

LIBERIA – The Promise Betrayed

Failure to fully implement forest sector reform may put the livelihoods of communities at risk and undermine the implementation of the Poverty Reduction Strategy. Will a progressive Voluntary Partnership Agreement with Europe mark a return to the path of reform?





The content of this report reflects the view of SDI only. SDI would, however, like to thank DFID and Swedbio for the financial support to produce this report as well as all its staff and Tom Ashton and Jonathan Gant for the preliminary research that gave rise to this report.

Foreword

This report reflects on the state of forest law enforcement and governance in post-conflict Liberia. It catalogues the major flaws and illegalities that occurred during the contract allocation processes, i.e. from the validation of forest areas designated for concessions, through prequalification and up to the signing and ratification of the first thirteen logging concession agreements. Most importantly, it shows that improvements in forest governance cannot come about without political will. It reaffirms that the potential of the logging industry to deliver jobs and revenue is exaggerated – often intentionally so. Current developments in the forest sector point to a future of disappointment and conflict across communities, and sustained tension between the state (on one side) and those non-state actors and community representatives who are determined to ensure that the rights and interests of communities are upheld and protected. The report presents recommendations with a special focus on how the government could return to the path of reform in order to get the forestry sector to work for Liberia and its people.

'When President Sirleaf issued Executive Order no. 1 on 2 February 2006, many of us were ecstatic about the prospects for reform. But three years into the implementation of agreed reform measures, the legal framework and institutional arrangements that were designed to ensure good governance in the forest are being gradually compromised. The president needs to put the reforms back on track, otherwise she risks leaving a tainted legacy and cloud of doubts about her commitment to meaningful governance reform.'

Silas Kpanan'Ayoung Siakor

Winner of the Goldman Environmental Prize (2006) and Whitley Awards (2002)

Director, Sustainable Development Institute/Friends of the Earth, Liberia

Abbreviations and acronyms

Alpha	Alpha Logging and Wood Processing Corporation
Atlantic	Atlantic Logging Ltd
CRL	Community Rights Law
EIA	Environmental Impacts Assessment
EJ & J	E J & J Investment Company
EPA	Environmental Protection Agency
EU	European Union
Euro Liberia	Euro Liberia Logging Company
FDA	Forestry Development Authority
FMC	Forest Management Contract
FSC	Forest Stewardship Council
Geeblo	Geeblo Logging Inc.
GEMAP	Governance and Economic Management Assistance Program
GoL	Government of Liberia
ICC	International Consulting Capital
IMCC	Inter-Ministerial Concession Committee
LEITI	Liberian Extractive Industries Transparency Initiative
LDI	Liberia Democratic Institute
LFI	Liberia Forest Initiative
LTTC	Liberia Tree and Trading Corporation
LWI	Liberia Wood Industries
NELCO	North Eastern Logging Company
NFRL	National Forestry Reform Law (2006)
NGO	Non-Governmental Organization
OTC	Oriental Timber Company
PPCC	Public Procurement and Concession Commission of Liberia
PRS	Poverty Reduction Strategy of the Government of Liberia
SA	Social Agreement
SDI	Sustainable Development Institute
SGS	Société Générale de Surveillance
TRC	Truth and Reconciliation Commission
TREE	Tropical Reserve Entrepreneurial Enterprise
TSC	Timber Sales Contract
TTC	Tarpeh Timber Company
UN	United Nations
VPA	Voluntary Partnership Agreement

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- ▼ Ekki logs extracted by Tarpeh Timber outside its concession (TSC-A2) in Compound 1, Grand Bassa County (July 24, 2009)



Introduction and context

This report reflects on the near collapse of the rule of law in the forestry sector in Liberia over the last three years, even before the timber companies were allowed to start logging. It presents compelling evidence that the forest reform process in Liberia is unravelling, and it points out the implications for forests and communities across Liberia.

All of the issues raised in this report, when looked at in the context of ongoing negotiations between the Liberian government and the European Union for a Voluntary Partnership Agreement, should form the basis for deep reflections amongst EU negotiators.

For example, this report will show that all the existing logging contracts were granted in violation of Liberian laws, which then raise the question; will implementation of a VPA change the fact that the contracts are illegal? How will products from illegally acquired concessions be defined in the VPA? Will the VPA only apply to timber concessions allocated after the VPA is concluded? Will licensing timber from these concessions not be the same as laundering illegal timber?

The report concludes that for any future Voluntary Partnership Agreement (VPA) that may be agreed with the European Union (EU) to control illegal logging, there must be strong political will on the part of the EU and the Liberian government, as well as the active participation of civil society actors, including local communities. Without that, the VPA will be used simply to 'greenwash' illegal logs from Liberia. For example, without a robust legality assurance system European consumers will buy 'legally' produced timber that is in fact stolen from the people and produced at great cost to the environment and to local communities.

President Ellen Johnson Sirleaf's accession to the Liberian presidency in 2006 was in large part due to her public commitment to fight corruption and to be a champion for transparency and accountability in government. She promised wide-ranging reforms in the extractive industries, especially the forestry sector. Her pledge to fight impunity and to introduce good governance in the forest sector was clearly articulated in her first major presidential decision: Executive Order no. 1, issued on 2 February 2006, just a month after she took office. She promised to restore the rule of law, investigate and prosecute past rights abuses and criminal behaviours, institutionalise transparency and accountability, and secure benefits for forest-dependent communities from forest exploitation. She also promised to hold accountable those who had plundered Liberia's forests and actively participated in the conflict that led to the deaths of more than 250,000 Liberians. Further, she promised to prosecute logging companies, including the

Oriental Timber Corporation and Maryland Wood Processing Industries, on charges of aiding and abetting civil unrest in Liberia.

The Ministry of Justice and the Forestry Development Authority (FDA) were tasked with leading the campaign to reform the forest sector to ensure transparency, accountability, public participation and the rule of law, but most importantly to ensure that the rights and interests of forest communities were adequately provided for. The overarching goal of the forest sector reform was to create a new environment in which illegal logging would become increasingly difficult, and where the communities themselves benefited from a more regulated industry.

Four years later, however, no one has been investigated, let alone indicted for their past criminal activities in the forest sector. Instead, the small amount of progress that was made to improve forest governance through legal and institutional changes is being reversed. Safeguards to keep out bad logging companies through the prequalification process have been badly compromised. The prequalification process has now been reduced to a box-ticking exercise. The first two bidding processes were characterised by widespread irregularities, illegality and fraud. The findings of the due diligence or background checks on logging companies – designed to ensure that they were financially viable, and could demonstrate integrity and technical capacity – were ignored in all thirteen instances that they were conducted.

Although all these irregularities were brought to the attention of the president, Her Excellency Ellen Johnson Sirleaf, insufficient action has been taken. The FDA has been allowed to ignore the rules and systems that were designed to help maximise the benefits accruing to Liberia from its forests. A legislature, led by allies of the president, enabled the president to ratify contracts that were allocated illegally, even though they were aware of the illegalities and irregularities that occurred during the allocation processes.

As a result, more than one million hectares of Liberia's forest are now under concessions held by companies that remain in the shadows, with Liberian companies fronting for them. The combined tax arrears of these companies have now reached approximately US\$10 million and continue climbing. Of the US\$36 million projected to be derived from the sector in the 2009/10 fiscal year, less than US\$4 million has been realised. The millions of dollars in revenue and thousands of jobs that were projected by the FDA are not forthcoming. Communities that are now ready to invest their 30% of logging revenues, as promised in the forestry law, have not received even a fraction of their share of timber revenue. Logging companies now owe affected communities a combined total of approximately US\$3 million: all because the implementation of reform measures has been compromised and undermined by entrenched and vested interests of powerful individuals both in the government and outside it.

This report starts with a list of recommendations for stakeholders, including donors and the international community, civil society and communities, and the Liberian government. The SDI fears that the government currently lacks the political will to take the necessary corrective actions on its own accord, but we hope to be proved wrong.

Recommendations

We call on the president of Liberia to take the following actions:

1. Commission a comprehensive economic review and analysis of the forest sector. This review should aim to establish the actual potential of the industry in terms of job creation and revenue, and match that against other opportunities for generating income and boosting the economy.
2. Based on the outcome of the review, the president should instruct the FDA to convene a stakeholder conference on the future of Liberia's forests. The outcome of the conference should then serve as a basis for deepening forest sector reform.
3. Instruct the Ministry of Justice to initiate proceedings for the cancellation of all Forest Management Contracts (FMCs) that have failed to perform. All the companies that hold contracts and have not been able to fulfil their financial obligations should be penalised according to the law.
4. Instruct the Ministry of Justice to investigate the circumstances surrounding the harvesting of timber by Tarpeh Timber outside its concession. This violation suggests that the Chain of Custody is insufficient to control the illegal extraction of logs, as the company is not allowed to harvest a single tree without a bar coding or without it being marked and entered into the Chain of Custody system. Based on the findings of the investigation all those found to have been involved in this illegal act should be punished according to the law.
5. No new bidding processes should be conducted until a comprehensive due diligence enquiry has been conducted on all prequalified companies, to eliminate those who cannot demonstrate access to reliable finance, cannot demonstrate a track record of good logging practices elsewhere, and lack the technical capacity to perform.
6. Commission an independent and comprehensive assessment of how the reform process has been implemented to date. This assessment should set out to establish objectively what went wrong, how the mistakes were made and what the consequences have been, and those found to be responsible should be held to account. This should specifically focus on the validation of contract areas, and the prequalification, bidding and contract award processes.

The Liberian legislature should:

1. Conduct a comprehensive legislative inquiry focusing on how the entire timber concession allocation processes were managed, on the failure of the timber industry to generate the revenue projected in the PRS, and on why the FDA refused to consider any income streams other than industrial logging.
2. Establish a legislative process, including public hearings, to periodically assess the performance of the FDA and the logging industry. This will provide valuable opportunities for the legislature to receive and act on forest-related issues that are within their purview.
3. Henceforth, only ratify forest-related agreements that are negotiated legally and in the best interests of Liberia. Corrupt and unethical behaviour (e.g. influence peddling) during the contract ratification process should be eliminated, and those business interests involved in such practices should be exposed and punished.
4. Only ratify the final VPA that is been negotiated between the Liberian government and the EU if it is convinced that it adequately protects the rights and interests of communities that will be affected by logging. This includes, but is not limited to, insisting on provisions requiring free prior informed consent from communities prior to contract allocation and full compliance with the terms of social agreements signed with communities.

To return to the pathway of reform, the FDA should:

1. Cancel all the Timber Sale Contracts (TSCs) that have failed to perform. Collaborate with the Ministry of Justice to initiate proceedings to cancel all FMCs that have failed to perform according to the terms of their agreement.
2. Instruct logging companies that signed flawed social agreements with communities to renegotiate, in good faith, new social agreements that are fair and legally enforceable.
3. Make public all reports on bid evaluation and due diligence. This should include posting electronic copies on their website and making hard copies available to the public if and whenever it is requested.
4. In line with the instructions laid out in Executive Order no. 1, establish and publish a debarment list for the seventeen different companies and their significant individuals that were recommended for debarment due to their role in Liberia's civil conflict. Arbitrary denial of individual companies during the prequalification phase is insufficient.
5. Establish a comprehensive database on all companies that applied for and have been admitted into the logging industry. Currently there is very little information on these companies in the public domain.
6. Establish an efficient and accessible system for accessing information at the FDA. This system should be robust enough to enable the FDA respond promptly to requests for information.

The European Commission should:

1. Ask the Government of Liberia in close cooperation with civil society actors to assess the level of implementation of already agreed reform measures.. This assessment will help the GOL and the Commission to understand the challenges and threats to forest law enforcement, governance and trade in the Liberian context.
2. Ensure the VPA will address the failures identified by the UN, by civil society actors, such as in this report, from both an institutional and legal point of view. The final agreement should include measures to to address both industry and government complicity in illegal logging activities. The focus on industry actors tends to ignore the role of state officials in illegal logging activities.
3. Insist on a VPA that is being negotiated in a fully transparent and consultative process inclusive of participation of representatives of local communities and social and environmental NGOs in line with Conclusions by the European Council.
4. Insist on a VPA that truly improves forest governance, deepen commitment to respect for community rights, and provides for clarifying forest tenure in Liberia, addresses corruption and increases transparency, in line with Conclusions by the European Council and following signed VPAs with Ghana and Congo.

The international community, especially the United Nations, the US Government and other donors, should:

1. Try to persuade the Liberian government to return to the path of reform. This should include using whatever leverage they may have to demand improved forest governance, especially in the areas of transparency, accountability and the rule of law.
2. Continue to support forest reform in Liberia. This should include providing capacity-building support for the FDA and civil society, supporting civil society and communities' engagement with the sector. The focus of this support should be to improve forest governance.
3. Encourage the Liberian government to consider other opportunities for generating income from the forests, and to support efforts to develop small and medium-sized forest enterprises and sustainable forest management.

