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HERAKLES' 13TH LABOUR?
A Study of SGSOC's Land Concession
in South-West Cameroon

INTRODUCTION

The world's demand for arable land is increasing. At least 6 million hectares of arable land will be transformed for active agricultural production each year from present until 2030 according to a World Bank study. At least 2/3 of this land is located in Sub-Saharan Africa and Latin America; the two continents where large tracts of unexploited land still exist.

In a little less than one year investors snatched up around 56 million hectares of land, 29 million of which are located on the African continent, south of the Sahara. However, the rate of success of large scale plantations has been quite limited with only 20% of the land granted to investors being actively exploited.¹

The companies investing in large land concessions in Africa are based by and large outside the continent (European, North American, and Asian). External demand for land is entering into direct competition with local land needs and hinders local land use planning in the long term.

Using a particular case study, this report attempts to illustrate the problems communities, environment, and the entire country are exposed to when large agro-industrial plantations are developed. The issues explained here within appear in all large-scale and long-term land concessions our country with only minor variations. Additionally, the principal agro-industrial plantations in Cameroon that are already in their production phase all experienced a series of unrelated and dramatic labor protests at the end of 2011 and 2012.

This report has two parts. The first part introduces the problems linked to the development of a new agro-industrial plantation in the human and natural environment and explains the already perceptible difficulties of co-habitation that will follow. The second part focuses specifically on the numerous and grave legal problems contained in the state-investor agreement.

The report's goal is to attract attention to the explosive character of land concessions which are proliferating in our country over the last five years; be it the extension of existing plantations or the granting of new land

¹Byerlee, Derek and Klaus Deininger. Rising Global Interest in Farmland. Can it Yield Sustainable and Equitable Benefits? World Bank. 2011

concessions for palm oil or rubber. The authors call on political leaders to put in place a moratorium on new agro-industrial concessions until the country has developed a new approach to granting land concessions for agro-industry, which takes into account existing land rights and the new Law to Lay Down Guidelines for Territorial Planning and Sustainable Development.²

A new approach will in fact benefit all actors. It will help avoid conflicts between commercial land rights (logging concessions, mining permits, oil blocks, natural gas projects, and agro-industrial plantations) and customary land rights. It will also reassure scared investors of the legality of their land concessions and prevent the eventual annulment of certain contracts due to the non-respect of legal procedures at time of attribution. Finally, a new approach will provide important information to the general public regarding how these projects fit into Cameroon's greater development strategy.

² Law N 2011/008 of 06 May to Lay Down Guidelines for Territorial Planning and Sustainable Development in Cameroon

PART I

Land and Resource Grabbing

Rising commodity prices, the booming biofuel industry, land reform in Southeastern Asia, improved investment frameworks, and many countries' rising concerns over food security at home have led private firms and governments to rush (back) to the African continent in search of land.³ It is difficult to find accurate statistics on this phenomenon because land deals are often signed in secret. We do know that millions of hectares of land on the African continent are being snatched up, via land leases that last 50-99 years, each covering tens of thousands of hectares.⁴

Many of these recent land deals in Africa have stirred controversy, leading Non-Governmental Organizations (NGO's) and communities to accuse foreign companies and governments of "land-grabbing." In fact, investors are grabbing more than just land—water, timber, cheap energy, and other natural resources are often included in these deals.⁵

Agro-industrial plantations in Africa are not new—many plantations date back to the colonial period and still exist today. However, the new wave of land deals is partially different since:

They are not market-driven in the classic sense of seeking comparative advantage for production for global markets. Rather, they are about shifting land and water uses from local farming to essentially long-distance farming to meet home state food and energy needs. It is, in practice, purchasing food, with the risks that local food needs, land users and water rights will be displaced.⁶

How will new "resource-grab" investments impact African people, many of whom do not have recognized legal rights, but traditionally depend on these resources?

³See Cotula, L., Vermeulen, S., Leonard, R. and Keeley, J., 2009, Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa, IIED/FAO/IFAD, London/Rome.

⁴Smaller, Carin and Mann, Howard. A Thirst for Distant Lands Foreign investment in agricultural land and water, 2009. IISD, Winnipeg.

⁵Smaller, Carin and Mann, Howard. A Thirst for Distant Lands Foreign investment in agricultural land and water, 2009. IISD, Winnipeg.

⁶Smaller, Carin and Mann, Howard. A Thirst for Distant Lands Foreign investment in agricultural land and water, 2009. IISD, Winnipeg.

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Land-Grabbing in Cameroon – the Case of SGSOC

On September 17th, 2009 SG Sustainable Oils Cameroon PLC (SGSOC) signed a contract with the Cameroonian Government to develop a large industrial palm oil plantation and refinery.⁷ SGSOC is 100% owned by the American company **Herakles Farms**, an affiliate of Herakles Capital⁸, an Africa-focused private investment firm involved in the telecommunications, energy, infrastructure, mining and agro-industrial sectors.⁹

SGSOC obtained the rights to **73,086 Hectares**¹⁰ of land in the Ndian and Kupe-Manenguba Divisions of Southwest Cameroon through a **99-year land lease**.¹¹ According to their Environmental and Social Impact Assessment (ESIA), SGSOC will develop 60,000 hectares of land for palm oil nurseries, plantations, and processing plants. The remaining 12,000Ha will “be protected as zones for environmentally or socially sensitive resources, plantation infrastructure and social infrastructure, and lands for village livelihood activities.”¹² The Institute of Agricultural Research for Development (IRAD) has supplied SGSOC with seeds to begin palm nurseries.¹³

⁷ A copy of the contract has been posted on the following website:

<http://cameroonveritas.files.wordpress.com/2011/08/sgsoc-convention1.pdf>

⁸ Herakles Press Release, June 15, 2011.

http://www.heraklescapital.com/docs/PressRelease_%206_%2015_2011.pdf

⁹ <http://www.heraklescapital.com/>

¹⁰ SG Sustainable Oils Limited Environmental and Social Impact Assessment. Available at:

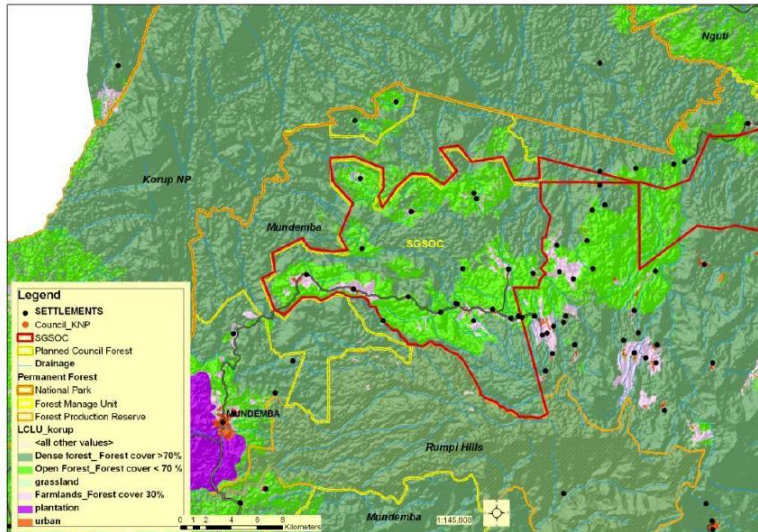
<http://www.heraklescapital.com/docs/SGSOC%20ESIA.pdf>

¹¹ Establishment Convention By and Between the Republic of Cameroon and SG Sustainable Oils Cameroon PLC. Section 9.5 (a, b, c). <http://cameroonveritas.files.wordpress.com/2011/08/sgsoc-convention1.pdf>

¹² SG Sustainable Oils Limited Environmental and Social Impact Assessment. Pages 1-1, 1-2. Available at: <http://www.heraklescapital.com/docs/SGSOC%20ESIA.pdf>

¹³ Baintong, Godlove. Palm Oil Production – IRAD Partners with Douala-based Company. March 18, 2010. <http://allafrica.com/stories/201003180872.html>

MAP of AREA



Map 4: Land cover/use map from spot images for NDIAN section of the concession, 2010.
Source: GIZ Cameroon

In Greek Mythology, Herakles was, before birth, destined to reign over a great territory. But as an adult, Herakles is driven mad, ends up killing members of his own family. He consequently loses the right to the throne to his archenemy who sentences him to 12 labors to be purified of his sins.

