



## **Proposed changes to Liberian forestry laws threaten government revenue and risk logging company interference in forest policy**

Changes to Liberia's forestry laws proposed by the Liberian Timber Association would be very damaging to the country because they would severely reduce the taxes the government receives from logging companies and give those companies much more power over the country's forest policy. Additionally, amendments to Liberia's logging concession model under the recently passed Community Rights Law are troubling because they create large, environmentally disastrous concessions that can be awarded without bidding.

In September of 2009, Global Witness obtained a document prepared by the Liberian Timber Association (LTA)<sup>1</sup> listing amendments the LTA would like see made to the country's 2006 National Forestry Reform Law.<sup>2</sup> The changes suggested by the LTA, if adopted into law, would be damaging to Liberia:

- Companies holding Forestry Management Contracts (FMC) would have the opportunity to pay much less to the government in revenue for their logging concessions;
- A conflict of interest would be created in which companies that profit from logging are given more power over logging policy;
- Local communities would be at risk as companies no longer have to sign agreements protecting the communities' environment and livelihoods;
- Companies that have committed abuses in the past could have their concessions reinstated;
- The government would receive much less revenue from logging companies holding concessions of up to 49,999 hectares (ha); and
- The government would receive smaller performance bonds from companies holding concessions of up to 49,999 ha. This would give the government an inadequate guarantee against companies who fail to perform.

The Community Rights Law (CRL), passed in October of 2009,<sup>3</sup> has amended the National Forestry Reform Law in ways that weaken controls on the allocation and management of logging concessions:

- Concessions of up to 49,999 ha will be awarded without the open bidding process necessary to separate those who might meet their obligations from those that cannot; and
- Concessions between 5,000 and 49,999 ha, called Medium-Scale concessions, may allow very large areas of Liberia's forest to be clear cut.

The rationale provided by the Liberian government for allowing the forests to be logged is that the revenue generated will contribute to the country's Poverty Reduction Strategy without too severely damaging the environment or the people who live on the land. The changes suggested by the LTA severely undermine this rationale. Liberia's forest reform process, including the legal framework governing the sector, has been lauded as an example of international best practice. The changes made to the forestry laws by the CRL are not international best practice and need to be considered further in multi-stakeholder meetings.

<sup>1</sup> The document produced by the Liberian Timber Association consists of two parts: "Recommended amendments for the 2006 NFRL and LTA's Justifications" (hereinafter, "Recommended") and "Alternative process for obtaining forest for commercial purpose through the expanded Timber Sales Contract (TSC)" (hereinafter, "Alternative process"). Both documents were received by Global Witness in September 2009.

<sup>2</sup> An Act Adopting the National Forestry Reform Law of 2006 (hereinafter "National Forestry Reform Law").

<sup>3</sup> An Act to Establish the Community Rights Law of 2009 with Respect to Forest Lands (hereinafter "Community Rights Law").

## **1. The LTA's suggested amendments to future Forest Management Contract fee obligations risk reducing government revenue and coincide with efforts by concessionaires to avoid current obligations.**

Forest Management Contracts are large logging concessions that contain more than 50,000 ha of land. At present, under the National Forestry Reform Law, FMC holders win a contract by bidding upon the amount they will pay to rent the concession land, and then pay a flat fee for every cubic metre of timber they fell. The LTA suggests this be changed so that logging companies would win FMCs by bidding upon the amount they will pay per cubic metre, and then pay an extremely low flat fee to rent the land.<sup>4</sup>

By themselves, the changes in the fee structure for FMC holders do not necessarily mean that the concessionaires will pay less money to Liberia for their concessions. It is possible that future FMC holders would bid cubic metre fees high enough to compensate for the reduced land rental fees. However, the LTA's suggested amendments provide a good opportunity for future companies to reduce their fee obligations. The flat land rental fee established by the LTA amendments is very low, only USD 1.25/ha, compared with the USD 5.06/ha<sup>5</sup> or USD 10.05/ha<sup>6</sup> owed by two current FMC holders. Because Liberia's official timber volume predictions are inaccurate and because timber market prices change, it is difficult to predict just how high cubic meter percentages would have to be to compensate for the reduced land rental payments. However, when one takes into account the fact that the logging companies have shown a consistent unwillingness or inability to pay the fees they currently owe, it is also difficult to see how they would bid cubic meter percentages sufficiently high to compensate for the reduced land rental payments.

