

# Respecting Rights?

Assessing Oil Palm Companies' Compliance  
with FPIC Obligations

## CASE STUDY



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## Acknowledgements

**Respecting Rights?** Assessing Oil Palm Companies' Compliance with FPIC Obligations  
A case study of EPO and KLK LIBINC Estate in Grand Bassa, Liberia

A report by Forest Peoples Programme (UK) and Sustainable Development Institute (Liberia)

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# Background



This review is the result of several years of fieldwork by the Sustainable Development Institute (SDI), 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’.<sup>1</sup> This Technical Guide is the third in a series that has been developed to support implementation of the 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 when 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.<sup>2</sup>

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 hundreds 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*

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/>

*not resolve a community's reasons for opposition or achieve consent will provide little assurance against potentially costly and disruptive conflict<sup>3</sup>.*

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 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 draft Land Rights 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 it has 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 in particular Equatorial Palm Oil (EPO) and the leading investor Kuala Lumpur Kepong Bhd (KLK) in respect of their joint venture (Liberian Palm Developments Ltd) and Liberian subsidiary company LIBINC Oil Palm Inc., it is hoped that as well as being a constructive contribution to resolving issues in contention in that context, the experiences presented by this review will give practical and scalable lessons that the private sector, government, civil society and community actors can use to ensure compliance with legal and voluntary FPIC obligations in particular, and the respect of 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.

3 FAO (2014) Technical Guide, Respecting Free, Prior and Informed Consent, p10

# Introduction



As a result of decades of misrule, the plunder of Liberia's vast natural resource wealth, and a devastating conflict that destroyed most of its infrastructure Liberia's economy was brought to near collapse and the social fabric of the society severely eroded. The first post-conflict government led by President Ellen Johnson-Sirleaf adopted a three-pronged recovery strategy: consolidating peace and security; revitalizing the economy; and strengthening governance and the rule of law.<sup>4</sup> This strategy emerged from nationwide consultations with citizens that many regarded as marking a new approach to development planning and implementation.

Regarded as the 'traditional engines of growth', the government turned to the natural resource sector to accelerate economic recovery. Between 2006 and 2008 more than 150 natural resource concession agreements including on logging, mining and agriculture were reviewed; about half of these agreements were cancelled. However, within three years the government had allocated new land-based concessions covering more than one third of the entire country. These land-based concessions have become a controversial *bittersweet* ingredient of Liberia's development formulae.

Although logging and mining concessions cover more land than oil palm concessions, the latter have come under intense criticism for their very visible and impactful environmental and human rights footprints, as well as direct impacts on the wellbeing of people in affected areas. The sustained criticism is also largely due to the commonly held belief that logging is temporary and less harmful to the forest, whereas oil palm plantation is seen as more permanent and destructive to forests. Furthermore, the negative and direct impacts of plantation establishment and expansion on populations in rural areas, especially those that are not hired as unskilled paid labourers, have been severe. Yet, the three major operators – Sime Darby Plantation Liberia, Golden Veroleum (Liberia) Inc. and Equatorial Palm Oil (EPO) – are all members of the Roundtable on Sustainable Palm Oil (RSPO), and all claim they are operating with community consent.

Liberia's experience with large-scale monoculture plantations dates back to the early 1920s when the US Corporation Firestone arrived in the country. The company was awarded the largest land-based concession ever in Liberia covering 1 million acres or 404,685 hectares. The then President Charles D. B. King, shouting down objections in the Liberian parliament declared:

<sup>4</sup> Government of Liberia, Poverty Reduction Strategy (2008 – 2011)

*“ For the development of our country, we must give liberal encouragement to foreign capital... Brush aside the old usual scare, now worn out by age, of ‘selling the country’. In considering proposals from strong and reliable foreign capitalists, for the development of the economic resources of our country, we should not permit our views to be obscured or warped by narrow and self- consideration of immediate and direct financial gains...<sup>5</sup>*

The plantation was developed using forced-labour, working conditions were documented as inhumane, and living conditions were deplorable for native workers. Almost a century later, improvements in the situation have been limited. The United Nations Mission in Liberia conducted a comprehensive assessment of Liberia’s rubber plantations and documented widespread human and labour rights abuses. The report noted that:

*“ Individuals and communities living and working on the plantations not only suffer violations of their human rights in the course of producing rubber, but the profits generated from the sale of rubber is not redistributed to improve conditions on the plantations. This has affected every aspect of the lives of Liberians on the plantations.<sup>6</sup>*

With the rapid growth of oil palm plantations across Liberia, and the growth in plantation enclaves, especially in South Eastern Liberia, the situation of communities (and plantation workers) needs to be monitored regularly.

This briefing examines the joint operations of EPO and KLK in Liberia. The assessment specifically evaluates the companies’ compliance with Free, Prior and Informed Consent (FPIC) requirements, with respect to the LIBINC concession situated in District No. 4, Grand Bassa County. The assessment examines compliance specifically within the context of the Voluntary Guidelines on the Responsible Governance of Tenure of Lands, Fisheries and Forests; the FAO’s Technical Guide to FPIC; Liberia’s legal framework governing forests and land; and compliance with the FPIC requirements of the RSPO.

5 Buell, R. L, The Native Problem in Africa, Volume II, 1928, p.821

6 UNMIL, Human Rights in Liberia’s Rubber Plantations: Tapping into the future, 2006, p.7. Available from: <http://www.refworld.org/docid/473dade10.html>

# Free, Prior and Informed Consent in the Liberian Context



## FPIC with respect to forest lands

In 2009, the Liberian legislature enacted the Community Rights Law with Respect to Forest Lands (CRL). This was the first attempt to elaborate the concept of community rights, and it elevated discussions on community land rights to the national political agenda. The CRL defines customary land as “land, including forest land, owned by individuals, groups, families or communities through longstanding rules recognized by the community” and noted that “to be recognized as customary land, it is not necessary for the land to have been registered under statutory entitlements”.<sup>7</sup> Another key principle enshrined in the CRL is that “any decision, agreement, or activity affecting the status or use of community forest resources shall not proceed without the prior, free and informed consent of the said community”.<sup>8</sup> These three provisions have become the foundational principles on which the notion of community rights is now rooted in Liberian policy discourses on forests and land. Together they provide a legal basis for the communities’ right to grant or withhold their FPIC for projects that affect their customary land.

