

OpenLandContracts.org

A NEW GLOBAL REPOSITORY

Large-scale land, agriculture, and forestry contracts

SELF-STUDY TRAINING MODULE TWO

Analyzing Land Contracts Using
OpenLandContracts.org



Columbia Center
on Sustainable Investment

A JOINT CENTER OF COLUMBIA LAW SCHOOL
AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY



UKaid

from the Department for
International Development

Module Objectives and Outline

- 🔥 Objectives of Self-Study Module Two:
 - 🔥 Better understand key pieces of information found in contracts
 - 🔥 Learn how OpenLandContracts.org can help in analyzing contracts
- 🔥 Part One: Analyzing Land Contracts on OpenLandContracts.org
- 🔥 Part Two: Contracts Exercise
- 🔥 Key Takeaways



Part One

Analyzing Land Contracts on OpenLandContracts.org



Analyzing Land Contracts

- 🔥 OpenLandContracts.org assists users in **accessing, reading, and understanding** land contracts
- 🔥 Through applying the **key features** discussed in Module One, you can:
 1. Search for and locate the contract(s) you are interested in;
 2. Locate relevant provisions within the contracts;
 3. Read contractual provisions alongside annotations (i.e., plain-language summaries) to increase your understanding of both individual provisions and the contract as a whole
- 🔥 This module examines some of the basic information that you can obtain from land contracts through OpenLandContracts.org



Analyzing Land Contracts

- 🔥 The following key types of information will be discussed:
 1. Contract Type
 2. Parties to the Contract
 3. Contract Term
 4. Contract Area (Size & Location)
 5. Rights and Obligations
 6. Stabilization Clause
 7. Dispute Resolution



Note on locating provisions

- 🔥 Longer contracts might include a Table of Contents, which can help you locate the provisions that you are interested in. Shorter contracts generally do not include this.
- 🔥 Article titles usually, but do not always, indicate the content of an article or clause. For example, although multiple contracts on OpenLandContracts.org have a stabilization clause, none of them are labeled as such.
- 🔥 On OpenLandContracts.org, each annotation for a particular topic or piece of information (e.g. Contract Type or Stabilization Clause) is **linked** to the relevant provision(s) in the contract itself. This can help you locate the provisions you are interested in.



Note on locating provisions

- 🔥 While there are different ways to locate annotations and contractual provisions on OpenLandContracts.org, this slide describes one approach.
- 🔥 **To locate a contractual provision using the annotations:**
 1. Go to the PDF View or Text View of the relevant contract
 2. Scroll down the annotations column on the left side of the page until you reach the annotation you're interested in (e.g., *Type of Contract*)
 3. Click on the hyperlinked Article number in parentheses (sometimes this is not a number, but instead a description like "Signature block")
 4. Clicking on the hyperlink will cause the contract to automatically scroll to the relevant provision in the contract, and will also bring up the annotation box
 5. If more than one provision is summarized in an annotation, each Article number will be hyperlinked to the relevant provision in the contract

Note: You can follow these steps to locate **any of the relevant provisions** discussed in the subsequent slides.



Locating provisions

Sudan, Syria, Special Agricultural Consultancy, 2002

See Summary

Search in this document

TEXT PDF 3 of 4



Stabilization clause

All non-local employees and workers are exempted from any federation taxes or state taxes or any fees or taxes that are newly issued. The Sudanese Investment Incentive Law is applicable in all its content unless otherwise indicated in a special text in this agreement. The government of Republic of Sudan has the role of protector according to the ongoing arrangements at the present time and to the new arrangements taking place in the future. This is applicable to all kinds of investments that are included in this agreement during the present and at future time. [less](#)

Page 3 ([Art. 11](#), [Art. 12](#))

State agency, national company, or other entity executing the document

Ministry of Agriculture and Forestry
Page 4 (Signature block)

Surface fees or rent

The Republic of Sudan is responsible

- 1- Full exemption from custom duties on all machines, equipment, project cars, on the condition that all the imported machines, equipment and others related to the project should be as listed and agreed upon in the economic feasibility study.
- 2- Exemption from Profit Income Tax on the conducted business for a period not more than ten years (10 years). During the allocated period of the project, any kind of taxes and fees are also not included in case such are imposed during later phases. The exemption is applicable from the beginning of commercial production.

From the present products have the highest quality standards that are provided to producers.
An exceptional exemption of custom duties for all the feasibility study such as cars, machines, and equipment and others related to the project should be as listed and agreed upon in the economic feasibility study.
Production inputs for a period of two year from the beginning of commercial production of the land.

Clause (11)- All non-local employees and workers are exempted from any federation taxes or state taxes or any fees or taxes that are newly issued.

Clause (12)- The Sudanese Investment Incentive Law is applicable in all its content unless otherwise indicated in a special text in this agreement. And the government of Republic of Sudan has the role of the protector according to the ongoing arrangements at the present time and to the new arrangements taking place in the future. This is applicable to all kinds of investments that are included in this agreement during the present and at future time.

