

Unsustainable Investment:

GAR's Continued Violations of Industry Standards and Sustainability Criteria Preliminary Findings for the DJSI Index Committee / March 2018

In September 2017, palm oil producer Golden Agri-Resources (GAR) became the first palm oil company to be listed on the Dow Jones Sustainability Asia-Pacific Index. GAR was listed under the Food, Beverage and Tobacco Sector, which has been identified as “the toughest sustainability index to qualify for.”¹ GAR is an Indonesian-based agribusiness and food company listed on the Singapore stock exchange. Golden Veroleum Liberia (GVL) is a Liberian-based company established by GAR to expand its palm oil business into Liberia. GVL is owned by the Cayman Islands-based company Verdant Fund, with GAR as the sole investor in the Verdant Fund. GAR claims to be the world's second largest palm oil company. GVL's plantation in Liberia is GAR's first expansion of its operations beyond Indonesia.²

In an industry known for human rights and environmental violations, both GAR and GVL have come under considerable fire for their operations, with extensive allegations of deforestation, human rights violations and dispossession of communities from their lands and livelihoods. On the occasion of GAR's listing on the DJSI, the company specifically highlighted practices of forest conservation, reducing greenhouse gas emissions, and promoting sustainable agriculture as evidence of its commitment to sustainable palm oil production. However, ongoing research shows that GAR and GVL's operations – far from being a model of sustainability – exemplify some of the worst practices of the palm oil industry.

Background

GVL signed an agricultural concession agreement with the Government of Liberia in August 2010, covering approximately 2.3 percent of the country's land mass. Notably, the land indicated in the concession agreement is customarily owned and used by rural communities as the source of food and water, livelihoods, and culture – a fact that has led to ongoing land conflict between communities and the company, including periodic eruptions of violence.

Since GAR's arrival in Liberia, mounting evidence indicates that GVL and GAR are in violation of numerous international responsible business standards, including the United Nations Guiding Principles on Business and Human Rights, Roundtable on Sustainable Palm Oil (RSPO) Principles and Criteria, and Free and Fair Labor in Palm Oil Production Principles, in addition to Liberian national laws and GVL and GAR's own corporate sustainability policies. Financiers of GVL and GAR are directly linked to these violations, and may face significant material financial and reputational risks as a result.

Since 2010, civil society reports have detailed how GVL has acquired community lands without communities' free, prior, and informed consent (FPIC), initiated violence and intimidation to coerce communities into signing agreements with the company, caused the loss of traditional livelihoods, and driven ongoing environmental degradation.

Field research conducted by SDI and Friends of the Earth US in 2017 confirmed existing reports that GVL's operations have led to the desecration of sacred sites, labor violations,

disregard for communities' customary land rights, and increased food and water insecurity, including cases where crops had been destroyed without adequate compensation, and access to farm lands, hunting grounds, and fisheries had been curtailed.

Since GVL began operations, the company has been subject to ongoing complaints to the Roundtable on Sustainable Palm Oil (RSPO). In February 2018, the RSPO Complaints Panel sent a summary letter to GVL (copied to Liberian community-based organizations and civil society organizations) based on an April 2017 RSPO Verification Mission to GVL, subsequent Verification Mission report, and complainants' responses.³ The letter outlines a series of continued violations of RSPO Principles and Criteria by GVL. These include GVL's non-compliance with FPIC principles, allegations of coercion and intimidation, lack and/or inadequacies of participatory mapping, destruction of sacred sites, and continued development of disputed land. As a consequence of the findings, the RSPO Complaints Panel reinforced an existing stop-work order and introduced a new stop-work order.

An examination of GVL's concession agreement raises serious legal questions. According to the auditing firm Moore Stephens and the government's Liberian Extractive Industries Transparency Initiative (LEITI), GVL was awarded the concession without undergoing the correct legal procedure, including the lack of a competitive bidding process.⁴ GVL was granted its concession for 65 years, in contravention of section 70 of Liberia's Public Lands Law, which states that no such lease shall exceed fifty years.⁵

New findings show ongoing violations

The February 2018 RSPO Complaints Panel letter confirms continued violations by GVL of FPIC principles, basic human rights, and internationally-accepted business standards. This includes GVL using methods of coercion to convince community members to sign MoUs and withdraw official complaints, including situations where “MoU [was] signed under the coercive presence of heavily armed ERP troops and government officials.”⁶ The letter details cases where GVL did not conduct participatory mapping at all, or inadequately, failed to involve relevant stakeholder groups, and did not consult communities in MoU signing processes. The letter finds that communities and their representatives remain uninformed while engaging in negotiation processes, which constitutes non-compliance with FPIC principles. The letter states that GVL is continuing to operate on disputed lands in violation of RSPO Principles and Criteria, as well as communities’ customary land ownership rights. The RSPO letter acknowledges GVL’s clearance of community sacred sites and states that this “has not been conclusively addressed by GVL.”⁷

