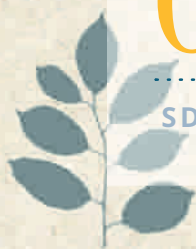


05 The Sewacajua Community Forest

The need to strengthen rule of law in the community forestry sector in Liberia

SDI BRIEFING | March, 2018



Introduction

In December 2017 the Sustainable Development Institute commissioned an assessment examining the Sewacajua (also called Sewaca) Community Forest Management Agreement (CFMA) in Juazon Statutory District in Sinoe County¹. The purpose of the assessment was to gather information about the Sewaca CFMA from community residents with a focus on their knowledge and involvement in the application process, investigate reports of violations of the regulations governing CFMA allocation, the nature of their agreement with a logging company to harvest logs in their community forest, and the potential community benefits enshrined in the agreement with the company.

The main findings of the assessment were:

- 1) The CFMA application process was not fully compliant with the legal requirements laid out in the amended CRL Regulation;
- 2) The logging company, Mandra Forestry Liberia Ltd., paid for the community to initiate the CFMA application process;
- 3) Mandra Forestry Liberia Ltd. was awarded logging rights once the CFMA was approved; and
- 4) Local expectations of benefits differ from the actual terms of the agreement.

This briefing paper presents the findings of the assessment, specifically highlighting the legal compliance and other issues that need to be addressed to make the CFMA compliant and ensure that it meaningfully benefits the community. Series of recommendations are proffered to address the identified issues.



@SDI - Sewacajua logs, Gbalawein - Dec 2017

Methodology

The Sewaca Community was selected because it is one of the communities that the FDA facilitated during the CFMA

application process and, where support from non-state actors was limited. The purpose was to document the level of legal compliance with the Community Rights Law (CRL) and the amended CRL regulations. The CFMA was approved on May 10, 2017; three months after the amended CRL regulations was adopted.

The team used a combination of participatory approaches to gather data including Key Informant Interviews using semi-structured questionnaires and Focus Group Interviews. A total of ninety nine community residents comprising fifty five males and forty four females from eight of the fourteen towns within Sewaca community were interviewed. Of the ninety-nine respondents, nine members of the Community Assembly, four members of the Executive Committee and five members of the Community Forest Management Body were interviewed as Key Informants. One Focus Group Interview was then conducted in five of the eight towns covered during the assessment. A total of fifty persons participated in the five Focus Group Interview, with each of them involving ten persons, including local leaders, women and youths.

The main focus of the interviews was to assess awareness of the CFMA application process and level of community involvement in the process, compliance with legal requirements, and the number of community residents on the Community Assembly. Labor issues that were brought up during the interviews were subsequently investigated.

A draft of this report was then presented to another thirty-one community members in three separate Focus Group Interviews in the remaining three of the eight towns where the assessment was carried out. This second round of Focus Group Interview was used to further verify and validate the findings of the assessment.

Footnotes

¹ The Sewaca CFMA. Available from: <http://www.fda.gov.lr/community-forestry-management-agreements/#447-step-9-1505470682>.

The context of the assessment

In 2013, the Sustainable Development Institute (SDI), the Liberian Civil Society Independent Forest Monitors (CS - IFM) and Global Witness investigated the first group of CFMAs the Forestry Development Authority (FDA) approved between 2011 and 2012. A key conclusion of these investigations was that contradictions between the Public Procurement and Concession Act of 2010, the Community Rights Law of 2009 and the regulations to implement the CRL was being exploited to the disadvantage of communities. Following these revelations the FDA Board of Directors issued a resolution requiring the FDA management to “cure all deficiencies and missteps²” before awarding additional CFMAs.

In May 2014 the NGO Coalition for Liberia formally presented a briefing on the CFMAs to stakeholders in the forestry sector. The briefing containing series of concerns regarding the CFMAs was tabled and discussed later that month during the first Joint Implementation Committee (JIC) meeting. The JIC oversees and regularly assesses the implementation of the Liberia EU Voluntary Partnership Agreement on the forest. The parties agreed to harmonize the CRL of 2009 with its implementing regulations of 2011. The amended CRL regulations were adopted in February 2017.

This case study therefore examines the CFMA application process to determine whether the practice, following amendment of the regulation, has improved and whether CFMAs are delivering meaningful benefits to communities.

The Sewaca CFMA

Awareness of the CFMA within the community

Overall, the level of awareness amongst community members seems to be high. In all the eight towns visited residents are aware of the CFMA and that it affects forestland in the Juazon, Seekon, Cabadae and Wedjah Sections.³ These four sections together comprise of the fourteen towns that make up the Sewaca Community. Those interviewed in all but one community knew the process started back in 2014 and are aware that the CFMA was approved in 2017. They were also aware that in the same year the community signed a third party logging agreement with Mandra Forestry Liberia Ltd.

