



REVIEW REPORT - EXECUTIVE SUMMARY

Liberia Forest Sector Project

Legality review of forest concessions in Liberia

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1 INTRODUCTION AND OBJECTIVES OF THE REVIEW REPORT

Since 2006, the Liberian forest sector has experienced important reforms aiming to improve the sector's governance. In this context, the National Forestry Reform Law (NFRL) was enacted and laid the basis for the reform process.

Nevertheless, the effective implementation of the forest regulations has been often criticized and concerns have been raised on the fairness and legality of forest operations. Therefore, the Government contracted SOFRECO to conduct an assessment to ensure all forest concessions and contracts are reviewed by an independent party. On this basis, the Government expects to put in place a process to improve governance in the forest sector.

The objective of this review is to evaluate the legal compliance of the (i) negotiation and awarding process of logging concessions contracts and agreements and (ii) implementation and enforcement of these contracts and agreements.

2 METHODOLOGY

This legality review was conducted by a team of forestry and legality experts during the months from June to October 2019. The international experts were in Liberia from 29th of July to 23rd of August 2019. The national legality experts stayed in Liberia during the entire period of the review and had regular meetings with the FDA, the LRA, company directors, community representatives, civil society organizations, and other relevant MACs.

The assessment was based on the adaptation of the VPA legality matrix into an auditable checklist. This matrix is made of 11 principles based on Liberia's legal framework for the forestry sector:

- Principle 1: Legal existence/recognition and eligibility to operate in forestry sector;
- Principle 2: Forest allocation;
- Principle 3: Social obligations and benefit sharing;
- Principle 4: Forest management operations and harvesting;
- Principle 5: Environmental obligations;
- Principle 6: Timber transportation and traceability;
- Principle 7: Transformation and timber processing;
- Principle 8: Workers rights, health safety and welfare;
- Principle 9: Taxes, fees and other payments;
- Principle 10: Export, processing and trade requirements;
- Principle 11: Transparency and general disclosure.

These principles, enshrined within Liberia's legal framework, aim to ensure the legality of the allocation of forest use rights and of harvesting, transport, processing and selling of timber based on the national legislation in force, supporting regulations and guidelines, sector-specific and national policy and existing governmental control systems

Liberia's legal framework was established by the National Forestry Reform Law which aims to "balance the competing commercial, community and conservation priorities in use, management and protection of forest resources", thereby "promoting effective present use of forest resources for

economic development while, at the same time, ensuring that forest resources will be available for the benefit of future generations”.

Since the year 2013, the EU and DFID have supported the Libertrace project, implemented by SGS, aiming to implement the Legality Verification Division (LVD) of the FDA. In this regard, the Libertrace software was developed to operate the timber traceability and to be used as a repository of the administrative documents listed as the main criterias of the VPA legality matrix.

As a first stage of the review, LiberTrace was used by the experts for the first collection of documents for every concession and agreement. After the documents' collection on LiberTrace, consultations were held with companies and FDA to collect the documents that were not in the database. The documents that could not be collected during these phases were considered as non-existing.

A company's compliance with legal requirements defined in governing legislation, regulations, guidelines and forest governance policies was assessed through a review of documented processes and verified reports, permits, licenses, receipts and other supporting documents. Although this review was complimented by interviews, compliance was scored primarily using documented resources.

In addition to the VPA matrix, checklists based on the official guidelines and regulations were developed to assess the compliance of the following key management documents:

- Strategic Forest Management Plan (SFMP);
- 5 Years Management Plan (5YFMP);
- Annual Operational Plan (AOP);
- Environmental Impact Assessment (EIA);
- Social Agreements.

Based on the legality assessment of the forest contracts, the Review Team analysed the governance of key management processes and the potential structural and regulatory problems in the sector which contribute to non-compliance.

Field inspections took place at FMC A and in ICC' sawmill in Buchanan as these were the only areas accessible during the FDA-approved mission period due to heavy rains and poor road connectivity. Furthermore, no logging operations were carried during the approved mission period. Taking this into consideration, the experts focused inspections mainly on a review of documented process and social issues. During these field inspections, traceability verifications were also undertake, references of barcode tags were recorded on standing trees, logs and stumps and verified against their declared status in LiberTrace.

Nevertheless, these inspections were limited due to the pre-defined scope of the review and the limited capacity to carry out wide-ranging field inspections. Therefore, the review does not provide first hand confirmation of

forest activities. A future, field-based assessment is needed to provide a more in depth understanding of social and operational compliance.

