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Subject: Herakles Farms: The Environment vs. Palm Oil in Cameroon with a Dose of Unethical Behavior Mixed in

1. (SBU) Summary. A U.S. investment in Cameroon's palm oil sector has drawn widespread domestic and international criticism because of its possible environmental and socio-economic impacts. SG Sustainable Oils Cameroon (SG-SOC) is a subsidiary of the New York-based Herakles Farms (HF).

Additionally, critics claim that the firm is harvesting forests and cultivating land in direct violation of Cameroonian law — without proper authorization from the Ministry of Forests and Wildlife and without title to the land. For its part, HF claims to have the consent of the Government of the Republic of Cameroon (GRC) as well as the support of many local communities; unless the GRC instructs it otherwise, HF intends to move forward with its investment. Local organizations that are opposed to the project struggle to hold HF and SG-SOC. End
Summary.

Background

2. (SBU) In early 2008, Sithe Global (SG) hired a Cameroonian consultant, Dr. Isidore Timti, to develop a large, commercial grade palm oil project in Cameroon. Timti identified the land for the project site and in March 2008, a senior SG representative visited Cameroon and met with then-Prime Minister Ephraim Inoni, who is now on

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trial on unrelated corruption charges, to discuss the investment. Inoni was supportive of the idea. During that visit, SG also explored the idea of constructing the Limbe gas to energy power station, but decided against pursuing it. SG later established SG-SOC and sold it to HF. (Note: HF and SG are headed by the same chief executive and share the same office space in New York. End Note.)

3. (SBU) In May 2009, HF presented the GRC with a proposed agreement, which included a favorable fiscal regime based on Cameroon's free trade zone incentives, and requested a lease for its proposed land parcels. The proposal circulated among several government ministries, stalling at the Ministry of Economy, which disagreed with HF's business plan and held that the palm oil should be produced for biofuel rather than consumption. HF resolved these concerns and in September 2009, signed an "Establishment Convention" with then-Minister of Economy Paul Motaze.

4. (SBU) The 45-page binding document authorized HF to undertake palm oil cultivation. It set a rental price for the land but did not designate the amount of land or its location. Nevertheless, HF arrived at a verbal agreement with the GRC for land in the Southwest Region. Timti began conducting environmental and social impact assessments and proceeding with plans to stake out approximately 40,000 hectares in Nguti and 30,000 hectares in Mundemba.

5. (SBU) The absence of a land title, however, presented a problem to HF, which needed something more than the "Convention" to satisfy its investors and acquire equity insurance, which it sought from the U.S. Overseas Private Investment Corporation (OPIC). It also presented a legal dilemma, inasmuch as Cameroonian law (Decree 76-166 of April 27, 1976) stipulates that land concessions larger than 50 hectares must be requested through a clearly delineated process and must be approved ultimately by the Head of State.

6. (SBU) In late 2010, SG-SOC hired John DeMarco, a Canadian national, to assist with establishing the land boundaries for the plantation.

9. (SBU) In May 2011, the Presidency "rejected" the HF file. International NGO contacts confirmed this, saying that the Presidency had sent the land title applications to the Ministry of Agriculture and Rural Development for additional review.

Agriculture Minister's senior technical advisor responsible for the file, who said that his Ministry would not approve the investment in its present form. The ministry's primary problems with the project, he said, were its size and location, adjacent to several national parks and protected areas.

10. (SBU) These environmental concerns surfaced at the Roundtable for Sustainable Palm Oil (RSPO), a Kuala

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Lumpur-based certification body promoting better governance in the palm oil sector. In line with the United Nations Declaration on the Rights of Indigenous Peoples, RSPO required proof of the “free, prior, and informed consent” of local populations — something that HF could not provide. RSPO appointed the Worldwide Fund for Nature (WWF) to facilitate discussions between HF and local community representatives. When WWF and the other eight official complainants recommended a site visit in August 2012 and after former WWF employee whose wife is from the area allegedly made some remarks that indicated severe bias, HF announced its departure from the RSPO, citing “bad faith” on the part of at least one of the RSPO members.

