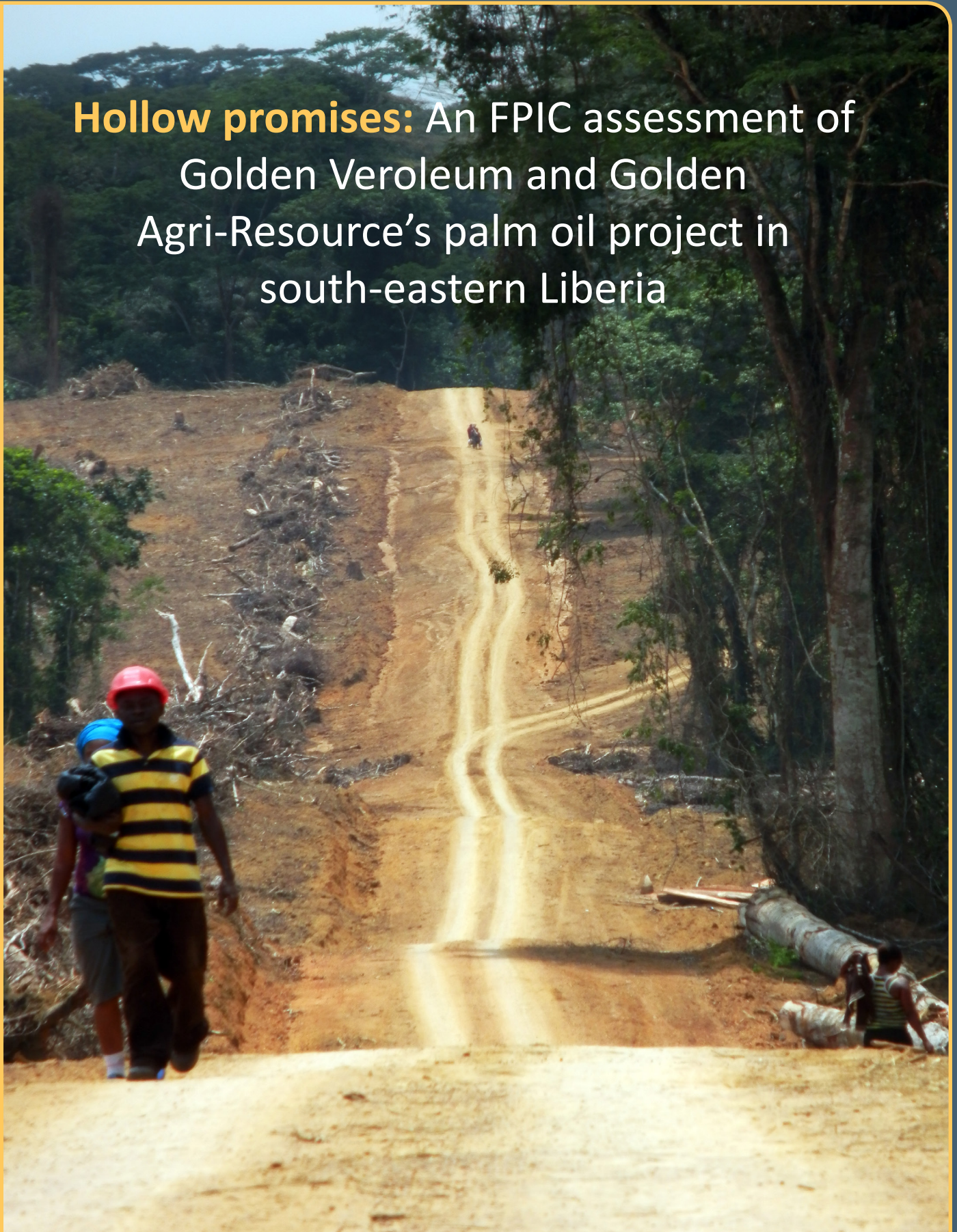


Hollow promises: An FPIC assessment of
Golden Veroleum and Golden
Agri-Resource's palm oil project in
south-eastern Liberia



This publication has been produced by Forest Peoples Programme.



This publication has been produced with the assistance of the Food and Agriculture Organisation of the United Nations (FAO). The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the FAO.



Contents

Introduction	6
1. Background – Why getting Free, Prior and Informed Consent (FPIC) right here and now matters	7
1.1. The Golden Veroleum (GVL) Concession and national context	7
1.1.1. GVL’s Liberia concession	
1.1.2. Historical conditions that give rise to communities’ customary rights	
1.1.3. Existing livelihood patterns of communities and local food security	
1.1.4. Environmental factors and foreign-direct investment (FDI)	
1.1.5. Socio-economic development options	
1.2. Summary of applicable laws and social standards	12
Part 1: An assessment of Golden Veroleum and Golden Agri-Resources’ FPIC compliance <i>in policy and procedure</i>	16
<i>Introduction</i>	16
Step-by-step Analysis of GVL’s FPIC Standard Operating Procedures (SOPs)	19
The ‘Introduction’ Section	19
The ‘FPIC Principles’ section	19
‘Right to say yes or no’	
‘Inclusiveness in community decision making’	
‘Negotiations with representatives and communities in consultative and participatory manner’	
‘Mutually respectful meetings and decisions principles’	
‘Transparent progress schedule’	
‘Possibility of public domain materials dissemination’	
‘Appropriate negotiation parties’	
‘Development possibilities and elements’	
‘Public information of outcomes’	
Initial Engagement Agreement	30
Step 1 – Fact finding, studies and broad communication	
Step 2 – Preparation for each community	
Step 3 – Outreach meetings	
Step 4 – Community engagement decision	
Step 5 – Community representation decision	
Step 6 – FPIC engagement agreement	
Participatory mapping	38
Step 1 – Sensitization meeting	
Step 2 – Base map development	
Step 3 – GPS tracking	
Step 4 – GIS draft mapping	
Step 5 – Participatory map validation	
Step 6 – Map agreement	
Step 7 – GVL agreement on feasibility ground	
Step 8 – Mutual planning	
Development Agreement	42

- Step 1 – Possible negotiation on provisional MOU and negotiation principles
- Step 2 – Final negotiation
- Step 3 – Signing and endorsement

Implementation	45
Verifiers and FPIC Flowcharts	46
Part 2: An assessment of Golden Veroleum and Golden Agri-Resources’ FPIC compliance in practice	47
<i>Introduction:</i>	
2.1 A summary of previously reported outstanding concerns regarding GVL’s FPIC process	
2.2 Current Situation – Our Assessment of GVL’s FPIC Process	
2.2.1. A Summary of the Underlying Situation	
2.3 Forest and farmland is being cleared without consent	
2.3.1 Town A	
2.3.2. Town D	
2.4. Do you want development? Temporary jobs for (effectively) permanent land loss	
2.4.2. Town F	
2.4.2. Town H	
2.4.3. Town J	
2.4.4. Town A	
2.5. Giving out jobs, and local government coercion, cannot be routes to consent	
2.5.1. Town A	
2.5.2. Town K	
Part 3: An assessment of Golden Veroleum and Golden Agri-Resources’ FPIC compliance in practice – an analysis of the <i>outcome</i> (the Memoranda of Understanding - MOUs)	59
3.1. Analysis of community experiences of entering into MOUs highlights both a <i>process</i> and an <i>outcome</i> (the MOU) that is not FPIC-Compliant	59
3.2 Town M community’s understanding of the MOU:	59
3.3. Analysis of common FPIC compliance problems in the MOUs entered into by GVL with communities	62
3.3.1. ‘Provisional’	
3.3.2. ‘Memorandum of Understanding incorporating Social Agreement’	
3.3.3. An MOU as a contract requires the company to be offering an equitable agreement by not taking advantage of their position of power	
3.3.4. ‘Preference’ is not a contractual term	
3.3.5. Possible ‘Benefits’ are included which are nothing to do with the MOU	
3.3.6. Employment	
3.3.7. ‘Community’ Development Fund	
3.3.8. The Fundamental Land Issue	
3.3.9. Compensation and the Law	
3.4. So what are the guaranteed benefits for the community in this MOU?	67
Part 4: Taking stock & Recommendations: a summary of the evident structural flaws in GVL’s project in Liberia and some proposed urgent recommendations	68
Recommendations	71
Page-by-Page Analysis of this MOU exemplar	73

Hollow promises: An FPIC assessment of Golden Veroleum and Golden Agri-Resource's palm oil project in south-eastern Liberia

Notes

This review is the result of several years of fieldwork by the Forest Peoples Programme and civil society partners in Liberia, and is the first step of a UN Food and Agriculture Organisation (FAO) funded project that examines putting into practice in Liberia the FAO Technical Guide entitled 'Respecting free, prior and informed consent, Practical guidance for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition'.¹ This Technical Guide is the third in a series that has been developed to support implementation of the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, which were officially endorsed by the Committee on World Food Security on 11 May 2012, since which they have received approval from various forums, including the G20, Rio+ 20, and the United Nations General Assembly. The other FAO technical guides in this series include guides to: responsible gender-equitable governance of land tenure; improving governance of forest tenure; and, improved governance of tenure in fisheries.²

The FAO in Liberia and Rome has been particularly helpful during the first steps in this project through helping facilitate meetings with key figures in the UN (UN Development Programme and World Food Programme) and the Government (the Forestry Development Authority, Ministry of Agriculture, Land Commission), and we would like to express thanks to the FAO, as well as the above-mentioned offices of the UN and Government of Liberia. Most of all, thanks are due to the thousands of community members spoken to in the course of developing this report, as well as the hugely committed civil society organisations working with those communities without which this review would be an impossibility.

The FAO Technical Guide to Respecting FPIC summarises the principle by highlighting that it is concerned with enabling communities to be at the centre of the **process** by which decisions concerning their rights and interest are made, as well as playing a decisive role in the **outcomes** of that decision-making process:

FPIC requires ensuring that communities can meaningfully participate in decision-making processes and that their concerns, priorities and preferences are accommodated in project designs, indicators and outcomes. ... FPIC thus additionally requires that communities can negotiate fair and enforceable outcomes and withhold their consent to a project if their needs, priorities and concerns are not adequately addressed. Consultations and negotiations that do not resolve a community's reasons for opposition or achieve consent will provide little assurance against potentially costly and disruptive conflict.

FAO Technical Guide, Respecting Free, Prior and Informed Consent, page 10

The requirement for free, prior and informed consent is already a central tenet of Liberia's Community Rights Law with Respect to Forest Lands (2009). Both this provision, and stated policy commitments in section 6 of Liberia's new (2013) Land Policy, namely that 'communities may define themselves and determine how their land is managed, used, and allocated' can be seen as a meaningful expression of Liberia's Constitutional provision

1 This Technical Guide, hereinafter referred to as the FAO Technical Guide to FPIC, can be viewed at the following link: <http://www.fao.org/docrep/019/i3496e/i3496e.pdf>.

2 Those other FAO Technical Guides in the series can be viewed on the same page as the Voluntary Guidelines themselves - see: <http://www.fao.org/nr/tenure/information-resources/en/>.

guaranteeing the greatest feasible public participation in the management of Liberia's natural resources (Article 7), though adequate implementation of this principle is still lacking. The broader national legal context is that a new (2013) land policy is now in place, and a new Land Act is before the legislature, in preparation for implementing the land policy. Although there are still significant questions about whether (and if so how) the law will respect customary land where they have been encumbered by existing government-granted private sector concessions, it is clear that Liberian law is making significant strides in giving due recognition to the customary land and resource rights of communities.

Although this review concerns Golden Veroleum and Golden Agri-Resources in particular, it is hoped that as well as being a constructive contribution to resolving issues in contention in that context, the practical experiences presented by this review will give practical and scalable lessons that private sector, government, civil society and community actors can use to ensure compliance with legal and voluntary FPIC obligations in particular, and respecting customary land rights generally. By creating an enabling environment within which communities can play a decisive role in determining their own development visions, the risks of costly and disruptive conflict highlighted by the FAO's Technical Guide to FPIC can be minimised, and the benefits of sustainable development properly realised.

Introduction

It is now four years since Golden Veroleum (Liberia) Incorporated ("GVL") concluded an agricultural concession agreement with the Government of Liberia, leasing approximately 2.3 per cent of Liberia's entire land area for an extendable period of sixty-five years for the production of palm oil from land in five of Liberia's south-eastern counties. Despite the terms of GVL's lease, under which the government purport to provide GVL with land free of encumbrance, much of the land, forests and wetlands it concerns have been occupied, used and owned by rural communities for many generations, providing ample scope for the GVL project being in conflict with both communities and their forests.

Both as a member of the multi-stakeholder Roundtable on Sustainable Palm Oil ("RSPO"), and in implementation of the company-specific 2011 Forest Conservation Policy ("FCP") of GVL's lead investor, Golden-Agri Resources ("GAR" – which is also an RSPO member), both companies are publicly committed to a stringent set of overlapping social and environmental standards. Central to both standards is the requirement to respect customary rights to land (i.e. ownership rights derived from custom whether formally titled or not), and to only develop land with the free, prior and informed consent ("FPIC") of communities. FPIC is also a principle guaranteed by both Liberian domestic law and based on extensive jurisprudence under international human rights laws to which Liberia is legally bound. Practical guidance on FPIC has been produced under the auspices of the RSPO, as well as recently in the form of the FAO's Technical Guide to Respecting Free, Prior and Informed Consent, part of the series of Technical Guides produced to support implementation of the FAO's Voluntary Guidelines on the Responsible Tenure of Land, Fisheries and Forests in the Context of National Food Security.

Mirroring compliance failures and poor social and environmental performances that have attracted criticism across the palm oil sector, the GVL/GAR project in Liberia had a troubled and conflict-ridden beginning. Initial development resulted in community concerns being registered with the RSPO's grievance process regarding the loss of customary farm and forest lands (including high canopy forest) without communities' FPIC, and damage to grave sites, sacred forest areas, water-sources and wet-lands, placing both GVL and GAR in a position of clear non-compliance with the standards outlined above. Those complaints were upheld by an FPIC assessment completed by TFT (formerly the 'Tropical Forest Trust') in February 2013.

Despite contracting TFT to support GVL and GAR in improving their social performances – including via the development of GVL's new FPIC Standard Operating Procedures (SOPs) – those initial conflicts remain largely unresolved, and as GVL has sought to continue its development into other areas, against CSO advice to halt their operations while they resolve existing complaints, further complaints have continued to arise. This report takes stock of the social performance of GVL and GAR in Liberia, principally by assessing compliance with FPIC in two parts: (1) in company **policy and procedure** (in particular via the FPIC SOPs and governing concession contract), and (2) in company **practice**. For the purposes of this review, although both GVL and GAR are both responsible for ensuring FPIC compliance in their project in Liberia, we will primarily refer to GVL by name for ease of reference, however the observations and conclusions concern the regulatory (legal and voluntary) compliance of both companies.

This review concludes that the both companies are still manifestly failing to comply with many relevant RSPO, legal and other best practice standards. Most worrying of all is the picture that emerges of companies whose current business model fundamentally undermines any prospect of their project's community engagement achieving FPIC compliance. Only through equally fundamental change will GVL and GAR be able to move meaningfully towards compliance and rectify past mistakes. Unless that happens, the social, environmental and economic viability of the project will continue to be in jeopardy.

1. Background: Why getting Free, Prior and Informed Consent (FPIC) right here and now matters

1.1. The GVL Concession and national Context

1.1.1. GVL's Liberia concession

The Government of Liberia's August 2010 concession agreement with GVL granted the company a lease of 220,000 hectares of land, to be selected from a gross concession area of 350,000 hectares, for the production of palm oil from land across five of Liberia's south-eastern counties: Sinoe, Grand Kru, Maryland, River Cess and River Gee (see the concession map at figure 1 on page 15).³ The term of the GVL concession is 65 years, with an optional extension for a further 33 years with further extensions possible.

Land clearance first commenced in December 2010 and accelerated in September 2011, before being halted by a December 2012 freeze on plantation expansion requested by the RSPO in response to community complaints. Plantation expansion re-commenced during 2013 and 2014, in both Sinoe and Grand Kru counties. It is unknown how much land has been cleared and planted to date, but the figure is likely to be at least 3,000 hectares, possibly twice that amount, including in previously heavily forested areas.

GVL is owned by private equity fund, Verdant Fund LP (Cayman Islands registered), whose major investor is the Singapore-listed GAR - part of Indonesia's Sinar Mas group. Associated/intermediary companies with shares at various levels are understood to include Golden Veroleum (Switzerland) Ltd., Golden Veroleum Ltd. [Hong Kong], and GV Holdings Ltd. [Cayman]. Media reports refer to GVL targeting USD 1.6 billion for its investment in Liberia, and having procured a USD 500 million loan from the China Development Bank Corporation.

³ See the 2010 Concession Agreement between the Government of Liberia and GVL. The concession agreement also provided for a new port with 100 ha of adjacent land to be established by Golden Veroleum, and a further 40,000 ha 'out-grower' scheme (essentially a community small-holder scheme with varying degrees of management responsibility retained by the company).

1.1.2. Historical conditions that give rise to communities' customary rights

Of the five counties covered by GVL's concession agreement, development to date has taken place in Sinoe and Grand Kru. Sinoe is one of the three original counties to make up the Republic of Liberia and one of the signatories to the Declaration of Independence on July 26, 1847 (see the text box below summarising the historical process and its impact on land relations in Liberia).

Sinoe County is predominantly occupied by two peoples, the Kru and Sapo, while in Grand Kru there are both Kru and Grebo peoples. GVL's operational areas in Sinoe and Grand Kru are mostly made up of Kru and Sapo peoples. The Kru, Sapo and Grebo are the original inhabitants of this part of Liberia's hinterland (from before 1847). The basis for their present-day customary land ownership rights flow from this long-standing connection to, and governance over, the lands, territories and resources they have used, possessed and occupied in the area, in accordance with customary laws and norms.

According to those customary laws, communities in Sinoe and Grand Kru (as in much of Liberia) assert collective ownership and management rights over their customary lands and resources. If a 'stranger' (outsider) makes a formal request for farmland or for a place to build a house, the community will make a collective decision whether to let that stranger use the land but the stranger cannot own it. Communities normally have a defined boundary that is recognized by neighbouring communities. These boundaries are usually marked by rivers, soup trees or a particular rock. If disputes arise, the communities concerned will generally refer to those natural boundary markers for verification of where one community's land stops and its neighbour's land starts.

How Land Relations today are a consequence of the History of Liberia:

Five features in the evolution of the Liberian State have special bearing upon land relations today, only the first of which is not unique to Liberia.

In summary, these are:

1. The territory now known as Liberia was not 'terra nullius' when American colonists arrived in 1821; that is, it was far from empty, unsettled or un-owned.
2. Although Liberians are rightly proud of having never been colonised by another nation state, the reality is more complex: privately sponsored colonisation did occur and the Declaration of Independence made by its settlers in 1847 marked their independence from those sponsoring societies. The indigenous majority continued to live under 'colonial' norms led by these settlers and their descendants throughout the era now designated as the first Republic (1847-1980). This greatly affected their land rights.
3. The area established as colonial Liberia ('the Littoral' or later 'County Liberia') embraced well under half of the territory of modern Liberia. Political sovereignty over the greater half (the Hinterland) was not seriously sought before 1880 or achieved until 1930. The history of land relations with indigenes (native Africans) in the two areas accordingly evolved in different ways.
4. The Hinterland was officially governed separately from the Littoral until 1964 and in many respects continues to be governed under different norms. The most important is that although reshaped, tribal administration and customary law has had unbroken continuity in that territory. Ironically, the unification of the two areas in 1964 would prove to the detriment of majority land rights in the Hinterland.
5. The approach which the early US-backed colonies in Liberia adopted to the land rights of Africans was almost unique on the continent. They recognised the land belonged to Africans and bought their settlement areas from them. This was not to be the case in the Hinterland.

From 'Who owns the forest?' - Liz Alden Wily (SDI/FERN 2007: 62)

1.1.3. Existing livelihood patterns of communities and local food security

GVL's concession area is remotely located from Monrovia, with the closest point of operation at least a full day's drive from the capital. Broadly speaking the communities living within GVL's concession area are rural communities dependant on a mixed livelihood system including swidden/shifting agriculture, hunting and gathering in community managed forests and wetland areas.

Agriculture is a mixture of subsistence agriculture for food as well as cash crops such as rubber, coconut and other fruiting trees, though excess food crops will also be sold. Meat is provided by hunting game (often deer), and fish and crayfish are gathered from swamp and wetland areas, the latter being mainly the responsibility of women.

Non-food items are also gathered in forests: round-poles and palm thatch for housing, wood for fuel and charcoal, and rattan for weaving into baskets and furniture (with charcoal and rattan products used both for domestic use and for sale). Community sacred forest areas are prevalent in south-east Liberia, with communities in Sinoe and Grand Kru using those areas to hold meetings among elders to discuss issues of importance to their towns and hold other traditional practices. These meetings are commonly used to develop customary laws, and to enforce them through sanctions where community members are found to have breached those laws. The forests and the peoples of the south east are inextricably linked, with some sacred forests allocated for hunting, rituals, healing and medicinal purposes, and other areas of sacred forests used for burial purposes.

Sacred forest areas allocated for hunting purposes are generally restricted to men, who will go into the "Hunting Bush" for three to four weeks at a time or more, hunting wild animals for food and livelihood purposes. Meat is dried and smoked to preserve it. Medicinal plants and other non-timber forest products are also gathered from the forest. When community members have unexplained ailments they are sometimes taken to their sacred forests for healing. Traditional leaders perform most of the rituals during different kinds of community ceremonies. There are no formal schools to maintain this practice so volunteers are usually recruited or inherited from lineage.

Liberia is highly food insecure, importing over two-thirds of its food, and with 39% of children under five being chronically malnourished and 7% acutely malnourished.⁴ Food insecurity is particularly high in the counties of the southeast, where GVL's concession is located.⁵ A July 2013 comparative study by Colombia University, compared food security indicators in Liberian communities affected by land acquisition by palm oil company Sime Darby in northern Liberia, with the same indicators for communities unaffected by land acquisition.⁶ It found that affected communities, when compared with non-affected communities:

- are more food insecure;
- have a significantly less diverse and nutritious diet;
- are more in-debt; and,
- become indebted to cover basic food and health needs (as opposed to use of debt for agriculture and education in non-affected areas).

4 World Food Programme, 'The State of Food and Nutrition Insecurity in Liberia: Comprehensive Food Security and Nutrition Survey' (2010, Republic of Liberia) at <http://home.wfp.org/stellent/groups/public/documents/ena/wfp231357.pdf>

5 *Ibid*, see for example Map 2.10.

6 Balachandran, L. et al (2012) 'Everyone must eat? Liberia, Food Security and Palm Oil', (Colombia University, School of International and Public Affairs).

These findings were based on a project of a very similar size and type as GVL's, and guided according to the terms and conditions of an almost identical concession agreement. Poorer food security in the south east, and the fact that Liberia's south east was one of the last places in Liberia to emerge from the civil war, indicate a heightened danger of such poor socio-economic outcomes from GVL's plantation and a greater risk of civil conflict.

1.1.4. Environmental factors and foreign-direct investment (FDI)

Around half of Liberia is forested, comprising the single largest block of Upper Guinean forest ecosystem. This is globally significant as it constitutes over half the remaining rainforest in West Africa. GVL's concession area contains large areas of forest, current or fallow crop-lands and orchards as well as rivers, swamps and other wetlands. Areas in the region of the GVL concession area are rich in significant biodiversity species. Chimpanzee, Leopard, Pygmy Hippopotamus, Forest Elephant and other significant species been recorded in 2012 surveys conducted in Tarjuowon District of Sinoe County,⁷ a district where GVL has already commenced plantation development.

In addition to the GVL plantation, Foreign Direct Investment-led projects most likely to impact on communities and the local landscape in the vicinity of GVL's concession area include commercial logging, port development, a proposed train-line linking the Putu Iron Ore Mine in Grand Geddeh with a port on the Sinoe County coast. Large-scale palm and rubber plantation development is also taking place in Maryland County at the Cavalla Rubber Corporation (CRC) and Maryland Oil Palm Plantation (MOPP) sites by the company SIFCA, with investment from Singapore-listed palm oil giants Wilmar International Ltd. and Olam International Ltd.

1.1.5. Socio-economic development options

When considering whether to participate in any proposed land-use development that may affect their customary lands, resources and livelihoods, communities should be fully aware that a variety of different socio-economic development options exist, and be advised that they can seek support from other sources to pursue those development alternatives, and understand the risks and benefits of the various options available. This is a basic ingredient necessary to satisfy the 'informed' element of FPIC.

Other such development options for communities include those based on community food production, including from fishing and agriculture, hunting, and from the gathering of non-timber forest products. There are numerous existing examples of productive community-based agriculture in Liberia, which have been able to combine both local food security and income generation, the latter being used to invest in self-development, including education, health and tools or seeds for maintaining or improving yields, processing to add value, and transport to access markets.

Further rural development opportunities might require, for example, improved access to essential services like schools and health services and further training, advice and access to finance in relation to: enabling local production to access more (or more diverse) local, national and export (regional or international) markets through better road and transport links; adding value to products through processing or quality certification; benefiting from economies of scale through producer cooperatives; accessing cheap and responsible sources of credit etc.

⁷ See, Vogt, T, (2013) *Empowering grassroots capacity for REDD+ development in Liberia: Wildlife Survey Report Shaw-Boe, Tarjuowon, Sinoe County*, (Flora & Fauna International)

Even in the context of the palm oil industry, although the dominant palm oil production model as developed in south-east Asia is based on single companies acquiring and intensively managing large areas of land as cheaply as possible using wage labour, other ownership and management models are feasible where communities' customary land ownership rights can be properly respected. These include supported small-holder production on community owned lands, e.g. via community cooperatives. Alternatively, where communities are happy to let a company use some of their land, their customary land ownership rights can nonetheless be recognised providing that this land-use is properly organised on the basis of a legally enforceable land lease with rent paid to communities. Alongside a rent, communities could additionally request material benefits or even an equity stake in the company for which the community could accrue a dividend as share-holder.

Of course alternative crops or a mix of crops should also be considered, to avoid excessive vulnerability of rural communities to volatility and global shocks from international markets inherent in relying on a single export-orientated commodity.

In relation to the palm oil product itself (as when making any informed decision) communities should be appraised of factors on the basis of which they can judge whether the crop is a sound basis on which to base their hopes for long-term sustained and quality social and economic development. This is particularly important because the palm oil sector has attracted a number of economic development myths, commonly repeated in Liberia, which appear to be unfounded.

For example, palm oil is often credited as having underpinned Indonesia's economic success, when in fact as underlined in a recent economic analysis of palm oil,⁸ the economic data does not back this up:

“Counter to popular perception, the palm oil sector has added little real value to the Indonesian economy. The average contribution to of estate crops, including palm oil and rubber, to GDP, was only 2.2 per cent per year during the peak of boom cycle. Value added dropped to below two per cent in 2012 as the global commodity market entered a down cycle.

“Food crops add significantly more value to the economy. The contribution of the fishery sector now outperforms estate crops. Our analysis confirms that these sectors also generate higher economic multipliers and welfare impacts in Indonesia's economy compared to estate crops. ...”

“Counter to the media hype, export earnings from palm oil play only a minor role in Indonesia's export portfolio... In 2011, the export of low-tech manufactured goods, led by leather shoes, exceeded the export earnings of CPO by more than eight times.”⁹

8 Rhein, Matthias, (2015) *Industrial Oil Palm Development: Liberia's Path to Sustained Economic Development and Shared Prosperity? Lessons from the East* (Rights and Resources Initiative: Washington DC), my emphasis.

9 *Ibid*, at pages 13 & 14.

Further factors that should be considered when assessing the long-term economic value of a palm oil industry to Liberia include the following:

- **Susceptibility to oversupply, low prices, and ‘boom and bust’ price volatility.** As a tree crop that takes around four years to be productive and seven years to reach peak production, farmers are ‘locked in’ to a single market for a significant amount of time, and correspondingly less able to respond to demand changes. This has the effect of creating oversupply, lower prices, and ‘boom and bust’ price volatility.¹⁰
- **Crude Palm Oil (CPO) prices have nose-dived by more than 40 per cent since their peak in early 2011 and are set to remain low,** due to oversupply and weak demand, with prices likely to remain low and less competitive as other vegetable oils show signs of overtaking palm oil with lower production costs and greater productivity increases.¹¹
- **The palm oil industry relies heavily on cheap land and cheap (often migrant) labour** to maintain palm oil’s market share relative to other vegetable oils. Companies also need to recoup the extra risk premiums paid to raise capital investment for projects in tropical countries perceived by investors as risky. This suggests Liberia will gain minimal revenue from palm oil through land rents, taxes or wages. This is likely to be a key reason for palm oil industry expansion into Africa, as it seeks ever cheaper land and cheaper labour. Communities in Liberia may be interested to know that Malaysian small-holders are starting to remove oil palm plantations and replace them with rubber.¹²
- **Growing more palm oil results in importing more food.** Since 2012, Indonesia now spends more importing food than it earns from *both* palm oil and rubber exports. Even before the recent upsurge in industrial palm oil development in Liberia it was importing over two-thirds of its food, suggesting it can little afford to risk food security (let alone the hoped for export income) from becoming even more reliant on exporting food.¹³
- **Palm oil has failed to increase the number of rural jobs available in Indonesia compared to 1990 levels,** with jobs on palm oil plantations being mostly casual and seasonal, triggering huge in-migrations to the detriment of local populations. On a jobs/hectare measure, industrial palm oil produces relatively few jobs, when compared to small-holder cocoa, rubber, rice and agroforestry.¹⁴

1.2. Summary of applicable laws and social standards

The web of standards regulating GVL’s venture include the RSPO Principles & Criteria (both as a member, and via the membership of its lead investor GAR), the GAR FCP, as well as obligations derived from law.¹⁵ Sources of relevant applicable law include customary law, domestic/national law, and international law.

