

# Annex I – Background information on the conflict in the Malen Chiefdom<sup>1</sup>

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SOCFIN leased 6.500 hectares of agricultural land in Malen Chiefdom for a period of 50 years, with the option of renewal for additional 25 years. First, the land was leased by the Minister of Agriculture, Forestry and Food Security (MAFFS) on behalf of the Central Government from the traditional authorities and land owners of the Malen Chiefdom on March 5th 2011. This so-called “head lease” was signed by the Paramount Chief BVS Kebbie and 28 land owners. MAFFS then subleased the land to SOCFIN on the same day.

From the outset, the communities denounced this agreement as illegitimate. In a letter of the local organisation called “Malen Affected Land Owners and Land Users Association” (MALOA) dated October 2nd 2011, it was highlighted that *“The Paramount Chief, Hon. P.C BVS Kebbie, instructed the chiefs and land owners to thumbprint documents and repeatedly told them that they will lose their land even if they didn’t sign or accept the compensation. This and the presence of armed police in a public meeting in Sahn intimidated chiefs and land owners to thumbprint a document and accept the ‘shake hand’ and compensation. Some villages rejected the money”*<sup>2</sup>. A legal analysis of the land lease agreement, commissioned by the German NGO Welthungerhilfe also questioned the legality of the land deal under Article 21 of the Constitution of Sierra Leone<sup>3</sup> (Protection from deprivation of property) and the Provinces Land Act (CAP 122)<sup>4</sup>. The legal analysis concluded that *“there are strong indications that due to legal inconsistencies the signed lease agreements are in effect voidable”* and that there is *“an urgent need for a review and amendments of both the lease and the sub-lease agreement so as to ease the tension and to prevent the tension generating a conflict that would likely escalate”*<sup>5</sup>.

In the above-mentioned letter, the members of MALOA expressed their main grievances to the local and national authorities. These included: inadequate consultation, lack of transparency, inadequate compensation, high levels of corruption, destruction of livelihoods of landowners and land users, appalling working conditions for labourers working in the plantation, lack of proper documentation of financial transactions with landowners, non-payment of compensation to landowners of land leased to the former Sierra Leone Produce Marketing Board (SLPMB), failure of the company to mark the boundaries of family lands before clearing, and destruction of the biodiversity of ecosystems, etc.<sup>6</sup>

These serious grievances have not been adequately considered and addressed by the authorities, which should have reviewed the terms of the lease agreement and properly regulated SOCFIN’s activities. Instead, SOCFIN has acquired more land in the Malen Chiefdom. The exact same process of land acquisition, which the communities have denounced since the beginning, has been applied for

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1 SOCFIN was contacted about factual correctness before the release of this letter. In their reply they stated that : *« it is a collection of old biased information,(...) to which our position as Socfin has been made clear years ago.»* SOCFIN also refused to respond to several clarifying questions that were asked about the investment project in the Malen Chiefdom.

2 MALOA, “Grievances of land owners in Malen Chiefdom”, 02 October 2011, available upon request.

3 The constitution of Sierra Leone, 1991, <https://www1.umn.edu/humanrts/instreet/SCSL/SierraLeoneConstit.pdf>

4 P. JOHNBULL, « A LEGAL ANALYSIS OF THE LEASE AGREEMENT BETWEEN THE GOVERNMENT OF SIERRA LEONE AND THE TRIBAL AUTHORITIES OF THE MALEN CHIEFDOM PUJEHUN DISTRICT, SOUTHERN PROVINCE OF THE REPUBLIC OF SIERRA LEONE », 2011.

5 P. JOHNBULL, 2011.

6 MALOA, “Grievances of land owners in Malen Chiefdom”, 02 October 2011, available upon request.

the three subsequent lease agreements that SOCFIN stated to have contracted with MAFFS<sup>7</sup>. As of April 2016, SOCFIN claims to hold 17,724 ha (43,796 acres) of land in the Malen Chiefdom, of which 12,557 ha have already been planted with palms<sup>8</sup>. The planted area already exceeds the terms of the Memorandum of Understanding (MoU) signed between SOCFIN and the Government of Sierra Leone in September 2012, fixing a limit on the size of cultivated plantation to 12,000 ha<sup>9</sup>. The project currently affects around 28,135 people in 61 villages<sup>10</sup>.

