

# **LIBERIA**

## **REVIEW OF CONCESSION MANAGEMENT PRACTICES AND APPROACHES TO CONCESSION MANAGEMENT**

---

**Mission Consultation Draft**

**February 21, 2010**

**The World Bank**

## **Caveat**

This draft note has been prepared by World Bank as a desk study for the purposes of enhancing the dialogue on concession management in Liberia.

It explores issues and opportunities in concession management, including review of international practice in PPP and concession management, and reviews options for refining institutional roles.

As a second purpose, this note would feed into the paper “**Enhanced Governance for Growth – EGG**” currently in preparation and commissioned by the Ministry of Planning and Economic Affairs.

The overall intent is to assist the Government of Liberia to increase the benefits drawn from the wealth in renewable and non-renewable natural resources.

## **Contents**

INTRODUCTION .....	1
Role of Government.....	1
Functions of Central Government.....	1
Role and Functions of Commissions, Agencies and Regulatory Bodies .....	2
BACKGROUND on PPCA and PPCC .....	3
CONTEXT OF CONCESSIONS MANAGEMENT IN LIBERIA .....	4
INTERNATIONAL APPROACHES TO CONCESSION MANAGEMENT .....	5
Table 1a: International PPP and Concession Management Arrangements .....	8
Table 1b: International PPP and Concession Management Arrangements.....	10
APPROACHES FOR CONCESSION MANAGEMENT IN LIBERIA .....	13
Table 2: APPROACH FOR CONCESSION MANAGEMENT IN LIBERIA.....	17
PROPOSED NEXT STEPS IN LIBERIA .....	22
Annex 1: ACRONYMS .....	23
Annex 2: DEFINITIONS .....	24
Annex 3: A SAMPLE OF GOVERNMENT RESPONSIBILITIES FOR CONCESSIONS .	26
Annex 4: THE VALUE CHAIN APPROACH “EITI++” .....	28

## INTRODUCTION

### *Role of Government*

1. The fundamental role of any Government is to provide effective governance and security for its citizens, at home and abroad, and foreigners within its borders. To achieve this, Government creates structures that respond to the various areas of governance and security. The President, under the Constitution, has the authority to create the institutions considered appropriate for the delivery of these mandates.
2. One of the most significant structures is the Civil Service, whose objective is to assist the Government in the formulation and implementation of policies that would deliver the mandates of governance and security. The President has authority to assign portfolios of responsibility to Ministers for the oversight of the civil service.

### *Functions of Central Government*

3. Ministries have five primary functions in support of achieving their specific mandate.<sup>1</sup> These functions are:
  - a. Policy – This includes developing the national and sectoral strategic focus, implementation planning, legal drafting, development of performance contracts, minimum standards, norms, policy analysis and evaluation, forecasting.
  - b. Co-ordination, supervision, performance monitoring and evaluation – This includes coordinating relationships between different entities, monitoring the performance of implementing entities, facilitating and enabling subsidiary entities to reach their performance targets.
  - c. Regulatory – This includes licensing, certification, permissions, accreditation, inspection, compliance, and financial audit. This function may be undertaken by a separate entity under the authority of the ministry.
  - d. Support - These are activities that support the functions of the Ministry and may be financial management, human resources management, information systems, development and management infrastructure, staff training and development, efficiency review and management audit; and secretarial services.

---

<sup>1</sup> Nick Manning/Neil Parison, 2001, Modernization of the Federal Civil Service: Methodology for Functional Reviews

- e. Service delivery - This includes the provision of products or services to internal or external customers. These services are normally performed by supervised bodies or executing agencies.

#### *Role and Functions of Commissions, Agencies and Regulatory Bodies*

4. Commissions are usually established to meet Government's development objectives. They are created through legal instruments which describe their mandate, normally provide broad powers, may or may not be under the direction of a Minister and may or may not have a designated lifespan. Commissions are usually established for regulatory purposes, although they may also have a service delivery purpose. It is noted that commissions are often used in environments where a stable policy environment exists and to manage politically sensitive regulatory services.
5. Agencies, similarly, are formed by separate legal instrument with specific mandates, functions and governing bodies. Their mandates and functions usually relate to implementing or executing a specific activity for which a sector ministry is responsible and funding is primarily from central revenues. They may be referred to as executing agencies. These agencies are, for all intent and purposes, indistinguishable from Government as they are implementing or executing on behalf of the responsible ministry. This may be, for example, an Internal Revenue Agency, reporting to the Ministry of Finance or a Forestry Development Authority reporting to the Ministry of Lands, Mines and Energy.
6. Independent regulatory bodies are established to ensure the legal compliance of all sectors of the economy in a specific area. They are established by separate legal instrument with well defined mandates, functions and governing bodies. They may or may not be financed by central revenues and once established are usually independent of any Ministry, reporting either directly to Parliament/Legislature or the Office of the President. They have legal authority to set rules, regulations, guidelines etc for the area being regulated. They are additionally authorized to review processes and procedures in order to ensure compliance and institute sanctions and penalties for non-compliance. The ability to institute sanctions and penalties in public, private, non-profit and other sectors of the economy distinguishes the regulator from other types of commissions or agencies.
7. The term autonomous agency refers to all three institutional frameworks, commissions, executing agencies and independent regulators.
8. The framework for the role and functions of Government will provide guidance to the discussions on the most appropriate institutional structure for concessions management.

