

# The BioPalm oil palm project: a case study in the Département of Océan, Cameroon

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## Introduction

An increasing trend in large-scale land acquisitions has been observed globally since about 2007 driven by rising food commodity prices, amongst other factors.<sup>1</sup> This phenomenon has attracted the label of ‘land-grab’ due to widespread concern over the threats it presents to the human rights of communities living from the land being acquired. Africa has arguably been the region most affected by such land deals<sup>2</sup> and the authors of this study have recently witnessed this trend in Cameroon. Coinciding with the moratorium on palm oil in Indonesia in 2011, at least four new large-scale oil palm plantation projects have been announced in Cameroon<sup>3</sup> and several existing oil palm and rubber plantations are seeking to expand their current land allocations.<sup>4</sup> This paper examines an oil palm plantation project planned by BioPalm/SIVA in the Océan department of Cameroon.<sup>5</sup> It assesses the plans and processes undertaken by the project proponents, reports on the views of local communities and analyses the project’s compliance with national and international laws, with particular emphasis on the right to Free, Prior and Informed Consent (FPIC).

Overall, the authors argue that to date the actions of the company and the government related to this project fall short of the requirements of both national and international law and the RSPO Principles & Criteria and that to avoid conflict and the legal consequences of a serious violation of the rights of citizens, the government and the company will have to make a fundamental change to their approach.

The BioPalm project is planned in southern Cameroon where the Congo basin meets the Atlantic Ocean. The Congo basin is second in size only to the Amazon and hosts a wide range of species including gorillas and elephants. It is also home to a great diversity of ethnic groups, most of whom depend on the forest for their food security and livelihoods.<sup>6</sup> The current President has been in place since 1982 and was re-elected in October 2011 with close to 80% of the recorded vote.<sup>7</sup> The driving idea of the President’s latest election programme was to achieve ‘great realisations’, aiming to develop large projects (e.g. dams, mines and other infrastructure) and ‘modernise’ agriculture from subsistence to ‘second generation’ agriculture. Such agricultural modernisation refers to increasing mechanisation using more agrochemicals as well as attracting larger-scale agricultural projects by national and international investors. This effort had been initiated by the 2009 Strategy Document for Growth and Employment (DSCE) that outlines steps for Cameroon to become an emerging country by 2035.

The Vice Prime Minister of Cameroon’s Ministry of Agriculture and Rural Development (MINADER) launched the BioPalm plantation project in August 2011, announcing an investment of 900 billion CFA (1.3 billion Euros).<sup>8</sup> In the same year, the government reportedly committed itself to provide 200,000 ha to SIVA Group (of which BioPalm is a subsidiary) in a Memorandum of Understanding (MoU).<sup>9</sup> BioPalm started its work in Cameroon with the Cameroon Investment Corporation, which advertises assistance to foreign investors.<sup>10</sup> In addition to its obligation to adhere to the legal framework of

Cameroon, BioPalm also claims that it is 'setting up its operation in adherence with stringent sustainability policies for palm oil production as defined by the Roundtable on Sustainable Palm Oil principals and criteria standards'.<sup>11</sup>

Under RSPO rules, member compliance with the RSPO Principles & Criteria is only transferred to subsidiary companies who are not themselves RSPO members if the member company has a whole or majority stake in the non-member. The institutional setup of the companies involved in the project is multi-layered and somewhat opaque so for simplicity we refer to it as the 'BioPalm project'. According to the information available online,<sup>12</sup> the SIVA Group, based in Singapore, 'owns' BioPalm Energy Ltd, which itself, according to the BioPalm representative in Cameroon, operates in Cameroon through a subsidiary called Palm Resources Cameroon Limited. Neither Bioplam Energy Ltd., Palm Resources Cameroon Ltd nor the SIVA group are RSPO members themselves. There is a RSPO member company called 'Geoff Palm Limited', which lists Biopalm Energy Ltd as a company that Geoff Palm either owns, has a stake in or is a joint venture.<sup>13</sup> In direct telephone communications with a representative of Palm Resources Cameroon Ltd, the representative was unwilling to clarify the relationship of Geoff Palm to Biopalm Energy Ltd, for reasons that were not explained. The authors have also tried to confirm this relationship, and the relationship to SIVA, with SIVA and Geoff Palm representatives themselves. Despite SIVA giving their feedback on the contents of this report in direct communications, neither company have not answered our query as to the full nature of these relationships, and in particular, whether Geoff Palm owns outright, or has a majority stake, in Biopalm Energy Ltd. As a result, we (and more importantly, the communities themselves) are unable to know for certain whether the Biopalm project is obliged to follow the RSPO Principles & Criteria or not in order to retain the certification awarded to Geoff Palm.

This case study is based on FPP and Okani's long-term involvement in Cameroon, desk-based research and seven visits to the area of the BioPalm project between September 2011 and September 2012. During that period, the researchers held numerous meetings with the Bagyéli, Bassa and Bakoko communities of Bella, MOUNGUÉ, Nkollo and Gwap. They also met with government officials from a number of ministries (MINEP, MINFOF, MINEPAT, MINDCAF)<sup>14</sup> at departmental and national levels and the prefecture. The researchers were not able to meet with MINADER<sup>15</sup> staff despite repeated attempts.

This study examines the the land uses in the department of Océan and around the BioPalm project and discusses some of the impacts the project may have on local communities. It then assesses the nature and extent to which communities have been consulted and whether their right to FPIC has been respected. Finally, the authors report how local communities currently view the project. The actions and omissions of the project promoter and the government in the light of relevant national and international laws and best practice standards are evaluated throughout the paper.

### **Conflicts of the planned BioPalm plantation with other land uses**

The Océan department has recently become the location for a number of large infrastructure projects that will entail the displacement of rural communities. These include a deep sea port,<sup>16</sup> a railway from a large iron ore mine to this port<sup>17</sup> and a gas plant with a transmission line.<sup>18</sup> This new infrastructure comes in addition to existing land uses, which include the Chad-Cameroon pipeline,<sup>19</sup> the Campo Ma'an national park, seven logging concessions, at least six mining exploration permits and a number of forest reserves. There seems to be limited oversight in the coordination of these land allocations. For instance it has recently emerged that the mining

