

ECHO

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Forestry Development Authority (FDA)

... is violating the National Forestry Reform Law (2006), trampling on community rights and paving the way for illegal logging



The Government of Liberia, through the FDA, has allocated two Timber Sale Contracts (TSCs) in Bokomu District and one Forest Management Contract (FMC) in Gou Nwolaila District. These contracts have been issued, on dedeed land belonging to the communities in these districts, in total disregard of their rights

as land owners. These communities are between a rock and hard place. Resist the logging companies and secure your rights to your forest or allow the companies to operate for the short-term benefits they are promising.

This is not an easy decision to make. Poverty is widespread. Farm to market roads in both

districts are in extremely bad shape. The schools are neglected. The only health services available are provided by quack or black bag nurses. The logging companies are promising to build schools, roads and hospitals.

But this is a familiar story. The people of Bokomu and Gou Nwolaila, like many communities across

Liberia, have heard it many times before.

The chiefs, elders and majority of the residents of Bokomu and Gou Nwolaila Districts appear determined to resist logging in their forest without their permission. The challenge is convincing all the members of their communities that this is in their long-term interest. But given the *cont'd on page 2*

The Sustainable Development Institute (SDI) is working to transform the decision-making processes relative to natural resources and promote equity in the sharing of benefits derived from natural resource exploitation in Liberia. The organization's vision is a Liberia in which natural resource management is guided by the principles of sustainability and good governance and benefits all Liberians. Its activities cover a range of cross-cutting issues including governance and management, environment, state and corporate social responsibility, economic and social justice for rural populations and the democratic participation of ordinary people in how government manages their natural resources.

The organization was founded in 2002 and received the Goldman Environmental Prize for outstanding environmental achievements in Africa in 2006. The Goldman Environmental Prize is the world's largest prize honouring grassroots environmentalists.

FDA is Violating...

economic situations of people in the area, this is a difficult task. If they fail, this is likely to lead to divisions, heightened tension and conflicts in these communities.

Bokomu and Gou Nwolaila Districts are situated within Gbarpolu County in north-west Liberia. The two districts were originally a single chiefdom, known as Bokomu Chiefdom, within Lofa County. The chiefs and elders acting on behalf of the citizens



Photo (SDI): Village level meeting in Gou Nwolaila (June 28, 2008) to discuss and agree on a collective response to FDA's plans to give logging contract in the area

“bought back” their land from the Government of Liberia in 1956. A Public Land Sale Deed was issued and signed by President W. V. S. Tubman for a total of 856,373 acres of land. The deed is dated 20th June A. D. 1956 and issued to the chiefs, elders, and inhabitants of the Bokomu Chiefdom. When Gbarpolu County was created, the Chiefdom was partitioned into two districts; Bokomu and Gou Nwolaila Districts. However, the citizens have maintained a single title for their land and have not sought to divide up their estate.

This edition of ECHO examines the FDA's decision to issue contracts on land belonging to the two districts.

Violating the law and trampling on Community rights: the case of Bokomu and Gou Nwolaila Districts

The National Forestry Reform Law of 2006 prohibits the granting of Timber Sale Contracts and Forest Management Contracts on private land. Various sections under Chapter Five of the Law deal with these issues. For example, Section 5.3b(ii) provides that the land to be included in TSCs must not include private land. It goes on to further elaborate this point by requiring the FDA in Section 5.4j (i) to take into account the terms of any existing contract, deed, or similar instrument pertaining to the ownership or management of the Forest Land to be covered by the Timber Sale Contract; and (ii) Respect established contractual and property rights, if any, under these instruments to the greatest extent possible, consistent with the purpose of this Law.

To ensure that forests resources on private land are not excluded entirely from commercial use, Section 5.6 deals with commercial use of forest resources on private land. It provides very clearly that if commercial activities are to be undertaken on private land the following procedures should be applied. If the person applying for permission to undertake commercial activities on private land is not the land owner, the person must have permission from the land owner in writing. It further instructs the FDA to attest to such an agreement or permit.

By issuing three different contracts on land held under title by these communities, the FDA is violating the law. Other communities with titles to their lands should beware. Today it is Bokomu and Gou Nwolaila; tomorrow it will be your communities.

