



CAO ASSESSMENT REPORT

**Regarding Concerns in Relation to
IFC's Investment in Salala Rubber Corporation-01/Margibi and Bong (IFC Project
#26510) in Liberia**

March 2020

Office of the Compliance Advisor Ombudsman
for
the International Finance Corporation and the
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org

About the CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA-supported projects in a manner that is fair, objective, and constructive, and to enhance the social and environmental outcomes of those projects.

For more information, see www.cao-ombudsman.org

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LIST OF ACRONYMS

| | |
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| ARD | Alliance for Rural Democracy |
| CAO | Office of the Compliance Advisor Ombudsman |
| EPA | Environmental Protection of Agency of Liberia |
| FPIC | Free Prior Informed Consent of indigenous peoples (FPIC) |
| GAI | Green Advocates International |
| GPSNR | The Global Platform for Sustainable Natural Rubber |
| IFC | International Finance Corporation |
| INTERCULTURES | Compagnie Internationale de Cultures |
| LAC | Liberian Agricultural Company |
| LNP | Liberian National Police |
| MIGA | Multilateral Investment Guarantee Agency |
| NRWP | Natural Resource Women Platform |
| RSPO | Roundtable of Sustainable Palm Oil |
| SGBV | Sexual and Gender-Based Violence |
| SRC | Salala Rubber Corporation |
| YNCHR | Yeagbamah National Congress for Human Rights |

1. OVERVIEW

In May 2019, a complaint was lodged with CAO by members of 22 communities from the Margibi and Bong Counties in Liberia (the “Complainants”), supported by the NGOs Green Advocates International (GAI), Alliance for Rural Democracy (ARD), Natural Resource Women Platform (NRWP), and the Yeagbamah National Congress for Human Rights (YNCHR) (hereafter referred to collectively as the “Salala Affected Indigenous Communities Support Organizations”). The complaint raises concerns related to the operations of Salala Rubber Corporation (SRC or the “Company”), which is one of Liberia’s largest rubber-producing and processing companies, located in Margibi County (together, SRC and the Complainants will be referred to as “the Parties”). In June 2019, CAO determined that the complaint met its eligibility criteria and conducted an assessment, during which the Complainants expressed an interest in engaging in a dispute-resolution process convened by CAO, while the Company decided to have the case referred to CAO’s Compliance function for appraisal of IFC’s role. In keeping with CAO’s Operational Guidelines, the complaint will now be handled by CAO’s Compliance function.

This assessment report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, and the next steps.

2. BACKGROUND

2.1. The Project

According to IFC project disclosures in February 2008, SRC was Liberia’s fourth-largest rubber producing company. It produced semi-processed rubber used to manufacture tires.

SRC was created by a merger in July 2007 between a standalone rubber processing factory called Weala Rubber Company and a standalone rubber plantation formerly called Salala Rubber Corporation. The plantation was established in 1959 by the Weala Rubber Company and was acquired by the Socfin Group in 2007, after the civil war in Liberia.¹ SRC is owned and managed by the Socfin Group and the SRC’s plantation is located in Margibi County.

In June 2008, IFC committed a USD 10 million A-Loan to SRC to finance the Company’s rehabilitation and optimization program (the “Project”). According to IFC, the Project was intended to complement SRC’s management plans to rehabilitate and expand the plantation, which had been neglected during the civil war. Optimizing operations specifically entails the planting of new rubber trees on the existing concession, renovating plant and equipment, rebuilding administrative and social infrastructure, including worker housing, and meeting additional working capital needs.²

At the time of IFC’s investment, SRC was 90 percent owned by Agrifinal N.V. (a privately-owned agribusiness investment company incorporated in Belgium) and 10 percent owned by Compagnie Internationale de Cultures (Intercultures) (an agribusiness company registered in Luxembourg). SRC was managed by Socfin Consultant Services (Socfinco), a subsidiary of Intercultures, which manages all group operating companies.³ In 2007, Intercultures changed its name to Socfinaf, and in 2012, Agrifinal sold its shares to Liberian Agricultural Company (LAC). Today, according to Socfin’s website, SRC is 64.9 percent owned by Socfinaf and 35.09 percent owned by LAC.⁴ Both Socfinaf and LAC are part of the Socfin Group.

¹ See Socfin’s website at <https://www.socfin.com/en/locations/src>

² See IFC Disclosure Website at <https://disclosures.ifc.org/#/projectDetail/SPI/26510>

³ See IFC Disclosure website, project sponsor section, at <https://disclosures.ifc.org/#/projectDetail/SPI/26510>

⁴ See financial data at <https://www.socfin.com/en/investors/src>

2.2. The Complaint

On May 27, 2019, Green Advocates filed a complaint with the CAO on behalf of the Complainants from 22 communities located in the Margibi and Bong Counties, in Liberia. The Complainants are members of the communities of Gleagba, Bloomu, Old Dokai, New Dokai, Bondolon, Massaquoi, Martin Village, Dedee-ta 2, Kuwah-ta, Jorkporlorsue, Gorbor, Kolledarpolon, Monkey-tail, Ansa-ta, Lango, Garjay, Dedee-ta 1, Kolongalai, Sayue-ta, Tartee-ta, Varmue, and Pennoh.

The complaint raises concerns about land grab and forced eviction, lack of Free Prior and Informed Consent of the indigenous peoples (FPIC), destruction of ancestral graves and sacred sites, economic displacement and loss of livelihood, water pollution, poor employment conditions, and labor rights violations, limited access to schools and health facilities, sex and gender-based violence (SGBV), reprisals, threats and intimidation, non-compliance with national and international law, as well as with IFC's Performance Standards and lack of freedom of association.

