

RSPO Verification Mission to GVL Liberia (2-13 April 2017)

**Final Report
June 25, 2017**

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Executive Summary

The team conducted a field mission, engaged with all stakeholders and reviewed nearly 30'000 documents to verify whether the large number of complaints voiced against Golden Veroleum Liberia (GVL) are justified and whether progress has been made with a view on the decisions and recommendation provided by RSPO's Complaints Panel in 2013 and 2015.

The depositions suggest that GVL

- failed to date to establish a Standard Operation Policy that meets RSPO's requirements for free, prior and informed consent. Key short-comings were observed with a view on
 - allowing communities to self-identify their representatives without using the often-intimidating services of non-elected local government officials;
 - facilitating a meaningful participatory mapping that engages all sections of the communities throughout the process;
 - enabling the communities to make informed decisions through the provision of comprehensive information to all sections of the community in due time to allow an internal decision-making process; and
 - respecting the decisions and requests of communities without using intimidation and cohesion to obtain responses that are closer to the interests and desires of GVL.

The depositions suggest further that the complaints in their large majority are justified, that none of the 16 MoUs signed to date meet RSPO's minimum standards and that none of them gained to date the free, prior and informed consent of the affected communities; thus GVL continues to operate on nearly 50,000 ha without the consent of the affected communities.

With a view on the decisions and recommendations provided by RSPO's Complaints Panel in 2013 and 2015, the depositions suggest that very limited progress has been made. While the Complaints Panel provided GVL with the opportunity to continue operations while addressing the legacy issues in Butaw and Tarjuowon and enhance overall operations, the depositions suggest that GVL's performance on both remained wanting. As the recognition of the issues at hand is the sine qua non for any improvement, it is highly recommended that GVL embarks on solving issues rather than questioning their existence.

To address the outstanding areas of non-compliance and to speed up delivery on the decisions and recommendations of RSPO's Complaints Panel, the team recommends that

- GVL acknowledges in writing that the complaints were justified, that it is fully committed to address the issues by the end of 2017 following the guidance provided by RSPO's Complaints Panel in 2013 and 2015 and agrees that its RSPO membership is suspended, if this objective is not met and confirmed by an independent verification mission deployed by RSPO's Complaints Panel;
- GVL focuses on enhancing its Standard Operational Procedure to meet RSPO Standards, before doing any further work on the existing MoU, which GVL agrees to be reclassified as Draft MoUs rather than Provisional and/or Final MoUs,
- GVL accepts the deployment of an independent mediator to solve the legacy issues, refrains from interfering into the process and accepts the outcomes whatsoever; and
- GVL refrains from developing any new land and in turn considers providing seedlings ready for planting at production costs to the communities affected by its operations and provides them with technical assistance to establish the much needed Out-growers' Program without further waiting for external financing etc.

1. Introduction

To weight into balance GVL's (Golden Veroleum Liberia Inc.) experience in establishing the largest palm oil company in Liberia and to evaluate GVL's performance against the Principles and Criteria of the Roundtable for Sustainable Palm Oil (RSPO), whose member GVL is since August 2011¹, it needs to be remembered that Liberia presents an extremely challenging environment for any large-scale investment. Key bottlenecks include, but are not limited to a) challenging process to access land and b) unsolved governance issues at all levels.

GVL is owned by a private equity fund (Verdant Fund LP), whose major investor is Golden Agri-Resources Limited (GAR), which by hectares is the second largest oil palm cultivator in the world. Media reports that GVL is targeting USD 1.6 billion for its investment in Liberia, and having procured a USD 500 million loan from the China Development Bank Corporation.

In 2010, the Government of Liberia (GoL) awarded GVL a 65-year concession with an option of renewal. The concession agreement (CA) was signed in August 2010 and ratified by Parliament in September 2010. The CA requires GVL to provide its workers with clean water (§9.4), adequate housing (§9.5), medical care (§10) and education for their dependants (§11). There are further some requirements with a view on local content, labour standards, training and capacity enhancement, but most allow room for improvement with a view on clarity. In addition, GVL shall pay 0.5% of its annual gross sales into an Oil Palm Development Fund, to be established and administered at the GoL's discretion. Additionally, an Outgrowers' Program might be developed, if the GoL provides an additional 40,000 ha, funding for its establishment and the consent of the Outgrowers to comply with the terms and conditions of such program (§15.3).² In support of biodiversity conservation, GVL is under obligation to preserve primary forests and areas of high biodiversity as well as sacred community lands. The CA further requires compliance with the Environment Protection and Management Law of Liberia as well as RSPO's Principles and Criteria (§16) including but not limited to RSPO's Guidelines on how to obtain the Free, Prior and Informed Consent of communities that have an attachment to a development area prior to clearing and planting oil palms. In addition, GVL is required to provide affected communities with a grievance mechanism and undisturbed access to legal remedies. In addition, affected people or communities that are unsatisfied shall have undisturbed access to RSPO Complaints Panel (RSPO-CP) to ask for a verification of whether GVL complies with its obligations under RSPO's Principles and Criteria.

The concession area contains development areas with a total surface area of 220,000 ha within an overall area of interest of 350,000 ha. The concession affects five Counties of South-East Liberia: Sinoe, Grand Kru, River Cess, River Gee and Maryland. For the initial development phase, GVL earmarked an area of 46,900 ha and has established Preliminary or Final Memorandums of Understanding (MoU) to date for 29,000 ha (see below).

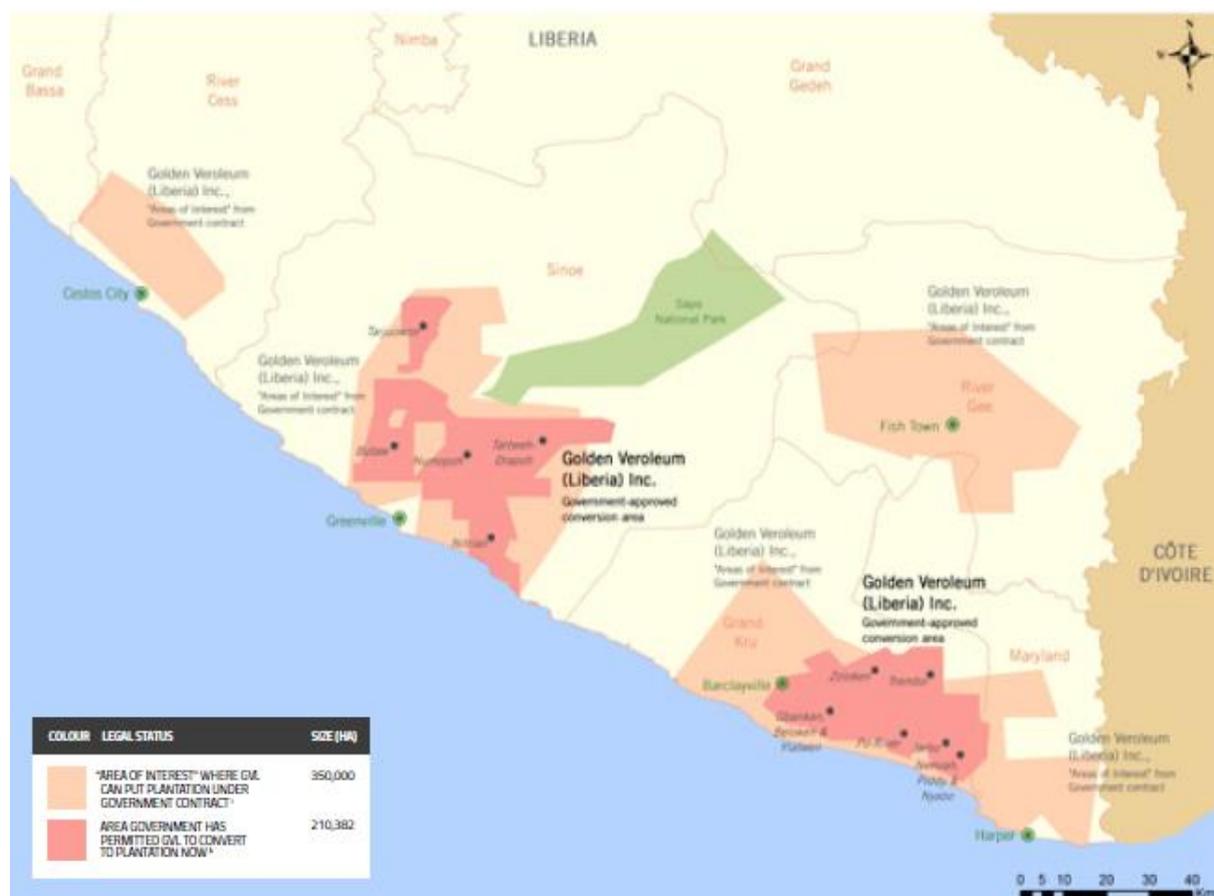
It needs to be noted that, based on information provided by GVL staff, GAR, GVL's largest shareholder, decided in January 2017 to put all further developments on hold and to reduce GVL's workforce significantly. The reduction in workforce shall cover all business areas and included GVL's Vice-President/Principle Advisor for Sustainability and the Team Leader of the Sustainability Team in Grand Kru. It also suggests that no new recruitments will be performed and/or people rehired that were dismissed because of RSPO-CP's Stop Order for certain areas.

¹ GVL became a member of RSPO on 29 August 2011 (membership number 1-0102-11-000-00).

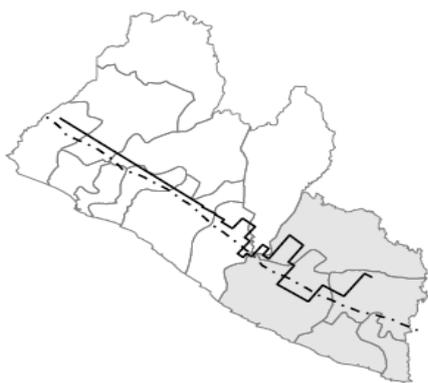
² The CA requires GVL to establish together with the GoL and "optionally community representatives an Outgrowers' Program, the detail of which shall be included in the Development Plan, within 3 years of the Effective Date. Under such Program, Investor shall develop and exercise exclusive management of the land designated for the Outgrowers' Program on a cost recovery basis for the benefits of the Outgrowers as shareholders in organised cooperatives" (§15.3). While GVL is granted with the exclusive right to purchase the Outgrowers' harvest, the prices are set by §8.4 to follow, with some adjustments to accommodate difference in quality etc., the daily prices of the Malaysian Palm Oil Board. However, the GoL remains in charge of providing the land for the Outgrowers' Program (40,000 ha), secure Third-Party Financing for its development and obtain and manage the compliance of the Outgrowers with the Terms and Conditions of the Outgrowers' program. As GVL has no obligation to develop the Outgrowers' Program, if the GoL delivers on these requirements, which is unlikely to happen within the foreseeable future, it seems questionable whether this Program ever materialises.

GVL senior management further informed the verification mission that it has decided to suspend payment to the GoL and seeks to renegotiate the Concession Agreements. In their comments on the Draft Report, GVL contested this information without providing substantiations.

GVL Development Areas to date			
County	MoU providing for land in	Signed	Hectares
Grand Kru	Dougbo, Newaken, Sorroken, Wutuken, Gbanken (of Trembo)	21.10.2013	1.537,84
Sinoe	Tarjuowon	09.11.2013	8.053,42
Grand Kru	Zoloken (of Grandcess Wedabo)	17.12.2013	1.900,00
Grand Kru	Weteken and Garraway Beach (of Jarbo)	15.04.2014	1.872,96
Sinoe	Numopoh	28.04.2014	1.566,00
Sinoe	Numopoh/DWN (Phase I)	28.04.2014	629,00
Grand Kru	Nemiah (with Piddy and Nyanbo of Jarbo, jointly)	21.07.2014	566,17
Grand Kru	Piddy and Nyabo (with Nemiah of Jarbo, jointly)	21.07.2014	613,52
Grand Kru	Gbanken (with Ylatwen & Beloken of Wedabo, jointly)	15.08.2014	705,61
Grand Kru	Ylatwen (with Gbanken & Beloken of Wedabo, jointly)	15.08.2014	778,27
Grand Kru	Beloken (with Gbanken & Ylatwen of Wedabo, jointly)	15.08.2014	585,54
Grand Kru	Po River (of Garraway)	22.08.2014	1.217,79
Sinoe	Nitrain	30.09.2014	2.093,08
Sinoe	Lower Tartweh, Upper Tartweh and Drapoh Chiefdoms	11.10.2014	2.922,70
Sinoe	Du, Wolee and Nyennue (of Kpanyan)	11.06.2016	1.449,00
Sinoe	Kao, Karbeh, Chu Chu and Ceekloh (of Butaw)	10.02.2017	2.582,05
	Total		29.072,94



Access to Land: Prior to land reforms implemented after the Liberian Civil War (1989-2003), Liberian law divided the country into two zones “County Area and Hinterland: The County Area includes all territory extending from the seaboard forty miles inland and from the Mano to the Cavalla Rivers. The Hinterland commences at the eastern boundary of the County Area; i.e., forty miles inland and extend eastward as far as the recognized limit of the Republic” (Liberian Code of Laws 1956).



These zones demarcated two distinct systems of property rights: In the County area, Americo-Liberian settlers and their descendants instituted a “Western statutory system of land ownership based on individual fee simple titles” (USAID 2016). Fee simple titles are the highest possible ownership interest under common law as the holders can alienate, divide, or hand down their property. By contrast, in the Hinterland (roughly 60 percent of Liberia’s territory), customary systems with some variations governed collectively owned land with individuals or households enjoy access rights that stopped substantively short of full ownership. However,

county area regulations remained in practice limited to the larger towns and centres, while in rural coastal areas customary land systems were and are recognised and provide the basis for land management and land acquisition.

Following the end of the Liberian Civil War in 2003, the GoL passed several legal reforms aimed at reshaping the property rights system throughout the country. These include a 2008 moratorium on transactions involving public land, the Community Rights Law of 2009 and the 2014 Land Rights Policy. However, given the halting reform process, de facto property rights continue to reflect the pre-war division of the country into two parallel zones:

The **Hinterland** exhibits a set of features that created flexible, community-based property rights that are not very legible to outsiders. Little or no formal documentation of land rights exists (Stevens 2014). As the GoL has never conducted a general survey, community members rely on natural landmarks and oral histories to identify the boundaries of their landholdings (Alden-Wiley 2007). Over time, development and population growth as well as the approach of the GoL to established without surveys administrative boundaries along often imaginary ethnic boundaries overburdened the system and have resulted in overlapping and competing land claims while the legal status of land remains ill-defined and subject to interpretation and political considerations (World Bank et al. 2015). This includes the notion of state land: While the GoL presents itself as owner of large parts of the country, these areas were never demarcated and/or verified that they don’t overlap with customary land.

For most of the 20th Century, Liberian law suggested that all rural land should be considered public land, with allocative authority rested with the central government. Although some property rights legislation suggested that local authorities retain decision-making power over community land for a time³, this did not define the distinction between community, private and public land. While historically membership in the community determined, who did and did not enjoy access to land, in practice, the formalised “customary system” limits individual rights to pure access rights, suggests that community lands cannot be alienated or used as collateral without permission from the central government and any proposed sale, rent or lease of community lands necessitates a complicated process of acquiring a tribal certificate. This costly process is rarely (if ever) followed and, as a result, most transactions involving community land might not stand legal scrutiny (Bruce 2008). Even family plots used for agriculture or residential purposes, which traditionally belong to the household that use them, cannot be freely disposed of by their owners/users. While the 2014 Land Rights Policy seeks to reform this system, and aims to provide communities with full ownership rights over all non-private land in rural areas, the associated Land Right Act, which is mutually agreed to address the above-mentioned challenges, has not been enacted yet. This leaves Liberia in a limbo of conflicting property rights that have become subject of large scale speculations and political considerations. It is however agreed within the donor community and responsible investors that the provisions of the Land Right Act should be considered to govern land access even

³ Between 1923 and 1956 the Hinterland Laws seem to have permitted communities on the hinterland side of the boundary to own their land communally, but these rights were abolished in 1956 with the passage of the Aborigines Land Law, which accorded only usage rights to hinterland communities.

though the Act itself has not been endorsed by parliament as it delivers a consistent and compelling approach to the 2014 Land Right Policy.

