How Can Liberia’s Government Prevent Private Use Permits from Degrading Liberia’s Forests?

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Issue

Companies have acquired long-term leases from individuals and communities to much of Liberia’s forested land, without being subject to the environmentally and socially protective regulations that apply to forest concessions on public land. Gaps and ambiguities in the laws governing harvesting in privately owned forests create a risk that large areas of Liberia’s forests may be legally degraded or destroyed, harming communities that depend on these forests for their livelihoods.

Problem Definition

In common law systems like that of the US, real property is often described as a “bundle of rights” (Baron 2014). Property ownership exists on a spectrum ranging from diffuse to consolidated depending on the allocation of these rights among different parties. At one extreme of this spectrum, a person who owns property in fee simple absolute (meaning that they control every right within the bundle) can essentially do what they wish with the property (subject to limitations derived from common law principles including nuisance, economic waste, and eminent domain).

Footnotes:

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2 The term “fee” (also, “fief”) described the property holding of a tenant living on a lord’s land in feudal England. At the time, only lords could own land; they granted tenants a fee, which conveyed lifetime tenure and could not be passed on to a tenant’s heirs. After about 200 years following the Norman Conquest, the fee’s status under the law had evolved from a mere holding to a fee simple—a right to the land that the lord could no longer terminate, and which could be freely conveyed to other parties. Today, “[t]he fee simple absolute is as close to unlimited ownership as [United States] law recognizes” (Dukeminier et al. 2010).
In Liberia, the bundle of rights associated with private land ownership does not necessarily extend to the trees growing on the land. With the exception of “Communal Forests” and artificial plantations, the central government holds all forest resources in trust for the benefit of the people (NFRL 2006, § 2.1). Private ownership of forestland, therefore, does not generally grant rights to the trees that comprise the forest. This legal foundation justifies burdensome regulations concerning the circumstances under which trees can be harvested from private land that would be impossible in legal systems with more comprehensive private property rights. For example, private landowners need government permission to commercially harvest trees that naturally occur on their land.

Liberia’s National Forestry Reform Law (NFRL), passed in 2006, defines three types of licenses that authorize commercial timber harvest. The two that apply to government land are governed by a robust suite of rules detailed in the legislation and accompanying regulations. In contrast, the NFRL includes only limited rules concerning “Private Use Permits” (PUPs)—which allow commercial harvest on private land—deferring elaboration to a future regulation (NFRL 2006, § 5.2 (a)(iii)). The regulations that flesh out the rules for the other license types do not, for the most part, apply to PUPs, and the implementing regulation for PUPs that the NFRL envisioned has not been promulgated. In effect, Liberia’s forest regime is designed to regulate private forestland but has yet to specify these regulations in full.

In the context of an incomplete legal infrastructure, corporate interests began in 2010 to acquire harvest rights to vast segments of Liberia’s territory through PUPs. A UN panel of experts has described PUPs as a “particularly worrisome” and “largely unregulated route to substantial concession holdings” (UNSC 2012, ¶107). At present, more than 40% of Liberia’s forests (Global Witness, SAMFU, & SDI 2012a), or about a quarter of Liberia’s total land area (De Wit 2012), falls under PUPs, and the companies that control these permits have come to dominate timber exports (UNSC 2012, ¶125). Under-regulation renders Liberia’s forests vulnerable to unsustainable management and exposes communities that depend on these forests to risk of negative economic and/or cultural impacts.

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3 Note that the fact that the government holds forest resources in trust for all Liberians does not mean that all forestland is national land. Individuals may still own the land, even if they do not have rights to the trees.

4 The UN Security Council reported that, according to the company contracted to monitor Liberia’s timber chain of custody, “64 per cent of all logs exported between January and October 2012 came from land covered by private use permits.”
The following questions drive the paper’s subsequent analysis:

- Why have companies turned to PUPs to acquire rights to forestland?
- How might the government reform relevant forest laws and regulations to limit degradation of private forestland where communities maintain longstanding interests?
- What options are available to the government to overcome implementation and enforcement challenges?

