



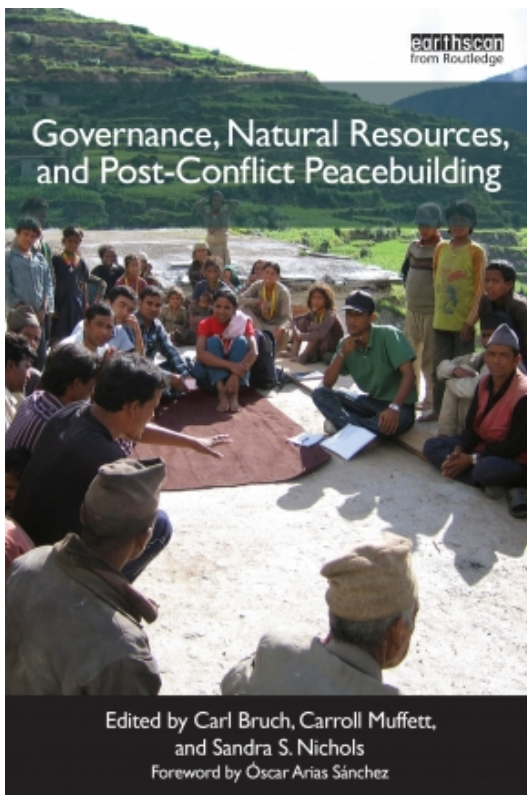
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Concession Reviews: Liberian Experience and Prospects for Effective Internationalized Solutions

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Concession reviews: Liberian experience and prospects for effective internationalized solutions

K. W. James Rochow

The misuse—and sometimes the spectacular abuse—of natural resource concessions in the developing world is both a cause and a symptom of regional conflict and international tensions. Concession reviews have been instituted over the past decade in Africa and Asia in response to the potential repercussions of illicit concessions.¹ The literature to date tends to focus on the specific procedures and outcomes of such concession reviews but rarely ventures into discussions of their broader applicability.

Liberia represents an extreme case: its internal conflicts spread beyond its borders to destabilize neighboring countries and even to threaten regional stability. It is not to be expected that all efforts to address systematic abuse of concessions

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¹Such reviews have been implemented with varying degrees of success in, for example, Cambodia and the Democratic Republic of the Congo (World Bank 2007; UNOHCHR 2007; Methot and Thompson 2009). The Libyan government has also undertaken a review of existing oil concessions (*Asharq Al-Awsat* 2012; Gumuchian 2012). In 2012, the Libyan transitional government declared it was undertaking a review of almost 10,000 contracts signed under the Gaddafi regime, including oil and gas concessions (Yee 2012). Aware of the country's dependence upon oil revenues and not wanting to disrupt operations or deter future investors, the review group appointed by the National Transitional Council provided assurances that even if irregularities were discovered, contracts could be amended rather than cancelled. Following the announcement of the review, there has been little public news about developments, and exploration-production sharing agreements (EPSAs) appear to have remained largely the same.

In late 2012, the Libyan government declared that it would offer new EPSAs on better terms than previous contracts, indicating that existing concessions were probably strict enough. However, since this announcement, the National Oil Corporation chairman "confirmed that there are to be no new [EPSAs] before mid-2014," which would in any case have to be overseen by "a constitutional government" (Zaptia 2013). Due to political instability in the country, the likelihood of a legitimate constitutional government having effective control over such a process in 2014 seems unlikely.



will involve identical geopolitically seismic circumstances. But because the Liberian concession reviews were catalyzed by a high degree of geopolitical instability that compelled international action, they highlight the range of ways in which internationalized approaches can inform concession reviews and help ensure that they serve as vehicles for natural resource management reform and consequent post-conflict stabilization.

This chapter employs the author’s experience in three Liberian concession reviews to explore the broader context of concession reviews, specifically the ways in which they may encourage or require international cooperation. After presenting an overview that highlights the background and key elements of the concession reviews in Liberia, the chapter draws six basic lessons about concession reviews in general. The hope is that these lessons will provoke discussion and further analysis concerning how internationalized processes and dynamics might improve concession reviews and help to restore progressive peace and stability in natural resource–rich (or, as often termed, “resource-cursed”) countries.

