

CURSE OR CURE?

HOW OIL CAN BOOST
OR BREAK LIBERIA'S
POST-WAR RECOVERY

SEPTEMBER 2011



global witness





Global Witness:

Global Witness investigates and campaigns to prevent natural resource-related conflict and corruption and associated environmental and human rights abuses.

Liberian Oil and Gas Initiative (LOGI):

CENTAL, LDI, LMI and SDI are the founding members of LOGI. LOGI works to strengthen good governance in oil and gas development through broad-based collaboration and participation, promoting socio-economic and political growth in Liberia.



The Center for Transparency and Accountability in Liberia (CENTAL):

CENTAL is a leading non-governmental organisation focused on fighting corruption and promoting good governance in Liberia. CENTAL is the local chapter (Chapter in Formation) of Transparency International and works to create and strengthen a participatory social movement across all sectors of society to fight corruption, improve governance, reduce poverty and build a culture of integrity among all peoples and institutions in Liberia.



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LDI is an independent, not-for-profit and non partisan organisation with over 11 years of experience dedicated to the promotion of socioeconomic justice, good governance and democracy in Liberia in particular and throughout Africa in general. LDI's work seeks to foster the idea of examining the root causes of bad governance through the process of engendering dialogue between society and government to improve rule of law, promote sound economic management policy and advocate for the mainstreaming of integrity in public administration. LDI programmatic foci include: Political Accountability and Citizens' Participation; Natural Resource Governance and Accountability; Elections and Democratic Governance; Budget Expenditure Tracking and Accountability; Economic Justice and Political Governance.



The Liberia Media Initiative for Peace Democracy and Development (LMI):

LMI's mission is to achieve good governance and peaceful co-existence through media related programmes and activities. LMI regards the development of the media in Liberia as a key impetus to sustaining Liberia's emerging democracy. LMI aims to achieve this through media sensitisation, media empowerment, training and workshops for media practitioners, outreach on peace-building and national reconciliation and awareness on key development issues pillars.



The Sustainable Development Institute (SDI):

SDI is working to transform and improve natural resource related decision making processes in Liberia. SDI advocates a rights-based approach to natural resource governance and management, and resource exploitation that is guided by the principles of sustainability and benefits all Liberians. The organisation focuses on resource governance and community rights.

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1 Executive Summary

With recent oil finds in Ghana and Sierra Leone, interest in Liberia's oil and gas sector is increasing and companies including United States (US) supermajor Chevron are rushing to begin exploration. An oil find in Liberia, which is still recovering from two natural resource fuelled civil wars, could provide desperately needed revenues if the industry is sufficiently reformed. But Liberia is not currently ready for oil, a comprehensive reform of the country's oil and gas industry is needed now. Change will become increasingly difficult as more companies begin operating and have a vested interest in maintaining the status quo.

Since 2004, Liberia's Government has awarded ten offshore oil and gas production sharing contracts and one onshore reconnaissance permit. Until recently no wells had been drilled for over 25 years and therefore no discoveries have yet been made. However, with recent oil discoveries in neighbouring Sierra Leone, signs are encouraging that Liberia will find oil soon. One oil and gas company has begun to drill and others are set to follow later this year. The National Oil Company of Liberia (NOCAL), the agency with responsibility for the sector, has recently announced that it will soon auction thirteen new ultra-deep offshore oil blocks¹ and has asked an international donor partner to develop a model onshore production sharing contract.

Since the end of its civil wars, Liberia has made considerable governance gains in the natural resources sector. In 2009, the government passed the landmark Liberian Extractive Industry Transparency Initiative (LEITI) Law, requiring natural resource revenue and contract transparency. President Ellen Johnson Sirleaf has taken steps to investigate allegations of natural resources corruption and the country has developed a National Energy Policy containing some good ideas as to how the oil sector could be restructured. And in late 2010, Christopher Neyor, who has a reputation for being a reformer, was appointed as NOCAL's President.

These reforms present the opportunity for change that the sector needs. Even before oil has been discovered, considerable problems have begun to emerge, including corruption, worrying company practices and a failure to follow the law. Liberia today stands at a crossroads. If the country discovers significant oil and gas reserves and the sector is reformed, the revenues could drive the country's post-conflict development and enable citizens to benefit from wealth that is rightfully theirs. Without reform, however, a downward spiral of mismanagement could set in, entrenching patterns of corruption and cronyism and undermining the country's economy and governance. Given Liberia's history of resource-driven conflict and corruption, it is essential that the government and its international partners take action without delay.

Later this year, the Liberian people will once again go to the polls to elect a president and their legislators. If the election is declared free and fair, it will mark another important step on the country's difficult road to recovery. This report is not written to influence the outcome of the election and information within it should not be used to score political points during the election campaign. Instead, it highlights current problems within the sector and provides a roadmap for the new government to address them. It provides recommendations to promote a transparent, accountable and sustainable oil and gas sector, in which the rights of communities are respected. The report also aims to encourage the incoming government to develop a comprehensive plan to address the many challenges that the oil sector faces before the industry develops further and change becomes more difficult. The report has been drafted by the Liberian Oil and Gas Initiative (LOGI) and Global Witness in conjunction with oil and gas, human rights and environmental experts and reflects international best practice.^A

A. The Liberian Oil and Gas Initiative (LOGI) was founded by CENTAL, LDI, LMI and SDI. LOGI works to strengthen good governance in oil and gas development through broad-based collaboration and participation, promoting socio-economic and political growth in Liberia. International experts consulted include Norman Sheridan, Barrister, who specialises in international and European environmental law and policy; Professor Sheldon Leader and the University of Essex Business and Human Rights Project; Richard Murphy, chartered accountant and economist, a founder of the Tax Justice Network and is Director of Tax Research LLP and Dr Valerie Marcel is an Associate Fellow with the Chatham House Energy, Environment and Development Programme.

A. PROBLEMS IN THE OIL AND GAS SECTOR

Despite some improvements in natural resource governance in Liberia, the country will not maximise the benefits from oil revenue without substantial reforms. The legal framework falls far short of international best practice, agencies responsible for the oil sector lack capacity and there is evidence of mismanagement by NOCAL.

Weak governance, outdated laws and weak institutional capacity

Liberia's governance indicators, including those gauging the ability of the government to maintain the rule of law and fight corruption, are improving, but remain very low. Outdated laws create a conflict of interest within the agency responsible for managing the sector – NOCAL – and do not contain sufficient fiscal, human rights, labour or environmental safeguards.

In addition, NOCAL and the Environment Protection Agency (EPA), which is the government agency responsible for regulating Liberia's environment, lack sufficient resources to oversee the oil sector and the operations of oil companies. NOCAL has very low capacity with which to negotiate agreements with oil companies and according to Liberia's former Auditor General does not have adequate accounting practices.² The EPA has stated that it lacks the capacity or funding to adequately enforce the country's environmental laws³ and told Global Witness that it was not yet prepared to handle offshore oil and gas operations.⁴

Mismanagement of the sector by NOCAL

NOCAL appears to have engaged in corrupt acts and needs to be reformed. Rather than regulate the operations of companies, between 2006 and 2008, NOCAL paid US\$120,400 in what it referred to as "lobbying fees" to the Liberian Legislature so that oil contracts would be passed.⁵ The stated position of Liberia's General Auditing Commission is that NOCAL's "lobbying fees" are bribes, a view which is shared by Global Witness and LOGI.⁶

These "lobbying fees" were first documented in a report by Liberia's General Auditing Commission that reviewed NOCAL's finances for the fiscal years of 2006-2007 and 2007-2008.⁷ However, as NOCAL

has not been subject to an audit by the General Auditing Commission prior to 2006 or since 2008 it is unclear whether any other oil contracts were facilitated through such payments. In response to evidence of the "lobbying fees," the former NOCAL President Fodee Kromah stated that "although management recognises that this is a common practice, however, from henceforth we will refrain from so doing."⁸ Global Witness wrote to Fodee Kromah in August 2011 to ask for comment on the payment of "lobbying fees", but as of the date of publication has not received a reply.

Global Witness and the LOGI coalition found evidence – detailed below – that in 2007 the Nigerian company Oranto Petroleum (Oranto) authorised at least one payment made to the Liberian Legislature to ratify its oil concessions. Under Liberian law, paying a public servant so that he or she will undertake an official act is bribery. Information regarding this payment was publicly available in 2010, when US oil giant Chevron bought a 70% stake in the oil blocks owned by Oranto.⁹ Either Chevron's due diligence processes were inadequate and failed to identify the payment made by Oranto, or Chevron was aware of Oranto's payment and Chevron continued with its purchase anyway. While the investment by an experienced company like Chevron is good for Liberia, investments based on an illegal payment undermine the steps that Liberia has made to improve governance.

Global Witness wrote to Oranto Petroleum and Chevron in August 2011 to ask for comment on the payment of "lobbying fees," but as of the date of publication has not received a reply.

NOCAL has also awarded a concession to Isle of Man registered Peppercoast Petroleum (Peppercoast), a company that had neither the financial capacity to execute its contract nor any experience in the oil sector. In August 2011, Global Witness wrote to Peppercoast to ask the company for comment on its previous experience. The company responded on 14 August 2011 stating that "when the Company entered into the Production Sharing Contract as the contracting party it had not previously owned or operated an oil concession."¹⁰

According to NOCAL, Peppercoast has failed to implement its contract and earlier this year the government issued the company with an ultimatum: either find a buyer for the block or lose it. As of

the date of publication, Peppercoast has not found a buyer that NOCAL will accept. In Peppercoast's letter to Global Witness it stated that "Peppercoast is still working with NOCAL towards approval of the assignment of its interest in the PSC [production sharing contract]." ¹¹ With so little financial capacity and no background in the oil sector, Peppercoast is not the type of company to which the Liberian Government should have granted an oil concession.

NOCAL has also awarded two blocks to Regal Liberia and European Hydrocarbons, companies ultimately controlled by African Petroleum Corporation Limited (African Petroleum). ¹² Controversial investor Frank Timis is the Non-Executive Chairman of African Petroleum and controls the largest portion of the company's stock. ¹³ Two companies associated with Timis have been fined by the London Stock Exchange's Alternative Investment Market for making misleading statements regarding the companies' respective diamond and oil prospects. ¹⁴ Additionally, Timis declared that the Toronto Stock Exchange (TSX) said he is "unsuitable to act as a director, officer or major or controlling shareholder of a TSX listed issuer due to [his] failure to disclose [his] previous heroin

convictions." ¹⁵ Global Witness wrote to Frank Timis in August 2011 to ask for comment on the previous operations of his companies, but as of the date of publication has not received a reply.

Allocation of contracts has been shrouded in secrecy and NOCAL has failed to ensure that the country's Petroleum Law was adhered to. According to a 2007 US State Department report "Doing Business in Liberia," offshore concessions were awarded to Spanish company Repsol Exploracion and Oranto Petroleum without bidding. ¹⁶ The award of oil concessions without a bidding process was a violation of Liberia's Petroleum Law. The lack of information in the public domain means it is also unclear whether Canadian company Simba Energy (Simba), was awarded its onshore reconnaissance licence after a competitive bidding process. Global Witness wrote to Simba in July 2011 to ask about the allocation of its concession, but as of the date of publication has not received a reply. The lack of competitive bidding or a pre-qualification process means that the government cannot be sure that it has attracted the best possible companies. NOCAL has also failed to ensure that all contracts are published in accordance with the LEITI Law, as the concession agreements held by Simba and Chevron are not publicly available.



Andarko and African Petroleum have both constructed offshore oil rigs in Liberia. © Carlo Leopoldo Francini



Liberia is in desperate need of money. Revenue from oil and gas could be used to fund the country's post-conflict reconstruction.

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B. WHY SHOULD THE SECTOR BE REFORMED NOW?

It is important that Liberia starts to reform its oil and gas sector now, before any more blocks are granted, concessions negotiated or any discoveries are made. Change will become harder as more companies start operating and have a vested interest in maintaining the status quo. Revenue from any discovery could transform Liberia's small economy. Whether oil revenues will positively contribute to development and growth in Liberia is dependent on the success of these reforms.

There have been some governance improvements in the natural resources sector: the Liberian Government has drafted a National Energy Policy that includes many of the changes that the sector desperately needs. International partners have

provided some support through suggested amendments to laws and the holding of expert seminars. However, the reforms suggested in the Policy are yet to be adopted and may be undermined by people within the government or companies who benefit from the status quo and may be unwilling to support the stripping of NOCAL's current functions. Additionally, current donor partners efforts are not coordinated and civil society has yet to be engaged in the process.

Significant support for reformers within NOCAL is needed to create the requisite political will to fundamentally restructure the sector. The recommendations put forward in this report are achievable if the Liberian Government wants to implement them and is supported in this effort by the international donor community. Reform will not be easy, but it is vital if the country is to benefit from its possible oil endowment.

C. WHAT SHOULD THE REFORMS LOOK LIKE?

The legal infrastructure that is supporting the oil and gas sector is very weak and lacks key accountability, environmental and human rights safeguards. The primary instruments are the 2000 Petroleum Law, which was drafted during the presidency of Charles Taylor, and a Model Production Sharing Contract (Model Contract). These are both in need of revision to ensure that Liberia maximises the potential benefits from its oil and gas revenue and its environment and people are sufficiently protected.

i. Develop a comprehensive reform process

To ensure that the reform process is effective, it must be comprehensive, transparent and inclusive. Wholesale redrafting of the laws relating to oil and gas is needed to respond to the unique challenges of oil sector development. Safeguards should be codified in law as much as possible so that they cannot be weakened through negotiations of individual contracts. Because responsibility for regulating the oil and gas sector is shared by multiple agencies within the Liberian Government¹⁷ they all must be involved in the reform process. It is also important that civil society and international donor partners are brought to the table. Transparency in the reform process could help manage the public's expectations and also place limits on the power of individuals within the sector who are benefiting from the status quo.

The government can draw lessons from other successful and inclusive initiatives within Liberia's natural resources sector. For example, the Liberian Forestry Initiative was a multi-stakeholder forum where government representatives, donors and Liberian and international civil society groups could coordinate and discuss the reform of the forest sector.

ii. Carry out adequate planning

Oil and gas development has potentially dramatic financial, environmental and social consequences for a country. Prior to committing to exploration activities, it is essential that a government determines whether oil development is the best use of its land and coastal resources. A public holistic study is needed that identifies what natural resources the country has and the potential environmental, social and economic values of those resources, in order to maximise the potential benefits for the country. Information from

this study would both empower the government when negotiating with natural resource companies and also enable it to assess the potential benefits and impacts of competing natural resource industries.

iii. Restructure the sector

The structure of NOCAL means that it is not suited to the upcoming demands of the sector. The agency suffers from a fundamental conflict of interest as it maintains three different mandates that are mutually incompatible. It is responsible for developing policy and regulations for the oil and gas sector, providing regulatory oversight of the sector and operating as a commercial oil company. As such, NOCAL is mandated to oversee the operations of companies with which it shares profits. Even though Liberia is yet to discover oil, NOCAL has already proven itself unable to perform these conflicting roles.

In its National Energy Policy the Government of Liberia has committed to restructuring NOCAL. The restructuring is in line with the agency design promoted by the Norwegian Government's Oil for Development programme, separating the policy, regulatory and commercial mandates into different government agencies and stripping NOCAL of many of its current functions. However, even if the reforms outlined in the National Energy Policy are adopted, Liberia's oil sector would still not have sufficient oversight and accountability. An independent monitor is needed to oversee the operations of companies and the government, and the National Energy Committee should be given a long-term role to coordinate government departments that relate to oil operations. There should also be a mandatory annual independent audit of companies' and the government's revenue from oil, in accordance with the Liberia's LEITI Law, to increase transparency and accountability.

iv. Revise the contract allocation process

One of the most effective ways to promote an oil and gas sector that benefits Liberia is to ensure that contracts are awarded through transparent, competitive bidding to companies that have been properly vetted. Liberia's current oil laws do not include sufficient vetting requirements and this has helped questionable companies obtain oil concessions. While the country's current legal framework does require that most contracts are awarded on the basis of competitive bidding, the government has not consistently followed these laws. Liberia needs to establish pre-qualification

processes and implement its existing concession award laws in order to ensure that only reputable companies offering the best possible terms enter the sector.

v. Increase transparency and improve financial management

The discovery of oil in Liberia could generate much needed revenue for Liberia's post-conflict reconstruction. Unfortunately, Liberia's current oil and gas tax regime is unclear, as the country's 2010 Consolidated Tax Amendments are yet to be made public. As such, it is difficult to assess whether transparency and accountability mechanisms are in place. To ensure that Liberia benefits from any potential oil finds it must establish a tax regime that ensures companies cannot avoid their obligations by manipulating their profits.

Collecting oil and gas revenue is a complex exercise: influxes of revenue from oil discoveries are notoriously difficult for small economies to manage sustainably. The government must manage this income in a way that protects against price shocks, allows for long-term

development through the use of savings and stabilisation accounts and with sufficient safeguards to prevent corruption and misuse.

vi. Protect community rights and the environment

The Petroleum Law and Model Contract do not contain adequate protections for communities that will be affected by concessions, those working for oil companies or the environment. These weak legal protections are compounded by the low capacity of NOCAL and the EPA to regulate and monitor company operations.

At present, Liberia has issued only one onshore oil concession – a reconnaissance permit that may shortly be converted into a full production sharing agreement. However, the government has asked an international donor government to develop a model production sharing agreement for onshore oil and gas development. Onshore development will pose challenges for the Liberian government, which must ensure that the rights of communities are sufficiently protected and that their free, prior and informed consent is given if they are to be relocated.



Liberia needs the oil and gas companies to pay their taxes. © Global Witness

The Petroleum Law and Model Contract also fail to address human rights issues associated with the use of security forces. The use of private security companies is now standard for many companies operating in the extractive sector. However, this is particularly risky in Liberia given the history of human rights abuses committed by these kinds of organisations. One particularly notorious case, documented by Global Witness, involved a militia controlled by the Oriental Timber Company, which fought on behalf of former President Charles Taylor and committed serious crimes against Liberian civilians.¹⁸

Neither Liberia's Environment Law nor its Petroleum Law contain sufficient protections against the significant and unique environmental risks associated with oil and gas operations. Exploration in Liberia's coastal waters carries particular risks because Liberia is biologically diverse and it is uncharted territory for oil companies and requires deep water operations.¹⁹ As such, significant revisions to the Environment and Petroleum Laws are needed requiring oil spill risk assessments to identify all the possible causes, locations, size and types of hazardous substances that may be spilled and the development of mitigation plans. Marine emergency contingency plans should also be developed by each company with oversight by the government and an oil spill emergency fund established to respond to any spills.

vii. Revise stabilisation clauses

Liberia's Model Contract contains anachronistic stabilisation provisions, meaning that provisions within an oil contract can nullify changes to the country's laws, including Liberia's constitution. As Liberia is a post-conflict country with an outdated legal system, it is highly likely that many of its laws will be reformed over time. The existence of stabilisation clauses in oil concession contracts could create a hierarchy of rights whereby those people living outside oil concession areas can benefit from amendments to Liberia's outdated laws, whereas those within a concession area would not. The stabilisation clauses could also obstruct efforts by Liberian legislators to make necessary improvements to laws governing the oil sector and business activities more broadly.

viii. Build the capacity of the Liberian Government

One of the fundamental issues facing the Liberian Government is its low capacity. This will affect the

government's negotiating power with companies, its ability to oversee the operations of companies and the reform process itself. The donor community has spent millions of dollars supporting Liberia in its post-conflict reconstruction. More support will be needed to reform the oil sector and build the capacity of the Liberian Government to operate it.

KEY RECOMMENDATIONS

To address the substantial problems within the oil sector Global Witness and LOGI are recommending that the Liberian Government should:

1. Establish an inclusive, comprehensive and transparent forum for the reform of the oil and gas sector, with a central role for civil society. This should be modelled upon the Liberian Forestry Initiative, drawing lessons from the Extractive Industries Transparency Initiative and the Voluntary Partnership Agreement in Liberia.
2. Restructure government agencies within the oil and gas sector, separating oversight, policy and profit-making responsibilities and ensuring transparent operations with independent oversight.
3. Develop a new set of laws and amend the Model Contract to include sufficient social and environmental safeguards and ensure contract and fiscal transparency.
4. Develop a long term plan for the investment, spending and saving of oil revenues through savings and stabilisation accounts.
5. Investigate allegations of bribery presented in this report and the report of the General Auditing Commission.

2 Oil in Liberia

Interest in Liberia's oil and gas sector is increasing rapidly. While no discoveries have yet been made, there have been recent finds in Sierra Leone and Ghana and several companies operating in Liberia have promised to start drilling by the end of 2011.

According to President Ellen Johnson Sirleaf, Liberia is "ready for business"²⁰ and since the end of Liberia's civil wars the country has awarded massive mining, logging and agriculture concessions. A number of oil contracts have also been awarded. At the time the Abuja Peace Agreement was signed in 2003 the country had not licenced an exploratory well in over 25 years²¹ and had no active oil concessions. However, as of September 2011, the National Oil Company of Liberia (NOCAL), the government institution responsible for regulating the sector, had awarded ten offshore production sharing contracts, is negotiating the terms of two additional offshore contracts and had accepted bids for five offshore blocks.²² The government has also issued one onshore reconnaissance permit and is reportedly in the final stages of negotiation to convert the permit into a full production sharing agreement.²³ Basic (2-D) geophysical data has been collected to support the tendering of 13 additional offshore licences.²⁴ According to NOCAL,

these "ultra deep water" concessions will be offered "in the near future."²⁵

Most of the companies that have received oil concessions are accelerating their operations. African Petroleum, which controls two offshore blocks through its subsidiaries Regal Liberia and European Hydrocarbons, began exploratory drilling in August 2011.³³ Anadarko, which holds an interest in four concessions, reports that it will begin drilling after the third quarter of this year.³⁴ Chevron, which controls three concessions, has announced that it will begin drilling by the end of the year.³⁵

Because it has been over 25 years since an exploratory well was drilled in Liberia, it is difficult to determine whether a commercially viable oil field will be discovered. Until that happens, projections as to what revenue the government can expect remain speculative. However, considering the geologic proximity of Sierra Leone's Venus and Mercury finds and the increasing interest of companies in Liberia – including the interest of supermajor oil company Chevron – the possibility of a commercial valuable find in Liberia should be taken very seriously.

