

Liberia's forestry law in an international context

Reasons for concern

A report by Forest Peoples Programme

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Cover pictures

- 1 and 3 Logs from the former OTC concession at Buchanan Harbour, Liberia, October 2006 (Photo: S. Ozinga)
2. Street scene, Buchanan, Liberia, October 2006 (Photo: S. Ozinga)

The critical role of the timber industry in helping to finance the brutal wars in Liberia and Sierra Leone was under the international spotlight in 2006. Dutch timber baron, Gus Kouwenhoven, was convicted of violating a UN arms embargo imposed on the regime of former Liberian President Charles Taylor, on 7 June 2006. The Dutch Court found that he had traded guns for timber rights and used his lumber company to smuggle weapons used by militias to commit atrocities against civilians in West Africa.

Kouwenhoven, a Dutch national, was General Manager of the Oriental Timber Company (OTC), Liberia's biggest logging company during the regime of former president Charles Taylor. Taylor is himself in the dock charged by the Special Court for Sierra Leone with crimes against humanity, war crimes and other serious violations of international humanitarian law.

I Introduction

UN ‘smart’ sanctions on the exports of timber from Liberia were effective in denying former President Charles Taylor a valuable source of revenue to support his civil war actions as well as curtailing international demand for Liberian timber. Following the end of the civil war, the new Liberian government drafted a new Forest Law, which was adopted by the Legislature on 19th September 2006.

Although timber sanctions were lifted ahead of the completion of this law, the government rightly decided in June 2006 to declare a moratorium on timber export and recommitted itself to a forestry reform process¹. Additionally, the UN Security Council² warned the government against doing anything that would derail this process and expressed its preparedness to re-impose the sanctions if the government acted to undermine the process.

Liberia’s forest sector now has the chance to provide benefits to the government and its people as the country rebuilds itself after the civil war. The newly adopted law can be seen as a step in the right direction. The law is progressive in its recognition of existing rights of other persons³, intention to promote local community engagement in sustainable forest management⁴ and its efforts to increase transparency⁵ and reduce corruption and violence.⁶ However, several critical concerns remain, which indicate that in our opinion the lifting of the moratorium on timber exports would be premature at this time, and could easily lead to a situation in which Liberia’s forests will not contribute to the benefit of its people. Lifting the moratorium risks repeating the mistakes of other countries in West and Central Africa. This briefing note explains why.

There are further questions whether the current law is in line with international law, notably Human Rights Law and the Convention on Biological Diversity to which Liberia is a signatory.

¹ Executive Order #1 of February 2006 (para. 4) states: ‘The FDA is hereby mandated to grant or allocate future forest concession only after it determines in writing that the measures for forest management reform outlined in para. 5 through 7 are fully instituted and implemented and the necessary legislation enacted and regulations passed under para 7(K) below’. These measures include land use planning, the law, enabling regulations, etc.

² UNSC Resolution 1689 of June 2006

³ Section 18.11

⁴ Section 10.1

⁵ Sections 3.4; 4.2 b (v, vi), c; 5.8; 14.2 c (iv), h; 18.15 a, e; 20.11 a

⁶ Section 5.2 b (v, vi, vii), d; 6.1 l; 18.16

II The Context⁷

According to the World Bank:

*... more than 1.6 billion people depend to varying degrees on forests for their livelihoods. About 60 million indigenous people are almost wholly dependent on forests. Some 350 million people who live in or adjacent to dense forests depend on them to a high degree for subsistence and income. In developing countries about 1.2 billion people rely on agroforestry farming systems that help to sustain agricultural productivity and generate income.*⁸

These figures are known to be only very rough estimates but the lack of good national data about the numbers of people living in and using areas classified as forests makes greater precision difficult.⁹ 'Scientific forestry', as developed in Europe in the 18th century, secured forests as state assets and established systems for regulating access to forests by the private sector, while denying the rights of forest dependent communities and severely curtailing their access to the common property resources that their livelihoods depended on.¹⁰ These impositions sparked widespread, local resistance. Conservation policies, which developed later, reinforced these centralising tendencies and gave further power to government officials at the expense of indigenous peoples.¹¹

In the 19th century these same policies were then imposed on the peoples and forests of European colonies, in Burma, India, South East Asia and Africa.¹² The creaming of the forests of French Equatorial Africa of the prized timber, *okoume*, depended on first crushing indigenous resistance, then the forced resettlement of forest peoples and, finally, the extraction of *corvée* labour to supply the manpower that the industry demanded. Death rates in the logging camps were so high that an appalled Governor General felt obliged to denounce the practices of his own administration. The timber industry he wrote is a 'great devourer of men'.¹³ Scientific forestry, nonetheless, set the dominant pattern for forest management in the tropics for the next century and a half.¹⁴ The few detailed studies that there have been of the impact of modern forestry practices on local people reveal a number of serious problems:

⁷ This section of the report is based to a large extent on a report by Forest Peoples Programme: Marcus Colchester (ed). *Forest Peoples, Customary Use and State Forests: the case for reform*; presented to the 11th Biennial Congress of the International Association for the Study of Common Property, Bali, Indonesia, 19-23 June 2006.

