

## **THE LIBERIA FOREST CONCESSION REVIEW: LESSONS FOR THE RESTORATION OF THE RULE OF LAW IN AFRICA**

*K. W. JAMES ROCHOW, ROBERT D. SIMPSON, ALFRED L. BROWNELL  
AND OLIVER PIERSON*

### **ABSTRACT**

*Illegal trade in ‘conflict timber’ as well as in ‘blood diamonds’ played a primary role in perpetuating lawlessness and fueling conflict in West Africa. The Forest Concession Review undertaken in Liberia resulted in a recent Executive Order that voided all timber harvesting concessions and mandated wide-ranging forest sector reform measures. This unprecedented effort was based on Liberia/international cooperation, broad participation, compliance with the rule of law, and explicit links to reform. It provides an adaptable model for the review of other natural resource concessions and offers lessons for reform and the restoration of the rule of law in destabilized societies.*

### **INTRODUCTION**

Liberia has eponymously exemplified a ‘failed state’ and constituted an epicenter of regional disorder for almost two decades.<sup>1</sup> With the appointment of the National Transitional Government of Liberia (NTGL) in October, 2003 and the inauguration of Ellen Johnson Sirleaf in January, 2006 as President of an elected government, Liberia has started on the long road to effective democratic governance.<sup>2</sup> Because illegal trade in timber as well as diamonds played a primary role in perpetuating convulsive lawlessness in Liberia and in fueling conflict in West Africa<sup>3</sup>, the recently completed review of all forest (timber harvesting) concessions in Liberia – unprecedented in its comprehension and in its explicit links to reform – represents a critical step toward reconstitution of the rule of law and the lifting of the timber embargo imposed by the UN Security Council (see GOL 2006:1-3).

The concession review was accomplished by the Forest Concession Review Committee (FCRC) appointed by the NTGL (FCRC 2004: ‘Terms of Reference of Concession Review Phase III’ (unpaginated)). The FCRC recommended the voiding of all existing forest concessions, the implementation of a set of specified forest sector reform measures under the supervision of a similarly constituted successor Forest Reform Monitoring Committee, and a suspension of new concession grants until the reforms were instituted (FCRC 2005:38-40). The newly elected Johnson Sirleaf administration adopted the recommendations in their entirety by executive order in one of its first official acts (GOL 2006).

This briefing is written as a first-hand report on the provisional success of the Liberia Forest Concession Review: Phase III (Review).<sup>4</sup> It takes the form of six lessons learned from the review that should prove applicable to other concession reviews and offer an

adaptable model for addressing natural resource reform and restoration of the rule of law, especially in destabilized societies and failed states.

**1: Conduct a thorough, objective, and professional review through an expert, interdisciplinary Technical Secretariat.**

Composition – The FCRC appointed a five person Technical Secretariat (TS) as a technical body to accomplish the extensive data collection, procedural refinements, public outreach, and basic analysis necessary to conduct a comprehensive review. Like the interagency and internationalized FCRC itself, the TS was composed to reflect the interdisciplinary expertise necessary to achieve technically sound and legally binding forest sector reforms and continued cooperation with the international community: The TS consisted of a Liberian forester and environmental lawyer and their international counterparts. (FCRC 2005: Appendix 1, Exhibit C.) Despite ‘fox in the henhouse’ reservations, a representative of the Forestry Development Authority (FDA) was added to the TS in order to facilitate communication with the responsible agency.

Structure and process – The TS intensively focused its initial work on refining and formalizing the structure and process of the review. The review’s methodology had been developed by translating the government’s terms of reference for the concession review into a matrix generally listing decision criteria based on legal requirements and the acceptable means of verification for each criterion. The TS developed ‘individual company data sheets’ to record systematically and uniformly the results of the review for each individual concession. (FCRC 2005:4-5,10-25, Appendix 2, Exhibit A.) The emphasis on rationalizing and systematizing the review prior to examining the behavior of any concession holder prolonged the review despite enormous political pressure to conduct it precipitously<sup>5</sup>, but proved critical to making its conduct and results definitive, free from political interference, and unimpeachable (to date, no legal challenges have been filed).

