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**LARGE-SCALE FORESTLAND ACQUISITION IN CHINA:
FIELD FINDINGS AND RECOMMENDED IMPROVEMENTS**

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Abstract:

The authors conducted extensive interviews of farmers in 12 villages in southern China, where Stora Enso, a large multinational pulp and paper producer, had acquired large areas of farmers' forestland rights for its eucalyptus plantations. The research findings indicate that in this region of China large-scale land acquisition by multinational companies coupled with local government's desire for international investment tends to weaken farmers' tenure security, reduce rule of law in the countryside and threaten the livelihoods of farmers who depend on land for their living. Government intervention in the forestland acquisition (and the company's reliance on such intervention) can trigger widespread coercive, fraudulent and legally questionable transactions, failure to respect FPIC principle and failure to pay rent to farmers. To correct such misconduct, companies should design and implement a "pro-farmer" corrective action process, strictly follow the laws and central government policies related to acquisition of forestland, make rental payments directly to individual farmer households, and improve institutional grievance mechanisms to effectively address farmers' concerns.

Key Words:

China; Corporate Social Responsibility (CSR); forestland rights; land acquisition

Bio:

Li Ping is a Senior Attorney of Landesa (formerly the Rural Development Institute), a Seattle-based non-governmental land law and policy institute. Since 1987, Mr. Li has conducted extensive research on rural land rights in China, and has provided technical assistance to the Chinese government and international development agencies related to the development and implementation of Chinese land laws. Over the past 20 years or so, Mr. Li has interviewed more than 1,500 Chinese farmers in more than 20 provinces, and provided legal and policy recommendations to the Chinese government with respect to rural development. Mr. Li is a graduate from China's Southwest Teacher's University (1977), Seattle University (M.P.A. 1989) and University of Maine School of Law (J.D. 2000).

I. Introduction

Recognizing that China's economic growth has increased market demand for forest products, investors, including multinational forest and paper companies using timber as raw material, began acquiring large areas of Chinese collective forestland rights for tree plantation farming and production. While such investments, if done correctly, can help stimulate local economies, they may negatively affect farmers who depend on forestland for their livelihoods.

Stora Enso Oyj (Stora Enso) is a leading international forestry company based in Finland. Since 2002, the company reports that it acquired 90,200 ha of forestland rights from six municipalities in Guangxi Autonomous Region, of which 32,990 ha is collectively owned forestland and 22,864 ha is located in Beihai Municipality. The company plans to use the land for fast-growing eucalyptus plantations to supply the raw material for its pulp and paper production facilities.

In order to understand how Stora Enso acquired forestland from farmers and assess the impacts of such acquisition on farmers' livelihoods, Landesa researchers, in collaboration with the Rights and Resources Initiative (RRI), conducted three rounds of field research in 2006 and 2009 in Hepu County, Beihai Municipality¹ and produced a research report on Stora Enso's collective forestland acquisition. Our 2010 report concludes that forestland acquisition by Stora Enso entailed serious violation of farmers' forestland rights, and proposes recommendations for improving its land acquisition practices (Li & Nielsen, 2010).

Again in collaboration with RRI, we revisited Hepu County in February 2013 and conducted a new round of field research. Stora Enso officials gave us an informative briefing at the beginning of the fieldwork. We then interviewed farmers to examine the improvements, if any, that Stora Enso has made in the last four years, and to identify any issues of concern arising from Stora Enso's land acquisition program.

Section II summarizes our discussions with Stora Enso officials on issues relating to the company's forestland acquisition, as well as the findings of our fieldwork conducted in Hepu County. Section III analyzes the Stora Enso acquisitions in light of Chinese law and central government policies on the forest reform, and the company's internal principles for Corporate Social Responsibility. Section IV offers updated recommendations with respect to large-scale, land-dependent investments, as well as more targeted recommendations with respect to Stora Enso's project, followed by our conclusion in Section V.

¹ We chose Hepu as the fieldwork site because most of the rights to collectively owned land acquired by Stora Enso for its plantations in the Beihai Municipality are located here, which is also the base of Stora Enso's Guangxi operation.

II. Field research findings

In February 2013, we conducted a six-day field study in Hepu County of Guangxi Autonomous Region. The field study consisted of: (1) meetings with field managers of Stora Enso in Hepu, and (2) farmer interviews in Hepu County and Qinzhou Municipality. We spent four days in Hepu County and one day in Qinzhou Municipality, holding semi-structured interviews in 12 villages in seven townships where all or part of the village's forestland was acquired by Stora Enso. In most cases, farmers participated in these interview sessions in groups. In some cases, more than ten farmers were present to offer their perceptions of the Stora Enso acquisition. We also interviewed the village chief of one administrative village to discover how collective cadres perceive these issues.

We conducted the interviews using a Rapid Rural Appraisal method. We asked the farmers questions about their experience with Stora Enso's acquisition of forestland rights in their villages based on a checklist of issues prepared before the interview. All interviewed farmers were active participants in these discussions. To minimize undue influence, no government officials or Stora Enso employees attended the interview sessions. We randomly selected villages, gave no advance notice, and spoke with the first farmer or first group of farmers we met in the village to minimize bias in the selection process. No collective officials were present for any farmer interview because we did not notify the officials in advance of our visit to the village. Our findings are reported below.

