



**Centre pour
l'Environnement et
le Développement**



RELUFA

Above All Laws

How an American Company Operates Illegally in
Cameroon

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INTRODUCTION

Like in other African countries, there is strong demand for arable land in Cameroon to produce food staples and cash crops destined for consumption abroad. Though it is impossible to deliver exact figures, **the total land area solicited, subject to negotiation, or already granted over just the last two years, is estimated at around two million hectares according to press reports and information from government ministries.** In many cases, investors' land acquisitions negatively impact communities that depend on land and forests for subsistence agriculture, hunting and the gathering of other forest products. Communities (and governments) are often seduced by promises of jobs, sub-contracts, infrastructure, and service delivery. However, when agro-industrial projects fail to implement international best practices, the benefit sharing schemes generally have a net negative impact on community livelihoods. Weak legal frameworks already disadvantage rural communities whose usage and property rights are tenuous.

Sithe Global Sustainable Oils Cameroon (SGSOC) was the first company to request a land concession for industrial agriculture in the South West Region of Cameroon during this land rush. SGSOC signed an Establishment Convention with Cameroon in September 2009. The convention defines the legal framework and conditions for SGSOC's future oil palm operations in Cameroon. Since 2009, the company has been present in the field scoping the 70,000 hectares it wishes to acquire. There are numerous questions concerning the legality of the company's activities in Cameroon. This report intends to dissect the legal questions concerning SGSOC's investment. For a more comprehensive discussion of the social and environmental impacts of the proposed oil palm plantation as well as policy recommendations for future investment in the agro-industrial sector, please see *Herakles' 13th Labor*.¹

¹ The full title of the report is *Herakles 13th Labor? A Study of SGSOC's Land Concession in South-West Cameroon*

1. The Legality of the Establishment Convention

The illegal components of the Establishment Convention signed between the Government of Cameroon and SGSOC are explained below:

- a. The convention violates the rights of Cameroonians by positioning itself above all national laws. Article 22.2 of the Establishment Convention states:

[...] in the event of a conflict between this Convention and any Law, **except for the Constitution of Cameroon, as in effect at the date hereof²**, the rights, obligations and duties of a Party shall be deemed to be those set forth in this Convention [...]

This article merits at least two comments:

- i. The convention is clearly positioned above all national laws. Yet it was signed by a member of the Government that does not have the authority to take decisions that create exceptions to law. The convention violates the hierarchy of legal norms which forbids a contract from contradicting the law. Yet it contains many provisions for exploiting natural resources with no respect for the procedures provided by the law in force concerning for example, timber, water, gravel, and stones. The convention is replete with dispensations of the laws in force. From this point of view, the legal validity of the convention is in question.
 - ii. The convention is subject to the Cameroonian Constitution, but only the January 1996 version which was in force when the agreement was signed in September of 2009. If for any reason Cameroon changes its Constitution and SGSOC judges the amendments to be less favorable to its activities, the company could invoke this article to inhibit the application of the new constitutional clauses to its operations. This is an example of a stabilization clause on the Cameroonian Constitution which is rarely found in conventions between states and multinational companies and is totally illegal.
- b. The Establishment Convention contradicts Cameroon's land laws in several ways :
 - i. *Decree N°76-166 of 27 April 1976 to establish the terms and conditions of management of national lands* explains:
 - i. Land concessions are granted using a progressive system: First a temporary, 5-year grant of rights is issued which, after an evaluation concluding that project development has taken place, may be transformed into a definitive land lease. The SGSOC convention violates these dispositions as it offers SGSOC a 99-year concession immediately.
 - ii. Concessions are granted based upon requests, which must follow a specific procedure explained in the decree: i) submission of the request in the local office of the Ministry of Lands and cadastral affairs; ii) opinion given by the local government services with the authority over lands with local government services "concerned with the project"; iii) transfer of the file to a consultative commission and then to decision makers (Divisional Officer,

² Our emphasis

Governor, Minister of Lands and cadastral affaires, the President for grants of over 50 hectares on National Lands).

