

19 September 2015

The Complainants

Liberia

Attn : Green Advocates,
 Save My Future Foundation
 Sustainable Development Institute
 Forest Peoples Programme
 Social Entrepreneurs for Sustainable Development
 Kulu United Development Association

Dear Sir/Madam,

Complaint - Golden Veroleum Liberia- Final Decision

With reference to the preliminary decision of the Complaints Panel (the Panel) dated 22 April 2015.

The Panel is very well aware of the criticism levelled at the RSPO fact finding team; revisions have since been put in place, to ensure that any future RSPO fact finding team will operate independently.

The Panel has reviewed the responses from the complainant CSO's dated 13 May 2015 and subsequent evidence, and attempted to group the individual complaints into several categories. The following is their final decision:

Complaint/Issue	Rationale	Decision of the Complaints Panel
<p>1. Concession Agreement (CA)</p> <ul style="list-style-type: none"> • Concession agreement is illegal • No consultation with people/communities • Not compliant with other laws on granting of concession by Government to foreign companies 	<p>The Panel takes cognisance of the following :</p> <ul style="list-style-type: none"> i. The CA has been passed by the Liberian Parliament. ii. The CA can be interpreted in different ways in relation to its legality and compliance with legal process as the case maybe. iii. No consultation took place with the affected communities prior to the signing of the CA by the government. 	<ul style="list-style-type: none"> i. The RSPO's Complaints Panel does not have the mandate to assess the legality of the CA. ii. The CP takes the view that the CA allows GVL to operate in a manner that is in conformance with the RSPO Principles & Criteria and GVL is accountable to ensure the provisions of the CA are implemented in accordance with the RSPO rules. iii. To ensure that outstanding concerns following perceived inconsistency between the CA and RSPO P & C are addressed, GVL is hereby instructed to enter into discussion with all complainants to address all concerns that are still open, concerning compliance with RSPO P & C.

<p>i. Relocation Clause</p> <ul style="list-style-type: none"> Allows for relocation of the communities 	<p>i. The Panel is cognisant of the relocation clause contained in the CA, but this should be read together with GVL's 'no relocation policy'.</p> <p>ii. The 'no relocation policy' is further repeated expressly in its Memorandum of Understanding (MOU) with communities and serves as a safeguard for the communities.</p> <p>iii. Also, the Panel notes that any relocation is subject to Government approval and compensation.</p>	<p>i. Therefore, the Panel's opinion is that the existing policy underlines GVL's commitment to avoid any arbitrary relocation.</p>
<p>2.Lack of Free Prior Informed Consent (FPIC) process</p> <ul style="list-style-type: none"> No FPIC of the communities obtained by GVL No Memorandum of Understanding has been signed with communities 	<p>The RSPO team confirmed the existence of the following :</p> <p>i. There was a socialisation programme.</p> <p>ii. There was sharing of the concession agreement.</p> <p>iii. Joint mapping was carried out with the affected communities.</p> <p>iv. Memorandums of Understanding (provisional in some cases) have been signed with communities.</p> <p>vi. Local government officials have also witnessed the MOU.</p> <p>v. All this is documented in the Standing Operating Procedures of GVL.</p> <p>This points to a systematic FPIC process</p>	<p>The Panel's decision is :</p> <p>i. There is now a systematic FPIC process in place but GVL needs to demonstrate that it has followed the process on each MOU that has been signed.</p> <p>ii. All provisional MOUs with the communities need to be converted and signed as permanent MOUs, which clearly specify the duration, rights and obligations of the parties and clear identification of the land to be developed</p> <p>iii. GVL must also check all the MOUs prior to the revised SOP, to ensure conformance with RSPO rules.</p>
<p>3.High Conservation Value (HCV) issues</p> <ul style="list-style-type: none"> GVL was clearing HCV forest without HCV assessment in breach of RSPO rules. They were damaging farmlands, in the process of clearing land. GVL were not respecting sacred land 	<p>i. The Panel finds that in Butaw, the HCV areas that were damaged during the initial clearing prior to the 2013 RSPO stop work order (which is still in effect),has since been rectified based on the TFT report in February 2013.</p> <p>ii. The damage to water ways caused by roadbuilding has been noted and GVL</p>	<p>i. The Panel is satisfied that the company has followed RSPO rules on HCV conservation since the complaint, based on the 5 NPP that were submitted.</p> <p>ii. However, the Panel instructs where HCV was cleared without a HCV assessment prior to the Complaint, then GVL needs to appropriately compensate for those</p>

