



Large-Scale Land Acquisitions in Liberia

Case studies and some legal aspects on the palm oil sector

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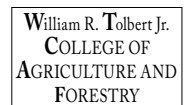
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Study conducted by the authors Rudolf Buntzel and Wollow Topor together with students from the William R. Tolbert, Jr. College of Agriculture and Forestry University of Liberia (WRTCAF) with support of Fin Church Aid and The Fellowship of Churches & Church Councils in West Africa (FECCIWA).

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Abbreviations

CAAS-Lib	Comprehensive Assessment of the Agricultural Sector
CDC	Community Development Contribution
CDP	Community Development Programme
CFS	Commission on Food Security
CGIAR	Consultative Group on International Agricultural Research
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
DTIS	Diagnostic Trade Integration Study (DTIS Report)
EITI	Extractive Industries' Transparency Initiative
EPA	Environmental Protection Agency
EPO	Equatorial Palm Oil
ESIA	Environmental and Social Impact Assessment
FAO	Food and Agricultural Organisation
FDA	Forest Development Agency
FDI	Foreign Direct Investment
FIAN	Food First Information and Action Network
FPIC	Free and Prior Informed Consent
GAP	Good Agricultural Practices
GoL	Government of Liberia
GRAIN	Genetic Resource Action International
GV	Golden Veroleum
HCV	High Conservation Value
HR	Human Rights
IFAD	International Fund for Agricultural Development
IFPRI	International Food Policy Research Institute
IIED	International Institute for Environment and Development
ILO	International Labour Organisation
ISIDC	International Centre for Settlement of Investment Disputes Convention
KGB	Kumpulan Guthrie Berhad
LEITI	Liberia Extractive Industries' Transparency Initiative
LIBINCO	Liberia Operation Oil Palm Inc. (predecessor of EPO)
LIBINC	Liberia Operation Inc. (predecessor of LIBINCO)
MOA	Ministry of Agriculture
NBC	National Bureau of Concession
NGO	Non-Governmental Organisation
NIC	National Investment Commission
NPP	New Planting Procedures
OECD	Organisation for Economic Development
PAC	Project Affected Communities
PPCA	Public Procurement and Concession Act
PRS	Poverty Reduction Strategy
RAI	Responsible Agricultural Investment
RSPO	Round Table of Sustainable Palm Oil
SD	Sime Darby
SDI	Sustainable Development Institute
SOP	Standard Operation Procedure
TFT	The Forest Trust
UK	United Kingdom

UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
VG	Voluntary Guidelines of the FAO
WB	World Bank
WFS	World Food Summit

Introduction

The combination of a general economic downturn, rising food and commodity prices, and new forms of state-backed investments have tempted many governments especially in poor African countries to put their hand into what is most valuable to them – their land. They allocate common land to international investors at considerably intransparent conditions. They take advantage of the unclear legal situation under which most of their populations make use of the national land resources for their subsistence (Anseeuw et al. 2011).

Most African states simply maintain the status quo of the land tenure, e.g. allowing their populations to continue using “common land” largely unmolested but without the prospect of genuine tenure security to active predation. While the tillers of the soil and their communities perceive their rights to use the land under customary law as entirely their possession, the states tend to misinterpret the situation. National laws usually view the public land as the property of the nation – eminent domain. Thus, African governments give away land, even if occupied by local smallholders, to companies as they wish.

Even if a national law exists to regulate the granting of concession on natural resources to private entities, the legislation is still mostly confined to matters of restitution, state internal procedures, very formal ways of making it public, and may be tight rules of resettlement. But mostly these rules miss the most important aspects such as the many ways in which the local population makes use of their environment and landscape, as well as how this kind of intervention into people’s livelihoods deeply affects their understanding of rights and justice, food security, and other humanitarian aspects such as like the feeling of love for their native homes and affinity for their forefather’s places or sanctuary locations.

This new phenomenon, which is referred to in a populist version as “land grabbing,” is especially widespread in countries with weak land institutions, dubious governance and sometimes even failed states (Anseeuw et al. 2012, 10). Many of

them are post-war states that are largely confined to agrarian societies, where access to land is critical for the survival of most of the predominantly agricultural active population; and in countries where post-colonial or post-feudal deprivation of land rights is a common reality. The outbreak of land conflicts over these new land concessions by foreign companies will most likely endanger the weak conditions of internal peace.

The Mano-River Basin countries (Liberia, Sierra Leone, Ivory Coast and Guinea) are typical targets of large-scale land acquisitions. Such is also a reality in countries with highly undefined land tenure systems and governments that have no scruples in taking recourse for the unclear legal tenure situation. These governments act under the assumption that their countries have sufficient land resources to satisfy both the demand of foreign investors and the need of the local smallholders for subsistence agriculture.

The old colonial dualistic structure of their agriculture of these countries are characterised by foreign owned plantations cropping for unprocessed export products under monoculture condition, while the majority of the population lives in a neglected smallholder sector barely making a survival on their little plots under subsistence agriculture. Even with the desire to transform such agricultural structure, in the long run, these governments see the extension of the plantation economy as a transition step towards general rural development, which take into account the peasants’ needs and interests.

The Government of Liberia (GoL) is determined to transform its agricultural sector: *“Transformation’ in that sense means the conversion of a system characterised by an economically concentrated commercial plantation sector to one in which there is broad-based farmer participation in integrated cashcrop/food crop systems. It is essential that the country avoids falling back into old patterns of growth and development based on natural resource extraction industries and a heavily concentrated plantation and commercial agricultural sector.”* (CASS-Lib Report, 2007)

Chapter 1

Large-scale concessions in Liberia

Following the cessation of the war and the return of normalcy to the country, new land concession agreements were granted recently by the Government of Liberia (GoL) to foreign companies predominantly for the establishment of huge plantations for palm oil production for the international market.

In spite of the internal conflicts that arose with the recent land concession in Liberia, the reputation of Liberia's concession policy is quite outstanding. One of the concessionaires, Equatorial Palm Oil (EPO), came to the following conclusion: *"Liberia's concession agreements are recognised as being among the most rigorous of such agreements, containing clear performance requirements for business practices, the development of Liberia's workforce, the participation of traditional landowners and subsistence farmers, and significant contributions toward national programmes for food security, health and education. Our concession agreement requires us to commit to social involvement and environmental protection. This is the Company's major focus."* (Equatorial Palm Oil 2012, 7)

Interesting enough, this view was also held by the academic study of International Institute for Environment and Development (IIED), which examined closely 12 cases of land grabs in Africa.

"Three contacts from Liberia stand out for their more flexible duration, their clearer identification of the land being transacted, their more specific investor commitments on jobs, training, local procurement and local processing, their greater attention to local food security, and their tighter social environmental safeguards." (Cotula 2011, 2)

The study based its findings on three cases of recently granted land concessions to international palm oil producing corporations. (See Boxes 1-3).

These concessions were granted as part of the GoL's national policy for developing tree cropping as the backbone of an export oriented rural economy. But these were granted with the expectation that a value added chain will be established for palm oil processing in the country, which is also for the benefit of the local market.

The increase in the production and productivity of palm oil, rubber and cocoa is supposed to facilitate rapid increase in rural incomes, employment, infrastructure, export earnings and public revenues. In all three cases the production has just been started on only a small part of the concession area, and since it takes seven years for a new plant to reach its real yielding capacity, the economic potential of these undertakings is not yet evident.

Box 1: Concession agreement between the government of Liberia and the corporation Sime Darby (SD)

A 120,000-hectares (ha) concession in the North-West was given to the Malaysian Company of Sime Darby in the Grand Cape Mount, Bomi and Gharpolu County to grow on 80% of the land oil palms and on 20% rubber trees. The Concession Agreement which was signed on April 30, 2009, is for a duration of 63 years, with the commitment to have developed all 120,000 ha up to 2020, and 75% of the Concession area within the next 10 years (Minimum Development Obligation) (paragraph 8.5).

"GoL represents and warrants to the investor that all the public land that makes up the concession area

shall be free and clear of encumbrances." (paragraph 5.1)

It started with the taking over of an old rubber estate (5,000 ha), of which only 1,118 ha is planted with oil palm tree up to the present. The still non-developed part of the leased land is in close proximity to this estate. The allotted land is bush-land with a thick biomass stock, which so far is extensively used by local communities for their livelihoods of various sorts such as burn-and-slash agriculture; fishing; hunting; and collecting fruits, herbs, building material and firewood. The expansion of the first stage affected 17 local communi-

ties, which are either located within the area or at the fringe. Small hamlets and individual settlers in the estate area had been resettled into the nearby villages. Moreover, 100,000 ha were only granted under the condition that the company constructs a vegetable oil refinery. The construction of 18 oil mills, one kernel crushing plant and one rubber plant is also part of the agreement (Sime Darby Plantation).

Economic growth: Sime Darby promised to invest up to 3 billion US Dollars into their Liberian undertaking, and to create some 22,000 jobs within 10 years. It is expected that the total number of employment will be 35,000 when fully operational. An addition of 44,000 ha is reserved for an outgrowers' programme, amounting to an aggregate size of the whole undertaking of 264,000 ha.

The benefits for the Government of Liberia as announced by the GoL are US\$ 847 million, but it is unclear how this figure was calculated. The agreement fixes the rent for the land as follows (paragraph 20.1):

- US\$ 5.00 per ha annually for the developed area;
- US\$ 1.25 per ha annually for the next 8 years for the non-developed concession area;
- US\$ 2.50 per ha annually for the non-developed concession area after the first 8 years.

At the moment 1,118 ha has been developed while 218,882 ha are still not developed. This therefore implies that an annual rent for 2012 of US\$ 279,192 is to be paid to GoL. In addition, the GoL benefits from the general income and sales taxes of the normal business operation of Sime Darby. But because of generous tax cost reductions (paragraph 19.8) and duty-free import provisions, the expected revenues will be minimal for the next years.

The Concession Agreement also defines the following financial obligations for the company:

- Development Fund: (paragraph 19.5) US\$ 5.00 per developed hectares annually needs to be

paid into a community development fund. The spending is decided by an Administration Team of ten persons selected from the surrounding communities, GoL and the investor (holds 50% of the voices).

- Palm Oil and Rubber Development Fund: 1% of the gross sales of each product category has to be paid into an extra commodity specific development fund. The use and the administration of the fund shall be determined by mutual agreement (paragraph 19.6 + 19.7)

Social obligations: The Agreement requires the investor to provide for minimum housing facilities for employees and their families, free medical care for the employees and their dependents, schools and free primary and high school education for the dependents of the employees within reach of the homes, and spending at least US\$ 25,000 annually on vocational training and adult literacy. It also requires the investor to build and operate one centrally located hospital also for non-employees within 10 years, as well as to build and to run five kindergartens (paragraph 9.5, 10, 11).

Employment: There are no provisions for preference of employment of people from the project affected communities. All unskilled labour need to be Liberians. At least 50% of the senior management positions need to be Liberians, and 75 % in 10 years. The International Labour Organisation ILO-Conventions on regular employment are obligatory, which include paying at least the minimum wage, no discrimination and no child labour (paragraph 12).

Outgrower programme: The development and management, technical advice and purchase of their products is the exclusive obligation of Sime Darby; while sourcing funds from outside the country is GoL's responsibility. The selection of the participants and the procedures of cooperation will be collectively determined by the Company and GoL. The outgrower scheme needs to be started three years after the effective date of the agreement (paragraph 15.2).

Environment: The Agreement only makes a reference to the general laws of Liberia and to the Principles of the Round Table on Sustainable Palm Oil (RSPO) (paragraph 16).

Food security: The Investor may consider growing rice and other food products, where the land is not suitable for the tree crops. This area may not exceed 5 % of the total Concession. Losses from food growing can be deducted from the Company's tax payment. But the Company can also allow independent farming activities on those lands, provided the farmer lives within the Concession Area and the growing is for subsistence purposes only (paragraph 8.8 + 8.10).

Domestic use: Twenty-five percent (25%) by volume of the estimated annual gross sale of crude palm oil must be sold domestically to satisfy the demand in Liberia (paragraph 8.7).

Resettlement: By notice to GoL, the Company can request that certain settlements be relocated, provided the Company can demonstrate that such existing settlements and its inhabitants would impede the investor's development of the concession area. The investor must pay a maximum of US\$ 200 per hectare to the affected persons. GoL will pay the expenses that exceed this amount. Fifty percent of these expenses can be used by the Company as tax credit. A Resettlement Committee of six members supervises all resettlements (paragraph 4.3).

Monitoring: Sime Darby has to submit a rolling four-year developing plan to GoL annually, which can be subject to comments and review; however not for approval nor modification for as long as it is inside the frame of the original agreement (paragraph 23.2). GoL has the right, from time to time, to inspect the records and to ask for a specific investor's activity report. All information herewith is confidential.

Overall coordination: A committee of seven members is established to overlook all social matter, labour relations, personnel and other matters related to the investment activities. The members

are appointed by the Company and by GoL; while the chairman is commonly selected. One person in each one's delegation should be from the surrounding communities (paragraph 17).

Arbitration: Arbitration is only destined for disputes between the GoL and the company. They will be taken to the International Centre for Settlement of Investment Disputes Convention (ISIDC) (paragraph 28).

Project Affected Communities (PAC): A grievance mechanism on conflict resolution with the local inhabitants is not provided for, except in cases of resettlement. The agreement explicitly rejects any responsibility of the Company vis-à-vis the PAC: "*Government agrees to defend and protect for the benefit of the Investor, all rights granted to Investor hereunder and indemnify and hold harmless Investor for any losses incurred by Investor, as a result of ... without limitations disputes relating to the ownership of land ...*" (paragraph 5.1)

International law (paragraph 31.1): "*The Investor shall conduct itself in a manner consistent to Liberia's obligations under international treaties and agreements insofar as those have the effect of law in Liberia.*" Paragraph 32.2. states, "*The rights, obligations and duties of the Parties under the Agreement shall be construed and interpreted in accordance with Law and by such rules and principles of generally accepted international law particularly with regards to an investment by nationals of one country in another country.*"

Water: "*The Investor shall be entitled to take and use water found within the concession area free of charge for purposes necessary or useful to the investors' activities; provided that the investor shall not materially deprive any villages of a reasonable supply of water insofar as such water has customarily been utilized.*" (paragraph 4.c)

The original concession Agreement is scanned and published in internet by LEITI; see: www.leiti.org.lr/doc/sime12.pdf

Box 2: Concession agreement between the government of Liberia and the corporation Golden Veroleum (GV)

The Concession Agreement with Golden Veroleum (GV) (Ministry of Foreign Affairs 2010) is very similar to that with Sime Darby (SD). Since it is a more recent agreement, there is a slight chance that corrections from past experiences have been made, such as paying tribute to the different locations. This is because the concession area of GV is in much more remote places than that of SD, which means that the economic options for the population are more limited, and that the required infrastructural investments by the company to connect the estates with the harbour and with the national markets need to be higher.

A 220,000-ha concession is granted to the company GV, and an addition of 40,000 ha for an out-grower scheme. The Agreement was signed in September 2010. GV is a subsidiary of the huge Indonesian palm oil corporation Verdant Fund Lp. (Sinar Mas). GV concession area is in the Southeast of Liberia, which is difficult to reach from the capital Monrovia, but close to the harbour of Greenville. The land is virgin bush land and forest, and utilised by indigenous communities for their survival.