Local communities and civil society should:

1. Continue to engage government and logging companies to safeguard the rights and interests of local communities and improved forest governance, i.e. greater transparency, accountability, rule of law and equitable distribution of benefits from forests.
2. Participate and contribute to the VPA discussions and negotiations in such a way that the final agreement provides a robust response to the challenges to forest law enforcement and governance in Liberia.

3. Increase collaboration and coordinate efforts to tackle the problems of illegal logging, corruption, and the unequal distribution of benefits from forests.

- ▼ SDI team documents illegal logs extracted by Tarphe Timber outside its concession (July 24, 2009)



Where are we?

'The central goal for forestry over the Poverty Reduction Strategy implementation period is for the sector to become a source of higher incomes for the rural population, ensuring that the benefits are shared equitably, and that adequate environmental and other regulatory safeguards are in place to ensure sustainability.'¹

In 2008 and 2009, the Liberian government issued seven Forest Management Contracts, covering more than one million hectares, and six Timber Sale Contracts, covering 30,000 hectares. This makes a combined total of 1,037,266 hectares of forest or a third of the country's forests (Liberia's forest estate is estimated to be 4.39 million hectares).² Unfortunately the various processes leading up to and during the bidding and contract allocation processes were characterised by numerous flaws and illegalities. All of these logging contracts were awarded in violation of various Liberian laws and regulations. Many of these contracts were issued to logging companies with unproven technical and financial capacities, and to financial backers who we know very little about.

The first nine contracts allocated in 2008 were all illegal. To begin with, the FDA did not have a Certificate of Concession or a Concession Plan when it announced the bids. According to the Act Establishing the Public Procurement and Concession Commission of 2005: 'The head of a Concession Entity shall, prior to commencing any activity for the purpose of implementing a concession, request the Minister responsible for Economic Affairs to issue a Certificate for Concession for the specific concession.'³ The Act further states: 'Every concession implementation process shall commence with the issue of a Certificate for Concession and no concession shall be implemented unless the proposed project has been issued with a Certificate for Concession.'⁴ Secondly, some companies that were not qualified to participate in bids for forestry contracts were allowed to participate, and some actually went on to win contracts. In total, six TSCs covering 30,000 hectares of forest were awarded in mid- to late 2008 and three FMCs covering approximately 235,876 hectares were awarded to Alpha Logging, LTTC and EJ & J. All of these contracts were awarded in violation of various provisions of the forestry law, FDA regulations and the PPCC Act.

1 Liberia Poverty Reduction Strategy, 2008 - 2011
 2 National Forest Management Strategy, June 2007
 3 PPCC Act (2005), Section 87(3)
 4 PPCC Act (2005), Section 88(1)

L TTC was not qualified to bid, as the company had tax arrears when it submitted its bid.⁵ The company then sold 49%⁶ of its shares to EcoTimbers, another logging company, following the prequalification process. The regulation on prequalification states that for a prequalification certificate to remain valid, the following must be true: ‘The facts that the bidder submitted in the prequalification application have not materially changed.’⁷ Each of these breaches on their own rendered null and void the company’s prequalification certificate. However, beyond these two breaches, the company also influenced the bid evaluation panel during the bid evaluation process. The company contacted the bid evaluation panel ‘requesting the Panel to hold on to its final report on evaluation for one week to allow them [to] settle their tax arrears with the Ministry of Finance.’⁸ The chairman of the bid evaluation panel informed the rest of the members of the panel that this was a violation of the law.⁹ The panel’s report to the FDA, dated 11 July 2008, confirmed that the delay in completing its evaluation was due in part to L TTC’s interference: but the panel still recommended L TTC for the contract.

The second company, Alpha Logging, did not have a valid prequalification certificate when they submitted their bid.¹⁰ The due diligence check on the company found that there had been a material change in the ownership of the company following the prequalification process but prior to the bidding exercise. According to the due diligence report, when Alpha Logging was prequalified, 60% of its shares were owned by a Korean Company, Eagon.¹¹ In January 2008, after prequalification but before bidding, Eagon sold its shares to a Woodman Sdn Bdh.¹² A material change of this magnitude automatically nullifies a company’s prequalification certificate and therefore renders them ineligible to bid.¹³ In order to be qualified to bid the company must reapply and go through the prequalification process.¹⁴ But not only was Alpha Logging not qualified to bid: the company was awarded the contract even though they did not win the bid, and had come second to Global Wood.¹⁵

The third company, EJ & J, failed to demonstrate reliable financial and technical capacity to implement their FMC.¹⁶ The due diligence report on the company showed that it had ‘virtually no capital – no equipment and cash of less than \$0.01 million.’¹⁷ The company only presented a loan agreement with Taakor Tropical Hardwood for U\$5 million, though there was no convincing evidence that Taakor Tropical Hardwood had the funds available to make the loan. Taakor at the same time was also promising to provide cash and equipment to another company, BODEVCO. EJ & J provided no other financial statements, bank balances, or credit agreements.¹⁸

5 Report of the Bid Evaluation Panel, July 2, 2008

6 Due diligence report, 26th August, 2008

7 FDA Regulation 103-07, Section 46 (b)(4)

8 Minutes of Bid Evaluation Panel Meeting held on July 2, 2008.

9 Ibid

10 FDA Regulation 103-07, Section 46(b)(4)

11 Due Diligence report, August 26, 2008

12 Ibid

13 FDA Regulation 103-07, Section 46 (b)(4)

14 Ibid

15 Bid Evaluation Report, July 11, 2008

16 Due Diligence report, August 26, 2008

17 Ibid

18 Ibid

All of these issues were brought to the attention of the legislature, who nevertheless went ahead and ratified the contracts. This marked the beginning of the unravelling of the reform agenda.

The unravelling of the reform climaxed in late 2009. In September 2009 four new FMCs were awarded to International Consulting Capital (ICC), Atlantic Resources Ltd, Geblo Logging Inc. and the Euro Liberia Logging Company. These four contracts covered a total 771,390 hectares of forest. Again the bidding process was marred by various illegalities and flaws similar to those that occurred during the bidding for the first three FMCs in 2008.

For example, ICC was not qualified to bid for forestry contracts. The company transferred 92.5% of shares originally owned by Mr Mulbah Willie to Liberia Wood Industries (LWI).¹⁹ This transfer of shares took place on 18 February 2009,²⁰ just a day before they submitted their bid. This was a material change that automatically rendered ICC's prequalification certificate invalid. Additionally another winner, Atlantic Resources, technical proposal was in the bid envelop presented by another company, Southeast Logging. The FDA's National Authorizing Officer, who presided over the opening ceremony, commented on this after he found Atlantic Resource's proposal in Southeast's envelope.²¹ This suggests that the two companies did share information or colluded during the bidding process; sufficient grounds for the disqualification of both companies. Instead, Atlantic Resources was awarded a contract.

Another company Euro Liberia Logging bid for FMC Area F, did not meet the minimum required bid or reserve bid. The company bid was US \$6.46 whereas the reserve bid was US \$7.01.²² The contract was nevertheless awarded to Euro Liberia apparently following an negotiation with the company or an illegal invitation to the company to adjust its bid price to US\$10.05. The company's final bid price stated in their contract with the government is US\$10.05.²³

19 Final Legal Due Diligence Report, 30th June 2009

20 Ibid.

21 One of the authors of this report was present and witnessed this firsthand

22 UN Panel of Experts on Liberia Report, December 2009, S/2009/640

23 Act Ratifying FMC Area F between GoL and Euro Liberia Logging Company, September 30, 2009

Table 1: Summary of violations and other issues related to the allocation of seven FMCs

Issues	Parties involved	Legal provision violated
Allocated new concessions without fulfilling the instructions laid out in Executive Order no. 1	FDA, World Bank and LFI partners	Executive Order no. 1: (1) All executive agencies and departments are <i>authorised</i> and <i>required</i> to carry out the recommendations and findings of the Forest Concession Review Committee for actions and activities within their jurisdiction. (4) The Forestry Development Authority is hereby mandated to grant or allocate future forest concessions <i>only after</i> it determines in writing that the measures for forest management reform outlined in Paragraphs 5 through 7, below, are fully instituted and implemented and the necessary legislation enacted and regulations passed under Paragraph 7 (k.), below. Paragraph 7 (e) Develop and implement a transparent forest concession allocation procedures based on the Public Procurement and Concession Act of 2005 and that will include a comprehensive debarment and suspension system that would include a debarment list of those who aided and abetted civil disturbances and a suspension list of those who defaulted on their financial obligations
Commenced concession allocation without Certificate of Concessions from the Ministry of Planning and Economic Affairs	FDA	FDA Regulation 104-07, Section 31: In compliance with Section 87(3) of the Public Procurement and Concessions Act, as amended, prior to commencing any activity for the purpose of offering a specific concession, the Managing Director shall request the Minister responsible for Economic Affairs to issue a Certificate of Concession. Public Procurement and Concessions Act, Section 87(3): The head of a Concession Entity shall, prior to commencing any activity for the purpose of implementing a concession, request the Minister responsible for Economic Affairs to issue a Certificate for Concession for the specific concession. This Act further states: 'No concession without certificate.'
Commenced concession allocation without filing Concession Procurement Plan with PPCC	FDA	FDA Regulation 104-07, Section 32: The Authority shall prepare the Concession Procurement Plan required under Sections 77 and 79 of the Public Procurement and Concessions Act, as amended, and submit the plan to the Public Procurement and Concessions Commission.
Bidders without valid prequalification certificate participated in 1st and 2nd bidding for FMCs	FDA; EJ&J, LTTC, Alpha; and ICC, Geeblo and Atlantic	FDA Regulation 103-07, Section 46(b): For a prequalification certificate to be valid with respect to bidding on any particular concession for Forest Resource License, the following must be true: Section 46(b)(4): The facts that the bidder stated in the prequalification application have not materially changed <i>NB.:</i> Atlantic and Alpha Logging introduced New Significant Individual that lacks 'integrity of character and respect for rule of law' as required by prequalification regulation. Atlantic also colluded with another logging company during the bidding process.
IMCC awarded contracts to Alpha Logging, EJ & J and Euro Liberia in contravention of the PPCC Act	IMCC	PPCC Act (2005), Section 115(2)(d): Recommendations which shall include a statement that the bidder with the highest overall score be invited for negotiations and if negotiations fail with that bidder, negotiations should be held with the next bidder in that order till a successful bidder is selected.
Contracts awarded to bidders without valid prequalification certificates	FDA, IMCC, EJ& J, LTTC, Alpha, ICC, Geeblo and Atlantic	FDA Regulation 103-07, Section 46(b): For a prequalification certificate to be valid with respect to bidding on any particular concession for Forest Resource License, the following must be true: Section 46(b)(4): The facts that the bidder stated in the prequalification application have not materially changed. <i>Note:</i> LTTC also contacted the bid evaluation panel 'requesting the Panel to hold on to its final report on evaluation for one week to allow them settle their tax arrears with the Ministry of Finance' in violation of bidding ethics.
Changes in payment terms for 3 Forest Management Contracts Areas A, B and C	FDA	Act to Ratify Forest Management Contract: Area 'A' Section B7.11 – Land Rental Bid Payments (c): 'Holder shall make payment of the Land Rental Bid Fee annually (each and every year of contract duration) to the Government not later than 30 days after the <i>Contract Effective Date</i> .' This applied to the other two FMCs.
Failure to pay Land Rental Bid, Contract Administration and Area Fees on time	FDA, EJ&J**, LTTC**, Alpha,* ICC, Euro Liberia, Geeblo	Act to Ratify Forest Management Contract: Area 'A' Section B7.11 – Land Rental Bid Payments (c): 'Holder shall make payment of the Land Rental Bid Fee annually (each and every year of contract duration) to the Government not later than 30 days after the <i>Contract Effective Date</i> .' This applied to the other two FMCs.
Failure to pay and failure to collect initial annual Contract Administration and Area Fees before signing and subsequently ratifying FMCs None of the companies paid these fees before the government signed and ratified their contracts. The first three companies' payments were a year late	FDA, SGS, Minister of Finance, President, Legislature, and all seven FMC contract-holders	FDA Regulation 107-07 Section 32(d): The Government shall withhold signing of a Forest Management Contract or Timber Sale Contract until presented proof by the Holder that the initial annual area fees has been paid. FDA Regulation 107-07 Sections 33(f): The Government shall withhold signing of a Forest Management Contract or Timber Sale Contract until presented proof by the Holder that the initial annual area fees has been paid.
* Alpha Logging has paid for its first year. The second year payment is now due. ** These companies have made some payments against their first year fees. The balances and the second year payments are due.		

