

UNCERTAIN FUTURES



The impacts of Sime Darby on communities in Liberia



by Silas Kpanan' Ayoung Siakor

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**World Rainforest
Movement**



Counties to be affected by Sime Darby Palm Plantation

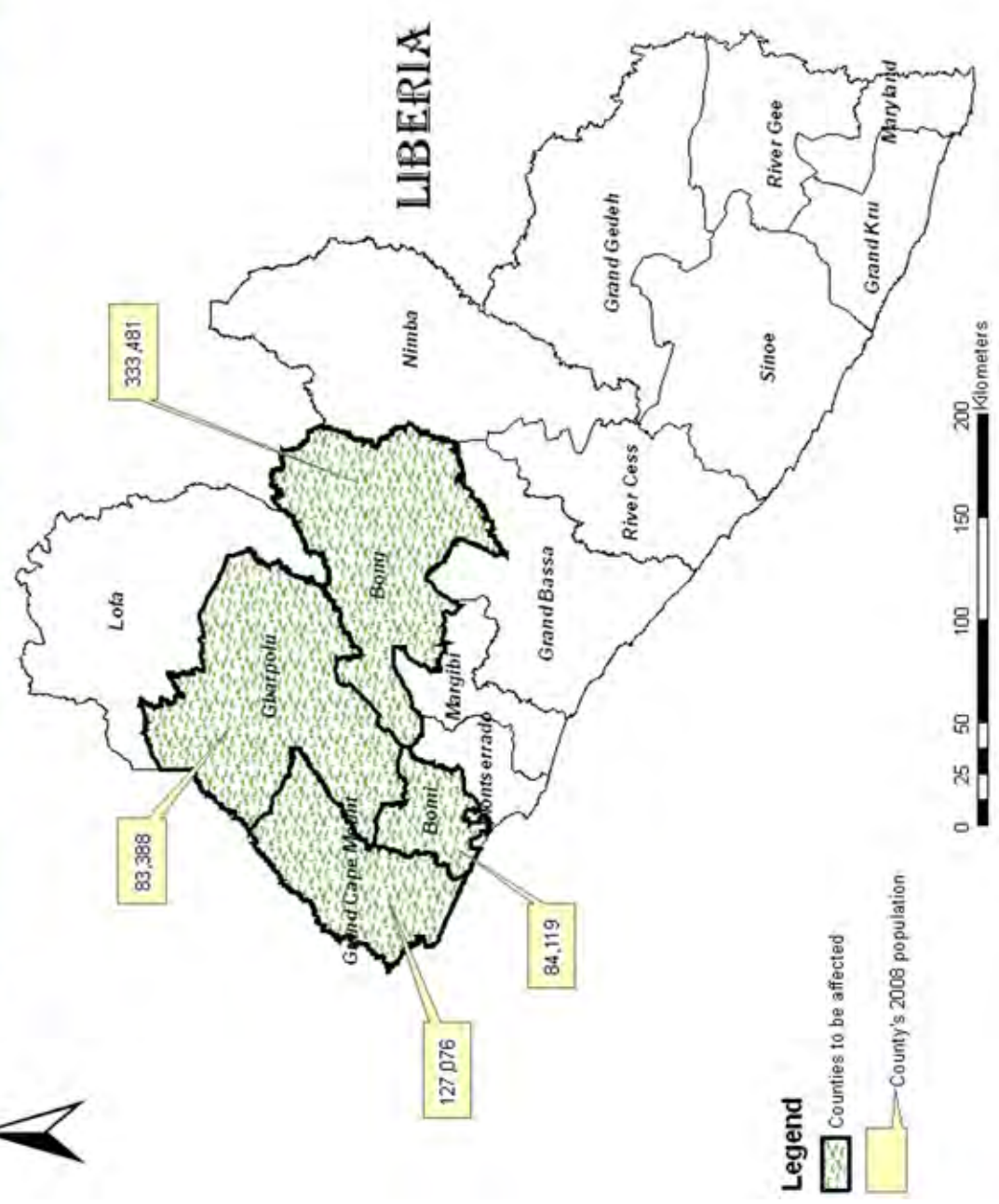


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Acronyms

EPA	Environmental Protection Agency
ESIA	Environmental and Social Impact Assessment
GoL	Government of Liberia
GVL	Golden Veroleum (Liberia) Inc
HCV	High Conservation Value
ILO	International Labor Organization
MIA	Ministry of Internal Affairs
MoA	Ministry of Agriculture
RSPO	Round Table on Sustainable Palm Oil
SDI	Sustainable Development Institute
SDPL	Sime Darby Plantation (Liberia) Inc
UNDP	United Nations Development Programme
UNMIL	United Nations Mission in Liberia

Conversions used in this report

United States Dollars 1 = Liberian Dollars 70

1 Hectare = 2.47 Acres

1 Gallon = 3.79 Liters

Executive Summary

The situation facing communities impacted by the expansion of Sime Darby's plantation in Liberia is dire. The oil palm plantation is on their doorsteps, and their farms and farmlands are being swallowed up by it. Most of the men and women in the affected villages are now out of work, and their children are hungry. There are very few alternative livelihood options. All of the locals interviewed for this report said no compensation had been paid to them for land taken over by the company. The only compensation they had received was for crops that had been destroyed and this was inadequate. Forest areas used for various cultural practices had also been destroyed and planted with oil palm, and no compensation had been paid to the communities for the desecration of these areas either. Thus the challenges faced by people living in the areas already being cultivated for oil palm are manifold: they have lost their farms, their lands, and various livelihood options, and some of their culturally significant sites have been destroyed.

When the government signed the contract with Sime Darby in 2009, the agreement was hailed as another milestone in Liberia's drive towards economic recovery, a critical step towards sustainable development. The company promised to provide tens of thousands of jobs and to contribute to the government's economic recovery agenda. In 2010, Sime Darby started operations in western Liberia, cultivating land to set up an oil palm nursery; and in 2011 the company began planting its first oil palm plantation, in Garwula District, Grand Cape Mount County. But it is now the case that often, when people in the area talk about Sime Darby, they are not commenting on the development benefits that have been generated. Instead they are critical of the company's impacts on communities where it has cleared and planted oil palm. They are worried for the future.

The Government of Liberia and Sime Darby share responsibility for the negative situation facing these communities, since they negotiated a contract that clearly cannot be implemented without violating the rights of third parties. These third parties include communities that have traditionally occupied and used the land, communities that hold collective titles and private property rights to their land, individuals that hold private property rights to their land, and all those who have estates and other forms of assets on lands that fall within the Concession Area. The contract obliges the government to allocate land free of encumbrances to Sime Darby. This is impossible: there is no land free of encumbrances in the counties targeted for the development. In addition, some contractual provisions requiring joint implementation have either been ignored or poorly executed; and the company planned and implemented its activities poorly from the onset.

In an attempt to be heard, the communities affected in Garwula filed a complaint with the Roundtable on Sustainable Palm Oil (RSPO). At the time of publication of this report, Sime Darby and the communities had reached agreement on many of the issues raised in the complaint but, according to some residents of the community, the agreed actions had either not been carried out yet or were carried out in a way that was not satisfactory to them. A representative of Sime Darby clarified that the minutes of the trilateral discussions between the company, the government and the communities clearly lay out what remedial actions would be taken by the company, and constitutes an agreement. Representatives of the parties approved the minutes of the talks¹.

This is not a new situation, but it may be more explosive than others in the past. The history of large-scale monoculture plantation is replete with cases of rights violations, including in Liberia. Firestone, the largest rubber plantation in Liberia, was established on land taken from communities without any compensation. Locals were then enslaved to work on the plantation in inhumane conditions. The current working and living conditions of many families on the plantation remain poor. These conditions are similar to those endured on various other rubber plantations across the country.

Both the government and Sime Darby must take steps to proactively address some of the potential sources of conflict with communities in areas where the company plans to expand. This may require significant changes to the contract, the mode of implementation of the contract, and the company's behavior. While the company's admission of failures is a step in the right direction, good intentions need to be accompanied by concrete action if they are to have any meaning for the communities impacted by Sime Darby's operations.

Recommendations

The conflict between Sime Darby and the communities in Garwula District may be just the beginning. Many more communities could be impacted in just the same way as those in Garwula, and while some people might grudgingly accept the company, others might resist aggressively. These potential conflicts can be prevented however. The following recommendations, if implemented comprehensively, could reduce the likelihood of human rights violations, reduce the company's impacts on people and the environment, and ensure improvements in the relationships between the company and the host communities.

The Government of Liberia should:

1. Assess the situation of the communities impacted by Sime Darby in Garwula District, and work with them to develop a plan addressing the many challenges they now face as a result of losing their land and livelihoods. Such a plan should be developed through a properly designed and executed consultative process, and establish a clear path towards improving the overall situation and well-being of people in the area.
2. Review and improve the scheme for compensating individuals and communities that lose land and crops as a result of plantations and other developments. The current system - compensating for lost crops only - is unfair and inadequate. Land lost to plantations should be properly valued and compensated for in a way that enables those that lost land to find replacement land and continue their normal farming and livelihoods activities.
3. Review the current approach to allocating land to companies, since it disregards the rights and livelihoods of those that inhabit those lands, further impoverishing the population. It also generates conflicts between companies and host communities. A new approach should allow for those likely to be affected to have a greater say in decision-making regarding allocation of land in their communities. It should be based on the principles of fairness and justice, and backed by appropriate legislation.

4. Review the contract with Sime Darby (and by extension other agribusinesses) and amend it as necessary to ensure that implementation does not give rise to human rights violations, dispossessing communities of their customary lands and disregarding the property rights of private landowners. To suggest that there are hundreds of thousands of hectares of land free of encumbrances is a recipe for conflict and chaos – Liberia needs neither of these.
5. Respect the rights of communities to freely accept or refuse government plans for their lands, regardless of any good intentions that might underpin these proposals. Where there is a compelling case for a development plan on their land, this should be pursued through a mutually respectful dialogue and negotiation. Should all efforts to convince them of the development benefits fail, such plans should be abandoned; they should not be imposed, under any circumstances.
6. Support the efforts of Sime Darby and the communities in Garwula to resolve the issues the communities raised in their complaint in an amicable manner. Also, support the full implementation of the measures agreed by the parties (including those already agreed).
7. Develop a comprehensive reform program for the agriculture sector that incorporates the recommendations contained in this report. This reform should aim to bring more transparency to the process of negotiating and concluding land deals with foreign businesses, make governance institutions more accountable, and address land hoarding by concessionaires.
8. Facilitate direct payments for land taken from communities for use by the oil palm plantation. The annual lease payment per area developed should be distributed to families that lose land to the plantation. This would provide them with an ongoing income that would make up for the loss of land, and provide them with a means of acquiring replacement lands for new farming activities from neighboring communities.

Sime Darby Plantation (Liberia) Inc. should:

1. Formally conclude negotiations with the affected communities in Garwula district. This should build on the agreed remedial measures that the company has already confirmed it is committed to implementing, and include agreement on fair and concrete actions that will take place. The agreement should be comprehensive, covering all the issues the communities raised in their complaint, and be legally binding.
2. Request the Government of Liberia to jointly review the contract to ensure that implementation will not lead to human rights abuses, dispossessing communities of their customary lands, and violating the rights of those that own private property including land within the Concession Area. This includes making changes that take into account the proposals presented in Annex I of this report, and the experiences in Garwula district.
3. Ensure that the land taken from communities in Garwula is properly surveyed and

documented as community land. Following the survey, negotiate and agree a lease term for the land that is fair and acceptable to the communities – Sime Darby should not impose the US\$5 per hectare developed that has been agreed with the government.

4. Adequately compensate individual families that have already lost their farmlands. The initial payments were for the crops that were destroyed, not the land that was lost. Compensation should take into account the fact that these families will no longer have access to the lands they farmed and will need to identify and secure other areas to be able to continue farming and feeding their families.

5. Develop a comprehensive community engagement plan that is publicly available. Such a plan should clearly outline the company's policies on land acquisition and plantation development. Specifically, it should demonstrate how communities and private landowners will be engaged, how their permission will be sought, and clarify financial and other terms that might be negotiated for the use of their land. This plan should be developed before any further expansion into Gbarpolu, Bong, and parts of Bomi and Cape Mount.

6. Address the urgent food needs of affected communities, given the dire livelihoods situation that has been created by the company's actions. This should include distributing food throughout the affected communities in a manner that is agreed with the communities, while they wait for the next planting season. It should also include properly ploughing the swamps designated by the communities in order to allow them to prepare for the next planting season, so that they will be able to feed themselves rather than having to rely on food distribution for a long time.

Liberian civil society organizations should:

1. Explore possibilities for collaborating with each other, and coordinating their actions to support affected communities, now and in the future. This could include establishing a platform facilitating coordination. The current lack of collaboration renders many laudable interventions ineffective, and may even become counter-productive in the medium and long-term.

2. Organizations working on human rights, agriculture and development issues should engage with the few organizations currently working on this issue, including Sustainable Development Institute, Green Advocates and Save My Future Foundation, to broaden the coalition supporting communities affected by the rapid expansion of export-oriented agriculture across the country.

3. The Liberian media should scale up their investigation of the expansion of monoculture plantations in western and southeastern Liberia, and report it more effectively. Reporting should aim to bring community voices to decision-makers and duty-bearers.

Introduction

Sime Darby entered into a 63-year lease agreement with the Government of Liberia on July 23, 2009, for a total of 311,187 hectares of land, which is referred to as the Gross Concession Area. This Gross Concession Area is to be located within four counties: Gbarpolu, Grand Cape Mount, Bomi and Bong. According to the contract, the government agreed to allocate land 'free of encumbrances' to Sime Darby, with the understanding that the company would cultivate all the land referred to within twenty years of signing the agreement.

The agreement specifically gives Sime Darby rights to use land within the area covered by the lease for agricultural purposes. The company agreed that it would pay US\$5 per hectare per year for land it cultivates for oil palm, putting it into a social development fund. The company also claims that it will provide employment for more than 30,000 Liberians.²

However, Sime Darby's operation got off to a rocky start, and communities from the Garwula district in Grand Cape Mount County filed a complaint with the Roundtable on Sustainable Palm Oil (RSPO) in 2011, alleging various rights abuses and claiming that Sime Darby was not adhering to the RSPO's principles.³ The company, probably afraid that its reputation would be damaged if it didn't take steps to address the communities' concerns, proposed a negotiated settlement; and the communities accepted the offer to enter into direct talks with the company. According to a government report, the company also approached President Ellen Johnson Sirleaf, "*requesting her intervention in the dispute between the citizens and the company*".⁴ The same report explicitly notes that Sime Darby's request to the President was made after the communities had filed the complaint with the RSPO.