WEST AFRICA'S OIL BOOM

West Africa is currently experiencing an oil rush. In 2007 oil was discovered off the coast of Ghana, in what is known as the Jubilee Field. In 2010, a consortium of five companies – Kosmos Energy, Tullow Petroleum, Anadarko Petroleum, Ghana National Petroleum Corporation and Sabre Oil and Gas Holdings – began oil extraction. Tullow believes that the field has a 50% chance of producing a total of 370 million barrels,²⁶ and by July of 2011 announced that it was producing 80,000 barrels of oil per day.²⁷

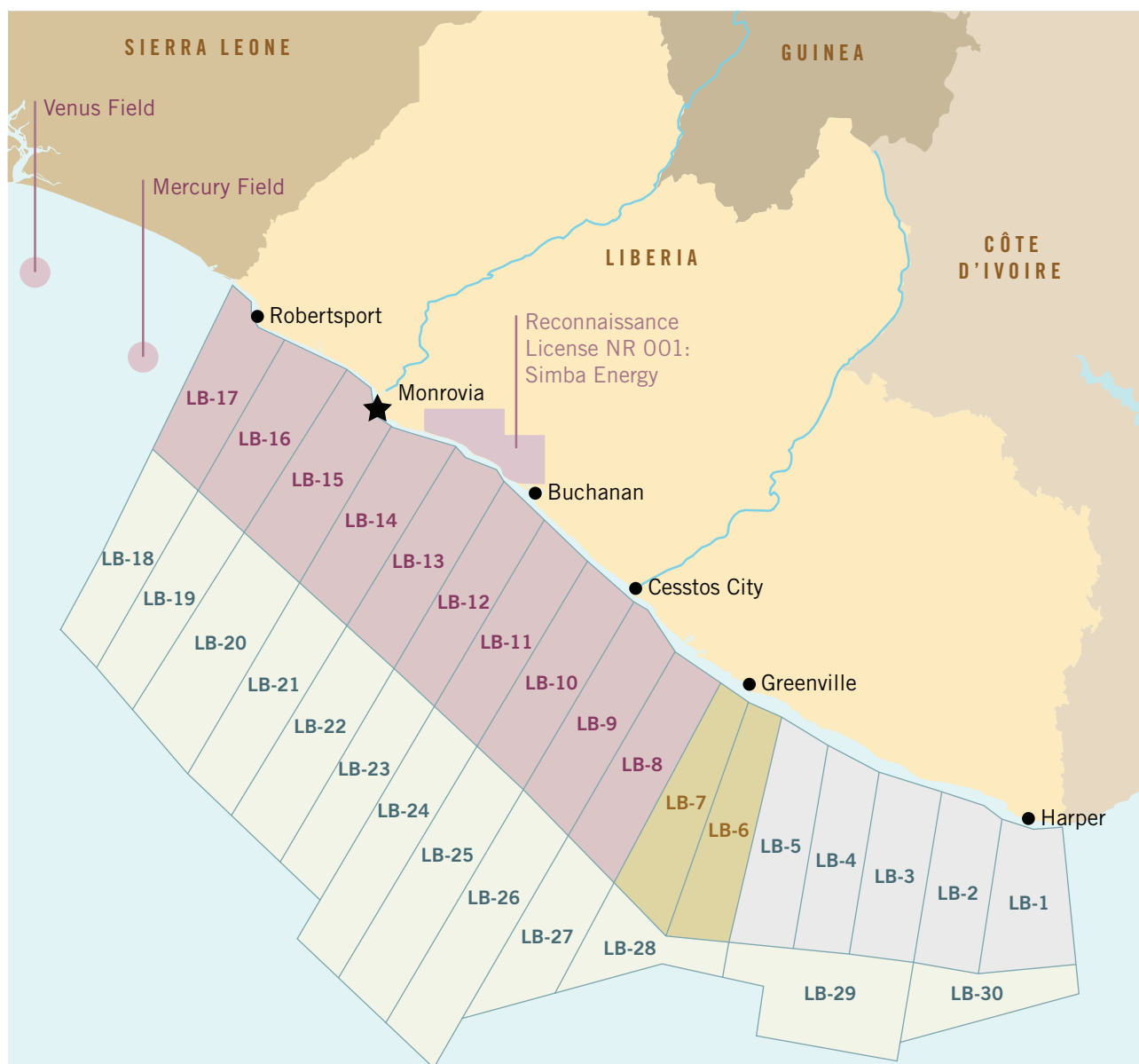
Excitement has also been building in Sierra Leone, where Anadarko Petroleum has made two offshore discoveries. The company announced a find at the Venus Field in September 2009,²⁸ and a second at the Mercury Field in November

2010. This latter discovery is of particular note for neighbouring Liberia, as Mercury appears to lie very close to Liberia's maritime border. (See Map: Liberia's Oil and Gas Concessions: Existing and Proposed, September 2011, page 13.)²⁹

Oil production has a longer history in Côte d'Ivoire, where companies have operated intermittently since the 1970s.³⁰ Until recent violence in the country halted activities, companies such as Anadarko and Tullow were showing renewed interest in offshore prospects.³¹

According to the US Geological Survey, the West African Coastal Province – which includes Liberia, Sierra Leone and Guinea – has a mean estimated 3,200 million barrels of oil and 23,629 billion cubic feet of gas.³²

Map: Liberia's Oil and Gas Concessions: Existing and Proposed, September 2011



Offshore Production Sharing Contracts

- LB-1-5 Bidding round ended March 2010. As of September 2011, no contracts awarded.
- LB-6 Hong Kong Tong-Tai (Draft contract on LEITI website, no contract awarded.)
- LB-7 Hong Kong Tong-Tai (Draft contract on LEITI website, no contract awarded.)
- LB-8 Regal Liberia/ European Hydrocarbons
- LB-9 Regal Liberia/ European Hydrocarbons
- LB-10 Anadarko Liberia Block 10
- LB-11 Chevron Liberia/ Oranto Petroleum
- LB-12 Chevron Liberia/ Oranto Petroleum
- LB-13 Peppercoast Petroleum
- LB-14 Chevron Liberia/ Oranto Petroleum
- LB-15 Anadarko Petroleum; Tullow Oil; Repsol Exploracion
- LB-16 Repsol Exploracion; Anadarko Petroleum; Tullow Oil
- LB-17 Repsol Exploracion; Anadarko Petroleum; Tullow Oil
- LB-18-30 According to NOCAL, will be offered "in the near future."

Map not to scale. Concession and oil field locations approximated.

Chart 1: Liberia's Current and Prospective Oil and Gas Contracts

Concession	Company	Incorporated ^A	Initial Signing Date ^B	Contract Revision Date ^C	Contract Effective Date ^D	Comments
1-5 (Offshore, near shore)	-	-	-	-	-	Bidding round ended March 2010. As of September 2011, no contract awarded. ³⁶
6	Hong Kong Tong-Tai Petroleum International Corporation	Not Available	-	-	-	Undated draft contract available on the LEITI website. United Nations (UN) Panel of Experts list contract but provides no effective date. ³⁷
7	Hong Kong Tong-Tai Petroleum International Corporation	Not Available	-	-	-	Undated draft contract available on the LEITI website. UN Panel of Experts list contract but provide no effective date. ³⁸
8	African Petroleum Corporation Ltd (Ultimate owner)	Australia ³⁹	16 June 2005	11 March 2008	23 June 2008	Regal Liberia and European Hydrocarbons are ultimately owned by African Petroleum Corporation Ltd. ⁴⁰
	Regal Liberia Ltd	England and Wales				
	European Hydrocarbons Ltd	England and Wales				
9	African Petroleum Corporation Ltd (Ultimate owner)	Australia	16 June 2005	11 March 2008	23 June 2008	Regal Liberia and European Hydrocarbons are ultimately owned by African Petroleum Corporation Ltd.
	Regal Liberia Ltd	England and Wales				
	European Hydrocarbons Ltd	England and Wales				
10	Anadarko Liberia Block 10 Company	Cayman Islands	19 March 2009	Not Revised	23 July 2009	-
11	Chevron Liberia Ltd Chevron Liberia B Ltd	Bermuda	16 June 2005	23 August 2010	September 2010	Original contract with Oranto came into effect on 22 May 2007. In 2010, Chevron purchased 70% of the contract and an addendum to the original contract was ratified by the Legislature in September 2010.
	Oranto Petroleum Ltd	Nigeria (2007-2009) British Virgin Islands (2010)				
12	Chevron Liberia Ltd Chevron Liberia B Ltd	Bermuda	7 August 2006	23 August 2010	September 2010	Original contract with Oranto came into effect on 22 May 2007. In 2010, Chevron purchased 70% of the contract and an addendum to the original contract was ratified by the Liberian Legislature in September 2010.
	Oranto Petroleum Ltd	Nigeria (2007-2009) British Virgin Islands (2010)				
13	Peppercoast Petroleum plc (Formerly, Broadway Consolidated plc)	Isle of Man	16 June 2005	17 August 2006	22 May 2007	In April 2011, NOCAL announced that the contract was "up for mandatory sale." As of the date of publication, NOCAL has not publicly approved of any company purchasing the contract. ⁴¹

Concession	Company	Incorporated ^A	Initial Signing Date ^B	Contract Revision Date ^C	Contract Effective Date ^D	Comments
14	Chevron Liberia Ltd Chevron Liberia B Ltd	Bermuda	10 June 2009	23 August 2010	September 2010	Original contract with Oranto came into effect on 23 July 2009. In 2010, Chevron purchased 70% of the contract and an addendum to the original contract was ratified by the Legislature in September 2010.
	Oranto Petroleum Ltd	Nigeria (2007-2009) British Virgin Islands (2010)				
15	Woodside West Africa PTY Ltd (Original contract signatory, now sold)	Australia	18 August 2005	11 March 2008	Unclear	In 2010, Woodside sold its stake in contracts for blocks 15, 16 and 17. According to Tullow, contract ownership and production are shared with Tullow Oil plc, Repsol Exploracion SA and Anadarko Petroleum Corporation. ⁴²
	Tullow Oil plc	England and Wales ⁴³				
	Repsol Exploracion SA	Spain				
	Anadarko Petroleum Corporation	Delaware, US ⁴⁴				
16	Repsol Exploracion SA	Spain	18 August 2005	11 March 2008	23 June 2008	In 2010, Woodside sold its stake in contracts for blocks 15, 16 and 17. According to Tullow Oil plc, contract ownership and production is shared with Tullow and Anadarko Petroleum Corporation. ⁴⁵
	Tullow Oil plc	England and Wales				
	Anadarko Petroleum Corporation	Delaware, US				
17	Repsol Exploracion SA	Spain	7 July 2004	11 March 2008	23 June 2008	In 2010, Woodside sold its stake in contracts for blocks 15, 16 and 17. According to Tullow Oil plc, contract ownership and production is shared with Tullow and Anadarko Petroleum Corporation. ⁴⁶
	Tullow Oil plc	England and Wales				
	Anadarko Petroleum Corporation	Delaware, US				
18-30 (Offshore, deep water)	-	-	-	-	-	Will be offered "in the near future." ⁴⁷
"NR 001" (Onshore)	Simba Energy Inc (Formerly, International Resource Strategies Liberia Energy, Inc)	British Columbia, Canada ⁴⁸	Not Available	Not Available	Not Available	No contract has been made available by NOCAL or the company. All information is provided by company. Holds a reconnaissance permit covering 1,366 km ⁴⁹ across coastal Margibi and Grand Bassa Counties. In July 2011, Simba announced that it had been invited to Liberia to "commence the final negotiation" for a production sharing contract. ⁵⁰

A. Incorporation Location: Unless otherwise noted, information on incorporation location drawn from company's agreement.

B. Initial Signing Date: The date that the contract was first signed by the President of NOCAL.

C. Contract Revision Date: Many of Liberia's oil contracts were significantly revised after they were first signed, with changes to tax provisions and work commitments being included in contract "addenda." The date that the contract was revised has been determined as the date that the Liberian President signed the contract prior to its being forwarded to the Legislature for ratification.

D. Contract Effective Date: The date that the contract was fully in force and the company had control over the concession. This date is determined by the date at which the contract was ratified by the Legislature and printed into handbills. However, because this date is not made clear by many of the contracts publicly available, for some contracts Global Witness and LOGI have relied upon the date provided by the United Nations Panel of Experts, "Final report of the Panel of Experts on Liberia submitted pursuant to paragraph 9 of Security Council resolution 1903 (2009)," S/2010/609, 17 December 2010, paragraph 83.

3 The Need For Reform



LIBERIA'S HISTORY OF CONFLICT RESOURCES

Liberia is no stranger to natural resource mismanagement. Between 1989 and 2003 Liberia was wracked by civil wars that claimed the lives of 250,000 people. These wars were fuelled in a large part by the country's natural resources. Central to much of this plunder was warlord turned President Charles Taylor. Taylor gave logging concessions to arms dealers like Leonid Minin⁵¹ and paid his soldiers in timber money.⁵² It is estimated that the former president generated over US\$75 million a year from the sale of Liberia's commodities.⁵³

Warlord turned President Charles Taylor used revenue from natural resources to finance insurrections and instability across West Africa. © We have not been able to identify the copyright owner of this photo, but are willing to pay a standard licence fee if he or she comes forward.

If oil is found in Liberia and the sector remains unreformed, the industry could undermine the country's already weak governance systems. The risks associated with a developing oil sector are inherently high. The current Petroleum Law was drafted during the presidency of Charles Taylor and is deeply flawed. The government institutions responsible for regulating the sector – the National Oil Company of Liberia (NOCAL) and the Environmental Protection Agency (EPA) – lack capacity. The result is an industry that, although developing, is already characterised by corruption, other legal breaches and the involvement of unsuitable companies. Comprehensive reform is needed before the oil sector develops further. While the Liberian Government and its international partners are making some efforts, considerably more must be done if oil revenue is to benefit the country.

A. LIBERIA'S WEAK LEGAL AND INSTITUTIONAL INFRASTRUCTURE

i) A very small economy and weak governance capacity

Liberia remains a fragile post-conflict country. If oil is discovered, the country's tiny economy and weak government are unlikely to be able to absorb a large influx of revenue from oil without substantial reform. Liberia desperately needs revenue. However, development through oil production can be extremely risky. In his 2007 review of petro-states in the Gulf of Guinea, Ricardo Soares de Oliveira argues that countries with weak government institutions can be made to appear successful by oil wealth. Yet, as de Oliveira points out, "far from leading the oil state down the route of institution building, oil provides a paradoxical contribution to the accelerating deterioration of institutions and lives prevalent across Africa."⁵⁴

Since the end of its civil wars Liberia has made considerable economic and governance gains. But the country remains very poor and governance is weak.

According to President Sirleaf, following the conflicts the country was in an “abyss” facing “almost total destruction.”⁵⁵ In 2010, the country’s per capita GDP was US\$240, while the government’s annual budget was only US\$369 million.⁵⁶ According to Transparency International, the country’s Corruption Perception Index score is improving – from 2.4 in 2008⁵⁷ to 3.3 out of 10 in 2010⁵⁸ – but still remains low. The World Bank’s Worldwide Governance Indicators project also reflects governance improvements, but Liberia still ranks in the bottom 10th percentile for government effectiveness and regulatory quality, and the bottom 35th percentile for control of corruption.⁵⁹

The government’s record when tackling natural resources corruption has been uneven. In late 2008, it was revealed that an official within the government’s Forestry Development Authority had changed the contracts for three logging companies, reducing tax obligations by 96%.⁶⁰ Presented with evidence of a secret deal between the companies and individuals within the government, the Forestry Development Authority’s (FDA) Board of Advisors closed its investigation without holding any officials or company representatives to account.⁶¹ More recently, in June 2010, the Financial Times reported that a British businessman had been arrested in the United Kingdom for allegedly planning to pay Liberian officials so that they would sell a large swathe of Liberia’s forest for use as a carbon concession.⁶² The businessman has since been released and has not been charged by the British police. In Liberia, President Johnson Sirleaf also constituted a special investigative committee to examine the deal. Following its investigation, the committee recommended that charges be brought and government officials fired. However, as of the date of publication no senior Liberian officials have been held to account.

ii) Weak legal infrastructure governing the oil sector

It is within this context that Liberia is developing its oil sector. Unfortunately, the legislation that is supporting the oil and gas sector is very weak and is in need of significant revision. This legal infrastructure, which is comprised of six laws and a Model Production Sharing Contract, lacks key accountability, environmental and human rights safeguards. Details of these problems will be outlined in section 4, but a brief summary of the laws is as follows:

- The Petroleum Law (2000). The Petroleum Law was drafted during the presidency of Charles Taylor and includes anachronistic provisions preventing contract transparency and shielding companies from future changes to Liberia’s laws. The law does require that all oil contracts are bid upon, but contains insufficient social, environmental and land tenure safeguards.
- The National Oil Company of Liberia (NOCAL) Act (2000) (NOCAL Law). Also established by Charles Taylor’s government, this law grants NOCAL – a semi-autonomous government body – the mandate to both regulate private company operations and enter into profit-making production sharing contracts with those companies. This conflict of interest, coupled with a lack of independent oversight, severely jeopardises the government’s ability to effectively regulate oil company operations.
- The Model Production Sharing Contract (date unknown) (Model Contract). The Model Contract is a template designed to serve as the basis for Liberia’s offshore oil and gas concession negotiations. Drafted recently,⁶³ it has a number of positive components including the absence of a confidentiality clause. However, the Model Contract does not contain safeguards sufficient to protect Liberia’s environment or the rights of the people who will be affected by concessions. It also lacks provisions for regulating onshore oil and gas activities. Global Witness and the LOGI members^B have learned that NOCAL has asked an international donor partner to develop a model onshore production sharing agreement to serve as the basis for future onshore concessions.⁶⁴
- The Amendment and Restatement of the Public Procurement and Concessions Act, 2005 (2010) (2010 Concessions Law). Recently updated, the 2010 Concessions Law defines the procedure by which all natural resource concessions – including oil and gas contracts – should be allocated. The law requires that most contracts be subjected to a competitive bidding process but does not include details regarding the process by which companies are qualified to bid and does not provide specific criteria by which bids should be evaluated. Such details are left for sector-specific laws, such as the Petroleum Law.
- The Environment Protection and Management Law (2002) (Environment Law). Liberia’s Environment Law contains requirements that companies undertaking oil and gas operations conduct

B. The Liberian Oil and Gas Initiative (LOGI) was founded by CENTAL, LDI, LMI and SDI. LOGI works to strengthen good governance in oil and gas development through broad-based collaboration and participation, promoting socio-economic and political growth in Liberia.

environmental impact assessments, but lists few safeguards specific to the industry.

- The Consolidated Tax Amendments (2010, unpublished) (Consolidated Tax Amendments). Global Witness and LOGI have learned that Liberia's new tax law contains language detailing the tax regime that will apply to companies conducting oil and gas exploration and production. However, while government officials report that the law was passed by the Liberian Legislature in 2010 it is currently not publicly available. Apparently, the regime established by the tax law will supersede previous oil and gas tax requirements and will obviate the need for tax terms to be established in any new Petroleum Law. It remains unclear what regime the law creates, including whether it requires the establishment of an oil and gas savings fund or stabilisation fund.
- The Liberia Extractive Industries Transparency Initiative (LEITI) Act (2009) (LEITI Law). The LEITI Law is state-of-the-art legislation, requiring public reporting and reconciliation of all payments made by companies operating in the minerals, agriculture and forestry sectors. The law requires complete contract transparency, establishing a public repository of all extractive industry contracts. The law also requires LEITI to investigate the process by which Liberia's natural resource concessions were allocated to ensure that they have been awarded legally. However, despite LEITI having been provided the funds to undertake such a review, at the time of writing, the investigation had not yet begun.

iii) Low capacity within agencies regulating the oil sector

Compounding the problems created by this insufficient legal infrastructure is the fact that the two agencies principally responsible for regulating the oil and gas sector have severely limited capacity. According to numerous experts who have worked with the agency in recent years, NOCAL staff have very little expertise when it comes to negotiating oil and gas contracts.⁶⁵ Some NOCAL staff appeared unaware of transparency requirements contained in the LEITI Law, refusing an October 2010 request by Global Witness for copies of three concession agreements.⁶⁶ It also appears that at least one key NOCAL staff member is unaware as to whether at least one concession was actually issued by NOCAL at all.⁶⁷ And according to Liberia's former Auditor General John Morlu, whose term ended in April 2011, during his last conversation with NOCAL staff it was apparent that the agency was years away from implementing necessary accounting procedures.⁶⁸

In discussions with Global Witness, Christopher Neyor, President of NOCAL said that support is now being provided by the international donor community to increase the capacity of NOCAL and accounting systems have been put in place to address the problems highlighted by the Auditor General.⁶⁹

Liberia's Environment Protection Agency (EPA) is also not in a position to provide the necessary oversight of the oil and gas sector. In 2007, the EPA produced an assessment of Liberia's coastal environment that did not include a thorough assessment of the risks associated with offshore oil and gas exploration. The lack of information on the specific environmental challenges of oil and gas operations is compounded by the lack of capacity of the EPA itself. The EPA has stated that it does not have the personnel or funding to adequately enforce the country's Environment Law⁷⁰ and the United Nations Environment Programme has stated that the EPA's capacity to evaluate environmental impact assessments is "very weak."⁷¹ In a 2010 interview with Global Witness, a top official with the EPA stated that the Agency was wholly unprepared to handle an offshore oil and gas industry.⁷²

B. "LOBBYING FEES," FINANCIAL MISMANAGEMENT, QUESTIONABLE COMPANIES AND OPAQUE AWARDS

Operating within this weak legal and institutional environment, Liberia's oil sector is already beset by corruption and illegality. NOCAL staff have paid members of the Liberian Legislature to facilitate the passage of oil contracts and have received compensation to which they were not entitled. Companies with poor track records have been awarded contracts, including one company that has also paid the Legislature to ensure its contracts were ratified. In some cases concessions have been awarded in a contravention of Liberia's laws.

i) NOCAL's "lobbying fees" and other financial irregularities

a. NOCAL's "lobbying fees"

As outlined below in Chart 2 – "Lobbying Fees" Paid by NOCAL Staff to Facilitate Passage of Oil Contracts at the Liberian Legislature – on page 20⁷³ between September 2006 and April 2008, NOCAL staff paid US\$120,400 in "lobbying fees" to the members and staff of the Liberian Legislature so that the Legislature would ratify oil contracts. These payments were not

made to lobbyists as compensation for advocacy before a policy maker. These payments were made directly to representatives and staff within the Liberian Legislature so that those representatives and staff would undertake an official function: the ratification of oil production sharing contracts.

Liberia's General Auditing Commission has taken the view that NOCAL's "lobbying fees" amount to bribes.⁷⁴ According to Liberia's Penal law paying a public servant so that he or she will undertake an official act is bribery and is illegal. It is also bribery for a public servant to receive payment in exchange for an official act.⁷⁵ As such, Global Witness and the LOGI coalition support the position that the "lobbying fees" are bribes.

NOCAL's "lobbying fees" were first documented in a report by Liberia's General Auditor Commission that reviewed NOCAL's books for the fiscal years 2006-2008.⁷⁶ Global Witness and LOGI have obtained receipts verifying that these payments were made. These receipts are included in this report. In August 2011, Global Witness wrote to the individuals named in these receipts to ask for comment on the payment of "lobbying fees," but as of the date of publication has not received any responses.

AK 7-008-808

NATIONAL OIL COMPANY OF LIBERIA		REQ. NO.	0500
NOCAL		CHECK NO:	486201
DISBURSEMENT VOUCHER		DV. NO.	D49-006
PAYEE: Timothy G. Wiafah		DATE	Sept. 19, 2006
CODE	DESCRIPTION	DEBIT	CREDIT
7-008-808	Tin Payment for Lobbying Fees to ratify the two Contract Agreements before the legislature	US\$26,900	
(US\$26,900.00)			
TOTAL		US\$26,900	

PREPARED BY: *Pinto 9/19/06* Accounts Dept. Date: *9/19/06*

SIGNED: *McBarker* VP/Administration Date: *9/19/06*

APPROVED: *Loke Kruh* (President/CEO) Date: *9/19/06*

NOCAL disbursement voucher recording payment of US\$26,900 in "lobbying fees" to facilitate the ratification of two contracts by the Liberian Legislature.

