Forest Peoples Programme

1c Fosseway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK
tel: +44 (0)1608 652893 *fax:* +44 (0)1608 652878 info@forestpeoples.org www.forestpeoples.org

"They want to take our bush"

by John Nelson and Tom Lomax, FPP

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An independent assessment of processes to obtain the Free, Prior and Informed Consent (FPIC) from communities in the Mundemba and Nguti Subdivisions in South West Cameroon, for palm oil developments overlapping their customary territories The case of Herakles/SGSOC

Discussion document circulating for comments

Send all comments to: john@forestpeoples.org

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Acronyms

ACHPR	African (Banjul) Charter on Human & Peoples' Rights
CBD	UN Convention on Biological Diversity
CCPR	UN Covenant on Civil and Political Rights
CEDAW	UN Convention on the Elimination of Discrimination Against Women
CERD	UN Convention on the Elimination of Racial Discrimination
CESCR	UN Covenant on Economic, Social and Cultural Rights
CRC	UN Convention on the Rights of the Child
ESIA	Environmental and Social Impact Assessment
FPIC	Free, Prior and Informed Consent
FPP	Forest Peoples Programme
HCV	High Conservation Value
IFC	International Finance Corporation
SGSOC	SG Sustainable Oils Cameroon PLC
SOP	Standard Operation Procedure
RSPO	Roundtable on Sustainable Palm Oil
RSPO P&C	Roundtable on Sustainable Palm Oil Principles and Criteria
UDHR	UN Universal Declaration on Human Rights
UNDRIP	UN Declaration on the Rights of Indigenous Peoples

Executive Summary

This report summarises the findings from an independent assessment by the UK-based Forest Peoples Programme (FPP) of the processes employed by Herakles/SGSOC to obtain the Free, Prior and Informed Consent (FPIC) of communities to be affected by their palm oil development project in Mundemba and Nguti Subdivisions in South West Cameroon. This assessment is framed in terms of the obligations on the company and government of Cameroon to comply with international law with respect to protecting community rights, and especially the need to secure the FPIC of local and indigenous peoples over the development of their customary lands.

The first part of this report summarises the legal situation in Cameroon with respect to compliance with international laws, and obligations for gaining the FPIC of communities for the acquisition of their land. The second part of the report contains the key findings drawn from community interviews and field observations, including evidence obtained from discussions with the technical committee in Limbe. The final section sets out some basic steps that should be carried out in order to ensure that during the development of the Herakles/SGSOC project communities' right to FPIC is protected.

Based upon interviews with community representatives from 12 affected communities, along with direct observations of the impact of Herakles/SGSOC operations on the ground, this assessment arrives at some preliminary findings that fall under four main headings:

- Local peoples are strongly connected to their lands and natural resources, which they govern by custom;
- Communities' decisions about the Herakles/SGSOC project have not been free from coercion;
- Communities have not been informed in advance of major decisions;
- Communities have not given their consent for development on their lands.

Together the above findings support the view that communities' right to give or withhold their FPIC for the Herakles/SGSOC palm oil development project that overlaps their lands has not been respected. Given the facts that (i) the company is targeting over 70,000 hectares of communities' customary lands, especially forests, for conversion from communally managed forests to private, monoculture palm production, and (ii) local peoples rely upon those lands and forests to secure their current and future livelihood needs, the report predicts a potential human rights and livelihood disaster if these plans continue.

The report concludes by providing a basic template laying out 10 basic steps summarising the process that the company should follow in order to secure the FPIC of communities in line with international human rights norms.

Given the short time frame for this first scoping mission, this document is intended as both an assessment of FPIC and a discussion document. All comments about the content and additional clarifications concerning the conclusions are welcomed, and will be used to produce a final document in the coming months.

Background to this report

On September 17th, 2009, SG Sustainable Oils Cameroon PLC (SGSOC) signed a contract with the Government of Cameroon to develop a large industrial palm oil plantation and refinery. SGSOC is 100% owned by the American company Herakles Farms, an affiliate of Herakles Capital, an Africa-focused private investment firm involved in the telecommunications, energy, infrastructure, mining and agro-industrial sectors. SGSOC is applying for the right to develop 73,086 Hectares of land in the Ndian and Kupe-Manenguba Divisions of Southwest Cameroon through a 99-year land lease.

According to their Environmental and Social Impact Assessment (ESIA), SGSOC intends to develop 60,000 hectares of land for palm oil nurseries, plantations, and processing plants. Despite withdrawing its application to become a member of the Roundtable on Sustainable Palm Oil (RSPO), Herakles has publicly stated its intention to follow best practice principles, including those of both the RSPO and International Finance Corporation (IFC), in the implementation of its project. The company is currently negotiating agreements with individual communities to access land and provide certain benefits.

The assessment

Serious concerns about the process to secure consent over community lands have continued to be raised by various NGOs and campaigning organisations that have been concerned about the implications of the project since it was announced. Anecdotal evidence has been used by both sides of the debate. Following multiple requests from local organisations for support with the Herakles/SGSOC case FPP agreed to carry out an independent assessment of the situation.

This assessment by FPP is framed in terms of the obligations on the company and government of Cameroon to comply with international law with respect to protecting community rights, and especially the need to secure the FPIC of peoples over the development of their customary lands. The purpose of this scoping assessment was therefore to collect direct evidence that communities' rights were or were not adequately protected during the land acquisition process, and to understand better the specific context of South West Cameroon. In late May 2013 FPP visited areas targeted for development by SGSOC to test the assertions by the company that local communities were adequately informed and involved in decision-making, and if any had already provided their FPIC for the Herakles development process.

This scoping visit was relatively short, comprising 10 days including international and local travel. This meant that in addition to meetings with civil society and other actors in Kumba, Limbe and Buea, only four days were spent talking to local people in the communities where Herakles/SGSOC has been trying to acquire land. Given the tight time scale, effort was made to obtain direct observations of potential impacts in the forest and fields in and around the concession areas, and to conduct interviews directly with members from 12 affected communities in Mundemba and Nguti Subdivisions, which together account for most of the Herakles/SGSOC proposed concession area.

As is clear from our mission statement (see www.forestpeoples.org) FPP aims to support the self-determination of forest peoples, and the development and application of laws protecting

forest communities' rights. Other than FPP's commitment to securing the application of international human rights laws, we have no policy either for or against palm oil development in and of itself, as long as its development adheres to those high standards. During our visits and interviews we made this clear to all contact groups. Both sides of the debate agreed to talk to us.

