

PWYP Liberia and Global Witness Memorandum on the Financial Year 2006/2007 Report of the Auditor General on the Liberian Ministry of Lands, Mines & Energy

October 2009

On 31 July 2009, the General Auditing Commission released a report by Liberian Auditor General John S Morlu II, on financial management in the Ministry of Lands, Mines and Energy (Ministry of Lands and Mines) for financial year 2006/2007. This audit, the first of its kind in more than 25 years, was conducted as part of the Heavily Indebted Poor Countries Initiative (HIPC) to evaluate Liberia's commitment to implementing strategies focused on reducing poverty and building the foundation for sustainable economic growth.

Liberia's greatest potential for development and economic recovery probably lies in its wealth in natural resources. Before the civil war, mining was the most important sector of the economy, accounting for two-thirds of the country's exports.¹ If managed in a sustainable and transparent way, and as part of a broader and diversified economic strategy, the revitalization of the mining industry could be the most important economic driver for post-conflict Liberia.

The Auditor General paints a bleak picture, identifying several cases of concern in the Ministry of Lands, Mines and Energy's accounts and processes, and underscoring the need for far reaching policy reform and a renewed commitment to aggressively tackle corruption within the Ministry and the Liberian Government as a whole. The failings highlighted in the report include unaccounted for discrepancies in resources, reported revenues, and donor funding, a lack of transparency and accountability, a failure to follow the mineral and mining law and law on procurement, and an inability to demonstrate sound financial management; all of which leave the Government vulnerable to corruption and mismanagement.

In President Johnson Sirleaf's inaugural speech, she pledged to wage war on corruption regardless of where it exists, or by whom it is practiced. The President and the Government of Liberia must now demonstrate their willingness to do this. The findings of the audit of the Ministry of Lands and Mines must be addressed. Failure to do so risks undermining the ability of the Government to generate the revenue needed for Liberia's post-conflict reconstruction and implement critical initiatives like the Liberian Extractive Industries Transparency Initiative, the Kimberley Process Certification Scheme and the Liberian Poverty Reduction Strategy.

This memorandum, written by PWYP Liberia² and its international partner, Global Witness, highlights some of the main issues raised in the audit of the Ministry of Lands Mines and Energy as well as the recommendations of the Auditor General. It also makes further recommendations to support the implementation of the findings of the audit.

1. The Ministry of Lands, Mines and Energy has failed to implement international accounting standards and more than US\$862,000 of expenditure during the audited period is unaccounted for³

Even with Liberia's multi-million dollar Governance and Economic Management Assistance Program,⁴ the Government has failed to institute good fiscal policies across the board. International standards require that a Government ministry should produce a full financial statement at the end of each fiscal year to allow for independent assessments. The Auditor General found that for financial year 2006/2007, the Ministry of Lands and Mines did not prepare a comprehensive financial statement including income and expenditure, balance sheets, and cash flows. In fact, according to the audit, the Government of Liberia has never produced a financial statement meeting the minimum requirements of international accounting standards. This lack of proper reporting standards makes it extremely difficult, if not impossible, to assess financial performance, quality, and efficiency, and leaves the Ministry extremely vulnerable to 'creative accounting' and auditors in a difficult position to detect

¹ Coakley, George J , The Mineral Industry of Liberia, US Geological Survey Minerals Yearbook 2004; Doing Business in Liberia, Economic and Social Section, United States Embassy. Monrovia, Liberia.

² PWYP Liberia is the Liberian chapter of the Publish What You Pay (PWYP) campaign and comprises 20 leading civil society organizations. PWYP is a global civil society coalition that helps citizens of resource-rich developing countries hold their governments accountable for the management of revenues from the oil, gas and mining industries. PWYP Liberia successfully lobbied the Liberian Government to join the Extractive Industries Transparency Initiative (EITI) and works to raise public awareness of the importance of transparency in Liberia's extractive industries.

³ More details on pages 16 and 17 of the audit.