In contrast, land administration in the **County Zone** (de-facto limited to urban areas) has been much clearer to outsiders: First, land deeds and maps exist that identify the owners of specific plots. Second, the status of land is defined, with a large proportion of land held by private individuals. Owners have the right to develop and transfer land without seeking approval from local authorities. Finally, a legal land market existed, with a government administration supporting the process of title transfers (Bruce 2008). It is however noted that this system totally collapsed outside urban areas and that de-facto the hinterland provisions govern all rural areas.

This all presents investors with significant challenges: Land deals under the customary system require negotiating with local authorities without legal framework. This can raise transactions costs — due, for example, to the complexity of the tribal certificate process and/or the fact that various communities claim the same land — but also permits land deals that could not be concluded under a system of private property and at rates that are far below what is requested in neighbouring countries. This discount mostly results from the fact, that in the absence of functioning land markets, prices are defined by non-elected authorities or negotiated through middlemen. Tenants and/or landholders can be displaced without warning, consent or entitlements for compensation. While the customary system permits discretion, the absence of a clear legal basis and mutual resentments leads to sometimes violent local efforts to renegotiate these agreements and provide the investor with all, but a clear approach on how to access land. While in such a challenging context, RSPO's FPIC Guideline provide a hands-on approach on how to obtain the consent of all right-holders, community members have voiced concerns that their right to FPIC might not have been fully observed by GVL and triggered this verification report through numerous complaints voiced towards RSPO.

Provisions in the 2010 Concession Agreement between GoL and GVL

As the 2010 Concession Agreement between GVL and the GoL established the basis for GVL's activities in Liberia, it seems useful to start the assessment from here: The CA considers the GoL as sole owner of all non-private and non-demarcated land and offers GVL the land as leasehold (§ 4.9). Within this logic, GoL “represents and warrants to GVL that the Concession Area shall be free and clear of all encumbrances” (§5.1). As most land in Liberia is customary owned and utilised for local livelihoods i.e. not clear of encumbrances, the GoL committed to clear the concession area and resettle villages etc. to other areas and to “bear the sole responsibility for resettlement, including effecting resettlement and payment of all costs and expenses of resettlement” (§4b). The GoL further “agrees to defend and protect for the benefit of GVL, all rights granted to GVL and to indemnify and hold GVL harmless for any losses as result of such rights, including disputes relating to the ownership of land, existing palms and other non-movable, tangible assets in the concession area or disputes resulting from the grant of rights” under the CA (§5.1). As it can be questioned, whether the GoL has the funds and capacity to resettle the estimated 50,000 people within GVL's concession area and/or to compensate GVL for the losses triggered by the ongoing land and community conflicts, one might need to question the feasibility of this provisions and, as the above stated situation has been well known when the CA was signed, the rationale of agreeing on it.

However, based on this logic, GVL “shall pay annually to GoL a surface rental equal to USD 5/ha of land within the developed areas” and in addition during the first 10 years USD 1.25/ha for all land within the concession area that has not been developed and USD 2.5/ha thereafter (§20.1). The rental fee shall be adjusted every 5 years to accommodate deflation/inflation. GVL is also required to pay USD 5/ha for land within developed areas into a Community Development Fund (CDF), which is administered by a team of not more than 10 members, of which half shall be nominated by GVL (§19). This team “shall develop an annual budget in consultation with the GoL and GVL. Funds may be disbursed only for direct delivery of services and community infrastructure improvements ... and for the benefit of Liberian communities in the affected counties. The budget for and the actual disbursement shall be subject to audits ... and information

regarding the fund advances, receipts and expenditures publicly available. GVL shall maintain a website on which are posted the members of the committee, all audit reports, and a short description of each program funded and the amount of funding provided. Expenses incurred by GVL to fulfil its obligations under the CA including expenses related to the provision of housing, education, medical care and other social services shall not be deducted from the fund". (§19.7). With a view on GVL's obligation, the team notes that only a very limited number of funds are operation, that planning and disclosure requirements have not been met and that the MoUs provide a less clear language than the CA with a view on requirements and public access and scrutiny. There is further an ongoing dispute between GVL and the local communities on the formula for the allocation of funds and communities' distrust in GVL's self-declaration on the surface area of developed lands. In contrast to the provisions of the CA and the MoUs, the communities request and assume that the MoUs provide that the "rental free" of USD 5/ha is paid for the "gross land" provided by the community and not only for the "net land" developed by GVL at their discretion. This seems to suggest some miscommunication and a limited understand of the MoU for which the communities allegedly have provided their free, prior and informed consent.

Summary: It is mutually agreed and well documented that the Liberian legal and practical framework for land access allows significant room for improvement from the identification and recognition of existing rights, over the provisions for fair compensation for losses to the management and protection of the acquired land. It is further noted that despite these well-known challenges, GVL recognised in the CA the GoL claim to be the sole owner of all non-demarkated lands, agreed in the CA that GoL provides the concession land free of settlements, existing land use etc. and with very limited tangible benefits to the local communities. While the verification team acknowledges that the CA is a legal agreement between GoL and GVL, it also notes that the CA does not prohibit GVL to address these challenges within their Standard Operational Procedures (SOP) and provide additional benefits to those agreed in the CA. While other RSPO compliant companies in states with similarly weak governance systems on land access identify and address these gaps through Land Acquisition, Compensation and Resettlement Frameworks and Plans, the verification team could not identify within GVL's SOP and/or other procedures/documents a clear, consistent and/or transparent approach on how GVL aims to obtain and secure its access land and that this situation prevails despite numerous related complaints and clear guidance by RSPO-CP on how to address the issue.

Governance challenges: While Liberia is the oldest representative democracy in Africa, experiences with "representation" had been largely negative. While some ethnic groups in Liberia traditionally had patrimonial chiefs, the Kru, Sapo and Grebo, which inhabit GVL's concession area since time immemorable, are largely egalitarian societies and have no tradition and/or customary practice of representation. Ethnic identity and leadership were introduced/strengthened as elements of the indirect nature of the Americo-Liberian rule and to date paramount chiefs, town chiefs etc. are installed and paid by the GoL as lowest level of the government and even clan chiefs, though formally elected, serve at the discretion of GoL (i.e. are paid by the GoL and with the right of removal by the GoL). At the same time, the GoL remains weak with limited capabilities to facilitate negotiations and was not perceived as an impartial broker by any of the communities interviewed by the verification team. The creation/reorganisation of new townships, districts etc. with new and/or adjusted boundaries is mutually considered as been driven by political interests rather than based on ethnographic studies and/or participatory mapping etc. and further complicated land management and access.

Within this complicated environment, which has been further disrupted by large population displacements and forced migration during the Civil War, the elites and the diaspora in Monrovia are often more powerful than the "local authorities" and can ideally play an important role to voice local concerns at higher levels and/or communicate complex issues effectively to the local populations. Unfortunately, the elites and/or the diaspora don't always deliver on the high expectations vested on them by the local populations, but use their influence and trust for personal political and/or economic interests and for example offer their services as middlemen for the GoL, investors such as GVL and/or other organisations including NGOs that have

interests that are not always aligned with the desires of the people on the ground. As communities in Liberia - as everywhere else - are all but homogenous, local elites, local authorities and/or the diaspora tends to find some sections of the local community that trusts them and follows their guidance, while others strongly oppose their views. This obviously perpetuates the negative perception on and experience with all forms of representation.

The verification team acknowledges the challenge for GVL to interact with these conflicting communities that might have as sole common goal the desire to obtain cash to enhance their living conditions, which generally sees them below the poverty line with limited or no access to portable water, limited access to healthcare/education and/or limited chances to market their products. However, already on the approach on how income could be generated, the verification team noted a clear difference between the elders, traditionally perceived as the decision makers on customary land, and the rural youth. While the elders seem to be generally more favourable to leasing/selling out community land for cash returns, the youth seems to be much more interested in employment opportunities and/or to operate their own farms as Outgrowers. To some extent, the provision of direct cash benefits through the "lease agreement"/CDFs and the provision of local employment provided by GVL aims to satisfy both groups, but as not a single USD of the CDFs has been disbursed into development projects and employment only benefits a small fraction of the rural youth, it is no surprise that there are tensions and/or unfulfilled expectations.

Summary: The verification team noted that all sections of the communities visited were willing to work with GVL and the team did not find a single person that rejected the idea to provide GVL with access to land and resources. However, the team noted that the knowledge of what GVL offers in return allows significant room for improvement with a view on clarity as even most of those community members that have "negotiated" the MoUs with GVL, or are in the process of doing so, demonstrated limited knowledge of the terms and conditions of the MoUs and suggested that they have signed the MoUs because they trusted the GoL, their local leaders and/or the elites residing in Monrovia that these are good deals and that GVL will enhance their living standards and incomes in the near future. It seems not surprising, that this limited understanding has resulted in unrealistic expectations that nobody can satisfy. Thus, from the available information it seems that a comprehensive understanding of the terms and conditions of providing GVL with access to land, which is the basis and objective of the FPIC process, has not been achieved yet.

2. Objective of this report

The Terms of Reference for the Verification Mission state that the main objectives were to verify:

- a. the status of GVL and the complainants' follow up to the RSPO CP Decisions of 4 February 2013 and 19 September 2015 by identifying compliance and/or whether there are any gaps in compliance and implementation in relation to the RSPO standards and key documents, applicable at that time,
- b. whether the continuing allegations of violations as reported in public domain and through official complaints received by RSPO are well-founded on the basis of the evidence found during the verification exercise, and
- c. in light of the above, to recommend practical solutions to guarantee the adoption and practice of relevant RSPO Principles and Criteria and other key RSPO standards by GVL.

2.1. Methodology

Consequently, the expected outcome is “a report from the verification team addressing progress on all the elements listed under the objectives and related questions. The report is to obtain a description of the progress made by all stakeholders in the complaint, identification of any gaps and provision of a clear conclusion, supported by evidence, as to whether the continuing allegations made against GVL are justified.”

To deliver on this challenging task, the verification team conducted a field mission of 11 days that included discussions with the GoL (Ministry of the Interior, National Bureau of Concession, Sinoe and Grand Kru County, six District Authorities as well as other officials at all levels), GVL teams at the Monrovia Headquarter as well as in the field offices in Sinoe and Grand Kru, NGOs based in Monrovia (FPP, SDI, SESDev, GA and KUDA) as well as at local level (SCHNRRM etc.). The team further engaged with The Forest Trust (TFT), which conducted in 2013 an independent compliance assessment of GVL against RSPOs Principles and supported on behalf of GAR GVL in the enhancement of GVL's SoP, and Parley, which has been trying since 2015 to mediate the conflicts in the Tarjuowon District. The focus of the mission however was the engagement with all sections of communities in the following districts: Butaw, Numppoh and Tarjuowon (all Sinoe country) and Garraway, Trehn and Wedabo/Grandcess (all Grand Kru). Preliminary findings of the field mission were discussed with GVL and the Monrovia-based NGOs.

In addition, the verification team reviewed 27'673 documents, letters, emails etc. provided by GVL, the NGOs, community members and other stakeholders.

The Draft Report was provided for review and comments to GVL and the complainants and their representatives on May 5, 2017. Within the timeframe agreed between RSPO-CP and these stakeholders (June 6, 2017), comments were provided by a) GVL, b) Green Advocates, c) Blogbo-Teh and d) consolidated comments by SESDev, SDI, SAMFU and FFP. The verification team would like to thank these organisation for their very useful comments that have been carefully reviewed and addressed in this final report.

The team would further like to thank all participants for the outstanding support and willingness to discuss the issues openly and productively. The team would like to highlight that the transparency offered by GVL, which provided the bulk of the documents including internal communications etc., and their willingness to engage in problem-solving discussions went far beyond of what had been experienced in the work with other companies. The team further would like to thank the many community members and leaders that spend many hours with the team without expecting any compensation for their time and energy and for their openness to search for realistic solutions to the issues at hand. The team would finally like to thank the Complaints Team of RSPO, which was available 24/7 to offer guidance and support.

While the work would not have been possible without these inputs, all errors and omissions remain the full responsibility of the consultants trusted with this assignment.

3. Verification of Complaints

3.1. Butaw (Sinoe County)

On **23 October 2010**, some local government officials, elders and citizens from the Butaw District in Sinoe County informed the GoL that they “have agreed to give a parcel of land to GVL for investment based upon request of said company. We have more over agreed to accord our fullest support to the company for the improvement of our living conditions and give employment to our local citizens.”⁴ It is noted that the 2017 MoU claims that “Butaw District Communitis first approached GVL by way of a letter of invitation dated 23 October 2010”.

3.1.1. Complaint

On **3 October 2012**, members of the Butaw communities⁵, represented by Alfred Brownell from the Green Advocates⁶, submitted a complaint to RSPO against GVL. The complaint included allegations that GVL had:

1. not provided public notification for a 30-day public consultation period consistent with the New Planting Procedures (NPP),
2. commenced land preparation, new planting and infrastructure development prior to the expiry of the minimum the 30-day public consultation period,
3. not conducted a comprehensive and participatory independent social and environmental impact assessment of the area concerned and incorporate the results into relevant action plans (i.e. RSPO Principles and Criteria (P&C) 5.1, 6.1, 7.1 & 7.4, including the identification of: (a) primary forest, (b) any area required to maintain or enhance one or more High Conservation Values (HCVs), and (c) local peoples’ land,
4. grabbed land without respecting customary rights and without the free, prior and informed consent of the customary land owners (RSPO’s P&C 2.2, 2.3, 7.5 and 7.6),
5. forcibly evicted people from their lands without compensation (7.5 and 7.6) and
6. cleared lands prior to the period provided in the NPP.

3.1.2. Depositions

The team heard various testimonies and reviewed more than 2’000 related documents. The following testimonies have a direct bearing for the complaint including clarifications provided by the complainants, decisions and recommendations by RSPO-CP as well responses from GVL. It also includes information by third parties that are relevant to the case.

On **13 December 2012**, RSPO-CP issued a preliminary finding⁷ and noted that

1. based on the evidence, there is merit in the complaint,
2. there are reasonable doubts on the issue of FPIC compliance and
3. there is need for validation of the Environmental Impact Scoping Study done in December 2010 and Environmental and Social Impact Assessment done in February 2011.

The CP also sought the co-operation of GVL to cease all land clearing activities in the Butaw District until the complaint had been closed out.

On **5 January 2013**, Green Advocates submitted a follow up email to RSPO alleging that there were demands, threats and intimidations by GoL to withdraw the complaints. It was further alleged that ERU police officers had raided and arrested community leaders in relation to this.

⁴ Letter Butaw community to Management Environmental Protection Agency 23 October 2010.

⁵ The complaint focused on GVL’s first phase development in Butaw District, which covers 2,582 ha and affects land owned and used by 24 towns and villages. While administratively located in one district, the investment impacts on four chiefdoms and eight clans.

⁶ Complaints received from Green Advocate on 3 October 2012 on behalf of A-Bloteh, a *group* established by the communities in the Butaw District to negotiate a Memorandum of Understanding (MoU) with GVL. A-Bloteh informed the mission in April 2017 that Green Advocate still serves as their community advisors and legal counsel.

