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Dispossessed at all costs ?

Remarks on the process of allocating land to SGSOC in Nguti sub-division

Signatory in September 2009 of an Establishment Convention with the Government of Cameroon, the firm SGSOC (Herakles Farms) has begun operations in the Southwest Region, where it claims rights for 99 years to an area of 73,000 hectares for the creation of a palm oil plantation. The Establishment Convention stipulates the conditions which apply to the company's activities in Cameroon and requires the firm to respect the laws of Cameroon. But the same Convention also claims to take precedence over Cameroonian law as well as over certain international agreements that Cameroon has ratified. (Sections 9.3 and 22.2 of *Establishment Convention dated as of 17 September 2009 by and between the Republic of Cameroon and SG Sustainable Oils Cameroon PLC.*)

The presence of SGSOC in the Southwest Region has come about in violation of existing Cameroonian legislation

and has provoked strong resistance from local communities. Farmers and civil society leaders have been the victim of arbitrary arrest and harassment by SGSOC, the local administration and judiciary, and this harassment is continuing.

Following the Forestry Ministry's suspension of felling operations in April 2013 and the lifting of the suspension in May 2013, one has the impression that the procedure of allocating land rights to SGSOC has accelerated, and that the firm is trying to conform to legal requirements, or at least appear to. **An important step in the process of allocating land to SGSOC was taken 8 June 2013 with the meeting of what is supposedly considered to be the Consultative Board required by Decree No. 76-176 of 27 April 1976 to establish the terms and conditions of management of national lands.** Today, according to

local officials in charge of the case, nothing stands in the way of the signature of the concession between SGSOC and Cameroon, which could be finalized in October, after the electoral process.

The commentary that follows attempts to analyze this meeting, a decisive step in the allocation process of a land concession to SGSOC. They are comprised of three parts: (1) an assessment of its conformity with the requirements of *Decree No. 76-176 of 27 April 1976 to establish the terms and conditions of management of national lands*; (2) the conflicts between the provisions of the Establishment Convention between SGSOC and Cameroon and the relevant Cameroonian legal texts regulating land allocation; (3) recommendations.

1

Can the meeting held last 8 June at Nguti be considered a valid meeting of the Consultative Board?

The response to this question is negative in view of the process by which it was convened, the people present, the content of discussions, and the meeting's minutes.

→ The convening of the meeting

What do the legal texts say? Decree No. 76-176 of 27 April 1976 stipulates: "Members shall receive notice and the agenda at least ten days before the date of the meeting. The agenda shall be posted on notice boards at the offices of the prefecture, sub-prefecture or district where the land is situated. It shall indicate the situation of the land, its approximate area, and the project planned."

What actually took place? None of the people we talked to during a visit to Nguti sub-division at the end of August had been informed within the period required by the 27 April 1976 decree. (Though, we were unable to speak with every participant listed in the minutes of the June 2013 meeting.)

There was no posting of the agenda in public places in Nguti sub-division. Information regarding the location of the land solicited by Herakles Farms was thus not publicly available, and the total area solicited per village was unknown to many of the community members interviewed until NGOs organized community information meetings in July and August 2013.

Moreover, the way in which the meeting was convened presents a number of incongruities, which require clarification by the administration. In a letter dated 4 April 2013 with the subject heading "Land disputes resulting from the Palm Oil Project by SGSOC in Ndian Division" the Minister of State Property, Surveys and Land Tenure gives the Senior Divisional Officer of Kupe Manengouba several instructions including: "to take all necessary measures to permit a maximum participation of representatives of the Communities of the project area." In execution of this, on 5 June 2013 the Senior Divisional Officer invited some local government authorities to an "enlarged concertation meeting" to be held at Nguti on 8 June 2013 (three days later), preceded by a planning meeting on 7 June at Kumba (outside the project zone). Was this the act by which the Consultative Board was convened? If so, it violated the timetable set by the law, and it wasn't convened by the competent authority, namely the Nguti Divisional Officer. Or was this simply an "enlarged concertation meeting," as the letter of the Senior Divisional Officer says? In this case, how was it transformed into a meeting of the Consultative Board?

→ The members

What do the legal texts say? Section 12 of Decree No. 76-176 of 27 April 1976 indicates the composition of the Consultative Board: "the sub-prefect or the district head, chairman; a representative of the Lands Service, secretary; a representative of the Surveys Service; a representative of the Town Planning Service, in the case of an urban project; a representative of the Ministry

concerned with the project; the chief and two leading members of the village or the community where the land is situated." (Section 12 of Decree No. 76-176 of 27 April 1976) In the case of the meeting held 8 June 2013 at Nguti, one notices the presence of several individuals described in the minutes as "members" who are absent from the list stipulated in section 12. The people in question are Divisional- or national-level government officials and at least one SGSOC official. These individuals were present at the meeting and participated in the discussions, at times referring to information that gives the impression the decision to award land rights had already been taken by Yaoundé, and that was thereby liable to deprive the meeting of its *raison d'être*: if the decision had already been taken, why meet at all and what can still be changed? This situation represented a decisive advantage for the company in a meeting meant to be a forum to debate the possibility or otherwise of allocating it land in the sub-division.

