

# **Will the Forest Sector Reform Make a Difference? *FDA Continues to Violate the National Forestry Reform Law with Impunity***

## **NGO Coalition for Liberia**

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### **Summary**

The publicized forest sector reform in Liberia is in near shambles. The Forestry Development Authority (FDA) continues to violate the National Forestry Reform Law of 2006 (NFRL 2006) and the Ten Core Regulations governing logging and other forestry operations in Liberia. Logging companies continue to flout the forestry law and regulations with impunity. The legislature and the Presidency have to date refused to publicly hold anyone accountable for the widespread violations of the forestry law and regulations. Additionally, a new legislative proposal, tabled in the House of Representatives, will giveaway more than USD200 million<sup>1</sup> to logging companies over the next two decades. This will cost impoverished forest dwellers at least USD 60 million, a significant portion of their share of timber revenue, over the same period.

This briefing paper raises questions about the legislative act that does not only seek to waive hundreds of millions of dollars in expected revenue but will reward logging companies for pillaging Liberia's forests. It presents a snap shot of recent violations of the law and regulations regarding the handling of logs illegally harvested by Tarpeh Timber Company (TTC) in 2008. TTC harvested 100 pieces of logs outside of its concession, and without permission in late 2008 and early 2009. Finally it exposes a key weakness in the Chain of Custody system; restricting its role to simply collecting tax dollars and not asking questions. On at least two separate occasions SGS/ LiberFor, the firm managing the Liberian Chain of Custody system, has enrolled timber harvested in violation of the law into the system.

These developments raise serious questions about whether the Government of Liberia is interested in addressing the problems of illegal logging or whether it is simply trying to *green-wash* illegal logs from Liberia by entering into a Voluntary Partnership Agreement (VPA) with the European Union. The European Commission leading the negotiation with the Government of Liberia should therefore ensure that it is convinced of the government's commitment to combating illegal logging, as reflected in its actions, and not merely in words or policy statements on paper.

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<sup>1</sup>This is a conservative estimate. The actual figures could be higher if all the companies that currently have contracts kept their contracts and paid their taxes over the entire lifespan of their contracts.

## **Giving away what you don't have**

A new legislative proposal that emerged in the Liberian House of Representatives two weeks ago seeks to waive the Land Rental Fees amounting to tens of millions of dollar annually to logging companies. The bill has just been passed by the House of Representatives and is before the House of Senate for concurrence. The Land Rental bid fees make up a substantial portion of the overall revenue intake from the forestry sector. Each logging company in its bid submission stated how much it could afford to pay annually as land rental for the contract area. When the contracts were negotiated, they again reconfirmed the amount they could afford to pay as land rental fee annually. During legislative hearings on their contract they boldly told legislators that they had the financial resources to capitalize their investments. No sooner had these contracts been ratified when the logging companies started stalling on paying their taxes. As at September 6, 2010 the seven largest logging companies operating owed a combined total of approximately USD 13,972,630<sup>2</sup> in taxes; some of them still owe taxes brought over from 2009.

Instead of demanding that logging companies fulfill their financial obligations, as enshrined in the law and their various contracts, the act will relieve them of their tax liabilities. The amount of money that would be lost is significant. More than that, communities hosting logging concessions are entitled to 30% of the Land Rental Fees they pay annually. The forestry law requires the government of Liberia to distribute fees collected as follows:

*“Thirty percent of land rental fees to communities entitled to benefit sharing under Forest Resources Licenses; thirty percent of land rental fees to Counties; and forty percent of land rental fees to the Ministry of Finance to hold as part of the general revenues of the Republic in accordance with Section 7 of the Reform Tax Code.”*<sup>3</sup>

Although it is the prerogative of the legislature to make, repeal or amend laws their actions must be in the best interest of the country. If this act becomes law, impoverished communities impacted by logging will have a substantial amount of their financial benefits taken away, before they had received the first dime. Furthermore, the justification for restarting industrial logging, with its dismal track record in Liberia and other parts of Africa would be brought into question.