The evidence laid out in Table 1 indicates that all of these contracts were awarded in violation of various laws and cannot withstand a legality test. But these illegalities aside, the evidence presented in this report also demonstrates how little is known about some of the companies that have entered the logging sector and the notoriety of some financiers are of particular concern. For example, Atlantic Resources and Alpha Logging are entirely dependent on one of the world's most notorious logging companies, Samling Global, for financing. The due diligence report of 30 June 2009 lists Samling as Atlantic's principal financier.²⁴ Samling Global is the subject of widespread criticism.

In addition, the contracts that were awarded to the first three companies gave them an unpublicised and late change to their payment obligations, reducing by 96% the amount they would pay in land rent to the government. This would have resulted in more than US\$40 million lost in forest-related taxes in their 25-year lifespan.²⁵ While this change was corrected after questions were raised, it is demonstrative of the uncertain and potentially dangerous future promised by Liberia's confused FDA.

'The high level of discretion being used by senior FDA management in implementation of some aspects of the National Forestry Reform Law and FDA regulations is of concern. Decisions to sell abandoned logs without auction and the initial non-charging of stumpage fees (and later charging of lower rates) are clear violations of the law, resulting in lost revenues for the State.' UN Panel of Experts Report, 12 December 2008, S/2008/785

▼ **Logging activities will shortly intensify, will FDA properly regulate the industry? (July 24, 2009)**



²⁴ Final Legal Due Diligence Report dated 30th June 2009

²⁵ Circular Memorandum #001 from Alfred F. Kotio dated October 8, 2008

Prior to resuming the allocation of new logging concessions the FDA started to show signs of weakness and a lack of political will to tackle bad operators. This became apparent on two separate occasions discussed below.

Illegal shipment of timber in March 2007

The first shipment of timber from Liberia, after sanctions, left the country illegally. This shipment took place in March 2007.²⁶ The shipment went to Morocco, in violation of a Liberian government moratorium on timber export.²⁷ The wood also came from illegal chainsaw operations, and export documents were acquired through fraudulent means. Although the FDA were aware of this illegal shipment before it left the Freeport of Monrovia, the agency failed to coordinate its efforts with the Ministry of Justice to stop the shipment.²⁸ The company that carried out this unlawful shipment (Edgail Inc.) was subsequently prequalified²⁹ without reference to their previous illegal behaviour. The company is therefore able to continue to do business in the sector.

Illegal transactions involving abandoned logs

At least two shipments of abandoned logs were dispatched from the Port of Buchanan despite various illegalities and malpractices that occurred during the auction and sale of those logs. One shipment took place in January 2009³⁰ and the other in March 2009.³¹ The first shipment went to Italy and the second to France. The illegalities and malpractices included understating the volume of stockpile of abandoned logs during appraisal, the sale of more than 6,000 cubic meters of abandoned logs without an auction, and the unlawful reclassification of the logs.

Instead of 9,985 cubic meters, the volume of abandoned logs was reported by FDA technicians to be 3,897 cubic meters³² following the pre-auction assessment. When this was uncovered, the FDA – instead of requesting a second auction for the additional 6,088 cubic meters of logs – sold them to Unitimber in violation of FDA regulations.³³ The FDA devalued the logs from class A to class C, automatically reducing the stumpage fee from 10% of the value of the logs to 2.5%. This resulted in the loss of approximately US\$100,000³⁴ in revenue due to the state. This situation was only partially corrected after the UN panel of experts and NGOs raised concern about the loss in revenue to the government.

The auctions for the logs were also not conducted properly, and bidders had only three days to prepare. In a letter regarding this issue, the managing director wrote that the abandoned logs were ‘unprofessionally assessed and auctioned to Unitimber’.³⁵ A fourth issue was that Unitimber, was allowed to bid and eventually won the bid. Prequalification documents submitted by Unitimber lists Wael Charaffedine as a Significant Individual of the Company. Wael Charaffedine was a Significant Individual of LLWPC. LLWPC and TTCO were owned by the same individuals including Wael. TTCO was listed for debarment and all its Significant Individuals.³⁶ Yet Unitimber was allowed to participate in the bid.

26 UN Panel of Experts on Liberia Report, June 7, 2007

27 Ibid

28 FDA letters and other documents related to this shipment

29 Report of the Prequalification Evaluation Panel, January 4, 2008

30 Bill of Lading dated January 19, 2009, issued to Unitimber Corporation

31 Bill of Lading, dated March 21, 2009, issued to Unitimber Corporation

32 Ibid

33 FDA Regulation 108-07, Section 51

34 UN Panel of Experts Report, June 12, 2008, ref.: S/2008/371

35 FDA Letter Ref: MD/103/08-12 of July 23, 2008

36 Report of the Forest Concession Review Committee, May 2005

Was reform undermined from the start by lack of political will?

The real challenge to forestry reform in Liberia has come from unlikely sources: a president that expressed strong commitments to good governance in the sector, and the lead architect of the reform plan. As In-country Coordinator of the Liberia Forest Initiative (LFI), Mr John Woods led the efforts of stakeholders to design the new systems and structures at the FDA and the formulation of the National Forestry Reform Law (2006), the foundation of the legal framework for the reform. He went on to become managing director when President Sirleaf was inducted into office in 2006. Ironically, he became extremely critical of the safeguards established in the law. He and other senior managers and technicians constantly complain publicly that the safeguards are impediments to their work, and they have been calling for some of them to be revoked. They have also publicly supported violations of the law during allocation of all the current contracts.

The National Forestry Reform Law of 2006, to the credit of a multi-stakeholder process that led to its development, has some progressive provisions and establishes a legal framework for forestry in Liberia. At the same time, there are some shortcomings that were the focus of disagreements between some of the stakeholders.

The law and accompanying regulations are particularly progressive in terms of requirements on transparency and public access to information,³⁷ benefit sharing³⁸ and public participation³⁹. For example, the regulation on public participation elaborates a comprehensive framework for public consultation and input to policy formulation, rule making and implementation.⁴⁰ The forestry law gave far-reaching rights to the public to access information⁴¹ about forest governance and management in Liberia. On the other hand its weakest point is its treatment of community rights, and its extensive focus on logging is a major contradiction in light of the 3C policy adopted by the Liberian government. The law deferred the promulgation of a Community Rights Law (CRL) with Respect to Forest Lands to 2007. Three years later, the result of the FDA-led process to draft the CRL has produced what is effectively an Anti-Community Rights Law, given the excessive degree of authority and control that legislators and the state have over community forest management institutions.

37 NFRL 2006, Section 18.15

38 Regulation 106-07 on Benefit Sharing

39 Regulation 101-07 on Public Participation

40 Ibid

41 NFRL 2006, Section 18.15

The following section discusses in greater detail some of the critical stages in the implementation of agreed reform that were either disregarded or poorly implemented. Others were marred by outright violations of the law.

Prequalification

‘The prequalification panel has failed to set prequalification standards, has not succeeded in screening out unqualified companies and has not identified and vetted all significant individuals. It has also prequalified companies in three forest management contract categories, although the regulation defines only two. A more effective prequalification process would help foreclose problems in the bidding process.’
UN Panel of Experts Report, 12 December 2008, S/2008/785

The preamble of FDA Regulation 103-07 on Prequalification summarises the thinking that underlies the creation of this check. The preamble states: ‘Whereas, to achieve sustainable commercial development of the forest the nation *must* ensure that forest users [companies] possess integrity of character and respect for law, as well as financial and technical capacity’.⁴² Unfortunately the prequalification process failed to fulfil this requirement.

The first prequalification process was conducted between October 2007 and January 2008. A series of other rounds have been conducted since then. The lead author of this report participated in the first round of the prequalification exercise. Having experienced at first hand the challenges brought on by the lowering of standards, the lack of interest shown by representatives of government agencies in conducting a thorough process, and failures to follow guidelines established for the process presented, he presented an independent critique of the process and recommendations for improvements to the FDA.

Although the key recommendation on debarment, presented in the critique below, was also presented in the Prequalification Evaluation Panel’s report, the FDA did not establish the list. The FDA also argued that the due diligence process would be conducted during bid evaluation. The Prequalification Evaluation Panel restated the recommendation for a debarment list in its second report. This suggests that it did not exist at the time of the second evaluation. The FDA ignored two prequalification panels’ recommendations which led to unsuitable companies gaining prequalification. The failure to conduct any form of background checks allowed several companies with questionable character to enter or re-enter the timber industry.

Also, as shown in the section on bid evaluation, the companies themselves have been able to take advantage of these lapses and introduced new actors through the back door. The prequalification process has therefore been reduced to a mere box-ticking exercise that enables the FDA to claim that their system for allocating concession has safeguards and is transparent. This situation remained the same for the first and second rounds of bidding for the seven FMCs, as noted by the UN panel of experts in its December 2008 report.

⁴² FDA Regulation 103-07 (preamble)

Critique of the prequalification process

The concept of prequalifying logging companies to participate in competitive bidding processes for new timber concessions in Liberia is new. The process is mandated by the NFRL 2006.⁴³ The first ever prequalification evaluation was conducted between October and December 2007.

Overall, the concept is good; it provides a rare opportunity for screening potential timber companies to ensure that ‘they possess integrity of character and respect the rule of law’. This is a key element of the FDA’s vision as established by the Regulation on Bidder Qualification adopted by the FDA in 2007. The prequalification evaluation process and the methodology adopted for the evaluation must therefore support this vision in every respect. Conducting the evaluation to uphold this vision is critical, and to demonstrate its unwavering desire to uphold this vision the panel must conduct the evaluation in a transparent and consistent manner. This will add value to the process.

This is particularly important if the exercise is to maintain its usefulness and integrity and to ensure that it does not become a box-ticking exercise or an opportunity for possible rent-seeking or other corrupt practices by a few individuals within government, especially those charged with issuing clearances for various purposes.

Issues arising from the first sitting of the prequalification evaluation panel

During the review process, various issues and challenges emerged. These issues need to be discussed and preferably addressed before another round of the prequalification exercise gets under way. Combined, these issues presented a host of lessons to inform future reviews. These issues are presented below with some suggested actions:

1. There was disagreement amongst members of the Panel about the fate of companies recommended for debarment by the 3rd Phase Forestry Concession Review Committee. The panel was unable to confirm whether or not the Government, by endorsing the recommendation to cancel all logging concessions through Executive Order no. 1 in 2006, in fact fully endorsed the committee’s findings and recommendations.

***Suggested action:** the Liberian government should formally act on this outstanding recommendation of the 3rd Phase Forestry Concession Review Committee. The FDA management should present this issue to the board of directors and follow up to ensure that a firm decision is taken on the matter. The public should be informed about the outcome of these deliberations.*

2. The lack of clarity on role of the Truth and Reconciliation Commission (TRC) and the purpose of the TRC clearances created some challenges for the panel. This is of particular concern considering its implications for the debarment standards established in the prequalification regulation. During the review, a handful of TRC clearances were presented to the

43 NFRL 2006, Section 5.2a

panel even though the Commission had not started hearing on natural resource issues.⁴⁴ This prompted a request for clarity from the panel. In response, the TRC categorically rejected the aforementioned clearances and declared them null and void.⁴⁵

Suggested action: *the FDA management should request a formal investigation of the circumstances surrounding this issue because it has implications for the quality of the panel's work and the relevance of clearances from the TRC. Additionally, this raises questions about the integrity of the process whereby logging companies will apply and receive clearances for future prequalification processes. On a broader scale, this raises some hard questions about the integrity and workings of the TRC itself, which has serious implications for national reconciliation and healing.*

3. The Regulation on Prequalification clearly states that anyone owing forestry-related taxes should not be prequalified. However, it became obvious that if this provision was applied fully none of the old logging companies would have prequalified. The Ministry of Finance issued several tax clearances to companies that had not met their full financial obligations to government at the time of the review. However the panel made the decision to allow those companies to be prequalified following assurances from the Ministry of Finance that they would not be allowed to bid if the balance of their arrears were not cleared.

Suggested action: *the FDA's board of directors should discuss this situation and present some guidance on this matter for the future. It is far too early to try to amend any of these regulations because they are only now getting tested; however, efforts should be made to clarify these issues in a guidance note that future panels can refer to. For example, who is authorised at the Ministry of Finance to issue tax clearances? Can tax clearances from outside Monrovia be considered valid for future exercises? Is there a standard form or format for tax clearances at the Ministry of Finance? If these questions are addressed, the resulting guidance note should be available for the future sittings of the panel.*

4. Various companies presented clearances issued under different names and signatures and different formats from the same agency. This raised questions about the authenticity of those clearances.

