

# MULTINATIONAL CORPORATIONS AND THEIR IMPACT ON RURAL COMMUNITY RIGHTS TO LAND AND NATURAL RESOURCES

A CASE STUDY OF SIME DARBY OIL PALM PLANTATION IN  
LIBERIA

Ground Breaking Ceremony for  
the First Land Clearing



Plantation (Liberia)

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Cover photo: Sime Darby now holds large concessions covering 4 counties in Liberia ©FERN.

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# EXECUTIVE SUMMARY



In the name of reducing unemployment and promoting economic growth, the Liberian government has committed a significant portion of its land and natural resources to large, long-term concessions for multinational corporations. At the same time, the country's land law and tenure system is unclear. As a result, there are continuous conflicts in the Liberian courts over land and natural resources.

If the motivation for issuing concessions for multinational corporations is to lift ordinary Liberian citizens out of poverty, then it has become evident that the reality on the ground does not reflect those aims: the concessionaires' operations are negatively and significantly impacting on rural communities in a way that outweighs the projected benefits, and the concessions are depriving rural people who have lived and managed that

land for centuries of their livelihood and ownership rights.

Throughout Liberia's history land has been a significant source of tension, becoming a particularly sensitive issue in the wake of the civil conflict that ended in 2003. Liberia has one of the highest land concession rates in Africa, and investors continue to seek and obtain rights to valuable mineral, timber, and agricultural resources (World Bank, 2010). Recognizing the growing risk of future conflicts around land, in 2006 the Government of Liberia (GoL) imposed a moratorium on the sale of public land and subsequently established a Land Commission to investigate and assist government in finding a lasting solution. However the GoL has contradicted this move by continuing to grant large-scale concessions and not allowing the Land

Commission to present its findings and recommendations to the GoL.

Though the concession allocation process in Liberia is clearly outlined through the Public Procurement and Concession Act, it remains susceptible to manipulation, often resulting in agreements that are highly favourable to foreign investors who have stronger bargaining positions and leverage. The allocation process is often marked by corruption, bribery, a complete lack of public participation, and does not take into consideration the free prior and informed consent, the customary rights to land and the need for access to information of rural people affected by these concessions.

Liberia is not alone in facing the challenge of balancing the aims of attracting investment and safeguarding local community rights and livelihoods:

according to one recent estimate by the International Land Coalition, 203 million hectares were approved or under negotiation for large-scale land deals between 2008 and 2010 – the majority of which were located in Africa (Anseeuw et al 2012).

There is a need to develop a clear, universal standard for the acquisition of land and natural resources by corporations, that works to protect the rights of those rural people who are not categorised as indigenous or tribal people and hence do not enjoy the same protection under international human rights law. Such a standard is essential to protect both the rights of communities and the growth prospects of developing countries, if they are to rise out of poverty.



## INTRODUCTION

Liberia is relatively a small West African country that is bordered on the west by Sierra Leone, on the north by Guinea, the east by Ivory Coast, and on the south by the Atlantic Ocean. The Country has a total area of 43,000 square miles, of which 37,189 square miles is land.

Historically, Liberia has 16 tribes spread out in 15 political sub-divisions called counties. According to the 2008 census report, Liberia has the population of 3,476,608 of which 50.05 % are males and 49.95 % females (LISGIS, 2008).

Liberia is rich in natural resources including gold, diamonds, iron ore, timber, and vast arable land resources. Exploration for off shore oil is on-going. People who live in rural lands and communities in Liberia make up about one-third of the country's population and depend on land and natural resources for their entire livelihoods (Knight and Siakor, 2012).

The mismanagement of Liberia's natural resources was one of the key factors leading to nearly two decades of civil

crisis which lasted from 1989 to 2003 and which resulted in the deaths of about 250,000 of its citizens, and critically damaged the country's infrastructure and basic social services.



*Community meeting in Liberia © FERN*

Granting concessions to multinational corporations is not new to Liberia. The history of the extraction of Liberia's natural resources and natural rubber goes as far back as the earlier part of 19<sup>th</sup> century, when multinational concessionaires obtained contracts for huge portions of land rich in natural

**Sime Darby was chosen as a case study for several reasons including:**

- to identify if Liberia's post-conflict concession agreements contain more favourable terms than the pre-conflict agreements, the flaws of which were among the main factors fuelling the civil crisis;
- to assess whether the government's anticipated economic boost and reductions in unemployment through foreign investment have become reality;
- its close proximity to Monrovia, which should encourage the company to exhibit a high level of corporate social responsibility since it is easily monitored by the GoL, civil society and researchers; and
- to present a clear picture of the current public outcry about the company's activities, which the company contests.

resources for extractive activities and rubber plantations. Even with this long history of granting concessions for all of Liberia's natural resources, the benefits accrued to the country are rarely visible and the claims of development for which the government grants these concessions are farfetched. Although Liberia is today classified as the second-highest grantor of concessions in Africa, it is paradoxically the second poorest country in the world, with 83.7% of the population living below the income poverty line of US \$1.25 per day (UNDP, 2011).

Though there have been periods of

relative growth, the overall past and present impact of concessions on the lives of people in rural communities has been negative. The concession granting processes do not take into consideration public participation, often occur without obtaining the free, prior and informed consent of rural people who have lived on the land for centuries, and there is a total dearth of information available to the public – particularly in rural areas - about how concessions will affect people's livelihood, socio-economic wellbeing and food security.

This report focuses on the impact

of one multinational corporation on community land and natural resource rights. It examines one of the three large concessions recently granted in the palm oil sector to a corporation called Sime Darby.

Sime Darby is a Malaysian-based multinational company, and is the world's largest agribusiness company. In 2009 Sime Darby was granted a 63-year lease for palm-oil production across a 220,000 hectare concession spanning the counties of Grand Cape Mount, Bomi, Bong and Gbarpolu.

The research concludes that the land laws in Liberia are unclear and provide an uneven framework for granting community land as concessions to multinational corporations. This lack of clarity is a main source of the current land conflicts in Liberia.

Sime Darby's current operations are in violation of the rights of affected communities including their rights to own property, to food, to education, to health, to safe drinking water and other rights under the International Convention on Economic Social and Cultural Rights

(ICESCR), the International Convention on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights (UDHR) and other regional and international human rights instruments to which the government is party.

In order to avoid future land conflicts and the violation of community rights, Sime Darby's concession agreement and operations need to be revisited to ensure that they adhere to best practices in corporate social responsibility (CSR). This should include remedying the negative impacts it is having on the lives of citizens in Grand Cape Mount, which might spread to the remaining three counties if no mechanism is put in place to improve the situation. In the three counties where Sime Darby has not yet started operations, activity should be halted in order to provide for the participation of affected rural people.

The land laws of Liberia should also be harmonized to ensure individual and collective customary ownership rights to rural people, which will prevent their land from being given away in concessions without their consent.

## METHODOLOGY

The entire work of this thesis was done in two main parts; a literature review and field research. The literature review process included an extensive desk review of books, articles, internet sources, newspapers and newsletters related to the current thesis topics.

Having completed the literature review, field research was planned and carried out in five affected communities in Cape Mount County. The communities were selected because of their location within and around the concession area, with the aim of identifying how people's lives were being impacted by the government granting the concession and Sime Darby beginning operations. Three focus group discussions were held in each of the five communities, in order to identify how the company's operations affected men, women and youth differently.

In each discussion at least five participants were selected from each sectoral group. A total number of 93 community members participated in the focus group discussions. Adult men including

traditional elders, local chiefs and some men who are currently working with Sime Darby represented the men. Elderly women as well as women chairladies, and some women who are currently working with the company represented the women. Males and females not above 35 years of age represented the youths.

The discussions focused on people's perception of their ownership rights to their land, the procedural rights of granting concession, employment, traditional and cultural related issues, livelihood and coping methods as well as allowing communities to make recommendations to government and other stakeholders involved in granting Sime Darby concessions.

After the focus group discussions were completed, a transect walk was also conducted in each community to verify the communities' claims and the current high wave of public outcry about the company. Data collected were analysed and the result of the analyses used as empirical facts for this report. The analysis

was essential in making the conclusion derived in this report.

Visits were also made to government ministries and agencies responsible for the granting of concessions, to

verify communities' claims and gather information on the actual number of concessions currently granted in Liberia, the land space they cover, and information about coordination between the agencies in these processes.

## LITERATURE REVIEW

### **Historical and anthropological perspectives of foreign direct investment/multinational corporations in a global context**

While Foreign Direct Investment (FDI) is generally regarded as a necessary part of generating economic growth in developing countries, the increasing dominance of multinational corporations over the global economy has its critics. Economy Watch describes FDI as "a measure of foreign ownership of domestic productive assets such as factories, land and organizations." FDI has become the major economic driver of globalization, accounting for over half of all cross-border investments. The greatest effects have been found in southern countries, where the investment flows have increased

from \$10 billion in 1970 to \$639 billion in 2006. FDI is intended to provide domestic countries with foreign capital and funds, exchange of skill sets, job opportunities, improved productivity levels as well as information and expertise (Economy Watch, n.d).

According to Economy Watch 51% of the world's largest economies are corporations. Their increasing power to dominate nations and the impact they can have on marginalized people continues to provoke anger and has set off a whole new debate about whether corporate-led

globalization can have positive impacts on less developed nations and marginalized and vulnerable people (Economy Watch, n.d).