<p>and old towns and were damaging them</p>	<p>has been instructed to remedy it in June 2014.</p> <p>iii. The Panel notes that the HCV assessment has been conducted for the 5 New Plantings which have been submitted to the RSPO.</p>	<p>clearances; this includes both HCV 1-4 as well as HCV 5-6.</p>
<p>4. Inadequate compensation/land compensation and the Community Development Fund(CDF)</p> <ul style="list-style-type: none"> The payment of US\$5.00 per hectare (as per CA) is not commensurate with the value of the land given. 	<p>i. The CA states that a payment of US\$5.00 per hectare planted by the company shall be paid into the CDF;</p> <p>ii. This payment is separate from any compensation that is paid to landowners for the acquisition of the land by the company.</p>	<p>The Panel finds that</p> <p>i. The funds that are allocated to the CDF are not compensation for land acquired. The CDF is additional to the land compensation and meant to support the common development needs of the communities.</p> <p>ii. As such, it is not to be regarded as compensation for land acquisition.</p> <p>iii. This Complaint is not justified</p>
<ul style="list-style-type: none"> The management of the Community Development Fund (CDF) is controlled by GVL. 	<p>The Panel notes that the composition of the Board of the CDF does provide for participation of the community and the company.</p>	<p>The Panel does not have jurisdiction to comment on the validity of the provision in the CA ,however, the Panel hereby instructs GVL to ensure that:</p> <p>i. There is a balanced representation on the board of the CDF. This to ensure that the interests of the communities are met.</p> <p>ii. The CDF meetings and decisions should also be made public, to ensure transparency of the whole management and administration of the fund to guarantee that they are for the benefit of the local communities.</p> <p>iii. It must be highlighted that the CDF is not a part of the compensation, in return for land or crops in MOUs with communities, but a separate community development fund.</p>
<p>5. Crop Compensation Payment</p> <ul style="list-style-type: none"> Inadequate crop compensation 	<p>i. The crop compensation payment has been fixed by the Ministry of Agriculture.</p> <p>ii. The compensation rates have since been revised on 29th March 2013.</p>	<p>GVL must provide proof that:</p> <p>i. It has paid the rates set by the Ministry of Agriculture, and</p> <p>ii. That since 29th March 2013 the new rates have been used, for all its land acquisition activities.</p>

		Under these circumstances, it would be inequitable for the communities to retrospectively claim the difference between the old rates and new rates.
<p>6. Employment</p> <ul style="list-style-type: none"> • Demands that every able-bodied person is employed • Jobs must be reserved for local communities where development is taking place. • The communities also demanded that others from outside the community be excluded • A demand that local people be hired for managerial positions 	<p>i. GVL has a policy (ESIA 9.6.2) to ensure local staff is hired as per Article 12.b of the CA.</p> <p>ii. There are policies in place to educate and train Liberians for key positions in the company in the near future.</p>	<p>The Panel found that GVL has hired 4040 local staff out of a total workforce of 4080. This is 99% of the total number of staff of employed by GVL.</p> <p>However, it would be unreasonable to expect GVL to exclude other Liberians, who are not from local communities as economic development is meant for all Liberians. iii. Sourcing of key skills which may not be available locally, must also be considered. GVL should be able to hire outside talent when required.</p>
<p>7. Harassment/intimidation</p> <ul style="list-style-type: none"> • GVL harassed people (communities/GVL employees) who are against the development 	<p>i. The RSPO team found no evidence of a concerted effort by the company to harass people in the general concession area.</p>	<p>The Panel would like to stress that any action to intimidate dissenting opinions by GVL representatives is unacceptable.</p>
<ul style="list-style-type: none"> • GVL provided vehicles to the Liberian police/government officials 	<p>ii. GVL have said that they have provided vehicles to the local police/government on a needs basis.</p> <p>iii. The utilisation of GVL vehicles to transport persons, who were arrested by the police, subsequent to alleged or suspected crimes may have contributed to the harassment claims.</p>	<p>The Panel hereby, strongly recommends that the company refrains from providing its vehicles to the police/local government for any activity that may be seen to suppress free opinion and expression.</p>
<ul style="list-style-type: none"> • Hiring of ex-combatants/warlords, who are alleged to have threatened community members and employees who spoke out against GVL. 	<p>The hiring of ex-combatants is part of the <i>'Disarmament, Demobilisation, Rehabilitation and Reintegration (DDRR) programme by the UN Mission in Liberia (UNMIL)'</i>.</p>	<p>The Panel is of the opinion that it would be wrong to deny these people the right to be employed in the absence of strong proof of wrong doing.</p> <p>However, known and confirmed ex-combatants shall not be part of any social teams of GVL, who are tasked with obtaining Free Prior Informed Consent of the communities.</p>

