



Changes needed to the legal framework governing Community Forest Management Agreements

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Summary

After decades of industrial logging and forest mismanagement, in 2014 the Liberian government pledged that it will now only issue forest licenses to the people who own the forest, through Community Forest Management Agreements (CFMAs).¹ This promising commitment was followed in 2016 by a consultation process to revise the legal framework governing community forestry, harmonising the 2011 Community Rights Law (CRL) Regulation with Liberia's other laws. It is Global Witness' understanding that a new CRL Regulation is now in force (2017 CRL Regulation).²

The process by which the 2017 CRL Regulation was revised serves as a positive example of consultative legal reform. However, the legal framework governing community forestry in Liberia remains underdeveloped on key issues that, if left unaddressed, risk undermining the ability of communities to manage their forests themselves. At present, there are insufficient safeguards to ensure it is the people who own the forests that make decisions about how to manage their resources. Failing to ensure this may create CFMAs that violate the 2009 Community Rights Law.³ The legal framework also contains loopholes that will allow

companies to log – and possibly clear-cut – large swaths of forest. And the legal framework is drafted in a way that encourages industrial-scale logging. References in the 2017 CRL Regulations to rules that govern Liberia's large logging contracts encourage communities to partner with logging companies and discourage them from exploiting the diverse goods and services they have enjoyed from their forests in the past.

These issues can be addressed in two ways. First, the Forestry Development Authority (FDA) should work with Liberian civil society groups, community representatives, and its international partners to develop a regulation and guidelines governing how communities and companies interested in logging their forests interact. Second, communities can themselves develop by-laws that must be followed by both the community members who organize, and the community members who ultimately manage, the CFMAs. Both the former group – called Community Forestry Organizing Committees (CFOC) – and the latter group – Community Forestry Management Bodies (CFMB) – should be required to follow by-laws that can be developed by the CFMB Union (CFMBU). Details for what a new regulation, guidelines,

and by-laws should contain are included below.

The FDA is currently considering approving approximately 120 CFMA applications.⁴ Before it does so, Liberia's legal framework should be changed so that communities are encouraged to manage their forests themselves and are not left sitting on the side-lines just collecting paltry rents from the logging companies that are actually managing the forests. It is also in the interest of the FDA's partners – the Voluntary Partnership Agreement Support Unit, the EU, USAID, and the World Bank – to make sure the rules governing CFMAs create legal, sustainable, community-managed forests. In particular, if timber from CFMAs is eventually to be exported and granted FLEGT licenses allowing entry into the EU, it is critical that the VPA Support Unit encourage reform processes ensuring laws are in place to guarantee this timber's legality

Transparency

Section 1.6 of the 2017 CRL Regulation requires that all documents pertaining to community forestry be made public, unless such publication is barred by another law.⁵ However, despite repeated requests from civil society groups, the FDA has provided little information regarding the 120 CFMA applications it has received.

Recent experience has shown that, if information on forest license applications is not made publicly available, there is a risk that these licenses will be awarded without following due process. As well as the secretive Private Use Permits and the questions hanging over the way in which FMCs were allocated, investigations into the process by which the Blouquia, Bluyeama, Doru, and Gbi CFMAs were awarded have shown a lack of

knowledge among communities that their forests were being illegally granted to logging companies.⁶ As the FDA is asked to approve such a large number of licenses, it must ensure that past problems are not repeated and that the law is followed.

The best way to ensure new CFMAs are awarded legally and with the knowledge and consent of communities is for all application documents – and the process through which the FDA is assessing applications – to be made public. This should include access by interested parties to documents at FDA offices, such as those of the Community Forestry Working Group Secretariat, and a hotline that community members can call as outlined in 2016 Global Witness brief *Making Community Forest Management Work for Liberia*.⁷

To ensure these procedures are followed, the FDA should develop a guideline describing in detail how it will make all information pertaining to CFMA applications public and easily accessible. Community leaders can themselves also work to ensure all community members have access to important information, including in the CFMBU by-laws requirements that CFOCs and CFMBs make all documents pertaining to CFMAs available to those who want to see them.