⁸ World Bank, 2002, *A Revised Forest Strategy for the World Bank Group*. World Bank, Washington, DC

⁹ The newly established Rights and Resources Initiative for example claims there are 2 billion people dependent on forests of whom 350 million are forest dependent indigenous people. www.rightsandresources.org

¹⁰ Jack Westoby, 1987, *The Purpose of Forests*. Basil Blackwell, Oxford; Jack Westoby, 1989, *Introduction to World Forestry*, Basil Blackwell, Oxford.

¹¹ Marcus Colchester, 1994, *Salvaging Nature: Indigenous Peoples, Protected Areas and Biodiversity Conservation*, United Nations Research Institute for Social Development, Geneva.

¹² Ramachandra Guha, 1991, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya*, Oxford University Press, Delhi; Madhav Gadgil and Ramachandra Guha, 1993, *This Fissured Land: an Ecological History of India*, Oxford University Press, Delhi; Nancy Peluso, 1992, *Rich Forests, Poor People: Resource Control and Resistance in Java*, California University Press, Berkeley; Raymond Bryant, 1996, *The Political Ecology of Forestry in Burma 1824-1994*, University of Hawaii Press, Honolulu.

¹³ Roland Pourtier, 1989, *Le Gabon: État et Développement*, L'Harmattan, Paris:146, 173, 181; Marcus Colchester, 1993, *Slave and Enclave: the Political Ecology of Equatorial Africa*, World Rainforest Movement, Penang:22-26.

¹⁴ Ramachandra Guha, 1991, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya*, Oxford University Press, Delhi; Madhav Gadgil and Ramachandra Guha, 1993, *This Fissured Land: an Ecological History of India*, Oxford University Press, Delhi;

- increases in mortality and severe health and nutritional impacts, leading to demographic decline among previously isolated peoples¹⁵
- marked decline in game, both through direct disturbance of habitats and because of increased hunting pressure along access roads and skid trails¹⁶
- changes in disease ecology resulting in high incidences of diseases like yaws, tuberculosis, malaria and dengue
- elevated rates of STD infection due to prostitution and exploitative sexual relationships in logging camps¹⁷
- high rates of injury among local people employed as forest workers¹⁸
- discriminatory working conditions and a loss of forest-dwelling skills¹⁹
- disproportionate impacts on indigenous women, children and the elderly²⁰
- denial of rights in land, forced resettlement, and limitations of rights of access and creation of dependency resulting in exploitative, even corrupt patron-client relations between forestry officials and indigenous peoples²¹
- breakdown of traditional social structures, introduction of new inequalities, undermining customary laws, social support networks and systems of land management
- internal conflicts over decision-making, resource allocation, further undermining social cohesion.²²

¹⁵ John D. Early and Thomas N. Headland, 1998, *Population Dynamics of a Philippine Rain Forest People: the San Idefonso Agta*, University Press of Florida, Gainesville.

¹⁶ Julian Caldecott, 1986, *Hunting and Wildlife Management in Sarawak*, World Wildlife Fund (Malaysia), Kuala Lumpur, Malaysia; Marcus Colchester, 1989, *Pirates, Squatters and Poachers: the political ecology of dispossession of the native peoples of Sarawak*, INSAN and Survival International, Petaling Jaya:37; Marcus Colchester, 1993, The International Tropical Timber Organisation: Kill or Cure for the Rainforests In: Simone Reitbergen (ed.) *The Earthscan Reader in Tropical Forestry*, Earthscan, London:185-207; Marcus Colchester, 1993, *Slave and Enclave: the Political Ecology of Equatorial Africa*, World Rainforest Movement, Penang:48-51; Samuel-Alain Nguiffo, 1998, In Defence of the Commons: Forest Battles in Southern Cameroon, In: Michael Goldman (ed.), *Privatizing Nature: Political Struggles for the Global Commons*, Pluto Press, London:111; Fiona Watson, 1996, 'A view from the forest floor: the impact of logging on indigenous peoples in Brazil', *Journal of the Linnaean Society* 122:75-82

¹⁷ World Rainforest Movement and Forests Monitor, 1998, *High Stakes: the need to control transnational logging companies – a Malaysian case study*, Ely and Montevideo.

