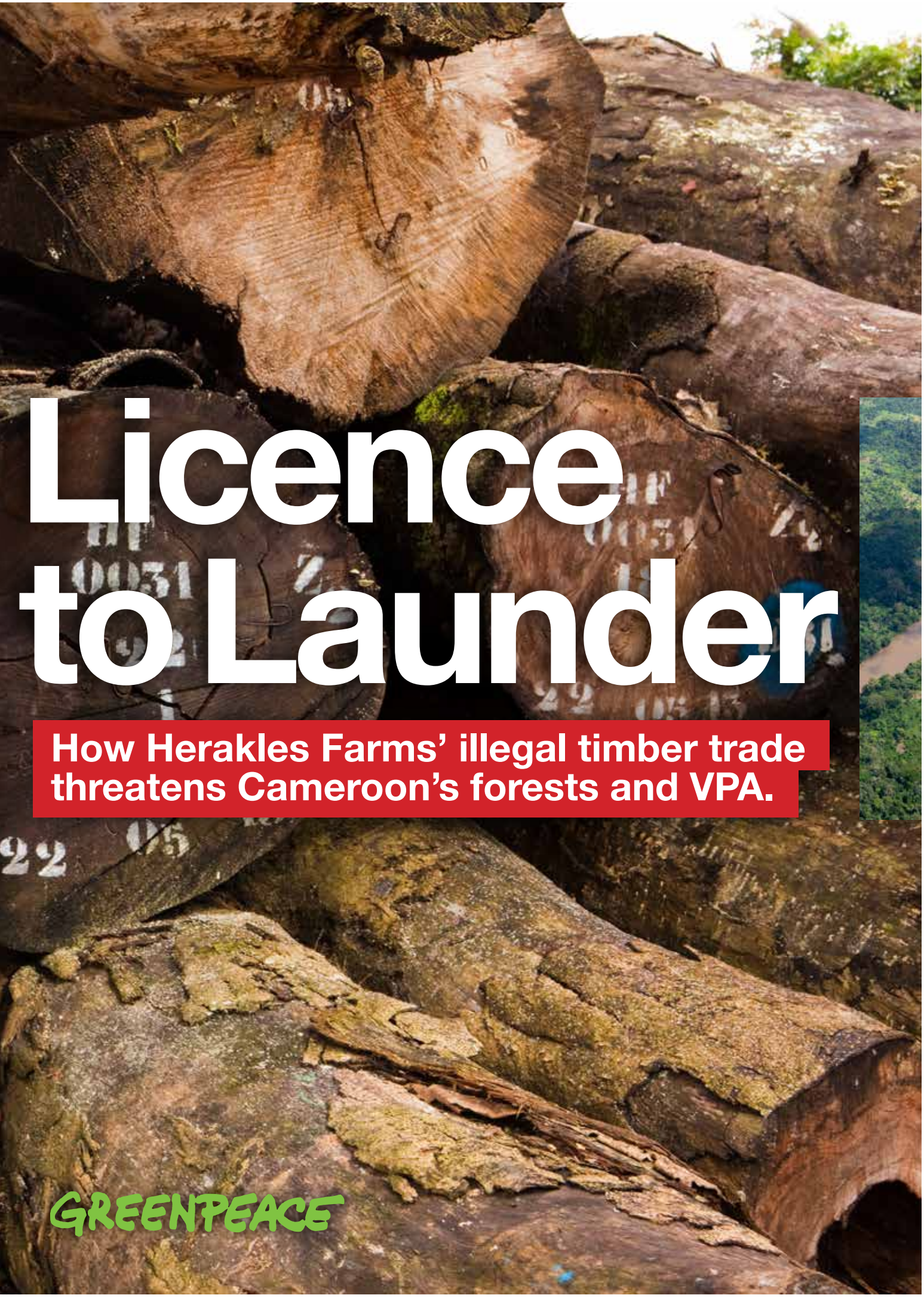


Licence to Launder

How Herakles Farms' illegal timber trade threatens Cameroon's forests and VPA.

GREENPEACE

Introduction

Palm oil's expansion into Africa

Africa has long been targeted by foreign-based corporations or governments for its resources. In recent times a large number of the land deals and concessions that have been awarded to developers in Central and West Africa can be viewed as part of a global land grab[1].

Most of these deals are opaque in character, and are conducted without the adequate consultation and consent of people and communities who have used the land for generations[2].

The world's biggest palm oil producers and investors have been turning their attention to the continent for industrial production[3]. Growing restrictions on palm oil expansion in Malaysia and Indonesia – as well as promises of profits and the perception of great availability of land in Africa – mean the continent is seen more and more as an attractive target as foreign/multinational palm oil companies seek to satisfy increasing global demand.

With the wider region including the Congo Basin, home to the world's second-largest expanse of rainforest, many of these deals involve forested areas.

While such expansion can represent, in theory, an opportunity for local economies, it also represents severe threats to local livelihoods, local environments, and the global climate. Investors need to act far more responsibly. The recent large-scale upsurge in land deals and investments could lead to widespread deforestation, exacerbate climate change, and produce an increased risk of social conflict and abuse.

The oil palm plantation being developed by Herakles Farms in the Southwest region of Cameroon, an area of great biodiversity surrounded by five protected areas, illustrates what happens when irresponsible companies are not held accountable to local laws and processes. The companies activities pose a serious threat to forested areas and the communities who rely upon the forest for their livelihoods[4].

