



POLICY BRIEF #3

THE IMPACT OF THE VOLUNTARY PARTNERSHIP AGREEMENT ON COMMUNITY FORESTRY

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

POLICY ISSUE

Liberia is home to over half the remaining rain-forest in West Africa, with almost 45% of the country, roughly 4.3 million ha, covered by forest. Liberia has made significant efforts to strengthen forest management through legal reform. These reforms provide a framework to improve transparency, good governance and sustainability and provide a strong basis for community rights in relation to forestland management. While these legal reforms have been lauded internationally, actual implementation of the law has been limited by limited capacity and resources in the FDA.

The Voluntary Partnership Agreement (VPA), a bilateral agreement between the European Union (EU) and the Government of Liberia (GOL), aims to reinforce this reform agenda, and improve forest governance overall, by implementing legality standards for timber products and supporting

capacity development at the FDA to monitor these standards. The VPA sets the requirements to establish a legally assured system for Liberian timber for both international and domestic markets. The requirements outlined in the VPA will be implemented by the GOL, primarily by the Forestry Development Authority (FDA), through the support of the EU and other bi-lateral donors. To date, engagement under the VPA has been limited to communities that are “affected” by commercial logging contracts, and thus entitled to benefits sharing. These communities have also been engaged through a multi-stakeholder platform to assist in the design and implementation of the VPA. While addressing community benefits from commercial logging operations and participation in forestry governance are positive, and in line with the National Forest Reform Law (NFRL) of 2006, implementation of the VPA has largely left out a key aspect of community involvement, namely communities as owners of the forest resources, with the agency to conduct commercial timber extraction.

BOX 1: POLICY OPTIONS

Option 1: Implementation of the Voluntary Partnership Agreement (VPA) concentrates on Forest Management Contract, Timber Sales Contracts, and affected communities. This option maintains the current trajectory of engaging primarily with FMC and TSC contracts, and addressing the affected communities by establishing benefit-sharing mechanisms.

Option 2: Increased engagement with community forests through Community Forestry Management Bodies (CFMB) under the VPA. This option supports the VPA’s increased level of engagement with CFMB. Given that the CRL of 2009 has empowered communities to manage and benefit from their forestlands, and most forestlands and resources are located in rural communities. Liberia will most likely see a steady increase in the amount of forestland under community forest management, as well as the number of commercial extraction operations on community forestlands managed by CFMBs.

BACKGROUND

Review of community rights to forest land

Since 2003 Liberia has implemented a forest reform agenda that recognizes and formalizes rights of communities to forestland. The NFRL of 2006 states that ownership of all forest resources, except those in communal forests and those that have been developed on private or deeded land through artificial regeneration, are vested in government in trust for the benefit of the people.ⁱ However, the 2009 Community Rights Law with respect to forestland (CRL), creates community ownership of forest resources, and explicitly overrules any conflicting provisions in the NFRL.ⁱⁱ This essentially paves the way for communities to be the primary managers and beneficiaries of forest resources in Liberia.

Prior to the passage of the CRL, most of the logging in the country occurred on lands owned by the government, classified as “public lands.” Logging has been authorized through Forest Management Contracts (FMC) and Timber Sale Contracts (TSC). Provisions in the NFRL and its ten core regulations entitle communities affected by FMC and TSC to compensation, 30% of land rental fees, and other benefits outlined in “social agreements,” benefits such as employment construction of roads, schools, etc. An *affected community* is an entity that is less than a statutory district and whose economic, cultural, aesthetic, spiritual, religious, environmental, health or livelihood interests are likely to be impacted by operations of a Forest Resources License holder, usually a logging company. Affected communities are legally obligated to form Community Forest Development Committees (CFDC) to interface with the FDA and concessionaires.ⁱⁱⁱ CFDCs are therefore “beneficiaries” of commercial logging concessions that are entered into between the FDA and logging companies.

In contrast, communities that undergo the process to create authorized community forests consistent with the CRL own the forest resources and can themselves enter into agreements with logging companies. The CRL requires that these communities *themselves* form Community Forest Management Bodies (CFMB) in order to access, manage use and benefit from community forestlands and resources in a sustainable manner. CFMBs are selected by community-elected community assemblies, and are supervised by the executive committees of community assemblies. The CFMB is responsible for drafting a Community Forest Management Plan (CFMP), which outlines how the forest resources will be used, which is normally for a combination of subsistence, commercial, and environmental purposes. Once the FDA approves the CFMP and Community Forest Management Agreement (CFMA), CFMBs have the authority to enter into small-scale, medium-scale and large-scale commercial contracts with companies licensed by the FDA. CFMBs have the rights to negotiate directly with commercial actors and rights to at least 55% of all revenues/income from large-scale commercial contracts.^{iv} The revenue from commercial contracts is paid directly to the community, whereas benefits for the CFDC are paid to the Ministry of Finance, and then distributed to the CFDC upon their request.

