

Legal Authorities Governing Transportation Infrastructure in Liberia: *A Desk Study*



LEGAL AUTHORITIES GOVERNING
TRANSPORTATION INFRASTRUCTURE
IN LIBERIA:

A Desk Study

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TABLE OF CONTENTS

INTRODUCTION	1
OVERVIEW OF MAIN LEGAL APPROVALS REQUIRED FOR TRANSPORTATION INFRASTRUCTURE DEVELOPMENT IN LIBERIA.....	1
REVIEW OF LEGAL FRAMEWORK GOVERNING TRANSPORTATION INFRASTRUCTURE IN LIBERIA.....	2
LIBERIAN ENVIRONMENTAL LAWS.....	2
ENVIRONMENT PROTECTION AGENCY ACT 2003.....	2
ENVIRONMENT PROTECTION AND MANAGEMENT LAW 2003 (EPML).....	3
Environmental Impact Assessment Requirements.....	4
NATURAL RESOURCE MANAGEMENT PROVISIONS.....	6
Coastal Zone Protections.....	7
Land Use Planning Provision.....	7
NATURAL HERITAGE SITE PROVISION.....	7
Ozone Protection Provision.....	7
ANALYSIS OF ENVIRONMENTAL LAWS.....	7
FORESTRY LAW.....	8
AGRICULTURE LAW.....	11
EDUCATION LAW.....	11
BUSINESS LAW.....	11
LABOR LAW.....	12
PROPERTY LAW AND RIGHT TO LAND OWNERSHIP.....	13
PROCESS FOR THE SALE OF LIBERIAN PUBLIC LANDS.....	14
FISHING AND MARITIME LAWS.....	17
MINERALS AND MINING LAWS.....	17
PUBLIC PROCUREMENT AND CONCESSIONS ACT.....	18
PUBLIC HEALTH LAW.....	19
INTERNATIONAL AGREEMENTS AND TREATIES.....	20
INTERNATIONAL DEVELOPMENT BANK STANDARDS FOR ENVIRONMENTAL AND SOCIAL ASSESSMENTS.....	21
SUMMARY	23
APPENDIX A TABLE OF LAWS AND REGULATIONS REVIEWED	24

LEGAL AUTHORITIES GOVERNING TRANSPORTATION INFRASTRUCTURE IN LIBERIA: A Desk Study

INTRODUCTION

This desk study identifies and describes key Liberian legal and regulatory requirements related to the construction of a trans-Liberian railroad and a port facility. The Environmental Law Institute (ELI) identified potential requirements for the construction of a rail line assuming either the use of existing rail track or a new line parallel to the existing line, with the possibility of the line running in or near the Nimba Mountains.

The research for this study involved the review of laws and regulations of Liberia governing environmental, natural resources, social, and cultural issues, as well as those relating to property ownership and business practices. It should be noted, however, that the examination of Liberian legal authorities is limited to those pieces of legislation that could be accessed electronically, found through various internet resources, or were codified in Volumes 2-5 of the Liberian Code Revised, 2001. Moreover, the Liberian Ministries may also have internal administrative requirements not readily apparent from a desk study review. Appendix A lists the laws and regulations ELI reviewed for this preliminary report, and these laws are cited in the discussions below on potential legal requirements.

The study also highlights those areas in which, in the absence of specific Liberian authority, international standards could be imposed. Moreover, if a rail/port project is funded in part with development bank funding, the project may trigger the imposition of the bank's standards and procedures.

It should also be noted that the Liberian Constitution, the National Environmental Policy, and

Liberia's recent environmental laws have strongly encouraged and put in place requirements for a robust public participation process. The Environment Protection Agency Act declares that all persons in Liberia have a "right to a clean and healthy environment" and grants them a right to petition to protect that right. In addition, following the end of the civil wars and environmental and destructive practices during the Taylor government, it can be assumed that international and national civil society groups will be heavily involved in closely scrutinizing and following major project activities. As noted below in the discussion on Concession Agreements, Liberian President Sirleaf's government has actively encouraged participation by outside civil society organizations, and in at least one case allowed environmental and social groups to review and comment on a major mining concession agreement prior to sending it to the Legislature for approval.

This study is limited to a review of the text of the laws and regulations identified in Appendix A. Except as expressly noted in the text, ELI has not attempted to ascertain, and makes no comment here, on the implementation of, and compliance with, the legal requirements described in this study.

OVERVIEW OF MAIN LEGAL APPROVALS REQUIRED FOR TRANSPORTATION INFRA- STRUCTURE DEVELOPMENT IN LIBERIA

Based on a preliminary review of the laws and regulations available to ELI, the types of approvals, licenses, registrations, or permits that may be required of the project developer include:

- Environmental Impact Assessment License under the Environment Protection Agency Act

(EPA Act) and Environment Protection and Management Law (EPML).

- Pollution Discharge Licenses under the EPML, including:
 - o Effluent Discharge License (§58)
 - o Solid and Hazardous Disposal License (§64)
 - o Pollution Emission License (§55)
- Forest Resources License and/or express written approval from the Forestry Development Authority to clear trees or develop roads or ports on Forest Land under the 2006 National Forestry Reform Law.
- A Certificate for Concession under the Public Procurement and Concessions Act.
- A work permit for non-Liberian workers under the Labor Law, as well as resident alien visas and alien residence permits under the Aliens and Nationality Law.
- Registration of new business under the General Business Law of Liberia

REVIEW OF LEGAL FRAMEWORK GOVERNING TRANSPORTATION INFRASTRUCTURE IN LIBERIA

The following is a description of the laws and regulations that could be triggered by the construction of transportation infrastructure in Liberia, including railways and ports, and the enforcement provisions that could be applied for a violation of those laws. The discussion is set forth by issue, beginning with a discussion of environmental laws.

ENVIRONMENT PROTECTION AGENCY ACT 2003

The Environment Protection Agency Act (EPA Act), published on April 30, 2003, created Liberia's Environment Protection Agency (EPA or Agency) and granted EPA the authority to coordinate and implement Liberia's environmental policy.

Among other things, EPA is charged with promulgating media-specific environmental quality standards and permitting requirements, investigating reports of pollution, and coordinating response

actions among environmental emergencies. (EPA Act §§ 6, 43)

EPA is also responsible for identifying which projects and activities require an environmental impact assessment (EIA) or environmental impact statement (EIS) (EPA Act §6(1)(k)) and approving those assessments or statements before the project may go forward (EPA Act §6(1)(l)). A government agency may not issue a permit or license for a covered project without reviewing and approving an EIA or EIS. (EPA Act §37) A company's failure to comply with the environmental impact assessment process may result in a criminal prosecution or fine, as well as other remedies, including an order to tear down already completed construction or to restore the site to its previous condition. (EPA Act §38) In at least one recent case, the government took action against a foreign company that began construction in a wetland area without prior approval from EPA. (See J. Nathaniel Daygbor "Liberia: Chinese Nationals Violate Zonal Law," *The Analyst*, April 28, 2008, <http://allafrica.com/stories/200804281021.html>)

The EPA Act authorizes the Agency to issue "environmental restoration orders" to restore the environment or natural resources, prevent further damage or pollution, compensate for damage to the environment, and clean up waste or refuse. (EPA Act §40) The Act authorizes criminal penalties of imprisonment of up to 10 years and a fine of up to \$25,000 for violation of a restoration order. (EPA Act §41)

The Agency may also appoint environmental inspectors who are authorized to enter and inspect, without warrant, any land, premises or vessel to ensure compliance with the Act. (EPA Act §§20, 21)¹ Anyone who refuses to comply with an inspector's "improvement order" is subject to criminal prosecution and a fine. (EPA Act §22) According to its official website, EPA had deployed environmental inspectors to seven counties as of July 2007 and anticipated sending inspectors to an additional

¹ See Environment Protection and Management Act §95 for detailed description of the duties and authority of environmental inspectors.

eight counties. (Liberia Environmental Protection Agency website, <http://www.epa.gov.lr/index5e.php?m=5&sm=5e> <accessed March 30, 2009>)

Part IV, Section 49 of the EPA Act requires EPA to create a register of “natural resource extractive activities” and “industrial plants” that are likely to have an “adverse significant effect on the environment.” Annex V of the Act lists those registered activities that are subject to a refundable performance bond deposit, including applicants and holders of Mining Licenses and Forest Utilization Licenses.