Globalization has often been criticized as being dominated by corporate interests, with multinational corporations exercising their influence and promoting their interests in the global context. Criticisms of this corporate dominance include arguments that they own and influence the media, improperly influence democratic political processes, influence tax havens, influence corruption in parliaments, violate human rights with impunity, use child labour, degrade the environment, lobby and influence sovereign governments, and manipulate international agreements. These negative impacts are even worse in developing countries, where corporations have greater financial and technical resources than the host countries, and are backed by their governments, which provide financial aid to these less developed countries (Economy Watch, n.d).

While many developing countries are rich in natural resources and land, they often lack the capacity - both technical

and financial - to explore and develop them. This creates an opportunity for multinational corporations to capitalize on these resources. Multinational corporations tend to have access to corporate lawyers who have the capacity to negotiate favourable agreements, providing for tax havens, transfer pricing and other policies that shield corporations from the full cost of exploiting a country's resources while preventing the host government from deriving their just share from the investment. "Through corporate crime, tax havens, transfer pricing and many other policies — both legal and illegal — billions of dollars are prevented from being taxed. The much-needed money would help developing (and developed) countries provide important social services for their populations. Usually, these crimes, which often have far worse effects than individual crimes, go unaccounted" (Cotula, 2010).

Several recent realities provide proof of how corporations have generally set their profit agenda above human development and well-being, especially in developing countries. As HIV and AIDS has become a global crisis with the impact mostly felt in Sub-Saharan Africa, South Africa - one of

the most affected countries in the world - decided to research and manufacture cheaper drugs to assist the millions of its own people suffering from the disease. Pharmaceutical companies lobbied the US Government to impose sanctions on the South African government over this action, as it could significantly reduce

## The history and impact of multinational corporations in Liberia

The presence of multinational concession holders is not new to Liberia. Their operations date as far back as the early 1900s, when Liberia's rich natural resources including iron ore, gold, diamond, timber and vast land areas, were given in concession to multinational corporations mainly from the United States. Earlier concessions were connected to America because Liberia was founded by a non-governmental organization, the American Colonization Society, which organized to bring freed black slaves to Africa who later found Liberia suitable for such purpose in the 1800s. Through this connection, America had an advantage in gaining control over the political and economic direction of an infant state, through which it

the companies' profit margins. Many of the people who are suffering from HIV and AIDS in sub-Saharan Africa live below the global benchmark of poverty and are unable to afford daily meals, let alone purchase expensive HIV and AIDS treatments.

pursued its interest in Liberia's resources (Pham, 2004). The principal concessions were granted for rubber, mining, and timber. Today palm oil concessions are a significant addition to this list. The history of concessions for various significant resources in Liberia are examined in the following pages.

### Rubber

One of the prime intentions of the Americans in encouraging large concessions was to slowly drive European interests and influence out of Liberia during colonial period, by asserting its own control (Brown, 1941). The first and biggest investment signed in Liberia was that of the American owned Firestone



Plantation Company in 1926 for 1 million acres (about 404,700 hectares) of land for the period of 99 years at 0.6 US cents annual land rental payment. This concession agreement resulted in the eviction of rural communities of the Mamba or Bassa tribe from their ancestral land without any compensation and respect for their fundamental rights.

The Liberian government, overwhelmed by huge local and international loans and with no obvious way to service these debts, saw little option but to take the US\$ 500,000 loan from an American firm as a condition for granting the 1 million acres. The 1 million acres of land was then granted in concession to the Firestone Plantations Company which became the world's largest natural rubber plantation, located in modern-day Margibi County. The concession agreement signed between Firestone and Liberia did not allow Liberia to access needed revenues to service its loans, as the agreement provided tax havens to the company on the exportation of raw material as well as on the importation of equipment and other inputs. Further, Firestone's labor practices kept costs low by using forced labor, paying chiefs and local leaders

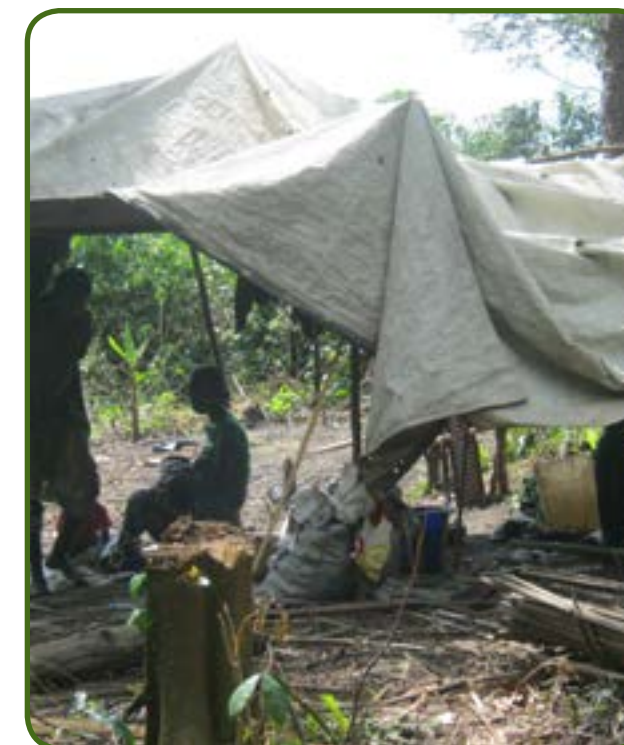
tokens to send laborers on the plantation forcefully (Pham, 2004).

In 2006 a Liberian NGO, the Save My Future Foundation, investigated almost 80 years of Firestone's operations and concluded the impacts on adjoining communities had been completely negative. Save My Future Foundation accused Firestone of polluting rivers and streams used by communities with industrial and solid waste, providing poor working and living conditions for its employees, employing child labour, and other abuses. At the same time, the company was enjoying tens of billions of dollars in annual profits from the sale of raw materials (rubber) sent to America and the rest of the world. In spite of this gross imbalance in benefits derived from the deal, and amidst criticism from local and international organisations and allegations of bribery, in 2008 the Firestone concession agreement was extended for an additional 41 years with the strong support of the US Embassy.

### Iron Ore

In the 1930s Liberia entered into negotiations over new concession agreements with American steel company

US Steel. This deal did not materialize until 1945 after the US Foreign Economic Administration, with the mandate "to assist Liberia increase its production of strategic materials", sent a team to Liberia in November 1944 for an assessment of the country's needs for the exploitation of the Bomi Range (Shah, 2009).



*Makeshift shelter for community members producing charcoal on recently cleared land by Sime Darby © FERN*

The agreement was signed between the Government of Liberia and the Liberia Mining Company owned by Lansdell K. Christie. Christie was a former officer of the US Army who became familiar with Liberia during the construction of the Roberts International Airport: a product of the Defence Treaty between Liberia

and the US in 1942. It soon became evident that Christie as an individual lacked the capacity (both technical and financial) to manage and develop the concession. He sought a partner to develop the concession, and ultimately signed an agreement with the Dutch Muller Company and Republican Steel, another US steel Company.

While there is today no significant development or change in the lives of people who lived in the county that hosted this company, the depleted Bomi Range is today referred to as the "Bomi holes". The county is one of the poorest counties in Liberia (CUC, n. d). "In 1977 LMC, Liberia's first iron ore mine, closed its doors. The ore deposits at Bomi hills had been depleted. During the 1951 – 1977 period LMC had shipped US \$ 540 million worth of iron ore whereas the Liberian Government has received during these 27 years some US \$ 84 million (excluding rentals), or approximately 16% of LMC's sales income." (Bremer, 1983)

Similar trends in granting concessions continued in the iron mining industry after this period during the reign of President William V.S. Tubman, who



was not himself the creator of the Open Door Policy but who rigorously pursued its implementation and took the credit for it. “The basic aim of this policy was to entice foreign entrepreneurs to Liberia to invest in the country’s vast natural and mineral resources” (Kraaij n.d). Critics say Liberia’s Open Door Policy opened the door to Liberia so wide that there was no safeguard to monitor entry. When these concessions were granted, there were no organized guidelines or policies to govern the concession allocation processes. Each concession was treated as a bilateral contract, independent of the rest.

Additional concessions in the mining sector were granted in 1953 to the Liberia American Mining Company LAMCO, owned by the Bethlehem Steel Company of the United States, for the exploitation of the Nimba mountain deposit. This deposit produced 12 million tons of raw and unprocessed iron ore annually, making it largest mining concession in Liberia at the time (Kraaij, n.d).

In 1958 the second largest mineral concession was signed between the Government of Liberia and the German-Liberian Mining Company for the

exploitation of the Bong Range Deposits, covering an area of 30 square miles some 50 miles north of Monrovia. The concession was jointly owned by the Liberia Government and a consortium of German steel companies with one-third of their shares sold out to Italian Steel companies.

Actual mining operations were carried out by the Bong Mining Company (BMC), which also built and operated the railway that shipped raw and unprocessed iron ore through the Free Port of Monrovia. In the same year, concession agreements for the exploitation of the Mano River Deposit were concluded with the National Iron Ore Company (NIOC). Concessions were also granted in other mineral resources, notably gold and diamonds (CUC, n.d).

