



POLICY BRIEF #2

PROMOTING TRANSPARENCY AND ACCOUNTABILITY IN THE COMMUNITY FOREST MANAGEMENT PROCESS THROUGH MULTI-STAKEHOLDER GROUPS

THE USAID PEOPLE, RULES, AND ORGANIZATIONS SUPPORTING THE PROTECTION OF ECOSYSTEM RESOURCES (PROSPER) PROGRAM

POLICY ISSUE

The Forestry Development Authority's (FDA) track record in forest management raises concerns about their capacity to implement their own laws and regulations, and suggests that additional support and oversight by civil society may be needed to implement the Community Rights Law with Respect to Forestland (CRL).ⁱ The recent Private Use Permits (PUPs) scandal revealed that members of the FDA were involved in granting these licenses on communal land without regard to the process required.ⁱⁱ Despite FDA staff dismissal, this scandal has shaken the Liberian public's confidence in the FDA's ability to manage Liberia's forest resources. This situation is further exacerbated by the fact that the FDA lacks the capacity to carry out their manifold responsibilities as laid out in the National Forestry Reform Law (NFRL) and CRL.

The Voluntary Partnership Agreement (VPA), signed between the Government of Liberia (GOL) and the European Union (EU), aims to help address legality in timber extraction and build the capacity of the FDA. A Legal Verification Department (LVD), housed within the FDA, will verify the legality of all timber products, including legality of source. While the LVD has the potential to bring additional rigor to the forestry sector, the VPA is a new and untested system in Liberia, and its ability to affect meaningful change on the ground is as yet

BOX 1: POLICY OPTIONS

Option 1: Utilize the National Forest and Landscape Forum (NFLF) and County Forest Fora (CFF). The NFLF and CFF are legally recognized multi-stakeholder fora supported by the Food and Agriculture Organization (FAO). These platforms have served as a place for information exchange and consultation between civil society actors. This option suggests utilizing the NFLF and CFF to provide oversight to CFMA, but cautions that members in these platforms may lack the technical capacity in community forestry management.

Option 2: Formalize the Community Forest Work Group (CFWG). The CFWG currently has an informal arrangement to support the FDA in reviewing Community Forest Management Agreement (CFMA) applications. This option recommends formalizing the CFWG as part of the governance structure in the oversight of the development and monitoring of community forestry agreements.

Option 3: Coordination of effort between existing multi-stakeholder groups. This option purposes a process to ensure coordination and collaboration between multi-stakeholder groups, to maximize the oversight and support given to the FDA and communities. Coordination will also prevent fatigue by civil society actors asked to participate in multiple multi-stakeholder fora to support sustainable forest governance in Liberia.

untested. Further, its current emphasis appears to be on existing commercial Forest Management Concessions (FMC) and Timber Sale Contracts (TSC), rather than Community Forest Management Agreement (CFMA) and their contracts.

Despite this, moving forward, the majority of forestland in Liberia will likely be managed as community forest, rather than as FMC or TSC. Ensuring that community forestry is practiced in compliance with the law will require oversight and monitoring. The LVD, which will be staffed by the FDA, is charged with developing such monitoring systems to ensure legal compliance in forest management. Given the limited capacity of FDA and the lack of confidence in the FDA, it has been proposed that civil society participation in the monitoring process may be needed to ensure accountability in community forestry management. The stage is set for this, and civil society organizations (CSOs) are committed to supporting the FDA in both the implementation and monitoring of forestry laws and regulations. However, providing a space for CSOs to actively participate in the implementation of the CRL and its Regulations is needed to legitimize their involvement.

THE POLICY DILEMMA AND ITS ROOTS

History of the FDA

The FDA was created in 1976 by a Special Act to manage the forestry sector. From 1976 until the imposition of UN sanctions on timber and diamond exports in 2003, the focus of the FDA was on the allocation of concessions. During this period, concession granting in Liberia did not consider environmental impacts or human rights concerns. In addition, the forestry sector was linked with weak governance and corruption. The Forest Concession Review Committee (FCRC), established in 2004, found that almost 2.5 times of the entire forested surface area of Liberia was granted in concessions, and not one of the 70 logging concessions reviewed were in compliance with the legal requirements.ⁱⁱⁱ The FCRC recommended that all concessions be cancelled, and that a process of legal and institutional reform be carried out to allow logging activities to eventually resume under a more transparent and equitable framework.

