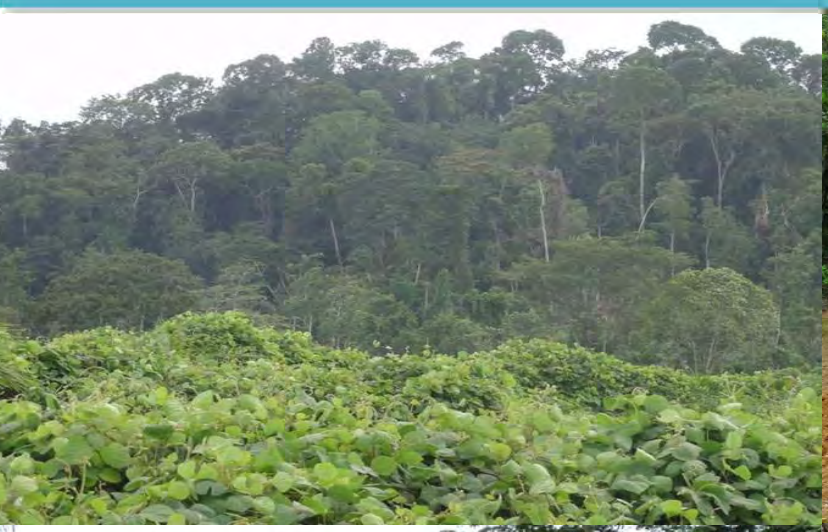
REPUBLIC OF LIBERIA




EUROPEAN UNION

FIFTH AUDIT REPORT – Volume 1

(New Reviews)

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
EuropeAid/137659/IH/SER/LR

March 2021

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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
A5R	Audit 5 report
AM	Aide Memoire
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)
IFM	Independent Forest Monitor/ Monitoring
IR	Inception report
IT	Information Technology
JIC	Joint Implementation Committee
KE1	Key expert 1
LAS	Legality Assurance System
LDF	Log Data Form
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
MC&R	Main Conclusions and Recommendations
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
TDF	Tree Data Form
TL	Team leader
ToR	Terms of reference
TSC	Timber Sale Contract

TSIS	Timber Sector Information System
UK	United Kingdom
VPA	Voluntary Partnership Agreement
VPASU	VPA Support Unit

1 EXECUTIVE SUMMARY

1.1 Introduction to this Audit 5 report

This '**Fifth Preliminary audit report'** concludes the fifth and last audit ("Audit 5") that was completed between October 2020 and February 2021 by the appointed **Independent auditor** (IA), the SOFRECO-EQO-Nixus Consortium (SOFRECO). It included a mission in Liberia from 13 November to 9 December 2020. 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 have been completed in total within the 4 years of the SOFRECO's IA mandate in Liberia, which ran from 6 March 2017 to 5 March 2021, with a view to have covered most of the entire scope of the LAS by the end of the initial IA mandate.

Approach to the design of the audit reports

Each new audit built upon, and followed on from the previous one. Thus, the results of each audit should not be interpreted in isolation; the results of each of the first four audits were rather meant to be reused, refined, completed and updated through the next audit, including this fifth and last audit.

All audit reports were therefore 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.

As a result: **this Audit 5 report is the most comprehensive of all five reports**, since its content also incorporates most of the content of the four previous reports.

The reader can however navigate through the report, from references in the Table of content, from this Executive Summary, and/or from the Main Conclusions & Recommendations (MC&Rs, Chapter 3), to find increasing levels of detail.

The IA has intended to keep this approach until the Baseline review of VPA requirements would be completed, at which stage the VPA Legality matrix would provide a relevant structure for the referencing of issues and the methodology

would become increasingly focused on risk-based assessments of LAS efficiency. This is still "Work in Progress" to be taken over and continued by the next contractor.

Structure of this Audit 5 report (A5R)

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

Hence the decision validated with the JIC's Working Group on the Independent Audit (IAWG), already for the Audit 4 report (A4R), to concentrate on the results of this Audit 5 and to thus split the report into:

- This **Volume 1** of the Audit 5 report (A5R, Vol.1), or "Main report", for all new analyses and findings and for all significant updates from the Audit 5; and
- The **Volume 2** of this Audit 5 report (A5R, Vol.2), for reminders of all reviews already completed in previous audit reports (Audit 1 to 4 reports), and only slightly updated or followed-up on during the Audit 5, 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 (Vol.1) report, but keeping all Issues and Risks in one table (See Chapter 7.2, 'Risks & Issues tracking' Database);
- The scope of the main report would also include a '**Review of corrective actions implemented by GoL**' for follow-up during Audit 5 within relevant sections of the report (i.e., not in one single place). These corrective actions, where any, were mostly communicated to the IA as part of the '**IAWG's comments to the A4 Report**' received on November 23, 2020 through the NAO, classified by Main Conclusions & Recommendation (MC&R) number in the Audit 4 report. Details of the review, with both the IAWG comment and the IA response, have been presented in the relevant section of this A4R, where the related issue is discussed in detail, for consideration. The IA kept such review in the Volume 1 where it affected IA's findings and C&Rs.

Based on that split, several sections from the previous report structure (as per their reference in the Audit 3 report) would now be included in a separate Volume 2 of the Audit 4 report:

- 'Key recommendations from Audits 1 to 3 combined' (1.3, now removed);
- 'Reminder of Audit 1 to 3 focus and results' (1.4, now 1.2);
- '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 5', actually now 'from the five Audits 1 to 5' or, in fact, 'from the Independent Audit 2017-2021' (1.2) is a key part of the report which the IA considers needed to stay in this main report (A5R 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 from one audit report to the next and between the two volumes of the same audit report.

As a result, the structure of this Volume 1 of the Audit 5 report now includes:

- This EXECUTIVE SUMMARY in Chap.1, with this 'Introduction to the report' (1.1) followed by the GENERAL CONCLUSION from the Independent Audit 2017-2021 (1.2);
- In Chap.3, the IA's MAIN CONCLUSIONS AND RECOMMENDATIONS (MC&Rs) to the Joint Implementation Committee (JIC), new or revised, from the Audit 5;
- In Chap.5, some parts of the IMPLEMENTATION phase of the Audit 5 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 5; and also, a copy of the entire database of the key risks & issues registered so far by the IA (See 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.

In response to an IAWG comment (11.10.19) for Audit 4, on the Audit Report, the IA again 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.*"

Focus of Audit 5

The main points of focus for this Audit 5 have been:

- As agreed with the IAWG for Audit 4, 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's comments to the A4 Report', classified by MC&Rs in the Audit 4 report);
- To continue exploring the effective and efficient LAS implementation by the responsible MACs;

- Time permitting, to continue the Baseline review into VPA annexes; and otherwise;
- To endeavor to "close" (resolve) all questions and needs for clarification that had been left pending in the Audit 4 report.

Methods used for this Audit 5

As for the first four previous 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[1]);

2. **Field audits** of the effectiveness of elements of the LAS, as observed on the ground, this time limited to audit meetings with, and requests for information from, responsible MACs in the Monrovia area;

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 4 had left off, having regard to the agreed focus. The **preliminary findings** from the Audits 1 to 4 were **followed upon** where necessary, and new findings added from this Audit 5.

The Audit 5 mission of the IA's experts in Liberia coincided with the **8th JIC meetings** held in Monrovia on November 24 to 26, 2020. This reduced the time available for interaction with auditees, since the IA KE1 Team Leader (KE1-TL) attended the (virtual) three-day meeting and staff from key MACs were busy preparing for and attending the meeting.

The IA also held a **Stakeholder information workshop** in Monrovia on December 2 and 3, 2020, on the Independent auditor' work and Complaint Management System (CMS). This also occupied significant time of the IA experts for preparation, implementation and administration.

Institutional setting of the Liberia LAS (short reminder)

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)

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

more into context. It shows the different levels of intervention of the Independent auditor within the FLEGT LAS.

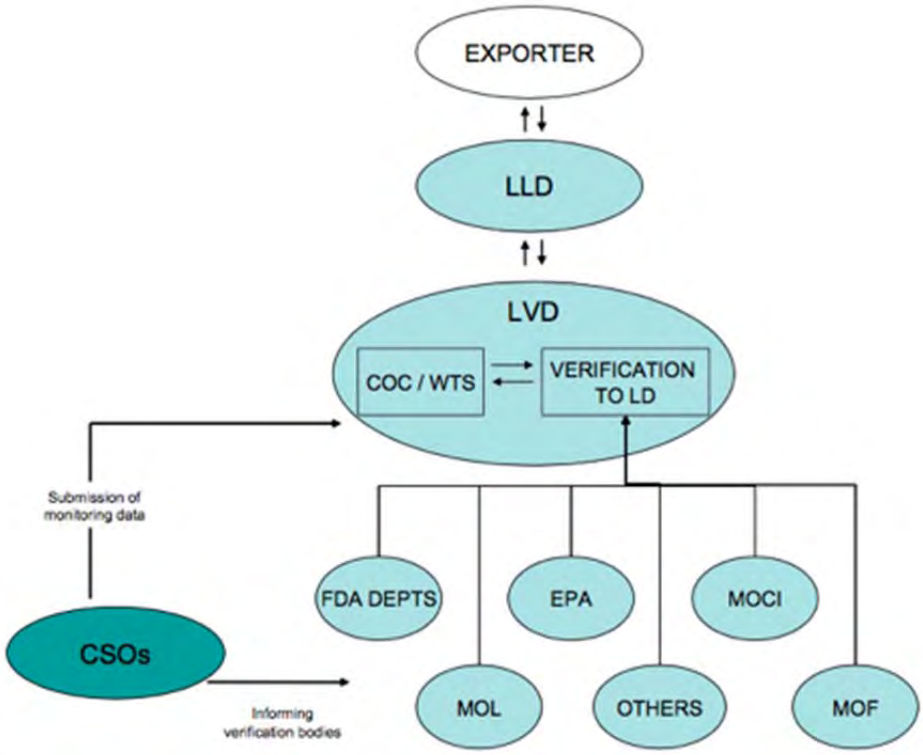

Figure 1: Institutional set-up for verification and licensing (source: Liberia VPA)

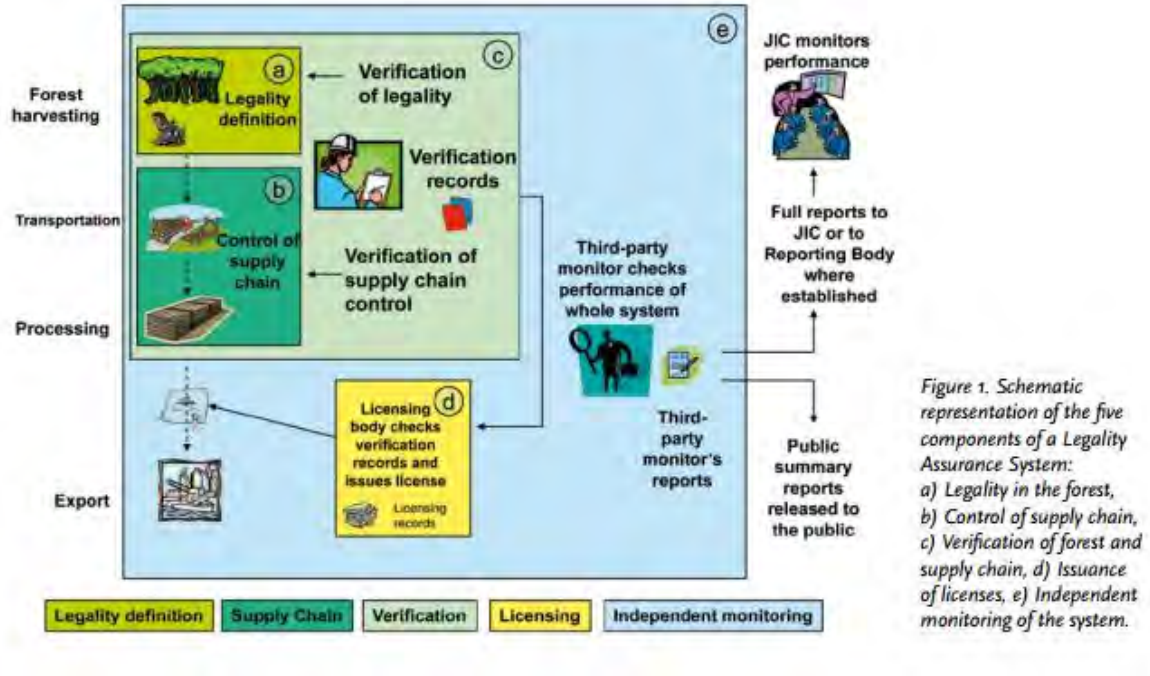

Figure 2: The five components of a Legality Assurance System

(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 1** below draws up a more detailed mapping of the LAS and shows what the Independent Audit has been able to cover, under the contract operated by SOFRECO from March 2017 to March 2021. It also shows yet unexplored territories of the LAS.

Table 1: Coverage of the Liberia LAS by the Independent Auditor, 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 III-X	-	-	-	-	-
Audit of FDA Departments: Commercial Forestry Dept.	√	√	√	√	√
Audit of FDA Departments: Legality Verification Dept.	√	√	√	√	√
Audit of FDA's Timber Sector Information System (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	√	√	√	√	√
New timber sources covered by the LAS (if regulation developed and enforced), from: artisanal logging, plantations, agricultural and mining concessions (conversion)	-	-	-	-	-

1.2 General conclusion and summary of findings from the Independent Audit 2017-2021

1.2.1 General conclusions from the Independent Audit 2017-2021

The Liberia LAS Implementation timeline and context:

- The EU-Liberia VPA, signed in July 2011, entered into the Implementation phase of its **Legality Assurance System** (LAS) in **2012**.
- The VPA's Joint Implementation Committee (JIC) contracted the **Independent Audit** function of the LAS in **2016**, with a view that its "recommendations will be useful to improve the system while it is being developed" (IA ToR).
- This is the fifth and last audit report issued by SOFRECO, that concludes the **2017-2021 Independent Auditor** (IA) mandate implemented by SOFRECO between 6 March 2017 and 5 March 2021 (48 months).
- The IA's findings must be placed in the context of an evolving system, yet with an initial objective set for the LAS to become fully operational, and for the first **FLEGT License** to be issued by Liberia, in **2014** (VPA Annex VII); now an estimated timeframe for **2022** (8th JIC AM, Art. 17).
- Such timeline indicates **considerable delays**, reflecting difficulties not limited to the Ebola crisis of 2015. It also suggests **mounting pressure** for the VPA parties, funders, and implementing partners to successfully complete the Liberia LAS' operationalization within a reasonable time horizon.
- Progress in implementation of the Liberia LAS has relied on (i) substantial **technical assistance** programs, geared to the capacity building of the responsible Ministries, Agencies and Commissions (MACs) and to developing the relevant operative frameworks, and on (ii) the will and capacity of the Liberian institutions to absorb such efforts and to manage and implement the expected changes.
- A key element in that phase has been the establishment of the **Legality Verification Department** (LVD) in the FDA, ending with the handover of the LVD capacity to the FDA, by the external service provider SGS. This was a continuation from the former SGS contract of 2008-2013 to develop and manage the first national timber Chain-of-Custody System (COCS). Starting in 2013, SGS developed and operated the LVD, and the handover process was eventually declared completed in July 2019.
- SGS also supplied an Information System called **LiberTrace**, a decision-making tool for the GoL and in particular the FDA, offering: (1) a Chain of Custody Information System (COCIS) to ensure the traceability of timber products along the supply chain from the forest to export; (2) a Legality Verification System (LVS) to ensure that timber products were produced, transported and sold in compliance with the Liberian definition of legal timber; and (3) a Licensing system to issue Export Permits, Certificates of Origin and ultimately FLEGT Licenses.
- The Government has then retained SGS as **Third-Party Monitor** to provide 3rd-party verification of Export Permits (on-going).

- Meanwhile, a long-term technical assistance to the LAS implementation process by a **VPA Support Unit** (VPA SU) has been in place ever since 2015, as well as a few other supporting projects.

What is the situation as of the end of 2020 (when this last audit was completed), i.e., eight years later?

The "big picture" can be figured out from the following conclusions.

Many positive aspects exist. This General conclusion does not intend to list them up, but they should be implicit from the identification of current gaps.

The ultimate goal of the VPA is to ensure that Liberia only exports (and sells on the national market, in future) **legally harvested timber** and timber products. *What is the current state of the legality of exports from Liberia? How has it evolved from the first to the fifth independent audits? How is this being monitored and acted upon?*

Conclusion 1: still a negative compliance picture

Broad compliance actually stands on three pillars, as per the modules in the Libertrace system: Traceability, Legality and Fiscality.

All IA's audit reports so far, as well as several international NGO reports, have concluded that **all exports from Liberia are currently illegal**. Not yet looking at the compliance with all applicable laws and regulations, this statement is based on the fact that key pre-felling requirements are not being met (qualification documents, management plans, obligations towards communities etc.).

Export permits (EPs) are currently being issued against the official list of '**Current export regime requirements**', which is a sub-set of the applicable laws and regulations as reflected in the Legality Matrix (LM) of the VPA: of **132 VPA LM Verifiers**, only 46 Verifiers are thus currently activated in Libertrace.

Even then, EPs are being issued although all Current regime requirements are not being complied with, for the same incompliances as indicated before. And yet, the current LM is still not incorporating all **new and forthcoming regulations** developed and adopted since 2013.

So, there is a long way to go before **FLEGT Licenses** can be issued against *full* compliance with *all* the requirements of an *updated* LM. Unless VPA annexes are amended to allow a distinction to be made between (i) what would currently be blocking for a License and (ii) what could be addressed through other measures and processes: this has been a constant IA 's recommendation since Audit 1.

Meanwhile, this situation is likely to be restricting the acceptation of Liberian timber on increasingly **regulated international markets** (like under the EU Timber Regulation), be it from Liberia directly or through a third country like China.

It may be though, that an EP from Liberia, now stamped and signed by SGS as third-party verifier, and duly authenticated, gets **better recognition** than EPs issued by Liberia before.

Still, there should be more positive and transparent communication for the export market, based on the recognition of the current limitations but also based on clear and realistic enforcement plans, from A) the current situation to B) compliance with Current regime requirements and then gradually to C) LM requirements.

Conclusion 2: slow progress, if no regression, and inadequate monitoring and drive

Since 2017, the IA has seen ongoing discussions about the issues mentioned above (Global Witness' 'Holding the Line' report, the "missing documents", absence of management plans, etc.).

Only lately, the IA has had indications that some **things are finally moving** regarding those particular issues, for example:

- Decision drafted on the legality of forest concessions with missing allocation documents. GoL to communicate a final position to the JIC before the end of 2020. (8th JIC AM, Art. 57, MoJ)
- Relevant Output 1.6 (Forest Management Plans, Elements for Sustainability of forest operations) in VPASU-2's workplans ('Planning Matrix pure', 'Update' 19Nov2020), which includes assisting FMCs and FDA develop 25-year cycle Forest Management Plans and update FDA guidelines.

The count of corrective measures implemented since March 2017, against IA's findings (See Table 3 in 5.5.2.2), shows that, out of **38 key selected issues** documented by the IA over 5 major audits in 4 years, only 1 has been closed, 2 are half resolved, and 5 still under investigation, while **30 remained 'non-compliant'**.

Clearly, the list of new and unresolved "previous" issues kept growing over time as the IA explored new scope. But the IA has no firm indication of the necessary energy and drive being put into trying to resolve the issues. In the IA's **Risks & Issues Tracking** Database (See Chap. 7.2), 2 risks and 2 issues have actually been upgraded from medium to high, while **not a single one was closed** in 4 years, and only one was downgraded (lifting of Liberia's suspension from EITI).

Feedback provided to the IA has been limited to a few FDA/IAWG[2] comments to the Audit reports nos. 2 to 4, mostly denying issues, initially, and then only partially addressing issues, often in an inconclusive manner, or making very general commitments.

It is an issue raised by the IA (HII 38) that the Independent Audit's results are **not** formally and systematically **feeding into the Forward Planner**. These processes should be closely connected to make a full and synergetic use of them.

The same criticism **also applies to** the results of **the Third-Party Monitoring** and of **Civil Society** (CS)'s **IFM** (Independent Forest Monitoring): at the 8th JIC meeting (Nov. 2020), the EU "highlighted that the concerns and findings raised by the Independent Auditor and Third-Party Monitor are *sometimes not addressed* and that this strongly indicates that *there might be some regression in the implementation of the VPA*"; and CS likewise expressed "concern about the low response on their independent monitoring reports, which is causing frustration and fatigue" as "no attention [is being] paid to their work". (8th JIC Aide-memoire)

Another indication of slow progress from the 8th JIC: an update of the **status of VPA implementation** since the last JIC, provided through the Forward Planner [FP] tool, showed that **only 2** out of 19 **decisions** (11%) made during the 7th JIC (in Feb. 2019) have been **completed** in over one and a half year, and 9 (47%) were simply marked "in progress", but without much detail.

[2] Independent Audit Working Group (the JIC's WG on the Independent Audit)

The EU, while admitting that "the necessary changes will require time and joint effort", is now urging Liberia "to progressively learn to drive the system and proactively **improve the compliance picture** in the country". The UK CFDO mentioned "*the increasing number of non-compliances*". (8th JIC Aide-memoire)

The Liberia side acknowledged "the compliance challenges" and stated that "FDA Management and the FDA Board have also taken an **interest in the compliance picture**".

The parties' shared the view that "the FP has not been fulfilling its intended role in measuring the status of implementation", and that "the tool is not being used to its full potential because **there has not been adequate monitoring** of targets within the tool".

Several measures were adopted by the 8th JIC towards a "***more adequate monitoring of targets*** *within the tool*", (i) for "*FP updates (…) to contain more detail around agreed timeframes, actions still in progress, key steps to be taken, and the individuals responsible for those actions*" (which also points to a current lack of firm drive in TLAS implementation, even if the "*lack of details in the FP (…) might also reflect an inaccurate picture of progress*"), and (ii) "*that the tool will be reviewed on a quarterly basis, through a high-level meeting to be led by the Technical Committee of the Liberian Implementation Committee (LIC)*".

Conclusion 3: some positive moves

Among the positive points, **new regulations** have been **approved** since March 2017 on e.g., the Community Rights Law (CRL), Abandoned Timber, Third Party Access to Forest Resources, Confiscated Timber, and Sustainable Biomass.

VPASU-2 also has a relevant Output 2.1 for 'Legality Matrix (LM) Completion' that includes **reviewing the LM** and **updating LM verification procedures**. It is unclear to the IA, though, whether this only involves incorporating CFMAs (linking to Output 3.1, Legality verification for CFMAs) or if an in-depth review has been undertaken and takes account of the IA's numerous recommendations regarding the LM.

The creation of the 'Independent **Third-Party Monitoring** (TPM) of Export Permit Issuance' role has also been an important step forward, partly compensating some regression resulting from the regrettable weakening (in relation to weak leadership, alleged reduced financing, and further lack of independence) of LVD, post-handover, particularly the LVD Legality Verification Unit, and especially the auditing section. LVD's poor working relationship with SGS has also been a publicized issue. The 'Compliance Registry' mechanism being put in place should be a good addition to the TPM and its functional articulation with LVD.

The creation of the TPM function may in fact have allowed to stabilize the **LAS Verification Framework** which the IA suggests can now be represented as follows, with 7 levels:

Level 7 – Oversight	Joint Implementation of the VPA by the JIC			
Level 6 - Independent Audit	Independent Audit			
Level 5 - Third-Party Monitoring	Independent Third-Party Monitoring			
Level 4 – Licensing vs. Enforcement	License/EP award by LLD		Enforcement" by LED	
Level 3 – Compliance verification	Broad compliance verification and auditing by LVD			
Level 2 – Government control	COCS (Traceability) by CFD	Forest Management (Legality) by LVD LV Unit	Taxation (Fiscality) by LVD LV Unit and LRA	Non-forestry regulations by EPA, MoL etc.
Level 1 – Logging sector operations	Economic operators			

Subject to further analysis, this may have removed the need for the **externalization of the LVD**, and possibly LLD, as the IA previously recommended because of internal conflicts of interests' issues (HII 8). This might also allow for another IA's recommendation, to **move the CoC inspectors in LVD to CFD**, to be implemented without also moving LVD out of FDA.

The Third-Party Monitor should actually cover the two possible outcomes of compliance verification by LVD: "License/EP award" (if all requirements fulfilled) or "Enforcement" (ensuring that non-compliances are redressed and duly sanctioned).

Conclusion 3: Where are the main gaps?

The **new regulations** approved since March 2017 have **not yet been enforced.** And some key regulations are **still missing** like on e.g., Chainsaw Milling, Timber Processing, Penalties, and Revised Fiscal Policy; or key **implementing and enforcement tools** like revised LVD procedures, the Enforcement and Compliance Handbook, or the Debarment List. The new chainsaw code produced overlaps with the existing approved CFHP code of Liberia and should be abandoned.

If the newly created Third-Party Monitoring function is mitigating conflicts of interests within FDA, two areas are undermining the functioning of FDA as an institution: both the Law Enforcement (LED) and the Public Affairs (PAS) Divisions need to be revived, their roles and responsibilities confirmed, and made functional. The IA has highlighted a strong need to clarify and strengthen the whole Law Enforcement chain within the FDA. The relevant Output 2.3 (Assist FDA in Law Enforcement) in VPASU-2's workplans is noted in that regard.

A critical weakness, consistently reported by the IA since 2017, though being a technical issue that should be easy to fix, has been the grave **lack of procedures** (including role description and allocation, templates, checklist, job descriptions etc.)

across the board, or poorly written ones. This includes all FDA Depts. (CFD, CyFD, LVD COC, LVD LV, LED, PAD) and the other line MACs (EPA, MoL) that the IA has audited. This is undermining all phases and elements of planning, resource allocation, efficiency of operations, reporting, enforcement, technical support, and even internal/ external monitoring and evaluation.

The lack of adequate **budgetary allocation** to the FDA and other line agencies, though not checked in detail under this last Audit 5, seems to be persisting. That the **escrow account** funding mechanism created for SGS/LVD could also be used to support all COCS activities, other field checks and LLD as mentioned by the 8th JIC would be a positive step, subject to effective government **revenue generation**.

Most preoccupying uncertainties remain regarding the long-term hosting, support and maintenance of **LiberTrace**, software property rights, and even on the integrity of data management, until decisions have been made and implemented.

While the Traceability and Fiscality pillars are fairly well supported by the CoC Information System (COCIS) as part of LiberTrace, the **Legality verification** (LV) pillar - both in documents and in the field – remains the weak point of the LAS. The auditing function of the LVD LV Unit has been almost idle since SGS' handover.

The **LiberTrace system** itself (both software and hardware) still has many needs and opportunities for further functionality enhancements. This could also include electronic field data management based on the use of the barcode tag system (the tag barcodes are currently not used) and of hand-held devices to support secure and efficient data capture, transmission, recording and processing.

New risks and issues have been registered by the IA, mostly owing to the findings from the Audit 4 field audits of (1) **containerized exports** (*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 evolutions needed in 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.*), and (2) the **TSC A2** area: *control and management of the contract and resulting case by the FDA*.

Field inspections by FDA CFD/LVD (pre/during/post-harvest) are generally lacking. The relevant Outputs 2.2 (Assistance to FDA in Inspections) and 4.2 (LVD Handover), which includes reviewing the management effectiveness of LVD inspections, in VPASU-2's workplans are noted.

Though this was not an area of focus for this Audit 5, many issues are apparent from the IA's monitoring reports or early findings, in relation to e.g.: land use conflicts (forestry vs. mining), abuses of the CFMA system, or agreements with affected communities. In that regard, the IA made a useful distinction between three different **benefit sharing mechanisms** benefitting communities, that are often confused: 1) Social Obligations and Benefit Sharing (LM P3), 2) the National Benefit Sharing Trust Board (NBSTB) mechanism, and 3) the Percentage of land rental fees paid to communities under CFMAs. Neither the second and the third are yet currently represented in the LM.

Private sector operators keep complaining about the lack of good infrastructure and services (to e.g., transport their products, implement processing facilities, and

export bulked logs – through Monrovia - or containers – through all other ports) as part of a more enabling business environment that would create a win-win situation for the Liberia forest sector and the business.

Civil Society Organizations (CSOs) keep complaining that they are not being listened to as they should, be it in the committees they sit in, or through their IFM and media reports. Some say they even feel threatened. Amazingly, though, not a single CSO or individual has yet filed any complaint against the LAS, even anonymously, following the public launch of the IA's **Complaint Management System** (CMS) in December 2020 through a stakeholder workshop.

Gaps with regards to the **"soft" values of the VPA**, like transparency, communication, inclusiveness, and accountability, must also be carefully monitored and addressed.

The list of key findings follows in the next section.

Since its inception in March 2017, this Independent audit has covered a fairly **comprehensive scope** of the Liberia LAS. Reviews in a few areas have only been initiated, and other would require further investigations. These will be for the future IA to consider exploring or pursuing, as well as to monitor the risks and issues already registered.

1.2.2 Summary of findings

The following **Table 2** cross-references the **Main Conclusions & Recommendations** (MC&Rs) presented in Chap. 3, with the key (high and medium) **Risks and Issues** compiled in the IA 'Progress Database' presented in Chap. 7.2, **by area of the LAS**:

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

VPA LM Principle	*Area of the VPA/LAS*	*Main C&R*	*Risk/Issue*	*Ref.*	*Ref. in A5R Vol.1/2*
	LAS implementation framework				
General	Legal and regulatory framework	3.1	Revised LVD Procedures (SOPs) not formally approved	HII 11	Vol.2, 7.3.6.8
General	Legal and regulatory framework	3.1	Slow development and implementation of new regulations	HII 13	Vol.1, 6.4.1.1
General	Legal and regulatory framework	3.1	FIDERA law risks affecting public revenue, contract compliance	HR 1	Vol.1, 7.3.5.3
P1	Legal and regulatory framework	3.1	Forest governance challenges from the Land Rights and Local Government Acts	MR 4/ 5	Vol.2, 7.3.6.10
General	Current relevance of the Legality matrix	3.1, 3.3	Legality matrix needs to be updated and reviewed	HII 2	Vol.2, 7.3.7, 7.3.17.2
P4	Minimum cutting diameters	3.2	Administrative DCLs missing in regulations; Management Guidelines risk not being applied	HII 33	Vol.1, 7.3.5.9
General	Participatory forest governance in Liberia	3.4	Forest Management Advisory Committee currently weak	HII 12	Vol.1, 7.3.1.10

VPA LM Principle	Area of the VPA/LAS	Main C&R	Risk/Issue	Ref.	Ref. in A5R Vol.1/2
General	Institutional setting for VPA implementation	3.5	Conflicts of interest b/w key roles of LVD/LLD and within FDA	HII 8	Vol.1, 7.3.1.10/ 7.3.7.3
General	LAS Verification Framework	3.5	Confusion regarding different levels in the LAS Verification Framework	MII 18	Vol.1, 6.1.7.3
General	LAS Verification Framework	3.5	Level 2 roles entrusted to LVD (otherwise a Level 3 function) creating issues	MII 19	Vol.1, 6.1.7.3
P10	Operator's compliance with LM requirements	3.6	Current log exports would not allow FLEGT Licenses issued	HII 4	Vol.2, 7.3.10.3
General	Management of non-conformances under the VPA	3.7	Full compliance with all LM requirements not a feasible 'SMART' goal	HR 3	Vol.2, 7.3.13
P6	Timber products subjected to the LAS	3.30	Timber products in VPA Ann. I not currently in the COCS	HII 31	Vol.2, 7.5.2.1
	Implementation of the role of Government				
General	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	Vol.2, 7.4.9
P4	FDA approval of pre-felling requirements	3.9	Annual Operation Plan (AOP) approved after felling took place	HII 1	Vol.2, 7.4.3.2
P4		3.9	CFMA management plan approved based on a 15-year cutting cycle	HII 17	Vol.2, 7.4.3.1
P4		3.9	Lack of: AOP report template and of procedures for approval	MII 8	Vol.1, 6.2.1.3
P4		3.9	Lack of: Compartment report template, approval procedures	MII 9	Vol.1, 6.2.1.3
P4		3.9	Regulatory steps before being allowed to harvest not followed	HII 7	Vol.2, 6.4.9
P2		3.9	Concession reviews may find contracts non-compliant	HR 5	Vol.2, 6.4.9
P4	Field inspections of post-felling requirements (CFD)	3.10	CFD not fulfilling day-to-day control responsibilities	HII 6	Vol.2, 7.4.1.4
P3		3.10	Financial and other obligations from Social Agreement not met	HII 9	Vol.2, 6.5.2
P4		3.10	Minimum diameters not correctly enforced	HII 33	Vol.1, 7.3.5.9
General		3.10	Field staff lacking resources, independence, support	HR 4	Vol.2, 7.4.1.4
P5	CFD Environmental Impact Assessment Division (EIAD)	3.11	Unclear responsibilities vs. EPA, possible overlaps and loopholes	HII 26	Vol.1, 6.2.1.3

VPA LM Principle	Area of the VPA/LAS	Main C&R	Risk/Issue	Ref.	Ref. in A5R Vol.1/2
General		3.11	Lack of: procedures, checklists, templates, training, resources	MII 10	Vol.1, 6.2.1.3
P5		3.11	Lack of: clear allocation in LM and of procedures for CFD/ EIAD? *wrt* water courses	MII 11	Vol.1, 6.2.1.3
P2, P3	Community Forestry Department (CyFD) of FDA	3.12	No procedures for prior informed consent to FMCs and TSCs	HII 27	Vol.2, 7.4.2.2
General		3.12	Insufficient budget to operate; other issues contingent	HII 28	Vol.2, 7.4.2.2
P3		3.12	Unclear which FDA Dept. enforces social obligations: CyFD or CFD	MII 12	Vol.2, 6.5.2
General, P2, 3, 4, 5, 8	Law Enforcement Division (LED) of FDA	3.13	Unclear roles; limited participation in law enforcement; few ACARs, inconsistently prepared	HII 21	Vol.2, 7.4.8.1
		3.13	Unclear assignment of roles and ineffective implementation; enforcement chain dysfunctional	HII 22	Vol.2, 7.4.8.1
General	Public Affairs Division (PAD) of FDA	3.14	PAD needs to be revived. FDA website not fulfilling its key communication roles	HII 24	Vol.2, 7.4.8.2
P5	Environmental Protection Agency (EPA)	3.15	Unclear roles under P5; lack of resources, procedures, training	HII 36	Vol.2, 7.4.10.1
P8	Ministry of Labor (MoL)	3.16	Lack of: resources, procedures, training to operate under P8	HII 37	Vol.2, 7.4.10.2
P6	Manual of CoC procedures for LVD staffs	3.17	Problems relative to accuracy &/or level of implementation in the field	HII 15	Vol.2, 7.4.6.1
General		3.17	Confusing SOP numbering (vs. Chapters, Operators, old set)	MII 16	Vol.2, 7.3.11.1
General	Documentation used by the Auditing section of LVD	3.18	Documentation and training of LVD audit team needs updating	MII 2	Vol.2, 7.4.6.3
General	LVD auditor training & qualifications	3.19	Gaps in procedures in respect of training & qualifications and in related records	HII 16	Vol.2, 7.4.6.2
P4	LVD auditing against the CFHP Checklist	3.20	LVD audit team not conducting enough field audits	HII 20	Vol.2, 7.4.6.4
		3.20	Sharing of funding mechanism with other FDA depts. and MACs further weakening LVD LV Unit	HR 9	Vol.1, 6.2.3.8
General	Functionality of COCIS software (LiberTrace)	3.21	Functionality issues with the auditing section in LiberTrace	MII 3	Vol.2, 7.4.7.1
P6	CoC inspections by the LVD	3.22	CoC integrity and data quality issues; case for electronic field data management	MR 6/ HR 7	Vol.1, 6.2.3.7, 6.4.11

VPA LM Principle	Area of the VPA/LAS	Main C&R	Risk/Issue	Ref.	Ref. in A5R Vol.1/2
General	Data management by LVD in LiberTrace	3.23	Information missing, status not accurately qualified	MII 4	Vol.2, 7.4.6.5
P6, P9	Data management by LVD in LiberTrace	3.23	Felling only declared upon export: COC only retrospective; stumpage, traceability/ compliance checks delayed; abandoned logs undetected, not taxed or fined	MII 14 / HII 41	Vol.1, 6.4.11; Vol.2, 7.4.6.5
P6		3.23	Late supply of documents by Operators before loading	MII 15	Vol.2, 7.4.6.5
P6		3.23	Risk of logs circulating, and processed or smuggled out undeclared	HR 6	Vol.1, 6.4.11.6
P3	Data sharing with CSOs / communities	3.24	LiberTrace not supporting Benefit sharing with communities	HII 30	Vol.2, 6.5.2
General		3.24	CSOs not providing monitoring data on operators‘ compliance	MII 13	Vol.2, 7.3.8.1
P10	Review of current Export Permit issuance	3.25	Inconsistent enforcement of LM requirements for Export Permit	HII 3	Vol. 2, 7.4.12
P10		3.25	Log exports receiving EPs; but do not comply with requirements	HII 18	Vol.2, 7.5.3.1
P2		3.25	Missing concession documents against legal export requirements	HII 25	Vol. 2, 6.4.9
P10		3.25	Export permits being issued outside LiberTrace; no register	HII 32	Vol. 2, 7.5.3.4
P10	Enforcement of Legality matrix requirements	3.26	Inconsistent enforcement of LM requirements for export and else	HII 3	Vol. 2, 7.4.12
P10	Efficiency of border control	3.27	Risk of illegal loading of ships ashore e.g., Harper (potential transshipment at sea)	MR 2	Vol.2, 6.4.14.2
P10		3.27	Risk of smuggling through unmanned border-crossings	MR 3	Vol.2, 6.4.14.2
General	Reporting, enforcement, and publication	3.28	Few sanctions/fines being imposed for illegalities; none published	HII 5	Vol.2, 6.4.15
P11	**Communication and transparency**	3.29	Liberia once suspended from EITI, still unable to implement LM Indicators 11.2-3?	HII 34/ MII 21	Vol.2, 6.5.3
General		3.29	No JIC’s Annual reports 2015 - 2020; irregular LVD monthly reports, content not assessed	MII 5	Vol.2, 7.4.13
General	**Continued external support to LAS implementation**	3.1	VPA-SU2 now covering the entire LM scope?	HII 14	Vol.2, 7.3.11.1
General		3.31	Uncertain status of handover from SGS to GoL/FDA/LVD	HR 8	Vol.2, 7.4.5.2

VPA LM Principle	Area of the VPA/LAS	Main C&R	Risk/Issue	Ref.	Ref. in A5R Vol.1/2
General	**Monitoring of progress in VPA implementation**	3.32	Independent Audit, Third-Party Monitoring, Civil Society processes not systematically feeding into the Forward Planner	HII 38	Vol.1, 6.1.16
General	**Implementation of the Independent Audit of the LAS**	3.32	Failure by VPA implementation partners to respond to IA's information requests	HII 19	Vol.2, 7.4.1.2
		3.32	IA untruthfully quoted and without clear references	HII 35	Vol.2, 6.2.2.2
P2	**Control by FDA of TSC status and activity**	3.33	Illegal extensions of a TSC, pre-felling requirements not met, and many other critical issues in the management of the TSC A2 case	HII 39	Vol.1, 6.2.3.11
P6	**Enforcement of new regulation**	3.34	Late and slow enforcement of the 'Abandoned Logs' Regulation	HII 40	Vol.1, 6.4.1.1
P4	**Development of new implementing and enforcement tools**	3.35	Inappropriate release of 'New Code of Forest Harvesting Practices on Chainsaw'	MII 20	Vol.1, 6.4.12
P10	**COCS, Control of legal shipments**	3.36	Inspections of container loading operations by FDA not robust enough to prevent fraud	HR 10	Vol.1, 6.2.3.11
P10	**COCS, Control of legal shipments**	3.36	Export permits approved against SGS recommendations, through override documents issued by Management without control	HII 10/ MR 7	Vol.2, 7.5.3.2/ Vol.1, 6.2.3.11

1.2.3 A reflection by the IA on the VPA

Overall legal compliance situation in the Liberian forest sector under VPA LAS implementation, from the perspective of the Independent Auditor 2017-2020:

Better (governance and technical) systems and procedures are in place. They have already triggered short-term improvements and they will trigger lasting improvements if they are sustained.

Coherence and complementarity with other instruments will help, like international recognition of the Liberian LAS' robustness measured through the filters of: readiness assessments for FLEGT licensing; due diligence (by potential buyers) under EUTR (and other international timber regulations) endorsing, or sanctioning, Liberia's timber; and Public CS reports and country profiles providing information for legality risk assessment and mitigation.

The risks of circumvention (of the LAS) are still considered high, on the basis of the large and ever-growing number of risks and issues raised so far, and too few addressed. There is a non-negligeable risk that another system could develop (or continue running) in parallel of the LAS.

Likely enemies of the LAS are the lack of political will and rampant corruption fueling unlawful deals. Though difficult to prove (yet recognized in Liberia), these are common issues in a number of national forest sectors - especially in

developing countries where institutional capacity (budget, management, systems, skills) is low, or is kept intentionally low, as well as accountability.

This can only but undermine staff integrity and professionalism, with a large spectrum of possible outcomes, going from “simple” non-compliances not punished to possibly organized crime. To the detriment of sustainable forest management and good governance for the common benefit of the Liberian people.

Institutional capacity-building can be a long and arduous process. It may require a change management program to educate and motivate changes to deep-rooted mentalities and behaviors. Its success very much depends on how it is driven and impulsed from the top; therefore, it depends on the political agenda. An independent contractor hired to run the whole LAS, reporting to the Minister, would be operational within a short time, but this is not the option that Liberia and the EU have chosen.

Against possible doubts on the cost opportunity and eventual success of the VPA, the paradigm should not be “*Liberia is not a big exporter, so why care?*” but “*Liberia could significantly increase its exports' volumes, based on a robust system to prove that Liberia's timber is legal*”. And there is the economic development opportunity, which also justifies the EU's and other donors' engagement.

The four components of FLEGT, Forest Law, Enforcement, Governance and Trade still have potential for greater leverage in Liberia. The “T” for Trade in FLEGT, in particular, through promotion and trade facilitation, has not really been used yet in Liberia, as a way of engaging all stakeholders into mutually beneficial and sustainable relationships.

1.3 Reminder of Audits 1 to 4 focus and results

As previously agreed with the IAWG, this section derived from the Audit 3 report structure has now been moved to the separate Volume 2 of this Audit 5 report.

2 CONTRACTUAL FRAMEWORK FOR THIS AUDIT REPORT

As previously agreed with the IAWG, this section from the Audit 3 report structure can now be found in the separate Volume 2 of this Audit 5 report.

3 MAIN CONCLUSIONS AND RECOMMENDATIONS FROM AUDIT 5 (AND FOLLOW-UP ON FROM AUDIT 4)

The Main Conclusions & Recommendations (MC&Rs) from Audit 5 in this chapter are either new C&Rs, or existing C&Rs that have been updated from the previous Audit 4 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.

Origin: 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) in this Audit 5 report, while existing C&Rs were followed-up and updated under this Audit 5 from previous reviews in 6.4 and in Chap. 7.3 to 7.5 in the previous Audit 4 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 have been increasingly presented in a sequential order that reflected the structure of the LAS.

3.1 Legal and regulatory framework relative to LAS implementation

References in the IA Progress Database and in this Audit 5 report:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
LAS implementation framework				
Legal and regulatory framework	3.1	Revised LVD Procedures not formally approved	HII 11	Vol.2, 7.3.6.8

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
	3.1	Slow development of new regulations	HII 13	Vol.1, 6.4.1.1
	3.1	FIDERA law risks affecting public revenue, contract compliance	HR 1	Vol.1, 7.3.5.3
	3.1	Forest governance challenges from the Land Rights and Local Government Acts	MR 4, MR 5	Vol.2, 7.3.6.10
Current relevance of the Legality matrix	3.1	Legality matrix needs to be updated and reviewed	HII 2	Vol.2, 7.3.7
Continued external support to LAS implementation	3.1	A question now is whether VPA-SU2 covers the entire LM scope	HII 14	Vol.2, 7.3.11.1

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 **key 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**: for example, 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 IA Legal expert has established that 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 (HII 13), 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);
- 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 and beyond (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 (SOPs) not yet 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) and still having many issues (HII 15);
- **Enactment of the (then) 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. 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 were 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)

  Audit 5 (FDA comment): FDA & LRA finalizing the reviewing of the provision of the agreement that goes beyond the removal of the suspension of the 3 years.

The also (then) new Land Rights and Local Government Acts (See 7.3.6.10, 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. Audit 5 (FDA): The FDA legal office will work with other ministries and agencies to assess the impact of the two new laws and put in place proper mechanism that would avert any negative impacts. IA Legal expert: Most of the fees collected from logging companies are related to the award and operation of logging contracts, as well as the sale of harvested timber. The full value of these fees continues to be invoiced for and collected by the central Government (LRA). Hence, there is really no significant drop to be expected from what the LRA is currently collecting merely because of the provisions of the Local Government Act.

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 and technically improved versions of the LVD Procedures (SOPs) 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, and not renewing it anyway after it expired in October 2020;
- 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.

3.2 Minimum cutting diameters

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
LAS implementation framework				
Minimum cutting diameters	3.2	Administrative DCLs missing in regulations; Management Guidelines risk not being applied	HII 33	Vol.1, 7.3.5.9

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 led to a risk that cutting diameters would be reduced on an *ad-hoc* basis.

Undersized logs were in fact produced for some time due to the new CFHP no longer containing the list of DCLs and to the general 60cm rule (the absolute minimum) being wrongly applied to *all* species. The single limit of 60 cm was also applied for Export permits in LiberTrace across the board.

Legally, however, the IA has established that the administrative "Diameter Cutting Limits (DCLs)" have always remained in force, on the basis of provisions in the 2017 CFHP linking to the 2009 FMPGs.

Recent re-enforcement of the Diameter Cutting Limits (DCLs) by the FDA has not been fully consistent, through letters being sent to some, but not all individual contract holders or operators.

The IA's recommendation had rather been for the JIC to consider supporting any FDA's effort to re-issue a regulation on DCLs of general application for new forest contracts. Under such option, because no FDA regulation could lawfully amend or annul a forest contract, a review of existing forest contracts would need 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.

If no regulation on DCLs is re-issued, the FDA still needs to clarify how it intends to review and regulate the DCLs that do not formally exist in any current law or regulation. The FDA must publicly provide transparent evidence that it is enforcing the Diameter Cutting Limits (DCLs) evenly, through consistent instructions given to all logging operators, with the list of DBH DCLs, and in accordance with provisions in the 2017 CFHP based on the 2009 FMPGs.

Meanwhile, FDA comments to the IA[3] suggest that FDA is relying only on the contract holders or loggers to develop their Strategic Forest Management Plan (SFMP) and to adjust the administrative DCLs. If that is confirmed, it means the FDA would not be fulfilling its role and legal obligation, as defined in the FMPGs, to apply the provided scientific methodology during the preparation of the SFMPs.

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. And FDA still needs to enforce that FMC holders submit their strategic plan.

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

Consistent implementation of DCLs in LiberTrace must also be clarified: it should be the tree DBH that is retained in LiberTrace for EP (if above DCL) for all logs from a same tree.

3.3 Current relevance of the Legality matrix

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
LAS implementation framework				
Current relevance of the Legality matrix	3.1, 3.3	Legality matrix needs to be updated and reviewed	HII 2	Vol.2, 7.3.7, 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.

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[4] 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 the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
LAS implementation framework				
Participatory forest governance in Liberia	3.4	Forest Management Advisory Committee currently weak	HII 12	Vol.1, 7.3.1.10

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

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

Main recommendations: 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.

See also next 3.5, d: Strengthen the role of the NMSMC to increase transparency and accountability in forest governance as exercised by the FDA.

3.5 Institutional setting for VPA implementation (LAS Verification Framework)

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
LAS implementation framework				
Institutional setting for VPA implementation	3.5	Conflicts of interest b/w key roles of LVD/LLD and within FDA	HII 8	Vol.1, 7.3.1.10 / 7.3.7.3
LAS Verification Framework	3.5	Confusion regarding different levels in the LAS Verification Framework	MII 18	Vol.1, 6.1.7.3
LAS Verification Framework	3.5	Level 2 roles entrusted to LVD (otherwise a Level 3 function) creating issues	MII 19	Vol.1, 6.1.7.3
Law Enforcement Division (LED) of FDA	3.5, 3.13	Unclear definition of roles; very limited participation in law enforcement; few ACARs, inconsistently prepared	HII 21	Vol.2, 7.4.8.1
Law Enforcement Division (LED) of FDA	3.5, 3.13	Unclear assignment of roles and ineffective implementation; enforcement chain dysfunctional	HII 22	Vol.2, 7.4.8.1

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 of 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, while the External Service Provider was building and handing over the capacity of the LVD, 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.

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.

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, and now six levels (with the newly created 'Independent Third-Party Monitoring of Export Permit Issuance' role currently entrusted to SGS Liberia) in the LAS verification framework (See 6.1.7.3).

The FDA/IAWG response (to the C&R in the Audit 3 report) did not address the key CoI issues raised 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 had been informed that this effort was not yet completed.

There has now been recognition by the FDA that the LVD TM is currently reporting to the DMDO although all FDA TMs should report to the MD.

The IA's first recommendation below (to transfer CoC from LVD to CFD, with use of LiberTrace and same funding) is in fact being implemented by the FDA. However, this was only one part of the IA's whole recommendation which also included that LVD should be moved out of FDA and should not be implemented only partially. But this reservation may actually not withstand the creation of the above-mentioned Third-Party Monitor role.

There is also concern about the direct financing mechanism through a transitory account, which had been created for SGS/LVD and then LVD, being diverted from LVD to the benefit of COCS management and other activities in FDA (See HR 9).

As a result of both actions, the remaining Legality Verification arm of LVD is being critically weakened.

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 six 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.
      * Unless the Third-Party Monitor role is maintained in the overall LAS.

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[5].
- 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.

[5] Possibly renamed “LVD”, the name being in fact appropriate to concentrate all Level 2 control.

- Keep the third role (licensing function) 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 function (of currently LVD) outside the FDA possibly into a broader "LLD"[6], under LRA or Internal Audit for example (See 7.3.7.3).

These externalization options for LVD, and possibly LLD, may not survive the creation of the new Third-Party Monitoring role, if the Third-Party Monitor can ensure that 1) these internal conflicts of interests' issues do not preclude the good functioning of the overall LAS and that 2) Export permits (EPs) and FLEGT Licenses are issued on the basis of an objective, if not independent, opinion.

The Third-Party Monitor should actually cover the two possible outcomes of compliance verification ("Pass or Fail"): either "License/EP award" by LLD (if all requirements are fulfilled) or "Enforcement" by LED (to ensure that non-compliances are redressed and sanctioned as the Law provides for), with some possible overlap for "non-blocking non-compliances".

The recommended 7-level LAS framework then can be represented as follows:

Level 7 – Oversight	Joint Implementation of the VPA by the JIC			
Level 6 - Independent Audit	Independent Audit			
Level 5 - Third-Party Monitoring	Independent Third-Party Monitoring			
Level 4 – Licensing vs. Enforcement	License/EP award by LLD		Enforcement" by LED	
Level 3 – Compliance verification	Broad compliance verification and auditing by LVD			
Level 2 – Government control	COCS (Traceability) by CFD	Forest Management (Legality) by LVD LV Unit	Taxation (Fiscality) by LVD LV Unit and LRA	Non-forestry regulations by EPA, MoL etc.
Level 1 – Logging sector operations	Economic operators			

[6] The name in fact being appropriate to concentrate auditing and licensing.

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

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
LAS implementation framework				
Operator's compliance with Legality matrix requirements	3.6	Current log exports would not allow FLEGT Licenses issued	HII 4	Vol.2, 7.3.10.3

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).

3.7 VPA management of non-conformances

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
LAS implementation framework				
Management of non-conformances under the VPA	3.7	Full compliance with all LM requirements not a feasible 'SMART' goal	HR 3	Vol.2, 7.3.13

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 risks blocking the

system, or rather prompting the circumvention of some requirements in LAS implementation and compliance, 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. is needed.

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 therefore suggests that ”*existing legal procedures and sanctions [that] apply for handling failures*” (as per Art. 6.2) may not be sufficient or adequate.

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 “system response procedures” document. But it has not been formally approved yet and might need to be first revised whether it fulfills that need.

Main recommendations:

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 part of the draft regulations that were sent to MFGAP for legal review by a law firm (8th JIC)), subject to its prior revision whether it constitutes the much needed “system response procedures” document.

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

This section has been archived in the Volume 2 of this Audit 5 report (same number and heading).

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
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	Vol.2, 7.4.9

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

Case 1: Management plan

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
Implementation of the role of Government				
FDA approval of pre-felling requirements	3.9	CFMA management plan approved based on a 15-year cutting cycle	HII 17	Vol.2, 7.4.3.1

Conclusion: FDA Commercial Forestry Dept. approved a CFMA management plan based on a 15-year cutting cycle in contradiction with Liberian Law and Liberia's sustainable Forest Management Planning Guidelines (FMPGs).

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).

For Norway, "there is a very concerning trend with commercial logging shifting from Forest Management Contracts (FMCs) to community forests [CFMAs]. The logging based on 15-year cycle in community forests is not sustainable, as it encourages companies to do one-time extraction of the most attractive parts of the forest. This undermines efforts to sustainably manage the forest" (8th JIC AM, Art. 54).
The FDA responded that *perhaps* the legal framework around the cycle needs to be reviewed against the commercial competitiveness of a 15 year versus 25 year

cutting cycle" (8th JIC AM, Art. 55), which for the IA reflects a lasting lack of firm political engagement to resolve the issue.

Case 2: AOP

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
LAS implementation framework				
FDA approval of pre-felling requirements	3.9	Annual Operation Plan (AOP) approved after felling took place	HII 1	Vol.2, 7.4.3.2

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*.

For the IA, this links to the "lack of AOP report template and of procedures for approval" (as per the following chapter) which should be addressed before any training in their application can efficiently take place.

AOP template, approval procedures

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
Implementation of the role of Government				
FDA approval of pre-felling requirements	3.9	Lack of: AOP report template and of procedures for approval	MII 8	Vol.1, 6.2.1.3

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.

There will then be a need 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 referring to the new community forest management guidelines reportedly launched at the end of October 2019, developed by FDA/PROSPER and FDA claims is used as a template to review and approve CFMAs; but the IA has no evidence these have been approved which, as of November 2019 was due "after the consultant finally report").

Conclusion: 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 (apart from a checklist based on the content of an AOP in the FMPGs).

Recommendation: AOP report template and approval procedures and checklist yet to be officially developed, approved and implemented.

Template and approval procedures for Compartment plan and annual blocks

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
Implementation of the role of Government				
FDA approval of pre-felling requirements	3.9	Lack of: Compartment report template, approval procedures	MII 9	Vol.1, 6.2.1.3

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 FMPGs stipulate and the VPA/LM therefore also requires).
- No procedures and audit checklist and report template exist for completing the Annual compliance audit and audit report (ACAR) covering Compartment planning and Annual coupe review.
- The intended corrective measure for FDA Management to develop a compartment harvesting report template *after 5 years* was noted.