This US firm was originally trying to acquire more than 70,000 hectares of forested land in the region in 2009. Its local subsidiary, SG Sustainable Oils Cameroon (SGSOC), began clearing forest despite the fact the project did not have a land lease signed by the president as required by Cameroon law[5].

Greenpeace and other local and international NGOs have continued to exposed Herakles Farms' illegal operations and the threats its irresponsible project poses to local livelihoods, environment and global climate[6].

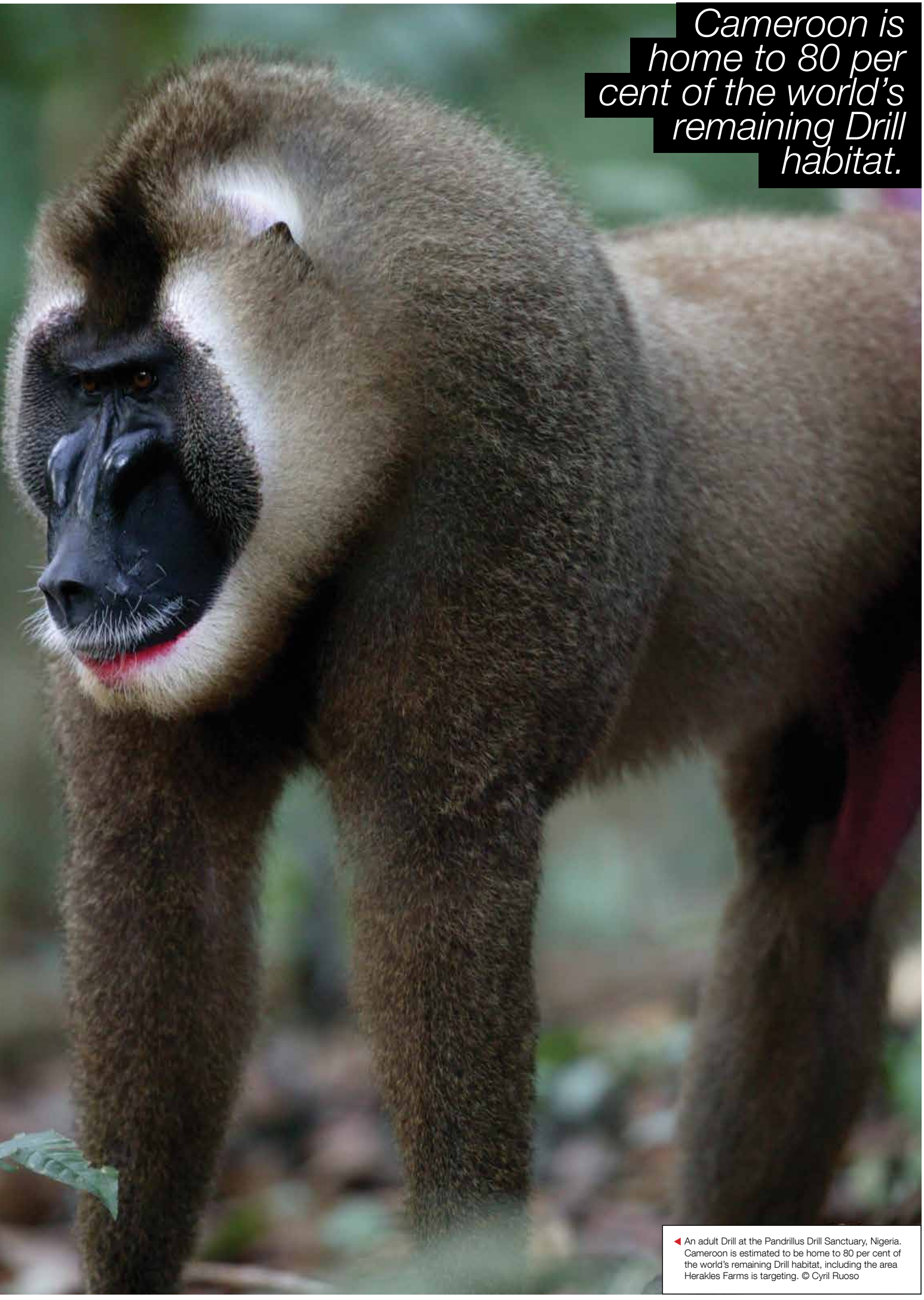
The company has consistently said one thing to appease any real and potential investors, and done quite another on the ground in order to bypass local and international law[7]. It also did not adequately consult local residents over its plans, many of whom are angry that the future of their land and livelihood is being decided without their consent[8]. Furthermore, Herakles Farms underplayed the biodiversity value of the area, which in reality is home to a number of endangered animals including the chimpanzee and Drill[9].

Herakles Farms finally received a land lease in November 2013 for a vastly reduced area of about 20,000 hectares. In the meantime, the company has run into operational and financial problems.

In this report Greenpeace reveals how the company is now colluding with the Cameroonian government to commercialise the timber – much of which was illegally felled – from its project, despite previously categorically stating that it had no intention to do so[10].

This new development demonstrates the persistent illegalities at the heart of the Herakles Farms project, indicative of a wider problem in many land deals and the logging sector in Africa. If allowed to persist, it will also seriously undermine Cameroon's Voluntary Partnership Agreement (VPA) with the EU to stop illegal logging.

Finally, it sends the message that, if companies are allowed to behave as they wish, contravening national laws and ignoring the rights of local communities, then the forests and people of Africa will have no protection.



Cameroon is home to 80 per cent of the world's remaining Drill habitat.

