

Case Report 2019

Land Grabbing for Palm Oil in Sierra Leone

Analysis of
the SOCFIN
Case from
a Human
Rights
Perspective



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List of Acronyms

ACHPR – African Charter on Human and Peoples’ Rights

CEDAW – UN Convention on the Elimination of Discrimination Against Women

CESCR – UN Committee on Economic, Social and Cultural Rights

CFS – UN Committee on World Food Security

CRC – UN Convention on the Rights of the Child

CSR – Corporate social responsibility

EIA – Environmental Impact Assessment

EISHIA – 2011 Environmental, social and health impact assessment carried out by STAR Consult on behalf of SOCFIN

EPA – Environmental Protection Agency of Sierra Leone

FAO – Food and Agriculture Organization of the United Nations

FFM – Fact-finding mission

FPIC – Free, prior and informed consent

GOSL – Government of Sierra Leone

HRC – Human Rights Commission of Sierra Leone

ICCPR – UN International Covenant on Civil and Political Rights

ICESCR – UN International Covenant on Economic, Social and Cultural Rights

LUC – Local Unit Commander of the Sierra Leone Police

MAFFS – Sierra Leone Ministry of Agriculture, Forestry and Food Security

MALOA – Malen Affected Land Owners and Land Users Association

MoU – Memorandum of Understanding and Agreement 24 September 2012

NGOs – Non-governmental organizations

NLP – Sierra Leone National Land Policy 2015

OSD – Special Operations Unit of the Sierra Leone Police for the Malen Chiefdom

SAC – SOCFIN Agricultural Company Sierra Leone Ltd

SLIEPA – Sierra Leone Investment and Export Promotion Agency

Tenure Guidelines – Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

UN – United Nations

UNDP – United Nations Development Program

UNESCO – United Nations Educational, Scientific and Cultural Organization

YASAC – Youth Affected by SAC

WFP – World Food Program

FIAN's Mandate

FIAN international is an international human rights organization that has advocated for the realization of the right to adequate food for more than 30 years.

FIAN's mission is to expose violations of people's right to food wherever they may occur. We stand up against unjust and oppressive practices that prevent people from feeding themselves. The struggle against gender discrimination and other forms of exclusion is integral part of our mission. We strive to secure people's access to the resources that they need in order to feed themselves, now and in the future. FIAN envisions a world free from hunger and malnutrition, in which every person fully enjoys all human rights, particularly the human right to adequate food and nutrition, alone, in association with others, or as a community, in dignity and self-determination.

In pursuit of this vision, FIAN follows a case-based human rights approach by documenting and analyzing concrete violations of the right to food. FIAN identifies and addresses human rights violations, interviews people threatened or affected by violations of their right to food, and verifies the facts of a situation. Face-to-face contacts with local counterparts are established and serve as a basis for trustful co-operation.

On the request of those affected, FIAN reacts quickly, analyses cases, and mobilizes members and supporters worldwide. Violations are also followed-up in long-term casework. In close co-operation with the affected communities, FIAN persistently approaches the responsible authorities and identifies breaches of obligations flowing from the right to food.

In 2011, **FIAN Belgium** was approached by communities in the Chiefdom of Malen, a Southern province of Sierra Leone, with a request for support.

In view of the involvement of a Belgian non-state actor in their case, and the clear and legitimate request for support from organized communities, FIAN Belgium has closely followed the Malen case since 2012.

This support has taken the form of three fact-finding missions in the Chiefdom, an in-depth and updated human rights-based analysis, raising human rights violations and abuses with authorities in Sierra Leone, Belgium and Europe, support for affected communities in their claims, media work, the organization of advocacy tours in Europe, and close cooperation with relevant local, national and international organizations working on the case.

This report forms an integral part of this support. It is based both on FIAN Belgium's investigative work, and on existing reports and publications from intergovernmental organizations, academics, journalists, NGOs and local organizations.

Executive Summary

Since the arrival of **multinational agribusiness company SOCFIN in 2011** as part of a large-scale investment in palm oil in the Southern Province of Sierra Leone, **social conflict has raged in the Malen Chiefdom**. SOCFIN is controlled by a Belgian businessman (Hubert Fabri) and the French group Bolloré, which has developed a business empire in many parts of Africa.

This **report** found that affected communities who have lost access to and control over their land have been exposed to **serious human rights violations and abuses** since 2011. Several issues emerged, spanning from the rights to land, food, water and a healthy environment, to workers' rights, women's rights, the rights of the elderly and the right to education. Added to this are serious **violations and abuses of civil and political rights**, including the rights to peaceful assembly and association, physical integrity and clear cases of criminalization of human rights defenders. The report also points to serious allegations of corruption, lack

of transparency and non-implementation of corporate social responsibility promises by SOCFIN.

The report paints a grim picture of a **profound, multi-faceted decline in the enjoyment of rights by local communities** as a direct result of the shift in control over land in Malen, and the subsequent development of SOCFIN's activities in the Chiefdom.

The report is based on three fact-finding missions carried out by FIAN Belgium in collaboration with local and national organizations, in 2012, 2016 and 2018. It analyses the land conflict in Malen Chiefdom from a **human rights perspective**, exploring the extent to which human rights are respected, protected and fulfilled, and the extent to which states and non-state parties have upheld obligations arising from international human rights instruments. It also draws on existing reports and publications from international human rights experts, local and international NGOs, academics and journalists.

BACKGROUND

On 3 March 2011, SOCFIN signed a lease agreement with the government of Sierra Leone to **acquire 6,500 hectares** of land in the rural chiefdom of **Malen**, in southern **Sierra Leone**. This followed a prior agreement signed by the local Paramount Chief and 26 landowners to cede their land to the government through the Ministry of Agriculture. These agreements marked the first step in the **large-scale seizure of land** by SOCFIN in Malen. In subsequent years, following two other lease agreements, the company has taken control of a total of **18,473 hectares** of the Chiefdom's 27,000 hectares of land, transforming **over 12,000 hectares** into industrial palm oil plantations. This concerns **more than 32,000 people** living in 52 villages located within the concession area.

From the outset, the **communities denounced the agreement as illegitimate**, insisting on the absence of their active, free, meaningful and informed consent. In the years that followed

the communities organized themselves into the Malen Affected Land Owners and Land Users Association (MALOA), and continuously called on the State of Sierra Leone and SOCFIN to recognize and counteract the negative impact of the land deal and the company's activities on their human rights. Their **grievances** include:

- A lack of consultation with landowners prior to the agreement of the land lease;
- Pressure, intimidation and threats aimed at coercing landowners to sign over their land;
- A lack of transparency and high levels of corruption in the land acquisition process and afterward;
- Inadequate compensation for land leasing and crops and non-payment or irregularities of annual rental payments;
- The failure of SOCFIN to mark boundaries of family land before its clearing, which prevents communities from reclaiming their land at the end of the lease;
- Extremely poor working

conditions on the SOCFIN plantation;

- The destruction of the livelihood of landowners in the area;
- The destruction of the area's ecosystems and the negative impact on its biodiversity.

In response, different state authorities took several initiatives in an attempt to find a solution to the conflict. These efforts, however, proved unsuccessful, largely due to a lack of political will. The change in government following the **2018 elections brought renewed hope for the conflict's resolution** since the resolution of Malen's land conflict was part of the new president's electoral promises. A new mediation process was initiated under the auspice of the Vice-President. Unfortunately, the conflict has escalated following a recent violent incident involving security forces, leading to the **killings of two villagers** and the consecutive arbitrary arrests of community people and MALOA leaders. This report aims to **contribute to solving this conflict by applying the lens of international human rights law to the situation**.

KEY FINDINGS:

The Right to Adequate Food and Nutrition:

Communities have lost their access to farmland, preventing them from growing their own food and other cash crops. Following the arrival of SOCFIN, the diversity and quality of food consumed by the Malen communities dramatically decreased. In many households, the number of meals consumed daily dropped from between 2-3 per day to 1-2. In the absence of cash crop sales, higher commodity prices on local markets, and increased expenditures on food, a decrease in household income has resulted in lower purchasing power. Promises of mitigation measures made by SOCFIN to ensure food security are not adequate or simply not respected. Villagers are complaining about the following: the 'buffer zones' (or 'green belts') between plantation and villages are not sufficient for gardening and are usually under the 500m promised; inland valley swamps let out to communities are unsuitable for cultivation because of chemical pollution; the smallholder out-grower scheme (budgeted at \$2,608,000) was never implemented; and other alternatives financed by the company's corporate social responsibility program (namely the 600-acre rice project and construction of fish ponds) do not allow communities to feed themselves adequately.

The Right to a Healthy Environment:

The land lease changed the way in which land in the Chiefdom was used, transforming a traditional bush-fallow agricultural system into a large-scale industrial palm oil monoculture. This has had serious impacts on the biodiversity of fauna and flora in the chiefdom, leading to a drastic decline in mammal species and medicinal plants in particular. Communities also report that the use of chemicals and fertilizers in SOCFIN's operations have made swamps in the plantation area unsuitable for cultivation. Further independent investigation and chemical analysis is necessary in order to assess whether the use of chemical substances by SOCFIN complies with national law and international standards. Unfortunately State agencies tasked with environmental protection – in particular the Environmental Protection Agency (EPA) – lack the human and financial resources to conduct such investigations. As recently raised by the UN Special Rapporteur on hazardous substances and wastes in September 2018: *"This lack of detail fundamentally obstructs the ability of the EPA to perform its duties under human rights law, and fails to respect the rights of workers and local communities to information, participation and remedy. Despite these concerns, Socfin received an EIA [Environmental Impact Assessment] licence"*.

The Right to Water:

SOCFIN's agro-industrial activity poses a serious threat to water in the Chiefdom, risking pollution of water sources and interference with water use, including for future generations, with concerns stemming from an agreement between the company and the Government allowing SOCFIN to draw unlimited quantities of water to service its activities in Malen, and to do so at a heavily cut price (\$0.00012 per cubic meter). In a complaint to the EPA in 2013, local communities reported high levels of pollution of the Malen River, along with large numbers of dead fish. Despite repeated attempts by MALOA, no public report or conclusions were shared with communities.

The Right to Decent Work and Fair Employment:

32,842 villagers are estimated to be affected by SOCFIN's activities in the Malen Chiefdom, yet SOCFIN only offers 1,178 permanent job positions. What's more, only a few members of the Chiefdom communities are employed in management or supervisory positions. In addition to permanent contracts, SOCFIN claims to offer another 2,500 job opportunities for casual workers, all working under very precarious employment conditions. They usually do not have a proper contract and can be laid off at any time. Pay is dependent on the completion of daily tasks, which are described as very difficult to accomplish. Evaluation of completion is left to the discretion of supervisors, and workers report

frequent cases of corruption. As a result, average salaries for seasonal local workers at the company were between approximately 150,000 and 250,000 Leones per month, which is far below the minimum wage in Sierra Leone (500,000 Leones per month). Elderly community members are completely overlooked for employment. Workers' strikes increased in 2018, leading to more tension and further human rights violations and abuses.

The Right to Education:

Subsequent to the land lease agreements, family sources of income either became insufficient to cover education expenses or – in most cases – ceased entirely. Families were left with little choice but to remove their children from school, with girls commonly the first to be withdrawn.

The Rights of Women: Prior to the arrival of SOCFIN, the agricultural activity of women was of chief economic importance within communities. As the basis of much of the social interaction within villages, it also played a key social role. The changes in access to and control over land following the lease agreement removed the base materials of this activity from local women, creating a wide economic and social gap in communities. Women, especially elderly women, are mostly deemed unfit for the tasks demanded of workers on SOCFIN's plantations, and thus frequently face barriers when it comes to work in all its forms.

Civil and Political Rights and the Protection of Human Rights Defenders:

Opposition to the land lease agreement has been systematically criminalized and repressed by local security services, many times using violence. Acts of arbitrary detention and judicial harassment against MALOA and other community members have been denounced by international human rights organizations, including UN Special Rapporteurs. National and international civil society organizations supporting local communities have faced continuous acts of intimidation by the company and local authorities. The escalation of tension in the chiefdom and recent violent repression by the police in January 2019 led to the death of two people, dozens of wounded and the arbitrary arrest of several people, including one leader of MALOA, and MALOA's former spokesman, a member of Parliament.

Participation, Consultations and Free, Prior and Informed Consent (FPIC):

All available evidence indicates that the conditions under which the land lease agreement was made did not allow for communities to give their free, prior and informed consent. Allegations of coercion aimed at gathering signatures for the agreement, including through bribes and the presence of armed guards at a meeting to sign the contract, raise significant doubts as to the agreement's legality. Some promises, which

were decisive in convincing some chiefs and landowners, have never been respected or even implemented. These range from annual payments, and the respect of buffer zones to the establishment of an out-grower scheme, and long-term employment opportunities.

Transparency and Corruption: A profound lack of transparency has accompanied the development of SOCFIN's activities in Malen, seriously restricting the capacity of local communities to assert their rights and seek remedies to the conflict. From the outset, communities have demanded increased transparency and access to key documents relating to the leasing of land, including the land lease agreements themselves. In parallel, irregularities in the compensation payment process and unjustified payments to official representatives and others have led to repeated accusations of corruption.

Compensation, Resolution and Restitution:

The form and levels of compensation and payment due to the land owners by the company in accordance with the lease agreement, along with the process for making these payments, have raised serious concerns from the outset. Firstly, the lease agreements provided compensation to landowners for their loss of palm oil crops. This was fixed as a single lump payment of \$570/ha. This is very low considering that SOCFIN

itself valued the price of one hectare of palm trees at \$57,120. Landowners also denounced that the size of land plots were undervalued, and that the loss of other cash crops was not compensated for. Secondly, it was agreed that a recurring yearly rental payment would be paid by SOCFIN. This was set in the lease agreement at \$5 per acre per year (\$12.5 per hectare), of which landowners would only receive 50% (20% goes to the chiefdom authorities, 20% to the district and 10% to the government). This sum is considered a meager amount. Moreover, substantial problems have been identified throughout the payment process, leading to strong accusations of corruption, particularly at the level of the chiefdom authorities. SOCFIN is paying the amount that was targeted for landowners (supposedly \$115,456) to the chiefdom authorities who supposedly act as intermediaries, but these are

accused of withholding payments and engaging in inequitable distribution. Despite the many requests by MALOA and others to both SOCFIN and local authorities to obtain lists of payments made in compensation and annually, the communities have never had access to these lists.