The EPA Act also grants all persons in Liberia the “right to a clean and healthy environment” and the “duty to take all appropriate measures to protect and enhance” the environment through judicial and administrative procedures. (EPA Act §32) Accordingly, any person may petition the Agency or bring an action in the Environmental Administrative Court to stop actions harmful to the environment or natural resources, to compel the government to take appropriate actions, to require an environmental audit or monitoring, or to compel responsible parties to provide compensation to victims or restore the environment to its previous condition. (EPA Act §32) Details of the petition procedures are outlined in the Environmental Protection and Management Law §5. Decisions from the Administrative Court may be appealed to the Environmental Court of Appeals and eventually to the Supreme Court of Liberia. (EPML §5(9))

ENVIRONMENT PROTECTION AND MANAGEMENT LAW 2003 (EPML)

On April 30, 2003, the Liberian Legislature also published the Environment Protection and Management Law (EPML), a companion law to the EPA Act, which established the “legal framework” for the Agency’s work on the sustainable development, management, and protection of the environment. This Law is far-ranging and addresses most of the issues contained in the twenty plus separate environmental

laws in the United States, from air, soil, and water pollution to wilderness protection and coastal zone management. While detailed in many parts, it envisions and authorizes EPA to set the standards and set up the structures for implementing and enforcing its provisions, a daunting task for an Agency that has been in existence only six years (and whose Director has recently died.).

The Law specifically authorizes EPA to promulgate, among other things, standards for air, water, and soil quality, hazardous and solid waste disposal, toxic substances, noise, radiation, labor and work places, industrial products, materials used in industry and agriculture, and consumer products. (EPML Part IV §§34-50) EPA is also authorized to establish permitting or licensing procedures for pesticides, toxic and hazardous substances, and water and air pollution discharges. (EPML Part V §§51-73) The discharge of pollutants in contravention of these standards into the air, water, or soil without a permit or license is prohibited. (EPML §61 (water pollution), §62 (solid waste), §69 (air emissions))

The Law includes enforcement provisions for violation of those requirements. Based on a review of the EPA website and other information gleaned from current reports, however, it appears that no quality standards or permitting procedures have been put in place to date. EPA is currently preparing standards that cover air quality, noise, combustion conditions and emissions for municipal and hospital waste incineration, and discharge into surface waters. (see Draft Environmental and Social Impact Statement for Salala Rubber Company, prepared by Earthtime, Inc., 2008) The enforcement provisions are found throughout the Law, with liability provisions regarding specific offenses, such as a violation of the EIS procedures or restoration orders outlined in EPML Part XII, in Sections 105-109.

Environmental Impact Assessment Requirements

Part III of the EPML fleshes out the specific environmental impact assessment requirements imposed in the EPA Act, discussed above. The EPML requires

a developer to obtain an environmental impact assessment (EIA) license or permit before he may legally commence an activity or project specified in Annex I of the Law. (EPML §6) The list of approximately 170 projects and activities on the six-page Annex I is broad and includes most activities that could affect the environment in any way. An EIA license is specifically required for the “construction and expansion/upgrading of roads, harbours, ship yards, fishing harbors, air fields and ports, railways and pipelines.” (EPML Annex I, 13)

The sections pertaining to the EIA process do not specifically cite a requirement that the developer provide a “social impact assessment” of the proposed activity. The definition of “environment,” however, includes “the social factors of aesthetics and includes natural, built and cultural/historical environment.” (EPML §3) Moreover, Liberia’s EPA clearly anticipates that an EIA will incorporate a social impact assessment, according to a recent article by the Administrative Assistant to the Executive Director of the Liberian EPA. (Mohammed F. Konneh, “EPA Liberia Addresses George Siaway’s Article,” *The Liberian Journal*, May 28, 2008, <http://www.theliberianjournal.com/index.php?st=news&sbst=details&rid=273&comesOfTheHome=1>) Thus, it can be assumed that a Social Impact Assessment (SIA) of the proposed activity will also be required, although the EPML does not specify the factors that must be considered.

ELI has not located any rules or guidelines for preparing an EIS promulgated by Liberia’s EPA via internet search. ELI did find one reference, however, to a statement in a journal from EPA’s Administrative Assistant that claims “regulations, guidelines, and standards have been developed upon which the EIA is administered.” (Konneh, *The Liberian Journal*, May 28, 2008) The article further reports that, according to this official, EPA has entered into a “partnership” with the “Union of Construction Companies & Engineering Firms and the Association of Liberian Construction Contractors,” and will provide them with information on environmental compliance procedures and how to design environ-

mentally friendly structures. (Konneh, *The Liberian Journal*, May 28, 2008.)

The following are the steps required by the EPML for a developer considering a project or activity listed in Annex I, which includes activities related to the construction of railways and ports:

Steps for Obtaining an Environment Impact Assessment License under the EPML

1. The developer must submit an application for an environmental impact assessment (EIA) license on a prescribed form to EPA’s County Environmental Officer for the appropriate county. (EPML §6) The Law specifies that the project developer is responsible for the “timely preparation” of documents required in the process in accordance with the procedures developed by EPA. The Act itself does not set forth a time table for the submission and review of the assessment. The developer is also responsible for the cost of the preparation of documents requested by EPA, and EPA may impose fees that reflect the cost incurred by EPA for reviewing the documents. (EPML §9)
2. The developer/applicant must submit a Notice of Intent that includes a brief description of the project, its location, and timeframe for completion. (EPML §7) The notice must be published in at least one daily newspaper of major circulation and broadcast on local station in English and at least one vernacular language. (EPML §3, definition of “published notice”)
3. The developer must submit a “project brief” to EPA and any other government Ministry with potential responsibility for the project (the “Line Ministry.”) The project brief must include, among other things, a description of the project and the number of people employed, the project design, including materials to be used during construction, possible environmental consequences and the areas that may be affected. (EPML §8(1))

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4. EPA, in consultation with the other government Ministries, evaluates the project brief. If the Line Ministry does not give its comments to EPA within a prescribed period of time (not specified in the Act), EPA may still proceed to consider the project brief. (EPML §8(3)) EPA then determines that the project shall fall into one of three categories:
 - a. *Significant Impact.* If EPA determines that a project may have a significant impact on the environment, the developer must prepare an “environmental review.” (EPML §8(4)(a)) Under the Law, the “environmental review” must contain information to enable EPA to determine whether a full environmental impact study should be required. (EPML §12) The EPML charges EPA with promulgating guidelines for these reviews, but it is unclear whether they have yet been published. (EPML §12)
 - b. *Significant Impact and no mitigation identified.* If EPA determines the project will have or is likely to have a significant impact on the environment and the project brief identifies no sufficient mitigation measures that would alleviate the impact, the developer must prepare an “environmental impact study.” (EPML §8(4)(b))
 - c. *No Significant Impact.* If EPA determines that the project will not have or is unlikely to have a significant impact on the environment, or that the developer has proposed sufficient mitigating measures to ameliorate the impact, EPA may 1) issue a “finding of no significant impact” (FONSI) and 2) issue a certificate of approval (unless the scope or sensitivity of the project warrants “public consultation.”) (EPML §8(4)(c))
 5. Before the developer prepares an environmental impact study, the developer is required to provide for public participation in the development of the project through a “scoping process” described in detail in EPML §11. This “scoping process” is designed to involve the public early in the preparation of the assessment and to ensure that all significant environmental and social issues have been identified and addressed. The developer must publish information on the proposed project and hold public meetings in the areas affected. A written “scoping report” must then be submitted to EPA.
 6. Based on the results of the scoping process, the developer must then conduct an “environmental impact study” on the anticipated adverse impacts of the project. (EPML §13)
 7. After completing the environmental impact study, the developer must submit a detailed “environmental impact statement” (EIS), which must include, among other things, an extensive description of all aspects of the project and the processes used in construction, measures for avoiding or mitigating anticipated adverse effects, an analysis of social, economic, cultural, and public health effects, as well as ecological and atmospheric impacts. (EPML §14) A mitigation plan is also required. (EPML §15) The EIS is available for public inspection at EPA and the developer must submit 10 copies to the affected County and District environmental committees. (EPML §14(3))
 8. EPA then reviews the EIS and invites comment from the line Ministries and the public. (EPML §17) Comments from the public must be submitted within 30 days of the published notice or within the time limit specified by EPA in the notice. (EPML §17(1)(c)) Comments from the line Ministries must be submitted within 30 days or such extended period of time as agreed upon with EPA. (EPML §19(2)) EPA may require a public hearing to be held. (EPML §§16(3)(c) and 18)
 9. EPA then convenes an Environmental Impact Assessment Committee, consisting of agency staff, a representative of the developer, and at
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least one person from the area affected by the project, which reviews the EIS and makes a recommendation to EPA. (EPML §20)

10. EPA then either approves, rejects, or refers the project back to the developer for further study. (EPML §21) An approval may be conditioned upon a redesign of the project or other requirements. (EPML §21(2)) EPA's decision should be issued within three months of receiving the EIS unless the applicant agrees to extend the time period. (EPML §22)
11. EPA then issues an environmental impact assessment license to the developer. (EPML §23)

After the EIA license has been issued, EPA must monitor the project development to ensure that it is being conducted in compliance with the EIA requirements. Environmental inspectors may enter the property to monitor for environmental effects. (EPML §24) EPA must also conduct "periodic" environmental audits of the activity or project. (EPML §25) The Law does not specify how frequently these monitoring or audit procedures should be followed.