Suggested action: *the panel should be clearly authorised to conduct due diligence focusing on clearances received by it during its sitting. This will ensure that long hours of debate on and negotiations within the panel when these issues arise do not undermine the integrity of the panel's work.*

5. The NGO coalition raised concerns about the confidentiality arrangements agreed by the members of the panel. It is crucial that genuine issues of confidentiality are addressed, and the public's demand for information is met. The panel had to negotiate a compromise. However, this creates an opportunity for the panel, based on its composition and the motivation of individual members at a given time, to change the rules arbitrarily as they move along.

Suggested action: *the FDA's board of directors should authorise the panel to publish the full list of applicants and their significant individuals as a part of the drive to be more transparent and*

⁴⁴ TRC clearance for LLWPC dated October 26, 2007

⁴⁵ TRC letter to the FDA dated December 3, 2007

accountable to the public. The panel should establish a medium through which individuals could communicate information relevant to its work or the evaluation process.

Recommendations

The following recommendations are presented here to further emphasise the need for action on the issues identified above

1. The Liberian government should officially establish the debarment list for companies and individuals listed in the 3rd phase Forestry Concession Review Report;
2. The FDA should request a formal investigation of circumstances surrounding the unauthorised issuance of clearances by the TRC Executive Director Nathaniel Kwabo;
3. The FDA should authorise the panel to work with the ministries and agencies that are required to issue clearances for the evaluation process, to establish a framework for validating future clearances; and
4. The FDA should instruct the panel to publish the list of applicants and their significant individuals before commencing review and evaluation of their applications.

All of these actions will greatly improve the quality of the panel's work and further strengthen its role in the sector.

- ▼ Broken logging equipment in Gargar Town, Compound 1, Grand Bassa County (July 24, 2009)



Bidders, bid evaluation and contract award processes

On 4 March 2008, bidding for the first three FMCs was announced by the FDA without a Certificate of Concessions from the Ministry of Planning and Economic Affairs. The FDA Regulation on Bidding⁴⁶ and the Act Creating the Public Procurement and Concessions Commission both require that prior to announcing a bid for concession the procurement entity must apply for and be granted a Certificate of Concession.⁴⁷ When this issue was raised, the FDA claimed that it had requested the certificate but had not been awarded it before the bidding process. The then assistant managing director reportedly told the UN panel they had not obtained the certificate because FDA staff thought they were supposed to request the certificate prior to logging.⁴⁸ Although this violation was brought to the attention of the government, the process was allowed to proceed. Hence it can be rightly argued that the bid for the first three FMCs was conducted in violation of the law.

A total of ten companies submitted bids for the three contracts. Table 2 lists the companies and the amounts bid.

Table 2: Bids submitted for the first three FMCs⁴⁹

Contract area	Counties covered by contract	Bidders	Amounts
FMC A (119,240 ha)	Gbarpolu and Lofa Countie	Global Wood	US\$13.50
		Tropical Reserve Entrepreneurial Enterprise (TREE)	10.55
		International Consulting Capital (ICC)	7.10
		Alpha Logging & Wood Processing	10.05
		EcoTimbers	3.00
		Bopolu Development Corporation	3.27
		Liberia National Resources	4.13
FMC B (57,262 ha)	River Cess	EJ & J	5.06
		Liberia Tree and Trading Corp. (LTTC)	8.30
		Kparblee Timber	25.50
FMC C (59,374 ha)	River Cess	Liberia Tree & Trading Corp. (LTTC)	9.60
		Kparblee Timber	26.00
		EJ & J	5.00

⁴⁶ FDA Regulation 104-07, Section 31

⁴⁷ PPCC Act (2005), Section 87(3)

⁴⁸ UN Panel of Experts Report, 12 December 2008, S/2008/785

⁴⁹ Bid Evaluation Panel Report dated July 11, 2008

Some of the bidders were not qualified to bid. LTTC, for example, was not qualified to bid but was allowed to participate in the bid in violation of the National Forestry Reform Law (2006)⁵⁰ and the PPCC Act.⁵¹ Ricks Toweh, chief executive officer of LTTC, owed the government more than US\$100,000 in forestry-related tax arrears.⁵² This amount did not include taxes owed by RETCO Liberia Timber Industry,⁵³ another company he operated simultaneously but failed to declare during the forestry concession review process in 2004/05.

The US\$100,000 relates to taxes owed by NELCO, the company for which he provided information to the concession review committee.⁵⁴ This issue was raised at the time of prequalification and as noted earlier in this report the Ministry of Finance assured the prequalification panel that companies in this category would not be allowed to participate in bidding if they didn't clear their arrears. Alpha Logging was also not qualified to bid. Ownership of Alpha Logging changed significantly after prequalification but before bidding. When Alpha Logging was prequalified, 60% of its shares were owned by a Korean Company named Eagon. Before bidding, Eagon sold its shares to a Malaysian company, Woodman Sdn Bhd.⁵⁵ This material change of ownership automatically nullified the company's prequalification certificate and therefore rendered them ineligible to bid until they had resubmitted to another prequalification process.

Bid evaluation processes

The bids were opened on 21 April 2008. The bid evaluation, like the prequalification that preceded it, was marred by irregularities and flaws. Some of these irregularities were serious violations of the relevant laws and regulations, raising questions about the legality of the contracts that were awarded as a result of the process. For example, LTTC – in addition to the other issues discussed above – also contacted the bid evaluation panel 'requesting the Panel to hold on to its final report on evaluation for one week to allow them settle their tax arrears with the Ministry of Finance'⁵⁶. The chairman of the bid evaluation panel informed the panel that this was a violation of the law.⁵⁷

The bid evaluation panel, in its report to the Inter-Ministerial Concession Committee (IMCC) and through the FDA, established a list of provisional winners 'based on the results of the quantification of the evaluation criteria contained in the Bid Document'.⁵⁸ However, the report went on to note that it had conducted an additional evaluation to verify technical and financial capacity using the preliminary findings from the due diligence conducted on all bidders. The panel final recommendation to the IMCC is presented in Table 3.

50 NFRL 2006, Section 5.2a

51 PPCC Act 2005, Section 32 (1) h

52 Bid Evaluation Panel Report dated July 11, 2008

53 FDA Correspondences addressed to Ricks Toweh as Manager of RETCO

54 Forestry Concession Review Committee Report, May 2005

55 FDA Due Diligence Reports dated August 26, 2008

56 Minutes of Bid Evaluation Panel Meeting held on July 2, 2008

57 Ibid

58 Bid Evaluation Panel Report dated July 11, 2008

Table 3: List of provisional winners

Contract area	Company	Provisional winners
FMCA	Global Wood	1st
	Alpha Logging	2nd
	TREE	3rd
FMCB	EJ & J	1st
	L TTC	2nd
FMCC	L TTC	1st
	EJ & J	2nd

A series of legal and technical questions have dogged the process since then. As stated earlier the panel should not have evaluated bids submitted by L TTC and Alpha Logging because they were not qualified to bid in the first instance. L TTC also influenced the process by persuading the panel to delay its report to enable the company clear up its tax arrears. This suggests that L TTC was aware that it needed an advantage over other bidders when they went to the next stage, sought that advantage and was actually given that advantage by the bid panel.

All of these issues were raised with the FDA, the IMCC and members of the national legislature at different stages of the process.

‘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. ... 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).’ UN Panel of Experts Report, 12 December 2008, S/2008/785

Award of contracts

Following receipt of the bid evaluation panel’s report, the FDA forwarded it to the IMCC for its action. The IMCC then proceeded to award contracts to Alpha Logging, EJ & J and L TTC. These allocations were not in line with legal requirements of the PPCC Act.

To begin with, Alpha Logging and L TTC should have been disqualified or their bids considered not responsive because they were not qualified to submit bids. Reviewing them along with other bids was a violation of the law.

Secondly, the PPCC Act requires that bid evaluation panels report ‘the responsiveness of the bids on the basis of the requirements set out in the proposals’⁵⁹. Disregarding the issue about

misinterpretation of the responsiveness of a bid, the panel made recommendations to the IMCC in line with this provision. The IMCC, in contravention of the PPCC Act, awarded contracts contrary to the evaluation panel's recommendations without going through the process laid out in law. For two of the three bids the contracts were given to the second highest bidder and not, as legally required, to the highest bidder whose bid is equal to or greater than the reserved bid. At the least this should have included inviting the recommended companies to negotiations, and inviting another company only if negotiations failed with the first bidder. They were required to follow this order until a successful bidder is selected.⁶⁰ For example, the IMCC ignored the bid panel's recommendation and awarded FMC A to Alpha Logging rather than Global Wood, without inviting Global Wood for negotiation first.

The due diligence process during the first round of bidding

The due diligence process for the ten companies that participated in the bid for the three FMCs was conducted on 21 April 2008 by a team of FDA technicians and the then GEMAP Financial Advisor to the FDA. The process used the guidelines established in Section 116 of the PPCC Act. These guidelines are clear and designed to ensure the interest of the government and people of Liberia is protected from businesses with suspect backgrounds or links to international or regional criminal networks.

- ▼ **Log bridge constructed by Tarpeh Timber. Although the company stated that it would not construct log bridges on major roads in the area; that is exactly what it has done.**



60 PPCC Act of 2005, Section 115 2(d)

PPCC Act, Sections 116 (2)(3)(4)

2. The extent of the due diligence shall be determined by the Entity but shall at a minimum include a verification of the following:
 - a The capacity of the private sector entity to enter into the concession agreement.
 - b The authenticity of the certificate of incorporation and other statutory documents. If the private sector partner is of a foreign origin company, the validity of the document must be verified from the country of origin.
 - c Authenticity of the persons purporting to represent the bidder for which purpose the public entity shall demand a board resolution of the prospective bidder authorizing the persons to negotiate or enter into an agreement on its behalf.
 - d The fulfilment by the private sector entity whether wholly foreign owned or in partnership with a local counterpart of the requirements of the laws regulating business operations in Liberia.
 - e Where the bidder is a consortium, proof that:
 - i None of the members is disqualified under this Act;
 - ii Members of the consortium have bound themselves to assume joint and several liabilities for the private sector party's obligations under the concession agreement or in the alternative that a member(s) of the consortium has consented to bear the risk of the other(s) and that a copy of the document evidencing same has been deposited with the entity.
 - iii **Authenticity of the claims of technical and financial capability made by the bidder**
3. The Concession Entity may, if appropriate engage independent experts to carry out the due diligence.
4. In all cases the due diligence must be concluded before the concession's contract comes into force.

The due diligence process presented very clear and objective findings. The committee was forthright about its limitations, and by extension the limitations of the scrutiny that each company was subjected to. For example, where they were unable to verify claims of financial and technical capacity they illustrated clearly why that was not possible and presented their findings recommending that additional information and background checks were necessary. In an environment where many private-sector actors are often dilatory in following established rules, this recommendation was critical. Table 4 summarises the findings of the due diligence process on each company.

Table 4: Summary of findings⁶¹

		Capacity to enter contract	Authenticity of documents and fulfilment of laws	Technical capacity – equipment	Technical capacity – personnel	Technical capacity – value added processing	Financial capacity – access to capital
PPC Act Provisions		116(2)(a)	116(2)(b) & (c)	116(2)(f)	116(2)	116(2)(f)*	116(2)f
FMC AREA – A	Alpha Logging	Not demonstrated	Not demonstrated	Not demonstrated	Partially demonstrated	Not demonstrated	Not demonstrated
	Bopolu	Yes	Not demonstrated	Not demonstrated	Not demonstrated	Not demonstrated	Not demonstrated
	EcoTimbers	Yes	Not demonstrated	Not demonstrated	Not demonstrated	Not demonstrated	Not demonstrated
	Global Wood	Yes	Not demonstrated	Partially demonstrated	Partially demonstrated	Partially demonstrated	Not demonstrated
	ICC	Not demonstrated	Not demonstrated	Not demonstrated	Not demonstrated	Not demonstrated	Not demonstrated
	Lib. Natural Resources	Yes	Not demonstrated	Not demonstrated	Not demonstrated	Yes	Not demonstrated
	TREE	Yes	Not demonstrated	Partially demonstrated	Not demonstrated	Not demonstrated	Not demonstrated
FMC – B	EJ & J	Yes	Not demonstrated	Not determined	Yes	Not demonstrated	Not demonstrated
	Kparlee Timber	Yes	Not demonstrated	Not demonstrated	Not demonstrated	Not demonstrated	Not demonstrated
	LTTC	Not demonstrated	Not demonstrated	Not demonstrated	Yes	Not demonstrated	Not demonstrated
* This provision took into account FDA regulation 103-07(45)							

At the time of this due diligence check, none of the companies could prove they were qualified to be awarded a concession. But because the FDA and IMCC were determined to award the three concessions, they commissioned a second due diligence process to focus on the provisional winners in the FMC category. The second due diligence report was submitted 26 August 2009. The only significant change was that Alpha entered into an agreement with its majority shareholder, Woodman, whereby Woodman obligated to supply US\$70 million to Alpha but failed to provide convincing documentation. However, the due diligence team decided that the company was able to provide the minimum US\$15 million needed to start a viable operation.