Background

Liberia’s 1989-2003 civil war was fuelled in part by natural resources. During the 1990s, former president Charles Taylor traded diamonds for weapons and funds to pay his troops. In response, the UN Security Council imposed a ban on imports of Liberian rough diamonds in 2001 (UNSC 2001). Taylor turned to timber as a replacement source of income, but the Security Council again responded by banning imports of Liberian round logs and timber products (UNSC 2003).

By the war’s end, the forest sector was in disarray. A review of forest concessions issued during the war found that they covered a combined land area more than double the acreage of forested land in the entire country (Wood, Blundell, & Simpson 2003). Moreover, not a single concessionaire met the five basic legal criteria to operate in Liberia (Ibid.).\(^5\) Not only had they violated many laws, but logging companies had failed to pay US$64 million owed in taxes (Ibid.)—a sum equal to 15% of Liberia’s current GDP (World Bank n.d.).

Upon taking office in 2006, President Ellen Johnson Sirleaf acted quickly to restore order in the forest sector. Her first executive order canceled all timber concessions, froze timber exports, and placed a moratorium on granting new concessions until the relevant laws could be reformed (Government of Liberia 2006). The legislature enacted the NFRL in the same year (NFRL 2006) and in 2007, the Forest Development Authority (FDA) promulgated regulations about how forest resource licenses would be issued going forward (FDA 2007). These new legal instruments embrace principles of public participation, transparency, benefit sharing, and environmental sustainability. Satisfied that the

\(^5\) The criteria are that a company must: (1) possess a business license; (2) possess articles of incorporation; (3) hold a valid contract signed by all appropriate parties; (4) have posted a performance bond; and (5) have received legislative ratification (up until 2000).
executive order and legal reforms reflected Liberia’s “commitment to transparent management of the country’s forestry resources for the benefit of all Liberians,” the Security Council lifted timber sanctions (UNSC 2006).

Certain provisions from this new legal regime apply across all forest license types. For example, “no person,” whether on public or private forest land, may “waste” forest resources, “expose natural resources to damage,” or “destroy” long-term forest productivity (NFRL 2006, § 8.1(d)). Timber must also be tracked along the chain of custody to the domestic market or the point of export regardless of the type of land on which it was harvested (FDA 2007, Reg. No. 108-07). Other provisions apply specifically to PUPs. These include restrictions that harvest be undertaken only by the landowner or parties with written permission from the landowner, and that harvest proceed only after government approval of short- and medium-term management plans (NFRL 2006, § 5.6 (c)(i)).

Despite these rules which constrain PUP holders, a range of stakeholders assert, and practitioner studies have found, that there exist ambiguities and gaps that weaken the rules’ ability to ensure that forests will be managed in a manner that protects the environment and community interests. For example, although harvesters are required to submit management plans, no criteria are specified for writing them and for assessing their completeness. And unlike other forest concession types, PUPs are not subject to a size limit, renewal restrictions, or public consultation and disclosure requirements. Further, Liberian law does not clearly define private land. The Liberian Land Commission proposed such a definition in May 2013 after years of work, but no definition has been officially adopted (IISD 2013). As a result, it is impossible to know what land is considered to be private and thus eligible to be harvested under a PUP. Scholars, NGOs, and a government commission have suggested that many of the PUPs issued to date are invalid because they cover communal rather than private land (De Wit 2012; Global Witness, SAMFU, & SDI 2012b; SIIB 2012). Besides the legal implications of issuing PUPs for ineligible land, this practice risks sidestepping the environmental and social protections applicable to communal land under the Community Rights Law.

These very ambiguities and gaps that create environmental and social risk may be the reasons that companies have been eager to access forestland via PUPs. Other types of forest licenses may only be issued through a bidding process in which companies with a history of legal violations are barred, and
they are subject to a complaint and review process and oversight by a dedicated concessions commission (Government of Liberia 2010). The lack of a clear definition of private land has enabled companies to negotiate deals with individuals who claim ownership to large land areas that may actually belong to communities (General Auditing Commission 2012). And the lack of transparency and public participation requirements means that companies need not bother engaging potentially affected communities or risking public ire by publishing information that could expose exploitative characteristics of a land deal. Given that it may be in companies’ self-interest to access forestland through PUPs, the question is how to ensure that management of forests under PUPs does not lead to degradation of forest resources and negative impacts for forest-dependent communities.

