

ECHO

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What's Happening at the FDA:

Forest Sector Reform Process Undermined by FDA

"...we [...] alert the people of Liberia and our international partners of the 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..." Excerpt from a Press Statement issued by the FDA on 5th August 2008. The statement was a response to concerns raised by the NGO Coalition for Liberia with respect to the manner in which the FDA was handling the reform process.

"...I believe the motive is not to report the facts but undermine progress in the sector and sabotage the PRS..." Hon. John Woods' reacting to the Panel's report

The FDA is miserably failing in its efforts to implement the National Forestry Reform Law and the Regulations. The rules are not being followed. Where efforts have been made to follow the rules, the outcomes have been less than satisfactory. Under the leadership of Hon. Woods the FDA has lost its way.

Perhaps it is time for him to quit. We urge him to do the honorable thing; RESIGN.

This edition of ECHO is an exclusive featuring the UN Panel of Experts Report on the forest sector. In spite of the Panel's effort to soften its criticism, the message is clear. The FDA overlooked some key elements of the law, which thus render the entire contracting process to date invalid. Some paragraphs have been deleted due to lack of space.

The Panel, in its report, notes with concern that, while the general framework of the National Forestry Reform Law is being used to plan and allocate timber concessions, FDA is often either not aware of the legal requirements or unable to follow them. As a result, the allocation of timber concessions is being conducted in a manner that is often not in conformity with the National Forestry Reform Law and regulations, or the Public Procurement and Concessions Act.

For example, Section 31 of Regulation 104-07 states "In compliance with Section 87(3) of the Public Procurement and Concessions Act, as amended, prior to commencing any activity for the process of offering a specific concession, the Managing Director shall request the Minister responsible for Economic Affairs to issue a Certificate of Concession". The FDA did not request and was not granted a Certificate of Concession prior to announcing bids; this renders the entire contracting process null and void.



John T. Woods, FDA Managing Director

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.

Evaluation And Awarding Of Timber Concessions

A bid evaluation panel must evaluate the bids submitted for each concession area. The bid evaluation panel completed its review of the bids submitted by 10 companies for the three forest-management contracts and recommended winners in its report of 11 July 2008. In accordance with legal requirements, bid evaluation criteria can include only the status of the company and information as to whether a bidder has met substantive and procedural requirements and whether the bid is equal to or greater than the reserve bid. However, during its evaluation of the three forest-management contracts the bid evaluation panel used a scoring method that has no basis in law (see annex VI). Nor did the scoring method make economic common sense. For example, a company which submitted a manager's cheque (similar to a cashier's cheque or bank draft) rather than surety as a bid bond (a distinction not made in law) was awarded additional points sufficient to compensate for having the second-highest bid (\$358,000 less per year than the highest bid).

and three forest-management contracts, the due diligence committee found problems with all nine provisional winners of contracts. It found that none of the companies bidding on the three forest-management contracts had all of the technical and financial capabilities required by law and that there had been material changes in ownership of three companies, rendering their pre-qualification certificates invalid (see annex VII). The committee also noted that virtually nothing was known about the companies providing almost 100 per cent of the financing to two of the bidders that were subsequently named preliminary winners. The committee expressed concern that each of the bidders was to be funded 100 per cent by debt. None of the companies had any equity cushion, making the chance of failure high. Nor did any of the companies have any experience with logging.

The Public Procurement and Concessions Act requires that a contract be awarded to the highest bidder meeting all pre-qualification requirements. The Inter-Ministerial Concessions Com-

mission met at the beginning of September 2008 and awarded contracts to three companies. In the case of two forest-management contracts, it awarded them as recommended by the bid evaluation panel. For the third area, forest management contract "A", it awarded the contract to the Alpha Logging and Wood Processing Corporation, rather than to Global Wood, the company recommended by the bid evaluation panel.

