Gambling Away the Forest: *lack of proper oversight from President Sirleaf and the Legislature puts communities and forests at risk in Liberia*

NGO Coalition for Liberia
Briefing Paper No. 01/09
July 2009

The actions of the Forestry Development Authority (FDA) and the failure of the President and Legislature to take corrective actions have opened the door to corrupt practices and the inevitable plunder of Liberia's forest. The FDA's flawed decisions, and in some cases illegal actions, led to the award of nine timber concessions in 2008 and established a grim precedent in the logging industry after sanctions. Forest communities across Liberia now stand at the risk of getting a raw deal. Their hopes and expectations will be dashed and the promises of a new day will not come to pass, unless some radical decisions are taken in the coming weeks.

This Briefing Paper reflects on the warnings issued by the coalition and other stakeholders prior to the awarding of the first nine logging contracts, discusses the logging companies' failure to honor those contracts, and questions why the Government of Liberia continues to forge ahead on a path that will lead to disaster and anarchy in the forestry sector.

Recommendations:

1. In light of the failures of the current Contract Holders to perform and the reluctance of reasonably '*good*' companies to directly invest in the Liberian timber industry, the President of Liberia should initiate a national dialogue about the future of Liberia's forests. This dialogue should be initiated with the view of exploring other options for generating income from the forest. In the meantime, steps should be taken to address the failures of the first group of Contract Holders to honor the terms of their agreements.

2. The Ministry of Justice should investigate and prosecute Tarpeh Timber Corporation for illegally harvesting approximately US $100,000 worth of ekki (timber) outside its Timber Sale Contract area in Compound 1, Grand Bassa County. The Ministry of Justice should also investigate circumstances that led to the FDA imposing a fine of US $2,000 instead of referring the matter to the Ministry for prosecution as required by law.

3. The Ministry of Justice should also request an explanation from the Forestry Development Authority (FDA) about why it delayed collecting the Area Fees from the three Forest Management Contract (FMCs) Holders on the date of the signing of the Contracts, as required by law. The Area Fees are more than eight months overdue.

4. The FDA Board of Directors should request an inquiry into the status of the first six Timber Sale Contracts and three Forest Management Contracts to verify whether or not they are able to implement their contracts. The Board of Directors, in the meantime, should NOT approve the pending allocation of the four new FMCs. The Board should NOT forward the Bid Evaluation Report to the Inter-Ministerial Committee on Investment and Concessions for approval.

5. The FDA should further investigate the financial backers of Alpha Logging and Wood Processing, Southeast Resources and Atlantic Resources. This investigation should seek to establish whether there is any link between these three companies and the notorious Malaysian logging company Samling Global Limited. If the investigation finds that these companies are linked to Samling, for example through any of their Significant Individuals, they should be requested to sever their ties immediately.

Where is the money?

Alpha Logging & Wood Processing Incorporated (Alpha Logging), EJ & J and Liberia Tree and Trading Company, Inc. (LTTC) have failed to meet their first two main financial obligations to the Government of Liberia. The October 6, 2008 and June 30, 2009 respective deadlines, for the payment of their Annual Area Fees and Land Rental Bid fees, have come and gone and none of them has paid. Five of the six Timber Sale Contracts issued to smaller operators are also sitting idle; they also lack the financial resources to conduct operation. The good news is these companies have now been given their bills and it is left to be seen if and when they will make their first payments; now due in about two weeks.

One wonders however, why it took the FDA eight months before it billed the companies for their Area Fees that were due on the day FDA signature the contracts; October 6, 2008? Recent reports that the FDA and these companies were engaged in negotiations aimed at reducing the companies' Land Rental Bid and Area Fees are of concern. If these reports are accurate, we fear that they will either continue trying to get these fees reduced, delay their payments or use the argument that they need tax breaks because of the "*global economic crisis*". This will be illegal and will violate the terms of their Forest Management Contracts with the Government of Liberia.