The issues raised by the Complainants during the assessment are described in more detail below.

3. ASSESSMENT SUMMARY

3.1. Methodology

The assessment aims to obtain a better understanding of the issues and concerns raised by the Complainants by gathering information from different stakeholders, without making a judgment on the merits of the complaint. The assessment also seeks to establish which CAO process the Complainants and the Company would like to pursue a dispute resolution process or compliance review of IFC's performance (see Annex A for CAO's complaint-handling process).

In this case, CAO's assessment of the complaint included:

- a desk review of project documentation;
- in-person meetings with the IFC project team;
- telephone conversations and in-person meetings with the Complainants and the Salala Affected Indigenous Communities Support Organizations;
- telephone conversations and in-person meetings with the Company in Liberia and Belgium; and
- in-person meetings with external stakeholders at the request of the Complainants and the Company.

Because of the sensitive nature of some of the complaints made by the Complainants, CAO put additional measures in place to deal with allegations of sexual and gender-based violence (SGBV). These steps include ensuring that a consultant with relevant expertise forms part of the CAO team for purposes of the assessment.

This document summarizes the views heard by the CAO team from the Parties and describes the next steps, based on the decisions made by the Complainants and the Company.

3.2. Summary of Views

The concerns raised in this complaint have been clustered as follows:

- Land Grabs and Forced Eviction and Lack of Free Prior and Informed Consent of the indigenous peoples (FPIC)
- Destruction of Ancestral Graves and Sacred Sites
- Economic Displacement and Loss of Livelihood
- Water Pollution
- Poor Employment Conditions and Labor Rights Violations
- Limited access to Schools and Health Facilities
- Sexual and Gender-Based Violence
- Reprisals, Threats, and Intimidation
- Non-Compliance with IFC's Performance Standards and National and International Laws
- Lack of Freedom of Association

3.3. Complainants' Perspective

3.3.1 Land Grabs and Forced Eviction and Lack of Free Prior Informed Consent of the indigenous peoples (FPIC)

The Complainants explained that they are indigenous people, recognized by the Government of Liberia ("Government") as aborigine and that their ancestors inhabited the concession area before the independence of Liberia in 1847 and before the Government awarded the concession to the Company in 1959. They stated that since the concession was awarded in 1959, there have been continuous land grabs and forced eviction by the Company without their Free Prior and Informed Consent. The Complainants claim that this has had negative effects on the indigenous communities' religious, cultural, natural resources, and social and economic livelihood. They further stated that the evictions happened despite the Government's request to the Company to identify and only survey unencumbered land, as a condition for awarding the concession.

The Complainants explained that during the expansion of the plantation between 2008 and 2014, prior notice was given to some communities before the land was taken but not all communities received notice. They reported that in some cases, the Company bulldozed towns, and in other cases, the Company took the communities' land or destroyed their crops with no compensation. Some Complainants also stated that they left their towns when the Company started clearing neighboring towns because they knew that their towns would be destroyed next. Complainants expressed that the land taken by the Company during the expansion was their inheritance and that some Complainants have deeds dating back to 1904 and the 1950s, as well as tribal certificates. They explained that a tribal certificate is an encumbrance on the land. It indicates an intention to buy land and is the first step in acquiring a land deed. According to the Complainants, the Public Land Laws of Liberia prohibit the President from awarding a concession on land that is subject to prior appropriation or encumbrance. Once a tribal certificate has been issued for a piece of land, the formal process for acquiring a land deed starts and therefore the same piece of land cannot be subject to future or subsequent acquisition.

3.3.2 Destruction of Ancestral Graves and Sacred Sites

The Complainants reported that one of the consequences of forced land eviction by the Company during the expansion of the plantation was the destruction of graves and sacred sites (for example, snake and poro bushes). They explained that remnants of their destroyed

or desecrated ancestors' graves and sacred sites are still visible on the Company's rubber plantation. They said that the Company had no regard for their traditional practices and values and did not pay compensation for the destroyed graves and sacred sites in villages including Lango, Garjay, Kolleh, and Kuwah. They explained that while the Company claims to have provided funds and materials to perform cleansing rituals for some communities, those were only provided after the destruction occurred. Moreover, the Complainants stated that these negotiations occurred with individuals who did not represent the entire communities' views. In addition, they consider the funding and rituals insufficient to remedy the destruction of ancestral and cultural sites.

3.3.3 Economic Displacement and Loss of Livelihood

The Complainants explained that during the Company's expansion of the rubber plantation, between 2007 and 2013, the Company destroyed their rubber, cocoa, and palm trees, and perennial crops without warning or compensation.

The Complainants argue that the Company started clearing their crops and informed them that the land belonged to the Company and was required for expansion of the plantation. They further claim that most of the community members who owned farms and had crops planted were not invited during the time SRC surveyed their land and enumerated their crops. The Complainants said that the Company assured them that they would be compensated for their crops and subsequently invited some Complainants to the Company offices, where they received partial compensation. Others received no compensation at all. The Complainants insisted that the compensation process was bias, unfair, discriminatory, capricious and arbitrary. They allege the Company took pictures of the Complainants who received payment and made them sign documents as proof of compensation. However, they were not given copies of these documents.

The Complainants stated that the compensation received was not enough because they were compensated at USD \$3 per rubber tree, as opposed to \$18 promised by the Company. They also stated that there was no accurate account of how many trees and crops each person had. Some Complainants alleged that trees and crops were counted by the Company in their absence, and in some instances, counting was either not done or was inaccurate, and the Company gave estimates of Complainants' trees.

