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The Politics of Land Based Agricultural Concessions and Rural Development:  
A case of Sime Darby Plantation in Western Liberia.

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## List of Acronyms

AU	African Union
CESCR	Covenant on Economic, Social and Cultural Rights
CRL	Community Rights Law
CSO	Civil Society Organization
ECC	Entity Concession Committee
GoL	Government of Liberia
IATF	Inter-Agency Task Force
IMCC	Inter-Ministerial Concession Committee
ISS	International Institute of Social Studies
LEITI	Liberia Extractive Industries and Transparency Initiative
LRA	Land Rights Act
MIA	Ministry of Internal Affairs
MOA	Ministry of Agriculture
MOU	Memorandum of Understanding
NBC	National Bureau of Concession
NIC	National Investment Commission
NRM	Natural Resource Management
PPCA	Public Procurement and Concession Act
PRS	Poverty Reduction Strategy
RSPO	Roundtable on Sustainable Palm Oil
SDPL	Sime Darby Plantation Liberia
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNFAO	United Nations Food and Agricultural Organization

## **Dedication**

This Master dissertation is dedicated to my loving mother, who has been my support and motivator throughout my pursuit of education. Her valuable contributions have made me to accomplish the dream of earning a Master's degree. Heartfelt gratitude to you Mom, your motherly guidance and supports will never be forgotten.

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## **Abstract**

Post-war Liberia has experienced a wave of large-scale land agricultural concessions in recent years. In principle, the goal is to transform rural livelihoods and promote economic growth through jobs creation and infrastructural development. However, those large-scale land concessions have not met the expectations of job creation and economic empowerment. Instead, public reactions to those concessions operations have threatened the peace and stability of the state. The disenchantments engulfing concession plantations in the country can be attributed to many factors, ranging from economic, environmental to social. Many authors have reflected on these issues, not enough studies have focused on the strategies and modes of design and award of these concession agreements. This study explored state-investors strategies in the design and award of concession contracts which led to continued protestations and conflicts between local communities and the concessionaries.

The research focused on the agricultural land concession between Government of Liberia and the Malaysian-based Sime Darby Plantation Liberia (SDPL). It argues that the concession lacks public support because the State ignored basic principles of good governance in the design and award of the concession agreement. To substantiate my argument, I adopted qualitative method to gather the perspectives of stakeholders on the concession design and negotiation. I further used four principles of good governance to analyse the findings in line with relevant literatures. The conceptual framework used in this study presents the four dimensions as: participation, transparency, accountability, and legitimacy. These dimensions are based on what is required in the Public Procurement and Concession Act (PPCA) of Liberia. The Findings indicate that not adhering to these principles in concessions arrangement can have negative implications on the relationship between local communities and Concession Companies.

## **Relevance to Development Studies**

Concession-driven development has emerged in the development discourse in recent years as it is fundamental to the transformation of rural livelihoods. Development scholars have been critiquing the establishment of land-based concessions in line with best practice as prescribe in international covenants, national laws and voluntary standards. Those scholars argue that if land concession is properly design, it can serve as a source of job creation and economic empowerment for local communities. On the contrary, land concessions could plunge rural communities into economic deprivation and abject poverty. This study contributes to the discourse on the politics of natural resource concessions, particularly large-scale land concessions and rural development. Understanding the politics around land-based concession is imperative as it has to do with inclusion or exclusion of stakeholders. For the past ten (10) decades development practitioners and academicians have shifted the development discourse to focus on inclusive and people centre approach. This is what 21<sup>st</sup> century development is about, promoting the inclusion of women, minority group and indigenous communities in decision about their development. It is about ensuring that duty bearers are transparent and accountable to rights-holders in process of land concession.

### **Keywords**

Liberia, Large-scale land acquisition, land policy, concession agreement

# Chapter 1: General Introduction

## 1.1 Introduction

Following 14 years civil unrest, the first post-war democratic government of Liberia led by Madam Ellen Johnson Sirleaf, Africa's first female president, entered into series of concession contracts with Multinational Corporations (MNCs). The Government saw natural resource concessions as the best way to achieve rapid economic growth and rural development in the aftermath of the civil war. It attracts several Multinational Corporations (MNCs) including: the Malaysian based oil palm giant Sime Darby, the Indonesia company Sina Mar (Golden Veroleum), and British Equatorial Palm Oil to invest in the agricultural sector (Stevens 2014; Bruce 2008; Wily 2007). These concessions account for a considerable quantity about 40-50 percent of the country land (Wit 2012; Oxfam 2012a).

A concession agreement is a legal contract between a government and private company (the "investor") in which the Government give the investor right to use, maintain, or provide goods or services for export and/or within the country for a given period of time, but ownership usually remains with the government (OECD 2007). In the context of this research, the terms contract and agreement are used interchangeably. The processes that lead to awarding concession contracts and the outcomes are varies from one country to another. However, some scholars have estimated over fifty percent of concession agreements awarded in developing countries since 1980s have either been renegotiated or failed to meet the premise on which they were established (Estache 2006; Greenpeace International 2012). The policy mode used to award those concession contracts are often influenced by power imbalances and elites interests (Cotula and Verneulem 2011; Miranda 2007). In most instances, selected government officials and the concessionaires preclude transparency and ignore existing legislations and policies (Borras and Franco 2011; Deininger and Byerlee 2011; Cotula et al. 2009; Bruce 2008) as well as practical hindrances in awarding the concession contracts. The lands are often acquired without the involvement of local communities who are directly affected by the concession activities (Miranda 2007; Wily 2007; Estache 2006; Manji 2006). These actions have made natural resource particularly land concessions vulnerable and often faced constant resistance from local communities.

## 1.2 Background

Liberia is a small country located on the west coast of Africa with an area of more than 37,000 square miles and population of approximately 5 million people (World Population Review 2020). According to UNFAO, 44.9% or 4,329,000 hectares of the country is forested, which include 37% of the remaining 'upper Guinea forest' in West Africa. Liberia's land grab history can be traced to its history. Under the Aborigines Law and the Public Lands Law in 1956, the Liberian government has treated all land not under fee simple private ownership as public property owned by the state. Consequently, central government officials have negotiated concessions without consulting the affected communities, and often without the knowledge of which communities in fact live on the land in question. The 1926 Firestone agreement that granted 99 years concession to Firestone marks the beginning of Large-scale land acquisitions for agricultural concession in Liberia. Firestone was granted the right to develop one million acres of land into rubber plantation (Church 1969, Steven 2014). The concession was Liberia's first foreign capital investment to contribute taxes and royalties for economic growth and development.

Since the Firestone concession establishment, the State has heavily depended on natural resource concessions as a key source of revenue generation for economic development. Agricultural concessions particularly oil palm, are estimated to account for about 21 percent of the total concessions in the country (Oxfam 2012a; Unruh 2009; Bruce 2008). However, a number of these concessions have created persistent conflicts between the concessionaries and local communities. Thus, this research seeks to explore the mode of concession agreements' creation that has generated local opposition to most concession operations in the country. The study focuses on the design, negotiation, and award of the concession contract which grant Sime Darby the right to cultivate 220,000 hectares of land for Oil Palm development in Western Liberia.

The research looks into the existing policy and legal instruments that influenced the design and negotiation of the concession contract and its subsequent passage into law, 'the Amended and Restated Concession Agreement between the Republic of Liberia and Sime Darby Plantation Liberia (SDPL) Inc. This study explores how the different policy documents on land concessions have been utilized, and how different actors' opinions have been included or excluded in the process. This is intended to show how political elites, bureaucratic politics, interest groups both at the local and national levels can influence formulation of concession agreements.

### 1.3 Conceptualization of concession policy in Liberia

The history of the formation and development of Liberian state is replete with controversy particularly over land resources. From the foundation, there has been intense conflict over land between the founders of Liberia<sup>1</sup> and the indigenous who they met on the ground. The State created policies and laws to ensure control over land resources in the country. One of those laws was the Public Lands Law of 1956 giving the State ownership over all customary lands (Stevens 2014; Bruce 2008; Unruh 2003). The “Public Lands Law” gave leasing rights for “any portion of lands not appropriated for other purposes”. Under the Public Land Law, lands without title deeds were classified as “public Lands”. The law gave the president exclusive right to concede land to concession companies without regards for customary rights.

The 1926 Firestone concession agreement seems to have enforced the State action as they negotiated and awarded the Company one (1) million acres of land without the involvement of indigenous communities who inherited the land for generations (Bruce 2008; Unruh 2008). Cotula et al, (2009) argues that States action to control land and natural resources is inherent in policy decisions and State institutions can be used to implement those decisions. Thus, the State crafted policies and laws and used its bureaucratic institutions to claim land and expand territories in the interior (Unruh 2008; Sawyer 2005). These policies and laws created distinction between the indigenous and settlers in terms of social classes, rights and obligations; and reflected the social and structural difference between the settlers and natives. Example, the Public Land Law of 1956 (amended in 1973) gave State ownership over all customary lands. The discriminatory nature of the land policies and laws appear as one of the main causes of the Liberian civil conflict.

After the civil war, Liberia instituted a number of reforms to address several land disputes and concession conflicts across the country. The reforms were necessary in addressing the vagueness in the Public Land Laws. The law did not provide a clear definition of ‘public land’ which has been a source of tension among customary land users, investors, and the national government (Stevens 2014; Unruh 2009; Wily 2007). The reforms led to the creation of a number of policies and laws to impact the awarding of concession contracts in the country (Christensen, Hartman, and Samii, 2017; Delton 1965). Key among these laws and/or policies are:

- The Public Procurement and Concessions Act (PPCA), 2005 (Approved 2010);

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<sup>1</sup> Americo-Liberians - Liberian who migrated from United States of America in the 18 century.

- Environmental Protection and Management Law (2002);
- The Community Rights Law (2009) of Liberia with Respect to Forest Lands (CRL)
- Liberia Extractives Industries and Transparency Initiative Act 2010;
- Land Rights Act 2018

These legal and policy instruments are not specific to the agricultural sector. They are intended to regulate natural resources in general to ensure citizens benefit thereof. The instruments outline processes and procedures through which concession contracts should be awarded. For instance, the Public Procurement and Concession Act 2005 is the main instrument that applies to agricultural concession negotiation and implementations. The PPCA outlines steps that should be applied in granting agricultural concessions.