Reports of efforts by current FMC holders to avoid paying the fees they owe have been a recurring theme over the past year. In its December 2008 report, the UN Panel of Experts on Liberia raised concerns that in the final months of 2008, the first three allocated FMC logging contracts had undergone "unauthorized" changes after they had been negotiated. As a result of the changes, the contract holders Alpha Logging, E.J. & J., and LTTC stood to pay 96 percent less in land rent to the government, reducing government revenue by a potential USD 49 million and resulting in a "serious violation" of Liberian law.<sup>7</sup> Following up in June of 2009, the Panel reported that this remarkable tax break arose following conversations between at least one logging company and unidentified Forestry Development Authority (FDA) employees. While the FDA's Board of Advisors did reinstate the original payment terms for the three FMCs, the UN reported that at least two companies were still seeking to alter their contractually obligated payment terms.<sup>8</sup>

On the 21<sup>st</sup> of July, 2009, the company responsible for billing logging concessionaires, Société Générale de Surveillance (SGS), sent invoices to the three FMC holders stating that their land rental fees were due. These fees, totalling USD 2,650,787, were not paid by the legally required due date. Instead, according to the UN Panel of Experts, the companies spent their time "lobbying for reductions in payments," claiming that the FDA had promised a 20 percent reduction in their rental fees.<sup>9</sup> Eventually, Alpha Logging, E.J. & J., and LTTC committed in writing to a date of October 21<sup>st</sup> as the deadline by which they said they would pay the fees that they owed. Alpha Logging paid its fees by this date. However, both E.J. & J. and LTTC paid only a portion of the fees they owed by this date.<sup>10</sup>

<sup>4</sup> Recommended, *supra* note 1, at § 5.2(a)(1).

<sup>5</sup> Forestry Development Authority, Forest Management Contract Area "B" River Cess County (6 October, 2008) § A-4, available at [http://www.leiti.org.lr/doc/an\\_act\\_forest\\_ej.pdf](http://www.leiti.org.lr/doc/an_act_forest_ej.pdf).

<sup>6</sup> Forestry Development Authority, Forest Management Contract Area "A" Lofa and Gbarpolu Counties (6 October, 2008) § A-4, available at [http://www.leiti.org.lr/doc/an\\_act\\_fda\\_wood.pdf](http://www.leiti.org.lr/doc/an_act_fda_wood.pdf).

<sup>7</sup> United Nations Security Council, *Report of the Panel of Experts submitted pursuant to paragraph 1 of Security Council resolution 1819 (2008) concerning Liberia December 2008*. S/2008/785 (12 December, 2008) para. 90; Table 5.

<sup>8</sup> United Nations Security Council, *Midterm report of the Panel of Experts on Liberia submitted pursuant to paragraph 4 of Security Council resolution 1854 (2008)*. S/2009/290 (5 June 2009) paras. 60-63.

<sup>9</sup> United Nations Security Council, *Final Report of the Panel of Experts on Liberia submitted pursuant to paragraph 4(e) of Security Council resolution 1854 (2008)*. S/2009/640 (11 December, 2009) para. 101.

<sup>10</sup> Conversation between Global Witness and Thomas Pichet, Liberia Project Manager, Société Générale de Surveillance, 14 December, 2009.

This stalling continues, and not just by the initial FMC holders. As of the publication of this briefing, seven FMCs have been awarded but only two holders have paid all of the due fees in full. Additionally, of the five TSCs that have been awarded, the government has received full payment on fees due for only two. For the other eight concessions, either no fees have been paid or only partial payment has been made. At present, companies in Liberia owe the government over USD 13,106,000 in land rental fees and late payments. To meet this obligation, they have paid the government only USD 5,001,307. That is a shortfall of over USD 8,100,000.<sup>11</sup>

The LTA's proposal to change the FMC holders' bidding requirement from their land rental to stumpage creates another window for companies to exploit. Logging companies are refusing to pay the taxes they owe. Logging companies are trying to decrease the taxes they owe. Logging companies are trying to amend the law so that future taxes they owe will be changed. The companies are already failing to contribute their due to Liberia; they cannot be allowed to contribute even less. The LTA's amendment should be rejected.

