

Bottom-up Accountability Initiatives to Claim Tenure Rights in Sub-Saharan Africa:

*Securing community tenure rights to land
in Betem, Akpet, Idoma and Akampa in
Cross River State, Nigeria*

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List of Acronyms

CBFM	Community Based Forest Management System
CFW	Community Forests Watch
CSR	Corporate Social Responsibility
EIAR	Environmental Impact Assessment Report
ERA/FoEN	Environmental Rights Action/Friends of the Earth Nigeria
FPIC	Free Prior and Informed Consent
HRH	His Royal Highness
LGA	Local Government Area
MoU	Memorandum of Understanding
TGs	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (Tenure Guidelines)
PLWD	People Living With Disability

Abstract

This report is based on on-going research on natural resource governance and land grabbing in four selected communities in Cross River State, Nigeria. Tension and violent conflicts based on land and forests issues are on the increase in Nigeria. Communities' lands and forests are unique assets of all indigenous people because they depend on them for food, shelter and medicines and other services provided by nature. Due to ignorance, oppression and an unclear land tenure system in Nigeria, many communities have lost rights to their lands at the hands of multinational corporations, as well as local and national elites who acquire such lands through questionable and non-transparent methods. Companies exploit the environment, displacing smallholder farmers and polluting and degrading local ecosystems, water, and biodiversity. This has led to increased conflict in many communities.

Since 2000, Cross River State's forests have been threatened by activities that grossly undermine sustainable forest management practices. This study seeks to explore the system of land tenure in place in Nigeria, and its relationship to these threats. What are the drivers of land grabbing or "large scale land acquisitions" in Nigeria? What are the differentiated impacts of land grabbing within communities? And what strategies of engagement and resistance are being used to support land tenure?

The study focuses on the impacts of Wilmar International, now known as PZ Wilmar (referred to here as Wilmar), a multinational company involved in land grabbing cases related to oil palm plantations in Cross River State, southern Nigeria. It shows the extent of Wilmar's infringement on communal land rights and examines cases of eviction and destruction of livelihoods². The research methodology deploys case studies to conduct community mapping of four selected communities (Betem, Akpet, Idoma, and Akamkpa), and uses participatory action research to demand increased accountability in land deals and governance processes.

The research findings show that the four communities studied have lost sources of livelihood and suffered from increasing food prices, deficits of local staple foods, and evictions and displacement of poor farmers. Severe loss of biodiversity due to pollution and unsustainable environmental practices of various multinational companies was also observed.

Following trainings on the Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests (also known as the VGGTs, The Tenure Guidelines, or the TGs) organised by ERA for members of the affected communities, the installation of community forest watches, and other advocacy actions, some community members argue that it seems Wilmar is trying to revisit its consultation practices to ensure greater participation from impacted communities. Still, the communities are calling for a review of a Memorandum of Understanding (MoU) concluded between Wilmar and the government, demanding that this be made open and transparent, with inclusive participation by local people. Also, as a result of the community forest watch actions and campaign, the government of Cross River State has responded by forming the state "green police" though this has yet to begin operations at the time of writing.

1 Introduction

1.1 Background and context of the research

Nigeria is a federal constitutional republic in West Africa, bordering Benin in the west, Chad and Cameroon in the east, and Niger in the north. Its southern coast lies on the Gulf of Guinea in the Atlantic Ocean. It comprises 36 states and the Federal Capital Territory, where the capital, Abuja is located.

Nigeria is an officially democratic secular country with a federal system of governance in which there is an Executive, a Legislative and a Judiciary each acting as a check and balance on the powers of the other two arms. The country is known for its natural landmarks and wildlife reserves. Safari destinations such as Cross River National Park and Yankari National Park showcase waterfalls, dense rain forest, savanna and rare primate habitats.

Although federal government support for agribusiness may provide some economic opportunities, ERA/FOEN argues that it is also leading to large scale-land acquisitions, which have displaced thousands of Nigerians, and is failing to address rural poverty and hunger.

1.2 Brief summary of ERA/FoEN and its engagements in defending community customary land rights

Environmental Rights Action/Friends of the Earth Nigeria (ERA/FoEN) is a Nigerian advocacy group dedicated to the defense of human ecosystems in terms of human rights, and to the promotion of responsible environmental practices by government, companies, communities and individuals through campaigns and the empowerment of local people.

Founded in 1993, ERA/FoEN has worked with local communities in Cross River State, Nigeria since the acquisition of nearly 30,000 hectares³ of land in the state by PZ Wilmar^{4, 5} (henceforth referred to as Wilmar), in an area not only rich in agricultural heritage but also home to vast tracts of natural forest and a host of endangered species including the critically endangered Cross River gorilla. Consistently, we have documented and campaigned about the impacts of pollution, environmental degradation, forced evictions, deforestation and land grabbing in the state. Our work has built capacity and enabled local people to defend their environmental human rights using the Tenure Guidelines (see below).

1.3 “Large Scale Land Acquisitions” in Nigeria

Nigeria has been a target of large land grabs in recent years as the government has prioritized attracting international investment in the country's agricultural sector. The Federal Ministry of Agriculture and the Federal Ministry of Trade, Industry and Investment say the investments will increase national food production and make Nigeria a food exporting country.

In effect, over the years there has been an influx of multinational companies acquiring – with the connivance of the state – territories belonging to local communities in the name of development. Yearly, large tracts of forested land as well as communal farmlands are grabbed for industrial-monocultural tree plantations in a bid to meet the growing market for certain natural products which is emerging as many multinationals are faced with challenges acquiring raw materials for their final products. Many smallholder farmers and community members have been impacted negatively at various levels, giving rise to conflicts and underdevelopment in many communities in Nigeria. Due to a ‘loose’ land tenure system, it is observed that government facilitation of investments, often in questionable circumstances, regularly results in land grabbing.

Land acquisition, land grabbing or acquisition of community land by corporations is not possible in Nigeria without government facilitation. However, communities have not so far been consulted about most investments and the Free, Prior and Informed Consent (FPIC) of impacted indigenous communities has not been sought. Communities have not been formally informed of the sale of their lands and the forests on which they depend for food, shelter, medicines and other services provided by nature.

A critical problem is that the land tenure system and how it operates, especially in relation to customary land rights, is not clear in Nigeria. According to the Land Use Act of 1978, all land is held in trust by the government and can be appropriated for overriding state interest or economic development for the social good of all.

Land in Nigeria is officially held by the government at the State level; local communities have no legally protected say in its allocation. The Land Use Act is backed by the constitution by virtue of section 315 (5) as an existing law. Thus section 1 of the Land Use Act vests the ownership, control, management and administration of all land in the territory of each state of the federation (excluding land vested in the Federal Government for its agencies) on the Governor of that state. This law is, however, controversial and highly contested. Nonetheless, the status quo persists because an alteration to the law would require legislative change from the central government. Even taking into account lessons learned from the Tenure Guidelines and community capacity building advocating for this type of change has proven an uphill battle in the geo-political setting of the multi-ethnic national assembly.

This Nigerian land law has been subject to abuse and manipulation and the possible role of the Tenure Guidelines is not clearly defined. Land deals are always brokered with the involvement of the government and in many cases in partnership with foreign multinational companies. This was observed in the four communities studied: with the promise of benefits from high paying employment and long term development, some communities such as Ehom, Akpet, and Betem have been manipulated into accepting development, but these promises have not been fulfilled. Most contracts which are concluded make reference to provision of employment to the community members, but according to some community members interviewed, these contracts are often in such imprecise terms that it would be very difficult or impossible to hold the investor to account in cases of non-compliance.

2 The Case Study, research problem and research questions

This report seeks to address the issue of Community Land Tenure Rights while attempting to answer the question of how the Tenure Guidelines, an international instrument setting out standards and guidelines on the governance of land and other resources, can be used to protect customary land rights in Cross River State of Nigeria. In order to complete this investigation, we must first explore the key question of what system of land tenure is currently in place in the Nigerian context. In addition to these questions, the project also seeks to discover:

- What have the differentiated impacts of land deals been on local people in the selected Local Government Areas (LGAs)? What factors have contributed to these impacts and how?
- What are the various responses of local people, from resisting to supporting land deals?
- What strategies can be put in place to enhance the capacity of local people to effectively hold public authorities accountable for their rights?
- How and under what conditions can international governance instruments and principles, especially the TGs, be used to hold public authorities more accountable in the process of LSLAs? Where and how is this already occurring?
- To what extent are international governance instruments and principles, especially the TGs, coherent with national land governance frameworks? What are the tensions and synergies?
- If the TGs aren't effective or aren't coherent with national frameworks, what should be done about this?

These questions are important to gauge the extent of bottom-up accountability in relation to communal land rights struggles, and to assess how the TGs could provide new opportunities to enhance accountability.

2.1 Brief description of Cross River State: its geography, administration and socio-political context

Cross River State, commonly referred to as “The Nation’s paradise” is a coastal state in southeastern Nigeria. The state is named after the Cross River, which passes through the state. Located in the Niger Delta, Cross River State occupies 20,156 square kilometers. It shares borders with Benue State to the north, Enugu and Abia States to the west, Cameroon Republic to the east and Akwa-Ibom and the Atlantic Ocean to the South.

The State is composed of three major ethnic groups namely: Efik, Ejagham and Bekwarra. The Efik language is very widely spoken in Cross River State. Cross River State is divided into 18 Local Government Areas (LGAs). Each LGA is administered by a Local Government Council consisting of a chairman, who is the Chief Executive of the LGA, and other elected members who are referred to as Councilors. However, the traditional institution although less recognized politically nevertheless influences the socio-political, cultural, life of the people involved.

Land in Nigeria, and Cross River State in particular, is officially held by the state government; local communities have no say in its allocation. Although communal ownership is common, the government can invoke eminent domain to reclassify any individually or collectively held land by arguing that it is acting in the public interest. Ironically, provision of a formal title can actually speed up dispossession, as poorer farmers may be forced to sell their land after a bad harvest, leading to a concentration of land in wealthier sections of the community.

In Cross River State, there is increasing land tension and conflict due to the expansion of economic activities, illegal logging and land grabbing. The state contains the largest part of Nigeria's 9.6 million hectares of rainforest, and a significant portion of its 1,000 km² of mangrove and swamp forests. Most of the country's remaining primary rain forest watersheds, covering about 7,000 km² are located within Cross River State. A total of 6,202 km² within Cross River State is covered with thick high forest, which accounts for about 32% of the landmass area of the state⁶. These varied forests support the livelihood needs of 85% of rural dwellers in the state.

Cross River State is very rich in biodiversity. It provides habitat for 950 species of butterflies - a quarter of all butterflies found in tropical Africa - 100 of which are not found anywhere else. The region also includes one third of Africa's primate species; the most endangered, rare, and unique gorillas are found there, as are drill monkeys, hippopotamuses, chimpanzees, elephants, gray parrots and an incredible diversity of migratory and resident birds, as well as other endangered animals and plants⁷. Many of Africa's rarest trees, such as mahogany, iron-wood, camwood and mimosup, also grow here, along with other trees used for construction, boat-building and other uses.

Cross River State's forests have been threatened by unhealthy activities that grossly undermine sustainable forest management practices. In particular, this study will focus on the results of multinational company Wilmar's activities in oil palm cultivation and their impact on the rights and livelihoods of selected communities.

2.2 The research communities: Betem, Akpet, Idoma, and Akamkpa

The four communities addressed in this study are the Ibiaye communities of Betem, Ehom, Idoma and Akpet⁸, and are located in the Biase local government area in Cross River state, Nigeria. The Biase local government area is 1,310 km² with a population of 169,183 (according to the 2006 census). The people are predominantly farmers and dependent on the forests for their livelihoods.

Ownership of land in the communities can be classified under "legal right to land," where government or individuals sell land to an individual or corporate (multinational) landholder, or "customary/inherited right to land," which generally relates to land owned by families, traditional rulers or the "community". Community lands are governed by traditional rulers e.g. clan heads, chiefs and elders. The government has overriding powers in land matters, irrespective of communal rights based on the constitution. Because of the existing laws, people have reported difficulty in obtaining compensation when land is expropriated from its original owners. It is also important to mention here that the communities studied share common boundaries and forest resources with each other.