- ii. *Decree N°76-167 of 27 April 1976 to establish the terms and conditions of management of the private property of the State :*
 - i. An *ordinary lease*, which cannot exceed 18 years in duration, with the obligation to develop the land. “The lessee shall not assign his lease or agree to sub-lease without authorization.” This is one of the lessee’s obligations under an ordinary lease. (SGSOC does not envision applying for an ordinary lease).
 - ii. Long leases, which are valid for a period of no less than 18 years and not exceeding 99 years, including a “condition that the property shall be developed within a given period.”³

The land concession requested by SGSOC partially falls into lands that are the private property of the state and partially into national lands and thus is subject to the both corresponding land decrees. It is illegal to sub-lease national lands without approval from the Cameroonian Government, yet SGSOC’s convention grants this right to the company (it could be, however, legal to sub-lease lands granted via a long lease on the private property of the state). Additionally, the convention does not oblige the company to develop the plantation within a given timeframe, which contradicts Cameroon’s land laws.

- iii. Article 26 of *Decree N°76-167 of 27 April 1976 to establish the terms and conditions of management of the private property of the state* provides, “any agreements entered into by the lessee in violation of the provisions of the lease shall as of right be null and void, and shall entail the immediate termination of the lease without compensation. If necessary, proceedings shall be taken to evict the lessee and all occupants authorized by him.” The same is true for temporary land leases on national lands. This article refers to the State’s responsibility to protect lands it holds in trust by imposing the respect of the law in contracts between lessees with third parties. The content of SGSOC’s Establishment Convention contains numerous contradictions with the land laws in force in Cameroon and leaves both parties in a delicate situation: We are left with two possible scenarios: i) either the land lease (SGSOC has requested, but has not yet been granted) will be in conformity with Cameroon’s land laws (and would thereby contradict clauses of the Establishment Convention on fundamental issues); or ii) the land lease will align itself with the Establishment Convention (and would in this case contradict national land laws and expose the company to the annulment of all contracts concluded with third parties).

- c. The convention violates national and international human rights law:

³ Article 23 of *Decree N°76-167 of 27 April 1976 to establish the terms and conditions of management of the private property of the State*

- i. Article 9.3 of the convention authorizes the company to “...establish, manage, and maintain its own asset and employee security and protection service for the purpose of maintaining law, order and security in the Production Area and in other areas where Investor has or maintains property and assets, subject to applicable law. Such service shall have the power to search, apprehend, detain, exclude and evict unauthorized Persons from the Production Area...” This clause contradicts the Cameroon Penal Code, the African Charter on Human and Peoples’ Rights (which is an integral part of the Cameroonian Constitution of January 1996), and other human rights conventions to which Cameroon is party under the auspices of the UN.
 - ii. The Establishment Convention provides a land rental fee between \$0.5 and \$1 per hectare per year, increasing 2% annually, but not adjusted for inflation. Article 2.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) requires that each State make progress towards realizing the right to food, utilizing the maximum of available resources. The United Nations Special Rapporteur on the Right to Food wrote, in his preliminary assessment report from his mission to Cameroon (16-23 July 2012), about the weak fiscal imposition on SGSOC and encouraged the Government to “reconsider its tax policies on logging and agro-industrial concessions so as to optimize revenues derived from these natural resources.”⁴ (p. 11). Cameroon could be neglecting its ICESCR obligation to mobilize maximum resources by giving away land to SGSOC at rates much lower than the true asset value.
- d. The convention provides that only land which is not subject to any claims will be ceded to the company. However, the convention was not officially published and distributed to third parties making it impossible for local communities and other stakeholders to verify that their rights to land and resources have not been violated. In reality, the land claimed by SGSOC is subject to numerous existing claims.
 - e. The area requested by SGSOC is not free of any claims since there are villages whose economic livelihoods depend on the land and forest for subsistence agriculture and non-timber forest products. Communities maintain sacred sites as part of their cultural heritage in the zone and claim customary property rights on the entire area. Cameroon’s land and forest laws recognize communities’ rights to customary land use. This is why many inhabitants and chiefs oppose either the project itself or the manner in which they believe it will be carried out.
 - f. The Establishment Convention is not compliant with Cameroon’s labor laws. Section 9.5.a provides, “Compensation paid or provided to employees of Investor and Operator shall be based on the application of the occupational categories and minimum wages scales fixed on the basis of productivity and efficiency criteria.” This article allows the company to pay minimum wage only when workers have met productivity and efficiency targets arbitrarily developed by the company alone. The labor code in Cameroon allows for productivity criteria to be used only to increase worker income and not as a criterion to fix a worker’s base salary.