The developer also has a duty to inform EPA if there is a substantial change or modification to the project or if there are found to be unforeseen environmental impacts. Failure to do so may result in a fine and/or imprisonment and cancellation of the license. (EPML §26) If the holder of the EIA license wants to transfer the license to another person, the holder must give EPA "prior notice" of the transfer and the parties must jointly notify EPA in writing within 30 days after the transfer. (EPML §28)

Interestingly, the EPML requires *existing* industries, projects, or activities that are listed in Annex I to prepare and submit to EPA a plan for improving environmental performance that should identify major environmental effects and outline a comprehensive mitigation plan for addressing those effects. (EPML §27) Failure to comply carries the risk of imprisonment and/or fine.

Natural Resource Management Provisions

While most of the Liberian protections for natural resources, wildlife, and habitat are contained in the 2006 Forestry Law, which is implemented by the Forestry Development Authority (FDA) and described below, the EPML does contain some provisions addressing protected areas that may be applicable to a project that transverses the country and that could affect protected forests, national parks, and coastal zone areas. (EPML §§74-94)

The EPML authorizes EPA to promulgate guidelines for the protection of rivers, lakes, and wetlands and to declare certain waterbodies "protected areas." (EPML §75) The Law also prohibits, among other things, actions that may have adverse environmental effects on or may block or drain rivers, lakes, or wetlands. (EPML §74) Even more broadly, EPA is granted the authority to declare "any area of land, river, lake, wetland or coastal zone as a protected natural environment" in order to promote and preserve the ecology, beauty, or biological diversity of the area in general. (EPML §79)

EPA may also prescribe guidelines for the protection and management of forests, and may create "wildlife protected areas," such as national parks and nature reserves or "wildlife management areas," such as sanctuaries. (EPML §80) EPA may prescribe measures that a developer is required to follow in or near these restricted areas, including the establishment of buffer zones, to conserve habitat and natural ecosystems. (EPML §84)²

Coastal Zone Protections

Section 82 of the EPML contains provisions governing the protection and management of coastal

² Further discussion of the natural resources management provisions in the EMPL is contained in "Assessment of the Legal, Scientific, and Institutional Frameworks for Biodiversity Protection in the Republic of Liberia," Report of the Environmental Law Institute, UNEP, and Oxford Forestry Institute, 2007.

zone areas and resources. EPA is authorized to issue regulations to control environmental damage to the marine environment from land-based sources of pollution and vessels, although only the Liberian legislature may, on the advice of EPA, declare a coastal zone a protected area and impose necessary restrictions. (EPML §82(1) and (6))

Land Use Planning Provision

EPA is authorized to promulgate environmental protection measures for land use planning, including the adoption of management systems that facilitate the integration of environmental components and policies that encourage compatible, mutually reinforcing land use and management of land resources. (EPML §87)

Natural Heritage Site Provision

EPA is authorized to identify and prescribe protection measures for sites in the natural environment that are “of national importance to the people of Liberia, economically, culturally and environmentally” and prescribe measures for their management and protection. (EPML §88) The Nimba Nature Reserve Act states that the Nimba Mountain complex on the Cote-d’Ivoire-Guinea side of the border has been declared a World Heritage Site, and that it is likely the Liberian side will meet the criteria. Thus, any construction through or near this area may be subject to an added layer of protection from this designation, as well as protections afforded to those areas included in the East Nimba Nature Reserve.

Ozone Protection Provision

The EPML authorizes EPA to issue guidelines and programs relating to the control of activities leading to the depletion and degradation of the ozone layer. (EPML §89)

ANALYSIS OF ENVIRONMENTAL LAWS

Under the 2003 environmental laws, Liberia’s EPA has been given appropriate inspection, enforcement,

and permitting authorities, but the regulations, standards, and administrative mechanisms to implement these laws and ensure compliance with them do not appear to have been put in place as of yet.

The major provision specifically governing infrastructure projects is the requirement to prepare an EIS/SIA prior to beginning the activity. It has not yet been determined whether EPA has promulgated rules for preparing an EIA. A Liberian attorney noted that EPA has issued certain EIA guidelines, although ELI has not been able to obtain these. The EIA/SIA process should be very open to the public and there are specific mandates in the legislation for public notice and comment. The law also requires a member of the community affected by the project to sit on the EIS committee that reviews the EIS and makes recommendations to EPA for final decision.

The EPA legislation authorizes the establishment of County and District Environment Committees that are charged with identifying those areas that are at risk from environmental degradation. (EPML §76) A developer for a proposed activity should check with these committees, if they exist, for the areas through which a railway will travel or a port will be located.

While it does not appear that Liberia’s EPA has yet promulgated regulations addressing quality standards, natural resources management, coastal zones, land use planning, and ozone depletion, any project developer must be aware that EPA does have authority to address these issues and specific standards will likely be identified in any EIA/SIA requirements that exist or that are subsequently developed. Even without national regulations, EPA may impose standards from international bodies, such as the World Health Organization, International Finance Corporation, or International Maritime Organization. (EPA may “approve the application conditionally by requiring the developer to redesign the project or do such other things as the Agency considers necessary, taking into consideration the suggestions and comments made and all environmental factors.” §21 EPA Act) Previous EIAs for Liberian EIS have applied

international or U.S. standards in the absence of Liberian standards. (“Republic of Liberia, Ministry of Public Works//Emergency Infrastructure Project, Final Report,” prepared by environQuest, April 2008; “Draft Environmental and Social Impact Statement Report,” prepared by Earthtime, Inc., for the Salala Rubber Company, 2008.) One example of an international standard that could be applied to a new port facility was recently approved by the International Maritime Organization, a United Nations body that oversees air pollution and other policies for oceangoing vessels. The organization endorsed the concept of “emission control areas,” which requires ships going through these areas to use low-sulfur fuel or new technology to ensure a reduction in sulfur dioxide emissions. (Juliet Eilperin, “U.S., Canada Propose Pollution Control Zones for Ports,” *The Washington Post*, March 31, 2009, A2.)

FORESTRY LAW

The Forestry Development Authority is responsible for the implementation and enforcement of Liberia’s forestry laws and regulations. In 2006, the Legislature passed the National Forestry Reform Law (NFRL), which was drafted with guidance from the Liberia Forest Initiative. The 2006 Forestry Reform Law replaced the 2000 Forestry Law and the now-repealed 1988 Wildlife and National Parks Law as the legal framework for addressing forestry issues. The FDA is the lead government entity on the use of forest land, which is defined as “a tract of land, including its flora and fauna, capable of producing Forest Resources, not including land in urban areas.” (NFRL §1.3) The NFRL states that “all Forest Resources³ in Liberia ... are held in trust by the Republic for the benefit of the People,” except for forest resources that are located in Communal Forests or that have been developed through artificial regeneration. (NFRL §2.1) The Law charges the FDA to assure sustainable management of Liberia’s forest

3 Forest Resources are defined as “anything of practical, commercial, social, religious, spiritual, recreational, educational, scientific, subsistence, or other potential use to humans that exists in the forest Environment, including but not limited to flora, fauna, and microorganisms.” NFRL §1.3

land and resources and to develop a National Forest Management Strategy with robust community and public input that will identify forest lands as to their protected status or potential use. (NFRL Chapters 3-4.)⁴

The NFRL contains a general prohibition on damaging forest resources in §8.1, unless the activity is done pursuant to an approved EIA. No person can cut down trees in a municipality without prior written consent from the Agency. (NFRL §8.5.) In certain areas designated as nature reserves or natural parks, construction activities may be prohibited altogether. (NFRL §9.10)

It is not clear what specific type of permit or license would be required under the NFRL for the construction of rail or port facilities through forest land. The NFRL states that no person “shall undertake Commercial Use of Forest Resources without permission from the FDA, and that permission can only be granted through “Forest Management Contracts, Timber Sale Contracts, Forest Use Permits, or Private Use Permits.” (NFRL §5.1(a)-(b)). The term “commercial use” is defined in the Law to exclude infrastructure development.⁵ Forest Management Contracts (FMCs) are issued to persons to manage and harvest or use *forest products*, not forest lands. (NFRL §§1.3 (definition) and 5.3) Forest Use Permits (FUPs) and Private Use Permits are defined as being only issued for commercial uses. (NFRL §§5.5, 5.6) Timber Sale Contracts relate only to the selling of timber.