Safeguarding community governance structures

Liberia's current community forestry legal framework states that two members of the National Legislature should be members of a community's Executive Committee.⁸ Experience has shown that legislators can exert undue influence over the decisions of communities, including rushing CFMA

communities such as Doru, and Gbi into signing logging contracts.⁹

To prevent legislators from dictating community decisions the FDA should develop guidelines and the CFMBU should include requirements in its by-laws for how CFMA governance bodies should be structured. These guidelines, which would cover the CFOCs, CFMBs, Executive Committees, and Community Assemblies, should create safeguards preventing individual committee members from exerting control over the Committee or the other two bodies. The guidelines should also draw from Liberia's experience in setting up Community Forestry Development Committees (CFDC), and include template constitutions and by-laws that CFMA management bodies can draw upon. Given the expertise Liberian NGOs have developed whilst working with CFDCs, it is critical that NGOs be involved in developing these guidelines and governing documents.

FDA support for communities

Current regulations encourage communities to log

That the FDA has demonstrated its willingness to approve CFMA licenses offers a remarkable opportunity to reverse decades of mismanagement by giving control of forests to the communities that own them, not the companies that log them. Experience worldwide has shown how communities benefit when they manage forests themselves, and a recent Liberian study shows the potential benefits communities could reap from commercializing their forests themselves, including producing timber for the domestic market.¹⁰ Indeed, in promoting community-managed forests, the FDA has the opportunity to fulfil Liberia's 2006 Forest Policy, the aim of which is:

“...to conserve and sustainably manage all forest areas, so that they will continue to produce a complete range of goods and services for the benefit of all Liberians and contribute to poverty alleviation in the nation, while maintaining environmental stability and fulfilling Liberia's commitments under international agreements and conventions.”¹¹

However, for this opportunity to be realised communities applying for CFMAs must be able to make informed choices about how to use their forests, be it conservation, harvesting non-timber forest products (NTFP), contracting with loggers, or a mix of uses, in line with a holistic Community Forestry Management Plan (CFMP). Experience in the Bluyema and Blouquia CFMAs has shown that when communities are not able to make such choices they are instead directed only towards logging. And in these CFMAs the communities have been disempowered, with companies making decisions about how the forest is managed, failing to meet with community members, and breaking promises about where roads should be built.¹²

At present, the legal framework governing CFMAs does not encourage choice, and instead pushes communities towards contracting with logging companies. Notably, under Chapter 10 of the 2017 CRL Regulations communities wishing to monetise their forests are required to follow Liberia's Ten Core Regulations, which focus overwhelmingly on the establishment of logging contracts and are not suited to the management of forests by communities.¹³ These provisions violate the CRL, which establishes communities' rights to make informed choices about the best use of the forests (Section 2.2(c)) and prohibits the FDA

from drafting regulations that bias communities towards industrial logging (Section 2.2(g)).¹⁴

To correct this flaw, the FDA should draft a new regulation that replaces Chapter 10 of the 2017 CRL Regulation and instead guides communities who wish to conduct commercial activities to explore multiple potential economic uses of their forests. The new regulation should include references to regulations that encourage community-forest management, such as the Chain Saw Milling and NTFP Regulations.¹⁵ The new regulation should also include guidance for communities that may wish to contract with logging companies, but this guidance should not simply transplant rules from the Ten Core Regulations designed for logging contracts issued by the government that leave communities on the side-lines. Additional recommendations for how a new regulation could achieve this are included in the following sections.

Ensuring quality socio-economic and resource reconnaissance surveys and Community Forest Management Plans

In order to encourage communities to make informed decisions about what to do with their forests, the 2017 Regulation requires that the FDA should work with communities to conduct socio-economic and resource reconnaissance surveys and for communities to develop plans describing that they want to do with their forests – called Community Forest Management Plans (CFMP).¹⁶ To date, however, many surveys led by the FDA have been poorly executed or not done at all, denying communities the information about their resources and economic options needed to make decisions about their forests.¹⁷ And as described further below, there is also evidence that CFMPs have been co-opted by

logging companies and local elites, demonstrating that it is not always communities making decisions.

To better ensure it is communities and not companies who are making informed decisions, the FDA should describe in a new regulation the process by which socio-economic and resource reconnaissance surveys should be developed and the detailed information they should include. It should also describe the process by which a community drafts its CFMP, the type of information that CFMPs should include, and safeguards ensuring these documents are not drafted by loggers.

The CFMBU can also play a role ensuring that communities have make informed choices and are not pushed towards logging. CFMBU by-laws could require that CFOCs and CFMBs demand thorough surveys from the FDA, and even lay out expectations of what a high quality and useful socio-economic and resource reconnaissance survey should contain. The by-laws could also require that communities consider the full diversity of sustainable uses of their forests – including conservation, NTFP harvesting, and logging – when drafting their CFMPs. In addition, the by-laws could require the active participation of the entire community during the development and approval of the CFMP.