Responsible Investment: A major gap has emerged between the promises made by the company in its corporate social responsibility action plan, and the projects actually implemented, their respective budget and ultimate impact on the ground. The corporate social responsibility plan formulated by SOCFIN in 2011 foresaw an expenditure of \$16,433,375 for the benefit of communities between 2011 and 2017. Only \$2,583,784 was actually spent for this purpose. This figure, which represents a mere 16% of the budget planned for the social benefit of the communities, includes expenditure on roads

(which almost exclusively benefit the company) for more than 1/3 of the total budget, as well as several expenses with no social interest, or which could be related to corrupt practices. No investment has been made to implement the smallholder out-grower scheme, one of the company's primary promises.

Based on these findings, the report makes a series of recommendations aimed at ending ongoing human rights abuses and violations in Malen, and finding a peaceful solution to the conflict. Indeed, it can be concluded that immediate steps by all actors must and can be taken to provide remedies for harm suffered by local communities since the initial land lease agreement, and that such steps, along with others aimed at providing a stable ground for local communities to enjoy their rights, are essential to finding a resolution to the conflict.





1. Introduction

Introductory comment:

In accordance with FIAN's policy on publications involving non-State actors, the relevant extracts from this report were sent to SOCFIN in December 2018, before finalization. The objective is to enable the company to provide explanations and details on the elements included in this report.

While the company did not substantively respond to similar requests in the past, on this occasion SOCFIN responded in some detail¹ for the first time in seven years. The relevant information provided by SOCFIN has therefore been included in this report, either by improving the accuracy of information or by adding comments in footnotes.

1.1. Food and Agriculture in Sierra Leone

The West African country of Sierra Leone is one of the world's poorest nations.² Over 70% of its six million people live below the national poverty line of \$2 a day. As of 2015, approximately one out of every two households was **food insecure**, amounting to almost half of the country's population.³ These households have **insufficient access** to food in sufficient quantity, quality and diversity to lead a healthy life.

Sierra Leone's **economy** is primarily **agricultural**. As much as **60% of the population depend on farming for their livelihood and food needs**.⁴ These are mostly small-scale rural farmers, for

whom land is the main economic and social asset.

The promotion of large-scale foreign investment in the agricultural sector has been made a priority by consecutive governments in the country, in the hope that increased agricultural production may lead to a decrease in poverty. This has been accompanied by support from international partners since the world food crisis of 2007/2008 (see Box 1). Nonetheless, **rural poverty**, in particular, has remained widespread,⁵ and the food situation has not improved. Between 2010 and 2015, total food imports primarily coming from wealthy nations increased from \$151 million to \$387 million.⁶

¹ SOCFIN. "SOCFIN's response to FIAN's Draft Report extracts made available to SOCFIN before publication". Letter sent to FIAN Belgium. 09 January 2019.

² Sierra Leone ranks 179th out of 185 countries in a recent human development index. UNDP. *2016 Human Development Index*. p. 204. Available at: hdr.undp.org/sites/default/files/2016_human_development_report.pdf

³ World Food Programme. *State of Food Security in Sierra Leone 2015*. p. 45. Available at: documents.wfp.org/stellent/groups/public/documents/ena/wfp288316.pdf?iframe. The WFP uses a "consolidated approach for reporting indicators of food security" (CARI). Within this, households are classified into one of four categories: food secure, marginally food secure, moderately food insecure, and severely food insecure. According to the 2015 report, 49.8% of Sierra Leone's households are moderately or severely food insecure.

⁴ International Food Policy Research Institute. *2012 Global Hunger Index - The challenge of hunger: ensuring sustainable food security under land, water, and energy stresses*. p. 35. Available at: www.ifpri.org/publication/2012-global-hunger-index.

⁵ See IndexMundi. *Sierra Leone - Rural Poverty Gap at National Poverty Lines (%)*. Data from World Bank Global Poverty Working Group, compiled from official Government sources. Available at: www.indexmundi.com/facts/sierra-leone/indicator/SI.POV.RUGP.

⁶ United Nations Conference on Trade and Development. *State of Commodity Dependence 2016*. p. 107. Available at: unctad.org/en/PublicationsLibrary/suc2017d2.pdf.

1.2. Governance and Land Grabbing in Sierra Leone

According to the FAO, 75% – 5.42 million hectares (ha) – of Sierra Leone’s land is arable. Officially, less than 15% of this land is currently under cultivation. The Sierra Leone Investment and Export Promotion Agency (SLIEPA) (See Box 1) has maintained that: “Sierra Leone has significant amounts of arable land, most of which remains uncultivated, with up to 4 million hectares of arable land still available for cultivation.”⁷

In contrast with these claims, as early as 2011, studies indicated that the concept of ‘unused’ or ‘uncultivated’ land was controversial in Sierra Leone. It was argued that:

“At the level of **large commercial farm investments**, there could be bankable economic opportunities in biofuels, palm oil and commercial cocoa plantations, yet, there is **no idle productive land** that could easily be made available for commercial investment under the current patterns of smallholder upland cultivation and fallow rotation.”⁸ Under the **bush-fallow agricultural system** traditionally used in Sierra Leone, land may be left uncultivated for long periods whilst nevertheless remaining in use for purposes beyond crop cultivation.

There have been several attempts to reform the system of land law in the country.⁹ The most recent came in 2015, with the adoption of a new *National Land Policy* (NLP). It was launched in 2017 along with a ten-year implementation plan.

If fully implemented, the NLP would have transformative potential. It seeks to **guarantee equal rights to and control over land for women**, enable access to **independent legal services for communities** negotiating with investors, and **secure the tenure rights of individuals, families and communities** through a system of mapping and title registration,¹⁰ although this last provision is not without its problems.¹¹ It envisions changes to the systems for surveying and registering land; the introduction of land commissions; the creation of land banks; and **limiting land acquisitions by foreign enterprises to areas of 5,000 hectares**.

The importance of such changes bears upon the **links between access to land, control of land, and food needs** of individuals, families and communities in the country.

Several factors including the historic peculiarities of the land governance system in Sierra Leone, a rising population, and the use of the **bush-fallow system** in rural areas have combined with governmental policies aimed at increasing foreign investment in agriculture in the country to create a situation of **land competition** and **land scarcity**. It is estimated that between 2009 and 2012, foreign investors contracted long-term leases of 50 years with possible extensions on 1,154,777 hectares of land in Sierra Leone – approximately 21.4% of the country’s total arable land – for large-scale industrial agriculture projects.¹² This should be considered as part of the wider pattern of land grabbing which has taken place across Sub-Saharan Africa since the 2008 food crisis, and as being directly connected to increased global demand for biofuels produced from sugar cane and palm oil.

7 SLIEPA. “Unique Selling Points of the Agriculture Sector”. Available at: sliepa.org/investment/agriculture/.

8 Bald, J and Schroeder, P. *Study on rural and agricultural finance in Sierra Leone: product innovation and financial access*. 2011. p. 12.

9 Such as the adoption of the Sierra Leone *National Land Policy* in 2005, which was never implemented.

10 See Aidara and Pemagbi. *Agriculture Policy in Salone – Sierra Leone Green Revolution: Prospects for success*. 2017. Available at: www.osiwa.org/publication/agriculture-policy-salone/.

11 See Bonanno, A. “Formalizing Freedom: Land Tenure Arrangements from the Perspective of Social Modes of Production” in Ndi, B. F, Fishkin, B. H and Ankumah, A. T (Eds.) *Living (In)Dependence: Critical Perspectives on Global Interdependence*. 2018. pp. 115–118.

12 Baxter, J. *Who Is Benefiting? The Social and Economic Impact of Three Large-Scale Land Investments in Sierra Leone / A cost-benefit analysis*. 2013. p.14.

BOX 1.

THE SIERRA LEONE INVESTMENT AND EXPORT PROMOTION AGENCY – SLIEPA

Following the end of the civil war that took place in Sierra Leone between 1991 and 2002, a change occurred in the approach to agricultural development in the country's rural provinces. In 2007, with the support of the World Bank¹³ and the European Union, the Sierra Leone Investment and Export Promotion Agency (SLIEPA) was established.¹⁴ Its purpose was to facilitate direct foreign investment and export development in the country, with a priority placed on agribusiness.¹⁵ The Agency positioned itself as a facilitating body between investors, the government and local stakeholders.¹⁶ It also advertised land available for large-scale cultivation of crops such as palm oil and sugar cane.

SLIEPA's creation was accompanied by explicit calls for direct foreign investment in the country's agricultural sector. In 2009, at the Sierra Leone Trade and Investment Forum in London, the previous President of Sierra Leone, Ernest Koroma, declared: "Our soils are fertile and our land under-cultivated, offering ideal conditions for new investments in rice, oil palm, cocoa, coffee and sugar".¹⁷

The call was heard, and bilateral negotiations over land-based investment began between Sierra Leone and several states, including Belgium.¹⁸ In 2009, SLIEPA contacted SOCFIN directly to see if they would be interested in an oil palm plantation project.¹⁹ SLIEPA further offered its services to help identify available land, and to facilitate the land agreement between SOCFIN and the Government.

LAND ADMINISTRATION IN SIERRA LEONE IS GOVERNED BY A DUAL SYSTEM OF LAW.

The **Western Area and the capital Freetown**, constituting the area of the former British colony, operate under a **composite system of pre-independence English common law and post-independence statutory law**. Land is either publicly or privately owned.

The **Provinces**, to the North, East and South, previously a British protectorate, operate under a **dual system of general law and customary law**, of which the latter dominates. The region is comprised of 149 chiefdoms. Local administration is coordinated through Paramount Chiefs and chiefdom councils, with section- or sub-chiefs. Paramount Chiefs are endorsed by the President and rule for life, although they may be removed. Customary laws vary between the chiefdoms, and are mostly unwritten.



¹³ United Nations Conference on Trade and Development. *Investment Policy Review: Sierra Leone*. 2010. pp. 29 and 61. Available at: unctad.org/en/pages/PublicationArchive.aspx?publicationid=491.

¹⁴ Through the *Sierra Leone Investment and Export Promotion Agency Act 2007*. Available at: www.sierra-leone.org/Laws/2007-3.pdf.

¹⁵ Oakland Institute. *World Bank's Bad Business in Sierra Leone*. 2014. Available at: www.oaklandinstitute.org/world-banks-bad-business-sierra-leone.

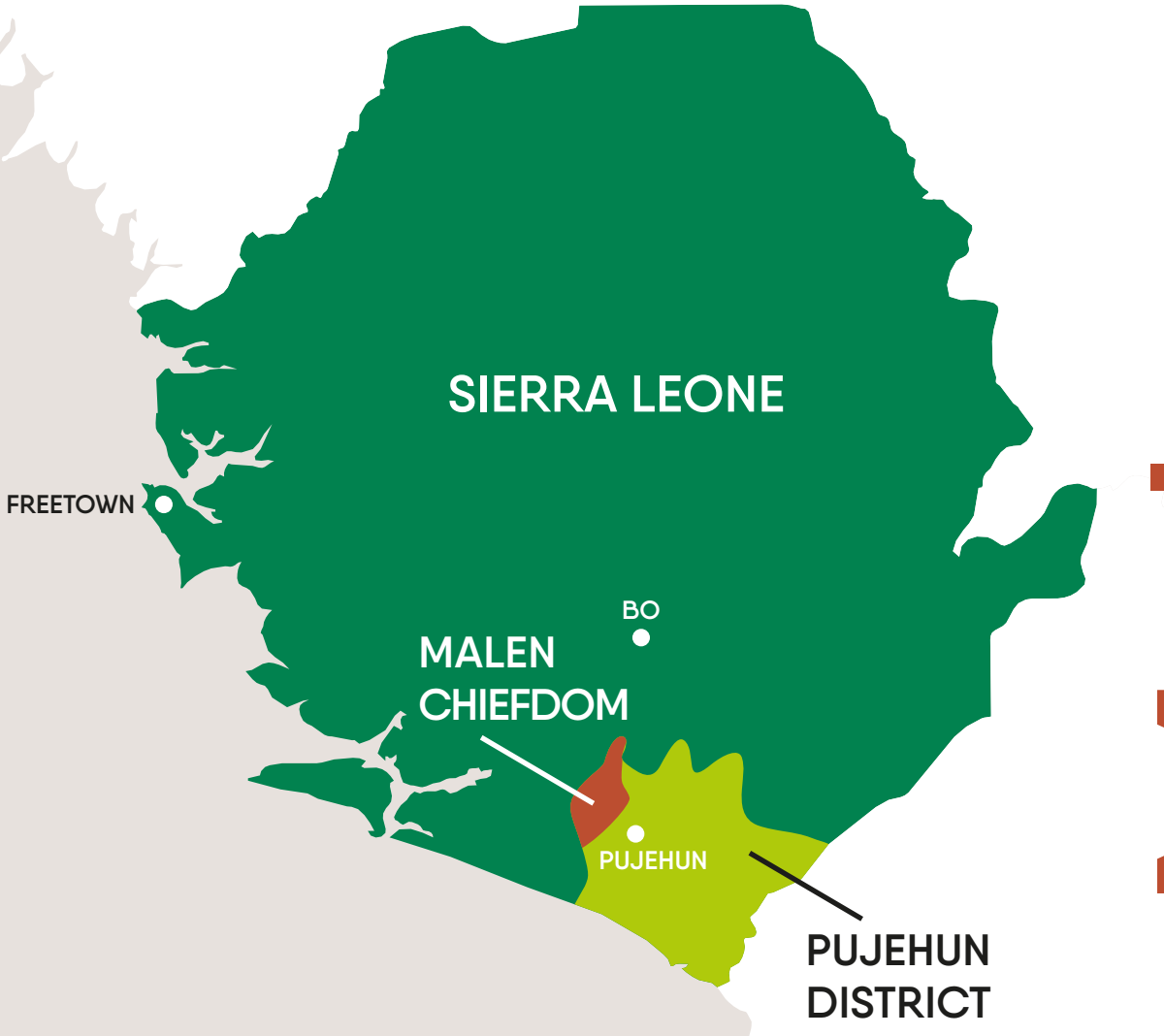
¹⁶ Ochiai, T. *Customary Land Tenure, Large-Scale Land Acquisitions and Land Reform in Sierra Leone*. 2017. p. 9.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ SOCFIN. *Supra* Note 1.