In summary, those laws and standards provide a firm legal basis on which the property rights of communities strongly reliant on maintaining their connection to customary forest lands and resources for their cultural and physical integrity must be respected by others, whether those lands are formally titled or not. Similarly, there is a strong legal basis for such communities’ lands and resources only being impacted on by third parties if they have the FPIC of those communities; on the basis of a participatory social and environmental assessment

¹⁰ *Ibid*, at page 5

¹¹ *Ibid*, at page 7

¹² *Ibid*, at pages 9 – 12

¹³ *Ibid*, at page 14, and World Food Programme (2010), *supra*, at note 5.

¹⁴ *Ibid*, at page 14.

¹⁵ GVL has been a member of the Roundtable on Sustainable Palm Oil (RSPO) since 29 August 2011. Its chief investor GAR has been a member of the RSPO since 31 March 2011. As members, both companies are committed to adhering to the RSPO Principles & Criteria. As lead investor, GAR shares responsibility for ensuring compliance by GVL since GAR’s membership commenced on 31 March 2011

conducted independently and prior to any land- or resource-use decision being made; and with profit/benefit-sharing and compensation arrangements made via FPIC compliant agreements.¹⁶

Customary law has constitutional force in Liberia, in that it can be relied on in domestic courts.¹⁷ It often has the greatest resonance at the community level, where customary rules are the most commonly practiced and recognised normative frameworks guiding the invariably collective community ownership and management of community land and natural resources. The key domestic legal frameworks applicable to the natural resource management in the area include the Constitution and laws concerning environmental protection, public procurement and concession administration, forest tenure and management, land tenure and mining.

Local government is based on county and district administrations with county administrations having representatives of the various ministries. Local government representatives are generally supportive of GVL's plantation. Perhaps the most significant single local administrative (executive) actor is the County Superintendent, under the Ministry of Internal Affairs, and the County Development Superintendent. It has been observed that both tend to regard their role in natural resource management as giving political support to private sector concessionaires. The scope for this political patronage to manifest itself in the coercion and intimidation, or inducement, of communities into accepting the GVL acquisition of community land is clear, particularly in areas of significant influence (e.g. in the home towns of influential local government representatives) or among individuals whose jobs can be threatened by the offices of those local government representatives. **The implications for FPIC are obvious, since any land acquisition that takes place in conditions of undue pressure or inducement is not FPIC compliant, regardless of whether those conditions were directly or indirectly caused by GVL's own actions or omissions.**

It is worth noting that in Liberia, as elsewhere in Africa, some customary leaders (e.g. Paramount Chiefs) have been partially or wholly integrated into the formal network of local and national governance, receiving payment and sometimes being dismissed by government. As such, it is common that such leadership roles are subject to strong pressure to support economic projects which have the governments approval, with instances of Chiefs being dismissed where they have chosen not to mirror the position of government, electing instead to represent the position of their community. In the last couple of years, paramount chiefs and clan chiefs that express support for community opposition to concessions have been dismissed. In one case regarding Equatorial Palm Oil's (EPO's) concession in Grand Bassa county, a clan chief was dismissed for "*going against the government policy*" on the EPO Concession – after he publicly refuted the company's claim that he had given them his consent to take his community's land. This was also repeated in Bong Mines where two clan chiefs were also dismissed for being critical of the China Union mining project. While this dynamic should be evaluated on a case-by-case basis, **the practical result is that a simplistic approach that assumes all customary leaders are able to legitimately represent and communicate the collective will of their communities is not going to be FPIC compliant for these reasons.**

Among the international human rights laws to which Liberia is a party are the major treaties agreed under the auspices of the United Nations (UN) and African Commission on Human and Peoples Rights (ACHPR). In addition, Liberia and the EU have agreed a Voluntary Partnership Agreement (VPA) under the EU's Forest Law Enforcement Governance and Trade Action Plan (2003), committing both parties to supporting a programme of governance reforms aimed at addressing the problem of illegal logging.

16 For a summary of international human rights law & RSPO standards applicable to Liberia, see: Lomax, T, *Human rights-based analysis of the agricultural concession agreements between Sime Darby and golden Veroleum and the Government of Liberia*, (2012, Forest Peoples Programme, UK), in particular pages 6 to 14.

17 1984 Constitution of Liberia, Article 65.

The focus of this report is in assessing Golden Veroleum's social performance generally, but with particular regard to assessing compliance with the requirement to respect customary rights and only acquire and use community lands with the FPIC of communities whose lands and resources would be impacted. Originally enumerated under international and regional human rights treaty law (including those to which Liberia is legally committed), FPIC is provided for under domestic Liberian law by the Community Rights Law with respect to Forest Lands (2009). Respect for customary land rights and FPIC, as well as the avoidance of development of plantations in areas classed as having high conservation value (either from an environmental or social and cultural perspective), are also an obligation under the RSPO Principles & Criteria,¹⁸ mirrored by similar requirements in GAR's FCP¹⁹.

As natural resources (particularly timber and diamonds) played such a pivotal role in fuelling Liberia's 14-year civil war which ended in 2003, and in recognition of the importance that UN sanctions played in ending that conflict, the UN Security Council has retained a mandate for a UN Panel of Experts to review progress in Liberia on various fronts, including improved governance of key natural resource sectors. In addition, Liberia's Extractive Industries Transparency Initiative ("LEITI") plays an important role in regulating transparency in forestry, mining and agriculture industries, notably focused on transparency in respect of natural resource concessions generally, including revenue paid by companies and received by government.

Concerns have been consistently raised about the legality of GVL's concession agreement (and the process leading to the conclusion of the concession agreement), despite the fact that the agreement was ratified by the legislature. Neither the company nor the Government have acted on the concerns that have been raised. This has included concerns expressed in reports of the UN Security Council's Panel of Experts to Liberia regarding lack of compliance with public procurement regulations,²⁰ and in the May 2013 report by UK-based law firm Moore Stephens LLP (LEITI's 'Post Award Process Audit' final report).²¹ The latter found nine separate regulatory violations of Liberian national law and procedure in the contracting process leading to the concession agreement between the Government of Liberia and GVL and judged it to be 'non-compliant' with the relevant national laws and regulations of Liberia. Compliance with all applicable local, national and ratified international laws and regulations is a requirement of the RSPO Principles & Criteria and GAR's FCP.²²

Despite the RSPO being appraised of these legal compliance issues on several occasions, it has so far refused to take any steps to monitor or enforce this central tenet of the RSPO standard in the case of GVL. It is unclear why this is the case, since in response to allegations of legal non-compliance in other cases being handled by the RSPO's complaints system, the RSPO has recommended that an independent lawyer be instructed to investigate the allegation and advise on its remediation.

18 See for example Principles 2, 6 and 7, in both 2007 and 2013 RSPO Principles & Criteria, at http://www.rspo.org/files/resource_centre/RSPO%20Principles%20&%20Criteria%20Document.pdf (2007) and <http://www.rspo.org/file/revisedPandC2013.pdf> (2013) respectively.

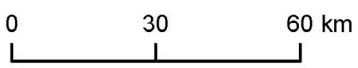
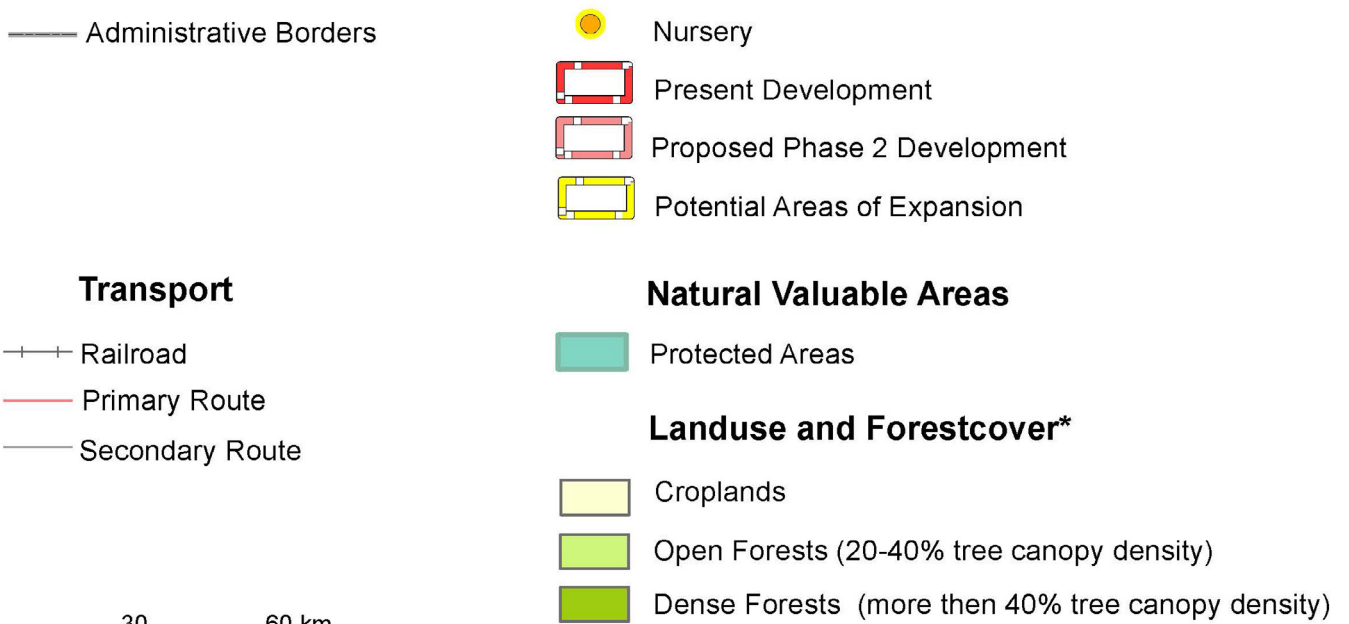
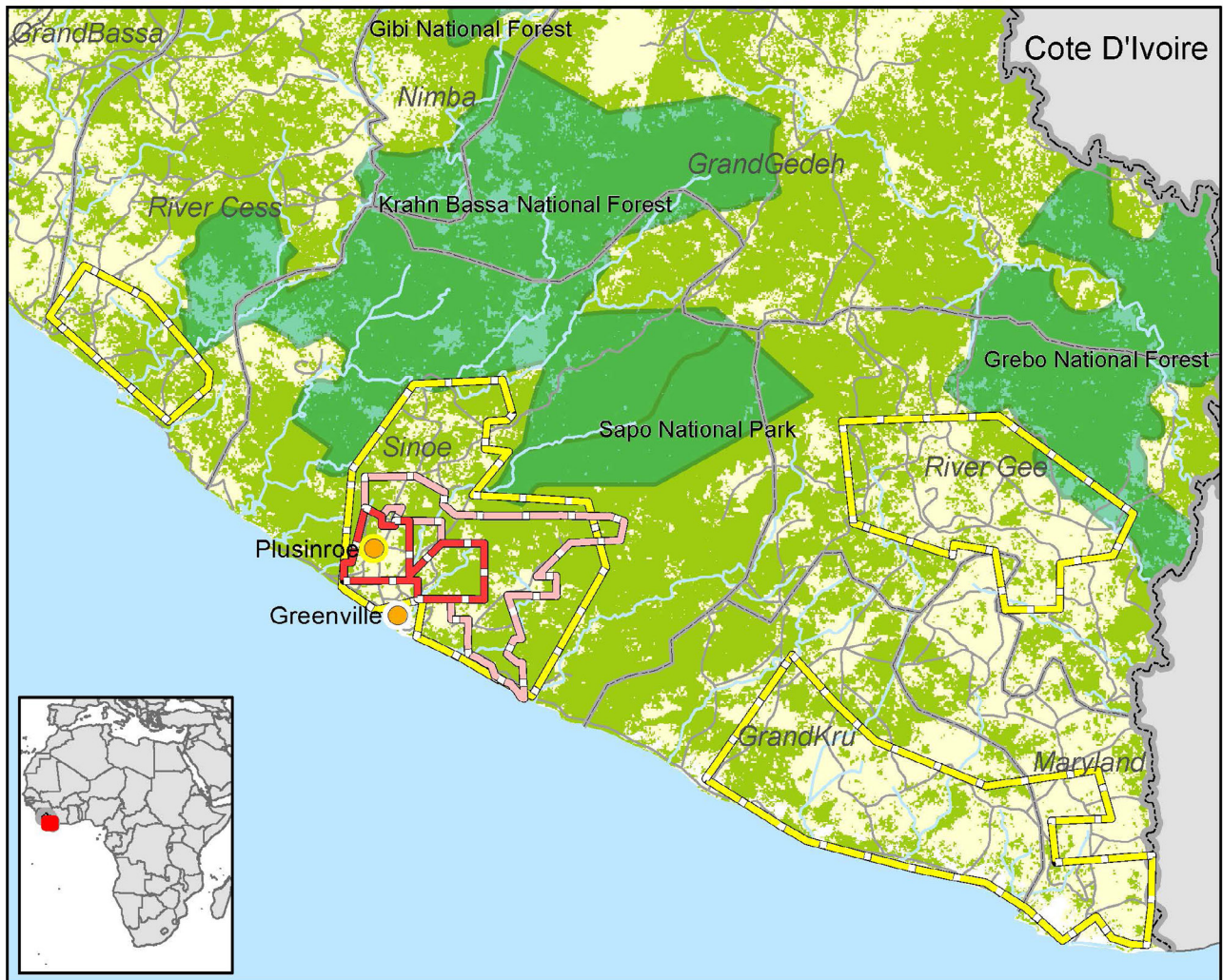
19 Golden Agri-Resources Forest Conservation Policy (Feb 2011), available at: http://www.goldenagri.com.sg/pdfs/sustain_policies/GAR_Forest_Conservation_Policy.pdf, at para 6. (accessed November 2014 – NB. all web links referenced in this report were accessed and/or checked as current in November 2014 unless otherwise indicated)

20 Reports of the UN Security Council Panel of Experts on Liberia, see for example December 2010 (paras 99 and 100); and December 2011 (at para 215), available at: <http://www.un.org/sc/committees/1521/liberiaPOE.shtml>.

21 Liberia Extractive Industries Transparency Initiative (LEITI) audit report (2013) conducted by Moore Stephens LLP (see <http://www.scribd.com/doc/151344593/LEITI-Post-Award-Process-Audit-Process-Report>), see pages 5, 9, 27 & 38.

22 See Principle 2 in both 2007 and 2013 RSPO Principles & Criteria (*supra*, at note 13); and, GAR's FCP 2011 at paragraphs 1 and 7 (*supra*, at note 14) respectively.

Golden Veroleum Palm Oil Concession Area in the Southeast of Liberia



* On the basis of Modis Vegetation Continues Fields (Hansen, 2003) and GlobCover project (ESA, 2008)

Figure 1. GVL's concession in Liberia, from Greenpeace International (2012) 'Palm Oil's New Frontier – How industrial expansion threatens Africa's rain forests (www.greenpeace.org/international/en/publications/Campaign-reports/Forests-Reports/Palm-Oils-New-Frontier/)

Part 1: An assessment of Golden Veroleum and Golden Agri-Resources' FPIC compliance *in policy and procedure*

Introduction

The key reference documents guiding the implementation of GVL's concession in Liberia from the perspective of communities whose land the concession area overlaps, are (1) the Concession Agreement (2010), which sets out the contractual responsibilities and obligations of both the company and the Government of Liberia,²³ and (2) the Standard Operating Procedures applicable to land acquisition, GVL's FPIC SOPs.²⁴

Initiating human rights due diligence (identifying potential human rights risk factors and identifying prevention measures through consultative processes) as early as possible in a new project is crucial, including at the point of negotiating concession contracts. As highlighted in the UN 'Respect, Protect and Remedy' ("Ruggie") framework which underlines the global standard of expected conduct for all business enterprises 'human rights risks can be increased or mitigated already at the stage of structuring contracts or other agreements'.²⁵ A full analysis of the terms and conditions of GVL's concession contract suggests GVL's early human rights due diligence to have been negligible or non-existent, as the contract is non-compliant with human rights and voluntary (including RSPO) standards in numerous fundamental respects, including its contractual authorisation for the following:²⁶

- 1. The acquisition of community land without participation or consent:** The concession agreement purports to grant a government lease to GVL over land that includes land and resources already under customary ownership of communities, coupled with a lack of any procedural safeguards to mitigate the potential land grab of community property (including a lack of any FPIC requirement).
- 2. Resettlement of communities:** Provisions in the contract allowing GVL to request resettlement of communities "minimising the number of enclaves within the Concession Area where inhabitants are permitted"²⁷, a measure incentivized by provisions allowing associated costs to the company to be deductible from taxes or fees owing to the government.
- 3. Activities affecting community lands and resources conducted without community participation or consent:** Provisions allow GVL to build infrastructure, close roads or impose tolls, use timber, drain wetlands and extract stones, sand etc., without safeguards for community participation, consent, or access to grievance mechanism.
- 4. Broad security powers without safeguards to prevent abuse:** GVL has powers of arrest and detention, to search and exclude or evict, on the basis of economic, operational or security reasons.

23 Concession Agreement available at: <http://goldenveroleumliberia.com/files/Agreements/2014-01-07-GVL-Concession-Agreement.pdf>

24 See GVL's FPIC Standard Operating Procedures at: http://goldenveroleumliberia.com/upload/gvl_fpic_principles_and_roadmap_description.pdf.

25 Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Prof. John Ruggie, 'Guiding Principles on Business and human Rights: Implementing the United Nation's "Protect, Respect and Remedy" Framework', Human Rights Council, 21 March 2011 (UN Doc. A/HRC/17/31), see commentary to Principle 17.

26 Lomax, T, (2012) 'Human rights-based analysis of the agricultural concession agreements between Sime Darby and Golden Veroleum and the Government of Liberia' (FPP, UK), see <http://www.forestpeoples.org/topics/palm-oil-rspo/publication/2012/new-report-human-rights-based-analysis-agricultural-concession>.

27 Concession Agreement between the Government of Liberia and GVL (2010), Articles 4.3(a) & (c).

5. **Poor benefit sharing provisions for communities on whose land the concession is developed**, including a lack of any permanent employment guarantees to replace lost livelihoods; provisions that enable GVL to monopolize the local purchase of community-grown palm fruit or rubber; limited social benefits (education and health etc.) restricted only to permanent employees and their dependants (excluding other community members who lose livelihoods but who risk losing jobs).
6. **Low revenue recovery from the perspective of a central government looking to fund essential services using FDI revenues**: Provisions include extraordinarily low annual land rent (between 1.25 and 5 USD/hectare) – payable to government not communities – coupled with numerous tax breaks, tax credits, tax deductions and exemptions. According to media reports the Liberian Revenue Authority (LRA) recently identified four companies owing unpaid taxes to the revenue, with GVL reportedly owing USD 50,000, suggesting GVL is not meeting even those minimal commitments.²⁸

These serious failings in the originating Concession Agreement present a fundamental challenge to FPIC compliance and respect for community land rights for GVL's project. For example, how can the company respect customary land rights if it has already agreed a lease over community land with the government, to whom it pays rent? What is the legal status of subsequent land-use agreements between the company and communities (as customary owners of the land) in that context? Resolution of the various deficiencies in the process by which the 2010 Concession Agreement was agreed and the flaws in the substance of the Concession Agreement could be achieved via a relatively simple set of amendments to the agreement, agreed through a process that ensures the meaningful participation of potentially affected communities and civil society and is compliant with other aspects of relevant Liberian law. Without this amendment process, the Concession Agreement will continue to present a serious barrier to full compliance with relevant legal, RSPO and FCP standards.

Prompted by a formal community complaint made to the RSPO on behalf of communities in October 2012 alleging *inter alia* the acquisition of land without communities' FPIC; the RSPO-requested cessation of plantation development; and TFT's February 2013 report which upheld the communities' complaint, GVL developed FPIC Standard Operating Procedures (SOPs) as a measure for improving FPIC compliance in its land acquisition process.²⁹ The first draft GVL FPIC SOPs consisted of a series of simple flow-charts, which though easy to read, lacked the detailed guidance needed to ensure staff compliance with FPIC standards. The second draft joined a narrative description, alongside the flow-charts, which was a significant improvement.

It is strongly suggested that if GVL wishes to retain the flow-chart format, they should be integrated into this narrative document, and moreover, we propose that they should *not* be available separately, since having the two together in one document will help promote a much better understanding of what is really meant by the 'headline' steps in the flow charts. Although the flow-chart format of the SOPs developed to date is presumably meant to be visually clear and easy to read, the concepts and complexities of the various procedural stages cannot be captured by small headline boxes. This risks simplistic implementation and a possible 'tick-box' culture, that is unlikely to be FPIC compliant.

The serious flaws in the Concession Agreement notwithstanding, it would be hoped that GVL's FPIC SOPs would go some way to mitigating the multiple ways in which the Concession Agreement currently leaves communities vulnerable to violations of their civil, political, economic, social and cultural rights. In practice however, although

28 See C. Winnie Saywah-Jimmy in 'The Inquirer', ('LRA Books BHP, Golden Veroleum, Others'), 27 October 2014 (accessed via [allafrica.com](http://allafrica.com/stories/201410273033.html) at <http://allafrica.com/stories/201410273033.html>) and David A. Yates in 'Liberian Observer' ('BHP, Sime Darby, Others Owe Taxes'), see <http://allafrica.com/stories/201411050255.html>).

29 See [http://www.forestpeoples.org/sites/fpp/files/news/2012/10/Final%20complaint%20to%20RSPO%20on%20Golden%20Veroleum-%20Butaw-sinoe%20county%20\(2\).pdf](http://www.forestpeoples.org/sites/fpp/files/news/2012/10/Final%20complaint%20to%20RSPO%20on%20Golden%20Veroleum-%20Butaw-sinoe%20county%20(2).pdf). Documents pertaining to the complaint are available at <http://www.forestpeoples.org/topics/palm-oil-rspo/news/2012/10/letter-complaint-round-table-sustainable-palm-oil-rspo-indigenous>

GVL should be commended for taking steps to develop FPIC SOPs, analysis of these SOPs shows serious flaws that fall well short of FPIC compliance. This is further reflected by experience of their implementation to date in Sinoe and Grand Kru counties, where those flaws are evident in the GVL-community engagement process as it has taken place, most visibly in the GVL-community agreements (“memoranda of understanding” or “MoUs”). Most worrying of all is the overall picture that emerges of a company that has a pre-determined business model that it wishes to roll out, and that its community engagement process will necessarily be constrained by the demands of ensuring that this model is achieved – the ends justify the means. This is in stark contradiction to the whole point of FPIC, which is to ensure that all parties engage in a good faith information-sharing and negotiation process that is open-ended (not with a pre-determined end point), which can then result in individually negotiated agreements with each community concerned (if that can be reached).

A paradigm shift is therefore still needed for GVL to reach FPIC compliance, and until that point there will remain serious flaws in policy and practice that will cause GVL to fall well short of its legal, RSPO and FCP obligations. Crucially, as well as making sure its policies are as good as they can be, GVL will need to ensure that policies are fully implemented in practice. In the light of this, very clear recommendations are made by this report. These comments are made in recognition that a win-win for company and communities would be a situation where GVL derives sustainable and secure investment from a project that fully respects community rights.

In the subsequent sections of this report we present a critique of GVL’s SOPs alongside constructive suggestions as to how best to address those failings. Section 1.12, for example, extensively explores how to answer the following critical question which is identified as a key gap in the current GVL SOPs: *How do communities want to make and communicate decisions as a community, and how should negotiations be conducted?*



Grand Kru county

Step-by-Step Analysis of GVL's FPIC SOPs

The **introduction** to the narrative roadmap contains some useful background information, although some key issues need addressing that are indicative of fundamental flaws found throughout the SOPs:

- 1.1. The introduction states that 'communities **shall have a say** in whether development proceeds and how it proceeds'. This implies mere consultation or participation not consent. This should be amended to make clear that FPIC means communities **shall be able to decide** whether development proceeds and how it proceeds.
- 1.2. The SOPs currently do not outline that **FPIC is a compulsory procedural right that communities have**, which is grounded in national and international law, and is not simply a voluntary commitment that is part of GVL's corporate social responsibility. This is a key point, since it underlines the importance of FPIC compliance to staff and third parties (including local government), and empowers communities to demand nothing less.
- 1.3. Currently the introduction frames the purpose of the FPIC process as being one of engaging communities in a decision about whether to accept 'agricultural development and modernization' or not. **This is fundamentally misleading. The decision for communities is not about development or modernisation in principle, it is about a particular project with a particular company.** This should be made crystal clear. The worst-case scenario for the current wording is that the question "do you want development or not" is used as a proxy for "do you want the GVL project here or not", (which communities report is exactly how GVL has posed the question to them in its community engagement process). This is certainly not an accurate reflection of the choice communities are being asked to make. Communities in Liberia often have a strong perception of their own poverty and have naturally strong development aspirations. Equating the decision about whether to engage with GVL's project with whether they want development is exploitative of the poverty and development aspirations communities have. This narrows the decision-making space available to communities (which should be as open as possible), and is not FPIC compliant.

The **FPIC Principles** section (pages 1 to 4) again provides some useful guidance, but the following key concerns and amendments need to be integrated into the SOPs and their implementation in practice, to bring GVL into compliance with the required FPIC standard:

'Right to say yes or no'

- 1.4. Again, FPIC is very much presented as being a choice "for (or against) development" and a discussion about "the benefits of development", and in the last sentence of the section: "Development will only proceed on mutual agreement". As outlined above at (1.3) this is misleading and exploitative, since the decision is not about development in principle, it is about a particular project with a particular commercial enterprise (GVL). This section and other similar sections in the SOPs should be re-drafted and **the word 'development' replaced by 'GVL's proposed palm oil project'** or something equivalent.
- 1.5. This section states that though the community can reject the GVL project, GVL can also "say yes or no, and is not required to agree either". While the company is free to decide not to go ahead, expressed in this way this guidance is not likely to facilitate FPIC compliance as it could be misinterpreted as a justification for GVL abusing its negotiating position by simply presenting an inflexible business model to communities on a "take it or leave it" basis. This is an approach that communities in GVL's concession area have reported taking place in practice. An FPIC compliant SOP should rightly acknowledge communities' rights to refuse use of their land by the company (as it is their land), but the section should also expressly make clear that an inflexible "take it or leave it" approach is not acceptable, as it has the effect of bullying communities into acquiescing to the company's wishes contrary to the "free" element of FPIC. The SOPs should also make clear the following: the essential need for communities to be given the time and space

to think through their own proposals whether and if so how they would consider collaborating with GVL; that community proposals should not be unreasonably rejected by the company; and that in this way the communities may reach an agreement that differs from any preconceived business model GVL might have.

'Inclusiveness in community decision making'

- 1.6. Again, references to 'development' need amending (as per the comments at 1.3 and 1.4 above). E.g. 'for or against development' in the second sentence of the paragraph commencing "Rural communities in Liberia are not homogenous..." and 'advocating or opposing development' in the next sentence.
- 1.7. The SOPs include in the categories of people that may act in their personal interests and exploit positions of power and influence "persons hailing from the community [who] hold positions in or receive income from organisations that have different development policies or are opposed to development". This appears to be a misleading and inappropriate comment calculated to discredit community members who have links to community based organisations (CBOs) or civil society organisations (CSOs). This should be removed for a number of reasons, not least because CSOs and CBOs are one of the few sources of independent (i.e. non-governmental, non-company) technical and legal support available, so it runs counter to an FPIC-compliant engagement process. The work of CSOs and CBOs should be accommodated and not undermined by GVL (in policy or practice). Furthermore it is a wholly inaccurate appraisal of power dynamics within communities to equate the position of community members who are important figures in local government with community members who have links to CBOs or CSOs. An important figure of local government is exceedingly more powerful than anyone connected to a CBO or CSO.

What this section of the SOPs should be addressing is undue influence, which in basic terms means one person or one section of the community taking advantage of a position of power over another. This is likely to be coercive behaviour that is not consistent with FPIC. A realistic assessment of power dynamics means the company's SOPs should instead focus on likely sources of undue influence based on an accurate appraisal of power dynamics. In the GVL concession area, the overwhelmingly likely source of such influence is prominent figures in local government and GVL itself. The SOPs should (but currently do not) give guidance on how to mitigate such risks of undue influence. This is a key gap.

- 1.8. A central element of FPIC (highlighted in the SOPs themselves) is the principle that it is entirely for the community to decide how they make their decisions. They may decide to do so on the basis of consensus/ unanimity if they so chose. It is inconsistent with this principle (and therefore not FPIC compliant) for the SOPs to express any opinion on what this may mean in practice. As such, the statements "Typically this reflects significant, but not necessarily complete consensus" and "However, in the end, community decision making cannot be expected or required to be unanimous. Minority views cannot be expected to hold the board (sic) community hostage" should be deleted. GVL's SOPs should not pre-empt the community's right to self-determine how collective decisions are made. At the same time, it would be useful if the SOP's required GVL to ask communities to demonstrate how minority viewpoints are dealt with in the community decision-making processes. For example, if GVL is presented with 'a decision', it would be useful if the community could demonstrate how they have dealt with any minority concerns.

'Negotiations with representatives and communities in consultative and participatory manner'

- 1.9. In this section of the SOPs, the clause "The agreement needs to be legally binding" sounds right, but it is important to specify *what* agreement is being referred to here. Our recommendation would be to make clear that if the community makes a final decision to engage with GVL in the use of community land and resources for palm oil production (whether under community or company management), the final agreement between the community and the company needs to be legally binding, and will set out all the agreed terms and conditions for how community land and resources will be used for this purpose. This wording would promote FPIC compliance as it is suitably open-ended about the various ways in which that agreement could be structured.
- 1.10. This section also includes the sentence "therefore whichever form of representation the community has chosen, it must have decision-making authority..." which is not currently FPIC compliant. The representatives chosen by communities are likely to have the power to *communicate* decisions to GVL, but they may not have the power to *make* decisions on behalf of the *whole* community. There may be a separate process for making decisions and communicating them, and this nuance needs to be incorporated into the text to ensure the SOPs are as open as possible to whatever process the communities self-determine. The SOPs can legitimately state that whatever form of decision-making process is chosen by the community, the community's decision-making body (which may be the whole community if a decision is being made by consensus) must have the authority to make legally-binding decisions on behalf of the whole community. Similarly, it would also be advisable for the SOPs to state that if this community decision is being communicated (but not made) by community representatives chosen by the community for this purpose, then those representatives must have the community's authority to communicate the decision.
- 1.11. The final paragraph of this section refers to the role of GVL's Community Affairs (CA) team, and needs significant attention to ensure clarity on key issues necessary for FPIC compliance. For example, it would not be consistent with FPIC for GVL Community Affairs (CA) team to provide support while community decisions are being made (or even while decisions about how to self-represent and make decisions are made), since it may prevent a free and uninhibited discussion among community members. Communities will need to make those decisions in private for the company to avoid later accusations of undue influence itself.