Some Complainants reported receiving no compensation, while others said that they were paid for some of their rubber trees, but not for other trees and perennial crops. They further stated that threats, intimidation, and misrepresentation were used to coerce them to accept payment, which was far less than what should have been paid.

The Complainants said that after the Company destroyed their crops, it engulfed communities with rubber plantations and did not leave any farmland for the communities to grow crops. In some cases, the land the Company left for farming was inadequate for the Complainants' livelihood needs. This made it impossible for communities to produce food and resulted in economic difficulties and food insecurity. The Complainants stated that, at first, the Company allowed some of them to use the swamp to grow rice. However, they later stopped this practice, leaving them with no option but to lease land from outside the Company's concession area.

3.3.4 Water Pollution

The Complainants also expressed concerns about their water sources. They said that due to soil erosion, especially during the rainy season, chemicals used by the Company to spray trees in the rubber plantation, pollute their water sources. They also stated that the Company staff members who use these chemicals to spray, usually wash themselves and their protective equipment in the water creeks used by the Complainants for drinking water. The Complainants stated that as a result, they have no safe drinking water. They further stated that in some

villages (Jorkporlorsue, Kuwah Siaffa Molley, Daokai, Massaquoi, and Blomu) the color of the water has changed, the water has a bad odor and has developed a mold-like layer. The Complainants reported that the pollution in the creeks has resulted in rashes and red eyes and has also killed fish. They highlighted additional concerns including loss of creeks and boreholes and water pumps that do not work. The Complainants shared that the water pumps built by SRC in Gorbos, Jorkporlorsue, and Kuwah have all run dry, and this violates the Environmental Protection Agency (EPA) requirements that the Company should build water pumps or create new water sources if the water is contaminated by their activities.

3.3.5 Poor Employment Conditions and Labor Rights Violations

The Complainants expressed dissatisfaction with the Company's employment practices in general. They stated that very few community members affected by the Company's expansion are employed in permanent positions with the Company. The Complainants told the CAO that, often, they are not aware of available jobs within the Company because the jobs are never advertised. The Complainants stated that most people working for the Company are from locations outside the concession area. They further said that many community members are employed temporarily through contractors, sometimes for a day. The Complainants explained that contract workers who work with hazardous chemicals are required to purchase protective equipment. This is expensive and prohibitive given the low salaries of \$3 per day for tappers and \$4 per day for security guards.

The Complainants further asserted that their payment is dependent on production quotas, which they must meet daily. They said these quotas are unrealistically high and difficult to achieve. Because there are more job seekers than jobs available, the Complainants express that anyone looking for work is usually required or coerced to pay between \$10 and \$50 to secure a job with the Company. Sometimes after completing the work, they receive partial payment, or the payment is late. The Complainants also stated that sometimes they are only paid with half a bag of rice and no monetary remuneration.

The Complainants informed the CAO that, at times, when they are sick and unable to come to work, the contractor deducts \$5 from their monthly pay for each day missed. This is more than what they earn in a day. They also explained that if they get injured at work, the Company does not take responsibility. Some Complainants stated that the Company unilaterally changed their employment status from permanent to temporary without following any process.

3.3.6 Limited access to Company Schools and Health Facilities

According to the Complainants, the Company's school policy is discriminatory because children of non-employees do not enjoy the same opportunities as employees' children. The Complainants explained that school fees for children of non-employees are twice as expensive as the fees set for employees' children. They said these fees are prohibitive since they no longer have a way to generate income without farmland. They indicated that employees' children are given first preference for enrollment and non-employees' children are enrolled at a very high cost only if space was available. Some Complainants shared that they sometimes negotiate with friends employed by the Company to register their children as their dependents. This arrangement allows non-employees' children to attend school.

The Complainants explained that the Company's health facility provides limited access to non-employees, except for pregnant women. They further stated that when they do make use of the health facilities, they are overcharged for the services.

The Complainants said that the health facilities are located in places that are hard for community members to access. When there is an emergency or a woman is in labor, residents often carry their sick relative to the clinic in a hammock because the ambulance service is not available for non-employees.

3.3.7 Sexual and Gender-Based Violence

Some Complainants reported having experienced sexual and gender-based violence (SGBV) from the Company's contractors and security guards. The Complainants disclosed that they were sexually harassed whilst working for the Company's contractors. They explained that contractors often requested sexual favors in exchange for hiring women ("sex for work"). In some instances, the contractors would touch them inappropriately during work and then request sex. The Complainants also explained that in some instances the contractors withheld their pay or dismissed them if they refused to have sex. Women also reported that at night, when they use the outdoor toilets, the Company's security guards harassed them by shining torches on them to humiliate them. The security guards were also accused of threatening to kill women who refused to have sex with them. The Complainants informed the CAO that they were told by people advocating on behalf of the Company not to speak about SGBV issues during the CAO assessment.

3.3.8 Reprisals, Threats, and Intimidation

The Complainants expressed concerns about their safety. They said that the Company uses the Liberian National Police (LNP) and their security guards to threaten them. They reported living in fear for their lives.