GUINEA



FREETOWN

SIERRA LEONE

MALEN
CHIEFDOM

BO

PUJEHUN

PUJEHUN
DISTRICT

LIBERIA



SIERRA
LEONE

2. The Malen

2.1. The Malen Chiefdom

Malen is one of twelve Chiefdoms in the Pujehun District in the Southern Province of Sierra Leone. It is a rural area of approximately 27,000 hectares situated to the west of the district capital, Pujehun Town. A recent population boom has seen its numbers grow from 22,090 inhabitants in 2004 to 49,263 in 2015.²⁰ The majority of the people in the Chiefdom belong to the Mende ethnic group, one of the two major ethnic groups in the country.

The Chiefdom is overwhelmingly agriculturally focused, both economically and socially. Historically, the local population practised low external input

agriculture. Farming of diverse food crops, with rice as the staple, has been combined with fishing from local streams, and foraging and hunting in fallow bush areas. Other crops, including palm oil, coffee and cacao, either wild or planted, have also been harvested, with their produce sold by households on local markets to generate small cash incomes. Testimonies gathered by FIAN Belgium in fact-finding missions to the Chiefdom indicate that under these conditions Malen was in a stronger position in terms of food self-sufficiency compared with other chiefdoms. These findings are supported by studies and reports examining the food situation in the Chiefdom.²¹



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²⁰ Statistics Sierra Leone. *2015 Population and Housing Census, Summary of Final Results*. 2015, pp. 42-43. Available at: www.statistics.sl/images/StatisticsSL/Documents/final-results_-2015_population_and_housing_census.pdf.

²¹ Melsbach, G and Rahall, J. *Increasing Pressure for Land: Implications for Rural Livelihoods and Development Actors. A Case Study in Sierra Leone*. 2012, p. 23. Available at: www.fian.be/IMG/pdf/whh_study_land_investment_sierra_leone_october_2012.pdf. Baxter. *Supra* Note 19, pp. 5-6.

2.2. The Arrival of SOCFIN

On 5 March 2011, a lease of over 6,500 hectares of land in the Malen Chiefdom was signed between the Minister of Agriculture, Forestry and Food Security (MAFFS) of Sierra Leone and the Chiefdom's traditional authorities. The lease was for a period of 50 years, renewable for an additional 25 years. It was signed by the **Paramount Chief** of the Malen Chiefdom, BVS Kebbie, and 28 landowners.²²

On the same day, the land was sub-let by the Ministry to **SOCFIN Agricultural Company Sierra Leone Ltd. (SAC)**, a subsidiary of the Belgo-Luxembourgish company SOCFIN (See Box 2).

The lease was for a period of 50 years, renewable for an additional 25 years.



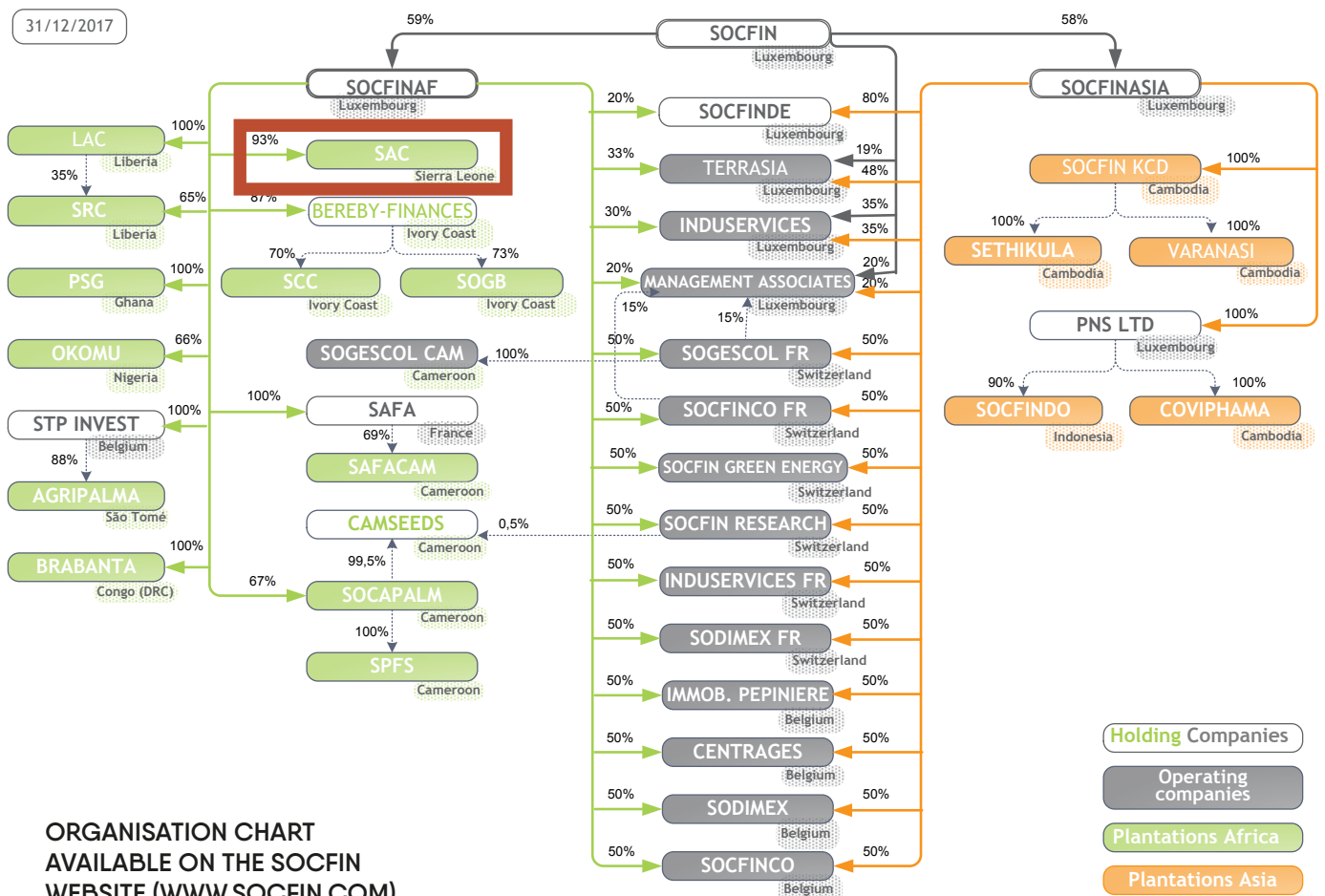
²² Head Lease Agreement (Zone A) between the Government of Sierra Leone and the Malen Chiefdom authorities. 15 October 2012. Available at: www.fian.be/IMG/pdf/2012-communities-sl_head-lease_15oct2012-zone_a_completed.pdf.

BOX 2

WHAT IS SOCFIN?

SOCFIN is an agro-industrial group specialized in the production of **palm oil** and **rubber**. The company dates back to the colonial era, when it was heavily involved in the exploitation of rubber in the Belgian Congo. With a 54% share, the Belgian businessman Hubert Fabri is the main shareholder in the Group, followed by the **Bolloré Group**, headed by French businessman Vincent Bolloré, who holds a 38.75% share.²³ Since 2011, the Bolloré Group has also been a heavy investor in the port of Sierra Leone's capital Freetown.²⁴

Globally, SOCFIN controls more than 400,000 hectares of land in a dozen African and Asian countries. In recent years, the group has acquired new plantations in Guinea, Kenya, Sao Tome and Principe, Liberia, Cambodia and Cameroon. Between 2009 and 2017, its plantation land increased by approximately 48%, from 129,658 to 192,072 hectares.²⁵ The expansion of the group's operations has repeatedly been criticized for abuses of the rights of local populations.²⁶



²³ See SOCFIN webpage. Available at: www.socfin.com/en/socfin.

²⁴ See Bolloré Ports webpage. Available at: www.bolloré-ports.com/reseau-mondial/afrique/port-de-freetown-sierra-leone.html.

²⁵ SOCFIN. *Sustainable development report 2017*, p. 14. Available at: www.socfin.com/sites/default/files/2018-12/RAEB19-1.PDF.

²⁶ See United Nations. *Human Rights in Liberia's Rubber Plantations: Tapping into the future, 2006*; FIDH. *Land cleared for rubber, Rights bulldozed – The impact of rubber plantations by Socfin-KCD on indigenous communities in Bousra, Monduliri, 2011*; Sherpa et al vs SOCAPALM/SOCFIN/SOCFINAF. "Complaint for breach of OECD Guidelines for Multinational Enterprises". Available at: www.oecdwatch.org/cases-fr/Case_202-fr; Bread for all. *Struggle for Life and Land: Socfin's Rubber Plantations in Liberia and the Responsibility of Swiss Companies*, Bern, February 2019. Forthcoming.

From the outset, local communities denounced the lease agreement as illegitimate. Organizing themselves into the **Malen Affected Land Owners and Land Users Association (MALOA)**, they detailed their concerns in a letter to the Pujehun District Authorities on 2 October 2011. Their grievances included:

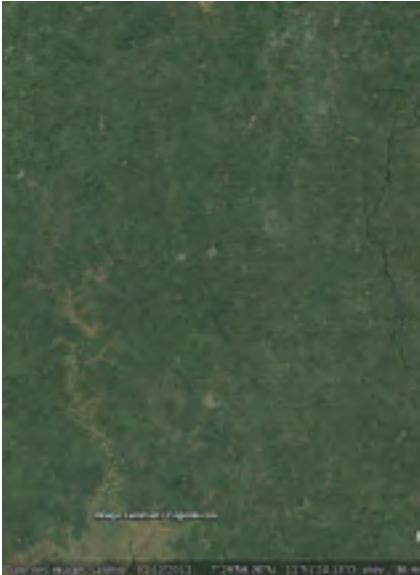
- A **lack of consultation** with landowners prior to the agreement of the land lease;
- **Pressure, intimidation and threats** aimed at coercing landowners to sign over their land;
- A lack of **transparency** and high levels of **corruption** in the land acquisition process;
- Inadequate **compensation** and the non-payment of compensation;
- The failure of SOCFIN to mark **boundaries of family land** before its clearing;
- Extremely poor **working conditions** on the SOCFIN plantation;
- The destruction of the **livelihood** of landowners in the area;
- The destruction of the area's **ecosystems** and the negative impact on its **biodiversity**.²⁷



From the outset, local communities denounced the lease agreement as illegitimate.

²⁷ MALOA. *Grievances of land owners in Malen Chiefdom*. 2 October 2011. Letter to Pujehun District Officer. Available at: www.fian.be/IMG/pdf/maloea_grievances_of_land_owners_october_2011.pdf.

2011



2013



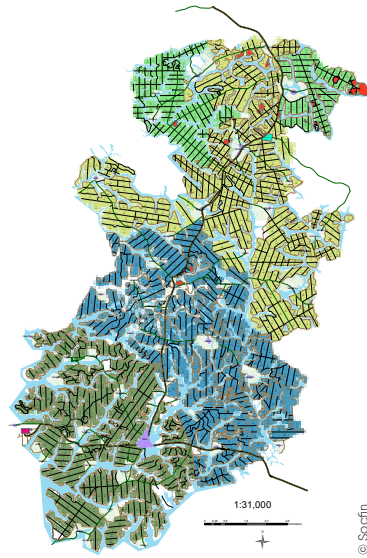
2014



© Google Maps

MAP SAC PROJECT 18,473 HA

2016



In April 2012, more than a year after the initial lease agreement, a **Memorandum of Understanding (MoU)** (See Box 3) was signed between SOCFIN and the Government of Sierra Leone, foreseeing the development of palm oil plantations by SOCFIN over an area of 12,000 hectares in the Malen Chiefdom, creating a projected 2,414 jobs.²⁸ A new version of the 2011 lease agreement was subsequently signed between the MAFFS and SOCFIN in October 2012.²⁹ This was followed by a new lease for a further 6,269 hectares in November 2013, and a third lease agreement at an unknown date covering 5,628 hectares. All three leases followed the same process of a 'head lease' between the MAFFS and the Malen Chiefdom, and a sub-lease between the MAFFS and SOCFIN.³⁰

²⁸ Memorandum of Understanding and Agreement, 24 September 2012. Available at: www.fian.be/IMG/pdf/sac_memorandum_of_understanding_mou_and_agreement_with_rep_of_sierra_leone_24-09-2012_.pdf.
²⁹ According to SOCFIN the 2011 lease was amended in 2012 at the request of the Government of Sierra Leone following a change from the GPS data system. SOCFIN. *Supra* Note 1.
³⁰ All requests by FIAN Belgium and MALOA for access to these lease documents have been rejected by SOCFIN.



SOCFIN's concession is larger than the entire Brussels-Capital Region.

As of December 2017, SOCFIN claimed to hold **18,473 hectares of land** in concession in Sierra Leone.³¹ Out of the total land held by SOCFIN, between **12,349 hectares³² and 12,557 hectares³³ have been converted into palm oil plantations** according to SOCFIN's own source, an area in excess of the limit of 12,000 set by the Government of Sierra Leone in the 2012 MoU.

Projections made by SOCFIN in 2010 on the basis of the 2004 national census estimated that approximately 28,135 people in the chiefdoms of Malen, Bum, Lugbu and Bagbo would be affected by the project.³⁴ However, of the four chiefdoms identified only Malen is located within the concession area. Testimonies gathered by FIAN Belgium indicate that this may be due to Paramount Chiefs in other chiefdoms refusing to lease their land to SOCFIN or posing certain conditions that SOCFIN was unwilling to accept.³⁵ On the basis of data from the new census conducted in 2015, we estimate at least **two-thirds of the population of Malen to be directly affected by the project (32,842 people).**³⁶ It concerns about **52 villages.**³⁷



© Maja Hiji

BOX 3. THE 2012 MEMORANDUM OF UNDERSTANDING (MOU)

- This MoU shall be construed in accordance with the laws of the Republic of Sierra Leone and is intended to be **binding on the parties** (Article 7).
- This MoU shall be **renewed after every five years** in line with the land lease agreements (Recital I).
- SAC intends to distribute the bulk of its future palm oil production to the local Sierra Leone market (Recital C).
- The Investor shall develop a **Corporate Social Responsibility (CSR)** plan based on an assessment of community needs in collaboration with local government officials, Paramount Chiefs, representatives of land owning families, and the communities themselves (Article 1, Investor's Obligations).
- The Investor shall develop a **smallholder or out-grower scheme** as per the guidance of the Government of Sierra Leone (GOSL). The **aim of the scheme shall be to achieve food self-sufficiency and ultimately food sovereignty** (Article 4, Investor's Obligations).
- The Investor shall adhere to the Environmental Protection Agency Act and other environmental regulations developed by the GOSL and in line with international best practices (Article 12, Investor's Obligations).
- The GOSL agrees to enter into a **water rights agreement** with SAC, and SAC will be charged at a fixed rate of 3 Leone per cubic metre of water. (...) There will be no restriction on the volume of water extracted. (Annex 11).

