

From the Desk of

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RESPONSE TO LETTER DATED MAY 17, 2016 FROM SPECIAL TASK-FORCE TO INVESTIGATE ALLEGED ACTS OF BRIBERY PUBLISHED BY GLOBAL WITNESS IN ITS REPORT RELEASED MAY 11, 2016

Tuesday, May 24, 2016

Dear Sirs:

I acknowledge receipt of your letter of invitation late evening of May 17, 2016 which states: *“The report links several individuals including you to alleged bribery and other criminal conducts.... The specific allegation made against you in the Global Witness’ report states that, “ on August 23, 2010, you received payments which was part of a scheme to revise the then PPCC Act and influence processes to suit the interest of Sable Mining Company, a British mining Company, to do mining in Liberia.”*

By this letter of May 17, 2016 you invited me to appear before the Task-Force on the next day May 18, 2016; *“... for your [my] response, if any.”*; and also advised, *“...as a guarantee of your constitutional rights, to come along with a counsel of your choosing, as any statement made voluntarily in the absence of such counsel, may be used against you in a court of law.”*

I appeared before the Task-Force on schedule at 1:00 pm on May 18, 2016 to express my willingness to cooperate with the investigation, but could not provide a “response” to the allegations at that point, since you had left me with only five (5) working hours to read the “official copy” of the Global Witness report which you provided attached to your letter of invitation; to find a lawyer, seek his advice and prepare a response to be presented. I therefore requested reasonable time to prepare such a “response”.

This submission presents my initial response to your letter and to the allegations made by Global Witness in the report entitled “The Deceivers”.

1. Your letter informs me that the Task-Force is of the opinion that Global Witness has alleged *I received payments which was part of a scheme to revise the then PPCC Act and influence processes to suit the interest of Sable Mining Company, a British mining Company, to do mining in Liberia.*

I consider what is written in your letter as the opinion of the Task-Force because I have read the report you provided me, and I did not see where in that report, Global Witness specifically alleges that Ernest C. B. Jones, Jr. *“... received payments which was part of a scheme to revise the then PPCC Act and influence processes to suit the interest of Sable*

Mining Company, a British mining Company, to do mining in Liberia”. So I consider that the Task-Force which should be investigating the validity of allegations made in the Global Witness report, is the one accusing me of receiving payments to revise the Public Procurement and Concession Act (PPCA) (or PPC Act) and influence the processes to suit the interest of Sable Mining Company to do mining in Liberia. This, in my view is not proper. However; since that is the interpretation of the Task-Force, let me respond by saying:

- (a) I do not recall receiving any payment from any person or company on August 23, 2010, as part of a scheme to revise the then “PPCC Act” and influence processes to suit the interest of Sable Mining Company, a British mining Company, to do mining in Liberia.**

- (b) I do not recall ever being involved in any scheme to revise the then “PPCC Act” to suit the interest of Sable or any other private company. I recall participating in a legal national process aimed at revising the PPC Act of 2005, for the purpose of making that law more appropriate and more effective in protecting the interest of the Government and people of Liberia. And I recall giving my best to make sure that the law we drafted, if approved by the Legislature, would be adequate enough to protect Liberia’s interest.**

- (c) I do not recall being involved in any scheme to influence processes to suit the interest of Sable Mining Company; instead I recall influencing processes that have led to the preservation of the Wologizi iron ore deposits, until today.**

2. Haven said that, I consider it extremely important that I put things in proper context so that members of the Task-Force and all others who come across this “response“ from me, may have a better understanding of the background and see the flaws in the logic of the allegations made by Global Witness. What I see happening here is that Mr. Jonathan Gant writes a report accusing Sable Mining of committing acts of corruption in many parts of the world including Liberia; and the way Liberia seems to have chosen to deal with that report is to immediately draw arms against one another instead of analyzing the report and trying to sifter the facts from the speculations. Mr. Jonathan Gant admits that he received bits and pieces of information from various sources which he refuses to disclose. Have we Liberians not figured out that some if not all of this information could be fabricated by disaffected Liberians or disaffected foreign employees of Sable Mining to use the hands of Global Witness to shoot at some of Liberia’s political leaders and/or their own social enemies? For me, I see this as an attempt to indict Liberia; and as such Liberia and Liberians the world over should pause and reflect before passing judgments; for we all could be the victims if our leaders fight and fall because of an unconfirmed report from Mr. Jonathan Gant who could have been misled to write such a report; considering the stakes in our forthcoming elections. Global Witness should be a credible institution; but I have seen the impact of its previous reports on the lives of our people. The Private User Permit (PUP) saga in the forestry sector is an example. Our Government

reacted by shutting down an entire subsector, based on the findings of a similar investigation. No consideration was made of the fact that thousands of our villagers depended on income from PUPs for livelihood. Let us therefore exercise caution as we proceed with this one. Let us study the report before acting. Below are a few of my observations which I hope the Task-Force will find useful.

