



“SMELL-NO-TASTE”

The Social Impact of Foreign Direct Investment in Liberia



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Cover photo: Golden Veroleum palm oil nursery, Sinoe County, Liberia, June 22, 2011.

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I. Executive Summary

“When your government and the representatives sign any paper with a foreign country, the communities can’t change it ... You are trying to undermine your own government. You can’t do that. If you do so all the foreign investors coming to Liberia will close their businesses and leave, then Liberia will go back to the old days.”¹

- Republic of Liberia President-elect Ellen Johnson-Sirleaf, speaking to rural, indigenous community members affected by the operations of Sime Darby, a multinational palm oil producer that holds a 63-year lease to operate in Liberia, December 6, 2011.

In the past few years, international observers have commented extensively on the connection between natural resource mismanagement and violent conflict.² The importance of the issue is quite clear: since WWII natural resources have been linked to 60 percent of intrastate conflicts, and countries that depend on export commodities are far likelier to relapse into war after the end of hostilities than those which do not.³ Nowhere has the link between conflict and natural resources been more apparent than in the case of Liberia, a small African nation that was ravaged by war in the 1990s and early 2000s. While the conflict was caused by a number of social, historic, and economic factors, many observers have noted the role that official corruption and mismanagement of state funds, largely culled from the country’s natural wealth, played in exacerbating underlying tensions in the country.⁴

Since the Accra accords ended the war in August 2003, Liberia’s lucrative mineral and agricultural sectors have gone through significant restructuring and development, and the country has instituted a policy intended to attract long-term Foreign Direct Investment (FDI). The government of President Ellen Johnson-Sirleaf, re-elected in 2011, has instituted legal reforms and policies that promote the transparent management of natural resource revenues, professional investment negotiation practices, and socially responsible development initiatives. It has signed natural resource concession agreements with foreign investors amounting to a total projected investment value of more than US\$19 billion dollars.⁵ Such investment is instrumental to the government’s strategy for revitalizing the economy. The vast majority has been in the iron ore and

1 Siakor, Silas and Knight, Rachel, “A Nobel Laureate’s Problem at Home,” opinion-editorial, *The New York Times*, January 20, 2012.

2 United Nations Environment Programme (UNEP), “From Conflict to Peacebuilding: The Role of Natural Resources and the Environment,” 2009; United Nations Interagency Framework Team for Preventative Action (UNIFTPA), “Extractive Industries and Conflict,” 2010; UNIFTPA, “Capacity Development for Managing Land and Natural Resources,” 2010; UNIFTPA, “Land and Conflict,” 2010; Collier, Paul, *The Bottom Billion: Why the Poorest Countries are Failing and What Can Be Done About It*, Oxford University Press, 2007.

3 UNEP, “From Conflict to Peacebuilding,” p. 5.

4 Ellis, Stephen, *The Mask of Anarchy: The Destruction of Liberia and Religious Dimension of an African Civil War*, NYU Press, 2006; International Crisis Group (ICG), “Liberia: How Sustainable is the Recovery?” August 19, 2011.

5 United States Department of State online site, “2011 Investment Climate Statement – Liberia,” March 2011.

palm oil sectors, making them a crucial source of future government revenue.

While FDI in Liberia promises economic growth and prosperity it also irreversibly alters the lives of those who live within or near project areas. Most concessions are located in the far reaches of the Liberian hinterland, where government presence is weak and indigenous communities have resided since before the state existed. Indigenous peoples living in Project-Affected Communities (PACs) near FDI operations bear the brunt of the socio-economic and environmental impacts of the projects; given the country's recent divisive past, it is important to understand how these PACs regard FDI projects and whether they feel they have been consulted and treated respectfully during their implementation and development.

This report is the result of a three-month study conducted in Liberia by a team of researchers from Columbia University's Center for International Conflict Resolution (CICR). The research was conducted in two phases: a ten-day scoping mission was carried out in the Spring of 2011, followed by a return visit by three researchers in Summer 2011. Logistics were facilitated by the United Nations Mission in Liberia (UNMIL), which provided transport and other administrative support to CICR, allowing the researchers to access parts of the country that are difficult to reach. The purpose of the study was to provide answers for the following questions:

1. What are the socio-economic and environmental impacts of the large, recent influx of FDI in Liberia?
2. How is FDI perceived by communities who live in areas that are most affected by large-scale investment projects?
3. To what extent is Liberia's policy of attracting FDI strengthening the conditions for sustainable peace and equitable economic development in the country?

The report centers on the strategically important iron ore and palm oil sectors and presents findings based on visits to four geographically distinct concession sites and surrounding PACs: the ArcelorMittal and Putu Iron Ore Mining Corporation concessions in the iron ore sector, and the Sime Darby and Golden Veroleum concessions in the palm oil sector. As outlined in Section III: Methodology, the report is qualitative in nature, and its conclusions are based primarily on townhall meetings, focus group discussions, and one-on-one interviews with indigenous communities, public officials both in Monrovia and in the counties, United Nations staff, civil society activists, international organizations, and corporate representatives. In all, over 100 interviews were conducted during the span of three months. The purpose of this study is to analyze FDI policy in Liberia and offer recommendations based on that analysis to a range of actors both inside and outside the country.

Observations regarding the socio-economic and environmental impacts of the four concessions that were visited and studied are presented in Section IV. A project overview is presented for each of the four concessions, followed by a summary of findings from focus group discussions and interviews with PACs, and a set of case-specific recommendations for each concessionaire. Section V examines the landscape of Liberian government policy, focusing on the role and responsibilities of a broad range of agencies and institutions. Section VI seeks to ground the recommendations of the report

in the context of international standards related to the extractive and agricultural industries operating in Liberia and offers a brief overview of current scholarship regarding the link between natural resources and conflict. Section VII presents detailed recommendations, which, if adopted, would strengthen natural resource management in Liberia and mitigate the risk of conflict in the future.

Of the many findings presented in this report, there are five overarching conclusions:

1. The marginalization of indigenous communities during concession negotiations and project implementation has resulted in high tensions around a number of FDI projects. This tension has occasionally led to violence and other forms of social unrest, which could feasibly lead to conditions that might threaten peace in the country.

- Concession negotiations do not include respect for the principle of Free, Prior and Informed Consent (FPIC) for indigenous communities, and PACs are generally unaware of the coming of concessionaires before agreements are signed.
- Legally mandated public stakeholder consultations are not conducted.
- Concession negotiations prioritize the government's claim to land ownership over the customary land tenure of indigenous communities.
- Concession agreements are virtually inaccessible, particularly to community members.

2. Compensation rates for loss of land and crops are outdated, low and inconsistently applied across concessions. Unless directly hired by the concessionaire, members of PACs experience little improvement to living standards as a result of FDI. In some cases, the shift in land use priorities are producing enhanced food insecurity for PACs.

- Crop compensation packages are undervalued. Typically payment is given for one harvest, rather than a full year's production. This lowers living standards for PAC members and places food supply at risk while farmers adjust to livelihood changes.
- The formation of a Resettlement Committee is required by concession agreements but they are rarely constituted.
- There are no functioning out-grower programs in the major palm oil concession areas, partly due to a flaw in agreements that allow the concessionaire to sidestep the liability of funding their implementation.

3. Job creation and industrial economic diversification are challenged by the structural characteristics of the sectors, low human capacity levels and high energy costs. While FDI has produced jobs, they have so far not been of a scale that addresses the extremely high unemployment rate in the country, and it is difficult to imagine how this will change even when the projects become fully operational.

- The mineral sector is not labor-intensive, and the proportion of PAC

members that are absorbed into the concessionaire workforce is low and in most cases temporary.

- Some concessionaires are sidestepping provisions to employ local labor by engaging foreign sub-contractors who in turn import foreign labor for skilled positions.
- Prohibitive energy costs make it too costly for concessionaires to undertake secondary manufacturing ventures. Resultantly, most resources are exported in raw form and there is virtually no “value-added” industrial activity in Liberia.

4. Government corruption and financial mismanagement have compromised the good intentions of concessionaire-financed Social Development Funds (SDFs) and contributed to a rising mood of distrust and hostility regarding some concessions.

- The economic situation is desperate in many of the rural counties where FDI is directed, and PAC members have high expectations for concurrent development resulting from investment.
- Mismanagement and the politicization of SDFs have resulted in millions of lost dollars and, as of Summer 2011, the freezing of funds until the system is reformed.
- In most cases, SDFs have not produced visible development despite being designed to compensate PACs for livelihood disruptions.

5. Institutions lack the full ability to effectively monitor compliance of concession agreements and penalize infringements. A rush to sign new deals and fast track economic growth has overwhelmed the government’s ability to ensure that concessionaires act responsibly and are subjected to sound oversight.

- There is little coordination between key government agencies tasked with monitoring concessions, leading to an ineffective compartmentalization of responsibilities.
- Resource constraints have led to an imbalance between the scale of FDI operations in Liberia and the government’s ability to regulate the relationship between PACs and concessionaires.

In an effort to offer useful recommendations to the Government of Liberia and other stakeholders, this report presents a list of proposals in Section VIII intended to strengthen natural resource management policy in Liberia. Among those recommendations, the following are highlighted:

The **Government of Liberia** is urged to:

- Grant indigenous communities the right of Free, Prior and Informed Consent during the executive review of concession agreements and during the course of expansions by existing concessionaires;

- Ensure that the proposed National Bureau of Concessions (NBC) possesses a strong, independent mandate to supervise monitoring of compliance with concession agreements, and that it is adequately funded to carry out its important responsibilities;
- Convene a week-long, publicly broadcasted national forum on natural resource policy in Liberia, inviting a wide range of government officials, civil society representatives, indigenous community leaders, and other experts to present their views;
- and impose a moratorium on the further granting of concessions to foreign investors until a public review of the socio-economic impacts of FDI is conducted and the perspectives of a wide range of stakeholders in Liberia are incorporated into government policy.

The **Concessionaires** are urged to:

- Openly share financial models and business plans with the National Investment Commission as part of the concession bid;
- Ensure that community liaison representatives are selected from within the PACs;
- Prioritize the establishment of vocational training centers and, in the case of agricultural concessions, development of out-grower programs;
- and exercise their statutory influence over SDFs to prevent politicization of such funds, ensuring timely delivery of development initiatives.

The **United Nations** is urged to:

- Incorporate the monitoring of the social and environmental impacts of concessionaire operations into the responsibilities of UNMIL's peacekeeping mission;
- Facilitate dialogue between PACs, the Liberian government, and company representatives by sponsoring town hall and other meetings;
- and provide technical assistance and training to NBC monitors to ensure a high standard of professional competence and familiarity with international private-enterprise standards and human rights obligations.

Liberian Civil Society is urged to:

- Continue monitoring conditions inside concession areas and producing public reports about the community-level experience of FDI;
- and form sustainable partnerships with company representatives, so that civil society can act as a bridge between them and PACs.

II. Introduction

Near Robertsfield International Airport in Liberia, there is a town named “Smell-no-Taste.” The town acquired its name in the period after World War II, when foreign contractors arrived in the country, tasked with building the airport. The massive construction project attracted a stream of Liberians hoping to find employment. Eager to be selected as a temporary worker, those migrants set up camps near the residences of the foreigners who were supervising the project. Every night, the contractors would cook dinner inside their compounds, the smell of the food drifting its way into the camps where the hungry migrants waited for the opportunity to work. Thus, the town became known to locals as “Smell-no-Taste.”⁶

Today, Liberia is rebuilding after a fifteen-year civil war that devastated the country, destroyed its infrastructure, and left a generation of Liberians physically and emotionally scarred. It is now one of the poorest countries on earth, with nearly 95 percent of the population living on less than US\$2 dollars per day.⁷ Paradoxically, though, Liberia is rich in valuable, mostly untapped natural resources. The country has extensive deposits of iron ore, diamonds, and gold, as well as abundant timber and wide swaths of arable land that are ideal for the cultivation of export-friendly cash crops such as rubber and palm oil.⁸ The administration of Liberia’s recently re-elected President, Ellen Johnson-Sirleaf, has prioritized the development and extraction of these resources as the cornerstone of its strategy to reduce poverty and grow the country’s economy.⁹

By advertising and implementing an investor-friendly policy designed to attract foreign capital to Liberia, the government has completed a flurry of long-term contracts that grant foreign conglomerates the right to establish industrial mining projects, large agricultural plantations, and offshore oil exploration. By some accounts, these contracts – known as “concessions” – cover nearly half the country’s total landmass.¹⁰ The International Monetary Fund (IMF) projects that corporate taxes and royalties from these concessions could amount to US\$2 billion dollars in the next 10 years, with benefits that include the rehabilitation of infrastructure such as roads, ports, and power plants.¹¹ Since the end of the war, foreign concessionaires have agreed to undertake investments that total more than US\$19 billion dollars.¹²

6 Republic of Liberia Truth and Reconciliation Committee (TRC), “TRC Final Report,” December 4, 2009, p. 74.

7 The World Bank, “Poverty Headcount Ratio at \$2 a Day,” 2008.

8 The Diamonds and Human Security Project, “Land Grabbing and Land Reform: Diamonds, Rubber, and Forests in the New Liberia,” July 2007.

9 Government of the Republic of Liberia (GoL), “Poverty Reduction Strategy,” April 2008, p. 36.

10 Center for International Conflict Resolution (CICR) Interview with Ministry of Planning official, Monrovia.

11 International Monetary Fund (IMF), “Liberia: 2010 Article IV Consultation and Fifth Review Under the Three-Year Arrangement Under the Extended Credit Facility – Staff Report,” December 2010, p. 14.

12 United States Department of State online site, “2011 Investment Climate Statement – Liberia,” March 2011; “Sesa Goa, Elenito Project to Create 2,000 Jobs in Liberia Ore Project,” *Bloomberg News* (New York), August 23, 2011.

The 2008 “Poverty Reduction Strategy” of Liberia promises that the benefits of Foreign Direct Investment (FDI) will “accrue to the nation as a whole and not to just a few.”¹³ Indeed, many of the concession agreements include obligations for investors to fund local development projects, and the country has adopted a financial oversight program that ensures resource-related payments from concessionaires to the government are audited and catalogued publicly.¹⁴ Concessionaires are required to provide schools, housing, and health services for their employees, and must hire Liberians for a portion of their top-level management positions.¹⁵ If spent well, revenues from these concessions will allow Liberia to rebuild vital infrastructure, generate business opportunities, and extend social service access to its desperately poor citizenry.¹⁶

However, while FDI promises to be an important source of development in Liberia, it is also severely affecting the lives of those who live within concession areas. Most concessions are in the far reaches of the Liberian hinterland, where government presence is weak and indigenous communities have resided since before the state existed. Historically, the relationship between these communities and the government of Liberia has often been contentious, and the perception that they were mistreated by the country’s governing elite was a major cause of the civil war.¹⁷

Although FDI policy in Liberia will undoubtedly bring substantial sums of money to the country, there are a number of concerning aspects of that policy’s impact on some segments of Liberian society. Project-Affected Communities (PACs)¹⁸ are given no consultative rights prior to the appearance of multinational corporations in their traditional lands, despite profound livelihood changes that include loss of farmland, environmental degradation, and in some cases resettlement. While compensation is given in the form of cash payments, these are often small and do not always counteract the loss of livelihood experienced by those who do not gain subsequent employment with concessionaires. Many expect development to accompany FDI, but there are few guarantees that it will occur quickly or be accessible to non-employees. In some cases, dissatisfaction with the projects is pervasive.¹⁹

Many PAC representatives interviewed for this report were generally pleased that investors had selected the area near their homes for the projects, and were hopeful that jobs and development would follow. This was particularly the case in Putu and Golden Veroleum, new concessions that were signed in the last year and which are still in

13 GoL, “Poverty Reduction Strategy,” April 2008, p. 38.

14 “An Act Establishing the Liberian Extractive Industries Transparency Initiative,” Republic of Liberia, July 10, 2009.

15 For detailed examples of these provisions, see “An Act to Ratify the Concession Agreement Between the Republic of Liberia and Golden Veroleum (Liberia) Inc,” GoL, September 2010, Articles 9.5, 10, and 12.1(b).

16 IMF, “Liberia: 2010 Article IV Consultation,” p. 15.

17 Levitt, Jeremy, *The Evolution of Deadly Conflict in Liberia*, Carolina Academic Press, 2005, pp. 132-194; Ellis, Stephen, *The Mask of Anarchy*, 2006; TRC, “TRC Final Report,” December 4, 2009, pp. 59-84.

18 This report refers to communities that are located in and near concession sites as “Project-Affected Communities”, or “PACs.” This is not a legal term, nor does it describe an entity with any one specific constitution. The PACs spoken to in this report were generally located in a common geographical area.

19 CICR Townhall Interviews with Project-Affected Community (PAC) Representatives, Montserrado, Nimba, Bong, Grand Bassa, Grand Gedeh, Sinoe, Bomi, Grand Cape Mount, and Gbarpolu Counties, Liberia, June and July 2011.

the early phases of operation. However, in each of the four concession areas, PACs also expressed concerns and in some cases growing anger over the implementation of investment projects. Many reported that they felt ignored or pushed to the side, and expressed frustration with how little say they have in the company's operations. Some spoke of false promises of employment, coercive attempts to solicit their acceptance of the project, and a lack of information about its scope.²⁰

While PACs expected benefits to come to their communities in the form of development projects such as clinics, schools, and roads, examination of the concession agreements reveals few contractual mandates for such services to be provided to non-employees.



Palm seedling planted by President Ellen Johnson Sirleaf at the GoldenVeroleum nursery. Sinoe County, June 22, 2011.

Where the agreements do mandate that concessionaires fund such services, the timetable for their delivery can be up to a decade, or they are too expensive for poor subsistence farmers to access.²¹ In cases where concessionaires have made contributions to rural development funds, PACs are given little to no say on how or where the money is spent.²² Near Sime Darby's palm plantation in Grand Cape Mount County, PACs referred to heightened food scarcity resulting from the clear-cutting of forests that were traditionally used for "slash-and-burn" agriculture and small-waterway fishing.²³

The United Nations recently produced a number of studies that suggest in some cases PAC dissatisfaction with resource-related FDI projects can lead to forms of conflict.²⁴ Indeed, Liberia has experienced a number of high profile, violent incidents related to this issue. In November 2007 the foreign manager of a Belgian rubber company was shot and killed by indigenous peoples who were upset at the company's expansion plans, and in March 2011 there was a mass demonstration near the Putu concession that resulted in the deaths of two people and required the deployment of a government paramilitary unit.²⁵ Last summer, PACs within Sime Darby's palm oil concession area

20 CICR Townhall Interviews with PAC Representatives, Montserrado, Nimba, Bong, Grand Bassa, Grand Gedeh, Sinoe, Bomi, Grand Cape Mount, and Gbarpolu Counties, Liberia, June and July 2011.

21 For a detailed example of this provision, see "Amended and Restated Concession Agreement Between The Republic of Liberia and SIME Darby Plantation (Liberia) Inc," GoL, April 2009, Article 10; CICR Interview with PAC Representatives, Zolowee, Nimba County, June 10, 2011.

22 "Revised Draft Reform Strategy: County Social Development Fund," Dedicated Funds Committee, GoL, April 2010, p. 5.

23 CICR Townhall Interview with PAC Representatives, Kelia Town, Grand Cape Mount County, July 6, 2011.

24 United Nations Environment Programme (UNEP), "From Conflict to Peacebuilding: The Role of Natural Resources and the Environment," 2009; United Nations Interagency Framework Team for Preventative Action (UNIFTPA), "Extractive Industries and Conflict," 2010; UNIFTPA, "Capacity Development for Managing Land and Natural Resources," 2010; UNIFTPA, "Land and Conflict," 2010.

25 "Murder, Armed Robbery at LAC," *The Inquirer* (Monrovia, Liberia), November 19, 2007; International Crisis Group (ICG), "Liberia: How Sustainable is the Recovery?" August 19, 2011, p. 21; CICR Interview with Liberian civil society representatives, Monrovia; CICR Interview with Grand Gedeh county officials, Zwedru; CICR Interview with Putu Iron Ore Mining management representatives, Penoken.

promised “stiff resistance” to the company’s operations, and a Liberian civil society organization threatened legal action over alleged human rights abuses by the company.²⁶ Tensions reached an extremely high level during the winter, and in December 2011 President-elect Johnson-Sirleaf visited the plantation, admitting to “mistakes” made by her government in an attempt to reconcile the company and disgruntled community members.²⁷

On the government side, financial shortages and a lack of expertise have made the monitoring of concession sites sporadic, and there is a clear prioritization of the needs of investors over those of PACs.²⁸ Government agencies responsible for ensuring corporate compliance with their contractual obligations are underfunded and do not always communicate well with one another, leading to a compartmentalization of monitoring responsibilities and a lack of clear institutional knowledge regarding the conditions within concession areas. Consultation with indigenous communities is never conducted during the negotiation and ratification of concession agreements, and while government officials referred to the expected economic and employment benefits of FDI, at times they seemed unsure of the exact circumstances inside concessions.²⁹



Town of Gbarpa. In the background is Mount Tokadeh, site of ArcelorMittal’s iron ore mine. Nimba County, June 9, 2011.

Large and long-term foreign investments are not a new phenomenon in Liberia; the Firestone rubber company has held nearly a tenth of the country’s arable land under lease since 1926, and before the war, taxes from iron ore mining were one of the primary sources of government revenue.³⁰ Unfortunately, profits from those concessions did not translate into equitable development for average Liberians, and the living conditions in and around old concessions continues to be extremely poor for non-employees.³¹ Funds tended to be spent in Monrovia or siphoned away in networks of patronage and corruption in the pre-war era; one poll shows 63 percent of Liberians believing that such

26 “Halt Sime Darby Plantation Expansion,” *The Analyst* (Monrovia), July 14, 2011; Azango, Mae, “Green Advocates Threatens to Sue GOL Over Sime Darby Human Rights Abuses,” *FrontPageAfrica* (Monrovia), August 10, 2011.

27 “Ellen Ends Deadlock at Sime Darby Plantation in Grand Cape Mount,” *The Daily Observer* (Monrovia), January 14, 2012.

28 CICR Interview with government officials in Monrovia (*While statements in this report are often based on interviews with specific government or corporate officials, they have not been directly attributed to those individuals. A full list of interviews conducted by CICR can be found in the Annex.*); CICR Interview with Franklin Siakor, Senator from Bong County, Monrovia, June 9, 2011; CICR Telephone Interview with John Morlu, former Auditor General of the General Auditing Commission (GAC), July 15, 2011.

29 CICR Interview with government officials in Monrovia and the counties.

30 Koffa, Morris, Executive Director of the Liberia Environmental Watch, “A Call for Environmental Revolution,” *The Liberian Dialogue* (Monrovia), April 7, 2006; United States Department of State, “Background Note: Liberia,” July 1, 2011.

31 Save my Future Foundation (SAMFU), “The Heavy Load: A Demand for Fundamental Changes at the Bridgestone/Firestone Rubber Plantation,” June 2008.

corruption was the primary cause of the civil war.³² It is therefore crucial that the stated intention of using concession revenues for the public good is translated into concrete planning, with a timetable for improvements in the circumstances faced by PACs and in the counties where FDI is present.

Most of Liberia's modern concessions are relatively new, and it is in this period that respectful, mutually beneficial relationships can be established with PACs. By granting local indigenous communities the right to Free, Prior, and Informed Consent in FDI negotiations, keeping them informed of long-term operational planning, offering clear explanations of the timetable for job creation and skill requirements for management positions, and compensating them adequately for livelihood impacts, the government and concessionaires will ensure that projects occur in a supportive, secure local environment.

FDI has the potential to improve the lives of Liberians, strengthen the government's capacity to serve its people, and grow the country's struggling economy. It is also an invaluable opportunity for building and repairing trust between the state and its rural communities. While there are troubling trends in some concession areas, it is not too late for the government and concessionaires to build partnerships with those communities that will pay enormous dividends in the future, strengthening the establishment of peace in Liberia and extending opportunity to its citizens. The more that local residents who now find themselves living among vast palm oil plantations or in the shadow of mammoth iron ore mines are able to taste the benefits of FDI projects rather than simply smell them, the brighter Liberia's future will be.

32 ICG, "Liberia: How Sustainable is the Recovery?" August 19, 2011, p. 17.

III. Methodology

Research for this report was conducted in Liberia during the spring and summer of 2011 by seven representatives of Columbia University's Center for International Conflict Resolution (CICR). Four researchers visited the country for ten days in March 2011, followed up with an extended mission by three researchers during the months of May – August 2011. The report is qualitative in nature, and its conclusions are based primarily on townhall meetings, focus group discussions, and one-on-one interviews with indigenous communities in and around concession sites. Interviews were also conducted with government officials both in Monrovia and in the counties, United Nations staff, civil society activists, international organizations, and corporate representatives. In all, over 100 interviews were conducted during the span of three months. A full list can be found in the Annex to this report.

Four concessions were chosen for analysis: that of GoldenVeroleum, Sime Darby, ArcelorMittal, and Putu Iron Ore Mining Corporation (Putu). These four concessions are in two sectors: two from the iron ore sector, and two from the palm oil sector. They represent various stages of development; GoldenVeroleum and Putu were granted concession agreements in Fall 2010, while ArcelorMittal and Sime Darby have been operating for a number of years. Researchers visited the counties of Nimba, Grand Bassa, Bong, Grand Gedeh, Sinoe, Bomi, Grand Cape Mount, and Gbarpolu. Each concession was visited for a period of five days.

Thirteen informal focus group discussions were held in these counties, typically in a public space located inside a town or village. Attendance at these meetings ranged from ten to approximately thirty participants, who were asked a number of questions regarding their experiences with the investors operating nearby. Questions asked were broad and were crafted to avoid soliciting predetermined responses. While these discussions did not typically include separation of men and women, female participants were asked to speak when it appeared that males were dominating the discussion. Occasionally, follow-up interviews were held with individual participants, who were asked to elaborate on information they shared with researchers during the group sessions. Participants were told at the outset that the meetings were purely for research purposes, and that they should not expect any significant changes to occur as a result of the discussions. Prior to the discussions, consent was solicited from local authorities and tribal leadership.

All statements in this report can be backed up by notes, video, and audio recordings taken from these discussions and other meetings; these can be furnished for examination upon selected request. Company officials and government representatives were asked to clarify issues that were brought up in focus group discussions, and the researchers went to great length to obtain as wide a range of views as possible. Much of the information in this report was gathered either through interviews with policymakers, activists, and government representatives, or examination of published literature. In some cases citations are not directly attributed to individual sources in order to protect the ability of interviewees to speak freely.

Travel and logistics were facilitated by the United Nations Mission in Liberia (UNMIL). However, the conclusions of this report are entirely those of the CICR research team and do not reflect the views of the United Nations.

IV. Case Studies

The Iron Ore and Palm Oil Sectors

a. Introduction

Of the large-scale concessions that have been signed in the eight years since the end of the country's civil war, those in the iron ore and palm oil sectors have been among the most significant in terms of up-front capital investment. Six iron ore concession agreements have been signed, amounting to nearly US\$13 billion dollars in projected investment value, and another four concessions have been granted to palm oil conglomerates for a projected investment value of nearly US\$3 billion dollars.³³ These two sectors are strategically crucial in revitalizing economic growth in Liberia; the IMF estimates that government revenue from these concessions could be as high as US\$2 billion dollars in the period up to 2020, with additional payments to follow.³⁴

At one point, Liberia was one of the world's leading exporters of iron ore; during the 1970s and 80s, shipments of the mineral accounted for half of its export income.³⁵ Its current reserves are estimated to be massive; the IMF projects that in the best-case scenario, the country could ship as many as 50 million tons per year of iron ore by 2030.³⁶ This would make Liberia the world's eighth largest producer overall.³⁷ While modern geological information about Liberia's mineral deposits is sparse, investors in this sector include some of the world's leading steel manufacturers, indicating a high level of foreign confidence in the country's productive capacity.

In the palm oil sector, global demand for the product is expected to rise by nearly a third in the next five years alone, from 45 to over 60 million tons per year.³⁸ Prices of the commodity have recently increased due to an imbalance between demand and productive capacity; nearly 90 percent of land cultivated for palm oil production is in Malaysia and Indonesia, and producers have been forced to look to Africa for new land that will allow them to meet this increased demand.³⁹ It is a controversial industry, with many observers citing its responsibility for widespread deforestation and harmful

33 Liberia Mining, Energy, and Petroleum (LIMEP) online site, "Geology," 2011; "Sesa Goa, Elenito Project to Create 2,000 Jobs in Liberia Ore Project," *Bloomberg News* (New York), August 23, 2011; McLanahan, Paige, "West Africa Rising: Liberia Leads Charge to Lure Palm Oil Investors," *The Christian Science Monitor* (Boston), May 18, 2011; GoL, Executive Mansion press release, "Sime Darby Increases Investment in Liberia; Cites Confidence in Government as Basis for Increment," May 20, 2011.

34 IMF, "Liberia: 2010 Article IV Consultation," p. 14.

35 United States Department of State, "Background Note: Liberia," July 1, 2011.

36 IMF, "Liberia: Selected Issues," Unpublished, November 22, 2010 (Copy on file with CICR), p. 17.

37 United States Geological Survey, "Iron Ore Statistics and Information: 2011," January 2011.

38 Adnan, Hamin, "Global Demand for Palm Oil Growing Rapidly," *The Star* (Malaysia), March 10, 2011.

39 Ibid; "Indonesia: Medium-Term Outlook For Palm Oil 'Bullish' on Supply Issues," *PalmOilHQ* (Australia), May 29, 2009; "Rise in Palm Oil Price Reflects High Demand," *Bloomberg News*, August 14, 2011; Imara Africa Securities Team, "Africa's Palm Oil Industry to Attract More Investment," March 1, 2011.

impacts on the lives of those who live inside plantation zones.⁴⁰ In addition, the long gestation period before the palm trees become productive ensures a lengthy gap between the disruption of community livelihoods and the payment of royalties to the government that could be used to finance local development.⁴¹ The two largest palm oil concessions in Liberia are held by two of the world's principal producers: the Indonesian conglomerate Sinar Mas, which owns GoldenVeroleum Liberia, and Sime Darby, a Malaysian company.⁴²

The concessions that are examined in this section were selected due to the large size of their capital investment, the variance in their stage of operations, and fact that they are located in diverse regions of the country. For iron ore, the concessions chosen for site research were the ArcelorMittal mine in northern Nimba County and the Putu Iron Ore Mining Corporation (Putu) exploration project in southern Grand Gedeh County. The ArcelorMittal mine is now fully operational; the research team witnessed the first shipment of ore being loaded onto a vessel that will take it to France for secondary processing. Putu's concession was signed in September 2010; the company is still in the exploratory phase and is presently testing mineral samples while designing plans to build a railroad to the coast, where it will build port facilities to ship the ore it mines from the Putu mountain range.⁴³

In the palm oil sector, GoldenVeroleum signed a 65-year agreement in September 2010 to develop a 250,000-hectare plantation in remote Sinoe County and is currently in the planning and development stage of operation.⁴⁴ It has built a nursery and begun negotiations with local communities and farmers to compensate them for the crops they will lose when it begins to clear forest areas for palm planting.⁴⁵ Sime Darby signed a 63-year agreement in 2009 to develop a 220,000-hectare plantation in Grand Cape Mount, Gbarpbolu, and Bomi Counties. The company has conducted extensive clear-cutting, planting, and construction activities in its initial plantation, which covers 5,000 hectares in Grand Cape Mount County that includes a rubber plantation that was controlled by rebel factions during the civil war.⁴⁶ Sime Darby's operations have been extremely controversial; Project-Affected Community (PAC) representatives interviewed for this report expressed strong dissatisfaction with the company and it has recently been the subject of a great deal of negative press coverage as well as the attention of Liberian community rights advocates.⁴⁷

40 McCarthy, Micheal, "Demand For Palm Oil is 'Harming the Planet,'" *The Independent* (London), November 9, 2007; Bruntse-Dahl, Rikke, "Malaysia and Indonesia Bolster Defense of Palm Oil to the West," *The Guardian* (London), May 20, 2011.

41 IMF, "Liberia: 2010 Article IV Consultation," p. 14.

42 McLanahan, Paige, "West Africa Rising: Liberia Leads Charge to Lure Palm Oil Investors," *The Christian Science Monitor*, May 18, 2011.

43 CICR Interview with Putu Iron Ore Mining management representatives.

44 "Liberian Parliament Ratifies \$1.6b Oil Palm Concession Agreement with Golden Veroleum," *African Press Agency* (Dakar), September 3, 2010.

45 CICR Interviews with GoldenVeroleum management representatives.

46 Executive Mansion press release, "Sime Darby Increases Investment in Liberia;" United Nations Mission in Liberia (UNMIL), "Human Rights in Liberia's Rubber Plantations: Tapping into the Future," May 2006.

47 CICR Townhall Interviews with Project-Affected Community (PAC) Representatives, Beajah, Besau, and Golodee, Bomi County, Kelia, Konjah, and Gbah, Grand Cape Mount County, and Gbama, Gbarpolu County, July 4-7, 2011; Azango, Mae, "Green Advocates Threatens to Sue GOL Over Sime Darby

b. ArcelorMittal Liberia

i. Background



Sign pointing to Mount Tokadeh, site of ArcelorMittal's iron ore mine. Gbarpa, Nimba County, June 9, 2011.

ArcelorMittal Liberia, the world's largest steel-maker, was one of the first investors in post-war Liberia and as such has been highly scrutinized both inside and outside the country. Its initial contract – negotiated by the National Transitional Government of Liberia (NTGL) – was criticized by a number of international advocacy groups, who claimed the terms were unfair to Liberia.⁴⁸ When Ellen Johnson-Sirleaf assumed the presidency in 2006, one of her first acts was to re-negotiate the contract and modify provisions that were deemed to be inequitable.⁴⁹

Since then, ArcelorMittal has re-opened the iron ore mines near Yekepa in northern Nimba County, revitalized the railroad that leads to the port city of Buchanan, and begun shipping iron ore out of the country. The investment, estimated at having cost nearly one billion dollars already, aims to reach an annual shipment of 15 million tons of ore.⁵⁰ While the price per ton of iron ore is presently quite high, there is disagreement about the likely future price. Some market analysts estimate that it will stabilize between US\$50 and US\$100 dollars per ton in the next decade, while others claim it could stay around its current level of US\$150 dollars per ton.⁵¹ Calculated at the low price of US\$50 dollars per ton, the market value of 15 million tons of ore is US\$750 million dollars. Given the concession agreement's provision that ArcelorMittal will pay Liberia five percent of the market value of each ton of ore shipped, with a further 30 percent of the company's adjusted profits being paid as taxes, it is certain that government revenue from this project will be substantial.⁵² If ArcelorMittal is able to reach its intended production, government revenue will likely reach hundreds of millions of US dollars from this

Human Rights Abuses," *FrontPageAfrica* (Monrovia), August 10, 2011; "Ellen Ends Deadlock at Sime Darby Plantation in Grand Cape Mount," *The Daily Observer* (Monrovia), January 14, 2012.

48 Global Witness, "Heavy Mittal: A State Within a State, The Inequitable Mineral Development Agreement Between the Government of Liberia and Mittal Steel Holdings NV," October 2006.

49 Revenue Watch Institute (RWI), "Getting a Better Deal from the Extractive Sector: Concession Negotiation in Liberia 2006-2008," 2009.

50 ArcelorMittal online site, "ArcelorMittal Liberia: Current Status of Liberia Mining Project,"

ArcelorMittal online site, "Financial Results: Capital Expenditure Projects," July 27, 2011; CICR Interviews with ArcelorMittal management representatives.

51 MacNamara, William, "Iron Ore Set to Stay 'Stronger For Longer,'" *The Financial Times* (London), July 19, 2011.

52 "An Act Ratifying the Amendment to the Mineral Development Agreement Between the Government of the Republic of Liberia and Mittal Steel," GoL, May 7, 2007, Articles 19 and 20.

concession alone, a significant windfall for a country that currently operates with an annual budget of just over US\$400 million dollars.⁵³

The primary area of ArcelorMittal's mining operations is in the corridor heading north from the city of Saniquille towards the Guinean border. Mount Tokadeh, a large mine adjacent to the small town of Zolowee, is the site of ArcelorMittal's "exclusionary zone," where the first phase of ore extraction is presently taking place.⁵⁴ The company's headquarters are a few kilometers north in Yekepa, a mining city built in the 1950s by the Liberian-American Mining Company (LAMCO) a Swedish-American corporation. ArcelorMittal's presence in the region is ubiquitous, and its impact on the lives of residents in communities near the mine and along the railroad have been immense.