## BACKGROUND on PPCA and PPCC

9. In September 2005, the Public Procurement and Concessions Act (PPCA) was passed by the National Transitional Legislative Assembly (NTLA) of Liberia for implementation following the inauguration of a duly elected Government. The PPCA formalized, institutionalized and expanded the mandate, within the 2003 Comprehensive Peace Accord, which required a Contracts and Monopolies Commission to oversight monitor and review all Government contracts. The PPCA came into effect in January 2006.

10. The new requirements for public procurement and concession processes established in the PPCA were a major transformation and required significant changes for both the Liberian public and private sector. The key objectives of the PPCA are to:

- i. Maximize economy and efficiency in procurement, and obtain best value for public expenditures;
- ii. Promote economic development of Liberia;
- iii. Promote competition and foster participation in procurement proceedings and concession agreements by qualified suppliers, contractors and consultants;
- iv. Provide equal access without discrimination to all eligible and qualified providers of goods, works and services and fair and equitable treatment of all bidders;
- v. Promote integrity, fairness, accountability and public confidence in the procurement process;
- vi. Achieve transparency in the procedures, processes and decisions relating to procurement and concession agreements;
- vii. Decentralize public procurement to procuring entities;
- viii. Promote the growth of indigenous Liberian Private sector;
- ix. Harness private sector financial, human and technical resources through concession agreements; and
- x. Eradicate monopolies and promote competitiveness in the concession procurement process.

11. The Act also established a regulatory body, the Public Procurement and Concessions Commission (PPCC) with the objective to:

- i. Monitor compliance with the Act
- ii. Disseminate information related to the Act
- iii. Develop rules, instructions, regulations and related documentation on public procurement and concessions, including formats;
- iv. Formulate, promote, support and implement human resource development programs;
- v. Review procurement and concessions documents and/or inspect records as and when necessary to prevent corruption of the process or any intended process;
- vi. Formulate policy and prepare standards for procurement and concessions, including forms of contract;

- vii. Assess the operations of the public procurement and concession processes and make improvements
- viii. Investigate and debar business entities and bidders who have seriously neglected their obligations under a public procurement or concessions contract or done anything in contravention of this Act from participating in public procurement in accordance with this Act;
- ix. Conduct independent reviews of complaints and appeals related to the procurement and concessions process and make decisions thereon.

12. Four years of implementation of the PPCA revealed areas where modifications were required to improve the achievement of the desired objectives, particularly in the area of concessions. The PPCA has had many challenges as a regulator, not only as a result of weak capacity but also the lack of understanding, in Liberia, of the role of a regulator. Liberia has had no history of autonomous regulators, with the exceptions of the Bank of Liberia and Liberia Telecommunications Authority (LTA). Both the LTA and PPCC, which came into effect in 2006, have lost significant credibility due to issues of internal management, conflict of interest and inability to assist and support public and private sector entities with interpreting and implementing their legal frameworks.

13. In 2009, the PPCA underwent a review process with the objective of developing necessary amendments. The process concluded that additional reviews were necessary in the area of concessions. As a result, an amended PPCA would be submitted to Legislature with procurement amendments and no modifications to Part VI related to Concessions. The amended document would reference an "Autonomous Concessions Entity" that would be defined and established later through a separate legal act which would include any modifications to the concession processes.

14. The objective of this paper is to provide information on international practices on sector design and implementation of concession management and an approach for management of concessions.

## **CONTEXT OF CONCESSIONS MANAGEMENT IN LIBERIA**

15. Concessions in the Liberian context have referred, primarily, to the grant of an interest in mining, agriculture and forestry by Government to a private sector entity for a specified period during which they operated, managed, utilized or improved the asset and paid fees or royalties under the condition that the Government retains its overall interest in the asset and that the asset would revert to the Government at a determined time. Although the PCCA includes other types of public private arrangements as concessions, the perception in Liberia is that they are all natural resource related.

16. Concession management in Liberia is the responsibility of the relevant Sector Ministry and the Bureau of Concessions, within the Ministry of Finance. The Sector Ministry, as the concessioning entity, has responsibility to ensure that the concessionaire complies with the terms and conditions of the agreement. The Bureau of Concessions has the primary role of monitoring the financial obligations of the concession agreement. They also support, as a part of the Ministry of Finance team, the financial analysis and negotiations related to concessions.

17. The existing legal framework, PPCA Section 121, establishes that concession post-contract management arrangements are determined by the negotiating team during the negotiations. The section does not provide any definitive institution or agency with the responsibility to monitor and report whether the concession has satisfied the overall objective of Government.

18. Liberia has made significant progress related to transparency in extractive industries under the Liberia Extractive Industries Transparency Initiative (LEITI). However, the current value chain approach to concessions<sup>2</sup> expands the focus of the use of the revenues from extractive industries to include implementation of policies and programs for sustainable development. Considering this expansion, the value chain approach is often referred to as "EITI++".

19. Liberia currently has weak concession management structures. A recent World Bank report identified five major challenges in governance of natural resources and agricultural concessions. i) award of contracts and licenses; ii) regulation and monitoring of operations; iii) collection of taxes and revenues; iv) revenue management and allocation and v) implementation of sustainable development policies and projects.<sup>3</sup> If Liberia is to adopt the value chain approach, new structures for concession management are required. This need comes, conveniently, at a time when the review of the concessions component of the PPCA is underway and allows any amendment to consider the new concession management requirements.

## **INTERNATIONAL APPROACHES TO CONCESSION MANAGEMENT**

20. The concept of 'concessions' in Liberia has remained very narrow, while internationally they often encompass the various forms of a relationship between Government and the private sector. This document is intended to respond the specific needs of Liberia's natural resource concession management, however, it is applicable to broader public private partnership relationships.

