

## CAMEROON: OPEN LETTER FROM CEO OF HERAKLES FARM IN RESPONSE TO REPORT ON LAND DEALS IN AFRICA-REJOINDER.

by Malle Adolf, Cameroonian lawyer

As an active participant in this matter I read with some interest and consternation some of the statements made by Mr. Bruce Wrobel, the CEO of Heracles Farms which has a subsidiary in Cameroon called SG Sustainable Oils Cameroon, Ltd. that has the ambition of establishing an oil palm plantation in the South West Region of Cameroon in purported response to what is contained in a report recently published by the Oakland Institute concerning the project. In particular, I am more concerned with his statements concerning the legality of the activities of SG SOC in Cameroon and the position of the litigation against the company instituted by me as Counsel for SEFE which occupy such a prominent place in Mr. Bruce's so-called response and it's so called deceptive ambitious social policy.

a) Violation of Cameroon Law: Without the necessity of going into the issue of the legality of the establishment convention which SG SOC signed with the Cameroon government on 17 September, 2009 (this will be addressed at the appropriate time in the appropriate manner), we have no doubt in our mind that all of the SG SOC activities in Cameroon are tainted with illegality. In the first place, they do not have a lease properly granted under Cameroon law. Secondly, they started cutting down forest and degrading the environment when they started to develop their nurseries in three locations in South West without even complying with the minimum legal requirement of carrying out a satisfactory environmental and social impact assessment. These are some of the reasons which led us into filing an action against SG SOC at the High Court of Ndian Division on 04-08-2011 and thereafter, an application for an interlocutory injunction to be placed on the activities of the company in until the case filed on 04-08-2011 was disposed of by the court. For the purpose of clarity I reproduce here in extenso, the questions which we put before the Court to answer:-

- 1) Whether or not the Defendants (i.e. SG SOC and Dr. Timti) can legally enter upon land in Mundemba and Toko Subdivision, indiscriminately plant survey beacons purporting to demarcate areas of land without due authorization and without regard to existing farms and village settlements?

- 2) Whether or not the Defendants can legally commence their operations of establishing an oil palm plantation in Mundemba and Toko Subdivisions of Ndian Division without having satisfactorily carried out a social and environmental impact assessment pursuant to the provisions of Law No. 96/12 of 5 August, 1996 relating to environmental management and its decree of application No. 2005/0577/PM of 23 February 2005 laying down modalities for carrying out environmental impact assessment?
- 3) Whether or not the 1<sup>st</sup> Defendant (i.e. SG SOC) is a company legally incorporated in Cameroon in accordance with the OHADA General Commercial law and the OHADA Uniform Act relating to commercial companies and economic interest groups?

SG SOC never filed a defence either to this substantive action in which the above stated major issues were raised or to challenge our application for an interlocutory injunction, which application was, of course, granted.

Instead of SG SOC seizing the opportunity at this initial stage to demonstrate that it was acting in conformity with Cameroon law, they chose to hide behind a petition against the presiding judge alleging nebulous reasons. Mr. Bruce has said some where before that they had petitioned against the judge for, “his affiliations that could have produced a biased outcome”. I wonder whether Mr. Bruce is also a soothsayer to have foreseen the outcome of the case (see Mr. Bruce responses to inquiries regarding the sustainability and intentions of Heracles Farms SG Sustainable oils project in South West Cameroon published on 20 March 2012). Unfortunately for SG SOC, the judge who replaced the first judge ruled on the matter on 27/02/2012 as follows:-

1. That the Applicants herein (i.e. SG SOC) who are the Defendants in the substantive action are temporarily prohibited from proceeding with their acts on the lands found in Mundemba and Toko Subdivisions until the mandatory environmental impact assessment is carried out with a view to evaluate the impact of their acts on the natural and human environment of these areas, establish all reasonable measures to avert them.
2. Compensate those directly affected by their farms and village settlements on their basis of the relevant law which is the Prime Ministerial text on the subject.
3. Compensate those affected by taking of their ancestral possessory rights over the land.

4. Reach a clear understanding with the indigenous people by way of a memorandum of understanding for the project to avert any future conflicts.

This is the decision of the Court given in the matter on 27/2/2012 but Mr. Bruce also said in his publication of 20 March, 2012 that our case was dismissed. And these are what Mr. Bruce styles “nuisance suits”. Many more of these are on the way.