Analysis

There is a rich literature analyzing governance in the forest sector. Scholarly efforts have focused on the factors that comprise good forest governance (Cashore 2009), forest resources as key inputs for post-conflict peacebuilding (Lujala & Rustad 2011; Bruch, Muffett, & Nichols forthcoming 2014), and the potential of forestry as an entry point for broader governance reform (Brown et al. 2002). To approach the question of how the Liberian government can address the failure of governance of private forestland, this paper selects a recent theoretical framework to organize its analysis: Bernstein & Cashore’s (2012) ‘four pathways of influence.’ This framework identifies four pathways that transnational actors may travel to influence domestic policy-making: international rules, international norms and discourse, creation of or interventions in markets, and direct access to domestic policy processes (Bernstein & Cashore 2012). Beyond providing a neat typology for a range of interventions available to the international community, its merit is that it identifies different ‘causal logics’ that explain how these interventions can shape behavior at the domestic level.

Although the four pathways framework was created to explain interventions by transnational actors, the pathways it describes are available to domestic actors as well. This paper extends the framework to propose ways that a national government can exert influence within its jurisdiction to effectuate its own policies. The following section describes the four pathways. Because extending the original framework risks severing the causal logics upon which it rests, a brief section follows that discusses the causal logics of each pathway as applied to the context of the Liberian government, considering the appropriateness
of policy interventions depending on two primary obstacles to successful intervention: powerful political opposition and capacity constraints. The pathways are then applied to the challenge of PUPs in Liberia to shed light on the actions that the government might take to prevent forest degradation on private land.

**Four Pathways of Influence, Extended**

According to the Bernstein & Cashore model, the international rules pathway is traversed when an actor cites an international rule that is binding on the target state in an effort to force the state to comply with the rule. The logic of this pathway is that “whether perceived as resting on consent ... or on coercion,” international rules “are binding and create a pull toward compliance” (Ibid., p. 590). This may be the effect when transnational actors invoke international rule against states, but such rules are of little use to national governments seeking to enforce compliance with their domestic laws: international rules are binding on states—not on actors subject to a state’s jurisdiction. Instead, I consider how a government can reform its own laws to foster more or less of a particular activity of concern. Specifically, I analyze the ambiguities and gaps in Liberia’s forest legal regime to identify types of provisions that could be added or clarified to strengthen the regime. The causal logic of this modified pathway is similar to the rules pathway in the original framework: domestic law is binding; compliance is expected and can be enforced.

Actors travel the second of Bernstein & Cashore’s pathways, international norms and discourse, by using norms that emerge from multilateral processes and instruments to shape domestic policy. For example, the world community affirmed the importance of ‘sustainable forest management’ (SFM) at the 1992 Earth Summit, and numerous countries have since moved to incorporate sustainability principles into their forest management. The International Tropical Timber Organization and its members have worked to define the scope of SFM, and watchdog organizations such as Global Witness and Transparency International have been instrumental in promoting its uptake at the national level (Ibid.). The same way that transnational actors have employed norms such as SFM to further their domestic purposes (i.e., improving forest management abroad), so too can a national government. To the extent that a government can link its policy agenda with one supported by the larger global community, it may be
able to boost the policy’s perception of legitimacy among the regulated community and increase compliance rates.

The third pathway makes use of international markets to achieve domestic objectives. Examples include initiatives to boycott products with undesirable environmental or social externalities, certification of products from well-managed sources to reward producers with enhanced market share and/or price premiums, and the recent trend toward consumer countries requiring that timber imports be legally sourced. National governments could use some of these strategies, albeit in slightly different ways. On the one hand, they could adapt these tactics for domestic use, for example by offering their own certification labels, as Indonesia has done by launching the Indonesian Sustainable Palm Oil scheme, or by revising procurement standards to support legal goods produced domestically. On the other hand, they could develop the institutions needed to take advantage of existing market mechanisms. In the case of Liberia, an option is to ratify the Voluntary Partnership Agreement (VPA) negotiated under the Forest Law Enforcement, Governance and Trade (FLEGT) regime with the EU.