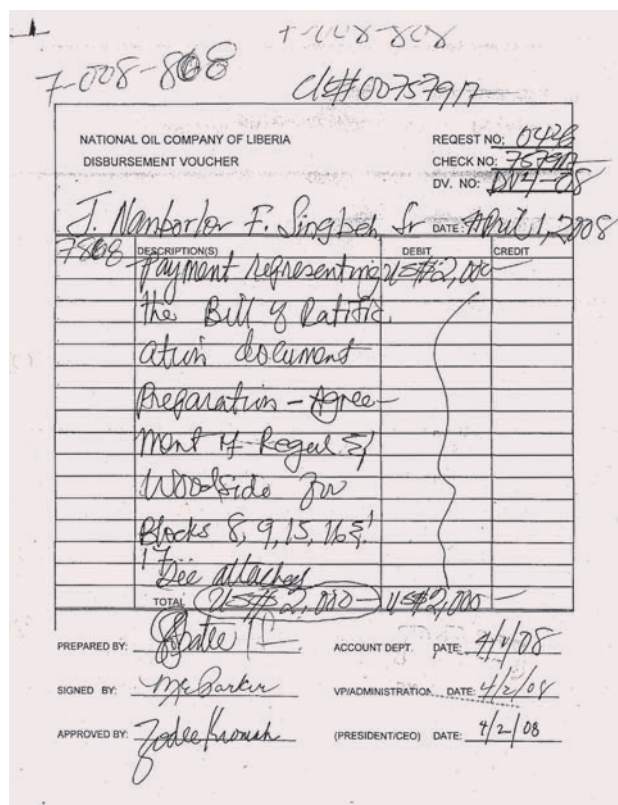
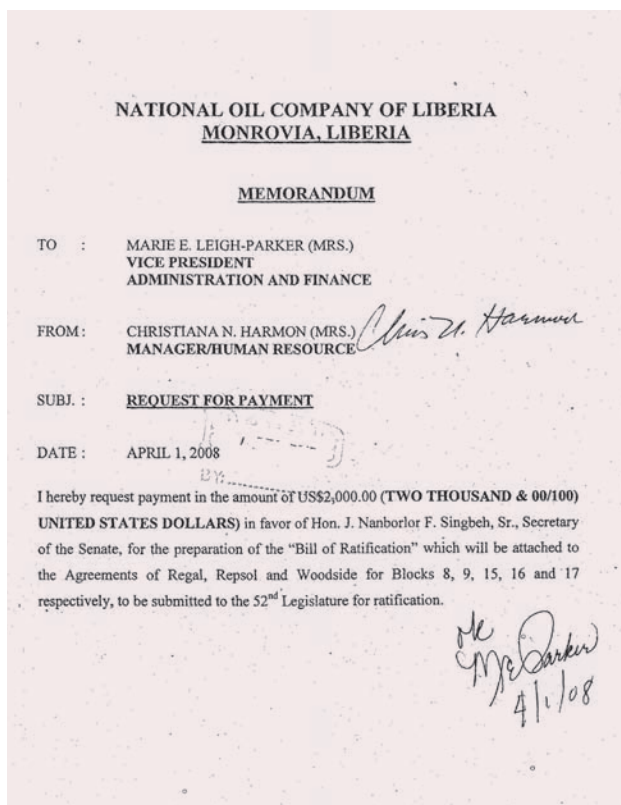


Anti-corruption mural sponsored by USAID. Steps have been taken to tackle corruption in Liberia, but much more needs to be done.

Chart 2: "Lobbying Fees" Paid by NOCAL Staff to Facilitate Passage of Oil Contracts at the Liberian Legislature^A

Source	Date	NOCAL Staff involved		Recipient		Objective	Amount (US\$)
		Name	Title	Name	Title		
1 ⁷⁷	19 September 2006	Fodee Kromah	NOCAL President/CEO (2006, 2007)	"Legislature"		<ul style="list-style-type: none"> "Lobbying fees" paid to gain passage of two contracts. According to NOCAL Board, Oranto Petroleum either provided or promised to provide NOCAL with US\$26,900 	26,900
		Marie E Leigh-Parker	NOCAL Vice President for Administration and Finance				
		Timothy Waiplah	NOCAL Senior Accountant (2006, 2007)				
		Potential additional individual, signature unidentified.					
2 ⁷⁸	4 / 5 April 2007	Fodee Kromah	NOCAL President/CEO (2006, 2007)	Alomiza Ennos Barr	Member, House of Representatives (Montserrado County)	"Lobbying fees" paid to gain passage of unspecified contracts.	40,000
		Marie E Leigh-Parker	NOCAL Vice President for Administration and Finance				
		Timothy Waiplah	NOCAL Senior Accountant (2006, 2007)				
		Potential additional individual, signature unidentified.					
3 ⁷⁹	17 April 2007	Marie E Leigh-Parker	NOCAL Vice President for Administration and Finance	James R Kaba	Chief Clerk, House of Representatives (2007)	<ul style="list-style-type: none"> "Lobbying fees" paid to gain passage of unspecified contracts. Global Witness and LOGI have obtained April 2007 email correspondence between Marie E Leigh-Parker and the Oranto Petroleum Chairman Prince Arthur Eze, in which Eze authorises the payment of US\$1,500 to clerks and secretarial staff of the Liberian Legislature. [See section 3(B)(ii)(a) for more details.] 	1,500
		Potential additional individual, signature unidentified.					
4 ⁸⁰	28 August 2006	Timothy Waiplah	NOCAL Senior Accountant (2006, 2007)	"Legislators"		<ul style="list-style-type: none"> "Lobbying fees" paid to gain passage of contracts for Oranto Petroleum and Broadway Consolidated. This payment was verified through an examination of NOCAL's bank account, which documented a debit associated with cheque number 451866. 	50,000
		Approved by NOCAL Board of Advisors.					
5 ⁸¹	1 April 2008	Fodee Kromah	NOCAL President/CEO (2006, 2007)	J Nanborlor F Singbeh	Secretary, Senate	"Ratification bill" paid for contracts for Regal Liberia, Repsol Exploracion and Woodside West Africa for blocks 8, 9, 15, 16 and 17.	2,000
		Marie E Leigh-Parker	NOCAL Vice President for Administration and Finance				
		Potential additional individual, signature unidentified.					
TOTAL							US\$120,400

A. A summary of the information contained in this table was originally reported in the 2011 audit of the National Oil Company of Liberia by the Liberian Government's General Auditing Commission. General Auditing Commission, "Report of the Auditor General on the National Oil Company of Liberia (NOCAL) for the Fiscal Years 2006/07, 2007/08," 20 April 2011.



Memorandum and disbursement voucher for US\$2,000 paid to facilitate the ratification of oil concessions for Regal, Repsol and Woodside.

Responding to this evidence in March 2010, NOCAL Board of Directors Chairman Clemenceau B Urey told the Auditor General that “we were quite aware that making payments to the legislators was wrong. These payments were made after much discussion, consultations and reflection.”⁸² However, in an October 2010 interview with Global Witness, NOCAL’s then president Fodee Kromah stated that NOCAL had not paid the Legislature any “lobbying fees”.⁸³ When asked for comment by Global Witness in August 2011, neither Board Chairman Clemenceau Urey nor former NOCAL President Fodee Kromah provided a response.

Outside of those individuals whose names are on the payment receipts, it is unclear who in the Liberian Government was aware of the payments being made. According to the minutes from 15 May 2007 and 22 May 2007 meetings of the NOCAL Board of Advisors, the Board approved a payment of US\$50,000 and was aware of a payment of US\$26,000. The minutes for a 2 August 2007 meeting also note at least one additional high-level official within the Liberian executive who was aware of “lobbying fees” being sent to the Legislature in exchange for contract ratifications.⁸⁴

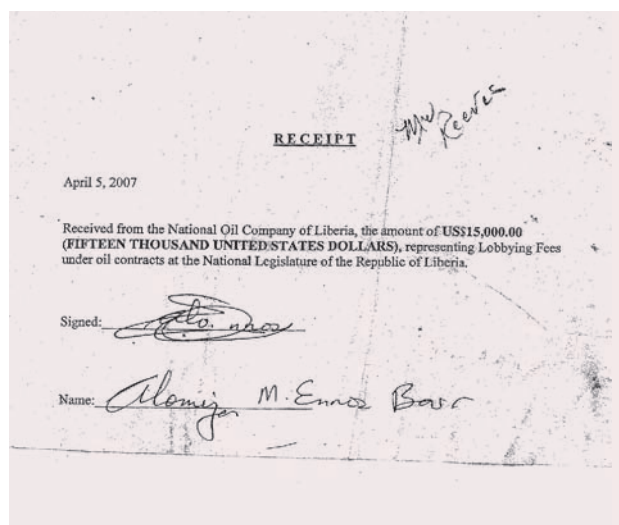
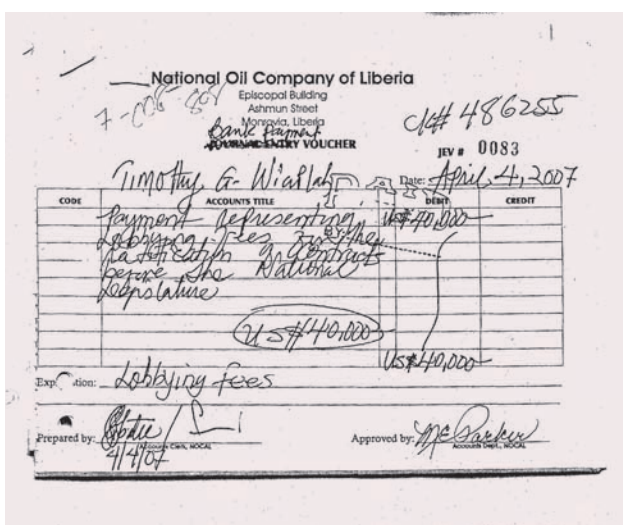
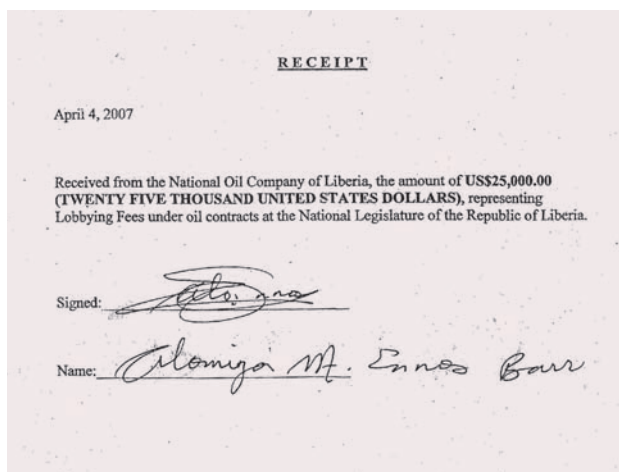
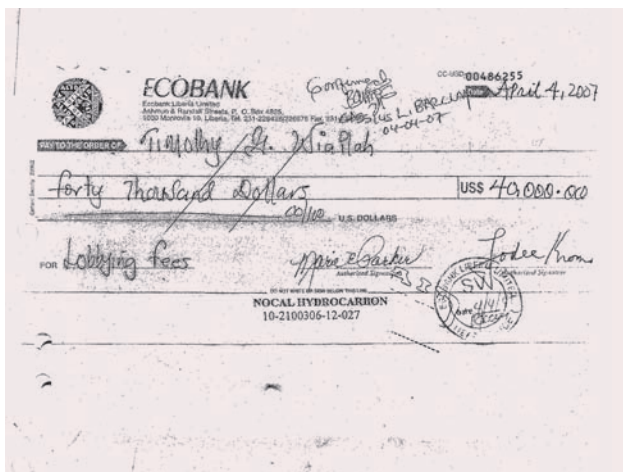
It is important to note that the payments for which

documented evidence exists all fall within the period that Liberia’s Auditor General was mandated to audit: fiscal years 2006-2007 and 2007-2008. NOCAL has not been subjected to an audit for any years prior to 2006 or following 2008 and thus has been able to keep the details of its accounts out of the public domain. At present, no data exists demonstrating whether additional contracts were ratified through the use of “lobbying fees”. However, a statement made by NOCAL’s then president Fodee Kromah hints that the payments documented from 2006 to 2008 may be representative of wider corruption in the oil sector. When presented with the above payment evidence, Fodee Kromah responded to the Auditor with the following assurance:

“Although management recognises that this is a common practice, however, from henceforth we will refrain from so doing.”⁸⁵

b. NOCAL’s other financial irregularities

The Auditor General also discovered records demonstrating that NOCAL’s then president Fodee Kromah and Board Chairman Clemenceau Urey had received compensation in contravention of Liberia’s laws. While serving as NOCAL president, Fodee Kromah was paid as a member of the NOCAL Board of Directors



Cheque (top left) and bank payment voucher (bottom left) recording US\$40,000 in “lobbying fees” paid by NOCAL to facilitate the ratification of contracts by the Legislature; two NOCAL receipts (top right and bottom right) recording the payment of US\$25,000 and US\$15,000 in “lobbying fees” to Member of the House of Representatives Alomiza Ennos Barr.

even though the NOCAL Law states that the NOCAL President is not a member of the Board.⁸⁶ Additionally, the Auditor found that Chairman Clemenceau Urey had taken possession of a US\$34,500 truck that was the property of NOCAL and had not returned it during a period when he was not serving as Board Chairman.⁸⁷ These cases, which represent only a sample of the problems outlined in the Auditor’s report, reveal an agency that has operated with very limited constraints or accountability. Neither Fodee Kromah nor Clemenceau Urey responded to requests for comment on these allegations.⁸⁸

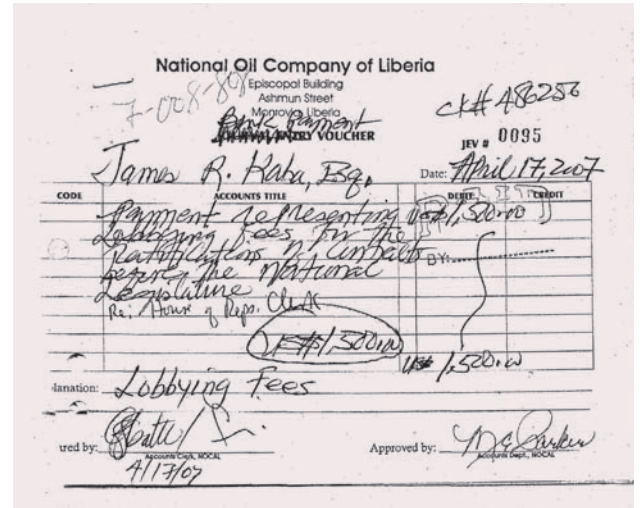
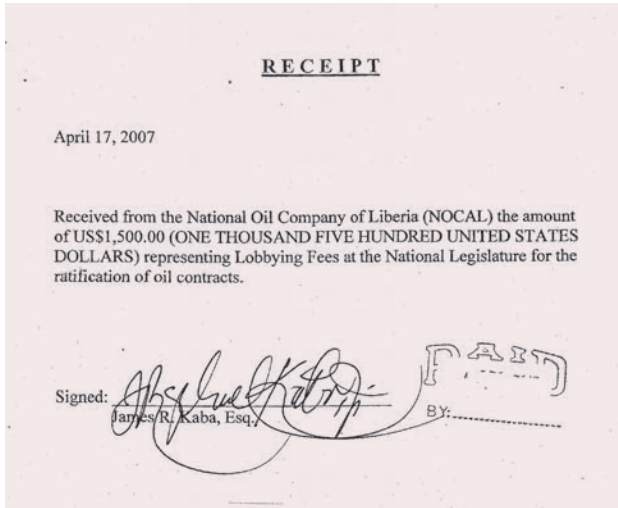
At the end of 2010, Christopher Neyor replaced Fodee Kromah as NOCAL president. Global Witness and LOGI have no evidence suggesting that irregular payments have been made by NOCAL since Christopher Neyor has taken over. In a discussion with Global Witness in July 2011, the new NOCAL president stated that he was committed to change within NOCAL.⁸⁹

ii) Questionable companies and opaque contract awards

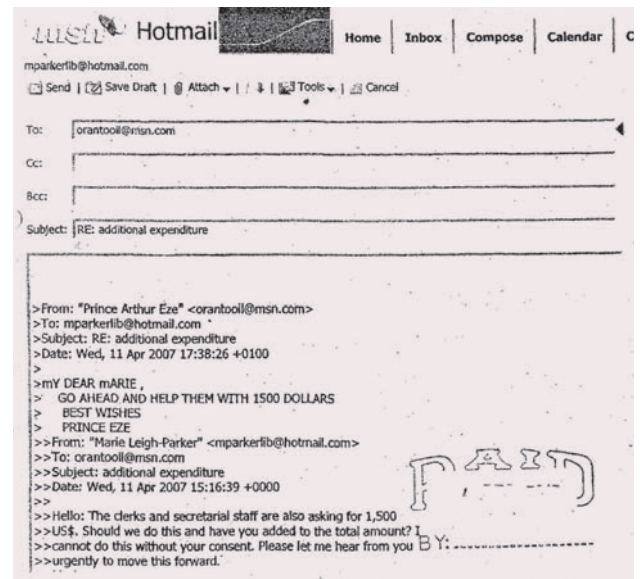
Liberia has also awarded oil contracts to at least one company that has paid the Legislature to receive its contracts, to companies with questionable backgrounds and to companies that have received their contracts in a manner not in keeping with the country’s laws.

a. Oranto Petroleum’s payment to the Liberian Legislature

Global Witness and the LOGI coalition have evidence that one company – Oranto Petroleum – authorised at least one payment in order to receive its concession. Liberia’s Auditor General determined that this payment was a bribe under Liberian law,⁹⁰ an assessment with which Global Witness and LOGI concur. A timeline of events is as follows:



- On 19 September 2006, NOCAL's then president Fodee Kromah approved a voucher authorising the payment of US\$26,900 to the Liberian Legislature for "lobbying fees" to facilitate the ratification of two unspecified contracts.⁹¹ According to minutes from two separate meetings of the NOCAL Board of Directors, in May 2007, Oranto had either provided or promised to provide NOCAL with US\$26,000 in "lobbying fees" to aid in the passage of the company's oil contracts.⁹²
- On 11 April 2007:
 - NOCAL Vice President of Administration Marie E Leigh-Parker wrote an email addressed to "orantool@msn.com". This email included the following: "*The clerks and secretarial staff are also asking for 1,500 US\$. Should we do this and have you added to the total amount? I cannot do this without your consent.*"⁹³
 - Marie Leigh-Parker received a response from the email account "'Prince Arthur Eze' <orantool@msn.com>." According to Oranto's contracts for offshore blocks 12 and 14, Prince Arthur Eze is the name of the company's chairman. The response stated the following: "*Go ahead and help them with the 1500 dollars*".⁹⁴
- On 17 April 2007, Marie Leigh-Parker co-signed a disbursement voucher authorising the payment of US\$1,500 to the Clerk of the House of Representatives for the payment of "lobbying fees for the ratification of contracts". On the same day she also approved the bank payment voucher for this money. James R Kaba – House of Representatives chief clerk – wrote a receipt documenting that he was paid this money.⁹⁵
- On 22 May 2007, Oranto's concessions for blocks 11 and 12 were published.⁹⁶



Clockwise from top left: receipt, bank payment voucher and e-mail recording payment of US\$1,500 for the ratification of Oranto oil contract.

In November 2010, Global Witness asked a Monrovia representative of Oranto Petroleum whether the company had paid bribes in order to ensure the ratification of its contracts. The representative stated that all questions relating to the blocks in which Chevron had an interest should be directed towards Chevron.⁹⁷ In August 2011, Global Witness again requested that Oranto Petroleum and Chevron comment on the payment of "lobbying fees" to the Liberian Legislature, but at the time of publication had received no response.

b. Chevron and Oranto Petroleum

In September 2010, the Liberian Legislature ratified three "addenda" to Oranto's offshore blocks 11, 12 and 14,⁹⁸ approving the 70% purchase of those



John Watson, Chairman and Chief Executive Officer of Chevron. In 2010 Chevron bought a 70% share in an oil concession held by Oranto. Oranto originally acquired this concession in 2007, following an irregular payment to the Liberian Legislature.

© Mannie Garcia / Greenpeace

contracts by Chevron Liberia. At the time that Chevron's agreement was signed, information about Oranto's payment to the Liberian Legislature was already in the public domain. A timeline of events is as follows:

- In June 2009, the Liberian General Auditing Commission produced a draft report of its audit of NOCAL's accounts. The audit provided evidence of the September 2006 and April 2007 payments. Copies of the draft audit were in circulation in 2010, although it was not officially released until April 2011.⁹⁹
- In March 2010, evidence of these payments was reported in the Liberian media.¹⁰⁰
- On 23 August 2010, the Liberian Legislature ratified an agreement that allowed Chevron to purchase a 70% stake in the oil blocks owned by Oranto.¹⁰¹

There is no evidence that Chevron had a relationship with Oranto in 2007, the point at which the latter authorised its payment to the Liberian Legislature. However, information about the payment to the Legislature was public knowledge at the time Chevron purchased Oranto's contracts. Therefore, either Chevron's due diligence was inadequate and failed to identify the payments, or else it did identify

STATEMENT OF ACCOUNT DATE 04:58:53 27 JAN 2009 PAGE 13

FROM 01.01.06 TO 31.12.06

ACCOUNT NUMBER : 10210030612011 USD CURRENT ACCOUNT - USD
 NATIONAL OIL COMPANY

CUSTOMER 21003061
 NATIONAL OIL COMPANY

BOOK DATE	TRANSACTION	REFERENCE	VALUE DTE	DEBIT	CREDIT	BALANCE
01.01.06	BALANCE BROUGHT FORWARD					16,277.56
01.01.06	Bank Charge Standard	FT0624000905	01.01.06	-1,000.00		15,277.56
01.01.06	TRANSFER	FT0624000905	01.01.06		68,970.00	84,247.56
01.01.06	TRANSFER	FT0624000905	01.01.06			84,247.56
01.01.06	TRANSFER	FT0624000905	01.01.06	-788.00		83,459.56
01.01.06	TRANSFER	FT0624000905	01.01.06			83,459.56
01.01.06	TRANSFER	FT0624000905	01.01.06	-80.00		83,379.56
01.01.06	TRANSFER	FT0624000905	01.01.06		206,500.00	289,879.56
01.01.06	TRANSFER	FT0624000905	01.01.06			289,879.56
01.01.06	TRANSFER	FT0624000905	01.01.06	-5,700.00		284,179.56
28.08.06	TRANSFER	FT0624000905	28.08.06	-50,000.00		234,179.56
01.01.06	TRANSFER	FT0624000905	01.01.06			234,179.56
01.01.06	TRANSFER	FT0624000905	01.01.06		50,000.00	284,179.56
01.01.06	TRANSFER	FT0624000905	01.01.06			284,179.56
01.01.06	TRANSFER	FT0624000905	01.01.06	-107.00		284,072.56
01.01.06	BALANCE BROUGHT FORWARD					284,072.56

The highlighted text shows a “lobbying fee” payment made into NOCAL's bank account, to gain passage of the contracts for Oranto Petroleum and Broadway Consolidated.

the “lobbying fees” but chose to proceed with the deal anyway. If the latter is the case, it raises serious questions about why Chevron would choose to get involved in a deal which may have resulted from undue influence. Investment by large reputable companies like Chevron will benefit Liberia only if the concessions are awarded properly and fairly.

In July and August of 2011, Global Witness wrote to Chevron asking at what point the company became aware of the payment being made to influence the passage of Oranto’s contracts and why it proceeded with the deal. As of the date of publication, Global Witness has received no response from Chevron.

c. Regal Liberia, European Hydrocarbons and the reputation of Frank Timis

The government has also awarded concessions to companies linked to controversial Australian investor Frank Timis. In June 2008, the Liberian Legislature ratified concession agreements awarding offshore blocks 8 and 9 to Regal Liberia and European Hydrocarbons. These two companies are ultimately owned by African Petroleum Corporation Ltd (African Petroleum), based in Australia.¹⁰² The Non-Executive Chairman of African Petroleum is Frank Timis. Through Sarella Investments, which he controls, Timis also holds the largest portion (46.83%) of African Petroleum’s issued capital.¹⁰³

Frank Timis himself disclosed during his 2010 application to Australia’s National Stock Exchange (NSX) that the Toronto Stock Exchange (TSX) determined twice, in 2002 and 2007, that Timis was “unsuitable to act as a director, officer or major or controlling shareholder of a TSX listed issuer due to [his] failure to disclose [his] previous heroin convictions.”¹⁰⁴ In 2008, the London Stock Exchange’s Alternative Investment Market (AIM) fined African Minerals, of which Frank Timis was the Executive Chairman,¹⁰⁵ £75,000, reportedly for making misleading statements regarding its diamond prospects in Sierra Leone.¹⁰⁶ One year later, AIM issued Regal Petroleum the largest fine in AIM history for making misleading statements regarding the company’s oil prospects in the Aegean Sea.¹⁰⁷ According to an AIM spokesman, the £600,000 fine was imposed because Regal’s actions were “unprecedented in terms of the seriousness of the rule breaches involved.”¹⁰⁸ Frank Timis was Executive Chairman and Director of Regal during the period AIM found that the misleading statements were made.¹⁰⁹

Timis has also run into considerable difficulties with regulators at Australian stock exchanges. In February

2010, the Australian mining company Global Iron announced a merger with Timis-controlled African Petroleum.¹¹⁰ However, in March 2010, the Australian Securities Exchange (ASX) refused to allow Global Iron to trade on its index because of concerns that Timis would be a substantial shareholder and director of the newly merged company.¹¹¹ Although the ASX later reversed its decision on appeal, the exchange continued to block the listing of Global Iron.¹¹² In response Global Iron joined Australia’s second stock exchange, the National Stock Exchange of Australia (NSX) in June 2010. Global Iron, which in July 2010 announced it had changed its name to African Petroleum Corporation,¹¹³ was required to assure NSX regulators that Frank Timis would have no executive role in the company and would not be able to speak on behalf of the company.¹¹⁴ Despite these assurances, Timis continues to control the largest portion of African Petroleum shares and is chairman of the company’s Board of Directors.¹¹⁵

In August 2011, Global Witness wrote to Frank Timis to request comment on his companies’ suitability to operate in Liberia, but at the time of publication had received no response.

d. Opaque contract allocation

The irregular process by which the Liberian Government has issued oil and gas licences raises questions about its ability or willingness to implement Liberia’s laws on concession allocation.

