



Signing their Lives away:

Liberia's Private Use Permits and the Destruction of Community-Owned Rainforest

September 2012

Liberia is the most heavily forested country in West Africa and contains the last large areas of relatively intact rainforest in the region. Most of Liberia's rural communities are also dependent on the forest for food, energy and other basic needs. During the country's long conflict, timber exports were used to finance arms sales and logging companies committed human rights abuses against those living in the forests. In the nine years since the war, the Liberian Government and its international partners have spent considerable time and money reforming the sector – drafting new laws and negotiating a timber trade agreement with the European Union. However, in the span of only two years, companies have used a legal loophole to secretly parcel out dozens of logging contracts covering a quarter of the country's land area – roughly 26,000 km² – once again threatening Liberia's forests and the people who depend upon them.

These new licenses – termed Private Use Permits – contain no sustainability requirements and therefore would essentially allow companies to clear 40 percent of Liberia's forests, including almost half of Liberia's primary intact forests. Private Use Permits provide much less revenue to the Government than other types of logging licenses. Frequently allocated on land owned collectively by the local communities, the Permits provide little benefit to these communities and violate Liberia's new laws designed to ensure that communities can control their forests. Investigations by Global Witness, Save My Future Foundation and Sustainable Development Institute have also uncovered evidence of Permits awarded in violation of the country's Community Rights Law, suspected forged documents and systematic neglect for due process in the allocation of Private Use Permits.

While some 66 Private Use Permits have been awarded to a range of companies, by far the largest beneficiary is Atlantic Resources. Atlantic is registered in Liberia but is linked to logging giant Samling, a Malaysian company with a history of illegal logging in both its home country and around the world.

In recent weeks as top Liberian Government officials and international partners begin to grasp the extent of the threat, Private Use Permits have become a much debated topic. In August, Liberian President Ellen Johnson Sirleaf reconfirmed a moratorium on Private Use Permit operations and an investigation into what has gone wrong. These promising commitments from the President must result in enforcement and action, with an independent investigation and the prosecution of those responsible for perpetuating any fraud uncovered as a result.

A brief history of Liberian logging

From 1989 to 2003 Liberia experienced a series of civil wars, resulting in the deaths of 250,000 people and the displacement of 1.3 million. During a break in the conflict, in 1997 the country elected warlord Charles Taylor as President. During his regime, Taylor used Liberia's forests as a personal bank account and a means of financing his war efforts. Some of the leading logging companies made significant off-budget payments to Taylor and were actively involved in illegal arms imports. At its height, Liberia's timber industry was responsible for widespread abuses of forest inhabitants and destructive logging in concessions covering nearly half of the country. In 2003, the United Nations Security Council recognized the role that logging played in the country's ongoing conflicts and imposed sanctions, banning imports of Liberian timber by member states.

In the nine years since the end of Liberia's war, the Government, with support from Liberian civil society and key international partners – particularly the U.S. and the World Bank – embarked on a major effort to reform the forest sector. These reforms were designed to be comprehensive: Liberia's war-time logging contracts were cancelled and new laws were passed. Liberia's partners have invested heavily in these reforms, including:

- A reported US\$ 30 million from the United States to support communities in managing their forest resources.
- A trade agreement with the European Union – the Voluntary Partnership Agreement – requiring that only “legal” timber be cut in Liberia, and setting standards for what “legal” should mean.

Following the lifting of U.N. timber sanctions in 2006, the Government began issuing new logging licenses. Despite all the reform efforts, this process was characterized by significant violations of the country's laws and regulations. The resulting seven large Forest Management Contracts and ten small Timber Sale Contracts together cover nine percent of the country. Although the first of these concessions began exporting timber in 2010, it is generally agreed that the companies holding the contracts have failed to deliver the promised benefits to the Liberian people. Many of companies awarded contracts owe significant back taxes, and while the Government had estimated that between 2008 and 2011 it would receive some US\$ 107 million from logging, by July 2012 the country had received only US\$ 24 million.