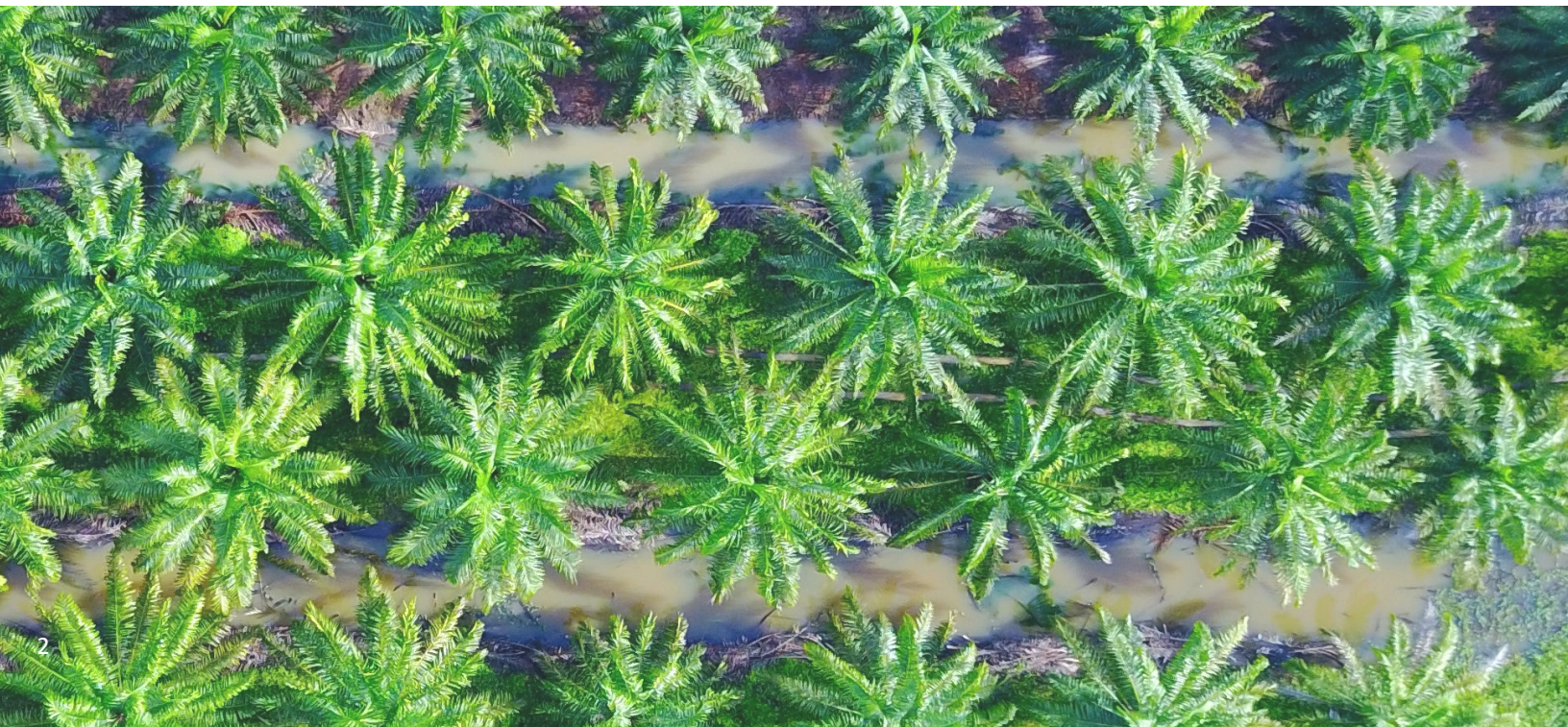
There is also ongoing research being conducted into the environmental impacts of GVL’s operations. **Full findings and analysis will be published by Friends of the Earth in April 2018.**

Violations of sustainability criteria

Robeco SAM states that “material nonfinancial factors contribute to better informed investment decisions” and therefore its methodology “focuses on long-term sustainability factors that are relevant to each industry, material to the company’s financial performance and under-researched in conventional financial analysis.”⁸ Robeco SAM’s human rights criteria is centered on whether or not companies are meeting the implementation requirements of the UN Guiding Principles for Business and Human Rights (UNGPs). This includes the provision of company-specific policies in accordance with the UNGPs and other internationally accepted human rights standards.

Violence, intimidation, and coercion linked to GVL’s operations, as documented by the RSPO and civil society organizations, violate basic human rights to physical security, liberty, and dignity. The desecration of community religious sites violates social and cultural rights to participate in cultural life. The destruction of farmlands and crops and curtailment of access to community forests and fisheries violate rights to a standard of living.