A study conducted by students of the Cuttington University College about concession agreements in Liberia presents that more than one hundred exploration licenses have been given to concessionaires to explore for either gold or diamonds. Prominent amongst the companies currently doing exploration in Liberia are Liberty Gold and Diamond, AmLib United Minerals,

Mano River Resources, Diamond Fields International, Hummingbird, and Ducor. The second largest investment in Liberia was the signing of a 1.5 billion concession agreement between the Government of Liberia and ArcelorMittal, with the same intention of jumpstarting the country’s economy and providing employment for Liberians. The contract was originally signed in 2006 and later renegotiated in 2007 after widespread criticisms by citizens and other civil society organizations that the terms of the contract did not favour the Government of Liberia as anticipated.

The concession was granted for the Nimba deposit formerly exploited by LAMCO during the pre-conflict period. The biggest concession deal in the history of Liberia was signed between the Government of Liberia and the People’s Republic of China in April 2010 for the exploitation of the Bong Range deposit which was also exploited by the Bong Mining Company before the civil crisis. The concession will be taken over by China Union and is worth USD 2.6 billion. BHP Billiton is also currently carrying out exploration for iron ore in Nimba and Grand Bassa Counties (Wrokpoh, 2010).

## Timber

Concessions were not only granted in the mining sector before the Liberian civil crisis. Sources from the Ministry of Finance in its annual report of 1976/1977 state that “there may have been about 40 – 45 timber companies in the country of which about ten were inactive with the remaining producing timber. Officially, it was reported that 33 of these firms were engaged in forestry operations in 1977”. According to the Ministry’s source, Liberia’s forestry administration body, the Forestry Development Authority (FDA), not only failed to keep track of the number of logging companies operating in the forestry sector in Liberia, but also failed to assess the total area granted under concessions in this sector: the 12.7 million acres reportedly granted in concession by the FDA amounted to more than the total available forest cover at the time.

Additionally, many of these companies were functional until the start of the Liberian civil crisis in 1989, when the country’s natural resources, especially the gold and timber resources, were looted and misappropriated by various

warring factions to finance the conflict. After more than a decade of conflict which ended in 2003, elections were held in 2005. The new government was elected and inaugurated in 2006, inheriting huge local and international financial debts, and assuming the obligation to restore infrastructure, basic social services, and to reduce both unemployment and poverty.

Attracting foreign investment became the government's primary strategy for meeting the considerable hurdles of post-conflict reconstruction, restoration of social services, and economic recovery. Without conducting an analysis to understand the past impacts concessions have had on Liberia and its people, or the role of concessions in contributing to land conflicts in almost every part of the country, the government immediately began granting concessions and exploration licenses in all of the extractive sectors including mining and forestry, as well as the agricultural sectors.

According to international conservation organizations including Fauna and Flora International and Conservation International, Liberia's forests now

account for the biggest remaining portion of what is known as the Upper Guinea Forest of West Africa, consisting of about 4.2 million hectares of which more than 2 million hectares have been granted in various concessions sizes including Forest Management Contracts, Timber Sale Contracts and Private Use Permits according to concession updates provided both by the FDA and private firm conducting chain of custody in Liberia the SGS.

### **Agriculture**

The agriculture sector has also experienced an influx of multinational corporations, with the three biggest concessions granted for palm oil plantations. Palm trees are native to Liberia and have been used by communities for centuries, providing them with benefits such as palm oil, sauces, soap, wine, fertilizer (ashes), roofing (leaves), building material (trunk), and medicines (roots) which are traditionally part of Liberian communities (Carrere 2010).

Europeans and foreign companies became interested in the palm oil trade when they invaded Africa during the colonial period,

and it became evident that they could accrue profits for the trade of palm oil and palm kernels by using forced labour and establishing large-scale plantations on communal land. The situation was further exacerbated by the World Bank and IMF-led structural adjustment policies imposed on African governments in the '90s, which resulted in the privatization of most of those industrial complexes and the return of control over industrial palm oil production to foreign corporations.

Over the last few years, the expansion of industrial plantations has changed its focus from edible palm oil to the production of agro fuels, mostly led by a broad array of foreign corporations eager to invest in the region (Carrere, 2010). Liberia's experiences with Sime Darby are linked to regional and global trends: biofuel production is a driving factor for the current high wave of investment in the palm oil industry which targets low income countries.

Today the Liberia Government has ratified three large concessions for palm oil plantations with Sime Darby (Malaysia), Equatorial Palm Oil (UK) and Golden Agric-Veroleum (Indonesia).

Sime Darby was given a concession of 220,000 hectares of land in four counties in Liberia including Bong, Gbarpolu, Cape Mount and Bomi counties. Golden Agric-Veroluem currently holds 240,000 hectares of land in Sinoe County while Equatorial palm Oil has also been given a concession of 169,000 hectares in South-eastern Liberia. (Smell no taste, 2012)

### **Land tenure system in Liberia**

Liberia's population historically and currently is divided into two distinct groups; settlers and indigenous Liberians. The settlers commonly known as "Americo Liberian" or "Congos" are descendants of freed black slaves from the Caribbean and the Americas, and make up an urban based elite of about 5% of the population. The indigenous Liberians make up about 95% of the population whose ancestors have lived in the rural parts of the country for centuries. Before the settlers arrived, rural Liberians had their own land tenure system based on customary system of community and collective ownership of their land. The urban-based elites, influenced by the American and English systems, exported the western statutory land ownership system of individual "fees

simple” under Anglo American law, which is also interpreted in the English law as “Freehold”. (USAID, n.d)

As the Americo-Liberians took over the political leadership of the country, policies they made did not recognize customary ownership of indigenous land as full ownership rights but as usufruct rights of possession and use of undocumented customary claims. These policies separated the elites from the indigenous tribes in their application in terms of “civilized and uncivilized”. For example, in fee simple land ownership as enshrined in the Hinterland Rules and Public Land Laws there was a clear reservation for so called “civilized people” who make up the urban based elites of settlers (Wily, 2007).

Chapter 4 paragraph 50 of the Hinterland Law states “On arrival in Liberia, every immigrant who shall have attained the age of twenty-one and who shall have filed a declaration of intention to become a citizen as provided in section 83 of the Aliens and Nationality Law, shall be entitled, if single, to draw from the public lands a town lot or ten acres of farm land, and, if married, a town lot or

twenty-five acres of farm land; provided that a husband and wife shall be entitled to draw only a town lot or twenty-five acres of farm land for both of them. Persons who have drawn land under the provisions of this section shall receive from the President as evidence of their right to the land a certificate specifying the number of the lot or parcel and the time when it was drawn.”

Lands which did not have legal title became property of the state, paving the way for huge portions of customary land to be granted in concession for monoculture plantations, iron ore mining, timber exploitation as well as setting them up as nature reserves and national parks. Some families and communities took advantage of this situation and obtained legal title for some portion of their land individually or collectively, buying back the land which has served as their main source of livelihood, food, and supported their traditional and cultural heritage. There were various kinds of statutory land ownership in Liberia which represented legal title, but status of customary land ownership in Liberia which is still considered usufruct or users rights is complicated and unclear

Liz Alden Wily described in her research publication “So Who Owns the Forest” the various statutory legal land title as:

- **Land Deed:** Document conferring ownership for land sold to original immigrants who purchased land from indigenous tribes from 1821 onwards.
- **Aborigines Land Deed:** title granted to indigenous tribes collectively under the Aborigines and Hinterland Laws.
- **Public Land Sale Deed:** deed granted as title for the purchase of public land to settlers or tribal people who have become “citizens” or “civilized”. Public land was granted to civilized citizens in the amount of 25 acres per family. Under this scheme the land already belonging to tribal was sold back to them under fee simple which rarely happened as many of them could not be regarded as civilized a situation which pushed rural people to acquire land collectively.
- **Leasehold:** User rights for the possession of land granted either by an individual or government for a specified period under conditions.
- **Warranty Deed:** title acquired for purchasing land owned privately.

(Wily, 2007). Moves have been made by local and international organizations in the direction of piloting community land titling with no deed granted.

While land conflict did not directly trigger the Liberian civil crisis, it became clear that land conflict was an integral part of the conflict with disputes over customary land and natural resource rights -

especially between ethnic groups and sometimes between ethnic groups and concessionaires. Many of the conflicts were caused by a lack of proper land tenure system, poor land administration systems and the weak capacity of land administration organizations. This led to the deaths of many in ethnic clashes and violent disputes between community members and concessionaires about



their land and natural resources.

The intensification of land conflicts, particularly after the Liberian civil crisis, pressured the Government of Liberia to impose a moratorium on the sale of public land and set up the Land Reform Commission through legislative enactment in 2009. Conflicts over land and natural resources have become key challenges for the Liberian government particularly in its post-civil crisis reconstruction period.

Even though customary ownership was recognized by state policy before it was changed to usufruct rights, the need to develop a clear land and resource rights and tenure policy is urgent. The simmering tensions in this area have become one of the main sources of insecurity in Liberia's post-conflict development period, and have led to the destruction of property and the death of many in recent times. The need for harmonization of land and natural resource policies in Liberia also cannot be overemphasized.

The development of land and resource rights policies in Liberia is further complicated by two recent laws including

the New National Forest Reform Law of 2006 (NFRL) and the Community Rights Law of 2009 (CRL). Section 2.2 paragraph (a) and (b) of the CRL states: (a) All forest resources on community forest land are owned by local communities (b) All forest resources in Liberia, regardless of land proprietorship shall be regulated by Authority for the benefit of the people except forest resources that have been developed on private or deeded land through artificial regeneration. The 2006 New Forestry Law recognizes forest resources on community forest land as state owned while the 2009 Community Rights Law returns forest ownership to communities.