11. (SBU) As the RSPO process fell apart, HF proceeded with clearing roads, felling trees, and planting four nurseries. A U.S. national took over project coordination in Cameroon following the death of Timti, who suffered a heart attack while visiting the United States in December 2011. HF later told Emboff that, at about this same time, the Presidency had given its tacit consent. He said that the Presidency had advised HF to move forward to demonstrate its “seriousness;” and once proven, HF would receive its signed land title from President Biya. HF also put forward that the original 2009 Establishment Convention included a clause that allowed President Biya to nullify the agreement within three years of its signing, and that the Presidency’s silence at the end of that period signaled consent.

12. (SBU) At present, the public campaign against HF continues to mount and critics have grown more vocal. An American activist, with support from U.S.-based organizations, produced a film called the *Herakles Debacle*. On February 19, 2013, in Washington, Greenpeace and the Network for the Fight against Hunger (RELUFA) released “Above All Laws: How an American Company operates illegally in Cameroon.” Reuters, Radio France International, France 24, National Geographic, Huffington Post, and other news outlets and publications covered the story negatively. The UN Special Rapporteur on the Right to Food allegedly criticized the investment during his visit, as did Germany’s Minister for Development. According to some sources, it was also the subject of discussion during President Paul Biya’s February 2013 meetings with members of the French business community in Paris, and, since November 5, Biya and Ambassador Jackson have each received over 500 e-mail letters condemning the project.

Allegation: Breach of Cameroonian Law

13. (SBU) A Cameroonian lawyer, barrister Malle Adolf, alleges that SG-SOC is in violation of Cameroonian law for occupying land without a land lease; for cutting down forests without authorization; for clearing forests and planting nurseries without performing satisfactory environmental and social impact assessments (decree 2005-0577/PM); and for not legally registering in Cameroon. Adding to this, others state that the land is not free of claims and the Establishment Convention is not in accordance with Cameroonian law.

14. (SBU) According to Cameroonian law, the GRC is the custodian of lands in the national domain and there is an established procedure to request and allocate it. Procedures differ slightly from land in the national domain (“non-permanent forest estates”) and the private property of the State (“permanent forest estates”). SG-SOC’s proposed land parcels fall under both categories: national domain and private state property. Applying for land in the national domain requires three steps: (a) the applicant must submit a request to the local Ministry of Lands office; (b) a consultative committee must present its recommendation; and (c) the appropriate GRC authorities should give their approval. Any land allocation above 50 hectares must be signed by the Head of State. The Ministry of Lands confirmed in a letter to SG-SOC that it had not followed these procedures.

15. (SBU) The use of land categorized as private property of the State requires authorization from the Ministry of Forests and Wildlife. According to an independent forest observer recruited by the GRC, “SG-SOC conducted tree felling without authorization inside the permanent forest estate. ... SG-SOC did not follow the procedures and legal terms guiding the alienation of the permanent forest estate.” Additionally, “the Ministry of Agriculture and Rural Development and the Ministry of Forests and Wildlife were not associated to the implementation of the development project in the area requested, according to the regulations in force.”

16. (SBU) A technical advisor at the Ministry of Agriculture later reiterated this point, calling the

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project "illegal." The Ministry of Forests issued a \$50,000 fine, condemned the tree-cutting as illegal, and required HF to re-negotiate its Establishment Convention. (Note: In an abrupt reversal, the Ministry of Forests later issued HF the necessary authorizations, to the surprise of conservationists, apparently having hastily re-categorized the lands as "secondary forest estates." End Note.)

17. (SBU) Detractors also accuse HF of falsifying letters of support from local communities. They claim that in some instances SG-SOC forged signatures and in other instances took signatures from attendance rolls at community meetings. They also claim that SG-SOC representatives are misleading local populations by telling them that HF has received its presidential authorization and land titles.

18. (SBU) Lastly, critics condemn HF for enforcing security on land that it does not rightfully possess. For instance, in August 2012, SG-SOC representatives physically assaulted Besingi, who was riding his motorbike along a road in or near the SG-SOC project site. A France 24 journalist, who had been trailing Besingi, caught part of the abduction on film (www.france24.com/en/20121002-planethope-cameroon-palm-oil-rush-forests-development-agriculture-biodiversity-villagers-animals).

