

# SG Sustainable Oils Cameroon PLC (SGSOC) in South West Cameroon

# 15

Christopher Fon Achobang, Samuel Nguiffo and Brendan Schwartz

On 17<sup>th</sup> September 2009, SG Sustainable Oils Cameroon PLC (SGSOC) signed a contract with the Cameroonian government to develop a large industrial oil palm 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.<sup>1</sup>

SGSOC claims to have obtained rights to 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 will develop 60,000 hectares of land for oil palm nurseries, plantations and processing plants.<sup>2</sup> The remaining 12,000 ha will “be protected as zones for environmentally or socially sensitive resources, plantation infrastructure and social infrastructure, and lands for village livelihood activities.”<sup>3</sup> Cameroon’s Institute of Agricultural Research for Development (IRAD) has supplied SGSOC with seeds to begin their palm nurseries. The project will produce as much as 400,000 metric tons (MT) of crude palm oil and 40,000 MT of palm kernel oil per year. SGSOC plans to export a portion of its palm oil production, while leaving some for domestic consumption in Cameroon ‘depending on market conditions.’ By December 2012, SGSOC had planted four palm nurseries and cleared over 60 hectares of forest to this end. The company has reportedly applied for a land lease covering the 73,000 hectares it hopes to exploit.

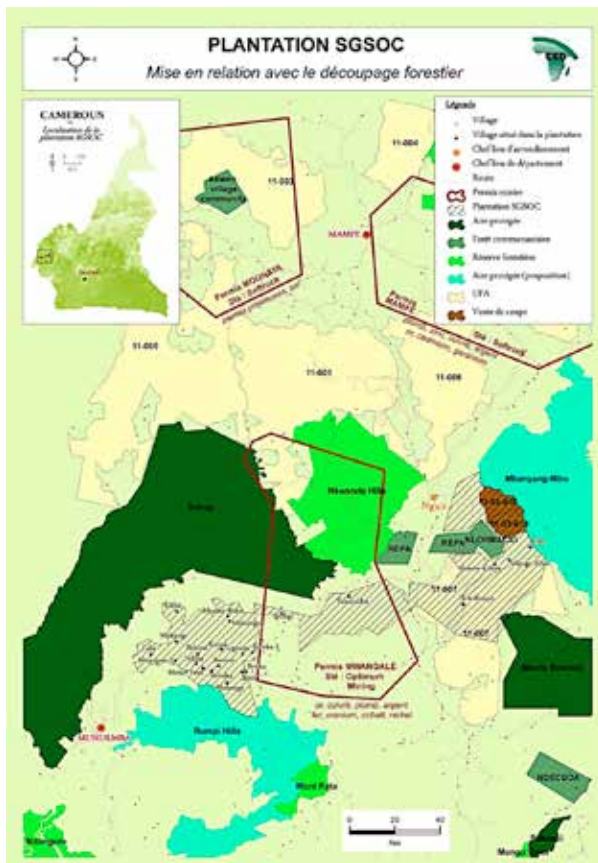
SGSOC’s project has been the subject of great controversy over the last two years.

Local communities, conservation groups, and NGOs have expressed opposition to the project due to its numerous negative social and environmental impacts. However, Herakles claims the project will contribute to socio-economic development and environmental protection. Yet in September 2012, the firm withdrew their application for membership of the RSPO in reaction to a formal complaint lodged against them and widespread criticism of their project.<sup>4</sup>

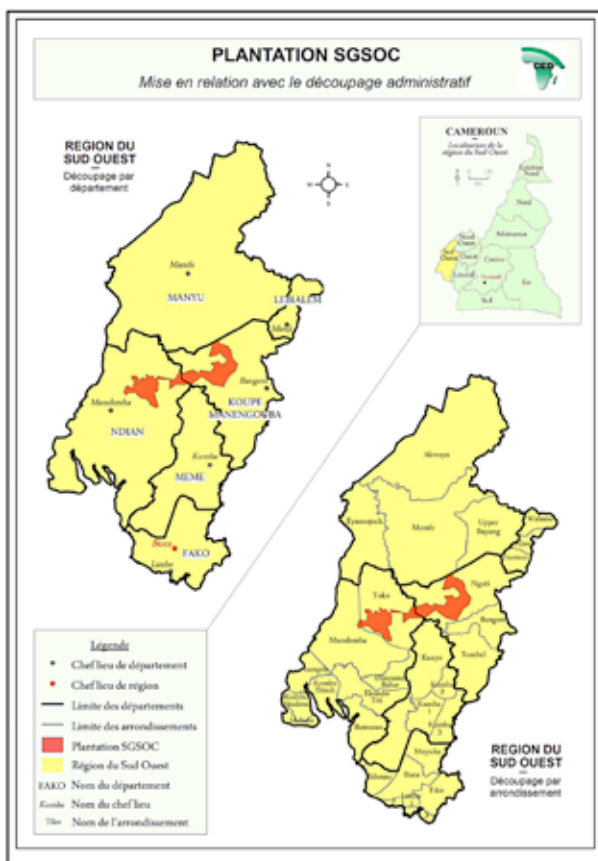
## Oil palm development in Cameroon

Cameroon has a long history of abusive practices by foreign agro-industrial companies occupying large tracts of land, abusing workers, and using chemicals harmful to people and the environment.<sup>5</sup> The Cameroonian government has made it a high-level political and economic decision to develop agro-industrial plantations to promote job creation, economic growth and development. Today, Cameroon produces approximately 200,000 MT of palm oil per year and exports 35,000 MT onto the international market. Production is dominated by five companies that collectively occupy 60% of the land devoted to oil palm plantations.<sup>6</sup>

Cameroon hopes to further develop the palm oil sector on an industrial scale principally by attracting foreign investors. Many international palm oil companies are searching for fertile land throughout Africa due to a moratorium on new oil palm plantations in Indonesia and limited land availability in Malaysia: the two countries produce 80% of the world’s palm oil exports. In addition to the SGSOC project,



■ Map and location of SGSOC Concession (Note: not all villages appear on map)



Cameroon recently ceded a large amount of land near Kribi to Goodhope Asia Holdings Ltd for a palm oil plantation capable of producing 20,000 – 30,000 MT per year.<sup>7</sup> According to working documents from the Ministry of Economy and Planning and press reports, approximately 2 million hectares of land are currently the subject of negotiations for new agro-industrial plantations in Cameroon.<sup>8</sup>

### The area in question

The proposed plantation area is divided into two blocks spanning the Ndian and Kupe-Muanenguba Divisions of South West Cameroon. The Nguti concession is over 42,000 hectares while the Mundemba-Toko concession area is 31,000 hectares in area.<sup>9</sup>

### Nguti

Nguti is a sub-division in Kupe Muanenguba Division of the South West Region of Cameroon. It is found along the Kumba – Mamfe road. Nguti is host to two protected areas of High Conservation Value: the Banyang Mbo Sanctuary and the Bakossi Mountains. Some rare species are found in the region even though the area has been subject to various waves of selective logging by timber companies since the 1970s. There are hosts of non-timber forest products which provide revenue for the communities in addition to subsistence agriculture.