Introducing transparency in the policy development process

Recognizing that the FDA lacked the capacity and legitimacy to lead the forestry reform effort, it was agreed that a multi-stakeholder committee would oversee the reform. This multi-stakeholder committee contributed to the formation of the 2006 National Forestry Reform Law and the 2007 National Forest Policy and Strategy. Similarly, the Community Forest Working Group (CFWG) was formed to support drafting of the CRL. This multi-stakeholder group is chaired by the FDA and comprises key stakeholders from civil society and representatives from the community. The CFWG has worked closely with the FDA and USAID to cooperatively design and implement outreach campaigns to inform the public about the laws and policies that govern community forestry, and has supported the FDA Community Forestry Unit in reviewing CFMA applications. Since the end of the war, multi-stakeholder groups have played an important role in both drafting and implementing laws and policies in the forestry sector.

Business as usual?

The NFRL Strategy sets out the framework for identifying, allocating and managing logging concessions, conservation areas, and community land. The 2009 CRL and its implementing Regulations provide the basis for recognition and regulation of community forests, and provide for commercial activities on communally owned land.^{iv} While the legal framework provides relatively clear requirements and restrictions on forestry concessions and community forest management, the strength of the system depends on the FDA's capacity and willingness to implement the legislation. Perhaps the most egregious example of the FDA's failure to follow the law was the issuance of 63 illegal PUPs totaling 2,532,501 hectares, equivalent to 23 percent of the land area of Liberia. The Special Independent Investigating Body (SIIB), commissioned by President Johnson Sirleaf, revealed that the FDA purposefully granted PUPs in violation of existing legal frameworks. The SIIB found that 59 PUPs were issued under collectively held deeds, which automatically makes the property in question community land and as such, regulated under the CRL.^v The failure of the FDA to comply with the NFRL and the CRL has resulted in the granting of community forestland to private entities.

The SIIB report recommended that the government cancel PUP contracts and prosecute those guilty of violating the law. In January 2013, President Johnson Sirleaf issued Executive Order 44, placing a moratorium on logging

by PUP holders and committing to prosecute and sanction those who broke the law. Currently, government officials state they are implementing the Executive Order, but to date minimal action has been taken.^{vi} The perceived hesitancy to fully implement Executive Order 44 has negative consequences for community forestry in Liberia,^{vii} as it may embolden companies and individuals to continue to ignore the law, and illegally exploit forest resources through other avenues, such as CFMA.

ANOTHER SCANDAL READY TO HAPPEN

Over the past six years, USAID has worked with communities around Liberia to establish CFMA applications. These agreements have been developed in accordance with the CRL and CRL Regulations, and provide a model that could be adopted throughout the country. However, companies that initiated PUPs are now supporting the formation of community forests, through the CFMA process. The applications reviewed to date suggest that some logging companies may be attempting to abuse CFMAs, which were specifically designed to benefit communities.

As of November 2013, the FDA has received 69 applications to establish community forests. The CFWG is working with the Community Forestry Unit of the FDA to screen the CFMA application for consistency with the requirements of the CRL and the CRL Regulations. Of the 48 applications screened to date, only seven applications complied with the 2009 CRL. Review of the 41 non-compliant applications revealed that:

- At least five applications show individuals attempting to replace an existing PUP with a CFMA or explicitly obtaining a CFMA in lieu of a PUP.
- At least 14 applications indicate the involvement of a logging company.
- Some communities applying for the CFMA were not aware that a CFMA application was submitted on their behalf.
- Some communities were aware of the CFMA application, but confirmed a logging company, rather than the community itself led the process.
- Most of the CFMA applications did include information on the locations or sizes of community forests.^{viii}

Community level

The 2009 CRL is intended to provide communities with the opportunity to develop community governance structures to sustainably manage their own forest resources. If the CFMA process is mismanaged and corrupted to support private interests over community rights, communities will not have the opportunity to realize the full benefits from their community forests.