## **Tarpeh Timber Company illegally harvested logs outside of its concessions**

Tarpeh Timber Company (TTC) felled 100 pieces of Ekki logs (*Lophira alata*) outside of her concession area (TSC-A-2)<sup>4</sup> in Grand Bassa County. This was a major violation of Section 22 of FDA Regulation 108, which states:

### ***(a) No person shall harvest Timber for commercial Use without –***

- 1. Being in full compliance with the terms of the Forest Resources License under which the harvesting activity is to occur;*

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<sup>2</sup>LiberFor Chain of Custody Financial Update, September 6, 2010

<sup>3</sup>Section 14.2e(ii) of the National Forestry Reform Law (2006)

<sup>4</sup>Midterm report of the UN Panel of Expert report on Liberia, S/2009/290 (5 June 2009)

2. *Entering the Timber in the Chain of Custody System using forms and means established under this Part; and*
3. *Marking the Timber and the stump with the identification assigned by the Authority through the Chain of Custody System.*

The estimated volume of the logs harvested was 500 cubic meters with an estimated market value of US\$100,000 based on the market value at the time.<sup>5</sup> The UN Panel also reported that FDA imposed a fine of US\$2,000 on the company for the violation.<sup>6</sup> Again the FDA fine of US\$2,000 violated FDA Regulation 109-07.

Section 41 of Regulation 109-07 states, “*The FDA may impose an administrative penalty for an offense, rather than referring the offense to the Ministry of Justice, if all of the following conditions are satisfied:*

- (a) The offense did not result in physical injury to any person;*
- (b) The offense did not significantly harm the interests of a local community;*
- (c) The offense did not result in damage to Forest Resources or the Environment exceeding United States Dollars Ten Thousand (US\$10,000) in value.*

Both of the violations cited above constitute serious breaches of the law, regulations, the contract and the Liberian Code of Harvesting Practices.

#### **SGS issues Request of Payment to TTC in violation of the law**

On June 3, 2009, SGS issued a Request of Payment to the Government of Liberia for logs harvested by TTC outside of its concession; TSC A2. The Request of Payment was based on an FDA Memorandum to SGS-LiberFor dated May 22, 2009; apparently authorizing SGS to enroll the illegally harvested logs into the Chain of Custody System. SGS-LiberFor went ahead and issued the Request of Payment even though it was aware that TTC had violated the law and regulations. This was the second time in less than six months that SGS-LiberFor by its poor judgment and actions had contributed to green-washing illegal logs harvested in the same area.

#### **NGO Coalition for Liberia writes a letter of complaint to the Ministry of Justice**

In September 2009 the NGO Coalition for Liberia wrote the Ministry of Justice through the Minister Cllr. Christine P. Tah reporting these violations and asking for an investigation into the matter. In October 2009 representatives of the NGO Coalition for Liberia visited the Justice Ministry and met with Cllr Wilkins Wright, Solicitor General (SG) of the Republic of Liberia (RL) to follow up on the issue. During that meeting Cllr. Wright informed the team that the Minister had asked him to sit on the matter. The Solicitor General (SG) promised to cite FDA, TTC and the NGO Coalition to a conference. The conference was never organized and no action was taken though the NGO coalition made series of follow ups.

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<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

## **FDA writes Societe Generale de Surveillance (SGS/Liberfor) and authorizes the logs to be enrolled into the Chain of Custody System**

On July 13, 2010 FDA wrote to SGS referencing a Payment Request Invoice issued on June 3, 2010 for “logs felled outside of the concession area (TSC A - 2) in violation and/or in contravention of chapter 11 sections 11.5 of the National Forest Reform Law of 2006”. The FDA letter further states that the “logs be placed into the chain of custody system in favor of TTC since they have met all the legal requirements in keeping with the 2006 law which will enable Messrs: Tarpeh Timber Company to dispose of the logs legally”<sup>7</sup>. The FDA does not state the legal basis for allowing TTC to take possession of the logs but rather refers to a Request for Payment that was at the time issued in violation of the law.