The SOPs should clarify here that communities may wish to have the benefit of trusted civil society advisors when making community decisions, and make clear that independent legal advice will be crucial at that stage. It should also specify that a supported and documented process for making community decisions will be particularly important when communities are making key decisions, especially when making decisions about how the communities wish to be represented in communications with GVL; and how they would like to make decisions on any final agreement with GVL on the future use of their land and resources. The presence of GVL (including its Community Affairs team) during such community decision making processes should not be permitted in order to facilitate free and uninhibited community discussions. The support of independent CSOs and legal advisors during that process should be recommended, as they are not parties to the final agreement.

The SOPs should also make clear that GVL's CA team will however need to attend a community meeting where it can be officially informed about how the community will make and communicate its decisions, to avoid accusations that final agreements between the community and GVL are void, because they did not have the full authority of the community. It is hard to imagine this happening safely outside of a community assembly with *all* community members present (with the decision confirmed in writing) for

the most important decisions, so that GVL can be certain (and can prove) that this is the final view of the community (see below for more detail on this point).

- 1.12. Currently, a key gap that the SOPs do not provide any policy guidance on is what is meant by 'a community'. The SOPs need much more detailed guidance on this key issue: *What unit of community is GVL going to negotiate with? How will this be self-identified by the community?*

A criticism of GVL practice to date has been that many negotiations are taking place at too high a level – e.g. at the District level in Butaw, Numopoh, Tarjuowon etc. – which is usually unworkable for communities as it contains too many people. This has disadvantages for both the community and GVL. Being based purely on electoral boundaries, district areas generally ignore the customary, ethnic and social realities of communities and customary decision-making, so more division and conflict is likely.

There are various other disadvantages to negotiations at this level, especially the requirement to travel often long distances to attend district level meetings. Challenges include: (1) transport costs, particularly high in the region, which discourages people from participating that live far from the district headquarters where meetings are often held; (2) for those towns without access roads, the walking distances – sometimes as much as 6 hours both ways - may act as a discouragement; (3) only those that can overcome these challenges can attend district level meetings – effectively excluding others by design; and most importantly (4) women in particular are most likely to be excluded because of the travel distances and other family responsibilities.

Customary governance seems to operate most effectively at the town level – and for inclusive decision-making this is the ideal level. This may be challenging, particularly where towns are very small and if that is the case (though obviously it is for the communities to determine how they negotiate) other levels may be workable: for example town-clusters or clans which are typically made up of 5 to 10 towns. Organizing meetings at the lowest level possible allows for broader participation by avoiding the challenges outlined above which can make participation impossible for many.

District level negotiations are also far more likely to be subject to undue influence by local government administrators, whereas smaller-scale negotiations are better at allowing communities the space to make their own decisions. Therefore, even where the community makes decisions at the clan level, there needs to be a way of verifying that individual towns within the clan have agreed to the decision. Communities may of course decide to bring in local government representatives if they want to, but this is no longer inevitable and GVL should be careful not to promote it, so that communities do not feel any obligation to do so.

Clearly, to be FPIC compliant, the decision about what community level/unit GVL should communicate and negotiate with is for communities themselves to make, but this can lead to a circular debate: who decides what unit of community decision-making decides the unit of community decision-making? GVL has to start its conversation somewhere and somehow, and the SOPs will need to guide staff on how to approach this. This and related guidance is vital, but is currently missing in the current SOPs.

Our suggestion (though this will need discussing further with civil society and communities) is that GVL should start this conversation through consultations with individual towns. To be sure of the collective will

of the community during early stages, the GVL/community discussions will need to happen with as many people as possible from each town – what we are calling here a full ‘community assembly’ for ease of reference. For all such community assemblies, communities will need adequate notice, preparation and capacity support in advance by civil society, and a good day and time should be agreed when everyone is most likely to be around (e.g. Sunday afternoon after church, but not during the working day when people (particularly women) are working in the fields etc.).

Essential to the proper functioning of this whole process is active independent monitoring and support from civil society organisations, who can then independently testify that there was a satisfactory process. This in turn requires full transparency and good communication between GVL and civil society *well in advance*, so that CSOs know beforehand where this process is happening, and can prepare communities and establish relationships with them if they have not done so already.

Consultations with each of the individual towns in a clan will need to focus on the fundamental question: *How do communities want to make and communicate decisions as a community (including how they want to give and receive information), and how should negotiations be conducted?*

This report suggests that this breaks down into at least two key sets of decisions that need deciding in sequence, in a way that confirms the collective decision of the community:

a. **If the community wants to have a conversation with GVL, what will the community unit be:** Does the community want to talk to GVL at all? If so, does the community want to talk to GVL and make collective decisions as a single town, or would the community rather do this jointly, as a collection of neighbouring towns, or at some other level?

⇒ One way to try to ensure that the community unit has been chosen collectively, is for the community to answer this question in front of GVL in a full community assembly at each town concerned by show of hands, or the equivalent, unless the community determines otherwise.

⇒ GVL will first need to explain simply, objectively and without pre-empting what kind of outcome the FPIC process might lead to or trying to ‘sell’ the project:

- that it is looking for land on which palm trees can be grown to produce palm oil;
- that it recognises the community’s ownership over their land and resources; and,
- that community land can only be used to grow oil palm in collaboration with a company like GVL if discussions between GVL and the communities lead to a legally enforceable agreement.
- that the community should strongly consider seeking independent legal advice and the support of a civil society organisation if discussions with the company proceed any further.

GVL should not claim that it has already been given land by the government, as the government is not legally entitled to lease community property to the company (whatever the concession agreement might purport to do).

GVL should also not try to sell or market its idea to the community at this early stage – descriptions of potential pros and cons can come later if the community agrees to further discussions and (importantly) after the community has explained how it wants to conduct those discussions.

Independent monitoring of this early stage would help avoid later complaints that GVL had sought to influence the community’s decision.

GVL should then explain that the first set of decisions for the community to make is to **decide:**

(1) whether they want to talk to GVL about this proposal at all, if no, that is fine, but if yes,

(2) whether the community wants to talk to GVL and make collective decisions as a town, or as

a collection of towns, or whatever.

Communities may wish to have the presence and support from a CSO and/or legal representative when making these decisions.

- ⇒ **GVL should then absent itself to give the community time to discuss and decide on these questions, and arrange a future date when it can come back** and get an answer from the town at a second meeting (which may need to be many days or weeks later to give the community adequate time). If the community agrees at that subsequent meeting to talk further, and states clearly whether the community wants to talk to GVL as a town, or as a collection of towns, or whatever, then GVL can proceed to the next step (b) on that basis (see below). Before that can happen however, where the town decides it wants to talk and make decisions as more than one town, this decision will need checking with the other towns in the proposed grouping to see if they are in agreement with this definition of who the community is for the purposes of talking to GVL and making collective decisions.
- ⇒ **If the community says it does not want to talk further with GVL about the proposal, then GVL should politely accept this decision**, thank the community for being clear, and leave the community alone. It should not reintroduce the discussion to the community through repeat visits. If there is disagreement at the second meeting, GVL should give the community more time, and come back at an arranged future date to try again. If there is a consistent pattern of disagreement, GVL will have to accept that negotiations with the community are not workable as there is no community consensus on this vital starting point.

b. Representation, communication and decision-making: Although it is of course up to communities how they organise communication and decision making, it remains the whole community's right to actually make the collective *decisions* though they may decide to nominate representatives to communicate those decisions. GVL therefore should highlight the following questions, though they should absent themselves while the community thinks them through and decides how to respond to them.

- ⇒ Key questions for the community to consider, decide on, and communicate to GVL at this stage in a full community assembly include the following.
 - 1) **How is the community going to communicate with the company** – does it want to communicate as a whole community with everyone present, or through chosen representatives or another way?
 - 2) For key decisions, **how will the community validate and confirm that those key decisions being communicated to GVL** (e.g. via community representatives if that is how they chose to communicate), **are the true and legitimate decisions of the whole community? What are the 'key decisions'? how will they be recorded and documented** by the community if needed?
 - 3) If the community wants to communicate with GVL through representatives – **who will those representatives be?**
- ⇒ As outlined above, community decisions at key moments require validation/ confirmation. One way would be by a show of hands or the equivalent, in front of GVL, at a full community assembly – regardless of whether the decision has already been communicated to GVL through community chosen representatives. *It may be important that any decision is tentative until confirmed and validated by a community assembly.* This could be both a safeguard to protect the community from rogue community representatives communicating a decision that has not been decided by the community (or not done properly), and for GVL to know that these key decisions are indeed the collective will of the community.
- ⇒ This approach could be used for key decisions throughout FPIC process. It is of course up to the community how it wishes to do this, and it is up to them to decide what will be 'key decisions', and how it wants to record and document them. This would presumably need to be decided on by the community in GVL's absence, and communicated and validated to GVL in a full community assembly. At a minimum, this may include key decisions including those decisions specifically addressed here (see above under bullets a. and b.), as well as *all decisions which will result in the community being legally bound* – e.g. to a contract such as a lease, MOU, social agreement or

other agreement/arrangement. Of course, communities may decide that other decisions should be dealt with in this way too.

- ⇒ **Representation:** Before GVL leaves the community to make all these decisions (numbered 1-3 above), it would also be good for GVL to highlight some key principles of a quality FPIC process, again perhaps by reference to its RSPO commitments. This could include advising the community to think carefully how to:
 - ensure men and women, young and old, and other vulnerable groups like the physically challenged, participate fully in discussions and decisions;
 - ensure that everyone in the community is fully informed and information is adequately shared;
- ⇒ Communities may decide that non-community GVL staff should absent themselves from being present when the community is making decisions (1)-(3) – which may take days or even weeks. Communities may well wish to have the presence and support from CSO/ legal representatives at this crucial time, and this should be recommended and accommodated by GVL.
- ⇒ To be as sure as possible that decisions (1)-(3) have been made collectively, GVL and the community could arrange a subsequent meeting with a full community assembly after the community has had enough time to consider and make those decisions, where the community's chosen representatives can be identified in front of the whole community, and the whole community can be asked to confirm and validate the decision in front of GVL by show of hands or equivalent. If there is disagreement, GVL should give the community more time, and come back at an arranged future date to try again. If there is a consistent pattern of disagreement, GVL will have to accept that negotiations with the community are not workable as there is no consensus.

The processes outlined above should be sufficient to start the FPIC process. Getting these initial steps right will give a clear and sound basis on which the company and the community can be certain how information sharing, decision making, communication and representation will be organised by the community. GVL should be aware that community may wish to change these decisions, for example if communities lose faith in chosen representatives, or trust breaks down with neighbouring towns. In such cases, a repeat of the process outlined above at (a) and (b) may be necessary.

'Mutually respectful meetings and decisions principles'

1.13. In several parts of the SOPs, a key mistake being made is that GVL proposes a template/pro forma for the community to consider, which is then the basis of discussions and negotiations. In this section for example, the SOPs provide for GVL proposing an agenda for community meetings. It is not appropriate for GVL to propose a whole agenda as a starting point, as it is possible that communities who are not familiar with such formal agenda-based meetings will interpret this as being a definitive *fixed* agenda for the points for discussion, without fully appreciating that they too can drive the contents of the agenda. The risk of this approach having the effect of constraining community discussions and decisions means that it is not consistent with FPIC. The SOPs should be amended to make clear that agendas for GVL/ community meetings should be mutually developed in advance of meetings, with communities providing their suggestions first. This allows communities to have internal discussions on what they would like to see in the agenda, so that they can discuss their own agenda points and come to collective decisions on their negotiating position *prior* to meetings with the company.

1.14. A gap in this section of the SOPs is a lack of clear policy guidance (i) that communities will need to make internal decisions without GVL being present, and (ii) on refraining from assuming that community representatives can make decisions without first referring back to the community, to ensure FPIC compliance. It is generally inappropriate for community representatives attending meetings with companies (if communities have structured the negotiating process in that way) to be asked to make a

decision there and then. Instead they should be able to go back to their communities and consult with them through internal discussions that lead to a collective decision on important issues in their own time and in their own way. Representatives can then *communicate* the outcome of those decisions to GVL at the next meeting, but the representatives themselves are not making the decision. A two-step process like this is very healthy, and should be encouraged, as it maximises the likelihood of a fully participatory and community-led process. Not taking this approach creates the risk of situations whereby decisions communicated to the company may not be legitimate, which is inconsistent with FPIC.

- 1.15. This section of the SOPs refers to documenting community meetings, which, though a good idea in principle, requires better clarity on how this will be done in a way that is fully participatory. This will necessitate policy guidance to ensure communities are involved in documenting meetings, and in a way that guarantees that those without reading and writing skills can also be involved. For example, the person taking minutes should be agreed to by all present at the beginning of the meeting. If this cannot be agreed, a literate community member and a GVL employee should be tasked with making simple notes, and these can then be collated and validated by both parties.
- 1.16. Related to the taking of minutes is the need for some guidance in the SOPs for how community endorsement of meeting minutes can be ensured. For example, immediately after the meeting has finished, a summarised list of the key points, decisions and action points could be read out, endorsed line by line by the community members present with the final agreed copy signed by those present.
- 1.17. The SOPs refer to creating a community 'binder', so that the community has a complete record documenting the FPIC process, which is an excellent idea. However, it is not clear from the SOPs how many such binders would be provided to the community, and filled with the various documents during the course of the FPIC process. **One binder per village is unlikely to be satisfactory**, so the SOPs should state that, at a minimum, these documents should be distributed: (1) to all towns within the community unit (however it is defined), i.e. to the town chief; and (2) within each town – to all social groups, i.e. women's leader, youth leader, elders/ traditional leaders. The SOPs should emphasise that GVL should make a special effort to offer binders expressly to be held by women, so that other women may examine them, to encourage their involvement.
- 1.18. The SOPs should also make clear that **information must be made available to communities at the earliest possible stage in the process**. SOPs should state that when a new piece of information becomes available, there should be no unreasonable delay in getting it to the community. The SOPs should also say that, at the outset, all relevant information in existence at that stage should be provided, to ensure timely information sharing.
- 1.19. Finally, although the SOPs rightly say that all information should be provided in a form and language that is accessible to all, **the SOPs should also state that this should not stop the community from receiving original documents such as maps, ESIA's, concession agreements, HCVAs etc., as well as summaries in a form and language that is more accessible**. This will help ensure that communities know they are getting all the information available, and can always seek advice from civil society and legal advisors on anything they do not understand. In any event, what is meant by 'alternative forms and languages' needs more guidance. Oral dissemination may be necessary during open consultation meetings, in the most appropriate language, to ensure maximum participation, and other options should be explored in consultation with communities.

'Transparent progress schedule'

- 1.20. Since FPIC compliant processes depend on information and support from civil society legal and technical experts, to complement information flows from GVL, the SOPs (in this section or elsewhere) should be amended to **expressly recognise civil society's role as a support agency and possible route to legal advice, not only as an independent observer or witness**. To that end, GVL should advise communities as early as possible in their community engagement that communities may wish to contact a civil society organisation, through whom they may be able to get independent legal and other technical advice and support.
- 1.21. **Ideally, discussions about FPIC should then be able to take place with those civil society support organisation's knowledge and presence so as to help strengthen communities' capacity**. In the long run this will help GVL as well as the community, as the community will be better able to make decisions, speak with one voice, and minimise division and conflict.
- 1.22. A change of tone is needed in this section, as currently it is structured in a way that implies that GVL proposes methods of communication and communities merely consent to that proposal. This kind of approach is not FPIC compliant as communities are cast as a passive party with the conversation 'closed down' by GVL's proposals, instead of having an open discussion about *how* GVL can best share information leading to an agreement on appropriate communication methods. It would however be appropriate for the SOPs to give general advice that whatever method/s are chosen, it would be best if they are open, transparent and inclusive.

'Possibility of public domain materials dissemination'

- 1.23. This section provides for the possibility of company disclosure, subject to community authorisation and commercial confidentiality. In the spirit of encouraging an open and transparent process necessary for FPIC, it would be advisable to make it clear that the default position will be maximum possible public transparency and disclosure. **An FPIC process that can be independently monitored and supported stands a much greater chance of long term success** than one which happens behind closed doors. The latter is ripe for accusations of undue influence with costly implications for renegotiating company-community agreements.
- 1.24. This section should also be amended to make clear that **communities must be free to disclose any information that they want to disclose to third parties such as legal advisors or civil society support organisations**, without needing GVL's consent. As currently constructed, the SOPs could be interpreted as giving the company a right to veto community disclosure of information to such third parties (including their legal advisors or civil society support organisations) which would clearly not be FPIC compliant.

'Appropriate negotiation parties'

- 1.25. While this section correctly recognises that community land in Liberia is generally communally governed, it **does not stress that community land in Liberia is also communally owned**. To adequately explain what the implications of this collective nature of community land ownership and management are for FPIC, it

is essential that the SOPs mention here that **community decision making and self-representation should be self-chosen by a collective decision of the community, preferably with the technical support of civil society organisations.**

- 1.26. Currently this section refers to engaging with ‘traditional decision making authorities’, which needs unpacking as it could be interpreted in a way that is not consistent with FPIC. For instance, **it would not be appropriate to simply assume that traditional authority figures such as clan chiefs are the appropriate negotiating party for the community, or that they should be involved as a matter of course.** There are unfortunately numerous examples of clan and other chiefs being co-opted by local government, or corrupted by financial/material inducements. Where that is the case, they lack a community mandate to play a legitimate role in company-community negotiations, and their involvement can lead to conditions of coercion and undue pressure that would render FPIC impossible. To avoid this problem, a more broadly participatory process is needed wherein communities can ensure that their decision-making and communication structures are self-chosen, and have their full mandate and authority. Our suggestion for this process is set out in Section 1.12 above.
- 1.27. As stated in Section 1.12 but repeated again for emphasis, **GVL’s SOPs need to distinguish community communication from community decision-making. This is because where community land is held collectively, the whole community has a collective right to discuss the decision and come to a decision.** Without a specific community mandate to the contrary, it would be highly risky to assume that representatives have the right to make decisions that could bind the whole community. The least risky approach would be to assume that representatives only have the right to *communicate* decisions already made by the community as a collective.
- 1.28. The SOPs rightly say that FPIC engagement should avoid creating/accepting artificial boundary conflicts, but currently do not give adequate advice for avoiding this problem. **GVL has to date agreed a number of MOUs with large administrative areas (e.g. whole districts in some cases), which is arguably inconsistent with this element of the narrative roadmap, since it actively uses an artificial boundary (in this case by following the boundary of an administrative district) which is insensitive to customary boundaries that are recognised and workable for communities.** It also suggests that the community parties to those MOUs have been selected by the company rather than self-chosen by communities, which is not FPIC compliant. In practice this has led to communities within those large areas complaining that they are losing an unfair share of their community land (without their consent) while communities from other parts of that large area are seen as gaining an unfair share of the benefits. The approach outlined in Section 1.12 would, in the authors’ view, help give guidance that could be used to manage this problem, particularly the steps that would give communities the time and space to decide what the ‘unit of community’ is going to be in negotiations with GVL – whether by town, town cluster etc.
- 1.29. Related to this issue, it has been observed that in practice GVL has tried to establish part of its plantation on land areas that are the subject of long-standing and well-known boundary conflicts. This is a basic lack of compliance with FPIC obligations that GVL should avoid, suggesting that the SOPs need to do more to set out the due diligence procedures needed to identify pre-existing land conflicts, with a clear policy to avoid trying to establish its plantation in those areas unless those conflicts are first resolved to the satisfaction of both communities, and of course subject to proper participatory mapping and FPIC.

- 1.30. The narrative SOPs also refer to **providing information to communities on alternative development possibilities, which is a good idea though it is not clear how this has been done in practice. Since this may involve structures and business models that may be outside of GVL's expertise, this is another point where the SOPs should expressly recommend that GVL should advise communities to seek independent technical and legal advice.** Several national and international civil society organisations have worked on alternatives, and their expertise could be useful.
- 1.31. **The SOPs also need to be amended to make clear to communities that any changes to community agricultural practices on their customary land can only take place with their FPIC, and this includes the design of the "out-grower" programme, to avoid this being seen as imposed by the concession contract with the Government of Liberia.** The ratio of 10 acres of out-grower for every 50 acres of company-developed farm mentioned in the SOPs is a feature of the concession contract, which has no validity at the community level as it is a contract with the government. **To be FPIC compliant, the out-grower arrangements would need to be individually arranged with each community without predetermined limitations or ratios.** The 10:50 ratio should therefore be deleted, to avoid it being represented and perceived as pre-determined.
- 1.32. This section of the SOPs again makes misleading reference to the word development, when saying that 'GVL does not necessarily agree to carry out development, when it is not economically viable'. Instead of development the SOPs should refer to the GVL palm oil plantation project or similar, as explained above. Some guidance is also needed in the SOPs on whether and if so how the social team should refer to GVL decisions on economic viability. Of course GVL will make its own assessment of what is economically viable, and it is a profit-making enterprise. It is not a development agency. However, **in the worst case, GVL's refusal of community proposals on grounds of economic viability could be used as a 'trump' card to make communities accept GVL's pre-determined business model on a "take it or leave it" basis. This is not open-ended and therefore not good faith negotiation, and is not FPIC compliant, as outlined previously.** All other negotiation avenues would need to be explored and exhausted before GVL refers to economic viability, which should be a last resort. The lack of negotiating experience of communities is recognised by GVL, but GVL needs to give guidance to social teams to make sure this is not exploited to exploit a bargaining advantage.
- 1.33. Furthermore, **good faith negotiations with communities necessary to achieve FPIC compliance will requires GVL to be open and transparent about the commercial realities of the palm oil business, so that any company-community agreement is based on a fair and equitable understanding of key factors.** If GVL comes to the negotiating table with all the commercial facts at its disposal, but communities do not, any resulting company/community agreement can easily become exploitative, in bad faith and potentially voidable by virtue of undue influence. The SOPs therefore need to make clear that there should be a fair exchange of relevant information as early on in the process as possible, including but not limited to information on: market prices for palm oil (domestic and international); factors likely to influence price fluctuations; likely production rates per hectare in Liberia; likely timescales for production; changes in market price based on the absence or presence of value-adding technology such as refining mills; factors relevant to harvesting – e.g. the fact that palm oil crops are not seasonal as fruits ripen throughout the year; irrigation and fertilisation needs; and building on that, the likely overhead costs in palm oil production per hectare based on prevailing recommended commercial practices etc.

'Public information of outcomes'

- 1.34. This section of the SOPs outlines a process that, if followed to the letter, could always happen behind closed doors, with the results only coming to light at the end of the process. However, if there is a problem, it would be better for all concerned to identify it and rectify it sooner than that, so that all parties can have confidence and certainty in the outcome. Recommendations made above to ensure the involvement of CSOs and legal/technical advisors at an early stage will help. These should be reiterated here. Further, it is not clear what the reference to 'information of outcomes' refers to in this section, e.g. does this refer to the content of MOUs, Social Agreements etc.? This needs clarifying so that the SOPs are not misapplied. The idea of a semi-annual forum to update civil society on current operations, expansion schedules and negotiating processes is good in principle, but sounds far too infrequent. Although the SOPs could set a minimum frequency for such forums (e.g. quarterly), it would be better if in practice, the SOPs expressly viewed civil society support organisations as an integral and active part of the FPIC process, accommodated and facilitated by various steps outlined in the SOPs, and as such were fully involved and informed at every stage.

The **FPIC Process** section (pages 5 to 18) setting out GVL's FPIC process is clearly intended to give details on how those FPIC principles should be implemented in practice, and include narrative elements alongside extracts from flowcharts. As per the above, several key concerns and amendments need to be integrated into the SOPs and their implementation in practice, to bring GVL into compliance with their FPIC obligations.

Initial Engagement Agreement

- 1.35. This section of the SOPs contains the confusing statement '*once determination is made that FPIC applies*', but without further clarification. In the absence of any reason to do otherwise this should be deleted, since FPIC applies to all situations where GVL seeks to use land over which communities have a customary interest.³⁰

Step 1 – Fact finding, studies and broad communication

- 1.36. We strongly suggest that key initial stages of FPIC should be more carefully described, along the lines suggested in Section 1.12 above. A clearer, perhaps even pro forma description of what information will be shared at this stage might be a good idea, so that it can be independently monitored for objectivity, clarity and completeness.
- 1.37. Currently, step 1 sets out a process by which the company gathers background data on the concession area including finding out which communities would be affected. However, the SOPs are far too vague about what information is useful and how it could be obtained e.g. 'information gathering could range from informal general fact finding to formal social and environmental studies'. Clearly, GVL needs to do general preliminary research by talking to a wide range of international, national, regional and local actors and read widely in order to get a general sense of culture, livelihoods, tradition and norms, and other

30 The last sentence of this section should also presumably be amended to read 'if a community does not want to proceed then the FPIC process ends at that point' instead of 'If a community does want to proceed then the FPIC process ends at that point', which appears to be a typographical error.

environmental and social factors. But **any information gathering on a particular community should only take place after an initial contact, communication and decision making process along the lines outlined above**. In contrast, this section embarks on discussing the appropriate social and environmental studies to be prepared, including High Conservation Value Assessments (HCVA) and Environmental and Social Impact Assessments (ESIAs). However, it would be inappropriate to embark on those until communities have agreed to participate, and have made those key early decisions as to how they will communicate with GVL; represent themselves in discussions with GVL (including HCVA and ESIA processes); and make decisions. Engaging in ESIAs and HCVAs before that is premature and not FPIC compliant. It has been observed that these deficiencies are playing out in practice, with communities lacking awareness of those risk assessment processes, and not being involved (or sufficiently involved) in their design, execution and validation, and ultimately not being adequately informed during those assessments so as to be able properly to consider granting their *informed* consent. This section should therefore be amended to clearly separate a preliminary research and data gathering (including a preliminary assessment of social and environmental risks and mitigation) from more detailed data gathering, which will need to take place later on, after communities have agreed to engage with GVL (at least initially), and have had a chance to structure their internal mechanisms for participative engagement and obtain independent legal and technical advice.

- 1.38. **If separate narrative SOPs do not exist in relation to HCVAs and ESIAs, then GVL will need to draft them and integrate them into the FPIC narrative SOPs, as they are a key element of information gathering and sharing in the FPIC process** (as stated in the RSPO Principles and Criteria). For example, there needs to be guidance on how those studies will be designed, planned, implemented, with the full consent and participation of communities at every stage (including design, execution and validation).
- 1.39. As stated above, Step 1 of the SOPs is entitled ‘Fact finding, studies and broad communication’, and yet there is no discussion of what ‘broad communication’ means. Does this refer to communication with communities, or with both communities and other relevant parties, and if so whom? **There needs to be much clearer guidance in the SOPs on what is meant here, outlining to social teams what information is being provided or sought, what stage in the FPIC process this is being done, and how this communication will take place**. Finally, the flowchart attached to this section refers to a ‘Documents and dissemination log’, which presumably is a log of what documents have been shared with communities, and when, but it is not clear. It would be worth clarifying what this log should include.

Step 2 – Preparation for each community

- 1.40. It is unclear what the purpose is of sending the ‘Letter to Outreach Meetings’ to communities, for communities to sign and send back. It is hard to assess this for FPIC compliance without knowing what it would say. If this is a pro forma, a copy could be annexed to these SOPs, which would be helpful to assess compliance with FPIC standards. In addition, it goes without saying that **without the steps recommended in paragraph 1.12 above, this step would be premature, as GVL would not know who on behalf of the community is authorised to sign and return the letter**. Without embedding this step in a much more detailed policy guidance for GVL’s engagement with communities, this step risks sounding like an activity entirely aimed at ensuring the existence of a paper trail for GVL’s benefit and ticking boxes. Essentially, documenting company/community engagement should be tailored around an FPIC compliant engagement process, and for the reasons set out above and below, these SOPs do not set out an FPIC compliant engagement process. In this context, ticking boxes and documenting the process risks giving the impression that GVL is more concerned with appearing to meet its FPIC obligations than actually doing so.

Step 3 – Outreach meetings

- 1.41. **Step 3 refers to preparation of an information package by GVL, which is an excellent idea, however some details need to be reconsidered.** Clearly, an approach such as that outlined at paragraph 1.12 would need to have taken place already. Under that approach, presumably **it would have been necessary for a summary of the proposed development project to have already been provided to communities at initial contact, before the communities decide whether to talk to GVL at all**, before communities have decided whether they want to discuss and negotiate with GVL as a town, town cluster or whatever unit of community, and before communities have decided on their decision making and communication mechanisms. **A more detailed package of information would be appropriate after those key initial decisions have taken place.** Furthermore, as soon as some or all of those preliminary summary documents and the more detailed package of documents is available (e.g. where they are not community-specific), they should be annexed to these SOPs, so that they can be independently inspected. It is impossible to assess these processes for FPIC compliance without knowing what those documents say.
- 1.42. Step 3 sets out a list of documents to be included in an information package, some of which are inconsistent with GVL's FPIC-related obligations:
- a. **A document containing 'The Suggested roles and structure of the Community Representative Committee'. This should be removed from the information package, as it could have the effect of being prescriptive, and thereby closing down and constraining community discussions on this crucial issue.** It is important that communities have the chance to think this issue through in their own time, preferably with civil society legal and technical support. It is not GVL's place to offer a template or model (even by way of example), as it could easily influence the community before they have had chance to think about it among themselves and determine the roles and structure that is tailored to *their* community and context.
 - b. **For the same reasons, copies of a draft or sample Social Agreement (or MOU) are not appropriate either, and we strongly suggest removing this from this list.** All such documents should only be the *outcome* of a fully informed negotiation and community decision making process (preferably with legal and technical support). Again, it is not GVL's place to offer a draft or sample (even by way of example), as it could easily influence the content and structure of community discussions and decision making, before they have had chance to think about it among themselves and benefit from expert advice.
 - c. **'Copies of the Environmental and Social Impact Assessment (ESIA) summary and other studies as well as a summary of the Environmental Social Management Plan (ESMP)' (or HCVA for that matter) – again, in terms of the sequence of events, it is not clear why the ESIA and ESMP are in the list of documents for a preliminary outreach meeting, since the community would not have been ready to participate in any ESIA or ESMP (and may know nothing about what those would involve), and consequently the research for those studies should not yet have commenced.**
 - d. **'A Starting Draft of the FPIC Engagement Agreement' – for reasons explained above, this should also be removed from this list.** Any such document should be the outcome of a community decision-making process, and it is not appropriate to pre-empt that outcome with a starting draft. As outlined above FPIC compliance means allowing communities to shape their own FPIC process. Company-generated drafts, models, samples etc. may pre-empt that, and potentially undermine that (as they are all too likely to be based on an outcome desired by the company), and so should be avoided.