21. Countries have become increasingly aware of the cost of implementing infrastructure projects and obtaining full benefit from natural resources to move

---

<sup>2</sup> A World Bank Working Paper #125 of March 2009 – Extractive Industries Value Chain – A Comprehensive Integrated Approach to Developing Extractive Industries" by Alba

<sup>3</sup> World Bank, Liberia Enhanced Governance for Growth - EGG, Mission Aide Memoire, November 2009.

their growth and development initiatives forward. As a result, countries in the developed and developing world have formalised approaches to the establishment of public private partnerships.

22. There appears to be no 'best' approach to concession management as each country has a different political context, history, capacity, issues and requirements. However, there are common themes that run through the most recent management frameworks and appear to be successful for the countries in which they have been implemented.

23. The following table provides a summary of information obtained from documentation on the various countries. This summary reveals that most countries have a legal instrument that definitively establishes the intent, format, authorities, processes, procedures, etc of the relationship between the Government and private sector through public private partnerships and determines the unit or entity responsible for the management and/or coordination of the initiatives. The legal instruments are not primarily to establish the management structure however. The units that coordinate these relationships are usually within the Ministry of Finance, Ministry of Development or Ministry of Public Works, depending on the primary focus of relationships with the private sector in the particular country. Those that do not have legal instruments have definitive guidelines or policies under which the relationships operate. Sector ministries usually have a key responsibility in the relationship with the private sector partner to ensure the delivery of the agreed outputs.

24. The management and coordination of the PPPs and concessions is usually in four categories:

- a. Within a Government Ministry – These may be a PPP or concession unit of a ministry such as the Ministry of Finance or Ministry of Public Works which coordinates all initiatives between the private sector and various agencies, or it may be separate PPP or concession units in sector ministries with or without central coordination.
- b. External Autonomous Agency – These may be institutions set up by Government that are attached to or report to a Ministry but operate outside of the Ministry. There were only two instances of this in the documentation.
- c. Government Owned Company with Board – These may be separate legal entities that operate on a commercial or quasi-commercial basis with a Board appointed by Government. Canada was the only instance of this in the documentation reviewed.
- d. Joint Venture between Public and Private Sector – These may be separate legal entities with public and private sector capital and a Board. It

operates on a commercial basis and reports to the authority determined by the legal instrument. Partnerships UK have this structure.

25. The relationship between Government and the private sector is critical to the success of concession arrangements. The ability of Government to effectively perform its necessary roles of planning, designing, implementing, coordinating and regulating will have a direct impact on the returns to all parties. It has been determined that implementing the following principles would improve the way concessions are managed:

- a. Clarification of roles and responsibilities with respect to private investors.
- b. Effective coordination of relevant government policies and approvals
- c. Acquiring access to the expertise required to design and implement complex transactions.<sup>4</sup>

26. The clarification of roles and responsibilities of Government and the private sector can most effectively be handled in the legal instrument for concessions. The ability of the legal instrument to reflect the various forms of PPPs and concessions would enable Liberia to determine its relationship to the private sector for infrastructure, natural resources and other initiatives. These other initiatives may include various arrangements for private participation in public corporations. This would enable the legal instrument to respond to the current concerns related to traditional concessions but also provide transparency and guidance for the broader context of PPPs into the future.

27. The legal clarification of roles and responsibilities is also important with PPP financing of infrastructure. Many countries have responded to the challenge of financing infrastructure through the establishment of infrastructure /project funds of various types to provide guarantees for the private sector financing. In traditional concessions, however, the private partner provides the financing and accepts more of the business risks. The legal basis for all the financial relationships must be explicitly clear and transparent. Additionally, the infrastructure / project funds are used to assist Government entities in financing technical experts, transaction advisors, feasibility studies, environmental impact studies, project development, etc to enable Government to maintain its independence from the private sector in the assessment of projects and initiatives. These infrastructure /project funds are a key component of the more recent PPP / Concession frameworks.

---

<sup>4</sup> WB Technical Paper No. 399 Finance, Private Sector and Infrastructure Network "Concessions for infrastructure A guide to their design and award"

Table 1a: International PPP and Concession Management Arrangements

Country	Type of Arrangement	Legal Instrument	Status				Functions						
			In Gov't Ministry	Autonomous / Attached to Gov't	Gov't Owned Company w/Board	JV between Gov't & Private Sector	Planning services	Policy Formulation	Resource Center (Disseminate Info)	PPP Guidance Material	Detail Project specific advice		
Australia	PPP		Min of Fin /Treasury										
Australia	PPP	X	Infrastructure Australia							X		X	X
Brazil	PPP / Concessions	X											X
Canada (British Columbia)	PPP	X			Partnerships BC (Commercial & reports to MOF)					X		X	X
Canada (Ottawa) Federal	PPP	X			PPP Canada (Commercial & reports to Treasury Board)					X		X	X
Chile	PPP Concession	X	Min. Public Wks							X		X	X
Czech Republic		X	Sector Ministries										
France	PPP		Min for Economy & Sector Ministries							X		X	X
Greece	PPP		MOF - PPP Secretariat							X		X	X
India (Andhra Pradesh)	PPP	X		Infrastructure Authority						X		X	X
India (Central Gov't)	PPP		Dept. of Econ Affairs							X		X	X