◀ An adult Drill at the Pandrillus Drill Sanctuary, Nigeria. Cameroon is estimated to be home to 80 per cent of the world's remaining Drill habitat, including the area Herakles Farms is targeting. © Cyril Ruoso

Executive summary

The issue of conversion timber and Cameroon's VPA

Aiming to eradicate illegal logging and its associated trade, the EU adopted its Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT) in 2003[11]. This is intended to promote better governance and sustainable management of forests in tropical countries. A main component is Voluntary Partnership Agreements (VPA) between the EU and timber producing partner countries. Another central tenet is the EU timber regulation (EUTR), which came into effect in March 2013 and prohibits the placing of illegal timber on the EU market[12].

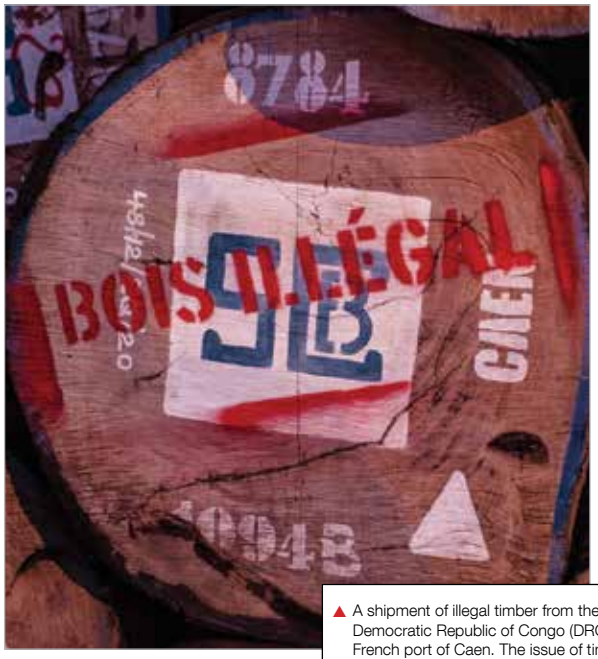
Cameroon signed a VPA with the EU for its timber sector on 6 October 2010, which entered into force on December 1, 2011[13]. It is a legally binding trade agreement that specifies both the commitments and actions the country's authorities will take to fulfil the aims of FLEGT, through better forest management and halting illegal logging[14]. Through this agreement Cameroon commits to ensuring that all timber production is legal no matter the final destination market[15]. In exchange, the EU will facilitate access to its market to Cameroonian timber, by granting the right to the Government of Cameroon to issue "FLEGT Licenses" that will serve as legality certificates.

VPAs were conceived with so-called "selective" logging in production forests in mind. More recent data, however, indicate that timber from forest conversion is also of increasing significance in tropical production[16] and in Cameroon could in fact soon account for a large part of the total national timber production.[17] The growing volume of this type of wood is due to increased forest clearance for other land uses, such as the establishment of commercial agriculture, mining, or infrastructure projects.

Within this context of an expansion in commercial agriculture, Herakles Farms, an American private equity firm, signed a contract in 2009 with the Cameroon Minister of Economy to develop an oil palm plantation in the Southwest region of the country[18]. The project has been racked by controversy from the beginning.

In 2010, the company began illegally clear-cutting forest[19] to establish oil palm nurseries. This activity proceeded despite the firm lacking a presidential decree authorising the concession – an approval required by law.[20]

Herakles Farms' Cameroonian affiliate, SGSOC, was cited for illegal logging by the EU-funded Independent Forest Observer in June 2012.[21] Forest clearing operations were then temporarily suspended by the Minister of Forestry in April 2013 for "violating forestry regulations".[22] These operations led to Herakles Farms stockpiling hundreds of illegally felled logs in its nursery site – many of which have been there for nearly two years.



▲ A shipment of illegal timber from the Democratic Republic of Congo (DRC) in the French port of Caen. The issue of timber from forest conversion projects could threaten efforts to tackle illegal logging in countries including Cameroon.
© Pierre Baelen / Greenpeace

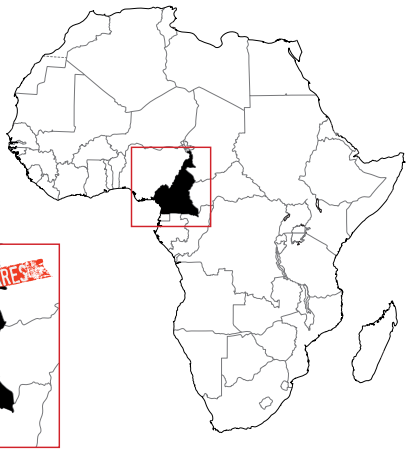
A history of illegality

HERAKLES FARMS

2009

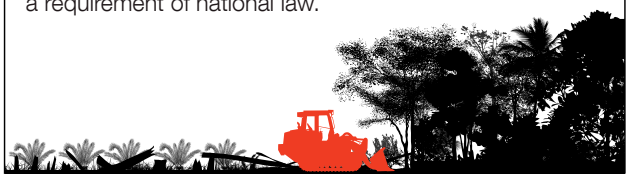
Herakles Farms threatens people, forests and wildlife.

Herakles Farms signs an establishment convention with Cameroon government. The company is seeking to convert 70,000 hectares of land, much of it natural dense forest, into a palm oil plantation.



2010

Herakles illegally begins forest clearance, despite of widespread local opposition and the fact the company possessed no valid land lease - a requirement of national law.



2012

Herakles resigns from RSPO, confirming its project cannot even guarantee basic standards of sustainable palm oil.

2013

Cameroon's Ministry of Forestry suspended Herakles forest clearing operations following "violations of forestry regulations."