THE LIBERIAN EXAMPLE

Liberia has served as a negative example—at times, a striking one—of a resource-cursed country. It has been a quintessential failed state for much of the past three decades (*Foreign Policy* 2011). Tensions between the founding Americo-Liberian elite and the repressed indigenous populations, which had simmered almost from the beginning of Liberia's political formation, exploded into civil convulsion with Samuel Doe's 1980 coup, ushering in a long regional bouleversement—turmoil characterized by brutal contention between warlords and rebel factions for corrupt advantage and political power (Kapuściński 2001). The most notorious of the warlords was Charles Taylor, who served as president of Liberia from 1997 to 2003 and became an international symbol of political thuggery.²

Liberia has been in the process of recovery since the National Transitional Government of Liberia (NTGL) was formed as a result of the Accra Peace Agreement of 2003.³ The agreement established an unelected interim government with cabinet positions apportioned by political faction. The United Nations Security Council (Security Council) established the United Nations Mission in Liberia (UNMIL) to support the implementation of the peace agreement (UNSC 2003a). The subsequent elections for a permanent government, contemplated by the Accra Peace Agreement, were held in Liberia on October 11, 2005, with a runoff on November 8, 2005, and resulted in the election of Ellen Johnson Sirleaf as president of Liberia for a six-year term.⁴

The internationalized dynamic of Liberian concessions

Under international law governing conflict and the environment, classic definitions of *international* are quite literal in their triggering requirement of crossings or transgressions of nation-state boundaries.⁵ But the meanings of *international* and *international system* have evolved beyond restrictive interpretations, especially in contemporary fields such as sustainable development and environmental protection (Sohn 1973). An internationalized perspective attempts to engage all levels

² Charles Taylor has been convicted as a war criminal and sentenced to fifty years in prison by the Special Court for Sierra Leone, specially moved to The Hague (Bowcott and agencies 2012). The Taylor trial garnered international celebrity attention (CNN Wire Staff 2010).

³ The Accra Peace Agreement—signed on August 18, 2003, in Accra, Ghana—is the Peace Agreement between the Government of Liberia (GOL), the Liberians United for Reconciliation and Democracy (LURD), the Movement for Democracy in Liberia (MODEL) and the Political Parties. For the complete text of the agreement, see www.usip.org/sites/default/files/file/resources/collections/peace_agreements/liberia_08182003.pdf.

⁴ In 2011, President Johnson Sirleaf was reelected.

⁵ Trail Smelter Case (United States, Canada), *Reports of International Arbitral Awards* 3 (2006): 1905–1982. http://legal.un.org/riaa/cases/vol_III/1905-1982.pdf.

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of government and institutions, from the international to the community level, and all sets of actors in a coordinated effort to address a common problem.⁶

The Liberia conflict was international even under the strictest definition of the term because it involved a struggle between factions for territorial control across the permeable boundaries between Liberia and its neighbors (Sierra Leone, Guinea, and Côte d'Ivoire). Indeed, the two main rebel factions that contended with Liberian president Charles Taylor and that were factored into the Accra Peace Agreement each had a national base outside Liberia: the Liberians United for Reconciliation and Democracy in Sierra Leone and the Movement for Democracy in Liberia in Guinea.⁷

The conflict was also international in the broader senses. The war was funded by the sale of high-value natural resources—especially diamonds and timber—in international trade by parties on all sides of the conflict. In order to sustain that illegal trade, parties outside of West Africa provided funding and corrupt subventions to fuel the conflict. Recognizing that the convulsive disturbances in Liberia were creating a seismic disturbance in West Africa and beyond, the UN intervened at key points, most notably by brokering the Accra Peace Agreement, establishing UNMIL, and imposing Security Council sanctions prohibiting importation of Liberian timber (McAlpine, O'Donohue, and Pierson 2006; UNSC 2001, 2003a, 2003b).

Propelled by the urgency of bringing stability to Liberia, international institutions, donors, and national governments engaged in peacebuilding there, along with Liberian nongovernmental organizations (NGOs), who with their savvy international outreach efforts created the internationalized dynamic that became characteristic of Liberia's concession reviews. This robust dynamic included the structured incorporation of international expertise and of common reference points for policy recommendations and law reform.

Concessions and conflict

The word *concession* has a Conradian ring to it: one thinks of foreign agglomerations commandeering a country's natural resources through one-sided arrangements in the colonial era. Liberia has indeed experienced its fair share of routine exploitation through accession to overly generous and autonomy-ceding concessional arrangements over the years. The concessions granted to the main

⁶ See, for instance, Trust for Lead Poisoning Prevention (2002).

⁷ When newly elected President Johnson Sirleaf made the decision to include former representatives of those contending factions in her cabinet rather than purging them, she was, in effect, regionalizing her administration. Under more direct notions of international law, she has been instrumental in resuscitating the Mano River Union, a compact among Côte d'Ivoire, Guinea, Liberia, and Sierra Leone. The Mano River Union was established by the Mano River Declaration between Liberia and Sierra Leone, concluded on October 3, 1973. For the text of the declaration, see <http://wits.worldbank.org/GPTAD/PDF/archive/MRU.pdf>.