In response to Sime Darby's request, the President visited the area and met with the communities on December 15, 2011.⁵ At that meeting the President told the citizens that once the government had signed a contract with the company, the communities could not change it.

Since then, this approach seems to have developed into a problematic policy position on the part of the government. An Inter-Ministerial Committee on Sime Darby met to consider the communities' demand for the "*Government of Liberia to recognize their rights to Free Prior Informed Consent to development on their ancestral land including their right to say Yes or No to any development on their ancestral land without any fear [of] harassment, threats, prosecution, intimidation, etc.*"⁶ The minutes of the meeting, however, state that "*The committee agreed that free prior informed consultation with affected communities to inform them of the importance of the development initiatives and their benefits is important. However, giving communities the right to consent or refuse endeavors that could benefit the entire country should not be encouraged.*"⁷

In Gbarpolu county, some 80 km away from Garwula, Sime Darby is also targeting 20,000 ha of land to cultivate and plant oil palm. The company has not started clearance or nursery preparation yet, and its Environmental and Social Impact Assessment (ESIA), prepared by the Liberian firm Green Cons had not been approved as at July 2012. Although the Vice President of Liberia reportedly intervened personally, the Environmental Protection Agency

(EPA) withheld a permit, on the grounds that the company should demarcate the 20,000 ha for which it is applying first. With the EPA refusing to budge, even in the face of what may be considered political pressure from the Vice President, the company has left Gbarpolu County. It is not known when the company plans to return.

The case studies in this report tell the story of two groups of communities: those in Garwula District, Grand Cape Mount County, who are already suffering the negative consequences of Sime Darby's plantation development; and those in Bopolu District, Gbarpolu County, who are waiting in a state of uncertainty.

Two fundamental questions raised by this report are: is the government doing enough to address the plight of the communities that have been negatively impacted by Sime Darby; and can communities in other regions where the company plans to expand expect to be treated any differently?

Liberia and Land-based Concessions

Liberia, a small West African country with a population of approximately 3.5 million people⁸, has a predominantly agrarian economy, with high dependency on land and land-based resources. The majority of the population live in rural areas and are engaged in subsistence agriculture and forest-based trade for income generation. Healthcare facilities are poor and in some places non-existent, and the majority of children lack access to safe drinking water. They also lack decent education. The country ranked 182 out of 187 countries on the UNDP Human Development Index in 2011.⁹ However, the abundance of fertile farmlands has enabled people in rural Liberia to survive and thrive even in these very difficult circumstances, much to the amazement of outsiders.

Successive national governments have relied on the negotiation of land-based concessionⁱ agreements with agribusinesses, especially those engaged in the export of rubber, palm oil, timber and mineral resources. These activities, frequently undertaken by foreign companies, have generated export revenues for central government. For the period July 1, 2009 to June 30, 2010 taxpayers in the agriculture sector paid about US\$12 million¹⁰ or about 3% of the 2010/2011 Annual Budget¹¹. Although some may argue that this is revenue the country needs, it is often the case that communities affected by the activities associated with production of these resources, have benefited little, if at all. This has led to tension and disagreement between the national government, agribusinesses and resource extraction companies, and local communities. These tensions have intensified recently, as new land-based contracts have been allocated on lands claimed by rural communities.¹²

The initial land-based concessions system in Liberia started in the early 1900s. The government signed a 99-year land lease for 404,685 ha (1 million acres) with the Firestone Plantation Company in 1926. By the 1950s the scale of land-based concessions, especially rubber plantations, had increased. Between 1949 and 1959, Liberia signed four large concession agreements totaling about 485,622 ha (1.2 million acres), including the Liberian Agriculture Company concession (1959); the African Fruit Company (Sinoe Rubber Plantation) concession (1953); and the Guthrie Rubber Plantation (1954).¹³

Once established, oil palm and rubber plantations tend to be more permanent than other land-based concessions. For example, once a logging company extracts timber in a particular area, it moves on to other forest areas in search of more high-value timber. Oil palm or rubber plantations, on the other hand, tend to outlive those who initially allocated the land.

Plantations have a poor track record in Liberia. According to the report of the Government of Liberia (GoL) and United Nations Joint Plantation Task Force of 2006, most of the agricultural concession agreements, including those mentioned above, “*are not in line with Liberia’s obligations in terms of national and international laws¹⁴” and “do not reflect contemporary responsible business practices.¹⁵”*

ⁱ Concession, as used throughout this report, refers to the government granting rights to resources to a business entity.

An analysis by the United Nations Mission in Liberia (UNMIL)'s Human Rights and Protection Section also found that *"Concession agreements concluded with the Government of Liberia impose very limited and vague obligations on plantation management to protect the human rights of individuals and communities living and working on the rubber plantations."*¹⁶ Key provisions of the contracts allocated in 2009 and 2010 similarly include very limited and vague obligations on the companies in question. In most instances these concessions are imposed on communities against their wishes, on the grounds that it is for the greater good of the nation.

The rationale and arguments used at the beginning of the 20th century are strikingly similar to those being used today. During a legislative hearing on the Firestone contract in December 1924, President Charles D. B. King is quoted as saying: *"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..."*¹⁷

Some 88 years later, these promises of development remain unfulfilled, and the financial gains for the country have been minimal. Instead of delivering on the promises of development made by President King, Firestone has been at the center of various controversies. These have ranged from allegations of bad labor practices to depriving the country of its just share of the profit from its operations. With respect to the former, the League of Nations investigated Firestone's labor practices, concerning an allegation of *"forced labor, modern equivalent of slavery"* on its plantation.¹⁸ Interestingly, it was established that the Government of Liberia had led the forced labor campaign on behalf of Firestone. The government required the tribal chiefs to send a specific number of laborers or workers to Firestone, the chiefs being paid per laborer. Firestone agents also went from one village to another to ensure that the chiefs provided the men. This practice continued until 1961, when Portugal filed a complaint to the International Labor Organization (ILO).¹⁹ After an intervention by the ILO, this notorious recruitment practice was finally outlawed, more than three decades after it was first used.

Lost in Concessions

Liberia has a land area of approximately ten million hectares.²⁰ Rubber, oil palm and logging concessions cover a significant percentage of the country's land area, and are spread across all fifteen counties. As illustrated below land allocated to rubber, oil palm and logging concessions covers approximately 2,546,406 ha or approximately 25% of the country.

The duration of these concessions and their sizes vary. Logging concessions are typically for 25 years, while agricultural concessions can last up to 99 years – as was the case with Firestone. The areas to be leased under these concessions are often occupied by people who are not told in advance that the government plans to allocate the land to a (foreign) company.

These large-scale allocations reflect a striking lack of coherence in government policies. The government's agriculture policy states *"81% of the population is either highly vulnerable or moderately vulnerable to food insecurity²¹"*. To address this situation, two of the three broad objectives of the government's agriculture policy are to make *"safe and nutritious foods available in sufficient quantity and quality at all times to satisfy the nutrition needs of all Liberians²²"* and to ensure *"inclusive and pro-poor growth in agricultural production, productivity, competitiveness, value addition and diversification, and linkages to market²³"*. These policy objectives seem to be at odds with the practice of allocating large swathes of fertile land to foreign companies to cultivate rubber and oil palm, preventing their use for food production. The rhetoric of adopting a pro-poor approach to stimulating growth in the agricultural sector seems to make a mockery of poor farmers who are being stripped of their farmlands, which are then handed over to foreign investors.

Large-scale land allocation to agribusinesses, which is also commonly referred to as 'land grabbing', is a global nightmare affecting the poor. Fred Pearce eloquently illustrates the global nature of the problem, and shows how corporations and politicians are colluding with each other to strip the poor of the only real assets they have to lift themselves out of poverty. In his recent book *The Land Grabbers²⁴*, he writes: *"I discovered how logging concessions in central Africa may have helped elect Nicolas Sarkozy as president of France; what Lord Rothschild and a legendary 1970s asset-stripper are doing in the backwoods of Brazil; who is buying Laos and Liberia, and who already owns Swaziland; how Goldman Sachs added tens of millions to the world's starving; the dramatic contrast between Kenya's Happy Valley and Zimbabwe's Hippo Valley; who grabbed a tenth of the new state of South Sudan even before it raised its flag; why Qatar is everywhere; and what links a black-skinned Saudi billionaire to Bill Clinton, Ethiopia's ex-freedom-fighting prime minister and rich cattle pastures at the head of the Nile."*

To illustrate the scale of land allocation in Liberia, below is a list of rubber, oil palm and logging concessions. This list includes only those concessions in the agricultural and logging sector with a duration of 25 years or more. The data below, extracted from the individual concession agreements and other published literature, show that all fifteen of Liberia's counties are affected by one or more agriculture and/or logging concessions.

Name of company	Concession Size(ha) ⁱⁱ	Counties
Firestone	404,685 ⁱⁱⁱ	Margibi, Bassa
Liberia Agricultural Company	121,405	Grand Bassa/Rivercess
Sinoe Rubber Plantation	242,811	Sinoe
Equatorial Palm Oil	68,391	Sinoe, Grand Bassa
Salala Rubber Company	40,468	Bong
Sime Darby Plantation (Liberia) ^{iv}	311,187	Cape Mount, Bomi, Gbarpolu, Bong
Golden Veroleum Liberia	350,000	Sinoe, Grand Kru, Maryland, Rivercess
Forest Management Contract – Area A	119,240	Lofa, Gbarpolu
Forest Management Contract – Area B	57,262	Rivercess
Forest Management Contract – Area C	59,374	Rivercess
Forest Management Contract – Area K	266,190	Rivercess, Grand Gedeh, Nimba
Forest Management Contract – Area I	131,466	Grand Gedeh, Sinoe
Forest Management Contract – Area P	119,344	Grand Kru, Maryland
Forest Management Contract – Area F	254,583	Grand Gedeh, River Gee
Total	2,546,406	

ⁱⁱ For the conversion from acre to hectare used in this table see: <http://www.convertunits.com/from/acre/to/hectare>

ⁱⁱⁱ There are suggestions that this figure was changed in the 1970s, while others suggest it was only recently changed. The 2006 Government of Liberia - UNMIL Rubber Plantation Task Force Report puts the figure at 1,084,000 acre (p.3).

^{iv} Sime Darby's concession area includes the old Guthrie Plantation concession, which covered 121,500 ha. By 2006 only 7,300 ha was planted with rubber.

Liberia's land legislation^v

The fragility of rural tenure security in Liberia has been compounded by contradictory national land and natural resources policies, ambiguous legal frameworks, weak implementation, low professional and resource capacity, corruption, and a lack of political will to ensure tenure security for rural communities.

Between 1821 and the mid-1900s, the liberated slaves from the United States of America ('Americo-Liberians') who founded the modern nation-state of Liberia largely confined their rule and activities to the coast (the 'littoral'), leaving indigenous Liberians to inhabit and administer the inland areas (the 'hinterland') according to customary principles and leadership structures. As the Americo-Liberians slowly expanded their domain inland, they did not declare all land and resources to be the property of the state, as was common colonial practice. Instead, in 1923, they agreed to recognize tribes' ownership of their land according to customary boundaries and allow local land administration and management to be governed by customary paradigms. The Hinterland Act (1949) (An Act Approving the Revised Laws and Administrative Regulations for Governing the Hinterland) legalized this arrangement and allowed chiefs to formalize tribal land claims by applying for a deed in fee simple. The Hinterlands Law (1949) established that tribes were eligible to apply for deeds to establish documentary proof of their formal ownership over their lands.

The full text of article 66, entitled 'Lands' is as follows: *"The right and title of the respective tribes to lands of an adequate area for farming and other enterprises essential to the necessities of the tribe remain inherent in the tribe to be utilized by them for these purposes; and whether or not they have procured deeds from Government delimitating by metes and bounds such reserves, their rights and interest in and to such areas are a perfect reserve and give them title to the land against any person or persons whosoever."* By providing indigenous persons with full ownership (not simply a right of use and benefit) and regardless of whether a formal deed had been issued, this law offered wider protection to community land holdings than any other African country at any time in history. Thirteen chiefdoms seized this opportunity and their combined 2.3 million acres (930,798 hectares) remain registered today in the name of these chiefdoms.²⁵

In 1956, however, the Liberian government changed its policy and, under the Aborigines Law (1956) (Title 1: Aborigines Law, Liberian Code of Laws), claimed all lands as property of the state. As a result, with the exception of those 13 chiefdoms that had acquired deeds, tribes no longer owned their lands, but rather became 'holders' and 'users' of state land.²⁶ The full text of the relevant articles (270-272) reads: *"Extent of Tribal Rights in Lands: Each tribe is entitled to the use of as much of the public land in the area inhabited by it as is required for farming and other enterprises essential to tribal necessities. It shall have the right of possession of such land as against any person whomsoever. The President is authorized upon application of any Tribal Authority to have set out by metes and bounds or otherwise defined and described the territory of the tribe thus applying. A plot or map*

^v This section attempts to unpack a rather complex and confusing legal landscape with respect to land rights in Liberia. It is extracted from recent publications from the Sustainable Development Institute (SDI), Namati and International Development Law Organization (IDLO).

of such survey or description shall be filed for reference in the archives of the Department of State within six months after the completion of such survey. The omission of the tribe to have its territory so delimited shall not affect in any way its right to the use of the land."

Yet when the Liberian Code of Law (1956) was revised in the mid-1970s, the full text of the Aborigines Law (1956) was omitted. As a result of this omission, it is not clear whether the Aborigines Law or the Hinterland Act remains operative today.²⁷

The Public Lands Act (1972–1973) (Title 34 of the Liberian Codes Revised) adds to this confusion. Under the Public Lands Act, Liberians (including chiefdoms and other community units) may purchase their lands from the state for 50 cents an acre and thereafter claim private ownership. Between 1956 and 1986, 19 chiefdoms successfully secured 2.5 million acres (1 million ha) under public land sale deeds held collectively by community members.²⁸ Since 1988, however, no community has acquired a deed to its land through this process. Furthermore, the Public Lands Act not only fails to define 'public lands', but also contains important contradictions. On the one hand, by requiring that applicants purchase such land from the state, the law implies that the state is the owner of public lands, and in this capacity may sell it to communities. On the other hand, the application process requires that tribal authorities consent to the sale of land and the County Land Commissioner be satisfied that the land in question is not a portion of the Tribal Reserve – an implication that tribes remain the owners of such land.