The concession includes clear cut of the present vegetation, just like in the case of SD. But unlike that of SD, the concession area of GV is not one consolidated piece, but spreads out as separated pieces over the five neighbouring counties of Sinoe, Grand Kru, Maryland, River Gee and River Cess. In its full development, employment is expected to exceed 35,000 jobs and investments to reach 1.6 billion US\$. The initial development will commence with a 15,000 ha estate.

Rent (paragraph 20): The rent required is the same as that for SD, but rent of the US\$ 1.25 per not-developed land is extended to 10 years (instead of 8 years with SD) before it increases to US\$ 2.50.

Development fund (paragraph 19.7): It has the same provision as that in the agreement with SD.

Palm oil fund (paragraph 19.5): Instead of 1%, only 0.5% of the turnover is required.

Food security (paragraph 8.9): The Concession with GV only speaks of “employees or their dependents or their association or cooperatives” to be allowed to produce on non-used land from oil palms food for their subsistence (With SD, it is for independent farmers).

Employment (paragraph 12): Provisions are the same as that with SD.

Research and extension (paragraph 15.2): This paragraph is novel since GV is asked by the Concession Agreement to “provide farm advisory support and farm supplies to qualified farmers” in liaison with the extension service of GoL. It also added: “to collaborate with the existing palm oil research institutes in Liberia” and “GV may consider the establishment of additional palm oil research institution and learning centre in Liberia.” This provision had its direct consequences: The University of Liberia, Faculty for Agriculture and Forestry, was asked by GV to submit a proposal on a “Center of Excellence” of Palm Oil production. WRTCAF has positively responded.

Environment (paragraph 16): A new provision was added, where GV is asked to submit an Environmental Impact Assessment Study (already compulsory for all big projects in Liberia) and an Environmental Management Plan to GoL (through the Environmental Protection Agency (EPA) for approval, as well as to update them and to deliver from time to time upon request of EPA for additional studies.

Minimum development obligation (paragraph 8.6): Eighteen months after the agreement takes effect, at least 15,000 hectares need to be prepared for planting; after 10 years, at least 30% of the concession area needs to be planted, after 16 years at least 60%, and 100% be planted in year 25.

Outgrower programme (paragraph 15.3): This is the same as that of SD, except that only 40,000 ha are reserved for outgrowers with GV (not 44,000 ha as in case with SD).

Domestic use (paragraph 8.8): The same as with that of SD.

Resettlement (paragraph 4.3): The same, but with slight changes: GoL does not pay for anything that exceeds US\$ 200 per ha, but the investor needs to spend more than US\$ 3 million in the aggregate amount during the entire term.

Monitoring (paragraph 23.2): The same as with that of SD.

Arbitration (paragraph 28): The same as with that of SD.

Project affected communities (paragraph 5.1): The same as with that of SD.

International law (paragraph 31.1): Almost the same as with that of SD, however the following sentence was added: *“If there is any conflict or inconsistency between any Law, the agreed upon provisions of this Agreement shall govern.”*

Water (paragraph 4.e): The same as with that of SD.

See: www.leiti.org.lr/doc/act_golden_veroleum.pdf

Box 3: Equatorial Palm Oil (EPO) concession

A concession for over 89,000 ha with an option of another 40 years extension signed by GoL with the UK/Indian Company of Equatorial Palm Oil (EPO) of which 34,395 ha was enacted by Legislature in 1965 for the Palm Bay Estate in Grand Bassa to LIBINC (Ministry of Foreign Affairs 2008). In 2008 they got an addition of 54,550 ha on the Butaw Estate in Sinoe. The company started off from the existing Palm Bay Estate in Grand Bassa, where it built the first commercial palm oil mill in the country and began producing palm oil on 1,100 ha.

In River Cess, EPO signed a memorandum of understanding with local chiefs and district officials for an option over 100,000 ha. The promise of the company is to have 50,000 ha developed in the next 10 years, and up to 100,000 ha by 2020. It also promises to create jobs for 20,000 people. The company is also expected to make a major contribution in terms of supplying the regional West African market with cooking oil. EPO is praising its commitment to high standards and its membership and devotion to the Round Table on Sustainable Palm Oil (RSPO) as well as its high standard of Corporate Social Responsibility

(CSO), which goes beyond any provision of the concession agreement (Equatorial Palm Oil 2012, 7ff). Unlike SD and GV concession agreements, this concession does not mention RSPO as good business practice (paragraph 6.2).

EPO is replacing LIBINC Palm Oil that came to Liberia 1965. The original agreement explicitly allows the transfer to any other person or company. After the cessation of the civil strife, which left the plantation of LIBINC in a devastating state, LIBINC was turned over to LIBINCO, and a renewed version of a concession agreement was signed with the Government of Liberia (Ministry of Foreign Affairs 2008). LIBINCO then was renamed in Equatorial Palm Oil (EPO). This concession agreement was ratified in May 2008 with LIBINC. The concession area is situated between New Cess and Timbo Rivers.

Rent (paragraph 16.1): The rent is different from that of SD and GV. It is US\$ 0.5 per acre annually per not-developed land in the first 7 years, and US\$ 1 thereafter; and US\$ 1 per acre annually for developed land in the first 7 years and US\$ 2 thereafter.

Community development fund (paragraph 17.4): It is 1% annually after 7 years on gross sales.

Palm oil development fund (paragraph 17.4): It is 0,5% of annual gross sales in first 7 years, and 1% thereafter.

Food security: There are no provisions for food security under the EPO/LIBINCO concession.

Employment (paragraph 9): The same provisions under the concession are stipulated.

Research and extension (paragraph 12.2): Similar to the concession with GV, LIBINCO is asked to *“to endeavour to liaison and collaborate with the Memorandum of Agreement (MoA) to provide extension services and to a reasonable extent with existing palm oil research institutes in Liberia.”*

Environment (paragraph 13): Unlike in the concession with GV, there is only a very vague provision that refers to environmental practices - “reasonable measures that production does not cause unreasonable risks or damage.”

Minimum development obligation (paragraph 6.7): LIBINCO clears and plants at least 1,000 acres annually for the first 10 years and 2,000 acres annually thereafter; in case of default, LIBINCO forfeits all uncleared land.

Outgrower programme (paragraph 12.3): It has the same provisions as that in the SD and GV concessions, except that only 10,115 ha are reserved for outgrowers (not 44,000 ha as in case with SD or 40,000 ha as with GV); LIBINCO will be re-

warded with additional land that is equivalent to the area it will help to develop for the outgrowers which is up to the limit of 10,115 ha. LIBINCO assists MoA with technical support and provision of inputs, although funding has to be sourced from outside.

Domestic use: There is no direct provision for domestic use, but the existing palm oil mill is the sole producing facility for the domestic market; paragraph 11.1 foresees that within 10 years LIBINCO shall cooperate with GoL to explore possibilities of establishing manufacture and processing facilities to utilize crude palm oil for domestic marketing.

Resettlement: Not mentioned

Monitoring: Not mentioned

Arbitration (paragraph 24): The provision is only for disputes between the company and GoL.

Project affected communities: They does not appear in the concession agreement.

International law: Not mentioned

Water: Not mentioned

Education/health: Provision is only defined obligatory for employees and their spouses and dependents

See: www.leiti.org.lr/doc/LIBINIC_OIL_PALM_INC.pdf

Chapter 2

Oil palm growing in Liberia

Oil palm is indigenous to the West African region and as such will not only thrive but produce well in Liberia. Liberia is particularly blessed with optimal, conducive environmental, topographic and climatic conditions to underpin and support productive interventions in oil palm production. Environmental factors critical for optimal growth and production include the following: measure of annual rainfall, sunshine hours and temperature; and factors which must be present in the right combination for the proper development of the palm. The prospect of palm oil in the international markets seems to be excellent. Palm oil is used for many purposes: about 71% as ingredient for processed food items (it is estimated that palm oil can be found in every second supermarket product, the oil cake as feed; 5% for biofuel (with high rates of growth and unlimited demand); and about 24% is used as an ingredient in non-edible products like soaps, detergents and surfactants, cosmetics, pharmaceuticals and a wide variety of other household and industrial products. The oil palm produces more oil per hectare than other leading oil producing crop (i.e., rapeseed, soybean, groundnut, etc.).

Liberia has a history of smallholder palm oil production in the northern counties. It is estimated that production provides direct employment and income impacts to approximately 37,000 families or to an estimated 250,000 individuals. About 75% of these farmers are from Lofa, Nimba, and Bong Counties where earlier promotional efforts occurred. The same survey concluded that small household scale producers largely harvest aging trees, averaging 30-35 years old, well beyond their productive potential.¹ Most farmers practice minimum fertilization, little maintenance or replanting of old stock. Thus, yields are very low, i.e. below three tons of fresh fruit bunches per ha or less than 20% of Indonesian averages. Liberia's total annual output of raw material in 2009 was about 47,300 tons of crude palm oil. Domestic consumption is estimated at between 62,800-66,200 metric tons. Given the deficit in supply and demand, Liberia

imported an estimated 14,000 to 17,000 metric tons of palm oil with an economic value of US\$ 10.5-12.8 million. Until now, there are no exports of internationally-recognized food-grade crude palm oil or palm kernel oil (Fricke 2010, 5).

Should a level of production of 2-3 t/ha be in effect in the future, the new concessions would bring Liberia among the top five largest global producers of palm oil, including Indonesia, Malaysia, Thailand, and Nigeria. Currently, Liberia rates near the bottom of the producer countries and does not even have adequate production for domestic consumption needs.

The focus on oil palm is an attempt to make use of the genuine comparative advantage that the country has for tropical tree crops. However, the companies have not even thought of one agronomic problem, which they suddenly faced. Even if the plant "oil palm" originated from Africa, the variety which all three of the companies introduced come from Asia. In the case of SD and GV, these came from their own research stations. A high yielding variety which resulted from multiplication by cloning was introduced in Liberia. The new variety, which was planted, however suffered an outbreak of a fungus - or a kind of "blast" (*magnaporthe grisea*). This fungus which yellows the leaves and is unknown in oil palm plantations in Asia, turned out to be hard to combat.² At the same time an unknown virus has also attacked the young palm trees. The companies' enthusiasm about the optimal growing conditions for oil palms in Liberia got a small damper by these. EPO also documents that they faced this "little" problem in its Annual Report 2011.

There is a need to find out the kind of pesticide to solve these plant-pathogenic problems. However, given the problems the companies face with the surrounding communities such is no easy solution. "The people are a real obstacle for our expansion programme," so one senior manager of SD admitted (personal talk).

¹ Data collected during 2008 by Government of Liberia LISGIS statistical survey,

² Verbal statement by Prof. Franklin Philips, consultant to SD

Chapter 3

The international attempts to qualify big land concession

After the World Food Crises of 2008, when the world food prices rocketed, the future of the global food security looked dubious to many players and the influx of financial capital into the future markets and hedge funds for raw material and food became overwhelming. Such led to the international community's concern about the rush of transnational land deals that especially target the poor countries with high incidence of under nutrition and hunger, and weak governance structures in Asia and Africa.

The concerns encompass especially the rights of project affected communities (PAC), food security matters, conflict resolution and environmental degradation. There have been attempts to draw up Guidelines, or Code of Conducts or Models of Good Agricultural Practices (GAP) by international organisations aim at drawing the line between "good" and "bad" land investments. Such attempts have the potential to strengthen the moral and political interests of the affected people and PAC vis-à-vis their national governments and the investors.

The World Bank was the first one to come out with an attempt to define criteria for "responsible land investments" in Third World Countries that do not jeopardize the development aims of the host countries with its "Principle for Responsible Agricultural Investments" (RAI) (World Bank et al. 2010). The original formulation of the RAI released in early 2010 is actually a joint undertaking and position by the World Bank, the FAO, IFAD and UNCTAD. The "Code of Conduct" advocacy by the International Food Policy Research Institute (IFPRI) - a member of CGIAR - is essentially the same as the collective position of these agencies (von Braun/Meinzen-Dick 2011).

Inspired by the huge influx of capital into global South agriculture, which promise to raise the long wanted productivity of the food systems in developing countries, the WB welcomes the new trend: "*Any investment in lower income countries that can close the (productivity-) gap, is desirable in principle*" (World Bank et al. 2010, 1). The WB aims to introduce the following qualification: "*it is important to also ensure that they (the investors) respect*

the rights of existing users of land, water and other resources, that they protect and improve livelihoods at the household and community level, and that they do no harm to the environment." Thus the intention of the RAI is clearly to define what others call "land grabbing" and many of them find large scale land acquisitions unreasonable all together.

The World Bank Principles faced heavy criticism by various actors. Besides the objection against the basic intention of the WB, mainly three more legalistic major criticisms have been raised: 1) RAI does not include any reference to binding legal instruments, like the Human Rights or FPIC; 2) They do not distinguish between the responsibilities of the companies and those of the states; and 3) They do not contain methods of enforcement and sanctions for non-compliance (see for instance EU Parliament 2012, 17).

One of the more influential detractor is the UN Rapporteur for the Right to Food, Oliver De Schutter (2009). He advances the view that the WB's RAI basic position gravitates around "managing risks while harnessing opportunities". In his work, De Schutter puts forward a proposal to the UN Human Rights Council, and introduces the concept of "Minimum Human Rights Principles," which has to be addressed to the host states and the investors. Their main aim is to ensure that negotiations leading to land acquisitions and leases comply with a number of procedural requirements, including the FPIC-Principle, promoting labour intensive systems, the inclusion of all local people into the welfare improvement, monitoring and impact assessment requirements, supplementing the investment project with measures to also supply the local markets with food and that "under no circumstances should such transactions be allowed to trump the human rights obligations of States". (De Schutter (2009, 1)

One principle, which does not appear anywhere else in international laws or programmes, is that "*the local populations should benefit from the revenues generated by the investment agreement*". He wants to make sure that those who bear the bulk of the costs of those investments do adequate-

ly benefit.¹ De Schutter refers also to the African Commission on Human and Peoples' Rights which stipulates that the right to self determination imposes on governments an obligation to protect individuals under their jurisdiction from being deprived of their access to productive resources by foreign actors.² According to him, "large scale investment in land will not necessarily be justified, even though it may comply with the various principles listed in the RAI principles."

Important international NGOs, who form parts of the Global Land Grab Campaign, like GRAIN, Friends of the Earth, La Via Campesina or FIAN, have found de Schutter to be a key ally and have invoked De Schutter's "Minimum Human Rights Principles". They claim that the World Bank's RAI are too investor friendly and are naive in the assumption that land lease or purchases reduce hunger and poverty, and build sustainable agriculture. The facts tell otherwise, they claim. Reports on land grabbing show in reality that those land deals sometimes displaced thousands of communities, caused violent conflicts, undermined livelihoods, and did not generate the promised jobs.³ In a common declaration they claim that weak rules like the kind on redress of the affected persons only legitimise land grabbing. This is especially so since these principles do not refer to any binding legal or institutional mechanism like those of national governments or of internationally binding human rights groups.

In fact, the World Bank's own comprehensive report on land deals fails to find evidence of the benefits of land grabbing. The cases detailed by the study found overwhelmingly negative im-

pacts, while benefits remained confined to theoretical possibilities (Deininger et al. 2011). In spite of its own findings: "many investments...failed to live up to expectations, and instead of generating sustainable benefits, these contributed to asset loss and left local people worse off than they would have been without the investment." (World Bank et al. 2010, 71) But these findings did not stop the World Bank from continuing support for land grabbing through its Multilateral Investment Guarantee Agency (MIGA), which grants political risk insurance to multinational land investments in countries like Uganda or Ethiopia (van den Berg 2011).