**2. Structure the review process to mirror and reinforce its fundamental goal of restoring the rule of law.**

Nature of the review process – The unfolding of the review with its revelations of pervasive routine and spectacular illegality confirmed the overwhelming necessity of securing and routinizing legal compliance as a prerequisite to revitalizing a sustainable and productive forest sector. **The review process was structured from the beginning to mirror and reinforce its fundamental goal of restoring the rule of law.** The review was conducted in a transparent manner, with its methodology widely publicized and the entire process structured to comport with sound legal and administrative process. The burden of proof was explicitly placed on each concession holder to document compliance consistent with the reporting

requirements of its concession instrument, with the fact that a concession is a license (not an entitlement), and with the principle that the concession holder is deemed to have the best access to its own records. Each concession holder was also required to verify all documentation submitted. (FCRC 2005:5-6.) The review went beyond due process (which technically requires that parties affected have the right to challenge decisions by adjudicatory process), by scheduling individual meetings to allow participating concession holders to make their best case to the TS.

Force majeure and normalized business practices – As expected given the prolonged *bouleversement* Liberia has suffered, the review revealed a general lack of organized documentation. Virtually every concession holder invoked *force majeure* – the ‘Act of God’ defense – to explain the almost complete lack of compliance with record keeping, reporting, and operational standards. Liberia technically had a continuity of government, however, so legal requirements were always in force. Even though the review was prepared to give the concession holders some latitude under the prevailing circumstances of disarray, not a single concession holder could provide evidence that it ever invoked *force majeure* – a legal prerequisite – even in the form of after-the-fact file notes or correspondence. **Establishment of normal business practices thus became another outcome of the review.**

Categorization of compliance – It became clear early in the review that no concession could come close to meeting all requirements specified in legislation, regulations, and its concession document. **To avoid rigid absolutism while still following the rule of law, the review devised a progressive three-part test** conditioned on compliance with criteria in three main categories: 1) minimum standards; 2) threshold behavior (corrupt, criminal, and quasi-military activity); and 3) additional requirements (financial, labor, and community development obligations). If a concession holder passed the first two tests, it would also have to demonstrate ‘cumulative’ (not complete) compliance under the third category. (The twenty-three concession holders out of a total of seventy who failed to submit any data in effect eliminated themselves and were automatically disqualified from further consideration.) (FCRC 2005:7-9.)

The review found that not a single concession holder could meet the minimum standards: relatively few even had a current business license and many concessions had expired on their face. **In addition to pervasive routine non-compliance, the review confirmed the spectacular illegality associated with ‘conflict timber’:** One half of the seventy existing concessions were associated with generating and channeling illicit funds to warlords and criminals to support civil disturbance, insurrection, usurpation of property, and corrupt business practices. In the interests of fairness and rigor, a determination of failure to clear the ‘threshold behavior’ standard depended on citation of the concession holder in an official UN report or list related to

the timber sanctions, or corroboration of illegal activity by three sources, or clear documentation of territorial usurpation. Even though it was a moot point, the review also evaluated the concessions under the ‘cumulative’ criteria for the record and found that instances of compliance in that category were rare and exceptional. (FCRC 2005:7-9; Diagram 1, page 10.)

Forensic accounting – Financial accounting conducted by an international/local team was incorporated in the review’s methodology from the beginning and denominated ‘forensic’ because of its investigative nature. While government records were the prime source of data, the accounting review also undertook reconstruction through non-traditional sources such as interviews, logs, and inspection reports to redress the lack of data submissions by the concession holders themselves. The financial review found massive noncompliance with fee, tax, and performance bond and capital spending requirements. The aggressive attempts by a few of those associated with the former Charles Taylor regime to obstruct the financial review’s access to bank records required resort to compulsory legal process (writ of search and seizure) and illuminated the residual lawlessness in Liberia. (FCRC 2005:5-7;36;Appendix 1, Exhibit G.)

### **3. Conduct democratized outreach to energize civil society and build informed constituencies of support.**

The outreach component included but went beyond a conventional multi-media public awareness campaign. Local outreach experts held focus group discussions and town hall meetings nationwide to elicit comments regarding concession holder conduct toward the local population, links to civil instability, compliance with community development obligations, and steps to move forward with effective forest reform to avoid the mistakes of the past. This intensive field outreach had the broader purpose and effect of laying the foundation of public participation necessary for the long-term effectiveness of the review’s reform recommendations. (FCRC 2005:5,6.) To activate this potential constituency of support will require the continued efforts of the Liberian government and, especially, civil society, which was instrumental in the concession review (see Lesson 5).