⁷ *Complaints Panel preliminary decision on 13 December 2012.*

In **January 2013**, GVL engaged TFT to conduct an independent assessment of GVL's compliance with RSPO's FPIC requirements. In February 2013, TFT submitted its independent assessment of GVL's compliance with RSPO's FPIC requirements. The report documented several gaps in GVL's FPIC policy and practices, and made recommendations on how to enhance GVL's SOP to meet RSPO's FPIC requirements.⁸

On **4 February 2013**, the RSPO-CP requested GVL⁹ to

- a. comply with RSPO's NPP henceforth,
- b. engage an approved Certification Body to verify that all necessary SOPs especially a "Conflict Resolution Management Plan" are in place to prevent a recurrence of the events that led to this complaint,
- c. instruct TFT to inform whether an FPIC has been obtained for the clearance of any additional land in Butaw,
- d. engage with the complainants (Green Advocates and FPP) in the review of the situation on-the-ground via the field study conducted by TFT,
- e. establish with the complainants a roadmap/action plan on how to obtain FPICs from all communities in the concession area in line with RSPO's FPIC Guidelines and that this roadmap should be mutually agreed by RSPO, GVL and the complainants within a maximum period of 6 months,
- f. make changes, if recommended by TFT, to the SOPs and follow this updated SOP in all future new plantings within GVL's concession area,
- g. clarify to RSPO the total areas that may have been cleared and/or planted by GVL,
- h. submit management and monitoring plans for all known HCVs, and
- h. submit a quarterly progress report to RSPO on the implementation of these requirements.

On **6 March 2013**, GVL accepted RSPO-CP's decision and the findings and recommended corrective actions outlined in the TFT Report.¹⁰

In **20 June 2013**, GVL informed RSPO that effective 31 May 2013 it had reduced its workforce "due to the halt in further Butaw development (as requested by RSPO-CP) despite substantial progress made at the local level in addressing and resolving complaints made by A-Bloteh ... As a last resort GVL has announced a partial reduction in its excess Butaw workforce by approximately 500 personnel".¹¹

On **26 July 2013**, FPP issued an assessment of the implementation of the corrective actions outlined in the TFT report and the RSPO-CP Decision, both from February 2013.¹² They

- voiced concern with regards to the heightened sense of threats and intimidation involved during the negotiation process,
- noted a lack of adequate information and use of inappropriate mediators during the MOU negotiations, and
- suggested that GVL is not yet complying with the FPIC Principles and/or respect the communities' customary right to land.

On **1 November 2013**, FPP, SAMFU, SESDev, SDI and GA issued a joint statement,¹³ which requested with a view on the outstanding corrective actions GVL to

- refraining from further plantation development,
- instituting a transparent FPIC process, where access to information and community representation is guaranteed,
- allowing an independent monitoring and community support by NGOs and CSOs,

⁸ TFT: (2/2013) Independent Assessment of FPIC Process GVL.

⁹ *Complaints Panel decision on 4 February 2013*

¹⁰ Communication of GVL to RSPO dated 6 March 2013.

¹¹ "GVL Status Report to RSPO re complaint by A-Bloteh" (June 2013) submitted 20 June 2013.

¹² *FPP 26 July 2013 submission concerning (inter alia) GVL's quarterly report, RSPO letter to GVL, 11 September 2013, regarding conflict and intimidation; GVL responded to the points raised by FPP on 30 Sep 2013.*

¹³ *Joint statement FPP, SAMFU, SDI and GA – 1st November 2013. GVL responded to the joint statement on 8 Nov 2013.*

- committing to ensure that all contracts/agreements are only concluded after the communities have received independent legal advice/counsel,
- completing new ESIA and HCV assessments in areas where gaps have been identified,
- revising the existing SOPs to ensure compliance with RSPO Standards etc.,
- respecting and recognising communities' customary rights,
- verifying that the CA follows Liberia's national and international legal commitments, and
- taking appropriate measures to rectify issues related to intimidation, pressure, undue influence and threats against community leaders and members.

From **13 to 20 June 2014**, the RSPO Secretariat conducted a visit to the GVL concession and issued on 1 August 2014 a site visit report, which stated that actions stipulated by the RSPO-CP were either completed or ongoing as per GVL's Quarterly Progress Report to RSPO. In response, NGOs voiced concerns and suggested that the RSPO Report was biased as GVL had hosted the RSPO mission and organised the community meetings etc.¹⁴

In **January 2015**, FPP, SESDev etc. issued a Draft Report titled "Hollow Promises: An FPIC assessment of Golden Veroleum and Golden Agri-Resource's Palm Oil Project in Liberia" to RSPO to substantiate their negative reception of the RSPO Site Visit Report. An enhanced version was submitted in March 2015 to GVL for comments and the finalized report published in April 2015. GVL submitted an initial response to RSPO on 3 February 2015, claiming that the findings are largely unsubstantiated, and responded in detail to the report on 13 April 2015.

On **25 February 2015**, GVL invited A-Bloteh, which GVL recognised as "a committee duly established by the Butaw citizens to work with the company", to

- sign a Social Agreement and MoU,
- surveying Butaw land,
- implement RSPO's and TFT recommendations,
- implement key points agreed in consultative meetings on 25 February 2015 facilitated by the Deputy Minister of Internal Affairs and
- implement CDF projects in line with the concession agreement

To document its good intent, GVL promised to "withdraw court charges against Butaw citizens after the MOA has been signed".¹⁵

On **22 April 2015**, RSPO-CP recommended the following steps to achieve an amicable solution:

- GVL shall demonstrate that it is applying the CA in a legitimate way and compliant with the RSPO P&C.
- GVL shall engage in open and transparent discussions with the affected communities and CSO on how the FPIC can be obtained for all development areas.
- RSPO offers to establish a local Dispute Settlement Facility to resolve the specific complaints against GVL in an impartial and transparent manner and with the benefit of understanding local conditions in Liberia.
- GVL should involve CSOs in new development areas; starting from ground zero, right up to the signing of the final MOUs with the community.¹⁶

On **13 May 2015**, a joint Liberian civil society response to this decision was sent to RSPO confirming their overall consent with the proposed measures, but highlighting that they feared that within the challenging political and societal environment a Local Dispute Settlement Facility would not be able to be impartial. In turn, they requested that such tasks should be handled by RSPO-CP and international experts.

¹⁴ Report of the Site Visit, 1 August 2014. On 18 October 2014, some NGOs (SDI, SESDev, Green Advocates, SAMFU, Alliance for Rural Development and Liberia Natural Resources Women's Platform) voiced in a joint letter their concerns. A revised RSPO Site Visit Report that partly addressed the concerns voiced was sent out to all parties on 8 January 2015.

¹⁵ Letter GVL to A-Bloteh dated 25 February 2015.

¹⁶ Letter by RSPO to complainants with GVL and NGOs in CC dated 22 April 2015.

On **19 May 2015**, GVL met with A-Bloteh in follow up of the meeting from February 2015. GVL stated that “there is a need to withdraw the complaint” to RSPO to move forward. In the context of the meeting, the Butaw community requested to have a meeting with “GVL President/CEO Pak Daud Dharsano” during his visit to the GVL Butaw Office on 25/6 May 2015. GVL responded that such meeting cannot be organised at such short notice.¹⁷ On 24 May 2015, the Butaw Youth Association (BYA) urged GVL to revisit its decision and to allow the community to discuss with the GVL President the outstanding corrective actions suggested in the TFT report and in the RSPO-CP Decisions and to request him to re-hire the 500 workers dismissed in 2013 in response to the stop-order for new land development triggered by the 1st RSPO-CP Decision.¹⁸ GVL informed BYA that such meeting cannot be facilitated due to “an emergency situation”.¹⁹ On 25 May 2015, BYA responded that due to “your failure to permit us hold the meeting with the CEO of GVL (the investor who is investing on our land Butaw) you should immediately close your operation in Butaw and vacate the land occupied by GVL”.²⁰

On **26 May 2015**, members of BYA blocked the entrance to GVL Butaw Office and requested to meet the GVL President. In response GVL called the policy and the UNMIL contingent from Greenville and asked the Deputy Minister for Internal Affairs to mediate. In return, the blockage turned into a riot during which property on the GVL farm was destroyed/stolen and GVL staff attacked.²¹

On **27 May 2015**, the Greenville City Magisterial Court ordered the national policy to “search and seize for GVL properties” as well as to “break and enter premises, if dwellers fail to open their doors”.²² 35 people were detained, 15 of them GVL employees and 6 employees of GVL subcontractors,²³ while several hundred community members fled to the forests. While most of the detainees were released within the following months without charges, 15 remained in custody for nearly a year without a hearing. Fred Thomson, one of these detainees, died after 49 days in custody of unknown cause. It needs to be noted that the treatment of the protestors seems to stand in contrast to due process in Liberia, where people who are detained must be formally charged within 48 h or released.²⁴ In addition, there were claims that the detained community members “were flogged and tortured” and “that Fred Thomson died as a result of these flagrant violations inflicted on him in prison”.²⁵

On **11 June 2015**, the Butaw District Commissioner, the paramount chiefs and some community members issued a public statement of rebuttal against the Complaint to RSPO submitted by Green Advocates on behalf of the Butaw community. The signatories claim that Alfred Brownell from Green Advocates “has refused to come to our call in joining us to plan the withdrawal of our complaint to RSPO” and suggested that the Butaw people consented “to withdraw its complaint against GVL from the RSPO and the subsequent consent to give GVL additional land. It is apparent that upon hearing that progress was being made between GVL and Butaw that Cllr. Brownell sent one of his paid agent ... to Butaw to stir up confusion and set us backward.” “We believe Cllr. Brownell master-minded and orchestrated the recent riot on GVL compound”.²⁶

On **19 June 2015**, GVL requested from the Commissioner of the Independent National Commission on Human Rights (INCHR), which volunteered to conduct an independent assessment of the situation in Butaw, to remove SDI members from the INCHR team, because

¹⁷ GVL MoMs between GVL and Abloteh on 19 May 2015.

¹⁸ Letter of Butaw Youth Association BYA to GVL dated 24 May 2015.

¹⁹ Letter GVL to BYA dated 24 May 2015.

²⁰ Letter of BYA to GVL dated 25 May 2015. See for more detail on this.

²¹ INCHR Report from the INCHR Fact Finding Mission on the Butaw Riot of May 26, 2015. Issued August 25, 2015

²² Greenville Magisterial Court Search and seizure warrant 28 May 2015.

²³ Email 10 June 2015 Andrew Kluth.

²⁴ Elaisha Stokes; Riot on the Plantation; Al Jazeera America 4 October 2015.

²⁵ Statement of citizens of Butaw District residing in Monrovia 14 July 2015; Letter to RSPO by Saydee Monboe 16 July 2015 and Response letter from GVL to RSPO on 23 July 2015.

²⁶ Statement of rebuttal against Cllr. Alfred Brownell's complaint to the RSPO against GVL purportedly and falsely representing the citizens of Butaw. 11 June 2015.

SDI had send four complaints to RSPO-CP and as “SDI has sought to prevent GVL from further development of oil palm in Liberia.” “GVL therefore requests and expects the INCHR to immediately recall and cancel the mission which includes SDI participation, nullify any in such manner compromised outputs to date of the mission in which SDI participated and establish and launch a new, neutrally-constituted mission which carries out a complete fact finding from the beginning”.²⁷ INCHR rejected GVL’s request and issued on 25 August 2015 an investigation report, which concluded that “the uprising could have perhaps been prevented if GVL had found a view minutes within its busy schedule to have the visiting CEO meet with the BYA. GVL instead decided to ignore the threats. ... Instead of making it possible for BYA to meet with the visiting CEO of GVL – the investor who is investing on our land Butaw – quoting BYA’s second letter, GVL selected to have UNMIL, Superintendent, Country Attorney and Police on the alert in case BYA decided to cause trouble”. In turn, INCHR recommended to a) put in place a mediation process between GVL and A-Bloteh/BYA, b) involve those hiding in the bushes into the mediation process, c) prioritise smallholder farming i.e. out-grower schemes, d) A-Bloteh and BYA to merge and speak on behalf of Butaw with one voice, e) cease all arrests and intimidations and allow persons hiding in the bushes to come back without risk of arrest, f) release all people detained on account of the riot in view of the fact that no lives were lost due to the riot”.²⁸

On **22 June 2015**, the Butaw Welfare and Development Association (BWDA) asked GVL for a meeting on 25 June 2015, which was granted by GVL on 24 June 2015. One notes, that the request from BWDA and the response from GVL appear nearly identical in style and format (see below) and that according to the community members and officials interviewed by the verification team in April 2017 BWDA was “created” after the riots to open a communication line with GVL as the A-Bloteh leadership was either in prison or hiding in the forests.

June 22, 2015

The Management
Golden Veroleum Liberia (GVL)
Butaw District
Sinoe County
Liberia

Subject: **Called Meeting**

Dear Management:

We write to present our compliments and to inform you that the citizens of Butaw through the **Butaw Welfare and Development Association (BWDA)** would like to have an audience with you on Thursday, June 25, 2015 at 10:00 A.M. At your Regional Office to hold a Meeting regarding the current **GVL/Butaw** crisis so as to find common resolution.

It is our fervent hope that this audience will be granted by your **Management** in the sole interest of all of us, and look forward to hearing from you soonest.

Kind regards.

Sincerely yours,

Mr. Jérôme S. Pojah
Acting Chairman (BWDA)

Received by Dixon PATIER
Community Affairs Officer
June 23, 2014 @ 9:25am


June 24, 2015

Mr. Jerome S. Pojah
Acting Chairman
Butaw Welfare and Development Association (BWDA)
Butaw District, Sinoe County

Dear Mr. Pojah:

Your letter dated June 22, 2015 requesting to have an audience with the Management of GVL on Thursday, June 25, 2015 at 10:00am regarding the current Butaw/GVL crisis was received on June 23, 2015.

The Management of Golden Veroleum Liberia through its Community Affairs and Social Sustainability Department is pleased to inform you that it accepts having such audience with you on the date, time and venue mentioned above. However, due to the limited seating capacity in our Regional Office Conference Room, we humbly request that your delegation should not exceed ten (10) persons.

Your decision taken to have a meeting with GVL is welcome and we look forward to seeing you in the meeting.

Best Regards,
Very Truly Yours,

McDonald Wiemus, Jr.
Manager
Community Affairs & Social Sustainability Department

On **25 June 2015**, a meeting between GVL and BWDA was held at the GVL office with the UN Police and the Liberian National Police present. The BWDA Delegation, which largely consisted of Butaw community members residing in Monrovia, local officials and local authorities on the payroll of GoL, apologised to GVL for the damage done and “humbly requested that the company please withdraw the case involving their children misbehaviour from court so that it can be settled peacefully as one family”. They also requested GVL to reopen its hospital and school. During the meeting, the Butaw District Commissioner informed GVL that they should no longer work with A-Bloteh, which was earlier recognised by GVL as the sole representative of Butaw, but with BWDA.²⁹

²⁷ Letter GVL to INCHR 19 June 2015.

²⁸ INCHR Report ditto.

²⁹ A Comprehensive Meeting Minutes GVL and BWDA in regard to the May 26 riot at the Wakefield Nursery. With a view on who represents the Butaw people, GVL submitted on 26 June 2015 a request to BWDA „to provide additional assurance that the BWDA is sanctioned by the entire Butaw District“. On 30 June 2015 BWDA responded that „hereafter GVL deals with BWDA“. It can be questioned whether this process met normal

On **8 July 2015 and 28 July 2015**, GVL and BWDA had follow up meetings. BWDA begged GVL “to withdraw the case from court for peaceful settlement”. “The people of Butaw do not have money or are not in the position to enter court with GVL. We are depending of GVL.” In response, GVL “said since Butaw is willing and open to engage GVL, it was good for discussion to start and see how Butaw operations can restart because they did not know how long the court case will last for.” GVL stressed that “it is the GoL decision to prosecute and not GVL.”³⁰

On **29 July 2015**, two months after the riot, GVL reopened the Butaw plantation for “partial working activities,” and invited 550 workers from Butaw to return, while an additional 400, which had also been employed before the riot, were not rehired.³¹

In **July 2015**, Global Witness published a report entitled “The New Snake Oil? The violence, threats and false promises driving rapid palm oil expansion in Liberia.”³² GVL’s responded to the report on 12 August 2015.