Simba Energy (Simba) currently holds Liberia’s only known onshore oil concession, a permit the company calls “Reconnaissance Licence NR 001” (NR 001).¹¹⁶ According to Simba, the licence was awarded in January 2009 to International Resource Strategies Liberia Energy (IRSLE), a company that Simba then immediately purchased.¹¹⁷ The licence reportedly allows the holder 12 months to conduct reconnaissance over 1,366 km¹¹⁸ of land along Liberia’s central coast (see Map: Liberia’s Oil and Gas Concessions: Existing and Proposed, September 2011, page 13) and provides the holder a first right of refusal to apply for a full production sharing contract.¹¹⁹ In February 2010, Simba reported that it had obtained an extension of this initial 12 month period.¹²⁰ The company has also hosted NOCAL staff at its Vancouver office in an attempt to persuade them to convert its reconnaissance permit into a full production sharing contract.¹²¹ In July 2011 the company announced that it had been invited to Monrovia to “finalize discussions” on a full production sharing agreement.¹²² A representative of NOCAL has also confirmed that it is in negotiations with Simba

regarding the conversion of its reconnaissance permit into a production sharing contract.¹²³

It is unclear whether the initial award of Simba's reconnaissance licence was conducted in accordance with Liberian law. Global Witness and the LOGI coalition were unable to find any government documentation describing the manner in which NR 001 was awarded. However, in a 2010 interview with a British financial journalism website, Simba staffer Hassan Hassan described the process through which the licence was obtained:

"I found that there was what I thought to be an onshore basin and it wasn't getting any attention because everyone was focused on offshore oil, including the government. So I quietly made enquiries about it and had some discussions with the Ministry of Mines and Energy and told them I would like to acquire the onshore [concession] and after some time it worked out that they said 'nobody else has any interest in it, you're welcome to have it.'"¹²⁴

If Hassan's description of how NR 001 was awarded is accurate then the licence was not issued in accordance with the law. The government agency responsible for issuing oil reconnaissance licences is NOCAL,¹²⁵ however according to a senior NOCAL official the agency did not issue Simba with its licence.¹²⁶ Global Witness wrote to the Ministry of Lands, Mines and Energy to ask why the Ministry issued Simba a licence and whether the Ministry has issued any other oil concessions, but as of the date of publication had received no response.

In addition, while it is common elsewhere in the world for reconnaissance permits to be awarded without an open tendering process, at the time NR 001 was awarded Liberia's laws required that the contract be subjected to a bidding procedure. Sections 95, 106 and 122(2) of Liberia's 2005 Concessions Law, require that all concessions undergo an advertised, competitive bidding process. If NR 001 was awarded without bidding, this would also violate section 2.4.13 of the Petroleum Law, which likewise requires all contracts to be subject to competitive bidding. The only information publicly available on the process is Hassan's description of the licence being awarded through "quietly made enquiry." Because Global Witness and LOGI have not been able to obtain an official account of the process by which NR 001 was awarded it remains unclear whether the licence was granted legally.

At the time this report was published, Simba's contract was not available on the Liberian Extractive

Industry Transparency Initiative (LEITI) website, despite this being a requirement of section 4.1(f) of Liberia's LEITI Law. Global Witness' requests to LEITI for an explanation have so far gone unanswered and a company representative whom Global Witness met in October 2010 declined requests for a copy of the licence.¹²⁷ Because Simba's licence is not public, it is impossible for Liberian citizens to know the terms under which the company is operating, or the social and environmental impacts that its operations might have. The lack of disclosure also prevents the public from determining whether the government is receiving the revenues it is due.

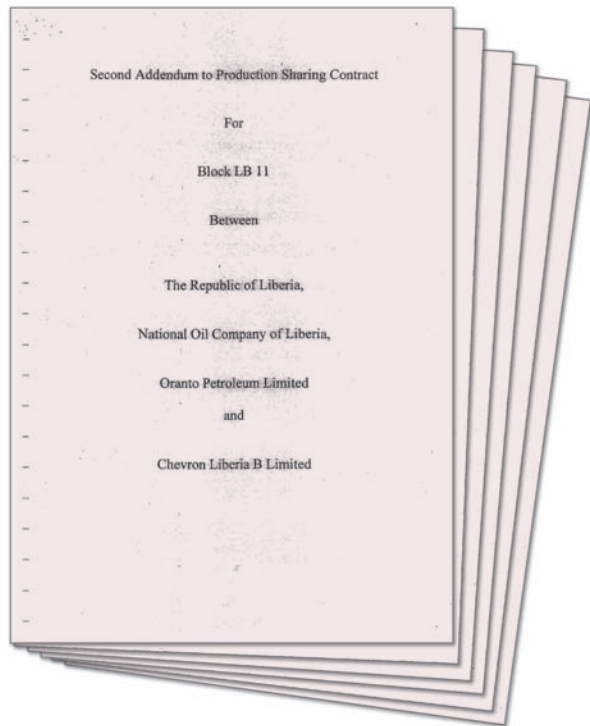
Global Witness has written to Simba Energy asking how the company received its concession and why its licence has not been made public. At the time of publication, the company had not responded.

Licence NR 001 is not the only contract that has been awarded outside of the legally-prescribed process. According to a 2007 US State Department report "Doing Business in Liberia," both Oranto Petroleum and Repsol Exploracion received one offshore concession each without having to submit bids.¹²⁸ At the time that the State Department issued its report, both Oranto and Repsol held two offshore concessions each. The report is not specific about which of the two companies' respective concessions were awarded without bidding. The awards may violate the bidding requirement contained in the Petroleum Law, which applies to all contracts signed after its adoption in 2000.

Another agreement that has not been made public is the contract between Chevron, Oranto and the Liberian Government. In August 2010, when Chevron purchased its stake in Oranto Petroleum's offshore production sharing contracts, the two companies and the Liberian Government executed three "addenda" to Oranto's original contracts. These documents – which Global Witness and the LOGI coalition have seen – set out significant changes to the company's tax obligations. However, the addenda are not available on the LEITI website because, according to an LEITI representative, the agency has not been provided with a copy.¹²⁹ (Addenda for LB11 can be found in the Annex, LB11, 12 and 14 can be downloaded from www.globalwitness.org.) Unless the Liberian Government meets its own transparency obligations, it will be impossible for those without special access to the contract to determine whether Chevron's tax obligations are being fulfilled.

It is crucial that the Liberian Government abides by its obligations under the LEITI Law to ensure that

natural resource contracts are published. For their part, companies such as Chevron and Simba Energy should support the important work that LEITI is doing to promote a transparent oil industry and must ensure their contracts are made publicly available.



Global Witness and LOGI were able to obtain a copy of the Addenda to the contracts between Chevron, Oranto Petroleum and the Government of Liberia. As the contracts have not been published, affected communities may be unable to obtain copies. Simba Energy's licence is also yet to be published, despite the fact that Liberia's EITI Law demands disclosure of these kinds of documents.

e. Peppercoast Petroleum and a lack of financial capacity

The Liberian Government has awarded at least one concession to a company – Peppercoast Petroleum (Peppercoast) – that did not prove that it had the capacity to execute its contract. In July and August 2011, Global Witness wrote two letters to Peppercoast to ask about the company's Liberian concession, offshore block 13. Peppercoast provided detailed responses to both letters. This correspondence confirmed that, four years after receiving a concession, Peppercoast has not started to drill for oil. Instead, the company is “working with NOCAL towards approval of the assignment of its interest in the PSC [production sharing contract].”¹³⁰

Peppercoast Petroleum – named Broadway Consolidated at the time it received its oil concession – may

have a long history in Liberia, but it has no apparent experience in the oil sector. In a 2007 interview with Liberian newspaper Front Page Africa, then Managing Director Gary Allsopp stated that the company was formed in 1993, trading in cocoa and coffee and operated mining concessions during Liberia's civil wars.¹³¹ It is also reported in the press that the company was once run by Jonathan Mason,¹³² former Minister of Lands, Mines and Energy during the 2003 transitional government. In its letters of July 2011 and August 2011, Peppercoast denied that it had a relationship with Jonathan Mason, stating in August 2011 that “nor has Jonathan Mason has [sic] ever run Broadway Consolidated or Peppercoast Petroleum.”¹³³ Global Witness and the LOGI coalition have been unable to independently verify any relationship between the two.

Irrespective of Peppercoast's history of mining during Liberia's wars or possible ties to former ministers, the company's apparent lack of oil industry experience raises serious questions about its suitability as a concession holder. In his 2007 interview, Allsopp stated that offshore block 13 was Peppercoast's first ever oil concession.¹³⁴ This was confirmed by Peppercoast in its 16 August 2011 letter to Global Witness.¹³⁵ Peppercoast also stated that since its acquisition of block 13 “it has not owned or operated other oil concession.”¹³⁶

Records analysed by Global Witness and LOGI indicate that, at the time that Peppercoast was awarded offshore oil block 13, the company also lacked the financial capacity to operate a concession. In July 2011, Global Witness wrote to Peppercoast requesting information about the company and its shareholders.¹³⁷ In its 20 July 2011 response Peppercoast supplied Annual Accounts and Returns for the company from 2006 to 2011.¹³⁸ The company's 2006 Annual Accounts, which describe Peppercoast's financial situation at the time it signed the block 13 deal in 2005, appear to show that it had few assets and was entirely dependent upon loans, resulting in a shareholders' deficit of £2,774,363. One year later, when Peppercoast's agreement was ratified by the Liberian Legislature, its financial situation was even worse. Its 2007 Annual Accounts, which describe the company's financial situation at the time of ratification in 2006, show that Peppercoast had a shareholders' deficit of £3,642,174. Even in an industry populated by oil companies of varying sizes, Peppercoast's finances stand out as extraordinarily weak.

It is not uncommon in frontier oil territories for small companies to win concessions with the intention of attracting larger investors to aid in their development. Indeed, as Allsopp stated in 2007, this was Peppercoast's strategy with block 13: "We are talking to three farming partners at the present moment in time on coming and complementing what we've got."¹³⁹ However, with so little financial capacity and no background in the oil sector, Peppercoast was not the type of small company to which the Liberian Government should have handed over valuable public assets. Four years after obtaining block 13, Peppercoast stands accused by senior NOCAL officials of failing to fulfil the lax performance requirements set by its contract and patience with the firm appears to be wearing thin. The company disputes the claims of non-performance¹⁴⁰ but now faces an ultimatum issued by the government in January this year: find a buyer for block 13 or lose the concession.¹⁴¹ As of the date of publication, Peppercoast has not found a buyer that NOCAL will accept. In its August 2011 response to Global Witness, Peppercoast said that it is still working with NOCAL "towards approval of the assignment of its interest in the PSC."¹⁴²



Charles Gyude Bryant was the Chairman of the post-war transitional government that ran Liberia from 2003-2006. Over this period Bryant and his ministers rapidly sold off the rights to some of the country's most valuable natural resources, including the oil concession now held by Peppercoast Petroleum (then named Broadway Consolidated). Many of these deals were not in the best interests of the country. Global Witness and LOGI are calling for limits to be placed on the ability of transitional governments to allocate natural resource concessions.

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C. THE OPPORTUNITY FOR CHANGE IS NOW

There is a very real possibility that a commercial oil field will be discovered soon in Liberia and, as the rapid development of Ghana's Jubilee Field has shown, oil extraction could follow only a few years later. With its weak economy and low governance capacity, Liberia will not maximise the potential benefits from oil revenue without reform of the sector.

At the same time, it is important to stress that there has never been a better opportunity for reform. As discussed above, the Liberian Government has already made some important commitments to revenue and contract transparency through its passage of the LEITI Law and 2010 Concessions Law. In 2009, the government's Ministry of Lands, Mines and Energy also produced a National Energy Policy,¹⁴³ which outlined principles by which the oil and gas sector should be governed. These principles include:

- Removing contract allocation, policy making and regulatory oversight authority from NOCAL. Contract allocation and policy making authority would rest with the Ministry of Lands, Mines and Energy, while regulatory authority would rest with a newly created autonomous Energy Regulatory Board.¹⁴⁴
- Strengthening legal safeguards relating to labour and the environment.¹⁴⁵
- Promoting transparency of company operations.¹⁴⁶
- Promoting strong penalties for corrupt acts.¹⁴⁷
- Developing a new "Energy Law" that would codify these changes.¹⁴⁸

Although short on detail, the policy does outline many of the oil and gas sector's fundamental problems. And while little has been done over the past two years to address these challenges, recent statements by the heads of the Ministry of Finance¹⁴⁹ and NOCAL suggest a real appetite for reform. In a July 2011 interview with Global Witness, NOCAL's new president, Christopher Neyor, stated that he anticipates shortly tackling the most ambitious elements of the policy, including the drafting of a new oil and gas law.¹⁵⁰ Of course it remains to be seen how much momentum NOCAL's reformist president can muster, but a commitment to change at the top of Liberia's oil and gas regulatory agency creates an invaluable opportunity.

This coincides with heightened interest among Liberia's international partners in helping the government with its reform efforts. The US Government, Norwegian Government and international transparency advocacy organisation Revenue Watch Institute have already provided some assistance to NOCAL. The US State Department's Bureau of Ocean Energy Management, Regulation and Enforcement has held one course for officials across the Liberian Government focusing on offshore oil and gas resource management. The US Geological Survey anticipates holding a series of courses with NOCAL staff on geophysical data processing and interpretation, and plans have been mooted for the US Department of Treasury to provide advice to the Ministry of Finance on tax and revenue management. The US Department of Commerce, meanwhile, has assisted in strengthening the fiscal terms for onshore concessions. For its part, the Norwegian Government has also provided limited assistance through its Oil for Development programme, which helps governments better manage their oil sectors.

However, good intentions and training courses are not enough. To address the problems in Liberia's oil and gas sector, current laws that would help to regulate the sector must be enforced, while those laws that contain insufficient safeguards must be overhauled or replaced. Liberia's government agencies responsible for managing the oil sector should be reformed so that the agency that profits from the sector does not also regulate companies. The government should create stronger mechanisms for evaluating the merits of bidding companies to ensure that only those that will benefit the country are awarded concessions. Liberia's oil tax regime should be made public and savings accounts should be established to ensure that the country benefits from potential oil revenues in the long term. And reforms must take place in the open, through a comprehensive, inclusive and transparent process that involves civil society and those affected by the sector. The next section of this report explores these key reform issues in more detail.



Liberia enjoys a close relationship with the United States. The US government will be a key partner in reform of the oil and gas sector.

4 How The Oil And Gas Sector Should Be Reformed

This section is designed to provide recommendations to promote a transparent, accountable and sustainable oil and gas sector in Liberia. The recommendations have been drafted by Global Witness and LOGI after consultation with international experts on the oil and gas industry, human rights and environmental protection. They aim to incorporate international best

practice and draw upon principles outlined both in the Natural Resources Charter and the Principles for Good Governance of the National Petroleum Sector developed by experts at Chatham House. The most important consideration, however, in framing these recommendations has been ensuring that they address Liberia's specific needs and are practical.

Precepts of the Natural Resources Charter

The Natural Resources Charter¹⁵¹ provides a guide on how governments and companies can ensure that natural resources benefit a country's people. Drafted by a panel of international experts on natural resources and development, the Charter is not politically affiliated and is designed to be a living document reflecting inputs from policy makers, civil society groups and interested individuals. As a living document, the Charter will change as international best practice evolves. At the time of publication, the Charter's principles were as follows:

Precept 1	The development of a country's natural resources should be designed to secure the <i>greatest social and economic benefit</i> for its people. This requires a <i>comprehensive approach</i> in which every stage of the decision chain is understood and addressed.
Precept 2	Successful natural resource management requires <i>government accountability</i> to an <i>informed public</i> .
Precept 3	Fiscal policies and contractual terms should ensure that the country gets full benefit from the resource, subject to attracting the investment necessary to realise that benefit. The long-term nature of resource extraction requires policies and contracts that are robust to changing and uncertain circumstances.
Precept 4	Competition in the award of contracts and development rights can be an effective mechanism to secure value and integrity.
Precept 5	Resource projects can have significant positive or negative local <i>economic, environmental and social effects</i> which should be identified, explored, accounted, mitigated or compensated for at all stages of the project cycle. The decision to extract should be considered carefully.
Precept 6	Nationally owned resource companies should operate transparently with the objective of being commercially viable in a competitive environment.
Precept 7	Resource revenues should be used primarily to promote <i>sustained, inclusive economic development</i> through enabling and maintaining <i>high levels of investment</i> in the country.
Precept 8	Effective utilisation of resource revenues requires that <i>domestic expenditure and investment be built up gradually</i> and be <i>smoothed</i> to take account of revenue volatility.
Precept 9	Government should use resource wealth as an opportunity to increase <i>the efficiency and equity of public spending</i> and enable the private sector to respond to structural changes in the economy.
Precept 10	Government should <i>facilitate private sector investments</i> at the national and local levels for the purposes of diversification, as well as for exploiting the opportunities for domestic value added.
Precept 11	The <i>home governments</i> of extractive companies and <i>international capital centres</i> should require and enforce best practice.
Precept 12	<i>All extraction companies</i> should follow best practice in contracting, operations and payments.

Principles for Good Governance of the National Petroleum Sector, Chatham House

A group of experts working under the auspices of Chatham House has developed a series of principles designed to guide governments in the design of an oil and gas sector and its agencies.¹⁵² Published in 2007, the principles were developed after a series of consultations with policy makers, government officials from oil producing countries, private corporations and independent experts. In their most basic form, the Chatham House experts recommend the following:

Clarity of goals, roles and responsibility	“Lack of clarity can lead to conflicting agendas, duplication of effort and policy paralysis. For each policy, strategy or operational decision there has to be clarity on the intended outcome of the decision, who will be involved in making it and how.” ¹⁵³
Sustainable development for the benefit of future generations	“As a capital - rather than people - intensive industry, dependent on finite resources, sustainability should be at the heart of petroleum sector policymaking. Sustainable development policies address meeting the needs of the present without compromising the well-being of future generations.” ¹⁵⁴
Enablement to carry out the role assigned [Capacity building]	“Enablement is a major issue for producers because there is often a mismatch between where skilled people are concentrated (in the operating companies) and where they are also needed (in the ministry, regulator or broader government) ... For optimum performance, each actor must have access to the necessary means in terms of authority, financial resources, information, human capacity (skills, knowledge, experience etc.) and supporting processes.” ¹⁵⁵
Accountability of decision-making & performance	“Accountability of decision-making and performance provides assurance to society that decision-makers (individuals and institutions) are identified, that they explain their decisions to a higher authority, and that their performance is assessed objectively. Without accountability, corruption and malpractice can flourish and good practice can go unrecognised.” ¹⁵⁶
Transparency and accuracy of information	“Whatever the precise mechanisms of governance and accountability in a particular national context, their effectiveness depends on reliable, relevant and timely information. Those charged with defining roles and objectives for the sector must be aware of the capabilities and interests of each responsible authority; in turn, actors must be aware of the authority they are permitted and their limitations.” ¹⁵⁷

A. COMPREHENSIVE, INCLUSIVE AND TRANSPARENT REFORMS

Before focusing on how Liberia's oil and gas sector should be reformed, it is first important to consider the process by which reforms should be undertaken. Global Witness and LOGI recommend that the Liberian Government establish a forum in which the components of a new oil and gas sector are discussed and agreed upon. If this forum is to be effective, it must be comprehensive, transparent and inclusive.

The reform of Liberia's oil and gas sector should be comprehensive. As outlined in section 3, Liberia's current laws and institutions have already proven themselves incapable of managing the award of contracts effectively. As will be discussed further below, the country's current Petroleum Law and the Model Contract contain inadequate human rights,

environmental and financial safeguards to protect the rights of local people and employees and do not ensure that the country maximises benefits from its oil and gas revenues. Such fundamental problems will require major reforms, including the drafting of a new oil and gas law, revision of the Model Contract, restructuring of government agencies responsible for oil and gas and long term sustained support to build the capacity of the Liberian Government. Safeguards should also be built into the new law, rather than just the Model Contract, so they cannot be weakened through negotiation in individual contracts.

The reform process must be transparent. With concessions already granted, some oil sector operators may consider reforms damaging to their interests. Some individuals within the National Oil Company of Liberia (NOCAL) may also be unwilling to give up the power that they currently enjoy. However, if reforms are developed in the public domain, it

will be more difficult for such “power brokers” to exert undue influence. A transparent process would also help manage the expectations of the Liberian public, which would better understand the promises and limitations of a sector that has been receiving increasing media attention.

The reform process must also be inclusive. Because responsibility for regulating the oil and gas sector is shared between multiple agencies within the Liberian Government,¹⁵⁸ they must all be involved in the reform process. Similarly, because international partners such as the US Government and the Norwegian Government have different areas of expertise and capacities, it is important that they all be brought to the table.

However, for a reform process to be truly effective, it must also include members of Liberian civil society and affected communities. Liberia’s constitution requires that the government allows the country’s citizens to participate in the management of natural resources and the most practical way of meeting this obligation is to involve Liberian civil society organisations.¹⁵⁹ In Ghana, the Civil Society Platform on Oil and Gas has served as an extraordinary vehicle for spreading information on developments in the country’s growing oil sector and has helped the

government carry out a reform programme with public input.¹⁶⁰ Inclusive processes not only contribute valuable information regarding the citizen’s expectations, but also help inform civil society groups and communities about the obligations of the government and companies to them. This is crucial, as ultimately it is members of the public who monitor the oil and gas sector.

Another reason why reform efforts would benefit from this kind of inclusive approach is that a number of Liberian civil society groups, including those within LOGI, have relevant experience from other natural resource sectors, notably forestry. The participation of these groups in forest governance reform, for example, has ensured that the sector operates more transparently and that the rights of people living in logging concession areas are better protected. The inclusive composition of the Liberian Forestry Initiative (LFI) reform process, the Voluntary Partnership Agreement (VPA) negotiations and the role for civil society within the Liberian Extractive Industry Transparency Initiative (LEITI) should also be models for the oil sector reform process. With all stakeholders attending regular discussions, laws, policies and structural reforms can be formulated in a measured and consultative manner. The first step to reform is the creation of such a forum.



The Liberian Government passed a landmark law in 2009 when it made contract and fiscal transparency compulsory. The Liberia Extractive Industries Transparency Initiative has made efforts to ensure that communities have access to the information published. © The EITI

PRECEDENTS FOR CIVIL SOCIETY INVOLVEMENT IN THE REFORM OF LIBERIA'S FORESTRY AND MINING SECTORS

The Liberian Forestry Initiative ¹⁶¹

The Liberian Forestry Initiative (LFI) was established in early 2004 to support the rehabilitation and reform of Liberia's forestry sector and enhance cooperation and coordination of activities in Liberia. LFI outputs included a review of existing concessions, a new forestry policy and new laws. Participating in the initiative were representatives from the Liberian Government, US Government, the European Commission, international financial institutions and international environmental organisations. The initiative also featured the active participation of Liberian civil society groups, which were involved in legal drafting and the review of forestry concessions.