3 RESULTS

The review of the legality of the assigned contracts was also severely limited due to the number of key documents that were missing and/or not made available to the Review Team. The lack of key documents affected the Team's ability to assess the transparency and legality of negotiation and awarding processes, the sustainability of forest planning and management practices, and the environmental impact of commercial use activities.

3.1 Adaptation of the legality matrix

The Legality Matrix was reviewed and adapted to include developments to the national legal framework and streamlined by identifying redundancies, repetitions and obsolete criteria. Indeed, while evaluating the companies' compliance against the requirements of the legality matrix, it appeared that:

- Some Legality Matrix criteria were redundant due to developments to the legal framework.
- Several criteria are repeated within the Legality Matrix. In some instances, a single cross-cutting document/report could contain information to satisfy multiple indicators across more than one principle.
- The Legality Matrix contains several verification criteria that require the documentation of processes which are not expressly defined in supporting regulations or guidelines.
- Regulations for the Community Rights Law (CRL) were not originally included in the VPA Legality Matrix. As much as possible, regulations for the CRL must be streamlined across all 11 principles and indicators.
- There are several obsolete criteria, referring to processes that have never been undertaken or do not apply to the types of contracts under review.

3.2 Analysis of the companies' compliance against VPA legality principles

This analysis was conducted for all forest contracts registered or known to the FDA. The Review found that that no companies were fully compliant with any of the legality principles, meaning no companies fully discharged their responsibilities relating to forest operations under Liberian law. The results per principle is presented below outlining the most persistent issues.

The sector is therefore characterized by:

- The overall absence of forest management and environmental monitoring;
- The massive amount of overdue tax payments;
- The absence of banking system to realize payments to communities;
- The undermined credibility of certificates and other official documents;
- The absence of official sanctions in case of late or no payment of taxes or implementation of regulations;
- The doubts on the traceability system;
- The risk for the wood importers to use export license as a legal attestation;
- The lack of transparency of the administrations in charge of field inspections;
- The overall weakness of FDA's document management system.

The lack of compliance with VPA requirements, and as a result Liberian law, is not the sole responsibility of the companies. The government of Liberia's limited capacity to fully discharge its regulatory function, technical limitations with communities and lack of/will from a few bad actors also contributes to overall ineffective forest management and unsustainable practices.

3.2.1 Principle 1: Legal existence/recognition and eligibility to operate in forestry sector

In relation to FMCs and the TSCs, the Review Team could not confirm that these companies were eligible to hold a forest license and that their owners were not GoL officials prohibited from conducting commercial forest operations or persons barred from bidding for concession and other public contracts due to violations of tender rules established by the PPCC. Indeed, only two of the five FMCs under review provided lists of shareholders and beneficiaries and only one provided an affidavit declaring that its owners are not prohibited persons. The last assessment of beneficial ownership was conducted by LEITI's evaluation on its Beneficial Ownership Disclosure Pilot

Besides, the business registration, ownership, and shareholder details for third party contractors operating in community forests were not made available to the Review Team. Therefore, the legal existence/recognition and eligibility of these contractors could not be assessed.

3.2.2 Principle 2: Forest allocation

Most of the performance bonds, pre-qualification reports and certificates were obtained from the companies. Although, most of the documents that

had to be shared from the FDA could not be found (9 specific documents, including socio-economic report and proof of community consultation). The Review Team was told by the FDA that all these documents were lost during its office relocation process.

3.2.3 Principle 3: Social obligations and benefit sharing

Amongst the required documents, only the Social Agreements signed by contract holders and CDFCs were available for all companies.

The main issue reported for the social obligations is that payments from companies to communities are made directly in cash to community representatives with the FDA providing verification of the payment. This method doesn't guarantee transparency or accountability of the transactions.

3.2.4 Principle 4: Forest management operations and harvesting

The analysis of this principle is especially preoccupant as it shows that almost no criteria of sustainable forest management is respected in Liberia.

Amongst the 5 FMCs, only two had a SFMP. Unfortunately, none of them was compliant with applicable regulations and guidelines. As such, none of the companies undertook the basic studies required to design a credible management plan:

- No multi-resources inventory was conducted, as such the following assessments couldn't be made:
 - The calculation of the rotation;
 - The partition of the FMC into management units;
 - The partition of the Timber Production Unit into Compartments;
 - The calculation of the species recovery rates for the update of the DBH cutting limit;
 - The calculation of the commercial species stock;
 - The realization of the industrial planning and the economic and financial assessments.
- No socio-economic diagnosis was made, which is essential for:
 - The partition of the FMC into management units;
 - The realization of the industrial planning and the economic and financial assessments.

