

The Hunter's Whistle: *an opportunity for the Liberian Legislature to rescue our rural communities from the plunder of our forests, a renewal of illegal logging, failed promises of jobs and socio-economic development.*



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Executive Summary

In February 2009, the President presented three Forest Management Contracts (FMC), totaling 235, 876 hectares of forest, to the Liberian Legislature for ratification. This is in spite of overwhelming evidence of system failures, bad leadership at the FDA, illegal actions, and misguided decisions that characterized the processes leading to the issuance of these contracts. All of these have been possible because of a conflict of interest that is allowed under the forest law. The FDA serves as manager of the forest, facilitator and regulator of decision making processes related to the forest, which it interprets as an expansive discretionary authority. The UN Panel of Experts noted in their December 2008 Report that 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”*¹.

It is therefore not a surprise that Hon. Dickson Yarsiah of Gbarpolu County, sometimes refer to Hon. John T. Woods, Managing Director of the FDA, as the *“Prime Minister of the forest”*².

The decisions that will be made by the Legislature in the coming days will have lasting implications for the nation's forests. The Legislature can either approve these contracts, turning a blind eye to the potential negative consequences for the country's post-conflict recovery and poverty reduction efforts or reject the contracts and demand that the FDA get its act together. This will not only prevent the wholesale plunder of the forests, it will also send a clear signal to the FDA and the Executive that the days of business-as-usual are over.

Obviously these are difficult decisions. There is a strong argument for restarting large-scale logging operations. The need to address unemployment and poverty in rural areas is used as justification for this argument. We concede that these issues need to be addressed. However, the fact is the expectations that underlie these arguments will not be met in an environment where progressive and equitable laws on paper are not followed and corners start to be cut. Experiences from Cameroon, Ghana, Congo and other countries across Africa show that failure to follow the rule of law (especially in the forest sector) exacerbates poverty in rural areas and at times leads to conflicts.

¹UN Panel of Experts on Liberia Report, June 2008 (*Page 51*)

²Comments by Hon. Dickson Yarsiah at a Roundtable on Community Rights and Forests in January 2009. Many speakers, including other lawmakers, at this meeting expressed serious disappointment with the manner in which the FDA has conducted itself over the last two years.

The FDA has failed to fully utilize the enormous expertise and good will of the international community. For example, the World Bank, US Forest Service and the Governance Economic Management Assistance Program (GEMAP) all have deployed experts to assist the FDA in its activities. Unfortunately, the FDA is clearly failing to take full advantage of their presence. For example, the due diligence team, comprising FDA technicians and the GEMAP Financial Expert at the FDA raised questions about the ability of these companies to mobilize the capital to implement their contracts. Due diligence also revealed that there was a wave of changes in their ownership structures, hence a need to thoroughly investigate the new financiers and shareholders, as required by law. This advice was ignored and the contracts awarded.

The Legislature should use the ratification process as an opportunity to conduct a full-scale inquiry into the entire contracting process carried out by the FDA to date. The Legislature should call on the experts providing technical assistance to the FDA to provide more insights on these issues during the hearings on these contracts.

The purpose of this briefing paper is two-fold; first, to inform the forthcoming debate on the contracts at the Liberian Legislature and second to highlight the failures of the FDA.

A summary and timeline of the failures of the FDA to date

Timber sanctions were lifted in June 2006. Below is a summary and timeline of the subsequent systematic failures of the FDA in enforcing the forestry law. When one reflects on these failures, it is apparent that the FDA cannot be expected and should not be trusted to manage large-scale logging. The stakes are just too high.

2006 Feb.: The President issued Executive Order #1 instructing the FDA to establish lists of individuals to be debarred and suspended from entering the forestry sector. The seventeen companies recommended to be debarred (*for their involvement in the Liberian conflict*) included Oriental Timber Corporation (OTC) and Mohammed Group of Companies and those to be suspended (*for owing forestry related taxes*) included NELCO, E.J. and J. and Liberia Logging Wood Management Corporation. The FDA failed to establish those lists.³ **The FDA refused to implement the instructions issued in Executive Order #1.** This is keeping the door wide open for companies that should be punished for their past illegal activities to re-enter the logging industry.