The project will produce as much as 400,000 metric tons (MT) of crude palm oil and 40,000 MT of palm kernel oil per year. SGSOC plans to export a portion of its palm oil production, while leaving some for domestic consumption in Cameroon “depending on market conditions.”¹⁴

SGSOC’s project has been the subject of great controversy over the last two years. Local communities, conservation groups, and NGOs have expressed opposition to the project due to its numerous negative social and environmental impacts. However, Herakles claims the project will contribute to socio-economic development and environmental protection.¹⁵

Cameroon has a long history of abusive practices by foreign agro-industrial companies occupying large tracts of land, abusing workers, and using chemicals harmful to people and the environment.¹⁶

We feel that SGSOC’s land deal has not been structured appropriately and is therefore unlikely to promote socio-economic development in Cameroon. Below, we explain why:

¹⁴ Ibid. Page 1-1.

¹⁵ Hance, Jeremy and Butler, Rhet. Palm oil, poverty, and conservation collide in Cameroon. September 13th, 2011. http://news.mongabay.com/2011/0914-hance-butler_herakles_cameroon.html

¹⁶ A group of 4 NGOs filed a complaint against the parent companies of SOCAPALM using the OECD complaint mechanism due to SOCAPALM’s abusive practices; Filmmaker Franck Hameni produced a film entitled “the Big Banana” which paints a damning picture of PHP’s Banana Plantations; CDC workers often strike in protest of working conditions and employee benefits; 2 SOSUCAM workers and one gendarme were killed during labor protests in early 2012; HEVECAM workers also launched a strike at the beginning of 2012 which led to numerous arrests.

Palm Oil Development and Mega Land Concessions

The Cameroonian government has made a high-level political and economic decision to develop agro-industrial plantations to promote job creation, economic growth, and development.¹⁷ Today, Cameroon produces approximately 200,000 MT of palm oil per year¹⁸ and exports 35,000 MT onto the international market.¹⁹ Production is dominated by five companies that collectively occupy 60% of the land devoted to palm plantations.²⁰

Cameroon hopes to further develop the palm oil sector on an industrial scale principally by attracting foreign investors. Many international palm oil companies are searching for fertile land throughout Africa due to a moratorium on new palm oil plantations in Indonesia and limited land availability in Malaysia—the two countries produce 80% of the world's palm oil exports.²¹ In addition to the SGSOC project, Cameroon recently ceded a large amount of land near Kribi to Goodhope Asia Holdings Ltd for a palm oil plantation capable of producing 20,000-30,000 MT per year.²²

Are Conditions Right for Land Deals?

Although Cameroon needs to increase agricultural production, it is unclear whether leasing large land concessions to foreign companies for palm oil, or other cash crops, is the best solution.

Food Sovereignty, Import Dependency and Riots

Even though the country has the ability to be self-sufficient with regards to agricultural production—which employs 70% of the population—a lack of investment has devastated small farmers in Cameroon. According to the NGO ACDIC, Cameroon imported on average 426,000 tons of rice, 393,000 tons of wheat, and 13,000 tons of corn from 2008-2010.²³

¹⁷ See Cameroon's Rural Sector Development Strategy and the Growth and Employment Strategy

¹⁸ Tumanjong, Emmanuel. Cameroon to Open 110,000 Hectares Oil Palm Farms - Minister. October 14, 2010.

<http://www.palmoilhq.com/PalmOilNews/cameroon-to-open-110000-hectares-oil-palm-farms-minister/>

¹⁹ <http://www.indexmundi.com/agriculture/?country=cm&commodity=palm-oil&graph=exports>

²⁰ <http://oilpalminafrika.wordpress.com/2010/08/19/cameroun/>

²¹ DrYusofBasiron. Deforestation Moratorium and Future Shortages of Food Supply Will Require 10 Times More Forest Conversion. August 25, 2010. <http://www.ceopalmoil.com/2010/08/deforestation-moratorium-and-future-shortages-of-food-supply-will-require-10-times-more-forest-conversion/>

²² Tumanjong, Emmanuel. DJ Cameroon Sees Palm Oil Output Rise by 30,000 Tons With Singapore Deal-Official. August 15, 2011. <http://www.morningstar.co.uk/uk/markets/newsfeeditem.aspx?id=155144956425624>

²³ Statistics available at <http://www.acdic.net/ACDIC/fr/les-campagnes/cession-des-terres/itemlist/category/15-donn%C3%A9es-statistiques-sur-les-importations-exportations-et-productions-des-produits-de-base>

In February 2008, citizens in the seven southern regions of Cameroon spontaneously broke out in protest over, amongst other issues, rising food prices. Riots lasted for several days and left hundreds dead. Prices for many food staples had doubled in a short period, revealing Cameroon's dangerous dependency on food imports.

Under these conditions, how can we justify leasing land to foreign companies that will export palm oil production, when we should be supporting small farmers producing food staples for domestic consumption?

SGSOC's impact on food sovereignty

Indeed, the SGSOC ESIA states that subsistence agriculture is the primary activity conducted inside its land concession and rates the negative impact of their plantation on livelihoods as "major" and "long-term."²⁴ Although SGSOC claims its project will not displace communities, the contract gives SGSOC the exclusive right to farm within the concession. This will inevitably displace locals, who will be forced to search for alternative farming land. Economically displacing impacted populations is considered "involuntary resettlement" by widely used international standards such as the Equator Principles and thus requires SGSOC to compensate individuals who lose their farm land and promote alternative livelihoods activities. Unfortunately, SGSOC's ESIA contains no compensation plans and weak alternative livelihoods programs.²⁵

The SGSOC plantation will undoubtedly have a negative impact on the local population's food security as they lose farming land and access to non-timber forest products.

Bad Economics

SGSOC is touting its investment as a driver for employment, infrastructure development, and social services delivery. The project's ESIA claims the plantation will create 7,500 jobs with the company, generate revenues for the government and improve roads.²⁶ However, a close examination of the contract and project design show the project is unlikely to generate much revenue for the Cameroonian government or local people.