4 For a detailed analysis of Liberia’s laws governing biodiversity protections, see “Assessment of the Legal, Scientific, and Institutional Frameworks for Biodiversity Protection in the Republic of Liberia,” Report of the Environmental Law Institute, UNEP, and Oxford Forestry Institute, 2007.

5 Commercial Use is defined as “any use of Forest Products or Forest Land, other than direct use for personal purposes or infrastructure development. Commercial Use includes uses involving Trade or any other disposition of Forest Products or Forest Land for direct or indirect financial benefits.” NFRL §1.3.

It is quite likely, however, that FDA permission would be required for infrastructure construction on forest lands under the broad authority granted to the FDA in Section 5.1(d). That section states that FDA has authority to “require permission for non-commercial forest uses” and to “control any activity involving Forest Land, Forest Resources, or Forest Products.” Thus, a developer would likely be required to obtain a general “Forest Resources License,” which is defined in the NFRL as “any legal instrument pursuant to which the (FDA) allows a Person, subject to specified conditions, to extract Forest Resources or make other productive and sustainable use of Forest Land.” (NFRL §1.3) Moreover, a holder of a Forest Resources License must also obtain *express written permission* from the Agency if the holder wishes to perform any activity on Forest Land involving 1) clearing trees, shrubs, or other obstacles, cutting wood on land not covered by the license, 2) developing roads, canals, pipelines, channels, conveyors, or other above-ground conduits for the purpose of transporting products beyond the land subject to a valid Forest Resources License, or 3) creating or developing seaports, river ports, or airports. (NFRL §11.5(a), (e), (f))

NFRL Chapter 12 governs the public use of infrastructure installed by a holder of a forest resources license. Section 12.1 states that the “*Government and third parties may use infrastructure of any kind installed or developed on Forest Land by the Holder of a Forest Resources License*” as long as the use does not hinder or interfere with the license holder’s operations and the user provides the license holder with fair compensation when appropriate. Further, “all fixed assets installed by a Holder on Government-owned Forest Land become the property of the Government upon termination of rights under a Forest Resources License.” (NFRL §12.3.) All “moveable assets” owned by the license holder, however, remain the property of the holder upon the termination of the license. (NFRL §12.3(b)) The FDA is authorized to promulgate further rules governing the use of infrastructure by the Government and third parties. (NFRL §12.1 (b))

In addition, the government retains for itself the right to construct railways, roads, highways, and other “instrumentalities of transportation” within a forest use holder’s area if the government does not unreasonably interfere with the holder’s activities and it compensates the holder for any losses. (NFRL §12.2)

In addition to civil and criminal penalties, the NFRL authorizes persons harmed by a violation of the Law to bring a citizen suit for damages and injunctive relief. (NFRL §20.10) Chapter 6 outlines when a forest resources license may be terminated or transferred.

The NFRL contains several provisions on public participation in the management of forest lands and on the public right to access information. (See, e.g., NFRL §§18, 9.3, 4.4(e), 8.2(b), 19.2(a)) The NFRL also addresses the longstanding conflict between the local use of forest lands and commercial development by specifically mandating that the FDA issue regulations that will “grant to local communities user and management rights, transfer to them control of forest use, and build their capacity for sustainable forest management.” (NFRL §10.1) The regulations must, at a minimum, specify rights and responsibilities of communities with respect to ownership and uses of Forest Resources, establish community participation mechanisms, create a framework that allows communities fair access to Forest Resources, and establish procedures for capacity building to ensure equity in the sustainable management of the forests. (NFRL §10.1) On Sept. 7, 2007, the FDA published the first of its regulations implementing the 2006 NFRL, designated as “Ten Core Regulations,” although the FDA is preparing to draft additional rules. Most of the regulatory requirements and procedures in the Ten Core Regulations applicable to the holders of a license or permit appear to only apply to the commercial use of forest products or resources; it is therefore unclear whether those requirements would be applicable to the development of an infrastructure project, although the government could use them as guidelines. Before any project proceeds, it should be further clarified with government officials as to

whether a license from the FDA would be required and what procedures would be imposed.

The Ten Core Regulations include:

No. 101-07: Public Participation in Promulgation of Regulations, Codes and Manuals. Pursuant to its mandate to provide for greater community rights and public participation in the management of forest uses, the FDA issued this regulation, which sets forth transparent, participatory administrative procedures it must follow when promulgating regulations, codes and manuals. FDA Regulation No. 101-07 §3 charges the FDA with maintaining a list of persons interested in forest management in Liberia, including community leaders and civil society organizations. *This list would be useful for a developer for outreach purposes as the project is being developed.*

No. 102-07 Forest Land Use Planning. Sets forth the procedures for consultation, participation and development of the National Forest Management Strategy. Under this regulation, the FDA may not award a forest resources license until the Strategy has been adopted. (§31)

No. 103-07 Bidder Qualifications. Outlines bidder and pre-qualification requirements for bidders on certain licenses offered as concessions, ensuring transparency and public notice. It appears to only apply to commercial licenses.

No. 104-07 Tender, Award and Administration of Forest Management Contracts, Timber Sales Contracts, and Major Forest Use Permits. Sets forth procedures for awarding these commercial licenses and permits, ensuring participation by the “affected communities.” An “Affected Community” is “a community comprising less than a statutory district (including chiefdoms, clans, townships, towns, villages, and all human settlements) whose interests are likely to be affected by Operations carried out under a Forest Resources License. “Interests” for the purposes of this definition may be of an economic, environmental, health, livelihood, aesthetic, cultural, spiritual, or religious nature.” (§ 2)

No. 105-07 Regulation on Major Pre-felling Operations. Specifies procedures to ensure that community social agreements and environmental assessments are developed and in place before trees are felled under a forest resources license. It appears to apply only to “Holders” of a forest resource license under which commercial logging activities are authorized.

No. 106-07 Benefits Sharing. Regulates the allocation of land rental fees to counties and Affected Communities.

No. 107-07 Regulation on Certain Forest Fees. Sets forth regulations for establishing, assessing and collecting fees for forest sector activity, including land rental fees.

No. 108-07 Regulation on Establishing a Chain of Custody System. Regulations to create a system of tracking wood products from forest to processing to domestic market or export.

No. 192-07 Penalties. Sets forth penalty provisions for violations of the Law and regulations

No. 110-07 Rights of Private Land Holder. Establishes the responsibilities of the commercial operator with respect to the rights of private land owners and provides a right of compensation for land owners harmed by forest operations.

The 2006 NFRL also requires the FDA to present to the legislature a community rights bill governing Forest Lands. (NFRL §10.2) Pursuant to this mandate, the FDA developed a Draft Community Forest Rights bill, printed on September 11, 2008, that outlines procedures for ensuring meaningful local community participation in decisions governing the use of forest lands. The bill also provides mechanisms through which contested access and other matters affecting community forests lands will be mediated and resolved. Its provisions with respect to customary law land ownership may be particularly informative. (See further discussion on customary land law below, in the section on Property Law and

Rights to Land Ownership.) If passed, the Community Rights Law would require that “any decision, agreement or activity affecting the status or use of community forest land shall not proceed without the prior, free informed consent of the affected community,” either through a public meeting or written approval of the Community Forest Management Authority with jurisdiction over the affected forest land. (Draft Law §3.4) However, disagreement among the FDA, the legislature, and civil society has resulted in dueling bills, and while votes have been scheduled, no version of the above bill has yet been passed.

In 2003, the Liberian legislature designated a forested area in the Nimba Mountains as a Nature Reserve and significantly extended the boundaries of Sapo National Park. (Nimba Nature Reserve Act 2003, Sapo National Park Act 2003) These areas also enjoy protection under the 2006 National Forestry Reform Law which would likely preclude construction activities for a railroad through or near the designated locations.