The Complainants alleged that on October 2, 2013, a group of SRC security guards together with members of the Liberian National Police and the Sheriff from the Bay-Polu Magisterial Court, entered Dokai Town with a search and demolition order and, arrested the Town Chief, Mr. Sansee Fahnbulleh. The Complainants stated that the security guards began destroying structures belonging to the community members as well as some houses in the town. According to the Complainants, the security guards also confiscated valuable property and cash belonging to several community members, including 3.5 tons of unprocessed rubber, one chainsaw, mobile phones, and took USD \$10,000.00 from the Treasurer of the Dokai's Town United Saving Club's house. Club members are mainly established by small-holder rubber farmers and sugar cane growers. This incident was documented by the community in the formal letter of complaint that the people of Dokai Town addressed to Green Advocates on October 27, 2013. The Complainants also reported that one of the Complainants' children died mysteriously during the raid and the police are yet to determine the cause of death or whether it was a homicide. They further stated that their communities are often raided, and community members beaten by the LNP. They expressed that LNP often comes into the communities to instill fear even if they do not carry out any raids.

The Complainants also reported an incident in 2018 where a community member was found dead after he had gone to work. Community members were angered by this and blamed his death on the Company. When they organized protest actions against the Company, several of them were arrested for allegedly damaging Company property.

According to the Complainants, anyone who advocates against the Company for the rights of the community faces serious threats and reprisals to themselves and their relatives, including arrest, torture, and dismissal from work. Complainants stated that they are often arrested and detained for days for allegedly inciting the community until Green Advocates intervenes. Some Complainants reported having been teargassed by the police, resulting in damage to their eyesight.

The Complainants further stated that the Company places restrictions on their movement with a curfew which prevents them from freely moving around after 6 pm (traveling from one community to another or returning from one community to theirs using the normal, regular travel routes through the plantation). They explained that if they are found moving around after 6 pm they are beaten by Company security guards and accused of stealing rubber. The Complainants also informed the CAO that if they plant crops and rubber trees to generate

income, the Company accuses them of stealing rubber belonging to the Company and this can lead to arrests.

3.3.9 Non-Compliance with IFC's Performance Standards, and National and International Laws

Although the Complainants did not raise violation of IFC Performance Standards and relevant laws during CAO's assessment trip, these were raised in the written complaint submitted to CAO.

The Complainants claimed that the Company violated IFC Performance Standards 1-8 through;

- forced acquisition of community land and failure to minimize, mitigate, or compensate communities;
- destruction of crops and sacred sites, and failure to pay proper compensation in a culturally appropriate manner;
- failure to map out indigenous communities within the plantation;
- failure to adequately engage and consult the community and Lack of Free Prior Informed Consent as Indigenous Peoples;
- failure to comply with local and international laws;
- pollution to the environment using hazardous chemicals;
- failure to put in place policies which protect women, and failure to investigate and deal with allegations of sexual and gender-based violence, and threats of reprisals; and
- failure to put in place adequate policies which protect workers and create equal opportunities for jobs.

The Complainants also claimed that the Company has violated national and international laws including:

- The Constitution of Liberia (particularly articles 22, 24 and 65.);
- Liberia's Declaration of Independence;
- Liberia's Public Lands Laws (Under Article 30 and 70 of the Public Land laws);
- Liberia's Interior Regulations;
- Liberia's Land Rights Act (2018) by failing to obtain permission from the tribal authority and to comply with Article 67 of the Interior Regulation of Liberia;
- Liberia's Community Rights Laws (2009) by failing to obtain Free, Prior and Informed Consent (FPIC) during the Company's expansion;
- The International Covenant on Civil and Political Rights (1966) and International Covenant on Economic, Social and Cultural Rights (1966) by forcibly evicting community members from their homes;
- The United Nations Declaration on the Rights of Indigenous People (2007) by failing to observe the right of indigenous people; and
- The African Charter on People and Human Rights (1981) by seizing homes, farmlands, and sacred sites, and causing economic hardship to the community.

3.3.10 Lack of Freedom of Association

The Complainants raised concerns about the Company's behavior before the CAO's visit.

According to the Complainants, in September 2019, after the IFC's supervision visit to SRC's plantation, the Company formed a "Taskforce" made up of senior management and prominent community members. The Taskforce is alleged to have travelled from village to village after the IFC's visit, and before the CAO visit, to discourage the community from supporting the complaint filed to the CAO and to encourage the Complainants and community at large to dissociate themselves from Green Advocates. The Complainants claimed that the Company urged them to tell the CAO that they were already in negotiations with the Company to try and resolve all community grievances. They further asserted that the Company asked them to only tell the CAO about crop compensation and to refrain from raising other issues, including sexual and gender-based violence.

The Complainants explained that during all meetings the Company convened with the community, the Company expressed readiness to resolve the disputes with the community and expressed a desire and readiness to establish a friendship with the community. The Company is alleged to have offered to pay compensation for crops and resolve all outstanding disputes with the community. The Complainants also shared that the Company repaired wells for a few of the community members a few days before the CAO's visit.

The Complainants claimed that the Company also reportedly offered incentives, such as scholarships and jobs to a handful of Complainants and their relatives if they agreed to engage with the Company without Green Advocates' intervention. The Complainants also shared that the Company recruited community members who were initially critical of the Company and paid them to travel from community to community advocating on behalf of the Company and encouraging the community to distance themselves from Green Advocates. The Company is alleged to have set up a Citizen's Union in May 2019, to deal with community grievances to counter the work of Green Advocates. However, the Complainants stated that they do not want to proceed with the CAO complaint without Green Advocates.

3.4. Company's Perspective

3.4.1 Land Grabs and Forced Eviction and Lack of Free Prior Informed Consent of the indigenous peoples (FPIC)

The Company provided background information regarding the Concession Agreement procedure and the difference between a Concession Area and a Development Area. They explained that the Concession Agreement between the Government of Liberia and SRC, which was signed in 1959, stated that "*the Concession area shall comprise a total of 100,000 acres, to be selected from unencumbered public lands within the central province between Yangwelepe (Gibi Mountains), Waung-Gliba and Borlalah River and in Zorzor, Vorijama and Kolahum Districts of the Liberian Hinterland*". Furthermore, the Concession Agreement stated that the Company was instructed "*to file with the Government within 24 months... surveys setting forth the first geographical boundaries of areas it desires to develop*".