During the assessment process we spoke to everyone we encountered, whether or not they were opposed to or in favour of the Herakles/SGSOC palm oil development. We targeted interviews towards members of the Oroko, Bakossi, Bassossi, Mbo, and Upper Balong ethnic groups from both ends of the disputed area. We spoke to everyone available when we arrived in the different locations, with about half the meetings organised by prior arrangement. Meetings ranged between five and 65 people, and included both men and women. The majority of views expressed publicly were those of men but we also documented some women's views.

This assessment sets out to test the following **hypothesis**:

> *Consent to use community lands or property for palm oil development is being provided in advance to Herakles/SGSOC by most of the communities whose lands are currently targeted for development, or already affected by it, and that the consent being provided to the company is being secured from communities in line with accepted international standards for Free, Prior and Informed Consent.*

The short time frame we had to test this hypothesis meant that during our field visit we sought access to forests, fields, and other community sites where it was claimed or asserted by authorities or SGSOC (or anyone else) that communities had already given their FPIC for land developments overlapping community lands, or where SGSOC had already started working on the ground (including marking out concession boundaries, etc).

Given the difficulties in finding places where even partial community consent had been granted, we also visited areas where communities rejected SGSOC proposals outright, as well as those with mixed views.

In all of these target areas we asked communities and their leaders directly about the different processes in which each were engaged by the company during project preparation and the land acquisition process up to the present date. A short survey was used to guide the discussions. Where some level of consent was indicated in the survey we deepened interviews to help us assess the scope of the consent.

The assessment was carried out in four phases.

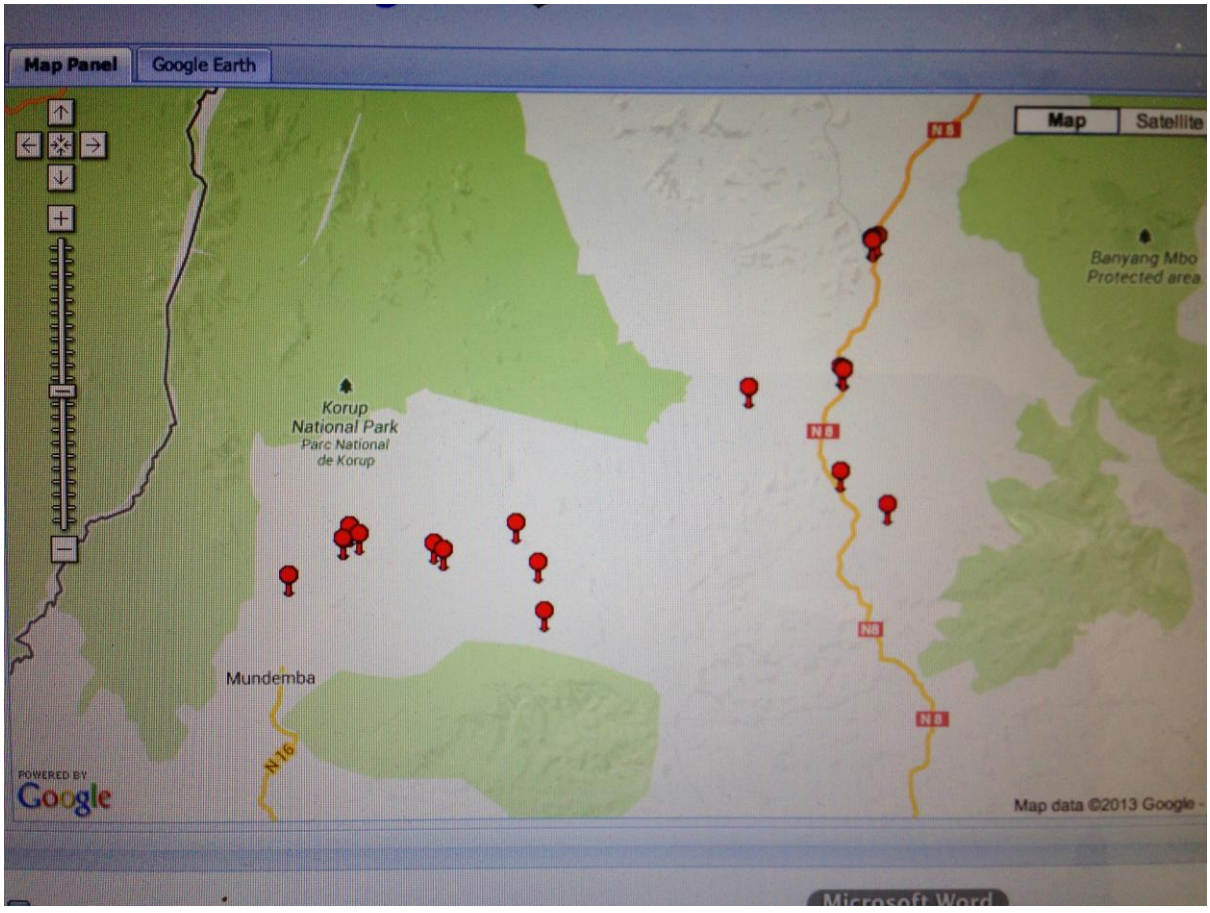
Phase I involved travelling around Mundemba subdivision to meet community representatives where SGSOC had already planted pillars in farmer's fields, to document some of their locations and context, and to discuss the process by which these were placed in the ground. We also aimed to find communities who were for the development, or where some level of consent to develop their land was claimed by either company representatives or community members, in order to identify who might have consented and how.

During Phase II we met with similar communities across Nguti subdivision to the north, including interviews with chiefs and community members both for and against the palm oil development project.

Phase III involved a meeting in Limbe with the "technical committee" – comprised of civil society including lawyers advocating for community rights around Nguti, and several village chiefs from the Nguti area, including some who had not previously participated in "technical committee" meetings.

The interviews carried out were geo-recorded and time-stamped (see map below) and documented via photos of key observations. Indicators of compliance with FPIC standards in community dealings were noted.

The names of informants have not been included in this report.



Map of areas visited during FPIC assessment

The central purpose of the interview process was to try to corroborate claims that FPIC was being granted to SGSOC properly and in accordance with international laws and standards, and to record the special circumstances of the different areas visited for future reference.

The first part of this report frames the analysis by summarising the legal situation in Cameroon with respect to compliance with international laws, and obligations for gaining the FPIC of communities.