The following issues remained unresolved.

FDA: the bids were announced without a Certificate of Concession or a Concession Plan.

Alpha Logging did not have a valid prequalification certificate and was therefore ineligible to participate in the bid. There were significant changes in ownership of the company. 60% of the shares held by Eagon were sold to Woodman Sdn Bdh between prequalification and the bidding process. The due diligence process was unable to establish the full identity of the new majority shareholders.

EJ & J had virtually no capital, i.e. no equipment and cash of less than US\$0.01 million. The purported loan from Taakor was not backed by a legally binding agreement for the said loan.

LTTC did not have a valid prequalification certificate and was therefore ineligible to participate in the bid. The company sold 49% of its shares to EcoTimbers Liberia Ltd and was still in

61 Due diligence report dated July 10, 2008

forestry-related tax arrears. LTTC could not demonstrate access to sufficient capital but had entered into an arrangement with another company whereby they would then provide some backing.

In response to the concerns about lack of capital and equipment, the FDA argued the companies could not mobilise capital until they had won the contract, and it was unfortunate that they did not have a clear plan of action in the event of winning. The FDA appeared like lobbyists on behalf of these companies, when they argued that insufficient capital doesn't mean they can't fulfil their obligations, and as part of the chain of custody they can't harvest timber without paying taxes.⁶²

In addition to the irregularities in the prequalification and bidding processes, the due diligence processes conducted on the companies were largely ignored. The concession allocation for all three FMCs did not conform to the forestry law, regulations or the PPCC Act.

But that was not the end of the intrigues that characterised the process. The draft agreement with the three companies required an annual land rental payment for the entire 25-year duration of the contracts. The payment terms were clandestinely changed from an annual payment to a one-off single-year payment.⁶³ This meant that the land rental payment for the remaining 24 years would be written off, which would have amounted to more than US\$49 million being waived by the government. Fortunately, this change was noticed in time and after being publicised the payment terms were adjusted back to the 25-year annual payment. To date the person who made this change to the draft has not been identified and there is no report of anyone being held accountable for the change at the FDA. Alfred Kotio, the author of the memo instructing the logging companies to make a one-off single-year payment, remains in his post as National Authorizing Officer/Contracts; we are not aware that he has been reprimanded for this. The least the FDA could do is to investigate from where he got his instructions to send this memo to the logging companies.

There were suggestions that logging companies had complained about this to President Sirleaf and that she had promised to intervene in the matter. But more revealing is the fact that when the companies participating in the bids for the second round of FMCs were offered the option of a one-off payment versus a 25-year annual payment, none took the one-off option.

Why due diligence?

As noted above, the due diligence process is intended to ensure that information provided by the bidder is accurate and the information and documents presented are accurate and authentic. It also ensures that bidders have the required financial and technical capacity to implement the contracts for which they are bidding. The failure of the FDA to act on the due diligence reports in the case of the three FMCs and the TSCs allocated earlier during the year was a major error of judgement. The outcomes provide compelling justifications for a thorough due diligence process during the allocation of concessions. Inviting companies with limited

⁶² FDA Press Release, 9th September 2008

⁶³ Circular Memorandum #001 from Alfred F. Kotio dated October 8, 2008

or non-existent financial resources into the timber industry has far-reaching implications for the overall Poverty Reduction Strategy, communities' benefits from timber operations and the overall economic development of Liberia. In addition to fulfilling the legal requirements, the examples below further illustrate the importance of the due diligence processes that were conducted.

First, three deadlines for the area and land rental fees, amounting to more than US\$2.4 million, passed without payment from three companies: EJ & J, Alpha Logging and LTTC. The deadlines were 21 August, 1 September and 21 October 2009. At the time of writing, none of the companies have been penalised for failing to pay their taxes in time. This directly impacts local communities as they are entitled to 30% of the land rental payment under the forestry law.

Second, five TSCs were awarded to B & V and Tarpah Timber (2008) even though they had no finances of their own. These contracts were based on assurances from TREE, another logging company, that it would finance their operations. TREE also submitted bid for FMC A.

During the due diligence process conducted on 21 April 2008, TREE claimed it had an agreement with Tropical Africa Business to provide US\$1 million in equipment and spare parts.⁶⁴ It also claimed to have an agreement with a Chinese investor, Ningbo Jujin Investment, to provide US\$2.5 million to support TREE's operation.⁶⁵ However, the company failed to substantiate these claims to the satisfaction of the team conducting the due diligence check. The team pointed out several flaws in these purported agreements.

But what they were unaware of was that on 10 January 2008 TREE had received US\$350,000 from Ningbo as payment for round logs. This agreement for the supply of these round logs was entered into at a time that TREE had no logging concession. Second Ningbo and Tropical Africa Business appear to be linked. By April the two companies were already in discussion to cancel the Logging Investment Agreement while TREE was still presenting it as evidence of their technical and financial capacity. These discussions culminated in the cancellation of the Logging Investment Agreement between Ningbo and TREE on 20 May 2008.⁶⁶ Tropical Africa Business was also a party to this cancellation. TREE had no agreement with these investors at the time the report was concluded in August 2008.

A copy of the cancellation memo between Ningbo and TREE is presented on the next page.

64 Due Diligence report dated August 26, 2008

65 Ibid

66 Cancellation agreement between TREE and Ningbo dated May 20, 2008

REPUBLIC OF LIBERIA)
MONTSERRADO COUNTY)

CANCELLATION OF LOGGING INVESTMENT AGREEMENT

THIS CANCELLATION OF LOGGING INVESTMENT AGREEMENT is made and entered into this 20th day of May A.D. 2008 by and between Tropical Reserves Entrepreneurial Enterprises (TREE) of the City of Monrovia, Liberia hereinafter known and referred to as LOGGER represented by its Chairman of the Board of Directors, Peter Amos George, Jr. and Ningbo Jujin Investment Co. Ltd. of Ningbo, The People's Republic of China by and thru its Chairman of the Board of Directors, Zhang Chang Shan and as represented by Tropical Africa Business (TAB) by and thru its CEO, Shou Dong Song also of the City of Ningbo, The People's Republic of China hereinafter known and referred to as Investor hereby:-

WITNESSETH:

ARTICLE I:

THAT BOTH LOGGER AND INVESTOR have met, discussed and mutually agreed to waive all their rights relevant to ARTICLE XIX under the title ARBITRATION in a Logging Investment Agreement entered into on the 10th day of January A.D. 2008;

ARTICLE II:

THAT INVESTOR BEING UNWILLING to continue to with the contractual agreement has demanded to pull out of the Investment and retrieve it's initial investment fund in the amount of US\$350,000.00 (Three Hundred Fifty Thousand USD) a portion of the original stipulated amount of US\$500,000.00;

ARTICLE III:

THAT LOGGER BEING WILLING TO refund the initial investment capital to Investor has agreed to a tentative timetable of by or before July 15, 2008 A.D.: the remittance to be made to the Account of Ningbo Jujin Investment Co. Ltd.

ARTICLE IV:

THAT BOTH LOGGER AND INVESTOR have understood and agreed that by this action on the part of Investor, NO further obligation shall be met by both parties.

ARTICLE V:

UPON THE SIGNING of this Cancellation of Logging Investment Agreement, this agreement shall remain binding on the parties, their heirs, assigns, legal representatives, successors in office etc.

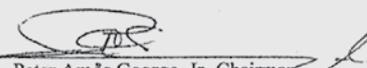
Done this 20th Day of May A.D. 2008 in the City of Paynesville, Liberia

Witness



Signed:


Zhang Chang Shan – Chairman
Ningbo Jujin Investment Co. Ltd.


Peter Amos George, Jr.-Chairman
Tropical Reserves Entrep. Ent.

In February 2009 Ningbo took TREE to court to make full payment of U\$798,336 representing the amount paid for the round logs plus interest.⁶⁷ The court ruled in Ningbo's favour on 4 June 2009.⁶⁸ In March 2009 another debtor, VAPCO (Liberia) Inc, took TREE to court demanding U\$149,000 as repayment of loan plus interests.⁶⁹ This marked the beginning of TREE's demise. TREE collapsed and with it financial support for Tarpeh Timber and B & V vanished. Tarpeh Timber has suspended operation and is looking for funding from other sources.

Another company, LTTC, had no money of its own but was awarded a contract based on assurances that EcoTimbers would support them. However, this agreement was deemed unenforceable by the government since the government was not a party to it. In spite of this advice, the FDA proceeded to award the contract to LTTC. No sooner had the company started its pre-felling activities than EcoTimbers pulled out of the arrangement. EcoTimbers took its equipment from the concession area and withdrew its forestry expert. LTTC suspended operations and have since been unable to return to the area. As at the time of writing this report, the company was heavily in arrears to the government.

The lack of financial capacity is not the only the issue at stake here; there are other concerns about the character of those entering the sector through the back door. The failure of the government to follow the rules with respect to prequalification requirements and the recommendations of the due diligence process created the opportunity for this to happen.

For example, Alpha Logging and Atlantic Resources are known to have links with Samling Global. Both companies are entirely dependent on one of the world's most notorious logging companies for financing. Many subsidiaries of Samling Global have long track records of extremely bad forestry operations in many countries, and Samling itself is the subject of widespread criticism. The company has come under fire for abusing community rights in Sarawak where they are logging the last remaining primary forest, while one of its subsidiaries, Barama, lost its FSC certificate over violations committed in Guyana.⁷⁰ Another company, ICC, is also of concern given the questionable character of some of its key players and the manner in which it violated and manipulated the bidding process. ICC literally sold out, transferring 92.5% of its shares,⁷¹ to unknown actors on the eve of submitting bid for the contract it eventually won. There is very little information about the group that has taken over the company.

By entering into and ratifying these contracts, the FDA, the president and the legislature took unnecessary risks that threaten their individual and collective legacies. The failure of the FDA to use the findings of the due diligence process has created an uncertain future for communities that have signed social agreements with the logging companies, some under pressure from the FDA.

67 Action of Debt filed by Ningbo Jujin on 18th February 2009

68 See Annex x for Court's Ruling on the matter

69 Action of Debt filed by VAPCO on 6th March 2009

70 Global Witness Letter to FDA Board of Directors dated July 15, 2009

71 Final due diligence report, June x, 2009

Failing concessions: communities' 30% share of logging revenue under threat

The total land rental and area fees for the timber industry amount to some US\$15,707,186. Communities are entitled to 30% of this amount, or approximately US\$5million. Approximately US\$5 million has been allotted to the fifteen counties of Liberia in the NFRL 2006. That these monies will be fully paid to the beneficiary communities and counties is unlikely. Some contract holders have started lobbying for a 20% or approximately US\$3m discount on their annual land rental fee.⁷² If granted, this could add up to approximately US\$75million over the 25 years duration of the current seven FMCs or cost communities approximately US\$25 million over the same period.

Expectations are unreasonably high within the government. For example, the government forecast of timber related revenue in the Poverty Reduction Strategy is unrealistically high. The total revenue was projected to reach US\$36 million this fiscal year 2009/10, and to peak at US\$46 million in 2010/11.⁷³ The industry is also expected to create at least 5,000 jobs in rural Liberia. The FDA and World Bank in large measure share responsibility for these baseless projections. These projections and the associated expectations were some of the main drivers behind the illegal and flawed decisions that have characterised the implementation of agreed reform measures. These projections are largely responsible for the government's relentless effort to restart the failed industrial logging industry, disregarding Liberia's own experience with this model.

Local communities, on the other hand, find themselves in a difficult position. With their political leaders and elected officials standing alongside the logging companies, and promising them jobs and a share of the millions to be generated from the industry, they had no choice but to comply. To drive the message home some timber companies showed up with incentives of fat cows and social agreements drafted by the FDA without any consultation with communities. The cows, together with cartons of cheap local beverages and bags of rice, were apparently enough for them to seal their own deals with the timber companies, even though some did so under protest.

As a result of this, expectations in forest communities are high. It is very unlikely that those expectations will be met. The consequences of failure are difficult to predict, but there are likely to be tensions when timber companies start harvesting without meeting their social

⁷² FDA, Liberian Forestry Brief, No. 3, September 2009

⁷³ Poverty Reduction Strategy, 2008

obligations and the government is unable to release their expected 30%.

Table 5 illustrates the scale of the problem; most companies have failed to meet their fiscal obligations. These figures are based on official invoices issued to the companies and independent assessment of their financial obligations based on the terms of their contracts. The government needs to reassess its decisions to allocate these contracts knowing that the majority of these companies did not have the financial resources of their own.