Clause (13):
a- The Syrian Party is committed to develop a technical and economic feasibility study of the project during a four months period from the start date of this agreement, on condition that the feasibility study does not take more than twelve months after the end of the timeline indicated earlier.

b- The second Party is committed to complete the constructions and infrastructure of the project during a period of three years and to begin the actual comprehensive production during two years time after the completion of the infrastructure.

Clause (14)- This project is considered to be a federation project invested exclusively by the Government of the Syrian Arab Republic. In case the Syrian Government wishes to

METADATA

Country
Sudan

Signature Year
2002

Resource
Not Specified

Type of Contract
Agricultural Development Agreement

Open Contracting Identifier
ocds-591adf-2248245813

Disclosure Mode
-

Land Matrix ID
#1732

More from Sudan

More for Not Specified

Click on the hyperlinked article number, which will scroll the PDF to the relevant page/bring up the annotation box



1. Contract Type

- 🔥 The type of land contract used for an underlying deal may vary depending on a range of factors, including:
 - 🔥 The type of resource (e.g. timber extraction vs. palm oil plantation)
 - 🔥 The nature of the investment project (e.g. forest management vs. plantation agriculture)
 - 🔥 The host state's legal system (e.g. common law vs. civil law jurisdictions)
 - 🔥 The objective of the contract (e.g., investment incentive contract vs. land lease agreement)
- 🔥 In some cases, the type of contract is clear from the language of the document
- 🔥 In others, it is necessary to read and understand the provisions of the contract as a whole in order to establish the type of contract



1. Contract Type

- 🔥 OpenLandContracts.org **categorizes land contracts by type**, allowing users to search for and view specific types of contracts
- 🔥 You can search for specific types of contracts by selecting the appropriate “Contract Type” dropdown on the **Advanced Search Page**

OPENLAND Beta
CONTRACTS

Search all documents

All Documents

167 DOCUMENTS

Country: Select

Resource: Select

Year Signed: Select

Company Name: Select

Language: Select

Document Type: Select

Contract Type: land (Land Lease Agreement)

Annotation Category: Select

Annotated Contracts Only:

Search Reset

Share Download



1. Contract Type

- When viewing contracts in either PDF View or Text View, you can see the Contract Type in the right column, which lists the contract's metadata

OPENLAND Beta
CONTRACTS

Ethiopia, Green Valley, Land Lease Agreement, 27 February 2012

The screenshot displays the OpenLand Beta interface. At the top, the document title is "Ethiopia, Green Valley, Land Lease Agreement, 27 February 2012". Below the title is a navigation bar with options for "TEXT" and "PDF", a page indicator "1 of 10", and a zoom level of "100%".

On the left side, there is a sidebar with a search bar and a table of contents. The "Type of contract" section is expanded, showing "Land Lease Agreement" as the selected item. Other sections include "Preamble" and "Year of contract signature" (2012).

The main content area shows a preview of the contract document. The title of the document is "LAND RENT CONTRACTUAL AGREEMENT MADE BETWEEN MINISTRY OF AGRICULTURE AND GREEN VALLEY AGRO PLC". The text of the document is partially visible, starting with "This Land Lease Agreement is made and entered by and between Ministry of Agriculture of FDRE having its principal office at Bole sub city, Addis Ababa, Ethiopia, (herein referred to as the 'Lessor')." and "and Green Valley Agro PLC is a Private limited company incorporated and registered under Ethiopia commercial law, having its Registered Office at H.no 2004/05 Sheger House floor room No 605, Kibele, 0202, Bole, Addis Ababa, Ethiopia.".

On the right side, there is a "METADATA" panel. It contains the following information:

- Country: Ethiopia
- Signature Year: 2012
- Resource: Cotton
- Type of Contract: Land Lease Agreement

A red arrow points from the text "The Contract Type is also listed in the metadata column" to the "Type of Contract" field in the metadata panel.



2. Parties to the Contract

- 🔥 The Parties to a contract are the **legal persons** executing the agreement and consenting to be bound by it
- 🔥 OpenLandContracts.org features investor-state contracts (sometimes referred to as “investment contracts”)
 - 🔥 These are contracts between the host state government and the investor
- 🔥 Land contracts are often executed **on behalf of** the host country government by a state agency, national company, or ministry



2. Parties to the Contract

- On OpenLandContracts.org, the following annotations are particularly relevant for locating and understanding the provisions that establish the Parties to the contract:
 - Name of the company executing the document*
 - State agency, national company or ministry executing the document*
 - Signatories, Company*
 - Signatories, State*
- Reminder:** To locate these annotations (and the relevant provisions that they summarize in the contract itself), follow the steps indicated in the slides above on “locating provisions”



2. Parties to the Contract

- 🔥 A note on “**beneficial owners**”:
 - 🔥 OpenLandContracts.org can assist you in learning the Parties to a contract
 - 🔥 However, the company executing the contract may not necessarily be the company that **ultimately benefits** from the investment
 - 🔥 Land contracts are often executed by locally-incorporated companies owned and/or controlled by companies incorporated in other jurisdictions
- 🔥 Additional research may therefore be needed to identify the “beneficial owners” of the company executing the land contract.
- 🔥 **OpenCorporates.com** can be a useful starting point for this research. When available, a link to the relevant Open Corporates page is available on a contract’s *Summary Page*.



