

## Summary Analysis of FPP's Review of GVL/GAR's FPIC Procedures



Summary of 'Hollow promises: An FPIC assessment of Golden Veroleum and Golden Agri-Resource's palm oil project in south-eastern Liberia'

This publication has been produced by Forest Peoples Programme.



This publication has been produced with the assistance of the Food and Agriculture Organisation of the United Nations (FAO). The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the FAO.

Published April 2015

Forest Peoples Programme  
1c Fosseyway Business Centre, Stratford Road  
Moreton-in-Marsh  
GL56 9NQ  
United Kingdom  
Tel: +44 (0)1608 652893  
[info@forestpeoples.org](mailto:info@forestpeoples.org)  
[www.forestpeoples.org](http://www.forestpeoples.org)

© Forest Peoples Programme 2015

## Executive Summary – *Hollow promises: An FPIC assessment of Golden Veroleum and Golden Agri-Resource’s palm oil project in Liberia*

### Introduction

This is an executive summary of the main report with the same title, which is the result of several years of fieldwork by the Forest Peoples Programme and civil society partners in Liberia, and is the first step of a UN Food and Agriculture Organisation (FAO) funded project that examines putting into practice in Liberia the FAO Technical Guide entitled ‘Respecting free, prior and informed consent, Practical guidance for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition’.<sup>i</sup> This Technical Guide is the third in a series that has been developed to support implementation of the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.<sup>ii</sup>

The FAO Technical Guide to Respecting FPIC summarises the principle by highlighting that it is concerned with enabling communities to be at the centre of the **process** by which decisions concerning their rights and interests are made, as well as playing a decisive role in the **outcomes** of that decision-making process:

FPIC requires ensuring that communities can meaningfully participate in decision-making processes and that their concerns, priorities and preferences are accommodated in project designs, indicators and outcomes... FPIC thus additionally requires that communities can negotiate fair and enforceable outcomes and withhold their consent to a project if their needs, priorities and concerns are not adequately addressed. Consultations and negotiations that do not resolve a community’s reasons for opposition or achieve consent will provide little assurance against potentially costly and disruptive conflict.

*FAO Technical Guide to Respecting FPIC, at page 10*

The requirement for free, prior and informed consent is already a central tenet of Liberia’s Community Rights Law with Respect to Forest Lands (2009). Both this law, and stated policy commitments in Liberia’s new (2013) Land Rights Policy (namely that ‘communities may define themselves and determine how their land is managed, used, and allocated’)<sup>iii</sup> can be seen as a meaningful expression of Liberia’s Constitutional provision guaranteeing the greatest feasible public participation in the management of Liberia’s natural resources (Article 7). Though adequate implementation of these existing legal provisions is still lacking, it is hoped that a new Land Rights Law (expected in 2015) will lay the ground for a more comprehensive recognition of community land rights in Liberia.

Although this review concerns Golden Veroleum and Golden Agri-Resources in particular, it is hoped that the practical experiences presented by this review will give scalable lessons that private sector, government, civil society and community actors can use to ensure compliance with legal and voluntary FPIC obligations in particular, as well as respect for customary land rights more generally. By creating an enabling environment within which communities can play a decisive role in determining their own development visions, the risks of costly and disruptive conflict highlighted by the FAO Technical Guide to FPIC can be minimised, and the benefits of sustainable development properly realised.

### **Summary assessment of FPIC non-compliance**

*Golden Veroleum company procedures regarding free, prior and informed consent are still highly inconsistent with relevant legal standards, the Principles and Criteria of the Roundtable on Sustainable Palm Oil and GAR’s Forest Conservation Policy, as is Golden Veroleum’s 2010 Concession Agreement with the Government of Liberia. Serious procedural flaws continue to be reflected in practice to the extent that Golden Veroleum’s current approach to engaging with communities in its concession area is fundamentally incompatible with FPIC and other social obligations. These failings are also attributable to Golden Agri-Resources, given its status as Golden Veroleum’s lead investor. Equally fundamental change is urgently required both in the company’s procedure and practice in order to both avoid future human rights violations and to rectify past mistakes*

## 1. Background on Golden Veroleum's concession in Liberia and the national context

The Government of Liberia agreed a concession agreement with Golden Veroleum (Liberia) Inc. (GVL) in August 2010, leasing 220,000 ha of land to GVL for the production of palm oil from land in five of Liberia's south-eastern counties: Sinoe, Grand Kru, Maryland, River Cess and River Gee.<sup>iv</sup> The term of the GVL concession is 65 years, with an option to extend for a further 33 years, and further extensions possible.

Land clearance commenced in December 2010 and accelerated in September 2011, before being halted by a December 2012 freeze on plantation expansion requested by the Roundtable on Sustainable Palm Oil (RSPO) in response to community complaints. Plantation expansion recommenced during 2013 and 2014, in both Sinoe and Grand Kru counties. Presently, several thousand hectares of land are believed to have been cleared and planted, including in previously heavily forested areas.



**Photo:** GVL's Sorroken nursery in Grand Kru (in the distance), and to the right, an area of sacred forest which was damaged by GVL operations. This should have been avoidable had GVL been complying with its FPIC commitments.

The communities living in the area covered by GVL's concession are mostly rural communities dependent on a mixed livelihood system including swidden (shifting) agriculture, hunting and gathering in community forests and wet-land areas. Liberia is considered food insecure, with a nutrition assessment conducted with the World Food Programme finding that Liberia imports over two-thirds of its food. Food insecurity is particularly prevalent in the south-east, where GVL's concession is located. A recent comparative study of a similar large-scale palm oil plantation in northern Liberia found that communities affected by the plantation are more food insecure, have a significantly less diverse and nutritious diet and are in greater debt, than non-affected communities.<sup>v</sup> This mirrors economic analysis of the impacts of the palm oil industry in Indonesia which has resulted in greater spending on food imports but contributed little to GDP, shows an industry-wide reliance on very cheap land and labour, and has failed to increase the number of rural jobs in Indonesia since 1990 levels.<sup>vi</sup>

In Liberia, the national and local legal and policy context is one based on customary law, which has constitutional force; Liberia's international legal commitments; and domestic (national) law.<sup>1</sup> Communities derive ownership of their traditional lands and forests from customary law (whether title is formally registered or not), supported by international human rights and environmental law and relevant provisions of the domestic legal framework. Despite this, successive governments have granted leases to third parties over land areas to which communities have customary entitlements. The result is an all too common land conflict between the three major parties involved – the communities, the state and the companies – with negative repercussions for all sides.

---

1 The latter two sources of law are interconnected since key international treaties have been domesticated into national law through legislative acts, with the practical effect of incorporating them into national law.