A. Coercive land acquisition

Farmers reported coercion to have been pervasive in the villages we visited. In eight of the 12 villages, farmers complained that a level-by-level administrative pressure was exercised when Stora Enso was acquiring forestland rights from the village. According to farmers interviewed, a typical approach was for the township government to force administrative villages within its jurisdiction to come up with a target amount of land. The administrative village allocated this task among all villager groups within the administrative village, and compelled the groups to transfer collective forestland rights to Stora Enso. In at least one village, the township government threatened the village group leader with removal if he did not cooperate with the Stora Enso acquisition.

In two villages, interviewed farmers reported violent confrontations between the township government and the villagers. In 2009, apparently under pressure of the Hepu County government's campaign to acquire forestland for Stora Enso,² the township government and the township police came to these two

² The 2009 campaign, which had an acquisition target of 141,906 mu of collective forestland by June 2009, was described in detail in a county forest bureau's report posted on the Hepu government website. To fulfill the target,

villages and forced farmers to give up land, some of which was already planted with sugar cane, cassava and pine trees. The police met strong resistance from farmers, triggering a severe physical altercation. In both incidents, several villagers were arrested for “obstruction of justice.” Under the township government's threat of “no land, no release,” protesting farmers gave in and surrendered the land.

According to interviewed farmers, “attracting Stora Enso investment” was most frequently cited by local government to justify coercive land acquisition. In seven of the 12 villages visited, local officials cited Stora Enso's investment as the motive for the government's compulsion. In three of the 12 villages, government officials simply announced the acquired land was state owned, leaving the farmers without any opportunity to present evidence to justify their claims. In two of these three villages, farmers showed us collective ownership certificates for the acquired land issued by the county government in 1962 and 1981.

B. Reports of fraudulent land transfers

Through our interviews with local farmers, we found an allegedly fraudulent transfer of a villager group's forestland orchestrated by the Party Secretary of the administrative village. Three hundred mu³ of the villager group's land was originally contracted on an annual basis to several non-villager farmers to grow watermelon, sugar cane and cassava. When Stora Enso worked with local government to acquire forestland rights for its plantations in 2004, the village Party Secretary reportedly seized this opportunity for his own gain, purportedly manipulating the villager group to transfer use rights to that 300 mu of land to Stora Enso for 30 years at 38 yuan per mu per year. With a belief that the land would be transferred to Stora Enso, farmers reportedly signed their names or affixed their fingerprints on the villager consent form, and the villager group leader signed his name in the place of the transfer contract designated for the transferor party. However, the Party Secretary left the transferee party field blank and cheated farmers into believing that it would be signed by Stora Enso. After completing the contracting formalities, the Party Secretary typed and signed his wife's name as the transferee. With his wife as the documented “transferee,” the Party Secretary then allegedly subleased the land to Stora Enso for a rental amount believed to be much higher than 38 yuan per mu per year. Through this maneuvering, the Party Secretary

the county government invented a risk deposit mechanism that required the party secretary and the governor in each of the county's 14 townships to put up a cash deposit. If any township failed to complete its quota assignment, the deposit made by both leaders of the township would be forfeited together with a yellow pad warning to be publicized in the county. If the quota was completed, the deposit would be returned together with a monetary reward. After our 2010 research was published, the report on the 2009 campaign disappeared from the website. The authors retain a copy of the original report.

³ 1 mu is equal to 0.06666667 hectares or 667 square meters.

was alleged to have intercepted and pocketed the difference in rent between what Stora Enso actually paid him and what he paid the villagers.

C. Legally questionable transfers

Although Stora Enso denied that it was linked to any fraudulent actions in the above-mentioned case, it appeared to be involved in several legally questionable transactions. At least two of these involve transfer of "private mountains" rights. "Private mountains" are forestland rights that were allocated to farmer households in 1960s, long before China decollectivized its agriculture. Together with rights to agricultural "private plots" and residential "foundation plots," private mountain rights were legally defined as individual land rights "for a long term without change" and perceived by farmers as their private property even in the people's commune era (Sixty Article Regulation, 1962, art. 40). Under the Property Law adopted after the termination of the people's commune system, private mountain rights are legally defined as individual property rights together with other land rights allocated to individual farmer households (Property Law, 2007, ch. III). The private mountain land has been used by farmers as their de facto private property for six decades, and this is likely the reason that even the drastic current nationwide forest reform overhauling the collective forestland system not only excludes private mountain rights from administrative reallocation, but also explicitly and resolutely prohibits any attempt by the government to take them back from farmers or reallocate them through "readjustment."⁴ Furthermore, while giving farmers 70-year rights to collectively managed forestland allocated to individual households through the forest reform, modern central policies term private mountain rights as rights for an indefinite "long time without charge" (Central Committee & State Council, 2008b). Clearly, under the existing regulatory framework, farmers' private mountain rights enjoy much greater protection and deserve an extra caution when they are subject to acquisition. .