- Under the CRL, if a company wishes to log in a community forest, timber extraction must be included in the Community Forestry Management Plan (CFMP), and the company must enter into a contract with the community. The CRL does not set a minimum production-based fee for community forest. For example, a community affected by a FMC is entitled by law to a production-based fee of \$3/m³, while communities with CFMAs must negotiate for revenues associated with logging. Before a community can negotiate fairly with a logging company under a CFMA, they must understand the value of their forests, and know that they are entitled to up to 55 percent of the all revenues generated. If a logging company leads the CFMA process, there is no way to ensure that communities receive their full benefit entitlement.

BOX 2: CFMAS EXPLOITED

Prior to the moratorium, the FDA approved a CFMA to the community of Doru, in Nimba County. In a meeting with Global Witness, Doru community members reported that they had been solicited by Liberia Tree & Trading Company for a CFMA and were rushed into signing documents to legitimize the deal. The community reported that they had not been given copies of the actual CFMA contract and there was confusion over what promises the company had made in exchange for the right to log the forest.

The Doru CFMA highlights the FDA's inability to manage community forests in accordance with the 2009 CRL. When the CRL is not followed, communities will lose their land to private communities, via the same permit intended to protect them.

(Source: Global Witness, 2013)

- The FDA's failure to promulgate the CRL leaves most communities uninformed and unaware of their rights under the CRL and the process of establishing a community forest. The lack of knowledge leaves communities vulnerable to private interests, and in a poor position to begin negotiations with much more sophisticated partners.
- The intention of community forests is not to provide another avenue for timber extraction, but rather to empower communities to manage their forests in a sustainable manner. Issuing CFMAs that do not comply with the CRL deprives the communities of a chance to use the forest for conservation, non-timber forest product livelihood endeavors, etc.

FDA

In February 2012, the GOL issued a moratorium on all PUP and CFMAs. While the moratorium provides the FDA with additional time to set processes and allocate resources to review CFMA applications, it does not address the weak technical capacity within the FDA to implement the law and regulations that govern community forests. Prior to the moratorium, the FDA approved 10 CFMAs, and there is clear evidence of logging company involvement in five of them. These CFMAs are similar in size to PUP, and are located in proximity to other large logging concessions (see Box 2). This suggests that the FDA has around a 50 percent success rate in issuing legal CFMAs. The implementation of the VPA and the establishment of the LVD may help build the capacity of the FDA, and bring legality and transparency to the CFMA process, but these departments are not yet established, nor are they the FDA's first priority.

If the FDA is unable to implement the CRL and another scandal emerges, there will be serious implications for the GOL. First, the authority and legitimacy of the FDA will be further tarnished, which may lead to increased lawlessness in the forestry sector. Second, the GOL's commitment to sustainable forest management, as demonstrated through the signing of the VPA, may be called into question. Third, Liberia's forests and biodiversity will be under greater threat, and lastly, forest communities in Liberia will be again deprived of their rights to manage their forest resources.

POLICY OPTIONS

The FDA must improve their community forest management processes to ensure legality and transparency, and to prevent a repeat of the PUP saga. However, the FDA has consistently demonstrated that it does not have the resources, technical capacity, and in some cases, political will to do so on their own. The VPA will not be in a position to bolster capacity for some time. Civil society in Liberia has proven, through their active participation in designing forestry reform laws, that they are committed to ensuring lawful and sustainable forest management in Liberia. The VPA reinforces the importance of engaging civil society by requiring that a national multi-stakeholder committee be formed to monitor implementation. Therefore, policy options that formally engage civil society in community forest management must be explored.

Option 1: Utilize the National Forest and Landscape Forum and County Forest Fora to improve community forestry management

Since 2009, the FDA has worked with the United Nations Food and Agriculture Organization (FAO) to legally establish a National Forest and Landscape Forum (NFLF), which is linked to 15 County-level Forest Fora (CFF). The overall objective is to install effective mechanisms and structures that will ensure fully operational multi-stakeholder fora for regular and improved dialogue and consultations between stakeholders on issues affecting forestry. The NFLF serves as a national platform for multi-stakeholder dialogue, consultation, and synergy building. The CFFs strengthen stakeholder participation at the community level, ensure accountability and transparency in forest management, promote awareness on laws and regulations, and act as a whistleblower for illegal forest activities.^{ix} The NFLF and CFFs have created a space for enhanced forest sector consultation and participatory management, but they have not engaged directly in community forestry management. There may be an opportunity to leverage these legally recognized bodies to provide oversight and technical guidance on the implementation of the CRL and CFMA process.