AGRICULTURE LAW

The Liberian Ministry of Agriculture administers the Agriculture Act of 1973, as amended, and works to protect plants and animals in Liberia from the introduction of pests and diseases. The Ministry is also involved with the regulation of the forestry and agriculture sectors, including fisheries, plantations, and animal husbandry.

The Agriculture Act of 1973 §3.1 specifically prohibits the removal of palm trees in Liberia and §1.4(k) authorizes the Ministry to promulgate rules for the “protection of marine life in rivers and streams and the protection of water pollution within the Republic.”

EDUCATION LAW

The Education Law examined by ELI did not contain any apparent provisions relevant to transportation infrastructure. (Education Law of A.D. 2001)

BUSINESS LAW

Under the General Business Law, Title 14, Chapter 4, any business in Liberia is required to register with the Ministry of Commerce and Industry prior to receiving an operating license. (§4.5) A foreign corporation must provide a copy of its certificate of incorporation and a statement with the address of its principal office in Liberia. (§4.3) The Associations Law, found in Title 5, notes that upon filing articles of incorporation with the Liberian Government, specified fees determined by corporate stock values must be paid to the Minister of Finance. (§1.6) The Minister of Commerce and Industry may also require information on the amount and source of capital, expected duration of operations, skilled labor, and other data regarding financial and economic soundness. Documents must state the proposed name of the business, initial capital, location, ownership, and nature of business activities. Foreign corporations must also submit a statement that that Minister of Foreign Affairs constitutes its agent in any action or proceeding within Liberia. Fees of \$100 for sole proprietors, \$150 for partnerships, and \$200 for corporations are necessary for completion of the registration process; however, concessions exempted from paying taxes are not required to pay the registration fee. After submission of the documentation and requisite fee, the Assistant Secretary issues a certificate of registration. (§4.2, §4.3) Certificates expire on the 30th of November of each year and shall be renewed before that date on proof of payment of a fee of \$100 to the Secretary of the Treasury. A business operating in Liberia may be incorporated locally or abroad, and can be jointly owned by foreign and local entities or entirely foreign-owned. (U.S. Department of State, “Doing Business in Liberia,” August 2007, 6.)

A concession operating under an agreement exempting it from payment of taxes shall not be required to pay the renewal fee. (§4.4) The General Business Law, Title 14, Chapter 6, describes the process for granting of national concessions to use Liberian resources. Applicants must submit all information required for the specific concession to the Minister

of Planning and Economic Affairs and mining concession applicants must prove compliance with the filing standards of the Natural Resources Law. The President then considers the concession's potential for economic expansion in Liberia, and if approved, forwards the application to a committee of relevant agency leaders. The committee investigates the potential economic development and feasibility of the concession and upon confirmation of corporate fiscal responsibility, the committee may initiate concession negotiations. Following negotiations, signatures of the President and of the agency leader responsible for concession oversight are necessary, along with ratification by the Legislature. (§6.2) After application approval, the President may at any time establish a board to periodically inspect and enforce conditions of the concession agreement. (§6.6) All foreign concessions must also pay consular fees specified under the Foreign Relations Law unless the concessionaire is explicitly exempted from these fees. (§6.7)

Under a "Liberianization Policy" initiated in 1975, the government has set aside certain business activities that are reserved exclusively for ownership by Liberians. The number of business sectors was increased to 26 in 1988, and includes such activities as cement making, gas station operations, and ice cream manufacturing, none of which appear to affect the transportation industry. (U.S. Department of State, "Doing Business in Liberia," August 2007, 14.)

LABOR LAW

Liberia's Labor Law sets forth general rules governing, among other things, conditions of employment, grievance procedures, minimum wage, labor practices, and organizations. (See Title 18 of the Code of Liberia) Every foreign employee and their family shall have the right to be repatriated at the expense of the employer to his place of origin on expiration of his employment contract and employers, under written contract, must maintain adequate monetary security to cover costs of repatriation. (Labor Law Ch. 16, §1504) The maximum period of service in a contract of employment is 2 years and the maxi-

imum period of service in a reemployment contract is 18 months. (Labor Law Ch. 16, §1505) Section 1507.1 of the Labor Law requires that non-Liberian workers obtain a work permit from the Ministry of Labor, and registration of foreign work permits must be renewed annually. (Labor Law Ch. 16, §1507.4) Work permits may only be issued when suitably qualified Liberians are not available to meet the labor requirements of the employer. (Labor Law Ch. 16, §1507.2) The Ministry of Labor manages a list of qualified Liberian workmen, excluding agricultural and unskilled employees, and all employers must hire workers from this directory. Foreign employees may only be hired in situations where no qualified Liberian capable of performing the job duties is available; however, this requirement may be exempted for employees in administrative, supervisory, or technical positions. Foreign employees must also receive salaries comparable to their Liberian colleagues in similar positions. (Labor Law Ch. 2, §75)

Recruitment of Liberian workers requires application to the Ministry of Labor including the number of desired employees, the location of work, the nature of the work, and proposed wages. Successful applicants will receive permits to recruit the number of workers from the region specified in the application, which may be accompanied by licensing fees. When considered necessary by the Ministry of Labor, employers may be required to provide monetary assurance of the proposed wages and traveling expenses for potential employees. Liberian workers are subject to medical examination and issuance of a medical certificate prior to approval. Employers must finance transportation and amenities that are necessary for employees to reach their work destination and repatriate workers incapable of working due to sickness or accident during the journey or medical incompetence, among other things. Families who accompany workers repatriated under these conditions must also be returned at the expense of the employer. Before commencing employment, workers must be certified as properly recruited by the Ministry of Labor. (Labor Law Ch. 16, §1506) The Alien and Nationality Law requires that professional, skilled, semi-skilled, and unskilled foreign

workers who have contracts of employment with employers in Liberia, together with their spouses and children, apply for alien resident visas. (Alien and Nationality Law §1.2) The Attorney General approves the visa applications, which must be accompanied by an employment permit issued by the Minister of Labor, as discussed above. (Alien and Nationality Law §5.10, §5.13)

In addition to the work permit requirement, a company may not employ an alien unless the alien holds a valid permit of residence. (Alien and Nationality Law §6.1) If the permit of residence is not issued at the time of entry, the alien must present himself at the Central Office of the Bureau of Immigration and Naturalization, Monrovia, within 10-20 days after entry. Permits are valid for 1 year and may be renewed within 30 days after the expiration of the year. The Attorney General may also extend the allotted period for an alien visitor at his discretion and may restrict the geographic regions where alien visitors can settle. (§6.2) The prospective employer must furnish a \$3000 bond as guarantee of prompt departure. (§6.1- 6.5) Employers of alien employees must also furnish the Attorney General semi-annually with a list of all alien employees, nationality and tenure of service. Violators of this requirement are subject to a civil penalty of \$100 for each employee. (§6.5.2)

Foreigners desiring Liberian citizenship may only pursue naturalization if they are “a Negro or of Negro descent,” are at least 21 years of age, have lived continuously in Liberia for at least two years prior to initiating naturalization proceedings, and maintain residence in Liberia until receiving citizenship. (Alien and Nationality Law §21.1, §21.3) Applicants must appear before the Circuit Court, declare their intention to become a Liberian citizen, and renounce all previous nationalities. A final petition must also be presented verifying the applicant’s intent to reside permanently in Liberia and their moral character. (§21.2, §21.3)_

PROPERTY LAW AND RIGHT TO LAND OWNERSHIP

The 1986 Liberian Constitution, Chapter II, Article 22(a), restricts the ownership of property in Liberia to Liberian citizens. Private property rights do not extend, however, to the mineral resources on or beneath the land or under the seas and waterways. (Article 22(b))

Property law in Liberia comes from 1) civil law, which has developed from American common law, judicial decisions, and statute; and 2) customary law based on the practices of indigenous traditional communities and recognized by the Constitution as governing land not brought under the common law. (World Bank, Environmental and Natural Resources, Africa Region, Report No. 46134-LR, “Liberia: Insecurity of Land Tenure, Land Law and Land Registration in Liberia,” Report Oct. 22, 2008, viii, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/11/23/000333037_20081123230839/Rendered/PDF/461340ES-W0P10310Box334099B01PUBLIC1.pdf).