Nguti is a cosmopolitan sub-division hosting three ethnic groups. The Mbo constitute over 15,000 people, according to Chief Tabi Napoleon of Baro. They live around the Banyang Mbo sanctuary and are part of the native population of Nguti town. Nguti Sub-Division also hosts the Bassosi clan which numbers over 18,000 people spread out through the eleven villages of Ntale, Bombe Konye, Mungo Ndor, New Konye, Babensi I, Babensi II, Ekita, Ediengo, Ekenge, Ofrikpabi and Mboka according to Ebong Robinson, an elder

from the area. The Bassosi villages fall under the umbrella of the Mboum Nsuanse, the Bassosi Cultural and Development Association that represents 11 Bassosi villages.

Upper Balung is another clan in Nguti sub-division numbering over 6,000 people, according to Barrister Eni Makia, Chief of Betock village. They occupy the seven villages of Talangaye, Manyemen, Ebanga, Ayong, Betock, Sikam and Baro. These villages are mostly located along the Kumba – Mamfe road and comprised of cocoa farmers.<sup>10</sup>

Even though three Upper Balung chiefs (Chief Dr. Atem Ebako, Chief Eben Nkongho Jacob, Chief Lordson Asek Akum) support the project, the majority of their populations are opposed to it. Chief Lordson Asek works with SGSOC as Community Development Officer and his role is to sensitise the Upper Balung people on the merits of accepting the SGSOC plantation. Chief Eni Makia of Betock is completely opposed to project while Chief Eben Nkongho claims that he has 3,147 hectares to offer the company, but worries about how much land will remain for subsistence agriculture.

#### *General perceptions of the proposed plantation in Nguti—*

The Bassosi are primarily farmers of cash crops such as cocoa. The area produces over 10,000 tons of cocoa supply each year, according to Chief Ajang Samuel of Ntale. The Bassosi also cultivate oil palm trees and gather non-timber forest products (NTFPs) such as *njangsa*, African bush mango, pepper, bitter cola, and others. The Mboum Nsuanse are united in their opposition to any industrial palm oil project on the Bassosi lands. They claim that the available land is just enough for them and their descendants to use for the next 50 years. In a communication with the authors of this report, Herakles stated “it has respected their [Bassosi] decision not to be partners of the project.”<sup>11</sup>

Nevertheless, the researchers observed that in several villages, those who are supposed to represent the community are ignoring the wishes of their people. Even though one of the elites and village chief, Chief Dr. Atem Ebako of Talangaye has thrown his weight behind the SGSOC industrial oil palm project, many of his subjects are opposed to it.<sup>12</sup> Ebako has stated that he decides for his village and everybody must abide by his decisions. One of the Chief’s representatives, Eyang Richard, says chief Ebako has instructed villagers of Talangaye to speak to no one about the SGSOC project without his permission. Ebako has also ordered his subjects to avoid contact with environmental organizations such as Greenpeace and WWF.

A similar situation is occurring in Manyemen village where Chief Oben Nkongho supports the project while the vast majority of his subjects oppose it. He claims that after scouting in Europe and America for capital, investors told him that Cameroon was a corrupt country and thus would not invest there. According to Chief Oben, SGSOC has come to fill that investment gap. He underscored that if the communities were paid carbon credits, then he would be satisfied and turn away from SGSOC.<sup>13</sup> Ayong village also suffers a similar fate under its chief Lordson Asek, who is a Community Development Officer (CDO) for SGSOC and supports the project while a majority of the community is opposed to it.<sup>14</sup>

It is interesting to note that in the villages whose local chiefs support the project, the company has tactfully avoided sharing useful information with the supporters of the project. The discourse presented by Herakles Farms posits the plantation is a government project and thus the local communities must comply. However, groups such as UBACUDA, the Upper Balung Cultural and Development Association which represents 7 villages, is mobilising its constituents to oppose the project. Led by Barrister Chief Eni Makia, the Association is looking for means to stage their opposition to the project publicly.

## Mundemba – Toko

---

Mundemba – Toko are sub-divisions in the Ndian Division of the South West Region of Cameroon. Mundemba sub-division is host to the Korup National Park of renowned high conservation value. The Park covers 129,000 hectares and is one of the world's richest bio-diversity hotspots. Toko sub-division is host to the Rumpi Hills. The Rumpi Hills area serves the main catchment and watershed for most of the South West Region in Cameroon and the Cross River State of Nigeria. For example, the Mounjo River, which flows south-eastwards to the Littoral Region and into the Atlantic Ocean, takes its source at the Rumpi as does the Cross River.

These two subdivisions are inhabited by over 21,000 people. Mundemba commands a population of 14,385 according to Okwo Wa Namulongo Peter, Deputy Mayor of Mundemba. The proposed concession area, which already hosts two Herakles Palm nurseries at Fabe and Lipenja 1, has a population of 6,500.<sup>15</sup> There are 23 villages in the concession area as follow: Mofoko Bima, Ngenye Bima, Esoki Bima, Mokange Bima, Fabe Bima, Lipenja II Batanga, Meangwe II Ngolo, Ndiba Ngolo, Meta Ngolo, Beboka Bima, Kuma Bima, Lipenja II Batanga, Iwai Bima, Mobenge Ngolo, Bwene Ngolo, Mokango Bima, Massaka Bima, Many Batanga, Mayeke Batanga, Bareka Batanga, Esoki Batanga, Loe Batanga and Ikondo Kondo I.<sup>16</sup>

### *General perceptions of the project in Mundemba-Toko—*

The Mundemba-Toko area is inhabited by three ethnic groups: the Bima, Ngolo and Batanga. Many residents in these communities oppose the Herakles plantation since the Cameroonian Government earmarked 129,000 hectares of their land for the Korup National Park and additional land was set aside for the Rumpi Hills Park. The Cameroonian government assured them that the remaining portion would be used for agriculture for current and future generations.<sup>17</sup>

According to one of the supporters of SGSOC's agro-industrial project Nangea Felix, the Chief of Fabe, the Prime Minister had reassured local communities that if they needed farmland in the future, the government would cede a portion of the Korup National Park back to communities for agricultural use.<sup>18</sup> There are serious allegations that some elites from the Mundemba – Toko proposed concession area are fuelling a conflict which might soon escalate. An example is the Chief of Fabe who states that people like Nasako Besingi, the director of a local NGO called SEFE which opposes the plantation, should never come to his village as they come and provoke people by informing them of their rights to their forests.