However, members of the NFLF and CFFs have raised some key concerns about their ability to provide oversight and accountability to the community forest management process. While the NFLF and CFF institutionally are in a strong position to assist the FDA in review of CFMA applications and management, they

may lack the technical capacity to do so. Furthermore, concerns have been raised about the risk of the NFLF and CFF being manipulated by political and private actors for personal gain.^x Lastly, the second phase of the FAO Forest and Farm Facility Program aims to “strengthen existing cross-sector coordination with NFLF,” but does not have a stated objective of supporting community forest management.^{xi} Therefore, providing direct support to the Community Forestry Unit of the FDA might be outside their scope.

Option 2: Formalize the CFWG involvement in community forestry management

The CFWG is chaired by the FDA and comprises representatives from civil societies and Community Forest Management Bodies (CFMB). The FDA accepts the CFWG as a partner in community forest management, and values the technical knowledge and community perspective they bring to the table. Because the CFWG has representation from community members, it is more accountable to a community’s interests. The CFWG’s participation in the vetting of CFMA applications is already bringing legitimacy and rigor to the process. The value of the CFWG in promoting transparency, accountability, and legality in community forestry management is clear. The current working arrangement between the FDA and CFWG is informal, and depends largely on the support of USAID. This option recommends formalizing the CFWG as part of the governance structure in community forestry. Arguments in support of formalizing the CFWG’s role include:

- The CFWG’s formal role in reviewing and approving CFMA applications would provide an additional level of oversight in community forest management.
- The representativeness of governance institutions in the community forestry sector would increase, and the representative and inclusive nature of the CFWG may positively influence the FDA and other government institutions.
- The CFWG’s guaranteed access to forests, documents, personnel, and other government resources would help promote greater transparency in community forest management.
- Legitimizing the CFWG’s involvement in community forestry could provide the opportunity for a multi-stakeholder group to be incorporated into the systems that will be established by the LVD to monitor compliance with the VPA. This, in turn, could restore confidence in the FDA and legitimize the LVD.

These arguments seem compelling, but formalizing the CFWG in the community forest governance process also presents several risks. Namely, the legitimacy and independence of the CFWG may be questioned or jeopardized by becoming a formal part of the government. As a consequence, the CFWG’s ability to reveal information, particularly embarrassing examples of illegality, may be constrained.

Option 3: Multi-stakeholder group coordination to improve community forest management

There are a multitude of multi-stakeholder groups working to improve the forestry sector in Liberia. Unfortunately, there has been little to no coordination between the CFWG and the NFLF and CFF, in regard to community forestry management. In addition, the VPA has formed a multi-stakeholder group charged with monitoring the legality process. This group has not engaged formally with CFWG or the NFLF. This option recommends that the CFWG coordinate efforts with the NFLF, CFF, and VPA multi-stakeholder group to provide oversight to the FDA on community forest management. The CFWG, NFLF, CFF and VPA multi-stakeholder group should take the following steps:

- Coordinate information sharing, capacity building and outreach campaign efforts to ensure continuity in messaging and non-duplication of efforts.
- Examine the membership of each respective group, and consider options for combining these multi-stakeholder platforms and/or forming sub-committees that address specific aspects of forestry governance.
- The CFWG should work with the VPA multi-stakeholder group and the CFF in each county to follow up with their CFMA application, educate them on why their application was denied, and help the communities draft a new application that is compliant with the CRL.

This option would ensure coordination and collaboration between multi-stakeholder groups and donor efforts, to maximize the oversight and support given to both the FDA and communities to promote sustainable community forest management.