In the meantime, soon after we sued SG SOC to *Court* they hurriedly put up a document which they said was a report of a social and environmental impact assessment they has carried out in the project area and presented it to the then Ministry of Environment and Nature Protection so as to pre-empt the orders which the Court was likely going to make. The said ESIA was submitted to the Ministry in charge of the Environment on the 5<sup>th</sup> August, 2011 when our case was already in Court

On August 23, 2011, the ministry of environment and nature protection in violation of the provisions of Article 12(i) of Decree No. 2005/0577/ pm of 23/02/2005 which stipulates that notice of public hearing of an ESIA must be given to the public at least 30 days in advance in a press release of that day fixed public hearings in Mundemba and Nguti from August 29 to September 3<sup>rd</sup> 2011 from 10 a.m. to 4 p.m. and in addition, contrary to the law on the matter, copies of the ESIA documents were not given to opinion leaders, elites and other stakeholders in advance. These public hearings were also fixed at a time when the roads in the area, especially during the rainy season of last year were extremely bad and mostly inaccessible making it difficult for people to travel to Mundemba or Nguti.

Despite all the above irregularities, the Ministry proceeded to issue SG SOC a certificate of environmental conformity on September 18, 2011, only a few days after the public hearing ended on 3/9/2011.

Immediately this fact came to our knowledge, we (SEFE) immediately wrote a petition to the minister of environment and nature protection protesting against the glaring irregularities and illegalities committed as far as the examination of SG SOC so-called ESIA was concerned and called upon him to withdraw the certificate issued to SG SOC. This is our legal procedure in administrative matters. When the minister failed to react to one letter within the time stipulated in law, we

seized the administrative Bench of the Supreme Court of Cameroon where the matter is presently pending hearing.

Soon after the court ruling of 27/2/2012, Counsel for SG SOC filed an application at the Ndian High Court by which he was praying the court to rule that SG SOC has complied with the orders of the court. He attached as exhibits to the supporting affidavit three documents, a letter to SG SOC from the minister of environment and nature protection dated 05/08/2012, a copy of a certificate of environmental conformity dated 18/9/2011 and a document titled "Common commitment" dated 31-08-2011 emanating from the office of the senior Divisional officer for Ndian Division. It is upon this evidence that they had complied with its orders of 27/2/2012. Incidentally, the same judge who came from Buea who delivered the ruling of 27/2/2012 insisted on hearing the application though he had ceased to be a judge of the High Court. On the date fixed for the hearing I raised preliminary objections to the application on points of law. Surprisingly, the judge overruled me and proceeded to rule on the substantive application without hearing arguments of counsel. The judge ruled that on the basis of the three documents I have mentioned above, SG SOC had complied with the court's orders of 27/2/2011. I wonder whether anyone can comply with a court's orders before those orders are made. We wasted no time to apply against the said ruling of 9/4/2012 and the matter is now on appeal at the South west Regional court of Appeal, Buea.

It is worthy of note that SG SOC have done nothing as regards complying with order 2,3 and 4 of the court's ruling of 27/2/2012, yet Mr. Bruce claims that they had complied with the orders of the court. It is also important to point out that under Cameroon law, an appeal except that to the Supreme court stays execution of the judgment. What this implies is that the execution of the court's orders of April, 2012 is suspended since there is an appeal against the ruling. The subsisting orders are those which the court made on 27/2/2012 which SG SOC have done nothing to comply with. There is no gain saying, therefore the company is operating in illegality.

Mr. Bruce assertion that the Cameroon government would not allow them to operate in illegality is hollow. Everyone knows that many people do the wrong things until somebody bothers to complain. So the fact that the government of Cameroon has not complained does not necessarily mean that the company is not violating the law and floating court orders with impunity.

## **What returns to the people of Cameroon?**

I have heard over and over again Herakles Farms talk of the social and economic benefits which will accrue to the local communities from the establishment of the oil palm plantation in their area. The actual nature of these so-called benefits lie only in the minds of the promoters of the company. No matter what good intention one may harbor in mind in respect of a given situation, those intentions amount to nothing if they are only the mind of the person who forms them. As one eminent English judge said a long time ago a man's mind cannot be tried for even the devil himself knows not the heart of man. Intentions are thus worth nothing if not manifested in some overt act. In the instant case, the contractual obligations of Herakles Farms operations in Cameroon are as contained in the establishment convention. Any one reading this document cannot escape to note the astuteness of the businessman in its provisions. The document is so craftily drafted and all details carefully taken care of to protect the interests of Herakles Farms that the motive to maximize profit is obvious.