Meetings under the umbrella of the Ngolo Cultural and Development Association, Batanga Cultural and Development Association and Bima Cultural and Development Association, have raised allegations that representatives of SGSOC have been using financial incentives for locals in order to win public support for the project. A report by the South West Delegation of the Ministry of Forestry has also stated, "The team has collected during its fact finding mission in 20 villages a lot of information showing the way SGSOC is operating. The negotiation is done with lot of intimidation and bribery, targeting the chiefs and some few influential decision-making members of the communities."<sup>19</sup>

### **Legal status of the company's rights to the land**

---

A thorough analysis of SGSOC's rights to the land reveals a very confusing legal situation. According to the Establishment Convention of September 2009 signed with the Government of Cameroon, SGSOC's rights are clearly explained and include the following:

- "...The non-exclusive right, franchise, and license for and during the Term to: (i) engage in Production in the Production Area (and subject



to the terms of this Convention, in other areas in Cameroon), (ii) develop, manage, maintain, rehabilitate, and expand (as may be permitted herein) the Production Area, (iii) to utilize Oil Palm Products in Cameroon and to supply to local markets and to export and to export oil palm products from Cameroon, (iv) to produce other agricultural products after providing Notice to Government and (v) to conduct such other activities as contemplated by this Convention, in accordance with applicable Law.<sup>20</sup>

- The right to benefit from government support to expand the production area.<sup>21</sup>
- The right ‘exclusively, within the Production Area, to plant, cut and utilize timber, to the extent the Investor and any Investor Party deems necessary for the construction and maintenance of Infrastructure, without the need to obtain any further authorization or pay any further fees, and for other Investor Activities within the Production Area, subject to Article 10.’<sup>22</sup>
- The right ‘exclusively, within the Production Area, to take and use, subject to any limitations pursuant to Article 10, free of charge (but not to sell to any other Person without the written approval of Government), such water, earth, stones, rocks, sand, clay and gravel having no significant commercial mineral value other than as aggregate filler or other construction material, as Investor may considered necessary or useful for Investor Activities, without the need to obtain any further authorization or pay any further fees. Any activity conducted pursuant to this Section 3.3(a)(v) shall not be considered mining for purposes of any Law.’<sup>23</sup>
- Carbon Credits. Government undertakes to promptly provide to Investor all certificates, consents, authorizations, and other supports reasonably requested by Investor in connection with the application for or monetization of the Credits.<sup>24</sup>

However, this agreement can only be considered as a framework agreement governing the relationship between the Cameroonian Government and the company, which aims at setting the general rules that will apply when the company receives a land concession. The

Establishment Convention does not grant, in itself, any right to a specific portion of land to SGSOC, despite the reference to an annex supposedly describing the project area, which has remained unpublished so far. It is our understanding that the description of a proposed concession does not absolve the company from the requirement to apply for a land concession, following the procedure set forth by the existing regulations. SGSOC’s application for a land concession should therefore be subject to the existing land regulations in Cameroon, providing for a clear process for the allocation of land concessions.

According to Decree N° 76-166 of 27<sup>th</sup> April 1976 establishing the terms and conditions for management of national land, land concessions are granted following submission of an application which includes, among other files, a map of the land solicited and a project development programme. Rights to the land are granted in two stages: 1) temporary grants for up to five years and 2) with a possibility of extension to a long lease in case of satisfactory implementation of the activities planned for the temporary grant phase. Authorities empowered with the right to allocate land concessions are also specified in the Decree. For concessions of less than 50 hectares, the allocation is granted by a ministerial order of the Minister in charge of Lands, and for concession of over 50 hectares, a Presidential Decree is needed. The purpose of this process is to allow third parties (especially communities, but also the citizens of Cameroon more broadly) to be informed of the allocation, and to eventually challenge the extent or the nature of rights to be granted to the company in question.

The land lease should provide a description of the land granted, including clear limits, both as a way to protect the investor and in order to prevent future conflicts between the grantee and other potential users of the land and resources. In the case of SGSOC’s operations, this procedure was not respected. SGSOC does not have a land lease, but has been proceeding with forest

and land clearing, in order to create a palm nursery in its claimed concession.

The Ministry of Forests and Wildlife has provided us with evidence of SGSOC's illegal behaviour, explained below. The former Minister of Forests and Wildlife signed a letter (disclosed in the appendices of the company's High Conservation Value Assessment) to 'Certify that the entire concessions granted to SG SUSTAINABLE OILS CAMEROON LIMITED...have been logged and farmed repeatedly over the years and the area is classified as secondary forest. The concession areas applied for are not virgin or primary forests.'<sup>25</sup>

This statement by the Minister contradicts the forest zoning plan of 1995, under which part of the proposed oil palm plantation overlaps with the permanent forest estate, where only conservation and sustainable logging (with an approved management plan) are authorised. Furthermore, when the company began clearing the forest, the regional delegate of the Ministry of Forestry and Wildlife seized SGSOC's bulldozers and issued a notice of illegal logging. A field mission of the central control unit of the Ministry of Forestry and Wildlife and a report of the European Union's independent

forest observer confirmed the illegal nature of the tree felling in the area and a fine was levied against the company.<sup>26</sup>

If indeed SGSOC had obtained valid land rights for the area, the forest management unit would have been declassified and the regional delegation of forests would have no authority to conduct controls in the area. However, this is clearly not the case since the forest management unit in question was included on a list of logging concessions for allocation (to be managed for the next 30 years) in the July 2012 tendering process.

After having claimed, for some time, that they did not need a land lease, citing the Establishment Convention, the company is now actively trying to seek a land concession, in compliance with Cameroon's regulations.

It should be noted that the Establishment Convention is clear on this issue, as section 3.5 states:

Government shall issue, or cause to be issued, all necessary permits, authorizations and land registration certificates required under applicable law for investor to lease and exercise its rights in all of the production area and to provide public notice of such rights of investor.<sup>27</sup>

This article seems to clearly indicate that the Establishment Convention is insufficient to

■ *Economically valuable logs piled in Talangaye by Herakles Farms in Talangaye plantation / Fon Christopher Achobang*





claim rights to the land and requires the investor to fully comply with Cameroon's regulations on State and National Lands.

■ *Planted area with new bags for nursery at Talangaye plantation near Nguti / Fon Christopher Achobang*

On 9<sup>th</sup> November 2012, the Minister of Forestry and Wildlife provided SGSOC with an authorisation to fell trees in the permanent forest estate. The Minister's decision is an agreement, in principle, for SGSOC to commence operations on the site they have identified. According to the authorisation, given the urgent need to plant palm trees from the nursery, SGSOC is requested to fell and store the trees themselves. Again, this authorisation does not comply with the existing laws and regulations governing forestry in Cameroon.