De Schutter's and the NGOs' critical assessment of attempts to tame land concessions by Code of Conducts got some support from the academia. Tania Muray Li for instance from the University of Toronto argues that she is not convinced by the effectiveness of any code of conduct regulatory measure to make land investments 'pro poor.' Most of the time, the projects result in employment security for some, while leaving the majority of the people without shelter, food, means of livelihood and environmental security. Where safeguards have effectively been put in place for the rural poor they have been the result of political organisation and social mobilization. "Without such struggles even the most assiduous regulatory regime has no purchase," she observes (Li 2011).

The Land Policy Guidelines of the African Union came out in 2010 with the promise to shed light into the contentious matter. It turned out to be a disappointment because the whole document did not even make any reference to foreign firms' scramble for African land (African Union et al. 2010). It made a strong plea for acknowledging the legitimacy of indigenous land rights and for the recognition of the local community based land management. In so far it made a contribution to challenging African governments that give away land without consultation with the affected communities. But since not one of African political leaders dares to speak out against land grabbing, the tame outcome of this extraordinary process is no surprise.

1 Principle No. 4 (De Schutter 2009, 16). He construes this from the Universal Declaration on the Right to Development, which encompasses the principle of inclusion of the entire population in the progress.; § 31 in De Schutter's submission.

2 The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria, African Commission on Human and Peoples' Rights, communication No. 155/96 (2001), para 58, quoted by De Schutter (2009, 13)

3 See for instance Oxfam, Oakland Institute.

Box 4: Some UN-instruments that influence governance of tenure

- Universal Declaration of Human Rights
 - Convention relating to the Status of Refugees
 - International Convention on the Elimination of all Forms of Racial Discrimination
 - Convention on the Elimination of All Forms of Discrimination against Women
 - Convention concerning Indigenous and Tribal Peoples in Independent Countries
 - International Covenant on Economic, Social and Cultural Rights
 - International Covenant on Civil and Political Rights
 - Istanbul Declaration on Human Settlements
 - Convention against Corruption
 - Declaration of the International Conference on Agrarian Reform and Rural Development
 - ILO Convention (107 + 169) on the Rights of Indigenous, Tribal and Semi-Tribal Populations in Countries
- Compiled by FAO (2009, 12); see also an even more comprehensive list in Annex 2 of the Voluntary Guidelines of the FAO*

Some pieces of international law touch certain aspects relevant to the large-scale land acquisitions. These include the Extractive Industry Initiative EITI (a Code against corruption and for accountability, which play a major role in Liberia) (EITI 2003), the Kothari Guidelines (on Adequate Housing as a component to the Right to an Adequate Standard of Living) (United Nations 2006), the Pinheiro-Principles (Principles on Housing and Property Restitution for Refugees and Displaced Persons) (United Nations 2005), the International Centre for Settlement of Investment Disputes Convention,⁴ the ILO Convention on the Right of Indigenous People, the UN Declaration on the Rights of Indigenous People (adopted by the General Assembly 61/295 from September 13, 2007, Article 29), the UN-Covenant of the Economic, Social and Cultural Rights, - especially the Right to Food, and the OECD Code of Conduct for

Multinational Corporations. Even if these have some kind of binding implication in terms of land deals, they are still weak in implementation i.e., where there is no plaintiff there is no defendant. All of them lack effective monitoring and dispute settling mechanism, a sanctioning procedure, or the capacity to win the trust of the victims to claim recourse for them. Their strength lies more in the ability of political advocacies to make use of them in the form of claims against the host governments of large-scale land concession. They can also be used to embarrass domestic governments in the international arena, since as members of the UN, all countries are under some kind of obligation to comply.

From all international regulations, the most stringent and important rule is that of the “First Prior and Informed Consent” (FPIC), which is a principle now enshrined in a number of international laws, industrial guidelines, and national legislation related to Foreign Direct Investment (FDI) projects:

“Free, prior and informed consent recognizes indigenous peoples’ inherent and prior rights to their

⁴ See <https://icsid.worldbank.org/ICSID/Index.jsp>. It is an independent Convention with 140 states as members to facilitate for conciliation and arbitration between international investors and governments of host states. All concession agreements of Liberia make reference to ICSID as the dispute settlement procedure between the contracting parties; however the affected people are not a party in the contracts.

lands and resources and respects their legitimate authority to require that third parties enter into an equal and respectful relationship with them, based on the principle of informed consent.” (United Nations 2004, 5)

FPIC implies that

- the indigenous communities are consulted about plans of an FDI-project before they are legally fixed or implemented,
- the obligation of the investors is to negotiate with the indigenous communities about the potential impacts, terms and compensation, and
- the indigenous communities are empowered to refuse the project altogether, should their terms are not met.

The right to refuse is the toughest one. There is no known case where the refusal as outcome of a consultation process has stopped a large land deal altogether; except when there is a resulting social unrest afterwards, which force governments to finally respect the will of the affected people.

If a domestic government insists on the implementation of the project, it only has the possibility of expropriation, which is according to all national and international law a cumbersome and highly conflicting and strictly legal procedure. Whether the commercial interest of any FDI could justify such a deep intervention in the name of a public interest, when the case is taken to court, is very doubtful; such allegations are denied by the UN Rapporteur completely.

Another sort of international rule are standards developed by the private sector itself, like the Equator Principle (see: Equator-Principles: www.equator-principles.com/resources/equator_principles.pdf). They are a voluntary set of standards for the private sector banks not to provide loans to borrowers, who will not comply to certain social and environmental criteria. The most recent concession agreements of Liberia make reference to them. Some consider them as the best industry practice.

For soy and palm oil, which are very important crops in the world trade, commodity specific voluntary private standards for sustainability were introduced by the respective industry, mainly stemming from the pressure of customers and the importing countries. As in the case of Liberia, the multinational companies (which basically intend to produce palm oil) are members of the Round Table on Sustainable Palm Oil (RSPO). Their Asian counterparts are certified by the RSPO. They committed themselves to also get certification for their Liberian estates. If they stick to their promise, they have to follow the International Guidelines for Certification of Enterprises by the RSPO (Round Table on Sustainable Palm Oil 2007). These guidelines define best business practices that have been set up by the palm oil producing companies themselves. Estates and companies need to apply for certification, which is costly. Without this certification, their market access to Europe faces restrictions by customers. Because RSPO-certification can be commercially lucrative, there is a real incentive to comply with their rules. Compliance should not be a major matter. But even as low as the standards are, some unreasonable requirements may be introduced into the pure business operation in Liberia.

Most of the “Best Practices” of RSPO are self-evident, such as complying with the laws of their host countries and refraining from corrupt practices. Others are very weak though, as in the use of agrochemicals, which even allow the use of the herbicide Paraquat, which is banned in Europe due to its hazardous effect on human health. Moreover, the rules for respecting endangered species are vague (“their conservation to be taken into account,” criterion 5.2).

In matters of safeguarding people’s rights, the guidelines just provide that “the right to use the land is not legitimately contested by local communities with demonstrable rights” (criterion 2.2). The rules of the “New Planting Procedure” are however more trenchant since they are especially relevant as performance standards for the new concession cases in Liberia that we discussed. These shall become the basis in assessing the environ-

mental impacts of such concessions (Round Table on Sustainable Palm Oil 2009).

With the “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security” of the UN Commission on Food Security (CFS) - hosted by the FAO as basis, the study wants to discuss these on the basis of whether they might be an appropriate tool for qualifying the policy and reality of large-scale land acquisitions in developing countries by foreign investors, as in the case of three huge land concessions for palm oil production in Liberia.

Chapter 4

The Voluntary Guidelines of the FAO: origin, nature, scope and principles

In May 2012, after three years of discussions and many regional consultations, the FAO-hosted UN Committee on Food Security (CFS) finally adopted the “Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security” (called from now on VG) (FAO 2012). The operational organisations in the background that supported the process were the FAO, IFAD, World Bank, and many others. The process that led to the drafting of these VG and the final version got the support of those international leading NGOs in the Land Grab Campaign. It was also welcomed by many groups with high expectations in terms of taming land grabbing. However, a closer look at them reveals that these hopes may be exaggerated a bit. The VG build on and reinforced the African Land Policy Framework which is being spearheaded by the African Union.

Even if they are called “voluntarily”, the VG consequently follow a human rights line of reasoning which has to be considered as internationally agreed interpretation of the binding Human Rights Covenant on Economic, Social and Cultural Rights, especially the Right to Food. The UN-Right to Food has also been translated by the FAO into a practical standard for governments action by “The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security”. Even if the right to food does not automatically translate into a right to land, to evict people who made their living from land is a clear violation of the Right to Food.

The overarching goal of the VG is to help countries to improve their governance of land tenure; as well as for donor countries that are under obligation to use the VG as conditions for their development assistance and lending practice. Towards this end, the VG establish internationally accepted principles and standards for responsible land and resource-use practices. The VG will serve as a framework to support countries in the development of national policies, and constitute a baseline of acceptable practices for all stakeholders for evaluation of proposed and existing policies and ac-

tions. For the Civil Society Organisations (CSO), the VG will serve as an instrument to lobby vis-à-vis powerful players of all sides. The VG include a code of conduct for business enterprises (under Chapter 3A). To call them “voluntary” is the price that had to be paid for the unanimity. It would not have been politically more beneficial to aim for a binding international convention since documents that require obligatory compliance are much more difficult to negotiate. The negotiations would more likely drag on for so many years before coming up with a watered-down text; which would only be valid for the few countries that finally ratified it.¹

The VG is clearly linked with the uptake of a human-rights based approach which places emphasis on: “universal, interdependent, indivisible and interrelated Human Rights. The principles of consultation and participation, accountability, non-discrimination, transparency, human dignity, gender equity, rule of law, human dignity, equity and justice, holistic and sustainable approach apply to the approach of responsible governance.” (FAO nd) It’s clear reference to the UN Covenant and general HR-principles make a marked difference to the pragmatic approach of the WB-Principles on RAI, which try to make a compromise between the interest of the investors and those of the affected people. Under a rights-based approach, no compromise on legal rights can be accepted.

Originally, the discussion about the necessity to develop such VG by the FAO goes back to a mandate given by the “Plan of Action” from the World Food Summit (WFS) in 1996, and was repeated by the “WFS Five Years Later” in 2002. The VG on the Right to Food (2004) was reiterated by the Declaration of the International Conference on Agrarian Reform and Rural Development from Porto Alegre/Brazil in 2006. They all call for the establishment of legal mechanisms that advance land reform, recognise and protect land property, water and user rights, and enhance access to the

¹ This is a conclusion by one of the chairs of the process: Michael Windfuhr (2012); the same statement is made by Harold Liversage (2010)

poor and women to resources. But the real negotiations over them started only after 2008, i.e., when the concerns over large-scale land acquisitions had grown. Even if the VG make no direct reference to these new land deals by foreign players, they were perceived by most stakeholders as an instrument that will set clear benchmarks for what has to be respected in matters of people's rights; transparency; rule of law; and environmental considerations to avoid social conflicts, increasing hunger and poverty, and environmental damage.

The VG cannot be understood as law by itself. Instead these guidelines provide frameworks that should be used by developing strategies, policies, legislation, programmes and activities that will be used as point of reference by all stakeholders alike: e.g., governments, investors, PAC, NGOs, national and international donors, and lenders.

Chapter 5

Some basics of the Voluntary Guidelines in relation to large land acquisitions

At the core of the VG is the commitment to recognise, respect, promote and protect all legitimate rights of the local people and communities in the matter of land tenure (the use of the land-based resources). It explicitly includes “legitimate customary rights that are not currently protected by law” (paragraph 5.3, 7.1) and collectively used land (commons) (paragraph 8.3). “Where it is not possible to provide legal recognition of tenure rights, States should prevent forced evictions¹ that are inconsistent with their existing obligations under national and international laws and in accordance with the principles of these Guidelines.” (Paragraph 7.6) Practically, this means that the rules of the VG take precedence over national land tenure laws in case of eviction of people from their land.

Due to the potential conflicts associated with questions of access to land, the VG emphasize dispute resolving mechanisms at all levels: preventive, in a non-judicial manner, or through formal judicial remedies. (See for instance paragraph 3.2, 4.9, 7.3 Chapter 21 and partly Chapter 25.)

To guarantee responsible governance, the guidelines call on all governments for a national land policy with clear-cut legal and organisation frameworks (paragraph 5.1 and following), in order to prevent corruption, have transparent processes, and let the rule of law prevail (paragraph 6.9). This shall include government services that will enable affected people to enjoy their rights, with special regard to the needs of vulnerable or marginalized groups. For instance, by providing them with suitable means of information transfer (simple, clear, accessible and understandable to all, see paragraph 8.9), as well as simplified measures of granting tenure security and special services (paragraph 6.4-6.7, 7.5).

The VG also prioritize consultation and participation of affected people and stakeholders. Participation, on the one hand, serves practical reasons, as such limiting arbitrary use of power to

avoid corruption and to address conflicts of interest (paragraph 6.9). On the other hand, it is also being considered as a basic human rights principle (paragraph 3B6; also reference to them under paragraph 8.6). Here, the conditions for a “real participation process” are clearly stated: “prior to decisions being taken,” “taking into consideration existing power imbalances,” and “ensuring active, free, effective, meaningful and informed participation” (paragraph 3B6). The VG explicitly take reference to FPIC in paragraph 9.3 and paragraph 9.8. This aspect can also apply in terms of the obligatory Environmental and Social Impact Assessments (ESIA) of big projects (paragraph 12.10 + 12.11)

Commercial large scale investments in Land:

However, in spite of the firm commitment of the VG on strengthening the rights of the affected communities and environmental interests, such does not serve as an unambiguous instrument in taming land grabbing as many might have hoped. The VG also opens a door for commercial intervention into a given land tenure system. Paragraph 11.1 proposes that states should recognize the “sale and lease market as means of transfer of rights of use and ownership of land” (even with the restriction that it should be “fair, transparent, and prevent undesirable impacts for people and nature”).²

During the last stages of the negotiations, pressure by the business sector resulted in considerable modifications of the draft texts of the chapter on “investments” which reversed the basic original intention of that paragraph. While the chapter (paragraph 12.5) originally served the goal “to prevent risk by large-scale land acquisition, concession and leases that involve conversion of land used by local communities, families and individuals to commercial activities,” the text now gives acknowledgment to private investment as essential in improving food security, under the condition that it is a “responsible investment” (paragraph 12.1). A “variety of farming systems” as promoter of social,

¹ The utmost requirement of the Social, Economic and Cultural Human Rights, as clarified in the General Comment No. 7 of 1997 is that no eviction takes place that does not comply with the tight rules.

² The UN Rapporteur on right to Food, Oliver de Schutter, rightly point out that individual titling and land markets do not offer sufficient protection because the smallholders can easily be priced out by corporations on the market (De Schuuter 2009, 11)

economic and environmental objectives is emphasized preparing the ground for paragraph 12.5, which says: “*States should provide rules for allowable large-scale transactions in tenure rights.*” These rules could include introducing ceiling of permissible land transactions and regulating how land transfers could be approved (paragraph 12.6). This statement can be understood in the sense that states do not really have the freedom to close the use of their land from large-scale foreign investment altogether, but that they are only allowed to set the concrete modalities. In paragraph 12.8 of the VG “responsible investments” are being “promoted” and “encouraged.”