The second part of the report contains the key findings drawn from the community interviews and field observations, including evidence obtained from discussions with the technical committee in Limbe that we organised during a final meeting on Friday 21 May. These comprise our preliminary conclusions.

The final section sets out some basic steps that should be carried out in order to ensure that during the development of the Herakles/SGSOC project communities' right to FPIC is protected.

The legal context

Introduction to land rights in Cameroon

Under Cameroon's national law[i], the state is guardian of *all* lands in Cameroon (not the owner), but it can legally intervene in how land is used in accordance with its economic or defence policies. All lands in Cameroon that are not privately registered are 'national lands' controlled by the state.

On national land, communities can continue to use and occupy settlements and farms, and hunt and gather from forests, swamps etc. However, communities do not own these lands unless they are registered. Communities can only register their land privately if it is developed with houses or farms.

Under Cameroon law the government has the power to stop communities from using unoccupied or unexploited national land, and can instead use the land itself or give it to someone else to use (e.g. for a private plantation, mine, logging concession or national park, including by a foreign national or company). To do this, environmental impact studies must be completed and a community consultation process be respected.

The various international human rights laws to which Cameroon is a party are legally binding on the Cameroonian state. In defining the relationship between international law and domestic (national) laws, the constitution of Cameroon states that the international laws to which Cameroon is a party will supersede domestic law even if it provides different or additional rights than are found in the national law.[ii] Cameroon's constitution also affirms its commitment to international law both in general terms, and in particular in respect of the Universal Declaration on Human Rights, the UN Charter, and the African Charter on Human and Peoples' Rights.[iii]

The international legal instruments applicable to Cameroon and relevant to land and natural resource acquisition include the following:

- UN Universal Declaration on Human Rights (UDHR), 1948
- UN Convention on the Elimination of Racial Discrimination (CERD), 1965
- UN Covenant on Economic, Social and Cultural Rights (CESCR), 1966
- UN Covenant on Civil and Political Rights (CCPR), 1966
- African (Banjul) Charter on Human & Peoples' Rights (ACHPR), 1981
- UN Convention on Biological Diversity (CBD), 1992
- UN Convention on the Rights of the Child (CRC), 1989
- UN Convention on the Elimination of Discrimination Against Women (CEDAW), 1979
- UN Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007

Land rights are based on international human rights law relevant to land and resources, and include the right to property[iv]; to food[v]; to adequate housing;[vi] to health[vii]; to culture and religion[viii]; and to equality and non-discrimination in the enjoyment of all human rights[ix]. All 'peoples' (including indigenous and non-indigenous peoples), have related collective or group rights. These include the right to self-determination[x]; to development[xi]; to freely dispose of lands and natural resources and not be deprived of the peoples' own means of subsistence;[xii] to peace and security;[xiii] and the right to a satisfactory environment favourable to development[xiv].

Focusing on the right to property in particular, as an obvious route to protecting customary property, although classed as an individual (rather than group or peoples' rights), when the individuals in question make up a community that owns and manages its land collectively, these individual property rights can be aggregated to protect customary rights to own land and resources held collectively. Any interference with the right to property must be necessary and proportionate to a legitimate aim; and in accordance with applicable law. To be proportionate, the interference must be the least restrictive means possible of achieving the legitimate aim, i.e. there must be no other less restrictive option available to reach that objective. In addition, the interference must not disproportionately discriminate against any particular section/s of society. The threshold for justifying such an interference is higher when the severity of other rights is also engaged, for example the right to self-determination of peoples. The threshold is also high in the case of forced eviction/removal of communities from traditional territory which is unlawful under international law except in the most exceptional circumstances.[xv]

The right to information, consultation and consent

Under **Cameroon national law**[xvi], if Herakles/SGSOC wants to develop national land, it must first apply to the local office of the ministry of lands for a temporary concession (*concession provisoire*) lasting five years or less. The application dossier must include an application form, a map of the land, the development plan and company details. The lands office must *'consult all appropriate parties'* before sending the dossier to the local *'consultative board'* (*commission consultative*) which is the principal mechanism for community consultation.

Consultative boards are appointed by the prefect, and must consist of a number of local government officials, as well as the chief and two notables from the village or community where the land is situated. Where more than one community is concerned, one chief and two

notables should be present from each of the different communities and villages affected. Among other things, the consultative board is responsible for selecting lands that are *'indispensable to village communities'* and making recommendations on applications for concessions over national land and other aspects of national land use, development and conflict resolution. Consultative boards must meet at least once every three months, with members receiving the agenda with a minimum 10 days notice. The agenda must also be pinned to notice boards in the prefecture, sub-prefecture or district offices.

The consultative board, via the prefect, should then submit its recommendations on the proposed concession to the Minister of Lands. The final allocation decision is made by central government, which if approved, must be made by decree signed by the president. The rights and obligations of the concessionaire are set out in special clauses and conditions (*cahiers de charge*). Following development under the temporary concession, a more long-term concession may be given, e.g. for up to 99 years, which could be renewed for even longer. For this to happen, the consultative board is convened to assess the extent of the development, and the prefect will then make recommendations to the ministry. Failure to develop the lands or any breach of the terms of the cahiers de charge may be a basis for refusing a longer-term concession.

International human rights law goes beyond national law in relation to information and consultation, and may require community consent. In particular, international law gives all community members (including women) the right to be informed, consulted and involved in decision-making, not just community chiefs and notables.

It is settled law that traditional possession and use of customary land and natural resources by indigenous peoples amounts to an enforceable property right. Interference with this property right by the state or anyone else is therefore strictly prohibited by international law. Under the African Charter of Human and Peoples Rights and in conjunction with other international laws applicable to Cameroon, all peoples who have demonstrable collective rights to land under customary law have collective rights to their customary lands and resources including the rights of ownership. As outlined above, this right is founded on a number of inter-connected rights. These include a people's right to the disposal of natural resources and to not be denied its own means of subsistence, rights to property, rights to culture (where that culture is especially linked to land), and non-discrimination (for example where protection of customary rights to land is necessary to protect a group from discrimination).

