

13 Summary case study on the situation of Golden Veroleum Liberia's oil palm concession

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GVL/GAR's oil palm concession in Liberia and complaint by local communities to the RSPO

The Golden Veroleum Liberia (GVL) concession agreement was concluded on 16th August 2010 and provides a lease for 220,000 ha of land to GVL in Liberia's southern counties: Sinoe, Grand Kru, Maryland, River Cess and River Gee.¹ In addition, the concession agreement provides for a further 40,000 ha out-grower scheme and a new port with 100 ha of adjacent land. The term of the agreement is for a period of 65 years, with an optional extension of 33 years conditional on GVL having satisfied required certain key performance indicators.²

Plantation development first commenced in December 2010 with two nursery sites, and clearing is understood to have accelerated around September 2011.³ As of the time of writing, it is understood that around 2,500 ha of land has been developed (cleared and planted) in the Butaw District of Sinoe County. Further plantation development (of several hundred hectares) is understood to have recently commenced near the GVL nursery site in Kpayan District of Sinoe county. A further nursery site has been developed in Grand Kru, but plantation development has yet to commence. However GVL has recently posted a New Plantings Procedure Announcement for a further 28,171 ha.

Community grievances concerning the loss of land to the company, the destruction of crops and water sources, the lack of respect for communities' right to free, prior and informed consent in land acquisition and associated allegations of intimidation, arrests and harassment directed at

community leaders, led to a complaint submitted to the RSPO on 1st October 2012.⁴ This complaint also asserted a lack of compliance by GVL with the information and notification procedures required under the RSPO's New Plantings Procedure (NPP). Finding merit in the complaint and reasonable doubt on the issue of FPIC compliance, RSPO requested a freeze in plantation development, pending resolution of the complaint in December 2012.⁵

The Tropical Forest Trust (TFT) was subsequently contracted by GVL to complete an independent assessment of GVL's operations with reference to FPIC compliance. In its final report, TFT's report largely confirmed community concerns about GVL's operations, finding that the plantation had acquired land and damaged community grave sites, creeks and drinking water sources, swamps and food sources, including crop lands, without the community's free, prior and informed consent.

The report found a lack of compliance with key aspects of FPIC (a process which was largely undocumented by GVL) and included the following: inadequate participative consultation with communities; lack of participatory mapping; the taking of land and destruction of community resources without their prior consent; insufficient provision of information to communities; a lack of sufficient time given for the community to consider proposals on their own and in their own way; poor environmental and social impact assessment (ESIA) and High Conservation Value (HCV) Assessment, including a shortage of consultation in ESIA development and lack of accessibility of the ESIA to communities

and; inadequate crop compensation process, with insufficient compensation rates that were not individually negotiated.

TFT's assessment also highlighted the fear of recrimination against farmers if they spoke out about the plantation development, in the light of alleged arrests and detentions by the police. It noted that on two occasions a formal complaint was made to the police by GVL itself. It was also noted that community members who had become GVL employees were reluctant to speak out for fear of losing their jobs.

TFT recommendations included *inter alia*: addressing complaints about drinking water and grave sites; capacity support for GVL's social and other teams; reviewing past land acquisition and finding an agreement on the way forward based on the requirement to respect FPIC and to recognise communities as legitimate owners of customary lands and resources; revisiting existing social agreements; and, reviewing crop compensation and standard operating procedures (SOPs) regarding FPIC.

The TFT report was subsequently used as the basis for the RSPO complaints panel's determination for how the complaint would be dealt with, which included a 6-month deadline for agreeing a roadmap for resolving the complaint (as of the date of the panel's letter of 4th February 2013). Among other recommendations, the complaints panel asked (4th February) GVL to ensure that *all* future plantation development complied with the NPP. Similarly, in its subsequent 5th April letter, the RSPO complaints panel stated that only *past* clearance and development would be considered as 'ongoing development'. Thus legal counsel for the communities understood that GVL would have to comply with procedures under the NPP in all *future* development (treated as 'new plantings' and therefore requiring the 30 day notice period), not as ongoing or continued plantings. However GVL has cleared and planted land both after the 4th February 2013 and the 5th April 2013 letters, but it

has treated all such clearing and planting as being ongoing plantings, and have therefore not given the communities 30 days' notice before those plantings commenced.