In two villages, we found that farmers' use rights to "private mountains" were transferred to Stora Enso despite the holders' objection. In one village, use rights to 100 mu of private mountains, referred by farmers as "ancestors' mountains," were compulsorily transferred to Stora Enso under the pretext of "the minority submitting to majority." The land had been allocated to the household in 1960s for long-term use and planted with pine trees. At the time of the transfer, the trees were more than 20 years old, with a diameter of 30-40 cm. According to the farmer interviewed from this household, although all farmer households were allocated with private mountains, most of them had already transferred these rights to non-village business ventures before Stora Enso entered Hepu and begun to capitalize on the transfers.

⁴ These explicit rules can be found in the central policies on collective forest reform, including but not limited to Central Committee and State Council, Document No. 9 (2003) and Central Committee and State Council Document No. 10 (2008).

Because the household we interviewed relied on forest farming for living, it had not transferred its rights to the private mountains as the other villagers had. However, when Stora Enso began acquiring forestland rights in the village around 2006, the villager group leader manipulated a villager conference to gain majority consent and compelled the household to surrender its private mountains. To make matters worse, all proceeds from transferring the household's property rights to its private mountains were delivered to the village and distributed among all villagers.

In another village, 20-30 mu of a household's private mountains were reportedly rented through compulsive measures to Stora Enso and are now planted with eucalyptus trees. However, the farmer had yet to receive any compensation due to a contract dispute between the village collective and Stora Enso.

D. Reliance on government and intermediaries for land acquisition

Interviewed farmers confirmed the Stora Enso report that more than 80% of forestland rights were acquired through government-owned companies or other intermediaries, rather than through direct contracting with villages or farmers. Of the 12 villages visited, we found direct transfers in only two. In the remaining ten villages, forestland was either compulsorily surrendered initially to township government or government-owned companies (in six villages) or contracted out to private intermediaries (in four villages) before being transferred to Stora Enso.

Interviewed farmers in these villages voiced strong complaints about these intermediary land acquisition schemes. Several problems were identified. First, in ten of the 12 villages, government agencies and intermediaries failed to obtain the villagers' "free, prior and informed consent" (FPIC) before acquiring the village's rights. Even though villager meetings were convened in some cases, farmers were not informed about the specific details of the transfer deals, nor were they consulted about their willingness to transfer out forestland rights. In villages where forestland rights were acquired through government or government owned companies, coercion was common and pervasive, leading to the above-mentioned violent confrontations in at least two villages.

Second, whether the land acquisition was conducted through government or intermediaries, farmers had difficulty receiving adequate compensation for the forestland rights eventually delivered to Stora Enso. When asked about the level of rent Stora Enso paid for leasing the village's forestland, all farmer interviewees in these ten villages expressed frustration over not having been notified when Stora Enso signed transfer contracts with township governments, government owned companies, or private intermediaries. Such land acquisition schemes often installed barriers for farmers to receive due compensation. In four villages, farmers complained they had not received any compensation since their

villages' land was taken by township government or private intermediaries several years ago. In the other six villages where farmers had received some compensation, farmers told us that they received payment from government or intermediaries, but did not know how much rent Stora Enso actually paid to these entities.

Third, although the lack of direct contracting relationship may provide a certain shield for Stora Enso, it has impeded farmers from seeking dispute resolution over the land acquisition. In all ten villages, we asked farmers whether they had complained to Stora Enso about the land acquisition deals. They told us that when they approached company employees, they were redirected to township government or to private intermediaries because the village did not have a contractual relationship with Stora Enso. For example, in one village where 2,100 mu of the village's forestland were initially acquired by the township government for 30 yuan per mu per year and subsequently passed to Stora Enso in 2003 for an unknown amount, thereafter farmers continuously complained to Stora Enso employees for several years about the low rent they received. Stora Enso employees rejected their complaints on the ground that the initial contract was with the township government and the complaints should have nothing to do with Stora Enso. In the above-mentioned fraudulent transfer case, the upset farmers were reportedly told by Stora Enso employees that they needed to resolve the dispute with the Party Secretary who committed the fraud.

E. Implementation of the Stora Enso's corrective measures

Dispute resolution: The Stora Enso officers reported that the company had taken several measures to improve its dispute resolution mechanism, including a telephone hotline to receive complaints, a bi-monthly newsletter to publicize the company's commitment to following Chinese laws and CSR in land acquisition, and an office at the company's Hepu headquarters to receive office visits by farmers.

However, in the 12 villages we visited, no farmer reported was aware of the hotline or the bi-monthly newsletter, though the chief of an administrative village had seen the newsletter. Although the company claimed it had established an office to receive and handle farmers' complaints about land acquisitions, few farmers interviewed were aware of this grievance channel.

Addressing farmers' complaints: In all 12 villages we visited, farmers expressed their dissatisfaction with Stora Enso's land acquisition practices, ranging from resentment over forced taking of farmers' forestland by local government to meet Stora Enso's request for land, to complaints over extremely low rent. In at least three villages, farmers received no compensation from the township government, the intermediaries or Stora Enso for forestland currently controlled by the company.

Farmers in five villages reported they had approached Stora Enso field officers regarding rent that was never received, rent they perceived as too low, or transfers they believed to be fraudulent. In two cases concerning rent, field officers responded that the transfer contracts were entered or agreed either between the village and township government or between the village and the intermediary businesspeople, and therefore had nothing to do with Stora Enso.