As a result, it can be concluded that there is no sustainable forest management plan that complies with legal and regulatory requirements resulting in an absence of long-term forest management planning.

Only one FMC had a 5YFMP, although, it was not compliant. The main weaknesses of the plan were related to the absence of SFMP which should be the main foundation of the document.

Although all FMCs had an AOP, none was compliant. Besides the fact that no plans were based on credible SFMPs and 5YFMPs, the recurrent issues with the AOPs are as follows:

- The location of the AC is not based on a SFMP, nor on compartments or 5 years blocks;
- Absence of enumeration prior to the design of the AOP (as prescribed in the management guidelines and in the Forest Management Contracts) which undermines:

- The calculation of the harvesting forecasts;
- The annual coupe and stock maps;
- The planning of harvesting operations and other activities.

Only one company (Mandra) operating under a CFMA completed a 15-years management plan. However, this 15-year management plan did not appear to meet any of the official requirements.

As described in the above tables, no company completed the 25-year, 5 year and annual planning processes according to the official requirements. However, the FDA generally accepts the plans and always issues a harvesting certificate, which indicates that governance of the planning processes is very weak.

3.2.5 Principle 5: Environmental obligations

Most companies have prepared Environmental Impact Assessment Report. However, none of these appeared to be compliant with the official guidelines. Despite these compliance issues, all EIAs were approved by the EPA and environmental permits were issued. This approval shows that Governance of the environmental processes is weak.

Amongst the weaknesses of these documents and as the SFMPs, it appears that no field studies (such as a multi-resource inventory for the description of the environment) were undertaken for the elaboration of the documents. The Review Team observed that EIAs documents appeared to be designed to meet administrative obligations rather than as a tool to mitigate impacts generated by the logging activity.

A field visit to a logging camp showed that the E & S measures were minimal, did not relate to the EIA, and that a large margin of progress was possible in this area. According to the FDA and the companies, the FDA conducts a joint annual inspection along with the EPA. However, neither organization prepares reports from these inspections, except cases of non-compliance. No letters of compliance were uploaded into LiberTrace or made available to the review team. This undermines the transparency and credibility of these visits and their findings.

3.2.6 Principle 6: Timber transportation and traceability

The LiberTrace system is fully operational. Companies must comply with the enumeration and Tree / Log / Export Data Forms processes for all exported logs. On face value, the traceability of exported logs is very strong.

According to the FDA and companies, the LVD and the regional offices of the FDA conduct annual inspections. Although annual reports were not compiled, the FDA did share some of the monthly reports of these assessments (in hard copy). Therefore, the team could not be sure about the transparency of processes or regularity of field inspections.

According to the LiberTrace COC SOPs, the companies must declare their Tree Data Forms (TDF) on a monthly basis for stumpage fee invoicing. In practice, these declarations are only made for the logs that are supposed to be exported (and which are already in the port facilities) and only when these are ready to be exported. As such, the review team was unable to confirm that stumpage fees are paid on time and for logs that are not exported (for logs dedicated to the local market, infrastructures or lost logs). Furthermore, as these declarations are not made on time, LVD does not possess up to date view of the harvesting operations. Consequently, LVD cannot effectively organize field inspections to ensure that TDF and LDF are recorded as per the field reality.

Furthermore, as the enumeration is audited on sample base by the LVD and as few inspections are made outside of the port facilities by the LVD, it is hard to ensure that no industrial harvesting can be conducted outside of the COCIS.

Outside of the COCIS, there are less robust systems in place to protect against illegal logging. According to the Liberia Timber Association (LibTA), there are significant areas of recent illegal clear-felling within the FMCs. These appear to be related to community based agricultural development and illegal harvesting undertaken by individuals. There does not appear to be any control of these types of illegal logging activities.

3.2.7 Principle 7: Transformation and timber processing

While all forest management contracts stipulate that the companies shall develop a sawmill, only one of them is operated in Liberia. While this sawmill is operating with a sawmill permit, no EIA was produced, and no evidence of FDA and EPA inspections were found.

3.2.8 Principle 8: Workers rights, health safety and welfare

Most companies submitted payroll documentation for review. However, companies nor regulators provided documents demonstrating compliance to workers' rights, health safety and welfare.

