



Spoiled: Liberia's Private Use Permits

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The Government of Liberia is failing to address the largest breakdown of the rule of law in the forest sector in the country's post-conflict period. The abuse of Private Use Permits is having a significant negative impact on community land rights and the environment while generating very little income and undermining corporate investment and relations with donors. There is need for urgent action to address widespread illegality, abuse of forest communities and the blatant disregard for governance structures that characterize Liberia's Private Use Permits.

The Government is aware of the considerable problems associated with Private Use Permits, yet these concessions continue to operate – indeed the number of active Private Use Permits has increased threefold since the Government first claimed it was addressing the matter in February 2012. The Liberian Government must immediately halt the operations of and exports from Permits not active at the time of a February 2012 moratorium and hold to account those found to have broken the law. The Government must also cancel PUPs underpinned by collective deeds and develop regulations to ensure Private Use Permits harm neither the Government nor Liberia's people.

Private Use Permits: Basic facts

Private Use Permits (PUP) were established under the 2006 National Forestry Reform Law as a framework to allow logging contracts between private land owners and companies approved by the Government.¹ PUPs stand in contrast with other types of logging concession – Forest Management Contracts (FMCs) or Timber Sale Contracts (TSCs) – that are agreed between the Government and logging companies on public land.

The National Forestry Reform Law outlines basic requirements for how a PUP is issued, but the Forestry Law's implementing regulations apply only to other types of logging contract, leaving PUPs relatively unregulated. Of the standards that do exist, the Government may only approve a Permit if the company has a business plan and is considered to have the technical and financial capacity to log. The logger must put together a five-year management plan, conduct an economic and social impact assessment and sign social agreements with any forest-dwelling communities

Availability of documentation is poor, but we estimate that since November 2009 the Liberian Government has issued 65 PUPs. We estimate that known PUPs cover 25,800 km² of Liberia's territory, or 23% of the entire country. PUPs also cover over one third of Liberia's remaining primary forest. Because Liberian law currently contains very few restrictions on logging in PUPs, they can be classified as clearance permits. This means that over one third of Liberia's best forests are at risk of being flattened.

Unlike companies operating FMCs or TSCs, PUP operators pay no land rental taxes to the Liberian Government, reducing considerably the revenue that the Government can receive in exchange for its forests. Instead, operators are supposed to pay the land owners with whom they have agreements at a rate both agree upon. As discussed below, the rate of compensation to land owners turns out to be very low.

Since the explosion of PUPs, concerns around illegality, fraud, corruption and poor allocation processes have been raised by various commentators. Earlier this year the FDA's Board of Directors issued a report on PUPs in response to concerns raised, although this report failed to address many of the most significant questions regarding fraud and the opaque manner in which Permits have been allocated.² In April 2012 Liberia's Land Commission published its report "Land Rights, Private Use Permits and Forest Communities."

¹ National Forestry Reform Law, 2006, sec. 5.6.

² FDA Board of Directors, "Report of the Board of Directors on the inquiry regarding the issuance of Private Use Permits, February 2012.

In this report, the Commission highlighted significant issues around land tenure and suggested that the drafters of Liberia’s forest laws did not intend PUPs to be large concessions, but rather licenses that allowed “smaller scale extraction of commercial timber standing on private, individual land.”³ Mandated by the FDA, Liberia’s General Auditing Commission has now begun an investigation into the allocation of PUPs.

Despite these initiatives, earlier this year we received information that suggested Permits were continuing to operate. Between May and July 2012 we carried out investigations focusing on Sinoe and Grand Kru Counties, an area with a high concentration of PUPs and particularly valuable forest.

Findings of Investigation

1. Violation by Forestry Development Authority management of its own Board of Directors’ order to recall Private Use Permits

In February 2012 the Forestry Development Authority’s Board of Directors ordered its management to “recall” all PUPs save those four operating at the time of the Board decision.⁴ Recalled PUPs were to be renegotiated; an order that at a minimum would prevent them from beginning operations. The Board also placed a moratorium on the issuance of new PUPs and mandated the General Auditing Commission to carry out a compliance audit.