Preventing exploitation by logging companies

To date, each approved CFMA that has not been sponsored by an NGO or development organisation has become attached to a logging company. There is evidence that this trend may continue, with reports of ties between loggers and the recently-approved Garwin CFMA.¹⁸ Despite this trend, the

current community forestry legal framework does not contain safeguards to ensure that a community consents to logging its forest, or – if such consent is given – that the community will get a good deal from a logging company.

Logging company support for CFMA applications

CRL Section 4.9 states that a community may request “financial and technical assistance” from outside sources, which can include logging companies, when developing and implementing its CFMP.¹⁹ In practice, logging companies dominating the CFMA application process have exploited this clause, providing assistance only in exchange for a logging contract. Evidence collected by Global Witness in the Blouquia, Bluyeama, Doru, and Gbi CFMAs show that companies paid for community meetings, paid for CFMB registrations, substituted logging plans for CFMPs, and ultimately paid to submit CFMA applications. Subsequent interviews with community members showed that many were unaware that they had obtained a CFMA at all.²⁰

Global Witness has also received reports that similar company “assistance” has been offered in newer areas for which CFMA applications have been submitted. In these application areas people have signed deals (sometimes called “Financial Support Agreements” (FSA)) promising companies logging access in exchange for money to set up a CFMA even though the community has not yet elected a CFMB. If these reports are true then such deals have been signed by people who are not elected by the community and have committed communities to logging before the forest has been mapped, the community has developed a CFMP or the community has been issued its CFMA.

While deals such as FSAs are probably illegal under Section 4.7(e) of the 2017 CRL Regulation, which stipulates that only a CFMB may negotiate with a company, that such agreements are being made demonstrates the risk posed by unregulated company “assistance” to communities.²¹ In a new regulation, the FDA should include safeguards ensuring that any financial or technical assistance provided to communities is not done so in a way that obligates communities to choose a particular use of their forest, including issuing it to a company for logging. The CFMBU, meanwhile, could include in its by-laws a requirement barring community members, including CFOC members, from forming financial relationships with companies that obligate communities to a particular economic decision.

Commercial Use Contract negotiations

Under Chapter 6 of the CRL and Section 4.7 of the 2017 CRL Regulation a CFMB may sign a Commercial Use Contract (CUC) with a company allowing the company to exploit the community’s forest.²² However, at present, the legal framework contains insufficient safeguards to ensure that communities are making the final decisions about whether to sign CUCs and that they get a good deal when negotiating with companies.

First, the current legal framework does not make sure that a CFMB negotiating a CUC does so in a transparent manner and with the ultimate consent of the larger community. Under 2017 CRL Regulation Section 3.2 it is the CFMB and not the Community Assembly that approves a CUC. However, the CUC may be the largest decision a community makes, having a profound impact upon how its forest is treated. As such, it should be the Community Assembly – essentially the entire

community – that should provide final approval for a CUC.²³

Second, the current framework contains no guidance for what a CUC should look like. At present, the FDA is accepting “Memoranda of Understanding” (MOU) and “Third Party Agreements” giving companies permission to log as substitutes for CUCs. A review of the two MOUs published on the FDA’s website demonstrates that these are not negotiated contracts in which communities are managing their forests: allowing logging in some places, farming elsewhere, and negotiating the sustainability and financial terms under which a company can operate.²⁴ Instead, these MOUs are very similar to “Social Agreements,” the deals struck between communities near FMCs and TSCs that give companies license to log without community input or skills transfer, and oblige companies – under duress – to provide a little in the way of infrastructure or cash as compensation.²⁵

Both the FDA and the CFMBU should act to improve the process by which communities negotiate CUCs with companies. The FDA (through regulation) and the CFMBU (through by-laws) should make clear that communities holding a CFMA cannot sign an MOU, Third Party Agreement, or Social Agreement with a company in lieu of a legally-binding CUC. Instead, communities wishing to work with a logging company must negotiate a legally-binding contract outlining full terms and conditions, similar to that included in a government-issued concession agreement. The FDA should develop a model contract fit for the purpose that communities may draw from if they choose. This contract should be called a CUC, as required by Chapter 6 of the CRL.²⁶

Third, communities should be provided guidance so that they are better able to negotiate with well-resourced logging companies. A new regulation and by-laws should make clear that communities can negotiate all terms of a CUC with a company. They should also ensure that negotiations are transparent, including that the Community Assembly has access to company pre-qualification documents. In the case that companies are bidding for a CUC, the Community Assembly should be involved in the bid evaluation process. And communities should be provided with a guide for how to conduct negotiations, using the new Social Agreement Negotiations Guide as a model.²⁷ This Guide should, however, be adapted to reflect the fact that CUCs are very different contracts than Social Agreements, as outlined above.