The Inter-Ministerial Concessions Committee appointed negotiation teams to conduct negotiations on behalf of the Government, as required by law. Teams have negotiated three timber sales contracts and three forest-management contracts. The three timber sales contracts, which include a provision to raise \$250,000

in capital, have been signed by FDA and the companies. The Inter-Ministerial Concessions Committee sent letters to the two companies that won the three other timber sales contracts stating that they had to identify \$250,000 in capital for each area within 90 days, a period that ended in October 2008. Neither company has met that deadline for submitting proof of sufficient capital.

FDA, the Ministry of Justice, the Ministry of Finance and the companies signed the three forest-management contracts early in October 2008. However, forest-management contracts do not come into effect until they have been signed by the President and ratified by the National Legislature. The Panel has been informed that the President has not signed the forest-management contracts, as she would like further due diligence to be conducted.

After the conclusion of negotiations but before the submission of the version sent to the President, the terms of the contracts were changed.

estry Reform Law and the Public Procurement and Concessions Act.

The Panel notes that this change in the contracts would have a significant impact on Government revenues. The one-time-only payment is for the same amount as the company would have had to pay to the Government for only one year of the 25-year contract. That is to say, payments in years 2 through 25 were eliminated without any increase in the payment due in year 1. This change would amount to an annual loss of over \$2 million for each of the 24 remaining years, with the loss for the 25 years totaling just under \$50 million.

The loss in revenue would also affect communities and counties, as they are each entitled to 30 per cent of land-rental fees. The accumulated losses from the three forest-management contracts would total more than \$14 million for the communities and more than \$14 million for the counties over the 25-year period.

The FDA Board of Directors was not aware of the change until the contracts had been forwarded to the President. However, the Chair of the Board of Directors has assured the Panel that it is now conducting a review and will recommend that the President refrain from signing the three contracts.

The lack of familiarity with and understanding of the requirements of the National Forestry Reform Law and its regulations is evident in a letter dated 8 October 2008 from the national authorizing officer of FDA to the three companies awarded forest-management contracts (see annex IX). The letter states that the contracts have been signed and that the appropriate fees are due within specific time frames. Given that the contracts are not in effect, the letter and its notice about payments have no basis in law. In addition, the time frames given are incorrect and would not be in compliance with legal requirements. Although the letter states that the administrative and area fees must be paid within 30 days (and before 6 December 2008), FDA regulation 107-07 requires that administration and area fees be paid upon signing (by the President). The national authorizing officer had also prevailed upon the chain of custody contractor to issue invoices which then had to be retracted.

A company has already challenged the awarding of one of the forest-management contracts. Global Wood submitted an appeal to the Public Procurement and Concessions Commission, which has the power to undertake independent reviews of appeals related to the concessions process through its complaints, appeals and review panel. The appeal panel's decision of 7 November 2008 overturned the Inter-Ministerial Concessions Committee's decision on forest management contract "A", stating that it had found procedural deficiencies in the bid evaluation, the due diligence and the awarding of the contract by Committee.



The bid evaluation panel recommended the second-highest bidder (out of seven bidders) for forest management contract "A". The two smaller contracts had only three bidders, and the bid evaluation panel awarded one contract to the highest bidder and the second to the second-highest bidder (the third bidder was not qualified to bid in this category and did not submit completed forms). The bid evaluation panel's report was forwarded to the Inter-Ministerial Concessions Committee by FDA.

FDA appointed an internal committee to conduct due diligence on bidding companies, as legally required. As a result of its investigations of the bidders for the six timber sales contracts

mission met at the beginning of September 2008 and awarded contracts to three companies. In the case of two forest-management contracts, it awarded them as recommended by the bid evaluation panel. For the third area, forest management contract "A", it awarded the contract to the Alpha Logging and Wood Processing Corporation, rather than to Global Wood, the company recommended by the bid evaluation panel.