This Payment Request Invoice referenced in FDA’s letter is outdated, more than a year ago. The due date established in the Payment Request Invoice is also long overdue; again more than one year ago. The questions therefore are (1) what is the legal basis for the FDA releasing these logs to TTC? (2) Why is the FDA using an outdated Payment Request Invoice to justify the release of the logs to TTC? (3) Once SGS has issued a Payment Request Invoice, it is the responsibility of the company to make payment and present proof of payment directly to SGS, why is the FDA interfering with this system?

## **FDA disposes of abandoned logs in violation of the law and regulations**

The rationale the FDA provided for allowing the logs to be placed into the chain of custody is that all the legal requirements have been met by TTC. The procedure employed in giving TTC custody of the logs, which fits under the category of abandoned logs, violates the law. Section 11.5a of the NFRL 2006 provides that no Holder shall “...cut wood” on land not covered by Holder’s license; TTC harvested logs outside of its concession without permission.

For logs in a Communal Forest, Community Forest, or on deeded lands outside of any area covered by a valid Forest Resources License FDA has a responsibility to “*notify the community or deed holder, and the notified person may claim the logs, timber, or wood products...*”<sup>8</sup>

The second option is that FDA “...shall seize them”<sup>9</sup>. The FDA is also required to “...transport all seized logs, Timber or wood products to safe location and within 5 business working days, petition a court sitting in the county where the logs, timber or wood produce were seized to verify that they are abandoned and oversee their disposal by public auction”<sup>10</sup>

The winner of the public auction may take possession of the logs, timber, or wood product after presenting to the court proof of payment to the central bank of Liberia of the **auction price and, in the case of logs or timber, stumpage fee.**<sup>11</sup>

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<sup>7</sup>Ibid.

<sup>8</sup>FDA Regulation 108-07 Section 51 (c)(1)

<sup>9</sup>FDA Regulation 108-07 Section 51(d)

<sup>10</sup>FDA Regulation 108-07 Section 51(e)

<sup>11</sup> Regulation 108: Section 51(f)

Had FDA followed this provision of the law, the Government could have at the minimum generated US\$100,000, the estimated market value of the logs and the other fees including stumpage.

## **Conclusions**

The failure of the Government to act within the framework of the forestry legal framework undermines rule of law in the forest sector. The failure of the government to also levy the appropriate fines on TTC undermines its longstanding rationale for rapidly reopening the logging sector in spite of clear warnings to the contrary. But most importantly, it raises serious questions about the commitment of the government to combat illegal logging by strengthening law enforcement and supporting the rule of law.

In addition to these illegal activities, the legislative bill just passed by the House of Representatives will negatively affect government revenue. But more than this, the cost to forest communities will be unbearably high. They will lose their resources and will benefit very little, if they do benefit after all, from forest exploitation in Liberia.

According to Global Witness press release dated 6 September 2010 “This could cost Liberians US\$10.3 million a year in much needed revenue. In a clear conflict of interests”, Honorable Moses Y. Kollie, Representative of Lofa County, one of the lawmakers supporting the move, “holds 6% shares” in International Consultant Capital of FMC K and “stands to benefit financially”. The Ministry of Justice must immediately investigate this allegation which will indeed clarify the motive behind the move to waive hundreds of millions of dollars in expected revenue.

The Government of Liberia is currently negotiating a Voluntary Partnership Agreement (VPA) with the European Union. The EU and the Government of Liberia both claim that this is an effort aimed at improving governance, strengthening rule of law, maximizing benefits to Liberia and ensuring respect for the rights of communities. It is important that actions and statements do not contradict each other. The parties’ words should be matched by their actions. For example 1million hectares of forest was given out to logging concessionaires in violation of the forest sector legal framework, in spite of the negative publicity this generated within and outside of Liberia, companies continue to violate various provisions of the forestry laws and regulations with impunity, and now illegal logs from Liberia are now flowing once again in to the EU; all of this while negotiations continue.

These are troubling developments and the EC negotiators should now start to raise questions about them with their Liberian counterparts. It is important for these questions to be raised publicly so that the message is clear; once the VPA comes into force this type of conduct will not be permitted. The time is now and not later, when law enforcement has collapsed and current positive provisions in the legal framework have been reduced to nothing more than rhetoric.