An order they ignore to carry on illegal clearing.

The company is finally given the signed presidential land lease it needed from the start, but the project is vastly downscaled to 20,000 hectares

Greenpeace and partners reveal the true biodiversity value of the area Herakles is targeting and how the project would destroy the habitat of endangered species such as the nigeria-cameroon chimpanzee.

2014

Greenpeace reveals how Herakles, in financial difficulty, breaks yet more of its promises and attempts to sell its illegally cleared timber to China.

▲ Oil palm nursery managed by Herakles Farms in the Talangaye concession near Nguti. The US company operated without a valid land lease, as required by national law, for more than three years.
© Jan-Joseph Stok / Greenpeace

“As we are not commercial loggers, we will cut it, trim it and stack it for the government.”

Herakles Farms, 2012.

Herakles Farms timber scam

In a letter of November 2012, the Cameroonian Minister of Forests, Philip Ngole Ngwese, authorised Herakles Farms to proceed with forest clearance. This authorisation was granted even though the company had no legal land lease at the time[23]. The decision was derogation from forestry regulations[24] and presented as an emergency measure.

On January 28, 2014, Minister Ngole awarded *vente de coupe* ("sale of standing volume") n° 11-02-10 for a logging permit for 2,500ha to a little known company called Uniprovince (UP). The *vente de coupe* is located inside the Herakles Farms concession in the area where almost all of the company's illegal logging has taken place.

This allocation is in flagrant violation of Cameroon's forestry legislation.[25] National law specifies that *vente de coupe* permits can only be awarded by a competitive public auction,[26] something that did not occur before Uniprovince was allocated the title, which was not put out for tender.[27]

Vente de coupe 11-02-10 is conspicuous by its absence from the most recent list of "valid" logging permits issued by the Ministry of Forestry on March 10, 2014,[28] even though it was awarded on January 28 to Uniprovince and the certificate delivered on February 6 – more than a month before the list was published.

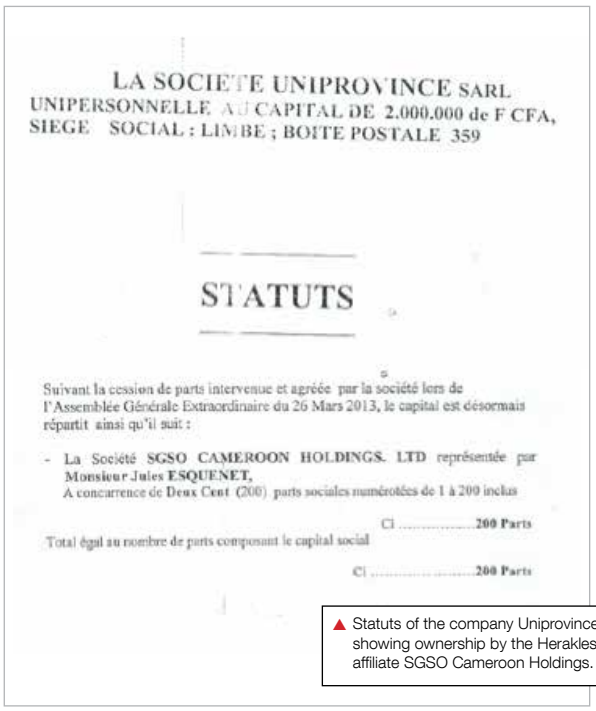
This appears to be a deliberate attempt to to conceal an illegal decision of awarding a logging permit to a company (Uniprovince) that seems be just a simple front for Herakles Farms.

Deliberate strategy

Herakles Farms previously claimed publicly that it did not intend to benefit from the sale of any wood cut on its concession. It is now evident this is an integral part of its business strategy[29].

The company was aware that it would not be able to legally sell wood because it is not registered as a timber company in Cameroon. This meant that a front company would be required, and in March 2013, SGSOC Cameroon Holding Ltd (represented by Mr. Jules Esquenet and registered in the Cayman Islands) acquired Uniprovince[30].

A year later, Uniprovince began transporting illegal wood from the Herakles Farms oil palm nurseries to the port in Douala.[31] Almost the entire timber stock was felled illegally between 2010 and 2013 by SGSOC.[32] A substantial part of this timber is to be exported to China.[33]



LA SOCIETE UNIPROVINCE SARL
UNIPERSONNELLE AU CAPITAL DE 2.000.000 de F CFA,
SIEGE SOCIAL : LIMBE ; BOITE POSTALE 359

STATUTS

Suivant la cession de parts intervenue et agréée par la société lors de l'Assemblée Générale Extraordinaire du 26 Mars 2013, le capital est désormais répartit ainsi qu'il suit :

- La Société SGSO CAMEROON HOLDINGS. LTD représentée par Monsieur Jules ESQUENET,
A concurrence de Deux Cent (200) parts sociales numérotées de 1 à 200 inclus