While ArcelorMittal deserves praise for its detailed and publicly available Environmental and Social Impact Assessment (ESIA), clear policies on resettlement compensation, and willingness to re-negotiate the terms of its concession agreement with the Liberian state, it remains the case that PACs in the area of its operations have experienced significant livelihood disruptions.⁵⁵ In addition, funds it has set aside for county-level development have been mismanaged, completely failing to reach the PACs – a state of affairs for which ArcelorMittal has partial culpability given its 50 percent decision-making stake in the board that oversees those funds.⁵⁶

ii. Community Impacts

Socio-Economic Development

ArcelorMittal's Mineral Development Agreement (MDA) mandates that the company make a contribution of US\$3 million dollars per year to a "Social Development Fund" (SDF) that is intended to offset the impacts of its activities by allocating funds for development projects in Nimba, Grand Bassa, and Bong counties. Considered to be a novel manner of ensuring the equitable distribution of benefits from FDI projects, the SDF's management guidelines mandate that "20 percent of all approved projects [will] be implemented in communities with closest proximity to ArcelorMittal operations."⁵⁷ In practice, however, the process of expending the funds has been highly politicized and despite ArcelorMittal's total contribution of US\$13 million dollars as of 2010, only three projects have been completed, none of which have been in PAC areas.⁵⁸ In fact, an internal government review of the SDF's management practices revealed that nearly a

53 "Draft Budget for the Fiscal Year July 1, 2011 to June 30, 2012," GoL, Liberia Ministry of Finance, 2011. The total budget for FY 2011-2012 is projected to be US\$414 million dollars.

54 ArcelorMittal, "Socio-Economic Baseline Survey: Analysis and Results, Communities Close to the Mine," May 2009.

55 CICR Interviews with civil society representatives in Nimba County; CICR Interview with a District Commissioner from within the ArcelorMittal Concession, Nimba County, June 9, 2011; CICR Townhall Interview with PAC representatives, Zolowee, Nimba County, June 10, 2011.

56 Ibid; CICR Interviews with government officials in Nimba County; CICR Observations from an "ArcelorMittal Affected Communities Stakeholder Meeting" organized by the Sustainable Development Initiative (SDI), June 15, 2011; "Revised Draft Reform Strategy: County Social Development Fund," Dedicated Funds Committee (DFC), GoL, April 2010, p. 5; Friends of the Earth/SDI, "Working for Development? ArcelorMittal's Mining Operations in Liberia," June 2010, p. 15.

57 "Revised Draft Reform Strategy," DFC, GoL, April 2010, p. 6.

58 Ibid, p 5.

third of the fund – over four million dollars – was spent by government officials who failed to adhere to the guidelines for management of the fund.⁵⁹ In one case, the Superintendent of Bong County spent half a million dollars from the SDF on preparations for Independence Day festivities, leading to public outrage and extensive local media coverage.⁶⁰

PAC residents near the exclusionary zone expressed a view that they have received “no benefits” from the ArcelorMittal operation.⁶¹ Most of those interviewed in the areas closest to ArcelorMittal’s mining activities expressed frustration with the lack of development in the region and cited mismanagement of the SDF as being a primary concern of theirs.⁶² Due in part to the extensive scrutiny of ArcelorMittal and the SDF in the Liberian media, interviewees displayed a strong sense of familiarity with the “20 percent” stipulation, expressing confusion and anger over the lack of consultation regarding how the money will be spent.⁶³

In a community stakeholder meeting organized by a Liberian civil society organization that was held in the city of Buchanan in June 2011, tribal, political, and community representatives from PACs in Nimba, Bong, and Grand Bassa counties met and discussed their grievances regarding ArcelorMittal’s operations with one another. During the daylong workshop, which included District Commissioners, Paramount Chiefs, village elders, and Town Chiefs – the backbone of Liberia’s indigenous representation – the SDF was a frequent topic of discussion. Participants strongly expressed their view that the 20 percent – which now amounts to nearly US\$3 million dollars – must be spent in collaboration with PAC representatives.⁶⁴

While the Liberian government acknowledges the fund was mismanaged and has instituted a reform process that is scheduled to be implemented in late 2011, the newly formed county-level management board that will review project proposals does not include mechanisms to solicit direct input from PACs for expenditure of the 20 percent.⁶⁵ The administrative manager of the committee in Monrovia that will oversee the fund’s operations ensured researchers that the 20 percent will ultimately be spent on projects that will directly benefit PACs, but given the fund’s history it is troubling that the reform proposal does not include direct PAC representation.⁶⁶ The new structure does include local civil society representation and one “representative of the council of chiefs,” but they are outnumbered by appointed government officials. PAC

59 Ibid.

60 Friends of the Earth/SDI, “Working for Development? ArcelorMittal’s Mining Operations in Liberia,” June 2010, p. 14.

61 CICR Interview with a District Commissioner from within the ArcelorMittal Concession, June 9, 2011; CICR Townhall Interview with PAC Representatives, Zolowee, June 10, 2011.

62 Ibid.

63 Ibid; CICR Observations from an “ArcelorMittal Affected Communities Stakeholder Meeting,” June 15, 2011.

64 Ibid.

65 “Revised Draft Reform Strategy,” DFC, GoL, April 2010, p. 8.

66 Ibid; CICR Interviews with government officials involved in the management of the SDFs.

representatives present at the stakeholder meeting strongly expressed their view that they must be directly consulted about how their share of the funds will be spent.⁶⁷

Additionally, the government has yet to agree on and publicize a list of “affected communities” that will be entitled to the 20 percent. Due to political infighting among government representatives who hope to allocate as much of the fund as possible to their preferred districts, a coherent description of “affected communities” has not been established, nor is there a clear timetable for when this will occur.⁶⁸ Thus, PACs have legitimate cause for concern that they will continue to be marginalized from the decision-making process and that benefits from the SDF will fail to reach them in a meaningful way.

In addition to the SDF, ArcelorMittal was obligated by the concession agreement to open schools and a clinic in Yekepa for use by its employees.⁶⁹ This is a common provision and was present in all the concession agreements examined by the researchers of this report. These institutions, however, are not open to use by local community members except in the case that they pay a fee.⁷⁰ While the fees are not excessively high, most of the local residents are unemployed and survive through subsistence farming activities and the sale of non-timber forest products, and as such are unable to afford even those small fees. PAC representatives expressed frustration at the close proximity of a modern, functioning clinic that was for all intents and purposes off-limits to them.⁷¹ One interviewee referred to a charge of nearly US\$30 dollars for his wife to be treated for Typhoid fever, a huge sum of money in an area where most people survive on less than US\$1 dollar per day.⁷²

Livelihood

When ArcelorMittal re-opened the Mount Tokadeh mine, it created an “exclusionary zone” of operations. Any local residents who had farms in that area were compensated for their crops and then told that they could no longer cultivate food or collect non-timber forest products within the exclusionary zone.⁷³ Although ArcelorMittal was responsible, systematic, and transparent in its disbursement of funds, there is a widespread sentiment that the crop compensation scale they used was inadequate.⁷⁴ In fact, the superintendent of Nimba County – the county’s highest political appointee – stated her belief that farmers were undercompensated in an interview with the researchers of this report.⁷⁵ While the sums disbursed to the displaced farmers were appealing to locals in

67 Ibid; CICR Observations from an “ArcelorMittal Affected Communities Stakeholder Meeting,” June 15, 2011.

68 Ibid.

69 “An Act Ratifying the Amendment to the Mineral Development Agreement Between the Government of the Republic of Liberia and Mittal Steel,” GoL, May 7, 2007, Articles 10 and 11.

70 CICR Interviews with ArcelorMittal management representatives.

71 CICR Interview with a District Commissioner from within the ArcelorMittal Concession, June 9, 2011; CICR Townhall Interview with PAC Representatives, Zolowee, June 10, 2011.

72 Ibid.

73 CICR Interviews with ArcelorMittal management representatives.

74 CICR Interviews with civil society representatives in Nimba County; CICR Interview with a District Commissioner from within the ArcelorMittal Concession, June 9, 2011; CICR Townhall Interview with PAC representatives, Zolowee, June 10, 2011; CICR Observations from an “ArcelorMittal Affected Communities Stakeholder Meeting,” June 15, 2011.

75 CICR Interview with Edith Weh, Superintendent of Nimba County, Saniquellie, June 10, 2011.

the sense that they were up-front cash payments, one local civil society representative described the process as causing “serious problems” for those farmers who could not find alternate plots of land to farm.⁷⁶

ArcelorMittal paid these farmers the equivalent of one harvest, neglecting to acknowledge that such a one-off payment was not even worth the value of a year’s return on those crops, let alone their lifetime productivity. While the company should be commended for utilizing IFC guidelines on crop compensation rates, it remains the case that compensation for only one harvest does not adequately ensure that farmers whose livelihoods are affected by the project will have the financial capacity to adjust to the changes.⁷⁷ The value of a farm, which produces yearly yields of marketable or consumable agricultural products, is far higher than the price of one harvest, and a number of observers commented on the shortcomings of ArcelorMittal’s payment scheme.⁷⁸

A major benefit that concessionaires claim will accompany their projects is access to employment opportunities for local residents. Indeed, in ArcelorMittal’s case many local people were incorporated into the construction of company infrastructure, working as security guards, railroad rehabilitators, and in other low skill positions.⁷⁹ However, most of these jobs were short-term; once the construction projects were completed the workers were quickly laid off with a low likelihood of future employment.⁸⁰ They were hired through contractors rather than as direct, long-term employees of the company. ArcelorMittal estimates that it has provided Liberians with 2,100 jobs through contract and direct hiring, but admits that much of this work “[is not] permanent but will at least provide temporary transition opportunities whilst adaptation starts.”⁸¹ Thus, many of the jobs that PAC residents expected to obtain as a result of the project will not provide a sustainable source of income; many interviewees expressed confusion at this circumstance and claimed they did not realize that their employment would be short-term.⁸²

In addition, the MDA stipulates that 25 percent of top management jobs must be given to Liberian nationals within the first five years, escalating to 50 percent after ten years. Vocational training programs for these positions, however, are weak and most of the managers are hired from other countries.⁸³ PAC interviewees expressed a desire to be

76 CICR Interview with civil society representatives in Nimba County.

77 Ibid.

78 Ibid; CICR Interview with a District Commissioner from within the ArcelorMittal Concession, June 9, 2011; CICR Observations from an “ArcelorMittal Affected Communities Stakeholder Meeting,” June 15, 2011.

79 CICR Interview with a District Commissioner from within the ArcelorMittal Concession, June 9, 2011; CICR Townhall Interview with PAC Representatives, Zolowee, June 10, 2011; CICR Interviews with ArcelorMittal management representatives.

80 Ibid.

81 ArcelorMittal online site, “Case Studies: Supporting Development in Post-War Liberia,” ArcelorMittal, “Yekepa Mine Area Resettlement Plan,” February 2011, p. 15;

82 CICR Townhall Interview with PAC Representatives, Zolowee, June 10, 2011.

83 “An Act Ratifying the Amendment to the Mineral Development Agreement Between the Government of the Republic of Liberia and Mittal Steel,” GoL, May 7, 2007, Article 12; CICR Interview with Emmanuel Sherman, Assistant Minister of Mineral Concessions, Ministry of Lands, Mines, and Energy (MLME), Monrovia, June 2, 2011.

considered for these positions, and some were upset at the prevalence of foreign nationals receiving much higher compensation than their Liberian counterparts.⁸⁴ During an interview, a government representative stated that ArcelorMittal was not being forthcoming with providing figures on how many Liberians it is employing for these management positions, and explained that the government is unsure whether ArcelorMittal has met its obligations under this provision of the agreement.⁸⁵ The researchers of this report were unable to acquire these employment figures from ArcelorMittal despite repeated requests.

Environment

Compared to some other industrial mining activities, iron ore extraction has a relatively low impact on the surrounding environment.⁸⁶ Because it does not necessitate the widespread use of dangerous chemicals, there is a lower risk of environmental catastrophe and adverse health impacts on PAC residents than in chemically intensive extractive industries such as gold. However, ArcelorMittal's Environmental and Social Impact Assessment (ESIA) does recognize the "potential for localized impacts on water quality arising from accidental spillage and discharge of potentially polluting materials such as fuel and oil, and for localized erosion or flooding due to inappropriate road or drill site drainage."⁸⁷

As part of its corporate responsibility strategy, ArcelorMittal commendably spent US\$5 million dollars on its ESIA, which included one of the most comprehensive biodiversity surveys ever conducted in Liberia.⁸⁸ The study includes an extensive management plan for mining-related environmental impacts including soil erosion, water quality, handling of hazardous materials, the health and safety of workers, and the protection of cultural sites and community land. The plan has standards for protecting water quality, such as the use of settling ponds, drainage practices that do not contaminate surface water, and a monitoring regime for water bodies within 150 meters of worksites.⁸⁹ However, the researchers found some discrepancies between the ESIA's provisions and reports from local leaders and PAC representatives, reinforcing the need for government monitoring and evaluation.⁹⁰

The ArcelorMittal concession area is located in one of the last remaining primary rainforest areas in West Africa, and it is extremely close to the East Nimba Nature Reserve.⁹¹ In fact, the area to the west of Mount Tokadeh was originally designated by

84 CICR Townhall Interview with PAC Representatives, Zolowee, June 10, 2011; CICR Interviews with ArcelorMittal Employees, Yekepa, Nimba County, June 8, 2011.

85 CICR Interview with representative of the GoL Ministry of Lands, Mines, and Energy, Monrovia.

86 CICR Interview with ArcelorMittal management representatives.

87 ArcelorMittal, "Western Range DSO Iron Ore Project Environmental Management Plan Operation of the Buchanan - Tokadeh Railway." May 2011, p. 16.

88 Ibid, CICR Interview with ArcelorMittal management representatives.

89 ArcelorMittal, "Western Range DSO Iron Ore Project Environmental Management Plan Operation of the Buchanan - Tokadeh Railway." May 2011, p. 16.

90 For example, the management plan states that no cultural site would be affected by the mining operations, while town leaders from Zolowee claim that a local religious site in the exclusionary zone was purchased by the company. Town members reported receiving compensated of US\$3,000 dollars for the site. CICR Townhall Interview with PAC Representatives, Zolowee, June 10, 2011.

91 CICR Interviews with ArcelorMittal management representatives; CICR Interviews with Non-Governmental Organizations (NGOs) operating in Liberia.

the Forestry Development Authority as a nature reserve, but due to the fact that the park's registration documents were lost in the course of the civil war, the Ministry of Lands, Mines, and Energy was able to effectively argue that the area was not protected.⁹² The mining site is located in one of West Africa's most important biodiversity areas.



Creek near the site of the ArcelorMittal fuel spill near Gbarpa, with contamination clearly visible. Nimba County, June 9, 2011.

The ESIA identified ArcelorMittal's mining sites as containing "66 large mammal species, including eight primates. Among other fauna were 242 species of birds, 33 fishes, 43 amphibians, 78 mollusks, 74 ant and termite species, and an impressive 742 species of butterflies and moths."⁹³ Many have been determined to be of "conservation concern" and some were identified as potentially being new species.⁹⁴ Clearly ArcelorMittal is operating in an area with huge conservation value.

The most significant environmental impact observed by the research team in the ArcelorMittal concession area concerned a fuel spill by a contractor. On May 19, 2011, a truck with the capacity to carry 1000 gallons of fuel tipped over in an area west of Gbarpa township.⁹⁵ An ArcelorMittal management representative estimated during an interview that at least 500 gallons leaked out of the truck, much of which made its way into the local water supply.⁹⁶ Community members escorted the research team to the site of the spill over three weeks after it occurred; the smell of fuel was still palpable and a thin film of petrol was observed in a nearby creek.

ArcelorMittal claimed it was not notified of the spill until over a week later, and the Liberian Environmental Protection Agency (EPA) stated its intention to fine the company if its investigation reveals wrongdoing.⁹⁷ In the meantime, a local government representative reported severe impacts to the community's drinking water and damage to crops that depend on the creek for irrigation.⁹⁸ While ArcelorMittal cannot be entirely faulted for the incident, the time lag between its occurrence and any action demonstrates the absence of clear lines of communication between local communities, ArcelorMittal officials, and government agencies tasked with concession monitoring responsibilities.

⁹² Ibid.

⁹³ ArcelorMittal, "Western Range DSO Iron Ore Project Environmental and Social Impact Assessment, Vol. 1" September 2010, p. 41.

⁹⁴ Ibid.

⁹⁵ CICR Interview with a District Commissioner from within the ArcelorMittal Concession, June 9, 2011; CICR Interview with Environmental Protection Agency (EPA) officials; CICR Interview with Edith Weh, Superintendent, June 10, 2011.

⁹⁶ CICR Interviews with ArcelorMittal management representatives.

⁹⁷ Ibid; CICR Interview with EPA officials.

⁹⁸ CICR Interview with a District Commissioner from within the ArcelorMittal Concession, June 9, 2011.

Community Engagement

As is the case in all concession agreements negotiated by the government, PACs near the ArcelorMittal operations were not given the opportunity to consent to the project prior to the agreement being signed.⁹⁹ In fact, almost four years after the renegotiation of the contract, PACs reported that they had still not been given copies of the MDA despite repeated requests made to government representatives.¹⁰⁰ This lack of transparency and information was one of the primary concerns expressed by interviewees inside the concession area. While ArcelorMittal has emphasized the importance of community relations and employs a liaison officer tasked with maintaining lines of communication with PACs, community members still reported feeling alienated from the company and its representatives.¹⁰¹

Interviewees claimed that the meetings which occur between local government officials and the company do not include direct community representatives or tribal leaders, and that it is difficult for them to reach ArcelorMittal representatives to express their grievances. Residents in Zolowee, a town east of the exclusionary zone, referred to a sense of uncertainty about ArcelorMittal's plans for the future and concern over what will become of their community.¹⁰² According to an ArcelorMittal press release, a stakeholder meeting was held in early August in Bong County; researchers were not able to attend this event, but it is a step in the right direction and should be the basis for continued dialogue rather than a one-time affair.¹⁰³

In general, there is an unfortunate communication gap between ArcelorMittal and PACs. Nostalgia for the days of LAMCO and unrealistic expectations regarding the length and variety of employment opportunities has created an environment of confusion. Locals who were told that the loss of their farmland and heritage sites would result in development and jobs for their communities now feel misled, as the promised benefits have not appeared.¹⁰⁴ As is the case within many concessions, there appeared to be a gap between expectations and reality. While ArcelorMittal representatives have stated their belief that in time the bond between the company and the PACs will strengthen, PAC perception that the company is unresponsive to their concerns is cause for concern. ArcelorMittal can point to its praiseworthy corporate strategies for grievance review and community outreach, but it remains the case that some PAC members are dissatisfied with what they see as a lack of communication and transparency regarding the company's operations.

99 Ibid; CICR Townhall Interview with PAC Representatives, Zolowee, June 10, 2011.

100 Ibid.

101 Ibid.

102 Ibid.

103 ArcelorMittal, "ArcelorMittal Liberia: Leading the Way in Stakeholder Engagement," August 17, 2011.

104 CICR Townhall Interview with PAC Representatives, Zolowee, June 10, 2011.

iii. Recommendations

ArcelorMittal is in the difficult position of replacing a company that is remembered fondly by most residents within its former area of operations. Time and again, researchers were told that ArcelorMittal is perceived by locals to be less attentive to the needs of PACs than the now-defunct LAMCO.¹⁰⁵ To be fair, the company has in many regards been deserving of praise: it funded a rigorous and impressive ESIA, agreed to renegotiate its contract after international civil society expressed concerns with its provisions, and has built hand pumps, markets, and roads along the Nimba-Buchanan development corridor. It has been reliable with making its contribution to the SDF and cooperative with the Liberia Extractive Industries Transparency Initiative (LEITI).

There are, however, a number of areas where ArcelorMittal can improve its behavior and strengthen its relationship with the PACs that surround its multi-billion dollar investment. While the expectation of benefits and employment on behalf of PACs may be unrealistic, ArcelorMittal can still establish more direct lines of communication with residents and use its leverage to ensure that the 20 percent of the SDF allocated to those PACs reaches those who it was intended to assist. If it fails to repair its reputation with PACs, there is a real risk that demonstrations and other forms of resistance will increase in frequency and intensity. As one town elder said during an interview, “Soon we will go to the company and demand our rights. We are not afraid. The war made us all brave.”¹⁰⁶ Liberian civil society organizations have begun to organize members of the PACs into political advocacy groups, and it is only a matter of time before ArcelorMittal will have to address the concerns raised in this report out of necessity rather than choice. To that end, ArcelorMittal should:

- Establish a clear line of communication with local residents. Regular, open townhall meetings should be held in PAC townships where community members are invited to ask questions, raise their concerns and express grievances. The townships of Zolowee and Gbarpa should be the site of such townhall meetings on a relatively frequent basis;
- Ensure that its Mineral Development Agreement (MDA) and Environmental and Social Impact Assessment (ESIA) is widely distributed in communities near the exclusionary zone;
- Use its influence over the SDF to ensure that “affected communities” are quickly defined by the government and granted the opportunity to meaningfully contribute to decisions of how best to spend the 20 percent that has been allocated for their benefit;
- Establish a strong vocational training program where Liberians from Nimba County can be trained to occupy managerial positions in the company. The entrance examination fee should be reduced or eliminated in order to ensure local access to the program;

105 Ibid; CICR Informal Interviews with ArcelorMittal Employees, June 9, 2011.

106 CICR Townhall Interview with PAC Representatives, Zolowee, June 10, 2011.

- Provide the Liberian government with accurate employment statistics and compensation figures for both Liberian and expatriate employees;
- Include civil society and community members in a review of its crop compensation scheme;
- and form partnerships with Liberian civil society organizations that can act as a bridge to and from PACs within its concession area, increasing dialogue and facilitating clearer communication.

c. Putu Iron Ore Mining



Tiama Town, Grand Gedeh County. In the background is the mountain that will become Putu's iron ore mine. July 21, 2011.

i. Background

The Putu Iron Ore Mining (Putu) mining concession is located in Grand Gedeh County, an extremely underdeveloped and sparsely populated region of Liberia. Its concession agreement was concluded in September 2010, granting Putu a 25-year term of operations that covers exploration, construction of mining facilities, and the rights to mine iron ore from the Putu mountain range, an area of high cultural significance to local communities located in the southern portion of the county.¹⁰⁷ Putu is a joint venture owned indirectly by Severstal Resources, a large Russian steelmaker. The project is the cornerstone of Severstal's strategy to develop a portfolio of iron ore mines that will provide resources for its industrial steel processing activities.¹⁰⁸

The Putu project is currently in the exploration phase. Once exploration is completed, the company will build a facility that has the capacity to ship more than 20 million tones per year of iron ore. The construction phase of the Putu project is due to take place between April 2014 and October 2017, during which time the company will construct

¹⁰⁷ Perry, Roland "Putu Mining to Pave Grand Gedeh, Sinoe Highways," *The Informer* (Monrovia), September 9, 2010; CICR Interviews with civil society representatives in Grand Gedeh County.

¹⁰⁸ Severstal press release, "Putu Iron Ore Resource Increased to 3.2 Billion Tonnes," July 11, 2011.

the mine and build a railroad to the coast, where port facilities will be built to ship the ore overseas. A paved highway will also be built, connecting the county capital of Zwedru to the port.¹⁰⁹ The project is estimated to cost over US\$2.5 billion dollars in direct investment.¹¹⁰ Putu plans to build a power plant with sufficient capacity to supply electricity within a ten-kilometer radius, with power provided to public users such as schools and hospitals for free, and to individuals at subsidized prices.¹¹¹

ii. Community Impacts

Socio-Economic Development

The Putu concession agreement establishes a Social Development Fund akin to the ArcelorMittal SDF. Initial contributions to the Putu SDF are relatively low, as the company is still in the exploration phase, but by 2014 it will increase to US\$3 million dollars per year.¹¹² The fund will be managed by the same Monrovia-based Dedicated Funds Committee (DFC) that manages the ArcelorMittal SDF, and there is a similar structure in place to select, approve, and execute county-level development projects. A significant difference, however, is that the Putu SDF does not include a provision that mandates expenditure of funds directly in “affected communities.”¹¹³

While ArcelorMittal’s SDF allocates 20 percent to the indigenous peoples that live near its operations, Putu’s does not. Grand Gedeh County is large, and without a specific mandate to fund development projects in the area around the mine it is possible that PACs which are most affected by Putu’s operations will not receive an equitable share of the fund’s benefits. As in the case with ArcelorMittal’s SDF, the structure set up to manage Putu’s contribution does not include direct representation of the affected communities.¹¹⁴ At present, the stall in the management reform process instituted by the government to address the issues with ArcelorMittal’s SDF have prevented the \$500,000 dollars that Putu has contributed to the SDF from being spent.¹¹⁵

The concession agreement also compels Putu to “develop programs for the development and maintenance of the economic and social viability of the centers of population that have formed and that may form as a result of [its] Operations.”¹¹⁶ It does not, however, mandate that the company fund those programs, instead vaguely binding Putu to “cooperate in good faith” with government efforts to develop those areas.¹¹⁷ In this regard, though, Putu is off to a good start. Community members who were interviewed by the research team in one town near the planned mine cited their happiness with a school renovation that was independently carried out by the company, and researchers

109 CICR Interviews with Putu management representatives.

110 Ibid.

111 Ibid.

112 “Mineral Development Agreement (MDA) Between the Government of Liberia, Putu Iron Ore Mining Inc, and Mano River Iron Ore Ltd.,” September 2, 2010, Section 8.2.

113 CICR Interviews with government officials involved in the management of the SDFs.

114 “Revised Draft Reform Strategy,” Dedicated Funds Committee (DFC), GoL, April 2010, p. 8.

115 CICR Interviews with Putu management representatives.

116 “MDA Between the Government of Liberia, Putu Iron Ore Mining Inc, and Mano River Iron Ore Ltd.,” September 2, 2010, Section 8.1.

117 Ibid.

observed a group of contractors painting the exterior and rebuilding the damaged interior of the school.¹¹⁸

In addition, Putu funded the electrification of the central town of Petroken, its base of operations. While this was a significant benefit for the residents of the city, illegal splicing activities have made the power supply unreliable due to severe strains on the generators.¹¹⁹ The company's environmental consultant stated that it plans to distribute medicines to local residents, and its Chief Executive Officer referred to expenditures on sporting events, hand pumps, and donations to local clinics.¹²⁰ For the most part local residents reported gratitude for Putu's contributions to development in the area; one group of citizens mentioned that the company gave Christmas gifts of rice and other goods to the community last winter.¹²¹ A few participants in one focus group, however, stated their frustration with the lack of delivery of promised development projects such as a clinic and new water pumps.¹²²

Livelihood



Putu mining employees collecting samples for testing. Grand Gedeh County, June 11, 2011.

The primary area of community grievance in Putu's area of operations concerns access to employment. The mountain range that was given to the company in its concession agreement holds a special significance for local residents; considered to be a sacred site by indigenous Liberians, many members of the PACs hid from the violence of the civil war in ad hoc camps deep in the valley.¹²³ As such, it is an extremely important site for locals, and there are large, yearly religious gatherings near a lake located adjacent to the exploration site.¹²⁴ Although the indigenous peoples that inhabit the area

around the valley who were interviewed for this report said they have accepted the destruction of the mountain by Putu, they consistently referred to their expectation that this would be offset by increased access to employment for local residents.¹²⁵

The initial reception of local residents to the signature of Putu's concession agreement was characterized by shock and anger.¹²⁶ Citizens complained that the agreement was

118 CICR Townhall Interview with PAC Representatives, Tiama Town, Grand Gedeh County, June 23, 2011.

119 CICR Interviews with Putu management representatives.

120 Ibid.

121 CICR Townhall Interview with PAC Representatives, Penoken, Grand Gedeh County, June 23, 2011.

122 CICR Townhall Interview with PAC Representatives, Tiama Town, June 23, 2011.

123 Ibid; CICR Townhall Interview with PAC Representatives, Penoken, June 23, 2011; CICR Interviews with civil society representatives in Grand Gedeh County.

124 Ibid.

125 CICR Townhall Interview with PAC Representatives, Tiama Town, June 23, 2011; CICR Townhall Interview with PAC Representatives, Penoken, June 23, 2011.

negotiated and signed without the knowledge or consent of those who have an ancestral connection to the area, and by the time local residents were informed of the agreement it had already been finalized.¹²⁷ When they raised their grievances with the senior Senator from Grand Gedeh County, William Sandy – who also chairs the Senate Investment Committee – he claimed that he had been under duress when he voted for it.¹²⁸ In an interview, he said that he had asked for more time to review the contract but was told by colleagues that it was necessary to pass the agreement quickly and therefore he felt compelled to grant his consent.¹²⁹ To pacify the concerns of the local population, government officials promised that the company would hire residents and raise their standard of living through the financing of development projects.¹³⁰

This has put Putu in a difficult situation. Community members expect that they will be considered for managerial positions despite their lack of qualifications, and become deeply frustrated when they are only able to obtain low-paying security jobs. Government representatives expressed their belief that local residents do not fully comprehend the timeline for Putu operations, as large-scale employment even for unskilled labor will not occur until the company ends its exploratory phase and moves into the building of rail and mining infrastructure a number of years from now.¹³¹ Exploration activities require trained geologists, and managerial vacancies are often filled by Liberians from parts of the country other than Grand Gedeh County.¹³² PAC residents articulated a sense of anger that those vacancies are not widely advertised and that youth in their communities are not trained or offered the opportunity to compete for those positions.¹³³

Anger over these issues boiled over in March 2011, when mass demonstrations erupted in the town of Petroken, the site of Putu's headquarters. Demanding greater pay for security guards and increased access to employment, demonstrators hijacked a vehicle and disrupted exploration activities for a period of 24 hours. The "bush devil," a secretive, masked tribal leader with significant spiritual and political influence in the area, was present at this demonstration. The importance of the "bush devil" to some indigenous Liberian societies cannot be overstated; his opposition indicates that tensions in the region are extremely high. The Liberian National Police's "Emergency Response Unit" – Liberia's most well-armed and best-trained government paramilitary force – was called out to respond to the demonstrations, and two protestors died after losing control

126 CICR Interviews with civil society representatives in Grand Gedeh County; Sonpon, Leroy, "Grand Gedeans Threaten to Halt Mining of Putu Mountain," *The Daily Observer* (Monrovia), September 16, 2010.

127 CICR Interview with Christopher Bailey, Superintendent of Grand Gedeh County, Zwedru, June 20, 2011.

128 Ibid.

129 CICR Interview with Hon. William Sandy, Senator from Grand Gedeh County and Chair of the Senate Investment Committee, Monrovia, July 11, 2011.

130 CICR Interview with Christopher Bailey, Superintendent, June 20, 2011; MLME press release, "Citizens Of Grand Gedeh County and the Management of Putu Iron Ore Mining Presently Carrying On Exploration Activities on the Putu Mountain Over the Weekend Smoke a Peace Pipe," GoL, June 1, 2011.

131 CICR Interviews with Putu management representatives; CICR Interview with Christopher Bailey, Superintendent, June 20, 2011.

132 Ibid.

133 CICR Townhall Interview with PAC Representatives, Tiama Town, June 23, 2011; CICR Townhall Interview with PAC Representatives, Penoken, June 23, 2011.

of a hijacked vehicle. The County Superintendent, Christopher Bailey, was required to submit a detailed report on the unrest to the Ministry of Justice, but was unwilling to share a copy of that report with researchers.¹³⁴

While local government expressed its belief that the tensions have been defused in part by a high-profile visit by the Minister of Lands, Mines, and Energy to discuss PAC grievances with local indigenous representatives, it appears that the strategy for addressing the conflict was to promise locals that they would receive access to better jobs once the company begins large-scale mining operations and infrastructure construction.¹³⁵ However, the research team did not see evidence of a sophisticated program to train local residents for managerial positions, and thus it is likely that employment opportunities will be mostly limited to the same short-term contract labor offered by ArcelorMittal. Given the heightened tensions in the area and high anticipation the PACs have for local employment, a failure to meet expectations will be dangerous and could lead to more unrest.



Truck that was hijacked by protesters in the March 2011 demonstrations. Two passengers were killed when the truck ran off the road. Penoken, Grand Gedeh County, June 21, 2011.

Environment

The Putu operation is being conducted in what is known in the industry as a “greenfield” mine – meaning that it is an entirely new development. Thus, the impacts to wildlife and other ecosystems on and around the mountain will be severe and irreversible.¹³⁶ Putu is presently in the process of conducting the Environmental and Social Impact Assessment (ESIA) that was mandated in its concession agreement, and was not able to provide the research team with specific data on the projected impacts of its operations.¹³⁷ It is likely, however, that the environment will be seriously disrupted. Some civil society representatives expressed concern that Putu’s proximity to Sapo National Park, a protected wildlife and biodiversity reserve, could create problems once the mine is operational and construction of the railroad begins.¹³⁸

The company is required by contract to build a railroad from the mine to the coast, where a port will be built.¹³⁹ There are two possible routes for the railroad, with the most direct leading directly through Sapo National Park. According to Putu’s CEO, Alexey Borisov, the Forest Development Authority (FDA) of Liberia has granted Putu the

134 CICR Interview with Christopher Bailey, Superintendent, June 20, 2011; CICR Interviews with Putu management representatives; CICR Interview with the Save My Future Foundation (SAMFU), Monrovia, June 1, 2011; CICR Interview with Flora and Fauna International (FFI), Monrovia, June 16, 2011; ICG, “Liberia: How Sustainable is the Recovery?” August 19, 2011, p. 21.

135 CICR Interview with Christopher Bailey, Superintendent, June 20, 2011.

136 CICR Interviews with Putu management representatives.

137 Ibid.

138 CICR Interview with SAMFU, June 1, 2011; CICR Interview with FFI, June 16, 2011.

139 “MDA Between the Government of Liberia, Putu Iron Ore Mining Inc, and Mano River Iron Ore Ltd.,” September 2, 2010, Section 6.7; CICR Interviews with Putu management representatives.

right to build the railroad through the park, but he expressed his desire to avoid this option even if it means funding a less direct, costlier route.¹⁴⁰ The FDA denied having granted such approval, although they admitted to being aware of the possibility. In an interview, the FDA stated its opposition to such a route, but said that if such a proposal is authorized they would attempt to ensure that environmental impacts of the railroad are mitigated. If Putu decides to build the railroad through Sapo, it could have severe effects on wildlife migration and endangered species habitats. When asked if this sort of environmental impact in a national park was acceptable to the FDA, a senior official stated his view that it is not uncommon for national parks around the world to have road networks or railways.¹⁴¹

Putu's environmental consultant stated that the preliminary findings of the ESIA showed that there were numerous rare species of butterflies and insects on the mountain where iron ore exploration is presently taking place.¹⁴² The Putu mountain range likely contains a high percentage of high conservation value (HCV) forest. According to Putu's mine exploration team, its open pit mining method will remove all vegetation from a significant portion of the mountain.¹⁴³

Putu's environmental consultant stated her belief that people understand the "need for development," and are therefore willing to absorb the environmental changes of the mine.¹⁴⁴ However, participants of one PAC focus group discussion reported issues of water purity, stating that there had been problems with contamination of drinking water since Putu began its operations.¹⁴⁵ The deforestation that occurs in the course of exploration can often have negative impacts on water sources, as muddy run-off and chemical spills from exploration equipment leaks its way into the creeks that are utilized by locals as sources of drinking water.¹⁴⁶

Community Relations

As was the case with ArcelorMittal's operations in Nimba County, residents of Grand Gedeh in the areas around Putu's exploration activities reported a sense of alienation from company management.¹⁴⁷ They referred to difficulties contacting Putu for information, and similar to PACs located near ArcelorMittal's mining site, they expressed frustration at not being able to obtain copies of the concession agreement.¹⁴⁸ The community was informed of the mining operation in 2010 by a representative of the Ministry of Lands, Mines, and Energy, but reported an absence of follow-up meetings until necessitated as a response to the March riots. Putu has a community relations officer whose job it is to relate directly to local leaders and citizens, but locals still

140 Ibid.

141 CICR Interviews with government officials in Monrovia.

142 CICR Interviews with Putu management representatives.

143 Ibid.

144 Ibid.

145 CICR Townhall Interview with PAC Representatives, Tiama Town, June 23, 2011.

146 ArcelorMittal, "Western Range DSO Iron Ore Project Environmental and Social Impact Assessment, Vol. 3," September 2010.