■ *Forest shredder and picker at Talangaye nursery / Fon Christopher Achobang*



The right to fell trees cannot be granted to a company for a project which has not been approved by the competent Ministries (the Ministry of Agriculture and Rural Development and the Ministry of Cadastre and Lands in this case). The Ministry of Forestry is sending contradictory messages: on the one hand, it has levied a fine on the company for illegal felling of the trees in the permanent forest estate. Subsequently, however, it has granted the company with the right to continue the very activities the ministry considers illegal.

In the context of the future implementation of the Voluntary Partnership Agreement (VPA) between the EU and Cameroon as part of the *Forest Law Enforcement, Governance and Trade* (FLEGT) process, these conflicting actions of the Ministry of Forestry are likely to raise serious questions about its ability to properly assess the legality of operations in the future. In conclusion, from a legal point of view, the company does not have a valid land title, which is clearly a condition for starting operations, and thus its operations can be considered illegal.



### **What has the company or the government done to respect Free and Prior Informed Consent (FPIC)?**

FPIC is not recognised in Cameroonian legislation. However, the land regulations in Cameroon contain provisions recognising and protecting some community rights, even in the absence of formal property (land title). Article 8.1 of the 1994 Forestry Law gives rights to use the land and resources for the benefit of neighbouring communities. According to this law, these rights can be expropriated for public utility, subject to the payment of compensation.<sup>28</sup> One could assume that in the absence of a public utility declaration, the common principles of compensation apply, and any restriction of the right to use land and resources would lead to compensation, either monetary or in kind.

In the case of SGSOC's operations, the Establishment Convention itself constitutes a violation of the usage rights recognised by the Forestry Law for the communities living in or around the proposed palm plantation. A portion of the land concession constitutes National Land, equivalent to the non-permanent forest estate (ie free of any property rights). However, another part has been earmarked to be incorporated into the category of Private State Lands (permanent forest estate). In those two categories of forests, communities enjoy usage rights recognised by the 1994 Forestry Law. Surprisingly, section 4.2 of the Establishment Convention states that 'the Government represents and warrants that all State land in the production area is not encumbered by any [...] use rights [...]'. There thus appears to exist implicit recognition of customary rights to land and resources, especially on National Lands, mainly through the possibility of transferring those rights to third parties, with approval from the local government and authorities. The loss of those customary rights should logically be subjected to the right to information and compensation for the communities, which should require their consent, even in the absence of clear

provisions in the laws and regulation to this effect.

The right to be consulted (and therefore, implicitly, informed) of all activities potentially affecting their area applies in at least three circumstances. First is the gazettment process. The Forestry Law obliges the Government to consult communities living in an area to be converted from National Land to privately owned land (either to the benefit of the State, of municipalities or individuals).<sup>29</sup> Second is the preparation and the validation process of the ESIA report. The project sponsor is required to consult potentially affected communities in order to document expected impacts of a project and to design appropriate mitigation measures.<sup>30</sup> Third is the granting of land concessions on National Lands, where the process prescribes the involvement of the consultative commission which includes communities' representatives.<sup>31</sup>

Concerning FPIC, the laws and regulations are very weak, since they refer to the terms 'consultation' and 'participation', and never mention 'consent' of the communities. Furthermore, the laws and regulations provide no indication in terms of the process or the result to be achieved by the project sponsors during the consultation process. This loophole in the law is detrimental to communities and prevents the government from being able to objectively monitor compliance with legal requirements in this regard.

In the specific case of SGSOC, the company enjoys support from some local chiefs (far from being the majority of the chiefs in the area) and certain community members, as well as certain local authorities. There has however been a severe shortage of open public discussion on the project, and the government has never stated its official position regarding the proposed investment, including on the validity of the Establishment Convention. If the project is to proceed under the current legal setting, the government's ability to protect the



rights of impacted communities, including their FPIC, will be seriously undermined.<sup>32</sup> According to the Establishment Convention, the government of Cameroon is obliged to provide land for oil palm development to SGSOC. Article 23.3 of the Establishment Convention states:

Non-Derogation. Government affirms that at no time shall the rights (and the full value and enjoyment thereof) granted by it under this Convention be derogated from, unreasonably delayed, frustrated, impeded or otherwise undermined by the action or inaction of Government, any official of Cameroon, or any other person whose actions or inactions are subject to the control of Government including any action that rescinds, or purports to rescind, the rights or benefits granted Investor or project participant hereunder.

This leaves very little space for implementation of FPIC as it is conceivable that the result of the FPIC process could contradict Cameroon's contractual obligations.

Furthermore, there is a long running misunderstanding between communities and the government on the issue of property of the land and resources, and decisions concerning its management. The legal design granting property of certain categories of land to the government (public land and private property of the State), and putting the management of national land under the trust of the government, has been an ongoing source of frustration for the communities.

In the proposed SGSOC land concession, communities believe consent should be required before their land is granted to the company, and they feel the government's current position (a silence that allows the company's operations to continue) does not represent the views of the majority. It is worth noting that the land regulations in Cameroon do not provide for a mechanism to arbitrate disagreements between communities and the government on a proposed land management decision.

The most significant obstacle to the recognition and proper implementation of FPIC is the government's policies, which prioritise the following main objectives:

1. Creating an enabling environment for investors, especially in the natural resources sector, in order to attract more foreign direct investment. This objective is often perceived as lifting any restrictions on the operations of the investors. This is reflected in a number of contracts signed between foreign companies and the government, which often contain stabilisation clauses that exclude foreign investors' compliance with existing laws in Cameroon. These clauses are no longer limited to fiscal provisions and are so broad that they can impact on community and human rights. The assumption behind this position is that foreign direct investment will lead to economic growth and that wealth creation will accrue to the communities. According to this view, the adverse impacts of a company's operations will be compensated by the positive development opportunities brought by the presence of a foreign firm in a given area.
2. Reducing unemployment, by facilitating operations requiring intensive use of unskilled labour. Land concessions for agriculture are perceived as a quick way to generate jobs. In the case of SGSOC, the promise to create 7,500 jobs has most likely influenced the government's decision not to cancel SGSOC's contract or halt operations, despite the company's persistent violation of the law.
3. Increasing exports. This objective has been emphasised since the beginning of the structural adjustment programme in the late 1980s and has focused on natural resource exploitation.