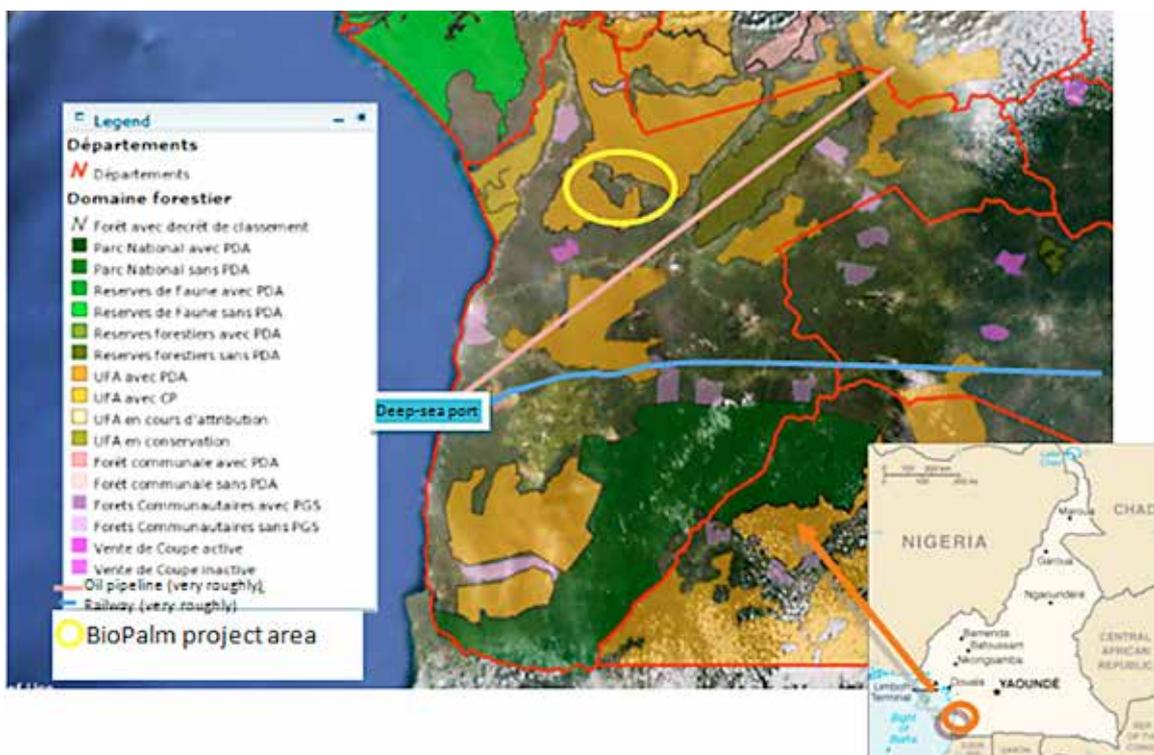
exploration concessions allocated by the government overlap with other concessions and even overlap with each other.<sup>20</sup> The authors also noted during their fieldwork that there was limited information exchange and coordination horizontally between some ministries and vertically within the same ministry at the national and departmental levels. The existing land use model leaves only narrow strips of land on either side of roads for farming by communities, while their access to the forest for hunting and gathering products depends on the rules and management practices of each concession. New projects entering this landscape of large-scale land users are therefore likely to bring heightened pressure on the land used by communities for farming and other forms of livelihoods.

Neither Biopalm nor the Government would confirm the exact location that BioPalm plans to occupy despite repeated questions about this from the authors and local communities. BioPalm stated in writing that as of November 2012, the government has not yet allocated land to them. Nevertheless, based on the information gathered and outlined below, it appears that the initial

phase of the BioPalm project targets an area used by four villages: Bella, Nkollo, Gwap and MOUNGUÉ (see map below). The houses belonging to inhabitants of these four villages are spread fairly evenly along the length of the road from Elog-Batindi to Bipindi and some are on side roads. There are also hunting and gathering settlements within the forest surrounding the villages. Behind the houses, there are fields beyond which the land is predominantly forested for hundreds of kilometres to the south and east (see below).

There are three main ethnic groups living in the area: the Bagyéli, the Bassa and the Bakoko. The main activity of the Bassa and Bakoko is farming, while the Bagyéli are primarily hunter-gatherers but all practise a range of livelihoods. All three groups derive meat, fish, medicines and a number of other natural products from the forest around their villages. The Bassa and Bakoko often present the forest as a reserve for potential fields that the young

■ Some of the land uses in Océan department (adapted from base map WRI Atlas<sup>21</sup>) / Emmanuel Freudenthal



generations will cultivate in the future. There are defined limits between the villages, which are relevant when someone wants to clear a field or build a permanent structure, however the trails leaving from each village criss-cross the land as they extend into the forest. The Bagyéli say that the forest belongs to them as a community and they often set up settlements there, living there for several months and up to a year at a time to hunt, gather forest products and practise other livelihood and cultural activities.

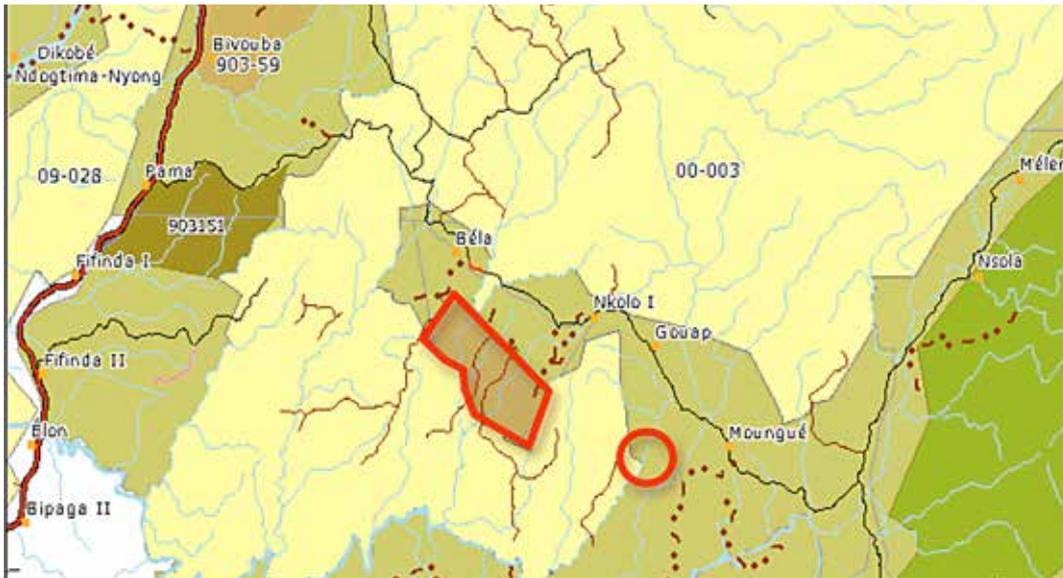
Based on interviews with members of the local communities, BioPalm and government representatives, the authors received several different figures for the amount of land BioPalm is planning to use in the area. MINADER has disclosed that 3,300 ha of the 200,000 ha mentioned in its MoU with BioPalm have been allocated, although this report is undated and it is unclear whether this allocation has been approved by the President as required by

law.<sup>22</sup> Nevertheless, as the findings of this report show it is clear that a palm plantation located in the area in question would overlap with community land use and possibly also with an existing logging concession. The authors were told in September 2012 that a forested area further east (near Fifinda) was being logged with a view to creating another plantation for BioPalm.