Under the leading palm oil industry standards, the Principles & Criteria of the RSPO, which are closely aligned in many respects with international human rights law and best practice,<sup>2</sup> the requirements for GVL include: (i) that customary rights are respected, (ii) that community land is only used or acquired on the basis of communities' free, prior and informed consent (FPIC), and (iii) that areas classed as having High Conservation Value (either from an environmental or social and cultural perspective) are avoided. In addition, GVL is a pilot area for implementing the Forest Conservation Policy (FCP) of GVL's lead investor, Golden Agri-Resources (GAR), a policy which includes both non-deforestation and human rights elements (including FPIC). Both GVL and GAR are both responsible for ensuring FPIC compliance in their joint project in Liberia. For ease of reference, we will primarily refer to GVL in this document, although the observations and recommendations concern the regulatory (legal and voluntary) compliance of both companies.

## 2. GVL non-compliance with relevant legal, RSPO & FCP standards in policy and procedure

### ***Overall assessment of FPIC in policy and procedure***

*It is FPP's assessment that gaps and flaws in GVL's FPIC Standard Operating Procedures (SOPs) and aspects of Golden Veroleum's concession agreement with the Government of Liberia are not FPIC compliant, and fail to meet applicable legal, RSPO and FCP standards. The procedure outlined in the FPIC SOPs does not describe a process that would achieve the necessary conditions for FPIC (and in many respects actively undermines the possibility of achieving such conditions), and are therefore inconsistent with the RSPO Principles & Criteria and key provisions contained in applicable national and international laws.*

Two key documents govern GVL's social engagement policies in relation to its concession in Liberia: (1) the Concession Agreement (2010), which sets out the contractual responsibilities and obligations of both the company and the Government of Liberia;<sup>vii</sup> and (2) the Standard Operating Procedures applicable to land acquisition, GVL's FPIC SOPs.<sup>viii</sup>

Concerns have been consistently raised about the legality of GVL's concession agreement (and the process leading to the conclusion of the concession agreement), despite the fact that the agreement was ratified by the legislature. Neither the company nor the Government have acted on the concerns that have been raised. This has included concerns expressed in reports of the UN Security Council's Panel of Experts to Liberia regarding lack of compliance with public procurement regulations,<sup>ix</sup> and in the May 2013 report by UK-based law firm Moore Stephens LLP, Liberia Extractive Industries Transparency Initiative (LEITI's) 'Post Award Process Audit' final report.<sup>x</sup> The latter found nine separate regulatory violations of Liberian national law and procedure in the contracting process leading to the Concession Agreement between the Government of Liberia and GVL, and judged it to be 'non-compliant' with the relevant national laws and regulations of Liberia. Compliance with all applicable local, national and ratified international laws and regulations is a requirement of the RSPO Principles & Criteria and GAR's FCP.<sup>xi</sup>

---

<sup>2</sup> GVL has been a member of the Roundtable on Sustainable Palm Oil (RSPO) since 29 August 2011. Its chief investor GAR has been a member of the RSPO since 31 March 2011. As members, both companies are committed to adhering to the RSPO Principles & Criteria.

Key human rights law concerns include the Concession Agreement's contractual authorisation for the following activities to take place, without community consultation or consent:<sup>xii</sup>

- a. The acquisition of community land, forest and wetlands.
- b. Resettlement of communities, with company costs deductible from taxes or fees.
- c. Numerous activities affecting community lands and resources, such as the imposition of tolls on roads, use of timber, wetland drainage etc.
- d. Broad security powers, such as powers of arrest and detention and powers to search and exclude or evict, without adequate safeguards to prevent abuse.
- e. Poor benefit sharing provisions for communities losing land to the plantation.
- f. Low revenue recovery for central government from low government rents and numerous tax breaks, credits, deductions and exemption<sup>s</sup>.

These serious failings in the originating Concession Agreement present a fundamental challenge to FPIC compliance and respect for community land rights for GVL's project. For example, how can the company respect community land ownership if it has already agreed a lease over community land with the government, to whom it pays rent? What is the legal status of subsequent land-use agreements between the company and communities (as owners of the land) in that context? Resolution of the various deficiencies in the process by which the 2010 Concession Agreement was agreed and the flaws in the substance of the Concession Agreement could be achieved via a relatively simple set of amendments to the agreement, agreed through a process that ensures the meaningful participation of potentially affected communities and civil society and is compliant with other aspects of relevant Liberian law. Without this amendment process, the Concession Agreement will continue to present a serious barrier to full compliance with relevant legal, RSPO and FCP standards.

Those concerns notwithstanding, it would be hoped that GVL's FPIC SOPs would go some way to mitigating the multiple ways in which the Concession Agreement currently leaves communities vulnerable to violations of their civil, political, economic, social and cultural rights. In practice however there remain serious flaws in GVL's FPIC SOPs, which are also evident in practice. Key problems include the fact that the SOPs:

- **Provide and promote a 'Provisional MOU' procedure in an attempt to obtain land without seeing the FPIC process through first**, in return for the interim provision of some jobs and associated benefits. This appears to have become GVL's chosen approach, with nine of the ten MOUs agreed so far being Provisional MOUs.<sup>xiii</sup> By short-cutting the FPIC process properly in these cases it has been observed that communities are under-informed, have not had the chance to come to a fully collective decision or benefit from independent legal and technical advice, and yet they are in principle bound for the next 65 years and beyond by the terms of the supposedly 'Provisional' MOU. The few community members who have gained employment through this process, along with their dependants, are effectively 'hooked' into either sticking with this Provisional MOU or agreeing to what the SOPs call a 'Final MOU and Social Agreement' on the terms the company dictates or face losing those jobs. This procedure is therefore fatally undermining communities' capacity to maintain the necessary cohesion to come to a final/long-term land-use agreement based on their FPIC and is profoundly inconsistent with FPIC.
- **Contain mistaken and misleading descriptions of FPIC as concerning a community decision about whether to accept "development" and "modernisation" or not.** All community members in Liberia are likely to be pro-"development". Equating the decision about whether to engage with GVL with a decision as to whether the community wants development and modernisation is both misleading and exploitative of the poverty and aspirations for development that all communities have.

- **Attempt to drive a wedge between communities and civil society organisations** by implying *inter alia* that NGOs and those connected to them are opposed to development or that they may undermine traditional governance etc. therefore seeking to dissuade communities from availing themselves of an important (and often the only) source of independent legal and technical advice. The SOPs also fail to give due weight to the essential need for communities to receive independent legal and technical advice, and lack adequate guidance as to what GVL's role in that process should be.
  
- **Fail to give important guidance on when it is and is not appropriate to give jobs and other benefits to community members.** In practice, the main mechanism by which the cohesion of communities is shattered is when GVL provides some jobs to some community members before the FPIC process has led to a final legally binding agreement, thus causing often irreconcilable division.
  