The Company explained that under Liberian Law, before the Land Commissioner can approve the Development Area for inclusion within the Concession Agreement, the Development Area needs to be surveyed and confirmation obtained from the Tribal Authority that the land was unencumbered. The Company further explained that despite having a Concession Area of 100,000 acres, the surveyed Development Area encompasses 21,000 acres. Within the Development Area, the plantation today covers 14,800 acres, which includes roads, infrastructure and 11,100 acres of planted rubber trees. The Company clarified that the complaint relates to an IFC funded project, which is an expansion of 3,640 acres that was planted between 2008 and 2014.

The Company stated that as far as it was aware, and although the original Land Commission records were destroyed during the Liberian Civil Wars, there is no reason to believe that the legal procedure for obtaining a concession was not followed. The Company presented copies of the land surveys and a letter dated September 1960, from the SRC management team to

the Clan Chief of the Neyorkpor Clan. The letter states that the Chief's request to have the Clan's proprietary rights to their land acknowledged, was respected by SRC, and the Development Area survey was adjusted accordingly. According to the Company, this demonstrates that there was consultation with the Tribal Authority.

The Company went on to explain that deeds or tribal certificates of land within the Development Area dated after 1959 when the Concession Agreement was signed, held by individuals or groups, are ineffectual under Liberian Law because the Concession Agreement supersedes any subsequent grants to the title. However, the land for which deeds dated before 1959 were issued, whether from a third party or from the Government to an individual or group, could not have been taken without appropriate compensation under the 1847 Constitution of Liberia. The Company also shared that although notice was received from individuals and groups, claiming land within the Development Area, none of the deeds from the claims received pre-dated 1959, and no original documents were provided to verify the authenticity of the Registration Numbers with the Land Commission. In some cases, boundary surveys were undertaken but no anomalies were found.

The Company stated that tribal certificates referred to by the Complainants are neither a title deed nor an expression of interest in land ownership. They explained that tribal certificates demonstrate an interest of local dwellers to live and work with a private individual who sought to acquire land from the Government. The Paramount or Clan Chief who signs a tribal certificate has no authority to transfer title.

The Company refuted claims of forced eviction without Free, Prior and Informed, Consent (FPIC). They stated that FPIC requirements were only recognized under the Interior Regulation of Liberia, which was passed into law in 2001. Therefore, because laws are not applied retroactively, when the Concession was granted to SRC in 1959, FPIC did not apply as the Government had sole sovereignty of all public land under the Constitution. The Company further explained that under the terms of the Concession Agreement, they were permitted to plant within the initial 21,000-acres Development Area without FPIC because the land was originally surveyed as unencumbered. Furthermore, this survey received confirmation from the Tribal Authority that the land was unencumbered and was approved by the Land Commissioner. The Company stated that SRC became the de facto leaseholder of the land in 1959 and that anyone who planted crops within the Development Area after that date required permission to do so from SRC.

The Company went on to explain that although FPIC requirements were included in the 2018 Land Rights Law, Concessions are exempted. Article 33.3 states: "*Save for Concessions... granted in Customary Land by the Government, before the Effective Date of this Act, any interference with or use of the surface of Customary Land requires the FPIC of the Community.*" The Company restated the point that laws do not apply retroactively. However, they stated that if they were to request additional lands from the Government outside of the Development Area, they would be required to obtain the FPIC of the people on customary land because they participate in the Roundtable of Sustainable Palm Oil (RSPO) and The Global Platform for Sustainable Natural Rubber (GPSNR).

The Company also refuted claims that "*residents of Lanco, Garjay, and Tarteeta were evicted in 2010 in the face of bulldozers.*" The Company shared satellite photos to illustrate that villages which were allegedly bulldozed, did not exist at the time of the expansion. The Company also shared a community witness's written testimony stating that although there were houses in these villages in the 1980s when SRC's expansion reached Garjay in 2011, there were no villages left, just a few fruit trees." Additionally, the Company questioned the credibility of the allegation that villages were bulldozed stating that the village of Gorbor-ta with 16 houses and a 60-acre green belt, is the only community within the expansion area that is surrounded by the plantation.

The Company stated that during the project evaluation, the IFC did not recognize the people affected by the expansion as indigenous and therefore concluded that Performance Standard

7 did not apply. One of the reasons put forward by the Company referred to the IFC's Environmental and Social Impact Survey, which included the 2008 National Census results. This indicated that 37 percent of people aged 14 and over (approximately 47,000) in Margibi County, were displaced following the end of the Liberian civil wars in the 1980-1990s. The Company recognized that during the wars, the plantation had been abandoned, the processing factory destroyed, and people began growing crops on Company land within the 21,000-acres Development Area.

During the expansion project from 2008, these displaced people were given a two-year moratorium to complete the harvest of any food crops, and crop compensation was paid for food and agroforestry crops. The expansion project took six years to complete and all claims received for crop compensation were paid.

3.4.2 Destruction of Ancestral Graves and Sacred Sites

The Company responded to allegations of destroying cultural heritage without consultation, by explaining that they understood and respected the importance of preserving traditional practices and protecting all traditional sacred sites including forests, shrines, and graves.