While the legal framework remains unclear, what is clear is that in the past, the Liberian government did grant a number of tribes legal deeds to their chiefdoms and clans under the Aborigines Law (1956) and the Public Lands Law (1972–1973). Alden Wily's research located 47 deeds, which in combination cover a total of 6.8 million acres (2,751,922 ha) or 29% of Liberia's total land area. However, such land ownership has not impeded the government from granting lucrative mining and forestry concessions to investors in these areas.

To put the discussion in this section into context, some points are worth repeating. Firstly, the government has not followed the spirit and intent of Liberia's land-related laws in its dealings with foreign investors. Secondly, the dominant thinking within the government at the moment is that the government has the right to allocate land to foreign investors because it is in the interest of the development of its people. Thirdly, the government has not used due process to extinguish existing encumbrances (formal, customary or otherwise) on land it has allocated to agricultural companies since the 1920s. And finally, the practice has been to allocate land to foreign investors without any prior consultation with those that would be affected by projects, and this practice continues.

The oil palm sector

The government allocated 311,187 ha to the Malaysia-based Sime Darby conglomerate, with a 63-year lease. The agreement, signed in April 2009, allows Sime Darby to plant oil palm on 220,000 ha of the Concession Area.²⁹ This is more than the total land area that Sime Darby had planted with oil palm in Indonesia in 2009³⁰ even though Indonesia is more than fifteen times the size of Liberia.^{vi}

In 2010, the government also allocated 350,000 ha under contract to the Singapore-listed company belonging to the Indonesian Sinar Mas Group, Golden Veroleum Liberia (GVL), for 65 years.³¹ The terms of the contract allow for an extension of an additional 33 years before the expiration of the first 65 years.³² Another company, British-based Equatorial Palm Oil also secured a 169,000 ha concession combining the old Butaw Plantation in Sinoe County and LIBINCO in Grand Bassa County.

This case study on plantation development in Liberia focuses on Sime Darby, and asks three questions. Firstly, how is the company's operation affecting communities in the areas where they operate? Secondly, what are the key demands of those affected by the operation of the company? And thirdly, what are the communities' expectations and fears in areas where the company plans to expand?

To address these three questions the case study focused on two groups of communities: those in an area where the company has already cleared and planted oil palm, and those in a proposed development area.

Who is Sime Darby?

Sime Darby Berhad, Golden Hope Plantations Berhad and Kumpulan Guthrie Berhad completed a merger on 27 November 2007, thus establishing Sime Darby Plantation as one of the world's largest palm oil producers, producing about 2.4 million tons of crude palm oil output annually.³³ According to Sime Darby's company website, Sime Darby Plantation is the plantation and agri-business arm of the Sime Darby Group. The plantation division is mainly involved in oil palm cultivation, and related production, processing and marketing activities. Sime Darby is also a member of the Roundtable on Sustainable Palm Oil (RSPO), the international body set up to certify the 'sustainability' of oil palm plantations around the world.

When Sime Darby acquired Kumpulan Guthrie Berhad it acquired the Guthrie Rubber Plantation as part of the deal.³⁴ The original concession agreement for the Guthrie Rubber Plantation was signed in 1954. In 1981 the government of Liberia acquired the plantation and hired the Malaysian rubber company Guthrie to manage it.

^{vi} *Indonesia's land area is 737,815 sq miles while Liberia's is just 43,000 sq miles.*

Sime Darby's Contract with the Government of Liberia

Sime Darby's concession covers land in Grand Cape Mount, Bomi, Gbarpolu and Bong Counties. According to the agreement the government shall ensure that lands included in the concession area are "free from Encumbrances at the date of handover of such lands in accordance with the Development Plan."³⁵ But the agreement does not specify how land will be made free from encumbrances and does not promise to develop guidelines and procedures for how this should happen. At the same time, there is no requirement in the contract to inform people living on the land, including those who have private property rights to land and other estates in the selected Concession Area.

Furthermore, the contract provides that the government assumes ownership of all non-movable assets in the Concession Area when the company leaves; and this provision does not exclude private estates, land and other assets that may have been taken by the company.³⁶ There is thus no provision for the land and others assets to be returned to communities or their original owners either during implementation or after the contract expires. Failure by Sime Darby to meet its Minimum Development Obligations, requiring 100% of the area to be planted by the twentieth year of the contract, also entitles the government to reclaim any undeveloped portion of the Concession Area.³⁷ Again, this provision does not require the government to return private lands included in the concession to the original owners.

According to the contract, the company may also displace and resettle communities³⁸ – it is only required to show that if the communities remained they would interfere with its operations. In cases where a community has to be relocated, Sime Darby and the government will share the responsibility for the resettlement, including managing the plans, carrying the resettlement out, and paying for the cost (Sime Darby would be obliged to pay for up to US\$200 per hectare; the government will pay the rest). In addition, 50% of these expenses will be taken off the taxes that Sime Darby owes the government.³⁹ However, the contract does not specify whether this is payment for land needed to resettle those that have to be moved, or compensation for land that has been lost. Displacement may also affect people living outside the boundaries of the Gross Concession Area chosen by Sime Darby and the government. This could occur either to replace land lost to government infrastructure or to replace land lost to third-party or other concessionaires.^{vii}

Communities on the frontlines

The company's current plantation development activities are situated in Bomi and Grand Cape Mount Counties. In Bomi, the company is clearing old rubber trees to start planting oil palms in the area. In Grand Cape Mount, within the Garwula District, the company has established a nursery and started planting its first 5,000 ha. The Environmental and Social Impact Assessment (ESIA) for this phase has already been approved. Another area of

^{vii} An additional and more detailed critique of the contract, including suggestions for possible changes, is found in Annex I.

interest in Grand Cape Mount is the Gola Konneh District.⁴⁰

In Gbarpolu County, Bopolu District, the company is targeting 20,000 ha of land for nursery and oil palm plantation. For the Gbarpolu project, it has submitted an ESIA, which is awaiting approval. Other areas of interest in Gbarpolu County include Gbarma and Bokomu Districts.

These case studies focus on Garwula District in Grand Cape Mount, and Bopolu District in Gbarpolu County. These districts fit into the two categories, described earlier, and there are several important differences between the situations in Garwula and Bopolu Districts. These include degree of forest cover, land tenure and ownership, livelihoods, and experiences of large-scale plantations.

Garwula District, Grand Cape Mount County

Garwula District is situated in Grand Cape Mount County, western Liberia. The county is located on the border with Sierra Leone. The population of the district is 26,936-13,668 men and 13,268 women.⁴¹ Several villages and towns are in the immediate vicinity of the area that has been planted with oil palm. These include Senii, Konja, Baka, Madina, and Kenemah. Many of the residents of these villages are subsistence farmers, while a small number of people have smallholder rubber farms.

According to Sime Darby's High Conservation Value (HCV) assessment report, the vegetation is comprised of wetlands, agricultural lands, and mainly intact natural forested areas.⁴² The assessment documented reports of a variety of animal species including Water Chevrotian (*Hyemoschus aquaticus*) and African Buffalo (*Syncerus caffer*), both of which are protected under Liberian laws. Various species of forest and lowland birds, as well as reptiles including crocodiles were also recorded during the avifaunal population survey.⁴³ The original Guthrie Rubber Plantation extends into the district.

Bopolu District, Gbarpolu County

Bopolu District is situated in Gbarpolu County, northwestern Liberia. The population of Bopolu is 17,719. This includes 9,580 men and 8,139 women.⁴⁴ The main towns and villages situated within or straddling the proposed development area include Totoquellie, Gainamah, Small Bong Mines, Mombli-taa, and Sawmill. Residents are predominantly subsistence farmers but a significant number of people, especially women, are engaged in growing vegetables to sell, cultivating sugar cane to produce local alcoholic beverages referred to as cane juice, and small-scale artisanal mining. Mining is mainly situated in the Totoquellie area. There are several large family land holdings as well as a significant number of tenant farmers.

The area targeted by Sime Darby has significant forest cover, including large blocks of primary and secondary forests. The vegetation also includes agricultural land. Several large water bodies including the Mafu and Wegbeni creeks flow into the St. Paul River. Locals

report various species of animals including monkeys and different types of duikers. Various species of birds also occur in the area including different types of hawks, pigeons and the Piping Hornbill.⁴⁵ There is an abundance of various non-timber forest products.



Communities' land for farming



Traditional village in Bopulu – Gbarpolu District

Venturing into the unknown

Sime Darby visited Liberia in 2009 as part of a plan to acquire more land and expand into West Africa. Apparently convinced by senior government officials that Liberia has vast quantities of ‘unused and un-owned’ land, the company signed a Concession Agreement covering 311,187 ha acquiring a 63-year lease.⁴⁶ One could say, however, that the company, with its many years of experience in the palm oil sector, must have known that such large tracts of fertile land in an agrarian society such as Liberia are often occupied and used by the local inhabitants.

The agreement required Sime Darby, in collaboration with the Ministry of Agriculture and the Ministry of Land, Mines and Energy to conduct a survey to identify an area of land equal to 311,187 ha of land in Gbarpolu, Bomi, Cape Mount and Bong Counties (the Gross Concession Area) within one year of July 23, 2009.⁴⁷ An area equal to 220,000 ha would then be selected for the Concession Area and an area equal to 44,000 ha of land would be selected for an Outgrowers’ Program.⁴⁸ However, the contract does not say if the parties would seek prior consent from the communities in the areas to be surveyed. The contract also fails to outline how Sime Darby and the government would take measures to acquire permission to survey the land from the affected communities.

The Gross Concession Area map, later appended to the agreement, distributed the Concession Areas as follows: 39,010 ha in Grand Cape Mount County; 57,008 ha in Bomi County; 55,342 ha in Bong County and 159,187 ha in Gbarpolu County. It is unclear how these numbers were derived and whether surveys were in fact conducted on the ground. One thing that is certain, however, is that the communities to be affected by the concession were not consulted and did not give their consent for the areas they currently occupy and use to be converted to oil palm plantation. Even communities and individual families with legal titles to their lands were not consulted. The result of this lack of consultation became evident soon after the company started clearing areas in Grand Cape Mount County in order to plant oil palm.

On October 4, 2011 a cross-section of inhabitants from communities in Grand Cape Mount and Bomi Counties jointly filed a complaint to the Roundtable on Sustainable Palm Oil (RSPO)⁴⁹. The complaint specifically targeted the company’s plans to develop the first two areas, covering 10,000 ha and 15,000 ha in the two counties. In the complaint, the communities in Grand Cape Mount alleged that Sime Darby is *“engaged in active land clearing, destruction of our sacred sites, destruction of our crops, damming of our creeks and streams, filling in of our swamps, destructions of grave sites, destruction and pollution of our drinking water sources, forceful displacement of our people without adequate compensation, active planting and cultivation of oil palm including the massive establishment of an oil palm nursery without our free prior informed consent.”*⁵⁰ Sime Darby’s plan to access 220,000 ha of ‘unencumbered land’ had begun to unravel. In response, Sime Darby stated its willingness to engage in bilateral discussions with the communities on the issues raised in the complaint.

The bilateral discussion, which was scheduled for December 17, 2011, did not proceed smoothly. To start with the company asked the President to intervene in the dispute with

the communities. Their request triggered a series of reactions from the government starting December 8, 2011. The Minister of State, in a letter to the Ministers of Justice and Internal Affairs, stated “*the President asks that you take this matter in your hands since we cannot allow communities to engage foreign entities directly in resolving national issues*”.⁵¹ An Inter Agency Task Force was thus established and instructed to meet with the communities that filed the complaint, hear their grievances, and solicit their support for governmental efforts to resolve their grievances amicably. The team was also tasked with meeting the company to hear their grievances and concerns as well and to solicit their support in working with the government for an amicable resolution of the issues affecting their operation. Finally, the team was tasked with reviewing the Concession Agreement between the Government of Liberia and Sime Darby to determine if there are any major problems with its execution, and to advise the government accordingly.

The Inter Agency Task Force (or the Task Force) met with the communities and proposed that they present their grievances to the government, who would then present them to the company during a tripartite session scheduled for December 17, 2011. A series of meetings was also organized between the different stakeholders: the government and communities, the government and the company, and the company and communities.

According to the Task Force’s report, the communities initially agreed to the government’s proposal but reneged at the last minute, when the Task Force arrived on the 17th. The report claims that the communities then went ahead and met with the company directly, on the 17th, but after the departure of the government’s team.

Following almost a month of stakeholder consultations and meetings, the Inter Agency Task Force presented its findings. Two points stood out in particular. Firstly, there seemed to be a clear lack of understanding of the agreement amongst various government entities as well as the concerned citizens. Secondly, several aspects of the agreement have been, either intentionally or unintentionally, overlooked and/or disregarded by both the Government of Liberia and Sime Darby.⁵²

To address some of the issues identified, the task force presented thirteen recommendations. Three of those recommendations validate some of the concerns the communities had raised in their complaint. The task force recommended that:

- (1)** Sime Darby makes restitution and adequate compensation for shrines that were intentionally and unintentionally destroyed;
- (2)** The government and Sime Darby should jointly survey the land identified by Sime Darby for its plantation development; and
- (3)** Sime Darby and the government should jointly audit the compensation that was paid for crops.

Additional recommendations included working with the concerned citizens to withdraw their complaint, and exploring the possibility of Sime Darby moving into another county – preferably Gbarpolu – while the situation in Grand Cape Mount was being resolved. The final recommendation was particularly instructive: “*the government of Liberia see how it*

can learn from and use the experiences gained from this exercise to address similar problems around the country⁵³". The communities however refused to withdraw their complaint. While some of these recommendations reflect good intent they are contrary to the views and opinions expressed by some senior government officials, as discussed in the next section.

Skewed interpretation of rights jeopardizes the wellbeing of local communities

Members of the Government of Liberia have made several comments that contradict fundamental aspects of international human rights treaties, which Liberia has ratified and signed.