The Ministry of Labor purports to regularly conduct inspections of forestry operations, but there is no documentation to verify these claims. The regulator does not provide reports of its inspections to the companies.

3.2.9 Principle 9: Taxes, fees and other payments

Table 1 presents the status of concession fee issuance and payments for all companies from January 2017 to July 2019 (SGS, 2019). The table also considers the area and bid premium fees invoiced since the award of the concessions.

Table 1 - Status of concession fee payments (in million USD for all companies, from January 2017 to July 2019)

<i>SGS database (million USD)</i>	<i>Area Fees</i>	<i>Export fees</i>	<i>Stumpage fees</i>	<i>Area fee Arrears</i>	<i>Other fees</i>	<i>Bid premium / arrears</i>	<i>Misc.</i>	<i>total</i>
Total invoiced	11.8	6.2	7.8	2.2	1.8	11.7	0.6	42.1
Cancelled invoices	0.0	0.0	0.2	0.0	0.4	0	0.1	0.7
Total invoices due	11.8	6.2	7.7	2.2	1.4	11.7	0.5	41.4
Paid	1.8	5.9	6.5	1.0	0.5	0	0.1	15.8
Not yet due	5.7	0.0	0.0	2.2	0.0	11.7	0.0	17.6
Overdue	4.3	0.3	1.2	1.0	0.8	0	0.3	8.1

Payment performance of the companies is not satisfactory: only 38% of the 41.4 million USD invoiced by the FDA to the forest concessions were paid during the period under review.

According to data provided by SGS, active companies accrued 6.5 million USD in unpaid duties and fees between 01/2017 and 07/2019, namely:

- 4.3 million in Area fees;
- 1.2 million in Stumpage fees and
- 1 million Unpaid arrears (invoiced before 2017).

Payment of Area fees and arrears is very low. Only 15% and 7% of the bills issued during the reference period have been paid, thus adding another 4.3 million USD to the “old” arrears”.

Bid premium fees have been abolished through the “act to abolish the payment of annual land rental bid premium on contract area (...)” approved on the 17/09/2013. As such, all land rental bid premiums accrued up to the Fiscal Year 2011/2012 should have been fully paid within a period of 36 months or as agreed with the FDA and the Ministry of Finance. Nevertheless, outstanding bid premium fees have been invoiced by SGS as “2008-2011 (Bid Premium)” with due date October 2020. The recovery of these payments is currently progressively made by the companies which must pay 13 % of the FOB value of every export against their arrears. The long grace period for area fees and bid premium arrears payment of 12 months resulted in a volume of 17 million USD in not yet due invoices for which payment is not guaranteed. Moreover between 1/2017 and 7/2019 the area fee debt of the companies has been increased by another 4.3 million USD in overdue and 5.7 million USD in undue payments. Both FDA staff and

companies expressed serious doubts that the 2.2 million of open area fee invoices and 2.2 million of area fee arrears will be paid in due time.

The development of export and stumpage fee payments has been more satisfactory. 84% of the stumpage fees invoiced have been paid in time. Regarding export fees: Only 5% of the invoices are overdue since no export permits are issued if export fees are overdue.

The calmativo amount of outstanding payments is critical and reveals weaknesses from the companies and the tax monitoring system. The lack of compliance with payment obligations indicates reluctance of the government to enforce legal penalties against companies with high outstanding forest fee debts.

Despite evidence of overdue payments and tax arrears, the majority of FMC companies were issued tax clearance certificates by LRA.

This demonstrates weaknesses within the tax collection system, especially as:

- A tax clearance aims to “certify that on the basis of available information to the tax department the company has qualified to obtain this tax clearance”;
- A tax return aims to demonstrate “that all relevant forest taxes are paid”.

According to the FDA and LRA, both agencies reached an agreement to issue tax clearances to companies with tax arrears because tax clearances are required by law as a prerequisite for export. As companies generate revenue through exportation, they will subsequently make payments towards overdue taxes.

Additionally, some companies claimed other payments (such as for the construction of infrastructure) to be deducted from their annual area fee. However, documents supporting these claims seemed to be not existing.

Consequently, it can be stated that the tax clearance and tax return documents are not necessarily a proof that a company has paid all their concession fees.

In addition to Community Benefits, communities are also entitled to 30% of the Annual Area Fees payable from the Ministry of Finance. The Ministry has for some time failed in its obligations to pay these fees completely and this non-payment is the source of considerable legitimate grievance.