3. Contract Term

- 🔥 The Contract Term refers to the period of time during which the contract governs the relationship between the Parties with regard to the investment
- 🔥 The “**initial contract term**” may be a fixed number of years, e.g. 10 years
- 🔥 Users should also examine the contract carefully to ascertain the “**effective date,**” which is the date upon which the contract comes into effect. The effective date is usually defined in the contract. It could be, for example, the date the contract has been signed and ratified, or it could be the date that the Parties meet certain negotiated conditions (“**conditions precedent**”).



3. Contract Term

- Multiple provisions within the contract may be relevant for understanding the Contract Term, as well as its potential start or end date
- For ease of reference, OpenLandContracts.org specifically includes an annotation for the *Term* of the contract
 - This annotation draws from the relevant provisions within the contract, and summarizes the key elements necessary to deduce the **initial contract term**



3. Contract Term

← Pheapimex Co., Ltd, Concession, 1998 See Summary

Search in this document

TEXT PDF 12 of 17

Infrastructure

- Pheapimex has the right to construct houses, garage workshops, other buildings, ports and other systems. Pheapimex can construct buildings as necessary in side the bamboo concession land including building roads for bamboo production work, digging small streams, pounds for storage of bamboo, garages for repair, office and other house for workers, schools, hospitals and pagodas, other infrastructure for running the paper industry such as factories, water supply, electricity, government buildings and work systems. Road and other transportation infrastructure built by Pheapimex within the bamboo concession needs to be inspected. less

Page 12 (Art. 6), Page 13 (Art. 12.2, Art. 12.3)

Infrastructure - third party use

- The government, military and local people have rights to use any such roads. Traffic laws will be made after

The annotation draws on multiple provisions within the contract to summarize what it says about infrastructure

The investor will have rights to construct such as house, garage workshop, other buildings, ports and others system and other development places, others plans and other according to forest management's law.

Pheapimex has the right to construct houses, garage workshops, other ... - Art. 6 >>>

Infrastructure

7.1 Article seven is under Royal Government of Cambodia t investment's law and other concern sub-degrees which Brakas on, August 1994.

7.2 According to investment's law and encouragement's law, which had confirmed in article 14 of Royal Government of Cambodia investment's law.

7.3 The investor could be complaint to government in duration 120 days after finished yearly fund. Accountancy is doing as international standard and clearance account list by the independent clearance list that monitoring team international standard.

Article 8: Royalty Payment.

8.1 Royalty payment need to practice on processing bamboo only, the company had to pay in monthly duration of 30 days by the end of the month. The royalty's plan practice on bamboo produced only, and the investor had to respect on work plan, which had written in agreement, and had came in force since dated. The Royal Government of Cambodia is party to limited royalty rate.

8.2 The Royal Government of Cambodia had kept rights to changing (irregular) of royalty rate to investor. Every changing royalty rates will inform to investor not more than two month by written letters of new royalty payment.

Article 9: Limited the cost of production

The investor was allowed to discuss on technical of production or size and making the price of their own production for exported without limited.

Article 10: Local workers and internal workers.

10.1 Investor had to use Khmer workers only, Royal Government of Cambodia did not

METADATA

Country
Cambodia

Signature Year
1998

Resource
Paper | Bamboo

Type of Contract
Concession Agreement

Open Contracting Identifier
ocds-591adf-8504865632

Disclosure Mode
Online - Open Development Cambodia

Land Matrix ID
-

More from Cambodia

More for Paper | Bamboo



3. Contract Term

- 🔥 **Other provisions** of the contract that are relevant for understanding the full extent of the *Term* include those relating to:
 - 🔥 *Extension*
 - 🔥 *Renewal*
 - 🔥 *Cancellation or termination*
 - 🔥 *Date - contract signature*
 - 🔥 *Date of ratification* (i.e. the date upon which the contract was approved by the relevant authority – note that this date may also be indicated as the “effective date”)
- 🔥 OpenLandContracts.org annotates these provisions when they are included in a contract



4. Contract Area

- The Contract Area refers to both:
 - The **size** of the area of land to which the contract applies (typically given in acres, hectares, or square kilometers/miles)
 - The **geographic location** of the land to which the contract applies (typically given by means of a narrative description or geographic coordinates)
- The Contract Area may change during the project life cycle



4. Contract Area

- On OpenLandContracts.org, the following annotations are particularly relevant for locating and understanding the provisions that establish the “contract area”:
 - Country*
 - Location*
 - Name of the field, block, deposit or site*
 - Closest community*
 - Size of the concession area*



4. Contract Area

OPENLAND Beta
CONTRACTS

Liberia, Thunder Bird International, Timber Sale Contract, 1 October 2010

Search in this document

TEXT PDF 7 of 43 Zoom 75%

"Force majeure" means any unforeseen cause beyond the reasonable control...more

Art. B10.23
Page 37

Reporting requirements

Exigences de déclaration

Thunder Bird International consents to the Government or a designated...more

Arts. B5.3, B5.51 - B5.53
Page 22

Size of concession area

Superficie de la concession

5,000 ha

Art. A1
Page 7

Stabilization clause

Clause de stabilisation

If any statute or regulation referred to in the contract...more

PART A – SPECIFIC PROVISIONS

A1 – Location and Area
See Section B2.1 (Contract Area)

The Contract Area of 5,000 Hectares has the following Metes and Bounds Description:

Timber Sale Contract A-8/Thunder Bird International Liberia Inc., concession area lies within Latitudes 7°14'24" - 7°18'0" North of the equator and Longitudes 11°0'0" - 11°6'36" West of the Greenwich meridian and it is located in Grand Cape Mount County-Liberia.