2007 March: The first shipment of timber from Liberia after the sanctions left for Morocco in violation of the Government of Liberia moratorium on timber exports.⁴ Also, the shipment was comprised of illegal timber from pit-sawing activities. **Although the FDA was aware of this illegal shipment before it left the Freeport of Monrovia, FDA failed to coordinate its efforts with the Ministry of Justice to stop the shipment.**⁵ Nobody was prosecuted and the violators went unpunished.

³The first two Pre-qualification Panels recommended that the FDA establish these lists to improve their work. The FDA, to the best of our knowledge has refused to establish these lists.

⁴UN Panel of Experts on Liberia Report, June 7, 2007

⁵FDA letters and other documents related to this shipment.

The company that carried out this unlawful shipment (Edgail Incorporated) was subsequently Pre-qualified without reference to previous illegal activity⁶ and is able to continue to do business in the sector.

2008 Jan.: Following the first round of Pre-qualification of logging companies, several issues emerged. These issues included companies presenting documents that were acquired without going through the due process and the lack of standards used to ensure that those recommended for debarment or suspension did not get pre-qualified⁷. To address some of these gaps and concerns, the first Pre-qualification Evaluation Panel recommended the establishment of the debarment list. The Second Pre-qualification Evaluation Panel again recommended the establishment of the debarment list. **The FDA has ignored these recommendations twice.⁸ As a result, a number of companies that should not have pre-qualified have pre-qualified and are therefore able to operate.**

2008 April: **The FDA announced bids for FMCs without a Certificate of Concessions from the Ministry of Planning and Economic Affairs; in violation of FDA Regulation⁹ and the Act Creating the Public Procurement and Concessions Commission¹⁰.** When these issues were raised, the FDA claimed it requested the certificate but was not awarded the certificate before the bidding process. The 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.¹¹

2008 April: **Liberia Tree and Trading Company (LTTC) was allowed to participate in the bidding for logging contracts in violation of the National Forestry Reform Law (2006) and the Public Procurement and Concessions Law.¹²** Ricks Toweh, one of the Significant Individuals (shareholders) of LTTC, owed government more than US\$100,000 in tax arrears. This was taxes owed by NELCO, his former logging company.

2008 May: **The FDA authorized the shipment of abandoned logs from the port of Buchanan, although several malpractices and illegal activities occurred during the auction and sale of the abandoned logs:**

- 1) Hon. John T. Woods, Managing Director of the FDA, confirmed that the abandoned logs were “*unprofessionally assessed and auctioned to UNITIMBER¹³*”. The volume of logs was grossly

⁶Report of the Pre-qualification Evaluation Panel, January 4, 2008

⁷The author personally brought some of these issues to the attention of the FDA Managing Director in memo titled “*A Civil Society Critique of the Pre-qualification Process*”, January 2008

⁸Reports of the 1st and 2nd Pre-qualification Evaluation Panel (January 4 and June 24, 2008 respectively)

⁹FDA Regulation 104-07, Section 31

¹⁰Act Creating the Public Procurement and Concessions Commission, Section 87(3)

¹¹UN Panel of Experts on Liberia Report, December 2008 (Page 21)

¹²National Forestry Reform Law (2006) Section 5.2a and the Act Creating The Public Procurement and Concessions Commission, Section 32 (1) h

¹³FDA Letter Ref: MD/103/08-12 of July 23, 2008

- understated. Instead of 9,985 cubic meters the volume was reported to be 3,897 cubic meters – a difference of 6,088;
- 2) The 6,088 cubic meters of logs were sold to UNITIMBER in violation of the FDA own regulations¹⁴.
 - 3) The bids for the abandoned logs were not conducted properly, in one instance bids had only three days to prepare;
 - 4) The FDA devalued the logs from Class A to class C **resulting in over U\$100,000¹⁵ lost in revenue to the state**. This situation was only corrected after the UN Panel of Experts and NGOs raised concern about the loss in revenue to the Government.
 - 5) The bid was won by UNITIMBER, a company partly owned by Wael Charafeddine¹⁶, one of those the President asked the FDA to put on a list of people debarred¹⁷ from entering the timber industry.