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

New from Audit 3, concession reviews

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
Implementation of the role of Government				
FDA approval of pre-felling requirements	3.9	Concession reviews may find contracts non-compliant	HR 5	Vol.2, 6.4.9

Reviews (the Presidential Review, the complementary review of forest concessions under the Liberia Forest Sector Project) of all existing agreements, contracts and concessions signed by and between the Liberian Government and private sector firms have taken place or are still ongoing. The IA has no knowledge of the status and outcomes of these reviews.

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.

Main conclusions for this section

Lack of templates and of approved procedures for approval of pre-felling requirements.

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 found by the IA have existed of illegitimate approvals of pre-felling requirements (i.e., management plan based on a 15-year cutting cycle, AOP approved after the felling took place, Annual Harvesting Certificates issued 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 still 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 the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
Implementation of the role of Government				
Field inspections of post-felling requirements (CFD)	3.10	CFD not fulfilling day-to-day control responsibilities	HII 6	Vol.2, 7.4.1.4
	3.10	Field staff lacking resources, independence, support	HR 4	Vol.2, 7.4.1.4
	3.10	Financial and other obligations from Social Agreement not met	HII 9	Vol.2, 6.5.2
	3.10	Minimum diameters not correctly enforced	HII 33	Vol.1, 7.3.5.9

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, DSA) 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 unless the separate financing mechanism that had been created for SGS/LVD was maintained for LVD (see 3.5, HR 9).

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

The field audit conducted in Region 4 of the FDA also indicated that, as already noted in Region 3, the FDA Head Office (HO) 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. (CFD). 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 HO).

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 HO, was not fulfilling day-to-day field control (inspections, reporting, sanctioning, publishing) responsibilities (Vol.2, 7.4.1). 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 were 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 has remained 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.

On CFD now using the direct financing mechanism through a transitory account that had been created for SGS/LVD, see 3.5, HR 9.

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

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

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
Implementation of the role of Government				
CFD Environmental Impact Assessment Division (EIAD)	3.11	Unclear responsibilities vs. EPA, possible overlaps and loopholes	HII 26	Vol.1, 6.2.1.3
	3.11	Lack of: procedures, checklists, templates, training, resources	MII 10	Vol.1, 6.2.1.3
	3.11	Lack of: clear allocation in LM and of procedures for CFD/ EIAD? *wrt* water courses	MII 11	Vol.1, 6.2.1.3

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.
- The IA still needed 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 in Audit 4 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.

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

This section has been archived in the Volume 2 of this Audit 5 report (same number and heading).

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

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
Implementation of the role of Government				
Law Enforcement Division (LED) of FDA	3.13	Unclear definition of roles; very limited participation in law enforcement; few ACARs, inconsistently prepared	HII 21	Vol.2, 7.4.8.1
	3.13	Unclear assignment of roles and ineffective implementation; enforcement chain dysfunctional	HII 22	Vol.2, 7.4.8.1

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 no. 4, LED should be playing three key roles, at Level 4 in the proposed Legality Verification Framework (See 6.1.7.3), 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 "Level 4" roles (as per in the proposed LAS framework) identified for LED within FDA, to: 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.

FDA/IAWG response to the Main C&R in the Audit 3 report[7]**:** none.

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

This section has been archived in the Volume 2 of this Audit 5 report (same number and heading).

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

This section has been archived in the Volume 2 of this Audit 5 report (same number and heading).

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

This section has been archived in the Volume 2 of this Audit 5 report (same number and heading).

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

This section has been archived in the Volume 2 of this Audit 5 report (same number and heading).

[7] 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

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

This section has been archived in the Volume 2 of this Audit 5 report (same number and heading).

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

This section has been archived in the Volume 2 of this Audit 5 report (same number and heading).

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

This section has been archived in the Volume 2 of this Audit 5 report (same number and heading).

3.21 Functionality of COCIS software (LiberTrace)

This section has been archived in the Volume 2 of this Audit 5 report (same number and heading).

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

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
Implementation of the role of Government				
CoC inspections by the LVD	3.22	CoC data quality issues in case of copy-paste of operators' data	MR 6/ HR 7	Vol.1, 6.2.3.7

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 inspection 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 risk factor would be that of collusion between FDA/LVD staff and operators.

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

Despite the “blind inspection” procedures for LVD CoC Inspectors, inspections are not always organized as such, LVD managers can see and export Operators’ data from LiberTrace (LT), the handwritten inspection form can be forged before being attached in LT, Inspectors do not really need to, and often don’t go to the field, or don’t enter the forest; and Operators can adopt Inspected data as their Declared data.

For the IA in the current context, only if the role of approving inspection data in the system can be granted to a truly independent third-party, based on a robust methodology, 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 (QMS) 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 has been to involve the management to challenge the current status quo of insufficient or unreliable field data collection. Suggested measures include: obligation to capture GPS coordinates of tree/stump and/or scan the barcoded tag with other data entry; Make the barcode system operational to further support electronic traceability, and quick and secure tally checks during inspections and at checkpoints; or Use electronic devices to secure (geopositioned and timed) field data capture and processing; Balance flexibility and security in LT system design; Ensure robust audit trail capability in LT; Follow the SOPs for sample checks of inspected CoC data from LT by a truly independent LVD or third-party monitoring body.

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

This section has been archived in the Volume 2 of this Audit 5 report (same number and heading).

3.24 Monitoring data sharing with civil society organizations / communities

This section has been archived in the Volume 2 of this Audit 5 report (same number and heading).

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

3.25 Review of current Export permit issuance

This section has been archived in the Volume 2 of this Audit 5 report (same number and heading).

3.26 Enforcement of Legality matrix requirements

This section has been archived in the Volume 2 of this Audit 5 report (same number and heading).

3.27 Efficiency of border control

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
Implementation of the role of Government		Efficiency of border control		Vol.1, 6.4.14 (follow-up)
Efficiency of border control	3.27	Risk of illegal loading of ships ashore e.g., Harper (potential transshipment at sea)	MR 2	Vol.2, 6.4.14.2
	3.27	Risk of smuggling through unmanned border-crossings	MR 3	Vol.2, 6.4.14.2

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 that (i) it will only check the loading of *declared exports [previously] verified as legal (i.e., with an approved EP)* anyway and (ii) it 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 log/timberyard 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: a significant portion of the logs is now 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 risks mostly relate to: collusion between LVD inspectors and the Exporter, or alteration of the content of containers before export (See also 3.22).

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, especially for containers of timber.

3) Other potential risks identified in the previous Audit 3 report are 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/ SGS 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 (LiberTrace, LVD SOPs; even the LM?) 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 future IA will consider the need to:

- 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.

The MFGAP Project is supporting LRA, MoJ and MIA and is, or will be providing technical support to the Customs of LRA. The MFGAP team is managing the risk of uncontrolled or ill-controlled terrestrial border crossings.

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

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
Implementation of the role of Government				
Reporting, enforcement, and publication	3.28	Few sanctions being imposed for illegalities; none published	HII 5	Vol.2, 6.4.15

Main conclusions (from Audit 1, updated):

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.

Until recently (with one known exception in February 2018 and the one issued to the logging operator of TSC A2 in January 2019), no sanctions were being imposed (monetary fines, regulatory action) on any contractor for violations of forest laws and published. LRA, though being the collector, is "not aware of any". One senior FDA manager said FDA is "not publicly" issuing/collecting fines, which clearly suggests hidden deals.

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 report, and they are not even 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.

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

- 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 Vol.2, 7.4.8.1 and 7.4.8.2, 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 (LED) of the FDA is willing and is enabled 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 has not found information allowing it to clearly understand the chain of responsibilities among FDA departments for inspections, reporting, enforcement of sanctions, and publication of information.

3.29 Communication and transparency

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
Implementation of the role of Government				Vol.1/2, 6.5.3 (follow-up)
Communication and transparency	3.29	Liberia suspended from EITI, unable to implement LM Indicators 11.2-3	HII 34/ MII 21	Vol.2, 6.5.3
	3.29	No JIC Annual reports 2015 - 2019; LVD monthly reports no longer published	MII 5	Vol.2, 7.4.13

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 and 2020) are yet to be published. In February 2019, the EU Delegation and FDA were said to be 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 had then 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.

Outstanding annual workplans and reports were eventually 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).

Effective 6 March 2020, the EITI Board agreed to lift Liberia's temporary suspension, and re-classified Liberia as a "Medium Improvement" country under a new scoring system. Liberia's next Validation (was) scheduled to commence on 1 July 2020.

Main recommendation(s): As per VPA Art. 19,3(g), and details 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 must comply with the measures the international EITI Board prescribes to ensure that Liberia is truly committed to and implementing the EITI criteria and principles.

FDA/IAWG response to the Main C&R in the Audit 3 report [8]: none.

3.30 Timber products subjected to the LAS

This section has been archived in the Volume 2 of this Audit 5 report (same number and heading).

3.31 Continued external support to LAS implementation

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
Implementation of the role of Government				
Continued external support to LAS implementation	3.31	Uncertain status of handover from SGS to GoL/FDA/LVD	HR 8	Vol.1, 6.2.3.2 Vol.2, 7.4.5.2

Main conclusions *(revised)*

The IA in its Inception report[9] described "Other uncertainties identified" relating to:

[8] 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 extension or renewal of current technical assistance contracts (VPA SU, SGS) in their then 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[10] 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 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 were fully achieved:

- Some activities had 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 had been found yet on the terms and conditions of a new SGS-GoL contract after October 2019; only short-term extensions;
- Some activities had 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 had not yet been in a position to play the role of an independent third-party vis-à-vis the FDA.

[9] Chap. 3.7.2.3
[10] “Can Liberia Afford the Re-Imposition of Sanctions on Its Timber Industry/Forestry Sector?” was published (Liberian Observer, September 17, 2018)

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

There were, and there still 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.

The handover was however considered by FDA as complete and SGS' mandate to establish LVD through technical assistance ended in July 2019.

SGS Liberia then signed a new contract up to February 14, 2021 (initially) to perform Independent Third-Party Monitoring of Export Permit Issuance, which includes 1) reviewing submissions in LiberTrace, and 2) counterchecking in the field. The IA's understanding is that SGS is more independent than it used to, that SGS only endorses (stamps and signs) EPs where it is comfortable to do so.

The presence or the absence of the SGS signature on an EP is thus potentially an important element of due diligence/care information that is made available to e.g., EU/US importers of Liberian timber (to the extent they are informed of the meaning of the SGS signature on the EP).

In the Audit 3 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 maintain external long-term technical assistance until full and durable capacity exists within GoI/FDA (a role now being entirely fulfilled by VPA SU); to maintain truly independent third-party role in the EP issuance process (currently SGS); 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[11]**:** none.

[11] 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

3.32 Monitoring of progress in VPA implementation; Implementation of the Independent Audit of the Liberia LAS

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
Monitoring of progress in VPA implementation	3.32	Independent Audit, Third-Party Monitoring, and Civil Society processes not systematically feeding into the Forward Planner	HII 38	Vol.1, 6.1.16
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	Vol.2, 7.4.1.2
	3.32	IA untruthfully quoted and without clear references	HII 35	Vol.2, 6.2.2.2

The concerns and findings (risks & issues) raised by the Independent Auditor, but also in the Third-Party Monitor's and Civil Society Organizations' reports, are often not taken into account in the Forward Planner. All these processes (Independent Audit, Third-Party Monitoring, and Civil Society scrutiny or Independent Forest Monitoring) should, formally and systematically, feed into the Forward Planner management process. This was highlighted by the EU (re: Independent Audit and Third-Party Monitoring) and civil society (8th JIC AM, Art. 18 & 65).

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 happened on 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.

3.33 Control by FDA of TSC status and activity

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
P2	3.33	Illegal extensions of a TSC, pre-felling requirements not met, and many other critical issues in the management of the TSC A2 case	HII 39	Vol.1, 6.2.3.11

Main conclusions

The repeated extensions by FDA of Tarpeh's TSC A2 contract were illegal, against the automatic termination of a TSC and the automatic reversion to GoL of the associated rights (NFRL 18.12 and 18.14).

FDA did not follow due protocols to authorize the extensions for commercial logging such as prior consent of, and agreements with the affected communities (Reg. 105-07, 31b1).

Pre-felling requirements were not complied with, but apparently no desktop audit was conducted by LVD.

Many other critical issues transpire in the control of TSC A2 and management of the case by FDA*.

Because of the criminal violations and the significant harm done to the interest of the community, the TSC-A2 matter was beyond the administrative jurisdiction of the FDA.

Main recommendations

FDA should not have extended Tarpeh's TSC A2 and should not renew any FMC or TSC in future (NFRL 18).

FDA should have followed its own Regulations (e.g., Reg. 105-07) to authorize the extension for commercial logging such as on the prior consent of, and agreements with the affected communities.

The Ministry of Justice should have asserted its jurisdiction over the case.

The IA had recommended referring this TSC and its successive extensions to the concession review panel and that a formal investigation is launched.

Mitigation/ Corrective measure (in progress)

The Ministry of Justice in October 2020 launched an 'Independent Investigation into TSC A2'. The IA has not seen the report and cannot comment on it. The IA is not aware of the outputs and outcomes of that investigation.

3.34 Enforcement of new regulation

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
P6	3.34	Late and slow enforcement of the 'Abandoned Logs' Regulation	HII 40	Vol.1, 6.4.1.1

Main conclusions

The Abandoned Logs' Regulation was approved in October 2017. An assessment was finally conducted in August 2020 by FDA (over 3 years later), leading to very substantial volumes discovered just in Region 3: over 25'000m3. These logs were left to rot, felling/stumpage fees and post-harvesting taxes were not paid, etc.

But the assessment document does not constitute an official report (no date, no author/s, no signatures), which is another issue, hampering transparency of

information, accountability and enforcement action. FDA-CFD advised that the report has been revised, but has only provided the IA with the unrevised report.

Late and slow enforcement action is becoming a real issue.

Interestingly, the assessment team noted a number of other non-compliances (e.g., logging outside contract area, undersized logs, chain saw operation).

Main recommendations

The Regulation needs to be enforced: confiscation? retrospective taxation? auction sales etc.

The report itself provides a few relevant practical recommendations (increased field monitoring by FDA mainly during the dry season, by well-equipped and decently paid field scalers in sufficient numbers), which it seems the IA can endorse.

Mitigation/ Corrective measure (in progress)

Assessment conducted by FDA, but the report is not an official report.

The report needed to be revised but there is no indication it has been so.

3.35 Development of new LAS implementing and enforcement tools

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
P4	3.35	Inappropriate release of 'New Code of Forest Harvesting Practices on Chainsaw'	MII 20	Vol.1, 6.4.12

The new chainsaw code produced overlaps with the current CFHP code. There can only be one code for all operators, and that anything else is misleading and confusing.

The IA's recommendation is to keep only one Code for all harvesting operations. Any gaps relating to chainsaw operators that may be identified in the current CFHP can be addressed through an addendum to it for this purpose.

3.36 COCS, Control of legal shipments

References in the IA Progress Database and in the Audit 4 & 5 reports:

Area of the VPA/LAS	*Main C&R*	*Associated RISKS/ ISSUES in the IA Progress Database*	*Ref. RISK/ ISSUE*	*Ref. in A4R/ A5R*
P10	3.36	Inspections of container loading operations by FDA not robust enough to prevent fraud	HR 10	Vol.1, 6.2.3.11
P10	3.36	FDA approval of Export permit (EP) against SGS/LVD evidence and recommendation	HII 10	Vol.2, 7.5.3.2
P10	3.36	Export permits granted on the basis of an override document issued by FDA Management without control	MR 7	Vol.1, 6.2.3.11

Main conclusions

LVD CoC Inspectors do not attend all container loading operations. One inspector, or a team of two field inspectors, on his/their own, is not incorruptible.

Nobody is checking afterwards what the CoC Inspectors have really inspected and what was actually loaded into the containers, or if the seal was broken and replaced after the inspection.

In the absence of any container loading inspection by LVD, or if the inspection was not conducted honestly, of if the content of a container could be altered afterwards, anything could be loaded from either within the COCS (more or less legally) or outside the COCS (illegally). The (hand-written) Loading Inspection Report can just be made up before uploading to LiberTrace. COCS/LiberTrace data will only reflect what the CoC Inspectors, or in fact the Exporter, reported.

The potential risks at stake are varied: 1) under-declaration of species and volume (in case the prior timber yard inspection was biased), 2) under-declaration of quantities loaded (like new false shortships), 3) laundering of illegal stuff through the COCS (like under previous false shortships, or under made-up inventories), and 4) smuggling of wood products, entirely outside the COCS.

A case of FDA approval of Export permit (EP) against SGS/LVD evidence and recommendation has been presented to the IA during Audit 2.

EPs are in fact being granted on the basis of an override document (OD) issued by FDA Management. The OD overrides an SGS/LVD' recommendation to reject the EP unless some non-compliant logs are removed from the EP and not allowed to be exported. Example of issues, sometimes triggered by an 'Event message' resulting from LiberTrace reconciliation, include: tree DBH for the log below the diameter cutting limit (DCL), outstanding tax payment, or unclear origin. The "illegal" log remains flagged in red in LiberTrace, under Traceability, Legality or Fiscality.

The IA considers that the use, by FDA Management, of such ODs relates to undocumented, discretionary powers, whereby the Authority decides not to apply its own regulations and to ignore the agreed blockers of approval set in the LAS, and creates significant risks of subjectivity and abuses.

A copy of the OD should always be attached to the company's account for third-party scrutiny. But is it always the case? The IA, for example, does not have access to ODs.

Main recommendations

Ensure the container loading inspection really took place, like by LVD Inspectors having to fill in an official LVD Waybill on the inspection site. Ensure photos are always taken of all the logs loaded, with the tag numbers readable. Store all key container loading inspection records in LiberTrace. Ensure internal auditing is done by an LED officer with clear work instructions or by a truly independent (LVD or else) auditor or third party. Ensure systematic or unannounced data reconciliation meetings take place with the responsible MACs, on the loading site or at the port. Move to electronic management of field data or records (like GPS-tagged and timed photos of all manual records). Enhance LiberTrace to provide needed additional functionality. Ensure supporting evidence is provided for shortships. Ensure the original seal numbers are registered on the B/L. Etc.

Mitigation/ Corrective measure

The issuance of Export permits only granted on the basis of an override document issued by FDA Management, for tax payment deferral or through installments or even allowing a tax reduction, or despite issues with diameters or others, should be contingent on clear and transparent procedures including referral to the FDA Board for information.

In case there is a technical issue in LiberTrace (average butt log diameter vs. the biggest of four diameters used for reconciliation with DBH DCL) the software should be modified.

4 AUDIT PREPARATION

As previously agreed with the IAWG, this entire section can now be found in the Volume 2 of this Audit 5 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 5 report (as Ch. 5.1).

5.2 Follow-up on previously reported issues

This section can now be found in the Volume 2 of this Audit 5 report (as Ch. 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 5'):

Day	*Date (dd/mm/yy)*	*Activity*
Fri	13/11/2020	Arrival of KE1-TL in Monrovia, Liberia
Sat	14/11/2020	Work in Monrovia including: ▪ Install Audit 5 (A5) mission ▪ Liaise with former Local Partner GAI, former VPA SU TL, EU Delegation, Liaison Officer (LO) ▪ Plan & organize work, implement NKE3 mission ▪ Distribute Audit 4 report (A4R) to IA team for identification of follow-up actions from A4 and of key areas for A5 Arrival of NKE3 in Monrovia, Liberia
Mon	16/11/2020	Work in Monrovia including: ▪ Meet with NKE3; Discuss approaches for A5; Design a tool to request missing information ▪ Review A4R for pending IA actions; Finalize, clarify, prioritize listing and allocate responsibilities for actions from A4R Vol.1; Prepare info gathering needs and requests to close pending IA actions ▪ Liaise with SGS, NAO, VPASU, FDA, FLEGT Fac., EUD etc.; Meet LO; Start building Audit 5 Schedule; Update Stakeholder DB; Organize printing of VPA documents; Clean pending IA actions from A4R

Day	Date (dd/mm/yy)	Activity
Tue	17/11/2020	Work in Monrovia including: ▪ Implement A5 work (C'ed); Meet LO and with KE2 ▪ Liaise, meet with 'Team Europe Initiative, Forestry & Biodiversity' Identification Mission (TEI) ▪ Plan A5 mission activities in detail, including audits meetings
Wed	18/11/2020	Work in Monrovia including: ▪ Make appointments for audit meetings ▪ Request briefing meeting with FDA Management (and Introduction letter); same with the IAWG to discuss last A4 results, any related IAWG comments, A5 program and detailed schedule ▪ Meet with KE2; Implement CMS (C'ed) ▪ Meet with EU Delegation
Thu	19/11/2020	Work in Monrovia including: ▪ Plan & organize A5 work (C'ed) ▪ Prepare Stakeholder workshop; Liaise with GAI ▪ Hold meeting at VPASU office and follow up ▪ Implement CMS (C'ed); Finalize Public CMS launch message
Fri	20/11/2020	Work in Monrovia including: ▪ Send follow-up questions to auditees, and make appointments: MoL, EPA, SGS, FDA ▪ Finalize CMS comm. means with KE2 and public CMS launch message with SOFRECO ▪ Prepare Stakeholder workshop
Sat	21/11/2020	Work in Monrovia including: ▪ Draft letter to NAO to launch IA CMS, for internal validation; Implement CMS with KE2 (C'ed) ▪ Prepare Stakeholder workshop ▪ Consult with SGS re: FOB prices; Meet with NKE3; Send request for meetings with LRA, Customs, NPA, MOCI ▪ Submit update on the IA Contract to NAO
Mon	23/11/2020	Work in Monrovia including: ▪ Review A4 report Vol.1, pending IA actions (C'ed, to end); Prepare info requests; Meet with NKE3 ▪ Prepare and hold meetings with SGS, EPA ▪ Make appointments: FDA, LRA/ LRA Customs ▪ Receive, register IAWG comments to A4
Tue	24/11/2020	Work in Monrovia including: ▪ Attend 8th JIC meeting (virtual) - Day 1 ▪ Review IAWG comments to A4; Assess comment/ any corrective action implemented by GoL, for either immediate action or only for reporting ▪ Prepare, submit follow-up questions from A4 to: EPA, MoL, SGS; Email LRA, SGS, NKE3 etc. ▪ Register press releases for relevant audit information

Day	Date (dd/mm/yy)	Activity
Wed	25/11/2020	Work in Monrovia including: ▪ Attend JIC 8 meeting (Day 2) online ▪ Send follow-up questions to auditees: FDA CFD ▪ Discuss over email with SGS (re: follow-up questions), NKE3/Sofreco (re: A5, IA workshop), KE2 (re: CMS), FDA (re: workshop) etc.
Thu	26/11/2020	Work in Monrovia including: ▪ Attend JIC 8 meeting (Day 3) online ▪ Brief NKE3 before FDA meetings; Send follow-up questions to auditees: LVD, VPASU ▪ NKE3 meeting with LVD team, CFD Dept. at FDA ▪ Email SGS, Sofreco
Fri	27/11/2020	Work in Monrovia including: ▪ Prepare structure to get quotations for workshop ▪ Organize workshop logistical details (room, catering, supplies, banners) with LO; Manage authorizations (NAO, VPA Sec., Sofreco) ▪ Prepare text of invitation, list of participants
Sat	28/11/2020	Work in Monrovia including: ▪ Organize workshop (C'ed); Update quotations ▪ Finalize text of invitation, list of participants ▪ Send invitations with cover email; Register, acknowledge answers ▪ Email EUD, SGS, VPA Sec.
Mon	30/11/2020	National Holiday
Tue	01/12/2020	Work in Monrovia including: ▪ Hold meetings at: VPASU, LRA offices ▪ Explore A4R Vol.2 for follow-up questions to LRA, SGS (C'ed, end); Send follow-up questions to LRA ▪ Prepare IA stakeholder workshop; Process replies to workshop invitations; Email VPA Sec.; Review workshop material content with NKE3
Wed	02/12/2020	Work in Monrovia including: ▪ Hold Independent Audit workshop – Day 1 ▪ Manage related administration tasks
Thu	03/12/2020	Work in Monrovia including: ▪ Hold Independent Audit workshop - Day 2 ▪ Hold informal debriefing meeting with EUD, VPASU ▪ Manage related administration tasks
Fri	04/12/2020	Work in Monrovia including: ▪ Design a synthetic reporting structure for the key results of the IA's five audits ▪ Hold IA audit team discussion (reach conclusions on key issues) ▪ Meet with the TEI Mission team ▪ Seek updates on VPA progress and on regulations

Day	Date (dd/mm/yy)	Activity
Sat	05/12/2020	Work in Monrovia including: ▪ Address admin tasks related to workshop ▪ Revise IA CMS Complaint form, send to NKE3 ▪ Review A4 report Vol.2, for remaining outstanding IA actions; Prepare info requests; Send info requests to LVD, SGS, KE2, VPASU, LED, FDA Departure of NKE3 from Liberia (Sunday morning)
Mon	07/11/2020	Work in Monrovia including: ▪ Write in draft A5 report; Merge NKE3 and KE1's draft A5R versions ▪ Prepare for travel (Covid-19 measures in LB, BE, FR); Update IA's List of contacts ▪ Review key topics for A5; Review schedule ▪ Email LTA with questions; Email LVD, Sofreco, TEI, NAO (re: Public holiday)
Tue	08/11/2020	(Public holiday, due to elections)
Wed	09/11/2020	Work in Monrovia including: ▪ Research, write new A5R section on export control; Email FLEGT Facilitator ▪ Manage payments and receipts for local expenses under Incidental Expenditure budget ▪ Write in draft report Departure of KE1-TL from Liberia (late evening)

Remarks:

- FDA Management was never available to meet the IA Team (brief/debrief) and provide an Introduction Letter;
- The IAWG was never available to meet the IA Team (brief/debrief).

5.3.2 Interaction with External Service Providers during Audit 5

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 (2019) to replace the PM for a one-month extension in October, and up to then SGS ensured continuity in the management.

Following the signature by SGS Liberia of a new contract up to February 2021 to perform Independent Third-Party Monitoring of Export Permit Issuance, the SGS Liberia PC was available to meet with for the IA auditors at the time of the IA's Audit 5 mission in Liberia.

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") management team was therefore present and available in the country for the IA, with the former Team Leader leaving Liberia in August 2020 and a new Team Leader appointed as of end of September 2020.

Earlier in July, the IA had been informed that progress was being made to assist FMCs and FDA develop 25-year cycle forest management plans and update FDA guidelines in an attempt to raise to the overall implementation challenge. The team was also working on assisting FDA to establish the Liberian Licensing Department (LLD) and with the hiring of an international Service Provider to carry the Third-Party Monitoring of exports after the agreement with SGS expires early 2021 (200702, communication with the VPASU TL).

Audit 5: The IA asked VPASU about the work plan VPA-SU2 is currently working with, and of the status, in order to figure out what progress in VPA implementation is being achieved (actions completed or in progress) as per VPASU's monitoring (independently of the Forward Planner). In response, the IA was provided with VPASU2's 'Planning Matrix pure' and 'Update' as of 19Nov2020.

The IA was mostly interested to see the external outputs that directly touch on VPA components e.g.:

- 1.2 (Management of Corrective Actions);
- 1.6 (Forest Management Plans and Elements for long-term Sustainability of forest operations);
- 2.1 (Legality Matrix Completion), also linking to 3.1 (Legality verification for CFMAs);
- 2.2 (Assistance to FDA in Inspections);
- 2.3 (Assist FDA in Law Enforcement);
- 4.1 (Institutional arrangements); and
- 4.2 (LVD Handover),

and potentially address some of the IA's past recommendations.

The VPA FLEGT Facilitator provided by **Palladium** was in the country but not available to meet the IA due to preparation and implementation of the 8th JIC.

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'). None was implemented under Audit 5.

5.4 Review of the current issuance of Export permits

This entire section can now be found in the Volume 2 of this Audit 5 report (Chapter 5.4).

5.5 Independent auditor's stakeholder workshop

5.5.1 The IA's stakeholder workshop

The IA held a two-day 'Stakeholder information workshop on the Independent auditor's work and Complaint Management System (CMS)' in Monrovia during the Audit 5 mission in Liberia (2-3 December, 2020).

The workshop aimed to inform and update key stakeholders of the Liberia LAS regarding:

1) The work of the IA (as a way for the Liberian stakeholders to "acquire a fair understanding of the IA's work", as per the IA's Terms of reference); and

2) The Complaint Management System (CMS) that the IA has implemented, for all stakeholders of the Liberia LAS to be enabled to use.

The workshop was attended by:

	Day One	*Day Two*
Government of Liberia	5	9
International partners	0	1
(Non-State Actors) Support orgs	8	9
LBR CSOs, communities	7	9
iNGOs	0	0
Private Sector	1	1
Total	**21**	**29**

Apart from the VPA Secretariat, attendance by senior FDA managers was limited to one person only, from the afternoon of Day One.

The focus through successive sections over the two days was on:

- Mandate, role and schedule of the Independent auditor (IA);
- Based on the IA ToR, what have we achieved? Difficulties? Problems? Recommendations for next IA mission?;
- Review of IA organization & methodology implemented for the Independent audit 2017-2020;
- Procedures of the IA as per the IA's Quality Management System (QMS);
- Work undertaken by the IA, main areas of attention, and key outcomes;
- IA's Complaint Management System (CMS), allowing stakeholders to file complaints against the functioning of the LAS or the work of the IA;
- Conclusion – Perspective: The way forward in VPA implementation;
- Closing address by the EU Delegation.

5.5.2 The Independent auditor's work

5.5.2.1 Summary of issues raised by the participants

1. Both LTA (private sector) and civil society complained they are not included in the JIC IAWG. MoJ: IAWG is addressing issues as EU-GoL VPA JIC.

Verification: As per a letter to the JIC on the status of the Independent Audit (February 20, 2019), the Independent Audit Working Group (IAWG) is composed of the following members: FDA, EU, LRA, MoJ and NAO. It also involves as Observers / Technical Support to the IAWG: the VPA Secretariat (FDA), the FLEGT Facilitator and the European Forest Institute (EFI). It is therefore a purely governmental (and institutional) committee.

2. Civil society (CS) would like to see more engagement (of/with Liberian CS) from the VPA partners and the IA. CS is requesting to get the IA audit reports (only A1R was circulated to NMSMC members). IA: This request has to follow the appropriate route. The IA is not allowed to share the reports it in fact delivers to the JIC only through the NAO as per its ToR.

3. FDA CFD have no access to LiberTrace yet.

5.5.2.2 Summary of issues raised by the IA

The IA ran the participants through a presentation of the IA's work according to the agenda topics. This ended with a summary of key issues raised by the IA during the first four audits and as again tentatively assessed during the Audit 5 mission, with a few additions.

The list of issues is presented in the below **Table 3**. It shows both the breadth and depth of the IA's work and the limited and slow progress on the Liberian side. It provides a selection of key issues (38), consistent with the entire list of the Risks & Issues raised by the IA in the course of the Independent Audit mandate 2017-2021 (See **Table 2** in 1.2). Out of 38 issues, 1 has been ticked as closed, 2 are half resolved, and there are question marks for another 5 of them.

Table 3: List of key issues documented by the IA over the 5 audits

"X" = non-compliant "✓" = compliant "?" = under investigation

Issue	A1	A2	A3	A4	A5
Documents required to be submitted as part of the concession awarding process remain missing	X	X	X	X	X
Debarment list and list of prohibited persons not available	X	X	X	X	X
Implementation of minimum cutting diameters	X	X	X	X	0.5
Revision of the Legality Matrix	X	X	X	X	X
Conflict of interest in FDA/LVD	X	X	X	X	X
High levels of operator non-compliance of requirements in the Legality Matrix and CFHPs	X	X	X	X	X
Management of non-conformances by Gvt departments	X	X	X	X	X
Compliance to all requirements in LM to issue FLEGT License	X	X	X	X	X

Issue	A1	A2	A3	A4	A5
Budgeting constraints in FDA	X	X	X	X	X
Inappropriate approval of pre-felling requirements	X	X	X	X	X
No credible 25-year management plan being completed (ignoring FMG)	X	X	X	X	X
FDA field inspections lacking (pre/during/post-harvest)	X	X	X	X	X
LVD: Documentation used by auditing section	X	X	X	X	X
LVD: Auditor training and qualifications	X	X	X	X	X
LVD: Inaccurate and incomplete information contained in LiberTrace (Audit 5: waybills)	X	X	X	X	?
LVD/FDA: Only issue EPs when meeting 'Current regime'	X	X	X	X	X
FDA: Laws that should block issuance of EP, if non-compliant	X	X	X	X	X
FDA to impose sanctions/fines	X	X	X	X	X
Slow progress with some regulations being completed and others missing – specifically Chainsaw regulation still outstanding and Abandoned logs not yet implemented		X	X	X	X
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)		X	X	X	?
The revised LVD Procedures not being formally approved as legally binding and technical updates are required (containers)		X	X	X	X
The enactment of a new law (the 'Forest Industrial Development & Employment Regime Act' - FIDERA) questionable		X	X	X	?
Liberia Forest Management Advisory Committee (FMAC) provided for in the NFRL is currently weak		X	X	X	X
15-year cycle with CFMA management plans and contract period		X	X	X	X
LVD: Auditing against the CFHPs during field audits. Conducting inconsistent and non-credible field audits, if at all.		X	X	X	X
LVD: LiberTrace: Slowness of system		X	X	X	✓
Illegal loading of barges and containers		X	X	X	?
JIC annual reports missing		X	X	X	X
Role of FDA LED			X	X	X
Roles and responsibilities of Public Affairs Division – Revive			X	X	X
EPA: No consistent infield inspections. No fines issued.			X	X	?
MOL: No consistent audits and no infield inspections			X	X	X
LVD: CoC inspections (blind inspections required) Status of field inspections?			X	X	?

Issue	A1	A2	A3	A4	A5
Liberia suspended from EITI			X	X	0.5
Obligations in Social agreement not met				X	X
EP does not reflect the final list of loaded logs					X
EPs issued outside of LiberTrace?				?	?
New chainsaw code produced overlaps with current code					X

5.5.2.3 Participants' reactions to the issues raised by the IA; following discussions

Debarment List: It will be a framework. It is targeting people not meeting the requirements of the **PPPC Act (**former VPASU staff).

DCLs: logs are being rejected; FDA sent a letter to all operators (FDA).

Summary of issues raised by the IA: has no indications of progress? No scoring system? (LRA) IA: No, it is either compliant or not compliant. Progress has to be monitored on the Forward Planner.

CFD: Moving CoC inspectors from LVD to CFD was an IA's recommendation and we are doing it (FDA CFD). IA: But this is only one part of the whole recommendation, which also involved that LVD should be moved out of FDA, and should not be implemented only partially.

LM Verifiers: Are we saying they all have the same weight? (MFGAP). Yes, and it is black or white (SGS). IA: Yes, that's the way the LM has been constructed.

FDA not issuing fines: FDA is "not publicly" issuing/collecting fines (FDA).

FIDERA: Has now expired. There are two different agreements, not to be confused, where investments in 3 years are credited against arrears (LRA).

Weakness of the FMAC: CS confirms.

LVD LV Unit: Conducted 9 out of 35 planned audits in 2020. LVD claims lack of vehicles, DSA etc. Funding mechanism is no more functional for LVD, being shared with other Departments.

LEITI: No longer suspended. New scoring system has classified Liberia as a "Medium Improvement" country.

"Missing documents" issue: Wait for the 8th JIC Aide memoire.

5.5.3 The IA's Complaint Management System (CMS)

Invitees had been informed that they should soon be able to find, on the FDA website (IA Documents Section at www.fda.gov.lr/vpa-independent-audit-document/), the announcement of the launch of this first EU-Liberia VPA IA's Complaint Management System (CMS), with two related documents:

- 'Message to the VPA Stakeholders on the Complaint Mechanism, and HOW TO SUBMIT A COMPLAINT TO THE INDEPENDENT AUDITOR, and
- the related 'Complaint Form'.

Or they could also ask the IA Team Leader (antoine.delarochefordiere@sofreco.biz) for a copy.

Sadly, the FDA website has consistently been found being ”down for assistance” over the past weeks preceding the closure of this report.

The participants to the workshop were guided step by step through these two documents so they should be able to submit complaints to the IA against the functioning of the LAS or the work of the IA itself.

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 4** below (now in both Vol.1 and Vol.2 of this Audit 5 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 4: Management of the reviews from one Audit report to the next Audit report

Audit 4 or 5 report	Audit 5 report (A5R)
New reviews, or reviews in progress, conducted in (Vol.1) Ch. 6.1-6.3, 6.5 If review still incomplete ->	Review continued in Ch. 6.1-6.3, 6.5 in this Vol.1 as part of Audit 5, or was moved to Ch. 6.1-6.3, 6.5 in Vol.2 if not (for suggested follow-up under the next IA contract)

Audit 4 or 5 report	Audit 5 report (A5R)
New issue raised in (Vol.1) Ch. 6.1-6.3, 6.5 as part of the review: Follow-up required to clarify C&R ->	Issue followed up in Ch. 6.4 in this Vol.1, as part of Audit 5, or moved to Ch. 6.4 in Vol.2 if not (for the next IA contract to consider) C&R (if any) provided in same Ch. 6.4
Same as above No follow-up required ->	Discussion moved to Vol.2, Ch. 7.3-7.5 for archiving
New review, or review in progress, conducted in (Vol.1) Ch. 6.1-6.3, 6.5: Review completed ->	Discussion moved to Vol.2, Ch. 7.3-7.5 for archiving
Issue followed up and C&R provided in (Vol.1) Ch. 6.4: Investigation complete ->	Discussion moved to Vol.2, Ch. 7.3-7.5 for archiving
Issue followed up and (temporary) C&R provided in (Vol.1) Ch. 6.4: Further investigation required ->	Issue followed up in this Vol.1, Ch. 6.4 as part of Audit 5, or moved to Vol.2 if not (for the next IA contract to consider)
Review/Issue archived in (Vol.2) Chapters 7.3-7.5	Review/Issue remains there, unless recalled in Vol.1, Ch. 6.4 if new development required further significant investigation

This Section 6 therefore contains:

- Reviews in progress that continued in Ch. 6.1-6.3, 6.5 as part of Audit 5 (or, if not, were moved to Ch. 6.1-6.3, 6.5 in Vol.2 for the next IA contract to consider, or archived in Vol.2, Ch. 7.3-7.5 if completed and no issue was raised nor was being followed-up in 6.4);
- Issues that were followed up in Ch. 6.4 as part of Audit 5 (or, if not, were moved to Ch. 6.4 in Vol.2 for the next IA contract to consider, or were archived in Vol.2, Ch. 7.3-7.5 if no more follow-up by the IA was needed).

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 as from the Audit 2 report (A2R). Clarification of some of the conclusions and recommendations (C&Rs) was still required, thus these discussions were moved to under Ch. 6.4.1 in the Audit 3 report (A3R), then in the Audit 4 report Vol.1 (A4R Vol.1), and now in this Audit 5

report, Vol.1 (A5R Vol.1), for further investigation and follow-up, 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 in the Audit 2 report, were either completed and moved to Section 7 for archiving in A3R, then in A4R Vol.2, and now in A5R Vol.2, or were moved to 6.4 if an issue was raised and required follow-up by the IA, or are still being continued below under 6.1.1.1 to 6.1.1.9.

6.1.1.1 List of relevant references in the VPA

Status: This review has been archived in Chapter 7.3.6.1 of A5R Vol.2.

6.1.1.2 Introduction

Status: This review has been archived in Chapter 7.3.6.2 of A4R Vol.2.

6.1.1.3 Legal framework vs. institutional & governance frameworks

Status: This review is still being followed-up on in Ch. 7.3.5.3 in this A5R Vol.1.

6.1.1.4 Overview, as per the VPA preamble

Status: This review has been archived in Chapter 7.3.6.4 of A5R Vol.2.

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

Status: This review has been archived in Chapter 7.3.6.5 of A5R Vol.2.

6.1.1.6 Hierarchy of the legal and administrative texts

Status: This review has been archived in Chapter 7.3.6.6 of A5R Vol.2.

6.1.1.7 Existing Liberian forestry legislation

Status: This review is still being followed-up in Chapter 7.3.6.7 of A5R Vol.2.

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

Status: This review has been archived in Chapter 7.3.6.8 of A5R Vol.2.

6.1.1.9 Land Rights Act and Local Government Act

Status: This review has been archived in Chapter 7.3.6.10 of A5R Vol.2.

6.1.1.10 Discussion on CFMAs and their integration into the Legality Matrix

The Community Forestry Management Agreements (CFMAs) are not in the initial scope of the VPA LAS and will not be so until the relevant legal and regulatory framework is incorporated into the Legality Definition (Legality Matrix) of the LAS for their inclusion in the VPA.

The relevant legal and regulatory framework relative to the definition, allocation and management of CFMAs can be found in the corresponding sections:

- Timber sources in the LAS' scope (Vol.2, 7.3.5.3);
- Existing Liberian forestry legislation (Vol.2, 7.3.6.7);

- Development of new regulations; application to the LAS (this Vol.1, 6.4.1.1).

Other direct references to CFMAs as forest licenses, in this A5R, Vol.1/Vol.2:

- Vol.2, 7.4.2.2 The Community Forestry Department (CyFD) of the FDA in the Legality Matrix;
- Vol.2, 7.4.3.1 Approval of Forest Management operations (LM P4), Approval of a Community Forest Management Plan in a CFMA;
- Vol.2., 7.4.3.2 Approval of Forest Management Operations (LM P4) - Pre-felling requirements, Approval of Annual Operation Plan (AOP) in a CFMA.

Other direct references to CFMAs as forest licenses, in the previous Audit 4 report:

- Vol.2., 8.6 Compliance Audit Report on (…) CFMA-4;
- Vol.2., 8.13 LVD audit of a CFMA (Jan. 2018).

Below, the IA intended to collate JIC's and other progress reports on CFMAs, for ease of later references.

Summary/extracts 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.
- CFMAs have the potential to capture part of [the] 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 1: On 21.02.2020 the IA found that the http://www.fda.gov.lr/community-forestry-management-agreements/ section of the FDA website was still empty.
  Note 2: On 06.01.2021 the IA found that the FDA website was "down for assistance" and could not verify the above statement.
- Although the CFWG has challenges implementing its work plan, a number of CFMAs have been approved, some already producing timber for commercial purposes.
  Note 3: How many? See below information from the 8th JIC Aide-memoire.
- Along with community forestry, there are currently 1.1 out of 2.5 million ha assigned for commercial forestry and 411,000 ha 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).
  Note 4: See 6.4.1.1, Development of new regulations; application to the LAS

- 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) was provided in A4R Vol.2, Annex 8.19.

Legal background (extract from the 7th JIC Aide-memoire, Annex 6)

Under the Community Rights Law (CRL) of 2009, communities are granted legal rights over the areas of forest resources they have traditionally used, once they have completed the relevant procedures. Once all of the necessary requirements (8 first steps), the FDA and the community sign a Community Forest Management Agreement (CFMA). On this basis, the community can decide to sign an agreement with a third-party for the use of the authorized forest community´s forest resources, for commercial or conservation purposes.

At the time of the VPA´s entry into force in 2013, the legal framework applicable to community forestry was not fully coherent yet and it had been anticipated that work will first need to be done around the promulgation of community forestry regulation to provide specific guidelines for community forest management. In February 2017, amendments to the Regulation to the Community Rights Law were approved.

Furthermore, the Liberia Land Rights Act was recently passed by the Liberian legislature and signed into law by the President. As this new law defines the different categories of land ownership and prescribed the means by which each of these categories may be acquired, used transferred and managed; it is likely it will have an impact on forest lands and the community forestry; whose regulations will need to be scrutinized so as to be coherent with this new piece of legislation.

Summary from the 8th JIC (Nov. 24 - 26, 2020) Aide-memoire (AM):

45. The FDA provided an overview of the current status of community forests in Liberia. It was outlined that currently 128 Community Forest Management Agreement (CFMA) applications have been received and 44 have been approved. Of the 44 CFMAs approved, seven are actively operating. Of the CFMAs approved, 30 communities have signed third-party agreements of which 29 are commercial and one is conservation (*)

* From 37 CFMAs approved, 101 applications pending or being processed for approval, and only 5 CFMAs out of the 37 approved producing timber for commercial purposes, as of September 2018 (7th JIC Aide-memoire, Annex 6).

Note: The most significant increase in 2 years would be that 29 CFMAs have now signed third-party agreements that are commercial, against 5 as of September 2018.

46. The 44 total CFMAs approved total an area of 941,560 hectares. Of the seven actively operating CFMAs, the total area allocated is 230,769. Liberia and the EU agreed that the numerical data presented in this session on existing community forests, current areas allocated, and the status of applications will be included as Annex 5 of this JIC Aide Memoire (*). It was agreed that the FDA website also needs to reflect updates to this information. The Ministry of Justice expressed concern around FDA's balance of forest allocation between commercial and conservation, considering the current number of hectares allocated to commercially oriented community forests.

* The IA can confirm the existence of ANNEX 5 providing some detail, including that the 128 applications have the following sponsorship: LFSP – 70, SCNL -2, and GOL- 56.

47. FDA noted that the 'institution faces continuous threats, pressure, and threats of lawsuits from communities to receive and process CFMA applications. FDA outlined that although the World Bank/Norway Liberia Forest Sector Project (LFSP) has committed to supporting 70 CFMA applications, the project has placed a hold on supporting CFMA applications. This hold on funding affects the process of awarding of community forestry status. LFSP has outlined that the project is driven by REDD+, so the project wants to take a step back and reevaluate its outputs, considering current trends.

48. FDA outlined that LFSP however continues to provide funding towards community forestry management [CFM] by drafting CFM guidelines, recruiting staff for the Community Forestry Department [CFD], and providing equipment, field vehicles, and logistical support. In piloting CFM plans under LFSP, FDA highlighted that there are challenges with communities pulling out of the process, despite the need for extensive inventories.

49. FDA highlighted that in many cases, community forest areas overlap with mining concessions, agricultural concessions, adjacent community forests and protected areas. The NUCFMBs acknowledged this point and estimated that approximately 30% of current community forests have overlap with mining concessions. FDA has proposed to do preliminary mapping exercises to help counter this overlap for potential CFMA applicants. It is proposed that if these mapping exercises are done, and there is any overlap to these areas, a CFMA will not be issued in the proposed area. As a result of current pressures to increase Government revenue, Liberia has recognized that there are conflicting mandates between the Liberia Land Authority (LLA), Ministry of Agriculture, the Ministry of Lands and Mines, and FDA. There are necessary conversations to be had within the government around mining concessions being allocated within community forests, and the conflict that this is creating.

50. FDA and the NUCFMBs highlighted that the majority of CFMAs are experiencing conflict and operational disruption due to *interference from members of the National Legislature, local government Superintendents, District Commissioners, and policy makers*. The NUCFMB highlighted that *Government actors are not working within the legal framework* around CFM. *This interference has fueled disruption, unravelling of governance structures, undue influence in company selection and violence. Liberia agreed that conversations need to be held regarding the interference from the National Legislature, and local government in the governance of community forests.*

51. The Ministry of Internal Affairs (MIA) acknowledged that there are frequent challenges with community forests because *contract negotiations with the company may take place with the involvement of higher-level Government officials*. MIA highlighted that at times these discussions may happen in the absence of the local community, and this may create conflict when the contract is being implemented. Liberia and the EU agreed that the MIA be added to the Liberia Implementation Committee (LIC) considering current issues around community forestry and the MIA's direct statutory responsibility for supporting community governance structures. The MIA noted that MIA's scope of work in coordination with the JIC and FDA needs to be more clearly outlined.

52. FDA highlighted that there is evidence that especially during the COVID pandemic, many third-party companies have not been living up to their social agreements to the community. Communities continue to seek FDA's assistance to terminate existing, under-performing thirdparty contracts with companies. The NUCFMBs agreed that companies need to comply with the law by making their agreement of royalty fees to communities. UK FCDO indicated that that with the passage of the new Commercial Use Contract [CUC] template, it is hoped that some of these issues will be resolved. UK FCDO also highlighted that currently there is no CUC template for community forests between 35,000-50,000 ha.

53. Civil society further emphasized that if communities are to be engaged in sustainable management of their forests, donor support should be targeted at supporting communities to actually improve their livelihoods, and not primarily providing band tools for very small-scale livelihood alternatives. Civil society also encouraged FDA to take national ownership by hiring staff that can be sustained at the level of current sector project staff. FDA was also encouraged to support civil society as a part of FDA' mandate to provide extension and monitoring services in the forest.

54. Norway highlighted that there is a very concerning trend with commercial logging shifting from Forest Management Contracts (FMCs) to community forests. Norway highlighted that the logging in community forests is based on 15-year cycle, and that this is not sustainable, as it encourages companies to do one-time extraction of the most attractive parts of the forest. Norway highlighted that this undermines efforts to sustainably manage the forest. The FDA responded that perhaps the legal framework around the cycle needs to be reviewed against the commercial competitiveness of a 15 year versus 25-year cutting cycle.

55. The EU and Liberia agreed that there is a need for a short-term expert to review the legal framework around the harvesting cycle / term of the agreements (15 versus 25 years) and how to align it with the current cutting cycle as outlined in the Code of Forest Harvesting Practices. Once recommendations are received from the expert, the JIC will then take a decision on how to move forward. This expert mobilization should be prioritized so that the necessary recommendations can be reviewed and decided upon in advance of the next JIC.

56. The JIC Seven-Member Committee on Community Forestry presented their draft workplan for formally incorporating community forestry into the Legality matrix. The EU and Liberia agreed that the workplan of the JIC 7-Member Committee needs to be amended so that the committee's recommendation is proposed to the JIC within the next three months.

Political influence is confirmed above in Art. 50 & 51 (put in italic, as also mentioned under 6.2.3.8 Efficiency of LVD post SGS handover).

6.1.2 VPA Articles

The Table '**Assessment of VPA requirements'** in Section 7.1, in A5R 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.

Another 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 after Audit 3, however this was not the required focus for Audit 4 and 5 and it remains to be done, for the next IA Contractor to consider.

Status: The following reviews have been archived under 7.3.1 in A5R 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

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6.1.2.6 VPA Art. 8,1b

Status: 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.

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Status: The following reviews were not updated during Audit 4 and have also been archived under 7.3.1.6 to 7.3.1.11 in A5R 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

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6.1.2.12 VPA Art. 16,1

This review has been archived in Chap. 7.3.1.10 in A5R Vol.1 and then partially moved to Chap. 7.3.1.11 in A5R Vol.2 for archiving, where it has however been slightly updated during Audit 5.

6.1.2.13 VPA Art. 16,2

Status: This review has been archived in Chap. 7.3.1.11 in A5R 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 review 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 A5R Vol.2.

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

Status: This review has been archived in Chap. 7.3.1.14 in A5R Vol.2.

6.1.2.17 VPA Art. 22,2d

Status: The analysis initially 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 A5R Vol.2 as a previously reported issue.

6.1.2.18 VPA Art. 25 and Art. 29

Status: This review has been archived in 7.3.1.15 in A5R 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: This review has been archived in Chap. 7.3.2 in A5R, Vol.2.

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

Status: This review has been archived in Chap. 7.3.3 in A5R, Vol.2.

6.1.5 Annex II - Introduction of, and conditions for licensing

Status: This review has been archived in Chap. 7.3.4 in A5R, Vol.2.

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

Status: The following reviews have been archived in Chap. 7.3.5 in A5R, Vol.2:

6.1.6.1 Relevant references in the VPA

6.1.6.2 Discussion

6.1.6.3 Timber sources

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6.1.6.4 Timber markets

Ann. II, 2.3a-b: Verification of legality is applied … [both] 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) **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**)	No known relevance so far (there is no such signed ECOWAS regional trade tariffs or treaties that might have an impact on, and should therefore be incorporated in the LAS).

* 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.

There is no indication yet of a timeframe for when the LAS will be operational for exported timber. There is a statement that "FDA emphasized the need to (…) work towards FLEGT Licensing in 2022" (8th JIC AM, Art. 17).

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 (See 6.4.1.1) is that the FDA Board has requested an additional external review, after which it can be approved for further validation of public participation". (8th JIC AM, Art. 58); and,
- Formally, Chainsaw Milling will not be in the IA's scope until the regulation is approved and enforced.

Contextual notes:

- "…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". (7th JIC Aide-memoire);
- "In [current] practice, domestic timber and timber products are mostly unregulated and untaxed. It is estimated that half of the profits from chainsaw milling go to rural populations, around USD$ 15 to 20 million annually. Government collects only around 5% in fees." (EU Liberia 2019-21 Terms of Reference AM DP, 1.4).

6.1.7 Annex II - Institutional set-up of the LAS

6.1.7.1 Establishment of the Legality Verification Department (LVD)

Status: This review has been archived in Chap. 7.3.8.1 in A5R, Vol.2.

6.1.7.2 The Liberia Licensing Department (LLD)

Status: This review has been archived in Chap. 7.3.8.2 in A5R, Vol.2.

6.1.7.3 Verification and licensing framework

Status: completed parts of the initial review had been moved to 6.1.7.3 (and further to 7.3.8.1) in A4R, Vol2. The review continued below during the Audits 4 and 5.

It was unclear to the IA where the "Levels" (2, 3, as on the Figure 2 in Vol.2, 7.3.8.1), referring to respectively Field inspections (Level 2) and to LAS implementation audits (Level 3), are defined: not in the VPA text, not in the ESP ToR, not in the LVD SOPs.

The IA then identified the other (already mentioned above) document titled '**LAS Verification Framework**'[12] that defined "4 distinct, yet interrelated levels at which the LAS, and verification thereof, essentially operates", where "Levels" are defined as the IA herewith summarizes:

[12] 'Liberia Legality Assurance System (LLAS) Verification Framework' (SGS/ FDA, 2013, by J. Laporte)

1. The first level [**Level 1**] consists of the **statutory requirements** that a timber operator[13] 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.

2. At a second level [**Level 2**], the LAS relies on the **Government 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[14] 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 reportedly available to the LLD at all levels within the LVD, including full time access to the data provided through LiberTrace.

4. The fourth level [**Level 4**] would now be, as results from the IA's analysis and recommendations in Vol.2, 7.4.8.1, 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.

The "Levels" (2, 3) used in the above-mentioned Figure 2 rather seem to refer to the concept of "instances" used in the text.

A discussion was therefore initiated, to try and clarify and more clearly separate the first three "levels", thus reducing potential conflicts of interests, by departing slightly from the SGS document and rather consider that:

[13] "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.
[14] "…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.

- **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 request/have the License issued prior to commencement of harvesting operations), and 'Level 2' for the EPA (the EPA must issue the License prior to Operator commencing harvesting operations). Clearly, every Level 1 requirement for the operators generates a Level 2 requirement for the relevant MAC to check compliance.

  Note under Audit 5: It remained (from A4R) to be seen how this is presented in the LM. The example provided above for Level 1 is the LM Verifier 5.1.2 (*Environmental Impact License issued by EPA to contract holder or timber processor prior to commencement of harvesting operations*). It does not affect the above analysis. The "Regulatory Control" paragraph refers to the reference Law (EPML, 2002) to which it can be referred for more details on the EIA application process with EPA. It further involves FDA, therefore at Level 2 ("*Prior to issuing the license, the FDA provides the necessary consideration and inputs into the EPA evaluation*").

  In the other example provided above 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 [Note: or EI Permit] (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.