The legal framework for forestry in Liberia also provides for FPIC with respect to logging. In 2007, the Forestry Development Authority (FDA) regulations 102 and 104 introduced the principle of FPIC into the legal framework for the forestry sector. Regulation 102 requires the forestry authorities to secure the free prior informed consent of affected communities in writing before it can designate an area to commercial

logging.<sup>9</sup> Additionally, Regulation 104 on Tender, Award, and Administration of Forest Management Contracts, Timber Sale Contracts, and Major Forest Use Permits explicitly requires the authority to seek written consent from would-be affected communities prior to allocating logging concession on their customary land. Regulation 104 states:

*“ The Authority shall not proceed with offering a proposed FMC or TSC unless the Authority has obtained free prior informed consent, in writing, from Community Forestry Development Committees representing all Affected Communities identified under this Section, to negotiate in good faith a social agreement with the winning bidder and subject themselves to independent arbitration should those negotiations not reach a satisfactory conclusion.”<sup>10</sup>*

*If the Authority fails to obtain agreement under Paragraph (1) of this Subsection from Community Forestry Development Committees representing all Affected Communities, the Authority may reconsider the terms of the proposed FMC or TSC.<sup>11</sup>*

*Community Forestry Development Committees may seek the assistance of experts, legal counsel, civil society organizations, or any other Person to help them effectively represent the interests of Affected Communities in consultations under this Section.<sup>12</sup>*

The FDA, however, has so far failed to seek and to secure meaningful FPIC of would-be affected

7 Government of Liberia, An Act to Establish the Community Rights Law with Respect to Forest Lands of 2009, Section 1.3.

8 Section 2.2c of the Community Rights Law of 2009

9 FDA Regulation 102 on Forest Land Use Planning, Section 61(c)(3), 2007

10 FDA Regulation 104-07, Section 22(j)(1)

11 FDA Regulation 104-07, Section 22(j)(2)

12 FDA Regulation 104-07, Section 22(k)

communities prior to designating areas for logging and awarding logging concessions. This has set a poor precedence that now characterizes implementation of laws and regulations requiring FPIC throughout Liberia.

## FPIC and land rights in Liberia

Conflicts between oil palm companies and communities have attracted the attention and the direct intervention of the president, who has accused communities of harassing investors and claimed that NGOs are ‘seeking to undermine national sovereignty’<sup>13</sup> although she has on other occasions acknowledged that ‘mistakes’ were made when allocating concessions – albeit those ‘mistakes’ have not been rectified. NGO actors on the other hand insist that they are simply defending communities’ land and human rights, and supporting communities to seek justice where their rights have been violated or abused. At the heart of the NGO advocacy in the agriculture sector and with respect to oil palm plantation establishment or expansion is the principle of FPIC.

In 2013, FPIC was further entrenched in the political discussions around land and natural resources with the adoption of Liberia’s Land Rights Policy. The policy recommended that, “rights to Customary Land, including ownership rights, must be secured by ensuring that these rights are equally protected as private land rights”. The policy notes that, “Rights to Customary Land include rights of the community as a collective land owner and rights of groups, families, and individuals within the community”.<sup>14</sup>

The Commission delivered a draft Land Rights Act (LRA) to President Johnson-Sirleaf in 2014. The draft act, subsequently submitted to the Legislature, incorporates many of the progressive elements of the Land Rights Policy.

## The Voluntary Guidelines and land rights

The reforms of Liberia’s legal and policy framework for forests and land are in many respects consistent with the broad aspirations of the Voluntary Guidelines on the Responsible Governance of Tenure of Lands, Fisheries and Forests in the Context of National Food Security adopted in 2012 (VGGT). Under the VGGT

the state has responsibilities including: recognizing and respecting all legitimate tenure right holders and their rights; safeguarding legitimate tenure rights against threats and infringements; promoting and facilitating the enjoyment of legitimate tenure rights; providing access to justice to deal with infringements of legitimate tenure rights; and preventing tenure disputes, violent conflicts and corruption. These responsibilities of the state, elaborated below, include that states should:

- 1 Recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights.
- 2 Safeguard legitimate tenure rights against threats and infringements. They should protect tenure right holders against the arbitrary loss of their tenure rights, including as a result of forced evictions that are inconsistent with their Liberia’s obligations under national and international law.
- 3 Promote and facilitate the enjoyment of legitimate tenure rights. They should take active measures to promote and facilitate the full realization of tenure rights or the making of transactions with the rights, such as ensuring that services are accessible to all.
- 4 Provide access to justice to deal with infringements of legitimate tenure rights. They should provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes. States should provide prompt, just compensation where tenure rights are taken for public purposes.
- 5 Prevent tenure disputes, violent conflicts and corruption. They should take active measures to prevent tenure disputes from arising and from escalating into violent conflicts. They should endeavour to prevent corruption in all forms, at all levels, and in all settings.

To ensure that legitimate tenure rights are protected, the VGGT explicitly provides for FPIC during the planning and execution of development projects, programs, legislations and administrative decision-making processes. Additionally, state parties have responsibilities under various international human

13 President Ellen Johnson-Sirleaf state of the nation address, January 16, 2013

14 Land Rights Policy adopted by the Government of Liberia in 2013



rights instruments including the African Charter on Human and Peoples' Rights, United Nations Declaration on the Rights of Indigenous Peoples, International Labour Organisation Convention 169, and the Universal Declaration on Human Rights. The VGGT simply complements those international human rights instruments and associated jurisprudence that provide for FPIC.