Bokomu and Gou Nwolaila: resilient communities fighting for change

Only few people have heard about their struggles before today. For two decades they have challenged the status quo; the notion that government owns their forest. The people of Bokomu and Gou Nwolaila are courageous and resilient. They have a history of resisting attempts by central governments to impose logging companies on them. Their struggle over the years exemplifies the silent struggles many communities are engaged in to change their situations.

Many people wonder, what is their motivation? Control over the forest; the most valuable asset they have.

Today, their resilience is being put to the test again.

In 1998 former President Charles Taylor attempted to give out the forest in the area to the Royal Timber Company (RTC) owned by Gus van Kouwenhoven; the communities mobilized quickly and resisted. The FDA, in a letter to then President Taylor, later admitted that indeed the people had title to their land and as such their ownership of the forest could not be ignored. The management recommended that the people be allowed to enter into an agreement with a logging company of their choice and the FDA attest to their agreement.

Before Taylor these communities had also engaged the Samuel Doe regime. In fact it was this first engagement that led to the establishment of a citizen committee in the area to coordinate their struggle. Two decades on their committee still survives; in spite of the changes in membership over the years.

The benefit of their victory was short-lived. In April 2000, Charles Taylor introduced the notorious Section 2.1 into the forestry law. This section states: “All forest resources in Liberia are the property of the Republic...” (Forestry Law, April 2000). This Section 2.1 is maintained in the National Forestry Reform Law (2006) albeit with a slight modification. It states: “All forest resources in Liberia... are held in trust by the Republic...” (Forestry Law, October 2006)

For the people of Bokomu and Gou Nwolaila, this does not matter.

Hon John T. Woods and Hon Demetrius B. Taylor interpret these lines in the same way; “you own the land but the government own the trees on your land”.

If local communities are to meaningfully benefit from forests in Liberia, this notion will have to change. Others call it a paradigm shift.

The bottom line is communities' ownership of their forests must be recognized in law and respected by the FDA.

Photo (SDI): A forest tree in Bokomu

Transparency And Public Access To Information

The National Forestry Reform Law (2006) explicitly provides for public access to information. Section 18.15 mandates the FDA to grant and facilitate free public access to read and to copy all information and documents in its possession with some limited exceptions.

More than eighty companies have applied for pre-qualification to engage in logging business in the country; of this amount about sixty have been pre-qualified. However, there is very scanty information about these would be investors in the public domain. For example, what are the origins of these companies, who are the owners, share holders, board members, what is their financial status, track record and how many years of experience do they bring into the sector. This lack of information can be easily remedied by establishing an internet based publicly accessible database on all the companies in the sector. This database could then be regularly updated to include due diligence findings for those that participate in bids and to track changes in ownership and other significant changes in the status of each company.

As the FDA advances in its moves to reopen the logging industry, it is important that it keeps the public informed in an organized, systematic and complete way instead of adopting an ad hoc approach in responding to requests for information. The FDA's refusal to provide information, requested by the people of Bokomu and Gou Nwolaila Districts, relating to the issuance of contracts for forests in their area is a clear indication of the danger of adopting an arbitrary approach to fulfilling this mandate. This was also reported by the UN Panel of Experts in June, as an issue of concern.

Abandoned logs

The United Nations Panel of Experts on Liberia raised several issues, in its June 2008 report, surrounding the auction and sale of abandoned logs to Unitimber. Those concerns included the fact that the initial auctions in Buchanan (Grand Bassa County) and Sanniquellie (Nimba County) had been conducted at very short notices. For example, for the Buchanan auction the bidders had only one working day to prepare. The auction was announced on Thursday December 27, 2007 and conducted on Monday December 31, 2007. Additionally, the volume on which the bid was based was understated by more than 6,000 cubic meters. Initially the FDA resisted charging stumpage fees as provided for FDA Regulation 107-07 and when it finally agreed to charge stumpage it reclassified the logs as a lesser grade thereby significantly reducing the tax accruing to the government. [Report of the UN Panel of Experts on Liberia of 12 June 2008 reference S/2008/371]

Although the export of the abandoned logs in question appears to be on hold, the FDA has not explained how these questionable decisions were taken in the first instance and how the authority intends to remedy the situation.



Conclusions

There is a real risk that the forestry sector is gradually sliding back into the old ways of doing business.