The preamble of the landmark African Charter on Human and Peoples' Rights, which was ratified and entered into force in October, 1986, in none other than Monrovia, Liberia states that "...civil and political rights cannot be dissociated from economic, social and cultural rights...". Thus contract provisions signed between the Government of Liberia and oil palm concessionaires like Sime Darby breach the civil and political rights of thousands of Liberians living in areas affected by these concession agreements, because they are breaching their economic, social, and cultural rights.

In addition, the two oil palm concession agreements signed between the government and Sime Darby, and the government and Golden Veroleum, specifically contravene critical provisions of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), and the notion of Free Prior and Informed Consent inherent in the above Covenants and Convention.

The discussion below highlights specific government comments that thwart the observance of Liberia's human rights obligations. This is done by juxtaposing government comments taken from the minutes of the January 18, 2012 meeting of the Inter-Ministerial Committee on the Sime Darby Concession Area with relevant provisions of the aforementioned international human rights agreements. It should be noted that the President has made remarks that seem to reflect the same position.

Firstly, the Inter-Ministerial Committee on the Sime Darby Concession Area responded to community demands for government recognition of their right to Free Prior and Informed Consent with respect to development on their ancestral land with the following remark:

"The committee agreed that free prior consultation with the affected communities to inform them of the importance of the development initiative and their benefits is important. However, giving communities the right to consent or refuse endeavours that could benefit the entire country should not be encouraged."^{viii}

^{viii} Page 2 of minutes from the Meeting of the Inter-Ministerial Committee on the Sime Darby Concession Area.

Discouraging communities from the right to consent or refuse resource extraction by multinationals who put their livelihoods and wellbeing at risk blatantly contravenes several laws in force. Free Prior and Informed Consent (FPIC) is a key principle of international human rights law and appears in the following international instruments to which Liberia is a signatory and has in force:

- The International Covenant on Civil and Political Rights (ICCPR)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- The International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)

In the context of Liberia, the principle of FPIC guarantees informed, non-coercive negotiations between investors and companies, the government, and affected communities prior to plantations or logging operations being established on their customary lands.^{ix} Efforts to discourage Free Prior and Informed Consent undermine Liberia's legal obligations.

Communities impacted by plantations or logging operations also need access to information regarding concession agreements, in order to exercise their right to consent or refuse extractive activities on their customary land. Article 15(c) of the Constitution of Liberia provides that no limitation shall be placed on the public right to be informed about the government and its functionaries. The Liberian Freedom of Information Act of 2010 further promotes the right to access information and obliges public bodies and officials to disseminate essential information that the public would generally want to know.^x The right to receive information is also a tenant of the Universal Declaration of Human Rights^{xi} and the African Charter on Human and Peoples' Rights.^{xii} The right to information is premised on the notion that with information, individuals and groups will be able to make informed decisions that foster their individual and collective rights and interests.

The committee's remark in response to citizens' demands for government recognition of community ownership and customary right to ancestral land, some of which was forcefully taken from communities in 1955, was also instructive: *"It was recognized by both the government and community that the State is the custodian of all land. There is no need to go back into history regarding the issue of land ownership because this would be like opening a Pandora Box."*^{xiii}

Several international human rights agreements in force in Liberia acknowledge traditional land rights and do not consider the state the custodian of all land. Article 21 of The African Charter on Human and Peoples' Rights (hereafter The Charter) specifically addresses community land rights and the use of natural resources. Article 21 Section 1 provides that in no case shall people be deprived of their right to freely dispose of their wealth and natural resources, a right to be exercised in the exclusive interest of the people. The

^{ix} See p.17 of *'Free Prior and Informed Consent: Making FPIC Work in Forests and Peoples' (2010)*.

^x See *Liberian Freedom of Information Act of 2010 1.4(c)*.

^{xi} See *Article 19 of the Universal Declaration of Human Rights*.

^{xii} See *Article 9 Section 1 of the African Charter on Human and Peoples' Rights*.

^{xiii} See p.2 of *minutes from the Meeting of the Inter-Ministerial Committee on the Sime Darby Concession Area*.

International Covenant on Civil and Political Rights (ICCPR) also protects individuals' right to self-determination and to freely dispose of their natural wealth and resources. Pursuant to the ICCPR, people are not to be deprived of their own means of subsistence or the right to enjoy their own culture.^{xiv} Inherent within enjoyment of culture is the right of indigenous communities to continued use of their customary land and resources.^{xv} Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the same as Article 1 in the ICCPR, again protecting people's self-determination and their right to freely dispose of their natural wealth and resources and not be deprived of their own means of subsistence.

The Charter also speaks extensively about community land rights. It provides that the right to property shall be guaranteed, and can only be encroached upon in the interest of public need or in the general interest of the community.^{xvi} Like the ICCPR, The Charter protects each individual's right to freely take part in the cultural life of their community, and pursue their economic and social development according to the policy they have freely chosen^{xvii}. Article 17 Section 3 advances the recognition of community land rights by making it the duty of the state to promote and protect the morals and traditional values recognized by the community. As a party to these international instruments, the Government of Liberia therefore has an obligation to uphold and protect these rights.

Article 21 Section 5 of The Charter also provides that *"States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources."* Yet instead of taking measures to eliminate all forms of foreign economic exploitation, the Government of Liberia has, over the past decade, increasingly entered into concession contracts with multinational oil palm corporations like Sime Darby and Golden Veroleum, directly contravening this provision.

The Committee remark responding to communities' demands not to be displaced is also pivotal: *"The committee also recognizes that right of indigenous people to land, but if the government can determine that the land will be used for the general good of all through developmental purposes, then the government should not be denied this right. Indigenous people can be relocated or compensated."*

The Charter guarantees the right to property, and only permits property rights to be encroached under extreme circumstances in the interest of public need.^{xviii} The Government of Liberia should therefore take all measures to avoid displacement of communities. Article 21 Section 2 of The Charter also provides that in case of spoliation, the dispossessed people shall have the right to the lawful recovery of their property as well as to adequate compensation.

^{xiv} See ICCPR Articles 1 and 27.

^{xv} See ICCPR General Comment 23 explaining the relationship of land and resource use to enjoyment of culture.

^{xvi} To be done in accordance with the provisions of appropriate laws. See Article 14 of The Charter.

^{xvii} See Article 17 Section 1 and Article 20 of The Charter.

^{xviii} See Article 14 of The Charter.

Case studies

The impacts of Sime Darby in Garwula District, Grand Cape Mount County: testimonies from the villages of Baka and Kenemah

For generations, residents of Baka and Kenemah have farmed and lived off the land. They grew rice, cassava, and a variety of food crops to feed themselves and to sell the surpluses. The sale of the surpluses was for many a major source of income. Others cultivated cash crops such as rubber and kola nuts for sale. Those that planted rubber sold their latex to Firestone and other agribusinesses. The residents also collected a variety of non-timber forest products from nearby forests. Some of the forest products were used domestically and others were processed and sold to markets near and far for income. These local industries provided diverse opportunities for income generation to men and women alike.

Since the arrival of Sime Darby in the area all of this has changed. The company cleared their farmlands and converted them to oil palm plantations. They cleared the forests from which they harvested non-timber forest products, and converted those areas to oil palm plantation as well. The residents of the area now have to buy their food items, including their staple foods, cassava and rice, from other villages that are far away and from the capital city, Monrovia. For the people in Baka and Kenema, the closest markets where residents can buy food brought in from Monrovia, are Nimba Point and Kon Town – this means that women and children now have to walk three to four kilometers daily, to buy food.

When the company first arrived, the community seemed unaware of what this would mean for their wellbeing. According to one of the residents of Baka who participated in the interviews for this case study, several people initially embraced the company. But, as it turned out, the company's activities have brought many challenges to the community in the area: they have negatively impacted them, and will continue to do so for many years to come.

In these interviews with some of the residents of Baka, several concerns emerged, relating to community members' farmlands and cash crops, as well as the desecration of the community's culturally significant sites.

The first concern was that Sime Darby did not properly consult them about the farmlands and crops on the land before it started clearing. They said that although the company did convene a meeting in their area, the meeting did not lead to an agreement about their land and crops. The company neither asked how much crop owners would accept nor negotiated prices for crops with villagers in the area. Those whose crops were later destroyed by the clearing were not told the prices the company would pay for their crops in advance. They further claimed that even if the company had properly sought their consent, they would not have given up their farmlands. In short, they did not enter into any agreement regarding farmlands and crops before the company's bulldozers arrived.

The second concern was that the compensation paid for crops that were destroyed was not sufficient. Instead of negotiating compensation with the farm owners, the company used a price list provided by the Liberian Ministry of Agriculture. According to the official

Ministry of Agriculture “prices for claims for compensation for expropriated/ damaged major tree crops for 2009⁵⁴” a mature rubber tree, cocoa tree, coffee tree, coconut tree, or avocado tree was valued at US\$6 per tree, a mature plantain at US\$3 and a mature pineapple at US\$2.^{xix} Some people received as little as US\$62 as compensation for their crops – from which the government then deducted 4% in taxes. According to the residents that were interviewed, the company imposed the government prices on them. The company however countered: “SDPL was guided by the GoL/Ministry of Agriculture rates but went beyond that and negotiated the rates with communities⁵⁵”.

Sime Darby Plantation (Liberia) Inc
Mobil Compound,
St. Paul Bridge,
Montserrado County,
Monrovia, Liberia
Tel : 00304672

Date: 21st June, 2010
Receipt #: SDL New Area 243

RECEIPT

Received from the joint team consisting of Sime Darby Plantation (Liberia) Inc. and the Ministry of Agriculture, Republic of Liberia the sum of **USD 58,75** as compensation for my crops as follows;

1	1	Pepper	@	0.90	per tree	=	0.90
2	7	Bitter ball	@	0.90	per tree	=	6.30
3	40	Stick bean	@	0.90	per tree	=	36.00
4	10	Immature plum	@	1.80	per tree	=	18.00
Total							61.20
Less Govt. of Liberia tax 4 %							2.45
NETT							58.75

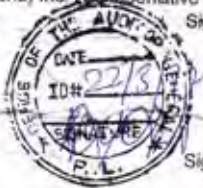
Name of crop(s) owner: Famata Sombai Signature: _____
Baikai Town

Government of Liberia Representative:
Mr. James Biah Signature: _____
Ministry of Agriculture Rep.

Sime Darby Plantation (Liberia) Inc. Representative
Mr. Boima Sonii Signature: _____
SDL Liason Officer

Approved By Town Chief
Mr. Varney Kanneh Signature: _____

Attested By District Commissioner
Mr. Mambu Sonie Signature: _____



The community also claimed that the figures for compensation given on the payment lists were different from what some people actually received. This claim seems to be based on unexplained differences in the prices offered for the same crops. For example, one receipt listed the value of one acre of cassava at US\$150 while another listed the value of an acre of cassava at US\$80; both receipts were documented in the same village. According to locals, the company representatives did not explain these differences.

The third concern was that the counting of crops was not done properly. Those interviewed claimed the community was not involved in the survey of their farmlands and crops because they could not understand the technology being used and how the compensations were subsequently calculated; Sime Darby claims otherwise. The interviewees said that once the company completed its assessment, the team that was established to pay out the compensation then arrived and commenced payment. Some of the residents initially rejected the payments, but the company threatened to hand their compensations to the government, so they panicked and accepted them; they felt that if the payments went to the government it would be impossible to get them back.

^{xix} The list is found in Annex II. The list has been recently revised and the price for a mature rubber tree is now set at US\$8.

The claims of inadequate compensation are also validated by some of the receipts seen by the author. For example, one farmer was paid US\$817.50 for five acres of cassava; no compensation was paid for the land and no replacement land was given to the farmer. The government also deducted a 4% tax from this amount. He now has nowhere to grow food to feed his family because the oil palm plantation surrounds his village. The US\$1,284.48 total that he got is all he has to support his family from now on.

Sime Darby Plantation (Liberia) Inc.
Head Compound,
St. Paul Bridge,
Bongorah County,
Monrovia, Liberia
Tel: 0023184712

Date 15th May 2015
Receipt # SDL New Area 102

RECEIPT

Received from the joint team consisting of Sime Darby Plantation (Liberia) Inc. and the Ministry of Agriculture, Republic of Liberia the sum of **US\$ 1,284.48**, as compensation for my crops as follows:

1	5.45	acres cassava farm	@	150	per acre	=	817.50	
2	8	kola trees - bearing	@	6.00	per tree	=	48.00	
3	10	immature rubber	@	3.00	per tree	=	30.00	
4	45	plum tree - bearing	@	4.00	per tree	=	180.00	
5	25	Tappable rubber	@	0.90	per tree	=	22.50	
6	15	pineapples	@	1.50	per tree	=	22.50	
							GROSS TOTAL	1382.00
Less							Govt. of Liberia tax	97.52
							NETT	1284.48

Name of crop(s) owner: **Abdul Sombal**
Baka Town

Signature: _____

Government of Liberia Representative:
Mr. James Bah
Ministry of Agriculture Rep.

Signature: _____

Sime Darby Plantation (Liberia) Inc. Representative
Mr. Roma Soro
SDL Liaison Officer

Signature: _____

Approved By Town Chief
Mr. Momodu Mansaray

Signature: _____

Attested By District Commissioner
Mr. Mambu Soro

Signature: _____

Sime Darby Plantation (Liberia) Inc.
Head Compound,
St. Paul Bridge,
Bongorah County,
Monrovia, Liberia
Tel: 0023184712

Date 21st June 2015
Receipt # 079

RECEIPT

Received from the joint team consisting of Sime Darby Plantation (Liberia) Inc. and the Ministry of Agriculture, Republic of Liberia the sum of **US\$ 1,284.48**, as compensation for my crops as follows:

1	1	Pre-cropping operation (1 bag)	Total	1
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Name of crop(s) owner: **Abdul Sombal**
Baka, Baka Kondoma

Signature: _____

Government of Liberia Representative:
Mr. James Bah
Ministry of Agriculture Rep.