²⁴ SG Sustainable Oils Limited Environmental and Social Impact Assessment. Pages XXI-XXIII. Available at: <http://www.heraklescapital.com/docs/SGSOC%20ESIA.pdf>

²⁵ SG Sustainable Oils Limited Environmental and Social Impact Assessment. Pages 7-223. Available at: <http://www.heraklescapital.com/docs/SGSOC%20ESIA.pdf>

²⁶ SG Sustainable Oils Limited Environmental and Social Impact Assessment. See table on page XXIV. Available at: <http://www.heraklescapital.com/docs/SGSOC%20ESIA.pdf>

The project will create 7,500 jobs—yes, but...

Although the project may lead to the creation of 7,500 jobs at peak production, SGSOC will not employ 7,500 people for the entire life of the plantation. SGSOC's contract requires the company to hire 80% Cameroonian labor five years into the project. However, if SGSOC is not able to comply with that target, the company must simply explain why they did not meet the 80% threshold and there is no penalty for non-compliance.²⁷ Thus, it is unclear how many Cameroonians will truly be employed by the project and for how long their employment will last.

Furthermore, it is unclear whether Cameroon's minimum wage laws and other labor protections apply to SGSOC employees since the contract allows for the company to pay employees according to "minimum wage scales fixed on the basis of productivity and efficiency criteria" and freely negotiate terms of employee dismissal.²⁸

Section 22.2 of the contract states, "in the event of a conflict between this Convention and any Law, except for the Constitution of Cameroon, as in effect as of the date hereof, the rights, obligations and duties of a Party shall be deemed to be those set forth in this Convention." In other words, SGSOC has the right to pay employees less than Cameroon's minimum wage based upon "efficiency criteria." It appears SGSOC employees will have very few legal protections.

Although SGSOC has promised jobs to many locals, it will be impossible for the company to absorb the entire local labor market. The project will likely have a *negative net employment* impact as thousands of displaced small scale and subsistence farmers will fail to find work with the company. SGSOC proposes unconvincing livelihoods alternatives for people who lose their farms and access to the forest.

The project will generate revenues for the government—yes, but...

According to the contract, SGSOC "shall pay annual surface rent to Government of US\$ 1.00 [500 FCFA] per hectare for State Land that is Developed Land, and US\$ 0.50 [250 FCFA] per hectare for State Land that is not Developed Land" per year. The rates will increase 2% per year.²⁹ Here are the projected surface rental fees including rate increases for "developed land":

²⁷Establishment Convention By and Between the Republic of Cameroon and SG Sustainable Oils Cameroon PLC. Section 9.6 (a, b, c). <http://cameroonveritas.files.wordpress.com/2011/08/sgsoc-convention1.pdf>

²⁸Establishment Convention By and Between the Republic of Cameroon and SG Sustainable Oils Cameroon PLC. Section 9.5 (a, b, c). <http://cameroonveritas.files.wordpress.com/2011/08/sgsoc-convention1.pdf>

²⁹Establishment Convention By and Between the Republic of Cameroon and SG Sustainable Oils Cameroon PLC. Section 13.5. <http://cameroonveritas.files.wordpress.com/2011/08/sgsoc-convention1.pdf>

| | |
|-----------------|------------------------------------|
| After 10 years: | \$ 1.22 (610 FCFA) per hectare |
| 20 years: | \$ 1.48 (740 FCFA) |
| 50 years: | \$ 2.69 (1,345 FCFA) |
| 99 years: | \$ 7.10 (3,550 FCFA) ³⁰ |

This surface rental fee is extremely low compared to other projects of similar nature. For example, SOSUCAM, operator of a sugar cane plantation in Nkoteng, pays 6,457 FCFA per hectare per year.³¹ In agricultural zones with rich soil such as Njombe, companies pay up to 100,000 FCFA per hectare per year to private land-owners. Even commercial logging companies, which pay notoriously low surface rents, pay on average 2,500 FCFA/ha for large concessions (UFA) and 13,900 FCFA/ha for small concessions (vente de coupe).³² Comparatively, SGSOC's surface rent will contribute almost nothing to the state budget.

Lost Carbon Credits

With the advent of the international carbon market, local communities and the Cameroonian government will soon receive payments for conserving carbon-stocking forests. Not only does SGSOC plan on razing the forest in its concession area to plant palm—greatly reducing the value—but its contract entitles the company (not communities or the government) to all the carbon credits generated by the plantation.³³

Other Taxes—no thanks

The SGSOC contract exempts the company from paying all taxes for a 10-year period to begin when production equals 10 tons of palm fruit bunches on at least 3,000 ha. It also exempts the company from paying all customs and certain social security payments for the 99 years of the project. SGSOC will pay a “tax on taxable profits at a flat rate not to exceed 15%” and favorable accounting provisions will allow the company substantially reduce its tax burden by carrying forward losses from previous years “indefinitely without any limitation” to reduce taxable profits.³⁴

³⁰ At current exchange rates.

³¹ Bail Emphyteotique Entre La Republique du Cameroun et SOSUCAM.

³² Cerutti, Lescuyer, Assembe-Mvondo, Tacconi. The Challenges of Redistributing Forest-Related Monetary Benefits to Local Governments: A Decade of Logging Area Fees in Cameroon. *International Forestry Review*, 12(2):130-138. 2010.

³³ Establishment Convention By and Between the Republic of Cameroon and SG Sustainable Oils Cameroon PLC. Section 13.3. <http://cameroonveritas.files.wordpress.com/2011/08/sgsoc-convention1.pdf>

³⁴ Establishment Convention By and Between the Republic of Cameroon and SG Sustainable Oils Cameroon PLC. See sections 11-14. <http://cameroonveritas.files.wordpress.com/2011/08/sgsoc-convention1.pdf>

The extremely favorable terms of SGSOC's contract will permit the company to pay little or no taxes on a very profitable project.



Photos of SGSOC's Palm Nurseries. Source not disclosed

Opportunity Cost

There are certainly numerous alternative uses of the land granted to SGSOC that would generate more income for the Cameroonian government while protecting communities. Investing in small-scale agriculture and conservation in the zone would easily generate more than \$1 per hectare per year in taxes for the government while promoting food security, employment, and sustainable development.

The Cameroonian Government currently spends massive sums subsidizing imported food stuffs to slow inflation on the local market. This spending could be significantly reduced if the government supported local production for domestic consumption instead of agro-industrial plantations oriented towards the export market. For example, Cameroon's Food Sovereignty Coalition (COSAC) estimates that if the Government of Cameroon were to require bread-makers to use 20% locally produced flour (derived from sweet potatoes, corn, or cassava), 96,000 farming jobs would be created using just 15,000 Ha of land. This would generate 13 times more employment and significantly larger government revenue than the SGSOC project and would leave additional lands available for peasant agriculture, conservation, and use of non-timber forest products.