The presence of the company at this meeting raises a number of questions. If it's understandable that it be involved in some part of the discussions, for example to present its need for land and to respond to participants' questions, it's much harder to understand that it be allowed to try to convince Board members. According to the minutes, "The representative (of S.G. SUSTAINABLE OIL CAMEROON LTD) on his part assured the population that the company shall solve some of their problems as soon as they are settled." Vague promises involving no specific commitment on the company's part. On this point, the 8 June meeting cannot be considered a Consultative Board meeting.

→ The content of the discussions

In allocating a land concession, the Consultative Board must, among other things stipulated by section 14 of the 1976 decree, "select the lands which are indispensable for village communities" and "make reasoned recommendations on applications for [land] grants."

Judging from the minutes, several questions can be raised:

- ◆ Was the Board able to examine the land concession request filed by SGSOC

The minutes refer to a "thorough examination" and conclude with a recommendation to the Head of State to allocate the land concession. However, the meeting ran from 1:30 pm to 3:15 pm, a total of 1 hour and 45 minutes, including the time devoted to a prayer and an introductory word of welcome. Can one really consider this duration appropriate for such a high-stake meeting on such a controversial issue? **Less than two hours to make a decision on the ceding of 12,000 hectares of land for 99 years**, when the documentation wasn't made available beforehand and the people invited didn't necessarily know they would be called upon to decide such a delicate question and one so difficult to understand even for the government officials present?



◆ **Did the Board “select the lands which are indispensable for village communities”?**

There’s a good deal of confusion on this point:

First, the representative of the Ministry of State Property informs the communities that only 30% of the land offered by the villages concerned will be taken into account in the land allocation process. The impression this formulation gives is that the villages offered specific areas of which only 30% will be finally allocated to SGSOC, representing the total 12,000 hectares the company wishes to obtain in Nguti sub-division. Discussions with village residents indicate that such is not the case.

Later in the minutes, the company refers to “the approximate areas of land proposed to the company by the [...] villages” and indicates the figures representing these areas, totaling 12,348 for Nguti sub-division, as follows: Nguti (2,532 ha), Manyemen/Ebanga (2,720 ha), Sikam (3,110 ha), Talangaye (2,538 ha), Balung (822 ha), Ayong (300 ha), Ekita (347 ha). When added together the areas in the Nguti Consultative Board report total 12,369 ha, not 12,348 as stated in the same document. What does this error suggest? Is it a result of the haste with which the process was conducted? What might be the consequences of such an error?

Two questions arise:

1. Do the areas indicated above represent 30% of the available land in the villages?

If so, the available land must have been mapped and the exact areas established for it to be possible to determine that the areas offered to SGSOC don’t exceed 30% of village areas. This work has not been carried out in any of the villages in question.

2. Have the boundaries of villages been marked?

This task is essential to establish the areas available in the villages. Reading the minutes, it’s clear that the drawing of land boundaries remains a community demand in most villages. **SGSOC claims that the areas are tentative and will be finalized in the course of land demarcation. How can the Consultative Board recommend that a land concession be allocated on the basis of surface areas that are only provisional?** What area will be indicated in the concession contract? In whose interest is it that communities be given the impression that the process underway is only provisional and will remain under strict government surveillance, even after signature of the land lease? The representative of the chief of Ebanga expresses concern that the demarcation exercise with the neighboring village of Manyemen hasn’t been done. The Nguti Divisional Officer states that demarcation activities will be conducted later but recommends signature of the land concession. The logic of this is difficult to understand, since land demarcation is a prerequisite which will prevent future intercommunity conflict and will help establish as well exactly what traditional lands each village possesses and thus which areas can be ceded without jeopardizing the survival of the communities and their cultural identity.

◆ **Did the Consultative Board make “reasoned recommendations” on SGSOC’s request for a land concession?**

General justifications are given (“Considering the importance attached to Agriculture in Cameroon”) but nothing specific to the project in this Region. There’s especially no response to the following basic questions: is this project compatible with community use and all other land uses of the zone in question? On what demographic forecasts (over the course of 99 years!) is the decision to cede these lands based?