Table 5: Fiscal obligations of logging companies to the people of Liberia

Company	Contract area	Size (ha)	Financial obligations: taxes and due dates (all amounts in USD)					
			Admin	Bid Fees	Area Fees	Total due	Paid	Balance
Alpha Log.	A	119,240	2,000	2,396,724	596,200	2,994,924	1,497,462	1,497,462
E J & J	B	57,262	2,000	579,490	286,310	867,800	216,959	650,841
LITC	C	59,374	2,000	1,139,980	296,870	1,436,850	148,415	1,290,435
ICC	K	266,910	1,000	2,815,900	667,275	3,484,175	0	3,484,175
Euro Liberia	F	253,670	1,000	2,600,117	634,175	3,235,292	0	3,235,292
Geeblo	I	131,466	1,000	1,413,259	328,665	1,742,924	0	1,742,924
Atlantic	P	119,344	1,000	1,062,161	298,360	1,361,521	1,361,521	0
Totals FMCs		1,007,266	10,000	12,007,631	3,107,855	15,123,486	3,224,357	11,901,129
TTC	A-2	5,000	2,000	50,000	12,500	64,500	64,500	0
B & V	A-9	5,000	2,000	200,000	12,500	214,500	18,750	195,750
Bargor & B	A-7	5,000	2,000	19,100	12,500	33,600	6,250	27,350
B & V	A-6	5,000	2,000	200,000	12,500	214,500	-	214,500
B & V	A-10	5,000	2,000	60,100	12,500	74,600	-	74,600
Totals TSCs		25,000	10,000	529,200	62,500	601,700	89,500	512,200
Grand totals						15,725,186	3,313,857	12,413,329

NB: This table includes only the contract administration, land rental and area fees. It does not include any other fees or taxes. The fees for the TSC and FMC holders who got their contracts in 2008 are multiplied by two, i.e. their next payments are already overdue

FDA undermining the rule of law and accountability: the case of Tarpeh Timber

Tarpeh Timber Corporation was the first timber company to begin work in the formal logging sector after the UN timber sanction was lifted in 2006. The company was also the first to have their products entered into the Chain of Custody system in Liberia. Disappointingly, the company started harvesting in early 2009 in violation of the forestry law and regulations, and the environmental laws of Liberia. According to the forestry law,⁷⁴ regulations⁷⁵ and environmental law,⁷⁶ no logging may be carried out by a TSC or FMC holder without an Environmental Impacts Assessment (EIA) certificate from the Environmental Protection Agency (EPA) of Liberia.

Tarpeh Timber was fully aware of this requirement. The company was also reminded that under no condition should they harvest timber without completing the EIA process.⁷⁷ The company discussed the EPA Act lengthily in its modified draft EIA report submitted to the EPA on 10 February 2009. In total disregard of the law, however, the FDA granted Tarpeh Timber a Harvesting Certificate even though they had not met the major pre-felling requirements under FDA regulations, the National Forestry Reform Law and Liberia's environmental law.

Following a rapid fact-finding mission by the Sustainable Development Institute, Green Advocates and a representative of the local Community Forestry Development Committee, to Tarpeh Timber contract area on 1 March 2009, the two NGOs issued a press release and exposed Tarpeh Timber for illegal harvesting logs without an EIA certificate. The EPA then organised its own investigation and confirmed that the company had indeed violated the law. Surprisingly, the FDA publicly defended Tarpeh Timber arguing that the EPA was delaying the issuance of the EIA certificate and holding the Liberian economy to ransom.

The FDA's action can be looked at from two different angles. Not only did they defend a company breaking the law, the FDA itself had also broken the law. The EPA Act states: 'A licensing or permitting agency or authority under any law in force in Liberia shall not issue a license for any project for which an environmental impact assessment is required under the Act, unless the applicant produces to the licensing agency or authority an environmental impact assessment license or permit issued under this Act and the regulation made there under.'⁷⁸ Punitive measures could include contract cancellation, jail or a fine.

74 National Forestry Reform Law, Section 5.3.(b)(iv)

75 FDA Regulation 105-07, Sections 24 & 41

76 Environmental Protection and Management Law, Sections 14 to 23

77 Letter dated January 22, 2009 from the EPA to Tarpeh Timber Corporation

78 EPA Act, Sections 37(3)

A major concern is that these logs were also entered into the Chain of Custody, which means that these illegally harvested logs were being effectively laundered as legal timber until the SDI and Green Advocates blew the whistle.

But not only did the company start extracting timber without an EIA permit: some of the logs were extracted outside of its concession. The company extracted about 100 ekki logs outside of its concession.⁷⁹ The UN panel, citing ITTO market prices at the time, put the value of the logs at approximately US\$100,000.⁸⁰

Harvesting timber outside the concession boundaries is a very common example of illegal logging and is used by most logging companies to steal high-value timber from areas outside their concessions or engage in overharvesting, thus leading to the rapid depletion of high-value timber stocks in the forest. Given the serious and common nature of this crime, the FDA is required by Regulation 109-07 to refer illegal activities that result in damage to forest resources valued at US \$10,000 or above to the Ministry of Justice for prosecution.⁸¹ Accordingly, because Tarpeh Timber caused approximately US \$100,000 in 'damage to Forest Resources', the FDA is obliged to refer the violation to the Ministry of Justice. But instead of following the legal requirements, the FDA imposed a fine of just US\$2,000.⁸² The fact that this was unlawful was brought to the attention of the FDA and later the Ministry, but both agencies chose not to act and correct the situation. This was the third violation of the forestry law and regulations and the EPA Act, relative to Tarpeh Timber, in which the FDA was knowingly complicit.

▼ **Gargar Town is one of the few villages that are supposed to benefit from Tarpeh Timber's operations. Will these benefits be delivered as promised?**



79 Report of the UN Panel of Experts on Liberia, 5th June 2009 (S/2009/290)

80 Ibid

81 FDA Regulation 109-07, Section 22, 41(c)

82 Report of UN Panel of Experts on Liberia, 5th June 2009, (S/2009/290)

Transparency and public access to information

The NFRL 2006 is very clear and unambiguous about the right of the public to forest-related information. Section 18.15 of the law states: 'The Authority shall grant and facilitate free public access to read and to copy all documents and other information in its possession, including all audits, all Forest Resources License fee invoices and fee payment information, business and forest management plans, strategies, resolutions from the Board of Directors, public comments, reports, inventories, regulations, manuals, databases, contract maps, and contract.' This provision is intended to ensure that there is no misunderstanding or misinterpretation of its intent. It is further reinforced in various regulations, especially the regulation on the Chain of Custody which clearly allows for independent forest monitoring by civil society, communities and other third parties.

The transparency requirements in the law and regulations are perhaps the most progressive provisions in the entire forest legal framework. In spite of these clear provisions in the law FDA has sought time and again to restrict civil society access to information by selectively responding to requests for information. Additionally, without any legal or justifiable reason it has sought to restrict the use of information requested by imposing arbitrary restrictions on those it decides not to release. In addition to the forest sector legal framework the Liberia Extractive Industries Transparency Initiative (LEITI) Act provides for full disclosure of all contracts and concession agreements in the extractive industries, including forestry. A stated objective of the act is 'to promote the public disclosure of contracts and concessions bearing relationship with the extraction of forest and mineral resources.'⁸³

Most existing forest-related information is produced and held by the FDA and should be regularly uploaded to their website because it legally constitutes public information. Unfortunately this is not being done, and the FDA continues to deny public access to some of these documents. The decision to restrict or deny public access to these documents is difficult to comprehend, especially when one takes into account the content of those documents. For example, the FDA has awarded at least thirteen logging contracts, seven FMCs and six TSCs to date. All logging contracts are public documents and there is absolutely no legal justification for denying or restricting access to them. Additionally, LEITI has already taken steps to acquire some of these contracts and to host them online while the FDA, the agency that holds the information, continues to deny public access by refusing to give out copies and failing to publish them on their website.

83 LEITI Act, Section 3.1e

The SDI regularly requests information from the FDA and the Chain of Custody management entity. These requests are in line with the rights of civil society to access forest-related information as provided for in section 18.15 of the forestry law, the LEITI Act and other forestry regulations. But most importantly these requests have been sought with the sole objective of promoting sustainable forest management by using credible and official information to demand accountability and more effective law enforcement. The SDI also redistributes the information to the public using its cost-free newsletter to raise public awareness of developments in the sector. While the agency has responded positively to some of the SDI's requests for information, it has disproportionately refused to honour similar requests for other information. Other NGOs, including Green Advocates and Liberia Democratic Institute (LDI), have all been subject to these restrictions at some point.

NGOs are not alone in being subject to these arbitrary and selective denials. For more than a year a request for information⁸⁴ by the people of Bokomu and Gou-Nwolaila Districts through their Joint Forest and Resource Management Committee was denied. Not only was this a violation of their rights to the requested information: it was an unacceptable disrespect if not insult from the FDA. The committee had requested documentary evidence showing that FDA had followed due process when they allocated two TSCs and one FMC on their private land. To verify FDA claims that it had followed the process, the committee asked for minutes of the meetings FDA held with their communities during the validation process, the written consent from their communities and the maps of the areas targeted for these contracts.

The FDA then requested the committee to provide CDs to enable them put all the requested data onto them. The committee provided the CDs but did not receive the data or their CDs back. Under pressure, the committee and the community later dropped their request for documents and withdrew their protest against the allocation of the contracts on their land.

This is particularly worrying considering Liberia's past experiences. The lack of transparency in the sector and restrictions on information from the FDA provided a cover for the FDA and logging companies to collude and deny Liberia more than US\$64 million in taxes. With the recurring trend of logging companies delaying payments of their taxes and instead seeking ways of avoiding those taxes it is high time that the FDA and SGS, the Chain of Custody manager, work to proactively provide information related to logging companies compliance with tax obligations to the public.

84 Letter dated April 19, 2008 from the JFRMC to FDA

Attacks on civil society and the spread of misinformation about critics

Civil society actors in Liberia are struggling to keep pace with developments in the sector and to monitor and report on issues of concern. These include violations of the law, failures in control systems, threats to the rights and interests of communities and overall forest governance, with a particular emphasis on provisions in the law dealing with transparency and public access to information, public participation and community rights. All of this requires vigilance and tenacity on the part of civil society.

Fulfilling this obligation without fear has challenged relations between the FDA on the one hand and some civil society actors on the other. In fact the FDA publicly interprets vigorous pursuit of these rights as anti development and anti logging stance. In other instances the agency has labelled NGOs and UN experts raising these concerns as saboteurs of the Poverty Reduction Strategy (PRS). In a statement issued to the press in July 2008, the FDA claimed that the NGO coalition, by criticising the agency, aimed to halt all commercial logging, foment community discontent and profit from consultancies.⁸⁵ In that same statement the FDA also falsely claimed that 'the NGO coalition was the leading stakeholder in the prequalification, bid evaluation, and contract negotiation and cast the deciding vote in most cases.'⁸⁶ As stated earlier the SDI, representing the NGO coalition, participated in the first prequalification process and presented a critique of the process with the expectation that the recommendations would be used to improve the process. It is however not true that the SDI or another representative of the NGO coalition was involved in the contract negotiation process or casted a deciding vote during contract negotiation.

In an attempt to silence critics, in January 2009 the FDA circulated draft guidelines seeking to restrict the activities of NGOs to those approved by the agency. The guidelines stated: 'Forestry-Related Partners must fully consult and seek the approval and collaboration of the Forestry Development Authority... in the formulation of its project'⁸⁷. The SDI rejected these guidelines and considered them a blatant attempt to silence the organisation. Widespread criticism of and opposition to the guidelines led to their being dropped. But the FDA instead introduced what can be described as an unwritten policy of selective enmity targeting the SDI and others.

85 FDA Press Release, 9th September 2008

86 Ibid (FDA press release)

87 FDA Draft Policy Guidelines for NGOs issued in January 2009

But the worst and most unacceptable reaction came from an unlikely source, a senior World Bank official who directly accused the SDI of undermining peace and security in Liberia by insisting on full implementation of the law. In his words, insisting on full implementation of the law stalls resumption of logging and by extension undermines the Poverty Reduction Strategy, and national peace and security.⁸⁸ These remarks are a clear demonstration of the double standards some World Bank officials apply when dealing with governance and rule of law issues, i.e. favoured regimes need not be criticised even if their performance leaves stakeholders wanting. They are also a manifestation of the resentment that FDA technicians and some of their staunch allies, including the World Bank Forestry Advisor, against those demanding good governance in the forestry sector, even though they claim they want to institutionalise good governance in the sector.

- ▼ Although mostly degraded, the forest in Compound 1, Grand Bassa is the main source of livelihood for people in the area.