- **Pre-empt and constrain the decision of communities about how the FPIC process should be conducted and what the outcome of that process will be,** with the practical effect of being prescriptive and closing down and constraining what should be purely internal community discussions and decisions, for example by:
  - Providing communities with GVL's own pre-drafted proposals concerning the following: a communication method, a community representation model ("the Community Representative Committee"), a draft FPIC engagement agreement, draft meeting agendas, a draft grievance procedure, pro forma letters confirming community engagement, the preconceived notion of a Joint Committee for conducting negotiations etc.;
  
  - Claiming that community decisions need not require unanimity (and therefore assuming that GVL has a right to express an opinion on how communities decisions are made, when FPIC requires that this is entirely up to communities);
  
  - Assuming that communities will represent themselves in a particular way and that those representatives will have *both* negotiation, communication *and* decision-making authority, when in fact even where communities do nominate representatives to communicate and negotiate, the entire community still reserves decision-making authority;
  
  - Stipulating that government, traditional authorities and civil society will be sought to sign GVL-community agreements, when in fact FPIC compliance means that who signs the agreement (and who is present) should not be determined by the GVL, but by the communities themselves;
  
  - Presenting communities with pre-determined sample Social Agreement or Memoranda of Understanding (MOUs) alongside pre-defined ratios of company plantation to out-grower areas, and USD 5/hectare contributions to community development funds, etc. Leaving aside the dubious enforceability of these documents, their content is substantially pre-defined by the Concession Agreement and thereby clearly not an outcome tailored by communities via individually negotiated agreements as FPIC requires. SOPs that define a process that narrowly focuses on only one pre-determined outcome or type of outcome and which fail to guarantee a genuine good faith negotiation through an open-ended process with all outcomes on the table, are not FPIC compliant;
  
  - Assuming that the outcome will necessarily involve crop compensation (see the flow-charts accompanying GVL's FPIC SOPs), rather than some other outcome;
  
  - Failing to ensure that all options are on the table in terms of outcome of the FPIC process, e.g. community lease of land to the company, small-holder production, community shares in GVL, no agreement etc.; and,

- Seeking to discourage communities from saying ‘no’ to engaging with GVL by casting a factually incorrect, subjective and disparaging view of communities’ existing livelihoods by stating that shifting (‘slash and burn’) agriculture is neither ‘socially or environmentally sustainable’.
- **Assume that traditional authority figures such as clan chiefs are the appropriate negotiating party for the community, or that they should be involved as a matter of course** when in fact there are unfortunately numerous examples of clan and other chiefs being co-opted by local government or corrupted by financial/ material inducements in a way that undermines their ability to legitimately represent communities.
- **Do not give crucial guidance on how the company should conduct initial contact with communities** to find out the community’s preferred “unit” of communication and collective decision making; whether they wish to talk to GVL at all, and if so how they wish to communicate with the company; how they wish to make and validate community decisions; and (if they so wish) how they would like to represent themselves during that engagement.
- **Lack critical guidance on avoiding areas where there are previously existing inter-community land conflicts.** Relatedly, the SOPs suggest that GVL will expect to assist in addressing internal or inter-community grievances (regardless of the cause of that grievance), when in fact this is almost certainly going to be inappropriate and not FPIC-compliant as GVL has its own vested interest and cannot act as independent arbiter.
- **Fail to provide important guidance for ensuring that the company does not act in a way that may exploit communities’ development aspirations by engaging in a “take it or leave it” manner.** This needs mainstreaming in several respects, including in the way the company considers and potentially rejects community proposals or assesses a community collaboration as not in GVL’s economic interests. Companies seeking community consent should accommodate reasonable community proposals and counter-proposals where these represent a viable business proposition, even if these proposals do not conform to pre-determined company business models and may involve a reduction in total profits. (Indeed, the requirement of “prior” consent means companies should consult with communities at the outset of forming the proposal, to obtain community input in developing their business model, rather than coming to the table with a ready-made business plan, and having already reached an agreement with the government which constrains the shape of their business model.)
- **Lack due guidance expressing the importance of all community members being able to access information, and the importance of the provision of all information essential for communities to make an informed decision. This must include all key factors relevant to the palm oil industry and commodity, e.g. market prices and factors affecting price variability, productivity per hectare, timescales, input costs, factors relating to cultivation such as irregular ripening of fresh fruit bunches and the implications for harvesting, processing and transport etc.**
- **Do not properly integrate clear guidance on how and when High Conservation Value Assessments (HCVAs), Environmental Social and Impact Assessments (ESIAs), Environmental and Social Management Plans (ESMPs) and Participatory Mapping should be developed in a way that ensures communities are in the driving seat through their maximum possible participation in the design, execution and validation** of these key processes, inclusive of all community interest groups (women etc.), and in a way that preserves community cohesion.
- **Fail to give due weight to the importance of accommodating internal community decision-making.** At numerous steps the importance of GVL *leaving* communities to make decisions in their own way and in their own time is under-estimated, whether at initial contact in determining whether to talk to the company and if so how, how to engage in HCVA, ESIA, and participatory mapping processes etc. A key example is the step in the SOPs defining a process of ‘Mutual Planning’ following participatory mapping defined simply as a mutual process for planning and negotiating land available, crop compensation and benefit sharing, when what really needs to be front-loaded here is an internal decision making process by the community alone.



- **Are deficient in giving any clear guidance for ensuring that any outcome from the FPIC process that involves some kind of community-GVL collaboration is clearly governed by a contract that is clear, equitable and legally enforceable.** Currently, the company-community MOUs emerging are of doubtful legal validity, being insufficiently clear and unambiguous and (given the pre-existing Concession Agreement) possibly lacking in contractual consideration (see section 3.7.2 below for more details).<sup>3</sup> In addition, they are frequently the outcome of processes that may well constitute undue influence, exacerbated by the fact that communities are invariably entering into these agreements without the benefit of independent legal and technical advice. Furthermore, since the Concession Agreement already purports to provide a lease to GVL, the SOPs must address the question about maintaining legal certainty and enforceability in contracts with communities in way that does not dispossess communities of their right to be recognised as land-owners themselves.
- **Do not give adequate guidance guaranteeing communities are able to determine and benefit from appropriate implementation, joint oversight and periodic/participatory monitoring.**

## Recommendations

As part of the process of addressing these and other compliance failures and procedures addressed in the main report, GVL must urgently take the following key steps, including through a comprehensive review of policy and practice:

- 1) **Remove the Provisional MOU procedure from GVL policy and practice, and where communities have already entered into MOUs of this kind, they should as a matter of urgency be given the option (with the benefit of independent legal advice) to either renegotiate or rescind those Provisional MOUs so that only Final MOUs are agreed, on the back of a comprehensive FPIC process without short-cuts.**
- 2) **Ensure all steps of the FPIC process are entirely open-ended as to how communities wish to communicate, negotiate, make decisions and engage with GVL. Erring on the side of caution, GVL should assume (unless authority from the whole community confirms otherwise) that community representative structures do not have decision-making powers that can bind the whole community, and that decision-making will be a fully collective right reserved by the whole community.**
- 3) **Remove from policy and practice steps that implicitly or explicitly undermine civil society and NGOs, and instead (a) actively accommodate independent civil society monitoring and supervision of GVL's FPIC policy and practices, and (b) repeatedly and strongly encourage communities to seek independent technical and legal advice including through civil society organisations.**
- 4) **Accept that it would not be responsible for the company to enter into agreements with communities who have not had the benefit of independent legal and technical advice, and make a clear policy commitment only to enter into agreements with communities where those communities have received adequate independent legal and technical advice.**
- 5) **Ensure adequate policy guidance on addressing real sources of coercion, undue influence and actions undermining community cohesion – namely the actions of prominent figures in local government and GVL itself. As part of this, GVL should urgently make a clear policy commitment to only giving jobs**

<sup>3</sup> NB. 'Consideration' is a legal term for the two-way exchange of something of value, which is a necessary component of an enforceable contract – e.g. a payment of rent to one party to a contract, in return for the use of a property by the other party to the contract – essentially a two-way exchange of value.