Comment: Whether those national laws and authorities will be effective or not in enforcing the “responsibility” of the investors - if ever they exist at all - is highly debatable, especially in view of the fact that most land investments target states with weak land governance. Just like the Principles of the World Bank, here the VG falls back with the dubious concept of “responsible land acquisitions.” In the VG, huge tracts of land that are taken away from the people’s use for livelihood for 60 and more years - with or without fair compensation to the local people and payment of revenues to the government - will no longer be available for their control in making a living from the local communities. The promise of wage labour employment on the newly established estates is vague and projects the hope for improved welfare of most in the future.

The changes made in the text (of what is now) paragraph 12.8 can be a concern. Originally, the language always talked about “investment and concession.” The term “concession” however, was eliminated in the final text, which made the valid guidelines assume that all land acquisitions are automatically productive “investments.” In the case of Liberia, the concessions are huge, but the actual stretch of land that has been productively developed up to the present is still small. It will still take 20 to 30 years before the corporations will be able to deliver their promise to make use of the whole area and fulfill their investment pledges. This is true even as in the case of the 1923 concession with

Firestone, which aimed at developing rubber plantations. Until now the company was actually only able to develop a part of the total land area under the concession. It becomes apparent therefore that the hunger for control over large areas of land is more than just the willingness to develop the land; it also has speculative functions as well as a component of gaining power over a territory. To neglect this dimension is a big failure on the part of VG.

Consequently, the changes made in paragraph (12.9) weaken the participatory rights of the affected people in matters of FDI. All original references to “negotiations” with the local people have been reduced to simple “consultation” requirements (which largely are the responsibility of governments and not those of the investors). The repetition of the rigorous criteria on how consultations should be carried out (“active, free, effective, meaningful and informed”), in the earlier version of the text has been dropped and replaced by just a general reference to the “Principles of these Guidelines” concerning the meaning of “consultation” (the same in paragraph 16.2 and 16.8.). This shortcut waters down the procedural rights of the PACs.

The former paragraph of the draft (12.12) that refers to the installation of a “*timely, affordable and effective means of dispute resolution to enforce contractual terms and obligations of parties to investment agreements*” has been dropped altogether; only a remark in the new paragraph 12.14 concerning monitoring has been added i.e., that “aggrieved parties can request” corrective action. In case of large land acquisitions, an automatic dispute settlement procedure is thus not provided. It is a big task for PACs to come up with clear evidence that companies have not fulfilled their contractual obligations or requirements according to national or international laws. It is difficult for ordinary people to request corrective action from authorities of their government that are not specified.

In line with an FDI-friendly orientation of the VG, the final version of the topic of “Expropriation and Compensation (Paragraph 16.1)” dropped the sentence: “*In no way should expropriation or forced eviction be made for private purpose.*” Apart from

that, the legal and procedural requirements for expropriation by the VG are tight. However, in paragraph 16.7, the draft of the VG made special reference to “people and communities who do not have legally recognized tenure rights,” which is the usual case for the rural population in Liberia. In these cases, the former text says that “*States should prevent forced evictions that violate existing obligations under national and international laws.*” Under the other provisions of the VG these people enjoy strong protection. This reference however is missing altogether in the final text of the VG. Again this further weakens the position of local communities vis-a-vis interventions in customary land tenure such as foreign companies buying communal land from the government.

The VG are strong in suggesting to states to install an integrated recording system of land tenure (under paragraph 17) and apply spatial planning to clearly identify and protect the areas under different land tenure rights and constrain the use of land by legal instruments (paragraph 20.1 + 20.3). “*Whenever it is not possible to record tenure rights of indigenous people and other customary communities, or occupations in informal settlements, particular care should be taken to prevent the registration of competing rights in those areas.*” (paragraph 17.2) It must be ensured that this spatial planning is conducted through wide public participation “*to ensure that priorities and interests of communities, including indigenous peoples and food-producing communities are reflected*” (paragraph 20.4). In paragraph 20.5 the VG want to combine this spatial planning with diversified sustainable management of land, agro-ecological agriculture, sustainable intensification, and climate change and food security.

States are called to set up a multi-stakeholder platform for effective implementation, monitoring, and evaluation of these guidelines (paragraph 26.2).

Chapter 6

National law and its relevance

The international standards are only an advice to the national law makers to design clear regulations for the FDI when searching for land transactions in their countries. Even the best national legal framework and contract terms, might not be sufficient for the protection of the local people and environment, if the process on the land transfer and consultation that was conducted has been irregular in terms of the stated objectives. Much also depends on the possibility of corrective measures in cases of conflict and failures that have been identified by an effective monitoring system. All depends upon the good intention of the government and the investors, as well as on the effective mechanisms that will translate the intentions of the laws and of the concession agreements into realities. And even with all of that, it will still not suffice if the affected people are not empowered to effectively make use of their rights, and no collective action is made that can help give real leverage to address these legal rights.

The amount of land that GoL has given away to foreign investors is immense. A recent investigation by Global Witness and Sustainable Development Institute (SDI) from Liberia found out that 25% of the total land mass has been granted to logging companies in just the last two years, some of which was virgin rainforest; the land has been turned over in secret and often illegally by contracts, involving evidence of fraud and misconduct among government officials and timber companies (Global Witness et al. 2012). According to a newspaper report, an official of the Ministry of Planning said that these deals cover almost half of the country's total land mass (Ford 2012). One might suspect that the GoL is trying to sell out quickly the land, before a land reform will give tenure security to the peasants. US\$ 19 billion are supposed to be involved as promised total investment for these land concessions.

Liberia is, as it have been said before, an example of a country with more sophisticated formal legal practices as most other African states, since they do have a framework of laws and institutions in place for granting land concessions, and the larger concessions have to be passed through the

Legislature and are published in the internet by the the Liberian Office of the Extractive Industries Transparency Initiative LEITI (www.leiti.org.lr). The Concession Agreements follow a model master template, which was worked out in collaboration with international legal consultants¹ and is linked to EITI (www.eiti.org/eiti), an international standard ensuring transparency of payments from natural resources.

But at the same time, Liberia is also governed by a leadership that acts as if it is convinced that central government is the only authority over all common land. It restricts its responsibility concerning the affected people to just consulting the people about the transactions and to looking for fair compensation for people's investment in the land (crops in the ground, homesteads). For the GoL however, it does not seem to be necessary to gain people's consensus to the deal.

This attitude is hard to understand, since apparently the GoL has made land reform a top priority and the Legislature has mandated a Land Reform Commission to take lead in designing a proposal as well as advocate and coordinate reforms in land policy. The objectives include: promoting equitable and productive access to the nation's land, security of tenure in land, and effective land administration and management.² This endeavour recognizes that land questions in Liberia are explosive. In fact, sporadic eruptions of violence due to land are already occurring and a view commonly expressed by many Liberians is that "the next war will be about land" (Sawyer 2009). The respected Diagnostic Trade Integration Study (DTIS Report) even claims that "the past concession system has been one of the root causes of the country's socially non-inclusive development, which results in civil war" (Integrated Framework for Trade Related Technical Assistance 2008).

1 A revision of the concession policy with proposals on how to improve the agreements goes back to the famous Report: Republic of Liberia/Ministry of Agriculture, Comprehensive Assessment of the Agricultural Sector, Vol 1, Synthesis Report, IFAD/World Bank/FAO, Liberia 2007, § 79

2 Legislature submitted August 2008.

GoL also acts as if all land without visible development is considered to be idle and useless land, which people should evade. This attitude is clearly reflected in the concession agreements, which fully endorse the sole proprietorship of government over common land; and which hardly accept any obligation of the investor with regards to the indigenous local people. No provisions are also foreseen for a grievance mechanism. Moreover, no reinvestment of the revenue gained from the land rental into the affected area for the benefit of the total local population is obligatory (except for the dues to be paid into the three different funds).

This however, does not need to be so. There can be quite different arrangements, as has been documented to be the case in other African states. In Senegal or Madagascar, the concession contract was made not only between the central government and the companies, but with the full inclusion of a representative of the local people and/or the local and regional state authorities commencing from the earlier stages of negotiation (see: Cotula, L. 2011, 18).

The details in the Liberian concession policy or contracts seem to be somewhat outstanding in relation to concession agreements in some other African countries. The study has to give GoL recognition for the following provisions:

- investment by foreign investors into processing of the raw products inside Liberia;
 - social obligations with regards to their own employees and their dependents, obligatory yearly fees for a Community Development Fund and a Commodity Development Fund (Research);
 - a time schedule for investors to fully develop the total concession area, in order to avoid unproductive speculation with land;
 - inflation bound index of the yearly lease;
 - a clear demarcation by maps of the total area of the concession. In the case of SD and GV, they have the option to select their concession area from a consignment suggested by government, which is one third larger than the area that they can actually use;
 - an obligation for an environmental and social impact assessment before the project gets started and prior to every next step of expansion inside the concession area. The contracts refer to compliance with national environmental laws and the standards of RSPO.
- Recognizing the strong side of Liberia's concession policy its weakest point however is the warrant GoL gives to the investors that "Government shall not permit the exploitation by any other person of any parcel of land within the Concession Area for any commercial purpose." (paragraph 5.1 of SD and GV Contract). Even more strong is the provision: "*All the public lands that make up the concession area shall be free and clear of encumbrances.*"
- The LIBINCO Concession Agreement "indemnifies and saves LIBINCO from all claims, liabilities, costs and expenses;" the local communities do not appear at all in the Agreement. How can it be free of all encumbrances? The land handed over to the foreign companies was used by the indigenous communities in various ways i.e., from farming up to hunting and firewood collection. "Without encumbrances" is an impossible obligation, except if the government takes over all encumbrances that
- All concession agreements have to be passed by Legislature.
 - These agreements contain: specifications for recruiting nationals for unskilled and skilled labour, which require compliance with national and international labour laws;
 - precise regulations on outgrowers' schemes with the kind of division of labour between the government and the investor;
 - provisions on producing food for overcoming bottlenecks in the local food market;
 - obligatory benchmark for domestic marketing of the produce;

rest on the land. But that does not seem to be the political reality.

The legal context within which provisions like these would operate is quite wide (see also in the box of the concession agreement of SD the quotation to paragraph 5.1 under the cue “PAC”). This implies that either GoL is completely neglecting any rights of the local people to the resources of the affected area, or it has to expropriate the people of their rights. Eviction however is a complicated legal matter under Liberian law and will involve high costs. These costs now rest completely with the government. Cotula (2011, 33) is right by remarking: *“If the commercial projects really can generate greater economic benefits than current land users, one might expect them to be able to buy out local people on a negotiated rather than a compulsory basis.”*

Compensation is only paid by the investors for the loss of visible improvement on the land, not for loss of land as such. The visible productive use of land is a culturally biased perception. This is because it only considers agriculture, and not some other forms of local resource use such as long period fallow, pastoralism, hunting, gathering of fruits and herbs from the wilderness, firewood collection, collection of building material (mud, poles, straw), or fishing. The compensation paid for crops on the fields are inadequate to restore the lost livelihoods of the people. Most of the losses cannot be compensated by money but only by giving users’ rights to similar resources. This has not been thought of by the authorities since the concession areas are so huge. Compensation by giving access to other land is either impossible, given that the other empty land is not available; or would imply resettlement over large distances in which the approval of PAC will be hard to get.

The payments the concession agreements provide for the PAC are useful since they provide for the development fund or the infrastructure and social facilities. However the payments that go into these communal funds are investments into public goods, which do not actually benefit directly the affected individuals in the PACs. On top, these compensations are not income generating for the local

people. None of the concession agreements make it obligatory to the investors to give preference to employment for the affected people, which would have been an adequate option for regaining livelihoods in some other way. The concession agreements oblige the investors in some detail to provide for adequate housing for their employees and their families. It seems they are free to hire anyone from the national labour market.

In the case of GV, it is reported that the project attracted many people from outside to come to the area in the hope to find employment with the newly established estates. Thus, the local population even bears the burden brought about by the newly generated employment opportunities. With the arrival of many job-seekers from outside the region, pressure mounts on limited facilities, like public health and sanitary infrastructure, schooling, accommodation and even the food market. The prices for housing, construction material and food in the project surrounding areas went up (Toe 2012, 10). What seemed especially puzzling to the on going development efforts in the region is the impact GV had on the willingness of the young people to earn a living by getting trained as farmers. Many left vocational training schools and got attracted to the potential unskilled employment opportunities in the new estate. In the case of SD, there is the offer by the company to give employment to one person from each family in the affected 17 communities. This provision was not part of the concession agreement, but a voluntary step by the management.

The investors are free to use the water found in the concession area, but not to the detriment of the surrounding population. This paragraph of the concession agreements gives to the company priority rights on the water. The villagers are stuck in their development with the customarily usage of water - in case of future water scarcity. The lack of proper water pricing may promote inefficient water use. It also constitutes a virtual subsidy to the plantation economy and deprives government of an important source of revenue. But worse, it externalises the upstream and downstream water management cost to government.

Finally, the question of what happens in case of any future change in the national law is obscured. On the one hand, paragraph 31.2. of the concession agreement rules that *“the Investor shall be subject to law as in effect from time to time;”* On the other hand, paragraph 31.2 of the same agreement contradicts by saying: *“In the event of a conflict between this agreement and any law coming into force after this agreement, except for the Constitution of Liberia, the rights, obligations and duties of a Party shall deemed to be those set forth in this agreement.”*

Thus, it is not clear which provision will prevail in case Liberia introduces stricter environmental regulations that ban certain chemicals extensively used by the plantations, or strengthens the rights of affected people. Will Government need to compensate the companies for the extra costs from the changes in the laws? The regulatory measures that undermined the viability of a land-based investment may be considered as a kind of expropriation of that investment.

The three companies in Liberia the study looked at are protected against expropriation by the concession agreements and also by bilateral investment treaties. This indeed opens up a legal and complicated debate. It looks as if the concession areas are partly exempt from the validity of national law, like a state within the state. Recalling that apparently 40-60 % of the Liberian territory is under concession with foreign investors, it raises a serious debate about how much of the national sovereignty of the Liberian state has been rendered.

Chapter 7

The national legal framework concessions in Liberia

The concessionaires are responsible for ensuring that their operations are in line with international standards by which they are certified and with their own internal Corporate Social Responsibilities (CSR). It is the government of Liberia that is ultimately accountable to its citizenry. The GoL is in between the foreign investor and the affected people. It needs to protect the rights and livelihoods of the people, but at the same time it has its own interest to raise revenues for funding its long term development plans, to cater for economic growth, and to provide public facilities and infrastructure for the population. The instruments to balance all the divergent interest of the stakeholders need to be imbedded in the laws regulating FDI, land concessions, and the effectiveness of the state institutions to implement and enforce the laws.

Liberia has a lot of historical experience with large-scale foreign plantations and other conflicts resulting from a dualistic land tenure system. The new political leadership that evolved after the civil war was determined to construct a legal framework that caters for transparency, accountability and the rule of law. The post-war recovering efforts put a lot of emphasis in a stringent concession policy with strong institutions and negotiating power (see: Ministry of Agriculture 2007). With legal assistance provided to the government of Liberia by International Senior Lawyers Project (see: www.islp.org), EITI and other agencies, Liberia can build a legal system that can be outstanding and sound for Africa.