  Note under Audit 5 how this is presented in the LM: The 'Verification Method' and 'Verification Frequency' boxes provide the relevant 'Description' ("*The LVD must confirm with the FDA and the EPA that the contract or permit holder has not only an EI license but also an EI permit that sets forth with specificity the conditions that the EI license holder must comply with.*"), the 'Verification means' (*1. Consultation with the EPA and the FDA; 2. Document review*), and the 'Frequency' (*Once during the validity of the EI License and Permit*). The FDA and EPA are clearly playing a Level 2 role and the LVD a Level 3 role as per the above definitions of the "levels".

Following the same logic, and contrary to what the SGS document states, the LVD should/would no longer be responsible *in first instance* for field inspections [see Level 2, in the above-mentioned Figure 2] 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-mentioned Figure 2] 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 (Assessment of LVD auditing against the CFHP Checklist), initiated in 6.2.3.5, and now archived in 7.4.6.4 in A5R Vol.2, *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 of operators 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 that instance, there was no indication that the LVD auditors had checked on the (though existing) FDA inspection report (see 'FDA field inspections (CFD)' in Vol.2, 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 and updated under Audit 5)

There was 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 **government 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 broad compliance 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 new 'Independent **Third-Party Monitoring** of Export Permit Issuance' role that SGS Liberia has been performing, after the previous SGS' mandate to establish LVD ended in July 2019, and reportedly includes 1) reviewing submissions in LiberTrace, and 2) counterchecking in the field; and
- **Level 6**: The **Independent Audit** of the LAS of the VPA, the fifth component of the LAS.

And there is of course a "**Level 7**" role represented by the JIC's oversight of the whole LAS.

Recommendations

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

The IA had identified this as a significant issue for a clear construction of the LAS, and registered a medium impact **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 distinction of five levels, now six levels with the newly created 'Third-Party Monitoring' role, in the LAS verification framework, as recommended.

IAWG comment to A4 Report

Issue/ Risk Ref No.: **MII 18**
MC&R No.: **3.5**
Area/Element of the VPA/LAS: **LAS Verification Framework**
Identified ISSUE description: There has 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 MC&R 3.13). The IA suggested new definitions for five levels in the LAS verification framework (See 6.1.7.3).

IA's Recommendation (Quote): "Consider implementing a more logical definition of five levels in the LAS verification framework: statutory requirements; inspection and/or enforcement; LVD's internal audit; results from the IA's analysis and recommendations; independent auditor/audit".
FDA's Response: FDA needs more clarity on this recommendation.

Full clarity is provided above. The FDA's response does not change the IA's analysis.

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 (in 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.

There would be a need/opportunity to 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 identified 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 medium impact **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 (in fact now six levels, with the new 'Third-Party Monitoring' level), 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

IAWG comment to A4 Report

Issue/ Risk Ref No.: **MII 19**
MC&R No.: **3.5**
Area/Element of the VPA/LAS: **LAS Verification Framework**
Identified ISSUE description: as above
IA's Recommendation: as above
FDA's Response (informal, 201126): This is something that the stakeholders concerned with the creation of LVD and its functions need to discuss to have an informed decision before considering transfer

The FDA comment (informal, from a draft response document, no longer existing in the final document) does not affect the IA's analysis.

There was also a discussion whether A) Independent Audits (i.e. Level 6 verification) of *private sector operators* by the IA would also be justified as part of assessing the overall efficiency of LAS implementation or if, B) as it was felt in what is now A5R Vol.2, 4.3 (Preliminary planning of Audit 4 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" (A and B) because (See discussion in A3R), 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.

The IA, therefore, confirms its understanding that, either depending on contextual needs, or as part of a systematic assessment program, it may be relevant for the IA, on some occasions or at some point, to assess whether PS operators contribute efficiently and effectively 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.

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Status: The following reviews have now been archived in 7.3.8.3 to 7.3.8.5 in A5R, Vol.2.

6.1.7.4 Legality definition and related verification procedures
6.1.7.5 Data management
6.1.7.6 Legality verification of operators working under an independent forest management certification scheme

6.1.8 Annex II - Implementation of Legality verification

Status: This review has been archived in 7.3.9 in A5R, Vol.2.

6.1.9 Annex II - Implementation of the Chain of Custody System

The following reviews have been archived in 7.3.11.1 to 7.3.11.11 in A5R, Vol.2:

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

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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".

Important note: This clearly makes the right to sell *in Liberia* (i.e., on the domestic market) also conditional on *full compliance* with the LD.

The relation, suggested in A4R, to the investigation in A4R Vol.2, 7.3.8.4, now A5R Vol.2, 7.3.8.4 (Data management), whether and which records are in fact potential "blockers" (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**) has been established under that same section.

The other suggested relation to the investigation in A4R Vol.2, now A5R Vol.2, 7.5.1 and 7.5.2 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, has also been established under 7.5.2.4 (Legality) and 7.5.2.6 (Follow-up), and also 7.5.3 (Performance-based assessment of Export permit issuance), but not for *sale in Liberia*.

The domestic market is not yet in the IA's scope but, in due course, for consideration by the next IA Contractor, there would be a need to:

- First, understand what mechanism currently exists in the COCS/COCIS (in 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 just makes "common sense" to use such mechanism, if any, to verify legality, as has been assessed for the Export Permit (See Vol.2, 7.5.2.6);
- Next, understand whether the "*mandatory declaration of ownership change by the Seller and acceptation by the Buyer in LiberTrace*" (as per A5R Vol.2, 7.5.2.2) for a sale in Liberia provides any mechanism to verify Legality (in the

broader sense) or by which the Buyer would consider the product accepted as Legal.

- And, finally, 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: This review has been archived in 7.3.12 in A5R, Vol.2.

6.1.11 Annex II - Licensing

Status: This review has been archived in 7.3.14 in A5R, Vol.2.

6.1.12 Annex II - Independent audit

Status: This review has been archived in 7.3.15 in A5R, Vol.2.

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

Status: This review has been archived in 7.3.16 in A5R, Vol.2

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

The following reviews have been archived in 7.3.17.1 to 7.3.17.3 in A5R, Vol.2:

6.1.14.1 Foreword
6.1.14.2 The Legality Matrix itself (table)
6.1.14.3 Exploration of the VPA Annex II, Appendix A (continued and ended)

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

For consideration by the next IA, the Baseline review should continue during future 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 7.3.11 in A5R Vol.2), and then of the rest of the VPA Annexes III to X. It was not an agreed point of focus for Audits 4 and 5.

6.1.16 Outline of progress in VPA LAS implementation since the 7th JIC

"The VPA Secretariat at FDA provided a status on the Forward Planner [FP] and the respective Joint Implementation Committee [JIC] decisions and action points captured in the tool, since the sitting of the last JIC. The Secretariat summarized that *out of the 19 decisions that were made by the EU and Liberia during the 7th JIC in February 2019, 11% were completed 47% were in progress, and 42% were pending*". (8th JIC AM, Progress with the Timber Legality Assurance System (TLAS), Overview since the last JIC and status of VPA implementation, Art. 7)

This reflects slow progress, with only 2 out of the 19 decisions made by the EU and Liberia during the 7th JIC in February 2019 (11%) that have been completed since then. It was further observed that "in progress" often did not reflect tangible action (see below).

The EU request that "FP updates to the JIC and other implementation structures need to contain significantly more detail around agreed timeframes, actions still in progress, key steps to be taken, and the individuals responsible for those actions" also reflects a current lack of firm drive in TLAS implementation.

"The parties' shared the view that the FP has not been fulfilling its intended role in measuring the status of implementation. It was agreed that the tool is not being used to its full potential because there has not been adequate monitoring of targets within the tool". (8th JIC AM, Art. 8 & 9)

"The apparent slow pace of TLAS implementation is only to be relativized because of the lack of details in the FP, since "Because of this lack of updating, (…) the FP may be reflecting an inaccurate picture of progress on VPA implementation". "Considering these factors, Liberia and the EU agreed that the tool will be reviewed on a quarterly basis, through a high-level meeting to be led by the Technical Committee of the Liberian Implementation Committee (LIC)". (8th JIC AM, Art. 8)

Attention should be kept in the management of the FP to keeping up with the "intention" of the VPA Art. 14,2, to evaluate progress with reference to the 'Implementation schedule' set out in Annex VII, including *whether referencing with the milestones in the initial Annex VII's schedule is also somehow realized,* with the FP process, The Schedule lists up 59 'Milestones (Activities)' under 12 'Key outputs'.

Out of 38 key issues documented by the IA over the 5 audits (See **Table 2** in 1.2), only 1 has been marked 'compliant' and 7 'under investigation', while 30 remain 'non-compliant'. This is a similar observation to the "slow progress" noted above, based on the FP.

It is however questionable that the FP process does not formally and systematically take account of the IA's Risks & Issues, that both processes are mostly running separately, while they should be closely connected:

"The EU (…) highlighted that *the concerns and findings raised by the Independent Auditor (and Third-Party Monitor) are sometimes not addressed* and that this strongly indicates that *there might be some regression in the implementation of the VPA*". (8th JIC AM, Law Enforcement and Non-Compliance, Art. 18)

This extends to civil society (CS) reports, as CS has a similar complaint: "Civil society raised concern about the low response on their monitoring reports that they prepare independently, which is causing frustration and fatigue to undertake these monitoring activities. Civil society is always prepared to engage, but it gets increasingly difficult to play their role when there is no attention paid to their work". (8th JIC AM, Issues Raised by Stakeholders, Art. 65)

The IA raised a new high-impact **ISSUE** (ref. **HII 38**) about this situation in the IA Progress DB:

ISSUE HII 38
Impact level: High
Identified ISSUE: The concerns and findings (risks & issues) raised by the Independent Auditor, but also in the Third-Party Monitor's and Civil Society Organizations' reports, are often not taken into account in the Forward Planner.
Recommendation: All these processes (Independent Audit, Third-Party Monitoring, and Civil Society scrutiny or Independent Forest Monitoring) should, formally and systematically, feed into the Forward Planner management process.
Mitigation: This was highlighted by the EU (re: Independent Audit and Third-Party Monitoring) and civil society / IFM (8th JIC AM, Art. 18 & 65).

"The EU indicated that, although the necessary changes will require time and joint effort, Liberia needs to progressively learn to drive the system and proactively improve the compliance picture in the country". (8th JIC AM, Law Enforcement and Non-Compliance, Art. 18)

"Liberia (…) acknowledged that the compliance challenges identified do exist [but] that FDA Management and the FDA Board have also taken an interest in the compliance picture. The FDA expressed that management and compliance issues are much more complicated in countries managing natural forests and, considering this, advised it would be helpful to see more implementation examples at future JICs from VPA countries that are engaged in the management of natural forests, rather than from those engaged in plantation forestry". (8th JIC AM, Art. 19)

And "the Ministry of Justice [MoJ] further highlighted that the FDA Board has taken steps towards the approval of the draft Enforcement & Compliance Handbook, and that once finalized this will help to more clearly outline how the Government has agreed to deal with potential non compliances in the future". (8th JIC AM, Art. 20)

But the UK CFDO mentioned "the increasing number of non-compliances". (8th JIC AM, Art. 21)

MoJ "also agreed with the FDA Board and FDA Management to convene in order to define more specifically how the Government of Liberia [GoL] will deal with non-compliance issues. The Government clarified that although they do not want to go into details about specific non compliances, GoL acknowledges that there are issues with non-compliances and have agreed to have internal discussions to move the sector forward. MoJ also reminded the JIC that FDA and MOJ have an existing MOU governing their relationship around reviewing issues of compliance, and that both institutions are considering reactivating the agreement. A clear roadmap will be developed on how the Government plans to move forward with non-compliances. This roadmap will be made available by the next JIC, which will be held within the next six months". (8th JIC AM, Art. 21)

And "the FDA highlighted that based on the Government's internal consultations on non-compliances, corrective actions will be taken. The FDA emphasized that there is a clear need for internal restructuring and rotation of staff to improve the professional and technical capacity around FDA's implementation of the VPA. Corrective actions will begin at FDA within the next week, so that there is no further regression in the VPA implementation process. FDA also expressed regret that due to the leadership change at FDA in 2018, VPA implementation was a new process for several members of FDA management. However, with the current

knowledge of the process, FDA is committed to using this restructuring as an opportunity to make sure there is more robust supervision of staff, and that management provides the necessary drive". (8th JIC AM, Art. 22).

As part of further commitments to improve the situation, "FDA Management committed to continue to engage the LIC through regular sessions and to ensure that discussions at the LIC are tailored to also make decisions around key outcomes from the LVD-SGS Project Board meetings. The EU agreed that comprehensive management of natural forests is a significant challenge and acknowledged the Government's commitment to improved forest governance. Both parties committed to seeing Liberia's timber progress to being more competitive on the international market". (8th JIC AM, Art. 23).

Note: IA reflected the above commitments as a mitigation measure against ISSUE HII 18 in the IA Progress database and the recommendation to either "Adopt a time-bound 'Current regime requirements for EP' enforcement plan, or close down the entire Liberian logging sector".

Reflecting the need for the private sector to be able to demonstrate compliance to their buyers (for ex in the EU under the EUTR DD requirements) in the absence of FLEGT Licenses, "the Liberia Timber Association [LibTA] proposed that the private sector could further contribute to reducing non compliances by setting up LibTA as a Self-Regulating Organization (SRO). LibTA's view was that this would encourage further compliance because the organization would be able to identify and sanction companies if they do not comply with Liberia's current laws. Compliance certificates could then be withheld from members who violate, and those companies would not be allowed to operate until non compliances are cleared". (8th JIC AM, Art. 25).

"The EU and MoJ acknowledged and appreciated the willingness of the private sector to get more involved in preventing non compliances in the sector. The EU also noted that although SRO status could be explored, this status would not be a substitute for the mandate of GoL and FDA in managing non compliances. LibTA was encouraged to further analyze the feasibility and legality of their suggestion. GoL agreed to review this analysis. MoJ also emphasized that the Government would like to see more effort from the private sector in addressing those minor and administrative non compliances that could easily be handled by the companies on their own". (8th JIC AM, Art. 26).

In that regard, the IA would suggest that internationally recognized legality certification schemes can also be a good alternative for the same purpose.

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: This review has been archived in 7.4.1.1 in A5R, Vol.2.

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

Status: This review has been archived in 7.4.1.6 in A5R, Vol.2.

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

Status: Parts of this review have been archived in A5R, Vol.2, 7.4.3 (Approval of Forest Management operations (LM P4) - Pre-felling requirements) for archiving and follow-up. The review continued below with LM Principle 4.

LM Clauses	***4 Forest management operations and harvesting*** ***4.1 The contract or permit holder* has completed *an annual operational plan and where applicable, a forest management plan*** ***4.1.1 Annual Harvesting Certificate*** ***4.1.2 Approved Annual Operational Plan (AOP)*** ***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. **Recommendations:** ▪ An AOP report template is required for operators to use when preparing their AOPs ▪ 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 No approved procedures for approval of AOP by FDA **Recommendations:** 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: (Not specified)

Responsible Department: Commercial /Community departments

Time Frame: (Not specified)

Reference: AOP approval templates

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

IA review of FDA/IAWG response:

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

During Audit 4, the IA had requested the information below from the FDA NAD office, with assistance of the VPA Secretariat to collect and scan the documents (as no soft copies are available) and email them to the IA Auditor, and finally return the originals to the NAD's office, but there was no response from FDA:

1. Approved official AOP report template for the operators, to prepare their AOPs;
2. Approved procedures incl. for approval of AOP and 5-year FM plan;
3. In particular, approved procedures for the FDA process of approving AOPs;

   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".
4. Approved checklist for CFD to check the compliant implementation of AOPs; all reflecting the FMGs.

The IA therefore had to confirm 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 verification of AOP by CFD (i.e., to ensure that CFD officials consistently follow the FMG/LM requirements).

IA still needed to get confirmation:

- That "*procedures exist in the FMPGs 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).

IAWG comment to A4 Report

Issue/ Risk Ref No.: **MII 8**
MC&R No.: **3.9**
Area/Element of the VPA/LAS: **FDA's approval of pre-felling requirement**
Identified ISSUE description: (quote as per MII 8) *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.*
IA's Recommendation: (quote as per MII 8)
FDA's Response: Forest contracts (CFMAs) follow the nine steps guidelines under the CFRL. AOP report template for operators needs clarity. However, Template and approval procedures exist for approval of AOPs & FMPs will be forwarded to the IA. The template and procedures are used for CFMAs

Audit 5: CFD confirmed during the audit that no specific procedures exist for the operators to follow in order to prepare their AOPs for submission to CFD for approval; and, also, that no procedures exist for the CFD on the approval process of AOPs submitted by the operators. However, the CFD uses a checklist reflecting the content of an AOP in the FMPGs to review and approve AOPs.

ISSUE MII 8, as per its reference in the IA Progress DB, thus remains open as updated below:

ISSUE MII 8 (updated)
Impact level: Medium
Identified ISSUE: Lack of AOP template for operators to follow, and of approved FDA/CFD procedures for AOP approval (apart from a checklist based on the content of an AOP in the FMPGs)
Recommendation: AOP report template for the operators, and approval procedures for CFD (including for the CFMA Forest Management Plans) to be developed and implemented.
Mitigation: New community forest management guidelines reportedly launched at end of October 2019

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*** ***4.2.1 Approved annual blocks*** ***4.2.2 Compartment and Annual coupe*** ***4.2.3 Felled trees data verification (SOP11)*** ***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 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) 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. 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 No approved procedures for FDA approval of Compartment plan No procedures and audit checklist and report template for completing the Annual compliance audit **Recommendation:** Report templates and approved procedures to be implemented 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 remained open, as slightly revised.

IAWG comment to A4 Report

Issue/ Risk Ref No.: **MII 9**
MC&R No.: **3.9**
IA's latest Ref.:
Area/Element of the VPA/LAS: **FDA's approval of pre-felling requirement**
Identified ISSUE description: (as per MII 9)
IA's Recommendation: (as per MII 9)
FDA's Response: Template and approval procedures exist but will be improved with the help of VPASU-2 the documents will be forwarded to the IA.

Audit 5: There are no procedures for the approval process of 5-year compartment plans and no evidence was provided of an approval template being used for the approval of the 5-year plans.

ISSUE MII 9 in the IA Progress DB remains open as previously revised:

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.

LM Clauses	***5 Environmental obligations*** ***5.2 The contract or permit holder or timber processor implements the mitigating measures identified in its EIA as indicated in the EI permit*** ***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. 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. Lack of procedures, checklists and report templates in the EIA Division of the CFD. **Recommendations:** ▪ All EIAD inspectors trained on how to do EIA inspections in the field to meet the LM requirements ▪ 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 then revised) remained open.

IAWG comment to A4 Report

Issue/ Risk Ref No.: **MII 10**
MC&R No.: **3.11**
Area/Element of the VPA/LAS: **CFD Environmental Impact Assessment Division (EIAD)**
Identified ISSUE description: Lack of procedures, checklists (CFHP?), report templates, training, and resources for CFD EIA Division inspections, including of waste disposal. 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.
IA's Recommendation: (as per MII 10)
FDA's Response: The FDA recognizes the limitations, but will work with the VPASU 2 to address the problem. The training covered EIA but lack of logistics remained issue to be addressed.

Audit 5: "Checklists developed by VPASU on the joint monitoring of CFHP include some elements relevant to the follow up of the EIAs" (EUD source, but with no reference to trace the VPASU document). The existing VPASU-developed checklist for the inspections related to the CFHP is currently also in the process of being updated. IA yet reflected the above commitments as a mitigation measure against ISSUE MII 10 in the IA Progress database.

The related medium impact **ISSUE** (ref. **MII 10** in the IA Progress DB) registered by the IA during Audit 3 remains open as previously revised:

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* *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* *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. 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). Lack of procedures, checklists and report templates in the EIA Division of the CFD. **Recommendation:** 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. All EIA inspectors trained on how to do EIA inspections in the field to meet the requirements of LM. Prepare procedures, checklists and report templates to allow inspectors to conduct consistent and credible field audits regarding EIA requirements.
Relevance of the requirement in LM	Possibly not relevant - EPA is directly responsible for 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 is it done' 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 a high impact **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 in any detail, to avoid overlap of responsibilities and thus a wastage of resources.
- IA had 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.

IAWG comment to A4 Report

Issue/ Risk Ref No.: **HII 26**
MC&R No.: **3.11**
Area/Element of the VPA/LAS: **CFD Environmental Impact Assessment Division (EIAD)**
Identified ISSUE description: (as per 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’s Recommendation: (as per HII 26)
FDA's Response: FDA to work with the VPASU2 & EPA to establish clear responsibilities of the FDA EIA Division. The MOU between the FDA and the EPA will be provided the IA.

Audit 5: Copy of MOU not received from FDA. IA yet reflected the above commitments as a mitigation measure against ISSUE HII 26 in the IA Progress database. Meanwhile, HII 26 shall remain open as is.

LM Clauses	***5 Environmental obligations*** ***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)*** ***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. These reports currently have the following deficiencies: ▪ The various regional reports are not consistent in their layout as there is no master template to follow. ▪ Reports are not completed consistently each month for each region. For example • May/June reports: 3 reports were submitted (no report for Region 1) • June/July reports: No reports were available • July/August reports: 1 report was submitted from Region 3 • No reports were submitted since then. • No electronic transmission and filing (NAD office has no computer). ▪ 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. **Recommendations:** ▪ Prepare field inspection procedures for field staff ▪ Implement CFHP checklists as the checklist to be used by field staff during ongoing audits ▪ 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 a medium impact **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:

- The IA acknowledges the appetite for training but the issue is not a training issue; it is about organizing the functioning of the respective FDA departments.
- Meanwhile, Issue MII 11 remained open as is.

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*.

IAWG comment to A4 Report

Issue/ Risk Ref No.: **MII 11**
MC&R No.: **3.11**
Area/Element of the VPA/LAS: **CFD Environmental Impact Assessment Division (EIAD)**
Identified ISSUE description: (as per MII 11)
IA's Recommendation: (as per MII 11)
FDA'S Response: There are templates and check lists. They will be presented to the IA on their arrival to conduct A5.

Audit 5: Templates and checklists have not been presented to the IA. IA yet reflected the above commitments as a mitigation measure against ISSUE MII 11 in the IA Progress database. Meanwhile, MII 11 shall remain open as is.

6.2.1.4 Capacity analysis of the Commercial Forestry Department (CFD)

Status: This review has been archived in 7.4.1.7 in A5R, Vol.2.

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

The following reviews have been archived in 7.4.2.1 to 7.4.2.3 in A5R, Vol.2:

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

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

6.2.2.3 Capacity analysis of the Community Forestry Department (CyFD)

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

Parts of this section 6.2.3 related to LVD's *establishment* were moved for archiving to A4R Vol.2, now A5R Vol.2, in 7.3.8.1 (under 7.3.8, 'Broad institutional set-up of the LAS'), separately from other sections on the *functioning* (i.e. performance-based assessment aspects) of the LVD, but together with the completed review of the initial establishment of the LVD from initially 6.1.7.1 in A4R Vol.1 (under 6.1.7 'Annex II - Institutional set-up of the LAS').

6.2.3.1 Background to this assessment

Status: This review has been archived in 7.4.5.1 in A5R, Vol.2.

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

The following reviews have been archived in 7.4.5.2 in A5R, Vol.2:

- **LVD structure**
- **LVD sites (offices) and organogram**
- **Capacity handover process from SGS (as of Oct. 2018)**

Review of SGS' End of Project Report for possible 'lessons (to be) learned'

For this Audit 5 report, the IA undertook a review of SGS' End of Project Report (ref. V6 7/10/20) and produced the following 'Summary review by the IA'. The IA looked for possible 'lessons (to be) learned', of relevance for the future of the EU-Liberia VPA implementation.

On July 10, 2020, SGS released Version 6 of its Final '**LVD Project**' report (28 pages), under its **DFID contract** (PO6380) co-funded by the EU, published on the SGS Sharefile system.

Project title: '*Establishing and Operating a Timber Legality Verification Department (LVD) within Liberia's Forestry Development Authority (FDA) and Building Capacity within FDA*'. It started on October 14, 2013 initially for 5 years to support VPA implementation. It ended on July 31, 2019 following an extension of the services.

The report aimed to review how the project performed against SGS' terms of references [ToR] and Inception Report:

- Assessment of performance at the end of the project;
- Drawing lessons for other projects;
- Detailing unfinished work, ongoing risks or deviations from the ToR.

The Project undertook:

- Institutional design, establishment of LVD within FDA, and staffing;
- Design of necessary Standard Operating procedures [SOPs] and systems for implementation of the Legality Assurance System [LAS] and capacity building [CB] of LVD and Implementing Partners;
- Handover of all systems, equipment and staff, once sufficient capacities have been built and FDA/LVD can operate autonomously (B.O.T. intervention).

SGS also implemented a separate, complementary **Service Agreement** [SA] with the Government of Liberia [GoL], to provide FDA with services for verifying traceability, issuing export permits [EPs] and managing forest tax collection.

The LVD Project worked alongside the '**VPA Support Unit**' (VPA-SU) charged with:

- CB (human and other resources) within: the Liberian Licensing Department (LLD), other FDA Departments (excluding LVD), and relevant non-FDA MACs;
- Ensuring non-state actors' sufficient understanding of the VPA (…) so as to contribute to its effective implementation.

Section 1 of the report covers '**Project Governance and Team structure'** through the following chapters: **Project Board**, **Project team** (Project Manager [PM], Capacity Building Team Leader [TL], LAS TL), **SGS Group backstopping**, **Short-term experts**, and **FDA/LVD Managers** (the LVD Technical Manager [TM] - SGS-PM's counterpart, main contact point for communication with FDA -, and three other Operations, Database Information and Quality managers).

Section 2 of the report first recalls, and provides a '**Project Review'** against, first the '**Project Objectives'** (2.1).

Main difficulties identified:

- **A complicated contractual framework** (between the DFID contract to develop the system and build capacity for its transfer; and the GoL contract to operate elements of that system and facilitate the transfer) that created confusion and challenges in setting performance criteria;
- The unforeseen **need for SGS to also fulfil the LLD functions** by continuing to issue traditional EPs in a manner compatible with the LLD mandate [**Note:** The IA commented on this, in this report or in a previous audit report];
- The **unavailability of due LVD staff since 2014**, with only data clerks in place instead of CoC [Chain of Custody] inspectors from late 2015/early 2016 [**Note:** same as above];
- The **lack of FDA budget for LVD**, SGS having to pre-finance the LVD operation from January to October 2018 [**Note:** same as above].

The independent ["readiness"] assessment conducted in May 2018 found several risks for the due handover of all LVD activities:

- **Substantial gaps subsisting in overall verification** of compliance with Liberia's applicable legal requirements under the VPA [**Note:** same as above];
- **Lack of a financing mechanism** for both the operating and capital (replacement) expenditure of the LAS by GoL [**Note:** same as above];
- Some field/HO functions of **vacant LVD positions** having to be performed by SGS staff;
- The **need to further strengthen FDA/LVD management** [**Note:** same];
- **Incomplete VPA implementation** preventing the testing and transfer of FLEGT licensing functions to LLD, nor the preparation of (the non-existing) LLD through issuing EPs;
- **Quality Management System** (QMS) not yet fully in place [**Note:** same as above];
- **Code of Conduct** to ensure LVD staff integrity not yet implemented.

From October 2018, as a result, the **SGS contract was extended for 9 more months** to:

- Complete the handover of the CoC system (Head office);
- Train and handover the FDA Legality Verification [LV] Unit;
- Ensure implementation of the ISO 9001:2015 certification;
- Train two officers who would form the future LLD;
- Handover EP and Certificate of Origin [COO] issuance.

The **Project Review** then (2.2.1) looks at the' **Project Benefits'** achieved, in SGS' view:

- For the **FDA**:
  - **New LVD** operational, visible, and independently managed by the FDA;
  - A team of **LVD staff** with capacities developed (though not all fully independent yet [**Note:** same as above]);

- **Equipment** to allow LVD management and operation (in head office [HO], regions);
- **Manuals** of (managerial, operational) procedures, improved several times [**Note:** same as above];
- **An operational IT solution**, LiberTrace, comprising a CoC Information System (COCIS), a LV System (LVS) and a Licensing system to issue EPs and COOs, and FLEGT Licenses later on [**Note:** same as above].
- **A financial mechanism** to finance LVD operations out of operators' fees through a Transitory bank account [**Note:** same as above];
- **International recognition** of LVD's QMS as ISO 9001 certified [**Note:** same as above];
- A core **team of the future LLD** trained;

- For the **LRA**:
  - Accurate **monitoring of fees**, invoiced and paid monthly by the forestry operators [**Note:** same as above];
  - **Direct access to timber export data** [**Note:** same as above];
  - **Enhanced revenue collection** based on joint LVD-LRA management and monitoring of forest fees;
- For the **forest sector operators**:
  - **Facilitation and security of exchanges with FDA**, with an IT system that enables them to declare activities, receive invoices and request/receive EPs and COOs;
  - **Enhanced transparency** of the CoC and LAS processes;
  - Credibility of **statements of legality** issued to importers [**Note:** same as above];
- For **Civil society** (local communities, NGOs):
  - **Access to monitoring data** along the supply-chain [The IA commented on*/against* this in an audit report];
- For the **EU**:
  - **Reliable source of information for due diligence** by EU importers under the EU Timber Regulation [**Note:** The IA commented on this, in this report or in a previous audit report];
  - **Better assurance of legality** for the final consumer of Liberian timber.

The report (2.2.2) also identifies '**Residual benefits expected'** [deferred] and related **limitations and constraints**:

- **LiberTrace hosting and maintenance**. GoL to host the solution in Liberia in a datacenter under Government supervision. To allow this, application migrated to SGS Cloud and physical servers moved to Liberia but, to [report] date, no datacenter designated to install the servers. LiberTrace therefore not fully transferred. Willingness of GOL to maintain the application itself, but no qualified resources identified to do so, and no

agreement concluded with SGS or else. Discussions thus ongoing to find an appropriate and sustainable solution [**Note:** same as above];

- **LV unit not ready to operate independently**. TL position filled by an FDA employee (SGS staff member originally designated for the position not selected). Two staff members assessed as fully independent, but the others require more coaching and training [**Note:** same as above];
- Agreed **VPA Legality definition** (LD) requires revision to incorporate new regulatory and technical obligations. FDA and many MACs not yet having the capacity to provide evidence for all the existing verifiers [**Note:** same as above].

The report recalls JIC's admission (AM, March 2019): **LAS not ready** yet to meet all VPA requirements, and no FLEGT licenses could be issued before 2021. It then (2.2.3) claims '**Deviations from the approved Program of Work**' for SGS:

- **CB of LV team hampered** by late assignment of LVD staff, thus not ready to independently perform legality audits;
- **Upgrade of the LV system** being dependent on the upcoming revision of the LD;
- **Handover of software management** to GoL at the end of the project precluded because of delayed decisions for LiberTrace hosting and maintenance arrangements.
- Many **aspects of the LD not managed** due to some FDA procedures not implemented and to weaknesses of other involved MACs [**Note:** same as above].

Chap. 2.3 of the report assesses '**Project performance**', first in terms of '**Team Performance'**

- First for the **SGS team**:
  - **Key personnel** providing satisfaction after several changes. Difficulties included: to recruit and retain quality staff to live and work in Liberia, especially because of, and during the Ebola crisis (2014-2015).
  - **Several changes** in project management team (2 PMs, 3 LAS TLs, 3 CB TLs), only compensated by SGS HQ backstopping and short-term [ST] consultants.
- Then for the **FDA/LVD staff**, as regularly assessed by SGS and by the Change Management Expert plus an independent assessment (of LVD managers, June 2018):
  - **Current TM** hardly meeting the requirements for the position (to be fully conversant with all LVD activities and capable of exercising his responsibilities without guidance), seldomly logging on to LiberTrace, and playing a limited role in hands-on system operation; only one decision recorded in 2018. "Not satisfactory situation" communicated as a risk by SGS to Project Board members [**Note:** same as above].
  - Current **Operations' Manager** [OM] performing well against requirements (sound knowledge of all field activities; effective supervision of inspection

staff), making a regular use of LiberTrace, and showing the highest level of competence among all managers.

- **Database Information Manager** performing well against requirements (sound knowledge of data management and processing within LiberTrace, barcode management and processing EPs; effective supervision over data clerks); knowledgeable and fully competent for the role.
- **Quality Manager** performing well against requirements (to oversee overall quality assurance, customer service and complaints and integrity mechanisms within LVD; be capable of guiding LVD through a successful ISO 9001 certification assessment) [**Note:** same as above].
- Current **Finance Officer** performing fairly against requirements (to prepare LVD budgets, exercise applicable financial controls and prepare financial reports), having a sound knowledge of relevant procedures. Position relocated in FDA Finance Dept.
- **Lead LV Auditor** performing fairly against requirements after 4 trainings, with still room for gaining more field experience and further coaching needed to improve her leadership skills [**Note:** same as above].

Chap. 2.3.2 then assesses the Project's '**Performance against project variables**' in terms of

- **Scope:** Project remained within the defined scope of work. The extension introduced two new activities (independent observation ("second party monitoring"); training of officers for approval and issuance of EPs and COOs, pending LLD establishment and FLEGT licensing);
- **Time:** all project objectives and outputs completed by extension's end, with exceptions identified above in 2.2.3 (technical management of LiberTrace; capacity of LV unit);
- **Cost:** DFID Contract a fixed cost contract. Additional funding was required to implement Amendments #2 and #3;
- **Quality:** little criticism from stakeholders regarding the quality of the services, a small portion of the deliverables requested for review by DFID, a reduction of the gaps and improvement of the project's image from the beginning of the program (with delays mainly due to external factors incl. Ebola, passivity and low buy-in from the FDA, heath problems of CB TL, etc.), the absence of criticism by the two independent evaluations (June 2018, July 2019 FDA readiness to take over SGS);
- **Benefits:** expected benefits largely met, some others not yet materialized and requiring further political and managerial commitment from the GoL [**Note:** same as above];
- **Risks**: managed by SGS, regularly raised to Project Board, but not mitigated as hoped and becoming significant issues (staffing, budget, absence of office in Greenville). More details provided in section 3.4.

Section 2.3.3 ('**Outputs, Work Packages and Activities'**) assesses the achievements against ToR requirements under the five expected outputs

- Output 1: Establishment of the Legality Verification Department (LVD)

- **LVD legal status**: LVD formally and functionally established within FDA;
- **LVD organizational structure**: internal management structures described in General Management SOPs and implemented, and certified against ISO 9001;
- **LVD integration within FDA**: LVD included in FDA's organizational chart, LVD offices located in FDA HQ and regional offices, linkages with other departments explained in the SOPs. Mechanisms [were to] be refined during the extension;
- **LVD financial management**: relevant management SOPs provided and LVD managers trained (though still lacking assimilation and commitment); self-sustainable funding mechanism designed out of forest taxes and implemented under LRA supervision;
- **LVD operational management**: LVD Managers trained to manage operations in all regions, LVD having the capacities to operate in the entire country;
- **LVD administrative management**: internal management described in SOPs, implemented, and QMS certified against ISO 9001.

▪ Output 2: Sufficient capacity established within the LVD (human and other resources)

- **CB Implementation Plan (CBIP)**: first CBIP prepared and delivered in 2014; second version in Nov. 2016;
- **Training and equipment**: LVD progressively set up over 5 years, due to Ebola and other delays (e.g., staffing), with HQ and regional offices fully equipped and staffed (except for Greenville's temporary building);
- **Continued CB**: LVD CB regularly measured against the CBIP as part of change management.

▪ Output 3: Establishment and implementation of efficient, effective LV

- **LV system**: developed in LiberTrace and operational; though only 36% of Legality Matrix Verifiers currently verifiable [**Note:** same as above];
- **SOPs**: LVD started operating under LiberFor SOPs; new set of SOPs officially approved by FDA in April 2017 and implemented [**Note:** same as above];
- **Coordination with other public agencies**: public agencies, except FDA and LRA, not yet fully involved in VPA implementation, LVD still not fully visible or recognized by the relevant MACs, and mutual relationships still very limited [**Note:** same as above];
- **Integration with CoC data management**: LV System linked to the CoCIS in LiberTrace; and legality, traceability and fiscal statuses checked before licensing;
- **Private sector** [PS] **capacity**: PS awareness raised during Technical Advisory Committees [TACs]; and operators trained in the use of LiberTrace.

▪ Output 4: Development and operation of an efficient, effective CoC system

- **Traceability**: CoCIS LiberTrace Go Live declared in April 2017 and fully operational since April 2018, enabling traceability along the entire supplier chain and the secure issuance of export authorizations and certificates; assessed in May 2018 by EFI FLEGT Facility as having the capacity to meet the LV needs as set out in the VPA [**Note:** same as above];
- **Legality**: LV fully integrated with the CoC in the CoCIS. However, some indicators not currently verifiable in the field, deactivated in the system [**Note:** same as above];
- **Tax management**: LiberTrace CoCIS manages forest fee invoicing and monitors revenue collection. Establishing automatic exchanges between LiberTrace and LRA's system (outside the ToR), will require additional funding to upgrade the two systems [**Note:** same as above];
- **IT system management**: LiberTrace developed and installed on two dedicated servers hosted in SGS Geneva's datacenter. May 2019: application migrated to the Cloud so that servers can be installed in Liberia. Hosting, maintenance: [see 2.2.2];
- **PS capacity**: [see 2.3.3, Output 3 (above)]. No showstopper raised by PS;
- **Transitional measures**: SGS used the old LiberTrack COCS, then launched and operated LiberTrace, then transferred responsibility to LVD in March 2019. Two LVD employees trained to approve and issue EPs, COOs, and FLEGT licenses (when LLD established); expected to take over EP issuance from SGS [see 2.3.2, Output 3];

▪ Output 5: Transfer of a fully operational and self-sustainable LVD to FDA by contract end

- **Planning**: Handover plan delivered in 2016, with some delay due to the Ebola outbreak;
- **Adherence to the transfer schedule**: transfer schedule affected by Ebola. Slow re-mobilization of project stakeholders after 2015. FDA and SGS staffing and funding issues leading to further delays. Initial plan had to be readjusted and the contract extended by 9 months to achieve the initial objectives [see 2.1];
- **Transfer effectiveness**: All LVD functions built and transferred both at HQ and in the regions, but independent end-of-project evaluation showed some functions (e.g., LV unit) needed strengthening;

▪ Output 6: Second-party monitoring of LVD post-handover

- [No detail provided]

SGS's **Review of Deliverables** (2.3.4, Table 3) provides the following list:

Output 0 ✓ Progress reports (x10 + 2 during the extension period)

Output 0 ✓ End Project Stage Report (Report redesigned as end stage report to highlight the situation before the extension)

Output 0 ✓ End Project Report (present report)

Output 1 ✓ Transfer to new LVD offices

Output 1 ✓ ISO 9011:2015 Certification report (QMS)

Output 2 ✓ CB Implementation Plan V2

Output 2 ✓ Change Management/CB Assessment Reports (x9 + 2 during extension period)
Output 3 ✓ Manuals of LV & Licensing SOPs
Output 3 ✓ Updated Manuals of SOPs
Output 3 ✓ COC Operation Report (x28)
Output 4 ✓ Manuals of COC SOPs
Output 4 ✓ Updated Manuals of COC SOPs
Output 4 ✓ LV Operation Report (x23)
Output 4 ✓ Monthly Revenue Report (x28 + 6 during the extension period)
Output 4 ✓ Monthly Market report (x28 + 6 during the extension period)
Output 3-4 ✓ LiberTrace Go Live
Output 3-4 ✓ LiberTrace fully operational
Output 3-4 ✓ Quarterly IT Maintenance Report (x10 + 2 during the extension period)
Output 5 ✓ Detailed Handover Plans (x3 + 1 during the extension period)
Output 5 ✓ Pilot Handover completed
Output 5 ✓ Upscaling Handover completed
Output 5 ✓ HO Handover completed (during the extension period)
Output 5 - Concerns of joint LAS technical evaluation addressed (evaluation not conducted)
Output 5 ✓ LVD financing mechanism process established
Output 5 ✓ LV Handover report (during the extension period)
Output 6 ✓ Second-party monitoring report (x4 during the extension period)

Full list of Deliverables: separate document (*LR_Deliverables_monitoring*) available upon request. All deliverables shared with DFID, FDA, LRA, VPA SU and EU in Liberia. All reports, except for Quarterly IT Maintenance and Second-party Monitoring reports, published on the FDA website (but no longer available since the site was redesigned) [**Note:** same as above].

Section 2.3.5 provides a '**Review of the milestones schedule**' in A3 format, of the following milestones with 3 types of marks (Initial plan, Replanning, and Achieved):

- Output 0: Project managed
  - Core management team in place
  - End Project
- Output 1: LVD established
  - LVD established
  - LVD HO available in FDA premises
  - LVD QM Nominated
- Output 2: LVD Capacities established
  - LVD management in place
  - LVD fully staffed
- Output 3: LVS designed and developed
  - Manuals of SOPs and Work Instructions delivered (D26)
- Output 4: New COCIS designed and developed
  - LiberTrace manual

- Outputs 3-4: LiberTrace implementation
  - New COCIS/LVS enforced by official regulation
  - LiberTrace Go Live
  - Libertrace fully operational (all legal requirements)
- Output 5: LVD Transferred to the FDA
  - Pilot Handover completed
  - Handover of the 2nd field operation site
  - Handover of ALL field operations, data management and site management
  - Handover of management responsibilities (Handover completed)
  - LVD financing mechanism process established
  - Certification Audit Report /Certificate (D45)

The report then provides a '**Review of outstanding actions**' (2.3.6), in relation to

- **LiberTrace hosting**: Agreement with LibTelCo or LRA (two structures identified to receive the servers) not yet formalized. Meanwhile, servers stored at the VPA-SU office and still awaiting final customs clearance (FDA application for exemption still pending). To date [of the Report], SGS still hosting LiberTrace outside of the contract; calling for an urgent solution [**Note:** same as above];
- **LiberTrace maintenance** - Associated GOL's rights for each of the three imbricated LiberTrace modules:
  - Module 1 - SGS.Net Framework: GOL granted a royalty free perpetual license to use the pre-existing SGS.Net Framework in Liberia but no right to modify it. SGS keeps the IP rights. Activation key envisaged for GoL, to protect this module, preventing third party reuse without SGS's agreement;
  - Module 2 - SGS-LegalTrace®: GoL granted a royalty free perpetual license and the source codes to use SGS-LegalTrace® in the forestry sector in Liberia, allowing GoL to maintain the software but not to give or sell the solution or modify it. SGS keeps the IP rights, including to reuse it in other existing or future contracts;
  - Module 3 – Liberia-specific module: GoL owns the LiberTrace module based on specific requirements for Liberia, including source codes and associated IP Rights.

[See 2.2.2 (above):] SGS proposed a Service Level Agreement (SLA) to maintain LiberTrace – which was not retained - and/or to train Liberian technicians for it (3rd module) – but GoL did not present technicians with the required technical capabilities;

To date, **SGS still maintaining LiberTrace** outside any contract; calling for an urgent solution [See above] [**Note:** same as above].

- LVD Offices in Greenville (Region 4): second-hand containers fitted out as temporary offices;
- Ongoing support to the LVD staff: all operational functions of LVD transferred, but some particular areas still fragile and requiring special attention (LV auditing and reporting techniques, licensing (analysis of CoC and LV results [The IA commented on this in an audit report]) and HR management (code of conduct, evaluation of staff performance).

Section 3 is a '**Lessons**' review report of the positive and negative aspects of project implementation, and a set of recommendations for program management consideration.

It starts with a '**Report summary**' (3.1) of the major lessons learned (and issues) and key aspects that need review.

- **LiberTrace CoC Information System (COCIS)**: a "first-time success in Africa", of a web application developed and implemented, involving all stakeholders to ensure timber traceability and legality monitoring from forest to export and issue EPs and COOs. The logging operators appreciate that they can manage their own data directly and monitor LVD actions. One challenge is to find staff in Liberia with the required skills to maintain and operate such software;
- **A very ambitious project in a difficult context**: a tremendous change compared to the pre-existing situation, even if SGS ran a previous COCIS six years before the LVD project start; and tremendous challenges to overcome for the project team and for GoL (e.g., Liberia's historical background, current practices);
- **Ebola Outbreak**: marked the first two years of the project, with State of Emergency declared on 6th August 2014, and SGS having to relocate SGS expatriates (PM, TLs) in Accra, Ghana between August 2014 and March 2015, and to apply an 'Interim strategy'. No in-country capacity building activities, including training and communication (like TAC meetings), could take place, which delayed the handover process.
- **LVD Staff assignment**
  - LVD Managers: The absence for five months and resignation, because of Ebola, of two competent FDA counterpart managers (TM, OM) negatively impacted the CB strategy implementation at an early stage of the project. SGS not invited to have a say in the selection of replacement candidates;
  - Office and Field Staff: new staff had to be recruited, mainly outside FDA, to work for LVD, but the available budget has been an issue (see 3.1.7). IA note: 2 diagrams show critical delays and reductions in the deployment and handover of operational staff;
- **SGS' international Experts:** difficulty to attract and keep international experts motivated, and other problems (health), hence several changes to the initial team to manage;
- **Offices** (being recalled that GoL was responsible for providing all offices for LVD)
  - LVD Head Office: FDA buildings at Mount Barclay not completed before February 2016, with main building ready to host FDA staff and SGS given an "Annex" for refurbishment. Meanwhile, SGS installed 3 container offices for a few employees and the office archives while most SGS experts worked in an SGS office in Old Road, Monrovia, hence different locations during the first 2.5 years until May 2016, which undermined the motivation of LVD employees and LVD's visibility, identity and appropriation by FDA. Lack of available space, including a meeting room, and far from Monrovia,

adversely impacted CB activities such as training. SGS used VPASU's conference room or rented a conference center to deliver the training;

- LVD regional offices: Regional office for Regions 1 & 2, hosted in LVD HO, only became operational late in the project for reasons explained above. Existing FDA office in Buchanan, Region 3, needed refurbishment beyond initial procurement plan, and was fully operational in April 2017. Office in Greenville, Region 4, still temporary.

- **Budget and financial mechanism:** GoL/FDA financing of LVD staff and operating costs a recurring issue since project's start (as regularly reported in Progress and Capacity Building and Change Management Reports) that precluded effective handover. For some time, SGS pre-financed operations (interim mechanism under the SA). Then, financial mechanism to fund the LVD budget from a transitory account collecting forest taxes put in place, but is not yet mature, suffering from lengthy administrative procedures and suspicion by some of the parties involved [**Note:** same as above].
- **Changes within GoL and FDA**: FDA top-level management changed following 2017's Presidential elections: new Board, new MD, new DMDO, and new 'Special Advisor' position created by the MD, an added level in the decision-making process and to access him, causing some delays (assignment of LVD Officers, provision of regional offices, implementation of a budget).

Identification of '**Key areas for improvement**' (3.2)

- **Project Board Meetings**: established from Project start, to secure stakeholder involvement and guidance, but it proved difficult to hold monthly meetings;
- **TAC** meetings: TAC created to facilitate LiberTrace development, and used to harmonize understanding of regulations (mainly CoC and LM) and discuss technical issues, but it also proved difficult to hold monthly meetings at the appropriate level (partly owing to lack of private sector engagement). Included in QMS as a channel to get customer feedback;
- **Assets and Vehicles**: Project acquired 7 vehicles and IT equipment sufficient for field checks and office work. Routine maintenance proved costly. The vehicles should better be renewed every 3 years; their replacement did not take place at the end of the project, but should be planned [**Note:** same as above].

Recommendations issued by SGS (3.3)

LVD the (only) operational part of the VPA framework, at the end of the project extension. SGS will also have trained two persons from FDA to give final approval to EPs and issue the COOs (**core LLD function**) [see 2.3.2 above]; (…)

Recommendation: that **LVD is supported and/or monitored** while the rest of the LAS framework is being built, which should include:

- Updating of the Legality definition (Legality matrix)
- LLD
- Strengthening of FDA and MACs capacity to perform the activities at their level
- Updated and new Regulations
- Maintenance and updating of LiberTrace

- Continuous capacity building and training/coaching.

Finally, the SGS report identifies the main '**Risks for LVD** (performance against the VPA requirements, and) sustainability, **and mitigation measures**' (3.4), that

- **LVD may not perform** at the expected professional standard [**Note:** same as above]:
  - Close monitoring during independent audits
  - Refresher trainings on integrity and SoPs
  - Second or third-party verification of LVD activities
  - Maintenance and continued certification of the ISO 9001 Quality System
  - Relevant information delivered to the MD and FDA Board
- **Technical Manager may not have** the capacities to manage the LVD [**Note:** same as above]
  - Regular performance assessments
  - Monitoring of the TM's performance by MD, LRA and FDA Board
  - Assistance to the TM with highly qualified direct reports
- **LV implementation is further delayed** because of Legality auditors not fully performing [**Note:** same as above]
  - Continued auditor training (with VPA SU support?)
  - Regular performance assessments
- **Legality Matrix not fully implemented** as some verifiers are not available [**Note:** same as above]
  - Further support to MACs providing inputs to the Legality matrix
  - Support to FDA in the review of the current Legality definition
- **LiberTrace could be interrupted** [**Note:** same as above]
  - FDA to secure the hosting of the application and its maintenance
- **LVD funding not yet fully secured**; may lack liquidity to finance its operations [**Note:** same as above]
  - Secure an annual allocation from the national budget and/or perpetuate the current system governed by the MoU [transitory account] through stronger regulation
  - Strengthen FDA and LRA audits on LVD financial operations
- **Possible conflict of interest** between the LVD verification and LLD licensing functions [**Note:** same as above]
  - Establish LLD outside FDA
  - Periodic verification by the Independent auditor or any other third party.

6.2.3.3 Review of the Manual of procedures for LVD staffs

Status: This review has been archived in 7.4.6.1 (Performance of the LVD, SOPs) in A5R, Vol.2.

6.2.3.4 The LVD auditing section (as of April 2018, and beyond)

Status: This review has been archived in 7.4.6.2 (Performance of the LVD, The LVD auditing section (as of April 2018)) in A5R, Vol.2.

6.2.3.5 Assessment of LVD auditing against the CFHP Checklist

Status: This review has been archived in 7.4.6.4 (Performance of the LVD, Assessment of LVD auditing against CFHP Checklist) in A5R, Vol.2.

6.2.3.6 Further assessment and Capacity analysis of LVD

Status: This review has been archived in 7.4.6.6 (same heading) in A5R, Vol.2. It has been followed up during Audit 4 and 5 on LVD Budget (See 6.2.3.8 below).

6.2.3.7 Issues potentially undermining the LVD handover process from SGS

The following discussion was initiated in 6.2.3.2 and 6.2.3.6 in A3R.

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: (…)

    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 in case of 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.

The rest of this section has been rewritten as a compilation of results from Audits 4 and 5, reflecting the IA's current understanding.

IA review of FDA/IAWG response:

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

- No, the IA's conclusion in A3R (RISK raised, ref. HR 7, of 'Declared data used by LVD CoC inspectors *in the field* to fabricate (copy-paste) inspected data) was based on the initial finding presented under "Follow-up during Audit 3" and was a direct transcription from the interview with the SGS/LVD auditee (SGS LVD Project Manager);
- The statement has been reviewed during Audits 4 and 5 with the SGS LVD Project Coordinator (below).

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

- SGS has designed "blind inspections" procedures (i.e., not influenced by any declared data) for the LVD inspectors on the field, for Inventory verification as well as for all block, stump, timber yard and export permit (EP) inspections:
  - For example, copy-paste of operators' data is (theoretically) not possible for the forest inventory verification/ approval process because no base data is provided, as for a truly blind inspection;
  - For block, stump, timber yard and EP inspections, the inspector doesn't (in theory) have access to the data, being provided empty TDF, LDF, EPIF forms[15];
  - The IA has verified that, for on-site EP Inspections (according to SOP 22.2.3 4), the COC Inspectors (theoretically) do not have a copy of the data submitted by the operator (and could/should therefore NOT be tempted to just validate the data without checking i.e., take the "declared data" as "verified/inspected data"): the EP Inspection Form only provides the list of the Barcode Tag numbers of products to be inspected.
  - The IA however observed, during the field audit of the LVD container loading inspection (in A4R Vol.1, 6.2.3.8, now A4R Vol.1, 6.2.3.11), that the inspectors had the SPECs with them; they claimed they were re-scaling the logs (to ensure that the log being loaded is the same) without looking at the SPEC (for later reconciliation in LiberTrace), but having the SPECs with them clearly created a high risk of copy-paste of declared data. This was no longer a blind inspection.

[15] Tree Data Form, Log Data Form, Export Permit Inspection Form

- The IA also assessed that it was technically possible to change the results from the handwritten paper form that is given to the Data clerk (and can thus also be altered or replaced before attaching a scanned copy of it in LiberTrace) before official approval by the managers (DIM, OM, TM[16]) and reconciliation by the system.

- For at least block, stump, timber yard and EP inspections, though, the LVD managers (DIM and OM[17]) and Data clerk do have access to the data, and LiberTrace allows data exports in Excel files. They are the ones who could sometimes be tempted to fill-in inspection forms in advance with declaration data.

- So, it is indeed technically possible to (i) provide inspectors with copies of operator's declared data sets for them to fabricate (copy-paste) or alter inspected data or (ii) to even fill in the inspection form in LiberTrace *in advance of the field inspection*.

- But it has been found also possible for the managers who have access to the data (Data clerk, DIM, OM, TM) to just use declared data to fabricate or alter inspected data directly in LiberTrace (independently of whether or not, or how the inspection really took place) before the reconciliation is done by the system.

  - Evidence of this: By checking EP inspection no. 2019/00627/2 in LiberTrace it is obvious that there has been a copy of declaration data to forge an inspection report. 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 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.

  - Inspectors might not even (have to) go to the field, and Inspected data would still be entered into LiberTrace without LVD doing the inspection.

    - For example, the IA understands that 13 blocks (CFMA Worr) were approved during 2020 lockdown (by LVD TM), only 10 days after the submission for inspection. This involves reviewing the submission, setting up an inspection team, traveling to the site, inspecting 1 block per day at 100%, reviewing the report (LVD OM), all this in 10 days. In LiberTrace, the inspection was not scheduled, no report was initially attached (at the time it was however approved) and the report was only added later; it was all satisfactory and got a 100% clean reconciliation. This is all considered "hardly technically possible".

[16] Technical Manager
[17] Data Input Manager and Operations Manager

- The IA further heard it is commonly admitted that LVD inspectors are often “not available” for going to the field and/or do not enter into the forest, anyway. (See new 6.2.3.8 below on Efficiency of LVD post SGS handover).
- Some operators claim LVD is not helping in that regard and are now insisting that LVD should go to the field to ensure they get SGS approval.