The final, direct access pathway is used when transnational actors assist national governments or non-governmental actors through funding, training, and other forms of capacity-building in an attempt to empower stakeholders that share their interests. These tactics, unlike recourse to international rules, norms, or markets, represent direct interventions in the domestic policy arena. A national government may employ a similar approach by building coalitions in civil society that support its agenda. For example, a government that finds it difficult to monitor activities in remote areas may be able to work with local groups to fulfill this role more cheaply than if it were to expand its own footprint. Similarly, a government might be able to improve uptake of a particular policy by educating stakeholders about its merits. Just as the direct access pathway in the Bernstein & Cashore framework represents the most direct means for transnational actors to influence domestic policy, it allows a national government to effect on-the-ground behavioral changes more directly than by attempting to regulate such behavior, inspire it by appealing to norms, or incentivize it through markets.

**Appropriateness of Actions along the Modified Pathways**

There are a number of ways to assess policy interventions. Cashore (2009), for example, emphasizes the importance of the legitimacy of both the process by which a policy is selected and the final decision
taken in earning support from citizens and stakeholders. I focus on the appropriateness—defined as the likelihood of successful adoption and implementation—of interventions given the presence of powerful opposition and/or capacity constraints. Each pathway, when extended for use by governments, has its own causal logic, so the particular context will dictate which pathway the government should follow.

The appropriateness of following each pathway given powerful opposition and/or capacity constraints may be visualized using a 2x2 matrix that presents appropriateness as the dependent variable and opposition and capacity as independent variables. See Figure 1 for a representation. A discussion of the appropriateness of each pathway given these hurdles follows.

**Figure 1.** Appropriateness (i.e., likelihood of success) of the four pathways, when each is traveled alone, depending on the presence of opposing power blocs or a lack of capacity

<table>
<thead>
<tr>
<th>Powerful opposition</th>
<th>Lack of capacity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rules</td>
<td>X</td>
</tr>
<tr>
<td>International norms</td>
<td>✓</td>
</tr>
<tr>
<td>Markets</td>
<td>X/✓</td>
</tr>
<tr>
<td>Direct access</td>
<td>✓</td>
</tr>
</tbody>
</table>

**Rules.** The rules pathway functions on the presumption that the government has both the necessary support within the legislature to enact desired reforms and the capacity to monitor compliance with and enforce violations of the rules. Inability to overcome a power bloc opposed to the desired policy or a lack of capacity would dictate against following this pathway. As a result, Figure 1 provides an ‘X’ next to the rules pathway under circumstances of either powerful opposition or insufficient capacity.

**Markets.** As with the rules pathway, powerful opposing interests could stymie efforts to use the markets pathway to the extent that insufficient support exists to change procurement policy or create institutions to make use of international market instruments. But to the extent that sympathetic government actors can make use of existing international instruments that require little from exporting countries, opposition may be less relevant. (Figure 1 reflects these possibilities by listing ‘X/✓’.) Moreover, if the problem is merely lack of capacity, the markets pathway presents an opportunity to
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outsource monitoring and enforcement responsibilities. If Liberia were to ratify its VPA, for example, responsibility to ensure that timber imported to the European Union is legal would be shared between the Liberian government and the European Union along the lines specified in the agreement.

**Direct Access.** Capacity constraints would also favor recourse to the direct access pathway, which would enable the government to coopt other actors supportive of its policy agenda. At the same time, this pathway presents an opportunity to work around opposing interests within the government by avoiding the need to formally enact any policies; instead, individual government stakeholders, at the ministry or agency level, could simply direct funds, training, or other resources to partners outside the government.