The overarching objective that has guided Liberian government policy on the use of natural resources can be found in the 2008 Poverty Reduction Strategy (PRS): *“The secretive, special deals of the past that benefited a few to the detriment of the majority will be replaced by transparent agreements with fairer terms and stronger mechanisms to ensure the proper distribution and spending of funds and that concession revenues will be used to promote public welfare by financing investments in roads, education, health, water and other areas.”* (Republic of Liberia 2008, 37)

According to the Public Procurement and Concession Act of 2010 (PPCA) the Ministry of

Agriculture is mandated to be the Concession Entity for agricultural products. The Concession Entity leads the process together with a seven-member Commission appointed by the President with the approval of the Parliament. This Commission is supposed to make a public tender for a designated project, invite for bids, and to evaluate the different offers before the actual negotiation with the potential investor starts. The Concession Entity is also responsible for conducting a *“public stakeholder forum on proposed concessions prior to the finalization of the bid documents to be included in the invitation to bid.”* (Public Procurement and Concession Act, Part VI 81)

The Commission also has the function to act as a watchdog body for ensuring good governance during the concession awarding process as well as to follow-up upon complaints that are related to the negotiations. The role of dispute settlement can only pursue as a reaction of a filed complaint; it does not have the authority to monitor the process on its own. With the newly established successor organization of the National Bureau of Concession however, this role will terminate.

The process was not followed in matters of our cases. The government did not select the area, did not make a public tender to invite for bids, and there were no competing bids for the potential concession. Instead, the companies approached the government with their intention to expand their existing (small) estates to a wider concession area and the government even went into negotiations with the companies right away. According to one investigation, the Entity Commission is rarely if ever constituted prior to concession negotiations (Center for International Conflict Resolution 2012, 63).

The Act also calls for conducting a public stakeholder forum on a proposed concession prior to the finalization of the bid document, and where it is required for the results to be included in the invitation to bid. The lack of details about who should be invited, where the meeting should take place, how such a forum should be designed to be meaningful lead to the fact that this provision turned out

in reality to be a fake; and that no meaningful dialogue with the PAC has resulted from this process negotiations (Center for International Conflict Resolution 2012, 62). The law also prescribes that the proposed concession be posted in the areas where the investment will occur prior to its ratification. The researchers found no evidence that such has taken place. If there is no public tender, there cannot be a consultation or announcement prior to the bids.

The next step in processing a concession agreement is led by an Inter-Ministerial Concession Committee, which is also established by the PPCA. This Committee effectively represents the Government during negotiations. Thus, during the negotiation, non-executive representatives are not present, who could have an impact on the terms of the agreement.

Another Act comes in here, which is the National Investment Commission Act from 2010 (Ministry of Foreign Affairs 2010b). This established the National Investment Commission (NIC) with an operational office to conduct the business. NIC, among its other duties, is responsible for evaluating investment proposals and for coordinating the different state actors in the process of processing the terms of the agreement. NIC has been replaced by a National Bureau of Concession (NBC), with the additional function of monitoring concession agreements and to administer a review process.

The final draft of the Agreement is then submitted to the President's Office for review and approval. The President will then be submitting it to the Parliament. The National Legislature is responsible for holding public hearings on all concession agreements before submitting them back to the President's Office for final ratification by a simple majority in the full chamber. The quality of these legislative hearings is quite contentious. Their announcements, the reporting about them, the list of invited speakers, the decision to hold them inside the Parliament building which is difficult to access, the time rush for offering inputs by the civil society, are all biased against a mean-

ingful participation by the PAC. *"This is troubling, as the legislative review process is intended to be the phase where communities and the Liberian public could express their views to the legislators."* (Center for International Conflict Resolution 2012, 65) The practical possibilities of the legislative to make corrections of the draft agreements also seem to be very limited and did not happen so far.

After the start of the investor's operation, the Bureau of Concession - an arm of the Ministry of Finance - has been the agency that is responsible for monitoring and reviewing existing agreements. The Environmental Protection Agency (EPA) on the other hand, is the principal authority for implementing national environmental policy. The EPA approves the Environmental and Social Impact Assessment (ESIA). All larger projects have to supply at their own cost for ESIA and EPA also monitors compliance with the national law. It can charge fines or can prosecute environmental infringements.

The strong juridical mandate of EPA is somewhat at odds, considering the weak technical capacities of the organisation such as inadequate laboratory facilities. EPA has sub-contracted the ESIA in the two concession cases we look at, to the consultants of GreenCon, who did the assessment with much routine and professionalism. GreenCon included in its assessment process meeting with the local affected communities. From the environmental point of view, the only fear the reports express were that related to soil erosion during the first three years of new planting when the trees are not yet strong enough to protect the soil from the heavy rainfall.

Another organisation that has been set up with a restricted mandate of monitoring is LEITI, a governmental entity modelled from the international "Extractive Industry Transparency Initiative" (EITI). But unlike EITI, LEITI's watchdog function also covers payments from agricultural companies. LEITI is tasked to publish the concession agreements on its website, to disseminate information regarding concession agreements, and to audit extractive revenues. The audit does not include

however, the performance of the projects. It does not go deep enough into actually checking all monetary obligations of the companies, but only what comes in for government from the companies' side, and what goes out from the government side.

The legal framework that is in place in Liberia might suffice in theory. However, in practice there are many limitations in all instruments and mechanisms for it to operate effectively according to their mandate. In addition, their mandates are ill-described and limited. Some areas of regulation are not covered at all, especially those that refer to land conflicts, the rights of the affected people, and the monitoring and review mechanism. A real dispute settlement between the local people, on the one hand, and the companies and government on the other hand, is absent.

At the first glance, many standards asked for by international guidelines are present. These include instruments of effective negotiations, transparency rules, formal democratic control, well worked-out master agreements, rule of law, and certain conditions imposed on the investors. But others are missing, especially the FPIC in which the specifications of what "participation" really mean is included, i.e., active, free, effective, meaningful and informed participation. The standard that came out from the SD assessment by TFT will be an important benchmark for any further FPICs in the country (see next chapter).

In principle, the legal mechanism of bid invitation is a very sound instrument, i.e., the terms are clearly described by the announcement, especially the exact demarcation of the area; and the plan to contract this land out to foreign investors has been discussed and approved by the representatives of local communities. The reality of the Liberian mechanism however does not fulfil the criteria.

As condition for the tendering process, there has to be a mandatory national land use planning that is based on law. This planning clearly marks areas for different land tenures and kind of usage, e.g., for large commercial use, for smallholder development with private titles, for land under cus-

tomary tenure, for forest, for grazing, etc. A change in the prescribed land use shall be a cumbersome legal procedure that will involve the possibility of filing objections by the affected people.

A less stringent, but also an effective way to protect people's right would be to allow the registration of customary land titles to communities, as foreseen by the "Draft Land Rights Policy Statement" of the Land Commission (Republic of Liberia Land Commission 2012). This draft, which went for approval to the Cabinet, is the long expected outcome of a review and analysis of land tenure issues by the Land Commission that has long been going on since 2009. The draft text proposes four different types of legal land rights, which are Public Land, Government Land, Customary Land, and Private Land. Under paragraph 6.2.2 the draft proposes: "*Ownership of customary land by Community and its members have the unrestricted and perpetual right to use and manage the land in accordance with customary practices and norms to exclude all others from use and possession.*" The text promises that "*lands of customary communities are given protection equal to that of private lands*" (paragraph 2.5).

The draft admits however, that the strength of the rights depends upon the demarcation area: "*The uncertainty of many Customary Land boundaries has been a major contributor to land disputes in Liberia. By investing the time and resources necessary to work with communities to establish Customary Land boundaries such land disputes will decrease significantly*" (paragraph 6.5). It will still take many years before the land can be demarked and registered in a national cadastre. In the transitory period, there will be little protection of customary land enforceable.

It seems that the draft of the land tenure resembles the Hinterland Act of 1949, which legalized customary land ownership allowing chiefs to formalize tribal land claims by applying for a deed. Only 13 chiefdoms seized this opportunity and combined 2.3 million acres which remain registered today under the name of these chiefdoms. This land was exempt from the Aborigines Law of

1956, which claim all lands as property of the state (Siakor 2012).

The new draft however explicitly states: “*This Policy Statement is not going to address existing or future land concessions*” (paragraph 2.0). Because Government had appointed a special Concession Land Use and Tenure Task Force, there is more need to study this “complex and cross-cutting issue.” It becomes totally unclear then how the potential new land legislature might affect the land concession practice of government. This exception for future land concessions requires deeper understanding of the issues and the process as well.

Chapter 8

Sime Darby in conflict

At present, SD's presence in Grand Cape Mount County has generated considerable friction and despair amongst local communities. While the Project Affected Communities (PACs) at the onset of the planning welcome the idea that the multinational company is going to invest in their area, the excitement turned into frustration when the activities started.

The land of the people was taken away and cleared, and the compensations paid to the people were meagre and not done in good faith. The villagers received money for the loss of crops only, but nothing for the lost land or lost access to forest, which is the host of so many other important livelihoods of the people. A fast growing discontent mounted to protest due to the impossibility of planting crops any more, improper calculations of compensation paid, the feeling of alienation from their ancestor's land, and the fact that the taking over of their land came as a surprise to the villagers.

Tensions have steadily risen between the company and host communities. In August 2011, community leaders in western Liberia wrote to the Roundtable on Sustainable Palm Oil (RSPO), the global association that acts as a certifier for good practices in this field. They accused SD of "*destruction of our sacred sites, destruction of our crops, damming of our creeks and streams, filling in of our swamps and forceful displacement of our people without adequate compensation.*" They called on the RSPO to get SD to "*halt all land acquisition and land preparation in Liberia while the current situation is being investigated and resolved.*"

It was the first time that the government of Nobel-Prize winner President Ellen Johnson-Shirleaf faced open criticism against her generous concession policy. Puzzled by the open hostility from the PACs, she went and visited the area and told the people: "*When your government and the representatives sign any paper with a foreign country, the communities cannot change it.*"

SD has strongly denied the charges made against it. Recent statements posted on its website



Photo: Friends of the Earth International

have stressed SD commitment to sustainable agriculture and its "*regular and direct engagement with communities, adherence to national laws and regulations, environmental stewardship, and the use of best agricultural practices.*"

Two months later the RSPO responded to the letter signed by the two Heads of the Traditional Councils of Cape Mount and Bomi County indicating SD's willingness to enter into a dialogue with the PACs about some of the charges on the basis of an independent evaluation.

SD commissioned The Forest Trust (TFT) from Switzerland to look into the matter. An international team of three experts visited the area and inquired on the complaints of the PACs. They presented their findings to a big crowd of representatives of all affected villages by the end of October 2011. Representatives from government and the company were also present. The final report was out one month later (www.tft-forests.org).

To the surprise of the PACs, the findings of TFT turned out to be a strong verdict: "*The Standard Operation Procedure of FPIC was considered not to be effective as to deliver a sound FPIC.*"

The following failures were also documented:

- a very rapid process;
 - only a few meetings were conducted, which focused on just the “good” communities;
 - communities were not adequately informed;
 - PACs were not really consulted in the ESIA and HVCF assessments;
 - no PAC involvement in the agreement;
 - absence of a mapping process;
 - the buffer zone around the villages of 500-1,000 feet is inadequate to sustain the livelihoods;
 - only minimal farmland, forest and no sacred places were left;
 - the swamps were cleared and dried;
 - water sources were destroyed and diverted;
 - the complaints of the PACs had no one to address;
 - the local communities currently see no benefits;
 - PACs only see dispossession;
 - absence of clear compensation procedure;
 - no transparent crops counting;
 - abuse and corruption with regards to compensation payments.
- the compensation process was a disaster for trust building.

This report was also submitted to the Court of the RSPO. In a letter of RSPO to the Head of the Complaining Traditional Councils on October 19th, 2011, the RSPO informed the PACs that SD admitted the mistakes committed by the company and that SD has offered a renewed process of dialogue and communication procedure.

Negotiations started between the SD and the PACs on the improvement of the five broader issues:

- **Employment:** SD conducted a household census in the PACs and agreed to hire one person from each household.
- **Farming:** The swamp areas were to be laid out again and to be developed to farming land to produce food for the needs of the communities. (However, due to adverse weather conditions, it did not materialize; SD instead provided food aid for the villagers).
- **Fishing:** The plans of SD were rejected by the villagers; the PACs asked for sheep instead (i.e., two per household).
- **Schools:** SD agreed to build one elementary school for children of non-employees of SD in Sinio, which is inside the plantation.
- **Compensation:** Instead of going through a cumbersome procedure, the PACs and SD agreed to increase the rent per ha from 5 to 6 US\$ and to put the additional revenue of one million US\$ into a social trust fund for the PACs.

In summary, three points were presented by the TFT during the meeting:

- the FPIC process was very poorly done;
- deep conflict, unhappiness, bad things have happened, livelihoods under threat; and

SD established a “social mobilisation team” composed of three staff persons who are in charge of good future relationship with the PACs. SD contracted TFT for one year to supervise and consult SD on the conduct of proper FPIC in the new expansion area. TFT has set out SOPs for the FPICs and makes the PACs in the new areas to understand the procedure and meaning of FPICs.

These measures stand for themselves. They made it possible that the company and the affected communities can talk with one another again, which was not possible before. The model sets standards of a proper conduct of FPIC for SD, as SD expands into its concession area; but potentially also for other concession areas like with GV or EPO. It should be mentioned that there is quite some confusion on the side of the PACs in the future expansion areas on the role of TFT and the Social Mobilisation Team. Three towns of Zoldua Land for instance wrote a letter to SD and asked to be left alone from TFT and the Social Mobilization Team. It was only when they got better informed by the PACs from the older estate area about the real character of the process that they revoked.

The team of students that visited the project area and talked to many people from the PACs and to one representative of SD, confirmed the findings of TFT fully. They collected some additional information and stories of people who told them how they have experienced the take-over of their livelihoods by the company. The report of the students is found in the Annex I.

Chapter 9

Golden Veroleum in conflict

The situation of the presence of SD seems to be similar to the experiences of the people in Sinoe, with the presence of the Indonesian multinational company GV there. The people first welcomed the company and invested so much in the expectation that the company will bring development to their remote places. However on October 1st, 2012, in a letter to the RSPO by 14 representatives of the indigenous Butaw Kru tribe as well inhabitants from several local communities within the proposed GV concession area, GV was accused to have violated basic provision of the criteria of the RSPO and asked RSPO for action to address the concerns raised. They demand that GV *“immediately freeze its operation on our lands until our rights are respected and secured in line with the RSPO `New Planting Procedures` (NPP) and RSPO `Principles and Criteria`.”*

In detail, the letter complains about the violation of FPIC (as part of the NPP), especially by *“taking away forcefully our customary land, facilitating our forceful eviction without our free and prior informed consent.”* The local Government authorities have *“used threats, intimidation, harassments and threat of arrest and detention”* to break the *“refused permission (of the people) for GV to take away our customary lands.”* *“The compensation scheme has been imposed upon us with threat.”* *“Our crops, drinking water sources, and farm land were all destroyed.”*

The letter continues by claiming that grave sites and burial grounds were bulldozed, *“humiliating us by desecrating our sacred shrines, villages have been swept away.”* It all happened without any consultation. By filling the swamps, a source of building and construction material, important food producing areas and medical plants were taken away from them. *“What is more horrendous is that Golden Veroleum has done little to improve alternative livelihood and living conditions for our people.”* The food security of the PACs has been eroded, since they pay more for locally produced food (Brownell 2012; Scoop 2012).

The team of students who visited the project site and talked with many community leaders and members, confirm that the spirit has changed.

While the people of Kpanyon District at first accepted the company’s coming, the current negative trend toward the company is causing them to panic. This is because some of the most basic regular procedures have not been followed. These include presenting maps and demarking areas, listing of affected communities and members liable for compensation, a transparent way of counting and valuation of crops for fair compensation, and the proper documentation of payments with receipts for the villagers. (see Students’ Report, Annex II)

However, according to the students’ report, the villagers did receive preferential treatment in matters of employment and the company does train young people to gain some skills for working on the plantation.