FUNCTIONS (continued)									
Country	PPP Financing / Guarantees	Funding for PPP Preparation	Role in Project Dev't	Role in Contract Mgt or M&E	Regulator of PPP or Concession Award Process	Approval Power over PPP's and/or Concessions	Accountable for Output of PPP's	Notes	
Australia	X		Contracting Ministry	Contracting Ministry		Gov't with Process determined by Jurisdiction	Contracting Ministry	Nat'l PPP Policy, PPP considered a procurement method	
Brazil	X							Concerned that regulatory institutions should be staffed by competent professionals, dispute resolution will be consistently applied. Capacity issues are downfall of system	
Canada (British Columbia)			Feasibility & Viability			Asst with appv'l process & procurement process			
Canada (Federal)	X					X			
Chile			X	X		X	X		
Czech Republic			X		Office of Protection of Competition	Nat'l or Local Self Gov't, MOF, Body Deciding Mgt of Assets	X		
France				X		X	X		
Greece	X	X		X		X		It: Commun. - MOF, MODev, MOEnv, Plan, PW&Rel. & Sector Min Sector Ministries are contracting entities and undertake procurement processes for private sector partner	
India (Andhra Pradesh)	X	X	X	X	X			Approve bid documents, resolve project approval issues, public awareness, they prescribe regulations to regulate own procedures	
India (Central Gov't)	Infrastructure Proj. Dev. Fund	Infrastructure Proj. Dev. Fund						Funds portion of consultants and transaction advisors to increase quality & quantity of successful PPP's & allowing informed decisions without burdening budget of sponsoring authority. Increase quality & quantity of 'bankable projects.'	

Table 1b: International PPP and Concession Management Arrangements

Country	Type of Arrangement	Legal Instrument	Status					FUNCTIONS					
			In Gov't Ministry / Agency	Autonomous / Attached to Gov't	Gov't Owned Company w/Board	JV between Gov't & Private Sector	Planning services	Policy Formulation	Resource Center (Disseminate Info)	PPP Guidance Material	Detailed Project specific advice		
Ireland	PPP	X		MOF				X			X		
Ireland (State Auth)	PPP	X	X										X
Latvia	PPP Concession	X	X					X			X		X
Lithuania	Concessions	X	Various Entities					X					X
Mauritius	PPP	X	MOF - PPP Unit					X			X		
Netherlands	PPP		MOF - PPP Knowledge Center										X
Nigeria (Lagos State)	PPP		MOF - PPP Unit					X			X		X
Philippines	PPP	X	Various Entities					X			X		X
Romania	PPP		Various Entities								X		
Russia		X											
Senegal	PPP	X									X		X
South Africa	PPP / Concession	X	Nat'l / provincial treasury								X		
South Korea	PPP	X	Min Plan & Budget								X		
South Korea	PPP	X	Korea Dev Ctr - PFI Inv. Mgt Ctr					X					X
UK	PPP	X					Partnerships UK	X			X		X

FUNCTIONS (Continued)

Country	PPP Financing/ Guarantees	Funding for PPP Preparation	Role in Project Dev't	Role in Contract Mgt or M&E	Regulator of PPP or Concession Award Process	Approval Power over PPP's and/or Concessions	Accountable for Output of PPP's	Notes
Ireland	Nat'l Dev. Fin Agency							
Ireland (State Auth)	X	X	X	Designated Monitoring Inst.	Proc. Monitoring Bureau	X		
Latvia						Concession Proc. Commission		Public Proc Law procedures applicable for bid process, Law completed in 2009
Lithuania			X	X		Gov't or Municipal Authority		
Mauritius				Contracting Ministry	MOF	MOF, Cent. Tender Board & Cabinet	Contracting Ministry	
Netherlands	X							
Nigeria (Lagos State)				X			Contracting Ministry	
Philippines			Contracting Ministry	BOT Ctr / Contracting Ministry		Contracting Ministry	Contracting Ministry	
Romania	X							Use reg. procurement procedure
Russia							Contracting Ministry	
Senegal				X		X		
South Africa	X	X	Contracting Ministry	Contracting Ministry		X	Contracting Ministry	Detailed procedures and manuals, municipal treasury must demonstrate expertise to undertake a PPP or appoint someone to assist
South Korea			Contracting Ministry	Contracting Ministry			Contracting Ministry	
South Korea	Infra. Credit Guar. Fund							Supports in feasibility, etc. Provides expertise to institutions at a fee
UK	X	X	X			X		Permanent centre of expertise available to public sector, can invest own capital provide staff. Services paid for at point of use, helpdesk is free.

28. Effective coordination of relevant government authorities and approvals, along with the implementation, determine the success of the relationships between Government and private sector and of the intended benefits of sustainable development.

29. Whether PPP in infrastructure, natural resource concessions or other forms of PPPs or concessions, the activities which must be undertaken by Government include those related to:

- a. The framework for relationships
- b. Project identification and analysis
- c. Enabling and supporting measures for specific projects
- d. Design of PPP / Concession arrangements
- e. Award of Contract
- f. Monitoring and Regulation<sup>5</sup>

The ability to effectively undertake these activities requires a responsive management structure.

30. Recently developed management structures are primarily PPP Units within the Ministry of Finance or Development that have cross cutting responsibility for providing support, advice, monitoring and evaluation of PPPs and concessions. Infrastructure funding is often associated with the unit but may be a separate entity under the Ministry of Finance as it considers issues separate from the management and coordination. The location, functions and authority of the PPP / Concession unit are critical, as it must have professionalism, private sector acceptability and political authority.

