

Understanding the complexity of formalizing a reduction in size of a large scale oil palm concession in Sierra Leone: *Company motivation and responsibilities to act*

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Edited for on-line publication by LEGEND by Julian Quan (NRI University of Greenwich) in January 2020

Editor's foreword

This document, presents a learning story from the LEGEND Challenge Fund that supported partnership projects by civil society and private sector business to test approaches through which private business can potentially contribute to more secure land rights and better land governance in agricultural investment sites and supply chains. It details the questions and practical challenges facing one company Natural Habitats Sierra Leone Ltd (NHSL) a member of the Netherlands based Natural Habitats Group (NHG), and the NGO Solidaridad, which partnered with NHSL to facilitate a process of agreement between the company and local communities to resolve problems, grievances and conflicts involved in the development of an oil palm plantation. These problems originated before NHSL acquired the investment site but involved conflicts between communities and the company and amongst community level and other stakeholders which were undermining social stability across one of Sierra Leone's Paramount Chiefdoms, threatening community livelihoods and food security and the feasibility of the investment project. The key measure required to address this situation and overcome these problems agreed by all stakeholders at the outset of LEGEND project was a reduction in the size of the 41,218 hectare concession area.

This learning story was prepared by Solidaridad before the LEGEND project was complete, and it provides a snapshot of the concession reduction process and the challenges that confronted both Natural Habitats as a company and the local communities as legitimate indigenous land owners and users at the time. Readers should be aware that the problems associated with the excessively large original concession are now very largely resolved as the concession size has been reduced to 2,320 hectares (ha) an area considerably smaller than the area the company expected to retain at the time the story was written. This is thanks to the efforts of Solidaridad, the patience and active engagement of local community stakeholders, the sensibility and responsiveness of NHSL staff and Sierra Leone, the company as a whole and of government officials and the support and encouragement by the LEGEND programme. LEGEND does not however have access to full information about exactly how all of the questions referred to in this document have been resolved.

It should also be noted that views expressed in this document reflect those of the author and those taken by Solidaridad and other stakeholders in the process at the time; as such they do not necessarily reflect the views of the companies involved, or those of the LEGEND programme and of DFID.

Introduction

The original concession of Natural Habitats in Makpele Chiefdom covered a total area 41,218 hectares (ha) occupying the entire Chiefdom¹. This concession was originally made to a previous company WAA2 associated with a World Bank regional economic development programme initiative that never materialised, and was contested from the start by local communities. The legitimacy of the concession was questioned since no formal consultation with local communities took place when it was granted to WAA2 originally by the Paramount Chief. Considering the history of the lease, Natural Habitats was motivated - with support of the LEGEND project in partnership with Solidaridad - to realize a new, reduced land lease based on free prior and informed consent with local communities. However, this process proved to be more complex than anticipated and multiple challenges led to delay. This learning story, originally written in May 2018 shows how the reduction of the concession size had multiple dimensions; namely: environmental, social, legal and financial, all of which need to be taken into account to understand the responsibilities and ways forward for Natural Habitats, and for other companies that might find themselves in a similar position.

The environmental dimension: Responsibility for High Conservation Value Areas

Natural Habitats aims to comply with RSPO certification. RSPO has a New Planting Procedure for greenfield operations, which demands the mapping of High Conservation Value (HCV) areas in the concession and planned operational area. This HCV mapping has been carried out for the original concession of 41,218 ha. The HCV report as filed to RSPO states: "A total of 25,293.13 ha of HCV area was identified on site, including HCV 1-6. It is recommended that 15,925.32 ha of shrubland (not HCV) remains as plantable area. The company plans to develop up to 7,500 ha into an oil palm plantation (hereafter referred as Zimmi plantation) in the next five years, and to support independent smallholders in the development of 2,500 ha (within the concession area)."²

Challenges

If the concession size is reduced to the plantable area, then Natural Habitats will no longer take responsibility for the identified HCV areas or have any control over management of these HCVs in the original concession. The question is, to what extent is this accepted by RSPO? Is the RSPO New Planting Procedure (NPP) still valid when Natural Habitats will only take responsibility for the HCVs part of the new, reduced lease? And secondly, what role can Natural Habitat play to support local authorities to act on the information about the identified HCVs to ensure they are managed and protected (i.e. the buffer zone for Gola National Park)? These are important questions for Natural Habitats, since taking care of the environment and obtaining RSPO/ organic certification is a key condition of their license to operate and critical to their business.

¹ The original concession included a buffer zone of the cross-border Gola National Park (located in the far east of Sierra Leone and straddling the Liberian border, which all concerned in the LEGEND project acknowledged could not be developed.

² NPP Summary Documentation for Natural Habitats Sierra Leone Ltd (October, 2017); p.29

The social dimension: Transparent communication³ as a prerequisite for good relations and trust between stakeholders and company

To date [i.e. by April 2018], as a result of community consultation and the FPIC process, 3302 hectares has been mapped and acquired from land owning families as part of the new land lease Natural Habitats aims to establish. Other families have rejected requests to lease out their land. Stakeholder relations between Natural Habitats and local authorities at Chiefdom and district level have been maintained through the Multi Stakeholder Platform, meaning that stakeholders in favor of the investment project and those opposed to the company activities are on speaking terms and informed about them through quarterly meetings. However, the relation between local stakeholders and Natural Habitats is now under pressure due to delays in planting, delays in payments for the lease and lack of communication from the company explaining the delay. In addition, the lack of clarity regarding formal reduction of the concession size is another reason for concern, because discontent about the illegitimacy of the original concession is still on people's mind and needs to be adequately addressed by the company. Natural Habitats has to be clear and transparent about the scope of their operations moving forward and communicate about the new (legitimate) land lease to the relevant authorities in order to remain a trustworthy partner.