The Voluntary Partnership Agreement ¹⁶²

Civil society played a key role during the negotiation of Liberia's Voluntary Partnership Agreement (VPA). VPAs are agreements

between the European Union (EU) and timber producing countries that aim to eliminate illegally harvested wood from international and domestic trade. While Liberia's VPA was negotiated between the EU and the Liberian Government, local civil society and communities played a key role in ensuring that community voices were represented at the negotiating table and that their concerns were addressed.¹⁶³

The Liberian Extractive Industries Transparency Initiative ¹⁶⁴

Liberian civil society also has a formal role in the Liberian Extractive Industry Transparency Initiative (LEITI). LEITI publishes extractive industry contracts and revenue data and is governed by a Multi-Stakeholder Steering Group, which includes civil society representation. In 2009, Liberia was only the second country to be judged "compliant" with the principles of transparency and reporting established by the international Extractive Industries Transparency Initiative (EITI) board. To be considered EITI compliant Liberia had to show that "civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate."¹⁶⁵

RECOMMENDATIONS

The Liberian Government:

- 1. Forum for reform:** Reform of Liberia's oil and gas policies, laws, Model Contract and Environment Law should be conducted in a public forum that includes the participation of all relevant branches of the Liberian Government, Liberian civil society, communities affected by concessions, companies and international partners.
- 2. Civil society participation:** Civil society and affected communities should be involved at the earliest possible opportunity in any reforms. Their opinions should be adequately considered throughout the reform process and not merely at the end when few changes are realistically possible.

- 3. Legal safeguards:** Safeguards should be built into a new oil and gas law and not just the Model Contract.

- 4. Liberian Legislature participation:** Major decisions and policies should be approved by the Liberian Legislature.

International Donors:

1. Technical and financial support should be given to the Liberian Government to build a forum for reform and donors should fully participate in the forum.
2. Technical and financial support should be given to Liberian civil society groups and affected communities ensuring their full participation in reform efforts.

B. PLANNING

Oil and gas development has potentially dramatic financial, environmental and social consequences for a country. Prior to committing to such a path it is important that the government determines whether such development is the best use of Liberia's land and coastal resources. In short, before Liberia discusses how it wants to manage an oil sector, it should first consider whether it wants to have an oil sector at all. As outlined in Precept 5 of the Natural Resource Charter:

*“Resource projects can have significant positive or negative local economic, environmental and social effects which should be identified, explored, accounted, mitigated or compensated for at all stages of the project cycle. The decision to extract should be considered carefully.”*¹⁶⁶

A holistic assessment of all Liberia's main natural resources would not just benefit planning in the oil sector, but also the development of other sectors also. The country's land and ocean resources have a number of possible uses: fishing, conservation, oil and gas exploration, community use, small and large-scale logging, mining and agriculture. By reviewing the possible social, environmental and economic impacts of these uses, it is possible for the Liberian Government to determine which resource uses will best generate revenues for the government and livelihoods for Liberian citizens and ensure that the environment and community rights are protected. Information from such a study can then inform the creation of a national resource plan that benefits the government, provides jobs and protects critical environments. It can also strengthen the government's hand in negotiations with companies seeking concessions. The assessment of the ocean and potentially oil producing areas could be prioritised to ensure that oil and gas operations are not unduly hindered.

It is already evident that a lack of resource assessments has hampered the management of Liberia's forests. The government has awarded seven large logging concessions but has not conducted an assessment of what the forests contain or surveyed other possible uses. One of the consequences of this lack of planning is that the government has received only a fraction of the taxes it is owed. Five of Liberia's large logging concessions are not operating and one company has claimed that it cannot log because of a lack of infrastructure and forest stock.¹⁶⁷ This might have been avoided if the government had first undertaken a comprehensive survey examining the forests' full range of values and potential uses.

One particular issue that is fundamental to the planning and management of an oil and gas industry is clarification of Liberia's borders with neighbouring countries. In a May 2011 interview with Global Witness, an expert with knowledge of Liberia's oil and gas sector stated that questions were being asked within the Liberian Government regarding the exact coordinates of the Liberia-Sierra Leone maritime border.¹⁶⁸ These questions need answering, in particular because Anadarko Petroleum has recently discovered an oil field, the Mercury Field, off the coast of Sierra Leone close to what may be Liberia's maritime boundary.¹⁶⁹ (See Map: Liberia's Oil and Gas Concessions: Existing and Proposed, September 2011, page 13) Complicating matters further, Anadarko also holds a stake in Liberia's off-shore block 17, which lies against the Liberian side of the border. For the Liberian Government to plan effectively the location of its concessions, it is essential that it takes steps to clarify the Liberia-Sierra Leone and Liberia-Côte d'Ivoire maritime borders.

RECOMMENDATIONS

The Liberian Government:

1. **National Natural Resource Assessment and Strategy:**
 - Before Liberia's oil and gas sector develops further, the government should undertake an assessment of the other possible values and uses of Liberia's land and natural resources and draw up a national strategy. The ocean and potentially oil producing areas could be prioritised. This would involve:
 - Identifying what natural resources Liberia has.
 - Compiling as much information as practicable on the social, environmental and economic potential of different land and ocean uses, including fishing, conservation, oil and gas exploitation, community use, small and large-scale logging, mining and agriculture.
 - Using this information to create a national resource plan that can guide the Liberian Government and its people in the best use of its resources.
2. **Clarification of Liberia's maritime borders:** Liberia should clarify its maritime borders with both Sierra Leone and Côte d'Ivoire.

C. STRUCTURE OF GOVERNMENT OIL AND GAS AGENCIES

The Liberian Government does not yet have the institutional arrangements in place necessary to regulate the oil sector effectively. At present, almost all government functions relating to Liberia's oil and gas sector are managed by a single agency: the National Oil Company of Liberia (NOCAL). NOCAL formulates policy, drafts regulations covering oil and gas operations and has a principal role in overseeing companies (Liberia's Environmental Protection Agency shares regulatory responsibilities with respect to environmental safeguards).¹⁷⁰ NOCAL also chairs the Inter-Ministerial Petroleum Technical Committee, which awards contracts.¹⁷¹ However, NOCAL is not simply a regulatory body; it is also a semi-autonomous national oil company and a partner in production sharing contracts with oil companies.¹⁷² These different roles create a conflict of interest: NOCAL is responsible for regulating oil operations in which it has a commercial stake.

As outlined in section 3, there is clear evidence that NOCAL is currently unable to perform these functions. For example, rather than provide oversight of companies, NOCAL facilitated the ratification of Oranto Petroleum's oil contract through the payment of "lobbying fees". In addition, the General Auditing Commission has noted that NOCAL has severely limited capacity and does not maintain sufficient internal accounting or auditing procedures.

The government has taken steps to resolve these institutional problems through a plan to restructure the sector outlined in its National Energy Policy. However, the proposed changes would not provide adequate regulatory oversight and have yet to be implemented. Retaining a national oil company may not be in the best interest of the country. Furthermore, significant capacity building will also be needed to ensure that the government agencies operate effectively.

i) Does Liberia want to have a national oil company?

While the Liberian Government must have an agency responsible for regulating the oil industry, it is less clear whether the country needs a state-owned company to participate in concession operations. NOCAL currently lacks the money, experience or technical capacity to operate effectively as an oil company.

Governments sometimes establish national oil companies because they believe such companies

can develop state capacity to manage oil and gas, facilitate the transfer of technology and increase the state's ability to oversee operations. Another common assumption is that the government will receive greater revenues from its oil resources if a national company has a share in the concession, thus earning the state dividends on the company's share price.¹⁷³

National oil companies can be a burden upon the government and the industry, however. If given the mandate to regulate as well as profit from the oil sector, they can become corrupted. There is also the risk of national oil companies becoming too dominant within domestic politics.¹⁷⁴

In Liberia, policy makers have an additional consideration when determining the need for a national oil company: would it be financially viable? Liberia has not yet discovered oil, and even it does, it may not discover enough to justify a state-run enterprise. In the meantime, if NOCAL is to operate as a company and invest in projects it must raise capital, either by incurring debt or drawing upon scarce government resources. It is questionable whether the Liberian Government has the revenue to do this.

Liberia's 2009 National Energy Policy commits to keeping a national oil company, the name of which is changed from NOCAL to the Liberian National Oil Corporation. However, Global Witness and the LOGI coalition believe this decision may be worth revisiting. As argued by Chatham House expert Paul Stevens, in the oil and gas sector "regulation is seen as a more efficient solution than direct government intervention."¹⁷⁵

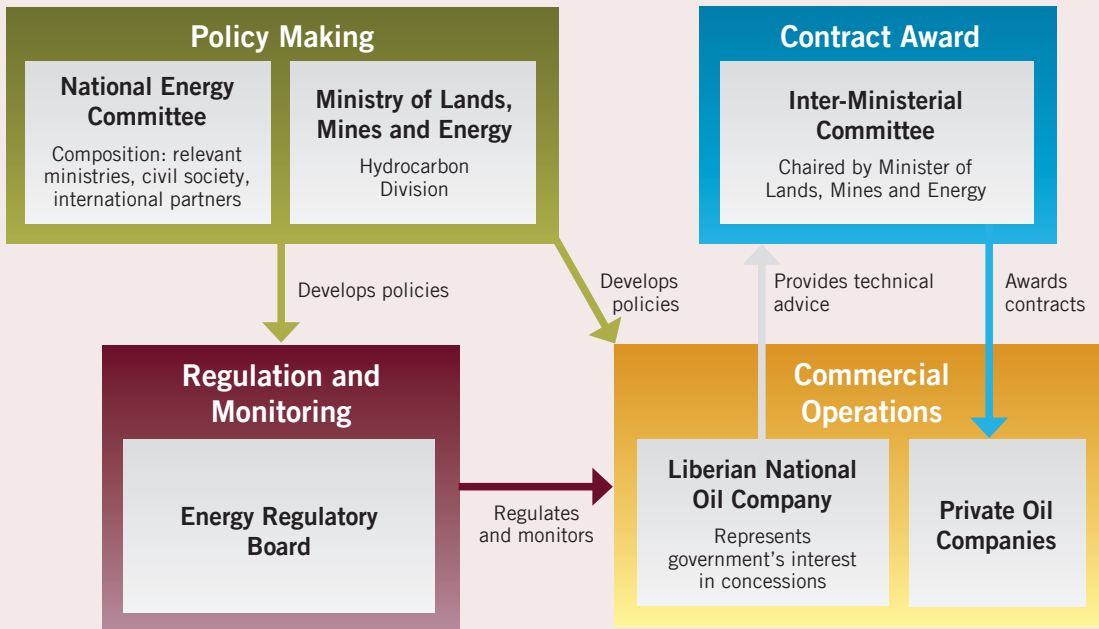
ii) How can Liberia ensure clarity of roles and responsibilities?

Regardless of whether the government continues to have a national oil company, Liberia must ensure that there is sufficient regulatory oversight of the sector. According to the "Principles for Good Governance of the National Petroleum Sector" outlined by Chatham House, a lack of clarity can lead to conflicting agendas, policy paralysis and a duplication of effort.¹⁷⁶

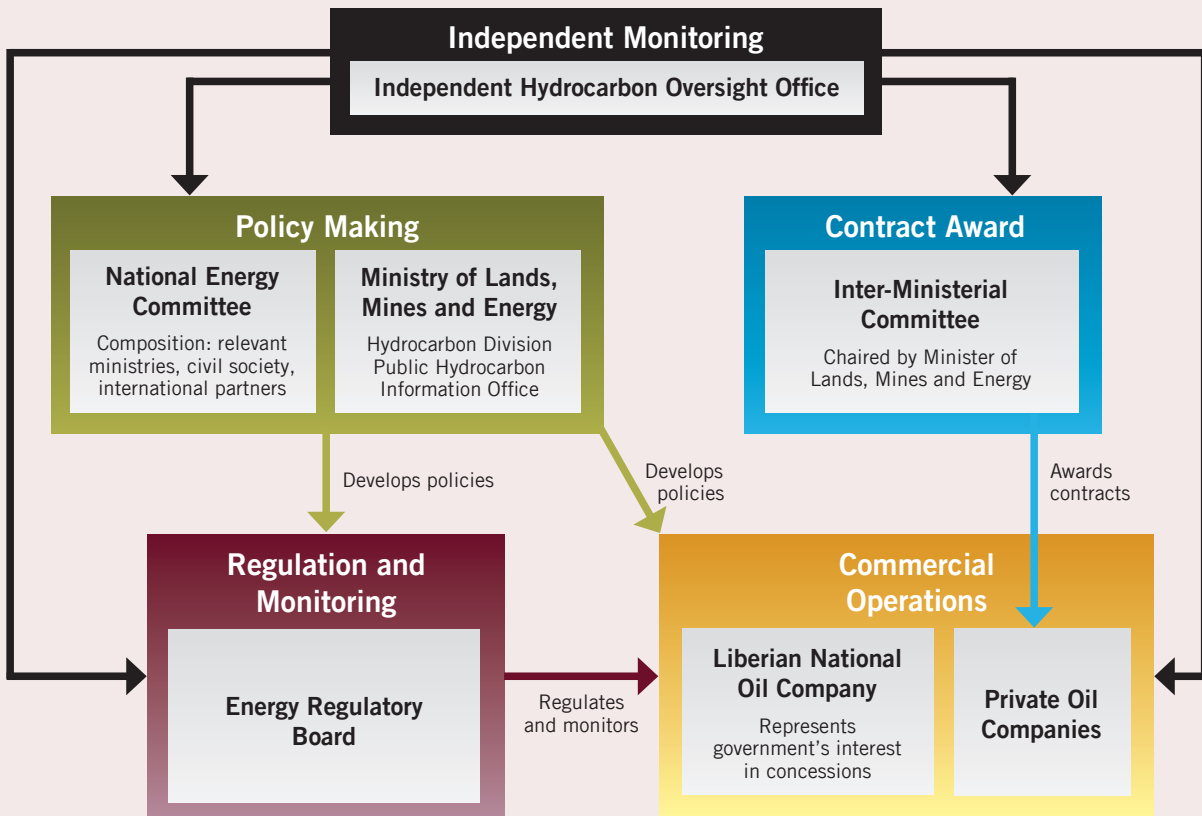
Under its current law, Liberia will not be able to adequately regulate its oil sector because the agency with regulatory authority – NOCAL – also has a financial interest in company operations.

Chart 3: Proposed Oil and Gas Agency Structures

National Energy Policy Proposed Agency Structure



Global Witness and LOGI Proposed Agency Structure



A common solution to this problem is to adopt a model similar to that advocated by the Norwegian Government, which separates roles and responsibilities within the oil and gas sector. Norway's oil sector is managed by three distinct government bodies: a quasi-autonomous national oil company engaged in commercial oil and gas operations, a regulatory body that provides oversight and technical expertise and a government ministry that helps set policy.¹⁷⁷ The importance of splitting the commercial and regulatory functions has been frequently emphasised by different intergovernmental bodies, including the OECD.¹⁷⁸

In its National Energy Policy, the Liberian Government itself has recognised that NOCAL is currently “player and referee at the same time”¹⁷⁹ and describes a separation of functions within the oil and gas sector in line with the Norwegian model. The policy states that the government will “separate the roles of policy setting, policy implementation and policy monitoring.”¹⁸⁰ As outlined in Chart 3: Proposed Oil and Gas Agency Structures, page 36, policy making functions will no longer be handled by NOCAL, but

by the Ministry of Lands Mines and Energy, through the creation of a hydrocarbon division. NOCAL will also be sidelined during contract negotiations. The body that currently negotiates contracts, the Inter-Ministerial Petroleum Technical Committee, will remain largely the same, but will now be chaired by the Ministry of Lands, Mines and Energy. Regulatory oversight authority will also be taken away from NOCAL and given instead to a newly created Energy Regulatory Board. The Policy envisages the Ministry of Finance taking on the current revenue collection functions of NOCAL.

This division of responsibilities outlined in the National Energy Policy is positive and would serve as a good first step to providing Liberia's oil sector with much needed regulatory oversight. However, it remains unclear when the government intends to implement the reforms outlined in the Energy Policy. Furthermore, there may be powerful vested interests that may be unwilling to support the stripping of NOCAL's current functions. If Liberia is to benefit from its possible oil endowments, significant support is needed to create the requisite political will to fundamentally restructure the sector.



Liberia may not want to follow Angola's example in having an all powerful oil company. Little of the wealth from its oil sector reaches the Angolan population which still has a life expectancy of just 48.1 years. © Robin Hammond / Panos

iii) How can Liberia ensure sufficient oversight?

While it is a positive sign that the Energy Policy recognises the need for a separate government agency with authority to regulate the oil sector, it is important also that the sector is subjected to independent monitoring. The government could consider four different mechanisms for doing this.

First, and most important, an effective way of achieving sectoral oversight would be through the creation of an Independent Hydrocarbon Oversight Office institutionally and politically independent of the national oil company and any government regulatory authorities (see Chart 3: Proposed Oil and Gas Agency Structures, page 36.) The office would be mandated to ensure that the institutions and individuals charged with managing the sector act responsibly and it could review and publicly report upon the activities of all government and corporate actors operating in the oil and gas sector. It could monitor the performance of companies to ensure compliance with contractual obligations to workers and communities. The need for this kind of body is illustrated by recent experiences in the forestry sector. Here, there has been insufficient oversight of logging companies' operations and this has resulted in a failure of companies to fulfil obligations in social agreements with communities. In one case, this caused a dispute between a company and community which in June 2010 resulted in a violent clash in the forests of River Cess County.¹⁸¹

Second, and as outlined by the Energy Policy, the government could reconvene the National Energy Committee to develop policies, rules and plans. Under the Policy, the Committee would include various stakeholders, including representatives from the government, civil society and international partners.¹⁸² While this is a step in the right direction, Global Witness and LOGI believe the Liberian Government should increase the remit of the Committee and give it a long term role in overseeing the sector. The Committee could coordinate relevant government agencies, streamline decision and policy making and address problems that may arise once operations begin. This would provide an opportunity for the views of relevant government agencies to be considered during decision making.

Third, in order to promote monitoring by Liberian citizens, the government should create a Public Hydrocarbon Information Office, perhaps contained within the Ministry of Lands, Mines and Energy. Discussed in further detail in section 4(E), this office

would provide information on company and government activities to civil society and communities, allowing those most affected by concessions to hold operators to account.

The office should be mandated to investigate the corporate ownership of companies involved in the oil and gas sector. This is important to guarantee that only reputable and capable companies are able to enter the sector. This will help ensure that concession holders perform well, respect communities' rights and the environment, and generate much needed revenue.

Fourth, the Government of Liberia should carry out independent audits of company operations and government management of oil revenues to increase transparency and accountability. The Hydrocarbon Oversight Office would oversee the implementation of the audits and address any irregularities that are identified.

iv) Building capacity

As discussed in section 3, the Liberian Government currently requires considerable capacity assistance to effectively regulate the oil sector. This need will only increase if the government develops additional agencies to take on some of the functions currently held by NOCAL. Indeed, the Norwegian model (which the National Energy Policy model closely parallels) has been criticised because it can require poor countries to commit considerable resources, which they may not have, to building government institutions.¹⁸³ Instead, it can be better to pursue incremental reforms that emphasise the development of institutional and technical capacity.¹⁸⁴

One way to minimise the burden of multiple oil sector agencies would be to dispense with the national oil company. Whether or not the government chooses to do this, a large investment in government capacity will clearly be necessary. A particularly pressing need, highlighted by the Auditor General, is improvements in government accounting practices.¹⁸⁵ Without this, revenues are likely to be mismanaged and Liberia will not maximise the benefits from its oil and gas resources. In discussions with Global Witness, NOCAL President Christopher Neyor said that support is being provided by the international donor community to increase NOCAL's capacity and accounting systems have been put in place to address the problems highlighted in the General Auditing Commission's report.¹⁸⁶

RECOMMENDATIONS

The Liberian Government:

1. Assessing the necessity of a national oil company:

The government should assess whether it is in Liberia's best interests to maintain a national oil company.

2. Restructuring the government's oil and gas agencies:

If the government does maintain a national oil company, it should ensure that the company does not also regulate the sector. It should adopt an agency responsibility model in line with the 2009 National Energy Policy:

- **A National Oil Corporation:** This agency would have the mandate to enter into production sharing agreements on behalf of the Liberian Government. Criteria for evaluating both the economic performance of the company and the liability of management and board members for acts of misconduct should be clearly established and made publicly available.
- **An Energy Regulatory Board:** This agency would have the mandate to regulate companies operating in the oil and gas sector. The board would be institutionally separate from all other government agencies.
- **A Hydrocarbon Division within the Ministry of Lands Mines and Energy:** This agency would have the mandate to establish sector policy.
- **An Inter-Ministerial Petroleum Technical Committee:** This agency would maintain its current mandate: to negotiate oil and gas contracts. However, the committee would no longer be chaired by Liberia's national oil company.
- **National Energy Committee:** This agency would have the mandate to establish broader oil sector policies, resolve issues arising from oil and gas operations and coordinate between relevant ministries. The committee would be composed of representatives from relevant ministries and government agencies, including Ministry of Planning and Economic Affairs, the Environment Protection

Agency, the Liberia Maritime Authority and the Bureau of Fisheries, civil society organisations and international partners.

Each of these agencies should be established taking into account the following:

- Their missions and objectives must be well-defined and disclosed.
- Division of responsibility between the different agencies should be clearly defined and made public.
- Staff and board positions should be filled through a transparent and competitive application process with qualification criteria made publicly available. Individuals selected should have the necessary technical expertise, and should be free from any potential conflicts of interest, past associations with human rights abuses or involvement in corrupt activities.
- Liability for misconduct or negligence on the part of the management or the Board of Directors should be clearly established.
- Criteria for evaluating economic performance of the national oil company should be established and made publicly available.

3. Independent Hydrocarbon Oversight Office:

- A hydrocarbon oversight office should be established with the responsibility of independently monitoring the oil and gas sector. The office should have the authority to:
 - Conduct investigations into credible allegations of misconduct or corruption.
 - Compel other government agencies to provide all information necessary for the fulfilment of its mandate.
 - Commission reports and investigations in collaboration with the Liberian Extractives Industry Initiative and the General Auditing Commission.
- The office should have the mandate to review and publicly report upon the activities of all actors linked to the oil and gas sector including the government, companies and

civil society. Such activities should include, but not be limited to reviewing:

- Production data, including volume of oil and gas produced and exported.
- Fiscal data, including government revenues and costs claimed by concessionaires.
- The corporate ownership of companies and sub-contractors operating in the country and the legality of the contract allocation process.
- The implementation of contracts including agreements made between the government and concessionaires, and between concessionaires and any partners or sub-contractors.
- The impact of oil and gas industry activities on workers, people living in the vicinity and the surrounding environment.
- The legal structure and funding of the office should provide the independence, resources and technical expertise necessary for the fulfilment of its mandate.
- The criteria for appointing key positions should be publicly available. Criteria for membership should include: the necessary technical expertise, freedom from any potential conflicts of interest and absence

of any history of human rights abuse, or corruption.

- The oversight office should produce an annual public report identifying systemic weaknesses, abnormalities and oversight challenges. These findings, accompanied by recommendations on how to improve oil and gas sector management, would then be presented to the Legislature for follow-up.

The international donor community:

1. Donors should support the Government of Liberia in its implementation of the recommendations above.
2. Capacity building should include support for the review of policies, laws, the Model Contract, the restructuring of government agencies and building the technical capacity within these agencies to negotiate with and regulate international oil and gas companies.
3. Donors' assistance should be attached to benchmarks requiring the successful implementation of sectoral reform.



The allocation of natural resource concessions in Liberia has been facilitated by illegal payments or “lobbying fees” to members of the Legislature. © Mikkel Ostergaard / Panos

D. THE CONTRACT ALLOCATION PROCESS

One of the most effective ways to promote an oil and gas sector that benefits Liberia is to ensure that contracts are awarded through transparent, competitive bidding to companies that have been properly screened. Liberia's current oil laws do not include sufficient vetting requirements, allowing questionable companies to enter the sector. While the country's current legal framework does require that most contracts are subjected to competitive bidding, the government has not consistently followed these laws.