31 SOCFIN. *Sustainable Development Report 2017*, p. 10.

32 *Ibid.*, p. 167.

33 SOCFIN. *Sustainability Report 2015*, p. 6. Available at: www.socfin.com/sites/default/files/2018-12/RAP-POR-3.PDF.

34 Environmental Resources Management on behalf of SOCFIN. *Sierra Leone Agricultural Company (SAC). Sierra Leone: Environmental and Social Due Diligence Assessment*, 2015, pp. 10-11. Available at: www.fian.be/IMG/pdf/socfin_esdd_sac_erm_report_final_v2.0_31jul15.pdf.

35 See FIAN Belgium. *Minutes - Interviews Fact-finding mission (FFM) 2016*, Bo. 01 April 2016.

36 In the formula used in the SOCFIN assessment of 2010 it was considered that 28% of the total population of the chiefdoms of Malen, Bum, Lugbu and Bagbo would be affected by the concession.

37 SOCFIN. *Supra* Note 1.

2.3. Community Opposition

Following the signing of the MoU, local communities in the Malen Chiefdom continued to voice concerns over the land acquisition process and SOCFIN's activities. They were joined in their efforts by national and international civil society organizations and NGOs, including Green Scenery, Welthungerhilfe, the Oakland Institute and FIAN Belgium. Their demands included:

- A **review of all agreements concerning the land deal** in Malen;
- An **increase in the compensation** paid to local communities;
- Involvement of landowners unwilling to lease their land in an **out-grower farmer scheme**;
- The **provision of all relevant agreements and documents** to local stakeholders;
- **Transparency** in all future negotiations;
- The **proper demarcation and preservation of land** for community agricultural activities;
- **Clarity around social and community commitments** of SOCFIN.³⁸

In December 2012, the communities submitted a petition to the **Human Rights Commission of Sierra Leone (HRC)**.³⁹ Following this petition, the HRC dispatched fact-finding missions to the area and initiated a mediation process engaging all relevant actors. A draft agreement was submitted to the parties in June 2013, and a follow-up meeting was held in November 2013. The mediation, however, 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.⁴⁰

Amidst this process, a protest in Pujehun Town was organized for 30 August 2013. In a letter to the Pujehun Police several days prior, MALOA expressed their continued concerns:

*"We are convinced that the peaceful protest march will help to attract the government's attention and further raise public awareness of human rights abuses and land grabbing in Malen Chiefdom caused by the illegal operations of SOCFIN Agricultural Company."*⁴¹

On 16 October 2013, six MALOA executive members were **arrested** in various parts of the Malen Chiefdom, allegedly in connection with their advocacy on behalf of local populations.⁴² They were **charged** with "destruction of growing plants", "conspiracy" and "incitement".

THE SIX MALOA EXECUTIVE MEMBERS ARBITRARILY ARRESTED IN 2013 AND CONVICTED IN 2016.



³⁸ MALOA. *Grievances of land owners in Malen Chiefdom*. *Supra* Note 27.

³⁹ MALOA. *Petition to the Human Rights Commission of Sierra Leone: "Gross abuse of our fundamental human rights by the Paramount Chief and Chiefdom authorities of Malen Chiefdom, Pujehun District, Southern Province of the Republic Sierra Leone"*. 1 December 2012. Available at: www.fian.be/IMG/pdf/maloe_statement_1st_december_2012-2.pdf.

⁴⁰ Sierra Leone Human Rights Commission. *Annual report 2013*, p.36. Available at: www.parliament.gov.sl/Portals/0/2014%20DOCUMENT/COMMITTEE/HUMAN%20RIGHTS/THE%20STATE%20OF%20HUMAN%20RIGHTS%202013%20MAIN.pdf.

⁴¹ MALOA. *Peaceful protest march against human rights abuses and land grabbing in Malen Chiefdom*. 27 August 2013. Letter to Pujehun Police Station.

⁴² See Communication of the UN Special Rapporteurs on Human Rights Defenders, Freedom of Expression, and Freedom of Assembly and Association. AL SLE 2/2015. 17 December 2015. Available at: spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=21201.

In March 2014, a **joint mission of the Parliamentary Committees on Land and Agriculture** to Malen was facilitated by Green Scenery. The mission sought to collect testimonies in the hope of facilitating a dialogue between the parties to the conflict. However, during the opening meeting in Malen, the mission was disrupted by members of the delegation who claimed the land lease agreement had not made available to them.⁴³ After meeting with SOCFIN and the Paramount Chief, the mission was aborted. The Parliamentary visit subsequently failed to result in any concrete recommendations.

On 4 February 2016, following a lengthy legal process, all six of the MALOA executive members were **convicted** and ordered to pay heavy fines or face six months imprisonment.⁴⁴ This conviction is part and parcel of a series of arbitrary arrests and judicial harassment against MALOA members.⁴⁵



⁴³ Green Scenery, *Activity Report on Parliamentarian Engagement/ Visit to Sahn Malen Chiefdom, Pujehun District*, 14–16 March 2014.

⁴⁴ Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes on his mission to Sierra Leone, A/HRC/39/48/Add.1, p. 12. Available at: daccess-ods.un.org/TMP/6078302.86026001.html.

⁴⁵ See Observatory for the Protection of Human Rights Defenders, *Sierra Leone: Arbitrary detention and continued judicial harassment against several members of the Malen Land Owners and Users Association (MALOA) in three different criminal cases*. Urgent Appeal, 9 February 2016. Available at: www.fidh.org/en/issues/human-rights-defenders/sierra-leone-arbitrary-detention-and-continued-judicial-harassment.

2.4. Failed Dialogue

In the aftermath of these convictions, MALOA wrote to the Minister of Political and Public Affairs to request for an **independent investigation** into the conflict. In addition, MALOA and Green Scenery approached the Government for the resumption of the **dialogue process**. Despite a positive reaction from the Chief of Staff and his promise to develop a Road Map leading back to the negotiation table, no action was taken.

On 3 January 2017, in a new letter from MALOA to the Chief of Staff of the President’s Office, it was made clear that from the communities’ perspective the situation in Malen had not improved.

*“Sir, we have lost livelihood and have suffered indignities as a result of the SOCFIN investment. We have been criminalized for speaking out against human rights abuses that characterize the land deal in Malen. We continue to suffer in silence, despite the misleading official propaganda of the company providing thousands of jobs, improving our living conditions etc.”*⁴⁶

In the letter, MALOA repeated their long-term request for a **mediated meeting of parties to the conflict**. This was granted, and a meeting took place at the Office of the Chief of Staff in Freetown on 11 April 2017.

⁴⁶ MALOA, *Proposed Stakeholders Meeting in Malen Chiefdom*. Letter to the Chief of Staff, Office of the President, 3 January 2017.

Consequently, the Chief of Staff established the Malen Issues Mediation and Coordination Committee, which met on a regular basis to discuss the case. In addition, several individual meetings between the Chief of Staff and the stakeholders were held, including Government institutions, SOCFIN and representatives of civil society, including from MALOA and Green Scenery.⁴⁷ This process led to an acknowledgement by the Committee of issues requiring action, an outlining of steps to be taken, and an appraisal of potential remedies. However, no further action was taken.

In March 2017, during a European tour, the spokesperson of MALOA, M. Shiaka Sama, tried to meet with the management of SOCFIN in Brussels. SOCFIN refused to meet with him on the grounds of the ongoing process that was initiated by the Chief of Staff, thus cutting short any possibility of dialogue with M. Sama: “We cannot contemplate meeting a convicted criminal to discuss matters concerning our company or his criminal record.”⁴⁸

⁴⁷ Green Scenery, *Appeal to observe an open Community Meeting in Malen Chiefdom on 23 and 24 of June 2017*.

⁴⁸ Communication with SOCFIN on 7 March 2017.

2.5. Context Following the 2018 Elections



In March 2018, **elections** in Sierra Leone brought about a change in government. The Sierra Leone People's Party candidate, Julius Maada Bio, who had made a promise to resolve the conflict in Malen during his campaign, was elected President. The election was also notable for the success of Shiaka Sama – former spokesperson of MALOA – as an independent candidate in the Malen Chiefdom, where he received 70% of the vote to become a member of the National Parliament.⁴⁹

This can clearly be interpreted as massive support for MALOA by the communities, as well as their eager desire for change. This contradicts the discourse built by SOCFIN, which has repeatedly stated that most community people were happy with its operations, and that local organizations like MALOA: “are not representing neither legally nor legitimately the populations living near the plantations and are sometimes even in the service of personal interests.”⁵⁰

In July 2018, a **strike** of all SOCFIN workers in the Malen Chiefdom was organized. Concurrently, a **fact-finding mission** to the area took place under the auspices of the Resident Minister for Sierra Leone's Southern Province.

Following these two events, on 14 July 2018 a meeting was arranged by the Office of the President to address the “current deteriorating security situation in the Malen Chiefdom.” It took place at the State House in Freetown and was attended by the President and Vice-President, relevant Ministers, the Pujehun District Authorities, the Paramount Chief, representatives of MALOA and representatives of SOCFIN, including its General Manager in Sierra Leone. At the conclusion of the meeting, three thematic areas of concern were identified by President Bio:

1. Dissatisfaction with the land lease agreement;
2. The deteriorating relationship between the Paramount Chief and the local communities;
3. Conditions for workers on the SOCFIN plantations.

A further meeting was held in August, in Pujehun. Organized by the Vice-President, it was attended by SOCFIN and their legal representative, the Paramount Chief for Malen Chiefdom, the Minister for Local Government and the Resident Minister for the Southern Province, along with representatives of local communities and civil society organisations. From this meeting emerged **a clear call for an independent investigation** into the conflict.

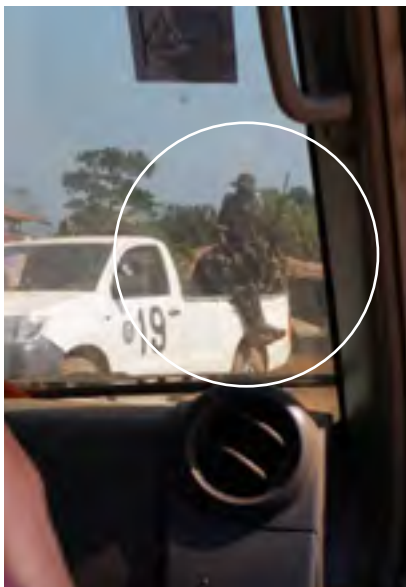
On 28 August 2018, a letter was sent by Green Scenery, FIAN Belgium and the Oakland Institute to the Vice-President repeating this call. However, with this letter going unanswered, a further correspondence was addressed by MALOA to the President himself. Citing suspicions of corruption amongst other Government officials, the letter notified the President of MALOA's suspension of all engagements with Government officials, and requested a meeting directly with him.

⁴⁹ For further information, see FIAN Belgium. *Vote de protestation contre l'accapement des terres de SOCFIN en Sierra Leone*, 28 March 2018. Available in French at: www.fian.be/Vote-de-protestation-contre-l'accapement-des-terres-de-SOCFIN-en-Sierra-Leone?lang=fr.

⁵⁰ SOCFIN. “Droit de Réponse”. *Actualités Hebdomadaires du Centre de Ressources sur les Entreprises et les Droits de l'Homme*. 19 February 2016. Translated by the authors. Available in French at: www.business-humanrights.org/sites/default/files/documents/2016%2002%2022%20R%C3%A9ponse-Socfin.pdf.

In early November, heightened tensions led to a new strike of SOCFIN workers and community women. In response, the Government launched two successive pre-dialogue initiatives in the Chiefdom: one under the auspices of the Resident Minister South, and the other under the auspices of the Vice-President. **Affected communities continue to demand an independent investigation, deeming it a prerequisite for the establishment of an impartial and effective resolution mechanism** capable of reviewing the terms of the land lease agreements and the working and living conditions in the Chiefdom, including the free and informed participation of community representatives.

27 JANUARY 2019



2.6. Conflict Escalation throughout 2019

The conflict in Malen recently escalated to new levels following violent incidents that took place between 16 and 25 January 2019, **causing the death of two people and further harassment and arbitrary arrests of MALOA members**. These events were denounced by national and international civil society.⁵¹ A team of 15 human rights defenders was assembled to further investigate the situation during a 3-day fact-finding mission in Malen.⁵²

These dramatic events occurred after yet another work stoppage of SOCFIN workers from 16 January onwards, and following a new conflict that arose between the Paramount Chief and the newly elected MP Shiaka Sama. As elected MP, Shiaka Sama was granted a stipend to set up his offices within his constituency. He had a plot of land that he had acquired from a landowner in Sahn Malen, but the Paramount Chief would not allow him to settle.

On Sunday 20 January, the Resident Minister South came to Sahn Malen to look into the matter. He then went to the community radio to address

the public. It is reported that he urged SOCFIN workers to return to work. He further instructed a secret society (known as the Poro society) to put an end to their ritual activities, as they had been accused of stealing palm fruits. The next day, villagers organized a large demonstration, which soon escalated. **The military and police were protecting SOCFIN's assets** at a place called Jao Junction. Two men were shot dead and one policeman was wounded. At the time of finalizing this report, there are conflicting testimonies between community members – who accuse the police and military for the killings of the two people – and the police, who allege that the killings were carried out by members of the 'Poro Society' using shot guns.