Among those rights listed above in relation to land, the African Charter on Human & Peoples' Rights is distinctive in the extent of the protection it affords to the "rights of peoples". These provisions have been applied by the African Commission on Human and Peoples' Rights to a number of peoples who were not classified by the Commission as indigenous peoples (for example the Ogoni,[xvii] ex-slaves in Mauritania,[xviii] all people of Southern Cameroon,[xix] and Katangese).[xx] Provided that groups seeking protection for their collective rights can be considered 'peoples', it is not necessary that they be also defined as indigenous, though the jurisprudence relating to indigenous peoples may be applied for groups that the Commission is happy to accept as coming within that definition.[*xxi*]

International law also implies that certain conditions are met where steps are taken by third parties that would impact on peoples' customary land and resources and thereby compromise their physical and cultural survival, including respect for indigenous peoples' right to give or withhold their FPIC.[xxii] The right to meaningful participation, consultation and consent in decision-making processes concerning developments affecting customary lands can be argued for peoples with collective connections to their customary lands.[xxiii] The right to consent would be illusory unless that consent is also free, prior and informed. In summary, Communities from distinct peoples who manage their lands collectively under customary rules and with strong cultural connections to their lands, territories and natural resources have the legal right to give or withhold their consent about decisions affecting those lands and resources.

Some private companies make voluntary commitments to meet higher social and environmental standards than required by national law. This can help them access bigger export markets for their products, and/or to get higher prices for those products. The Roundtable on Sustainable Palm Oil (RSPO) is one such certification scheme to which many multinational companies have committed themselves.

The RSPO principles & criteria (P&C) place a duty on member companies to respect customary rights to land and observe the right to FPIC in respect of all communities potentially affected by proposed palm oil developments, through processes and agreements that are well-documented and transparent.[xxiv] Although Herakles/SGSOC are not a member of the RSPO, the RSPO standards on FPIC are set out here as they accurately describe FPIC in detail in a way that is consistent with international human rights law requirements. The right to FPIC should be observed at the earliest stages possible, with the provision of all relevant information to all community members in a form that is appropriate to the customs and languages of all the communities. This information should objectively and transparently state all aspects of the project including all potential risks as well as potential benefits, including benefit sharing and compensation proposals. The information should not be in the form of propaganda, or present the project as a *fait accompli*, or otherwise aim at promoting acceptance of the project.

The negotiations need to be in good faith and open-ended, without any coercion or force. This means the project developer must therefore be open to the communities' ideas and proposals. Communities should also be given time and space to seek independent legal advice. All contact and negotiations with the communities should be via their self-chosen representative structures. Representative structures must be transparent and in open communication and consultation with all community members, including women. Communities must be allowed adequate time to consider all relevant information and come to their own decisions. The community may require time for an iterative decision-making process that is done in many stages. This will serve to build trust. Ultimately, with the right to consent, communities have the right to say 'no' to the project, in whole or in part.

Herakles already withdrew from RSPO membership, so the formal procedures of the RSPO such as the new plantings procedure and grievance procedure are not binding on them. However, because international law still applies under the Cameroon jurisdiction, we used this as a framework for assessment, as well as the current (2013) RSPO guidance on

indicators for Principle 2 Compliance with Applicable Laws and Regulations, especially regarding community rights to FPIC.

Indicators of FPIC

During our field visit to Mundemba and Nguti subdivisions we looked for evidence of community FPIC using some direct indicators such as:

- Completed maps of community areas that are customarily held, managed and used;
- Maps of the concession area preferably overlain with the above, or evidence of demarcation on the ground by either party;
- Minutes of meetings and any decisions made with communities to discuss the company proposal or to consent to the development;
- Copies of formal letters or communications exchanged between community-recognised groups or representatives and the company;
- Documentation on the project or information from the above discussions that was permanently or regularly located in the community, and available in forms appropriate for all community members to access;
- Evidence that communities had information and access to outside advisors during the process, including legal support.

In addition to this and the geo-referenced and time-stamped data on the interviews that took place during the assessment (see above map) basic notes were recorded covering:

- communities' previous or current contacts with Herakles/SGSOC;
- both real and perceived impacts on communities from the proposed development;
- the general views of local peoples including their history of occupation in the area;
- communities' livelihood and land management strategies;
- specific information on whether or not consent had been provided by their community to SGSOC in order to conduct work on community customary land.

Our analysis was conducted on the basis of the evidence collected during the assessment itself[xxv] and, based upon the legal framework described above, it proceeds from the assumption that there is no standard model process for gaining community consent which is mandatory or appropriate in all circumstances. Gaining the FPIC of communities to use their land is an iterative dialogue process involving both companies and communities operating collectively, based upon accepted cultural norms, with multiple points for decision-making by communities on whether or not to proceed with discussions/negotiations, and under what conditions.

Results of visits and interviews

During one-to-one interviews as well as larger public meetings in both areas visited, FPP exchanged information with around 300 people from 12 communities in Mundemba and Nguti subdivisions, along with representatives from four social and environmental NGOs who have been working on the ground, and the "technical committee" based in Limbe. Our preliminary findings are summarised below and fall under four headings:

- Local peoples are strongly connected to their lands and natural resources, which they govern by custom;
- Communities' decisions about the project have not been free of coercion;
- Communities have not been informed in advance of major decisions;
- Communities have not given their consent for development on their lands;

These findings are explained in more detail below.

Local peoples are strongly connected to their lands and natural resources, which they govern by custom

Based upon the interviews with communities and surveys in local fields and forests, and by comparing this with other contexts in West and Central Africa where FPP has worked for decades, it is evident that the traditional possession and uses of customary land by most of the longstanding communities living in and around Mundemba and Nguti Subdivisions amount to a series of collective property rights held and managed by several groups belonging to distinct "peoples." Land connectedness through culture strengthens land claims for the peoples we met including the Oroko, Bakossi, Bassossi and Upper Balong, since they all live on and manage lands upon which they have relied for many generations. Their distinct cultures are clearly tied to the forest and fields upon which their livelihoods rely. Under international law such lands should only be interfered with under special conditions, since such peoples' rights are legally protected.

Initial findings from this assessment suggest that most of the peoples in these areas originated in or migrated into the region many, many generations ago (hundreds of years in some cases) and their shared history in that shared place is complex. The local land tenure situation, especially the management arrangements for customary lands, including the local decision-making processes governing land, is the most obvious link between local peoples, and between them and the land upon which most local livelihoods rely – lands which Herakles/SGSOC aims to use for palm oil development.