31. Some PPP Units have recently been referred to as Resource Centers as they are considered a one-stop-shop for all information and support services to Government ministries and agencies as well as the private sector on the processes and procedures for PPPs and concessions. In decentralised environments, like Liberia, where the sector ministries have significant responsibility for the project planning, design, bid, negotiation, award, monitoring and evaluation, they provide standardised documentation, integrate output reports, provide information on funding sources, undertake policy formulation, assist in identifying specialised technical assistance and may or may not be a part of the Government's approval process. In centralised environments they develop policy as well as have more direct involvement with the sector ministries in project planning, assessments and approvals through the planning process, participation in the bid documentation, evaluation, negotiation, award, financing, providing specialised technical assistance

---

<sup>5</sup> WB Technical Paper No. 399 Finance, Private Sector and Infrastructure Network "Concessions for infrastructure A guide to their design and award". Page 22. Full detail in Annex 3

and monitoring. In these instances mechanisms are put in place to minimize conflict of interest situations.

32. Only four of the countries reviewed made specific reference to regulators or independent compliance reviews of procurement processes, one of which is Latvia whose law was completed in 2009.

33. The location, functions and responsibilities of a PPP/Concession Unit or Resource Center are often determined by the political history of governmental structures and authorities in the various countries. The use of some combination of centralised and decentralised management is often the case.

34. Access to expertise required to design and implement complex transactions was a concern in most documentation reviewed and particularly for developing countries. In a post-conflict environment, where capacity is weak in virtually every sector, specialised expertise for transactions is a challenge for the central management ministries and virtually non-existent outside the technical areas of any sector ministry. The specialised nature and cost of the expertise for complex transactions often does not allow these professionals to be retained within the PPP/Concession Unit, Resource Center or the sector ministry. Although the expertise is best placed within the sector ministry to institutionalise the capacity for the sector. As a result, either some competences are retained and strengthened with others outsourced or systems are put in place to outsource all the specialised expertise in a timely manner when needed. Outsourcing all specialised expertise would build no capacity in the sector ministries and perpetuate their dependence.

## **APPROACHES FOR CONCESSION MANAGEMENT IN LIBERIA**

35. Liberian governmental structures have traditionally been designed considering an American decentralised approach to management. As a result, Ministries have significant authority to make and implement decisions under broad policy guidance approved at the Cabinet level. Reporting has been through sector ministers to the President and Cabinet. Autonomous agencies and commissions operate through Government appointed boards also under broad policy guidance and may have no regular formal reporting mechanism into the Executive. The current arrangements, for example, of a Minister reporting the Poverty Reduction Strategy performance through committee into another sector ministry is inconsistent with this decentralised management approach and is presenting challenges, although it is necessary.

36. A fundamental premise in the development of the PPCA was the need to decentralise procurement and concessions processes to the Ministry and Agency level to ensure the transactions were with the entity responsible and accountable for implementation. This was a change from centralised Government procurement. As

these processes and procedures completely transformed the way procurement and concessions were undertaken in Liberia and these issues were considered key to continued national security, an independent regulator was established to monitor compliance.

37. Although Liberia's level of decentralised management was more effective prior to the civil war when human resource capacity was significantly higher care would be required in centralising too many functions purely as a result of the current lack in capacity. In considering options for location, functions and authority for concession management the need for some combination of centralisation and decentralisation is the best approach.

38. The four key roles required for concession management are:

- a. **Regulator** - This role provides independent review of compliance with the law in terms of processes and procedures for obtaining the concession and has no involvement in decision making related to the concessionaire.
- b. **Gatekeeper(s)** - This role has the primary functions of the coordinating all aspects of concessions, across Government, and sharing of information on concessions with interested parties. The gatekeeper may perform many other functions related to supporting the concession process and they may be performed by one or more entities depending on the specific function.
- c. **Implementation** - This role undertakes the tasks necessary to initiate and deliver the technical aspects public private sector partnerships involved in a concession.
- d. **Monitoring and Evaluation** - This role ensures that the terms, conditions and expectations of the agreement are tracked and outcomes reported to the relevant authorities. The role may be performed by different entities depending on the specific function.

39. The concession management approach for Liberia has considered these four key roles, the role of Government and the required functions to be performed by Government in the management of concessions.

40. The data review revealed that sector ministries, in most countries, have the primary responsibility for the relationship with private sector partners, including the management of concession agreements. This best practice enables the sector ministry to have full responsibility for the output from the relationship they encouraged Government to enter. In most instances, this includes monitoring and evaluation.

41. The proposed approach for Liberia supports decentralised concessions management, with centralised information management.
42. The current Bureau of Concessions, within the Ministry of Finance, would have functions and authority that enable it to perform the role of the gatekeeper for concessions. The detailed functions along with those of other entities are provided on the following table.
43. For the short term the Bureau of Concessions would provide financial analysis, revenue projections, cost/benefit analysis and other financial information necessary for the Government's review and decision making on the financial viability of any concession. In addition, they would be mandated to be the repository for all concession agreements which would include the administration plan and have responsibility and authority to obtain, collate, summarize and report on the performance of all concessions across sectors. This will facilitate the monitoring and reporting of the EITI++ initiatives in an integrated and comprehensive manner.
44. One of the key responsibilities of the Bureau of Concessions would be to provide the public and private sector and civil society with information on the benefits and sustainable development outcomes of concessions in Liberia on a regular basis.
45. In the medium term, 4-6 years, they would begin to take on more of the responsibilities for this coordination and reporting in relation to other PPP arrangements. They would also manage any funding facility for PPP's should they become a feature in these arrangements.
46. It would be necessary to provide external technical assistance to the Bureau of Concessions, for at least three years. This assistance would be used to establish reporting formats for sector ministries, determine the reporting line of authority for concession management summaries to ensure non-performing agreements are addressed, prepare operating manuals, guidelines and material for PPP and concession initiatives, determine the approach to capturing lessons learned, sharing them and modifying policies or approaches as required and building depth of knowledge in all of the BOC areas of responsibility.
47. Sector ministries would have primary responsibility for the process of obtaining a concessionaire under the PPCA guidelines, as well as for the actual management of concession agreements. They would be required to submit their monitoring and evaluation reports, which cover all aspects of the concession agreement, to the Bureau of Concessions based on established reporting guidelines and ensure that any issues related to non-performing concessions, are resolved.
48. The capacity of the sector ministries to manage complex transactions in an efficient and effective manner is very weak. The key concession ministries,