Throughout the years, numerous reports from local<sup>11</sup> and international NGOs<sup>12</sup> as well as several academic researchers<sup>13</sup> have highlighted the negative impacts of the SOCFIN investment on the communities. The grabbing of the land by SOCFIN has deprived the affected communities from their main source of income and livelihood. As reports demonstrate:

- Smallholders have lost their access to upland on which they heavily depend to cultivate a large variety of medicinal plants, trees and crops including: rice (the staple food) and other cereals, legumes, tubers, oil seeds, vegetables, fruits for the food security of their family and the community<sup>14</sup>;
- farmland is also important to cultivate trees (like kola nuts, oil palms, coffee, cocoa, etc.) whose products represent the main source of income of rural families;
- communities have also lost their access to fallow bush areas on which they rely for a wide range of foods including wild fruits, honey, bush yams and especially bush meat, which is an important source of protein<sup>15</sup>;
- communities are now heavily dependent on food markets where an increase in prices occurs, partly due to the commercial activity of the company in the area<sup>16</sup>.

Therefore the reports converge in concluding that: *"The conversion of land to industrial plantations has led to a dramatic reduction in food crop production, access to food, and access to the full variety of foodstuffs that [communities enjoyed] before the investors came. The results are most evident in the reduction of the number of meals that households (...) said they consume every day. (...) The quality of the meals had also deteriorated."*<sup>17</sup>

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7 SOCFIN has now 4 lease agreements for zones A, B, C and D. See: Sierra Leone Agricultural Company (SAC), Sierra Leone, « Environmental and Social Due Diligence Assessment », July 2015. [http://ifcext.ifc.org/ifcext/spiwebsite1.nsf/0/5E6E5F39E02C653785257E930077B7DE/\\$File/Socfin%20ESDD%20SAC%20ERM%20Report%20Final%20v2.0%2031Jul15.pdf](http://ifcext.ifc.org/ifcext/spiwebsite1.nsf/0/5E6E5F39E02C653785257E930077B7DE/$File/Socfin%20ESDD%20SAC%20ERM%20Report%20Final%20v2.0%2031Jul15.pdf) (consulted 05/04/2016). However, during a research mission in Freetown by FIAN Belgium and Green Scenery in April 2016, it was not possible to find the lease agreements for zones C and D at the Registrar General. A specific request was made to SOCFIN to receive a copy of the lease agreements. SOCFIN didn't reply.

8 SOCFIN, « Sustainability report 2015 ».

9 Memorandum of Understanding and Agreement signed on September 24th 2012. It should be noted that this MoU specifying the respective obligations between SAC and the Government was signed more than 1,5 year after SOCFIN started its operations.

10 Sierra Leone Agricultural Company (SAC), Sierra Leone, « Environmental and Social Due Diligence Assessment », July 2015, p.11.

11 Green Scenery, «The Socfin Land Deal Missing Out on Best Practice: Fact finding Mission to Malen Chiefdom, Pujehun District, Sierra Leone,» May 2011.

12 G. Melsbach and J. Rahall, "Increasing Pressure for Land: Implications for Rural Livelihoods and Development Actors. A Case Study in Sierra Leone", Deutsche Welthungerhilfe e.V, October 2012 ; Oakland Institute, «SOCFIN Land investment in Sierra Leone», Land Deal Brief, April 2012 ; FIAN Belgium et al. « Résistances locales contre l'huile de palme en Sierra Leone », Bruxelles, Juin 2013 ; J. Baxter, "Who is Benefiting? The social and economic impact of three large-scale land investment in Sierra Leone: a cost-benefit analysis", ALLAT, July 2013.

13 G. T. Yengoh and F.A. Armah (2014), « Land access constraints for communities affected by large-scale land acquisition in Southern Sierra Leone », GeoJournal, Volume 81, Issue 1, pp. 103-122.