Ci .....200 Parts

Total égal au nombre de parts composant le capital social

Ci .....200 Parts

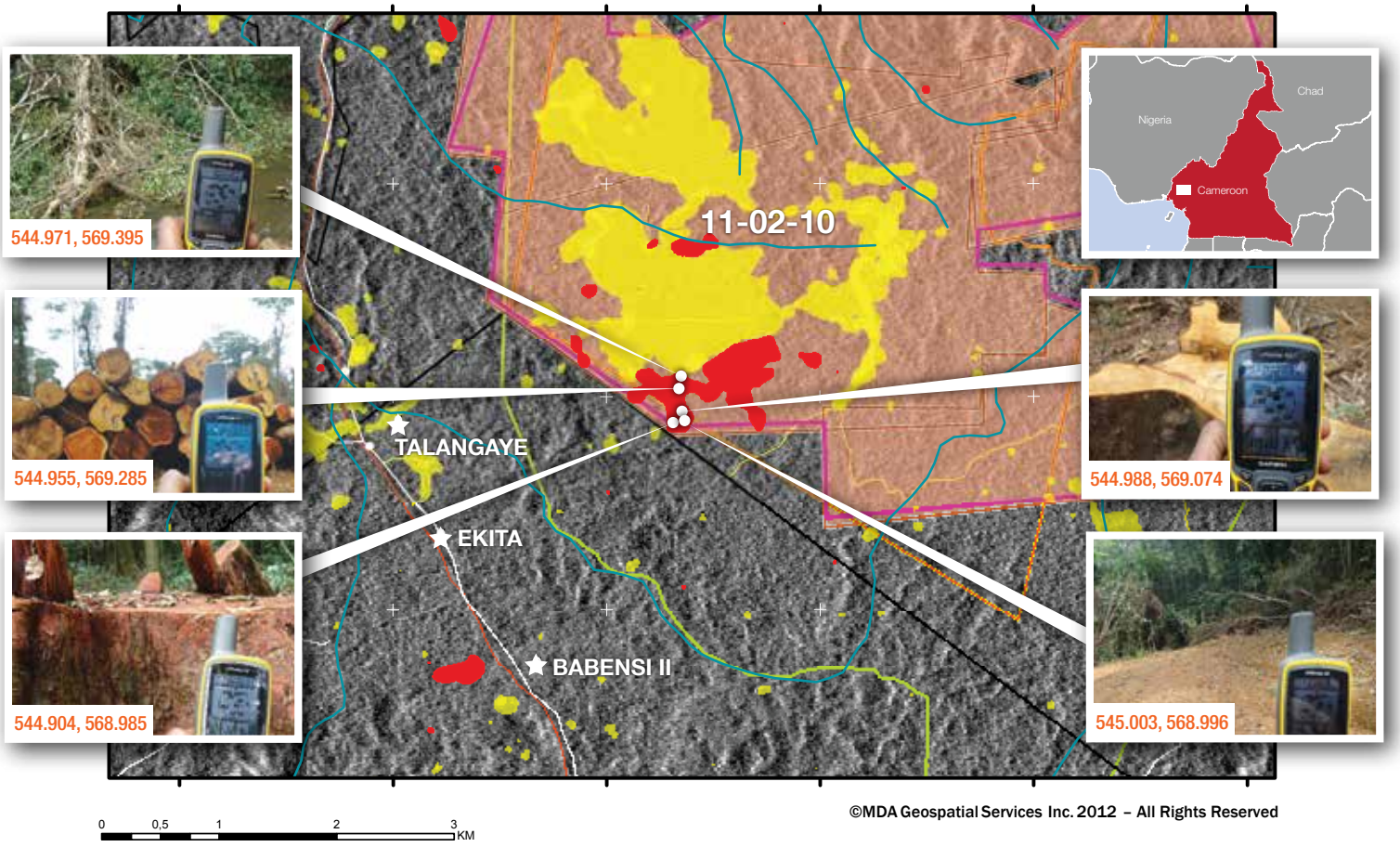
▲ Statuts of the company Uniprovince, showing ownership by the Herakles Farms affiliate SGSO Cameroon Holdings. Ltd

▼ Timber with the mark "UP" (Uniprovince) in transit for Douala on the Nguti-Kumba Road (Greenpeace, March 2014)

▼ Timber with the mark "UP" (Uniprovince) stocked at the Port of Douala (Greenpeace, April 2014)

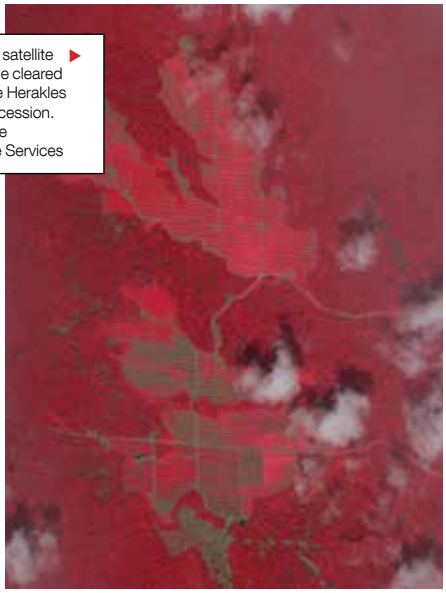
Deforested and degraded areas in the Herakles Farms concession

Map showing that *vente de coupe* 11-02-10 covers the same area as the Herakles Farms concession project. Most illegal clearing that has taken place since 2010 is located inside the *vente de coupe* area. The photos have been taken in the most recently cleared area, in forest that belongs to the village of Babensi II, whose residents have refused to be part of the project.



©MDA Geospatial Services Inc. 2012 – All Rights Reserved

- Villages
- Rivers
- Forest cleared Oct 2013 – March 2014
- Forest cleared Oct 2011 – Oct 2013
- Uniprovince illegal vente de coupe 11-02-10
- Nov 2012 authorization to clear forest
- Roads
- Herakles Farms' land concession – Nov 2013
- Land concession originally requested by HF
- Forest Management Unit 11-007



An infrared satellite image of the cleared areas in the Herakles Farms concession. © Mckenzie Intelligence Services

Timber “laundering”

Presently, *vente de coupe* 11-02-10 seems to be used primarily to “launder” timber from forest illegally cleared by Herakles Farms.