**Table 1. Summaries PPCA steps in awarding concession contracts**

Phases	Legal reference	Steps
Case of Sole Source award	Section 101 PPCA	Follow the procedure stated in Section 101 of the PPCA, and obtain the approval of the PPCC
Certificate for Concession	Section 89 PPCA	Request and obtain a Certificate for concession from the Minister of Planning and Economic Affairs
Entity Concession Committee	Section 77 PPCA	Designation of an Entity Concession Committee (ECC) by the Minister of Agriculture
Participation phase	Section 38 PPCA	Written request by the Minister of Agriculture to the President of GOL in order to constitute the Inter-Ministerial Concessions Committee (IMCC)
	Section 83 PPCA	Nomination of the IMCC members by the President of GOL
	Section 79 PPCA	Preparation of a Concession Procurement Plan (CPP) by the ECC
	Section 79 PPCA	Filing of the CPP with the Public Procurement Concession Commission (PPCC) and IMCC
	Section 79 PPCA	Approval of CPP by IMCC
	Section 91 PPCA	Publication of a notice of the stakeholder forum not less than 14 days prior to the Forum by the MOA (stating the time and place)

	Section 90 PPCA	Holding of Public Stakeholder Consultations by the MOA
	Section 106 PPCA	Publication of a General Notice of Investment Opportunity by the MOA
Expressions of Interest or prequalification (if EoI used)	Section 77 PPCA	Preparation of pre-qualification instructions for bidders if prequalification is to be used
	Section 104 PPCA	Submission of the Expression of Interest (EoI) Form to the IMCC for Review and approval
	Section 102 PPCA	Review and approval of the EoI Form and of the pre-qualification criteria by the IMCC
	Section 106 PPCA	Publication of a request for EoI with a minimum deadline of 4 weeks
	Section 110 PPCA	Receipt of the EoI by the ECC
	Section 110 PPCA	Opening of the EoI by the ECC
	Section 111 PPCA	Appointment of a Concession Bid Evaluation Panel (CBEP) by the IMCC
	Section 111 PPCA	Evaluation of submissions by CBEP and preparation of a report on the evaluation
	Section 102 PPCA	Approval of the results by IMCC
Invitations to bid	Section 77 PPCA	Preparation of all documentation to be included in any invitation to bid by ECC
	Section 82 PPCA	Submission of the Invitation to Bid Form and the invitation to bid documents to IMCC for review and approval
	Section 82 PPCA	Review and approval of the invitation to bid form and the invitation to bid documents by the IMCC
	Section 117 PPCA	Submission of the Invitation to Bid Form and the invitation to bid documents to the Ministry of Justice for review of legal aspects
	Section 106 PPCA	Publication of an invitation to bid with a minimum deadline of 6 weeks
Reception, opening and evaluation of bids	Section 110 PPCA	Receipt of the Bids by ECC
	Section 110 PPCA	Opening of the Bids by ECC
	Sections 78 and 116 PPCA	Appointment of an independent organisation to carry out the due diligence
	Sections 115 and 116 PPCA	Conduct of a due diligence review of all responsive bidders (the evaluation report should be accompanied by a summary of the results of the due diligence performed)

	Section 118 PPCA	Preparation and submission of the evaluation report by CBEP on the post-qualification to IMCC
	Section 118 PPCA	Review and approval of the evaluation report by IMCC
	Section 118 PPCA	Notification to the PPCC and the President of GOL of the actions taken following the CBEP evaluation report
Contract Negotiation	Section 118 PPCA	Appointment of a negotiation team by the President of GOL to carry out the contract negotiations
	Section 118 PPCA	Conduct of contract negotiations and choice of the contractor
Contract signature	Section 117 PPCA	Signature of the Agreement by the President
	Section 6.2.4 GBL	Ratification of the contract by Legislature
Further Communications	Section 92 PPCA	Documents stated in Section 92 of the PPCA are sent to the National Bureau Concessions by ECC and IMCC

Source: LEITI post award process audit final report, 2013

These legal and policy instruments recognize the involvement of local communities in the design and awarding of concessions in their areas. For instance, the Community Rights Law (2009) emphasizes that any agreement on activities that affect the use of customary land should be conducted in acquiescent with the local population. The activities should proceed with the full participation of affected communities and the benefits be equitable distributions (Lowenstein 2017). The Environmental Protection and Management Law (2002) also requires an environmental due diligence before the concession operations can begin. Besides, there are customary land governance system in Liberia which some of these policy/legal instruments recognized. Local lands are often administered by the Town, Clan and paramount chiefs (Lomax, Kenrick and Brownell 2012) who preside over land administration in the rural communities.

Additionally, Liberia has signed and ratified some international human rights instruments such as the African Chapter on Human and People's Rights, Universal Declaration of Human Rights (UDHR), and International Covenant on Economic, Social and Cultural Rights (CESCR) among others (Lowenstein 2017). These instruments are in place to ensure best practice in the processes of designing and awarding concession agreements. The ratification of these international instruments means that the State is obligated to engage the local



population as rights holders and therefore are active stakeholders in the concession processes.

Importantly, in September 2018, Liberia passed a Land Rights bill into law. The Land Rights law strongly protects community land rights in many ways including private ownership of their customary land (Article 2, Article 32.1), equal rights for women, youth, and members of minority groups (Articles 2 and 34.3) etc. Despite the enactment of the law, there are visible shortcomings in terms of implementation. Example, although the Law recognises and includes communities' rights and ownership to land, however (O'mahony 2019) argued that there is flaw within the legislation for those living on the quarter of the country's land set aside for concessions, it is not retroactive. The law will not apply to those already living close to oil palm concessions, a difficult truth that is only just beginning to permeate thousands of villages in Liberia.

However, the Land Rights Law was not in place when Sime Darby concession negotiation was carried out. But there were other existing legal and policy instruments as well as international covenants. It seems that those existing laws and treaties were not fully applied in the design and award of the concession agreement. The process of awarding the concession appears to be a matter of private, bilateral agreement between national government officials and the concessionaries. Accordingly, this research argues that Sime Darby concession has been a source of contentions because the design, negotiation and award of the concession agreement violate community rights. The concession negotiation did not meet broader public participation particularly the affected communities which are now part of the current Land Rights Law. For instance, the concession area as defined in Section 1.12 of the concession Act states, "...an area of 220,000 hectares of Government land including the existing Areas, to be identified jointly by Investor and Government pursuant to section 4.1".

This provision is self-explanatory excluding indigenous communities from the land acquisition process. Such exclusion of local people who depend on the land for livelihoods causes resentment in the local communities. If national policymakers fail to pass concessions particularly land in accordance with existing laws and through open legislation process, and thereby negotiate with affected communities, the agreement become politicize and prone to oppositions and conflicts. It should be noted that land is a critical asset to any society; and land concessions often destroy basic necessities particularly rural livelihoods and cultures, which is imperative to the survival of large number of people (Miranda 2007; Manji, 2006). Interestingly, citizens are aware that access to land resources are basic human rights and are

inherent in the social contract agreed with their elected government. Thus, Concession agreements over land resources should not be mere bilateral contract between private investors and few officials of government. The concession negotiation processes should be inclusive of the local communities.

## **1.4 Statement of the Problem**

In 2009, Sime Darby entered into a 63-year concession agreement with the Government of Liberia (GoL) to develop 220,000 hectares of agricultural lands in the north-western counties of Grand Cape Mount, Bomi, Gbapolu, and Bong. The 220,000 hectares is inclusive of 120,000 hectares originally provided for under the terms of the Guthrie Concession Agreement of 1953. A 100,000 hectares for the construction and operation of vegetable oil refinery in Liberia. Sime Darby Plantation Liberia (SDPL), is a Malaysia-Based multinational conglomerate, one of the largest palm oil producers in the world; and it is one of the founding members of the Roundtable on Sustainable Palm Oil (RSPO). As a member of the RSPO, the Company claims it followed best practices in all of its concessions designs and negotiations including the operation in Liberia. The company promised that the concession will promote local livelihoods and economic development through the provision of employment, health, and education opportunities for the local population. The Guardian Weekly newspaper March 8, 2011 edition reported an executive of Sime Darby as saying, “We want to act as a catalyst for Liberia's development”. The Company executive further explained that their vision is to help the Liberian government promote economic growth and improve rural livelihoods.

On the other hand, the Government of Liberia claimed to follow all policies and laws governing the natural resource sector and ensure the concession agreement is in the best interest of the people. Daily Observer newspaper January 10, 2010 edition cited from Ministry of Agriculture press release, “the commencement of the implementation of the agreement will significantly reduce the unemployment rate in the country and create a positive impact on the mitigation of poverty in line with the government’s Poverty Reduction Strategy (PRS)”. But recent events have shown that, GoL may have ignored existing statutory provisions, international human rights treaties, and some practical obstacles in the design, negotiation and awarding of the concession contract. There have been several protests and contestations from affected communities in the concession areas. For instance, on July 14, 2011, The Analyst Newspaper reported aggrieved citizens of more than 15 towns and villages in

and around the concession threatened to resist any further expansion of the company plantations. The aggrieved citizen claimed that the concession negotiation granting the land to BF Goodrich and to Sime Darby were done outside of their free prior and informed consent.

In the same year (2011), affected communities' complaint Sime Darby (Liberia) Inc. to the Roundtable on Sustainable Palm Oil (RSPO) for clearing their customary land without their Free Prior and Informed Consent (FPIC). And that the company operation was destroying their farmlands, water sources and burial and sacred sites. The communities further complained that Sime Darby has done little to provide alternative livelihoods. They have to travel to the Capital city (Monrovia) to buy food, protein and other essential needs. This often happens when concession agreements are signed. The concessionaries are insensitive of indigenous peoples' culture, their customary rights, their traditional knowledge, and do not bother if their subsistence base is negatively affected by their activities (De Schutter 2011; Borrás and Franco 2011; Cotula 2009; Lewis and Nelson 2006). It seems that this practice continues because of the influence of national government and the policy mode of granting agricultural concessions to foreign investors.

In 2013, an international accounting firm Moore Stephens reported that only 6 out of 68 concessions (agriculture, mining, forestry) contracts awarded to foreign investors in Liberia meet the procedures mandated in national policies and laws. The report indicates that national Government has negotiated concession contracts without the involvement of local population who are direct victims of concession operations on their land (LEITI Post-award Audit, 2013). To explore why and how this happened, one must have a clear knowledge of the existing political structure and power relations that exist in the country. The system of governance in Liberia is overly centralized with its institutions based in the capital city Monrovia. This system was established as a result of state formation as settlers' state in 1822. The State created a political system that give the president extreme power to shape the economic, political and social life of the country (Stiftung 2018; Gerdes 2013; Sawyer 2005). Such centralize and immense power of the executive has not created the opportunity for integration of others into the power-administering structure.

The centralized state controls and dominates all aspects of the governance system with little or no room for those dominated to participate in making decisions about their own development (Bruce 2008; Sawyer 1995; Dalton 1965). The State formulates policies and laws and built bureaucratic institutions that often implement these policies and laws for personal gains (Sawyer 2005; Gylfason 2001; Dalton 1965). Dalton (1965:584) recognizes that

in Liberia, "...political form differs radically from political substance, and official pronouncement differs radically from actual practice". According to him, people who should benefit from these policies and laws are not aware or do not understand the provisions therein. The State has not involved the local population to create these policy instruments and used it to build state-society relations through provision of public goods, which are key ingredients of input and output legitimacy<sup>2</sup>. Because of the predatory nature of the Liberian State, concessions have not yielded the desired benefits for the most affected communities. Cotula et al, (2009) affirms that in most developing countries concession agreements are often bilateral arrangements between high ranking government officials and private investors with the aim to generate revenue through taxes and royalties for self-serving interest. This practice of negotiating and awarding concession contracts is seriously contested in local communities leading to constant conflicts between the local population and the concession companies.

