

Taking the land without encumbrances

Liberia's government seeks to put greater emphasis on integrated cash/food crop systems with broad-based farmer participation. However, shortcomings in regulations on land transactions could threaten livelihoods in what is already a vulnerable country.

About 40 per cent of the land in Liberia is now under concessions with companies for producing rubber, palm oil, timber or minerals for exports, most of them foreign-owned corporations with Liberian affiliations. At the same time Liberia being an agrarian society as it is, the country is extremely dependent upon food imports: about 50 per cent of daily calories and 60 per cent of protein intake is imported, according to a UN Food and Agriculture Organization (FAO) estimate. Liberia's food sector has not yet recovered from 15 years of civil war

The Government of Liberia (GoL) is well aware of this contradiction. That is why it is determined to achieve a transformation of its agricultural sector – defined as follows: "... the conversion of a system characterised by an economically concentrated commercial plantation sector to one in which there is broad-based farmer participation in integrated cash crop/food crop systems. It is essential that the country avoids falling back into old patterns of growth and development based on natural resource extraction industries and a heavily concentrated plantation and commercial agricultural sector." In

spite of this commitment, the Government recently (2008, 2009 and 2010) again granted land concessions on a huge scale to three foreign companies to mainly produce palm oil for the international market.

Here, the overarching objective that guides Liberian government policy on the use of natural resources, which can be found in the 2008 Poverty Reduction Strategy (PRS), enters the picture: "The secretive, special deals of the past that benefited 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." Do the new concessions live up to this goal? In order to evaluate this, sev-

eral teams of students of the College of Agriculture and Forestry from the University of Liberia went out into the areas of the three new plantations. For their interviews in the Project Affected Communities, they used a list of indicators which drew on the wisdom of the "Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests" recently adopted by the FAO.

■ The concessions

The objective of the new concessions is to plant oil palm trees in monoculture on large scratches of land (one company also plans to grow rubber trees on 25 % of the land), after clear-cutting a dense bush-forest area. The concessions are made up between the Government of Liberia and multinational leading corporations in the world's palm oil

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business. The Malaysian Sime Darby company and the Indonesian Golden Veroleum company were each awarded a 220,000 hectare concession, and the UK/Indian Equatorial Palm Oil (EPO) company got 169,000 ha.

All three concession agreements were quite similar. The agreements were ratified by Parliament for a rent of five US dollars (USD) a hectare (developed area). The concession periods were 63, 60 and 40 years, with options to extend for quite some more decades. The companies promised to invest billions into the plantations and oil mills and create 22,000/35,000/20,000 jobs each. They are all obliged to pay five USD for each “developed” hectare of the land into a Social Fund to be administered by a common board of the company, the government and appointed representatives of the local communities. They are also obliged to pay 0.5–1 per cent of their yearly turnover into a Palm Oil (and Rubber) Development Fund. In addition, the agreements commit them to invest into housing, schools and health facilities for their employees and their dependents. All have to assist the government in getting an out-grower scheme started three years after the commencement of their own plantation; areas of 44,000/40,000/10,115 hectares additional land to each concession have been set aside by the gov-

Example of a concession agreement

“The Government of Liberia represents and warrants to the investor that all the public land that makes up the concession area shall be free and clear of **encumbrances**” (for instance paragraph 5.1 of the agreement with Sime Darby). “Government agrees to defend and protect for the benefit of the Investor, all rights granted to Investor hereunder and indemnify and hold harmless Investor for any losses incurred by Investor, as a result of ... without limitations disputes relating to the ownership of land.” (paragraph 5.1 of the agreement with Sime Darby)

ernment for these programmes; funding is supposed to come from outside sources.

The land has been given to the companies with the sole obligation of paying compensation to the villagers for the crops that have been damaged by the clearing of the fields for planting oil palms. The villagers are allowed to stay in their settlements, except for isolated farms and hamlets in the way of companies’ land development plans; these people will be resettled into the central villages. For the people of the Project Affected Communities (PAC), a strip of 500 metres of bush or forest land is left around the village for livelihood purposes. The PACs have the right to trespass the roads and paths leading through the plantation to their villages.