This will not be surprising, however, because the FDA appears to be determined to help the logging companies get off the hook at the expense of communities waiting for their 30% share of the Land Rental fees. In fact, the FDA first attempted to reduce the Land Rental Bid fee in 2008. Just two days after signing these FMCs, the FDA instead of reminding the companies that their Area Fees were due, unilaterally waived 24 years of Land Rental Fees and instructed the companies to make a one-time payment instead of the 25 (years) annual payments required under law.[1] If these changes had been allowed to stay, the people of Liberia would have lost approximately US $50 million over the course of the 25years that these three companies would have been operating. This amount would have continued to go even higher with the signing of other contracts. The FDA abandoned these changes only after intense criticism from donors and civil society.

According to the FDA Regulation on Certain Forest Fees, Regulation No. 107-07 Section 33(f), Area Fees are due on the date the Forest Management Contract is signed. The FDA signed these contracts on October 6, 2008. According to their individual contracts, the Land Rental fee is due within thirty (30) days as of the Contract Effective Date.[2] The three FMCs were ratified by the Legislature and Approved by the President on May 27, 2009.[3]

The three companies combined arrears total approximately US $2,425,000. Their failure to pay directly impacts Affected Communities, which are entitled under the National Forestry Reform Law to 30% of the Land Rental Fees.[4]

How did this happen?

In spite of warnings from civil society[5], the UN Panel of Experts on Liberia[6], and the FDA Due Diligence Committee[7], that the companies submitting bids had questionable financial capacities, the

[1]FDA Memo dated October 8, 2008 and signed by Alfred Kotio
[2]Section B7.11 – Land Rental Bid Payments
[3]"Liberian Chief Executive Signs More Bills," 27 May, 2009, *at* http://www.emansion.gov.lr/press.php?news_id=1185.
[4]National Forestry Reform Law, 2006, Section 14.2, e(ii)
[5]The NGO Coalition first raised the alarm in its briefing paper "Reform in Jeopardy", NGO Coalition for Liberia, July 31, 2008. This briefing was released before the Inter-Ministerial Concessions Committee approved the awarding of those contracts.

FDA insisted the companies would mobilize the needed capital. The FDA labeled the NGOs calling for caution "*saboteurs*"[8]and later the UN Panel Specialist on timber similarly after its December 2008 report was released.

The FDA top management, in a press release responding to an NGO Coalition statement on the issue, argued…

> *"It is a fact that during the due diligence on the thirteen companies that submitted bids, sufficient capitalization for their investment could not be demonstrated. Obvious reason for this is that most of them could not mobilize capital until they won a contract but did not make contingency plan to mobilize such capital if they won the contract. This is logical because you could not mobilize millions of dollars as required in this case and have it idle while you seek for a contract. However companies that showed a strong financial and technical capacity or commitment are being preferred."*[9]

The first due diligence report was released in July 2008 and revealed that not one of the companies that participated in the bids demonstrated it was fully qualified to be awarded contracts. Each of the companies that submitted bids either had an invalid prequalification certificate, or failed to demonstrate both financial and technical capacity to perform.[10] For example, none of the companies that submitted bids for the six (6) Timber Sale Contracts had the capital to finance their investments; they were all depending on third parties for their financing. Additionally four out of the five companies that submitted bids for Forest Management Contracts failed to demonstrate financial capacity, i.e. they did not have the minimum capital to be able to implement the contract for which they submitted bids. Only one company "*demonstrated access to sufficient capital*[11]", but the origins of this company's capital was unknown at the time. There was very little information about the company providing the finances, which raised questions about the reliability and integrity of the financier.[12]

All of the facts were gathered and presented in various reports to the FDA's senior management, the FDA Board of Directors, the President and the Liberian Legislature. All the facts were ignored at the different levels of oversight within the government. The contracts were ratified by the Liberian Legislature in early May and the President subsequently signed them at the end of May 2009.