## **2. The LTA's amendments would increase logging companies' control over forest policy and law and help companies avoid social obligations.**

The LTA also hopes to increase the power companies have over Liberia's forestry policy. In its suggested amendments, the Timber Association states that the "FDA does not have the financial or technical capacity to manage the Forestry Sector of Liberia."<sup>12</sup> Instead, according to the LTA, increased management power should be granted to a streamlined advisory body: the Forestry Management Advisory Committee (FMAC). At present, the FMAC is an advisory body to the FDA with few powers beyond the right to be consulted at some point over forestry strategy and regulatory drafting. The Committee can have up to twelve members, including at least three representatives from forestry organizations: a professional forester association, a forest labour organization, and a logger association.

Under the LTA changes, the FMAC would change and be granted more powers. The Committee would have a set number of nine members, taking forestry organization representation on the FMAC from a possible one in four to a certain one three.<sup>13</sup> Additionally, under the LTA amendments, the FMAC would now have the following powers:

- To have its views regarding Liberia's overall forestry strategy be given "more prominence;"<sup>14</sup>
- To be consulted on the criteria used to qualify logging companies for bidding upon contracts;<sup>15</sup>
- To be consulted on the size of performance bonds the government will receive from companies;<sup>16</sup> and
- To be consulted first on any new regulations.<sup>17</sup>

The LTA suggests that logging companies and not the government should identify future concessions,<sup>18</sup> and calls for the creation of a "forest arbitration panel," although it does not say what types of disputes this panel would hear.<sup>19</sup> The LTA amendments also hold that companies should no longer be responsible for negotiating social contracts with the people living in the concession. Logging companies should instead pay a "social tax." It is unclear to whom this tax would go or how, but it is

---

<sup>11</sup> It should be noted that the amount that FMC holders owe but have not paid will soon increase significantly. Because FMC holders are in such serious default, those who have not yet paid in full are currently accruing monthly penalties equivalent to the Liberia's "standard interest rate." (FDA Regulation 107-07 § 63) This rate is still being calculated. Thus while concessionaires owe the government additional penalties, because new invoices have not been issued those penalties have not been taken into account in the above shortfall calculation.

<sup>12</sup> Recommended, *supra* note 1, at § 4.1(a).

<sup>13</sup> Recommended, *supra* note 1, at § 4.2(a).

<sup>14</sup> Recommended, *supra* note 1, at § 4.4.

<sup>15</sup> Recommended, *supra* note 1, at § 5.2(a)(2)-(3).

<sup>16</sup> Recommended, *supra* note 1, at § 5.1(e)(1).

<sup>17</sup> Recommended, *supra* note 1, at § 19.1-19.2.

<sup>18</sup> Recommended, *supra* note 1, at § 4.5; Alternative Process Steps 2-4.

<sup>19</sup> Recommended, *supra* note 1, at Issues that need to be addressed, bullet 4.

assumed that it would go to local communities.<sup>20</sup> Finally, the LTA suggests a “review” of Liberian owned “former concessions.”<sup>21</sup>

These amendments constitute an attempted power grab by logging companies in Liberia. Increased powers to a smaller FMAC means that the companies who are regulated by the forestry law have more power over its design and implementation. Potential conflicts of interest could include a company hindering the drafting of a regulation that would increase fees upon the company, or companies desiring a particular concession influencing the FDA’s decision whether to recognize the land as suitable for commercial, conservation, or community use. Considering that logging companies in Liberia have a track record of unsustainable and illegal operations it is concerning that they should be allowed greater control over the design of Liberia’s forest policy.