Signature: _____

Sime Darby Plantation (Liberia) Inc. Representative
Mr. Roma Soro
SDL Liaison Officer

Signature: _____

Approved By Town Chief
Mr. Yancy Sarrad

Signature: _____

Attested By District Commissioner
Mr. Mambu Soro

Signature: _____

Sime Darby Plantation (Liberia) Inc.
Head Compound,
St. Paul Bridge,
Bongorah County,
Monrovia, Liberia
Tel: 0023184712

Date 21st June 2015
Receipt # SDL New Area 100

RECEIPT

Received from the joint team consisting of Sime Darby Plantation (Liberia) Inc. and the Ministry of Agriculture, Republic of Liberia the sum of **US\$ 202.29**, as compensation for my crops as follows:

1	2.134	cassava # 1	@	80.00	per acre	=	170.72	
2	0.5	cassava # 2	@	80.00	per acre	=	40.00	
							Total	210.72
Less							Govt. of Liberia tax	8.43
							NETT	202.29

Name of crop(s) owner: **Abdul Sombal**
Johnson Town

Signature: _____

Government of Liberia Representative:
Mr. James Bah
Ministry of Agriculture Rep.

Signature: _____

Sime Darby Plantation (Liberia) Inc. Representative
Mr. Roma Soro
SDL Liaison Officer

Signature: _____

Approved By Town Chief
Mr. Musa Gray

Signature: _____

Attested By District Commissioner
Mr. Mambu Soro

Signature: _____

Sime Darby Plantation (Liberia) Inc.
Head Compound,
St. Paul Bridge,
Bongorah County,
Monrovia, Liberia
Tel: 0023184712

Date 21st June 2015
Receipt # 130

RECEIPT

Received from the joint team consisting of Sime Darby Plantation (Liberia) Inc. and the Ministry of Agriculture, Republic of Liberia the sum of **US\$ 34.80**, as compensation for my crops as follows:

1	1	Pigpen	@	0.50	per tree	=	0.50	
2	2	chick pens	@	0.50	per tree	=	1.00	
3	40	Shoe pens	@	0.50	per tree	=	20.00	
4	10	vineyard plum	@	0.50	per tree	=	5.00	
							Total	26.50
Less							Govt. of Liberia tax	0.00
							NETT	26.50

Name of crop(s) owner: **Abdul Sombal**
Baka Town

Signature: _____

Government of Liberia Representative:
Mr. James Bah
Ministry of Agriculture Rep.

Signature: _____

Sime Darby Plantation (Liberia) Inc. Representative
Mr. Roma Soro
SDL Liaison Officer

Signature: _____

Approved By Town Chief
Mr. Yancy Sarrad

Signature: _____

Attested By District Commissioner
Mr. Kabori M. Kabori

Signature: _____

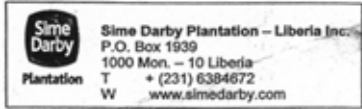
Pay Slips

EARNINGS		USD	DEDUCTIONS		USD	CONTRIBUTIONS	
NO. _____ PAYSIP FOR THE MONTH 31 AUGUST 2012 COMPANY : SIME DARBY PLANTATION (LIB) INC EMPLOYER : _____ REFERENCE NO.: _____ EMPLOYEE NAME : _____ EMPLOYEE NO. : _____ SEX : MALE DIVISION _____ SOCIAL SEC. NO. : _____ TAX NO. _____							
BASIC EARNED WAGES		115.71	N.P.S		3.47	EMPLOYEE	3.47 1.76
			UNION FUND (GAAWUL)		2.00	EMPLOYER	5.50
			RICE		44.38	*TOTAL*	8.97 1.76
			P.I.T		1.76		
TOT. EARNINGS		115.71	TOT. DEDUCTIONS		51.61		
			NETPAY		64.10		
NORMAL DAY	21.0	LEBIHMASA-HARI BIASA	0.0	PUBLIC HOLIDAY	0.0	APPROVED LEAVE	0.0
REST DAY	0.0	OVERTIME - RP	0.0	VACATION LEAVE	0.0	ABSENT	0.0
HOLIDAY	0.0	OVERTIME - RP	0.0	SICK LEAVE	0.0	MATERNITY LEAVE	0.0
						SOCSCO CLAIM	0.0
						OTHERS	0.0

SIME DARBY PLANTATION (LIB.) INC.		
MATAMBO ESTATE		
PAYSIP		
Mar-12		
BASE SALARY		90.00
Bonus		0.00
House Rental		0.00
OVERTIME		0.00
HOLIDAY		0.00
GROSS		90.00
DEDUCTION		
1ST BAG RICE	35.50	
INCOME TAX	0.62	
NPS	0.00	
INSUR. DUE	0.00	
Union Due	0.00	
TOTAL DEDUCTION		36.12
NET EARNING		53.88

One bag of rice is reflected on the slip because the two bags are subsidized at 50% of the market price.

Worker's Employment Contract



Strictly Private & Confidential

Strictly Private & Confidential

Mr./Mrs./Ms. _____

Mr./Mrs./Ms. _____

Dear Mr./Mrs./Ms. _____:

Dear Mr./Mrs./Ms. _____:

We are pleased to offer you a contract employment as General worker effective Dec 29 2011. You shall report directly to Mr. Sam Karmwhine, Manager, Nursery Operations, Sime Darby Plantation- Liberia, Inc.

We are pleased to offer you a contract employment as General worker effective April 2 2012. You shall report directly to Mr. Sam Karmwhine, Manager, Nursery Operations, Sime Darby Plantation- Liberia, Inc.

Duration:
This assignment is for a period of three months effective as of Dec 29 2011 to March 31 2012. It is subject to renewable conditions based upon performance.

Duration:
This assignment is for a period of three months effective as of April 2 2012 to July 2 2012. It is subject to renewable conditions based upon performance.

Responsibilities:
Your duties and responsibilities shall be determined by the Manager, Nursery Operations of your contract area and in accordance with the standard operating procedures (SOP) of Sime Darby Plantation – Liberia, Inc.

Responsibilities:
Your duties and responsibilities shall be determined by the Manager, Nursery Operations of your contract area and in accordance with the standard operating procedures (SOP) of Sime Darby Plantation – Liberia, Inc.

Salary/Wages:
You shall be paid US\$ 5.00 USD dollars per day each month.

Salary/Wages:
You shall be paid US\$ 5.00 dollars per day each month.

Terms and Conditions:
You are subject for transfer, if deem necessary to other jobs; especially at the equivalent of your contract specification. The company reserves the right and discretions to review, revoke, vary, add and delete any and/or all the terms and conditions at any time and in any way as the company may deem fit and necessary.

Terms and Conditions:
You are subject for transfer, if deem necessary to other jobs; especially at the equivalent of your contract specification. The company reserves the right and discretions to review, revoke, vary, add and delete any and/or all the terms and conditions at any time and in any way as the company may deem fit and necessary.

Acceptance:
The company retains the sole discretion to receive, revoke, vary, add and delete any and/or all the aforesaid terms and condition as and when deemed necessary. Please indicate your understanding and agreement to the terms of your assignment by signing the copy of this letter and return it to the Manager, Nursery Operations within two (2) days as of the date received.

Acceptance:
The company retains the sole discretion to receive, revoke, vary, add and delete any and/or all the aforesaid terms and condition as and when deemed necessary. Please indicate your understanding and agreement to the terms of your assignment by signing the copy of this letter and return it to the Manager, Nursery Operations within two (2) days as of the date received.

Sincerely yours,

Sam Karmwhine
Manager, Nursery Operations
Sime Darby Plantation – Liberia, Inc.

I, _____ Contractor # _____
understand the content of the contract letter and agree to accept the offer as per terms and condition stipulated in this letter.

Signed: _____ Date: _____

Sincerely yours,

Sam Karmwhine
Manager, Nursery Operations
Sime Darby Plantation – Liberia, Inc.

I, _____ Contractor # _____
understand the content of the contract letter and agree to accept the offer as per terms and condition stipulated in this letter.

Signed: _____ Date: _____

According to those interviewed, following the complaints from the communities and the intervention of the government, the communities had meetings with Sime Darby. These meetings were aimed at resolving the broader complaint and also about the food shortages they now faced. Some meetings took place in Kon Town while others took place at the company's estate, Motambo. At one of the meetings in Motambo, on May 3, the company promised that it would clear the swamps where it had already planted oil palms, and provide seeds for the communities to plant. The company also promised that it would employ at least one person from each house within a community. These employees, the company said, would then be given two bags of rice at subsidized prices each month. This would then contribute to addressing the food shortages in the area. The company confirmed that several remedial actions were indeed agreed at the trilateral meeting, and that some of the agreed measures have been implemented although others have been slowed due to the rainy season.

“SDPL agreed to provide expert agricultural extension support to the local communities to engage in intensive agricultural activities. Such support as agreed will include but not be limited to clearing the swamps for the Community to use as farmland, provide seeds, tools and farm inputs for planting. Provide an expert agronomist and the relevant technician required to help the local communities cultivate food crops. It was agreed that the Town chiefs and the leadership of the PAC will identify and allocate plots for individual farmers. SDPL as indicated above agreed to offer agronomic assistance to intensify the cultivation.”

Excerpts from the Minutes of the 3rd May Trilateral Discussions

The fourth concern is that the promises of employment have not been fulfilled satisfactorily. The company promised to employ at least one person from each household in a village; this village has about a dozen houses. The villagers also contend that in light of the loss of farmlands and the lack of alternative livelihoods, even the one person per house agreed is insufficient. They also argue that the houses host more than one family, therefore it doesn't make sense to hire just one person and expect them to cater to the other family that shares the house with them. On the other hand the company argues that it has fulfilled its promise to hire one person per house and that as a result it now employs 3,700 people – three times more than it needs at the moment.

The fifth but most important concern is that there is no more land available to residents: they are now confined to their villages and there is nowhere to farm. Some residents fear that this will contribute to increasing poverty and crime rates in the area, and forced migration. Without land to farm, they are unsure how else they are going to survive in the coming years.

To conclude the interviews in Baka and Kenemah, the participating residents were asked: *“Would you have allowed the company to clear your farms to plant oil palm if they had negotiated with you and agreed on higher compensation for your crops?”* To this they responded no. According to them, they would not have allowed the company to use all the area they had cultivated – regardless of the benefits the company had to offer. This is because the community needs places to farm. One of the interviewees summarized their situation: *“We did not have a choice in the matter. The company was here, the government had given them the land, they were ready to clear your farm and destroy your crops – what more could you do. The situation was that either you take whatever amount they were giving you or they take the money back and still clear the land anyway”*. According to them, their failure to stop the company from the onset was one mistake they will forever regret.

Asked whether they had any recommendations for communities in Gbarpolu County or other areas where the company was planning to expand, they said that those communities would do well to hold a proper discussion with the company and document their agreements, before the company can start operations there:

“Let them review the concession agreement before they let the company in. They should negotiate and agree compensation before the company starts clearing anywhere. They should insist on agreement before Sime Darby starts work there and let them be careful with their legislators. Our Senior Senator claims he was coerced to sign the contract but this doesn't sound true. He has admitted he had no proper understanding of the contract but he signed because of pressure.”

The jobs on offer

In various interviews with residents of the area, many people highlighted the need for jobs. In a village where residents no longer have land to farm, this is reasonable, as it is the only visible and immediate means of survival for many people. The young and the old both compete for the manual jobs available at the nursery and with the planting teams. But the jobs that are on offer can be accurately likened to a bitter-sweet pill: they provide income for people who would otherwise be unemployed but pay very little and the conditions of work may be deemed unfair.

The people from Baka and Kenemah who are 'employed' by the company can be grouped into two categories: 'Daily Hires or Contractors' and 'General Worker'. 'Daily hires' are paid per task performed. For example, those that work with the planting team are paid US\$0.17 to dig each pit and those planting are paid US\$0.22. 'General Workers' are the best of the lot – they are issued employment letters and thus see themselves as above those in the other categories.

However, their employment offer letters and contracts are vague, and the terms of reference broad, and subject to changes without notice. Changes in assignment may even be on a daily basis. The responsibilities outlined in the employment letter, for those assigned to the nursery, are as follows: *"Your duties and responsibilities shall be determined by the Manager, Nursery Operations of your contract area and in accordance with the standard operating procedure of Sime Darby Plantation – Liberia, Inc."* The Terms and Conditions are also similarly broad: *"You are subject for transfer, if deem necessary to other jobs; especially at the equivalent of your contract specification. The company reserves the right and discretions to review, revoke, vary, add and delete any and/or all the terms and conditions at any time and in any way as the company may deem fit and necessary"*.

General Workers receive US\$5 per day for days worked. According to several General Workers interviewed, in the event of holiday, illness, or any accident that prevents a General Worker from reporting for duty – even if the accident occurred with a company tractor on the way to work and you were injured in the accident – you do not get paid for those days. Therefore at the daily rate the highest monthly gross salary is US\$135, i.e. if you work Monday to Saturday. The minimum is dependent on how many days you worked based on the conditions described above. From this amount, 50% of the market price of the two subsidized 100kg bags of rice distributed to workers is deducted – an increase in the price of rice therefore means less take home pay. The two pay slips presented below illustrate the fluctuation in the take home pay for a typical 'General Worker'.



Sime Darby Motambo Estate in Garwula, Grand Cape Mount County

Testimonies from Kon Town, Senii and Gbenii

“The company did not consult with us before they started operations. If they had done that, many of these issues would have been avoided. We didn’t have any arrangement with the company before they came. When they first came to our area they stopped all farming activities and informed residents that if they planted any new areas, their labor would be in vain. Some people were planting already, but they stopped everyone. We had not experienced this situation before and did not know what to do.”

Women Representative and Resident of Senii

According to the testimonies of the community members from Senii town, when the team from Sime Darby first arrived in the area in 2010, they started counting the crops without involving the owners. Later, some community members got involved to ensure that their farms were properly documented and surveyed. Following the assessment, the team left, but did not leave copies of the records with the owners of the farms or the villagers. The company later sent a team to pay for the crops that would be destroyed. When the company’s pay team arrived to pay the compensation to the farm owners, some of the farm owners refused the payments on grounds that the payments were inadequate; they demanded proper compensation for farms and crops that would be destroyed. In response to their demands, the team from Sime Darby threatened that they would hand over the payments for those who were refusing to accept their compensation to the government – the government would then pay them whenever they were ready to receive their compensation.