Specifically, the VGGT requires:

*“ States and other parties should hold good faith consultation with indigenous peoples before initiating any project or before adopting and implementing legislative or administrative measures affecting the resources for which the communities hold rights. Such projects should be based on an effective and meaningful consultation with indigenous peoples, through their own representative institutions in order to obtain their free, prior and informed consent under the United Nations Declaration of Rights of Indigenous Peoples and with due regard for particular positions and understandings of individual States. Consultation and decision-making processes*

*should be organized without intimidation and be conducted in a climate of trust.<sup>15</sup>*

As indicated earlier, Liberia has made progress in fulfilling the requirements of the VGGT through policy and legal reforms related to forest and land tenure. The changes in policy, laws and regulations outlined above have opened new possibilities for recognizing, securing and protecting customary land rights. Implementation of these policies and laws has, however, been poor and customary tenure and land rights remain far from secured and protected. The state has failed to set appropriate standards or progressive precedence for the private sector to follow.

### **VGGT, FPIC and the responsibility of non-state actors**

To ensure clarity, the VGGT devotes special attention to the role and responsibilities of non-state actors in

<sup>15</sup> Voluntary Guidelines on the Responsible Governance of Tenure of Lands, Fisheries and Forests in the Context of National Food Security adopted in 2012 (VGGT), Part 3 Section 9.9

respecting human rights, especially tenure rights. The VGGT specifically states:

*“ Non-state actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with **due diligence to avoid infringing on the human rights and legitimate tenure rights of others**. They should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights.*<sup>16</sup>

The responsibilities of the state and corporations to respect legitimate tenure rights to land are therefore defined and disaggregated in the VGGT. Although the VGGT is qualified as *voluntary*, complementary international human rights laws and national laws are legally binding; therefore violation of the VGGT may be a violation of international and domestic law to the extent that such violation or non-compliance violates specific elements of these international human rights conventions and national laws.

### FPIC in the RSPO Principles and Criteria

The RSPO Principles and Criteria include specific provisions on FPIC.<sup>17</sup> The Principles and Criteria states, “the right to use the land is demonstrated, and is not legitimately contested by local people who can

demonstrate that they have legal, customary or user rights”.<sup>18</sup> The Principles and Criteria further states:

*“ No new plantings are established on local peoples’ land where it can be demonstrated that there are legal, customary or user rights, without their free, prior and informed consent. This is dealt with through a documented system that enables these and other stakeholders to express their views through their own representative institutions.*<sup>19</sup>

As RSPO members, both EPO and KLK are required to secure FPIC from communities prior to clearing and establishing new oil palm estates in Liberia. While membership of the RSPO is entirely voluntary, any company that holds membership of the organization is obliged to uphold and respect its principles and criteria. In addition to its obligations as a member of the RSPO, the company also has legal obligations under Liberian laws – to secure FPIC from communities for the use of their customary land.

16 Ibid, para 3.2 (emphasis added).

17 Principles and Criteria for the Production of Sustainable Palm Oil, endorsed by the RSPO Executive Board and accepted at the Extraordinary General Assembly by RSPO Members on April 25th 2013 (Including Major Indicators endorsed by RSPO Board of Governors on 15 November 2013)

18 Ibid, Principles and Criteria 2.2

19 Ibid, Principles and Criteria 7.5



## Failing to Secure FPIC



In 2007, the Government of Liberia and LIBINC Oil Palm (LIBINC) signed a concession agreement for 34,500 acres (approximately 13,961 hectares) of land. The concession was reportedly a renewal of an earlier agreement between the parties dating back to 1965. The National Investment Commission and the Ministries of Finance, Agriculture and Justice negotiated the agreement. According to the agreement, LIBINC's Board of Directors had opted to exercise their right to request an extension of the 1965 agreement.<sup>20</sup>

While the laws in Liberia governing concessions appear to be robust, various forms of irregularities, and in some instances illegalities, have marred the award of concessions in practice. For example, in 2012 the Liberia Extractive Industries Transparency Initiative (LEITI) commissioned a post-award audit of concessions issued since 2010. The audit found that the overwhelming majority of the concessions allocated during the period under review were allocated in violation of various laws.<sup>21</sup> The LIBINC agreement was not included in the post-award audit as it came into force before the legislation establishing the LEITI came into effect in 2010.

Founded in 2005, EPO is a crude palm oil company publicly listed in the United Kingdom. EPO acquired LIBINC Oil Palm Inc. in January 2008. According to EPO's Placing and Admission to AIM documents, EPO owns 100 per cent of LIBINC Oil Palm Inc. EPO

lists LIBINC Oil Palm Inc. and another concession holder – the Liberia Forest Products Inc. – as subsidiaries.<sup>22</sup>

EPO applied for membership to the RSPO on August 13, 2007 and its application was approved on September 13, 2007. Given that EPO acquired LIBINC Oil Palm Inc. after it had joined the RSPO and that LIBINC Oil Palm Inc. is a wholly owned subsidiary of EPO, the operations of LIBINC Oil Palm Inc. must be compliant with the RSPO's Principles and Criteria. EPO claims its policies and procedures are designed in line with RSPO Principles and that it has key personnel on the ground to ensure that it meets all the Principles of the RSPO.