Firestone rubber plantation,⁸ which is still the world's largest, are illustrative. Firestone has, for the better part of a century, conducted its operations in Liberia in an iron-fisted manner, running a company town with its own police force, jail, hospital, and other facilities.⁹ The corruption, lack of political autonomy, and seething social and political tensions associated with exploitative colonialist concessions create the circumstances for conflict.¹⁰

Beyond this routine exploitation, concessions have helped fuel the Liberian conflict in a variety of ways. The warlords who have ruled Liberia have handed them out as favors to cronies, without concern for legal process or registered ownership. The concession review mandated by the NTGL under the auspices of the Liberia Forest Initiative (LFI) revealed that almost two and a half times the entire forested surface area of Liberia had been granted as forest concessions by the end of Charles Taylor's presidency. The LFI concession review's forensic investigation also revealed a concession tax arrears of US\$64 million (FCRC 2005). Usurped timber and rubber plantations served as base camps and as territory in which the various rebel factions could consolidate their positions and from which they could launch attacks. Illegal concession operations also were essential to generating funds to arm and support the rebel bands and to fuel insurrection and criminality (Global Witness et al. n.d.).

Despite their historically demonstrated potential as a vehicle of exploitation and societal destabilization, concessions remain the principal mechanism by which developing countries license exploitation of their natural resources in exchange for needed revenues. The assumption—which seems unexceptionable—that transparently administered concessional arrangements can provide public benefits and contribute to the public fisc undergirds the many concession reviews that have been conducted in the past decade in Africa and Asia to ascertain the legality and soundness of existing natural resource concessions. The following section summarizes the concession reviews that have been conducted in post-conflict Liberia.

Three concession reviews

Three concession reviews were conducted in Liberia during the past decade. The most formal and elaborate was LFI's highly formalized review, catalyzed by UN

⁸ Firestone's main rubber plantation, Harbel, is adjacent to Monrovia's airport, and Firestone has other rubber plantations scattered throughout Liberia. Firestone is now a subsidiary of Bridgestone but retains its own brand name.

⁹ The government of Liberia has successively tightened up its concession agreements with Firestone, making revenue-sharing and other arrangements less one-sided, but the Firestone operation retains its company-town characteristics (MOA 2008).

¹⁰ These destabilizing tensions are ongoing. Firestone was sued in 2005 by a class of its employees for various abuses, including the exploitation of child labor (Stempel 2011). As of this writing, the U.S. federal 7th Circuit appeals court has dismissed the case—*Flomo v. Firestone Natural Rubber Co.*—on the grounds that while the court could consider the foreign claims, the plaintiff employees failed to prove them.

timber sanctions, of all existing timber concessions. The second was the donor-driven process that reviewed all concession contracts executed by the NTGL. The NTGL review, designed to be accomplished expeditiously, adopted the basic outline of the forest concession review but did not follow its elaborate procedures related to decision criteria and public participation. The third review is more forward-looking: it represents an ongoing attempt to develop an enlightened model for agricultural concessions that is based on best international practices, a model that could initially be applied to oil palm concessions. The process of developing such a model concession necessitated a review of past agricultural concessions to highlight both meritorious and unacceptable provisions.

The Liberia Forest Initiative (LFI) concession review

Pressured by the Security Council's ban on the importation of Liberian timber, the Liberian government for the third time mandated a review of all existing forest concessions.¹¹ Absent that international pressure, the first two in-house concession reviews the government conducted were widely criticized as white-washes. The internationally catalyzed review took place under the auspices of the LFI and constituted the key first step in its effort to thoroughly reform Liberia's forest management system. The LFI is a multi-donor partnership composed of representatives of international agencies, NGOs, the European Commission, and the U.S. government (McAlpine, O'Donohue, and Pierson 2006; Altman, Nichols, and Woods 2012).

The LFI concession review was systematically and transparently conducted by a review committee that included international as well as Liberian representatives from various agencies and civil society. The case-by-case review found that not a single concession could meet even minimal legal requirements, much less criteria related to participation in civil conflict and required provision of community services. As a consequence, the review committee recommended that all seventy of the identified concessions be voided. In addition, that committee outlined a series of forest law and management reform measures and recommended the constitution of a follow-up committee to superintend their

¹¹ In the drafting of the National Forestry Reform Law of 2006, there was an effort to abandon use of the term *concession* because of its historical connotation involving inequitable benefits for private interests. This chapter retains the term because no adequate alternative expression exists. The term *contract*, for example, suggests a freely negotiated agreement between equal parties. Although some provisions of a concessional arrangement are typically negotiated, a concession is essentially a unilateral permission (that is, a license) from the government under its police power. Concession holders should not be able to negotiate away legal requirements. Although the National Forestry Reform Law uses differing terminology for the categories of concessions, it stresses that forest concessions constitute licenses. For the text of An Act Adopting the National Forestry Reform Law of 2006, see www.fao.org/forestry/16151-05fd47b845599b5d3a594a9b0240dacf.pdf.

implementation. The LFI review recommendations were adopted in their entirety by the Liberian government through an executive order—the first executive order issued by the Johnson Sirleaf administration.¹²

The Governance and Economic Management Assistance Program (GEMAP)

The Governance and Economic Management Assistance Program (GEMAP) was constituted by Liberia's major international donors, led by the World Bank, to review and improve the way the Liberian government administered its finances, in terms of both following transparent procedures and adhering to standard accounting and financial management practices. After the Johnson Sirleaf administration took office, GEMAP instituted a review of all contracts entered into and concessions granted by the NTGL during its term of office (October 2003 to January 2006).