One of the participants, representing the State Property Ministry, seems to have encouraged the representatives of the villages concerned and the other members of the Consultative Board to “not hesitate to sign any documents that shall be presented to them.” According to the minutes, he also “informed the population on the fact that only 30% of the land proposed by the villages concerned shall be taken into consideration and that the process of land lease has just began [sic].”

Can we consider the decision taken by the Land Consultative Board a rational utilization of land? Article 16 of Ordinance N° 74 -1 of 6 July 1974 to Establish Rules Governing Land Tenure states: “National lands shall be administered by the State in such a way as to ensure rational use and development thereof.” Can we consider as rational decisions on the use of land that do not take into account the needs of local communities to ensure the sustainability of their livelihoods (agriculture and hunting)?

 **The minutes**

It’s clear from the minutes that they were not signed by the participants (including community representatives) but by the Divisional Officer (chairman of the Board) and the Divisional Service of State Lands (secretary). Regarding the signatures of the other participants, the minutes refer to the list of participants. The other participants appear thus never to have seen the minutes. And certain of them have publicly denied, in their villages, that they have given community land to SGSOC. This ambiguous situation is apt to create problems in the villages, as well as between the villages and the company. It’s important to keep in mind that what we’re dealing with is the handing over of village land for at least three generations!



2

The Establishment Convention violates Cameroonian law: what rules apply to the project?

The Divisional Officer and the representative of the Ministry of State Property, Surveys and Land Tenure both indicate that a temporary, three-year grant will be allocated to the company, and that the conversion into a definitive concession will not happen before an evaluation of the implementation of the company's commitments. This procedure is what is required by Cameroonian legislation (Decree of 27 April 1976). **But the Establishment Convention between SGSOC and Cameroon stipulates a different procedure.**

◇ The Divisional Officer announces to villages that first there will be a temporary grant which will be renewed only after evaluation of the company's compliance with its commitments. This assurance has the effect of giving the communities the impression that they won't be in for any surprises and that they will continue to benefit from government oversight. But the Establishment Convention doesn't give the State the option of a phased approach as required by sections 8 and thereafter of the 27 April 1976 decree, namely the signature of a temporary grant first, including specific company commitments, followed by an evaluation of compliance with these at the date of expiry of the temporary concession, then, if successful, the signature of a long lease. What will happen if the State refuses to extend SGSOC's Convention at the end of the three years referred to by the Divisional Officer as the duration of the temporary grant? Will the company be able to invoke its Establishment Convention (which remains valid) to retain its title to

the land? The Establishment Convention stipulates a duration of 99 years (section 2.1).

◇ The Divisional Officer and the representative of the Ministry of State Property, Surveys and Land Tenure indicated to communities that this is just a first step, giving the impression that the whole process will be under control, today and in the future. This is indeed what Cameroonian law requires, but it's not what the Establishment Convention requires. Thus, for example, **the company retains the right to sell its concession, without prior authorization by the State. Concretely, this means that the communities and the State could tomorrow find themselves, without warning, confronted with a different interlocutor, without any possibility of recourse.**

Why haven't the documents signed by the State and SGSOC been formally annulled? At least two documents can be mentioned here:

- the Establishment Convention
- the "common commitments" signed by the Senior Divisional Officers of the two Divisions concerned by the SGSOC project

These two documents contain obligations incumbent on the State of Cameroon which contradict Cameroonian law.

3

Recommendations

The SGSOC project is among the firsts of this size in Cameroon and is starting as the development of a national palm oil strategy is getting underway. It's important to insure that the communities receive optimal protection throughout the transactions taking place so as to prevent future conflicts with the company. We thus recommend the following:

a. Undertake the mapping of lands and the marking of boundaries between villages. This activity will make it possible to know the precise area of customary land of each village and its boundaries. On the basis of this, villages wishing to cede a part of their land to SGSOC can do so in an informed way, that is, with knowledge of the area that will remain to them for their present subsistence and that of future generations.

b. Undertake wide consultation in the villages with independent actors present, to insure that communities understand the stakes of handing over their land, and that any consent is free, prior and informed.

c. Conclude, on the basis of the two steps above, the process of the Consultative Board, insuring that all local representatives other than village chiefs are designated by whole communities, and that legality is fully respected, specifically with regard to informing communities of the location of land to be ceded.

d. Clarify the legal regime applicable to the project, insuring that the Establishment Convention and the "common commitments" signed by SGSOC and various representatives of the Republic of Cameroon (Minister and Senior Divisional Officers) are officially annulled. Failing that, it will be difficult for the State to insure that Cameroonian law is enforced.

e. Accelerate the putting in place of a policy and rules regulating large-scale land allocation in Cameroon that insure the protection of community rights with the aim of preventing controversial situations like the one we're seeing now with the case of Herakles Farms.

Report authored by Samuel Nguiffo (October 2013)