⁴ The Governance and Economic Management Assistance Program is a partnership formed in 2005 between the Government of Liberia and international donors aimed at promoting sound economic governance, accountability, and transparency.

fraud or errors. The Ministry responded that they are now producing financial statements as required by the Finance Ministry as of 2007/2008.

The audit also reports that US\$862,000 was unsupported by vouchers⁵, and that some of the vouchers that did exist were unsupported by reliable documentation, making it impossible to ensure that these funds were used for state interests and in accordance with the law.

Recommended Action:

The Auditor General recommends that the people listed in the audit who have failed to account for unjustified expenditures should return the missing funds to the Government. If they fail to do so, we recommend that people listed in the report be prosecuted in keeping with law. This would serve as a deterrent.

The Auditor General also recommends that the Government of Liberia should adopt international accounting standards and that the Ministry of Lands and Mines should produce comprehensive and detailed financial statements annually. It also calls on the Budget Committee in the Government Budget Bureau to produce a financial statement for the audited period based on international accounting standards.

We further recommend that unsupported expenditures be reviewed by the Anti-Corruption Commission and the Ministry of Justice and that donors support the Government of Liberia's efforts to implement international accounting and reporting standards.

2. Weak controls threaten the Government of Liberia's ability to effectively implement the Kimberley Process Certification Scheme (KPCS)

The Ministry of Lands and Mines is the agency responsible for Kimberley Process implementation.⁶ The Auditor General found that reliable production statistics, information necessary for the effective implementation of the Kimberley Process, were still pending.

The Auditor General also found a specific case of a potential violation of the Kimberley Process when a 33.8 carat shipment of rough diamonds exported by a company called Faith Inc was transported into Israel without a Kimberley Process certificate and intercepted by Israeli authorities. The company claimed that the violation was inadvertent, agreed to pay a fine, and the diamonds were returned to Faith Inc. Weak controls in Liberia's Kimberley Process system which may have allowed this shipment to leave the country without a certificate must be addressed by the Liberian Government.

Recommended Action: We recommend that the Liberian Government review the current Kimberley Process legislation to ensure that sanctions are tough enough to deter illegal exports of diamonds. As discussed below in section 6, the effectiveness of the Inspectorate Unit needs to be strengthened for the effective implementation of the Kimberley Process. In the case of the Faith diamond shipment, the Liberian Government should investigate how the shipment left Liberia without a certificate and provide assurances to the Kimberley Process Monitoring Working Group that this weakness has been addressed.

3. Failure of all extractive industries companies to join Liberian Extractive Industry Transparency Initiative (LEITI)⁷ undermines its implementation and effectiveness

The Auditor General found that several exploration and mining companies identified by the Ministry of Lands and Mines to be working in Liberia were not LEITI⁸ participants, making it difficult to ensure that these companies are complying with their tax obligations and that the Ministry of Lands and Mines is properly regulating the sector. For LEITI to be an effective tool against corruption, all extractive industries companies must participate. The 2009 LEITI Act includes a requirement for all companies engaged in the extraction of agricultural, forest and mineral resources in Liberia to join the LEITI.

⁵ Official payment vouchers serve as evidence of payment and ensure that payments are authorized in line with approved regulations governing the payment. All payments should be supported by a voucher which provides proof that the money was spent for its intended purpose.

⁶ The Kimberley Process Certification Scheme is a government-led rough diamond certification scheme that was set up in 2003 by governments, civil society and the diamond industry to try and prevent the trade in conflict diamonds. The Kimberley Process (KP) requires implementing governments to pass national legislation and to set up robust internal control systems that are subject to peer review by KP working bodies.

⁷ More details on page 63 of the audit.

⁸ The Extractive Industry Transparency Initiative is a multi-stakeholder group, made up of countries, companies, and civil society, which sets international standards for good governance, transparency, and accountability of the extractive industries. The initiative is voluntary and, with the help of the international board and in consultation with local civil society groups, individual countries are responsible for its implementation, including creating a country EITI board, making key policy reforms, and publishing all revenues received from the oil, gas, and mining sectors.