“Customary land law” is a system of governance and management of forest land in Liberia based on equitable distribution of resources and enforced norms and “customary codes of conduct” regarding the use of those resources. (*Liberian Biodiversity Country Study*, (National Capacity Self-Assessment) implemented by the United Nations Environment Program, 35 (2005-2006))

According to the World Bank, less than half of the land in Liberia is held by citizens under civil law, and most of this is the coastal settler areas; most of the interior hinterland is under customary land tenure. The history of this dichotomy begins in the 1800s when the American Colonization Society (ACS) began purchasing land from traditional authorities along the coast. The ACS, which was organized to resettle freed slaves from America and other free persons of African descent, granted parcels of land to settlers in fee simple title, introducing to the area the concept of private ownership governed by American common law. While the original grants of

land in fee simple were limited to the coastal areas, the Liberian government later expanded by conquest its ownership of lands to the south and east without bothering to purchase this land from the indigenous peoples. The government deemed this “public land” and began to sell fee simple title to settlers. The World Bank estimates that the government has granted or sold in fee simple at least 20 percent of the country, although it cautions that it is very difficult to determine because of the state of the land records.

(World Bank, *Insecurity of Land Tenure*, 18)

The main land provisions are found in the Public Lands Law of 1956, which are codified in Title 34 of the Liberian Code. This law provides for the sale of public land and the registration of deeds to that land. Below is the process, as outlined in the 2008 World Bank Report, for purchasing public land in the interior of Liberia.

PROCESS FOR THE SALE OF LIBERIAN PUBLIC LANDS

1. Obtained consent from traditional authorities, upon token payment. It is unclear what “token payment” means in this case.
2. Obtain certificate of availability from the traditional authorities.
3. Submit certificate to the District Commissioner, who (acting as Land Commissioner for the District) satisfies himself that the land is not part of a Tribal Reserve or other right that would prevent its sale, and issues a certificate to that effect.
4. Take the certificate to the Bureau of Revenues, pay the price of the land and obtain a receipt.
5. File an application to the President of the country to purchase this public land, attaching the receipt and certificate.
6. The President, upon approving the application, orders the surveyor to survey the land concerned.
7. Present this order to the surveyor and pays surveyor’s fees.
8. Once the land has been surveyed, a public land deed is drawn up by the Land Commissioner, authenticated by him, and given to the purchaser.
9. Submit the deed with the accompanying certificates to the President for signature.
10. Once signed, the deed is probated.

Once probated the deed can be registered. The process is the same for sale of public land within original counties, where traditional authorities are not involved, except that the process begins with an application to the District Commissioner, corresponding to step 3 above.

World Bank, *Insecurity of Land Tenure*, Box 4, 20.

Customary ownership of land is not recognized by a formal deed, so communities often do not enjoy security of their property rights, which is often a source of conflict. (Forests and the European Union Resource Network (FERN), *Forest governance in Liberia*, January 2008, 12). Moreover, because the archive of official records was looted and destroyed during the years of civil war, many of the property

deeds were lost, which has further complicated property rights disputes. (World Bank, *Insecurity of Land Tenure*, viii). The World Bank reports that the court system in Liberia is in disarray and unable to deal with the volume and complexity of land disputes. (World Bank, *Insecurity of Land Tenure*, 54) County-level circuit courts have original jurisdiction over land issues, but many are barely operational, resulting in major backlogs. (World Bank, *Insecurity of Land Tenure*, 54)

This process of purchasing public lands in the interior of the country has been a long-simmering source of conflict and has raised significant Liberian and international concern for the indigenous people who occupy those lands but are displaced by these acquisitions. President Sirleaf has made land reform a priority in her administration and has pledged to establish a Land Commission that will develop a framework for settling land issues. The Liberian Governance Reform Commission has issued a concept paper outlining the major issues and recommending a consultative approach to making changes. (Liberia Governance Reform Commission, “The Way Forward: Land & Property Rights Issues in the Republic of Liberia,” March 30, 2007, http://lib-governance.org/land_property_rights.pdf.) A bill to create a Land Commission is currently before the legislature.

A project funded by USAID, led by ARD, Inc., is working with local communities and the Liberian government “to develop models and processes for conflict management over land and forest resources.” (See ARD website, <http://water.ardinc.com/projects/project.php?id=154&tid=1017>.) ARD’s Land Rights and Community Forestry Project worked with the Zortapa and Gbapa communities to map community boundaries, which had the unfortunate result of creating conflict between the two groups. A conflict resolution specialist with ARD is working with the communities to resolve these issues. This incident is an example of the difficult and complex problems surrounding land issues in Liberia.

The Ministry of Lands, Mines & Energy recently organized a land tenure workshop on the formulation of a land tenure policy, which produced a memorandum of understanding making recommendations for the future. (Ministry of Lands, Mines & Energy website, <http://www.molme.gov.lr/index.php>, accessed April 1, 2009)

The National Forest Reform Law of 2006 mandated that the Forestry Development Authority present to the legislature a comprehensive law governing community rights to forest lands. One draft of the

Community Rights Law, released by the FDA in September 2008, would appear to codify customary land ownership of forest lands. The Draft Law specifies that all forest lands are owned by local communities, except for ownership under Aborigines Deed or Public Land Sale Deed. A community land area is created when a representative body, such as a town council, identifies and documents the boundaries of its customary lands. (Draft Law §4.1-4.2) Upon completing this process, the local community is recognized under the Draft Law as holding “customary ownership of the community land area regardless of whether its tenure has been formalized in registered collective entitlements.” (Draft Law §4.3) The community would then elect a five-person Community Forest Management Body (CFMB) that would serve as the lawful management authority of customarily-owned community forest land. (Draft Law §5.1) A Department of Community Forestry would be established within the FDA to protect the tenure of forest land communities. (Draft Law §6.1) Under the Draft Law, the FDA would retain the authority to issue concession rights in community forest areas, but could only do so after a CFMB has been established and written approval has been obtained from that body. (Draft Law §10.1) Even if the provisions of the draft Community Rights Law are not passed by the legislature, the Liberian government has made it clear that respect for community rights and customary law ownership in forest lands will be required of any project that takes place in these areas.

While foreign nationals are effectively barred from owning land in Liberia, they can obtain access to land under the Public Lands Law by entering into long-term leases. (U.S. State Department, *Doing Business in Liberia*.) Governed by Chapter 2 of the Property Law, a foreign concern can lease land from a Liberian citizen for a period ranging from 21 to 50 years, depending on the value of the property, with an option for renewal for another 21 to 50 years. (§2.20-§2.20-A) Foreign entities are also permitted to lend money to Liberian citizens, Liberian corporations, or foreign corporations with Liberian assets under the Alien Mortgage Guaranty Act. (§3.31)

The Liberian Property Law includes a variety of procedural and registration requirements related to land acquisition, including:

- Designation of adjudication areas (§8.11, §8.31)
- Actions permitted in adjudication sections (§8.32)
- Presentation of adjudication claims (§8.41)
- Inclusion of public lands and unrepresented private claims in adjudication (§8.44)
- Adjudication claim determination and recording (§8.51, §8.54, §8.57)
- Adjudication guidance (§8.52, §8.53)
- Content and compilation of land registries (§8.71-§8.73)
- Content of lease registries (§8.74)
- Mortgages and liens (§8.75)
- Easements (§8.76)
- Restrictive Agreements (§8.77)
- Profit-gaining instruments (§8.78)
- Release or easements, restrictive agreements, or profit-gaining instruments (§8.79)
- Land interests requiring notice (§8.80)
- Maintenance and composition of Registry Maps (§8.91-8.98)
- Rights of landowners (§8.121-§8.127), including provisions for public lands (§8.123) and leases (§8.125)
- Property transfer registration (§8.141-§8.143)
- Transfer of mortgages, leases, or loans (§8.144)
- Document quantities necessary for land registration (§8.151)
- Transfer of property following owner death (§8.161-§8.163)
- Transfer of property through eminent domain or court judgment (§8.165)
- Chattel mortgage provisions (§10.140-§10.165), including registration (§10.143) and implementation by corporations or partnerships (§10.145)

Although the Ministry of Lands, Mines & Energy is the lead government agency in Liberia dealing with land issues, there is a smorgasbord of agencies with functions and responsibilities for land management under the current legal framework. The

World Bank lists the various roles of these agencies below:

Ministry of Lands, Mines & Energy: responsible for supervising Country Surveyors involved in public land sales and land registration.

Ministry of Agriculture: negotiates and administers agricultural concessions, including industrial crops such as rubber and palm oil.

Ministry of Internal Affairs: responsible for land matters, including interactions with traditional authorities over land, and supervision of the Country Land Commissioners, who play the key role in public land sales and deed registration.

Ministry of Public Works: responsible for land use zoning.

Ministry of Finance: responsible for collection of registration fees and for implementation of a real property tax under Chapter 20 of the Revenue Code of Liberia (2000).