147 CICR Townhall Interview with PAC Representatives, Tiama Town, June 23, 2011; CICR Townhall Interview with PAC Representatives, Penoken, June 23, 2011.

148 Ibid.

expressed a sense of being uninformed about Putu's operational timeline and their likelihood of becoming employed.¹⁴⁹

iii. Recommendations

Operations in the Putu valley area are still at a nascent stage, and as such the impacts on local community members have thus far been low in comparison to more advanced projects such as that of ArcelorMittal. To some extent, Putu is off to a strong start in its relations with PACs. Although indigenous communities in the Putu area were not given the opportunity to grant their Free, Prior, and Informed Consent to the mining operation, they are nonetheless willing to accept the presence of Putu, provided that their communities benefit from development projects and employment opportunities.¹⁵⁰ PACs in the Putu concession area are desperately poor, and overwhelmingly reported a sense of alienation from local government officials.¹⁵¹ It is difficult to predict the long-term stability of the project, as it is in the early stages of operation, but given that violent social unrest has already occurred in the concession area, it is vital that Putu establishes and maintains open, clear lines of communications with PACs.

In order to avoid the establishment of a dynamic of mistrust and anger, Putu should partner with local government representatives to provide an accurate, clear description of the company's plans and concrete information on the types of jobs that will be made available to local residents, when they will begin hiring, and what qualifications will be necessary for the more high-paying managerial positions. If this information is provided soon, and in a digestible, transparent format, community members can begin planning for the mining phase and adjust their expectations accordingly.

If Putu conducts a well-managed, long-term information campaign that provides local residents with sound information about the nature of contracting jobs and what opportunities and benefits PACs can expect from its operations, it may be able to avoid incidents similar to that which occurred this past spring. Although it may be challenging to clearly explain to PACs that most employment opportunities will be limited and temporary, and that managerial positions require skills which will be difficult to acquire in a short period of time, it will be much better if that is made clear now rather than for it to become apparent through practice later on.

In addition, while Putu has been mostly commendable in offering services and small-scale development projects to the surrounding communities, it is imperative that the Social Development Fund be managed in such a way that PACs benefit from its soon-to-be sizeable contributions. Because the Putu concession is in a "greenfield" site, many residents are likely unclear about what the exact effect of the mining operations will be. When they see a mountain that they regard as sacred begin to disappear in front of their eyes it will be crucial that there are development projects nearby to provide a counterweight to that stark image. To ensure that Putu and the surrounding communities enjoy a stable, symbiotic relationship, the company should:

149 Ibid.

150 Ibid.

151 Ibid.

- Ensure the widespread distribution of the Mineral Development Agreement to local communities and Grand Gedeh civil society representatives so that residents are fully informed about the company's obligations and plans;
- Conduct a public information campaign that clearly outlines what jobs will be made available to local residents, the timeline for their delivery, and their likely duration;
- Create vocational training programs for local residents that will allow them to become competitive in the application process for managerial positions;
- Implement an environmental management plan immediately that draws upon the preliminary results from the Environmental and Social Impact Assessment, and which is made available for public consumption;
- Interview at least two local residents for any managerial vacancy before making a final hiring decision;
- and use its influence on the SDF's county-level management board to ensure that development projects are approved, funded, and implemented inside its concession area and that have a positive impact on PACs near its operations.

d. Sime Darby



Sime Darby's nursery operations in Grand Cape Mount County. July 6, 2011.

i. Background

Sime Darby is a Malaysian palm oil producer that holds the lease for a 220,000-hectare concession to the northwest of Monrovia in Grand Cape Mount, Bomi, and Gbarpolu counties.¹⁵² The clearing of forest areas for use as plantation land has primarily occurred in Grand Cape Mount County so far, which is also the site of the company's nursery operations. The total investment will eventually reach over US\$3 billion dollars, with the initial plantings covering a 5,000-hectare plot of land.¹⁵³ Prior to the signing of the concession agreement, the Sime Darby plantation area was leased by Guthrie, a rubber company that was forced to leave in 2000 by rebel combatants who controlled the plantation until the United Nations peacekeeping force negotiated their departure in 2005.¹⁵⁴

Sime Darby's concession agreement, signed in 2009, is for a length of 63 years.¹⁵⁵ In the first phase of its operations, the company plans on clearing and planting over 120,000

¹⁵² Sime Darby press release, "Sime Darby to Set Roots in Liberia," May 19, 2011.

¹⁵³ "Vice President Boakai Impressed with Sime Darby," *The Analyst* (Monrovia), November 5, 2010; Executive Mansion press release, "Sime Darby Increases Investment in Liberia."

¹⁵⁴ UNMIL, "Human Rights in Liberia's Rubber Plantations."

¹⁵⁵ Executive Mansion press release, "Sime Darby Increases Investment in Liberia."

hectares by the year 2020.¹⁵⁶ The project currently employs 1,700 people, 1,000 of which are former employees of the rubber plantation who are continuing to tap the former Guthrie rubber trees until the time when Sime Darby is able to clear them and plant palm trees.¹⁵⁷ Sime Darby's impact on local communities is undeniable and comprehensive; the main highway that leads from Monrovia to the Sierra Leonean border cuts through the plantation area and the company's presence is obvious to anyone who passes through. Forest areas have been cleared and gates demarcating the entrance to plantation land are a common sight.

Without question, Sime Darby is the most controversial concessionaire presently operating in Liberia. While ArcelorMittal received a great deal of attention due to the renegotiation of its contract and its status as one of the first foreign investors to enter the country after the war, the level of negative media attention and community frustration associated with Sime Darby is unmatched by any concession in present-day Liberia. During the period when researchers visited the country to conduct this research, a Liberian civil society organization initiated a lawsuit against the company, local newspapers printed editorials attacking the company's conduct, and a public statement prepared by representatives from 15 communities that will be affected by Sime Darby's expansion plans referred to "disappoint[ment] over the continuous lack of protection and respect for our distinct ways of life, traditions and customs by these concessions."¹⁵⁸

Sime Darby was mentioned repeatedly by civil society activists in Monrovia as a major violator of community rights, and a UN official speaking privately told researchers that in her conversations with Project-Affected Community (PAC) representatives in Bomi County she had been warned of impending violence against its management officials.¹⁵⁹ PACs have promised "stiff resistance" to Sime Darby's expansion plans, and interviews with community members inside its initial plantation area revealed increased food scarcity as a corollary effect of the company's operations.¹⁶⁰ These tensions boiled over in December 2011, when PACs and Sime Darby contractors rioted over fears that their farmland would be clear-cut by the company, seizing bulldozers and other equipment. The incident led to the firing of 700 contractors and precipitated an in-person visit by President Johnson-Sirleaf, who admonished PACs to allow the government to negotiate on their behalf rather than continue to cause problems for the company.¹⁶¹

Sime Darby points to its campaigns of information-sharing and public dialogue regarding its operations, and it is listed on its website as a founding member of the

156 Sime Darby press release, "Sime Darby to Set Roots in Liberia."

157 CICR Interview with Sime Darby management representatives.

158 Wolokolie, Alva, "Sime Darby's Trouble Deepens," *The Daily Observer* (Monrovia), July 29, 2011; Editorial, "The Government of Liberia Should Fix the Sime Darby Concession Problem Now," *The Daily Observer*, August 1, 2011; "Halt Sime Darby Plantation Expansion," *The Analyst*, July 14, 2011.

159 CICR Interview with SDI, Monrovia, June 2, 2011; CICR Interview with Green Advocates, Monrovia, August 10, 2011; CICR Interview with a United Nations official.

160 "Halt Sime Darby Plantation Expansion," *The Analyst*; CICR Townhall Interview with PAC Representatives, Kelia Town, Grand Cape Mount County, July 6, 2011; CICR Townhall Interview with PAC Representatives, Konjah, Grand Cape Mount County, July 5, 2011.

161 "Ellen Ends Deadlock at Sime Darby Plantation in Grand Cape Mount," *The Daily Observer* (Monrovia), January 14, 2012; "LIBERIA: 500 Contractors Dismissed at Sime Darby," *Global News Network Liberia* (Monrovia), December 15, 2011.

Roundtable on Sustainable Palm Oil (RSPO).¹⁶² However, its Liberian operations have not been certified as RSPO-compliant, and indigenous tribes affected by its operations were never offered the ability to grant their free, prior, and informed consent for the loss of their traditional lands – a key provision of the RSPO guidelines. In fact, until President Johnson-Sirleaf intervened, communities in the Sime Darby plantation had begun the process of initiating a complaint against the company to the RSPO.¹⁶³ The company has also failed to institute out-grower programs that could compensate for the loss of farmland experienced by PACs inside its plantation zones.¹⁶⁴ Its 2010 Annual Report describes “support for local communities” as a key aspect of its Corporate Social Responsibility policy, but PAC representatives interviewed by the researchers of this report expressed deep sentiments of anger and fear regarding the company’s operations.¹⁶⁵

ii. Community Impacts

Socio-Economic Development

According to an official with the Ministry of Lands, Mines, and Energy, agricultural concessions do not include provisions for Social Development Funds in the same manner as those required in mining agreements such as that of Putu and ArcelorMittal because they do not involve the extraction of non-renewable resources.¹⁶⁶ However, the Sime Darby contract mandates the creation of three funds that could potentially be used to compensate for the social impacts of its operations, which have been broad and severe. There is an “Oil Palm Development Fund,” a “Rubber Development Fund,” and a “Community Development Contribution.”¹⁶⁷ The first fund – which will ultimately be the largest – will not receive any contributions until the palm trees become productive in the next three to five years, but contributions should already have been made to the latter two funds.¹⁶⁸ The “Community Development Contribution” is calculated at US\$5 dollars per hectare of “developed” land per year, and the Rubber Development Fund contribution is calculated at 1 percent of the value of rubber sales.¹⁶⁹

Contributions to these two funds have been opaque, and are not subjected to the management structure and restrictions of the Dedicated Funds Committee set up to manage the iron ore mining-related SDFs. Company representatives were unable to provide researchers with information on contributions to the two funds, and there is no mechanism to ensure that development projects are funded in areas where the

162 CICR Interview with Sime Darby management representatives; Sime Darby online site, “Sime Darby Plantation and RSPO Certification.”

163 “Ellen Ends Deadlock at Sime Darby Plantation in Grand Cape Mount,” *The Daily Observer* (Monrovia), January 14, 2012.

164 Ibid.

165 Sime Darby, “Annual Report 2010,” October 2010, p. 87; CICR Townhall Interviews with PAC Representatives, Beajah, Besau, and Golodee, Bomi County, Kelia, Konjah, and Gbah, Grand Cape Mount County, and Gbama, Gbarpolu County, July 4-7, 2011.

166 CICR Interviews with representatives of the GoL Ministry of Lands, Mines, and Energy.

167 “An Act to Ratify the Amended and Restated Concession Agreement Between the Republic of Liberia and Sime Darby Plantation (Ltd),” GoL, July 29, 2009, Sections 19.5 – 19.7; CICR Interview with Sime Darby management representatives, July 20, 2011.

168 Ibid.

169 Ibid.

livelihoods of farmers have been significantly impacted.¹⁷⁰ A Sime Darby management representative stated in an interview that he was unaware of whether a structure has been developed to ensure transparent management of the “Community Development Contribution,” despite the fact that the concession agreement mandates that it nominate half of the board that will oversee the fund. In fact, Sime Darby’s Chief Financial Officer in Liberia seemed unsure of whether any payments have even been made at all to this fund. County administrators appeared unclear of whether such a fund exists, let alone who is tasked with managing it.¹⁷¹

The concession agreement also mandates that Sime Darby build facilities for its employees that will include clinics, schools, housing, and other social services.¹⁷² While this will significantly improve the quality of life of those who obtain employment with the company, they will not be open to use by the large number of local residents who will not be incorporated into the company’s workforce. While the company hopes to eventually employ more than 30,000 Liberians, this is only a fraction of the population that lives in the concession area.¹⁷³ The company is also mandated to eventually build a hospital in the central city of Tubmanburg, but this provision does not enter into force until 2019.¹⁷⁴ At present, the majority of development activities undertaken by the company are intended to service its growing workforce rather than members of the PACs who are impacted by its operations.



Editorial Cartoon from *The Daily Observer* (Monrovia), August 2, 2011. Checkpoints such as the one depicted were a prominent feature of the country’s civil war.

Livelihood

The greatest impact that the company’s operations have had on local residents has been related to the issue of land use. Of the four concession areas that were visited by the researchers of this report, Sime Darby was the site of the most vivid expressions of dissatisfaction regarding land dispossession. PACs that had been encircled by plantation land reported an increase in food scarcity due to the loss of traditional farmlands, and spoke of company rules that prohibit them from utilizing the slash-and-

burn farming practices that are the bedrock of food cultivation in Liberia.¹⁷⁵ Swamplands that were previously used for rice cultivation were filled with dirt and palm

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² “An Act to Ratify the Amended and Restated Concession Agreement Between the Republic of Liberia and Sime Darby Plantation (Ltd),” GoL, July 29, 2009, Sections 9, 10, and 11.

¹⁷³ Brown, Kevin, “Sime Darby Eyes Palm Oil Expansion in Africa,” *Financial Times*, February 27, 2011.

¹⁷⁴ “An Act to Ratify the Amended and Restated Concession Agreement Between the Republic of Liberia and Sime Darby Plantation (Ltd),” GoL, July 29, 2009, Section 10.

¹⁷⁵ CICR Townhall Interview with PAC Representatives, Kelia Town, July 6, 2011; CICR Townhall Interview with PAC Representatives, Konjah, July 5, 2011.

seedlings were planted over them, leading to a shift in dietary habits from rice to cassava and other plants.¹⁷⁶ PACs in Grand Cape Mount County reported having to travel to Monrovia to purchase food supplies, whereas they were previously able to supply themselves with sustenance through farming activities.¹⁷⁷

Sime Darby representatives verified that communities within their plantation zone, which extends to nearly 50 percent of Bomi County alone, will no longer be able to conduct traditional farming techniques in its concession area due to the risk that the fires will damage the palm trees.¹⁷⁸ This adverse impact on the food security of rural, indigenous Liberians is arguably a violation of international human rights law and is a large source of the suspicion with which Sime Darby is viewed by communities in areas where the company plans to expand its operations next.



Workers leaving their shift at Sime Darby's nursery in Grand Cape Mount County. July 6, 2011.

While an “out-grower” program has been theoretically developed to offset some of these impacts, as of the writing of this report no farmers have been incorporated into that program. Forty-four thousand hectares of land were set aside for the out-grower program in the concession agreement.¹⁷⁹ This would allow local farmers to cultivate palm trees with a guarantee that Sime Darby will purchase the palm kernels they produce, but neither the government nor the company has invested in the creation of this program despite a provision in the concession agreement that requires its establishment within three years of the signing date.¹⁸⁰ For farmers and community members who are not able to obtain jobs, hunger will be a permanent condition unless there is an adequate strategy to deal with this issue. Exacerbating the difficulties with Sime Darby's operation is the fact that palm trees do not become productive for years, and hence government revenues from the concession are expected to be largely insignificant in the next decade.¹⁸¹ Thus, PACs who are no longer able to cultivate food will not be able to benefit from local reinvestment of concession revenues until well after they have been forced to permanently cope with livelihood disruption.

While the company claims that employment opportunities will be provided to members of PACs to offset these problems, in practice the jobs are limited in number, and some

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ CICR Interview with Sime Darby management representatives, July 20, 2011.

¹⁷⁹ “An Act to Ratify the Amended and Restated Concession Agreement Between the Republic of Liberia and Sime Darby Plantation (Ltd),” GoL, July 29, 2009, Section 15.2.

¹⁸⁰ Ibid.

¹⁸¹ IMF, “Liberia: 2010 Article IV Consultation,” p. 15.

PAC interviewees reported being asked to provide bribes to managers in exchange for hiring preference.¹⁸² While Sime Darby denies such practices, company representatives admit they have not spoken directly to PAC members regarding their experiences with the application process. Those jobs that are available are generally difficult and low-paying; contract laborers are paid around US\$3 dollars per day whereas full employees receive US\$5 dollars.¹⁸³ While Sime Darby claims that the company has hired 1,700 full employees and only 400 contractors, the perception in one PAC townhall interview was that most of the workers are contractors.¹⁸⁴ According to local media reports, some workers receive as low as US\$2 dollars per day; anger over this low compensation led one former lawmaker to threaten legal action against the company for corporate malpractice.¹⁸⁵

Compounding the challenges faced by Sime Darby is the fact that it has agreed to prioritize the incorporation of rubber tappers from the former Guthrie plantation into its workforce, meaning that there are less available opportunities for those who are affected by the new expansions.¹⁸⁶ These workers, who continue to cultivate rubber that is sold by Sime Darby, recently referred to the conditions in the plantation as “modern-day slavery,” and the Secretary-General of the Workers’ Union of Sime Darby admitted to concerns over their health and welfare.¹⁸⁷

In December 2011, contractors were involved in a riot over Sime Darby’s conduct in the area and its practice of clear-cutting local farmland. The company responded to this incident by firing 700 of them, despite the fact that those jobs are billed as a key means of compensation for livelihood impacts suffered by PACs.¹⁸⁸

Environment

Sime Darby financed an extensive Environmental and Social Impact Assessment (ESIA) that was conducted by Green Consultants, an environmental consulting group that also conducted the ESIA for GoldenVeroleum. The report found that land use in the area is primarily characterized by subsistence farming that involves slash-and-burn practices, which has reduced the majority of the forest to secondary and tertiary forest and brush. The assessment also found that there is a low content of high conservation value flora and fauna.¹⁸⁹

182 CICR Informal Interviews with Sime Darby Employees, Gbah, Bomi County, July 6, 2011; CICR Townhall Interviews with PAC Representatives, Konjah, July 5, 2011; CICR Townhall Interviews with PAC Representatives, Golodee, Bomi County, July 5, 2011.

183 CICR Informal Interviews with Sime Darby Employees, Gbah, July 6, 2011; CICR Interview with Sime Darby management representatives, July 20, 2011.

184 CICR Townhall Interview with PAC Representatives, Beajah, Bomi County, July 4, 2011.

185 Perry, Roland, “Lawsuit Hangs Over Sime Darby Plantation,” *The Informer*, August 12, 2010.

186 CICR Interview with Sime Darby management representatives.

187 “Slavery at Sime Darby,” *The New Dawn* (Monrovia), December 20, 2011.

188 “Ellen Ends Deadlock at Sime Darby Plantation in Grand Cape Mount,” *The Daily Observer* (Monrovia), January 14, 2012; “LIBERIA: 500 Contractors Dismissed at Sime Darby,” *Global News Network Liberia* (Monrovia), December 15, 2011.

189 Greencons, Inc, “Sime Darby Environmental and Social Impact Assessment,” March 2010, (On File with CICR).

The report identifies the main areas of environmental impact to be soil erosion, water contamination, and destruction of wildlife. These three negative environmental impacts can be kept to a minimum through the maintenance of 20-meter buffer zones of natural forest that protects the vital interface between land and bodies of water known as “riparian zones.”¹⁹⁰ Riparian zones include swamps, streams and riverbanks that provide important ecosystem services that make it possible for local communities to fish and grow rice. Despite buffer zones around riparian zones being one of the central aspects of Sime Darby’s stated environmental conservation plan, the company has drained and filled valuable swamps and planted them with palm trees.¹⁹¹ The Environmental Protection Agency (EPA) imposed two fines against Sime Darby for a total of US\$50,000 dollars due to “non-compliance with the terms and conditions” of their environmental permit, as well as purported non-payment of compensation to farmers.¹⁹² This violation calls into question Sime Darby’s commitment to the environmental sustainability of its project and flags it as requiring acute regulatory monitoring and strict fines for non-compliance.

The development of palm oil plantations inevitably leads to mass destruction of forests that serve as some of the world’s most powerful carbon sinks.¹⁹³ Additionally, the putrefaction of biomass cleared during planting results in methane emissions, and the tilling of soil releases carbon dioxide stored in the soils. While these effects are consistent with any large agricultural project that takes place inside a tropical zone, the implications for global climate change are severe, given the global expansion and scale of the palm oil industry.¹⁹⁴ Palm trees do absorb some carbon dioxide, and Sime Darby’s ESIA identifies areas of forest that will become conserved areas intended to partially mitigate the impact of its clear-cutting.¹⁹⁵

Community Engagement

According to community members, local government officials, and company management staff, Sime Darby held meetings in regional hubs to inform people about their plan for establishing the plantation after the concession agreement was signed.¹⁹⁶ However, PAC interviewees expressed the view that they did not understand just how small the forest area they would be granted to farm on would be, and said that they did not realize that they would no longer be able to use slash-and-burn practices. Resentment directed towards the company was prevalent in virtually every focus group discussion held inside PACs.¹⁹⁷

190 Ibid.

191 CICR Interviews with EPA officials.

192 Ibid; “Sime Darby Company Fined US\$50,000,” *Heritage* (Monrovia), October 7, 2011.

193 Center for Science in the Public Interest, “Cruel Oil: How Palm Oil Harms Health, Rainforest, and Wildlife,” 2005, p. 10.

194 Chua, Grace, “New Research Tracks Palm Oil’s Carbon Footprint,” *The Jakarta Globe* (Jakarta), March 12, 2011.

195 Greencons, Inc, “Sime Darby Environmental and Social Impact Assessment,” March 2010.

196 CICR Interview with Sime Darby management representatives; CICR Interview with Sam Brown, Superintendent of Bomi County, Tubmanburg, July 6, 2011; CICR Townhall Interview with PAC Representatives, Beajah, July 4, 2011.

197 CICR Townhall Interviews with PAC Representatives, Beajah, Besau, and Golodee, Bomi County, Kelia, Konjah, and Gbah, Grand Cape Mount County, and Gbama, Gbarpolu County, July 4-7, 2011.

The general sense among PAC members interviewed for this report was that the company had not engaged in any meaningful consultative process with the local indigenous representatives or members of PAC civil society.¹⁹⁸ While Sime Darby appears to have begun making efforts to secure the support of PACs for its corporate operations by conducting powerpoint presentations on the benefits, they do not offer those communities the opportunity to negotiate adequate compensation for the loss of their traditional lands. Moreover, its initial expansion into Grand Cape Mount County was not accompanied by such presentations; it was outrage over the lack of transparency of the company's operations that prompted their development for current expansion operations.¹⁹⁹

Overall, PAC interviewees expressed deep frustration at the lack of adequate mechanisms available to address their grievances with Sime Darby's operations. One town chief said that she felt "disenchanted" with the government of Liberia for its inattentiveness to the impact that the Sime Darby concession is having on PACs.²⁰⁰ Numerous interviewees stated their view that neither the government nor the company is interested in listening to PAC complaints, let alone addressing them. On that point, many expressed frustration that Sime Darby management staff are nearly impossible to contact, an assertion anecdotally supported by how difficult it was for the research team to secure a meeting with company representatives.²⁰¹

In fact, one District Commissioner – a county government official with responsibility for a large number of townships within a given area – told the research team that the company rarely, if ever, communicates with him about its operations and that despite his position as a key government representative in the area it is extremely difficult for him to reach company representatives to discuss community issues.²⁰² Given the local government's crucial role in monitoring conditions within the concession area, this is troubling and reflects the lack of strong, formalized mechanisms to ensure communication between the company, government, and PACs. Furthermore, the county administrative offices had no copies of the concession agreement document, and both the local land commissioner and county inspector stated that they had never been given a copy of the document.²⁰³

iii. Recommendations

Sime Darby's Social Policy "recognizes that development needs to be socially beneficial," and mandates the company to "identify, through local consultations, potential social benefits and determine how they might be enhanced to the mutual benefit of the company and local community; [and] to ensure that any negotiations concerning compensation for loss of legal or customary rights are dealt with through a documented system that enables indigenous peoples, local communities, and other

198 Ibid.

199 CICR Interview with Sam Brown, Superintendent of Bomi County, July 6, 2011.

200 CICR Townhall Interview with PAC Representatives, Beajah, July 4, 2011.

201 CICR Townhall Interview with PAC Representatives, Konjah, July 5, 2011.

202 CICR Interview with a District Commissioner from Bomi County, July 4, 2011.

203 CICR Interview with local government officials in Bomi County.

stakeholders to express their views through their own representative institutions.”²⁰⁴ While the phrase “express their views” is vague and does not necessarily reflect a need to obtain the consent of PACs, better mechanisms are required to ensure that Sime Darby is in compliance with its own policies in this regard. In particular, the company should hold regular townhall meetings with PACs who live within its area of operations, rather than only holding one meeting to brief them prior to the commencement of plantation expansion.

Moreover, Sime Darby considers itself a founding member of the RSPO, and on its website it states its intention to certify all of its plantations under RSPO guidelines.²⁰⁵ Were a thorough, professional certification to be conducted right now it is highly unlikely that Sime Darby’s Liberian plantation operations would meet the standards of those guidelines. RSPO guidelines repeatedly stress the need to respect the customary land rights of indigenous peoples even where they do not hold legal title, and Criterion 7.5 states that “No new plantings [will be] established on local peoples’ land without their free, prior and informed consent.”²⁰⁶ In fact, the principle of “free, prior, and informed consent” is repeatedly stressed throughout the RSPO guidelines.²⁰⁷

Operationally, this would require the company to engage with tribal representatives and civil society representatives from the PACs in negotiations *before* they expand into their traditional lands, provide adequate time for PACs to solicit legal and technical advice from Liberian civil society, and allow for them to refuse expansion into their lands if they so choose. It is unacceptable that Sime Darby can acquire RSPO certification for its plantations in Malaysia but not in Liberia.²⁰⁸ Interestingly, there is a provision in the Sime Darby concession agreement that mandates the company to observe RSPO standards “with respect to the environment,” but as the term “environment” is not clearly defined in the agreement it could be argued that this provision includes social conditions within the concession area.²⁰⁹ Given that the Environmental Protection Agency is responsible for monitoring the social impacts of concessionaire operations as a part of its environmental mandate, it is possible that the government would be within its rights to apply that provision of the concession agreement to all of Sime Darby’s operations and compel them to submit themselves to RSPO certification. Under such an interpretation, it is likely that Sime Darby is violating the terms of its concession agreement.

Overall it is clear that Sime Darby must do a better job of maintaining good relations with community members inside its concession zone. Tensions are high, and despite assurances to researchers by local youth leaders in Bomi County that resistance to the company’s operations will be “non-violent,” they claimed that it would nonetheless be

204 Sime Darby, “Social Policy,” April 2008.

205 Sime Darby online site, “Sime Darby Plantation and RSPO Certification.” “Sime Darby Plantation is in the midst of ensuring that all its Strategic Operating Units are in a state of readiness for the RSPO certification process. We aim to have all SOUs certified by FY 2010/11.”

206 Roundtable on Sustainable Palm Oil (RSPO), “RSPO Principles and Criteria for Sustainable Palm Oil Production,” March 2006, Criterion 7.5.

207 Ibid; for details see Section VI: International Standards and Best Practices.

208 Sime Darby online site, “List of RSPO Certified SOUs,” July 2011.

209 “An Act to Ratify the Amended and Restated Concession Agreement Between the Republic of Liberia and Sime Darby Plantation (Ltd),” GoL, July 29, 2009, Section 16.

“fierce.”²¹⁰ This resistance became a reality in December 2011, when local riots over the company’s conduct resulted in the seizing of Sime Darby’s construction equipment and the eventual dismissal of 700 contractors. Responding to these events, President Johnson-Sirleaf visited the plantation and asked PACs to respect the government’s sovereignty over concessionaire relations and trust that FDI projects will eventually produce economic benefits for the country.²¹¹ Silas Siakor, lead campaigner for the Sustainable Development Initiative (SDI), penned an opinion-editorial in the *New York Times* regarding her visit, saying, “[b]y dictating that communities’ only available means of redress is through the state — which has a less-than-sterling track record of prioritizing rural residents’ rights over foreign business interests — Mrs. Johnson Sirleaf is obstructing more effective methods of achieving justice.”²¹²

Communities in Bomi and Gbarpolu Counties have seen the circumstances in Grand Cape Mount County, where towns and villages have dealt with profound cultural changes, a loss of access to traditional sacred sites, and the effects of food scarcity without any concurrent benefits of development or widespread employment, and are fearful that they will be subjected to similar treatment.²¹³ Sime Darby will have to negotiate with these communities in a much different manner – a point that the company apparently acknowledges given that it recently initiated new discussions with PACs after recent unrest among workers and community members in its area of operations.²¹⁴ Focus group discussions and townhall meetings conducted by researchers in the area of Sime Darby’s operations were emotional, with many speakers expressing a high degree of suspicion and discontent towards the company.²¹⁵

Moreover, it is not enough to simply inform indigenous communities about the nature of their corporate operations and solicit their consent. Due to the severity of the impact that Sime Darby has had on the communities where it presently operates, it should offer adequate compensation to villages whose way of life has been damaged by its operations. Merely paying farmers for one harvest’s worth of crops is not enough; while iron ore concessions place stress on local farmers inside exclusionary zones, their impact is not nearly as comprehensive as that of the clear-cutting of forests that occurs in the course of palm oil development. The technique employed by Sime Darby of leaving villages with a minimal encirclement of forest and then forcing them to cease utilizing traditional farming methods is a clear path to food insecurity for those villages; forcing an already poor rural population into increased hunger is a practice that no responsible company should be associated with.

210 CICR Townhall Interview with PAC Representatives, Beajah, July 4, 2011.

211 “Ellen Ends Deadlock at Sime Darby Plantation in Grand Cape Mount,” *The Daily Observer* (Monrovia), January 14, 2012; “LIBERIA: 500 Contractors Dismissed at Sime Darby,” *Global News Network Liberia* (Monrovia), December 15, 2011.

212 Siakor, Silas and Knight, Rachel, “A Nobel Laureate’s Problem at Home,” opinion-editorial, *The New York Times*, January 20, 2012.

213 CICR Townhall Interviews with PAC Representatives, Beajah, Besau, and Golodee, Bomi County, and Gbama, Gbarpolu County, July 4-7, 2011.

214 “Ellen Ends Deadlock at Sime Darby Plantation in Grand Cape Mount,” *The Daily Observer* (Monrovia), January 14, 2012.

215 Ibid; CICR Townhall Interviews with PAC Representatives, Kelia, Konjah, and Gbah, Grand Cape Mount County, July 5-6, 2011.

Compensation does not need to be entirely financial. The company can set up out-grower programs, train farmers on alternate methods of crop cultivation, provide impacted communities with economic opportunities other than farming or direct employment, and allow communities in undeveloped areas to negotiate the fair use of adequate land for crop cultivation inside the plantation area. Rather than view the 44,000 hectares that the concession agreement sets aside for the out-grower program as a single tract of land, the company could allow towns that fall within its plantation operations to cultivate palm trees along with other food crops in the areas adjacent to their residences. This form of “intercropping” would allow PACs to ensure they can continue to cultivate food while still allowing Sime Darby to purchase palm products from farmers once the trees become productive.

By interacting with traditional tribal leadership institutions in forums that are comfortable for indigenous peoples in the area, Sime Darby may be able to begin repairing its damaged reputation in the area and avoid social unrest and other forms of tension between the company and those who live in its concession area. Threats to the company are becoming routine, and some PAC interviewees described the rising anger as likely leading to some form of mass demonstrations.²¹⁶ CICR researchers experienced the frustration with Sime Darby in a vivid manner: participants in one Bomi County townhall interview inaccurately thought that the meeting would be with Sime Darby management representatives, and a number of participants walked on foot for hours for the chance to express their grievances to the company. The tension level was immediately apparent to the researchers, who were confronted with a group of extremely angry residents who only became calm once they realized the true nature of the meeting. Sime Darby acknowledges that this investment was risky; it is exacerbating that risk through its behavior. It is not too late for the company to reestablish good relations with PACs within its operational zone, however, and to that end it should:

- Institute a moratorium on further expansion until it has an adequate plan to ensure farmers and communities do not experience food scarcity as a result of its operations;
- Enter into negotiations with indigenous peoples who live inside the areas where the company intends to expand its operations and solicit their free, prior, and informed consent for those operations;
- Immediately subject its Liberian operations to independent RSPO certification and auditing, with the aim of becoming compliant;
- Allocate resources to the development of a well-managed outgrower program that allows PACs to remain on their traditional lands and intercrop palm trees with traditional Liberian food products;
- Assist villages in the development of tilapia ponds to balance out the loss of fish protein from drained swamps;

216 CICR Townhall Interview with PAC Representatives, Kelia, July 6, 2011.

- Determine whether it has made the requisite payments to the County Development Contribution and Rubber Development Fund and ensure that funds are disbursed for the benefit of those affected by its operations;
- Publicize its plans to select its five nominees for the management board of the County Development Contribution and ensure they are drawn from a representative pool of civil society and indigenous community leaders from PACs;
- Ensure that the County Development Contribution management board directly solicits input from PACs on what their development priorities are so that project selection is done on a “bottom-up” basis;
- Investigate allegations of solicitation on the part of managers in exchange for employment;
- Institute a structure for regular, participatory, transparent meetings with local community members where dialogue can take place regarding the impacts of its operations on local areas;
- and hire community liaisons directly from the PACs so that there are accountable Sime Darby representatives who are able to effectively work with local communities and can be easily reached by members of those communities.

e. GoldenVeroleum Liberia



Employee of GoldenVeroleum working at the company's nursery in Sinoe County. June 22, 2011.

i. Background

In September 2010, GoldenVeroleum Liberia, a subsidiary of the Indonesian conglomerate Sinar Mas, was granted a 65-year concession to develop a 250,000-hectare palm oil plantation that will include portions of Sinoe, River Cess, Grand Kru, and Maryland Counties.²¹⁷ The size of the investment is estimated at US\$1.6 billion dollars, and – as in the case of Sime Darby – will include the widespread clear-cutting of forest areas presently utilized by indigenous communities.²¹⁸ The concession area is virgin; the land granted to GoldenVeroleum in the concession agreement has never been used for large-scale industrial agricultural production, and in some cases the company will be negotiating with a population that has never experienced Foreign Direct Investment.²¹⁹

The company has planted and established a nursery, where its palm trees will be incubated, and is in the initial phases of developing a 33,000-hectare plantation located a

217 Suga, Masami and Collins, Sean, "Liberia, Golden VerOleum Plan to Invest \$1.6 Billion in a Palm Oil Complex," *Bloomberg News*, September 2, 2010; GoldenVeroleum Liberia online site, "Vision for Sustainable Poverty Reduction in Liberia."

218 Ibid; CICR Interview with GoldenVeroleum management representatives, Monrovia, July 11, 2011.

219 CICR Interviews with local government officials in Sinoe County.

short drive north of the city of Greenville in Sinoe County.²²⁰ Whereas Sime Darby's operations are located close to the capital city of Monrovia and can be reached easily by journalists, researchers, and other interested observers, GoldenVeroleum's plantation is located in an extremely inaccessible region. The drive from Monrovia to Greenville can take as long as two days during the rainy season, and the city does not even have Internet access for government employees.²²¹ Thus, the monitoring of this concession will be extremely challenging.

GoldenVeroleum is an important case study due to its nascent stage of operations. It is in this period that the company will be able to choose whether it will prioritize sound community relations and responsible environmental management – or alternately, follow the poor example of Sime Darby and be confronted with hostility and negative public attention. While discussions in Project-Affected Communities (PACs) reflect overall positive signs, there is also cause for concern. During the initial stages of Sime Darby's operations it too was viewed as a potential source of local benefits by PACs; it was only after livelihood disruptions became widespread that public sentiment began to turn against the company.²²²

Although there were some grievances mentioned in PAC interviews, GoldenVeroleum so far enjoys a relatively strong reputation in the county and among its indigenous peoples, who hope that the company's presence will bring employment, development, and an increased standard of living.²²³ However, GoldenVeroleum's plans to clear forest areas around towns and villages that lie within its concession area will likely be met with resistance unless the company anticipates the impacts of its operations and formulates compensation strategies prior to expansion.