**Norms.** The international norms pathway is not more or less appealing dependent on governmental capacity, as linking policies to international norms is not always a resource-intensive proposition and can be done under most capacity conditions. (This is indicated in Figure 1 with a dash.) It may be an important strategy, however, to overcome powerful opposition to a given policy. One way to accomplish this is to cite norms during debates in the legislature to get a policy enacted. Proponents of a particular policy could also appeal to the public through the language of these norms to pressure their representatives to support the policy.

**The Four Pathways Applied to Liberia**

**Rules.** The Liberian government could travel the rules pathway either by reforming the NFRL at the level of the legislature or by promulgating regulations through the FDA to clarify existing PUP provisions and add new provisions to fill gaps. Regulations could go beyond requiring certain documents as prerequisites for obtaining a PUP by specifying the information which the documents must contain. This might help end the recent practice of rubberstamping PUP requests without a robust vetting process.

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6 International norms and practice are often cited during the process of debating and enacting national legislation. For example, in the lead-up to the enactment of China’s “Red Cross Law,” which legally recognizes China’s branch of the Red Cross, the State Council Legal Department and the People’s Congress legal working committee stated that “[o]ne of the factors in favour of establishing the ‘Red Cross Law’ is that the Red Cross forms a part of the International Red Cross Movement, and we should consider aligning ourselves with international practice.” (Working Committee of the National People’s Congress Standing Committee 1994, 11). During the recent debate in the US Congress on how to react to Syria’s use of chemical weapons, proponents of a military response frequently cited the international norm against chemical weapons use (Tumulty & Gearan 2013).
(Jackson 2012). Regulations could also set parameters for the permits themselves, providing size and duration limits along the lines of those that pertain to other types of forest concessions. This would spatially and temporally limit the potential for forest degradation, which is theoretically possible under PUPs that have been issued to date on areas as large as 140,000 hectares and for periods of up to 25 years (General Auditing Commission 2012). Transparency and public consultation may also merit regulation. Concessions on public land require that information regarding the license be published in a newspaper of general circulation, that affected parties be consulted and specifically notified of upcoming consultations, and that a particular level of agreement be reached (NFRL 2006, § 5.8; FDA 2007, Reg. No. 104-07 § 22). No such regulations currently apply to PUPs.

As shown in Figure 1, actions along the rules pathway may be ineffective in the presence of strong opposition to reforms or where government capacity is weak. Reforms to the rules governing PUPs such as those just now proposed require sufficient political support to be enacted. In fact, it may be that the strongest proposed reforms, which would be likeliest to prevent forest degradation under PUPs, are the least likely to be enacted in the face of opposing interests. It is difficult to predict how political alliances will form in the Liberian government because the Liberian political arena is complex and opaque; the presidency is endowed with substantial power on paper, but influential senators who command fierce support stemming from wartime activities are important political players, and little is known about the inner-workings of the legislature. Further, even if there were no strong opposition to reforms, the government’s capacity to monitor and enforce forestry regulations is severely limited. As an example, the Environmental Protection Agency, which issues and enforces the environmental permits required by all harvesting operations, including those conducted under PUPs, has three vehicles with which to monitor projects across the entire country, and it is not uncommon for only one to be serviceable at any given time.7 Given this reality, the rules pathway is unlikely to improve PUP governance—at least not when traveled in isolation from the other pathways.

**Norms.** To use the norms pathway, the government would need to first identify the norms that support better governance of private forestland and then decide how to use them to effect governance reforms. The norms available for this purpose could derive from Liberian society or from the international

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7 Based on the author’s experience working for the Liberian Environmental Protection Agency in 2012.
community, but as domestic social norms are difficult for foreigners to identify, I focus on international norms. Several norms might be helpful. One is the “generally accepted principle in international law that indigenous peoples should be consulted as to any decision affecting them” (Anaya 2005, 7), supported by instruments including International Labour Organization Convention No. 169, Agenda 21, and the UN Declaration on the Rights of Indigenous Peoples. Similarly, Agenda 21, the Global Initiative for Fiscal Transparency, and other multilateral instruments have promoted transparency in dealing with payments to governments and decision-making around natural resources. Sustainable development has emerged as a norm through the Convention on Biological Diversity, the UN Framework Convention on Climate Change, and other instruments, and sustainable forest management in particular has been “extensively used by both developing and developed countries” (Bueno & Cashore 2013). The precautionary principle, which the United States has passed over as an environmental decision-making technique in favor of cost-benefit analysis, has nonetheless permeated international environmental instruments created since the 1980s (McIntyre & Mosedale 1997).