The enactment of the Community Rights law is positive start in the recognition of customary rights to forestry ownership but there are still provisions in the New National Forest Law, the Aborigines Law and other national laws that are undermining customary ownership of land in Liberia which needs to be reconciled by the Land Commission and developed into a new Land policy that reflects existing realities.

The government's act of granting

concessions on communal land before and during periods of its moratorium on public land sale has ignited conflicts in the past and will continue to do so with sometimes fatal results. For example, the granting of land for the extension of the Liberia Agriculture Company led to violent conflict between the citizens of Grand Bassa and the company, which led to the death of one of the company's expatriate managers (Wrokpoh, 2007).

Several experts have outlined the benefits of the new approach of recognizing customary land tenure in Liberia. According to Liz Alden Wily, these benefits include: "1) ending a long history of mainly unintended abuse of land rights; 2) ending a main source of conflict between custom and statute; 3) laying a foundation for the economic empowerment of the poor; 4) triggering long-awaited conservation of resources; 5) advancing good governance; and 6) advancing peace."

## **The legal framework of community rights to land and resources**

### **National legal framework**

Rural peoples' land ownership rights are a global issue, and Liberia is no exception. In Liberia there are several legal instruments with provisions on statutory and customary rights to land which will be reviewed under this sub-topic. Liberia's land law is pluralistic, which serves as the major cause of the customary land tenure insecurity and conflict. The World Bank's 2008 report on Liberia's Land Tenure characterizes Liberia's pluralistic Land Law as follows: firstly "a civil law of

land, consisting of a common law of land derived from American common law at the creation of the colony and developed subsequently by judicial decision, and statutes supplementing that common law", and secondly "a customary law of land based on the practices of traditional communities and recognized by the Constitution as governing land not brought under the common law".

This recognition of customary land rights under the constitution without formalization by statutory provisions is

a source of ambiguity, confusion and inconsistency in Liberia's pluralistic land tenure system. For example, in the past, under customary land tenure systems, land deeds were issued through a formal process and accepted as ownership rights by traditional and customary authorities, including Paramount chiefs and other local authorities. Under the modern statutory framework, however, it is unclear what – if any – legal status these land deeds have. This confusion extends to “the overall status and application of policies and laws regarding land and property. Those that exist are unclear, lack effective implementing regulations, and are often very outdated and so are not able to engage present Liberian reality. As well the existence of a good deal of received law from England via the US is unsuited to present Liberian reality” (Unruh 2007).

Further adding to this confusion is uncertainty within the body of common law regarding “which laws have been applied in which cases and how, particularly with regard to the granting of concessions and resolution of disputes.” This lack of clarity about the governing laws and their proper application

and interpretation in turn generate a significant number of disputes over land. By one estimate, between 75-90% of all cases in all statutory courts (probate, civil, criminal, and appellate) are related to land and property (Unruh 2007; GRC, 2007).

There are several sources that combine to make up the formal legal framework for land tenure in Liberia. Chapter 24(a) of the constitution of the Republic of Liberia of 1986 provides for the rights and requirements for citizens to own property, and limits citizenship to “Negroes or their descendants” and sets forth requirements for the expropriation of land using the powers of eminent domain (Liberian Constitution, 1986).

The Public Land Laws of 1904, which were amended in 1972, spell out the procedures for allotment and purchase of land by “aborigines” (indigenous peoples), as well as the lease of public land to foreigners. It also spells out the procedures in which land that has been reverted to the Government of Liberia can be re-claimed (Alden Wily, 2007).

The Hinterland Rules and Regulation of 1905, amended in 1949, clearly

recognizes customary ownership to land rights as full ownership and not just as usufruct rights as stated in Article 66 which focuses on land as: “Title to the territory of the Republic of Liberia vests in the sovereign state. The right and title of the respective tribes to lands of an adequate area for farming and other enterprises essential to the necessities of the tribe main interest in the tribe to be utilized by them for these purposes; and whether or not they have procured deeds from Government, delimiting by metes and bounds of such reserves, their rights and interest in and to such areas, are a perfect reserve and give them title to the land against any person or persons whenever”.

The 1956 Aborigines law also recognizes customary land rights but as usufruct rights and not as full ownership rights, which gives rights for the use and possession of “as much of the public land in the area inhabited by it as is required for farming and other enterprises essential to tribal necessities” but forbids their ability to sell their land except by public land sales under section 270.

The Registered Land Law of 1974 regulates and formalizes Liberia's land registration system. The Law empowers the Government of Liberia to decide and designate which area is suitable for registration and required landholders to register landholdings (Wily 2007).



*A banner hung during a community organising meeting in Liberia*

The 2006 New National Forest Reform Law provides the rights to the Government to use land whether statutorily and customarily owned using eminent domain law and states under Section 11.3: “Where the Government has granted permission for the use of forest resources, no land owner or occupant has a right to bar that use; however, the land owner or occupant shall be entitled to just, prompt, and adequate compensation for any diminution in the value of his property occasioned by the use”. Section 2.2 paragraphs (a) of the CRL states: All forest resources on community forest land are owned by local communities.

### Regional Legal Framework

There are not many regional legal frameworks on Land rights in Africa, however one has been developed that provides protection for property rights, of which land is a part. Chapter 14 of the African (BANJUL) Charter on Human and Peoples’ Rights of June 1981(held in Liberia) states: “The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the

community and in accordance with the provisions of appropriate laws.”

### International Legal Frameworks

The rights to land are not directly codified under international human rights law, but land access for vulnerable groups including women and indigenous groups has been identified as a cross-cutting issue. Landlessness directly affects other fundamental human rights including the rights to food, water, education, housing, water, work, and health, which have been defined in several international legal human rights documents.

Aside from its relationship to basic human rights, land is tied to rural people culturally, spiritually, traditionally and makes up their social identities. While the people on whom this case study is focused do not necessarily meet the requirements as indigenous people under International Human Rights Laws, several human rights instruments serve as a legal basis for the protection of their rights (Wickeri, Kalhin, n.d).

Article 17 paragraph 1 and 2 of the Universal Declaration of Human Rights

protects the rights of everyone to own property and states that “(1) Everyone has the right to own property alone as well as in association with others; and (2) No one shall be arbitrarily deprived of his property.” Article 25 paragraph 1 of the UDHR also provides protection for everyone to an adequate standard of living by stating specifically that “(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

The International Convention on Economic, Social and Cultural Rights adopted by the General Assembly resolution 2200A of 16 December 1966 also provides protection for everyone to freely dispose of their natural wealth and states in Article 1 Paragraph 2 of both the ICCPR and ICESCR that “All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-

operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”

Additionally, Article 11 Paragraph 1 of the ICESCR protects the rights of everyone to an adequate standard of living and states in paragraph 1: “The States Parties to the present Covenant 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. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

Paragraph 2 of the same covenant states: “The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed.”



## LIBERIA: A GLOBAL PERSPECTIVE



*Some rural Liberians walking near some of the country's remaining forest © Fern*

Liberia is known as the oldest African Republic with anthropological and archaeological information showing that the area today known as Liberia was occupied or inhabited as far back as the 12<sup>th</sup> century or even before this century by the Mende people on the coast of the Atlantic Ocean. While traditional people lived in what is today known as Liberia by the 12<sup>th</sup> century, at “the beginning of the 19th century, groups of free-born blacks, freed slaves and mulattoes from the United States of America emigrated to the west coast of

Africa. In 1847, 25 years after the first successful colonisation, they proclaimed an independent Republic, which they named “Liberia” (Bremer, 1983). Liberia’s legal and administrative systems are styled after the United States of America, and it is the lone country in West Africa that was not conquered by the European during the period of colonization (Pham, 2004).

The agriculture sector of Liberia has been and continues to be one of the strongest pillars of the economy, which

has prompted investment in recent years to spur economic growth. In 1987 before the Liberian civil crisis the sector contributed about 37.2% of the country’s GDP, providing employment for about 75% of the country’s labour force. The sector also contributed about 25% of the country’s export with rubber as the leading commodity, and accounted for 67.8% of the country’s GDP as compared to 37.2% in 1987 (CUC, n.d).

Liberia has a proven reserve of about 800 million tons of iron ore which has the quality content of 35-65%, with deposits amounting to an estimated one billion tons of high-grade ore. The deposits are found in the Nimba Range, located along the northern border with Guinea, and the Bong Range, which is among the most mineral-rich deposits in West Africa. The deposits were mined prior to the civil crisis by American and Swedish companies and, as mentioned above, have recently been granted to ArcelorMittal and China Union in concession (CUC n.d). While most research in the mineral sector have been mainly focused on gold and diamonds, recent exploration has found that other mineral resources including beryl, tin,

columbite-tantalite, phosphates, zinc, copper, lead, rare earth minerals, nickel, molybdenum, beach sand (zircon, rutile, ilmenite, and monazite), bauxite, kyanite, chromite, uranium and silica sands are found in most parts of the country (Africa Focus, n.d)

Before the civil crisis Liberia’s economy depended heavily on revenues accrued from the exportation of iron ore and natural rubber, which made up more than half of the country’s export earnings. As Liberia became a major exporter of iron ore on the world market between 1970 up to the civil crisis in 1989. Even though these resources have been contracted to concessionaires who are currently extracting and processing them, Liberia is paradoxically ranked as the second poorest country in the world with a per capita GDP of USD 300 while the majority of its citizens live on less than 2 US Dollars a day. Liberia’s ranking amongst the poorest countries in the world is supported by indicators including high unemployment rate, low adult literacy and low percentage of the country’s population having access to basic social services including safe drinking water,

electricity, road, health facilities, and education (World Bank, 2008).