The GEMAP review was an abbreviated version of the LFI concession review, put on an expedited schedule. GEMAP created a Contracts and Concessions Review Committee and an attached technical secretariat to make recommendations to GEMAP's governing board (Kaul and Heuty 2009). The GEMAP shortened review criteria focused on commercial and economic evaluation because the preponderance of the documents reviewed were ordinary commercial contracts, not natural resource concessions.¹³ The GEMAP review resulted in recommendations for approval of fifty-two contracts, cancellation of thirty-six, and renegotiation of fourteen (of which five were oil contracts, one was a rubber concession, and one as reported was an iron ore concession) (Kaul and Heuty 2009).

The comprehensiveness of the GEMAP process was compromised in only one instance, but it was a noteworthy one. The iron ore mineral development agreement with ArcelorMittal Steel (formerly Mittal Steel Holdings)—called the Mittal agreement—contained some of the most inequitable concession terms in Liberia (Columbia Law School Human Rights Clinic 2006). The Liberian government established a parallel process for reviewing and renegotiating the Mittal agreement and exempted the Mittal agreement from the GEMAP concession review process before its technical secretariat had an opportunity to analyze that agreement according to the GEMAP concession review's criteria.¹⁴

¹² For the text of Executive Order No. 1: GOL Forest Sector Reform, see www.emansion.gov.lr/doc/EXECUTIVE%20ORDER%20_%201%20-%20Forest%20Sector%20Reform.pdf.

¹³ The GEMAP review did not include any forest concessions because there was a moratorium on the granting of new forest concessions during the NTGL's term.

¹⁴ The Liberian government established a parallel review process especially for the Mittal agreement review and renegotiation, including appointment of a review committee, called the Inter-Ministerial Concessions Committee (Kaul and Heuty 2009). The government's rationale was that it was necessary to expedite the renegotiation to realize revenues that met the deadlines of the government's economic recovery program.

Excluding the Mittal agreement entirely from the GEMAP concession review had the dual effect of diminishing both the GEMAP concession review (because it was not comprehensive and apparently subject to political considerations) and the separate, parallel Mittal agreement review and renegotiation (because its secrecy fostered suspicion about the political pressures involved and their possible effect on the review and renegotiation).¹⁵ In addition, the fact that the Liberian government was supported in the parallel Mittal agreement review and renegotiation by a client-oriented expert legal team undoubtedly helped facilitate a successful outcome, but it also raised the question of whether the government's overriding interest in maximizing received revenues from concessions exclusively defined the public interest.¹⁶ One reason for instituting internationalized approaches is to import into concession reviews the broader perspectives of international partners and civil society in order to transcend governmental interests by fostering transparency and public participation and by reevaluating the terms, scope, and modalities of concession benefits, especially to affected communities.

The model oil palm concession project

The model oil palm concession project was not a concession review per se, although it appears under the category of concession reviews in this chapter for ease of reference. The model project stemmed from a comprehensive report reviewing Liberia's agricultural policies, which, although it concentrated on food policy, recognized that the potential of a revitalized oil palm industry warranted the preparation of a model concession (MOA 2007). The International Finance Corporation picked up on the recommendation and commissioned the project.

The project design was problematic, however, to the extent that it paralleled the active negotiation of oil palm concessions by the Liberian Ministry of

¹⁵ Raja Kaul and Antoine Heuty's rendition of the unfolding GEMAP review differs in some respects from the author's experience on the technical secretariat of the GEMAP concession review (Kaul and Heuty 2009). It was always a point of emphasis within the secretariat that review of the Mittal agreement was out of GEMAP's purview and that the government's deliberations about it were none of the secretariat's concern. It should be noted that the renegotiated Mittal agreement was eventually ratified by the Liberian legislature, as Liberian law requires. But in the author's experience, the ratification process in Liberia has not invariably presented a model of transparent review, and given Liberia's persisting political culture, it poses the prospect of secret deals and unilateral modification.

¹⁶ "Even as they conduct business, governments have duties, obligations and interests that go well beyond pure profit maximization. As such, the same secrecy afforded to contracting parties in commercial law is out of place in such contracts" (Rosenblum and Maples 2009, 11). This salutary statement, by Peter Rosenblum and Susan Maples, applies to the informational firewall in the model oil palm concession project, discussed next, as well as to the Mittal agreement.