88 Remarks by Peter Lowe, World Bank Forestry Advisor to the FDA, at an LFI Retreat on 1st September 2009 in Monrovia

Conclusions

A number of issues need to be emphasised and clarified for stakeholders to properly understand the scope of the problem in the forest sector.

First, there is clearly no political will in the government to rein in logging companies or to insist on transparency, accountability and rule of law. From the FDA through to the Office of the President, and on to the national legislature, the forestry law and regulations as well as the PPCC Act were violated. The systems and structures designed to ensure checks and balances all crumbled under pressure from politicians. The pressure was apparently a result of influence from business interests and unrealistic expectations about the potential of the logging industry within the government. Where these pressures and interference strayed into illegal actions, none of those with oversight responsibility, took sufficient steps to correct the violations that occurred or held those responsible to account.

We are convinced that without political will in the current government logging will not be properly regulated, sustainability requirements will be discarded and community rights will be violated with impunity; and all of this will be for nothing because the expected revenue and jobs might not materialise.

Second, the widespread illegalities that occurred during the contract allocation processes are clear and worrying signs of what lies ahead. But more worrying is the apparent diminishing desire within the FDA to implement the laws that are in place to protect the economic, social and environment interests of Liberia. Most of the logging companies and FDA managers have demonstrated disdain for stakeholders insisting on rule of law, transparency and accountability. With the industry now moving into operation, it is difficult to see how and when the FDA can become the regulator and enforcement agency it is supposed to be.

Third, the widespread system failure documented in this report shows that the FDA lacks the capacity and is unable to manage the nation's forests and properly regulate commercial logging. It is therefore difficult to see how, in the absence of a radical re-engineering of the entire FDA and strengthening of the systems and structures in place to regulate the commercial logging industry, the FDA can function properly. Sadly, if the current capacity constraints facing the FDA are not sufficiently addressed, Liberia could be heading for disaster. For example, one could easily predict that logging companies will engage in widespread illegal activities and not be held accountable. The FDA has so far convincingly demonstrated that it lacks the

capacity that is necessary to rein in logging companies if they violate the law. If anything it has shown indulgence for those who violate the law.

Fourth, there is convincing evidence that large-scale logging operations, contrary to widespread expectations, neither alleviate poverty nor create secure and decent jobs for forest communities. In fact these operations have been found to exacerbate poverty in forest communities, and in other instances they have played direct role in financing state and non-state actors involved in violent conflicts. The World Bank is fully aware of this but has chosen to encourage the Liberian government to pursue this flawed forest management model.

Although there is an urgent need to address unemployment and rural poverty, it is also important to point out that what Liberia is witnessing is not new. Nothing has changed in the character of key industry actors, therefore expectations that the industry will now deliver appear to be unfounded.

Finally, for any future Voluntary Partnership Agreement (VPA) that may be agreed with the European Union (EU) to control illegal logging to be successful, there must be strong political will on the part of the EU and the Liberian government, as well as the active participation of civil society actors, including local communities. Without that, the VPA will be used simply to 'greenwash' illegal logs from Liberia. For example, without a robust legality assurance system European consumers will buy 'legally' produced timber that is in fact stolen from the people and produced at great cost to the environment and to local communities.

Therefore, the EU has a particular responsibility to ensure that its desire to improve forest governance and law enforcement is not abused by countries like Liberia. The fate of existing illegally acquired concessions must be addressed in these negotiations. If not addressed, the integrity of the VPA will be challenged from the start. Contrary to its goal, the VPA will thus provide a major opportunity for illegal logs extracted from illegally acquired concessions in Liberia to enter the European market.

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- ▼ After listening to promises from Alpha Logging and FDA, people of Gou Nwolaila District, Gbarpolu County, pray for the company to live up to its commitments (July 2009).



Annexes

Annex 1

Executive Order #1 on Forest Sector Reform

REPUBLIC OF LIBERIA
GOVERNMENT OF LIBERIA
EXECUTIVE ORDER ON FOREST SECTOR REFORM
NO. GOL/

Adopting the Recommendations and Report of the Forest Concession Review Committee and promoting transparency, benefit sharing, and public participation in forest and natural resource management in Liberia.

WHEREAS, The 1986 Constitution of the Republic of Liberia mandates that "[t]he Republic shall, consistent with the principles of individual freedom and social justice enshrined in this Constitution, manage the national economy and the natural resources of Liberia in such manner as shall ensure the maximum feasible participation of Liberian citizens under conditions of equality as to advance the general welfare of the Liberian people and the economic development of Liberia"; and

WHEREAS, under Chapter 6 of the 1986 Constitution of Liberia, the Executive power of the Republic is invested in the President who shall be Head of State and Commander in Chief of the Armed Forces of Liberia;

WHEREAS, the natural resources sector over the last two decades has been characterized by lack of: transparency, accountability, civil society participation (especially by non-governmental organizations and rural people), and equitable sharing of benefits generated by the industry; and

WHEREAS, several investigations and reports commissioned by civil society organizations and confirmed by the United Nations Panel on Liberia have confirmed that illicit trade in natural resources has fueled and prolonged the country's civil war; and

WHEREAS, from 2001 to the present and continuing, the United Nations Security Council has imposed and renewed an embargo on the diamond and timber sectors of Liberia and

instructed the Government of Liberia to carry out reforms in the forest and other resources sectors so their operations conform to internationally accepted standards and that revenue there from is used for the benefit of the Liberian people; and

WHEREAS, in conformity with the United Nations Security Council mandate, as well as with the policy of the Government of Liberia to ensure transparency and accountability in the management of the forest resources of the Republic of Liberia, the Chairman of the National Transitional Government of Liberia by letter dated July 7, 2004 appointed an 18 member Forest Concession Review Committee (Committee) composed of representatives “from a broad cross-section of government agencies, international agencies, and non-governmental organizations working in Liberia” to conduct a review and evaluate the legal status of all timber concessions.

WHEREAS, in the course of its comprehensive case-by-case review the Committee found multiple and massive instances of legal non-compliance and mismanagement. As a result, the Committee recommended that each and every existing forest concession be cancelled, and further recommended that an integrated set of forest sector reform measures be developed and instituted prior to allocating any future concessions; and

WHEREAS, the United Nations Security Council Resolution 1521 lifted the timber industry to an issue of National Emergency, which impinges on the national security and sovereignty of the Republic of Liberia and the destabilization of the West African sub-region; and WHEREAS, the United Nations Security Council Resolutions 1607 and 1647 request the implementation of the recommendations of the Forest Concession Review in their entirety; and

WHEREAS, the President is authorized under the New Executive Laws of the Republic of Liberia Chapter 3, section 3.4 (delegation of function) and Executive Law Chapter 10, section 10.5, (Regulation in general) to designate and empower the Head of Ministries or Agencies in the Executive Branch of Government or any official thereof, who is required to be appointed by and with the advice and consent of the Senate to perform such function which is vested in the President by statute or regulation; and

WHEREAS, in consideration of the above it has become imperative that the Government of Liberia adopt corrective measures to reform the forest and natural resources sectors and ensure independent monitoring and verification of the management of these sectors;

NOW, THEREFORE, the Government of Liberia hereby adopts and incorporates by reference the recommendations and findings of the Forest Concession Review Committee as contained in its Report of May 31, 2005 and orders the following corrective measures to institute reform of the natural resource sectors.

1. All executive agencies and departments are authorized and required to carry out the recommendations and findings of the Forest Concession Review Committee for actions and activities within their jurisdiction.
2. The President of the Republic of Liberia, the Chief Executive Officer and Commander in

Chief, based on the findings of the Concession Review Committee and the mandate of the United Nations Security Council, hereby declares all purported forest concessions null and void ab-initio – including ‘concession agreements,’ ‘management contracts,’ ‘non-concession operator permits,’ ‘forest management utilization contracts,’ and ‘salvage permits.’

3. The President of the Republic of Liberia, the Chief Executive Officer and Commander in Chief, hereby instructs the Ministry of Justice to issue individual letters informing all parties of the decision in paragraph 2.

4. The Forestry Development Authority is hereby mandated to grant or allocate future forest concessions only after it determines in writing that the measures for forest management reform outlined in Paragraphs 5 through 7, below, are fully instituted and implemented and the necessary legislation enacted and regulations passed under Paragraph 7 (k.), below.

5. The President of the Republic of Liberia, the Chief Executive Officer and Commander in Chief, hereby establishes a Committee (Forestry Reform Monitoring Committee) to be led by the Forestry Development Authority with the participation and assistance of the Liberia Forest Initiative, composed of Liberian and international representatives including international and local civil society, to monitor forest management reform.

6. The Committee is hereby charged with the responsibility of overseeing, monitoring, and verifying the formulation, development, and implementation of the measures prescribed as a condition precedent to the resumption of concession grants and allocations as per Paragraph 4, above, which would allow the resumption of timber harvesting in Liberia consistent with international standards and basic principles of accountability, transparency, and sustainability and as contained in the Public Procurement and Concession Act of 2005.

7. The measures to be monitored and verified by this Committee shall consist of the completion and implementation of all of the following actions by the FDA and other appropriate agencies of Government:

- a. Identify appropriate land areas for establishing a concession system based on land-use planning principles; and
- b. Establish an appropriate chain of custody system that tracks logging operations from the point of enumeration to export; and
- c. Work with the international community to define an appropriate tax system (based on international timber prices) and equitable sharing of the benefits with local communities and institute that system; and
- d. Revise the concession contract to reflect legal requirements and mandated procedures, including without limitation the changes in laws, regulations, chain of custody requirements, and taxation procedures prescribed by these interim measures or otherwise necessary for forest management reform; and
- e. Develop and implement a transparent forest concession allocation procedures based on the Public Procurement and Concession Act of 2005 and that will include a comprehensive debarment and suspension system that would include a debarment list of those who aided and abetted civil disturbances and a suspension list of those who defaulted on their financial obligations; and

- f. Establish procedures for investigating, crafting appropriate remedies, and taking legal action for financial and tax fraud, human rights abuses, economic sabotage, and violations of labor and other laws attendant upon misuse and mismanagement of the forest resources of Liberia; and
 - g. Elaborate an Environmental Impact Assessment process and implement it for future concession allocations; and
 - h. Advise on implementation of GEMAP in the FDA, by working with established Technical Team under the EGSC; and
 - i. Take measures to institutionalize the participation of communities and civil society in forest management in a transparent manner, including without limitation access to information, mandated public participation, and the right to bring citizens' suits to redress violations of law.
 - j. Conduct a comprehensive review of the forestry laws and regulations to identify on a priority basis what strengthening amendments and additions are needed to implement forest management reforms.
 - k. Propose legislation and pass regulations based on the review conducted under Paragraph 7 (j.), above.
8. All agencies and departments shall cooperate fully with the work of the Forestry Reform Monitoring Committee, including provision of technical assistance and access to information as may be requested.
9. In order to facilitate public access to information utilized or generated by the work of the Forestry Reform Monitoring Committee and on the management of the natural resources sector, all personnel of the government, including ministers, directors and the heads of public agencies and parastatals, technicians and management staff shall make available and affordable for public inspection and access, information relating to the entire chain of operations of the natural resources industry and shall follow up, act on, and respond in writing to citizens' complaints.
10. This Executive Order shall take effect on the day of February A.D., 2006.

GIVEN UNDER MY HAND AND SEAL
OF THE REPUBLIC OF LIBERIA, THIS
DAY OF, A.D. 2006

Ellen Johnson-Sirleaf
PRESIDENT REPUBLIC OF LIBERIA

Annex 2

Reform in Jeopardy: reflections on the forest sector reform process in Liberia A briefing from the NGO Coalition for Liberia

31 July 2008

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.¹ 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 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.

The FDA should:

1. 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.
2. 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.
3. Act on the recommendations of the FDA Prequalification Panel concerning the debarment of logging companies recommended by the 3rd Phase Forestry Concession

¹ 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.

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

4. Establish a publicly accessible database on all the companies that have applied for prequalification and clearly distinguish those that have prequalified and those that have failed to prequalify. The database should include details of ownership, shareholders, senior officials, and relevant history.
5. Publicly respond to the questions surrounding the reclassification and under calculation of the volume of abandoned logs sold to Unitimber. If there is evidence of wrongdoing by any of the FDA staff that was involved in the assessment of those abandoned logs they should be penalised.

The issues

1.0 Bid evaluation and due diligence reports

Two bid evaluations have been completed for nine contracts. The 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 alleged that many of these companies lied, during the prequalification 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 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.

2.0 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 Deed² to the FDA in 2007 and in March 2008 the FDA wrote the communities to confirm that it did not deny or dispute their

² Public Land Sale Deed for a total of 856,373 acres of land, dated 20th June A. D. 1956 and issued to the Chiefs, elders, and inhabitants of Bokomu and Gou Clan, Bokomu Chiefdom, Bopolu District (then a part of Lofa County)

ownership of the land.³ This treatment of the land rights of these 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.