- e. **It is unclear what level of consultation has been done with communities, civil society legal and technical support organisations etc. in relation to the content of these SOPs, but it is important that this is done, for example so that other information communities might need can be added to this list if not currently included.**
- 1.43. A further concern regarding Step 3 is that it is not clear how many information packages will be given out, who they will be given to, how this dissemination process will be determined, and by whom. Again, the manner in which the community receives and communicates information with the company needs to be decided via a process along the lines of that outlined at paragraph 1.12 above, since it is a key community decision. **Every community member has a right to see all relevant documents. How this is guaranteed is up to the communities**, who will almost certainly need many copies, with copies held by women, as well as men, and not just held by those holding traditional leadership positions. Illiterate community members will need particular support. CSOs will be best placed to support the community to find an information sharing approach that is inclusive and accessible to everyone, but space for this process to take place needs to be accommodated in GVL's FPIC policies to guide its engagement process.
- 1.44. **Step 3 refers to the company and the community agreeing on a draft 'FPIC engagement agreement', but it is unclear from the SOPs what is intended here. Presumably this means some kind of document that sets out how a particular community is going to structure its engagement with GVL, and if so, the SOPs should make clear that this is for communities to determine, not the company.** This could be a helpful document, and communities should be given the option of communicating the elements of the process they decide to follow in writing, so that this can be made clear to the company and available to remind the community of its decision in this respect. However, this would depend on there being a much more **detailed, step-wise guidance in the SOPs (along the lines of the approach outlined at paragraph 1.12) to assist GVL's social team in appreciating the process needed by which communities can decide, and if they want, formalise and write down in paper, their decisions on how to approach their FPIC engagement.**
- 1.45. Step 3 also states that 'The team³¹ will leave information with the communities for a sufficient time' which rather sounds like GVL will take the information away again in the future. This needs amending since it seems unlikely that this is what was meant in order to maintain compliance with the requirements of consent being 'prior and informed'. **It should be made clear instead that communities will be given as much time as they want to consider all information, conduct internal discussions and make internal decisions before any community/company discussions or negotiations take place based on that information.**
- 1.46. A further seriously problematic issue in step 3 that indicates a clear violation of FPIC is the statement: *'The LCT [GVL's Land Consultation Team] will consider the level of consensus required to proceed. 100% agreement may not be feasible OR necessary and some level of disagreement is likely. At this stage, the consequences to the Community are relatively minor'*. Firstly, it is not at all clear what community agreement or consensus the SOPs are referring to here, and this needs specifying for this guidance to be at all helpful. Are the SOPs referring to consensus over information sharing procedures, or the FPIC Engagement Agreement, or a community agreement to talk to GVL at all, or other? Secondly (and crucially) **FPIC compliance means that companies must at no stage decide for themselves what level of consensus is expected or required, or even express any expectation in this regard – whether by simple majority, unanimity or some other approach. This is entirely the decision of the community who should have a blank canvas to decide this for themselves at all stages.**

31 By 'team', the SOPs refer to GVL establishing a 'Land Consultation Team' (LCT) which is referred to as 'an interdisciplinary team incorporating oil palm expertise, environmental, social and technical aspects...responsible for developing and making available material to use during FPIC Process as well as logistics and resources', at page 5.

Step 4 – Community engagement decision

- 1.47. Essentially this step refers to two letters: a ‘Community Letter’ (that the community should provide to the company expressing their willingness to go ahead with the FPIC process) and a ‘Letter to go Ahead’ (to be endorsed by both the community and company, presumably as proof of a mutual agreement to proceed with an FPIC process). Providing the initial community engagement sequence is far more carefully considered in amended SOPs, along the lines of the approach outlined above at paragraph 1.12, it would not be a problem to ask the community to confirm in writing that they want to engage in an FPIC process (essentially, confirmation that they want to talk further).
- 1.48. However, the approach outlined above at paragraph 1.12 is that **confirmation that communities want to talk further to company will need to be in a community assembly (since the company cannot know at that point how the community wants to communicate with the company). The approach suggested outlines key decisions that will need to flow from that initial decision, including how the community wants to make decisions as a collective, and how it wants to communicate decisions and negotiate with the GVL.** Written confirmation that the community wants to engage with the company will naturally not be possible until those basic decisions have been taken, to ensure that the company knows for certain that the signatories to any future correspondence (including this letter) have the legitimate authority of the community. **Ultimately, how the community wants to express its confirmation should be up to the community** – the company should not provide a pro forma.
- 1.49. Likewise, there would not be a problem with GVL and community endorsing a ‘Letter to go ahead’ (meaning a joint agreement in principle to proceed with the FPIC process), but again, this should not be a pro forma, but a letter drafted by the community and company together, to ensure the community is not ‘locked in’ to a process already pre-defined by the company.

Step 5 – Community representation decision

- 1.50. To avoid repetition, the approach outlined above at paragraph 1.12 should also be taken into account here, in order to properly set out how the community decides on, develops and confirms its own self-determined mechanism for communicating community decisions to the company (e.g. via chosen representatives).
- 1.51. Currently, **GVL’s SOPs at step 5 state that the company will recommend that the community will negotiate and communicate with a group of community representatives who have formed a negotiating team. This rather pre-empts the decision of the community about how it wants to make decisions, negotiate and communicate, which should be up to the community.** GVL should not represent a particular model, beyond recommending that the mechanism be participatory and inclusive. The letter the SOPs refer to for documenting this stage in the FPIC process is a ‘Request to the Community for Representatives’ from the company. The SOPs ask that a copy of this letter is returned to the company, to acknowledge receipt. Even the name of this letter (‘Request to the Community for Representatives’) pre-determines how the communities structure their communication with the company (i.e. by choosing representatives), which should be amended to make this entirely neutral and open-ended. More broadly, since FPIC compliance will require significant amendment of the SOPs along the lines of the approach set out in paragraph 1.12, GVL’s SOPs will need to accordingly amend how that process is documented. In any case (for the reasons already outlined) GVL should generally refrain from providing pro forma letters for communities to endorse, to prevent the company from pre-defining the terms of community engagement without those

terms being self-determined first by the community. For standard letters being sent to the community, those letters should (for the same reasons) be sufficiently open-ended, and not predetermine the process, and those letters should be attached to the company SOPs, so that they can be properly monitored for FPIC compliance.

- 1.52. In Step 5, **the GVL SOPs also wrongly conflate internal decision making with communicating those decisions and negotiating with the company. How the community wants to do these separate steps is entirely up to them.** The SOPs need to be amended to ensure that GVL appreciates that these are separate activities, and that the community may have separate mechanisms to achieve them. Essentially, even if the community chooses representatives to communicate with GVL as a negotiating/communicating team, the right to make the decisions is reserved to the community and will often require a completely separate process involving far more people if not everyone in the community (particularly for key decisions). The representatives in that scenario would simply then communicate that decision to the company, but will not themselves be making those decisions. The SOPs should be sufficiently open-ended to allow for this, while making the distinction clear between these two separate activities (internal decision making cf. external communication).

These procedural flaws in the SOPs have translated into problems in practice, which are not FPIC compliant. Instead of letting communities determine their own model for making decisions, conducting negotiations and communicating decisions, GVL has provided communities with a suggested model of the 'Community Representative Committee' ("CRC"), with the SOPs specifying that communities will be provided with a document outlining the suggested roles and structure of the CRC. In addition to the general comment outlined above at paragraph 1.42(a) that it is inappropriate to provide a model by which communities can represent themselves (which has the practical effect of being prescriptive and closing down and constraining community discussions on this crucial issue) it is the experience of our CSO partners that CRC members often are or eventually become employees of GVL. This is a clear manipulation of the process that is not FPIC compliant, since it unduly influences community dwellers to become CRC members and use that position to speak for and support GVL in the hope of gaining employment, thereby fatally undermining their capacity to faithfully represent their community.

- 1.53. GVL SOPs currently (rightly) anticipate the conflict of interest that is caused by the presence of GVL employees in the community. While this is a problem, it is a problem of GVL's creation. In practice some communities have come to believe that this has been a deliberate tactic used by GVL as a measure to 'buy support' for the GVL project. GVL can then point to the existence of this support for the project (that it has by these means manipulated into existence) even where previously the community had been relatively unified in its opposition to the project (effectively a 'divide and rule' tactic). Giving jobs to a select number of community individuals before an FPIC process has led to a written and legally binding community-company contract is poor practice and is not FPIC compliant. It undermines community cohesion, and prevents (possibly fatally) the community from being able to take a collective decision. **It is vital that GVL stops giving jobs to community members before there is a written and legally binding community-company contract with that community, and this must be included in the company SOPs for them to be FPIC-compliant.**
- 1.54. GVL rightly mentions in step 5 that communities often need, but lack, independent legal and technical support. The SOPs refer to finding neutral parties to serve as community advisors or advocates, but provides no clarity on what this means. In fact it is not GVL's role to determine who those parties should be. GVL can (and should) do the following, and specify this in the SOPs – but **GVL should not be trying to do more than what is specified below as it would then risk acting as intermediary and gate-keeper to third party support, which could compromise the independence of that third party support:**

- **GVL staff should expressly recommend that the community obtain independent legal and technical advice, including via civil society organisations.**
- GVL should also make clear in its SOPs and to communities that it will **not agree written and legally binding community-company contracts (MOUs, social agreements or whatever) unless the community has had the benefit of independent legal and technical advice (independent from the company and government)**, as a vital safeguard against GVL exploiting the disparity in bargaining power between the company and communities.
- If GVL does recognise the right and need of communities to consult the advisors of their choice, **GVL SOPs should not (as they currently do in several places in these SOPs) implicitly and explicitly suggest that NGOs or advocacy groups are ‘anti-development’.** In fact the SOPs should do the opposite, and expressly state that GVL staff must refrain from any activities that may have the effect of undermining the activities of NGOs or advocacy groups. It is not for GVL to choose which NGOs they like and which they do not, or to influence communities on this issue.

1.55. Provision of information by GVL is an obligation of FPIC, and can to a degree help overcome poor access to technical advice, and the enormous inequality in bargaining power and expertise between the company and community. Any activity that exploits (deliberately or otherwise) this inequality is not FPIC compliant, so all measures need to be taken to avoid this. This principle should be made clear in the SOPs and followed through by concrete measures. As an example of a concrete measure, communities are unlikely to know the palm oil commodity and industry as well as the company. They are unlikely to know how many trees can be grown per hectare, how much oil this can typically produce or what the market value of that oil is, likely market price variability/ volatility etc. Communities do not therefore know the basic information needed on which to judge the productive value of their land for palm oil production, and are not in a position to decide whether to use some of their land to grow oil palm (in principle) and/ or whether to agree a profit sharing agreement/contract with GVL of some kind. **All this and related information must be objectively and openly shared by GVL with the community (as outlined above at paragraph 1.33) as early as possible, and in a way that the community can understand and use to make an informed decision.**

1.56. Communities may also not be aware of key agricultural factors that are relevant to having realistic expectations on what the palm oil crop means for them and their land use – in terms of issues relevant to how palm is grown, harvested, transported, processed and sold. For example they may not know that there is a short time to get the fresh palm fruits to the processor before they can be processed, otherwise they spoil and degrade. This then requires arrangements for transport that the communities will need to be aware of and consider, when deciding whether to use land to grow oil palm and collaborate with GVL in some way. **This and related information relevant to the palm oil crop must be provided to the community by the company as early as possible (as outlined above at paragraph 1.33), again in an objective but accessible way that the community can understand and use to make an informed decision.**

1.57. Step 5 contains several other problematic elements, that are not consistent with FPIC requirements:

- a. Firstly, step 5 assumes that representatives must also have decision-making power and authority over the use rights of the community, when in fact communities may want to organise their decision-making, negotiating and communicating processes very differently to this preconceived notion (as already explained above, e.g. at paragraph 1.52). How the community wants to organise those activities is up to them as already outlined. In fact, subject of course to that overarching proviso, **learning lessons from successful instances of FPIC compliant processes in other countries, it would be better to assume (unless communities subsequently decide otherwise) that representative**

structures will not have decision-making powers that can bind the whole community, and that decision-making should be a separate process that is far more collective and participatory. Either way, the SOPs must not set out a preconceived notion of this as they currently do, as it should be entirely left to the community.

- b. Step 5 includes the following statements which are seriously problematic and inconsistent with FPIC: *“There may at times be pressure by NGOs to elude the traditional governance structures from the FPIC process as a decision making body. However it is important to understand that the traditional governance structure in Liberia govern the communal land. Typically, the traditional land ownership rights are governed by paramount chief and clan level. A town chief or a community may grant use rights for land”*. This component of step 5 constitutes bad practice, is inconsistent with FPIC, and should be deleted from the SOPs. The first sentence undermines NGOs, echoing the destructive approach that the SOPs have adopted elsewhere, which is not appropriate. **Driving a wedge between communities and NGOs acts to undermine some of the only sources of technical and legal advice available independently of GVL and the government, and therefore undermines FPIC. Whether GVL likes it or not, FPIC means that communities should have access to advice, regardless of whether GVL is in agreement with that advice or not.**

Furthermore, where NGOs have suggested that communities (and companies) take care when it comes to the role of traditional governance structures/roles, it is because **sometimes those traditional structures have been co-opted by government and may no longer have the legitimate mandate of their communities, even if they do still draw on the respect naturally due to traditional leadership roles**. Sometimes those roles receive payment from government and are subject to pressure from central government to act in accordance with the government’s wishes, and therefore have a conflict of interest, and no longer represent the legitimate will of the community. **That is the reality on the ground, and in some cases in Liberia where traditional leaders have stood up for their communities and disagreed with local government, they have been dismissed from their posts with their pay stopped, as already discussed. GVL’s SOPs not only fail to set out how this difficult problem should be addressed, but they dangerously deny there is any such problem, leaving communities vulnerable to having their decision-making autonomy captured by individuals who may not represent or respect their rights and interests.**

A far more careful and nuanced approach is needed by GVL and needs to be integrated into these SOPs to ensure FPIC compliance: one that takes account of the very high risks of assuming traditional governance bodies own land (in trust or otherwise) and can grant user rights over land, and makes sure that the decisions communities reach and the ways that they negotiate and communicate their decisions have been fully determined and endorsed by the community themselves, not just by traditional governance bodies.

By way of a further example of this problem that needs urgent attention, the SOPs state that an agreement made by individual community members, even when selected by the community, may not have full decision-making authority of the traditional governance system. **This is a huge mistake and the situation is quite the reverse, and must be rectified through significant amendments to SOPs: in reality, the traditional governance system may not have the authority of the community, and any decision made by traditional governance system may be contested.** An approach that gets this wrong is likely to fail to meet FPIC requirements, for the reasons outlined above.

1.58. Finally, the last point in step 5 refers to communities deciding on their representation and providing a list of representatives. As outlined above, a list of representatives presumes that the community wishes to communicate in this way. A more open-ended system is needed that simply invites the community to decide and confirm its decision-making, communication and negotiating mechanism (along the lines suggested above at paragraph 1.12). Having this in writing is preferable of course.

Step 6 – FPIC engagement agreement

1.59. This section of GVL's FPIC SOPs state that a Joint Committee will be set up, including representatives of the community and the company. This again pre-empts the internal community decision as to how it wishes to communicate with the company. It may be that the community wishes to negotiate as a whole, or that the representatives will change depending on what is being discussed or will naturally circulate. Depending on how this is done, the community may or may not feel it appropriate to set up a Joint Committee with the company. There should be space in the SOPs to ensure that whatever communication/decision-making/negotiation mechanism the community decides on can be accommodated and not pre-empted by GVL.

1.60. Step 6 dictates that the first task of the Joint Committee will be to agree terms of engagement setting out how the two parties will work together (including a calendar and identifying what periods will be appropriate for the community to review and reflect on information before making decisions. This is to be formalised by the Joint Committee in an 'Engagement Agreement'. While it is to be commended that GVL makes reference to the time needed for the community to make decisions, the implication of this section is that the Joint Committee can on its own decide on the 'terms of engagement' and agree an 'Engagement Agreement', without the community at large being empowered to discuss and decide for itself what these terms of engagement should be. **A better approach would be to specify that the community should decide for itself what terms of engagement to propose, unless the community expressly authorises representatives to do that with the company** (but this should be their decision to do, and should not be pre-empted by the company as is currently suggested by the SOPs).

Participatory mapping³²

1.61. In terms of all steps of the mapping process outlined in the SOPs, **it is currently unclear from the SOPs how mapping will take place, in particular how the community will be empowered to include all key community interests (including women) in a participatory process. Of course this process is up to communities to decide, but GVL will need to have a process in its SOPs of finding this out in a way that makes sure it is the communities' decision, not GVL's.** Communities will need to have a way of validating maps that have been translated into a GIS map by others (e.g. GVL or its consultants), to ensure they are a true reflection of the lands and interests they have identified, e.g. by walking around the site – ground-truthing. The legitimacy of the whole process (and reliability of the results) will be enhanced if communities have the benefit of independent legal and technical support (e.g. from civil society support organisations), which should be accommodated. **In practice, reports from communities indicate that GVL have been quite directive by asking for communities to nominate seven individuals to conduct the participatory mapping as a participatory mapping committee (often without any women involved). Such directive approaches that dictate the process are not consistent with FPIC. A more open ended process is necessary that empowers communities to think through for themselves how they would like**

32 GVL M FPIC SOPs, pages 10 – 14.

to design and implement the participatory mapping of their customary lands and natural resources, with independent technical support. Communities may also wish to have training and access to GIS systems to do this side of the mapping themselves so that they can have the utmost confidence in the resulting maps, as some communities have expressed an interest in doing. Communities should have this option.

Step 1 – Sensitization meeting

- 1.62. The SOPs state that the first step in the participatory mapping will be a sensitisation meeting, for which GVL will provide an invitation and a meeting programme, giving the community the right ‘to influence the agenda’. What is not clear is why the programme and agenda cannot be developed jointly in advance, to avoid the community simply acquiescing to the proposed agenda. **As outlined repeatedly above, a systemic problem in GVL’s SOPs that needs urgent attention is that it sets a precedent by which GVL drives the process and the community is the passenger, when FPIC is all about ensuring the community is in the driving seat.** In this instance, the SOPs need amending to make clear that it would not be appropriate for GVL to propose an agenda as this may have the effect (however unintentional) of closing down community debate on what they would like to discuss, and precluding a more open-ended participative process.
- 1.63. In addition, the process for making and agreeing minutes and attendance lists is too vague. The risk is that in practice GVL makes the minutes, and sends those to communities and takes any lack of follow up as acquiescence to their content. In reality, a far more deliberately participatory process is required to ensure communities are actively involved in recording and validating minutes, rather than leaving this to the company. Again, the purpose of the SOPs should be to define a process that supports communities in the driving seat.

Step 2 – Base map development; Step 3 – GPS tracking

- 1.64. The next step following the sensitisation meeting outlined in the SOPs is the joint development of a base map, showing rights holders and land overlaps, documenting community hunting, gathering and other forest land uses. **What is missing is confirmation that GVL will respect customary land ownership rights as equivalent in strength and legal effect to documented/deeded property rights.** Staff implementing the SOPs will need clear guidance that communities have legitimate property rights even if those are undocumented customary rights. Without this key clarification, the SOPs will lack compliance with the RSPO Principles & Criteria and applicable law. Furthermore, this section should be amplified to include all land, natural resource and cultural resource areas. To this end, **this section should be extended to include swamps, rivers, creeks and other wetlands and all other areas in the communities’ customary land estate, not just forest, as wetlands are a key community resource** for food security (trapping fish and crayfish) and for fresh water.
- 1.65. This section rightly states that there is a need to find out whether there are boundary conflicts with neighbouring communities. This is a very good idea (by asking the community if the boundary with neighbouring communities is mutually agreed and recognised or if there is a dispute), but it should be added into the SOPs that it will also be important to cross-check feedback with the neighbouring communities themselves.

- 1.66. It is **unclear how the base map development or GPS tracking will take place, in particular how the community will be empowered to include all key community interests (including women) in a participatory process to identify the base map, and to validate and endorse it.** Of course this process is up to communities to decide, but GVL will need to have a process of finding this out in a way that makes sure it is the communities' decision, not GVL's. Communities will need to have a way of checking that maps that have been translated into a GIS map by others (e.g. GVL or its consultants) are a true reflection of the lands and interests they have identified, e.g. by walking around the site.
- 1.67. One key aspect is to what extent the community will be able to **engage in its own internal mapping without having GVL representatives there.** It is inevitable that having GVL present may inhibit an internal discussion on mapping, establishing what is valuable to the community etc. The SOPs need to be amended to ensure that space is deliberately made in the process to ensure communities have this time and space without GVL present.
- 1.68. Independent technical advice and support (e.g. by NGOs) during this process will be crucial, but is currently not integrated into the SOPs. **The SOPs should therefore contain a distinct recommendation to be made to communities by GVL staff that they obtain independent advice and support (e.g. from NGOs) at this key stage** of the process if they have not already.

Steps 4, 5 and 6 (GIS draft mapping, Participatory map validation, and Map agreement)

- 1.69. This section concerns the provision of a GIS map to the communities, on which communities can input farm and crop census data, with steps 5 and 6 covering 'participatory map validation' and 'map agreement' respectively. As above, deliberate space should be made in these parts of the SOPs to ensure communities have the **time and space without GVL present to conduct farm and crop censuses as well as the other aspects of developing, validating and agreeing the documented participatory mapping results. These processes provide valuable opportunities for internal discussion which may be inhibited if GVL are present.**
- 1.70. This section also states that the outputs from the participatory mapping process to date should be shared throughout the community in a way that is accessible to all sections of the community. This part of the SOPs needs amending to make clear whose duty this is (GVL's), and giving some guidance on how this can be done.
- 1.71. Some complex issues arise when identifying crops and farms via a census. This is potentially a contentious and divisive process, as community members consider this as intricately bound to how much compensation they will receive from GVL, or whether they will get a job – i.e. what individual benefits they as individuals may receive from GVL. As a general point, the SOPs should do more to set the conditions by which these risks can be avoided, and place the emphasis instead on the community as a collective. Although community land will be invariably collectively owned, standing crops may of course be owned by the individuals or (more likely) families who plant, care for, and harvest them. There may be however subtleties within this picture, for example differences in how permanent crops (e.g. fruiting trees) and temporary crops (e.g. cassava) are owned and managed, and this may be different between a community's town where it is currently located, and old towns from which they have moved. Farmland that has been left fallow may have a different land use management approach again. **Crucially, the SOPs should highlight that it is for the community to decide how both of these are reflected in the final agreement, but as a fundamentally collective asset, the assumption should be that the community will bargain collectively rather than on an individual basis (irrespective of individual family user rights), otherwise the collective cohesion of the community may be undermined.**

Step 7 – GVL agreement on feasibility ground

- 1.72. This step of the SOPs states that where the community does agree on a final participatory map, GVL will use this and an HCV Assessment to decide whether to proceed on feasibility grounds. The phrasing of this step is slightly odd, as it currently sounds as though GVL has the right at this point to decide whether the negotiations continue or stop, which although true (in the sense that it takes two parties to be willing to proceed for an agreement to be reachable) detracts from the fact that the emphasis at every stage of FPIC should be the communities' right to give their consent or not. A better approach would be to delete this step, and simply move on to giving guidance on accommodating an internal community decision-making process about whether they wish to allow some of their land to be used for palm oil, and if so how, e.g. by way of supported small-holder/cooperative development as a community, or by leasing land to the company etc.
- 1.73. **A key point that needs adding here and mainstreaming throughout these SOPs is that the outcome of negotiations should not be predetermined. All options should be on the table – this includes smallholder use of the land for palm fruits sold to the company, lease of community land to the company for growing palm oil etc. It should not be restricted to one kind of land-use agreement favoured by the company. SOPs that define a process that focuses on only one pre-determined outcome and which fail to guarantee an open-ended process with all outcomes on the table will not be FPIC compliant. The GVL SOPs currently suffer from this fundamental problem and need amending accordingly.**
- 1.74. A further problem that should be noted here is that HCV and ESI Assessment processes – in terms of how they are explained to communities, and designed, executed and validated with full community participation – are not properly spelled out and integrated into GVL's FPIC SOPs despite being an integral part of any FPIC process (as outlined above at paragraph 1.38). This needs to happen so that GVL staff, communities and third parties can know where and how these processes fit in alongside the other steps of the FPIC process, and in order to properly assess GVL's SOPs for FPIC compliance in this respect.

Step 8 – Mutual planning

- 1.75. This section outlines how GVL and the community will proceed with negotiations if on the basis of the participatory mapping, both parties are willing to proceed. A key flaw in this step that is not FPIC compliant is that this process is defined simply as a mutual process for planning and negotiating land available, crop compensation and benefit sharing, when **what really needs to be front-loaded here is an internal decision making process by the community alone**. The community needs to internally decide for itself and by itself if it wants to use any of its land for palm oil, and if so how much and how, and **having all the options on the table** (including community farming of oil palms, the full range of company land-use models (especially land leasing), and the full range of profit-sharing models (rents, company shares in GVL, clearly defined and time-bound development benefits etc.). **This is a key stage when communities really must have access to independent legal and technical advice on all of the relevant technical and legal factors.**
- 1.76. Only if this community internal process results in an indication from the community that it would like to come to some kind of agreement with GVL *and* a clear sense of how they would like to do this, should there be some kind negotiation process.
- 1.77. One statement that must be removed from the SOPs as it is subjective, pejorative and factually incorrect is the sentence in this section in which GVL states that: *“it is important to recognise the realities of today's*

society and what is happening in escape from rural areas and in urbanization. Slash and burn farming with low productivity is not socially or environmentally sustainable under the current population growth or considering the persistent food insecurity in large parts of Liberia". This is wholly inappropriate and not FPIC compliant, since information being provided by the company should be objective, non-pejorative and factually correct, and this statement is none of these. It is also an overly simplistic assessment of communities' current livelihood patterns. **It is not for GVL to take a view on the sustainability or otherwise of rotational farming (pejoratively known as 'slash and burn') in contrast to the sustainability or otherwise of large-scale palm oil plantations, and it is misleading to do so.**

- 1.78. The product of step 8 appears to be a 'Revised Endorsed Participatory Map' yet it is not clear from the SOPs what that is intended to be. A clearer indication is needed before this can be both clear, and assessed for FPIC compliance. Presumably, what is proposed is a map indicating the areas the community is prepared to use for palm oil production, with information on how it would like to do that. The vital need for an open-ended process that does not pre-empt what the community decision is in this respect needs to be reflected in a suitably open-ended procedure in these SOPs, but currently the outcome (and therefore the procedure) is ambiguous.

Development Agreement³³

- 1.79. As outlined above, it is clear from these SOPs that the direction of travel is one of land acquisition by the company, when in fact FPIC means that all options should be on the table, including small-holder/cooperative production by communities on community owned land, land leasing etc. **Without improved SOPs that make room for all options being on the table and legal clarification of the implications of those options, these SOPs could easily lead to outcomes that consist of permanent dispossession without communities having realised it (and without realising they had other options), which is exploitative of their weaker legal capacity and bargaining position, and is therefore not FPIC compliant.**
- 1.80. A general point that needs attention goes to the fundamental nature of the community-company agreements envisaged by these SOPs. Currently, these are referred to as Memoranda of Understanding (MOUs) and Social Agreements. **FPIC depends on an engagement process that leads to contracts that contain certainty and enforceability.** Making clear that both parties intend to be legally bound is important, yet both Memoranda of Understanding/MOU and Social Agreement are ambiguous in this sense. To ensure FPIC compliance, the use of the title 'Memoranda of Understanding/MOU' should certainly be avoided. Social Agreement is perhaps better, but the word 'social' rather indicates some kind of 'social contract' with the community at large, which could be interpreted as avoiding an intention to be legally bound to a particular community. Calling the contract by what it is – e.g. a 'Lease' – with an express warrant/term early on in the agreement confirming that both parties enter into the agreement with a view to being legally bound under Liberian contract law, would help remove this ambiguity and ensure FPIC compliance, *providing* of course that all the other terms and conditions in the contract are sufficiently clear and equitable.
- 1.81. In addition, many of the terms included in the MOUs signed to date are highly vague expressions of intention, but are not worded in a way that can be measured for compliance. A promise "to try to do something" (e.g. a promise to prioritise jobs for suitably qualified community members from the community) can be easily avoided and are insufficiently certain. **The SOPs should give guidance that ensures any such agreements give maximum certainty to both parties, as uncertainty can render contracts unenforceable.**

33 Pages 15 – 17.

1.82. A final general point situates the company-community agreements in the context of the pre-existing concession agreement between the Government of Liberia and GVL. The concession agreement currently states that it creates a lease between the government and the company, for the full concession area and warrants that the land is free of encumbrance. This warranty was blatantly incorrect, since much if not all of the land in the concession agreement is encumbered by prior customary land rights of communities. **Leaving aside the issues of illegality and non-compliance with RSPO Principles and Criteria that the Concession Agreement itself creates, the question that the SOPs must manage is how the customary property rights of communities can be respected in the FPIC process, so that the both sides (community and company) can hold each other to any legally binding land-use agreements that the FPIC process leads to.** This is a complex problem, and would require the attention of lawyers familiar with Liberian law, however it will not be sufficient for the SOPs to remain silent on this point, since it goes to the heart of whether and if so how the company is going to respect communities' customary property rights, and whether and if so how the company-community agreements will be legally enforceable. These are fundamental questions on which GVL's FPIC compliance hangs.