Timber Sale Contract A-8 is 47 miles north of the Atlantic Ocean and 104 miles assessable by road to the Port of Monrovia.

Commencing at a point which serves as the conduit between Timber Sales Contract A-9, A-11 and A-8 (7°13'58.00"N-11°00' 14.69"W); thence a line runs N 74° W for 6,643 meters to a point; (7°14'59.31"N-11°03' 43.18"W); thence a line runs S 88° W for 5,715 meters to a point (7°14'54.25"N-11°06'49.00" W); thence a line runs N 57° E for 4,405 meters to a point (7°16'10.51" N-11° 04'47.43" W); thence a line runs N 4° E for 2,370 meters to the point (7°17'26.83"N-11°04'41.84"W); thence a line runs N 49° E for 2,999 meters to a point (7°18'30.57"N-11°03'28.07"W); thence a line runs S 71° E for 7,567 meters to a point (7°17'10.72"N-10°59'35.34"W); thence a line runs Due South for 223 meters to a point (7°17'03.29"N-10°59'35.34"W); thence a line runs S 69° W for 3,982 meters to a point (7°16'18.22" N-11°01'36.27" W); thence a line runs S 31° E for 4,991 meters to the point of COMMENCEMENT (7°13'58.00"N-11°00'14.69"W), Embracing 12,355 acres or 5,000 hectares of forest land and no more.

METADATA See Summary

Country
Liberia

Signature Year
2010

Resource
Timber (Wood)

Type of Contract
Timber Sale Contract

Open Contracting Identifier
ocds-591adf-LR0342088869OL

Disclosure Mode
-



5. Rights and Obligations

- 🔥 Land contracts generally **establish or affect** a series of rights and obligations for each Party to the contract
- 🔥 Understanding these obligations in full often requires:
 1. Reading multiple provisions of the contract **together**
 2. Reading these provisions in the **context** of other aspects of the legal framework (e.g. domestic and international law)
- 🔥 In some cases, an accurate understanding of the Parties' rights and obligations vis-à-vis an investment will also require reading other relevant documents, such as contract amendments, side letters, or binding social agreements with local communities



5. Rights and Obligations

- 🔥 OpenLandContracts.org assists users in developing a basic understanding of the rights and obligations established or affected by a land contract
- 🔥 It does so by:
 1. **Grouping** similar provisions together under the following **categories**: General; Environment; Fiscal; Operations; Social; Legal Rules
 2. **Combining and summarizing** provisions that relate to specific topics or types of rights and obligations
 - 🔥 Examples of these topics or types of rights and obligations include: *Access to the concession (non-contracting parties)*; *Community consultation*; *Local development agreement*; and *Water use*



5. Rights and Obligations: Key Questions

- ◆ Some of the **key questions** that you should bear in mind when reading the annotations and contractual provisions include:
 1. What rights and obligations does the land contract **establish or affect** for both the host state and the investor (and for third parties, where relevant)?
 2. Does the contract establish a specific **timeframe** that affects any of these rights and obligations?
 3. Does the contract specify how specific rights and obligations will be **monitored and enforced**?
 4. **Who is responsible** for the monitoring and enforcement of specific rights and obligations?
 5. **What happens** if specified obligations are not met?



5. Rights and Obligations

- 🔥 The following slides highlight some of the key types of rights and obligations that are summarized in the annotations attached to each contract on OpenLandContracts.org



5. Rights and Obligations: Environment

- 🔥 Key environmental issues summarized on OpenLandContracts.org:
 - 🔥 *Environmental impact assessment (EIA) and management plan*
 - 🔥 *Environmental monitoring*
 - 🔥 *Environmental protections*
 - 🔥 *Water use*
 - 🔥 *Other – environment*



5. Rights and Obligations: Environment

- 🔥 **Example:** *Environmental impact assessment and management plan*
- 🔥 This annotation includes information regarding obligations on any Party to assess potential environmental impacts and to establish plans for mitigating risks of adverse impacts, as well as any information on the financing of such plans. In addition, this annotation summarizes any relevant external environmental standards that will be used.

