



LIBERIA

TECHNICAL FORM FOR THE PRESENTATION OF A CASE

Chapter I – Characteristics of the Case

1. Organisation(s) or group(s) responsible for presenting the case

Sustainable Development Institute (SDI)

2. Name of the company and/or consortium being accused

Golden Agri-Resources (GAR) is an agribusiness and food company listed on the Singapore stock exchange and Golden Veroleum Liberia (GVL) is a Liberian-based company controlled by GAR to expand its palm oil business into Liberia.

3. Place and type of operation in which events related to the accusation/case occurred

Industrial palm oil plantation in Sinoe county, Liberia.

Chapter II – Characteristics of the Company / Consortium

1. Country or countries where the company has its headquarters / main office

GVL is established in Monrovia, Liberia. GAR is stocklisted in Singapore.

2. Ownership of the company's capital

GAR has set up and is the sole investor in the Cayman Islands-based private equity fund: Verdant Fund LP, which is the owner of GVL.¹ GAR directly influences and controls GVL through this ownership structure and various acts of guiding, directing and influencing the operations in GVL plantations through physical presence, policies, monitoring of progress, technical advice, training and management level exchanges among others. GAR has a duty of care to prevent wrongful acts by GVL.

The Cayman Islands are a tax haven that have recently been blacklisted by the EU.² The Verdant Fund LP and related entities have been registered as “Excluded Person,” which means they are exempt from regulation by the Cayman Island Monetary Authority.³ Intertrust Corporate Services is the Cayman division of the Dutch Intertrust NV and has been entrusted by GAR to manage the Verdant Fund LP, as well as GV Holdings Ltd and Verdant Capital Partners Ltd in the Cayman Islands.⁴ A trust firm acts as a local representative on behalf of foreign clients and provides administrative and management services as well as coordinating corporate financial planning advisory services.

¹ Various documents, including the 2010 Concession Agreement between GVL and the Liberian Government, and the USD1.5 credit memo state that GAR is an investor in the Verdant Fund LP, which owns GVL: GVL Concession Agreement, <http://goldenveroleumliberia.com/index.php/downloadable-content/concession-agreement>, 1 September 2010, (30 January 2018) & Golden Assets International Investment Ptd Ltd, Information Memorandum dated 10 April 2015, on US\$1,500,000,000 Multicurrency Medium Term Note Programme, Guaranteed by GAR: (8 March 2018)

² <https://www.taxjustice.net/2020/02/14/after-brexiteu-blacklists-uks-territory-cayman/>

³ Cayman Islands Monetary Authority, <http://www.cima.ky/search-entities> (12 February 2018)

⁴ General Registry Cayman Islands, <http://www.ciregistry.gov.ky/portal/page/portal/reghome/companies> (9 February 2018)

Intertrust NV is a Dutch multinational company listed on the Amsterdam stock exchange with its headquarters in the Netherlands. It sets up and manages subsidiaries, or letterbox companies, for multinational companies. These ownership structures arranged by GAR are red flags for tax avoidance.

GAR is a publicly traded company listed on the Singapore stock exchange. The Widjaja founding family has a controlling stake in the company. Silchester International Investor's LLP is a substantial shareholder and is UK-based firm specialising in equity investment on behalf of rich individuals and institutional investors⁵

The top bond and shareholder financial institutions in GAR are from the US (The Vanguard Group Inc, BlackRock Institutional Trust, Kopernik Global Investors LLC, Dimensional Fund Advisors LP, The Investment Fund for Foundations, CALPERS pension fund, Van Eck Global (Dutch parent), TA Associates, JP Morgan Chase), from Italy (Banco Mediolanum), Luxembourg (Sparinvest), Sweden (Sjundje AP fonsden), Hong Kong (Robeco) and the Netherlands (Zorg en Welzijn).⁶

3. Country or countries in which the parent company has its operations

GAR operates industrial palm oil plantations totaling around 500,000 hectares in Indonesia as well as processing facilities.⁷

4. Country of company's incorporation/registration

GVL is registered in Liberia.