During the civil crisis Liberia's natural resources, especially rough diamonds and timber, became key commodities for the various warring factions who were party to the conflict. Diamonds and timber were harvested in many cases under forced labour and exported mostly to Europe and China, with the generated revenues benefitting only a few elites. Much of the revenue attained from the resources was used either to buy or exchange arms to perpetuate the civil crisis.

To bring sanity to Liberia and end the civil crisis the United Nations Security Council conducted series of investigations, concluding that the two sectors were playing a major role in prolonging the civil crisis. The Security Council consequently imposed smart sanctions on the exportation of both Liberia's diamond and timber sectors. The sanctions, which also included an embargo on fire arms, paralyzed the major warring factions by blocking supplies. The imposition of the sanctions ultimately led to the end of the conflict.

Following the war, Liberia subscribed to reforms in both the diamond and timber sectors and subsequently signed up to the Kimberly Scheme and the Extractive Industry Transparency Initiative (EITI), following the lifting of sanctions. Both schemes are international best practices for transparency and accountability.

After the civil crisis a new government made efforts to rebuild Liberia's infrastructure and economy, advertising Liberia's rich natural resources and fertile land for concessions as part of this strategy. According to study conducted by the Columbia University recently, more than half of Liberia's total land area has been given in concessions for agriculture and other natural resources including diamonds, gold and iron ore. "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. Since the end of the war, foreign concessionaires have agreed to undertake investments that total more than US\$19 billion dollars." (Smell no taste, 2011).

Liberia is a participant in a number of multilateral efforts to improve its post-conflict economic and fiscal governance capacity, and to deal with its large sovereign debt. In particular, Liberia subscribed to the Governance and Economic Management Assistance Program (GEMAP) a tool designed by the international community as a way to "reshape the fundamentally broken system of governance that contributed to the almost 2 decades of conflict in Liberia" (ICGL, 2005).

GEMAP was concluded in September 2009, having cleared Liberia's debts with the World Bank, International Monetary Fund, and African Development Bank in the sum of approximately 1.6 billion. The country reached Heavily Indebted Poor Countries (HIPC) completion point in June 2010 and also cleared its nearly \$1.4 billion arrears to Paris Club creditors in September 2010. The government's 3-year poverty reduction strategy was scheduled to end in June 2011. The same month, the IMF approved a continuation of Liberia's Extended Credit Facility (ECF) through March 2012 (Kraaij n.d).

Liberia's substantial debts to foreign counterparts and organizations continue to provide a strong incentive for attracting foreign direct investments as the most prioritized option to boost the nation's economy and sustain economic growth. Since 2006, there has been a huge influx of multi-national corporations in Liberia seeking to acquire their share of Liberia's land for setting up concessions - mainly in the timber, mining and agriculture industries.

Rough calculations suggest that between 2006 and 2011 more than a third of Liberia's total land was given out in concessions to multi-national companies in these three industries (Knights and Siakor, 2012). To further disaggregate this number, more than seven million acres have been given in concession in the forestry and agriculture sectors while an additional 1.6 million acres have been given in palm oil concessions alone. This adds up to concessions granted by previous governments since the earlier 1900's such as the 1 million acres granted to the Firestone Rubber Plantations company (Smell No Taste, 2012).

## CASE STUDY: SIME DARBY

Sime Darby is a Malaysian-based multinational company that was established in 1910, and is today the world's largest agribusiness company. In 2007 Sime Darby Behard (formerly known as Synergy Drive Bhd), KGB and Harrison & Crossfire merged to become what is today known as Sime Darby. This company acquired the entire business including all rights, title, and benefits of KGB – including a 600 acres concession in Liberia. (Sime Darby, n.d).

On April 30, 2009 the Government of Liberia (GoL) and the Sime Darby Plantation Liberia Incorporation entered into the amended concession agreement amending the July 9, 1954 agreement between the Government of Liberia and the B.F Goodrich Company. The 1954 agreement between the government and B.F Goodrich permitted the company to carry out activities including planting, cultivation, harvesting, processing, and marketing of products - especially natural rubber - on a total land area of 600 acres along the St. John River in Grand Bassa, with the said area also situated along the

St. Paul, Mano and Lofa Rivers in South-western Liberia (Sime Darby Agreements, 2009).

According to Sime Darby sources, on November 22, 1985, the 1956 agreement was amended to reflect the sale, assignment and transfer of the concession rights to Guthrie Corporation Ltd of the United Kingdom and in turn to the Kumpulan Guthrie Sendirian Berhad (KGB) which was the parent company of Guthrie UK. In 2001 KGB suspended its operation temporarily due to insecurity caused by the Liberian civil crisis, having given notice to the Liberian Government. During the Liberia civil crisis the GOL appointed an interim management team to manage the KGB concession and further notified KGB of the cessation of hostilities and urged KGB to resume operations in Liberia in their bid to attract foreign direct investment to boost employment, export revenues and national economic growth.

The amended agreement signed in 2009 grants an additional 220,000

hectares (543,612 acres) of land for the cultivation of rubber trees and palm oil in Cape Mount, Bomi, Gbarpolu and Bong Counties for a contractual term of 63 (sixty three years), and an additional 44,000 hectares set aside in the contractual agreement for out-grower program which will allow local farmers to produce and sell palm products including palm oil and kernel to Sime Darby. This brings the total concession area under Sime Darby to 1,143,612 acres or 462,819 hectares. Under the agreement, Sime Darby is to pay in advance to the government of Liberia annually the amount of US\$ 5.00 for each acre of land developed and US\$2.50 per hectare of undeveloped land. When disaggregated by county 39,010 hectares is situated in Grand Cape Mount County, 57,008 hectares in Bomi, 55,342 hectares in Bong and 159,827 hectare in Gbarpolu County.

The agreement also allocates to Sime Darby carbon credit rights, title and benefits if the company realizes certified emission reduction credits or other carbon or carbon-equivalent emission reduction credits or any other corresponding monetary value or cost saving that results from greenhouse gas

emission reductions, whether created by the company or by third party acting under the direction of the company.

“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”

President of Liberia

(Knight and Siakor, 2012).

In 2009 Sime Darby started official operation by clearing forest land for palm nursery and cultivation, beginning with Grand Cape Mount County which targets the first 5,000 hectares to be planted by the company initially. The initial clearance of forest land for palm oil plantation has met with mixed reactions from rural communities in the county who have lived on the land granted to Sime Darby approximately as far back as the 12 century before the formation of what



is today known as Liberia. Communities affected by Sime Darby's operation are agrarian communities who depend on the land for their entire livelihood activities, including subsistence slash and burn farming, planting of life crops for the economic viability of their families, fishing, medicinal herbs, protein source, and drinking water.

Affected communities have expressed concerns about the company's clearing of forest land which they claimed have desecrated their ancestors' land by destroying sacred sites such as cemetery, land for their traditional bush school for girls including the Sande, destruction of food and cash crops without just compensation, filling in of swamps, destruction and pollution of creeks, forceful displacement of affected communities without suitable relocation or compensation, and most importantly the establishment of the concession without their free, fair and informed consent (Smell no taste, 2012).

Concession allocation processes in Liberia are mostly done amongst the various line ministries in conjunction with the Public Procurements and Concession

Commission (PPCC) established in 2005 to ensure transparency, efficiency, economic growth, and competition in the contract allocation processes. While these allocation processes are outlined in the PPCC Acts and Mineral Development Agreement, they do not provide for sufficient public participation in the decision making processes during the negotiation processes.

In almost all cases the concessions are agreed without consultation of the people who have lived on the land for centuries and do not take into adequate consideration during the process, the impact the concessions are going to have on the lives of the communities to be affected by the concession. In the case of Sime Darby, the additional land allocated to the concession was only described in the agreement between the company and the government without knowing directly which communities will be affected by the communities.

Sime Darby is a founding member of the Roundtable on Sustainable Palm Oil (RSPO) and has subscribed to and should be held accountable to the RSPO Principles and Criteria for Sustainable



*Land cleared for Oil palm plantations, Liberia*

Palm Oil Production of October 2007. The RSPO is a consortium of palm grower companies and millers seeking corporate social responsibilities for their members.

After some portion of the land awarded to the company under the contract was identified by the government, the company's Environmental and Social Impact Assessment suggested that the land which is currently under development by the company will affect more than 15,000 community members who will eventually be relocated from their land. According to communities with whom research discussions were

held, they have had no discussions about relocation and it is not clear whether a relocation and compensation plan has been established. These communities are currently being surrounded by oil palm plantations without any land available to support their livelihood activities.