*to community members when a clear, equitable, written and legally binding community-company contract has been concluded with that community on the basis of a full (i.e. 'no short cuts') FPIC process.*

- 6) Mainstream into policy and practice the crucial principle that the outcome of GVL's community engagement should not be predetermined, pre-empted or preconceived in any way. All options should be on the table – both if the community decides to formally engage with the company (including smallholder use of the land for palm fruits sold to the company, lease of community land to the company for growing palm oil, company shareholdings for communities etc.) – as well as if the community decides not to formally engage with the company.
- 7) Ensure that GVL's information sharing includes full and objective disclosure of the commercial and agricultural realities of the palm oil business and palm oil crop, so that any company-community agreement is based on a fair and equitable understanding of key factors.
- 8) Provide proper guidance on how GVL should initiate its engagement with communities in a way that properly respects communities' right to determine for themselves *whether the FPIC process should proceed and if so how*. This requires a process by which GVL can legitimately find out the answers to a sequence of key questions that communities will need to decide for themselves at the outset without GVL being present. (Namely: whether to talk to GVL at all; what their 'unit of community' is for the purposes of collective decisions and negotiations; how they want to communicate with the company; how they want to validate and confirm key decisions; and, if they want to communicate with GVL via representatives, who will those representatives be.) Due to the importance of this key early step, a proposed process is set out in detail in the section below following Recommendation 13.
- 9) Guarantee that GVL will only embark on supporting ESIA and HCVA processes, *after* a minimum set of internal decisions have been made by communities (as highlighted above at Recommendation 8). Only after these decisions have been made are communities ready to participate in designing, executing and validating these key information exchange processes.
- 10) Take a far more careful and nuanced approach to dealing with traditional governance in a way that properly takes account of the very high risks of assuming traditional governance bodies own land (on trust or otherwise) and can grant user rights over land, and makes sure that the decisions communities reach and the ways that they negotiate and their decisions are communicated have been fully determined and endorsed by the community themselves, not just by traditional governance bodies.
- 11) Mainstream throughout policy and practice the express recognition and respect on the part of GVL of communities as *owners* of their customary lands, territories and natural resource, and treats that ownership as equivalent in strength and legal effect to documented/deeded property rights. A major component of this recommendation will manifest itself in the kinds of contractual agreements that emerge from GVL's engagement with communities, which must thereby be: (a) clear, equitable and legally enforceable; (b) *expressly* recognise the lands, territories and resources concerned as the property of the community; (b) properly ascribe to the communities concerned *all the rights* consistent with their status as owners, including their right to *continued* recognition as owners even where they have consented to GVL using or occupying some of their lands, territories or resources, e.g. by deriving a rent under a land-use contract (lease); (c) expressly guarantee legal certainty for those communities that their legal standing in relation to their agreement with the company will not be compromised or diminished by the fact that GVL's 2010 Concession Agreement with the Government of Liberia purports (among other things) to provide a lease to GVL and warrants the concession area to be free of encumbrances.
- 12) Ensure that the 2010 Concession Agreement will not itself continue to present a serious barrier to full compliance with relevant legal, RSPO and FCP standards, by demanding that the Concession Agreement is properly amended to address the various deficiencies in the *process* by which the Concession Agreement was agreed and the multiple flaws in the *substance* of the Concession Agreement (as outlined above). This will require a negotiation process

that has the meaningful participation of potentially affected communities and civil society.

- 13) Mainstream an ethic of ‘getting things right first time’ rather than the current emphasis on mere ‘continued improvement’, in order to recognise that in practice it is much harder (and potentially impossible) to satisfactorily put things right once they have gone wrong in the context of community engagement and FPIC. While degrees of improvement in policy and practice are of course positive signs, anything less than a swift achievement of full FPIC compliance creates a real risk of seriously harmful consequences for communities and their environments.**

As outlined above at ‘Recommendation 8’, a central plank in any FPIC process (and which is currently a key gap in GVL’s FPIC SOPs) is a process by which communities can determine for themselves *whether the FPIC process should proceed and if so how*, and according to which the company can know for certain what the communities’ decisions are in these respects. A detailed summary of our suggestion for how a company might initiate such a process is set out as follows.

A key question that needs determining early on in an FPIC process is: **Who is ‘the community’?** An important factor is that meetings held at the lowest level possible allow for broader participation by avoiding common challenges that inhibit participation in larger arenas. Customary governance seems to operate most effectively at the town level where smaller-scale negotiations can enable communities to make their own decisions in their own time and space. This may be challenging, particularly where towns are very small, and if that is the case (though obviously it is for the communities to determine how they negotiate) other levels may be workable: for example town-clusters or Clans which are typically made up of 5 to 10 towns, providing they are not too large.

This review suggests that an FPIC process be commenced in the following way:

- **Initiating FPIC Consultations:** GVL should start this conversation through consultations with each individual town in an area with all community members present (a ‘community assembly’). GVL will need to explain simply, objectively and without pre-empting what kind of outcome the FPIC process might lead to or trying to ‘sell’ the project:
  - that it is looking for land on which palm trees can be grown to produce palm oil;
  - that it recognises the community’s ownership over their land and resources; and,
  - that community land can only be used to grow oil palm in collaboration with a company like GVL if discussions between GVL and the communities lead to a legally enforceable agreement.
  - that the community should strongly consider seeking independent legal advice and the support of a civil society organisation if discussions with the company proceed any further.

At this point, communities must be allowed the opportunity to self-determine whether and if so how the engagement will proceed from this point on, according to the following key questions (in this sequence):

- 1) Does the community want to talk further? If not, that is no problem, but if so,**
- 2) Does the community want to talk to GVL and make collective decisions as a town or as a collection of towns or else how?**

- Having presented these first two decisions to a community assembly with all community members from the town present **GVL should then absent itself to give the community time to discuss and decide on these questions, and arrange a future date when it can come back** and get an answer from the town at a second community assembly (which may need to be many days or weeks later to give the community adequate time). If the community agrees at that subsequent meeting to talk further, and states clearly whether the community wants to talk to GVL as a town, or as a collection of towns, or whatever form the community chooses, then GVL can proceed to the next step on that basis (see below). Before that can happen however,

where the town decides it does want to talk and make collective decisions as a town cluster or clan, this decision will need checking with the other towns in the cluster or clan to see if they are in agreement with this definition of who the community is, for the purposes of talking to GVL and making collective decisions.