In the case of SGSOC, the Establishment Convention is potentially detrimental to human rights as it contains provisions

clearly violating human rights recognised and protected by domestic law and international agreements ratified by Cameroon. In section 9.3, for example, the Establishment Convention provides SGSOC with the power to ‘search, apprehend, detain, exclude and evict unauthorized persons from the production area’ in contradiction to the Penal Code of Cameroon, the African Charter on Human and Peoples’ Rights (which is an integral part of the Cameroonian Constitution) and of the United Nations Covenant on Civil and Political rights.

The Establishment Convention contains provisions related to compensation to be paid by the government to the company in case SGSOC’s rights are not respected as recognised by the Convention. Given the fact that most of the rights granted to the company overlook communities’ rights, it is anticipated that the government will soon be in the position of having to choose between the protection of the communities’ or the investor’s rights, with high chances that it will opt for the protection of the latter.

Finally, by entering into the described agreement with SGSOC, the government has failed to comply with its obligations under the International Covenant on Economic, Social and Cultural Rights. The United Nations Special Rapporteur for the Right to Food, Olivier de Schutter, stated in his Cameroon country report:

Article 2, paragraph 1 of the International Covenant on Economic, Social, and Cultural Rights says that each State must progressively implement the right to food “using the maximum of available resources.”...However, the weak fiscal imposition on agricultural and logging concessions is striking. For example, SGSOC obtained a land lease for 73,086 ha of land for a duration of 99 years, through an annual royalty (land fee) of \$1 USD per hectare (for developed land) or \$.5 USD per hectare for undeveloped land... The Special Rapporteur encourages Cameroon to reconsider its fiscal policy for agro-industrial and logging concessions to optimize revenues derived from its natural resources.<sup>33</sup>

There are many obstacles preventing communities from securing their rights via FPIC. The persistent belief in the existence of ‘un-utilised’ land in Cameroon, which is the assumption upon which the entire legal land tenure system is built, leads to structural marginalisation of rural communities from their lands. The law allows for a sort of ownership and for individual customary rights on areas utilised by persons, using an evidence-based standard of ‘development’ or ‘enhancement.’<sup>34</sup> However, the government and national land laws deny communities’ rights on land considered to be part of the commons. To date, Cameroon’s land laws were conceived based upon the colonial model which consists of identifying land uses by rural populations and then differentiating between ‘used’ and ‘unused’ lands. The State considers communities claims to these ‘unused’ lands as exaggerated due to the perception that communities do not use or need them.

Another obstacle is the belief that foreign direct investment is inherently virtuous and necessary for economic development. The government acts as though the need to attract foreign direct investment justifies the suppression of any and all potential impediments to foreign direct investment, and FPIC is often perceived as a major obstacle to investment.

In Cameroon, access to information is very difficult for rural communities, which in turn limits the possibilities of implementing an adequate process to seek their consent. It is also interesting to note that the government’s stance leads to the dispossession of communities of their land in order to facilitate investment, which further marginalises FPIC as a land management tool. In January 2011, the President of Cameroon, in his opening speech at the Ebolowa National Agro-Pastoral Show, instructed the government to prepare a land-use reform to facilitate access to land for large agro-industrial companies (baptised ‘second-generation agriculture’). Since 2012, the Minister in charge of lands has launched a process to create government land banks which will

be taken from National Lands, the very lands where communities enjoy customary use of lands that are not legally protected.<sup>35</sup>

Finally, the application of voluntary standards is not encouraged by the Cameroonian government. This could be seen as a deliberate decision not to impose standards or restrictions on agro-industrial operations, and second, or a result of ignorance of the existence of such standards and their purpose by relevant government bodies.

### **Community relations, the RSPO and the SGSOC FPIC process**

---

Herakles Farms, the parent company of SG Sustainable Oils Cameroon marketed its palm oil project to investors, the Cameroonian government and local communities by promising to adhere to the Principles and Criteria of the Roundtable on Sustainable Palm Oil (RSPO). RSPO standards are very complex, as are the legal and procedural implications of FPIC. It is not our intention to provide a thorough explanation of either, but rather to analyse certain aspects of each which created discord between SGSOC, RSPO, local and international NGOs, and the local communities themselves.

RSPO requires that its members or applicants implement a robust FPIC process with local communities, refrain from clearing or pressuring High Conservation Value areas (HCV), comply with all national laws in their countries of operation, and publish a New Planting Procedure informational document at least thirty days prior to planting oil palm or clearing land to make way for planting. SGSOC was unable to implement many of the standards and processes required by the RSPO which eventually led to the company's withdrawal from RSPO and intensified tensions with local communities.<sup>36</sup>

### **SGSOC and FPIC**

---

Free, Prior and Informed Consent requires, among other things, that impacted

communities be provided with accurate information concerning a proposed project prior to a project's advanced planning stages, and that communities be permitted to use traditional methods of representation and non-coercive decision-making prior to giving or withholding their consent to a project. Communities have the right to seek legal counsel to negotiate agreements that condition their consent. Agreements must clearly and specifically define the land and compensation rights of local communities and any benefits such as employment, royalties, land excisions and so forth. These agreements should be available to all parties at all times.<sup>37</sup>

It would be difficult to argue that SGSOC has implemented a robust FPIC process since the company signed a contract which defined the nature of the project and granted it broad rights prior to any serious stakeholder engagement and certainly without local consent. The Convention was signed in 2009 while the company held most of their public sensitisation meetings in 2010-2011 (though some meetings were held prior to the signature of the Convention). Herakles Farms' CEO rebutted this critique by explaining that the company 'signed Memoranda of Understanding (MoUs) with the communities in and around our concession area, as well as Common Commitments with local officials.'<sup>38</sup>

The authors of this report administered a questionnaire to 69 individuals in 18 villages to be impacted by the project to ascertain this statement.<sup>39</sup> While all 69 respondents stated they had been in communication with the company at least once, all but four stated that the company had not made any assessment of their land rights. The four who had witnessed the company assess their land rights all belong to Ekita village, but none feel that SGSOC understands or respects their claims to land rights. 68 of the 69 individuals responded that the company had not conducted participatory mapping in their village, with one person abstaining from comment.<sup>40</sup>



68 of the 69 respondents stated they had not participated in any discussions about ‘mitigation, monitoring, benefit sharing and compensation agreements’ with one person abstaining from comment. All 69 respondents stated there was no agreement between their community and the company as to how their lands would be used and managed.

Although the sample size of the interviews is limited, the evidence overwhelmingly indicates that FPIC has not been respected by SGSOC. It was not possible to verify the exact numbers, but the authors are aware of a small number of communities that have signed MOUs with SGSOC. Yet it appears that these agreements did not pass through representative decision-making channels (as required by FPIC) as many villagers are unaware of their existence. It is unlikely that community members were presented with the opportunity to seek legal counsel when negotiating the existing accords, another fundamental requirement of FPIC.