FDA throws '*Rule of Law*' Out the Window

Only one of the nine contract holders commenced logging operations. Tarpeh Timber Corporation (TTC), the only company that has harvested logs since the lifting of the timber sanctions on Liberia violated two critical elements of the law even before the first log was transported to the ports. The company commenced logging without an approved environmental permit[13] and logged outside its concession area[14]. Both the Environmental Protection Agency (EPA) and the FDA imposed separate

---

[6]The UN Panel of Experts re-echoed the NGOs concerns later in December in its report,reference S/2008/785 dated 12th December 2008. This report was released five months ahead of the ratification of the three FMCs by the Legislature in May 2009

[7]A second Due Diligence Report dated August 26, 2008 reconfirmed its initial findings – the companies did not have the required financial capacity to perform

[8]In a Press statement dated 9th September 2008, the FDA accused the NGO Coalition of trying to sabotage the Poverty Reduction Strategy (PRS)

[9]FDA Press Release dated 9th September 2008

[10]NGO Coalition for Liberia briefing, Reform in Jeopardy, July 2008

[11]Report of the Due Diligence Committee, August 26, 2008

[12]Investigations into this financier's background has revealed that the financier himself may be depending on another company; a logging company that is notorious for breaking forestry laws and committing human rights abuses in other countries

[13]Press release: Illegal Logging Ignoring Liberia's Environmental Laws, SDI & Green Advocates, March 3, 2009

[14]Midterm report of the UN Panel of Experts on Liberia, S/2009/290 (5 June, 2009)

fines on the company. The EPA fine has not been fully paid. None of its obligations to the Affected Communities, established in their Social Agreement, have so far been met.

In June 2009 the UN Panel of Experts reported that TTC "felled trees illegally outside of the concession."[15] The hundred (100) Ekki trees felled contained an estimated 500 cubic meters of timber, with an approximate market value of US $100,000 at the time of harvesting.[16] Under FDA Regulation 109-07, any offense that results in "damage to Forest Resources or the Environment exceeding United States Dollars Ten Thousand (US$10,000) in value" cannot be penalized by the FDA through an administrative penalty; it must be referred to the Ministry of Justice for prosecution.[17] Accordingly, because TTC caused approximately US $100,000 in "damage to Forest Resources" the FDA is required to refer the violation to the Ministry of Justice. Instead of following the legal requirements, however, the FDA imposed a fine of just US$2,000.[18]

Where are we now?

The report of a new due diligence performed on logging companies that submitted bids for an additional four large FMCs has been submitted to the FDA. According to the report, delivered anonymously to the NGO Coalition for Liberia, all the logging companies bidding for these concessions have unreliable sources of financing. Some failed to demonstrate that they have the minimum required capital to implement contracts of this size while others rely on sources that also failed to demonstrate financial ability to provide the capital they will need. The only bidders that appear to have demonstrated access to capital (also unreliable because the apparent financial backer does not have a legally binding agreement with them) are backed by a Malaysian logging company with a reputation similar to that of the Oriental Timber Corporation (OTC). The company is notorious for breaking forest laws, failing to meet its financial obligations to host countries and committing human rights abuses.

Why the government must stop and reflect on the past

Reflecting on recent development in Liberia's forestry sector, it would be foolish to repeat the same mistakes. Awarding these FMCs to companies with unreliable financial sources and others with damaged reputations in other countries where they have operated in the past will completely destroy the little faith that remains in some friendly quarters. The government must stop and reflect on the recent past before forging ahead.

There are clear lessons to be learnt.

For example, in 2007 the Tropical Reserve Entrepreneurial Enterprise (TREE), operated by Cllr Peter Amos George, Jr. appeared on the logging scene in Liberia. Prior to their entry, no one had heard of them; this was a new logging company. But the company was flamboyantly buying new vehicles, hiring staff and opening a large office in the suburbs of Monrovia. Everyone was talking about TREE, especially within the FDA. In January 2008 the company was pre-qualified for a Forest Management Contract.[19]

[15]Midterm report of the UN Panel of Experts on Liberia, S/2009/290 (5 June, 2009)
[16]Ibid.
[17]FDA Regulation 109-07, secs. 22, 41(c)
[18]Midterm report of the UN Panel of Experts on Liberia, S/2009/290 (5 June, 2009)
[19]Report of the Pre-qualification Evaluation Panel, January 4, 2008

On 24th June 2009, Debt Court Judge James E. Jones issued a ruling against TREE.[20] TREE had failed to meet its obligations under a Logging Investment Agreement it signed with a Chinese company to supply them timber; even though it did not have a logging concession at the time.