## **1.5 Relevance of the Study**

Over the past decades, much academic work has focused on assessing land acquisition for concessions, governance of agricultural concessions, land rights and ecosystem services and Free, Prior, Informed Consent processes of oil palm concessions in Liberia. These areas are important underpinning to understand how agriculture concessions are governed and the impact on ecosystem services in the country. But none has attempted to look at the legal and policy frameworks supporting the consummation and implementation of these concession deals. This research is relevant as it examined the policy mode used to engage local communities and/or small-holders in the concession schemes in Liberia. The study contributes to policymakers to design and implement land policies that will tackle the issues of social legitimacy in concessions and development related agreements. The study also uncovers the gaps in existing land policies as identified in the literature reviews and ultimately inform future formulation and implementation. Findings from this study add value to further research related to the discourse of land concessions in the global South.

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<sup>2</sup> Input legitimacy is the involvement of the governed into decision making processes; while Output legitimacy is benefits from the center of power are trigger down to the governed through basic social services and jobs.

## **1.6 Objective and Purpose**

In this study, I set out to explore Government concession design and negotiation strategies which have led to series of contestations against concessions operations. Specifically, the research seeks to examine the policy mode that influence the formulation of the Sime Darby concession agreement and subsequence passage into law. In doing so, the research accessed good governance practices in the design, negotiation and acquisition of the land as well as the concession implementation in the local community. This is a qualitative study with a purpose of informing policymakers on the relevance of inclusive contractual design and negotiation. It further aims at creating awareness for open participatory processes among stakeholders and improving negotiation practice for large-scale land concession in the country.

## **1.7 Research questions**

In what way did the national Government and concessionaries design and negotiate the concession agreement that awarded Sime Darby 220,000 hectares of land for oil palm development in western Liberia?

### **1.7.1 Sub-questions**

What was the role of community actors namely: Civil Society Organizations (CSOs), and community representatives in the design, negotiation and award of the concession agreement?

How has power relations among actors influenced pattern of the concession negotiation?

How do the local communities perceive and relate to the concession agreement and operations in the counties?

## **1.8 Organization of the Study**

This study is organized into five (5) chapters. The first chapter focuses on the historical background of large-scale land agricultural concessions and rural development in Liberia. It highlights the policies and laws that drives natural resource concessions in Liberia and presents the contentious issues existing in Sime Darby concession contract agreement. Chapter two (2) discusses the theoretical framework that underpinned this study, starting with governance as the key concept. In Chapter three (3), I presented overview of the study site and the methodology used to gather relevant data. The data collection technique and tools are

described and the relevant for using them are further elaborated. The Chapter further highlights the limitations and impact on the data gathered in this study. Chapter four (4) and five (5) present the main findings from interviews conducted, newspaper reports, policy documents, and scholarly articles on the concession design and negotiation. Chapter four further highlights the findings on the main research question while Chapter five presents the outcomes of the three sub-questions. Finally, Chapter six (6) summarizes the paper and makes recommendations.

## Chapter 2: Conceptual Framework

### 2.1 Large-scale land Concession

Large-scale land acquisition is the purchase or lease of a tract of land larger than 200 hectares or double the median landholding, in line with national context (Sudan, 2015). Large-scale land acquisition is dated as far back from the colonial period. During which the colonial regimes engaged into expansionism to enhance their business interests. This was driven by the rapid industrialization in Europe. These European States presided over their respective colonies and introduced land policies with total disregard for customary laws<sup>3</sup>. Gironde, Messerli and Golay (2015), observe that these European States took control over the lands and left the indigenous populations unable to claim their rights as customary laws were not recognized by colonial authorities.

After independence, most of the States arising from the process of decolonization in Africa followed and maintained the colonial land policies. They did not consider customary rights of indigenous communities. Their actions were supported by legislations that established state controlled over customary lands and created insecurity of lands tenure for indigenous populations (Gironde, Messerli, and Golay 2015; D' Odorico et al. 2014; Atwood 1990). Moreover, since the 1980s, international organizations such as the World Bank, European Union, the United Nations Conference for Trade and Development (UNCTAD), the Food and Agricultural Organization (FAO), and the Asian Development Bank have supported States actions by encouraging a neoliberal approach to land and agricultural development (Borras and Franco 2011; Akram-Lodhi 2008; Ogendo 1998). These organizations have encouraged States legislation for land titling as a form of giving land rights to indigenous communities.

The international interests in agricultural land resulted into national government engaging into different policy mode aimed at attracting foreign capital investment in the agricultural sector. De Schutter (2016) posited there are two modalities to understand the role played by some developing countries governments in the land acquisition process. First is the State-led land deals, in this process government identified land it considers “underutilized” or “vacant” and decides to sell or lease that land to foreign or local investors. In this

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<sup>3</sup> Customary laws are traditional laws practice by indigenous peoples, generally oral, rather than in written codes or principles (Oxford).

case, indigenous people with customary rights to the land are considered “squatters” without titles, and national government may treat the land as government land. Or if alternatively, where the government may decide to use the version of “public purpose” or “eminent domain” doctrine if it recognized that the land in question is titled. The second situation “market-led land deals” occurs when concessionaries engage government officials or local representatives in financial deals for land acquisition (De Schutter 2016; Borras and Franco 2011) or long-term lease of land occupied by indigenous communities.

This practice lead to unequal bargaining power between concessionaries and indigenous communities who are directly affected by the concessions. The deals may not meet the consent of local population particularly women and the minority groups who mostly depend on the land for their livelihoods. As observed by Baird (2014) when working in the Ratanakiri region of Cambodia, political elites greatly influence land appropriations and administration, in association with regional and global capital. This implies that policies designed to administer land deals in Cambodia seem to be associated with ‘elite capture’. These local elites and State bureaucrats often influence concession negotiation processes (Sabatier and Weible 2014; Miranda 2007). Concession negotiations often take place among high-level government officials, lawyers and investors in a closed engagement.

Notwithstanding, in recent decades there have been tremendous efforts toward land policy reforms to tackle some of the existing conflicts in the land sector. State actors recognized that issues related to land based concessions cannot be addressed in isolation from agricultural, economic and institutional policy framework. The move for policy reforms has been triggered by series of contestations and pressure from local communities, donors, advocates, civil society organizations and academia (Verhoog 2013; Auty 2001; Karl 1997). These organizations and scholars emphasize the need for a well-defined policy framework to govern the land sector. Hence, they have contributed to defining land policy from different perspective. Hengstermann and Gerber (2015) refer to land policy as “all public decisions and actions aiming to implement politically defined spatial development objectives through changes in the use, distribution and value of land”.

The African Union (AU) (2009), defines land policy as “the set of agreed principles to govern ownership (or access to), use and management of land resources to enhance their productivity and contribution to social, economic, political and environmental development and poverty alleviation”. AU definition is inclusive of regulations (contract law, environmental law, property rights, and concession law) and land management and administration issues



that are strictly linked to good governance. Moreover, Hengstermann and Gerber's characterisation point to land policy as not just a public policy but strategy that put stakeholders at the centre of decision making processes (Hengstermann and Gerber 2015). These definitions imply the use of good governance principles at all stages of natural resource concessions. It is against this backdrop that my research adopt governance as the key concept that underpinned this study.

## **2.3 Governance**

The term governance emerged in the 1980s as a means to remedy and improve the poor economic performance of Sub-Saharan African countries. Governance was therefore used to enhance institutional reforms and to build a viable public sector for sustainable growth in the 21st century. Since its emergence, the term has been adopted and used by several scholars in different fields including the natural resource sector. For instance, UNDP (1997) views governance as a medium through which citizens can voice out their concerns, enforce their rights, hold their government accountable, and participate in the decision making processes of their development. The UNFAO also looks at governance as a formal and informal arrangement and/or management of institutions to reconcile competing interests and priorities in the society (FAO 2007). These two perspectives look at governance from the governed (civil society actors, citizens or public institutions). On the other hand, The World Bank (2007) expands its viewpoint on governance as a manner in which State exercise authority to influence public policy and provide basic social services. The World Bank emphases is on the "governor" (State actors, multinational corporations) not the "governed". Yet, these definitions point to governance as involving actors including the people.

In the context of this study, I define governance as how power and authority over land resources are exercised, how citizens-including women, men, youth and local communities participate in and are impacted by decisions to manage and use their land resources (Campese et al. 2016; Gisselquist 2012). In this regard, the research presents the concept of governance from the perspectives of legal and policy instruments, as well as customary practices governing land transactions and disputes resolution (Howard et al. 2001). It focuses on the processes and structures through which policy decisions concerning access to land, and its use are made and effectively implemented. To begin with, the research explored the different debates and scepticism scholars have had over the use of governance in the natural re-

source sector discourse. Some scholars have questioned the effective application of the concept given the multiplicity of actors, levels and interactions in the natural resource sector (Armitage 2008; Blomquist 2009). These critics argue that the process faces challenges of inadequate participation, transparency, accountability and legitimacy (Pierre and Peters 2019; Wyborn and Bixler 2013; Poteete 2012). For participation, Morgan (1993) points out that the process is often manipulated and influenced by partisanship, financial inducement, whim of multinational corporations and local and national interest groups and state bureaucrats.

In most cases, State authority sponsored the travels of local leaders and tribal chiefs to regional capital and pay them allowances for the purpose of participation. He (Morgan) refers to such participation as ‘induced participation’, it is “sponsored, mandated, and officially endorsed” (Morgan 1993:28). It is simply gathering local stakeholders to legitimize already agreed and/or existing decision or convince affected communities on what is best for them. This has been the pattern of participation in development projects in Africa for decades. The reason for this is that state actors/development professionals often assumed that local communities do not have the know-how to decide development initiative (Sawandi and Thomson 2014; Cleaver 1999). This form of participation has not generated benefits for the local population who are directly affected by the development. Expanding the argument further, Bushman, Piotroski, & Smith, (2004) and others point out that these dimensions are not a stand-alone in resource governance processes. They must be backed by strong institutions, good understanding of policies and laws among the local population (Bäckstrand 2008; Hood, and Heald 2006), and the political will to implement development outcomes. The institutional backing and political will are not being achievable in developing countries since introducing the concept of governance in natural resource management (NRM).

Nevertheless, Graham et al., (2003) sees it differently, referring to “interactions”, he emphasizes how the different actors exercised power and responsibilities through voicing out their concerns in decision making processes. Effective stakeholders’ engagement and interactions is achievable by creating and implementing regulatory framework that protect the rights of local people and corporate entities (Zakout, Wehrmann and Torhonen 2006). A number of scholars and organizations have developed different frameworks for natural resource governance. For the purpose of this study, the researcher concentrated on Lockwood et al. (2010) nine principles for regional natural resource governance. These nine (9) principles are not casted in stone but they can be helpful if apply to design and negotiation of concession agreements in Liberia.