FDA management has violated this recall order from its own Board. The June 2012 Chain of Custody Update states that six PUPs are felling timber.⁵ Our investigators also found an estimated 20,000 m³ of timber in a log yard in Greenville labelled as logged in a PUP that is neither one of the four PUPs that were operating in February nor is listed in the June Chain of Custody Update (PUP 18 – Dugbeh River). We have also learned that the chain of custody operator – SGS – anticipates two additional Sinoe PUPs to begin operations in the coming weeks. In total SGS has received approval from the FDA to allow felling in 13 PUPs. Rather than following the February directive issued by its Board, the FDA has activated an additional 9 PUPs.

PUPs Activated by FDA Management in Violation of FDA Board Order		
	Number	Size (KM ²)
PUPs that FDA Board has allowed to operate	4	616
PUPs FDA Management has activated in violation of FDA Board order	9	3,169
Total PUPs now active	13	3,785

2. Private Use Permits on private land without land owners’ consent

Of the 27 Private Use Permits for which we have been able to obtain information on the type of land deed underpinning the agreement, 25 are based upon deeds where the private owner is not an individual but a community – a chiefdom or the people of a district. This large proportion of PUPs on collectively-owned land raises questions over who initiated the move towards logging. The idea of rural communities living across a quarter of the country suddenly and simultaneously choosing to strike deals with logging companies over the last two years suggests a massive and unlikely country-wide mobilization. Instead, it must be concluded that the initiative came from the authorities and/or from logging companies.

Other evidence also suggests that it was not the rightful land owners that initiated PUPs. Within its select few provisions pertaining to PUPs, the National Forestry Reform Law requires that a PUP applicant must be either a deed holder or have permission from that deed holder.⁶ But in each of the PUPs we visited – all of which were based upon collectively-owned land deeds – residents had not seen copies of an actual Permit contract and did not understand that such documents existed. Instead, communities had been engaged in discussions of documents such as Memoranda of Understanding and Social Agreements, which have questionable legal enforceability.

Given that the majority of PUPs are on collectively-owned land, the decision-making process through which every member of the community agreed to the PUP contract is highly important. In five of the six PUPs we visited, resident communities – the deed holders – had clearly not made decisions to allow logging with the benefit of complete information or with sufficient time for proper consideration. In as far as we could

³ Paul De Wit, “Land Rights, Private Use Permits and Forest Communities,” April 2012, p. 5.

⁴ FDA Board of Directors, “Report of the Board of Directors on the inquiry regarding the issuance of Private Use Permits”, February 2012.

⁵ SGS/Liberfor, “Chain of Custody Financial Update,” 30 June 2012.

⁶ National Forestry Reform Law, 2006, sec. 5.6(c)(i).

ascertain, meetings at which MOUs and Social Agreements were signed were held at the behest of the logging companies, no meetings were longer than one day and at no meetings were any documents altered based upon suggestions by community attendees. (In the sixth PUP visited, interviewed residents were unaware of the process by which decisions had been made.)

In some of the PUPs it appears that the PUP contract was signed with a few members of the local elite – not always community leaders or the most appropriate representatives – before an MOU or a Social Agreement was signed by the full community. In Tartweh-Dropoh (PUP 21) an MOU and a Social Agreement were both signed with the land owners well after a PUP for the region was signed and approved by the Government. This suggests that this PUP, and any additional Permits where Government approval preceded a decision by the land owner, were awarded in violation of the law.

Ultimately, this use of community-owned lands to obtain logging licenses in the name of community members without their knowledge represents a cynical abuse of power and of Liberia's rural communities.

3. Forged deeds and documents

In a further extension of this abuse of communities, we found that some land deeds being used as the basis for PUPs are falsified, likely deliberately for the purpose of attaining a PUP. It is unclear who created these false deeds. Evidence of falsified deeds includes the following:

- The deed underpinning the PUP for Doedian District (not currently issued a PUP number) is dated 1924 but signed by President Edwin Barclay, who did not become Liberia's President until 1930;
- Community members representing all six chiefdoms of Dugbeh River PUP (PUP 18) told investigators that their people had never obtained a deed for their land, and were entirely unaware that a 1952 "deed" allocating to them 300 km² of Sinoe County had recently been recognized by the Government. Evidence suggests that this deed is not legitimate. The Permit contract we obtained includes not only the 1952 "deed" but also a June 2011 letter from a Dugbeh Paramount Chief attesting to the document's authenticity and requesting that a PUP be awarded for the area. When shown this letter in July 2012, the Paramount Chief stated that he had not written, signed or seen the letter previously and that he had never known his people to have a deed for their land.