"Sime Darby representatives verified that communities within their plantation zone, which extends to nearly 50 per cent of Bomi County alone, will no longer be able to conduct traditional farming techniques in its concession area due to the risk of farm fires damaging the palm trees" (Smell No Taste, 2012). This

is going to have serious negative impact on food security in communities living in and around Sime Darby's concession in clear violation of the communities' rights to food and other basic needs. Like many concessions in Liberia, contribution to the reduction of poverty through increased employment in rural areas is one of the convincing factors for which concessions are granted in Liberia. This, according to government, is intended to reduce the negative impacts of the company's operation on communities.

The company hopes to eventually employ 30,000 community members, a number which represents just a minute fraction of counties in which the company will operate. It is unlikely that community members have the requisite capacity to attain the high level positions that will be available within the company, and in many cases the company will bring staff from other parts of the country to occupy such positions. Jobs available for community members are usually casual labour, the salary for which does not translate into amounts that are sufficient to even sustain their families let alone raise them above poverty line.

Recently, Sime Darby started developing a portion of about 25,000 acres of its concession in Grand Cape Mount County, located in the western part of Liberia. The current development includes the clearing of forests, some of which are rich in other resources especially valuable timber species.

The decision to destroy valuable timber species in order to plant palm trees, without first harvesting the resources that could accrue millions of dollars, remains an open question for the government. The current operation of Sime Darby is unarguably having negative impacts on communities within and around the concession, and provides a clear indication of what will happen to local people whose lands have been given out in palm oil plantations elsewhere.

Recent concessions given out to multinational companies in the agriculture, timber and mining sectors amount to a third of Liberia's land area. The palm oil sector alone accounts for more than 1.6 million acres, and will affect the lives of about 150,000 local people (Knight and Siakor 2012). Already in the Sime Darby concession area, local

communities have begun to raise serious concerns about the company's impact on their livelihood including the damaging of valuable non timber forest products that are used by communities especially for the construction of local housing. In 2011 the communities filed complaints about the company's operation to the various government line ministries and agencies responsible for granting concessions in Liberia.

With no form of redress from the government forthcoming, and with the assistance of local NGOs, some communities filed a complaint before the Roundtable on Sustainable Palm Oil (RSPO); an international certification body of palm oil companies which investigates their corporate social responsibility practices. "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 Roundtable on Sustainable Palm Oil (RSPO). However, its Liberian operations have not been certified as RSPO-compliant, and rural communities 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" (Smell No Taste, 2012).

"You know in Liberia poor people don't get justice, if you do not have money how can you go to court and win a case? We are only now depending on NGOs to speak for us"

Woman Community member

The RSPO requested that Sime Darby halt further expansion of its activities and negotiate with the communities. According to the a Liberian daily newspaper Daily Observer, one of the negotiation meetings which was held on January 6, 2012 between communities and representatives of Sime Darby was disrupted and declared illegal by officials from the Ministry of Internal Affairs - the state ministry responsible to deal with local matters - before any agreement was reached.

To further strengthen the position of the Government of Liberia about granting

concessions without the participation of the people whom it affects, and to exhibit the strength of multinational corporations in developing countries, the President of Liberia visited the communities and without any remorse said in her words “When your government and the representatives sign any paper with a

## Field research results

Field research for this project was focused on the Sime Darby Plantation. Five communities situated within the Sime Darby Plantation were selected for the field research work. The communities included Conja, Guenja, Nimba Point, Gbai and Madina towns. Fifteen focus group meetings were held in the five towns (three in each town for men, women, and youths). This method was selected to identify how the company’s operations impacted different sectoral groups differently and to gather in-depth information about the concession. The discussions were focused on gauging community members’ perceptions about land ownership in Liberia as it relates to customary and statutory ownership, the

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” (Knight and Siakor, 2012).

procedural rights to land and natural resources, livelihood and the current coping methods, employment and other corporate social responsibility issues as described in detail below according to the various sectoral groups.

### Land Ownership

Men, women and youths in all communities believed that the land granted to Sime Darby in concession is owned collectively by citizens of Grand Cape Mount County at the county level and then collectively owned at the clan, towns and family levels. Community members voiced several arguments in support of this belief. First, they believed that these ownership rights were passed

on to them by their forefathers who collectively owned them. Secondly, they argued that their generation was born on the land, which gives them ownership rights whether by law or not. The Local chief of the Conja town Mr. Manoballah further commented by saying “under our African tradition, anything that belongs to your grandfather belongs to you. We do not need a deed to own this land because our forefathers owned them. It is God’s creation and he placed us on our land but it is “Congo People” who brought about the deed business just to take our land.” Communities’ perception about customary land ownership in Liberia is strong to an extent that no rural land can be granted to an individual without the collective agreement for the granting of said land. In all cases in Liberia, land owned collectively can only be granted to individuals who are not from said community, for short term use and not for what they call ‘life trees’, which are crops that take more than one year to grow, including rubber and cocoa.

When asked about the procedures under which the concession was granted, all sectoral groups in all the five towns said that they were never consulted

by the Government of Liberia, their parliamentary representatives, or the Sime Darby Company during the concession agreement process. They only knew about Sime Darby when it arrived and started breaking grounds for their plantation, which was followed by bulldozers that started clearing the land the following week. Community members have neither seen the contractual agreement nor have a copy of it. When asked why they have not followed the legal process if they felt their rights were abused, a woman replied as saying “you know in Liberia poor people don’t get justice, if you do not have money how can you go to court and win a case? We are only now depending on NGOs to speak for us”.

### Employment

According to community members, before the arrival of Sime Darby, most of the community and especially men were employed with B.F Goodrich and then later with the Guthrie Rubber plantation. When Sime Darby arrived, community people saw it as an opportunity for employment and a form of development coming to their communities. They did



not anticipate the negative impacts it would have on them. All of the sectoral groups in the communities stressed that Sime Darby has performed below their expectations on providing employment, which was one of the key reasons for which the concession was granted.

According to the communities Sime Darby is at the moment providing a few low level jobs including security, casual labour positions, masons, carpenters, etc.. While there are local people who are capable of doing such low level jobs, according to community members the majority of the people currently employed in these roles and brought to the county by the company managers and elites, who are themselves not from the county.. Community members say they have qualified university graduates living locally who are not employed, but Sime Darby continues to import staff from other parts of the country, who are not in sympathy with the community's situation.

On the issue of working conditions, the community members said majority of local people who are given jobs are working as "daily hires", This means they

do not get benefits such as education for their children, housing, or safety equipment. Many have worked without full employment rights for more than three months in excess of the allowed probationary period, set by the Ministry of Labor. People working as casual labourers are paid US\$ 3.00 daily while those fully employed are paid US\$ 5.00 daily.

The work available to women generally consists of filling polybags with soil and transporting them required distances, or weeding grass on specified areas of the plantation and working to daily quotas specified by their supervisors. The company uses trucks and tractors to transport its workers to work, which is usually overloaded and unsafe.

### **Livelihoods**

In all the five communities where this research was conducted, the men said they carried out slash and burn subsistence farming for food, and plant cash crops including rubber, cocoa, oranges, mangoes, plantain, bananas and other crops to generate income to provide for their families' other needs

such as food, health, education, housing, and clothing. The men explained that since Sime Darby began clearing the land on which they used to farm, including clearing their cash crops, most have been unable to cater to their families' needs. Those who can are the few men who are employed by Sime Darby and who benefit from the company rice supplies and salaries.

The men further explained that no land has been left in the communities as reserves for communal activities. Payment for cash crops destroyed by Sime Darby was at the discretion of the company as it was the company who assessed how many crops was damaged, rated the crop maturity and determined how much it had to pay for each crop damaged. This issue has recently been the major bone of contention amongst community members in the cleared areas visited.

Women in almost every part of rural Liberia carry the biggest burden of catering for their families. They depend greatly on land and its resources for the survival of their households. In the communities researched, they depend on

wetland rice farming, plant vegetables of all varieties, grow cassava, process palm oil, and plant cash crops like oranges and mangos to cater to their family needs. They also use the forest for their cultural and traditional Sande schools for girls, and harvest herbs to take care of most of their traditional herbal needs. The women say the swampland on which they depended has been filled with soil for palm plantation, while all their cash crops have been destroyed by the company without fair compensation. One woman who attempted to calculate the production value of a single orange tree said it provided at least US\$50 dollars-worth of oranges annually, which could earn at least US\$1000 over the 20 years life span of the tree. She was surprised then that the company offered the payment of US\$6 for each mature tree.

Youths in the communities, who are mostly students, depend on their parents and grow cassava gardens, produce palm oil, and fish to contribute to their educational and other needs.

From the transect work carried out in all communities researched it is clear that all the land in the communities was

granted to Sime Darby in concession by the Government of Liberia. The company has recently cleared the land granted to them, surrounding all of the communities at a distance as close as under 100 meters. No reserve forest for community use was seen in any community. Creeks were seen dried up. In some communities the company is trying to dig shallow pits for the construction of hand pumps. Prices of basic commodities in the communities have doubled and sometimes tripled.

#### **Impact on Men, livelihood change and coping methods**

Men in all the communities revealed that the forest on which they depended for their entire livelihood has been cleared without any reserve for communal use. Their food and cash crops have also been cleared without just compensation as well as other timber and non-timber forest plants which they used to construct their homes. Their natural palm which was also one of the main sources of income has also been destroyed. Also crucial, according to the men and the other sectoral groups alike, was the issue of the destruction of sacred sites where rituals, burials and other important

communal events were performed. All 27 men with whom the discussions were held felt undermined as head of their families as they are unable to provide the basic needs including food, health, education, clothing and other needs for their families.