3.2.10 Principle 10: Export, processing and trade requirements

Reference prices needed to establish the official FOB prices and calculate the stumpage and export fees have not been reviewed for more than 4 years.

As stated for Principle 6, the fact that the felling declarations forms (TDF) are not made on time challenges LVD's ability to closely monitor harvesting operations and to ensure that effective traceability at field level.

3.2.11 Principle 11: Transparency and general disclosure

No companies published their payments made to GoL. Furthermore, Liberia is suspended from the EITI initiative since 2018 and companies, therefore, cannot comply with the LEITI requirements.

3.3 Analysis of governance of key management processes

3.3.1 Implementation of the Forest Management Contract (FMC)

More than ten years after their signature, there is almost no enforcement of the FMC on the part of both the GoL and the companies. The main discrepancies between the contracts and their implementation include:

- Forest Management Plan including SFMP, 5YFMP and EIA: No companies had a SFMP, 5YFMP nor EIA in line with the official requirements.
- Sawmill: All FMCs foresee should have an operational sawmill and plywood / veneer mill within two years after the ratification of their contract. However, only one industrial sawmill is functional in Buchanan.
- AOP: No AOPs were complying with the official guidelines. None of the companies if conducting a complete enumeration prior to the elaboration of the AOP.
- Environmental management (including wildlife, pollution, erosion, H&S): In addition to the fact that no EIA is compliant with the official requirements, the EPA does not provide any inspection report that could ensure the compliance of the companies against their contracts.
- Payments not received and Land Rental Bid Payments: While Land Rental Bid Payments were cancelled in 2013, most of the companies still have important outstanding arrears. None of the provisions regarding late payment are enforced, such as interest penalties, contract termination or suspension.
- Force Majeure: As per the terms of the contracts, the Ebola outbreak could have been considered as a Force Majeure. Although and even if they couldn't operate, companies were still invoiced for the area fees.
- Audits and Reviews: No Government Ministry, Agencies, or Commissions (MACs) produce reports to ensure that contracts are implemented as per their terms.

3.3.2 Background for issuance of certificates and other official documents

The overall governmental process shows weaknesses to guarantee credibility and transparency in the monitoring of the companies. The Review Team was rarely able to confirm the basis on which the following documents were issued by the GoL:

- Letters of approval of SFMPs and 5YFMPs: none of these documents were designed based on the official guidelines for forest management;
- Annual Harvesting Certificates: none of the companies is complying with the official guidelines;
- Environmental Impact Permits: none of the companies is complying with the official guidelines for EIA;
- Tax clearance certificates and tax returns: most of the companies have important outstanding tax arrears and as official arrangements between the LRA and the companies could not be shared with the review team.

In addition, no GoL MACs tasked with conducting audits and inspections of companies issued reports.

GoL has very limited operational capacity. Considering the lack of equipment (vehicles), financial and human resources of the GoL administrations (especially the FDA regional offices) for field inspections, there is low confidence that relevant MACs can perform their day-to-day responsibilities and keep their objectivity while depending on operators for support (lodging, feeding, transportation).

3.3.3 Export process and export permit

The regulatory and administrative processes around processing Export Permit applications are extremely complex and results in a high level of uncertainty around the logistics of exporting logs and timber products. The companies assert that there is a lack of fairness, reasonableness, and care afforded them through the imposition of overbearing bureaucracy leading to needless additional expenses.

As SGS / LVD is supposed to verify the legality of the traceability of the logs to be exported and as the system is conducted through the LiberTrace system (which is the backbone of the Legality Verification System), the Export Permit issued is often considered as a legality evidence by the wood importers in Europe in the frame in the EU Timber Regulation.

However, even if the logs are always traceable on paper, the real field traceability is still questionable and the basis to attest legality is uncertain.

FDA asserts that the legality is currently verified under the “current regime”, which was defined through a listing of document issued in November 2016¹. However, only the requirements related to traceability are currently considered. None of the pre-felling requirements nor most of the concession allocation documents appear to be regularly considered.

This suggests a regime of general indulgence, derogation or lack of enforcement. In some cases, discretionary decisions are made by the FDA to issue EPs in contravention of the requirements it has itself prescribed.

If FDA adhered to its own guidelines, under Liberian law, as outlined in the VPA (or under the “current regime”), no EP would be issued.