1.83. **A further fundamental flaw in this section of the SOPs is the suggestion of a 'Provisional MOU' as an alternative to a 'Final MOU and Social Agreement'.** This is explained in the SOPs as an option that enables the company to commence plantation development on community land, during which time some community members may gain employment alongside some other community benefits, but before a final FPIC based land-use agreement has been reached. **This is fundamentally inconsistent with FPIC, since the provisional MOU allows the company to develop some land, without completing a full FPIC process.** Without a full FPIC process, communities are going to be under-informed, will not have had the chance to come to a fully collective decision, and yet they will have received some jobs and therefore those who have gained employment will be **effectively 'hooked' into agreeing a Final MOU on the terms the company dictates or face losing those jobs.** **The scope for shattering community cohesion and long-standing intra-community division is obvious, and is almost inevitably likely to prevent the community from maintaining the necessary cohesion to come to a final/long-term FPIC based land-use agreement.**

1.84. This SOPs need urgent attention to remove the option of Provisional MOUs completely from GVL practice (and mitigate the harm caused by previously negotiated provisional MOUs), since this seems to have become GVL's chosen approach: nine of the ten MOUs agreed so far have been termed Provisional MOUs.³⁴

In practice (as outlined later in this report) such provisional MOUs are understood by many communities who have entered into them as temporary, when in fact the contractual terms state that they remain valid until replaced by a further mutually agreed MOU, which could potentially never happen. This means that **these ostensibly provisional MOUs become permanent in effect, without communities being properly aware of it.** The only thing provisional about the Provisional MOUs is in fact their name.

1.85. A broader point here casts serious doubts on the validity of GVL's general approach, which expressly states that it will not get things right first time, but will continually improve. In practice, it is much harder to put things right once they have gone wrong. Once communities are fundamentally divided and intra-community conflict caused, it is very difficult and potentially impossible to rectify. Despite the problem with provisional MOUs being first raised with GVL in 2013, many of the MOUs agreed since then have used exactly this approach, clearly disregarding the advice given. **GVL should in fact be focusing on getting things right first time and taking such advice on board in a far more timely fashion** (as well as strengthening its own internal judgment), though obviously if it does not do so, it should be capable of

34 For a full downloadable list of all MOUs entered into by GVL with communities to date, see: <http://www.goldenveroleumlberia.com/index.php/downloadable-content/memorandums-of-understanding>, accessed February 2014.

learning from mistakes and improving practices.

- 1.86. In addition, the SOPs are misleading here in how they present these two options ('Provisional MOU' or 'Final MOU and Social Agreement'). Clearly the language here is geared towards inducing communities to accept the idea of a Provisional MOU, which is inappropriate. For example, the SOPs refer to the delay caused by agreeing a full MOU, and the 'new uncertainties' that would be introduced by a full MOU, when surely **it is avoiding any uncertainty (particularly the level of uncertainty that a 'Provisional MOU' actually guarantees) that is the reason why a 'Final MOU' is necessary to comply with FPIC.** The company's role in an FPIC process should be instead to remain as outcome-neutral as possible, to allow all options on the table.
- 1.87. **Grievance procedures:** FPIC processes include negotiations as to the shape and form of grievance procedures, so that they can work for communities. Although the SOPs rightly refer to a participatory development of grievance procedures, the starting point is a GVL proposal, which is presented to communities. As outlined several times above, an FPIC-based engagement requires open-ended processes, to avoid closing down discussions or pre-determining the outcome. Instead a fully participatory process should be outlined in the SOPs, without the provision of a GVL proposal or template.
- 1.88. **Communities' internal disagreements:** This section includes the statement that '*GVL will expect to assist or facilitate communities to address internal or inter-community grievances in the interest of undisturbed decision making and development work*'. This is not FPIC compliant, as GVL should not be playing a role in this respect, as it would risk having a massive conflict of interest, and overly exploiting its influence in determining community decision making in its own interests. **Internal and inter-community grievances are for the communities to manage, and GVL should steer clear and wait for those to be resolved before engaging/re-engaging with those communities.**

Step 1 – Possible negotiation on provisional MOU and negotiation principles

- 1.89. As outlined above, **Provisional MOUs are not FPIC compliant, and this should be removed entirely from the GVL SOPs as a matter of urgency.** This problem has been evident in practice when provisional MOUs have been agreed with communities (see FPP's analysis of the MOUs below in Part 3 and the annotated sample MOU at Annex 1).
- 1.90. Crucially, **GVL must not provide a pro forma MOU to communities.** As outlined several times above in other contexts, the provision of a GVL pro forma MOU is a fundamental mistake, and is fundamentally not FPIC compliant. It has the effect of closing down internal community discussions and decision making, which should be free to think widely and freely about what they would like to see in a contract with the company, without being influenced by what the company expects or suggests.

Step 2 – Final negotiation of final MOU and Social Agreement

- 1.91. Although the sentiment is on the right lines when the SOPs state that community representatives should brief the broader community when considering proposals from final negotiation meetings, this is insufficient. There needs to be a clearer statement here that it is open to the community to decide how it structures its decision making, communication and negotiation, so as to **avoid the assumption that representatives will be authorised to make decisions** which as outlined above in detail, is not always healthy as it detracts from a more participatory and inclusive decision-making process. Ideally representatives would communicate and negotiate, but not make decisions unless that is what the

community has freely chosen to do, since the right to make decisions about the future of collective customary lands resides with the whole community.

- 1.92. In addition, is crucial here that (as mentioned above) GVL makes an **express commitment to not agreeing legally binding written MOUs with communities unless communities have had the benefit of independent legal and technical advice**. Failure to do so could lead to MOUs being legally void.

Step 3 – Signing and endorsement

- 1.93. This step of the SOPs stipulates that government, traditional authorities and civil society will be sought to sign the agreement. However FPIC compliance means that **who signs the agreement (and who is present) should not be determined by the SOPs, but by the community themselves**.
- 1.94. As outlined above several times and in relation to this step, the process of internal community discussions and decision-making, as well as the negotiation with the company and communication of community decisions needs to be far better accommodated within the SOPs than they currently are. **Reflecting the details and safeguards suggested above at paragraph 1.12, it is crucial that the communities' decisions are carefully reached and communicated, so that all parties can be sure that the decisions communicated to them (e.g. by a handful of community representatives) are the true will of the community**. The community would be well advised to have a special validation procedure for decisions of the magnitude of a legally binding company-community land-use agreement (particularly if it has the effect of alienating some of the communities' land – either permanently or for a long period).

Implementation

- 1.95. Leaving aside the problems associated with pre-determining implementation through a Joint Committee (see above at paragraphs 1.59 and 1.60) this section states that the farm, the agreement and the ESMP will be implemented by this Joint Committee. The SOPs currently do not state at any point what the ESMP is (in fact it is an Environmental and Social Management Plan), or how it is created. There is no indication of whether this would be created in a participatory fashion or not. In the absence of such guidance, the risk is that the ESMP would be designed unilaterally by the company, in contravention of FPIC requirements.
- 1.96. This section of the SOPs also refer to the company providing the community with a full compilation of process documents, which is fine (though several copies should be provided to ensure everyone has access as outlined earlier). However, (a) the community should have been supported to build up a full collection during the FPIC process itself; and (b) the community should have been given multiple copies so that as many people as possible have access to these copies.
- 1.97. **Currently the policy guidance provided by the SOPs in respect of implementation, joint oversight and periodic/participatory monitoring is inadequate**. While it should be open to communities to design these processes, these processes should have been fully discussed internally by communities, negotiated and set out in full in the company-community contracts, and not left until after contracts have been signed. The sequence in the SOPs needs to reflect this, as well as provisions ensuring communities are empowered to decide these processes for themselves, which will require additional SOP guidance.

- 1.98. FPP’s comments throughout this document outline our critique of the processes, and correspond equally to the list of Verifiers. For example at Verifier (19) where the Verifier Description is “Standard Operating Procedures and/ or other documents which show that the company has a mechanism to address and resolve disputes and grievances” are discussed at paragraphs 1.87 and 1.88 above (concerning grievance and dispute resolution). We will not repeat these comments, since it is clear which part of this critique concerns each verifier referred to.

Likewise, the comments throughout this document outline our critique of various elements of the narrative SOPs that are depicted in the FPIC Flow Roadmaps. For example, in relation to the question “Is the community willing to consider a provisional [as opposed to final] MoU?” (on page 25) see paragraphs 1.83 – 1.86 above concerning the fundamental flaws in the whole concept of provisional MOUs which render this step inconsistent with FPIC. All the flowcharts would need significant amendment to ensure compliance with FPIC, according to the numerous comments made in the paragraphs above.

In addition to comments already made, observations specific to the flowchart depicting ‘Updated GVL Crop compensation SOP’ are necessary, to reinforce points already made. As currently depicted, this flowchart’s emphasis on crop compensation is inappropriate, as it pre-empts one issue among many that communities should be able to consider including in coming to a company-community land-use agreement. **A FPIC compliant approach would be to depict a far more open-ended process by which communities are able to engage in a fully informed participatory mapping and internal decision making process, whereupon they will be able to determine what the ingredients they wish to see in the final company-community agreement.**

The SOPs should not assume that the community will want to let the company use their land (as this flowchart currently does), but may instead want company support (or support from third parties) to grow palm oil or other crops, or to set up small-holder cooperatives or some other proposal for commercial collaboration with the company. The community proposal may of course include compensation for specific crops lost (if the community does decide it wants to lease land to the company) but it may not, depending on the type of agreement they want to engage in. However it should not be pre-empted by the GVL SOPs – a much more open-ended process should be depicted as highlighted several times in this report. In practice, there should be space (and adequate legal and technical advice) for communities to consider and propose a possible combination of other elements to include in any commercial agreement with the company, including company co-management, or support for community small-holder palm oil, company land-use in return for rent, equity shares in GVL and/or other benefits in kind (schools, clinics, roads, jobs, training) etc.



Sinoe County

Part 2: An assessment of Golden Veroleum and Golden Agri-Resources' FPIC compliance *in practice*

Introduction:

This analysis of GVL's FPIC performance in practice in Liberia is broken into two sections:

- (1) A summary of the **Outstanding Concerns** in relation to GVL's ability to carry out FPIC that were communicated to GVL, GAR and RSPO in November 2013, in order to highlight the critical issues that have consistently been raised since that date and earlier; and
- (2) A **Current Assessment** of the FPIC performance of GVL *in practice* based on extensive fieldwork, community consultations, and an analysis of current MOUs being entered into by the company with communities. This section is completed with an extensive **content analysis** of a specific representative MOU to highlight the issues.

2.1 A summary of previously reported outstanding concerns regarding GVL's FPIC process

On 1st November 2013, FPP and local civil society organisations Save My Future Foundation (SAMFU), Green Advocates, Sustainable Entrepreneurs for Sustainable Development (SESDev) and Sustainable Development Institute (SDI) sent an assessment of GVL's FPIC process to the RSPO, listing a number of outstanding concerns many of which had been previously expressed directly to both GVL and to the RSPO on numerous occasions since the original complaint to the RSPO was made on 1 October 2012. The concerns listed below are those that remain unresolved to date, and are therefore marked as '*Continuing*'. These were sent in confidence in order that the RSPO and GVL could consider these with a view to encouraging a marked improvement in GVL's FPIC process in policy and practice. The RSPO were asked not to make this list of concerns publicly available in the hope that by bringing these clearly to the RSPO's and GVL's attention, GVL and GAR would be able to expeditiously address these concerns and help enable the situation to move forward constructively. As measured against the concerns communicated previously to the companies, the section following this one will outline our assessment of where GVL's FPIC process stands now in 2014, and finds that in key respects GVL's social engagement is still fundamentally non-compliant with FPIC.

Concerns that remain outstanding since at least 1 November 2013

1. **FPIC process is not sufficiently 'free' of undue influence, pressure, intimidation and threats:** Land acquisition is taking place in circumstances where GVL, its employees, its agents, and/or local government are creating conditions of undue influence, pressure, intimidation and/or threats for communities. Frequently, this takes the form of exploiting community anxiety about jobs and development. This is preventing a genuinely *free* FPIC process. Not enough is being done by GVL to mitigate and avoid this. *Continuing*

- 2. CSO access to communities has been denied, and FPP staff have been followed by GVL security during community visits.** In one mission FPP and partners were followed by GVL security in three successive visits to communities. At each community three GVL staff members would stand and observe the community meeting. It is impossible for FPP to know how much their presence inhibited communities from speaking freely to FPP on those occasions. More recently, GVL has restricted access to SESDev in Kpayan. GVL staff informed them that no NGO car could gain access to the plantation without prior appointment and/or discussion with the plantation manager. The plantation manager was not present at the time they were denied access. SESDev's purpose for passing through the plantation was to visit communities on the other side of the plantation. Both FPP and SESDev have raised these issues with GVL, and GVL are looking into the matter. However it is concerning and indicative of a wider problem that CSOs appear not to be recognised by GVL as crucial to supporting communities and the company to arrive at agreements that can stand the test of time, agreements that are arrived at through an FPIC process that respects the rights of all. *Continuing (see also joint report on RSPO visit, and statements in GVL's SOPs which serve to undermine CSOs working in the area)*
- 3. Fundamental flaws in GVL's crop compensation negotiation process:** Despite the Ministry of Agriculture (MoA) issuing a new minimum crop compensation list, GVL has been telling communities that it cannot afford to pay the MoA rates. GVL/GAR has told some communities that they must accept jobs instead, and has told other communities that they must accept lower compensation. The "take it or leave it basis" of GVL/GAR's approach in this regard has led communities to accept the GVL offer, out of fear that the company will otherwise leave. This is bad practice, and far from compliant with FPIC requirements. It also raises questions of legality, since the company is not even respecting the MoA minimum. *Continuing*
- 4. Communities are still not being adequately informed:** Communities continue to lack the information they need to make a fully informed decision about whether and if so how, GVL can use their land. This includes lack of adequate and accessible information in respect of the following: the concession contract; the results of SEIAs and HCVAs (and associated information about those processes and communities' rights and roles within those processes); their legal rights and RSPO standards; the importance of independent legal and other technical advice, support and monitoring etc.; technical information such as the productive value of their land if used for palm oil; and are frequently not clear on how much land is in question and where it is located (both in terms of areas to be left for community use, and areas to be used by the company), since abstract measures of area are not familiar to all members of the community; the benefits that the community can reasonably expect to receive, in sufficient detail for the community to make a judgment call on the cost-benefit – including for example the numbers of permanent jobs that the community can reasonably expect to receive etc. *Continuing*
- 5. The quality of participatory mapping is inadequate** – communities are not adequately informed of the mapping process (as is the case in respect of ESIA and HCVAs). Knowledge of the process (and participation in the process) is usually limited to a subset of normally male community members (typically more educated/elite community members). Vulnerable groups such as women are inadequately involved; draft and/or final copy maps are not shared or not shared in sufficient quantities; there is a lack of clarity on how maps will be verified by the community to overcome the fact that communities are less than clear on the areas of land and locations being discussed. *Continuing*
- 6. GVL is yet to formally recognise community ownership in practice.** GVL is yet to take any (or any adequate) steps that confirm recognition that the land they seek to utilise *belongs* to the communities under customary law (which is the case regardless of ambiguities in the statutory law). *At a minimum*, GVL should proceed on the basis that Memoranda of Understanding/Social Agreements (MOU/SAs) need to be in the form of a lease, with terms and conditions that reflect the fair and productive value of the land, including a rent, and defined rental period etc. Fixed payments of 5USD/ha to a Community Development Fund (CDF), as set by the concession contract and as being communicated to communities by GVL, do not qualify as rent. These fixed CDF payments are further flawed in that the concession contract where they are fixed is not the result of individual negotiations with communities, and is therefore not FPIC compliant. *Continuing*

7. **Communities do not have access to independent legal advice**, including when negotiating MOUs social agreements and at other key stages in the FPIC process. There is a lack of knowledge about the level of clarity needed in MOU/SAs, and little understanding of exactly what benefits are proposed and when they would take place (e.g. if schools are to be provided: where, when and who will provide the teachers and books? Similarly with jobs, clinics, etc. What will happen to old farm areas? How will crop compensation be managed? How can damage to valuable community resources – rivers, creeks, forests, swamps be avoided?) Without legal advice, all MOU/SAs will be at risk of legal challenge in the future. *Continuing. In fact 7 of the 10 MOUs so far entered into by GVL with communities were concluded between April and October 2014 during Liberia's Ebola crisis during which time legal and technical advice or civil society support were least accessible to communities.*
8. **GVL/GAR's FPIC process lacks transparency and independent monitoring**: GVL's FPIC process is going on behind the scenes, without adequate transparency on what they are doing, where, and when. Independent civil society organisation support and legal advice for communities is vital, and the provision of independent monitoring of GVL's activities by CSOs is also essential. This requires full and open transparency and appropriate mechanisms to get support and monitoring in place. At a minimum, this requires transparency on what towns GVL is currently (or soon to be) working with; what stage they are at in the FPIC process in that town; and advance notice of company/community engagement so that support and legal advice can be channelled to those communities by CSO technical and legal advisers. *Continuing*
9. **GVL/GAR has yet to address the illegality in its concession** (central to RSPO Principal 2, Criterion 2.1). Concerns have been raised by FPP, Moore Stephens LLP/LEITI and the UN Panel of Experts. For example, Moore Stephens LLP, in its audit report for LEITI found nine separate counts of legal and regulatory non-compliance, and made an overall finding of "non-compliance" regarding the GVL concession's legal compliance. *Continuing*
10. **There is a lack of progress in responding to specific complaints in areas GVL has already cleared, e.g. in Butaw District**. It took months for GVL to agree to the minutes of the April 2013 meeting. While criticisms have been levelled at both sides in relation to the delays in seeking a resolution, progress is badly needed by communities. In the meantime, water sources, creeks and swamps are still spoiled or destroyed; food security is compromised as people have lost their farm and forest land; disputes over sacred sites and cemeteries that have been damaged or planted over have yet to be fully resolved; some of the new wells installed by GVL are foul and unusable; and communities are worried about their villages becoming 'ghost towns' as people migrate to GVL/GAR's camps in search of work. All these concerns need addressing urgently. *Continuing. For example, in Tarjuowon, GVL is rapidly expanding the plantation and is not making progress towards resolving the complaint submitted on behalf of communities from the Kulu people, resulting in serious on-going tensions in the district that have led to reports of violence by GVL employees directed at community and civil society activists.*
11. **HCVAs and ESIA's relating to Sinoe and Grand Kru are inadequate**. Flaws in the content and the process by which they were conducted have been noted by several parties at several stages, including TFT. As far as we are aware, new HCVAs and ESIA's have not been completed to rectify this problem in all cases. *Continuing*
12. **Current Standard Operating Procedures (SOPs) need revising**, to make them effective and fully compliant with international law and RSPO standards. The current (August 2013 draft) is a significant improvement on the zero (April 2013) draft. However the current draft still raises a number of important questions, and lacks adequate guidance in a number of key respects. *Continuing (NB. These issues are addressed in full above in Part 1 of this review.)*

2.2 Current Situation – Our Assessment of GVL’s FPIC Process to date

The sections below contain an assessment of GVL’s FPIC process as it is currently being carried out on the ground in its current areas of operation in Sinoe and Grand Kru. It is drawn from the community consultations conducted by FPP and informed and cross-checked with reports from other civil society organisations and from communities, from our discussions with GVL and TFT staff, as well as with other civil society groups and legal experts.

2.3 Forest and farmland continues to be cleared without community consent

2.3.1 Town A:

At a community meeting in Town A, FPP was told about the forceful taking of their land:

“GVL is negotiating with us for land, and we are not agreeing to their taking our land but they have forcibly entered our land and damaged some of our sacred areas, and even made a public announcement on the radio that no citizen is to travel there without the permission of GVL. Our brothers in Town B who rely on hunting and trapping have been stopped from this because GVL has taken over all the forest. Even as we speak now GVL has a checkpoint there.” Another added: “We consider this a complete violation of our rights”.

People spoke of being forcefully restricted, including from their own land:

“Let’s sit down instead of them walking in under the arm of the Government and forcing us to agree things”. Another complained that there is “no free movement, no access to road, not enough land to sow food. Of all these things we conclude that GVL be put to stop”; and another asked: “How can GVL question you why do you go there on your own land?”

People spoke of clearing happening without consent, and of the potential for food insecurity:

“GVL concession is to take 13% of our area. How are we to determine the land? The social policy says we should sit down with GVL and do participatory mapping but they have not done this.”

“GVL came asking the residents to sign over their land . . . We said how come you’re asking us to sign documents without consultation? So GVL forced some of their workers from here to sign with their thumbprints. So GVL began clearing all our old farms. So we went to visit and found the logs laid down on the clearing. We went courteously to ask the Government to take action but they grabbed people and arrested them. At the same time GVL came to say we’ll open employment to people here. This was to try to capture people’s minds . . . From this we concluded that if GVL came we would have no free movement; we wouldn’t have enough land to grow our food to feed our children. So we say no to GVL.”

2.3.2. Grand Kru:

GVL came to map land, despite not giving having the community's consent to do so:

"GVL put in for a portion of land to be given to them. We asked them what are you going to do for us in return? They told us they wouldn't tell us what they had in mind for us unless we gave them land. We said no. They went back. One of our Representatives came from Monrovia with them telling us we had to accept these people. We told then we don't want to refuse them but we want to know their policies.

"Surprisingly to us the next day we saw them on their pick-up going into our bush to do mapping. They said they had been authorised to go into our bush. But we said no this is our land and we stopped them from going. We continued to say we want them to come but we want to know what are our benefits."

GVL operating on disputed land is likely to exacerbate land conflicts:

"They told us GVL does not operate on disputed land. Town C and Town D are in dispute. But they [Town C] transcribe the disputed territory to GVL. The authorities allowed GVL to operate at that area. As we are speaking GVL have a nursery on the disputed ground and are planting palm. Town D people have not given them any portion of land.

"We decided to send a delegation to the higher authority in Monrovia. We then sent this complaint to the RSPO (on March 7th). We want GVL to come but we have not signed any document with them.

"The reason was because our Government is there to come and make peace between two parties but they don't want to play their role, they are doing nothing and taking sides. Meanwhile these people are taking away our land. The very representative from the Houses of Parliament told the company to go ahead. This is why we wrote to the RSPO (the highest authority) to come to our aid.

"This land has been in dispute for a long time, but that representative told them to go ahead. We want the RSPO to halt them until the dispute is resolved.

"GVL - we have not given them any land but our concern is if they are working on the disputed land we want to know who is getting the benefit so we want them to wait until it is demarcated."

Communities are clearly not willing to consent to a process that appears to involve an unfair deal:

"Town E and Town F are crying, they are seriously complaining about GVL lack of respect for human dignity. The dignity of labour is not being respected. The two hand pumps they constructed at not enough. After 90 days grace period you should put people as bone fide labourers [make them permanent employees] but some of these people have been working for almost a year as casual labourers."

“The Ministry of Agriculture sent a listing of prices, how much they will pay for what is in their area. GVL decided to negotiate with communities and said they don’t have the money for rubber trees and said they will go around the area. We said if you cannot pay for our crops then it is better you go away because there can be no extension for my crops for my children. That is where the problem lies.”

“If the Government comes and measures the land then we as a community will decide. We have an MoU and this agreement. I want to know the land rental agreement. Which one is most preferable to guarantee the agreement?”

“This company promises and then does not fulfil the promises.”

2.4. Do you want development? Temporary jobs for (effectively) permanent land loss

A recurring theme throughout the communities is the fact they are told that the more land they give to GVL the more development they will get. A strongly linked theme is that communities are told that for every hectare they provide, they will receive \$5. Invariably communities get the impression that this means companies will pay \$5 in rent and that it is destined for the community that gives that hectare. Of course in reality this is not a rent, but (effectively) an ex gratia contribution to a Community Development Fund which the concession agreement states will be managed at a much higher level than the individual community that has given the land, who will therefore have little or no direct control over whether it sees any benefit from that money. At Town D they spoke of both these themes, saying:

“They [GVL] told us that the more land the more development. They told us that per hectare \$5 goes to the community, but we later learnt this is false.”

2.4.2. Town F:

In Town F, as elsewhere, the community believed that “For every hectare it is \$5 going into the community account”; and they had said how happy they were at first to hand over as much land as possible in order to get as much development, especially in the form of employment and community funds. They said:

“We gave them the land because we need development: we need employment, we need to be trained, we’d be happy to give our whole town based on the MOU. We have given 1,225 hectares. Almost the whole land we have given to GVL. This is the land we were using for farming. GVL said anyone give more land we will give more development. We gave all our land. There is only one land we got now that is swampy area for fish; and small small area in the town for cassava for eating.”

The trust in the process at Town F was clearly linked to the fact that they saw this as a 6 month provisional MOU that they had signed, so if it did not work out they believed they could simply not renew it (something that of course is not the case, as discussed extensively below in section 3.5):

“GVL are here but they have not put up anything to make us discouraged . . . We have signed a provisional MoU for 6 months.”

Despite their initial enthusiasm and the sense of reassurance they have as a result of thinking they have signed a 'provisional' MOU that they can choose to not renew, their concerns became apparent over the course of the community meeting:

"Since 2013 GVL started operation. As soon as we started clearing, the first thing they did was employ us as casual labour for 6 months probation, but this was not in the MOU [They believed they should be employed full time]. Only 25 person were employed as casual labour since then, and when they were starting their nursery they employed people from all over Liberia. They say they are employing 35 from here. GVL promises to employ 20 women but they have not done this. [NB. Town F report that they have over 1,500 inhabitants]

"The total land area is 2,225 hectares. Out of this we gave GVL 1,225 and we were left with 610 hectares. They said giving 1,000 hectares is equal to [employing] 75% of people in the community. They said as more land is given the more will be employed. They said the amount we had given was not real. So we called them to meeting. When we went in the meeting they told us the map wasn't real. I showed them the map that they had made. They said we had only given them 813 hectares. We had a meeting with them and they then said 710 hectares but what we know is 1,225.

"GVL said they would employ 75% of community for 1,000 hectares. GVL say the Government has stopped them taking the land with rubber. We said if the Government is not letting you move the rubber that is not our issue. They said part of the land belongs to Town G, but it's not true. They just wanted to reduce the amount.

"We say they need to train people from the community in GPS so we can survey the land. According to the MOU they should train us. Now other people [from elsewhere in Liberia] are being trained to key positions. GVL said people would be trained on GPS to be able to be informed on the number of hectares, but nobody had been trained. When they say it is a certain amount we have no idea.

"GVL said they would do hand pumps but they have not. They started digging a pump but 8 months later they are still digging it. When Chris the GVL controller came he promised to train one woman and one man in tractor driving. We are still waiting. We are over 1,500 inhabitants.

"So this issue of amount of hectares we had given, and the rejected areas which are now being cleared by GVL, this is the burning issue. GVL accepted the recommendation early this month to train 2 people in GPS to be able to survey. So we hope to open a new page.

"We said if we give you land we want you to create individual farm. They said according to the number of hectares you give us you can get \$5 per hectare. For every hectare it is \$5 going into the community account. They said for every 5 hectares they get, we will get 1 hectare for it [for Outgrowers].

"I regret the situation: if you people had come ahead then the community would know the rights [This was in response to hearing that the 'provisional 6 month MOU is not actually provisional but will last for the full concession period unless GVL agrees to make changes to it]. So now maybe our confusion is already past. Maybe GVL will not agree to start it over. The land given to GVL we the community don't really know because we are not trained in the machine to measure the land.

“Everyone in the community was convinced to give all the land for employment. But I am employed as a casual labour. If something happens to me on the field GVL is not responsible for me. If GVL build a school or a clinic then as a casual labour I cannot go there for free. The man responsible for giving jobs said after 6 months the casual labour will go to employment.

“We are used to upland farming not swamp farming. The land GVL left us is swamp farming”.

2.4.2. Town H

A strong theme here and elsewhere was the community’s story of being poor and needing to be brought out of poverty. At Town H they were clear that this was why they had invited the company to come, believing it will build a school, a clinic, a hand pump, and that it will bring jobs.

One man in a GVL shirt (the man who spoke loudest) said he wanted to get a job and stressed that even if he then loses his job they will be OK because they will keep their land. This was the key point, jobs and development were welcome but losing their land was not. An old man spoke very clearly about why they would lease land to GVL but not hand it all over to them. He said:

“Our farm is our power, it is our strength. If you [the company] don’t want to rent our land I say go, I don’t want you to have it”. Another elder added: “The land is our forefathers property and therefore ours”

This spoke very eloquently to the willingness of communities to enter into agreements with GVL, as long as their rights to their land are respected, and as long as they are respected as equal partners, something which can only be achieved through an FPIC process that is transparent, and in which communities are well-informed not only by the company but also by other legal and technical advisors, an FPIC process which is free of coercion, and where community cohesion is not manipulated or undermined e.g. by the division caused by handing out jobs pre-emptively. If the deal is not good for the communities it should not be presented in an opaque and misleading way in order to persuade communities the deal is something other than it actually is.

Likewise of course, if the deal is not good enough for the company, then the company should of course be able to walk away prior to any agreement being signed, but the company should in no circumstances (ether deliberately or inadvertently) use the threat of walking away to present vulnerable communities with an exploitative “take or leave it” bargaining approach. The company should do everything in its power to accommodate community wishes. It should only reject those wishes on reasonable and proportionate grounds, and where no mutually satisfactory agreement is reached, the company should recognise that a deal is not possible and respect this fact.