Challenges

Natural Habitats currently does not have a country manager in Sierra Leone, meaning that on site there is no representative from Natural Habitats who has the authority to move forward with this situation. At the start of the project in October 2016, the former country manager was the point of contact. After he left (April 2017), different spokespersons from the company had discussions with NAMATI - who provide general advice to stakeholders on the legal and political dimensions of the overall process - but NAMATI concluded from these meetings that the direction of company plans was not yet clear, as different people gave different information. In addition, NAMATI received complaints from Natural Habitats staff in Zimmi that they are looked on with mistrust by the landowners due to delays in payments, beyond their control. Although discussions between Solidaridad, NAMATI and Natural Habitats continue, but stronger company of management authority in Sierra Leone to make decisions and move forward is needed to avoid continuing delays. After the evaluation visit in February, Solidaridad has taken up direct contact with Natural Habitats headquarters in Rotterdam, The Netherlands, to inform them directly and urge for clarity in next steps.

The legal dimension: the original concession was not legitimate

As stressed above, Natural Habitats is motivated and has a responsibility to distance itself from the original concession - as it was obtained in an illegitimate way. It is important to understand the difference between the original concession and the new lease in legal terms. NAMATI states that it is not feasible for the company to control land use across the whole of Chiefdom land and there are many unrelated activities ongoing which are completely outside of the control of the company, for example in mining, whether they

³ The characteristics of transparent communication are: 1) It gives the information that people need in order to understand what is going on at the time that they need it. 2) It avoids surprises. 3) It provides follow-up for concerns that are raised. 4) It is consistent both in content and process. 5) It creates expectations that are then carried out.

have official government concessions or not. The legal status of a government concession in Sierra Leone differs from that of a land lease, and irrespective of the existence of the concession, it is critical for Natural Habitats to understand their rights and responsibilities, regarding access to, use and management of land in the process of transitioning to the new lease, as well as their financial obligations to stakeholders.

Challenge

Currently the company does not know how to move forward and the linking pin - the position of country manager - who should guide action locally is missing. On Monday 16th of April 2018, Solidaridad and Natural Habitats HQ had a meeting where the situation regarding reduction in concession size was discussed and company confirmed: "Indeed, we haven't figured it out yet how to deal with the chiefdom wide lease [i.e. the composite lease that was created following the establishment of the original concession arrangement for the total area] and the 10,000 ha lease [i.e. a lease that Natural Habitats anticipated would be created for the reduced concession size they initially expected to achieve, including HCV and community land use areas reserved within it], we need help here." "... Decision about the whole chiefdom, not discussed yet, to be asked to them [i.e. the chiefdom authorities]." Subsequently a meeting with NAMATI in which they advised the company to take action. NAMATI and Solidaridad concluded that it is critical to create a sense of urgency at the level of HQ and push for decision making at the highest level.

The financial dimension: Meeting financial obligations of the past and making timely payments in future

Currently Natural Habitats is in a situation where there is a financial obligation for the original concession as well as for the new land lease agreements, signed with individual landowners. Moreover, the payments for both arrangements are overdue and questions are raised by local stakeholders and NAMATI whether the company is struggling or not able to continue the investment. However, when speaking to company staff at headquarters in Rotterdam, it seems as if the delay in payments is due to mismanagement and lack of communication internally ⁴(). Reasons for delay in payments may also be related to uncertainty on how to transition between the old concession to the new lease and the NPP process. If this is the case, it is important to realize that to transition to the new lease, all past financial obligations have to be met and when the final payments are made by Natural Habitats in respect of the original concession area⁵, it has to be clearly communicated to all stakeholders that this is the final payment.

Conclusion

Natural Habitats has the ambition to realize a responsible land based investment in Sierra Leone. However, company efforts are fragmented due to multiple commitments: complying with RSPO certification, complying with organic certification, respecting national and local customary land tenure

⁴ Responsibilities and procedures for payments were not clear at the time due to the absence of a Natural Habitats country manager in Sierra Leone

⁵ Editor's note: these final payments included backdated payments for land rental at levels in force when the original lease for the whole concession area was created for all of the land areas obtained from the communities both before and after acquisition of the concession by Natural Habitats, whether or not these had been prepared or planted; associated compensation payments to farmers for temporary and permanent crops lost; plus any fees payable to the Chiefdom Authorities in respect of holding the concession rights to the area.

policies and activities under the LEGEND project. Although there is significant overlap, these commitments and interventions are not aligned. For example the NPP was carried out for the old concession, which now leads to confusion about responsibilities when moving forward with only the new reduced lease. In addition, the responsibility for each of these commitments lies with different staff members. The sustainability manager is responsible for certification, the (former) country manager is closest to local stakeholders, has to explain management decisions as well as delay in payments, and finance officers fall under control of HQ - who have not realized the urgency of delay in payment as felt on site. Since priorities differ for each staff member and the final decision making power is at times lacking, the process for reduction of the concession has been slow and unclear.