Chapter III – General Argumentation of the Case

In August 2010 GVL signed an agricultural concession agreement with the Government of Liberia for 350,000 hectares. Of this area, the company is permitted to convert 220,000 hectares into plantation and devote 40,000 hectares to an outgrower scheme. The contract is for 65 years until 2075, with an opportunity to extend the contract for a further 33 years until 2108.⁸ GVL has planted slightly more than 18,000 hectares⁹ of industrial plantations, but has not developed any land for outgrowers.

The palm oil plantation is expanding in Sinoe and Grand Kru, two of Liberia's counties where significant parts of the Upper Guinean forest remain and where thousands of Liberians live and work. Liberia is globally recognised as a significant conservation priority country, as it has high levels of biodiversity, species endemism and the largest section (42%) of West Africa's remaining Upper Guinean forest. Liberia hosts the highest population of elephants in the region and is home to pygmy hippopotamus (*Choeropsis liberiensis*) and scattered populations of western chimpanzees (*Pan troglodytes verus*). The expansion of palm oil plantations is identified in Liberia's national biodiversity strategy and action plan as a direct threat to forests and biodiversity.¹⁰

Friends of the Earth research found that hundreds of hectares of High Conservation Value and High Carbon Stock forest were destroyed by GVL, which was first denied¹¹ and later confirmed by GVL¹² and is currently dealt with in a formal complaint procedure with the High Carbon Stock Approach.¹³

⁵ <https://goldenagri.com.sg/investors/shareholder-information/substantial-shareholders/>

⁶ Thomson Reuters Eikon, 'Share ownership: Golden Agri-Resources Ltd - 31 May 2018', viewed in February 2020.

⁷ <https://goldenagri.com.sg/about-gar/our-business/>

⁸ Concession Agreement between Golden Veroleum Liberia and the Government of the Republic of Liberia." <http://goldenveroleumliberia.com/files/Agreements/2014-01-07-GVL-Concession-Agreement.pdf>

⁹ https://rspo.org/view-acop-pdf/oil-palm-growers/Golden_Veroleum_Liberia_Inc_GVL_ACOP2018.pdf

¹⁰ National Biodiversity Strategy and Action Plan II 2017 – 2025, Republic of Liberia, March 2017, <https://www.cbd.int/doc/world/lr/lr-nbsap-v2-en.pdf>

¹¹ Milieudefensie, SDI, FoE US, 2018, High Risk in the Rainforest.

¹² <http://foe.org/wp-content/uploads/2019/10/2019-10-04-Reply-to-SDIFOE-Letter.hilite.pdf>

¹³ <http://highcarbonstock.org/grievance-case-developments/>

Traces of chimpanzee populations and sightings of pygmy hippo in and near plantation areas are frequent, including in Numopoh and Tartweh-Kabada areas. The impact of expanding industrial plantations on these populations' habitats is detrimental.

Since the start GVL has been mired in conflict with local communities. As of 2012 multiple complaints to the RSPO had been filed by local communities and NGOs. A February 2018 RSPO Complaints Panel decision affirms a series of ongoing violations by GVL, including failure to implement adequate free, prior and informed consent (FPIC) procedures, destruction of sacred sites, coercion and intimidation of community members and continued development of disputed land.

The RSPO Complaints Panel has ordered GVL to cease operations in multiple locations in its concession area.¹⁴ GVL is not complying with the timelines of the Complaints panel¹⁵ and communities continue their complaints and concerns, especially since GVL has now started processes to renegotiate the Memoranda of Understanding with communities. For example the Numopoh community states it will not sign a new memorandum unless GVL complies with the obligations in the old one, including providing for health-care, education, roads, safe drinking water, jobs, payments to community funds and proper FPIC process.¹⁶

Human rights violations and threats to Environmental Human Rights defenders are reported by local communities and civil society. In 2015, for example, 17 community members were arrested and put in jail for a year without proper trial after community protest in Butaw at the insistence of GVL.¹⁷ They were only released in 2016 due to lack of evidence and have never received compensation or redress.

GVL's operations and GAR's investment constitute violations of international standards including the United Nations Guiding Principles on Business and Human Rights (UNGPs), Free and Fair Labor in Palm Oil Production Principles, Liberian national laws and GVL and GAR's corporate sustainability policies, as well as the No Deforestation No Peat No Exploitation (NDPE) sourcing policies of several of GAR's downstream customers.