Men who previously provided for these needs for their families from their land and other forest products now entirely depend on purchasing food and other provisions at high cost from the nearby cities. As cash crops on which they depended for supporting the health, education and other crucial family needs were also cleared it is becoming difficult for parents to attain an adequate standard of living for themselves and their families. Few men who were able to get a job with the company are able to meet some of these needs for their families while some of them depend on support from their children in the cities, and remittances from families abroad.

#### **Impact on Women, livelihood change and coping methods**

Women in Grand Cape Mount County predominantly depended on swamp

(low land) farming, cassava farms, grew a variety of vegetables, fruits and other cash crops, fished the streams and laid baskets in low land swamps to satisfy their protein needs. This contributed to their family food needs and also contributed supplementary income to the household. As with the men, Sime Darby's concession rights have had profound negative impacts on women's livelihoods. Sime Darby filled up the swamps in which they farmed and fished, and has cleared and planted the high lands with palm nurseries, removing all vegetables and other cash crops that the women had cultivated to supplement their family needs.

All the 31 women who participated in the focus group meeting said life has become unbearable for them as they have to buy everything for food from Monrovia, at a high cost. The prices of food and provisions have now doubled, in some cases tripled, and in many cases have become entirely unavailable in the communities. They have to go outside of their communities to cities around them or other communities that have not been affected to purchase food and other items. According to the women, Sime

Darby's payment for damaged crops was unfair. They paid US 6.00 for each mature crop and the consideration of mature trees, the quantity, and payment methods were left at the discretion of the company without community participation. A few women who are either employed with the company or working as daily hires benefit from the company's rice supply which is deducted from their salaries. Many of the women now depend on their children from the city to provide them food or other relatives abroad for remittances to sustain themselves.

#### **Impact on Youths, livelihood change and coping methods**

Youths in Cape Mount - both males and females - depended on gardening as a main source of income, paying for their education and other needs. Having taken away the land on which young people depended for gardening, all of the 35 young people both male and females said life in the community has become hopeless. Few of the young people in the communities are employed with the company or working as daily hires. Those who are not employed or currently attending schools are either sitting idle

in the communities, riding transport motorcycles, or are involved in illicit rubber tapping of the former Guthrie rubber plantation currently being cleared by Sime Darby. When asked what will happen if Sime Darby cut down the rubbers trees, the youths responded saying, “it will increase the already high wave of crimes and insecurity in the communities”.

### Eviction

In all the communities visited community members said they were informed that the company will one day relocate them but there was not any clear information on when the relocation will take place, to where they will be relocated and what mechanisms have been put in place for said eviction process.

### Mobility of community Members

Community members raised concerns over Sime Darby blocking roads that they community had previously been using. The communities say the company blocked some roads with rubber logs, preventing the movement of vehicles in their communities. This poses threats to the commercial users of the road, and creates safety concerns in the event of evacuation of sick people from their communities.

## ANALYSIS

### Concessions, community land rights, participation in decision-making and access to information and justice

All community members with whom the discussions were held perceived that the land currently granted to Sime Darby is community owned, while the government of Liberia believes that the land is public land that belongs to the state.

Such a lack of clarity about land ownership should have provided the basis for Sime Darby to reject the land area granted to it in support of the RSPO Criterion 2.2 which demands that “the right to use the land can be demonstrated, and is not legitimately contested by local communities with demonstrable rights”. Granting large-scale long-term concessions for land while these inconsistencies have not been handled is a clear recipe for confusion between the communities and government on the one hand and the communities and the concessionaires on the other hand.

The commissioning of the Land Commission is a welcomed decision but

the government must stop contradicting itself by granting concessions during the periods of moratorium, to allow the Commission to synchronize the land policy and harmonize it with the laws of Liberia. This process is expected to recognize the full customary ownership rights of communities, which is important for their survival and the protection of their rights to own property alone or collectively. There is an urgent need to clarify land ownership and put in place a clear tenure system, in order that the ownership rights of rural people are taken into consideration and land conflicts, which have sometimes claimed lives, are avoided in the future.

The Government of Liberia decision to grant a concession during the period of moratorium in Liberia is a contradiction and a wilful decision to undermine its moratorium and the tenants of good governance. This decision has led to severe consequences for rural people currently



affected by the Sime Darby Plantation, and has fuelled the current land conflict between the rural communities and the company in recent times.

The impact of Sime Darby's operation on communities in Grand Cape Mount County is negative. Taking away the land which serves as their main source of living, providing for food, health care, education, clothing and their economic needs, violates the communities' basic human rights including the rights to own property alone or collectively, rights to adequate living standards under international human rights treaties including the Universal Declaration of Human Rights, the International Convention on Economic, Social and Cultural Rights as well as the International Convention on Civil and Political Rights to which Liberia is a party. The company's operation is also in violation of RSPO Criterion 2.1 which states "there is compliance with all applicable local, national and ratified international laws and regulations" by RSPO members.

Free prior and informed consent has become a cross-cutting human rights issue, intended to guarantee people's

participation in decisions about issues that affect them, especially relating to natural resource and land allocation processes. For example Criterion 7.5 of the RSPO Guidelines states "no new plantings are established on local peoples' land without their free, prior and informed consent, dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions". This guideline was not taken on board by the government and the company during the negotiation process. Deforestation for plantation has also been a universal concern of various policies, some of which Sime Darby is a party to. RSPO Criterion 7.3 states "new plantings since November 2005, have not replaced primary forest or any area required to maintain or enhance one or more High Conservation Values". However, according to communities Sime Darby clears primary forest for planting oil palm in Liberia.

The Sime Darby Agreement is not clear with regards a dispute resolution mechanism through which grievances can be addressed, to provide options

for redress of public concerns. This is in violation of the RSPO Criterion 6.3 which demands "There is a mutually agreed and documented system for dealing with complaints and grievances, which is implemented and accepted by all parties". Almost all of the people who participated in this research do not see the legal process in Liberia as a means of addressing problems affecting them. The court processes in Liberia are unnecessarily long, overly complex and expensive for rural people.

The labour practices of Sime Darby, including recruiting personnel as contractors for more than three months without full employment, falls short of Liberia's labor laws. The Ministry of Labor needs to more closely monitor Sime Darby's labor practices to ensure that people hired or employed with the company are treated in accordance with Liberian law, which will provide them adequate benefits. Women in all the communities visited have no option for taking care of their families except to accept any job and especially underpaid labor work with the company. This undermines the principles of equality, threatening their peace and security as

women. Youths in the communities were productive community dwellers before and after the civil crisis, and depended on the forest for their livelihood and economic needs. The absence of jobs and clearing the land has encouraged this group to engage in common crimes, which is posing insecurity for the communities. During the visits to the communities, youths were seen transporting illicit rubber on motorcycles. The situation will become worse as Sime Darby clears the remaining rubber trees for palm plantation, as this will create security problem for community members as a whole.

Sime Darby alone dictated compensation levels for the communities' cash crops cleared in the concession area, with crops belonging to all three sectoral groups being undervalued. This in turn undermined community members' ability to improve their lives, and has further plunged them into deeper poverty. This further contravenes RSPO criterion 6.4 which states "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 stakeholders to express their views through their own representative institutions.”

The blocking of primary roads connecting communities that pass throughout the concessions violates section 4.4(a) of the agreement between the government and Sime Darby, which states that “...all roads including but not limited to farm roads and trails across the plantation that are used immemorially by the population shall remain open to the population for commercial and public purposes.” According to the contract, in cases where such use interferes with the security of the company’s assets, the company has the right, with the consent of the government, to impose minimal restrictions on the use of the roads by erecting check points. In this case Sime Darby totally blocked the road, which is illegal and an infringement of community dwellers’ right to free movement.

There is no clear-cut resettlement plan outlined in the contractual agreement that takes into consideration the full participation of communities to be affected by the resettlement. Section 4.3 of the agreement between Sime Darby and the GoL states “Investor may by notice to the Government request that certain settlements be relocated if the investor can demonstrate to Government’s satisfaction that such existing settlement and its inhabitants would impede investor’s development of the concession area and would interfere with investor activities.” The same chapter of the agreement prevents Sime Darby from paying any amount over US\$200 for resettlement costs per 1 hectare of land, with a 50% tax credit for resettlement expenditures during the fiscal year. This undermines the state potential to generate the much needed revenues to support basic social services for its people.

## DISCUSSION AND CONCLUSION

The power of multinational corporations in Liberia is visible from the negotiation of contracts through to the way they operate their concessions. As in other parts of Africa, corporations are dictating the course of action and terms of contractual agreements in Liberia, largely favouring themselves with long-term concession agreements usually granted on communal lands. In almost all cases the lands granted are described in the concession agreements as being granted to the concessionaires before they are identified on the ground.

At least in Liberia it has been proven from time to time that multinational corporations have direct political and other support from the countries in which they are based, whose backing and behind-the-curtain arrangements influence the granting of concessions to corporations. In many instances the host countries of a concession are dependent on the home countries of concessionaires for other bilateral, financial and technical support.

The contractual agreements processes are carried out amongst government line ministries and agencies including the Ministries of Agriculture, Lands and Mines, FDA, and concluded by the House of Parliament. These procedures do not include public participation in the decision making processes, especially not from rural people who are affected by the concessions. Policies including the PPCC Acts do not require public participation, jeopardising transparency and accountability. The ArcelorMittal concession is a clear example of concessionaires dictating terms, manipulating negotiations, and corrupting public officials in these processes.