The students came across repeated information on forceful evictions without any resettlement agreement in collaboration with government. If this is a fact, it would also be a violation of national law. There has not been a Resettlement Committee in operation as provided for by law, and no grievance mechanisms are in place altogether as well.

The negative trend of the events contradicts somewhat a report commissioned by German Agro Action of Liberia, which was submitted in March 2012. The report concluded that: *“Tensions and disputes over village and farm lands, including villagers’ compensation by GV, do not pose any significant threat to peaceful relations with the GV mainly because both parties have recognized (and for now seem generally satisfied by) the benefits of the corporate/community symbiosis that has emerged.”* (Toe 2012, 10) It is hard to imagine that things have changed so quickly within one half year i.e., “satisfaction” among the villagers to the PACs claim that they are living under constant fear and threats.

Based on the Toe report, GV intends to launch a Community Development Program (CDP) in response to the loss of food producing farm land and other adverse outcomes and gaps. GV allocated 30 hectares of land in the Greenville, Kpanyan and Butaw districts that will be dedicated to “system-



Photo: Friends of the Earth International

atic” farming and production by local farmers of local food crops at very high production levels to supply the local markets. The company will provide technical support, farming implements and seed inputs. According to Toe, “*this initiative is especially laudable,*” since it counteracts the potential reduced supply of food available in the local market (Toe 2012, 4).

The study puts some emphasis on an aspect which is not highlighted by any other author. Toe fears an observable decline in farming activities and a corresponding reduction in agricultural outputs in the affected areas (Greenville, Kpanyan and Butaw) due to abandonment of local farming by farmers for more attractive wage labor in the GV palm plantations. This come on top of the effect by the acquisition of local farm lands by GV plantation. “*Observable indications of this effect are in the scarcity and sky high prices of local food items at local markets.*” (Toe 2012, 5) This phenomena has also to do with the fact that young people skipped out of vocational training for farming and leave their parents’ farms to search for employment in the company.

In matters of resettlement, Toe came to a positive conclusion that somewhat contradicts the

complaints of the PACs to the RSPO. He said, “*however, where plantation clearing and road construction necessitate the relocation of an entire village, villagers have so far seemed pleased to join their kinsmen in nearby locations and receive appropriate compensation.*” (Toe 2012, 5)

Chapter 10

Conclusion and recommendations

Conclusion

The GoL is determined to transform its agricultural sector. “*Transformation` in that sense means the conversion of a system characterised by an economically concentrated commercial plantation sector to one in which there is broad-based farmer participation in integrated cashcrop/food crop systems. It is essential that the country avoids falling back into old patterns of growth and development based on natural resource extraction industries and a heavily concentrated plantation and commercial agricultural sector. While policy pronouncements clearly indicate that this is not the GoL's strategy, there is a risk that the pressing need for foreign exchange and fiscal revenues could eventually lead to acceptance of easier strategy centred on large commercial rubber and oil palm plantations.*” (Ministry of Agriculture 2007, 60)

The study took the above quotation as a premise on which it anchors its assessment. Irrespective of the concession agreements, the process of granting land concessions in Liberia is critical because the regulation is based on one assumption by the companies and the national government, which is not shared by the local affected people. The theory of eminent domains does not hold in the Liberian context. The assumption that the land belongs to government and that government can give the land away just as it likes with only very little co-determination by the affected communities, is debatable. Even in the best negotiated contract and land allocation procedures, the gap between legality of land transfer and legitimacy as seen by the people is immense. The people feel the land they have used for generations is theirs. This gap exposes the local groups to the risk of dispossession and investors to that of contestation. The conflict is inherent and needs to come out sooner or later. The need to address this problem by a new political and legal frame as well by the conduct of the stakeholders in the field is paramount.

As the rapid rural appraisal studies in the affected villages revealed in all three locations, the potential of discontent and frustration can grow faster than the capability of the companies to ex-

pand their operations in order to award the villagers with the promised employment and other benefits. Many people see their livelihoods eroded, even if they have not yet fully realized what it actually means in the end to live in settlements surrounded by hundreds of thousands of clear cut landscape grown in monoculture (oil palm trees).

Recommendations

The following recommendations have to be given consideration by GoL in order to bring about improvements in its land concession policy, and therefore maintain human rights, peace, food security and sustainability:

- GoL needs to adopt a new land tenure policy by a revising the land law as soon as possible. The present draft of the Land Commission points to the right direction, however without the mentioned exception for large-scale land concessions.
- There must be a fast procedure for the demarcation of the customary land areas and its registration as full-fledged ownership of local communities over their land.
- In case of big land concessions, the original policy concerning public procurement has also to be implemented. Areas that might potentially fall under land concessions in the future have to be defined by GoL together with the consent of the affected communities. A public tender process has to take place and competing bids from different companies have to be invited. In the Commission, which does the selection, representatives from the PACs have to be included.
- GoL shall adopt spatial planning of potential land use with defined priority areas for food production, commercial agricultural, forestry or natural protection, industrial estates, and public land use. This planning should be done in close cooperation with local communal bodies.

- In the meantime, GoL should introduce a moratorium on all large scale land concessions, until the new land laws are operational and the new land use instruments are in place.
- GoL should make a clear commitment in its land policy to recognise, respect, promote, and protect all legitimate rights of the local people and communities in matter of land tenure (and the use of all land-based resources). It must explicitly include legitimate customary rights that are not currently protected by law.
- In case of legal uncertainty, the customary land use rights need to have precedence.
- Where it is not possible to provide legal recognition of tenure rights, the States should prevent forced eviction that are inconsistent with their existing obligations under national and international laws and in accordance with the principles of Voluntary Guidelines of the FAO.
- The land policy of GoL has clearly to be linked with the uptake of a human-rights based approach, which places emphasis on universal, interdependent, indivisible and interrelated human rights. The principles of consultation and participation, accountability, non-discrimination, transparency, human dignity, gender equity, rule of law, human dignity, equity and justice, holistic and sustainable approach apply to the approach of responsible governance.
- The dispute settlement procedure of dialogue between the PACs and SD has set a standard that should be followed in the future by all land concessions.
- GoL should establish by law the conduct and procedure of what FPIC in the Liberian case really means and how to ensure “prior, active, free, effective, meaningful and informed participation” of the affected people in matters of land concessions.
- There should be no concession agreement without establishing a dispute resolution mechanism and effective rules for governmental monitoring of the agreement.
- GoL shall put all emphasis on the planned out-grower schemes and to improve marketing and processing channels for smallholder palm oil supply. These programmes have to be speeded up in order to better link the concession policy with poverty reduction and food security strategy and to make sure that smallholders can really benefit from the new plantations and their investments. Persons from the PACs with sufficient skills should have primacy in the recruitment process. The companies have to also deliver their obligations in this respect.

Annex I

Report of the students to Sime Darby

Presented by: Wooiklee S. Paye, S. Wahkwee Bedell and Teta Bonar

Introduction

This document contains the results of a five day survey conducted by three students of the William R. Tolbert Jr. College of Agriculture and Forestry, on the impact of Sime Darby Plantation operations on the livelihood of 18 affected communities in Grand Cape Mount County. The survey is part of the college's initiative to improve the quality of learning at the University of Liberia through research. The survey was focused on the following issues:

- the free, prior and informed consent (FPIC) of the affected communities in which Sime Darby is currently operating,
- compensation of the affected inhabitants of the PACs,
- employment opportunity for the PACs,
- Respect for livelihood within the project affected area,
- environmental criteria, and
- resettlement benefits, among others.

The survey was also focused on the relationship of Sime Darby with the PACs. It contains the views of community leaders, ordinary citizens (farmers), the management of Sime Darby, and other similar survey conducted in these communities.

It is our hope that this report will give a clear picture of Sime Darby's operations in Grand Cape Mount County, particularly in lower Garwular District, where the company is currently operating.

Objectives

The study was undertaken in order to provide knowledge of the operations of Sime Darby with respect to the following:

- free, prior and informed consent (FPIC),
- compensation for losses sustained by PACs,
- priority employment opportunity for the PACs,
- respect for livelihood within the PACs,
- resettlement benefits,
- outgrower scheme,
- community/social development funds,
- infrastructures, etc.

It also intends to provide the students with a practical field experience as a part of their professional training in the area of agricultural extension education at the college.

Methodology

A team of three students along with an NGO contact person made a field visit to 12 of the 18 affected communities in Grand Cape Mount County where Sime Darby is currently operating.

The team conducted interviews with community leaders, town chiefs, chair ladies, teachers, youth leaders, farmers, traditional leaders and Sime Darby officials. The team also reviewed the other reports of similar studies undertaken by other organizations.

Background of the Sime Darby oil palm company in Liberia

In April 2009, Sime Darby plantation (Liberia) entered into a concession agreement with GoL, for the lease of 200,000 ha of land for the purpose of cultivating oil palm and an additional 20,000 ha

for rubber plantations over a period of 63 years with an option of renewal for another 30 years. The concession agreement includes the takeover of the former Guthrie Rubber Plantation comprising of 8,000 ha which is located in Bomi and Cape Mount counties.

The Guthrie Rubber Plantation, since the late 1950s, has been the most important source of employment for rural people in Grand Cape Mount and Bomi counties. Due to the civil war, the operations of the plantation were disrupted, forcing Kumpulan Guthrie Berhad (KGB), to abandon its operation in Liberia by October 20, 2001. Since that time, the plantation has been run by an appointed interim management team, which eventually turned over the facility to Sime Darby plantation (Liberia) in January 2010.

Sime Darby Plantation (Liberia) is a Malaysian owned agro-industrial company with a downstream business that comprise of 21 entities in 15 countries worldwide, from America, to Europe, to Asia and Africa. The company is a founding member of the Round Table on Sustainable Palm Oil (RSPO).

Key findings of the survey

1. Free, Prior and Informed Consent (FPIC)

This means that there should be no coercion and outside pressure during the negotiation for a project to be undertaken in an area. It includes the absence of any treats or implied retaliation should the results of the decision be negative, and this should be implemented before a plan or a project begins.

It should have all relevant information reflecting all views and positions. It should include the input of traditional elders, spiritual leaders, subsistence farmers, etc., with adequate time and resources to consider impartial and balanced information about the potential risks and benefits of the said project.

Consent should be demonstrated by a clear and compelling agreement, in keeping with the decision-making structures of the indigenous people in question, including traditional consensus procedures.

Considering the above definition, our survey discovered that Sime Darby did not acquire the land in Grand Cape Mount Count through a proper FPIC procedure. The survey revealed that people within the project areas have not been given adequate information about the operation of Sime Darby in their community.

Mohammed Nuah, a 75-year-old elder in Senii Town, told us that they were never informed about the coming of the company to their community. *"We only heard it on radio that a certain big company was coming to take over Guthrie plantation. But after few months, we saw some people coming to our town telling us that they came to count our crops and pay for them, because the government has already given them the land to plant oil palm trees. They told us that whether we agree or not, the land belongs to government, and it is the one that sent them to take the land,"* old man Nuah explained.

Mr. Boima W. Kiazulu, the town chief of Sengema town, told us similar story. *"I had two rubber farms in two different locations. My two farms used to produce three tons of rubber per month,"* Mr. Kiazulu said. *"While I was sitting on my porch one morning, I just saw some groups of men entering the town. They spoke to me and asked if I had a farm. I told them yes, and they asked me to take them to my farm for them to count my crops and pay for them because the new oil palm company was coming to plant palm trees on the land. When I asked who sent them, they told me that the government has given the land to the company, and there is nothing that I do could about it."*

Most of the lands in the PACs are not owned by individuals, and the people therefore do not have deeds for the land that they occupied. However, the people believe that the land belongs to their ancestors who had resided on it for a very long time. The land therefore is their ancestral heritage, and as such, the ownership belongs to no single individual, but rather to the whole tribe.

Throughout our survey, we were told that citizens from the PACs were never part of the concession agreement, and were never involved in the negotiation that gives their land to Sime Darby. Even though there are no supporting documents, but logical reasoning show that pressure was placed on the people in order to gain their cooperation.

2. Compensation of the PACs

According to the definition of compensation by the FAO Voluntary Guidelines, the State should ensure a fair valuation and prompt compensation in accordance with national law. It states that among other forms, the compensation may be for example, in cash, rights to alternative areas or a combination of both.

This again did not happen in the case of Sime Darby and the PACs. Clearly, the company did not provide adequate compensation for the damages the operation had caused on the livelihood of the people in Grand Cape Mount County. There was no collective bargaining between the company and the villagers about the amount and kind of compensation that they received.

There was no clear compensation procedure, and the local management team involved with the process did not work under any guideline.

In all of the villages that we visited, the people complained that management even requested money from them before their crops were counted. The people told us that their crops were underestimated and that the management did not explain to them how much money they will receive for their lost crops.

Musu Dablah, the assistant chair lady of Johnson town, explained to us that: *“the people who the company sent here to count our crops requested money from us before counting our crops. If they went to a farm and the owner did not have money to give them, they would refuse to count that farmer’s crops and consider his farm as a forest. They never told us how much they would be paying for our crops. After counting our*

crops, they never allowed us to know the total amount. They only told us that they were taking their record to their boss.”

The villagers also told our team that during the time of payment, there were some people they saw receiving payments, and that these people were not residents of the PACs. Throughout the compensation process, there was lack of transparency; the management paid 60% of the cost for lost crops first and 40% later, with most of the people receiving no payments at all. The management unilaterally determined how much to pay for the damages they have caused, with the people having no input on the payment procedure.

The payment was only expressed in terms of money, with no other benefits offered in kind. Our survey also discovered that the company had not offered any land within the concession area for farming by the people. The company has set a buffer zone of 500-1,000 ft between each town and the plantation where citizens of the PACs can continue their traditional lifestyles. As the population increases however, the 500-1,000 ft buffer zone will be inadequate for the continuation of their traditional lifestyle.

The compensation was paid individually to each farmer. We don’t know whether it was in accordance with national law. But the people complained that they received very small money for their crops, which they never found to be satisfactory.

3. PACs priority employment

According to the management of Sime Darby, through its public relations officer (PRO), the company took over from the old Guthrie Rubber plantation, and is under obligation to maintain all the employees and staff of the old rubber company. It was difficult for Sime Darby to start immediate employment of citizens from the PACs. Therefore, when the issue of unemployment was raised by the PACs, the company agreed to employ one person from every house. This exercise took place just three days before our visit to the plantation. The

company was able to recruit 574 persons including men and women, who will serve a three-month probation after which they will receive permanent employment.

The company also embarked on training young people from the PACs for skill jobs. For example, during our visit, we saw some 300 young men and women from the PACs who were sent to the Tumutu Agricultural Training Camp to acquire skills in the management and production of oil palm. These will also be hired by the company upon completion of the training.

4. Respect of livelihood

The operations of Sime Darby had a lot of negative impacts on the livelihood of the people within their operational areas. The company has occupied all of the suitable farmland, thus leaving the people with no alternative for farming. Most of the inhabitants of the PACs depended on farming for their livelihood, thereby making it impossible for subsistence farming activities to take place.

The filling of swamps and diverting of streams have had a serious negative impact on other activities such as fishing and hunting. Everywhere we went during our survey, we were told that the scarcity of food is a major problem for the people in the area.

We were told that before the arrival of Sime Darby, Grand Cape Mount County used to be a major producer of cassava and farina. But people within the PACs now buy these items from Monrovia. Even though there are no supporting documents to these claims, there are physical evidences of old cassava farms that have been cleared and planted with oil palm by Sime Darby.