While photocopies of deeds available to us were of sufficiently poor quality to properly analyze the authenticity of each, it is possible that many additional deeds underpinning PUPs are also forgeries. Residents within four of the six PUPs we investigated stated that their land was undeeded, at least until the FDA and a logging company turned up and began to "process" their deeds. Moreover, many PUPs cover precisely the same territory the FDA had previously identified as potential areas for Forest Management Contracts.⁷ By law, Liberia's FMCs were planned for forest lands that were not privately owned. Yet tracing the boundaries of many PUPs, it is precisely these public forests that now suddenly find themselves under private ownership.

4. Additional irregularities during PUP allocations: verification, land area, prequalification, management plans, ESIA's

Copies of permits available to us raise serious concerns regarding verification of Private Use Permit requests by Government authorities charged with approving the contracts. Contained within most Permits obtained is an "Authentication and Verification" letter, describing visits of Forestry Development Authority staff to potential PUP areas. Current Liberian law is silent on how private forest lands should be "authenticated" or "verified" by the FDA, and these letters represent the only evidence that the FDA has investigated to see whether land owners have genuinely requested a PUP. However, most of these FDA letters follow a very similar pattern, suggesting little difference in forest residents' opinions throughout Liberia. The most egregious examples of this trend are separate letters justifying three different PUPs with a total area of 1,600 km². These letters state that the FDA took two separate trips to the PUP areas in River Gee, but findings were word-for-word identical, suggesting that at least one of the letters describes a trip that was not taken.

Also problematic is the considerable disconnect in some PUPs between the area to which a land owner is entitled under a deed and the area ultimately assigned as available for logging under a PUP. In Grand Bassa County, a 5 km² deed issued in 1979 and held by the Autridge Family has been used to justify a 56 km² PUP (PUP 3). It remains unclear what justification has been given for allowing logging on the 51 km² of land not

⁷ FDA, Map showing location of approximately 45 PUPs, Undated, estimated First Quarter 2012.

held under the Autridge deed. In his April 2012 report on PUPs for Liberia's Land Commission, Paul DeWitt described a total of six PUPs that have logging areas larger than their underlying deeds.⁸

Finally, while Liberian law does not currently outline many requirements for the issuance or operation of PUPs, several of those requirements that it does outline do not appear to have been followed. Section 5.6(c) of the National Forestry Reform Law requires a PUP applicant to demonstrate it has the technical and financial capacity to operate, but the FDA reportedly has not undertaken pre-qualification of any logging companies since 2008. The law also requires all applicants to submit five year management plans and environmental and social impact assessments prior to the issuance of a PUP. However, even though the FDA has issued 65 PUPs, after requests to the EPA, FDA and logging companies, we have been able to obtain only four ESAs and no management plans.

5. Ten percent of Liberia's territory, Samling and palm oil

Although 2010-2011 saw an explosion of PUPs generally, the period was particularly productive for Atlantic Resources, a company affiliated with Malaysian logging giant Samling. By a conservative estimate, Atlantic currently holds 8,605 km² in PUPs. Atlantic also controls a 1,200 km² FMC, as does Alpha Logging, a company also affiliated with Samling. All told, Samling thus controls ten percent of Liberia's total land area. Holdings on such a scale raise questions of national sovereignty, especially in Sinoe, Grand Kru and River Gee Counties where much of the land is under Atlantic concession.

During our investigation in Sinoe and Grand Kru Counties it became clear that Atlantic Resources is ramping up production in the area, with an estimated 40,000 m³ of timber in its timber yard near the Greenville port. As discussed above, we estimate that roughly half of this timber is derived from the Dugbeh River PUP.

Also of concern is that the PUP licenses held by Atlantic have been awarded in a particularly questionable manner. During our investigation we found the following:

- At some point prior to August 2011, Atlantic struck a deal with the University of Liberia. The University claimed a right to a large swath of forest in central and eastern Sinoe County and allowed Atlantic to log the forest while building a road to its FMC in Grand Kru County. In August 2011 the Liberian Land Commission ruled that the University had no right to the forest.⁹ According to representatives of the University, they considered this ruling authoritative and the University's agreement with Atlantic was cancelled.¹⁰ Shortly thereafter, a series of PUPs were assigned for the same forest formerly claimed by the University of Liberia, including the aforementioned PUP 18 (Dugbeh River) which now has a boundary identical to that previously claimed by the University for its forest.