SGSOC has stated very clearly it does not intend to compensate local communities but will leave 2,000 hectares of land for subsistence agriculture. It is estimated that 25,000 people depend on subsistence agriculture in the area. If 12,000 of these are estimated to be in working age (in line with Cameroon’s general demographic trends), this would mean each individual holds 0.166 ha, a clearly insufficient area of land. This is most likely the reason why there have been no frank discussions on compensation issues in the area between the company and the communities

#### Local tensions in the project area

---

Herakles’ poor outreach and communication with local communities has frustrated villagers who feel the plantation will have an adverse impact on their livelihoods. The communication vacuum was filled by a local NGO, based in Mundemba (Ndian Division), called Struggle to Economise Future Environment (SEFE), which began

sensitising locals to the negative social and environmental impacts the project could bring to the area. SEFE also filed a lawsuit in the Mundemba High Court against SGSOC’s ESIA. The judge granted an injunction on the development of the oil palm plantation until the legal issues were resolved.<sup>41</sup> However, SGSOC continued its activities in violation of the court moratorium, which was eventually lifted on 27<sup>th</sup> April 2012.

#### New Planting Procedure

---

SGSOC submitted its application to the RSPO for a new planting on 15<sup>th</sup> February 2012, which opened a thirty – day comment period to the general public. A total of eight NGOs and researchers submitted comments requesting that RSPO reject SGSOC’s application for the following reasons:

- The company violated Cameroonian law in the ESIA process and refused to respect a court injunction on the project.
- SGSOC’s contract violates Cameroonian and international law.
- Independent HCVF analyses revealed at least 20,000 hectares of HCVF in the concession area.
- Independent analyses found an inadequate amount of land would be left for subsistence farmers who would therefore be forced to take up agriculture in the surrounding forest and protected species areas.
- The proposed planting area is home to rare animals and serves as a migration corridor for numerous species.<sup>42</sup>

The RSPO forwarded the above complaints to its internal judicial mechanism which asked the complainants to enter into mediation with SGSOC in order to find an amicable solution to the complaints filed. Unfortunately, the parties were not able to amicably solve their differences via mediation and thus the RSPO decided to establish an independent panel of experts to evaluate the parties’ claims.<sup>43</sup> Herakles withdrew its membership from the RSPO shortly thereafter.<sup>44</sup>



#### Tensions increase in the project area

SGSOC's withdrawal from the RSPO and its publicised intention to clear the forest and plant 2,000 hectares of oil palm greatly increased tensions between proponents and opponents of the project. Residents of Fabe village held a demonstration against SGSOC in June 2012. Four villagers were arrested following the incident. The director of SEFE, Nasako Besingi,<sup>45</sup> was physically assaulted by SGSOC employees in August 2012 as he toured villages to conduct sensitisation on the project. The end of the attack was captured on video by a France24 documentary crew that Besingi was guiding in the area.<sup>46</sup> Nasako Besingi was arrested with four of his colleagues in November 2012 while distributing anti-SGSOC T-shirts to local community members. The five were held for 48 hours and then released on bail although no charges were filed.<sup>47</sup>

SGSOC promised to 'follow RSPO and IFC guidelines'<sup>48</sup> even following the withdrawal of their RSPO application, hinting that an FPIC process would still take place. However, SGSOC has since

■ *Huge logs abandoned on area being planted in Talangaye near Nguti / Fon Christopher Achobang*

launched the land consultative board process, as described earlier in this article, which would preclude a genuine FPIC process since the land consultative boards do not require broad consent. Furthermore, it is impossible to conduct an adequate FPIC process when local communities and NGOs are already facing intimidation and arrest.

#### Conclusion

The SGSOC case demonstrates how contractual rights and obligations and operational obligations can interfere with communities' rights to Free, Prior and Informed Consent. However, the issues raised by this particular case extend well beyond the question of FPIC to the illegality of SGSOC's contract, its repeated violations of Cameroonian law and its withdrawal from the RSPO. The Cameroonian Government has not helped to clarify these issues by refusing to publicly state whether or not it supports the project and by refusing to

promote voluntary best practice initiatives such as the RSPO. Cameroon has also refused to collect fines from the company for illegal logging and violating the court injunction on the project. Finally, the Ministry of Forests has contradicted itself by fining SGSOC for illegal logging and then subsequently granting an authorisation to fell trees in the permanent forest estate.

The incoherency of the government's position creates or reinforces the confusion of all stakeholders. The local governments in the area could interpret certain actions or inactions as showing support by Cameroon's highest public authorities and sending them tacit instructions. Meanwhile, local communities are likely to doubt the government's will or capacity to effectively protect their rights, particularly when these rights are so flagrantly violated, such as in the project area solicited by SGSOC.

As this is the first large scale agro-industrial plantation in Cameroon as part of the new wave of land investments on the African continent, the actions of Cameroon's government will set a precedent and send a signal to other potential investors. It will thus be imperative to adopt a cautious approach to the project's implementation in order to ensure the protection of community rights and the environment, and the promotion of local development.

## References

1994 *Law on Forestry, Wildlife, and Fishing*.

*Assessment of High Conservation Value on the SGSOC Concession for Oil Palm Development in South-Western Cameroon*. March 2011.

Cameroon Tribune 2012 *Le gouvernement conduit actuellement une importante politique de constitution des réserves foncières pour répondre adéquatement à une demande de plus en plus forte mais aussi multiforme et variée*. Jacqueline Koung in Bessike, Minister of the Cadastre and Lands of Cameroon, 24<sup>th</sup> November 2012, p.12.

Carrere R 2010. *Oil Palm in Africa: Past, Present, and Future Scenarios*. World Rainforest Movement, Montevideo, Uruguay. Available at [http://www.wrm.org.uy/countries/Africa/Oil\\_Palm\\_in\\_Africa.pdf](http://www.wrm.org.uy/countries/Africa/Oil_Palm_in_Africa.pdf)

De Schutter O 2012 *Mission au Cameroun du Rapporteur spécial sur le droit à l'alimentation*, M. Olivier De Schutter (16-23 juillet 2012): *Conclusions préliminaires*. Yaoundé: 23<sup>rd</sup> July.

*Decree N° 76-166 of 27<sup>th</sup> April 1976 to establish the terms and conditions of management of national lands*.

*Establishment Convention By and Between the Republic of Cameroon and SG Sustainable Oils Cameroon PLC*. Available at <http://cameroonveritas.files.wordpress.com/2011/08/sgsoc-convention1.pdf>.

Forest Peoples Programme 2008 *Free, Prior and Informed Consent and the Roundtable on Sustainable Palm Oil: a guide for companies*. Forest Peoples Programme, Moreton-in-Marsh. Available at <http://www.forestpeoples.org/sites/fpp/files/publication/2009/12/fpicandrspocompaniesguideoct08eng.pdf>.