¹⁸ A.N. Zainorin 1985, 'The Status of Logging Safety and Accident Prevention in Sarawak'. In: *Proceedings of the Azam Conference*, Kuching, Sarawak:18-84 ; Marcus Colchester, 1987, *Pirates, Squatters and Poachers: the political ecology of dispossession of the native peoples of Sarawak*, INSAN and Survival International, Petaling Jaya:38.

¹⁹ Oubangui, nd, *Pygmées et Chantiers Forestiers de la Sangha*, ms ; Louis Sarno, 1993, *Song from the Forest: my life among the Be-Benjelle Pygmies*, Bantam Press, London ; David S. Wilkie and John G. Sidle, 1990, *Social and Environmental Assessment of the Timber Production Capacity Extension Project SFAC*, US Department of Agriculture, Washington DC ; Robert Bailey, Serge Bahuchet and Barry Hewlett, 1992, 'Development in Central African Rainforests: concerns for forest peoples'. In: Kevin Cleaver, Mohan Munasinghe, Mary Dison, Nicolas Egli , Axel Peuker and Francois Wencelius (eds.), *Conservation of West and Central African Rainforests*, World Bank, Washington DC:202-21; Richard Carroll, 1992, *The Development, Protection and Management of the Dzangha-Sangha Dense Forest Special Reserve and the Dzangha-Ndoki National Park in Southeastern Central African Republic*, WWF-USA ms:28.

²⁰ Noeleen Heyzer, 1996, *Gender, Population and Environment in the Context of Deforestation: a Malaysian Case Study*, United Nations Research Institute for Social Development, Geneva; Kelvar, Govind and Dev, Nathan, 1991, *Gender and Tribe: Women, Land and Forests in Jharkhand*, Zed Books and Kali for Women, London and Delhi.

²¹ Marcus Colchester, 1993, 'Forest Peoples and Sustainability'. In: Marcus Colchester and Larry Lohmann (eds.), *The Struggle for Land and the Fate of the Forests*, World Rainforest Movement and Zed Books, Penang and London:61-95; Mark Poffenberger and Betsy McGean (eds.), 1996, *Village Voices, Forest Choices: Joint Forest Management in India*, Oxford University Press, Delhi; Madhu Ramnath, 1999, 'People, Politics and Forest Management in Bastar: an ethnobotanical perspective'. In: Paul Wolvekamp (ed.), 1999, *Forests for the Future: local strategies for forest protection, economic welfare and social justice*, Zed Books, London:41-56.

These problems indicate that industrial forestry faces clear challenges to meet development objectives, including poverty alleviation.

Moves to restore community rights in forests have shown mixed results. The 25-year leases offered to communities in Cameroon as a form of community tenure have excluded hunters and gatherers.²³ Comparative studies show that over-onerous regulations of community forest management often push poor communities into illegality and even to getting ensnared in illegal logging networks.²⁴ However, in several parts of Africa, notably Southern and East Africa reforms in favour of community control of forest lands are now gaining ground.²⁵

Box 1 National obligations under the International Arrangement on Forests

International concern to ensure that forest policies lead to conservation, sustainable forest management and provide benefits for local communities has grown over the past 20 years. While there has not been agreement on the desirability of adopting an international legally-binding instrument on forests, a wide range of inter-governmental declarations have been made, internationally and regionally, which can be interpreted as imposing 'soft law' obligations on countries to respect the rights of communities in forests.

Through the Rio Declaration and Agenda 21, the Non-legally Binding Statement of Principles on All Types of Forests, the 'proposals for action' agreed at the UN Intergovernmental Panel on Forests and the Inter Governmental Forum on Forests, the decisions of the Commission on Sustainable Development, and the Convention on Biological Diversity's Expanded Programme of Work on Forest Biological Diversity, governments have committed themselves *inter alia* to:

- address forest issues in a holistic and cross-sectoral manner
- ensure the participation of local communities and indigenous peoples in the formulation, planning and implementation of national forest policies
- recognise and support the identity, culture and rights of indigenous peoples and other forest dependent people
- formulate policies and laws to secure land tenure for indigenous peoples and local communities
- recognise and support community-based forest management
- develop regimes to protect traditional forest related knowledge.²⁶

²² Marcus Colchester, 1992, *Sustaining the Forests: the community-based approach in South and Southeast Asia*, United Nations Research Institute for Social Development, Geneva; Samuel-Alain Nguiffo, 1998, 'Defence of the Commons: Forest Battles in Southern Cameroon'. In: Michael Goldman (ed.), *Privatizing Nature: Political Struggles for the Global Commons*, Pluto Press, London:111-112.