RSPO

Roundtable on Sustainable Palm Oil

<ul style="list-style-type: none"> • Use of violence by GVL employees 	<p>No proof of use of violence by GVL employees was found by the Panel from the report by the RSPO team.</p>	<p>The Panel nevertheless wishes to remind GVL that use of violence is prohibited and unacceptable by virtue of their membership in the RSPO as defined by RSPO Principle and Criteria 6.13.</p>
<ul style="list-style-type: none"> • Community members and NGOs have been stopped from entering the concession area by the security personnel. 	<ul style="list-style-type: none"> i. The company has a right to put the necessary security measures in place ii. On safety and security grounds to prevent unlawful intrusion iii. And also to protect members of the general public from accessing these sites and putting themselves at risk. 	<p>The Panel understands the concerns of the NGOs/CSOs. The Panel recommends that:</p> <ul style="list-style-type: none"> i. Access to these sites if needed, shall be via a formal request to GVL and records of these visits must be kept and published to show transparency. ii. Access to sacred sites within the concession should be accessible by a more informal method to be agreed upon by community members and GVL by negotiation.
<ul style="list-style-type: none"> • Intimidation by government officials 	<ul style="list-style-type: none"> i. The RSPO has no jurisdiction to inquire into the conduct of government officials 	<p>The Panel recognizes that there may be occasions where Project Affected Communities (PACs) either specifically request the presence of Government of Liberia (GOL) officials, or specifically request that GOL officials should not be present during deliberations and negotiations. GVL should attempt to ascertain the wishes of the community and discreetly advise GOL officials of the outcome.</p> <p>The Panel recognizes that while GVL may advise GOL officials not to attend, ensuring their non-attendance is out of GVL's control, and GVL has no legal standing on this matter.</p> <p>It will generally be appropriate for officials to be present at formal signings of any agreements or MOU. GVL's role in ascertaining PAC wishes on attendance or non-attendance of GOL officials during discussions, and conveying these views to GOL officials must be incorporated into the GVL SOP on FPIC.</p> <p>Any complaints by the community against GOL officials should be pursued through government grievance mechanisms.</p>

<p>8. Operating in disputed areas.</p> <ul style="list-style-type: none"> Dispute between communities: of Wedabo Zoloken – Gblebo/Blebo in Grand Kru, where one community is contending that GVL is working on disputed land 	<p>i. The RSPO team’s report was clear that GVL was working in a non-disputed area and that an MOU has already been signed with the particular community.</p> <p>ii. It was also clear that the disputed area was left undisturbed.</p> <p>ii. The dispute has since been settled in September 2014 through government efforts.</p>	<p>Based upon the fact, the disputes between the Zoloken and Bleebo communities has been settled by the government in Sept 2014.</p> <p>GVL must adhere to the terms and conditions of that agreement and respect the boundaries as defined by the government in the Sept 2014 settlement.</p>
<p>9. No waiver/consent was obtained for construction of road to Bestnewlu.</p>	<p>i. There was no FPIC process completed at the time of the visit by the RSPO team</p>	<p>The Panel is satisfied that the consent from all the stakeholders for this road's construction has since been obtained.</p>
<p>10. GVL is carrying out mining in the area.</p>	<p>i. No mining equipment or activity was seen by the RSPO team during the site visit to the mill together with the NGOs and the community.</p>	<p>The Panel believes that since no evidence of such activities were found, GVL is not conducting any mining activities.</p>
<p>11. Clearance of areas in Lower Kulu were done without consent.</p>	<p>i. MOU has been signed with the Tarjuowon communities.</p> <p>li. There are dissenting voices on the completeness of the FPIC obtained.</p>	<p>i. The Panel finds that the signing of the MOU and Social Agreement with Tarjuowon communities and the participatory mapping suggest that the consent has been obtained.</p> <p>ii. The Panel recommends that GVL engage with the dissenting voices to address the outstanding issues.</p>
<p>12. Flawed ESIA report and Environmental Protection Agency permit</p>	<p>i. The RSPO team met the Environment Protection Agency of Liberia</p> <p>ii. The RSPO team inquired into the process of granting the environmental permit in detail.</p> <p>iii. The method has been deemed to be stringent.</p>	<p>The Panel is satisfied based on the RSPO team's meeting with the Agency, that GVL has satisfied its requirements, prior to the granting of the permit.</p>