**Table 2. Key principles for effective management and natural resource governance**

No	Governance Principle	How the principle applies to effective natural resource governance
1	Legitimate in the exercise of authority	Legitimacy is the popular acceptance of a regime's authority to govern. It ensures accountability and transparency in decision-making and actions; foster relevant policies, procedures and regulations; compliance with legislative and contractual obligations; and principled exercise of shared and individual power
2	Inclusive engagement of people involved or affected by decision-making policies and procedures.	Governance is far more inclusive when all those with a stake in reform processes can engage with each other on an equal basis.
3	Fair and equitable in recognition and distribution of costs, benefits and responsibilities	State and non-state actors and institutions are expected to be fair and equitable in the exercise of the authority conferred on them, in the distribution of power, creation of opportunities for engagement, treatment of participants, recognition of diverse values, consideration of current and future generations, sharing of costs, benefits and responsibilities of decision-making and actions.
4	Connected functionally across governance institutions	Functional and/or cross-functional connectivity requires systematic coordination and cooperation across different scales of government, policy sectors, and regions.
5	Consistent in direction across governance institutions and instruments	Consistency requires formulation of a long-term vision with short- to medium-term measurable objectives; strategic direction vertically consistent with arrangements at all levels of the government; and horizontally consistent policy and management instruments.
6	Competent and effective in delivering outcomes	This principle refers to effectiveness in improving resource condition, efficiency of resource use, and the skills and capacities available to NRM participants.
7	Well informed	Good quality information and communications, and diverse inputs of knowledge are needed in solving NRM problems.
8	Responsive and self-reflection with respect	Responsiveness, conscious self-observation and self-reflection about the performance of public institutions and civil society organizations and operating conditions

	to changing circumstances, knowledge and performance	in order to be alert to and respond to changes as they may happen.
9	Durable in ability to account for varying temporal scales in social, institutional and biophysical processes.	Persistence of policy and institutional settings is necessary to support sufficient longevity for policy and institutional learning.

Source: Adapted from (Lockwood, Davidson, Curtis, Stratford and Griffith 2010).

The study encapsulated these nine principles in to four dimensions: participation, transparency, accountability and legitimacy to explain governance in natural resource concessions. These dimensions were adopted from Jones M. Jaja (2014) characteristics of good governance. Jaja presents several characteristics of good governance. I choose these four based on the fact that they are component of the Liberian’s Public Procurement and Concession Act (PPCA), of 2005. The Act which regulate all natural resources concessions in the country. Secondly, these dimensions are inculcated into different policies and legal instruments as well as international treaties designed to promote human rights in the design and award of concession contracts (Deininger, Selod and Burns 2011; UNDP 1997). They will be dealt with in relation to the existing law and/or policy particularly the PPCA.

### 2.3.1 Participation

Participation is one of the basic principles overused in governance. The concept has been advocated for as international best practice that should be applied in every aspect of governance, particularly natural resource management. Participation has been defined by several scholars through time. Devas & Grant (2003) defines participation as the inclusion of citizens to have some level of influence in the decision-making process of development that directly affect their lives. In an effective governance, government uses an openly participatory method to design and negotiate concession agreement. It is within this context, this research defines participation as the involvement of stakeholders in decision making processes, with those directly affected having the potential to agree or disagree with decisions emanating the processes (Chamber 2005; Cornwall 2002; Botes, and Van Rensburg 2000). Participation in this form legitimize the decision and sustain the development initiatives (Botes and Van Rensburg 2000; Cleaver 1999). Section 90 of PPCA provide for participation phase of concession negotiation processes. Mentioning participation in a policy document is not sufficient

for governance. It requires proper involvement of all stakeholders at the design and implementation of development initiatives.

### **2.3.2 Transparency**

Transparency is an important dimension in agricultural land governance. It can be defined from a broad or narrow context depending on the perspective of the scholar/agency. UNDP (1997) views transparency as access to information regarding the process, and mechanisms for public concerns to understand and monitor implementations. Within the context of agricultural land acquisition, access to information means openness and the information is designed within a language appropriate to convince the local population that their views are accepted by State actors (Bodin and Crona 2009; Gisselquist 2012; Oliver 2004). The Transparency International (TI) refers to transparency as,

...a principle that allows those affected by business transactions, administrative decisions, or charitable work to work not only on the basis of facts and figures but also the mechanisms and process. It is the duty of civil servants, managers, and trustees to act visibly, predictably and understandably (Transparency International 2004:5).

These definitions suggest openness not just in terms of information but the public should have access to all State policies, laws, regulations, decisions and processes. Section 82 and 106 of the PPCA provide for an open bidding process and publication of Expression of Interest (EoI). This means public disclosure of the investor's interest and the bidding process should be open for others to compete. Article 9 of the Universal Declaration of Human Rights affirms, "Everyone has the right to seek, receive and impart information and ideas through any media regardless of the frontier".

The three main characteristics of transparency: structural, legal, and functional are necessary in this regard. Structural transparency is concerned with how accessibility and connected institutions created to implement policies and laws are to the public and the private sector. Access to information can serve as a good response to regulatory deficit often experience in concession negotiations (McCloughlin 2015; Kraak 2011; Bäckstrand 2008). The embeddedness of State institutions can ensure effective and efficient communication and awareness of regulations at all levels of the society (Ansell and Gash 2008; Freeman 1997). Legal transparency which has to do with accessibility and understanding of legal instruments (policy, laws, regulations, charters, code) are relevant in promoting transparency in State land deals. It has to do with the availability and accessibility and clarity of these legal instruments

(soft and hard laws) to the local population. Effective legislations can ensure accountability among public officials and build trust between public officials and their citizens. But if these legislations, policies, laws or regulations are unclear or unavailable, people will misunderstand or act in ignorance (Gisselquist 2012; Kraak 2011; Bäckstrand 2008). Additionally, functional transparency looks at information on: who does what? Who is responsible for what? This characteristic is important in agricultural concessions as it informs stakeholders on their roles in the concession negotiation and implementation (UN/Habitat and TI 2004). It serves as a good public policy network that bring together the State, corporations, civil society organizations and community actors (Oliver 2004; Freeman 1997). However, this form of transparency is not often seen in land concession deals in most developing countries. Even though State actors claim that concessions processes are transparent, evidence have shown the contrary.

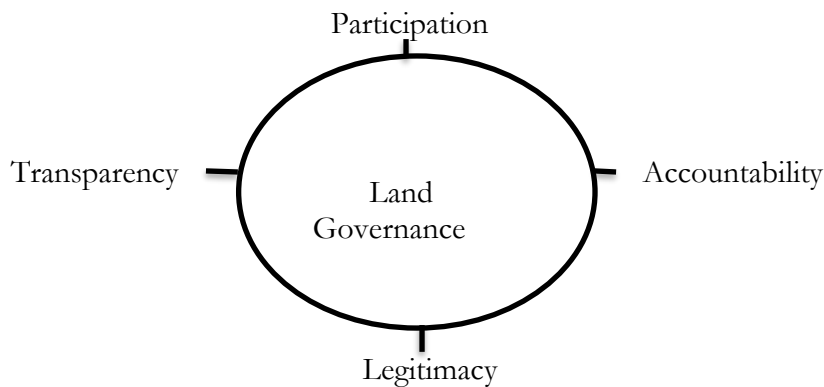
### **2.3.3 Accountability**

Accountability is closely linked with transparency as both emphasize responsibility and openness of institutions to the public. The term accountability refers to how management and public officials respond to inquiries, acknowledge their actions and provide reasons thereof (FAO 2007). Grant and Keohane (2005) pointed out that accountability implies that the public have the right to hold their officials accountable to a set of standards, to judge whether they have fulfilled their responsibilities in light of these standards. This apply to the principal-agent views of accountability. The principal-agent accountability is where the principal uses whatever means available, to compare other actors (agents) to make decisions that the principal most prefer (Kraft and Wolf 2018; Gailmard 2012). In the context of land governance, those who land is affected by the concession are the principals while their representatives/public officials are the agents. Such form of accountability is relevant as it gives the affected population voice to demand their rights. In this case, downward accountability where the agents freely carry out their responsibility rather than be pressured by external actors or protest from the local communities. This form of accountability can be emphasized at the grassroots with focus on the affected communities (Sawandi and Thomson 2014; Fox 1995). Downward accountability could be applied at the beginning of concession negotiations by introducing procedural fairness (Palmer, Fricska and Wehrmann 2009; Bäckstrand 2008), balanced representation of stakeholders, transparency and information sharing, monitoring and reporting mechanisms.

### 2.3.4 Legitimacy

Legitimacy has been the main concern in land deals in developing countries particularly in African. It is an important principle in sustaining business development particularly agricultural concessions. It implies being in accord with established policies, norms, regulations, and rules that govern a sector (Neef, Touch and Chiengthong 2013; Colfer 2011; Kaul, Heuty and Norman 2009; Cashore 2002). Suchman (1995: 574) refers to legitimacy as “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions”. The success of specific policy, law, or regulation governing land concessions can serve as a precondition for public acceptance. Governance mechanisms are often legitimized if the public perceived fairness in their objectives and established norms (Owen and Kemp 2014; Biermann and Gupta 2011). This is considered as output legitimacy which is relevant in corporate and public governance (Mena and Palazzo 2012; Curtin and Meijer 2006)). In a nutshell, policies, laws, regulations and/or agreement in land deals should be in strict adherence to public participation, transparency, accountability to be legitimated by the affected communities.

**Figure 1: Conceptual Framework Matrix**



Source: Adapted from Jaja (2014) characteristics of good governance

The dimensions discussed above are operationalized by using indicators to ascertain where progress is made in the design and negotiation of concessions, or where certain condition exist. In this case, indicators are necessary in setting benchmarks to measure success or failure in the implementation of the policy designed to be used in awarding of natural resource contracts (Deininger et al. 2012). Table 3 below presents the variables, descriptions and list of indicators to ascertain the level of participation, transparency, accountability and legitimacy of Sime Darby Plantation Liberia (SDPL) Concession agreement.

**Table 3. Descriptions and list of indicators**

Variable/Dimension	Description	Indicator
Participation	Involvement of actors (State, private, civil society and local population).	<ul style="list-style-type: none"> <li>-Number of communities representatives involved in the concession negotiation</li> <li>-Number of civil society organizations involved</li> <li>-The frequency of meetings between the local representatives and the land acquiring authority.</li> </ul>
Transparency	Procedures, policies, laws and regulations are in the appropriate languages and accessible to all.	<ul style="list-style-type: none"> <li>-Open bidding process.</li> <li>-Establishment of information desk/centre.</li> <li>-Frequency of information dissemination locally.</li> <li>-Medium of information dissemination at the local level.</li> <li>-Regulations and laws are made clear to the local population.</li> <li>-Full disclosure of the intended use of the land.</li> </ul>
Accountability	State and corporate entities are responsive to the people.	<ul style="list-style-type: none"> <li>-Number of stakeholders involved in the negotiation process;</li> <li>-Duration of publication of Expression of Interest in newspapers as prescribes in section 106 PPCA</li> <li>-Number of independent organizations appointed to carry out due diligence.</li> </ul>
Legitimacy	Public acceptance of the agreement, laws, policies and/or regulations that govern the concession.	<ul style="list-style-type: none"> <li>-Number of people satisfied with the concession operation in the area.</li> </ul>