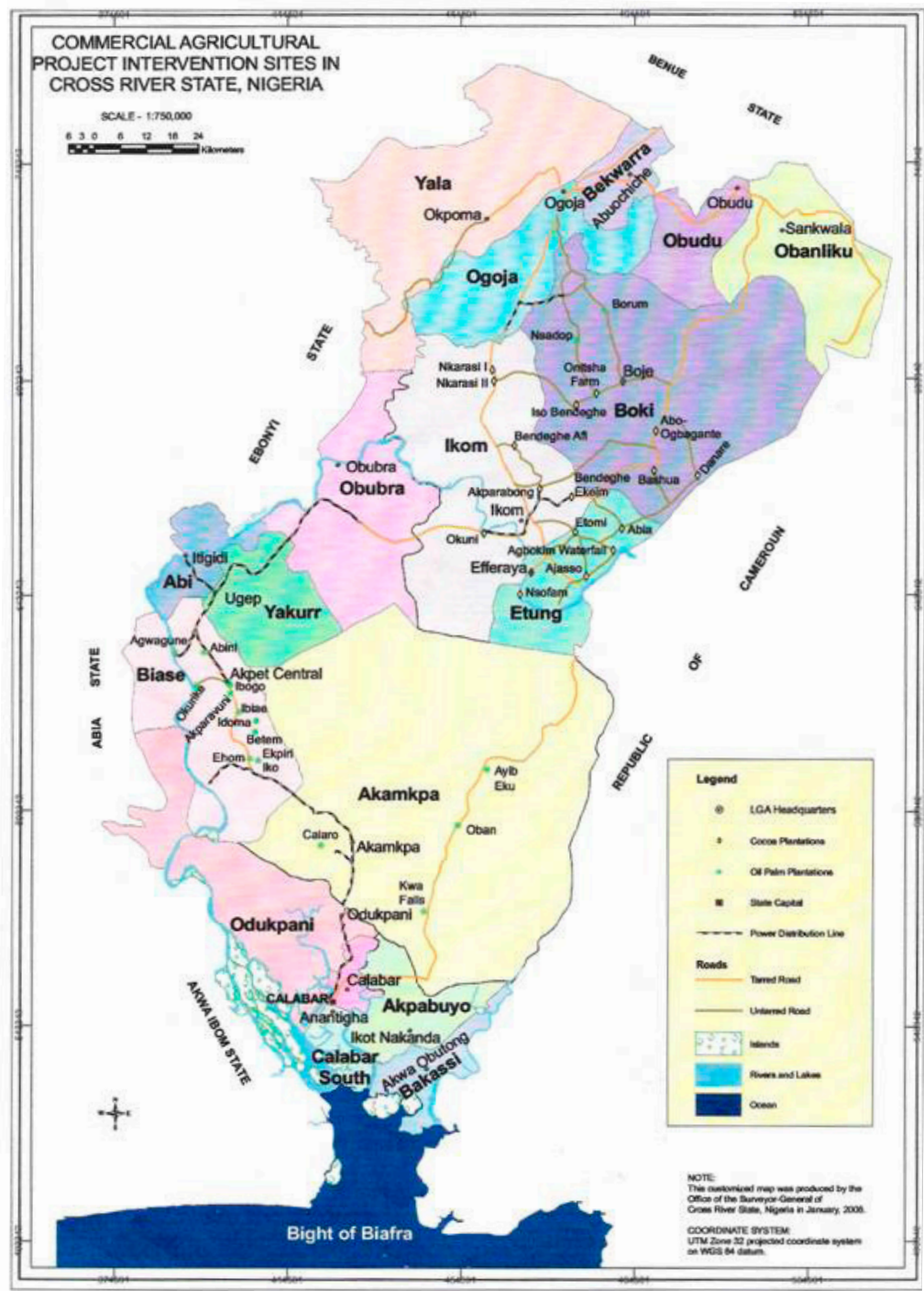
The presence of palm plantations controlled by Wilmar is affecting each community differently, depending on, among other things, differences in the percentage of total community land used for these plantations. However, all four communities are affected. For generations, the people of these communities have depended on forest resources for their food, clothing, and shelter. The development of oil palm plantations, as well as urban growth, has reduced the land area available to the people. Increasing land grabbing has meant a loss of income and of forest cover. A community respondent stated:

As a father I have to support all my children to have a quality education and better job to lift us out of poverty in the future. This means I have to work very hard to sell farm produce. The major challenge has been access to government support through the agricultural schemes. The foreign company came to our land with false promises, more community land is inaccessible and given to companies and major parts have been cleared for palm oil plantation. I cannot venture to the wild to source for local food and medicine found in the forest to sell and earn money.

It was clear from the research conducted that community members' way of life is under threat and ecosystems have been disrupted because of Wilmar's activity. Socio-economic and environmental damages have been done by Wilmar's activities and compensation has not been provided for the socio-economic and environmental damages resulting from the activities of multinationals like Wilmar corporation, which have partnered with government and other actors, disrupting communities and ecosystems through land grabbing. Land grabbing has been

carried out with little local resistance because most community members are unaware of their tenure rights due to low literacy rates. Where cases have been brought against the government the costs, length of cases, and various administrative bottle necks make the process inaccessible to most community members, who may abandon cases due to lack of resources. Nonetheless, following the capacity building workshops organised in November 2015 and April 2016, more community members are beginning to stand up for their land rights. In an interview, a community member stated that it is imperative to promote communal land rights of these communities so that “we can stand for our lands rights now and help protect our livelihood, children and heritage.”

Figure 1
Map Showing Cross Rivers state impacted forests and communities.



MAP: http://www.acerden.org/images/crossriver_map_clip_image002.jpg

2.3 Drivers of Land grabbing in the research communities

In Nigeria, most land grabs have been profit-driven, and linked to agricultural “development”. In the case of Wilmar, a dominant actor in these communities, its focus is on large-scale palm oil plantations providing raw materials for export, biofuel production, and use in cosmetics⁹.

It should be noted that land grabbing in Cross River State, while driven by multinational corporations, is facilitated by local chiefs, as well as government’s officials and other local and national elites.

2.3.1 Local and national elites

The National government is supportive of foreign direct investment and, since 2000, they have implemented a range of policies to encourage investment including in large-scale land acquisitions. A number of factors make Nigeria particularly appealing to international investors, but also increase the chances of investment projects developing in ways which are damaging to local communities and ecosystems and involve land grabbing. These factors include the commitment to agricultural development aiming at increasing production, the vulnerability of rural dwellers in respect to land rights, the interests of local elites, and the government’s commitment to new perspectives on alternative development from the oil industry. In the last decade, the number of foreign direct investment projects has increased steadily as a result of the supportive environment created by different levels of government¹⁰.

In addition to the national government, a number of other powerful actors within Nigeria and Cross River State have played a role in facilitating “development” projects which have often taken the form of land grabbing. The local elites within the research communities include local chiefs and the elders, some of whom aid and abet land grabbing by “fronting” for multinational companies. National elites, on the other hand, facilitate land grabbing by using their political influence and misuse legal loopholes in the Land Use Act.

A report by Friends of the Earth Africa and Friends of the Earth Europe noted that most land grabbing in Nigeria was profit driven and took place under the guise of using the lands acquired for agricultural investments especially in cassava, sugarcane and sweet sorghum production, for biofuel production¹¹. This is consistent with the findings of IIED, FAO and IFAD who noted that “production of liquid biofuels is a key driver of much recent land acquisition. Internationally, government consumption targets have been the key driver of the biofuels boom, as they create guaranteed markets for decades to come.”¹² Local businesses and elites have also benefited from policies supporting biofuel production and large scale land acquisition. Nevertheless, there has been some noteworthy resistance to such development in some local communities with support from NGOs, as this study documents.

2.3.2 Multinational companies (Wilmar)

Wilmar is a Singapore-based multinational conglomerate with the largest market share of palm oil trading in the world. They own some of the largest palm oil plantations in the world, are the largest palm oil refiner in Indonesia and Malaysia, and are the largest supplier of edible oil to China¹³. Wilmar controls 45% of all palm oil trading in the world¹⁴. As of 2014, the company was valued at \$17.9 billion USD with a raft of subsidiaries, over 600,000 hectares of land (which they call a “land bank”) and expanding operations in parts of Africa^{15,16}.

Wilmar¹⁷, under a joint venture agreement in 2014, is so far alleged by community members to have grabbed and converted a sizable area of forest that infringes on a forest reserve, a national park and a wildlife sanctuary, as well as communal farmlands across about eight native communities in Cross River State. The company is targeting a total of 100,000 hectares of land in Nigeria¹⁸. Since 2000, tensions and violent conflicts based on land and forests issues are on the rise in Nigeria. Wilmar’s recent acquisition of community lands from the Cross River State government is the latest case in point. Already 30,000 hectares of land has been acquired for palm oil plantations in Cross River State¹⁹. The company is making plans to further expand this to 50,000 hectares in order to supply a proposed oil refinery²⁰.

The communities of Ehom, Akpet Egbai, Igbofia, Betem & Idoma are directly impacted by this acquisition while others such as Ukam, Afi, and Biase/Oguangu will be indirectly impacted. Four of the impacted communities have been selected for this study while other community members have been involved in the advocacy and campaign follow-up actions on how to deploy the TGs to resist land grabbing.

Wilmar's Corporate Social Responsibility (CSR) policies, like those of many other multinational corporations, lack transparency and accountability, potentially creating rather than preventing conflicts in the communities where they operate. For example, a block of classrooms and a borehole were constructed in Mbarakom, where Wilmar's Nigerian headquarters are located. While these facilities primarily benefit the company's own staff, they have been presented to the community as a CSR project. This lack of clarity and transparency can lead to conflicts within communities that were previously very united²¹.

2.4 Large Scale Land Acquisitions and the Land Use Act: the troubled status of customary land governance

The critical problem for land rights in Nigeria is that land tenure system and how it operates is not clear, especially in relation to customary land rights. The right to use forest land in Nigeria is vague and communal land rights are poorly supported.

According to the Land Use Act 1978, all land is held in trust by the government and can be appropriated for overriding state interest or economic development for the social good of all. The provision for compulsory acquisition of land or public land tenure in the Land Use Act of 1978 represents an attempt by the Nigerian Government to modify land tenure and access for the purposes of development.

The Land Use Act is backed by the constitution of Nigeria and unambiguously vests the ownership, control, management and administration of all land in the territory of each state in the Governor (with the exception of land vested in the Federal Government). The Land Use Act of 1978 envisaged that "rights of occupancy", would replace all previous system or rules of inheritance to land, and would form the basis upon which land was to be held. These rights were of two kinds: statutory and customary.

The recognition of customary rights to land appears to provide a window of opportunity for communal and customary land rights, which could be reinforced by the application of the TGs. However, it should be noted that the trusteeship provision created under the Land Use Act is deeply problematic and has served to remove ownership of land from local people, placing it instead in the hands of state government officials. The Act enacts a Trust but fails to provide mechanisms of accountability. Section 47 of the act explicitly states that "no court shall have jurisdiction to inquire into any question concerning or pertaining to" several key aspects of the implementation of the law. The Act therefore creates a forced Trust, with powers vested on the Trustee to convey property to anyone he/she pleases, including himself/herself, without questioning or legal recourse for people or communities disadvantaged by such reallocations of land rights. Furthermore, while the Land Tenure Law of 1962, applicable in Northern Nigeria, was a statute passed by the elected representatives of the people of the North, the application of the Land Use Act to the South took place through Military fiat, providing an additional argument for reforming this law.

One of the principal features of the Act is the nationalization of land and the vesting of its ownership in the State. This meant that the citizens were divested of beneficial ownership of land and the beneficiary of that beneficial ownership was the state. The word nationalization here connotes the impairment of the freedom to exercise those main rights which evince and determine ownership of property²². Land reforms which change what it means to control land create tensions and conflicts between those who lose land rights and those who gain as a result. It is significant in this context that, in 1916, Northern bureaucrats refused to implement the provisions of the "Land and Native Rights Ordinance No. 1 of 1916", which they derided as legislation conceived and drafted in England²³. The Land Use Act continues to suffer from gross non-implementation by the State Governors in whom ownership of land is vested. Numerous bureaucratic obstacles have been raised to ensure that the Act was not implemented and to undermine the social justice objectives of the Act, giving the impression that it has failed and is unworkable²⁴.

In fact, while the Act is not ideal, and it has been subject to significant abuse and manipulations, the recognition of customary land tenure, as predominantly practiced in Southern Nigeria, is a positive feature of the act. However, in practice, the provisions of the act entirely fail to protect such rights, which become insignificant in the face of conflicting demands from the state or businesses. This study seeks to apply Tenure Guidelines (TG) to provide insights into bottom-up accountability initiatives in large scale land acquisition in some selected rural communities. It also documents how Wilmar takes advantage of such legal scenario, which allows them to acquire local and customarily held land with support of the state without being held accountable for subjecting communities to untold hardship.

3 The research methodology

A participatory action research methodology was used for this study. In the process, we employed a “multiple loop learning” process whereby the methods and types of action developed over time were collected via an iterative process of research, action and reflection. This process involved a strategic and collective reflection-action loop “from below” during which we created our own real life “virtuous circle” of authoritative and accountable natural resource governance.

The process of this action research methodology will be described in Section 5 of this report; the focus of this section will be to describe the techniques used for data collection, the participants, challenges faced during the data collection process and the possible limitations of our chosen research method.

3.1 The research tools and techniques

During this research, we used in-depth and semi-directive interviews, focus group discussions, and life histories. We conducted ten in-depth interviews and four semi-directive interviews with local chiefs. The in-depth interviews went on for 45 to 60 minutes, while the semi-directive interviews lasted approximately 30 to 45 minutes. We also conducted two focus group discussions and life histories which went on for some 60 to 120 minutes.

We then used quantitative techniques in collecting data from questionnaires that contained open and closed questions. We administered a total of 100 questionnaires, 95 of which were valid for analysis using SPSS (version 23). The remaining 5 could not be retrieved from the field.

3.2 The research participants

Research participants were mainly drawn from the selected communities of Akpet, Idoma, Betem, and Akampka in Biase Local Government Area (LGA). They included traditional rulers, community stakeholders, women, and youth. Local chiefs were involved because of the unique role they play in the day-to-day leadership of communities and issues of land dispute, where their role is informed by their knowledge of their community mapping and territories. The survey, group discussion, workshops and other activities carried out by ERA during the course of the research ensured that participants were resident in the community and that representation was inclusive of gender and people living with disability (PLWD). The research participants included: four community chiefs (aged 55-70) who are clan heads and middle class, community members, and elites.