➤ **Global Witness accuses the Government of Liberia of changing its Public Procurement and Concession Law so that Sable Mining could be awarded the Wologizi Mountain without tender.**

The below listed clippings from the Global Witness report confirm this:

- “When Sable Mining arrived in Liberia in early 2010, almost all of the country’s most valuable iron ore fields had already been parceled out. Just one prize asset remained.”
- “Groves became obsessed with Wologizi Mountain,”
- ‘One obstacle stood in their way. Wologizi had been earmarked for public tender—and in an open auction a smaller company like Sable might easily find itself outbid. But Sherman had a plan: **if he could engineer a change in the law, they could circumvent the process.** ‘
- “Fortunately for Edmonds and Groves, a new Public Procurement and Concessions Act was on its way through parliament. **By bribing the right people Sable could get a loophole inserted allowing it to win the mountain without a tender,** said Sherman.”
- **“Liberia’s new Procurement Act passed on 16 September 2010, complete with the new provisions Sable wanted. Article 75 allowed the mining minister to declare a mining concession as a “non-bidding area”—that is, one that could be handed out without a tender.”**

The Task-Force must investigate whether the law was changed, how it was changed and whether the changes made were designed to benefit Sable Mining alone. I believe the alleged changes in the Law must be verified first before the investigation of the individual allegations of bribery, which if handled wrongly could drift into very risky socio-political outcomes, given the individuals involved and the fact that national elections are around the corner.

A quick review of the New Minerals and Mining Law of Liberia (September 2000) the Public Procurement And Concessions Act (September 2005), the Regulations on Procedures for Issuing Exploration Licenses (August 2007), the Mineral Policy of Liberia (March 2010), the mineral Exploration Regulations (March 2010), the Amendment And Restatement Of The Public Procurement And Concessions Act, 2005 (September 18, 2010), and other associated documents, would certainly

convince any reasonable reader that Liberia’s Procurement and Concessions law was not revised in 2010 to suite the interest of Sable Mining.

Assuming all the alleged actors – Sable, its lawyer and the individuals accused of changing the PPC Act for bribes are reasonably sensible people, then if changing the law could not help Sable obtain the Wologizi mountain, why would they have offered or taken bribe, to change the law in order to help sable get the Wologizi mountain, as Global Witness alleges?

In my view, the PPC Act was not revised to suite the interest of Sable Mining, because it was practically impossible to insert any clause into that law that would have helped Sable obtain the Wologizi Mountain. I am aware that Sable Mining had submitted an unsolicited expression of interest (EOI) in obtaining Exploration License over the Wologizi range around March 2010. But by then two other companies, namely Capital Mining and China Henan International Cooperation Group Co. Ltd. (CHICO), had previously filed similar unsolicited expressions of interest (EOI). And by the time the law got passed in September 2010 about twelve unsolicited EOIs had been received for Exploration license over the Wologizi. While it is true that an Exploration license is intended to lead to a “Mining Concession” I must note that BHP Billiton, a world leading mining company, did have an Exploration License over the Wologizi but failed to convert it into a Mining Concession.

If the law was meant to be changed only to help Sable Mining get the Wologizi, the drafters, knowing that two other applicants had filed ahead of Sable, would not have prescribed the First-in-First-Assessed (FIFA) (or First-to-File) rule for Exploration licenses over “non-bidding” areas; but they did.

Global Witness was therefore analyzing wrongly when it stated in the report: “Liberia’s new Procurement Act passed on 16 September 2010, **complete with the new provisions Sable wanted**”. The reality is that the provisions were not included to suite Sable’s interest, because Sable had already filed an unsolicited Expression of Interest and was not the first to file.

Global Witness also tried to sensationalize its argument by stating: “Article 75 allowed the mining minister to declare a mining concession as a “non-bidding area”— **that is, one that could be handed out without a tender.**” Article 75 defines a very elaborate procedure which cannot be described as “**handing out**” a License without tender. Also, the process of obtaining mineral rights is not governed by Article 75 alone. Global Witness’s intension was to make its readers believe that a few Liberians took bribes from Sable and sat down around some table and drafted a law to allow the Minister of Mines to “hand out” the Wologizi to Sable without a tender. That blatant attempt to smear the credibility of Government Officials and international experts

involved in the drafting and approval processes should inform our learned Task-Force and readers about the credibility of Global Witness’s report.