### Community objection to new clearing

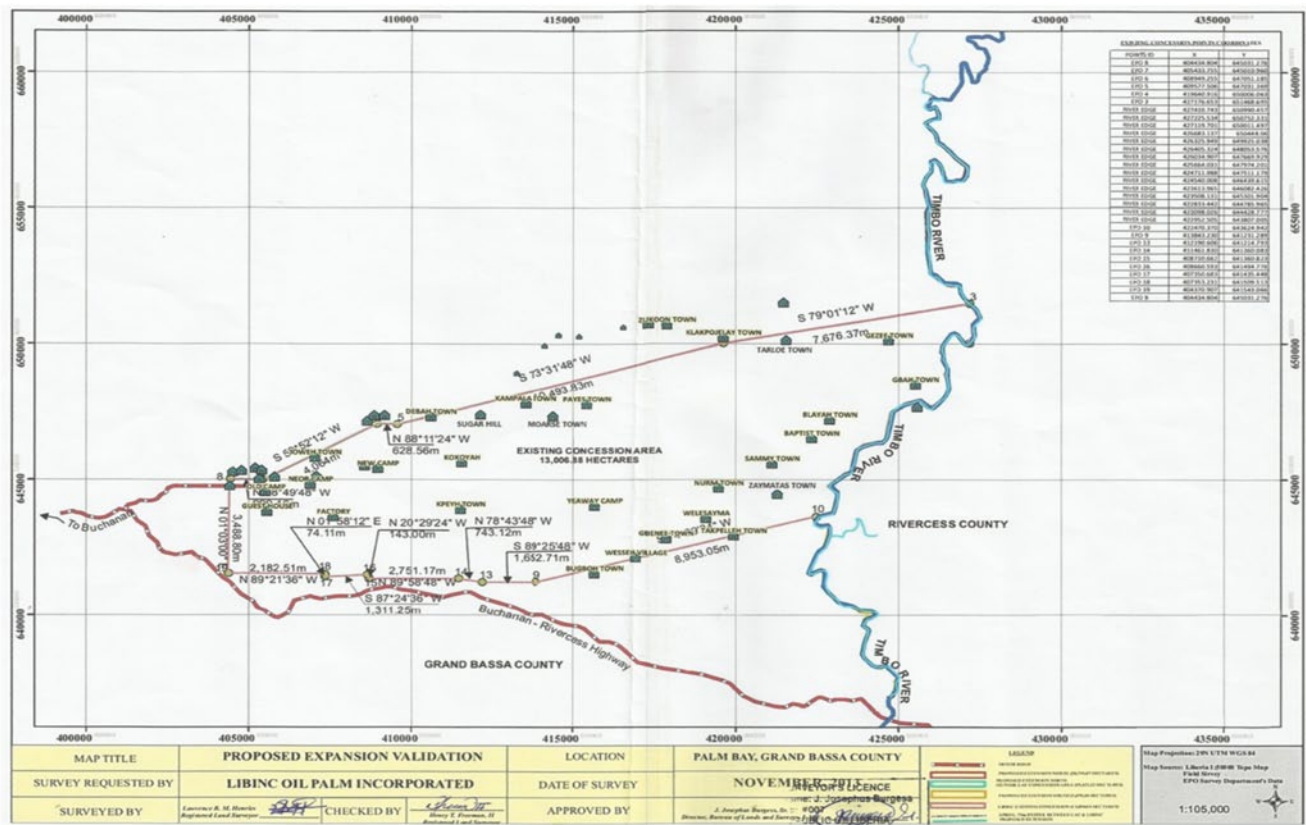
EPO says it has planted a total of 13,837 acres (5,600 hectares) of the 34,500 acres (13,961 hectares) it acquired under the concession agreement with the Republic of Liberia in 2007.<sup>23</sup> Towards the end of 2012 and continuing into the first quarter of 2013, EPO continued rehabilitating the old palm plantation. By June 2013, the company began moving into farmlands on the fringes of the old estate, this immediately triggered community concerns and objection to the new clearings. The affected communities consequently came together to demand that the company stop the expansion.

20 An Act to Ratify the Concession Agreement Between The Republic of Liberia and LIBINC OIL PALM INC., dated December 21, 2007.

21 Moore Stephens, Liberia Extractive Industries Transparency Initiative Post Award Process Audit, Final Report, May 2013. Available at: <http://www.leiti.org.lr/uploads/2013/05/21569928/151344593-leiti-post-award-process-audit-process-report.pdf>

22 Equatorial Palm Oil Plc, Placing and Admission to AIM, 2010, p 19. Available online at: <http://www.epoil.co.uk/uploads/epo-admission-document.pdf>

23 Equatorial Palm Oil Plc, Placing and Admission to AIM, 2010, p.19. Available online at: <http://www.epoil.co.uk/uploads/epo-admission-document.pdf>



According to villagers from the affected communities, by 2013 they had already met with EPO officials, local government officials, and legislators from the county, about EPO’s activities more than twenty times. They also claimed that they had consistently expressed their objection to the company’s expansion on their customary land. Various documents confirm the communities’ claims, and that EPO attended several meetings.

An internal memo to the directors of EPO from Mr. Weseh Weah Bestman, EPO Government Liaison Manager, as far back as 2011 substantiates claims that indeed the company was aware of the communities’ opposition. In that memo, Mr. Bestman reported that the citizens had warned against LIBINC carrying out a resurvey of the entire concession, but rather agreed to a survey of the perimeter of the planted area. In his words, “the citizens strongly warned against further actions by LIBINCO Management to carry out re-survey of the concession reserve land for expansion”.<sup>24</sup>

24 Internal memo from Weseh Weah Bestman to Mr. Allen Yancy dated December 30, 2011

Figure 1: EPO map of its concession area after its controversial land survey in 2013<sup>25</sup>

Following a full year of meetings and consultations regarding the company’s plan to resurvey and expand its plantation in 2012, the affected communities lodged a complaint with the Grand Bassa Legislative Caucus asking them to intervene in the situation.

On May 28, 2013 members of the Grand Bassa Legislative Caucus, local government officials, EPO executives including Mr. Allen Yancy, Director of Corporate Affairs and Mr. Weseh Weah Bestman met with the affected communities at the EPO estate. A follow up meeting between the Grand Bassa Legislative Caucus and EPO executives also took place on June 3, 2013 at the Capital Building (National House of Parliament) in Monrovia. A separate meeting was held with representatives of the citizens after the meeting with EPO executives on June 3, 2013.