GVL's land acquisition processes violate Liberia's Community Rights Law and Land Rights Policy, as they disregard communities' land and natural resource rights. GVL's 65-year concession agreement contravenes Liberia's Public Lands Law, which states that no such lease shall exceed 50 years.¹⁸ GVL's concession agreement allows the company to withhold tax payments for 65 years, in violation of Liberian tax code.

Chapter IV – Impacts: Violations of Peoples Rights and Destruction of the Environment

1. What are the main impacts of the company's operations in the place the accusation is being made?

- Destruction of High Conservation Value and High Carbon Stock forests, expansion of plantation area impacts populations of threatened species such as pygmy hippopotamus and chimpanzee.
- Communities report on pollution and disturbance of water courses, lack of safe drinking water and fishing areas.

¹⁴ Complaints Panel's decision on Golden Veroleum Liberia's (GVL) Complaints, Roundtable on Sustainable Palm Oil, February 13, 2018, http://foe.org/wp-content/uploads/2018/05/GVL_CPs-Final-Decision.pdf

¹⁵ <https://askrspo.force.com/Complaint/s/case/50090000028ErzuAAC/> accessed 14 February

¹⁶ Numopoh community letter to SDI, October 2019.

¹⁷ The New Snake Oil? Violence, Threats, and False Promises at the Heart of Liberia's Palm Oil Expansion, Global Witness, July 2015, https://www.globalwitness.org/documents/18046/New_Snake_Oil_-_July_2015_-_Final_lores.pdf

¹⁸ Liberia Extractive Industries Transparency Initiative (LEITI) Post Award Process Audit Final Report," LEITI/Moore Stephens, May 2013, http://www.leiti.org.lr/uploads/2/1/5/6/21569928/leiti_post_award_process_audit_final_report.pdf

- Rights violations including landgrabbing, arbitrary arrests, development of conflicted land, intimidation and coercion are reported.
- Loss of livelihoods and living space as well as loss of healthy forest areas impacts on people's food sovereignty and development opportunities.
- Worker health and safety issues, including accidents during travel to work in company vehicles.
- Ill-treatment of workers impacts on people's wellbeing and livelihoods (income).
- Conflict within and between communities and decreasing social cohesion.
- Destruction of cultural and spiritual areas of local communities.
- Failure to provide adequate and requisite information to communities impacted by GVL's activities.

2. In the impacts mentioned above, what has the company's involvement been?

The impacts are through the direct effects of GVL's operations. However, companies hired by GVL for clearing their land also contributed to these impacts.

3. Who has been mainly or differently affected by the company's activities?

All communities in the concession area have been affected by the company's activities. Key among these are the people of Butaw, Blogbo and Numopoh.

4. What strategies has the company used to legitimise its actions or quell resistance?

- RSPO membership and voluntary company policies.
- Divide and rule tactics in communities. An example is the establishment of alternative community representative bodies that are supported by the company when the communities already had a formal group to represent their interests.
- Denying allegations from civil society, even if clear and compelling evidence is delivered.¹⁹
- Arbitrary arrest and intimidation at the insistence of GVL after community protest,²⁰ and intimidation of community members and EHRDs.
- Refrain from sharing essential information with communities and civil society, such as expansion plans and plantation areas.
- Commitments made to civil society during meetings that are not fulfilled.

Chapter V – Strategies of Resistance: Local and National Level

1. What strategies of resistance have social organisations and affected communities adopted in the company's place of operation?

- Self-organising of communities and inclusive decision making that involves youth and women.
- Civil society has been providing negotiation and legal support to communities in negotiations with the company.
- Training in Liberian and international laws, rights and use of grievance mechanisms.
- Resistance strategies, such as non-signing of MoUs, petitions and demonstrations.
- Women's conferences to ensure the voices of women are included in decision making.
- Participatory research and documentation of rights violations and environmental harm.
- Mapping of plantation areas on community lands.
- International and national lobbying and advocacy for improved practices and policies, including travel to Europe where the financiers of GAR and GVL are based to hold them to account.