The land near the villages where the BioPalm project will go ahead is already a source of tension, and the Bagyéli often find themselves in a weaker position in these local conflicts. The Bagyéli interviewed stated that there are many cases where their fields have been destroyed by the Bassa and Bakoko who see themselves as owning the land adjacent to the village. This puts the Bagyéli in an especially difficult position as they reported that they are not able to ask for protection from the government in such situations. They stated that they rarely in contact with government authorities, except when they attend a meeting between the chiefs and the government and at such events they reported not being allowed to speak. They also occasionally have meetings with the government-recognised village chiefs when the latter want to

■ *Forest in the area of the BioPalm project.*  
*Photograph taken on the Bella-Moungué road (2011) /*  
*Emmanuel Freudenthal*





provide information to them. In Cameroon, village chiefs are tasked with officially representing their village to the government. They are chosen for life and instated by the government. All the official chiefs in the four villages visited by the authors were Bassa or Bakoko and were all living away from the village they represent (e.g. in Douala or Kribi), but had a representative in the village (usually a family member). Because of this dynamic the Bagyéli appear to have very limited ability to influence decisions taken regarding their areas.

Most of the forest surrounding the villages is classified as Forest Management Unit (FMU) number 00\_003, which covers about 129,188 ha<sup>23</sup> (see below). This FMU was allocated in 2000 as a logging concession to a company called MMG based in the coastal town of Kribi. The management plan for the concession was created during a pilot project financed by Canada's international development agency, Agence Canadienne de Développement International (ACDI).<sup>24</sup> This management plan aims to lessen the impact of logging on the forest, for example by demarcating areas where logging cannot take place and using low-impact logging methods.<sup>25</sup> It is also reported that the management plan was developed with the participation of the communities.<sup>26</sup> Nevertheless, the communities reported that since the attribution of the concession to MMG they have received very few benefits

■ Rough estimation of the area of planned BioPalm plantation (adapted from base map WRI Atlas<sup>28</sup>) / Emmanuel Freudenthal

from the concession owner and have not received any funds from the *Redevance Forestière Annuelle* (Annual Forestry Tax), a tax on logging of which 10% should go directly towards community projects.<sup>27</sup>

In addition, the land use plan for the area is a source of tension between the different ministries and companies concerned. The land initially requested by BioPalm and/or MINADER reportedly overlapped with the MMG logging concession. One government official told the authors that the concession owner had been told to 'take his wood quickly' because his concession was part of the land identified for BioPalm that 'needs a lot of space'.<sup>29</sup> However the concessionaire MMG has expressed his opposition to giving up all or part of his concession and has appealed in writing to the government.<sup>30</sup> Furthermore, while MINADER has been forging ahead with the BioPalm project, it seems that MINFOF, the ministry in charge of forests, was not informed of the project by MINADER or the Prime Minister's Office until the plans were well advanced. Subsequently, MINFOF has expressed concerns about the plantation being established in the FMU because national laws state that this would necessitate the

de-classification of the FMU as state forest and the gazetting of another area of the same category, size and ecological zone. This is understood to be difficult or impossible in the region.<sup>31</sup>

Moreover, the declassification of a FMU cannot take place when clearing is likely to:

- a. harm the satisfaction of the needs for the local populations in forest products;
- b. compromise the survival of the local communities whose lifestyle is related to the forest concerned and;
- c. compromise the ecological equilibrium.<sup>32</sup>

These risks would have to be properly assessed through the Environmental Impact Assessment (EIA) process. As outlined above, local communities exercise customary rights to harvest forest, animal and fish products in the area.<sup>33</sup> The declassification of the FMU and allocation of the land to BioPalm clearly threatens these rights and the survival of the local communities who depend on the forest products to meet their everyday food, livelihood, spiritual and cultural needs.

According to a map obtained by the authors (see below), it appears that the plantation is currently planned only on the land outside the logging concession, possibly as a result of the current standoff between ministries and companies, although this is difficult to confirm due to the lack of public and consistent information. This would consist of the land which was deliberately left by the management plan of the logging company for the *communities to use for their farms and houses*, based on a study of their needs, in addition to access to the forest in the concession. Depending on interview sources, BioPalm has promised to leave two to four kilometres of land for the communities on each side of the road for their farming activities.<sup>34</sup> The Bassa and Bakoko interviewed were particularly worried that this area would not be sufficient for their farms if village populations increased or if the youth living in towns came back to their villages when they finished their studies.

Moreover, much of the land customarily used by the local communities is forested, both in the logging concession and in the area left to communities along the road (map above). The Bassa, Bakoko and Bagyéli communities explain very clearly the many uses they have for this forest and, as such, the MMG management plan acknowledges the importance of the forest livelihoods for communities and allows them some usage rights in the concession.<sup>35</sup> While some forest livelihoods can be undertaken in a forest under commercial logging, areas where oil palm trees are planted will necessitate cutting down most if not all of the existing trees. In these planted areas it will be impossible for communities to engage in their forest-based livelihoods, dramatically affecting the Bagyéli, Bassa and Bakoko. Many Bassa, Bakoko and Bagyéli, asked us, ‘what will the Bagyéli do once the forest is cut?’ Indeed, the forest is the primary source of food, home, livelihoods, spirituality and culture of the Bagyéli, to the extent that their way of life would become impossible if the forest was lost.

In addition, Bagyéli forest use is not visible in the same way that farms and houses are, and as a result it is often difficult or impossible to obtain compensation for the loss of forest lands, associated livelihoods and other impacts. While some compensation for loss of user rights is required by national law, this is not properly implemented in practice. In several other projects nearby, communities in a similar position have never received compensation. These practices and the lack of effective national laws to ensure that land users with little or no visible impact are fully compensated in such cases is clearly discriminatory towards the Bagyéli.

BioPalm’s website specifies that its ‘focus is on planting in areas that had been previously deforested and were with no use, creating new economical and social opportunities for whole communities’.<sup>36</sup> As outlined above, the area around Bella and Moungué is neither ‘previously deforested’ nor it is ‘with no use’. The management plan of the MMG logging concession, which is freely

available online, explains that it specifically aims towards the sustainable management of the forest in the concession, clearly implying that the land will be maintained as forest land and not ‘deforested’.<sup>37</sup> This is also in accordance with the government designation of the land area as part of the permanent forest domain.