- Technically again, LVD office staff can also falsely pretend to redress Operator’s declaration by replacing Declared data with Inspected data: while the Operator’s **felling** declaration (LDF, the basis for Stumpage fees) cannot be changed, it is possible at **EP level** (the basis for Export fees). Discrepancies are sent to the Operator for approval and, if the Operator accepts, the Inspected data becomes the Operator’s data.
- On the potential impact of the identified risks: Can this technical possibility be used to **reduce or annul discrepancies between declared and inspected data**, so that it is the entire set of declared data that is adopted as final, if more favorable to the Operator, in an attempt to reduce the amount of taxes paid? In other terms, to under-declare export quantities (i.e., dimensions of e.g., logs) or species, implying a reduction in the amount of taxes paid?
  - The answer is yes; it will have the above-identified effect if either 1) Inspection data is artificially reduced within tolerances of under-declared data; or if
    2) Inspection data exceeds tolerances, and is accepted by the Operator, but is still under-stated in comparison to reality;
  - This further includes the risk that fabricated (declared / inspected) data is used to launder *non-compliant* logs (due to e.g., species, diameter) that would otherwise have been rejected;
  - Is there also a risk that fabricated (declared/inspected) data could be used to launder *illegal* logs from trees felled without permission (under the disguise of falsely-claimed parent logs (same mother log) in LiberTrace, for example)?
    - In theory no, a cross-cut log or any log cannot be added later, or it should be flagged in red as not having any traceability;
    - But EPs are still being issued with red flags anyway (**HII 18**);
    - And assembling old logs with new logs is not technically impossible, as the IA understands it might have been done in the TSC A3 case[18].
- **In conclusion**, the IA has reassessed the situation during Audit 5, and confirms the potential high risks for system integrity, data quality and reliability, and government revenue collection (See **HR 7** below).

Regarding the proposed Mitigation Measure in the above FDA/IAWG response (“*Internal quality control of data submitted by operators*”), the IA

[18] CFMA Worr: the IA has been informed of two TSC A3 reports (SGS’ in-field block counter-checking report, and an Investigation team report) showing the lack of FDA inspection (not covered in this A5R)

would recommend that 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.

3) Is it correct for FDA/IAWG to also remark, "*The ISO certificate will assist the LVD as a tool to identify gaps in the system, and take corrective measures"?* This was assessed during Audit 4.

- 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 confirmation 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 (and subsequent) reports*.

- 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.

▪ Based on the above, the 'HIGH RISK' HR 7 shall remain open as now edited below.

The overall **RISK** had been downgraded from high (HR 7) to medium (MR 6) in the absence of substantiated evidence under Audit 4. It has now been upgraded back again to high (ref. **HR 7**) in the IA Progress Database:

RISK HR 7
Impact level: High
Identified RISK factor: Despite "blind inspection" procedures for LVD CoC Inspectors, inspections are not always organized as such, LVD managers can see and export Operators' data from LiberTrace (LT), the handwritten inspection form can be forged before being attached in LT, Inspectors do not really need to, and often don't go to the field, or don't enter the forest; and Operators can adopt Inspected data as their Declared data. The barcode system of the log tags associated with LiberTrace is not operational in the country: the encrypted barcoded number is not used for electronic traceability, allowing quick and secure tally checks during inspections and at checkpoints.
Identified RISK description: Technically, LVD Inspectors can copy-paste declared data as inspected data or be influenced by it, to fabricate or alter inspected data, when they have the declared data with them, be it on their form (no blind inspection), or if an LVD manager provided them with copies of it, or filled in inspection forms for them with declaration data in advance of the field inspection. An LVD manager who has access to the data can technically fabricate or alter inspected data directly in LT (independently of whether or not an inspection really took place) before the reconciliation is done by the system. Inspected data can be forged to cover up under-declared data; at EP level (for Export fees), the Inspected data can become the Operator's data. This can be used to reduce the amount of taxes paid, and it can be used to launder *non-compliant* logs or even *illegal* logs for export. *Internal* quality control of declared/ inspected data and holding an ISO certificate will not be enough to significantly mitigate those risks of acts of corruption of data in LT. This is a serious overall risk for CoC system integrity and data quality,

negatively impacting on government revenue and legal / sustainable forest management.
Recommendation(s): Capture GPS coordinates of tree/stump or scan the barcoded tag number (making the barcode system operational will support electronic traceability, and quick and secure tally checks during inspections and at checkpoints); or use electronic devices to secure (geopositioned and timed) field data capture and processing; Balance flexibility and security in LT system design; Ensure robust audit trail capability in LT; Follow the SOPs for sample checks of inspected CoC data from LT by a truly independent LVD or third-party monitoring body.

IAWG comment to A4 Report

Issue/ Risk Ref No.: **MR 6 / HR 7**
MC&R No.: **3.22**
Area/Element of the VPA/LAS: **CoC Inspection by the LVD**
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 : 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. For stump, timber yard and export permit inspections, 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. (Note 1) 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. (Note 1)
IA's Recommendation: (as per MR 6)
FDA's Response (formal, 201118): The first thing is no company does stump verification but rather LVD's to adhere to SOP and also in the case discrepancy data at the timber yard (Note 2); with regard to timber yard verification, to minimize error, it was agreed by the than Project Manager of SGS and the LAS Team Leader of SGS that a joint inspection be conducted at timber yard by contract holders inspectors and SGS/LVD CoC Inspectors which was intended for consistency of data in the system (Note 3). Therefore, there is nothing like copy and paste by LVD staff (Note 4).
FDA's Response (informal, 201126): (…) 10% stump inspection that the IA reference is small sample is sanction by the SOP (Note 5). The 10% is carryout because after extraction, survey lines, skid trails and cells are all eroded thus making it difficult to do more than 10% stump inspection. (Note 6)

(1) These paragraphs seem to have been taken from Main C&R 3.2.

(2) IA does not see the reason for such statement, but understand what is said.

(3) Was it a joint re-inspection? Did that happen because there were doubts? When did that happen? Only once or as a routine? What was the result? Was it unannounced for the LVD CoC Inspectors?

(4) IA cannot be convinced by the explanation provided and will not accept this conclusion which is against the IA's findings. IA remains concerned about the credibility of field and document checks being done by LVD.

(5) LVD must provide a clear reference to that provision. Sampling rates seem to have disappeared from the new versions of the LVD SOPs.

(6) LVD must provide records showing that this provision is being applied by LVD.

6.2.3.8 Efficiency of LVD post SGS handover

For consideration by the next IA: this new section was created in Vol.1. Once completed, this review could be archived under Section 7.4.3 in Vol.2 (Performance of LVD).

Efficiency of the handover process had previously been assessed in terms of whether SGS complied with the related requirements. Efficiency of the functioning of the LVD *after* having taken over from SGS is a different question (skilled staff, means to operate, respect of SOPs, independence of action and judgment from FDA Management etc.).

Funding of LVD now newly an issue?

Follow-up during Audit 4 on LVD Budget:

LVD since the end of 2018 had been said to be newly benefitting from the same financing system (through an escrow/transitory account) that SGS/LVD had 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 Vol.2, 7.4.10.3), 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" and the results were:

- 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 other, capacity-building contract (DFID Contract, which ended July 2019), there is no handover of any functions to FDA/LVD and thus no need to organize funding for FDA/LVD in that regard.

Follow-up during Audit 5 on LVD Budget:

So, LVD was now supposed to be (since the end of 2018) funded through the MOU signed between SGS/LVD and LRA with the Central Bank of Liberia.

During Audit 5, the IA asked both LRA and FDA "What mechanism is in place to ensure a transparent use by FDA of the funds on the transitory account, really benefitting LVD?"

Audit 5 - Clarification received from LRA:
The process and all procedures were put in place in support of LVD, similar to SGS. In the first two months, LVD had to justify spending and ask for replenishments. Since then, an annual budget requirement has to be approved by the FDA Board of Directors as a basis for financing through the mechanism. Unlike SGS, LVD is not issuing monthly invoices but submitting *requests* for the release of funds (based on LRA auditing, the IA understands).

Note 1: The 8th JIC Aide-memoire (Art. 12) mentions: "…despite administrative delays in the past, the department has an adequate budget to do necessary audits and field checks".

However, there was recognition that (because) "LVD is not the only player in CoC, FDA had to manage to also provide resources to other departments involved" and that "***the same mechanism is therefore also being used for CFD, LLD…"***

Note 2: The 8th JIC Aide-memoire (Art. 12) in fact highlights that "*other Ministries and Agencies still face logistical challenges in implementing the necessary legality checks in the field*", and states: "*It was agreed that the LIC Technical Committee will initiate an assessment of this issue and if necessary, budgetary allotment may be made under the Chain of Custody operations budget at FDA (formerly LVD Budget).*" And Art. 16 also states: "*The LLD budget will [also] be supported out of the funds currently allocated to the operations of the Chain of Custody system at the FDA (formerly the LVD Budget)*".

Audit 5 - Information request to FDA:
IA: We have received information that the amount of funding initially available for LVD is actually being shared with other sections of FDA and that the LVD finds itself under-resourced in spite of the funding mechanism put in place last year. Can you please confirm/ clarify this? And what mechanism in place to ensure a transparent use of the fund provided in the Transitory Account to benefit the LVD?

Clarification received from FDA Management (DMDO):
"All Funds, allotted to the Authority, FDA, are used in the TRANSPARENT and ACCOUNTABLE procedures set forth and are processed accordingly for the intended line items budgeted.

The fund allotted and approved in the Transitory Account known as "LVD-Account" Budget has been used solely then by LVD as follow:

1. A budget for a period; broken down on the quarterly basis is submitted from LVD by the Management, FDA for the Activities to be carried out to the Board of Directors of the Forestry Development Authority and approved for its implementation.

2. The amount in the budget approved is then requested for by Liberia Revenue Authority, LRA through a written communication to Eco-bank Liberia Ltd. And the amount indicated is transferred to the Legality Verification Department/FDA Operational Account at Eco-Bank.

3. Money from this account at the Eco-Bank is disbursed after the monthly Financial report is made by the Department, audited by Liberia Revenue Authority (LRA). That is, when satisfactory checks are done and cleared for the required processing as relates to Procurement Laws and approval of payments checks for goods and services.

As in the inquiry if "LVD fund is shared with other sections of FDA". This is incorrect because the fund is for the running of the "Chain of Custody System" and has since been used to effectively run the chain of Custody System. There has been no shortage of fund except in the case when reports and requests were delayed by the Department and the

Procurement Unit due to staff "Stay Home Order" for COVID-19 safety measures in place at that time. The needed logistical items MUST have to follow the required processes for transparency and accountability as this is required by Public Procurement Concession Commission (PPCC). In that event, management sourced out fund for DSA and Fuel to have LVD staff carried out the activities for the running of the Chain of Custody in the field.

Moreover, LVD functions and the running of the Chain of custody like the SGS then, was as a trainer and a system builder clearly stated in the VPA process.

Meanwhile, discussions have been ongoing with SGS, VPA-SU2 and other Government Institutions, particularly, the Ministry of Justice and Liberia Revenue Authority on the nomenclature "LVD Budget" to the appropriate terminology "The Running of the Chain of Custody Budget". The activities clearly embedded in the running of the chain of custody and responsible sections executing those activities will benefit and report on the approved budgetary allotment received accordingly.

For the past period/years after SGS Contract expired, SGS is now to monitor the Activities of the Running of the Chain of Custody especially the insurance of export permits. Therefore, we are endeavoring to establish for the clear understanding of the role and functions of the Commercial Forestry Department and the Legality Verification Department as spelled out in the VPA Process to our many stakeholders. As enshrined in the Ten Core Regulation No. 108-07 that the Authority "MAY" delegate, in whole or in part the Chain of Custody System database to a Private Contractor with the Authority's 'Oversight and Auditing".

Finally, we appreciate your inquiry in the drive to transparency and ensuring that we are on course in meeting up with the FLEGT licensing by 2020."

The IA reads this answer as a recognition that the amount of funding initially available for LVD is actually shared with other sections of FDA involved in "the running of the Chain of Custody System" (COCS):

- *Where it says "(…) the fund is for the running of the "Chain of Custody System" and **has since been used** to effectively run the chain of Custody System";*
- Although the change in the terminology (presumably in the MoU) from "LVD Budget" to "The Running of the Chain of Custody Budget" is said to still be under discussion with the signatories,
- And although the FDA statement *"(…) The activities clearly embedded in the running of the CoC and responsible sections executing those activities **will benefit** and report on the approved budgetary allotment received accordingly"* is therefore written in the future tense.

The IA has in fact been informed by LVD staff of FDA's plans to move the LVD CoC inspectors to CFD.

Note 3: LRA was not aware of LVD CoC inspectors being moved to CFD (which LRA qualified as an "internal FDA issue").

Question to LVD: Is this (situation) working for LVD? What mechanism is in place to ensure a transparent use by FDA of the funds on the transitory account, really benefitting LVD against agreed budgets or invoices?

Answer received from LVD: "*Yes. A budget for the chain of custody operations is prepared and executed in accordance with the budget law, Public Financial Law and Public Procurement, Commission and Concession Act. It is by these laws we implement our budget.*"

SGS Liberia/ Geneva confirmed being informed that FDA has decided to change the bank (moving from Ecobank to UBA) but has not yet been notified of this or the

reason for the move or any updating of the MoU. There is thus a concern that the unilateral change of bank could *de facto* imply the termination of the MoU. It is unclear whether FDA would want to keep a similar funding mechanism in place, though, and whether the existing signatories (incl. SGS, LRA) would be involved in any decision and would remain parties to the MoU (or its replacement). Meanwhile, arrears for the payment of SGS' invoices are reaching 6 months.

SGS Liberia also heard that the budget allotted for LVD has been used for several other FDA duties like some staff salaries, Commercial Dept. operations, etc.

But SGS also ascertained that *the quality of LVD field operations is (currently) very bad*, reportedly because *DSA are not paid timely to the field inspectors*. The IA sought clarification whether this really affected the *quality* (Would LVD inspectors purposely not work well when they do?); or rather the *quantity* in terms of LVD not fulfilling their daily obligations relative to CoC inspections and LV audits. Which could be related to the lack of funding for mobility, if not for the lack or will or else. For SGS, quality is not the issue (approximatively 80% of the LVD field inspectors are well trained, and some of them are former SGS field inspectors). So, the issue really is the fact that the DSA (perdiems) is not paid timely (or totally, if any at all). Which does relate to the lack of funding.

It is not clear yet to the IA whether the likely increased needs (for those added activities and responsible sections under the same funding mechanism) are currently being fully covered by this mechanism:

- The FDA states "*There has been no shortage of fund"*, which only excepted delays due to COVID-19 related safety measures, in which event *"management sourced out fund for DSA and Fuel to have LVD staff carried out the activities for the running of the CoC in the field";*
- But the IA was also informed that the LVD Legality Verification (Audit) Unit currently finds itself consistently under-resourced. This was recognized in IA's communications with LVD and other stakeholders, though the LVD TM denied the fact publicly during the JIC 8 meetings: "*Despite administrative delays in the past, the department has an adequate budget to do necessary audits and field checks*" (8th JIC AM, Legality Matrix and FLEGT Licensing Procedures, Art. 12);
- Since all FMCs are currently dormant and only CFMAs are currently operating, there is also a question whether CFMAs generate as much government revenue from taxes and fees than the FMCs before.

It is also unclear whether the current (transparent) mechanism will remain in place.

Note 4: Incidentally, the IA reads with some circumspection the above FDA statement that Liberia is "*on course in meeting up with the FLEGT licensing by 2020*". This is probably a mistake (See Vol.2, 7.3.1.10).

The IA registered a new **HIGH RISK** (ref. **HR 9**) about this in the IA Progress DB:

RISK HR 9
Impact level: High
Identified RISK factor: LVD in 2018 had also been made a direct beneficiary of the same existing Escrow Agreement (MOU) between SGS and LRA with the Central Bank of Liberia. But LVD is now sharing the same funding mechanism with other departments involved in CoC (CFD, LLD…) and potentially other FDA duties

and other MACs implementing legality checks in the field. FDA might have decided unilaterally to change the escrow account hosting bank.
Identified RISK description: There are reports that LVD is now under-funded, mostly to the detriment of the LVD auditing section. While FDA reportedly has plans to move the LVD CoC inspectors to CFD, it is unclear whether the needs of all the new beneficiaries are or will be fully covered by this mechanism. With all FMCs currently dormant and only CFMAs operating, there is also a question whether CFMAs generate as much government revenue from taxes and fees than the FMCs before. Arrears due to SGS are reaching 6 months. It is also uncertain whether the MoU is being respected by FDA (the unilateral change of bank could imply its termination) and the current (transparent) mechanism will remain in place. Dependence on the same budget, and thus competition with other FDA Depts and bodies involved in COCS control (CFD) and VPA (LLD, SGS), risk adding to the weakening and lack of independence of LVD post-handover.
Recommendation(s): EU and Liberia to review the issue.

Regarding **evidence of under-performance in terms of level of activity,** in LVD's different roles, especially where in-field presence is required (CoC inspections, Legality Verification (LV) audits), the IA has collected evidence or had reports that/of:

- Poor planning and implementation of field audits by the LVD auditing section:

  Audit 5: A list of all desk top and field audits planned and executed during 2020 was supplied by the head of the auditing section of LVD. 36 desktop and corresponding field audits were planned for the 2020 calendar year. Although 28 of the desktop audits were completed, only 5 of the field audits were done, reflecting a clear lack of control of activities occurring in the field by the LVD.

  Discussion during the IA Stakeholder Workshop (Monrovia, 2-3.12.2020) regarding the LVD LV Unit: conducted 9 out of 35 planned audits in 2020. LVD claims lack of vehicles, DSA etc. Funding mechanism is no more functional for LVD, being shared with other Departments.

- The LV Unit had not been going to the field since logging started again in October and has no plans to do so; to the point that one of LVD's new cars is being used by FDA Management;

- The whole LVD seemed to be focused on managing the COCS;

- Cases of LVD Inspectors not entering the forest for block inspection, and copy-pasting data from other records (see 6.2.3.7); for example, blocks were being approved during Covid-19 lockdown, reportedly without inspection and against money (personal communication);

- The two TSC A3 reports (SGS' in-field block counter-checking report, and investigation team report) show the lack of inspection (CFMA Worr case, not covered by the IA in this A5R);

- The IA further heard:
  - It is commonly admitted that LVD inspectors are often not going to the field, one reason being that *FDA/LVD staff stay in town one to two weeks every month with their families, only to get their salaries*, which would be another serious restriction to their mobility. This is an allegation that critically requires a cautious investigation by the next IA.

- Plus, there are issues with inspectors not receiving DSAs timely, if at all. The DSA issue has been mentioned in several places above.

Against those allegations, LVD Management has provided the IA with copies of:

- a 'Monthly Activities Plan' for each month from January to December 2020; and
- a 'Monthly Operations Report' for each month from January to December 2020 (except March and April, likely due to the Corona virus crisis).

Risks that skills, efficiency and ethical behavior are deteriorating:

- A VPA implementation partner mentioned to the IA "everybody knows things are becoming very wrong", but "nobody is raising any alarm";
- During the 8th JIC, the EU suggested "(…) *there might be some regression in the implementation of the VPA*" (8th JIC AM, Art. 18), and the UK CFDO mentioned "the increasing number of non-compliances". (8th JIC AM, Art. 21);
- For the EU, "despite Liberia's clear institutional challenges, the performance of the Legality Verification Department (LVD) needs to improve (…)". (8th JIC AM, Art. 18);
- Since FMCs have stopped operating (Corona virus crisis, rain), there is no information that they are preparing to start operating again, and only CFMAs are now operating. As reported to the IA (by several confidential sources), it would occur that politicians and even FDA officers are the unofficial owners, behind the scene. Note: This is what the Debarment list should prevent if it was put in place. There is also a question why CFMA applications require "sponsorship", often by GoL[19], and whether these two things might be related.

Resulting weakness of LVD due to its current material incapacity, possible lack of political will and lack of independence

Some VPA implementation partners have confirmed they would be in favor of moving the LVD Legality Verification (Audit) Unit out of FDA.

The highest risk concerns the future of the LiberTrace system, in terms of its support and maintenance, and of its integrity (data management)

A VPA implementation partner expressed the following concern: "My main worry in Liberia is losing more control and corruption of the chain of custody system".

Publishing of LVD monthly reports

"FDA and civil society (…) reconfirmed the need for the LVD to circulate harvesting reports to the NMSMC every month, and to make those reports available on the FDA website. Civil society also reflected on LRA's IT assistance to the FDA around LiberTrace and asked whether similar support could be extended to support the FDA website. The FDA highlighted that a company has been contracted to support more robust maintenance of the FDA website and will ensure that the relevant transparency related documents are made available on the FDA website". (8th JIC AM, Issues Raised by Stakeholders, Art. 62)

[19] 8th JIC Aide-memoire, Art. 46, ANNEX 5 providing some detail, including that the 128 applications have the following sponsorship: LFSP – 70, SCNL -2, and GOL- 56 (See 6.1.1.10)

The publication by LVD of monthly (or not quite monthly) reports has resumed on the public LiberTrace website (https://libertrace.sgs.com/Private/Default.aspx) in two places (redundant files are in small letters):

- NEWS CENTER, 10/30/2019 02:39 PM, LVD Monthly Report, LVD monthly report available on line Read More...:

- LVD_**October** Report **2019**.pdf (1531.077 Kb)
- LVD_Monthly Performance_Report for **10-2019**.pdf (1419.535 Kb)
- LVD_Monthly_Report_**December 2019**.pdf (1419.401 Kb)
- LVD_Monthly Performance_Report for **01-2020**.pdf (1650.937 Kb)
- LVD_Monthly Performance_Report for **03-2020**.pdf (1834.42 Kb)
- LVD_Monthly Performance_Report for **06-2020**.pdf (1469.031 Kb)
- LVD_Monthly Performance_Report for **08-2020**.pdf (1498.774 Kb)

- NEWS CENTER, 02/12/2019 05:48 PM, LVD reports available online:

The LVD monthly reports available below Read More...:

- LVD_Monthly_Report_**May 2019**.pdf (2372.397 Kb)
- LVD July Monthly Report **July 2019**.pdf (3646.034 Kb)
- LVD- August COC, Revenue and Market report **August 2019**.pdf (2950.17 Kb)
- LVD_Monthly Performance_Report-**September-2019**.pdf (1495.974 Kb)
- LVD_**October** Report **2019**.pdf (1531.077 Kb)
- LVD_Monthly Performance_Report for **11-2019**.pdf (1345.723 Kb)
- LVD_Monthly_Report_**December 2019**.pdf (1419.401 Kb)
- LVD_Monthly Performance_Report for **01-2020**.pdf (1650.937 Kb)
- LVD_Monthly Performance_Report for 03-2020.pdf (1834.42 Kb)
- LVD_Monthly Performance_Report for **06-2020**.pdf (1469.031 Kb)
- LVD_Monthly Performance_Report for **08-2020**.pdf (1498.774 Kb)
- LVD_Monthly Performance_**September 2020** Report (1).pdf (1778.309 Kb)
- LVD_Monthly_Report_**October_2020**.pdf (1680.171 Kb)

6.2.3.9 Efficiency of SGS' current 'third-party monitoring of exports' role (up to February 2021)

This new section is created in Vol.1. Once completed, this review could be archived under Section 7.4.5.2 in Vol.2 (Establishment of the LVD by SGS, SGS contracts as Service provider, Handover process to LVD, and follow-up).

This section looks at the efficiency of the new role entrusted to SGS after the previous SGS' mandate to establish LVD ended in July 2019.

SGS Liberia signed a new contract up to February 14, 2021 (initially) to perform Independent Third-Party Monitoring of Export Permit Issuance, which includes 1) reviewing submissions in LiberTrace, and 2) counterchecking in the field.

The IA's understanding is that SGS is more independent than it used to, that it is not really (forced to) endorsing each EP but is at least adding the SGS signature (only) where it is comfortable to do so.

The presence or the absence of the SGS signature on an EP is thus an important element of due diligence/care information that is made available to e.g., EU/US importers of Liberian timber (to the extent they are informed of the meaning of the SGS signature on the EP).

SGS Liberia operates out of an office located in the outskirts of Monrovia and is equipped with 2 cars. The SGS Liberia Project Coordinator (PC) has a team of: 1 Operations Manager, 1 Data Manager and 6 inspectors.

The SGS Liberia PC submits monthly reports to an 'SGS-LVD Project Board' that involves the FDA (Management, LVD, CFD, DMDO, LED, Lawyer), LRA, MoJ, EUD, DFID, FLEGT Facilitation and VPA SU, and meets on a monthly basis.

SGS monthly reports:

- The IA has been provided with copies of the March to October 2020 Third-Party Monitoring Monthly reports submitted by SGS Liberia.
- Example of cover page: 'Third Party Forest Monitoring and Capacity Building to the Timber Legal Assurance System in Liberia', Deliverable 4.1.1 Monthly Monitoring Activities October 2020.
- Example of Table of Contents:

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Due to time limitations, the IA has not reviewed the above reports.

According to SGS, there are many cases of Export Permits (EPs) not correctly managed (i.e., rejected by SGS, yet issued) as reported to the SGS-LVD Project Board, but no action has ever yet been taken.

This has included a number of cases flagged by SGS on real grounds, like felling outside the boundaries of the concession in several CFMAs; cases emailed to LVD TM, that were however cleared for export by the MD without further checking. Clearly, this is undermining the 'third-party monitoring' role currently fulfilled by SGS and aggravates the issue of illegitimate EP issuance by FDA.

In order to foster follow-up and enforcement action, a new Compliance Registry is however being implemented by VPA SU (See copy in **Annex 1** to this A5 report, Vol.1).

The Compliance Registry includes the following information fields (columns) to be filled in by:

Information	**Responsibility**
# Date Ref. legal framework Non-conformity (more details in SGS monthly reports)	SGS
Responsibility [for action] Correction Action [taken] Supporting document(s) (evidence) [of action taken]	LVD
Status Completion Date	Project Board (LVD – VPA SU)

Examples of non-conformities (as per copy of Compliance Registry in **Annex 1**):

- Audit to be conducted for each operator and resource area;
- Outstanding area fees to be paid by Operators;
- Felling not declared within thirty (30) days by all operators;
- Stump verification not conducted for each resource area;
- Felling close to a river in CFMA Zuhzon;
- Annual Coup 2019/2020 for CFMA Worr approved although absence of 5-years management plan;
- Annual Coup of CFMA Garwin approved although inconsistency between the map in the AOP and the map in the 5-years management plan;
- LiberTrace errors report to be transmitted to Law Enforcement through DMDO;

- Felling out of concession in CFMA Worr and CFMA Bluyeama;
- Felling below DCL in FMC A and CFMA Sewacajua.

Completion Date: still empty for all above non-conformities.

Due to time limitations, the IA has not reviewed the above cases.

For SGS, the current mandate is having some effect …just because SGS is watching. This [deleterious situation] is mainly a political issue (**Note:** political interferences already noted by the IA), not a technical one.

"FDA Management committed to continue to engage the LIC through regular sessions and to ensure that discussions at the LIC are tailored to also make decisions around key outcomes from the LVD-SGS Project Board meetings". (8th JIC AM, Art. 23)

To conclude, 'Independent Third-Party Monitoring of Export Permit Issuance' is in place, currently performed by SGS Liberia. It includes 1) reviewing submissions in LiberTrace, and 2) counterchecking in the field, and 3) finally endorsing EPs issued in compliance with current requirements and procedures. As such, an SGS-signed EP provides credible reassurances of broad legality to e.g., EU or Chinese buyers, even if not yet at the level of what the VPA Legality matrix requires. It is only having an effect insofar as non-conformities are redressed and addressed, with measures implemented so that the same problems are not repeated in future.

In July 2020, VPASU was working on assisting FDA with the hiring of an international Service Provider to do the TPM of exports after the current agreement with SGS expires in early 2021.

"Despite a potentially lengthy process, Liberia reconfirmed its commitment to maintaining a Third-Party Monitor and agreed to engage in an international competitive bidding process to select a service provider". (8th JIC AM, Tracking and Control: Next Steps for Third Party Monitoring and LiberTrace, Art. 27)

However, "the Government agreed that considering the short timeframe to the end of the current contract, [it] will propose the extension of the current contract with SGS for six months, so that there is no break in TPM. The Technical Committee of the LIC will lead the negotiations for the extension with SGS and agree to an extension by the end of January 2021". (…) The EU acknowledged support of Liberia's efforts to secure an internationally reputable firm and offered further support of the VPASU2 on the procurement process, if needed". (8th JIC AM, Art. 28)

6.2.3.10 Efficiency of the articulation between the third-party monitoring role and the LVD post SGS handover

This new section was created in Vol.1. Once completed, this review could be archived under Section 7.3.8 in Vol.2 (Broad institutional set-up of the LAS).

This section looks at (a) the relevance of having an independent third-party in place to monitor the issuance of Export permits (EPs) and (b) the efficiency of the articulation / combination between (i) the Third-Party Monitoring (TPM) role as currently played by SGS and (ii) the LVD post-handover from SGS as completed in July 2019.

SGS has a decision-making power to sign or not to sign an EP depending on whether it approves / endorses or not.

SGS can reject any EP in LiberTrace; and from there:

1) The Operator may fix the problem, which will satisfy SGS; or
2) The Operator may give up and resubmit a different request; or
3) In the case of rejected logs, the non-compliant logs will not be exported under the rejected EP*, and they may stay in LiberTrace for ever.
   Note 1: Not meaning these logs will not be exported anyway, which would be out of the COCS and without EP, if there is a way to circumvent the system. In this regard, container loading inspections are sometimes manned by only one LVD inspector or even …zero (and the inspection report made up) which creates a very serious "border control" issue (See the next chapter 6.2.3.11 and Vol.2, 6.4.14).
   Note 2: Should the logs, in this case, not be confiscated and put to auction as per the Regulation?

The frequent rejection of EPs by SGS and the SGS reports have created mistrust vis-à-vis the SGS Liberia PC who has even be intimidated. The IA has seen a copy of the letter sent by SGS to the Ministry of Justice (2019-09-15) to complain about the bad LVD-SGS relationship.

From the TSC A3 case, it is not sure the combination of LVD and SGS is proving very effective at the moment (confusing reports, still leaving much space for interpretation and maneuver for FDA Management).

The TPM role as currently played by SGS is yet regarded by many SHs as an indispensable addition to LVD post-handover.

In July 2020, a VPA implementation partner expressed the following concern to the IA: "*It is urgent to have an "independent" international company to review export process and "endorse" every export permit. If the government is not willing to do this, then not sure what the international cooperation will do with illegal exports*".

For the IA, though, this can only be justified as a temporary measure until LVD' s (and LLD's) capacity is fully established and strengthened. In the longer-term, this would only be a reflection of the weakness of LVD: the TPM role as currently played by SGS is representing yet another level (Level 5!) in the Liberia LAS Verification framework (See 7.3.8.1 in A5R Vol.2) in a seemingly never-ending move to add layers above layers of control whereas the root problem is the lack of independence of the highest level of control and the lack of accountability of the rulers.

Could the TPM and Independent Auditor roles be merged in future? This has been a spontaneous but un-tested suggestion in the IA's discussion with stakeholders.

To conclude, the relationship between LVD and the TPM tends to be a conflicting one. The TPM is there to compensate the lack of matureness and independence of the LVD. It may be that, due to the current institutional challenges, there is no other way to reassure the donors, the international market and all other VPA stakeholders that Export permits can be issued in Liberia that reflect broad compliance with currently enforced export requirements.

6.2.3.11 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).

Background

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.

Audit 5: The reason is actually that there is no log yard in the Port of Monrovia, so the log exporters have no other choice than to export logs in containers despite uneconomical trucking and handling costs and stuffing rates. (Interaction with LTA)

The relevant Standard Operating Procedure (SOP) and associated Work Instruction (WI) in the Manual of CoC 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 (now completed): Comment received from LVD OM contradicted the SOP and was confusing. LVD OM was requested to describe the work flow accurately to reflect how things are done in practice and how it compares with what the SOP says.

  Answer received from LVD during Audit 5:

  "In practice: Loading request is made by Exporter and not the Port Authority when all documentations are satisfactorily completed through email or phone communication. The OM informs LVD Port staff (CoC inspectors) and gives them the approved EP # for the shipment. Thereafter the shipment Loading report is received upon completion of the shipment."

Conclusion: SOP 26 must be corrected with either “upon notification from the Exporter” or “upon notification from the Port Authority (on the effective Date of Arrival of the ship) and the Exporter (Loading Request)”.

- 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 (now completed): How the LVD OM prepares the Monthly

  Answer received from LVD during Audit 5:

  “Operators are requested to furnish LVD OM of upcoming field activities through phone calls or email; upon receipt of request, LVD OM prepares monthly activities plan for inclusion of companies desiring to conduct field activities. Activities Plan that includes the loading inspections.”

  Conclusion: SOP 26 may have to be corrected or complemented accordingly.

Witnessing the inspection against applicable procedures

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 and is referred to as either ‘Loading Registration Form’ or ‘Loading Inspection Report’ (See copy of ‘Container Loading Inspection Report_10-28-2019’ provided as **Annex 8.1** to the previous audit report **A4R Vol.1**).

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* 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 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)*”.

The July 2018 version of the SOP 14 on Transport Declaration, in the Work Instruction 14.2 (Transport Declaration/ Waybill registration), 14.2.1 Description, now also 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*”.

Investigation (now completed): The IA had wanted to understand why sealed containers should constitute such an exception to the use of waybills. **Question to LVD:** Please explain why waybills are NOT NECESSARILY used when the wood products are sealed in the container. What “mainly” means in the sentence?

Answer received from LVD during Audit 5:

- "Approved specifications are for container loading; containers are fumigated after loading and sealed with shipping line seal and seal # recorded in the presence of LVD CoC Inspectors, Operator representatives, representatives from LED and CFD ranger scalers. (…);
- An approved Template containing the following information (Name of company, Number of pieces of wood products, Truck license plate, Loading Site, Name of CoC inspectors, Name, and signature of company representative, Name, signature and phone # of CoC Lead Inspector) is used to accompany sealed containers to the port of exit instead of Waybill."

Conclusion: SOP 14 may have to be corrected or complemented accordingly: if the wood products are loaded into a sealed container, the new "Template" containing the information (as above) can be used to accompany the sealed container to the port instead of a waybill. However, if this document has been created recently, it has to be given a proper name and its use must be described in the updated SOP, subject to formal approval of the latter (including a clarification *why an official waybill is not used*, to escape waybill fees or else).

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 (in 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[20], 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 (another example: ICC/FMC K Timber Yard in Buchanan).

  Investigation (now completed): Where in Libertrace we can find the list of registered sites.

  Answer received from LVD during Audit 5:

  "Sites are informed under the LiberTrace Tab "Storage" where you will find **Site and Timber Yard Inspection**."

  IA: Confirms 40 "Approved" items found under Storage, Site.

[20] WI 24.2, July 2018 pending approval.

This includes the Sing Africa Plantation's timber yard in Gbarnga, Bong County, where this inspection took place, with the following information:

Type: Timber Yard
Name: Sing Africa Gbarnga Log Yard
Address line: Koryah Town Gbarnga
Owner Company: SING AFRICA PLANTATIONS LIBERIA INC, MONROVIA (Liberia)
Zip Code:
City: Gbarnga
KML/KMZ Document: Gbarnga_logyard_original (1).kmz.

- 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 IA thus infers that the Buyer or Liberia/EU Customs can verify that the seal has not been broken (if not intentionally by the company itself)*;

  * Customs should be able to verify that the (unbroken) seal number is the same as the initial seal number, thus such information should accompany the paper work (Customs Declaration etc.). If the seal has been broken and/or the seal number has changed, then a formal physical inspection of the content (against the detailed description of the content, thus also to accompany the paper work), should be launched (To feed into the Border control section in Vol.2, 6.4.14).

- 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 the previous audit report **A4R Vol.1**).

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

- The IA thus deduces that external observers cannot 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.

  Note: In particular, it is likely that such documents are not easily used by SGS as Third-Party Monitors when reviewing an EP for endorsement (which implies (i) making the request to LVD OM and (ii) access in LVD office or be provided copies of the documents). This further undermines the TPM role (See 6.2.3.8).

- LiberTrace will not monitor the segment between the loading 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 is sealed, the LVD Auditing section will not be able to counter-check what the 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? No, 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 a 'Container Loading Inspection Report' (as opposed to a 'Shipment Inspection Report') in the DOCUMENTS. So, this is only an indirect and time-consuming way of checking for such information.

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?

  Answer received from LVD during Audit 5:

  "The following EPs# have Counter-Signed data reconciliation meeting attached to the loading Report in LiberTrace. Eg. EP# 904, 906, 806, and 885."

  Review of the answer received:

  - IA confirms for EP# 904, Loading Request 2020/00520, Documents (3), Type 'Others', File Name '2020-09-28_145538 A.pdf', Issued on 09/29/2020 02:00 AM, Created by Abraham Sherif: **Reconciliation report** (Buchanan) provided with the Loading report signed by the representatives

of five parties (FDA, LRA, STEVENT, ACSA, AWL, and NPA). A copy of it can be found as **Annex 2** to this report.

- IA confirms for EP# 906, Loading Request 2020/00523, Documents (4), Type 'Others', File Name '2020-10-06_111758.pdf', Issued on 10/06/2020 02:00 AM, Created by Abraham Sherif: **Reconciliation report** (Buchanan) provided with the Loading report signed by the representatives of seven parties (FDA, LRA, BOLLORÉ, TRIPLE E, AW&L, WAFDI, and NPA).
- EP# 806: not found.
- IA confirms for EP# 885, Loading Request 2020/00521, Documents (3), Type 'Others', File Name 'WEST Africa.pdf', Issued on 09/29/2020 02:00 AM, Created by J. Morris Sheriff: **Reconciliation report** (Buchanan) provided with the Loading report signed by the representatives of six parties (FDA, LRA, GMI, ACSA, WAFDI, and NPA).

The IA would ask: Only in Buchanan is this really taking place?

- Who are the participants that are normally involved (Exporter, Buyer, NPA, Customs, Shipping Agent, LVD...)?

  Answer received from LVD during Audit 5:

  "At the port: the Exporter, Buyer, NPA, FDA-CFD, FDA-LED and LVD reconcile the loading report and counter sighed.."

  IA: Other examples have been found above, although their role is not always apparent: ACSA, AWL/AW&L (likely African Wood & Lumber Company), BOLLORÉ, GMI, STEVENT, TRIPLE E, and WAFDI (CFMA?).

- 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)?

  Answer received from LVD during Audit 5:

  "Reconciliation data is signed only at the Port after shipment with the party involved attesting to the Loaded Volume and short shipped capture during the shipment. Loading at a Timber yard with containers, the party involved are LVD CoC Inspectors, Op representatives, FDA LED Officers and Commercial Staff. *Reconciliation data is not counter-signed due to the absence of National Port Authority and Customs that control the template*."

  IA notes with interest the last sentence in italic. Thus, the broad answer is NO.

In those circumstances, the IA had to ask itself the questions:

- 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, under Audit 4:

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)?

(**Audit 5:**) The IA approached LRA Customs to explore the general export procedure for timber from Liberia and "How FDA's Export Permit (EP) system currently integrates with the standard GoL export control system", with regards to timber chain of custody up to shipment. As of February 26, 2021, responses were still awaited despite a reminder (See Border control section in Vol.2, 6.4.14).

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 (now concluded): LVD OM to provide evidence that this process is described in the SOP for a normal shipment that is done at the port.

  Answer received from LVD during Audit 5:

  "Previous SOP 20 states that 10% minimum Of the total shipment be verified. This was removed from the SOP (Loading Registration and Inspection) during the last updating process of the current SOPs. This action is performed now by LVD staff during Shipment for *internal record* purpose."

  Review of the answer received:

  - No reference to the LVD quote from a "previous SOP 20" has been found in the July 2016 version of the LVD CoC SOPs which, for the IA, remains the official version (See 7.3.6.8 in Vol.2 on 'What it takes …').
  - WI 26.2 (Loading Registration and Inspection) only says: "The inspectors (…) write or scan the Barcode Tags of the logs or sawnwood products designated for loading. They then check visually that the products are really loaded on the vessel".

- The latest update of the WI in the (unofficial) July 2018 version of the SOPs, now 24.2, adds under 24.2.1 (Loading Inspection): "*The CoC Inspectors team, at the foot of the vessel, check each log to be loaded by establishing the consistency of the barcode, the species and the measurement between the data on the SPEC and the physical log*". Then "*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*".
- So, in neither version is there any reference to such a "process that is done at the port during normal shipment, which involves 10% or above random scaling".

Conclusion: This is definitely another disturbing example of inconsistency between the SOP in force and LVD CoC inspection practice which needs to be addressed one way or another (see ISSUE ref. HII 15 re: Manual of CoC procedures for LVD staffs, Problems relative to accuracy &/or level of implementation in the field).

- 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 (now concluded): 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)?

  The IA finds this situation confusing and thinks the inspection should follow one of three possible options but not a mix:

  1) The CoC inspectors only have an empty SPEC with them, with the log tag numbers on it, but no measurements, and they just tally count the logs that are really being loaded (i.e., noting the log tag number of each log loaded). But it seems correct to the IA that there is risk of substitution (barcode tag moved to, or reused on a different log) and the inspectors won't know;

  2) A blind inspection, whereby the CoC inspectors only have an empty SPEC with them, with the log tag numbers on it, but no measurements, and they re-scale (all, or a sample of) the logs. LiberTrace will indeed compare the two sets of measures and analyze any discrepancies. In this case, the IA will wish to know what happens in case there is a discrepancy (whereas the container is already sealed and possibly moved to the port). And again, the IA sees no reason for the report to be kept as internal record, not loaded onto LiberTrace in a transparent manner.

3) A tally and check against the SPEC, whereby the CoC inspectors have the full SPEC with them (as already inspected in the timberyard), with the log tag numbers AND the species and measurements on it, and they visually check (all, or a sample of) the logs that the log being loaded is really the one that is described on the SPEC. In this case, the CoC inspectors will be able to block and report a log where there is a serious discrepancy suggesting a substitution or a problem with the previous inspection. Note: This is what WI 26.2 provides for (see above, previous discussion).

Question to LVD: LVD to please indicate which procedure is, or should be used according to the SOP, and what procedure is really being used in practice (suggesting a possible inconsistency in respect of the SOP).

Answer received from LVD during Audit 5:

"The Timber Yard Inspection SOP 19.3, Inspection of Timber Yard is done with a blank template is issue to the COC Inspectors to conducts a daily Verification of Log Products brought into the Timber Yard. After the declaration of Logs in the LiberTrace, when an inconsistency is flagged in the products declared, the Barcodes of those Logs declared with inconsistency are printed and submitted to the LVD COC Inspectors for Counter Verification. This is done in the present of the Operator representative."

IA: Timber Yard Inspection SOP 19.3 (in all SOP versions) is not relevant to this discussion on loading inspection.

Where WI 24.2.1 in the (unofficial) July 2018 version of the SOP states: "The CoC Inspectors team, at the foot of the vessel, check each log to be loaded by establishing the consistency of the barcode, the species and the measurement between the data on the SPEC and the physical log", it implies the Inspectors have the SPEC with them, which reflects the above Option 3.

Conclusion: SOP needs to be made more accurate.

- *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. For bulk logs, the B/L is logically issued (by the Shipping Agent) on the basis of the logs really loaded as tallied during loading. LVD will make sure its Loading Registration Form is consistent with the B/L.
- The above procedure (SOP) does not seem to be consistent, though, 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. For containerized exports, the B/L can obviously only be issued (by the Shipping Agent) on the basis of the logs really loaded into the container, as per LVD's loading inspection (on the basis of the

Loading Registration Form or else – See further down). Once the container is closed, the Shipping Agent will not have another chance to know what has really been loaded.

Investigation (now completed): LVD OM was requested to confirm (IA's understanding) that he does the reconciliation (with the EP's SPEC) in Libertrace on the basis of the inspection records. The output being the updating of the Loading Requests? And that 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 for containers?

Question to LVD: Please confirm the IA's understanding that 1) *first* the LVD OM does the reconciliation (with the EP's SPEC) in Libertrace on the basis of the inspection records. The output being the updated Loading Requests in Libertrace?

Answer received from LVD during Audit 5:

The Bill of Lading is submitted after the completion of Shipment. It is submitted to the OM and reconciliation is done with the loading report on hands from the COC Inspectors.

IA: The question was about the reconciliation of the inspection records with the EP's SPEC in Libertrace. The answer relates to the reconciliation of the B/L with the inspection records and does not answer the question. For the IA, the answer is also irrelevant because the B/L can only have been prepared on the basis of the inspection records. Plus, it does not answer the question of output.

Other question to LVD: And please confirm the IA's understanding that *only then* 2) 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)? Clearly indicating that the SOP (as above-recalled) is incorrect for containers?

Answer received from LVD during Audit 5:

This action is not only applied to Containers shipment, but to all shipments. The Company submits B/L only to the OM when requesting for COO upon the completion of every shipment.

IA: Again, there is a misunderstanding of the IA's question by LVD.

<u>Conclusion from Audit 5:</u> There is very little in the current SOPs covering issues related to the export of containerized logs, leaving a GAP in the LAS that needs to be addressed by updating the SOPs, so as to avoid leakage of illegal logs and lumber into the export market.

- 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.

Table 5: Review of EP 2019/00696 and EP 2019/00697

	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.*" **Explanation received** from SGS/LVD: *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.* On the **use of so-called "override documents"**, and the **IA's access to these "override documents":** See below discussion, out of this box.
		Same day, 01:16 PM: EP marked 'Rejected'	Reason: "*All the logs coming from trees felled below diameter cutting limit must be removed*". **Explanation received** from SGS/LVD (informing above questions): *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.* Same comment as above re: communication/ override document.
Product Description:	Round Wood: 11 PIP-Dabema (93.550 m3)	Round Wood: - 1 PAR-Sougue (3.902 m3), - 18 PIP-Dabema (116.655 m3)	
SPEC: Tag nos.	AA319YVQ to AA990ZAR	AA919YVC (PAR-Sougue); then AA041ZC9 to AA989ZA8	Matches IA's photos
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:	Inspections (0) Despite:	Status: under Loading Requests, was still in Inspection scheduled (Not "done", not "Approved", why?).

	EP 2019/00696	*EP 2019/00697*	*Total, or Comment*
	Inspection requested; scheduled	Inspection requested; scheduled	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

(Audit 5:) Discussion on the use of so-called "override documents"

This actually relates to both the override document (OD) issue and the DCL issue (HII 33, discussed in Vol.1, 7.3.5.9).

In this example (see the next row in the above text box, Reason given by SGS for EP marked 'Rejected'; Explanation received from SGS/LVD), SGS confirmed to the IA that FDA/LVD Management used such OD to override SGS' recommendation not to allow some logs to be exported.

Such discretionary power is not documented in any SOP. And there is a question whether the Authority has a legal right not to apply its own regulations without good reasons.

A copy of the OD is provided as **Annex 3** to this report.

The document mentions a "3 months grace period " to go back to the official DCLs.

Pending questions for the IA had been: Is this an official measure that has been formally adopted and consistently applied (for undersized logs over 60cm DBH produced during the logging season of 2018/2019, duly declared as such, and on the basis of a joint FDA-MoJ inspection?), or is it a particular arrangement for this case? If it was an official measure, then it was probably right to approve the EP? Or maybe things are not so clear?

Explanation received (from SGS) is that, the MD/FDA instructed all the operators to henceforth fell trees as per the CFHP and authorized them to submit all the previous felling within three months (from Oct. 16, 2019 to Jan. 15, 2020). But, because that authorization (to submit all the felling within the three months' grace period) was specific to some operators, in other cases EP with undersized logs was rejected if the specific authorization was not attached. So, in this case, EP was indeed "Approved according to the OD…".

Amazingly, the letter mentions Appendix 14 of the CFHP i.e., in the old 2007 Code (IA checked both versions: the new Code (amended 2017) does not include a list of the DCLs; there is no such Appendix 14 in the 2017 Code). Thus, FDA makes reference to the old Code that has been replaced, without mentioning it...

The importance (frequency) of such practice is difficult to estimate as it can also be related to e.g., payment of taxes through installments (meaning override documents are also used to allow deferred payment of taxes). It can even be related to tax reductions (FDA letter (to be) reported in SGS' Nov. 2020 report).

LRA now asks for double (FDA, LRA) signature (See JIC 8 AM, 39 (extract): *Arrears' arrangements cannot be agreed by a government institution unilaterally. LRA has registered concern to FDA around the overlap of roles in the assessment and collection of liabilities. Companies should expect their shipments to be stalled due to lack of a tax clearance if tax payment instalment arrangements have not been made with appropriate cross Government coordination*.

The proportions of non-compliant logs that thus became legally exported logs (i) in EPRs or (ii) in the total log export volume, are also difficult to estimate. It is believed to be small for logs coming from trees felled below diameter.

Note: It might be possible to obtain estimates from using the Business Intelligence function of LT (with the appropriate access rights, look in TOOLS, then Select a topic, Criteria, View report, then filter results in/out, easier from CSV exporting to Excel).

Q: Where can override docs (ODs) be found? **A:** *Under Account, Validated, Company, DOCUMENTS*; however, the IA's "read only" role does not allow access to uploaded documents.

Q: Where, in LiberTrace, the roles are defined? **A:** *Under Account, Active, Active.* **IA:** The IA cannot see. **A:** *With the "read only" role, IA can't access "any data uploaded".* **IA:** However, IA can already see a number of documents uploaded (by LVD, at least; if not by companies).

Q: Can you clarify which documents we can see? And which documents we may not see? Could the IA please be given access to these override docs?

A: These questions must be asked to LVD, now managing roles and permissions.

- 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 in fact 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 1) The meaning and implications of the issue described in the 'Event Messages', 2) Why LVD finally decided that this was not a blocker for approving the log for export, and 3) Why the T wasn't turned from red to green.

(**SGS, Audit 5:**) Event messages are the result of LiberTrace reconciliation; it keeps the history of each activity. The override is not transforming an "illegal" log into a "legal" log, it just authorizes to move forward with the process although the log is flagged [and remains] in red.

Conclusion: For the IA, this implies that in some cases, illegal logs previously rejected by LVD/ LiberTrace/ SGS, and still flagged in red in LiberTrace, are in fact authorized for export thanks to an "override document" issued by FDA Management. Clearly, the use of "override documents" by FDA Management, to override a recommendation issued by LVD/ LiberTrace/ SGS, in order to finally allow non-compliant logs to be exported, creates space for subjectivity, discretionary powers and risks of abuses.

- 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]
  - What evidence is there in LiberTrace that the logs were indeed short-shipped under EP # 2018/00427? The associated Loading request # 2018/00264 (for AA414YZQ) only indicates: "*Log was short shipped and has been found at the logyard*". [Same for 8 of the 11 logs]
  - **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?

    Answer received from LVD during Audit 5:

"When a loading is done and short shipped are captured from the shipment, the first information as regards to short shipped is the loading report. It is always scanned and uploaded in the system upon the completion of every shipment.

Note (by LVD): that the Port is not a storage facility after shipment to keep short-shipped. The Op will move the short-shipped logs [back] to the timber yard and place it at a separate location. In the event, of company wishing to ship the short-shipped logs, they will request for new EP# for the short-shipped logs (…)."

Note 1: IA now understands that an EP is not always requested by the Operator to be closed after shipment. This can happen later on if the Buyer requests a COO.

Note 2: IA now also understands that these short-shipped logs are supposed to be found (only) if/when a new Timber Yard or EP Inspection is conducted. It would remain to be seen how this is documented in LiberTrace (in the Product History of the logs). The search for short-shipped logs in the Timber Yard is thus not systematic.

Is there any technical risk, though, that a log was (dishonestly) declared short shipped, but was actually loaded into a container, and that – because the search in the logyard for all logs declared short-shipped is not systematic, and/or there was no documented evidence back to when the log was previously declared short-shipped – it did not actually exist (anymore, if ever) in the logyard and another (presumably illegal) log (not in COCS/LiberTrace) could then be loaded / laundered later on in its place with the same log tag number?

In other terms, whether it is technically possible (and easy) to just say that they have loaded a log that was a shortship but with no need/ evidence to prove it was indeed ever a real shortship?

(SGS:) It does occur that a log was declared loaded by LVD in LT, but the Operator said No, it was shortshipped. Possibly because LVD inspectors were *not available* for the loading inspection (See 6.2.3.8). LVD Inspectors must be able to find it back in the export logyard. IA: but again, this is not done systematically or even through routine sampling checks.

- **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) and short-shipped? Did they not trigger e.g., Export fees at the time? 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?

Answer received from LVD during Audit 5:

"An additional Export Fees are not pay on short shipped Logs, because all fees are paid for prior to the issuance of Export Permit. Only an Export Permit Fee of 100 USD is paid when requesting the shipment of short-shipped logs".

(SGS:) Export fees are only paid once. They will be noted already paid. No reimbursement is organized, but it is not in the Operator's interest to keep a log as shortship for too long anyway.

- 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 (See the risk of "false shortship", below).
- 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) ...
  - **New 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? As already asked above: Are such short-shipped logs physically re-inspected at some points, that they really exist?

    (SGS:) "Short-shipped logs are not physically discriminated (IA: Contrary to LVD's above statement that "*The Op will move the short-shipped log [back] to the timber yard and place it at a separate location*"). (SGS, confirming the above findings:) They will be reinspected (only) if resubmitted for export (EPR inspection). Whether LVD Inspectors always do it, is another question. EPR inspection is not systematic.

    Conclusion on the risk of "false shortship": Yes, the risk technically exists that a log is (dishonestly) declared as being a shortship and accepted as such in LiberTrace: it is enough for the Operator to say it was shortshipped, if no LVD inspectors were *available* for the loading inspection. The search in the logyard for logs declared short-shipped is not systematic, even on a routine sampling check basis, so its non-existence will not be noticed. Another (presumably illegal) log (not in COCS/LiberTrace) can then be loaded / laundered later on in place of the "false shortship" with the same log tag number (log tag transferred or declared lost) and similar features (species, dimensions) so that it may even withstand a pretended "reinspection" (EPR inspection) if falsely re-

submitted for export. The risk will need to be assessed by the next IA.

- To support the assumption that rejected logs may stay in LiberTrace for ever, is there any indication that the total number of short-shipped logs in LiberTrace is an ever-growing number? Same question, by the way, for rejected logs?

  (SGS) It may be possible to investigate this through LT's Business Intelligence (BI) function.

  Answer received from LVD during Audit 5:

  "There is no indication [of this]. The short-shipped in LiberTrace are at a minimum rate. The short-shipped logs are detected even, if those logs were place on an EP with newly declared logs and they are inspected in the event of new declaration in an EP for shipment."

  - 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?

- **Question to LVD:** Organizational chart for LVD? Is the LVD OM only on the CoC side or both CoC and Audit?

  The OM is responsible for the Chain of Custody Operations.

- Can the Bill of Lading (B/L) be used to confirm the content of the containers? Higher up we assumed not. Review of B/L No. 579550159, corresponding to Loading request # 2018/00264, 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).
- **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 yet provide (to the above)?

  (Partial) response received from LVD during Audit 4:

  "Kindly note that, every information on B/L 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 B/L and the reconciliation on the B/L volume will be done in line with the loading report from the CoC Inspectors."

  Further answer received from LVD during Audit 5:

  "There is no further clarification that could be giving order then the one previously shared with you".
- Unfortunately, nothing tells *which other EP(s) or Loading request(s) were used for this same shipment*, together with the Loading request # 2018/00264, with the same SHIPMENT REFERENCES (i.e., 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 can be (See 'Sing Africa Reconciliation' as **Annex 8.3** to the previous audit report **A4R Vol.1**). 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, not allowing any later 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? Higher up we assumed this rather works the other way around. 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 to** the previous audit report **A4R Vol.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:

  See **Table 6** next page.