Shortly after this incident, **police and military raids were carried out** on the night of 21 January and during the following days. It is reported that the police and the military made excessive use of violence. **People were beaten, houses were vandalized and properties were looted.**⁵³ Many villagers fled their homes for fear of violence.

The police arrested 15 people (most of them MALOA members), including the honorable Shiaka Sama. According to

⁵¹ SiLNoRF, Green Scenery et al. "In Sierra Leone, Land rights defenders under attack". Press Statement, 23 January 2019. Freetown. Available at: www.fian.be/IMG/pdf/malen_incident_press_release.pdf.

⁵² See Sierra Leone Human Rights Organization Coalition. *Report of the fact finding mission on the Human Rights situation in Malen Chiefdom after the violent incidents in January 2019*. Compiled by Human Rights Defenders in Sierra Leone, 29 January 2019. Available at: www.fian.be/IMG/pdf/report_on_malen_incident_final_version.pdf.

⁵³ *Ibid.*

Affected communities continue to demand an independent investigation, deeming it a prerequisite for the establishment of an impartial and effective resolution mechanism.

the information M. Sama has received so far, he is accused of: incitement; the murder of the two persons who were killed; obstruction of SOCFIN's operations; allowing the illegal Poro Society to operate; and forcefully grabbing a piece of land in Sahn.⁵⁴ These accusations were made by the Paramount Chief Kebbie.⁵⁵

During the night of 23 January, three other MALOA members were arrested by both police and military personnel in the company of people who are perceived to

be supporters of Paramount Chief Kebbie. They were taken to Malen court, where they were beaten and later detained in a police cell.

It is reported that during these events, SOCFIN held meetings with the security forces and chiefdom authorities to discuss the management of the crisis, and that **SOCFIN's vehicles were made available to the police and military.**

Human rights defenders organizations in Sierra Leone reiterate MALOA's demands, and call on the government of Sierra Leone to:

1. open an inquiry into the actions of the security forces, SOCFIN and other actors involved in the January 2019 incidents in the Chiefdom of Malen;
2. immediately put an end to all forms of criminalization against land rights activists and MALOA members; and
3. to facilitate a long-lasting peaceful resolution of the land conflict in Malen.⁵⁶

⁵⁴ Communication with Shiaka Sama, 22 January 2019.
⁵⁵ Sierra Leone Human Rights Organization Coalition, *Supra* Note 52.

⁵⁶ *Ibid.*





5. Human Rights

3.1. Human Rights Obligations

Under national, regional and international human rights law, the Government of Sierra Leone has specific **obligations to respect, protect and fulfil the human rights** of its citizens. These obligations arise from several primary sources:

- The 1991 Constitution of Sierra Leone, in particular Chapter III;
- National Legislation;
- The African Charter on Human and Peoples' Rights (ACHPR);
- The African Charter on the Rights and Welfare of the Child;
- Protocols to the ACHPR to which Sierra Leone is a party, in particular the 'Maputo Protocol';
- The International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The International Covenant on Civil and Political Rights (ICCPR);
- The Convention on the Elimination of Discrimination Against Women (CEDAW);
- The Convention on the Rights of the Child (CRC);

- Optional Protocols to UN conventions to which Sierra Leone is a party.

Further to this, the Government bears human rights obligations arising from so-called 'soft-law' instruments, including: Resolutions of the African Commission; Declarations of the UN Human Rights Council; and Voluntary Guidelines agreed to by the Government, particularly the Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (**Tenure Guidelines**).

Several of these obligations bear upon the conflict in Malen, to which the Government of Sierra Leone is not only a party as the constitutional protector of its people, but as the initial lessee of the land at the heart of the conflict.

“At the time, when we had our land, we were not suffering the way we are suffering now”

Peasant woman.

3.1.1. THE RIGHT TO FOOD AND ACCESS TO LAND AND NATURAL RESOURCES

“When you take away a bush, you take away one life!”⁵⁷

“Selling our plantations and farms is selling ourselves. But we had no choice, we were pressured to lease the family land.”⁵⁸



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Malen Chiefdom is comprised of approximately **27,000 hectares** of land. Prior to the initial land lease between SOCFIN and the Government of Sierra Leone, this land served as the **primary source of food** for the Chiefdom’s communities. A diverse, nutritious range of food was harvested, including rice and other cereals, legumes, tubers, oil seeds, vegetables and fruits from upland farms. Bushland that was developing in farmland left fallow continued as a source of firewood, bush meat, wild plants, honey and herbs. Alongside this, small plantations produced cash crops of kola nuts, oil palms, coffee and cocoa, which were harvested and sold on local markets, generating incomes for households.

As of 2015, **18,473 hectares** (70%) of land in the Malen Chiefdom had been handed over under concession to SOCFIN.⁵⁹ Between **12,349 hectares⁶⁰** and **12,557 hectares⁶¹** have been converted into palm oil plantations. This land is accessible only to SOCFIN workers. Another 1100 ha are used for roads and infrastructure buildings. As a result, within the concession area only 5,024 hectares of land remains for local communities, within which swamps, villages, gardens, cemeteries, and preserved forests are included. Effectively, communities are surrounded by a green desert.

⁵⁷ FIAN Belgium, Minutes – Interviews FFM FFM 2018, Bannaleh Town. 22 March 2018.

⁵⁸ FIAN Belgium, Minutes – Interviews FFM FFM 2018, Ngandorhun Town. 22 March 2018.

⁵⁹ Environmental Resources Management on behalf of SOCFIN. *Supra* Note 34, p.3.

⁶⁰ SOCFIN. *Sustainable Development Report* 2017, p. 167.

⁶¹ SOCFIN. *Sustainable Development Report* 2015, p.6.

AVERAGE INCOME AND EXPENDITURE OF HOUSEHOLDS IN AFFECTED AND NON AFFECTED AREAS (2017)

Source: Kabba, V.S. * Impact Study of Socfin Agricultural Company and SunBird/Addax Bioenergy⁶⁹

| | NON AFFECTED AREAS | AFFECTED AREAS |
|--|--------------------|----------------|
| Income | 295.170 | 393.570 |
| Income from food items sale | 135.094 | 57.714 |
| Income from non-food items sale | 160.076 | 335.856 |
| Expenditures | 182.678 | 775.680 |
| Expenditures for food | 123.314 | 575.111 |
| Expenditures for non-food | 59.364 | 200.569 |
| Balance | 112.492 | -382.110 |

⁶⁹ See Kabba, V.S. *Supra* Note 66.



THE MAJORITY OF BUFFER ZONES ARE NOT SUITABLE FOR CULTIVATION BECAUSE THEY ALREADY HAVE OTHER SOCIAL FUNCTIONS OR ARE INAPPROPRIATE TO FARM.

The rapid shift of control of the land from the resident population to SOCFIN has had wide ranging consequences for local communities' access to land and natural resources, with severe bearings upon the fulfilment of their right to food.

Numerous indicators point towards a worrying situation in terms of quantity and quality of food consumed by households in Malen, and in the Pujehun District more broadly, since this change. In 2011, the Pujehun District had the highest percentage of overall food insecurity in Sierra Leone, with 79.9% of its households experiencing moderate to severe food insecurity.⁶²

While this appears to have decreased slightly in 2015, the **number of households affected by severe food insecurity has increased** from 6,8% to 18,8%, making Pujehun District the most affected by this extreme form of food insecurity at the national level.⁶³ In the year immediately following the entry of SOCFIN into Malen, the **number of meals** consumed in the Chiefdom was recorded as dropping from between 2-3 per day to 1-2, even during harvest season, with the **quality of the food** eaten also lowering.⁶⁴ At the same time, **access to proteins**, in particular meat dwindled.⁶⁵ Access to the second most important source of protein, fish, also decreased

dramatically.⁶⁶ Food stocks, including dried cassava and groundnuts that had been stored prior to the land agreements, were quickly used up.⁶⁷ By 2017, households in communities affected by SOCFIN's operations were recorded as spending four times more on food than in unaffected households. Furthermore, the expenditure on food by households in affected areas was recorded as exceeding household incomes, forcing people to adopt **coping strategies**, including skipping meals and accruing debts.⁶⁸

⁶² World Food Programme. *State of Food Security and Nutrition in Sierra Leone 2011*, p. 9. Available at: documents.wfp.org/stellent/groups/public/documents/ena/wfp250158.pdf.

⁶³ World Food Programme. *State of Food Security in Sierra Leone 2015*, p. 45.

⁶⁴ Baxter. *Supra* Note 19, p. 51.

⁶⁵ Melsbach and Rahall. *Supra* Note 21, p. 24.

⁶⁶ Kabba, V.S. *Impact Study of Socfin Agricultural Company and SunBird/Addax Bioenergy*, Research Commissioned By Action For Large-Scale Land Acquisition Transparency (ALLAT). Forthcoming, p. 93 of the draft: Fishing, source of fish for household consumption in affected communities, passed from 42% 6 years ago to 14% today.

⁶⁷ Melsbach and Rahall. *Supra* Note 21, p. 24.

⁶⁸ See Kabba, V.S. *Supra* Note 66, pp. 84-86.

THE MAJORITY OF BUFFER ZONES ARE LESS THAN 500 METERS LONG, AND ARE SOMETIMES NON-EXISTENT, SUCH AS HERE IN SAHN MALEN.



by an increased demand following an influx of new workers attracted into the region in the hope of employment with SOCFIN.⁷⁴

*“Farming is our only way to live! Before we could grow rice, cassava, beans, vegetables, coco, leaves, groundnuts, cola nuts... Now, we are only able to grow some rice on the remaining Batiland and swamps but that’s not enough to feed families the whole year. How to explain to my children that before we could eat three meals a day and now only one?”*⁷⁵

This chain of events occurred in spite of mitigation measures necessary to protect the food security of local populations identified in the initial impact assessment, as well as in the MoU between SOCFIN and the Government. These crucial mitigation measures included the keeping of **‘buffer zones’** (or ‘green belts’) between plantation and community land, the **preservation of swamps for cultivation** of crops, the development of **fish ponds**, a **rice cultivation scheme**, and a **smallholder out-grower scheme**.⁷⁶

The primary cause of this **decline in food security and self-sufficiency** can be attributed to the **grave reduction of arable land available to communities** as a consequence of SOCFIN’s investment. The land leases resulted in the seizure of household farmland on a mass scale.⁷⁰ This in turn necessitated the shortening and in many cases **elimination of fallow periods** for the remaining land, which would have previously been left to stand as bushland.⁷¹ Resultantly, the availability of resources that used

to be collected from these former bushlands significantly dropped.⁷² Meanwhile, the soil in these areas failed to replenish itself during the fallow period, leading to a drop in soil quality, and thereby to increasingly poor agricultural outputs for communities. As they turned to local and regional markets to bridge the gap in ensuing food needs, households found their **purchasing power diminished**. This came as a result of decreased revenues in the absence of cash crop sales, and of high prices,⁷³ which were driven

⁷⁰ *Ibid.*, Table 5, pp. 79–80.
⁷¹ *Ibid.*, pp. 114–115.

⁷² *Ibid.*, pp. 94–95.
⁷³ Melsbach and Rahall. *Supra* Note 21, Table 4.1, p. 25.

⁷⁴ *Ibid.*, pp. 20–25.
⁷⁵ See FIAN Belgium, Minutes – Interviews FFM 2012, Kortunahun Town, 21 October 2012.
⁷⁶ See Investor’s Obligations n° 4 in Memorandum of Understanding and Agreement, p. 7. *Supra* Note 28.

To date, despite a commitment by the company to contribute \$2,608,000 towards a **smallholder out-grower scheme** between 2011–2017, no such scheme has been implemented (see Box 5).⁷⁷ When asked about the reasons for this, SOCFIN stated that “SAC reviewed its initial plan and decided to prioritize the rice farming scheme and the fishing ponds”.⁷⁸

Academic studies and the communities themselves report that **buffer zones** have rarely been developed or respected, and, where they do exist, have roundly proved insufficient to support community food needs.⁷⁹ Fact-finding missions by FIAN Belgium to the Chiefdom confirmed these reports. While studies and community testimonies consistently refer to promises of a minimum buffer zone of 500 metres around villages – where buffer zones have been observed – they have at times been found to be of less than 100 metres in area. Furthermore, communities had frequently put the land (that the buffer zones then occupied) to other, long-standing uses, rendering them unsuitable to meet the purposes of the proposed buffer zones. Some areas claimed by SOCFIN to be developed as buffer zones were often already in use as cemeteries⁸⁰ and fallow areas prior to the arrival of the company in the Chiefdom, or were made up of forests deemed sacred according to community beliefs.⁸¹

Swamps have been left at the disposal of the communities. However, very few of these are actually used for cultivation. According to locals, this is because swamp areas have been affected by pollution associated with the SOCFIN plantations.

As part of its CSR program, SOCFIN has supported the building of **fish ponds** and the development of a **rice cultivation project** in the Chiefdom. According to SOCFIN, approximately 600 acres (242 hectares) of boliland have been cleared in eight sites in the concession area for mechanical cultivation. It is claimed that some 1,194 families will benefit from this program. However, it is not clear who can access and cultivate the land and who exactly can benefit from the program and on what conditions. When pressed on these issues by FIAN Belgium, SOCFIN did not respond.⁸²



INTERNATIONAL HUMAN RIGHTS LAW

Concerning access to land and natural resources, and the right to food, the Government of Sierra Leone holds several clear obligations originating in the international human rights framework.

Article 11 of the ICESCR recognizes the right to adequate food. This was defined by the UN Committee on Economic, Social and Cultural Rights in its **General Comment No.12** as the right to “physical and economic access at all times to adequate food or means for its procurement”. As a party to the ICESCR, the Government of Sierra Leone has an **immediate duty to respect existing access to adequate food** and to **abstain from taking any measures, which would prevent such access** and result in a deterioration of existing levels of fulfilment of the right to food. It is also under an obligation to **protect the enjoyment of the right by those under its control from interference by private actors**.⁸³ Furthermore, it has the responsibility, to the maximum of its available resources, to take steps to fulfil the right.