The ArcelorMittal concession included the port of Buchanan, the railway running from the port of Buchanan to the mine site in Nimba as well as high valued timber species free of charge. There was a public outcry after the company was accused of bribing members of parliament with 100 pick-up trucks, which the ArcelorMittal

## Recommendations



- Liberia needs to develop a clear land tenure policy that harmonizes all laws concerning land in Liberia, taking in to consideration the customary ownership of rural communities who have lived on their land of centuries.
- The concession agreement between the GoL and Sime Darby needs to be urgently revisited to ensure that the flaws in the agreements that undermine the growth of Liberia and affect communities are amended.
- Liberia needs to domesticate human rights principles in its national laws and respect the human rights treaties it has ratified to prevent the gross violation of the rights of the people in the Sime Darby concession and other rural communities.
- The ministry of Labor and Agriculture needs to constantly monitor the company's activities to ensure that employees are protected.
- Countries and organizations promoting corporate social responsibility should therefore ensure the guidelines already developed are revisited and improved with workable implementation and sanctioning mechanisms that promote corporate social responsibility especially in developing countries, where the state and nation states are usually weaker than the concessionaires.

claimed to have donated for agricultural purposes, and allegations of bribery. This led to the concession agreement being renegotiated in 2007, as it was clear that the deal had originally been fast-tracked without proper scrutiny.

The lack of clarity about customary and statutory land ownership in Liberian laws, and the lack of a clear land tenure policy, provide an unequal framework and set the stage for granting land customarily owned by communities in long-term concessions. While revenue generation from concessions has become the target for government to spur economic growth and development, the results in terms of reducing unemployment and poverty at the local levels are minimal and in most cases not visible.

The terms of concession agreements largely favors the concessionaires against the state and its people. In many cases there are huge tax havens granted to the companies, which prevents the country and its people from benefitting from these much needed revenues. This is in addition to a long term lease of the land and natural resources which are mainly intended to acquire large quantities of

land, which in effect deprives rural people from livelihood sources and other socio economic benefits.

In the case of Sime Darby concession on which this research was conducted, several factors account for the negative impact the company is going to have on the state and its people. Granting concession rights to Sime Darby to sell carbon credits solely without state participation or share in the revenues accrued from such trade reduces the state's potential to provide basic social services for its citizens, while making it difficult to monitor how much the company accrues from such trade.

The current plantation approach is leading to a waste of valuable resources that could be profitably harvested and sold for additional revenue before the land is granted in mining and agriculture concessions. In the case of Sime Darby, rich timber resources have been cleared and the land granted to the company in other counties are primary forests with rich timber that could be harvested and sold by the country to accrue huge revenues for the benefit of the country and its people. The waste of such valuable timbers species by Sime Darby



further reduces the country's potential to generate much needed revenue. Even though clearing primary forest for plantation falls short of RSPO criterion 7.3 of which the company subscribed to, Sime Darby is reportedly still cutting down primary forest for its plantation.

The impact of Sime Darby's operation on communities is grave and in violation of international human rights treaties which Liberia is party to. The marginalization of communities' rights during these processes reflects the company's poor corporate social responsibility practices.

This marginalisation is reflected in the impact it has on people's livelihood, including the destruction of farms and cash crops without just compensation, the destruction of drinking water sources, the desecration of sacred land such as graves, forest for Sande schools, grave sites, the clearing of community and reserve forest set aside by communities for conservation purposes, the filling in of wet land previously used for low land farming and a proposed forceful relocation of communities to be carried out by the company. This is a serious breach of international human rights

laws and the RSPO Principles and Criteria for Sustainable Palm Oil Production.

The concession allocation process does not take into consideration the ownership rights of communities who have lived on the land for centuries, including their statutory and customary rights as well as procedural rights to their land and natural resources. This includes their rights to free prior informed consent in the decision making processes, adequate information about the concessions allocation processes and their right to access justice when faced with difficulty.

The projected benefits of the Sime Darby concession have not reached the communities most affected by the concession, whose land and resources have been taken away with unprecedented negative socio-economic impacts. While revenues have been paid to the Liberian government, communities lack basic social services including water, health facilities, schools etc.

In conclusion, land and natural resources in poor countries present one of the few options available to spur crucial economic growth and development to uplift the country and its citizens

from the high wave of poverty that they continue to endure. However, the negotiation processes for land and natural resources in poor countries do not provide the possibilities to achieve these development goals. The negotiation processes between corporations and governments are often marked by flaws including huge tax havens; manipulations that prevent community rights; a lack of public participation; and a lack of access to information and justice, all of which promote poor corporate social responsibility practices.

The intention of the Structural Adjustment Policy by international financial institutions to boost poor countries' economies is good, but it lacks needed safeguards to protect the countries from powerful multinationals that are usually stronger than the host nations. Such a lack of safeguards, combined with the lack of sanctions in international corporate social responsibilities CSR guidelines including the RSPO and Organization for Economic Corporation and Development (OECD) Guidelines developed by OECD member countries, are undermining the dreams of poor countries. The CSR practices of most multinational corporations in developing

countries are extremely poor and have negative impacts on host nations and its people.

The need to develop a universal model backed by a strong sanctions mechanism to protect host nations and their people, and allows them to harness and benefit from their resources, remains a priority. Liberia provides a stark example of the negative results of such investment without the proper safeguards. Though Liberia has granted concessions to foreign companies in the iron ore, timber and agriculture sectors since the early 1900s, it is paradoxically the 2<sup>nd</sup> poorest nation in the world, unable to service its debts of 3.4 billion dollars until they were waived in 2011.

Liberia laws concerning customary and statutory land ownerships are unclear, in most cases ambiguous and pluralistic. They present an uneven framework for communities, setting the stage for huge portions of community land to be granted to concessionaires, and serving as one of the main factors for the current high wave of land conflicts and insecurity in Liberia.

**Liberia needs to develop a clear land tenure policy that harmonizes all laws concerning land in Liberia, taking in to consideration the customary ownership of rural communities who have lived on their land of centuries.**

The concession agreement of Sime Darby did not take into consideration public participation in the decision making process. It excluded especially the free prior and informed consent of rural people affected by the concession, access to information about the concession, and lacks dispute resolution mechanisms for communities that are harmed during the concession operation. The tax waivers granted to the company and the rights to sell carbon credits solely undermine Liberia's capacity to accrue much needed revenue to provide basic social services for its citizens. A clear model of granting concessions that allows ample time for all stakeholders to participate in concession allocation, and timely information dissemination, needs to be immediately developed and implemented if Liberia is to benefit from its remaining land and natural resources.

**The concession agreement between the GoL and Sime Darby needs to be urgently revisited to ensure that the flaws in the agreements that undermine the growth of Liberia and affect communities are amended.**

In Liberia customary land, on which the poorest people live and depend for their livelihoods, has been and continues to be the target of foreign direct investment. In the case of Sime Darby, the impact of the company's operations on affected communities has proven to be largely negative. The anticipated poverty alleviation through job creation, for which the concession was granted, has not materialised. The clearing of forest land on which communities depend for their entire livelihoods including food, safe drinking water, health, education, their cultural heritage and their ability to develop their economies, is a clear violation of international human right instruments Liberia is party to.

**Liberia needs to domesticate human rights principles in its national laws and respect the human rights treaties it has ratified to prevent the gross violation of the rights of the people in the Sime Darby concession and other rural communities.**

The labour practices of Sime Darby are unarguably poor. Hiring personnel for more than three months without granting them employment status, exposing employees to work without safety equipment and transporting employees in unsafe vehicles all undermine standard labour practices.

**The Ministries of Labor and Agriculture need to constantly monitor the company's activities to ensure that employees are protected.**

In developing guidelines to promote corporate social responsibility for corporations abroad, the OECD countries, the oil palm group RSPO and other organizations may have the best of intentions. These intentions are not generating a positive reality though, as results such as the RSPO and OECD guidelines lack the basic implementation and sanctioning mechanisms that will compel multinationals to respect them.

**Countries and organizations promoting corporate social responsibility should therefore ensure the guidelines already developed are revisited and improved with workable implementation and sanctioning mechanisms that promote corporate social responsibility especially in developing countries, where the state and nation states are usually weaker than the concessionaires.**

## FUTURE RESEARCH

This report does not represent the full impact of multinational corporations across all sectors on communities and community rights in Liberia. The research was conducted in only 5 of the 13 communities currently affected by Sime Darby's current operations, meaning it is necessarily limited to assessing the impacts of the current Sime Darby concession activities and does not assume the future impact in communities where the company may extend.

Gathering information from the rural communities proved easier than gathering information from the various line ministries responsible for the granting concessions for several reasons including:

- Liberia has just held elections and a new government is being formed. As such, in many cases persons in offices responsible for providing required information have been replaced with new staff, who do not have previous knowledge and information about the research topic.

- In Government line ministries, the technical staff who have the required information are lower-level staff and hence do not feel comfortable talking or providing information to researchers without prior approval for their bosses who are themselves very busy.

Information used in this thesis is therefore based on that which was gathered through desk studies and field research from communities in addition to the researcher's experience in the field.

Future research should be focused specifically on some of the other resource sectors to understand how they impact the rights of rural people differently.

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