Although the FDA Manager admitted that these malpractices and illegal acts occurred¹⁸, it still went ahead with this transaction. The Managing Director in fact dismissed the seriousness of these issues claiming “*this situation was handled with expediency rather than the law*”¹⁹.

2008 Sept.: **The FDA, in violation of the law entered into agreements with LTTC, even though LTTC was not qualified to bid²⁰.** During the bid evaluation the company 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 Finance²¹*”; the Chairman of the Bid Evaluation Panel informed the panel that this was a violation of the law²² – but the Panel still recommended LTTC for the contract.

2008 Sept.: **The FDA signed a Forest Management Contract agreement with Alpha Logging in violation of FDA Regulation 103-07, Section 46(b)(4).** Ownership of Alpha Logging and Wood Processing changed significantly after prequalification but before bidding. When Alpha Logging was prequalified, sixty percent of its shares were owned by a Korean Company named Eagon. In January 2008 i.e., after prequalification but before bidding, Eagon sold its shares to a Malaysian company, Woodman Sdn Bdh.²³ Strangely when the due diligence

¹⁴Regulation 108-07 Part 5 Section 51

¹⁵By devaluing the logs from Class A to Class C, the FDA automatically reduced the stumpage fee from 10% of the value of the logs to 2.5%

¹⁶Pre-qualification documents submitted by UNITIMBER lists Wael Charafeddine as a Significant Individual of the Company.

¹⁷See Report of the Forest Concession Review Committee (as endorsed by the President in Executive Order #1). The states that Wael Charafeddine was a Significant Individual of LLWPC. LLWPC and TFCO were largely owned by the same individual. TFCO was listed for debarment and by extension all its Significant Individuals.

¹⁸FDA Letter Ref: MD/103/08-12 dated July 23, 2008

¹⁹FDA Letter Ref: MD/103/08-12 dated July 23, 2008

²⁰Report of the Bid Evaluation Panel dated July 2, 2008

²¹Minutes of Bid Evaluation Panel Meeting Held on July 2, 2008. The Bid Evaluation Panel in its report to the FDA, dated July 11, 2008, confirmed that the delay in completing its evaluation was due in part to this situation.

²²Ibid.

²³FDA Due Diligence Reports dated August 26, 2008

committee visited in June 2008, an Eagon representative was present while Woodman was not represented. Neither Alpha nor Eagon mentioned the transfer of ownership; they both portrayed Eagon as a continuing owner. This material change of ownership automatically nullifies a company's pre-qualification certificate and therefore renders them ineligible to bid unless and until they re-apply and are awarded pre-qualification status.²⁴

2008 Sept.: The FDA signed a FMC agreement with E. J. & J. Investment Corporation even though the **Due Diligence on the company showed that it "has virtually no capital - no equipment and cash of less than \$0.01 million"**. E.J. & J. has presented a loan agreement whereby Taakor Tropical Hardwood would lend E.J. & J. \$5 million. Despite the FDA's request, E.J. & J. has not presented convincing evidence that Taakor Tropical Hardwood has the funds available to make the loan. The company has provided no financial statements, bank balances, or credit agreements.²⁵

2008 Oct.: The FDA unilaterally changed the land rental payment terms of the first three FMCs; from an annual payment to a one-off payment in the first year²⁶. For example, FDA instructed Alpha Logging to pay U\$1,198,362 as land rental only ONCE instead of the U\$29,959,050 it is supposed to pay over the 25 year period of the contract. **Thus on the Alpha Logging contract alone, Liberia would have lost U\$28,760,688 if this FDA decision had not been exposed.** When the issue was publicized, and only after enormous pressure from various sources, did the FDA change the terms to its original 25 year annual payment schedule. However, before announcing the bids for the four recent contracts it further confused the situation by unilaterally providing for an option for discounting 25 payments to a single, one-off payment, thereby changing the goalposts between one set of contracts and the next.