The explosion of Private Use Permits

Even as companies failed to meet their obligations under existing contracts, a new avenue for gaining logging rights emerged and has been exploited on a massive scale: Private Use Permits. Private Use Permits differ from Forest Management Contracts and Timber Sale Contracts in that they are not allocated by the Government on public land. Instead, the Permits involve deeded private land, allowing land owners to enter into contracts directly with logging companies.

Liberia's forest law allows for such contracts, but unlike for other types of licenses the law is accompanied by few regulations to guide the use of Private Use Permits. As a result, these Permits have no size limit and are accompanied by few restrictions on how logging operations are carried out. Also, while Liberia's other large logging licenses have requirements meant to improve the sustainability of logging operations, Private Use Permits can be used to entirely clear large areas of forest. Evidence revealed by our investigations show that at least one company – Atlantic Resources, linked to Malaysian logging giant Samling – has the intention of clearing forest areas after logging them.

Other disadvantages of Private Use Permits include a lack of competitive bidding, lower tax contributions to the Government than under either a Forest Management Contract or a Timber Sale Contract and no minimum level of revenue to be paid to land owners.

Since 2010 there has been a huge increase in the number of Private Use Permits issued. Although Government reports vary, recent information suggests that there are now some 66 Private Use Permits covering 26,000 km² of Liberia's territory – almost a quarter of the entire country. By our estimates these Permits, which as stated above are subject to virtually no regulations to promote sustainability of logging operations, now cover over 40 percent of Liberia's forests, including 46 percent of the country's intact rainforest. Such rapid and widespread allocation is itself a major concern, but that Liberia has signed away its natural heritage for such paltry returns is particularly alarming. For a map showing the locations of the 59 Permits for which we have location information, see Annex I.

Obtaining information on Private Use Permits has proven difficult, and it was not until November 2011 that the Liberian Government provided some basic information on their locations and sizes. Since then a series of events has brought further attention to this issue:

- Responding to protests from Liberian civil society members and a Government insider, in February 2012 the Board of Directors of the Government's Forestry Development Authority ordered a moratorium on operations of all Private Use Permits save the four operating at that time and on the issuance of further Private Use Permits.
- By June 2012 it was apparent that the moratorium on operations was being ignored and additional companies holding Permits had begun operating.
- On August 3rd, the authors of this memo wrote to President Ellen Johnson Sirleaf presenting evidence of fraud and other suspicious activities during the award of Permits.

- On August 6th President Johnson Sirleaf renewed the February moratorium.
- Reacting to the President's reconfirmation of the moratorium on logging operations, on August 8th the Liberian Timber Association – a trade group – filed a protest with the Liberian Senate. On August 23rd, the Senate stated that the moratorium should be lifted, although the legal weight of this statement is unclear. The Timber Association has also filed a complaint with the Supreme Court.
- On August 20th President Johnson Sirleaf announced that she would commission an investigation to examine the issue.

Fraud and community exclusion

Private Use Permits have become such a widespread problem in large part because many appear to be based upon forged documents and have been awarded without the informed consent of the people living in concession areas.

Suspicious and forged documents

As an agreement between a land owner and a company, Private Use Permits require a holder show that the attendant land is owned – that it is deeded. Our investigations show that many of the deeds that underpin Private Use Permits are of either suspicious provenance or may be forged:

- 28 of the 30 deeds seen by Global Witness, SAMFU and SDI are held in the collective name of the people of a district or clan. Based on interviews with residents in ten areas for which Private Use Permit have been issued, we found that community members and local leaders in six cases stated they did not believe deeds to their land existed, raising serious questions about whether the deeds underlying these Permits are valid. When presented with a letter written in his name submitting his people's deed to the Government, a Paramount Chief from the Dugbeh River Private Use Permit area in Sinoe County told us that the letter was a forged.¹
- In Liberia, most deeds must be signed by the President. In one Private Use Permit (Doedian District, Rivercess County), the attendant deed is dated 1924 but signed by President Edwin Barclay, who did not become Liberia's President until 1930.
- To date, we have been able to obtain only 30 deeds for the reported 66 Private Use Permits, and these copies are very poor, leaving open the possibility that many additional deeds have been forged.