For example His Royal Highness or King, Clan Head in Akpet Central, is the custodian of the community tradition and custom, and is also responsible for harmony amongst community members. He informed our field officer during a field visit that they have been short-changed in the deal signed by government with Wilmar. He said that his community was not involved in the signing of any Memorandum of Understanding (MoU) and challenged the company to provide such a document²⁵. He called on the State Government to set in motion a process to review the memorandum of understanding (MoU) allegedly signed between the state government and Wilmar on behalf of the communities, ensuring that all impacted communities and interested groups take part in the review process by making it transparent and inclusive.

Similarly, in Mbarakom, the Clan Head HRH and some of his elders, constitute the governing council are responsible for the governance of natural resources in their area. They informed our field officers that their “communities were not consulted, nor did they enter into any agreement with the company and as such have not seen an MoU between the government and the company.” They lamented the impact of Wilmar’s activities on their land and said since the coming of Wilmar, “there has been forced eviction that has resulted in high rural-urban migration since [people] no longer have lands to farm and that the relative peace they have enjoyed over the years with their neighbours have been thwarted by Wilmar’s divide and rule tactics under the pretence of corporate social responsibility.” A “divide and rule” strategy has been apparent in Wilmar’s dealings in the region. For example the company built classrooms for staff wards and an access road to their facility while paying little or no compensation to some impacted farmers in other communities, creating tensions between and within communities.

In Betem, on the other hand, the Clan Head Betem/Ehom, who is responsible for harmony amongst community members and natural resources governance, was rather optimistic. He informed ERA officers that they await the official presentation of the MoU between them, the government and the company. He said a ceremony will take place to commemorate the occasion. But could not disclose the content or make the MOU available at the time of the field visit.

It is in this light that Environmental Rights Action/Friends of the Earth Nigeria introduced a simple but important innovation: a bottom up accountability advocacy project, that will engage these affected communities and, in the long-run, help to build up important leadership structures that address the urgent needs of the affected communities. ERA, with the help of the communities, has been able to establish the “community forest guards” who are to be communities’ watchdogs on issues related to environment, agriculture and land grabbing. The community forest guards formed by ERA have been found to be very effective and supportive in addressing various issues in communities of Cross River State. Community leaders and other relevant stakeholders were consulted to ensure supportive and synergistic collaboration aimed at achieving the set goals and objectives.

3.3 The research procedure

In order to study bottom-up accountability mechanisms in the researched LGAs, field visits were organised to impacted communities across the three LGAs. The visits provided an opportunity for community members to collectively reveal their struggles for accountability within the target communities. Interestingly, the challenges identified by the communities were quite similar. Hence, the agreement with the target communities to begin the research by providing capacity development on TGs, and on strategies of resistance and advocacy so that small farm holders and other community members could build their capacity and be empowered to monitor problems and act through advocacy and campaigning.

Thereafter, ERA/FoEN began the research phase with an inception workshop with impacted communities. The workshop, which took place on 8 May, 2015, and aimed to secure project understanding and community buy-in was expanded to include a round-table discussion. The interactive sessions were led by key resource persons who provided background inputs, and were followed by questions, comments and discussions.

After the inception workshop a training workshop, which was recommended and convened by ERA, preceded the administration of questionnaires by enumerators including two field officers and members of the communities. The essence of the training was to equip enumerators with appropriate strategies for eliciting the required data. After training enumerators were commissioned to randomly administer the questionnaires across the selected LGAs of Akpet, Idoma, Betem and Akamkpa in Cross River State. A total of 100 questionnaires were administered in four communities. To gain information about the legal framework and its implications for LSLAs, respondents were asked: “what are the regulations guiding access to land and natural resource use in your community?”

On the 10th of May 2015, 25 questionnaires each with a total number of 18 questions were administered in two communities of Akpet and Betem but 5 administered questionnaires from Betem were not returned. On the 11th of May, 2015, another 25 questionnaires each with a total number of 23 questions were administered in Akamkpa and Idoma bringing the total number of questionnaires administered in the four impacted communities to 100, with 95 of these analysed.

3.4 The research challenges

Some of the challenges faced during data collection posed difficulties to the research. Community representatives had no prior access to any related fundamental documents such as the Environmental Impact Assessment document (EIA) – it was alleged that the assessment was carried out in secrecy and without community participation. The EIA process is intended to make sure that environmental issues are raised when a project or plan is first discussed, and that any concerns are addressed prior to the commencement of a project. Recommendations made by the EIA may necessitate the redesign of some project components, require further studies, or suggest changes which alter the economic viability of the project or cause a delay in project implementation. To be most beneficial it is essential that an EIA is carried out early in the project cycle, so that recommendations can be built into the design and cost-benefit analysis to address significant impacts without causing major delays or increased design costs.

An important output from the EIA process should be the delineation of enabling mechanisms for effective management. The process includes the following: screening, scoping, prediction and mitigation, management and monitoring, and audit. Rapid rural appraisal techniques provide a means of assessing the needs and views of the affected community. A major component of scoping is identifying key interest groups, both governmental and non-governmental, and establishing good lines of communication. People who are affected by a project need to hear about it as soon as possible and local knowledge and perspectives may have a major bearing on the focus of the EIA.²⁶

Therefore the fact that community members did not have access to the EIA report, and reported being excluded from the process of the assessment, casts serious doubt on the effectiveness of the EIAs carried out in these communities.

Another important document that the community stakeholders were not aware of was the Corporate Social Responsibility (CSR) MoU concluded between Wilmar and the government, which some claimed contained details of a corporate social responsibility package. Representatives were also not aware of the Tenure Guidelines. Learning about the existence of these documents, which community members had not previously had access to, sparked interest in the research project and a desire to participate further.

Official government support and participation was not provided during the research. When Community Forest Watch members began to make themselves known in the communities as forests watchers they were perceived as opposition to the people and major stakeholders involved in 'development' projects, and especially to those who were benefiting from Wilmar's activities in the region.

Other constraints related to funding and timing. For example, local customs demanded that the research organization give gifts of drinks and kola to community chief. When you present gift, it serves as a mark of respect and honour for the local chief leadership position, and this exchange helped to secure support for the project. However, these gifts were not included in the project budget and, in some cases, the required back and forth to honour local custom and courtesy consumed considerable resources in both time and fuel.

Another major issue was the availability of resources to motivate the Community Forest Watch team. The ERA research team was able to succeed in setting the group up through cooperation with community stakeholders. However this means that the team are only available at specified times rather than being able to provide the full-time attention required by the communities. The research team improvised to support the CFW team to administer the community survey; since then they have not been assisted financially. The sustainability of the CFW will depend on their ability to generate personal funding, which is critical for their overall functioning as a community forest group. Continuous engagement with the CFW and collaboration in advocacy and workshops has helped to register continuous presence in the communities.

4 Access to land in the research communities

The research seeks to delve into the contextual dimensions and historical perspectives linked to the conceptualizing of the land tenure system in Cross River State. In particular this study seeks to juxtapose the so called “legal” land tenures (represented by a deed of property) with customary land rights.

Historically land ownership in Cross River state is based on individual and community ownership. Access to land in the communities is through communal and customary rights, which guarantee access based on needs. The chiefs and elders in council approve a parcel of land for farming in a freehold system that discourages land stocks and land speculation. The community's various clans and families own land and use it for farming and other economic livelihood activities. No registration is required and the status can be hereditary or freehold depending on social status and the terms of oral agreements. These agreements are usually vague and undocumented.

However, these customary land rights have been eroded following the introduction of the Land Use Act of 1978, according to which land is held in trust by the state and, by implication, the government of the federal republic of Nigeria, and administered for overriding state interest. Although the law still provides for family inheritance of land rights, all land can be removed from its customary users in order to make it available for the implementation of development plans.

Another means by which land can be removed from the hands of local communities or individuals is through outright sale and purchase of land. Land can be acquired through sale with a firm legal arrangement, using a deed of property or conveyance, which legally transfers ownership of land. This process usually involves a contract and the payment of exorbitant fees for the contract, which makes this approach unobtainable or highly unattractive as a strategy for local communities to acquire land.

Customary rights have been threatened by arrangements concluded by registered government consultants and officials. In principle, contractual arrangements over land ownership could help to facilitate communal land rights. However, based on experience, it is reasonable to conclude that both in theory and in practice, land registration could carry a significant risk with it, as it immediately prepares the land for marketisation and financialisation, which may ultimately not be in the interests of the impacted communities.

In 2011 and 2012, Wilmar purchased several plantation sites in Cross River State. These land purchases were part of the state's efforts to encourage “high capacity” foreign investors to revive its flagging plantation economy²⁷. Wilmar's new Nigerian holdings include the plantations of Biase, Ibiae, and Calaro (totaling 19,173 hectares)²⁸ all purchased from the Cross River State Privatisation Council,²⁹ (as well as the Obasanjo concessions, totalling 10,791 hectares)³⁰. According to a November 2014 article in *Businessday* Wilmar's investment of \$165 million USD to develop the current 26,000 hectares of palm oil plantations is only the beginning³¹. In 2014, Tunde Oyelola, vice chairman of Wilmar, announced the company's plans to “aggressively expand the nation's palm oil production to 240,000 hectares of plantations, employing over 250,000 within five to six years”.³² Thus the issue of communal land rights and deeds of property can be viewed as a clash of systems, and of conflicting notions of development, which either promote capitalism on the one hand or suppress its expansion on the other.

The Report “Exploitation and Empty Promises: Wilmar's Nigerian land grab,” published by Friends of the Earth Nigeria, reveals that Wilmar's recent acquisition of about 30,000 hectares of land in Cross River State has left local people destitute, threatens protected forest areas that are home to some of Africa's greatest biodiversity, and has already destroyed areas of High Conservation Value, including food producing areas and water sources essential to local communities.³³ Wilmar's operations in Cross River State have failed to meet the company's obligations to gain the Free, Prior and Informed Consent of communities directly affected by its operations³⁴ In the assessment of community members, the government has also not played its role in ensuring proper consultations and informed consent of the communities. Wilmar has also taken advantage of local power dynamics to bypass best practices in community consultation and development.

Wilmar is opening up new palm oil plantations and establishing vast nurseries on land acquired by clearance of community farmlands. This pattern in Nigeria follows the same business model that has caused vast forest destruction and human rights abuses in South-East Asia. For countries like Indonesia and Malaysia, embracing large scale palm plantations has contributed little to GDP, failed to provide stable and secure local employment, and subjected their economies to the volatile fluctuations of global commodity prices³⁵. In Southeast Asia, aggressive government support for large scale plantations, similar to that planned for Nigeria, has extracted wealth from the country and deposited this in the pockets of foreign business owners, leaving as little as possible in tax revenue. It has left communities landless, hungry, indebted, and in conflict. The same effects can be foreseen in Nigeria, and are already being felt. One farmer recently displaced by Wilmar's Nigerian operations said, "By taking our farms, Wilmar is declaring us dead."

Wilmar's expansion plans will likely lead to further evictions and appropriation of farmlands worked by migrant and small-holder farmers. The expansion plans also pose serious risks to Wilmar's brand reputation and the credibility of its commitment to "No exploitation³⁶." According to one of the village elders in Ibogo village, "Wilmar destroyed all our farmland. The community is over 7,000 people, and the land was over 300 hectares, and about 200 hectares have been taken now. We lost our forest too. Now we need to buy meat, or imported iced fish, and this is very expensive."

Wilmar's Corporate Social Responsibility (CSR) Programmes have been shrouded in secrecy with no clear cut MoUs guiding the process. The company promised to build schools, water systems and roads, and to help the community to achieve sustainable development through CSR initiatives. These claims formed the basis of the negotiations with both the Cross River State and the local chiefs; yet no formal MoUs have been signed, and project documents lack concrete agreements regarding economic benefits. According to one of our Community Forest Coordinators, "[Wilmar's] promise to implement community development projects of roads, primary and secondary schools, clinic construction and improve access to potable water supply have not seen the light of day. Rather, forests and biodiversity losses continue to rise".

Some community members, mostly youths who work on the plantation, stated that, "employment by the company is mostly non-permanent, unskilled, and lacking basic remunerations and incentives such as health insurance, accommodations, pension schemes, education for children and adequate salaries." Most of the unskilled workers claimed they have "no employment letters, no specification of work responsibilities and work from dawn to dusk."³⁷

4.1 Mapping shifting trends in land tenure and sustainable forest management systems in the research communities

Forest management systems have undergone several dramatic changes with rural folks experiencing the consequences. Forest dwellers have depended on their forests for food, medicine and shelter for centuries. They provided for their livelihoods by hunting wildlife and gathering wild fruits, nuts, and vegetables. Communities were able to depend on the forests and managed its resources in a sustainable manner in spite of the challenges of increasing population.

In the twentieth and twenty-first century, however, dramatic population growth and increasing commodification of nature has led to increasing exploitation of natural resources for consumption, commercial purposes, and profit. In the last 50 years this situation has given rise to a model of wilderness conservation which is understood to require the exclusion/ eviction of community people from forests and an end to their dependence on forest resources. The creation of such wilderness, natural parks, and concessions for timber logging further alienates indigenous populations who watch helplessly as their land is deforested or deeded away by state legal instruments. The long-term effects of deforestation include loss of ecosystem functions like carbon sequestration capacity, erosion control and sediment transport mitigation, and wildlife corridors,³⁸ as well as loss the ability of local inhabitants to support themselves economically from the forest.

Many countries in the global South have experienced extensive development of palm oil plantations at the expense of indigenous forests, driven by increasing global demand for palm oil as a trans-fat substitute. The four research communities cry out for help as many of their community rights have been violated, including access to food and energy drawn from forests for local use.