The Inter-Ministerial Concessions Committee appointed negotiation teams to conduct negotiations on behalf of the Government, as required by law. Teams have negotiated three timber sales contracts and three forest-management contracts. The three timber sales contracts, which include a provision to raise \$250,000

While the National Forestry Reform Law and FDA regulation 107-07 do not specify the payment terms for the land rental bid, the bid documents specified that the land rental would be paid each and every year for the 25-year life of the contract, as noted above. The bids received from the company reaffirmed that the payment would be made annually (see annex VIII). Negotiation team members have confirmed that they negotiated annual payments, in accordance with the terms of the bid documents.

However, the contract signed by FDA, the Ministry of Justice and the Ministry of Finance and submitted to the President provides for a one-time-only payment. This unauthorized change after the conclusion of the negotiations appears to be a serious violation of the National For-

Overall Assessment Of Compliance With Allocation Process

It is the Panel's assessment that the forestry reform process for commercial timber concessions is currently not functioning as efficiently as desired and that concerted efforts are required to put it on the right track.

In its poverty reduction strategy, the Government of Liberia identified the timber sector as an important contributor to economic development and stated that concession revenues would be used to promote public welfare through investments in roads, education, health care and water. The Government projected \$24

million in revenues for the 2008/09 fiscal year, with an increase to \$36 million for the 2009/10 fiscal year.

However, the slow and rocky start will result in significantly reduced revenues this fiscal year. As at 14 November 2008, only one company with a timber sales contract was moving towards felling operations for the 2009 logging season. In addition, the three forest-management contracts are likely to be delayed as a result of the changes to the contracts that would cost the Government \$50 million in revenue and, in the case of one contract, the ruling on the awarding

process.

Thus, the trend in decision-making that has argued for the short-circuiting of the National Forestry Reform Law to facilitate economic development, although it may appear to be in the short-term interests of the country, will actually result in less revenue from this sector in the long term. In other words, the rush to allocate timber concessions and generate revenues for the country has not been an effective strategy for jump-starting the timber sector.

The Panel notes that there are still fundamental problems with management in FDA and capacity to understand and implement the National Forestry Reform Law. However, rather than learning from its previous mistakes, FDA appears not to have reviewed its internal procedures to ensure that it undertakes the appropriate planning process for each activity. Instead, it has commenced new allocation processes without correcting past mistakes and, in some instances, made errors that appear to be more

fundamental breaches of the National Forestry Reform Law, its regulations and the Public Procurement and Concessions Act.

Although the forestry reforms may appear onerous, they were developed to help ensure that Liberians benefit from the use and development of their forest resources. A carefully developed strategy and checklist of requirements could help guide FDA and other stakeholders through the concession allocation process so that the goals of the forestry reform process are realized.

Other commercial forestry activities

FDA is also tasked with implementing the National Forestry Reform Law and regulations with regard to other commercial forestry issues.

Abandoned logs

As noted in the Panel's report of 27 May 2008 (S/2008/371, paras. 173-183), FDA regulation 108-07 establishes a general framework for the auction of abandoned logs. The Panel noted that the Government of Liberia had commenced auctioning abandoned logs and that some decisions had been made that appeared to contravene FDA regulation 108-07. On 17 June 2008, the non-governmental organization Global Witness wrote to the President and the Managing Director of FDA, and the export of 1,305 m³ of ekki wood was stopped. The FDA Board of Directors undertook an assessment of the auction process.

The Panel has obtained the report of the Board of Directors to the President, as well as copies of invoices and cheques deposited by Unitimber, the winner of the auction of approximately 3,897 m³ in Buchanan, Grand Bassa County. The Panel notes that the Board of Directors concluded that FDA did not exercise sufficient care in disposing of abandoned logs, that the auction by the court was not conducted effectively and that the invoice provided by FDA was incorrect (in relation to both volume and stumpage fees). The Board of Directors noted that the misclassification of ekki wood as class C resulted in Unitimber's paying only 25 per cent of the stumpage fees it should otherwise have paid. That report was presented to the

President and the recommendations were adopted by the Cabinet.