To help ensure that contracts are only awarded to companies that will operate the concession effectively, Liberia should establish a pre-qualification process for vetting companies that wish to apply for contracts. Pre-qualification requires a company to submit information on its operational and financial background. It can also allow a government to examine a company's ultimate or "beneficial" owners, providing insight into any backers hiding behind layers of shell companies. With this information, a government can prevent entry into the sector of companies and individuals with histories of tax evasion, corruption or other criminal behaviour. As outlined by the Chatham House Petroleum Sector principles, "pre-bid qualification is a key process to ensure the most suitable candidates for licences have a chance to bid."¹⁹⁰

Liberian law currently does not require companies vying for oil contracts to undergo a pre-qualification evaluation. Because no such vetting occurs it is easier for companies with questionable backers – e.g. Regal Petroleum and European Hydrocarbons – to gain concessions. The lack of vetting also makes it easier for companies lacking the ability to execute their contracts, such as Peppercoast Petroleum, to enter the sector.

The Liberian authorities must also ensure that all concessions are awarded through a transparent, competitive bidding procedure. Bidding allows a government to obtain the best possible deal in terms of revenue and to choose a company with a good track record of protecting communities and the environment. A transparent process also encourages more reliable firms to enter the sector, as it provides assurance that bids will be evaluated, contractual terms negotiated and concessions awarded fairly. Precept 4 of the Natural Resources Charter supports competitive bidding for natural resource contracts,¹⁹¹

and the Chatham House Petroleum Sector principles hold that: "Transparent processes can increase competition and raise the standards of work programmes and generate more investment... The transparency of the contract between the winning bid and the host country can also build greater public trust."¹⁹²

Both the Petroleum Law and 2010 Concessions Law require competitive bidding.¹⁹³ Unlike its predecessor, the 2005 Concessions Law, the 2010 Concessions Law does allow reconnaissance permits to be awarded without bidding, but only if NOCAL can show that a lack of data about a concession makes bidding impractical.¹⁹⁴ For each concession, public consultations must be held during the development of bid evaluation criteria, concession tenders must be publicly advertised and all participating companies must be allowed to attend the opening of bids.¹⁹⁵

While most of Liberia's oil and gas contracts have been awarded following competitive bidding and in line with the law, some, notably Oranto Petroleum and Repsol Exploracion and Simba Energy appear not to have been. It is crucial that any new oil and gas law reinforces the bidding requirements set out in the 2010 Concession Law and is adhered to by the government.

Once it has chosen its winning bidder, the government should make every effort to keep the terms of its negotiated contract consistent and close to those of a Model Contract. As shown by the award timeline found in Chart 1: Liberia's Current and Prospective Oil and Gas Contracts, page 14, Liberia's current production sharing contracts were negotiated and re-negotiated over a period of several years and (as discussed in further detail below) the contracts' tax obligations vary considerably. It will likely be a considerable handicap to a government with limited regulatory capacity to enforce different tax and environmental regimes for different companies.

Finally, while evidence of "lobbying fees" outlined in section 3 calls into question the ability of the Liberian Legislature to perform a meaningful role in the concession granting process, it is nonetheless essential that lawmakers remain involved. The Legislature is Liberia's best forum for discussing concessions, adding democratic legitimacy, accountability and transparency to a process that has traditionally been dominated by the executive. As such, support is needed to build the capacity of the Legislature to understand the terms of Liberia's oil contracts and the way in which the sector operates.

Production Sharing Contracts v. Concession or Licence Agreements

There are many types of contracts that governments can enter into with companies that wish to exploit oil and gas resources. While their terms may vary and occasionally overlap, two common arrangements that governments and companies enter into are concession or licence agreements (CLA) and production sharing contracts (PSC).¹⁸⁷ The key distinctions between the two are as follows:

	Concession or Licence Agreement	Production Sharing Contract
Who owns or controls the oil and gas resources?	The company has exclusive rights to develop oil and gas resources.	The government retains ownership of the oil and gas, but permits companies to exploit it. Through its national oil company, the government may choose to join the company in the exploitation activities.
Who pays for developing the concession?	The company pays for developing the concession, but can claim its expenses against taxes.	The company and the national oil company, if it is involved. Company expenses can be claimed against the share of oil that the company would otherwise provide to the government or against other taxes. If the national oil company cannot pay its contribution to development costs, its share can also be paid (and claimed against taxes or its share of profit oil) by the company.
How are taxes levied?	Principal tax revenues come from a flat licence fee. Governments can also levy fees based upon company profits.	Principal tax revenues come from oil production: the government receives a share of oil produced.
What is the relationship between the agreement and the law?	The law governs.	Frequently, the agreement is viewed itself as a small law. It is ratified by the legislature, and can supersede any pre-existing laws.

Both contract types have their drawbacks. Because a CLA is often a simple licence with few details regarding environmental or human rights safeguards, it is crucial that the overarching oil and gas and environmental laws contains such safeguards and are modern, detailed and robust. However, unlike some production sharing contracts, a CLA does not prevent the government from changing laws that apply to the licence-holding companies.

A production sharing contract can also have drawbacks, in particular for countries with low state capacity. Because revenue generated under a PSC is based largely upon the quantity and price of oil produced by the concession, government tax revenues can fluctuate wildly. As a PSC contains more detail regarding the operations and safeguards that will guide a concession, it can also be more difficult for a government with low capacity to negotiate. This is particularly problematic in countries where PSCs have the force of law (for example, because they are ratified by the legislature), superseding existing laws and making it more difficult to improve legal standards over time.¹⁸⁸ The Russian Sakhalin II oil and gas project, signed in 1994, may serve as a warning of the damage a poorly negotiated PSC can inflict on a country, as the contract governing the project explicitly undermined Russia's existing environmental laws.¹⁸⁹

As of the date of publication, the Liberian Government has awarded ten contracts it terms production sharing contracts. In a number of ways, these contracts are PSCs in the classic sense: NOCAL owns an equity share in each concession and will receive revenue in the form of oil production sales. However, Liberia's agreements also contain characteristics of CLAs as companies are subjected to flat land rental and royalty fees.

In light of NOCAL's low capacity, it is unclear whether production sharing contracts are the best contracting mechanism for Liberia's oil sector. Alternative arrangements, such as a concession or licence agreement should be considered when the government revises Liberia's Model Contract and Petroleum Law.

RECOMMENDATIONS

The Liberian Government:

1. Pre-qualification:

- A reformed oil and gas law should include a requirement that all companies wishing to bid for an oil licence must undergo a pre-qualification process prior to bidding. If the company proposes a significant change of ownership, proposed new parties must also be pre-qualified prior to government approval of the deal. To be pre-qualified the company must:
- Disclose the names and roles of all directors, managers and ultimate “beneficial” owners.
- Disclose connections between directors, managers and owners and Liberian Government officials.
- Disclose whether any directors, managers or owners have histories of corruption, human rights abuses or environmental destruction.
- Provide information demonstrating technical and financial capacity sufficient to operate.
- Provide information demonstrating that company funds come from legitimate sources.

2. Competitive bidding and transparency:

- The Liberian Government should enforce existing laws that require all oil licences to be subject to a transparent and competitive bidding process.
- The transparency and competition procedures outlined in the 2010 Concessions Law should be followed for every licence.
- Bidding should take place against a timetable that is disclosed to the public and bidding outside such a timetable should not be allowed.
- The Independent Hydrocarbon Oversight Office and the Public Procurement and Concessions Commission must approve all proposals for sole sourced concessions.

3. **Clear and consistent contracts:** Terms of signed contracts should be simple and clear and should parallel those of a Model Contract.

4. **Legislative contract ratification:** All oil and gas contracts should be ratified by the Liberian Legislature prior to coming into force.

International Donors:

1. Provide technical assistance during the drafting of a new oil and gas law to ensure inclusion of a pre-qualification process.
2. Provide support to the Liberian Government during contract negotiations.
3. Provide support to the Liberian Legislature to improve the ability of legislators to evaluate oil and gas contracts on their merits.
4. Provide ongoing technical support to regulatory bodies to assist in the monitoring of operations.



Whoever wins the next election needs to make sure that Liberia's laws are applied in full whenever natural resource concessions are awarded. © Joe Corrigan / Getty Images

E. TAX REGIME, FINANCIAL MANAGEMENT AND TRANSPARENCY

While an oil find would generate much needed revenue for post-conflict reconstruction, managing Liberia's oil revenues could also pose considerable challenges. Liberia's new tax code has not been published, and as such cannot be commented on. However, it is clear that current contractual tax obligations are too complex and do not sufficiently protect the government from the accounting tricks that companies sometimes employ.

Because Liberia has a relatively small economy and the government has low fiscal management capacity, the revenue that would be generated by even a moderate oil find could have a destabilising effect upon the country. The government must establish institutions to manage potential revenue in a way that protects against price shocks, allows for long-term development and contains safeguards to prevent corruption.

i) An unclear and unnecessarily complicated tax structure

In 2010, the government introduced the Consolidated Tax Amendments, which reportedly contain provisions regulating the oil and gas sector. At the time of this report's publication, this law remains "unpublished"¹⁹⁶ making it impossible to determine all the details of Liberia's oil tax structure. This lack of clarity will pose a major problem to government officials, companies and members of civil society as they attempt to determine companies' complete tax obligations. The Consolidated Tax Amendments should be published immediately.

In addition, the tax obligations in the different production sharing contracts vary considerably, which will make them difficult to regulate. The production sharing agreements set out a range of tax obligations, including royalty taxes on profits, income taxes and concession area rental taxes. One of the most important is the percentage of oil and gas that the company must provide to the government – the production it must share. These percentages differ from contract to contract, as shown in Chart 4: Liberia's Complicated Production Sharing Percentages.



Liberian civil society has played a key role in the Extractive Industries Transparency Initiative and must be fully included in the oil sector reform process too. © Darek Urbaniak / Friends of the Earth Europe

Chart 4: Liberia's Complicated Production Sharing Percentages

Under Liberia's current contracts, if a company begins pumping oil or gas, it has to share a percentage of what it has produced with the government. The amount of oil that the government receives is determined as follows:

1. The company calculates how much it has spent producing the oil and deducts these costs, called "cost oil," from the value of the oil extracted.
2. The remaining oil, called "profit oil," is divided between the company and the government.
3. The percentage of the profit oil that the government receives varies according to the level of oil production. This sliding scale of percentages is not standardised however, and the companies have negotiated different percentage shares at different production levels. This makes for a complicated tax structure.

Concession	Company	Percentage of Profit Oil Due Government at Different Oil Production Levels (Barrels/Day) ^A												
		0-30,000	30,001-75,000	75,001-200,000	200,001-300,000	>300,000	0-50,000	50,001-75,000	75,001-100,000	>100,000	0-100,000	100,001-150,000	>150,000	
8, 9	Regal/European Hydrocarbons	-	-	-	-	-	-	-	-	-	-	40	50	60
10	Anadarko	-	-	-	-	-	-	-	-	-	-	40	50	60
11, 12, ^B	Chevron/Oranto	-	-	-	-	-	-	-	-	-	-	-	-	-
13	Peppercoast	-	-	-	-	-	45	50	55	60	-	-	-	-
14	Chevron/Oranto	-	-	-	-	-	-	-	-	-	-	35	47	55
15	Repsol/Tullow/Anadarko	-	-	-	-	-	-	-	-	-	-	40	50	60
16	Repsol/Tullow/Anadarko	-	-	-	-	-	-	-	-	-	-	40	50	60
17	Repsol/Tullow/Anadarko	30	35	40	50	55	-	-	-	-	-	-	-	-

A. Data drawn from respective contracts in force at the time of report's publication.

B. Final production sharing percentages unclear as contracts available to report authors omit potentially relevant annexes.

It is difficult to determine why the Liberian Government has negotiated such complicated and potentially arbitrary production sharing rates with different companies. Tax rate variation is not uncommon in the oil and gas sector: as information on potential reserves changes so will a company's profit calculations and the rate of tax it is prepared to pay. However, data on Liberia's oil and gas reserves has not changed greatly over the past seven years. Whatever the reason may be for these different rates, they leave the Liberian

Government – which has little experience collecting oil and gas revenue – facing an unnecessarily complex set of accounting procedures. Serious consideration should be given to harmonising the production sharing terms of current contracts, and ensuring that the terms of future contracts do not vary unnecessarily. Capacity building within the Ministry of Finance is also needed to manage companies' complicated tax obligations.

SIGNATURE BONUSES

Signature bonuses are upfront payments made by companies to governments in addition to tax obligations. Such payments can be beneficial to a government in immediate need of revenue. Moreover, when long-term tax revenue is uncertain – e.g. for oil concessions in a frontier territory – signature bonuses can offer a more secure method of receiving revenues.

However, a government should also use caution when including signature bonuses in its tax regime. The more a government requires at the time of a contract's ratification the less it can negotiate for over the life of a contract. This can mean that, over time, a government receives less revenue for its natural resource as inflation reduces the value of the early upfront

payments. In addition, political pressures often encourage governments to spend bonuses quickly. Signature bonuses can also encourage corruption as the government may not have the financial mechanisms or budgetary planning established to manage a sudden rush of funds.

Liberia has a number of mechanisms that can be used to combat the risks of corruption associated with signature bonuses, principal among them are requirements within the Liberian Extractive Industry Transparency Initiative law that contracts and revenue payments are publicly available. The Liberian Government should nonetheless carefully consider the potential pitfalls of negotiating contracts in which such bonuses play a large role.

ii) Protections against transfer pricing

Another weakness in Liberia's current oil tax regime is its lack of protections against the accounting tricks that companies can employ to minimise their taxes. A large percentage of the taxes the Liberian Government should receive are based upon the profits companies make. That means that the lower the profits a company reports, the less tax it must pay. Unfortunately, elsewhere in the world some oil companies have found a way to make it appear that they are making less profit than they actually are. Referred to as "transfer pricing," this involves companies deflating the price of produced oil – and thus their declared profits – by selling that oil to entities in which they have a financial interest. Similarly, some companies have inflated the expenses they can claim against taxes by purchasing goods or services from entities in which they have a financial interest.¹⁹⁷ The net result is that the company can claim it is making less profit and so pays less tax.

In order to protect itself from transfer pricing, a government can introduce two safeguards. It can require that all of a company's transactions are conducted at "arm's length," whereby a fair market price is paid for all goods and services and a fair market price is received for all oil sold. Enforcing such safeguards in practice can be difficult because the transactions concerned are often complex and the company holds all the relevant information. To correct this information imbalance, a government can place the "burden of proof" on the company, by requiring it to

demonstrate that its transactions were made at fair market prices.

Liberia's Petroleum Law¹⁹⁸ and Model Contract¹⁹⁹ do contain "arm's length" requirements but no burden of proof requirement, leaving the government vulnerable to tax manipulation.

iii) Performance requirements

The Liberian Government should also subject companies operating in the oil sector to strict performance requirements in order to improve financial management. This can discourage the acquisition of concessions by companies that do not intend to fulfil their contracts' terms but are simply looking to hold an asset until its value appreciates and it can be sold at a profit. Liberia's current contracts do contain performance requirements. However, in some cases these have been too lenient and have allowed companies without proven technical or financial capacity, such as – Peppercoast Petroleum – to hold concessions for years without substantially developing them.

iv) Hydrocarbon savings fund and hydrocarbon stabilisation account

The Natural Resources Charter Precept 8 states:

"Effective utilisation of resource revenues requires that domestic expenditure and investment be built up gradually and be smoothed to take account of revenue volatility."²⁰⁰

Because no oil has yet been discovered in Liberia, it is impossible to tell how much revenue, if any, the sector will produce. However, given the small size of the country's economy, it must be assumed that even a modest find would have a profound impact upon government coffers. Oil revenues, if they materialise, could serve as a lifeline to a country still struggling to rebuild after years of war. Managed correctly, oil can result in development for this generation and the next.

However, because government revenues are so low and because there is considerable political pressure to spend funds immediately, Liberia is also vulnerable to the destabilising impact oil money can have on an economy; a phenomenon known as Dutch disease. Dutch disease occurs when a sudden rush of oil revenue pushes up inflation, weakening exports and making other domestic industries less competitive. Moreover, because oil is a finite resource and taxes generated by the sector are not sustainable, failure to prepare for the end of oil revenues can result in budgetary collapse. And because oil prices are volatile, economies that become dependent upon oil revenue can be thrown into disarray as global prices fluctuate. (See Chart 5: Oil Price Fluctuations and Hydrocarbon Stabilisation Accounts).

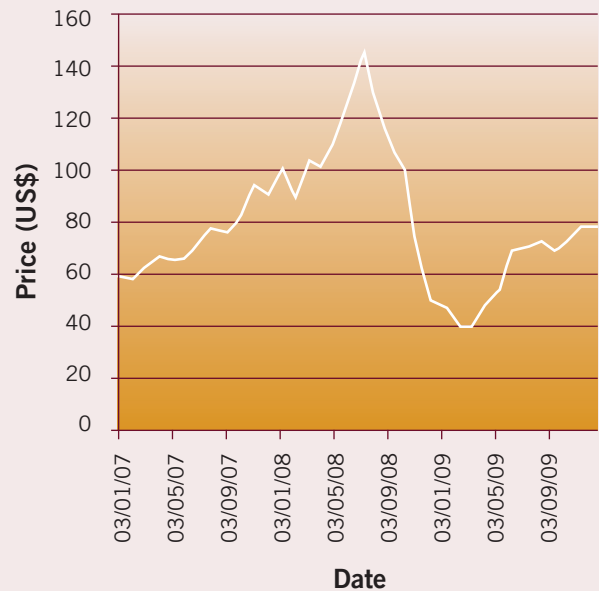
Other countries have adopted two financial mechanisms to manage these risks. To curb inflation and make expenditures more sustainable, countries such as Norway, Sao Tome and Timor-Leste have developed hydrocarbon savings funds. Countries using such funds allocate a percentage of annual oil revenues to the government budget, but retain the remainder for use after the oil wells have run dry. According to one senior government official, the Liberian Government is considering creating such a fund, although details regarding its design and the timeline for its creation remain unclear.²⁰¹ A similar mechanism that can be used to insulate a country from fluctuations in the global price of oil is the hydrocarbon stabilisation account. These accounts act as buffers to shocks in the price of oil: when the price rises, excess revenue is deposited in the account, when the price dips, the government can draw upon the account to meet budgetary needs.

v) Revenue for development and benefit sharing

The Liberian Government has made considerable efforts to structure its budget around objectives

Chart 5: Oil Price Fluctuations and Hydrocarbon Stabilisation Accounts

Crude oil price: January 2007 - December 2009



Hydrocarbon stabilisation accounts can prove an effective mechanism for insulating oil-producing economies from fluctuations in the international price of oil.

Source: Energy Information Administration, "Daily Cushing, OK Crude Oil Future Contract 1, (dollars per barrel)," available at http://www.eia.gov/dnav/pet/hist_xls/RCLC1d.xls. Last visited 7 September 2011.

outlined in its 2008 Poverty Reduction Strategy (PRS). The government says that it is working on a successor to the PRS, entitled the "Liberia Rising 2030 Strategy", although the contents of this plan are not yet published. The government has also tried to share the benefits accrued by natural resource concessions with some of the people affected. In the commercial forestry sector a National Benefit Sharing Trust has been established to distribute logging revenues to communities affected by company operations. A similar mechanism has been established in the mining sector – the Dedicated Funds Committee – although the distribution of the revenues from mining operations has been beset by accusations of abuse.²⁰² Use of revenue from oil and gas which is included in the annual budget should be focused on the country's development plan outlined in its PRS or successor and benefit distribution.

vi) Transparency of finances and operations

Transparency and accountability are the best means of preventing the misuse of Liberia's oil revenues and ensuring that companies are operating within the law. As outlined in the Chatham House petroleum sector principles: "transparency not only removes the cover for possible corruption, but enables good decisions, allows rapid intervention to correct problems in the system, and builds trust."²⁰³

In adopting the Liberian Extractive Industry Transparency Initiative (LEITI) Law the Liberian Government has made considerable efforts to promote transparency of official payments by companies to the government.²⁰⁴ Liberian law also requires a degree of transparency during the contracting process and requires that all finalised contracts are made public.²⁰⁵

However, as demonstrated by the problems outlined in section 3, existing transparency safeguards have not been enough to prevent companies and government officials from paying legislators to have contracts ratified. In addition, while the LEITI Law has shone light on official payments made by companies, the fact that the contracts of both Simba and Chevron are not publicly available shows that the government is not consistent in fulfilling its transparency obligations. Moreover, while the 2009 National Energy Policy does promote transparency of company operations,²⁰⁶ the current Petroleum Law, Model Contract and signed production sharing contracts all actively discourage the publication of information on companies' operations.²⁰⁷

As described in the section on Structure of Government Oil and Gas Agencies (4C), an effective way to increase corporate accountability is through the development of independent monitoring mechanisms such as a Public Hydrocarbon Information Office, which could be housed in the Ministry of Lands, Mines and Energy and would complement but go beyond the current role served by the LEITI.²⁰⁸ With the creation of such an office, affected communities, employees and the Liberian public would be able to access information on the process by which contracts have been allocated and reports on how companies are operating, allowing them to verify that the country's laws are being followed. Aware that the public has this information, officials and company representatives will be discouraged from breaking the law.

RECOMMENDATIONS

The Liberian Government:

1. **Publication of the Consolidated Tax Amendments:** The Liberian Government should immediately publish its reformed tax code.
2. **Tax regime:**
 - The tax regime that governs oil and gas companies should include the following principles:
 - Forms of taxation and, to the greatest extent possible, rates of taxation should be consistently applied to all companies, including any national oil company.
 - The government should retain the right to investigate and challenge all transactions between a company and third parties, in order to guard against transfer pricing. If the government challenges a transaction, the burden of proof for proving its validity should lie with the company.
 - To reduce bargaining inequality, there should be a requirement that any company that wishes to undertake dispute proceedings against the government must pay all outstanding taxes first.
3. **Performance requirements:** The reformed law and Model Contract should include performance requirements that ensure the timely development of exploration activities and set strict penalties for the failure of companies to undertake those activities.
4. **Hydrocarbon savings fund:**
 - Liberia should establish a hydrocarbon savings fund along the following principles:
 - The fund should be the sole destination for all oil and gas revenues to improve transparency and ease of management. Withdrawals from the fund should be made only to the government budget.
 - The amount that can be drawn from the fund on an annual basis as a contribution to the government budget should be prescribed in law.
 - The roles of officials with authority over the fund should be prescribed in law. A limited

number of officials should have access to the fund, and a series of checks and balances distributing power over the fund to different branches of the government should limit the power of any given official.

- All payments made to the fund should be reported to the Liberian Extractive Industries Transparency Initiative. An annual summary of all transactions and the performance of the fund should be made available to the Legislature and the public.
- The fund should be audited every year by the Auditor General and an independent international auditing firm.
- The Independent Hydrocarbon Oversight Office should have the power to investigate the fund's operations.

5. Hydrocarbon stabilisation account:

- Liberia should establish a hydrocarbon stabilisation account along the following principles:
- The account should incorporate transparency and independent monitoring safeguards similar to those developed for the hydrocarbon fund.
- The stabilisation account and savings fund should be kept separate, preserving their respective purposes.

6. Revenues for development:

- Decisions regarding how to spend oil funds should be made after public consultations, in accordance with the development priorities established in Liberia's Poverty Reduction Strategy or its successor.
- The Liberian Government should allocate funds for a Petroleum Action Fund, an Oil Spill Emergency Fund for affected communities and for capacity building of the government and potential employees.

7. Zero tolerance of corruption: Credible allegations of corruption should automatically lead to a criminal investigation. Proven corrupt acts should bring serious penalties, including freezing of funds, asset seizure, the cancellation of contracts and prison sentences.

8. The Liberian Extractive Industry Transparency Initiative: A reformed Petroleum Law,

Model Contract and all subsequent contracts should reinforce the implementation of the Liberian Extractive Industries Transparency Initiative, including the public reporting of all revenues paid to the state.