Community exclusion

Many Private Use Permits have been awarded in contravention of Liberian law because they have been issued on land owned by communities, frequently without meaningful participation of those residents. As discussed above, the vast majority of Permits for which information is available are underpinned by deeds that are held collectively by the forest's residents. However, under Liberian law such collective-deeds are actually controlled by the country's 2009 Community Rights Law which dictates that collective titles must be covered as "community forests" and not Private Use Permits. As such, almost all of the Private Use Permits for which deed information is available cannot legally be awarded as Private Use Permits.

This requirement exists in order to protect Liberia's rural populations – to ensure that when deciding what to do with collectively-owned forests they set up governance structures and operational plans to manage them in a participatory and accountable way. The way Private Use Permits were issued underlines why such safeguards are essential. Our investigations have shown that people living in Permit areas did not make informed decisions when handing their forests to logging companies. In five of the six Private Use Permit communities where residents were aware of the process by which documents were signed, communities reported that meetings were short – no longer than one day – and at no meetings were any documents altered based upon suggestions by community attendees. In the sixth Private Use Permit area visited, interviewed residents were unaware of the process by which decisions had been made.

One of the most striking examples of how little negotiating capacity affected communities had in the award of Private Use Permits is the paltry sums they agreed to accept as compensation for allowing their forests to be logged. Prices for Liberian tropical hardwoods can reach US\$ 200 per cubic meter. Yet in all the Permits areas visited, communities members involved in "negotiations" agreed to receive either US\$ 1.50 or US\$ 3.00 per cubic meter. In violating Liberia's Community Rights Law, it is clear that Private Use Permits risk widespread exploitation of the people who own the forest.

The roles of Atlantic Resources and Government officials

Atlantic Resources, Alpha Logging and Malaysian logging giant Samling

Our investigation has identified 16 different companies holding Private Use Permits. Principal among these is Atlantic Resources, a company linked to Malaysian logging giant Samling. Atlantic holds a total of 8,400 km² in Private Use Permits, or almost eight percent of the entire country. Also linked with Samling is the logging company Alpha Logging. Both Alpha and Atlantic also hold Forest Management Contracts amounting to 2,400 km². In total, Samling-linked companies thus control some 10% of Liberia's land area.

That Atlantic and Alpha have the right to log such a large percentage of Liberia's territory is a concern given Samling's egregious record elsewhere:

- In August 2010, the Norwegian Government's Pension Fund Global disinvested from Samling after finding that the company was involved in systematic illegal logging within and around its timber license concessions in Sarawak, Malaysia.²
- Samling-linked companies have also been accused of illegal logging in both Cambodia³ and Papua New Guinea.⁴
- In 2007, the Government of Guyana announced that, after investigating a Samling subsidiary in that country, it had found the company responsible for colluding with officials to defraud the Government.⁵

In Liberia, companies linked to Samling also have a poor track record. In 2009, when bidding for a Forest Management Contract, Atlantic submitted its bid in the same envelope with another company linked with Samling (Southeast Resource), suggesting collusion between the two companies. This should have prevented the companies from bidding, but did not. The manner in which Atlantic has obtained its Private Use Permits also raises considerable concern. Evidence collected includes the following:

- Atlantic and Alpha have not paid their taxes: At the time that Atlantic was awarded the bulk of its Private Use Permits, the company owed the Liberian Government over US\$ 2.7 million, while Samling-linked Alpha Logging owed an additional US\$ 2.9 million.
- Atlantic's Private Use Permits are based upon questionable land deeds: Of the five Private Use Permit areas held by Atlantic that we visited – all of which were justified by collectively-held deeds – community members and local leaders in four stated that they did not believe they had deeds to their land. Among these was Dugbeh River, where the above-mentioned Paramount Chief stated that a justifying letter in his name was forged.
- Atlantic's persistence is paying off: Some of the logging rights Atlantic now holds as Private Use Permits have superseded rights originally granted under a 2011 contract between the University of Liberia and Atlantic covering some of the same forest. This deal was discredited following an investigation by Liberia's Land Commission, which determined that the University did not have legal rights over the forest. Atlantic continued to log the area despite the invalidated contract while seeking Private Use Permits to gain access to the even larger areas of forest in the same area.
- Atlantic has broken the Government's February moratorium: In February of this year, the Government's Forestry Development Authority Board of Directors ordered a moratorium on the operations of all save four Private Use Permits. Under this moratorium only one of Atlantic's 22 Private Use Permits was authorized to operate. However, the company has since started operating a different Private Use Permit – Dugbeh River – and it was reported in July 2012 that the company was to commence operations in two further areas in the coming weeks.

Although most of its logging concessions are not yet operational, Atlantic has already begun felling a considerable amount of timber. The company began exporting in April of this year and as of July we estimated that the company had tens of thousands of cubic meters of logs waiting to be shipped out. Much of this timber was labeled as felled under Atlantic's agreement with the University of Liberia after the Land Commission declared the agreement invalid. The remainder of Atlantic's timber was labeled as felled under Atlantic's Private Use Permit with Dugbeh River, a contract that should not be operating under the Government's February moratorium. On this basis, it can be concluded that Atlantic had no legal mandate to fell much of the timber it has cut, timber that is now sitting in a local port awaiting export.

Our investigations also uncovered proof that Atlantic intends to convert forest land to agricultural use after it has finished logging. Earlier this year Atlantic began circulating a proposed agreement to people living in some of its

Private Use Permit areas. Under the terms of this contract, Atlantic would have the right to convert the communities' land to palm oil plantations or other agricultural use for a minimum duration of 75 years, with paltry benefits to local communities. The agreements we have seen, only one of which has reportedly been signed by community members, suggest that Atlantic may plan to set up its own subsidiary or department to operate palm oil plantations. Samling operates palm oil subsidiaries in other countries. Such arrangements would have enormous impacts on communities' access to farming land, food and water supply, while at the same time irreversibly destroying some of Liberia's most biologically rich forest areas. A copy of one of Atlantic's agricultural agreements is attached to this brief as Annex II.

On August 23rd, Global Witness wrote to Samling to request comment on the above issues. As of August 30th no response had been provided.

Additional logging companies

Very little information is known about other companies that hold Private Use Permits, including who owns them and whether they have the financial and technical capacity to operate. This is because Private Use Permit holders do not need to go through the same background checks – called prequalification – as logging companies receiving other types of logging licenses. The Government has made no background information on the companies receiving Private Use Permits available to the public since approving the Permits. However, in recent weeks Liberia's logging trade group – the Liberian Timber Association – has become the public corporate face of the Permits. In August the Association submitted complaints to both the Liberian Senate and Supreme Court claiming that the President's renewed moratorium on Permit operations was "illegal." Whether any of the Association's members hold or operate Private Use Permits is unknown, but to date it remains the only entity to have publicly defended the Permits.

Government involvement

It is not yet clear precisely which Government officials have been involved in awarding Private Use Permits. We have found no evidence that officials have been involved in corruption or the forging of land deeds. However, evidence collected so far shows that the following individuals have played a role in awarding permits:

- Minister of Agriculture Florence Chenoweth: The Chairwoman of the Forestry Development Authority's Board of Directors, Minister Chenoweth signed all of the Private Use Permit contracts for which we have signature information. Under the Minister's direction in February 2012 the Board ordered a moratorium on the activation of all Private Use Permits except the four then operating. This ban has been repeatedly violated, and in June 2012 it was reported that the Forestry Development Authority had authorized the activation of 13 Private Use Permits. The Minister remained the Board Chairwoman during the period that the February moratorium was violated.
- Forestry Development Authority: The Authority is the Government agency responsible for approving and allowing operations in Private Use Permits.
 - Managing Director Moses Wogbeh has signed all of the Private Use Permit contracts for which we have signature information and has rigorously defended the licenses' legality.
 - FDA mapping staff – including Augustine Johnson and John Kantor – authored documents validating most Private Use Permits. Our investigation identified one case where a verification document signed by Kantor appears to have been falsified as it is virtually identical to another verification document. When considered together with the failure of the FDA to appropriately apply the Community Rights Law to collectively-held deeds, the evidence raises serious questions about the quality of the FDA's review process for approving Permits. Johnson has since been fired from the FDA following a Liberian Government investigation into corruption surrounding a proposed deal involving forest carbon credits.
- Ministry of Lands, Mines and Energy: Responsible for validating the land deeds that underpin Private Use Permits, Ministry staff members George Miller and Maxwell Gwee signed letters stating that such deeds were valid. In particular, Gwee signed letters validating the two questionable deeds discussed in this brief: one containing the signature of a Liberian President who was not in office at the time the deed was issued, and one accompanied by an apparently forged letter from a Paramount Chief in the Dugbeh District. These examples and other cases discussed in this brief where communities were not aware of the existence of deeds in their names, raise questions about the quality of the Ministry's deed validation process.

Recommendations

A moratorium on Private Use Permits has now been put in place, and an investigation will be commissioned shortly. The following steps are now necessary:

- The moratorium on Private Use Permit operations must be maintained and strictly enforced.
- No logs already felled under Private Use Permits should be exported, including those felled by Atlantic Resources.
- The investigation ordered by the President must be independent, thorough and identify those corporate and Government representatives responsible for criminal behavior.
- The Government must prosecute those who for whom evidence of criminal behavior is discovered.

Further Reading (Available upon request)

- De Wit, Paul, *Land Rights, Private Use Permits and Forest Communities*, April 2012.
- Deah, John (LTA Acting President), *Letter to Senator Gbehzohngar Findley*, 8 August 2012.
- Sustainable Development Institute, *Private Use Permits threaten the international image of Liberian logs*, June 2012.
- Wogbeh, Moses (FDA Managing Director), *Letter to President Ellen Johnson Sirleaf*, 9 August 2012.

¹ For a video of the testimony provided by Paramount Chief Peter Tugbe, taken in July 2012, please visit <https://www.dropbox.com/sh/0xqn6ihgt6hx1sq/z3XNKpl2JT>. Higher resolution versions of the same video available upon request.