Ministry of Justice: responsible for Probate Courts, which play major certification roles under the country's two land registration systems.

Ministry of Foreign Affairs: holds early deed registers and issues certified copies of those documents.

National Center for Documents and Records/ National Archives: holds recent deed registers and land registers from pilot systematic land registration.

Forestry Development Authority: has broad legal authority over forests and forest land, covering much of the land within the country's interior.

Environmental Protection Agency: administers rules and guidelines for protection of wetlands,

wildlife, and biodiversity that impact land use in certain areas of the country.

World Bank, *Insecurity of Land Tenure*, 43.

FISHING AND MARITIME LAWS

After a review of the Fishing and Maritime Laws, ELI identified the following restrictions that could potentially affect the construction of transportation infrastructure:

- 1) Section 94.2 of the Laws on Marine Fisheries maintains that all persons importing dynamite into Liberia must file a declaration with the “Collector of Customs” identifying its use. (Title 23, Natural Resources Law, Liberian Code of Laws.)
- 2) Section 95 prohibits any person from allowing “sawdust, mill waste or other material that is harmful to fish to enter any stream or waterway in Liberia.”
- 3) According to the Act, the “Ministry of Agriculture” is tasked with executing actions essential to preserve and protect fish species from extermination, including closing any area or zone found to be a breeding ground for shrimps or other marine life for a season in order to save the eggs and young. (§99 Laws on Marine Fisheries)
- 4) Regulations promulgated in 2002 prohibit the discharge of oil, noxious substances and garbage from maritime vessels into the sea. (Liberian Maritime Regulations §2.37 – §2.38.)
- 5) Section 30 of the Liberian Maritime Law also adopts the “non-statutory General Maritime Law of the United States of America” in instances where it does not conflict with other provisions included in Title 21. (Title 21, Liberian Maritime Law, Liberian Code of Laws.)

MINERALS AND MINING LAWS

The Minerals and Mining Law of 2000 governs mineral rights and the eligibility and conditions covering holders of Mineral Licenses. It is administered by the

Ministry of Lands, Mines & Energy. Chapter 8 of the Law requires the licensee to prevent environmental damage from mining or exploratory activities, and makes the licensee responsible for restoration of the site.

A Mining License is required of any person who engages in mining in Liberia. Section 147 of the Law of Mines specifies the four categories of mining permits: exploration or tunneling, prospecting, mining claims, and mining concessions. Foreign applications for mining concessions must include the candidate’s home address, Liberian address, and a signature from the consul of their country of citizenship. (§160) Foreign involvement in the Liberian diamond trade is also specifically restricted to foreign entities with approved concessions and foreign groups with fifty percent ownership by Liberians. (§192) (Title 23, Natural Resources Law, Liberian Code of Laws.)

The Mineral License holder may not develop or construct a railway or port in the licensed area without specific approval by the Ministry. Unless specified otherwise, owners of mining concessions may not operate a railroad extending beyond “the pit, mine opening, placer workings, and the mill.” (§163)

PUBLIC PROCUREMENT AND CONCESSIONS ACT

The Public Procurement and Concessions Act (PPCA), approved in 2005, established the Public Procurement and Concessions Commission and set forth requirements and streamlined procedures for all forms of public procurement and concessions. One of its goals is to “harness private sector financial, human and technical resources through concession agreements.”

A concession is defined to mean “the grant of an interest in a public asset by the Government or its agency to a private sector entity for a specified period during which the asset may be operated, managed, utilized or improved by the private sector entity who pays fees or royalties under the condition that the Government retains its overall interest in the asset

and that the asset will revert to the Government or agency at a determined time.” (PPCA §73(1)) The Act applies to the grant of concessions in all sectors, including mineral exploration and mining, the development of public infrastructure (including but not limited to airports, terminals, toll roads/bridges, shopping malls, etc.), and the grant of special licenses, including licenses for imports, exports, services, works, or for the performance of functions on behalf of the public sector. (PPCA §75(1))

Evidently, concessions have been freely granted in the past and much of the land has never been used by the concession holder, which has created resentment over time from the local communities who are restricted in the use of such land. One study found that the Liberian government had granted rubber companies concessions on one million acres since 1926, although less than 20 percent has been utilized and developed. (World Bank, “Liberia Insecurity of Land Tenure, Land Law and Land Registration in Liberia,” Oct. 22, 2008, 32. http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/11/23/000333037_20081123230839/Rendered/PDF/461340ESW0P10310Box334099B01PUBLIC1.pdf)

There are many variations of concession agreements described in the Act, including several involving the building of a facility and then the transfer of the facility ownership to the government. One type of concession described in the Act is a Build-Operate-Transfer model where a private entity finances the development of an infrastructure and operates it for a specified period, after which the infrastructure is handed over to the government free of lien or at a cost to the public. (PPCA §73(1) (a))

The concession implementation process commences with the issuance of a Certificate for Concession issued by the Ministry of Planning and Economic Affairs. (PPCA §88) Before issuing the Certificate, the Ministry must find that 1) the concession arrangement furthers national economic objectives; 2) a proposed concession has not already been allocated

with public funds for the same purpose; and 3) all barriers or bottlenecks that need to be addressed have been identified. (PPCA §89(1))

During the concession implementation process, the entity must undertake public stakeholder consultations and provide the public with information on 1) the strategic importance of the project; 2) the extent of the entity’s resources to address the needs of the community; 3) the technical and financial feasibility of the project; and 4) measures to address any environmental challenges and adverse impacts. (PPCA §90-91)

The entity must perform feasibility studies and provide detailed information in its bidding documents, as outlined in Sections 103-105. Section 113 identifies the criterion used to evaluate and award the concession agreement, as well as what criterion may not be considered.

The Liberian government has embraced the call for greater transparency and public participation in the awarding of concession contracts. One example is a recent agreement between the government of Liberia and the China Union Mining Company, in which the government took the unusual step of publishing the contract and reported the payments, including the signature bonus. The contract also contained provisions and restrictions on transfer pricing (valuing the goods and services traded between parent-subsidiary or associated companies), and made the government and company jointly and severally liable. In another unusual step, the government requested that two civil society groups, Green Advocates⁶ and Global Witness,⁷ review and comment on the agreement before it is sent to the legislature for

6 The Association of Environmental Lawyers of Liberia (“Green Advocates”) is Liberia’s “first and only public interest environmental law organization.” It advocates for stronger environmental laws, enforcement, and public participation in environmental decision-making. See <http://www.greenadvocates.org/>

7 Global Witness works to stop the exploitation of natural resources and abuses against the environment and human rights. See <http://www.globalwitness.org>

approval. The agreement was lauded by the two organizations and the Liberian government advertised these endorsements in a press release. It is likely that any future concession agreements in Liberia will follow some of the standards advocated by Green Advocates and Global Witness. (“Global Witness Lauds Government of Liberia on Concession Agreement”, *The Liberian Journal*, Feb 25, 2009, <http://www.theliberianjournal.com/index.php?st=news&sbst=details&rid=904>)

PUBLIC HEALTH LAW

The Public Health Law contains provisions, governing public nuisance, adulterated foods, sewage systems, occupational health and chemical safety, and protections for drinking water supply sources and streams, among other things. The Law prohibits the disposal of sewage, industrial or agricultural waste, or any other materials injurious to the public health into waters of the Republic, unless express written permission has been granted by the Minister. (Public Health Law §24.2) Apparently, there has been little enforcement under these provisions. (*Liberian Biodiversity Country Study*)

Government Development Entities

There are a number of government agencies or entities identified in the Liberian Code that would potentially need to be consulted or could provide assistance to a developer of an infrastructure project in Liberia. Some of these entities (and their citation in the Code) are listed below.

National Port Authority, Title 30, Chapter VI
The National Port Authority was established and created to plan, design, construct, and engage in the development, maintenance, and operation of all public ports within Liberia. The Authority assumes the responsibilities and functions of the various government departments with regard to “the ports of Monrovia, Buchanan, Greenville, Harper, and such additional ports as the government shall from time to time decide to and so construct or acquire.” (§53) The Port Authority may also introduce tariffs and charges deemed necessary to support the upkeep

of port facilities and services. (§54) The government must consult with the Port Authority any time it intends to grant any concession for private port operations in Liberia. (§58)

Liberia Shipping Corporation, Executive Law, Chapter 56

The Liberia Shipping Corporation was established to finance government participation in shipping companies, represent government interests in negotiations, make loans, establish shipping lines, and hold title of any shipping interest acquired.