### **Consultation, FPIC and legal compliance in the BioPalm project**

#### **Compliance with national laws**

According to what the authors were told, the government of Cameroon committed in a Memorandum of Understanding signed by MINADER with BioPalm to identify 200,000 ha of suitable land for the company to develop its oil palm plantation.<sup>38</sup> The authors were also told that this MoU has a confidentiality clause and both BioPalm and the government refused to disclose it. It is not clear exactly what MINADER committed to and whether BioPalm could sue the State if it fails to deliver, for example if it is not able to provide the land. Substantial concerns were recently raised about a palm oil project in the Southwest region of Cameroon, including regarding the low quality of the deal negotiated by the government for the State, workers and local communities in a confidential contract signed with the company.<sup>39</sup> This approach raises issues of transparency and accountability of the government towards its citizens and civil society. To clarify this and other issues, the authors attempted several times to meet with representatives of MINADER at the departmental and national levels but a meeting was never granted.

Regardless of the terms of the MoU, there is a series of steps required in Cameroonian law for the allocation of concessions such as that requested by BioPalm. Under the land law, national lands that are unoccupied or unexploited shall be allocated by a temporary grant (concession provisoire) of rights for development projects for an extendable period of up to five years.

This grant may become a lease (bail) or an absolute grant (concession définitive).<sup>40</sup> An applicant for a temporary grant of land must be made to the Lands Service where the property is located. On ‘consulting all appropriate parties’, in particular the local government, the head of the Lands Service will submit the dossier for consideration by the Consultative Board (commission consultative).<sup>41</sup> Grants under 50 ha shall be allocated by order of the Minister in charge of lands (MINDCAF),<sup>42</sup> whereas grants of over 50 ha require a presidential order. The latter would be the case for BioPalm and at this moment it is not clear whether the Head of State has already signed the decree granting the temporary lease. In either case, a cahiers des charges (special clauses and conditions) has to specify all applicable rights and obligations.<sup>43</sup> Land grants can be terminated under certain conditions including non-fulfilment of the grantee’s obligations or insolvency.<sup>44</sup>

The Consultative Board should be appointed by the prefect to reflect a district or a sub-division, and consists of the following members: sub-prefect (chair), representatives from the Lands Service (secretary), the Ministry concerned, and the chief and two leading members (notables) of the village or the community where the land is situated.<sup>45</sup> During a meeting in February 2012, the MINDCAF Minister told the authors that it was the responsibility of the prefect to ensure that all relevant parties were involved, for example where more than one village is concerned. She also confirmed that where a proposed grant involved an area where both Bantu and Bagyéli communities lived, both groups should be represented on the Consultative Board.<sup>46</sup>

The Consultative Board must meet at least once every three months, members receiving notice and the agenda at least ten days before the date of the meeting, and with the full information displayed on notice boards at specified offices (e.g. situation of the land, area, and project planned).<sup>47</sup> The Consultative Board is tasked with undertaking the following tasks:<sup>48</sup>

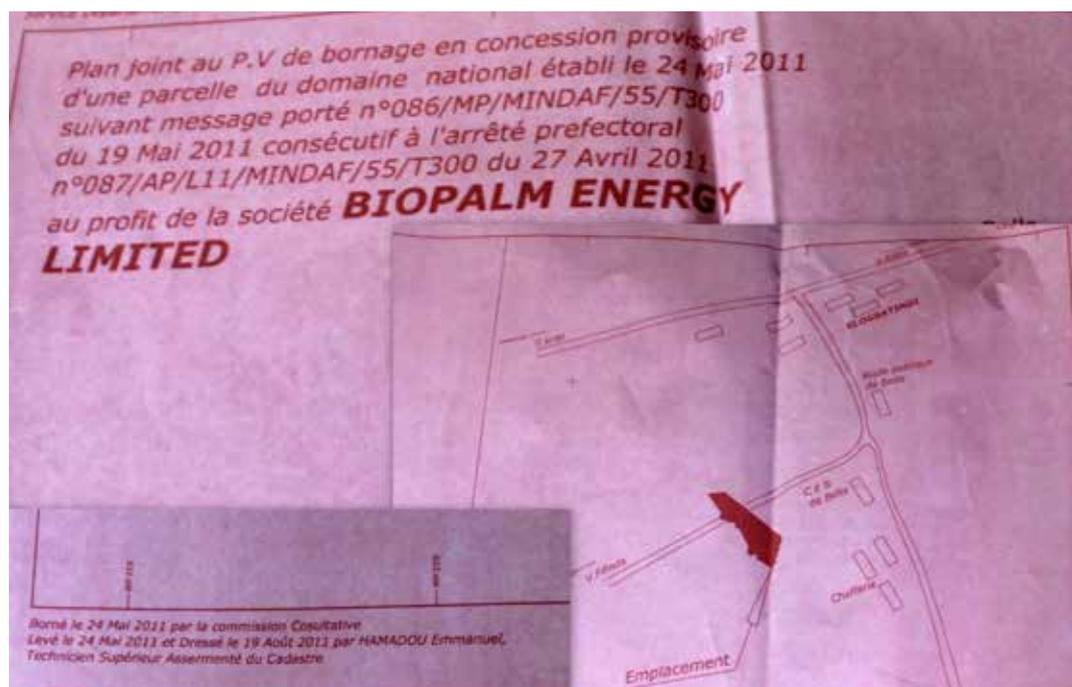
- Make recommendations to the prefectural authority on the allocation of rural areas to agricultural and grazing according to the needs of the inhabitants;
- Make reasoned recommendations (approval/rejection) on applications for grants;
- Examine and, if necessary, settle disputes submitted to it under the procedure for allocation of land certificates on occupied or exploited national lands;
- Select lands which are indispensable for village communities;
- Note all observations and all information concerning the management of national lands and transmit its recommendations to the Minister in charge of the Lands;
- Examine, and if necessary, settle all landed property disputes referred to it by the courts pursuant to Article 5 of Ordinance No. 74-1 of 6<sup>th</sup> July 1974 and;
- Assess the development (*mise en valeur*) of lands for the issue of land certificate.

A map of the part of the plantation located near Bella (see below) mentions that the limits of the proposed concession have been set by a prefectural order. The map

also indicates that markers were put in place in May 2011 by a ‘commission Consultative (sic)’ and shows their position near Bella. The chief of three villages and the communities said they had never even heard about such a process taking place. The chief of one village, who supports the project, said that he was involved in a Consultative Board but was not able to give much detail about who was involved and what information was provided to members. If a Consultative Board process did take place, it is clear that its composition did not include representatives of all impacted communities, and was therefore not in accordance with the requirements of national law as interpreted by the MINDCAF minister.