The many questionable circumstances surrounding the auction and sale of abandoned logs, the lowering of the standards for logging companies simply to see the sector reopen, the failure of the FDA to establish the debarment list and the manner in which the FDA has handled some stakeholders request for information all point to a troubling start. Also of particular concern is the manner in which the FDA has treated concerns raised by communities in Bokomu and Gou Nwolaila Districts as it relates to their rights as land owners. The pronouncement by these communities that they will resist any attempt to log their forest is enough reason to re-examine the decision to allocate contracts in their area. The FDA must demonstrate a commitment to upholding the rule of law and focus on attracting investors with good track records elsewhere; the stakes are high for Liberia.

Additionally, companies wishing to do business in Liberia must be challenged to demonstrate integrity of character and respect for the rule of law from the onset. Actions, on the part of some of these companies, that appear to violate the law and regulations, need to be thoroughly scrutinized to ensure compliance. For example, by accepting 100% financing from a non-Liberian business entity, a purported Liberian owned company brings into doubt its claim to Liberian ownership. Therefore decisions about whether or not they benefit from special measures aimed at supporting Liberian businesses should be taken only after sufficient legal checks have been conducted to verify that they are not circumventing the laws.

As we approach the summer (dry season) the pressure to reopen the sector will intensify. It is therefore incumbent on the FDA to begin a process of nationwide sensitization about the inability of most of the companies that have come forward to invest in the sector to come up with the requisite capital. This will help to lower expectations and allow the FDA to some time to fully enforce the pre-felling requirements established under the law.

REPUBLIC OF LIBERIA

FORESTRY DEVELOPMENT AUTHORITY

Kappa House, Elise Saleeby Compound

Tuesday, 5th August 2008

PRESS STATEMENT

Ladies and Gentlemen of the press, we invited you today to alert the people of Liberia and our local and international partners of deliberate and willful attempts by detractors of the government of Liberia to sabotage the honest and willing efforts of the government to improve the living standard of the Liberian people. The NGO Coalition for Liberia has accused the government of putting its own reform into jeopardy. What an irony. To say that the government of Liberia is threatening its own reform as alleged by the NGO Coalition is indeed erroneous. This government is on record for having first of all taken the risk of canceling all concession agreements and introducing reform programs including policy, the laws, regulations, procedures and mechanism for sustainable forest management. The government has taken appropriate measures to ensure that these reform procedures are implemented to avoid business as usual. To do this, the government has put in place a responsible technical institution staffed by recognized professionals and responsible government officials. The Board of Directors of the Forestry Development Authority consists of six officials of the government including the ministers of Finance, Agriculture, Internal Affairs, Commerce and Planning and Economic Affairs with the minister of Agriculture serving as chairman.

Additionally, the government has appointed responsible members of the Inter-ministerial Concession Committee (IMCC) whose job is to approve concession contracts for the sustainable management of the forest.

The Forestry Development Authority has been right sized and the retained staff is compensated sufficiently to perform professional forest resource management. All of these efforts indicate a sincere and willing desire of the government to avoid returning to business as usual. All international forums of sustainable forest management in which we have participated have congratulated the government of Liberia for the tremendous strides over the past two years geared toward reforming the forestry sector. To me this indicates that we are on the right track. It is therefore surprising and indeed a misguided thought by the NGO Coalition to conclude that Liberia is taking key decisions and actions at this time that could undermine the very honest efforts that we have made to reestablish the rule of law in the forest sector and plunge counties into conflict.

This conclusion of the NGO Coalition has ulterior motives: the first motive is to undermine this government and sabotage its effort to implement the poverty reduction strategy. The methods by which this is being accomplished include the following: 1. Doing all that is possible to avoid commercial logging, 2. Striving consistently to bring confrontation between the communities and the government and 3. to create opportunities for some members of the NGO Coalition to mobilize resources to enable them create wealth and resources for their consulting firms at the expense of the general public.