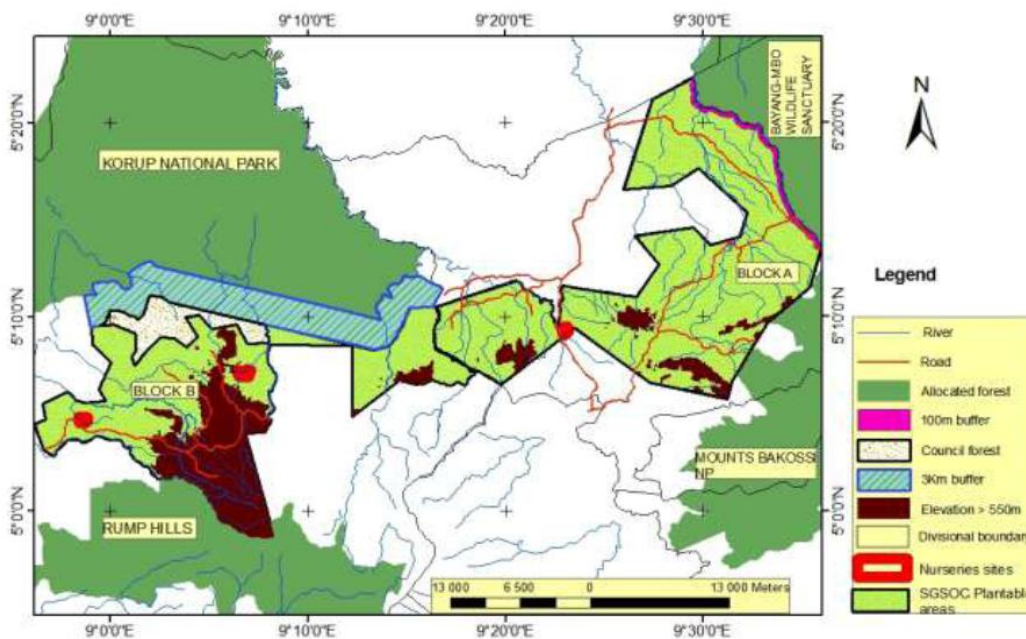
Bad Ecology—“we consider ourselves environmentalists”³⁵

While SGSOC and Herakles teams have been on a public relations offensive intended to minimize the environmental impact of the palm oil plantation, the truth is that the project will be an ecological disaster.

Biodiversity

Monoculture palm oil projects, no matter how well-managed, result in a huge loss of biodiversity. In this case, SGSOC’s land concession is neatly nestled in a biodiversity hotspot near four protected areas—Korup National Park, Rumpi Hills, Mount Bakossi, and the Bayang-Mbo Wildlife Sanctuary. Not only are these areas home to dozens of species that are close to extinction, but the land between the parks operates as an essential corridor for their migration. SGSOC’s project will disrupt the protection and growth of important wildlife.³⁶

Figure 1 Carte de la Zone sous Concession à Mundemba, Toko et Nguti



Source: SGSOC Environmental and Social Impact Assessment

³⁵Bruce Wrobel, CEO of Herakles in interview with Mongabay.com September 13th, 2011. http://news.mongabay.com/2011/0914-hance-butler_herakles_cameroon.html

³⁶Hance, Jeremy and Butler, Rhet. Palm oil, poverty, and conservation collide in Cameroon. September 13th, 2011. http://news.mongabay.com/2011/0914-hance-butler_herakles_cameroon.html

High Conservation Value Forest (HCVF)

To reduce project risk in the eyes of potential investors, Herakles has signed up to a number of international best practice instruments including the Equator Principles and the Round Table on Sustainable Palm Oil (RSPO).³⁷

Acknowledging the negative impact of palm oil on forest conservation, RSPO prohibits its members from razing High Conservation Value Forest (HCVF) to make way for palm plantations and also states “plantation development should not put indirect pressure on forests through the use of all available agricultural land in an area.”³⁸

When SGSOC approached a British consulting firm to conduct a HCVF assessment in the plantation area, the consultancy simply refused stating the project clearly violates RSPO principles on HCFV among others.³⁹ Numerous analyses, including one conducted by GIZ of the German Government, show that over half of SGSOC’s concession overlaps HCVF.⁴⁰ GIZ also estimates that SGSOC would need to reserve 31,576 Ha of land to accommodate the agricultural activities of local communities—SGSOC has set aside less than 10% of that.

SGSOC’s ESIA claims “HCVF including primary forests, vegetation on steep slopes (greater than about 30°), and sacred sites, as well as agricultural land used by the villages within the Concession, will remain.”⁴¹ However, the assessment provides no explanation of how this will be done and no map is provided to demarcate the lands that will remain. Furthermore, if indeed this land will be set aside for agriculture and conservation, why must it remain part of SGSOC’s land concession? This land should be ceded back to the communities.

SGSOC would need a concession of 114,691 Ha to avoid destroying HCFV, provide adequate agricultural land for locals, and exploit 60,000 Ha of land for palm oil (as planned). The critical issue is that they only have 73,086 Ha.

³⁷ See <http://www.rspo.org/>

³⁸ Criterion 7.3.RSPO Principles and Criteria for Sustainable Palm Oil Production - *Including Indicators and Guidance*. October 2007.

http://www.rspo.org/files/resource_centre/RSPO%20Principles%20&%20Criteria%20Document.pdf

³⁹ <http://www.africanconservation.org/201106302271/network/stop-blackstone-deforestation-in-cameroon>

⁴⁰ Observations on the SGSOC ESIA Report from GIZ and GFA/DFS Buea.

⁴¹ SG Sustainable Oils Limited Environmental and Social Impact Assessment. Pages 5-191 and 5-192. Available at: <http://www.heraklescapital.com/docs/SGSOC%20ESIA.pdf>

SGSOC's math's just doesn't add up

| | |
|--|-------------------|
| Area required for local agriculture according to GIZ | 31,576 Ha |
| Area classified as HCVF by GIZ | 23,115 Ha |
| Area SGSOC plans to develop for palm plantation | 60,000 Ha |
| Total Land Area Required | 114,691 Ha |

Further expanding the plantation is not a feasible option due to the current population density and land use in the zone. *For the project to be truly sustainable, SGSOC would need to reduce the size of its plantation and associated infrastructure to 17,000 Ha.* Yet, SGSOC's contract gives it the right to expand the concession infinitely "in its sole discretion."⁴²

Migration, poaching, and bush meat trade

Historically, in Cameroon all major investment projects lead to migration towards project zones as Cameroon's heavily unemployed populous looks for work. In the case of SGSOC, economic displacement of locals will increase reliance on hunting and migration will inevitably increase demand for bush meat. Improved roads will also increase the profitability of professional poaching operations. These factors combine to make SGSOC's project a recipe for disaster in wildlife conservation terms.

Alternatives—no thoughts

Despite the disastrous ecological impacts of SGSOC's plans, Bruce Wrobel, CEO of SGSOC's parent company, stated "we consider ourselves environmentalists" in a recent interview.⁴³ This statement is particularly disingenuous considering the lack of alternatives considered in the project design. In SGSOC's ESIA, the section titled "Alternatives Considered" is less than one full page and doesn't actually consider any alternative project designs.⁴⁴

In a recent interview about SGSOC, Dr. Nigel Sizer of the World Resources Institute (WRI) said, "Given the versatility of oil palm and so much degraded, deforested land across the tropics, surely there are better places to make this kind of investment."

⁴²Establishment Convention By and Between the Republic of Cameroon and SG Sustainable Oils Cameroon PLC. Section 3.2. <http://cameroonveritas.files.wordpress.com/2011/08/sgsoc-convention1.pdf>

⁴³Hance, Jeremy and Butler, Rhet. Palm oil, poverty, and conservation collide in Cameroon. September 13th, 2011. http://news.mongabay.com/2011/0914-hance-butler_herakles_cameroon.html

⁴⁴ See Chapter 3.12

WRI estimates there are 2 billion Ha of land available worldwide that could host a similar palm oil project without such a heavy ecological impact.⁴⁵

Profit over the Environment

Cameroon has large tracts of land that have been previously logged or degraded which could host SGSOC's plantation. However, these areas are further from the major ports of Limbe and Douala—which would increase infrastructure, energy, and transport costs associated with the project. If moved, SGSOC's plantation would continue to be economically viable considering the company will pay almost no taxes over the 99-year lease.