When FPP and Okani first visited the area in September 2011, concrete markers as shown in the photo opposite had just been built to delineate the area of BioPalm’s planned plantation.<sup>49</sup> The land marked on the ground by these markers overlaps the territories of three villages. Since then, more markers have been placed and marking trails have been cut through the forest. According to the communities, the markers were placed without any prior information or consultation with the villagers. They report that people just came into their

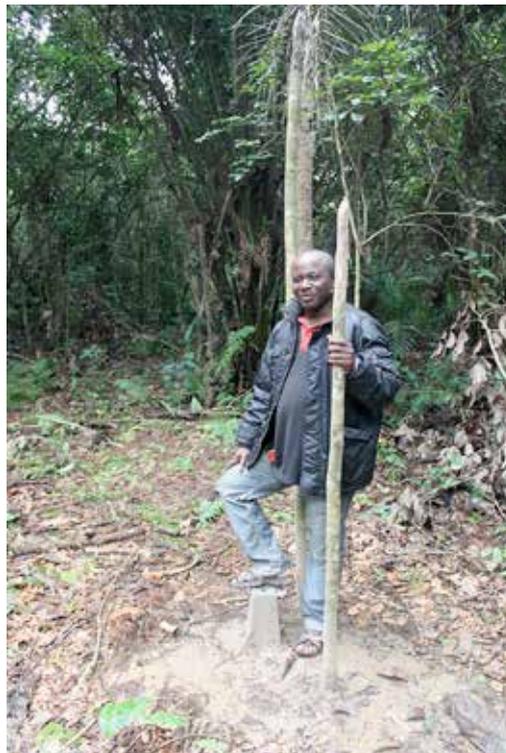
■ *Extracts of map of markers for the BioPalm concession near Bella (2011) / Emmanuel Freudenthal*



forest with GPS devices and installed the markers without any meaningful discussion and without seeking the communities' permission. This is in clear contravention of the Consultative Board process as described above.

If local communities had been meaningfully involved with a Consultative Board, certain obvious mistakes would have been avoided, such as one instance where a marker was placed right behind a house, meaning that the house is entirely included in the concession area. The government has promised the community that this marker will be moved and indeed it does not fit the government's map obtained by the authors (see map above). The researchers were also told that another part of the concession is planned near MOUNGUÉ village and communities confirmed that the markers had already been placed in the forest but they have not been able to obtain the map for this second part of the concession and neither did the authors.

In addition to the Consultative Board procedures, national law requires that the extent of the risk of harm to community needs and survival presented by the project be assessed by the Environmental Impact Assessment (EIA) procedure and the associated consultation and compensation process. The realisation of EIAs must be done with the participation of populations concerned through consultations and public audiences, in order to collect the opinions of local communities on the project.<sup>50</sup> The communities also have the right to be consulted on the EIA when it has been drafted, so as to publicise it, to register community opposition and to permit communities to reach a decision on the EIA's conclusions.<sup>51</sup> Community representatives must be given at least thirty days' notice before the date of the first meeting of all the dates and places of consultation meetings; the descriptive and explanatory report of the project; and the objectives of the dialogues.<sup>52</sup> As many people as possible should be involved.<sup>53</sup> Records (*procès-verbal*) of each meeting,



■ Messe Venant (Okani) and a marker behind a house in Bella (2011) / Emmanuel Freudenthal

signed by the promoter and representatives of the communities in attendance, must be annexed to the EIA.<sup>54</sup> To our knowledge, BioPalm has yet to commence an EIA process as of November 2012. In February 2012, MMG was still finishing the environmental audit process for its logging concession. To comply with national law this process should have been finished before January 2008.<sup>55</sup>

#### Compliance with international laws

Cameroon's Constitution provides for the primacy of international law over national laws.<sup>56</sup> This provides a constitutional basis by which international law would supersede inconsistent national laws. To maintain compliance with Cameroon's Constitution, international human rights laws should therefore be used to supplement the requirements of national law detailed above, including the procedures relating to land, consultation and impact assessment, and be used in preference to these national

laws where they fall short of international laws to which Cameroon is a party.

Where BioPalm's proposed plantation excludes communities from areas where they live and/or derive essential food, livelihoods, culture, spirituality and more generally their way of life, this would amount to involuntary displacement/forced eviction with disastrous consequences for the cultural and physical integrity of the communities concerned. Under international law, it is clear that traditional possession and use of customary land by indigenous peoples such as the Bagyéli, amounts to a property right which must be respected and protected by the government.<sup>57</sup> Interference with this property right could only take place if the right to Free, Prior and Informed Consent of the Bagyéli was respected.

Cameroon endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) on 13<sup>th</sup> September 2007. On 9<sup>th</sup> August 2008, Cameroon also celebrated its first International Day of Indigenous Peoples. Displacement of the Bagyéli as described above would be in breach of the principles contained in UNDRIP, in particular article 10, which states that:

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the prior consent, given freely and in an informed manner, by the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 32 of UNDRIP also specifies that indigenous peoples have the right to give or withhold their 'free and informed consent prior to the approval of any project affecting their lands or territories and other resources'.

Cameroon has ratified the International Covenant on Economic, Social and Cultural Rights, which sets forth other binding commitments for Parties, including rights with respect to adequate food, housing,

health and rights to a cultural life, and peoples' rights to self-determination and not being denied their means of subsistence.<sup>58</sup>

With regard to involuntary displacement (also referred to as forced eviction) General Comment No. 4 of the UN Committee on Economic, Social and Cultural Rights (CESCR) states that 'instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law'.<sup>59</sup> Reiterating this and General Comment No. 7 of the CESCR,<sup>60</sup> the Special Rapporteur on Food's 'Minimum human rights principles applicable to large-scale land acquisitions or leases' highlights that:

States should ensure, prior to carrying out any evictions or shifts in land use which could result in depriving individuals from access to their productive resources, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to resort to forced evictions.<sup>61</sup>

It is well documented that forced relocation can be catastrophic for indigenous peoples as it severs the multiple connections they have with their customary or ancestral lands.<sup>62</sup> Eviction and resettlement is not construed restrictively as referring to eviction from settlements or houses only, and includes circumstances where the traditional or customary land estate (or parts thereof) are impacted on or lost to third parties. As underlined by the United Nations Sub-Commission on the prevention of discrimination and the protection from minorities, 'where population transfer is the primary cause for an indigenous people's land loss, it constitutes a principal factor in the process of ethnocide'<sup>63</sup> and that '[f] or indigenous peoples, the loss of ancestral land is tantamount to the loss of cultural life, with all its implications.'<sup>64</sup>