The Auditor General also noted that there is a conflict of interest for the Minister of Lands, Mines and Energy, who is responsible for declaring revenue generated from the mineral sector, reporting on this for LEITI and acting as co-chairman of the multi-stakeholder steering group. This means that one of the key people responsible for judging the accuracy of the reporting is also the head of the agency being assessed. Given the conflict of interest, this role needs to be carefully managed and transparency and adherence to international standards are even more vital.

Recommended Action: As recommended by the Auditor General and in accordance with the LEITI Act of 2009, all extractive industries companies operating in Liberia should join LEITI.

The Honorable Eugene Shannon should publicly state how he intends to avoid any conflict of interest in the fulfillment of his roles as Minister of Lands and Mines and as co-chairman of the LEITI multi-stakeholder steering group.

4. The Ministry of Lands and Mines has failed to implement the Public Procurement and Concession (PPCC) Act of 2005⁹ and the recommendations of the Contracts and Concessions Review Committee (CCRC)

The Auditor General found several instances of non-compliance with the PPCC Act, especially as it relates to competitive bidding. For example, no meetings of the Procurement Committee were held during the audited period before procurements were undertaken, and in several cases there is no documentary evidence to show that contracts were awarded through a process of competitive bidding. Consequently, there is no way to ensure that contracts were fairly awarded and in the best interest of the state.

In 2007, the CCRC also recommended the cancellation of exploration licenses for three companies (Broadway Mineral, Akewa Global Minerals, and Trans Coast Enterprise) for a failure to meet reporting obligations and breach of the Exploration Agreement and Mining Code. At least one of them, Trans Coast Enterprise, is still operating in the country. The aim of the contract review was to weed out unscrupulous business from the mineral sector. The failure of the Ministry to implement the recommendations of the review committee raises questions regarding its commitment to doing this and its ability to regulate the sector adequately.

Recommended Action: We recommend that the President ensure that all operations of the Ministry comply with Liberian law. The Procurement Committee deliberations and decision justifications should be made public. The recommendations of the CCRC should be implemented, and if they are not, the reasons why should be made public. Furthermore, the Government of Liberia and the Ministry of Lands, Mines and Energy should ensure all companies operating in Liberia's mineral sector adhere to the Mining Code, exploration agreements, and LEITI's reporting obligations. We recommend that donors consider withholding funds until appropriate reporting and accounting standards are put in place.

5. The audit reveals irregularities in company development contributions and a failure of the Ministry of Lands, Mines and Energy to provide documentation on donor supported projects¹⁰

The Mineral Development Agreement (MDA) for Mittal Steel includes a provision by which the company gives the three counties Bong, Nimba and Grand Bassa an annual social contribution of one million dollars. According to the agreement, this fund is to be used by the counties to carry out social development. The Auditor General reported that US\$4,594,521 of these funds were unaccounted for.

The Mittal Steel MDA also required the company to provide US\$100,000 a year to the Ministry of Lands and Mines for scientific research. However, the Ministry could not provide the Auditor General with documentation explaining how US\$100,000 paid by the company in October 2005 was used. Without documentation supporting all expenditure there is a risk that monies are misused or used for an inappropriate purpose. Furthermore, the Auditor General was presented with payment vouchers for transactions that were not related to scientific research which suggests that the fund was not used for the intended purpose. This use of the money could breach the terms of the MDA and undermine investor and donor confidence in the Ministry.

When asked by the Auditor General, the Ministry of Lands and Mines could not provide the proper documentation for donor supported projects, agreements, and funding records. Without the appropriate documentation and records, donor resources provided for development projects cannot be accounted for and could be used for inappropriate purposes.

⁹ More details on pages 27, 28, 34, and 35 of the audit.

¹⁰ More details on pages 24, 25, and 44-46 of the audit.