Most of TREE's vehicles are now parked at the Temple of Justice and their operation grounded to a halt. One need not ask about their future. Three other debt cases are reportedly pending against Cll. Peter Amos George, Jr. The Monitor (newspaper), in its August 3, 2009 edition reported "*Court chases Peter Amos George for over US$274,853*"[21]. The paper reported that this is just one of several debt related court cases against him.

But not only has TREE crashed, other companies it promised to finance, example Tarpeh Timber Corporation (TTC), are next in line. Without the promised financial backing from TREE, TTC operations in Compound 1, Grand Bassa County are now at a standstill.

This is not the only case, though. Liberia Tree and Trading Corporation (LTTC) submitted bids for two Forest Management Contracts in 2008. The majority shareholder at the time, Ricks Toweh, owed the Government of Liberia more than US $100,000 at the time of the bid. During the due diligence on the companies that submitted bids it was discovered that LTTC did not have the financial capacity to implement the two contracts.[22] They were therefore awarded one FMC based on assurances that another company would finance their operation. This company however, was also depending on funds it claimed it had access to from another financier.

LTTC started block cutting in late 2008 and moved some equipment and personnel into their concession. Everything seemed to be going well until June 2009. The financier changed his mind, recalled his staff and started relocating his logging equipment to Monrovia. LTTC operations grounded to a halt and the company is now looking for a new financier.

EJ & J also submitted a bid for one FMC but failed to demonstrate it had the means to capitalize its investment. They claimed that another logging company Tarkor Liberia Ltd., would finance their operation.[23] In spite of their lack of capital FDA awarded them a contract. It has been more than seven months since and there is no evidence of them starting operation. Meanwhile Tarkor Liberia Ltd has folded up; and EJ & J now has to find new financiers.

These developments are still unfolding. Alpha Logging, LTTC and EJ & J have all failed to pay their taxes to the government. Five of the six Timber Sale Contracts that were awarded last year are still sitting idle: the companies that were to log in them clearly lack the financial resources to do so.
Meanwhile, Affected Communities that signed Social Agreements with some of these companies are now waiting for their payments 30%, which is to come from the Land Rental Fees that have not yet been paid. How will they react when they know that Government of Liberia, in cohorts with logging companies including Tarpeh Timber Corporation, LTTC, EJ & J, and the other companies misled them?

---

[20]Court's Ruling on Motion for Summary Judgment in the case NINGBO JUJIN INVESTMENT Ltd. MOVANT/ PLAINTIFF vs. TROPICAL RESERVES ENTREPRENEURIAL ENTERPRISE (TREE) RESPONDENT/ DEFENDENT
[21]The Monitor, Vol. 4 No. 207 Monday, August 3, 2009
[22]Report of the Due Diligence Committee, August 26, 2008
[23] Ibid.

New bidders: ***a mix of empty-shell-companies and dodgy-financial-backers***

In light of these developments discussed above, commonsense would warn against any more unnecessary risk-taking by the Government of Liberia. The newly released due diligence report provides sufficient reason why the Government should not award these four new large Forest Management Contracts to any of the current bidders without further investigation and adequate safeguards. The eleven companies that submitted bids are mostly *empty-shell-companies* depending on other companies for financing. Worst, two of these companies Atlantic Resources and Southeast Resources, appear to be depending of financing from a Malaysian logging company that is reportedly worst than the former Oriental Timber Corporation (OTC).

Of the eleven companies that submitted bid for the four new FMCs, none of them could demonstrate that they (as a company) have money themselves to conduct logging operations. Eight out of the eleven companies either did not present documents to substantiate their claims of reliable financial support or provided insufficient documents to enable the due diligence team reach reliable conclusions. The others appear to rely entirely on financing from outside. However, none of the agreements they presented were considered enforceable by the due diligence team.

Unless the agreements between these companies and their purported international financiers are enforceable (i.e. that is a clear provision that liability for non-performance, if they are awarded contracts, would be carried by them jointly) the government must not and should not consider awarding them contracts.

But, as the saying goes, "*when the baboon is ready to die it cannot hear the hunter's whistle*". If the current wave of non-performing companies is not sufficient warning to the President and the Legislature, they may proceed and award these new FMC.