particularly those in the natural resource sectors, would require technical assistants with decision making authority to assist with the necessary processes and procedures for undertaking a concession process. One of the main responsibilities of the technical assistants would be to deepen the capacity of the technical specialist within the ministry in the objective analysis and reviews of concessions from feasibility to award of contract. The approach to and implementation of due diligence on bidders continues to be a serious challenge for the ministries. The technical assistance would assist them to understand how this process should be most effectively undertaken, usually with contracted advisors. Additionally, they would be necessarily be involved in the concession agreement management to assist the staff scrapped ministries in ongoing monitoring and evaluation. This is an area that has been overlooked in the past.

49. The validity of the PPCC as a regulator has been recognized by Government and stakeholders in Liberia. As a transparent concession process was specifically mentioned in establishing the framework for peace in Liberia, it would be appropriate to have the PPCC continue to perform its regulator role as it relates to concessions. The concession processes and procedures may change with the amendment to the PPCA, however, the PPCC role as a regulator of the amended Act would be unchanged.

50. It would be necessary to provide external technical assistance, which has decision making authority, in concessions for at least three years to build the capacity of staff and Commissioners of the PPCC in the understanding of the role of a regulator as well as in monitoring compliance of PPP and concession processes.

Table 2: APPROACH FOR CONCESSION MANAGEMENT IN LIBERIA

	Role in PPP/Concession Management	Function of Central Government	PPP / CONCESSION FUNCTION	As of Feb 2010	Future Scenario				
					Accountable Government agency in Liberia	Government Agency	PPCC	BOC	Sector Min / Agency
1	<b>REGULATOR</b>	Regulatory	Regulating compliance with the processes for obtaining partners for PPPs and concessions	PPCC					
2		Regulatory / Policy	Granting approvals for implementation of PPP and concession procurement plans	PPCC	MPEA Lead			Support	
3		Regulatory	Granting permits and other authorizations for PPP or concession operation		Sector Ministries				Lead <sup>6</sup>

<sup>6</sup> Various relevant ministries to issue with implementing sector ministry to ensure permits and authorizations are issued by other ministries

4	Policy	Establishing policies for PPPs and concessions	BOC / NIC7	MPEA (Lead) & NIC(Support)		Support							
5	Policy	Developing the standardised legal instrument for PPPs and concessions	Role not filled in Liberia today	MOJ (Lead)									
6	Coordination & Policy	Monitoring and revising policies for PPPs and concessions in all forms	Role not filled in Liberia today			Lead							
7	Policy	Determining and designing of royalty / dividend payments, pricing rules and financial performance targets	BOC			Lead							
8	Support	Managing Government financial support to PPP infrastructure projects and for support to public sector entities for transactions (if applicable)	Role not filled in Liberia today			Lead <sup>8</sup>							
9	Service Delivery	Managing and providing information on PPPs and concessions	BOC <sup>9</sup>			Lead							
10	Coordination /Supervision	Granting approvals for implementation of specific transactions	Sector Ministry or IMCC <sup>10</sup>								Lead		No Object
11	Coordination /Supervision	Determining form, if any, of Government financial support to the PPP or concession	MOF <sup>11</sup>			Lead					Support		
12	Coordination /Supervision	Approval of contract to be awarded to winning bidder	IMCC / Sector Ministry <sup>12</sup>								Lead		No Object
13	Coordination /Supervision	Approving PPP or concession bid documents prior to invitation of bids	IMCC								Lead		No Object

**GATEKEEPER(S)**

<sup>7</sup> BOC and NIC performs this function in an adhoc manner as it is not a part of the defined responsibilities of either Division of PPP and Concessions Unit. Funding may be provided from Government, international partners or private sources and transaction costs may be used to support sector ministries or agencies budget for activity

<sup>8</sup> The BOC may provide information to the private sector if a formal request is made and approved by the Ministry, offering general information is not a part of their current mandate.