9. Public Hydrocarbon Information Office:

- A public repository should be set up to house all important documents relating to the oil and gas sector, including:
- Government documents, including laws, policies, studies, audits and investigative reports.
- Contracting documents, including concession planning data, pre-qualification findings, bid documents, due diligence findings and bid evaluation criteria.
- Company documents, including information on beneficial ownership, accounts and contracts.
- Operations documents, including environmental and social impact assessments, operational reports, production and sales figures, taxes paid and other financial transactions.
- Members of the public should be able to access this information online or by visiting the office. Because of low literacy rates in Liberia and the centralisation of government functions in Monrovia, the government should also pro-actively disseminate the data, using radio, training courses and community meetings. Information should be presented in a form that people can understand.

International Donors:

1. Provide technical assistance during the negotiation of contracts to promote consistent tax provisions.
2. Provide technical assistance to facilitate the creation of a hydrocarbon savings fund and hydrocarbon stabilisation account.
3. Provide support to the creation of a Public Hydrocarbon Information Office.
4. Support the activities of the Liberian Extractive Industries Transparency Initiative.

F. RIGHTS OF COMMUNITIES AND EMPLOYEES

The current Petroleum Law and Model Contract include very few safeguards to guarantee the rights of communities affected by, and employees working in, the oil and gas sector. Liberia is party to international conventions that create obligations to protect worker and community rights.²⁰⁹ However, there are insufficient protections guaranteed in Liberia's outdated labour laws.

The discussion below details a number of specific safeguards that a reformed law and Model Contract should adopt. Ultimately, however, Liberia's oil reforms should be founded first upon what some have termed the "precautionary principle." In short, if an activity may have a negative impact upon a community living in a concession area or a company's employee it is better to avoid that activity rather than compensate for it after the fact.

i) Lack of protections for communities affected by concessions

Gaps in the Petroleum Law and Model Contract raise a number of human rights concerns regarding communities affected by concessions. These include a lack of sufficient consultation, a lack of protection for land rights, insufficient controls on the powers of security forces, the potential breaches of human rights as a result of environmental damage and the inability of communities to directly defend their rights before companies. Precept 5 of the Natural Resources Charter states that:

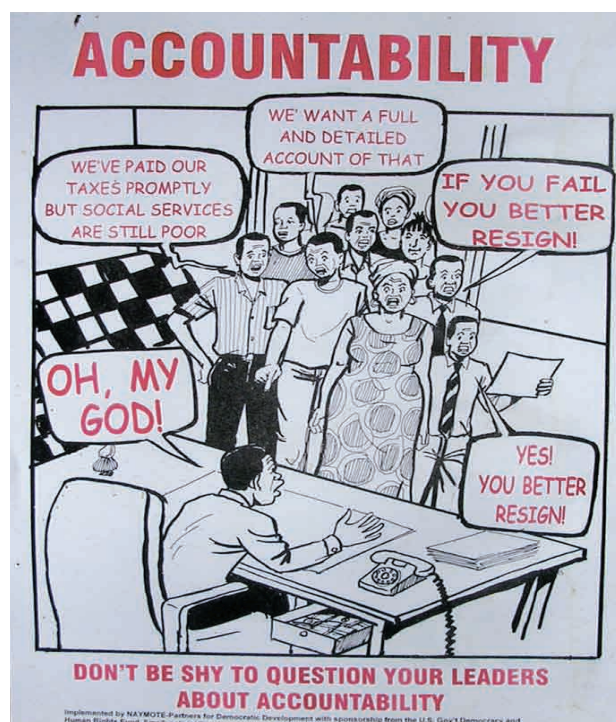
*"Resource projects can have significant positive or negative local economic, environmental and social effects which should be identified, explored, accounted, mitigated or compensated for at all stages of the project cycle."*²¹⁰

a. Consultation

Information regarding how and why the Liberian Government makes decisions regarding the use of the country's natural resources does not often leave Monrovia. The government has made some efforts to narrow the urban-rural information divide, for example via the Liberian Extractive Industries Transparency Initiative and through consultations with communities living in logging concession areas. However, research by LOGI and Global Witness suggests that many people living in large-scale agriculture, mining and even forestry concessions do not feel adequately consulted on how concessions will affect their

livelihoods. This failure to consult perpetuates Liberia's long history of economic and social disenfranchisement.

The Petroleum Law and Model Contract include no requirements that those who will be affected by a concession are consulted. In order to fairly address the concerns of those who depend upon Liberia's coastline or – in the case of onshore contracts – those who live in the concession area, consultations must be carried out at an early stage and not when the decisions or contracts are a *fait accompli*.



It is hard for communities to hold companies and the government to account because information on decisions taken and deals struck often does not leave Liberia's capital Monrovia. © Global Witness

Free, prior and informed consultation should be built into all key stages of the oil sector development. In addition to the consultation required for the reform process, consultation should happen when drawing up concession areas, negotiating contracts with oil and gas companies and during the Environmental and Social Impact Assessment (ESIA.) Participants should include representatives from across the affected community, ensuring that those being consulted truly represent the population. High levels of poverty, low levels of literacy and lack of experience negotiating with concessionaires can make communities vulnerable to manipulation. Companies or officials engaged in consultations should not dispense gifts or other inducements and must ensure that information about the activities proposed is communicated in a way that is readily understood.

b. Land rights

In 2008, Liberia's Truth and Reconciliation Commission reported that land tenure was a major root cause of the Liberian conflict.²¹¹ The potential for conflict over land remains, in part, because land tenure in Liberia is unclear and there is a conflict between customary law and statutory law.²¹² This lack of clarity creates the possibility of friction, not only between communities and the government, but also between communities and concessionaires, which can result in increased costs and delays for the company.²¹³ The Liberian Government is taking steps to address the ambiguity over land tenure through the establishment of the Lands Commission, although little progress has been made to date.

Chapter IX of the current Petroleum Law grants the government and concessionaire broad powers to utilise public or private land for the purpose of oil and gas operations but fails to protect sufficiently the rights of land owners. This is particularly problematic because, while the majority of Liberia's current oil concessions are located offshore, the government may soon begin issuing onshore oil concessions such as the production sharing agreement it is currently negotiating with Simba Energy.



If more onshore oil concessions are awarded this could affect communities' land rights. © Mikkel Ostergaard / Panos

In order to protect the land rights of those who may be affected by oil concessions, the Liberian Government should incorporate into its reformed law three principles. First, and as discussed in the section above on planning (4B), the Liberian Government must conduct a comprehensive land use survey to ensure that it knows the economic, environmental and social value attached to different land uses and can be certain that oil development is the best use of an individual's or community's land. As will be further discussed in the section on the environment (4G) below, each concessionaire should also conduct an ESIA in order to help the company, the government and the affected population become aware of and mitigate any negative impacts of the activities proposed.

Second, the government should always consider the relocation of communities as a last resort and displacement should only occur if people affected have provided their free, prior and informed consent.²¹⁴ The World Bank has recognised the potential impact of relocation, stating that involuntary resettlement can cause impoverishment unless appropriate measures are carefully planned and carried out.²¹⁵ Moreover, as a party signatory to the International Covenant on Economic, Cultural and Social Rights (ICESCR) the government is required to receive free, prior and informed consent if it wishes that people are moved off of their land.²¹⁶

Businesses also have a vested interest in ensuring that communities provide their consent, as this can greatly reduce the costs of a project. Community opposition to a project can lead to increased costs from delays in construction and operation, reduced demand for project outputs and increased costs of mitigating environmental and social impacts.²¹⁷

Third, if people are moved from their land, it is necessary that they receive full compensation for the disruption to their livelihoods. Many Liberians depend upon their land for subsistence farming, and if they are displaced it is essential that an alternative livelihood is provided. Failure to do so risks breach of Liberia's commitments under the ICESCR.²¹⁸ In its Policy on Involuntary Resettlement, the World Bank states that "displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher."²¹⁹

c. Security forces

Another area that raises human rights concerns and has not been sufficiently considered in the current Petroleum Law and Model Contract is the powers and operations of private security forces of oil and gas companies. The use of private security companies is now standard for many companies operating in the extractive sector globally. However, their role in resource related operations – in particular in conflict-afflicted areas – has frequently exacerbated tensions between local populations and private companies.²²⁰ This has to be considered as a serious risk in Liberia, not least because of the recent history of crimes committed by private security forces. During Liberia's last war, for example, Global Witness reported evidence of human rights abuses committed by the militia of the Oriental Timber Company, which fought on behalf of former President Charles Taylor.²²¹

Private security forces should strictly abide by Liberian laws as well as the Voluntary Principles on Security and Human Rights.²²² The Voluntary Principles set out the applicable international standards on the conduct of private security forces, the use of force and standards of behaviour for companies in the extractive sector. Many oil and gas companies such as Chevron support the principles. A set of recom-

mendations on ways of strengthening oversight over and accountability of private security forces in Liberia is set out below.

d. Potential breaches of human rights as a result of environmental damage

Environmental damage as a result of oil and gas operations can also lead to human rights violations. As discussed in further detail below, Liberia currently has insufficient protections to prevent environmental damage. Farming and fishing are both important sources of livelihood in Liberia. Oil pollution either onshore or offshore could severely disrupt or destroy these activities, breaching an individual's right to an adequate standard of living and right to gain a living through work, as guaranteed under the International Covenant on Economic, Cultural and Social Rights (ICESCR).²²³ Article 12.1 of the ICESCR guarantees the right to physical and mental health, which has been defined by the Committee on Economic, Social and Cultural Rights to include factors that promote a healthy environment.²²⁴ ICESCR Article 12.2 also holds that, to realise this right, states should improve all aspects of environmental and industrial hygiene.²²⁵ Liberia will need to make significant amendments to its oil and Environment Laws and Model Contract if it is to fulfil these obligations.



Charles Taylor's militia committed appalling human rights violations during Liberia's civil wars. His fighters were supported by private security forces recruited by logging companies. © Teun Voeten / Panos

e. Third party rights

Finally, even if communities affected by Liberia's oil sector are able to gain sufficient protections for their land and livelihoods, they must also have the right to protest directly to any company that may infringe upon their rights. Liberia's Model Contract and Petroleum Law give no legal power to a community if a concessionaire breaches safeguards contained in the law or contract, meaning that the community has to rely upon the government to enforce these provisions.²²⁶ To ensure that affected individuals or communities can require companies to fulfil their contractual obligations they should be defined as third parties to the contract and given standing to defend any rights set out within it.

ii) Protection for employees

The Model Contract and Petroleum Law also fail to ensure that Liberian labour capacity is developed and do not sufficiently protect the rights of employees. This problem is compounded by the fact that Liberia's Labor Law is severely outdated.

a. Capacity building

Liberia's formal unemployment rate currently stands at between 80 and 85%²²⁷ and few within Liberia's workforce are likely to have the training necessary for the skilled roles required for oil exploitation.²²⁸ Liberia's current laws do attempt to boost both unskilled and skilled employment by requiring companies to give preference to qualified Liberian workers and creating an action fund to promote local research and training.²²⁹ However, in order to better promote local employment, these provisions need to be strengthened. Contradictions between the Petroleum Law and Liberia's Labor Law regarding whether it is the company or the government that determines if qualified Liberians are suitable for available positions should be settled, perhaps through the creation of a multi-stakeholder commission chaired by the Ministry of Labor.²³⁰ And to complement Liberia's current action fund, the government can require concessionaires to train Liberian employees, transferring skills in a manner similar to that envisaged in Nigeria's 2010 Oil and Gas Industry Content Development Act.²³¹

b. Potential breaches of labour rights

Under the Model Contract, standards for working hours, salaries and any other matters relating to

employment conditions are set by Liberia's Labor Law, which does not contain modern labour safeguards.²³² Health and safety protections in both texts are limited. Section 2.5.10 of the Petroleum Law, meanwhile, requires companies only to apply standards common within the international oil and gas industry.²³³ The language of this provision is unclear and gives the contractors too much discretion to choose which standard they want to apply. Under tight budgetary conditions, contractors may be motivated to cut corners to save on costs. The stabilisation provisions in the Model Contract (discussed below) provide a further incentive to maintain low standards.



Oil spills can lead to severe environmental damage and the destruction of communities' livelihoods. © Roadrunnerdeluxe

More appropriate safeguards for Liberia's workers can be found in the international conventions to which the country is party. The ICESCR requires a safe and healthy working environment for all employees²³⁴ and the International Labour Organization's Minimum Wage Convention of 1970 requires states to establish a minimum wage that takes into account the needs of workers and their families and the cost of living.²³⁵ It is from these standards that Liberia should develop its labour protections in a reformed oil law and Model Contract. These protections should grant company employees the right to directly hold companies to account for breaches to their labour rights.

RECOMMENDATIONS

The Liberian Government:

1. Community Consultations: Communities potentially affected by a concession should be consulted at all stages of development, including planning, contract negotiation and during operations.

2. Land Rights:

- Land tenure should be clarified, codified and published and a land cadastre system established before further onshore blocks are allocated.
- The rights of individuals and communities that own land, either under customary or statutory tenure law, should be respected when allocating concessions.
- Individuals or communities should not be displaced from their land. Environmental and Social Impact Assessments should emphasise the avoidance of displacement. If such displacement is unavoidable, it must be conducted only in accordance with the following principles:
- Free, prior and informed consent should be required before any resettlement of communities.
- An individual or community whose land is taken must be compensated for that land and adequate alternative land provided.
- Compensation must be no lower than the land's fair market value and should also not be limited by a statutory or contractual cap.
- Displacement should be conducted in a manner that meets standards established by the World Bank Policy on Involuntary Resettlement.
- Sacred land should be identified, protected and omitted from onshore blocks.

3. Private Security Forces:

- The responsibilities and powers of private security forces should be clearly defined in law. Principles that should be incorporated include the following:
- Amendments to the Model Contract should clearly define and limit the powers of the private security forces.
- Forces must not be armed and may not use excessive force.
- Forces' jurisdiction should be limited to the concession area.

- Recruitment of private security personnel should follow procedures developed by the Armed Forces of Liberia to prevent employment of individuals involved in Liberia's civil wars who have a record of human rights abuse.
- Forces must follow procedures consistent with the Liberian Guidelines to Organise and Operate Private Security Agencies, the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Firearms.
- Any complaints about security personnel should be independently investigated and, if necessary, lead to prosecution.²³⁶

4. Labour Standards:

- Liberia should incorporate international labour and human rights treaties into domestic law and ensure that they are implemented.
- Companies must provide all employees with a living wage and follow modern health and safety standards in accordance with Liberia's labour laws and standards established through international labour treaties.
- In order to build local capacity, companies should be required to provide training and scholarships to Liberians.

5. Third Party Rights: A reformed Petroleum Law should create a right for any individual who is injured by a company's operation or a failure of government enforcement to seek a legal remedy through Liberia's courts.

International donor community:

1. Training and financial capacity should be provided to the government and communities to facilitate consultations during the preparation and operations of companies affecting the land use rights of communities.
2. Technical support and advice should be provided to the Liberian Government so that it can develop modern labour standards within a new oil and gas law and Model Contract.

G. ENVIRONMENT

Both the Chatham House principles and Natural Resources Charter stress the need to ensure that environmental damage is mitigated and operations do not result in long term environmental damage.^c The Model Contract and Petroleum Law both contain insufficient protections for the environment during oil and gas development. While Liberia has a modern Environmental Law that sets out requirements for Environmental Impact Assessments (EIA), it does not contain provisions specific to the oil and gas sector. Liberia's National Energy Policy says that the government is committed to the maximum environmental protection throughout all aspects of oil and gas exploration and development.²³⁷ It states, moreover, that the government will make changes to the Environment Law to fulfil this policy. Aside from changes to the law, an additional consideration is capacity: the Environment Protection Agency (EPA) is institutionally very weak and is unable to respond to the specific environmental threats associated with oil and gas development.

i) Planning

As discussed in the main section on planning (4B) above, Global Witness and LOGI are recommending that the Liberian Government should assess the possible social, environmental and economic impacts of developing its different natural resources, including oil, prior to issuing additional concessions. In addition to this national level planning, it is crucial that the government also requires companies to conduct an Environmental and Social Impact Assessment (ESIA) for each concession they are allocated and at each stage of the concession's development.

The current Petroleum Law demands that companies carry out an Environmental Impact Study but gives no details as to what that study would contain.²³⁸ Liberia's Environment Law does detail how concessionaires should undertake an EIA, however, including requirements for the development of

Environmental Mitigation Plans and Implementation Strategies.²³⁹ Liberia's oil concessionaires are required to fulfil these planning requirements in order to comply with section 6.5 of the Model Contract.

Global Witness and the LOGI coalition are advocating that the Liberian Government consider changing the assessment requirement, as currently defined, to an ESIA. As discussed above, environmental damage can lead to significant social impacts and the erosion of communities' and individuals' rights. Conducting an ESIA rather than an EIA would identify the potential social impacts of oil and gas development and help prevent any potential conflicts. To ensure that companies mitigate the environmental and social issues identified in the ESIA they should also be required to prepare a social and environmental mitigation plan for each stage of concession development.

In addition, to best protect against the specific environmental threats posed by oil development, the government should also require plans to be drawn up for managing marine emergencies. As demonstrated during the 2010 oil spill in the Gulf of Mexico, deep water offshore drilling can have disastrous impacts on the marine and coastal environment.²⁴⁰ According to an oil expert interviewed by Global Witness, drilling off the coast of Liberia poses particular environmental risks because the region is new to oil companies and they are operating in comparatively deep water.²⁴¹ In an effort to anticipate these risks, it is important that companies conduct a comprehensive oil spill risk assessment, identifying the possible causes, locations, sizes and types of hazardous substances that may be spilled.²⁴² This assessment should be independently verified. With this data collected, a marine emergency contingency plan and an oil spill contingency plan should be developed by the company with oversight provided by the government. The government has an obligation to make sure that this happens in order to meet its commitments under the Protocol Concerning Co-operation in Combating Pollution in Cases of Emergency in the Western and Central African Region.²⁴³ In order to

C. Natural Resources Charter Precept 5 "Resource projects can have significant positive or negative local economic, environmental and social effects which should be identified, explored, accounted, mitigated or compensated for at all stages of the project cycle. The decision to extract should be considered carefully." Natural Resource Charter, Precept 5, available at <http://www.naturalresourcecharter.org>. Last visited 30 June 2011. Chatham House principle: "Effective processes are in place to ensure that the development of hydrocarbon infrastructure and its operations do not result in long-term damage to local and regional environmental assets." Chatham House, "Report on good governance of the national petroleum sector", April 2007, page 29.

ensure that Liberia is able to cope financially with any possible spill, the government should set up an oil spill emergency fund. This revenue could both come from companies (included as a requirement in their contracts) or from revenue the country receives from the industry.

ii) Insufficient environmental protections

There are currently insufficient safeguards within Liberian law to adequately address the possible environmental challenges associated with oil and gas exploitation. Liberia's Petroleum Law and Model Contract contain few environmental provisions. Instead, they defer to the country's Environment Law and "good international petroleum industry practice."²⁴⁴ However, this deferral leaves Liberia with few actual protections, as the Environment Law does not specifically address the oil and gas sector and it is unclear what good international industrial practice entails. This unclear language gives companies the opportunity to apply standards that are insufficient to ensure the protection of the environment.

Some of the most important environmental risks that a reformed legal framework needs to address are those relating to oil platforms. There is considerable disagreement in the scientific community about whether it is more harmful to the environment to decommission an oil platform or to leave some parts of it intact. It is unclear at this stage what view the Liberian Government will take on this question. Section 17.9 of the Model Contract does make a reference to decommissioning expenses suggesting that redundant oil platforms should be removed, however there are no further details here or in the Petroleum Law. Whatever decision the government takes, it will need to develop detailed requirements on the management and closure of oil platforms and companies' responsibilities for remedying any damage caused, as well as a means of ensuring that the companies have sufficient revenue to fulfil these obligations.

iii) The possible impact of oil and gas development on Liberia's people

The coastline of Liberia is 560 kilometres long and is home to 58% of the country's population.²⁴⁵ It has numerous resources that are both biologically and socio-economically significant.²⁴⁶ Liberia's marine and coastal environment is exceptionally biologically diverse, with high populations of species that are endangered elsewhere, including four of the world's seven remaining species of sea turtle.²⁴⁷

Oil spills could potentially affect the livelihood of Liberians who fish and – if a spill occurred onshore – those involved in agriculture too. In 2003, fisheries accounted for 3.2% of national GDP and provided more than 10,000 jobs and this number is likely to grow as Liberia develops. Fish are an important source of food for thousands of Liberians.²⁴⁸ The Liberian Government needs to put in place environmental safeguards to ensure that its fishing industry is protected from any risks associated with oil and gas exploitation. This is particularly important because companies operating in the oil and gas industry do not always apply the same engineering and equipment standards in Africa as in industrialised countries.²⁴⁹ If fishing and agricultural activities were significantly disrupted it could lead to an erosion in the right of Liberians to health, an adequate standard of living and the right to gain a living through work. These issues are discussed in the previous section (4F) on the rights of communities and employees. To protect fishing, the Petroleum Law should be amended to include a specific clause protecting fishing rights.

iv) Lack of capacity to oversee the oil and gas industry

Finally, neither the Environment Protection Agency (EPA) nor the National Oil Company of Liberia (NOCAL) have the capacity necessary to monitor and control company operations.²⁵⁰ While the UN Environment Programme has provided some training and support to the EPA,²⁵¹ it became clear to Global Witness through discussions with staff members in 2010 that the agency still requires substantial assistance in terms of equipment, logistical support and training.²⁵² NOCAL staff have also recently received various training courses; however, during an April 2011 presentation NOCAL President Christopher Neyor stated that one of the agency's biggest challenges was its lack of human resource and structural capacity.²⁵³

The lack of capacity within both the EPA and NOCAL means that monitoring companies' compliance with regulations, their own drilling plans and environmental and social impact assessments will be a challenge. The Energy Policy transfers regulatory oversight responsibilities to the Energy Regulatory Board.²⁵⁴ However significant capacity building by international donor partners will be needed to ensure that the board has the capacity to fulfil this role.



Stronger environmental safeguards are needed to protect Liberia's fishing industry. © Helene Moreau

RECOMMENDATIONS^D

The Liberian Government:

1. Environmental and Social Impact Assessments (ESIA) and Consultations:

- A reformed oil and gas law should require that holders of oil and gas licences conduct ESIA's drafted in accordance with the following principles:
- All licence holders, including NOCAL, should conduct an ESIA and prepare an Environmental and Social Mitigation Plan that are independently verified and publicly available.
- ESIA's should be conducted prior to the commencement of all operations that may have an adverse environmental impact, including exploration, drilling, infrastructure development or oil and gas production.
- Each ESIA must be drafted following free prior and informed consultation with communities affected by a proposed operation.
- Companies' ESIA's should be continually developed during the lifetime of their hydrocarbon activities in Liberia in order to identify and address new impacts on communities and the environment.

^D. In 2010, WWF published a best practice guide for offshore oil and gas development in the West African Marine Ecoregion. This guide describes the environmental impacts of each stage of petroleum exploration and could be a useful resource for the Government of Liberia when developing reforms of the hydrocarbon sector. WWF, "A best practice guide for offshore oil and gas development in the West African Marine Ecoregion," by Sandra Kloff, Clive Wicks and Paul Siegel, June 2010, available at: http://cmsdata.iucn.org/downloads/21705_wwf_broch_anglais_2.pdf.

2. Environmental Safeguards:

- The reformed oil and gas law should include the following specific safeguards:
- Drawing upon its natural resource use survey and strategy, the government should identify environmentally sensitive areas, including unique and endangered habitats and exclude them from companies' areas of operation.
- Companies should assess the environmental risks associated with potential oil spills. Their assessments should be independently verified.
- Companies should develop marine emergency contingency plans. Such plans should be supported and complemented via the creation of an oil spill emergency fund.
- Companies should be required to employ the best available techniques to prevent or, where prevention is not possible, to minimise, environmental damage. Such techniques should include all measures necessary to prevent, minimise or recycle waste. Waste that is produced should be collected, stored and disposed of in an environmentally safe manner.
- Companies should only be allowed to take or use water necessary for their operations and should not be permitted to infringe upon the water rights of individuals in and around the concession area.
- Companies should be required to take all measures necessary to prevent accidents and to limit the human and environmental impact of any accidents that do occur. Laws governing oil and gas operations should be amended to lay out clear responsibilities in the event of a company, company employees or subcontractors causing pollution:
- The company should take all steps necessary to return the environment to its original state, to the best extent possible.
- The company should provide full compensation to any affected individuals, including compensation for expenses related to relocation, environmental damage or damage to livelihoods.
- Companies should be required to carry insurance adequate to ensure that the environment is returned to its original state after any accident, that full compensation is paid to any affected individuals and that

any government penalties are met.