Ongoing land conflicts, curtailment of community livelihoods, and development of community lands without community consent breaches principles outlined in RobecoSAM’s human rights dimension, namely to “avoid causing or contributing to adverse human rights impacts through their own activities” and to “prevent or mitigate adverse human rights impacts that are directly linked to their operations, products, or services by their business relationships, even if they have not contributed to those impacts.”



The lack of appropriate human rights due diligence processes conducted by GVL contravenes the UNGPs and RobecoSAM's human rights dimension, which calls for companies to execute proper due diligence to "proactively and systematically identify what potential issues and where they could occur." The fact that GVL is operating on communities' lands without their free, prior, and informed consent indicates a lack of adherence to proper due diligence processes.⁹ Furthermore, the lack of proper disclosure to communities regarding the full impacts of company operations, acknowledged most recently in February 2018 by the RSPO, does not comply with proper due diligence standards.

Environmental degradation by GVL contravenes RobecoSAM's environmental dimension criteria, which call for companies to reduce their overall environmental footprint and minimize the consumption of natural resources. The pollution and negative impacts on communities' water sources calls should be a red flag regarding GAR's environmental performance, especially as it pertains to fresh water extraction and consumption, which is high-lighted as part of RobecoSAM's environmental dimension criteria.

Finally, a number of red flags are apparent with regard to GVL's tax optimization strategy, which may violate RobecoSAM's economic dimension criteria. Liberia's tax code authorizes tax stabilization "for a period not to exceed 15 years," yet the agreement with GVL provides a stability clause of 40 years and allows GVL to withhold tax payments for an incredible 65 years.¹⁰ That several named and direct GAR subsidiaries including the Verdant Fund, Verdant Capital Partners Ltd and GV Holdings Ltd. are domiciled in secrecy jurisdictions and/or tax havens indicates potential tax avoidance and/or evasion. GVL's tax optimization strategy should trigger serious questions under RobecoSAM's Corporate Sustainability Assessment,¹¹ including: concerns of reputational risk when increased public and regulatory scrutiny result in lower brand value; potential impacts to the relationship with the host country that could result in rejection of expansion projects or in the company losing its license to operate; impacted earnings if tax regulations change; and economic development risk as successive governments receive inadequate tax income to fund basic needs such as infrastructure and education.

Recommendations

Based on emerging evidence, existing literature, RSPO documentation, and an analysis of Robeco SAM's criteria, Friends of the Earth strongly recommends that the DJSI Index Committee recommend de-listing Golden Agri-Resources from the Dow Jones Sustainability Asia-Pacific Index. De-listing GAR would show that the Index Committee takes its listing criteria and Media & Stakeholder Analysis process seriously. De-listing GAR would preserve the integrity of the Dow Jones Sustainability Indices, and prevent these indices from serving as a tool for "green-washing" problematic companies while ongoing environmental destruction and human rights violations persist.



1 Hicks, Robin. "Palm oil giant makes debut in global sustainability index." Eco-Business. 21 September 2017. <<http://www.eco-business.com/news/palm-oil-giant-makes-debut-in-global-sustainability-index/>>

2 "The New Snake Oil? Violence, Threats, and False Promises at the Heart of Liberia's Palm Oil Expansion." Global Witness. July 2015.

3 Roundtable on Sustainable Palm Oil. Complaints Panel's decision on the Golden Veroleum Liberia's (GVL) Complaints. 13 February 2018. <<https://rspo.org/files/download/88ac-572d1e4060b>>

4 Leiti & Moore Stephens, "Post Award Process Audit, Final Report," May 2013, http://www.leiti.org.lr/uploads/2/1/5/6/21569928/leiti_post_award_process_audit_final_report.pdf (10 February 2018)

5 Leiti & Moore Stephens, "Post Award Process Audit, Final Report," May 2013, http://www.leiti.org.lr/uploads/2/1/5/6/21569928/leiti_post_award_process_audit_final_report.pdf (10 February 2018)

6 Roundtable on Sustainable Palm Oil. Complaints Panel's decision on the Golden Veroleum Liberia's (GVL) Complaints. 13 February 2018. <<https://rspo.org/files/download/88ac-572d1e4060b>>

7 Roundtable on Sustainable Palm Oil. Complaints Panel's decision on the Golden Veroleum Liberia's (GVL) Complaints. 13 February 2018. <<https://rspo.org/files/download/88ac-572d1e4060b>>

8 "Measuring Intangibles: RobecoSAM's Corporate Sustainability Assessment Methodology." RobecoSAM. February 2017.

9 "RobecoSAM's Corporate Sustainability Assessment Companion." RobecoSAM. April 2017.

10 Leiti & Moore Stephens, "Post Award Process Audit, Final Report," May 2013, http://www.leiti.org.lr/uploads/2/1/5/6/21569928/leiti_post_award_process_audit_final_report.pdf (10 February 2018)

11 "RobecoSAM's Corporate Sustainability Assessment Companion." RobecoSAM. April 2017.40