At the end of these meetings, the caucus recommended that EPO first survey the planted area or area being used by the company and after that survey the

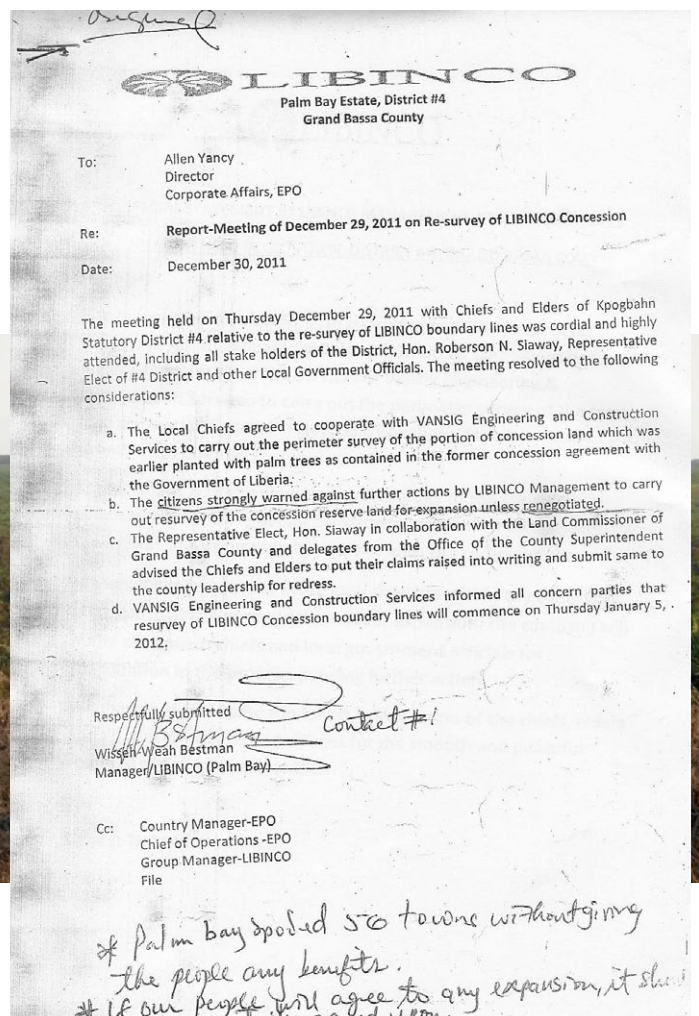
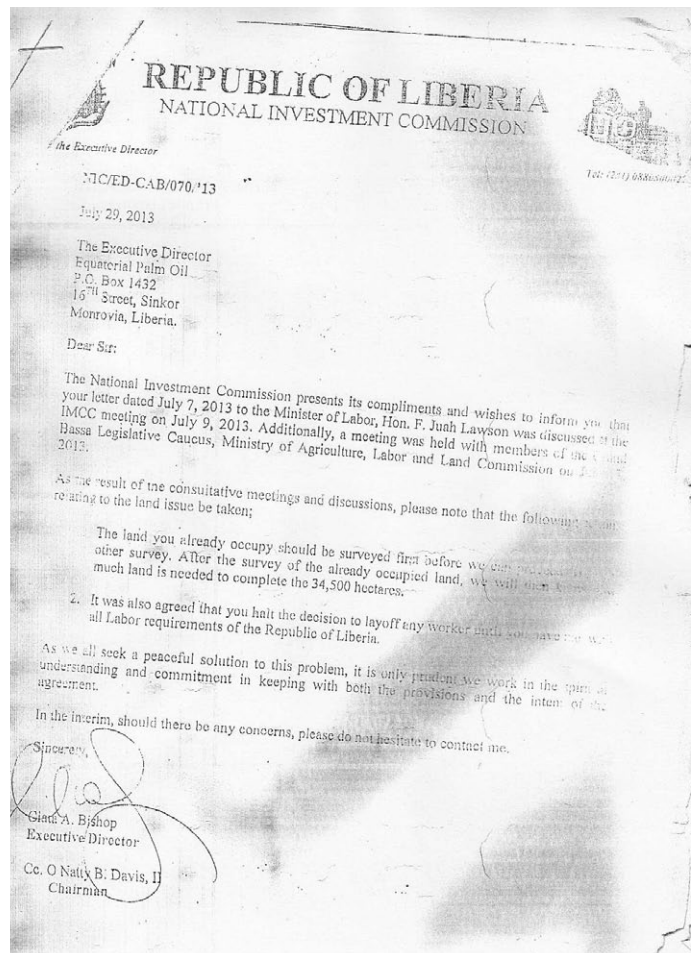
25 EPO Presentation to the author at the company’s headquarters on March 2, 2015

stakeholders would convene to discuss next steps.<sup>26</sup> EPO, however, noted that it was incurring significant losses as a result of the delays it was encountering.

A month later, the National Investment Commission of the Republic of Liberia, following another meeting with the Grand Bassa Legislative Caucus, the Superintendent of Grand Bassa County, Representatives of the Ministry of Agriculture, and the Land Commission of Liberia, also communicated to EPO on July 29, 2013 the need to first survey the planted area and that thereafter the government would determine how the remaining quantity of land would be identified.<sup>27</sup>

On September 3, 2013 EPO began surveying the communities customary land area, contrary to the recommendations of the county legislators and the National Investment Commission who had asked for a survey of the old oil palm plantation. The affected communities came together and demanded that EPO stop the land survey as they feared that this was the beginning of the company's expansion onto their customary land. The surveyors stopped work but returned on September 17, 2013 to continue the survey.