However, farmers in two other villages did tell us that the field officers had been open to discussing options to settle the disputes over low rent. While the farmers in these two villages clearly had hope for a resolution in their favor, there had been no concrete result at the time of the interview.

Contract screening and direct contracting with the rural collectives: The Stora Enso officer we interviewed highlighted these two measures as an effective means to improve their land acquisition practice. While we acknowledge the company's well-placed intentions, we found no corresponding implementation of these measures in the villages we visited. For example, Stora Enso told us that they had completed screening of all transfer contracts and had corrected 25% of all problematic contracts after a lengthy process that included consulting farmers. However, in at least ten villages where farmers had a variety of claims against Stora Enso, none reported having been consulted by Stora Enso for contract screening and correction, nor did they seem to know anything about the company's plan for contract screening. Even in the two villages where Stora Enso's field officers approached farmers to resolve disputes, farmers did not know of any efforts related to contract screening and correction.

In seven of the 12 villages, all or part of the village's forestland was initially acquired by private businesses at low cost and subsequently subleased to Stora Enso at an apparently higher rent. According to Stora Enso representatives, the company intended for such intermediary contractors to be phased out and replaced with direct contract schemes to minimize intermediaries' profit margin and directly channel profits to farmers as the rightful owners of the collective forestland. However, in the seven villages, we found no evidence that this plan had been implemented. More surprisingly, in its formal response to farmers' allegations of a fraudulent transfer by a private intermediary, Stora Enso showed no indication of plans to remove that intermediary from the transaction chain. Instead, the company defended the intermediary's position and regarded the transfer contract to be valid. In this case, apparently Stora Enso declined to oust the intermediary even when the intermediary had been accused of fraud in cheating villagers into the transaction.

F. Farmers' attitude toward Stora Enso's forestland acquisition

Most farmers expressed mixed feelings toward Stora Enso and its forestland acquisition practices. On the one hand, they were extremely upset about compulsory takings. On the other hand, they expressed preference for direct contracting with the company as opposed to a middleman, if they had no other option and the transfer terms were reasonable.

We asked farmers a series of questions concerning the terms of transfer they were willing to accept. In ten of 12 villages we visited, farmers ranked rent as their top concern. Interestingly, when asked how much annual rent per mu they believed would be reasonable, instead of giving us a direct quote they offered a series of calculations of how much income could be derived from the forestland if kept in the village rather than transferred to Stora Enso. Farmers would either grow sugar cane, or plant pines or eucalyptus trees on their lands. In case of sugar cane, farmers can produce four tons of cane per mu of land per year and sell for 470 yuan per ton, for total gross revenue of 1,880 yuan per year. After deducting 1,000 yuan per mu for the cost of production, farmers can have an annual net profit of 880 yuan per mu. Pine trees become mature for cutting in 12 years. Farmers can harvest seven to eight tons of pine timber per mu and sell for 600-800 yuan per ton, for total revenue of 4200-6400 yuan per mu or annual revenue of 350-530 yuan per mu. In addition, farmers can collect pine oil beginning after the eighth year and sell it for 40 yuan per mu annually or 160 yuan per mu over the course of four years between the eighth year and the twelfth year, when the tree is cut. Because pine trees grow naturally with virtually no input cost, the average annual net revenue for farmers could be 360-550 yuan per mu if the land were not in the hands of Stora Enso.

In contrast, Stora Enso currently pays 30-140 yuan per mu per year for the collective forestland it acquires

The second greatest concern was the duration of the lease. Perhaps due to the recent rent hikes in forestland rights markets in Hepu, most farmers interviewed did not desire a long-term transfer contract with Stora Enso. Given the fact that most, if not all, Stora Enso leases last 30 years, farmers expressed the wish that Stora Enso would periodically adjust the rent in response to market price. Though 30-year leases were reported by the farmers, in subsequent discussion with the company, Stora Enso reported that their contracts have varying lengths: from seven to 30 years, averaging 23 years.

G. The forest reform and its implications for Stora Enso land acquisition

A key component of the central government's 2008 nationwide forest reform was to enable collectives to allocate collective-managed forestland to individual households for 70 years (Central Committee & State Council, 2008a). To prevent businesses from taking advantage of the decollectivization of collectively

managed forestland to acquire forestland rights, the central government mandates that collectively owned forestland and wasteland under collective management not be transferred out of the village before the rights are first contracted to individual farmer households, except in the case of “absolutely necessary” circumstances” (State Forestry Administration, 2009).

In response to the central government’s demand, forest reform was formally launched in Guangxi in 2009. According to the official report on implementation of the forest reform in Beihai Municipality, by the end of 2011, more than 90% of collective forestland had been allocated to individual households and 91% of allocated land had been officially recognized with forest certificates issued to individual farmer households. Moreover, Hepu County was ranked as an “excellent implementer” of forest tenure reform (Yang, 2012).

Because the central policies on collective forest reform have significant implications for Stora Enso’s land acquisition program, we asked farmers a series of questions concerning the forest reform itself. In all of the villages, with the exception of one located in Qinzhou, villagers reported a complete lack of meaningful implementation. In six of the remaining 11 villages, farmers were merely informed of the forest reform either through the television or from collective cadres. In five villages, the forest reform and its relevant policies were completely unknown to farmers.