²³ Centre pour l'Environnement et le Développement, Rainforest Foundation UK and Forests Monitor, 2003, *Forest management transparency, governance and the law: case studies from the Congo Basin*. CED, Yaoundé, RF, London and Forests Monitor, Cambridge. Community forestry permits cost, on average, US\$ 6,000 each to secure, way beyond the means of most rural communities (Albert Barume, 2005, *Étude sur le cadre legal pour la protection des droits des peuples indigenes et tribaux au Cameroun*. International Labour Organisation, Geneva:10).

²⁴ Marcus Colchester et al., 2006, *Justice in the Forests; rural livelihoods and forest law enforcement*. CIFOR, Bogor.

²⁵ L. Wiley and S. Mbaya, 2001, *Land, People and Forests in Eastern and Southern Africa at the beginning of the 21st century. The impact of land relations on the role of communities in forest futures*. IUCN, Nairobi.

²⁶ Tom Griffiths, 2001, *Consolidating the Gains: Indigenous Peoples' Rights and Forest Policy Making at the United Nations*. Forest peoples Programme, Moreton in Marsh; FPP, 2004 *A summary of some key existing political commitments and international standards on the social and cultural aspects of forests*. Forest peoples Programme, Moreton in Marsh; Helen Newing (ed), 2005, *Our knowledge for our survival*, International Alliance of Indigenous and Tribal Peoples of the Tropical Forests and CIFOR, Bogor.

This recognition by governments of the need to reform forest-related laws and policies in order to secure the rights of indigenous peoples and local communities in forests, can be seen as the start of a process to revise previously exclusionary national forest policies and bring them into line with international human rights laws. UN human rights committees have interpreted a number of international human rights treaties as requiring States to secure the rights of indigenous peoples, including in forests.

These treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, the UN Convention on the Elimination of Discrimination Against Women and the International Labour Organisation's Convention No. 169 on Indigenous and Tribal Peoples, impose binding obligations on countries that are party to them.²⁷ These treaties indicate that under international law indigenous peoples enjoy recognised rights to:

- the ownership, control and management of the lands they customarily occupy and use
- exercise their customary law
- represent themselves through their own representative institutions
- free, prior and informed consent to developments on their land
- control, and share in the benefits of the use of, their traditional knowledge self-determination.²⁸

²⁷ Fergus MacKay, 2001a, *A Briefing on Indigenous Peoples' Rights and the United Nations Human Rights Committee*. Forest Peoples Programme, Moreton-in-Marsh; Fergus MacKay, 2001b, *A Guide to Indigenous Peoples' Rights in the Inter-American Human Rights System*. Forest Peoples Programme, Moreton-in-Marsh; Fergus MacKay, 2001c, *The African Commission on Human and Peoples' Rights*. Forest Peoples Programme, Moreton-in-Marsh; Fergus MacKay, 2002, *A Guide to Indigenous Peoples' Rights in the International Labour Organization*. Forest Peoples Programme, Moreton-in-Marsh; Fergus MacKay, 2003, *A Guide to Indigenous Peoples' Rights under the International Convention on the Elimination of All Forms of Racial Discrimination*. Forest Peoples Programme, Moreton-in-Marsh; Ellen-Rose Kambel, 2004, *A Guide to Indigenous Women's Rights under the International Convention on the Elimination of All Forms of Discrimination Against Women*. Forest Peoples Programme, Moreton-in-Marsh.

²⁸ FPP, 2005, *Indigenous Peoples and United Nations Human Rights Treaty Bodies: A Compilation of Treaty Body Jurisprudence, 1993 – 2004*. Forest Peoples Programme, Moreton-in-Marsh.

Box 2 National obligations under the Convention on Biological Diversity

The Convention on Biological Diversity, to which Liberia is a signatory, is a legally binding international treaty that frames the way in which States that are party to the Convention should achieve biodiversity conservation, sustainable use and the fair and equitable sharing of benefits arising from the exploitation of genetic resources. The Convention adopts an ecosystems approach to conservation and from its inception, and in numerous decisions of the Parties, the CBD has established progressive norms and principles to address equity, participation and the rights of indigenous peoples, local communities and other interested parties.²⁹ Article 10(c) of the Convention requires States 'as far as possible and as appropriate' to:

Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.