Almost everyone living in this rural, forested region farms, hunts or fishes on customary lands that belong to specific communities, and by and large boundaries are recognised and respected by their neighbours. Local communities' collective claims and mutual boundaries are based upon customary and community-based systems of land management that are widely known, understood, and obeyed locally. Despite the cultural heterogeneity across the affected region, those peoples' shared farming and forest roots, and their mutual connectedness to the lands where they live is clear from their way of life and culture. These peoples are closely tied to their places, through clan and culture and history usually preceding the colonial era. Each group shares their own history and culture related to these lands and forests that they have used for centuries:

Mbo clan leader quote:
We came from the East many hundreds of years ago, and have our family lands in strips running into the forest. We do what we can on them, including farming along with forest hunting and gathering, and then we pass them to our children, and they do the same – but the land is small. There is not enough space for them to take bush that cuts right across those lines, where will our children and grandchildren go? This project is against our interests but how can we protect them?

Quote from an Oroko man:

Our Butamu (Ekpe) secret society is very much observed by every village in the area and the spirit of Butamu is invoked by using nature relics and materials found in the forest. Cutting the forest down means taking away our spiritual blessings and strengths, and our sense of well-being as a people. From the building of the Etana (local assembly) to the process of divination and procession, all the materials are from the forests.

Quote from a Bakossi man:

I am a Bakossi man, we do not give up our land easily.

As previously stated, under the African Charter of Human and Peoples Rights, all such peoples have collective rights to property, including the means of disposal of their natural resources, and including property rights that can be aggregated where they are exercised and managed collectively. This means that it is highly likely that, despite various claims to government ownership of all land, under international law, most (if not all) of the communities traditionally living in Mundemba and Nguti Subdivisions in South West Cameroon are the rightful owners of the lands being targeted by Herakles/SGSOC, through their customary, collective institutions that have traditionally managed them (as clearly identified in the Environmental and Social Impact Assessment (ESIA), see Box below).

Given this social complexity and the legal situation covering community customary lands (which the ESIA also clearly stated would be affected by the project, see Box below), the local land tenure situation should have been subject to detailed analysis as part of the project assessment process. This work should have been carried out well before any project activities took place that would affect community lands. While the ESIA preparation process did attempt to document community decision-making processes in general as part of the village survey to obtain basic information, the history and current scope and nature of individual customary land tenure management situations was not carried out. This appears to be a major failure of the ESIA since the development of a palm oil plantation overlapping thousands of hectares of such peoples' customary lands is likely to be associated with a wide range of negative impacts related to local land rights. But curiously the SGSOC ESIA only focuses on the potential positive effects of the development in terms of jobs and development, but without defining these community by community, and certainly without defining the likely negative impacts on the different communities concerned.

Box 1: Some excerpts from the Herakles/SGSOC ESIA

Loss of Traditional Livelihood Activities
SGSOC xxvi *August 2011**SGSOC ESIA***

Traditional livelihood activities inside the Concession such as subsistence agriculture, gathering and use of NTFPs, and hunting will be adversely impacted by the Project due primarily to the loss of land available for these activities. These activities can be replaced to a large degree by full-time employment provided by the Project, employment provided by businesses that will be established with the support of SGSOC, and the implementation of modern agriculture programs. Additionally, these activities can continue to be practiced, but likely to a lower intensity level, within the areas that will not be cleared by the Project.

4.9.10 Land Tenure
Respondents noted that land distributed in several ways. It can be inherited through the family and owned in a traditional sense, and it can also be distributed in a customary manner by the Traditional or Village Council. It can also be communal and held on a community basis by the village. Land ownership is typically regarded as a birthright by the native inhabitants. Non-natives must either rent or buy their land from the Traditional or Village Council. In some cases, migrants are allowed to cultivate annual crops (maize, beans, cassava, etc.) for a short period of time before the land is given back to the native owners. Rich migrants can rent farms from natives.
Land conflicts occasionally exist between neighbors due to encroachment of territory for farming reasons or when boundaries are not respected. Such conflicts are primarily resolved in the Traditional or Village Council and only in rare cases are they taken to the Administration (D.O.) for resolution. Some land conflicts also exist between villages, and the Village Councils typically reconcile such disputes, as well.

SGSOC 4-133 August 2011SGSOC ESIA

7.3.12 Social Investment Plan

The Social Investment Plan outlines the types of measures that SGSOC will consider as it develops the Project to assist the communities in and around the Project area to benefit from the presence of the Project. As a basis, SGSOC will sign Memorandums of Understanding (MOU) with villages to ensure that there is no loss of village farms or plantations (e.g. oil palm, cocoa, and banana) and will provide for farmland for future generations to avoid impacts related to food insecurity. SGSOC will demarcate such farmland for each village in coordination with a team to be composed of the villagers, SGSOC personal, Subdivision Farm Council, and Regional Delegation of the Ministry of State Property and Land Tenure.

Community decisions about the project have not been free from coercion
Everywhere we went during the assessment we heard about the way communities had felt compelled to signed up to Herakles/SGSOC plans, even when there was widespread local disagreement and dissent. There has been an overriding sense that the company is receiving high level government backing for its plans, and as far as most communities are concerned, the government always has the last say. There is widespread fear of confronting government authorities, and this fear has been used by the company to force through decisions on the ground. Additionally, several legal injunctions have been taken out against the company to stop its activities pending further discussions and study, but it is common knowledge that all of these injunctions have been ignored by the company with impunity. Well known campaigners against the Herakles/SGSCOC project have been physically attacked, and their offices have been ransacked, and this has heightened peoples' fears about speaking out against the scheme.

There is of course a long history of struggles between communities and the government over the establishment of conservation areas in the local area. Korup National Park is one such example. The resettlement villages where communities were threatened with re-location to upon the creation of the national park in 1986 (one village was eventually re-located) serve as a constant reminder about what could happen to communities who are seen to oppose state plans. Concerning the Herakles/SGSOC development, as recently as June 2013 communities continued to face heavy pressure to agree to company terms without adequate information, sometimes, it is alleged, under the threat of government persecution. Meanwhile the palm takeover continues and fields and forest continue to be cleared by SGSOC - communities feel powerless to stop this development:

Bassossi quote:
This is our land, our land is small. We do not want them (the company) here, even for development, we are unified about this….. They are already coming into our forest from the other side, how can we stop them from cutting?

Communities have not been informed in advance of decisions
As is clear from the available ESIA and other documentation, local consultations by Herakles/SGSOC focused mainly on sharing information with some traditional community leaders through a limited number of short meetings concerned with sharing general overview information about the project. Most of these events were single-session, multi-community meetings held in local towns, which meant that only a limited number of notable people were invited to attend. These included mostly traditional leaders along with mostly male, middle-aged and often elite interests. While some paperwork for the meetings was prepared, discussed, and signed by some community representatives in those meetings (e.g. the community wide MOU that was then abrogated by court injunction) it was done there and then, not after community-wide discussion and review. Neither before nor afterwards were individual members of those communities provided with adequate documentation on those meetings, nor the decisions taken. Community members had no opportunity to examine the documents in their own time. Most communities encountered do not even have copies of the documents they are already alleged by Herakles/SGSOC to have signed. The absence of this documentation in those communities is a clear sign that communities have not been adequately informed about project plans.