The provisions in the PPC Act which the Global Witness report refers to can be summarized as follow:

- a) in case of **known mineral deposits**, the procedure for obtaining a License should be by competitive bidding; and
- b) **in case the mineral assets are unknown**, the Ministry of Lands, Mines and Energy (MLME), the Inter-Ministerial Concession Committee (IMCC) and the Public Procurement and Concession Commission (PPCC) are involved and the procedure to be used is first-come-first served (known also as First-in-First-Assessed (FIFA)).

Global Witness refers only to Section 75 to suit its purpose of making Liberia look bad; but the FIFA process is governed by a combination of Sections 75-3, 82, 95 and 101 of the PPC Act. Together they show that in order for MLME to grant an exploration license without going through the bidding procedure, the following conditions should be met:

- The **Liberia Geological Survey (LGS)** must issue a recommendation stating that the available information on the existence of such Minerals in such areas indicates that there are insufficient quantities and/or qualities of such Minerals in such areas to support meaningful bidding for the granting of Exploration Licenses for such Minerals in such areas.
- Following the foregoing, the **Minister of Lands and Mines** must issue a determination stating that the area has been declared as a non-bidding area for such minerals.
- **The Minister’s determination must be reviewed and approved by the IMCC; and prior expressed approval must be obtained from the PPCC regarding the procedure to be employed.**
- Such determination should be renewed every two years; otherwise the area automatically ceases to be a non-bidding area.

The IMCC as defined in Art 81.3 of the PPC Act, is comprised of nine (9) senior Cabinet Ministers

All existing exploration licenses to date have been awarded according to the FIFA. Without those provisions in the Law, it would have been impossible to grant exploration licenses.

- **The Processes of drafting and approval of the Amended and Restated Public Procurement and Concession (PPC) Act of 2010 could not have been influenced by a few individuals to suite the interest of Sable Mining Company.**

The revision of the PPC Act of 2005 was an all-inclusive process that involved multiple stakeholder ministries and agencies and numerous international experts of very high reputation who were sponsored by the World Bank, USAID, the European Commission and other partners of Liberia.

The process began long before Sable came to Liberia in early 2010 and lasted many months. I am reminded that at one point there were two separate drafts, one supported by the World Bank experts and the other supported by the International Senior Lawyers Program (ISLP). Several review meetings and work sessions were held at various venues including the Ministry of Finance, the PPCC and even the World Bank offices.

- **Because the granting of Exploration Licenses on the First-in-First-Assessed (FIFA) basis is a norm in the industry, it was considered acceptable and economically justified by our international partners, and it was adopted by the Government several years before Sable Mining came to Liberia. Nobody changed the Law to suite the interest of Sable Mining.**

The real fact is that by August 2007, three years before Sable Mining arrived in Liberia, the Government of Liberia had already decided to allow the Minister of Lands, Mines & Energy to grant exploration licenses without a tender. The PPCC promulgated Regulation N°002 - Regulation on Interim Procedures for Issuing Exploration Licenses (effective August 31st, 2007) to provide an exemption to provisions of the PPC Act of 2005 (PPCA-2005), which define all licenses as concession (Art. 75.1 (b) of the PPCA-2005) and required all concessions to be granted through a competitive bidding process. (Art. 95 of the PPCA-2005). Before Regulation 002 was promulgated, (2005 -2007 August) it was not legally possible to obtain a license to explore for minerals in Liberia; because exploration areas are normally unknown – without sufficient information to permit a tender. The Government of Liberia (GOL) was unable to fund exploration by the Liberian Geological Survey. Ten years have gone by and the GOL has still not been able to fund exploration activities.

The revision of the PPC Act was simply an opportunity to provide adequate statutory basis for the continued use of this Regulation 002, since many felt that the Regulation was inconsistent with the Law, which prescribed that all concessions must be granted by competitive bidding. The decision to insert the principal of FIFA contained in Regulation 002 - Procedures for Issuing Exploration Licenses into the amended and restated PPC Act, was made at the inception of the drafting process and long before Sable came to Liberia. As such it is incorrect and untrue to state that there was “*a scheme to revise the*

then PPCC Act and influence processes to suit the interest of Sable Mining Company, a British mining Company, to do mining in Liberia.”

➤ **Global Witness appears to accuse our President, Madam Ellen Johnson Sirleaf, of offering the Wologizi iron ore deposits to Delta Mining in exchange for the Western Cluster iron ore deposits. The Task-Force must investigate that first, because it sets the context for everything else that is alleged in the report.**

(a) According to Global Witness’ Report (page 15 Para 6) : “... *in a closed door meeting at the presidential mansion [Executive Mansion], Delta had struck a deal with the Government. Officially cleared of corruption, Delta and its new shareholder Sable were now convinced that they could get Wologizi instead.*”

This statement implies that there was something cynical about the meeting that was held at the Executive Mansion. What Mr. Gant does not know is that following the cancellation of Delta’s bid for the Western Clusters deposit, Delta engaged the services of Sherman & Sherman and sued the Liberian Government. Any meeting subsequent to that could have been intended for only one thing – to resolve the difference between the Liberian Government and Delta outside of the court so that the Liberian Government would be able to offer the Western Clusters deposit for a new bid. To the best of my knowledge no meeting is held at the Executive Mansion with foreign investors with the doors opened.