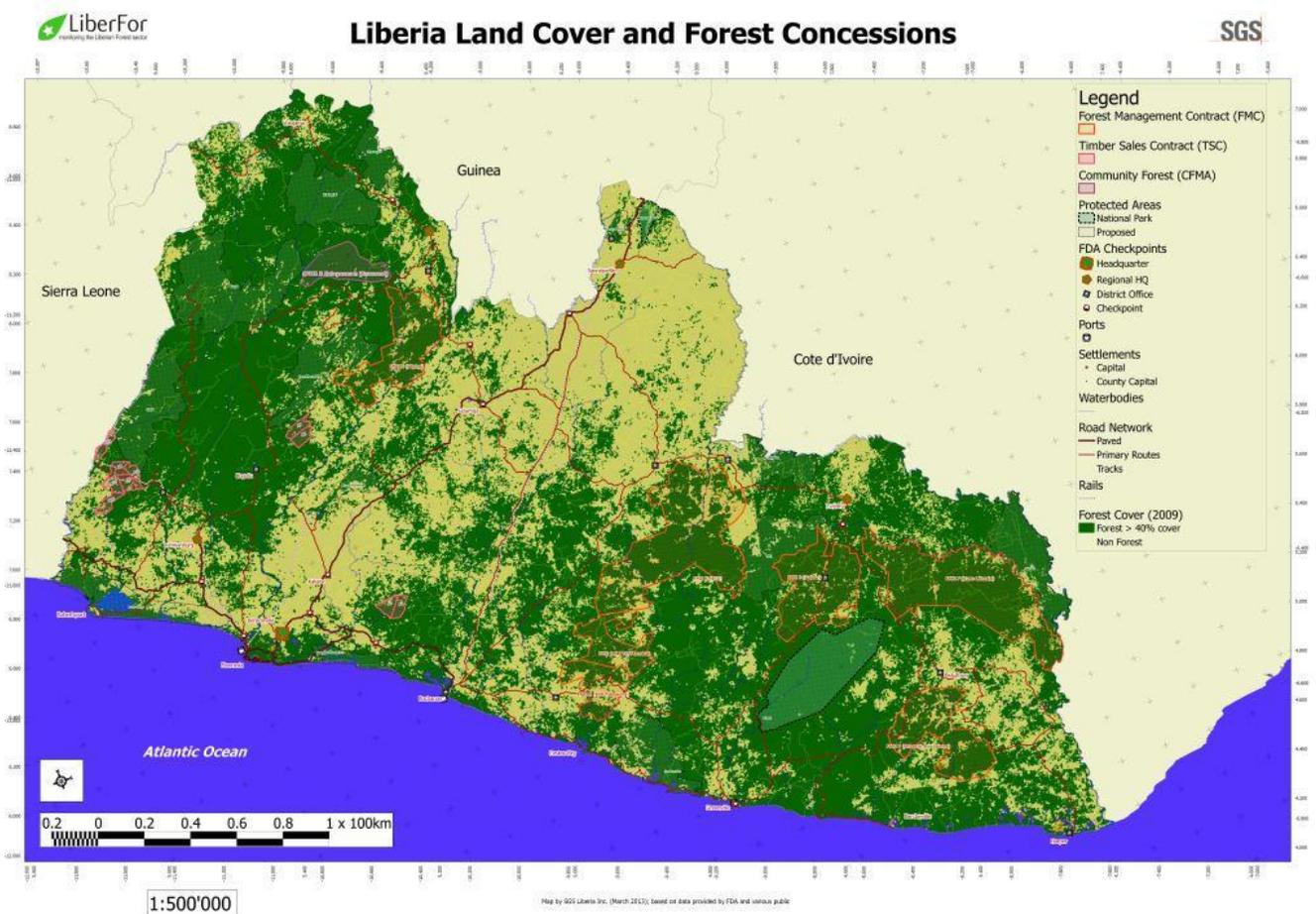
Overview of the Voluntary Partnership Agreement