There are two general strategies that elements of the Liberian government supportive of improved forest governance could use to take advantage of these norms. First, they could wield them in legislative debates to persuade the opposition to vote for improvements to the PUP system. Opponents may be convinced to change their minds by the logic of taking a cautious approach to resources on which the poor rely, of allowing parties to participate in decision-making that affects them, and of ensuring that forests are used sustainably for the benefit of future generations. These bases for good governance reform may be framed as scientifically appropriate approaches to resource management or as ways to

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8 Article 6 states: “[G]overnments shall [] consult the peoples concerned ... whenever consideration is being given to legislative or administrative measures which may affect them directly.” Article 7 adds: “The peoples concerned shall have the right to decide their own priorities for the process of development as it affects ... the lands they occupy or otherwise use.”

9 Section 12.57(b) urges governments to “establish and utilize mechanisms for the consultation and involvement of land users ... to identify and/or contribute to the identification and planning of action.”

10 Article 19 requires states to “consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that affect them.”

11 Cashore (2009) asserts that “[t]ransparency is now an entrenched norm.”

12 Article 8(e) states: “Each contracting party shall, as far as possible and appropriate: ... [p]romote environmentally sound and sustainable development ....”

13 Article 3.4 states: “The Parties have a right to, and should, promote sustainable development.”
garner support from constituents. Even if these arguments are not found compelling, opponents may see political and economic value in conforming Liberian policies to those that have gained traction within the global community so as to please international donors and partners (an example of interaction between norms and international market forces). In this way, as Figure 1 suggests, the norms pathway can be effectively used to overcome political opposition.

The second way to use norms to reform PUP governance is to educate the public about them. Diffusing norms that support good forest governance could boost compliance with existing PUP rules or even stimulate voluntary actions beyond what the rules require. If timber companies themselves are influenced by ideas such as enhanced transparency and public consultation, they may be likelier to take actions along these lines. If these norms penetrate into the public consciousness, citizens may refuse to abide by violations of the norms—especially if they are also violations of PUP rules, but even perhaps if they are not. The public may then become a more active participant in monitoring activities on private land and in informing the government of any problems. To facilitate norm diffusion, the government could build strategic coalitions with NGOs and civil society organizations that support environmental conservation, with the many aid agencies, UN offices, and international NGOs working to rebuild the country, and with timber and agricultural companies wishing to escape the poor reputation associated with Liberian timber. Amplified by the international media, watchdog NGOs have exposed corruption in the timber sector and questioned the legality of timber exports (Butty 2012; Ford 2012). Companies looking to sell timber or to develop agricultural plantations in previously forested areas may find it in their interest to abide by good governance norms to improve the international image of Liberian timber and export-oriented agricultural products in a world where consumers in the United States and the European Union demand legal and, to a more limited extent, sustainable products.

**Markets.** The market pathway provides the Liberian government two options for reducing the risk of forest degradation from PUPs. One option is to ratify the VPA it has negotiated under the EU’s FLEGT regime. Under this agreement, Liberia would put in place a Timber Legality Assurance System which would verify the legality of all timber exported to the European Union, and the European Union would prohibit imports of any Liberian timber not verified using this system. This would create a market
incentive for companies operating under PUPs (as well as under any other license type) to comply will all relevant laws to ensure access to the lucrative European market.

A second approach would be to ensure that all countries with illegal logging laws and green procurement policies are familiar with Liberia’s forest laws to make it more difficult for violators to export timber. This approach takes advantage of instruments like the US Lacey Act, the EU Timber Regulation, and Australia’s Illegal Logging Prohibition Act, which require timber imports to have complied with the relevant laws of the country of harvest. Further, they require importers to exercise “due care” in the case of the former law or “due diligence” in the case of the latter two laws when importing timber products. Whether or not Liberia itself creates institutions to verify the legality of its own timber, these laws incentivize companies logging in Liberia to operate legally so as not to jeopardize market access.