The Company explained that during the expansion project evaluation phase, they were instructed by the IFC to create an Environmental & Social Action Plan to: "1) identify and map socially important, natural features in the plantation (or areas affected by the plantation) and to incorporate protective measures into the management plans; and 2) document all cultural heritage issues to date". The Company stated that all cultural heritage sites within the Development Area are mapped, protected and were planted around during the expansion project.

The Company also shared that meetings were held with the communities that were directly impacted by the expansion project, including the villages located along the plantation boundary and Gorbort-ta, which was surrounded by the plantation. Additionally, they stated that they provided support directly to the Gleegbar and Kolleh communities, to perform cleansing rituals to move their shrines to different locations and that the communities received support through the National Traditional Council of Liberia, with the consent and participation of the Tribal Authorities. The Company presented the Gorbort-ta community to the CAO where the community explained that the gravesites were located within the 60-acre green belt next to the village. They had not been bulldozed or planted over with rubber trees as the complaint alleged.

3.4.3 Economic Displacement and Loss of Livelihood

The Company reiterated that no evictions, physical resettlement, and destruction of homes took place at the hands of the Company. They stated that the alleged towns of Lanco, Garjay, and Tarteet-ta did not exist when the expansion project of 3,640 acres occurred, as evidenced by testimony and satellite imagery. Therefore, compensation claims in these villages, for lost assets are refuted by the Company. The Company illustrated through satellite imagery and site visits, that the communities located along the boundary of the plantation but within the Development Area, were allocated 'green belts' for cultivation and expansion. These communities included Ansa-ta (25 acres) and Kolleh-ta (47 acres). The Company reported that Gorbort-ta, a community within the Development Area, which is surrounded by the plantation, was allocated a green belt of 60 acres.

The Company went on to explain that crop compensation payments were in line with a 2005 procedure established between multiple Government Ministries, LAC and the communities surrounding LAC. A Special Executive Committee (Committee) was established by the National Transition Government to address the expansion of LAC within its Development Area. The negotiated assessment for crops was determined to be \$1.50 per tree but the Committee

agreed a rate of \$3.00 per tree (e.g. of cocoa, coffee, cola, rubber, avocado or coconut); \$50 per acre of sugar cane and \$25 per acre of food crops (e.g. of cassava or pineapple).

The Company stated that in 2008, these rates were accepted by the Ministry of Agriculture, SRC and the Community Leaders for crop compensation in the SRC expansion projects. They described that typically, farmers' fields were counted by a team including representatives from the Ministry, SRC and the farmers themselves, although the Company admitted that in some cases, the representative from the Ministry was not available. The Company shared that the results of the counting were collated and in total, 469 individuals were compensated and received a total of \$483,843.23 between 2010 and 2012. The Company maintained that since the expansion project was announced in 2008, and planting occurred from 2008 until 2014, community members had substantial time to ensure their crops were assessed and payments received. The Company further stated that although some communities complained about the assessment process, no genuine complaint about the non-payment of a claim has ever been received by the Company. They gave an example in 2015, where the Gleegbar community and SRC failed to agree on the number of damaged crops. A dispute resolution process was conducted, chaired by the Ministry of Internal Affairs, which concluded that as a final settlement, SRC would contribute to four social investment projects, including a road, a market, a clinic and the elevation of the school from a primary to a secondary school. A memorandum of understanding was signed between the Company and the community and to date, SRC has completed the construction of the road and the market. The school and the clinic are on hold, pending government involvement.

The Company argued that they put in place measures to limit the community's use of the swamps for growing crops following a request from the Environmental Protection Agency (EPA) to protect the riverine and swamps areas within the Plantation. The Company added that the EPA held workshops at SRC to raise awareness amongst the communities regarding the importance of preserving these habitats by limiting crop cultivation and fishing in the swamps. They further explained that one of their obligations emanating from the bi-annual inspections by the EPA is to continue the community awareness program.

The Company stated they permit the community to produce charcoal from rubberwood when the trees reach the end of their commercial life cycle after 25 years. However, they highlighted that this practice is likely to come to an end, once sustainability compliance programs that prohibit burning come into effect. The Company also expressed that due to the risk of the fires spreading through the plantation to the camps and communities, they have cautioned the communities against setting fires during the dry season, to clear the land of crop residues before tilling. The Company also shared that they place no restrictions on the harvesting of medicinal plants within the forest areas on the plantation, or fishing within the creeks or streams along the boundaries unless EPA restrictions are in place.

The Company further stated that they have recruited 300 permanent employees from the communities, as well as seasonal contractors and casual workers that are employed on an as-needed basis. All of whom have access to the schools and medical facilities, and a subsidized rice program.

3.4.4 Water Pollution

Regarding the allegations contained in the complaint that "*rubber plantations use massive amounts of agrochemicals*", the Company stated that rubber trees require very few inputs and that fertilizer is only used in the first few years after planting. The Company clarified that Mancozeb, a fungicide used in the nursery, is a Class U pesticide under the WHO Classification system. Glyphosate, a Class III herbicide, is only used to spray weeds in the planting lines when the trees are between three to five years old. The Company went on to explain that the WHO classification refers to the toxicity levels of the pesticides and if applied at the right dosage and with the proper personal protective equipment, it could be assumed

that class U pesticides are less toxic than class III. However, all pesticides can be harmful if not used according to the technical recommendations.

The Company went on to explain that once the canopy of the trees made up of overlapping branches and leaves starts closing across the rows, the weeds are suppressed by the shade. Leguminous cover crops are sown when the trees are planted to prevent soil erosion and during the dry season, the leaves drop, eliminating the habitat of insect pests. Therefore, no other pesticides are applied after the first few years of planting.