Analysis of data on forest losses between 2001 and 2013 shows that deforestation has been occurring across all of the examined concessions. The average rates of forest cover loss (hectares/year) showed a rapid acceleration starting in 2011³⁹. A study by CIFOR researcher George Schonevelde found that the new agricultural plantations being established entail “widespread displacement of smallholder production systems,” and estimated that Wilmar’s plantations will impact farmland currently or previously managed by as many as 7,800 households. Further, writes Schonevelde, “There are few mechanisms through which affected households can claim redress.”⁴⁰ In the case of communities impacted by Wilmar, an institutionalized community-based forest management system, which would allow communities to take charge of governance of their forest resources through communal efforts, might provide a viable alternative to the land appropriations and evictions that have characterized ‘development’ projects in the State so far.

Efforts to regain their lands have been met with the criminalization of indigenous people, forced evictions, and dispossession from their ancestral lands. The concept of free, prior and informed consent, which specifies that forest deals must be by informed participation and consent of communities before communal ownership of land can change hands into the private arena, highlights the injustice in these communities.

The UN-REDD+ response to climate change has created a further disconnect about ownership and control of forests and their resources. The UN-REDD is highly controversial and seeks to deprive local communities of their prime forested lands in return for wages and alternatives that often not equally distributed.

4.2 Actual situation of access to land in the different research communities

Communities in Cross River State began to be affected by land grabbing when a large parcel of land, mainly for palm oil, was granted to Wilmar corporation in 2010. As a result, a high proportion of land in the community was allocated to Wilmar. The communities reported that the activities of Wilmar infringed on communities’ rights, as the concession was granted without the consent of the people who lived on and held customary title to these lands⁴¹. According to community members’ testimonies, Wilmar’s land grabbing⁴² has affected over 1,000 peasant farmers who have lost an estimated 2,000 hectares of land which they used for growing crops like cassava, plantain, banana, vegetables, pawpaw etc. They stated that it is now difficult for them to meet their basic needs, as their means of livelihood have been taken away from them since Wilmar started its operations. Due to the palm oil plantation, which demand vast areas of deforestation and make heavy use of water and other resources, Wilmar’s activities pose serious threats to food security and livelihoods in the affected communities, increase the risks of conflict, contribute to deforestation and environmental degradation, and negatively impact biodiversity.

Community members also have no means of seeking redress. According to one community member, “venturing into the premises of Wilmar is considered as violation and anyone caught will be arrested and molested by the military men attached to the company.” Other testimonies from community members from Mbarakom stated that “youths are not being employed by Wilmar and are now migrating to the cities of Calabar to look for jobs while the old people in the village do not have enough energy to cultivate the remaining lands degraded forestlands.”⁴³

Since the impacts of Wilmar’s activities vary, the appropriate or preferred redress also varies from community to community, or even from individual to individual. While those who lost subsistence crops and farmlands tend to favour immediate compensation for these losses, others evicted from homesteads want, instead, a revocation and a return of their land.

Some communities’ responses have addressed these problems in only the most limited ways. Clearly, while a few within the community stand to benefit from Wilmar’s investments, others who are impacted are clamouring for redress. In the past, they have written to Wilmar, but have not received any response. With the support of local CSOs other community members have undertaken litigation, but so far with no success.

However, in Mbarakom community, some local chiefs have openly signed petitions condemning Wilmar for using “divide and rule” tactics. These actions can be traced to the advocacy and community organising training provided by ERA and discussed above. This shows that the training is generating community-wide debate that has

emboldened many to challenge the local power structures and powerful figures who are allegedly colluding with Wilmar, as well as continuing to challenge Wilmar itself through repeated visits and clear demands. Following this advocacy work, Wilmar, according to information from community members, seems to be making attempts to revisit its faulty consultation with the impacted communities to ensure greater participation. Still, the community members are calling for a review of the MoUs, which must be made open and transparent, with inclusive participation by the local people.

4.3 Evaluation of land governance in Nigeria based on the provisions of the Tenure Guidelines

The Tenure Guidelines aim to improve the governance of tenure of land, fisheries and forests for the benefit of all stakeholders, but with a specific focus on marginalized groups. Specific aims of the TGs are: food security, the progressive realization of the human right to adequate food for all, eradication of poverty, social stability, rural development and protection of the environment. Paragraph 1.1 establishes that the TGs form part of the duties incumbent on a state under international human rights law and sets out the core aim of the TGs, as identified above. Information and effective participation in decision making processes is one of the core principles of human rights. According to our findings, community stakeholders in the research communities are entirely unaware the guidelines and how they can access or use them. Because of corruption and a loose system of governance, stakeholders end up being used as agents to fast track big corporations' acquisitions of land in their various communities.

The TGs introduce the concept of "legitimate tenure rights," which covers those tenure rights not officially recognised and/or registered, but which are nonetheless deemed legitimate, which may include both constitutional and customary rights to land. Chapter 3A of the TGs defines the general principles of the guidelines and states that states should identify, register, recognise and respect all legitimate tenure holders and their tenure rights, and safeguard those rights from threats and violations, including protecting rights holders from forced eviction. Furthermore, the responsibility for states to provide access to justice is underscored, in order to deal with cases of violations of legitimate tenure rights. Paragraphs 4.4 and 4.5 call on states to legally recognise those legitimate rights which are yet to be officially recognised and/or recorded, and to ensure that people are not subject to arbitrary expulsion.

Essentially, the customary land tenure system of landholding is indigenous to Nigeria. Thus, the legitimate tenure rights to land, fisheries and forests are well recognized and protected under the customary law in the constitution of the federal republic of Nigeria. The Supreme Court of Nigeria⁴⁴ while interpreting the provisions of the Land Use Act with respect to customary right of occupancy unanimously held as follows: "A customary right of occupancy means the right of a person or community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by a Local Government under this Act; A person with customary right of occupancy is entitled to use the land in accordance with customary law. A customary right of occupancy predates the Land Use Act and this is intimately linked with the custom of the people of the area. It is a creation of customary law and the fact that it can now be granted by the local government has not taken it out of the realm of customary law." Further, the preservation of the customary tenure system has been firmly established in the case of *Ogunola v. Eiyekole & Ors* where the Supreme Court pointed out that:

"Land is still held under customary tenure even though dominium is in the Governor. The most pervasive effect of the Land Use Act is the diminution of the plenitude of the powers of the holders of land. The characters in which they hold remain substantially the same..."⁴⁵

The mechanism and procedures to claim legal recognition for legitimate tenure rights to land, fisheries and forests are well established and even provided for in the national Constitution. The 1999 Nigerian Constitution provides that all citizens have the right to acquire and own immovable property. Also it has been held "...that although the Act takes away the freehold title vested in individuals or communities, the Customary Right of use and control of the land have not been swept away."⁴⁶ This is more so since no member of the family or community for example, can validly apply for and obtain a certificate of occupancy to use family property nor can a prospective

customary tenant bypass the customary landowner to apply to the Governor or the Local Government for a lease of the land. Also, alienation of such land requires first and foremost, the requisite consent of the family or the community.⁴⁷

However, in spite of these ample provisions, in practice very little protection against arbitrary and forced evictions exists for people and communities whose legitimate tenure rights are yet to be recognized. Following cases of extensive government-sanctioned mass forced evictions, demonstrating clear disregard for the human right violations involved, there seems to be no clear-cut protection from the government which could arrest this trend.

However, Section (2)(d) of the 1999 Nigerian Constitution mandates the government to ensure that “suitable and adequate shelter are provided for all citizens.” The defenders of the right to land, fisheries, and forests of peasants, and all those who depend on the land and forests have severally been intimidated and criminalised. As is typical around the world, activists and communities raising their voices to stop environmental devastation, land grabbing and natural exploitation face severe oppression and intimidation. These defenders and impacted communities are often victims of intimidation and human rights violations by vested political and economic interests⁴⁸. The defenders are usually forced to function in a context of physical and psychological insecurity.

There is no statutory law in Nigeria to safeguard the right to secure tenure of land but the court has inferred such safeguard in a recent case. Thus, the Supreme Court, per Nnaemeka J.S.C. aptly observed as follows:

“...the Land Use Act never set out to abolish all existing titles and rights to possession of land. Rather, when such rights or titles relate to developed lands in urban areas, the possessor or owner of that right or title is deemed to be a statutory grantee of a right of occupancy under Section 34(2) of the Act. Where it is non-urban land, the holder or owner under Customary law or otherwise is deemed to be a deemed grantee of a right of occupancy by the appropriate Local Government under Section 36(2).”⁴⁹

There has been no clear government adopted provision, whether by constitutional or legislative measures, to prohibit forced evictions and provide restitution. There is no statutory law in Nigeria that expressly prohibits evictions or provides for compensation, restitution, resettlement, and rehabilitation. And, case by case, events have shown that governments, either at the federal or state level, have little or no provisions in place to tackle these problems. Hence there is no effective judicial resource to ensure that individuals and communities subjected to evictions can defend themselves through the courts.

As a corollary, there are no appropriate civil and criminal penalties that can be used against governments or corporations that carry out evictions. Therefore, the TGs’ provisions might prove useful in the case of Nigeria: under the 1999 Constitution, aggrieved person(s) can seek redress in court for the enforcement of fundamental human rights. Section 46(1) and (2) provides for the enforcement of a fundamental right, as provided for in the Constitution, in the event of a violation.

Thus, although there are no specific provisions yet, recourse can be had to common law which makes it unlawful to forcibly evict another without a court order. In almost all cases of eviction, international human rights law applies but is hardly respected. For example, Paragraph 8 of the UN Basic Principles is regularly observed to be violated. This paragraph states that:

“States should explore fully all possible alternatives to evictions. All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the rights to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should consider.”

In cases where this principle is breached, we have also observed that advice is not given to communities on how to defend themselves in cases of eviction, and compensation is not guaranteed for any community members. Thus, in the best case scenario, compensation is paid arbitrarily and usually only following protracted court cases which are highly discouraging to local communities due to the time constraints, high costs of legal fees, and uncertain outcomes.

Under customary law, which governs much of the country, all members of a rural community are entitled to have use of a portion of land, which they receive through land rights by purchase or inheritance. However, customary law provides little, if any, protection against rights asserted by the state or third parties under formal law, although provision of this kind of protection is called for in the TGs. Specifically, Section 3 sub-section 8.2 on public land, fisheries and forests states that:

“Where States own or control land, fisheries and forests, the legitimate tenure rights of individuals and communities, including where applicable those with customary tenure systems, should be recognized, respected and protected, consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. To this end, categories of legitimate tenure rights should be clearly defined and publicized, through a transparent process, and in accordance with national law”.

This, in effect, implies delineation and registration of communal land tenure to secure land rights. This means that combining the provisions of the customary laws with the TGs might provide greater possibilities for securing communal rights to land. Although rights to rural land held under customary law are generally considered secure, claims from state agencies often trample on such provisions where these are not accompanied by certificates of occupancy obtained through registration of land.

National legislation does contain provisions that recognize and respect the legitimate tenure of local people, but major problems of enforcement and compliance persist. Customary title and use of land exist in pre- and post-1978 property law practice and jurisprudence in Nigeria. In addition to the cases mentioned above, this principle was clearly laid out in the case of *Garuba Abioye V. Sa’adu Yakubu* (1991) where the full bench of the Supreme Court of Nigeria, while interpreting the provisions of the Land Use Act with respect to customary right of occupancy, unanimously held as follows:

“A customary right of occupancy means the right of a person or community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by a Local Government under this Act; A person with customary right of occupancy is entitled to use the land in accordance with customary law. A customary right of occupancy predates the Land Use Act and this is intimately linked with the custom of the people of the area. It is a creation of customary law and the fact that it can now be granted by the local government has not taken it out of the realm of customary law.”⁵⁰

There are no established statutory laws on evictions in Nigeria today, nor are there laws prohibiting evictions. It is estimated 40% of Nigeria’s households do not have secure tenure.⁵¹ Complete statistics on migration and forced evictions are not available. However, the scope of the problem is suggested by the Centre on Housing Rights and Evictions’ naming of Nigeria as one of the three worst global violators of housing rights in 2006⁵². Community members’ testimonies further showed that, since the year 2000, a number of people estimated to run into the tens of thousands have been forcibly evicted from their homes in different parts of Nigeria while many more continue to be at risk.

Nigeria’s customary law is a local, uncodified, evolving system of principles and norms that varies by region. Under customary law, which prevails despite the enactment of the Land Use Act, land is generally regarded as owned by a universal ruler, held by a community, and administered for the benefit of that community by the village head, chief, or Oba (head chief). Prior to 1978, Nigeria’s system of customary land tenure provided families and individuals with use rights to rural land for agriculture and urban / town plots for housing that were heritable within families and lineages.

Affected communities are learning to make use of the national and international legal systems to bring attention to their plights and strengthen campaigns for justice. However, so far impacted communities are not able to effectively exercise their rights to Free, Prior, and Informed Consent (FPIC), which should function to enable information flow and support quality participation by communities. Although FPIC is not stipulated by national laws the provisions are generally recognised to obtain within the EIA process, which provides for local participation in

project planning. However, the requirements for free and prior informed consent are usually not followed during the implementation of EIA processes, leaving indigenous communities vulnerable to transnational companies.

The state respects and protects the rule of customary dispute resolution systems relating to tenure and, in rural areas disputes are mainly settled through customary law, providing the resolution is not inconsistent with the provisions of the Land Use Act.