Similar to the obstacle confronting legal reforms along the rules pathway, ratifying the VPA would require sufficient support within the government that may be difficult to muster. However, no voting is needed to take advantage of existing legislation in other countries that impact Liberian timber. The elements of the government that support improved private forestland governance could work to educate consumer countries on Liberian forest laws to enhance their ability to require compliance with these laws, without having to work with political opponents. Unlike efforts to use the rules pathway, Liberia’s weak monitoring and enforcement capacity make use of the markets pathway more appealing. Instruments like the VPA and illegal logging laws represent opportunities for Liberia to reach beyond its borders for assistance. The VPA would involve collaboration between Liberian and European regulators to develop and implement legality verification infrastructure. Recourse to other countries’ laws for enforcement assistance would allow Liberia to share the enforcement burden with well-resourced countries.

**Direct Access.** The Direct Access pathway presents an opportunity for supportive factions of Liberia’s government to promote improved PUP governance regardless of political opposition or capacity constraints. Individual ministries or agencies could provide capacity-building to civil society organizations through funding, training, information-sharing, or other means, without having to garner the sort of support in the legislature that would be needed to enact a legal reform or approve an
international agreement like a VPA. Building the capacities of groups outside the government that share the goal of improved PUP governance would also expand the total resources directed toward monitoring, enforcement, and related activities. Beyond coopting non-governmental stakeholders to share the burden of government tasks, civil society organizations working to implement government policies—particularly ones such as PUP reform which comport with international norms of transparency, public participation, and sustainable forest management—may be able to attract donor assistance and add further resources to the cause. Many NGOs and bilateral and multilateral donor agencies continue to operate in Liberia to rebuild the country’s infrastructure, institutions, and social fabric;\textsuperscript{14} expanding the number of Liberian civil society groups that collaborate with these international actors could have a multiplying effect on the attention and resources directed toward private forestland governance.

Figure 1 depicts the appropriateness of each of the pathways when traveled alone under circumstances of powerful opposition or lack of capacity. When traveled in concert, actions along two or more pathways may complement each other in ways that both overcome the limitations of some pathways and strengthen the effects of others. For example, reform efforts along the rules pathway alone would be powerless in the face of weak capacity to monitor and enforce the rules. Paired with actions along the direct access or market pathways, however, environmentally and socially protective rules are likelier to create an impact on the ground. Civil society groups that are informed of stringent rules which apply to PUPs and that are empowered and sufficiently resourced may be able to monitor private forestland in remote areas that government regulators cannot easily access and report any violations. Likewise, while stringent rules may be difficult for the Liberian government to enforce, companies that are required to carry out due diligence under foreign illegal logging laws,\textsuperscript{15} and the governments that enforce these laws, may be better equipped to ensure compliance.

Another opportunity for travelling multiple pathways simultaneously is to invoke the ideas embodied in international norms to persuade initially opposing legislators to support the adoption of stringent rules.

\textsuperscript{14} By one count, “hundreds” of international NGOs operate in Liberia (Glencorse 2013).
\textsuperscript{15} The EU Timber Regulation requires parties that place timber on the European market to conduct “due diligence” into the timber’s legality (Article 4.2). Australia’s Illegal Logging Prohibition Act similarly requires timber importers and processors to conduct “due diligence” (Part 2, Division 2, Section 12; Part 3, Division 2, Section 17). The US Lacey Act instead refers to a standard of “due care” (e.g., Section 3373(a)(1)). Each law, or their accompanying regulations, provides its own definition for the term it uses.
In the case of PUPs this could be done, as suggested earlier, by highlighting the scientific basis for the precautionary principle and sustainable forest management, and arguing that these ideas could be usefully applied in rules governing PUPs. Alternatively, supporters of stringent rules could appeal to their opponents’ sense of accountability to their constituents in arguing that transparency and public participation respect the rights of the forest-dependent communities that they represent. Finally, supporters could stress the importance of incorporating these norms into Liberian policy not so much because of their content but simply because they are international norms and that there are benefits to bringing national policies in line with international standards.