The Right to Food, whilst not explicitly enumerated in the ACHPR, has been deemed to fall under its protection, as it is essential for the fulfilment of **Articles 4, 16 and 22 of the Charter**. This was established in SERAC & CESR v Nigeria⁸⁴ and reiterated in the **‘Nairobi Guidelines’** on the Implementation of Economic, Social and Cultural Rights in Africa.⁸⁵ The minimum core obligations upon parties to the Charter include the **duty to refrain from and protect against destruction and/or contamination of food sources**.⁸⁶

Protection from compulsory acquisition of property is provided for in **Article 21 of the Constitution of Sierra Leone**. The general prohibition provided for in the Article is subject to specified public interest exceptions. Should any of these exceptions arise, provision must be made by law for the **prompt payment of adequate compensation** to affected parties, and for **access of affected parties to courts or another independent and impartial body** for the determination of the legality of the acquisition, the amount of compensation required, and in order to obtain compensation promptly.

Access to land and natural resources is also recognized and protected in the **ACHPR**, in particular through **Articles 14 and 21**. As per the Nairobi Guidelines, this places an obligation upon State parties to **prevent unfair exploitation of natural resources by both state and non-state national and international actors**.⁸⁷

77 Star Consult on behalf of SOCFIN. *Environmental Social and Health Impact Assessment for the Establishment of Oil Palm and Rubber Estates in the Malen Region, Southern Sierra Leone*. 2011. p. 175. Table 26: “Community Development Schedule and Budget between the years 2011 and 2025”. Available at: www.fian.be/IMG/pdf/revise_eshia_report_for_sac_sl_.doc_16th_april_2011.pdf

78 SOCFIN. *Supra* Note 1. See Box 5 for more details.

79 See Yengoh, G.T and Armah, F.A. *Land access constraints for communities affected by large-scale land acquisition in Southern Sierra Leone*. *GeoJournal* 81(1). 2014. pp. 103–122.

80 See FIAN Belgium. Minutes – Interviews FFM 2018, Gandorhun Town. 22 March 2018.

81 See FIAN Belgium. Minutes – Interviews FFM 2018, Bannaleh Town. 23 March 2018.

82 See FIAN Belgium. List of questions and documents. Letter to SOCFIN. 20 March 2018; SOCFIN. *Supra* Note 1. It was only in January 2019 that SOCFIN, in its response, answered the question by stating that: “The Company has put in place a rice farming scheme, providing rice seeds and cultivation equipment in boliland. [...] overall a small percentage of the total potential cultivation land available for the communities is utilized by them. [...] The Company will formalize this scheme started in 2012 by drawing an SOP that will determine how the land is allocated, who are the people who can benefit from it, the size of the plots...”

83 UN Committee on Economic, Social and Cultural Rights (CESCR). *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*. 12 May 1999, para 27. Available at: www.refworld.org/docid/4538838c11.html.

84 ACHPR. “SERAC & CESR v Nigeria”. Available at: www.achpr.org/communications/decision/15596/.

85 See ‘Nairobi Guidelines’. p. 48. Available at: www.achpr.org/files/instruments/economic-social-cultural/achpr_instr_guide_draft_esc_rights_eng.pdf.

86 *Ibid.*, para 86B, p. 48.

87 *Ibid.*, para 55G, p. 20.

3.1.2. THE RIGHT TO A HEALTHY ENVIRONMENT

Environmental concerns are directly connected to access to land, natural resources and food. A **healthy environment is essential for the enjoyment of human rights**. In the process of leasing the Malen land, environmental due diligence was required of SOCFIN by SLIEPA.⁸⁸ This was carried out by the company in 2011, in the form of an environmental, social and health impact assessment (EISHIA). In the course of this assessment, concerns surrounding deforestation, soil degradation, pollution of multiple forms, and the effects of SOCFIN's proposed operations on the Chiefdom's flora, fauna and wildlife were identified.

An environmental monitoring plan, intended to enable the mitigation of these concerns, was subsequently formulated by SOCFIN, resulting in the granting of an EIA (Environmental Impact Assessment) license to them by the **Environmental Protection Agency of Sierra Leone (EPA)**. Despite this, environmental damage and negative changes to Malen's biodiversity and wildlife have accompanied the development of SOCFIN's operation in the Chiefdom, with serious implications for the rights of local communities.

In a 2015 evaluation of SOCFIN's environmental and social management practices commissioned by the company, local communities raised **concerns about the depletion of wildlife in Malen**. In particular,

they reported the relative scarcity of mammal species, which had previously been an important source of protein for communities.⁸⁹ In the absence of adequate baseline data, such testimonies from affected communities are all the more important, and cannot be ignored. **Increased scarcity of plants used for medicinal purposes** was also identified as an issue in the 2015 evaluation. Interviews conducted in 2018 reaffirmed these concerns. Plants mentioned by affected communities as being formerly accessible and now impossible or difficult to find included those used against diarrhoea, dysentery, inflammation and fever.⁹⁰ Materials used in the construction of housing, such as poles, sticks (*Anisophyllea* spp) and a special grass ('vonii') used for roofing, were also cited in interviews as scarce.

Communities report that the **use of chemicals and fertilizers** in SOCFIN's operations have left swamps in the plantation areas, which had been primarily owned and worked on by women,⁹¹ unsuitable for cultivation. Whilst few members of the Malen communities report losing swamps to SOCFIN in the land lease process,⁹² testimonies from women in the communities point to the unsuitability of swamps for cultivation as a result of contamination from company chemicals and fertilizers,⁹³ which leave crops blighted.⁹⁴ Complaints about **pollution of the River Malen** have also been made (see Box 4). These

allegations have been denied by the company. An independent investigation and chemical analysis would be necessary to verify water pollution levels in the Chiefdom, and to assess whether the use of chemical substances by SOCFIN complies with the national law and international standards.

National institutions, however, and in particular the EPA, **lack the capacity to conduct such investigations**. This was pointed out during a mission of the UN Special Rapporteur on hazardous substances and wastes in Sierra Leone in August 2017. Regarding the SOCFIN plantation, the report concluded that:

“Only the swamps are left for us. But they are often contaminated because of fertilizers and chemicals.”
Peasant woman.

⁸⁹ See Environmental Resources Management on behalf of SOCFIN. *Supra* Note 34, p. 25.

⁹⁰ The most frequent plants which are reported as no longer being available are: *Solanum pubescens*, *Spondias mombin*, *Phyllanthus discoideus*, *Morinda geminata* DC, *Scottellia coriacea*, and *Antrocaryon micrastrer*. See Kabba, V.S. *Supra* Note 66, pp. 99-110.

⁹¹ See Kabba, V.S. *Supra* Note 66, pp. 25 and 39.

⁹² See Kabba, V.S. *Supra* Note 66, Table 41, p. 132.

⁹³ See FIAN Belgium. Minutes - Interviews FFM 2018, MNO6, Ngandorhun Key informants, 22 March 2018.

⁹⁴ See note on Jumbu village in Yengoh and Armah. *Supra* Note 79, p. 113.

⁸⁸ See Star Consult on behalf of SOCFIN. *Supra* Note 77, p. 25.

**NURSERY OF PALM TREES :
SEEDLINGS AND YOUNG TREES.**



“... more robust data is required than what is currently provided under approval and monitoring procedures to appropriately assert the safety situation of workers, communities and the environment. For example, while business enterprises need to disclose in their quarterly reports to the EPA what pesticides they use, the EPA informed the Special Rapporteur of challenges in analysis or testing of pesticides. One of the EIA licenses examined by the Special Rapporteur in relation to Socfin’s large-scale palm oil plantation **failed to provide an accurate list of pesticides and other agro-chemicals envisaged to be in use in the plantation and remained non-exhaustive on several other key aspects that may be hazardous to human health and the environment, including strategies to ensure the safe handling, transportation,**

*application, storage and disposal of pesticides. This lack of detail fundamentally obstructs the ability of the EPA to perform its duties under human rights law, and fails to respect the rights of workers and local communities to information, participation and remedy. **Despite these concerns, Socfin received an EIA licence.**”⁹⁵*

Concerns around the long-term environmental impact of large-scale palm-oil plantations have been raised in multiple academic,⁹⁶ State-sponsored,⁹⁷

and civil society⁹⁸ studies. Primary areas of concern highlighted in these studies have included **deforestation**, connected **threats to biodiversity**, and **climate change**.⁹⁹ Whilst the large majority of these studies have focused on Malaysia and Indonesia, where the largest concentration of global palm oil production is found, warnings as to the overall environmental impact of palm oil monocultures are also relevant in Sierra Leone and other West African countries.

⁹⁵ Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes on his mission to Sierra Leone. *Supra* Note 44, pp. 10–11.

⁹⁶ See Turner, E.C, Snaddon, J.L, Ewers, R.M, Fayle, T.M, Foster, W.A. *The Impact of Oil Palm Expansion on Environmental Change: Putting Conservation Research in Context in Environmental Impact of Biofuels*. Dos Santos Bernardes (Ed.). InTech, 2011. Available at: eprints.soton.ac.uk/359401/1/19109.pdf.

⁹⁷ See European Commission, *Study on the Environmental Impact of Palm Oil Production on Existing Sustainability Standards*. 2017. Available at : ec.europa.eu/environment/forests/pdf/palm_oil_study_kh0218208enn_new.pdf.

⁹⁸ See Miejaard, E, Garcia-Ulloa, J, Shell, D, Wich, S.A, Carlson, K.M, Juffe-Bignoli, D, Brooks, T.M. *Oil Palm and Biodiversity: a situation analysis by the IUCN Oil Palm Task Force*, IUCN, Gland, Switzerland, 2018. Available at: portals.iucn.org/library/node/47753.

⁹⁹ See Vijay, V, Pimm, S.L, Jenkins, C.N, Smith, S.J. *The Impacts of Oil Palm on Recent Deforestation and Biodiversity Loss*. PLoS ONE 11(7). 2017, pp. 1–19. Available at: journals.plos.org/plosone/article?id=10.1371/journal.pone.0159668.

Pollution of water resources was repeatedly highlighted as a high risk.



INTERNATIONAL HUMAN RIGHTS LAW

The enjoyment of human rights and environmental protection are interlinked.

As States have obligations to protect the enjoyment of human rights from interference and to work towards their full realization, they have obligations to prevent violations of human rights arising as a result of environmental harm.¹⁰⁰

This is implied in multiple international and regional human rights instruments, including those to which Sierra Leone is a State party. **Article 12 (2)(b) of the ICESCR** recognizes the right to a healthy environment as one of the **underlying determinants** of the enjoyment of the highest available standard of health¹⁰¹ – a connection that has since been extended to the right to life and the right to food, amongst other rights.¹⁰² It obliges States to take steps to improve all aspects of environmental and industrial hygiene, and was further supported by **Resolution 45/94** of the UN General Assembly.¹⁰³

Obligations upon States flowing from the ICESCR were recently gathered by the **UN Special Rapporteur on human rights and the environment**. States must not violate human rights through either environmental damage brought about by their own acts or by allowing other parties to proceed with damaging acts, amounting to a **duty to “protect against harmful environmental interference from other sources, including business enterprises.”**¹⁰⁴ This duty extends to taking **due diligence** to prevent such damage or to reduce it to the greatest extent possible. This includes providing **avenues to remedy and justice for any harm done**. Beyond this, States have a duty to **monitor situations** in which environmental concerns may arise and **disseminate the information collected**. Furthermore, they must provide **effective access to environmental information** in their possession.¹⁰⁵ In addition, States have an obligation to require **environmental impact assessments** prior to beginning or authorizing any activities the environmental impact of which may have a negative bearing upon the enjoyment of human rights. Within this framework, the potential consequences of the environmental impact of activities on the enjoyment of the broad spectrum of human rights should be examined, including the rights to food and water.¹⁰⁶ States must also provide for **meaningful public participation** in the decision-making processes related to the environment.¹⁰⁷

Human rights obligations bearing upon States in relation to the environment have also been outlined in regional human rights frameworks, including in Africa. Within the **ACHPR, Article 16**, concerning the right to health and **Article 24**, concerning the right to a “general satisfactory environment favourable to their development”, have been interpreted as implying a human right to a healthy environment and State obligations therein. As held by the African Commission in the **SERAC** case, these obligations, echoed in the report of the Special Rapporteur, include a duty to **require environmental and social impact studies** prior to major industrial development, the **monitoring** of such situations, a duty to **provide information to communities exposed to hazardous materials and activities**, and to provide a space for **meaningful participation** of communities in development decisions affecting them.¹⁰⁸

Nationally, the **Environmental Protection Agency Act of 2008**¹⁰⁹ should also be noted. The Act brought the EPA into existence, empowering it with a range of capacities and functions, including issuing environmental permits, monitoring activities with potential environmental impacts, collecting environmental data, and rendering the data available to the public.¹¹⁰

¹⁰⁰ Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. A/ HRC//37/59. January 2018, p. 8, para. 5. Available at: daccess-ods.un.org/TMP/6349422.33562469.html.

¹⁰¹ UN Committee on Economic Social and Cultural Rights. *General Comment No.14: The Right to the Highest Attainable Standard of Health (Art 12)*. 2000, para 5. Available at: [www.refworld.org/pdf-id/4538838d0.pdf](http://www.refworld.org/pdf/id/4538838d0.pdf).

¹⁰² Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. 2018, p. 7, para 4.

¹⁰³ UN General Assembly. *Need to ensure a healthy environment for the well-being of individuals. A/ RES/45/94*. December 1990. Available at: www.un.org/documents/ga/res/45/a45r094.htm.

¹⁰⁴ Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. 2018, p.7, para 5.

¹⁰⁵ *Ibid.* p. 11, para 18–19.

¹⁰⁶ *Ibid.* para 20–21.

¹⁰⁷ *Ibid.* para 23–26.

¹⁰⁸ See the decision of the African Commission on Human and Peoples’ Rights in *SERAC and CESR v Nigeria*, para 53.

¹⁰⁹ Available at: www.sierra-leone.org/Laws/2008-11.pdf.

¹¹⁰ Environmental Protection Agency Act. 2008, para 12.



3.1.3. THE RIGHT TO WATER

Directly connected to the right to a healthy environment, access to natural resources and the right to food, is the **right to water**.