<sup>9</sup> IMCC provides approvals for natural resource concessions, other types of public private partnerships may be approved by the relevant sector ministry

<sup>10</sup> The MOF provides input into the financial implications of concessions or other PPP's on behalf of Government

<sup>11</sup> The IMCC provides approvals for natural resource concessions, other types of public private partnerships may be approved by their relevant sector ministry

		IMPLEMENTER																		
14	Policy	Identifying appropriate projects for PPPs and concessions (internally identified or unsolicited) and determining benefits to be derived from the relationships	Sector Ministry															Lead		
15	Policy	Performing project feasibility studies, including cost/benefit analysis, that provide information adequate for the type of PPP or concession	Sector Ministry															Lead		
16	Policy	Prioritizing appropriate projects for PPPs and concessions	Sector Ministry															Lead		
17	Policy	Preparation of PPP and concession procurement plans	Sector Ministry															Lead		
18	Policy	Reviewing project legal and regulatory issues	Sector Min(L) & MOJ(S)						MOJ (Support)									Lead		
19	Policy	Determining of most appropriate legal instrument and modifying to specific PPP or concession	Sector Min(L) /MOJ (S)						MOJ (Support)									Lead		
20	Service Delivery	Determining PPP or concession preliminary selection/evaluation criteria	Sector Ministry															Lead		
21	Service Delivery	Securing appropriate transaction expertise and advisors	Sector Ministry															Lead		
22	Service Delivery	Determining prequalification and short listing processes	Sector Ministry															Lead		
23	Service Delivery	Preparing PPP or concession bid documents	Sector Ministry															Lead		
24	Service Delivery	Issuing, receiving, evaluating and making recommendation on bids	Sector Ministry															Lead		
25	Service Delivery	Undertaking due diligence on relevant bidder(s)	Sector Ministry or IMCC <sup>13</sup>															Lead		
26	Support	Negotiating contract	IMCC / Sector Ministry															Support	Lead	Support

<sup>13</sup> The IMCC determines the negotiating team and mandate for negotiations



		MONITORING & EVALUATION											
30	Monitoring & Evaluation	Monitoring and evaluation of technical performance, social and development impact of PPP or concession	Role partially filled in Liberia today <sup>15</sup>									Lead	
31	Monitoring & Evaluation	Monitoring and evaluation of financial aspects of all PPP or concession agreements	BOC <sup>16</sup>								Lead		
32	Coordination / Monitoring & Evaluation	Obtaining, collating, summarising reports on financial & technical performance, social and development impact of all PPPs and concessions	Role not filled in Liberia today								Lead		
33	Monitoring & Evaluation	Reporting technical and financial performance along with social and development impact of all PPPs and concessions to Executive semi-annually.	Role not filled in Liberia today								Lead		
34	Governance	Reporting technical and financial performance along with social and development impact of all PPPs and concessions to public annually.	Role not filled in Liberia today										
35	Complaints	Complaints and review for concession transaction	Complaints and Review Panel						President				Complaints and Review Panel

<sup>15</sup> Sector ministries broadly monitor technical areas of concession agreements, this is not the specific responsibility of officer in the ministries

<sup>16</sup> The BOC broadly monitors revenues from the concessionaires

## PROPOSED NEXT STEPS IN LIBERIA

51. The proposed next steps to move the forward in the improvement of the concession management process in Liberia are:
- Discussion with key stakeholders on the proposed approach considering the functions to be performed
  - Determination of the PPP and Concessions management approach
  - Establishing the policies for PPPs and Concessions
  - Development of a legal instrument for PPPs and Concessions to include the management process
  - Approval of the legal instrument
  - Recruitment and selection of external technical assistance to the Bureau of Concessions, Sector Ministries and PPCC

**Annex 1: ACRONYMS**

ACRONYMNS	
BOC	Bureau of Concessions (within MOF)
BOT	Build-Operate-Transfer
GOL	Government of Liberia
IMCC	Inter-Ministerial Concessions Committee
LEITI	Liberia Extractive Industries Transparency Initiative
LTA	Liberia Telecommunications Authority
MOF	Ministry of Finance
MPEA	Ministry of Planning and Economic Affairs
NIC	National Investment Commission
PCRC	PPP and Concessions Resource Center
PPCA	Public Procurement and Concessions Act
PPCC	Public Procurement and Concessions Commission
PPP	Public Private Partnership

## Annex 2: DEFINITIONS

Concession	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 which pays fees or royalties under the conditions 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.
Build/Refurbish/Modernize-Operate-Transfer	Where a private entity finances the development of infrastructure/facility/utility and operates it for a specified period after which the project is handed over to the Government/public entity free of lien or at a cost to the public entity.
Build/Refurbish/Modernize-Transfer-Operate (BTO)	Where the Government/public entity contracts with a private entity to build or complete a facility the ownership of which is transferred to the Government/public entity on completion after which the facility is leased back to the private entity for a fixed or renewable term.
Build/Refurbish/Modernize-Own-Operate-Transfer (BOOT)	Where the private entity obtains a franchise for a fixed period, whether exclusive or not, to develop, operate, maintain, manage and collect user fees for a public facility over a fixed period at the end of which title to the facility reverts to the public entity/Government.
Build/Refurbish/Modernize-Own-Operate (BOO)	Where the Government/public entity either transfers ownership and responsibility for a public facility or contracts with a private entity to build, own and operate a new facility, in each case subject to terms and conditions laid down by the Government/public entity for the operation of the facility
Joint Ventures	Where the Government/public entity shares investment, profits, losses and/or control of the operations of a facility with the private entity.
Partial Privatization	The partial disposal of Government interest to a private entity other than through the Stock Exchange
Leases	Where a private sector entity obtains an agreement to utilize a public facility or asset and pays a fee to Government. The private entity's profits depend directly on their operating profits of the firm. Operating risk is fully transferred to the private entity. The government still maintains ownership of the asset.
Public Private Partnership	An arrangement between a public sector entity and a private sector entity for the creation and/or

	management of infrastructure for public purpose or the extraction of a natural resource for a specified period of time (concession period) on commercial terms
--	--

## **Annex 3: A SAMPLE OF GOVERNMENT RESPONSIBILITIES FOR CONCESSIONS**

Source: WB Technical Paper No. 399 Finance, Private Sector and Infrastructure Network "Concessions for infrastructure A guide to their design and award". Page 22 Source: Klein, So, and Shin (1996); Fishbein and Babbar (1996); and World Bank staff.