FDA reclassified the ekki wood in Buchanan as class A, as set out in schedule I of FDA regulation 107-07. As a result, the stumpage fee payment was increased from 2.5 to 10 per cent. FDA set the market price at \$137 per m³ and requested that Unitimber pay the 10 per cent stumpage fee on the merchantable volume of 7,072 m³, as required by FDA regulation 107-07. FDA issued a new invoice for an additional \$62,689.77 in stumpage fees, bringing the total stumpage fees paid by Unitimber to \$96,891.37. As recommended by the Board of Directors, FDA issued a new export permit for the 1,305 m³ originally scheduled for export in May 2008, and Unitimber has paid 10 per cent export fees of \$25,317.58 on this volume. The wood was exported on 3 September 2008 on a ship to Bayonne, France.

While the Panel applauds the correction of some errors made by FDA, it has noted that the fundamental problem of the sale of 6,088 m³ of ekki wood without an auction was not corrected and thus does not appear to conform to the requirement of regulation 108-07. The Panel has also confirmed that auctions of abandoned logs took place in a number of other counties in the period from February to April 2008 but that they were later cancelled. The Panel is not clear on the rationale for cancelling the other auctions but not this one.

The Assistant Managing Director of FDA informed the Panel during September 2008 that FDA had been



Abandoned logs

charged with contempt of court by the Gbarpolu County court because of its cancellation of the auctions, as that is the prerogative of the court. Although the Panel wrote a letter to the Minister of Justice on 21 October 2008 requesting information on court procedures for auctions and information on the interpretation of the legality of the sale of 6,088 m³ of wood without a further auction, the Panel had not received a response as at 20 November 2008.

Rubber wood

In its previous report, the Panel highlighted the issue of payment of stumpage fees on rubber wood (S/2008/371, paras. 184-187). In his letter dated 6 June 2008 to the Panel, the Managing Director of FDA explained that there were conflicting perspectives on whether stumpage fees should be paid for rubber wood. He also stated that FDA regulation 107-07 would be amended to exempt rubber wood from stumpage fees. He stated that FDA would request the chain-of-custody contractor, Société Générale de Surveillance, to col-

lect stumpage and export fees until changes had been made to the regulation. The letter also noted that Firestone was not subject to stumpage and export fees on rubber wood production and export because of its concession agreement with the Government of Liberia.

According to the project manager of Société Générale de Surveillance, it inspected eight containers of Firestone rubber wood lumber before export as well as eight containers of woodchips from rubber trees being exported by the company Buchanan Renewables. It has invoiced for stumpage fees for the latter's exports.

According to minutes of the meeting of the FDA Board of Directors held on 7 August 2008, the Board approved a resolution to reclassify rubber wood and other tree crops as class D species, with no stumpage fees needing to be paid on such wood products. The Panel notes, however, that there is no provision for class D species in FDA regulation 107-07 and that the regulation would need to be revised

to accommodate that change.

Pit sawing and charcoal activities

FDA is currently earning revenue from the transportation of pit sawn timber and charcoal. FDA estimates that there are approximately 6,000 unlicensed pit sawyers operating in various parts of the country. In the period from July 2007 to April 2008, FDA issued 2,585 permits to transport 719,989 pieces of sawn timber, providing \$432,138 in revenue. FDA issued 660 charcoal transport permits during the same time period, resulting in approximately \$7,870 in revenue.

To address concerns about the potential for confusion and instability between pit sawyers and licensed timber concession holders when the formal timber sector resumes, FDA is in the process of drafting a new pit sawing policy.