Source: research author, 2020



## **Chapter 3: Study Area and Methodology**

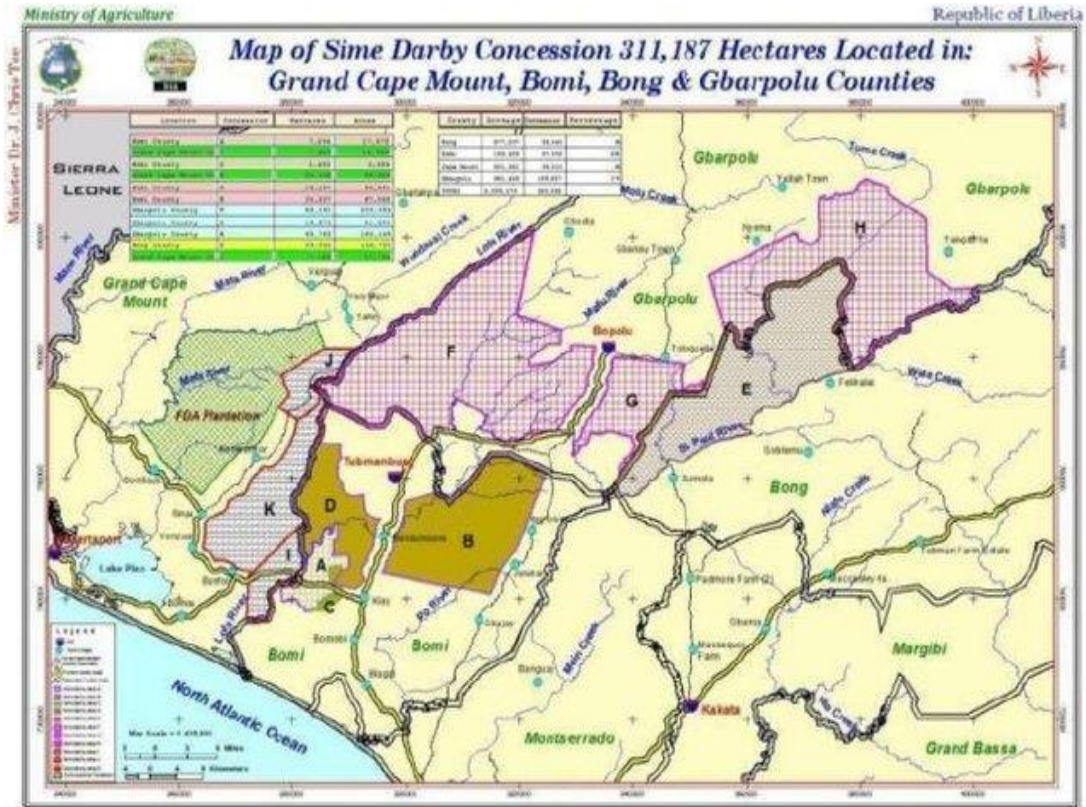
### **3.1 Introduction**

The previous chapters explored the background, problem, justification, literatures and concepts regarding the politics of agricultural land concessions and rural development. This methodological section operationalized the research objectives by describing the study areas, data collection technique, justification of research respondents, data analysis, and the limitation associated with the study. Section 3.1 described the study area, while section 3.2 presents the research approach and 3.3 described the primary and secondary data sources and collection techniques. The justification and selection of research respondents and data analysis are presented in section 3.4, and finally the limitations encountered are outlined in section 3.5.

### **3.2 study Area**

This research was conducted in the western region of Liberia which comprises of Grand Cape Mount, Gbarpolu, Bong and Bomi counties. These four counties have a combined area of 9, 815 sq. mile and combined population of about 628,064 people (Population Census Report, 2008). The western region constitutes one of the essential rain forest areas in the country. The land awarded for Sime Darby concession include mixed shifting cultivation and forest that have been used by the rural communities for generation (Lomax, Kenrick, and Brownell 2012; Wily 2007). Land is a dependable source of livelihoods activities. The local population in the area are engaged with multiple and overlapping land uses. They are involved in shifting agriculture and subsistence farming (eg: rice, cassava, maize, pepper etc.) food and also grow cash crops (Kola nut, Cocoa, Oranges, etc.) for business purposes (Lomax, Kenrick and Brownell 2012; Wily 2007; Unruh 2003). The counties have large settlements referred to as towns. The affected communities include eighteen towns in Garwula District, Grand Cape Mount County which is the focused area of this study. Map showing Sime Darby Concession area.

**Map 1: Sime Darby Concession areas**



Source: Liberia Ministry of Agriculture, (n.d)

### 3.4 Data Collection technique

Based on serious restrictions on field work as a result of the COVID-19 global health crisis, this study has been designed on qualitative method using online interviews with a semi-structured questionnaire. The online interviews were conducted using Skype and telephone calls. The method is adopted to enable the researcher access respondents in their own environments (homes or workplaces) given the travel restrictions and lockdowns. Online interview is relevant and advantageous in such crisis period as it allows the interviewer and interviewees to stay in the respective places and choose a convenient time that best suit the participants in the study (Daymon and Holloway 2010). The method enables the respondents to provide extensive narratives in a structured conversation with the interviewer (Taylor 2005). It helps the interviewer to understand and interpret societal concerns and experiences through close engagement with the respondents' voices and perceptions.

Key informants were selected from four categories of actors for the online interviews. Each category had at least three informants sample purposively. The categories of informants are defined as follow:

1. **Government agencies/Members of the Inter-ministerial Concession Committee (IMCC) and the National legislature:** The Inter-ministerial Concession Committee was established and chaired by the National Investment Commission to negotiate the Sime Darby concession contract. The IMCC was comprises of ministries and agencies including Agriculture, Land, Mines & Energy, Justice, and Finance etc. Section 83 (4) of the Public Procurement and Concession Act (PPCA), provided for establishment of IMCC by the president. The IMCC shall be established from ministries and agencies concerned with the sector and their mandate is to negotiate the concession contract. Once negotiation of the contract is concluded the IMCC is dissolved. The second informants in this category were members of the National Legislature representing the counties and districts affected by the concession.
2. **Communities' representatives/Local Chiefs:** Paramount and town chiefs who are responsible to administered land affairs on behalf of the communities. These chiefs represent their communities on issues of greater concerns particularly natural resources.
3. **Civil Society organizations (CSOs):** National non-governmental organizations with strong linkages to the local communities. These CSOs serve to protect the interest of local communities in the concession negotiations and implementations. Their involvement is necessary to validate information from stakeholders in the other categories.
4. **Concession Company:** Representatives from the concession company to provide their perspectives of the concession negotiation and community reactions to the concession operations.

Considering the relevant of the study, secondary data were also collected from policy documents, newspaper articles, and scholarly journals on the concession negotiation and operations. These secondary data sources help to support the findings from the key informants' interviews.

## **3.5 Ethical considerations and Limitations of the study**

### **3.5.1 Ethical considerations**

Due to the COVID-19 restrictions and the regulations from ISS regarding field work, I choose to conduct online interviews with the research participants. This method was adopted to prioritize the health of both the interviewees and interviewer. During the interviews, I ensured the full consent of every interviewee was obtained and the dignity and privacy of the participants were respected. I also work to ensure confidentiality and the anonymity of the interviewees considering the sensitive nature of the research topic and level of participants. This is in alignment with ISS research protocol in the context of the COVID-19 pandemic.

### **3.5.2 Limitations**

Due to the COVID-19 global pandemic, there were many limitations in conducting this study. The main limitation was lack of first-hand fieldwork in the concession affected communities. The travel restrictions and lockdowns measures to contain the spread of the Coronavirus disease impeded fieldwork. The presence of the researcher in the communities to conduct face-to-face interviews with respondents would have given the study a much more reliable sources of information. Unfortunately, the research data were collected through online interviews by phone and Skype calls. The limitations associated with online interviews are several. Lack of network and/or poor internet connectivity, limited interview time, and misinterpretation of some research questions are some highlights.

Secondly, most of the people involved in the concession negotiation process at the time are either out of government now, deceased or have travelled out of the country. Therefore, the researcher did not get most of the people directly involved for the interview. Most of the participants interviewed at the State level came into positions after the signing of the concession contract. Moreover, given the lack of mobile phone network and internet connectivity, it was difficult to sample respondents in the four affected counties. The data were gathered in Gbah and Madina two affected communities in Grand Cape Mount. The selection of these two towns among eighteen (18) affected communities in the county was based on access to phone and/or internet connectivity in the area.

# Chapter 4: Sime Darby Concession Design and Negotiation Strategy

## 4.1 Introduction

This Chapter focuses on the findings arising from the main research question. It is divided into two sub-sections based on views and accounts of key actors interviewed, newspaper reports, legal and policy documents, and scholarly articles on the design and negotiation of the concession agreement. The analysis of the findings are presented based on my research objectives and the theoretical concept that underpinned this study.

## 4.2 Concession Design

Large portion (120,000 hectares) of the land subject to Sime Darby Concession were allocated from the original BF Goodrich concession contract of 1956. GOL signed handover agreement with Sime Darby in July 2009, according to which additional 100,000 hectares were added, totalling the land area allocated under the new agreement to 220,000 hectares. To accomplish this concession agreement, GOL considered the process as a transfer of ownership rights to Sime Darby. There is no law that requires tendering of assets between buyers and sellers. Thus, my findings suggest, state-actors ignored best practices in the design of Sime Darby concession agreement. The process for additional 100,000 hectares did not go through any competitive bidding process. The Ministry of Agriculture (MOA) violated provisions in existing legal and policy instruments such as the Community Rights Law (CRL), Public Procurement Concession Act (PPCA) and other international covenants (UDHR and CESCRC) which Liberia has signed and ratified. A former official of National Bureau of Concession (NBC) told me in an online interview that the land in question was Government owned. *“The land in question was Government owned. There was existing Guthrie rubber development agreement which covered 120,000 hectares in the region. Government did not need to involve local stakeholders in redesigning an existing contract”*. I asked whether the PPCA was followed in the concession design. He responded, *“I do not know because at the time of the concession arrangement the PPCA was just a draft document not approved. It was approved in 2010 when the Company has already begun operations”*.

A civil society actor interviewed expressed similar concerns that state-actors excluded key stakeholders in the design and award of the concession agreement. According to him,

civil society and the local communities were only involved after GOL has committed community lands to foreign investors. When I asked how the design was carried out, he replied:

*“There was no public notice or any open call for bid as far as my knowledge is concern. The Concession Committee and the investors seat in Monrovia and design whatever they feel is good for the affected communities. Prior to the civil war, B.F. Goodrich had a rubber concession in this region. The contract was awarded through negotiation between the GOL and the concessionaires without the involvement of civil society and the local people. That was then, in this modern age we expect government mode of concession design to change unfortunately this is not the case. Civil society and local people were excluded from the process”<sup>2</sup>.*

In furtherance, I found evidences in the Sime Darby concession agreement that exclude non-state actors in the design. For instance, Section 17 of the concession agreement requires the establishment of a Coordination Committee with representation from GoL and the Concessionaire. The committee is established for the purpose of discussing environmental, health, safety, educational, and labour issues that may arise as the result of the concession activities. No community representation is required on that committee. Secondly, Section 5.1 of the concession agreement also warrant that all public land in the concession area are “free of encumbrances.” This means that the State negotiators did not recognize that local people occupied and use those lands for subsistence farming and therefore, need to be captured in the concession design. This action contrivance Provisions of the PPCA and CRL of Liberia.