The community members that we interviewed also claimed that Sime Darby cleared their swamps and planted oil palm in those areas as well. As a result no one was able to farm in 2012. Also, because the cassava farms were cleared, and cassava is the main staple food in the area, there is now an acute food shortage in the area. To address some of the challenges facing the communities, they demanded that Sime Darby provide food to the community and adequately compensate those whose crops were destroyed, as interim measures, while the community and the company worked to determine how the community’s long term food needs would be addressed.

An assessment of the area found that due to the loss of their land, the villagers can no longer farm or produce anything to sell and generate income. Senii town, for example, has been completely ‘fenced in’ by the oil palm plantation. According to some residents, this is impacting on their ability to pay school fees for their children. Women who used to engage in small businesses, such as processing cassava for sale in the county and in Monrovia, are similarly unable to work. They now rely entirely on their husbands, who are also without work and unable to farm. The community therefore demanded that the company removes all the oil palm it had planted from the swamps and plough it for them to grow rice. They also demanded that the company provide seeds for planting. According to those we interviewed, the company did agree during meetings on May 3 and May 8, 2012 to remove the oil palm from the swamps. The minutes of these meetings confirm these claims regarding the swamps and support for community agriculture. Recently, the company designated five swamp plots but the community members from Senii and nearby towns rejected these, because they were not properly ploughed, the rains were already

too heavy, and planting rice at this time would not be possible without first developing a nursery and transplanting the rice later. As a result none of the plots have been planted with rice.

Listening to these testimonies one message is clear: they would have preferred that Sime Darby had met with them to discuss how it would operate in their area, before they started clearing and planting oil palm. They would have been in a better position to discuss the details for how Sime Darby acquired some of their land, under what conditions, and how the company's activities would benefit them. This issue seems to be central to their disagreement with the company and the government.

This however would have come with its own challenges as well. Their responses to three questions provide some insights into their understanding and expectations. First, when asked (like the respondents in Baka) if they would have given away their farmlands in return for the things they are demanding from the company - they replied no. They were clear that they would not have given away their farmlands. Second, asked whether they would be willing to give additional land to Sime Darby if it requested it, the interviewees said no, because according to them there was no more land left to give. Third, when asked whether they were satisfied to leave the area already planted with oil palm to Sime Darby, they said the company should first complete a survey. Once the survey has been done, and the boundaries established, and it is clear how much of their land the company has really encroached upon, then they would sit down and discuss the future of the palm that has already been planted. One respondent said, *"we are willing to discuss how the palm will remain on our land, but we need to do the survey first"*⁵⁶.

Impacts on women in Garwula District

"When the President [of Liberia] came we met and talked, the company was wrong. In May we met again at Motambo estate and talked. We said they should move [uproot] their palm from our swamps. They came they took all of our swamp. For 63 years? No place to even make garden?"

Women Representative and Resident of Senii

In the past, women in Garwula District engaged in farming to feed their families. They engaged in rice and cassava farming, and cultivated vegetables. They worked side-by-side with their husbands and other family members to grow food to feed their families and sell the surplus to the local markets or to Monrovia - the nation's capital. The women mixed their crops – rice, cassava, corn, potatoes, cucumbers and a variety of other vegetables are grown on the same piece of land. This ensured that while the rice was growing, the family could harvest other crops with a shorter growing time, such as the corn, cucumbers and other vegetables. These were for their own use and to sell as surplus. These early crops provide a small stream of income for their families before the major harvests. When the rice is harvested, mostly from October through December, more cassava is planted along with other tubers in place of the rice.

The months of December through March are mostly sunny and dry in Liberia. At this time of the year, there is a relative abundance of food in most villages. But more than that, this is also a moment of strategic value to the women – the ideal time for processing cassava into Garie for sale and domestic consumption. Garie is a cereal-type cassava product that is eaten widely throughout Liberia. It is very easy to prepare and can be prepared in many different ways. Women in the area set up small businesses processing and marketing the Garie. They are known for producing high quality Garie and local consumers favor their products. This was a major income earner mainly for women.

The forests in the area also served multiple purposes for women. They gathered forest products used to manufacture a variety of household items. For example, they would gather materials to weave fishing nets and baskets. These are particularly important because their villages sit on the bank of the St. Paul River and the villages rely on fishing as a major source of protein. Like the farm products, the surplus fish and other catch are sold to generate income for the family.

The incomes they generated from all these activities empowered women in the area and propelled them to a higher level of independence. With these incomes they were able to augment their husbands' incomes, and this was a major source of pride for them.

But the value of the forest is more than just a place to farm and gather non-timber forest products. The forest has critical cultural and social importance for the women as well. The communities set aside forest reserves to host the shrines where the bush schools for girls are conducted. These shrines are off limits to non-members and strangers. In February 2011, Sime Darby's High Conservation Value assessment team identified four of these shrines including one in Baka. The team recommended that these areas be recorded and protected. But, according to locals the company destroyed between four to seven such shrines including the one in Baka. In Baka locals reported that the company initially identified the shrine and left it standing when it was clearing the nearby farmlands. But the company later returned, destroyed the shrine and planted the area with oil palm. The company admits that it did destroy some culturally significant sites but insists that this was unintentional. The company also claimed that it is working with the community and their legal representative to establish a Cultural Endowment Fund to compensate for the loss of sacred sites.

With the loss of the land and the forest, not only have women lost their main sources of livelihoods and income, their social wellbeing and cultural practices have also been severely impacted. As a result, the women have got their own demands as well. A women representative on the community committee outlined one of their key demands:

"In this our country, we the women we help our husbands. If you get the children and they are going to school the husbands will not be able to take care of all the needs of the family. But if the women are doing business we can be helping our husbands. When your husband makes the farm and you plant cassava, you make gari, you can go to Monrovia and sell it. You can be doing that and helping to support the family. You can buy your own clothes and pay some of the children school fees. Now that the company has destroyed all of that they need to provide money for the women to engage in business."

“All the damage Sime Darby has caused us, it cannot repair them all at once. It will take time. But if they can deliver on these first demands, that would be a good starting point. It will be step by step – because we have fourteen counts [community 14-count complaint presented to the government] against them. If we can address the livelihood problem now, then we hold onto that and move to the next demands. We can do that step-by-step.”

Member, Community Negotiating Committee

Testimony of Mr. Kiazolu

To help the research team understand the challenges facing the communities, Mr. Kiazolu explained the nature of people’s economic and livelihoods activities prior to Sime Darby’s arrival. His testimony is used to illustrate the myriad impacts of the company on their livelihoods:

“I used to support all the private farms here under the supervision of Firestone. That is what we were living on. Some of those that had rubber farms inherited them from their fathers. If for example, someone had 1,000 trees their monthly production would be three tons. Even those with few hundred trees, were also producing rubber and selling it to buyers. Those with smaller farms or fewer trees and lower production pooled their produce together in one place to make it attractive for the buying agents. At the net market price of US\$1,462 per ton, multiply that by the three tons produced monthly. As the supporter of these farmers, whenever the farmers sold their produce, I also got some money on the transaction. But now, all the farms have been cleared.

Then Sime Darby came with a price of US\$6 per tree as compensation for destroying the trees. In the case of the farmer with the 1,000 trees, the farm from which you were generating more than four thousand dollars you get a one-time payment of US\$6,000. Then the government deducts taxes from the compensation. Now you are left with only US\$5000 plus – for ever and ever. Then the ways the company people counted the crops were not correct. They only paid for the ones they recorded and those that they did not count - went in vain. That is one of the things that hurting everyone.

When they came to check the cassava, because they were paying per acre, when the cassava farm is not brushed [cleaned], they refuse to do the survey properly and say ‘why you did not brush your cassava farm?’ They would then estimate the size without properly surveying the area. Then they pay you what they want, they give you what they want. That is the main problem that is hurting lots of people. Then the government auditors came and we said to them, now that they have destroyed our crops and our farms we are just sitting down and doing nothing. Now people are hungry in that area. Is this what they call development?

When we raised these issues, we told them to leave the swamps. Then they said they would give us seeds. If they came and bring their machines and plough the swamps for us, give us seed rice to plant. If they had delivered on these promises – since the 8th of May, then the rice would have started growing already. This would then help to lower

the tension. Now people are hungry and when people are hungry and angry you can't control them. Any group hungry you can't control them. Now we are facing problem, especially the communities on the riverbanks. They have nowhere to turn, nowhere to farm. But the problem is they have already cleared the land and planted the palm there. If we take it away from them, what will we do with it? Therefore if we meet with them and come to one understanding, whatsoever we agreed that will benefit us in the future, then we can live with that.

The main demands of the community are that Sime Darby should pay for the crops they have already damaged; let them say something about the compensation. Also the food situation is desperate. They promised to give us seeds to put in that swamp - that is the major one. If they can give back the swamps and provide us the seeds for planting, and the community is able to provide more food for the people, in the area, that would be of great help to us. Only this year we will face the food problem, but by next year the community would be able to feed itself. We cannot sit and depend on Sime Darby because they will not be able to supply the communities with food. In other places (in the swamp) we will make gardens and grow vegetables to sell and get money. If they do that – then that would be development.

Also if the survey is done and we know the quantity of land they took from the community, we can then calculate how much they can pay to the community per year. If that is done, and they pay these monies regularly, that will also be helpful.”

Those interviewed in this area articulated some of their demands very clearly: Sime Darby should pay for a survey of the land to determine how much of the community land is planted with oil palm. The company should also deliver on their promises of development by constructing a health facility and a school for the affected communities. According to them, if the company did that, that would be helpful. Their children would be able to attend school close to their homes.

Claims compensation updated

Apparently responding to criticisms about the low compensation companies pay for crops, the government recently published new prices for claims compensation for expropriation or damaged major tree crops for 2012⁵⁷. The government also provided an explanation of how the prices were determined; but the explanation only reinforces the complaint that the compensations are low. For example, the government calculates that the average annual yield of a rubber tree per year is estimated at 8.16 kg of latex. At the prevailing market price of US\$1,020 per ton the value of a rubber tree per year is US\$8.16. However, the lifespan of a rubber tree is between 25 and 30 years. Therefore the total value of a rubber tree, using the government's calculation, for the entire lifespan of a rubber tree would be US\$204. Therefore one can argue that to make a one-off payment of US\$8.16 for a rubber tree to poor farmers is unfair. Also the fact that no compensation is paid for the land that is taken away from them makes it even more unjust.

Oil palm plantations in Grand Cape Mount County



Communities demand during meeting



Sime Darby Nursery in Grand Cape Mount County



Sime Darby Announcement of first land clearing in Grand Cape Mount County



Hopes, fears and expectations: testimonies from Bopolu, Gbarpolu County

News of Sime Darby's imminent arrival first reached the district in 2010. The company then paid a visit and made a presentation to the communities in the district. According to several of those who attended the meeting, the company outlined its plans to invest in their district and create job opportunities for thousands of people. To do this, the company said it would require land. It also informed the people that the government had already allocated land to them in the district, and they had come to inform the community about their plans. They then outlined how the district would benefit from their investment.

After the presentation the company met with the Clan Chief, Sumo Kamara, who lives in one of the small settlements in the area, Saw Mill. The company hired him as a security guard or watchman and constructed an office using mostly local materials next to his village. Clan Chief Sumo is a supporter of the company. But not everyone is as impressed with the company or as welcoming. Some are fearful about their future and their children's future.

Testimonies gathered from the community were mixed: some people would like the company to come to their area, while many more are concerned about various issues. Some testimonies illustrate the dilemma they face – whether or not to embrace the company and on what terms. Other testimonies outlined tensions simmering between those people who would take their chances with the company and those who want more clarity and discussion about their future before deciding. According to some locals⁵⁸, when Sime Darby visited the area and met with communities in Gaynamah, they announced that the government had given them the land. They screened a video for the community to show what they plan to do. The company promised to build a school and a clinic and to construct a road, and to hire fifty men from the community temporarily to set up their nursery.

A few young people, some local but mostly young people that had moved into the area recently to carry out chainsaw-milling, were quite excited about the prospects of Sime Darby coming to the area; for them the company was going to create jobs and undertake development projects. Some people that attended the meeting suggested a survey to delimitate boundaries, so that they know exactly how much land they have before deciding whether to give land to the company and if so, how much. Others rejected the idea of giving the community's lands away outright. Some wanted to know more about the contract between Sime Darby and the government – reports that the duration of the contract was 63 years unnerved many people. These people felt that this was too long.

Also, some of the reports coming in from Grand Cape Mount were already worrying them. For example, they had heard that the company usually cleared the land around the villages to within 500ft of the villages, leaving very little space. They were concerned that this would affect them by restricting their livelihood activities.

“Our children will not know anything about forests. We will lose all our medicine we get from the bush. We will also be vulnerable to storm. There will be nowhere to plant food crops.”

A Community Health Volunteer

Esther Massaquoi was cautiously receptive. She lives in Small Bong Mines with her partner. She walks to Lott Carey, the closest Junior High in Bopolu district. The school is about an hour away and she walks back and forth each day. She cannot attend the school in Gaynamah because it is only up to sixth grade. She is in her twenties and when the research team met with her she was working with other siblings on the family farm. She expects that when the company operates in their area it will build a school, a clinic and roads for the community. She has heard that the company has promised to bring development to their community; but she wasn't at the meeting in Gaynamah.

She says that if the company wants land in the area, the community should decide how much land it can give to the company. She recommends that the company and the community should involve the government in the discussions so that there is no conflict in the future. She also points out that the company will have to abide by the norms of the community. The company should not tamper with graveyards or the burial grounds; gravesites should be respected. The company should not clear their farms. But, she has heard the reports from Grand Cape Mount and based on these reports, she is worried. However, she believes that the company will behave differently, because of its experience in Cape Mount – especially the conflict with the locals. She is firm when she says that if the company is not committed to changing its practices, especially those that are at the center of the conflict between the company and the communities in Cape Mount, the company should not come to their area. She believes that the senator, representatives and the people should make the final decisions on whether to accept the company and let it move onto their lands or not.

But the decision about the company will have wider implications. The situation of the Massaquoi family in general, which is described in the next section in more detail, illustrates some of the complex challenges that the decision her family makes about their land will pose for them and for future generations. It also illustrates the various implications these decisions will have with respect to their livelihoods and wellbeing. This shows that the dilemma these communities face is more complex than many outsiders would think – it is not just a question of whether the community wants the company in their backyards or not.