¹⁹ <https://foe.org/wp-content/uploads/2018/04/2018-04-04-GVL-Feedback-to-SDIFOE-Report.pdf>

²⁰ Writ of Arrest, June 2015, Greenville City Magisterial Court, Sinoe county

2. Has a case been presented before a local, national or international court?

No, but the Independent National Commission on Human Rights (INCHR) of Liberia has produced a report on the case of violent repression, intimidation and arbitrary arrests during and after the Butaw protests in 2015.²¹ The affected Butaw people are still working with civil society and lawyers to achieve justice and redress.

3. Is there evidence of corporate influence and capture that has played a role against the interests of the affected people? How do you describe the company's relationship with the local / national government?

In 2018, a community-based forest monitor that researched chimpanzee presence in the plantation area was intimidated by community members working for the company. This was reportedly after the company informed workers that the work of the forest monitor was going to put them out of their jobs thus setting up the workers against their own people and the general interest of the communities to hold the company accountable.

4. Has the company/corporation filed a case against the government - using the ISDS (Investor to state dispute system) or other dispute mechanisms, at ICSID & other Tribunals – what was the outcome?

No

5. Has the company/corporation filed a case or taken other steps against a community organisation or community activists?

At the insistence of GVL dozens of community members were arrested in 2015 and 17 people were jailed for one year, of which one person died.²² GVL sometimes halts community activists or civil society at the gates of the plantation in order to prevent information gathering and research on their sites.²³ GVL is reported to use coercion and intimidation tactics against community members by the RSPO complaints panel²⁴ and civil society.

6. What are the main obstacles for access to justice for affected communities?

Lack of trust in the judiciary system, lack of strong law firms based in the area and lack of financial means to hire a strong legal team required to repeatedly appear in the court in Sinoe County, Liberia where GVL is based.

Chapter VI – Global Context: Policies, Actors, States and National / International Institutions and Frameworks relevant to the case

1. What official international instruments and/or international declarations are being ignored or violated by the accused company?

GVL's operations and GAR's investment constitute violations of international standards including the United Nations Guiding Principles on Business and Human Rights (UNGPs), Free and Fair Labor in Palm Oil Production Principles, Liberian national laws and GVL and GAR's corporate sustainability policies, as well as the No Deforestation No Peat No Exploitation (NDPE) sourcing policies of several of GAR's

²¹ <https://InchrLiberia.com/Images/ButawRiotReport.pdf>

²² Clearance, December 2017, 14th Judicial Circuit Court, River Cess County & name list from affected Butaw citizens, October 2019.

²³ Butaw citizen reports to Friends of the Earth, October 2019 & September 2018 twitter reports from Friends of the Earth and response from GVL: <https://twitter.com/goldenveroleum/status/1045308068345581569>

²⁴ <https://askrspo.force.com/Complaint/s/case/50090000028ErzuAAC/> &

downstream customers. GVL's operations are not in compliance with High Carbon Stock methodology and RSPO principles and criteria. GVL's practices are not in line with the responsibilities of everyone under the UN Declaration on Human Rights Defenders.²⁵

2. Which national and international institutions are facilitating the entry and operations of this company / consortium?

The Liberian government has signed a concession agreement that does not comply with the national laws of Liberia: GVL's land acquisition processes violate Liberia's Community Rights Law and Land Rights Policy, as they disregard communities' land and natural resource rights. GVL's 65-year concession agreement contravenes Liberia's Public Lands Law, which states that no such lease shall exceed 50 years.²⁶ GVL's concession agreement allows the company to withhold tax payments for 65 years, in violation of Liberian tax code.

3. Was the company's entry to the country facilitated by the policies of international financial institutions?

A USD 500 million loan facility from the Chinese Development Bank with a total tenure of 15 years was registered by GAR at the Singapore Stock Exchange on 13 March 2012 for the sole purposes of developing palm oil plantations and related infrastructure to be implemented by GVL in stages.²⁷

4. Which mechanisms or instruments did these financial institutions use to facilitate the entry of the corporation?

Loan facility

5. If it is a transnational corporation, what has the position of the government of the corporation's country of origin been? Has it facilitated the entry of the corporation into the country where it is being denounced?

The Liberian government is actively pursuing expansion of industrial plantations by foreign investors. The tax breaks are one of the measures to that effect. Rather than investing technical and financial support for the millions of smallholder Liberian farmers and focusing on development that benefits the livelihoods and food sovereignty of Liberians, the government chooses to focus on industrial agriculture and provides concession agreements and permits for foreign investors. According to Land Matrix, around 15% of the land is under contract by foreign investors, mainly in long-term leases.²⁸ This does not take into account the forest land that is contracted to industrial logging firms.