- The government should issue penalties that are effective, proportionate and dissuasive.

3. Oil platform decommissioning:

- The government should establish a policy determining how it would like any oil platforms that are erected to be managed after they are no longer in use.
- Responsibility for implementing and paying for this policy should lie with the operating company.
- The company should be responsible for developing a plan to restore the environment to its original state or, if complete restoration is not feasible, return affected areas to the condition of viable, functioning and self-sustaining ecosystems. The plan should be made publicly available and involve extensive public consultation.
- All companies should establish a platform closure fund sufficient to cover plant closure costs and post-closure monitoring.
- Companies should carry out such post-closure monitoring to ensure that the project area and any other affected areas are safe and free from pollution. Companies should be required to take such corrective measures that are necessary.

- 4. International Standards:** The Liberian Government should take measures to accede to those international conventions that provide environmental safeguards, including all IMO conventions and relevant conventions covering liability and compensation, notably; the International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969 and the 2010 Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.

The International donor community:

1. Support the Liberian Government in the implementation of the recommendations above.
2. Provide technical assistance and training in environmental management to Liberia's Environmental Protection Agency, other regulatory bodies, civil society organisations and affected communities.

H. STABILISATION CLAUSES



Lakshmi Mittal is the CEO of ArcelorMittal. In 2005, the National Transitional Government of Liberia signed an agreement with Mittal Steel (now ArcelorMittal) which was not in the best interests of the country. The agreement contained a broad stabilisation clause. © David Rose / Panos

Liberia's current Model Contract contains, and the Petroleum Law allows for, "stabilisation clauses." These provisions potentially affect the rights of individuals, employees and communities affected by companies' operations.²⁵⁵

Generally, the objective of a stabilisation clause is to provide a secure environment for a company's investments by protecting contracts from changes in the law after the agreement has been signed. While stabilisation clauses may be used as a means of encouraging the long-term investment that is needed for oil and gas exploration and exploitation, the terms contained in the Liberia's Model Contract are excessively broad.

Section 36.2 of the Model Contract prevents the Liberian Government from amending or modifying the terms of its agreements with companies through changes to any law, rule or regulation after the effective date of the contract. Moreover, section 23 of the Model Contract, means that if the constitution is changed after the effective date of the contract, and it conflicts with the contract, the contract takes precedence.

As a country emerging from conflict, Liberia is in the process of revising its laws to bring them in line with international standards. It is therefore imperative that the government be given free rein to adopt new laws that protect the country's finances, people and environment. The inclusion of these regulatory stabilisation clauses create a hierarchy of rights, whereby communities and workers in the concession area may have fewer rights than others outside it who

have been able to benefit from developments in the law. This could affect the human or labour rights of people affected by individual contracts.

The consequences of these provisions can be far reaching. Together, the stabilisation provisions contained in the Model Contract limit the Liberian Government's ability to develop new laws, by prohibiting the application of future laws and even changes to the country's constitution. The government's ability to enforce its existing laws, both under domestic legislation and international obligations, can be limited by the Model Contract, a considerable further infringement upon Liberia's sovereignty. These provisions may also have a "chilling effect" whereby Liberia may be less willing to meet its human rights, labour or environmental obligations and bring its laws in line with international legal standards.

On 16 June 2011, the UN Human Rights Council endorsed the "Guiding Principles on Business and Human Rights." Principle 9 of the Guiding Principles holds the following:

*"states should maintain adequate domestic policy space to meet their international human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts."*²⁵⁶

In order to allow the Liberian Government the policy space it needs to reform the country's laws the Model Contract should be amended to set clear limits on the scope of the stabilisation clauses so that they do not unduly preclude the Liberian Government from establishing fiscal, environmental or social standards necessary for the protection of the state or its citizenry.

RECOMMENDATION

The Liberian Government:

Stabilisation Clause: a reformed Petroleum Law and Model Contract should not include provisions that prevent the Liberian Government from making changes to its constitution or including legal, fiscal, social, labour or environmental safeguards to the contracts of operating concessionaires.

5 Conclusion

In April 2011, President Johnson Sirleaf addressed a trade conference bringing together investors interested in Liberia's oil and mining prospects. In her speech, the President made a positive commitment to ensuring Liberia's oil and gas resources would be used to benefit the country:

"In this regard, we have made it clear, with the fullest of commitment, that before we export one drop of oil, we will have the policies in place that dictate how oil wealth will be used for development, stability and poverty reduction."²⁵⁷

Liberia has not yet found oil. If it does, oil and the revenues it could generate would be critical to the development of what is one of the poorest countries in the world. Unfortunately, there is considerable evidence that the sector is being built on unstable foundations. Bribery has marred the award of several concessions, the government is ignoring its own transparency laws and companies with questionable track records are entering the sector. Unless the government can quickly acquire the necessary capacity and legal infrastructure, oil production could bring with it a host of new political and economic challenges.

The Liberian Government and its international partners have expressed a commitment to undertake reforms, however these remain largely unrealised and current efforts are insufficient. In particular, the government needs to prioritise removing regulatory responsibilities from the National Oil Company of Liberia. Oil funds should be established to cushion the Liberian economy against price shocks and ensure revenues may be used sustainably in the longer-term. Stronger safeguards should be developed to protect land owners, workers and the environment. And reforms should be conducted through an inclusive and transparent reform process that brings together government officials, international partners and Liberian civil society groups.

Reforms are essential and must be undertaken before the sector develops further. With the support of its international partners, the Liberian Government should immediately make good on the promise made by President Johnson Sirleaf, ensuring that Liberia's oil and gas sector is reformed so that it will benefit rather than harm the country.



Annex

**Addenda to Production Sharing Contracts between the Republic of Liberia,
National Oil Company of Liberia, Oranto Petroleum Limited and Chevron
Liberia Limited, 23 August 2010**

Second Addendum to Production Sharing Contract

For

Block LB 11

Between

The Republic of Liberia,

National Oil Company of Liberia,

Oranto Petroleum Limited

and

Chevron Liberia B Limited

SECOND ADDENDUM TO PRODUCTION SHARING CONTRACT

FOR BLOCK LB-11

This Addendum to the Production Sharing Contract for block LB-11 (which Production Sharing Contract was approved by the National Legislature on April 16, 2007 and published in handbills on May 22, 2007 among the Republic of Liberia, the National Oil Company of Liberia and Oranto Petroleum Limited) (the "PSC" or "Contract") by and among the Republic of Liberia, represented for the purposes hereof by the National Oil Company of Liberia ("NOCAL" or "Government"), a company incorporated under the laws of Liberia, Oranto Petroleum Limited, a company incorporated under the laws of the British Virgin Islands ("Oranto"), Chevron Liberia Limited and Chevron Liberia B Limited, (the Chevron entities collectively may be referred to herein as "Chevron" or the "Chevron Group") all of which Chevron entities are incorporated in Bermuda. Chevron and Oranto are hereinafter referred to jointly as "the Contractor" or "Contractor Group." NOCAL, Chevron, and Oranto are sometimes collectively referred to herein as the "Parties".

WHEREAS, Oranto, the Chevron Group and the Government of Liberia through NOCAL have agreed to the attached Deed of Assignment, which transfers seventy percent (70%) of the Contractor's interest in the PSC from Oranto to Chevron Liberia B Limited and Chevron Liberia Limited as Operator of the PSC, with thirty percent (30%) remaining with Oranto for LB-11 PSC.

WHEREAS, Oranto and the Chevron Group are requesting this Addendum to the PSC and the Government now wishes to grant this Addendum.

NOW, THEREFORE, in consideration of the premises and mutual agreement set forth herein, the Parties agree as follows:

- 1) Chevron agrees to make a one-time payment of US \$3,333,333 to the Government within thirty (30) days of this Addendum to Production Sharing Contract being duly published in handbills in order to effectuate the transfers; and
- 2) Chevron agrees to invest in Chevron denominated corporate social responsibility programs in Liberia a sum of seven hundred thousand dollars (\$700,000) per year for the PSC, to a social development program mutually agreed and managed with the Government, limited to a maximum of five (5) annual contributions, provided the Exploration Period for at least one of the PSCs remains in effect. The first of these five (5) annual contributions will be made available within thirty (30) days of full ratification of this Addendum to Production Sharing Contract being published in handbills. Subsequent of such contributions will be made each calendar year on the anniversary date of the first contribution.
- 3) In exchange for Contractor's agreement to commence a drilling program for one well by the end of the fourth quarter in 2011 on any of blocks LB-11, LB-12 or LB-14, the Government agrees to allow a one year extension of the First Exploration Period in LB-11 and LB-12. Article 3.1 of the LB 11 and LB 12 PSC is therefore revised to read as follows: "The exclusive exploration authorization is hereby granted to the Contractor for a period of nine (9) consecutive years, effective as of the ratification of this Addendum, defined by the following three consecutive Exploration Periods: A first Exploration Period of five (5) Contract Years, a second Exploration Period of two (2) Contract Years and a third Exploration Period of two (2) Contract Years in respect of the entire Delimited Area."
- 4) It is agreed and understood that the drilling of a well on any of the blocks LB 11, LB 12, or LB 14 will satisfy the first well commitment for that block.
- 5) A new Article 6.10 will be added as follows:

"In connection with the Contractor's minimum financial obligation associated with the election to enter into each exploration phase, Contractor will provide a parent company guaranty pursuant to the form attached. For subsequent exploration periods beyond the current phase, the amount of the obligation in the guarantee will be adjusted according to the subsequent minimum financial obligation."

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- 6) A new Article 6.11 will be added as follows;

"For any Petroleum Operation conducted hereunder, the Contractor will comply with all applicable laws and regulation, including any requirement for insurance."

- 7) The second sentence of Article 17.2.1 of the LB-11 PSC is revised to read as follows: "The income tax rate applicable to Petroleum Operations carried out under this Contract shall be thirty percent (30%)." The third sentence of Article 17.2.1 is deleted.

- 8) Add a new Article 17.2.2 is added as follows:

The Contractor entities shall pay its income tax and file income tax returns, and pay other taxes and file other tax returns, directly to the General Tax Revenue Account of the Government of Liberia.

- 9) A new Article 17.4(i) is added as follows:

"In place of the 15-year period set out in the regular income tax provisions of the Revenue Code for recovering the costs of tangible fixed property and intangible property, Contractor shall be entitled to recover the costs of this property on an asset-by-asset basis over a five-year period at the rate of twenty percent (20%) per year."

- 10) Article 17.6 is revised as follows:

"Within three (3) months after the end of a Fiscal Year, each entity constituting the Contractor shall submit to the competent tax authorities its annual tax return together with financial statements and if required by applicable regulations, audited financial statements. The relevant taxing authorities shall furnish to the Contractor, upon receipt of payment, the tax receipts evidencing the payment of Contractors Liberian Income tax and all other documents certifying that the Contractor has, for the Fiscal Year in question, complied with its tax obligations with respect to the income tax as defined in this Article. Such receipts shall be issued by the relevant taxing authorities and shall state the amount and other particular circumstances, according to Appendix 2 of this Contract."

- 11) A new Article 17.10 is added as follows:

"*Withholding Taxes.* Contractor shall withhold tax on payments made to nonresidents at the following rates:

- (a) Dividends, zero percent (0%)
- (b) Interest, six percent (6%)
- (c) Payments for services, six percent (6%)."

- 12) A new Article 18.7 is added as follows:

"18.7 PAYMENT OF ROYALTY

The Government of Liberia hereby agrees to expressly be paid a royalty rate applicable to the gross production of hydrocarbons, whether liquid or gaseous, of five percent (5%). Article 35 of the Contract will apply with respect to stability of conditions."

- 13) In lieu of Article 3.3 of the Petroleum Law, a new Article 18.8 is added as follows:

"18.8 EQUITY PARTICIPATION OF THE GOVERNMENT

The Government of Liberia through NOCAL will have the sole option to elect to receive, within ninety (90) days prior to the start of Commercial Production a ten percent (10%) transfer of interest from Oranto such that at the start of Commercial Production the equity shares would be seventy percent

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(70%) Chevron; ten percent (10%) NOCAL and twenty percent (20%) Oranto. Where the Government of Liberia through NOCAL elects to receive the 10% transfer of interest, this interest shall be deemed a Contractor interest for all purposes of the PSC, including Article 16, recovery of Petroleum Costs, Production sharing and the Accounting Procedures. Provided, however, NOCAL will be responsible for payment of NOCAL income taxes and all income tax return preparation and filing compliance obligations as required by Law. NOCAL will meet its ten percent (10%) share of all cash calls for all funding of the PSC projects. If the Government of Liberia through NOCAL cannot meet its cash calls within forty-five (45) days notice of funding requirements (directly or indirectly through a third party or as might be agreed between NOCAL and Chevron), Chevron will provide the funding, provided it is allowed cost recovery of additional Petroleum Costs to match the amount plus a rate of ten percent (10%) per annum. For the avoidance of doubt, the primary cost recovery under the PSC will always be treated as superior and the recovery of these costs as secondary, with respect of the timing of cost recovery. Within sixty (60) days of the NOCAL election to enter, it will enter into an international joint operating agreement (including accounting procedures) which will be consistent with best international practices and which will govern the above described relationship and the finances.

- 14) A new Article 18.9 is added as follows:

"18.9 STOCK PURCHASE BY LIBERIAN CITIZENS

The Government of Liberia, through NOCAL hereby shall not require the Contractor to make available (i) any portion of its stock or shares, and/or (ii) other stock and/or share purchase to Liberian Citizens, through procedures provided in The New Petroleum Law of Liberia and/or any other law. In the event a member of the Contractor Group becomes a publicly traded company, then Liberian Citizens shall have the option to purchase shares of such member made available for purchase on the stock exchange upon which such member may be listed, subject to applicable laws."

- 15) A new Article 31.4 is added as follows:

"31.4 SOVEREIGN IMMUNITY.

Any Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by the laws of any applicable jurisdiction pursuant to this Contract. This waiver includes immunity from (i) any expert determination, mediation, or arbitration proceeding commenced pursuant to this Contract; (ii) any judicial, administrative or other proceedings to aid the expert determination, mediation, or arbitration commenced pursuant to this Contract; and (iii) any effort to confirm, enforce, or execute any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from an expert determination, mediation, arbitration or any judicial or administrative proceedings commenced pursuant to this Contract.

- 16) To comply with the intent of the Contract for each PSC, the law and in other parts of the Appendix II Accounting Procedures, the phrase "... and those relating to the share of financing of development Petroleum Operations" which is set forth in Section II.3(c) of the Accounting Procedure is hereby deleted.

- 17) Article 26.6 is added to read as follows:

"Contractor is exempt from customs user fees of two and one-half percent (2.5%) imposed under the Revenue Code, including fees for the inspection or pre-shipment inspection of goods and on the export of hydrocarbons. A customs user fee of \$200,000 per year for customs related services and all materials imported into Liberia for use in Petroleum Operations to be used on the block will apply. Contractor will be subject to the ECOWAS levy of one half of a percentage point (0.5%)."

- 18) Except as specifically amended herein, all the remaining terms and conditions of the PSC shall remain in full force and effect. Capitalized terms used in this Addendum that are defined in the PSC and not otherwise defined herein shall have the respective meanings ascribed to them in the PSC. This

Addendum modifies the PSC and shall have effect from the date of ratification of the National Legislature and publication in handbills.

19) This Addendum may be executed in counterpart by each of the parties and with all signatures it shall be considered as one agreement effective as to all parties as if all had signed together.

The PSC, as hereby amended, is hereby deemed to be in full force and effect.

IN WITNESS WHEREOF, the Parties have signed this Addendum to Production Sharing Contract on the date as set forth below.

Dr. Fodee Kromah

Fodee Kromah
 PRESIDENT/CEO
 NATIONAL OIL COMPANY OF LIBERIA

Date 23/8/2010

[Signature]
 CHAIRMAN, BOARD OF DIRECTORS
 NATIONAL OIL COMPANY OF LIBERIA

Date 08-23-10

On Behalf of the Contractor

[Signature]
 ATTORNEY IN FACT FOR ORANTO PETROLEUM LIMITED

Date 22-08/2010

On Behalf of Contractor

KJ Sample
 ATTORNEY IN FACT FOR CHEVRON LIBERIA LIMITED

Date 22-8-10

On Behalf of Contractor

KJ Sample
 ATTORNEY IN FACT FOR CHEVRON LIBERIA B LIMITED

Date 22-8-10

Honorable Dr. Eugene Shannon

[Signature]
 MINISTER OF LANDS, MINES & ENERGY
 REPUBLIC OF LIBERIA

Date 22/08/2010

Honorable Augustine Ngafuan

[Signature]
 MINISTER OF FINANCE
 REPUBLIC OF LIBERIA

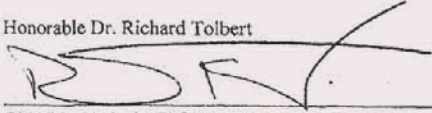
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22/08/2010 – Second Addendum to PSC LB-11

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Honorable Dr. Richard Tolbert

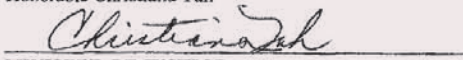


CHAIRMAN, NATIONAL INVESTMENT COMMISSION
REPUBLIC OF LIBERIA

Date 22/8/10

Attested:

Honorable Christiana Tah

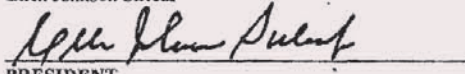

MINISTER OF JUSTICE
REPUBLIC OF LIBERIA

Date August 23, 2010

Approved:

Her Excellency

Ellen Johnson Sirleaf


PRESIDENT
REPUBLIC OF LIBERIA

Date August 23, 2010

Ratified:

National Legislature of the Republic of Liberia

Date _____

Endnotes

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207. Petroleum Law, 2000, section 2.5.5; Model Production Sharing Contract sections 8.5-8.6. For an example of an operational confidentiality clause in a current agreement, see Oranto Block 14, sections 8.5-8.6 or Anadarko Block 10, 8.5-8.6.
208. The LEITI currently has information on company payments and contracts but does not contain information on the contract allocation process, the environmental and social impact assessment or company reports.
209. A list of international conventions that Liberia is party to is available at: <http://www.ilo.org/ilolex/cgi-lex/pqconv.pl?host=tatus01&textbase=iloeng&querytype=bool&hitdirection=1&hstart=0&hitsrange=2000&sortmacro=sortconv&query=Liberia@ref&chspec=19> accessed on 20 June 2011.
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213. World Resources Institute, "Development without Conflict: The business case for community consent," May 2007, Available at http://pdf.wri.org/development_without_conflict_fpic.pdf, page 5.
214. The International Labour Organization (ILO) defines free, prior and informed consent as the right of communities "to exercise control, to the extent possible, over their own economic, social and cultural development." International Labour Organization (ILO). 1989. Convention No. 169. Geneva, Switzerland: ILO Article 7(1). There is no internationally agreed definition or understanding of the principle, yet it is now widely considered to be a guaranteed human right of indigenous people. It is increasingly being recognized in international norms, national laws and voluntary best practice guidelines. Some organisations have substituted consultation with consent which greatly weakens the rights of indigenous people and there is a reluctance of some states to see free, prior and informed consent as an inalienable right.
215. World Bank, Operational Policy, OP 4.12 - Involuntary Resettlement, available at <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064610~menuPK:4564185~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html> accessed on 11 June 2011.
216. Under article 11.1 of the International Covenant on Economic, Cultural and Social Rights, it states that "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent." This is interpreted as relating to forced evictions.
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221. Global Witness, "The Usual Suspects: Liberia's weapons and mercenaries in Cote d'Ivoire and Sierra Leone," March 2003, page 24
222. The voluntary principles are sponsored by the governments of the US, the UK, Norway and the Netherlands. They are available at: http://www.voluntaryprinciples.org/files/voluntary_principles_english.pdf accessed on 12 June 2011,
223. International Covenant on Economic Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976. Article 11 and Article 6.
224. Committee On Economic, Social And Cultural Rights, General Comment No. 14 (2000) on the right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Rights), E/C.12/2000/4, 11 August 2000, para 4.
225. International Covenant on Economic Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976. Article 12.2 and 12.1.
226. To give third parties to the contract rights and fulfil its obligations under the African Charter on Human Rights. (African Charter on Human and Peoples' Rights, adopted June 27, 1981, entered into force October 21, 1986, section 7) and the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on December 16, 1966, and in force from March 23, 1976. article 2 (3) available at <http://www2.ohchr.org/english/law/ccpr.htm> accessed on 12 June 2011.) to provide its subjects with remedies that are effective, the Liberian government could take a number of steps. The Liberian Legislature could enact a statute that gives third parties benefits under Liberian law to enforce

- provisions in contracts relating to them through local courts. Legal aid should be provided for these claimants. This would have no effect on the Government's obligations under the Agreement to pursue arbitration as an exclusive and final resolution to claims regarding a possible violation. The Model Contract could also be amended to give the relevant third parties standing to sue for the enforcement of obligations in that agreement which impact on them. The Petroleum law could also be amended to contain this requirement. Finally, third parties should be given standing before the arbitrator. An International Chamber of Commerce arbitration can provide more scope for the inclusion of third parties than the International Convention on the Settlement of International Dispute rules. Consideration should also be given to less expensive and more rapid methods of dispute resolution to deal with third parties complaint for example through 'expert determination' in order to assess whether or not there has been violations of the agreement.
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Global Witness

Email: mail@globalwitness.org
Website: www.globalwitness.org

UK Office

Phone: +44 (0) 207 4925820
Address: 6th Floor, Buchanan House
30 Holborn
London, EC1N 2HS
UK

US Office

Phone: +1 202 621 6665
Address: 529 14th Street NW
Suite 1085
Washington, DC 20045
USA

**Center for Transparency and
Accountability in Liberia (CENTAL)**

Executive Director: Thomas Doe Nah
Email: tnah@cental.org
Website: www.cental.org
Phone: +231 (0) 651 1142
Address: 22nd St. and Tubman Boulevard
Sinkor, Monrovia
Liberia

Liberia Democratic Institute (LDI)

Executive Director: Dan T Saryee, Sr.
Email: dsaryeeldi@yahoo.com
liberiadmo_institute@yahoo.com
dsaryee@brandeis.edu
Website: www.ldi-lbr.org
Phone: +231 (0) 651 4348

Visiting Address:

American Dry Cleaning Building
111 Randall Street
Monrovia
Liberia

Postal Address:

PO Box 1959
1000 Monrovia 10
Liberia

**Liberia Media Initiative for Peace
Democracy and Development (LMI)**

Executive Director: John O Kollie
Email: liberia.mediainitiative@gmail.com
Jkollie2001@yahoo.com
Phone: +231 (0) 651 3080
Address: Methodist Compound
13th St.
Sinkor, Monrovia
Liberia

Sustainable Development Institute (SDI)

Coordinator: Jonathan W Yiah
Email: managementteam@sdiliberia.org
listserve@sdiliberia.org
Website: www.sdiliberia.org
Phone: +231 (0) 6641 355

Visiting Address:

Environment and Development Centre
Duarzon Village, Robertsfield Highwa
Margibi
Liberia

Postal Address:

PO Box 5678
1000 Monrovia 10
Liberia

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“If properly managed, resources from oil wealth can be invested to transform our nation. This is the future that Liberians voted for – the kind of future parents want for their children.”

President Ellen Johnson Sirleaf, Annual Message to the Liberian Legislature, January 2011