The Pujehun District in which Malen lies has a tropical, equatorial climate, with a well-defined rainy season stretching from April to November. It receives between 2,750 and 3,500 mm of rainfall annually. Three major rivers run through the Chiefdom – the Malen, the Sewa and the Waanje. Beyond this, the area is home to many small streams, lakes and swamps. Prior to the arrival of SOCFIN in the area, these water systems were used by the communities for fishing, washing, and in some instances as a source of drinking water,¹¹¹ although drinking water was primarily sourced through wells constructed by the State, NGOs, and dug by individual households.¹¹²

Within its 2011 Environmental Impact Assessment, **pollution of water resources** was repeatedly highlighted as a **high risk** of SOCFIN's proposed activities.¹¹³

The dangers of land erosion during construction periods leading to damaging **run-off** into water bodies, with the correlate risk of **sedimentation** in downstream rivers and lakes, were noted. This is a common concern connected to the transformation of habitats for palm oil plantations.¹¹⁴ The risks associated with the use of nitrogen or phosphorous **fertilizers** on

¹¹¹ See Baxter. *Supra* Note 19, p. 24.

¹¹² Star Consult on behalf of SOCFIN. *Supra* Note 77, p. 135.

¹¹³ *Ibid.*, pp. 157-159.

¹¹⁴ See European Commission. *Study on the Environmental Impact of Palm Oil Production on Existing Sustainability Standards*. 2017, pp. 69-70.



plantation land, including **leaching** of fertilizers into water bodies, and subsequent **eutrophication** leading to reduced aquatic diversity and the **reduction of fish numbers** were also registered. Potentially severe health concerns connected to the possibility of fertilizers entering community drinking supplies were also raised. In response to these risks, several mitigation procedures were recommended.

As part of its Community Development Schedule and Budget, SOCFIN stated its goal of providing communities that were affected by its activities with access to clean water.¹¹⁵ This was to be facilitated primarily through the building of wells for communities – a commitment on paper that formed part of the balancing act of the public-private benefits of SOCFIN's entry into Malen. Following the EPA's granting of a license for SOCFIN to operate in the Chiefdom, in the **MoU** of 2012 a set rate for water used by SOCFIN was established. At **3 Leone per cubic metre (\$0.00012)**, this was substantially

lower than commercial water rates.¹¹⁶ Furthermore, the MoU made clear that there would be **no restriction on the volume of water available to SOCFIN**. Taking into account the length of the land lease, along with its potential extension, this raises serious questions about access to water in the Chiefdom for future generations.

Capacity shortages at the EPA affecting its ability to collect information and monitor and analyse the situation in Malen, combined with a lack of transparency regarding periodic reporting and analysis by both the EPA and SOCFIN, render the issue of access to water unclear. While the concerns and testimonies of the communities seem to point towards a negative impact of SOCFIN's activity on river water quality,¹¹⁷ the construction and repair of wells in the communities can be asserted as a concrete achievement of the company.

Per SOCFIN's submitted Social Corporate Responsibility accounts, between 2011 and 2017, 31 new wells were constructed by the company in Malen, whilst repairs were carried out on 64 instances.

In order to shed light on this issue, the EPA should conduct further analysis on the impact of the SOCFIN mill on adjacent water resources, and on pollution of the River Malen. In the first case, communities around the mill have raised concerns from the outset, reporting the presence of waste from SOCFIN's processing mill in streams in its surrounding area. For these communities, the **impact on their access to food is severe**, as **fishing becomes unfeasible** in the local area, seriously depleting their primary source of protein. Pollution of major rivers in the area, including the River Malen has similarly been a long-standing concern (see Box 4).

¹¹⁶ According to the World Bank, in 2007 the average rate for water in Sierra Leone was \$0.65 per cubic meter. See World Bank. *Sierra Leone's Infrastructure - A Continental Perspective, Policy Research Working Paper 5713*. June 2011, p. 43. Available at: documents.worldbank.org/curated/en/140751468302732478/pdf/WPS5713.pdf.

¹¹⁷ See Kabba, V.S. *Supra* Note 66, p. 97: 58% of respondents from communities affected by SOCFIN's operations reported water pollution as a perceived environmental impact of the company's activities.

¹¹⁵ See 'Goal 2' at Star Consult on behalf of SOCFIN. *Supra* Note 77, p. 174.



BOX 4. POLLUTION OF THE RIVER MALEN

The River Malen stands as a major source of drinking water for the Chiefdom's local communities. Since 2011, it has also been key to SOCFIN's operations in Malen. Between January and March 2013, high levels of pollution in the river, along with large numbers of dead fish, were reported by local communities in a complaint to the EPA. An investigation was subsequently carried out under the control of the EPA, confirming the reports of chemical pollution. While reporting the presence of an abundance of agro-industrial chemicals in the river's water, national media reports laid the blame for the pollution at the hands of "lazy workers" and thieves, citing unnamed sources.¹¹⁸ Despite repeated attempts by MALOA,¹¹⁹ the report into the pollution was never made public or shared with affected communities. SOCFIN maintains that the pollution incident is totally unrelated to their activity, but caused by a chemical used by community fishermen.¹²⁰ In 2015, the River Malen was named amongst the poorest river bodies in Sierra Leone for land-sourced nutrients as a result of its proximity to palm oil plantations.¹²¹



¹¹⁸ See 'SOCFIN accepts Malen River contamination'. AWOKO Newspaper, 1 July 2013. Available at: awoko.org/2013/07/01/sierra-leone-socfin-accepts-malen-river-contamination/.

¹¹⁹ MALOA, *Investigation into the contamination of the Malen River and the activities of Socfin Agricultural Company (SAC)*, Letter to the Environment Protection Agency, Freetown, 27 August 2013.

¹²⁰ SOCFIN. *Supra* Note 1.

¹²¹ See Environmental Protection Agency, *Sierra Leone: State of the Marine Environment Report 2015*, p. 34.



INTERNATIONAL HUMAN RIGHTS LAW

Many of the human rights standards bearing on the right to a healthy environment also underpin the right to water and State obligations flowing from it. As per **General Comment No. 15** of the UN Committee on Economic, Social and Cultural Rights, the right is deemed implicit in **ICESCR Article 11**, protecting the right to an adequate standard of living, and is essential for the full enjoyment of the right to food.¹²² It is the right to “sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”,¹²³ and includes the right to be “**free from arbitrary disconnections**

or contaminations of water supplies”,¹²⁴ and includes “the right to seek, receive and impart **information** concerning water issues.”¹²⁵ State obligations arising from the right include ensuring access to water for drinking, washing, preparing food and for personal hygiene,¹²⁶ and ensuring “adequate access to water for subsistence farming”.¹²⁷ Furthermore, **State parties must “take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to water by third parties”**.¹²⁸

The right is also protected in **Article 14 of The African Charter on the Rights and Welfare**

of the Child (2000) and in **Article 15 of the Protocol to the ACHPR on the Rights of Women in Africa** (2003), otherwise known as the Maputo Protocol – both of which have been ratified by Sierra Leone. Article 14(c) of the Charter obliges states to “**ensure the provision of adequate nutrition and safe drinking water**” for children, whilst Article 15 of the Protocol, on the right of women to food security, imposes a duty on State parties to take appropriate measures to “**provide women with access to clean drinking water**, sources of domestic fuel, land, and the means of producing nutritious food”.

¹²² See UN Committee on Economic, Social and Cultural Rights. *General comment No. 15: The Right to Water (Articles 11 and 12 of the Covenant)*, 2003, para 3. Available at: www.refworld.org/pdfid/4538838d11.pdf.

¹²³ *Ibid.*, para 2.

¹²⁴ *Ibid.*, para 10.

¹²⁵ *Ibid.*, para 12 (c)(iv).

¹²⁶ See OHCHR. *Human Rights Fact Sheet No. 35: The Right to Water*, 2010, p. 3. Available at: www.refworld.org/docid/4ca45fed2.html.

¹²⁷ CESCR. *General Comment No. 15*, 2003, para 7.

¹²⁸ *Ibid.*, para 44 (c).

3.1.4. THE RIGHT TO DECENT WORK AND FAIR EMPLOYMENT

Prior to the arrival of SOCFIN in Malen, the Chiefdom was primarily an **agriculturally rooted subsistence economy**. Basic needs, including food needs, were met through the use of the land, whilst cash to meet further needs, such as school fees, was generated through small-scale cultivation and capitalization of a small but diverse number of crops.

With the entry of the company into the Chiefdom, this system was rapidly **transformed into a labor-based economy**. With land no longer available for community farming, and household plantations taken over by SOCFIN through the land lease agreements, communities could no longer meet their basic or auxiliary needs. In turn, households sought employment to generate incomes, so that what could no longer be grown or collected could be earned and bought through work and markets.

Employment opportunities with the company were envisioned as forming the main counter-balance to the long-term takeover of the land by SOCFIN, and have repeatedly been presented by the company and the Government as an opportunity for economic development in the region. They would provide a source of income alongside a smallholder out-grower scheme to be implemented by SOCFIN (See Box 5). In 2012, a commitment to fulfil these hopes was codified in the **MoU** between SOCFIN



and the Government of Sierra Leone.¹²⁹ Over the proposed 12,000 hectares of land to be developed by SOCFIN into palm oil plantations, **2,414 jobs** were imagined as being created by 2020.

As of 2015, Malen counted a population of 49,263 people. A wealth of academic research and local testimonies indicate that the employment opportunities that were foreseen with the entry of the company into the Chiefdom

have not materialized. Moreover, new jobs have proved insufficient to offset the shortfalls linked to the communities' loss of access to land and natural resources that results from the land-lease agreements. This has shown to have wide-ranging repercussions for a broad spectrum of rights of the Malen communities, and to be compounded by serious failings concerning working conditions and the right to fair employment itself.

¹²⁹ See *Memorandum of Understanding and Agreement*, 2012, Recital D, Recital E, Recital M, Recital P, Agreement 5, Investor's Obligation 6(a) and Obligation 8. *Supra* Note 28.

As of 2017, SOCFIN claimed to employ a total of 3,583 people in the Chiefdom. Only one third of these workers (1,178) were permanent employees.



BOX 5.

THE PROPOSED SMALLHOLDER OUT-GROWER SCHEME

Smallholder out-grower schemes take the form of agreements between small-scale farmers and large-scale agricultural actors. Through these agreements, large companies agree to buy agricultural products from individual or small groups of farmers in the locality of their operations or their surrounding areas. In the 2011 ESHIA, the implementation of such a scheme in Malen was stated as a priority for SOCFIN.¹³⁰ It was to be developed in collaboration with communities,¹³¹ with the primary aim of ensuring that people leasing land to the company would be “at the very least no worse off in terms of food resources than they are at present”.¹³²

The out-grower scheme is subsequently included in the investor’s obligations under the Memorandum of Understanding (Art. 4) and aims to achieve food self-sufficiency and ultimately food sovereignty.

In the official letter of invitation to the public disclosure meeting of the ESHIA report, informing the communities and other stakeholders about the projects and its benefits, it was again highlighted that: “The first phase of the project considers the establishment of an industrial nucleus of 12,000 hectares of oil palm plantation and a purchase policy of buying 10,000 tons of locally produced oil palm fruits”.¹³³

\$7,824,000 was earmarked by SOCFIN to be spent on the development of the scheme between 2014 and 2025.¹³⁴ However, company corporate and social responsibility spending accounts provided to local

authorities by the company¹³⁵ indicate that as of 2017, **no money had been invested in the scheme**, although \$2,608,000 should have already been spent by 2017. In the Environmental and Social Due Diligence Assessment commissioned by the company in 2015, it was confirmed that “**there is no out-grower scheme**”.¹³⁶ When asked about the reason for the non-implementation of the out-grower scheme, SOCFIN systematically declined to answer.¹³⁷ It was not until a response to this report was issued in January 2019 that SOCFIN declared: “SAC reviewed its initial plan and decided to prioritize the rice farming scheme and the fishing ponds. (...). It is envisaged that once the whole industrial infrastructure is realized SAC will start to collect palm kernels in the region, allowing additional income to the communities”.¹³⁸

¹³⁰ See Star Consult on behalf of SOCFIN. *Supra* Note 77, p. 147.
¹³¹ *Ibid.*, p. 172
¹³² *Ibid.*

¹³³ Star Consult. *Public disclosure report of the environmental social and health impact assessment of oil palm and rubber plantations/Estates in the Malen Region, Southern Sierra Leone*. 2011. Annex 5, p. 77.
¹³⁴ *Ibid.*, p. 176.

¹³⁵ SOCFIN. *Corporate Social Responsibility Report from 2011 to 2017* 2018.
¹³⁶ Environmental Resources Management on behalf of SOCFIN. *Supra* Note 34, p. 59.
¹³⁷ Letter to SOCFIN’s country director in Sierra Leone by FIAN Belgium, 12 May 2016; and information requested through SOCFIN’s grievance mechanism, June 2018.
¹³⁸ SOCFIN. *Supra* Note 1.

CASUAL WORKERS
RECEIVE THEIR MONTHLY
SALARIES IN SIMPLE
ENVELOPES WITHOUT
ANY MENTION OF TASKS,
PERIOD OR TYPE.



As of 2017, SOCFIN claimed to employ a total of 3,583 people in the Chiefdom.¹³⁹ Only **one third of these workers (1,178) were permanent employees**. About a quarter of permanent employees are women. The large bulk of the workforce is comprised of 2,042 daily workers, 250 temporary employees and 113 sub-contractors,¹⁴⁰ all working under **precarious conditions of employment**. It has been demonstrated that these jobs are **underpaid, insecure, lacking in transparency and overly strenuous**.

Whilst the minimum wage in Sierra Leone stands at 500,000 Leone per month, average salaries for seasonal workers at the company are reported to be between 150,000 and 250,000 Leone

Only a few members of the Chiefdom communities are employed in management or supervisory positions: the large majority of work available to them is **seasonal**. Locals are employed for **indefinite terms** and **frequently laid off within six**

months or less. Sackings during the wet summer months, when alternative farming is unfeasible, are particularly common.¹⁴¹ Prior to the arrival of SOCFIN, local communities enjoyed a certain level of food sovereignty, yet these new conditions **increase food insecurity**, which is in turn exacerbated by the low level of remuneration paid by the company. Whilst the **minimum wage** in Sierra Leone stands at **500,000 Leone** per month¹⁴², **average salaries** for seasonal workers at the company are reported to be **between 150,000 and 250,000 Leone**.¹⁴³ None of the casual workers interviewed by FIAN Belgium during fact-finding missions to Malen had a signed employment contract in their possession. They receive their monthly salary in an envelope without mention of the type of work or the relevant dates or time period. This prevents them from proving that **they are paid below the legal minimum wage**.¹⁴⁴ In 2018, seasonal workers earned an average daily rate of maximum 20,000 Leone,¹⁴⁵ however, a multitude of further factors, as described below, prevented them from accumulating a fair remuneration for their work.