6. In the place the company is being denounced, have the national and local governments favoured the company by making changes to legislation? Are these changes related to the impunity with which the company acts? What has the position of the national government been in the conflict?

In 2018, the government of Liberia enacted into law the land rights law. However, the law falls short of protecting communities' areas/lands in which concession companies are already operating. In more cases, the government of Liberia has used and positioned state security (especially anti-riot armed personnel) to intimidate community members who have indicated that the process of acquiring their land was not done correctly.

²⁵ INCHR, 2015, Report from the INCHR's Fact-Finding Mission on the Butaw Riot of May 26, <https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx>

²⁶ Liberia Extractive Industries Transparency Initiative (LEITI) Post Award Process Audit Final Report, LEITI/Moore Stephens, May 2013, http://www.leiti.org.lr/uploads/2/1/5/6/21569928/leiti_post_award_process_audit_final_report.pdf

²⁷ GAR, "Banking Facility for Golden Veroleum Limited of USD500 million," 13 March 2013, <https://goldenagri.com.sg/wp-content/uploads/2016/02/GAR14-13-03-2013-Banking-Facility-for-Golden-Veroleum-Limited-of-USD-500-million.pdf>

²⁸ <https://landmatrix.org/stay-informed/liberia-country-profile/>

7. What role are the company's majority shareholders / owners playing?

GAR has been supporting GVL every step of the way and is controlling its plantation operations through assumption of responsibility, factual control and interference, specific expertise and knowledge. Examples of those actions are technical support and staffing, training and exchanges of staff, field visits of high level management and technicians, monitoring of progress,²⁹ among others. GAR's Forest Conservation Policy, now embedded in its Social and Environmental Policy applies to GVL.³⁰

8. Is the company receiving public or private funding? From whom?

The main financial institutions creditors (loans and underwriting) over 2014–2019 for GAR are Mitsubishi from Japan, Bank Negara Indonesia, Malayan Banking, Oversea-Chinese Banking Corporation, CIMB Group from Malaysia, China Development Bank, Rabobank and ABN Amro from the Netherlands, Raiffeisen Bank International from Austria, Bank Mandiri from Indonesia, Citigroup from the US, and Credit Suisse from Switzerland among others.³¹

9. Has a lobby or interest group become involved with the intention of favouring the company in the conflict?

The consultancy Earthworm foundation is supporting GVL in improving policies and practices and a sustainability action plan.³² IDH, the Dutch Sustainable Trade Institute, has been partnering with the Liberian Government and GVL since 2015 to develop the outgrower programme, but this has ended without reaching its objectives.³³ IDH international consultants have wasted considerable amounts of donor money.

10. Are you aware of any policies, requirements or procedures of the lending institution/s that are being violated?

OECD guidelines for financiers. Many financiers have policies in place that require clients to prevent conversion of High Conservation Value forests and human rights violations. Nevertheless these financiers continue financing GAR and/or GVL.

This form is based on the "Technical Form for the Presentation of a Case Against a Transnational Corporation", from the Permanent Peoples Tribunal, used on the occasion of the Southern Africa's Permanent Peoples Tribunal on Transnational Corporations (Manzini - Johannesburg, 2016-18)

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²⁹ GAR statement, July 2018, <https://goldenagri.com.sg/wp-content/uploads/2018/07/180720-GAR-statement-on-GVL-voluntary-RSPO-membership-suspension.pdf>

³⁰ GAR Social and Environmental Policy, 2016, <https://goldenagri.com.sg/wp-content/uploads/2016/01/GSEP-English.pdf>

³¹ Forests & Finance database, updated in March 2019 by Profundo, data without segment adjusters and derived from Bloomberg, Thomson Reuters, Trade Finance Analytics and corporate information such as annual reports.

³² <https://www.earthworm.org/members/golden-agri-resources> and <https://goldeneroleumliberia.com/gvl-sustainability-action-plan-progress/>

³³ <https://www.idhsustainabletrade.com/landscapes/south-east-liberia/>