The Analyst newspaper 2 January 2013, quoted President Ellen Johnson Sirleaf saying: *“I hope we can conclude the reform of our concession sector because we’ve made some mistakes, no question about it. To some of the areas, we have given the duplications. Some of it has been as a result of the lack of capacity; some of it has been upright intentional and, in some cases, illegal. So, we need to straighten that out.”* On the same occasion, Senator Abel Massaley of Grand Cape Mount County expressed disappointment over the concession agreement. *“I don’t take deception from people; we all should take the blame for this. This is no time to shift blame on one person because we all did not consult well during the contract preparation process”.* The Senator asserted that if those missteps are not corrected both the concessionaries and local communities will continue to be in conflict. The Government of Liberia under former President Ellen Johnson Sirleaf after assuming the mantle of power in 2006, vowed to ensure growth, development, and reconciliation by improving transparency in the extractive sector. Although Liberia is a natural resource endowed country, however converting these resources into visible socio-economic and infrastructural development remains a serious challenge to the government and people of Liberia.

Research has shown that there is a very thin line between natural resource governance and conflict (Cotula 2009; Auty 2001). Thus, when designing concession agreements it is essential for state-actors to involve all stakeholders at the beginning of the concession design (Neef, Touch and Chiengthong 2013; Cotula 2009). This enabled the negotiators to mitigate human rights risks at the stage of structuring the agreements. Because of the lack of broader citizens' participation and involvement in design of the concession agreements, citizens often assume that the government and the concession company are in cahoots to keep the wealth for themselves, and companies sometimes feel that governments and citizens are ganging up on them to reset the rules and renegotiate agreements. The lack of participation and transparency and the domination of elite in the concession process does not only foster conflict but a manifestation of the "natural resource curse," whose effects can include economic stagnation in the form of "Dutch disease"<sup>4</sup> (Krugman 1987; Sachs and Warner 1995; Leite & Weidmann 1999; Gary and Karl, 2003; Global Witness 2004; Karl 1997; Auty 2001), endemic corruption, and political underdevelopment.

### 4.3 Negotiation Strategy

The general sense among the research interviewees is that Government did not carry out due diligence during the award of Sime Darby concession agreement. The concession negotiation was fast track violating Section 77, 82, 89, and 91 of the PPCA. According to the respondents, the Ministry of Agriculture (MOA) did not designate an Entity Concession Committee (ECC), there was not open bidding process, and Certificate of concession for the additional 100,000 hectares. One of my respondents, a former official of NBC said, *"The case of Sime Darby concession is different from other concessions. There were on-going concession activities on the land but interrupted by the civil war. The same investors returned and expressed interest in the same area. The negotiation process would not include local communities and open bidding and thus, no certificate would have been awarded"*. Indeed, there was an existing Guthrie's concession contract, but the new concession agreement required additional 100,000 hectares, which should have been subject to open bidding process as prescribed in the PPCA. At the local levels, affected communities did not

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<sup>4</sup> Dutch disease is a phenomenon in which the discovery of substantial natural resource wealth negatively affects a nation's economy. The discovery often causes sudden appreciation in the value of the nation's currency—which, in turn, decreases the nation's competitiveness in the international commodity markets. This reduces the country's exports of manufactured and agricultural commodities and increases its imports. At the same time, the natural resource sector draws a substantial share of domestic resources such as labour and materials, increasing their cost to other sectors. Moreover, when the initially booming resource sector eventually declines, the non-resource-based sectors may find it difficult to recover.

participate instead their representatives were consulted after the concession contract has been agreed. These violations impeded collective decision making in the award of the concession agreement.

Non-compliance with these key Sections of the PPCA is illegal and can amount to bottlenecks in the implementation of the concession agreement. In concessions arrangements, it is relevant for State-actors to prioritize participation rather than consultation. Consultation and participation are two different things. Consultation is simply telling people what is going to happen without the opportunity to have a say. While participation is the involvement of those who will be directly affected to have a say at all stages of the concession processes. Participation is a right of all stakeholders and it has been recognized by the Constitution of Liberia and other international covenants which Liberia has signed and ratified. Even though the PPCA was not approved at the time of negotiating Sime Darby Concession agreement as stated by the former NBC official. But LEITI post-award audit 2013 report reveals that between 2007-08 provisions of the PPCA were used to review Firestone and Arcelor Mittal concession agreements. Also, Article 17 of the Liberia Constitution provides for citizens maximal participation in the country natural resource process and therefore the absence of a legitimate PPCA is not an excuse to not be transparent and inclusive.

The research participants from the local communities mentioned that representatives (chiefs and traditional leaders) from their communities were called for consultation on the concession agreement. According to community members interviewed from Gbah and Madina towns, there were consultation meetings in Robertsport the capital City of Grand Cape Mount County. The respondents claimed that consultation meetings were intended to explain the concession agreement between GoL and the concessionaires. A local youth advocate interviewed claimed,

*“We were somehow involved in the negotiation process as our chiefs especially our Paramount, Clan chiefs and traditional leaders were often called for consultation meetings in Robertsport. When the chiefs returned from the meetings they called general town meetings to inform us on the outcomes of their consultations”*.

The youth advocate asserted that GoL did not collaborate with local communities to identify and demarcate portion of the land for concession purposes. Government negotiators sit in Monrovia the Capital City of Liberia and assumed that there are vacant lands in the region. According to him, the process was influenced by top government officials including members of the County Legislative Caucus who normally decide for the local communities. *“This is not a secret, we know our Representatives and Senators were deeply involved because Sime Darby*



*will not come on our soil without their consent*”, he said. His claims were validated by a colleague (a community leader) in Madina who alluded that there were meetings between state-actors, the concessionaires and their chiefs. According to her, those meetings were not held in the local communities. The chiefs are called to the county capital city and given sitting fees to stay for days having discussion with state negotiators. When I asked how the consultation was carried out, she replied:

*“Our chiefs and traditional leaders are decision-makers in the communities once it comes to land matters the Government often invited them to Robertsport for meetings. The general community are informed of the outcomes after agreement has been reached between the chiefs and Government officials from Monrovia”<sup>4</sup>.*

In a separate interview with three chiefs from Gbah and Madina who were involved with the consultation processes, I inquired how the consultations were conducted. The chiefs informed me that the consultations were about information sharing on the concession agreement. One of the chiefs said:

*“It was about informing us on the concession agreement between the GoL and the investors. In the consultation meetings the Government representatives explained the benefits the concession would bring to our county. They told us that the Company will create jobs for our children, build schools, clinic and provide safe drinking water for the communities. These are the promises that convinced us to give our land to the Company”<sup>5</sup>.*

The chiefs expressed that local government officials and parliamentarians from the county were part of the process. The involvement of these officials was an assurance that the concession is an opportunity to develop their communities. *“Our children who are representing us in Government were part. In fact, they brought the Company in our county and called us in Robertsport to discuss on the land that has been given for the concession”*, he added. The assertion only justifies Morgan (1993) position that consultation is often induced by high-level government officials, state bureaucrats, national and local interest groups. In this case, the consultation processes were heavily influenced by Legislative Caucuses and local government officials from the affected counties as expressed by the local chiefs. The major concern these chiefs mentioned was explanation of a document (concession agreement) already agreed by Government and the concessionaires. They claimed that the concession agreement was prepared and agreed in Monrovia their role as chiefs was to accept the agreement and convince their people to give out the portion of land agreed by GoL and the concessionaires. The chiefs lamented that most of the land agreed were occupied by farms, tree and food crops, and villages, sacred and burial sites.

Indeed, the tensions between local communities and Sime Darby Plantation Liberia (SDPL) began when the Company started clearing communities sacred forest, burial sites, tree and food crops, and old towns. On July 14, 2011, The Analyst Newspaper reported aggrieved citizens of more than 15 towns and villages in and around the concession threatened to resist any further expansion of the company plantation operations on their land. The aggrieved citizens claimed that the Company was destroying their sacred forest and burial sites, food and tree crops leaving them with no source of livelihoods. They called on the Government to intervene and ensure the concession is renegotiated considering their rights.

In response to local communities' complaint, the Government setup an Inter-Agency Task Force (IATF) to investigate the grievances. Findings from the Task Force investigation reported in the Analyst Newspaper shows that state-actors and the Company did not engage into any constructive consultation with the local population before commencing clearing of the land. The newspaper further reported lack of transparency and accountability in Government deal regarding the acquisition of the land. Moreover, the Liberia Extractive Industries Transparency Initiative (LEITI) post-award audit 2013 report on Sime Darby Concession recognized GoL did not follow best practice as prescribed in the PPCA. The report made specific reference to Section 90 of the PPCA which provides for public consultation during which time the Ministry of Agriculture disclose details of the concession to the public. The PPCA also requires that consultation be part of the bid tender, evaluation and the award process. These processes were not followed when negotiating the concession agreement particularly the 100,000 hectares as it was treated as an addendum to the original contract. LEITI concluded that there was lack of transparency in the land negotiation and acquisition and called on the Government to renegotiate the concession contract considering the rights of local people to participate in the process. Similarly, World Bank research 2015, also revealed that despite citizens' joy for the introduction of concessionaires, for the promise of socio-economic and infrastructural development (Reinan 2015), including job creation, the sector has been marred by a number of challenges including lack of local participation and transparency.

Presently, Liberia enjoys relative peace but remains a fragile state because the management of natural resources have some nefarious effect in relation to peace and instability (Fearon and Laitin 2003; Collier and Hoeffler 1998). It is the responsibility of both Government and the concession company to ensure the peace and stability of the State. Having

consultation based on ready-made decisions imposed by public officials in two or more consultation meetings is a recipe for conflicts as is evident of constant protestations by local communities on the Company plantation over the years.

# Chapter 5: Role of Non-state actors, Power relations and Perceptions

## 5.1 Introduction

This Chapter presents the findings from the three sub-questions. The presentation and analysis is done in three sub-sections. The first section looks at the role of community actors in regard to stakeholders' involvement in the design and negotiation of the concession agreement. The second section analyses the pattern of the concession negotiation with respect to power relations between actors. The last and final section presents the perceptions of local communities on the concession agreement and operation of the Company in their areas. I finally encapsulated the findings and provide a critical perspective based on the research objectives and established indicators.

## 5.2 Role of Community Actors

### *A. Civil Society Organizations (CSOs)*

Non-governmental actors have the knowledge and potential to improve process and outcomes in concession design and negotiations. The early involvement of COSs as part of the bid tender and evaluation is relevant for the concession award process (Kaul, Heuty, and Norman 2009). However, interviews with informants indicate that CSOs did not play any active role in the concession design and negotiation processes. The Concession Committee created no mechanism for consultation with non-state actors at the inception of the process. In fact, State-actor feel the role of CSOs could serve as a procrastination to concession negotiation. One of my respondents who is a former legislator from Grand Cape Mount County told me that involvement of CSOs in Sime Darby concession arrangement could only delay the process. *“There was an existing BF Goodrich agreement for 120,000 hectares of land. Government did not need CSOs to play any role in renegotiating an existing contract. The involvement of third party could complicate things and prolong the process”*<sup>6</sup>. The former lawmaker claims suggest that CSOs inclusion in the process could demand the Government to clearly address environmental, social and cultural issues which are required by laws and international best practice. But state actors often ignored these issues and fast track concession agreements for their self-seeking interests (Liberti 2013; Brown 2012).