⁴ Non-official translation. Original states « reconsidérer sa politique en matière d’imposition des concessions agricoles et forestières afin d’optimiser les revenus qu’il tire de ses ressources naturelles »

Companies that apply productivity criteria to determine base salaries force employees to work more hours than a normal workday to obtain a minimum salary.

2. The legality of the company's presence in the area

In addition to the content of the Establishment Convention, the company's presence in what it considers to be its production area does not respect Cameroonian legislation.

- i. **The company does not have rights to the land.** To conduct a large scale project, the land laws in force in Cameroon require that the operator fall into one of the following two categories: landowner; leaser of the land from the landowner (the State or local council for land areas of this size). SGSOC has no land rights in this project. Part of the land concession requested by SGSOC is on national lands (managed by the State, and for which no one is a formal owner; however usage rights and customary rights are recognized for communities. It corresponds to the non-permanent forest estate) and another part is in the private property of the state (a part of the permanent forest estate). The procedures to grant access to lands in these two categories are defined in the decrees of April 1976. In the case of national lands, the law provides for the issuing of a temporary grant first and, after a satisfactory evaluation of the advancement of the planned investments, the grant of a definitive concession. The law does not allow for a direct definitive concession as is provided for in SGSOC's Establishment Convention with the Government of Cameroon. Again, SGSOC has no land rights, rendering its presence in the field and its forest clearing illegal. For this reason alone, the company should be sanctioned and its operations terminated.
- ii. The company did not respect the procedure for forest clearing for the purposes of a "development project." According to law, forest clearing is authorized by the Minister of Forestry only on the basis of prior authorizations given by other authorities validating the project. In the case of SGSOC, the Independent Forest Observer, recruited by the Cameroonian Government with financing from the European Union, produced a report on the zone in June 2012. It states, "SGSOC conducted tree felling without an authorization inside the permanent forest estate, in this case Block A of UFA 11-007."⁵ It also states, "SGSOC did not follow the procedures and legal terms guiding the cession of the permanent forest estate."⁶ Finally, the report confirms what was already known to people observing the project, "the Ministry of Agriculture and Rural Development and the Ministry of Forests and Wildlife were not involved in the implementation of the development project in the area requested, according to the regulations in force."⁷
- iii. The Minister of Forests and Wildlife as well as the head of the Centre Region Delegation of the Agricultural Research Institute for Development (known by its French acronym, IRAD) issued letters to SGSOC indicating that the zone is covered by secondary forests which were heavily logged and also cleared for subsistence

⁵ Non-official translation. Original : La société SGSOC a procédé à l'abattage des arbres sans autorisation dans le domaine forestier permanent, en l'occurrence le bloc A de l'UFA 11 007

⁶ Non-official translation. Original : La SGSOC n'a pas suivi les procédures et modalités légales conduisant à l'aliénation du domaine forestier permanent

⁷ See Observateur Indépendant, Rapport N° 040/OI/AGRECO-CEW

agriculture.⁸ The letter from the Minister of Forests and Wildlife is titled “attestation of conformity of forest map” which makes us think the letter concerns cartography, and not an assessment of the quality of the biodiversity the forests in the proposed project area. These two letters are problematic because they are contrary to the forest zoning plan of Southern Cameroon prepared in 1995 which classified part of the zone as a Forest Management Unit, part of the permanent forest estate. This part of the proposed plantation was also included in the list of forest concessions open to tendering in July 2012, indicating the Ministry does not consider it secondary or degraded forest due to intensive logging or use.