■ Tensions over the land acquisitions

The basic conflict over the concessions is about the land rights of the people, who have been using the land the government is handing over to the companies for all kinds of livelihood activities for centuries, like slash-and-burn agriculture, collecting firewood and making charcoal, fishing, hunting, collecting herbs and fruit from the forest. The people believe that the land belongs to their ancestors. Therefore, they see it as the property of the entire inhabitants, with their traditional tribal structures administrating the land rights.

However, the only secure customary land rights recognised by present law go

back to the 1949 Hinterland Act, which legalised customary land ownership allowing chiefs to formalise tribal land claims by applying for a deed. Only 13 chiefdoms seized this opportunity at that time, and today, just 2.3 million acres remains registered with secure tenure in the name of these chiefdoms. This land was then exempt from the 1956 Aborigines Law, which claims all lands not protected by private or customary deeds as property of the state. It is only very recently that the appointed land commission submitted a draft of a new tenure law allowing all tribal land to receive deeds.

The Government’s perspective is that it can give away land – even if occupied by local people for their survival – to companies as it wishes. The three concession agreements hand over the land with a very far-reaching provision (see also Box above):

“Without encumbrances” is a provision entitling the Government to release the companies from all responsibilities to deal with the local people’s claims on their rights on land uses and take over all encumbrances resting on the land itself. Neither are obligations regarding to consultations with the people and settling disputes and grievances the companies’ concern any longer, but the Government has taken them over for them. Mechanisms to deal with disputes between the people, the company and the Government are missing altogether in the concession agreements and other arrangements, with a provision only having been set up for disputes between Government and the Company.

Students from the University of Liberia during field visits. The Malaysian Sime Darby company has awarded a 220,000 hectare concession.



Photo: R. Buntzel

Thus the people had no official to consult when the agents of the companies came into their villages to count the plants and trees on the villagers' field in order to evaluate them for the compensation for crop losses after taking the land for oil palm growing. On average, the companies paid about 200 USD per hectare for fields under cultivation for the crops, but nothing for the land as such or the loss of other livelihood activities.

Serious conflicts arose in the case of Sime Darby and Golden Veroleum over the land occupation, because the people did not understand the whole dimension of the land acquisition and felt badly informed and consulted. Protest in the area of Bomi County against Sime Darby boiled over in December 2011 when the Project Affected Communities (PACs) rioted over fears that their farmland would be clear-cut by the company, seizing bulldozers and other equipment. The incident led to a visit of President Johnson-Shirleaf, who admonished PACs to allow government to negotiate on their behalf rather than to cause problems for the company. She also said: "When your government and the representatives sign any paper with a foreign country, the communities cannot change it."

■ The case of FPIC

From all international regulations, the most stringent and important rule is that of "First Prior and Informed Consent" (FPIC), a principle now enshrined in a number of international laws, economic guidelines and national legislation related to foreign direct investment (FDI) projects:

"Free, prior and informed consent recognises 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."

(UN Commission on Human Rights)

FPIC implies: **Free:** The absence of coercion and outside pressure, no threats and no implied retaliation if the project is refused by the people. **Prior:** The Project Affected Communities (PACs) are consulted about plans for FDI projects before they are legally fixed or implemented, leaving them sufficient time to collect information and to find consensus among themselves. **Informed:** PACs have all relevant information available reflect-

ing all views and positions. **Consent:** An agreement, statement or memorandum of understanding between the PACs and the Concession Entity is signed in accordance with the decision-making structures of the indigenous communities.

On August 2011, with the assistance of NGOs and advocates, the PACs of Bomi County filed a complaint to the Round Table on Sustainable Palm Oil (RSPO), where Sime Darby (and also Golden Veroleum and EPO) are members. The same month, a similar letter was sent by the PACs of Golden Veroleum. The regulations of RSPO on "New Plantings" contain many standards also asked for by international guidelines, like effective negotiations, transparency, formal democratic control, well-drafted master agreements, and rule of law. The PACs accused Sime Darby of "destruction of our sacred sites, destruction of our crops, damming of our creeks and streams, filling in of our swamps and forceful displacement of our people without adequate compensation". They called on the RSPO to get Sime Darby to "halt all land acquisition and land preparation in Liberia while the current situation is investigated and resolved". What no protest has achieved so far was enabled by the intervention of the RSPO, for the company's losing its certification under the RSPO would mean losing markets in Europe and North America. Sime Darby started a dialogue with the PACs about their complaints, and the company commissioned The Forest Trust (TFT) from Switzerland to make an independent evaluation. TFT's presentation

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Photo: R. Buntzel

After clear-cutting a dense bush-forest area, oil palm trees are planted in monoculture.

of their findings turned out to be a strong verdict. What the Government and the company called “consultation” was not sufficiently effective to deliver a sound FPIC process, which was “poorly done”, and the compensation process “was a disaster for trust building”. As a consequence, Sime Darby offered a renewed process of dialogue and communication procedure.