The Right to Water and Other Natural Resources

SGSOC's contract gives the company the right to use unlimited amounts of water within its land concession for free.⁴⁶ SGSOC also has the exclusive right to other resources within its land concession including timber, clay, and gravel.

Free access to these natural resources not only represents a significant revenue loss for the Cameroonian Government, but will also encourage inefficient resource consumption and waste. The real impact of the project on local peoples' access to water and non-timber forest products is unclear due to SGSOC's weak ESIA. However, from a contractual standpoint, SGSOC clearly has priority when accessing water, over local communities.

Community Resistance

SGSOC vs. the People

On August 8th, 2011 a local Cameroonian NGO called Struggle to Economise Future Environment (SEFE) filed a motion at the Mundemba Court to put a moratorium on the SGSOC plantation citing the possibility of irreparable damage or injury to local communities if the project were to continue. The court ruled in favor of SEFE on August 31st, 2011 and placed a restraining order on the project with a penalty of 500,000 FCFA per day if violated. Later on, the same court ordered the arrest of one of SGSOC's representatives for brazenly defying the moratorium handed down on August

⁴⁵Hance, Jeremy and Butler, Rhet. Palm oil, poverty, and conservation collide in Cameroon. September 13th, 2011. http://news.mongabay.com/2011/0914-hance-butler_herakles_cameroon.html

⁴⁶Establishment Convention By and Between the Republic of Cameroon and SG Sustainable Oils Cameroon PLC. Sections 3.3 and 3.7. <http://cameroonveritas.files.wordpress.com/2011/08/sgsoc-convention1.pdf>

31. According to the SEFE, the judge that granted the moratorium has since been removed from the case for unknown reasons.

Local Support?

SGSOC and Herakles have stated publicly that their project enjoys an “outpouring of support from communities.”⁴⁷ This statement is out of touch with the true sentiments of local groups. In the village of Fabe, local youth crowded the road to physically block SGSOC bulldozers in protest of the project.⁴⁸ According to the NGO Pro Wildlife, communities from Fabe, MassakaBima, Mbile, and Mundemba, have all sent complaint letters to the government opposing the project.⁴⁹

Many locals feel there are already too many restrictions on their land use due to the existing conservation zones. Adding a 60,000 Ha palm oil plantation will further restrict their access to lands held by their ancestors for generations. Normally docile rural communities are showing strong resistance to the project.

One project—two different ESIA’s

SGSOC commissioned H&B Consulting to conduct its ESIA. However, the original ESIA produced by H&B was not made public. SGSOC modified the impact assessment in secret and then submitted a watered-down version of the document to the Cameroonian government for comment and approval. [The original assessment](#)⁵⁰ and [the edited version submitted to the government](#)⁵¹ are both available online.

Some of the changes made by SGSOC are clearly semantic and organizational, but others are clearly intended to hide certain impacts of the project. Neither ESIA is of high enough quality to comply with RSPO’s best practice principles, nor the Equator Principles for investment, as noted by numerous environmental groups that submitted written critiques during the public comments period.

It is also unclear whether the process for approving SGSOC’s ESIA respected Cameroonian law.

⁴⁷Hance, Jeremy and Butler, Rhet. Palm oil, poverty, and conservation collide in Cameroon. September 13th, 2011. http://news.mongabay.com/2011/0914-hance-butler_herakles_cameroon.html

⁴⁸<http://www.africanconservation.org/201106302271/network/stop-blackstone-deforestation-in-cameroon>

⁴⁹Pro Wildlife. Comments on the Environmental Social Impact Assessment Report on SG Sustainable Oils Cameroon Limited. August 8, 2011.

⁵⁰ <http://cameroonveritas.files.wordpress.com/2011/10/sgsoc-esia-original.pdf>

⁵¹ <http://www.heraklescapital.com/docs/SGSOC%20ESIA.pdf>

A Prime Ministerial Decree of 2005 requires the public be informed at least 30 days prior to ESIA public consultations and hearings.⁵² In the case of SGSOC, the public was informed on August 23, 2011 that public hearings would be held from August 29-September 2nd, 2011 in Nguti and Mundemba.

The fact that SGSOC would secretly alter project documents to prevent the Cameroonian public and government from understanding the palm plantation's true impacts is alarming. Will all 99 years of SGSOC's project be conducted in the same opaque and unethical manner?

⁵²Décret n°2005/0577PM du 23 février 2005

PART II

Analysis of the Establishment Convention between the Government of Cameroon and SG Sustainable Oils Cameroon PLC

The Cameroon government signed an establishment convention with exceptional advantages for the company. Just some aspects of the convention will be presented here:

Object of the convention

Through the convention, Cameroon grants the investor the right to:

- Produce palm oil and other products within the production area, with the possibility to expand to other parts of Cameroon
- Produce palm oil for the Cameroon market and for export
- Carry out all other activities in the convention

Term of Convention

Pursuant to article 2.1, the term of the convention is 99 years. The convention truly mortgages the future of the people living around the production area. Future generations (over 4 generations!) shall be obliged to cohabit with this investor, and shall face land scarcity caused by their presence. It can already be imagined that the cohabitation will not be easy. There are over 20 villages with ancestral lands inside the concession, and 31 villages within a distance of the periphery. Over 25,000 people will be affected by this land concession.

Annual surface rents

Article 13.5 provides for the payment of between US dollar 0.5 to 1 (FCFA 250 to 500) per hectare per year, depending on whether the land was developed or not. The surface rent will be increased annually by 2%. This amounts to US\$ 7.10 per hectare per year (about FCFA 3500 for rent in 2108).

Cameroon's land tenure ordinance provides for rent sharing between the State (40%), councils (40%) and communities (20%). Annual rents therefore shall not exceed FCFA 35 million, if company developed the entire concession from the initial production year. Once the state and the local government receive their rents, just FCFA 400,000 would be allocated to each village each year. This amount is far less than the income a farmer makes from cultivating a hectare per year.

Compare this surface rent with the price paid by Cameroon sugar company (SOSUCAM), in a region with fewer people than in the production area of SGSOC: more than FCFA 6400 per hectare for a contract signed in 2006. In the Moungo region with the same ecological, economic and human characteristics as the SGSOC production area, surface rent is about FCFA 100,000 per hectare, per year (this is what small farmers pay around Njombé).

The surface rent, therefore, is by far lower here than for similar transactions elsewhere in Cameroon. Strictly from a financial perspective, Cameroon could have struck a much better deal.