### **Framework**

- Adopting legal provisions to enable the granting of concessions.
- Establishing or identifying regulatory authorities.
- Managing government support to infrastructure projects.
- Managing public relations and information.

### **Project identification and analysis**

- Identifying projects amenable to concessions (including in-house and unsolicited proposals).
- Prioritizing projects amenable to concessions.
- Hiring advisers.
- Performing a preliminary review of the costs and benefits of the project (without duplicating the analysis to be performed by the private sector), especially in cases where the government will be assuming part of the market risk.
- Reviewing legal and regulatory issues.
- Determining preliminary selection criteria.
- Granting permission for the project to go ahead (for example, for the opening of the bidding process).
- Setting a timetable for the project.

### **Enabling and supporting measures for specific projects**

- Granting permits and other necessary authorizations (such as environmental permits, rights of way).
- Determining the form of government support for the project.

### **Design of the concession arrangements**

- Choosing legal instruments.
- Allocating responsibilities.
- Choosing and designing pricing rules and performance targets.
- Determining bonuses and penalties.
- Determining duration and termination.
- Designing adaptation mechanisms to new or unforeseen circumstances.
- Choosing and designing a dispute settlement mechanism.

### **PPP / Concession award**

- Choosing the method of award.
- Making decisions regarding prequalification and short listing.
- Determining bid structure and evaluation method.
- Determining bidding rules and procedures.
- Proceeding with the bidding.
- Negotiating.

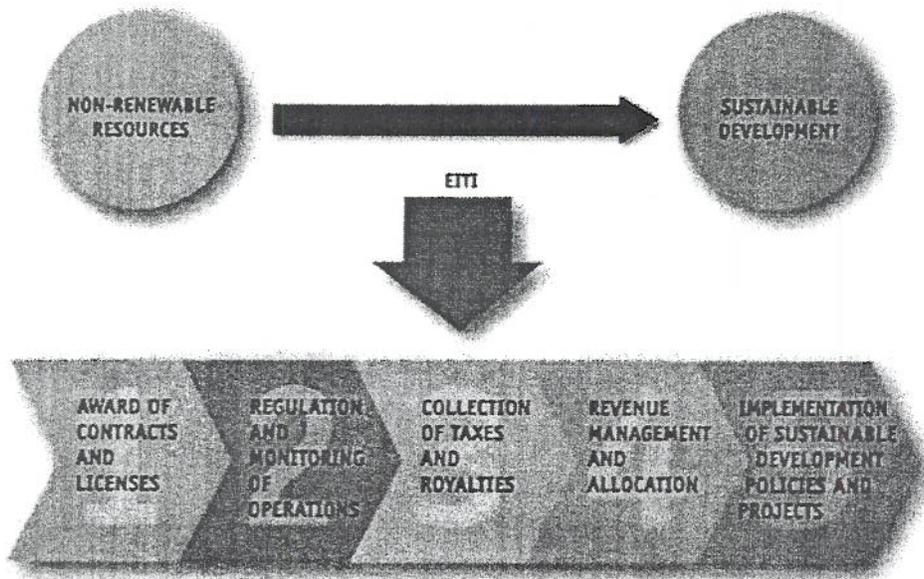
**Exercise of monitoring / regulatory function**

- Implementing regulatory rules.
- Supervising and monitoring.
- Enforcing rules (for example, imposing penalties).

## Annex 4: THE VALUE CHAIN APPROACH “EITI++”

The **Extractive Industries Transparency Initiative (EITI)** provides an independently validated way for the public to verify taxes paid for the use of natural resources in the extractive industries. While EITI is an essential step in shedding light on benefit streams from the extractive industries and holding both companies and Government s to account, many stakeholders recognize that it is only a small part of ensuring that the extractive industries, and the money generated by their activity, positively impacts development.

The **Extractive Industries Value Chain approach**<sup>17</sup> takes an integrated view of the management of extractive industries in resource-rich developing countries, and aims to help host countries leverage their natural resource wealth for sustainable development.<sup>18</sup> As illustrated below, the EI Value Chain approach goes beyond EITI's narrow focus on revenue transparency and concentrates on the entire value chain of natural resource extraction and utilization—from the award of exploration and production rights (Link 1) to the implementation of policies and programs for sustainable development (Link 5), as set out more fully in *Extractive Industries Value Chain: A Comprehensive Integrated Approach to Developing Extractive Industries*, World Bank, March 2009.



The EI Value Chain approach requires, as a first step, the joint conduct of an EI Value Chain survey, which is a powerful diagnostic tool to inform future priorities and actions. A survey would develop an evaluation matrix, which depicts the existing state and completeness of the extractive industries management system. The matrix and its underlying status and gap analysis are used as a tool to identify potential vulnerabilities of the extractive industries management system, help prioritize areas of action, and aid in the self-evaluation of progress. It can also facilitate discussions with different stakeholders on their respective roles and responsibilities at different stages of the EI Value Chain, and with Development Partners around potential technical assistance.

<sup>17</sup> A World Bank Working Paper #125 of March 2009 – Extractive Industries Value Chain – A Comprehensive Integrated Approach to Developing Extractive Industries” by Alba

<sup>18</sup> For this reason the EI Value Chain approach is also sometimes referred to as “EITI++”.