In addition, while poorly defined, the suggested forest arbitration panel could be used as a mechanism for avoiding conventional contract and legal enforcement mechanisms through the Ministry of Justice. Eliminating the requirement that companies negotiate agreements outlining their relationship with local communities would also be damaging. These social contracts are key to the protection of communities’ non-monetary needs, such as local employment or protecting farms, water sources, and traditional sites. If logging companies can get out of signing such agreements, as the LTA suggests, some of these protections could cease to exist.

It is unacceptable for Liberian logging companies to request that cancelled concessions be re-instated. Companies who could apply to have their concessions re-instated would include Inland Logging Company, which ran a private militia in Sinoe County during the war, and Salami Molawi Incorporated, which was headed by General “Quick to Fire” Coocoo Dennis. Such a reconsideration would require the repeal of Executive Order #1, President Ellen Johnson-Sirleaf’s landmark 2006 decision to cancel all previous logging concessions.<sup>22</sup> A reconsideration of old concessions would thus undermine years of forest sector reform and would require that the recommendations of the Forest Concession Review Committee be ignored. The amendments suggested by the LTA that would grant more power to logging companies should be rejected.

**3. Under the Community Rights Law, Liberia’s forestry law has been changed to allow logging companies to win Timber Sale Contracts without competing for them. The CRL has also created new Medium-Scale concessions without stating whether they will be subject to environmental protections. The LTA wants further amendments that would decrease payments on concessions up to 49,999 ha in size.**

Liberia’s forestry law is also under threat as the system for allocating small and medium sized concessions has changed. The recently passed Community Rights Law has altered Timber Sale Contracts and has created a new Medium-Scale concession. The LTA wants further changes to these two types of concessions. Both the changes made by the CRL and the LTA’s suggested amendments move Liberia’s forestry sector further away from the international model of responsible management it was supposed to be.

Until recently, Timber Sale Contracts were small logging concessions, covering no more than 5,000 ha. Being small in size, these concessions were designed with few environmental restrictions, even allowing the forest in such areas “to be cleared for agriculture or for the establishment of plantations.”<sup>23</sup> Companies that wanted to log a TSC would win a contract by bidding in a competitive process upon how much tax they would pay for logging the concession.

As a result of a provision in the CRL that has amended the National Forestry Reform Law, the nature of the TSC has changed. TSCs will now be issued on a non-competitive basis. While the CRL contains few details, it appears that these concessions will be awarded without companies bidding upon them and without the government ensuring that it is getting the best price. Additionally, under the CRL a

---

<sup>20</sup> Recommended, *supra* note 1, at § 5.1(f)(3).

<sup>21</sup> Recommended, *supra* note 1, at Issues that need to be addressed, bullet 2.

<sup>22</sup> Executive Order #1 (7 February, 2009) (hereinafter, “Executive Order #1”).

<sup>23</sup> National Forestry Reform Law, *supra* note 2, at 5.4(i).

company can now enter into a contract for a TSC directly with a community residing in the concession.<sup>24</sup> Under other circumstances it could be beneficial to local communities that the CRL allows them to negotiate such concessions directly with companies. However, because the CRL also allows national legislators considerable power over local community forestry committees,<sup>25</sup> these new concessions actually risk disenfranchising the people who live on the land.

Of great concern is that the CRL has also created new “Medium-Scale” concessions. Medium-Scale concessions will cover areas between 5,001 ha and 49,999 ha, situated in the law between the smaller TSCs (covering no more than 5,000 ha) and the larger FMCs (50,000 ha to 400,000 ha). As with a TSC, a Medium-Scale concession will be issued on a non-competitive basis and can be entered into by a local community. Moreover, as the CRL does not outline any environmental restrictions that will apply to these new concessions, it is unclear that they will be subject to the necessary safeguards.<sup>26</sup> By failing to include environmental restrictions, the CRL leaves open the possibility that a 49,999 ha Medium-Scale concession can be “cleared” in a manner similar to that of a 5,000 ha TSC. In contrast, the NFRL has established that only four percent of a 50,000 ha FMC may be logged each year. Unless environmental protections are established for Medium-Scale concessions, it is unclear whether they can be logged sustainably.