Recommended Action: The Auditor General recommends that the Minister of Finance immediately provide him with details of the escrow account in which the US\$4,594,521 is being held. The Ministry should also maintain adequate documentation on all donor supported projects and funding, and be able to account for all funds received.

We further recommend that, with support from all relevant stakeholders, the Ministry develop guidelines governing the disbursement of revenues paid by extractive industries companies into community development funds. These guidelines would facilitate transparency, accountability and greater access to revenues for community-based projects.

6. There are considerable discrepancies between reported expenditures¹¹ and there is no Internal Audit Unit and no functional Inspectorate Unit¹²

Due to the highly centralized nature of Liberia's financial management system, the Ministry of Lands and Mines relies on the Ministry of Finance for final financial records, and there are significant discrepancies between the two ministries' reports. For example, for the fiscal year being audited, the Ministry of Finance reported that the Ministry of Lands and Mines spent US\$1,786,807 while the Ministry of Lands and Mines reported spending only \$1,538,628. The audit also noted that the Ministry of Finance had no records for the fiscal period of 2005/06. Failure to keep accurate records presents a huge risk of corruption and mismanagement and could result in the Ministry of Lands and Mines making decisions based on inaccurate financial data.

USAID trained personnel specifically to work in an Internal Audit Unit, which has yet to be established, to ensure the effective and efficient execution of internal control systems and processes. Without this unit, there is a high risk of non-compliance, error, fraud, and abuse. The Ministry's financial management system therefore remained unchecked for the entire audit period and, while the Ministry assured the Auditor General that funds for the Internal Audit Unit would be included in the national budget for financial year 2009/2010, no concrete action has been taken to create it.

According to the Auditor General, the existing Inspectorate Unit is ill-equipped, poorly trained, and lacks sufficient support from the Government. The Inspectorate Unit is particularly important for the monitoring and control of the Ministry's field operations, for example in gold and diamond mining areas, to ensure that there is no cross-border smuggling of these materials. The lack of an effective inspection unit has implications for the ability of the Government to comply with the Kimberley Process Certification Scheme. Also, if fully operational, an inspectorate unit would be in a position to compensate in part for the lack of an Internal Audit Unit. The Ministry reported that in every budget submission to the Budget Committee in the Bureau of the Budget it had requested additional funding to facilitate the inspectorate and its operation units within the Ministry.

Recommended Action: The Auditor General recommends that the Government of Liberia adopt international accounting standards and that the Ministry of Lands and Mines produce comprehensive and detailed financial statements annually as discussed above. The Auditor General also recommends that a qualified Director of Finance be put in place within the Ministry and he/she should have full control over and responsibility for the Ministry's finances. The Ministry of Lands and Mines should establish a well-trained and properly supported Internal Audit Unit and Inspectorat Unit and funding should be provided for the Inspectorate Unite and Internal Audit Unit in the upcoming budget. We recommend that reported discrepancies are either immediately reconciled or investigated by the Anti-Corruption Commission and the Ministry of Justice.

7. The lack of a comprehensive land policy could lead to land disputes and conflict

The Ministry, despite being the regulatory authority for all lands in Liberia, does not have any data on the lands in and around the cities, towns, and villages except for the city of Monrovia. Moreover, there is no comprehensive policy to govern the acquisition, ownership, and sale of lands other than the act which created the department. This lack of a comprehensive land policy could be one of the major contributing factors for land disputes which sometimes lead to political crises, violence, and court action.

Recommended Action: The Auditor General recommends that the Ministry develop a comprehensive land policy.

Additional Recommendations

1. A legislative hearing should be held in six months and after one year to monitor the progress of the implementation of the audit recommendations.
2. Donors should support the Government of Liberia's efforts to implement the audit recommendations.
3. The President should pass an executive order to create a code of conduct for the executive branch of the Government.

¹¹ More details on pages 18-22 of the audit.

¹² More details on pages 14 and 15 of the audit.