All General **Environment**

Fiscal Operations Social

Legal Rules

Environmental impact assessment and management plan

🗨 Liberia Tree & Trading Company must ensure that the Five-Year Forest Management Plan provides for sustainable use and development of "forest resources" (i.e., anything that may be of potential use to a human in the forest environment). Liberia Tree & Trading Company must ensure that the Five-Year Forest Management Plan also conforms with Forestry Development Authority's Guidelines for Forest Management Planning, the Liberia Code of Forest Harvesting Practices, and Liberia Tree & Trading Company's Strategic Forest Management Plan. [less](#)

Page 33 (Art. B6.15(b), B1.0)



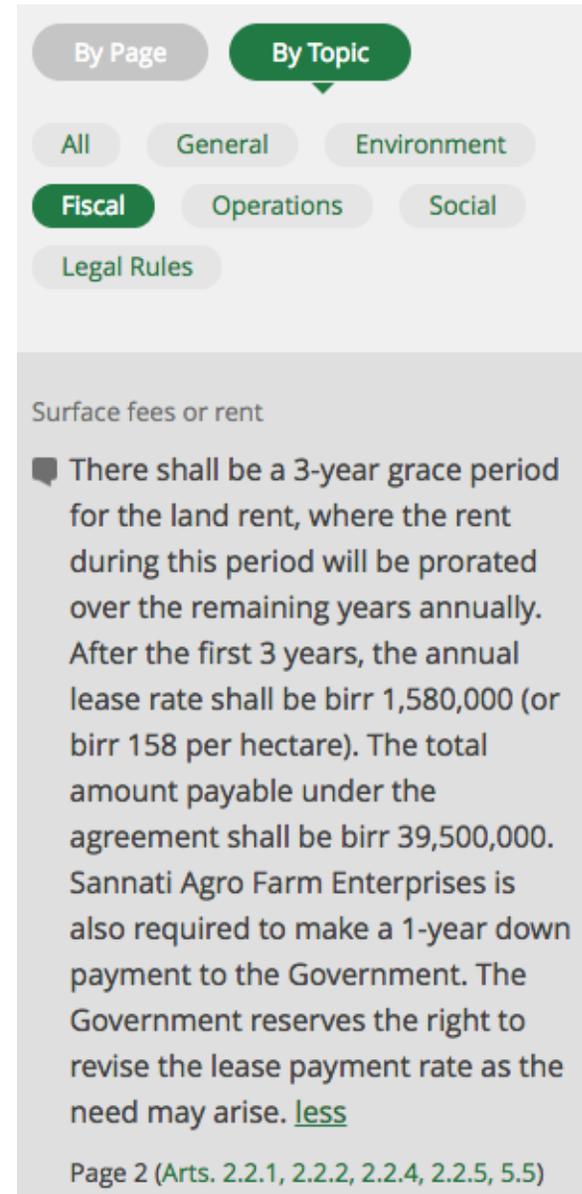
5. Rights and Obligations: Fiscal

- Key fiscal issues summarized on OpenLandContracts.org include:
 - Audit mechanisms*
 - Capital gains tax*
 - Carbon credits*
 - Income tax*
 - Exemptions; Rate; Other*
 - Other - fiscal / financial (such as provision of finance, regional trade levies, guarantees, etc.)*
 - Restrictions on transactions with affiliated parties*
 - Royalties*
 - Surface fees or rent*



5. Rights and Obligations: Fiscal

- 🔥 Example: *Surface fees or rent*
 - 🔥 This annotation will include information regarding obligations on the investor to pay annual or recurring fees in relation to the land to which the contract applies



The screenshot shows a digital interface for navigating legal documents. At the top, there are two tabs: 'By Page' and 'By Topic'. The 'By Topic' tab is active, and a dropdown menu is open, showing several topic categories: 'All', 'General', 'Environment', 'Fiscal', 'Operations', 'Social', and 'Legal Rules'. The 'Fiscal' category is selected and highlighted in green. Below the navigation menu, the text 'Surface fees or rent' is displayed. A quote icon is followed by a paragraph of text: 'There shall be a 3-year grace period for the land rent, where the rent during this period will be prorated over the remaining years annually. After the first 3 years, the annual lease rate shall be birr 1,580,000 (or birr 158 per hectare). The total amount payable under the agreement shall be birr 39,500,000. Sannati Agro Farm Enterprises is also required to make a 1-year down payment to the Government. The Government reserves the right to revise the lease payment rate as the need may arise. [less](#)'. At the bottom of the snippet, it says 'Page 2 (Arts. 2.2.1, 2.2.2, 2.2.4, 2.2.5, 5.5)'. In the bottom right corner of the slide, there is a blue circular logo with a stylized white tree or plant design.

5. Rights and Obligations: Social

- 🔥 Key social issues summarized on OpenLandContracts.org:
 - 🔥 *Community consultation*
 - 🔥 *Grievance mechanisms*
 - 🔥 *Local development agreement*
 - 🔥 *Local employment*
 - 🔥 *Local procurement*
 - 🔥 *Outgrowers program*
 - 🔥 *Protections or benefits for employees, dependents, or others*
 - 🔥 *Resettlement*
 - 🔥 *Right to access concession area (non-contracting parties)*
 - 🔥 *Social / human rights impact assessment and management plan*
 - 🔥 *Social / human rights monitoring*
 - 🔥 *Sacred, cultural, or historical sites (e.g., protections for areas of cultural or spiritual importance within the concession)*
 - 🔥 *Training*



5. Rights and Obligations: Social

- 🔥 Example: *Local employment*
 - 🔥 This annotation will include details regarding requirements to fill certain types of jobs or positions with local community members or host country nationals

The screenshot shows a document viewer interface. At the top, there are two tabs: "By Page" and "By Topic". The "By Topic" tab is selected and has a dropdown arrow. Below the tabs, there are several topic filters: "All", "General", "Environment", "Fiscal", "Operations", "Social", and "Legal Rules". The "Social" filter is selected. Below the filters, the document content is displayed. The title "Local employment" is visible. A text annotation is present, starting with a speech bubble icon, containing the text: "It is understood by the government, Subri Industrial Plantation Limited, SOCFINAF SA, and Plantations SOCFINAF Ghana Limited that SOCFINAF is buying the rights in the property to develop it into a rubber and oil palm plantation and to provide local employment, among other things less". At the bottom of the annotation, it says "Page 2 (Art. E)".