**Internal memo to the directors of EPO from Mr. Wesseh Weah Bestman, and the letter from National Investment Commission of the Republic of Liberia.**  
**Below: EPO vehicle with psu officers on survey.**



26 Report from the Investigation of a Complaint: The Resurvey of LIBINCO

27 Letter dated July 29, 2013 from the Executive Director of the NIC to the Executive Director of EPO with ref. NIC/ED- CAB/070/13

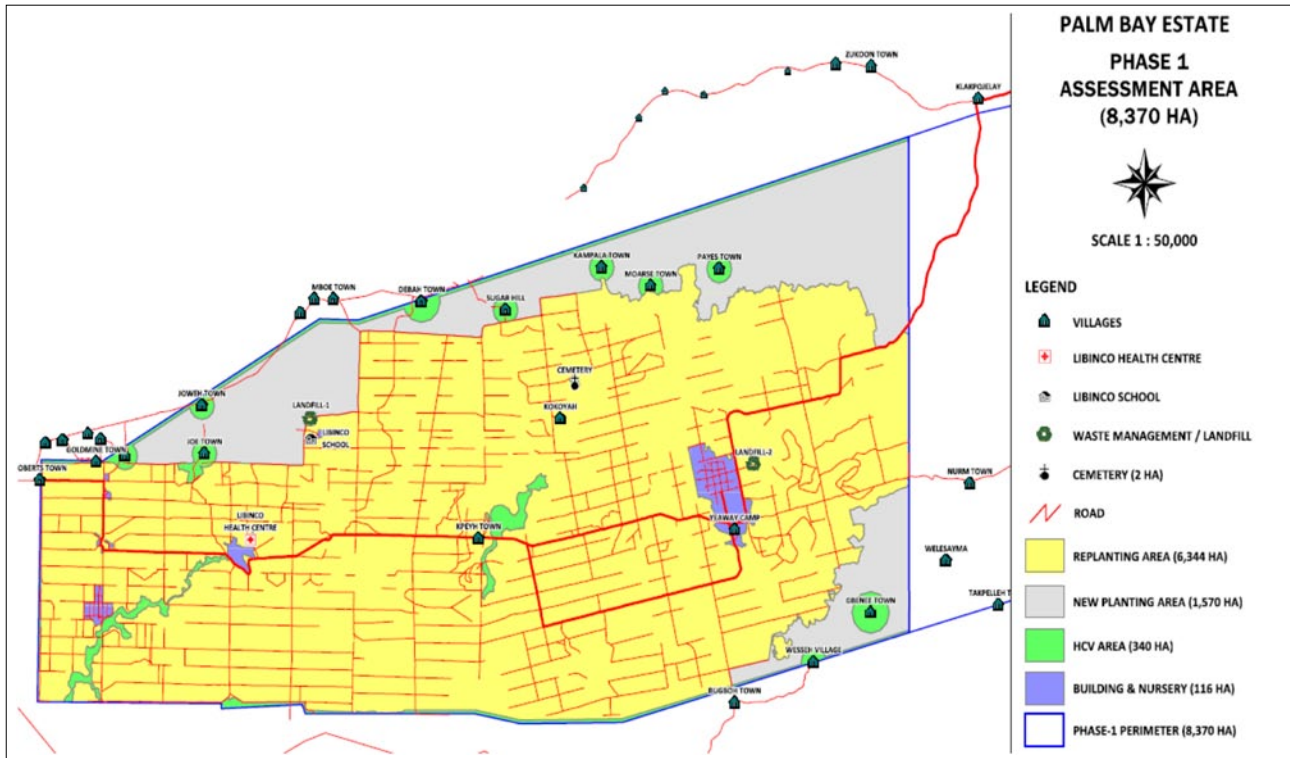


Figure 2: EPO’s map of its planted area<sup>28</sup>

On September 18, 2013 as the affected villagers marched in protest to the provincial capital, Buchanan, members of the Liberia Police Support Unit (PSU) accosted and detained several of them. Those arrested were later released without any charges being brought against them. Thereafter, the government deployed a unit of the PSU to provide protection for the EPO surveyors conducting the survey. EPO provided a vehicle for the PSU patrols during this period.

### Communities’ complaint to the RSPO

On October 2, 2013 the communities objecting to EPO expansion filed a complaint with the RSPO, through the Sustainable Development Institute (SDI). The complaint detailed specific instances of violation of the RSPO Principles and Criteria including Principle 7 (Responsible Development of New Plantings), which requires the company to secure the free, prior and informed consent of local communities prior to new plantings. The complaint also alleged that EPO had violated Principle 2, which requires the company to comply with applicable laws and regulations, i.e. that “the right to use the land can be demonstrated, and is not legitimately contested by local communities with demonstrable rights”. The complainants argued that the affected communities contested the company’s expansion onto their customary land, but the company did not respect their objection.

EPO responded that the resurvey was a requirement under its concession agreement with the government, and that “the local communities requested the management of LIBINCO to conduct the resurvey by physically ‘cutting a line’ along the entire boundary of the concession for better transparency”.<sup>29</sup>

A critical feature of the communities’ complaint was that in addition to allegations of new planting without community consent, its core argument was that the company was seeking to expand onto land for which it did not have their consent. This complaint marked a departure from the existing trend in Liberia whereby communities complained after the fact, i.e. after damage has already been done to their land including the clearing of community crops and forests and the planting of oil palms.

In March 2014, the communities met with the then Pro Temp of the Liberian Senate, in Jombang, and later with President Ellen-Johnson Sirleaf at her office in Monrovia. In both meetings, the communities

28 EPO Presentation to the author at the company’s headquarters on March 2, 2015

29 EPO Letter dated 4 October, 2013 under the signature of Mr. Sashi Nambiar, Head of Operations (Liberia), Equatorial Palm Oil

registered their opposition to the company's plan to expand onto their land. According to the delegation that attended the meeting with the President, she had assured them that their right to say 'no' to further expansion of the plantation on their customary land would be respected.

Prior to the meeting with the President, the local Clan Chief Railey W. Tompoe was suspended indefinitely on January 14, 2014 by the Grand Bassa Superintendent Etweda Cooper for "going against National Government Policy regarding the Equatorial Palm Oil Concession Agreement". The letter came just days after the Clan Chief appeared on local radio rejecting EPO's claims that he had consented to its plan to expand the plantation without the community's consent. He was still under suspension as at August 2015, even though the President had promised the delegation that met with her a year ago that the Clan Chief would be reinstated.