However, the exclusion of CSOs in the concession arrangements did not silence them from speaking out for the local communities. I found out that CSOs were more engaged with flexing on the Government actions against the local communities. One civil society actor expressed dissatisfaction over the way Government excluded them from the concession design and award processes. According to him, the Government action was intentionally intended to silence critical voices from the process. *“CSOs were not part of the concession arrangement. In my mind, this was intended to silence our voices, but we have been working behind the scene with the affected communities to ensure their rights are respected”*<sup>7</sup>.

On 10 August 2011, FrontPage Africa Newspaper reported that a CSO, Green Advocates threatened to sue GoL over Sime Darby human rights abuses. The Newspaper reported statement from the lead campaigner of Green Advocates, Cllr. Alfred Brownell that Government has allowed Sime Darby to operate in Grand Cape Mount and Bomi counties in violation of local communities’ rights under the Constitution of Liberia. Cllr. Brownell is quoted saying, *“We have to let those in the government understand that they cannot do this and walk away with impunity; this is why we Green Advocates are standing by these oppressed people. We feel that the people from Bomi and Cape mount have been robbed of their ancestral rights that were given to them before Liberia was founded”*. If CSOs actors who are considered the voice of the voiceless are excluded from concession arrangements, they find other means to make local voices count in the process. The current study reveals that was exactly the case with the Sime Darby concession. One of the chiefs I interviewed described CSOs as their saviour in the fight for their land. *“The NGOs are our hope in this fight. The Government which we elected is in caboots with foreign investors to displace us from our lands”*<sup>8</sup>. According to the chiefs, CSOs have supported them in many ways including, capacity building, awareness, and legal representation against the injustices and violation of their customary rights. They placed specific importance on the role CSOs in ensuring local communities lodge complain about Sime Darby to RSPO in 2011.

Indeed, CSOs often played essential role in advocating for the rights of affected communities to be respected in large-scale land acquisition (Kock 2006). Their involvement in concession negotiation could promotes participation, transparency, accountability and ensure long-term viability of the concession. Yet, state actors often see CSOs as a distraction in the quest to enhance their development agenda. De Schutter (2016) sees “corruption” as one of the reasons why state actors perceive CSOs that way. According to him, the exclusion of CSOs is often carried out to facilitate elite capture for personal benefits at the detriment of the local communities who have customary rights and practice subsistence farming. In the

case of Sime Darby, the GoL blamed CSOs for inciting local communities against national development agenda. Responding to the complaints of 18 affected communities former President Ellen Johnson Sirleaf blamed CSOs for instigating violence. The Daily Observer Newspaper 9 January 2012 reported the president saying, *“The NGOs are the ones creating problems because they want funding from their partners. We will start the process to address each of these complaints and those unreasonable ones will need to be left out”*. CSOs are not enemy to concession initiatives. If they are included in concession planning, they could be of great help in improving the relationship between concessionaires and local communities. The overarching goal of CSOs is to improve the efficiency of the process, and the effectiveness of the outcomes. Their participation will make real practical progress toward solving some of the challenges state actors and the concessionaries may face.

#### B. *Community Representatives*

Community representatives are often those responsible for decision making in the local communities. In the context of nature resource governance in Liberia, they are often chiefs and traditional leaders with authority over customary land administration. They play decisive role in approval of land transactions and dispute resolution at the local level (Wily 2000; Dalton 1965). The land is owned on a collective basis, while regulations and administrations are done in accordance with customary rules. The decisions regarding access to land are made at the level of the town chiefs. The Public Land Law of 1973 grants tribal chiefs the authority to administer tribal certificate for long-term access and use of community land. Thus, chiefs and traditional leaders serve as bridge between local communities and external users of the lands (Unruh 2003). They are the face of the local communities once it comes to matter relating to access and use of land.

Despite their immense power and authority over land, this study found out that most of the chiefs and traditional leaders are non-literate. They lack the capacity to negotiate fair deal on behalf of their communities. Moreover, the chiefs and traditional leaders work under the Ministry of Internal Affairs (MIA) and therefore take direct instruction from officials of Central Government. In an interview with one of the chiefs, I asked for their role in the consultation process. He replied, *“The Government has entered into an agreement with Sime Darby to bring development in our communities. Considering the authority we have over our communities and the land, the Government called us (chiefs) for consultation after which we took the message to our people and convince them to accept the concession operation on our land”*<sup>9</sup>. The chief assertion clearly shows that they were used to channel information to their people. Given that the concession agreement was already signed, the consultation was intended to influence the local communities through

promises of job creation, economic and infrastructural development. Of course, this rhetoric is often embraced in every struggling community. But when the lands are given implementations becomes problems.

However, not all my respondents share the opinion that communities' representatives were fully influenced. A youth advocate interviewed for this study believed their traditional leaders played significant role in the consultations. *"The chiefs were fully involved having meetings back and forth with officials of local and central government. At which time they were calling general town meetings to convince citizens to give out the land"*<sup>10</sup>. The chiefs and traditional leaders may have been actively engaged with the process at the local level. But, I found out that their role was part of the normal functions as employees of the Ministry of Internal Affairs (MIA) not from a bargaining position. This is not a surprise as those chiefs and traditional leaders are employees of MIA therefore, they are subject to the whims and caprices of the Central Government.

If local communities will have a fair deal in land concessions it is imperative for CSOs and communities' representatives to be included and allowed to play effective role at the beginning of the concession negotiation. By this, communities' representatives can rely on the experience and expertise of CSOs to negotiate from an informed position. This is the surest way to promote best practice and ensure good governance in large-scale land concessions. Simply requiring consultations at the local level is inadequate to guarantee consent for the acquisition of land local communities depend on for livelihoods.

### **5.3 Pattern of Concession Negotiation**

One major constraint this study found is the power imbalances among stakeholders during the consultations with local communities. This is a key issue because it has to do with who influences the consultations and to what extent. The research uncovered how often the consultations only involved local chiefs and traditional leaders who are the main authority in rural land administration. In most cases, those who serve as chiefs and traditional leaders are either semi or non-literate. They only understand informal governance system outside of formal statutory policy. The authority of those chiefs and traditional leaders are often threatened by central government in order to influence the chiefs and exercise control over natural resource (Neef, Touch, and Chiengthong 2013; Lewis and Nelson 2006; Wily 2000; Dalton 1965). Central government has so much power and authority to dictate decision at the local government level. The decision of who becomes a District Commissioner, Paramount or

Town Chief emanates from central government particularly the County Legislative Caucus or the President via recommendation from other influential people from that county.

Thus, the chiefs often relied on lawmakers and local government officials to make an informed decision on behalf of local communities. One of the chiefs interviewed for this study said, *“We do not know book (Not educated) how could we disagreed with an agreement our Government had signed with the Company. Our decision to agree was based on the fact that our children were involved from the side of national government not because we understood what is in the agreement”*<sup>11</sup>. The chief testimony suggests that they have less power, information and experience to negotiate from an informed position. Power imbalances is visible as State actors take local leaders away from their communities to side-line youth and women leaders who are knowledgeable and may want to make inputs in the discussion. Moreover, State actors gain bargaining power by taking local leaders to county capital city lodge them in luxurious hotels and provide sitting fees for the purpose of consultation. This action only denies local communities the opportunity to negotiate for fair deal (Cotula 2009; Lewis, Freeman, and Borreill 2008), demand transparency and hold duty bearer accountable.

Interestingly, the study found that women are increasingly serving in those positions as chiefs and traditional leaders but with limited role in the decision making process. In a separate interview, I asked two women leaders on their involvement in the consultation meetings. One of them mentioned that women were represented, but their voices are not considered on important issues affecting the communities.

*“Women who are playing leadership role in the communities were part of the consultation meetings from the beginning of the concession. But many of us do not understand the details of what was discussed and even if we understood, our views are not really considered for any major decision making. In this region (where the concession is operating) women voices do not count much in decision-making especially on major issues like land”*<sup>12</sup>.

The general feeling among this research participants is the inability of the chiefs and traditional leaders to understand information disseminated during the consultations. The Concession Committee could have compensated for this form of power imbalance by strengthening their information dissemination. In a transparent consultation, the local communities have to be given an active role to have real influence over the process (Neef, Touch, and Chiengthong 2013; Lewis and Nelson 2006). This is achieved by providing access to information and engaging Community-Based Organizations (CBOs) to create awareness through different medium of communication in the local communities. The process should go beyond telling the local population about jobs creation and infrastructural development.



It should involve exchange of ideas on the impact and alternative livelihoods opportunities. The awareness and consultation should be carried out in languages understandable to the local population. These are pathway to achieving good governance in natural resource concessions. However, these processes were not observed. A research conducted by Centre for International Conflict Resolution (CICR) (2012), indicates that GoL and Sime Darby did not conduct any meaningful consultation with affected communities in the concession areas (Lanier, Mukpo and Wilhelmsen 2012). The report emphasizes that the Concession Committee which is comprises of high-level government officials from central Government take advantage of the weak bargaining position of the chiefs to impose the concession. The report further mentioned that the Concession Committee did not provide information on how the land was identified and demarcated. It is unclear how Government derived at the additional 100,000 hectares as addendum to the 120,000 hectares provided under the original Guthrie concession contract. Furthermore, the Company did not publish its development plan and the environmental impact statement report before commencing land clearing activities in the affected communities.

Similarly, Jonathan Grant, a policy adviser at Global Witness expressed dissatisfaction with the concession arrangement in an interview with the Guardian Newspaper on 29 February 2012. According to Grant, the concession negotiation was characterized by “undue influenced” and “lack of transparency” at the local level. The newspaper quoted Gant saying, *“There has been very little information given on how the concession was handed out, how it's going to interact with the people living in the area, and how it's going to be executed”*. Gant assertion was acknowledged by Sime Darby head of development in the county, Mohd Zulkifli Isa. Isa admitted to the Guardian Newspaper that there were mistakes during the consultation in Grand Cape Mount County. But, whenever the Company engage the Government on the matter state actors referred them to the local communities for resolution. He further told the Newspaper that the Company was working with affected communities and has agreed to enter into additional memorandum of understanding (MoU) with the affected communities.

Isa assertion regarding additional MoU was confirmed to me in an interview with a former official of National Investment Commission (NIC). The former official mentioned that the signing of additional MoU was intended to address the concerns of affected communities. *“Yes, additional MoU was signed with separate communities. It was intended to give affected communities the chance to negotiate with the concession Company in their own environment without government influenced. In this way, everyone in the community can participate and make their inputs”*<sup>3</sup>. According to

him, the decision was taken with the acquiescent of representatives from affected communities in the concession areas. The respondent expressed that entering into MoU was one of the remedies to resolve some of the missteps recognized earlier during the consultation. He said, *“Sime Darby wishes development to be “socially beneficial” and this could be one of the ways of doing that. The company stated that it would like to “identify, through consultation, potential social benefits and determine how they might be enhanced to the mutual benefit of the Company and the local communities”.*

Good as this may sound, this study found out that signing additional MoU was not the remedy to power imbalances. In fact, the Company took advantage of the inexperience of the people and entered into an arrangement that has no legal binding on the concessionaires. One of the respondents says, *“The additional MoU is a joke. You cannot fool the locals to enter into an arrangement that is not legally binding on the concessionaires”*<sup>4</sup>. The respondent asserted that the State used its authority to force communities out of their customary lands. They did not conduct survey to determine whether there is vacant land. Public disclosure of expression of interest was not adhered to as provided for under Section 106 of the PPCA. There is no provision in the concession contract that requires the identification and demarcation of community sacred forest and burial sites as well as land area essential to community needs. This constitute abuse of power and failure of state actors to recognize customary ownership of land in the communities.