Table 6: Reconciliation of B/L with LVD's loading records by container

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: 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 the previous audit report **A4R Vol.1** – '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, which confirms previous assumptions, 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: see below) on the basis of what was loaded into the containers during, and as per the LVD inspection.

  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 is assumed to be different in the case of a vessel).

- **Questions & answers with SGS/LVD**, asked to confirm, in the example of the Loading Requests # 2018/00263 to EP 2018/00266:

  - Who issues the B/L: The Shipping Agent (e.g. Safmarine)? LVD: "Shipping line issue the Bill of Lading to the company".

  - Shipping Agent not necessarily based in Monrovia (since signed by SAFMARINE SINGAPORE; 'Place of Issue of B/L': Singapore)? **LVD:** "SAFMARINE has a shipping Agent based in Liberia/ Monrovia that liaises with National Port Authority and the Operator/ Company".

  - 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? LVD: "Yes".

  - The Shipper in this case also being the Buyer? LVD: "We do not know whether shipper is the Buyer".

  - Meaning this is an FOB Contract (not including Freight & Insurance)? LVD: "Insurance is on every shipment of logs".

  - 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? See the question below) **LVD:** "There is no law that say that the company should share their pro-former invoice to LVD or SGS".

    The IA could not 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.

    Audit 5 question to LVD: Please explain where the information of the Commercial Invoice # provided on the EP comes from. **LVD:** "The Operators should provide the commercial invoice base on their sales". **IA:** There will be a need (to be considered by the future IA) to verify if any regulation or SOP provides for this sensitive commercial information, or for the provision of only a (purely indicative) pro-forma invoice or nothing. It is still unclear how LiberTrace works in that regard. **SGS:** Maybe from CFD in the MD's office when issuing EP?

  - 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? LVD: "Yes".

  - On which documents is the Shipper's declaration based:

- 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).

LVD: “The EP and the Loading Report for the shipment has the information”. **IA:** No, it cannot be the EP (EP established before loading and there may be shortships); and it cannot be only the LVD loading report which does not provide the volumes.

- Which document or information does LiberTrace use to calculate the amount of Export tax due: loaded products on Loading request, or other? **LVD:** “The FDA Ten Core Regulations (2007), Regulation # 107-07 on Certain Forest Fees”. **IA:** This does not answer the question.
- Where can the Taxable values be found in LiberTrace? **LVD:** “The Account module will take you to each company financial status”.
  IA (See 6.2.6.3): The “FOB Since Dec 2016” document is available in the LiberTrace Document Library (after signing in); possibly also under TOOLS, Regulation, Approved, SPECIES (104/105).
- 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 received from LVD during Audit 4:

  “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.”

  Further answer received from LVD during Audit 5:

  “The Account Module (Click on Account from the main module and then select company from the dropdown menu and as well select financial from the sub-module, this is where LiberTrace displays the financial details of each company per fee and all Invoices and proof of payment are sent to LRA”.

- 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.
- When LiberTrace issues FLEGT Licenses, will LiberTrace not need to provide clear supporting evidence matching the FLEGT License, back to Export Permit, but taking into account the short-shipped logs and a breakdown by containers, providing detailed 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)?

  Answer received from LVD during Audit 5:

  "When we shall have started the issuing of FLEGT Licenses, procedures will be designed to this effect". **IA:** Not a constructive answer.

- 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 takes place in the case of containers. The responsible MACs do not travel to the timber yards where the loading of containers is done.
  - **Question asked 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 by LVD: "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 [We mean the actual loading of the containers onto the ship], 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 [Same remark]" is a gross contradiction. Unless there is a misunderstanding [Same remark

– whereas for you, ”shipment” may mean the loading of logs into containers” -]. Please clarify or provide any evidence of that statement being right.

Answer received from LVD during Audit 5:

“For Containers loading LVD staffs are present at the loading site along with Commercial/FDA representative and Company representative. After Loading and Containers sealed, they are taking directly to the port of Exit. FDA/LVD has absolutely completed her task when the containers are closed and sealed”.

Further questions to LVD:

In case 1) you wish to persist in saying that LVD is, or should always be invited to form part of the *shipment* [meaning the actual loading of the containers onto the ship], and 2) if you also confirm that “In the event, where LVD is not informed on container shipment [Same meaning], it is a violation and will be flagged as non-conformity on the part of the company”, then does it suggest that it may happen that “LVD is [sometimes] not informed on container shipment [Same meaning]”? Has this ever happened, that “LVD was not informed on container shipment [Same meaning]”, as far as you may be aware of it? Suggesting that containers are sometimes shipped [Same meaning] without LVD knowing?

Further answer received from LVD during Audit 5:

“Shipment in my own word means loading of containers at the Timber Yard / Loading site with the presence of LVD Staffs. LVD have never being told of any delay or not shipment of Containers on the part of the company”.

(**SGS, Audit 5:**) Yes, the loading inspection is the last checking point. LVD will not be aware when a container is loaded [onto the ship], and will not be invited to witness. In the absence of further control by e.g., Customs, the IA understands it is technically possible to break a seal after inspection and alter the content of the container, between the timber yard and the actual shipment.

- **Question asked to SGS/LVD:** Are you aware (officially or out of rumors) of any containers loaded *without* LVD inspection and EP and yet shipped or exported by road out of Liberia?

  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. Can you elaborate?

  Further answers received during Audit 5:

  LVD: “No”; SGS: “No, not aware”.

  But the IA recalls the risks already identified above: EPs issued outside COCS/LiberTrace, LVD not present at all loadings (no evidence, although well known), Inspection data provided by the Operator and reused to fabricate inspected data in LT...

- **Question asked 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?

  LVD 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/should receive an inspection request and the inspection would/should take place at the loading place (not at the border-crossing point where, however, Police would/should 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.

  Answers received during Audit 5:

  LVD: "The records can be formed in Loading. But there is no specific information in LT for container loading record to be formed. LT do not have special module for container loading and documentation. All loading [information] is reflected in module Sales under sub-module, Loading [Request]".

  SGS: One CoC and one data clerk have been assigned to an Operator (Westnaf*) in Maryland Region to Côte d'Ivoire through Harper (teak, but sometimes natural forest wood, hence should be in LT). Once the Super-intendent of Maryland blocked a truck; FDA Management had to go and discuss. But LiberTrace will not indicate that distinction (by see or road). IA: Is the location of the EP inspection visible on EPRs (e.g., near Harper)? Truck (or Container), instead of Vessel? Or will it always just say "To be announced", or "Not provided"? No COOs requested?

- 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):

  See **Table 7** next page.

Table 7: Traceability test for the logs contained on Waybill No. 1198

	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.

**From the one declared during inventory (Over tolerance of one diameter class).

Question to SGS/LVD: Where can the applicable **minimum DCLs** to all or particular FMCs, TSCs and CFMAs be found in LiberTrace?

Answer: "The DCLs can be configured in the System by the system Builder. Also, the company contract indicates the Cutting 60 cm above".

Note: Clarity has been gathered through IA's research under 7.3.5.9.

- **Question asked 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?*

  Initial reply received from LVD provided no clear answer to the question.

  Answer received from LVD during Audit 5: "The data in brackets is the Operator's declaration which is for each log declared and the one adjacent is the LVD verification data". **IA:** Still does not answer the question.

  SGS: log by log. Yes, it is possible [IA: It may indeed happen, as observed] that all the logs on the listing are within the tolerance [IA: Although this may look a little bit "too perfect", depending on the occurrence]".

▪ Re: "Fs" (for Fiscality): Paid: Green; Not paid, but payment date not passed: Orange; Not paid, and 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.

  See copy of Company's request and FDA MD Letter allowing tax payment deferral as **Annex** 4 to this report.
- 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 (under Audit 4) around 1 million USD for Stumpage fees 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 A4R Vol.1, 6.2.6.3 (LRA, Revenue collection).

Findings (as reviewed and updated under Audit 5):

- The LVD CoC 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 and is not yet covered by the official SOPs. The IA was informed that this has recently become a popular method for both logs and processed wood products. This in itself could raise questions, but the IA was told that log exporters through Monrovia have no other choice, since there is no log yard for storage in the Port of Monrovia.
- There is no easily accessible information in LiberTrace, as to which shipments were done through containers, which would tell the importance of this new method and would allow auditors to give it is special attention.
- The new draft July 2018 version of the SOPs (still not formally approved), in 24.2.1 on 'Loading registration and inspection', yet only includes one new paragraph relative to 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.
- The July 2018 SOPs in 14.2.1 now also mention: "*Waybills shall be used when moving logs or processed timber products (…) mainly if the wood products are not sealed in the* ***container***". LVD informed that a new (reportedly approved) template is now being used to accompany the sealed containers to the port of exit instead of the official Waybill.

Note: If that document has only been created recently by LVD, it has to be given a proper name and its use must be described in an updated (corrected or complemented) version of SOP 14, subject to formal approval of the latter.

- 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 among the registered public or private timber yards in LiberTrace) 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 neither 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 (all manually written, like the container loading form) and photos (of the logs loaded in each container) are only kept by LVD as *internal* records; i.e., not stored as evidence in LiberTrace for third party auditing. This clearly undermines the Third-Party Monitor role, when reviewing an EP for endorsement, as currently assigned to SGS.
- Once the containers are sealed, the LVD Auditors (or others) 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, the latter condition is not what was observed during the audit.
- No data reconciliation meeting takes place at the end of a 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), when issued, mentions the EP(s) but not the B/L; it is also based on the inspection results and provides no detail on the content of the containers. It is requested by Buyers in some countries but cannot be used for reconciliation purposes.
- Customs authorities are not present when the container is loaded, they have never asked to reopen a container to re-inspect its real content before it is loaded onto the ship, and they are unlikely to check the seal either.
- 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 Liberia or in the EU.
- In those circumstances, the IA questioned 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 after Audit 4: 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 6.2.3.12) 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.

  Note (Audit 5): The IA approached LRA Customs to explore the general export procedure for timber from Liberia and how FDA's Export Permit (EP) system currently integrates with it, up to shipment. As of February 25, 2021, no responses have been received by the IA.

- 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.

- Link to the Commercial Invoice # provided on the EP: subject to verification by the future IA, the SOPs do not provide any related instructions. Nothing was found in the LiberTrace User's Guide either. So, it remains unclear how LiberTrace works in that regard.

- 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 whether 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.

- **A**s regards Traceability, on the implication of the issues behind the red "T's" (like "Different diameter class from the inventory, over the tolerance"):

  - The IA has concluded that in some cases, illegal logs previously rejected by LVD/ LiberTrace/ SGS, and still flagged in red in LiberTrace, are in fact authorized for export thanks to an "override document" issued by FDA Management. This means that LVD/FDA sometimes decide to ignore the blockers of approvals set in the system as part of the agreed LAS. Clearly, the use of "override documents" by FDA Management, to allow non-compliant logs to be exported against LVD/ LiberTrace/ SGS's recommendation, creates space for subjectivity, discretionary powers and risks of abuses;

  - 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;

    SGS (Audit 5): An EP is not always requested by the Operator to be closed after shipment. This can indeed happen later if the Buyer requests a COO.

    LVD (Audit 5): The Port has no storage facility for shortships. The Operator will move the short-shipped logs [back] to the timber yard.

IA: IA now understands that these short-shipped logs are supposed to be found (only) if/when a new Timber Yard or EP Inspection is conducted, which would be documented in LiberTrace (in Product history). However, the search for short-shipped logs in the Timber Yard is not systematic;

- 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 systematically conducted before a short-shipped log is eventually loaded?);

  The risk of "false shortship" increases if LVD Inspectors were *not available* for the loading inspection or "turned a blind eye" to it.

- 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;

  This exemplifies the risk with "short ships", due to the lack of traceability.

- That the Bill of Lading (B/L) is not being used, and could 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. Nothing confirms 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. As a result, where this occurs, it is not possible to find both container loading information (with the loaded wood) *and then* vessel loading information (with the loaded containers) separately, and there is confusion as to what the loading information provided in fact 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 the previous audit report **A4R Vol.1**). 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 the previous audit report **A4R Vol.1**), 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;

  Is the Company waybill always available? It must be clarified whether the new, above-mentioned template being used instead, though, provides the same information and has been formally approved as part of an SOP.

- 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.

- There is no 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 had 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 to 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). This should always be documented by an exchange of letters between the Company and FDA (See **Annex 4** to this report); and LRA now asks for double (FDA, LRA) signature.

Summary of findings / Conclusions (as reviewed and updated under Audit 5):

- Containerization of wood product exports from Liberia has become common practice, currently only through the Port of Monrovia. But the official July 2016 version, and even the latest draft revision (July 2018) of the LVD CoC SOPs fail to support this new practice.
- LiberTrace still confusingly provides *container* loading information as if it was *vessel* loading information, and not both as it should (first container *loading*, then container *shipment*) in two separate steps for containers. LiberTrace does not steadily inform which shipments were done through containers, for statistical purposes or for special attention.

- 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 and the export sale. Once the containers are sealed, nobody (LVD Audit unit, Customs etc.) will check what the LVD Inspectors have inspected and ensure that no other than the declared logs, or no additional logs were actually loaded into the container before or after the LVD inspection (provided the latter did take place). Customs authorities have never asked for the containers to be re-opened for inspection at the port before shipment.
- 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 (handwritten) 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. This undermines the 'Third-Party Monitoring of EP Issuance' role currently assigned to SGS and the IA role.
- It is not the official LVD Waybill that is used to accompany the sealed containers to the port of exit but the own company waybill or, since recently, a new LVD template instead. It is unclear why a new LVD template was developed, whether for technical reasons or for fiscal reasons (in case it carries no fees), whether it contains the relevant information and whether it has been formally approved.
- An LED officer joined the scene to only make photocopies of LVD inspection records, not to counter-check. It was evident that she did not have clear work instructions. 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.
- Apart from LVD's inspection records, no other documents are established afterwards that 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 (B/L) 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 original seal numbers are not registered on the B/L for any later inspection by e.g., Liberia or EU Customs. The seal could be broken and replaced by the Exporter itself, and nobody would care, especially a connivant Buyer.
- LiberTrace neither registers nor does it reconcile the 'Container loading form' data, which takes 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 provided the complete description of the content of each container, but it is not stored in LiberTrace.

- As regards traceability (T) in LiberTrace, despite a red-flagged “T” for e.g., logs coming from a tree felled below DCL and SGS’s recommendation to reject the logs for EP, these logs may yet be accepted for EP on the basis of an override document issued by FDA Management.
- The management and traceability in LiberTrace of short-shipped logs (logs on an EP, finally declared not loaded) leaves grey areas. Because the search for short-shipped logs back in the timber yard is not systematic, or if documented evidence back to when the log was previously declared short-shipped is lacking, and if LVD/SGS do not challenge the statement that some logs on an EP are previous shortships, or if SGS asked for a re-inspection but FDA Management did not follow the recommendation, the risk of “false shortship” technically exists that (presumably illegal) logs could be loaded in place of falsely declared “short-shipped logs” that were actually loaded unrecorded, with the same log tag numbers.
- 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 or 2) to prevent a container from being re-opened, the load changed, and the seal just replaced after the LVD inspection. Risks further increase if LVD Inspectors were not available for the loading inspection, as it is said it sometimes happens.
- The IA approached LRA Customs during Audit 5 to explore the general export procedure for timber from Liberia and how FDA's Export Permit (EP) system currently integrates with it, up to shipment. No responses have been received by the IA for this report.
- There is suspicion from the other field audit (See 6.2.3.12) 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 cover 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 the system is currently highly dependent on staff’s integrity, and one inspector or even a team of two field inspectors is not incorruptible. The IA has now been informed that not all loading operations are attended by CoC Inspectors. 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.
- (**Audit 5**, re: risk that logs are exported outside the COCS / LiberTrace system:) In relation to this field audit of a container loading inspection by LVD during Audit 4, the risk is considered of both high relevance and high impact, that in the absence of tighter control of what is actually loaded into containers, logs that are not recorded in the COCS/LiberTrace could still be loaded. Clearly, the official sets of recorded, declared / inspected data in LiberTrace would fail to report it. And neither SGS/LVD nor anyone downstream (Customs, MoCI, NPA, etc.) would ever know (SGS’ opinion) – suggesting these bodies, not only do not have access to LiberTrace but, could knowingly or not cover timber exports that are unlawfully not registered in the national COCS (This also feeds into the Border control section in Vol.2, 6.4.14).

- The potential risks at stake, identified in this section in relation to containers, are varied: 1) under-declaration of species and volume (this risk is minimal due to the prior 100% inspection on the timber yard, unless the inspection was biased), 2) under-declaration of quantities (number) loaded into a container (like falsely declared shortships), 3) laundering of illegal stuff through the COCS (like falsely declared shortships again, or logs from 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.
  * Current post-felling inspection rates for back-to-stump traceability would need to be investigated.

  (**Audit 5:**) There is no definite requirements for stump traceback checks in the procedures. There are example emails where operators contact the MD directly to ask to release logs, after SGS requested a re-inspection of the logs (supposedly for doubtful origin). Email to LVD manager: 20/11/2020 and email to MD followed on 23/11/2020.

  IA would recommend more traceability tests are conducted, going through the log history, before raising a Risk or an Issue.

- The cases of EPs issued in spite of taxes not paid, in contravention of the LVD SOPs, have revealed discretionary decisions by FDA Management also to allow tax payment deferral.

  LRA (Audit 5): The Liberia Revenue Authority (LRA), however, is aware of, and monitors all fee payments from forestry operators, and the associated arrears, and can block Tax Clearance Certificates. LRA now has primary responsibility for granting deferred payments also for “FDA fees”, and it does it in agreement with FDA (See Vol.1, 7.4.10.3 LRA, Government forestry revenue collection).

- Like in other forestry-related instances, there is a question for the IA, whether there is not excessive discretionary power in the hands of the LVD/FDA managers, and the IA still concludes to a low security level (or high risk) for integrity of the COCS, especially in the case of containers.

Recommendations:

- The issuance of Export permits only granted on the basis of an override document issued by FDA Management, for tax payment deferral, or despite issues with diameters, or despite other issues, should be contingent on clear and transparent procedures and referred to the FDA Board for information.
- In case there is a technical issue in LiberTrace, with the reconciliation of the diameter of the butt log being based on the average diameter of the log instead of the biggest of the four diameters, which would introduce some space for discussion, the LiberTrace software should be modified.
- For the sake of clarity and to avoid confusions with vessel loading procedures, the LVD CoC SOPs need to be revised to accommodate exportation through containers and address all 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 private timber yard where the containers are stuffed and sealed, up to the eventual shipment of the containers.

- Encourage the use of the official LVD Waybill to accompany the sealed containers to the port of exit, if technically possible, instead of the own company waybill. If the new LVD template recently developed has to be used (if formally approved). it should contain the relevant information. It should be filled in *by LVD Inspectors on the container loading inspection site* as a way of ensuring that the inspection really took place.
- Ensure that photos of the logs loaded in each container are always taken as evidence that the Container loading form was correctly filled in and ensure that logs are not falsely declared short-shipped whereas they were actually loaded (making sure no other log can be loaded after the photo was taken).
- 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 on the inspection site, but with clear work instructions that bring extra security to the process; alternatively, an independent LVD auditor.
- A data reconciliation meeting with the responsible MACs at the end of the container loading inspection or at the port (seal would be replaced), 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. Currently handwritten inspection reports can be forged to cover up the fabrication of inspection data or to hide the fact that the inspection did not actually take place. Each LVD Inspector should be requested to use an electronic device to prove his/her presence on the inspection site.
- LiberTrace should be modified so that the Loading Requests at least provide the subtotal volumes Loaded / Not loaded.
- LiberTrace should also be modified to handle a desk version (and a PDA-based version in future) of the LVD ‘Container loading inspection report’, of the LVD ‘Container loading form’, and of the ‘waybill’ per container (the only document that provided the complete description of the content of each container, including all logs and newly crosscut logs loaded) and manage the associated information.
- LiberTrace should reconcile the ‘Container loading form’ data, taking newly cross-cut pieces into account, with the LOADED LOG PRODUCTS count on the related Loading request(s) and with the associated EPs.
- 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 be further modified to support the management of both container *loading* information *and* container *shipment* information in two separate steps for containers, and display how many shipments were done through containers, and by which companies.
- LiberTrace and LVD procedures should also be improved 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 for LiberTrace to then turn the red flags to green.
- LVD procedures and LiberTrace should also be improved 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 currently be laundered under the same log tag numbers, LVD procedures and LiberTrace should be further improved to restrict the conditions for allowing logs, once declared short-shipped but just stated "*Not loaded*", to be used again in future EPs. Meanwhile, more traceability tests need to be conducted, going through the log history.
- In doubt, subject to investigation of current post-felling inspection rates (i.e., frequency) for back-to-stump traceability, against prescriptions, it is likely that the current rates will have to be increased.
- More supporting evidence is also needed to ensure that no other logs are substituted for falsely declared shortships, like a clear photo of the log tag and a new physical inspection of the log systematically conducted before a short-shipped log is eventually loaded.
- The export sale (at least a pro-forma invoice, if not the final commercial invoice) should be recorded in Libertrace to support export price comparison against transfer pricing.
- The Pricing Information (Total FOB Value) should be removed from the EP template or its management reviewed to make it useful, and the LVD SOPs and the LiberTrace User's Guide be updated accordingly.
- Customs and/or other relevant authorities (Police, Marine, NPA, Export Verification service provider…) must be enabled to exert reliable border-control checks after the container loading and before the actual shipment (EP and SPEC, seal numbers; content of containers, even if it is on a small sample basis) and to detect and confiscate any containers being exported outside of the COCS. It seems important to ensure that the original seal numbers will be registered on the B/L for any later inspection by e.g., Liberia or EU Customs and detect it if the seal has been broken and/or replaced. This could be linked to the above-mentioned data reconciliation meeting.
- There is a need to 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.

Container loading inspections by LVD have revealed critical issues and the IA has concluded to a weak control of that export method although it is being increasingly used by exporters. The IA registered a new **HIGH RISK** (ref. **HR 10**) about this in the IA Progress DB:

RISK HR 10
Impact level: High
Identified RISK factor: LVD CoC Inspectors do not attend all container loading operations. One inspector, or a team of two field inspectors, is not incorruptible. Nobody is checking afterwards what the CoC Inspectors have really inspected and what was actually loaded into the containers, or if the seal was broken and replaced after the inspection. In the absence of a container loading inspection by LVD, or if the inspection was not conducted honestly, of if the content of a container could be altered afterwards, then anything could be loaded from either within the COCS (legally) or outside the COCS (illegally). The (hand-written) Loading Inspection Report can just be made up before uploading to LiberTrace. COCS/LiberTrace data will only reflect what the CoC Inspectors reported.
Identified RISK description: The potential risks at stake are varied: 1) under-declaration of species and volume (in case the prior timber yard inspection was biased), 2) under-declaration of quantities loaded (like new false shortships), 3) laundering of illegal stuff through the COCS (like under previous false shortships, or under made-up inventories), and 4) smuggling of wood products, entirely outside the COCS.
Recommendation(s): Ensure the inspection really took place, like by LVD Inspectors having to fill in an official LVD Waybill on the inspection site. Ensure photos are always taken of all the logs loaded, with the tag numbers readable. Store all key container loading inspection records in LiberTrace. Ensure internal auditing is done by an LED officer with clear work instructions or by a truly independent (LVD or else) auditor or third party. Ensure systematic or unannounced data reconciliation meetings take place with the responsible MACs, on the loading site or at the port. Move to electronic management of field data or records (like GPS-tagged and timed photos of all manual records). Enhance LiberTrace to provide needed additional functionality. Ensure supporting evidence is provided for shortships. Ensure the original seal numbers are registered on the B/L.

FDA Management is using override documents (ODs) to allow non-compliant logs through export. The IA also registered a new MEDIUM **RISK** (ref. **MR 8**), about this issue, in the IA Progress DB:

RISK MR 8
Impact level: Medium
Identified RISK factor: Export permits (EPs) are being granted on the basis of an override document (OD) issued by FDA Management. The OD overrides an SGS/LVD' recommendation to reject the EP unless some non-compliant logs are removed from the EP and not allowed to be exported. Example of issues, sometimes triggered by an 'Event message' resulting from LiberTrace reconciliation, include: log below the diameter cutting limit (DCL), discrepancy in measurement, outstanding tax payment, or unclear origin. The "illegal" log remains flagged in red in LiberTrace, under Traceability, Legality or Fiscality.
Identified RISK description: The IA considers that the use, by FDA Management, of such ODs relates to undocumented, discretionary powers, whereby the Authority decides not to apply its own regulations and to ignore the agreed blockers of approval set in the LAS, creates significant risks of subjectivity and abuses. A copy of the OD should always be attached to the company's account for third-party scrutiny, but is it always the case? The IA, for example, does not have access to ODs.

Recommendation(s): The issuance of Export permits only granted on the basis of an override document issued by FDA Management, for tax payment deferral or through installments or even allowing a tax reduction, or despite issues with diameters or others, should be contingent on clear and transparent procedures including referral to the FDA Board for information.

In case there is a technical issue in LiberTrace (average butt log diameter vs. the biggest of four diameters used for reconciliation with DCL) the software should be modified.

This OD issue also relates to the Export permit issuance section in Vol. 2, 7.5.3, particularly Issue HII 18 (Main C&R 3.25) that 'Log exports are receiving EPs; but do not comply with requirements' (7.5.3.1).

The IA also highlighted a great number of issues with the **LVD CoC SOPs** related to the inspection of container loading operations. This also relates to Section 7.3.6.8 in Vol. 2 (Revised LVD Procedures (SOPs) not formally approved, HII 11, Main C&R 3.1), and Section 7.4.6.1 in Vol. 2 (Manual of CoC procedures for LVD staffs, Problems relative to accuracy &/or level of implementation in the field, HII 15, Main C&R 3.17).

Likewise, the IA highlighted many issues with the **LiberTrace functionality** in relation to the inspection of container loading operations. This also relates to Section 7.4.7.1 in Vol. 2 (Functionality of COCIS software (LiberTrace), MII 3, Main C&R 3.21).

6.2.3.12 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 would remain so, if no further investigation was conducted (See Recommendations).

Follow-up under Audit 5:

Question to FDA CFD: The IA was made aware of a 'Liberia Independent Investigation into TSC A2' launched by the Ministry of Justice in October 2020 and that the draft mission report has been submitted.

What measures, if any, have been implemented or are being envisaged, against the operator(s) involved?

FDA CFD: The TSC A2 remains nonfunctional and will remain so until CFD receives instructions from top management to intervene.

IA's comment: From the answer received from FDA CFD, the IA understands all operations by the logging operator (Renaissance) have been suspended until further notice. Some FDA staff claimed nothing had moved since Audit 4.

This would be contradicted by the follow-up information collected between the main Audits 4 and 5, that "The FDA Board of Directors has suspended the operation of Tarpeh Timber, but not Renaissance, apparently on the basis that Renaissance had already served punishment".

It has also been reported to the IA that, although the FDA Board Chairman publicly supported the Independent Investigation, SGS was ordered to let the remaining logs to be processed to export.

Note: The Independent Investigation mission contacted the IA KE1-TL for some clarifications. But the IA has not been provided with a copy of the mission report and cannot comment on it.

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".

    Follow-up questions to FDA CFD under Audit 5:

Please explain how it is possible, in view of the situation:

1) That new blocks were submitted by Freedom Group in TSC A2 for inspection?

2) That several blocks were 'approved' as the IA found in the LiberTrace system (PREHARVEST, Inventory Inspection) with the respective inspection dates, reports and results: E3, F2 to F6, G3, G6, G7, and H7 (between 11/03 and 11/12/2019)?

3) The reason why all inspection results state "Not Satisfactory"?

4) Why, despite the "Not Satisfactory" inspection results, these blocks are to be found in the 'Approved' block inspections?

FDA CFD meeting notes: Needs to be elevated to MD. CFD has not yet received a report on this.

IA's comment: CFD should be very aware of the situation, all these proceedings being under its responsibility. Saying CFD has to receive a report on this sounds like a denial of such responsibility. Having to refer to MD reflects the political dimension of the case.

The IA's initial legal assessment was that it *may not be illegal* to extend or renew a TSC, as long as the parties agree to it; although:

- 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 was thus questioning whether all this was in line with the intention of the law (NFRL) that established the TSCs.

(*Audit 5:*) New legal research by the IA Team has now established that,

- Tarpeh's TSC A2 document under B2.2 (Termination Date) stipulates "***This contract is not renewable***". It also says "***Holder's right and license to harvest timber ends after the termination date*** *specified on the first page of this contract, unless extended or shortened under a provision of this contract or by operation of law*"; and "*Limited extensions are possible under Sections B8.5 and B8.6, regarding force majeure and interruptions*". It is questionable whether "limited" can mean 3 times the duration of the initial contract. In any event, there should be some documentation whereby FDA extended the term of the initial contract after it first expired in 2011.
- Even more so, the NFRL 2006, Section 18.12 on 'Renewal' provides that a. No Person shall have a right to renew a Forest Resources License; and b. The Authority **shall not renew** Forest Management Contracts or **Timber Sale Contracts**. No other relevant provision exists in it under the terms "extend" or "extension".

Subsection (b) of Section 18.12 of the NFRL is in fact categorical that the FDA ("Authority") shall not renew FMCs or TSCs. Based on the categorical statutory prohibition, the proper advice is that **it is illegal for the FDA to extend a TSC**, be it unilaterally or in an agreement with TSC holder. The NFRL does not permit extension of TSC for any reason.

The NFRL does not only prohibit extension of forest resource licenses such as TSCs; Section 18.14 thereof also provides for (i) **automatic termination of TSC** and (ii) **automatic reversion** to the Government of Liberia **of all interest, permissions and rights** earlier granted the holder of the TSC or any forest resource license holder.

- The conclusion is that it is illegal to extend any TSC, and that **it was illegal for the FDA to extend Tarpeh's TSC A2**. Any extension of a TSC undermines and violates Section 18.14 since it aborts the **automatic termination of the TSC** and also it frustrates **automatic reversion of the rights, permission and interest granted by and within the TSC**.

Further questions included:

- Can FDA lawfully (under new Land Rights Act, Aug. 2018) extend a TSC over an area that is presumably a community or customary land?

  FDA CFD meeting notes during Audit 5:

  "CFD staff thinks "no". However, the land rights act has not been implemented yet. There are no weigh points (beacons) to prove implementation".

  IA's comment: Land Rights Act was passed in August 2018. How can CFD states it has not been implemented yet? IA doesn't understand the rest of the response.

- 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))?
  - Prior consent of, and agreements with the affected communities? Like for example *"(ensuring) that at all times, for the duration of the forest resources license, a social agreement for the benefit of all affected communities is in force with respect to the area to be logged*" (as per FDA Regulation 105-07, Section 31 (b)(1)) etc., which in itself carries many subdued obligations.

  FDA CFD meeting notes during Audit 5: None.

  IA's comment: FDA admitted that no protocols were followed to authorize the extension for commercial logging.

- 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.

FDA CFD meeting notes during Audit 5: This needs to be posed to LVD.

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 the attention of any investigation in future);
- 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? Which purpose: obstruction or sanitation? 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 could not be completed in the time allocated for a field audit; nor was 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[21] 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 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.

[21] The IA Auditor tested the first and the last logs in each EP.

IA observation: The proximity of the registration dates of respectively the CROSS-CUT event and the subsequent (EP or timber yard) INSPECTION in some cases, both raise questions in respect of the important volume of INSPECTION registered:

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 retrospectively on the basis of the inspected values.

Further question to LVD: Please provide evidence that these important volumes of logs were really inspected each in one day, on a 100% sample basis, and with how many inspectors, or otherwise.

LVD answers, Audit 5: "Inspection of logs is done on a daily basis in the timber yard of the operator with a constituted team of CoC Inspectors organize by the Team Leader. Results of inspected logs are submitted to the Data Clerks daily for entry. According to LVD procedure, a team of seven (7), six CoC Inspectors and a Driver for verification schedule by the OM on a monthly basis."

IA's comment: This is the procedure. However, serious doubts remain that this was materially possible.

- 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[22] 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;
- Similar history and comments for 3 logs in EP 2019/634 tested with a red T[23], 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[24] still have similar discrepancies between declared and inspect value.

[22] AB896LYG, AB924LWW, AB966LWM, AB019LX3, AB910LV7
[23] AB898LVJ, AB920LYO, AB025MAH
[24] AB021LWL, AB021LYG

- In EP 2019/581, 5 logs tested with an orange T[25] 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[26], 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 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 was 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:

  According to provisions of the 'FDA Compliance & Enforcement Handbook' of August 2017:

  - 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[27] or criminal case[28] 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.

[25] AB863LWW, AB092LY7, AB022LXG, AB018LY3, AB999LWC
[26] AB982LYP, AB344MAB, AB094LY3, AB979LWE, AB531LW9
[27] as per the list in Section 1.5 of the FDA Enforcement Handbook
[28] as per the list of crimes in Section 1.4 of the EH, based on what offenses the NFRL criminalizes

However,

- 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 was whether the Handbook, once formally approved, would take the status of a regulation[29].
- 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[30].
- 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.

Some related follow-up, between the main Audits 4 and 5:

1. At least one officer of the FDA has confirmed that the $100,000 fine imposed on Renaissance for harvesting logs outside of the contract area was paid by Renaissance (Note: The IA audit team had in fact collected a copy of the payment slip). The management of FDA reportedly informed the Board of the payment of the fine.
2. The Ministry of Justice [MOJ] is believed to have known the facts, and that the FDA had reservations about the FDA handling of the matter without deference to or consultation with the MOJ, to have then had reservations about the adequacy of the fine as a complete sanction for the violation involved, and to have in fact asserted its jurisdiction over the case, but to have not persisted. It is not known what the MOJ did next or what then stopped it from pursuing this matter further, criminally or otherwise. The MOJ later waived its objection to the first shipment reportedly based on representation received from FDA staff prior to the IA report. But the MOJ is now reportedly of the current view that the report of the IA Auditors has provided more information that warrants a complete review of the matter.
3. The FDA Board of Directors has suspended the operation of Tarpeh Timber, but not Renaissance, apparently on the basis that Renaissance had already served punishment. Additionally, the Board has written to the MOJ to investigate Tarpeh Timber and related companies to the extent and in accordance with the request of the IA Auditors and that to the extent forensic audit is to be done, they should inform the Board which could solicit support from the EU, DFID and or other institution. The understanding is that the letter from the Board was delivered not long before the Covid-19 outbreak, and had not yet been acknowledged or responded.

The IA experts (initially) concluded that there was no issue with the FDA's fine, on the reason that if the FDA imposed a fine that was consented to by

[29] 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)".
[30] 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.

Renaissance, then there is no issue, even if this is in excess of the Enforcement handbook (See Preliminary review above).

4. This is because the Handbook does not establish legal limits to fines, especially amounts of fine not contested. In fact, the payment of the fine by Renaissance means that either it has consented to its imposition OR it waives any and all objections it may have had initially against the fine. Under Liberian law, waiver is a voluntary relinquishment of a known legal right. Renaissance knew or can be deemed to have known that it had right to challenge the fine or appeal it. Its decision not to, but to pay, can therefore be considered as an informed business judgment. In conclusion, the fine imposed by FDA, although above US$10,000, is valid and has not raised any issue because Renaissance did agree to pay it and is reported to have already paid it without any challenge. The absence of a challenge means a consent, and there is no difference whether the consent was given before or after the fine was imposed; it is enough that there was no challenge or objection by Renaissance.

5. The point then has been that, if the Handbook becomes enforceable, either from being made a Regulation or from being made binding on people by administrative actions, then the previous limitations disappear (from the Handbook being previously regarded as guidance and not law), especially the limitations to possible reasons for suggesting that the TSC A2 case was out of FDA's jurisdiction (i.e., if it can be established that the thresholds of US$ 5'000 and US$ 10'000 below were exceeded, or that significant harm was made to the interests of a local community, or that the violation was criminal, which it definitely was on several accounts). In short: if the Handbook was considered enforceable, then the TSC A2 case was out of FDA's jurisdiction. So, could the Handbook be considered enforceable, or not?

   The answer is yes, but with a reiteration of the explanation about the limited legal effect of a manual. A manual is simply an approved or recommended way of doing something. Such "means" or "way" does not really affect the legality of the act or the interest of third party. (…) Subject to that, it can be confirmed that if the Handbook was made a regulation, it would have more legal weight, and any third party could enforce or seek a court or any other competent body to enforce the applicable requirements of the Handbook when made a regulation.

To conclude (at this point), while the Handbook remains as is (and even if it is made a regulation), any criminality will have to be determined based on the provisions of the NFRL, and not the Handbook. The Handbook or any regulation cannot define or make a conduct criminal. Under Liberian law, only the law makers have the right to say that a specified act or conduct is criminal, and then prescribe the punishment. Hence, the Handbook is not, has never been and can never be able to define any conduct criminal. With respect to TSCs and other forest licenses, only the NFRL passed by Liberia's lawmakers defined what is criminal.

Are there other possible reasons for suggesting that the TSC A2 case was outside FDA's administrative jurisdiction?

6. The limited legal effect of the FDA Enforcement Handbook as a manual was noted. However, there was a point that some of the provisions of the Handbook (that are possibly in favor of the suggestion the TSC A2 case was out of FDA's jurisdiction) may still have legal and therefore enforceable grounds, not because they are mentioned in the Handbook but because they are in the Law.

   Would this be the case, especially for violations that can be considered as criminal as per the NFRL?

   The response is yes, some of the provisions of the handbook which also have independent existence in other laws or regulations are enforceable. Their enforceability against or to third parties is not necessarily because they are contained in the handbook, but because they have the force of law to the extent that they are in other laws and regulations or their positions are also in other laws or regulations.

   If any of these conditions is not met or is exceeded, FDA must refer all alleged violations of the NFRL and its regulations to the Ministry of Justice (MoJ) to move the case into the court system.

Is it therefore possible to find "alleged violations of the NFRL and its regulations" that could mean that the two conditions above were far from being met, including:

(ii) "No significant harm to the interests of a local community":

There was certainly much harm done, from illegally logging a community land (regardless of any likely hidden deal for obtaining the agreement and/or silence of the community);

(iii) As per the list of crimes in Section 1.4 of the EH, based on what offenses the NFRL criminalizes?

A number of criminal activities have definitely been observed in the case of TSC A2:

- The use of forest resources without permission of the FDA;
- Conducting activities on public or private Forest Land in violation of guidelines or codes;
- Conducting any of these actions (...) without express written permission from the FDA (Sections 11.5): a. ... cut wood on land not in a Holder's license; b. Develop above-ground transportation conduits to transport products to areas outside those contained in the Forest Resources License;
- Environmental responsibility: a. Wasting or damaging Forest Resources, including the destruction of the long-term productivity of Forest Land;
- Regarding the trade or exportation of forest products: a. (...) transporting, (...) exporting timber [not] accurately enrolled in the Chain of Custody System; b. Exporting timber or forest products not in compliance with established standards;
- Administrative procedures: b. Not paying the fees assessed in connection with a Forest Resources License.

Can it therefore be concluded that, whatever the Handbook says, the TSC A2 case was outside FDA's administrative jurisdiction, for two possible reasons (the point regarding the thresholds being discarded):

1) If "significant harm done to the interests of a local community" was established, from Renaissance logging their land without any right to do so; and
2) Because the condition, that the violation should not be criminal, was not met on several accounts?

The response is Yes, the severity of the violations and probable or actual injury to the communities are among reasons why the case was out of the administrative jurisdiction of the FDA. To the extent there is un-rebutted evidence that the condition for FDA Administrative Jurisdiction to lie did not exist or that there was significant harm done to the interest of the community (which seems very clear), the TSC-A2 case was in fact beyond FDA administrative jurisdiction.

To conclude: Because of the number and severity of the criminal violations and of the significant harm done to the interest of the community, the TSC-A2 matter was beyond the administrative jurisdiction of the FDA. The Ministry of Justice should have asserted its jurisdiction over the case.

Other questions had included, for the IA:

- Why the fine had been issued on LLD letterhead;
- Why the payment had had 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;
- 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 it was always confident in the possibility to export the (illegal) logs, most likely so by circumventing the CoC system, which raises other questions (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 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 on such a large scale. One avenue, 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 inflate the declared/inspected inventory to cater for volume from outside / logs from other areas.

This has been found to be technically feasible, and it has reportedly happened in other countries in the Congo Basin, but unlikely in Liberia as being too complicated to do on a large scale. What could happen that one tree tag in the inventory is used to cut a nicer tree outside the boundary. (Stakeholder interview)

2) There exist ways in Liberia to export (legally or illegally harvested) logs outside the normal COCS, without an Export Permit (EP).

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 ports and border-crossing points (by road) and at entry points into local sawmills (See discussions related to waybills, checkpoints and border control as part of this Independent Audit (See Vol.2, 6.4.14, Efficiency of border control).

The Ministry of Commerce (MoC) is reportedly authorizing exports outside FDA, and FDA is not inspecting the containers authorized by MoC (although by law FDA is responsible).

It should also be investigated in LiberTrace if theoretical stocks of logs are building up at certain steps in the COCIS (and could not be found in physical stocks), suggesting that some supply chains do not end at the EP and shipment stage and are exported without an EP.

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 was 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;

    Follow-up legal research under Audit 5 has now concluded that it is illegal to extend any TSC, and that **it was illegal for the FDA to extend Tarpeh's TSC A2**. Any extension of a TSC undermines and violates Section 18.14 since it aborts the **automatic termination of the TSC** and also it frustrates **automatic reversion of the rights, permission and interest granted** by and within the TSC;
  - 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);

    New finding under Audit 5: **FDA also did not follow due protocols to authorize such extension for commercial logging** such as prior consent of, and agreements with the affected communities (Reg. 105-07, 31b1).
  - 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.

    There has been **no confirmation of a desktop audit for TSC A2** by the LVD LV Team using the 'Current regime for Export Permit' checklist.
- 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[31] or if it should have involved the Liberia National Police and the Ministry of Justice;

    Follow-up legal research under Audit 5 has now concluded that, because of the number and severity of the criminal violations and of the significant harm done to the interest of the community, the TSC-A2 matter was in fact beyond the administrative jurisdiction of the FDA.

[31] 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.

- 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 has kept waiting for an explanation, with no avail;
- Sample traceability tests in LiberTrace 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 logs 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 dates of (i) registration of the CROSS-CUTS and (ii) subsequent INSPECTION events, 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 raised questions. Any future investigation into the TSC A2 case should try to establish whether the declared cross-cut log dimensions may have been fabricated retrospectively on the basis of the inspected values and whether this may reflect any connivance between the operator and LVD staff.

    Inquiry to LVD under Audit 5, whether these important volumes of logs were really inspected each in one day, on a 100% sample basis, and with how many inspectors, or otherwise, has not, has not provided evidence that this was materially possible.
  - 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 a tag, 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), 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; some 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 are 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); in which case the 14'000 m3 of logs produced between August 6 and September 3, 2018 would be exceeded;
  - 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 were 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".

    Follow-up under Audit 5:

    FDA CFD was requested to explain how it was possible, in view of the situation that: 1) new blocks were still submitted by Freedom Group in TSC A2 for inspection; and 2) several blocks were already found

‘approved’ in LiberTrace, despite all inspection results however stating “Not Satisfactory”.

FDA CFD denied being aware of the situation and said this needed to be elevated to MD which, for the IA, reflected the political dimension of the case.

Follow-up under Audit 5:

The IA was made aware of the 'Independent Investigation into TSC A2' launched by the Ministry of Justice in October 2020. The IA has not been provided with a copy of the mission report and cannot comment on it.

As to whether measures have been implemented against the operator(s) involved, from the answer received from FDA all operations have been suspended until further notice and nothing has moved since Audit 4.

A different information heard by the IA is that Renaissance had not been suspended after paying the USD 100’000 fine and that SGS was ordered to let the remaining logs to be processed to export.

Conclusions:

The audit of the TSC A2 conducted during the IA’s Audit 4 mission in Liberia raised concerns for the current capacity of the FDA to exert a reliable control of important components of the LAS. The issues observed during that audit further undermined the reliability of the current export permit (EP) process.

Over **9’000 m3** of logs had been exported by Freedom Group through Monrovia Freeport up to September 2019, despite the following problems:

- All the trees were felled illegally by Renaissance Group between August 6 and September 3, 2018, *outside the concession area*. The logs were not confiscated and were instead accepted as ‘Special Felling’ (roughly **14’000 m3**, for “Route opening”), as only declared in LiberTrace in December 2018.
- The Stumpage Fees, although duly invoiced, were still unpaid as of November 14, 2019 (and the IA has no information that these have now been paid).
- **11’000 m3** of logs were then permitted by FDA for export by Renaissance (“Permission Letter” to LVD/SGS dated June 27, 2019), of which 4’665 m3 were already exported, following the payment of two fines (for USD 5’000 issued on November 02, 2018 and USD 100’000 on January 11, 2019). The stakeholders consider that these fines are too low. They do not even compensate the unpaid Stumpage Fees, the whole illegal operation thus resulting even more economical than a legal one for the Operator.
- The logging company Renaissance then became Freedom Group Liberia, Inc. 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 to Renaissance Group was issued by the FDA (vs. MoJ), what’s more to that discretionary amount, on LLD letterhead, and paid into the LRA Forestry Transitory Account; and what governed the use of these funds.

  The IA has now established that, because of the number and severity of the criminal violations and of the significant harm done to the interest of the

community, the TSC-A2 matter was beyond the administrative jurisdiction of the FDA and should have been moved to the Ministry of Justice.

- Traceability tests strongly suggest retrospectively fabricated records and connivance with the Operator: systematic cross-cutting declarations; with in many cases newly *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 might have inspired the latter); 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.
- LVD under Audit 5 has not provided evidence that it was materially possible to inspect those large volumes of logs reported at certain dates in the time available, each in one day, and on a 100% basis, with the number of inspectors involved.
- 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; all felled trees not yet located; etc.
- Poor FDA/LVD control of the situation in the field: illegal felling of 1,641 trees between August and September 2018 (as finally declared) that remained unnoticed or unreported; until awareness of the case eventually came from an external source; no 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 issued in January 2019, felling is said to have continued up to April 2019, thus uncontrolled by FDA (there are no records of it). The total volume of logs illegally produced in/around TSC A2 would in fact exceed the initial 14’000 m3.
- The local communities are described as having vested interests in the illegitimate logging and no desire to report the operator. It is thus 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 in November 2019 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, 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 ever since 2008 lawfully, 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 IA has now established that it was illegal for the FDA to extend Tarpeh's TSC A2 (NFRL, 18.12). Any extension of a TSC in fact undermines and violates Section 18.14 of the NFRL (automatic termination of the TSC, and automatic reversion of the rights, permission and interest granted by and within the TSC).

The FDA also did not follow due protocols to authorize such extension for commercial logging such as prior consent of, and agreements with the affected communities (Reg. 105-07, 31b1).

Whether all statutory requirements had been met by the owner at the time of the extension, there has been no confirmation of a desktop audit for TSC A2 by LVD against the 'Current regime' requirements for EP.

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). Yet the logging operator was allowed to submit new blocks for inspection and new blocks were found in the 'Approved' block inspections' section of LiberTrace (though inspected as "Not Satisfactory").

When asked to explain, FDA CFD denied being aware of the situation (though being responsible) and said this needed to be elevated to the MD which, for the IA, reflected the political dimension of the case.

The IA was made aware of the 'Independent Investigation into TSC A2' launched by the Ministry of Justice in October 2020. The IA has not been provided with a copy of the mission report and cannot comment on it.

As to whether measures have been implemented against the operator(s) involved, FDA CFD said all operations have been suspended until further notice and nothing has moved since Audit 4. The IA has had a different information, that Renaissance had not been suspended (after paying the USD 100'000 fine) and SGS had been ordered to let the remaining logs to be processed to export. The IA has not found any new EP issued to any exporter by the name of Freedom.

Note, for consideration by the Independent Audit in future: traceability for sawn wood bundles (for example tag number AA236AVF in Product history) does not seem to link back to one or several forest source(s)/ resource area(s).

Recommendations

Illegal felling in TSC A2 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.

FDA should not have extended Tarpeh's TSC A2 in the first place, as occurred several times in ten years, and it should not renew any FMC or TSC in future (NFRL 18).

FDA should have followed its own Regulations (e.g., Reg. 105-07, 31b1) to authorize the extension for commercial logging such as on the prior consent of, and agreements with the affected communities.

LVD should have conducted a desktop audit against the 'Current regime' requirements whether all statutory requirements had been met by the owner of the TSC A2 at the time of the extension.

The Ministry of Justice should have asserted its jurisdiction over the case.

Clear procedures, including due amounts, payment, should have been followed for imposing fines or other sanctions.

The Stumpage Fees should have been paid in time by either logging company involved, or no Export Permit issued.

All Export Permits should be reviewed for authenticity, issuance, and content.

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.

The IA had recommended referring this TSC and its successive extensions to the concession review panel and that a formal investigation be launched.

It is hoped that sufficient resources and intelligence were put into the 'Independent Investigation' of the whole TSC A2 case as the Ministry of Justice launched in October 2020, 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 recommendations: 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. The Ministry of Justice in October 2020 launched an 'Independent Investigation into TSC A2'.

The IA would also recommend in case a formal investigation was launched, to 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.

The IA has now registered a new high-impact **ISSUE** (ref. **HII 39** in the IA Progress DB) related to the above during Audit 5 with conclusions and recommendations:

ISSUE HII 39
Impact level: High;
Identified ISSUES: Tarpeh's TSC A2 multiple extensions by FDA were illegal, against the automatic termination of a TSC and automatic reversion to GoL of the rights associated with a TSC (NFRL 18.12 and 18.14). FDA also did not follow due protocols to authorize the extensions for commercial logging, such as prior consent of, and agreements with the affected communities (Reg. 105-07, 31b1). Pre-felling requirements were not complied with, but apparently no desktop audit was conducted by LVD; A great number of other critical issues transpire in the control of TSC A2 and management of the case*; Because of the number and severity of the criminal violations and of the significant harm done to the interest of the community, the TSC-A2 matter was beyond the administrative jurisdiction of the FDA.
"Recommendation(s)": FDA should not have extended Tarpeh's TSC A2 and should not renew any FMC or TSC in future (NFRL 18). FDA should have followed its own Regulations to authorize the extension for commercial logging such as on the prior consent of, and agreements with the affected communities (Reg. 105-07). The Ministry of Justice should have asserted its jurisdiction over the case. The IA had recommended referring this TSC and its successive extensions to the concession review panel and that a formal investigation is launched.
Mitigation measure: 'The Ministry of Justice in Oct. 2020 launched an 'Independent Investigation into TSC A2'. The IA has not seen the report and cannot comment on it.

* Trees felled illegally outside the concession area; Logs not confiscated, lately accepted as 'Special Felling'; Stumpage Fees unpaid; Two relatively small fines issued, not even compensating for the unpaid stumpage; Whole illegal operation resulting even more economical than a legal one for the Operator; History of events erased; Likeliness of fabricated records in connivance with the Operator; All records of Loading Requests missing in LiberTrace; Improbable inspected volumes; Reconstitution of events and reconciliation of data almost impossible; Illegal felling of 1,641 trees unnoticed or unreported; No further LVD CoC inspection in the forest; Felling said to have continued, uncontrolled; Real magnitude of the violation and Government revenue losses largely unknown; Strong indication that the massive illegal operation was always "covered"; Transition process from one operator to the next uncontrolled; New blocks submitted for inspection, found 'approved'; But FDA CFD denying being aware, saying this needs to be elevated to the MD, thus reflecting the sensitivity and political dimension of the case; No clarity whether operations have been and remained suspended or if the remaining logs were allowed to be exported.

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: This review has been archived in 7.4.3.1 (Approval of Forest Management operations – LM P4) in the Volume 2 of this Audit 5 report (A5R Vol.2).

6.2.4.2 Law Enforcement Division (LED)

Status: This review has not been significantly updated during Audit 5 and has now been archived in 7.4.8.1 (same heading) in the Volume 2 of this Audit 5 report (A5R Vol.2).

6.2.4.3 Public Affairs Division (PAD)

Status: The content of this section has now been archived in 7.4.8.2 (same heading) of the Volume 2 of this Audit 5 report (A5R Vol.2).

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

Status: The content of this section has now been archived in 7.4.9 (same heading) of the Volume 2 of this Audit 5 report (A5R).

6.2.6 Implementation of the role of Government bodies (Other MACs)

6.2.6.1 Environmental Protection Agency (EPA)

Status: The content of this section has now been archived under 7.4.10.1 (same heading) in the Volume 2 of this Audit 5 report (A5R).

6.2.6.2 Ministry of Labor (MoL)

Status: The content of this section has now been archived under 7.4.10.2 (same heading) in the Volume 2 of this Audit 5 report (A5R).

6.2.6.3 Liberia Revenue Authority (LRA), Government forestry revenue collection

Status: The content of this section was not significantly updated during Audit 5 and has now been archived under a new section created as 7.4.10.3 in the Volume 2 of this Audit 5 report on Government forestry revenue collection.

6.3 Review of the current issuance of Export permits

6.3.1 Introduction to the assessment (as per the Questionnaire)

Status: The content of this section has now been archived under 7.5.1 (same heading) in the Volume 2 of this Audit 5 report (A5R).

6.3.2 System-based assessment of Export permit issuance

Status: The following reviews have now been archived under 7.5.2 (same heading) in the Volume 2 of this Audit 5 report (A5R):

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 7.5.3.1.

6.3.3.2 Export permit sample testing

Status: Same as above, under 7.5.3.3.

6.3.3.3 Re-assessment and further assessment of EP Issuance during Audit 3

Status: Same as above, under 7.5.3.4.

6.3.3.4 Review of the current issuance of Export permits during Audit 4

Status: Same as above, under 7.5.3.5.

6.3.3.5 Miscellaneous issues for future attention

Export permits (EPs) issued for timber from third countries *via* Liberia: the EP system also applies to all (re-)exports from timber imports from third countries 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 7.3.11.9 and 7.3.11.10, regarding the current importance of imported timber, interviews conducted during Audit 3 have indicated "Not aware of any imports; there is zero data".

6.3.4 Recognition of available Due Diligence information (EUTR)

This new section in this Audit 5 report (A5R) has only been initiated by the IA, for consideration by the future IA.

6.3.4.1 Background

The EU Timber Regulation (EUTR) prohibits the placing on the EU market of illegally harvested timber and charges the importer (as "first placer") to implement a "Due Diligence" (DD) system. Specific DD information must be collected, and the associated risks must be assessed and mitigated until these risks become negligeable.

This investigation by the IA was proposed with a view to replacing the Activity 3.4 'Evaluation of verification procedures by the EU Competent authorities for release into the EU for free circulation' in the Contractor's Methodology.

Some agreed tasks in that Activity were "not applicable", not until the Licensing scheme becomes operational in Liberia:

- Audit the documentary and physical checks conducted at entry points for timber into Europe;
- Evaluate Liberian authorities' response to additional information requests from EU Member States (MS) authorities *in relation to FLEGT Licenses*.

A possible variation had been identified in replacement of the second task above:

- To 'Evaluate Liberian authorities' response to additional information requests from EU MS authorities*, or from importers in the EU or globally, in relation to the EUTR Due Diligence*'**,** the idea being to evaluate the link between current LAS implementation and EUTR DD requirements.