The NGO Coalition alleges that the Forestry Development Authority is conducting an improper behavior in letting logging contracts to companies of dubious financial capacity and contracting loggers to forest areas, which are the private property of local communities. These assertions are far from the truth within the context of the legality of the reform process in which the NGO coalition has been a leading stakeholder. The process established by the National Forestry Reform Law and its attending regulations as well as the Public Procurement and Concession Act are being followed to the letter in identifying and establishing contract areas, pre-qualifying companies and public tendering of contract areas through national and international competitive bidding. The NGO Coalition refers to the Bopolu Community land on which contract has been awarded as a private land. Private land according to the law means a deeded land on which title can be transferred. The Bokomu Community presented a deed whose authenticity has not been established by the Ministry of Lands, Mines and Energy yet. In our attempt to convert the land for contract use, we consulted the concerned communities whose signatures and identities are on our records. Secondly, through a transparent process, the companies that have contracts for the area were pre-qualified and they participated in the competitive bidding and won the bid. The financial position of these companies was established by a due diligence process which limited them to the size and number of contracts they can sustainably manage. The Inter-ministerial Concession Committee appointed by Her Excellency Ellen Johnson-Sirleaf, President of the Republic of Liberia, approved these transactions.

The IMCC comprises the ministers of Justice, Planning and Economic Affairs, Internal Affairs, State for Legal and Economic Affairs, Agriculture and the Chairman of the National Investment Commission who are all respectable members of the cabinet. We have the record for this process.

It is worthy to note that the NGO Coalition's representative was the leading stakeholder in the pre-qualification, bid evaluation and negotiation of contracts for these areas and with these companies. In most cases they cast the deciding vote. It is strange, therefore, that they can now disassociate themselves from this process and call it fraudulent.

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. Again the NGO Coalition has been vividly involved in these decisions making.



Photo (SDI): Hon. John T. Woods, FDA Managing director makes a statement at the citizens meeting in Bopolu while Senator Naatehn of Gbarpolu and Superintendent Gertrude T. Lamin look on

It is not possible under the current reform process for companies with or without sufficient capital in the sector to be unable to fulfill their obligations as has been insinuated by the NGO Coalition. Firstly they are required to post a performance bond for every obligation they have to discharge. Secondly, it is not possible under the chain of custody to harvest timber without paying taxes due to the government from logging.

The Swiss owned company, SGS, is under contract with the Government of Liberia to ensure the harvesting of timber from legal origin, to track the movement of those logs from the point of felling to the point of export and to assess and invoice the taxes due and monitor payment before the timber is exported. The contractor and the government have to report the payment to the Liberia Extractive Industry Transparency Initiative.

The NGO Coalition is calling on the Managing Director of the Forestry Development Authority and the Inter-ministerial Concession Committee to make public evaluation and due diligence reports for all bidders to enable members of the public judge for themselves the types of investment being brought into the sector. All the bid evaluation documents are in the office of the FDA Managing Director and can be accessed by the public without charge and in some cases they are on the website of the FDA. However, some of the information is proprietary to some individual companies and we have obligation to protect such companies' data under confidentiality agreement—Chapter 18 Section 18.15 a (1)-(ix) of the New Forestry Reform law of 2006.

On the other hand, it has been observed by the FDA that certain elite members of the Bokomu and Gou Nwolaila districts identified themselves as Joint Forest and Resource Management Committee. The concerned community recognized

this committee for the first time in the presence of the Managing Director of the FDA and other government officials in that meeting in Bopolu months after the FDA insisted that the people endorse their leadership. The people were thus being misled about the FDA's concerns that certain leadership could be soliciting for benefits on behalf of the people without being authorized by the people.

The sole intention of the FDA was to ensure that benefits derived from the forest reach the affected community directly. The Resolution thus presented was not only deceiving the citizens but also misrepresenting the genuine intention of the FDA. It is therefore expected that the Superintendent and other government officials of the districts will create the atmosphere for all of us to interact and bring wholesome development that will benefit the forest dwellers of Bokomu and Gou Nwolaila Districts directly. This is the honest desire of the Unity Party led government, which is overwhelmingly supported by the people of Gbarpolu County.

FDA is committed to transparency and openness as evidenced by the collaboration and cooperation of other stakeholders including the NGO Coalition in all its reform initiatives.

Editor's note: the following facts are provided below for the benefit of the public. The SDI has documentary evidence to support all of these facts.