Other issues

FDA has already received solicitations from companies regarding carbon credit concessions. The Panel

notes that any area identified for carbon credits would be subject to the same allocation process as for commercial timber concessions. The FDA Board of Directors has agreed that a strategy for managing carbon would need to be incorporated into the National Forest Management Strategy. FDA established a Carbon Working Group early in 2008. The World Bank has approved \$200,000 in funding from the Forest Carbon Partnership Facility to enable FDA to prepare a strategy in the context of the Reduced Emissions from Deforestation in Developing Countries project. Land issues continue to be a significant factor in Liberia, both within the forestry sector and more generally. Community groups in Gbarpolu County continue to dispute the portion of one awarded timber sale contract and all of one tendered forest management contract on the basis of overlap with areas in Bokumu and Geu-Nwolaila districts, Gbarpolu County.

The UN Panel Of Experts Report

Awarding of commercial timber concessions

The National Forestry Reform Law defines the process for awarding forest resource licences, including timber sales contracts (areas of up to 5,000 hectares) and forest-management contracts (areas of 50,000 to 400,000 hectares). In order to participate in the process, companies must be pre-qualified so that they can be entitled to bid on commercial timber concessions. The allocation process involves three main phases: (a) planning; (b) bid document preparation and bid invitation; and (c) bid evaluation, due diligence and contract awarding. In their entirety, those various requirements are intended to ensure that the allocation of commercial timber concessions is carried out in a transparent and fair manner, which should increase revenues for the Government of Liberia.

FDA is responsible for the planning and administering of the concession allocation process, except for bid evaluation and awarding and, in the case of forest management contracts, the approval and execution of contracts. Other ministries and Government agencies have responsibilities for some aspects of planning and oversight, as well as the awarding of contracts.

As at mid-November 2008, FDA had advertised seven timber sales contracts and seven forest-management contracts. The Panel has previously reported on the bidding process for six timber sales contracts and three forest-management contracts (S/2008/371, paras. 146-192). On 15 October 2008, FDA issued an invitation to bid on four large forest-management contracts covering a total of 771,390 hectares, which represents one third of the total area available for commercial logging, and one timber sales contract (see annex V). Table 4 provides a summary of the Panel's assessment of the commercial timber allocation process for all 14 timber sales and Forest management contracts.

The Panel notes with concern that, while the general framework of the National Forestry Reform Law is being used to plan and allocate timber concessions, FDA is often either not aware of the legal requirements or unable to follow them. As a result, the allocation of timber concessions is being conducted in a manner that is often not in conformity with the National Forestry Reform Law and regulations, or the Public Procurement and Concessions Act. Non-compliance can have a number of negative effects, ranging from delays in contract issuance to loss of revenues and legal challenges. These effects are discussed in further detail below in relation to specific events of non-compliance.

Pre-qualification of logging companies

Pre-qualification is required for companies seeking to bid on commercial forest resource licences, including timber concessions. The pre-qualification panel has now completed three rounds of reviewing applications and has announced a fourth phase of pre-qualification. In its second



SDI has documented illegal human settlement in the Sapo National Park

report, of 4 July 2008, it announced that it had pre-qualified 15 and provisionally pre-qualified 8 companies out of 37 applications submitted. As in its first report, the pre-qualification panel recommended that the FDA take a decision on the third-phase Forestry Concession Review Committee recommendation regarding debarment. The panel had not released its third report as at 20 November 2008.

The Panel notes that many concerns have been raised about the qualifications of companies bidding on concessions. The pre-qualification panel has failed to set pre-qualification standards, has not succeeded in screening out unqualified companies and has not identified and vetted all significant individuals. It has also pre-qualified companies in three forest management contract categories, although the regulation defines only two. A more effective pre-qualification process would help foreclose problems in the bidding process.

Planning for concession allocation

The concession allocation process includes planning and approval of all concession areas. The Ministry of Planning and Economic Affairs is responsible for the development of a national annual concession plan. The Panel wrote to the Minister of Planning and Economic Affairs on 21 October 2008 and met with

the Chief of Staff on 13 November 2008 in an attempt to ascertain whether the annual timber concession plan had been developed for 2008-2009. The Ministry has since informed the Panel that the 2008-2009 timber concession plan has not been prepared.