2009 March: **FDA confirmed²⁷ it authorized Tarpah Timber Company to log even though they had not met all the pre-felling requirements provided for in the National Forestry Reform Law (2006), the FDA Regulations and the environmental law of Liberia.**²⁸ This is grounds for cancellation of the contract by the FDA; a fine of up to a maximum of U\$25,000 or jail term of up to ten years. It remains to be seen whether a legal case is brought against either the company concerned or the FDA as a result of such complicity.

²⁴FDA Regulation 103-07, Section 46 (b)(4)

²⁵ FDA Due Diligence Reports dated July 10 and August 26, 2008

²⁶Letter from Alfred Kotio and Jangar Kamara of the FDA to the Alpha Logging, LTTC and EJ & J, dated October 8, 2008

²⁷Telephone conversation between Hon. John Woods and Jonathan Yiah of the SDI on March 2, 2009; The News newspaper, March 4, 2009 also reported that Hon. Woods confirmed this in an interview with the paper.

²⁸ Forestry Reform Law, Section 5.3,(b)(iv), the FDA Regulation 105-07, Sections 24 and 41

Conclusions and Recommendations

The evidence is overwhelming. That the FDA lacks the capacity to manage the forestry sector, serve as an enforcement agency of the forestry law and regulate commercial logging activities is no longer in doubt. If the Liberian Legislature ratifies these agreements it will be putting the forest in the hands of logging companies that have demonstrated an ability to manipulate the FDA, circumvent the law and an agency that has proven it lacks the integrity and capacity to enforce the laws governing the sector.

A decision to ratify these contracts will have disastrous consequences for the government's poverty reduction strategy and the long-term sustainability of our forest resources. The appropriate time to stop this march towards a disastrous ending is now, before the country commits itself to 25 year large scale logging agreements on a false and illegal premise.

But all is not lost. In this chaos an opportunity has emerged. The Prince's Rainforest Project (PRP) has indicated to the FDA and the President that they could work with the Government of Liberia to mobilize financial resources to make up for lost revenue if we do not conduct industrial logging in our forests but instead take more holistic, 21st Century view of the value of our forests. There are confirmed reports indicating that the Government of Norway will also support such an endeavor – if this government decides to pursue this course. Together, the PRP and the Government of Norway have the potential to mobilize financial resources that would far exceed what the FDA has projected it will generate from logging and associated economic activities. This financial package could be used to stimulate local economies, create more and reliable jobs in rural Liberia while providing funds for rural infrastructure in a diverse and sustainable way.

There are a series of similar schemes operating or starting in other countries. For example, Brazil will benefit from approximately US\$1.5 billion dollars in the next five years and Tanzania will receive around US\$100 million over the next five years. Both of these initiatives are being supported by Norway, the PRP and others.

This of course will not be “*free money*”. The Government of Liberia will have to show how that money will substantially benefit local communities, especially those dependent on the forest, and keep the forest standing.

Instead of ratifying these agreements, the Legislature should:

- 1) Request the Executive to explore these options that promise alternative innovative and democratic revenue streams instead of the commoditization of just one forest product – timber – to the exclusion of all others through industrial logging.
- 2) Reject any contracts or bids that are in contravention of the applicable laws and regulations.
- 3) Conduct a full-scale investigation into failures at the FDA and recommend actions to address these failures, including holding individuals responsible to account.
- 4) Request the Executive to put a hold on further contracting activities until these initial issues have been fully addressed.