5. Rights and Obligations: Operations

- 🔥 Key operational issues summarized on OpenLandContracts.org:
 - 🔥 *Infrastructure*
 - 🔥 *Infrastructure – third party use*
 - 🔥 *Land use outside of concession area*
 - 🔥 *Other – operational*
 - 🔥 *Physical security or protection of property*
 - 🔥 *Value addition or downstream activities*
 - 🔥 *Work and investment commitments*



5. Rights and Obligations: Operations

- 🔥 Example: *Land use outside the concession area*
 - 🔥 This annotation includes information regarding whether, and if so to what extent, the investor and its employees have the right to use or acquire land outside of the concession area

The screenshot shows a document viewer interface. At the top, there are two tabs: "By Page" and "By Topic". The "By Topic" tab is selected and highlighted in green. Below the tabs, there are several topic filters: "All", "General", "Environment", "Fiscal", "Operations", "Social", and "Legal Rules". The "Operations" filter is selected and highlighted in green. Below the filters, the document content is displayed. The first line is "Land use outside of concession area". Below it is a text snippet starting with "Use of public lands outside contract area: Akewa Group of Companies shall not use public land outside the contract area,..." followed by a "more" link. At the bottom of the snippet, it says "Page 16 (Arts. B4.12, B4.13)".



5. Rights and Obligations: Legal Rules

- Other important rights and obligations established or affected by a land contract can include those relating to:
 - Arbitration and dispute resolution (discussed in detail below)*
 - Assignment or transfer*
 - Cancellation or termination*
 - Confidentiality*
 - Expropriation or nationalization*
 - Governing law*
 - Hardship clause or force majeure*
 - Language*
 - Reporting requirements*
 - Size of concession area*
 - Stabilization clause (discussed in detail below)*



5. Rights and Obligations: Legal Rules

- Example: *Assignment or transfer*
 - This annotation includes information regarding whether, and if so to what extent, a Party has the right to assign or transfer the rights (and sometimes the obligations) of the contract to a new party. More specifically, it may also include information on whether a Party has the right to transfer the land under contract (or property developed on the land) to another party.

Source: Guide to Land Contracts: Agricultural Projects (ISLP and CCSI, 2016)
<<http://bit.ly/1RUN5da>>

The screenshot shows a digital interface for navigating through a document. At the top, there are two buttons: "By Page" and "By Topic". The "By Topic" button is selected and highlighted in green. Below these are several topic categories in rounded rectangular buttons: "All", "General", "Environment", "Fiscal", "Operations", and "Social". The "Legal Rules" category is also highlighted in green. Below the navigation options, the document title "Assignment or transfer" is visible. A snippet of text follows, starting with a speech bubble icon: "ADA Commercial will not assign its obligations or rights under the contract to any other person without the prior written consent of the Government, which shall not unreasonably withhold its consent less". At the bottom of the snippet, it says "Page 18 (Art. 21.2)".



6. Stabilization Clauses

- 🔥 A feature of certain land contracts that can hold serious implications for the rights and obligations established or affected by the contract is the inclusion of a “stabilization clause”
- 🔥 These clauses are found in **multiple forms** in long-term investment contracts
- 🔥 Generally, they have the effect of “**fixing**” (or **stabilizing**) the **regulatory regime** (including the legal framework) that applies to the land contract by either:
 1. Precluding new laws from applying to the investment covered by the land contract
 2. Allowing new laws to be applied to the investment covered by the land contract, but requiring the host state to compensate the investor for the cost of complying with those new laws

Source: *Andrea Shemberg, Stabilization Clauses and Human Rights (2009)*
<<http://bit.ly/235XjQy>>



6. Stabilization Clauses

- 🔥 OpenLandContracts.org contains a **specific annotation** that summarizes any provisions of a land contract that amount to a “stabilization clause”
- 🔥 This is **particularly helpful where** legal language amounting to a stabilization clause is included within a provision that is not titled “stabilization clause” (which is the case for most contracts on OpenLandContracts.org)
- 🔥 OpenLandContracts.org also summarizes provisions that specifically seek to prevent the stabilization of a contract



6. Stabilization Clauses

OPENLAND CONTRACTS Beta Search all documents

Genesis Farms Sierra Leone Ltd., Makomp, Concession, MOU, 2014 See Summary

Search in this document

TEXT PDF 11 of 13

Stabilization clause

If any change of law in Sierra Leone has a material adverse effect on the ability of Genesis Farms Sierra Leone or its contractors, sub-contractors, shareholders or funders to perform their respective obligations relevant to the development, operation or funding of the project or the cost of, or return from, so doing, the government undertakes, after taking into account the benefits of the change in law, to grant to the project and the above actors any exemption or license or other authorization necessary or desirable to ensure that their interests, rights, obligations and economic return are not materially adversely affected less