Presently, negotiations are taking place between the company and local communities regarding the amount of land that will be granted to villages for use as farms, and some farmers have begun to receive compensation for crops that have been destroyed in the course of GoldenVeroleum's initial planting efforts.²²⁴ Residents of PACs seemed unsure of the amount of land in their district that will be converted to a palm plantation, and one Paramount Chief reported feeling coerced to grant his consent for GoldenVeroleum's plan to clear the forest around his community.²²⁵ GoldenVeroleum should now, before it begins large-scale operations, afford communities the right of free, prior, and informed consent in negotiations while simultaneously ensuring that the extensive livelihood impacts experienced by PACs in the Sime Darby concession are either avoided outright or adequately mitigated.

220 Greencons, Inc, "GoldenVeroleum Environmental and Social Impact Assessment," February 2011, (Sections on File with CICR).

221 CICR Interviews with local government officials in Sinoe County.

222 Binda, Stephen and Kennedy, George, "Sime Darby Restores Guthrie's Pride," *The Daily Observer*, January 25, 2010.

223 CICR Townhall Interviews with PAC Representatives, Morrisville and Plusunnie, Sinoe County, June 30, 2011.

224 Ibid; CICR Informal Interviews with PAC Representatives, Butaw, Sinoe County, June 29, 2011.

225 Ibid.

ii. Community Impacts

Socio-Economic Development

As is the case with Sime Darby, the GoldenVeroleum concession agreement mandates the creation of two separate funds: the “Oil Palm Development Fund” and the “Community Development Contribution.”²²⁶ Corporate contributions to the first fund are determined as being a percentage of the company’s sales of palm products cultivated in Liberia, whereas the second fund is calculated at a rate of US\$5 dollars per hectare of “developed” land per year. The concession agreement mandates that this fund be used for “development purposes,” and that composition of the ten-person management board be “selected by the surrounding communities, Government, and Investor.” Of these ten persons, five are to be nominated by GoldenVeroleum.²²⁷ Although initial contributions to this fund are low, they are valuable nonetheless, and a responsible management structure with authority to use the fund should be formed sooner rather than later.

While the investment is still extremely new, as of September the concession agreement will have been in force for a year, and GoldenVeroleum will owe the Liberian government an unspecified payment into the Community Development Contribution fund. In order to accurately calculate the size of that fund, the government can utilize local monitoring capacity and communicate with GoldenVeroleum about how many hectares it has “developed,” with the contribution placed in an interest-bearing account until a management structure is selected to spend the funds. This fund has the capacity to help offset the impacts of the company’s operations on local livelihoods, and thus it is important that it is managed transparently and incorporates the voices of PACs in project selection.

GoldenVeroleum has made some strong initial attempts to build a good reputation among residents in Sinoe County. To that end, it has provided funding for the construction of police stations, cleanup efforts in the city of Greenville, and community activities such as sporting events.²²⁸ Like the other agricultural concessionaires, it is mandated to build schools, clinics, and housing for company employees.²²⁹ These facilities, however, will not be made available to members of PACs who do not gain employment with the company, a fact that was not clearly understood by most interviewees.²³⁰ While the concession agreement does include a provision for the construction of a hospital by 2020, until that time there are no obligations for the company to provide development infrastructure in any of the affected counties except for its own full-time employees.²³¹ The company has, however, contributed

226 “An Act to Ratify the Concession Agreement Between the Republic of Liberia and GoldenVeroleum (Liberia) Inc.,” GoL, September 1, 2010, Articles 19.7 and 19.8.

227 Ibid.

228 CICR Interview with Milton Teah Jay, Superintendent of Sinoe County, Greenville, June 28, 2011; CICR Interviews with civil society representatives in Sinoe County.

229 “An Act to Ratify the Concession Agreement Between the Republic of Liberia and GoldenVeroleum (Liberia) Inc.,” GoL, September 1, 2010, Articles 9, 10, and 11.

230 Ibid; CICR Townhall Interviews with PAC Representatives, Morristown and Plusunnie, June 30, 2011.

231 Ibid.

US\$100,000 dollars to a scholarship fund intended to train agricultural students who may obtain management positions with the company after graduation.²³²

Livelihood

GoldenVeroleum's operations – like Sime Darby's – will necessitate the clear-cutting of forests in order to plant palm trees.²³³ The concurrent changes to local indigenous peoples' way of life are likely to be profound, and despite GoldenVeroleum's best intentions it is probable that the transition will be difficult for people inside the concession area. In an interview, GoldenVeroleum management officials expressed their hope that the company will be able to hire all PAC members who wish to gain employment, but this is unrealistic and highly unlikely.²³⁴ For those who are not incorporated into the company's workforce, it is crucial that out-grower programs are set up to include PACs in the company's operations, that these programs are located near existing population centers, and that intercropping of food products is allowed in order to avoid food shortages.



Townhall interview participants, Morrisville, Sinoe County, June 28, 2011.

The company's concession agreement allows for an alarmingly broad policy of resettlement within its area of operations. The agreement states that GoldenVeroleum may "request that certain settlements be relocated if [it] can demonstrate to Government's satisfaction that such existing settlements and their inhabitants would impede [GoldenVeroleum's] development of the Concession Area and would interfere with [it's] operations."²³⁵ Compensation for such resettlement is capped by the agreement at US\$200 dollars *per hectare* of land requiring resettlement, except where the government is willing to expend its own funds.²³⁶ This provision allows for widespread displacement of indigenous communities without their consent, aiming to "minimize the number of enclaves within the Concession Area in which inhabitants are permitted to remain."²³⁷ In other words, the concession agreement allows GoldenVeroleum to request that the government move indigenous peoples from their villages into large settlements without any mandate to provide them with social services or adequate resettlement compensation.

In an interview, GoldenVeroleum managers stated their hope that villagers will not be asked specifically to move, but rather will move on their own once they see the benefits

232 CICR Interview with Milton Teah Jay, Superintendent, June 28, 2011.

233 CICR Interviews with GoldenVeroleum management representatives.

234 Ibid.

235 "An Act to Ratify the Concession Agreement Between the Republic of Liberia and GoldenVeroleum (Liberia) Inc.," GoL, September 1, 2010, Article 4.3.

236 Ibid.

237 Ibid.

of relocating to centralized locations.²³⁸ Such benefits, however, are unclear, as the concession agreement does not mandate the construction and funding of social services for people in those centralized settlements, and their location has not yet been defined. Such an action seems difficult to envision; expecting rural villagers and their customary tribal leaders to leave their traditional homes and cluster themselves together without any concurrent benefits is almost certain to produce conflict. Resettlement initiatives conducted without the Free, Prior, and Informed Consent of indigenous peoples are highly irresponsible in any context, let alone that of a post-war country in a delicate phase of rebuilding trust between citizens and the government. Indeed, Sinoe County is inhabited largely by members of the Kru ethnic group, an indigenous community that has a long history of forcefully resisting territorial encroachment by the Liberian state.²³⁹

Presently, the company is in the process of negotiating compensation for farms in the areas where it is beginning its operations.²⁴⁰ In this regard, it is utilizing the same “one-off” compensation scheme that many observers consider to have been inadequate in other concessions.²⁴¹ Given the fact that affected villagers will lose their farmland permanently and face significant barriers to farm relocation – as the forest will be clear-cut throughout the plantation expansion area – payment for only one harvest will not be enough to guarantee that members of PACs will have the financial stability to adjust to the livelihood impacts of GoldenVeroleum’s operations. Exacerbating this problem is the fact that the compensation rates calculated by the Liberian government for use in such circumstances are lower than the prices for those crops would be in a modern market.²⁴²

In an interview, GoldenVeroleum’s management officials stated that they are willing to allocate 30 hectares of forest to large villages for the purpose of farming if they wish to continue subsistence farming activities and do not wish to resettle.²⁴³ While this sounds like – and is – a large plot of land, it does not take into account the inefficient manner of farming utilized by Liberians. Slash-and-burn crop cultivation requires the use of more land than is common with modern agricultural practices that involve fertilizers and machinery. German Agri Action estimated in an interview that an average Liberian family requires two to three acres of land to farm enough food to feed itself; given that some large towns can have thousands of residents, it is unlikely that 30 hectares will be adequate land for towns to remain capable of producing its own food supply.²⁴⁴

GoldenVeroleum expects that it will eventually employ over 30,000 Liberians, although as of early June 2011 it had only 240 paid employees in the country.²⁴⁵ The company has been particularly strong in its efforts to hire female workers, and researchers noted their prevalence in the GoldenVeroleum nursery. Employees of the company will be able to

238 CICR Interviews with GoldenVeroleum management representatives.

239 Levitt, Jeremy, *The Evolution of Deadly Conflict in Liberia*, Carolina Academic Press, 2005, pp. 89-180.

240 CICR Interview with GoldenVeroleum management representatives; CICR Interview with local government officials in Sinoe County; CICR Informal Interviews with PAC Representatives, Butaw, June 29, 2011; CICR Townhall Interviews with PAC Representatives, Morristown and Plusunnie, June 30, 2011.

241 Ibid; see Footnote 22.

242 For a further discussion of crop compensation rates, see Section VIII, “Reforming FDI Policy.”

243 CICR Interviews with GoldenVeroleum management representatives.

244 CICR Interviews with civil society representatives in Sinoe County.

245 CICR Interviews with GoldenVeroleum management representatives.

live in modern workers camps that will include housing, schools, and access to health care; a significant improvement from the general standard of living in the area.²⁴⁶ In an interview, GoldenVeroleum management stressed their belief that palm plantations offer opportunities for workers to provide a better life for their children, who will benefit from the schooling and stability offered in the camps.²⁴⁷

Those who are presently employed by the company as low-skill workers expressed happiness that they had jobs but felt the pay of US\$3 dollars per day was too small for them to adequately sustain themselves.²⁴⁸ When workers were asked to propose a reasonable salary, the most common figure was US\$5 dollars per day. One interviewee explained the financial difficulties of earning only US\$3 dollars per day, saying that such a low wage made it difficult for employees to afford anything other than daily sustenance.²⁴⁹ This rate is similar to that which was originally offered by Sime Darby; the formation of workers unions forced the company to raise its wages for direct employees.²⁵⁰ GoldenVeroleum should pay the higher salary now rather than after a similar event.

Environment

While the GoldenVeroleum concession is in its early stages of operation, it is likely that there will be severe environmental impacts due to the large-scale cutting of secondary forest. In one town, interviewees described contamination of their drinking water that resulted from mud runoff that occurred after the company cleared space for the nearby nursery. The community referred to gastrointestinal problems being experienced by local residents of the town as a result of the water issues.²⁵¹

At the time of this report's writing, the GoldenVeroleum ESIA had yet to be released publically despite the fact that it was completed in February 2011 and the company has already commenced the development of its first plantation. The researchers were, however, able to obtain a partial copy of the ESIA. According to the document, soil erosion is one of the major environmental concerns that will result from the early stages of the project. Silt from forest clearing will result in the disturbance of aquatic life and the loss of fish in rivers, which local populations depend on as a food source. Erosion will stabilize once the trees are fully planted, but given that the development of the concession area will occur in stages, soil erosion combined with chemical run off from fertilizers, herbicides and pesticides are likely to have heavy impacts on aquatic and riparian ecosystems.²⁵²

The large development area will also impact migratory patterns for some animals and lead to the elimination of wildlife and habitat degradation for numerous species, including some that are endangered. GoldenVeroleum claims to have plans for the

246 Ibid.

247 Ibid.

248 CICR Informal Interviews with PAC Representatives, Butaw, June 29, 2011; CICR Townhall Interviews with PAC Representatives, Morristown and Plusunnie, June 30, 2011.

249 Ibid.

250 CICR Interview with Sime Darby management representatives.

251 CICR Townhall Interview with PAC Representatives, Morristown, June 30, 2011

252 Greencons, Inc, "GoldenVeroleum Environmental and Social Impact Assessment," February 2011, (Sections on File with CICR).

establishment of protected zones within the plantation for “high conservation value forests.”²⁵³

The provision in the GoldenVeroleum concession agreement that gives the company automatic rights over the carbon credits that accrue in the international conservation program referred to as Reducing Emissions from Deforestation and Forest Degradation (REDD) is likely to cause disputes in the future.²⁵⁴ According to the Environmental Protection Agency (EPA)’s legal council, the mysterious inclusion of that clause in the contracts of both GoldenVeroleum and Sime Darby were not written with the prior knowledge of the Agency.²⁵⁵ EPA regulations mandate entities that wish to buy and sell carbon credits in Liberia to apply for a permit prior to such activities.²⁵⁶ Liberian civil society organizations, including high-profile advocacy groups such as Fauna and Flora International (FFI) and the Sustainable Development Initiative (SDI) believe that carbon credits should accrue directly to communities, who as custodians of the land could be given incentives to manage the forest sustainably.²⁵⁷

The clause will ultimately be difficult for the investor to capitalize on. Despite the fact that palm trees are carbon dioxide absorbers, most experts and environmental NGOs agree that plantations as a whole will absorb less carbon dioxide than natural forests.²⁵⁸ This is a contentious issue in Liberia. The EPA has made the claim that halting slash-and-burn agriculture – which releases carbon dioxide into the atmosphere – is an important way to aid the fight against climate change.²⁵⁹ According to industry advocates this must be taken into consideration when evaluating the net contribution of palm oil plantations to global warming. GoldenVeroleum states on their website that poverty is driving rural Liberians to use the forest for charcoal and inefficient farming methods, suggesting that its palm plantations are protecting forests in the long-run, despite the clear destruction present in the short-run.²⁶⁰

The ESIA also recommends riparian reserves to be created in the plantation area, describing such reserves as, “the areas between rivers and dry land that contain unique biodiversity that can act as buffer zones between sensitive aquatic habitats and pollution related to modern development.” This would be the responsibility of the EPA to design and monitor, but the agency’s limited capacity essentially forces it to rely on ESIA authors to develop site-specific environmental management regulations.²⁶¹

Community Engagement

GoldenVeroleum’s website states that it will “ensure a responsible and respectful balance between the needs of human development and that of preserving the valuable natural resources and environment of the country. Our investment and land selection,

253 Ibid; CICR Interview with GoldenVeroleum management representatives, July 11, 2011.

254 “An Act to Ratify the Concession Agreement Between the Republic of Liberia and GoldenVeroleum (Liberia) Inc.,” GoL, September 1, 2010, Article 21.12.

255 CICR Interviews with government officials in Monrovia.

256 CICR Interview with EPA officials.

257 CICR Interview with SDI, June 2, 2011; CICR Interview with FFI, June 16, 2011.

258 Ibid.

259 CICR Interview with EPA officials.

260 GoldenVeroleum Liberia online site, “Vision for Sustainable Poverty Reduction in Liberia.”

261 CICR Interview with EPA officials.

conducted together with local communities, have and will carefully preserve original forest and biodiverse areas, sacred and community lands.”²⁶² Company managers stressed in an interview their desire to maintain good relations in their area of operations, and the Sinoe County Superintendent commended GoldenVeroleum for its responsiveness and transparency.²⁶³ In focus group discussions, members of PACs reported that the company had visited to explain its operations, and indigenous leadership described meetings where it solicited their consent to begin its operations.²⁶⁴ While PACs have not been granted the ability to refuse development on their traditional lands, the company nonetheless appears to have done a good job of opening lines of communication.

For now, despite concerns about low wages, environmental impacts, and loss of traditional sacred sites, GoldenVeroleum enjoys a relatively good reputation in the affected area. Most residents remain hopeful that they will receive access to employment opportunities and other benefits. A major area of concern, however, is the degree to which communities have been made to understand just how severe the impacts of the company’s operations are likely to be. Many PAC members seemed puzzled about the extent to which the forest would be clear-cut, and did not appear to comprehend that it would be difficult for them to continue farming activities once the company expands into their traditional lands.²⁶⁵

There was also a sense of confusion about development prospects, with PACs stating their belief that the company would bring schools and clinics – which although true, will be only for GoldenVeroleum employees.²⁶⁶ One Paramount Chief claimed that he had asked for accurate maps regarding GoldenVeroleum’s expansion plans but had not received them.²⁶⁷ Fear over resettlement was mentioned more than once, with PACs expressing their strong desire to remain in their current locations.²⁶⁸

262 GoldenVeroleum Liberia online site, “Vision for Sustainable Poverty Reduction in Liberia.”

263 CICR Interview with GoldenVeroleum management representatives; CICR Interview with Milton Teah Jay, Superintendent, June 28, 2011.

264 CICR Informal Interviews with PAC Representatives, Butaw, June 29, 2011; CICR Townhall Interviews with PAC Representatives, Morristown and Plusunnie, June 30, 2011.

265 CICR Townhall Interview with PAC Representatives, Morristown, June 30, 2011.

266 “An Act to Ratify the Concession Agreement Between the Republic of Liberia and GoldenVeroleum (Liberia) Inc.,” GoL, September 1, 2010, Articles 9, 10, and 11.

267 CICR Townhall Interview with PAC Representatives, Plusunnie, June 30, 2011.

268 Ibid; CICR Townhall Interview with PAC Representatives, Morristown, June 30, 2011.

iii. Recommendations



Palm seedlings planted by the Minister of Agriculture, County Superintendent, and GoldenVeroleum officials. President Ellen Johnson Sirleaf's seedling is not shown. Sinoe County, June 22, 2011.

When President Johnson-Sirleaf visited the GoldenVeroleum concession site in early June 2011, she admonished residents to work with the company. A press release from the Executive Mansion – the seat of Liberia's presidency – describes her as having “cautioned citizens to desist from unpatriotic and non-nationalistic behavior aimed at undermining investment in the county, and to instead cooperate with companies who brave the storms to go there and invest, so that development can take place in the area.”²⁶⁹ While it is certainly understandable that President Johnson-Sirleaf wishes to protect an investment that will likely bring large revenues to the Liberian government, that is quite a strong message to deliver to indigenous communities who will soon face irreparable changes to their way of life. Thankfully, the relationship between these communities and the company is largely positive for the time being, a state of affairs that is clearly in the best interests of GoldenVeroleum to maintain.

The owner of GoldenVeroleum – Sinar Mas – has a number of subsidiary companies, including Golden Agri Resources, which is the corporate parent of GoldenVeroleum.²⁷⁰ While Golden Agri is not a member of the Roundtable on Sustainable Palm Oil (RSPO), another subsidiary company of Sinar Mas – Sinar Mas Agro Resources and Technology – is, and was recently selected for censure by the RSPO for environmental violations.²⁷¹ In a letter to Golden Agri Resources, the RSPO – an industry-civil society partnership tasked with promoting responsible palm oil cultivation – censured the company for making misleading statements about its plans to obtain RSPO certification, urging “[Golden Agri], and any of its subsidiaries, [to] withdraw and not repeat such claims, until [Golden Agri] has made, and the RSPO has accepted, a complete application for membership of the RSPO.”²⁷² In other words, GoldenVeroleum's parent companies have not been certified as in compliance with RSPO guidelines, and therefore there is cause for concern in how they will conduct their operations in Liberia.

Given that concern, however, the company has begun its operations in a largely respectful manner and its staff enjoys a good reputation in the area. Management officials were responsive to requests for interviews and highly forthcoming in their

269 GoL Executive Mansion press release, “President Sirleaf, on Tour of Sinoe County, Visits Golden Veroleum Oil Palm Nursery, Urges Citizens to Cooperate with Investors,” June 1, 2011.

270 “With No New Permits, Sinar Mas to Enter Liberia,” *Bloomberg News*, September 3, 2010.

271 “Indonesia's Sinar Mas Censured by Palm Oil Watchdog,” *Reuters* (New York), September 23, 2010.

272 Roundtable on Sustainable Palm Oil (RSPO), “Letter from Riike Netterstrom, Interim Secretary General, RSPO, to Franky Oesmon Widjaja, Chairman and CEO, Golden Agri Resources,” September 21, 2010.

explanations of their plans. The fact that GoldenVeroleum's operations are in such an early stage provides the company with the opportunity to ensure that its activities are carried out in a participatory way that meaningfully incorporates community concerns and responsibly compensates them for livelihood degradation. Provided it is attentive to the needs of communities inside its concession area and responsive to their concerns, it could develop a happy, productive workforce and a supportive local environment. To ensure this occurs, GoldenVeroleum should:

- Immediately subject its Liberian operations to independent RSPO certification and auditing, with the aim of becoming compliant;
- Enter into negotiations with indigenous peoples who live inside the areas where the company intends to expand its operations and solicit their free, prior, and informed consent for those operations;
- Allocate resources to the development of a well-managed outgrower program that allows PACs to remain on their traditional lands and intercrop palm trees with traditional Liberian food products;
- Institute a structure for regular, participatory, transparent meetings with local community members where dialogue can take place regarding the impacts of its operations on local areas;
- Respond quickly to environmental problems such as the runoff of mud into drinking water;
- Raise the wages of local workers to US\$5 dollars per day;
- Publicize its plans to select its five nominees for the management board of the County Development Contribution and ensure they are drawn from a representative pool of civil society and indigenous community leaders from PACs;
- and ensure that the County Development Contribution management board directly solicits input from PACs on what their development priorities are so that project selection is done on a "bottom-up" basis.

V. Government Policy



Sign outside the National Investment Commission in Monrovia. May 27, 2011.

a. Introduction

While concessionaires are responsible for ensuring that their operations are in line with international standards and their own internal Corporate Social Responsibility policies, it is the government of Liberia that is ultimately accountable to its citizenry. Therefore, it is the central actor in promoting policies that respect the rights of indigenous tribes, compel concessionaires to act responsibly in the hinterland, and guarantee the effective management of concession revenue. Liberian law binds concessionaires while they operate in the country, and government policy establishes the context in which businesses operate. Moreover, Liberian government agencies are tasked with monitoring corporate conduct in concession areas – despite possessing limited funds and human capacity to perform this role effectively.²⁷³

Government policy regarding FDI management sets the tone for whether concessionaires operate responsibly and with respect for local communities. In Liberia, there are a number of agencies that regulate how agreements are negotiated and monitored. While the executive branch exercises a guiding leadership role, it is often left

²⁷³ Center for International Conflict Resolution (CICR) Interviews with Environmental Protection Agency (EPA) officials; CICR Interviews with government officials in Monrovia.

up to these agencies to carry out broad mandates. Concession agreements are negotiated by a trained team of government employees, reviewed by the executive and legislative branches, and then signed into law. After they have been implemented, government bodies such as the Environmental Protection Agency (EPA), Forestry Development Authority (FDA), Bureau of Concessions (BoC), and Ministries of Agriculture (MoA) and Land, Mines, and Energy (MLME) exercise a supervisory role over concessionaire operations. Revenue streams collected by the government in the form of royalties and corporate taxes are publicized by the Liberian Extractive Industries Transparency Initiative (LEITI), and specialized government management committees have been set up to regulate the expenditure of Social Development Funds that are financed by some concessionaires.²⁷⁴

The overarching philosophy that guides Liberian government policy regarding the use of its natural resources can be found in its 2008 Poverty Reduction Strategy: “The secretive, special deals of the past that benefitted a few to the detriment of the majority will be replaced by transparent agreements with fairer terms and stronger mechanisms to ensure the proper distribution and spending of funds ... [and] concession revenues will be used to promote public welfare by financing investments in roads, education, health, water, and other areas.” Liberian law cites the “objective of concessions” as increasing government revenue, creating jobs, financing infrastructure, and promoting the private sector.²⁷⁵

President Johnson-Sirleaf has repeatedly stated her belief that GDP growth is a crucial aspect of poverty reduction, and the revenue from natural resources is intended to be a major driver of that growth.²⁷⁶ The following section examines the policies, institutions, and processes that are used by the government to manage those resources. Recommendations and analysis for government practice will be included in Sections VII, “Reforming FDI Policy,” and VIII, “Recommendations.”

274 CICR Interview with Sayon Henry Yaidoo, Head of Secretariat, and Konah Karmo, Project Accountant, Liberia Extractive Industries Transparency Initiative (LEITI), Monrovia, May 31, 2011.

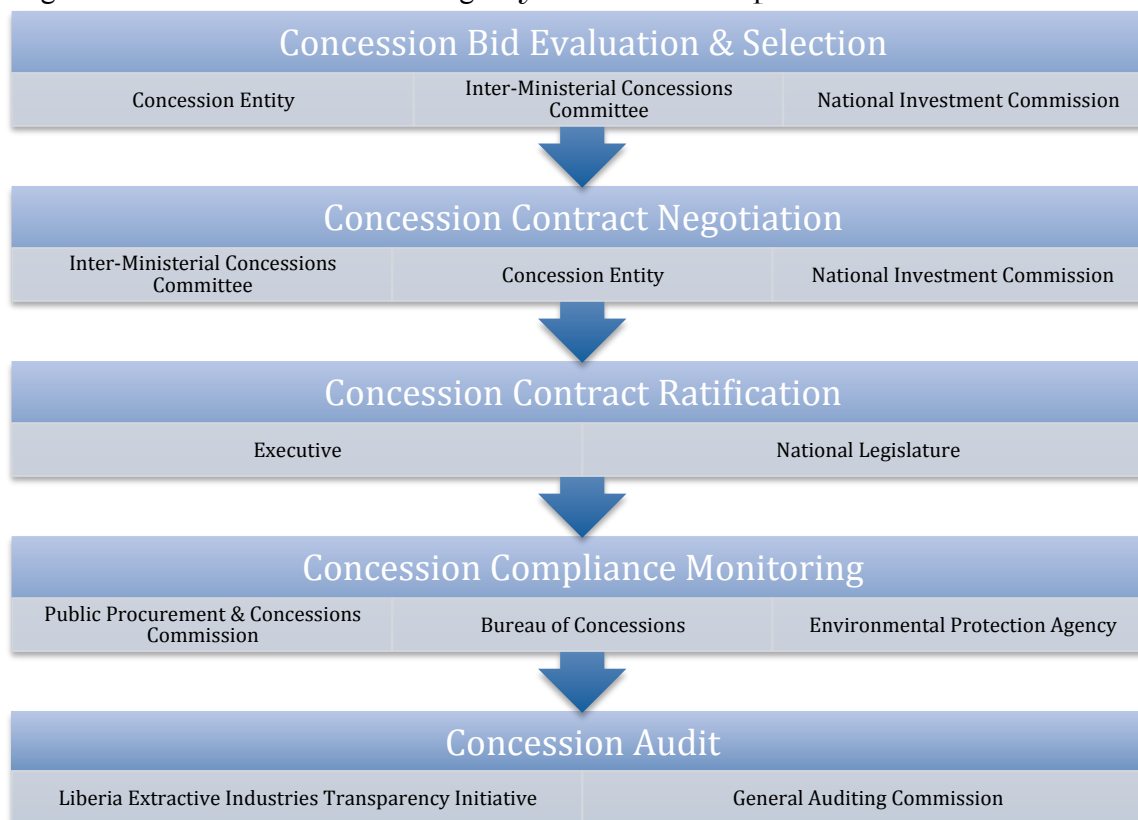
275 Government of the Republic of Liberia (GoL), “Poverty Reduction Strategy,” April 2008, p. 37

276 Speech by Liberian President Ellen Johnson-Sirleaf at the Center for Global Development, Washington, DC, June 23, 2011.

b. Attracting Investors and Awarding Concessions

Awarding concessions to foreign investors involves several steps and a number of different government actors. The diagram below illustrates the process in practice and which actors are responsible for each procedural step:

Figure 1: Liberian Government Agency Concession Responsibilities



i. The Concession Entity (Relevant Government Ministry)

The Concession Entity in the concession awarding process is the government ministry or agency with primary responsibility for the natural resource that the investor is seeking to cultivate or extract. The MLME is tasked with supervising mineral concessions such as diamond, gold and iron ore and providing technical advice during concession negotiations. The MoA performs the same task in the case of rubber, rice and palm oil concessions, as does the FDA for timber and forestry contracts. The National Oil Company of Liberia (NOCAL) provides technical assistance for offshore oil and gas exploration concessions.²⁷⁷

The Public Procurement and Concessions Act of 2010 (PPCA) – a law that was drafted with the assistance of the World Bank and which codifies government procurement practices – mandates the Concession Entity to designate a seven-member “Entity Concession Committee” to represent it and carry out its core functions in the bid

²⁷⁷ CICR Interviews with government officials in Monrovia involved in concession negotiations.

invitation and evaluation process.²⁷⁸ The “Head of the Concession Entity” – generally a cabinet-level minister – is to ensure that the committee works in partnership with other relevant government ministries and agencies of the Government in evaluating the investor and considering its suitability and offer.²⁷⁹ However, an employee of the National Investment Commission (NIC) revealed to researchers that in practice, this Committee is rarely if ever constituted prior to concession negotiations.²⁸⁰

According to the PPCA, the Concession Entity is intended to be responsible for conducting a “public stakeholder forum on proposed concessions prior to the finalization of the bid documents to be included in the invitation to bid.”²⁸¹ This provision, however, does not provide guidance for how, when or where such consultations should occur, nor does it mandate that community representatives from the regions where these concessions will be granted are invited to the consultation. In fact, representatives of the Public Procurement and Concessions Commission (PPCC) that was created by the Act told researchers that when stakeholder meetings do take place, they are held in Monrovia rather than in the affected counties and attendance is by invitation only.²⁸²

Despite the fact that the PPCA mandates that descriptions of proposed concessions be posted in the areas where investments will occur *prior* to their ratification, the researchers found no evidence of this having taken place – in general, the first time the concession agreements become public knowledge in the counties is after they have been signed. Additionally, stakeholder forums are not mandated when the bids are non-competitive.²⁸³

Concessions often overlap with private, customary, and tribal lands, and occasionally they even overlap with other existing concessions.²⁸⁴ By conducting stakeholder forums in Monrovia and failing to adequately advertise the proposed concessions in the counties where they will take place, Liberia virtually guarantees that there will be disagreements over who has the rights to the land. The PPCA provision that requires stakeholder forums is a good manner of soliciting input regarding the concessions from county representatives and Project-Affected Communities (PACs). Unfortunately, this provision appears to be followed only sporadically and in a manner that does not actively promote meaningful dialogue.

ii. The Inter-Ministerial Concessions Committee (IMCC)

The PPCA also creates a powerful Inter-Ministerial Concessions Committee (IMCC). Chaired by the head of the NIC, the IMCC represents the Liberian government in negotiations with the concessionaire.²⁸⁵ In this role, the IMCC is responsible for

278 “Amendment and Restatement of the Public Procurement and Concessions Act, 2005,” Government of the Republic of Liberia (GoL), September 16, 2010, Part VI(77)(1).

279 Ibid.

280 CICR Interviews with government officials in Monrovia involved in concession negotiations.

281 “Public Procurement and Concessions Act,” Part VI (90, 91).

282 CICR Interviews with government officials in Monrovia involved in concession negotiations.

283 Ibid.

284 CICR Interview with Société Générale de Surveillance (SGS), Monrovia, July 14, 2011.

285 “Public Procurement and Concessions Act,” Part VI(81); CICR Interviews with government officials in Monrovia involved in concession negotiations.

reviewing and evaluating concession bids. The criteria that is used in this evaluation includes the feasibility of the project, its likely environmental impact, its employment potential, and the financial benefits that will accrue to the government. The IMCC is also responsible for submitting negotiated concession agreements to the executive branch for comments and review, prior to their being sent to the national legislature.²⁸⁶

Along with the Chairman of the NIC, the IMCC's members include the ministers of Justice, Finance, Labor, Planning and Economic Affairs, Internal Affairs, the head of the Concession Entity, and two other ministers appointed by the President. This group draws on its internal expertise in order to effectively represent the government during negotiations.²⁸⁷ The fact that these are all Cabinet-level appointees suggests that these individuals are mostly representing the perspective of the executive branch, and hence the views of non-executive representatives are not present during negotiations.

A high profile international report – commissioned by the Liberian government in 2009 – recommended that the IMCC formally consult with non-governmental stakeholders prior to submitting the agreement for executive review.²⁸⁸ The reformed PPCA did include such a provision, and negotiations are still conducted without such input. While the “stakeholder forum” mandated by the PPCA provides an opportunity for non-governmental input into concession proposals, that input would not take place during negotiations, where they could have an impact on the terms of the agreement. Non-governmental actors such as civil society, international contract specialists, economists, and representatives of PACs would be able to offer valuable perspectives that are presently not solicited by the IMCC.

iii. The National Investment Commission

The National Investment Commission (NIC) was created by the National Investment Commission Act of 2010. Composition of the commission includes the Chairman of the NIC, the ministers of Finance, Justice, Planning, Commerce, State for Economic Affairs, and “one other professional person from the private sector who shall be appointed by the President.”²⁸⁹ The motto of the NIC is “One Stop Shop” – referring to the ease with which foreign investors can obtain operating permits once they sign a concession agreement.²⁹⁰

The core function of the NIC is to establish an investor-friendly environment in Liberia and to solicit FDI by presenting the country as a stable, profitable, and desirable destination for investment capital. Among its many specific responsibilities, it is mandated to train Liberians for employment with foreign concessionaires, provide potential investors with information about potential opportunities in the country, and to

286 Ibid.

287 Ibid.

288 Revenue Watch Institute (RWI), “Getting a Better Deal from the Extractive Sector: Concession Negotiation in Liberia 2006-2008,” 2009, p. 75.

289 “The National Investment Commission Act of 2010, Amending and Replacing the National Investment Commission Law of 1979,” GoL, July 19, 2010, Section 4.1.

290 CICR Interviews with government officials in Monrovia.

“develop image-building activities [that] promote Liberia as an ideal investment destination.”²⁹¹

As the NIC’s administrative and operational arm, the Secretariat is responsible for the analysis and evaluation of investment proposals and coordination of the relevant sector ministries and Entity Concession Committee during the “due diligence” review process.²⁹² Recently the national legislature passed a bill establishing a National Bureau of Concessions (NBC), which will assume many of these functions once it is officially constituted.²⁹³ In an interview, the chairman of the NIC outlined his vision that the NBC be incorporated into the NIC in the short term to help build its capacity to monitor contractual obligations and administer an effective concessions review process.²⁹⁴ While such a proposal could help incubate the NBC and build its capacity, its vital role in monitoring concession operations requires that it maintain a high level of independence, especially from a government agency whose mission is to foster an investment-friendly environment.

iv. The Executive

The executive branch of the Liberian government holds the responsibility to review and approve proposed concession agreements negotiated by the IMCC.²⁹⁵ Once the executive approves the agreement, it is submitted to the legislature for debate and review.²⁹⁶ This executive review is a separate step in the concession awarding process and offers the president the opportunity to consider whether the agreement is compatible with his or her national vision. In the case of the ArcelorMittal and Firestone renegotiations of 2006 and 2008, the executive review and negotiation process were merged due to the political importance of those renegotiations – which had been campaign issues in the 2005 elections. President Johnson-Sirleaf was intimately involved with the renegotiations, maintaining constant contact with the NIC chairman and the team of negotiators that ultimately secured more favorable terms for Liberia.²⁹⁷

v. The National Legislature

The National Legislature is responsible for holding public hearings on all concession agreements before submitting them back to the executive branch for final ratification. The amended ArcelorMittal and Firestone renegotiations set a good standard for these hearings, which were broadcast live on radio and received a great deal of public attention due to their high profile.²⁹⁸ In general, however, the transparency of legislative review of concession agreements is poor; multiple interviewees referred to a lack of open debate and even the Secretary of the Senate admitted that sometimes the hearings are

291 “The National Investment Commission Act,” Section 5.

292 Ibid.

293 “An Act to Create the National Bureau of Concessions (NBC),” July 2011.