14 J. Baxter, "Who is Benefiting? The social and economic impact of three large-scale land investment in Sierra Leone: a cost-benefit analysis", ALLAT, July 2013.

15 ibidem

16 G. Melsbach and J. Rahall, "Increasing Pressure for Land: Implications for Rural Livelihoods and Development Actors. A Case Study in Sierra Leone", Deutsche Welthungerhilfe e.V, October 2012.

17 J. Baxter (2013), p. 51

Reports also show that beyond agricultural production, the investment has negative impacts on other land uses that are vital for the socio-cultural, economic and environmental realities of the communities, such as access to charcoal and firewood, herbal medicines, construction materials and fibre, sacred forests, cemeteries, etc.<sup>18</sup> They also note that SOCFIN does not respect the minimum requirement of “buffer zones” between the villages and the plantations<sup>19</sup>, and that SOCFIN has not implemented the outgrower scheme as it was promised in the environmental and social impact assessment report and in the MoU<sup>20</sup>. In addition, reports document appalling working conditions<sup>21</sup>, lower school attendance due to loss of income and new social problems, including broken marriages, more unwanted pregnancies, increased incidences of theft, excess drinking and sex work<sup>22</sup> linked to the activities of SOCFIN.

Facing this situation of despair, the communities started to protest against the company. The protests were sometimes violently repressed by the local police, even using live bullets<sup>23</sup> and dozens of people were arrested and put in jail. MALOA members report that they are not allowed to meet and assemble peacefully in the Malen Chiefdom and that they were prevented from presenting their grievances to local authorities by the police. The criminalisation of land rights defenders culminated when six executive members of MALOA were arrested in October 2013 and charged for serious crimes of “conspiracy”, “incitement”, and “destruction of growing plants” for allegedly brushing palm oil plants belonging to SOCFIN. Although they denied the allegations, and despite the absence of clear evidence<sup>24</sup>, all six were found guilty to the above mentioned charges by the High Court of Justice on February 4th 2016. MALOA’s spokesperson, Mr. Shiaka Sama was sentenced to pay a fine of 60,000,000 Leones (approx. 13,400 euros) or face six months of imprisonment. The five other members were sentenced to pay a fine of 30,000,000 Leones (approx. 6,700 euros) each, or face five months of imprisonment. Owing to the solidarity funds raised by the communities, local civil society organisations and international solidarity, the six MALOA members were able to pay their fines and were released between February and May 2016.

Several attempts were made to find a peaceful solution to the conflict. Since 2011, a national NGO, Green Scenery, has been providing support to the communities and formulated recommendations on several occasions to solve the conflict. The communities have been further supported by local CSOs and a broader coalition of national NGOs gathered in the “Action for Large Scale Land Acquisition Transparency” (ALLAT) as well as by international NGOs, asking for the protection of the rights of the communities and a review of the land deal. In December 2012, the communities submitted a petition to the Human Rights Commission of Sierra Leone (HRC). Following this complaint, the HRC dispatched several fact finding missions to the area and decided to initiate a mediation process engaging all actors. A draft agreement was submitted to the parties in June 2013, and a follow-up meeting was held in November 2013. Unfortunately, the mediation could not be concluded due to the absence of the Paramount Chief, the Minister of Agriculture, Forestry and Food Security and the Minister of Justice<sup>25</sup>. Different testimonies from members of the HRC and CSOs also refer to SOCFIN’s lack of collaboration to allow for peaceful mediation in the Malen Chief-

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18 G. T. Yengoh and F.A. Armah (2014)

19 G. T. Yengoh and F.A. Armah (2014)

20 « SAC does not work with outgrower », see Sierra Leone Agricultural Company (SAC), Sierra Leone, « *Environmental and Social Due Diligence Assessment* », July 2015, p.11. Clarifying questions about the (non implementation of the) outgrower scheme were asked to SOCFIN in a letter by FIAN Belgium in May 2016. No answer was provided.

21 Oakland Institute (2012) and G. Melsbach and J. Rahall (2012). An update about the working conditions was supposed to be realised during a research of FIAN Belgium and Green Scenery in April 2016. But the research mission was prevented to enter the Malen Chiefdom by a restriction order of the Assistant Inspector General of Police.