Based upon our interviews, the company-community "agreements" that were initially established between various communities and the company (such as the original MOU) were understood locally primarily as agreements between the participating parties to continue to talk together and negotiate. Few local people believed that such documents constituted agreements by communities to hand over land to Herakles/SGSOC, since people had not yet been informed of the companies' exact plans for the places where they lived.

There was therefore great surprise and concern when, beginning in 2010, hundreds of concrete pillars were "planted" in community fields and forests throughout Nguti and Mundemba subdivisions without any prior notice. These boundary markers (see photo) were placed on peoples lands, dividing up fields and forests with straight lines based upon maps prepared by the company. These boundary markers were placed on peoples' lands without any advance notification or information, and certainly without communities' consent. Many of the markers were placed in the middle of planted fields manioc, maize and plantain, installed right at the heart of family and clan territories that they have managed for many decades as part of traditional and sustainable, field, fallow and forest slash and burn cultivation.

Boundary Markers planted by Herakles/SGSOC on local people's lands

"They cut lines in our land without asking our permission"

In numerous locations Herakles/SGSOC agents placed such boundary markers in the middle of perennial plantations of coco and rubber. These plantations represent significant, family inheritances and/or investments by local peoples that should not have been tampered with without the consent of communities, but this was never requested nor provided. In other areas adjoining the current development area, forest clearance by SGSOC inside neighbouring communities' boundaries is already taking place – again without local communities' consent – raising local tensions.

In all of the cases cited above it seemed clear that there is huge uncertainty within communities about how they can gain access to information about what is being planned for their forests, or to whom they should make complaints – coupled with the associated fear of being identified as a "troublemaker." As a result of such confusions, the tone of community discussion in many places is based upon rumour coloured by long-standing local rivalries between and within communities, aggravated by real and perceived grievances against Herakles/SGSOC – such as the gross violation of putting up a "fence" (the boundary markers) across local peoples' lands.

The Korup National Park story cited above, along with the creation of the Rumpi Hills Reserve, as well as the Banyang Mbo protected area all serve to inform local communities about "the likely course of events" as Herakles/SGSOC moves in with government support, and communities are progressively deprived of land they traditionally use. Together these conservation areas already deprive local peoples of at least 50% of their traditional and customarily-managed territories. Communities are determined not to let this happen again, especially since they have no reserve lands left over. Many of the lands now being targeted by Herakles/SGSOC are needed by communities to secure their livelihoods.

Family head quote:
I left my field at 5:30 pm and when I returned the next day at 6 am the pillar was here on my land, in the middle of my cocoa field. I have not pulled it up because I am scared of getting into trouble, but it is my land and do not want it taken from me. Others have them as well, there are hundreds of them all over, drawing out lines across our fields and forests. No one has come to talk to me about any of this, and we only heard that the company has signed papers with the government and some of the chiefs. But we have never seen any papers here in our community, …. and anyway even under Cameroon law those chiefs cannot harvest my crops or take things from my house, so they cannot take my land from me.

Bakossi quote:
We have been here for many generations, and our forest is still big…. We said we would be happy to talk to the company, since we want development and there could be opportunities to discuss in return for some of our forest. But they do not come here, so we have no deal, and they tried putting pillars in our forest anyway… Many young people do not want that company here now, the trust is gone.

Communities have not even been able to make maps of their lands so that they can assess what areas they might be able to provide to the company.

Community member quote:
Only some family heads saw the map made by SGSOC and the government people….. There was no opportunity for us to confirm the lines on the ground.

Communities have not given their consent to the development on their lands
During this assessment we found almost no evidence that SGSOC/Herakles has obtained the FPIC of any of communities to be affected by their development. In fact we found the reverse – most communities had lost trust over company engagement, and while they might talk to the company about potential development actions, most are very wary or negative about discussing specific areas of forest the company might be able to use since there is no trust. Amongst the young (<30 years old) and especially male population, negative views towards the company were most prevalent.

Virtually all developments directly experienced by communities such as the pillar planting or community forest clearance were not introduced or discussed before the actions took place, and local communities certainly did not give their consent beforehand.

Where consent had allegedly been provided by communities to the company it was usually based upon the signature of the chief only (some/many of whom do not actually live in the communities on a regular basis), and rarely also with the full council of community elders (both groups typically dominated by older men[xxvi]), but certainly almost never with the signatures (or often knowledge) of the individual families whose fields and forest resources would be affected. These families are not protected in current company-community negotiations. This includes recent 'consent' provided to local consultative boards, which were rushed through at the beginning of June 2013.

Community Chief quote:
The village council, family heads, youth and women leaders came, and they inform everyone so information spreads - of course all the land belongs to the government, but they have also

said they would try to not touch peoples' fields. We in this room (chief and seven personal advisors) have made a map with them (the company) and signed some papers for the community. … As leader I am often out of the village so I presented some of the documents to legal fellows. We are waiting to iron out the details of an agreement with them (the company), especially the benefits they are proposing.

Oroko community member quote:
We have been here hundreds of years, long ago migrating from the southern mangrove areas along the coast. We already know what happens when palm companies come to your land. We know Palmol, you can see the border of their plantation over there – before, that land was communities' land, but those people are all gone now. We also had many community lands taken by Korup and Rumpi Reserves, there are villages you can visit that contain communities who were resettled out of that new national park. Our remaining lands are rich and it is all we have left and that company is trying to take it illegally, the investors should lose their money for what they are trying to do to us.

Conclusion

In May 2013 FPP staff visited the Herakles/SGSOC development area to interview communities about the land acquisition process and to assess whether or not communities had provided the company with their FPIC to develop their lands. The assessment found that almost no communities in the Herakles/SGSOC development area have given their Free, Prior and Informed Consent to the development of a commercial palm oil plantation on their customary lands.

Communities continue to face coercion and political pressure to comply with company plans, yet they have little information about what those plans are. While communities do know that Herakles/SGSOC has signed papers with the government giving it permission to obtain land in the Mundemba/Nguti subdivisions, other than a few chiefs community members have almost no information about the plans for their areas. Most importantly, almost no communities have given their FPIC to Herakles/SGSOC activities on their lands, yet the company continues to operate there.