- iv. The European Union-funded Independent Forest Observer published a report in April, 2012, which was subsequently approved by the Ministry of Forestry, recommending a fine be imposed against SGSOC for illegal logging. The company was subjected to inspection which revealed that it had “deforested the permanent forest estate (UFA 11-007 Block A) on 60 hectares of land”⁹ and “opened a road of approximately 3 km by cutting and stumping trees in the permanent forest (UFA 11-007).”¹⁰ A fine plus damages and interest totaling 24,506,000 FCFA (approximately \$45,000) was imposed on the company.¹¹ Though it remains unclear whether SGSOC has paid.
- v. The legality of the authorization to fell trees granted by the Ministry is questionable and poses problems for the FLEGT/VPA process. Curiously, approximately one week after the publication of the report recommending a fine against the company for illegal tree felling, the Minister of Forests and Wildlife granted SGSOC an authorization to fell trees in the same exact area, near the Talangaye palm nursery site. This authorization violates the rules in force, which require that projects have the authorization from the “competent” authorities prior to being granted an authorization to fell trees. In this case, we would have expected the President to have signed a land lease. In the absence of the land lease it is difficult to understand why the Minister of Forests and Wildlife decided to grant an authorization to fell trees for a project that is not certain to have a land lease in Cameroon, nor in that precise area. In fact, the Minister of Forest’s decision almost puts the President of the Republic, who is the signatory to decrees granting land rights, before a fait accompli.

3. The company launched its operations prior to completing an environmental impact assessment

- a. Cameroonian regulations require investors to produce an environmental impact assessment prior to commencing operations for most large-scale industrial projects in dozens of economic sectors. On 13 March 2012 in a written communication to the Round Table on Sustainable Palm Oil (RSPO) SGSOC explained “To date, SGSOC has

⁸ These letters were once available on Herakles Farms’ website in the annexes of its High Conservation Value Forest Assessment, which has since been removed from the site. See <http://heraklesfarms.com/sustainability-environmental.html>

⁹ Non-official translation. Original : déforesté le domaine permanent (UFA 11 007 bloc A) pour une superficie de 60 hectares

¹⁰ Non-official translation. Original : ouvert une route d’environ 3 km avec abattage et dessouchage d’arbres dans le domaine permanent (UFA 11 007)

¹¹ See Observateur Indépendant, Rapport de mission N° 040, p.3

cleared 30 ha of land for three nurseries as is permitted by Cameroonian law.” The company cited “Arrêté No. 0070/MINEP of 22 April 2005, which permits development of up to 100 Ha of land for agricultural purposes without preparation of an ESIA (Article 4, Section V(A)(1)).” This Ministerial Order published by the Ministry of Environment pertains solely to the categories of large-scale operations required to conduct ESIA (including agro-industrial plantations of greater than 100 Ha). However, the main principles relevant to ESIA are laid down by a Prime Ministerial Decree of 2005.¹² Article 3 of this Prime Ministerial Decree states clearly that ESIA must be completed prior to any work or construction.

Since Prime Ministerial Decrees are superior to Ministerial Orders according to the hierarchy of legal norms in Cameroon, all operators planning to develop plantations of 100 Ha or greater are required to produce an ESIA prior any work. SGSOC plans to develop between 69,000-73,000 Ha (they have used a range of figures). Thus not only does their plantation fall under one of the categories of projects that must conduct an ESIA, but this ESIA must be conducted as a pre-condition to the start of work or development. SGSOC has violated Cameroonian Law by clearing land for palm nurseries prior to completing an ESIA. This calls into question the juridical validity of their 19 September 2011 certificate of environmental conformity and their legal right to continue to develop the plantation.

b. The company manipulated the content of its ESIA report

SGSOC commissioned H&B Consulting to conduct its ESIA. However, the original ESIA produced by H&B was not made public. SGSOC modified the impact assessment and then subsequently submitted a watered-down version of the document to the Cameroonian government for comment and approval. [The original assessment](#)¹³ and [the edited version submitted to the government](#)¹⁴ are both available online. Some of the changes made by SGSOC are clearly semantic and organizational, while others are clearly intended to hide certain impacts of the project. For example, the original assessment rated the impact of the use of agrochemicals on water as “major” and having a “regional extent”¹⁵, but the edited version downgrades these ratings to “moderate” and “local.”¹⁶

c. SGSOC has refused to comply with decisions taken by Cameroonian authorities

The company has attracted attention by refusing to respect decisions by Cameroonian authorities in at least two cases.