- **If the community says it does not want to talk further with GVL about the proposal, then GVL should politely accept this decision**, thank the community for being clear, and leave the community alone. It should not reintroduce the discussion to the community through repeat visits. If there is disagreement at this meeting, GVL should give the community more time, and come back at an arranged future date to try again. If there is a consistent pattern of disagreement, GVL will have to accept that negotiations with the community are not workable as there is no community consensus on this vital starting point.
  
- **Having made clear *who* the community is, that community will then need to confirm who it wishes to communicate with the company:** A community may choose representatives to communicate collective decisions, but it remains the whole community's right to actually make the collective decisions. GVL therefore should highlight the following further three key questions, which again should be presented to a full community assembly with all community members present with a repeated suggestion strongly advising the community to seek independent legal advice and the support of a civil society organisation. GVL should again absent itself while the community thinks them through and decides how to respond to them:
  - 3) ***How is the community going to communicate with the company?***
  - 4) ***How will the community validate and confirm that key decisions are the true and legitimate decisions of the whole community?***
  - 5) ***If the community wants to communicate with GVL through representatives – who will those representatives be?***
  
- The decisions will need to be communicated to GVL in a subsequent meeting, again in a community assembly with all community members present, since the company does not yet know who (if anyone) can speak on the community's behalf. GVL should be aware that community may wish to change these decisions, for example if communities lose faith in chosen representatives, or trust breaks down with neighbouring towns.

A win-win for company and communities would be a situation where GVL and GAR derive sustainable and secure investment from a project that fully respects community rights. By ensuring that the FPIC process gets off on the right track by ensuring the community is clear that it is in the driving seat for determining whether and if so how the process proceeds, the chances of a secure, respectful and sustainable relationship with communities are maximised.

### 3. GVL's way of engaging with communities to achieve FPIC is not working

#### ***Overall assessment of FPIC in practice***

*It is FPP's assessment that GVL/GAR's current processes for securing Free Prior and Informed Consent (FPIC) for their operations from communities are far from being FPIC compliant. The fact that they have not demonstrated an ability to engage in a way which can achieve FPIC is evident both in GVL/GAR's engagement with communities on the ground, and in the MOUs they have signed with communities.*

#### **3.1 Contextualising this assessment of FPIC in practice**

On 1<sup>st</sup> November 2013, SAMFU, SESDev, Green Advocates and SDI and FPP sent a joint assessment of the GVL FPIC process to the RSPO in confidence with the aim of encouraging a marked improvement in GVL's FPIC performance. However, despite several outstanding community complaints to the RSPO Complaints Panel, FPP finds that GVL is continuing to acquire, clear and plant on land through processes that are far from FPIC compliant. These processes are compromising food security, livelihoods, and environmental integrity. Basic flaws in the FPIC process include: (i) clearing land that is the subject of a pre-existing land dispute between neighbouring communities; (ii) failure to mitigate local government coercion of communities; (iii) undermining community cohesion and creating division; and (iv) development of misleading and inequitable MOUs.

FPP and civil society work with communities revealed that while the MOUs that had been signed were being sold as containing many attractive benefits to communities, they were actually deceptive and lacking the certainty needed for their legal enforceability to be beyond doubt. For example, some communities have thought they were signing a temporary 6-month 'Provisional MOU' to begin the relationship with GVL when in fact these MOUs will be in force for 65+ years unless both parties agree to a change.

The conclusion of these MOUs followed a community engagement in which communities were typically **not free** – with community cohesion hampered by both local government coercion and premature company inducements, and **not properly informed** – lacking provision of important information to guide internal decision making, as well as lacking in independent legal and technical advice.

#### **3.2 GVL appears to be pursuing a fundamentally flawed business model**

GVL's business model appears to rely on an unfair price for land it uses, which it sticks to rigidly. This means that however the attempted FPIC process goes, a fair price cannot be achieved, as it is not proposed by GVL and it is not accepted when proposed by a community. Bolting an attempted FPIC process onto a business plan that cannot and will not deliver for communities fatally undermines that process, and bleeds through into every aspect of that FPIC process. A more level playing field is required to rectify this and ensure FPIC compliance, including through communities having access to independent legal advice and other technical support, and having full knowledge of all alternative development options.

### 3.3 Forest and farmland is being cleared without consent

Most worryingly of all is that land continues to be taken from communities without their consent<sup>4</sup>:

“GVL is negotiating with us for land, and we are not agreeing to their taking our land but they have forcibly entered our land and damaged some of our sacred areas”.

People spoke of clearing happening without consent, and of the potential for food insecurity:

“GVL came asking the residents to sign over their land . . . We said how come you’re asking us to sign documents without consultation? So GVL forced some of their workers from here to sign with their thumbprints. So GVL began clearing all our old farms.”

Elsewhere:

“GVL put in for a portion of land to be given to them. We asked them what are you going to do for us in return? They told us they wouldn’t tell us what they had in mind for us unless we gave them land. We said no. They went back. One of our representatives came from Monrovia with them telling us we had to accept these people. We told them we don’t want to refuse them but we want to know their policies.”

GVL operating on disputed land exacerbates land conflicts:

“As we are speaking GVL have a nursery on the disputed ground and are planting palm . . . We then sent this complaint to the RSPO . . . Meanwhile these people are taking away our land.”



<sup>4</sup> NB. The quotes from community members in this report and the locations of those communities are not disclosed to protect the speakers’ and their communities’ anonymity.

### 3.4. Temporary jobs for permanent land loss

Communities are clearly told by GVL that the more land they give to GVL the more development they will get in return. Communities welcome any hope of economic development, but marketing the project in this way is misleading and exploitative of communities' development aspirations, in marked contrast to a responsible FPIC compliant process which would necessitate a fair, objective and outcome-neutral discussion concerning GVL's interest in the region.

As part of GVL's 'more land, more development' approach, communities are told that for every hectare developed with oil palm \$US 5 goes to the Community Development Fund (CDF). Invariably communities get the impression that this means the money is destined for the community that gives that hectare or that it is some kind of a rent (which would have the legal effect of recognising their ownership rights to the land). In reality the CDF envisaged by the Concession Agreement is a kind of ex gratia payment which does not have any legal equivalence to a 'rent'. Furthermore, according to the Concession Agreement there is no guarantee that each individual town concerned will directly receive or have direct control over any of that money. There appears to be a widespread misconception of this perceived benefit.