This suggestion then developed into a proposed '**Study on EUTR Due Diligence information regarding Liberia wood':**

- Regarding EUTR DD, there might in fact be scope, under this activity, for covering the broader issue of the *perception of the export verification procedures currently implemented in Liberia in meeting EUTR Due Diligence requirements, particularly the information that is currently available to importers in the EU or globally to support assurances of the legality of exports from Liberia, for EUTR Due Diligence purposes (i.e., LAS-based official documents and other information sources)*. The relevant regulation for reference would be the minimum requirements to be met for the issuance of the Export permits[32].

- The scope of the study would thus be to '**Evaluate EU importers' perception of available information on the legality of Liberian wood exports in the framework of EUTR Due Diligence**'.

For such assessment, the following tasks were further envisaged:

- To request information from the FDA (LiberTrace, LVD) on the volumes of exports to the EU, both in logs and sawnwood by EU country of destination (and if possible, per Export permit for the reason explained below);
- To ask the Liberian authorities (LVD) if they have received requests for information from EUTR Competent authorities or from private sector operators (importers) in the EU (for EUTR DD purposes) and evaluate their response;
    - **Note 1:** The question was asked to the SGS Liberia Project Manager during Audit 3; no such requests had been received and addressed (See A3R);
    - **Note 2:** These information requests could be inquiries on e.g., the authenticity or legitimacy of Export permits or questions of compliance with current legal requirements in Liberia for issuance of Export permits.
- To then contact the EUTR Competent authorities of the recipient EU MS (of such exports from Liberia), and EU-based importers of Liberian timber (previously identified through relevant means, like the Export Permits and/or to be researched in LiberTrace or requested from the FDA/LVD) or potential buyers (through their timber trade federations in the EU), to assess their experience of implementing EUTR DD for imports from Liberia.
    - This could include: understanding of the 'Requirements-for-Export-Permit-under-current-Regime' as current minimum requirements; evaluation by the EU side, EU Competent Authorities, importers and civil society stakeholders of export verification procedures currently implemented in Liberia, in relation to EUTR Due Diligence (DD); use/acceptance of Export Permits by

[32] Requirements-for-Export-Permit-under-current-Regime.pdf of Nov. 2016

importers as assumed evidence of legality for EUTR DD; use/acceptance of the claim that SGS' involvement in the LAS (now as Third-Party Monitor / surveyor of Export permit issuance until February 2021, countersigning EPs where found acceptable) effectively ensures the legality of exports, SGS being a reputable independent third-party; and use of Liberia country profiles on the Internet as sources of information / to assess the risks under EUTR DD).

Due to time constraints, this suggested activity has not been implemented yet and might be left to the consideration of the future IA or consultants.

Note: In July 2019, Timberleaks published an article about ongoing collaboration between French firms and suspicious exporters (https://www.timberleaks.org/amp/african-timber-from-firms-linked-to-bribery-conflict-and-illegal-logging-floods-into-france).

6.3.4.2 International recognition of Liberian Export Permits

In relation to the Export Permit (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:

- 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 (to be tested) – and (ii) can contact LVD in order to get the legality documentation available (to be audited).
- Then there would be a need to
  - 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;
  - 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).

6.3.4.3 Export volumes at stake

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. 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%**

Note: The modesty of volumes currently being exported may just reflect the *lack of trust* that potential international buyers place in the legality of Liberian wood exports (on the basis of the information that is currently available to them for identifying and assessing related risks that the wood may not have been harvested legally in Liberia).

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 also covered in this same Chap. 6.4.

This section builds on the Audit 1 to 4 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 4 report (A4R):

- If the Investigation was completed in A4R, the discussion has now been moved to Sections 7.3/7.4 in the Volume 2 of this Audit 5 report (A5R) for archiving;
- If further investigation was required, the discussion remained in Ch. 6.4 in this A5R Vol.1, if updated, or in A5R Vol.2 if it was 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 8: '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	N/A
Community Forest Management Agreements (CFMA)	2017	2018
Timber from artisanal logging [Chainsaw Milling]	2018	N/A
Timber from plantation [Plantation Forests]	2017	N/A
Timber from agricultural and mining concessions	2018	N/A

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 9: 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. Number of FMCs issued and currently valid: see **Annex 8.8** to **A4R, Vol.2** (Detail of forestry licenses, LEITI 2013); Other suggested sources: SGS/LVD reports, LiberTrace	**NFRL** 2006, Section 5.3 Others: The Act of the Legislature approving each FMC[33]
Timber sale contract (TSC)	First TSCs issued in June 2008 for 3 years. Number of TSCs issued and currently valid: see **Annex 8.8** to **A4R, Vol.2**; other sources (as above)	**NFRL** 2006, Section 5.4 Others: n/a[34].
Forest use permit (FUP)	FUPs cover specified Commercial Uses of forests: (i) Production of charcoal; (ii) Tourism; (iii) Research and education; (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. Note: Not in the Timber sources that are included in the LAS (See 7.3.5.3, Vol.2).	**NFRL** 2006, Section 5.5
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 VPA Ann. II, 2.1d: once regulation completed, amendments will be made to the LAS to reflect any additions. Other VPA requirements: Ann. II, 5.1b; App. A, 1,2b (Area that requires policy and legal reforms)	**Community Rights Law** (CRL) of 2009
Community Forest Management Agreement (CFMA)	First CFMA signed: see LEITI website Number of CFMAs signed and currently valid: see **Annex 8.8** to **A4R, Vol.2** (CFMBs); other sources (as above)	**Community Rights Regulations**, Sections 1,2, 2.12, Ch. 7 **Nine-step Handbook**

Table 10: Other laws/regulations approved and enforceable

[33] 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.
[34] 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.

Scope of the regulation	*History and current status*	*Relevant legislation*
FDA Ten Core Regulations Regulation 101 - 07 Public Participation Regulation 102 - 07 Forest Land Use Planning Regulation 103 - 07 Pre-qualification Regulation 104 - 07 Tender, Award and Administration Regulation 105 - 07 Pre-felling Operations Regulation 106 - 07 Benefits Sharing Regulation 107 - 07 Forest Fees Regulation 108 - 07 Chain of Custody Regulation 109 - 07 Penalties Regulation 110 - 07 Rights of Private Land Holder	All dated September 7, 2007, signed by the then FDA MD, and effective on September 11, 2007 (no official "gazetted date" besides the date of each regulation)	**NFRL** 2006
FDA Regulation No. 111-10 on Procedures to Access and Manage Funds on Behalf of Affected Communities by Community Forestry Development Committees (CFDCs)	Due to be effective on "September August 15, 2010". Known to be valid and effective, but no signed copy has yet been found (so, there is no confirmation it has been approved officially). A similar Reg. 114-10 exists, due to be effective on July 4, 2011; it may have superseded Regulation No. 111-10, however no signed copy of it has yet been collected either.	
An Act to Abolish the Payment of Annual Land Rental Bid Premium on Contract Area and Merging of Export Taxes into Stumpage/ Production Fee in the Forestry Sector of Liberian Economy	17th September 2013 The referenced law was a draft and was not passed. It is thought the law to abolish payment of land rental was by way of an executive order. A copy has not yet been found.	
Abandoned Logs, Timber and Timber Products	Drafted in 2012; re-draft submitted for FDA approval (2017); officially gazetted[35] as Regulation 116-17 (October 24, 2017). Ann. II, 2.1f: product to be incorporated into the system once it has been auctioned and new legal ownership established. Other relevant VPA requirements: Ann. II, App. A, 1,2c (Area that requires policy and legal reforms). (See below note from Audit 5)	
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). VPA requirement: Ann. II, App. A, 1,2h (Area that requires policy and legal reforms). See below note.	

[35] i.e. published, thus enforceable

Scope of the regulation	*History and current status*	*Relevant legislation*
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). VPA Ann. II, 2.1g: regulation to be incorporated into the LAS once developed and before FLEGT licensing becomes operational. Other VPA requirements: Ann. II, 5.1e; App. A, 1,2d (Area that requires policy and legal reforms). See below note.	
Sustainable Wood-based Biomass Energy Production and Marketing in Liberia	Officially gazetted as Regulation 119-17 (October 24, 2017). Covers fuel wood, charcoal, briquettes, etc. 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 Based on a Forest Use Permit (FUP).

*Note from Audit 5 regarding '**Abandoned Logs, Timber and Timber Products**':*

- After the Regulation was approved over 3 years ago (October 2017), an assessment was finally conducted in August 2020 by FDA, leading to substantial volumes (over 25'000 cu.mt. just in Region 3). The IA has been provided with a copy of the report with the volumes by logging companies, species etc.).
- This report gives an overview of the results of the once-off work of the team, but there is no date, no author/s, no signatures. So, the IA cannot determine the official status of the document, which in itself constitutes another issue, hampering transparency of information, accountability and enforcement action.
- The Regulation now needs to be enforced: confiscation? taxation? etc. Late enforcement action becoming an issue. FDA-CFD advised that "*the abandoned logs assessment report has been revised to precision of location and other information to enable management to take appropriate decision*". The result of such claimed revision is unknown (why would the IA been provided with the unrevised report?), but/and clearly management has not made any decisions based on this report.

*Note from Audit 5 regarding '**Confiscated Logs, Timber and Timber Products**:*
There is a question whether the Confiscated Timber Regulation is easily implementable in practice, or focuses too much on abandoned timber, whereas it should also support the confiscation of *non-compliant and illegal* logs that have been rejected for export and their sales (for local processing) through auctions (Stakeholder interview).

The IA has now registered a new high-impact **ISSUE** (ref. **HII 40** in the IA Progress DB) related to the above during Audit 5, with conclusions and recommendations:

ISSUE HII 40
Impact level: High

Identified ISSUES: Abandoned Logs' Regulation approved in October 2017 (over 3 years ago), assessment finally conducted in August 2020 by FDA, leading to very substantial volumes (over 25'000m3) just in Region 3 (left to rot, felling/stumpage fees and post-harvesting taxes not paid, etc.). But the document does not constitute an official report (no date, no author/s, no signatures), which is another issue, hampering transparency of information, accountability and enforcement action. FDA-CFD advising the assessment report has been revised (but has only provided the IA with the unrevised report). Late and slow enforcement action becoming a real issue. Interestingly, the assessment team noted a number of other non-compliances (e.g., logging outside contract area, undersized logs, chain saw operation).
Recommendation(s): The Regulation needs to be enforced: confiscation? retrospective taxation? etc. The report itself provides a few relevant practical recommendations (increased field monitoring by FDA mainly during the dry season, by well-equipped and decently paid field scalers in sufficient numbers).

Table 11: Regulations cancelled or suspended

Name	*History and current status*	*Relevant legislation*
Private use permit (PUP)	First PUP awarded in November 2009 (Lofa County). 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, President Sirleaf issued the Executive Order No. 44 imposing a (temporary) Moratorium on Private Use Permits. 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. However, two points are worth noting: 1. PUP is still a recognized forest resource license under the NFRL; and 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. Based on the foregoing, it is fair to say that the Government or FDA may lawfully issue a PUP under current Liberian law[36]. See below: Private Use-Permit (PUP) Regulation.	**NFRL** 2006, Section 5.6

New regulations still under development, not yet approved:

- **Private Use-Permit (PUP) Regulation:**

[36] 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.

- Regulation drafted, regionally vetted and awaiting board approval (7th JIC Aide-memoire, Annex 2).
- Status update on Key Regulations and Guidelines (8th JIC AM, Ann. 6):
  1, ii. The FDA Management team forward this (…) regulation relevant to the VPA implementation to its Board for approval;
  4.ii. On the instructions of the FDA Board of Directors, the FDA Management sent this (…) regulation to MFGAP;
  5. ii, b. The regulation was sent to reviewers, HPA.
  6. Feedback on the remaining regulations from HPA is due.

- **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 Volume 2, **Annex 8.9** (Status of the Guidelines for Plantation Forests)). 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'. However, the 'Sustainable Wood-based Biomass Energy Production and Marketing in Liberia' Regulation (2017) covers fuel wood, charcoal, briquettes, etc.
- **Import Logs, Timber and Timber Products**:
  - Drafting started in early 2012; pending EU Comments (as of Nov. 2017); (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 (…) 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 (…) Imported Timber Regulations is one on the first tasks of the new EU VPA support project". [7th JIC Aide-memoire, Art. 19]
  - Regulation drafted, regionally vetted and awaiting board approval (7th JIC Aide-memoire, 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.

- "The FDA provided an update on the status of regulations and procedures relevant to the implementation of the TLAS. It was highlighted that the (…) Regulations on (…) Imported Logs, Timber and Timber products has satisfied the review process by the FDA Board. The FDA Board has asked FDA management to take the necessary steps to put [the instrument] in place". (8th JIC AM, Status of Regulations and Procedures (TLAS) and the Legality of Liberia's forest concessions, Art. 58).
- "Liberia expressed growing concern over the delay in the official submission of EU comments and review of the Regulations on (…) Importation of Logs, Timber, and Timber Products. The EU agreed and expressed however, that there has not been a formal submission from the EU to Liberia on these regulations because there is a need for a comprehensive review to ensure that these regulations are globally aligned with other VPAs. The EU indicated that this feedback will be provided by the end of the first quarter of 2021". (8th JIC AM, Art. 61).
- Status update on Key Regulations and Guidelines (8th JIC AM, Ann. 6):
  1, viii. The FDA Management team forward this (…) regulation relevant to the VPA implementation to its Board for approval;
  2.ii. After deliberations on whether or not to approve the mentioned instruments, the Board resolved: The approval of the (…) Imported Timber Regulations for subsequent processing consistent with the Executive Law (procedures for issuing regulations);
  3. Consistent with the Board's desire for an alternative opinion, it requested support from MFGAP.

▪ **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, 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.

- "The FDA provided an update on the status of regulations and procedures relevant to the implementation of the TLAS. It was highlighted that the (…) Regulations on Transit Timber (…) has satisfied the review process by the FDA Board. The FDA Board has asked FDA management to take the necessary steps to put [the instrument] in place". (8th JIC AM, Status of Regulations and Procedures (TLAS) and the Legality of Liberia's forest concessions, Art. 58).
- "Liberia expressed growing concern over the delay in the official submission of EU comments and review of the Regulations on Transit Timber (…). The EU agreed and expressed however, that there has not been a formal submission from the EU to Liberia on these regulations because there is a need for a comprehensive review to ensure that these regulations are globally aligned with other VP As. The EU indicated that this feedback will be provided by the end of the first quarter of 2021". (8th JIC AM, Art. 61)
- Status update on Key Regulations and Guidelines (8th JIC AM, Ann. 6):
  1, vii. The FDA Management team forward this (…) regulation relevant to the VPA implementation to its Board for approval;
  2.ii. After deliberations on whether or not to approve the mentioned instruments, the Board resolved: The approval of the Transit Timber (…) Regulations for subsequent processing consistent with the Executive Law (procedures for issuing regulations);
  3. Consistent with the Board's desire for an alternative opinion, it requested support from MFGAP.

- **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[37].
  - 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, Art. 55)

[37] 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

- Revised Chainsaw Milling Regulation 115-11: regulation drafted, regionally vetted and awaiting board approval (7th JIC Aide-memoire, 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 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."
- The FDA letter 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.
- "FDA indicated that the Board has also requested additional external reviews of several draft regulations and instruments including the Chainsaw Regulation (…)". The FDA committed that the review of these two instruments should be completed within three weeks of the JIC, after which both can be approved for further validation of public participation". (8th JIC AM, Art. 58)
- Status update on Key Regulations and Guidelines by the FDA (8th JIC AM, Ann. 6):

  1, i. The FDA Management team forward this (and several other) regulations relevant to the VPA implementation to its Board for approval;

  3. Consistent with the Board's desire for an alternative opinion, it requested support from MFGAP;

  4.i. On the instructions of the FDA Board of Directors, the FDA Management sent this (and other remaining regulations and guidelines) to MFGAP;

  5. ii, b. The regulations were sent to two reviewers.

  6. There has been initial feedback on the Chainsaw Regulations (…):

  i. Chainsaw regulations are drafted more like a statute and not a regulation interpreting a statute. Reviewer to provide final (technical and other feedback) within two weeks.

  ii. (…)

  iii. Both instruments were not forwarded with records evidencing compliance with Regulation 101-07 on Public participation (requirements for (i) public involvement in rulemaking and (ii) record keeping.

- **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).
- 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 (Ref. 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);
  - Amendment to Regulation No. 109-07 on Penalties and Administrative Enforcement: regulation drafted, regionally vetted and awaiting board approval (7th JIC Aide-memoire, Annex 2);
  - Status (VPASU, 03.11.2019): Proposed Amendment to Penalties Regulation, drafted by VPA-SU1, pending approval;
  - Status update on Key Regulations and Guidelines (8th JIC AM, Ann. 6):
    1, iv. The FDA Management team forward this (…) regulation relevant to the VPA implementation to its Board for approval: Regulation No. 109-07 on Penalties and Administrative Enforcement (Amendment);
    4.iv. On the instructions of the FDA Board of Directors, the FDA Management sent this (…) regulation to MFGAP;
    5. ii, c. The regulations were sent to reviewers, HPA.

6. Feedback on the remaining regulations from HPA is due.

- **Guideline/Manual and Procedure for Accessing Timber Resource Wastes/Residues:**
  - Regulation drafted, regionally vetted and awaiting board approval (7th JIC Aide-memoire, 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 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: Draft Regulation for Timber Resource Waste/Residue Commercial Utilization."
  - Status update on Key Regulations and Guidelines (8th JIC AM, Ann. 6):
    1, iii. The FDA Management team forward this (…) regulation relevant to the VPA implementation to its Board for approval: Timber Resource Harvesting Wastes/ Residues Commercial Utilization Regulation;
    4.iii. On the instructions of the FDA Board of Directors, the FDA Management sent this (…) regulation to MFGAP;
    5. ii, b. The regulations were sent to reviewers, HPA;
    6. Feedback on the remaining regulations from HPA is due.
- **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).
- **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).
  - Status update on Key Regulations and Guidelines (8th JIC AM, Ann. 6):
    1, v. The FDA Management team forward this (…) regulation relevant to the VPA implementation to its Board for approval: Regulations on the Revised Forestry Fiscal Policy;
    4.v. On the instructions of the FDA Board of Directors, the FDA Management sent this (…) regulation to MFGAP;
    5. ii, d. The regulations were sent to reviewers, HPA;
    6. Feedback on the remaining regulations from HPA is due.
- **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:** not currently relevant (as recalled in 6.1.6.4 Timber markets in this report, and 7.3.1.9 in A5R Vol.2) 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 (…) takes consideration of *ECOWAS regional trade treaties and their integration into the LAS*"). There is no such signed ECOWAS regional trade tariffs or treaties that might have an impact on, and should therefore be incorporated in the LAS.

"FDA indicated that the Board has also requested additional external reviews of several draft regulations and instruments (…). The status of the **remaining regulations** and those **instruments the FDA Board is currently finalizing**, are outlined in Annex 6 of this Aide Memoire". (8th JIC AM, Status of Regulations and Procedures (TLAS) and the Legality of Liberia's forest, Art. 59)

Wildlife Regulation drafting: Efforts were being made by the FDA and partners to draft a Wildlife Regulation. The law firm of Heritage Partners & Associates (HPA) was hired by FFI on behalf of FDA and relevant stakeholders to draft the regulation. The first draft of the regulation has been submitted and under review by the stakeholders. (IA Legal Expert)

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 7.3.16 in A5R, Vol.2 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	Being monitored under 6.4.1.2 (below)
(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)

	Policy area	Status of the regulation
(e)	Integration of Independent Certification Schemes	See Vol.2, 7.3.8.5 (Legality verification of operators working under an independent forest management certification scheme): no indication of any independent certification scheme approved yet by the GoL nor of any Operator already working under any independent certification scheme.
(f)	Debarment List	Being monitored under 6.4.1.2 (below)
(g)	Processing facilities	Regulation on Timber Processing # 112-08 being monitored under 6.4.1.1 (above)
(h)	Third Party Access and Use of Forest Products	Approved and enforceable (See above)
(i)	Chainsaw Regulations	Chainsaw Milling Regulation # 115-11 being monitored under 6.4.1.1 (above)

The IA had registered a high-impact **ISSUE** about the slow development of new regulations and application to the LAS, referenced **HII 13** in the IA Progress DB, and had updated it under Audit 4.

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** remained open as revised.

IAWG comment to A4 Report

Issue/ Risk Ref No.: **HII 13**	
MC&R No.: **3.1**	
Area/Element of the VPA/LAS: **Legal and regulatory framework**	
Identified ISSUE description: 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.	
IA's Recommendation: For JIC: Maintain or increase efforts to finalize the necessary law reforms to support the VPA implementation process. Steadier development and implementation of new regulations, including through a revision of the Legality Matrix	
FDA's Response (formal, 201118): The following regulations have been approved by the FDA Board of Directors:	IA REVIEW:
*Regulation on Imported (Logs) Timber Product	*Agree
* Regulation on Transit Timber & Timber Product	* Agree
* Revised Forest Fiscal Policy	* No; sent to MFGAP and lawyers for review (8th JIC AM, Ann. 6)
* Revised Regulations on Penalty and Administrative Enforcement	* No; sent to MFGAP and lawyers for review (8th JIC AM, Ann. 6)
List of regulations that were sent to MFGAP for legal review by a law firm.	
• Commercial Use Contract (CUC)	• Agree
• Liberia Forest sector compliance and enforcement handbook	• Agree
• Manual and procedures for LVD	• Agree
• Manual and procedures for operators	• Agree
• Regulation for timber resources	• Agree (if same as Procedure for Accessing Timber Resource Wastes/Residues?)
• Regulation on harvesting wastes/residues	
• Regulation on commercial utilization	• Not identified as such
• Revised chainsaw regulation 115-11	• Agree
FDA's Response (informal, 201126): The slow development of new regulations for the full application of the LAS is recognized. This is being addressed by capturing the activities under the Liberia Forest Sector Project (LFSP) to be carried out by the Legal office of the FDA in consultation with the various FDA Departments.	

(*Audit 5 re: HII 13:*) Several key regulations have still not been approved, most profoundly the Chainsaw regulation, the Commercial Use Contract, the Compliance and enforcement handbook, and the LVD procedures.

These are under legal review but the IA is aware of many technical issues with for example the LVD SOPs that need to be fixed as a priority.

Other regulations have been approved but not implemented, for example the Regulation on abandoned logs (See HII 40).

The IA has updated the high-impact **ISSUE** referenced **HII 13** in the IA Progress DB 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. Several key regulations have still not been approved, most profoundly the Chainsaw regulation, the Commercial Use Contract, the Compliance and enforcement handbook, and the LVD procedures. These are under legal review but the IA is aware of many technical issues with for example the LVD SOPs that need to be fixed as a priority. Debarment list and list of prohibited persons not available, and ever 'missing' since 2013 for some existing concessions.
Recommendation(s): Steadier (technical and legal) development/review and implementation of new/existing regulations and tools, feeding into a revision of the Legality Matrix.

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 above)	Yes, but not yet in the LAS LM
(b) Chainsaw logging operations	Being monitored under 6.4.1.1 (above)	No
(c) Imported timber	Approved and enforceable (See 6.4.1.1 above)	Yes, but not yet in the LAS LM
(d) Timber in transit	Approved and enforceable (See 6.4.1.1 above)	Yes, but not yet in the LAS LM
(e) Confiscated timber	Approved and enforceable (See 6.4.1.1 above)	Yes, but not yet in the LAS LM

(*Audit 5, Further research by the IA and question to SGS/LVD:*) Which of these (new) sources have been introduced in the COCS (i.e., the COCS SOPs, and the COCIS/LiberTrace)?

- It seems to be the case only for (a) above (and SGS confirmed it is the case);
- A search in the SOPs with the words “chainsaw”, “imported”, and “transit” has revealed nothing. This may just reflect the fairly recent enforceability status of some of these regulations (as indicated) though also a lack of anticipation in updating the SOPs.
- SGS: (c) Imported timber is managed in the COCS through Special Entry (logs from Côte d’Ivoire);
- Regarding (e) Confiscated timber, 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”. SGS: introduced in the COCS but not applied (yet); a few logs ‘withdrawn’ in LT by SGS/LVD, but none confiscated yet;
- Reminder of VPA Ann. II, 2.1g: regulation to be incorporated into the LAS once developed and before FLEGT licensing becomes operational. Other relevant VPA requirements: Ann. II, 5.1e; App. A, 1,2d (Area that requires policy and legal reforms).
- LVD, Audit 5: “None” ...

Reminder: The development of new regulations is an on-going process that is being monitored under 6.4.1.1.

Table 12: 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

Name	*History and current status*	*Relevant legislation*
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). TBC See below notes.	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. SAs are enshrined in concession agreements between logging operators and affected communities (See IA's research on Benefit sharing).	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) or just LVD SOPs	Official July 2016 version. Updated July 2018, now Version 3.0 dated 190121 (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)'). SOPs for COCS (covering LM Principles 6, 7, 9 & 10): draft revision by SGS pending approval (191103, VPASU), This is a VPA requirement (Ann. II, 5.1 inter alia); see the review in 6.1.9.1 (SOPs) See below update.	TBC
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 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

Name	*History and current status*	*Relevant legislation*
The **"Nine Steps" Handbook**	Checklist for establishing an authorized forest community, published July 2017[38]. 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. 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. 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 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). Implementing agencies: EPA, FDA, FDA/REDD+ Implementation Unit.	CRL ECOWAS ILO UN

[38] 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)

*Audit 5 - Notes regarding the **Debarment List**:*

- The establishment of a debarment list is required by existing FDA Regulations (TBD).
- According to the VPA (Ann. II, A1.2f, TBC), it aims at identifying "those individuals who contributed to the civil war of Liberia and are thus banned from working in the forest sector". The debarment list or another list (to be confirmed/ identified) targets other categories (such as Government officers).
- 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).
- (…) only CFMAs are now operating. As reported by several confidential sources, it would occur that politicians and even FDA officers are the unofficial owners, behind the scene. Note: This is what the Debarment list should prevent if it was put in place. There is also a question why CFMA applications require "sponsorship", often by GoL, and whether these two things might be related (6.2.3.8).
- Discussion during the IA Stakeholder Workshop (Monrovia, 2-3.12.2020): It will be a framework. It is targeting people not meeting the requirements of the **PPPC Act (**former VPASU staff).
- That the Debarment list and the list of prohibited persons are not available, and have been 'missing' ever since 2013 for some existing concessions, is a critical issue. This has been added to HII 13 for further reference.

*Official update on **LVD QMS Manuals of Procedures** as part of Audit 5*

Status update on Key Regulations and Guidelines (8th JIC AM, Ann. 6):
1, vi. The FDA Management team forward this (…) regulation relevant to the VPA implementation to its Board for approval;
4.vi. On the instructions of the FDA Board of Directors, the FDA Management sent this (…) regulation to MFGAP;
5. ii, e. The regulations were sent to reviewers, HPA.
7. Feedback on the remaining regulations from HPA is due.

Audit 5: Board has approved the latest version of the SOPs [unsure which one]. VPASU is working on container inspection procedures for the CoC – target date is end of March 2021. January 2019 CoC has been updated and is being used, but has not formally been approved (apparently through a resolution) by the Board.

Note: The IA received from VPASU Versions 3.0 of both LVD Staff and Operators ("Dated 01.21.2019 by Abraham Sheriff, After QMS Internal Audit recommendation for LVD ISO9001 certification purposes"). The one for Operators confusingly says "Manual of Procedures for LVD staffs" in the header. In the absence of formal evidence of approval, and until further notice, the IA is therefore still living under the official 2016 versions. A quick look at these 2019 updates shows that the procedures for export in containers (for LVD Staff), just as an example, have not been improved at all since the (draft) July 2018 version, anyway. The updated is likely not to have been improved despite of all the issues highlighted by the IA in

the successive audit reports (See HII 11, in Vol.2, 7.3.6.8, and HII 15 in Vol.2, 7.4.6.1).

Other new tools 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).
  - "(…) MoJ emphasized that the FDA Board should prioritize the approval of the Compliance and Enforcement Handbook as this instrument is of high importance in terms of managing non compliances. MOJ requested that this instrument be fast tracked and approved by the next JIC meeting. MOJ emphasized and the EU agreed that the JIC needs to agree on a process and timeframes for the EU to review and return comments on pending regulations". (8th JIC AM, Art. 60)
  - "The MoJ further highlighted that the FDA Board has taken steps towards the approval of the draft Enforcement and Compliance Handbook (…)". (8th JIC AM, Law Enforcement and Non-Compliance, Art. 20)
  - "FDA indicated that the Board has also requested additional external reviews of several draft regulations and instruments including (…) the Compliance and Enforcement Handbook". "The FDA committed that the review of these two instruments should be completed within three weeks of the JIC, after which both can be approved for further validation of public participation". (8th JIC AM, Art. 59)
  - "MoJ emphasized that the FDA Board should prioritize the approval of the Compliance and Enforcement Handbook as this instrument is of high importance in terms of managing non compliances. MOJ requested that this instrument be fast tracked and approved by the next JIC meeting". (8th JIC AM, Status of Regulations and Procedures (TLAS) and the Legality of Liberia's forest concessions, Art. 60)
  - Status update on Key Regulations and Guidelines (8th JIC AM, Ann. 6):
    1, x. The FDA Management team forward this (…) regulation relevant to the VPA implementation to its Board for approval: **The Forest Sector Compliance and Enforcement Handbook**; and

5. ii, a. The regulations were sent to reviewers, Atty. Joel E. Theoway, MFGAP Legal Support via Ministry of Justice;
6. There has been initial feedback on the (…) Forest Sector Compliance and Enforcement Handbook: ii. (It) needs to layout (clearly) procedure to adequately inform users. Reviewer to provide final feedback within three weeks; and iii. Both instruments were not forwarded with records evidencing compliance with Regulation 101-07 on Public participation (requirements for (i) public involvement in rulemaking and (ii) record keeping.

- **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[39] (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 finally *report*" (**Note:** the IA still has no evidence of this); "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".
- New '**Code of Forest Harvesting Practices for Sustainable Chainsaw Milling in Liberia's Forests'**:
  - "New CFHP on Chainsaw developed in consultation with LICSATDUN while awaiting the approval of the Chainsaw regulation and LICSATDUN are conducting training" (LICSATDUN, 30 Nov 2020).
  - No indication it has been officially approved yet. The IA has obtained copies of it and discussed with VPA implementation partners. The IA concurs with the view that it is a cheap and poor copy of the "real" CFHP (with a lot of copy-paste from it), that there can only be one code for all operators, and that anything else is misleading and confusing.
  - The current "New Code of Forest Harvesting Practices on Chainsaw" poses a risk of causing confusion and thus undermines the ability to mitigate non-compliance by the chainsaw operator fraternity due to the existence of now two separate codes. There is no necessity to have reinvented the existing code and adapting it for the chainsaw cutting, as it is equally relevant in its current form to chainsaw operations as it is for other harvesting operations. If anything, any gaps relating to chainsawers that may be identified could

[39] Final draft release 26 March 2018, subject to review by SGS/LVD and DFID and to JIC approval

have been addressed through an addendum to the current code for this purpose.

The IA raised a new, medium -impact **ISSUE** (ref. **MII 20**) about this situation in the IA Progress DB:

ISSUE MII 20
Impact level: Medium
Identified ISSUE: New chainsaw code produced overlaps with current code. There can only be one code for all operators, and that anything else is misleading and confusing.
Recommendation: Keep only one Code for all harvesting operations. Any gaps relating to chainsaw operators that may be identified in the current CFHP can be addressed through an addendum to it for this purpose.

*Notes and official update on the **Commercial Use Contract** as part of Audit 5*

- From 6RM6: **New Commercial Use Contract** [CUC] **template for use by CFMBs**: With support provided by ClientEarth, the National Union of CFMBs (NUCFMB) have agreed a model Commercial Use Contract template for use by CFMBs in negotiating any third-party contract relating to their community forestry. The model contract template has been a subject of interactive review for many months, and was finally validated in early March 2020. The validation ceremony at the Golden Key Hotel was attended by officials of the FDA, representatives of logging companies, many CSOs, and nearly all members of CFMBs.
- "UK FCDO highlighted that currently there is no [**CUC**] template for community forests between 35,000-50,000 hectares". (8th JIC AM, CFMAs and the TLAS, Art. 52)
- "The FDA provided an update on the status of regulations and procedures relevant to the implementation of the TLAS. It was highlighted that the **Commercial Use Contract Template (CUC)** (…) has satisfied the review process by the FDA Board. The FDA Board has asked FDA management to take the necessary steps to put these (…) instruments in place. The EU acknowledged the passing of the CUC Template and the importance of this as a step forward in improving the governance of community forestry". (8th JIC AM, Status of Regulations and Procedures (TLAS) and the Legality of Liberia's forest concessions, Art. 58)
- Status update on Key Regulations and Guidelines (8th JIC AM, Ann. 6):
  1, ix. The FDA Management team forward this (…) regulation relevant to the VPA implementation to its Board for approval: **Commercial Use Contract Template**;
  2.i. After deliberations on whether or not to approve the mentioned instruments, the Board resolved: The approval of the **Commercial Use Contract Template** as a guide for negotiating Medium Scale Third-Party Commercial Use Contract for CFMAs;
  3. Consistent with the Board's desire for an alternative opinion, it requested support from MFGAP.

6.4.1.3 Applicable legal framework in the implementation and operational phases of the VPA

Status: This review has now been archived under 6.4.1.3 (same heading) in the Volume 2 of this Audit 5 report (A5R) for consideration by the future IA to pursue.

6.4.2 Minimum cutting diameters

The first part of this review has been archived under 7.3.6.9 in the Volume 2 of this Audit 5 report (A5R). It has continued under 7.3.5.9 in this Volume 1.

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 to Vol.2 in 7.3.7 for archiving (with the same heading), where it has however been updated.

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 to Vol.2 in 7.3.8.6 for archiving (with the 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: initially completed in previous reports, and moved to Vol.2 in 7.3.10 for archiving (with the same heading), where it has however been updated.

6.4.6 Management of non-conformances under the VPA

Status of this review: initially completed in previous reports, and moved to Vol.2 in 7.3.13 for archiving (with the same heading), where it has however been updated.

6.4.7 FDA field inspections (Commercial Forestry Dept.)

Status: The following reviews have now been archived under 7.4.1, as 7.4.1.1 to 7.4.1.4 (with the same headings) in the Volume 2 of this Audit 5 report (A5R), where they have however been slightly updated.

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: initially completed in previous reports, and moved to Vol.2 in 7.4.6.3 for archiving (with the same heading), where it has however been updated.

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: previously completed under 6.4.9 in A4R, Vol.2, it has now been moved to under 7.4.3 (Pre-felling requirements) in the Volume 2 of this Audit 5 report (A5R) for archiving, where it has however been updated.

6.4.10 Functionality of the COCIS software (LiberTrace)

Status of this review: initially completed in previous reports, and moved to Vol.2 in 7.4.7.1 for archiving (with the same heading), where it has however been updated.

6.4.11 Implementation of the role of Government departments, Data management by the LVD

6.4.11.1 Incorrect information loaded on LiberTrace

This review was completed in previous reports and can now be found unchanged under 7.4.6.5 (Implementation of the role of Government departments, Data management by the LVD, Incorrect information loaded on LiberTrace) in Vol.2.

Follow-up during Audits 3 to 5 actually led to other issues, and the updated parts of the initial review continue below under new headings.

6.4.11.2 Late capture of the logs in LiberTrace

Reminder of LVD Procedures:

- **'Tree Felling** Forms' (formerly TDF - Tree Data Form[40]) are uploaded into LiberTrace on the basis of the tagged long logs from felled trees. The data must be submitted before any further operations (cross-cutting, transport, sale) and in any case no later than 30 days after the date of felling corresponding to the maximum time allowed to pay the stumpage fee. (LVD Staff Procedure 11 - Felling/ Tree data Registration)
- Trigger for invoicing of **Stumpage fees**: Tree felled. Payment term: 30 days after felling date and in any case before loading (if exported). (LVD Staff Procedure 32 - Fee Management)
- LiberTrace does automatic consistency checks with the previous steps (Inventory, Resource Area, etc.). Inconsistencies are flagged. COC staffs can conduct a desk review and, *if necessary*, the OM *may* decide to conduct targeted **Post-Felling verification/ Stump inspections** in the forest on the basis of LiberTrace reconciliation results and/or (monthly, during the dry season, as per the KPIs) routine verification (10% of the block felled). Post-Felled Tree Form uploaded to LiberTrace. LiberTrace does new consistency checks and inconsistencies are again flagged. The Technical Manager informs and shares the results with FDA LED for further action. (LVD Staff Procedure 12 - Felling Verification/ Stump Inspection)
- **Cross-cutting** operations can be conducted on the log landing. New tags are affixed to each new child log. Operator staff fills in 'Cross-Cutting Forms' (formerly LDF - Log Data Form[41]). LVD staff uploads the data to LiberTrace. The Operator reviews the data and submits it to LVD before any further

[40] The reason for this name change, from previous SOPs, is unclear to the IA.
[41] The reason for this name change, from previous SOPs, is unclear to the IA.

operations take place (subsequent cross-cutting, transport, sale). LiberTrace performs new automatic traceability checks. (LVD Staff Procedure 13 - Cross-cutting/ Log data Registration)

- **Waybills** are prepared, and then submitted to the LVD, for allowing the transport of logs or timber products from one place to another. The Operator must have requested and paid for the waybills. LVD prints 5 blank copies of the waybill to be transmitted to the Company. Upon loading, Operator field staff fills in the Waybill (manually). 3 copies go to the driver (one for driver, one for the inspector at the checkpoint and one for the recipient), 1 for the Company, and 1 for FDA/LVD. LVD staff uploads the data to LiberTrace, the Operator reviews the data and submits it to LVD before any further operations take place (subsequent transport, processing, export, etc.). (LVD Staff Procedure 14 - Transport Declaration)
- FDA COC Inspection team conducts inspection and completes **Checkpoint Inspection** Form. COC Inspection team verifies the Barcode tags. LVD uploads Checkpoint Inspection Form(s) received from the field in LiberTrace ("as soon as possible" within KPI timeframe). Inconsistencies are flagged. (LVD Staff Procedure 15 - Transport (Checkpoint) Inspection)
- **Timber Yard/ Export Permit (EP) Inspections** may be conducted inside a Resource Area, on an Operator Site or on a Public Site. LVD COC staffs verify the labelling, measuring and declaration of logs, timber products and other products declared. Before the inspection, Operator must record the data into LiberTrace and submit it to LVD. LiberTrace performs automatic reconciliation with previous steps' data. Inconsistencies are flagged. For EP, LVD Data Information Manager assesses the need of inspection; LVD OM schedules Timber Yard Inspections on the basis of LiberTrace reconciliation results and/or routine verification. LVD CoC Inspector performs inspection in the designated area (Inspection Form uploaded in LiberTrace "as soon as possible" within KPI timeframe). Inconsistencies are flagged but the timber products can continue to move on and be declared along the supply chain. (LVD Staff Procedure 19 - Timber Yard Inspection/ Export Permits Inspection)
- Where inconsistencies are flagged, the logs or timber products flagged can however still continue to move on and be declared along the supply chain.

Another potentially critical issue that was not fully investigated during the previous audits was the **late capture of logs in LiberTrace** (LT): from a sample of 15 logs listed on a way bill of logs delivered to the logyard, as part of a field audit to an FMC during Audit 3, 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* to establish their legitimate origin.

Another finding still is that 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 either, which in fact relates to the same reason: the late capture of logs in LT (See below).
(*Audit 5:*) Enforcement of the 'Abandoned logs' Regulation is covered in this Audit 5 report (A5R), Vol.1, 6.4.1.1.

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 1: The "30 days" rule had not yet been reviewed by the IA and this has been followed on in the Audit 3 report (See below).
IA response 2: The abandoned logs were identified as such because the blocks visited were areas where harvesting (and skidding) had been completed, which the operator confirmed.

Important note on the barcodes: While *barcoded 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 using the (alphanumerical) numbers that are on the tags and also become the log numbers that are also painted on the log butt ends. This has consequences (See HR 10, recommendation to implement electronic field data management in Liberia).

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**, apparently late in the process, and possibly as a way of delaying the payment of taxes to the last moment before logyard inspection (hence abandoned logs are not captured either)*,

(ii) whether or not all **previous inspections** that are due in the process were yet **completed for these logs****, and

(iii) whether the full **chain of custody is included in the software** (i.e. captured in LiberTrace) in due course (for being checkable in near-real time), if ever – 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 harvesting (Stumpage fees) and some 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 effectively being done, especially in the current context of scarce presence of FDA inspectors/ auditors in the field, before and whereas the logs are actually declared for logyard inspection just before export? With some possible exception for a small sample of stumps in the forest for some blocks? This latter question relates to the rate/ frequency of back-to-stump traceability inspections/ checks by LVD, also posed in 6.2.3.11 and 6.2.3.1.2.

(*Audit 5:*) This question raised the need to 1) try to figure out all inspections that are due along the chain up to exit, and then 2) whether some of these inspections may have been missed or neglected due to the late capture of the logs in the system. Due to time constraints and the need to focus on specific areas, only the first aspect has been covered during Audit 5 (See 6.4.11.3 'Inspection responsibilities of various bodies in the supply chain in Liberia', below). The second aspect will be for the future IA to consider.

****FDA comment:* "transportation is captured in the chain of custody."

IA response: Is it realistic to state that logs are being checked at checkpoints whereas the IA understands waybills are filled in retrospectively, only when the logs are declared for logyard inspection just before export? This other issue of the use and control of waybills would need to be followed on by the next IA (See 6.4.11.4 'Waybills and checkpoints', below).

(*Audit 5, Question to FDA*:) FDA to also confirm that waybills are filled in retrospectively, only when the logs are declared for logyard inspection just before export.

(*LVD, Audit 5:*) "*Waybill are fill in with the corresponding information bush landing to log yard: Product tag, Operator name, Operator Tin, Location of origin, Location of Destination, Arriving date, Truck License Plate #, Driver Signature, Loading Supervisor Signature, name of receiving supervisor and etc. All waybill are inspected by CFD staff at all checkpoint.*"

Review by the IA: As often, LVD replies describing what should be done, no what is being done in practice (see below), therefore just denying the problem.

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), which provided the following findings, clarifications or confirmations:

- 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.

  Follow-up with FDA CFD meeting under Audit 5:

  "The Operators have 30 days after felling to *declare logs into LiberTrace*". "The Operators have 30 days after the declared felling date to *pay the stumpage*". FDA to please provide the exact references of the two related regulations and relevant LVD SOPs.

  FDA CFD meeting notes during Audit 5: In the NFRL it says you need to pay 30 days after the tree is felled. But not practical – cannot be done in 30 days.
- In practice, the felling date information is often made up (it just has to be within the Annual coupe expiry date).
- The system is indeed only retrospective. There is no access to traceability data on the field and during transport until the logs have been declared in LiberTrace; and it can only be accessed through the server, once the logs have been declared (for later reconciliation with field inspection data (Note: if any), one against the other, either way). But the logyard is a mandatory step (logs are 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 (See tentative solutions below*). Only if the Annual coupe is declared finished or has expired, LVD can reject declarations 30 days later (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)?
  * On the basis of a clear list of all inspections as tentatively gathered in 6.4.11.3.
  - SGS/LVD: No, landing inspection is not due;
  - What about post-felling inspection(s)? (See above)
  - What about waybill declaration? (Often done retrospectively; see above, and below).
- It is 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[42] without control [at checkpoints, how possible?]. Waybill must [just] exist [i.e. be declared] in the COCIS between the TDF (Tree Data Form) in the forest and the logyard. [Waybill therefore also used in retrospect?]

  (*Audit 5*:) The IA sought confirmation whether this reflects 100% of current practice, or exceptions.

  The IA in fact understands that:

  - The logs would first have to be declared (TDF, LDF) before using the waybill. And Operators want to do it later, so they use the waybill manually (waybill manually filled at the log landing) but won't yet declare the logs. Some trucks may even circulate without any waybill, especially if there are no checkpoints on the itinerary. And there's no (LVD) waybill from the export logyard to the port.
  - "Retrospectively": all these declarations can happen within only 2 or 3 days.
  - But waybill data is actually not even being regularized (not uploaded by the company) retrospectively in LiberTrace [Doesn't need to be?].

  Why is it so, and why is this being accepted as standard practice?

  (*LVD, Audit 5:*) Waybills are filled in manually, reviewed by parties (CFD, OP & LED) before the departure of the truck conveying the logs; SOP 14.7 is not practicable.

  Is there no **control of timber at road checkpoints**? Which MAC is responsible for the checkpoints: FDA-CFD or else?

  - Not CFD as such, but a committee under the Manager of the Forest Products / Marketing & Revenue Forecast unit in CFD.

[42] Waybills issued by SGS/LVD, taxed by booklet; carbon copies at/in origin, truck, FDA, SGS/LVD.

- "Checkpoint people are only happy to take some money, they are not trained at identifying and checking timber (and not interested in doing so)". (stakeholder comment)

How many checkpoints yet exist in Liberia for non-timber forest products?

(*LVD, Audit 5:*) Checkpoints are control by National State Security and FDA staff (Law Enforcement Officer) to execute FDA Regulations on timber and wood products trucking.

Who uploads the waybill data to LiberTrace?

(*LVD, Audit 5:*) "Operators are oblige to upload the waybill unto LT and verify by LVD".

Tentative solutions for consideration by the future IA (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 (30 days after felling) 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: Field checks of harvesting operations are needed to detect, among others, both undeclared felling of above 30 days and abandoned logs.
- SGS/LVD: Correct, if abandoned logs are not declared* and not checked, they will not be taxed, implying a loss of government revenue.

  * See what the regulation on abandoned timber provides for in terms of declaration and taxation (including when a portion of the tree is abandoned or left waiting).

  IA research for this report: As per the 'Abandoned logs' Regulation 116-17 of October 2017, unattended logs are deemed to be abandoned 30 working days after discovery by the Authority. It is an offense (liable to a fine and other penalties) to intentionally or negligently cause any logs to become abandoned. So, there is no right for a logging operator to abandon logs in the forest.

  But only CFD Inspectors could do these inspections and detect the problem (i.e. the late declaration of log data in LT and its multiple implications), from the field. And, more systematic inspections* (or without waiting for the felling declaration) would require a lot more staff to inspect logs and stumps in the forest.

  * See 6.4.11.3 'Inspection responsibilities of various bodies in the supply chain' below: Due frequency of CFD inspections and LVD audits? To be compared with actual frequency as audited: confirms that field inspections are currently very scarce (i.e. very far from systematic)?

  Current possible limitation: What triggers the post-felling inspection/ audit is (only) the felling declaration (TDF)?

6.4.11.3 Inspection responsibilities of various bodies in the supply chain in Liberia

This analysis has been initiated here. For future consideration, it could also belong to a broader topic like in Chapter 6.1.7.3 'Verification and licensing framework'.

Follow-up with FDA CFD meeting under Audit 5:

The idea was for FDA to be requested to provide the full summary list of those systematic inspections that must be done along the chain up to exit by e.g. CFD and LVD and indicate, for each type of inspection: Type of inspection, Responsible FDA Dept. and Office, Frequency or Trigger, Method, Sampling rate (% (of the number or volume?) of trees, logs, cross-cut logs, stumps, etc. checked or audited), where in LiberTrace the inspection result can be found, where the inspection reports can be found and, where possible, the related Legality Matrix Indicator or Verifier. (i.e., List of all inspections (checks, audits) that must be done along the chain up to exit and key details).

The following, very partial information has been supplied by the Commercial Department of the FDA (CFD), as per FDA CFD meeting notes during Audit 5:

- Pre-awarding inspections: Evaluation of the land, Socio-economic survey, document review. Due diligence
- Post-awarding inspections
- Pre harvest (block) (one inspection before the block starts) Document review – justification documents
- Ongoing (daily)
- Post-harvest inspection once off (after)
- Check points (headed by a committee and reporting directly to top management)
- From arrival time at bush landing, LVD takes over and no further inspections by CFD.

Note on actual implementation: Even though the above information was requested from CFD, not further evidence of field inspections of any nature was presented for the 2020 calendar year. Monthly Production and Activities reports were presented, but excluded the months of May, October, November, and December. Furthermore, there is no evidence of any follow up work on outstanding issues raised in reports neither have any fines been issued to operators since the last audit.

Over the duration of the IA's mandate, the IA has struggled to find clear procedures for every FDA Dept. (CFD/ CyF/ LED/ PAD etc.) clearly indicating who does what, when, with which sampling rate if not 100%, with which output, reporting to whom etc.

The IA has consistently concluded to the lack of existing procedures, templates, checklists etc. properly developed and approved. Even the LM is often vague in terms of assigning responsibilities to a particular FDA Dept. and providing details of what each inspection consists of.

The table below gives a draft summary of the various inspections/audits that need to occur by the relevant government departments. In order to indicate what is occurring consistently and accurately, orange color coding is used.

Here the IA has tried to collate and assemble information collected from different sources (e.g., VPASU, the LM, FDA CFD/ LVD, other MACs, SGS TPM), to describe what the IA understands as being the key inspections that should be conducted by CFD, LVD CoC Unit, SGS (TPM), LVD LV Unit, and some other bodies.

In doing this, the IA aimed to make a useful contribution, documenting current practice where no, or little relevant documentation currently exists.

This however also demonstrates the numerous limitations and information gaps in the LAS management system and serves to confirm the very significant risk that this poses to legal compliance verification and enforcement in Liberia.

Table 13: Inspection responsibilities of various bodies in the supply chain in Liberia

Type of inspection	FDA CFD inspectors	LVD inspectors	SGS inspectors	LVD auditors	Other FDA Depts./MACs
Pre contract award					
Document review	Review once off No SOP available			Annual No SOP available	
Land review	Review once off No SOP available			Annual No SOP available	
Socio economic survey				Annual No SOP available	CyFD: Review once off No SOP available
Compartment plan (bridging)	Review once-off FM guidelines			Annual FM guidelines	
Post contract award					
Social agreement					CyFD: 5 years for FMC and 3 years for TSC
25-year strategic management plan	Once off – within two years of contract being awarded FM Guidelines			Annual FM guidelines	
Inventory or Stock Survey Verification Uploaded SSF routine plausibility check by LiberTrace Desk verification of block and sketch map Inventory field inspection Consolidating the inspected data on LiberTrace Recommending block approval to CFD-NAD		Annually Field inspections carried out based on 5% sample of each block (i.e., 20 cells out of 400) Cells are randomly selected by LiberTrace FM Guidelines, but no SOP available	Ad-hoc when shortcomings are identified in Libertrace or complaints sent to SGS	Annual FM guidelines	

Type of inspection	FDA CFD inspectors	LVD inspectors	SGS inspectors	LVD auditors	Other FDA Depts./MACs
Compartment plan	5 years FM guidelines, but no SOP available			Annual FM guidelines	
Pre-felling block inspection	Field verification of SSF and block map (trees that should not be felled, terrain condition, location of log landings/skid trails, etc.), but no SOP available Block approval		Ad-hoc when shortcomings are identified in Libertrace or complaints sent to SGS		
Annual Operations Plan (AOP)	Annual FM guidelines			Annual FM guidelines	
Pre harvest (block)	Annual CFHP checklist	Continuous Checkpoint way bills		Annual CFHP checklist	
During harvesting	Ongoing CFHP checklist			Annual CFHP checklist	Annual CFHP checklist
Post harvesting (block)	After harvesting is complete and block is closed CFHP checklist			Annual CFHP checklist	
Post-harvest (end of season)	Annual Compliance certificate - not available			Annual	
Stump inspection		LiberTrace routine check of declared felled trees Depending on discrepancies, OM schedules inspections Routine inspections carried out during dry season as per KPI Manual of Procedures for LVD Staff, V.3, SOP 12	Ad-hoc when shortcomings are identified in Libertrace or complaints sent to SGS	Annual CFHP checklist	

Type of inspection	FDA CFD inspectors	LVD inspectors	SGS inspectors	LVD auditors	Other FDA Depts./MACs
Verification of felled trees at log landing	Verification of tree felling as per SSF (currently not done) Scaling/recording of felled trees at log landing using tally sheets or TDF Timely submission of tally sheets/TDF for invoicing stumpage fees Verification of waybill No SOP available		Ad-hoc when shortcomings are identified in Libertrace or complaints sent to SGS		
Transportation of logs from landing to log yard at checkpoints	FDA committee reporting to MD: Continuous (100%) Check points - waybills	Check points - weigh bills Use LVD Checkpoint Inspection Form Ongoing (sample) Manual of Procedures for LVD Staff, V.3 SOP 15	Ongoing (sample) Check points - waybills	Annual (sample) Check points - waybills	
Storage of logs on log yard		Continuous (100%) Log data form	Continuous (100%) Log data form	Annual CoC SOPs	
Loading, sealing and transporting containers from log yard to the port for shipping	Ongoing Log data form No SOPs available	Per container Log data form No SOPs available			Law enforcement: Per container LRA: Per container Log data form No SOPs available
Transport of logs from Log yard to Port		Continuous (100%) EP request prepared by client and uploaded EP issued by MD + Spec No SOP available		Annual No SOP available	

Type of inspection	FDA CFD inspectors	LVD inspectors	SGS inspectors	LVD auditors	Other FDA Depts./MACs
Loading of logs from portside to vessel		Continuous (100%) Spec No SOP available	Continuous (100%) No SOP available	Annual No SOP available	
Signing off logs on vessel ready for shipping		Continuous (100%) Export Permit, Specification, Loading Report, Certificate of Origin and Bill of Lading (BL), Loading Report No SOP available		Annual No SOP available	
Issuance of EP	MD's office SGS approved file			Per shipment Current Export Permit Regime (46 activated verifiers) last updated Nov 2016.	
Issuance of Export Permit declaration					Customs and Excise: Per shipment UNCTAD/ASYCUDAWorld MOC Per shipment Export Permit Declaration (EPD)
Processing of logs		Continuous Raw Material Input Batch, Finished Products Output Batch		Annual No checklist covering LM	MOL and FDA Annual No checklist covering LM
Exporting of lumber		Continuous (100%) Raw Material Input Batch, Finished Products Output Batch		Annual No checklist covering LM	
Company Audit				Company audit is being conducted as a part of Legality Audit is conducted at least	

Type of inspection	FDA CFD inspectors	LVD inspectors	SGS inspectors	LVD auditors	Other FDA Depts./MACs
				annually to verify compliance towards Legality Matrix against each principle. No SOP available, but Legality matrix checklist available	
Field Audit				Field audit conducted as a part of Legality Audit is conducted at least annually to verify compliance towards Legality Matrix against each principle. No SOP available, but Legality matrix checklist available	
Annual Compliance Audit Report (ACAR) *Contract Administration* *FLED*					FLED: To be prepared for each Forest License/ Permit Holder Content of audit report: The location and ownership of the land subject to the Forest Resources License; The volume and location of wood available for harvest under the Annual Coupe; The volumes and monetary values of the harvested Forest Resources, processed Forest Products, and exported Forest Products, in total and by species, produced under the Forest Resources License; The amounts of any fees and taxes assessed, and the amounts paid; The nature and monetary value of benefits provided to local communities, in total and by community; and The charges of violations and the arrests, settlements, and convictions associated with

Type of inspection	FDA CFD inspectors	LVD inspectors	SGS inspectors	LVD auditors	Other FDA Depts./MACs
					Operations under the Forest Resources License and associated commerce in Forest Products; the penalties, if any, assessed or agreed to; and the penalties actually paid. NFRL Section 3.4 Annual Audit

6.4.11.4 Waybills and checkpoints

This section has been created to collate all (even still row) information collected regarding waybills and checkpoints, for further consideration by the future IA.