France 24 *Cameroon: the rush for palm oil* (footage). Available at <http://www.france24.com/en/20121002-planet-hope-cameroon-palm-oil-rush-forests-development-agriculture-biodiversity-villagers-animals>.

H & B Consulting 2011 *Environmental and Social Impact Assessment prepared for SG Sustainable Oils Cameroon Ltd*. Available at <http://www.heraklescapital.com/docs/SGSOC%20ESIA.pdf>.

Hoyle D & P Levang 2012. *Oil Palm Development in Cameroon: an ad hoc working paper*. Yaounde: WWF, CIFOR, IRD. Available at [http://www.rsop.org/file/palmoildevelopmentcameroon\\_english.pdf](http://www.rsop.org/file/palmoildevelopmentcameroon_english.pdf).

International Federation for Human Rights (FIDH) 2012 *Cameroon: Arbitrary arrest of and judicial harassment against Mr. Nasako Besingi and four SEFE collaborators*. 29<sup>th</sup> November 2012. Available at <http://www.fidh.org/Cameroon-Arbitrary-arrest-of-and-12517>.

Nguiffo S & B Schwartz 2012 *Le treizieme travail d'Hérakles?* Centre pour l'Environnement et le Développement. Available at [http://www.cedcameroun.org/index.php?option=com\\_k2&view=item&id=41&Itemid=125](http://www.cedcameroun.org/index.php?option=com_k2&view=item&id=41&Itemid=125).

Observateur Indépendant, Rapport N° 040/OI/AGRECO-CEW. Available at [http://www.oicameroun.org/index.php?option=com\\_docman&task=doc\\_download&gid=131&Itemid=20](http://www.oicameroun.org/index.php?option=com_docman&task=doc_download&gid=131&Itemid=20).



*SEFE vs SGSOC*. Suite N HCN/003/2011/1M/2011. 31<sup>st</sup> August 2011. Mundemba High Court.

*SGSOC's withdrawal letter from RSPO*. Available at [http://www.rspo.org/file/PDF/Complaints/NPP\\_APPLICATION\\_LETTER.pdf](http://www.rspo.org/file/PDF/Complaints/NPP_APPLICATION_LETTER.pdf).

Wrobel B *A response to inquiries regarding the sustainability and intentions of the Herakles Farms SG Sustainable Oils project in Southwest Cameroon*. 20<sup>th</sup> March 2012. Available at [http://www.save-wildlife.org/downloads/save\\_the\\_forest/Herakles.pdf](http://www.save-wildlife.org/downloads/save_the_forest/Herakles.pdf).

## Endnotes

1. The first section of this paper is adapted from Nguiffo & Schwartz 2012.
2. H & B Consulting 2011: x. Herakles has provided a cadastral map for the land concession established by the Ministry of Lands which the company claims is 69,971 ha (see Appendix A). It is difficult to establish the exact size of the proposed concession since no land lease has been granted, the company's plans continue to evolve, and Herakles' public communications and reports have used figures ranging from 69,000-73,000 ha. After reviewing our research, the company provided the following comment:  
 "It should be noted that the company has since made public statements (eg at a June 2012 stakeholder workshop in Buea) and has also told the researchers of this paper that the number of hectares that will be developed will depend on findings from its participatory land-use mapping process with villages, as well as its environmental pre-development surveys. The researchers of this paper have been informed by the company that each of these activities are being conducted in phases corresponding to the company's multi-year build-out, and as such, the exact number of hectares that will be developed in its current concession are unknown at this time (the mapping and studies take place prior to each phase of land development)."
3. Ibid.
4. The complaint is available on the RSPO website at: [http://www.rspo.org/news\\_details.php?nid=106&lang=1](http://www.rspo.org/news_details.php?nid=106&lang=1).
5. For example: A group of four NGOs filed a complaint against the parent companies of SO-CAPALM using the Organisation for Economic Co-operation and Development (OECD) complaint mechanism due to SOCAPALM's abusive practices; film-maker Franck Hameni produced a film entitled 'The Big Banana' which paints a damning picture of PHP's Banana Plantations; CDC workers often strike in protest of working conditions and employee benefits; two SOSU-CAM workers and one *gendarme* were killed during labour protests in early 2012; HEVE-

- CAM workers also launched a strike at the beginning of 2012 which led to numerous arrests.
6. Carrere 2010: 24. The five major companies are CDC, Pamol, SAFACAM, SOCAPALM, and Ferme Suisse.
  7. For a complete list of palm oil speculators in Cameroon see Hoyle & Levang 2012.
  8. Tableau Synoptique des Lots de Terres à Securiser. MINADER, 2012.
  9. Herakles has provided slightly different statistics to the authors in a recent communication. The company claims the Kupe Muanenguba bloc is 39,371 ha while the Mundemba-Toko block is 30,600 ha.
  10. Herakles has provided the following population figures following a 2011 census. The figures are widely believed to underestimate population sizes in the area by the authors and other researchers:

Nguti Villages	Village Population
Ayong	530
Babun	320
Betock	223
Bombe	220
Ebanga	274
Ekenge	155
Ekita	108
Manyemen	2057
Mboka	126
Nguti	573
Ntale	773
Ofrikpabi	62
Sikam	367
Sambaliba	100
Talangaye	340
TOTAL	6,228

11. Communication with Herakles Farms February 2013. The company also claims to have the support of the following Six Upper Balung villages: Talangaye, Ayong, Ebanga, Manyemen, Sikam and Sambaliba. Herakles also stated its intention to avoid the Betock and Baro villages after discussions between the parties.
12. Interviews with villagers in Talangaye, 2012.
13. Interviews with villagers in Manyemen, 2012.
14. Interviews conducted with villagers in Ayong, 2012.
15. This figure does not include residents from Nguti sub-division that also fall within the proposed concession.
16. Herakles has disputed the above population figures and provided the following table:

Sub-divison	Village	Population
Mundemba		
	Beboka	102
	Esoki	147
	Fabe	214
	Iwei	33
	Lipenja II	137
	Massaka	87
	Meangwe II	240
	Meta	20
	Mokange	68
	Mokango	161
	Ndiba	26
	Mundemba Total	1,235
Sub-divison	Village	Population
Toko		
	Bareka I	109
	Betika	21
	Bweme	64
	Ikoti I	31
	Ikoti II	38
	Ipongi	87
	Kuma	31
	Lipenja I	301
	Lobe	32
	Loe	5
	Manya	30
	Mayeike	2
	Mobenge	83
	Toko Total	834
Mundemba-Toko Total		2,069