What's at stake? The case of the Massaquoi family

“The president can’t sign [an agreement on our behalf] and we say no. But if the company come and go ahead without our consent, then they are forcing their way into the community. They don’t want noise [conflict], so they will have to sit with us. Even if the community agrees to let the company come here, I won’t let them clear my farms, especially the rubber. I am old and won’t be employed. If they cleared my farm, that would be double losses.”

Mr. Johnson Massaquoi

Mr. Johnson Massaquoi has a Tribal Land Certificate^{xx} dated January 3, 1983. It is for a total of 250 acres of farmland. When he applied for and got the Tribal Land Certificate, the area was then Bopolu Chiefdom, Bopolu Statutory District, Lofa County. The area is now situated within Gbarpolu County, a newly created political sub-division, and falls within the Sime Darby proposed development area.

Mr. Massaquoi worked with the National Iron Ore Company in Bomi Hills. He was retired and subsequently settled in Gaynamah. After staying in the community for several years, he requested 250 acres of land from the host community. The community agreed and granted permission for him to survey the 250 acres and acquire a Deed in Fee Simple. Town Chief Vassay Sirleaf and Elder Amadou Sarnoh signed on behalf of the community. The Paramount Chief, County Commissioner and County Superintendent approved the Certificate. He then established the town that is now Small Bong Mines. Because he did not have the financial means, he did not carry out the survey.

Mr. Massaquoi’s family has grown considerably ever since. He has thirteen children; four men and nine women. He also has twenty-nine grand children: twenty-two boys and seven girls. Five of his children live in Gaynamah nearby, six live in Small Bong Mines, and two in Monrovia. Seven of his children are married, and some of these live with their spouses on the land and farm. Six of the children are still in school: five girls and one boy.

His children and their families – including those that that live in Small Bong Mines along with him and are engaged in farming, and the others that live nearby and in Monrovia – all maintain close contacts and interest in the Massaquoi family land. He says the decision about the land is no longer for him alone to make; it has to involve his children and their partners, because his grandchildren will also be affected.

But this is complicated. The issue is leading to internal family squabbles about how to deal with the current dilemma regarding Sime Darby coming to the area. Different family members have different opinions, because such a change would have differing financial

^{xx} *Tribal Land Certificate: an attestation from customary authorities that a particular parcel of land may be alienated from the commons. The Tribal Land Certificate is signed by the elders of the area in which the land is situated, then the head of the chiefdom (paramount chief), district commissioner and other county level officials. Although this is only the first step in the process of acquiring title to a piece of land, it is the only step that poor families wishing to alienate land from the commons can afford. As such many families rely on the Tribal Land Certificate as proof of their ownership – as part of the land reform, the Land Commission is now registering Tribal Land Certificates and issuing formal titles in their stead.*

implications for the various members of the family. Two of his children work as casual labors with the company. They advocate that the company should be allowed to come into the area. On the other hand some of his daughters have brought their partners to the village, and their partners value a stake in the family land – after all their children are entitled to a share of their grandfather's land. One of the in-laws, a volunteer health worker, is also opposed to the company because he has recently been to Garwula District and has seen the problems facing the residents of the villages that lost land due to Sime Darby's expansion. This situation pitches his two sons and his son-in-law (also his son's brother-in-law) against each other whenever there is a debate about Sime Darby.

It will need a clever balancing act to arrive at a decision about whether they should allow the company onto their land, the arrangement under which such cultivation would take place, and the extent to which they can push for a fair deal without triggering a harsh reaction from those that would welcome the company without a fuss. He is also not clear how his sons will react if the company insists on taking over all the land.

This challenge is not limited to Mr. Massaquoi's household. It is a debate that is now pitting the youths against the older population who have lived on and farmed the land for many years. Most of the older people have valuable cash crops and vegetable farms they harvest to sell in the nearby markets for income, while most of the youths believe that the coming of the company would create new and better opportunities for them. Like many of his peers, this is not a simple choice for Mr. Massaquoi. It is not a simple yes or no decision.

Furthermore, the government and the company must accept that his claim to the land is legitimate and that the associated rights must be respected. Without such recognition, he stands to lose everything. This is the second frontier that he will have to fight on, after dealing with the discord in his household. His children and grandchildren could lose the land they are to inherit when he passes on – the only real asset he is likely to leave behind.

If they do decide to give up the land, the decision will have implications for different aspects of his family's life and wellbeing. His children that live in the village and in nearby Gaynamah rely on the land for their livelihoods. They grow most of their food and vegetables on the family land. Others cultivate larger swathes of land with a variety of vegetables that they take to the local market and sometimes to Monrovia to sell and generate income. The story of Kpana Massaquoi, one of his eldest daughters, illustrates how Mr. Johnson's decision today will affect his grandchildren – those that are alive today and have sat and played on his lap – and those that are yet to be born.

Kpana Massaquoi lives in nearby Gaynamah, about thirty minutes walk away from Small Bong Mines. She has a three acre vegetable garden on her family land, where she cultivates garden eggs, eggplants, pepper, beans, ground peas and groundnuts (peanuts). Kpana also grows pineapples, plantains, and cassava. The cassava and plantains take some time to mature, but the vegetables are ready for harvest within three months. When she starts to harvest some of the crops, such as the garden eggs and the pepper, she harvests a minimum of two to three 50kg bags every Thursday, between April and November. She mostly sells her produce at the local market for about Liberian \$500 – Liberian \$750 per bag. In a good month she earns between Liberian \$6,000 to Liberian \$9,000. The lifespan or production

period of the vegetables is about six months and after that she has to replant. She uses one spot for up to three years and then she has to move on. The land is left fallow – within five to seven years another sibling or family member will cultivate and use it as well.

Kpana has also recently cultivated another part of the family's land, and planted rubber and sugar cane. Like others in the community, her decision to plant sugar cane was spurred on by the donation of a sugarcane-processing mill to the community by their junior senator, Armah Jallah. With the mill now operating in the community, several residents are planting sugarcane, which is then processed into a local alcoholic brew that sells for Liberian \$475 per gallon. She also buys the brew from fellow farmers and transports it to the market in Monrovia. During a visit in May 2012, the research team counted more than 200 gallons in her store. At the local market value this would generate Liberian \$95,000 (or US\$1,266.67 at the exchange rate at the time). This money is not spent on luxury goods – her eldest son is in Monrovia in school and he goes back regularly to Kpana for school fees and support money. Kpana also uses her income to support some of her siblings and in some instances shares it with her father as well. Therefore the decisions that Mr. Johnson will make today are not just about him – it's a decision that will clearly affect Kpana's children as well.

During the interview with her family Kpana was asked if she was concerned about the company coming to the area. According to her, she feels more than just concerned. She expressed fears about the arrival of the company – fear about her livelihood and the survival of her children. In her own words: *“my fear is, if they come and take this land, how will I survive?”*

Same concerns, different contexts: testimonies from Sao Villiage, Boloyala and Momblitaa

After Small Bong Mines, the team also visited Momblitaa, Sao Villiage, and Boloyala. In Sao Villiage, some of those interviewed said they came from other counties and settled in the area since the war ended. The woman who established Sao Villiage along with her late husband, now lives in Monrovia. They established the villiage after they got a Tribal Land Certificate from the Kamaras (Sumo Kamara and family) which was approved by the local authorities. When the villiage was established others moved to the area, and Madam Sao and her family welcomed them and designated places where they could farm. Some of these residents now have cash crops on the land and have taken steps to acquire Tribal Land Certificates for the areas they have cultivated. Even though Madam Sao no longer lives in the villiage, the understanding between her and those who reside there is that they will keep an eye on the land and keep her informed of developments there.

According to the villagers we spoke to in Sao Villiage⁵⁹, Sime Darby has not visited the town. No one from the company or the government has been to the villiage to speak to them about the company's plan to cultivate oil palm in the area. But they have heard that in early 2012, when the Land Commission visited Bopolu District (where Sao Villiage is located) and convened a meeting in Small Bong Mines about Sime Darby, the Land Commission had informed those at the meeting that Sime Darby would like to plant oil palm in the area and

that they therefore needed some land from the communities. Many of the villagers from the surrounding areas that attended the meeting left with mixed feelings. But this group hopes that when the company comes it will bring development to their community.

Several of those in Sao village believe that the government should conduct a survey of the land first and that based on the quantity of land available, the residents can then decide how much land to give to Sime Darby and where. They need land for their farming (usually differentiated as gardens where they grow vegetables for market, and areas for rice production which is grown mainly for subsistence purposes).

But one lady had a different view. She prefers that the community embrace the company because, she believes, the company will bring development to their area. She does not think the community should put forward any preconditions. On further questioning, she said her fiancée had left his pit-sawing activities in 2011 and took casual labor work with Sime Darby. He was working with the company and at the same time continuing his farming activities. Recently, however, he had been dropped when the company started making plans to leave the area. At the time of the team's visit, Sime Darby had just pulled out of Sawmill, the nearby village where they had set up their local office. Those in Sao Village were unsure why the company had left – but this lady's husband told them it was because NGOs were undermining the company, and they had decided to go.

In Momblitaa, the team observed an interesting dynamic. Some of the residents are tenant farmers; they moved into the area, requested place from the elders for farming, and then settled in the village. Even though these people, who may be described as tenant farmers, have lived in the area since the end of the war and have cash crops on the land, they still feel they don't have a voice. The majority of the residents of Momblitaa, however, are originally from the area – their parents and grandparents were amongst those that established the village. The families that originally inhabited the area are referred to as the Land Lords.

The tenant farmers are thus unsure of their future because it will, to some extent, depend on the Land Lords. On the other hand, the tenant farmers have established themselves and cultivated a variety of crops for marketing and income generation as well as for subsistence. Three names kept coming up in the conversations in Momblitaa: Gbele Kamara (Paramount Chief, Todee District), Sumo Kamara (Clan Chief, Bondi-Mandingo Clan, Bopolu District) and Ansumana Kamara. Several of the tenant farmers interviewed refer to these three brothers as their hosts. Sumo Kamara, as has been mentioned earlier, worked for and played host to Sime Darby, until the company left the area. His two brothers are absentee landowners.

Some residents of Momblitaa said that although other brothers were not keen on giving up their land their brother Sumo had already welcomed the company. They claimed that because Sumo is the resident landlord, he does not invite people in the town to meetings at Saw Mill when there is a discussion with the company; he is trying to exclude them from discussions with the company. But they feel reassured to a certain extent because there is a tradition that one person alone cannot make decisions about the land in the area: in order to make any binding decisions, the three brothers along with other elders in the village will have to meet and decide together. The hope amongst the tenant farmers is that they will be able to influence the others who will participate in this discussion. All of the people that

the team spoke to in Momblitaa depend on the land for everything: they grow food crops, cash crops, and vegetables, and use all the forest resources in the area.

Sime Darby had visited the area and had started demarcating the nursery area – this is what they claim the company told them.^{xxi} According to them, the company did not discuss its plans with them before starting the demarcation, which is just on the outskirts of the village, and did not seek their consent before entering the community.

Several of them said that if they had to make the decision about the company coming into their community, they would first conduct a survey of their land to establish how much land there is, and then designate an area for the company to establish its nursery. They would not allow the company to cultivate areas close to the village or to surround the village with the oil palm plantation. They certainly do not want the company coming within 500 ft of the village. They said that would be unacceptable; there would be insufficient land for the residents of the village to continue farming and using for other livelihood activities. Several of them said that if the company came to negotiate with them, they would give the company some land for their nursery, but not for the plantation. In return they would expect the company to build a school and provide vocational training for locals. This will enable them to train and get jobs with the company.

They were also clear that they don't want to be relocated or resettled; and all those interviewed were concerned that 63 years for the contract is too long.

^{xxi} *Momblitaa is situated within the 20,000 hectares that Sime Darby plans to cultivate for oil palm in the coming months. The villagers are totally unaware of the company's plan to cultivate the entire area rather than just creating a nursery.*

Conclusions

The Government of Liberia allocated significant amounts of land to Sime Darby in Grand Cape Mount, Gbarpolu, Bomi and Bong Counties without consulting the communities and peoples that would be affected by the operation of the company. This is a source of contestation by communities, especially in Grand Cape Mount and Gbarpolu counties. This situation is compounded by the fact that much of the land in Gbarpolu is deeded to communities and as such qualifies as private property under Liberian law. To lease customary lands and private properties to Sime Darby without the consent of those living on and using the land and the landowners, or following due process, is an invitation for conflict.

As such, it is highly likely that communities and private landowners in the affected areas will continually challenge implementation of the current contract. This might lead to Sime Darby and the government using aggressive tactics to ensure that the company continues to expand, or it might result in Sime Darby accepting that it cannot implement the contract and asking for a renegotiation of the terms. The former approach could generate conflicts that might easily deteriorate into violence, but the latter could provide an opportunity for the government to rectify the mistakes that were made during the negotiation of the current contract. This would also allow for proper consultations with private landowners and communities, and for those with an interest in oil palm development on their land to negotiate a fair deal that takes into account their livelihoods and the overall environmental health of their communities.

However, regardless of how well the contract is negotiated, and how much incentive the government and Sime Darby are able to offer, there will inevitably be private land owners, families and communities who will not want to give up their land for oil palm plantation. The government and Sime Darby would do well to recognize and respect the rights and interests of these groups. This would not only demonstrate a genuine desire to uphold the rule of law on the part of the government, it would also demonstrate that the government puts the interests of its citizens above all other considerations.

But the situation highlighted by this case study is about much more than the impacts of a single company; it is national disaster waiting to happen. Allocating large swathes of fertile agricultural land to foreign companies for several decades is dangerous, because as these companies expand their plantations less and less farmland is available to people in rural areas. As less land becomes available, and as the population continues to grow, this will place an increasingly severe strain on communities' ability to cope. This will then lead to an increase in the number of people leaving the rural areas for urban and major population centers, as they move out in search of a better life. It will also push people further into poverty, as their income generating activities are curtailed and earning capacities become limited. The end result of an increase in rural-urban migration is well known to many Liberians: major cities and towns have limited infrastructure and only basic services (including with respect to housing, hospitals, schools and sanitation). This is impacting all aspects of life and has contributed to an increase in crimes and other vices.