4.4 Summary of Land governance in Nigeria and of access to land for people in the research communities

It is not surprising that, although some provisions exist to protect communal rights, such laws lack direct mechanisms for seeking redress other than the regular civil court of law. There is no extant law prescribing punishment and redress, therefore defending communal land rights can be very difficult. This difficulty is exacerbated by conflicts between informal customary land rights and “modern” land rights conferred by a deed of property, which have not yet been fully addressed by national law and jurisprudence. This research focuses partially on how existing provisions in Nigerian land law could be supported by the TGs in order to allow for protection and realization of customary land rights in practice.

5 Accountability Strategy, Action Research and Key Successes

Our accountability strategy sought to empower community members through advocacy training and campaigns, as well as to review the land use act with a view to amending it. The community sought to interrogate the MoU which was signed by the government, Wilmar and some communities’ leaders. In this light, our research team proceeded by conducting training to empower communities (5.1), establishing a community forests watch (5.2), and mobilizing to engage with the MoU and the transparency of its process (5.3). As a result of these actions communities improved their engagement, although their efforts have produced minimal results in the short term.

5.1 Advocacy Training workshop to facilitate community rights

Following the successful inception workshop on the action research, it was clear that community participation was key to challenging the excess power of Wilmar and government officials dispossessing community members from their land. Community willingness to act, backed by the robust advocacy workshop organized to equip communities with advocacy skills, made it possible, during the course of this research, to enliven debate within the community, streamline demands against Wilmar, and make clear demands to the national and state governments.

The “divide and rule” tactics of multinationals working in communities were discussed, with communities providing examples from their experience. These included: CSR promises, financial inducements to elite and influential members of the community, and outright intimidation of community members. The communities were able to identify cases of these already happening in their respective communities, although with local differences.

The team of experts advocated for the need for Village Advocacy Committees, which is similar to the Community Forest Watch (CFW) Network that was eventually established. The aim of CFW is to address the issues of land grabbing from the grassroots, with support from facilitating CSOs. At the end, a communiqué containing sets of demands was agreed, and specific campaign issues were identified for further action by the CFW groups that were set up.

5.2 Establishment of Community Forests Watch

Community Forest Watch programme was extended to the Wilmar impacted communities in this study in order to foster community organizing, mobilization for resistance and protection of communal rights to land. During the training and advocacy strategy meetings, Village Advocacy Committees were suggested, as stated above. However, given a history of Community Forest Watch initiatives in the region some years back, as well as elsewhere in Edo state, expanding the network of community forests defenders was judged to be more effective.

Community forest watch groups had not yet taken hold in these villages because of local organizing challenges and lack of resources. This IDRC project provided the opportunity to renew community engagement and set up more CFW groups.

As part of the advocacy and organizing strategy, five new CFW groups were established in the impacted areas, each comprising a 5-person committee including men, women and youths drawn from the communities. They had the general responsibility to create awareness on the impact of Wilmar operations, defend the forests by representation, and seek redress for community members' grievances. The CFW groups were established to conduct community organizing from the bottom up, and to spearhead local campaigns against land grabbing.

An advocacy work plan was developed to help the forest watch members to be active in the protection of their rights. Community members were empowered to take a stand against the issues of land grabbing now and in the future, and to work towards reclaiming appropriated land through letter/petition writing, civic engagement, lobbying and effective advocacy. A community protest march against Wilmar took place on the 9th of May, 2015 in Cross River State, and at least five media publications were made in the national daily newspapers⁵³. The protests have drawn the attention of Wilmar, who have finally responded to community grievances and pledged to engage more with communities, using FPIC.

As a result of CFW groups' actions and campaigns, the government of Cross River State responded by forming the state "green police" to protect forests from illegal loggers and to generally monitor the forests in order to reduce the risk of conflict. As their operations become clearer over time, it is hoped that there will be some level of engagement with this new intervention, no matter how temporary it may seem. ERA's CFW training on safeguards, held on 2 November, 2015, also provided another opportunity for protest against Wilmar. A communiqué was issued condemning Wilmar's poor labour conditions and the environmental degradation caused by its operations. Two additional campaign and advocacy meetings were held in 2016 to continue to draw attention to the plight of the communities.

It was observed that Wilmar's activities in various communities in Cross River State have infringed on communal land rights of the host communities. There have been reported cases of forced evictions due to land grabs, environmental degradation⁵⁴, and destruction of livelihoods. Small-holder farmers have faced major challenges as a result of the activities of this multinational corporation, compounded by land grabs and other natural resources depletion. The communities of Betem, Akpet, Idoma and Akamkpa, have been severely impacted and community members have little or no knowledge of safeguards which might help to protect them. Therefore, it became necessary to train community forest watch groups on the TGs. By establishing standards which states and other actors should be held responsible for meeting, the TGs establish normative "pressure points" that can be used to investigate specific situations and consider mounting bottom-up accountability initiatives.

The training on safeguards prescribed by the TGs informed and sensitized individuals, grassroots communities, and youth groups and networks to understand the concept of tenure rights, which is essential for effective engagement with the government and lobbying to help them regain their lost communal/individual land and other properties. It is in line with this that Environmental Rights Action (ERA/FoEN) organized a capacity building workshop and community visit with the aim of monitoring and evaluating the project in the host communities and empowering the community members and other relevant stakeholders.

Community members were equipped with knowledge on how the TGs can be used to support communal land rights and ensure that governments at all levels provide legal recognition of traditional land use rights to small-scale farmers, women, and forest dependent communities (legitimize customary tenure rights). Participants were spurred to action and delighted with the information provided, as they have been eager to find ways to strategically address this growing problem. Their limitation has been lack of capacity, coordination and technical knowhow, which this project seeks to address. Community stakeholders were empowered, through training, to help with community coordination and strengthening. The production of Information Education and Communication materials like pamphlets also helped to highlight the negative impact of Wilmar's activities on sustainable livelihoods and the environment.

5.3 Mobilization against the non-inclusive State-Wilmar MoU and CSR

One of the major successes of the campaigns was in awareness raising and capacity building, allowing communities to defend their communal land rights. Community organizing and self-representation was facilitated in order to demand information on the Memorandum of Understanding signed with Wilmar by the state on behalf of the community. According to community members from Akamkpa, “we want to know the content of the MoU, and its local content, so that we know what to accept and what to reject. Unfortunately, we have not been given the opportunity to make our choice.” However, given the likelihood that the MoU’s terms will be damaging to the communities, advocates also argue that the MoU entered into by the state on their behalf should be considered illegal, and therefore disregarded because it was concluded without their prior, free, and informed consent or, indeed, their involvement. Community members visited both state government officials and Wilmar itself to request that they provide them with a copy of the MoU and allow them to make inputs to the document.

The visits were led by Maurice Olory, CFW Volunteer and Coordinator, who reported that the Ministry of Environment declined to provide them the document. According to him a government official stated that “it is not in their place to release the MoU document to the community.” Instead he directed them to a government agency called Privatization Council who was involved in the MoU process. The agency also declined to give them the report on the grounds that their Board has been dissolved and not yet reconstituted, and it was therefore unable to attend to them.

While Wilmar also has yet to provide the MoU, they seem to have acknowledged lapses in their consultation with communities and agreed to improve their consultations and relations with their host communities. Generally, however, communities’ efforts were frustrated and they were denied access to information they sought, including the MoU itself.

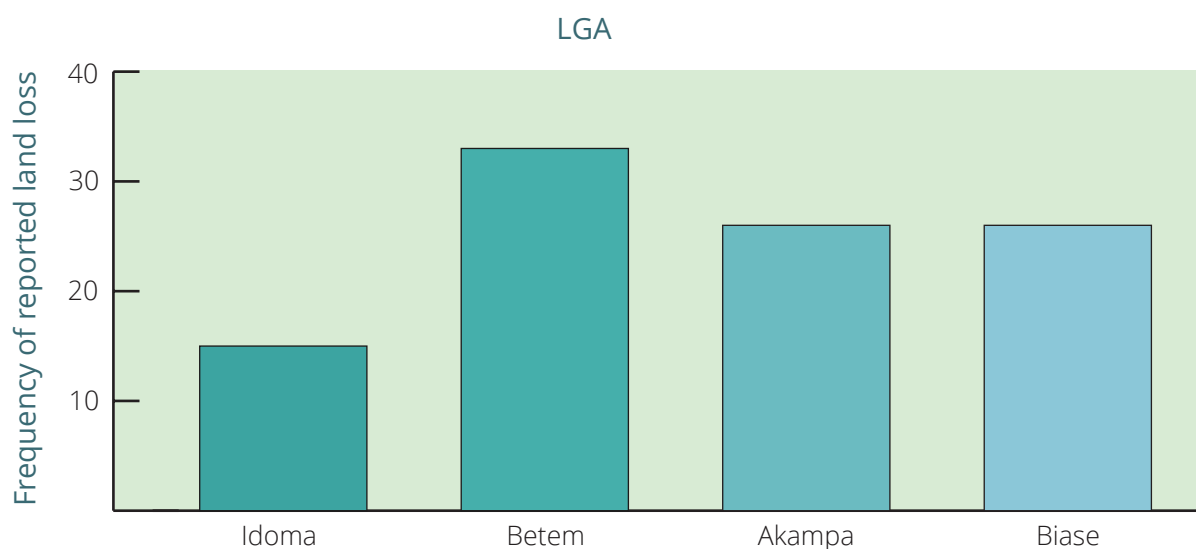
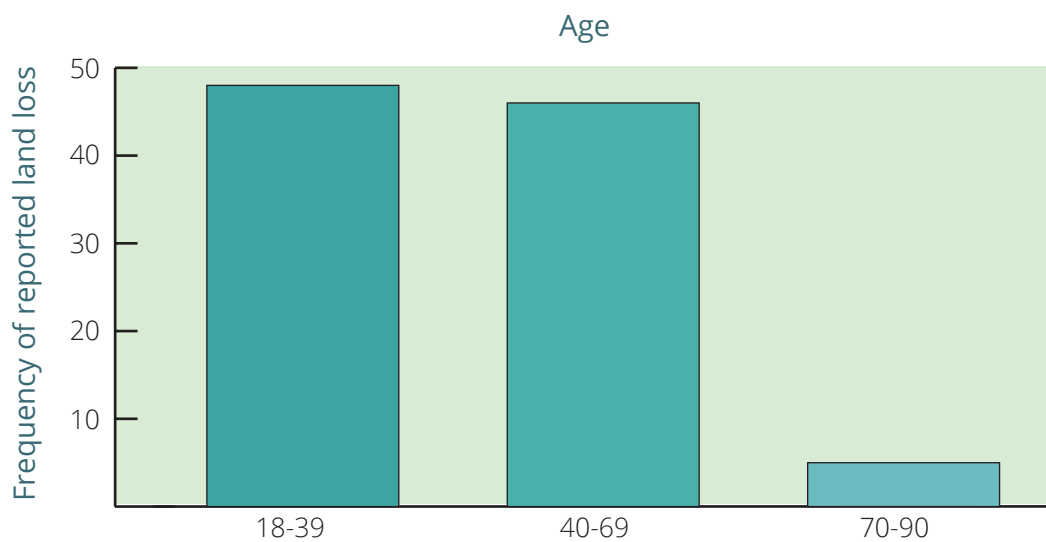
6 Results of the action research in the light of bottom-up accountability in LSLA.

6.1 Analysis of research findings

Land grabbing can be understood as a product of dynamics between local elites and international actors, which are often detrimental to local communities dependent on land. The system of land tenure in place in Cross River State remains unclear and confusing, with far too little consideration provided for customary land rights. The impacts of this unclarity are severe, specially for women and populations dependent on land and forests resources. The TGs might provide opportunities to enhance local communal land rights if effectively grafted into the national laws in Nigeria.

The communities studied shown by age distribution of respondents have been severely impacted by Wilmar’s activities establishing oil palm plantations. Although there are differentiated impacts between male and female, the number of males affected is almost 50% greater. This partially reflected the fact that more men have access to land than women, even though women are the more impacted by land grabbing. In the four communities, the issue of land grabbing cuts across demographic distinctions. This research shows the extent of Wilmar’s infringement on communal land rights, as well as providing illustrative cases of eviction due to land grabbing, destruction of livelihoods, and environmental degradation. However, it also shows the evolving responses from communities.

A total of 100,000 hectares of land is targeted for acquisition⁵⁵. Although the study was limited to Betem, Akpet, Idoma and Akamkpa, a number of other communities were impacted including Ehom, Egbai, and Igbofia.



The practice of land grabbing has increased in Cross River State. Land grabbing occurs when corporations and other investors buy land at cheap prices, often dispossessing local communities. This could be acceptable in some cases if such corporations practised sustainable and equitable land and water management, but more often than not, they do not. This research showed that powerful actors (both transnational and national), who often argue that the lands in which they invest are “marginal” and “unproductive,” are powerful drivers of land grabbing. These claims have been shown to be untrue in many cases: either the land is already used by small-scale food producers, or is of prime quality and associated with good (potential) access to water.

Corporations acquire land through non-transparent means, excluding native inhabitants from negotiations, appealing to the greed of those who hold power, or not delivering on promises made to the inhabitants. Local chiefs’ involvement in land grabbing is obscured in community representation. Local elites and chiefs are often targets of “divide and rule” strategies, as they are offered gifts including financial inducements to accept deals. Thus, community members often deny negative impacts or are unable to mobilize against land grabs for fear of intimidation due to multinationals’ collaboration with local chiefs. The people of Betem, Idoma, Akpet and Akamkpa are challenging this and resisting any form of land grab in their communities.