### **4. Use the review process to create an historical record and provide definitive documentation of illegality and mismanagement.**

The review composed a compelling and at times dramatic picture of the pervasive deficiencies of the past forest concession granting process in Liberia and the compounding effects of prolonged civil disturbance and lawlessness. **The forensic accounting exercise found over 64 million US dollars in tax arrears accumulated by the concession holders.** The review’s composite mapping of the boundaries of each concession revealed a jumble of multiple areal overlays, with a total

acreage of over two and a half times the surface forested area of Liberia allotted to forest concessions. (FCRC 2005:34-35,36.) While the review judged each concession deficient on its own merits, **the irremediably chaotic picture presented also argued for the blanket cancellation of concessions.**//**The individual and community testimony elicited during the public outreach part of the review added a first-hand credibility and immediacy to the historical record**, as well as to the review’s accumulated data. The fact that one of the civil society representatives on the FCRC (Jerome Verdier) has been appointed Chairman of the Truth and Reconciliation Commission designed to come to terms with Liberia’s recent past solidifies the broader links between the concession review’s record and findings and the on-going effort to restore the rule of law in Liberia. The findings of irregular and illegal conduct by the concession holders informed the review’s reform recommendations, designed to prevent repetition of such behavior (see Lesson Six).

**5. Put a ‘squeeze play’ on the national government through coordinated international and domestic pressure for reform.**

**The success of the review depended upon a coordinated ‘top down/ bottom up’ dynamic of internationalized cooperation** designed to squeeze the national government to accomplish reform through positive and negative incentives. The imposition and renewal of the UN Security Council’s sanctions on Liberia timber was the underlying force that convinced the Liberian government to conduct a credible concession review after two false starts. The UN Sanctions Panel<sup>6</sup>, in turn, endorsed the Liberian government’s adoption and implementation of the concession review’s recommendations as a key factor in determining whether and how long sanctions should remain in force.

**Positive incentives were provided by the international community through the Liberia Forest Initiative (LFI)**, which represents a flexible multilateral initiative carried out by a host of institutions and organizations, including the U. S. government, the World Bank, the European Union, and Conservation International. The LFI through its donor partners provided substantial technical and financial assistance to the review. (McAlpine, O’Donohue & Pierson 2006:85-89.) Clarifying the status and legality of the raft of existing forest concessions was a prerequisite to achieving LFI’s broader mission of instituting sustainable management of Liberia’s forests. In particular, the prospect of LFI’s continued facilitation of staff and administrative funding provided FDA not only a concrete incentive to reform but the realistic expectation that reform could be accomplished.

The LFI also worked reciprocally with civil society in the review process. Liberia civil society organizations precipitated the review when their representatives refused to concur

in the results of the second, in-house review and called for international participation in a third, broadened and transparent review. The composition of the FCRC itself reflected the ‘top down/bottom up’ dynamic: A majority (10 out of 18) of the FCRC represented agencies of the Liberian government that mandated the review (3 seats were occupied by Liberia civil society, 2 seats were occupied by the UN Mission in Liberia, and 3 seats by LFI partners). The Liberian government’s mandate for the review was essential to establish its legality and legitimacy. (McAlpine, O’Donohue & Pierson 2006:87.) The UN Security Council’s affirmation of the review’s template and recommendations as the road toward removal of sanctions, the unanimous adoption by FCRC of the recommendations, their support by civil society, and their subsequent adoption by the Government all evidence the success of the internationalized approach.

## **6. Link the concession review to legal and institutional reform.**

The review needed to muster the lessons learned in its detailed case-by-case evaluation of each existing concession to prevent the recrudescence of the circumstances that occasioned it in the first place – overwhelming governmental corruption, lawlessness, and civil strife. The first ‘never again’ need was to prevent the re-granting of concessions based on favoritism and flawed procedures: the review’s voiding of all existing concessions could have precipitated a rush to obtain new or replacement concessions. Consequently, the review recommended that the government not grant any concessions until it instituted a specified set of legal and institutional reform measures.

Implementing a transparent competitive bidding system to prevent the sequential awarding of multiple concessions through corruption and cronyism constituted a cornerstone of such reform. Another key reform recommendation was for a ‘cradle to grave’ chain of custody system for tracing harvested timber. The general failure to meet financial obligations and the usurpative behavior characteristic of half of the concessions led to recommendations to institute suspension and debarment lists (and to investigate past misbehavior). To take one more example, the review called for a comprehensive land use planning process that would rationalize the forest concession allocation process under FDA control, a significant departure from past practices. (FCRC 2005:38-40.) Following the FCRC’s recommendations, Executive Order No. 1 mandated a joint Forest Reform Monitoring Committee to oversee the implementation of the reforms (GOL 2006:3-5). The review thus seamlessly fed into the on-going legal and institutional reform efforts by the Liberian government supported by LFI and the international community.<sup>7</sup>

---

**K. W. James Rochow** is an international/environmental legal and policy consultant based in Washington, D. C. Rochow served as the International Lawyer working for the World Bank in the concession review process.