### RSPO response and ongoing dialogue

In June 2014, a delegation from the RSPO visited Liberia to assess complaints against EPO and Golden Veroleum (Liberia) Inc. The delegation visited Jodbahn Clan to verify the complaints against EPO. In July 2014, the delegation issued a report outlining its preliminary findings. In March 2015, the Complaints Panel wrote to EPO stating:

*“There are reasonable grounds to believe that the RSPO Principles and Criteria has been breached; notably: Principle 2.2 – The right to use the land is demonstrated, and is not legitimately contested by local people who can demonstrate that they have legal, customary or user rights.*

The Complaints Panel therefore requested EPO to “confirm that no work is currently being carried out on the disputed land”. Following this preliminary decision, EPO approached the complainants through the Sustainable Development Institute to enter into dialogue to resolve the issues raised in their complaint to the RSPO. The complainants agreed and initiated direct dialogue with EPO in April 2015.

In its final decision, communicated on 14 June 2015, the RSPO noted that the parties were engaged in dialogue and urged EPO to continue the dialogue with the aim of resolving outstanding issues such as encroachment and boundaries, and not to carry out any planting in disputed areas. The Complaints Panel

also requested EPO to submit an action plan with a timeline on how it would address the outstanding issues and to submit quarterly reports for a period of twelve months starting from July 2015.

EPO submitted an action plan with timelines to the RSPO – beginning July 2015 and concluding in June 2016. Neither the complainant nor their support NGO, i.e. SDI, were involved in the development of the action plan. The action plan does not provide any detail beyond a summary of activities to be undertaken and when those actions would be taken. But most importantly, it has no indication of when it expects a final decision from the complainant communities or whether in fact it would accept 'no' for an answer from the complainants.

A critical piece that is missing from this jigsaw is the absence of a Standard Operating Procedure (SOP) for seeking or securing FPIC from communities. The company has a one-page diagram and one-page explanatory note it presents as a SOP, which is clearly inadequate. Inadvertently or otherwise, the RSPO did not request EPO to develop a detailed SOP to enable it to determine whether, in fact, the company has the minimum systems and procedures in place to seek – let alone secure – FPIC from communities.

## KLK and EPO Partnership

According to its corporate profile, Kuala Lumpur Kepong Berhad (“KLK”) is incorporated in Malaysia and is listed on the Main Market of Bursa Malaysia Securities Berhad. At the end of September 2014, the company claimed it had a market capitalization of over \$5 billion (at today’s prices). The company’s core business is rubber and oil palm plantation development but it has diversified into processing and manufacturing.<sup>30</sup> KLK is the third largest listed plantation company in Malaysia.<sup>31</sup>

KLK is a major supplier for some of the world’s largest corporations dealing in diverse products and services ranging from food, personal care, cosmetics, agriculture and industrial products to beverages and financial services. These include major US and global brands such as Cargill, California Oils, Fuji Oils, Unilever and Proctor & Gamble. The UK-based HSBC is one of its principal bankers.<sup>32</sup>

In October 2013, EPO and KLK announced that they were in discussion regarding funding for EPO’s Joint Venture with Biopalm Energy Limited; Liberian Palm Development Ltd. (LPDL).<sup>33</sup> On November 7, 2013 KLK and EPO announced that they had reached a deal on financing for LPDL. Alongside the announcement, KLK and Biopalm Energy Limited announced that KLK had acquired Biopalm Energy’s 50.0% shares in LPDL and Biopalm Energy’s 20.1% shares in EPO.<sup>34</sup> On November 26, 2013 KLK announced it was increasing its holdings in EPO from 20.1% to 54.8% and its interest in the LPDL Joint Venture to 77.4%.<sup>35</sup> Given KLK’s growing interest in EPO, the RSPO complaint against EPO was formally amended on December 6, 2014 to include KLK. However, by December 23, 2014 KLK had acquired just over 63 per cent of EPO’s shares<sup>36</sup> making it the majority shareholder in the company. Also, at 77.4%, KLK holds a majority of the shares in the LPDL Joint Venture.

KLK published its expanded sustainability policy on December 1, 2014.<sup>37</sup> The policy applies to KLK and all of its subsidiaries but in situations where it holds minority interest, KLK only commits to “encourage the application” of the policy among its partners<sup>38</sup>; a major weakness that was widely criticised.<sup>39</sup> With its majority shares in EPO and LPDL, the KLK policy, however, applies to both entities.

Like some of its major competitors, including Golden Agri Resources, Wilmar and Sime Darby, KLK’s policy on paper may appear progressive in some respect. For example, according to KLK’s policy, it “supports the Universal Declaration of Human

30 KLK Company profile at: <http://www.klk.com.my/corporate-information/corporate-profile/>

31 See: <http://www.reuters.com/article/2013/10/23/us-klk-africa-idUSBRE99M01C20131023>

32 RAN, Conflict Palm Oil in Practice: Exposing KLK’s role in rainforest destruction, land grabbing and child labor, 2014. Available from: [http://www.ran.org/conflict\\_palm\\_oil\\_in\\_practice](http://www.ran.org/conflict_palm_oil_in_practice)

33 See announcement at: <http://www.stockmarketwire.com/article/4691100/KLK-may-make-cash-offer-for-Equatorial-Palm-Oil.html>

34 See announcement at: <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/11766918.html>

35 KLK announcement at: <http://www.epoil.co.uk/uploads/subscriptionofeposhares.pdf>

36 See: <http://www.stockmarketwire.com/article/4729977/KLKI-holds-about-63pct-of-Equatorial-Palm-Oil.html>

37 KLK Sustainability Policy available at: <http://www.klk.com.my/wp-content/uploads/2015/03/FINAL-KLK-Sustainability-Policy-with-footnote-14-Jan-2015.pdf>

38 *ibid*

39 Chain Reaction Research Sustainability Risk Analysis, Initiating Coverage Kuala Lumpur Kepong Palm Oil Company, 26 February 2014. Available at: [https://chainreactionresearch.files.wordpress.com/2015/02/klk-crr-report-02\\_26\\_20152.pdf](https://chainreactionresearch.files.wordpress.com/2015/02/klk-crr-report-02_26_20152.pdf)