Problem: Socio-Economic Implications

19. (SBU) Skeptics of the project suggest that local villagers, who will likely transition from smallholder farmers to plantation laborers, will be worse off in terms of both food security and economic income. Although not wealthy, the villagers generally have abundant amounts of food. Cash crops — primarily cocoa and non-timber forest products — provide small sources of income, amounting to as much as \$200 per month. The Convention exempts SG-SOC from paying social security benefits and ties salaries to the minimum wage, which is currently \$56 per month.

20. (SBU) SG-SOC has committed to the construction of wells, roads, schools, and medical facilities, thereby improving access to clean water and public services. However, reference to these activities in the proposed agreements is vague, according to some detractors, and does not clearly specify SG-SOC's obligations. Some local residents suggest that they would be prepared to support the investment once SG-SOC explicitly defines which land it will cultivate and what it will offer in exchange.

21. (SBU) HF executives note that it is conducting land demarcation in partnership with local communities and farmers may keep their land if they so choose.

allocation for local farmland.

22. (SBU) Critics also ask whether the investment as a whole provides equitable return to Cameroon. HF will reportedly lease the land for \$70,000 per year and will pay a monthly stipend to community leaders of \$100 (\$200 upon production). It will not pay taxes for the first ten years, any import or export duties for the life of the project, and only income tax (at a rate of 15%) from year 11 onward. HF may carry losses forward indefinitely, which could postpone income tax revenue, particularly under scenarios of transfer pricing. These benefits derive from Cameroon's free trade zone incentives (although the Convention does not bind HF to abide by the free trade zone requirements, i.e., exporting a certain percentage of production).

Problem: Environmental Impact

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24. (SBU) Much of the social outcry against the project stems from concerns about the project's environmental impact. In March 2012, a group of international scientists, including professors from Stanford, Duke, George Mason, and James Madison Universities, publicly denounced the project and documented its environmental hazards. Citing satellite images and aerial photos, they argued that nearly three quarters of the proposed land was covered in forest similar to that found in Korup National Park.

25. (SBU) Development agencies point out that the project in its current form will disrupt wildlife routes between Korup National Park (to the north) Rumpi Hills Forest Reserve (to the south), Bakossi National Park, and Banyang BMbo Wildlife Sanctuary (both to the east). Additionally, local communities note that they have already "given up" so much land to these protected areas, placing significant pressure on what remains; they also remind that most of the zone had been promised as community land in exchange for Korup National Park. Given the scarcity of land, others warn that the project could create social conflicts and push farmers, who have few remaining alternatives, into protected areas.

26. (SBU) The concession's environmental impact was a sticking point for essentially every actor in the conservation sector, including WWF, IUCN, and the Wildlife Conservation Society (all three of which are USG grant recipients). European development agencies, some of which had been carrying out environmental projects in the proposed project area for several decades, also disapproved of the proposed location for the investment. The High Conservation Value Resource Network, a global conservation organization with World Bank funding, dismissed the environmental impact assessment as "completely inadequate" and "severely lacking in every section."

28. (SBU) Although HF claims that it was presented with six or seven different options and chose its current location because it would have the smallest impact on biodiversity, conservationists claim that there are few parts of the country richer in biodiversity. According to [redacted] Timti may have looked at other sites, but he was not qualified to make an environmental assessment, nor was he interested in doing so. [redacted] said that Timti chose the Southwest Region because he was familiar with that area.

Comment

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32. (SBU) The case takes on additional relevance, given the interest by other palm producers in entering the Cameroonian market.

Either way, we expect the issue to be resolved in time: if local communities eventually reconcile themselves with the project, President Biya is likely to issue the land decrees. If they do not, then the Presidency may reject the investment at no political cost.

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End Comment.

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Signature: JACKSON

Drafted By: YAOUNDE:Cleverley, Mikael X.

Cleared By: Executive:Thome, Gregory D

Approved By: Executive:Jackson, Robert P

Released By: YAOUNDE:Jackson, Robert P

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