294 CICR Interviews with government officials in Monrovia involved in concession negotiations.

295 Ibid.

296 CICR Interview with J. Nanborlor Singbeh, Secretary of the Liberian Senate, Monrovia, July 13, 2011.

297 RWI, “Getting a Better Deal from the Extractive Sector,” 2009.

298 Ibid.

not accessible to the public.²⁹⁹ He did, however, maintain that radio broadcasts of legislative activities keep citizens abreast of Congress' agenda.³⁰⁰

Concession agreements are examined by a number of relevant subcommittees, and then submitted to the full chamber for passage by a simple majority. Speakers are sometimes invited to come to Congress to testify about the concession's benefits, but it is rare that such invitations are extended to representatives of the communities that will be most affected by the concessions. While invitations are sometimes sent to lawyers, university professors, and United Nations representatives, it is far more common that they are limited to ministry officials who were involved in the negotiations.³⁰¹ Grand Gedeh County Senator William Sandy, the chair of the Senate investment committee, stated his belief that it would be inappropriate to call on tribal representatives to testify at these hearings due to their being "illiterate."³⁰² It is also difficult to locate information about the congressional agenda; researchers were unable to identify the accurate time of hearings and could not locate a schedule on the congressional website.

Interviewees in Liberia also referred to their perception that the concessions are rushed through the committees and passed too quickly for civil society to offer its input on the terms of the agreement.³⁰³ This is troubling, as the legislative review process is intended to be the phase where communities and the Liberian public can consider the potential impacts of the concessions and could theoretically express their views to legislators. In the case of Putu, for example, residents of Grand Gedeh County were shocked to learn of the concession after it had been ratified, a situation that was particularly puzzling given that the chair of the Senate investment committee is from Grand Gedeh. In an interview, he claimed that he had not been given adequate time to review the concession agreement before it was passed, and said that he opposed it despite having voted in favor of its ratification. "There is not much time to study the MDAs, the sessions often last for just one day," he told researchers.³⁰⁴

Overall, a great many Project Affected Community (PAC) representatives expressed a low level of confidence in their congressional representation.³⁰⁵ There was a common view that Congress is the site of widespread corruption and that the needs of constituents are not a priority for many of the representatives. While the NIC chairman stated his belief that the legislative review process offers the best opportunity for community interests to be represented, in practice this does not seem to be occurring. The Secretary of the Senate claimed that congressional representatives do not have the

299 CICR Interview with Jonathan Yiah and James Otto, Sustainable Development Initiative, (SDI) Monrovia, June 2, 2011; CICR Interview with Thomas Nah, Director of the Center for Transparency and Accountability (CTA), Monrovia, June 1, 2011; CICR Interview with J. Nanborlor Singbeh, Secretary of the Liberian Senate, July 13, 2011.

300 Ibid.

301 Ibid; CICR Interview with Hon. William Sandy, Senator from Grand Gedeh County and Chair of the Senate Investment Committee, Monrovia, July 11, 2011.

302 Ibid.

303 CICR Interview with SDI, June 2, 2011; CICR Interview with Thomas Nah, Director of the CTA, June 1, 2011.

304 CICR Interview with Hon. William Sandy, Senator, July 11, 2011.

305 This was particularly the case in Grand Gedeh County, site of the Putu concession and home to Senator William Sandy, Chair of the Senate Investment Committee.

right to offer amendments to the concession agreements, and that any changes they wish to include can only be submitted as non-binding addendums. In addition, when there is disagreement over the terms of a concession agreement, there is not much that can be done without broad support for renegotiation.³⁰⁶ A representative from Maryland County recently resigned from his party over dissatisfaction with the terms of a rubber concession in his district after being unable to convince colleagues not to pass the agreement.³⁰⁷

vi. Public Procurement & Concessions Commission (PPCC)

The Public Procurement & Concessions Commission (PPCC) is a watchdog body that is tasked with ensuring transparency, accountability, and good governance in the concession negotiation process.³⁰⁸ Staffed by civil servants, its primary monitoring responsibility is to conduct independent reviews of complaints related to the negotiation process in order to determine whether there was wrongdoing on the part of the government. However, the PPCC only undertakes such an investigation upon submission of a complaint. It does not take initiative to serve as a watchdog and monitor the process on its own.³⁰⁹

The PPCC's monitoring capacity is limited by the fact that it is only responsible for examining the concessions awarding process. It does not have a mandate to monitor compliance of concession agreements after they are ratified, once corporate operations begin in the affected counties. In addition, PPCC policy officials explained in an interview that their concession-related responsibilities are close to ending due to the imminent establishment of the National Bureau of Concessions (NBC), and that they have begun to pay less attention to those responsibilities in anticipation of losing their oversight role.³¹⁰ This further reinforces the necessity to institute and adequately fund the NBC as soon as possible. Last year, the Chairwoman of the PPCC was fired by President Johnson-Sirleaf for improper conduct in a wide-reaching scandal over the granting of carbon credits to a British investor, who was arrested in the UK for fraud after a public campaign by the international NGO Global Witness – the same organization that provided the catalyst for the renegotiation of the ArcelorMittal contract.³¹¹ This event further underlines the endemic challenges faced by the Liberian government.

306 CICR Interview with J. Nanborlor Singbeh, Secretary of the Liberian Senate, July 13, 2011.

307 CICR Interviews with government officials in Monrovia involved in concession negotiations.

308 Ibid.

309 Ibid.

310 Ibid.

311 "Over Carbon Credits Deal: PPCC Boss Fired," *The Daily Observer*, October 13, 2010.

c. Monitoring Compliance

vii. Bureau of Concessions

The Bureau of Concessions (BoC) is an arm of the Ministry of Finance that was established in 1984 to centralize the administration of concession activities in Liberia. The Bureau is intended to serve as a coordinating unit for Concession Entities and those agencies responsible for natural resource-related FDI. Its current responsibilities include monitoring the operations of concessionaires in Liberia, reviewing existing concession agreements and analyzing new investment proposals in order to offer appropriate recommendations to government. These responsibilities, however, are carried out by a staff of seven people, and BoC representatives acknowledge that the monitoring of concessions is inadequate.³¹²

In anticipation of the creation of an NBC, the BoC is presently working with ArcelorMittal to develop a model procedure for monitoring concession agreements. This involves the submission of a corporate document outlining all the ways in which the company has attempted to live up to the terms of the agreement and comply with its obligations. Such a process would be a key responsibility of the NBC, and there is talk of moving the BoC into that institution so that it can carry its expertise and knowledge into the new bureaucracy. At present, the limited staff and capacity of the BoC ensures that it is not able to carry out on-site monitoring of concessions, and must rather rely on the concessionaires to accurately describe their operations.³¹³

viii. Environmental Protection Agency (EPA)

The EPA was established in 2003 under the EPA Act, and is the principle authority for implementing national environmental policy.³¹⁴ It is the government agency responsible for approving the Environmental and Social Impact Assessments (ESIAs) that concessionaires are required to fund. The EPA also monitors compliance with environmental law and prosecutes environmental infringements in a special environmental court. It has the mandate to hand out fines in circumstances where the companies are found to be non-compliant with Liberian environmental laws.³¹⁵

The EPA Act is a strong piece of legislation. Among its provisions is a directive to “ensure the sustainable and wise use of natural resources in pursuance of social and economic development without undermining the ecosystem’s renewal and re-supply process,” and to “use and conserve the environment and natural resources of Liberia equitably both for the present and future generations.”³¹⁶ In practice, however, the agency does not have the capacity or budget to uphold even the most basic principles of

312 CICR Interviews with government officials in Monrovia involved in concession negotiations.

313 Ibid.

314 “An Act Adopting the Environment Protection and Management Law of the Republic of Liberia,” GoL, November 26, 2002.

315 Ibid.

316 Ibid, Part II, Section 4.2.

its mandate. For example, the EPA has no facilities for testing water or soil samples and currently sends samples to a laboratory in Beirut.³¹⁷

County level assessors are paid US\$150 dollars per month, ensuring that it will be difficult to attract quality personnel and leaving the assessors susceptible to bribes.³¹⁸ When the EPA finally visited the ArcelorMittal site to investigate a fuel spill, the assessor did not have a vehicle or any equipment with him.³¹⁹ The agency does have qualified staff members, but even they admit that a more robust office is needed if it wishes to effectively monitor the social and environmental aspects of concessions. Undue political pressure from the executive and other ministries is causing “a very tense atmosphere,” according to one EPA official, adding his view that the government tends to prioritize economic growth over sound environmental policies.³²⁰

ix. Liberia Extractive Industries Transparency Initiative (LEITI)

LEITI is a government entity modeled from the Extractive Industries Transparency Initiative, an international effort to audit payments to governments by companies involved in the extractive industries. LEITI’s mandate is to increase transparency and accountability of corporate payments in order to help curtail corruption.³²¹ It is directed by a “Multi-Stakeholder Group” comprised of the Minister of Lands, Mines and Energy, the Minister of Agriculture, the president of the National Oil Company of Liberia, the director of the Forest Development Authority, the director of the civil society organization Publish What You Pay Liberia, two union representatives, and four representatives from the private sector engaged in extractive industries.³²² While EITI was created for the primary purpose of auditing extractive revenues, LEITI includes payments from agricultural companies and other concessionaires as well.³²³

LEITI is tasked with publishing all the concession agreements on its online website, but while many are available on that site, a great many are not. For example, researchers were forced to go directly to the Ministry of Agriculture to obtain a copy of the GoldenVeroleum concession agreement – a burdensome process that would be difficult and expensive for Liberians in rural counties. It is also responsible for disseminating information regarding concession agreements and their findings from the yearly revenue audits to rural communities impacted by concession agreements. These audits include information about payments made by companies to the government, but they do not include descriptions of the concession agreement’s provisions or information from the ESIAAs – important documents that those communities have repeatedly asked for in some circumstances.³²⁴

317 CICR Interviews with EPA officials.

318 Ibid.

319 Ibid.

320 Ibid.

321 “An Act Establishing the Liberian Extractive Industries Transparency Initiative (LEITI),” GoL, July 10, 2009, Sections 3-6.

322 Ibid.

323 Ibid; CICR Interviews with Sayon Henry Yaidoo, Head of Secretariat, and Konah Karmo, Project Accountant, LEITI, May 31, July 12, and August 8, 2011.

324 Ibid.

LEITI has successfully audited revenues from concessionaires to the government for the past three years. Its third report shows that the number of companies engaged in extractive industries rose from 70 in 2008-2009 to 121 in the 2009-2010 fiscal year. In the latest report it found only one serious discrepancy violation, committed by an employee of Cavalla Rubber Company and which did not implicate the government in wrongdoing. The former director of LEITI expressed his view that nearly all discrepancies are accounting blunders rather than being related to corruption or embezzlement. LEITI is a good tool for tracking total revenues from concessionaire royalties and fees, which rose from US\$29.45 million dollars in 2007-2008 to US\$71.9 million dollars in 2009-2010.³²⁵

LEITI has been commendable in its efforts to check receipts for payments from companies to government, but it has been criticized for only examining one specific juncture in a revenue stream that contains many more opportunities for corruption and mismanagement.³²⁶ Other aspects of concession-related government activities are not examined by LEITI, and despite its success in ensuring transparency in the revenue stream, the bidding and negotiation process of the IMCC are done almost exclusively behind closed doors. The General Auditing Commission (GAC), discussed below, has not audited the negotiation process or the activities of the IMCC or NIC.³²⁷



LEITI sign, Grand Gedeh County, June 21, 2011.

In addition, there is a lack of transparency in regards to the manner in which government spends money accrued from concessions. After LEITI checks the receipts of payments by concessionaires, the funds go directly into the overall revenue stream in the Ministry of Finance. Therefore, despite the stated government policy of using resource revenue to fund infrastructure and sustainable economic development, there is no way of tracking what it is being used for in practice.³²⁸ Another shortcoming of the LEITI auditing mechanism is that it does not monitor whether companies paid the full amount of what they owe Liberia, focusing instead on whether what they say they paid matches what the government says it received.³²⁹

LEITI is aware of these shortcomings and has created a new system in its third report to verify government reports on what should have been paid with what companies actually pay. Due to the newness of this system, only eight out of 121 companies completed the

³²⁵ Ibid.

³²⁶ CICR Telephone Interview with John Morlu, former Auditor General of the General Auditing Commission (GAC), July 15, 2011.

³²⁷ Ibid.

³²⁸ CICR Interviews with government officials in Monrovia involved in concession negotiations.

³²⁹ CICR Interviews with Sayon Henry Yaidoo, Head of Secretariat, and Konah Karmo, Project Accountant, LEITI, May 31, July 12, and August 8, 2011.

correct forms and verified that taxes received were in accordance with taxes owed. In response to this, LEITI has committed itself to strengthening its efforts to ensure this reporting requirement is responsibly followed in its fourth report. It is also in the process of creating a mechanism for tracking resource-related revenue streams in order to audit the expenditure of that revenue. LEITI officials stated that this component is currently being developed with support from the African Development Bank.³³⁰

x. General Auditing Commission (GAC)

The GAC is the chief financial watchdog institution of the Liberian government. Its primary duty consists of auditing public operations and providing the government and the legislature with independent advice to ensure proper and efficient management of public funds. The GAC and its highly competent staff plays a key role in battling corruption in the natural resources sector by auditing the procurement of royalties, taxes and development funds relating to concessions. The GAC is presently auditing the ArcelorMittal Social Development Fund, which has been the target of numerous allegations of corruption.³³¹ In an interview with researchers, the GAC expressed a view that concession negotiations suffer from a lack of transparency.³³²

From the outside, it appears that the GAC has been subjected to a significant degree of political pressure. The former Auditor-General, John Morlu, was not granted a term extension by President Ellen Johnson-Sirleaf after a series of public allegations he levelled against her administration.³³³ While some interviewees expressed their belief that his tone and conduct was inappropriate for an auditor, many Liberians that were interviewed for this report stated that he was a responsible civil servant who was released from his position for refusing to cave to political manipulation. In fact, such pressure is a constant element of the GAC's work – when a senior legislator was audited by the Commission he threatened to kill staff members unless the audit was cancelled.³³⁴

The GAC can recommend that individuals be sanctioned or prosecuted, but it does not have the political capital to ensure that such prosecutions actually occur.³³⁵ One of the key challenges the Commission faces is that only two of its 66 general audits have been brought before the legislature, and for the most part its meticulous efforts to catalogue financial mismanagement in the public sector are not met with executive or judicial action. If the Government is serious about addressing corruption and public financial mismanagement, especially in the natural resource sector, it should act on the recommendations presented by the GAC in order to send a clear message of intolerance to public officials. In addition, GAC representatives stated their belief that the executive should issue a public code of conduct in order to foster a culture of responsibility and good governance.

330 Ibid.

331 General Auditing Commission (GAC) online site, "Background: Duties of the Auditor-General;" CICR Interviews with government officials in Monrovia.

332 Ibid

333 International Crisis Group (ICG), "Liberia: How Sustainable is the Recovery?" August 19, 2011, p. 18.

334 CICR Interviews with government officials in Monrovia.

335 Ibid.

VI. International Standards and Best Practices

a. The Potential for Conflict

In the past few years, international observers have commented extensively on the connection between natural resource mismanagement and violent conflict.³³⁶ The statistics are stark: since WWII natural resources have been linked to 60 percent of intrastate conflicts, and countries that depend on export commodities are far likelier to relapse into war after the end of hostilities than those which do not.³³⁷ States with commodity-based economies often have less need to remain attentive to their citizenry, as revenues from natural resources can be much larger than that of taxes.³³⁸ Liberia is no stranger to this tragic circumstance; numerous commentators have drawn links to its lucrative natural resource deposits and the civil crises it experienced during the 1990s and early 2000s.³³⁹

While Liberia has done a commendable job of instituting policies that promote transparent management of natural resource revenues, professional investment negotiation practices, and responsible development initiatives, there remains cause for concern. In particular, the marginalization of indigenous communities who will experience severe impacts from concessionaire operations is a worrisome state of affairs that holds the potential to create real problems for the country. In many regards, there appears to be a profound disconnect in perception: numerous interviewees from the government, especially in Monrovia, stated their belief that local community members were glad to have investors operating nearby, due to the increased access to employment and infrastructure development that accompany their operations. As one legislator put it, “my understanding is the local people receive some benefits, health, education, that kind of thing.”³⁴⁰

On the other side are the Project-Affected Communities (PACs). While many PAC interviewees did acknowledge a sense of hope and excitement at the prospect of gaining employment and access to schools, clinics and roads, there were also numerous expressions of fear, anger, and despair at the livelihood changes that were taking place in their communities.³⁴¹ Many of these communities reported a sense of isolation and

336 United Nations Environment Programme (UNEP), “From Conflict to Peacebuilding: The Role of Natural Resources and the Environment,” 2009; United Nations Interagency Framework Team for Preventative Action (UNIFTPA), “Extractive Industries and Conflict,” 2010; UNIFTPA, “Capacity Development for Managing Land and Natural Resources,” 2010; UNIFTPA, “Land and Conflict,” 2010.

337 UNEP, “From Conflict to Peacebuilding,” p. 5.

338 Ibid., p. 11.

339 Green Political Foundation, “To Have and to Have Not: Natural Resources and Conflict;” Levitt, Jeremy, *The Evolution of Deadly Conflict in Liberia*, Carolina Academic Press, 2005, p. 94; The Diamonds and Human Security Project, “Land Grabbing and Land Reform: Diamonds, Rubber, and Forests in the New Liberia,” July 2007.

340 CICR Interview with Hon. William Sandy, Senator from Grand Gedeh County and Chair of the Senate Investment Committee, Monrovia, July 11, 2011; CICR Interviews with government officials in Monrovia.

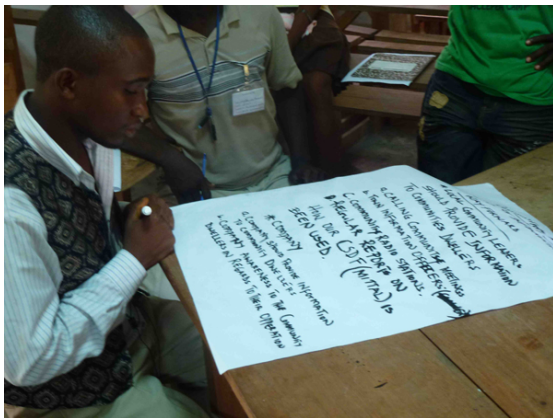
341 Center for International Conflict Resolution (CICR) Townhall Interviews with Project-Affected Community (PAC) Representatives, Montserrado, Nimba, Bong, Grand Bassa, Grand Gedeh, Sinoe, Bomi, Grand Cape Mount, and Gbarpolu Counties, Liberia, June and July 2011.

disconnect from the government, stating that it was extremely rare for them to be visited by even local officials. In particular, local government received almost universally poor reviews from PACs, with many referring to their sense that company officials were more concerned about them than their government representatives.³⁴² For a post-conflict society in the process of repairing the bonds of trust between the government and its people, this is not a good sign. Particularly in Liberia, where a dynamic of competition – and at times outright exploitation – has sometimes existed between the central government and indigenous tribal peoples, such sentiments can be very volatile.³⁴³

A United Nations (UN) report entitled “Extractive Industries and Conflict” outlines the manner in which FDI can lead to violent social tension:

“[W]here communities and stakeholders are poorly engaged, marginalized or excluded from the dialogue in the Extractive Industry development process, they are almost certain to begin to oppose the development. As the conflict escalates, the use of strategies of violence as a coercive measure against the company, and a means for addressing old grievances and mounting opposition against the government, are likely.”³⁴⁴

As one resident of Zolowee, a town adjacent to ArcelorMittal’s mining concession – speaking about the mismanagement of the Social Development Fund – put it, “Soon we



Representative of an ArcelorMittal “affected community” at a stakeholder meeting, drawing up a list of concerns. Buchanan, Grand Bassa County, June 15, 2011.

will go to the company and demand our rights. We are not afraid. The war made us all brave.”³⁴⁵ While PAC interviewees repeatedly stressed their intention to remain non-violent in expressing their grievances, an environment of tension has begun to develop in some concession areas. Such tensions appeared to correlate with the stage of company operations; where the concessions were new, PACs expected benefits to come in the future and were willing to be somewhat patient about their delivery. Where the concessions had been established for a number of years, however, there was a much higher degree of dissatisfaction – as was the case inside the Sime Darby plantation.³⁴⁶

342 Ibid; A game was played in a number of townhall meetings where participants were asked to split up into smaller groups and rank the level of concern for their lives exhibited by company officials, the central government, and local government. Almost every time, local government received the poorest marks.

343 Levitt, Jeremy, *The Evolution of Deadly Conflict in Liberia*, Carolina Academic Press, 2005.

344 UNIFTPA, “Extractive Industries and Conflict,” 2010, p. 5.

345 CICR Townhall Interview with PAC Representatives, Zolowee, Nimba County, June 10, 2011.

346 CICR Townhall Interviews with PAC Representatives, Montserrado, Nimba, Bong, Grand Bassa, Grand Gedeh, Sinoe, Bomi, Grand Cape Mount, and Gbarpolu Counties, Liberia, June and July 2011.

That same UN report outlines a “sequence of events” that often leads to conflict in areas affected by FDI. First, the entrance of foreign investors into the traditional lands of PACs is accompanied by a sense of hope that tangible benefits will accompany the project. As the impacts of the project become more apparent and severe, PACs begin to complain about the lack of transparency and slow delivery of those benefits. Some community members begin to form organized resistance movements to the company’s operations, and tensions begin to translate into protests and other forms of confrontation. As more community members become alienated and begin to oppose the project, political movements that exploit PAC fear and anger start gaining in popularity. At that stage, “conflict [becomes] entrenched with significant potential to become violent and highly politicized.”³⁴⁷ While it is impossible to predict how much of this is applicable to Liberia’s future, many of the circumstances observed by the researchers of this report were eerily similar to those described in the early stages of this “sequence of events.”

Of particular concern is the sheer size of the concessions in Liberia. Nearly half of the country is under some form of agricultural or mineral concession, and one Ministry of Planning official estimated that almost 40 percent of its population lives inside them.³⁴⁸ While social tensions can often occur in and around FDI projects, the fact that Liberia’s economic growth model involves granting such a huge portion of its land to concessionaires increases the risks of those tensions becoming an issue of national significance.

In a 2009 report on Liberia, the International Crisis Group (ICG) – a well-respected international NGO that analyzes global conflict – refers to the issue of land tenure as “explosive,” describing a tendency for land disputes to “escalate over time toward large-scale clashes.”³⁴⁹ Indeed, the Liberian government created a “Land Commission” to formulate a clear policy on this issue, but when it recommended a moratorium on concessions its advice was not taken.³⁵⁰ Concession agreements inevitably prioritize the government’s claim to land ownership over the customary land tenure of indigenous communities, many of whom do not recognize the state’s right to dispossess them of land that in some cases they may have resided on for centuries.

While poorly strategized FDI policy can increase the risk of conflict and exacerbate hostility between PACs and the government, it can also be an invaluable opportunity to build trust and support a peace-building agenda.³⁵¹ The partnerships that the government can build with local communities over FDI management can restore damaged confidence in the responsiveness of the state to its citizenry. By ensuring that promised benefits are produced quickly and that PACs are kept well informed about the projects that occur in and around their traditional lands, FDI can become a source of sustainable peace and equitable development.³⁵² According to the UN, when “benefits are consistent with community interests, and are perceived to be delivered fairly, they

347 UNIFTPA, “Extractive Industries and Conflict,” 2010, p. 12.

348 CICR Interviews with government officials in Monrovia

349 International Crisis Group (ICG), “Liberia: Uneven Progress in Security Sector Reform,” January 13, 2009, p. 8.

350 CICR Interviews with government officials in Monrovia.

351 UNEP, “From Conflict to Peacebuilding,” p. 19.

352 Ibid.

can help prevent conflict and compensate for the environmental and social impacts of the development.”³⁵³ A crucial driver of FDI-related conflict is a lack of local buy-in to the project. In Liberia’s case, fostering such buy-in would entail granting PACs the right of free, prior, and informed consent.

b. Free, Prior, and Informed Consent

Free, Prior, and Informed Consent (FPIC) is a well-established principle intended to mitigate the effects of FDI on indigenous communities. It is enshrined in a number of international laws, industry guidelines, and national policies related to FDI projects.³⁵⁴ The now-defunct UN Commission on Human Rights once defined FPIC as follows:

“Free, prior and informed consent recognizes indigenous peoples’ inherent and prior rights to their lands and resources and respects their legitimate authority to require that third parties enter into an equal and respectful relationship with them, based on the principle of informed consent.”³⁵⁵

Operationally, FPIC requires indigenous communities to be consulted about FDI projects *before* they are implemented, and affords them the right to negotiate with investors about the impact of their operations and adequate compensation for those impacts. Ultimately, they are empowered to refuse implementation of those projects if their terms are not met.³⁵⁶ While on face value this process may seem cumbersome to investors and governments that rely on FDI revenue to finance their development priorities, it is crucial in obtaining the community buy-in that will ensure peaceful conditions within project areas.³⁵⁷

Effective FPIC schemes involve direct negotiations between either the government or potential investor and PAC representatives, and grants them time to seek adequate legal and technical advice from civil society in order to prevent them from negotiating from a position of ignorance or weakness.³⁵⁸ Researchers for this report found many Liberian civil society organizations to be extremely strong, competent, and well staffed, and if FPIC is extended to indigenous communities as a legal right, it is difficult to imagine them being unable to solicit good advice from those organizations. It is important to remember that most communities welcome foreign concessionaires into their traditional lands – at least at first – and it is likely that the granting of concessions would not be prohibitively impacted by the application of FPIC to PACs in the countryside. It would,

353 UNIFTPA, “Extractive Industries and Conflict,” 2010, p. 6.

354 “United Nations Declaration on the Rights of Indigenous Peoples,” Adopted by General Assembly 61/295, September 13, 2007, Article 29; Roundtable on Sustainable Palm Oil (RSPO), “RSPO Principles and Criteria for Sustainable Palm Oil Production,” March 2006, Criterion 7.5; Forest Peoples Programme (FPP), “Making Free, Prior, and Informed Consent Work: Challenges and Prospects for Indigenous Peoples,” June 2007.

355 UN Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, “Working Group on Indigenous Populations, 22nd Session,” July 19, 2004, p. 5.

356 Oxfam, “Guide to Free, Prior, and Informed Consent,” June 2010.

357 Lehr, Amy, and Smith, Gare, Foley-Hoag LLP, “Implementing a Corporate Free, Prior, and Informed Consent Policy: Benefits and Challenges,” July 2010, p. 8.

358 FPP, “Making Free, Prior, and Informed Consent Work,” June 2007.

however, turn communities into partners in the investments and ensure that they are able to determine adequate compensation for company operations on their own, rather than allowing the central government to perform such calculations on their behalf.³⁵⁹

FPIC is enshrined in the national laws of Australia and the Philippines – both countries with large indigenous populations – and is a key element of the Roundtable on Sustainable Palm Oil (RSPO) guidelines.³⁶⁰ Liberia has, in fact, applied the principle already to some of its natural resource concessions. The management of timber contracts in the country is governed by a much different scheme than those in the mining and agricultural sectors, with logging companies required to enter into social agreements with PACs prior to beginning their operations. This entails that they pay a land rental fee and percentage of profits directly to those communities. While implementation of the new scheme has been shaky, and some Liberian government officials have expressed their view that it has kept the timber sector from reaching an ideal state of efficiency, it has nonetheless granted indigenous communities a much higher degree of sovereignty over their lands and promoted buy-in to timber extraction.³⁶¹

In order for FPIC to be meaningful, negotiations over FDI projects must be non-coercive and include access to detailed information regarding the proposed operations of concessionaires prior to their entering PAC lands.³⁶² A corollary impact of applying this principle is that PACs and county officials would be made aware of the specific details of a proposed concession agreement – reducing the likelihood of confusion and unmet expectations down the line. As the riots in Putu demonstrated, the lack of clarity among PACs as to the timetable for employment and benefits can easily lead to social unrest; FPIC negotiations would eliminate such misunderstandings. Additionally, PACs would be required to undertake representative internal consensus building in order to grant their consent to FDI projects, incorporating the perspectives of youth, elders, women, and traditional tribal leaders. By fostering dialogue between clans, subgroups, and the government, the country would be making progress toward repairing strained social ties that were damaged in the course of the war.

While implementation and monitoring of FPIC is a challenge in any context, there is a large volume of scholarship regarding the most effective ways to ensure it is appropriately applied.³⁶³ Moreover, it should not be viewed as an overwhelming impediment to FDI; where the principle has been applied in other contexts it has generally resulted in investors being granted the right to operate in tribal areas.³⁶⁴ In

359 Foley-Hoag LLP, “Implementing a Corporate Free, Prior, and Informed Consent Policy,” July 2010.

360 FPP, “Making Free, Prior, and Informed Consent Work,” June 2007; RSPO, “RSPO Principles and Criteria for Sustainable Palm Oil Production,” March 2006, Criterion 7.5.

361 CICR Interview with Jonathan Yiah and James Otto, Sustainable Development Initiative, (SDI) Monrovia, June 2, 2011; CICR Interview with Vaneska Litz, Country Director, Tetra Tech ARD, Monrovia, May 31, 2011; CICR Interview with Natty Davis, Chairman of the National Investment Commission (NIC), Monrovia, July 15, 2011.

362 Foley-Hoag LLP, “Implementing a Corporate Free, Prior, and Informed Consent Policy,” July 2010; Oxfam, “Guide to Free, Prior, and Informed Consent,” June 2010; FPP, “Making Free, Prior, and Informed Consent Work,” June 2007; Mehta, Lyla and Stankovich, Maria, Institute of Development Studies (UK), “Operationalisation of Free, Prior, and Informed Consent,” 2000.

363 Ibid.

364 FPP, “Making Free, Prior, and Informed Consent Work,” June 2007.

fact, the most common issue is that even where FPIC has been granted by law, it is not always implemented in a manner that guarantees the sanctity of its underlying principles.³⁶⁵ Were Liberia to codify FPIC as a guiding policy for concession agreements, it would certainly be able to continue attracting foreign investment – and would have the honor of being among the first African countries to ensure protection of indigenous rights. FPIC is not a radical idea; in fact, a variation of it is standard best practice for projects financed by the World Bank-affiliated International Finance Corporation (IFC) and it is also a crucial element of the Roundtable on Sustainable Palm Oil (RSPO) principles.³⁶⁶

c. The Roundtable on Sustainable Palm Oil (RSPO)

The RSPO was created in response to widespread concern over the environmental degradation and severe social impacts inherent in the industrial cultivation of palm products.³⁶⁷ Due to the rising world demand for palm oil, manufacturers have been in the process of expanding their production capacity for a number of years.³⁶⁸ Environmental activists have campaigned fiercely against the clear-cutting of forest areas for palm cultivation, and due to concerns about global warming and the livelihood impacts of plantation operations on rural communities, there has been significant public pressure on companies that use palm oil to ensure that they source the product only from sustainable growers.³⁶⁹ The RSPO is an organization comprised of industry representatives, advocacy groups, and financial investors who promote sustainable palm cultivation practices.³⁷⁰ Both of the major palm oil concessionaires in Liberia – Sime Darby and GoldenVeroleum – have indicated their desire to have their operations certified by the RSPO.³⁷¹

The RSPO guidelines are comprehensive; encompassing nearly all elements of palm cultivation, they offer a road map for ensuring that palm oil is produced in a socially and environmentally responsible manner. Described by the RSPO as “the world's toughest standards for sustainable agriculture production,” they have become accepted within the industry as best practice.³⁷² Were RSPO standards to be applied in Liberia, they would almost certainly mitigate social tensions related to plantation operations and offer the country a strong set of regulatory protections against the worst impacts of palm

365 Ibid.

366 International Finance Corporation (IFC), “International Finance Corporation’s Performance Standards on Social and Environmental Sustainability,” April 30, 2006; RSPO, “RSPO Principles and Criteria for Sustainable Palm Oil Production,” March 2006.

367 RSPO online site, “General Information on the RSPO.”

368 McCarthy, Micheal, “Demand For Palm Oil is ‘Harming the Planet,’” *The Independent*, November 9, 2007

369 Bruntse-Dahl, Rikke, “Malaysia and Indonesia Bolster Defense of Palm Oil to the West,” *The Guardian*, May 20, 2011.

370 RSPO online site, “General Information on the RSPO.”

371 Sime Darby online site, “Sime Darby Plantation and RSPO Certification.” “Sime Darby Plantation is in the midst of ensuring that all its Strategic Operating Units are in a state of readiness for the RSPO certification process. We aim to have all SOUs certified by FY 2010/11.” GoldenVeroleum press release, “GoldenVeroleum Awarded Environmental Permit,” June 25, 2011. “In addition to adhering to the Liberian legislation and regulations and to the conditions of the Permit, Golden Veroleum is committed to adherence to the international RSPO Principles.”

372 RSPO online site, “Why RSPO Certification?”

cultivation. Sime Darby, for example, is a founding member of the RSPO and has a number of plantations that have been certified as compliant with its provisions – a fact that contrasts sharply with some aspects of its conduct in Liberia.³⁷³ In order for a palm plantation to become RSPO certified, it must pay for an auditor to inspect its operations and issue public findings.³⁷⁴ PACs in Sime Darby's concession zone understand the importance of the RSPO – in late 2011 they initiated a complaint against the company to the international body, which according to one media report was subsequently withdrawn after a high profile visit by President Johnson-Sirleaf.³⁷⁵

Among the key provisions of the RSPO criteria is the principle of free, prior, and informed consent. Criterion 2.3 states that,

“Negotiated agreements should be non-coercive and entered into voluntarily, carried out prior to new investments or operations and based on an open sharing of all relevant information in appropriate forms and languages, including assessments of impacts, proposed benefit sharing and legal arrangements. Communities must be permitted to seek legal counsel if they so choose. Communities must be represented through institutions or representatives of their own choosing, operating transparently and in open communication with other community members. Adequate time must be given for customary decision-making and iterative negotiations allowed for, where requested. Negotiated agreements should be binding on all parties and enforceable in the courts. Establishing certainty in land negotiations is of long-term benefit for all parties.”³⁷⁶

This strong, comprehensive statement of respect for PAC rights has already been applied to numerous palm plantations; the organization's website lists 656 members of the RSPO, of which a large number are producers.³⁷⁷ Application of this criterion to palm concessionaires in Liberia would be a significant and straightforward display of respect for the livelihoods of indigenous communities inside the plantations. Moreover, it would most likely serve to profoundly reduce the kind of social tensions that have been causing controversy in the Sime Darby concession.

Criterion 6.2 relates to the establishment of mechanisms where PACs can express grievances and solicit information from palm producers, mandating that “[c]ommunication and consultation mechanisms should be designed in collaboration with local communities and other affected or interested parties ... Consideration should be given to the existence/formation of a multi-stakeholder forum.”³⁷⁸ By fostering dialogue and open communication between palm concessionaires and PACs in Liberia, latent sources of conflict could be addressed before they become entrenched and

373 Sime Darby press release, “Sime Darby Surges Ahead in RSPO Compliance,” November 8, 2010.

374 RSPO, “RSPO Certification Systems,” June 26, 2007.

375 “Ellen Ends Deadlock at Sime Darby Plantation in Grand Cape Mount,” *The Daily Observer* (Monrovia), January 14, 2012.

376 RSPO, “RSPO Principles and Criteria for Sustainable Palm Oil Production,” March 2006, Criterion 2.3.

377 RSPO online site, “RSPO Members.”

378 RSPO, “RSPO Principles and Criteria for Sustainable Palm Oil Production,” March 2006, Criterion 6.2.

potentially violent. RSPO guidelines also ensure strong protection of workers and the environment, as well as guaranteeing that PACs have input into the compensation they receive for the impacts of palm cultivation. Moreover, application of RSPO guidelines to producers in Liberia would bring the country into compliance with its obligations under international law.

d. International Law

Liberia is a signatory of the United Nations Declaration on the Rights of Indigenous Peoples.³⁷⁹ While the Declaration is not a binding treaty and hence does not carry the full weight of other international human rights instruments, Liberia nonetheless agreed to uphold its principles when it signed the treaty. Considered to be the most important international agreement addressing the treatment and rights of indigenous peoples, Liberia is obligated to ensure that its conduct and laws do not contradict its provisions. Unfortunately, there are a number of provisions that are currently being violated in regards to the granting of concessions on customary indigenous lands.