Agriculture, which the Liberian government determined should be kept secret even from the participants in the concession review. The informational firewall posed the absurd potential that provisions of ongoing concessions would contradict the model concession's provisions and render them moot. A partial antidote to that untoward secrecy—and perhaps the signal accomplishment of the model concession project—was the convening of the precedent-setting stakeholders' forum, discussed later in the chapter.¹⁷

LESSONS LEARNED

The multiple concession reviews in Liberia have given rise to a variety of instructive lessons regarding the administration of concessions, their relation to democratic governance, and their role in post-conflict reconstruction.¹⁸ One set of important lessons concerns how to incorporate internationalized perspectives and processes into concession reviews to make them transparent and effective. These six lessons, drawn from the author's direct experience with concession reviews in Liberia, suggest how such reviews can aid post-conflict reconstruction and how they can serve as models for internationalized solutions:

- 1) The simultaneous involvement of international institutions and local advocates can create both top-down and bottom-up pressure on national governments to conduct transparent and effective concession reviews.
- 2) International and local experts and decision makers should be integrated into a concession review in a way that is consistent with the national government's ultimate responsibility to accept or reject the review's recommendations.
- 3) International standards should be imported into the concession review's procedures and recommendations for reform—especially standards regarding the rule of law, natural resource management, and best practices.
- 4) Community-based action should be related to international processes.
- 5) International entities should retain a supervisory role in supporting the implementation of reform recommendations that emerge from the concession review.
- 6) A coherent and accessible database of concession review materials should be compiled.

¹⁷ In the original project design, the stakeholders' forum was conceived as the end point of the model concession project: it was to be a forum for presenting the finished model concession. Early on in the project, it became apparent that such a forum could instead aid the development of the model concession and help inject more transparency into the overall concession review process by providing a government-endorsed forum for public participation and comment.

¹⁸ Liberia has since strengthened its laws governing concessions (see the 2005 Act Creating the Public Procurement and Concessions Commission; www.mof.gov.lr/doc/procurement.pdf). But the role of Liberia's Public Procurement and Concessions Commission is weak relative to that of line agencies that have responsibilities for natural resource management (Kaul and Heuty 2009).

Top-down and bottom-up pressure

In the absence of anything resembling meaningful international governance, national governments remain the linchpin of internationalized peacebuilding and sustainable development initiatives, and they retain the ultimate authority to administer, implement, and enforce laws and policies. The usual internationalized dynamic involves conducting a squeeze play on national governments by involving international organizations and local advocates.¹⁹ The unfolding of the LFI concession review spun out variations of internationalized approaches, ranging up to the highest level of geopolitical response. Although few concession reviews will be occasioned by such disruptive conflict and require such elaborate response, the LFI process points to the kinds of dynamic elements that can impel successful concession reviews.

The forest concession review promoted by the LFI had its origins in a squeeze-play dynamic that characterized the sanctions regime the UN progressively imposed on Liberia. The UN began with (1) the appointment of a panel of experts to investigate deficiencies in forest management practices in Liberia and (2) the imposition of a travel ban on government and military officials associated with the Taylor regime (UNSC 2001; *Perspective* 2003). As early as 2001, the panel called for a financial audit of the Forest Development Authority (FDA). The UN's momentum ultimately led to the Security Council's unprecedented imposition of timber sanctions on Liberia in December 2003 (UNSC 2003b).

The ban on importation of Liberian timber met strong opposition from some timber-importing countries. That opposition was overcome in part by a persistent international outreach campaign by Liberian NGOs that included visits with representatives of the Security Council. Advocates of the ban argued that imposition of blanket timber sanctions would be an essential factor in catalyzing coordinated action to deal with the concession-related causes of Liberia's conflict. Liberian NGOs, such as Green Advocates and the Sustainable Development Institute, also formed an ad hoc NGO coalition to facilitate their international outreach and participation in the LFI (McAlpine, O'Donohue, and Pierson 2006).²⁰

Impelled by the desire to extricate itself from the UN sanctions regime and faced with the inescapable realization that cleaning up the forest concession

¹⁹ An illuminating instance of such a squeeze-play dynamic helped to expedite the international phase out of leaded gasoline: local NGOs in various countries took advantage of the World Bank's identification of phase out as a top priority at the 1996 Habitat II conference to mount national campaigns to eliminate leaded gasoline (WHO, World Bank, and UNEP 2001).

²⁰ The forest concession review was integral to the overall LFI, which also advanced initiatives such as a natural area protection and community participation under its mission of promoting the three Cs: conservation, commercial forestry, and community (McAlpine, O'Donohue, and Pierson 2006).

tangle was key to the lifting of UN sanctions and the resuscitation of commercial forestry, the Liberian government, through the FDA, conducted an in-house forest concession review. Critics of that initial review—especially Liberian NGOs—called the in-house effort a self-protective rubber-stamp exercise that cleared all identified forest concessions without rigorous process. So the FDA commenced a second review that included representatives of Liberian civil society. Those representatives found the second review equally ineffectual and refused to sign off on the report. The Liberian NGOs then broadened their international outreach efforts to request that the LFI superintend a third—and this time internationalized and transparent—concession review. They contended that such an internationalized exercise was necessary to broaden participation in the review beyond the FDA, to bring disinterested expertise and additional technical capacity to bear, and to expose the process to public view and comment both in Liberia and abroad.