6.1.1 Eviction

These land grabs have already resulted in forced evictions and other serious impacts for small scale farmers. Land has been made available to corporations, leading to land scarcity and threats to local food security. Importantly, production of palm oil and by-products mainly for export, industrial use, and fuel production, rather than for food or local consumption, has been prioritized ostensibly to satisfy the interests of the foreign investors.

Estimates of the number of people displaced and/or affected by Wilmar's expansion plans varies, and available figures are largely estimates because of the lack of clear statistical information. However, according to some accounts by Rainforest Resources Development Centre (RRDC), a local NGO, the impacted population is estimated at about 20,000 people, with about 10,000 people potentially facing eviction from their lands.⁵⁶ Another source found that the new plantations entail "widespread displacement of small-holder production systems," and estimated that Wilmar's plantations will impact farmland currently or previously managed by as many as 7,800 households.⁵⁷ The community action research carried out by ERA found out that Wilmar's operations in CRS may negatively impact the livelihoods of 7,000 people, with about 2,000 people (over 700 households) potentially facing eviction⁵⁸ from their lands. The research team observed that the people most affected by this land grabbing are women (especially widows), and children.

Youth in Ibiaye palm plantation in Biase local government area, have been denied access to their land and are frustrated because the chiefs of the communities have colluded with Wilmar and the government. These youth barely have access to farming activities or other possible livelihoods. Yet, there are no unified demands from evicted community members. While some demand compensation, others simply want appropriated land to be returned to them. This is making the framing of community demands in advocacy a difficult knot to unravel in collective campaigns for customary land rights.

6.1.2 Loss of Livelihoods

The research findings show that the four communities under study lost their livelihood sources and suffered from increasing food prices, food deficits of local staples, and evictions and displacement of rural poor farmers. In many cases, eviction meant deprivation and loss of farmlands and livelihoods.

According to testimonies from community members in Akampka, Wilmar has gone beyond the boundaries which the communities were told it would explore, expanding into private land. A recent takeover by grinding bulldozers has blocked off local roads and made incursions into farm lands. According to one victim, Paul, "my farmland has been completely leveled and taken over as part of the company's expansion drive. There is flooding due to the activities of the bulldozers. There is no compensation for the farmlands of the staples crops destroyed". This sort of behavior is widespread and farms close to Wilmar plantations have been destroyed by erosion⁵⁹. Thanks to the Community Forest Watch group, who brought this case to their attention, ERA is aware of this case and the legal team has been briefed on next steps. However, no meaningful action has yet been possible as legal action requires adequate resourcing.

In Biase, community members stated that, where palm plantation owned by Ibiaye used to exist, some university students used to benefit from employment opportunities as labourers in palm oil production. Since Wilmar's take over, however, such opportunities for local youths and students have come to an end. Several efforts to bring them to the table to discuss the issue have yielded no result. Lack of interest in the students' plight from some local chiefs has also led to allegations that they have been compromised or are colluding with the company.

Wilmar's failure to implement robust community consultation processes in Biase has resulted in impacts on areas of high conservation value and on farmlands. One community member said, "initially we thought that the operation of Wilmar will help greatly in community development but our eyes are now open. We have lost a lot in our community; from the farms to our sources of livelihoods".

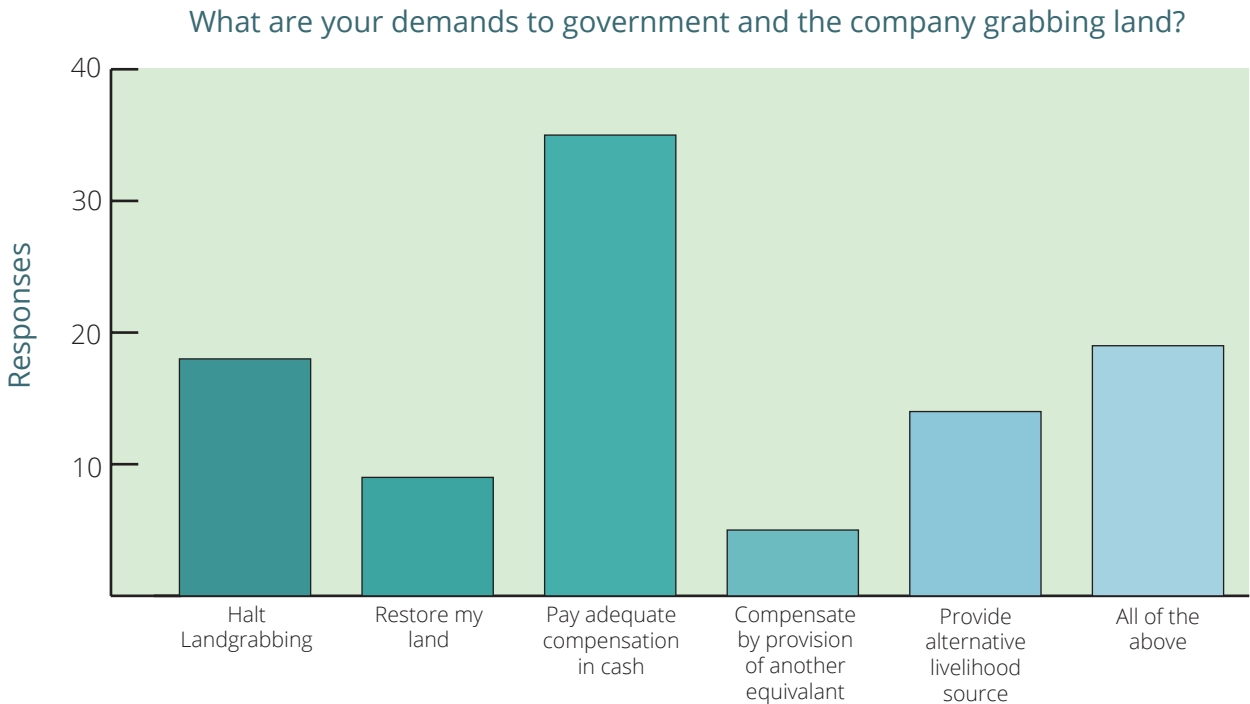
In recent times, tensions and violent conflicts based on land and forests issues are increasing in Nigeria. Community's lands and forests are the unique asset of all indigenous people because they depend on them for food, shelter, medicines and other services provided by nature. Many communities have lost their rights to lands to multinational corporations, or to local and national elites who acquire such lands through dubious and non-transparent means. The companies exploit the environment, displacing smallholder farmers and polluting and degrading ecosystem's water and biodiversity. This has led to increased conflict in many communities.

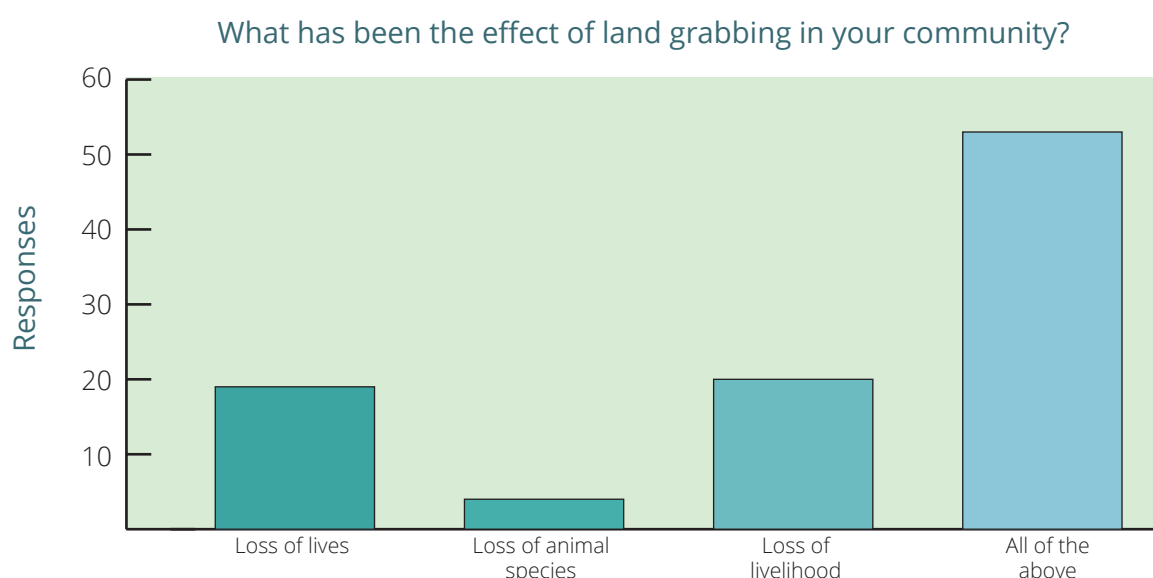
6.1.3 Environmental degradation and biodiversity threats

According to testimonies, in Betem, the community river (also known as Betem) was polluted by Wilmar's operations. The company depends on the river for irrigation. However, Wilmar did nothing to address concerns about pollution⁶⁰ until a community protest march was held against the company. A borehole sunk in 2014/2015 by Wilmar to provide water following earlier community protests remained non-functional during this project inception phase⁶¹.

In Betem, community youths were emboldened and sought dialogue with Wilmar in 2015. They embarked on advocacy and dialogue with the company to press home their demands for redress for pollution of their local river, on which they depend. For instance, in one case of water pollution resulting from Wilmar activities, some youth came together and took the case to both the local chiefs and Wilmar. Ultimately Wilmar provided a borehole for the community, although the borehole has been non-functional for some periods, the community was nonetheless encouraged by this tangible result from their actions. In 2016, it is reported that, thanks to continued pressure from the Community Forests Watch group, Wilmar has restored that the borehole to full functioning.

However, in addition to damage to water resources, severe biodiversity losses have also taken place due to pollution and other unsustainable environmental practices by various multinational companies. Due to the opening up of the forests, wildlife habitat has been degraded and many terrestrial animals and birds have come under threat, including the Pandrillus monkeys, chimpanzees, and variety of birds endemic to the area.





6.1.4 Gender perspectives and impacts

Large-scale farmland acquisitions also have important gender implications. We observed that, in farming communities in this research, most agricultural workers were women whose tasks extended from planting to post-harvest processing on their immediate and extended family's land, making them central to household food security. Despite women's centrality in the drive for household food security, farming contracts are often concluded with male household heads, with payments made to men even when it is women who do most of the work. In some cases, cash crops controlled by men may encroach upon lands otherwise used by women for food crops. Due to patriarchal forms of land governance, women often only have usufruct rights, despite being the actual tillers of the land.

Another driver of dispossession in the study area can be found in the global rush for land, which is justified by claims that small-scale farmers are unproductive and incapable, and that the best option is to ease them off the land and invest in "rational" agriculture⁶². This misrepresentation of the importance of small-scale farmers, pastoralists and forest dwellers to the earth, and the denial of their productivity and of their rights to land, food, water, and other resources, must be challenged head-on. Encouraging large-scale land investment affects this group and particularly rural women whose daily sustenance depends on land-based activities.

To find out whether women were impacted differently, the research questionnaire included a question directly addressing gender. Participants were asked if, in their own view, they would say women and girls are most impacted in terms of livelihood losses, eviction and exclusion. 61% of respondents said yes, 22% said no, 15% said they were not sure while 2% provided other answers. In the same survey, 37.4% of respondents agreed that external companies such as Wilmar, the Government, Community leaders, and community members were all actors and drivers of land use change, while, 30.3% opted for government only, 15.2% for community leaders, 11.1% for external companies and 6.1% for community members. On the whole, the research demonstrated that those most impacted by land grabbing are the vulnerable groups: women, children and people living with disability.

6.2 Analysis of the research findings in the light of bottom-up accountability in Large Scale Land Acquisition (LSLA)

There is evidence of some steps towards bottom-up accountability in large scale land acquisition from the four communities under study. This is from both within the communities and the power structures, as well as through their efforts to engage with government officials. The role of the Land Use act in protecting bottom-up accountability will be more meaningful if it can be used to complement the provisions of the TGs in order to reduce the risk of communal land rights being trampled by other interests.

The research showed that awareness raising and information sharing are cardinal elements of capacity building for better bottom-up accountability. To enhance the capacity of local people to effectively hold public authorities accountable to people's rights ERA/FoEN has put in place a strategy of continuous advocacy for strengthening the rights of rural populations to access, control and own the resources on which they depend, and for decentralisation of land administration. These goals can only be achieved if local people are knowledgeable about their rights and responsibilities, the role of public and private sectors and civil society in national policies, and the legal frameworks governing natural resources.

Through trainings conducted by FIAN and ERA/FoEN on the TGs in 2015, and follow up activities in 2016, community members and some CSOs were exposed to the usefulness of the provisions in tackling issues relating to communal land rights in Nigeria. The TGs provide new entry points to safeguards communal land rights in that it reinforces communal land rights as provided for in the Nigerian constitution. Beyond the provisions of the Nigerian constitution, the TG's relevance is in reinforcing communal land ownership rights through land registration. For example, Part 5 of the TGs, on administration of land tenure with regards to recognition and records of customary tenure rights, provides that "States should provide systems such as registration, cadastre, and licensing systems to record individual and collective tenure rights in order to improve security of tenure rights including those held by indigenous and other communities with customary tenure systems." We call on the in-coming governments to implement this provision to safeguard customary rights to land and forests.

While communities make demands for governments to effect this provision, it might be useful for civil society groups to jointly embark on land registration in advance of ratification registration by the government. This could offer a way to pro-actively engage the government and to show interest in and begin the process of land registration.