Knowledge about the CFMA application process

The majority of those interviewed demonstrated limited knowledge of the CFMA application process and the various activities that must be completed at each stage. However, the combined leadership comprising of four Executive Committee members and three members of the CFMB interviewed demonstrated good

understanding of the process.

Compliance with the regulations

There is little evidence at the community level that the process was followed in accordance with the law and regulations. For example the Community Assembly and CFMB exist but those interviewed said that the community's constitution and by-laws are incomplete. Also, during one of the three Focus Group Interview to validate the draft findings in Chebioh Town on 24th February 2018 the CFMB Chief Officer confirmed that he had just brought back copies of the community's Constitution and By-laws from Monrovia for signature. This further confirmed that the community's Constitution and By-laws were not agreed when the FDA approved the CFMA.

The CRL amended regulation requires that the FDA issue a CFMA for community review and approval after the applicant community has “selected and appointed the Community Forest Management Body, and adopted a constitution, governing by-laws and community forest rules⁴”. Without the community's constitution and by-laws, the FDA may have violated the regulation when it signed the CFMA with the community.

The CRL also provides that logging may not happen in a CFMA unless the Executive Committee of the Community Assembly, and the FDA, has approved the Community Forest Management Plan. There was no evidence that the Executive Committee of the Community Assembly had approved the Community Forest Management Plan. Logging in a CFMA without a legally approved management plan is also illegal; therefore Mandra's logging activities in the CFMA may be illegal. Also, during the validation of findings with communities the Executive Committee Chairperson confirmed that the Community Assembly is unaware of how the Management Plan was developed and that the Executive Committee did not approve the plan.



@SDI - Chelor town mtg - Dec 2017

footnotes

² FDA Board Resolution on the Lifting of Moratorium Reference: MD/422014/-2.

³ The eight towns included Chewlue, Geelor, Gbalawein, Wiah, Chebioh, Bardua, Shadee and Korjaryee.

⁴ Amended CRL Regulation, Section 7.1

Mandra's involvement

Majority of those interviewed alleged that Mandra had supported the community throughout the application process. They reported that the company first approached them in 2014 and offered to pay the \$250 non-refundable application fee on their behalf. In five of the communities, those interviewed alleged that Mandra had paid the \$250 application fees on their behalf. They reported that a Mr. McCarthy Sehwhy paid the money to the community on behalf of Mandra in 2014 in Juarzon. Mr. Sehwhy's name has also been associated with CFMA processes in Garwin, Ziahlué and Tekpeh and Blouquia in Riverces and Grand Gedeh Counties, respectively.

The CRL explicitly requires the FDA to “provide and assist communities seek and access technical assistance and support for management of forest resources⁵” and “support building the capacities of communities to sustainably manage their forest resources⁶” but is mute on financial assistance from logging companies during the application. However, the allegation that Mandra approached the community to initiate the process and actually paid the initial costs to initiate the process is serious and may be illegal. The fact that the company eventually benefited from this process by entering into an agreement to log in the CFMA with the community also illustrates a conflict of interest at the very least and possibly amounts to bribery or undue inducement. Bribing a community to secure logging rights to its CFMA may render the logging illegal because bribery is illegal under Liberian law.

The agreement between Sewaca and Mandra

The Sewaca CFMA covers 31, 936 hectares in Sinoé County. The CFMA was approved in May 2017 and on 25th June 2017, the community entered into a 15-year agreement with Mandra. The company pays the community 55% area-based fees and a royalty of \$1.75 USD per cubic meter. The company's annual coupe compartment map indicates the company will operate in 10,976 hectares in the harvesting season of 2017-2018 and if that trend continues the company may operate the concession for three years instead of the 15-year contract term. Beyond the fact that the duration of the operation may be less than anticipated by the community, other aspects of the agreement may be problematic.

First, there is a misunderstanding of the terms of the agreement within the community. Respondents asserted that the agreement guarantees 80 per cent of the jobs related to the operation in the area would go to residents. They also claimed that the agreement obliges the company to construct a clinic within six months or pay \$1500 United States Dollars to each of the 14 towns monthly.

Contrary to these claims, the agreement does not oblige Mandra to employ 80 per cent of the skilled and unskilled labor from the community.

In fact, the text states:

Mandra agrees to provide first preference for employment of skilled and unskilled labor to the dependent communities in the boundaries of the commercial logging area.

Moreover, said preference will include some managerial positions such as Human Resource Manager, PRO, etc. based on competence. All such preferential employment shall be made consistent with Liberia's Labor Law.