Furthermore, under international human rights law, *all* community members (not just the formally recognised chiefs and notables)

have the right to meaningful participation in decision-making concerning land and resources they have traditionally used and occupied. This includes consultation and the provision of prior, accurate, objective and comprehensive information in a form and language appropriate to all concerned communities, including information on the negative risks as well as the potential benefits of the project. International law requires the completion of a prior and independent cultural, social and environmental impact assessment in such circumstances.<sup>65</sup> Moreover, communities should receive a reasonable benefit or other suitable compensation for loss of traditional property and other rights in respect of customary land and resources.<sup>66</sup> In its 2010 Concluding Observations, the Committee on the Elimination of Racial Discrimination *inter alia* noted with concern the impacts on the Bagyéli of the Chad-Cameroon pipeline and recommended that Cameroon

consult the indigenous people concerned and cooperate with them through their own representative institutions, in order to obtain their free and informed consent, before approving any project that affects their lands, territories or other resources.<sup>67</sup>

The right to meaningful participation and consent in decision-making processes concerning developments affecting customary lands can also be argued for other customary communities with connections to their customary lands.<sup>68</sup> The recent (2012) Resolution 224 of the African Commission on Human and Peoples' Rights on a Human Rights-Based Approach to Natural Resources Governance<sup>69</sup> calls on state parties including Cameroon to confirm that 'all necessary measures must be taken by the State to ensure participation, including the FPIC of communities, in decision making related to natural resources governance', mindful 'of the disproportionate impact of human rights abuses upon the rural communities in Africa that continue to struggle to assert their customary rights of access and control of various resources, including land, minerals, forestry and fishing'.<sup>70</sup>

In addition to its obligations under national and international law, BioPalm has assured FPP (in writing and in person) that it will operate according to the voluntary RSPO 'Principles & Criteria for Sustainable Palm Oil Production'. As stated above, although BioPalm is not currently listed as a member of the RSPO itself,<sup>71</sup> its website states that BioPalm 'is setting up its operation in adherence with stringent sustainability policies for palm oil production as defined by the Roundtable on Sustainable Palm Oil principals and criteria standards'.<sup>72</sup> Although SIVA, BioPalm, and Geoff Palm representatives have not clarified the exact links between these companies at our request, they have stated that 'when the holding company is RSPO member all companies held by it becomes members and non compliance by any subsidiary means all subsidiaries are treated as non compliant.' As such they appear to be suggesting that the plantation project in Cameroon can be considered as operating under RSPO certification by virtue of Geoff Palm Limited's RSPO membership, but as mentioned above, we have been unable to confirm this.<sup>73</sup>

Assuming the RSPO standards do apply to the project, a key requirement of the RSPO is respect for the right of all communities to free, prior and informed consent. FPIC is also a settled principle under international human rights law as outlined above. Despite the clear requirements of national law, the international legal framework and the RSPO Principles & Criteria as set out in this report, BioPalm has been unable to reply to our repeated requests for information as to how the company is planning to respect the principle of Free, Prior and Informed Consent and other obligations.<sup>74</sup> Indeed, it is difficult to imagine how a process for Free, *Prior* and Informed Consent could take place when the location of the plantation is apparently already decided and delineated. The advanced stage of planning and the existence of concrete markers goes against the spirit of RSPO Criteria 2.2, 2.3 and 7.5 which states (7.5) that 'no new plantings are established on local peoples'

land without their free, prior and informed consent, dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions.<sup>75</sup> It is crucial that the proposed location of the plantation is subject to the free, prior and informed consent of local communities prior to the formal allocation of land. The advanced state of planning and delineation thus raises questions about Biopalm's commitment to respecting the right to FPIC, especially when compared with their assertion that nothing is yet established in Bella and so it is 'premature' for them to outline how the company will comply with the RSPO Principles and international laws.<sup>76</sup>

Moreover, most of the communities and their representatives were not adequately *informed* about the project. The provision of information is an essential precursor to any meaningful consultation process, so as to enable the communities to begin collective discussions about the merits and risks of the project and ultimately make a decision on whether to grant or withhold their consent. According to all of the many villagers interviewed, they were not provided with even basic information on the proposed location and size of the plantation project. This was also denied to the authors despite repeated requests to the company and government. The information provided to some individuals during the two or three presentation meetings held in the area only presented the advantages of the BioPalm plantation project and there was no mention of the risks and potential disadvantages (such as loss of livelihoods, disruption of water sources etc.). In effect these presentations were an attempt to 'sell' the project to the affected communities, instead of providing full and frank disclosure of both the risks and benefits. The communities were not told about their rights under national law, the international legal framework or the RSPO Principles & Criteria. Furthermore, the promises and limited information given to the communities by the promoters of the project were not given in writing. Neither the

company nor the government has provided the communities with documentation such as proposed concession maps or other relevant documentary materials or provided information in forms/languages appropriate to those who do not speak French or are illiterate.

During the few presentation meetings that did take place, the communities were not asked for their *consent* - or even opinion - on the proposed project. One villager reported that a government official told them during a public meeting, 'I did not come to ask the opinion of the populace. The forest is the forest of the State'.<sup>77</sup> One village chief requested just half an hour to consult with his community to think through their common position on the project but the government authorities told him that there was no point in doing so because the project would go ahead regardless of their opinion. Furthermore, there are no indications that the company or government are giving the communities the opportunity to decide their own representative decision-making structures, for consultation, participation and structured negotiation. One chief explained that they 'are forced to accept because we have not got the information to have a meaningful discussion'. This clearly shows that the current process does not seek the meaningful participation and consent of communities, in clear violation of constitutionally protected international standards and RSPO standards.

### **Views of local communities on the BioPalm plantation project**

As a result of the lack of clear information and the potential negative impacts of the plantation, which would destroy a substantial part of the forest, all the Bagyéli communities interviewed in the four villages were against the project. One Bagyéli stated, 'the forest is ours, they are going to come and tear it away from us'.<sup>78</sup> On the researchers' first visit in September 2011, the Bassa and Bakoko communities were torn between on one hand the destruction of the forest, with the negative impacts

this would have on their lives, and on the other hand the promises of jobs and ‘development’, such as in the form of provision of infrastructure by the company, including roads, schools, water pumps and hospitals. Arguably the responsibility of providing such infrastructure lies with the government but so far it has not fulfilled its role in this area. As outlined above, neither the company nor the government have provided balanced information to communities on the potential benefits that could accrue from the palm oil plantation and its potential risks. No information at all was provided in writing.