The Company informed the CAO that pesticides are applied with back-pack sprayers. The sprayer team has been instructed not to apply pesticides within five meters of any riverine system. The Company admitted that in the past, some sprayers rinsed themselves in the streams and creeks after their task until SRC built a set of showers for the team. The Company denied the allegations that the sprayers washed the spraying equipment in the streams.

The Company reported that both the EPA and environment specialists from other organizations, including IFC, have reviewed the Company's pesticide policies and operations and concluded that the quantity of active ingredient applied per acre is negligible. The Company added that it was issued with a three-year EPA permit and as a result, it is inspected by the EPA bi-annually. They also reported that they qualified for ISO 14001, which is an international certification standard for effective environmental management.

The Company said that water quality is tested across the plantation. Samples are taken from boreholes, creeks, and streams from points where water enters (upstream) and exits (downstream) the plantation, to compare the plantation's impact on water quality. The samples are tested for pH, Biochemical Oxygen Demand (BOD), and Chemical Oxygen Demand (COD), and to date, no issues have been found. The Company expressed that they were concerned with the statements in the complaint: "*after SRC sprays, the water turns red and has a noticeable smell*"; and "*when water gets washed into the creeks, the grass turns yellow and then dies*". They said that at no stage has anyone from the communities reported these issues to the County Health Team in Kakata, the SRC clinic or the community leaders. The Company said that they do not understand what would cause these symptoms and urged the CAO to check if the origin of the complaint were upstream of the plantation as there could be an alternative cause.

The Company reported that between 2013 and 2019, it constructed 33 boreholes in the communities surrounding the plantation, to ensure community members have access to potable water. Additional boreholes were constructed by an NGO, Living Water.

3.4.5 Poor Employment Conditions and Labor Rights Violations

In responding to allegations of poor employment conditions and violation of labor rights, the Company stated that there is a Collective Bargaining Agreement (CBA) in place that lists all employment terms and conditions, including wages, tasks, and benefits. The CBA is renegotiated every three years and the current version was signed off and approved by the Company, the Ministry of Labor, and two Labor Unions (SRC Workers Union and the General Agricultural and Allied Workers Union of Liberia). The Company explained that in addition to having two unions in the workplace, they have also established a Staff Association and a Gender Committee, to ensure that all issues reported, suggestions or grievances raised can be received and acted upon.

The Company informed the CAO that it pays wages according to the 2015 Decent Work Act, which stipulates that the minimum wage for a permanent employee or contractor is \$5.50 per day and \$3.50 per day for a casual worker. The Company went on to explain that tappers are also entitled to quality and production bonuses, which can add up to an additional \$3.00 per day over and above the \$5.50 per day. This increases their take-home pay to \$ 8.50 per day.

The Company expressed that the tappers' tasks are set according to West Africa industry standards, based on an eight-hour working day and calculated from detailed time-and-motion studies. The tasks vary according to the number of trees per acre as the distance a tapper can walk per day is the limiting factor. The Company explained that detailed records are kept verifying tapper's payments and bonuses, and in 2018 less than one percent of tappers failed to meet their tasks. They also stated that tools for the job and protective equipment are issued free of charge to the plantation workers, on an annual basis.

The Company explained that it uses a third-party company, JBE Contractors, to recruit contract labor. The recruitment of contractors is monitored closely to ensure that the third-party follows SRC's Code of Ethics and Employment Policies. The Company also mentioned that a grievance mechanism has been set up to ensure that any complaints, including payroll discrepancy or exploitative behavior from the supervisors, are dealt with immediately.

The Company explained that they employ 700 permanent employees and 300 seasonal contract workers. Permanent workers are housed either in one of the eight camps on the plantation or receive a rental allowance to live in one of the communities.

The Company stated that as part of the CBA permanent employees receive two subsidized bags (50 kg) of rice per month. Contract workers receive one bag at cost. In total 15,000 bags are issued to workers per annum, at a cost to Company of over \$300,000. The Company also stated that in addition to the 4 percent contribution made by the employees, it contributes six percent of permanent employees' gross salary to the National Pension and the National Insurance schemes.

3.4.6 Limited access to Schools and Health Facilities

In terms of access to schools, the Company explained that they have built four primary schools and two secondary schools within the plantation. The schools have a total of 2,486 students under the supervision of 51 teachers. The Company reported that annual school fees for dependents of permanent employees are free from nursery until Grade 9 but limited to eight dependents. Thereafter, a \$10 fee per child is charged for Grades 10-12. Annual school fees for contractors are \$10 per child from Nursery to Grade 6; \$15 for Grades 7-9, and \$20 thereafter. The number of dependents for contractors is limited to three. The Company admitted that although priority for enrollment in the schools is given to employees, members of the public have access to the school and are charged annual fees of \$15 per child from Nursery to Grade 6; \$20 for Grades 7-9 and \$25 for Grades 10-12. They compared this to the annual fees for Grades 10-12 in government schools in the area, which vary between \$15 and \$23.

The Company also stated that they provide medical facilities in the plantation consisting of one health center, one outpost, and one ambulance. They stated that the facilities are available free of charge to all employees and their dependents, and accessible to all members from the communities. The Company went on to explain that because 50 percent of the rubber trees planted on the plantation are immature, operations involving labor in those areas are limited. However, as the trees mature and the Company commences tapping, the Company anticipates that there will be a need to build a second medical outpost, serving the communities near the expansion area will be met. The Company reported that educational and medical services cost the Company an annual amount of over \$500,000.