5. Resettlement

When it comes to the issue of resettlement, Sime Darby will decide which communities it wants to resettle. Sime Darby will then make a request to

the government and justify why it wants to resettle those communities. Once agreed, Sime Darby and the government will form a resettlement committee. The committee will be comprised of six members, two of whom must be representatives from the PACs. The government and Sime Darby will choose these community representatives (one each), and none will be chosen by the communities themselves. This requirement does not specify which communities these representatives will come from, or whether communities in areas to which displaced people were moving will be included.

Sime Darby and the government will share the responsibility of resettlement including managing the plans, carrying it out, and paying the expenses. In terms of the expenses, Sime Darby must pay up to \$200/ha to those requiring resettlement, the government will pay the rest of the expenses.

However, throughout our survey, we found out that the people of the PACs do not want to be resettled. According to them, their ancestors' land is their only heritage and they don't want to lose it. What they are requesting for is a just compensation for the losses that they have sustained as a result of Sime Darby's operation, and also for the company to make the swamp lands available to them so they can continue their farming activities instead of resettling them.

6. Outgrower scheme

Sime Darby has a plan of organizing an outgrower program. The program will give 44,000 ha of the gross concession area to be farmed by Liberian oil palm farmers who will be selected by the company and the government.

Sime Darby commits to purchase their produce as well as to provide them with training and non-financial support in obtaining farming materials. Funding will be sought from the World Bank and other international development funds. If funding is not obtained for the implementation of the program, the program will not go through and the

land will revert to the government. However, the outgrower program will not start until after five years, i.e., two years after Sime Darby have harvested the first palm.

7. Social development fund

The concession agreement does provide for the establishment of a Community Development Contribution (CDC). Sime Darby will have to pay \$ 5.00 USD per ha of land annually within the developed areas to a community development fund.

A management team of not more than 10 members chosen by the surrounding communities, the government and Sime Darby will administer this fund. Sime Darby will have to choose half of the management team, while the other half will come from the government and the PACs.

There is also no restriction limiting the disbursement of funds to projects directly benefiting the communities as opposed to the general work programs of the administrative offices. There is no requirement that funds be only disbursed for the benefit of the communities in the affected areas.

8. Infrastructure

The company has built a high school for the education of its employees' children. There is also a clinic where employees and their dependents get medical treatment. Besides these facilities, Sime Darby has not built any school or clinic, nor has there been rehabilitation of any such facility by the company outside of its inner estate area.

However, we were able to find out that as a result of several bilateral meetings held between the company and the PACs, the company has agreed to build a primary school which will cater to the education needs of the children of community members who are not employed by the company. The site of this project has been identified between Senii and Johnson towns, but construction is yet to begin.

With regard to support of higher education, Sime Darby has not given funds to universities for such purpose. This is unlike Golden Veroleum, which gives \$100,000 USD annually to universities to sponsor students reading agricultural sciences in Liberia.

9. Continuation of traditional lifestyle

The presence of Sime Darby has made it difficult for the people to continue their traditional lifestyles. The company has cleared secret society bushes such as the poro and sande. Shrines have been damaged, graveyards destroyed, taboo trees cut down, thus leaving the traditional chiefs and elders with nowhere to perform their rituals. This has also caused serious social, health and psychological problems among the people within the PACs.

10. Environmental criteria

There has been no mapping process or identification of areas of High Conservation Values (HCV) carried out by Sime Darby. The company was only able to leave 500-1,000 ft for each town, which is inadequate to sustain livelihood. All areas falling outside the 1000 ft zone have been cleared and these include swamps, slopes and river banks etc., which has created a serious environmental problem within the PACs.

During the dry season, the shortage of safe drinking water is a major issue among the people in these areas. In order to compensate for this, Sime Darby has constructed 31 hand pumps within the PACs. But we were told that most of these hand pumps dried up during the dry season.

Evidences were shown when we saw five of these pumps locked up and had not been used for quite a few months. We were also told that due to the lack of safe drinking water, there was a serious outbreak of cholera among the people in Lyne town, which left many people hospitalized for several days.

11. Grievance mechanism

At the beginning of Sime Darby's operations, there was no grievance mechanism in place and the people did not know where to bring their complaints. It was difficult to reach the management of Sime Darby, and the NGOs became important vectors to address complaints. However, during a trilateral discussion between the company, PACs, and the land commission held on May 31, 2012 at the Matambo estate, it was agreed that 12 Malaysian managers will be the first point of contact for their respective adopted towns to channel their complaints. The company will also institute a logbook into which each grievance will be lodged and coded. Resolved grievances will have to be signed off by the General Manager of Sime Darby.

Recommendations

After a critical evaluation of what has happened between Sime Darby and the PACs, we will like to make the following recommendations in order to address the problems already created by the company:

- Sime Darby must take immediate actions to address issues surrounding food security and lack of water.
- Sime Darby must revisit the compensation procedures and make sure that the people receive adequate compensation for all losses sustained during the clearing of their land.
- The company must cooperate in making sure that all traditional sacrifices be carried out in accordance with the custom of the people.
- The issue of unemployment must be adequately addressed. Employing one person per household is not enough to address the problem.
- Sime Darby must make the swamps available for the people to continue their farming activities in the lowlands.

- The company should make sure that the social development fund is evenly distributed among the affected communities.
- Sime Darby should ensure that schools and clinics are built outside of their inner estate areas to cater to the needs of affected citizens who are not employed with the company.
- The company must empower the people to enable them to raise livestock to provide for their protein needs as there are no more bushes left for hunting and fishing.
- All grievances should be adequately addressed to avoid conflict. The company must organize a social committee to explain to the people about the operations of Sime Darby in their local dialects that will tell them the risks and benefits of the investment.
- Sime Darby should make sure that the FPIC procedure be properly implemented before moving into another community to avoid mistakes that have already been made.

Conclusion

To conclude, it is clear that there has been conflict between Sime Darby and the PACs. The FPIC procedure was not followed in the acquisition of the land in Grand Cape Mount County. The citizens of the PACs are not happy with the company for the manner in which their land was occupied.

Even though Sime Darby has made some compensation payments within the PACs, these payments were not given properly. The procedure was not clear and the people within the PACs were not happy about the kind of payments that they received for their crops. This has created a serious problem of trust within the minds of the people.

Though the communities have experienced something very bad, there is still a partnership develop-

ing between the people and Sime Darby. Such partnership aim at setting things right, restoring the affected community rights and livelihoods, and ensuring that future operations do not create the same problems.

It is our hope that Sime Darby will play a major positive role in bringing development to Liberia, and most importantly to the communities they are interacting with.

Acknowledgment

We are very happy to extend our heartfelt thanks and appreciation to the University of Liberia, most especially to the Dean of the William R. Tolbert Jr. College of Agriculture and Forestry, Dr. Roland C. Massaquoi; the Dean of the T.J.R. Faulkner College of Science and Technology, Dr. Wollor E. Torpor; Dr. Rudolf Buntzel, a visiting German Professor to the University of Liberia; and the entire faculty of the College of Agriculture and Forestry for affording us this opportunity to apply what we have learned over the years in a real life situation. This survey indeed has given us a lot of practical field experience in the area of agriculture extension education.

We also want to extend our gratitude to God Almighty, under whose guidance and protection we were able to walk through those bushes to gather the information that are written in this report.

List of towns that we visited

- Senii
- Sengemah
- Johnson Town
- Lyne

- Damah
- Timo
- Gbah Foboi
- Siapha Keh
- Madina
- Dendewea
- Kon Town

List of some people that we interviewed

Mohammed Nuah, Musu Kama, Amie Kamara, Jebbeh Nuah, Jenneh Nuah, Halgi Nuah, Boimah Kiazulu, Musu Dablah, Saye Gbongolo, Massah Turey, Musa Dekey, Jenneh Dabla, Morris Durkley, Alfred S. Freeman, H. Mohammed Kiawu, Mohammed S. Jallibah, Watta Gafalie, Hosni Gafalie, Momo Kollie, Isatta Kollie, Saidu Kamara, Jebbeh Kiazulu, Watta Jalieba, Sando Manoballah, Abraham Koromah, Morris Goe, Meima Manoballah, Momo S. Cooper, and David B. Koleh (PRO) Sime Darby.

Annex II

Report of the students to Golden Veroleum

Introduction

As part of the College of Agriculture and Forestry goals of teaching, outreach and research, the college decided to do a research on the large land concessions in Liberia specifically the oil palm concessions. The oil palm sector is of keen interest because it is a new sector, and importantly is part of our studies. Understanding the prospects and challenges is vital to the college.

It can be recalled that the government of Liberia under the leadership of President Ellen Johnson Sirleaf, signed a number of oil palm concessions that would serve as major impetus of growth for the economy of the country. It is against this backdrop, that a team of three students was sent to conduct a study on the concession area of Golden Veroleum in Sinoe County, south-eastern Liberia. The study period was from July 5, to July 11, 2012.

This report covers issues that include first, prior and informed consent of the community, environmental and social impact assessment of the concession area, resettlement, social development, etc.

Social criteria

Below are questions followed by answers that were given by people who were interviewed.

1. Free, Prior and Informed Consent (FPIC)

Indigenous communities (PACs) were consulted by their commissioners at a general citizens meeting held at their respective district administrative headquarters. It was mainly PACs authorities that were in attendance during the consultation. Women and youth participation was low.

Golden Veroleum did not consult with the PACs prior to the start of their operation in the PACs area.

PACs involvement in Environmental and Social Impact Assessment (ESIA):

Golden Veroleum works closely with the PACs and traditional elders who identified sacred sites, cemetery and other areas of high conservation value. For example, in Nimopoh, before demarcation of a sacred site was done, the traditional leaders requested for a cow to appease the gods. The company offered this cow for the sacrifice.

PACs involvement in negotiations on adequate compensation:

PACs have never been involved in negotiations on adequate compensation. For short, there have been no negotiations between the PACs and company or the PACs and the government.

According to the contractual agreement signed between the government of Liberia and Golden Veroleum, *“compensation for those affected by resettlement will be awarded according to a scale determined by the government of Liberia, as subject to Golden Veroleum approval. There is no community consultation at this stage.”* The statement implies that the company has no dealing with the indigenous people whose land is taken away. The company deals only with the government.

Government and company failed promises to PACs:

The citizens claimed that Golden Veroleum promised them to build hospitals, clinics, schools and markets; but these were not done.

External pressure or threat on PACs to gain cooperation:

In Kpanyon District, some citizens said they accepted the company because it was their own son, brother or kinsman Romeo Quioh who carried the investors to them. The current negative trend

however, such as the company taking all their land for palm cultivation, leaving not enough land for farming, the absence of a social agreement contract signed between the PACs and the company as well as a resettlement understanding or agreement, is causing them to panic.

Meanwhile, in Butaw the PACs informed us that the company told them the government of Liberia owned the land and gave them (company) the land. Therefore, PACs have no rights to the land and should rather to accept the result or decision.

PACs right to refuse cooperation:

It has never been mentioned by anyone to the PACs that they have the right to refuse cooperation. PACs are not aware of such right.

The early planning stage authorized a map that present the demarcation for the project area and the reserved area:

There was however, no map presented.

2. Compensation

Collective bargaining between the company and PACs:

The PACs and the company have not entered into any collective bargaining about the kind and amount of compensation.

List of communities to receive jointly agreed compensation:

There is no list of communities to receive the compensation.

Local land owners' compensation for losses:

No one person or family has ownership to land in these two districts; the land tenure is aborigine or inheritance in nature. They inherited the land from their ancestors and because their ancestors

were not schooled, they did not probate or register the land with the government.

This situation, therefore threatens their habitation, since the government is also claiming ownership by giving it to Golden Veroleum. There is only a single family (Grisgby) in Butaw that probated their land deed and this family was compensated by the company.

Entitlement or valuation of land lost:

Golden Veroleum pays for effort made on land and for crops, but does not pay for land. The compensation has been expressed only in money terms.

Outgrower scheme:

About 40,000 hectares is set aside for outgrowers scheme. It has not get commenced.

Promise made for enough land and forest to remain for PACs to continue life style and livelihood:

There was no promise made to PAC.

Compensation payments properly made:

The compensation payment in the case for crops and effort on the land was made properly. This compensation was made for one time only.

Individual or community payment:

Each individual received payment.

Compensation made in accordance with national law:

Some persons who received compensation were documented together with the terms and conditions; while the others were not documented.

This took place specifically in communities in Butaw where the operation was in full swing.

Any PAC marginalized strata?

There is no PAC marginalized group.

Are the tillers the same as those who received compensation?

The land offered for tilling purpose is very minute, and so few members of the PAC will be selected for tilling.

Please note PACs include both those compensated and not compensated.

Women given equal ownership, access to nature, control over land and the equal rights to own property?

Women were given equal ownership, access to nature, control over land, and equal rights to own property as their males' counterpart.

3. PACs priority employment**Were PACs given preference in employment?**

PACs had been given preferential treatment, in some instances a whole household of about 5 or 6 persons is employed.

The preference given to the PACs for employment is seen as kindness to them. The concession agreement however does not make that binding.

Which conditions or restrictions are connected with the promise?

No promise relative to employment was made.

Does the company train young people from the PACs?

The company does not train young people.

Are there skill or vocational training?

The company has no skills training program.

Are women given equal employment?

There is good number of female employees.

Are PACs jobs permanent?

PACs have permanent as well as contractual jobs, which are given normal payments.

Migrant workers:

The company has few migrant workers from Sierra Leone, Mali and Guinea.

Is there illegal settlement in the area?

There are no reported illegal settlers in the concession area.

4. Livelihood respect**Are PACs functions affected or abandoned?**

Farming, hunting and fishing are abandoned. Moreover, collection of non-timber forest products such as rattan, bamboo, nuts, and palm wine are affected.

What are PACs rights to nature?

Hunting, fishing, firewood collection, and trespassing are some rights to nature according to tradition.

Were the above mentioned impacts documented?

These impacts were not documented anywhere.

Were non farming-based losses in livelihood sufficiently addressed?

The non farming-based losses in livelihood are not sufficiently addressed by both the government and the company.

Are privilege rights of access and use of the reserved forests and swamps been given to specific PACs?

No specific privilege rights and use of reserved forests and swamps have been given to PACs.

5. Resettlement

The government of Liberia, Golden Veroleum-Liberia, and local authorities do not have a mutually acceptable resettlement policy or framework.

The communities affected by the project do not want to be resettled. They claimed that the resettlement incentive of 200 USD is not enough for them to be resettled.

The following are reasons why the PACs do not want to be resettled:

- Lack of social development contract between the PACs and the company.
- Do not want a change of environment.
- Fear of losing their traditional life style.
- New settlements might have no farming, hunting, fishing, collection of firewood and others opportunities.

Force eviction:

No PAC member has been forcefully evicted, even in areas where operation activities are active.

Is resettlement in line with national laws?

There is no resettlement agreement between the company/government and the PACs.

Were plans implemented to resettled hamlets and develop bigger towns implemented?

No plans implemented by Golden Veroleum or government.

Was there a resettlement committee established?

There is no resettlement committee of strong membership of PACs setup.

Are there available legal judicial process of expropriation?

The PACs do not have legal services or advice.

In case resettlement has taken place, habitability, access to services, housing and security of tenure.

No resettlement has taken place.

Outgrowers' scheme:

The out growers scheme is part of the concession agreement and it allocates 40,000 hectares for farmers. The government selects or identifies these Liberian farmers in the operational area of the company.