Medium CUCs

As a result of the evolution of Liberia’s legal framework from a NFRL and Ten Core Regulations to the CRL and its new regulation a substantial loophole exists for logging companies seeking contracts between 5,001 and 49,999 ha. At present, Liberian law includes guidance for how communities should obtain forest licenses of any size (CFMAs), and for how companies should obtain small logging licenses (TSCs, 5,000 ha) and large logging licenses (FMCs, 50,000 - 250,000 ha). The law contains little guidance, however, for how companies can obtain “medium” logging licenses of between 5,001 and 49,999 ha in size from either the government or a community.²⁸ Indeed, there are currently no laws ensuring such licenses are subjected to a transparent bidding process or that companies only log within certain limits preventing them from clear-cutting the forest.

This loophole has been noticed already by logging companies. Many of the CFMA applications for which Global Witness has size information are close to – but conveniently just under – the 49,999 ha size limit for a Medium CUC. In addition to demonstrating the need for further regulation of Medium CUCs, this trend suggests that CFMA sizes are being dictated by companies and not by communities in violation of CRL Section 1.3, which states that communities must self-identify their size and location.²⁹ In contrast, CFMAs that were supported by development agencies have been comparatively small in size, with none larger than 7,000 ha.

Under CRL Section 6.2, the FDA cannot force a bidding procedure for Medium CUCs.³⁰ However, the Authority can create guidelines to ensure communities have the best possible opportunity to contract with responsible companies, including encouraging communities to subject companies to a competitive procedure that focuses on local employment, infrastructure development, and financial compensation. The FDA can also require through regulation that each company wishing to obtain a CUC undergo a thorough pre-qualification process that provides information on the company's ownership and track record. This information should be given to the community before it enters negotiations so that it knows what kind of company it is dealing with. Similarly, the CFMBU can include in its by-laws requirements that CFMBs subject all potential companies to a transparency pre-qualification process and a competitive bidding procedure.

Finally, to prevent logging companies from using the Medium CUC loophole to clear-cut swaths of Liberian forest, the FDA should include in its new regulation (and the CFMBU in its by-laws) sustainable logging restrictions.

These include cut limits akin to those applicable to FMCs and language that prevents companies from obtaining two contiguous Medium CUCs from neighbouring communities, or from any party pressuring communities to operate as a single unit in order to create a larger forest management unit.

Conclusions

Global Witness is encouraged by commitments made the Liberian government to promote community-based forest management and believes that the country can both empower its citizens and conserve its forests if these CFMAs and CUCs are regulated correctly. However, experience to date suggests it is too easy for CFMAs to be co-opted by logging companies and local elites for narrowly commercial and unsustainable ends, and that Liberia's current legal framework is not well-suited to prevent this from occurring again and again in the future. Before future CFMA applications are assessed and approved, it is important that both the FDA and CFMBU first develop the legal tools necessary to safeguard communities and the forests, and it is for this reason that we believe a new FDA regulation and CFMBU by-laws should be drafted.

¹ Meeting between Global Witness and Forestry Development Authority Managing Director, April 2014.

² Global Witness has not been able to obtain a copy of this final regulation, but understands that it is very similar to a draft published in January 2017, and it is to this January draft that we refer in this brief. Amended Regulation to the Community Rights Law of 2009 with Respect to Forest Lands, 31 January 2017 On file with Global Witness. (2017 Regulation).

³ Community Rights Law of 2009 with Respect to Forest Lands, 20 October 2009, available at <http://www.fda.gov.lr/wp-content/uploads/2015/07/Community-Rights-Law-of-2009-with-Respect-to-Forest-Lands.pdf>. (2009 CRL).

⁴ Forestry Development Authority Community Forestry Department Update, 9 December 2016.

⁵ 2017 Regulation, sec. 1.6.