It was also expected that GVL would have to redo the SEIAs and HCVAs for existing areas to achieve compliance with RSPO standards, since the originals were found to be so inadequate in key respects – e.g. not recognising important farm land areas etc. (as established by the TFT assessment). To date, it is unclear if this has been done or not, but communities clearly state that they have not been involved; have not been adequately consulted, and; nor have they been given copies of such documents, whereas the documents disclosed on the RSPO website (purportedly placed there in order to comply with the RSPO notification requirements) are instead the original, inadequate SEIAs and HCVAs.

Clearly the underlying purpose of the RSPO's SEIA and HCVA requirements is to *accurately* identify adverse impacts on communities and high conservation areas and mechanisms for avoiding or mitigating those (based on communities' informed participation as a *central* component of the FPIC process); with public notification and a 30-day notice period needed so that those accurate findings are on record, and thereby subject to scrutiny and challenge. A similar public policy basis also underlies the environmental impact assessment procedures and requirements of Liberia's national environmental protection laws. Clearly, GVL's actions to date undermine the very purpose of such procedures in the RSPO standards, Liberia's environment laws and related international law.

The complaint originally concerned GVL, but was later extended to include Golden Agri-Resources Ltd (GAR), as they were understood to be the majority shareholder (or equivalent) in GVL and are also RSPO members. The RSPO complaints panel were also asked to adjudicate on the issue of the alleged illegality of GVL's concession contract; since legality is a key component

of the RSPO Principles & Criteria (Criterion 2.1). Although agreed to by the government and ratified by the Liberian legislature, GVL's concession contract itself *and* the contracting process leading up to and including the conclusion of the contract have been subject to criticism on grounds that they violate national law (including the constitution), as well as Liberia's international human rights law commitments.⁶

This is a fast moving situation and this case study can only capture the background situation (as outlined above) and how things stand at this particular moment (as outlined below) following the expiry of the 6 month period in August 2013. Below we consider what progress has been made (if any) in GVL's practice with respect to FPIC.

GVL/GAR, communities and FPIC: the situation 6 months on

FPP's overall assessment of the situation in relation to GVL/GAR as of August 2013 is that GVL/GAR is not yet able to comply with the principles of FPIC and is not able to respect the communities' customary rights in land. There is still a lack of explicit acknowledgment by the company that communities *own* their land.

Communities remain inadequately informed (including in relation to basic details such as the terms of the concession agreement). Communities are also unclear of the substantive and procedural rights that they hold (necessary for reasonably informing their engagement in processes such as participatory mapping, and high conservation and impact assessment processes). They crucially lack access to independent and other technical legal advice for guiding their engagement with the company, especially in relation to negotiating social agreements. Coercion and intimidation is preventing the possibility of a genuinely 'free' community decision making process, with undue pressure being exerted on communities by local government, company employees and others.

The solution

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GVL/GAR needs to recognise that communities *own* their land and act based upon this fact. 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' ongoing ownership beyond all doubt (e.g. via a rent being paid to communities by the company). Without this - although it may offer some possible social benefits without clarity or timelines - the process takes away people's security grounded in their ownership and use of their land, and leaves GVL's concession subject to legal and financial insecurity.

Securing livelihoods and investments in Liberia

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The situation in question is not just a matter of abiding by the RSPO criteria and international human rights laws. It is also a matter of ensuring that Liberia remains a place where companies can invest and people can work, secure in the knowledge that their own work and that of the company is improving rather than undermining the country's stability. A major underlying structural cause of the last civil war was rampant food insecurity from high food prices. Clearly, if agreements between communities and companies are seen and experienced as fair and therefore as establishing the basis for secure livelihoods, then those conditions are being effectively avoided. If FPIC processes are undertaken in ways that secure real consent through open and transparent processes, then the security of livelihoods and investments is being assured.

While GVL/GAR is updating the RSPO on its progress in complying with the RSPO criteria, they have also exerted immense pressure on communities, partly resulting from the laying off of 512 workers in Butaw, which in turn has led to huge pressure from those workers on the RSPO

complainants to withdraw the complaint. Complainants describe how they agree to write such a withdrawal, but only under duress (including fears for their personal safety) and only on the understanding that the signed paper would be seen first by their legal counsel (Alfred Brownell of Green Advocates) for his advice on whether or not to submit it to the RSPO. Instead it was sent directly to the RSPO without the benefit of legal advice.

Building on this ‘success’ of the complainants apparently caving in, one of the deputy land commissioners was then involved in giving the community representatives a deadline to agree to a very one-sided MoU. Despite this huge pressure, community complainants wrote a letter rejecting the MoU and negating the purported withdrawal of the RSPO complaint. (The one complainant not doing so had taken a job as Public Relations Officer with GVL as part of the process that had led to the withdrawing of the complaint in the first place). The coerced withdrawal from the complaint in itself testifies to the fact that FPIC is not happening in a way that is free from pressure and intimidation.