The idea of an internationalized concession review fits well within the concept and structure of the LFI, which has been characterized as “an informal multidonor partnership, working closely with Liberian authorities and civil society to implement far-reaching reforms and establish conditions that could permit the lifting of UN sanctions” (McAlpine, O’Donohue, and Pierson 2006, 83). In addition to the U.S. government, the LFI’s partners include an eclectic mix of international institutions with local offices or liaisons in Liberia: the World Bank, the European Community, Fauna & Flora International, the United Nations Environment Programme, Conservation International, the Center for International Forestry Research, the Environmental Law Institute, and the International Union for Conservation of Nature (McAlpine, O’Donohue, and Pierson 2006). The diversity of its partners and the fluidity of its operation have allowed the LFI to function with a dynamic that is characteristic of internationalized approaches.

Integration of international and local experts

There was undoubtedly a coercive element to the internationalization of the Liberian concession reviews that was based on the international community’s ability to leverage its funding support and the UN timber sanctions to promote reform through concession reviews. But the internationalized approach also encouraged the application of complementary expertise. The LFI and GEMAP concession reviews institutionalized expert advisory bodies in the form of technical secretariats that formulated recommendations for the review boards.

Consistent with an internationalized approach, these Liberian concession reviews formally structured the technical secretariats to counterbalance each Liberian expert with an international expert in the relevant discipline: a local lawyer was paired with an international lawyer, a local forester was paired with an international forester, and so forth. Although the agricultural concession review did not formally constitute a technical secretariat, a team consisting of an international lawyer and an oil palm expert worked together on an ad hoc basis with

other international experts, such as consultants in the rubber industry, and with equivalent representatives of the Liberian Ministry of Agriculture to derive model provisions for agricultural concessions. The international-local counterpart pairing—characteristic of all of the Liberian concession reviews—stimulated and channeled productive analysis rather than an artificial point-counterpoint colloquy. This led to common recommendations being unanimously approved.²¹

The view from the local side of the LFI concession review's internationalized structure reveals the salient fact that the forest concession review committee included a majority (ten out of eighteen) of the agencies representing the Liberian government that mandated the review. Additionally, three seats were occupied by Liberian civil society. Of the five international seats, two were occupied by UNMIL and three by LFI partners. The LFI deemed the Liberian government's mandate for the review and formal approval of it essential for its legality and legitimacy (McAlpine, O'Donohue, and Pierson 2006).²² The GEMAP concession review also involved an internationalized technical secretariat, whose recommendations were submitted to the Liberian government through the multirepresentational GEMAP board. The government's subsequent adoption and implementation of the technical secretariat's recommendations evidences the success of the internationalized approach.

Importation of international standards

Most concession reviews in the past decade have been triggered by the consequences of pervasive mismanagement and corrupt practices in natural resource-rich (or resource-cursed) countries that have been scarred by conflict. Such reviews therefore need to broaden out beyond rationalizing concession procedures and provisions; they must lay the foundation for longer-term reform in the interest of post-conflict stabilization.

To solidify the link between review and reform, applicable international standards should govern the concession review process and the reform recommendations that flow from it. There is a school of thought that says that holding developing countries to what are termed "Western standards" is a form of neo-colonialist imposition—China, for example, has taken this position when justifying its extensive foreign aid to dictatorships in Africa and elsewhere (Zhang 2010). This "GEDW" (Good Enough for the Developing World) standard is particularly unsuitable when it is applied to concession reviews because the very absence of adherence to legal norms and transparent democratic procedures is what created the destabilized conditions that occasioned the reviews in the first place.

²¹ For example, the twinned experts collaborated on a series of position papers on issues relevant to oil palm concessions as the basis for the concession review (papers on file with author).

²² But see, for example, Amos Sawyer's criticism of the concession review as a violation of Liberia's sovereignty (Andersen 2007).

Rule of law

Fundamentally, concession reviews should be viewed as vehicles for restoring the rule of law. Therefore, they should be conducted in a manner that comports with the reinstatement of the rule of law in countries scarred by conflict.

The LFI review process was structured from its beginning to mirror and reinforce the goal of restoring the rule of law according to commonly recognized legal principles. The review was conducted in a transparent manner according to predefined decision criteria and procedures, beginning with the widespread publication of those criteria. The burden of proof was explicitly placed on each concession holder to document compliance consistent with the procedures for license applications, and particularly to document any force majeure event—that is, any unanticipated event beyond the control of the concession holder that would prevent the concession holder from complying even while acting in good faith. Each concession holder was also required to verify by affidavit all documentation submitted. The review went beyond due process (which requires that parties affected have the right to challenge decisions by adjudicatory process after they have been made) by scheduling individual meetings to allow participating concession holders to make their case to the technical secretariat during the review process. Concession holders were notified in writing if their concessions were canceled and were advised of their right to appeal.