On **21 August 2015**, GVL informed BWDA “that they need to withdraw the complaint against GVL at RSPO” and that “they need to get the withdrawal either signed by A-Bloteh members or else convince RSPO that the BWDA is authentic”.³³

On **19 September 2015**, the RSPO-CP delivered its 2nd decision³⁴:

- “The Principles & Criteria of the RSPO, emphasize that GVL must advise the communities on their right to be *‘represented through institutions or representatives of their own choosing, including legal counsel’* and for GVL to ensure that this has been understood by the communities. It is also imperative that evidence of such understanding is documented prior to the signing of any MoU. The onus of getting the legal advice shall rests upon the communities and the NGOs/CSOs can assist the communities in this regard.
- GVL is requested to publish a detailed document on compensation rates (both crops and land), the procedures and methods for compensation including the management and expenditures related to the CDF, and socialize it to all communities and NGOs/CSOs.
- GVL must commit to revise the management and administration of the CDF to improve the transparency by which it is operated as detailed in item above.
- GVL shall continue to engage with all the NGOs/CSOs.
- RSPO members in Liberia including GVL and stakeholders (NGO/CSOs) are encouraged to play an active role in the formation of a National Oil Palm Advisory Committee in Liberia to address complaints, concerns and issues related to Oil Palm development. The RSPO is looking to set up such a Committee in late 2015 during their visit to Liberia.
- “All provisional MoUs with the communities need to be converted to permanent MoUs at the earliest practicable opportunity which clearly specifies the duration, rights and obligations of the parties and clear identification of the land to be developed.”
- GVL must implement the revised SOPs on FPIC and the right of communities to say ‘no’ must be respected. Communities must be provided with relevant documents. Intimidation or coercion is prohibited.
- Access of NGOs to villages must not be restricted.
- GVL must make reports of participatory mappings publicly available and all stakeholder groups must be included in the mapping process.
- GVL is asked to continue to provide a quarterly progress report on all of the complaints for a period of 12 months. The Panel shall review the progress at the end of the 12 months and make further decisions as appropriate.

standards to select community representatives, or in this case replace the recognised representatives through a different group that appear to be more positive towards the company.

³⁰ MoM GVL BWDA 8 July 2015; MoM Meeting GVL BWDA 28 July 2015

³¹ Ditto.

³² <https://www.globalwitness.org/en/campaigns/land-deals/new-snake-oil/>

³³ Internal GVL MoM with BWDA Monrovia on 21 August 2015.

³⁴ RSPO Communication to Complianants with GVL and NGOs in cc dated 19 September 2015.

To deliver the RSPO-CP's Decision, the RSPO Secretariat conducted a visit to Liberia and met the stakeholders on 26 September 2015. While GVL indicated that it agreed with the idea of an Advisory Committee, local NGOs, including most of the complainants, did not. The NGOs state that they had communicated already to RSPO that they did "not want a body, which does not have powers to sanction or risk the possibility of being dominated by local/national interests. The NGOs stated their preference for the current RSPO Complaints System to remain in force." GVL submitted their written response to CP's decision on 26 October 2015.³⁵

On **24 September 2015**, GVL and BWDA had a coordination meeting that "centred on addressing the issue of withdrawing Butaw citizens' letter of complaint to RSPO". Peter Teah from Monrovia, who is considered by GVL as BWDA leader and single point of contact³⁶ while having no formal role in BWDA, stated that he "had engaged the President, Madame Sirleaf on numerous occasions, but she refused to agree in releasing our boys from jail on ground that Butaw people had made her shame and only hopping to see/hear the level of mutual co-existence between GVL and the community. Mr Teah said no one can fight government, what is required of us as citizens is get things on path again. He said anything we say or do, you our citizens need to support us in this process as to make sure our children are released." GVL followed up and stated that "when the withdrawal letter to RSPO is signed and the boundary issue harmonised, then there will be opportunity for rehiring many Butaw citizens into GVL's workforce (and) it will pave the way for sustainable community engagement."³⁷

In response, the Co-Chairman of the Butaw Youth stated that "we sent our compliant to RSPO due to disagreement, but up to now GVL has not done any improvement with the aggrieved communities; moreover, signatories to the previous letter to RSPO are now in the bushes and in jail, how then do you want us to withdraw said case from the very RSPO. In conflict resolution, both parties must be willing to forgo many things, but GVL doesn't want to do anything like that. They continue to suppress us every time." He was told by Peter Teah that "the condition is that we have to do what the government says. No one can fight the government. Presently with the presence of RSPO representatives in Monrovia, we can pave the smooth road of building our rapport with the company. That which I believe will make our brothers and children in prison to be released soon. (...) So let us try our possible best to engage the process like this by signing the withdrawal letter from RSPO and see whether the company will not play her part. We are planning to meet with the President ... to update her on the level of progress made so far in resolving this problem so that our brothers can be free from prison". GVL followed up and concluded that "if RSPO honour the withdrawal letter from Butaw ... then GVL will rehire additional community dwellers/Butaw citizens" earlier dismissed.³⁸

While the Butaw community members participating in the meeting and GVL acknowledged that A-Bloteh leadership was hiding in the forest from possible arrests or were detailed for their alleged role in the May riots, A-Bloteh allegedly submitted a letter to RSPO indicating that they are withdrawing their complaint, "because of the steady discussion and progress we the people of Butaw and GVL are making and we are of the conviction that by withdrawing this complaint, employment, peace and development will prevail."³⁹ It needs to be noted that this letter was

³⁵ On 8 February 2016, RSPO received a communication from FPP, SDI and SESDev strongly asserting that the RSPO-CP had not adequately addressed the concerns and allegations raised during the complaints process. The criticisms included a criticism of the approach in aggregating all community complaints concerning GVL and that this has led to multiple community complaints unaddressed. They further highlighted that a) principles of FPIC has not been fully applied, b) GVL's FPIC Standard Operating Procedures are not FPIC compliant, c) GVL's policy and practice on agreeing Provisional MOU's with communities to allow the company to use land and provide some jobs to some community individuals before a complete and exhaustive information sharing and community-driven negotiation process has been completed, is not FPIC compliant, and d) the coercive presence of the heavily armed Emergency Response Unit at the signing of MOU. Subsequent, emails and other forms of communication further reiterated the dissatisfaction with RSPO CP's decision.

³⁶ Statement made by several GVL employees and senior management to verification team.

³⁷ MOM GVL and Monrovia-based and home-based Butaw citizens dated 24 September 2015.

³⁸ Ditto.

³⁹ Letter on A-Bloteh Letter Head to RSPO dated 24 September 2015 signed by 5 people for A-Bloteh, 5 people for BWDA and various officials.

not signed by the A-Bloteh chairman and/or other A-Bloteh members earlier introduced to GVL as A-Bloteh leadership. It is noted that none of the expectations of the Butaw community members associated with the withdrawal letter materialised: the community members remained in custody, the A-Bloteh leadership remained in the forest for over a year to avoid arrests and the 400 of the community members dismissed after the riot as well as the 500 dismissed after the submission of the first complaint letter in 2013 were not re-hired.

On **8 December 2015**, GVL requested RSPO for a lifting of the stop-work order.⁴⁰ RSPO-CP responded on 21 December 2015 that the lifting of the stop-work order is conditional on:

- a new FPIC process is done, resulting in a revised and permanent MOU that is signed by the duly authorized representatives of all groups of stakeholders having legitimate interests in the land under consideration. This will incorporate the existing social agreement with the community for lands agreed previously.
- Any new land offered by the communities must be subject to the FPIC process and NPP.⁴¹

In **January 2016**, GVL started the process to obtain the FPIC for its existing operations in Butaw. While this setting was not perfect as GVL started clearing the 2'582 ha covered in this MoU in 2011 and had completed transformation by the end of 2012, when the complaint to RSPO was submitted, they established together with BWDA most documents required under GVL's SoP for FPIC. However, it needs to be noted that the community members including the BWDA leadership interviewed by the verification team in April 2017 had no copies and very limited knowledge of the content of these documents. As an example, one might want to take the "participatory mapping": While the verification team was informed by A-bloteh and BWDA that no participatory mapping was carried out before the development of the land, the MoU states on page 4 that "as an official endorsement of the agreed land for development and confirming the detailed participatory mapping ... undertaken by the community and GVL, the community formally attests to and signs the development map". It seems clear that is a false statement as no participatory mapping was conducted prior to the signing of the MoU.

On **16 March 2016**, GVL requested BWDA to "send your proposal for community improvement projects and other benefits that you would like GVL to consider".⁴² On 1 September 2016, BWDA submitted a list of 110 proposals, of which hardly any were considered in the MoU in its original form.⁴³ There are no minutes of any negotiations on the proposals and BWDA and other community members consulted agreed that it was at the discretion of GVL to consider the proposals submitted by BWDA rather than a negotiation with the community.

On **14 May 2016**, GVL signalled to the Sinoe Peace Initiative, which tried to get the remaining Butaw community members released and allow the A-Bloteh leadership to return to their homes, that in case the MoU is signed, they would consider requesting the GoL to "drop all charges and claims as related to property damages" and/or to "drop all charges on those that are not suspected of being prime instigators, incitors (sic) of the attack or not active violent participants".⁴⁴

On **15 May 2016**, A-Bbloteh leadership responded from the forests and informed GVL that they are prepared to sign the MoU with GVL "as a means of bringing lasting peace", to agree to the "extraction of the case from RSPO" and begged GVL to approach GoL to drop the charges against those hiding in the forests and those in jail without trail for more than a year.⁴⁵

In **June 2016**, the detainees were finally released on bail and further arrest orders put on hold against bail. The bail was paid privately by Peter Teah, but charges have not been dropped to date and each of the 15 community members that have been jailed for a year are still exposed

⁴⁰ Letter GVL to RSPO-CP dated 8 December 2015. "GVL requests that the CP as a matter of urgency and with respect to the wishes of the Butaw community lifts the sanctions on GVL's operations in Butaw and closes the complaint for monitoring."

⁴¹ Letter of RSPO to GVL dated 21 December 2015.

⁴² Letter of GVL to BWDA dated 16 March 2016.

⁴³ GVL response to Butaw citizens' expectation 10 September 2016.

⁴⁴ Email Matts Karinen to GVL summarising meeting with Sinoe Peace Initiative.

⁴⁵ Letter of A-Bloteh to GoL and GVL dated 15 May 2016.

to a claim of USD 70,000 for the damages claimed to have occurred during the May 2015 riot.⁴⁶ The affected people stated that they were told “to behave” as otherwise they would be arrested and returned to jail without any further warning.

On **16 July 2016**, GVL asked BWDA to find ways that “as many as possible of the A-Bloteh leadership, who signed the original complaint letter to sign a letter that states that until further notice BWDA is the duly appointed community representative organisation on MoU and general community liaison matters between the community and GVL”.⁴⁷ A-Bloteh refused and is refusing to date to withdraw the complaint as they don’t consider the reported issues to be addressed.

On **20 October 2016**, BWDA issued an open letter to Alfred Brownell and the Green Advocates with RSPO, the President of Liberia and her entire cabinet as well as many officials in Liberia in copy. They “informed” him “that after 4 years of conflict through which your precarious interventions between GVL and the Citizens of Butaw District which destroyed the good development plan of Butaw is finally over.” He was “urged to avoid or do away with your unaccountable and disappointing intervention to the lasting peace and agreement between the peaceful citizens of Butaw and GVL”. In the same statement BWDA characterised A-Bloteh as “unreasonable and unaccountable” and claimed that they have been “constantly invited by Green Advocates to Monrovia to make false claims against the mutual co-existing relationship between GVL and the citizens of Butaw just for the personal interest of Cllr. Alfred Brownell”.⁴⁸ Facing such accusations, it is no surprise that Alfred Brownell took refuge in the US.⁴⁹

On **19 December 2016**, GVL agreed with Peter Teah “to urge the local Butaw community to push ahead with signing the MoU.” “Peter knows that we cannot do all the projects the community want. He will work with them to prioritise their ideas, but this probably won’t happen until he can visit in the new year.” One needs to note that Peter Teah, who seems to be GVL’s single point of contact for the MoU discussion is not listed as having any formal position in BWDA and didn’t sign the MoU in any capacity.⁵⁰

On **10 February 2017**, many people from Butaw District signed the MoU with GVL. However, the Butaw community members interviewed in April 2017 by the verification team including A-Bloteh and BWDA leadership documented that they have limited knowledge of the provisions of the MoU, had not seen the text and/or not received a copy of the MoU they had signed.

On **6 April 2017**, the verification team met with 23 A-Bloteh members including their leadership. The participants refuted ever writing a letter to RSPO to withdraw their complaints, indicating that such would have only been done through their legal representation Alfred Brownell from Green Advocates. They indicated that letter sent to RSPO in September 2015 under the letterhead of A-Bloteh was prepared and send without their consent. They were very aware and fully endorsed the TFT report from 2013 and had done some local monitoring of implementation. They confirmed that GVL has implemented some of the commitments in the MoU such as compensation for affected graves, establishment of a buffer zone around sacred sites, provision of 16 hand-pumps to provide portable water, some support to the schools and the construction of 15.6 km of feeder roads. They also indicated that a survey of the Butaw land was underway and that A-Bloteh had made some progress to close the boundary issue with Morrisville to provide additional land to GVL. They indicated their willingness to end the conflict with GVL as soon as the following conditions are met:

- Butaw citizens should be given employment preference over contractors from outside for all works conducted in the Butaw district if they meet the requirements;
- GVL should rehire the 500 employees from Butaw, which have been dismissed regarding the stop order that was part of RSPO-CP’s 2013 decision, as well as the 400 employees that have not been rehired, when the work continued on the existing farm after the 2015 conflict;

⁴⁶ Email Andrew Kluth 20 June 2016 to GVL.

⁴⁷ Email GVL to Peter Teah and Augustine Chea.

⁴⁸ Open Letter BWDA to Alfred Brownell 20 October 2016.

⁴⁹ Camilla Mortensen: Under Fire: Environmental attorneys face attacks. Eugene Weekly 1 March 2017.

⁵⁰ Email Andrew Kluth GVL VP Sustainability 19 December 2016

- The CDF should be managed by community members with the GoL and GVL as observers;
- Compensation for damages caused on both sides during the riot can be negotiated and they indicated that they are willing to waive their claims, if GVL does the same and the levies on community members lifted;
- GVL should pay the USD1'000 promised as compensation for shrines destroyed during the initial planting process;
- The community should have the chance to review the MoU with their legal representatives (i.e. Green Advocates) and discuss it with all sections of society and in all 24 town and villages owning land within the development area covered in the MoU.

On **6 April 2017**, the verification team also met with 13 members of the BWDA leadership, which informed the team that they were formed to facilitate discussions with GVL when A-Bloteh leadership was in hiding. They confirmed that they had written the complaint withdrawal letter on the A-Bloteh letterhead without the consent of A-Bloteh leadership and that they had worked with GVL on the MoU. It needs to be noted that even this team, which indicated that they had worked with GVL on the documents foreseen under GVL SOP to secure the FPIC of the Butaw community and the MoU, were largely unaware of the various steps and could not produce a copy of any of the documents established in this context. They also indicated that they had not received a copy of the MoU and assumed erroneously that the MoU provides

- priority employment of Butaw citizens for all jobs including management positions, while in the MoU employment remains at the discretion of GVL and priority access is only provided, if a Butaw candidate is "suitable qualified",
- payment of USD 5 per ha of land given to GVL, while the MoU provides that the USD 5/ha will only pay for planted land and not for all land given to GVL (under this MoU there is no difference as the 2582 ha covered in the MoU have been already developed, but there will be quite some difference in potential future development areas);
- full discretion of the community on how to use the CDF, while the MoU just refers to the provisions of the CA i.e. that 50% of the members of the CDF management team are from GVL;
- the establishment of an Outgrowers' farm with all development costs paid by GVL, while the MoU refers the provisions of the CA and provides that GVL will help the community, if funding is provided from elsewhere; It is noted that the provisions in the MoU on the Outgrowers' Program are more vague than in the CA as they for example don't inform about the agreement of pricing in the CA, but just suggests that this will be agreed in a separate MoU on the Outgrowers' Program, if funding is provided by the GoL;
- scholarship for Butaw youth per year, while the MoU only provides them with access to a national wide scholarship program offered by GVL in compliance with the CA,
- The MoU is valid for 5 years, if not renegotiated, while the MoU clarifies that all its provisions including the land rental fee remains valid for the duration of the CA (i.e. at least until 2075) as long as the two parties don't agree to amend the MoU in a review conducted every year; i.e. if GVL doesn't want to amend the MoU in the future, it remains valid at least until 2075 without any adjustments to at the very least accommodate devaluations etc.