The Secretariat of the CBD notes that article 10(c) should be read in conjunction with Article 8(j) which requires States party to the convention:

Subject to its national legislation, to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

As used in Article 10(c), the terms 'customary use' and 'traditional cultural practices' refer to, among others, indigenous legal systems for the control, use and management of land and natural resources. The CBD Secretariat has thus recommended that in order to comply with their obligations under this article States must ensure that national legislation and national policies account for and recognise, among others, indigenous legal systems, corresponding systems of governance and administration, land and water rights and control over sacred and cultural sites.³⁰ Furthermore, through adoption of the 'Addis Ababa Principles and Guidelines' on the sustainable use of biological diversity, government signatories to the Convention have agreed that sustainable use of biodiversity is enhanced by supportive policies, laws and institutions at all levels of governance, and that indigenous and local communities should be empowered to manage biological resources and their rights over, and/or stewardship of, biological resources should be recognised and reinforced.³¹

²⁹ *Sustaining Life on Earth: How the Convention on Biological Diversity promotes nature and human well-being*. <http://www.biodiv.org/doc/publications/guide.asp>

³⁰ Secretariat of the CBD, 1997, Traditional Knowledge and Biological Diversity. UNEP/CBD/TKBD/1/2) at 11 and 12 <http://www.biodiv.org/doc/meetings/tk/wstkbd-01/official/wstkbd-01-02-en.pdf>

³¹ <http://www.biodiv.org/doc/publications/addis-gdl-en.pdf>

III Concerns with the Liberian National Forestry Reform Law of 2006

Inappropriateness of the industrial forestry model

In the light of the above, it is important to notice that the drafting of the Liberian National Forestry Reform Law (NFRL) was not informed by a public policy debate on the vision for Liberia's forests and the most appropriate form of forest management to achieve that vision. Consequently the NFRL still emphasises industrial-scale logging, albeit with increased government oversight. On the African continent, as elsewhere, industrial-scale concession-based logging has neither managed the forest resource sustainably, nor provided significant poverty alleviation for the citizens e.g. Ghana, Cameroon, and Cambodia.³² As stated above the scientific forestry model has had negative impacts on local communities across the world.

In contrast, and as stated above, empowering communities to save and manage forests themselves is increasingly seen as key to the future of forests. In Africa, the establishment of community forests is becoming the main mechanism for bringing more forest under formalised protection and management.³³ The community forestry paradigm is shifting from one in which the community is a beneficiary, user, consultee and rule follower (e.g. Ghana, Kenya, Zimbabwe) to a power sharing approach in which the community is the manager, decision maker and rule maker, and has the powers of jurisdiction needed to ensure a proper guardianship role (e.g. The Gambia, Tanzania, Malawi).³⁴ This change reflects changes in international law, as described above.

Lack of prior legal clarification of tenure and use rights

To 'ensure that local communities are fully engaged in the sustainable management of the forests of Liberia', the NFRL provides for the granting of user and management rights to local communities, transfer of control of forest use to them and building their capacity for sustainable forest management.³⁵ This is an important commitment and supports provisions elsewhere in the law for the creation of communal and community forests.

However, information is lacking on how much forest land will be allocated to community management, and under what conditions, and how the NFRL's provisions affecting communities will be given legal effect, as most of these provisions will be clarified in regulations which have yet to be drafted and adopted.³⁶

The detail of these regulations will determine whether the law will genuinely uphold community rights and control over forest use (including communities' right to say no to logging activities on their

³² Forest Watch Ghana, 2006, *Forest Governance in Ghana, an NGO perspective*. FERN, Moreton in Marsh. Available at www.fern.org; Marcus Colchester et al., 2006, *Justice in the Forests; rural livelihoods and forest law enforcement*. CIFOR, Bogor. pages 41-43. Letter from World Bank to H.E Chan Sarun; Ministry of Agriculture, Forestry and Fisheries Cambodia, 24 November 2005.

³³ L. Wiley and S. Mbaya, 2001, *Land, People and Forests in Eastern and Southern Africa at the beginning of the 21st century. The impact of land relations on the role of communities in forest futures*. IUCN, Nairobi

³⁴ Alden Wily, L 2002 The political economy of community forestry in Africa – Getting the power relations right. *Forest Trees and People Newsletter* No 46: 4-12

³⁵ Section 10.1 Community empowerment.

³⁶ The NFRL refers to 49 regulations, 16 mandatory, through which the law will be implemented. The production of several important regulations is discretionary e.g. the Authority may, but is not obliged to, produce regulations on preparation of environmental impact assessments, concession allocation, chain of custody, scaling and grading of timber, fees for stumpage, land rental and forest products, and declaration of transactions involving timber are mentioned.

customary lands) and ensure that communities receive a fair share of the revenues from state-sanctioned logging. Sound drafting of these regulations requires the definition of communities' collective rights to control, manage, access, use and benefit from forestlands and resources. However, this information will not be available until September 2007, at the earliest, when the Authority is due to produce a 'comprehensive law governing community rights with respect to Forest Lands.'