Rights granted to the company by the convention

The convention is supposed to be a land lease to plant oil palm trees and subsequently other agricultural products. But from analysis it stands out that the rights of the investor go far beyond the prerogatives to access the land:

- The right to plant or to cut timber in the production area, for its exclusive use, without the need to obtain any further authorisation or pay any extra fees provided for by the laws in force.
- The right to extract and use water, stones, gravel, clay and sand from the concession area, without further fees or authorisation.
- The right to benefit from carbon credits (article 4.14 of the establishment convention), with government undertaking to promptly provide "all certificates, consents, authorisation and other support" requested by investors. Two observations stand out: Cameroon law does not provide for carbon trade; moreover, the value of carbon is greater than that of surface rents.⁵³ There is no special investment for the sequestration of carbon. Why give the right to exploit land and the rights for carbon to a business at such a low rent, whereas the State could gain more, without any special investment and transform the area into a REDD project.⁵⁴
- The right to obtain financial compensation from government when it fails to efficiently execute its obligations in the contract. In the context of a State where there is lack of optimal coordination of functions

⁵³At the signing of this contract one ton of carbon was valued at \$15-34 USD, about 7,500-17,000 FCFA. See www.co2prices.eu, visited January 31st, 2012. Tropical forest can stock approximately 250 tons of carbon per hectare. See www.treehuger.com, visited January 31st, 2012. The carbon market is less attractive today than in 2009; however it would have been impossible to predict so in 2009 when the convention was signed.

⁵⁴ The REDD Process' (Reducing Emissions from Deforestation and Degradation) main goal is to improve the management and protection of forests as a means of fighting global climate change. REDD projects attempt to measure and remunerate efforts to slow or stop deforestation (when compared to the status quo). The mechanism is about financially rewarding environmental services.

between its local and central administrations, such a provision can constitute an easy source of income for the company.

Moreover, the State gives SGSOC many facilities:

- Access to electricity at special offer rates or at prices equal or lower than those of high priority companies. Concretely, SGSOC could claim and pay electricity at a rate much lower than that paid by homes. Furthermore, the contract provides that SGSOC will have a unique rate for electricity and not be subject to the pricing system of AES/SONEL, which varies depending on number of units consumed. This advantage is granted without compensation. Government authorizes the company to generate electricity to meet its needs. When the electricity generated exceeds its needs, the company could, without being obliged, supply it to the government or any third party (article 6.1).

Does the convention violate the law?

The answer is yes, regarding the spirit and the letter.

Concerning the letter of the law firstly, as the lands in question fall in the category of state land, the transaction should have been subject to the provisions of Decree No 76/166 of 27 April 1976 on state lands. This decree provides two legal principles which seem not to have been respected in the leasing of land to SGSOC. One concerns the authority for allocation: above 50 hectares, land leases are granted by Presidential Decree.⁵⁵ The other concerns the progressive approach by which state land is ceded: the administration starts with a temporal lease which cannot exceed five years, subsequently renewable on the reasoned demand of the investor.⁵⁶ The final land concession can only be granted once the development of the preliminary land concession has been confirmed.

Concerning the spirit, it violates the hierarchy of legal norms which forbids a contract from contradicting the law. Yet the convention contains many provisions for exploiting natural resources with no respect for the procedures provided by the law in force concerning for example, timber, water, gravel, and stones. The convention grants SGSOC the right to exploit these resources without further authorisation or fees. Can a contract signed by a minister exempt an entity from laws adopted by parliament? Logically no! Yet, the convention is replete with dispensations of the laws in force. Thus article 22 relating to the rights of the contract states that: "*in the event of a*

⁵⁵Article 7 of the decree of 27 April 1976. The same article states that land leases of below 50 hectares are done by the Minister in charge of lands.

⁵⁶See article 3 of Decree of 27 April 1976.

*conflict between this Convention and any Law, except for the Constitution of Cameroon, [...], the rights, obligations and duties of a Party shall be deemed to be those set forth in this Convention [...]*⁵⁷

It is equally interesting to observe that the company has taken care to protect itself against all risks of the convention being contested, if ever any irregularities occurred in the process of its negotiation and conclusion. Article 4 thus states that signatories on behalf of government guarantee that they have the necessary authority to represent the state in the process. They equally attest that the execution of the convention will not conflict with or result in any breach of a treaty, agreement, decree or order to which Cameroon is signatory or susceptible to affect the project.⁵⁸

The convention breaches the international commitments of the state

Article 9.3 of the convention authorizes the investor to guarantee the protection of its production area, including the arrest and detention of all unauthorized persons.⁵⁹ This constitutes the privatisation of one of the main duties of the state. To authorise individuals to arrest and to detain citizens is contrary to the Cameroon penal code (this can be considered as sequestration which is punishable under the penal code). It is equally a violation of international agreements on human rights which Cameroon ratified, among others the Universal Declaration of Human Rights, the African Charter of Human and Peoples Rights and the International Covenant on Economic, Social and Cultural Rights.

We are talking here of an area inhabited by about 25,000 people, who will soon be deprived (and for the rest of their life...) of the right to free movement in certain parts of their ancestral lands, for fear of arrest and detention.

⁵⁷Article 22.2 reads in full "this convention (including its formation and any question regarding the existence, validity and termination of this convention) and the rights, obligations and duties of the parties under this convention shall be construed and interpreted in accordance with Law and by such rules and principles of international law as may be applicable, particularly with regard to an investment by nationals of one country in another country. However, in the event of a conflict between this convention and any Law, except for the Constitution of Cameroon, as in effect as of the date hereof, the rights, obligations, and duties of a party shall be deemed to be those set forth in this convention and each Party shall have such remedies as are provided for in this Convention with respect thereto including the remedies set forth in this Article 22.

⁵⁸Article 4.9 reads: No conflict - Government represents and warrants that the execution, delivery and performance of this convention will not conflict with, result in the material breach of or constitute a material default under any of the terms of any treaty, agreement, decree or order to which it or any of its assets is bound or affected"

⁵⁹This is contrary to Article 9 of the Universal Declaration of Human Rights which reads: "Nobody shall be arrested, detained or exiled arbitrarily"

The convention limits government authority

Contracts generally limit the ability of the contracting parties to maneuver. The government is a particular type of contractual party in the sense that it has powers invested in it by the people and thus the responsibility to ensure that all citizens can fully exercise their rights recognized by the constitution and international agreements the government has ratified. Government must also catalyze development by promoting infrastructure expansion in the country. The limits imposed on the government via this contract seem incompatible with its main role—protecting rights and equality.

- Infrastructure development. Article 7.2 subjects the construction of infrastructures (roadways, highways, railroads, telephone) to the condition of no material interference with the company's activities.
- Article 23.3 recalls that government commits to guarantee that the rights granted the investor via the convention suffer no derogation, or any hindrance, whatsoever, through the action or inaction of government.⁶⁰
- The company has the right to refuse to implement any future laws to be adopted by Cameroon's parliament over the next 99 years. Article 20.4 also provides that if the new legislation interferes with the implementation of the activities of the investor, it has the right to request that the government exclude its activities from the application of such laws, and compensate the investor for all costs associated with the legislative amendments.⁶¹

Financial provisions

What does the State gain from this partnership? The State gets almost nothing from the partnership when compared to other land leases. The taxes on the project are very favourable for the investor. In effect, there will be a total exoneration from present and future taxes for a ten (10) year period beginning in the initial production year (article 11.1(a)).

⁶⁰Article 23.3: "Non derogation. Government affirms that at no time shall the rights (and the full value and enjoyment thereof) granted by it under this Convention be derogated from, unreasonably delayed, frustrated, impeded or otherwise undermined by the action or inaction of Government, any official of Cameroon, or any other person whose actions or inactions are subject to the control of Government including any action that rescinds, or purports to rescind, the rights or benefits granted Investor or project participant hereunder."