■ Liberia’s national regulations – better than others?

In spite of recent land concession conflicts in Liberia, the reputation of its concession policy is quite outstanding in comparison with other African countries. For example, all concession agreements have to be passed by Legislature (Parliament). One of the concessionaires, Equatorial Palm Oil (EPO), comes to the following conclusion: “Liberia’s concession agreements are recognised as being among the most rigorous of such agreements.” And having closely examined twelve case studies on land grabbing in Africa, the International Institute for Environment and Development (IIED) states: “The three contracts from Liberia stand out for their more flexible duration, their clearer identification of the land being transacted, their more specific investor commitments on jobs, training, local procurement and local processing, their greater attention to local food security, and their tighter social environmental safeguards.”

However, the strong features (see Box) of Liberia’s concession policy do not figure looking at the violation of the people’s rights to their land and the failure to conduct proper FPIC according to international standards. And even beyond these fundamental flaws, the national laws and regulations set up for large project concessions have not been followed properly. According to the 2010 Public Procurement and Concession Act (PPCA), a seven-member commission is supposed to invite for bids for a designated project and evaluate the

Concession agreements in Liberia must contain:

- a) specifications for recruiting nationals for unskilled and skilled labour, and require compliance with national and international labour laws;
- b) precise regulations on outgrowers’ schemes with the kind of division of labour among the government and the investor;
- c) provisions about also producing food to overcome bottlenecks on the local food market;
- d) an obligatory benchmark for domestic marketing of produce;
- e) compulsory investment by foreigners in processing of the raw products inside Liberia.
- f) social obligations regarding to their own employees and dependents, obligatory yearly fees for a Community Development Fund and a Commodity Development Fund (research);
- g) a compulsory schedule for investors to fully develop the total concession area, in order to avoid unproductive speculation with land;
- h) an inflation-bound index of the yearly lease;
- i) a clear demarcation by maps of the total area of the concession. In case of Sime Darby and Golden Veroleum, they have the option to select their concession area from a consignment suggested by government of an area larger by a third than what they can actually use;
- j) an obligation for an environmental and social impact assessment before the project gets started and prior to every next step of expansion inside the concession area. The contracts refer to compliance with national environmental laws and the standards of RSPO.

different offers before actual negotiations with the potential investor start.

In reality, in matters of our cases this process was not followed. The Government of Liberia did not select the area, did not make a public tender to invite for bids, and there were no competing bids for the potential concessions. Instead the companies approached the Government with their intention to expand their existing (small) estates to a wider concession area and the Government went into negotiations with them right away. The law also prescribes that the proposed concession be posted in the areas where the investment will occur prior to its ratification. The researchers found no evidence of this having taken place.

The agreements have to be ratified by Parliament. The quality of the Legislative Hearings, their announcements, reporting on them, the list of invited speakers, their being held inside the difficult-to-access Parliament building, the time rush for offering inputs by the civil society – all of this is bias against a meaningful participation by the PAC.

In practice, the effective operating of all instruments and mechanisms according to their mandate is severely restricted. Also, the mandates of all involved agencies are ill-described and limited. Some areas of regulation are not covered at all, especially those referring to land conflicts, the rights of the people affected, or the monitoring and review mechanism. A real dispute settlement between the local people on the one hand and the companies and government on the other hand is absent.

■ Conclusion

The Government of Liberia’s efforts towards a stringent frame of regulations to introduce the rule of law, transparency and social responsibility must be appreciated. But giving away the land free of any encumbrances is a big mistake that threatens livelihoods and peace for the vulnerable country. The neglect of customary rights to the land contradicts international law and is a violation of the Right to Food.