FDA admitted the following: (a) its technicians "unprofessionally assessed" the abandoned logs and "underestimated" the actual volume by more than 6,000 cubic meters; (b) It violated FDA Regulation 108-07 by selling more than 6,000 cubic meters of the abandoned logs without an auction; (c) it wrongfully undervalued the abandoned logs from Class-A to Class-C; and (d) the auctions for other abandoned logs were improperly conducted.

The FDA in a letter Ref: MD/92/07/19, dated July 5, 2007, under the signature of Hon. John T. Woods, and addressed to Rev. Emmanuel Kerkula, Committee Chairman, Gue/Nwolaila District stated that it did not "deny or dispute" their ownership of the land. Therefore, to claim that it challenged the authenticity of the deed is a misrepresentation of the facts. Furthermore, the FDA claimed that the authenticity of the Bokomu deed has not been established by the Ministry of Lands, Mines and Energy YET. The question then is... "why not wait for the Ministry of Lands, Mines and Energy to investigate the deed?"

The FDA release states "It is worthy to note that the NGO Coalition's representative was the leading stakeholder in the pre-qualification, bid evaluation and negotiation of contracts for these areas and with these companies." At no time did any member of the NGO Coalition participate in contract negotiation. The coalition participated in the pre-qualification and bid evaluation processes. Issues arising from those processes were formally communicated to the FDA; the NGO briefing paper came as a result of the FDA's failure to address these issues.

In its Press Release the FDA failed to address the concerns about the debarment list.

The FDA has not provided the information requested by the Bokomu and Gou Nwolaila Joint Forest and Resource Management Committee. A check of US\$100 sent to the FDA to facilitate copying of the requested documents was returned because the amount was insufficient. The committee again sent a dozen blank CDs, months ago, to enable the FDA copy the information. The FDA has neither provided the information nor returned the blank CDs.

Exposed!!!

NGOs Criticise Forestry Development Authority On Several Issues

A coalition of Liberian NGOs recently criticized the Forestry Development Authority for jeopardizing the forest sector reform process. The FDA issued a response five days later. We publish the NGO briefing paper and the response from the FDA for the benefit of the public. A brief presentation of facts follows after the FDA's response.

Reform in Jeopardy: reflections on the forest sector reform process in Liberia

A briefing from the NGO Coalition for Liberia
July 31, 2008

gradually slipping back into the old ways of doing business. It is time the Forestry Development Authority (FDA) stopped and reflected on the lessons learnt from ongoing efforts to reopen the logging industry; otherwise we are headed for another cycle of widespread illegal logging.

The Government is threatening its own reform process and putting the rule of law in the forest sector at risk. A series of key decisions and actions taken over the last few months, if not reversed, could undermine efforts to reestablish the rule of law in the sector or plunge some communities in conflict when logging restarts.

of May 2005. This report and recommendations were endorsed by this government when it took office in 2006.

Establish a publicly accessible database on all the companies that have applied for pre-qualification and clearly distinguish those that have pre-qualified and those that have failed to pre-qualify. The database should include details of ownership, shareholders, senior officials, and relevant history.

Publicly respond to the questions surrounding the reclassification and under calculation of the volume of abandoned logs sold to Unitimber. If there is evi-

alleged that many of these companies lied, during the pre-qualification process about the amount of money they had to invest in the sector. In one instance, it is reported that the winner of the bid was accepted based on a financial arrangement with a non-Liberian company. According to these reports, the company in question had entered into a memorandum of understanding under which the non-Liberian company would finance its operations. These are very grave allegations and if true bring into doubt the ability of these companies to perform.

The FDA should therefore make public the due diligence reports for the bids

communities is not only questionable, it is an outright violation of the National Forestry Reform Law (2006) Sections 5.3b (ii) and 5.4b (ii). Both of these provisions prohibit the FDA from granting TSCs and FMCs on private land. It also poses threats to the peace and security of the country as this has the potential to create conflicts between the state and the people on the one hand and the people and the logging companies on the other.

The FDA should therefore reverse its decision, by nullifying the contracts and work with the aggrieved communities to find an amicable solution.

Issues from phase 1 and Phase 2 of the pre-qualification process

A number of issues have emerged from the first two phases of pre-qualification process. These included the absence of a debarment list and a system for verifying the authenticity of clearances issued by various government ministries and agencies.