Waybills and checkpoints are a VPA requirement (**Ann. II, 5.5i**): "(…) the Liberian police will check that all loads passing checkpoints have the required waybills with them.

Waybills are used for transportation of crosscut logs from the bush landing to the export log yard. Then no waybills are used from log yard to port.

Waybills are issued by SGS/LVD, and taxed by booklet. Waybills are filled in by the Operator with the following information: Product tag No., Operator name, Operator TIN, Location of origin, Location of Destination, Arriving date, Truck License Plate #, Driver Signature, Loading Supervisor Signature, Name of receiving supervisor etc.

Long logs are declared into LiberTrace through the felling declaration (Felling Form), which triggers the invoicing of Stumpage fees, and then the "final", crosscut logs with their new log tags are declared when the Cross-Cutting Forms are submitted to LVD, before any transport (supposedly) and any sale/export.

As seen before (See 6.4.11.1 above), however, the declaration tends to be done as a trigger for the log/timberyard inspection (if any is decided) and before the Export Permit Request is submitted to LVD anyway before export.

Likewise, in practice, the waybills are filled in (manually) at the log landing for the transport (with copies for origin, truck, FDA, and SGS/LVD). According to LVD in two separate statements, waybills are (or should be?) reviewed by parties (CFD, OP & LED) before the departure of the truck conveying the logs, and Operators are obliged to upload the waybill unto LT and it is verifed by LVD. But, in actual practice, the waybills are submitted to LVD through LiberTrace only *retrospectively*, after the logs have been transported and declared to LVD. Some trucks may even circulate without any waybill, especially if there are no checkpoints on the itinerary.

Waybill data must just exist (i.e., be declared) in the COCIS between the TDF (Tree Data Form) in the forest and the logyard. According to a source, waybill data is actually not even being regularized (not uploaded by the company) retrospectively in LiberTrace (which thus seems to have become "acceptable" as standard practice).

For these late-declared logs, the full chain of custody is therefore not included in the software in due course and time – for example the transportation from the log landing in the forest to the company log/timberyard is not covered while it occurs. The chain of custody is only reconstituted retrospectively (even if all these declarations can happen within only 2 or 3 days). And then from log yard (including container loading sites) to port no official waybills are used and transportation is admittedly not captured in the software either for that leg (the logs exit the chain of custody when they are declared loaded onto a ship, but no transport is recorded as such).

All waybills are (supposed to be) inspected by CFD staff at all road checkpoints. In reality, logs circulate without control at checkpoints.

According to LVD, checkpoints are controlled "by National State Security and FDA staff (Law Enforcement Officer) to execute FDA Regulations on timber and wood products trucking". From other sources, the MAC that is responsible for the checkpoints is not even CFD or LED as such, but a (formal/informal?) committee under the Manager of the Forest Products / Marketing & Revenue Forecast unit in CFD.

Checkpoint people collect money but are not checking timber (they are not trained at it and in fact not concerned).

Two press articles were reported by the IA in its Sixth Six-monthly Progress Report (6MR6) regarding Government revenue collection:

- One controversy article published in February 2020 by Front Page Africa: 'Why LRA Collectors Aren't Assigned at those FDA Checkpoints?'[43]; and

  Relevant extracts, summarized:

> FDA is "ensuring" that the appropriate taxes, fees and levies are collected from those using the forest products.
>
> But the accountability of said monies that are paid to the FDA via mobile money has come under scrutiny. Even the LRA wasn't ready to give an answer to this newspaper (…) whether the FDA is depositing the collected monies in the Government of Liberia's Consolidated Accounts (in the Central Bank of Liberia, as it should).
>
> FDA has been collecting hundreds of thousands in Liberian dollars as levy on non-timber products at various checkpoints across the country but said money is not deposited in government revenue account. The monies collected are transferred into a mobile money account after being collected in physical cash by the agents at checkpoints across the country.
>
> The mobile money number, 0888-207721, though registered as FDA (Central Office), is mobile number of (…), Marketing Manager. All 30 checkpoints across the country transfer fees collected to his mobile money number.
>
> The fees are collected on non-timber products like sawn timber [IA: ?!], charcoal, round pole/rafer, bamboo, rattan cane, rattan (bitter root), Raphia palm fond, xylopia fruits, fuel wood, chewing sticks, natural honey, palm wine, specialty wood species, tree bark, bitter root, etc. Prices for various items varies [IA: Is there any kind of official pricelist?].
>
> In addition to lack of accountability of these funds, checkpoint agents are complaining that (…) they have not been paid for several months [even if], for January alone and from one point of collection, more than half a million dollars was collected in revenue (agents assigned at the Klay checkpoint in Bomi County were able to raise and transfer a total of L$570,415).
>
> Assuming, all 30 checkpoints collected at least L$500,000 (US$2,551) for January alone, the government should have realized more than US$75,000.
>
> "We collect a lot of money and it is all transferred to a mobile money account. The top hierarchy at the FDA have been mismanaging this money and diverting it to their personal use instead of depositing into government's revenue account," an agent who preferred anonymity told FrontPageAfrica.
>
> We at FrontPageAfrica are concerned why aren't LRA agents, who are trained in such matters, assigned at each of these 30 checkpoints to collect the revenues, which is due government? We think this is a grave mistake on the part of the LRA. For too long many bad Liberians have duped this country of its lawful revenues. (…)
>
> The FDA should be made to account for every cent it has collected and it should henceforth begin to deposit every fee into the GoL's Consolidated Account. The LRA must at once move to assign agents at each of these FDA's checkpoints.

[43] https://frontpageafricaonline.com/uncategorized/why-liberia-revenue-authority-collectors-arent-assigned-at-those-forestry-development-authority-checkpoints/

- Another article also in February 2020 by The Liberian Observer: 'FDA Managing Director Outlines Constraints'[44] which reads as a recognition and justification by FDA.

  Relevant extracts, summarized:

> The current trend of the economic situation causing hardship in Liberia does not only border on the ordinary people, but also on agencies of the government as evidenced by delay in salaries and ineffective operations of many institutions of government due to budgetary constraints. One of such institutions of government is the FDA (…)
>
> FDA Managing Director [MD], Mike Doryen says financial constraint facing the entity is enormous like any other government agency in the current situation, highlighting the welfare of staff, logistics and power maintenance as key among the confronting issues. "We are like any government entity that has an allotment coming from the Ministry of Finance to us. This allotment, in the past and in my time, has not been coming for the past six, seven or eight years".
>
> At a media engagement forum on February 26, 2020, the MD said to remedy the situation confronting everyone at all levels now, FDA has to be innovative to devise strategies that will enable the entity to generate money for sustainability.
>
> Primarily, FDA generates money from commercial logging which goes directly to the government's consolidated account. Since money generated through this medium does not go to the FDA account, the MD said they have to devise other means to generate money from non-timber products, and **this collection is carried out at various checkpoints**. **Non-timber products** from which fees are collected include charcoal, dried meat, round poles, etc.
>
> This strategy of generating revenue has been yielding fruit, dating from the days of MD Doryen's predecessors to now, as indicated in the following statistical data: In 2018 the FDA collected L$2.3 million and L$2.03 million in January and December respectively [vs. L$4.7 million and L$3.1 million in 2015, at the highest].
>
> However, this progressive approach according to MD Doryen had some fluctuations that got them to decide on introducing a Mobile Money collection system to curb the financial improprieties. (…)
>
> "With this introduction, we were able to raise L$5.24 million in December 2019 from our existing sources, plus $840,000 that was sent to their operational account, and L$13 million in January of the same year," said the MD.

Note: Only non-timber forest products (NTFPs) are mentioned, no checking of logs or other timber products is mentioned (with one erroneous exception for sawn timber listed among NTFPs, and "specialty wood species").

How many checkpoints yet exist in Liberia for non-timber forest products? From the first article above, there would be 30 checkpoints in total.

The apparently last coverage of the waybill issue by the JIC was the 7th JIC:

> **'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".
>
> IA: This seems to refer to missing waybills in LT.

[44] https://www.liberianobserver.com/news/fda-managing-director-outlines-constraints/

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 re: **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. (…)*".*
- IA: Neither this statement nor the reminder are informative in respect of any particular issue.

If logs admittedly circulate without control, it means illegitimate logs can also circulate undetected over that segment of the chain of custody.

6.4.11.5 Summary of findings for this section

The logyard is a mandatory step in the COCS (logs no longer going from forest directly to port as before).

Waybills and checkpoints are a VPA requirement (Ann. II, 5.5i); and also, a LM requirement (e.g., under Verifiers 6.1.1-2, 6.2.3, 6.5.2, and 9.3.5).

Waybills are used for transportation of crosscut logs *from the bush landing to the export log yard (or the sawmill)*.

But no waybills are then admittedly used *from log yard (including container loading sites) to port*. That logs are allowed to circulate without a waybill undermines the possibility of using the checking of waybills (at fixed checkpoints or by the police) as a way of ensuring that e.g., no illegal logs circulate on Liberian roads in the open, uncontrolled, that log tags are not used several times, and that waybill fees are collected.

All logs, duly bearing a log tag after crosscutting at the log landing in the forest, should be declared through submitting the Log Data Forms (LDFs) to LVD in LiberTrace, before any transport and any sale/export (LVD Staff SOP 13).

The barcode system of the log tags associated with LiberTrace is not operational in the country: the encrypted *barcoded number* is not used for electronic traceability, allowing quick and secure tally checks during inspections and at checkpoints.

From a sample of log waybills during Audit 3, the logs could be found in the logyard of the audited FMC but not recorded in the COCS of LiberTrace (LT), not allowing any positive back-to-stump traceability test in the system.

As it was found, the logs first have to be declared before using the waybill but Operators tend to do it later, so they use the waybill but won't yet declare the logs.

The logs are in fact often captured in LT later in the harvesting process, and so the preceding felling declaration is also lately regularized (through submitting the Tree Data Form (TDF) to LVD in LT), likely so as a way of delaying the payment of Stumpage and other post-harvesting fees to the last moment before log/timberyard or Export Permit (EP) inspection.

This will also delay any targeted or routine Post-Felling verification/ Stump inspection in the forest.

Operators eventually declare a (reconstituted) date of felling, within no more than 30 days before paying the Stumpage fee (and within the Annual coupe expiry date).

For SGS/LVD in March 2018, that logs are not traceable back to stumps in the forest until they are declared in LT was *the main problem the COCS is facing*. But SGS/LVD said they have no way of detecting/ checking the late felling declaration (unless through CFD monitoring forest operations, which is apparently not systematically done, or else by checking the logging company's books retrospectively, which is apparently no common practice?).

Another aspect of such practice is that abandoned logs, not being declared as part of the TDFs and LDFs, will not be declared either at all in the system and might never be so until a CFD/LVD post-felling inspection eventually detects them (See 6.4.1.1, assessment having revealed over 25'000m3 of abandoned logs in August 2020 in Region 3 only). If abandoned logs are not declared and not checked, they will not be taxed, implying a loss of government revenue.

Likewise, waybills are (manually) filled in at the log landing but are often submitted to LVD through LT only *retrospectively*, after the logs have been transported and eventually declared to LVD just before export. Some trucks reportedly even circulate without any waybill, where there is no checkpoint on the itinerary (adding to the same above issue).

Waybill data must just exist (i.e., be declared) in the COCIS between the TDF in the forest and the logyard. According to a source, though, waybill data is actually not even uploaded retrospectively by the company in LiberTrace, which suggests that this has become "acceptable" as standard practice and that waybill data is in fact being ignored in the COCS verification process.

All waybills should then be inspected by CFD staff at road checkpoints (LVD Staff SOP 15). In reality, logs circulate without COCS-related control at checkpoints. All 30 checkpoints across the country are controlled not by LRA, or not by CFD or LED as such, but by a committee under the Forest Products / Marketing & Revenue Forecast unit Manager in CFD. They collect fees on non-timber products and do not check log/timber trucks (or only to collect money). The collected monies are admittedly not deposited into the Government's consolidated revenue account, but transferred to a mobile money account of the FDA under the discretionary control of FDA Management.

The full chain of custody is therefore not captured in LiberTrace in due course and time - i.e., while logging and transport operations occur. There is no access to traceability data on the field and during transport; and it can only be accessed through the server, once the logs have been declared (for later reconciliation with field inspection data, if any is collected). There is thus no way of checking compliance (for e.g., origin, prohibited species, diameter, use of log tags etc.) before the logyard.

So, the chain of custody system is only reconstituted, retrospectively. And then from log yard to port, no official waybills are used and, even if the logs exit the CoC only when they are declared loaded onto a ship, no transportation is recorded as such for that leg.

It is thus obvious that, by many aspects, the LVD Staff Procedures 14 (Transport Declaration) and 15 (Transport (Checkpoint) Inspection) are not being implemented nor enforced. This is another SOP-related issue. LVD said that SOP 14.7 (IA: Data review and submission to LVD) was "not practicable".

Tentative solutions identified include (for potential recommendation by the IA):

- Dissociate felling declaration and payment of stumpage: FDA to give 20 days to declare felling, then 10 more days (30 days after felling) to pay the stumpage. It might indeed make sense to dissociate the triggering event (felling) and the taxation in this case, because of the traceability implications;
- 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);
- Make sure LiberTrace reconciles TDFs and LDFs to detect abandoned logs as well (as would reflect a significant difference in volume between the tree, the long log and the crosscut logs) as per the relevant regulations in force;
- Increase the field checks of harvesting operations by CFD/LVD CoC Inspectors / Auditors to detect, among others, late felling declarations (of above 30 days) and abandoned logs; and to trigger post-felling/stump inspections by LVD;
- Effective checking and recording in LT or stamping of waybills through all fixed and mobile checkpoints during transportation to the export logyard. This would enable automatic reconciliation in LT for inconsistencies (like declared felling date posterior to checkpoint checking date) and random verifications (such as a credible itinerary for the truck);
- If waybills were to be declared before transport, instating a limited laps time to use the waybill so that it cannot be used several times (with the log tags transferred to other similar logs).

6.4.11.6 Conclusions and recommendations for this section

The IA had registered both a medium-impact ISSUE (ref. MII 14) and a high **RISK** (ref. **HR 6**) in the IA Progress DB about this situation, both now updated and MII 14 upgraded to a high-impact **ISSUE** as **HII 41** as follows:

ISSUE HII 41 (formerly MII 14)
Impact level: High
Identified ISSUE: **Late and false declaration of log production and transport in LiberTrace.** It has become common practice in Liberia not to declare felling and crosscutting in LiberTrace until the logs are prepared for export in the export logyard (against LVD procedures). The whole forest-to-logyard COCS information is thus only reconstituted retrospectively, and the logs circulate without waybill data being recorded in LiberTrace. Meanwhile CFD/ LVD/ SGS are not aware of the actual felling, the logs are not traceable back to stumps in the forest (if checked), compliance (for e.g., origin, prohibited species, diameter, use of log tags etc.) cannot be checked, and payment of stumpage fees (and other post-harvesting fees) is delayed, as well as any targeted or routine post-harvesting inspection in the forest. In the absence of field checks by CFD/LVD CoC Inspectors, abandoned logs may not be discovered either and will not be taxed or fined, and government will lose revenue. Waybill data may not even be uploaded retroactively and is in fact ignored (for consistency checks) in the COCS verification process.

Recommendation(s): Penalize false declarations; Check logging companies' books retrospectively for actual felling and transport dates; Dissociate felling declaration (20 days) and payment of stumpage (10 more days) to encourage early registration in COCS; Use the declared use of the barcode tag to detect late felling declarations and no-declarations (abandonment) of long or crosscut logs; Make sure LiberTrace reconciles TDFs and LDFs to detect abandoned logs as well; Increase field checks of harvesting operations by CFD/LVD to detect, among others, late or absent felling declarations, and to trigger post-felling inspections by LVD; Enforce waybill declaration before transport, with a limited validity time to ensure waybills are only used once; Effectively check waybills through fixed or mobile checkpoints and reconcile/ verify data in LT (like declared felling vs. checkpoint date; itinerary).

RISK HR 6
Impact level: High.
Identified RISK factor: Log trucks sometime circulate without any waybill, where there is no checkpoint on the itinerary. Log trucks with a waybill are not inspected at checkpoints anyway. This situation is against VPA / LM requirements. From log yard to port, no official waybills are used and, even if the logs exit the CoC only when they are declared loaded onto a ship, no transportation is recorded as such in the COCIS for that leg.
Identified RISK description: That logs are allowed to circulate without a waybill and to go through checkpoints unchecked undermines the possibility of using the checking of waybills (at fixed checkpoints or by the police) as a way of ensuring that e.g., no illegal logs circulate on Liberian roads in the open, uncontrolled, that log tags are not used several times, and that waybill fees are collected. Illegal logs risk circulating and be processed or exported illegally.
Recommendation(s): As for HII 41, enforce waybill declaration before transport, with a limited validity time to ensure waybills are only used once; and implement efficient, fixed or mobile roadchecks (for consistent tags and waybill, including physical description) and reconcile/ verify data in LT.

The issue that the barcode system of the log tags associated with LiberTrace is not operational in the country: has been added to the RISK HR 7 in 6.2.3.7.

The issue of the LVD Staff Procedures 14 and 15 not being implemented nor enforced: has been added to the ISSUE HII 15 in Vol.2, 7.4.6.1.

6.4.12 Review of the current issuance of Export permits

Status: This review has now been archived under 7.5 (same heading) in the Volume 2 of this Audit 5 report (A5R) where it has been slightly updated.

6.4.13 Inconsistent enforcement of Legality matrix requirements / Many requirements of the Legality matrix not currently verified

Status: This review has now been archived under 7.4.12 (same heading) in the Volume 2 of this Audit 5 report (A5R) where it has been slightly updated.

6.4.14 Efficiency of border control

The first parts of this review were completed in previous reports and can now be found in A4R Vol.2 (6.4.14, same headings). The review has continued below as followed-up during Audit 4 and Audit 5.

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.

[45] According to the IA's 'Email 3' consultation with LVD

6.4.14.3 Integration of FDA's current Export Permit (EP) system within the standard GoL export control system

Extracts of an email exchange with LRA during Audit 5 follow, with remaining "further questions" to LRA left unanswered in blue (for consideration by the future IA to pursue).

Dear XXX,

Thank you again for convening a constructive meeting with yourself and your team at LRA on December 1st. We were able to clarify a number of pending questions from our last audit report #4 (Nov. 2019). We are still due to process them and may still get back to you in that regard.

Here I wish to provide feedback in relation to the second part of our meeting, involving the Customs of the LRA.

The objective for the IA Team is to be able to describe "How FDA's Export Permit (EP) system currently integrates with the standard GoL export control system", with regards to timber chain of custody up to shipment.

I would be grateful for some further assistance from you or Commissioner XXX to validate my understanding and resolve the remaining question marks (in blue) in the attached text.

Thank you also for, in the meantime, sending two samples of Customs Declarations.

Draft text and questions (in blue) to LRA on "**How FDA's Export Permit (EP) system currently integrates with the standard GoL export control system**", with regards to timber chain of custody up to shipment.

So, the MACs involved in the export procedure currently include: **FDA**, **LRA**, **LRA Customs**, **MoCI**, **NPA**, and **SGS**. Also, **MoA**?

The other actors may include: **Exporter** (or its representative; also possibly being the Shipper/ Consignee*), **Buyer** (or its representative), **Shipping Agent**, **Cargo Handling Services Provider**, and **Export Verification Service Provider**. Is there more?

* Difference between Exporter and Consignee, if not the same?

The **FDA** issues an **Export Permit (EP)** to the exporter for each timber export shipment (NFRL 13.8a). FDA does it on the basis of compliance with traceability, fiscality and legality requirements.

The timber destined for export (being logs or cut wood) must have been enrolled in the **Chain of Custody System (COCS)** of the state (NFRL 13.5a/e).

COCS information and data is managed within the **COC information system (COCIS)** software of LVD (the Legality Verification Dept. currently established within the FDA), developed by SGS, and called **LiberTrace** (LT).

The **MoCI** issues **Export Permit Declarations (EPDs)**, a standardized Export Permit that is issued in all countries as part of the Uniform Harmonized System (HS?) of Customs, and is of course accepted by EU Customs. The FDA's EP# should always be on the EPD.

A sample of the EPD issued by MoCI provided to the IA shows, among other data:

- Permit No. (on the sample: 00657; which the IA has verified to be the corresponding FDA's EP No. in LT, which carries the same number of logs and same volume. All the logs were effectively loaded in this particular case);

- a statement: "The above, without exception", will be subject to inspection by **Customs** Authority or designated Agent, to ensure the prohibition of smuggling" [suggesting MoCI intervened before Customs?].

- The mention "APPROVED" stamped and signed by MoCI, "Subject to "Clean Report of Findings" [CRF] by **Bureau Veritas** (…) [also suggesting MoCI intervened before Bureau Veritas/BIVAC?].

- The SGS Liberia's stamp and signature.

SGS, in their current Third-Party Monitoring role, stamp and sign on both
1) FDA's EP, following independent verification; and
2) MoCI's EPD, following reconciliation with FDA's EP – which has to be based on product description, number of units, and total volume, upon presentation of the EP approved in LiberTrace, the evidence of payment of Export Fees*, and a valid tax clearance.

* Payment of Export Fees prior to Final EP issuance is not covered in this note.

IA must raise an issue here: No record is being kept of the SGS-signed EPDs in LiberTrace. This unfortunately precludes any check into all EPDs issued for timber (for forged SGS stamping on EPDs, backward traceability checks to EPs whether all FDA EPs are in LT, etc.).

Customs is the last final authority, in the whole process, controlling the actual shipment of goods.

The Customs Declaration is submitted online by the consignee – Is this done through the UNCTAD ASYCUDA system, in advance of the actual shipment?

Please can you provide detailed evidence of the technical capacity within Customs to inspect timber (species recognition in logs and processed products, scaling)? Have Customs officers received training?

LRA has kindly provided the IA with two samples of the Customs Declaration that is submitted by the consignee (one for break-bulk logs, the other one for containerized logs).

The samples show, among others:

- OFFICE OF DISPATCH/EXPORT

- Customs Reference (incl. Date) – Date of: Declaration submitted by the consignee? No indication of date of shipment? Date of inspection by Customs?

- Exporter's details

- Nbr packages (Sample 1: 2,300) – Meaning 2,300 logs?

- Nbr packages (Sample 2: 266) – Meaning 266 logs?

- Reference number (Sample 1: 2020 MLCGB)

- Consignee's details – Difference with Exporter? Or Buyer?

- Declarant's details

- Country of export / origin / destination

- Identity and nationality of means of transport (Sample 1: MSC GRACE, LR) - Same as Name of Vessel?

- Delivery terms (Sample 1: FOB MONROVIA)

- Currency & total amount (Sample 1: USD 437,000.00)

- Office of entry/exit (LRFR FREEPORT CUSTOMS)

- Location of goods (Sample 1: NPAFRP)

- Packages and description of goods, Marks & numbers - Containers No(s) - Number & kind

(Sample 1: ROUND LOGS EKKI 200X40FT STC, 2,300, MUTUALLY DEFINED) – Meaning 2,300 cross-cut logs in 200 40FT containers i.e., an average 11.5 (cross-cut) logs per container?

(Sample 2: LOP EKKIE/LIMBALI (888.59CM3), SEE ATTACHED INVOICE, 266) - Commodity code (Sample 1: 44013900) - Differs from HS 4403 for logs (Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared)?

- Commodity code (Sample 2: 44091000) – Same question

- Gross mass (kg) (Sample 1: 230,000.00) – Representing what: the containers and their content (logs)?

- Net mass (kg) (Sample 1: 20,000.00) – Representing what: only the logs?

- Gross mass (kg) (Sample 2: 870,000.00) – Representing what: only the logs? For 888.59 CM3 seems Ok

- Net mass (kg) (Sample 2: 860,000.00) – Representing what? Why that small difference?

- The Declarant's stamp and signature – Missing on the two samples. At what stage is the Declaration stamped and signed in original by the Declarant?

- Mrs. Decontee King-Sackie: "It references attachments that are in the system". IA: We see 'Attached Invoice" on one of the samples. Is this what you were referring to?

No references to: a MoCI's EPD No.? to a FDA's EP No.? to a B/L No.?

What therefore allows reconciliation, to ensure that these shipments are not occurring outside the timber COCS?

National Port Authority (NPA) manages all public ports in Liberia (Freeport of Monrovia, Buchanan, Greenville, and Harper) and offers a range of services:

- Marine Services (piloting and towage),

- Cargo & Handling (general cargo, a.k.a. break-bulk cargo, of goods that must be loaded individually, not in containers nor in bulk as liquids or grains; or using intermodal containers),

- Warehouses & Property (leasing of land and warehousing space within the ports system),

- Shipping & Inspection (One Stop Shop in the Freeport of Monrovia to obtain documents needed for clearance and to pay duties and port charges), and

- Reefer Container Storage (For goods that require refrigeration).

NPA or the Exporter informs LVD about the schedule of the loading operation. A vessel can load the wood products of several EPs. (LVD Staff SOPs, V2.2, 24.2.1).

Export Verification Service Provider: Bureau Veritas/BIVAC currently mandated to perform quality and quantity inspection and price comparison. IA assumes that inspections are done on a sampling (risk-based) basis and thus the SP does not intervene directly in the export procedure (no systematic inspection)? However, it may be possible to obtain inspection reports from BIVAC?

For **break-bulk log shipments**, the LVD loading inspection takes place at the foot of the vessel, with the presence of all shipment stakeholders and responsible MACs involved. The LVD CoC Inspectors check what products, out of the Export permit (SPEC), and visually inspected for consistency, are really loaded and write the tag numbers; the Lead Inspector completes the Loading Registration Form by registering the effective loading date, comments and the status of each product (LVD Staff Procedures 24.2.1, 24.2.4, 3)). All participants in a "**Data reconciliation meeting**" - Exporter, Buyer, NPA, Customs, Shipping Agent, and LVD - counter-sign the LVD Loading report (Note: this is not happening in Greenville, the IA has heard). The report will be uploaded to LiberTrace.

The Commissioner of LRA Customs, stated that Customs are always there also when **containers** are being loaded. However, the IA has other information which is consistent with its own observation (Field audit in Gbarnga, Oct. 2019): for containers, no data reconciliation meeting takes place at the end of the container loading inspection, where the participants would counter-sign the loading report. The IA was told the responsible MACs 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.

* Suggesting this is not always the case, which would clearly be an issue.

LRA Customs are welcome to comment, providing records of such invitations (by which means, whether or not systematic) and of their response.

LVD does not monitor the eventual shipment of the containers. So, the COCS for containers really stops there, at a remote timber yard from the port. LVD will not follow up to port, unless Customs would ask for the container to be opened (seal broken, replaced) which – according to LVD - has never happened.

Likewise, LRA Customs are welcome to comment and provide records of eventual inspections.

The **Shipping Agent** (a.k.a. Forwarding Agent?) issues the Bill of Lading (B/L) for the carrier (Shipping Line) on the basis of the logs really loaded, as declared to him by the Shipper (Shipping Agent not necessarily based in Liberia).

LVD makes sure its Loading Report is consistent with the B/L before validating the Loading inspection data in LiberTrace. A Certificate of Origin (COO) can then be issued to the Exporter; a copy of the signed certificate is uploaded to LiberTrace (LVD Staff SOPs, 25.1).

For containers this works differently, since the LVD Loading Inspection Report is the last check in the COCS. The B/L (among others) is therefore necessarily issued on the basis of the container loading records. The IA, during a field audit of the LVD Loading Inspection in October 2019, observed that the container was sealed by the Exporter.

The IA has raised an issue about that, since the integrity of the content of the container is not protected after the LVD Loading Inspection.

The IA was further told that the container is often sealed by the shipping agent at the port, but we are not sure of that? Can Customs provide evidence of re-opening and inspection of containers at the port?

Procedure for the FDA EP:

- Exporter submits an Export Permit Request (EPR) to the LVD.
- The EPR is approved by both 1) LVD (following Export Permit Inspection by LVD COC Inspectors) and 2) the Liberia Licensing Department (LLD) for final review.
- The EP itself is then formally issued (approved and signed) by the LLD. Until the LLD is operational under the VPA to issue EPs and FLEGT Licenses, the FDA Commercial Forestry Dept. (CFD) is said to be currently responsible for issuing the EPs.
- Detailed product description in the associated “SPEC” (shipping list): itemized listing with dimensions and volume, sub-volumes by product type and species, as well as “never short-shipped” and “previously short-shipped” volumes, and total number of units and volume).

“Short-shipped” timber products: Logs and other wood products [on the EP] that are not loaded are recorded on the loading report [Loading Registration Form] as short-shipped, and later registered in LiberTrace as “Not loaded”. They remain available for another EP or any other activity of the supply chain (LVD Staff SOPs, V2.2, 24.1). But no final EP is issued that does not include SSHs.

Among our initial questions it seems we have covered the following questions reasonably well:

- Where FDA-issued EPs fit in.
- What documents/reports are issued as a result?
- What reconciliation is possible?

However, we would be grateful for some more information in response to these other questions:

- What is the administrative work flow (sequence of steps) through Customs for export?
- What procedures are in place within Customs for the exportation of timber and timber products, both in bulk and via containers, in terms of required documentation and in terms of checking and inspection?
- How does the process connect to harmonized systems feeding into national and international trade data and statistics?

One additional question would be: What is the difference (respective/ complementary roles) between Customs of the LRA and Customs under the MoCI?

6.4.14.4 Exportation in containers

See A4R Vol.2, 6.4.14.4.

6.4.15 Reporting on law infringement, enforcement of sanctions, and public disclosure of information

Status: This review has now been archived under 6.4.15 (same heading) in the Volume 2 of this Audit 5 report (A5R) where it has been slightly updated.

6.4.16 Communication and transparency

Under this heading, a review of the publication of annual reports by the JIC is now archived under 7.4.13 (same heading) in the Volume 2 of this Audit 5 report (A5R).

New evidence has now been collected regarding the broader communication and transparency issue, under 6.4.16 (same heading) in A4R, Vol.2.

6.4.17 Timber products that are subject to the LAS

Status: This review has now been archived under 7.4.14 (same heading) in the Volume 2 of this Audit 5 report (A5R).

6.5 New issues from (other) reports or complaints made known to the IA

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

Status: This review has now been archived under 7.4.3 'Approval of Forest Management Operations (LM P4) - Pre-felling requirements' in the Volume 2 of this Audit 5 report (A5R), as 7.4.3.2 (same heading).

6.5.2 Social Obligations and Benefit Sharing (LM P3)

Status: The first part of this review had been moved to under 6.5.2 (same heading) in the Volume 2 of A4R, now in this Audit 5 report (A5R) where it has been updated. Relevant extracts from the 6th JIC Aide-memoire (June 2018) are also provided in that same section.

Relevant extracts from the 7th JIC Aide-memoire (Feb. 2019) are provided as **Annex 8.22** 'Implementation of social agreements with communities – Supplementary information' in the Volume 2 of the previous Audit 4 report (**A4R**).

Extracts from the 8th JIC Aide-Memoire, on Benefit Sharing Progress and Payments

31. The National Benefit Sharing Trust Board (NBSTB) provided an update on outcomes from the first National Forest Forum on Benefit Sharing (NFF), which took place in mid November. The NFF included a field trip to Lofa County for key stakeholders in the Government, National Legislature, private sector, and civil society to view successful benefit sharing projects.

32. The Board highlighted that the during the discussions at the NFF, it was agreed that there is room for improvement in the capacity of the community members from the Community Forestry Development Committees (CFDCs) and the Community Forestry Management Bodies (CFMBs) to manage and account for the respective benefit sharing funds intrusted to them. NFF participants also raised questions during their discussions around whether the two benefit sharing mechanisms (for CFDCs and CFMBs) could be merged. It was agreed that further discussions are needed within the Government on benefit sharing, and that building the capacity of communities to manage funds and projects needs to be prioritized.

33. During the NFF, participants also agreed that there is an urgent need for the Government of Liberia to look more closely at dormant logging companies, and the implications that forest area dormancy has on community benefit sharing. The NBSTB highlighted that when dormant areas are still officially in existence, and remain a part of Liberia's overall forest allocation, this creates complications around what is owed, and who should pay the relevant benefit sharing and land rental fees to affected communities. The EU expressed shared concern and questioned what activation of dormant concessions might mean for long term forest sustainability. It was highlighted that the payment and collection of benefit sharing fees from dormant concession areas, and respective arrears needs to be clarified.

34. Liberia and the EU agreed on the outputs at the National Forest Forum on Benefit Sharing, that a transitory account could be used to facilitate more expedient payments from companies to communities via the National Benefit Sharing Trust Board (NBSTB). It was agreed that discussions need to be held in advance of the next JIC with the relevant Government actors (i.e., FDA, Ministry of Finance and Development Planning, Central Bank of Liberia, MO] and the LRA) to assess the feasibility of putting this transitory account in place. UK FCDO expressed its support of the setup of the transitory account and suggested that the current mechanism used to support the L VD be used for the NBSTB.

35. LibTA highlighted that the benefit sharing process is a challenge because the Government is behind on payments and the companies are also behind on payments. The UK FCDO added that there is evidence that the government has not collected all that is to be collected from companies, and this has resulted in a very small percentage of overall amounts owed, actually being disbursed to communities. LibTA further agreed that a transitory account would help but considering the Government's current cash position, further discussion might be needed on different solutions for arrears owed, versus a solution for currently accruing payments.

36. FDA expressed further concern around the sustainability of benefit sharing projects and offered to play an advisory role (if needed) in community selection of sustainable projects. The National Benefit Sharing Trust Board responded that they are also interested in improvements in the overall sustainability of community projects. The NBSTB outlined that support was received to improve its selection processes and that the Board has made efforts to develop project sustainability guidance in a draft management guideline for CFDCs. It was also agreed that the National Benefit Sharing Trust Board would regularly share their reports with the EU and Liberia, including reports on the sustainability of community projects.

“Civil society (also) proposed that a regulation should be drafted to ensure that all the issues of transparency and benefits to communities that are not currently covered under existing laws, can be captured in the relevant regulations and guidelines”. (8th JIC AM, Issues Raised by Stakeholders, Art. 64)

Through a review of the issue of ‘Social Obligations to communities’, with a focus on the financial benefits that must be paid to communities, the IA has now established that these financial obligations are actually resulting from three different mechanisms that are not always covered or as clearly distinguished in the VPA LM, the LVD SOPs, the JIC FP etc.:

1) the implementation of social agreements (LM P3),

2) ‘Benefit Sharing’ through the NBSTB mechanism, and

3) the CRL on CFMAs.

Summary of the different benefit sharing mechanisms benefitting communities

1) **Social Obligations and Benefit Sharing (LM P3)**
Contract holders (for FMC, TSC, or FUP valued above US$10,000) must comply with social obligations, including the provisions of a **social agreement** to be signed with (members of CFDCs that represent all) affected communities and to be attested to by the FDA, as a pre-felling requirement, which includes benefit sharing commitments: these provisions include the **payment of financial benefits** to affected communities: a **cubic meter fee** (equal to, or greater than **USD1 per m3 of logs harvested** annually, based on verifiable information recorded in the chain of custody system [COCS]) that the contract/ permit holder shall pay on a quarterly basis, directly in an interest-bearing escrow account that the holder maintains in trust for each community, upon the written request of a CFDC approved by the FDA.
Legal references: NFRL 3.4, 5.3(b), 5.6(d); FDA Regulations 104-07 (22), 105-07 (24, 31-36); and LVD SOP 2, WI 2.2. These references are (almost comprehensively) reflected in LM P3.
Availability of data: by law, the chain of custody system [COCS, thus COCIS/LiberTrace].
Control: LVD through (i) consultation and verification with the FDA CyFD and field visit with affected communities and (ii) document review incl. FDA[/CyFD/CFD?]'s Annual audits.

2) The **National Benefit Sharing Trust Board (NBSTB) mechanism**
The Government shall also (through the National Community Benefit Sharing Trust [NCBST/ now NBST] mechanism and its Board (NBSTB)) allocate and distribute, on a quarterly basis, a percentage of fees collected annually to communities entitled to **benefit sharing** under Forest Resources Licenses: **30% of the Land rental fees collected** (where land rental fees include 1) an annual 'Area Fee', at US $2.50 per hectare (FMC); and $1.25/ha (TSC), and 2) an 'Annual Contract Administration Fee')**.**
Legal references: NFRL 14.2, FDA Regulation No. 106-07 on **Benefit Sharing** (2, 31-34, 41). Representation in the 2013 LM: none, though provided for before, in the NFRL 2006 and the FDA Ten Core reg. No. 106-07 (22) of 2007 (NCBST established).
Availability of data: TBC
Control: The law provides for (external) Annual audits of the NBSTB's disbursements to forest-affected communities and community projects. FDA shall then make available to the public, through the Internet, a complete list of its fees collected and distributed (total amounts of money disbursed *to* the NBST under each Forest Resources License for each type of fee and disbursed by the NBST to CFDCs by project, date, and Affected Community). LVD is supposed to be entitled to verify.
New ISSUE to be raised, adding to the need to revise the VPA Legality Matrix (LM): NBSTB mechanism (of 2007) not reflected at all in the LM (of 2013): no mention of implementation, verification and enforcement of NFRL, Section 14.2 (Only Indicator 3.3 covering social agreements on payment of financial benefits, which is a different mechanism). This has been added to the existing ISSUE HII 2 under 7.3.7 (Current relevance of the LM / Urgent need to update and review the LM) in the Volume 2 of this Audit 5 report (A5R).

3) Percentage of **land rental fees ("Area fee")** paid directly to the communities under **CFMAs** between communities, the Authority and third parties for harvesting of timbers on community forest land: 55% (for small- to medium-scale commercial use contracts) or more (for large-scale commercial contracts).
Legal references: CRL 2009 (3.1 (d), 4), FDA CRL Regulations (11.2 – 11.4), LVD SOP 3 (Old SOP 18), WI 3.2, Table 1. Representation in the LM (of 2013): none, though provided for, before, in the NFRL 2006 (but "community forestry / community forest management" provisions existed in the NFRL as general principles and for future consideration like in Sections 5.1(f) and 10.1 under regulations "to be" promulgated, and could therefore not be reflected in P/Is of the LM; which is likely to be the same for FDA's 'Ten Core' implementing regulations of 2007), and in the CRL (of 2009) but the CRL implementing FDA Regulations to the CRL only came after (in May 2017 as amended). Inclusion of the CFMAs into the VPA's Legality Matrix' in progress: See 6.1.1.10.
Availability of data: TBC
Control: TBC.

6.5.3 Suspension of Liberia from the global EITI Program

Status: This review has now been moved to under 6.5.3 (same heading) in the Volume 2 of this Audit 5 report (A5R) where it has been updated.

6.5.4 Issuance of Export permits

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 5 report (7.5.3.2) where it has been archived.

The "review of the current issuance of Export permits" conducted in Section 6.3.3.4/5 in the Volume 2 of the Audit 4 report as an agreed area of focus for Audit 4 (but not "from reports or complaints made known to the IA" as in this Section 6.5) has also been moved to under Section 7.5, in the Volume 2 of this Audit 5 report (A5R) for archiving.

7 PREVIOUS REVIEWS COMPLETED

This section contains reviews already completed in previous reports of the IA that were however further updated during the Audit no. 5. Those that have not been updated during Audit 5 have normally been moved into the Volume 2 of this Audit 5 report (A5R Vol.2) for archiving under the same headings.

7.1 Assessment of VPA requirements

Status of this review: archived in A5R 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 A5R Vol.2, 5.1.1).

The IA has intended to ensure that any new issue was systematically registered in the Progress DB and that any development concerning an existing issue was also uploaded for tracking purposes.

The Progress DB has been updated before submission of this Audit report, on the basis of updates to Risks & Issues raised in this Volume 1, and a copy of the updated version is provided in the following pages. The parts that have been revised are in red.

7.2.1 Issues

'Risks & Issues' tracking database [IA Progress DB]

A. ISSUES

Impor-tance /Priority (H/ M/ L)	Date of finding/ record [yymmdd]	Ref. no.	Main C&R	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	170928	HII 1	3.9	A5R Vol.2, 7.4.3.2	Pre-felling require-ments, LM P4	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	FDA response: Government is taking corrective action to ensure this does not happen		To be monito-red
H	180223	HII 2	3.1, 3.3	A5R 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: LM only being updated for CFMAs. Copy of revised LM to be provided		+1
H	180223	HII 3	3.25, 3.26	A5R Vol.2, 7.4.12	Art. 8,1a; Legality matrix, P10	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	3.6	A5R Vol.2, 7.3.10.3	LM P10, 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).	FDA/IAWG response: [Pledged] activation of additional LM verifiers		To be monito-red
H	180223	HII 5	3.28	A5R Vol.2, 6.4.15	General VPA, Art. 22,2d; Enforcement	Audits 1-3	Very few sanctions being imposed on contractors for violations of forest laws; 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	3.10	A5R Vol.2, 7.4.1.4	LM P4, 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. (See also HR 4)	(See also HR 4)		
H	180223	HII 7	3.9	A5R Vol.2, 6.4.9	Pre-felling require-ments, LM P4	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	IA not aware of outcomes from the LFSP forest concession review or the broader Presidential Review		To be monito-red
H	180223	HII 8	3.5	A5R Vol.1, 7.3.1.10; 7.3.7.3	General, 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 IA review of FDA/IAWG response to A3R: - No reply from VPASU-2 re: outcome or status of its review of the issue. FDA's response to A4: Recognition that LVD TM is currently reporting to the DMDO although all FDA TMs should report to MD. A5: Moving CoC inspectors from LVD to CFD was only one part of the IA's whole recommendation which also included that LVD should be moved out of FDA and should not be implemented only partially.	HII 8	3	Transfer CoC inspections from LVD to CFD, with use of LiberTrace and same funding; 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; Envisage 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.	Proposed mitigation measure in FDA/IAWG response to A3R: "Establishment of the LLD, review the functions of LVD, LLD and Commercial Department; by 1st week in October, 2019; after submission of the inception report by VPA SU-2". FDA's response to A4: Moving final review and EP issuance out of the CFD needs more clarity; Suggestion to separate key conflicting roles being considered. A5: First Rec. ("Transfer CoC from LVD to CFD, with use of LiberTrace and same funding") in progress.		1

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	180412	HII 9	3.10	A5R Vol.2, 6.5.2	LM P3, 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 Community	HII 9	3	Responsible government bodies [To Be Determined] to enforce social agreements with communities			
H	180216	HII 10	3.36	A5R Vol.2, 7.5.3.2	VPA Ann.II, 5; App. B, LM 10.2	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 and increased evidence building up		
H	180414	HII 11	3.1	A5R Vol.2, 7.3.6.8	General, Legal framework	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	3.4	A5R, Vol.1, 7.3.1.10	General, 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	3.1	A5R Vol.1, 6.4.1.1	VPA Annex II, Appendix A General, Legal framework	Audits 2 to 4	Generally slow development of new regulations and their application to the LAS, despite some recent progress. Several key regulations have still not been approved, most profoundly the Chainsaw regulation, the Commercial Use Contract, the Compliance and enforcement handbook, and the LVD procedures. These are under legal review but the IA is aware of many technical issues with for example the LVD SOPs that need to be fixed as a priority. Debarment list and list of prohibited persons not available, and 'missing' ever since 2013 for some existing concessions.	HII 13	3	Steadier (technical and legal) development/review and implementation of new/existing regulations, feeding into a revision of the Legality Matrix.	Some progress acknowledged. FDA: "slow development recognized, being addressed under LFSP by FDA Legal".		2 To be monito-red
H	180801	HII 14	3.1	A5R Vol.2, 7.3.11.1	General, Ann. VIII 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	3.17	A5R Vol.2, 7.4.6.1	LM P6, 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 entirely revised and the procedures implemented	SOP24 now (but only very partial-ly) covers the loading inspection and sealing of containers		
H	180912	HII 16	3.19	A5R Vol.2, 7.4.6.2	General, 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	3.9	A5R Vol.2, 7.4.3.1	Pre-felling requ'ts, LM P4, 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

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	180914	HII 18	3.25	A5R Vol.2, 7.5.3.1	LM P10, 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	During JIC 8, GoL made commitments to improve forest governance and law enforcement, and in fine Liberia timber's competitiveness, in dealing with non-compliances: approve Enforcement & Compliance Handbook; reactivate FDA-MOJ MOU, with a clear roadmap; FDA Management to provide robust staff supervision and the necessary drive; and FDA to also work with the LIC on decision-making around key outcomes from LVD-SGS Project Board meetings.		To be monito-red
H	180917	HII 19	3.32	A5R Vol.2, 7.4.1.2	General, IA (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	3.20	A5R Vol.2, 7.4.6.4	LM P4, LVD auditing against 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			
H	190125	HII 21	3.13	A5R Vol.2, 7.4.8.1	General, 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 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	3.13	A5R Vol.2, 7.4.8.1	General, 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 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	3.13	A4R Vol.1, 6.2.4.2		Audit 3		HII 23	3		HII 23 closed, merged with HII 21 and HII 22 above as revised		
H	171226	HII 24	3.14	A5R Vol.2, 7.4.8.2	General, Public disclosure of information	Audits 1-5	PAD currently inactive. FDA website consistently down for months and years (not showing any sign of being seriously maintained) and not fulfilling its key communication role in support of, and even obstructing LAS and NBSTB implementation.	HII 24	3	PAD needs to be revived in its full roles and responsibilities. Urgently reactivate the website, regularly update content, and maintain maximum uptime; use a "Website uptime and performance monitoring" service and publish regular corresponding reports.			

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	190204	HII 25	3.25	A5R Vol.2, 6.4.9	LM, 2.2-2.4	Audits 3, 5	Missing concession documents implying ongoing non-conformances of operators to legal requirements for operating (Also relates to HII 7)	HII 25	**3**	Options to consider: reconstruct the missing documents, declare an amnesty for the past, or cancel the contracts	Decision drafted. GoL to communicate a final position to the JIC before the end of 2020. (8th JIC AM, Art. 57, MoJ)		To be monito-red
H	190205	HII 26	3.11	A5R Vol.1, 6.2.1.3	General, LM 5.2-5.3	Audits 3, 4	Unclear respective responsibilities of FDA EIA Division in the CFD vs. EPA; 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) responsibilities are clearly divided FDA's response to A4R: FDA to work with the VPASU2 & EPA to establish clear responsibilities of the FDA EIA Division. The MOU between the FDA and the EPA will be provided the IA.		To be monito-red
H	190206	HII 27	3.12	A5R Vol.2, 7.4.2.2	LM 2.1, P3	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	3.9, 3.12	A5R Vol.2, 7.4.2.2	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			
H	190206	HII 29	3.8	A4R Vol.2, 7.4.9	General, FDA	Audit 3	Inability of FDA and key depts to fulfill their functions as per the LM, due to lack and late release of funds, part. for goods & services	HII 29	**3**	Allow annual budgets acc. to FDA needs; clarify funding mechanism under new Local Government Act; urgent contingency plan to address priorities	LVD continues benefiting from funding through the SGS-LRA Escrow Agreement; International cooperation assisting FDA in providing additional resources		
H	190207	HII 30	3.24	A5R Vol.2, 6.5.2	LM P3, VPA Ann. II, 3.2c	Audit 3	LVD (LiberTrace) does not currently support the Benefit sharing with communities, where 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	(7th JIC AM, 42-44: FDA committed to make disaggregated information available.		
H	190214	HII 31	3.30	A5R Vol.2, 7.5.2.1	LM P6, 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	3.25	A5R Vol.2, 7.5.3.4	LM P10, Export permit	Audit 3	Export permits (EPs) being issued by FDA outside LiberTrace, without consulting with SGS/LVD, and no register being kept by FDA of all EPs 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			

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	190215	HII 33	3.2, 3.10	A5R Vol.1/ Vol.2, 7.3.5.9	LM P4, Minimum cutting diameters (CFHP, 2009 Guidelines)	Audits 3, 4	Re-enforcement of the Diameter Cutting Limits (DCLs) by the FDA has not been fully consistent. FDA is denying its responsibility as per the Forest Management Planning Guidelines (FMPGs) to help adjust the administrative DCLs during the development of operator's Strategic Forest Management Plan (SFMP). The methodology is likely not currently applied. It is unclear which criterion should be and is currently applied for EP, whether DBH, or the average diameter of the biggest log of a tree, or the biggest of the four diameters; and this introduces subjectivity in EP issuance.	HII 33	**3**	If the FDA will not re-issue a regulation on DCLs of general application for new forest contracts and review existing contracts, FDA must provide public transparent evidence that it is re-enforcing the DCLs evenly, through consistent instructions given to all logging operators, with the list of DBH DCLs, and in accordance with provisions in the 2017 CFHP based on the 2009 FMPGs. It is FDA's role and legal obligation to apply the scientific methodology provided in the FMPGs, for adjusting the administrative DCLs during the preparation of the strategic plan. Consistent implementation of DCLs in LiberTrace must be clarified: it should be the tree DBH that is retained for EP issuance in LiberTrace (if above DCL) for all logs from a same tree.	FDA (201118): FDA recognized the need to place [in?] the Revised Code the "required DBH" per species (activity to be funded by the LFSP 2020-2023). The FDA has communicated with all operators to observe the requirements of the Diameter Cutting Limits in Appendix A of the 2007 CFHP, which will require approval of the FDA Board.		2
H	190219	HII 34	3.29			Audits 3, 5		HII 34	**3**		Downgraded to medium-impact ISSUE MII 21		
H	200103	HII 35	3.32	A5R Vol.2, 6.2.2.2	General, Ann. VII, Forward Planner	Audit 4	Several statements in the 'VPASec Updates' (7th JIC 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.			
H	181020	HII 36	3.15	A5R Vol.2, 7.4.10.1	LM P5, 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	3.16	A5R Vol.2, 7.4.10.2	LM P8, 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			
H	210225	HII 38	3.32	A5R Vol.1, 6.1.16	General, Ann. VII, Forward Planner	Audit 5	The concerns and findings (risks & issues) raised by the Independent Auditor, but also in the Third-Party Monitor's and Civil Society Organizations' reports, are often not taken into account in the Forward Planner.	HII 38	**3**	All these processes (Independent Audit, Third-Party Monitoring, and Civil Society scrutiny or Independent Forest Monitoring) should, formally and systematically, feed into the Forward Planner management process.	This was highlighted by the EU (re: Independent Audit and Third-Party Monitoring) and civil society (8th JIC AM, Art. 18 & 65)		0

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	210118	HII 39	3.33	A5R Vol.1, 6.2.3.11	LM P2, 2.9	Audit 5	Tarpeh's TSC A2 extensions by FDA were illegal, against the automatic termination of a TSC and automatic reversion to GoL of the associated rights (NFRL 18.12 and 18.14). FDA did not follow due protocols to authorize the extensions for commercial logging such as prior consent of, and agreements with the affected communities (Reg. 105-07, 31b1). Pre-felling requirements were not complied with, but apparently no desktop audit was conducted by LVD. Many other critical issues transpire in the control of TSC A2 and management of the case by FDA*. Because of the criminal violations and the significant harm done to the interest of the community, the TSC-A2 matter was beyond the administrative jurisdiction of the FDA. * See A5R Vol.1, 6.2.3.11	HII 39	3	FDA should not have extended Tarpeh's TSC A2 and should not renew any FMC or TSC in future (NFRL 18). FDA should have followed its own Regulations (e.g., Reg. 105-07) to authorize the extension for commercial logging such as on the prior consent of, and agreements with the affected communities. The Ministry of Justice should have asserted its jurisdiction over the case. The IA had recommended referring this TSC and its successive extensions to the concession review panel and that a formal investigation is launched.	The Ministry of Justice in Oct. 2020 launched an 'Independent Investigation into TSC A2'. The IA has not seen the report and cannot comment on it.		Unknown
H	210303	HII 40	3.34	A5R Vol.1, 6.4.1.1	VPA Ann. II, 2.1 (Timber sources); App. A, 1c; LM P6, 6.6; Ann. VIII, 6b	Audit 5	Abandoned Logs' Regulation approved in October 2017, assessment finally conducted in August 2020 by FDA (over 3 years later), leading to very substantial volumes (over 25'000m3) just in Region 3 (left to rot, felling/stumpage fees and post-harvesting taxes not paid, etc.). But the document does not constitute an official report (no date, no author/s, no signatures), which is another issue, hampering transparency of information, accountability and enforcement action. FDA-CFD advising the assessment report has been revised (but has only provided the IA with the unrevised report). Late and slow enforcement action becoming a real issue. Interestingly, the assessment team noted a number of other non-compliances (e.g., logging outside contract area, undersized logs, chain saw operation).	HII 40	3	The Regulation needs to be enforced: confiscation? retrospective taxation? etc. The report itself provides a few relevant practical recommendations (increased field monitoring by FDA mainly during the dry season, by well-equipped and decently paid field scalers in sufficient numbers).	Assessment conducted by FDA, but the report is not an official report. The report needed to be revised but there is no indication it has been so.		1

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	190207	HII 41	3.23	A5R Vol.1, 6.4.11; Vol.2, 7.4.6.5	LM P6/P9, VPA Ann. II, 5 (COCS)	Audits 3, 5	**Late declaration of log production and transport in LiberTrace:** common practice in Liberia not to declare felling and crosscutting in LiberTrace until logs are prepared in the export logyard (against LVD procedures). The whole forest-to-logyard COCS information is only reconstituted retrospectively, and the logs circulate without waybill data being recorded in LiberTrace. Meanwhile CFD/ LVD/ SGS are not aware of the actual felling, the logs are not traceable back to stumps in the forest (if checked), compliance (for e.g., origin, prohibited species, diameter, use of log tags etc.) cannot be checked, and payment of stumpage fees (and other post-harvesting fees) is delayed, as well as any targeted or routine post-harvesting inspection in the forest. In the absence of field checks by CFD/LVD CoC Inspectors, abandoned logs may not be discovered either and not be taxed or fined, and government will lose revenue. Waybill data is ignored (for consistency checks) in the COCS verification process.	HII 41	3	Penalize false declarations; Check logging companies' books retrospectively for actual felling and transport dates; Dissociate felling declaration (20 days) and payment of stumpage (10 more days) to encourage early registration in COCS; Use the declared use of the barcode tag to detect late felling declarations and no-declarations (abandonment) of long or crosscut logs; Make sure LiberTrace reconciles TDFs and LDFs to detect abandoned logs as well; Increase field checks of harvesting operations by CFD/LVD to detect, among others, late or absent felling declarations, and to trigger post-felling inspections by LVD; Effectively check waybills through fixed or mobile checkpoints and reconcile/ verify data in LT (like declared felling vs. checkpoint date; itinerary); Enforce waybill declaration before transport, with a limited validity time to ensure waybills are only used once.	MII 14 upgraded to HII 41		
		MII 1						MII 1			Issue upgraded from medium to high impact level, under HII 24		
M	180223	MII 2	3.18	A5R Vol.2, 7.4.6.3	General, 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	3.21	A5R Vol.2, 7.4.7.1	General, 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	3.23	A5R Vol.2, 7.4.6.5	General, 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	3.29	A5R Vol.1, 7.4.13	General 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		A5R 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		A5R 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, in accordance with the JIC's TOR in the VPA			
M	190204	MII 8	3.9	A5R Vol.1, 6.2.1.3	LM, 4.1	Audits 3- 5	Lack of AOP template for operators to follow, and of approved FDA procedures for AOP approval (apart from a checklist based on the content of an AOP in the FMPGs)	MII 8	2	AOP report template for the operators, and approval procedures for CFD (including for the CFMA Forest Management Plans) to be developed and implemented	New community forest management guidelines reportedly launched at 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	3.9	A5R 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		A5R 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 and exclusive FDA's response to A4R: The FDA recognizes the limitations, but will work with the VPASU 2 to address the problem. The training covered EIA but lack of logistics remained issue to be addressed.		To be monito-red
M	190205	MII 11		A5R 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	3.12	A5R 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	3.24	A5R Vol.2, 7.3.8.1	General, 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	3.23	A4R Vol.1, 6.4.11	VPA Ann. II, 5 (COCS)	Audit 3		MII 14	**2**		Upgraded to high-impact ISSUE HII 41		
M	190207	MII 15	3.23	A5R Vol.2, 7.4.6.5	LM P6, VPA Ann. II, 5 (COCS)	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	3.17	A5R Vol.2, 7.3.11.1	General, 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		A5R Vol.2, 7.4.1.6	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	3.5	A5R Vol.1/2, 6.1.7.3	General, LAS verification framework	Audits 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	3.5	A5R Vol.1/2, 6.1.7.3	General, LAS verification framework	Audits 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			
M	210303	MII 20		A5R Vol.1, 6.4.1.2	LM, P4	Audit 5	New chainsaw code produced overlaps with current code. There can only be one code for all operators, and that anything else is misleading and confusing.	MII 20	**2**	Keep only one Code for all harvesting operations. Any gaps relating to chainsaw operators that may be identified in the current CFHP can be addressed through an addendum to it for this purpose.			
M	190219	MII 21	3.29	A5R Vol.2, 6.5.3	LM 11.2-3, LEITI	Audits 3, 5	Suspension of Liberia from the global EITI Program lifted, due to improvements with regards to rules relative to annual reporting, change of its leadership, and multi-stakeholders process. New EITI scoring system has classified Liberia as a "Medium Improvement" country.	MII 21	**3**	Current status to be assessed, and monitored in future, whether or not it keeps preventing implementation of LM Indicators 11.2-3, and when the next Validation will take place for Liberia under EITI's new approach.	To be assessed and monitored		
L	180223	III 1		A5R Vol.2, 7.4.14	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): Issue impact level 3; Medium (M): Issue impact level 2; Low (L): Issue impact level 1.
Reference no.: unique Risk ref. no. or Issue ref. no.
Main C&R: Main Conclusion & Recommendation No. in Audit reports
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.	Main C&R	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	3.1	A5R Vol.1, 7.3.5.3	Legal framework	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; Consider reviewing and, if necessary, challenging the 'FIDERA' to reduce its potentially negative impacts, before it expires in October 2020, and not renewing it anyway	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; (201118): FDA & LRA finalizing the reviewing of the provision of the agreement that goes beyond the removal of the suspension of the 3 years.	To be monito-red
H	180223	HR 2		A5R 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	3.7	A5R Vol.2, 7.3.13	General, 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)	(201118): FDA will collaborate with Stakeholders\Partners for the amendment of relevant VPA annexes	
H	180223	HR 4	3.10	A5R Vol.2, 7.4.1.4	General, 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) Increase budget allocation to CFD, incl. for goods and services and Capex, allowing it to fulfill the LM requirements and contribute to government self revenue generation. Ensure effective follow-up and support from top management on field inspection reports issues	(See HII 6)	

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	180704	HR 5	3.9	A5R Vol.2, 6.4.9	LM P2, 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.	To be monito-red
H	190207	HR 6	3.23	A5R Vol.1, 6.4.11	LM P6, VPA Ann. II, 5 (COCS)	Audits 3, 5	Log trucks sometime circulate without any waybill, where there is no checkpoint on the itinerary. Log trucks with a waybill are not inspected at checkpoints anyway. This situation is against VPA / LM requirements. From log yard to port, no official waybills are used and, even if the logs exit the CoC only when they are declared loaded onto a ship, no transportation is recorded as such in the COCIS for that leg.	That logs are allowed to circulate without a waybill and to go through checkpoints unchecked undermines the possibility of using the checking of waybills (at fixed checkpoints or by the police) as a way of ensuring that e.g., no illegal logs circulate on Liberian roads in the open, uncontrolled, that log tags are not used several times, and that waybill fees are collected. Illegal logs risk circulating and be processed or exported illegally.	HR 6	2	4	**8**	As for HII 41, enforce waybill declaration before transport, with a limited validity time to ensure waybills are only used once; and implement efficient, fixed or mobile roadchecks (for consistent tags and waybill, including physical description) and reconcile/ verify data in LT.		
H	190207	HR 7	3.22	A5R Vol.1, 6.2.3.7	LM P6, LVD	Audits 3-5	Despite "blind inspection" procedures for LVD CoC Inspectors, inspections are not always organized as such, LVD managers can see and export Operators' data from LiberTrace (LT), the handwritten inspection form can be forged before being attached in LT, Inspectors do not really need to, and often don't go to the field, or don't enter the forest; and Operators can adopt Inspected data as their Declared data.	Technically, LVD Inspectors can copy-paste declared data as inspected data or be influenced by it, to fabricate or alter inspected data, when they have the declared data with them, be it on their form (no blind inspection), or if an LVD manager provided them with copies of it, or filled in inspection forms for them with declaration data in advance of the field inspection. An LVD manager who has access to the data can technically fabricate or alter inspected data directly in LT (independently of whether or not an inspection really took place) before the reconciliation is done by the system. Inspected data can be forged to cover up under-declared data; at EP level (for Export fees), the Inspected data can become the Operator's data. This can be used to reduce the amount of taxes paid, and to launder non-compliant logs or even illegal logs for export. Internal quality control of declared/ inspected data and holding an ISO certificate will not significantly mitigate those risks of acts of corruption of data in LT. This is a serious overall risk for CoC system integrity and data quality, negatively impacting on government revenue and legal / sustainable forest management.	HR 7	2	3	**6**	Capture GPS coordinates of tree/stump or scan the barcoded tag number (making the barcode system operational will support electronic traceability, and quick and secure tally checks during inspections and at checkpoints); or use electronic devices to secure (geopositioned and timed) field data capture and processing; Balance flexibility and security in LT system design; Ensure robust audit trail capability in LT; Follow the SOPs for sample checks of inspected CoC data from LT by a truly independent LVD or third-party monitoring body.		