17. Herakles argues that land set aside for agriculture was intended for agro-industrial cash crop production, while many villagers feel they have lost sovereignty over a large portion of their traditional lands which has had a detrimental impact on livelihoods (primarily farming, hunting and gathering).
18. Interview, 2012.
19. Fact finding mission on Herakles Farms (SGSOC) oil palm plantation project, February 2013. Available at: [http://cameroonveritas.files.wordpress.com/2013/04/03\\_01\\_2013\\_report-fact-finding-mission-sgsoc.pdf](http://cameroonveritas.files.wordpress.com/2013/04/03_01_2013_report-fact-finding-mission-sgsoc.pdf)
20. Section 8.2. Establishment Convention By and Between the Republic of Cameroon and SG Sustainable Oils Cameroon PLC. Available at <http://cameroonveritas.files.wordpress.com/2011/08/sgsoc-convention1.pdf>.
21. Section 3.2 of Establishment Convention.
22. Section 3.3(a)(iv) of Establishment Convention.
23. Section 3.3(a)(v) of Establishment Convention.
24. Section 4.14 of Establishment Convention.
25. Assessment of High Conservation Value on the SGSOC Concession for Oil Palm Development in South-Western Cameroon. Page 39. March 2011.

26. See Observateur Indépendant, Rapport N° 040/OI/AGRECO-CEW. [http://www.oicameroun.org/index.php?option=com\\_docman&task=doc\\_download&gid=131&Itemid=20](http://www.oicameroun.org/index.php?option=com_docman&task=doc_download&gid=131&Itemid=20). Herakles claims the reports were based upon a misunderstanding between the Ministry of Forestry and the company and that the fines were later retracted. However, Independent Observer reports are validated by the Minister of Forests and there is no process to waive fines.
27. Establishment Convention By and Between the Republic of Cameroon and SG Sustainable Oils Cameroon PLC.
28. Article 8.2. Republic of Cameroon. 1994 Law on Forestry, Wildlife, and Fishing. 'The Ministers in charge of forestry, wildlife, and fishing may, by reason of public interest, and in consultation with the populations concerned, may temporarily or permanently suspend the exercise of logging rights, when necessary. Such suspension shall be done in consonance with the general regulations on expropriation by reason of public interest.'
29. Article 26 of the 1994 Forestry Law: '(i)The instrument for classifying a State forest shall take into account the social environment of the local population, who shall maintain their logging rights. (ii) However, such rights may be limited if they are contrary to the purpose of the forest. In such case, the local population shall be entitled to compensation according to conditions laid down by decree...'
30. Article 11 of decree N°2005/0577PM of 23rd February 2005 to lay down the modalities of the production of environmental impact assessments, Article 11 (1): 'La réalisation de l'étude d'impact environnemental doit être faite avec la participation des populations concernées à travers des consultants et audience publique, afin de recueillir les avis des populations sur le projet.' (2) 'La consultation publique consiste en des réunions pendant l'étude, dans les localités concernées par le projet ; l'audience publique est destinée à faire la publicité de l'étude, à en enregistrer les oppositions éventuelles et à permettre aux populations de se prononcer sur les conclusions de l'étude.'
31. Article 12 of decree N° 76-166 of 27<sup>th</sup> April 1976 to establish the terms and conditions of management of national lands: 'The consultative boards shall be appointed by the Prefect, shall represent a district or a sub-division, and shall consist of: the sub prefect or the district head, chairman; a representative of the Lands Service, secretary; a representative of the Surveys Service; a representative of the Town Planning Service, in case of an urban project; a representative of the ministry concerned with the project; the chief and two leading members of the village or the community where the land is situated.'

32. Herakles claims it has conducted participatory mapping in the following villages as part of its FPIC process (though FPIC requires that participatory mapping precede attempts to acquire land): Talangaye, Sikam, Ayong, Ebanga, Manyemen, Sambaliba and Ekita of the Nguti sub-division, and with Fabe, Esoki, Mokango, Massaka, Mokange, Bweme, Mobenge, Ikoti 1 and 2, Ndiba, Iwei, Manya, Mayeike, Lipenja I, Lipenja II, and Kuma of the Mundemba–Toko block.
33. De Schutter 2012.
34. ‘*mises en valeur*’ in French.
35. Cameroon Tribune 2012.
36. SGSOC’s withdrawal letter from RSPO. Available at [http://www.rspo.org/file/PDF/Complaints/NPP\\_APPLICATION\\_LETTER.pdf](http://www.rspo.org/file/PDF/Complaints/NPP_APPLICATION_LETTER.pdf).
37. See Forest Peoples Programme’s FPIC Guide for RSPO companies for more details, [http://www.rspo.org/file/FPIC%20and%20the%20RSPO%20a%20guide%20for%20companies%20Oct%2008\\_cover.pdf](http://www.rspo.org/file/FPIC%20and%20the%20RSPO%20a%20guide%20for%20companies%20Oct%2008_cover.pdf).
38. Wrobel 2012.
39. The full list of villages includes: Betock, Ebanga, Ayong, Talangaye, Manyemen, Ntale, Bombe Konye, Mungo Ndor, New Konye, Ekita Village, Ekenge, Mboka, Baro, Mbaro, Fabe, Meangwe II, Lipenja I and Toko.
40. Herakles claims to have launched participatory mapping exercises since our field survey was conducted, though at the time of publication, the company had yet to render these public.
41. *SEFE vs SGSOC*. Suite N HCN/003/2011/1M/2011. 31<sup>st</sup> August 2011. Mundemba High Court.
42. See [http://www.rspo.org/news\\_details.php?nid=117](http://www.rspo.org/news_details.php?nid=117) for a partial list of complaints.
43. In the interest of full disclosure, two of the three co-authors of this article were parties to the complaint: Brendan Schwartz and Samuel Nguiffo.
44. See [http://www.rspo.org/file/PDF/Complaints/NPP\\_APPLICATION\\_LETTER.pdf](http://www.rspo.org/file/PDF/Complaints/NPP_APPLICATION_LETTER.pdf) for the letter of withdrawal.
45. Herakles Farms claims that Besingi’s views are not representative of the local communities—an assertion which the authors of this report disagree with. The company also asserts that he represents a rival palm oil initiative called Sustainable Africa Palm Oil Council (SAPOC).
46. Footage of the assault is available in the documentary produced by France24, <http://www.france24.com/en/20121002-planet-hope-cameroon-palm-oil-rush-forests-development-agriculture-biodiversity-villagers-animals>.
47. See the following link for a detailed explanation of their arrests <http://www.fidh.org/Cameroon-Arbitrary-arrest-of-and-12517>.
48. See [http://www.rspo.org/file/PDF/Complaints/NPP\\_APPLICATION\\_LETTER.pdf](http://www.rspo.org/file/PDF/Complaints/NPP_APPLICATION_LETTER.pdf).