3.1.3. Findings

Based on these depositions and testimonies, the verification team comes to the following findings with a view on the decisions of RSPO-CP from 4 February 2013 and 19 September 2015:

Assessment of compliance status on RSPO-CP Decision from 4 February 2013	
a. Comply with RSPO's NPP henceforth,	No further development was undertaken in Butaw to date. Therefore, GVL complied with this provision with a view on Butaw
b. Engage an approved Certification Body to verify that all necessary SOPs especially a "Conflict Resolution Management Plan" are in place to prevent a recurrence of the events that led to this complaint,	A Certification Body has been hired and TFT supported on behalf of GAR GVL in the update of GVL's SOP. However, this process has not been completed as TFT ended its support to GAR in early 2017 and

	had not submitted a final position on the Draft SOP. The team further could not find a dedicated “Conflict Resolution Management Plan”. Therefore, implementation seems to be incomplete.
c. Instruct TFT to inform whether an FPIC has been obtained for the clearance of any additional land in Butaw,	TFT supported GVL in the update of the SOP to reflect RSPO’s FPIC requirements. This process is incomplete (see above).
d. Engage with the complainants (Green Advocates and FPP) in the review of the situation on-the-ground via the field study conducted by TFT,	While GVL engaged both Green Advocates and FPP after the RSPO-CP Decision, the depositions suggest that GVL maintained a hostile attitude toward the Green Advocates and GVL staff expressed towards the verification team the view that the Green Advocates were responsible for the riots in 2015
e. establish with the complainants a roadmap/action plan on how to obtain FPICs from all communities in the concession area in line with RSPO’s FPIC Guidelines. This roadmap must be agreed by RSPO, GVL and the complainants. This should be completed within a maximum period of 6 months,	Some steps in that direction were done and GVL provided the NGOs with a copy of GVL’s updated SOP for comments. However, the complainants have not yet provided their comments awaiting the findings of this verification mission. It is however noted that the complainants stated in their written response that they have not received the full SOP package for review and comments.
f. Make changes if recommended by TFT to the SOPs and follow this updated SOP in all future new plantings within GVL’s concession area,	TFT recommended changes and has been provided in 12/2016 with a copy of GVL’s revised SOP for comments and endorsement. As TFT has ended its cooperation with GAR at this stage, no final comments have been provided.
g. Clarify to RSPO the total areas that may have been cleared and/or planted by GVL within 3 months,	Done.
h. Submit management and monitoring plans for all known HCVs and	Done.
i. Submit a quarterly progress report to RSPO on the implementation of these requirements.	Done.

Assessment of compliance status on RSPO-CP Decision from 15 September 2015

a. “The Principles & Criteria of the RSPO, emphasize that GVL must advise the communities on their right to be <i>‘represented through institutions or representatives of their own choosing, including legal counsel’</i> and for GVL to ensure that this has been understood by the communities. It is also imperative that evidence of such understanding is documented	The depositions suggest that GVL decided after the riots to stop working with A-Bloteh, which was earlier considered as representatives duly provided by the Butaw communities, and to work instead with BWDA, whose creation was supported by GVL. GVL further worked mostly with the Monrovia based Peter Teah, while the depositions suggest that he had not been designated by the 24 Butaw communities to represent them. With a view on legal advice, the community selected legal representative Alfred Brownell from Green Advocates had been bared by the local government to enter the district and had not been
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<p>prior to the signing of any MoU. The onus of getting the legal advice shall rests upon the communities and the NGOs/CSOs can assist the communities in this regard.</p>	<p>replaced by a different legal advisor. The limited understandings of the provisions of the MoU found among the community members, including those that have according to their own words negotiated the MoU, suggest that no legal advice was received to “decode” the rather legal language used in the MoU. The verification team therefore is of the view that limited, if any, progress had been made to comply with this provision in Butaw.</p>
<p>b. GVL is requested to publish a detailed document on compensation rates (both crops and land), the procedures and methods for compensation including the management and expenditures related to the CDF, and socialize it to all communities and NGOs/CSOs.</p>	<p>Neither in the MoU, the GVL Webpage and/or other documents disclosed to the public, the team could find detailed information on compensation rates beside of the rather generic information in the MoU that government rate will be provided in case private farm or land is affected. With a view on the CDF, neither the status of the CDF, composition of the CDF management team, the workplans etc. and/or the process to obtain funding has been disclosed. Beside of the CDF Chairman nobody interviewed by the verification team had any idea of how much money has been received. Based on the available depositions, it seems therefore unlikely that GVL has complied with this request from RSPO-CP.</p>
<p>c. GVL must commit to revise the management and administration of the CDF to improve the transparency by which it is operated as detailed in item above.</p>	<p>The depositions suggest that the rather generic CDF charter dated 18 December 2014 i.e. before the RSPO-CP decision, has not been updated and/or amended to reflect the requests made by RSPO-CP and it has not been disclosed to the public including the Butaw community members in whose name the fund is operated. In their written comments GVL suggests that this has not been done as GVL has a very limited role in the management of the CDF and that any revision need to be initiated by the CDF.</p>
<p>d. GVL shall continue to engage with all the NGOs/CSOs.</p>	<p>Since the RSPO-CP Decision in 2015, GVL organised 11 meetings with the NGOs.</p>
<p>e. RSPO members in Liberia including GVL and stakeholders (NGO/CSOs) are encouraged to play an active role in the formation of a National Oil Palm Advisory Committee in Liberia to address complaints, concerns and issues related to Oil Palm development. The RSPO is looking to set up such a Committee in late 2015 during their visit to Liberia.</p>	<p>This recommendation had been rejected by the NGOs as they fear that within the fragile socio-political environment of Liberia such committee could not be impartial. They requested in turn that RSPO-VP deploys an independent verification mission. This was done in April 2017 and this report is its outcome.</p>
<p>f. All provisional MoUs with the communities need to be converted to permanent MoUs at the earliest practicable opportunity which clearly specifies the duration, rights and obligations of the parties and clear identification of the land to be developed.</p>	<p>The depositions suggest that the establishment of the Final MoU for Butaw did not comply with the following RSPO FPIC Criteria a) self-identification of community representatives, b) freedom from external pressure, c) access to information etc.</p>

g. GVL must implement the revised SOPs on FPIC and the right of communities to say 'no' must be respected. Communities must be provided with relevant documents. Intimidation or coercion is prohibited.	The depositions suggest that the ordinary community members had no access whatsoever to the documents established following GVL's SOP and that even the team that negotiated the MoU with GVL has no copy of these documents including the MoU. The deposition further suggests that quite some of the communications made by GVL can be perceived as intimidation and coercion.
h. Access of NGOs to villages must not be restricted.	While the local government and BWDA tried to outcaste Green Advocates and tried to block them from interacting with Butaw community members, the deposition does not suggest that GVL blocked the access of NGOs to the Butaw communities.
i. GVL must make reports of participatory mappings publicly available and all stakeholder groups must be included in the mapping process.	No participatory maps were established for the 2'500 ha developed in the Butaw District to date, while some mapping is ongoing mostly with a view on future developments. The depositions suggest that not more than 4-5 members of each of the 24 settlements in the Butaw District participated in the mapping work performed in the context of the elaboration of the MoU, that this involvement was limited to look at the high-scale topographic map and it seems unlikely that all stakeholder groups were meaningful involved.
j. GVL is asked to continue to provide a quarterly progress report on all of the complaints for a period of 12 months. The Panel shall review the progress at the end of the 12 months and make further decisions as appropriate.	Done.

With a view on the continuing allegations of violations as reported by FPP, SDI, GA etc. and follow-up complaints to RSPO, the team notes that these complaints cover quite a wide range of issues at various levels. While the verification team had not sufficient time to verify all these issues in detail, the team found the following high level complains founded:

- **Coercion:** The depositions suggest that after the conflict in May 2015 GVL used methods that could be considered as coercion to convince some community members to a) form a new group that is less demanding, b) send a letter to RSPO withdrawing the complaint in 2015, c) sign the MoU.
- **MoU has not gained FPIC:** The depositions suggest that none of the four elements of the FPIC were obtained to date: a) Free: the community members clarified that they largely signed the MoU to free their community members from legal charges, in response to GVL's promise that GVL would rehire the 900 workers dismissed in follow up of the submission of their complaint to RSPO and they were further told that they were required to sign the MoU by the authorities, b) Prior: As GVL started the FPIC process only after the land had been developed, this could obviously not been achieved; c) Informed: the depositions suggest that the community members had very limited information prior to the signing of the MoU incl. those that negotiated the MoU, d) Consent: The depositions suggest that the negotiation process was conducted with limited involvement of ordinary community members and/or their self-selected representatives. The depositions further suggest that the community members hardly knew about the process, the existence, content or relevance of the underlying documents and/or the provisions of the MOU and signed the MoU largely to please GVL and the powers that be.

3.1.4. Recommended corrective actions to solve the legacy issues in Butaw

The discussions with all stakeholders indicated that the legacy issues could be addressed through a mediation process as it is generally agreed that the requests from A-Bloteh on behalf of the 24 Butaw communities are rather reasonable and that their offer to make peace with GVL and BWDA is genuine. It is further noted that most of their requests echo recommendations made by RSPO-CP. The key challenge is that in the Liberian setting the mediator would need to have a very senior profile and authority as well as funding from outside the country to be mutually perceived as an impartial broker. While such role is in other countries often allocated to high level governmental officials, the close collaboration of GVL and all levels of the GoL make this impossible in Liberia. The team therefore recommends that RSPO-CP considers deploying a mediator to address the legacy issue since 2013.

With a view on the MoU, which despite all efforts has not yet gained the FPIC of the 24 settlements in the Butaw district, it is recommended that the MoU of February 2017 is considered as Draft MoU and that GVL and A-Bloteh with the support of a technically qualified independent facilitator enables A-Bloteh to consult in detail with all sections of the 24 communities in the Butaw District, their legal advisors and any additional expert they find useful to provide – if needed – comments on the Draft MoU from February 2017. Based on that, GVL and A-Bloteh can engage in an open negotiation not only whether GVL can remain in the Butaw District, but also on the rules and regulations of land management as well as the benefits to be provided to the communities. Best practice also suggests that the Outgrowers' Program should be an integrated part of this updated MoU. In that perspective, GVL might want to consider that the CO does not prohibit them from providing the 24 settlements affected by the Butaw farm with benefits that go beyond the provisions already agreed in the CO.

It is acknowledged that such meaningful negotiations will take time, but as GAR – according to GVL staff - has requested GVL to put all new developments on hold, there seems to be sufficient time for GVL and A-Bloteh to overcome the challenges and confrontations of the past, jointly enhance GVL's performance in the social and environmental fields and assure that GVL operates in full compliance with RSPO's Principles and Criteria, which is necessary to allow GVL to have access to certified markets.

One area of concern is that GVL's acknowledgement of the issues at hand and consequently their preparedness to engage in corrective actions seems to differ significantly from time to time: While GVL senior management and the GVL in-country sustainability team agreed in the context of the field mission and the verification workshop to most of the Butaw related findings and the proposed corrective action, GVL's written comments on the Draft Report, submitted by GVL's Sustainability Advisor, suggest a less open approach and uses more than 100 pages to present alternative facts and goes into some length to question the competences of the verification team. While such differences are not uncommon, one would hope that at some stage GVL senior management and its shareholders embark also in public on a problem-solving approach to get finally over the legacy issues and focus on unleashing the potentials of sustainable palm oil production for the investors and the local populations.

3.2. Blogbo/Tarjuowon (Sinoe Country)

On 3 **October 2012**, the Tarjuowon Statutory District Development Committee invited GVL to invest in Tarjuowon.⁵¹

On 8 **December 2012**, the Superintendent of Tarjuowon Statutory District organised on request of GVL a meeting in Unification City. “The visit was aimed at providing education to the citizens about GVL’s operation and the facilities it provides for workers and citizens in its operational areas.” In response, the “Superintendent lauded the efforts of GVL and called on the company to move to Tarjuowon as soon as possible”. GVL presented their SOP – “in line with the standards set by the RSPO” and informed the community that “GVL’s GIS and Community Affairs Department in collaboration with the GVL Committee set up by the District will carry out the mapping exercise of the land allocated by Tarjuowon to GVL ... After the mapping, citizens of the district will write GVL, displaying the land to be given to GVL on a map backed by a letter stating their acceptance of GVL operations in the area.”⁵²

On 30 **April 2013**, GVL presented the result of this mapping work, indicated that they have found 30’000 ha of development land and clarified that they would not go to Jacksonville, One Way and Saywon Town as the forests there have a high conservation value. GVL further noted that they would need some access road to open the area and indicated that the communities have requested them to rehabilitate some roads in the area. GVL indicated that they were willing to rehabilitate the roads, but that that the communities would need to agree “that GVL will not held liable for any damage done during the road reconstruction”. GVL also informed the meeting that it does not foresee any resettlement and that it will not touch any farms, old villages and other areas unless this is approved by the communities.⁵³

On 6 **July 2013**, the District Authorities informed GVL that they “accept GVL without stupor pending detailed MoU and/or Social Agreement” and “that this resolution remains binding upon all Tarjuowon people and that any person or groups of persons who attempt to work against this resolution of the people should not be given credence or credibility”.⁵⁴

In **July 2013**, GVL conducted a community identification in the 22 settlements near the proposed development area. In that process, GVL categorized the settlements based on their present location and designated 4 as being far away from the concession, 9 as bordering the concession and 9 within the concession. Based on this, GVL prioritised the 9 towns located in the concession area and conducted with them a participatory mapping in Q3/2013, while such mapping was conducted in the settlements bordering the concession (Jacksonville etc.) in November 2013 and in the settlements far away in December 2013; i.e. 13 of the 22 settlements covered in the Tarjuowon MoU, signed the MoU before the participatory mapping was carried out. It is noted that this approach does not comply with GVL’s SOP and/or RSPO’s Principles and Guidelines.

GVL requested the 22 settlements in September 2013 to sign a “No Claim Statement”, which states that they “have no claim in the area to be developed including but not limited to the following: sacred sites, old town, grave sites, feature farmland, active and inactive farm etc.” As these statements were signed in 13 of the 22 settlements before the mapping was performed, the communities de facto waived all claims for compensation without knowledge of what they waived. In Jacksonville for example, the “No Claim Statement” was signed on 9 September 2013⁵⁵, while the mapping only started on 27 November 2013.⁵⁶

⁵¹ Tarjuowon Development Committee to GVL dated 3 October 2012. The verification team was informed that this is committee is part of the Tarjuowon Statutory District Administration; thus a governmental entity.

⁵² GVL MoMs with Tarjuowon District Authorities on 8 December 2012.

⁵³ GVL MoM with Tarjuowon District Authorities dated 4 May 2013.

⁵⁴ Joint Resolution representing the views and aspiration of the people of Tarjuowan Statutory District dated 6 July 2013.

⁵⁵ No-Claim Statement Jacksonville, signed through tump prints on 9 September 2013 by 5 people (community chairman, town chief, youth leader, women leader and elder). As apparently none of the 5 people «signing» the «No Claim Statement» could even sign their name, one might question that they fully understood the significant implication of this legal document.