The effectiveness of awareness raising in the communities is also apparent in their increased understanding of the need for them to defend their communal rights to land. Communities no longer believe that state officials' justifications for land appropriation as being in the "over-riding state interest" are sufficient to suddenly deprive them of such lands. In particular, communities have embraced the need for FPIC, as outlined in the TGs, as part of the land governance laws. This requirement now forms the basis of urgent calls for land reform.

In terms of local organizing, there is renewed vigour in conducting community mobilizing and resistance to landgrabbing, which is growing by the day. Through this advocacy initiative and local organizing ERA/FoEN was also able to establish five additional Community Forest Watch groups as part of ERA/FoEN's existing initiative on Community Mobilization and Resistance against Large Scale Oil Palm Plantations in Cross River State. These forest monitors became necessary as a result of the flagrant land grabbing sweeping across the state. They are expected to be forest watchers and resistance leaders in their respective communities, and to share experiences, information and materials about policies, strategies and drivers of land grabbing jointly with ERA and other CSOs, to strengthen advocacy campaigns and local resistance.

The strategy of "name and shame" advocacy meetings continues to be deployed. The success of the Community Forest Watch in conducting village advocacy and supporting resistance to land grabs affecting them is a major turning point. It is hoped that sustained resourcing can expand the distribution and scope of the activities of the CFW across the communities in Nigeria to curtail the expansion drive of Wilmar and other actors involved in land grabs.

A key success of the study is that it created space for communities to engage with and discuss land governance issues, and to reach a level of consensus on their demands. Ultimately, these included the following:

- 1 The Land Use Act of 1978 should be abrogated, as it is elitist and takes away the rights of communities to their customary land rights. Or it should be amended to reflect the provisions of the TGs to reinforce communal land rights.
- 2 State and Corporations should recognize the need for communities' free prior and informed consent in any proposed development to prevent future occurrence of land grabbing. To this end, FPIC should be recognized within the EIA provisions and other laws on land and resource governance in the state.
- 3 Demand for adequate compensation for evicted and displaced persons. Evictions and displacements, in any event, should not lead to human rights violations (human rights to adequate housing, food, and water). In Cross River State, Wilmar has violated this by rendering thousands poor rural small-scale farmers homeless through the appropriation of community forestlands and without payment of compensation or the provision of alternatives.
- 4 The mandatory Environmental Impact Assessment (EIA) prescribed by law should be conducted properly, with active public participation for informed decision on any proposed development. In this regard, project proponents should make a down payment of a fixed Bond, in case of any potential social or environmental damage, as part of the EIA process.
- 5 Large-scale plantations are not forests and are not an effective strategy to deliver sustainable food production. Rather, support to small-scale farm holders for food production, storage and preservation, and distribution is the answer to national food security. Communities' access to land to grow staples should be sustained.

Some of these demands have been published and used in press conferences and engagements with governments as part of the reports and research papers produced during the research. The materials were also shared in community outreach, workshops, and international conferences and through dissemination in high impact journals, which is currently on-going.

Realizing these demands calls for continuous organizing and mobilizing to resist forms of land grabbing which are the hallmark of new oppression and slavery. Although the awareness level is high, much more needs to be done to dismantle Wilmar's corporate impunity as the threat of further land grabbing looms, with expansion to another 50,000 hectares threatened. The groundwork has been laid and communities are now beginning to assert their communal rights to their land. This will continue to put pressure on land grabbers and their allies, and drive a reconsideration of "development" that excludes local people.

Furthermore, Wilmar has pledged to improve on their shallow engagement and to implement free, prior and informed consent (FPIC) in their operations. Communities have demanded a copy of the purported MoU signed on their behalf by the government with Wilmar, but these demands have not been met. While the expected change in land policy will likely be a long time coming, yet customary land rights are widely accepted, even though their undocumented oral nature makes them susceptible to abuse and manipulation.

The problems being contended with are of a huge scale, such that a small scale action of this nature can hardly address these comprehensively, especially at the level of policy change. However, the community training undertaken has led to active engagement and clear articulation of grievances that Wilmar and the state cannot ignore for too long. As communities gain greater confidence to assert their land rights, these communal rights become ever more secure.

7 Conclusions and Recommendations

This action research documents the phenomenon of land grabbing by Wilmar in four communities in Cross River State, Nigeria. To monitor the impact of the action-research, several activities were conducted in the first and second phases of the research. Importantly, communities were equipped with representatives to conduct advocacy and defend their communal land rights. This has been achieved by strengthening the organizing capacity of the communities to enforce communal land rights so that they can manage and gain control of their natural resources (through community organizing, alliance building, awareness raising, and campaigns).

It is anticipated that increasing community-based skills and knowledge about models for management, production and consumption (through education/village meetings, exchange studies and skills trainings) will continue. The ultimate aim of the research is to gauge how land the TGs can shore up communal land rights and empower communities to defend their land ownership. The impacts in terms of tangible policy change remain to be seen. However, dialogue to promote policy change is currently ongoing and both Wilmar and the government are beginning to pay attention to the demands of affected communities.

The study showed that land grabbing is growing in Nigeria and that Wilmar's activities have impacted the four communities studied. It showed that, in Nigeria, there is no clear tenure provision beyond the Land Use Act of 1978, which entrusts land to government control, which is subject to manipulation and abuse, often to the detriment of local communities. The research shows that gross failures of management of land and forests contribute significantly to weakening community land rights, and that this must be addressed promptly by the federal and state governments.

To this end, the idea of bottom-up accountability on land governance provided a fresh entry point to discuss the subject. In particular, the provisions of the TGs regarding recognition and protection of communal land rights can form the basis for reforms to the land use act, if it cannot be abrogated because of its standing as a constitutional matter. A new land governance law based on the TGs could be an effective way of formulating a new regime of laws that situate local people and their communal land rights at the heart of development. Genuine bottom-up accountability has the potential to provide the basis for land reform to enhance practices that would ensure the protection of communal land rights in Nigeria.

The following recommendations were jointly made by ERA and community representatives and could be adopted for improved and further intervention activities:

- Community should survey their land, using the TGs as a basis to secure communal land rights. While this is a political statement it is practicable if communities are well resourced to hire the services of qualified surveyors.
- Communities should develop advocacy skills to counter “green washing” by corporations. This should include more engagement of women through capacity building and skill development, and recognition of the role of women in land management issues. This is currently on-going throughout the project phases and will continue in the coming years, with the possibility that other allies will come to support the on-going community efforts.
- Monitor Wilmar's pledge to improve on their community engagement, which until now has been unsatisfactory. However, some repairs of a dysfunctional bore hole and improvements in community water provision have been achieved in Betem community.
- Review the land tenure system in Nigeria, using the TGs as a basis for reform.
- Further engage community members through outreach and workshops.
- Empower Community Forests Watch members and work with CSOs to begin advocating for all-inclusive land policy change at the local, state, and national level. This includes advocacy meetings with relevant stakeholders in engaging the government, Wilmar and other actors to protect community customary land rights.

- The boundary between community lands and those of Wilmar is unclear and should be resolved by government in consultation with the communities. There is need to advocate for the use of GIS in the Information System Agency of Cross River State. The government could begin adopting these principles to support communal land rights.
- Compensation should be paid to those whose lands have been seized or appropriated. While some have received inadequate compensation, others been left out entirely and this needs to be corrected by continuous engagement.
- The working conditions in Wilmar's operations are appalling, with wages below the minimum wage and work days of 10-12 hours⁶³. These should be improved to meet existing national as well as human rights standards for fair employment and decent wages.

Finally, although some differences exist within communities regarding their expectations or demands for compensation for loss of land versus revocation of Wilmar's license, all communities unanimously oppose Wilmar's expansion drive for an additional 50,000 hectares in the impacted communities. In particular, communities in Akamkpa want Wilmar out because of their poor environmental record, evictions, and inadequate payment of compensation. Wilmar plans to aggressively expand to several thousands of hectares⁶⁴ hence community resistance is growing. The impacted communities asserted that Wilmar and the government should follow correct procedures, and recognize FPIC and communal land rights. They demand that, should Wilmar fail to consult with communities and adhere to environmental standards, they be required to leave the region for good.

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Endnotes

- 1 Wilmar provided comments about some statements made concerning their activities in this report. These comments are incorporated as endnotes.
- 2 According to the response to a note sent to Wilmar, the company says that it “has not acquired any new lands in the Ibiae area, neither have we acquired any lands from the Ibogo Community. We have simply taken over the management of the Ibiae Estate which was established some 54 years ago and whose boundaries were clearly marked on the ground with beacon stones. The land for this project was willingly contributed by four landlord communities in 1963 -Idoma, Betem, Ibogo and Akpet Egbai (the initials of these villages forming the name of the IBIAE estate). Communities who were not in favour of the plantation willingly opted out of the project and there is ample evidence to demonstrate that other nearby communities elected not to donate land to the project. Not a single hectare of land has been added to the existing boundaries of the Ibiae Estate acquired over half a century ago.” What therefore needs further clarification are the arrangements which existed between the communities and their government as pertains the boundaries of their customary lands especially in CRS where before the 1978 land use Act, land used to be governed by customary laws. Other sources have as the authors of this report mentioned that the company acquired 30,000 hectares of land in Nigeria. See examples of these sources in the note on 30,000 hectares below.
- 3 Nandini Vijayaraghavan and Umesh Desai (2017) *The Singapore Blue Chips: The Rewards & Risks of Investing in Singapore's Largest Corporates*, World Scientific Books.
- 4 Ikyagba, E. T., et al., “Oil Palm Plantation Development: An Emerging Threat to Biodiversity Conservation in Oban Division of Cross River National Park, Nigeria,” *International Journal of Research in Agriculture and Forestry* Volume 4, Issue 4, 2017 PP 5-11 <http://dx.doi.org/10.22259/ijraf.0404002>
- 5 According to Wilmar, “both Calaro Estate and Ibiae estates are long existing plantations set up by the State Government in 1954 and 1963 respectively. The entire land area of Calaro was established with oil palm and actively managed at the time of BPL acquisition. Beginning from 2012, BPL's operations in Calaro Estate have been limited to the replanting of the existing low yielding and over-aged oil palms with improved material, using current best agricultural practices and in line with RSPO requirements. Not a single hectare of forest (be it primary, secondary or even fallow land) has been cleared at Calaro Estate”.
- 6 Forest Sector Strategy, Forestry Development Department (1994): *A strategy for Sustainable development, Conservation and Management of the Forest of Cross River State*. Unpublished.
- 7 *ibid*
- 8 Based on Wilmar's response to a note sent to them about their operations in Nigeria, “...The first three communities [Betem, Akpet, Idoma] are among the host communities for our Ibiae Estate, whilst Akamkpa is one of the host communities for our Calaro Estate” . Since the communities and their local leaders argue that they do not know what is in the MoU that Wilmar has with their authorities, most of their statements are based on their customary land arrangements
- 9 According to Wilmar, “Palm oil is an extremely important component of the diets of Nigerians. Currently, the demand for palm oil in Nigeria outstrips supply by more than 500,000 metric tonnes and the country spends Millions of dollars to import palm oil every year. BPL is helping to revive abandoned oil palm plantations in CRS using our knowledge and expertise on oil palm management to help meet this national palm oil supply gap in Nigeria, address food security and save the country some hard earned foreign exchange.” Nonetheless, in the country's Agriculture Promotion Policy 2016-2020 document, point 5 on prioritizing crops, oil palm is considered to be an export crop rather than a crop that address food security.
- 10 See the country's Agriculture Promotion Policy 2016-2020 document, “The Green Alternative” retrieved online from <http://fmard.gov.ng/home/the-green-alternative-is-nigerias-agriculture-promotion-policy-2016-2020/>
- 11 Friends of the Earth Europe & Friends of the Earth Africa. “Africa: up for grabs—the scale and impact of land grabbing for agrofuels.” Friends of the Earth Europe, Brussels, Belgium (2010) http://www.foeeurope.org/sites/default/files/publications/foee_africa_up_for_grabs_0910.pdf
- 12 Cotula, Lorenzo. *Land grab or development opportunity?: agricultural investment and international land deals in Africa*. Iied, 2009.
- 13 Wilmar International: Corporate Profile, no date, <http://www.wilmar-international.com/who-we-are/corporate-profile/> (accessed 29 August 2017)
- 14 “World's largest palm oil trader criticised for lack of progress on deforestation,” *The Guardian*, <https://www.theguardian.com/sustainable-business/2016/jan/26/worlds-largest-palm-oil-trader-criticised-progress-deforestation-wilmar> (accessed 29 August 2017)
- 15 AlimentTerre, Palm oil giant Wilmar ranked the worst company in the world, <http://www.alimentterre.org/en/breve/palm-oil-giant-wilmar-ranked-the-worst-company-in-the-world>, April 26
- 16 Forest Peoples Programme Open Letter to Wilmar International Re: International and Indonesian civil society organisations complaint on transparency and corporate social responsibility of Wilmar International regarding treatment of civil society queries in communications with Wilmar subsidiary PT Anugrah Rejeki Nusantara (Merauke, Papua), 19th April 2013. <http://www.forestpeoples.org/sites/fpp/files/publication/2013/04/complaint-transparency-and-corporate-social-responsibility-wilmar-international-regarding-treatment.pdf>
- 17 In a communication with Wilmar, they-the company-refers to their plantation in Akamkpa in Cross

River State where this research took place as Biase Plantations Limited (BPL) Mbarakom, Akamkpa LGA Cross River State,