Natural resource management

Concession reviews should link to legal and institutional reform by placing the specific lessons learned in the review of individual concessions within current international frameworks for natural resource management. The LFI concession review made a comprehensive program of legislative, regulatory, and administrative reform an integral part of its work. This program for moving forward was approved in the executive order that adopted the results of the concession review.²³

The LFI concession review called for a comprehensive land use–planning process that would rationalize the forest concession allocation process under FDA control, a significant departure from past practices. Other foundational reform recommendations included a cradle-to-grave chain-of-custody system for tracing harvested timber and the institution of a transparent competitive bidding system to prevent the sequential awarding of overlapping concessions through corruption and cronyism. The general failure to meet financial obligations and the usurpative behavior characteristic of many of the forest concession holders led to recommendations that independent suspension and debarment lists be instituted and that past misbehavior be investigated, an updated echo of the UN travel ban lists issued by the Security Council.

²³ Executive Order No. 1.

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The model oil palm concession project tried in two ways to inject state-of-the-art management concepts into the framework of future oil palm and other agricultural concessions in Liberia. First, both the project's international experts and participants at the project's stakeholders' forum identified as a paramount need an accelerated transition from the company-town arrangement (the company-town or philanthropic model) to a community- and revenue-based concession (the social-investment model). The traditional concession negotiation between the government and the proposed concession holder involves a trade-off between generation of government revenues and provision of essential public services by the concession holder through its own schools, hospitals, and other facilities. The evolving social-investment model emphasizes the engagement of the community in productive concessions that generate sufficient tax revenue to allow the government itself to provide proper public services.²⁴ Both the community and agricultural industry representatives at the stakeholders' forum expressed their preference for the social-investment model.

Second, the thrust of the agricultural model concession project was to attempt to adapt the plasma model of concession operation, which had been developed in Southeast Asia, primarily in Indonesia. The animating concept behind the plasma model is to grant foreign investors large concessional areas in return for requiring them to lease parcels to farmers and to guarantee a processing market to them under arrangements that will allow them to build up sufficient equity in installment payments to eventually purchase their parcels (Teoh n.d.).

Best practices

Concession reviews should also promote the use of international best practices in concession agreements. The model concession project found two basic sets of best practices that, if implemented, would improve the conduct and legality of oil palm concessions in Liberia. The first set consisted of specific standards for harvesting, processing, and other details of oil palm operations, which were derived from experiences in Indonesia and Malaysia. The second set consisted of principles related to conducting concessions on the basis of respect for human rights, such as equitable treatment of workers and limitations on the operations of private security forces (Jelsma, Giller, and Fairhurst 2009; Sime Darby 2012; UNMIL 2006).

²⁴ Local (subnational) government units played no significant role in the granting or evaluation of the concessions that were involved in the reviews discussed in this chapter. It is conceivable that any adoption of the social-investment model for agricultural concessions would strengthen local governments through augmented revenues. In addition, mandated benefits to local governments under Liberia's 2006 National Forestry Reform Law and its regulations may help to strengthen local governments and their role in the reformed forest management regime (Blundell 2008).

The requirement that the concessions should operate according to international best practices should be phrased as a general clause in the concession agreement, open to case-by-case determinations analogous to the way public nuisance cases are handled. Incorporating references to specific standards runs the risk of incompleteness or of fossilizing standards that may change in the future. The recommended general-reference approach underscores the need for an accessible database of best practices, as discussed below.

Relating community-based actions to international processes

The previous discussions contained examples of how international participation in concession reviews helped engage local communities beyond what was otherwise likely to occur. The imported plasma model for agricultural concessions is designed to empower local farmers by offering them technical assistance and agricultural extension training programs as part of the path to ownership of their land. The plasma model also fosters the growth of local businesses by making them preferred providers of supplies and services to the major concession holders, as well as by enlisting them in business training programs.

The stakeholders' forum convened by the model oil palm concession project, cosponsored by the Ministry of Agriculture, was a groundbreaking exercise in public participation in Liberia. A significant number of NGOs, community-based organizations, and tribal chiefs from all over Liberia joined Liberian government ministries, representatives of international organizations, agricultural experts, and oil palm and rubber industry representatives to candidly discuss the current status and proposed future of Liberia's agricultural concessions and their relation to community needs.²⁵

The Liberian process offers a cautionary example of a situation in which a well-intentioned internationalized approach may work against community-based approaches: the evolving model oil palm concession included a mandatory dispute-resolution clause that called for all disputes arising out of the concession to be referred to a World Bank–International Finance Corporation panel in Geneva, Switzerland. The clause anticipated disputes between the government and major investors, but it was incompatible with the plasma model. It is absurd to force small farmers and small businesses, which are integral to the plasma model, to undertake the rigors and expense of international dispute resolution.