One community reported:

"Almost the whole land we have given to GVL. This is the land we were using for farming. GVL said anyone give more land will get more development. We gave all our land. There is only one land we got now that is swampy area for fish; and small small area in the town for cassava for eating."

The key point made by communities was that jobs and development were welcome but losing their land was not. An old man said:

"Our farm is our power, it is our strength. If you [GVL] don't want to rent our land I say go, I don't want you to have it".

Another added:

"The land is our forefathers' property and therefore ours".

They spoke very eloquently about the willingness of communities to enter into agreements with GVL, as long as their rights to their land are respected, and as long as they are respected as equal partners, something which can only be achieved through a genuine FPIC process.

### 3.5. Offering jobs before FPIC-based agreements are concluded, and benefiting from local government coercion, undermines consent

The company's actions, in tandem with pressure from some in government, has developed divisions within communities. For example one community said: "People who sign the MOU with GVL did it under the high intimidation from Government". Another said the County Superintendent has told those working for him they will be dismissed if they don't support giving GVL land: "We don't even know what we're signing but we do because we're scared".

There is strong awareness of the need to ensure land can continue to sustain the community rather than become a scarce commodity that drives conflict between communities, or even drives conflict between conservation and communities if companies take the bulk of the agricultural land. As one community said:

“We have a big land conflict issue. . . . GVL [are] not allowed to take forest because Greenpeace said they couldn’t take it out. Community need to farm so they want to keep secondary forestland. We want to give land, and keep land for farms.”

### **3.6 MOUs that are not FPIC-compliant**

One community described how they feel misled because things that they were told would occur swiftly then did not happen, and do not look likely to happen. In hindsight, they believe this is because there was no timescale specified:

*“The problem there, was there was no specific time. That was the mistake we made”.*

In addition, the provisional MOUs give the impression of being temporary when they are not, and appear to promise a lot, while the actual benefits that are supposed to arise under the MOU are minimal and ill-defined, to the extent that it is doubtful whether they can constitute a legally enforceable agreement (as FPIC requires). Further, the statement above is evident of the dire need for communities to have the benefit of legal advice before they enter into any such agreement with GVL, and the urgent need for GVL to make a policy commitment to not entering into agreements unless communities have had the benefit of adequate legal advice in relation to those agreements.

### **3.7. Legal Analysis of a typical GVL-community MOU**

**3.7.1 The ‘Provisional’ MOU myth:** Most MOUs being entered into by GVL with communities are of the type referred to in the SOPs as ‘Provisional MOUs’ agreed before a full FPIC process has been completed (cf. what the SOPs refer to as a ‘Final MOU and Social Agreement’ agreed after a full FPIC process). The inclusion of ‘Provisional’ in the title is both incorrect and misleading. Rather than this being a temporary or interim MOU, communities are being asked to transfer their rights to GVL ‘for the duration of the concession agreement’ which in this case is 65 years plus. Any powers to improve the MOU to the benefit of the communities are left in the hands of GVL who through a veto can disrupt the completion of a Final MOU and (assuming it is enforceable) enforce compliance with this Provisional MOU for the full duration of the concession agreement and beyond. This disingenuous language means that communities believe the contract is legally provisional and will stop being in force six months after signing, when that is not the case.

**3.7.2 ‘Memorandum of Understanding’:** The purpose of legally binding agreements (contracts) is specifically to remove the reliance on good faith from relationships between two parties, especially where such relationships are based upon potentially competing commercial motivations. In contrast, the documents being presented by GVL provide only weak statements of good faith that, if ever tested by a community, may not be legally binding as they lack the necessary certainty and unambiguity and provide only limited consideration for the communities who enter into them. As such there is a real risk that the MOUs do not function as a legally enforceable contract. Even calling an agreement a Memorandum of Understanding or Social Agreement is arguably suggestive of an intention on behalf of GVL not to be legally bound. In contrast, FPIC requires outcomes on which communities can rely, and with which they can legally require companies to comply. (As mentioned above however, since communities are not in a position to test these agreements, they continue to believe themselves bound by the agreement even if they are unenforceable.)

**3.7.3 An MOU as a contract requires the company to be offering an equitable agreement by not taking advantage of their position of power:** In a way that reflects both the *process* and *outcome* requirements of FPIC, GVL needs to recognise that communities *own* their customary lands and resources *and act* on this by entering into agreements, according to a process that fully respects that fact and that also acknowledges and fully mitigates



the imbalance in negotiating power between the company and the communities. This would enable communities to make *equitable* agreements with the company, with rents and benefits that are *proportionate* to the true productive value of the land, and in a way that confirms communities' on-going ownership beyond all legal doubt (e.g. via a rent being paid to communities by the company). This would require a process that ensures GVL does not deliberately or inadvertently take advantage of their position of power; a process that, *inter alia*, is:

- Completely free, non-coerced and contains no actions or omissions likely to reduce internal community cohesion (upon which communities' ability to make a collective decision depends);
- leaves space for communities to determine for themselves whether to engage, and if so how they wish to communicate, negotiate and make internal decisions; and,
- Fully informs communities, including by only proceeding when communities have the benefit of adequate independent legal and technical advice at all key stages.

Without the above, although the resulting company-community agreement may offer some possible social benefits without clarity or timelines, the process takes away communities' security as grounded in their ownership and use of their land, and leaves GVL's concession subject to legal, financial and reputational insecurity. Studies show that industrial palm oil can severely reduce the economic wealth, development prospects, and food security of affected communities, and it is therefore vital that these harms are avoided.<sup>xiv</sup> There is also increasing evidence that failing to deal equitably and fairly with communities jeopardises the viability of large scale agricultural investments, so it is equally in GVL's interest to engage in a fair and equitable process with fair and equitable outcomes.<sup>xv</sup>

**3.7.4. 'Preference' and 'Priority' are not suitably contractual terms:** The use of these words (e.g. in the context of MOUs offering a preference or priority for certain benefits) offers no binding commitment. The inclusion of the words 'preference' and 'priority' enables the MOU to sound attractive without providing any firm commitments to local communities from GVL, e.g. for training or permanent meaningful jobs. Although such MOUs may suggest that these benefits may be offered to the community being contracted, it also opens the way for these benefits to be received by citizens of other GVL work areas, instead of the communities themselves. As a result, it is clear that the MOU offers no substantive commitments from GVL to the community in question and as such offers no space for the communities to hold GVL to its promise to provide benefits in the future.

**3.7.5. Including possible 'benefits' which seem intended to be attractive to communities without being necessarily of direct and individually-negotiated benefit to communities:** For example, the inclusion of benefits specific to only employees and their dependants is misleading in the context of a land use agreement where community members own the land as a collective, since those benefits do not accrue to the whole community. In addition, many of the benefits are already agreed upon in GVL's Concession Agreement and are not community-specific. As such their inclusion in the MOU misleadingly suggests that those benefits are special to that agreement when they are not: for example the inclusion of the Community Oil Palm programme, which may have little or no real or direct benefit for communities giving land. Likewise, the inclusion of road and bridge building is misleading as it suggests these benefits are being provided to the community in return for the use of their land. On the contrary, GVL needs to carry out these activities as part of their operations anyway.