It is also important to note that Atlantic did not export timber under a University of Liberia license until April or May of 2012 and that in July 2012 we observed that around half of the estimated 40,000 m³ sitting in the Greenville timber yard is labelled as University of Liberia timber. Following the Land Commission's August 2011 ruling and the subsequent determination by the University that their agreement was invalid, it is unclear whether this timber has been felled legally.

- Of the five PUPs held by Atlantic that we visited, residents in four stated that they had had no deed for their land until the PUP began. Among these was Dugbeh River, the boundaries of which are now identical to the University of Liberia forest boundaries and where the Paramount Chief stated that a justifying letter in his name was forged. Atlantic is also the holder of PUP 21 – Tartweh-Dropoh – where a PUP contract was issued prior to the signing of an MOU or Social Agreement with land owners.
- At the time that Atlantic was awarded the bulk of its PUPs, the company owed the Liberian Government over US\$ 2.7 million, while its sister company Alpha Logging owed an additional US\$ 2.9 million.

Samling's control over such a large portion of Liberia raises great concerns in light of recent 75 year agricultural conversion agreements that the company has distributed to PUP-holding communities in Sinoe and Grand Kru Counties. According to these agreements – only one of which has reportedly been signed to date – after logging a PUP, Atlantic would then have the rights to convert the entire area to an agricultural plantation, with particular emphasis on the possibility of palm oil. The unsigned agreements we have seen

⁸ Paul De Wit, "Land Rights, Private Use Permits and Forest Communities," April 2012, p. 10.

⁹ Dr. Cecil Brandy, Letter to Thomas Romeo Quioh, 19 August 2011.

¹⁰ It is unclear whether the Land Commission's August 2011 determination has the force of law in Liberia as the Act establishing the Commission does not provide it with adjudicatory authority, An Act to Establish the Land Commission, 4 August 2009, sec. 3.1.

suggest that Atlantic Resources may plan to set up its own palm oil subsidiary or department to operate these plantations.

Atlantic's agriculture agreements represent a shocking slight of hand by one of the world's most powerful logging companies. Communities – land owners – under whose names logging licenses have been issued are being solicited to sign up to 75 year concessions that would have enormous impacts on their land and their lives. At the same time, agricultural conversion in these areas would devastate much of Liberia's best forests, as well as going against the Roundtable on Sustainable Palm Oil's rules preventing conversion of primary forest into palm oil plantations.

PUPs are a dreadful deal for Liberia

In addition to undermining Liberia's rule of law, Private Use Permits also make little business sense for the Government and offer paltry benefits to those who live in concession areas.

1. Less revenue for the Government and minimal benefits for land owners

The Liberian Government will receive considerably less revenue from PUPs than it will from other types of logging concession (FMCs or TSCs). In FY 2011-2012, the Government is due to receive US \$12.8 m in land rental taxes from FMCs and TSCs. PUP holders do not pay such revenues to the Government and the fact that the Government has allowed Permits in areas previously planned as FMCs means there may be significant opportunity costs.

The only possible justification for the Government receiving less revenue from PUPs is that, because they are issued on private land, such concessions should provide increased revenue to the land owner. We have collected information on the revenues and other compensation due to land owners for six PUPs, and in each case the collective owners are to be paid US\$ 3 for each m³ felled. According to 2008 World Bank estimates, the average export value of Liberian timber is US\$ 200 per m³. In most cases, the signing company also promises to construct certain buildings such as a clinic or schools. However, the legal wording in these agreements does not specify the location of these facilities – in one case they have been built within the logging company's workers' compound rather than in the community's towns – and allows a delay of two to three years before they must be constructed.

2. PUPs undermine the Voluntary Partnership Agreement, development aid

Illegality and the breakdown of governance regarding Private Use Permits threaten to undermine Liberia's commitment to legality and Europe's willingness to support this, as enshrined in the Voluntary Partnership Agreement that is currently awaiting ratification by the Liberian legislature. Legal issues include contracts allocated without a management plan, an environmental and social impact assessment, proper consultation and consent of the land owner and fraudulent deeds and documentation. Despite this, however, timber from Private Use Permits that is clearly illegal is entering the Chain of Custody.