In relation to traceability, as the LVD is currently being transferred from SGS to FDA, there is a high risk that the LVD inspectors will face similar constraints (i.e. the lack of equipment (vehicles), financial and human resources) for field inspections as the rest of the FDA teams. In this respect, there is justifiable concern that the traceability system could be soon undermined.

As a result, the Export Permit currently provides little assurance of the log’s legality compliance and limited confidence for their traceability.

Moreover, overall forest management is weak, these Exports Permits don’t provide any assurance that logs are from managed forests.

¹ Document called “Verification of documentation before issuance of Export Permit”, issued by the FDA in November 2016

3.3.4 Forest planning and management

3.3.4.1 Design of supporting documents

As described above, no company implements the 25-year, 5 year and annual planning processes in line with regulations and guidelines. Nevertheless, the FDA generally accepts the plan which indicates that the Governance of planning processes is weak.

The mechanism to issue harvesting certificates and the block approval letters is especially revealing. In theory and as per the Forest Management Contracts, harvesting certificates should suffice for a company to start operation. Although, the companies do not enumerate their blocks before the elaboration of their AOP. In this respect, SGS implemented a system with a block approval letter in its COC SOPs to serve as an entry point of the COCIS. Consequently, the harvesting certificate became an official document without application, while the block approval letter became a mandatory document for the company, but which had no official legitimacy, and which is *de facto* acknowledging the fact that the AOPs don't comply with the regulations.

3.3.4.2 DBH Cutting Limits

The 2007 version of the Code of Harvesting Practices included DBH Cutting Limits for the main commercial tree species. The limits outlined were between 60 and 100 cm of DBH. In the revised Code of Harvesting Practice, approved in 2017, the DBH were all removed.

All Forest Management Contracts specify that (article B.6.22) “holder shall not cut or fell for commercial use any growing tree smaller than 60 cm Diameter at BREAST HEIGHT” (DBH).

In addition, these contracts also specify that (article B.3.11) a Forest Management Plan (including SFMP, 5YFMP and EIA) must conform with the “Guidelines for Forest Management Planning and the Liberia Code of Forest Harvesting Practices (...)”. In this respect and in the framework of the SFMP, the Guidelines for Forest Management Planning (2009) specify that cutting limits must be defined for all managed tree species in order to ensure their long-term reconstitution.

As there are is no SFMP based on the guidelines, and as no recovery rates were calculated, no cutting limits were defined in these documents.

At the time of the review, companies asserted that they should be allowed to harvest at 60 cm of DBH in line with their contracts and supported by revised Code of Harvesting Practices’ silence on cutting limits. According to information shared by FDA officials, SGS and companies, there was a consensus to start harvesting trees at 60 cm of DBH as there is no longer legal basis to prevent harvest at a higher cutting limit.

However, little consideration was given to contractual obligations relating to the preparation of SFMPs based on the Guidelines for Forest Management Planning and which would include definition of “sustainable” cutting limits.

Based on the facts that 1) the cutting limits were removed from the Code of Harvesting Practices; 2) overall forest management is very weak; and 3) the FDA is keen to agree to decrease the overall cutting limits (from 100 cm in some cases to 60 cm DBH), the Review Team concludes that there is little demonstrated will to ensure the sustainability of the forests in Liberia.

3.3.4.3 Cutting cycle for CFMA

The Guidelines for Forest Management Planning were prepared for the Forest Management Contracts and foresaw cutting cycles of 25 years. The Code of Harvesting Practices also states that the cutting cycle in selective logging system shall be of 25 years. This timeframe is similar for cutting cycles in other tropical countries (such as Cameroon, Gabon and Congo).

As the CFMAs are signed for 15 years, the only approved CFMA management plan was designed on a 15 years rotation, which is in contradiction with the Code of Harvesting Practice.

As there is currently no inventory made to assess the state of the resource and as the cutting limit shall likely be 60 cm of DBH, there is no evidence to support that this cutting cycle would allow for the recovery of community forests.

In this respect, the cutting cycle currently applied in CFMA conflicts with the Code of Harvesting Practices and does not offer confidence for the sustainability of the forests in CFMAs.