It is essential that the new community rights law is developed with full involvement of civil society and community representatives, and underpins the NFRL. It should include provisions for decentralisation of powers held by forestry administrations, recognition of customary/informal rights allowing commonly-held resources to be registered as the private property of communities, and grant communities legal powers to protect and develop their resources. It should also define communities' rights to access, use and benefit from forests not under community management, and their rights to engage in the sustainable management of Liberia's forests through informed participation in national and local policy making, forestry planning and implementation.

The fact that the NFRL was drafted and adopted without the benefit of prior clarification of tenure and use rights goes against current norms in development of forest legislation, as described above.

Ambiguities in the forest classification process

The NFRL requires the Authority to prepare a National Forest Management Strategy classifying all forest lands according to their legal status and potential suitability for commercial, conservation or community use.³⁷ The law does not specify the criteria by which lands are assigned to each category, or make provision for public consultation during the assessment of suitability. The public is only entitled to 'comment' on the overall draft Strategy and on 'validation' reports compiled by the Authority for each proposed use area. It is not clear what weight will be given to local community opinion, and there is no appeals process either in the draft Strategy or the subsequent 'validation' exercise.

The NFRL requires the National Forest Management Strategy to 'reflect the National Forest Policy'³⁸ i.e. the National Forest Policy must be adopted prior to classification of land. The importance of a forest policy review to establish the vision for Liberia's future forests was highlighted in II above. However no National Forest Policy has yet been adopted, although a draft exists.

In the absence of a National Forest Policy drawn up with informed and meaningful public participation, prior definition of community tenure and use rights, and a meaningful consultative process for classification of forest lands, Liberia's National Forest Management Strategy is likely to prioritise commercial use, and allocate community lands without their consent. Studies by the Centre for International Forestry Research (CIFOR) have shown that forest law reforms tend to be heavily influenced by the timber industry lobby and often driven by international development agencies, which favour laws that advantage large-scale, highly capitalised forest industries.³⁹

Experience from zoning programmes around the world has shown that full and meaningful participation of all stakeholders in forest zoning is paramount, with local people having a central role in the design, implementation and monitoring of zoning initiatives. Zoning must be based on reliable data and maps and implemented as part of an integrated approach to forestry and agriculture land use

³⁷ Section 4.4

³⁸ Mandated in Section 4.3

³⁹ Silva, E., Kaimowitz, D., Bojanic, A., Ekoko, F., Manurung, T. and Pavez, I, 2002, *Making the law of the jungle: the reform of forest legislation in Bolivia, Cameroon, Costa Rica and Indonesia*. Global Environmental Politics 2(3): 63-97; Marcus Colchester et al., 2006, *Justice in the Forests; rural livelihoods and forest law enforcement*. CIFOR, Bogor

planning.⁴⁰ In view of the experience of Cameroon, the Authority's intention to classify forests without stakeholders, and only then invite comments, is of concern. Although nominally a draft, once the Cameroon zoning plan was published, it was regarded as definitive with only minor scope for amendment.⁴¹ It ignored customary land rights and traditional types of forest usage, and reserved two-thirds of forest lands for commercial use, thereby severely restricting land available for community forestry and farming. Lifting the moratorium before these problems have been properly addressed would pre-empt zoning and the development of policies.

Given the lack of provisions safeguarding community land rights in the NFRL, Section 11.3 which states 'Where the Government has granted permission for the use of Forest Resources, no Land Owner or Occupant has a right to bar that use', is of serious concern. This section could contravene international agreements ratified by the Liberian government, protecting indigenous and community rights to culture and associated subsistence activities, and their rights to own, control and use their communal lands and resources.⁴² The fact that Section 11.3 offers compensation does not remedy the denial of fundamental rights. Furthermore, the law does not specify how compensation will be assessed.

No recognition of community land tenure and access rights

Recognition of community land tenure rights is not mandatory under the NFRL⁴³, and is not required for commercial timber contracts and use permits⁴⁴. Community access rights (and benefits from logging) are to be negotiated in social agreements made by holders of Forest Management Contracts with local communities.⁴⁵ The law is silent on community rights with respect to other types of forest exploitation contracts and use permits.

