

URGENT ATTENTION REQUIRED

Amsterdam, 27 August 2012

Mr. Bruce Wrobel
Herakles Capital
277 Park Avenue, 40th Floor
New York
NY 10172

Dear Mr. Wrobel,

Greenpeace International is in the process of finalizing a publication regarding the Herakles Farms SG Sustainable Oils Cameroon (SGSOC) project. As part of our fact-checking process, we would like to give you an opportunity to comment on certain facts and views that may be included in our publication.

In view of our publication schedule we would need to receive your responses no later than the end of Wednesday, 29 August in order to be able to take them into account in the final edit. The answers to the questions below should be readily available to you.

1) You are certainly aware that local NGOs have pointed out that under Cameroonian law (specifically, Article 7 of *Decree No. 76-166 of 27 April 1976 setting out the arrangements for management of land*)¹, the grant of a concession in excess of 50ha requires the adoption of Presidential Decree. Section 3.5(a) of the Establishment Convention imposes an obligation on the Government to assist SGSOC in procuring the authorisations necessary under local law to exercise land rights. This confirms that SGSOC is not exempted, by reason of the Establishment Convention, from the application of Decree No. 76-166.

- a) **Has a Presidential Decree (PD) been issued on the basis of Decree No. 76-166, granting SGSOC a concession?**
- b) **If a PD was issued: on which date was it issued and would you be willing to provide us with a copy of it?**
- c) **If no PD was issued:**
 - **Was the need for the issuance of a PD identified in Annex II to the Establishment Convention? Would you be willing to share a copy of Annex II with us?**
 - **Does Herakles Farms recognize that the Establishment Convention does not exempt SGSOC from complying with Decree No. 76-166, and that under this Decree a PD must be issued in order for the project to proceed?**
 - **If not, on which basis does Herakles Farms consider Article 7 of Decree No. 76-166 inapplicable?**
 - **If Herakles Farms recognizes that a PD is required:**
 - o **What steps, if any, has SGSOC taken to ensure the issuance of a PD?**
 - o **Does SGSOC acknowledge that clearance and other exercises of land rights undertaken to date were unlawful? If not, why not?**

¹ Available online at <http://faolex.fao.org/docs/pdf/cmrl270.pdf>

- **Does SGSOC now intend to suspend all such activities until a PD is issued? If not, why not?**

2) SGSOC has claimed that the two court cases brought against it by local NGO SEFE have been dismissed, and that "there was never a period of time that SGSOC was under a court order to cease operations".

The Order of the High Court at Mundemba in the suit between SEFE and SGSOC issued on 31 August 2011 clearly states, on the final page, that SGSOC is "restrained from carrying out further activities within the jurisdiction of this Court in furtherance of their establishment of an oil palm plantation until the substantive matter now pending before the Court is disposed of". On 5 October 2011, the same court issued a subsequent Order, finding that SGSOC violated the 31 August Order by continuing activities as normal, and ordering it to pay 10.500.000 francs as a penalty for having been in breach of the injunction for 21 days.

After the judge who issued these orders had been replaced, a further Order was issued on 27 February 2012, holding that "this court reiterate [sic] the former order of this court" and that SGSOC is "temporarily prohibited from proceeding with their acts on the lands found in Mundemba and Toko Sub Divisions".

a) Do you accept that SGSOC's claim, that at no time was it subject to a court order to cease operations, is false? If not, why not?

b) SGSOC has also cited the fact that it was able to carry on normal business without any enforcement by the court as evidence that no court order was issued.

- **Do you accept that SGSOC in fact was found to have breached the injunction against it in the Order of 5 October 2011?**
- **Do you accept that SGSOC was not granted a stay of the Orders of 31 August and 5 October 2011 at any point?**
- **Do you accept that a court order that has not been suspended should be complied with even if it is not enforced through the strong arm of the law?**
- **Did SGSOC ever pay the penalty ordered by the court? If not, why not?**

3) In June 2012, villagers mounted a protest in the concession area, leading to arrests by police officers. Witnesses say the police were brought on site in SGSOC vehicles.

a) Do you accept this account as correct?

b) What policies does SGSOC have in place to ensure that it does not commit or become complicit in any violations of human rights (including the right to freedom of assembly and expression) that might be committed by public authorities with regard to inhabitants of the concession area?

Thank you for your cooperation,



Karine Jacquemart
Congo Basin Forests Campaign Project Leader
Greenpeace International