On 9 January 2012, Daily Observer Newspaper published a news caption “Government admits errors in Sime Darby concession agreement”. The newspaper report quoted the President of Liberia, Madam Ellen Johnson Sirleaf saying, *“when your government signed agreement, no citizen can terminate it according to law. There were errors in the contract but what we can do now is to address those wrongs, and this is the beginning”*. Those errors seem to be unresolved and there are growing concerns that the Company and GoL have made little or no effort to improve relationship with the local communities. In the midst of these controversies, this research found out that Sime Darby Plantation Liberia (SDPL) had sold out to a Liberian owned company, Mano Palm Oil Industries. The research participants claimed that they have no idea Sime Darby was leaving the country. According to them, communities’ representatives were not informed that Mano Palm Oil Industries has taken over the plantation. One of the chiefs I interviewed said, *“The Concession Company and GoL continue to disregard us in these arrangements. The concession is on our lands and Sime Darby agreed to do development projects in our communities. Those development projects are yet to be done. How could Sime Darby entered into new agreement without our consent”*. The chief mentioned that the affected communities will continue to stand up until they get the due benefits for their lands. How this going to happen is a question to ponder.

What is even more complicated is the seeming inability of national Government to work with the local communities in addressing their plights.

There is no reliable way to ensure the sustainability of agricultural concession if the authorities of local communities are ignored. These people are the voice of their communities therefore it is important to achieve their genuine consent before and during concession operation. The promise of jobs creation, schools, clinics, and safe drinking water are not sufficient to guarantee consent. In fact, if provided these facilities normally benefits employees and their families not the entire communities. Lockwood et al. (2010) points out, good quality consultation requires the inputs of all knowledge necessary to enhance governance in natural resource concessions. It is the most common solution to control aggressive resistance on concession plantations.

## 5.4 Local Communities' Perceptions

I concluded the interviews by asking participants about what the future holds as Sime Darby has left and Mano Palm Oil Industries had taken over operation of the plantation. The responses vary as communities are not homogeneous. Most participants from civil societies and the affected communities sounded pessimistic about future prospects. According to them, the communities have fought for their rights for many years now, but nothing seems to change. One of the chiefs said, *"Sime Darby sold out to a new company without informing us. How do we demand the new company to do what was agreed in the MoU? This is just to create more conflicts between the communities and the new Company"*<sup>5</sup>. The chiefs mentioned that the Government and Sime Darby raised their expectations by promising jobs and economic empowerment for affected communities. But these promises were not fulfilled. Since the Company took their land the communities are experiencing more suffering and hardship. The Government of President Ellen Johnson Sirleaf promised to work with the Company and address their concerns but conditions still remain the same. The participants claimed that the foreign company could not delivered on their promises thus, they do not believe a local Liberian company will fulfil those promises.

Also, some of the locals mostly young people who are employed with the Company expressed similar concerns. They alleged that the presence of the Company in their area has exacerbated hardship. Even those working with the Company from the local communities are complaining about poor working conditions in the plantation. A young advocate who is consider a spoke person for youth in Gbah community told me that living conditions on the

plantation is not encouraging. *“The Company presence in our communities is not improving living conditions. Even those who are employed are not getting their due benefits”*. He stressed that since Sime Darby left there has been no improvement in workers’ wages, no medication at the clinic and the housing conditions have depreciated. This have led to the constant wave of violent protest on the plantation. On 13 March 2020, the Front Page Africa newspaper reported that Mano Palm Oil workers including members of the affected communities organized a 21-day protest demanding the GoL and Mano Palm Oil Industries live up to the contractual agreement they signed with Sime Darby Plantation Liberia.

A former parliamentarian of Grand Cape Mount County who served during the award of the concession agreement expressed disappointment in the Government and the Company inability to fulfil their promises. The former legislator made specific reference to the failure of GoL and the Company to implement the Out-grower programs as of 2011. Section 15.2 of the Concession Agreement stipulates that the investor shall establish an Out-growers’ program within three (3) years of the Effective Date of operation. *“The corporate entity should be accountable to the people by fulfilling their commitments, while the government should ensure robust monitoring of the implementation process”*, he said. The former lawmaker claimed that over five (5) years now the Company has not paid the land rental fees for community development as prescribed in Section 19.5 of the concession agreement. *“Since 2015 the Company has not paid the land rental fees to the local communities. This is why the chiefs are discouraged. As things stand there is no hope that Mano Palm Oil will change the situations as there is no political will in the interest of the communities”*<sup>6</sup>. However, the former official testified that local government authority and the County Legislative Caucus are working with national government to pressure Mano Palm Oil Industries to comply with provisions in the contract agreement. He emphasized that the concession operation has cause so much resentment among people in the communities. If nothing is done to improve the conditions of workers on the plantation as well as settle the existing problems with the local communities another violence might erupts on the plantation.

On the other hand, some participants expressed optimism that things will improve as the local government and Legislative Caucus continue to engage into constructive dialogue with the Company. According to them, the affected communities cannot fight a concession national Government has approved. The Company has not met the general expectation of the people but some residents of the communities are working and benefiting from the Company facilities. One women leader I interviewed cautiously stated, *“This is a difficult pill to swallow. Some of our kinsmen are employed and benefiting from the Company. Why should we continue to*

*stand against the Company when people from our communities depend on the plantation for livelihoods? What is needed is continue dialogue*"<sup>17</sup>. According to her, there are some progress among the local people, but the Company need to do much more as promised. They only hope Mano Palm Oil Industries will see reasons to improve relationship with the communities by fulfilling the MoU between Sime Darby and the affected communities.

The testimonies of these participants only reaffirmed existing problems with natural resource concessions in most developing countries. The rhetoric of economic growth and jobs creation are often used to persuade local communities to give out their land to foreign investors. Once the lands are given and concession operations commence, implementations of promises become a challenge. Failure to adhere to promises regarding development for local communities deride public trust and support for the concession. For a concession to enjoy support among the local population the investors should ensure continue relationship and trust. This is done by complying with promises made in the concession agreement. Implementation of provisions in the concession contract is a pathway to enhance transparency, accountability (Verhoog 2013; Neef, Touch and Chiengthong 2013; Manji 2006), legitimacy and promote good governance in concession-driven development.

## Chapter 6: Conclusion and Recommendation

### 6.1 Conclusion

In this study, I have endeavoured to explore the mode of concession design and award that has created local opposition to most concession operations in Liberia. With specific focus on Sime Darby Liberia concession, I tailored the research questions toward understanding the strategy used to design, negotiate and award the concession agreement. The study further explored stakeholders' roles, pattern of negotiation and perceptions of local communities. These processes were critiqued based on the concept of governance in natural resource management (NRM). The Governance concept is defined based on four dimensions: Participation, transparency, accountability and legitimacy. These dimensions proved relevant for the study. Participation aided in our understanding of the extent to which local stakeholders were involved at the inception of the concession agreement. Transparency enable us to understand the openness of the process, who influenced what and at what level. While accountability revealed the role of duty bearer to right-holders and finally legitimacy helped in our understanding of public perceptions and supports for the concession.

As the findings indicate, the Liberian Government quest to use Sime Darby investment to enhance economic growth and infrastructural development in the western region has not yielded the expected result. The reason is not that the country lacks the necessary policy, legal and institutional frameworks to manage concession-driven development. The study established that legal and policy instruments that govern the natural resource sector were ignored to some extent. Decision made regarding the concession bidding, contract negotiation and award did not meet the requirements of the PPCA of 2005. The process has been criticized for exclusion of CSOs and the affected communities, lack of informed consent, and illegality with respect to MoU with the affected communities. These imply that the concession award processes did not meet the four tenets of good governance as described in my conceptual framework. A lot more could have been done to improve public participation, transparency, accountability and legitimacy at all stages of the concession award process. Full adherence to the PPCA and other international human rights instructions the country has signed and ratified could have been appropriate.

Notwithstanding, there is optimism that land-based agricultural concessions will improve for the benefit of local communities once CSOs and the local population continue to

pressure national Government to ensure good governance in NRM. CSOs and Community-Based Organizations (CBOs) may well induce the political will. Evident is their relentless efforts ensuring that the national Government signed the Land Rights Act (LRA) into law in 2018. The Act clearly asserts the rights to “customary land” for local communities. Community members are considered to be the private owners of their customary lands. It ensures that customary land ownership is private land ownership and protected as private lands bought and sold on the land market (Article 2, Article 32.1). This is a good step to promote best practice and build social relationship with concession affected communities.

## **6.2 Recommendations and further research**

While the focus of this research did not dwell on monitoring and implementation of the concession agreement, participants expressed concerns about the Government’s inability to follow-up on the implementation of provisions in the concession agreement. What was also apparent in the findings is the fact that Sime Darby has not been accountable to their promises. Therefore, it is indeed important to conduct further research on the extent to which concessions are monitored and evaluated in both the corporate sector as well as the Government. Additionally, this study focuses on governance dimensions therefore for more participatory approach I recommend that GoL amend the PPCA to include the involvement of CSOs and local representatives at the inception of all concession design and negotiations. Ensure any additional agreement/MoU concession Companies inter into with local communities are legally binding on the concessionaires.

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## Endnotes

- <sup>1</sup> Excerpt from an interview with former official of NBC 25 August 2020
- <sup>2</sup> Excerpt from an interview with civil society actor 25 August 2020
- <sup>3</sup> Excerpt from an interview conducted with a local youth advocate August 29 2020
- <sup>4</sup> Excerpt from an interview with a women leader in Madina 25 August 2020
- <sup>5</sup> Excerpt from an interview with a chief in Madina 29 August 2020
- <sup>6</sup> Excerpt from an interview conducted with a former parliamentarian 1 September 2020
- <sup>7</sup> Excerpt from an interview conducted with civil society actor 25 August 2020
- <sup>8</sup> Excerpt from an interview conducted with chief in Madina 29 August 2020
- <sup>9</sup> Excerpt from an interview conducted with chief in Madina 29 August 2020
- <sup>10</sup> Excerpt from an interview conducted with a youth advocate in Gba 29 August 2020
- <sup>11</sup> Excerpt from an interview conducted with chief in Gba Community 25 August 2020
- <sup>12</sup> Excerpt from an interview conducted with women leader in Madina 25 August 2020
- <sup>13</sup> Excerpt from an interview conducted with a former NIC official 2 September 2020
- <sup>14</sup> Excerpt from an interview conducted with a civil society actor 25 August 2020
- <sup>15</sup> Excerpt from interview conducted with chief Gba Community 25 August 2020
- <sup>16</sup> Excerpt from an interview conducted with a former parliamentarian 1 September 2020
- <sup>17</sup> Excerpt from an interview conducted with women leader in Madina 25 August 2020