Seventeen (17) logging companies and all their Significant Individuals [Significant Individuals as defined in the Regulation on Pre-qualification refers to Board Members, share holders (10%) and senior officials of a company] were recommended for debarment because they were found to have aided and abetted civil instability in Liberia. In spite of numerous reminders from other stakeholders the FDA has resisted establishing the debarment list. The FDA's own pre-qualification evaluation panel also recommended the establishment of the debarment list; again the FDA has chosen to ignore the panel's recommendation. The failure of the FDA to establish the debarment list leaves the industry open for groups such as the Oriental Timber Company (OTC) to re-enter the sector. The arbitrary denial of individual companies is merely an interim measure agreed by the panel and can not be used as a substitute for the debarment list.

Another issue that has challenged the panel's work is the lack of a system for verifying clearances submitted during the pre-qualification process. In many instances clearances from the same agencies have been inconsistent in many respects. For example, different formats, signatories, offices (within the same agency), etc. There have also been credible allegations of favouritism in some of the ministries and agencies issuing clearances. All of this need to be investigated and the findings used as a guide to improve the system; otherwise there is a risk that this will simply become another box-ticking exercise. The FDA must therefore work with the other ministries and agencies to create a level playing field for companies during pre-qualification and bid evaluation.



Summary and Recommendations

The decision of the Government of Liberia in 2006 to reform the forest sector seemed like the beginning of a decisive break with the notorious past of the sector. [The history of the timber industry in Liberia is well documented. Official accounts, detailed in the Third Phase Forestry Concession Review Committee's report of May 2005, provide an insight into the collapse of the rule of law in the forest sector spanning several years. The report revealed that approximately US\$64million dollars in tax arrears remain uncollected and how Charles Taylor and his cronies joined forces to loot this country.]

It is now more than two years since the government announced its reform agenda, but all indications are that the reform process is failing. The forest sector is

The FDA should:

Liaise with the Inter-Ministerial Concession Committee (IMCC) to make public the bid evaluation and due diligence reports for all thirteen (13) bidders that have been evaluated. The public has a right to know who the would-be investors are and exactly what type of investment they are bringing into the sector.

Reverse its decision to allocate three contracts for forest in Bokomu and Gou Nwolaila Districts and work with the people of the two districts to find a lawful and acceptable arrangement for their forest.

Act on the recommendations of the FDA Pre-qualification Panel concerning the debarment of logging companies recommended by the 3rd Phase Forestry Concession Review Committee in its report

dence of wrongdoing by any of the FDA staff that was involved in the assessment of those abandoned logs they should be penalized.

The Issues

Bid evaluation and due diligence reports

Two bid evaluations have been completed for nine contracts. The Inter-Ministerial Concession Committee (IMCC) has already approved six Timber Sale Contracts; although verifiable reports about the findings of the due diligence on some of those companies raised several questions about the ability of these companies to perform. For example, some of these companies are either indebted to the Government, have not demonstrated that they have the capital to invest in the sector, do not have an experience in logging elsewhere or lack technical capacity. Additionally, some of the reports have

evaluation processes. The full reports of the committees conducting the bid evaluation should also be made public. It is high time that bogus investors are weeded out of the sector to avoid a situation whereby concessions are granted and companies are unable to meet their obligations to the Government and the communities in which they will operate.

Timber Sale Contracts and Forest Management Contracts

The people of Bokomu and Gou Nwolaila Districts have challenged the decision of the FDA to allocate two Timber Sale Contracts (TSCs) and one Forest Management Contract (FMC) on their land. These communities presented a Public Land Sale Deed to the FDA in 2007 and in March 2008 the FDA wrote the communities to confirm that it did not deny or dispute their ownership of the land. This treatment of the land rights of these com-

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For More information about this publication please contact:

Sustainable Development Institute (SDI)

P. O. Box 5678

Duarzon Village, Robertsfield Highway

1000 Monrovia 10, Liberia

Contacts:

Design and layout: Chares Brewer cbrewer@sdiliberia.org

Circulation: Daniel Krakue dkrakue@sdiliberia.org

Content: Silas Kpanan' Ayoung Siakor ssiakor@sdiliberia.org

For phone enquiries call: +231 (0) 6 641355

Website: www.sdiliberia.org