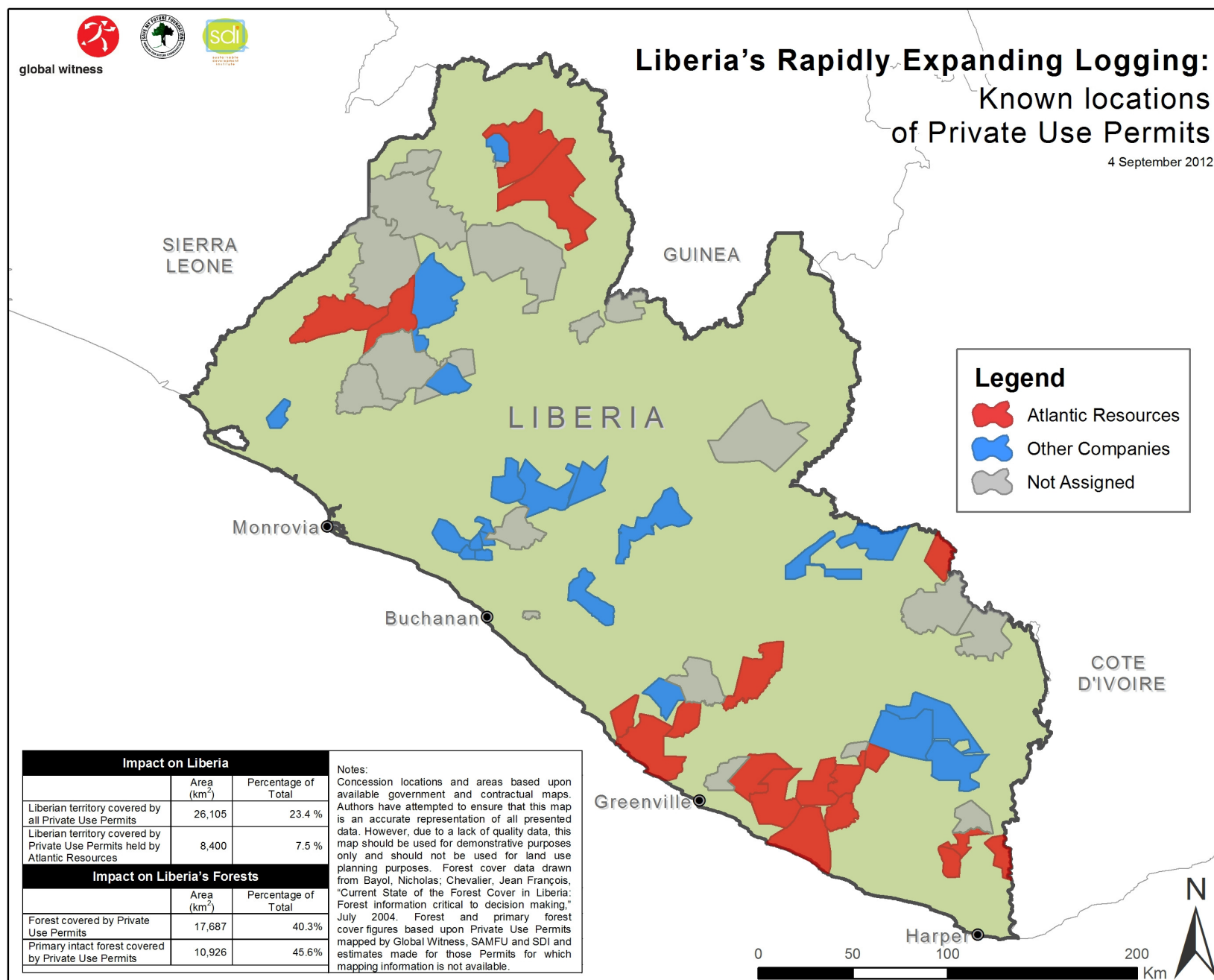
² Norwegian Government Pension Fund Global Council on Ethics, *Recommendation*, 22 February 2010, available at <http://www.regjeringen.no/pages/13897161/Samling.pdf>.

³ Global Witness, *The Untouchables*, December 1999, available at <http://www.globalwitness.org/sites/default/files/pdfs/untouchables.pdf>.

⁴ Forest Trends, *Logging, Legality, and Livelihoods in Papua New Guinea*, 1 March 2006, available at http://www.forest-trends.org/documents/files/doc_161.pdf.

⁵ Guyana Government Information Agency, *System to discourage log export to be implemented shortly*, 8 October 2007, available at <http://www.gina.gov.gy/archive/daily/b071009.html>.

Annex I. Map showing known locations of Private Use Permits. Higher resolution version of this map available upon request.



REPUBLIC OF LIBERIA

MONTSERADO COUNTY

ADDENDUM TO THE M.O.U OF SEPTEMBER 28th, 2011 BY AND BETWEEN ATLANTIC
RESOURCES LIMITED AND THE PEOPLE OF DUGBEH RIVER.