RECOMMENDATION

The FDA currently lacks the capacity to single-handedly implement the CRL. Multi-stakeholder groups can help fill the implementation gap by providing support and oversight to the FDA. The NFLF and CFF have representation both on the national and community levels, but lack the technical capacity and mandate to engage directly in community forest management. The VPA multi-stakeholder group is still in its nascent stages, and it is unclear how this group will engage other actors. It is clear that the CFWG is in the strongest position to provide support to the FDA Community Forestry Unit. A Memorandum of Understanding (MOU) should be established between the CFWG and FDA that recognizes the CFWG as a formal partner of the FDA in community forest management. The MOU should require the CFWG sign off on each step of the CFMA application process, before a CFMA can be issued. This process would provide legitimacy and authority to the CFWG, while maintaining some level of autonomy.

This option should be coordinated and supported by other multi-stakeholder groups. Coordination between the multi-stakeholder groups is necessary to ensure: 1) that there is no duplication of effort, 2) that appropriate actors are engaged in forestry activities and 3) that impact by multi-stakeholder groups is maximized. A coordinated effort will amplify civil society's contribution to promoting accountable and transparent community forest management. Therefore, it is recommended that a combination of Options 2 and 3 be implemented.

Author: Chelsea Keyser, Policy Specialist, November 2013

USAID People, Rules, and Organizations Supporting the Protection of Ecosystem Resources (PROSPER) program Contacts: Paul Meadows, Chief of Party paul.meadows@tetrattech.com; Eugene Cole, Deputy Chief of Party eugene.cole@tetrattech.com

DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government

-
- ⁱ Republic of Liberia. (2009). *Community Rights Law with Respect to Forestlands*. Monrovia: Forestry Development Authority; Republic of Liberia. (2006). *National forestry policy and implementation strategy*. Monrovia: Forestry Development Authority.
- ⁱⁱ It is worth noting that the UN Sanctions Monitoring Committee reported on the PUP scandal a year before the news broke in 2012.
- ⁱⁱⁱ Republic of Liberia. (2005). *Forest Concession Review, Committee Forest Concession Review*. Monrovia.
- ^{iv} The FDA has the authority to issue the following types of timber concessions and permits: Forest Management Contract (FMC) is offered on state-owned land, with maximum 25-year term, and size can range from 50,000 ha to 400,00 ha (Section 5.3 of the NFRL); Timber Sales Contract (TSC) is offered on state-owned land, with a maximum 3-year term, and a maximum size of 5,000 ha (Section 5.4 NFRL); Forest Use Permit (FUP) is offered on public or private land, not for commercial timber extraction, and the term ranges from 2 years for a single permit, and maximum size is 1,000 ha, eligibility is restricted to certain groups (Section 5.5 NFRL); Private Use Permit (PUP) is offered on private land with written permission from landowner, of variable duration and size, and has less stringent environmental regulations (Section 5.6 NFRL); and Community Forest Management Agreement (CFMA), provided under the CRL and established under CRL Regulations, is subject to community ownership and the establishment of community governance structures, for areas over 5,000 ha commercial activities are subject to requirements outlined for FMC or TSC.
- ^v Special Independent Investigation Body (SIIB). (2012). *SIIB Report on the Issuance of Private Use Permits (PUPs)*, presented to the President of the Republic of Liberia, H.E. Ellen Johnson Sirleaf December 19, 2012. Monrovia.
- ^{vi} As of November 13, 2013, the FDA has cancelled 17 of the PUPs issued; four FDA employees have been fired, including Moses Wogbeh, Managing Director of the FDA when 61 of the PUPs were issued; and the FDA Board of Directors has been dissolved.
- ^{vii} FDA Board of Advisors. (2012). *Investigation Report, February 2012*. Monrovia: Forestry Development Authority.
- ^{viii} Global Witness. (2013). *Avoiding the Riptide: Liberia Must enforce its forest laws to prevent anew wave of illegal and destructive logging contracts*.
- ^{ix} Food and Agriculture Organization (FAO). (2011). *The Development of Liberia's Forest Stakeholder Platform*. <http://www.fda.gov.lr/nfp/index.php/national-forest-forums>. (Accessed, November 12, 2013).
- ^x The Development of Liberia's Forest Stakeholders Platform, 2011
- ^{xi} FAO, IIED, IUCN. (2013). *Forest & Farm Facility Flyer*.