2.4.3. Town J

Here the community was very clear about two things:

One, that they were suffering and wanted what GVL was promising. They said:

“We ain’t got money we poor.”

“We will work for them, then later on they will bring schools and clinics and build hand pumps.”

“We need a road from them, and we have a river near and the river needs bridge. We need school; we need clinic. And we need employment.”

“We suffer too much because we’re poor. We suffer too much.”

At the same time they were clear about how important their land is to them:

“Land is very important to us. We depend on the land too much.”

“We can make farm, cassava farm. When you cut a drum of palm - if you work hard you can get 2 tins, which are 6,000 dollars a month. Just one person not a [co-op]”

“We want to give them this side, but not the other side because we want to make our farms there.”

2.4.4. Town A

In the light of this, communities are very conscious of the history of conflict and want to ensure no one is bullying them into bad deals. They also want to ensure they play their part in keeping the peace within their community and with neighbours. It is crucial that the FPIC process is undertaken in a way that does not deliberately pit those with jobs against the rest of their community who are aware how much they rely on their land for their well being. For this reason offering jobs prior to a final legally enforceable agreement with the communities is a dangerous, divisive and ultimately self-destructive approach:

“We want to maintain peace in Liberia, and so we stay quiet. If you can take us onto the land we can show you what they have taken from us. I may say come and occupy 2 rooms in my house but GVL says it wants to occupy 5 so we say no. When the Chief came the Minister for Internal Affairs came too, and said we will be trying to find how best the conflict will be resolved. So we said fine.

“Conflict happens in our own county between people who want to take jobs and people who say no to GVL.

“Suzanne [GVL’s community liaison] was the one who came with Eric and another from the Forest Trust [TFT] to hold the secret meeting to get people to sign. She brought FPIC, MOU, concession agreement and other documents but we said we can’t have these from you because our complaint is in.”

2.5. Giving out jobs, and local government coercion, cannot be routes to consent

Town A (Tarjuowon District of Sinoe County) and Town K (Kpayan District of Sinoe County) are examples of how the company’s actions, in tandem with pressure from some in government, have been developing divisions within communities.

2.5.1. Town A

When FPP visited Town A people said the Government and GVL told them that there are only a handful of people in Tarjuowon who are objecting to GVL. However, they said the County Superintendent is pressuring everyone in Tarjuowon, and that GVL came and offered employment to those who had said no.

One man said:

“People who sign the MoU with GVL did it under the high intimidation from Government. If they did not sign said document they would be dismissed from their job. [One person] refused to sign and has been dismissed for no reason. Some of those who signed tell us we signed because of fear of the Government and didn’t know what was in the document.”

Another added that the County Superintendent employs people under internal affairs and has told all those working for him they will be dismissed if they don’t support giving GVL land: “We don’t even know what we’re signing but we do because we’re scared”.

TFT acknowledged that:

“The influence from the superintendent creates a lot of hatred from those who don’t support him. He is happy to say GVL is here because of him. So doing FPIC in this context is a challenge. He is here speaking positively about the company. If people say something negative about GVL then he is not happy.”

GVL has repeatedly been asked to decide how it will respond to this evident local government coercion and intimidation, and to accept that where it exists FPIC is simply not possible. Unfortunately GVL has not been able or willing to answer this question, and moreover has continued to enter into MOUs with communities even where this coercion and intimidation are evident.

2.5.2. Town K

At Town K the community outlined the division in the community that at first could be understood simply as a difference of opinion:

“The social agreement is going to be signed. We need to keep some land while GVL is wanting almost all the land. GVL does not yet have agreement from the people but they have cleared land and planted the nursery. They are only working in the nursery because the social agreement has not yet been signed. Some people agree to sign the social agreement; some people don’t agree to sign:

“Some of us say we want development, we want school, we want the benefits from the social agreement. I say how many years you want to stay in my house, you want to rent from me?”

However, they then raised the issue of coercion:

“Eight guys said they were being forced to sign it so they said we needed to harmonise our agreement so it can be signed with the Minister of Internal Affairs here, etc. 65 years they’re going to stay here. They say they’ll build school, and our children will work on the plantation, they will provide water and other things. I agree but some people don’t agree so it hasn’t yet been signed. This is an agreement with the people in Nimopoh.”

Added to which is the division caused by giving jobs to some people before the community as a whole has decided its position:

“Our people who are working don’t want the company to go otherwise how will they get their children to school?”

Beneath it all is the need to ensure land can continue to sustain the community rather than become a scarce commodity that drives conflict between communities, or even drives conflict between conservation and communities if companies take the bulk of communities’ farming land and communities are forced to clear forest to make new farms:

“We have a big land conflict issue. We are having 12 people getting together from Nimopoh to present our side.”

“GVL have 1008 acres from 2000 because they’re not allowed to take forest because Greenpeace said they couldn’t take it out. Community need to farm so they want to keep secondary forestland. We want to give land, and keep land for farms.”

Despite these circumstances, an MOU between GVL and the whole of Nimopoh District was formalised at a ceremony on 28 April 2014. This took place in the presence of the Development Superintendent for Sinoe County, a very powerful individual locally as he lives in the district, and who happily admits that his role is to give the GVL project a “political canopy”. Crucially the signing was also accompanied by personnel from the heavily armed ERU (‘Emergency Response Unit’) of the Liberian police. It is hard to imagine a context less intimidating and less FPIC compliant for the conclusion of a company-community land-use agreement.

Civil society reports of the MOU signing reported the following:

“Based on information we gathered from community people in Nimopoh on our recent trip in well attended meeting in Town L, the MOU signing ceremony took place on 28 April [2014] in Town L. The process was characterized by the presence of heavily armed ERU personnel who were taken to the community by Mr. Romeo Quoih [Development Superintendant for Sinoe County]. Some elders told us that it was practically pushed down their throat. They have indicated that this will be brought to the attention of RSPO in the planned meeting... I asked for a copy of the MOU in the communities and no one has a copy to show. The District Commissioner himself told me he did have a copy of the document. The whole process was characterized by undue influence from local authority and GVL in Sinoe.”

Unfortunately circumstances of the anticipated meeting with the RSPO are unlikely to have successfully elicited a true picture of the degree to which FPIC compliance has or has not been achieved there, as it took place in an atmosphere that was similarly coercive and intimidating. According to reports from local civil society present:

“The first thing was the RSPO team did not arrive in Nimopoh on time for the meeting. There were two meetings scheduled for the 16th June at 1pm and 3pm. The 1pm meeting was supposed to be facilitated by civil society and the 3pm meeting was purely a GVL Meeting. The RSPO team arrived in Nimopoh at 2:30pm [but a] huge truck and tractor full of GVL employees arrived just when we were in our first meeting. People who were selected to speak for the affected communities were told by GVL employees and other elders not to say anything against the company. [One elderly man] was threatened and stopped from speaking by the employees along with a lady who insisted that she had to say something for the affected communities. The employees stormed the meeting hall and eventually took over the meeting with everything going their way. The actual problems were never mentioned to the RSPO team.

“... The RSPO visit had no significant impact on the entire situation as their neutrality is very much questionable for couple of reasons: 1. Their entire movement [around Sinoe and Grand Kru] was controlled by GVL, 2. They lodged and stay all their times at GVL estate which caused them to arrive late for meetings.”



Part 3: An assessment of Golden Veroleum and Golden Agri-Resources' FPIC compliance in practice – an analysis of the *outcome* (the MOUs)

3.1. Analysis of community experiences of entering into MOUs highlights both a *process* and an *outcome* (the MOU) that is not FPIC-Compliant

Below we comprehensively analyse the so-called 'Provisional MOUs', which appear to have become GVL's social agreement of choice despite the grave concerns of their lack of FPIC compliance as repeatedly expressed. To date, nine of the ten MOUs that have been entered into by the company with communities are of this type. These MOUs give the impression of being temporary when they are not. They also appear to promise substantial benefits while in reality the actual benefits that arise from the signing of the MOU are minimal and poorly defined to the extent that it is doubtful whether they are legally enforceable at all – a fundamental problem shared by both Provisional and Non-Provisional MOUs. Sometimes communities displayed an awareness of the fact that the MOUs they were entering bear very little weight in terms of legal guarantees, whereas the concession contract itself creates a very unequal playing field (as described above). For example, at Town A the community questioned whether the Tarjuowon District MOU was a valid contract, saying:

“GVL continue to assure those who agreed to the MOU that they will not relocate people, but in the concession agreement they are allowed to. Which will guarantee us: the gentlemen agreement of the MOU or the concession agreement signed with the Government?”

The clearest way of outlining how GVL's ways of engaging with communities is not FPIC-compliant is to take the example of one community (in this case Town M, though we believe this experience to be typical)³⁶.

We will undertake this by briefly contrasting:

1. **How the community understood what it was agreeing to in the MOU** with what it subsequently has experienced, with evidence for this in the form of substantial quotations from the community, and then contrast:
2. **What the MOU gives the impression of saying with what it is actually saying**, and then provide a comprehensive annotated content analysis of the MOU in order to be very clear about the evidence for this contradiction.

3.2 Town M Community's Understanding of The MOU:

Contrasting what the community understood it was agreeing to in the MOU with what it subsequently has experienced:

In hindsight the community thinks that what they thought had been promised has not arrived because there was no timescale specified: “*The problem there, was there was no specific time. That was the mistake we made*”. However they also feel misled that things that they were told would occur swiftly then did not happen, and do not look likely to happen.

³⁶ While below we focus on one specific example in order to be able to richly illuminate a general pattern, many other community-company MOUs are available online at:

<http://www.goldenveroleumliberia.com/index.php/downloadable-content/memoradums-of-understanding>

As can be seen from the community discussion below, the community said that:

- They understood they would receive \$5 a year for each hectare of land they gave the company (whereas this goes to a Community Development Fund managed by GVL which in accordance with the concession agreement would not be managed by each individual town, but by a larger umbrella organisation controlled by the company, and so it is perfectly possible that those in the county with good political connections may ensure it reaches the places they want it to reach, and none may reach the community);
- *“We gave them land to make nursery and gave them land to start planting. But they never start with us”* – i.e. the community understood that they would get more jobs and benefits once the promised planting of the nursery happened, but then GVL decided to plant elsewhere, leading to the women holding a blockade;
- *“They say the more land they develop the more development they will give us”* – i.e. the community understood that they would receive far more development the more land they gave to GVL, though it is far from clear that the community had the same idea of what development means for them as what GVL had in mind at the point of making this statement. Development benefits vaguely outlined in the MOU include school houses, clinics and housing for employees, permanent and preferential jobs, training for children in university, etc – but to date little of this looks like materialising..

Town M – Highlighting the communities’ understanding

“October 2013 we signed provisional MOU to last 6 months. According to [GVL] after that they would come back to sign a social agreement to be used throughout the 65 plus years but that has not come.”

“They promised 6 bundles of zinc with nails for the schoolhouse, but they have not already brought it. **The problem there was there was no specific time. That was the mistake we made.** We tried to negotiate with them because the community does not have a schoolhouse. We are using a private house.”

“Everything else in the agreement is not within the 6 months. They have not done anything on our piece of road, but yesterday they did something perhaps because they knew you folks were coming back.”

“The company came and made the nursery here. **They told us they would plant here but they didn’t, they took them [the palm trees] and planted the farm elsewhere.** We have provided land for the nursery, but where they plant is where the benefits come. So at the beginning of this month, 3rd March, we had a road blockade and said they weren’t going to take any trees from the nursery unless they were to start clearances [here]. So they brought 3 yellow machines back to do clearances near here.”

“The two communities [Town N and Town M] are interrelated and we combined to donate the land. They started clearing at Town N. **If they don’t plant anything here then we don’t benefit. The benefits according to them is that one hectare of land is \$5 a year and the amount of land you give them have to have 20% for your out-grower land** - after 5 years they will come to make a smallholder farm. If you give 1,000 hectares then 200 is for community farm which you’ll be selling to them. It will be controlled by GVL and government but the community will benefit. Community, GVL and government will monitor it.”

“They told us they will build school houses here and clinic, based on the amount of land donated to them. So if you give 1,000 hectares then you are entitled to school building and clinic.”

“According to them they will give preferential employment to the communities that donate land, and they will train our children in technical vocations. Sending them to university to be engineers, etc.”

“They say within 2 to 3 years they will build temporary housing for employees. They were going to build their own camp, but there is no housing.”

“They pay the permanent contracted workers \$5 a day and give them 50 kilo of rice at the end of every month. [Someone corrects this: these are for contractual workers only]. There are 45 people with employment letter from this town.”

“One of the major problems is that, according to their policy, if someone is sick 10 days in 3 months then they sack you. If your son dies you are allowed a maximum of 3 days. We know this because this is what is happening. ***You have to force yourself to go to work or you’ll be sacked.***”

“Both communities agreed to give 5,000 hectares in all. According to the map they showed us we have 4,000 hectares for Town M. We have 250 hectares on top of the nursery, they have not done anything on it yet.”

“What they told us they would do, they have not done. They said they would employ people from here.”

“Make sure you build us a schoolhouse, clean drinking water, employ our children, provide clinic for our community (the clinic they have there, if you’re not working there you’re not allowed to go there), develop the individual out-grower for each individual in the community.”

“We give you land for your own development and we will take the income from that. Once we have our own palm we get revenue to do anything we want as a community.”

“They say the more land they develop the more they will give us.”

“After we did the roadblock the first vehicle that came in was UN vehicle. The women from the two communities said they would stop all GVL vehicles. GVL called to Monrovia who called the Superintendent. GVL said people here were destroying the plantation, but all we were doing was blocking the road. The police Commander came to the City Mayor.

“We gave them land to make nursery and gave them land to start planting. But they never start with us. They took all the machines away. We were very angry. We were the first they started with. We were writing for a month but for nothing. We were angry so we put a gate there. They came with violence and they broke the gate. They said we were destroying their plants but when they asked security, security said we were doing nothing. The Government also came and stopped at the gate and asked questions and they walked to the city mayor.

“We all were sitting down. They say what happened? We explained our feelings. They said since you never

done anything wrong we will come back. They came back on the 13th March. ***All the things they [GVL] said was such***

a lie. All the things they said they would do they haven't done. And that was the cause of why we built the gate [i.e. blockaded GVL's nursery].”

3.3 Analysis of common FPIC compliance problems in the MOUs entered into by GVL with communities

Analysing the MOUs entered into by GVL with various communities in Sinoe and Grand Kru counties, the following sections contrast what the MOUs give the impression of saying with what they are actually saying (i.e. their contractual effect). In our assessment this analysis highlights how community misunderstandings are an inevitable consequence of the flaws in the community engagement process undertaken by GVL with communities and the flawed agreements between the company and communities that result. A comprehensive annotated content analysis of a typical MOU (the MOU for Trembo District) follows in Annex 1 in order to clearly exemplify these points with reference to text from an actual MOU.’

3.3.1. ‘Provisional’

Despite suggesting that the MOU is ‘provisional’, the MOU states that this ‘MOU shall remain in force until final MOU/Social Agreement is signed’ and the final MOU will only be signed after ‘changes or additions as mutually agreed by the parties’.³⁷ As a result, if for any reason either party refuses to agree to a further (final) MOU this current MOU will remain in place for the full duration of the concession agreement. Rather than this being a provisional MOU, communities are being asked to transfer their rights to GVL ‘for the duration of the concession agreement’ which in this case is 65 years plus.

Typically a provisional i.e. time-bound and temporary agreement (as this MOU implies it is, and as communities have understood it to be) would include specific dates which signify the start and finish dates of the provisional agreement, and would include reference to the fact that if a more enduring MOU is not agreed by that date then the provisional MOU will not remain in force. The absence of such dates and such a statement in this agreement render the use of ‘provisional’ in its title and presentation both incorrect and misleading.

Any powers to improve the MOU to the benefit of the communities are left in the hands of GVL who through a veto can disrupt the completion of a Final MOU and enforce the compliance of this Provisional MOU for the full duration of the concession agreement and beyond. The result of this disingenuous language is that communities believe that this contract is legally provisional and will stop being in force six months past the date of signing, when that is not the case.

3.3.2. ‘Memorandum of Understanding incorporating Social Agreement’

The purpose of contracts is specifically to remove the reliance on good faith from relationships between two parties, especially where such relationships are based upon business motivations. However the clauses in the MOU which purport to offer benefits to the communities are frequently vague and uncertain. By containing weak statements of faith that are neither committal or binding, there is a real risk that GVL’s MOUs (or large parts of them) are unenforceable as a contract by the communities. The MOUs being presented by GVL are therefore also likely to be inadequate as contracts between two parties as they provide only limited consideration for the communities who enter them. ‘Consideration’ is a legal term for the two-way exchange of something of value, which is a necessary

³⁷ For example see: ‘*Provisional Memorandum of Understanding (MOU) Incorporating Social Agreement*’, entered into by GVL with communities from Trembo District, 21 October 2013, page 4.

component of an enforceable contract in most jurisdictions – e.g. a payment of rent to one party to a contract in return for the beneficial use of a property by the other party to the contract.

The failings outlined above are either a grievous error or an attempt to gloss over the limited commitments GVL are willing to offer local communities. Indeed, though these MOUs (or large parts of them) are arguably unenforceable because of a failure of consideration, this flaw only becomes evident *after* GVL has started (or not started) its activities, with concomitant cost and harm to communities. It is unlikely that the communities in question will have the resources to challenge the MOU or GVL, and they risk being presented with a *fait accompli* in respect of their lands, with little or no recourse against GVL for the proposed benefits.

Even calling an agreement a Memorandum of Understanding or Social Agreement is arguably suggestive of an intention on behalf of GVL not to be legally bound. In contrast, FPIC requires outcomes on which communities can rely, and with which they can legally require companies to comply. As mentioned above however, since communities are not in a position to test these agreements, they are likely to continue to believe themselves bound by the agreement even if they are unenforceable.

3.3.3. An MOU as a contract requires the company to be offering an equitable agreement by not taking advantage of their position of power

In a way that reflects both the *process* and *outcome* requirements of FPIC, GVL needs to recognise that communities *own* their customary lands and resources *and act* on this by entering into agreements based upon this fact, according to a process that fully respects that fact and that also acknowledges and fully mitigates the imbalance in negotiating power between the company and the communities. This would enable communities to make *equitable* agreements with the company, with rents and benefits that are *proportionate* to the true productive value of the land, and in a way that confirms communities' on-going ownership beyond all legal doubt (e.g. via a rent being paid to communities by the company). This would require a process that ensures GVL does not deliberately or inadvertently take advantage of their position of power; a process that, *inter alia*, is:

- Completely free, non-coerced and contains no actions or omissions likely to reduce internal community cohesion (upon which communities' ability to make a collective decision depends);
- leaves space for communities to determine for themselves whether to engage, and if so how they wish to communicate, negotiate and make internal decisions; and,
- Fully informs communities, including by only proceeding when communities have the benefit of adequate independent legal and technical advice at all key stages.

Without the above, although the resulting company-community agreement may offer some possible social benefits without clarity or timelines, the process takes away communities' security as grounded in their ownership and use of their land, and leaves GVL's concession subject to legal and financial insecurity. Studies show that industrial palm oil can severely reduce the economic wealth, development prospects, and food security of affected communities, and it is therefore vital that these harms are avoided.³⁸ There is also increasing evidence that failing to deal equitably and fairly with communities jeopardises the viability of large scale agricultural investments, so it is equally in GVL's interest to engage in a fair and equitable process with fair and equitable outcomes.³⁹

A simple example of how the MOU does not offer an equitable agreement is that given that the MOU acknowledges that GVL operations will necessarily damage water bodies,⁴⁰ it is unusual that this MOU requires the community to

38 See Balachandran et al (2012), *supra* at note (6), and Rhein (2015) *supra*, at note (8).

39 See for example: World Bank (2014) *The Practice of Responsible Investment Principles in Larger-Scale Agricultural Investments: Implications for corporate performance and impact on local communities* (World Bank Report Number 86175-GLB, Washington DC), available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/04/25/000456286_20140425145714/Rendered/PDF/861750RAIOP1253560Box385174B00PUBLICO.pdf.

40 For example, see Provisional MOU Incorporating Social Agreement for Trembo District (2013), *supra*, at note 37

refrain from damaging water bodies⁴¹ and that a similar requirement is not made of GVL.

3.3.4. 'Preference' is not a contractual term

The use of the word 'Preferences' in relation to various benefits offers no binding commitment.⁴² This becomes clear in Appendix A, where the inclusion of the words 'preference' and 'priority' enables the MOU to provide no firm commitments from GVL and allows the possibility for GVL to provide no meaningful jobs to local communities at all.⁴³ It is no surprise then to hear that as a result communities complain again and again of not getting the jobs they hoped, seeing outsiders getting jobs instead of them, or getting only casual labour without job security and benefits instead of permanent jobs.

Further, such 'preferences' are themselves conditional on GVL's subjective assessment of potential candidates having a 'good reputation', 'willingness' and 'qualifications'. This further weakens GVL's commitments to preferential employment and associated benefits by providing further conditions – to be determined by GVL itself – on the provision of these benefits.

Finally Appendix A suggests that although these benefits may be offered to the community being contracted, it also opens the way for these benefits to be received by citizens of other GVL work areas, instead of the communities themselves. As a result of the above it is clear that this section of the MOU offers no substantive commitments from GVL to the community in question and as such offers no space for the communities to demand any benefits in the future.

3.3.5. Possible 'Benefits' are included which are nothing to do with the MOU

For example, the inclusion of employee relations and benefits in a land use agreement is unnecessary and misleading. In addition, many of the benefits are already agreed upon in GVL's Concession Agreement and as such their inclusion in this agreement is misleading (suggesting GVL is providing something of value, when in fact it is already obliged to do so) and superfluous.

For example the inclusion of the Community Oil Palm programme⁴⁴ is misleading in that it suggests that it is dependent upon the MOU and counts as one of the benefits being negotiated by the community for the use of their land instead of a prior request granted in a previous document (the concession agreement). Communities could easily understand that the ½ per cent of annual sales will be given directly to them,⁴⁵ whereas the only way they will receive the funds is if they request and are granted the funds by the Oil Palm Development Fund, over which they have no direct control. As a result these funds are not guaranteed to the community.

Similarly in a section concerned with 'Benefits GVL will provide',⁴⁶ the inclusion of road and bridge building is unnecessary and misleading as it suggests these benefits are being provided to the community in return for the use of their land. On the contrary, GVL needs to carry out this activity as part of their regular farm operations for their own purposes. Moreover they will retain a right to control access to roads they mend or repair within the concession area (as they have done in Tarjuowon and Butaw Districts in Sinoe County) and impose tolls if they so desire.

41 *Ibid*, at page 19.

42 *Ibid*, at page 3.

43 *Ibid*, at page 8.

44 *Ibid*, referred to on page 3 and 14.

45 *Ibid*, at page 14.

46 *Ibid*, at page 12.

Accordingly, at various stages of the MOU, predetermined conditions of existing contracts are incorporated interchangeably with conditions offered in this proposed MOU. In addition, activities that are needed in order for GVL to operate are also included, creating the misleading impression that they are also benefits being offered to the community within this MOU.

In order to allow communities to make free, prior and informed decisions about their lands and their relationship with GVL, MOUs should be the outcome of genuinely open-ended negotiations and informed internal community discussions, unconstrained by the provision of a pro forma MOU presented by GVL (which is the process currently specified by GVL's FPIC SOPs). To the extent that later on during these negotiations (so as not to constrain discussions early on) GVL indicates its own preferences, it must first make a far clearer and more understandable description of those preferences. Ultimately what is needed is an MOU which makes clear what specific benefits over what timeline will accrue to the specific community as a result of signing this MOU, structured in a way that properly respects

communities as land-owners. What is not needed is an MOU that confuses communities by proposing vague and unquantifiable benefits that lack a timeline, that may accrue anyway from company activity or the concession agreement, and that may accrue to others and not to the community signing the MOU.

3.3.6. Employment

The MOU does not discuss the difference between permanent and casual employment. Much of the employment the community has experienced until now has been restricted to casual employment which confers none of the benefits suggested in Appendix B.

Many communities affected by GVL are concerned that they are witnessing an influx of 'outsiders' who they see as taking their jobs. It is therefore unclear why Appendix C's title includes both the terms 'communities' and 'citizens'.⁴⁷ In practice this MOU is specific to one community only and the language of the MOU should reflect that. Instead its use of both of these terms ('communities' and 'citizens') can lead to the marginalisation of the specific community and thereby fails to guarantee that they will benefit from GVL farms.

It is important to note that access to healthcare and schooling is prioritised for employees, only some of whom may come from affected communities, and on a preferential basis only.⁴⁸ The availability of access is therefore dependent upon external factors and in no way guaranteed to the community signing the MOU. In addition no firm commitments are made by GVL to provide a quantifiable amount of access. This leaves the community unable to hold GVL to account for any perceived lack of activity in this area. Yet, as can be seen in the community discussions, the community believes that GVL:

“told us they will build school houses here and clinic, based on the amount of land donated to them. So if you give 1,000 hectares then you are entitled to school building and clinic.”

“According to them [GVL] they will give preferential employment to the communities that donate land, and they will train our children in technical vocations. Sending them to university to be engineers, etc.”

47 *Ibid*, at page 11.

48 *Ibid*, at page 12.

This interpretation is hardly surprising given that the MOU states that:

“University scholarships application will be available to qualified citizen’s children from the USD \$100,000 in annual scholarships to agricultural students.”⁴⁹

However, whilst to any community member reading it, it appears to suggest the community party to this MOU will have a fund of \$100,000, in truth this fund is instead the total availability of funds to GVL communities in the entire area of operation in Liberia. For this inclusion not to be misleading it would have needed to quantify the amount of funds available to the specific community party to this MOU, or (if that is not determined in advance) at least an indication of the number of communities among whom this amount will be shared and the basis on which funds will be distributed

3.3.7. ‘Community’ Development Fund

The Community Development Fund (CDF) highlighted in the MOU⁵⁰ is previously agreed by the prior Concession Agreement and is therefore not dependent on or relevant to this MOU. Its inclusion is misleading and suggests to the other party that they are receiving this benefit as a result of this particular MOU. This has led some communities to assume that the CDF fund is likened to a rent which is being paid to their community by GVL. They are unaware that this money will actually be paid into a fund over which the community will have no direct control. It should be noted that questions over the access to and control of the CDF by local communities is in serious doubt and it is far from guaranteed that direct benefits will be felt by the communities whose lands are developed. However the impression given by this MOU (and the impression received by communities as evidenced in community discussions) is that the CDF is one of the direct ways their specific community will directly benefit from GVL taking over land for palm oil production.

3.3.8. The Fundamental Land Issue

Such an MOU should solely concern the use of community lands by GVL for a limited time. Therefore it is both confusing and incorrect for language to be included that would normally be used in an agreement dealing with ownership of land.⁵¹ All use of terms like ‘obtaining land’ and ‘hand over land’ need to be replaced with language that clearly and specifically addresses and refers to the company’s use rights and not ownership rights. Similarly the language used describes a ‘granting of land’,⁵² when it should more appropriately refer to the use of land.

It is astonishing that an agreement of such importance that purports to be the result of a process consistent with FPIC is so utterly ambiguous as to whether it is a transfer of land or a land-use agreement or something else entirely. It is equally hard to believe that the MOUs even hope to represent a legally enforceable agreement, when they do not even attempt to address the legal uncertainty generated by the fact that the concession agreement GVL has with the Government of Liberia already claims to create a lease, over the very same land that GVL is obliged to respect is owned by communities, not the state.

As it stands, and taken in conjunction with language regarding the time limitations of the contract which suggests the MOU will in no way be ‘provisional’ but will stand for at least the 65 years of the concession agreement with the potential for unlimited extension, the language of this MOU could be interpreted as a transfer of ownership to GVL for

49 *Ibid.*

50 *Ibid.*, at page 11.

51 *Ibid.*, at page 17.

52 *Ibid.*, at page 22.

an unlimited period of time, without communities realising this is the case. Any ambiguity should be removed from a document of such importance and significance if it is to act in the interests of both parties, which is the whole point of an MOU, and indeed the whole point of an FPIC-compliant community engagement process.

3.3.9. Compensation and the law

In stark contrast to the statement that GVL will adhere to and observe applicable Liberian laws⁵³ is the fact that GVL is refusing to pay crop compensation for rubber trees, despite the minimum rates specified by the Ministry of Agriculture. GVL has justified this by stating that compensation for rubber cannot be incorporated into GVL's business model. Although of course communities may feel empowered to exclude areas of rubber from the land used by GVL, they may feel compelled to let GVL use those lands without receiving due compensation where GVL has presented this as a red line, "take it or leave it" option (or let GVL use lands the community would otherwise not have been happy to let them use, in the same spirit). At worst, this worryingly suggests that GVL can disregard laws and regulations in Liberia on grounds of market- and business-based interests, or at best, that communities will have to bend to a pre-defined business model on a take it or leave it basis, neither of which is FPIC compliant.

3.4. So what are the guaranteed benefits for the community in this MOU?

There are in fact very few true benefits and conditions being offered by GVL for the use of community land.⁵⁴ All other benefits being offered derive from other existing agreements and from company operations and therefore are not benefits linked to and determined by the MOU. This is also the only place in the MOU containing quantifiable benefits offered directly by GVL which are not subject to external conditions set by GVL (e.g. job preference) or a third party (e.g. Oil Palm Development Fund). This analysis would therefore conclude that the true guaranteed benefit and therefore value of the (minimum) 3,800 hectares of community's land,⁵⁵ as determined by GVL who drafted the MOU, is the value of one or two hand pumps, 10 school benches a year, and some remedial work to classrooms and schools.



53 *Ibid*, at page 18.

54 *Ibid*, for these see page 16.

55 *Ibid*, at page 22.