In all 11 villages, there was no allocation of collectively managed forestland to households, nor were forest certificates issued to households. Even in the few villages where collectively managed forestland remained after the Stora Enso acquisition, no individual allocation to households had been carried out. Only in one village, where the collective still maintained 300-400 mu of forestland, farmers were told that each villager would receive an allocation of two mu of collective forestland. However, this plan had not been enforced at the time of our interviews.

Nevertheless, when asked about their attitude toward the forest reform policies designed to allocate collective managed forestland to individual households, all interviewed farmers in the 12 villages warmly applauded the central government’s measures to protect farmers’ interest in forestland and care for their wellbeing. However, they did express serious doubt about the possibility of realizing these policies due to Stora Enso’s strong presence in Hepu, and its influence over local policy.

H. Women’s forestland rights

Although Stora Enso’s land acquisition naturally affects both men and women, we questioned whether the acquisition had affected men and women differently, and if so, how.

In each village we visited, we interviewed both men and women. Most women interviewed had very limited information about what happened to the forestland in their villages, as compared to male interviewees. They were not clear about Stora Enso's land acquisition in their villages and appeared unaware of their own forestland rights. In contrast, male villagers we interviewed had much more information regarding details of the forestland transaction. This lack of adequate information prevents women from making informed decisions on the crucial issues affecting their land and livelihoods.

In most villages we visited, women also appeared insufficiently represented in the decision making process of forestland transaction. Indeed, there were no female representatives in any village collective we visited.⁵ Thus, women appeared to be significantly marginalized in the decision making process. Their interests are therefore not likely to be considered, and their rights more likely to be violated.

In two of the 12 villages visited, women were excluded from distribution of the rent paid to the village collective by Stora Enso or intermediaries if the woman's marital status changed or her official residential registration changed. For example, in at least one village visited, village rules excluded the following groups of women from receiving rent: women who married out to other villages before June of the year the rent is due; women who had married into the village but had not changed their residential registration to the village; women who married into the village but got divorced within six months; and divorced women who had remarried a non-villager for more than six months.

Neither in the briefing, nor in the documents Stora Enso officials provided us, did we find any company-wide measures to ensure women's rights during Stora Enso's forestland acquisition. Even in relation to a 19-point screening list designed to review all contracts for possible defects (see below), we did not find any targeted measure to ensure women have access to information, actively participate in the decision making process, or derive equal economic benefits from the forestland acquisition.

III. Analysis

Stora Enso has publicly stated its commitment to strictly following Chinese laws, regulations and central policies in its land acquisition program in China. This section provides a comparative analysis of the practices we uncovered in our research against the Chinese relevant regulatory framework and internationally accepted CSR standards.

⁵ Chinese laws require that at least one-third of the villagers' representative assembly be female (Organic Law of the Villagers' Committee, 2010, art. 25).

A. Assessment of the contract screening and correction mechanism

To investigate the legality of its existing acquisition contracts, Stora Enso designed a screening list consisting of 19 issues that the contract screener must check against all existing contracts. Only a contract that passes the 19-point screening can be accepted as qualified. If it fails on one or more points, the contract correction process is triggered. While all these 19 points are valid, the list fails to include some important protections present in existing laws, regulations and central policies regulating collective forestland transfers in China.

First, the screening list is designed based on a seemingly incorrect assumption that all forestland rights acquired by Stora Enso are rights to collectively managed forestland. While most of the land to which Stora Enso acquired use rights may be under collective management, it is indisputable that some land was allocated to individual farmer households for private use, such as private mountain rights, prior to the Stora Enso acquisition. Under Chinese law, transfer of such individual rights must proceed through negotiation between Stora Enso and the farmer transferee and must be witnessed with a contract signed by the latter. The two-thirds consent rule, the only point in the list for checking procedural compliance in the contracting process, simply does not apply to a transaction involving individual forestland rights. However, the 19-point list does not ask whether the contract for screening includes individual land rights, and does not refer to any process for evaluating such transfers.

Second, compulsory transactions are a key source of contract illegality, but the screening list does not address this issue. Most farmers reported coercive acts when local governments seized collective forestland for Stora Enso plantations. Such actions alone are sufficient to trigger concerns regarding the illegality and therefore invalidity of land deals local governments obtained for Stora Enso because Chinese laws and the central policies are crystal clear in prohibiting coercive transactions of farmers' forestland rights.

Third, women's rights to collective forestland appeared to be completely ignored in the screening process. Our findings indicate that rural women were unaware of Stora Enso's acquisitions and did not participate in decision making on the transfer of village land to Stora Enso, although the majority of rural women economically depend on farming, including forest farming. Stora Enso vows to respect human rights, including women's rights, in its corporate social responsibility commitments, and it is therefore very puzzling why its screening process does not give special attention to the issue of treating women fairly. Moreover, the IFC, which finances Stora Enso's Guangxi operation, requires its client to consult both men and women in separate forums if necessary when the project is expected to generate impacts on local communities (International Financing Corporation, 2012). The failure to include consultations with

women in its contract screening process seems to suggest Stora Enso's ignorance of this obligation to its financial supporter.