The text also states:

The Company shall build in the first three years one Clinic in the affected community. The clinic must be completed by the end of the first three years. The Company shall provide US\$1,500 (United States Dollars One Thousand Five Hundred) every six months to the four existing clinics until the clinic is constructed by the company. The construction site of the clinic shall be determined by the community.

The differences between community residents' understanding of the agreement and the actual text are significant. For example, if no one is deemed competent for the managerial position mentioned in the agreement, the company is not under obligation to hire a resident. Also, their expectation that the company will pay \$1,500 to each of the 14 towns every month or \$21,000 United States Dollar to community every six month (until the clinic has been built) significantly differs from the terms of the agreement. To the contrary, the text provides that the company will only pay \$1,500 USD to the four existing clinics, which may come to \$375 USD to each of the existing clinics.

Second, the company's labor practice is drawing strong criticism from cross-section of the community. According to respondents Mandra hired some community residents when they commenced operation in 2017 and suspended five of them indefinitely soon afterwards. They also alleged that none of the community residents hired has been issued a formal employment letter or contract. All those interviewed expressed strong disappointment with this situation because they said “it makes their citizens vulnerable” to arbitrary dismissals.

footnotes

⁵ CRL of 2009, Chapter 5.

⁶ CRL of 2009, Chapter 5.



**@SDI - Sewaca report validation meeting - Feb 24, 2018
- Chebior Town**

Community claims changes to the agreement after signing
Participants attending the report validation stated that representatives of the CFMB and Mandra signed the Third Party Agreement in Sewakajua in the presence of Mr.

David W. Tiawelah, Sr., Assistant Statutory Superintendent for Development, Juarzon Statutory District, Sinoe County. They reported that Mr. Tiawelah signed the agreement as a witness.

However, community representatives stated changes were made to the agreement when it was taken to Monrovia for the FDA to attest to it. They claimed that the version attested by former FDA Managing Director, Mr. Darlington S. Tuargben does not contain Mr. Tiawelah's signature. When contacted, Mr. Tiawelah, confirmed affixing his signature as a witness to the Third Party Agreement in Sewakajua and that the copy signed later in Monrovia by FDA does not include his signature. Confronted with these claims during the community validation, the CFMB Chief Officer refused to respond to the claims.

Conclusion and recommendation

Conclusion

No constitution and bylaws existed within Sewakajua community forest prior to awarding of authorized CFMA status in May 2017.

Mandra alleged financial support to Sewakajua CFMA indicates a gap regarding how communities can be assisted in their application process to acquire Authorized Community Forest status.

There is little evidence that Sewakajua affected communities completed all of the nine step CFMA application process. An example is no finalized and adopted constitution and by-laws for Sewakajua community.

None of the workers in the employed of Mandra has employment including employment letter or contract with Mandra. The allegation that five workers, were suspended indefinitely highlights the current insecurity of working for Mandra.

The Sewakajua CFMA covers 31, 936 hectares and on June 25th, 2017, entered a 15-year agreement with Mandra. The annual coupe compartment map indicates the company will operate in 10,976 hectares in 2017-2018 and if the trend continues the company may operate in the area for just three years instead of the 15 year contract term.

The allegation that the terms of the agreement were changed following the signing in the community violates legal contracting standards.

Recommendation

FDA should verify and confirm all required attachments before granting authorized CFMA status to an applicant community. FDA needs to re-evaluate the role of the CFWG as clearing house for all community forestry matters.

FDA should work with forest stakeholders to develop a guideline for how communities can be assisted in their application process to acquire Authorized Community Forest status. This guideline should specify the roles of stakeholder in CFMA application process and negotiation with third parties.

FDA needs to re-evaluate the role of the CFWG as clearing house for all community forestry matters and may include advising on the status of an applicant community prior to an award of authorized community forest status.

Ministry of Labor should ensure Mandra provides its workers with employment contracts and/or employment with clear terms of reference and remuneration.

The FDA should work with Sewakajua and Mandra to rectify this inconsistency as it could become a source of conflict between the community and the company.

The FDA should promptly investigate the matter. If established to be true, the terms of the agreement should revert to the original as signed by the community or renegotiated to reflect the community's interests.



The Sustainable Development Institute (SDI) works to transform decision-making processes in relation to natural resources and to promote equity in the sharing of benefits derived from natural resource management in Liberia. The organization's vision is a Liberia in which natural resource management is guided by the principles of sustainability and good governance and benefits all Liberians. Its activities cover a range of crosscutting issues including governance and management, the environment, state and corporate social responsibility, economic and social justice for rural populations, and the democratic participation of ordinary people in government management of natural resources. The organization received the Goldman Environmental Prize (the world's largest prize honouring grassroots environmentalists for outstanding environmental achievements) in 2006



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