Article 8.2(b) of the Declaration compels signatories to “provide effective mechanisms for prevention of, and redress for any action which has the aim or effect of dispossessing them of their lands, territories or resources.”³⁸⁰ The policy of granting concessions without negotiating with indigenous communities or respecting their customary land tenure is not in line with the spirit nor the language of this provision. Similarly, Article 10 states that “indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”³⁸¹ As the prior section showed, the principle of Free, Prior, and Informed Consent requires a concrete process that is presently not being carried out in the course of awarding concessions to foreign investors. In addition, the resettlement provisions that are contained in a number of concession agreements are a violation of this principle, in that they allow concessionaires to compel the government to resettle indigenous communities whether they are willing to move or not.

Among other relevant provisions of the Declaration is Article 32, which provides clear-cut guidance for respect of indigenous rights in relation to Liberia’s FDI policy:

“1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order

379 Minde, Henry, Eide, Asbjorn, and Ahren, Mattias, Resource Center for the Rights of Indigenous Peoples, “The UN Declaration on the Rights of Indigenous Peoples: What Made it Possible?” 2007, p. 117.

380 “United Nations Declaration on the Rights of Indigenous Peoples,” Adopted by General Assembly 61/295, September 13, 2007, Article 8.2(b).

381 Ibid, Article 10.

to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.”³⁸²

Overall, it would be difficult for Liberia to argue that it is in compliance with its obligations under the Declaration. It must be acknowledged, however, that the Declaration is a “non-binding” treaty that merely expresses principles that signatories agree to represent in their conduct. The International Covenant on Economic, Social, and Cultural Rights (ICESCR), however, is not non-binding, and carries the full weight of international law. Liberia is a state party to the ICESCR, and as such it is obligated to meet the standards contained within the treaty in as much it is able to do so.³⁸³

Article 11 of the ICESCR compels “state parties to ... recognize the right of everyone to an adequate standard of living for himself and his family, *including adequate food*, clothing, and housing, and to the continuous improvement of living conditions. [italics added]”³⁸⁴ International law allows for what is known as “progressive realization” of the principles of the ICESCR – in other words, resource constraints do not bring a state into violation of its obligations under the covenant. States are merely compelled to show that they are attempting to reach the standards outlined in the Covenant through effective development strategies and relevant legal protections.

States party to the Covenant are not, however, permitted to institute policies that would lead to negative progress away from these principles, and must establish a minimum standard of behavior.³⁸⁵ By allowing Sime Darby to clear-cut forest areas around PACs without developing out-grower programs or providing them with alternate sources of food, Liberia is increasing food scarcity and hunger among some of its most vulnerable citizens. This is a violation of its obligations under the CESC. The country would be able to come into compliance with the covenant were it to compel Sime Darby to allow PACs space to continue traditional farming practices, or provide them with an alternate manner of maintaining the caloric intake they were able to obtain prior to the company’s expansion.

³⁸² Ibid, Article 32.

³⁸³ International Development Law Organization, “Liberia Country Report,” 2010, p. 2.

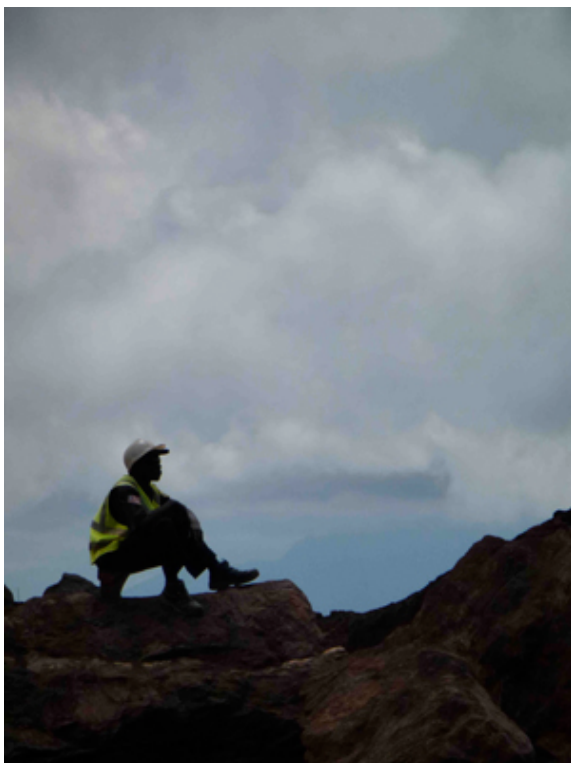
³⁸⁴ “International Covenant on Economic, Social, and Cultural Rights,” adopted and opened for signature, ratification and accession by United Nations General Assembly Resolution 2200A (XXI), December 16, 1966, entered into force January 3, 1976, Article 11.

³⁸⁵ Office of the High Commissioner for Human Rights (OCHCR), Committee on Economic, Social, and Cultural Rights (CESCR), “The Nature of States Parties Obligations, CESCR General Comment 3,” December 14, 1990, Point 9.

VII. Reforming FDI Policy in Liberia

a. Introduction

As this report has shown, the landscape of FDI policy in Liberia is complex and involves a wide range of issues, actors, and priorities. On the one hand, the country sorely needs



ArcelorMittal mining employee, Mount Tokadeh, Nimba County, June 10, 2011.

revenue to fund its development plans, build infrastructure, promote economic growth, and reduce poverty. On the other hand, the impacts of concessionaire operations on the livelihoods and culture of indigenous communities are profound and in some cases mostly irreparable. Balancing the needs of the Liberian state with those of Project-Affected Communities (PACs) will not be easy, and necessitates strong effort, creative thinking, and compromise. The consequences of inaction, however, may well be severe. Aside from the moral ambiguities inherent in the application of 'eminent domain' to nearly half the country, scholarship reveals that such action carries with it the potential for conflict and social unrest.³⁸⁶ Such challenges are particularly poignant in the context of Liberia's attempts to rebuild the bonds of trust and national identity in the aftermath of its civil war.

Liberia can, however, experience the best of both worlds. While the government deserves praise for its successful efforts in attracting FDI, it is important to remember that the relationship between the state and investors is highly beneficial for those investors as well. Profits from iron ore extraction are likely to be huge, especially for companies that will further refine the mineral into steel, and the skyrocketing demand for palm oil ensures that producers of the commodity will reap very profitable returns on their investment. Liberia's natural resources are extremely valuable and lucrative; this report suggests that it can institute stronger protections for PACs and still attract investors to the country.

In order to maximize the value of those resources and ensure effective management of the concessions that already exist, there are a number of policy reforms that could be extremely productive if instituted by the government of Liberia. These policy reforms

386 United Nations Environment Programme (UNEP), "From Conflict to Peacebuilding: The Role of Natural Resources and the Environment," 2009; United Nations Interagency Framework Team for Preventative Action (UNIFTPA), "Extractive Industries and Conflict," 2010; UNIFTPA, "Capacity Development for Managing Land and Natural Resources," 2010; UNIFTPA, "Land and Conflict," 2010.

include the extension of negotiation rights to PACs prior to the beginning of concessionaire operations, stronger local representation in the selection of development projects that will be funded by concession revenues, legal recognition of the customary land tenure rights of indigenous communities, streamlined government agencies with strong monitoring and regulatory mandates, adequate compensation for livelihood impacts that are determined in a participatory manner, wide distribution of concession-related documents, and a public national forum in which issues related to natural resource management can be discussed among a wide range of Liberian actors.

The following section details the recommendations of this report, highlighting specific areas of concern and attempting to offer advice on how to strengthen Liberia's natural resource management policy. Liberia has the opportunity to become a continental – and indeed, international – example of best practices in the transparency, democratic participation, and progressive thinking related to the management of its natural national wealth. Implementing the recommendations of this report, which have been carefully constructed to be feasible and politically realistic, would be a strong step towards promoting Liberia as a respected model for other commodity-producing nations.

b. Strengthening Concession Agreements

i. Granting Project-Affected Communities (PACs) the Right of Free, Prior, and Informed Consent

As Section V of this report explained, the right of Free, Prior, and Informed Consent (FPIC) is already enshrined in a number of important international standards.³⁸⁷ Extending this right to PACs in Liberia would place the country at the forefront of industry best practices and progressive investment policy. By negotiating directly with the communities that will be affected by concessionaire operations, Liberia would increase their buy-in to the project and reduce the likelihood of PACs claiming that their land was stolen from them. Operationalizing the right of FPIC in this case would mean selecting representatives from tribal authorities and local civil society, who would be given a description of the concession and asked to consult with their people in order to solicit their opinions and expectations of compensatory benefits.

Of primary importance would be ensuring that consent is granted in a representative manner; simply asking local government officials or tribal leaders to speak on behalf of their people is inadequate. FPIC produces maximum results when there is representation from women, youth, and other groups.³⁸⁸ While it is unnecessary to solicit 100 percent consent – as there will always be individuals who refuse to accept the presence of FDI projects in their backyards – FPIC necessitates fairly comprehensive

387 “United Nations Declaration on the Rights of Indigenous Peoples,” Adopted by General Assembly 61/295, September 13, 2007, Article 29; Roundtable on Sustainable Palm Oil (RSPO), “RSPO Principles and Criteria for Sustainable Palm Oil Production,” March 2006, Criterion 7.5; Forest Peoples Programme (FPP), “Making Free, Prior, and Informed Consent Work: Challenges and Prospects for Indigenous Peoples,” June 2007.

388 Lehr, Amy, and Smith, Gare, Foley-Hoag LLP, “Implementing a Corporate Free, Prior, and Informed Consent Policy: Benefits and Challenges,” July 2010.

agreement in those communities as to the benefits of the project.³⁸⁹ PAC representatives must, however, be given a summary of the provisions contained within a concession agreement and be allowed an adequate amount of time to consider the impacts of corporate operations on their livelihoods.³⁹⁰

In this stage, Liberian and international civil society would offer legal and technical advice to PACs, allowing them to bargain from an informed position. Leading civil society organizations in Liberia acknowledged in interviews that FDI is important and desirable – if managed appropriately – and it is unlikely that they would advise PACs to refuse acceptance of concessions, especially given the potential development and employment benefits.³⁹¹ Rather, PACs would be given the opportunity to discuss their own priorities and solicit specific compensatory measures that would allow concessionaires to operate without fear of resistance by indigenous communities.

The primary challenge of FPIC in this case is establishing a representative body through which PACs can offer their consent. In an interview, one knowledgeable Liberian consultant for the Ministry of Planning offered his view that such representation would be best organized at the clan level.³⁹² In this model, the Ministry of Internal Affairs would request that indigenous clans form negotiating bodies that include representatives from youth, women, and tribal authorities that would be briefed on the concession, its potential benefits, and the likely impact of corporate operations. The concessionaires would be required to fund initial, small-scale Environmental and Social Impact Assessments (ESIAs) for presentation to these bodies along with a digestible version of concession agreements. These preliminary ESIAs would not necessitate a long field visit to the affected areas, but rather would draw on pre-existing knowledge of concession impacts in order to project the likely outcomes of corporate operations.

On a case-by-case basis, these clan-level negotiating bodies (CNBs) would be expected to present the benefits and impacts of the concessions to other PAC members, and then return to government and company representatives with a list of expected compensatory measures. Once consensus is developed between the concessionaires, government representatives, and the CNBs, “social agreements” would be signed between the three parties.

Such a process would likely take approximately two months, and would be most appropriately conducted during the executive review process. After preliminary concession agreements are submitted from the Inter-Ministerial Concessions Committee (IMCC) to the executive branch, the president would review the document and then send it to the Ministry of Internal Affairs for FPIC negotiations in the affected communities. Public information campaigns would be developed for implementation in the counties where the concessions will take place; these would ideally rely heavily on radio broadcasts, which are the most effective way of reaching rural populations.³⁹³

389 Ibid.

390 Oxfam, “Guide to Free, Prior, and Informed Consent,” June 2010.

391 Center for International Conflict Resolution (CICR) Interview with Jonathan Yiah and James Otto, Sustainable Development Initiative, (SDI) Monrovia, June 2, 2011.

392 CICR Interview with government officials in Monrovia.

393 Ibid.

After presenting the agreement to the CNBs, negotiations would begin, and indigenous communities would be given one month to review the documents, discuss the concessions internally, and solicit outside advice. During this time, the public information campaigns would commence. At the end of the month, CNBs would discuss their concerns and demands with the concessionaire and government officials, and then return once more to their communities to present the agreed-upon terms. Further discussion would lead to a third meeting, after a period of an additional month, where the social agreements could be signed provided that the terms were acceptable to all parties.

From one perspective, this is a cumbersome and difficult process. However, in practice it is both implementable and likely to pay enormous dividends for Liberia. Experience in other countries where similar FPIC processes have been designed and carried out show that they are not a significant barrier to investment.³⁹⁴ Given the fact that some concessions are for terms of 50 years or more, a representative negotiation process lasting two months is both responsible and prudent. This report suggests that such a process would likely result in strengthened concession agreements that possess broad buy-in and incorporate the needs of those who will experience the most profound impacts of corporate operations. While the above should be seen as a potential road map for the development of a strong FPIC process, informed Liberian actors should further review and refine this recommendation so that it is compatible with local cultural values and needs.

ii. Conducting Stakeholder Forums as Mandated by the Public Procurement and Concessions Act (PPCA)

As was discussed in Section V of this report, Liberian law mandates that public stakeholder forums are required to be held during the bidding process for proposed concessions.³⁹⁵ In practice, such forums do not typically take place, and when they do they are conducted in Monrovia rather than in the counties where the concessions will be located. Additionally, attendance is by invitation only, and hence the discussion that takes place in these forums is not public and does not incorporate as wide a range of views as possible.³⁹⁶ This lack of transparency is a missed opportunity; by holding public stakeholder forums in the areas where corporate operations will occur and inviting civil society, PAC representatives, and other interested parties to attend them, concession proposals would be subjected to a healthy, open debate that could increase local buy-in and help tailor concession agreements to the specific needs of the county and its citizens.

Careful reading of the PPCA reveals a loophole in the provision mandating such forums, in that they are only required to be conducted for concessions that are solicited in an open bidding process.³⁹⁷ In such a process, the government advertises to international investors that it is seeking offers for a concession, whether it be for an area where

394 FPP, "Making Free, Prior, and Informed Consent Work," June 2007.

395 "Amendment and Restatement of the Public Procurement and Concessions Act, 2005," Government of the Republic of Liberia (GoL), September 16, 2010, Part VI(90, 91).

396 CICR Interview with government officials in Monrovia.

397 "Public Procurement and Concessions Act, 2005," GoL, September 16, 2010, Part VI(90, 91).

minerals are likely to be discovered or a plot of land for use in industrial agriculture. However, some concessions are granted in an unsolicited bidding process, where an investor proposes a concession on their own and then begins negotiations with the Liberian government in the absence of competition by other investors.³⁹⁸ In the case of unsolicited bids, stakeholder forums should still be carried out, either during the negotiations once an investor has made a bid for a concession or after those negotiations have ended and the executive branch is reviewing the agreement.

iii. Public Information Campaigns in Affected Counties

As the above discussion on FPIC noted, it is crucial that community members in affected counties are notified and informed of concession negotiations prior to their being ratified and made into law. Conducting a public information campaign in the form of radio broadcasts, newspaper advertisements, and posting digestible forms of concession proposals in county government offices would grant local residents and PACs the opportunity to communicate with their legislators prior to the agreements being signed.

The Liberian government has conducted such public information campaigns in the past; the Land Commission was asked to sensitize rural populations to its work and has done so through similar methods.³⁹⁹ Combined with a public stakeholder meeting, an effective information campaign would increase democratic input into concession negotiations and allow PACs to carry out FPIC negotiations for the project in an educated manner. Producing a summary version of the concession agreement that includes information on key provisions should be the responsibility of the IMCC, as it is the body that possesses the most comprehensive knowledge of the document.

iv. Eliminating “Encumbrance” Clauses

Within the “granting of rights” section, model concession agreements should eliminate the sentence “government shall ensure that concession area is free of all encumbrances.”⁴⁰⁰ This phrase, combined with the subsequent section on resettlement, grants concessionaires the right to demand government approval for the removal of communities and individuals who live in areas necessary for corporate operations. Such a provision is overly broad; resettlement of PACs should be carried out in a participatory manner that gives them the right to adequate compensation in exchange for leaving the land on which they live. FPIC negotiations would largely allow communities to prepare for such circumstances, and would ensure that crop compensation rates and other financial incentives are sufficient and designed in a participatory manner.

v. Redefining Resettlement

The phrase “resettlement” should be defined in the agreements to include resettlement of farms, sacred spaces and homes, rather than simply homes and villages alone. This clause allows investors the right to request that the government resettle unlimited

398 CICR Interviews with government officials in Monrovia involved in concession negotiations.

399 CICR Interview with government officials in Monrovia.

400 See for example, “An Act to Ratify the Amended and Restated Concession Agreement Between the Republic of Liberia and Sime Darby Plantation (Ltd),” GoL, July 29, 2009, Section 4.2(b).

numbers of PACs and individuals, and caps the compensation paid by concessionaires at US\$200 dollars per hectare – a strikingly low amount of money for the resettlement of an entire community.⁴⁰¹

These provisions mandate the creation of a “Resettlement Committee” to “supervise resettlement efforts.”⁴⁰² In practice, however, the researchers did not see evidence of the creation of any resettlement committees in the four concession areas that were visited.⁴⁰³ These committees should be constituted in advance of corporate operations, and should solicit the consent of communities that are to be resettled by incorporating PAC representatives onto the Committee. While the specific constitution of these Committees is not detailed in the concession agreements, this report suggests that they include at least two PAC representatives, one company representative – preferably the community relations officer – the county Ministry of Agriculture officer, and a representative from the Ministry of Internal Affairs. It is, however, troubling that such clauses were included in the concession agreements in the first place, and Liberia now finds itself legally bound to conduct large-scale resettlements that could easily provoke conflict and resistance in PACs. Indeed, numerous PAC interviewees stated their adamant opposition to being forcibly resettled.⁴⁰⁴

In cases where concession agreements have already been signed, Liberia should strongly request investors to only execute resettlements where absolutely necessary, and such resettlements should be subject to FPIC negotiations. While existing concessionaires might resist such pressure, they have an interest in maintaining good relations with the Liberian government and are much likelier to accept such negotiations when they are promoted by the government rather than by civil society or outside observers. A formal, public request by Liberia to the concessionaires to modify such provisions would be a good first step – especially in the case of palm oil concession agreements where mass resettlement could potentially affect tens of thousands of indigenous peoples.

Resettlement committees could play a vital role in ensuring fair compensation for those forced to move farms, homes and sacred spaces. Thus, one member of the committee should also be selected in a public forum by the community. To ensure informed consent by the community, the four other members of this seven-member committee should include the county representative of the Ministry of Agriculture and one representative from the Ministry of Health, Education or Public Works. The two representatives from the company should include the corporate community liaison and the public relations or corporate social responsibility officers.

401 See for example, “An Act to Ratify the Concession Agreement Between the Republic of Liberia and Golden Veroleum (Liberia) Inc,” GoL, September 2010, Article 4.3.

402 Ibid.

403 CICR Interview with Sam Brown, Superintendent of Bomi County, Tubmanburg, July 6, 2011.

404 CICR Townhall Interviews with PAC Representatives, Beajah, Besau, and Golodee, Bomi County, Kelia, Konjah, and Gbah, Grand Cape Mount County, and Gbama, Gbarpolu County, July 4-7, 2011; CICR Townhall Interviews with PAC Representatives, Morrisville and Plusunnie, Sinoe County, June 30, 2011.

vi. Including Industry Standards on the Conduct of Concessionaires

Many of the concession agreements signed in Liberia are for industries that are known to have caused severe environmental and social impacts as a result of their operations in other countries. As such, pressure from international activists and other observers has resulted in the formulation of standards and practices that allow these industries to carry out their operations while mitigating the harm they cause to communities and the environment. Such standards – which include those of the International Financial Corporation (IFC), World Bank, and Roundtable on Sustainable Palm Oil (RSPO) – are comprehensive and have been developed with the input and guidance of the industries themselves, and therefore are suitable for use anywhere those industries operate. Liberia should not allow these industries to operate in its borders without their complying with these standards.

The RSPO principles, detailed in Section V, are a key example of such standards, and compliance with them should be mandated in any concession agreements granted in the palm oil sector. For mining concessions, IFC standards regarding resettlement, crop compensation, and other operations offer valuable guidelines on how companies should operate.⁴⁰⁵ While they are essentially an imperfect, minimum standard of behavior, they offer a valuable baseline for use in concession agreements. Palm oil concessionaires have already been mandated to follow portions of the RSPO guidelines, specifically with regard to their environmental conduct; in the future such provisions should include full RSPO compliance in all corporate activities.⁴⁰⁶ Where IFC and World Bank guidelines have already been included in existing concession agreements, the government should review corporate conduct and ensure that those standards have been met.

vii. Review of Concessionaire Operations in Other Countries

In order to maximize the Liberian people's knowledge of the environmental and social track record of potential investors, the government could produce a brief – but detailed – report on the global operations of proposed concessionaires. Such a document would include more than just details of the company's profitability and capitalization; it would examine and describe the credible public record of the company's operations elsewhere. If the company has been heavily criticized for its environmental or social impacts – as is the case with Sime Darby and Sinar Mas – that information would be included in the brief.⁴⁰⁷ Alternately, where the companies have displayed commendable behavior and possess strong corporate social responsibility policies, that would be a part of the brief as well. This paper should be distributed to legislators, government agencies, and community members at the stakeholder forums. In cases where there are multiple bids for a concession, similar briefs would be prepared for each bidding party. This would allow key agents in the concession negotiation process to have as informed a view as is

405 International Finance Corporation (IFC), "International Finance Corporation's Performance Standards on Social and Environmental Sustainability," April 30, 2006.

406 See for example, "An Act to Ratify the Amended and Restated Concession Agreement Between the Republic of Liberia and Sime Darby Plantation (Ltd)," GoL, July 29, 2009, Section 16.

407 "Indonesia's Sinar Mas Censured by Palm Oil Watchdog," *Reuters*, September 23, 2010; "Malaysia to Probe Sime Darby Overruns," *Agence France Presse* (Paris), May 25, 2010.

possible regarding which potential concessionaire is best suited to establish a presence in post-war Liberia.

c. Monitoring, Compliance, and Mitigation of Harmful Impacts

viii. Ensuring the National Bureau of Concessions (NBC) is a Strong, Well-Funded Institution with a Broad Mandate

In July 2011, the legislative branch of the Liberian government passed the “Act to Create a National Bureau of Concessions.”⁴⁰⁸ Once the executive signs the act into law, the government will theoretically have the benefit of an agency that will oversee all aspects of concession negotiation, implementation, and monitoring. The Act is comprehensive, and gives the NBC broad powers to solicit compliance reports from concessionaires, coordinate the monitoring activities of government agencies, offer technical advice on concession negotiation, and draft concession agreements.⁴⁰⁹ If the NBC is adequately funded, staffed, and trained, and given a strong mandate that includes the ability to hand out fines for misconduct, it could be an invaluable regulatory agency that would unite the disparate elements of Liberian concession policy under one roof. If, however, it is poorly funded and given a secondary role to sector ministries and government agencies, it will be another layer of government bureaucracy that will not significantly improve or streamline government concession-related activities.

Careful examination of the NBC Act reveals legislation that could either create a strong agency, or allow for its marginalization by pre-existing bureaucracies. This report strongly recommends as one of its key findings that the NBC be given a position of unquestioned primacy in Liberian concession monitoring. Among the troubling clauses in the Act is Section 6(3), which states that the NBC must consult ‘each ministry, department, or agency responsible for the administration of a concession agreement before requiring information from the holder of a concession agreement.’⁴¹⁰ In other words, the NBC would be forced to go to the Ministry of Lands, Mines, and Energy before seeking an impromptu report on, for example, resettlement activities or employment statistics from a concessionaire.

This further reinforces the inefficient present circumstance wherein sector ministries are given an inordinate amount of power over the administration of concessions under their purview. The ministries of Lands, Mines, and Energy and Agriculture are both tasked with developing policy and acquiring accurate technical information about Liberian resources, but they should not be overly involved in the application of concession agreements. Giving such a large amount of power to a ministry that is intended to be the holder of technical knowledge is dangerous; it creates circumstances ripe for corruption by allowing the same ministry to take the lead on concessionaire relations from the granting of exploration permits all the way through to the monitoring of their compliance with concession agreements. A more efficient system would be to allow

408 “Liberian Senate Passes Bureau of Concessions Act to Regulate Companies,” *African Press Agency*, July 12, 2011.

409 “An Act to Create the National Bureau of Concessions (NBC),” July 2011.

410 Ibid, Section 6(3).

sector ministries to cultivate technical expertise, review and hand out permits, and then pass off responsibility for concession negotiations and follow-up monitoring to the NBC, which would be given the ability to direct relevant agencies such as the EPA and Ministry of Labor to conduct site visits and solicit information from concessionaires.

A well-designed NBC would include expertise on the financial, environmental, and social responsibilities of concessionaires and have effective mechanisms to ensure that they are complying with the terms of their agreements. The Act already mandates the NBC to “develop and maintain a concession agreement database,” and therefore it will be in the best position to develop institutional knowledge regarding the provisions of those agreements.⁴¹¹ The already existing Bureau of Concessions (BoC) in the Ministry of Finance would be completely incorporated into the new NBC, and it would include in its mandate the task of ensuring that royalties and taxes paid by concessionaires are fair and honest. Unfortunately, there have been circumstances in sub-Saharan Africa where dishonest sales practices by concessionaires have resulted in the short-changing of governments; the NBC should develop expertise on this issue and ensure it does not occur in Liberia.⁴¹²

Monitoring of concessions involves site visits; ideally, such visits would be regular, frequent, and professional. The NBC should coordinate with relevant agencies that are tasked with monitoring concession agreement compliance, and conduct such visits randomly and without warning. Visits to a concession site would include free inspection of corporate operations, the timely provision of documents and statistics by concessionaires to the NBC, examination of infrastructure projects, and discussions with PACs and local government representatives. Monitoring teams would be knowledgeable about the concession agreements and capable of discerning when the companies are causing labor, environmental, and social impacts that are prohibited in the agreements. Such violations should carry with them stiff fines, which would be imposed by the NBC and subject to appeal by the company.

Two factors are ultimately most crucial in the development of a strong, capable NBC: executive support and adequate funding. Without the support of the president and the financial capacity to carry out a robust mandate, the NBC runs the risk of being a small, limited bureaucracy that rarely if ever travels outside Monrovia and does not act as an early warning system for corporate misconduct or social unrest. The crucial importance of natural resource revenue to Liberia’s growth strategy has already been detailed in this report and elsewhere; it would be wise to ensure that such a vital element of the country’s economic planning involves robust, capable government bureaucracies to monitor and regulate it.

One government official estimated in an interview that the budget could easily be quite low; this would negatively impact the NBC’s ability to draw from a talented pool of staff and be able to conduct effective monitoring activities.⁴¹³ Given that the China Union iron ore-mining contract, for example, included a provision for a government signing fee of US\$40 million dollars, the concession agreements themselves could be used to partially

411 Ibid, Section 5(4).

412 Sharife, Khadija, “‘Transparency’ Hides Zambia’s Lost Billions,” *Al-Jazeera* (Amman), June 18, 2011.

413 CICR Interviews with government officials in Monrovia.

fund the NBC.⁴¹⁴ Concessions bring in large volumes of government revenue; investing in adequate human capacity and technical expertise for monitoring purposes is both prudent and wise.

Presently, the BoC and the EPA are the government bodies where most monitoring appears to be taking place.⁴¹⁵ The EPA holds the authority to fine companies for infringements related to non-compliance with the concessionaire's environmental and social obligations, and has the power to withhold permits that are necessary for a company to expand operations within the concession area.⁴¹⁶ Its capacity is, however, weak. When the researchers encountered an EPA official in Nimba Country inspecting a fuel spill near the ArcelorMittal mine, he was operating without the benefit of his own transportation.⁴¹⁷

Since it was created in 2007, the EPA's budget has grown from an initial US\$120,000 dollars in 2007 to a proposed US\$1.4 million dollars in fiscal year 2011-2012.⁴¹⁸ This would represent an increase of nearly double the budget from 2010-2011, which will hopefully strengthen the agency's capacity to conduct monitoring visits to concession sites. At present, one EPA official estimated that as of Summer 2011 the agency had only five working vehicles for the entire country and no laboratory to test soil or water samples.⁴¹⁹ A well-functioning NBC could oversee the professionalization and conduct of the EPA's concession monitoring functions, ensuring that the agency has the requisite capacity to ensure corporate compliance with Liberian law and soliciting outside technical assistance when necessary.

A major area of concern that the NBC should discuss with the EPA concerns carbon credit payments from the Reducing Emissions from Deforestation and Forest Degradation (REDD) program. Envisioned as a method of protecting tropical and other high-value forests that are major absorbers of carbon dioxide, REDD payments can accrue to companies that set aside forest areas for protection within their concession areas. In a number of the palm oil concession agreements, REDD credits are mandated to go to the companies. This could mean windfall subsidies for palm oil companies that preserve some forest areas within their concession area. The EPA has established regulations mandating that anyone seeking REDD credits in Liberia apply for permits, however the terms of the agreements do not mandate such an application. At an internal policy discussion forum one EPA employee admitted that monitoring of these provisions has been unsatisfactory and that the agreements are often not read by agency personnel.⁴²⁰

The NBC should also coordinate with the EPA regarding the granting of permits for concession operation expansions. Many of the agreements contain requirements for concessionaires to apply for permits for various stages of project development; the EPA

414 "Beijing's Bankroll for Bong's Ore," *Africa-Asia Confidential* (London), December 19, 2009.

415 CICR Interviews with government officials in Monrovia.

416 Ibid.

417 Ibid.

418 "Draft Budget for the Fiscal Year July 1, 2011 to June 30, 2012," Liberia Ministry of Finance, 2011.

419 CICR Interviews with EPA officials.

420 CICR Interviews with government officials in Liberia.

is permitted to halt such expansions in the event that the company has an unsatisfactory environmental record or has not adequately planned to mitigate the impacts of its operations.⁴²¹ The NBC's mandate to monitor concessionaire operations could include the supervision of such permits; if a company is non-compliant with its obligations under Liberian law or the terms of its concession agreement, such permits could be withheld.

To summarize, the NBC could become a key institution with an important role in the administration of Liberian natural resource concessions. By streamlining concession monitoring, ensuring open and fair negotiations, and gathering broad-based buy-in for the operations of concessionaires in rural counties, it could do much to correct the current shortcomings in Liberian investment policy. However, in order to do so it will require adequate funding and an established supervisory role over some operations of other government agencies. In addition, it is vital that the individual selected to lead the Bureau is a person of high integrity and professional capability, who will be able to establish a strong institution and meaningful partnerships with Liberian civil society organizations.

ix. Making Concession Agreements Publicly Available

A major complaint that researchers heard in all four concession areas regarded the lack of availability of concession agreements.⁴²² This frustration was shared by local government officials, civil society, and members of PACs. Numerous PAC interviewees reported that they had been asking to see official agreements for years, and had been unable to obtain copies.⁴²³ The researchers of this report experienced similar difficulties; while LEITI is mandated to provide the agreements on their public website, in practice a great many are missing. To obtain concession agreements, the researchers were required to visit the relevant sector ministries, a virtual impossibility for a rural farmer seeking to review what rights he has been granted – or lost – as a result of the agreements. In Bomi County, the local land commissioner and the county inspector both stated that they had asked for copies of the Sime Darby concession agreement and had not received it.⁴²⁴

To rectify this, the government could ensure that concession agreements are uploaded onto LEITI's – and eventually the NBC's – website as soon as they are signed. In addition, copies should be furnished to county administrative offices and made available for any concerned citizen to read and review. District commissioners could inform town, paramount, and clan chiefs that the agreements are available in the county capitals for this purpose. The same is true for the Environmental and Social Impact Assessments (ESIAs) that the companies are required to produce after signing a concession agreement. As these documents are in many cases the clearest description of how life will change for PACs in the course of company operations, it is crucial that they be made available for public consumption. While the NBC Act allows for citizens to request

421 CICR Interview with EPA officials.

422 CICR Townhall Interviews with Project-Affected Community (PAC) Representatives, Montserrado, Nimba, Bong, Grand Bassa, Grand Gedeh, Sinoe, Bomi, Grand Cape Mount, and Gbarpolu Counties, Liberia, June and July 2011; CICR Interview with the Bomi County Land Commissioner and County Inspector, Tubmanburg, July 7, 2011.

423 Ibid.

424 Ibid.

copies of concession agreements, they are expected to pay for printing costs on their own, which can be substantial in Liberia.⁴²⁵ By making copies available for viewing at regional hubs and in Monrovia, people without Internet access would still be able to examine them without incurring such costs.

x. Establishing Sustained Public Stakeholder Forums in Affected Counties

A common complaint among PAC interviewees was that concessionaires were nearly impossible to reach.⁴²⁶ PAC members wishing to request information or register complaints found it difficult to contact company representatives – at times prohibitively so. While concessionaires stated their desire to maintain open lines of communication with PACs, in practice there appears to be a communication gap. In the Sime Darby concession, for example, PAC interviewees adamantly stated their view that the company was virtually unreachable, and in fact even the local District Commissioner told researchers that it was difficult for him to contact company management.⁴²⁷ On the other side, ArcelorMittal management representatives expressed frustration that residents of Gbarpa, adjacent to the Mt. Tokadeh mine, did not notify the company of a fuel spill for weeks, a delay that according to them exacerbated a situation where the company was liable for fines and prosecution.⁴²⁸

In order to address this concern, the concessionaires, government, and PACs could attend regular townhall meetings where representatives of all three groups are invited to speak publicly about their concerns, plans, and needs. By introducing all of the key stakeholders to each other's perspectives on an ongoing basis, it is far likelier that a mutually beneficial state of consensus will be reached than if PACs are expected to hunt down difficult-to-reach company representatives every time they have a grievance. The most efficient way for such forums to take place would be to hold a monthly meeting in the county administrative capital as well as one a month in one of the PACs. This location would rotate every month, and each major PAC would eventually have the opportunity to host such a meeting. Thus, all stakeholders would be fully familiar with one another's experiences, facilitating dialogue and building partnerships so concessionaires can experience security in their operations and PACs can be ensured of considerate treatment.

425 "An Act to Create the National Bureau of Concessions (NBC)," July 2011, Section 5(4)(d).

426 CICR Townhall Interviews with PAC Representatives, Montserrado, Nimba, Bong, Grand Bassa, Grand Gedeh, Sinoe, Bomi, Grand Cape Mount, and Gbarpolu Counties, Liberia, June and July 2011.

427 CICR Interview with a District Commissioner from Bomi County, July 4, 2011.


428 CICR Interviews with ArcelorMittal management officials.

xii. Fixing Inadequate Crop Compensation Rates


Another primary source of complaints that was mentioned in all four concession areas concerned the payments for crops damaged in the course of corporate operations.⁴²⁹ While farmers receive cash payments in exchange for these crops, they are only compensated for the price of one harvest for each tree or plant. These payments appear sizeable to a farmer who has never held a large amount of cash at one time, but the compensation does not extend to a year's worth of harvests or beyond. Thus, unless recipients can move to other farmland quickly and plant new crops in anticipation of the next harvest or find alternate means of income, the payments will not last long enough for them to sustain their livelihoods beyond a very limited period of time.

More troubling are the rates at which farmers are compensated for destroyed crops. The National Transitional Government of Liberia (NTGL) calculated compensation rates in 2003 at the levels seen at the right, which are the rates that were cited in the Environmental and Social Impact Assessments of both palm oil companies that were studied.⁴³⁰

PAC interviewees consistently lamented these rates during discussions with researchers, saying that they were far less than what they would generally get for a full year's harvest of those crops.⁴³¹ County representatives of the Ministry of Agriculture (MoA) confirmed this view, explaining that rubber



Republic of Liberia
GENERAL AUDITING OFFICE (GAO)
P.O. Box 10 - 9026
Monrovia, Liberia



LIST OF CASH CROPS

1. Rubber	Tappable	\$6.00	Untappable	\$3.00
2. Cocoa	Bearing	6.00	Unbearing	3.00
3. Coffee	"	6.00	"	3.00
4. Kola	"	6.00	"	3.00
5. Coconut	"	3.00		
6. Plum				
7. Citrus	"	6.00		3.00
8. Avocado	"	6.00		
9. Bread Fruit	"	6.00		
10. Plantain		1.50		
11. Pineapple		1.00		
12. Oil Palm	Bearing	6.00	"	3.00
13. Sugar Cane				

GAO crop compensation rates.