Rights by the United Nations”<sup>40</sup> as well as “respects, upholds and recognises the rights of indigenous and local communities, to give or withhold their free, prior and informed consent (“FPIC”) to operations on land to which they hold legal, communal or customary rights”.<sup>41</sup> Also, a critical pillar of the policy is the company’s commitment to “resolve verifiable complaints and conflicts through an open, transparent and consultative process” or through the “responsible handling of complaints”.<sup>42</sup>

Prior to KLK publishing its sustainability policy, the US-based NGO Rainforest Action Network (RAN) published a damning report documenting conflicts and rights abuses linked to the company’s operations in Asia and Africa.<sup>43</sup> Additionally, a Greenpeace report in February 2014 linked the company’s operation to deforestation in Malaysia and Indonesia.<sup>44</sup> In 2012, the Norwegian Government Pension Fund Global divested from KLK and twenty-two other oil palm companies citing the companies’ links to deforestation.<sup>45</sup>

KLK’s own chequered track record suggests that its modus operandi may not be different from EPO. The company’s acquisition of the majority shares in EPO and the LPDL need to be monitored diligently and early signs of failure to respect the wishes of the communities rejecting EPO’s expansion challenged. Beyond fears about Jobbahn, however, there is also the possibility that the company may join the other oil palm companies to intensify pressure on communities and the Liberian forests.

40 KLK Sustainability Policy, 2014

41 ibid

42 ibid

43 RAN, Conflict Palm Oil in Practice: Exposing KLK’s role in rainforest destruction, land grabbing and child labor, 2014. Available from: [http://www.ran.org/conflict\\_palm\\_oil\\_in\\_practice](http://www.ran.org/conflict_palm_oil_in_practice)

44 Greenpeace International, P & G’s Dirty Secret, February 2014. Available at: [http://www.greenpeace.org/international/Global/international/briefings/forests/2014/ProcterGambleDS\\_MediaBriefing\\_Final.pdf](http://www.greenpeace.org/international/Global/international/briefings/forests/2014/ProcterGambleDS_MediaBriefing_Final.pdf)

45 Lang, C, Norway’s Sovereign Wealth Fund divests from 23 oil palm companies, REDD Monitor, 13 March 2013. Available at: <http://www.redd-monitor.org/2013/03/13/norways-sovereign-wealth-fund-divests-from-23-palm-oil-companies/>

# Conclusions



Changes in Liberian laws and policies on forests and land are fast evolving. Customary land rights in particular have taken centre stage in the debates on forests, land, and oil palm concession development. Albeit half-heartedly, the Government of Liberia, in particular the Land Commission, has publicly committed to recognizing, formalizing and protecting customary land rights. The populations in local communities and their support NGOs are taking advantage of these changes, and sometimes pushing boundaries to secure space for community land rights on the political agenda in tandem with the changing legal and policy landscape.

The major oil palm companies operating in Liberia, including EPO and KLK, are all members of the RSPO, and are bound by their membership requirements to secure FPIC from communities prior to establishing oil palm plantation on customary land. EPO's obligations under the RSPO are additional to its legal obligations under Liberian laws. The Government of Liberia also has legal obligations to respect and protect community land rights including FPIC, and to take positive steps to ensure respect of those rights by third parties including the private sector, under national and international law.

Although EPO says it is fully aware of its obligations to respect customary land rights, and to secure FPIC from communities prior to establishing oil palm plantation on their land, it is failing on several fronts to fulfil these obligations. The situation is further complicated by the government's reluctance to enforce provisions of various Liberian laws or implement policies that require project proponents like EPO to secure FPIC from would-be affected communities. This situation leaves communities and their support NGOs with no other option but to turn to the RSPO.

Given the current situation facing EPO and KLK, the RSPO's decision to insist on dialogue with the complainants fails to respect the communities' right to reject the project. There is abundant evidence that the complainants have rejected the project, for example by taking their case to the President. The companies' insistence on endless meetings to secure more land, rather than following best practice for securing FPIC, suggest that it is no longer possible to secure FPIC in Jogbahn. However, if the experience to date is illustrative of future direction, it is highly likely that EPO and KLK will intensify pressure on the communities to allow them to clear and plant more land in the area. Should the communities, however, maintain their objection there is a likelihood that the communities will continue to live in perpetual uncertainty – unless the government and EPO can reach a new deal for the remaining land it needs to complete its concession area.

## Some Lessons Learnt



The Government of Liberia, other companies operating in the agriculture sector, and NGOs can learn some lessons from the EPO and KKK experience in Jombang, as it shares some characteristics with land acquisition processes in other parts of Liberia.

First, government ministries and agencies such as the Ministries of Justice, Agriculture, Internal Affairs and Land Commission that should be in the forefront of efforts to ensure Liberia meets its obligations under the various international agreements mentioned in this study, need to attract appropriately trained personnel to provide oversight of land acquisition by private sector operators. To do this, however, the government has to back up the policy and legal changes that are taking place with a clear commitment to respect communities' land rights. The government also need to create the enabling environment, developing appropriate regulations, procedures and guidelines to ensure full and effective implementation of its policies and laws.

Second, multinationals operating in the private sector in Liberia, especially the agriculture sector, need to recognize that FPIC is a complex and lengthy process of respectful and properly facilitated engagement with communities to secure their consent for operations on their land; there are no 'short-cuts'. They also need to realise that for an FPIC process to be considered meaningful and successful, they should be prepared to accept the outcomes of internal decision-making within communities that they engage with, and refrain from manipulating or using coercion to secure 'consent'. Furthermore, relying on the government to use force or bully communities into submission is short-sighted and can be costly in the medium- and long-term.

Third, civil society actors across Liberia need to deepen their understanding of community rights, especially the principle of FPIC and its application or practice, and strengthen their engagement with communities to provide them the support they need to engage with the government and private sector in a meaningful and mutually beneficial manner. The case of the Jombang Clan demonstrates that without NGO support, communities' access to justice or other forms of recourse may not be possible given the lengthy processes, myriad actors, and formal communications involved.



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