The selection of the farmers is subject to the company's approval. The scheme starts when the company seeks funding from the World Bank.

6. Role of GV

Besides the provision of 40,000 hectares of farmland to cooperatives of Liberian oil palm farmers, Golden Veroleum commits to buy their produce, provide training for farmers and non-financial support in obtaining farming materials.

Also, the funding for the scheme will be sought by the Golden Veroleum from the World Bank and International Development Fund. Failure on the part of the company to secure funding the land becomes government's property.

Terms for outgrowers' support:

There are no terms spelt out in the concession agreement.

Terms for out growers to sell to company:

There were no terms defined.

Will there be outgrowers association?

Not defined.

Will there be skill trainings for out growers?

Yes.

Inputs, credit scheme and extension service:

There will be inputs provided for outgrowers. Extension service and credit scheme are not spelt out in concession agreement.

Who pays for credit scheme, extension, and input?

Not defined.

Social development:

There was no social development contract signed between the PACs and the company.

The concession agreement did not cover the social development fund.

7. Infrastructure

The company has made no commitment to build, rehabilitate, or maintain infrastructural facilities outside their inner estate area. Funds were not given to the national institution for infrastructure.

8. Continuation of traditional life style

Have any rule or regulation or other types of intervention by the company made it necessary for the PACs to change or abandon any traditional habits or practices?

PACs in Butaw district complained of not farming this year because their land was taken away and cleared by GV to plant oil palm. It caused serious food problems for them. They claimed Butaw used to produce most of the farina and cassava, but now they are buying farina and cassava from Rivercess County. Some of their streams or creeks that were used for drinking, cooking and bathing are no longer useful, they have become completely buried with dirt or debris as a result of GV felling or clearance activities.

Hunting, fishing, reduction in the number of sacred sites, and in land for burial are the activities that have been affected.

Traditional authorities are respected and forests that are of high critical value to traditional culture are reserved.

9. Environmental criteria

Have identification, documentation and location mapping for “high conservation values” primary forests, local people sacred land and peat soil been properly done?

Some areas of high conservation value (HCV) have been identified, documented, and location mapping conducted. In other areas in Butaw district, the PACs complained of the company’s destruction of the sacred sites, cemetery, water courses, etc. The current area used as nursery site in Butaw 2, is a sacred site that was cleared by the company.

The maintaining of HCV in the landscaping has not been effectively implemented.

10. Good governance

Grievance mechanism: Where were PACs complaints filed?

In case of confusion or problem, the PACs amicably resolve it among themselves or they involve the police to find solution.

Who among the company staff responsible for PACs relationship?

The company staff responsible for such is the public relations officer, Mr. Darius Geekor.

Who are the Government of Liberia staff responsible for PAC relationship?

The government does not have any staff responsible for PACs good relationship with the company.

Are procedures in place to deal with complaints (dispute settlement)?

There is no procedure that is place for such.

Have community company committees been formed to handle disagreeable issues?

There is no such committee.

Were public consultations and hearings held with the PACs during different phases of the planning/implementation?

Public consultations and hearings were held with the PACs at the district headquarters in both Kpanyon and Butaw districts to inform them about GV operation.

Did the PACs really understand what the consultations were about?

The PACs understood what the consultations were all about.

Was the inclusion of the PACs restricted to the village authority? Or could everybody participate?

A general citizens' meeting was held, and everybody was invited to attend the meeting.

Were women involved in consultation?

Yes, they had a voice to speak.

Were PACs hired or offered legal advice?

They were not hired nor were they offered legal advice.

Were PACs informed about the decision-making process over the concession on the national level?

No.

Were the county officials really involved in the details of the project?

Yes. The PACs claimed that the county officials are the ones that brought the company. They recommend their friends, relatives and loved ones for employment.

Was the conduct of the consultation/hearing satisfactory so that everybody could speak out and encouraged to participate?

The consultation was satisfactory; everyone could speak out and take part.

Have the PACs been properly invited in the meetings/hearings? Were there proper agendas and neutral moderation, and do the minutes fairly reflecting the spirit of the discussion?

During the hearings, there were agendas, a moderator from the commissioner's office, and the minutes were kept.

Were maps presented in the meeting, which clearly showed the borders of the concession area as well as the plans of clearing/planting and stripes that were left untouched?

No map was presented that showed the concession area and future plans for clearing/planting and stripe left untouched.

Was it clear to the PACs that the project progresses in different expansion phases and when a particular new area will become affected?

Such were not clear to PACs.

Was there enough effort made by government to come to an understanding with the PACs on whether the land belongs to government or is the ancestral heritage of PACs?

Government has made no effort in that direction.

Are there open channels of communication between the PACs and the company to adequately address issues of conflict?

No, there are no open communication channels between the PACs and the company.

11. Peace keeping

There had been no incidence of violence so that there was no need for peace keeping activities.

Conclusion

Based on the observation and findings, golden Veroleum is carrying on land grabbing for the following reasons:

- PAC members were not adequately informed about the concession agreement before it was signed.
- Nearly all of the fertile land for PACs has been taken away for oil palm.
- There is insufficient land provided where the PACs can continue farming.
- Some PACs threaten that if all their land will be cultivated for oil palm, they will move to the Sapo National Park because that is the only area not given to Golden Veroleum.
- Golden Veroleum does not consult the PACs in their operational activities, but instead Golden Veroleum deals with the Government.

- There is no social agreement between the PACs and Golden Veroleum.
- The PACs stand the risk of forced eviction as the company's scope of operations expands.
- The terms and conditions regarding the resettlement benefits for PACs are not clear; and so far, no one has received any resettlement benefit.
- Promises (housing, hospital, roads, education) made to PACs by Golden Veroleum have not been fulfilled.

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Annex III

Students report from their visit to Equatorial Palm Oil

Submitted by: T. Frank Johnson & Jerry G. Kwenah, together with Abraham Kollie

1. Introduction

This is an assessment report on the operation and impact of Equatorial Palm Oil in District # 4, Grand Bassa County. The assessment was done by a team of two students from the Agriculture and Forestry Department of the University of Liberia.

It attempts to find out the kinds of treatment provided by the Equatorial Palm Oil to its employees as well as community people surrounding its concession area. The report also discusses the benefits the citizens of District # 4 and Grand Bassa are getting from the operation of Equatorial Palm Oil especially as regards to full implementation of its concession agreement with the citizens and Government of Liberia.

2. Purpose/objectives of the assessment

This assessment was meant to achieve the following:

- To collect and document information on the impact of Equatorial Palm Oil operation in Grand Bassa.
- To provide document that will serve as a tool for improvement of services by Equatorial Palm Oil management
- To make available to students and researchers a document on the operation and impact of Equatorial Palm Oil for their study

This exercise was also meant

- To build the capacity of Agriculture & Forestry College students in carrying research
- To acquaint the same with practices of a palm oil company in their country

3. Methodology

The team of two students visited villages around EPO concession area, camps and towns where they interviewed elders, town and clan chiefs, employees, contractors, youth and women. The team held discussions with citizens in groups and mass meetings with citizens of 15 towns of District 4. They also held meeting with EPO management at their office in the concession area.

4. Equatorial Palm Oil operation and impact

4.1 Resettlement/compensation

There were lots of towns and villages in the area, which LIBINCO occupied before and which EPO is occupying today. The citizens were removed without any compensation. According to some citizens, the company promised to build a road from Behn to # 4 District compound. Current residents of area surrounding the concession area provided free labor to the company just for the same road, but up to the present nothing has been done about it.

Some men from Gbenie town and other villages vowed to laterally fight any one who would venture to take them out of their current dwelling places for EPO expansion. Other citizens angrily expressed their views that the company management lied to their people when they promised to build schools, dwelling houses and clinics for them.

The PACs said that the company or the Government have not at any time entered into formal negotiation with the PACS with regard to the collective bargaining on the kind and amount of compensation they should receive. The company only pays for perennial crops at their own val-

ue. They (PACs) have not received any list or name of communities and individuals and persons to be given compensation. The local landowners who have legitimate deeds to their property have not been compensated for their land. The company had not in any way promised or helped those whose land it has taken away.

There were no entitlements based on the valuation of specific losses of land capital investment for crops planted on concession land and livelihood of the affected peoples. Compensations were not expressed in money terms, and there has been no benefits and payment in kind for the lost land. Mr. Victor Lempia of Suegay Town, who lost his land said *“most of us are very dissatisfied about how lands were taken away and how the company is operating in this area.”* The company does not offer land for tilling within the concession area. Villages around the concession area drink contaminated water due to the operation of the company.

4.2 Employment and incentives

The citizens do not enjoy employment from the company. Citizens from different areas are hired by the company to do casual work which the youth, women and unskilled people of District # 4 are able to do. Moreover, midwives are brought in from the cities even when qualified citizens who are midwives are available and are denied employment.

According to some contractors and employees interviewed, the company pays its workers with very low salaries. Contracted workers are paid \$3.00 per day, while employees are paid \$3.50 per day. Sometimes, the salaries are so much delayed. The contractors that are funded by the company sometimes pay the workers by counting the money in the workers' hands, which is quite insulting to many of the mature workers.

The company had not made any effort to train young people within the PACs for skills jobs. A youth leader of Gio Town and former employees of the Equatorial Oil Palm Company lamented about

this action of the company so much. *“Promotion of vocational training in District # 4 will enable us to work for the company and care for our old people and even ourselves, but the company is not even thinking on this,”* they said. Because of the lack of skills most of the citizens do not get permanent jobs, so they only work as contractors.

Workers are also not given the necessary materials to work with. For example, the fingers of lady workers get all peeled up and sore because they work without gloves. Housing facilities of the workers are very unsatisfactory. The head nurse of the company, who is a professional worker, was offered with a dwelling place that is much smaller than the other workers with less stature.

The Labor Commissioner has a contract with the company, but the labor office in Buchanan compromised the rights of the workers. Contract workers said that they are given portions of land to clear or some amount of palm to plant per day. This forced labor has caused women to drop out of work.

4.3 Livelihood respect

Dwellers within the concession areas have no access to common nature such as hunting, fishing, farming land, firewood collection and sacred bush. The company cleared all the bushes even along the river sides. No privilege rights of access and use of the reserved forest and swamps have been given to specific PACs. According to the people, the company only respects traditional leaders so that they can help them in time of conflict with the citizens, but they have no time to promote traditional activities by leaving their sacred bushes. But, this is what the agreement contains:

“Tribal reserves of land, especially area deemed as sacred tribal land set aside for the communal use of tribe within Liberia are excluded from the operation of the agreement. Should any question arise as to the limits and attempt of such reserves, GoL shall determine such questions. Notwithstanding, the par-

ties hereto mutually agreed that within 12 months as of the execution of this agreement, LIBINCO shall conduct without cost to GL but in collaboration with the local authorities, the Ministry of Internal Affairs, the Ministry of Lands, Mines and Energy, and the Ministry of Agriculture a Socio-economic study to identify and demarcate tribal reserves in or sacred grounds. This condition extends to all future that may be granted to LIBINCO.”

Losses by people had not been addressed with any form of negotiation. As stated before, the company decided on what to give people whether they liked it or not. Since the company will soon be carrying out a survey for additional land, surrounding villagers fear loss of properties, crops and farming lands.

Nobody lives in the concession area who is not a worker.

4.4 Outgrower scheme

According to Mr. Wesseh W. Bestman, who is known as the black manager of the company, *“outgrower scheme has not yet started and there had been no launching of such a scheme though it is a part of agreement. And also there had been no percentage of the total concession areas of which number of outgrower agreement has been provided. However, the company is buying palm nuts from private farm owners from the surrounding towns and villages of the concession area.”* He claims that the company will form an association setup for outgrowers in the near future.

While it is true that no one would not like to doubt the manager’s explanation and claim, the people and concession agreement stipulates that: *“The Government and LIBINCO shall assist Liberian small holders (outgrower) in an outgrowers’ program the detail of which to form part of the development plan Section 19.2. The GoL shall provide additional public land up to 50,000 acres of land of which 25,000 acres of 50% shall be used for LIBINCO expansion purpose and 25,000 acres of 50% for the*

outgrowers program provided that the quantity of additional land cultivated by LIBINCO shall not exceed the quantity of land cultivated for the outgrowers as reviewed every three years as of the effective date until all 50,000 acres of additional public land has been cultivated. LIBINCO shall undertake to plan 750 acres annually of land dedicated to the outgrowers’ program based upon the availability of additional external funds to be secured through the collaborative efforts of LIBINCO and the Government from international bodies and other private institutions.”

4.5 Social development fund

There has been no social development fund given to the citizens. As a matter of fact, the PACs have no idea about this since they have never seen or read the concession agreement. However, they said *“the company always promises that in time to come, funds will be given out to the county authority to carry out some social activities.”*

On the other hand, what is known is that the company agreed to give 1% of its annual gross sales for community development. *“LIBINCO shall contribute 1% of its annual gross sales to a community development fund during the regular term.”*

The company had made lots of commitments to build, rehabilitate, or maintain infrastructure facilities outside its concession area. But according to the PACs, none had come to fruition. In one of the PACs general meetings held in Gio Town on June 28, 2012, the PACs stated that the planning and implementation of any project by the company never happened whether in cooperation with the county authority, nor had funds been given to any institution for development purpose by the company.

4.6 Environmental criteria

According to the PACs, the identification, documentation and location mapping of areas of high

conservation values have not been done. Even primary forests, local people scared land and peat soil have not been identified properly and the forest with the concession areas which runs and extends along the major rivers have not been kept intact to protect the ecological terrain of the area. Moreover, maintenance of these features in the landscaping has not been effectively implemented.

Community people complained so much of polluted water that they drink because of the operation of Equatorial Palm Oil. They therefore drink running water around the concession area.

The PACs said that there was no map presented by the company to show clearly the borders of the concession area and that the plans of clearing/planting and stripes left untouched. The Local Government authority makes no effort to establish their ancestral heritage grounds.

5. Conclusion

In this assessment report we have covered the operation and impact on the citizens of District 4, Grand Bassa County by Equatorial Palm Oil. Again, this document represents findings from community people, workers and local leaders whom we spoke to during our assessment.

Equatorial Palm Oil operation in Grand Bassa is a very good thing, but much needs to be done to make a relevant impact on the lives of community people around its concession area, its own workers and people of the county as a whole.

The company is paying workers with very low salaries and the incentives provided for them are not satisfactory. There is no one from the community people to prove that EPO has contributed to any development or initiated any development for the people of District # 4. The water that some villagers drink has been contaminated due to the operation of EPO.

6. Recommendations

Actions are needed on the side of the national Government, the company, the community people and workers to make EPO follow international standards in terms of best practices as a company.

The national Government must consider that the citizens of the district are stakeholders of the concession agreements with EPO and therefore involved them in every consultative meeting. It needs to listen to them and reflect their aspirations in the agreement.

The Government should make copies of said agreement available to the District 4 citizens, and make the company to provide the communities what is due for this development. Government agencies like EPA, FDA and Ministry of Agriculture should consider their policies and hold EPO responsible for every point that has to do with livelihood preservation.

EPO should not take advantage of the ignorance of the people (workers and citizens) and continue to exploit them. As an international company, it should do what is just and follow international best practices. The company should not violate human rights and fulfill its commitments. Lastly, the company has to maintain good relationship with the community people to prevent any form of violence in the future.

The community people need to engage both the company and Government to respect their rights and to justly provide them the benefits committed by the company. The communities should approach the matter with calm and sobriety.

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