429 CICR Observations from an "ArcelorMittal Affected Communities Stakeholder Meeting" organized by the Sustainable Development Initiative (SDI), June 15, 2011; CICR Townhall Interviews with PAC Representatives, Montserrado, Nimba, Bong, Grand Bassa, Grand Gedeh, Sinoe, Bomi, Grand Cape Mount, and Gbarpolu Counties, Liberia, June and July 2011; CICR Interview with Edith Weh, Superintendent of Nimba County, Saniquellie, June 10, 2011; CICR Interviews with civil society representatives in Nimba County; CICR Interview with Tetra Tech ARD, Saniquellie, Nimba County, June 8, 2011; CICR Interview with a District Commissioner from within the ArcelorMittal Concession, Nimba County, June 9, 2011.

430 Greencons, Inc, "Sime Darby Environmental and Social Impact Assessment," March 2010, Appendix F (On File with CICR); Greencons, Inc, "GoldenVeroleum Environmental and Social Impact Assessment," February 2011, Appendix F (Sections on File with CICR).

431 CICR Observations from an "ArcelorMittal Affected Communities Stakeholder Meeting" organized by the Sustainable Development Initiative (SDI), June 15, 2011; CICR Townhall Interviews with PAC Representatives, Montserrado, Nimba, Bong, Grand Bassa, Grand Gedeh, Sinoe, Bomi, Grand Cape Mount, and Gbarpolu Counties, Liberia, June and July 2011.

trees were particularly undervalued given that they constitute an important source of cash income for many subsistence farmers.⁴³² When compensated farmers were asked why they agreed to rates that were so far below what they felt was fair, some responded with their belief that the government would use its eminent domain laws to confiscate their farms and pay them nothing unless they accepted the packages.⁴³³

The MoA has revised the outdated compensation rates, but there were very few changes and the rates remain below IFC standards.⁴³⁴ Below are the MoA figures:

REPUBLIC OF LIBERIA
MINISTRY OF AGRICULTURE
P.O. BOX 10-9010

The Ministry of Agriculture wishes to announce the following prices for claims compensation for expropriated/damaged major tree crops for 2009.

Major Tree Crops and Price per Tree by Maturity
(United States Dollar)

Tree Crops	Price/Mature/Tree 1/	Price/Pre-Mature Tree 2/
Rubber	\$6.00	\$3.00
Cocoa	\$6.00	\$3.00
Coffee	\$6.00	\$3.00
Pinus	\$6.00	\$3.00
Coconut	\$6.00	\$3.00
Kola	\$6.00	\$3.00
Avocado	\$6.00	\$3.00
Breadfruit	\$6.00	\$3.00
Oil Palm	\$6.00	\$3.00
Plantain	\$3.00	\$1.50
Pineapple	\$2.00	\$1.00
Sugar cane	\$120.00 / acre	\$60.00
Cassava	\$80.00 / acre	\$40.00

1/Tappable (ex. Rubber) or bearing (ex. Cocoa)
2/Untappable or unbearing

[Signature]
Daniel F. Korleff
Technician Assistant

[Signature]
James B. Logan
Deputy Minister/Planning & Dev. – MOA

[Signature]
Florence Chenoweth
Minister of Agriculture

This is a crucial issue; crop compensation packages are often the only source of income that farmers will have until they are able to find new land to use or establish alternate methods of sustaining their livelihoods. Particularly in the case of palm oil concessions, where locating new areas in which to resume farming is extremely difficult due to the clear-cutting of forest areas and company prohibitions against slash-and-burn agriculture, it is vital that farmers are given an adequate cushion to use in establishing a new livelihood. Rather than further impoverishing an already destitute rural population, compensation rates should be seen in the context of the broad effects of dislocation on farmers rather than simply a low calculation of the market value of their crops. Determining new figures should be done in a participatory manner and on a case-by-case basis. Specifically, negotiations of these rates should be conducted during the FPIC process that this report recommends.

xiii. Establishing Effective Out-grower Programs in Agricultural Concessions

Out-grower programs are an attempt to create a partnership between small farmers and foreign investors in the agricultural sector to mitigate the livelihood impacts of large concessions. Under these programs, farmers are given the tools and training to grow the

432 CICR Interviews with local government officials in Sinoe County.

433 CICR Interview with PAC Representatives, Morrisville, Sinoe County, June 30, 2011.

434 ArcelorMittal, "Yekepa Mine Area Resettlement Plan," February 2011, p. 10.

crop that the investor seeks to harvest – palm trees in a palm oil concession, for example – in exchange for which the farmer commits himself to selling the commodity to the investor. In this manner, concessionaires are able to get the crop they wish to cultivate and local farmers are able to receive cash payments in exchange for farming activities.⁴³⁵ If properly managed and implemented, these programs are an innovative and important way to create a sustainable balance between PACs and foreign investors, and clauses pertaining to their creation are common in new Liberian agricultural concession agreements.⁴³⁶

In theory, the out-grower programs have the potential to reduce poverty and provide opportunity for PACs who are not incorporated directly into the company's workforce. However, in practice there are no functioning out-grower programs in the major palm oil concession areas, or indeed the entire country.⁴³⁷ This is due to the fact that the clauses relating to these programs included in the concession agreements are vague, non-binding, and poorly conceptualized. In addition, the government appears to be having difficulty finding capital to establish these programs.

Both the Sime Darby and Golden Veroleum contracts provide for 44,000 hectares of land to be used in an out-grower program.⁴³⁸ This land is mandated to be "(A) outside the concession area but within the gross concession area, (B) sufficiently acceptable to investor and (C) free from encumbrances."⁴³⁹ This land would be developed by the company and funded by outside sources; in other words, the investor would not pay for the creation of the program. In fact, although concessionaires are bound to develop these programs within three years of signing the agreement, if the government cannot find outside funds for the programs it is unlikely they will be created unless the grower decides to do so at their own cost.⁴⁴⁰

In the future, these programs should be mandated as part of concession agreements without any such clauses. The investor and government should be mandated to find funding for out-grower programs within three years of the concession agreement being signed, and partnerships should be established with the World Bank and other organizations that possess technical expertise related to their management. In addition, the granting of 44,000 hectares in a given area that may be far away from where PACs are most heavily impacted by a palm oil concessionaire's operations is not an effective means of addressing their livelihood concerns. These programs could be set up in smaller units, near the areas where PACs will no longer be able to use slash-and-burn agriculture. This would help alleviate the new food insecurity issues that researchers observed inside the Sime Darby concession.

435 Fauna and Flora International (FFI), "Liberia Sustainable Palm Oil Field Visit Report," June 2010.

436 See for example, "An Act to Ratify the Concession Agreement Between the Republic of Liberia and Golden Veroleum (Liberia) Inc," GoL, September 2010, Article 15.3.

437 CICR Interviews with Sime Darby management representatives; CICR Interviews with government officials in Monrovia.

438 "An Act to Ratify the Concession Agreement Between the Republic of Liberia and Golden Veroleum (Liberia) Inc," GoL, September 2010, Article 15.3; "Amended and Restated Concession Agreement Between The Republic of Liberia and SIME Darby Plantation (Liberia) Inc," GoL, April 2009, Section 4.1(3).

439 Ibid.

440 Ibid.

By establishing out-grower programs around these communities, farmers can be compensated for crop loss and then put directly to work cultivating the cash crop that the concessionaire needs for profitable operations. Rather than set aside 44,000 hectares in a distant area, the concession agreements could mandate that they be created in small sizes near the areas where corporate operations are most likely to cause severe impacts on PACs. The agreements could also state that a certain percentage of the concession area is to be used for such program – 10 to 20 percent would be a reasonable amount, and would be applied to each subsequent expansion. In other words, in the first 10,000-hectare development, one to two thousand hectares could be used for out-grower programs partially financed by the World Bank and other international organizations.

An added benefit of such a scheme would be the transfer of knowledge to Liberian farmers, many of whom are not familiar with modern agricultural techniques. Given that a major benefit of FDI projects is expected to be the acquisition of technical skills by Liberian employees of foreign concessionaires, this would be a highly desirable manner of training farmers to use fertilizers and other high-yield techniques that could ultimately be applied to other activities that would benefit the Liberian economy. Finding the financing for these programs will be difficult; while the report is not willing to recommend that the companies entirely finance them on their own, they will be profiting from the harvested crops and should bear some responsibility to solicit funds for their creation.

xiv. Reforming the Social Development Funds

Social Development Funds (SDFs) have been a part of newer Mineral Development Agreements (MDAs) in Liberia. Pioneered by ArcelorMittal, these funds are set up for the purpose of financing development in the counties where the mining concessions are located. The logic is that since iron mines are non-renewable resources, there should be clear, observable benefits for the counties where extractive industries operate that will last when the company is finished with the mine. Thus, ArcelorMittal is mandated to provide a contribution of US\$3 million dollars per year to an SDF that splits the funds between three counties: Nimba, Bong, and Grand Bassa.⁴⁴¹ Other mining concessions such as that of Putu have similar sized contributions.⁴⁴²

Unfortunately, the management of the ArcelorMittal fund has been substandard. Allegations of corruption have been widespread, and even the board set up to reform the fund acknowledged that in the first years of the fund's existence there were major issues with its management, saying:

“The current structure for managing the CSDF has yielded less satisfactory results due to the role of county stakeholders, lack of accountability and transparency in funds management, inadequate capacity to manage projects, and lack of grassroots involvement in

441 Friends of the Earth/SDI, “Working for Development? ArcelorMittal’s Mining Operations in Liberia,” June 2010; CICR Interviews with government officials in Monrovia.

442 “Mineral Development Agreement (MDA) Between the Government of Liberia, Putu Iron Ore Mining Inc, and Mano River Iron Ore Ltd.,” September 2, 2010, Section 8.2.

project selection and decision-making. Most [County Development Management Committees] have disregarded the measures on financial controls put in place by the [Dedicated Funds Committee]. There are constant disagreements among CDMCs over representation and control and interference in daily operations of Project Management Teams.”⁴⁴³

Numerous civil society organizations in Liberia have commented on this mismanagement, leading to an order by President Ellen Johnson-Sirleaf to halt use of the fund in anticipation of management reforms.⁴⁴⁴ These reforms are still being debated internally in Monrovia, and are intended to be unveiled in late 2011.⁴⁴⁵ In addition, 20 percent of the ArcelorMittal SDF was mandate to be used in “affected communities.”⁴⁴⁶ Although the fund has existed for nearly five years, there have been no projects implemented in these communities and, in fact, the government has not yet agreed on a precise definition of what constitutes such a community at all.⁴⁴⁷

SDFs are the only mechanisms that clearly mandate the re-direction of extractive funds to communities that have had to sacrifice their land, sacred spaces, and in some cases homes to industrial mining operations. Unfortunately, even where these funds do exist the money is not reaching the targeted recipients.⁴⁴⁸ While the reform does include greater representation by civil society and indigenous leaders, they are still far outnumbered by government bureaucrats and there is still a danger that “affected communities” will not be defined – let alone consulted – before projects begin to be authorized again. This creates a dangerous dynamic; communities do not understand why the fund has not been used for their benefit, despite the clear impacts of mining on their livelihoods and the provision that grants them 20 percent of the SDF.

Affected communities should in the future be defined in the ESIAs performed by the EPA and the concessionaire’s environmental consultant. In the case of Arcelor Mittal, the company has already surveyed and defined the “affected communities” in its ESIA. Their definition is comprehensive and could be used as the starting point for beginning consultations with those communities as to how the 20 percent should be spent.⁴⁴⁹ While giving funds directly to communities may not be the most desirable development strategy, they could be given the opportunity to engage in meaningful discussions about their priorities and select projects that will present them with maximum benefit. According to the fund’s management secretariat, Bong County has already set up an “affected community committee” that will advise project managers on community

443 Revised Draft Reform Strategy: County Social Development Fund,” DFC, GoL, April 2010, p. 5.

444 Friends of the Earth/SDI, “Working for Development? ArcelorMittal’s Mining Operations in Liberia,” June 2010; CICR Interview with Bime Kollie, Secretary of the DFC, Monrovia, July 14, 2011.

445 Ibid.

446 “Revised Draft Reform Strategy: County Social Development Fund,” DFC, GoL, April 2010, p. 5.

447 CICR Interviews with government officials in Monrovia.

448 Ibid; CICR Interview with Hon. Jackson Findor, Representative from Nimba County and Nimba County Caucus Chairman, Monrovia, July 14, 2011; CICR Interviews with civil society representatives in Nimba County; CICR Interview with a District Commissioner from within the ArcelorMittal Concession, Nimba County, June 9, 2011; CICR Townhall Interview with PAC representatives, Zolowee, Nimba County, June 10, 2011.

449 ArcelorMittal, “Socio-Economic Baseline Survey: Analysis and Results, Communities Close to the Mine,” May 2009.

needs.⁴⁵⁰ This is, however, partially contradicted by the presence of a Bong County contingent at a mid-June ArcelorMittal “affected community stakeholders meeting,” who stated that they had not been consulted about how the money would best be used.⁴⁵¹

Management of the 20 percent could be partially based on the Clan Negotiating Body (CNB) model proposed by this report for use in FPIC negotiations prior to the concession being signed. By utilizing the CNBs to offer project priorities to managers of the fund, they will be able to consider local needs and then use the portion of the fund set aside for those communities in an efficient, targeted manner. The County Advisory Committees (CACs) and Project Implementation Units (PIUs) that were set up in the reforms could solicit the input of these CNBs rather than relying on the one “representative of the council of chiefs” that has been proposed to sit on the CAC.⁴⁵² Organizing these CNBs and utilizing the expertise of ministries that oversee their development priority areas – health, education, etc. – would allow the government to maximize the impact of the 20 percent and ensure that local citizens feel compensated for livelihood impacts.

SDFs are also not included as part of agricultural concession agreements, with the logic being that land is not a non-renewable resource and hence there is less need to ensure that funds are specifically re-invested into the communities around which those concessions are located.⁴⁵³ This is despite the fact that agricultural concessions arguably impact the livelihoods of rural communities more profoundly than mining concessions, and that much of the environmental destruction associated with transforming forests into palm and rubber plantations is irreversible.⁴⁵⁴ In the case of Sime Darby and Golden Veroleum, “County Development Contributions” are set up at a rate of US\$5 dollars per developed hectare, a small sum given the sheer size of those concessions.⁴⁵⁵ Were Sime Darby to develop 200,000 hectares – unlikely given that even Firestone has not reached that level of expansion – the company would only be mandated to donate US\$1 million dollars per year for county level development. Given that these plantations often include investment requirements of a billion dollars or more, this is an extremely low figure.

Another concern is that when viewed next to the expected revenues that the FDI projects will almost certainly accrue, the SDFs are extremely small. While US\$3 million dollars a year is a great deal of money for a country as poor as Liberia, given the fact that the royalties and taxes from ArcelorMittal’s operations could top US\$100 million dollars per year, it is a relatively minor portion of the concession’s overall value. One

450 CICR Interview with government officials in Monrovia.

451 CICR Observations from an “ArcelorMittal Affected Communities Stakeholder Meeting,” Buchanan, Grand Bassa County, June 15, 2011

452 “Revised Draft Reform Strategy: County Social Development Fund,” DFC, GoL, April 2010, p. 8.

453 CICR Interviews with government officials in Monrovia.

454 Greencons, Inc, “Sime Darby Environmental and Social Impact Assessment,” March 2010 (On File with CICR); Greencons, Inc, “GoldenVeroleum Environmental and Social Impact Assessment,” February 2011 (Sections on File with CICR).

455 “An Act to Ratify the Amended and Restated Concession Agreement Between the Republic of Liberia and Sime Darby Plantation (Ltd),” GoL, July 29, 2009, Section 19.7; An Act to Ratify the Concession Agreement Between the Republic of Liberia and GoldenVeroleum (Liberia) Inc.,” GoL, September 1, 2010, Article 19.8.

observer of the history of FDI in Liberia remarked to researchers that the “Bomi Hills” concession, which was once owned by an American company, is known colloquially as “Bomi Holes, Bomi Hells,” referring to the lack of concurrent local development that accompanied the mining operations. Repeating such circumstances is highly undesirable, and a certain portion of revenue should be earmarked for county level development in addition to the SDFs. While there are a number of needs that the Liberian government must address in its economic plans, it would be wise to allocate at least 10 percent of revenues from a particular concession for supervised county level development, preferably through the SDF management system and with the same 20 percent clause for affected communities.

All SDFs should be audited annually by the General Auditing Commission (GAC) and projects selected by the CACs should be announced publicly on the radio repeatedly. If the GAC does not have the capacity or funding to audit the fund’s operations, a small percentage of the yearly contribution could be allocated to hiring an auditor in the GAC whose primary purpose would be the public auditing of the fund and its use. Construction contracts should only be granted to companies that are licensed by the Ministry of Commerce, and strict conflict-of-interest provisions that include prohibitions on allowing family members of PIU or CAC representatives to be involved in project implementation. Any malpractice related to the SDFs should be swiftly referred to the Ministry of Justice for immediate investigation and – if warranted – prosecution.

xv. Creating a Separate Financial Stream for Natural Resource Revenues

Currently, revenue from natural resource concessions is pooled together by the Ministry of Finance into a consolidated account and then allocated to the national budget based on legislative and executive priorities. There is, however, no way to track the specific flow of finances from natural resource concessions.⁴⁵⁶ The Poverty Reduction Strategy of Liberia promises that “concession revenues will be used to promote public welfare by financing investments in roads, education, health, water, and other areas.”⁴⁵⁷ Without specific mechanisms to examine the revenue stream, there is no way to ensure that those revenues are being used for development projects as they are simply deposited into already existing government accounts that include revenue from other sources.

To ensure that concession revenues are spent wisely and on projects that benefit a wide range of Liberians, the Ministry of Finance could partner with LEITI to use the Integrated Financial Management Information System (IFMIS), which would allow those revenues to be earmarked and followed all the way from deposit to expenditure. In an interview, a Deputy Minister of Agriculture stated that the government’s policy concerning these revenues is to ensure that they are spent in a way that does not turn Liberia into an “island nation” that experiences growth without concurrent development, adding that “the new vision of concessions is that they should ensure shared growth.”⁴⁵⁸

Tracking FDI revenue in a separate revenue source would ensure accountability and transparency. According to the project accountant of LEITI, the agency hopes to audit

456 CICR Interviews with government officials in Monrovia.

457 GoL, “Poverty Reduction Strategy,” April 2008, p. 37.

458 CICR Interview with government officials in Monrovia.

the revenue stream in this manner, in the belief that its publication would generate debate about how concession revenues should be spent and allow citizens to know how their country's non-renewable wealth is being spent.⁴⁵⁹ Currently, royalties from concession agreements flow into the Ministry's of Finance's consolidated account along with income tax and other government revenue sources. This consolidated account is then allocated to programs and agencies after the annual national budget negotiations. Up-front payments made by concessionaires to the government are routed to a capital account controlled by the Ministry of Planning.⁴⁶⁰ These signing fees can be quite large; in the case of China Union it was US\$40 million dollars, over 10 percent of the yearly government budget.⁴⁶¹

In order to ensure that taxes and revenues are spent appropriately and in accordance with the PRS, taxes, royalties, and payments could be directed to a capital fund. LEITI would monitor payments into this fund, which would then be allocated into projects in an open, transparent manner that can be publicly audited. When necessary, this fund could still be used for administrative costs or other one-off payments for infrastructure rehabilitation or other government priorities, but at least Liberians would be able to see clearly how much is being used for such purposes and how much is being used to finance development. This would strengthen LEITI and ensure that revenues from natural resources are being used for the maximum benefit of Liberia.

d. The "Big Picture"

xvi. Convening a National Forum on Natural Resource Policy

At the end of the civil war, Liberia was a shattered society with almost universal unemployment and a completely destroyed infrastructure. Given this circumstance, and the sharp contrast between pre-war Liberia and its post-war condition, the pressure to solicit sources of revenue for the government was high, and FDI was targeted as a crucial means to grow the economy quickly. Thus, concessions were granted in much the same way that they were prior to the conflict, following models pioneered by Firestone, LAMCO, and other large foreign investments.⁴⁶²

While it is understandable that the government felt a need to kick-start the economy quickly, it should be recognized that inequalities in wealth distribution were at least one cause of the war, and that the development circumstances in areas around those concessions in many cases did not significantly improve as a result of the investments.⁴⁶³ According to one official at the Ministry of Planning, the government did not examine alternate models of natural resource management before instituting its present FDI policy; although there have been public commitments to manage the revenues from

459 Ibid.

460 Ibid.

461 "Beijing's Bankroll for Bong's Ore," *Africa-Asia Confidential* (London), December 19, 2009.

462 CICR Interviews with government officials in Monrovia.

463 Republic of Liberia Truth and Reconciliation Committee (TRC), "TRC Final Report," December 4, 2009, pp. 59-84; Save my Future Foundation (SAMFU), "The Heavy Load: A Demand for Fundamental Changes at the Bridgestone/Firestone Rubber Plantation," June 2008.

concessions more responsibly than in prior phases of Liberia's history, there has not yet been a broad debate about the overall nature of the policy itself.⁴⁶⁴

In order to solicit a wide range of views and gain the benefit of the extensive expertise present in the Liberian diaspora and the international community, Liberia should convene a week-long public forum in Monrovia to discuss natural resource policy in the country. Such an event would be an opportunity to openly discuss the role of natural resources in development, the impacts of their extraction on indigenous communities, the wisest use of the funds, and the role of the state in soliciting investment and partnering with concessionaires. Speakers from a wide range of government, civil society, and indigenous communities would be invited to make presentations, and panel discussions would be held where a diverse range of views could be offered.

The forum could be broadcast live on the radio and representatives of PACs could also be invited to attend and speak at the event. At the end of the week, the chairman of the forum and his or her staff would attempt to reach consensus between participants in a closed session, and would then produce a policy brief that would be presented to the president and published online and in excerpt form in local newspapers. This would allow a broad discussion about natural resource policy in the country and would be an opportunity for the democratic process to be strengthened in Liberia; the results of such a forum would almost certainly be positive for the country.

Moreover, the forum would be an opportunity to develop creative thinking on how to formulate a policy that is specific to Liberia and that takes into account its unique political and social circumstances. This is especially timely given the potential for discovering oil; one government official expressed his view that the country would be better off developing its own expertise with regard to oil, rather than rushing to sign the rights away to foreign companies.⁴⁶⁵ Such issues should be discussed openly in Liberia, with the benefit of multiple points of view.

xvii. Tackling Land Tenure Reform

Land disputes are commonplace in Liberia.⁴⁶⁶ Years of war and large population movements combined with an outdated land registry system have led to widespread confusion over issues of land ownership, sale, and the right of return for refugees. These disputes are occasionally violent, and numerous international observers have commented on the potential for land issues to lead to conflict in the country.⁴⁶⁷ At present, there are two parallel systems: that of legal, private deeded tenure and the customary rights enjoyed by indigenous communities.⁴⁶⁸ There are, however, no simple means to bridge these two systems, and the government maintains that it has an almost universal right to 'eminent domain' in the country. While some communities possess "tribal deeds," many

464 CICR Interviews with government officials in Monrovia.

465 CICR Interviews with government officials in Monrovia.

466 Norwegian Refugee Council (NRC), "Confusions and Palava: The Logic of Land Encroachment in Lofa, Liberia," 2010, p. 5.

467 Ibid, International Crisis Group (ICG), "Liberia: Uneven Progress in Security Sector Reform," January 13, 2009, p. 8.

468 CICR Interview with Vaneska Litz, Country Director, Tetra Tech ARD, Monrovia, May 31, 2011.

more do not, and even those who possess such deeds can be legally dispossessed of their ancestral lands by a concessionaire.⁴⁶⁹ To review these and other issues related to land, the government established a Land Commission in 2009 to make recommendations after a five-year survey and review.⁴⁷⁰

At the administrative level the task of registering all old private land claims and correlating it with customary and tribal land claims is daunting, to say the least. Officials involved with the Land Commission say it may take a decade, and have called for a moratorium on concessions while it conducts its review.⁴⁷¹ This recommendation was not accepted by the current administration. The Commission lacks the capacity to perform this overwhelming task, and according to one observer even basic indexing and filing skills are rare, with many officials lacking the will to transparently re-categorize a broken system that can easily be manipulated for personal benefit.⁴⁷²

During focus groups discussions, PAC representatives explained the process that a foreign investor should go through while soliciting land from indigenous communities. In Bomi County, community leaders told researchers that the first step would be to approach tribal authorities, who would then call a community meeting in which terms could be worked out between the community and investor.⁴⁷³ This is very similar to the process of FPIC negotiation recommended by this report. The Liberian Code of Law on Tribal Lands, passed in 1956, describes such a process, saying that,

“A person who enters the territory of a tribe of which he is not a member for the purpose of farming, shall observe the following procedure:

1. Obtain permission of the Tribal Authority prior to commencing his activities;
2. Agree to pay some token in the nature of rent such as five or six bunches of rice out of every farm;
3. Pay taxes to the appropriate tribal chief on all huts on the land occupied by him.”⁴⁷⁴

While this law is now outdated, and the third provision in particular is no longer applicable, it does describe a Liberian precedent of granting communities the right to FPIC. The provision related to bags of rice is antiquated, but it should be interpreted as a requirement to adequately compensate the customary owners of tribal land on an ongoing basis for actions that impact the land on which they have traditionally cultivated crops, worshipped, buried their ancestors, and made their homes.

469 CICR Interview with Flora and Fauna International (FFI), Monrovia, June 16, 2011.

470 CICR Interviews with government officials in Monrovia.

471 Ibid.

472 CICR Interviews with Non-Governmental Organizations (NGOs) operating in Liberia.

473 CICR Interview with PAC Representatives, Beajah, Bomi County, July 4, 2011.

474 Wily, Liz, SDI/FERN, *So Who Owns the Forest?* 2008, p. 118.

The difficulty of defining customary or tribal land rights is that they do not refer to individually held plots that are tradable in a market system. Traditional Liberian land use in indigenous communities follows a pattern of collectively held, shifting agriculture in which the larger collective benefits from all labor and output.⁴⁷⁵ However, instead of appropriately defining the rights of indigenous communities, the government of Liberia decided to demarcate land in the countryside as belonging to the public, and hence, that it was the property of the government.⁴⁷⁶

As more and more desirable resources were discovered in the “hinterland” in the 1950s and 1960s the strength of tribal land deeds were diluted, with private land deeds becoming more normalized. According to a recent study of the land rights of indigenous communities in Liberia, the result of this pattern was that, “increasingly cavalier attitudes to the land rights of the Hinterland [became] evident; concession areas expanded ... with no evidence that due compensation for those lands was paid to affected tribes.”⁴⁷⁷ After 1956, if indigenous communities wanted to secure rights to their land they had to buy it from the government. The price for that land seems reasonable: US\$1 dollar per acre of farmland and US\$2.50 dollars per acre for the survey, but for subsistence farmers this – coupled with travel to administrative capitals – was prohibitively expensive in many cases. Only a few wealthy, well-connected tribes with educated leadership were able to acquire formal deeds and rights over their territories.⁴⁷⁸

There are currently 19 customary public land sale deeds owned by tribes in over 3.8 million hectares of land, according to Forestry Development Agency (FDA) figures from 2007.⁴⁷⁹ However, these tribal deeds – some of which fell in the concession areas studied in this report – did not supersede the authority of the central government to allocate their lands to concessionaires without including them in the concession negotiation process.⁴⁸⁰ According to representatives of the Ministry of Agriculture who sat in on the contract negotiations of both Sime Darby and Golden Veroleum, these tribal deeds were never a topic of conversation, strengthening the assertion that in practice, virtually all land in the countryside is subject to declarations of eminent domain by the government.⁴⁸¹

According to Liberian law, the government is the owner of public lands – which is to say any land that is considered un-registered. According to one author’s interpretation of the Public Lands Law, “the government may lease any portion of public land not appropriated for other purposes to foreigners or foreign companies. There is no requirement that the land is not owned or even encumbered.”⁴⁸² Indeed, concession agreements generally grant the concessionaire the right to request that communities be moved off their land if their presence disrupts company operations, whether or not those

475 CICR Interviews with government officials in Monrovia.

476 Wily, Liz, SDI/FERN, *So Who Owns the Forest?* 2008.

477 Ibid, p. 124.

478 Ibid, p. 125.

479 Ibid, p. 128.

480 Wily, Liz, SDI/FERN, *So Who Owns the Forest?* 2008, p. 128.

481 CICR Interviews with government officials in Monrovia.

482 Wily, Liz, SDI/FERN, *So Who Owns the Forest?* 2008, p. 137.

“encumbrances” are indigenous communities with tribal land deeds.⁴⁸³ While some indigenous communities may have roots in a village that are centuries old, the land below and around that village tends to be viewed as public property that belongs to the state.

Even if there were a clear legal system to categorize and examine the presence of recognized deeds inside concession areas, most people do not possess the documents that would be necessary to complete such a study. According to one survey, only 1 percent of households in 37 communities had acquired formal deeds for their homes or farms.⁴⁸⁴ While the government maintains its ownership of undeeded lands, the fact that so many Liberians live without the deed to their home creates a dangerous situation. Setting a precedent for mass appropriation of land, especially in circumstances where there will not be immediate, tangible benefits for local communities who lose their homes, is not helpful to the peacebuilding agenda in the country.

While land tenure is a difficult, contested issue that will require a number of years to adequately understand and address, mass resettlements should not be carried out without the Free, Prior, and Informed Consent of indigenous communities. The recommendation of the Land Commission that there be a moratorium on concessions is appropriate and timely, and the executive branch should heed its advice until a legal structure can be developed that balances the competing claims to land that exist in modern-day Liberia.

xviii. Ensuring Equitable, Sustainable Development and Addressing Corruption

The tragic and desperate circumstances in Liberia can on face value be somewhat puzzling. The country possesses huge natural resource deposits worth billions of dollars and a population of only four million for an area the size of the US state of Tennessee. Land is abundant and ideal for cultivating the kinds of cash crops that neighboring Cote D’Ivoire used to build an economy that was – until recently – strong and productive. Yet almost 85 percent of the population is formally unemployed, and 68 percent live below the national poverty line.⁴⁸⁵ Although this is certainly due in large part to the terrible effects of the civil war, the question must be asked: how did Liberia find itself in this circumstance, and how can it effectively move forward?

While an answer to that question requires an analysis of Liberian history that will not be covered in this report, and has been amply examined elsewhere, the mismanagement of natural resource revenue has significantly contributed to the breakdown of social cohesion in the country.⁴⁸⁶ During the post-WWII years, elites enriched themselves with concession revenues, constructing massive ministry buildings and monuments in

483 See for example, “An Act to Ratify the Amended and Restated Concession Agreement Between the Republic of Liberia and Sime Darby Plantation (Ltd),” GoL, July 29, 2009, Section 4.2(b).

484 Wily, Liz, SDI/FERN, “So Who Owns the Forest?” 2008, p. 144.

485 United States Department of State, “Background Note: Liberia,” July 1, 2011.

486 ICG, “Liberia: How Sustainable is the Recovery?” August 19, 2011, p. 17; Republic of Liberia Truth and Reconciliation Committee (TRC), “TRC Final Report,” December 4, 2009, pp. 78-79, 84, 88; Global Witness, “Taylor-Made: The Pivotal Role of Liberia’s Forests and Flag of Convenience in Regional Conflict,” September 7, 2007; The Diamonds and Human Security Project, “Land Grabbing and Land Reform: Diamonds, Rubber, and Forests in the New Liberia,” July 2007.

Monrovia while the vast majority of the country's indigenous population suffered from profound poverty and underdevelopment.⁴⁸⁷ Thus, when the war broke out, a great many disaffected rural villagers became easy recruits for the many fighting factions, who promised that victory would bring with it wealth and a better life. Of course, the true effect of the war was to take an already impoverished country and greatly exacerbate its suffering. Now, Liberia imports virtually everything; even livestock and rice come to the country via its ports.

The government of President Ellen Johnson-Sirleaf has promised that concession revenue will go towards vital infrastructure that will benefit the people of Liberia, but there is significant popular sentiment in the country that such development has not reached the people quickly enough.⁴⁸⁸ Given her victory in the 2011 elections, her administration will continue to be challenged to find ways of effectively using concession revenue to invest in tangible social infrastructure improvements for the country's impoverished citizenry. Given the history of unrest and violence in the country, failure to adequately distribute natural resource wealth could have terrible consequences both in the short- and long-term. As one high-profile Liberian human rights activist said in a speech at the National Endowment for Democracy in Washington, DC, "Current realities in Liberia suggest that we are sitting on a time bomb of social unrest ... without effective social policies, the gains and benefit of private sector investment only benefit the champagne and dinner table of senior government officials."⁴⁸⁹

While concession revenues will go a long way in financing equitable development, there are challenges and some disturbing signs. The issue of corruption remains prevalent in Liberia, and despite the current administration's promises to make the issue a priority, the consensus among most observers is that its efforts in this area have been substandard.⁴⁹⁰ Numerous political appointees have been accused of egregious corruption, including some county superintendents – public officials who have a central role in managing the funds that are earmarked by the central government for county-level development. The superintendent of Grand Gedeh county, the site of the Putu mining concession and one of the country's most troubled areas during the civil war, has been sanctioned by the GAC for misuse of public funds, and despite having been forced to repay money that was drawn from county accounts, he remains in his position.⁴⁹¹

487 Ibid; Levitt, Jeremy, *The Evolution of Deadly Conflict in Liberia*, Carolina Academic Press, 2005, pp. 132-194.

488 GoL, "Poverty Reduction Strategy," April 2008, p. 32; Simpson, Chris, "Liberia's Empty Promise," *BBC Online* (London), October 22, 2010; J. Alosiyus Toe, Human Rights Activist, Speech at the National Endowment for Democracy, Washington, DC, "Liberia: Elections, Justice, Corruption, and the Role of the International Community," February 24, 2011; CICR Informal Interviews with Residents of Monrovia, June – August 2011.

489 J. Alosiyus Toe, Human Rights Activist, Speech at the National Endowment for Democracy, Washington, DC, "Liberia: Elections, Justice, Corruption, and the Role of the International Community," February 24, 2011.

490 Ibid; United States Department of State, "2010 Human Rights Report: Liberia," April 8, 2011; ICG, "Liberia: How Sustainable is the Recovery?" August 19, 2011, pp. 17-19; "Corruption Crackdown Dominates Liberian Presidential Campaign," *Voice of America* (Washington), August 3, 2011; Transparency International, "Corruption Perceptions Index 2010," 2010, p. 3.

491 Kowo, Moses, "Superintendent Bailey's Pepper Bush: Auditors Break Into Grand Gedeh Secret Account," *FrontPageAfrica* (Monrovia), July 14, 2010; "Accountability Police Badly Needed in Grand

Given that one poll cites 63 percent of Liberians as considering the issue of corruption to have been the primary cause of the war, the current circumstances are concerning.⁴⁹²

In response to these sentiments, the government in 2008 established the Liberian Anti-Corruption Commission (LACC). The agency boasts a toll-free number with which citizens can report instances of corrupt practices and has conducted a number of investigations that have resulted in referrals to the Ministry of Justice for prosecution.⁴⁹³ However, according to the Executive Chairperson of the LACC, the vast majority of these referrals are stonewalled by the Ministry of Justice, who claim that the evidence is flimsy and therefore the cases cannot be tried in court despite the LACC's strong advocacy otherwise.⁴⁹⁴ In addition, when the outspoken Auditor General of the GAC began publicly accusing the administration of fostering corruption, his appointment was not renewed when it ended in March 2011.⁴⁹⁵ This despite his status among many Liberian civil society organizations, media, and other observers as one of the only public figures to have made an effort to tackle the country's pervasive corruption problem.