⁶¹Article 20.4(a) provides that "If any change of law has the effect of impairing, conflicting or interfering with the implementation of investor activities, or limiting, abridging or adversely affecting the value of the production area or any of the rights, indemnifications or protections granted or arising under this convention or any project agreement, or of imposing (directly or indirectly) any costs on any interest holder, investor shall, within 1 year of the date when it could with reasonable diligence have become aware of the effect of the change of law, give notice thereof in writing to Government. During the 90 days following government's receipt of such notice, Investor and Government shall endeavour to resolve the matter through amicable negotiations".

At the end of 10 year tax exoneration period, the company remains under a special and very favourable tax regime, which provides for exoneration from all present and future taxes, except for a tax on profits, set at a fix rate never exceeding 15% (article 11.2).

It is also useful to remark that the state gives the investor the right to carry forward to future fiscal years, throughout the duration of the contract, losses incurred during previous financial years. In fact, this article is tantamount to tacit tax exoneration.

The convention sets the decade of tax exoneration to begin from the initial production date, understood as the moment the company starts producing more than 10 tonnes of palm bunches per hectare on average, on a surface area of 3,000 hectares. It suffices for the company to claim that they are producing a little less than this tonnage to benefit from total tax exoneration.

Considering government's objective to promote agricultural production, why did it grant so many incentives for the company to maintain the land undeveloped without any production? The surface rent is *lower* if the land is not developed (but restrictions on land use will already apply) and the date on which taxes would have been due to start depends on production, instead of a deadline which would have spurred the company to produce more rapidly.

Finally, the project is totally exonerated from all customs duties for the entire term of the convention.

Termination of the convention

Two provisions pertaining to the termination of the convention are ripe for analysis;

- In the event that certain provisions of the convention become null and void, the parties agree to implement all the other provisions. The wording of this article calls for two comments:
 - The convention contains some superfluous provisions regarding protection of the investment.
 - The parties seem to recognize that some provisions risk nullity, and that they are not salient provisions related to the investment, since the agreement can survive their annulment.

The termination process of the convention is unbalanced. While the investor can terminate the convention at any time, without reason, by simply providing

30 days' notice, the government is constrained by a procedure and drastic conditions. For the government to terminate the contract there must be:

- Systematic and persistent breaches by the investor of one of its obligations in the convention. The breach(es) must cause a prejudice to the state
- Bankruptcy of the investor

A serious mortgage of the region's future?

- a. The provisions of the convention are significant. They have to be analyzed in the light of the bilateral investment treaty between Cameroon and the United States, which became effective on 6 April 1989, and guarantees the protection of American investments in our country. Many observations arise from a critical reading of the treaty and the convention between Cameroon and SGSOC:
 1. Arbitration will be the mode of settling subsequent disputes on which the parties cannot agree.
 2. It is the responsibility of the government to ensure that SGSOC fully enjoys all the rights granted by the convention. In the event of any difficulty, government could be made to pay financial compensation to the company, set by an independent court of arbitration, characterized by its rigour in matters concerning the rights of investors. In this case, it is the International Centre for the Settlement of International Disputes (ICSID) of the World Bank.
- b. We do not yet have a clear land use policy in Cameroon. It is difficult to understand why, during a period of increased land grabbing in Africa by the West and Asians, the government hurries to sign such long term contracts, without first putting in place a national land policy. It is also difficult to understand why during a period of such high demand for land, the rents paid by the investor are so low.

How valid is the convention?

We can question the validity of a convention signed by a Minister to:

- Grant a foreign company the right to ignore laws in force and laws passed by legislative activity in the future (for 99 years!). The convention has never been examined in parliament.
- Contradict the international human rights commitments of the state, including the African Charter on Human and Peoples Rights, and the International Covenant on Economic, Social and Cultural Rights.

- Create such an unbalanced investment framework with many rigid and potentially costly obligations for the state, in exchange for such low financial returns. While the company will have minimal obligations and unusual rights in the context of Cameroon.

Conditions and methods for leasing land

The land lease in question was granted in an area inhabited by about 25,000 people. This human settlement, with people mostly living on subsistence agriculture, will become a hostile environment for cohabitation in the future due to land scarcity that will arise from the presence of the project. It is unlikely that the users of the land will accept to trade their status as small independent farmers to the less enviable and less profitable one of agricultural labourer. An analysis of the conditions and methods for granting this land concession calls for some questions:

- Why do the authorities seem to prefer the option of a long-term land leases to multinationals, even when local communities using the land seem to oppose it?
- The process of granting land leases is not transparent. What is the basis on which the government grants or rejects requests for land leases? How do we select the location and the production area? How is the cost of the land rent fixed? Is there room for competition? How do we guarantee the rights of third parties? Considering the long term commitments of the state enshrined in these conventions, the government must be very cautious during contract negotiation. We must avoid scenarios where the government makes commitments it cannot honour, which will expose Cameroon to financial sanctions.

In the present context, every company wishing to obtain a land lease seems to decide for itself where to locate future projects before officially soliciting a land lease. Many different ministers are signatories of land lease agreements, on behalf of Cameroon. The law is actually quite clear on the procedures and the competent authorities to grant land leases. We could rightly declare nullity of the conventions signed without respecting the laws in force.

The uncertainty surrounding the validity of land lease contracts could be prejudicial to the commitments of investors; who, except for short-term speculators, would risk long-run financial losses in projects susceptible to litigation, cancellation and all the negative publicity that goes with such cases?

Moreover, the persistent non-respect by Cameroonian authorities of the laws governing the granting of land rights could have serious repercussions for Cameroon's "Doing Business" ratings. One of the hallmarks of a business friendly environment for investment is in effect the capacity of the administration to reduce, or even eliminate the possibility of arbitrary decision making, by enacting and respecting efficient and transparent legislation for all investors. From this perspective, the present land leases are alarming. In addition to questions regarding the authority of certain government signatories of land lease conventions, this agreement signed by a Government Minister fails to respect a zoning plan, in violation of the Prime Ministerial Decree instituting it.

Tax incentives are so favourable to companies that direct state income from land leases is currently very low. Nevertheless, we are of the opinion that better financial deals could generate important revenues for the state without rendering Cameroon unattractive to investment because demand for arable land remains high.

It is important to bear in mind that in the current system, where numerous ministries grant land leases without necessarily having the authority to do so, over-favourable contractual terms for investors could quickly become the norm. Many investment contracts, in fact, contain clauses extending the same favourable conditions provided to one investor to other companies operating in the same sector.

Proposal to improve the system

It is urgent to establish a clear policy for granting land leases. The system must guarantee transparency in the identification and allocation of land concessions. Such a system should also better protect community rights and increase state income. Without being exhaustive, we propose the following steps:

- The government should place a moratorium on the granting of new concessions until a mechanism for the granting of contracts has been developed which takes into account already existing land rights and customary land rights
- The government should, in close collaboration with parliament, launch a review process of contracts to determine whether they are valid (compliant with all procedures and laws in force as well as the government's international commitments) and render public all contracts that are judged to be valid. Contracts that are not consistent with Cameroonian law should simply be cancelled.
- Identify potential lands available for land leasing and establish a map. The advantage of this approach is that it allows for a debate on the transfer of lands and other possible uses (community use, mining permits, forest concessions, etc.). An analysis of alternative uses for the lands subject to request, highlighting how they could be used to increase national agricultural production, food sovereignty, improvement of the economic situation of peasant farmers by creating local jobs.
- Local and national consultative processes should be developed to identify those with existing land entitlements and allow Cameroonians to express themselves freely regarding the transfer of ownership of their ancestral land for industrial agricultural production.
- A public debate (at local and parliamentary level) about the terms of contracts, especially when they are long term and could trigger international mechanisms that protect investors (when the company is from a country having a bilateral investment treaty with Cameroon, or in the case where the local courts are judged to be incompetent by the provisions of the contract.)
- A public call to tender or auction for land concessions. The financial and technical proposals, as well as the projects' social contribution

shall be taken into consideration. Large plantations will be granted uniquely within a zone identified during the national land planning process explained above.