In effect, GVL's MOUs are largely a confusing mix of predetermined conditions from the Concession Agreement, alongside operational activities the company would hope to implement for its own benefit anyway, dressed up as benefits that are tailored to a particular community and a particular area of land. This makes it unclear for communities to know what they have individually negotiated and what will affect them in particular (invariably very little, and that poorly defined), as opposed to what might affect them in some indirect way in the future (or might not!). This is hardly a clear, fair and respectful basis on which to build an enduring and sustainable company-community relationship.

**What is needed is a legally enforceable agreement that emerges from open-ended community engagement process, whose contractual conditions makes clear exactly on what legally defined terms the land will be used (by whom and in what way), with clearly defined and unambiguous benefits and clear timelines for their delivery, in respect of the specific community that is signing the contract.** Instead these MOUs

propose vague unquantifiable benefits that lack a timeline, that may accrue anyway from company activity or the concession agreement, and that may accrue to others and not to the community signing the MOU at all.

**3.7.6. Employment:** GVL-community MOUs currently do not discuss the difference between permanent and casual employment. Much of the employment the community has experienced until now has been restricted to casual employment which confers none of the benefits suggested. Many communities affected by GVL are concerned that they are witnessing an influx of ‘outsiders’ who they see as taking their jobs. In practice each MOU is specific to one community only and the language of the MOU should reflect that. Instead the use of both terms ‘communities’ and ‘citizens’ can lead to the marginalisation of the specific community and thereby fails to guarantee that they will benefit. Clarity on this issue is particularly important as the prospect of employment is a strong inducement to engage with GVL, and yet research shows that the dominant industrial palm oil model overstates its ability to deliver rural jobs – for example Indonesia’s palm oil industry has failed to increase the number of rural jobs since 1990, contrary to common perceptions.<sup>xvi</sup>

**3.7.7. ‘Community’ Development Fund:** The Community Development Fund (CDF) highlighted in the typical MOU is previously agreed by the prior Concession Agreement and is therefore not dependent on or relevant to any one MOU. Its inclusion is therefore misleading as it suggests to the other party that they are receiving this benefit as a result of this particular MOU. This has led some communities to assume that the CDF is similar to a rent which will be paid to their community by GVL. It should be noted that questions over the access to and control of the CDF by local communities suggest it is in serious doubt whether direct benefits will be felt by the communities whose lands are developed. However the impression given by the MOUs (and the impression received by communities) is that the CDF is one of the direct ways their specific community will directly benefit from GVL taking over land for palm oil production.

**3.7.8. The fundamental land issue – respecting community land rights:** A GVL-community land-use contract should be clearly expressed as concerning only the use of community lands by GVL for a limited time, in accordance with a rent-based lease. All use of terms like ‘obtaining land’ and ‘hand over land’ need to be replaced with language that clearly refers to the company’s use rights and not ownership rights. As it stands, and taken in conjunction with language regarding the time limitations of the contract which suggests MOUs will in no way be ‘provisional’ but will stand for at least the 65 years of the concession agreement, the language of MOU currently being entered into by GVL could be interpreted as an ownership agreement for an unlimited period of time. Any misinterpretation should be removed from a document of such significance if it is to properly act as a legally enforceable contract serving the interests of both parties, as FPIC compliance requires.

**3.7.9. Compensation and the Law:** In contrast to GVL’s commitments to adhere to and observe applicable laws is the fact that communities are now reporting that GVL is refusing to pay any crop compensation for rubber trees according to the minimum rates specified by the Ministry of Agriculture. GVL states that those compensation levels are too high and cannot be incorporated into GVL’s business model. Although of course communities may feel empowered to exclude areas of rubber from the land used by GVL, they may feel compelled to let GVL use those lands without receiving due compensation where GVL has presented this as a red line, “take it or leave it” option (or let GVL use lands the community would otherwise not have been happy to let them use, in the same spirit). At worst, this worryingly suggests that GVL can disregard laws and regulations in Liberia on grounds of market- and business-based interests, or at best, that communities will have to bend to a pre-defined business model on a take it or leave it basis, neither of which is FPIC compliant.

**3.7.10. So what are the guaranteed benefits for the community in a typical GVL-community MOU?** In the typical MOUs agreed to date, only one section (in Appendix E) contains the true benefits and conditions being offered by GVL to the particular community for the use of that community’s land. All other benefits being offered derive from other existing agreements and from company operations and therefore are not benefits linked to and determined by the agreement with the particular community in relation to a particular land area. This section also contains the only quantifiable benefits offered directly by GVL which are not subject to external conditions set by GVL (e.g. job preference) or a third party (e.g. Oil Palm Development Fund). This analysis would therefore conclude that the true guaranteed benefit and therefore value of the several thousand hectares of

community land being used by GVL per community (or permanently acquired by GVL? It is unclear) is to the value of a few bunches of zinc roofing and nails for the school roof, school benches, and rehabilitation of a couple of hand pumps, to give a typical example.

#### 4. Conclusion

Liberia is considered one of the poorest countries in the world, having emerged in 2003 from 14 years of civil war. Despite ample natural resources Liberia is also food insecure, importing 60% of its food. The development aspirations of Liberian communities and Liberia's government are clear and urgent, particularly so in light of the Ebola crisis. To have a hope of meeting these aspirations through economic development, large-scale palm oil investments such as that of GVL and GAR must depart radically from the dominant business model exemplified in south-east Asia. This is a business model that has been shown to contribute little to GDP; fails to increase the number of rural jobs; subjects developing economies to the whims of global commodity price volatilities; extracts value away from the country into the hands of foreign owners leaving as little as possible in tax revenue; and crucially, leaves communities landless, more food insecure, more indebted and with their culture and identity in tatters.

As outlined above and in the main report however, in both its procedures and practices, GVL's concession in Liberia appears to involve rolling out much the same kind of business model referred to above. As a result the project continues to risk significantly diminishing sustainable access to land and water for local communities, and a highly negative impact on communities' economic, social and cultural livelihoods. The company can of course deliver some jobs, but working conditions are reported to be poor (they can be easily dismissed, and the work is so hard that many do not feel they can continue doing it for long). Moreover, the number of jobs GVL's project can sustain is vastly less than the number of community members risking loss of land, forests and livelihoods to create the plantation.

This problem is exacerbated when many jobs are in fact given to migrant labourers, who have no connection to the area or responsibility and accountability to the local communities whose land and resources are being used. Social cohesion is also impacted by some community members benefitting from jobs at the expense of far more who do not, as well as by the impact of a project that breaks the connection between communities and their particular ancestral lands and natural resources. GVL's activities have – whether intentionally or not – exacerbated community division and have benefited from local government coercion and intimidation of communities, with poor socio-economic and cultural outcomes evident.