Private Use Permits also go against FLEGT's principles of reduced impact logging. As PUPs are essentially clearance permits, currently issued permits could flatten 30% of Liberia's forest, including 34% of its primary forest. The proposed addenda to PUP contracts proposed by Atlantic Resources underline this point, as they would allow forest to be converted to agricultural plantations – likely palm oil – after logging, meaning that the forest is cleared.

Similarly, PUPs are undermining development aid in the forest sector. USAID has committed tens of millions of dollars to promoting community forest management through its LCRFP and PROSPER programmes. However, at least one of the community forests in which the U.S. has invested so heavily – Nimopoh, Sinoe County – is now largely covered by a Private Use Permit. Objectives of projects sponsored by the European Union (including FLEGT), the World Bank (FDA capacity building and for Liberia's Chain of Custody system) and DFID (support for the Chain of Custody system) will be undermined as the rule of law disintegrates in the forest sector. PUPs are also utterly contrary to Liberia's national REDD+ programme and the funding it receives from the Forest Carbon Partnership Facility.

3. PUPs, the Minister of Agriculture, undermining Liberia's investment climate

Five Private Use Permits of which we are aware overlap with palm oil concessions held by Sime Darby and Golden Veroleum. The USAID-sponsored Nimopoh community forest not only now overlaps with a PUP but is also located in one of the Golden Veroleum concession areas – creating a triple overlap. This double and

triple allocation has occurred despite the fact that all these contracts are signed off by a single person – Liberia's current Minister of Agriculture. The Minister signed the contract for the Tartweh-Dropoh PUP that overlaps Nimopoh on August 19 2010, three days after signing the concession agreement with Golden Veroleum that covers some of the same land.

Not only do such overlaps undermine donor projects and demonstrate reckless Government concession allocation, they also place both the palm oil companies and the Government at significant financial risk. Roundtable on Sustainable Palm Oil principles place emphasis on the rights of recognized land owners, and discovering private deeded land in palm oil concession areas will risk commitments made by both Sime Darby and Golden Veroleum to operate under such standards. At the same time, under the contracts held by the two companies, the Liberian Government has warranted against competing commercial interests in the companies' concession areas, providing a potentially expensive situation for the Government as it must compensate the companies for their lost areas of operation.

Recommendations

- The Forestry Development Authority's Management must immediately enforce the February 2012 Forestry Development Authority Board moratorium on activating Private Use Permits beyond the four operating at the time of the order.
 - All timber exports made in defiance of this order, and timber exported under after Atlantic Resources' contract with the University of Liberia was cancelled, should be immediately halted and timber should be confiscated from the companies that, de facto, logged it illegally.
 - Compensation should be paid to community forest owners for exported timber and timber felled but not yet exported.
 - Also in accordance with the Board's order, no additional PUPs should be issued.
- The Government must act promptly on the findings of the General Auditing Commission investigation when published, including ensuring the Ministry of Justice prosecutes any findings of illegality.
 - If the General Auditing Commission report does not assess each concession individually, a further investigation must assess each process and bring legal action where necessary.
 - Companies found to have engaged in illegal activities such as abuse of due process and the irregular or fraudulent obtaining of a PUP should be disqualified from operating in Liberia.
- We understand that a meeting is planned on 7 August 2012 to begin reform of regulations on PUPs. This reform process must include the full and effective participation of land owners involved in PUPs, especially groups which hold communal deeds and affected communities, and must:
 - Develop clear and verifiable standards by which deeds are validated by the Ministry of Lands, Mines and Energy and the Land Commission.
 - Establish whether Private Use Permits are intended as small permits or larger concessions. Decisions regarding where they are permitted need to fit into broader land use planning and take into account the need to protect and manage forests sustainably.
 - If it is decided that PUPs should only be small in size, regulations should establish size limits and appropriate environmental regulations. If it is decided that PUPs may be larger in size, regulations should establish environmental standards including cutting limits, rotation requirements, a prohibition on logging in primary forests, a prohibition on using PUPs contracts to lead to conversion into plantations and maximum allowable concession sizes.
 - Recognise that the Community Rights Law and not the Private Use Permit is the appropriate framework for forest management on collectively-owned land..
 - Significant capacity building efforts should be undertaken to assist collective land holders that wish to develop community forest management plans under the Community Rights Law. Such efforts must include developing environmental standards to ensure sustainability of forest resources.
- The Government must set up a concession review committee to apply the forthcoming Private Use Permit regulation to existing contracts and revoke / renegotiate as necessary.