Indeed the establishment convention is so drafted that in almost all its provisions, it is the government of Cameroon which has to pay if anything goes wrong with the project. Is this document, as it is, a social charter? Where in this document have the interests of the local populations been taken care of? Any objective person who reads the establishment convention would agree with me that it appeared as if those who drew it up assumed that there were no people living in the area for they were completely forgotten.

Mr. Bruce's assertion, therefore, that in the development of their oil palm plantation it will not be necessary to move people or take over their farms is laughable. How is that practically possible in an area which he himself admits has many villages? What plan have Herakles Farms put in place to handle the situation if it becomes necessary to move people or take over their farms? In the "establishment convention" it is even provided that the company may rely on the coercive force of the state to remove people who refuse to move voluntarily. Has Mr. Bruce even bothered to have a survey conducted to know exactly how many individual farm holdings are in the project area, to whom they belong and where they are located?

As their social corporate responsibility is concerned Herakles Farm has taunted people before with the so-called memoranda of understanding with the local populations. Mr. Bruce himself says that they have a memorandum of understanding with each village which is false. There are only two documents- one allegedly signed for the people of the Nguti segment of the project and the other for Mundemba and Toko Sub Divisions. Even a beginner in the study of the law of contract will have no difficulty in dismissing the documents as being invalid contracts. When I first read these documents, I could hardly associate them with Herakles Farms which had produced a document such as the “establishment convention”

And as I have said on several occasions before these documents were not signed on behalf of SG SOC, and as such, they are not legally binding even if other issues such as the capacity of those who purported to sign the documents on behalf of the communities are ignored.

e. Irrevocable Environmental Impact: So much has already been said by specialists on the issue of the unsustainability of the SG SOC oil palm project because of its probable negative impacts on the environment of the area. Herakles Farms claims that they are environmentalists and that they have conducted all necessary studies including HCV. I do not know if Mr. Bruce has forgotten so soon that the so called HCV report they purported to have conducted on the SG SOC concession received an unfavourable review by the HCV Resource Network Technical Panel Peer Review of April 2012.

Furthermore, SG SOC in their business plan state that they intend to build five oil mills in the project area. Neither the chosen locations of the mills nor their impacts on the environment are mentioned in their environmental and social Impact Assessment report which they published in August, 2012. Is this what Herakles Farms mean when they claim to be environmentalists?

d. Opposition to the Project: I wish also to correct some mistakes made by Mr. Burce in his analysis of the events that occurred in Fabe. He gives Fabe primacy out of proportion in his calculations of the acceptance and opposition to the SG SOC project. There is nothing peculiar about Fabe village apart from the fact that it is one of the villages hosting one of the oil palm nurseries. Mr. Bruce is misinterpreting the usual euphoria and excitement shown by people when strangers

come into their village as a general acceptance of their project. That is very misleading. What happened in Fabe is that not long after the initial excitement began to go down the people began to see the SG SOC masquerade- promises made which were never intended to be met, lies and influence peddling. The people came to realize that their chief had led them by the nose into accepting the establishment of SG SOC nursery in their village. They, therefore, rose in revolt. They blocked the road leading to the nursery, placed traditional injunctions thereon and asked that the workers of the company living in the village to leave. This was a spontaneous reaction of the villagers without the influence of any outside person or organization.

What happened on June 6, 2012? A few days before June 6, it was announced that the newly appointed Governor of the South West was going to make a maiden visit to Toko on 06/06/2012. Toko is the headquarters of Toko Sub Division in Ndian Division. SEFE decided to seize the occasion of the visit of the august guest to the Sub Division to draw the attention of the government to the fact that the people of the area were not satisfied with the SG SOC oil palm project. This is what non-governmental organisations do normally to draw government attention to the causes they stand for. Thus SEFE within the short time mobilized its followers to stage a peaceful demonstration at Tokoon the day of the Governor's visit, and since it was most unlikely that the Ndian administration would allow SEFE representatives to have any dialogue with the Governor, it was decided that silent messages by way of banners, T-shirts and placards with the inscriptions mentioned by Mr. Bruce be used as means of passing across the SEFE message. So, the demonstrations of 6/6/2012 did not take place at Fabe village which administratively is even within Mundemba Sub Division.

## **CONCLUSION:**

I would like to advice Herakles Farms that it is not by mudslinging that they will develop their oil palm plantation. They need to acknowledge that, may be due to improper advice and insufficient knowledge, their concept of the project was wrong from the beginning. If they still desire to go on with the project, they have to re-design it all over, and they should be grateful to all persons and institutions

who have pointed out the things which are wrong with the project, for they would have wasted their investment and only to realize so when too late to make amends.

Malle Adolf September 2012