3.3.5 Environmental monitoring

Several issues hindering environmental governance show that overall environmental governance is very weak and does not provide transparency nor credibility:

- The low interest of the operators in this technical area. Operators consider environmental obligations to be superfluous and inconvenient for logging;
- The overall weakness and non-compliance of the EIA documents;
- The low service offered by consulting firms specialized in this field, which leads to ESA reports that are very uniform in content, approach, design, and level of quality. Very few reports adhere to official guidelines;
- The weakness of E&S management plan design and weak field application of E&S recommendations or mitigations measures;
- The almost automatic allocation of environmental permits by EPA irrespective of the quality of the ESA documents;
- The lack of E&S monitoring, both from operators who do not report regularly on the implementation of their management plan and from the regulatory institutions (EPA, FDA, MoL) that do not produce inspection reports.

3.3.6 Payment of taxes and fees to the Government and communities

3.3.6.1 Stumpage and export fees calculation

The stumpage and export fees are based on listed FOB prices, which should be reviewed annually. The FDA has not modified the FOB price list for at least 4 years during which time log prices have changed considerably, generally trending downwards.

In this respect, the official FOB price calculation lacks transparency and these fees seem to be higher than they should be.

3.3.6.2 Bid premium fee recovery

The forestry industrial development act (29/8/29017) states that all land rental bid premiums accrued up to the Fiscal Year 2011/2012 should have been fully paid within a period of 36 months or as agreed with the FDA and the Ministry of Finance. Outstanding bid premium fees have been invoiced by SGS as “2008-2011 (Bid Premium arrears)” to the 5 FMC companies on 1/7/2018 with due date October 2020 with a total of 11.7 million USD.

No payments have been recorded so far. The total volume of bid premium is still open.

3.3.6.3 Forest fee collection system

The present system for forest concession taxes does not satisfactorily comply with Liberian law, as outlined within the VPA. The invoices are issued through LiberTrace under the responsibility of the FDA, informing also LRA through a triangulation platform.

There seems to be no common platform or channel between tax department and the FDA to reconcile/ monitor individual accounts with each concession company for the purpose of monitoring open and overdue concession fee payments, the actual state of the “bid premium” debt, payments to communities, and the volume of investments’ made within the “wood processing sector” agreed upon by both LRA, FDA and NIC.

3.3.6.4 Payments to communities

In the absence of banking system in rural areas, payments from companies to communities are made directly in cash to community representatives with the FDA providing verification of the payment. These payments are not captured on LiberTrace and it is not possible to confirm amounts paid except from company and community records.

This methodology doesn’t guarantee accountability or transparency of the system.

3.3.6.5 Late or absence of payments

No sanctions are taken when companies do not comply with payment obligations. As a result, the present management system facilitates incompliance, especially with respect to annual area fee payment.

3.3.7 Structural problems in the sector causing non-compliance

In relation to low contract implementation, companies assert that they were obliged to undertake activities (infrastructure development communities' payments, health care) that were the obligation GoL and therefore could not fully implement their contract.

Amongst others, the port facilities at Greenville and Buchanan are only suitable for logs. They offer virtually no services and often charge for services that they do not provide (log handling and storage). The port charges are also excessive, even extortionate.

These extra expenses hinder companies' ability to meet other financial obligations.

3.4 Analysis of the LEITI and SIIB's reports recommendations

As detailed below, most of the recommendations made in the LEITI and SIIB's reports were not implemented:

- One out of the four recommendations of the LEITI report's recommendations were implemented;
- Six out of the 27 recommendations of the SIIB report's recommendations were fully implemented.

4 CONCLUSIONS

As presented in this report, most policies and regulations framing the forest sector are not enforced.

In relation to non-compliance issues it is also important to note the low financial, material and human capacities of the GoL ministries, agencies, and commissions, tasked with inspections and audits. Capacity challenges facing GoL are further exacerbated by poor infrastructure which hinders the ability of companies to fully operationalise and knowledge gaps within communities which leads to questionable selection of partner operators.

The forest sector manager is therefore characterized by:

- The overall absence of forest management and the obvious lack of will from part of the FDA to enforce it;
- The lack of environmental monitoring;
- The substantial amounts of overdue tax payments;
- The absence of banking system to realize payments to communities;
- The undermined credibility of certificates and other official documents;
- The absence of official sanctions in case of late or no payment of taxes or implementation of regulations;
- The doubts on the traceability system;
- The risk for the wood importers to use export license as a legal attestation;
- The lack of transparency of the administrations in charge of field inspections;
- The overall weakness of FDA's document management system.

Consequently, the facts that the LiberTrace project is considered as completed and as the LVD is considered as operating are especially preoccupying. The LiberTrace software which was supposed to work as a repository of documents is "globally empty" while there is little confidence that the field traceability matches with the data on the system. As the information on LiberTrace is not supposed to be published, there is a risk that the export licenses issued through the system are used to whitewash the wood exports from Liberia.