At the request of the local communities, FPP and Okani agreed to enable them to access more complete information on the potential effects of palm oil projects. In June 2012, a number of community members and two chiefs visited the SocaPalm oil palm plantation located nearby. They had the opportunity to meet with members of the local communities living near to the plantation (in Bidou 1 and SocaPalm Kilombo) and hear about their experience directly from them. The communities living near the plantation reported that they had lost access to their customary lands, lost their forest livelihoods, been arrested for trespassing to pick palm kernels on trees existing prior to the plantation and got very little in return. One Bulu woman said:

We have lost everything. The children no longer know the names of trees, animals and fish. The loss of this area is a disaster for us.<sup>79</sup>

The group then shared what they had learnt with their villages back home. As a result, community members from the Bakoko and the Bassa became very worried that the BioPalm project could in fact affect them very negatively, in addition to the more obvious and direct impacts on the Bagyéli.

After many discussions within and amongst communities, during a meeting involving over eighty Bagyéli, Bakoko and Bassa from all the villages, the chiefs of three villages decided to sign a petition against the project. Two letters were sent, one to the President of the Republic of Cameroon and one to the Governor of the Province in September/October 2012. In their letter, the chiefs clearly stated that they had neither been officially informed, nor consulted and that a palm oil plantation could have negative impacts on their livelihoods, especially those of the Bagyéli. They requested the government to inform them officially of the plans for the plantation and of the ways that they would be consulted and their FPIC would be sought. The Bagyéli communities issued a similar letter outlining how they would lose their hunting grounds, traditional medicine and other things crucial to their life that the forest provides, and their consequent rejection of the oil palm project. The chief of one

■ *Coordination meeting organised by the three chiefs opposing the project in one of the villages near the proposed plantation (with further participants inside the building) (2012) / Emmanuel Freudenthal*



village, who had been dealing directly with the project developer and the State without informing his colleagues or community, continued to support the project despite the opposition of much of his community. Some have alleged that he has a personal stake in the project taking place. During the authors' work, it was observed that this chief was closely linked with the company (e.g. calling company representatives on his cell phone during meetings) and had access to much more information about the project than the other chiefs and community members.

## Conclusion

At this stage, it is not known what steps the government has taken or plans to take to ensure that the company respects national and international laws in terms of consultation with communities and respecting their right to Free, Prior and Informed Consent. It is clear that the actions of the company and the government to date fall short of the requirements of both national and international law and the RSPO Principles and Criteria. In several instances, government officials have even told us to ask BioPalm for the official documentation and information (such as concession maps and authorising decrees), thus forgoing their role of enforcing laws and regulations and encouraging best practice and transparency. Meanwhile, the communities are very worried about losing their lands and livelihoods as government officials have told them that there is no recourse against the project taking place. One community leader said in September 2011, 'we accept unwillingly'<sup>80</sup>, but since then communities have become increasingly mobilised so as to demand respect for their rights.

With so much at stake for the Bagyéli, Bassa and Bakoko communities and apparently so little effort to meaningfully engaging with them, there is significant potential for conflict, such as that currently taking place at the Herakles oil palm plantation project in the Southwest province of Cameroon.<sup>81</sup>

To avoid the risk of conflict and the legal consequences of a serious violation of the rights of its citizens, the government and the company will have to make a fundamental change in their approach, and closely observe both national and international laws and RSPO standards, including the right to FPIC of communities. Failure to do so is bound to have serious negative legal, commercial and reputational consequences for BioPalm and its parent company as well as repercussions on the government of Cameroon.

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## Endnotes

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2. Deininger 2011: 217–247.
3. Cameroon News 2011; Butler & Hance 2011; Lukong 2011; Brown (nd).
4. For example, the authors were told that SocaPalm and HeveCam were planning to expand their plantations.
5. An earlier version of this report was presented for feedback by BioPalm and the government of the Republic of Cameroon (MINDCAF and MINEPAT) during a workshop organised by FPP, CED and the FAO in March 2012. A final version was then presented to SIVA/BioPalm by email for comments. The report was drafted in consultation with the local communities of the area.
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14. MINEP: Ministry of Environment and Protection of Nature; MINFOF: Ministry of Forest and Wildlife; MINEPAT: Ministry of Economy, Planning and Regional Development; MINDCAF: Ministry of Domains, Cadastre and Land Tenure.
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21. Map based on data from authors' own research; [www.cameroun-foret.com](http://www.cameroun-foret.com); CIA (nd); CAMIRON/Rainbow Environment Consult 2011; Esso (nd).

22. MINADER (nd):3.
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26. Yene Yene 2002.
27. This is unfortunately a common occurrence. See for example Cerutti et alii 2010:130–138.
28. Map based on World Resources Institute 2007. Note: The location(s) of the plantation were not given to the authors by BioPalm but are based on interviews with communities regarding the location of markers.
29. ‘On lui a dis, prends ton bois rapidement car les concessions se chevauchent. Il faut beaucoup d’espace.’ This and other translations by Emmanuel Freudenthal.
30. Specifically, to MINFOF, MINDCAF and MINADER.
31. For the procedures on classification see Article 28 of Law No. 94-1 of 20<sup>th</sup> January 1994 (‘the Forest Code’), & Articles 9, 18, 19 and 24 of Decree N° 95/531/PM of 23<sup>rd</sup> August 1995.
32. Article 9 of Decree N° 95/531/PM of 23<sup>rd</sup> August 1995.
33. For non-commercial purposes, the user rights of communities to harvest all forest, wildlife and fisheries products are provided for by Section 8 of the 1994 Forest Code.
34. In the map of one part of the concession near Bella, two kilometres are left the side of the main road (with no space along secondary roads).
35. Data.cameroun-foret.com.
36. BioPalm (nd2).
37. If the forest is degraded, then either the concession owner has acted in breach of the management plan, or the government-approved management plan was inadequate.
38. See also Cameroon News 2011.
39. Nguiffo & Schwartz 2012.
40. Decree No. 76-166 of 27<sup>th</sup> April 1976 to establish the terms and conditions of management of national lands, Articles 1-3.
41. Ibid: Arts. 4-6.
42. Ibid: Art. 7(1).
43. Ibid: Art. 7(2).
44. Ibid: Art. 8.
45. Ibid: Art. 12. It is left unclear in the law whether, if the land relates to more than one village/community, more than one chief plus two notables will be part of the Consultative Board, or if it would be kept to a maximum of one chief and two notables.
46. It is not clear what mechanisms are in place to ensure that this approach is observed in practice. Relying on the prefect’s discretion to ensure representation from all affected groups, including indigenous peoples, is clearly an inadequate procedural safeguard and leaves a wide margin for inadequate representation in decision-making process. This is one of several discriminatory aspects of the existing legal framework that would need to be addressed in the planned reform of Cameroon’s land tenure laws in order for them to be effective and respect human rights and national aspirations. Discriminatory aspects of Cameroon’s land laws with respect to indigenous peoples have been the subject of criticism and recommendations for reform under international human rights law. See for example Concluding Observations and Recommendations of the African Commission on Human and Peoples’ Rights: Cameroon, 12<sup>th</sup> – 26<sup>th</sup> May 2010, at para 37; the Concluding Observations of the Committee on the Elimination of Racial Discrimination: Cameroon, 30/03/10. UN Doc. CERD/C/CMR/CO/15-18, at para 18, where the Committee urges Cameroon to ‘Establish in domestic legislation the right of indigenous peoples to own, use, develop and control their lands, territories and resources’; and the Concluding Observations of the Committee on Economic, Social & Cultural Rights: Cameroon, 23/01/12. UN Doc. E/C.12/CMR/CO/2-3, at para 24.
47. Ibid: Art. 13.
48. Ibid: Art. 14.
49. FPP 2011.
50. Decree n°2005/0577PM of 23<sup>rd</sup> February 2005, Art. 11(1).
51. Ibid: Art. 9, 11(2) & 13.
52. Ibid: Art. 12(1).
53. Ibid: Art. 12(2).
54. Ibid.
55. The legislation setting out the procedures for impact environmental assessments came into force in 2005 (Decree n°2005/0577PM of 23<sup>rd</sup> February 2005 & Order 0070/MINEP of 22<sup>nd</sup> April 2005). Projects already in progress were required to conduct an environmental audit within 36 months of the relevant law being signed (Decree n°2005/0577PM of 23<sup>rd</sup> February 2005, Art. 21.), but as of March 2012 the requisite audit is yet to be finalised by MMG in respect of FMU 003.
56. Article 45 of Law No. 96-06 of 18<sup>th</sup> January 1996 states that ‘Duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement’. The constitutional commitment to international law is also confirmed in the constitution’s recital which states that it ‘Affirms our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and The African Charter on Human and Peoples’ Rights, and all duly ratified international conventions relating thereto’.
57. See *inter alia*, decision of the African Commission on Human Peoples Rights (ACHPR) in the Endorois Case at para 209, in particular with regard to the ACHPR rights