<p>13. i. The NGOs/CSOs are unaware of the GVL Grievance Mechanism</p> <p>ii. GVL is not engaging responsibly with local, national and international stakeholders.</p>	<p>i. There is evidence that GVL has communicated to all the stakeholders</p> <p>ii. Details of the GVL Grievance mechanism is found in the MOUs that have been signed.</p>	<p>i. The Panel notes that the GVL did make efforts resolve the issues brought up by all stakeholders.</p> <p>ii. The company has voluntarily posted key information on its website since late 2013.</p> <p>The Panel is satisfied that GVL has made genuine attempts to resolve both issues. However, the Panel encourages GVL to use communication methods that are convenient and gives local communities access to the said information.</p>
<p>14. i. GVL is influencing the government to dismiss officials who are critical of the GVL development.</p>	<p>The Panel is unable to assess these allegations as no evidence was submitted. The Panel did not have the means to verify the validity of this allegation.</p>	<p>No decision was taken but the Complaints Panel will re-consider if the complainants can submit evidence.</p>
<p>ii. GVL is faking signatures on the MOU signed.</p>	<p>The Panel was unable to assess as the team did not have the means to verify the validity of this allegation.</p>	<p>No decision was taken but the Complaints Panel will re-consider if the complainants can submit evidence.</p>
<p>15. Latest complaints in 13 MAY 2015 letter</p> <p>i. GVL has developed plantations on disputed land by referring to the Provisional Memorandum of Understanding Incorporating Social Agreement between Numopoh Community and Golden Veroleum (Liberia) dated 28th April 2014.</p>	<p>1. based on the MOU that was posted in the GVL website http://goldenveroleumliberia.com/files/MoU/2014-05-07-Numopuh.pdf, the <u>disputed land was not included in the development.</u></p>	<p>i. The Panel finds that the complaint is inappropriate, because the disputed land, Phase 1 is not part of the Numopoh MOU and Social agreement and</p> <p>ii. No development has taken place in the said location pending the resolution of the land dispute between the communities.</p> <p>iii. GVL must ensure that any disputes must be resolved prior to the development of any land.</p>
<p>ii. GVL has developed land comprising of Wieh and Tuoh towns in Tarjuowon without the relevant communities' free, prior and informed consent (FPIC).</p>	<p>i. Based on the MOU that was posted on GVL website http://goldenveroleumliberia.com/files/MoU/2014-05-07-Tarjuowon-MOU.pdf</p> <p>ii. The documents were scrutinised by the RSPO team</p>	<p>i. The Panel is of the view that the consent has been obtained and the joint mapping carried out prior to any development work being done.</p> <p>ii. The continued claims on these towns are best resolved through engagement between the company, and the communities who signed the MOU as well as the complainants.</p>

The Panel's further decisions are as follows:

1. Provision of legal advice to communities during the FPIC process

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.

2. Company vehicles

The Panel hereby strongly discourages the company from providing its vehicles to the police, under any circumstance other than for humanitarian aid. GVL must avoid providing assistance to the government agencies to address security issues. This is a task which we feel is best undertaken by the UN agencies in Liberia.

3. 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 Compensation Development Fund, and socialize it to all communities and NGOs/CSOs.

4. GVL must commit to revise the management and administration of the Compensation Development Fund to improve the transparency by which it is operated as detailed in Item No. 4 above.

5. GVL shall continue to engage with all the NGOs/CSOs especially KUDA and follow-up on the meetings of 30 April 2015.

6. 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.

7. GVL must put in place a clear plan to finalize provisional MOUs i.e. *"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."*

8. 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 (e.g. concession agreement). Intimidation or coercion is prohibited.

9. Access of NGOs to villages must not be restricted, albeit, within the guidelines as mentioned in Item 7 above.

10. GVL must make reports of participatory mappings publicly available and all stakeholder groups must be included in the mapping process.

11. 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.

We look forward to a complete action plan with time lines on the implementation of all the above by 2 October 2015.

Yours sincerely,



Ravin Krishnan

Complaints Coordinator on behalf of the Complaints Panel of the Roundtable on Sustainable Palm Oil



Roundtable on Sustainable Palm Oil

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