The situation is extremely serious since Herakles/SGSOC is targeting over 70,000 hectares of communities' customary lands for conversion from communally-managed forests to private, monoculture palm production. These communities rely upon those forest areas to secure their basic livelihoods now, and to provide for land for their children and grandchildren, and their cultures are inexorably linked to their forest. There is a potential human rights and livelihood disaster in the making if these plans proceed.

Under international law, which supersedes Cameroon's current legislation (and which has been agreed by the Cameroon government), the situation is very clear: traditional peoples with a long history of occupation and use, such as most of those living in Mundemba and Nguti Subdivisions, have clear rights of control over the lands they traditionally use, and any changes to that use are subject to their Free, Prior and Informed Consent. Based upon the evidence gathered during this assessment the company appears to be in clear breach of these principles, thereby placing the government in a position that is in violation of international human rights laws to which Cameroon is a party.

On the basis of the evidence summarised above we therefore conclude that our hypothesis for this assessment[xxvii] is not valid, and that in fact the revised hypothesis (which IS supported by the evidence) should read as the following **revised hypothesis**:

Consent to use community lands or property for palm oil development is not being obtained in advance by Herakles/SGSOC from most of the communities whose lands are currently targeted for development, or already affected by it, and the consent being claimed by the company is not being secured from communities in line with accepted international standards for Free, Prior and Informed Consent.

What to do now?

In order to obtain the FPIC of communities in line with international standards, and Cameroon's international legal obligations, Herakles/SGSOC should develop a programme of community engagement based upon the following process, which is in line with international human rights:

10 Basic Steps to Secure Community FPIC
(1) Scoping – are there communities who could be affected by the project?

Decision

No communities affected – no FPIC process needed, process ends here
Yes, some communities will be affected – FPIC process required, proceed to step (2)

(2) Go and meet the communities who might be affected, make introductions, provide copies of all information on the project including area maps, the processes the company would like to initiate, the rights of communities in those process, including to take advice (eg legal advice), leave project information with communities, including a request that, if they want to proceed, they should identify an appropriate representative structure that will adequately represent all of the different interests in the community, male, female, young and old.

Ask for community consent to continue this discussion. Do they agree?

Decision

Community says NO – Discussion ends and no plantation is established on those communities' lands.

Community says Yes – Proceed to next step (3)

(3) Community identification of representatives or representative institutions (avoiding company employees where possible, since otherwise there is the potential for a real and perceived conflict of interest that will undermine the credibility of the FPIC process).

(4) Provide the community representatives with information on the company processes, including to agree the terms of engagement between company and community (the agreed "rules of the game" – e.g. an MOU, possibly for signature – this should be approved by independent legal advisor), and a calendar for the process. This will define how the community and company will work together.

(5) Working with those representatives, conduct participatory mapping to identify community lands and key resources, and to refine the ESIA with regard to local conditions in the specific communities concerned. Do this for each community (also this will help to refine the HCV analysis).

(6) All of the results (including all documentation) from Step 5 should be shared with the full communities (including maps for validation etc), and including agreed (or proposed) exact areas where the development might take place (identified with communities during the participatory ESIA mapping process) and linked/overlapped with all their customary areas

mapped. All the documentation should be left in the communities in a form that will be accessible to everyone concerned – male, female, young and old, and especially those who use, control and claim lands overlapped by the project area.

(7) The community should be given adequate time to consider all of this information. This decision making process should involve the whole community, and there should be an opportunity for the community to take advice (including legal advice).

Decision

No, the community does not want to proceed - No plantation
Yes, the community wants to proceed with the development – proceed to next step (8)

And if "no" then discussions could continue on how the project could be modified to suit both parties.

(8) Open formal negotiations with the community, concerning benefit sharing, rental agreements, compensation plans, the "social programme," job guarantees, etc. This step proceeds alongside the finalisation of various company Standard Operation Procedures (SOPs), including for conflict resolution/management of grievances, etc. This process will lead to the elaboration of an:

AGREEMENT

During this phase there should be enough time for communities to reflect on all of the information. The potential role of an independent observer throughout the process and at this stage in particular (e.g. civil society, lawyer, independent monitor) is invaluable in making sure the agreement that results can be relied on by all parties and not subject to future criticism. The communities should be supported to take legal advice, there should be time for community consensus building and the whole community should be involved, especially those who use land or hold land customarily.

Decision

No, the community does not agree – No plantation (even at this late stage)
Yes, the community agrees – proceed to next step (10)

(9) Formalise the agreement (with other signatures, approvals, etc) with the government, traditional authorities, etc.

(10) Deliver the agreement and development as per the agreed plan to all community members, including operational support for grievance processes, and independent auditing of the process.

Notes

[i] *Ordinance 74/1 of 6 July 1974*

[ii] The Constitution of Cameroon (*Law No. 96-06 of 18 January 1996*) provides for the primacy of international law over national laws. Article 45: "*Duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement"*.

[iii] The constitutional commitment to international law is also confirmed in the constitution's recital which states that it *'Affirms our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and The African Charter on Human and Peoples' Rights, and all duly ratified international conventions relating thereto*', and references a number of constitutional principles, including '*protection of minorities'* and preservation of *'the rights of indigenous populations'* as well as the right '*to use, enjoy and dispose of property'*.

[iv] African Convention on Human & Peoples Rights (*ACHPR*), Art. 14 (right to property) & 21(2) (right to recovery of property and compensation in circumstances of dispossession); UN International Convention on the Elimination of all forms of Racial Discrimination (*ICERD*), see in particular Art. 5(d)(v) (right to not to be subject to racial discrimination in the right to property); UN Declaration on the Right of Indigenous Peoples (*UNDRIP*), Art. 10 (right not to be forcibly removed from lands without FPIC), Art. 25 (right to maintain spiritual relationship with traditionally owned/occupied land and resources), Art. 26 (right to lands and resources they use and occupy), Art. 29 (right to conservation and protection of the environment of their lands and resources); Convention on Biological Diversity (*CBD*), Arts. 8(j) (right to respect for traditional knowledge and lifestyles of indigenous and local communities) & 10(c) (duty on states to protect and encourage customary use and culture).

[v] International Covenant on Economic Social & Cultural Rights (*ICESCR*), Art. 11 (right to a adequate standard of living, including adequate food and continuous improvement of living conditions); ICESCR & International Covenant on Civil & Political Rights (*ICCPR*) Arts. 1 (right of people to not be deprived of own means of subsistence).