The Task-Force and all Liberians following this case need to be told by Global Witness who did Delta meet with at the Executive Mansion that would have so much power to convince Delta and Sable that they could get Wologizi; and when did this meeting take place?

This in my view is one of the most important and gravest of all the allegations made by Global Witness. By that statement in the report, one does not have to be a lawyer or have PhD to see that Global Witness is accusing our President, Ellen Johnson Sirleaf and other Government officials of convincing Delta and Sable that they could get Wologizi instead.

A Task-Force established to investigate the validity of allegations contained in Global Witness’ report is expected to be morally and professionally competent to consider that the context of the investigation should be set by whether or not that alleged event occurred, whether or not that promise was made, and whether or not the promise was made by the President herself or on her instructions.

- i. If that meeting really happened and if the President really promised to give Delta and Sable the Wologizi, then two scenarios are possible:
 - the pertinent ministers and officials would have acted accordingly, and Delta and Sable would have had the Wologizi range; or
 - the pertinent ministers and officials would have acted contrary to the President’s will or in defiance of the President’s instructions, and Delta and Sable would not have the Wologizi range; and in this case, the President could have either forgiven the ministers and officials or promptly dismissed all of them;
- ii. If that meeting did not occur; and the President did not promise Delta and Sable the Wologizi, then of course the Global Witness report must be dismissed for lack of integrity and truth; and the investigation should be closed down; and Government should press appropriate legal charges against Global Witness.

Global Witness, with a few pieces of information, which they received probably from opportunists or disaffected former employees (Liberians and foreign), who may have political or social issues with one or more of the individuals accused, tried to put one and one together and came up with that report. Let Global Witness be brought forth to prove that this meeting took place at the Executive Mansion, and that the President promised Delta and Sable that she would give them Wologizi.

➤ **If Global Witness’ allegations that (a) the President promised Delta the Wologizi, and (b) the Government of Liberia has changed its Public Procurement and Concession Law so that Sable Mining could be awarded the Wologizi Mountain without tender; then why did Sable NOT GET the Wologizi.**

The Wologizi was NOT given to Sable Mining or to any of the over 24 companies that have applied since. Since the PPC Act of 2010 was passed, the Ministry of Lands, Mines & Energy could have initiated a process to review all the expressions of interest, shortlist the best three or five and invite them to submit definitive proposals. Even that was not done. By the end of 2010 almost all the official actors at the Ministry were replaced. The new group of officials has still not granted the Wologizi to any company.

The reasons may be very simple. The Wologizi is not just any mountain. It has a special place in the hearts of Liberians and especially those of us who come from Lofa County.

Global Witness’ arguments that (a) the meeting at the Executive Mansion could have been the **motive**, and (b) the ongoing revision of the PPC Act could have been the **opportunity**, could make sense; but (c) the **means** have not been shown. I believe that all the alleged actors are reasonably sensible people, and that they knew that even with the changing of the PPC Act, the Wologizi could not have been given without a proper tender. I therefore do not believe that there was a means. And since the target act did not occur, how can we prove “bribery” or “economic sabotage” or any other crime? I certainly don’t think that preventing Sable from taking Wologizi – which is what happened - can be defined as economic sabotage or any other crime.

As I stated above, this submission presents my initial “response” to your letter of invitation to provide “*response, if any*” and to the allegations made by Global Witness in the report entitled “The Deceivers”. They also include some of my initial observations and thoughts which are offered here mainly to help the Task-Force with essential background and guidance; because I sincerely believe that the ways the Task-Force chooses to handle these investigations, if not thought through thoroughly, could negatively impact the international community’s perception of integrity of our justice system and our mineral resource management system; frighten and drive away current and potential investors; and thereby cause job losses and revenue shortages. Considering recent occurrences relating to the way the Task-Force has chosen thus far to deal with this investigation, I am compelled to end this initial response by advising the Task-Force and our Government, to reflect on Liberia’s recent history of conflicts, the ongoing withdrawal of UNMIL, the upcoming elections; and to consider that our most important and overarching national objective at this point in our history should be above all other, to preserve the peace and stability we have achieved through many sacrifices.

I trust that this submission will prove helpful.



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