⁶ Global Witness, Holding the Line, February 2017, available at <https://www.globalwitness.org/en/reports/liberia-holding-line/>; Civil Society Independent Forest Monitoring Team, Briefing Note 1: Ecowood logging operations in the Bluyeama Community Forest, November 2013, available at <http://loggingoff.info/wp-content/uploads/2015/09/753.pdf>; Civil Society Independent Forest Monitoring Team, Briefing Note 7: Sing Africa Plantations Liberia Incorporated - is community forestry working for the people of Bluyeama Clan?, December 2016, available at <http://loggingoff.info/wp-content/uploads/2016/12/CS-IFM2016-SingAfrica-IsCommunityForestryWorkingPeopleBluyeama07.pdf>; Special Independent Investigating Body, Report on the Issuance of Private Use Permits, 19 December 2012, available at <http://www.cental.org/SIB%20Report%20on%20PUPs.pdf>.

⁷ Global Witness, Making Community Forest Management Work for Liberia, September 2016, available at <https://www.globalwitness.org/en/reports/making-community-forest-management-work-liberia/>.

⁸ 2009 CRL, sec. 4.1(e).

⁹ Global Witness, Avoiding the Riptide, June 2013, available at <https://www.globalwitness.org/sites/default/files/global%20witness%20-%20avoiding%20the%20riptide%20-%207%20june%2013.pdf>.

¹⁰ Building Markets, Liberia: Domestic Timber Value Chain Analysis, January 2017, available at http://buildingmarkets.org/sites/default/files/pdm_reports/liberia_domestic_timber_vca.pdf.

¹¹ Forestry Development Authority, National forestry policy and implementation strategy, 2006, available at <http://www.fao.org/forestry/16167-0dd77b0af6b1e94481d519ab979fd40db.pdf>.

¹² Solomon Saydee, Sampson Zammie, Blouquia Community Forest Management Body, Letter to Jihad Akkari, Liberia Hardwood Company, 2 December 2016. On file with Global Witness. Civil Society Independent Forest Monitoring Team, Briefing Note 1: Ecowood logging operations in the Bluyeama Community Forest, November 2013, available at <http://loggingoff.info/wp-content/uploads/2015/09/753.pdf>.

¹³ 2017 Regulation, ch. 10; 10 Regulations.

¹⁴ 2009 CRL sec. 2.2(c), (g).

¹⁵ Regulation on the Commercial and Sustainable Extraction of Non-Timber Forest Products (NTFPs), 1 December 2009, available at <http://www.fda.gov.lr/information/laws/#109-approved>; Chain Saw Milling Regulation, 20 March 2012, available at <http://www.fda.gov.lr/information/laws/#109-approved>.

¹⁶ 2017 Regulation, sec. 2.5 – 2.10.

¹⁷ Global Witness, Five legally non-compliant Community Forest Management Agreements, January 2014, on file with Global Witness.

¹⁸ Mongabay, Corrupt logging practices in Liberia could mar new era in community forestry, 29 November 2016, available at <https://news.mongabay.com/2016/11/corrupt-logging-practices-in-liberia-could-mar-new-era-in-community-forestry/>.

¹⁹ 2017 Regulation, sec. 4.9.

²⁰ Global Witness, Five legally non-compliant Community Forest Management Agreements, January 2014, on file with Global Witness.

²¹ 2017 Regulation, sec. 4.7(e).

²² 2009 CRL, ch. 6; 2017 Regulation, sec. 4.7.

²³ 2017 Regulation, sec. 3.2.

²⁴ Community Forestry Management Agreement between the Gba Community Assembly and LTTC, 12 April 2016; Community Forest Management Agreement between Numopoh Community Forest Management Body and Delta Timber Co., 5 December 2016. Available at <http://www.fda.gov.lr/information/agreements/>.

²⁵ Sustainable Development Institute, Briefing #4: Financial Flows from Logging to Communities & the Central Government, March 2017, available at <http://loggingoff.info/wp-content/uploads/2017/06/SDI2017-RevenueFlowsLoggingCommunitiesGovernmentBN4.pdf>.

²⁶ 2009 CRL, ch. 2.

²⁷ Client Earth, Heritage Partners, National Union of CFDCs, ACORD, Social Agreement Negotiations Guide, May 2017, available at <https://www.documents.clientearth.org/wp-content/uploads/library/2017-05-03-social-agreement-negotiations-guide-liberia-coll-en.pdf>.

²⁸ 2017 Regulation, ch. 10.

²⁹ 2009 CRL, sec. 1.3.

³⁰ 2017 Regulation, sec. 6.2.