The VPA was signed by the EU and GOL in 2011, and ratified in 2013. The agreement aims to reinforce the forestry reform agenda by tackling the problem of illegal logging, improving transparency and public participation, enhancing community rights and strengthening the role of civil society in overseeing the forest sector. The VPA sets out the requirements for a licensing system, Forest Law Enforcement, Governance and Trade (FLEGT), and accompanying verification processes, to ensure that all timber produced in Liberia is legal. Liberia’s legality assurance system (LAS), is based on 11 principals outlined in the VPA agreement, and includes all aspects of timber production, allocation of harvesting rights, benefit sharing, worker rights, taxes, and transparency.^v The definition of legal timber will be applied to *all* sources of timber and timber products, and the VPA explicitly includes timber from FMC, TSC, Private Use Permits (PUP), and Chainsaw permits. The VPA does not state that timber extracted from CFMA and mining and agricultural concessions must comply with legality standards. However, it is assumed timber from these sources is captured in the statement “all timber in Liberia.” Timber sold domestically and internationally will be required to comply with this legality system.^{vi}

Article 16 of the VPA calls for the involvement of stakeholders in the implementation of the agreement “including industry, civil society, local communities and other people dependent on forests... Participation via existing forest governance structures and a national monitoring committee to monitor implementation of the VPA.”^{vii} This institutionalizes a process for stakeholder consultation, and a mechanism for civil society and community members to monitor implementation and ensure accountability in the VPA process. The establishment of the VPA and implementation by the FDA has been lauded for its inclusive approach. The NGO Coalition for Liberia, including CFDC, has expressed satisfaction over the open and participatory manner in which the VPA process was carried out.^{viii} However, the VPA multi-stakeholder platform did not include representatives from the Community Forestry Working Group (CFWG), a multi-stakeholder group established to support the Community Forestry Unit of the FDA, or community members from community forest areas. The lack of engagement of the CFWG demonstrates the prioritization of commercial forestry over community forestry.

The increased and formalized engagement of communities and civil society in forest governance is welcome. However, engagement with communities to date has been centered on communities affected by logging operations under FMC or TSC. CFMBs, which have the authority to implement commercial activities, have largely been left out of the implementation of the Agreement.

Figure 1: Map of approved FMCs, TSCs, and CFMAs in Liberia



Source: SGS

POLICY IMPACTS

The VPA will ultimately affect forest governance and forest-dependent communities in Liberia, but whether that impact is positive, negative or indifferent will depend largely on how it will be implemented. In principle, the agreement is a positive development for Liberia, and particularly for its forest-dependent communities. However, recent experience with poor implementation of reform in the forest sector shows that legal and institutional reform does not equate with positive changes on the ground. To date, the implementation of the Agreement has been largely focused on timber extracted from FMC and TSC. While the majority of Liberia's timber exports currently are funneled through these contract mechanisms, failure to engage all actors in forestry, including CFMBs, could undermine the effectiveness and legitimacy of the VPA, especially if commercial timber activities increase in CFMA areas as is anticipated. The lack of engagement with CFMBs and other actors supporting community forestry has the following implications:

- Community forestry in Liberia is a fairly recent phenomenon, and requires the continued support and recognition from government agencies and the international community. Focusing engagement on communities affected by commercial logging (CFDC) reinforces communities as “beneficiaries” of commercial logging operations, rather than supporting their agency as owners of the forest resources on community lands, provided by the CRL of 2009.
- By not engaging CFMBs, the VPA process fails to take in to account the more than 2.5 million ha, which have the potential for commercial timber extraction under community management,^{ix} and will need to follow Liberia's legality standards.
- There will be a missed opportunity to harmonize the processes and requirements for establishing the legality of community forests and Community Forest Management Agreements (CFMA). The USAID PROSPER program, in collaboration with communities and the FDA, has developed a “How to Guide”, based on the CRL of 2009 that is currently being utilized by the FDA to ensure the legality in the CFMA process.^x The Legal Verification Department (LVD) of the FDA will be responsible for establishing the legality of all timber, including timber coming from community forests.^{xi} If community forest actors are not engaged as part of the VPA process now, there is a high risk that stakeholders and donors will duplicate efforts, and bring further confusion into the community forest processes already established.

POLICY OPTIONS

We present two possible options that decision makers should consider: focus implementation of the VPA on FMC, TSC and the communities that are affected by them; or proactively include community forests in VPA implementation.

Option 1: VPA concentrates on Forest Management Contract, Timber Sales Contracts, and affected communities

This option entails the VPA continuing its trajectory of engagement with actors in the private sector that hold FMC and TSC contracts, while addressing the affected communities through benefit sharing mechanisms. The arguments supporting this policy choice are:

- The majority of timber extracted and exported from Liberia is currently generated from FMC and TSC, and thus it is more cost effective to engage with these actors.
- Companies holding FMC and TSC are well known to the FDA, and should already be familiar with the Liberfor^{xii} system, and perhaps other certification schemes.
- Larger companies are easier to access; most have representation in Monrovia, and may understand the concepts introduced in the VPA more easily, due to the familiarity with other business codes.
- Communities affected by TSC and FMC should already have CFDC and benefit sharing agreements in place, and therefore are already in compliance with legality standard 2.1 of the VPA.