The NFRL does not define the minimum requirements of social agreements and their monetary value in relation to the revenues gained by contract holders. Neither does it specify the process for reaching agreement with the community. Holders of Forest Management Contracts are not required to submit social impact assessments, which would form a basis for the social agreement. The contract holder does not have to prove that the social agreement is actually being implemented to the satisfaction of the community, before being granted an annual harvesting certificate.⁴⁶ Experience in Ghana has shown how social agreements can be avoided or manipulated by contract holders and elites, to the detriment of local communities.⁴⁷ This despite the fact that the Ghanaian Government has gone some

⁴⁰ Hoare, A (2006) *Divided forests: towards fairer zoning of forest lands*. Rainforest Foundation UK.

⁴¹ Lescuyer, G (2003) *Forest Law Enforcement and Rural Livelihoods: a case study in Cameroon*. Draft report. CIFOR.

⁴² For UN jurisprudence affirming indigenous peoples' right to give or withhold consent, see, *inter alia*, Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII (51) concerning Indigenous Peoples*. Adopted at the Committee's 1235th meeting, 18 August 1997. UN Doc. CERD/C/51/Misc.13/Rev.4; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Ecuador*. 21/03/2003. UN Doc. CERD/C/62/CO/2, at para. 16; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Colombia*. 30/11/2001. UN Doc. E/C.12/Add.1/74, para. 12; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ecuador*. 07/06/2004. UN Doc. E/C.12/1/Add.100; and, *Concluding Observations of the Human Rights Committee: Canada*, 20/04/2006. UN Doc. CCPR/C/CAN/CO/5.

⁴³ Section 5.1.f (i) mentions recognition and protection of community land rights in the context of institutionalisation of the participation of communities in forest management, but this is discretionary rather than mandatory.

⁴⁴ Chapter 5: Commercial and Other Use of Forest Resources, Sections 5.3-5.5

⁴⁵ Section 5.3.b (vi)

⁴⁶ Section 5.3 e

⁴⁷ Forest Watch Ghana 2006 *Forest Governance in Ghana: an NGO perspective. Recommendations for a Voluntary Partnership Agreement with the EU*. FERN UK and Brussels.

way to recognise this problem by amending the regulations around Social Responsibility Agreements (SRAs) in 2003, making them a mandatory 5% of stumpage fees.

Given the weak negotiating position of local communities compared with industry, the NFRL's reliance on social agreements to protect community rights is seriously inadequate.

Lack of clarity concerning benefit sharing

The NFRL appears to be ambiguous in that land rental fees include the area based fee, which are bid for under the concession allocation process.⁴⁸ And yet in another section the authority is given the discretion over fees.⁴⁹ Furthermore in exercising this discretion the Authority is required to consult with 'relevant institutions'⁵⁰; it is not clear if this includes community institutions. The regulation to establish 'a fair and transparent procedure for allocating fees to communities and to Counties' has yet to be drafted.

Unbalanced public participation and consultation process

Civil society is only guaranteed one representative out of a potential 12 on the Forest Management Advisory Committee (FMAC), which advises the Authority on forestry policy, whereas industry is guaranteed three representatives.⁵¹ There is no other formal mechanism under the NFRL for representing community interests in forestry.

The public is allowed to comment on proposals to grant title over Forest Land to private parties, proposals for protected areas, the draft Forest Management Strategy, validation reports on areas of forest land proposed for commercial, conservation and community use, and regulations giving effect to the law. The 60-day period allowed for comments could constitute a bias against rural populations with poor access to information and means of response. The NFRL does not specify the nature and scope of community participation during the process of public comment, and the procedures for public vetting of regulations has yet to be published as a regulation. Therefore it is unclear how communities will be represented, what mechanisms will be established to ensure the communities will be informed in appropriate languages and formats to enable them to comment effectively within 60 days, and how much weight will be given to their voice.

Insufficient transparency

Despite a number of progressive references to transparency⁵², the NFRL relies too heavily on the assumption that putting information in the public domain would in itself lead to greater accountability and public participation. Without robust mechanisms by which communities can influence decision-making concerning forest management and hold the authorities to account, it is unlikely that offences and injustices will be acted upon. An independent monitor as envisaged by a

⁴⁸ Section 14.2b (II)

⁴⁹ Section 14.2c

⁵⁰ Section 14.2 c (i)

⁵¹ Section 4.2 b (i) A

⁵² Sections 3.4 (annual audit of activities); 4.2 b (v, vi), c (Forestry Management Advisory Committee access to information); 5.8 (publication of fee payments); 14.2 c (iv), h (disclosure of fee schedule and fees collected and distributed); 18.15 a, e (public access to all documents and other information in the Forest Authority's possession, with exceptions); 5.2 b (v, vi, vii), d (debarment of vested government and administration interests); 6.1 l (discretionary termination of licences in event of bribes); 18.16 (security personnel be free of convictions, trained, supervised and unarmed)

voluntary partnership agreement with the EU⁵³ could provide public accountability by reporting on failures in the control system in a way in which the authorities are obliged to take remedial action. The drafting of the NFRL missed an opportunity to give independent monitoring a statutory basis.