Uniprovince has begun work by sawing off the ends of the hundreds of stockpiled logs marked “HF” (Herakles Farms) and re-marking them “UP” (Uniprovince).

Tax swindle

The average area tax (the main tax in the logging sector) paid by companies that were awarded *ventes de coupe* permits via competitive auction in January 2014 is 43,000 FCFA (€66) a hectare a year, which means **108,635,833** FCFA a year for a 2,500 hectare permit (€167,000) such as that awarded to Uniprovince.[34]

However, the company will pay just 2,500 FCFA (€4) a hectare a year, totaling **6,250,000** FCFA (€9,600)[35] a year – some 17 times less than the average. This constitutes an important loss of revenue for the Cameroon State treasury, and also for local communities who are supposed to receive royalties from the area tax.

The question that remains unanswered is why Uniprovince benefited from such favourable treatment at the expense of the state coffers.

The Establishment Convention for the Herakles Farms concession signed with the Cameroonian Government[36] has been heavily criticised by a number of observers. It grants the company the right to land at the miserable price of $1 a hectare a year[37], even though Herakles Farms itself estimates the same land to be worth up to $6,000 a hectare.[38]

Herakles Farms’ CEO at that time described the financial opportunity the project supposedly represented for Cameroonians in an open letter in 2012:

[…] we surrendered the timber to the [Cameroon] government and took a lower lease rate [of $1 per hectare], as we are not commercial loggers. We will cut it, trim it and stack it for the government. This will cost us more than $75 million dollars and will add huge value to the government’s timber income. They will sell it in an auction, which we estimate will generate many millions of dollars of revenue.”

Piles of logs in Herakles Farms Talangaye nursery have had their “HF” mark removed and marked with the Uniprovince logo.

The initial rate was $1 per hectare per year. It was revised in november 2013 to $20 per hectare per year. Still a ridiculously low amount compared to usual prices in the country.

This is the latest in a series of duplicitous tactics propagated by Herakles Farms that show the company’s intent to cheat Cameroon out of any revenue generated by its project. It is clear that it wants to benefit financially from the “many millions of dollars” generated by timber exploitation, while at the same time paying an extraordinarily low land fee for the concession and the lowest possible area fee for the *vente de coupe*.

Pile of logs in Herakles Farms Talangaye nursery that have had their “HF” mark removed (Greenpeace, Talangaye, Cameroon. March 2014)

“Pile of logs in Herakles Farms Talangaye nursery that have had their “HF” mark removed The logs are now marked with the n° of cutting permit 11-02-10 and are carrying dates from March 2014. © Greenpeace, Talangaye, Cameroon. March 2014

Threat to VPA credibility

Greenpeace has repeatedly warned both the EU and Cameroon's Minister of Forests that unsanctioned commercialisation of Herakles Farm's illegal timber would undermine the credibility of the VPA[40]. We have not received clear answers over these concerns.

In April 2014, Greenpeace again contacted the EU Delegation in Cameroon and the country's Ministry of Forestry and Wildlife, requesting clarification regarding the legal status of the wood that was already cut by Herakles Farms, as well as the status of the wood from the remaining forest set to be cleared.

At the time of publication no response had been received from the Cameroonian government. The EU informed Greenpeace on April 27, 2014 that the issue was discussed between the two parties in a meeting on April 23, 2014 concerning VPA implementation. The EU proposed to create a working group to clarify the status of seized wood and the wood that comes from forest conversion (such as the conversion of forest into palm oil plantation in the Herakles area) to assess how this relates to the requirements of the VPA and the EUTR.

But while the various political players debate the issue, illegal wood is being prepared for export to China in Douala.

The illegality surrounding the Uniprovince permit should not come as a surprise to the EU. At another closed-door meeting on December 5, 2013 with the Cameroonian Ministry of Forestry and Wildlife regarding the VPA, the delegation asked about the "status of wood already felled" at the Herakles Farms site.[41] The minutes of the meeting were not made public, but have been seen by Greenpeace and contain this evasive response:

> *The Cameroonian party referred to the signature of three Presidential decrees awarding a temporary land concession to the company and congratulated itself on civil society's actions which contributed to the redefinition of the project.*[42]

The EU appears to have raised this particular question no less than three times: at a meeting on December 17, 2013 with the Minister; again in a letter to the Minister on January 24, 2014; and again in a letter from the head of the EU delegation to the Minister on March 18 2014.[43] In these letters the EU refers to public auctions that "appear to have already taken place".[44] At the time of publication, Cameroon's Ministry of Forestry and Wildlife had failed to provide an official answer to the EU.

The EU is equally evasive in its answers to Greenpeace. The delegation in Cameroon cites a delay in VPA implementation, due to the lack of an approved Timber Legality Assurance System, to explain why the reaction to Herakles Farms' illegal timber has been inadequate. The VPA has, however, already entered into force, and the Cameroonian government has committed itself to fight against illegal logging for all timber production. Commercialising illegally harvested timber without proper authorisation and granting a *vente de coupe* cutting logging permit without a public auction are clear violations of the country's forest legislation that should be sanctioned immediately.

