

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

A briefing from the NGO Coalition for Liberia  
July 31, 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.<sup>1</sup> 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 Pre-qualification Panel concerning the debarment of logging companies recommended by the 3<sup>rd</sup> Phase Forestry Concession 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 pre-qualification and clearly distinguish those that have pre-

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<sup>1</sup> 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.

qualified and those that have failed to pre-qualify. 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 penalized.

## **The Issues**

### *1.0. Bid evaluation and due diligence reports*

Two bid evaluations have been completed for nine contracts. The Inter-Ministerial Concession Committee (IMCC) has already approved six Timber Sale Contracts; although verifiable reports about the findings of the due diligence on some of those companies raised several questions about the ability of these companies to perform. For example, some of these companies are either indebted to the Government, have not demonstrated that they have the capital to invest in the sector, do not have an experience in logging elsewhere or lack technical capacity. Additionally, some of the reports have alleged that many of these companies lied, during the pre-qualification process about the amount of money they had to invest in the sector. In one instance, it is reported that the winner of the bid was accepted based on a financial arrangement with a non-Liberian company. According to these reports, the company in question had entered into a memorandum of understanding under which the non-Liberian company would finance its operations. These are very grave allegations and if true bring into doubt the ability of these companies to perform.

The FDA should therefore make public the due diligence reports for the bids 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 Deed<sup>2</sup> to the FDA in 2007 and in March

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<sup>2</sup> Public Land Sale Deed for a total of 856,373 acres of land, dated 20<sup>th</sup> 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*)

2008 the FDA wrote the communities to confirm that it did not deny or dispute their ownership of the land<sup>3</sup>. 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 pre-qualification process*

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

Seventeen (17) logging companies and all their Significant Individuals<sup>4</sup> were recommended for debarment because they were found to have aided and abetted civil instability in Liberia. In spite of numerous reminders from other stakeholders the FDA has resisted establishing the debarment list. The FDA's own pre-qualification evaluation panel also recommended the establishment of the debarment list; again the FDA has chosen to ignore the panel's recommendation. The failure of the FDA to establish the debarment list leaves the industry open for groups such as the Oriental Timber Company (OTC) to reenter the sector. The arbitrary denial of individual companies is merely an interim measure agreed by the panel and can not be used as a substitute for the debarment list.

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

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<sup>3</sup> 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

<sup>4</sup> Significant Individuals as defined in the Regulation on Pre-qualification refers to Board Members, share holders (10%) and senior officials of a company

#### 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.

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

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

#### 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 notices. For example, for the Buchanan auction the bidders had only one working day to prepare. The auction was announced on Thursday December 27, 2007 and conducted on Monday December 31, 2007. Additionally, the volume on which the bid was based was understated by more than 6,000 cubic meters. Initially the FDA resisted charging stumpage fees as provided for FDA Regulation 107-07 and when it finally agreed to charge stumpage it reclassified the logs as a lesser grade thereby significantly reducing the tax accruing to the government.<sup>5</sup>

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

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

## **Conclusions**

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

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

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

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