The community complainants, while under huge personal pressure, reject the assumption that the land is now the company’s and will revert to the government, and *not* the communities, when the 65 (plus 33) year lease is over (subject of course to further extensions). They are hoping that commercial and other pressures will enable negotiations based on the company accepting an agreement that: enshrines communities’ ongoing ownership of their lands (rather than just promises of the possibility of some vaguely defined social benefits at some point in the future) and; an agreement that does not just give jobs to some while taking land from all, but instead meaningfully recognises customary ownership of the land (whether through an appropriate level of rent to communities or another process) and seeks to move forward through seeking consensus and partnership with communities, rather than through

processes that engender division and endanger the company’s own investment.

References

Concession agreement between the government of Liberia and Golden Veroleum (Liberia) Inc. 16th August 2010.

Final reports of the UN Security Council Panel of Experts on Liberia, in particular the final reports for 2010, 2011 and 2012. Available at <http://www.un.org/sc/committees/1521/liberiaPOE.shtml>

Forest Peoples Programme (nd) *Letter of complaint to Round Table on Sustainable Palm Oil (RSPO) from indigenous Butaw Kru tribes and inhabitants from several local communities within the proposed Golden Veroleum 220,000 ha oil palm concession in Liberia, October 2012.* All sources pertaining to the complaint to the RSPO available from <http://www.forestpeoples.org/topics/palm-oil-rspo/news/2012/10/letter-complaint-round-table-sustainable-palm-oil-rspo-indigenous>

Liberia Extractive Industries Transparency Initiative 2013 *Liberia Extractive Industries Transparency Initiative audit report 2013.* May 2013. Conducted by Moore Stephens LLP. Available at <http://www.scribd.com/doc/151344593/LEITI-Post-Award-Process-Audit-Process-Report>

Lomax T 2012 *Human rights-based analysis of the agricultural concession agreements between Sime Darby and Golden Veroleum and the Government of Liberia.* Forest Peoples Programme, Moreton-in-Marsh. Available at http://www.forestpeoples.org/sites/fpp/files/publication/2012/12/liberiacontractanalysisfinaldec2012_0.pdf

RSPO 2012 *Letter from RSPO to Golden Veroleum (Liberia) Inc.* 13th December 2012. Available at http://www.forestpeoples.org/sites/fpp/files/news/2012/10/RSPOLetter_GVL_PremFindings_December2012.pdf

Tropical Forest Trust 2013 *Independent assessment of free, prior & informed consent process – Golden Veroleum (Liberia) Inc.* February 2013. Final report. Available at http://www.forestpeoples.org/sites/fpp/files/news/2012/10/TFT_GVL_Liberia_FPIC_Report_Final_Eng_low%20res.pdf

Endnotes

1. As per 16th August 2010 concession agreement between the government of Liberia and Golden Veroleum (Liberia) Inc., contract recital and Articles 3 and 4.
2. For a human rights-based analysis of the agricultural concession agreements between Sime Darby and Golden Veroleum and the Government of Liberia, see Lomax 2012.
3. See Tropical Forest Trust 2013:47.
4. See [http://www.forestpeoples.org/sites/fpp/files/news/2012/10/Final%20complaint%20to%20%20RSPO%20on%20Golden%20Veroleum-%20Butaw-sinoe%20county%20\(2\).pdf](http://www.forestpeoples.org/sites/fpp/files/news/2012/10/Final%20complaint%20to%20%20RSPO%20on%20Golden%20Veroleum-%20Butaw-sinoe%20county%20(2).pdf). All documents pertaining to the complaint available at <http://www.forestpeoples.org/topics/palm-oil-rspo/news/2012/10/letter-complaint-round-table-sustainable-palm-oil-rspo-indigenous>
5. See http://www.forestpeoples.org/sites/fpp/files/news/2012/10/RSPOLetter_GVL_PremFindings_December2012.pdf
6. See Lomax 2012; Final reports of the UN Security Council Panel of Experts on Liberia, in particular the final reports for 2010, 2011 and 2012; LEITI 2013. The recent (May 2013) report by Moore Stephens LLP (LEITI's 'Post Award Process Audit' final report) found nine separate regulatory violations concerning Golden Veroleum's concession contract, and judged the contract as 'non-compliant' with the relevant national laws and regulations of Liberia.