Fourth, the list does not include an item for checking whether farmers actually receive contractually mandated compensation. As stated above, Chinese law mandates that rural land, including collective forestland, is owned by members of a collective. Central policies further require that property interest to collectively managed forestland be allocated to farmer owners in the form of shares because the collective entity, be it a village committee or other administrative body, maintains no property interest in the land. Naturally, all compensation paid by Stora Enso should go to every household either on an egalitarian basis or in accordance with household share value. Farmers in many villages complained to us that they did not receive the rent for the land Stora Enso acquired. Although it is not entirely clear why this happened, interception or embezzlement of funds by village cadres or township government (or both) cannot be ruled out. Moreover, when farmers do not receive rent, they tend to accuse Stora Enso of non-payment, causing damage to the company's reputation.

B. Acquisition of individual forestland rights

While most of the forestland rights Stora Enso has acquired since its Guangxi operation appear to be collective forestland under collective management, there is ample evidence that the Stora Enso acquisitions also includes individual forestland rights, such as rights to private mountains. In two villages, farmers reported transfers of their private mountains rights to Stora Enso despite their resistance.

As a prestigious company with a strong legal team and CSR protocols, Stora Enso either knows, or should be aware, that its acquisition of collective forestland would most probably include farmers' private mountain rights. It appears that either in its initial acquisition or subsequent contract screening, Stora Enso did not scrutinize its forestland deals to determine whether private mountain rights might be involved. For example, while its 19-point screening manual does include rights to "ancestors' mountain" as a screening criterion, it fails to screen for private mountain rights, rights to self-developed wasteland or other allocated land rights. Although the screening manual does require its contract screeners to check for the compliance with the two-thirds consent rule in the village, it ignores the fact that the rule does not apply to transactions involving private mountain rights.

Stora Enso seems to be operating under the assumption that farmers' individual land rights are under a title registration system⁶ such that the absence of a land rights certificate meant a lack of household land rights. Such assumption is clearly a misunderstanding of Chinese law.

With respect to rural land rights, China does not operate by way of a title registration system. Rather, farmers' rights are created through the allocation of collectively owned land to individual households through household contracting rather than registration and certification. The RLCL states that individual land rights are created when land is allocated to individual households at the time of household contracting (Rural Land Contracting Law, 2002, art. 22). Although local government at the county level or above is asked to register such land rights and issue land certificate covering them, registration and certification are merely processes to reaffirm such land rights (art. 23). Even the 2007 Property Law, which establishes a rule of "no registration or certification, no rights", creates a clear exception to this uniform rule for farmers' individual land rights. The law provides that land rights do not become valid and effective until they are registered by government, except for land rights otherwise regulated under other laws (Property Law, 2007, art. 9). Based on a synthesized reading of all these laws, it is clear that the existence of individual land rights does not depend on the issuance of land certificate by government and the possession of the land certificate by individual farmer households.

C. BHC activities and Stora Enso liabilities

During this round of field research, eight out of 12 villages reported coercive transactions, including two villages where violent confrontation was triggered by the Stora Enso's forestland acquisition between farmers refusing to transfer their forestland rights and township governments seizing the land on Stora Enso's behalf.

We did not find any evidence that Stora Enso itself was physically involved in these coercive transactions. It is important to note, however, that Stora Enso is the direct beneficiary of such coercive acts conducted by local governments in cooperation with the Beihai Forest Investment Company (BHC), a state owned company created in 2006 for the sole purpose of acquiring collective forestland rights for Stora Enso (United Nations Development Programme, 2012). Moreover, in an official letter to Stora Enso in 2006,

⁶ The title registration system, also called the Torrens system, is a land registration institution under which the competent government authority registers ownership of land and issues a land certificate of title to the owner of the land upon the registration. The certificate is legally defined as the conclusive evidence of land ownership, thus creating a legal rule that a land right does not become legally valid until and unless it is registered and issued with a title certificate. This type of system is used in many countries, including Germany, Australia and some US states and Canadian provinces.

the Beihai Municipal Government made a commitment to provide 600,000 mu of forestland for Stora Enso plantations, most of which would be collective forestland located in Hepu County.

A case can be made that BHC acquired forestland as a de facto agent of Stora Enso. Given the official commitment by the Beihai Municipal Government, the creation of BHC for the sole purpose of acquiring collective forestland for Stora Enso, and the status of Stora Enso as the sole beneficiary of the BHC activities, an agency relationship between Stora Enso and BHC can hardly be excluded.⁷ If an agency relationship can in fact be established, Stora Enso must be liable for any illegal action taken by BHC. Under the General Principles of Civil Law of China, the principal bears civil liability for the agent's act of the agency (General Principles of Civil Law, 1986, art. 63). If the principal is aware that the agent's acts are illegal, but fails to object to them, the principal and the agent shall be held jointly liable (art. 67). Stora Enso is ostensibly aware of all Chinese laws governing transfer of collective forestland rights and is aware of illegal acts performed by BHC, its apparent agent, because of extensive coverage of BHC's illegal acquisition on behalf of Stora Enso (Tuohinen, 2009; Eronen & Rantanen, 2009; Green Peace, 2005). Such knowledge and Stora Enso's acceptance of what BHC acquired for it at least establish a prima facie evidence that Stora Enso is liable for BHC's land acquisition activities and such liability can hardly be denied by simply asserting its physical non-involvement.