22 J. Baxter (2013)

23 Green Scenery, « *Report on the incident of police arrest and highhanded measure of fifty seven citizens in Malen Chiefdom, Pujehun district* », January 2014

24 Testimonies in the verdict confirm that no witnesses were able to identify the suspects.

25 Human Rights Commission, « *Annual report 2013* », p.37.

dom<sup>26</sup>. In March 2014, Green Scenery facilitated a joint mission of the Parliamentary Committees on Land and Agriculture to the Malen Chiefdom. The mission aimed at collecting testimonies from the various actors and facilitating a dialogue. However, during the opening meeting in Malen, the mission was disrupted by some members of the delegation under the pretext that the lease agreement was not made available to them<sup>27</sup>. The Parliamentary visit did not result in any concrete recommendations. In April 2016, a joint research mission by Green Scenery and FIAN Belgium, an international human rights organisation, was prevented from visiting the communities due to a restriction order of the police referring to unspecified “security reasons”<sup>28</sup> and further requiring specific clearance from the Ministry of Foreign Affairs in order to proceed with the research mission.

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26 Testimonies collected during a research mission by FIAN Belgium and Green Scenery in Freetown and Bo in April 2016.

27 Green Scenery, « *Parliamentarian Engagement/Visit to Sahn Malen Chiefdom, Pujehun District* », 14th – 16 th March 2014, Activity report.

28 « *Presidential Visit: Police prevent human Right Organization visiting Pujehun until after 8th April* », April 4th, <https://ishmaeldumbuya.wordpress.com/2016/04/04/police-prevent-human-right-organization-visiting-pujehun-until-after-8th-april/> (accessed on 10/06/2016)

# Annex II – Human Rights Obligations of the Government of Sierra Leone

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According to national and international human rights law, the Government of Sierra Leone has the obligation to respect, protect, and fulfil the human rights of its citizens with special attention to marginalised and disadvantaged groups, such as the rural communities in Malen, and especially women and children.

Main obligations and relevant instruments include:

- The protection of the human right to food and nutrition as enshrined in the Constitution of Sierra Leone (article 7.1.d) and in article 11 of the [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR), and further explained in the [General Comment n°12](#) of the Committee on Economic, Social and Cultural Rights<sup>29</sup> and the [“Voluntary Guidelines to support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security”](#)<sup>30</sup>.
- The protection from deprivation of property and protection of access to land and land rights as recognised in the law of Sierra Leone (Constitution of Sierra Leone, article 21 and the Province Land Act, CAP 122), The [African Charter on Human and Peoples’ Rights](#) (article 21.1), and in the [Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security](#) (VGGT)<sup>31</sup>. The commitment of the Government of Sierra Leone to protect land rights and to implement the VGGT was recently reaffirmed in the process of elaboration of the National Land Policy and in the “Land Partnership” signed in December 2015 between the Government of Sierra Leone, the FAO, and the Government of the Federal Republic of Germany.
- The protection of the freedom of expression and of association and assembly as recognised in article 15(b) of the Constitution and in the [African Charter on Human and Peoples’ Rights](#) (articles. 10 and 11).
- The protection of human rights defenders as recognised in the [“Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”](#)<sup>32</sup> and in the [Resolution on the Protection of Human Rights Defenders In Africa](#)<sup>33</sup> and recently re-emphasised in a Resolution of the Human Rights Council “Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights”<sup>34</sup>.

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29 UN Doc E/ C.12/1999/5

30 <http://www.fao.org/docrep/009/y7937e/y7937e00.htm>

31 Especially § 3.1 on the general principles; § 4.4, 5.3, 8.2 and 8.3 on the recognition and protection of customary rights; § 4.8 on the protection of the defenders of the rights to land, fisheries and forests; § 4.9 on access to justice; §12 on investments and § 21 on resolution of disputes over tenure rights.

32 UN Doc A/RES/53/144

33 African Commission on Human and Peoples’ Rights meeting at its 35th Ordinary Session held from 21st May to 4th June 2004, in Banjul, The Gambia

34 UN Doc A/HRC/31/L.28