3.4.7 Sexual and Gender-Based Violence

The Company stated that no cases of sexual and gender-based violence (SGBV) have been brought to their attention. Therefore, no cases have been investigated. The Company also shared that both male and female members of the communities have vigorously denied any incidents of SGBV and that the community stated that they would react strongly against any

exploitation or incidence of SGBV. However, the Company admitted that whilst no SGBV cases were brought to their attention, it does not mean that SGBV could not occur. They further stated that they were open to the IFC's offer to bring a consultant, to work on these issues with the plantation industry in Liberia.

The Company reported that in recognition that male and female employees face different challenges in the workplace, they established a Gender Committee in 2017 and put in place all relevant policies. They stated that the Gender Committee is made up of eight female members, composed of three senior staff, three union members and two contractor employees. The Gender Committee's role is to raise awareness of SGBV in the communities surrounding the plantation through monthly meetings conducted in clinics and schools. The Company further stated that complaints to the Gender Committee are received through the tribal chief and women elders in the communities. The Gender Committee also works with the Ministry of Gender, Children and Social Protection.

3.4.8 Reprisals, Threats and Intimidation

The Company provided information regarding several allegations including the arbitrary arrest of activists and community members, accusations that the Company imposed restrictions on movement within the plantation and calls for anonymity due to fears of reprisals.

The Company stated that without the cooperation of the communities, it would be impossible to continue its operations on the plantation. They informed the CAO that they employ 100 security guards from the communities within the plantation. The security guards have standing instructions to monitor visitors entering and exiting the plantation for health, safety, and security reasons. The Company reported that their security guards do not have the power to arrest but are instructed to check for the unauthorized movements of company assets on the plantation, including company property or rubber 'cup lumps' (coagulated latex). The Company explained that it uses a color dye in its cups to mark its production and therefore the identification of Company rubber by security guards is a straightforward and standard procedure.

In response to the allegations of arbitrary arrests, the Company made specific reference to the case of Mr. Kamara and Mr. Pennoh, who they believe are employees of Green Advocates. The Company stated that according to the Complaint filed to the CAO, Mr. Kamara and Mr. Pennoh claim that in 2015, they were arrested and charged with "disorderly conduct and terroristic threats" and that subsequently, Mrs. Pennoh, an SRC employee, was fired without benefits. The Company responded that according to the Weala Police Station charge sheet from 2015, there were a total of 10 charges for the entire year. Mr. Kamara and Mr. Pennoh were arrested and charged with "disorderly conduct and terroristic threats" because they "put fire on the plantation." Additionally, the Company clarified to the CAO that Mrs. Pennoh was employed as an SRC Security Guard and according to a police statement, she intervened during the arrest of her husband and as a result, her position as a company employee became untenable. However, she received a termination package in June 2015. The Company stated that they are unaware of any arbitrary arrests, and that they have full confidence with the police and judicial system.

The Company also responded to the allegation that it had restricted movement. They reported that whilst they had issued a memo requesting all visitors to the plantation to register at the Head Office first, the 'restriction' did not apply to community members. The Company argued that the whereabouts of visitors or personnel is essential to any commercial operation, to ensure the health and safety of both the visitors, employees, and property in case of an incident or emergency.

In response to the Complainants' request for anonymity, the Company stated that it regrets if any community members feel a fear of retaliation. They highlighted the case of Yasaa Mulbah, who stated on Swiss TV that in 2010 she lived in Tarteeta, which had 30 houses and a population of 200 people. The Company publicly refuted these claims and provided counter

testimony from the local Chief and a satellite photo of the area in 2010 illustrated a canopy of trees and no houses. The Company stated that despite the difference in views between Yassa Mulbah and the Company, Ms. Mulbah lives peacefully in the community.

3.4.9 Lack of Freedom of Association

The Company reiterated that it has no issue with NGOs representing the communities with genuine concerns. However, the Company stated that the claim by Green Advocates they represent 22 communities, is not proven. The Company said that it has always and will continue to work with the 81 villages surrounding the plantation. They also explained that they had established a Citizen's Representative Committee, which is a leadership system within the community whereby each village has been grouped into 7 clusters. Each village is represented by 3 elected members and 1 cluster head, giving the Citizen Representative Committee a union of 250 members. The Company shared with the CAO that US\$ 45 million has been invested into rehabilitating the plantation, rebuilding the infrastructure, replanting the trees, recruiting and training its employees, and contributing to the local and national economies, without a return on investment to date.

4. NEXT STEPS

During CAO's assessment, the Complainants indicated their willingness to engage in a dispute resolution process facilitated by CAO. The Company raised concerns about the CAO process and the partiality of CAO's team. Given these concerns, and although the Company indicated a willingness to engage with the impacted community, the Company decided not to engage in a CAO led dispute resolution process. In keeping with CAO's Operational Guidelines, the complaint will now be referred to CAO's Compliance function.

ANNEX A. CAO COMPLAINT HANDLING PROCESS

Once CAO declares a complaint eligible, an initial assessment is carried out by CAO Dispute Resolution specialists. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

As per CAO's Operational Guidelines,⁵ the following steps are typically followed in response to a complaint that is received:

- Step 1: **Acknowledgement** of receipt of the complaint.
- Step 2: **Eligibility**: Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days).
- Step 3: **CAO assessment**: Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.
- Step 4: **Facilitating settlement**: If the parties choose to pursue a collaborative process, CAO's dispute-resolution function is initiated. The dispute-resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed-upon ground rules between the parties. It may involve facilitation/mediation, joint fact finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute-resolution process, in a way that is acceptable to the parties affected.⁶

OR

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

Step 5: **Monitoring and Follow-up**

Step 6: **Conclusion/Case Closure**

⁵ For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

⁶ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.