These TSCs and Medium-Scale concessions, as created by the CRL, are already a concern. However, as the LTA outlines in its proposed amendments document, logging companies want to make additional changes. Currently, a TSC is a three-year contract. The term of a Medium-Scale concession is unclear. For use of a TSC, companies pay two principal taxes: the amount they bid to rent the concession land and a flat fee for every cubic metre of timber felled. Additionally, a TSC holder must pay a performance bond of USD 25,000, insuring the government against non-performance. The tax structure and performance bond requirements of a Medium-Scale concession are unclear.

The LTA proposes that this tax structure be changed. First, it suggests that TSCs (maximum 5,000 ha) and Medium-Scale concessions (5,001-49,999 ha) be renamed to “Class A TSC” (maximum 5,000 ha) and “Class B TSC” (5,001-49,999 ha).<sup>27</sup> Second, the LTA suggests that both classes of TSC would be held for between seven and ten years.<sup>28</sup> Third, holders of both licenses would pay very little in fees to the Government. Concessionaires would pay only a low flat fee for each cubic metre of timber felled and an extremely low flat fee to rent the land.<sup>29</sup> Moreover, the suggested amendments would affect the size of the performance bond the government receives against a company holding either a Class A or a Class B TSC. Under the LTA amendments, a company would only have to pay between USD 7,500 and USD 75,000, depending upon the size of the concession.<sup>30</sup> The below table demonstrates how government revenue would be reduced as a result of the LTA’s suggested amendments. It compares the revenue paid by a concessionaire under the current tax scheme with that which would be paid were the LTA’s amendments to be adopted:

---

<sup>24</sup> Community Rights Law, *supra* note 3, at § 6.1. It should be noted, that technically these concessions can be issued only on land that has been recognized as community-owned. However, because a) no Liberian law provides a useful definition of community tenure, b) the agency mandated to sort out the question of community tenure is years away from a conclusion, and c) the FDA is reportedly already negotiating a TSCs under the new rules [United Nations Security Council, *Final Report of the Panel of Experts on Liberia submitted pursuant to paragraph 4(e) of Security Council resolution 1854 (2008)*. S/2009/640 (11 December, 2009) para. 82], it is anticipated that all future TSCs will be governed by the new rules outlined in the CRL.

<sup>25</sup> Community Rights Law, *supra* note 3, at §§ 4.1(e); 4.1(f); 4.1(g); 4.2(c); 4.2(d); 7.2; 7.3.

<sup>26</sup> Community Rights Law, *supra* note 3, at § 6.2.

<sup>27</sup> Recommended, *supra* note 1, at Issues that need to be addressed, bullet 1.

<sup>28</sup> Recommended, *supra* note 1, at § 5.4(b)(iii).

<sup>29</sup> Recommended, *supra* note 1, at § 5.2(a)(1).

<sup>30</sup> Alternative Process, *supra* note 1, at Step 5; Recommended amendments §5.2(a)(1).

## LTA's Suggested Changes to Fees Paid by Companies Holding Timber Sale Contracts

	Current Revenue Government Should Receive (USD)	Government Revenue Suggested in LTA Amendments (USD)	Loss in Absolute (USD)	Percentage Loss
Land Rental Fee (per ha)	5.00	0.75	4.25.00	85
Land Rental Fee Total (5,000 ha)	25,000.00	3,750.00	<b>21,250.00</b>	<b>85</b>
Stumpage Fee (Class B timber)	Constant		0	0
Performance Bond	25,000.00	7,500.00	<b>17,500.00</b>	<b>70</b>

It should be noted that the above numbers are based upon fees owed by a TSC holder that won its concession with a comparatively low bid and has a comparatively low tax obligation.<sup>31</sup> The loss in government revenue would thus be higher for TSC holders that have bid larger amounts for their concessions. Note also that for Medium-Scale concessions (or, as the LTA terms them, Class B TSCs) the loss in government revenues would be even more dramatic as they cover a greater area.