Ministry of Action for Development and Progress, Executive Law, Chapter 52

The ministry was established to increase trade and commerce, stimulate urban reconstruction and rural transformation, and coordinate among government agencies concerned with identifying and meeting urgent development needs.

Liberian Development Corporation, Executive Law, Chapter 55

The Corporation was established to aid in the establishment of transportation, commerce, and industry. It is designed to finance government equity participation in business development enterprises and to assist in encouraging industrial development.

Liberian Bank for Development and Investment, Executive Law, Chapter 64

The Bank was established to assist private productive business and industrial enterprises in Liberia.

INTERNATIONAL AGREEMENTS AND TREATIES

This study has examined the Liberian statutes and regulations governing transportation infrastructure construction. Liberia has also signed international agreements that may be relevant to such a project. The following is a list of some of those agreements, gleaned from recent sample environmental assessments. ELI has not reviewed these agreements.⁸

8 The 2007 report on Biodiversity briefly summarizes

INTERNATIONAL SOCIAL AND ENVIRONMENTAL
AGREEMENTS SIGNED OR RATIFIED BY LIBERIA

TABLE 1

AGREEMENT	DATE
African Convention on Conservation of Nature and Natural Resources	N/A
Treaty on Marine Life Conservation	1966
African Convention on the Conservation of Nature and Natural Resources	1968
The Convention on Prevention of Marine Pollution by Dumping of Waste and other Matter	1972
Convention on the International Trade in Endangered Species of Wild Flora and Fauna	1973
Convention on the Prevention of Pollution from Ships	1978
Abidjan Convention for Protection of Marine and Coastal Environment of the West and Central African Region	1981
Convention of International Trade in Endangered Species of Wild	1981
Convention on Biological Diversity	1992
United Nations Framework Convention on Climate Change	1994
Montréal Protocol on Substances that Deplete the Ozone Layer	1996
Kyoto Protocol - Convention on Climate Change	1997
Convention on Desertification	1998
Convention on Biodiversity	2000
Stockholm Convention on Persistent Organic Pollutants (POP)	2002
Convention Concerning the Protection of the World Cultural and Natural Heritage	2002
Ramsar Convention on Wetlands of International Importance	2003
Bio-Safety Protocol	2003

INTERNATIONAL DEVELOPMENT BANK
STANDARDS FOR ENVIRONMENTAL AND
SOCIAL ASSESSMENTS

Depending on the funding sources for a proposed rail/port infrastructure project, development banks may impose their own standards, procedures, or policies for preparing environmental and social assessments to assure that investment projects are in keeping with their mandates and goals. Examples of three such entities are listed below:

1. The International Finance Corporation requires all projects it finances to adhere to environmen-

tal and social standards. (See <http://www.ifc.org/ifcext/sustainability.nsf/Content/EnvSocStandards>.)

the applicability of most of these agreements to Liberia's biodiversity obligations. "Assessment of the Legal, Scientific, and Institutional Frameworks for biodiversity Protection in the Republic of Liberia," Report of the Environmental Law Institute, UNEP, and Oxford Forestry Institute, 2007.

2. The African Development Bank (AfDB), which has heavily favored infrastructure projects in its funding commitments, particularly in the transportation sector, has established "Integrated Environmental and Social Assessment Guidelines" to ensure that those issues are mainstreamed in Bank projects. The AfDB recently issued a Climate Risk Management and Adaptation Strategy (CRMA) outlining procedures for ensuring that investment development projects will not be negatively affected by climate change, climate variability, or extreme weather events, and recommending policy and regulatory reforms to address climate change issues. ("Bank Group CRMA Strategy," April 30, 2009, <http://www.afdb.org/fileadmin/uploads/>

afdb/Documents/Policy-Documents/Climate%20Risk%20Management%20and%20Adaptation%20Strategy%20-CRMA-%20%282%29.pdf) After approval of the Strategy by the Bank's Boards of Directors, the Bank will revise its Environment and Social Impact Assessment (ESIA) guidelines and replace them with more comprehensive Environment, Climate and Social Impact Assessment (ECSIA) guidelines that will more fully consider climate change vulnerabilities in future projects.

3. The World Bank has also established social and environmental safeguard operational policies (OPs) that may be triggered by projects associated with the Bank's lending operations. The table below outlines some of the policies required by World Bank procedures.

OP 4.01 Environmental Assessment	To help ensure the environmental and social soundness and sustainability of investment projects and to support integration of environmental and social aspects of projects into the decision making process.
OP 4.04 Natural Habitats	To promote environmentally sustainable development by supporting the protection, conservation, maintenance, and rehabilitation of natural habitats and their functions.
OP 4.09 Pest Management	To minimize and manage the environmental and health risks associated with pesticide use and promote and support safe, effective, and environmentally sound pest management.
OP 4.10 Indigenous People	To design and implement projects in a way that fosters full respect for Indigenous Peoples' dignity, human rights, and cultural uniqueness and so that they: (a) receive culturally compatible social and economic benefits; and (b) do not suffer adverse effects during the development process.
OP 4.11 Physical and Cultural Resources	To assist in preserving physical cultural resources and avoiding their destruction or damage. PCR includes resources of archaeological, paleontological, historical, architectural, religious (including graveyards and burial sites), aesthetic, or other cultural significance.
OP 4.12 Involuntary Resettlement	To avoid or minimize involuntary resettlement and, where this is not feasible, to assist displaced persons in improving or at least restoring their livelihoods and standards of living in real terms relative to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.
OP 4.36 Forests	To realize the potential of forests to reduce poverty in a sustainable manner, integrate forests effectively into sustainable economic development, and protect the vital local and global environmental services and values of forests.
OP 4.37 Safety of Dams	To assure quality and safety in the design and construction of new dams and the rehabilitation of existing dams, and in carrying out activities that may be affected by an existing dam.

Excerpts from the World Bank Environmental and Social Safeguard Policies—Policy Objectives and Operational Principles, Table A1, <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20403235-menuPK:4564185-pagePK:64709096-piPK:64709108-theSitePK:502184,00.html>. All World Bank operational policies, bank procedures, good practices, and operational directives may be found at: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,menuPK:4564185-pagePK:64719906-piPK:64710996-theSitePK:502184,00.html>

SUMMARY

As discussed above, there appear to be several Liberian laws that are relevant to the development and implementation of a transportation infrastructure project in Liberia. Some of these laws require a developer to obtain a license or approval from a government agency; prohibit certain activities that may be associated with an infrastructure project; and/or impose specific requirements on the activity. Moreover, there are general provisions that allow private citizens to file an action for injunctive relief or damages if environmental harm accrues from the project or if mandated requirements have not been followed.

Appendix A lists the laws reviewed for this report. ELI used the Liberian Code, revised 2001, to review many of these laws, and any revisions subsequent to that time were not included in the codification. With these statutes, as well as all the laws obtained and reviewed by ELI, care should be taken to ensure that there have not been amendments to the statutes.

It should be emphasized that this study only examines the laws on the books and not their on-the-ground application (or lack thereof). More information on the actual implementation of these laws and guidelines would be very helpful in determining more precisely the nature of the legal obligations that would attach to a transportation infrastructure project in Liberia.

APPENDIX A

TABLE OF LAWS AND REGULATIONS REVIEWED

Liberian Constitution of 1986
An Act Adopting a New Agriculture Law
An Act to Amend the Agriculture Law to Prevent Water Pollution
Education Law 2002
Environment Protection Agency Act 2003
Environment Protection and Management Law 2003
An Act for the Establishment of the East Nimba Nature Reserve
An Act for the Extension of the Sapo National Park
National Forestry Reform Law 2006
Liberia Code of Forest Harvesting Practices
Forestry Development Authority Ten Core Regulations
Revenue and Financial Law, Ch. 20 Stumpage and Forest Products Fee 1977
Act to Amend Ch. 20 Stumpage and Forest Products Fee 1987
Act Amending General Business Law to Facilitate Electronic Transactions 2002
Title 21 Liberian Maritime Regulations 2002
Title 21 Liberian Maritime Regulations Fees and Taxes 2002
An Act Adopting a New Minerals and Mining Law 2000
An Act to Amend the Penal Law, Ch. 15 Money Laundering
Public Procurement and Concessions Act 2005
*Aliens and Nationality Law
*Associations Law
*Executive Law
*General Business Law
*Labor Law 1956, as amended
*Natural Resources Law
*Property Law
*Public Health Law

The starred entries are laws reviewed as codified in the 2001 Revised Code of Liberia. Amendments or laws passed subsequent to that date were not included in the codification.

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