- 18 Ikyaagba, E. T., et al., "Oil Palm Plantation Development: An Emerging Threat to Biodiversity Conservation in Oban Division of Cross River National Park, Nigeria," *International Journal of Research in Agriculture and Forestry* Volume 4, Issue 4, 2017 PP 5-11 <http://dx.doi.org/10.22259/ijraf.0404002>
- 19 Ibid, pg 8
- 20 GrowAfrica, PZ Wilmar LTD – Nigeria, <https://www.growafrica.com/groups/pz-wilmar-ltd-nigeria>, accessed 26 July 2017; Mohd Nasir Ismail "PZ Wilmar: Reshaping Oil Palm Industry with Massive Plantation Devt" Economics and Industry Development Division, Malaysian Oil Palm Board, 2013 <http://bepi.mpob.gov.my/news/detail.php?id=13375> Accessed 27 July 2017
- 21 Wilmar's take to this is that "BPL has not constructed a new school at Mbarakom. Instead, we are renovating and refurbishing the existing government owned Onun Senior High School at Mbarakom. This school is open to the general public and indeed has been in existence long before BPL started its operations. BPL has no say in the day-to-day administration of the school and definitely has no locus to determine who is admitted into a government school or not."
- 22 Umezulike, I. A. (1984) Does the Land Use Act Expropriate – Another View IJJPL 11.
- 23 Justice I. A. Umezulike: Nigeria's major land reform and adaptive strategies of harnessing its social justice objectives, Nigerian Institute of Advanced Legal Studies (2011)
- 24 Ibid
- 25 Wilmar refutes this and says that there was a consultation process with the communities who gave the company their blessing but it is not clear if this consultations were sufficiently inclusive and representative.
- 26 Dougherty, T.C. and Hall, A.W., FAO Natural Resources Management and Environment Department, 53 FAO IRRIGATION AND DRAINAGE PAPER, Environmental impact assessment of irrigation and drainage projects, Chapter 3: EIA process, 1995 <http://www.fao.org/docrep/V8350E/v8350e06.htm> retrieved 24 July 2017
- 27 Schoneveld, George Christoffel. 2013. The politics of the forest frontier: Negotiating between conservation, development, and indigenous rights in Cross River State, Nigeria. *Land Use Policy*. November 2013. 153 At: <http://farmlandgrab.org/post/view/23996>
- 28 Roundtable on Sustainable Palm Oil, 2009, New Planting Procedures Summary Report of Assessments: Biase Plantations Limited (Ibiae Estate) http://www.rspo.org/file/RSPO-NPP_Report_Ibiae-Assessment_Findings%20Final.pdf accessed 24 July 2017
- 29 Wilmar International (no date), "Wilmar Affirms Commitment to Open, Transparent, and Responsible Practices", <http://www.wilmar-international.com/wp-content/uploads/2013/12/Wilmar-Affirms-Commitment-to-Open-Transparent-and-Responsible-Practices.pdf> Accessed 24 July 2017
- 30 Schoneveld, 2013
- 31 Ibid
- 32 Ibid
- 33 Friends of the Earth US & Environmental Rights Action Nigeria, 2015, Exploitation and Empty Promises: Wilmar's Nigerian Land Grab, available online: http://webiva-downton.s3.amazonaws.com/877/22/9/6057/FOE_ExploitationAndEmpty_LOWRES_rev.pdf
- 34 According to Wilmar, "our operations at Ibiae and Calaro have the full support, consent and goodwill of all host communities. Evidence of our FPIC process are readily available at BPL". Also confer note 9 on the same issue.
- 35 Forest People's Program 2015: Deforestation in Asia and Africa: Palm Oil Giant Wilmar Resorts to "Dirty Tricks" retrieved from <https://www.globalresearch.ca/deforestation-in-asia-and-africa-palm-oil-giant-wilmar-resorts-to-dirty-tricks/5461252>
- 36 "Sustainability Policies: No Exploitation" <http://www.wilmar-international.com/sustainability/integrated-policies/no-exploitation/> (accessed 29 August 2017)
- 37 In order to maintain the anonymity of the research participants who provided this information, neither these community members nor their communities have been mentioned in this report.
- 38 Sweeney, B. W., Bott, T. L., Jackson, J. K., Kaplan, L. A., Newbold, J. D., Standley, L. J., ... & Horwitz, R. J. (2004). Riparian deforestation, stream narrowing, and loss of stream ecosystem services. *Proceedings of the National Academy of Sciences of the United States of America*, 101(39), 14132-14137.; Bala, G., Caldeira, K., Wickett, M., Phillips, T. J., Lobell, D. B., Delire, C., & Mirin, A. (2007). Combined climate and carbon-cycle effects of large-scale deforestation. *Proceedings of the National Academy of Sciences*, 104(16), 6550-6555.
- 39 Urness, T & Teaby, A, (2015) ANALYSIS OF FOREST COVER LOSS IN PALM OIL CONCESSIONS IN NIGERIA FOR FRIENDS OF THE EARTH: UPDATE 2 http://webiva-downton.s3.amazonaws.com/877/4c/0/5932/FOE_NigerianPalmOilConcessions_ForestLoss_Analysis_Update2_41_web.pdf
- 40 Schoneveld, 2013
- 41 Wilmar argues that, "[a]lthough both the Ibiae and Calaro Estates were existing government-owned plantations acquired by BPL through an open competitive bidding process, BPL has also gone through a well-documented process of seeking the consent and blessings of all local communities before commencing work, having negotiated, agreed and conducted the Traditional Rights before entering the land, signing MOUs and receiving the symbolic Keys to the Communities as a matter of goodwill".
- 42 According to Wilmar, the company has "not 'grabbed land' in any of the four communities listed in the study and we strongly reject this allegation. Our work at Calaro and Ibiae estates have mainly focussed on reviving two failed businesses (abandoned oil palm estates) in the State, bringing on board much needed capital and expertise to spur on local socio-economic development in the State. The two estates have not at any point acquired any customary lands, community forests or privately owned lands from any of the communities presented in the report".

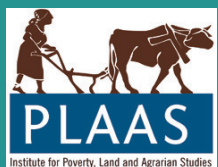
- 43 According to Wilmar, "Wilmar's project in Cross River State is the single largest private employer in the Cross River State with most of our workers coming from our host communities. Oil palm plantation development and management is a labour intensive endeavour and Wilmar provides direct employment for thousands in the Cross River State. Aside creating direct jobs for natives of host communities, we have provided massive opportunities for people in these communities to offer various services to our business. Contractors and service providers for our infrastructure development, supply of goods and services have come from our host communities and within the state. There is ample evidence of development of several allied industries that have arisen from the revamping of the two estates.
- 44 Garuba Abioye V. Sa' adu Yakubu (1991) 5 NWLR (Pt 190) 130, 225
- 45 Ogunola v. Eiyekole & Orswhere (1990) 4 NWLY (pt. 146) p.632
- 46 Onwuka v. Ediala (1989) 1 NWLR
- 47 Smith, I.O 1999, Practical Approach to Law of Real Property in Nigeria
- 48 See The Forest Peoples Program : 2015, Deforestation in Asia and Africa: Palm Oil Giant Wilmar Resorts to "Dirty Tricks" <https://www.globalresearch.ca/deforestation-in-asia-and-africa-palm-oil-giant-wilmar-resorts-to-dirty-tricks/5461252>
- 49 Ogunloye v. Oni (1990)2 NWLR (Pt. 135) p.745@ 784
- 50 Garuba Abioye V. Sa' adu Yakubu (1991) 5 NWLR (Pt 190) 130, 225
- 51 Amnesty International, (2011), Nigeria: Human Rights Agenda 2011-2015, pg 38.
- 52 COHRE/SERAC, Joint media release, Nigeria named a 2006 Housing Rights Violator for persistent, widespread forced evictions, December 2006.
- 53 *ibid*
- 54 Wilmar refutes these observations and states that "Wilmar has extensive experience operating sustainable oil palm plantations. At BPL, we are drawing on lessons from other areas to make sure that our plantations meet international best practice. Riparian buffer zones have been set aside (even in areas that were previously planted with oil palm by previous owners) to safeguard the ecological integrity of water bodies in our estates. On the specific claims of pollution of the Betem stream, this allegation has been well investigated in the past and samples tested by the Water Board of Cross River State. The cause of the said pollution was established to be contamination of the water by chemicals used by local fisher-folks to fish during the dry season upstream of our estates. Fisher-folks in the area were subsequently duly advised by State authorities on the use of this chemical and recent samples show an improved quality".
- 55 Mohd Nasir Ismail (2013) "PZ Wilmar: Reshaping Oil Palm Industry with Massive Plantation Devt" Economics and Industry Development Division, Malaysian Oil Palm Board <http://bepi.mpob.gov.my/news/detail.php?id=13375> Accessed 27 July 2017
- 56 ERA/FoEN and RRDC, 2014. Large-scale Palm Oil Production, Environment and Livelihood of Local Communities in Nigeria: The Case of Wilmar Plantations in Cross-River State. Report published in Nigeria, November 2014.
- 57 Schoneveld, 2013
- 58 According to Wilmar, "the allegation that farmers at Akamkpa and Mbarakom have been displaced and/or their land seized by BPL is [not exact]. At Ibiae, the previous owners in 1963 acquired, cleared and planted only part of the estate due to lack of funding. Some parts of the unplanted areas were rented to annual crop farmers from surrounding areas on a yearly base. This, we are informed, was to make sure that by the time the owners decided to continue planting, these farmers would be able to harvest their annual crops within a one-year period before plantation development re-starts. Prior to BPL's operations, a detailed enumeration of all existing farms on the land was done and compensation negotiated and agreed with affected farmers. The agreed compensations were then paid to the farmers and they left the areas after harvesting their mainly annual crops. Evidence of payment of agreed compensations are publicly available at BPL."
- 59 This information was shared with Wilmar but they did not provide a response as per the impact of their activities on the lands of neighbouring farmers.
- 60 Wilmar's in their response to our note did not comment on the community claims about their pollution activities.
- 61 According to Wilmar, the company "BPL has provided functional boreholes to all the four host communities at Ibiae- Idoma, Betem, Ibogo and Akpet Egbai. Additionally, two other nearby communities, Small Betem and Small Idoma have also been provided with boreholes. All these boreholes are in excellent working condition at the time of writing this response. [nonetheless] At Calaro Estate, work is ongoing to make sure that all host communities have access to borehole water". The authors of this report in subsequent sections of the report argue that this provision of boreholes only started after protests and demands made by community members.
- 62 Farming Matters (2011) "Planet for sale." December 2011.
- 63 This information was shared with wilmar and it argued that "Not a single worker at BPL receives salaries less than the national minimum wage" They further argued that, "in Nigeria, the national minimum wage is set at 18,000 Naira, assuming a 20 workday month [and] Anyone who is familiar with oil palm plantation work in this region is fully aware that for most field operations, workers go to the field around 7:00am and usually finish their work between 11am and 1pm. Office workers work between 8am and 5pm. Occasionally, some workers (e.g. drivers) may be requested to work beyond these regular hours and they receive adequate overtime payment in line with legal requirements. We would thus like to establish that there are no workers receiving salaries less than the minimum wage or workers forced to work for 10 or 12 hours a day".
- 64 Wilmar refuted this information and argued that "Boundaries of all estates have been mapped and clearly marked on the ground with beacon stones some dating over 60 years. Boundary lines are clearly marked on the ground".



TNI is an international research and advocacy institute committed to building a just, democratic and sustainable planet. For more than 40 years, TNI has served as a unique nexus between social movements, engaged scholars, and policy makers. It works to strengthen international social movements with rigorous research, reliable information, sound analysis and constructive proposals that advance progressive, democratic policy change and common solutions to global problems. Through its Agrarian and Environmental Justice Project, TNI works with rural social movements to defend and claim their economic, social and cultural rights to land and related natural resources.



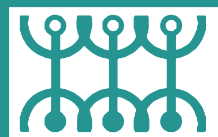
FIAN is an international human rights organization working for the realization of the right to adequate food. It consists of national sections and individual members in over 50 countries around the world. FIAN strives to secure people's access to the resources that they need in order to feed themselves, now and in the future, and cooperates with peasant organizations around the world. Since 2006, FIAN facilitates the IPC for Food Sovereignty working group on land and territory. In this role, FIAN facilitated the civil society process of participating in the development and negotiation of the Tenure Guidelines.



PLAAS of the University of the Western Cape in South Africa is a world leading research institute that conducts and coordinates research across the African region. It is the region's leading research institute working on land issues and land governance. PLAAS collaborates closely with ISS in The Hague especially around the land Deal Politics Initiatives (LDPI, www.iss.nl/ldpi).



The critical agrarian studies cluster in ISS has been in the cutting edge of research on global land deals, and has spearheaded innovative initiatives that bridge together academic, policy and grassroots activist circles. It is an institutional co-anchor for the global network of academics working on land deals, the Land Deal Politics Initiatives (LDPI – www.iss.nl/ldpi).



Founded in 1993, ERA is a non-governmental organization concerned with the protection, preservation and conservation of the natural environment, and the sustainable exploitation of natural resources. It is the Nigerian chapter of Friends of the Earth International, the environmental justice federation campaigning to protect the environment and to create sustainable societies. ERA is dedicated to the democratization of development, defense of human ecosystems and human rights, and promotion of environmentally responsible practices through local peoples empowerment. ERA/FoEN coordinates Oilwatch International in Africa and currently host its secretariat.

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