- A “model contract” for land leases, which will help to eliminate the disparities presently observed between different land lease conventions signed by various ministers. The model contract could contain, among other things:
 - A maximum term of 30 years renewable
 - A maximum size of 50,000 hectares
 - Abide by national law for the execution of the contract and the settlement of disputes (arbitration in Cameroonian jurisdiction)
 - Cancellation of lease contracts when the investment is not executed within a stated deadline. This condition will prevent speculators from freezing off areas while waiting for better opportunities to retrocede the land.
 - An obligation to obtain authorization from the State before modifying the use of the leased lands; or to replace the co-contractor of the state
 - Automatic publication of contracts as a condition of their validity. (contracts must be published on the website of the appropriate government ministry)
 - Transparency in land leases, which seem to be an indispensable instrument for land governance at a period characterized by land grabbing by national elites as well as by multinational companies. We could set a target surface area beyond which lease agreements must be approved by parliament and made available to the public, failure of which would lead to nullity.
 - The government, in association with parliament, will identify all cases where conflicting rights have been granted to investors, notable overlapping forestry, land, mining, oil, and gas concessions.
 - The government must urgently designate a ministry that will be responsible for centralizing all contracts for natural resource extraction in Cameroon (land, forests, mines, oil, gas, etc.). The private beneficiaries of these contracts will have a fixed deadline to bring their contract to the designated ministry.

Conclusion

It is difficult to understand the exact nature of SGSOC's operations. The company makes very positive statements about its good intentions and the best practice international standards to be observed during its operations (the Equator Principles, Round Table on Sustainable Palm Oil, etc.). Yet at the same time, the provisions of the convention grant SGSOC rights which contradict the public statements made by the company. Since the project is not yet fully operational, there are few practical elements to enlighten the observer. Nevertheless, we can simply remark that if the company really wishes to implement best practices, it will have to amend many of the provisions of the contract to avoid doubts concerning its activities.

It is also evident that the convention is exceptionally favourable to the company, and that the benefits to the state are deliberately limited. Normally, in a land lease convention, government should benefit from taxes on production, surface rent, and indirect benefits (job creation, business opportunities offered by the presence of company etc.).

There are environmental risks (what is the nature of pollution, and who is responsible for addressing it? Does the cost of repairing the damage overturn the financial gains of the state and other beneficiaries, especially local communities?) and risks in the social domain (the probability of conflict linked to resource and land scarcity at the local level, long term health risks, etc.).

Normally, the content of such a convention should reflect the risks and rewards for the state while taking into account its rights and obligations. The convention between Cameroon and SGSOC does not respect such principles: the surface rent is very low, the project is exonerated from customs duties for its term (99 years) of existence, and the investor benefits from preferential tax advantages. Meanwhile there is no strict contractual obligation to optimize the investment's indirect benefits for the local and national economy. We thus have the impression that all the advantages granted to the company by the state are not reciprocated.

Finally, it seems evident that the unbalanced nature of the convention will provoke lots of controversy around the project. The company will have to resort to the courts if it wishes to enjoy some of the rights granted it by the convention (that to arrest and detain people). It is likely that potential investors will be extremely prudent towards this company because of the risks, paradoxically coming from the excessive advantages the state granted the company. Cameroon courts have already been seized, and have passed

an unfavourable judgement against the company, which may lead to a series of contestations of the project.

The contract was designed to address this scenario by including clauses that require the government to pay compensation to the company if its actions or inaction prevent the company from fully exercising its contractual rights. It is also likely that an international arbitration court would side with the investor in this case, and that the state would be obliged to pay a huge compensation (calculated based on the expected profits during the 99 year term). If this turns out to be true Cameroon would be left in an ironic situation, having to pay huge sums in compensation to an investor whose project would have generated almost nothing for it. Or perhaps, that is what the end of the project was always intended to be.

APPENDIX A

Comparative analysis of the land lease conventions of SOSUCAM and SGSOC Company

| Company | SOSUCAM | SGSOC |
|---------------------------------------|---|--|
| Date of signature and duration | 20/04/2006, for 99 years | 17/09/2009, for 99 years |
| Sector | Sugar cane plantation | planting oil palm trees; refine and market oil; Other agricultural products (article 3.1) Possibility to monetize carbon credits (article 4.14) |
| Production area and location | 11,980 ha, plantation located in Centre Region | 73086 ha, plantation located in the South West region of Cameroon, with possibility of expanding during term of convention (article 3.2) |
| Annual rents | 77,354,860 FCFA/year, being equal to 6,457FCFA/ha/year | 0.5 dollar (about 250 FCFA) for undeveloped lands; 1 dollar/ha/year for developed lands. In total, 60,000 hectares shall be developed (being 60,000 ha x 1 dollar being 60,000 dollars, being 30 million FCFA), and about 13,000 ha of undeveloped land remaining (13,000 x 0.5 equals 6,500 dollars or 3,250,000 FCFA). The total the annual rent for the concession in year one would be 33,250,000 FCFA , assuming the company reached its maximal production level from the initial date of production. |
| Method for increasing rents | Subject to revision every 5 years | 2% increase per year being 7.10 dollars/ha/year by 2108 (3,550 FCFA), about half of what SOSUCAM is paying today |
| Legal Regime | Convention is subject to Cameroonian law (present and future laws) art 4(d) | The convention is supposed to conform to Cameroon law. But in the case of conflict between the convention and legislation in force in |

| | | |
|---|--|---|
| | | <p>Cameroon, the convention takes precedent, except when it concerns the Constitution of Cameroon.</p> <p>If the amendment of a law will negatively impact the implementation of the investor's activities, the value of the production area or any right and protection granted by the convention, it will not apply to the investor if he so demands. It could even lead to a compensation being paid to the investor for present and future costs resulting from the application of such new laws (article 20.4)</p> |
| Possibility to change the transfer of leased lands | Yes, with the authorization of the Minister of Lands | Yes, possible to cultivate other agricultural products, after informing the government (article 3.1) |
| Alienation/transfer of rights | Yes, with the prior authorization of the Minister in charge of lands. If not respected, risks nullity of the lease agreement and termination of lease | |
| Termination of lease | <ul style="list-style-type: none"> • By abandon (without compensation or reimbursement) • Termination by decree, three months after order remains unexecuted • Failure to develop 5 years after attribution • Non-payment of taxes one month after it is due | <ul style="list-style-type: none"> • If the investor abandons, with a 30 days' notice (article 18.1) • At the initiative of government if company fails to respect its material obligations according to the convention. |
| Competent jurisdiction | Administrative courts in Cameroon | Arbitration by the Washington based International Centre for the Settlement of International Disputes (ICSID) |

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