Even if an agency relationship cannot be established between BHC and Stora Enso, Stora Enso may still be held accountable. To clear itself from liability for illegal activities conducted by BHC, Stora Enso would have to establish that it is a good faith purchaser of what BHC has acquired on its behalf. Under Chinese law, if a purchaser of immovable property pays a reasonable price and takes the property in good faith believing that the seller had the asserted legal rights to the property, the purchaser takes the property free of any claims against the rights of the seller (Property Law, 2007, art. 106). In China, a good faith purchaser is a person who "has no knowledge of the relevant facts sufficient to influence the legal effects and has no fault with respect to having no knowledge" (Legislative Work Commission of the National People's Congress of China, n.d.). That is to say, a good faith claim must fail if the purchaser knows or should know the illegality of the subject property.

Stora Enso did not directly tell us whether they were aware of any issue with the underlying transactions between BHC and affected farmers. However, our findings suggest cause for concern. Various farmers interviewed reported having contacted Stora Enso employees regarding rights violations in their forestland transactions. Moreover, the media, including that in Finland where Stora Enso's headquarters

⁷ Agency is a relationship between two natural or legal persons, by agreement of otherwise, where one (the agent) may act on behalf of the other (the principal) and bind the principal by words and actions.

is located, has reported violence in several villages caused by allegations that land was taken from the farmers for Stora Enso's operations without the farmers' consent (Tuohinen, 2009; Eronen & Rantanen, 2009; Green Peace, 2005). If indeed the company's response was to deny responsibility based on the lack of a contractual relationship between Stora Enso and the farmers, the company may have too narrow an understanding of the scope of its legal obligations under Chinese law.

D. Forestland acquisition under the forest reform

Although the collective forestland reform was reportedly launched in Hepu County in 2009 and completed in 2011, our findings indicate that in 11 of the 12 villages we visited the forest reform was not carried out at all. Collectively managed forestland was not allocated to individual households, and farmers did not receive forest rights certificates. Such non-implementation raises new questions for Stora Enso's forestland acquisition in the future.

The central policies are very clearly stated: collectively managed forestland shall not be transferred to a non-villager in large scale before it is allocated to individual households unless the transfer is absolutely necessary; even if a proposed transfer is qualified as absolutely necessary, an asset evaluation must be conducted (State Forestry Administration, 2009, sec. 7). In addition the Guangxi provincial government has tightened the restriction by explicitly prohibiting transfer of use rights to collective managed forestland before the forest reform is complete, requiring post-reform transactions through competitive bidding or auction, and mandating a 30-day advance notification of villagers (Guangxi Zhuang Autonomous Region People's Government Provisions Measures on Management of Transfers of Collective Forest Rights, 2011, arts. 12, 22).

If Stora Enso upholds its commitment to compliance with laws and regulations of its host country, the Chinese government's central policies mandate that future acquisition of collective forestland can only be conducted after the land is allocated to individual households and evidenced with forest certificates issued to the households. In other words, Stora Enso must acquire the land through direct contracting not with rural collectives, but with individual households.

Transfer of individual forestland rights is significantly different from transfer of collective managed forestland rights. Once the land is allocated to individual households, it becomes individual farmers' property rights. With respect to transfer of individual property rights, the rules of two-thirds consent and "minority submitting to majority" are not applicable; it is entirely up to the individual farmer transferor to decide whether, when, and under what terms to transfer his or her forestland rights. If a farmer refuses to transfer, no one can force him or her to do otherwise. Moreover, if the farmer transferor agrees to the

offer by Stora Enso, the land transaction will not be completed until Stora Enso and the transferor enter into a binding contract containing at least all the required elements of the RLCL.

IV. Recommendations

Based on the analysis of our findings about Stora Enso's forestland acquisitions in Hepu in light of the Chinese regulatory framework governing collective forestland rights, we offer the following recommendations for Stora Enso to further improve forestland acquisition practice. Although these recommendations are made for Stora Enso, they may also be applicable for other companies that have acquired or plan to acquire farmers' land rights in China because the issues identified and analyzed in the paper are similar in most land based investments by corporations in China.

A. Design and implement a more pro-farmer contract screening and correction process

Setting up a contract screening and correction process demonstrates Stora Enso's acknowledgment of irregularities in its collective forestland acquisition and its determination to successfully address these problems. While recognizing Stora Enso's good will, we recommend that the company embrace a more pro-farmer approach in designing and implementing this process for existing and future acquisitions.

First, the screening process should examine existing contracts to see whether the contract with the village collective includes individual land rights allocated to individual households either in the form of household contracting rights or in the form of private mountain rights, and propose measures to address the issue if the contract does encompass individual rights.

Second, the screening list should be redesigned for any future acquisitions with both men and women in mind, acknowledging the gendered impacts of Stora Enso's current practices. International CSR standards, including those publically accepted by or imposed on Stora Enso, require paying special attention to women's rights. Thus, Stora Enso's list should reflect these internationally accepted standards and include examination of whether women's forestland rights and their right to decide transfer of collective forestland rights are infringed upon, and if yes, how the problems should be resolved.