⁵⁶ Letter of GVL to Jacksonville Community Chairman dated 25 November 2013 informing the chairman «that the community affairs department/social sustainability, GIS and environmental teams will on Wednesday 27

On **9 November 2013**, GVL and 22 Tarjuowon communities signed a MoU for a minimum of 8'053 ha. While the MoU by name is a Final MoU, it appears more as a preliminary MoU as it "outlines the process for future assignment of land for oil palm development". While the general provisions of the MoU are similar to those discussed above, one difference is that the MoU provides that the CDF "will be governed by the communities themselves". It is noted that the MoU uses the term "Tarjuowon Community", while the development area impacts on land of 4 chieftaincies, 9 clans and 22 towns/villages. The MoU suggests that "GVL and Community acknowledge that, given the history of Liberia, and the movement over the past 30 years of citizens away from community areas, it is possible that some community protected areas (cemeteries, shrines, sacred forests, special forest collection areas), old towns and other agreed cultural or economic items may be difficult for community members to identify. The communities commit to address and resolve any such mistakes internally before discussing with GVL".⁵⁷

3.2.1. Complaint

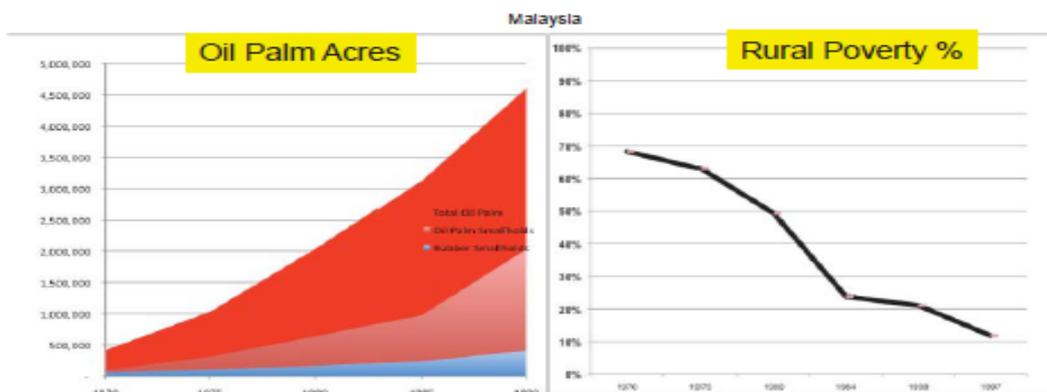
On **14 November 2013**, the Kulu United Development Association (KUDA), combining two of the 4 chieftaincies affected by GVL's investment in the Tarjuowon District, requested GVL to stop all developments on Kulu land on the basis that the MoU was not based on an "adequate FPIC process".⁵⁸

On 20 November, 2 December 2013 and **5 February 2014**, GVL responded that "GVL will withdraw from the clan areas, should the Kulu people in their majority, timely reject the signed MOU", but indicated that this would be a rather bad decision as the signed MoU will bring 2,000 stable jobs, generate USD 2.9m in annual wages and trigger the development of 4,000 acres of community oil palm projects. While it is GVL's right to promote their investment, quite some of the material (see the slide below) appear over simplistic and not in line with the known risks and challenges of sustainable oil palm development.⁵⁹

2.A. GVL Development Perspective



GVL is an Oil Palm Company. We think Tarjuowon and Kulu should do Oil Palm with us. There is good reason for this: Poor countries have become prosperous countries because of oil palm. Rural poverty has been eradicated. **Its not simple, and requires investment. Communities have the right to say yes, or to say no, for development we propose.**



On **17 February 2014**, KUDA submitted, as they were unsatisfied with GVL's response, a formal complaint to RSPO-CP. They informed RSPO-CP that Alfred Brownell from Green Advocates was their legal counsel and community advisor. On **17 February 2014**, SESDev, a

November 2013 conduct a participatory mapping and sensitisation exercises within your community at 1pm to identify life trees and old towns, sacred areas, cemetery, future farm land active and inactive farms».

⁵⁷ MoU GVL Tarjuowon dated 9 November 2013.

⁵⁸ Letter of KUDA to GVL dated 14 November 2013.

⁵⁹ GVL: Development Dialog Notes GVL and Kulu (issued 5 February 2014).

Liberian NGO, took up this issue and submitted also a formal complaint to RSPO-CP largely claiming the same non-compliances with RSPO's Principles. The complainants suggested that the mapping process was insufficient to identify HCV areas, areas with peat soils and local peoples' land and suggested that the MoU was established in non-compliance with RSPO's FPIC Guideline as the community members a) were provided with insufficient information on the potential impacts of land development, b) had no access to legal counsel in the process leading to the MoU c) had in consequence a limited understanding of the terms and conditions of the MoU, and d) were coerced to sign the MoU. They further highlighted that the process was largely driven by the District Superintendent based in Unification City and that he disfavoured the Lower Kulu populations. They also complaint that GVL is "forcing" the FPIC process by limiting it in meetings to a vote: "Are you for or against an investment" instead of making it a process to build consensus on how to cooperate. In turn, they requested that all further developments should be halted until the complaints are investigated and compliance with RSPO's Principles and Criteria assured.⁶⁰

On **18 October 2014**, KUDA added in a further communication to RSPO-CP that the Blogbo community members (i.e. former inhabitants of Wieh and Tuoh, two settlements that were abandoned during the civil war) were not consulted in the process leading to the MoU, while their land was earmarked to be used for the oil mill. They further claimed that the Palloh Hill, earmarked to host the mill, and the nearby Slenee creek were sacred sites of the Blogbo community.

3.2.2. Depositions

The team heard testimonials from all sides and reviewed nearly 3'000 documents related to the issues in Tarjuowon.

On **30 January 2015**, GVL confirmed to RSPO-CP that the locations of the abandoned Blogbo settlements were identified in the context of the participatory mapping conducted in Jacksonville on 27 November 2013, i.e. after the signing of the MoU and after the No-Claim form had been signed. They assured RSPO-CP that "the abandoned community area has been demarcated to be off limits to any GVL development".⁶¹

On **23 April 2015**, the District Superintendent, the District Commissioner, the Kulu Paramount Chief and the Clan Chiefs for Lower and Upper Kulu as well as some community members send a letter to GVL informing them that the Palloh Hill and the Slenee Creek are no sacred sites. They suggested that "this document serve as your authority to carry on your project as agreed by the Kulu and the entire Tarjuowon people".⁶²

On **21 May 2015**, GVL discussed their strategy on how to respond to the complains from KUDU. The available documents suggest that GVL considered KUDU as "a small dissident group of people who are being supported by SESDev." GVL expressed the fear that to organise a plenary of all Lower Kulu communities to validate the KUDU complaint as this "would have little benefit and be seen as a precedent that GVL caves in under sufficient pressure." "We should ask the GoL to intervene. We should also withdraw our machines and put them to work elsewhere, making it clear that we cannot work in an area where there is a threat to our people despite working in accordance with the MoU." To solve the issue, GVL agreed to "get the community itself to seek a solution to this impasse".⁶³

On **26 May 2015**, GVL invited SDI to facilitate a community mediation process.⁶⁴

On **10 June 2015**, SDI submitted a summary of the various positions and reported that the following action points had been agreed between KUDU and GVL:

⁶⁰ Letter KUDU to RSPO dated 17 February 2014 and Letter SESDev to RSPO dated 17 February 2014.

⁶¹ Letter GVL to RSPO dated 30 January 2015.

⁶² Letter from District Superintendent, District Commissioner, Paramount Chief etc. to GVL dated 23 April 2015.

⁶³ Email Andrew Kluth GVL VP Sustainability to GVL Senior Management dated 21 May 2015.

⁶⁴ Email with summary of kick of meeting of the mediation by Andrew Kluth GVL VP Sustainability to GVL Senior Management dated 28 May 2015.

- “KUDU expressed concern over clearing activities being done on parts of Wieh and Tuoh towns land while discussions with GVL are ongoing and KUDU and Blogbo people want GVL to order a go-slow or put a hold to all clearing activities being done on disputed land.
- KUDU wants a mapping of Wieh town and Tuoh town land. The mapping exercise will show clearly the total landscape of the two towns and their boundaries with other towns.
- KUDU will do a write-up of their plans for the disputed land, stating clearly issues to be resolve and clear rules of engagement to resolve written issues. The draft will be send to GVL and SDI.
- GVL will investigate its current operation on disputed land and explore the possibility of slowing down clearing activities or putting a hold to clearing activities on concerned land.
- GVL will explore the possibility of conducting a survey of Wieh and Tuoh towns’ areas. The survey will identify ex residents of Wieh and Tuoh towns and find out if the people talked to previously were the right owners of the land.
- GVL will then clarify how the process of survey will be and if it will involve NGO(s) and/or other concerned parties.
- GVL will develop a methodology for the survey and send to SDI. SDI will then forward same to KUDU.
- GVL will send the TOR for the contractor that will be conducting the survey to KUDU and SDI.
- GVL will circulate report from the survey to all stakeholders.
- GVL will discuss with the UN reconciliation panel on the likelihood of the panel investigating and providing ways and means of bringing all contesting parties involved together to discuss and clarify issues.
- GVL will respond to the complaints document sent by the KUDU and Blogbo people by Saturday, June 13, 2015.”⁶⁵

On **20 June 2015**, GVL internally acknowledged that “we never established the metes and bounds of legitimate farmers of the land around these old towns”; thus, that the assurance given to RSPO-CP on 30 January 2015 i.e. that “the abandoned community area has been demarcated” was false and that the “community area has been to be off limits to any GVL development” not substantiated by facts.⁶⁶

On **2 July 2015**, the Tarjuowon Nation Congress informed GVL, “that the mill and factory are set to be built on Kulu land, and particularly on Blogbo land”.⁶⁷

On **10 July 2015**, GVL and KUDU established a written agreement in which “GVL acknowledged that the land in the Blogbo Section is owned by the right-holders consistent with the relevant definition in the 2013 Land Right Policy. GVL commits to engaging with the properly identified people of the Blogbo section to resolve their concerns regarding the company’s operation in the Blogbo section”. It was further agreed that “the properly identified people of Blogbo, identified by KUDA and GVL,⁶⁸ will establish a representative body to represent their interest with GVL in going forward”. “The Blogbo Section Group and the KUDA members at this meeting requested GVL to cease further clearance of the Blogbo Section” and “GVL committed to respecting the wishes of the people of the Blogbo Section with regards to its operation in the Blogbo Section, and abiding by the final decision of their representative body”.⁶⁹

In **July 2015**, Global Witness published a report entitled “The New Snake Oil? The violence, threats, and false promises driving rapid palm oil expansion in Liberia”, which covered quite extensively the process in Tarjouwon. Global Witness highlighted a statement from a Tarjouwan community member that “GVL forced some of our people to sign a provisional MOU, through the influence of national government, the Ministry of Internal Affairs. There are no jobs

⁶⁵ SDI: Action Points of GVL, KUDU and Blogbo Meeting dated 10 June 2015.

⁶⁶ Email Andrew Kluth, GVL VP Sustainability to GVL Senior Management dated 20 June 2015.

⁶⁷ Email exchange between Sherman Seequeh (TNC) and Andrew Kluth, GVL VP Sustainability on 2 July 2015.

⁶⁸ This provision seems to ignore a submission of FFP from 1 July 2015 in which FFP stressed that “it is incumbent on GVL to refrain from deciding who are the rightsholders in respect of any one parcel of land. That is for the rights’ holders themselves to self-identify.”

⁶⁹ General Agreement between GVL and Blogbo Section/KUDA dated 10 July 2015.

or sources of livelihood in Sinoe other than farming. Many influential people are employed with the Ministry, so the high-level officials from the MIA (Ministry of Internal Affairs) threaten [lower MIA staffers] with their jobs if they don't sign... They were put under duress to sign a document but they don't even have knowledge of [what is contained in] that document."

On **29 August 2015**, SDI facilitated a large Blogbo community meeting, which apparently was attended by 140-180 people, to establish a committee (Blogbo-Teh) to represent the Blogbo community members in the discussions with GVL.

On **2 September 2015**, GVL expressed - in an internal email exchange - concerns that the makeup of the Blogbo committee might not be in favour of GVL and GVL's written commitment of 10 July 2015 ("to respect the wishes of the Blogbo Section with regards to its operation in the Blogbo Section abiding the final decision of their representative body") might require them to stop operations. GVL acknowledged that "the (representative) body is the committee appointed on 29 August" and that they "still want to try to honour this (commitment) in the spirit as well as the letter of the wording, but that depends on whether the committee genuinely represents the views of the whole Blogbo community, which Willie and Flomo (GVL senior staff) tells me is definitely in favour of GVL". This seems to suggest that GVL would not accept a committee that is not in favour of GVL, as according to GVL the genuine view of the Blogbo people "is definitely in favour of GVL". It seems rather clear that this approach is not in line with RSPO's guidance on the right of communities to self-identify their representatives. As an apparent fall-back position, the GVL VP Sustainability suggested to potentially pursue the argument that GVL didn't acknowledge any land rights of the Blogbo Section outside the two abandoned towns as the agreements states "the Blogbo Section consists of Tuoh's town and Wieh's town ... and says nothing about the land surrounding those towns. We have never agreed on what otherwise constitutes Blogbo land. ... I very much hope that we will be able to negotiate a proper agreement rather than getting down to semantics. I just don't think the process over the weekend (i.e. the community meeting on 29 September 2015) is going to provide that balance and I will be pointing out to SDI what the problems are and what must be done to rectify them".⁷⁰

On **12 September 2015**, GVL complaint to SDI, the mutually agreed mediator of the GVL-Blogbo conflict, that the Blogbo community meeting on 29 August 2015 was poorly managed and that a) the participants "were not properly vetted", b) "the publicity for the meeting was not adequate", c) some people could not travel to the meeting due to insufficient transport arrangement, d) the meeting excluded GVL employees from the committee and elected a large number of people from Monrovia and therefore are not "representative of the geographic distribution of the Blogbo community"⁷¹ and e) the Tarjuowon National Congress was not invited to the meeting. In sum GVL claimed that "there are several fundamental process failures and other very real concerns that mean that the committee members have serious compromised the process to the extent that the committee is not representative and is not likely to be able to fulfil its intended function".⁷²

On **14 September 2015**, SDI responded that they are aware of some constraints and shortcoming with a view on the community workshop, but that they would like to encourage GVL "to figure out ways in which it can more constructively engage with and support the committee to commence in community-wide consultations." SDI suggested further that "GVL should take a step back and give the committee a chance to establish itself and commence its work".⁷³

On **23 September 2015**, KUDA sent a follow up letter to the RSPO complaining about the limited progress made with a view on the participatory mapping and to facilitate an FPIC process for the use of the land owned by Tuoh Town and Wieh Town and that GVL continued

⁷⁰ Email of Andrew Kluth, GVL VP Sustainability to GVL Senior Management dated 2 September 2015.

⁷¹ This statement from GVL that there were no GVL employees in the Blogbo-Teh committee seems to be false as Blogbo-Teh provided the verification team with three names of commission members that worked at that time for GVL and GVL staff confirmed that this information was correct.

⁷² Letter GVL to SDI dated 12 September 2015.

⁷³ Email SDI to GVL dated 14 September 2015.

to clear land on the alleged sacred site, belonging to the communities, despite the request from KUDU to put this on hold until a participatory mapping has been performed.

On **2 October 2015**, Blogbo-Teh sent a letter to GVL informing them that they had organised a meeting “with a cross section of the Blogbo people to discuss the way forward and that they have agree to provide a conditional agreement to GVL’s operation on their land with the condition that GVL stops clearing, planting and conducting work on the mill site on Blogbo Section land until a participatory mapping has taken place to identify their land claims.”⁷⁴

On **31 October 2015**, GVL responded that they cannot stop the work on the Blogbo land until a participatory mapping has been carried out as this “would result in

- the laying off or inability to recruit from the local community of over 400 field workers;
- cancelling the recruitment of about 100 more workers on the mill site, at least in the short term;
- telling the wider Tarjuowon community that we are not able to deliver the development we committed to provide to the whole of the Tarjuowon district in the MOU; and
- halting the economic development of the whole of the south-east region. This is because revenues only start coming in to the company, and getting paid to the community in the form of salary, rice allowances, health care, schooling and community development, when the mill starts to operate. GVL cannot continue to pay workers and provide other benefits if the mill development has to stop for an indefinite period.”⁷⁵

On **1 November 2015**, GVL discussed the idea to “filibuster” the discussions with Blogbo-Teh to further progress with the development of the oil mill and factory on Blogbo land.⁷⁶

In **November 2015**, SDI resigned from the mediation process and was replaced by Parley, a local NGO that is specialised in mediation, which focused in the following on finding common grounds between the Blogbo-Teh and the local government and the leadership of other clans and groups in the Tarjuowon District.⁷⁷

On **16 April 2016**, Parley submitted a process report that suggests that they had managed to facilitate an agreement between Blogbo-Teh and the other clans and sections in the Tarjuowon District “to discuss the proposal to undertake the participatory mapping of Blogbo land” as the parties have agreed that the maps established by GVL “incorrectly represents the area comprising Lower Kulu.”⁷⁸

In **October 2016**, Global Witness published the report “Temples and Guns” that focused on the issue of the Blogbo land and suggested that the two “religious sites sacred to the community – Paloro Hill and Sleni River – have either been destroyed by GVL or are now off limits to the people.” GVL responded to the report on 19 November 2016 highlighting that they had obtained access to the entire area through the Tarjuowon MoU from November 2013.