4. The company violated a Cameroonian court injunction. The Ndian High Court rendered the following decision on August 31, 2011:

- i. “That the Defendants/Respondents, their servants, agents, appointees or whosoever acting on their behalf are restrained from carrying out further activities within the jurisdiction of this Court in furtherance of their establishment of an oil palm plantation until their substantive matter now pending before the Court is disposed of”
- ii. “That a penalty (astreinte) in the sum of 500,000 francs shall be imposed on the Defendants / Respondents should they violate the orders hereinabove

¹² See Article 3 of Décret n°2005/0577PM du 23 février 2005

¹³ <http://cameroonveritas.files.wordpress.com/2011/10/sgsoc-esia-original.pdf>

¹⁴ <http://www.heraklescapital.com/docs/SGSOC%20ESIA.pdf>

¹⁵ See table on Page 196 of the original ESIA.

¹⁶ See page 5-183 of the edited version.

from the date of notification without prejudice to any criminal action for contempt of this Court for her agents, servants and appointees.” This decision (which has since been overturned)¹⁷ unequivocally suspended SGSOC’s operations, but was violated by the company. Not only did they continue operations, but they also denied its existence in a public communication.¹⁸

5. **SGSOC refused to appear at the local delegation office of the ministry following a summons from the Regional Delegate of the Ministry of Forests and Wildlife.** The Regional Delegate of the Forests and Wildlife of the South West Region summoned SGSOC in a letter dated April 19, 2012. Report N° 040 of the EU Independent Forest Observer indicates the company “did not respond to the summons [of the Regional Delegate] and rather continued its activities”¹⁹ How can one explain the company receiving an authorization from the Ministry of Forests to fell trees after this sort of disregard for the Ministry’s authority?

¹⁷ See SUII NO: HCN/003/OS/2001/4M/2012 of April 27, 2012.

¹⁸ See http://www.save-wildlife.org/downloads/save_the_forest/Herakles.pdf. Pages 5-6.

¹⁹ See Report N°040 de l’Observateur Indépendant, p.8. Non-official translation. Original : n’a pas répondu à la convocation [du Délégué Régional] et a plutôt continué ses activités

CONCLUSION

HERAKLES would never operate in this manner in the United States. The company's operations would be immediately suspended and it would be forced to pay fines, penalties, and higher taxes. **So why this type of modus operandi in Cameroon?** These operations are the first of the new wave of land-based investments in Cameroon. According to information from reliable sources, between two and three million hectares of arable land are currently being requested for agro-industries in Cameroon, and the SGSOC case could set a precedent. It is therefore important for the Government of Cameroon to find the right balance between real conflicting interests—communities' rights and interests, the State's duty to protect its citizens and to maximize the potential benefits from natural resources management, and foreign companies' desire for a regulatory environment capable of satisfying their insatiable thirst for profit. This case is too unbalanced to serve as a model for the future.

Unfortunately, due to the non-discrimination clauses often contained in contracts between the Government of Cameroon and investors in the agro-industrial sector, the SGSOC project will set a precedent for the development of all new agro-industrial plantations in Cameroon. For this reason, we demand the following:

1. **The SGSOC project must be stopped immediately. SGSOC must stop forest clearing, planting seedlings, and attempting to acquire land.**
2. **The current Establishment Convention between the company and the Government should be cancelled.**
3. **The Government authorities, especially the anti-corruption administration, should investigate allegations of corruption and, if found to be true, prosecute them to the full extent of the law.**
4. **If the company still wishes to invest in Cameroon, the entire project must be restarted at zero. This includes negotiating a new convention that fully complies with the Constitution and Laws of Cameroon as well as international conventions the country has ratified. A new project must integrate international best practices established of the palm oil industry.**
5. **The Government of Cameroon should put in place a moratorium on the granting of all land concessions until Cameroon's national land-use plan and national palm oil strategies are complete.**
6. **For more detailed policy recommendations, please see the recommendations section of our prior report: *Herakles' 13th Labour*.²⁰**

²⁰ <http://www.relufa.org/documents/Herakles13THLabour.pdf>