3.0 Issues from phase 1 and phase 2 of the prequalification process

A number of issues have emerged from the first two phases of prequalification 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 logging companies and all their Significant Individuals⁴ 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 prequalification 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 reenter the sector. The arbitrary denial of individual companies is merely an interim measure agreed by the panel and cannot 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 prequalification process. In many instances clearances from the same agencies have been inconsistent, with differences in formats, signatories and offices (within the same agency), etc. There have also been credible allegations of favoritism in some of the ministries and agencies issuing clearances. All of this needs 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 prequalification and bid evaluation.

4.0 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.

3 FDA letter Ref: MD/92/07/19 dated July 5, 2007 under the signature of Hon. John T. Woods addressed to Rev. Emmanuel Kerkula, Committee Chairman, Gue/Nwolaila District

4 Significant Individuals as defined in the Regulation on Prequalification refers to Board Members, share holders (10%) and senior officials of a company 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.

More than eighty companies have applied for prequalification to engage in logging business in the country; of this amount about sixty have been prequalified. 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, shareholders, 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 organised, 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

5.0 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 notice. For example, for the Buchanan auction the bidders had only one full working day to prepare. The auction was announced on Thursday 27 December 2007 and conducted on Monday 31 December. 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.⁵ Although the export of the abandoned logs in question appears to be on hold, the FDA has not explained how these dubious decisions were taken in the first instance, or 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

5 Report of the UN Panel of Experts on Liberia of 12 June 2008 reference S/2008/371

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 scrutinised 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 law.

As we approach the summer (the dry season), the pressure to reopen the sector will intensify. It is therefore incumbent on the FDA to begin a process of nationwide sensitisation 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.

Annex 3

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

August 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; 6 October 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 continue trying to get these fees reduced, delay their payments or use the argument that they need tax breaks because of the current 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 25 years that

1 FDA Memo dated October 8, 2008 and signed by Alfred Kotio

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 27 May 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 society⁵, the UN Panel of Experts on Liberia⁶, and the FDA Due Diligence Committee⁷, that the companies submitting bids had questionable financial capacities, FDA insisted the companies would mobilize the needed capital. The FDA labeled the NGOs calling for caution ‘saboteurs’ and later the UN Panel Specialist on timber similarly after its December 2008 report was released.⁸

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

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.

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. 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 Report of the Due Diligence Committee, August 26, 2008

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 at the time it was not known where this company's capital came from. There was very little information about the company providing the finances, which raised questions about the reliability and integrity of the financier.¹²

All 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: but 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.

Is the FDA in contempt of the rule of law?

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 permit¹³ and logged outside its concession area.¹⁴ Both the Environmental Protection Agency (EPA) and the FDA imposed separate 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 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 offence that results in 'damage to Forest Resources or the Environment exceeding United States Dollars Ten Thousand (US\$10,000) in value' cannot be penalised 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

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

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)

15 Ibid

16 Ibid

17 FDA Regulation 109-07, Section 22, 41(c)

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

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 started 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 prequalified for a Forest Management Contract.¹⁹

On 24 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 Cllr. Peter Amos George, Jr. The newspaper 'The Monitor', in its edition of 3 August 2009, carried a story: 'Court chases Peter Amos George for over US\$274,853'.²¹ The paper reported that this was just one of several debt-related court cases against him.

But not only has TREE crashed; other companies it promised to finance, for example Tarpeh

19 Report of the Prequalification Evaluation Panel, January 4, 2008

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

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.

And this is not the only case. LTTC submitted bids for two FMCs in 2008. The majority shareholder at the time, Ricks Toweh, owed the Liberian government more than US \$100,000 at the time of the bid. During the due diligence check on the companies that submitted bids it was discovered that LTTC did not have the financial capacity to implement the two contracts. 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 capitalise its investment. They claimed that another logging company Tarkor Liberia Ltd., would finance their operation.²² In spite of their lack of capital, the 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, 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 TSCs 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 Targeh Timber Corporation, LTTC, EJ & J, and the other companies misled them?

New bidders

In light of these developments discussed above, common sense would warn against any more unnecessary risk-taking by the Liberian government. The newly released due diligence report provides sufficient reason why the Government should not award these four new large FMCs 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 worse 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 FMCs.

Annex 4

Circular Memorandum #001



REPUBLIC OF LIBERIA
FORESTRY DEVELOPMENT AUTHORITY (FDA)
 Kappa House
 Elise Saliby Compound
 P.O. Box 3010
 Monrovia, Liberia
 West Africa

Cell# (231)06564070

CIRCULAR MEMORANDUM # 001

TO: ALPHA LOGGING & WOOD PROCESSING, INC
 LIBERIA TREE & TRADING CORPORATION
 EJ&J INVESTMENT CORPORATION

FROM: Alfred F. Kotlo *AK*
 NATIONAL AUTHORIZING OFFICER/CONTRACTS

THRU: Jangar S. Kamara *JK*
 TM/COMMERCIAL FORESTRY

SUBJ: PRE-FELLING REQUIREMENTS

DATE: October 8, 2008

Management writes to remind you of the Provision in the contracts recently signed and the Ten Core Regulations relative to the pre-felling requirements which must be executed within the period of sixty (60) days that began as of the Contract signing date (October 6, 2008).

Additionally, the Government of Liberia (GOL) is in a dire need to commence commercial logging for the purpose of providing job opportunities for the many war ravaged Liberians and reduce poverty in the country.

To buttress this effort, the President of Liberia, Madam Ellen Johnson Sirleaf knowing the importance of the Forestry Sector, has issued **Executive Order # 13** that gives Duty Fee Privilege to all pre-qualified companies including Contracts holders for the period of one (1) year which ends on December 31, 2008

Against this backdrop, the following pre-felling requirements are to be executed on or before the 6th of December, 2008.

Annex 5

Court's Ruling against TREE

(REPUBLIC OF LIBERIA) IN THE DEBT COURT FOR MONTERRADO COUNTY
 (MONTERRADO COUNTY) SITTING IN ITS JUNE TERM A.D.....2009
 BEFORE HIS HONOR..JAMES E. JONESJUDGE, DEBT COURT
 NINGBO JUJIN INVESTMENT Ltd. MOVANT/PLAINTIFF vs. TROPICAL RESERVES
 ENTERPRENURIAL ENTERPRISES (TREES) RESPONDENT/DEFENDANT

COURT'S RULING ON MOTION FOR SUMMARY JUDGMENT

Plaintiff NINGBO JUGIN filed this Action of Debt against Defendant TREES on February 18, 2009, claiming the amount of US\$ 798,336.00 representing the principal plus interest of 10% and 20% agreed upon by the Defendant to pay to plaintiff following Defendant's default.

The said amount was given to Defendant by Plaintiff under a logging investment Agreement whereby the Defendant was to supply certain quantities of timbers and logs to the Plaintiffs within a certain time period which Defendant failed to do.

Plaintiff attached the following documents to its complaint: a receipt for US\$350,000.00, signed by Defendants Chairman Cllr. Peter Amos George dated 5 March 2008, a Cancellation of logging Investment Agreement dated 20 May 2008 wherein Defendant agreed to refund Plaintiff's money signed by Plaintiff's Chairman Zhang Chang Shan and Defendant's Chairman Peter Amos George Jr. Letter from Defendant's Chairman Peter Amos George Jr. to Plaintiff's Chairman Mr. Zhang Chang Shan dated 24 August 2008, by which Defendant **affirmed** and **confirmed** to Plaintiff that it would make the aforementioned refund to Plaintiff on or before 15 October 2008, and that should Defendant fail to make the said refund within the time specified, then Defendant would pay 10% interest on the initial amount up to the scheduled date, and an interest of 20% for each additional month of delay; another letter from Defendant's Chairman Peter Amos George Jr. to Cllr. Emmanuel B. James of Plaintiff's Legal Counsel dated 9 December 2008, in reply

to Plaintiff Counsel's letters of 01/12/08 and 05/12/08 and also referring to the outcome of a meeting held in the said Counsel's Office on 08/12/08, and containing a schedule for the refund by Defendant of Plaintiff's US\$353,000.00 as follows: January 25, 2009 ... US\$50,000.00, March 15, 2009 ... US\$50,000.00, May 5, 2009 US\$123,000.00, and June 30, 2009 ... US\$130,000.00 – a total of US\$353,000.00; another letter from Defendant's Chairman Peter Amos George Esq., to Cllr. Emmanuel B. James of Plaintiff's Counsel, acknowledging Plaintiff's response to Defendant's letter of 9/12/08, and expressing Defendant's inability to make an advance partial refund of US\$19,000.00 by 19 December since its logging operation had just commenced. Defendant concluded the said letter with a prayer that Plaintiff uphold Defendant's refund payment terms as was stated in Defendant's letter of 9 December 2008.

Plaintiff also attached to its Complaint four communications from Cllr. James to Defendant dated February 9, 2009, January 27, 2009, December 5, 2008, and December 5, 2008, all relating to Defendant's failure to meet its refund obligation to Plaintiff.

Defendant filed an Answer on 9 March 2009, which admitted the indebtedness to Plaintiff, but attempted to avoid present liability by alleging that Plaintiff premature withdrawal of support to Defendant brought about hardship to Defendant.

Defendant also alleged in count # 4 of its Answer that it only agreed to refund Plaintiff's money in order to keep its good reputation with another Chinese Investor but only after it commenced the sale of logs from one of its subsidiaries.

Upon Motion to Strike filed by Plaintiff on 17 March 2009, Defendant's Answer Was stricken from the records for lack of verification.

On 9 May 2009, Plaintiff filed this Motion for Summary Judgment, claiming that there is no genuine issue as to any material fact, and that Plaintiff is entitled to Judgment as a matter of law.

The Motion for Summary Judgment was (according to copy of the receipt made available to the court) received by Defendant's Security Director Myers S. Dorbor, on May 9, 2009, but Defendant has failed to file any Resistance thereto even though two notices of assignments have been served upon Defendant and returned served for the Disposition of this Motion.

On the day and date scheduled for the disposition of the Motion for Summary Judgment, neither Defendant nor its Counsel was present in Court even though the Notice of Assignment for the disposition of the said Motion was served and returned served.

At the call of the Case for disposition of the Motion and following notation of representation, Cllr. Emmanuel B. James of Counsel for Plaintiff moved Court to rule Defendant to Default on Motion, and grant Plaintiff's Motion for Summary Judgment, invoking section 10.7 of the Civil Procedure Law.

This Section says in its relevant portion that if a party fails to appear to oppose a motion, the motion shall be granted upon proof of service of the notice and motion papers.

The Notice of assignment for disposition of the motion on 10 June 2009 at 2pm Was served and returned served by the Sheriff of the Court, and the Motion Papers were received by Plaintiff's Director of Security according to copy of the Document receipt made available to the Court.

Notwithstanding the foregoing, the Court allowed Plaintiff to argue its side of the motion.

The question to be answered by the Court now, is whether or not Plaintiff is entitled to Summary Judgment as claimed?

Perusal of the evidence shows that the Defendant has never denied its indebtedness to Plaintiff. In fact defendant has always admitted its indebtedness

to plaintiff, but has always requested additional time to make payment even with volunteered Interest which interest Plaintiff has disregarded by omitting it from the motion for Summary Judgment. It was Defendant itself who communicated its own repayment schedule to Plaintiff by letter dated 9 December 2009 in which it offered to refund Plaintiff's money in January, March, May and June 2009 which Plaintiff which Plaintiff accepted, but which Defendant has failed to keep.

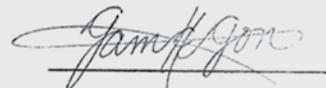
Defendant's contention that it was Plaintiff's untimely withdrawal of support which brought the financial hardship upon it, and that it (Defendant) was only to commence refund to Plaintiff when its subsidiary began harvesting logs have no evidential foundation in the record.

In consideration of the foregoing, this Court finds that there is no genuine issue of any material Fact to warrant the taking of evidence in this Case, and that the Plaintiff is entitled to Judgment as a matter of law.

WHEREFORE AND IN VIEW OF THE FOREGOING, the Motion for Summary Judgment is hereby granted, and Defendant is hereby adjudged liable to Plaintiff In the amount of US\$353,000.00 plus cost of these proceedings, *plus Interest.*

The Clerk of Court is hereby ordered to prepare the bill of cost and place the same in the hands of the Sheriff to be served on the Counsels of record to be taxed by them and thereafter approved by the Court for the payment of the full judgment sum. And it is hereby so ordered.

GIVEN UNDER MY HAND AND SEAL OF COURT THIS 24th DAY OF JUNE
A.D. 2009.



JAMES E. JONES

JUDGE

Sustainable Development Institute

January 2010