Provisions in the CRL that change the TSC concession model and create Medium-Scale concessions are dangerous. They allow large swathes of Liberia's forest to be awarded to companies who have not competed with others to show that they can provide Liberia with the best return for the harvesting its forests. The CRL's new concession models also risk disenfranchising the people who live in the forests by allowing Monrovia-based leaders the power to control contract negotiations. Perhaps of greatest concern, the CRL's new Medium-Scale concessions may allow forests of up to 49,999 ha to be clear cut. Such concessions would devastate forests and the people who depend upon them. It is also possible that, because the environmental safeguards for Medium-Scale concessions are so lenient compared to the safeguards governing FMCs, companies will try to obtain several "separate" Medium-Scale concessions next to one another. This tactic has already been used for existing TSCs,<sup>32</sup> where two 5,000 ha concessions have been placed next to one another, giving a single concessionaire that amounts to a 10,000 ha concession. Were the same tactic to be used for Medium-Scale concessions, a company could hold an immense concession the size of FMCs, but could avoid an FMC's environmental safeguards and be allowed instead to clear cut the forest.

These changes in the CRL to the concession model should be reconsidered. Such a reconsideration could take the form of a multi-stakeholder meeting, bringing together interested groups from the Liberian legislature, the executive, civil society, and international partners, discussing those elements of the CRL that should remain and those that should be reevaluated. It is through this discussion that the CRL's concession model could be altered to ensure that it benefits the country.

Additionally, the LTA's suggested amendments to the TSC and Medium Scale concession models are damaging and Liberian policy makers, both in the Legislature and the FDA, should reject them. At ten years in duration, the proposed contract period is too long. The LTA also wants concessions that give very little back to the country: Liberia would receive substantially less land rental tax from concessions

<sup>31</sup> Calculations for fees owed by a current TSC holder based upon those owed by the concessionaire for TSC A-2. See Forestry Development Authority, Contract to Manage Timber Sale Area: A-2, Compound #1, Grand Bassa County (27 June, 2008) § A-4, available at <http://www.leiti.org.lr/doc/contracttimber3.pdf>.

<sup>32</sup> The concessions TSC A-9 and TSC A-10 border one another. B&V Timber Company has been awarded TSC A-9 (see <http://www.leiti.org.lr/doc/contracttimber4.pdf>) and has negotiated for the award of TSC A-10. TSC A-2 and TSC A-3 also share a border. Tarpeh Timber Corporation has been awarded TSC A-2 (see <http://www.leiti.org.lr/doc/contracttimber3.pdf>) and while TSC A-3 remains dormant the FDA has previously discussed awarding the concession to the company. For additional information on the TSC's relative locations, see <http://www.fda.gov.lr/content.php?sub=Publications%20and%20Documents&related=Media%20Center>.

as large as 49,999 ha This is an extraordinary difference, and if Liberia is to receive so little revenue from its forest concessions then the rationale for allowing logging concessions is severely undermined.

## Recommendations

- The Legislature and the Forestry Development Authority should reject the LTA amendments suggesting a change in FMC payment terms as they leave an opportunity for logging companies to lower the fees they pay the Government.
- The Legislature and the Forestry Development Authority should reject the LTA amendments that propose to increase the power of the Forestry Management Advisory Committee and allow logging companies to shirk their additional obligations.
- The provisions in the Community Rights Law that change the nature of TSCs and create new Medium-Scale concessions should be reconsidered in a multi-stakeholder meeting to ensure that these concessions benefit the country. The Legislature and the Forestry Development Authority should reject amendments forwarded by the LTA affecting Timber Sale Contracts and Medium-Scale concessions.

At the outset of her term in office, President Ellen Johnson-Sirleaf decried the lack of transparency, accountability, and equitable benefit sharing that had characterized Liberia's logging industry. Liberia's forestry law, she demanded, must be reformed to benefit the people of Liberia.<sup>33</sup> International partners have agreed, investing heavily in Liberia's forestry reform and working to make it a model for others to follow. The amendments suggested by the LTA and those contained in the Community Rights Law mark a deeply worrying shift away from both of these goals.

---

<sup>33</sup> Executive Order #1, *supra* note 1.