In **February/March 2017**, Parley facilitated an initial participatory mapping to rectify the boundaries between the chieftaincies, clans and sections having interests in the land developed by GVL. A report, scheduled for late April 2017, is pending.

In **April 2017**, the verification team had a discussion with all groups involved in this process and learned that Blogbo-Teh would like to see the following conditions implemented before they can accept that GVL continues its work on the Blogbo community land:

- Finalise the participatory mapping and agree boundary of Blogbo land with their neighbours;

⁷⁴ Letter Blogbo-Teh to GVL dated 2 October 2015.

⁷⁵ Letter GVL to Blogbo-Teh dated 31 October 2015.

⁷⁶ Email Andrew Kluth, GVL VP Sustainability to GVL Senior Management dated 1 November 2015.

⁷⁷ Email exchange between GVL and Parley 9 November 2015, 25 November 2015, 8 December 2015, 6 March 2016, 30 March 2016, 11 April 2016 and 14 April 2016. While not going into the details of this email exchange, it is noted that GVL tried to influence quite strongly Parley to use their discretion in favour of GVL. In internal emails, GVL’s VP for Sustainability claims that this influencing was successful and that Parley largely agreed with GVL’s position. In the discussion with Parley in April 2017, Parley acknowledged that GVL tried to pressure them to support the GVL position, but suggested that Parley – as experienced mediators – are used to this pressuring and that they managed to maintain their independence contrary to the claims from GVL.

⁷⁸ Parey: Summary Blogbo-Teh and the Local Authorities of Kulu/Lower Kulu dated 16 April 2016.

- Make an addendum to the MoU recognising the Blogbo land and consequently its entitlement to access benefits provided in return for GVL's access to the land; in turn they would provide their signatures to be added to the existing MoU and
- GVL to compensate for the destroyed sacred sites based on what other communities have received for destroyed sacred sites (around USD 3'000 per site).

They further suggested that the Tarjuowon communities should come together to clarify based on their individual land holdings affected by GVL their entitlements i.e. their share of what is provided in the MoU.

In **April 2017**, the verification team had a discussion with Parley and learned that the main blockage to finalise the participatory mapping of the Blogbo land consists of diverting views on what rights communities have on land that they have left behind and that the neighbouring communities fear that by accepting Blogbo's former boundaries as actual boundaries, they would lose access to benefits. Parley informed the team that this is a general problem in Liberia even though the 2013 Land Right Policy recognises the rights of communities, which were displaced during the civil war, to their former territories. Parley highlighted that the National Land Commission and its successor the Liberia Land Authority is presently elaboration a pilot program to address this issue on a national scale and suggested that the Blogbo case could be used as a priority case study or in case this does not work out that an independent expert is hired to advise on this issue with a view to the fact that there are literally hundreds of settlements abandoned during the civil war within the 49,000 ha, which GVL aims to fully develop in the near future.

3.2.3. Findings

It is generally agreed that to deal with rights of old settlements is rather complex. However, the GoL 2013 Land Right Policy recognises in line with international standards - such as the UN Declaration on the Rights of Indigenous Peoples - the right of communities to land that they have left due to forced severance. GVL tried to address the issue through "No Claim Forms" that waive all rights associated to sacred sites, abandoned settlements and community land. While such waivers are generally legitimate instruments, one needs to remember that to meet minimum standards such "No Claims Forms" would need to gain the free, prior and informed consent of the affected right-holders.

The depositions suggest, that in preparation of the 2013 MoU for the Tarjuowon Statutory District, which covers 22 settlements and more than 100 abandoned settlements, GVL did not follow such due process with a view on community members of Tuoh and Wieh Town (i.e. the Blogbo community) and consequently failed to comply with RSPO's FPIC Standards: The depositions suggest that most Blogbo people had taken refuge in Jacksonville during the civil war and while GVL engage in general with the Jacksonville community, GVL failed to realise that the Blogbo community – living as refugees in Jacksonville – maintained an attachment to their community land in and around the Tuoh and Wieh Towns, both located within the GVL Farm. While such omission appears understandable at first glance as Jacksonville is located outside the GVL farm, GVL without any need limited its mapping prior to the signing of the MoU to those 9 villages within the proposed farm, while – according to their own SOP - they should have facilitated at least a participatory mapping within all 22 settlements covered under the Tarjuowon MoU prior to the signing of the MoU and/or identified for each of the abandoned ~100 villages within the proposed farm the present location of key community members. Only on such solid grounds, a "No Claim Waiver" could have been negotiated for each of the ~ 100 old settlements and their associated community land, but when GVL requested 13 of the 22 communities to sign the Waiver and the MoU prior to any participatory mappings and when GVL failed to satisfying itself that all communities with attachments to land within the proposed GVL Farm were recognised as right owners and had provided their free, prior and informed consent to the establishment of the GVL Farm before the signing of the MoU, GVL went into non-compliance with RSPO's FPIC Process and its own SPO.

While it seems that the issue could have been solved relatively easy in 2013/4 through an amended MoU that recognises the rights of the Blogbo community to the community land of

Tuoh and Wieh Town, GVL seem to have decided after the initial mapping and some initial discussions to “filibuster” the process to avoid accepting the reasonable request from KUDA/ Blogbo-Teh to hold developments until a detailed mapping of the Blogbo community land has been carried out and an FPIC Process conducted with the Blogbo community to clarify whether they agree to the GVL proposal. Based on the depositions, GVL knew very well right from the beginning that the Blogbo community land includes the area earmarked for the oil mill, factories etc. The depositions further suggest that GVL considered it too much of a risk for its overall investment in Tarjuowon to recognise the rights of the Blogbo people as they might have requested GVL to leave their land and/or requested additional benefits.

While the issue could have been solved in 2013/4, it still drags on due to questionable concerns:

- a. While GVL argues that community members from Jacksonville signed the “No Claim Form” and the MoU, this claim appear in front of the evidences irrelevant for the Blogbo case, as to request communities to waive their rights to compensation for affected farms, old settlements, sacred sites etc., before these have been mapped and/or the associated entitlements discussed and disclosed, does not comply with RSPO’s FPIC guideline.
- b. While GVL used significant efforts to question whether Blogbo community members and their commission is “legitim” by assessing their earlier places of residence etc., the self-identification of any other community is not exposed to any scrutiny and the argument anyway misleading as community membership isn’t limited to residents and can include members residing in other parts of the country or outside.
- c. While GVL constantly reminded the verification team that the District Superintendent, Paramount Chief etc. have confirmed that the two sacred sites claimed by the Blogbo are no sacred sites is misleading as sacred sites might be attached to a lineage or even one family only. As the site has been cleared, it seems impossible to verify the claim through material finds, but the verification team tends to favour the claim from the Blogbo community as the issue was brought up by most of the consulted Blogbo community members.
- d. While GVL claims that the “participatory mapping” of the land of the Blogbo communities, which might have taken around a week, would “halt the economic development of the whole of the south-east region”, one might want to ask whether such unsubstantiated claims can be considered as coercion as it triggered the resistance of other communities in the Tarjuowan District against the quite reasonable and well justified request from the Blogbo people to be recognised as community owning land within the GVL farm.

In general, the testimonies obtained by the team suggest that the Tarjuowon MoU and the process leading to it allowed room for improvement with a view on RSPO’s Principles and Criteria and the RSPO’s guidelines for FPIC in the areas of a) self-identification of communities, b) access to information relevant to the decision-making processes and c) coverage as for example the Blogbo community had not been involved in the process that led to the MoU affecting their land.

Assessment of compliance status on RSPO-CP Decision from 15 September 2015	
<p>a. “The Principles & Criteria of the RSPO, emphasize that GVL must advise the communities on their right to be <i>‘represented through institutions or representatives of their own choosing, including legal counsel’</i> and for GVL to ensure that this has been understood by the communities. It is also imperative that evidence of such understanding is documented prior to the signing of any MoU. The onus of getting the legal</p>	<p>The depositions suggest that GVL decided to stop in 2015 to work with Blogbo-Teh as they were feared that this representative body might either request to not work on Blogbo land and/or request additional benefits.</p> <p>The depositions suggest further that double standards have been used with a view on the self-identification process of those 22 communities that signed the MoU and the Blogbo community. While the depositions suggest that the team that established the MoU with GVL as well as the underlying documents was selected by the Local Government, in the case of the Blogbo, GVL requested that every community member is “properly vetted” without any mandate</p>

<p>advice shall rests upon the communities and the NGOs/CSOs can assist the communities in this regard.</p>	<p>and/or a clear definition of what a community member is. The depositions further don't indicate that GVL encouraged the communities to hire legal counsel. In turn, there are letters from the Local Government banning Green Advocates from the region and reports of an attempt to at least physically hurt Alfred Brownell, when he tried to advise the communities on behalf of KUDU on the legal implications of the MoU.</p>
<p>b. GVL is requested to publish a detailed document on compensation rates (both crops and land), the procedures and methods for compensation including the management and expenditures related to the CDF, and socialize it to all communities and NGOs/CSOs.</p>	<p>Neither in the MoU, nor the GVL Webpage nor any other documents disclosed to the public, the team could find detailed information on compensation rates beside of the rather generic information in the MoU that government rate will be provided in case private farms or lands are affected. It is further noted that each community submitted – often even before the mapping was carried out – a waiver to any compensation for farms, old settlements and sacred sites. It seems clear that the communities did not know in detail what they waived and that therefore this waiver doesn't comply with RSPO's FPIC Principles. Further, it needs to be questioned whether a community can waive the rights for compensation for affected individual farms as they are not the right-holder. With a view on the CDF, neither the status of the CDF, composition of the CDF management team, the workplans etc. and/or the process to obtain funding from the CDF has been disclosed. Th MoU is providing contradictory information: While in the main text, it states that the fund is managed by the community, in the annex it repeats the provisions of the CA, i.e. that GVL provides half of the CDF management team.</p>
<p>c. GVL must commit to revise the management and administration of the CDF to improve the transparency by which it is operated as detailed in item above.</p>	<p>As the chairman of the CDF just passed away before the verification team visited the area, the team was not able to obtain any information on the CDF as other members of the CDF indicated that they had no information of whether any funds had been paid and/or what the process for disbursement.</p>
<p>d. GVL shall continue to engage with all the NGOs/CSOs.</p>	<p>Since the RSPO-CO Decision in 2015, GVL organised 11 meetings with the NGO.</p>
<p>e. RSPO members in Liberia including GVL and stakeholders (NGO/CSOs) are encouraged to play an active role in the formation of a National Oil Palm Advisory Committee in Liberia to address complaints, concerns and issues related to Oil Palm development. The RSPO is looking to set up such a Committee in late 2015 during their visit to Liberia.</p>	<p>This recommendation had been rejected by the NGOs as they feared that within the fragile socio-political environment of Liberia such committee could not be impartial. They requested in turn that RSPO-VP deploys an independent verification mission. This was done in April 2017 and this report is its outcome.</p>
<p>f. All provisional MoUs with the communities need to be converted to permanent MoUs at the earliest practicable opportunity which clearly specifies</p>	<p>The depositions suggest that the establishment of the MoU for Tarjuowan did not comply with the following RSPO's FPIC Criteria a) self-identification of community representatives, b) access to information and c) inclusion of all right-holders.</p>

the duration, rights and obligations of the parties and clear identification of the land to be developed.	While the MoU states to be final, it appears rather provisional and for example it doesn't specify the surface area provided to GVL, while suggesting that further land might be added to the same MoU.
g. GVL must implement the revised SOPs on FPIC and the right of communities to say 'no' must be respected. Communities must be provided with relevant documents. Intimidation or coercion is prohibited.	The depositions suggest that the ordinary community members had no access whatsoever to the documents established during the implementation of GVL's SOP. It is further noted that the participatory mapping for 13 of the 22 communities covered under the MoU was only conducted after the MoU had been signed.
h. Access of NGOs to villages must not be restricted.	There are numerous reports that NGOs were not provided with access to the abandoned settlements located within the GVL concession. Even the verification team had to argue for quite some time to be allowed to pass the GVL check point and use the road from Jacksonville towards Unification City. However, there are no reports that NGOs were unable to meet the communities located outside GVL's concession.
i. GVL must make reports of participatory mappings publicly available and all stakeholder groups must be included in the mapping process.	The participatory maps are disclosed as part of the MoU, but all as all maps are placed on one A4 page, even in the high-resolution version of the MoU they cannot be meaningfully reviewed. The mapping process allows further room for improvement as even clan boundaries are not correctly presented and that old settlements etc. identified in the participatory maps were not reflected in the final base maps.
j. GVL is asked to continue to provide a quarterly progress report on all of the complaints for a period of 12 months.	Done.

3.2.4. Recommended corrective actions to solve the legacy issues in Tarjuowon

It seems clear that the 2013 Tarjuowon MoU did not comply with RSPO's FPIC guidelines and that it should therefore be considered as a Preliminary MoU that need to be updated based on additional consultations with all affected communities following an SOP that is FPIC compliant.

GVL and the communities might want to agree to split the MoU into individual MoUs for each of the affected communities rather than covering an entire Statutory District or use a setting in which a general MoU for the entire area is combined with specific sections for each community. The reason is, that the division of benefits and entitlement among the communities included in the MoU seems to be one of the driving forces behind the conflicts and/or had been used effectively by GVL to trigger local resistance against the reasonable claims from Blogbo-Teh.

With a view on the Blogbo issue, it is recommended to follow the approach suggested by Parley and engage the National Land Commission/Liberia Land Authority to solve the issue by using Blogbo as a case study in their pilot program on how to recognise and manage rights of communities that have been displaced through forced severance during the civil war, or if this setting doesn't work out that with a view of the several hundred abandoned settlements within the GVL farms, an independent study is commissioned to assess the issue and recommend how this could be addressed until legal procedures are established. It is generally agreed that if the Blogbo land is recognised, the other issues can be solved in due course.

3.3. Du, Wolee and Nyennue (DWN) & Nomopoh (Sinoe County)

The situation in DWN and Nomopoh is different from the two previous complaints as issues in DWN and Nomopoh were not introduced as stand-alone complaints, but were mentioned – starting from 2013 - in the context of other complaints. The complainants suggested that

- a) the Nomopoh Provisional MoU in 2013 as well as the DWN MoU in 2016 were signed under the coercive presence of heavily armed ERP troops and high-level GoL officials,
- b) both MoU's didn't gain an FPIC in line with RSPO's Guidelines and
- c) GVL developed conflict land and land for which GVL had not gained the consent of the land-owning communities.

3.3.1. Depositions

Between **March and April 2013**, GVL wrote to the town chiefs of the 23 communities within or near the proposed GVL farm in the Nomopoh District (located in the Kpanyan Statutory District) and informed them that “criterion 7.5. of RSPO mandates all its members not to establish any new plantations on local peoples' land without FPIC ... In view of the above, we are requesting you to please nominate 5-7 persons or any institution of your choice to represent you during the conduct of the FPIC”.⁷⁹ In turn, these government officials presented the requested “representatives” to GVL.⁸⁰ GVL then asked the local government officials to sign an “FPIC Agreement” that provided that GVL and the “representatives” agreed “to work together in creating community awareness and sensitisation on the GVL Oil Palm Development Project”, “manage false propaganda about GVL, “identify and demarcate HCVs”, conduct surveys and resolve grievances. The 23 town chiefs signed these agreements apparently without any discussion or request for changes with the “representatives” serving as witnesses.⁸¹

On **27 April 2013**, the “representatives” signed a letter to GVL in which they “granted GVL the permission to develop 1'200 ha” within the Nomopoh District.⁸²

On **7 June 2013**, Nomopoh District and DWN District entered into a legal agreement to settle boundary disputes over 800 ha of land earmarked by GVL as development area. It was agreed that GVL shall start immediately to develop the land and that 60% of the land rental should go to the DWN CDF and 40% to the Nomopoh CDF, but that the Nomopoh CDF should receive the entire rent for the years 2013 and 2014.