The mismanagement of the Social Development Fund in the ArcelorMittal concession should be a warning signal to the government of Liberia. While a reform process was commendably instituted to restructure the management of that fund, the willingness of county officials to bypass official regulations on the disbursement of money from the fund reflects a comprehensive lack of accountability and almost no fear of consequences for improper action. Liberia is undoubtedly fragile, and the wanton exercise of state power could have a destabilizing effect, but allowing corruption to remain unchecked is even more dangerous. In order to ensure that concession revenues are not squandered by venal public officials, the administration should prosecute government officials for the misuse of state funds and ensure that the management of that revenue is transparent, efficient, and responsible.

Of primary importance is the need to ensure that ample revenues make their way back to the counties where extractive or agricultural investment is producing harmful impacts on rural populations. While the SDFs are a good step in that direction, there are no direct policies in place to allocate percentages of revenue back to counties and it is currently left entirely up to the executive and legislature to make those decisions.⁴⁹⁶ In cases where the impact of concession operations are severe and far-reaching, if PACs do not directly see the value of those operations through tangible development benefits, conflict will become more and more likely. In the forestry sector, rental fees and taxes accrue directly to local communities in the course of logging operations; while this is

Gedeh County," Editorial, *FrontPageAfrica*, 2009; CICR Telephone Interview with John Morlu, former Auditor General of the General Auditing Commission (GAC), July 15, 2011.

492 ICG, "Liberia: How Sustainable is the Recovery?" August 19, 2011, p. 17.

493 "Sirleaf's Anti-Corruption Cogs at Crossroads," *The Analyst*, August 3, 2011.

494 Ibid; CICR Interview with Francis Johnson-Morris, Chairperson, Liberia Anti-Corruption Commission (LACC), Monrovia, July 20, 2011.

495 ICG, "Liberia: How Sustainable is the Recovery?" August 19, 2011, p. 18; United States Department of State, "2010 Human Rights Report: Liberia," April 8, 2011.

496 CICR Interviews with government officials in Monrovia.

only one model of revenue allocation, and implementation of the program has been difficult, the potential benefits for local development in those communities are clear.⁴⁹⁷

Overall, Liberia must grapple with the issue of corruption and ensure that affected counties receive an equitable share of concession revenue. This should involve more than an implicit promise; by earmarking a certain percentage of that revenue for use in the counties, the government would be building trust with rural populations and would be able to ensure that affected communities see a return for what they have been asked to give up. This will require a concerted effort to reduce widespread corruption in the country. In addition, Liberia's plans to decentralize power and allow for the election of county superintendents and other local officials should be instituted as soon as possible, giving county populations the ability to hold their officials directly accountable for misconduct.

xix. Creating Jobs

A major stated benefit of concessions, and one of the primary justifications for granting them, is that they will create jobs for an impoverished, unemployed Liberian population.⁴⁹⁸ The hope is that these jobs will stimulate the economy and provide cash to rural peoples that can then be used to purchase goods and other services, ideally from Liberians. Interviews with PACs in the affected areas reveal an extremely high demand for employment, and many people stated that it was the greatest advantage of having foreign investors operating in their homelands.⁴⁹⁹ There are, unfortunately, flaws with this view.

First, many of these industries are not labor-intensive. In the iron-mining sector, for example, despite ArcelorMittal's claim that it will ultimately employ 3,500 Liberians on a permanent basis and create up to 20,000 indirect jobs, its most recent public figures reflect that only 500 people have been directly employed by the company.⁵⁰⁰ While the company also states that it has employed an additional 2,100 Liberians, these are low-paying contract jobs that are not stable and can sometimes last as little as three months at a time.⁵⁰¹ One government official reported to researchers that the company was not providing information about pay scales for their employees or accurate statistical details

497 Sendolo, Joaquin, "River Cess Recieves \$36,000 Dollars for Development," *The Daily Observer*, August 27, 2011; CICR Interview with Jonathan Yiah and James Otto, SDI, June 2, 2011.

498 "Remarks by H.E. President Ellen Johnson Sirleaf at Signing Ceremony and Official Announcement of GoldenVeroleum US\$1.6 Billion Investment," Greenville, Sinoe County, September 2, 2010; "Remarks by President Ellen Johnson Sirleaf at the Investors Forum," Washington, DC, February 15, 2007.

499 CICR Townhall Interviews with PAC Representatives, Montserrado, Nimba, Bong, Grand Bassa, Grand Gedeh, Sinoe, Bomi, Grand Cape Mount, and Gbarpolu Counties, Liberia, June and July 2011; CICR Informal Interviews with ArcelorMittal Employees, Yekepa, Nimba County, June 9, 2011; CICR Informal Interviews with Sime Darby Employees, Gbah, Bomi County, July 6, 2011; CICR Informal Interviews with PAC Representatives, Butaw, Sinoe County, June 29, 2011.

500 ArcelorMittal online site, "Corporate Responsibility: Case Studies, Supporting Development in Post-War Liberia." "Since the start of operations in 2006, ArcelorMittal Liberia has provided nearly 500 jobs directly, and, through contractors, provided employment for 2,100 Liberians."

501 Ibid, CICR Interview with a District Commissioner from within the ArcelorMittal Concession, Nimba County, June 9, 2011; CICR Townhall Interview with PAC representatives, Zolowee, Nimba County, June 10, 2011;

about who they hire, for how long, and at what salary.⁵⁰² Even if one decides to be generous and include the contract jobs in an analysis of ArcelorMittal's employment impact, those 2,800 jobs are an extremely small percentage of the working age portion of Nimba County's 640,000 residents.⁵⁰³

The two palm oil companies studied for this report claim that they will eventually employ over 30,000 people in their respective plantations.⁵⁰⁴ In an interview, GoldenVeroleum management claimed that the impacts of their operations will be offset by employment opportunities that will be granted to members of PACs who are no longer able to farm or continue their traditional lifestyles.⁵⁰⁵ For their part, Sime Darby's management estimated that the company has already employed nearly 1,700 people.⁵⁰⁶

However, the wages for these positions tend to be very low, between US\$3 dollars and US\$5 dollars per day.⁵⁰⁷ In the GoldenVeroleum concession, the common wage was US\$3 dollars per day; PACs reported this figure as being too low to afford any more than one big meal a day.⁵⁰⁸



Union campaign card in the hands of an ArcelorMittal employee, Yekepa, Nimba County, June 9, 2011.

When farmers who have tended to survive with subsistence agriculture are converted to company employees who make only enough to purchase food, there will be very little effect on the local economy. Agricultural production will simply shift to other areas, and likely become more expensive due to shortages inside the plantation area; this circumstance will not bring benefits to the Liberian economy, as workers will not possess discretionary income that could be used to support local industries and merchants. At a higher level, while provisions that mandate companies to hire Liberians for as many as 50 percent of their management positions after ten years are commendable, the sheer number of jobs in those roles are likely to be relatively small when viewed in the context of overall Liberian unemployment statistics.

Without question, bringing jobs to Liberia is a worthwhile and vital endeavor, and FDI can provide employment in a country that desperately needs a busy workforce. However, the Firestone concession offers valuable perspective on this issue. Despite owning a concession that encompasses nearly 10 percent of the country's arable landmass, the company currently employs only 8,500 workers out of 100,000 people who live inside its gates.⁵⁰⁹ This figure represents only 8.5 percent of the local population and

502 CICR Interviews with government officials in Monrovia.

503 GoL, "2008 National Population and Housing Census Final Results," May 2009.

504 GoldenVeroleum Liberia online site, "Vision for Sustainable Poverty Reduction in Liberia;" Sime Darby press release, "Sime Darby to Set Roots in Liberia," May 19, 2011.

505 CICR Interview with GoldenVeroleum management representatives, July 11, 2011.

506 CICR Interview with Sime Darby management representatives, July 20, 2011.

507 CICR Informal Interviews with Sime Darby Employees, Gbah, Bomi County, July 6, 2011.

508 CICR Informal Interviews with PAC Representatives, Butaw, Sinoe County, June 29, 2011.

509 Wily, Liz, SDI/FERN, *So Who Owns the Forest?* 2008, Annex B, p. 296.

0.2 percent of Liberians aged 14 to 65.⁵¹⁰ It is important that the issue of job creation is accurately and dispassionately examined at a national level with an eye toward balancing the impacts of concession operations, the revenue that will accrue from those operations, and a clear understanding of how many jobs concessionaires are providing, what kind of jobs they are, and whether they are actually having a sustainable positive effect on the economy.

xx. Stimulating “Downstream” Industries

A common source of frustration in Liberia regards the fact that there is no secondary processing of commodities in the country. While some “rubberwood” products are manufactured, it is a very low-skill procedure that is not comparable to the processing of rubber or refining of iron ore into steel.⁵¹¹ While such activities are unlikely in Liberia’s near future, a major selling point of the concessions is that they will stimulate the local economy, which will lead to the development of local industries that service the concessionaire’s operations in the form of shops, food sales, and other small businesses.⁵¹² Foreign companies that invest billions in their projects require services and materials to support their activities. Ensuring that as many of these services as possible are sourced locally is a vital to translating FDI into local economic growth and job creation.

Sime Darby provides up to two bags of subsidized rice for 1,700 employees each month. This translates into as many as 2,400 bags of rice at an estimated total market value of US\$232,000 dollars per month. This rice, however, is imported. One Ministry of Planning official estimated that ArcelorMittal spends nearly US\$50,000 dollars a week on vegetables for use in its company canteen; again, these vegetables are largely imported from other countries.⁵¹³ Circumstances such as these are crucial opportunities for Liberia to translate the presence of foreign investors into jobs and dollars for local farmers, but there has been inadequate planning to take advantage of those opportunities. Without such planning, corollary industries such as commercial rice and produce cultivation will not happen, and Liberia will have missed its chance to stimulate local agricultural economies.

More difficult is the case of what is known as “downstream” industries. “Downstream” refers to the secondary processing of the kinds of raw commodities that countries like Liberia produce and export. Generally speaking, these kinds of refining activities require electrical capacity and other commercial infrastructure that Liberia is sorely lacking, and as such there has been little movement to create industry in the country.⁵¹⁴ This would, however, be an extraordinarily valuable opportunity to create semi-skilled jobs and maximize the value of Liberia’s resources; the country should review its capacity to support such activities and undertake a feasibility study to examine whether and how they could be made possible.

510 United States Central Intelligence Agency (CIA), “World Factbook: Liberia,” August 23, 2011.

511 Buchanan Renewables online site, “About Buchanan Renewables.”

512 GoL, “Poverty Reduction Strategy,” April 2008, p. 32.

513 CICR Interviews with government officials in Monrovia.

514 Ibid; CICR Interview with Alexey Borisev, Chief Executive Officer (CEO) of Putu Iron Ore Mining Corporation (Putu), Penoken, Grand Gedeh County, June 21, 2011.



Liberia's first shipment of iron ore in nearly thirty years being loaded onto a freighter, Buchanan, Grand Bassa County, June 13, 2011.

The primary challenges with regards to effective downstream processing in Liberia are energy costs, poor transportation infrastructure, and cumbersome bureaucratic hurdles.⁵¹⁵ On the first point, energy costs in Liberia are extraordinarily high. There is virtually no national power capacity, and most electricity is supplied by costly diesel-based generators. Any entity that requires a meaningful amount of power must pay for fuel and maintain its own generators. While there were once two hydroelectric plants in the country, they were destroyed during the war. The Brazilian iron ore company Vale has proposed to fix one, with the capacity to

generate 66 megawatts, as part of its concession agreement with Liberia wherein it could transport iron ore mined from Guinea through the country and out of its ports.⁵¹⁶

Buchanan Renewables, a clean energy pioneer, is presently planning to build a 35-megawatt generator that will use wood chips from rubber trees as biomass to burn and create electricity.⁵¹⁷ The project, however, is already one year behind schedule and government officials worry that the company may not be able to deliver its promised capacity. The company is presently exporting the wood chips it obtains in Liberia to a Dutch biomass plant; given that its concession agreement involves plans to build such a plant in Liberia, the government should press the company to deliver an accurate assessment of whether this is feasible and when it will take place.⁵¹⁸

The high cost of energy in Liberia makes alternative energy an important, viable option. Wind energy, for example, is more expensive in the developed world than other forms of power generation. In Liberia however, there are no domestic sources of coal or natural gas, and it is possible that wind or solar technology may be roughly comparable in price to that of importing coal. Although feasibility studies for the use of such technology were mentioned in the Poverty Reduction Strategy, funds were never located to undertake the study and progress on this issue has essentially stalled.⁵¹⁹ The government could make it a priority to source clean, local energy in the form of hydro, wind and solar power once

⁵¹⁵ Ibid.

⁵¹⁶ CICR Interviews with government officials in Liberia; Kennedy, George, "Vale Eyes Major Investment Projects in Liberia," *The Daily Observer*, April 13, 2011. Liberia is still in negotiations with Vale and the Guinean government concerning this deal.

⁵¹⁷ Buchanan Renewables online site, "Buchanan Renewables Power Group 'BRP.'"

⁵¹⁸ Pearce, Fred, "By Barcoding Trees, Liberia Looks to Save its Rainforests," *Reuters*, May 24, 2011.

"But two years after the power project was announced, there is no sign of construction at the power station site, let alone light ... critics say this is another example of Liberia's natural resources being shipped out at the earliest opportunity, rather than conserved for the country's benefit."

⁵¹⁹ GoL, "Poverty Reduction Strategy," April 2008, p. 104; CICR Interviews with government officials in Monrovia.

it has the financial capacity to do so. Without affordable energy, the country will be unable to compel concessionaires to conduct processing activities inside Liberia.

The construction of transportation infrastructure is also crucial in allowing for secondary commodity processing, and in many cases concessionaires have agreed to rehabilitate roads, ports, and railroads in the course of their operations.⁵²⁰ This will make secondary processing much more feasible than it presently is, especially if such infrastructure rehabilitation is undertaken in concentrated areas. This infrastructure will also assist the development of Liberian-run businesses, which can take advantage of it for their own purposes. This is part of the “development corridor” strategy elaborated by the Ministry of Planning and the World Bank. Unfortunately, however, progress toward stimulating business growth in the development corridor, which runs from Nimba County down to Buchanan and then Monrovia and is the site of ArcelorMittal’s infrastructure improvements, has to this point been less than satisfactory.⁵²¹

e. The Role of the International Community

Since the end of hostilities in Liberia, the United Nations and a plethora of international aid organizations have been intimately involved in reconstructing the country, offering a range of services such as skills training, peacekeeping, and project financing. Liberia is presently one of the world’s largest recipients of per capita international aid; such aid totals nearly 800 percent of government spending.⁵²² In addition, the UN peacekeeping mission’s annual budget is nearly US\$100 million dollars more than that of the Liberian government.⁵²³ President Ellen Johnson-Sirleaf has a well-deserved reputation for being friendly with foreign powers, and her administration has benefited from debt relief and substantial contributions to national initiatives by a wide range of international actors.⁵²⁴ Beyond the clear influence they can wield in matters of policy, these actors potentially have the ability to assist the Liberian government in managing its natural resources by offering technical support and conducting monitoring activities in cases where government capacity is weak.

In particular, the United Nations Mission in Liberia (UNMIL) is mandated to “assist the transitional government in restoring proper administration of natural resources.”⁵²⁵ While the current government of Liberia is democratically elected and no longer “transitional,” this mandate should still apply, given its importance in ensuring continued peace in the country. The international community has had an important role in the administration of Liberia’s resources, placing sanctions on diamonds and timber during the war, assisting the country in the renegotiations of Firestone and ArcelorMittal’s concession agreements, and at one point administering a financial program wherein

520 See for example, “MDA Between the Government of Liberia, Putu Iron Ore Mining Inc, and Mano River Iron Ore Ltd.,” September 2, 2010, Sections 6.6 and 6.7.

521 CICR Interviews with government officials in Monrovia.

522 United States Agency for International Development (USAID), “Liberia Strategic Review: Feed the Future,” January 21, 2010, p. 2.

523 UN General Assembly, Sixty-fifth Session, “Approved Resources for Peacekeeping Operations for the Period of 1 July 2011 to 30 June 2012,” July 12, 2011. The United Nations Mission in Liberia (UNMIL) total budget is listed as US\$525,612,730 dollars.

524 Leo, Ben, “Liberia’s Debt Relief Party,” *TheHuffingtonPost.com*, July 2, 2010.

525 United Nations Security Council (UNSC), “Resolution 1509,” September 19, 2003, Mandate (r).

disbursals of government funds were subject to veto by foreign auditors.⁵²⁶ According to one UN official, the government has – understandably – asked the peacekeeping mission to respect its claims to sovereignty in regards to concession policy and other related investment activities.⁵²⁷

While it is reasonable that the government would seek to control its own destiny and make its own decisions regarding the solicitation of foreign investment, scholarship reveals that the implementation of sound natural resource management policies is crucial in maintaining peaceful conditions in a post-conflict society.⁵²⁸ A comprehensive study of the connection between natural resources and conflict was conducted by the United Nations Environmental Programme in 2009.⁵²⁹ Among the recommendations of that report was that peacekeeping missions should include mechanisms to review concession agreements for fairness, “build international capacity to conduct mediation between conflicting parties where tensions over resources are rising,” and “make dialogue and confidence-building between divided communities an integral part of environmental projects, so that peacebuilding opportunities are not missed.”⁵³⁰ Furthermore, the report recommends that, “The international community should be prepared to help national authorities manage the extraction process and revenues in ways that do not increase risk of further conflict, or are unsustainable in the longer term.”⁵³¹

Much of the research of this report was facilitated by UNMIL’s logistical capabilities, and in many cases site monitoring was only possible due to the mission’s transport capacity, which far exceeds anything possessed by the Liberian government. Without question, monitoring of the social conditions inside concession sites is difficult for a government that suffers from financial constraints, and UN agencies such as UNMIL and UNDP can potentially fill that gap on a short-term basis. To some extent there is a gap between perception and reality; while many UN and government officials stated their belief that PACs are happy to receive employment opportunities, direct conversations with those communities reveals much more complicated circumstances and occasionally, far higher levels of tension than the UN appears to understand.

Given its mandate to ensure that the country remains peaceful after the expected drawdown of the peacekeeping mission, it is crucial that UNMIL uses its resources while it still can to monitor the conditions within concession areas and discuss community concerns directly with those who are being impacted by corporate operations. This report recommends that UN Civil Affairs staff include site-monitoring visits as a part of their regular reporting responsibilities; this would allow policymakers

526 Dwan, Renata and Bailey, Laura, World Bank Fragile States Group and the UN Department of Peacekeeping Operation’s Best Practices Section, “Liberia’s Government and Economic Management Assistance Program (GEMAP) – A Review,” May 2006.

527 CICR Interviews with UNMIL officials in Monrovia.

528 UNEP, “From Conflict to Peacebuilding: The Role of Natural Resources and the Environment,” 2009; United Nations Interagency Framework Team for Preventative Action (UNIFTPA), “Extractive Industries and Conflict,” 2010; UNIFTPA, “Capacity Development for Managing Land and Natural Resources,” 2010; UNIFTPA, “Land and Conflict,” 2010

529 UNEP, “From Conflict to Peacebuilding: The Role of Natural Resources and the Environment,” 2009.

530 Ibid, pp. 28, 29.

531 Ibid, p. 29.

and upper-level management to stay abreast of circumstances in potentially volatile areas of the country and to design conflict mediation strategies when necessary.

Such monitoring does not need to be the responsibility of the United Nations alone; other aid organizations and non-governmental organizations can assist in creative ways. Ushahidi, for example, is an organization that has designed a “crisis mapping” system, where text messages and voicemails can be used to locate areas of heightened tension in the country. Once synthesized concession agreements are made available to PACs and other citizens in affected counties, a program could easily be designed where voicemail messages could be used identify concessionaires who are seen by selected local citizens as acting in violation of their obligations. These people would be trained in reporting such violations and other grievances, adding their complaints to a database that would route reports to relevant government agencies. When there is a critical mass of reported violations in a given area, the NBC or EPA would be able to respond with a targeted monitoring visit, maximizing the efficiency with which the government utilizes its extremely limited resources.⁵³²

Additionally, there are a number of organizations that are working on projects to increase the productivity of Liberian agriculture, and who could be extremely helpful in establishing out-growers programs and other ways to mitigate the impact of agricultural concessions. One such organization is Farm Builders, a social enterprise that works in collaboration with Buchanan Renewables. The company offers an alternative to large-scale agricultural concessions by acting as a conduit for smaller-scale FDI for Liberian farmers, who receive tools and training to increase the efficiency of their crop cultivation. The organization provides seedlings and other inputs, and commits to purchase the products grown by farmers at a fair market value.⁵³³

Thus, farmers are able to convert their existing crops into palm, rubber, and cocoa trees, all cash crops that are valuable on the international market. These operations are done without displacement; while they are not likely to be a viable alternative to the revenues of larger FDI projects, there are opportunities to combine models and use organizations such as Farm Builders to grow crops that outside investors wish to buy in bulk, empower farmers, and promote local agricultural production. While some small investors in these programs might worry that the farms they invest in could be appropriated by larger concessions or other applications of ‘eminent domain,’ guarantees by the government to protect them would very likely stimulate larger investment in such programs.⁵³⁴

532 CICR Interview with Kate Cummings, Ushahidi Liberia, Monrovia, August 11, 2011.

533 CICR Interview with Brian Cauoette, President of Farm Builders, Monrovia, July 20, 2011.

534 Ibid.

VIII. Recommendations

To the Government of Liberia

- Grant indigenous communities the right of Free, Prior, and Informed Consent during the executive review of concession agreements negotiated by the IMCC.
- Ensure that the National Bureau of Concessions possesses a strong, independent mandate to supervise monitoring of corporate compliance with concession agreements, and that it is adequately funded to carry out its important responsibilities.
- Convene a week-long, publicly broadcasted national forum on natural resource policy in Liberia, and invite a wide range of government officials, civil society representatives, indigenous community leaders, and other specialists to present their views on the issue.
- Allow communities to enter into dialogue with concessionaires either on their own or in partnership with the government, rather than insisting on acting as a buffer between both parties;
- Eliminate the overly broad “encumbrance” clauses from future concession agreements and ensure that resettlement clauses allow for the Free, Prior, and Informed Consent of indigenous communities.
- Ensure that international best practices such as the RSPO and IFC guidelines are codified in concession agreements.
- Conduct public stakeholder meetings in the counties where potential concessions will be located, prior to the concession agreements being finalized, as mandated by the Public Procurement and Concessions Act, for both solicited and unsolicited investment bids.
- Conduct a public information campaign in affected counties prior to FPIC negotiations, in which digestible copies of the proposed concession agreement are presented to citizens along with small-scale, initial Environmental and Social Impact Assessments.
- Ensure that copies of the concession agreement are made available to community members and government officials in the affected counties, and publish them online on the LEITI and NBC websites as soon as they are made public.
- Review crop compensation figures for fairness, and involve affected communities in determinations of how much their farms are worth and what they will need to adjust to the effects of losing their land.

- Develop and publish a model agricultural concession agreement.
- Ensure that “affected communities” are defined during the Environmental and Social Impact Assessment phase of concessionaire operations.
- Establish strict guidelines for management of Social Development Funds that include regular auditing and effective consultation with affected communities on how to best spend their percentage of the funds.
- Facilitate regular townhall-style community meetings between local government officials, corporate management representatives, and affected community members on a regular basis inside concession areas.
- Establish a system to track resource revenue after it enters the Ministry of Finance.
- Ensure that the Land Commission includes the mapping of customary tribal lands in its mandate.
- Prioritize the acquisition of international funds to develop out-growers programs in agricultural concessions that can mitigate the impact of corporate operations, and do so in a manner that allows communities to remain on their traditional lands.
- Write and distribute a summary of each company that bids on a concession, and include a description of its social and environmental track record in similar projects conducted in other countries.
- Consider alternate models of foreign investment such as small investments into rural agricultural efficiency.
- Conduct a comprehensive feasibility study on the potential for developing “downstream” processing industries.
- Institute a moratorium on the granting of concessions until the above steps are examined, implemented, and operationalized.

To the National Legislature

- Ensure that concession hearings are held publicly, with sufficient advance notice, broadcast on the radio, and that witnesses are called from a diverse range of experts.

To the Concessionaires

- Share financial models and business plans with the National Investment Commission and the IMCC as part of the concession bid.

- Ensure that community liaison representatives are selected from within the affected communities.
- Prioritize the establishment of vocational training centers so that management positions can be given to trained Liberian workers.
- For any management vacancy, companies should interview at least two people from the affected county before making a final hiring decision.
- Prioritize the development of out-growers programs in agricultural concessions as a way to ensure stable community relations.
- Use statutory influence over the SDFs to ensure timely delivery of development, especially to “affected communities” within the concession area.
- Respect traditional conflict resolution mechanisms and follow tribal guidelines for approaching and communicating with local communities.
- For palm oil concessionaires, become immediately certified as RSPO-compliant.

To the United Nations and International Community

- Include continued monitoring of the social and environmental impacts of concessionaire operations as an aspect of the peacekeeping mission.
- Mandate UNMIL Civil Affairs to make regular visits to concession sites.
- UNDP and Peace Corps should work with the National Youth Volunteer Service to place volunteers in affected communities so they can train community advocates to register complaints and monitor corporate compliance with concession agreements.
- UNDP and the World Bank should provide technical assistance and training to NBC monitors to ensure a high standard of professional competence and familiarity with IFC and RSPO guidelines.

To Liberian Civil Society

- Continue monitoring conditions inside concession areas and producing public reports about the community-level experience of FDI.
- Seek out and form partnerships with concessionaires, so that civil society can act as a bridge between them and PACs.

IX. Conclusion



Child looks on during a townhall interview with Project-Affected Community members in Plusunnie, Sinoe County, June 30, 2011.

Foreign Direct Investment is flooding into Africa. As Asian industries gain traction in the world market and the global consumer base grows in size, the continent and its resources are becoming a compelling destination for international corporations seeking to capitalize on its low rents and favorable investment terms. For its part, Liberia has welcomed this investment, hoping to translate the revenues from industrial mining and agricultural production into equitable, broad-based development that can lead it to a condition of prosperity. This policy will almost certainly result in large financial rewards for

the country. It does, however, come at its own cost. Concession operations have severe, often irreparable impacts on the lives of community members whose homes are near these projects, and their effects on the environment are dramatic.

While Liberia is in an understandable rush to grow its budget and become a self-sufficient, stable country that can provide for its citizens on its own, it must not sacrifice sound planning for a fast return on its resources. In many regards, FDI policies in the country do not adequately take into account the needs of those who will be most directly affected by the granting of large concessions in the hinterland. Reforms are needed that will ensure the state can receive the benefits of foreign capital without creating a dynamic of distrust and anger that could lead to dangerous social tensions in an already fragile post-conflict environment. The good news is that these reforms are achievable, relatively cheap, and will allow Liberia to reap the rewards of FDI while still ensuring the respectful treatment of its indigenous communities.

Liberia has a tremendous opportunity to become an international standard-bearer of responsible natural resource governance in Africa. By granting indigenous communities a seat at the negotiating table, maximizing the social contributions of investors who stand to make billions of dollars from their projects, and creating streamlined government bureaucracies that are capable of effectively monitoring those projects, Liberia can establish itself as a model of creative thinking and integrity in natural resource management. This will require the government to partner with its citizens in developing a policy that spreads the wealth of natural resources and ensures sustainable, sound custodianship of the country's environment and people.

As Africa continues to experience the bounty – and the woes – of FDI, Liberia has the opportunity to take on a leadership role and ensure that it creates growth for all rather than windfalls for a few. Thus, the natural wealth of this small West African nation, defined for so long by war and misery, can become the foundation of a bright future for its deserving people.

Annex – List of Interviews

United Nations Development Programme (UNDP) senior representatives, Monrovia, May 26, 2011.

United Nations Mission in Liberia (UNMIL) senior representatives, Monrovia, May 26, 2011.

Sayon Henry Yaidoo, Head of Secretariat, and Konah Karmo, Project Accountant, Liberia Extractive Industries Transparency Initiative (LEITI), Monrovia, May 31, July 12, and August 8, 2011.

Robert Merritt, Tetra Tech, Monrovia, May 31, 2011.

Vaneska Litz, Country Director, Tetra Tech ARD, Monrovia, May 31, 2011.

James Makor, Executive Director, Save My Future Foundation (SAMFU), Monrovia, June 1, 2011.

John Kollie, Liberia Democracy Initiative, Monrovia, June 1, 2011.

Thomas Nah, Center for Transparency and Accountability, Monrovia, June 1, 2011.

Karl Cottrell, Chief Executive Officer, Chevron Liberia, Monrovia, June 1, 2011.

Emmanuel Sherman, Assistant Minister of Mineral Concessions, Government of Liberia Ministry of Land, Mines, and Energy, Monrovia, June 2, 2011.

Jonathan Yiah and James Otto, Sustainable Development Initiative, (SDI) Monrovia, June 2, 2011.

Norwegian Refugee Council (NRC), Monrovia, June 3, 2011.

Kofi Woods, Minister of Public Works, Monrovia, June 3, 2011.

Hon. Franklin Siakor, Senator from Bong County, Monrovia, June 7, 2011.

MacArthur Paybaye, Government of Liberia Land Commission, Monrovia, June 7, 2011.

Logan Tah, Agriculture Relief Services, Saniquellie, Nimba County, June 8, 2011

Tetra Tech ARD, Saniquellie, Nimba County, June 8, 2011

Community Development Officer, Nimba County, June 8, 2011.

UNMIL Civil Affairs officials, Nimba County, June 8, 2011.

Informal interviews with ArcelorMittal Employees, Yekepa, Nimba County, June 8, 2011.

Arthur Massaquoi, Public Relations Officer, ArcelorMittal, Yekepa, Nimba County, June 9, 2011.

District Commissioner from within the ArcelorMittal Concession, Nimba County, June 9, 2011.

Environmental Protection Agency (EPA) investigator, Gbarpa, Nimba County, June 9, 2011.

Peter Vonit, Nimba County Land Commissioner, Sanniquellie, Nimba County, June 9, 2011.

Project-Affected Community (PAC) representatives, Zolowee, Nimba County, June 10, 2011.

Martin Sopp, Grassroots Democracy Inc., Saniquellie, Nimba County, June 10, 2011.

Hon. Edith Weh, Superintendent of Nimba County, Saniquellie, June 10, 2011.

Vani Kiazolu, Community Liaison Officer, ArcelorMittal, Saniquellie, June 11, 2011.

John Howell, Environmental Officer, ArcelorMittal, Buchanan, Grand Bassa County, June 12, 2011.

UNMIL Civil Affairs officials, Grand Bassa County, June 13, 2011.

Hon. Julia Duncan Cassell, Superintendent of Grand Bassa County, Buchanan, June 13, 2011.

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UNMIL Return, Reintegration, and Recovery officials, Monrovia, June 16, 2011.

Flora and Fauna International (FFI), Monrovia, June 16, 2011.

James Dobor-Jallah, Deputy Minister, Ministry of Planning, Monrovia, June 17, 2011.

Elizabeth Greengrass, Environmental Consultant, Putu Iron Ore Mining Corporation, Monrovia, June 17, 2011.

Otis Jollo, Liberia Democratic Institute, Zwedru, Grand Gedeh County, June 20, 2011.

Hon. Christopher Bailey, Superintendent of Grand Gedeh County, Zwedru, June 20, 2011.

Regional Officer, Forestry Development Authority (FDA), Zwedru, June 20, 2011.

Alexey Borisev, CEO of Putu Iron Ore Mining Corporation, Penoken, Grand Gedeh County, June 21, 2011.

PAC Representatives, Tiama Town, Grand Gedeh County, June 23, 2011.

PAC Representatives, Penoken, Grand Gedeh County, June 23, 2011.

Land Commissioner, Grand Gedeh County, Zwedru, June 24, 2011.

Representative of the Republic of Liberia Ministry of Agriculture, Zwedru, Grand Gedeh County, June 24, 2011.

Tamba Boakai, Coordinator of Concessions, Republic of Liberia Ministry of Agriculture, Monrovia, June 27, 2011.

Hon. Milton Teah Jay, Superintendent of Sinoe County, Greenville, June 28, 2011.

Sinoe Women for Peace and Democracy, Greenville, Sinoe County, June 28, 2011.

Leroy Kammoh, Voice of Sinoe radio, Greenville, June 28, 2011.

Alexander Akoi, FDA, Greenville, Sinoe County, June 28, 2011.

Representative of the Republic of Liberia Ministry of Agriculture, Greenville, Sinoe County, June 28, 2011.

PAC Representatives, Morrisville, Sinoe County, June 30, 2011.

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GoldenVeroleum management representatives, Monrovia, July 1, 2011.

District Commissioner from within the Sime Darby concession, Bomi County, July 4, 2011.

PAC Representatives, Beajah, Bomi County, July 4, 2011.

PAC Representatives, Besao, Bomi County, July 4, 2011.

PAC Representatives, Konjah, Grand Cape Mount County, July 5, 2011.

PAC Representatives, Golodee, Bomi County, July 5, 2011.

PAC Representatives, Kelia, Grand Cape Mount County, July 6, 2011.

Hon. Sam Brown, Superintendent of Bomi County, Tubmanburg, July 6, 2011.

PAC Representatives, Gbama, Gbarpolu County, July 7, 2011.

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Land Commissioner and County Inspector for Bomi County, Tubmanburg, July 7, 2011.

Melvin Sherrif, National Investment Commission (NIC), Monrovia, July 9, 2011.

Hon. William Sandy, Senator from Grand Gedeh County and Chair of the Senate Investment Committee, Monrovia, July 11, 2011.

Joseph Neufville, Technical and Policy Advisor, Public Procurement and Concessions Commission (PPCC), Monrovia, July 11, 2011.

Keibo Gogle, Deputy Minister, Republic of Liberia Ministry of Labor, Monrovia, July 11, 2011.

James Logan, Deputy Minister for Planning and Development, Republic of Liberia Ministry of Agriculture, Monrovia, July 11, 2011.

Drayton Hinnah, Director of the Bureau of Concessions in the Republic of Liberia Ministry of Finance, Monrovia, July 12, 2011.

Wesley Nanka, Acting Auditor-General of the General Auditing Commission (GAC), Monrovia, July 12, 2011.

Chris Neyor, National Oil Company of Liberia (NOCAL), Monrovia, July 12, 2011.

Suzana Vaye, Commissioner, Stanley Toe, Land Policy Program Officer, and Arthur Tucker, Information and Communication Officer, Land Commission, Monrovia, July 13, 2011.

J. Nanborlor Singbeh, Secretary of the Liberian Senate, Monrovia, July 13, 2011.

Sam Russ, Deputy Minister for Operations, Republic of Liberia Ministry of Land, Mines, and Energy, Monrovia, July 13, 2011.

Bime Kollie, Secretary of the Dedicated Funds Committee (DFC), Monrovia, July 14, 2011.

Société Générale de Surveillance (SGS), Monrovia, July 14, 2011.

Hon. Jackson Findor, Representative from Nimba County and Nimba County Caucus Chairman, Monrovia, July 14, 2011.

John Morlu, former Auditor-General of the GAC, Telephone, July 15, 2011.

Natty Davis, Chairman of the National Investment Commission (NIC), Monrovia, July 15, 2011.

Environmental Protection Agency (EPA), Monrovia, July 18, 2011.

Dan Whyner, United States Agency for International Development (USAID), Monrovia, July 19, 2011.

Sime Darby management representatives, Monrovia, July 20, 2011.

Brian Cauette, Farm Builders, Monrovia, July 20, 2011.

Francis Johnson-Morris, Chairperson, Liberia Anti-Corruption Commission (LACC), Monrovia, July 20, 2011.

Jariya Hoffman, World Bank, Monrovia, July 21, 2011.

Morris Kamara, Director of Protected Areas, Forestry Development Authority (FDA), Monrovia, August 1, 2011.

Carlos Battaglini, European Union, Monrovia, August 4, 2011.

Ali Kab, "Vision 2030" Consultant to the Republic of Liberia Ministry of Planning, Monrovia, August 10, 2011.

Nathanial Kwabo, Republic of Liberia Ministry of Planning, Monrovia, August 10, 2011.

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Francis Kollie, Green Advocates, Monrovia, August 15, 2011.

Amos Sawyer, Director of the Republic of Liberia Governance Commission, August 18, 2011.

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