This Agreement is made and entered into this March day of ~~February~~, 2012, by and between the Citizen of _____ district, represented by their Traditional Leaders, Elders and Chiefs, of _____ District, Sinoe County, Republic of Liberia, hereinafter known and referred to as "OWNER" and/or party of the First Part; and Atlantic Resources Limited, a company registered and existing under the laws of The Republic of Liberia, represented by its Managing Director, **Dong Chun Han**, hereinafter referred to as Party of the Second Part, doth hereby:

WITNESSETH:

WHEREAS, the owner owns a parcel of land containing _____ acres lying and situated in _____ Sinoe County.

WHEREAS, the Government of the Republic of Liberia, having granted a fee simple title to the Owner, evidenced by a title deed and buttressed by the Private Used Permit (PUP), the said owner has agreed to grant a leasehold right to Atlantic Resources Limited for Agriculture purposes or any purpose or purposes related to Agriculture or any purpose or purposes that a corporation can legally do.

WHEREAS, the party of the First part and Atlantic Resources Limited have jointly reached an agreement to develop the land for palm oil, rubber, cocoa, coffee and /or other sustainable and commercially viable plantation business;

NOW THEREFORE THE PARTIES have mutually agreed to be bounded as follows:

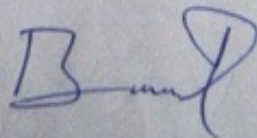
1. That it is mutually agreed and understood that the terms and conditions in the Memorandum of Understanding (M.O.U) previously entered into by and between Atlantic Resources Limited and the community which are not modified, changed, or specifically mentioned in this ADDENDUM are still binding on the Parties.
2. That it is further mutually agreed and understood by the parties hereto; that the Party of the second part shall transferred 10% (ten percent) of its total share to the party of the First Part when the party of the First part has executed the lease for which give

02.06.2012 13:15

Bunt

possession rights of the land to ARL and granted the permit and all other relevant consents for clearance of the Qualified Resources on the land as per the relevant provisions of this Agreement.

3. That it is further mutually agreed and understood by the parties hereto; that the party of the second part will make a yearly prepayment of US\$ 10,000.00 (Ten Thousand American Dollar) for 5 years during the unproductive period of the plantation to the Party of the first part after which the subsequent payments will be based on dividend.
4. That it is further mutually agreed and understood by the parties that the party of the First part shall have the responsibility and right to obtain the consent of all tribal people and relevant parties as the case may be to sign a leasehold agreement and within a period of 3 months from the date hereof the parties herein shall execute a lease agreement for a term of 75 years certain with an option of 20 years, and a 5% increment of share for the Party of the First Part during the optional period.
5. That it is further mutually agreed and understood by the parties that the party of the First part shall nominate one person to be a Director on the Board of Directors of Atlantic Resources Limited (Palm Oil Plantation), by virtue of the shareholding.
6. That it has been agreed also by the parties that the Party of the first part hereby also undertakes that it shall not sell, dispose, charge, mortgage or in any way encumber any or all of its shareholding under this new contract without the prior written consent of the party of second part. Otherwise, any agreement there from without the prior written consent of ARL shall be null and void.
7. That it is mutually agreed upon by the contracting parties hereto that the tribal people and /or residents of the towns and villages within the leased area or Atlantic Resources Ltd's operating area shall remain therein and not ousted by ARL except otherwise mutually agreed upon by the said parties hereto:
8. That this Agreement shall be binding on the parties hereto and shall extend to their heirs, assigns, executors, administrators and successors in office as though they were physically present and affixed their signatures thereto.



02.06.2012 13:15

IN WITNESS WHEREOF, WE HAVE
HEREUNTO SUBSCRIBED OUR NAMES
AND AFFIXED OUR SIGNATURES ON
THIS DAY AND DATE FIRST ABOVE
WRITTEN:

FOR AND ON BEHALF OF THE PARTY OF
FIRST PART:

R. D.

FOR AND ON BEHALF OF THE PARTY OF
THE SECOND PART:

Dong Chun Han
(Managing Director)

ATTESTED TO:

Banul