**Strategic Insights for Moving Forward**

Any attempted policy interventions by the Liberian government to ensure that PUPs do not lead to forest degradation must be sensitive to the possibility of political opposition and the surety of capacity limitations. Stringent rules will be ineffective on their own if political opponents block their enactment and in light of weak monitoring and enforcement capacity. Opposition could also block ratification of a VPA, and educational outreach and provision of funding to civil society groups may be beyond the government’s capacity. The following may be the most feasible options to improve PUP governance:

- **Use the language of international norms to persuade political opponents to enact stringent PUP rules.** Opponents may come to understand the logic of treating cautiously the forest resources on which the poor depend, of ensuring public participation in decision-making, and of protecting forests for the benefit of future generations. Additionally or alternatively, they may appreciate the reputational or other benefits of aligning Liberian policies with international norms.

- **Diffuse throughout society norms such as public participation, transparency, sustainable forest management, and the precautionary approach.** This could have at least two positive impacts. First, it may inspire the public to participate in monitoring compliance with PUP rules that reflect these norms, or to demand compliance with the norms even in the absence of strong PUP rules. Second, promoting transparency could lead to greater government reporting of forest license agreements and of relevant payments, which could in turn make it easier both for external monitors to pick up on incongruities and for international actors to respond through their markets to reports of legal noncompliance (i.e., by using illegal logging regulations).
• Enact stringent PUP rules in combination with efforts along the markets pathway to split the enforcement burden with other countries (provided political opposition is not prohibitive and/or can be overcome using norms-based arguments). Such efforts could include ratifying a VPA and communicating the new rules to countries that ban the import of illegal timber.

• Empower civil society groups to play a role in monitoring compliance with PUP rules. This could increase overall monitoring capacity directed at PUPs and could generate more resources as well if donor groups interested in supporting good forest governance choose to fund these newly empowered groups.

Although countries may differ in terms of the degree to which powerful political opposition and capacity constraints obstruct needed policy interventions, actions along the same combination of pathways are likely to be appropriate for countries that are similarly situated with respect to the matrix in Figure 1. As a result, the ways forward listed above (or variations thereof) should be applicable in countries where, like Liberia, power blocs threaten to derail interventions, and low levels of government capacity hinder implementation. International norms provide a means to persuade opposing policymakers to vote for reform and to coopt civil society into pressing for compliance with desired reforms, whether or not they are enacted. Direct access strategies represent an opportunity to sidestep opposition within the government and to increase monitoring capacity despite governmental shortcomings.

**Future Research**

The central problem that this paper sought to answer is how governance of privately owned forests in Liberia could be improved so as to prevent forest degradation and consequent harm to forest-dependent communities. One recommendation was to reform relevant forestry laws and regulations to include more stringent rules concerning issues like required documentation before harvesting may commence, size and duration limits on forest concessions, and transparency and public consultation procedures. In light of the trend among consumer countries toward enacting illegal logging regulations, stringent forestry rules in producer countries like Liberia are becoming an increasingly feasible means to improve forest governance. Whereas capacity constraints in many producer countries have long interfered with the effectiveness of even the most stringent rules, these rules can now be enforced—at least with respect to exported timber—by consumer countries that typically enjoy greater enforcement
capacity. As a result, the time is ripe for comparative research into which regulatory instruments are most effective at stimulating good management of private forestland.\textsuperscript{16} Models that have worked in certain contexts may be usefully adapted to the Liberian context. While political opposition may continue to hamper enactment of stringent rules, weak domestic enforcement capacity may be declining in importance with the rise of legality verification.

**References**


\textsuperscript{16} Fishman (forthcoming 2014), for example, analyzes Brazilian regulation of private forestland for instruments and approaches that might be usefully applied to the Liberian context.


Forest Development Authority (FDA). 2007. Ten Core Regulations.


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