FDA must identify potential concession areas in its National Forest Management Strategy, conduct pre-feasibility studies for each concession area and undertake community consultations. FDA has prepared justification documents for at least 13 timber concession areas (the Panel has not seen any documentation relating to the seventh timber sales contract). The Panel notes that the FDA letter of 6 June 2008 had stated that it had not been possible initially to plan and manage the process for awarding contracts owing to unknown time frames and the necessity of involving a wide range of stakeholders. After completion of those various steps, FDA must submit a request to the Ministry of Planning and Economic Affairs for the issuance of a certificate guaranteeing that a project is qualified to be the subject of a concession process. The Ministry of Planning and Economic Affairs has confirmed that certificates for concession have not yet been issued for any timber concession areas. The Assistant Managing Director of FDA informed the Panel

that certificates had not been obtained as FDA staff thought that they were to be obtained just prior to logging activities, rather than prior to the bidding process.

FDA must also submit concession procurement plans for each concession area to the Public Procurement and Concessions Commission. On 21 October 2008, the Panel wrote to the Public Procurement and Concessions Commission requesting information on whether the plans had been submitted, and met with the Executive Secretary on 13 November 2008. In his written response of 17 November 2008, the Executive Secretary confirmed that FDA had not submitted concession procurement plans.

Bid documents and invitations to bid

FDA must fulfill the requirements of the Public Procurement and Concessions Act with regard to the development of concession bid documents. The procurement unit is responsible for the development of concession bid documents. The documents must be submitted for review and approval by the Inter-Ministerial Concessions Committee, which establishes a technical team to review them. Those activities must take place before FDA issues an invitation to bid.

FDA has developed bid documents for the first six timber sales contracts and

three forest-management contracts. The documents refer to annual payments of the land rental bids made by companies and have been approved by the Inter-Ministerial Concessions Commission. FDA has drafted bid documents for the next four forest-management contracts and one timber sales contract. In the draft documents for the four forest-management contracts, changes have been made to the terms of payment for the land rental bids so that a one-time payment would be made. Those documents have not yet been approved by the Inter-Ministerial Concessions Committee. The Chair of the FDA Board of Directors informed the Panel on 19 November 2008 that the allocation process for the four forest-management contracts is now under intensive review by the Board of Directors.

According to the National Forestry Reform Law, all concession bidding processes must be advertised according to certain standards. In the case of timber sales and forest-management contracts for less than 100,000 hectares, rules for national competitive bidding apply. Forest-management contracts for 100,000 hectares and more are subject to international competitive bidding rules. Under the Public Procurement and Concessions Act standards, national competitive bidding requires advertisement in national newspapers. International competitive bidding provides for at least a six-week bidding process and advertisement in both national and international media with adequate circulation to attract foreign competition.

The Panel notes that FDA has advertised only in national newspapers for all 14 contracts. FDA has failed to advertise in any international media for the five forest-management contracts for areas greater than 100,000 hectares. Such non-compliance is problematic for a number of reasons. In addition to undercutting the rule of law, the lack of international advertisement reduces the size and quality of the bidding pool and lessens the likelihood that companies with financial and technical capabilities will apply. If less qualified companies apply, there is an

increased risk of revenue losses for the Government of Liberia, in both the short and the long term, as bid prices may be lower and companies winning concessions may be unable to fulfil their contractual obligations.

The Panel also takes note of the fact that FDA should not have advertised the invitation to bid for the four forest-management contracts and one timber sales contract in mid-October 2008, as the bid documents had not been approved by the Inter-Ministerial Concessions Committee. That action appears to be contrary to the requirements of both the Public Procurement and Concessions Act and FDA regulation 104-07.

Following the bidding period, FDA must hold a bid-opening ceremony at which bids are announced. Such a process was carried out in the case of the six timber sales contracts and the initial three forest-management contracts.

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