For communities, productive crop and forest-lands are cleared, wetlands are drained, diverted or otherwise heavily impacted, without communities receiving adequate information in advance, without receiving adequate (or any) compensation, and without the opportunity to properly give or withhold their consent according to their own self-chosen communication, negotiation and decision-making processes. Valuable water, food and livelihood sources are lost or heavily disrupted, and grave sites or sacred forest areas have been lost, damaged, or at best left as small islands surrounded by cleared plantation land. A drying out of the land has also been reported by communities, with the forest cleared and the hydrology of the area fundamentally altered. This appears to be lowering the water table to the extent that existing wells no longer function properly or in all seasons.

Additionally, it appears that ring-fencing areas of forest containing 'high carbon stocks' as no-go areas for the company in accordance with GAR's FCP is being imposed on communities' lands without their meaningful participation. This results in the company targeting 'degraded' forest areas, invariably areas communities use for shifting croplands and where outlying villages, tree crops etc. are located. This leaves communities with little choice but to make room for food crops in the environmentally significant forest areas, defeating the 'no-deforestation' policy objectives of the FCP.

Government intentions to boost revenue are thwarted by low rent (as outlined in section 20.1 of the concession agreement, this can be from USD 1.25 to USD 5 per hectare to the Government for developed land) and by a catalogue of tax breaks, exemptions and deductions. The concession contract, even from a revenue perspective, is a remarkably bad deal. This is the case even without considering the profit-minimising tools companies commonly use to avoid paying local taxes by the use of shell companies in tax havens such as the Cayman Islands, where some companies associated with GVL are understood to be registered.

Policy-makers in Liberia appear to be prioritising increased revenue and job creation (however illusory in practice), when in fact there are good arguments for expecting increasing incomes to be more easily (and sustainably) achievable from more community-centred rural development. There are already good examples in Liberia of community small-holders growing food for themselves and making a reasonable income from crops they sell. There is therefore every reason to believe that taxable incomes and rural self-employment can be boosted by, for example, better access to more diverse markets (including through improved transport links), value-addition and manufacturing of agricultural products or the exploration of under-developed cash-crops and other rural development options that build on existing community resilience and sustainable land and natural resource use.

If GVL's project is to be successful, it must – in essence – begin entering into the FPIC process in a way which properly recognises communities' ownerships rights over their lands and natural resources and ensures that communities are fully informed, and freely able to make their own decisions on whether and if so how to proceed. This is necessary not only for GVL's proposed investment in Liberia to be able to work for communities, but also for it to work for Liberia as a whole and – ultimately – for the company itself. In the words of one elderly community member from Sinoe county:

*“The land is for our grandchildren. If we don't get it right it will be our downfall”*



## (Endnotes)

- i This Technical Guide, hereinafter referred to as the FAO Technical Guide to FPIC, can be viewed at the following link: <http://www.fao.org/docrep/019/i3496e/i3496e.pdf>.
- ii The other FAO Technical Guides in the series can be viewed on the same page as the Voluntary Guidelines themselves - see: <http://www.fao.org/nr/tenure/information-resources/en/>.
- iii Land Rights Policy (2013), at Section 6.
- iv See the 2010 Concession Agreement between the Government of Liberia and GVL, available at: <http://goldenveroleumliberia.com/files/Agreements/2014-01-07-GVL-Concession-Agreement.pdf>. The concession agreement also provides for a new port with 100 ha of adjacent land to be established by Golden Veroleum, and a further 40,000 ha 'out-grower' scheme (essentially a community small-holder scheme with varying degrees of management responsibility retained by the company depending on how the scheme is eventually structured).
- v Balachandran, L. et al (2012) *'Everyone must eat? Liberia, Food Security and Palm Oil'*, (Columbia University, School of International and Public Affairs).
- vi Rhein, Matthias, (2015) *'Industrial Oil Palm Development: Liberia's Path to Sustained Economic Development and Shared Prosperity? Lessons from the East'* (Rights and Resources Initiative: Washington DC).
- vii GVL Concession Agreement (2010), *supra*, at note (iv).
- viii See GVL's FPIC Standard Operating Procedures at: [http://goldenveroleumliberia.com/upload/gvl\\_fpic\\_principles\\_and\\_roadmap\\_description.pdf](http://goldenveroleumliberia.com/upload/gvl_fpic_principles_and_roadmap_description.pdf).
- ix Reports of the UN Security Council Panel of Experts on Liberia, see for example December 2010 (paras 99 and 100); and December 2011 (at para 215), available at: <http://www.un.org/sc/committees/1521/liberiaPOE.shtml>.
- x Liberia Extractive Industries Transparency Initiative (LEITI) audit report (2013) conducted by Moore Stephens LLP (see <http://www.scribd.com/doc/151344593/LEITI-Post-Award-Process-Audit-Process-Report>), see pages 5, 9, 27 & 38.
- xi See Principle 2 in both 2007 and 2013 RSPO Principles & Criteria (at [http://www.rspo.org/files/resource\\_centre/RSPO%20Principles%20&%20Criteria%20Document.pdf](http://www.rspo.org/files/resource_centre/RSPO%20Principles%20&%20Criteria%20Document.pdf) (2007) and <http://www.rspo.org/file/revisePandC2013.pdf> (2013) respectively); and, Golden Agri-Resources Forest Conservation Policy (Feb 2011) at paragraphs 1 and 7 (available at: [http://www.goldenagri.com.sg/pdfs/sustain\\_policies/GAR\\_Forest\\_Conservation\\_Policy.pdf](http://www.goldenagri.com.sg/pdfs/sustain_policies/GAR_Forest_Conservation_Policy.pdf))
- xii See Lomax, T, (2012) *'Human rights-based analysis of the agricultural concession agreements between Sime Darby and Golden Veroleum and the Government of Liberia'* (FPP, UK), see <http://www.forestpeoples.org/topics/palm-oil-rspo/publication/2012/new-report-human-rights-based-analysis-agricultural-concession>.
- xiii For a full downloadable list of all MOUs entered into by GVL with communities to date, see: <http://www.goldenveroleumliberia.com/index.php/downloadable-content/memorandums-of-understanding>, most recently accessed February 2015.
- xiv See Balachandran et al (2012), *supra* at note (v), and Rhein (2015) *supra*, at note (vi).
- xv See for example: World Bank (2014) *The Practice of Responsible Investment Principles in Larger-Scale Agricultural Investments: Implications for corporate performance and impact on local communities* (World Bank Report Number 86175-GLB, Washington DC), available at [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/04/25/000456286\\_20140425145714/Rendered/PDF/861750RAIOP1253560Box385174B00PUBLIC0.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/04/25/000456286_20140425145714/Rendered/PDF/861750RAIOP1253560Box385174B00PUBLIC0.pdf).
- xvi Rhein (2015), *supra* at note (vi).