Page 11 (Appendix, Art. 10)

State agency, national company or ministry executing the document

The Government of the Republic of Sierra Leone acting by each of the Ministries of Agriculture, Forestry and Food Security, Finance and Economic Development, Trade and Industry

Page 1 (Title), Page 2 (Preamble, Art. 1)

Term

20 years

Page 3 (Recital H)

enter into a water rights agreement with Genesis Farms. Shall be charged at a fixed rate of 3 Leone per cubic extracted from rivers and other water courses. There shall be the volume of water extracted by Genesis Farms Sierra rivers, other water courses, wells and boreholes.

10. Change in Law If any law applied in Sierra Leone comes into effect or is amended, nullified, repeated, withdrawn or replaced (3 Change in Law) which has a material adverse effect on the ability of **Genesis Farms Sierra Leone Ltd.**, its contractors, sub-contractors, any shareholder or funder to perform their respective obligations under any document relevant to the development, operation or funding of the project or the cost of or return from so doing, after taking into account the benefits associated directly and expressly with any such Change in Law, then GOSL undertakes to grant to the project. **Genesis Farms Sierra Leone Ltd.** is contractors, sub-contractors, the shareholders and the funders any exemption or license or other authorization necessary or desirable to ensure that such interests, rights, obligations and economic return are not materially adversely affected. If there is a dispute between the Parties in relation to whether the Change in Law has the effect described above, it shall be referred to the arbitration procedures as agreed and set out in this Memorandum or PPA, once the PPA is in full force and force and prior to the date as set out in the Agreement.

11. Nationalization or Expropriation GOSL agrees that it will not, nor attempt to, nationalize, expropriate or confiscate all or any part of the assets or rights of **Genesis Farms Sierra Leone Ltd.**, its sub-contractor or their respective contractors or any other party to the documents relevant to the development, operation and funding of the Project or the share capital of **Genesis Farms Sierra Leone Ltd.** other than on the basis of full compensation (including loss of profit) to the affected parties, including an amount not less than that required to repay all principles, interest, fees, costs and expenses amounts outstanding to the funders under or pursuant to the funding documents.

12. Compliance with Laws Each Party confirms that it does not intend and will not engage in any illegal activity and **Genesis Farms Sierra Leone Ltd.** agrees that it will comply with national standards in relation to environmental protection and health and safety as required for the type of activities carried out under the Project and/or by **Genesis Farms Sierra Leone Ltd.** in general. **Genesis Farms Sierra Leone Ltd.** agree that it will take reasonable steps to ensure that none of its group companies will enter into without the prior written consent of GOSL (which shall not be unreasonably withheld) the business activity of the production in Sierra Leone of palm oil and other agricultural

METADATA

Country
Sierra Leone

Signature Year
2014

Resource
Food crops

Type of Contract
Concession Agreement | Memorandum of Understanding

Open Contracting Identifier
ocds-591adf-6561806963

Disclosure Mode
-

Land Matrix ID
#1820

More from Sierra Leone

More for Food crops



7. Dispute Resolution

- 🔥 Land contracts often contain provisions that establish a **process for resolving disputes** between contracting parties regarding the investment covered by the contract
- 🔥 In some cases, land contracts may require the parties to submit disputes to the **domestic courts** of the host state
- 🔥 In others, land contracts may require the parties to submit disputes to **arbitration**
 - 🔥 Arbitration is a form of binding dispute resolution conducted before a panel of arbitrators, which is usually appointed by the parties to the dispute

Source: www.NegotiationSupport.org



7. Dispute Resolution

- On OpenLandContracts.org, the following annotations are particularly relevant for locating and understanding the provisions that establish a process for resolving disputes:
 - Governing law* (i.e. the law that applies to the operation of the contract and any disputes arising from it)
 - Arbitration and dispute resolution*



7. Dispute Resolution

OPENLAND CONTRACTS Beta

Search all documents

Liberia, Firestone Liberia, Inc., Concession Agreement, 2008

See Summary

Search in this document

TEXT PDF 50 of 108

56 ANNOTATIONS

By Page By Topic

All General Environment Fiscal

Operations Social Legal Rules

Arbitration and dispute resolution

- All disputes concerning the concession agreement shall be finally settled by binding arbitration under the UNCITRAL rules. Firestone Liberia shall be considered a U.S. investor for the purposes of an arbitration. There shall be three arbitrators. The seat of the arbitration shall be Washington D.C. Arbitration shall be the exclusive remedy to settle any dispute arising out of the contract and parties shall not be required to exhaust local remedies. less

Page 50 (Art. 27)

Assignment or transfer

- Firestone Liberia shall not assign its obligations to any person without the prior written consent of the government.