Option 2: VPA increases engagement with community forests through Community Forestry Management Bodies

This option supports an increased level of engagement with CFMBs under the VPA. Most forestlands and resources in Liberia are located in rural areas, and given that the CRL has empowered communities to manage and benefit from their forestlands, we will likely see a steady increase in the amount of forestland under community forest management, as well as the number of commercial extraction operations on community forest lands in the future. The arguments supporting this policy choice include:

- Several communities have established governance structures (CFMBs) and CFMPs to sustainably use their community forests. Some of these CFMPs allow for commercial activity and timber extraction, but have not yet started these activities. If CFMBs who have not yet started extraction are engaged, the FDA would have a unique opportunity to implement the legality standards outlined in the VPA from the onset of commercial operations.
- By engaging with CFMBs and other actors in community forestry, the VPA Support Unit and LVD will have the opportunity to interact with a wider set of stakeholders, and generate a broader range of support and understanding of the Agreement.
- There is a history of distrust between the FDA and forest communities. If the FDA were to focus its attention on community forestry via the VPA process, there would be opportunities to increase levels of trust.
- CFMAs currently cover 213,000 hectares, with over 194,000 hectares held by 5 communities that are either preparing for, or are engaged in timber extraction operations. If these CFMBs are not engaged, these forest areas will struggle to comply with the legality standards.

RECOMMENDATION

The VPA has the potential to bring accountability, transparency and legality to Liberia's forestry sector. The success of the VPA depends on many factors including the political will, international support, and the capacity of the VPA to engage with all stakeholders in the forestry sector. Focusing engagement on FMCs and TSCs could be detrimental to both the agreement and the FDA's perceived legitimacy, and could ultimately affect the success of implementation. There is a history of collusion and lack of transparency between private timber extraction companies and the FDA. If the VPA engages predominately with large timber companies, forest communities and civil society as a whole may become weary of the VPA process. While engaging with CFMBs may require additional up-front time and resources, as they are located in more remote areas with lower levels of capacity, there is the opportunity for greater rewards. Communities generally have a strong political will to follow the law and manage their forest sustainably, and therefore will be more receptive to the VPA process. We therefore recommend that the VPA begin engaging CFMBs and other stakeholders supporting community forestry sector in tandem with outreach to FMCs and TSCs. Furthermore, it is recommended that representatives from CFWG be included in the VPA multi-stakeholder platform.

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DISCLAIMER

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- ⁱ Republic of Liberia, 2006. *National Forest Reform Law*. Monrovia: Forestry Development Authority
- ⁱⁱ Republic of Liberia. 2009. *Community Rights Law with Respect to Forestlands*, § 9.1. Monrovia: Forestry Development Authority.
- ⁱⁱⁱ Republic of Liberia, 2006. *National Forest Reform Law*. Monrovia: Forestry Development Authority.
- ^{iv} Republic of Liberia. 2009. *Community Rights Law with Respect to Forestlands*. Monrovia: Forestry Development Authority.
- ^v The 11 principles of Liberia's Legality Assurance system are Legal Eligibility to Operate in the Forestry Sector; Forest resource rights allocation; Social obligations of contractors to local people; Forest management standards for operations and harvesting to ensure sustainability; Environmental obligations; Regulation of timber transport and traceability obligations; Timber processing requirements; Workers rights, health, safety and welfare; on time payments of taxes, fees and other payments; export, and trade requirements; and transparency measures and information disclosure.
- ^{vi} Voluntary Partnership Agreement, 2011. FLEGT Voluntary Partners Agreement Between Liberia and the European Union Briefing Note. Monrovia: The Delegation of the European Union to Liberia and Forestry Development Authority (FDA).
- ^{vii} Voluntary Partnership Agreement between the European Union and the Republic of Liberia on Forest Law Enforcement, Governance and Trade in Timber Products to the European Union. 2011, Article 16.
- ^{viii} Randall, Lawrence, 2011. LIBERIA: Civil Society Organizations, forest communities endorse the Voluntary Partnership Agreement. Monrovia: Executive Director Liberia Media Center
- ^{ix} This figure is derived from the hectares of community land that were issued PUPs.
- ^x USAID PROSPER and the Forestry Development Authority, 2012, How to Manual for CFMAs
- ^{xi} IBID, Annex II Principle I, Indicator 1.1
- ^{xii} Liberfor is Chain of Custody System allowing for the traceability of forest products from the stump to the point of export, implemented by SGS.