▲ A bulldozer in the Herakles Farms concession area. The issue of timber from forest conversion has yet to be properly addressed in Cameroon's VPA with the EU.
© Jan-Joseph Stok / Greenpeace

◀ An oil palm nursery established by Herakles Farms in Southwest region, Cameroon. The company has tried to push ahead with its plans for a huge palm oil plantation with complete disregard for Cameroonian law and the opposition of local people.
© Greenpeace / Alex Yallop

What needs to be done

Greenpeace calls on the Government of Cameroon to:

1) Cancel Uniprovince's illegally allocated *vente de coupe*

Cameroon's forestry regulations clearly require *ventes de coupe* permits to be granted by public auction.[45]

Uniprovince's 11-02-10 permit was illegally awarded and must be immediately cancelled.

2) Seize all illegal timber, investigate and prosecute wrongdoers

Herakles Farms' timber being prepared for export is illegal under Cameroon law and constitutes a blatant violation of article 9.3. of the country's VPA.[46]

The entire stock of timber should be seized immediately by the authorities. Herakles Farms, Uniprovince, and government officials responsible for granting illegal authorizations should be investigated and prosecuted.

Cameroon has made a commitment to improve governance and transparency in the forest sector while fighting illegal logging via the VPA implementation process. The numerous and well-documented illegalities in the Herakles case provide a test case for the credibility of forest governance in the VPA era.

Greenpeace calls on the partners in the VPA to:

3) Integrate the question of timber from forest conversion into the VPA Legality Grid

The EU and Cameroon must integrate the question of timber from forest conversion (for agricultural, mining or infrastructure projects) into all ongoing implementation mechanisms and dialogue platforms so that conversion is properly addressed in the architecture of the VPA Legality Matrix. This means also enabling independent observation and third party verification. This must be addressed if the VPA is to become a relevant tool for forest governance as a fast growing proportion of Cameroon's timber production is expected to be of this kind in the coming years.

In the meantime, the EU and Cameroon must immediately create a surveillance mechanism for all timber from forest conversion.

4) Integrate beneficial ownership[47] of companies into the VPA

As part of the VPA implementation, the Cameroon government has committed to increasing transparency by publishing forest sector documents on its website[48]

However, the ownership structure of companies that benefit from logging permits is not included in that pledge.

This will be crucial in detecting evidence of conflict of interest, corruption, fraud or wrongdoing that violates international law, Cameroonian law or laws of companies' country of origin. The EU and government of Cameroon should formally integrate this requirement into the VPA legality matrix. Immediate measures should be taken to publish information on beneficial ownership until the Legality Matrix is amended.

Greenpeace calls on the EU to:

5) List timber from Cameroon as "high risk"

Given persistent illegalities, European timber traders and authorities responsible for the enforcement of the EU Timber Regulation need to classify Cameroonian timber as "high risk" for illegal logging until the FLEGT VPA is satisfactorily implemented. European timber traders must have a due diligence system in place and demonstrate compliance with the EUTR requirements for due diligence, to avoid the risk of placing illegally-harvested Cameroonian timber on the EU market.

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Article 57

(2) Toute attribution de vente de coupe sur une forêt domaniale est au préalable précédée d'un avis d'appel d'offres public, tel que prévu à l'article 51 ci-dessus. and Article 82

(1) Toute vente de coupe dans une forêt du domaine national est attribuée par arrêt du Ministre chargé des forêts après avis de la commission interministérielle prévue à l'article 64 ci-dessus, et à la suite d'un avis d'appel d'offres public.

27 Note that vente de coupe n°11 02 10 was absent from the October 2013 auction. MINFOF, « Communiqué portant publication des résultats de l'avis d'appel d'offres n° 0238/AA0/MINFOF/SG/SDAFF/SC/SAG du 21octobre 2013 [...], » 7 January 2014.

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29 Greenpeace and Oakland Institute (2013), Herakles Exposed: The Truth behind Herakles Farms False Promises in Cameroon, http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_Report_Herakles_Exposed.pdf

30 According to Uniprovince's ownership document

31 According to Greenpeace research, the trucks are owned by the company Transport Jean Khoury (TJK). TJK has also played a role in transporting illegal bush meat according to the International Union for the Conservation of Nature (IUCN). https://portals.iucn.org/library/efiles/edocs/SSC-OP-045-001.pdf (P. 20).

32 While clearing occurred from 2010- June 2013, Herakles lacked the Presidential approval granting them rights to the land they were occupying. According to forestry regulations, timber clearing cannot begin until the limits of the area concerned have been established by the Ministry of Forestry. In this case, the demarcation of limits could not have occurred because Presidential approval of the project was not granted until November 2013. See Ministry of Forestry and Wildlife, Lettre Circulaire N 0924/LC/MINFOF//SG/DF relative aux procédures de délivrance et de suivi des autorisations de récupération de bois et des autorisations d'enlèvement du bois. 23 Sept 2008.

33 Transport documents from Cameroon's Ministry of Forestry, dated 25 February 2014, indicate that the buyer of HF's existing stock of logs – at least some portion – is Hong Kong-registered "Senbergene HK, Ltd." HF's inaugural shipment will ship to the Chinese port of Zhangjiagang, known as a major destination for illegal African timber. See http://www.illegal-logging.info/content/illegal-logging-calls-give-it-chop

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40 Greenpeace, FERN and FPP, letter to Ms Cristina Pasca-Palmer, European Commission, "Accord de partenariat volontaire FLEGT avec le Cameroun", 17 July 2013 ; Greenpeace, letter to Ms Françoise Collet, EU Ambassador in Cameroon, "Concession de la SGSOC au Cameroun et partenariat FLEGT", 3 December 2013 ; Greenpeace et al, letter to Commisioner Andris Pieblags, "Implementation of the FLEGT partnership agreement between the European Union and Cameroon", 10 March 2014

41 European Union (unpublished), Aide memoire du 5ème comite conjoint de suivi de l'accord de partenariat volontaire flegt du 5 décembre 2013.