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	191101	HR 8	3.31	A5R Vol.2, 7.4.5.2	General, LVD, COCIS, LLD	Audits 2-4	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 LiberTrace, thus ensuring its sustainability		
H	210225	HR 9	3.20	A5R Vol.1, 6.2.3.8	LVD	Audit 5	LVD in 2018 had also been made a direct beneficiary of the same existing Escrow Agreement (MOU) between SGS and LRA with the Central Bank of Liberia. But LVD is now sharing the same funding mechanism with other departments involved in CoC (CFD, LLD…) and potentially other FDA duties and other MACs implementing legality checks in the field. FDA might have decided unilaterally to change the escrow account hosting bank.	There are reports that LVD is now under-funded, mostly to the detriment of the LVD auditing section. While FDA reportedly has plans to move the LVD CoC inspectors to CFD, it is unclear whether the needs of all the new beneficiaries are or will be fully covered by this mechanism. With all FMCs currently dormant and only CFMAs operating, there is also a question whether CFMAs generate as much government revenue from taxes and fees than the FMCs before. Arrears due to SGS are reaching 6 months. It is also uncertain whether the MoU is being respected by FDA (the unilateral change of bank could imply its termination) and the current (transparent) mechanism will remain in place. Dependence on the same budget, and thus competition with other FDA Depts and bodies involved in COCS control (CFD) and VPA (LLD, SGS), risk adding to the weakening and lack of independence of LVD LV Unit post-handover.	HR 9	3	3	**9**	EU and Liberia to review the issue.		

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	210226	HR 10	3.36	A5R Vol.1, 6.2.3.11	VPA Ann.II, 5; App. B (COCS), LM 10.2	Audit 5	LVD CoC Inspectors do not attend all container loading operations. One inspector, or a team of two field inspectors, is not incorruptible. Nobody is checking afterwards what the CoC Inspectors have really inspected and what was actually loaded into the containers, or if the seal was broken and replaced after the inspection. In the absence of a container loading inspection by LVD, or if the inspection was not conducted honestly, of if the content of a container could be altered afterwards, anything could be loaded from either within the COCS (more or less legally) or outside the COCS (illegally). The (hand-written) Loading Inspection Report can be made up before uploading to LiberTrace. COCS/LiberTrace data will reflect what the CoC Inspectors, or in fact the Exporter, reported.	The potential risks at stake are varied: 1) under-declaration of species and volume (in case the prior timber yard inspection was biased), 2) under-declaration of quantities loaded (like new false shortships), 3) laundering of illegal stuff through the COCS (like under previous false shortships, or under made-up inventories), and 4) smuggling of wood products, entirely outside the COCS.	HR 10	3	4	**12**	Ensure the inspection really took place, like by LVD Inspectors having to fill in an official LVD Waybill on the inspection site. Ensure photos are always taken of all the logs loaded, with the tag numbers readable. Store all key container loading inspection records in LiberTrace. Ensure internal auditing is done by an LED officer with clear work instructions or by a truly independent (LVD or else) auditor or third party. Ensure systematic or unannounced data reconciliation meetings take place with the responsible MACs, on the loading site or at the port. Move to electronic management of field data or records (like GPS-tagged and timed photos of all manual records). Enhance LiberTrace to provide needed additional functionality. Ensure supporting evidence is provided for shortships. Ensure the original seal numbers are registered on the B/L.		
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	3.27	A5R Vol.2, 6.4.14.2	LM P10, Border control, VPA Art. 8,1b	Audits 1-3	Harper: transshipment occurs at sea 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	3.27	A5R Vol.2, 6.4.14.2	LM P10, Border control, VPA Art. 8,1b	Audits 1-3	All terrestrial border crossings not fully, permanently controlled by Customs/Police/etc.	Smuggling through unmanned border-crossings (without EP)	MR 3	2	3	**6**	VPASU capacity building of Customs/ Police	MFGAP supporting LRA/Customs, MoJ and MIA, and managing the risk of ill-controlled terrestrial border crossings.	
M	191223	MR 4	3.1	A5R Vol.2, 7.3.6.10	Legal framework, LM P1	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		

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	191223	MR 5	3.1	A5R Vol.2, 7.3.6.10	Legal framework, LM P1	Audits 3, 5	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. Confirm if Art. 14, and the "transfer to county governments impacted by the operations of concessions of the annual contributions agreed in the concession agreements", could affect any of the three different benefit sharing mechanisms benefiting communities.		
M	190207	MR 6		A4R Vol.1, 6.2.3.7	LVD	Audits 3, 4	N/A	N/A	MR 6	N/A	N/A	N/A		MR 6 upgraded back from medium to high, as HR 7	
M	210301	MR 7	3.36	A5R Vol.1, 6.2.3.11	VPA Ann.II, 5; App. B (COCS), LM 10.2	Audit 4-5	Export permits (EPs) are being granted on the basis of an override document (OD) issued by FDA Management. The OD overrides an SGS/LVD' recommendation to reject the EP unless some non-compliant logs are removed from the EP and not allowed to be exported. Example of issues, sometimes triggered by an 'Event message' resulting from LiberTrace reconciliation, include: DBH below diameter cutting limit (DCL), outstanding tax payment, or unclear origin. The "illegal" log remains red-flagged in LiberTrace.	The IA considers that the use, by FDA Management, of such ODs relates to undocumented, discretionary powers, whereby the Authority decides not to apply its own regulations and to ignore the agreed blockers of approval set in the LAS, creates significant risks of subjectivity and abuses. A copy of the OD should always be attached to the company's account for third-party scrutiny. But is it always the case? The IA does not have access to ODs.	MR 7	2	3	**6**	The issuance of Export permits only granted on the basis of an override document issued by FDA Management, for tax payment deferral or through installments or even allowing a tax reduction, or despite issues with diameters or others, should be contingent on clear and transparent procedures including referral to the FDA Board for information. In case there is a technical issue in LiberTrace (average butt log diameter vs. the biggest of four diameters used for reconciliation with DBH DCL) the software should be modified.		

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]
Importance/Priority? High (H): Risk severity level 9-12; Medium (M): Risk severity level 5-8; Low (L): Risk severity level 1-4.															
Reference no.: unique Risk ref. no. or Issue ref. no.															
Main C&R: Main Conclusion & Recommendation No. in Audit reports															
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 A5R Vol.2 (same numbering and heading).

7.3.1.2 VPA Art. 3,2

Status of this review: archived in A5R Vol.2 (same numbering and heading).

7.3.1.3 VPA Art. 4,1a

Status of this review: archived in A5R Vol.2 (same numbering and heading).

7.3.1.4 VPA Art. 8,1a

Status of this review: archived in A5R Vol.2 (7.3.1.5, same heading).

7.3.1.5 VPA Art. 8,1e

Status of this review: archived in A5R Vol.2 (7.3.1.6, same heading).

7.3.1.6 VPA Art. 8,2

Status of this review: archived in A5R Vol.2 (7.3.1.7, same heading).

7.3.1.7 Art. 9,1a

Status of this review: archived in A5R Vol.2 (7.3.1.8, same heading).

7.3.1.8 Art. 9,1b

Status of this review: archived in A5R Vol.2 (7.3.1.9, same heading).

7.3.1.9 VPA Art. 14,2

Status of this review: archived in A5R 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 A5R 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) had been finalized below during Audit 4 and has been updated durig Audit 5.

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."

The FMAC is now said to be operational and working. It was 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 [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 collected by the IA, 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, dated July 22, 2019, especially regarding (i) Draft regulation for Timber Resource Waste/Residue Commercial Utilization; (ii) Revised Chainsaw Milling Regulation 115-11, etc.

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.

The IA had registered a high-impact **ISSUE** about this, referenced **HII 12** in the IA Progress DB:

Revised **ISSUE** ref. **HII 12**
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 however 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.

IAWG comment to A4 Report

Issue/ Risk Ref No.: **HII 12**
MC&R No.: **3.4**
Area/Element of the VPA/LAS: **Participatory forest governance in Liberia**
Identified ISSUE description: (as per HII 12)
IA's Recommendation: (as per HII 12)
FDA's Response (quote): "*The FMAC is actively working but perform their based on task on hand. Recently, all regulations submitted to the board of directors of the FDA for approval were reviewed by the FMAC prior to submission to the Board. The current members of the FMAC are: (list the names and institutions of all members of the FMAC, including the head)*" [list was missing]

The above comment is noted. However, all regulations recently submitted by the FDA to the Board of Directors for approval were then sent by the BoD to the MFGAP and to lawyers for additional review. This casts doubts on the efficiency of said review by the FMAC. The "weakness of the FMAC" was expressly confirmed by a civil society representative during the IA Stakeholder Workshop held in Monrovia under Audit 5. Issue HII 12 shall remain open.

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Status of the following reviews: archived in A5R 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 A5R 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 A5R 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 A5R 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 A5R Vol.2 (7.3.6.1, same heading).

7.3.5.2 Introduction

Status of this review: archived in A5R 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: the 'Forestry Industrial Development and Employment Regime Act' (known as FIDERA or FIDIERA). The 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.

The IA had registered a **RISK** referenced **HR 1** in its IA Progress DB, now revised further below.

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).

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

SOFRECO did not present any evidence of this "risk" [Note: HR 1] *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, it definitely is 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.

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*.

IAWG comment to A4 Report

Issue/ Risk Ref No.: **HR 1**
MC&R No.: **3.1**
Area/Element of the VPA/LAS: **Legal and regulatory framework**
Identified RISK factor: Enactment of new law- FIDERA: Forest Industrial Development & Employment Regime Act (FIDERA) in October 2017, 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. 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.
Identified RISK description: (as per HR 1)
IA's Recommendation: Share an impact assessment with the stakeholders; consider reviewing the law, or assess the need to design an adaptation plan; 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
FDA's Response (formal, 201118): FDA & LRA are finalizing the reviewing of the provision of the agreement that goes beyond the removal of the suspension of the three (3) years.
FDA's Response (informal, 201126): FIDERA has already expired. Going forward there will be a constant monitoring of activities at the Legislature that would affect the forest sector in order to take prompt actions to avert the passage of any law that will have negative impact on the sector.

Relevant extracts from the 8th JIC Aide-memoire

38. The Liberia Timber Association (LibTA) expressed that individual company arrears and the current state of payments owed to the Government of Liberia are not known by the Association. LibTA requested further clarity on the current state of arrears, and more detail around why companies with outstanding arrears are still being allowed to ship. Considering the current end of the **FIDIERA Act**, Lib TA asked the Government give further consideration to a new solution for the bid premium arrears accrued by logging companies before 2012. The UK FCDO emphasized that with the increasing tax arrears trend in the forest sector, further analysis is needed into how arrears and requested deferred payments from the private sector are impacting forest communities.

40. LRA added that under the 2017 Forestry Development Industrial Regime Act (**FIDIERA**), two companies have applied for tax credits against investments. Of these two applications, one company received verification of tax credits of approximately $1.9 million against a sawmill investment. Under a separate Memorandum of Understanding with the Government, another company also received a tax credit of approximately $3.2 million against road rehabilitation infrastructure in the south eastern region of Liberia. Although the **FIDIERA** act has now expired, the Government of Liberia needs hold further legal consultations to determine whether companies can still request future tax credits against investments made during the 2017-2020 term of the Act.

Discussion during the IA Stakeholder Workshop (Monrovia, 2-3.12.2020) regarding the **FIDERA**: Has now expired. There are two different agreements, not to be confused, where investments in 3 years are credited against arrears (LRA).

The IA revised the **RISK** referenced **HR 1** in its IA Progress DB accordingly and will keep it open, even if the FIDERA has now expired but not knowing whether it will be extended or renewed:

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; Consider reviewing and, if necessary, challenging the 'FIDERA' to reduce its potentially negative impacts, before it expires in October 2020, and not renewing it anyway
Mitigation: FDA and LRA had agreed there would be 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). (201118): FDA & LRA finalizing the reviewing of the provision of the agreement that goes beyond the removal of the suspension of the 3 years.

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The following reviews have been archived in A5R Vol.2 (under 7.3.6.4 to 7.3.6.8 (same headings):

7.3.5.4 Overview, as per the VPA preamble
7.3.5.5 The VPA Legality Definition: an exhaustive representation, or a sub-set of Liberian law?
7.3.5.6 Hierarchy of the legal and administrative texts
7.3.5.7 Existing Liberian forestry legislation
7.3.5.8 What it takes for an implementing text to become a by-law regulation (binding on forest stakeholders)

7.3.5.9 Minimum cutting diameters (MCDs) / Diameter Cutting Limits (DCLs)

The first part of this review can be found archived under 7.3.6.9 in the Volume 2 of this Audit 5 report (A5R).

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 MCDs, also referred to as 'Minimum Felling 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 DCL 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 DCL 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 DCL was included in the CFHP of 2007, and it was mistakenly excluded in the 2017 amendment. The DCL 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 (Note: the IA is not sure this, as per the FMPGs, should also be based on *commercial* standards).
- The IA also acknowledges that a letter (Ref. MD/084/2018/-2) was sent. The IA has now been provided with a copy of a letter 084 to the logging company operating in a CFMA (See **Annex 5**). The letter 084 indicates DCLs are being re-enforced beginning 2018/2019 logging season. A list of DBH DCLs was attached to the letter. There is no instruction to submit an SFMP (in case this applies to CFMAs).
- According to the FMPGs, it is the FDA that should apply the scientific methodology provided in them, anyway 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 no evidence either that the letter was sent to all FMC (and CFMA?) holders, and whether a letter to individual contract holders or operators was an adequate way of (re-)enforcing the DCLs as per the 2009 CFHP.
- The IA has no evidence either how the letter addressed the whole issue, whether or not letters sent to FMC holders did stipulate that they should submit their strategic plan.
- FDA needed to further clarify how it intends to review the DCLs.
- Meanwhile Issue HII 33 remained 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.

This is subject to the following verifications 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, including application to the TSCs:

The IA was 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 has been 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?

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 DCL 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. **Note:** 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”. **Note:** 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. **Note:** Is this by Law?

Follow-up during Audit 5

Comment noted (VPA SU staff):

- By definition, it should be enough for *harvesting* if one only diameter (out of two times two diameters measured in cross at each end of the log) is above DCL in all logs from a tree, and all the logs should therefore be allowed for export;
- However, it is the *average diameter* of the biggest log that is retained for Export Permit (EP) issuance, and *the average diameter is usually smaller than the biggest of the four diameters*; hence the margin that is created for discussion and tolerance when a log is rejected for EP. And because there is no rule or scientific basis for limiting that margin, some subjectivity is allowed to come into play;
- Suggested recommendation: In LiberTrace, the biggest of the four diameters in all logs from a tree should be retained for Export Permit issuance (if above DCL), rather than the average diameter.

Discussion around the above comment:

- By definition, it is enough for *harvesting* if the *tree DBH* is above DCL;
- But DBH data is not retained as part of log information (on LDFs) in LiberTrace;
- It is the *average diameter* of the biggest log that is retained for Export Permit (EP) issuance;
- It should be verified whether the average diameter is actually not *bigger* than the DBH (because of the simple geometrical cone shape applied to the calculation of the average whereas a butt log often has a concave profile);
- If that is the case, the test for EP is more favorable for the Operator; but not in terms of sustainable management, and this introduces a bias;
- It is likely that the biggest of the four diameters is even bigger, which would introduce a bigger bias still;
- These issues should not create a margin for discussion and subjective tolerance when a log is rejected for EP;
- Final recommendation: In LiberTrace, it should be the DBH of the tree (on the TDF) that is retained for Export Permit issuance (if above DCL) for all logs from the tree (if that is not already the case).

IAWG comment to A4 Report

Issue/ Risk Ref No.: **HII 33**
MC&R No.: **3.2**
Area/Element of the VPA/LAS: Minimum cutting diameters
Identified RISK factor: The revised CFHP (May 2017).
Identified ISSUE description: The revised CFHP (May 2017) does not regulate minimum cutting diameters anymore as in the previous version of 2007. 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. 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.

IA's Recommendation: 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 also 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.
FDA's Response (formal, 201118): The FDA recognized the need to place [in?] the Revised Code the "required diameter breast height" (DBH) per species and as a result, it has an activity to be funded by the Liberia Forest Sector project during the first quarter of the 2020 to 2023 extension period. The FDA has communicated with all operators to observe the requirements of the Diameter Cutting Limits in Appendix A of the 2007 CFHP, which will require approval of the FDA Board.
FDA's Response (informal, 201126): (…) A consultant could be hired or the FDA in house lawyer would perform the task in consultation with stakeholders.

Discussion during the IA Stakeholder Workshop (Monrovia, 2-3.12.2020) regarding **DCLs**: logs are being rejected; FDA sent a letter to all operators (FDA).

The IA has indeed been provided with the copy of a letter MD/058/2020/-5 dated May 11, 2020, issued as an "override document" (OD) to allow logs with a DCL issue to be exported (See **Annex 3** to this report).

The discussion on the use of such "ODs" by FDA Management in relation to DCLs during Audit 5 (See in 6.2.3.11) casts some light regarding that letter and also revealed a further situation/ issue:

Pending questions for the IA had been: Is this an official measure that has been formally adopted and consistently applied (that undersized logs over 60cm DBH produced during the logging season of 2018/2019 be duly declared as such, and on the basis of a joint FDA-MoJ inspection?), or is it a particular arrangement for this case? If it was an official measure, then it was probably right to approve the EP? Or maybe things are not so clear?

The IA now understands that the MD of the FDA was supposed to have instructed all the operators to henceforth fell trees as per the CFHP and, as per the copy of the OD provided**,** to have authorized them to submit all the previous felling within three months (the "3 months grace period " to go back to the official DCLs, from Oct. 16, 2019 to Jan. 15, 2020). However, that authorization (to submit all the felling within the three months' grace period) was specific to some operators. Hence EPs are still being rejected for DCLs where such an override document has not been issued.

Amazingly, the letter refers to Appendix 14 of the CFHP source as being the related regulation. IA checked both versions: the new Code (amended 2017) does not include a list of the DCLs and there is no such Appendix 14 in it). FDA in fact makes reference to the old 2007 Code (although the latter has been replaced and is no longer in force, without mentioning it).

The articulation between these two letters is not fully clear to the IA.

Summary of findings (updated)

The revised CFHP (May 2017) does not regulate minimum cutting diameter limits (DCLs) 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, 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 for Export permits in LiberTrace across the board, including for species that have a bigger DCL, of above 60cm, 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”.

The IA has been provided with a copy of a letter 084/2018/-2 to the logging company operating in a CFMA (See **Annex 5** to this report). The letter indicates DCLs are being re-enforced beginning 2018/2019 logging season, and a list of DBH DCLs was attached to it.

The IA has not been provided with evidence (i) that the letter “084” was sent to all FMC holders (and/or the notice issued), as well as all CFMAs’, (ii) how it addressed the whole issue - there is no instruction to submit an SFMP (in case this applies to CFMAs) -, and (iii) whether a letter to individual contract holders or operators was an adequate way of (re-)enforcing the DCLs as per the 2009 CFHP; and also, (iv) 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.

The IA has now seen another letter MD/058/2020/-5, issued to allow logs with a DCL issue to be exported (See **Annex 3** to this report). With the previous Letter 084/2018, the FDA had instructed all the operators to fell trees as per the CFHP. With this new letter, undersized logs (over the general minimum of 60cm DBH) produced during the logging season of 2018/2019 [therefore in contravention of the Letter 084/2018??] could be declared as such on the basis of a joint FDA-MoJ inspection; and the FDA authorized the Operator to submit these logs within a "3 months grace period" (Oct. 16, 2019 - Jan. 15, 2020).

The IA has evidence that the letter 058/2020/-5 was not sent to all FMC holders either, hence EPs are being rejected for DCLs.

The FDA keeps referring to Appendix 14 of the old 2007 CFHP as being the relevant regulation although it has been replaced and is no longer in force. A regulation on DCLs of general application for new forest contracts has not been re-issued and affected existing FMC contracts have not been amended, despite the IA's recommendation.

LiberTrace now implements the DCLs for FMCs and CFMAs, assumedly so with the DCL values from the "Old Code".

Finally, a tree is harvestable if its DBH is above DCL. On the other hand, it is the *average diameter* of the biggest log of a tree that is currently retained for Export Permit (EP) issuance. Whether or not the average diameter is bigger than the DBH, and the biggest of the four diameters is even bigger, both options introduce a bias and give space to subjective tolerances when logs are rejected for EP. In LiberTrace, it should thus be the DBH of the tree that is retained for EP (if above DCL) for all logs from the tree.

Conclusions (updated)

Legally, the administrative "Diameter Cutting Limits (DCLs)" have always remained in force, since the Code of Forest Harvesting Practices of May 2017 "as amended" (CFHP) in its Section 4 provides for the need to comply with the Forest Management Planning Guidelines (FMPGs) of 2009. And these FMPGs define and refer to the DCLs in the "old" 2007 Code 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.

Towards the end of 2018 and the beginning of 2019, the FDA acknowledged the situation put forward by the IA.

No regulation on DCLs of general application for new forest contracts has yet been re-issued, and no FMC contracts have been amended, which was the IA's recommendation.

But the FDA claimed it was enforcing new instructions (Letter 084/2018) given to the contract holders and logging operators (as of the 2018/2019 logging season) and that added inspection capacity had been created.

However, undersized logs were produced for some time due to the new CFHP no longer containing the list of DCLs and to the general 60cm rule (the absolute minimum) being wrongly applied to *all* species. The single limit of 60 cm was also applied for Export permits in LiberTrace across the board.

Another FDA letter MD/058/2020/-5, allowing undersized logs (always above 60cm DBH) produced during the logging season of 2018/2019 [therefore in contravention of the Letter 084/2018??], and duly declared and inspected, to be exported (between Oct. 16, 2019 and Jan. 15, 2020).

The IA has no evidence (i) that the Letter 084/2018 was sent to all contract holders and logging operators (the Letter 058/2020 has not, reason why some EPs are being rejected for DCL issues), (ii) that instructions were given to submit an SFMP, (iii) whether a letter to individual contract holders or operators was an adequate way of (re-)enforcing the DCLs as per the 2009 CFHP; and (iv) if new staff (scalers) are now effectively enforcing DCLs.

The IA has verified that DCLs are now duly implemented in LiberTrace.

FDA comments to the IA's Audit 3 report suggest that FDA is relying only on the contract holders to develop their SFMP and to adjust the administrative DCLs, whereas it is FDA's role and responsibility, as defined in the FMPGs, to apply the provided methodology. It is likely that neither the contract holders nor the FDA are currently applying the methodology provided for in the FMPGs.

To conclude, the DCLs are newly implemented in LiberTrace for EPs. DCLs were re-enforced by FDA sending letters to individual contract holders and operators, rather than issuing a new regulation, with indications that enforcement by FDA has not been fully consistent; and by FDA claiming enhanced inspection capacity.

No more undersized logs should be exported since Jan. 16, 2020.

FDA is denying its role and responsibility in applying the methodology provided for by the FMPGs to adjust the administrative DCLs during the development of operator's strategic plan (SFMP). The methodology is likely not currently applied.

Finally, uncertainty over which criterion should be and is actually applied for EP, whether DBH, or the *average diameter* of the biggest log of a tree, or the biggest of the four diameters, introduces subjectivity in EP issuance.

Recommendations (updated):

A recommendation has been for the JIC to consider supporting any FDA's effort to re-issue a regulation on DCLs of general application for new forest contracts. Under such option, 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.

If the IA's prior recommendation to re-issue a regulation on DCLs is not applied, the FDA must publish transparent evidence that it is enforcing the Diameter Cutting Limits (DCLs) evenly, through consistent instructions given to all logging operators, with the list of DBH DCLs, and in accordance with provisions in the 2017 CFHP based on the 2009 FMPGs.

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 during the preparation of the Strategic Forest Management Plan (SFMP).

Consistent implementation of DCLs in LiberTrace must be clarified: it should be the tree DBH that is retained in LiberTrace for EP (if above DCL) for all logs from a same tree.

In view of the above, the **ISSUE** (ref. **HII 33**) in the IA Progress Database has been further revised as follows:

ISSUE HII 33
Impact level: High
Identified ISSUE: Re-enforcement of the Diameter Cutting Limits (DCLs) by the FDA has not been fully consistent. FDA is denying its responsibility as per the Forest Management Planning Guidelines (FMPGs) to help adjust the administrative DCLs during the development of operator's Strategic Forest Management Plan (SFMP). The methodology is likely not currently applied. It is unclear which criterion should be and is currently applied for EP, whether DBH, or the average diameter of the biggest log of a tree, or the biggest of the four diameters; and this introduces subjectivity in EP issuance.
Recommendation(s): If the FDA will not re-issue a regulation on DCLs of general application for new forest contracts and review existing contracts, FDA must provide public transparent evidence that it is re-enforcing the DCLs evenly, through consistent instructions given to all logging operators, with the list of DBH DCLs, and in accordance with provisions in the 2017 CFHP based on the 2009 FMPGs. It is FDA's role and legal obligation to apply the scientific methodology provided in the FMPGs, for adjusting the administrative DCLs during the preparation of the strategic plan. Consistent implementation of DCLs in LiberTrace must be clarified: it should be the tree DBH that is retained for EP issuance in LiberTrace (if above DCL) for all logs from a same tree.

7.3.5.10 Land Rights Act and Local Government Act

Status of this review: archived in A5R 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: archived in A5R Vol.2 (7.3.7; same heading).

7.3.7 Annex II – Broad institutional set-up of the LAS

This section has been created to accommodate all system-based assessment aspects incl. transverse issues like CoI. For consideration by the future IA: section on the establishment of each relevant FDA Dept. or other Government 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: archived in A5R 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: archived in A5R 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 been archived in A5R Vol.2 (7.3.8.6, same heading). The review continued below, from follow-up under Audit 4 and Audit 5.

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”. No further update has ever been received despite several reminders (28.10.19, 07.02.20).
- 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 those** three **roles** in the institutional setting for VPA implementation defined as follows:

    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 above recommendations in 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(es) in the 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. **Note:** LLD is one of the two new departments "to be established under FDA", as per the VPA (i.e., the VPA does not provide for an independent LLD.)

Fulfilling the role of LLD (even more LVD's) 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; it would not get 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 (as currently given by LVD) 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: a merger of the licensing function (of LLD) with the auditing function (of currently LVD) outside the FDA possibly into a broader "LLD", the name in fact being appropriate to concentrate auditing and licensing, under either LRA or Internal Audit.

Note: this has to be analyzed in the context of the current FDA Administration being in favor of an autonomous institution[46].

IAWG comment to A4 Report

Issue/ Risk Ref No.: **HII 8**
MC&R No.: **3.5**
Area/Element of the VPA/LAS: **Institutional setting for VPA Implementation**
Identified RISK factor (Quote): 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.

[46] 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.

Identified ISSUE description (Quote): Conflicts of interests (CoIs) between key roles of LVD and within FDA in VPA implementation: 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; 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 from the management of the FDA, which potentially extends to the future Liberia Licensing Department (LLD).
IA's Recommendation (Quote): 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).
FDA's Response: All Technical Managers of the FDA are required to report to the MD. However, they are currently reporting to the DMDO on the instruction of Management for coordination and efficiency of work. Moving the final review and issuance of Export Permit out of the CFD to a place above of LVD needs more clarity- to where and how do they work? The suggestion to consider separating key conflicting roles is being considered to identify where the roles are conflicting for further action

IA review of FDA's response:

- The recognition by FDA, that the LVD TM is currently reporting to the DMDO although all FDA TMs should report to MD, is noted. The reason provided (instruction of Management for coordination and efficiency of work) should not prevail upon the CoI risk/issue. LVD should be one level up above the other Depts.
- "Moving the final review and EP issuance out of the CFD to a place above of LVD needs more clarity": The IA has provided a rationale for this recommendation (See A5R Vol.2, 7.3.8.6).
- "The suggestion to consider separating key conflicting roles is being considered to identify where the roles are conflicting for further action": Noted.

Discussion during the IA Stakeholder Workshop (Monrovia, 2-3.12.2020) regarding **CFD:** Moving CoC inspectors from LVD to CFD was an IA's recommendation and we are doing it (FDA CFD). IA: Yes, but this is only one part of the whole recommendation, which also involved that LVD should be moved out of FDA, and should not be implemented only partially.

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; Moving CoC inspectors from LVD to CFD was only one part of the IA's whole recommendation which also included that LVD should be moved out of FDA and should not be implemented only partially.
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

The following reviews have been archived in A5R Vol.2 (under 7.3.10.1 to 7.3.10.3; same headings):

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: archived in A5R 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)

The following reviews have been archived in A5R Vol.2 (7.4.3.1, 7.4.3.2; same headings). They 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 had been created to receive the reviews initiated during Audit 4 in 6.5.2 (same heading) once eventually completed.

7.4.3 Performance of the Legality Verification Department (LVD)

The following reviews have been archived in A5R 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

The following reviews have been archived in A5R Vol.2 (7.5.2.5, 7.5.2.6, and 7.5.3.1, respectively; 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

7.4.5 Inconsistent enforcement of Legality matrix requirements / Many requirements of the Legality matrix not currently verified

Status of this review: archived in A5R Vol.2 (7.4.12; same heading) where it has been slightly updated.

7.4.6 Communication and transparency

Status of this review: archived in A5R Vol.2 (7.4.13; same heading).

7.4.7 Timber products that are subject to the LAS

Status of this review: archived in A5R Vol.2 (7.4.14; same heading).

7.4.8 Government forestry revenue collection

Status of this review: archived in A5R Vol.2 (7.4.15; same heading).

7.5 Review of the issuance of Export permits, Track record of activity'

Status of this review: archived in A5R Vol.2 (7.5; same heading).

8 APPENDICES (ANNEXES)

8.1 Annex 1 - Compliance Registry

This document relates to Chap. 6.2.3.9 'Efficiency of SGS' current 'third-party monitoring of exports' role (up to February 2021)'.

Copy of the Compliance Registry running over 2 pages:

COMPLIANCE REGISTRY

#	Date	Ref. legal framework	Non-conformity (more details in SGS monthly reports)	Responsibility	Correction Action	Supporting document(s) (evidence)	Status	Completion Date
1	March 2020	VPA	Audit to be conducted for each operator and resource area	Legality Verification Unit	In - House Lawyer has been written through DMDO for action	Hard Copy of the letter is filed		
2	April 2020	Reg. 107-07	Outstanding area fees to be paid by Operators	LVD, LRA, MD, DMDO	Operators have been written to pay all outstanding fees and taxes or risk the issuance of Export Permits	Email trail		
3		Reg. 107-07	Felling not declared within thirty (30) days by all operators	Commercial Department, Law Enforcement Division				
4	May 2020	SOP for LVD	Stump verification not conducted for each resource area	LVD	At least one stump verification has been done for Magna Logging	SOP 12.2.2.2 SOP 12.2.2.3		
		CoHP	Felling close to a river in CFMA Zuhzon	LVD Auditors/MD/DMDO	A communication was sent to operators warning them to take the necessary corrective measures before the next logging season begin (October 2020 – April 2021)			

		SOP for LVD	Annual Coup 2019/2020 for CFMA Worr approved although absence of 5-years management plan	LVD	Five year management plan approval letter was attached in the AOP that was approved	Management will request the CEO of Worr to upload the Five year management plan into Libertrace		
5	June 2020	Guidelines for Forest Management Planning	Annual Coup of CFMA Garwin approved although inconsistency between the map in the AOP and the map in the 5-years management plan	Commercial Forestry				
6		SOP for LVD	LiberTrace errors report to be transmitted to Law Enforcement through DMDO	LVD				
7	August 2020	Reg. 108-07, Reg. 118-17	Felling out of concession in CFMA Worr and CFMA Bluyeama	Commercial Forestry Dept.				
8	September 2020	Appendix 14, COHP, Reg. 118-17	Felling below DCL in FMC A and CFMA Sewacajua	Commercial Forestry Dept.				

8.2 Annex 2 - Loading data reconciliation meeting report

This document relates to Chap. 6.2.3.11 Audit of a container loading inspection by LVD during Audit 4.

Copy of the report running over 3 pages:

NATIONAL PORT AUTHORITY
Port of Buchanan
P.O. Box 1849, Liberia

Office of the Manager
PORT OF BUCHANAN

CABLE ADDRESS NATPORT
TELEX 32075
TELEPHONE 226646
TELEFAX 231 226738

RECONCILIATION REPORT

We the undersigned Agencies confirmed to the Pieces and Cubic Meter of Round Logs Loaded on **MV'NEW COURAGE'** for the below consignee: AFRICAN WOOD AND LUMBER

CARGO TO BE LOADED: 222Pcs = 1,495.426 M^3

ETA: SEPTEMBER 10 , 2020
ETD: SEPTEMBER 20, 2020

DESTINATION: CHITTAGON

FINAL AND APPROVED RECONCILED REPORT

Consignee	Total pcs loaded	Total cubic meter loaded	Total pcs short shipped	Total cubic meter short shipped
AWL	111 Pcs	750.637 M^3	111 Pcs	744.789CBM
Total	111 Pcs	750.637 M^3	111 Pcs	744.789CBM

1. **FORESTRY DEVELOPMENT AUTHORITY (FDA)** — Joseph P. Gonkoloo — NAME / SIGNATURE
2. **LIBERIA REVENUE AUTHORITY (LRA)** — Frederick L. Weldon — NAME / SIGNATURE
3. **STEVENT** — Pat Harvey — NAME / SIGNATURE
4. **ACSA** — Jacksonville J. Kopah — NAME / SIGNATURE
5. **AWL** — Sarvagya Pandey — NAME / SIGNATURE
6. **NATIONAL PORT AUTHORITY (NPA)** — NAME / SIGNATURE

NATL. NWL. PORT AUTHORITY · PORT OF BUCHANAN · LIBERIA

	LOADING REGISTRATION FORM	Date	08/02/2017
		Page	1/2
		Author	Abraham M.Sheriff
		Approval	Simulu M. Kamara

Shipment Start Date: Sept. 10, 2020 Shipment End Date: Sept. 20, 2020

Contract Area: AWLC - CFMA Port: Buchanan

Total m^3 to be loaded: 1,495.426m^3 Total m^3 Short Shipped: 744.789 m^3

Vessel Name: MV New Courage Inspectors: Joe Garkolor, Robert Chilar, Onell Dolor, Hamilton Dogbeh

Buyer Address: Sudima International Pte Ltd. 151 Chin Swee Road unit 15-03, Manhattan 169876, Singapore.

No.	Export Permit No	Spec No.	Volume Loaded	Short Shipped List (Running No)
	00904	00904	750.637m^3	1, 6, 7, 10, 12, 13, 14, 15, 16, 17, 19, 20, 22, 23, 24, 25, 26, 27, 28, 31, 37, 41, 45, 46, 49, 50, 54, 58, 60, 62, 63, 64, 71, 72, 76, 77, 79, 84, 85, 86, 87, 89, 92, 94, 95, 96, 98, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 114, 115, 116, 117, 118, 119, 120, 121,

	00904	00904	750.637 m^3	122, 125, 126, 127, 128, 129, 130, 136; 139, 141, 145, 146, 150, 151, 160, 162, 164, 166, 168, 171, 172, 173, 180, 182, 183, 187, 191,
				194, 195, 199, 200, 203, 207, 208, 210, 212, 213, 215, 217, 218, 219, 220
				221, 222.

Shipment Description:

Comment: These logs where ShortShipped because the Ship had reached its loading Capacity.

Signed::

John Teah Sept. 28, 20

LVD Lead Inspector

John W. Teah

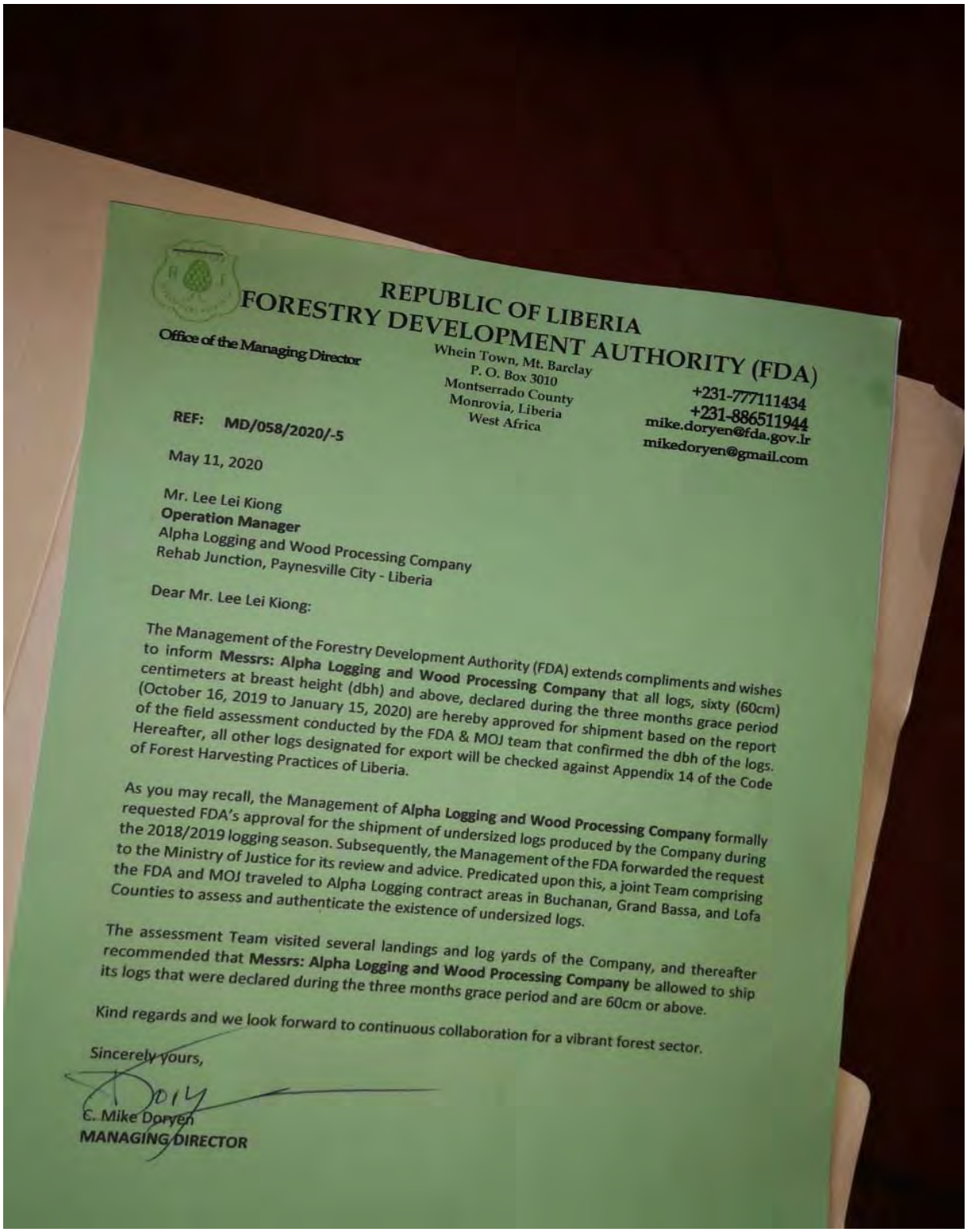
Approved by:

Operations Manager

LiberTrace

8.3 Annex 3 – FDA Approval letter 058/2020 (Override doc for EP 2019/00697)

This document relates to Chap. 6.2.3.11 Audit of a container loading inspection by LVD during Audit 4 and is also mentioned in 7.3.5.9.



REPUBLIC OF LIBERIA
FORESTRY DEVELOPMENT AUTHORITY (FDA)

Office of the Managing Director

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Monrovia, Liberia
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+231-777111434
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mike.doryen@fda.gov.lr
mikedoryen@gmail.com

REF: MD/058/2020/-5

May 11, 2020

Mr. Lee Lei Kiong
Operation Manager
Alpha Logging and Wood Processing Company
Rehab Junction, Paynesville City - Liberia

Dear Mr. Lee Lei Kiong:

The Management of the Forestry Development Authority (FDA) extends compliments and wishes to inform **Messrs: Alpha Logging and Wood Processing Company** that all logs, sixty (60cm) centimeters at breast height (dbh) and above, declared during the three months grace period (October 16, 2019 to January 15, 2020) are hereby approved for shipment based on the report of the field assessment conducted by the FDA & MOJ team that confirmed the dbh of the logs. Hereafter, all other logs designated for export will be checked against Appendix 14 of the Code of Forest Harvesting Practices of Liberia.

As you may recall, the Management of **Alpha Logging and Wood Processing Company** formally requested FDA's approval for the shipment of undersized logs produced by the Company during the 2018/2019 logging season. Subsequently, the Management of the FDA forwarded the request to the Ministry of Justice for its review and advice. Predicated upon this, a joint Team comprising the FDA and MOJ traveled to Alpha Logging contract areas in Buchanan, Grand Bassa, and Lofa Counties to assess and authenticate the existence of undersized logs.

The assessment Team visited several landings and log yards of the Company, and thereafter recommended that **Messrs: Alpha Logging and Wood Processing Company** be allowed to ship its logs that were declared during the three months grace period and are 60cm or above.

Kind regards and we look forward to continuous collaboration for a vibrant forest sector.

Sincerely yours,

C. Mike Doryen
MANAGING DIRECTOR

8.4 Annex 4 - Tax deferral request and granting letter

This document relates to Chap. 6.2.3.11 Audit of a container loading inspection by LVD during Audit 4.

Copies of the letters running over 2 pages:

Recd: Sept 14, 2020 Amage 12.56 pm

AFRICAN WOOD AND LUMBER (AW&L) COMPANY

NRD compound, 14th Street Beach Side, Sinkor, Monrovia (Liberia) West Africa

Ref. No.- AW&L/C&CoC/FDA/120920/01

12 September 2020

To

Hon. C. Mike Doryen
Managing Director
Forestry Development Authority (FDA)
Whein Town, Paynesville, Liberia

Sub.: Request for extension of payments for Marblee and Karblee Community Forest

Dear Sir,

Sincere greetings from African Wood and Lumber Company (*AW&L Co.*).

The management of *AW&L Co.* extends compliments and wishes to request the management of FDA to grant an extension for payment of the following invoices:

I. FDA Area Fees (9.2.1)
II. Contract Administrative Fees (9.3.3)
III. Annual Coupe Inspection Fee (9.3.4)

It is desired by the company to allow validity of payment to be extended by the FDA until the end of September 2020. The management is looking forward for your kind approval as we are striving for the forstry sector to make meaningful contributions to the national economy of our Liberia.

Thanking you

Sincerely yours,

Cesare Colombo
CEO, *AW&L Co.*

REPUBLIC OF LIBERIA
FORESTRY DEVELOPMENT AUTHORITY

Office of the Technical Manager
Legality Verification Department

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P.O.BOX 3010
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Monrovia, Liberia
West Africa

+231-888-034-118
+231-775-282-511
simukamara@yahoo.com

To : Hon. C. Mike Doryen
Managing Director
Forestry Development Authority

From : Simulu M. Kamara
Technical Manager
Legality Verification Department

Subject : Deferred Payment in favor of African Wood and Lumber

Date September 15, 2020

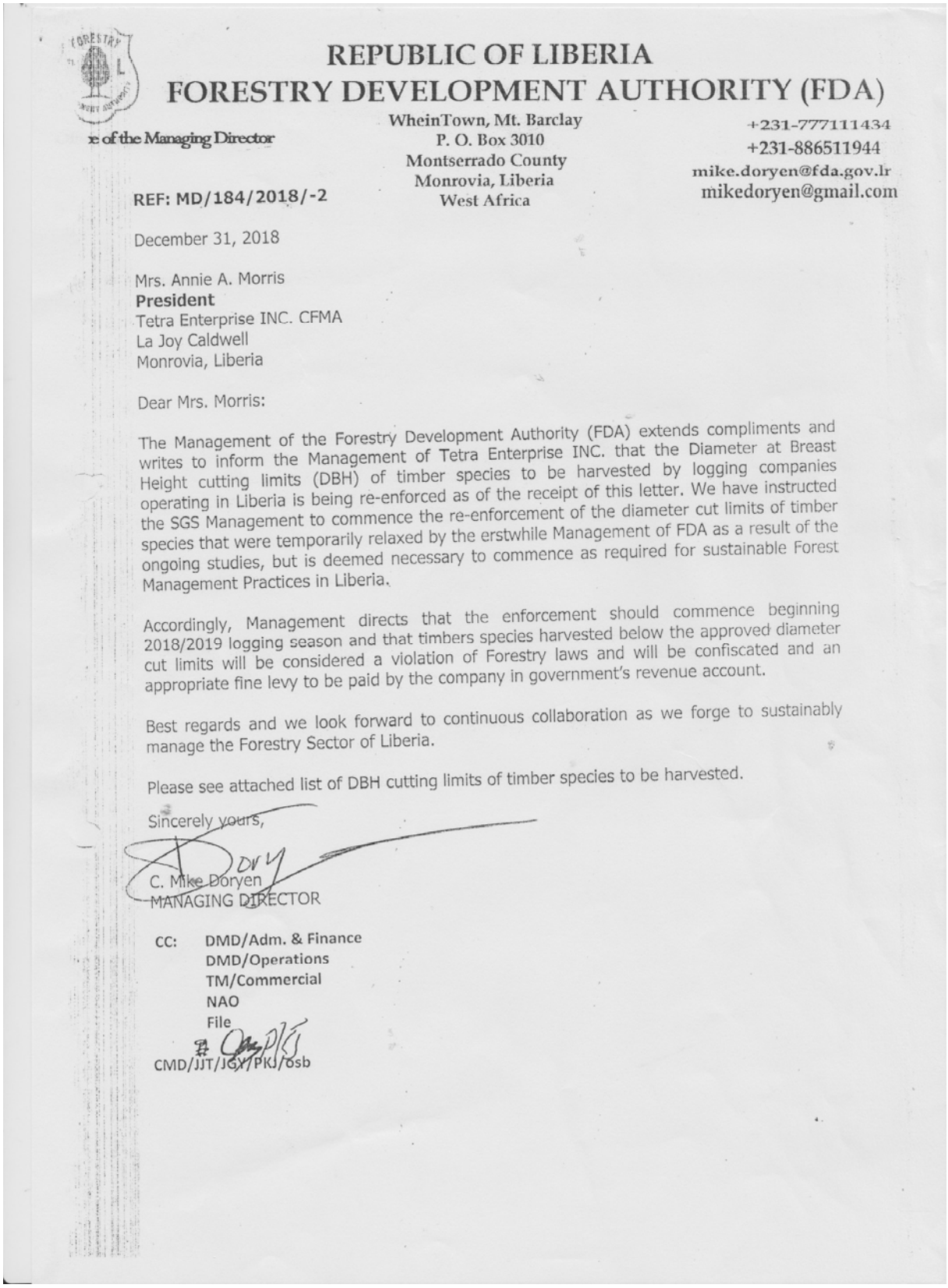
MD, we are in receipt of a communication from African wood and Lumber addressed to you requesting for deferred payment in taxes relating to land rental. Having analyzed the financial record of the above company in the Libertrace system, LVD interposes no objection to said request.

Further, we advise that management grant approval to AW&L and mandate SGS to approve export permits relating to this shipment consistent with the attached communication.

Kind regards,

8.5 Annex 5 - FDA DCL Letter 184/2018

This document relates to Chap. 7.3.5.9 on Diameter Cutting Limits (DCLs).



REPUBLIC OF LIBERIA
FORESTRY DEVELOPMENT AUTHORITY (FDA)

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REF: MD/184/2018/-2

December 31, 2018

Mrs. Annie A. Morris
President
Tetra Enterprise INC. CFMA
La Joy Caldwell
Monrovia, Liberia

Dear Mrs. Morris:

The Management of the Forestry Development Authority (FDA) extends compliments and writes to inform the Management of Tetra Enterprise INC. that the Diameter at Breast Height cutting limits (DBH) of timber species to be harvested by logging companies operating in Liberia is being re-enforced as of the receipt of this letter. We have instructed the SGS Management to commence the re-enforcement of the diameter cut limits of timber species that were temporarily relaxed by the erstwhile Management of FDA as a result of the ongoing studies, but is deemed necessary to commence as required for sustainable Forest Management Practices in Liberia.

Accordingly, Management directs that the enforcement should commence beginning 2018/2019 logging season and that timbers species harvested below the approved diameter cut limits will be considered a violation of Forestry laws and will be confiscated and an appropriate fine levy to be paid by the company in government's revenue account.

Best regards and we look forward to continuous collaboration as we forge to sustainably manage the Forestry Sector of Liberia.

Please see attached list of DBH cutting limits of timber species to be harvested.

Sincerely yours,

C. Mike Doryen
MANAGING DIRECTOR

CC: DMD/Adm. & Finance
DMD/Operations
TM/Commercial
NAO
File

CMD/JJT/JGY/PKJ/osb