[vi] ICESCR Art. 11 (right to a adequate standard of living, including housing and continuous improvement of living conditions); ICERD, Art. 5(e)(iii) (right to not to be subject to racial discrimination in the right to housing).

[vii] ACHPR, 16 (health); ICESCR, Art. 12 (highest attainable standard of physical and mental health); UNDRIP, Art. 24 (right of indigenous peoples to health and traditional medicines).

[viii] ACHPR, Art. 17 (rights to take part in cultural life) & Art. 8 (freedom of religion); ICESCR, Art. 15 (right to take part in cultural life); ICCPR, Art. 27 (right of minorities to their culture); UNDRIP, Art 11 (right to redress and restitution for impacts on indigenous peoples' cultural traditions and customs without FPIC).

[ix] Non-discrimination generally: ACHPR, Arts. 2; Art. 2 (non-discrimination); Racial discrimination in the enjoyment of political, civil, economic and social rights: ICERD; UNDRIP, Art. 2 (Non-discrimination of indigenous peoples); UN Convention on the Rights of the Child (*CRC*), Art. 30 (non-discrimination of indigenous children); Gender equality: UN Convention on the Elimination of ad Discrimination against Women (*CEDAW*); ACHPR, Art. 18(3); ICESCR & ICCPR, Arts. 3.

[x] ACHPR, Art. 20 (right of peoples to self-determination); ICESCR & ICCPR, Arts. 1 (peoples' right to self determination); UNDRIP, Art. 4 (self-determination of indigenous peoples).

[xi] ACHPR, Art. 22 (right of peoples to development); UNDRIP, Art. 32 (right of indigenous peoples to determine their own development priorities).

[xii] ACHPR, Art. 21 (right of peoples to freely dispose of wealth and natural resources); ICESCR & ICCPR, Arts. 1 (peoples' right to freely dispose of natural resources and not be deprived of own means of subsistence).

[xiii] ACHPR, Art. 23.

[xiv] ACHPR, Art. 24 (right of peoples to satisfactory environment favourable to development); UN Declaration on the Right to Development (*UNDRD*), General Assembly resolution A/RES/41/128 of 1986, in particular Art. 1 (right of peoples to participation and enjoyment of development), Art. 2 & 8 (right to active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom).

[xv] Committee on Economic, Social and Cultural Rights, General Comment 4, *The right to adequate housing* (Sixth session, 1991), para. 18, U.N. Doc. E/1992/23, annex III at 114 (1991); Commission on Human Rights resolution 1993/77, UN Doc. E/C.4/RES/1993/77 (1993); Commission on Human Rights Resolution 2004/28, UN Doc. E/C.4/RES/2004/28 (2004); Committee on Economic, Social and Cultural Rights, General Comment 7, *Forced evictions, and the right to adequate housing* (Sixteenth session, 1997), para. 14, U.N. Doc. E/1998/22,

annex IV at 113 (1998); and the African Commission on Human Peoples Rights decision in the *Endorois Welfare Council v Kenya (276/2003) – the* "Endorois Case", para 200.

[xvi] *Decree No. 76-166 of 27 April 1976, establishing the terms and conditions of management of national lands*, implementing *Arts. 16 and 17 of Ordinance 74/1 of 6 July 1974*

[xvii] *Communication* No. 155/96: *The Social and Economic Rights Action Center and the Center for Economic and Social Rights / Nigeria* (finding a violation of Article 21 and stating, at para. 58, that "the obligation to **respect** entails that the State should refrain from interfering in the enjoyment of all fundamental rights; it should respect right-holders, their freedoms, autonomy, resources, and liberty of their action. With respect to socio economic rights, this means that the State is obliged to respect the free use of resources owned or at the disposal of the individual alone or in any form of association with others, including the household or the family, for the purpose of rights-related needs. And with regard to a collective group, the resources belonging to it should be respected, as it has to use the same resources to satisfy its needs").

[xviii] Communication Nos. 54/91-61/91-96/93-98/93-164/97-196/97-210/98: *Malawi African Association, Amnesty International, Ms Sarr Diop, Union interafricaine des droits de l'Homme and RADDHO, Collectif des veuves et ayants-Droit, Association mauritanienne des droits de l'Homme / Mauritania* (finding a violation of Article 23 but not of Article 19).

[xix] Communication No. 266/03: *Kevin Mgwanga Gunme et al / Cameroon* (finding violations of Article 19, among others), http://www.achpr.org/files/sessions/45th/comunications/266.03/achpr45_266_03_eng.pdf.

[xx] Communication 75/92: *Katangese Peoples' Congress v Zaire* (brought to the African Commission in terms of article 20(1) of the African Charter for an assertion of the Katangese peoples' right to self-determination – claim accepted, but no violation found).

[xxi] *See e.g.*, Communication 276/03: *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council/Kenya* (February 2010), http://www.achpr.org/files/sessions/46th/comunications/276.03/achpr46_276_03_eng.pdf.

[xxii] See *inter alia*, decision of the African Commission on Human Peoples Rights in the *Endorois Case* (2003) e.g. at para 209, in particular with regard to the ACHPR right to property (Art. 14), as well we the right to development (Art. 22); UNDRIP Art 19 (indigenous peoples' right to be consulted through their own representative institutions and to obtain FPIC before taking administrative measures affecting them), plus Arts. 8, 10, 19, 28 and 32, as well as numerous other jurisprudence under ICERD, ICESCR, and ICCPR.

[xxiii] Whereas for indigenous peoples, the right to FPIC is a function of their right to self-determination, the right to FPIC of non-indigenous peoples, ethnic groups or minorities who maintain collective ownership over customary lands can also be argued on the basis of other cross-cutting rights impacting on land outlined above including the right to property, culture, non-discrimination etc. See also Special Rapporteur on Food, Olivier de Schutter: '*Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge'* (2009), in particular principal (2), page 13 & '*The emerging right to land'* (2010) 12 *International Community Law Review* p. 319.

[xxiv] *RSPO Principles & Criteria*, in particular criteria 2.2, 2.3, 7.5 and 7.6 and associated Guidance Document. Criterion 2.3 states that 'Use of land for oil palm does not diminsh the legal rights or customary rights, of other users, without their free prior and informed consent'

[xxv] Data collection to keep the Herakles FPIC database updated is continuing as part of ongoing community-based monitoring.

[xxvi] Referred to by some community members as "henchman."

[xxvii] See page 4.