This example raises a larger issue. Pro bono legal support from international business lawyers experienced in the drafting of oil palm concessions was provided to the Liberian government by the International Senior Lawyers Project (ISLP 2008). That kind of client-oriented technical assistance has proved critical in the

²⁵The stakeholders' forum produced a report that has been embargoed by the International Finance Corporation, apparently at the request of the Liberian government, which, it has been assumed, found some parts of the report objectionable. A copy of the report is in the author's possession.

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drafting of concessions that model enlightened international practice and that maximize the transparent flow of revenues to the government, but that expertise still needs to be complemented by a broader pro bono perspective that addresses public participation and community concerns.

Retention of oversight

Concession reviews should function as catalysts for reform. International participants consequently need to retain an active role in ensuring that concession review recommendations are implemented. The LFI was succeeded by the internationalized Forest Reform Monitoring Committee to promote the implementation of the forest sector reform measures recommended by the LFI's concession review, during which the granting of new concessions was suspended (FCRC 2005). During the suspension, the international participants supported FDA personnel who were trying to implement the reforms and working against the short-sighted view that the concession-granting process should be reinstated prior to the start of reform implementation. It turned out that part of the implementation process involved tempering unrealistic expectations concerning the amount and rate of revenues that would be generated by new forest concessions.

After it lifted the Liberian timber sanctions, the Security Council extended the mandate of its panel of experts on Liberia, charging it with periodically investigating and reporting on progress in the implementation of Liberia's post-concession review reforms (AllAfrica 2011). Thus, one way in which concession review committees can continue to foster post-review implementation of a reformed concession system is to retain jurisdiction and to prepare periodic implementation reports.

Database of concession review materials

Considering the importance of concession reviews to natural resource management and to social, economic, and legal reform, it is surprising that no accessible database exists as a centralized reference point for materials related to concession reviews. A database needs to be created, and posted materials should include concession review reports; documents such as articles and commentaries; sample concessions; laws, regulations, and policies; and information on best practices. A foundation-sponsored web site that follows anticorruption and transparency initiatives, such as that of the Open Society's Revenue Watch project,²⁶ constitutes a potential locus for a concession review database and the compilation of a wellspring of documentary evidence.

The existence of a dedicated concession review web site would not only support the transparency of concession reviews by providing international access

²⁶ See www.revenuewatch.org. On June 5, 2014, the Revenue Watch Institute and the Natural Resource Charter merged to create the Natural Resource Governance Institute.

to them, but might encourage the creation of standard paragraphs that could be adapted for various concessions. To take one example, concession documents should contain a self-contained narrative explaining, on the record, the circumstances of a concession, its history, and full background information on the concession holder to help inform the public of the circumstances of the concession.

CONCLUSION

Beyond their instrumental outcomes—concessions canceled, reapproved, or modified—concession reviews can provide larger lessons concerning the review process itself, the context in which reviews should be conducted, and the larger opportunities such reviews present for furthering post-conflict restoration of a robust civil society, properly functioning government, and the rule of law. Although Liberia, with its seismic upheavals, presents an extreme case, the very severity of the reconstruction challenges it posed gave rise to—indeed necessitated—a full range of best practices applied and lessons learned through three concession reviews. These experiences should help guide future concession reviews and post-conflict restoration projects in other countries.

Concession reviews should be viewed from an expansive perspective, and their conduct and conclusions should be integrated into the larger effort to rehabilitate and improve societies incapacitated by conflict. They should be conducted in a way that reinstitutes and strengthens the rule of law—an indispensable ingredient in post-conflict restoration and a characteristic of the LFI concession review.

One handicap in this effort to evaluate disparate concession reviews and to synthesize lessons learned is the lack of a coherent and accessible database that details and analyzes the reviews. Establishment of such a database is an obvious but necessary step toward making it easier to derive, disseminate, and compare lessons learned from concession reviews. To facilitate on-the-record comprehension of the background of the reviews, managers of individual concessions should recite in a standard format the details and circumstances of the concession.

The most distinguishing aspect of the Liberian concession reviews was their internationalized dynamic. Fruitful, mutually reinforcing exchanges between international and domestic expert counterparts contributed to the success of the reviews. Most important, the catalyzing role of Liberian NGOs during and following the review processes has played a vital role in the reestablishment of civil society in Liberia.

The Liberian NGOs could effectively play that role only because international organizations and initiatives like UN agencies and the LFI recognized NGO participation and incorporated it into the ongoing review process. It often takes such external legitimization to enable NGOs to participate in domestic processes on an equal basis with government and industry. Building a robust civil society in the context of an internationalized dynamic (the squeeze play between the

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international and the local, in the terminology of this chapter) is perhaps the most important result concession reviews can achieve beyond the disposition of individual concessions and the provision of maximum legitimate government revenues from concessions.

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