« La partie européenne a ensuite évoqué sa préoccupation par rapport au cas particulier du projet de plantation de palmier à huile de la société SGSOC (Herakles Farms), au sujet notamment du statut du bois déjà abattu suite au défrichement de 600 ha qui n'a pas fait l'objet d'une mission d'inspection de l'Observateur indépendant tel que demandé au MINFOF par la partie européenne. »

42 European Union (unpublished), Aide memoire du 5ème comite conjoint de suivi de l'accord de partenariat volontaire flegt du 5 décembre 2013.

« La partie camerounaise a informé de la signature de trois décrets présidentiels portant attribution d'une convention provisoire pour la société et s'est félicité des actions de la société civile qui ont contribué à la redéfinition du projet. »

43 Michal Golabek (2014), Letter from the European Union to Forestry Minister, 24 January 2014 ; Françoise Collet (2014), Letter from the European Union to Forestry Minister, 18 March 2014.

44 « […] ventes aux enchères qui auraient résulté des défrichements déjà effectués ».

45 PM, « Décret n°95/531/PM du 23 août 1995 fixant les modalités d'application du régime des forêts » Article 57

46 Article 9.3 of the Voluntary Partnership Agreement between the European Union and Cameroon states that

"Cameroon shall verify the legality of the timber and derived products exported to markets outside the Union and sold on the internal markets, and of imported timber and derived products".

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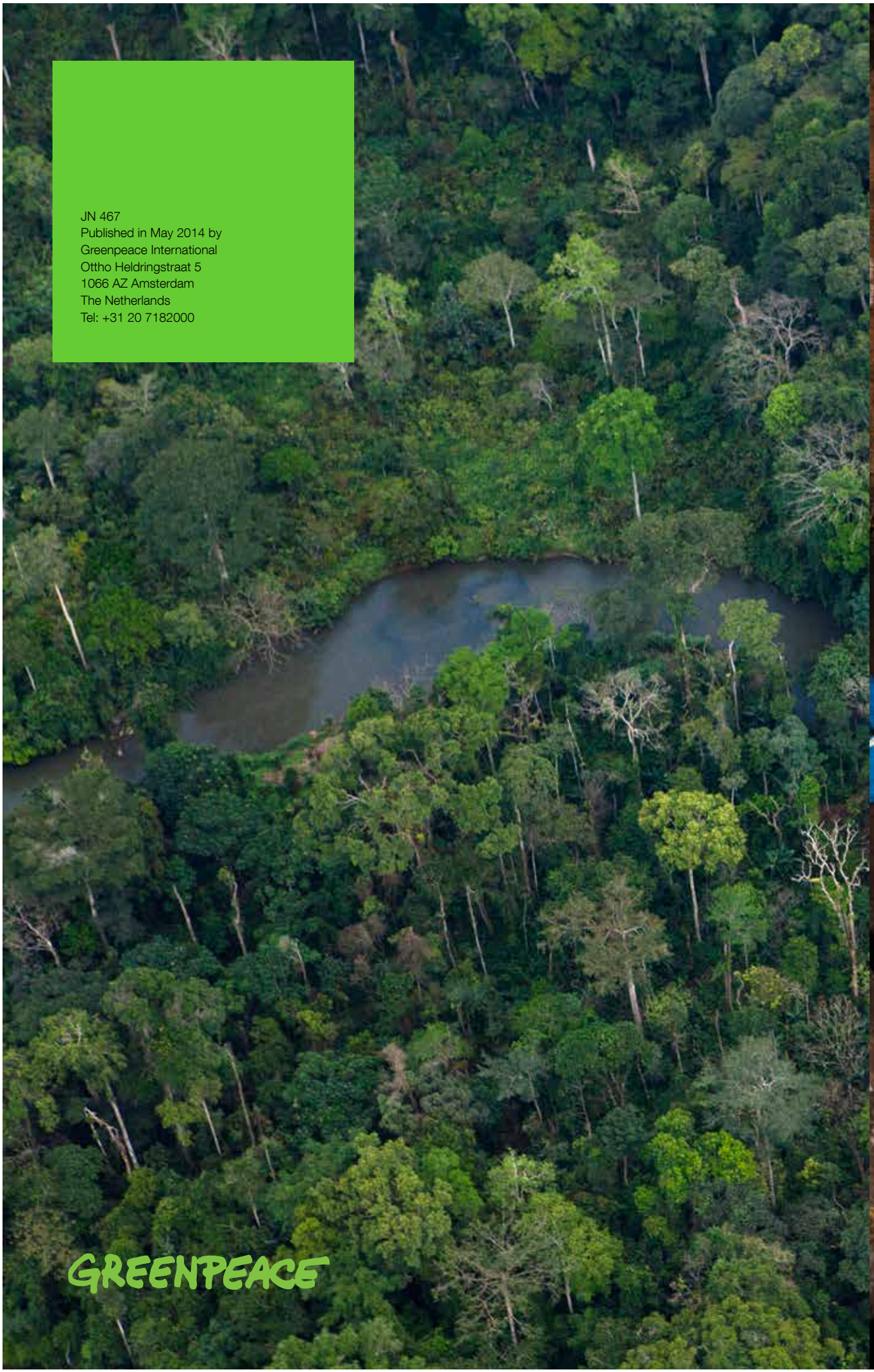

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