Page 44 (Art. 23)

after being informed by Firestone Liberia that it desires to sell such asset, Firestone Liberia may sell such asset to any other Person, including Government or an Affiliate, for such price as it may be able to obtain, or remove such asset from Liberia. The proceeds of any such sale shall accrue to the seller subject to any Taxes or Duties payable at Law. If Government purchases any such asset, it shall pay the purchase price not later than 60 days after such price has been agreed upon or determined, unless the Parties otherwise agree.

26.3 Removal of Movable Assets - Government, by notice to Firestone Liberia within a reasonable period but not to exceed one year after termination of this Agreement pursuant to Section 25.1, may require reasonable disposal or removal, in accordance with Law, of any or all movable assets, including unusable assets, remaining within the Production Area after total disposition of assets, in accordance with this Section 26. If Firestone Liberia does not reasonably dispose of or remove such asset or assets within a reasonable period after said notice, Government may effect such reasonable disposal or removal at the expense of Firestone Liberia, but Firestone Liberia shall be entitled to any income realized from the salvage value of such assets.

SECTION 27
ARBITRATION

27.1 Submission to Arbitration

(a) Any dispute between Government and Firestone Liberia arising out of, in relation to or in connection with this Agreement or its formation, or the validity, interpretation, performance, termination, enforceability or breach of this Agreement, which is not specifically provided elsewhere in this Agreement for resolution by submission to an expert, shall be settled by binding arbitration under the rules of the Centre in effect on the Effective Date (the "Rules"). The law applicable to any arbitration shall be determined pursuant to Section 30 below. In the event of any conflict between the Rules and Section 27 of this Agreement, the provisions of Section 27 of this Agreement shall govern. Arbitration hereunder shall be the Parties' exclusive remedy and no Party to arbitration shall be required to exhaust any local administrative or judicial remedy, provided that in a dispute involving a violation of Law, Firestone Liberia shall not initiate arbitration prior to a final administrative determination of a violation unless upon a reasonable showing that to do so would be futile, or that conditions in Liberia make participation in such a determination by Firestone Liberia's representatives, or traveling to Liberia to do so, difficult or impossible as a practical matter, or as a matter of any applicable Law.

(b) The Parties agree that this Agreement and Firestone Liberia's operations pursuant hereto constitute an "investment" by reason of the investment of a considerable amount of money in Liberia and that for purposes of Article 25(1) of the Convention, any dispute subject to this Section 27 is a legal dispute arising directly out of an investment. Either of the Parties to

METADATA

Country
Liberia

Signature Year
2008

Resource
Rubber

Type of Contract
Concession Agreement

Open Contracting Identifier
ocds-591adf-0966186576

Disclosure Mode
Government

Land Matrix ID
#1391

More from Liberia

More for Rubber



7. Dispute Resolution

- 🔥 When reading land contracts, you should remember that if the investor is protected by an investment treaty, the investor can challenge the host state in **international investment arbitration**
- 🔥 See OpenLandContracts.org Self-Study Module Three for further information on investment treaties



Part Two

Using
OpenLandContracts.org

Contracts Exercise



Contracts Exercise

- 🔥 A Contracts Exercise is available on OpenLandContracts.org as part of this training module
- 🔥 The Exercise will allow you to apply some of the key features discussed in the module in order to better understand the provisions of land contracts on OpenLandContracts.org



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AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY

Contract Analysis Exercise using OpenLandContracts.org

Exercise questions

The exercises below are intended to provide some practical experience with contract analysis using contracts available on Open Land Contracts (www.openlandcontracts.org).

1. Identifying the Parties, and Ownership of Investment-Related Assets

Locate the Addax Bioenergy Sierra Leone Ltd, Memorandum of Understanding and Agreement from Sierra Leone.

- Who are the parties to this contract?
- Is the investor company affiliated with any foreign entity?
- Are there any protections against expropriation of the investment?

2. Work Obligations

Locate the LIBINC contract from 2007. Find the part of the contract that discusses the conduct of operations and investment commitments.

- How much money must LIBINC invest in the first four years of operation?
- What obligations does LIBINC have with regards to the amount of acres it must clear and plant every year?
- What happens if LIBINC fails to clear and replant the required amount of acres in a given year?

3. Programs to support local farmers

Locate the Heng Yue contract from Cambodia and the Sime Darby Plantation contract from Liberia.

- Does either contract establish a program to assist local farmers, such as an outgrowers' program?
- Does the government have to provide additional land for these programs?
- What happens to the crops produced under these programs?

1



Contracts Exercise

- Two versions of the Contracts Exercise are available for download on the **Guides** page of OpenLandContracts.org:
 1. The first version contains the exercise questions without the answers – you should attempt to work through each individual exercise question prior to viewing the second version
 2. The second version contains both the exercise questions and the answers – you can review your own answers against this document once you have completed the exercise questions, or if you require assistance with any particular exercise question

<http://www.OpenLandContracts.org/guides>



Key Takeaways

- 🔥 Annotations are added to contracts to summarize, and help users find what a contract says about, key issues, including environmental, social, fiscal, operational and legal issues
- 🔥 You can search for annotations using the free text search or the annotation category dropdown in the advanced search panel
- 🔥 Clicking on an annotation's article reference will take you to the relevant page(s) of the contract that cover that issue



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Questions?

Email us:

info@openlandcontracts.org