**Robert D. Simpson** is the Liberia Forest Initiative Liaison, United States Department of Agriculture Forest Service International Programs. Simpson served as the Chairman of the Technical Secretariat of the Forest Concession Review Committee.

**Alfred L. Brownell** is the President and Founder of the Association of Environmental Lawyers of Liberia (Green Advocates). Brownell served as the Local Lawyer in the concession review process.

**Oliver Pierson** is the Africa Program Coordinator, United States Department of Agriculture Forest Service International Programs. Pierson coordinates the Liberia Forest Initiative, of which the concession review is a part.

Note: The opinions expressed by the authors are their own and do not necessarily reflect the views of their organizations.

## References

**Forest Concession Review Committee (FCRC)** 2004, *Background Documents For Concession Review Phase III [vol. 3]*, Monrovia.

**Forest Concession Review Committee (FCRC)** 2005, *Forest Concession Review Report: Phase III and Appendices*, Monrovia, available at <http://www.fao.org/forestry/site/29659/en>

**Global Witness** 2004, *Dangerous liaisons: the continued relationship between Liberia's natural resource industries, arms trafficking and regional insecurity*, available at <http://www.fao.org/forestry/site/29036/en>

**McAlpine, J. L., O'Donohue, P. A. & Pierson, O.** 2006, 'Liberia: forests as a challenge and an opportunity', *International Forestry Review* Vol. 8 (1), pp. 83-92.

**Reno, W.** 1999, *Warlord Politics and African States*, Boulder: Lynne Rienner.

### *Legal Authorities*

**Republic of Liberia, Government of Liberia (GOL)**, 'Executive Order No. 1 GOL Forest Sector', February 2, 2006, available at <http://www.fao.org/forestry/site/31586/en>

---

<sup>1</sup> Tension between the founding Americo-Liberia elite and the repressed indigenous populations existed almost from the beginning of Liberia's formation and exploded into civil convulsion with Sgt. Samuel Doe's 1980 coup, which ushered in an almost two decades long regional *bouleversement* characterized by rebel factions and warlords brutally contending for corrupt advantage and territorial control across the permeable boundaries of Liberia and its neighbors (Sierra Leone, Guinea, and Côte d'Ivoire) (E. g., Kapuscinski R. 2001, *The Shadow of the Sun*, pp. 233-260). The most notorious of the warlords and Ellen

Johnson Sirleaf’s predecessor as President of Liberia, Charles Taylor, is at this writing awaiting trial as a war criminal. See Nichols & Polgreen, ‘Liberia Ex-Leader Faces War-Crimes Court’, *The New York Times*, April 4, 2006, p. 3.

<sup>2</sup> The National Transitional Government of Liberia was formed as an unelected interim government with cabinet positions apportioned by warring faction as a result of the Accra Peace Accords of 2003. The subsequent election for a permanent government contemplated by the Accra Accords was duly held in Liberia on October 11, 2006 (general election) and November 8, 2006 (run-off election).

<sup>3</sup> While ‘blood diamonds’ are more portable, easier to conceal, and perhaps more notorious as sources of illicit funds than timber, forest concessions enable territorial control and usurpation while also generating revenues channeled to private militias and corrupt enrichment (Reno 1999; Global Witness 2004).

<sup>4</sup> The long-term success of the Forest Concession Review: Phase III (Review) depends upon the effective implementation of its forest sector reform recommendations.

<sup>5</sup> The original government mandate was to complete the review in a totally unrealistic time period of thirty days; despite its high priority and the resources devoted to it, the review took twenty-two months.

<sup>6</sup> S/2005/745; <http://daccessdds.un.org/doc/UNDOC/GEN/N05/617/93/PDF/N0561793.pdf?OpenElement>

<sup>7</sup> The review is intended to serve as the model for the contemplated broader natural resources concession review in Liberia under the donor-driven GEMAP process. See *Governance and Economic Management Assistance Program (GEMAP)*

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/LIBERIAEXTN/0,,contentMDK:20758495~menuPK:2024738~pagePK:141137~piPK:141127~theSitePK:356194,00.html>