Between **July and September 2013**, GVL wrote to the town chiefs of the 13 communities within or near the proposed DWN farm (located in the Kpanyan District with the Kpanyan Statutory District) and informed them that “Criterion 7.5. of RSPO mandates all its members not to establish any new plantations on local peoples' land without FPIC ... In view of the above, we are requesting you to please nominate 5-7 persons or any institution of your choice to represent you during the conduct of the FPIC”. In turn, these government officials presented the requested “representatives” to GVL. In turn, GVL asked them to sign an “FPIC Agreement” that provided that GVL and the “representatives” agreed “to work together in creating community awareness and sensitisation on the GVL Oil Palm Development Project”, “manage false propaganda about GVL, “identify and demarcate HCVs”, conduct surveys and resolve grievances. The town chiefs signed these agreements apparently without any discussion or request for changes with the “representatives” serving as witnesses.

In **early 2014**, mappings were carried in the 13 DWN communities following the same process discussed before. Apparently, this process documented additional border issues between the DWN and Nomopoh communities.

⁷⁹ See for example: Letter GVL to Bah Town Chief dated 18 March 2013.

⁸⁰ See for example: Letter Bah Town Chief to GVL dated 23 March 2013.

⁸¹ See for example: Memorandum of Agreement between GVL and Bah Community dated 20 May 2013.

⁸² See for example: Letter Tobo and Perlubo Chiefdoms, Numopoh District to GVL dated 27 April 2013. It is noted that only 9 of the 27 „representatives“ assembled for this chiefdom could write their own name.

On **23 April 2014**, the Deputy Minister for Internal Affairs met “selected representatives”, largely comprised of local government officials, to solve the issue. Under his leadership, which might be perceived by some as coercion, it was agreed a) “that GVL shall operate in the disputed area pending the survey of the area to clarify the border issue”, b) “equal benefits in term of development to the two communities (i.e. DWN and Numopoh) while survey is pending, c) affirmative action rendered in employment in favour of the DWN communities since the current nursery has more Numopoh citizens employed, d) cash accrued from rental must go into an escrow account under the control of GVL until ownership is determined and fund turned to the identified owners and e) maps presently available must be revisited with all parties involved”.⁸³

On **28 April 2014**, GVL and the 23 Nomopoh communities signed a Provisional MoU on 2’634 ha of land including a) 629 ha under phase 1 (i.e. 146 ha already developed for the nursery and 483 ha covered under the provisional benefit sharing agreement of 22 April 2014), b) 677 ha under phase 2 and c) 1’328 ha under phase 3. It was agreed that the 463 ha of disputed land should not be part of the Provisional MoU and should be addressed in a different MoU, but that GVL can develop this land in the meantime. It was agreed that the provisional MoU should be replaced by a final MoU preferably within 12 months. It is noted that GVL only commenced this process on 29 July 2016 and that there are no documents suggesting that more than some preparatory meetings were conducted.

On **10-12 March 2015**, the Deputy Minister for Internal Affairs was again involved to address a boundary conflict that occurred within the GVL concession. This time the main conflict was between DWN and Bannah-Worteh and concerned around 1’200 ha of land. As before the Deputy Minister “brokered” an agreement with “selected representatives” that largely consisted of local government officials reporting to him. It needs to be noted that the Nomopoh communities claims ownership of this land as well, but that they were not invited to participate in the settlement.⁸⁴

On **28 April 2015**, citizens of the Numopoh District complaint that limited progress has been made to solve the boundary issues, that they were not invited to participate in the March 2015 discussions on boundary issues and declared in an open statement that they unilateral cancel the land dispute settlements from June 2013 and April 2014. While they acknowledged that the claim of the DWN communities is substantiated through the administrative boundaries of the Due-Wollee Township established in 1977, they believed that landownership under the 2013 Land Right Act remains with the customary owners and users rather administrative settings.⁸⁵

On **11 June 2016**, GVL signed an MoU with the 13 DWN communities on 2’078 ha of land, comprising the 629 ha also covered in the Provisional MoU with the 23 Numopoh communities (i.e. the conflict land) and 1’449 ha of additional land. The MoU suggests that it has been “agreed by Numopoh District citizens that these 1’449 ha are not a contested area”. The MoU also covers 290 ha of land for the potential Outgrowers’ Program and the provision that “additional areas will be subject to a separate agreement, which may be an addendum to this MoU”. While the MoU indicates that “it is GVL’s policy not to develop land that is known to be contested”, it allows GVL to continue using the 629 ha of land claimed by the DWN and the Nomopoh communities.

On **11 April 2017**, the verification team was informed by community members of Deedo Town in the Nompoh District that they had given GVL 91 ha in 2013 (i.e. before the Provisional MoU was established) and that GVL in addition developed 240 ha of their land without their consent. They suggested that in that process, many graves and farms were destroyed without any survey being carried out or any compensation being offered. The Deedo community took GVL to the Magisterial Court in Nomopoh and obtained a Stop-Order on all further activities in this area. The judge confirmed to the verification team that he had satisfied himself that the case seems valid and that he has asked GVL to submit a response to the charges. In turn, the Nomopoh District Authorities were less favourable and fined Deedo Town for taking unilateral actions against GVL.

⁸³ Ministry of Internal Affairs: Meeting Minutes and Agreement between Numopoh and DWN dated 23 April 2013.

⁸⁴ Du-Wolee Nyannue and Wortheh Townships Resolution dated 12 March 2015.

⁸⁵ Position Statement adopted by the citizens of Numopoh County District against the map of Due Wollee Township Mantor Chiefdom dated 28 April 2015.

On **11 April 2017**, the verification team was further informed that a new Numopoh community leadership was recently appointed by the community and has legally challenged the 2013 and 2015 land agreements with DWN as they claim that signatures under the 2013 agreement has been forged⁸⁶ and that the 2015 agreement was valid only for two years. To demonstrate their dissatisfaction with the process and to point out that GVL continues to use their land illegally, the Nomopoh communities released from 7 to 10 April 2017 the “country devil” on the access road towards the GVL farm and brought GVL’s operations to a standstill. The Nomopoh community leadership has submitted an ultimatum to GVL to pay the outstanding CDF contributions since 2013 for the 627 ha of “conflict land” before the end of May 2017 or face severe resistance from the Nomopoh communities. The verification team got the impression that their concerns are very serious and that the Nomopoh youth might take actions similar to those employed in the context of the 2015 riot, if their concerns are not discussed with them.

On **11 April 2017**, the verification team was finally informed by the leadership of the DWN communities that they acknowledge that the Nomopoh communities had been the customary owners of the 2’000 ha that are contested between Nomopoh, DWN and Bannah Worteh, but that they are of the view that they were granted the land rights in 1977, when the township was established with a map that shows boundaries that serve as the basis of their present claims. They indicated that the issue with Bannah is similar, only that the Bannah Worteh Township was gazetted already in 1964, thus before their rights were established and that in their view the most recent boundary is valid.

3.3.2. Findings

In general, the testimonies obtained by the team suggest that the Draft MoU for the 23 Nomopoh communities as well as the MoU for the 13 DWN communities and the process leading to them allows room for improvement with a view on RSPO’s guidelines for FPIC:

Assessment of compliance status on RSPO-CP Decision from 15 September 2015	
<p>a. “The Principles & Criteria of the RSPO, emphasize that GVL must advise the communities on their right to be <i>‘represented through institutions or representatives of their own choosing, including legal counsel’</i> and for GVL to ensure that this has been understood by the communities. It is also imperative that evidence of such understanding is documented prior to the signing of any MoU. The onus of getting the legal advice shall rests upon the communities and the NGOs/CSOs can assist the communities in this regard.</p>	<p>The depositions suggest that instead of working with “institutions or representatives of their own choosing within the communities”, GVL worked with people that were hand-picked by the local authorities on GVL’s request. It is further noted that the terms and conditions of the FPIC Agreement limited their independence. There are no indication that GVL informed the communities about the advantage of securing legal counsel before signing a legal document such as the MoUs.</p>
<p>b. GVL is requested to publish a detailed document on compensation rates (both crops and land), the procedures and methods for compensation including the management and</p>	<p>Neither in the MoU, the GVL Webpage nor other documents disclosed to the public, the team could find detailed information on compensation rates beside of the rather generic information in the MoU that government rates will be provided in case private farm or land is affected.</p>

⁸⁶ The team could not verify this claim in detail due to limited time available, but notes that if it is justified, it would have far reaching consequences as the 2013 agreement has been made in court (Affidavit), but for whatever reason only registered in February 2017. Thus, if the signatures were forged, that then the juridical system must have been included in this process.

<p>expenditures related to the CDF, and socialize it to all communities and NGOs/CSOs.</p>	
<p>c. GVL must commit to revise the management and administration of the CDF to improve the transparency by which it is operated as detailed in item above.</p>	<p>With a view on the CDF, neither the status of the CDF, composition of the CDF management team, the workplans etc. and/or the process to obtain funding has been disclosed. Th MoU largely repeats the provisions of the CA without any additional details.</p>
<p>d. GVL shall continue to engage with all the NGOs/CSOs.</p>	<p>Since the RSPO-CO Decision in 2015, GVL organised 11 meetings with the NGO.</p>
<p>e. RSPO members in Liberia including GVL and stakeholders (NGO/CSOs) are encouraged to play an active role in the formation of a National Oil Palm Advisory Committee in Liberia to address complaints, concerns and issues related to Oil Palm development. The RSPO is looking to set up such a Committee in late 2015 during their visit to Liberia.</p>	<p>This recommendation had been rejected by the NGOs as they feared that within the fragile socio-political environment of Liberia such committee could not be impartial. They requested in turn that RSPO-VP deploys an independent verification mission. This was done in April 2017 and this report is its outcome.</p>
<p>f. All provisional MoUs with the communities need to be converted to permanent MoUs at the earliest practicable opportunity which clearly specifies the duration, rights and obligations of the parties and clear identification of the land to be developed.</p>	<p>The depositions suggest that the establishment of these two MoUs did not comply with the following RSPO's FPIC Criteria a) self-identification of community representatives and b) access to information. It is further noted that very limited progress had been made to graduate the Provisional MoU for Nomopoh from 2013 into a final MoU. The depositions further suggest that GVL is developing or has developed conflict land, land before the related MoUs were signed and land for which GVL has not obtained the consent of the right-holders.</p>
<p>g. GVL must implement the revised SOPs on FPIC and the right of communities to say 'no' must be respected. Communities must be provided with relevant documents. Intimidation or coercion is prohibited.</p>	<p>The depositions suggest that the ordinary community members had no access whatsoever to the documents established following GVL's SOP. With a view on intimidation and/or coercion, the depositions confirm that the riot police were present during the MoU signings. While GVL argues with reason that they were there to protect the high-level GoL delegation (Deputy Minister of Internal Affairs etc.), some community members perceived the presents of these high-level officials and their armed escort as intimidating and feel today coerced into signing the MoU. This is a tricky issue as normally citizens should not feel intimidate by government officials, but if one takes the special relationship between the Deputy Minister of Internal Affairs and GVL into consideration, one can understand the feelings of the community members, which felt intimidated. At the same time, it would be strange, if the communities and GVL would prohibit high GoL officials to participate in important events such as the signing of MoUs.</p>

h. Access of NGOs to villages must not be restricted.	The depositions suggest that NGOs had unrestricted access to the communities as most communities are located near the Greenville - Barclayville road on which traffic is not controlled by GVL.
i. GVL must make reports of participatory mappings publicly available and all stakeholder groups must be included in the mapping process.	The participatory maps are disclosed as part of the MoU, but as all are placed on one page, even in the high-resolution version of the MoU, they cannot be meaningfully reviewed. The mapping process allows further room for improvement as it is rather unclear how the participatory map was transferred to the base map and the depositions suggest that many details were not reported. It is further noted that the participatory mapping process was not used to solve the boundary issues between communities.
j. GVL is asked to continue to provide a quarterly progress report on all of the complaints for a period of 12 months.	Done.

3.3.3. Recommended corrective actions to solve the legacy issues

It is acknowledged that conflicts triggered by administrative boundaries that overlap with customary boundaries are tricky. The depositions suggest that GVL focused on obtaining access to the conflict-land rather than to broker a mutually acceptable solution. It is no surprise that this approach didn't result in sustainable outcomes as earlier or later the grievances reappeared in the form of the "country devil" on the access road to the GVL nursery in April 2017 and/or other forms of protests and court cases.

The issue of administrative versus customary boundaries is not limited to the area developed by GVL and it is recommended that GVL uses its relations to the GoL to secure the services of the Liberian Land Authority, which is tasked to assess and solve such issues.

With a view on the development of conflict land, it is recommended that GVL applies its own policy and doesn't develop any contested land in the future. With a view on those conflict lands that have been already developed, GVL should commit to solve the land issues within 12 months and pay in the meantime the agreed sums into the respected CDFs.

As the depositions suggest that the two MoUs have not gained yet the free, prior and informed consent of the affected communities, it is recommended that they are considered as Preliminary MoUs and finalised once an FPIC compliant SOP established by GVL.

3.4. Gbleebo, Wedabo and Garraway (Gand Kru)

On **2 October 2013**, SDI and SESDev complained that the development of 28,171 ha located in Grandcress – Wedabo and Threnbo Districts of Grand Kru county didn't follow RSPO's FPIC process. On 21 November 2013, they followed up and suggested that there is also a lack of a) access to information with regards to copies of ESAs, HCV assessments, maps etc. and b) participation and representation in the processes leading to the MoU is wanting.

On **7 March 2014**, Green Advocates on behalf of the Gbleebo clan submitted a complaint to RSPO-CP claiming that GVL had started to clear land and has developed its nursery on customary land without FPIC. Additionally, it was claimed was conducted without participatory mapping.

While GVL suggested in response to these claims and in their testimonials towards the verification mission that the situation in Grand Kru County is better than the situation in Sinoe County, the depositions comprising the review of several thousand documents and meetings with communities in the Gbleebo, Wedabo and Garraway Districts echoed the situation found in Sinoe country: The depositions suggest that the complaints were justified and that limited progress had been made to use the update of the nine Provisional MoUs in Grand Kru County to Full MoU to comply with RSPO's FPIC Guidelines. While there are meetings taking place in that context, the "representatives" are designated by the local authorities, the mapping is limited to this group with a non-transparent jump from the participatory base map to the topographic map, individual and community rights to compensation are generally waived without prior knowledge of the attached entitlements and/or the amounts of potential compensation payments, the documents established are not shared beyond the group directly involved and the knowledge of the provisions of the MoU and the underlying reports is rather limited.

It is rather worrying that GVL hasn't put much effort on using the opportunity provided by RSPO-CP to use the land, while developing FPIC compliant MoUs for these enormous areas and on the contrary demobilised parts of their sustainability team in Grand Cru.

The corrective action recommended by the team largely echoes the RSPO-CP Decision: GVL should align its SoP with RSPO's FPIC Guideline and use the update of the 9 Provisional MoUs in Grand Kru, which should be considered and re-classified until then as Draft MoU, to bring the investment back into compliance with RSPO's Principles and Criteria. As GAR has provided a stop order on all new developments, GVL should have sufficient time to review and enhance its approach to become a fully compliant RSPO Member.

As the depositions further suggest that GVL did very little to address the requests from RSPO-CP – potentially because GVL already had access to the land -, it is suggested that a clear deadline is agreed with GVL to establish FPIC compliant MoUs for the 9 farms in Grand Cru and if this is not done, escalate the issue and question whether GVL can remain an RSPO member.