Part 4: Taking stock & Recommendations: a summary of the evident structural flaws in GVL's project in Liberia and some proposed urgent recommendations

As well as drawing back and briefly exploring wider structural concerns about GVL's project in theory and practice, the section below concentrates on analysing the structural basis for the day-to-day experiences of communities exemplified above in their own words, and sketches the way forward, to be read in conjunction with the numerous detailed observations and recommendations made throughout this review.

The Government of Liberia's intentions to boost revenue from its concession agreement with GVL were already compromised at the stage the concession agreement was entered into: by the low rent (USD 1.5 – 5 per hectare) and by a catalogue of tax breaks, exemptions and deductions granted to the company. The concession contract, even from a revenue perspective, seems to be a remarkably bad deal for Liberia. This is the case even without considering the profit-minimising tools companies commonly use to avoid paying local taxes, e.g. by the use of shell companies in tax havens. Although we make no claim as to GVL and GAR's tax arrangements, it is interesting to note that GVL is owned by private equity fund, Verdant Fund LP (Cayman Islands registered), whose major investor is the Singapore-listed Golden Agri-resources Ltd. (GAR), and that associated/intermediary companies with equity shares at various levels are understood to include Golden Veroleum (Switzerland) Ltd, Golden Veroleum Limited [Hong Kong], and GV Holdings Ltd [Cayman].⁵⁶

Likewise, as was evident from the concession agreement and being born out in practice, the creation of jobs by GVL will almost certainly be overwhelmed by the number of people in communities who are deprived of livelihoods by the loss of land and natural resources to GVL that they have previously relied on. Infrastructure and benefit-sharing promises are vaguely defined by the concession agreement, and are disproportionately minimal when compared with the productive value of the land to GVL.

Policy-makers appear to be prioritising the increased revenue and job creation (however illusory), when in fact increasing incomes may be more easily (and much more sustainably) achieved if taxable incomes from rural self-employment can be boosted by better access to more diverse markets (including through improved transport links), value-addition to products produced or the exploration of new/under-developed cash-crops/products and other rural development possibilities that maintain and build on existing community resilience and sustainable land and natural resource use. There are numerous examples in Liberia of communities managing to both meet their food needs and make decent taxable incomes from rural livelihoods.

Agreements reached between GVL and communities therefore need to demonstrate that the company has taken into account the interests and rights of communities. To do so (and for GVL's project is to be successful and sustainable) it will not be sufficient for GVL to enter into negotiations with communities as if the company was only bringing benefits (however small) and as if the company's presence brings no significant potential for harm. Instead GVL needs to enter into the FPIC process in a way which recognises communities' property rights over their customary lands and resources, and so enter into negotiations knowing that the key to success is to ensure that both parties are fully informed, and communities are freely able to make their own collective decisions, in the manner of their choosing, as to how their land and natural resources are to be used, including whether to do so in collaboration with GVL or not.

⁵⁶ Switzerland, Hong Kong, Cayman Islands and Singapore came first, third, fourth and fifth respectively in the Tax Justice Network's 2013 financial secrecy index (see <http://www.financialsecrecyindex.com/>). Switzerland, Cayman Islands and Singapore were listed in a Forbes list of 'Top 10 Tax Havens', Murphy, R. (2010), http://www.forbes.com/2010/07/06/tax-havens-delaware-bermuda-markets-singapore-belgium_slide_2.html

Since GVL's FPIC compliance is lacking in these key respects, legitimate government, community (and company) development objectives will not be met by the GVL's project as it is currently being structured and implemented. On the contrary, large areas of productive land for a single export-orientated commodity are being relinquished by the community in an area that is significantly food insecure, with inadequate and poorly defined benefits accruing to communities and under misleading agreements which do not respect the customary property rights of those communities. This is causing increased intra-community tensions and community/company conflict (which have in some cases led to violence) including by exacerbating pre-existing land disputes, which has serious security implications. Correspondingly, although the profits GVL hopes to derive from the project may be significant in principle (since the dominant palm oil industry model depends on economies of scale based on cheap land and cheap labour, and demand for palm oil is set to increase) such benefits are only likely to accrue to the company for as long as communities believe they are also going to benefit fairly from the process.

For this reason (and from the point of view of all parties) ensuring the company's FPIC process legitimately creates an even playing field for communities to freely enter into negotiations prior to any final agreements being concluded and plantation (or other developments) taking place is critical. Equally critical is that the company's role in the FPIC process creates the enabling conditions for communities to make land-use decisions on the basis of being fully informed of the possible costs and benefits, as well as of their rights and other relevant legal and technical information, without having their internal cohesion and decision-making processes disrupted or undermined by actions of the company or government. Only through such an approach will GVL's presence in Liberia be able to work for communities, for Liberia as a whole and – ultimately – for the company itself.

FPP's work with communities with whom GVL have engaged with a view to obtaining their FPIC has revealed that the MOUs which have been entered into while attractive to communities on paper were actually misleading and vague in significant respects, to the extent of being legally unenforceable. As is clearly demonstrated below in the analysis of MOUs entered into to date, how an FPIC process appears on paper bears no relation to the reality on the ground. For example communities have thought they were signing temporary (6-month) MOUs with GVL when in fact these so-called 'Provisional MOUs' will remain in force for 65+ years unless both parties agree to amend or replace the existing MOU. Communities who have only come to realise this after the agreements have been concluded have understandably been shocked and dismayed.

FPIC in the context of GVL's project and others like it is fundamentally about creating the conditions whereby a satisfactory agreement can be reached between two parties, but specifically tailored to the special conditions that arise when a community is strongly connected to their land, resources and place, but whose collective property rights are frequently poorly protected, and whose financial and educational disadvantage renders them highly vulnerable to exploitation and abuse. As such FPIC is fundamentally different to any commercial negotiation process. FPIC necessitates high standards in relation to both the *process* by which a deal is reached with a community, and the quality of the agreement reached. Unless the agreement is acceptable to the community, it is unlikely to be workable, in part because in all likelihood it has been based on a level of exploitation, coercion or deception which not only means it is not FPIC-compliant but means it will not fulfil the conditions for enabling a lasting business enterprise. Any attempts to appear to produce an FPIC process which does not actually enable communities to freely enter a deal they are happy with is likely to replicate situations of conflict with which Liberia is only too familiar.

In summary:

- **GVL appears to be pursuing a fundamentally flawed business model** that prevents GVL from enabling a community-driven and self-determined FPIC process. GVL's business model appears to rely on agreeing terms and conditions with communities that are unfair, which it sticks to rigidly presumably to achieve the lowest operational costs, and with the assurance that the concession agreement with the government has given it a right to use the land in any event. However the community engagement process goes, a fair deal cannot be achieved in these circumstances, as it is not proposed by GVL and it is not accepted when proposed by a community.
- **By bolting a community engagement process that purports to be FPIC compliant onto a business plan that cannot and will not deliver for communities, GVL is fatally undermining its prospects of FPIC compliance** as it inevitably impacts on every aspect of the community engagement process by:
 - benefiting from inequities in the balance of bargaining and political power,
 - preying exploitatively on poverty and desperation for development,
 - depending on the coercive presence of local government and other actors,
 - providing inadequate and/or poorly defined community benefits,
 - structuring MOUs/Social Agreements in a way that is misleading and disadvantaging and of dubious enforceability, while being sold to communities as the answer to all their prayers,
 - creating a situation where no equitable agreement is sought or reached with communities as equal parties/partnership/joint investors – which would imply a fair process and a fair deal commensurate with respecting communities' position as land owners i.e. rent, meaningful and well structured profit-sharing modalities, equity shares etc. Whenever such fair deals have been suggested by communities they have been rejected, and GVL even openly states that it cannot afford to comply with Ministry of Agriculture minimum crop compensation rates for community rubber trees.
- **The only way a satisfactory FPIC process is achievable is if communities can be allowed to determine clear and enabling processes that properly rectify the imbalance of power and recognise their particular connection to customary lands and resources they have owned for a great many generations.**

This solution involves GVL making radical changes in its operational approach, in accordance with the numerous recommendations made in this review. If those recommendations were realised (and where communities have in fact got anywhere near this – with the help of civil society support), communities are highly unlikely to accept any proposal based on the tired (but unfortunately dominant) business model that GVL and its industry peers continue to offer, because what is being offered simply does not match what is being given up. Our conclusion is that any process that attempts to comply with FPIC is fatally undermined unless and until that business model can open up to the possibility of a fair deal for communities.

Recommendations

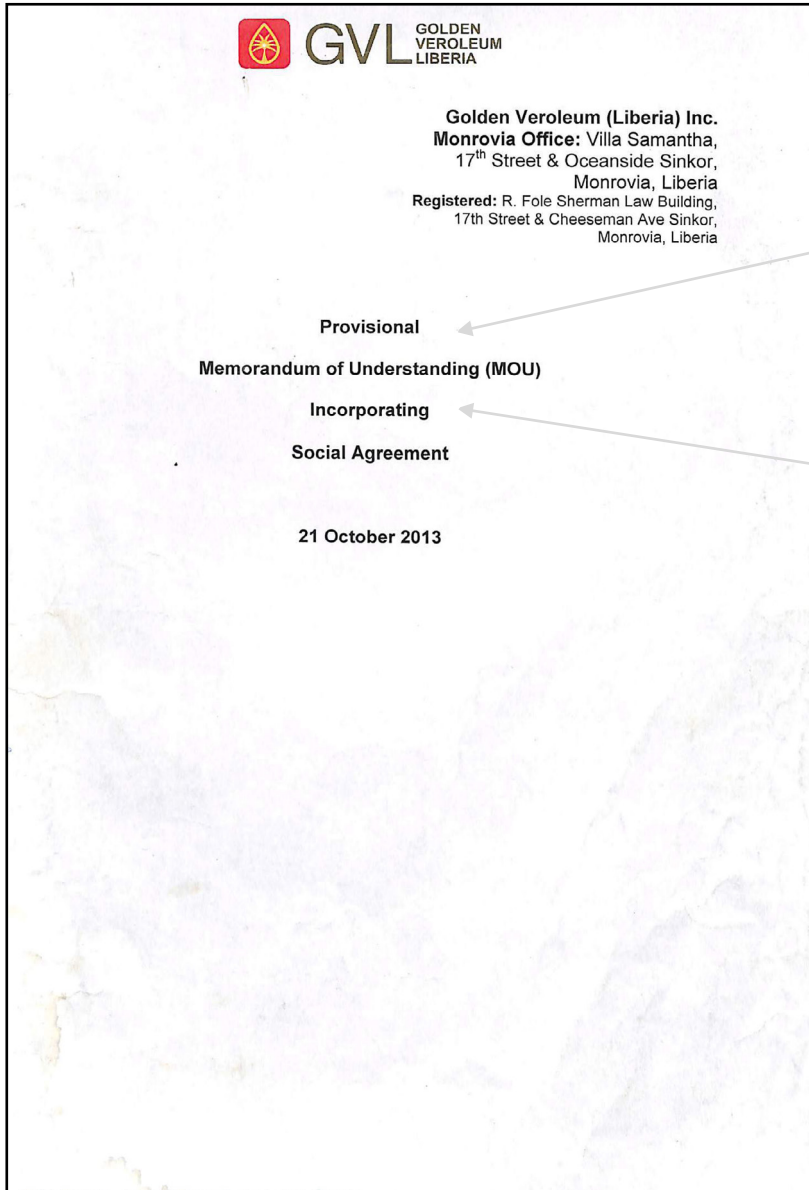
As part of the process of addressing the various compliance failures identified above in GVL's current FPIC-related policies, procedures and practices, GVL must urgently take the following key steps, including through a comprehensive review of policy and practice:

- 1) **Remove the Provisional MOU procedure from GVL policy and practice, and where communities have already entered into MOUs of this kind, they should as a matter of urgency be given the option (with the benefit of independent legal advice) to either renegotiate or rescind those Provisional MOUs so that only Full MOUs are agreed, on the back of a comprehensive FPIC process without short-cuts.**
- 2) **Ensure all steps of the FPIC process are entirely open-ended as to how communities wish to communicate, negotiate, make decisions and engage with GVL. Erring on the side of caution, GVL should assume (unless authority from the whole community confirms otherwise) that community representative structures do not have decision-making powers that can bind the whole community, and that decision-making will be a fully collective and participatory right reserved by the whole community.**
- 3) **Remove from policy and practice steps that implicitly or explicitly undermine civil society and NGOs, and instead (a) actively accommodate independent civil society monitoring and supervision of GVL's FPIC policy and practices, and (b) repeatedly and strongly encourage communities to seek independent technical and legal advice including through civil society organisations.**
- 4) **Accept that it would not be responsible for the company to enter into agreements with communities who have not had the benefit of independent legal and technical advice, and make a clear policy commitment only to enter into agreements with communities where those communities have received adequate independent legal and technical advice.**
- 5) **Ensure adequate policy guidance on addressing real sources of coercion, undue influence and actions undermining community cohesion – namely the actions of prominent figures in local government and GVL itself. As part of this, GVL should urgently make a clear policy commitment to only giving jobs to community members after a clear, equitable, written and legally binding community-company contract has been concluded with that community on the basis of a full (i.e. 'no short cuts') FPIC process.**
- 6) **Mainstream into policy and practice the crucial principle that the outcome of GVL's community engagement should not be predetermined, pre-empted or preconceived in any way. All options should be on the table – both if the community decides to formally engage with the company (including smallholder use of the land for palm fruits sold to the company, lease of community land to the company for growing palm oil, company shareholdings for communities etc.) – as well as if the community decides not to formally engage with the company.**
- 7) **Ensure that GVL's information sharing includes full and objective disclosure of the commercial and agricultural realities of the palm oil business and palm oil crop, so that any company-community agreement is based on a fair and equitable understanding of key factors.**
- 8) **Provide proper guidance on how GVL should initiate its engagement with communities in a way that properly respects communities' right to determine for themselves *whether the FPIC process should proceed and if so how*. This requires a process by which GVL can legitimately find out the answers to a sequence of key questions that communities will need to decide for themselves at the outset without GVL being present. (Namely: whether to talk to GVL at all; what their 'unit of community' is for the purposes of collective decisions and negotiations; how they want to communicate with the company; how they want to validate and confirm key decisions; and, if they want to communicate**

with GVL via representatives, who will those representatives be.) Due to the importance of this key early step, a proposed process is set out in detail in the section above at paragraph 1.12 of Part 1.

- 9) Guarantee that GVL will only embark on supporting ESIA and HCVA processes, *after* a minimum set of internal decisions have been made by communities highlighted above (at Recommendation 8). Only after these decisions have been made are communities ready to participate in designing, executing and validating these key information exchange processes.
 - 10) Take a far more careful and nuanced approach to dealing with traditional governance in a way that properly takes account of the very high risks of assuming traditional governance bodies own land (on trust or otherwise) and can grant user rights over land, and makes sure that the decisions communities reach, the ways that they negotiate, and how their decisions are communicated, have been fully determined and endorsed by the community themselves, not just by traditional governance bodies.
 - 11) Mainstream throughout policy and practice the express recognition and respect on the part of GVL of communities as *owners* of their customary lands, territories and natural resource, and treat that ownership as equivalent in strength and legal effect to documented/deeded property rights. A major component of this recommendation will manifest itself in the kinds of contractual agreements that emerge from GVL's engagement with communities, which must thereby be: (a) clear, equitable and legally enforceable; (b) *expressly* recognise the lands, territories and resources concerned as the property of the community; (b) properly ascribe to the communities concerned *all the rights* consistent with their status as owners, including their right to *continued* recognition as owners even where they have consented to GVL using or occupying some of their lands, territories or resources, e.g. by deriving a rent under a land-use contract (lease); (c) expressly guarantee legal certainty for those communities that their legal standing in relationship to their agreement with the company will not be compromised or diminished by the fact that GVL's 2010 Concession Agreement with the Government of Liberia purports to provide a lease to GVL and warrants the concession area to be free of encumbrances.
 - 12) Ensure that the 2010 Concession Agreement will not itself continue to present a serious barrier to full compliance with relevant legal, RSPO and FCP standards, by demanding that the Concession Agreement is properly amended to address the various deficiencies in the *process* by which the Concession Agreement was agreed and the multiple flaws in the *substance* of the Concession Agreement (as outlined above). This will require a negotiation process that has the meaningful participation of potentially affected communities and civil society.
 - 13) Mainstream an ethic of 'getting things right first time' rather than the current emphasis on mere 'continued improvement', in order to recognise that in practice it is much harder (and potentially impossible) to satisfactorily put things right once they have gone wrong in the context of community engagement and FPIC. *While degrees of improvement in policy and practice are of course positive signs, anything less than a swift achievement of full FPIC compliance creates a real risk of seriously harmful consequences for communities and their environments.*
-

Annex 1: Annotated analysis of the MOU between GVL and Trembo District, Grand Kru



Annex 1. Annotated analysis of the MOU between GVL and Trembo District, Grand Kru (21 October 2013)

Provisional: It is our interpretation of this document that it is in no way provisional and the inclusion of 'Provisional' in the title is both incorrect and misleading. Greater detail on this will be covered below.

Memorandum of Understanding (MOU) Incorporating Social Agreement: The purpose of legally binding agreements (contracts) is specifically to remove the reliance on good faith from relationships between two parties, especially where such relationships are based upon potentially competing commercial motivations.

In contrast, this MOU provides only weak statements of good faith that, if ever tested by a community, may not be legally binding as they lack the necessary certainty and unambiguity and provide only limited consideration for the communities who enter into them. As such there is a real risk that the MOUs do not function as legally enforceable contracts. Even calling an agreement a Memorandum of Understanding or Social Agreement is arguably suggestive of an intention on behalf of GVL not to be legally bound. In contrast, FPIC requires outcomes on which communities can rely, and with which they can legally require companies to comply. (As mentioned above however, since communities are not in a position to test these agreements, they continue to believe themselves bound by the agreement even if they are unenforceable)

REPUBLIC OF LIBERIA)
GRAND KRU COUNTY)

**Provisional Memorandum of Understanding
Incorporating Social Agreement**

THIS Provisional Memorandum of Understanding (MOU) is made and entered into this 21 October, 2013, between Golden Veroleum (Liberia) Inc., Republic of Liberia, a Liberian Domestic Corporation, (hereinafter referred to as "GVL") represented by its Authorized Signatories, named on below, and the undersigned communities of Trembo District of Grand Kru County, Republic of Liberia, (hereinafter referred to as "Community" or "Communities") represented by their Authorized Representatives, named below.

This MOU terms further incorporate the **Social Agreement** between GVL and the Communities.

RECITALS:

WHEREAS, on 2 September 2010 GVL was granted rights by the Republic of Liberia under the provisions of a 65-year agricultural concession agreement (the "**Concession Agreement**") to engage in the development of land for oil palm and the production and sale of palm oil products, and the Concession agreement is by reference included herein;

WHEREAS, the GVL investment is a business venture which additionally brings considerable benefits to communities in terms of jobs, careers, capacity building, infrastructure, and other social and economic benefits, while also implying changes in many matters of lifestyle and activities of Communities.

WHEREAS, the Communities have invited and hereby confirm GVL to develop land in their Community areas (whether held under customary, traditional, communal, tribal, private usage or forest management or other rights, permits, certificates or titles), for GVL plantings and facilities together with a Community Oil Palm program.

WHEREAS, GVL and Communities have agreed to jointly collaborate and through mutually participatory mapping have identified and shall further identify, a minimum of 3,800 acres of land for the development of oil palm by GVL and 760 additional acres of land as may be required for the use of the Community (with support from GVL) to establish a Community Oil Palm program;

WHEREAS, The Communities have determined or will furthermore determine to their considered satisfaction that such land identification for oil palm purpose still provides for and leaves necessary amount of land for other needs.

WHEREAS, this MOU outlines the process of engagement for future assignment of land for oil palm development, the social, employment and other economic benefits offered by GVL to the Communities, and the Communities' and GVL's approach to resolving grievances should they arise.

WHEREAS, this MOU shall respectfully be registered through the Liberian Legal system and become binding upon the parties hereto, their respective representatives, members, agents, counselors, heirs, successors in office, administrators and assigns, whether past, current or future, as though they were specifically named herein;

NOW, THEREFORE, in consideration of the foregoing, Communities and GVL parties have agreed as follows:

In a way that reflects both the *process* and *outcome* requirements of FPIC, GVL needs to recognise that communities *own* their customary lands and resources and act on this by entering into agreements based upon this fact, according to a process that fully respects that fact and that also acknowledges and fully mitigates the imbalance in negotiating power between the company and the communities. This would enable communities to make *equitable* agreements with the company, with rents and benefits that are *proportionate* to the true productive value of the land, and in a way that confirms communities' on-going ownership beyond all legal doubt (e.g. via a rent being paid to communities by the company). Without the above, although the resulting company-community agreement may offer some possible social benefits without clarity or timelines, the process takes away communities' security as grounded in their ownership and use of their land, and leaves GVL's concession subject to legal and financial insecurity.

This statement is not borne out by the lack of meaningful commitments made in the MOU itself. Indeed studies shows that industrial palm oil can severely reduce the economic wealth, development prospects, and food security of affected communities. (Balachandran et al, 2012; Rhein, 2015). There is also increasing evidence that failing to deal equitably and fairly with communities jeopardises the viability of large scale agricultural investments (World Bank Bank (2014).

It is not clear on what basis GVL were invited given their Concession Agreement was signed with the government and without the consent of local communities.

Annex 1

A) Preferences to be provided by GVL to Communities Citizens

GVL agrees to provide preference and priority to Communities citizens for jobs and employment, training, promotion, college and university scholarships and business opportunities in accordance of **Appendix A**.

B) Benefits to be provided by GVL to Communities Citizens Employees of GVL

GVL agrees to provide agreed, timely wages, salaries, free housing, free health care, free education and schooling of children in accordance of **Appendix B**.

C) Benefits to be provided to Communities even if not employed by GVL

GVL will provide USD \$5 per each hectare payments on developed land, repeated every year, to the Community Development Fund, which will be governed with the Communities themselves for development projects; GVL will also construct and rehabilitate roads and bridges; additionally GVL will provide Communities citizens access to GVL schools, university and college scholarships, health care facilities; and GVL will provide business opportunities to Communities entrepreneurs, and GVL will consider the Community for industrial development of an Oil Palm Factory Mill, in accordance of **Appendix C**.

D) Community Oil Palm Program supported by GVL

GVL will support the Communities in the construction of a Community Oil Palm Project, which will be owned by the Communities and its members. GVL proposes that the Community Oil Palm area will be in ratio of 1 acre to every 5 acres the Communities have assigned to GVL. The program will be offered in accordance to **Appendix D** and subject to terms, considerations, rules and regulations to be agreed with the Communities and program participants.

E) Development Timetable

The timing of investment and development is based on achieving a partnership between community and GVL. GVL estimates the timetable in accordance of **Appendix E** subject to uncertainties about logistics, weather, existing infrastructure, and to training progress, and subject to any external influences.

F) GVL Commitment to Communities regarding Potential Impacts

GVL will not pursue resettlement of the Community people from their villages or towns. This has always been GVL policy and GVL has never resettled anyone and has not required anyone to do so. GVL commits to adherence to all the affecting laws and regulations of Liberia and to international regulations of RSPO, to good practices, and to partnership with the Communities, in accordance of **Appendix F**.

G) Communities Commitment to GVL

The Communities commit to adherence to all the affecting laws and regulations of Liberia to good practices, and to partnership with GVL, in accordance of **Appendix G**.

H) Issue and Grievance Resolution process

Given the long term nature of the partnership, it is possible that disagreements or differences may arise as between community or individual citizens and GVL. The company and community recognized the importance of addressing and resolving any such differences in a friendly and timely way and as such have agreed to the attached Grievance Resolution Process included in **Appendix H**.

A: The use of the word 'Preferences' offers no binding commitment (see Appendix A for full analysis of this point).

B: The inclusion of employee relations in a land use agreement is unnecessary and misleading. All of the conditions of employee-employer relations exist independently of this agreement and bear no relationship to the conditions made within this agreement (see Appendix B).

C: As will be seen in later analysis the provisions offered in this section are misleadingly presented and are offered with such condition that suggest that most community members will not benefit from them. In addition, many of the benefits are pre-determined within GVL's 2010 Concession Agreement and are not conditional on this agreement. As such their inclusion in this agreement is misleading (see Appendix C).

D: As above this condition is already agreed upon in the Concession Agreement and is not conditional on this MOU.

F: GVL's refusal to provide compensation for rubber trees is in stark contrast to this commitment to comply with applicable laws, since minimum compensation rates are established by the Ministry of Agriculture (see Appendix F)

Annex 1

I) Statement of Acknowledgement

As an official endorsement of the agreed lands for development and confirming the detailed participative mapping and FPIC engagement process undertaken by the community and GVL, the community formally attests to and signs the development map, being current at date 12 October, 2013. The community acknowledges and affirms that it may wish to enter into future negotiations for transfer of additional lands, and that updated maps will be appended to and become part of this social agreement. The formal endorsement is contained in **Appendix I** and is an integral part of this MOU.

J) Documents of Reference

GVL and the Communities hereby acknowledge incorporation into this MOU of the reference documents listed in accordance of **Appendix J**.

This **PROVISIONAL MOU shall remain in force until final MOU / Social Agreement is signed - with mutual intent to do so within 6 months. The final MOU will include the same terms and any changes or additions as mutually agreed by the parties. By signing this Provisional MOU, the communities authorize GVL to start operations and land development in the areas referred to on the attached map of Trembo district. The Final MOU will endure for the life of the Concession Agreement, unless otherwise mutually agreed by the Parties hereto.**

Signed:

For Communities

(Authorized Self-Chosen Representatives)

For GVL

Name: Krishnan Nalaiah

Dougbo community	
Community Representative Committee	
Jackson Tuogbay CRC chairman	
Peter B. Toe	
Moses Q. Wreh	
Susana K. Wantu	
Jestina B. Toe	
Bestman K. Toubie	
Kay Sieh Smith	

Representative Attestations and Endorsements (Traditional Leaders incl Paramount Chiefs and Chiefs)	
Hon. Alfred D. Toe paramount chief Diayoken chiefdom	
Hon. Charles Want Clan chief-Pennoken Clan	
Hon. Baryea Bianyon Saywonken Clan	
Hon. Joseph Qiah Gen. Town chief- pennuken	
Hon. Brown B. Jackson Gen. Town chief - Saywonken	
Broad Based Leaders & Citizens incl Further Elders, Women leaders, Youth Leaders, Development leaders	
Esther Q. Toe Women leader	
Augustine K. Tuobie- Resources committee chairman	
Sampson Wantu-Township commissioner	

This section is of serious concern. Despite suggesting that the MOU is 'provisional' this paragraph is very specific in its insistence that this 'MOU shall remain in force until final MOU/ Social Agreement is signed' and the final MOU will only be signed after 'changes or additions as mutually agreed by the parties'.

As a result, if for any reason either party refuses to agree to a final MOU this current MOU will remain in place indefinitely and in its place.

Typically a **provisional** agreement (as this MOU implies it is, and as communities have understood it to be) would include specific dates which signify the start and finish dates of the provisional agreement, and would include reference to the fact that if a more enduring MOU is not agreed by that date then the provisional MOU will not remain in force. The absence of such dates, and such a statement in this agreement render the use of 'provisional' in its title both incorrect and misleading.

Any powers to improve the MOU to the benefit of the communities are left in the hands of GVL who through a veto can disrupt the completion of a Final MOU and enforce the compliance of this Provisional MOU for the full duration of the concession agreement plus extensions.

The result of this disingenuous language is that communities believe that this contract is legally provisional and will stop being in force six months past the date of signing, which is not in fact the case.

APPENDIX A

Preferences GVL Will Provide to Communities Citizens

1. Preference and priority for jobs in the Communities areas
2. Adult literacy and numeracy education for higher jobs
3. Technical training opportunity for advancement to qualified jobs and management in Community area and elsewhere in GVL business
4. Preference for GVLs college and university scholarships is given to qualified students
5. Preference for trainee Cadetships towards management jobs
6. Preference for contracting and supply entrepreneurship

The above preferences and priorities are given in each GVL MOU area to their own citizens of good reputation who have the willingness and qualifications for the opportunities, and also in other GVL areas, so that GVL MOU area citizens may cross-work in any GVL areas on equal basis.

Preference and priority means that in any starting and new jobs or business opportunity will first be given to citizens. But existing employees, trainees, students, cadets or vendors will not be fired to accommodate new entrants.

Appendix A's main shortcomings are the ambiguous and subjective nature of its content. The inclusion of the words '**preference**' and '**priority**' in this section enables it to provide no firm commitments from GVL and allows the possibility for them to provide no meaningful jobs or training to local communities.

Further, such preferences are themselves conditional on GVL's subjective assessment of potential candidates having a 'good reputation', 'willingness' and 'qualifications'. This further weakens GVL's commitments to the above by providing further conditions – to be determined by GVL - on the provision of these benefits.

Finally Appendix A suggests that although these benefits may be offered to the community being contracted, it also opens the way for these benefits to be received by citizens of other GVL work areas, instead of just the communities who are a party to this agreement.

As a result of the above it is clear that this section of the MOU offers no substantive commitments from GVL to the community in question and as such offers no space for the communities to demand any such benefits in the future.

APPENDIX B

**Benefits GVL Will Provide to
Communities Citizens Who Become Employees**

1. **Employment and wages end other**
 - a. Priority and preference for jobs and training opportunity is provided to communities that designate planting land for GVL
 - b. Wages and salaries meet Liberian Laws and Regulations and Minimum Wage rulings, as well as Terms and Conditions of Collective Bargaining Agreement with the workers union GOVAWUL.
 - c. Currently, GVL includes
 - i. 50kg bag of rice per employee each month,
 - ii. annual paid vocation,
 - iii. maternity leave
 - iv. bereavement payment and
 - v. National Social Security and Welfare Corp (NASSCORP) contributions
 - d. Qualified staff can receive a subsidized motorcycle without down payment
2. **Training and advancement:**
 - a. Provide skill training to employees of the company.
 - b. This includes
 - i. on-the-job training,
 - ii. head gang and supervisor training
 - iii. and cadet/management development for qualified candidates, as well as
 - iv. international secondment for qualified candidetes (e.g., learning modern mill engineering methods);
 - v. vocational training (for instance, heavy equipment operator certified training, and skills in mechanic end construction trades)
 - c. Employees with good skills end willingness and ability to advance and manage parts of the business will be encouraged and GVL wishes to create and build management and technical support capabilities deriving from the Communities
3. **Education of employee children:**
 - a. GVL will build schools in GVL farm townships starting at kindergarten and primary school and up to high school
 - b. Schooling is free for children dependents of employees
 - c. GVL will pay for teachers, maintenance of schools and study items

As stated above the benefit package offered to GVL **employees** is not relevant. It is not dependent upon this MOU which is specifically concerned with the terms of a land use agreement. Therefore their inclusion is misleading and irrelevant.