- to property (Art. 14) and to development (Art. 22). See also the UN Declaration on the Rights of Indigenous Peoples, Article 19 (indigenous peoples' right to be consulted through their own representative institutions and to obtain FPIC before taking administrative measures affecting them), plus associated Articles 8, 10, 19, 28 and 32; and as well as numerous other jurisprudence established under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of Racial Discrimination (ICERD).
58. Articles 11, 12 15 and 1 respectively of ICESCR. Article 1 is common to both the ICESCR and the ICCPR to which Cameroon is also a party.
  59. Committee on Economic, Social and Cultural Rights, General Comment 4 para. 18, U.N. Doc. E/1992/23, annex III at 114 (1991), para. 18.
  60. Committee on Economic, Social and Cultural Rights, General Comment 7, para. 14, U.N. Doc. E/1998/22, para. 13.
  61. de Schutter 2009:16.
  62. See for example, IWGIA & FPP 1999, in particular pp. 4 -55.
  63. See Al-Khasawneh & Hatano 1993 at para.101.
  64. Ibid: para. 336.
  65. See the decision of the African Commission on Human Peoples' Rights in the case of the *Endorois Welfare Council v Kenya (276/2003)* – the 'Endorois Case' – paras 227 and 228, and the cross-cutting human rights relating to land and natural resources, such as the right to property (Art. 14 of the African Convention on Human and Peoples' Rights – ACHPR), as well as the right to development (Art. 22 of ACHPR). See also the Convention on Biological Diversity, Articles 8(j) and 10(c), including *The Akwé: Kon Guidelines* on impact assessments at <http://www.cbd.int/doc/publications/akwe-brochure-en.pdf> and the Recommendations from *CBD Decision VI/10 of COP 6* for the conduct of cultural, environmental and social impact assessment regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities.
  66. See African Commission on Human Peoples' Rights in the Endorois Case, paras 227 & 228, 294-298 and the UN Declaration on the Right to Development Article 1 (right of peoples to enjoyment of development), Art. 2 & 8 (right to active, free and meaningful participation in distribution of the benefits resulting from development). See also the UN Declaration on the Rights of Indigenous Peoples, including among others, Art. 10: 'Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.'
  67. Concluding observations of the Committee on the Elimination of Racial Discrimination: Cameroon, 30/03/10. UN Doc. CERD/C/CMR/CO/15-18, at para 18, recommendation (b). See also the Concluding Observations of the Committee on Economic, Social & Cultural Rights: Cameroon, 23/01/12. UN Doc. E/C.12/CMR/CO/2-3, inter alia para 33: 'The Committee recommends that [Cameroon] take effective measures to protect the right of each group of indigenous people to its ancestral lands and the natural resources found there, and to ensure that national development programmes comply with the principle of participation and the protection of the distinctive cultural identity of each of these group.'
  68. Whereas for indigenous peoples, the right to FPIC is an expression of their right to self-determination, the right to FPIC of non-indigenous peoples can also be argued on the basis of the cross-cutting rights impacting on land outlined including the rights to property, the right to development and the right to food. See also de Schutter 2009 (especially Principle 2, p.13); de Schutter 2010:319.
  69. Resolution on a Human Rights-Based Approach to Natural Resources Governance, ACHPR 2012, <http://www.achpr.org/sessions/51st/resolutions/224/>.
  70. African Commission on Human and Peoples' Rights 2012.
  71. RSPO (nd2).
  72. Ibid.
  73. I.e. Holding Company: Broadcourt Investments Ltd & Premalatha Chandrasekar; [Subsidiaries/ JVs/ has stake in: Sierra Leone Agriculture SA, African Oil Palm Limited, SPZ Enterprise Pty Ltd, Sierra Leone Agriculture Limited, Biopalm Energy Limited, PT Citra Ganda Utama, Liberian Palm Developments Limited, Dekel Oil, Feronia Inc] as listed on <http://www.rspo.org/en/member/1147>.
  74. FPP 2012.
  75. RSPO 2007.
  76. FPP 2012.
  77. 'Je ne suis pas venu demander l'avis aux populations. La forêt c'est la forêt de l'Etat.'
  78. 'La forêt est la notre, ils vont venir nous l'arracher.'
  79. 'Nous avons tout perdu, les enfants ne connaissent plus les noms des arbres, des animaux et des poissons. La perte de cet espace est une catastrophe pour nous.' Quote collected by Venant Messe.
  80. 'On accepte involontairement'.
  81. Nguiffo & Schwartz 2012.