As stated earlier, the responsibilities of this situation are shared between companies and GoL as the Government is failing to undertake its part of the contract with the companies. This is also largely due to systemic lapses from regulatory bodies in discharging their monitoring and enforcement responsibilities. As such, the conditions are not set for the companies to comply with the regulations.

5 RECOMMENDATIONS

The recommendations are detailed in the report, the priorities from the point of view of the Review Team are as below:

5.1 Ensuring Accountability by Effectively Discharging Regulatory Responsibilities

- An oversight committee shall be created with a fixed term mandate to assist FDA, EPA, and relevant MACs to discharge regulatory duties.
- A capacity needs assessment shall be conducted for relevant regulatory MACs and capacity building initiatives/complimentary programs shall be developed.
- FDA and MOJ shall apply sanctions to companies who have been found to be in breach of contractual obligations.

5.2 Strengthening the Legal and Regulatory Framework

- The VPA legality matrix shall be reviewed, updated, and consolidated to include developments to the legal framework to provide clarity of current legal processes. Obsolete or redundant indicators shall also be removed.
- Regulations and guidelines relating to community forests shall be reconciled with the nine legality principles outlined in the VPA legality matrix.
- Standards and guidelines for awarding and negotiation of commercial contracts within community forests shall be developed.
- The government of Liberia shall re-state its commitment to sustainable forestry by developing and implementing an action plan for the resolution of non-compliance issues outlined within this report.
- Clear and transparent requirements shall be designed and applied for the issuance of export permits.

5.3 Ensuring Sustainability of Forests by Implementing Forest Management and Planning Laws

- A fixed-term program, funded by GoL, private companies, and international partners should be developed to assist companies, communities, and GoL to conduct multi-resource inventories of forest contracts, develop and implement comprehensive management plans in line with applicable laws. In the absence of reliable SFMP, it is impossible to ensure the sustainability of the forest management.
- A transparent and standardized approval process for AOPs, 5 years Management Plans, 5 Year Management Plans shall be developed and implemented.
- The previous cutting limits of between 60 and 100 cm of DBH for commercial species shall be re-instated to allow a better recovery of forests. In any case, the cutting limits shall be revised for every contract and specie, within every SFMP, to ensure the long-term reconstitution of the forest inside every forest contract.
- Regulatory provisions for rotation/cutting cycles for community forests shall be revised in line with the Amended Code of Harvesting Practice.

5.4 Improving Environmental Protection

- Capacity building initiatives on the design of ESAs for third party environmental impact firms, GoL, companies and communities shall be developed and implemented.
- The design level of ESAs shall be improved at the planning stage so basic elements such as: (i) the institutional set-up of the implementation and monitoring of the ESMP, (ii) the priorities of the mitigation measures, (iii) the responsibility for implementation their schedule and (iv) and costs of implementation are included.
- Monitoring data on environmental and social management plans shall be included onto LiberTrace and the COC system.
- GoL shall increase its financial expenditure to relevant MACs for the purposes of conducting inspections and periodic audits, with emphasis on reporting and dissemination procedures to superiors and concessions holders.

5.5 Payment of taxes

- FDA and LRA shall clearly define the signification of the tax clearance certificate and tax return in order to give credibility to these documents.
- FDA, LRA, NBC and NIC shall jointly evaluate individual concession accounts for the purpose of ascertaining open and overdue concession fee payments, payments to communities, and the volume of investments made within the “wood processing sector” agreed upon by LRA., FDA and NIC. The result of this evaluation shall be published publicly and updated onto the CIMS.
- The GoL shall apply and enforce appropriate sanctions to companies in violation of payment obligations.

- FDA shall update its FOB price calculation.

5.6 Community forestry

- An independent due diligence assessment shall be conducted to assess the managerial and financial capacity of all third-party contractors engaged with CFMAs. All third-party contractors found lacking managerial capacity, adequate experience, appropriate equipment, and financial capacity should have their contracts reviewed and where appropriate revoked.
- The contracts of non-performing companies shall be aborted so that communities are able to enter into new agreements with companies better able to discharge their forest management responsibilities.
- GoL shall provide commercial forestry and business development to communities to ensure communities are not disadvantaged when making decisions on commercializing forest resources and engaging with third-party contractors.
- GoL shall provide independent transaction advisory services to communities interested in entering into third-party commercial contracts.