The only inclusion that would be relevant to this MOU would be a commitment from GVL in response to any demands from the community in relation to how many jobs would become available that are dependent upon this MOU being signed.

As discussed above this commitment is not present in this MOU and all that is included are suggestions of preferential treatment on an undefined basis.

NB: Appendix B does not also discuss the difference between permanent and casual employment with GVL. From the communities' experience much of the local employment has until now been restricted to casual employment which confers none of the benefits suggested here.

Annex 1

- d. GVL offers schooling in adult literacy and numeracy for enrolled employees and for ability to be promoted
 - e. University scholarships application will be available to qualified employee children from the USD \$100,000 in annual scholarships to agriculture students.
- 4. Healthcare and clinics:**
- a. GVL will provide employees and dependents health care and medical treatment free-of-charge.
 - b. Health clinics will be constructed, equipped and staffed by health care personnel and nurses
 - c. GVL will pay the health care staff
- 5. Housing and facilities:**
- a. GVL will provide modern style free-of-charge family and bachelor housing within the developed area for full-time employees and their dependents that wish to live there
 - b. Housing will have
 - i. free electric power,
 - ii. running piped water and
 - iii. toilet bathrooms,
 - iv. as well as kitchens
 - v. The housing will be built in temporary form starting in year 2, and permanent houses starting in year 4 of a new GVL farm areas
 - c. GVL farm townships will have
 - i. Market place
 - ii. House of Worship (church or prayer hall)
 - iii. Sport field
 - iv. Normally we build these community buildings during year 2-3 of a new GVL farm area

As above.

APPENDIX C

Benefits GVL Will Provide to Communities and to Citizens Whether Employed or Not

1. **Employment priority at GVL**
 - a. Priority and preference in jobs and training opportunity is provided to communities that designate planting land for GVL, with evaluation and determination of their qualifications and suitability for employment.
2. **Community Development Fund payments and usage**
 - a. The community development fund will be used to pay for additional facilities, in addition to what is mentioned herein, over the whole life of the GVL concession, and payments will be repeated every year
 - b. GVL will each year pay USD \$5 each hectare (equivalent to US\$2.08 each acre) of developed land into a Community Development Fund.
 - c. This fund will be used to build infrastructure and other facilities of prudent selection and planning
 - d. GVL will carry out the needs and planning survey with the Communities at the beginning, and this will be repeated from time to time to guide planning
 - e. The fund will be governed by representatives from both community and company, where the GVL representatives participation is to assure that the fund will be used for prudent community purposes
 - f. GVL and community will work to establish this fund during the first year of field planting
3. **Education access to GVL schooling**
 - a. Community citizens will have access to study at GVL schools from primary school up to high school, but priority will be given to employees dependents
 - b. GVL offers schooling in adult literacy and numeracy for community citizens
 - c. University scholarships application will be available to qualified citizen's children from the USD \$100,000 in annual scholarships to agriculture students.
 - d. In allocating the scholarships, GVL will work prioritize students originating from the Communities in proportion to the land areas being allocated, and this will be monitored annually together with the Communities
4. **Healthcare and clinics access**
 - a. GVL will provide community citizen's access to GVL health care and medical facilities subject to availability and minimum at cost, but priority will be given to employees and dependants
5. **Roads and bridges:**
 - a. GVL will build and improve road and bridge infrastructure as part of its GVL farm operations.

It is of concern to many communities affected by GVL that they are witnessing an influx of 'outsiders' who they see as taking their jobs. It is therefore unclear why this Appendix's title includes both the terms '**communities**' and '**citizens**'. In practice this MOU is specific to one community only and the language of the MOU should reflect that. Instead its use of both of these terms ('communities' and 'citizens') can lead to the marginalisation of the specific community and thereby fails to guarantee that they will benefit from GVL farms.

1a: As previously suggested this inclusion suggests no commitment on the part of GVL and relies on good faith. This is not the basis of a typical contract between parties.

The **Community Development Fund (CDF)** is previously agreed by the prior Concession Agreement and is therefore not dependent on or relevant to this MOU. Its inclusion is misleading and suggests to the other party that they are receiving this benefit as a result of this particular MOU. This has led some communities to assume that the CDF fund is likened to a rent which is being paid to their community by GVL, which is not the case.

Further analysis of the CDF has been discussed elsewhere in this report but it should be noted that questions over the access to and control of the CDF by local communities is in serious doubt and it is unlikely that direct benefits will be felt by the communities whose lands are developed.

APPENDIX C

Benefits GVL Will Provide to Communities and to Citizens Whether Employed or Not

1. **Employment priority at GVL**
 - a. Priority and preference in jobs and training opportunity is provided to communities that designate planting land for GVL, with evaluation and determination of their qualifications and suitability for employment.
2. **Community Development Fund payments and usage**
 - a. The community development fund will be used to pay for additional facilities, in addition to what is mentioned herein, over the whole life of the GVL concession, and payments will be repeated every year
 - b. GVL will each year pay USD \$5 each hectare (equivalent to US\$2.08 each acre) of developed land into a Community Development Fund.
 - c. This fund will be used to build infrastructure and other facilities of prudent selection and planning
 - d. GVL will carry out the needs and planning survey with the Communities at the beginning, and this will be repeated from time to time to guide planning
 - e. The fund will be governed by representatives from both community and company, where the GVL representatives participation is to assure that the fund will be used for prudent community purposes
 - f. GVL and community will work to establish this fund during the first year of field planting
3. **Education access to GVL schooling**
 - a. Community citizens will have access to study at GVL schools from primary school up to high school, but priority will be given to employees dependents
 - b. GVL offers schooling in adult literacy and numeracy for community citizens
 - c. University scholarships application will be available to qualified citizen's children from the USD \$100,000 in annual scholarships to agriculture students.
 - d. In allocating the scholarships, GVL will work prioritize students originating from the Communities in proportion to the land areas being allocated, and this will be monitored annually together with the Communities
4. **Healthcare and clinics access**
 - a. GVL will provide community citizen's access to GVL health care and medical facilities subject to availability and minimum at cost, but priority will be given to employees and dependants
5. **Roads and bridges:**
 - a. GVL will build and improve road and bridge infrastructure as part of its GVL farm operations.

3 and 4: It is important to note that access to **healthcare and schooling** is prioritised for employees, only some of whom may come from affected communities, and on a preferential basis only. The availability of access is therefore dependent upon external factors and in no way guaranteed to the community signing the MOU. In addition no firm commitments are made by GVL to provide a quantifiable amount of access. This leaves the community unable to hold GVL to account for any perceived lack of activity in this area.

3c: This section is poorly written through its lack of qualification. Whilst at first it appears to suggest the community party to this MOU will have a **fund of \$100,000**, in truth this fund is understood instead to be the total availability of funds to GVL communities in the entire area of operation in Liberia. For this inclusion to be meaningful it needs to quantify the amount of funds available to the specific community party to this MOU.

5a: Building and improving roads and bridge infrastructure is a primary benefit to GVL farm operations and is therefore not dependent upon the completion of this MOU. Its inclusion here is unnecessary and misleading as it suggests these benefits are being provided to the community in return for the use of their land. On the contrary, GVL would need to carry out this activity anyway as part of their **regular operations** and activities.

Annex 1

- b. This will provide repairs to roads to the direct benefit of communities.

6. Wells and pumps:

- a. GVL will build wells for communities where needed to avoid disturbance to clean water supply from the Oil Palm development
- b. Wells will be equipped with hand pumps where towns have over 150 citizens.

7. Local Business

- a. GVL provides opportunities for local business and entrepreneurs, beginning with offering market areas in GVL farms so communities can sell to employees and for fully localizable trades such as
 - i. construction,
 - ii. lumber and carpentry works,
 - iii. brick making,
 - iv. furniture making and
 - v. garment making,
 - vi. poultry farming,
 - vii. and all types of service and trade activities.
- b. GVL will give preference to these locally sourced businesses
- c. Also indirectly, by creating real economic development and people with jobs and money to buy goods and services, GVL's presence can help bring in business and services such as cell phone services and more products may become locally available

8. Consideration for Oil Palm Factory Mill

- a. GVL will consider the Communities for build manufacturing mills locally in connection to some of its farms and in some communities.
- b. The location will depend on many technical factors including how much land is planted nearby.
- c. Typically a group of big farms will have a central factory, which provides further manufacturing, technical, transport and administrative jobs.
- d. In addition to processed palm oil, the factories side products are used as fertilizer.
- e. The decision of where and when to build is typically decided 1-2 years after first field planting is completed. Normally a new mill takes 2-3 years to build.

6: This section appears to admit that GVL operations will damage or disturb **water supply** as a result of their operations. It does not however make any commitments to limit this disturbance at any stage.

7: As noted in other sections, this section again provides no firm commitments from GVL in terms of how many wells and where and in what time frame, and instead relies on good faith. Contracts exist precisely to ensure the removal of doubt and the possibility for both parties to enter the contract based on guaranteed actions for which they can be held accountable. In addition, although this provision suggests that the GVL plantation will boost economic activity in the area, evidence from a study of a palm oil plantation in north-western Liberia suggests that communities affected by palm oil are often in worse economic conditions than those who have not, and experience increased food insecurity after they have (in effect) given their lands away. (Balachandran et al, 2012)

8: This report would like to question again the use of the vague way in which the term 'communities' is used in this agreement. As this MOU is specific to one community it is important that it is clear how all the benefits outlined are explicitly guaranteed to this specific community. This section only suggests that this particular community will be 'considered' for the development of a mill and does not offer any formal commitment beyond this.

APPENDIX D

Community Oil Palm Programme Supported By GVL

1. **Community Oil Palm Programme**
 - a. Every community is encouraged to designate proper, proportionate and regulated land area for assisted community farms (also known as supported out-grower farms).
 - b. GVL proposes that the Community Oil Palm area will be in ratio of 1 acre to every 5 acres the Communities have assigned to GVL.
 - c. GVL will provide training, advisory and will supply seedlings, tools and fertilizers at cost and free of import duties.
 - d. GVL will guarantee to purchase the fruits at regulated and transparent prices for processing at the established factories.
 - e. The Community Oil Palm program normally starts in year 3 of development, as at that time the community has gained experience from participation in GVL development.
 - f. The Community Oil Palm program is formulated in separate plan which when initialled and signed are attached to this MOU as integral parts
2. **Oil Palm Development Fund**
 - a. Each year GVL will pay 1/2% of annual sales of oil palm products into an Oil Palm Development Fund.
 - b. The proceeds will be used by Government to support and promote community and smallholder oil Palm development in addition to the Community Oil Palm, so communities can request funding for local oil palm projects

1: As discussed earlier the commitment to implement a **Community Oil Palm Programme** is included in the Concession Agreement agreed between GVL and the Government of Liberia. Its inclusion within this document is therefore both superfluous and not dependent upon the completion of this MOU. As a result its inclusion is misleading in that it suggests that it is dependent upon the MOU and counts as one of the benefits being negotiated by the community for the use of their land instead of a prior request granted in a previous document.

2: This inclusion echoes the points above. It is advised that all previously agreed conditions within the Concession Agreement should be isolated and clearly directed as being external to the agreements made in this MOU so as to allow the communities to clearly understand the particular terms and conditions being negotiated and agreed upon by the signing of this specific MOU.

It is also important for communities to clearly understand that this ½% of annual sales will not be given directly to them and that the only way they will receive the funds is if they request and are granted the funds by the Oil Palm Development Fund. As a result these funds are not guaranteed to the community agreeing this MOU in any way. The requirements for how these funds can be accessed are also not detailed, and insufficient information is provided to enable the community to make a grounded analysis for its inclusion within the MOU.

APPENDIX E

Approximate Timetable for Initial Development and Investments

Item	Estimated Beginning Timing	Estimated Duration	Estimated Completion Timing
1. Site facilities construction	Already ongoing	Ongoing	
2. Road rehabilitation and construction	Already ongoing	Ongoing	
3. Bridges construction	Already ongoing	Ongoing	
4. Nursery development	Already developed		
5. Land preparation	Oct 2013	Ongoing	
6. Planting in the field	Nov 2013	Ongoing	
7. Begin wells construction	Already started	As required	
8. Begin Install Hand pumps for communities whose water source is affected or was not sufficient	Already started	As required	
9. GVL School construction	2015	1 yr	2015/16
10. GVL clinic construction	Already built	Done	
11. GVL housing construction	2015	2-3 years based on land development	
12. Payment to Community Development Fund	Starting in 2014	Every year 65 years	
13. Organizing of Community Oil Palm Project (COPP)	Starting in 2014/15	Ongoing	
14. Begin works for COPP	2014/15		
15. Planting COPP	2014/15		
16. First harvesting of COPP	2017/18		
17. ...			

ALL: As evident throughout the document, this MOU misrepresents the true terms of the contract being signed by the communities. At various stages of the MOU, predetermined conditions of existing contracts are interwoven with conditions offered in this proposed MOU. In addition, activities that are needed in order for GVL to operate are also interwoven to suggest that they are also benefits being offered to the community within this MOU.

As an example, in this section of the MOU only items 7, 8, and 13 are true benefits to the community that are being offered by GVL within the limitations of this MOU. Items 9, 10, and 11 for example are executed for the benefit of the GVL staff, as are items 12, 13, 14, 15 and 16.

In order to allow communities to make free, prior and informed decisions about their lands and their relationship with GVL, GVL must first make a far clearer and more understandable presentation of the conditions being offered by GVL in the MOU. **What is needed is an MOU which makes clear what specific benefits over what timeline will accrue to the specific community as a result of signing this MOU.** What is not needed is an MOU that confuses communities by proposing vague unquantifiable benefits that lack a timeline, that may accrue anyway from company activity or the concession agreement, and that may accrue to others and not to the community signing the MOU.

Annex 1

Beneficiary	Project	Timing			
		2013	2014	2015	2016
DOUGBO	School rehabilitation: 9 classrooms (Provide cement for floor)		✓		
	Provide Benches for school		10	10	10
	Construction of 2 Hand pumps	✓		✓	
NEWAKEN	School rehabilitation (Provide doors, windows for junior high school)		✓		
	Cement for floor, door and windows for the kindergarten : 3 classrooms	✓			
	Provide Benches for school		10	10	10
	Rehabilitation (2) and construction (1) of Hand pumps	✓		✓	
SORROKEN	School rehabilitation (Provide 5 bundles of zinc and nails)	✓			
	Provide Benches for school		10	10	10
	Rehabilitation (1) and construction (2) of Hand pumps	✓		✓	
WUTUKEN	School rehabilitation (Provide 6 bundles of zinc and nails)		✓		
	Provide Benches for school		10	10	10
	Rehabilitation (2) Hand pumps	✓			
GBANKEN	School rehabilitation (Provide cement for the floor)		✓		
	Leveling football field	✓			
	Provide Benches for school		10	10	10

← ALL: This page contains the true benefits and conditions being offered by GVL for the use of community land. All other benefits being offered are secondary benefits of existing agreements and company operations and therefore are not benefits linked to and determined by the MOU. This page also contains the only quantifiable conditions offered directly by GVL which are not subject to external conditions set by GVL (e.g. job preference) or a third party (e.g. Oil Palm Development Fund).

This analysis would therefore conclude that the true benefit and therefore value of the community's land, as determined by GVL who drafted the MOU, is to the value of one or two hand pumps, 10 school benches a year and some remedial work to classrooms and schools. By any measure this is an astonishingly bad deal, given the productive value of the land to the company and profits that will accrue to GVL.

In summary, this MOU provides only weak statements of good faith that, if ever tested by a community, may not be legally binding as they lack necessary certainty and unambiguity and provide only limited consideration for the communities who enter into them – 'Consideration' is a legal term for the two-way exchange of something of value, which is a necessary component of an enforceable contract (e.g. a payment of rent to one party to a contract, in return for the use of a property by the other party to the contract – essentially a two-way exchange of value.) As such there is a real risk that this MOU does not function as a legally enforceable contract.

APPENDIX F

GVL Commitment to Communities and Citizens Regarding Potential Impacts

1. Land Negotiations and No Resettlement

- a. GVL will not pursue resettlement of the Community people from their villages or towns. This has always been GVL policy and GVL has never resettled anyone and has not required anyone to do so.
- b. As a member of the RSPO, and responsible investor in Liberia, GVL follows a strict process of conducting environmental assessments and intensive social engagement as part of the process of obtaining land for oil palm development to ensure the community gives its Free Prior & Informed Consent (FPIC) for any hand over of land for development – this is done before starting any development in an area. As part of this, Communities and GVL have a signed MOU from the beginning of engagement ("FPIC engagement Agreement", signed at start of mutual engagement).
- c. This FPIC engagement process will be an ongoing process subject to community desire and willingness to offer additional areas for development

2. Adhere to all Liberian Law and Regulations

- a. GVL agrees to adhere to and observe applicable Liberian Laws and regulations.
- b. GVL will adhere to the Environmental Protection and Management Law of Liberia, the New Forestry Reform Law of 2006 or any other law or regulation of Liberia, regulations of the Environmental Protection Agency (EPA), Forestry Development Authority and the principles of the Roundtable on Sustainable Palm Oil (RSPO).

3. Respect for Community culture and sacred values

- a. GVL has and shall make every effort to identify with community participation and clearly enclave/ avoid damage to any of the following during the land preparation process, as specified in our agreed and completed FPIC and participatory mapping processes.
 - i. Community's protected areas, including cemeteries, shrines, sacred forests, special forest collection areas (e.g., for special medicines)
 - ii. old towns community wishes to preserve
 - iii. other agreed cultural or economic items that are identified by community as important to its well being
- b. GVL and Community acknowledge that given the history of Liberia, and the movement over the past 30 years of citizens away from community areas, it is possible that some of these sites may be difficult for community members to identify. The communities commit to address and resolve any such mistakes internally before discussing with GVL

4. Compensation for active farms:

- a. Before any agreement to convert active farms to GVL farms, GVL and individual farmers will carry out field survey and crop count. If there is agreement by farmer and GVL to convert farm, compensation will be at a rate set by the Ministry of

1b: This present agreement should solely concern the use of community lands by GVL for a limited time for it to be consistent with the understanding of communities that they are not giving away or selling their land. Therefore it is both confusing and incorrect for language to be included within the agreement that would normally be used in an agreement dealing with ownership of land. All use of terms like 'obtaining land' and 'hand over land' need to be replaced with language that clearly and specifically addresses and refers to the company's use rights only, and does not suggest a transfer of ownership rights.

As it stands, and taken in conjunction with language regarding the time limitations of the contract which suggests the MOU will in no way be 'provisional' but will stand for at least the 65 years of the concession agreement, the language of this MOU could be interpreted as a permanent transfer of ownership over the land from the communities to the company. Any misinterpretation should be removed from a document of such importance and significance if it is to act in the interests of both parties, which is the whole point of this MOU.

2a. See comment below regarding crop compensation

APPENDIX F

GVL Commitment to Communities and Citizens Regarding Potential Impacts

1. **Land Negotiations and No Resettlement**
 - a. GVL will not pursue resettlement of the Community people from their villages or towns. This has always been GVL policy and GVL has never resettled anyone and has not required anyone to do so.
 - b. As a member of the RSPO, and responsible investor in Liberia, GVL follows a strict process of conducting environmental assessments and intensive social engagement as part of the process of obtaining land for oil palm development to ensure the community gives its Free Prior & Informed Consent (FPIC) for any hand over of land for development – this is done before starting any development in an area. As part of this, Communities and GVL have a signed MOU from the beginning of engagement ("FPIC engagement Agreement", signed at start of mutual engagement).
 - c. This FPIC engagement process will be an ongoing process subject to community desire and willingness to offer additional areas for development
2. **Adhere to all Liberian Laws and Regulations**
 - a. GVL agrees to adhere to and observe applicable Liberian Laws and regulations.
 - b. GVL will adhere to the Environmental Protection and Management Law of Liberia, the New Forestry Reform Law of 2006 or any other law or regulation of Liberia, regulations of the Environmental Protection Agency (EPA), Forestry Development Authority and the principles of the Roundtable on Sustainable Palm Oil (RSPO).
3. **Respect for Community culture and sacred values**
 - a. GVL has and shall make every effort to identify with community participation and clearly enclave/ avoid damage to any of the following during the land preparation process, as specified in our agreed and completed FPIC and participatory mapping processes.
 - i. Community's protected areas, including cemeteries, shrines, sacred forests, special forest collection areas (e.g., for special medicines)
 - ii. old towns community wishes to preserve
 - iii. other agreed cultural or economic items that are identified by community as important to its well being
 - b. GVL and Community acknowledge that given the history of Liberia, and the movement over the past 30 years of citizens away from community areas, it is possible that some of these sites may be difficult for community members to identify. The communities commit to address and resolve any such mistakes internally before discussing with GVL
4. **Compensation for active farma:**
 - a. Before any agreement to convert active farms to GVL farms, GVL and individual farmers will carry out field survey and crop count. If there is agreement by farmer and GVL to convert farm, compensation will be at a rate set by the Ministry of

4a: On a procedural level the insistence on working with individual farmers has the potential to marginalise **customary and collective forms of land ownership** and management and the potential to increase land conflicts in affected areas. This is contrary to customary law, and therefore domestic Liberian law and the RSPO Principles & Criteria.

Worryingly in stark contrast to point 2a which states that GVL will adhere to and observe applicable Liberian laws, is the fact that so far GVL have refused to pay any **crop compensation** for rubber trees, despite the Ministry of Agriculture having set minimum compensation levels for rubber and other crops. GVL has justified this decision on the basis that the compensation levels are too high and cannot be incorporated into GVL's business model.

Although of course communities may feel empowered to exclude areas of rubber from the land used by GVL, they may feel compelled to let GVL use those lands without receiving due compensation where GVL has presented this as a red line, "take it or leave it" option (or let GVL use lands the community would otherwise not have been happy to let them use, in the same spirit). At worst, this worryingly suggests that GVL can disregard laws and regulations in Liberia on grounds of market- and business-based interests, or at best, that communities will have to bend to a pre-defined business model on a take it or leave it basis, neither of which are FPIC compliant.

APPENDIX G

Community Commitment to GVL

1. Allow GVL safe and undisturbed use of agreed GVL farm areas:
2. Mutual collaboration to resolve any emerging crises (see more on grievances)
3. Participate in activities that protect High Conservation Values (HCVs) and High Carbon Stock (HCS) sites identified and demarcated within its farm areas
4. Help GVL maintain the quality of the water bodies by not use chemical and explosives for fishing purposed and disposal of waste & feces within the concession areas.
5. Collaborate with GVL to stop illicit drugs sale in communities within it concession areas.
6. Assist protect the investment from thieves, sabotage and any illegal activities and respect the private property of GVL
7. Work with GVL to protect wildlife by helping to decide non-approved hunting and then enforce zero tolerance in the farm areas.
8. Assist GVL to maintain the zero tolerance on burning in it concession areas.
9. Assist in sharing factual information about the GVL operations of GVL.
10. Fully participate in awareness and sensitizing activities about the GVL oil palm project.
11. Actively engage to monitor & evaluate activities of the GVL oil palm project.

ALL: It is not clear what the genesis for this commitment was, but from the language used it seems unlikely that it was driven by the community. A more community-focused commitment would be necessary if the community is to comply with the contents of the commitment. See below for examples.

3: It would be important to qualify or give better descriptions of what is meant by the use of HCV and HCS.

4: Given the earlier acknowledgement in the MOU that GVL operations will necessarily damage water bodies it is unusual that this MOU requires the community to refrain from **damaging water bodies** and that a similar requirement is not made of GVL.

5 and 6: It is not clear why sustainable hunting and charcoal activities could not take place within GVL farm areas given their roles in other oil palm areas in Liberia and elsewhere.

APPENDIX I

Statement of Acknowledgment and Acceptance of Land Grant by the Communities to Golden Veroleum (Liberia) Inc

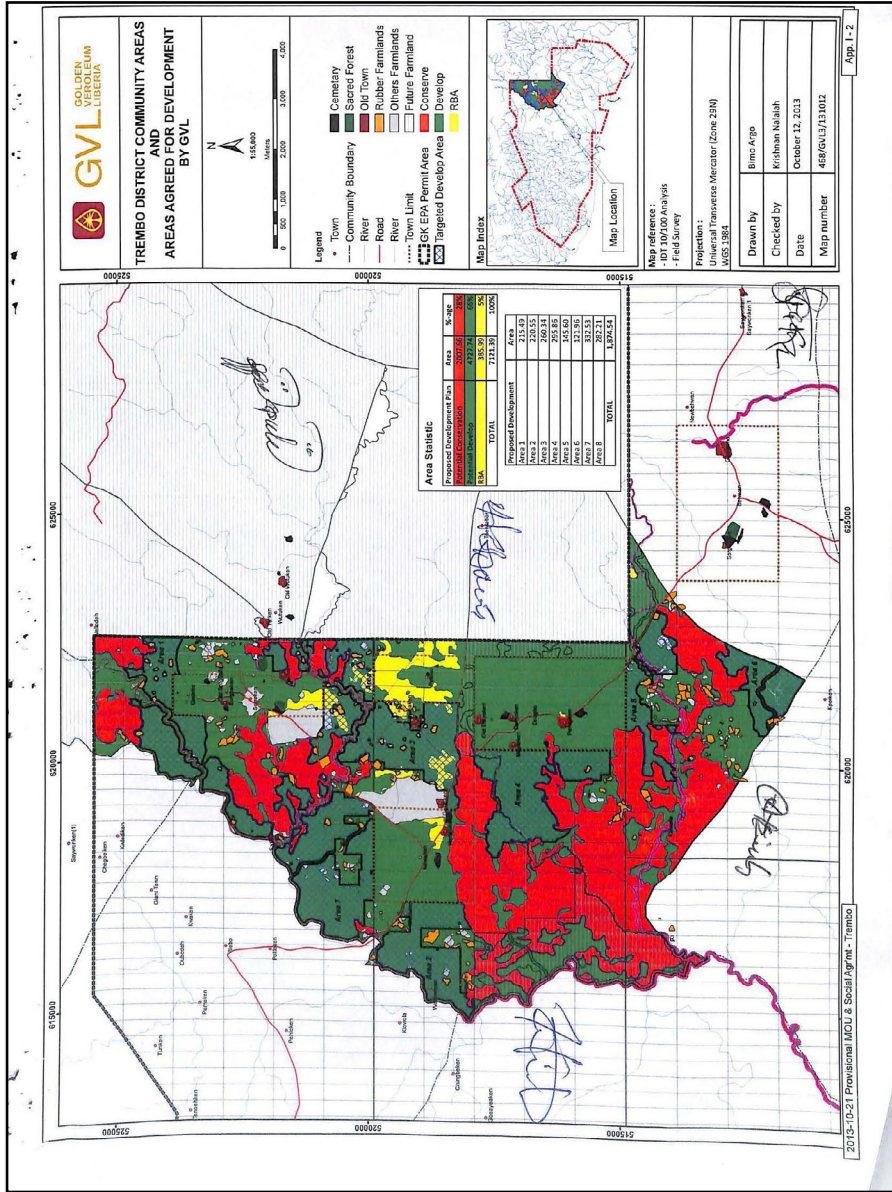
We, the tribal/local people, chiefs, elders, women, and youths of the communities of Trembo District, Grand Kru County, Republic of Liberia, do hereby freely, voluntarily, without the use of force or threat, neither by the Government of Liberia, nor GVL, do hereby consent to, and accept the grant of land made by this community as evidenced by the maps attached to this Statement for the purpose stated in the Concession Agreement between the Government of Liberia and the Concessionaire to wit: for the Concessionaire to undertake a large scale commercial grade oil palm plantation in Liberia, together with the related infrastructure to process and market certain oil palm products, including biofuel and biodiesel, for the duration of the Concessionaire's Concession Agreement with the Government of Liberia or any extension of the same.

That the decision made by us, the tribal/local people, chiefs, elders, women, and youths of the communities of Trembo District, Grand Kru County, to consent to, and accept the grant of land to GVL, is an informed decision based on prior consultations held with GVL and our understanding and appreciation of the purpose to which the minimum 4,560 acres of land will be committed and the ancillary and/or derivative social benefits that are expected to accrue to us, the tribal/local people, chiefs, elders, women, and youths of the communities of Trembo District, Grand Kru County, from the operation of the Concessionaire in the District.

ALL: As stated previously in this report, such use of language within the MOU is incorrect and misleading. Whether this is the result of a lack of professional legal advice or is intended by those drafting the MOU is unclear. Regardless of the reason, the result is that the **MOU is incorrect and misleading**.

As discussed earlier the MOU should specifically address 'the use of land'. The language used here describes a 'granting of land', which is inappropriate since it relates to land ownership and not land use. Rather than referring to the 'granting of land' this agreement should more appropriately refer to the **use of land** to accurately reflect the expectations of communities.

As discussed earlier it is very concerning that **what is claimed to be a 'provisional' MOU is legally applicable to a much longer period of time than the six months suggested** to communities. In this section it appears that communities are being asked to transfer some kind of property right (though it is not clear which) to GVL 'for the duration of the concession agreement' which in this case is 65 years plus extensions (which are potentially unlimited).



This is the only map provided as part of the MoU, and it is not at all clear to individual communities where the borders of their customary lands are and therefore what the implications of this map and the wider MOU are for those customary lands. This is a real concern since transparency on what is being agreed to is clearly essential for a successful FPIC process.