To avoid future conflicts, the government needs to critically examine its policy on land allocation, with a view to reforming the current processes for allocating land to investors,

especially in the agricultural sector. The current approach disregards the rights and livelihoods of those that inhabit these lands, and generates conflicts between the companies and the host communities. A new approach that is developed through an inclusive process should allow for those that would be affected by the proposed project to have a greater say in the decisions regarding whether or not the allocation is made. The new approach and processes should be based on the principles of fairness and justice, and backed by appropriate legislation.

Annex I: Specific critique and suggestions for changes to the contract between Sime Darby and the Government of Liberia

Introduction

The content of this brief is based on SDI's review and analysis of the Concession Agreement that was negotiated and agreed by the Government of Liberia and Sime Darby on July 23, 2009. This brief raises key concerns related to livelihoods and community rights arising from this Concession Agreement. Given the importance of livelihoods, community land rights, and development initiatives in Liberia, a key recommendation is that Sime Darby and the Liberian government re-engage with a view to ensuring that communities impacted by the Concession Area are adequately represented in the decision-making processes that affect them. This new approach should commence with the identification and demarcation of land the company would like to include in its development area.

Furthermore, the contract provisions that establish community development funds, should become mandatory and not optional. These funds should be allocated to those in affected communities systematically, in a transparent and accountable manner that includes the participation of community members.

This brief is organized in the following three categories concerning land rights; livelihood concerns; and the Outgrowers' Program and community development pledges. Each category lists areas of concern followed by specific recommendations.

Land Rights

Resettlement and displacement pose critical concerns to livelihoods, peace and stability in a post-conflict country

Sime Darby may decide that certain communities impede the development of the Concession Area and request that these communities are resettled.^{xxii} This raises grave displacement issues and creates the potential for conflict over land rights amongst the displaced, and with the residents of the land selected for relocation. Compensation for the displaced community members is not mentioned.^{xxiii}

Recommendation:

Sime Darby should take all measures to avoid displacing communities. However, in the event that the company does displace communities, a thorough compensation policy, which takes into account the challenges that relocation presents to livelihoods,

^{xxii} *Provision 4.3*

^{xxiii} *Ibid. Sime Darby must pay resettlement expenses of US\$200/ ha, and receives a 50% tax credit for those resettlement expenses. The government pays the rest of resettlement expenses. However, impacted communities are not specifically mentioned with respect to these expenses.*

emotional distress, and education, should be implemented. Furthermore, community members should be involved in the decision-making process with respect to selecting the resettlement land.

Community involvement can be addressed through a self-selection process. Using a participatory and transparent process, community members should be able to nominate representatives from the community to be involved in the decision-making process with Sime Darby and the government.

Engage communities prior to survey and selection of gross concession land through a clear procedure that identifies how land is intended to be freed for use by Sime Darby^{xxiv}

Within one year of July 23, 2009, Sime Darby, in collaboration with the Ministry of Agriculture and Ministry of Land and Mines, was supposed to have conducted a survey to identify an area of land equal to 311,187 ha of land in the counties of Gbarpolu, Bomi, Cape Mount and Bong (the Gross Concession Area).^{xxv} An area equal to 220,000 ha of land from those counties is to be selected for the Concession Area and an area equal to 44,000 ha of land is to be selected for the Outgrowers' Program.^{xxvi} The contract fails to address Sime Darby and the government taking joint measures to ensure they receive permission from affected community members with respect to surveying the land.

Recommendation:

It needs to be determined whether Sime Darby and the government are in breach of the original contract, if they did not conduct the land survey within one year of the effective date of the contract, pursuant to provision 4.1 (c). If parties are in breach, it will be necessary to renegotiate the terms of the contract, taking into account all the recommendations included in this brief.

Recommendation:

The government and Sime Darby should communicate with members of communities in the affected counties, in a clear and transparent manner, concerning the procedure to be used to select land in the Gross Concession Area. This will enable community members to take adequate measures to respond to such actions. Encroachment on the land presents serious concerns to livelihood, peace and stability, and land rights. For example, community members are entitled to prior knowledge if the contracting parties decide that the principle of 'eminent domain' applies, meaning that the land can be taken without consent (but with compensation) for the greater public good.

Recommendation:

Ensure that communities grant permission to survey their land in the Concession Area, prior to the commencement of those surveys. Next, identify and implement a process in which the government and Sime Darby do not violate community land rights. Provide communities members, stakeholders, and those interested in the public domain with up-to-date information on the status of the land surveys.

^{xxiv} Provision 4.1 (c).

^{xxv, xxvi} Sime Darby is solely responsible for funding the survey.

Clarify land rights issues and public mobility concerns which are raised by the promise to deliver concession land free of all 'encumbrances'^{xxvii}

The current contract does not provide a process through which the contracting parties free the land of 'encumbrances,' which include people's land rights and estates.^{xxviii} The contract is also silent on the issue of interactions with affected community members whose land rights include 'encumbrances.' A further stipulation is that all roads across the concession area shall remain open to free use by the public for commercial and private purposes, but only as long as that use does not unreasonably interfere with Sime Darby's activities.^{xxix}

Recommendation:

Clarification should be provided on how the contract will rid all encumbrances of the land. There is also a need to identify what types of actions would be considered as interfering with Sime Darby's activities unreasonably, such that access to roads would be denied, since this would impact on public mobility. Additionally, the condition which provides community members access to roads could be considered an easement, also included among the encumbrances to be eliminated with respect to the Concession Area.

Limit the number of years that the contract can be extended

Contracting parties^{xx} may extend the contract beyond 63 years without consulting affected community members^{xxxi}, and could even decide to extend the contract indefinitely, since it does not provide a limit. This presents a transparency issue that could make community members more distrustful of Sime Darby's presence, and lobby to have Sime Darby removed from their communities.

Recommendation:

Include a limit to the amount of years that the contract can be extended. Extensions that exceed the set amount of years should be renegotiated in a new contract between the government and Sime Darby, with community representation and consultation.

Clarify how Sime Darby may acquire or lease 'additional areas' of private land.^{xxxii}

The contract is silent on Sime Darby taking any measures to consult and negotiate with communities who may have rights to additional land sought. Furthermore, Sime Darby is not required to pay surface rental fees to the government for the use of such additional land. The contract is also silent on whether Sime Darby will be required to pay rental fees to community members.^{xxxiii}

^{xxvii} Provision 4.1 (c).

^{xxviii} exhaustive list of what is included in encumbrances is provided in provision 1.26.

^{xxix} Provision 4.4 (a)

^{xxx} Original Contracting Parties include the Ministers of Agriculture, Finance and Sime Darby attested to by the Minister of Justice.

^{xxxi} Provision 3.2

^{xxxii} Provision 4.3

^{xxxiii} Provision 4.3

Recommendation:

Clarify how residents and/or those with property rights to ‘additional land’ will be compensated; and establish a dialogue with relevant community members to negotiate terms to lease the land.

Involve communities in decisions about replacement land^{xxxiv} and clarify related processes and compensation requirements

In the event that replacement land is needed, how are communities included in the decision-making process of selecting hectares for the replacement land?

Recommendation:

Specify where replacement land comes from. Sime Darby should also implement a thorough compensation policy which takes into account the challenges that relocation presents with respect to people’s livelihoods, emotional distress, and education. Furthermore, community members should be involved in the decision-making process when it comes to selecting replacement land.

Specify if the land used for employee housing will come from the 220,000 ha of Concession Area^{xxxv}

Recommendation:

There is a need to specify where the land for employee housing will come from because, as written, it is unclear if the land for employee housing comes from the Concession Area or elsewhere.^{xxxvi} If displacement also occurs as a result of additional land being used for employee housing, Sime Darby should again implement a thorough compensation policy which takes into account the challenges that relocation presents to livelihoods, emotional distress, and education. Furthermore, community members should be involved in the decision-making process with respect to selecting the replacement land.

Remove Sime Darby’s rights to carbon credits^{xxxvii}

The contract provides that Sime Darby shall be entitled to all rights, title, and interest in carbon rights.

Recommendation:

Set an example to the palm oil sector and remove rights to carbon credits, due to the large amounts of emissions that large-scale forest conversion produces. By doing this you do not reward oil palm companies for destroying natural forests, biodiversity and local livelihoods.

^{xxxiv} Provision 4.8

^{xxxv} Provision 9.5

^{xxxvi} Provision 9.5

^{xxxvii} Provision 21.12

Livelihood Concerns

Allow independent farmers to continue commercial production within the Concession Area or compensate them for their loss

Whereas the contract places restrictions on independent farmers, limiting them to non-commercial use of the land,^{xxxviii} Sime Darby and its employees may grow rice or other food products within the Concession Area, and sell products commercially, even in areas unsuitable for palm oil production (and if it is carried out in such a way that it will not negatively affect that production).^{xxxix}

At its discretion, Sime Darby can also plant, cut, and utilize timber or rubber wood on the Concession Area for the construction and maintenance of its infrastructure, without government oversight. Rubber wood can also be sold commercially.

Recommendation:

Sime Darby should allow independent farmers who worked on the lands within the Concession Area prior to its arrival to continue the same work, allowing commercial food and rubber wood sales where appropriate. If Sime Darby does not take this approach, it should compensate the farmers for lost wages due to their inability to continue with the commercial use of land due to Sime Darby's presence.

Create work opportunities

Recommendation:

Sime Darby should create work opportunities on the Concession Area land for members of impacted communities, and actively recruit community members to company positions.

The Outgrowers' Program^{xi} and Community Development Pledges

Ensure that the details of the Outgrowers' Program are included in Sime Darby's Development Plan

The details provided in the 2009 contract are as followed: 44,000 ha of the Gross Concession Area are to be farmed by Liberian oil palm farmer cooperatives selected by Sime Darby and the government, under an Outgrowers' Program. Sime Darby commits to purchasing their produce and providing them with training and non-financial support to obtain farming materials. Funding for the program is expected to be sourced from

^{xxxviii} Provision 8.10

^{xxxix} See provision 8.8. Farming of rice and other food cannot exceed 5% of the annual Concession Area being used for production.

^{xi} Provisions 15.2

elsewhere, with assistance of investors, through international financial institutions or the World Bank.^{xli}

Recommendation:

The terms of the Outgrowers' Program should be equitable and designed to benefit Liberian farmers. The details should be placed in the public domain to raise awareness for Liberians affected by the Sime Darby Concession Area, as well as other interested stakeholders. Those impacted can then make an informed decision about whether to participate in the Outgrowers' Program or not.

The Outgrowers' Program should not be optional for Sime Darby

The contract provides that in the event that funds are not secured, Sime Darby does not need to ensure that the Outgrowers' Program is implemented; and the government will not be in breach of contract for not having the program.^{xlii} This creates little incentive for Sime Darby or the government to implement the program. This is particularly critical, because the possibility of an Outgrowers' Program has been used as a major selling point for the contract.

Recommendation:

The government and Sime Darby should take measures to ensure that the funds necessary for the Outgrowers' Program are acquired, to avoid a situation where communities grant land in anticipation of benefiting from the Outgrowers' Program but then find that the program doesn't get funded. This may create conflict with the communities, especially if this only becomes known after the company has cultivated and planted the community land with oil palm.

Ensure the Community Development Fund^{xliii} is independent of the Outgrowers' Program

The contract provides that Sime Darby will contribute US\$5 per hectare per year, for land within the areas being developed, and these funds will be put into a Community Development Fund.^{xliv}

Recommendation:

Ensure that the annual US\$5 contribution to the Community Development Fund is separate and distinct from the Outgrowers' Program, which is another discrete community development initiative. Funds for the Community Development Fund must not be dependent upon receiving funding for the Outgrowers' Program.

^{xli} Provision 15.2

^{xlii} Provision 15.2(d)

^{xliii} Provision 19.5

^{xliv} Provision 19.5

Ensure that communities on the Concession Area prior to development are included in economic and social viability programs

Provision 15.1 calls for the continuance of economic and social viability of “*communities that have formed, and may form as a result of investor activities.*”

Recommendation:

Ensure that communities on the Concession Area prior to development are also included in economic and social viability programs.

Clarify how participants in the Outgrowers’ Program will be selected

The Contract only provides that Sime Darby will collaborate with the government to identify potential outgrowers. The criteria to be considered in determining who shall be selected as outgrowers are not provided.^{xlv}

Recommendation:

To improve transparency and fairness in the selection of participants for the Outgrowers’ Program, Sime Darby should provide details about the selection process, including details of specific criteria that will be used.

Outgrowers should be able to provide informed consent or be able to decline the terms of the Outgrowers’ Program

Provision 15.2 (c) of the contract provides that the government shall ensure that each outgrower agrees to the terms and conditions of the Outgrowers’ Program. Ensuring that people agree does not address the need for a space for negotiation, and for people to be able to consent to or decline participation.

Recommendation:

Take steps to guarantee that community members are able to negotiate, and consent to or decline participation in the Outgrowers’ Program.

Identify the beneficiaries of the Palm Development Fund^{xlvi} and the Rubber Development Fund^{xlvii} and ensure that the funds are duly established by law

A Palm Development Fund and a Rubber Development Fund will be established, but it is not clear what the purpose of these funds will be. There is no requirement that either benefit the communities in the affected counties in the Concession Area. Furthermore, the annual contribution of one percent of gross palm and rubber sales, to the Palm Development Fund and Rubber Development Fund respectively, is not obligatory until those funds are duly established and constituted by law.

^{xlv} Provision 15.2(b)(v)

^{xlvi} Provision 19.6

^{xlvii} Provision 19.7

Recommendation:

Clarify how funds will be allocated and ensure that those in affected communities are the beneficiaries of the funds, since the aim of the funds should be to contribute to development. Set a date requiring that the funds for the Palm Development Fund and Rubber Development Fund are duly established and constituted by law.

General Conclusion

For Sime Darby (and similarly Golden Veroleum Liberia) to be able to implement its contract without violating the rights of local communities and private land owners, the company and the Government of Liberia should officially review and modify the Concession Agreement of July 23, 2009, in order to incorporate the recommendations outlined in this brief. In so doing, the Government of Liberia and Sime Darby will remove provisions of the contract that infringe on the social, economic, and cultural rights of local communities, minimize the threats posed to their livelihoods and wellbeing, and safeguard the rights and interests of third parties, as protected by various international treaties that Liberia has signed and ratified.

- ¹ Minutes of Trilateral Discussion SDPL-Community-Land Commission of 3 May and 8 May, 2012
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