Third, the screening and correction process should include checking and recording farmers' receipt of whatever compensation Stora Enso pays to rural communities for the land it has acquired.

Fourth, when conducting screening and correction, Stora Enso should pay greater attention to farmers' active and engaged participation in the process.

B. Strictly follow laws and the central policies in the event of future land acquisition

According to the arrangement made between Stora Enso and the Beihai Municipal Government, Stora Enso will continue acquiring as much as 270,000 mu of collective forestland once the 2009 moratorium is lifted. If Stora Enso does indeed acquire this or any other land, future land acquisitions would be expected to come from individual households because of implementation of the mandated forest reform that is designed to individualize collective-managed forestland. Acquisition of individual forestland rights obtained through the forest reform requires: (1) voluntariness, with compensation and in accordance with law, (2) arms-length negotiation with the farmer transferor, and (3) a written transfer contract with each individual household transferor who is willing to lease its forestland rights to Stora Enso. Even if some of its future acquisitions are qualified as “absolutely necessary” to exempt the forestland reform process to individualize collective managed forestland, Stora Enso is subject to rules that require: (1) a 30-day advance notice, (2) a forest asset evaluation, (3) two-thirds consent of affected villagers, (4) competitive bidding or auction, and (5) priority rights for villagers. Therefore, we strongly recommend that Stora Enso conduct any new acquisition in an equitable and lawful manner from the very beginning. That is, even if land acquisition becomes inevitable from the company’s perspective, it must be done correctly and in compliance with all requirements under the existing regulatory framework.

C. Pay rent directly to individual households

Many farmers complained that they had not received payment of rent for the forestland rights transferred to Stora Enso. Based on Landesa’s research in many parts of the country, it is not uncommon for collective entities and township governments to intercept or embezzle the compensation for land expropriation paid by the state, despite the legal mandate that the farmers, as rightholders, receive rent payments. The primary reason is that the compensation is not made directly to affected farmers; instead, it is made to collective entities or township governments, apparently with the assumption that the collective entities and township governments will fulfill their duty and distribute the fund among all affected farmers.

To ensure benefits are channeled directly to farmers, we recommend that the company explore ways to directly disperse rental payments to individual households according to the household’s share of the collective forestland determined at the villager conference. Stora Enso could work with local government to establish an individual account for each of the affected farmer households and arrange for depositing the rent directly into these individual accounts.

D. Further improve grievance mechanisms to effectively address farmers' concerns

In our 2010 report, we recommended that Stora Enso set up an internal dispute resolution system and improve the performance of its hotline. Not much progress was made in this regard. During our field research in 2013, farmer interviewees reported not being aware of the hotline, and even when farmers visited the Stora Enso's office in Hepu with their complaints, the company redirected them to local government. Stora Enso should make greater efforts in improving its grievance mechanism.

First, the existing hotline is a good tool, but it is essentially useless if most farmers are not aware of its existence. Farmers in most villages we visited expressed dissatisfaction, frustration and anger over forestland acquisition by Stora Enso, by BHC on behalf of Stora Enso or by intermediaries that eventually subleased the land to Stora Enso. It appears unimaginable under such a context for a hotline operating 24 hours a day, seven days a week to receive only 57 calls per year, and just eight calls from farmers. Stora Enso should widely distribute the hotline card that contains the contact information, and the company should encourage farmers to call the hotline when they have complaints. The hotline operators should be trained with CSR guidelines and Chinese laws on rural land rights and transfers, their performance should be reviewed periodically based on the feedback from farmer callers, and their compensation could even be tied to their performance.

Second, Stora Enso could conduct an independent review of most frequently reported complaints based on the phone log of the hotline and invite frequent callers to the review meetings. The company could take immediate actions if the dispute can be resolved internally, or could pass the complaint to local government with the company's suggested approaches if the dispute is related to government conduct.

Third, Stora Enso could design a "publicity pamphlet"⁸ that describes farmers' land rights under the law in a concise and farmer-understandable language and include the hotline number and the address of the company's dispute resolution unit. The company could distribute this pamphlet widely together with the hotline contact information card in areas where Stora Enso acquisitions have occurred or will occur, and could widely publicize the pamphlet through local media.

Fourth, Stora Enso should proactively improve performance of its dispute resolution unit by training the staff on the company's CSR standards and Chinese laws, regulations and the central policies on farmers' forestland rights, and provide staff with skills to deal with complaints. If the complaint is beyond their

⁸ In our fieldwork several years ago in many places of China, we found such publicity pamphlet on rural tax reforms, printed on a piece of durable paper, which proved to be extremely useful for farmers to understand their rights under the tax reform and the way to communicate with local government with respect to local implementation of the central policy on the tax reform.

authorized response scope, they could still provide advice on what farmers' rights are under the law and refer them to a higher level of management. Even when farmers' complaint is related to government actions, they could help farmers arrange meetings with relevant government agencies.

V. Conclusion

For Stora Enso, adapting its forestland acquisition to the sweeping forest reform is undoubtedly a new task. Tailoring its land acquisition program within this new regulatory framework will not only respect and strengthen the rights of a vast number of farmers, but also help Stora Enso explore a socially responsible way to create a business model that facilitates the company's growth, and results in genuine improvements to the livelihoods of local communities in southern China as well.

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