In addition there are provisions within the NFRL that mainstream the principles of the Extractive Industries Transparency Initiative (EITI).⁵⁴ However there are shortcomings within the law that undermine its ability to effectively ensure the transparent flow of revenues. The new law requires companies to publish a list of all payments to the Government in a local newspaper.⁵⁵ These figures must also be captured on the internet for future access. The Authority must also publish a schedule of all forest related fees.⁵⁶ The NFRL, however, does not specify how these figures should be recorded. For meaningful public oversight and scrutiny these figures must be separate public disclosures of payments by each company, not data aggregated by more than one company. The NFRL states that there will be an annual audit by the Authority of activities pursuant to each contract and permit issued.⁵⁷ However, to be compliant with EITI, there must be a further separate audit by a credible and independent institution to reconcile all payments and receipts in a form that is easily accessible.

⁵³ Liberia as well as the EU have indicated interest in developing a voluntary partnership agreement to control illegal logging and work towards sustainable forest management.

⁵⁴ Liberia signed up to the EITI in October 2006. The central feature of EITI, that companies disclose their payments, and governments disclose their receipts, enabling citizens to cross-check the accuracy of each set of figures could be applied to revenue generated by the logging industry.

⁵⁵ Section 5.8

⁵⁶ Section 14.2 c

⁵⁷ Section 3.4

IV Ways Forward

Liberia has an opportunity to start afresh, and manage its forests to deliver real benefits to its people. An essential step in this process is the production of a National Forest Policy, with meaningful public participation, setting out appropriate forms of forest management to achieve Liberia's vision and objectives.

The NFRL's commitment to full engagement of communities in the sustainable management of Liberia's forests requires definition of their tenure and use rights based on a good understanding of customary tenure systems, institutions and land use, and procedures for protecting community land and resource rights

The fact that that so much critical information is still missing from the NFRL is of great concern. The subsidiary regulations, which may contain this information, still need to be drafted and adopted to give effect to the law's provisions. A debarment list, for the worst timber operators under Charles Taylor's regime, which the government committed to develop, has not yet been established. Without this list the sector remains opened to known gunrunners who aided and abetted conflicts in Liberia and the sub-region.

In addition, mechanisms (including trained personnel) for administering and monitoring the implementation of the law and its regulations are not yet well established.

With both outside and inside forces keen to start opening up the country for logging on the assumption it will deliver cash, it is of paramount importance that structures and safeguards are in place to ensure Liberia's forest resources will be beneficial to the Liberian people. Without such structures and safeguards in place, it is more than likely that Liberia's forests will disappear without bringing benefits to the country, increasing poverty and fuelling conflicts as in neighbouring countries such as Ghana and Cameroon. Currently these structures and safeguards are not in place.

Given these facts, lifting the moratorium at this point will open up Liberia's forests to inadequately regulated industrial logging, allow illegal timber onto the international markets, most likely violate the rights of local communities, and compromise opportunities to develop sustainable community-based forest management. This would constitute a grave irresponsibility on the part of the Government and donors, which would almost certainly have negative environmental and social consequences for the people in Liberia.

In conclusion: the Government should maintain the moratorium on timber exports until the following conditions have been met:

- i) The National Forest Policy has been produced, with meaningful public participation, setting the future direction for Liberian forestry and informing the National Forest Management Strategy and the NFRL.
- ii) Community rights have been properly defined and addressed in the new law on 'community rights with respect to Forest Lands'.
- iii) Provisions and adopted regulations of the NFRL impacting on communities are consistent with the community rights law.
- iv) Regulations critical to good governance in the forest sector are adopted, including those dealing with land use planning and forest management, environmental impact assessments, concession allocation, contracts and permits, certification and chain of custody, scaling and grading of timber and forest products, forestry fees and declarations.

- v) The NFRL is amended to ensure that it is consistent with the National Forest Policy and the National Forest Management Strategy and international commitments.
- vi) A balanced representation of civil society and industry in the Forest Management Advisory Committee (FMAC).
- vii) A mechanism for representing community interests in forestry, in the Forest Management Advisory Committee (FMAC), in view of the NFRL's mandate to institutionalise the participation of communities in forest management.



The former OTC sawmill at Buchanan harbour.
Now under the ownership of a Spanish company.