Pay is dependent on the completion of daily tasks. Evaluation of the satisfaction of this condition is left to the **discretion of supervisors**, with **no effective avenue of appeal**.¹⁴⁶

Tasks may include the cleaning of large numbers of palm oil trees, or the collection of palm fruits from a designated area of the plantation. Such tasks are physically extremely arduous, and often far too much is expected to be completed during one day, in particular during the intense harvest period. As a result, the failure to complete daily quotas is common, resulting in loss of income. Compounding this are **reports of corruption in the management of salaries by supervisors** who control their distribution.¹⁴⁷ It is worth nothing that supervisors are mostly hired from outside the Chiefdom. The most recent testimonies from workers raise concerns that the payment of daily salaries has in some instances become conditional not only on the achievement of tasks, but also on a fixed schedule imposed by supervisors. In these instances, it is reported that workers are required to stay at the site until 6 pm, regardless of whether they have already completed their tasks or not.¹⁴⁸ SOCFIN has repeatedly refused to respond to requests for more information on working conditions, including tasks and seasonal workers' wages and schedules.¹⁴⁹

Such conditions – primarily experienced by male workers – lead to a gap between household incomes and the cost of meeting basic needs. For example, a bag of rice paid for on account in the Pujehun District costs between 190,000 and 265,000 Leone.¹⁵⁰ As a result, other household

to expose a complaint.” However, in practice, there are several obstacles to this: workers’ unawareness of the existence of recourse, power relations and corrupt practices between supervisors and casual workers, the requirement of a written complaint in a second stage, etc.
¹⁴⁷ See Kabba, V.S. *Supra* Note 66, pp. 130–131 and FIAN Belgium. Minutes – Interviews FFM 2018. 22–23 March 2018.
¹⁴⁸ FIAN Belgium. Minutes – Interviews FFM 2018. 22–23 March 2018.
¹⁴⁹ FIAN Belgium. Minutes – Interviews FFM 2018. 22–23 March 2018; and correspondence.
¹⁵⁰ See Kabba, V.S. *Supra* Note 66, p. 131.

¹⁴¹ See Kabba, V.S. *Supra* Note 66, pp. 132–133.
¹⁴² See Sierra Leone Minimum Wage, Labor Law, and Employment Data Sheet. *Sierra Leone Minimum Wage Rate 2019*. Available at: www.minimum-wage.org/international/sierra-leone.
¹⁴³ See Kabba, V.S. *Supra* Note 66, pp. 130–131 and FIAN Belgium. Minutes – Interviews FFM 2018. 22–23 March 2018; SOCFIN, *Supra* Note 1. “In January 2019, in SOCFIN’s response, the company claims that: “All types of contracts have wage conditions in line with the CBA (Collective Bargaining Agreement) negotiated every three years between the Unions and the Agriculture Sector. These wages are above the national minimum wages”. Nevertheless, interviews with casual workers and their monthly payment envelopes do not confirm this.
¹⁴⁴ FIAN Belgium. Minutes – Interviews FFM 2018. 22–23 March 2018.
¹⁴⁵ See Kabba, V.S. *Supra* Note 66, pp. 130–131.
¹⁴⁶ SOCFIN. *Supra* Note 1. In January 2019, in SOCFIN’s response, the company states that: “everyone is free

¹³⁹ SOCFIN. *Sustainable Development Report 2017*, p. 67.
¹⁴⁰ *Ibid.*

Pay is dependent on the completion of daily tasks. Evaluation of the satisfaction of this condition is left to the discretion of supervisors, with no effective avenue of appeal.



members, especially women, also seek employment with the company in an attempt to increase household incomes. Prior to the arrival of SOCFIN in the Chiefdom, women were the principle farmers in the family, cultivating gardens and swamps to provide food, as well as being chiefly responsible for raising children. In the absence of land and in the search for work, these

responsibilities are set aside.¹⁵¹ Women are employed in the company nursery, where **jobs are given on a daily basis**. In order to be hired, women are obliged to present themselves on the day, often at very early hours of the morning, after having **walked long distances** to arrive at the villages in which selections are made. It has also been reported

that **children of school-going age accompany their parents to work** at the plantations in order to assist them in finishing their daily work quotas.¹⁵² **Elderly** members of communities are **not hired** by the company in any capacity due to the physical nature of the tasks (except for rare exceptions), leaving them **entirely dependent on family**

¹⁵¹ *Ibid.* pp. 136–140.

¹⁵² FIAN Belgium. Minutes – Interviews FFM 2018, MN06, Taninahun, Focus group, Elders. 22 March 2018.

Unable to work on the company plantations, elderly community members faced the prospect of having no land to cultivate and no income to replace their loss.

members, in the absence of land to sustain themselves (See Box 6). Whilst SOCFIN claims to cover all medical bills in the case of an accident at work, and to continue to pay workers' salaries in such instances, these claims are contradicted by workers themselves (See Box 7).

The working conditions within SOCFIN in Malen have been **documented since the beginning of the company's operations in 2011**. Whilst daily salaries have increased since then,¹⁵³ levels of remuneration still fall far short of any just standard. Other **aspects of working conditions on the plantations have also deteriorated** for members of local communities. At the outset of operations, for example, a majority of local workers were provided with company transport to work sites each day, whilst in 2018 this was no longer the case, with the large majority of local workers having to walk to work, often over long distances.¹⁵⁴

BOX 6

THE SITUATION OF ELDERLY PEOPLE IN THE MALEN CHIEFDOM

Prior to the arrival of SOCFIN in the Chiefdom, elderly members of the Malen communities relied upon their land, particularly on small cash crops, to sustain themselves and meet their basic needs. When the physical labor would become overly arduous, elders would enter into an agreement with younger members of the community, who would cultivate the land in the elders' absence and share its produce.

Following the land lease agreements, the overwhelming majority of land used by elders came under the control of SOCFIN. Unable to work on the company plantations, elderly community members faced the prospect of having no land to cultivate and no income to replace their loss.

This issue was raised by communities during interviews carried out in the EISHIA of 2011, and assurances were given by SOCFIN that it would provide for elderly members of the communities.¹⁵⁵ Interviews conducted in 2012 and 2018 confirm the negative impacts of SOCFIN's operations on older people in Malen, as they have been left without the resources to meet their primary needs. This has had a serious knock-on effect on the social cohesion of families and communities, as the elderly gradually lose much of their authority.

Accounts of SOCFIN's corporate social responsibility spending between 2011 and 2017 received by FIAN Belgium indicate that on only two occasions were payments made to elderly members of the communities. In the first instance, a payment of \$340 was made to high-ranking Chiefdom elders, including the Paramount Chief, for their personal disposal. In the second instance, \$133 was paid to an elder to repair damage to his house caused by a fire.

During a meeting between SOCFIN and FIAN Belgium in March 2018, a special program for elders was referenced by the company's General Manager. However, the initial study for designing the program was not properly conducted and had to be reviewed.¹⁵⁶

¹⁵⁵ Star Consult on behalf of SOCFIN. *Supra* Note 77, p. 100 and 153.

¹⁵⁶ SOCFIN. *Supra* Note 1. In January 2019, in SOCFIN's response, the company confirms that: 'a special program is currently being designed for the elderly people with the objective to start in Q1 of 2019', more than 7 years after the start of the company's activities.

¹⁵³ See Melsbach and Rahall. *Supra* Note 21, p. 27.

¹⁵⁴ See Kabba, V.S. *Supra* Note 66, p. 135.

INTERNATIONAL HUMAN RIGHTS LAW

The right to just and favourable working conditions is interlinked with multiple other rights, including the right to an adequate standard of living and food. It is enumerated in **ICESCR Articles 6 and 7** and was elaborated on by the CESCR in its **General Comment No. 23**. It includes the right to a **fair wage**¹⁵⁷ and **remuneration sufficient to enable workers and their families to “enjoy other rights in the Convention,** such as social security, health care, education and an adequate standard of living, **including food, water and sanitation”**.¹⁵⁸ It impinges upon States’ **minimum core obligations** that they must take immediate and continuous steps to fulfil. These include a **duty to “effectively regulate and enforce the right and sanction non-compliance by public and private employers”**.¹⁵⁹ Violations of the right can be committed by State parties through commission or omission, in the case where, for example, they fail to enforce laws enacted to ensure the enjoyment of the right.¹⁶⁰ The right is also enumerated in **Article 15** of the **ACHPR**.

BOX 7.

COMPENSATION FOR INJURIES SUSTAINED AT WORK ON THE SOCFIN PLANTATIONS

“For work accidents we cover everything including the salary, no matter your status – permanent or casual. We have an agreement with the hospital. As long as you have a doctor’s certificate.”

– Philip Tonks, SOCFIN General Manager, in an interview with FIAN Belgium, 2018

“In the beginning, we were the first to work for SOCFIN. Recently, I had an accident: I left early, during the night, to go to work and I fell on the way. I couldn’t move my hand. I informed SOCFIN, but nobody came and I didn’t get any medication. Now, I can’t work because I can’t use my left hand. Life is really difficult.”

– Interview with female member of an affected community with FIAN Belgium, 2018



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¹⁵⁷ UN Committee on Economic, Social and Cultural Rights. *General Comment No. 23 on the right to just and favourable conditions of work*. 2016, para 10. Available at: www.refworld.org/docid/5550a0b14.html.

¹⁵⁸ *Ibid.*, para 18.

¹⁵⁹ *Ibid.*, para 51.

¹⁶⁰ *Ibid.*, para 79.

3.1.5. THE RIGHT TO EDUCATION

“Before I had 9 acres of palm trees to take care of my 7 children. But my land was taken from me. And I don’t have any other source of income or any job. I am devastated when I think about the future of my children. They are not going to school because we can’t afford it. Before, I was a farmer, I grew cassava and it was enough to send my children to school. SOCFIN constructed a school but not in our village. Parents are paying the teachers at our school.”¹⁶¹

In principle, primary education – including associated costs such as textbooks and notebooks – has been free in Sierra Leone since the passing of the 2004 Education Act.¹⁶² However, by 2011, an estimated 54% of households still paid school fees for children attending public primary schools, with 98% of households bearing the costs of uniforms, 10% paying for textbooks, and 15% paying for notebooks.¹⁶³ For some students, junior secondary school is *prima facie* covered by the State, however, fees apply for the majority of students. The impact of the newly elected Government’s ‘free education’ scheme¹⁶⁴ has yet to be drawn out.

Within the Malen Chiefdom, households have traditionally met the costs associated with education through income generated from selling the

produce of their **cash crops** and **collected produce** (such as honey and herbs) on local markets.¹⁶⁵ Subsequent to the land lease agreements, in the large majority of cases these sources of income **ceased entirely**, or became **insufficient to cover education expenses**. Income, where it has been generated – including through employment with the company – has been primarily diverted towards meeting basic food needs, leaving little left over for education. Whilst SOCFIN has provided some scholarships for students in the Chiefdom, along with other educational programs, many families have been left with little choice but to remove their children from school, with girls most commonly the first to be withdrawn. Loss of income stands as the primary determinant in such cases, although some young people and teachers have been reported to leave schools in the hope of obtaining work on the company plantations.¹⁶⁶ In order to bridge the gap between income and the cost of meeting basic needs, multiple members of households have often sought employment with SOCFIN. Where these jobs are found, **both parents within households are absent** for long hours during the day, leaving them unable to ensure their children attend school, and unable to provide parental support for their children’s education. In some cases, it has been reported that parents bring their children to the plantations to assist them with their tasks.¹⁶⁷



INTERNATIONAL HUMAN RIGHTS LAW

The right to education is protected in **Articles 13 and 14 of the ICESCR**. Amongst the normative content of the right, as elaborated in **CESCR General Comment No. 13**, is **accessibility** – the **need for education to be affordable to all**.¹⁶⁸ State parties to the Convention have a duty to respect, protect and fulfil this element of the right, described as an “essential feature” of it in the General Comment.¹⁶⁹ The responsibility to protect the right requires States to “take measures that prevent third parties from interfering with the enjoyment of the right”.¹⁷⁰ The right is further protected in the **Articles 28 and 29 of the CRC**.

At the regional level, the right finds protection under **Article 17 of the ACHPR**. It is also protected in several articles of the **African Charter on the Rights and Welfare of the Child**, in particular Article 11 and Article 20(2)(a), which states that State parties must take measures to “assist parents and other persons responsible for the child and **in case of need, provide material assistance and support programmes**, particularly with regard to nutrition, health, **education**, clothing and housing.”¹⁷¹

Nationally, the right is protected in the **2007 Child Rights Act**,¹⁷² the **2004 Education Act**,¹⁷³ and **Article 9 of the 1991 Constitution** of Sierra Leone.¹⁷⁴

¹⁶¹ FIAN Belgium. Minutes – Interviews FFM 2018, Gandomhun Town. 22 March 2018.

¹⁶² See Article 3 (3) of the Education Act. Available at: www.unesco.org/education/edu-rights/media/docs/a2030b790f9db88c-3149cbc7238d7dd419775cec.pdf.

¹⁶³ UNESCO. *Sierra Leone: Education Country Status Report*. 2013, p. 89. Available at: unesdoc.unesco.org/images/0022/002260/226039e.pdf.

¹⁶⁴ See Government of Sierra Leone. “President Bio Launches Free Education, Calls on Parents and Teachers to Support the Initiative”. 20 August 2018. Available at: statehouse.gov.sl/president-bio-launches-free-education-calls-on-parents-and-teachers-to-support-the-initiative/.

¹⁶⁵ Baxter. *Supra* Note 19, pp. 35–36.

¹⁶⁶ Baxter. *Supra* Note 19, p. 35. Confirmed in FIAN Belgium. Minutes – Interviews FFM 2018, March 2018.

¹⁶⁷ FIAN Belgium. Minutes – Interviews FFM 2018, Tanahun Town. 22 March 2018.

¹⁶⁸ Committee on Economic, Social and Cultural Rights. *General Comment No. 13: The Right to Education (Art 13)*. 1999, para 6 (b)(iii). Available at: www.refworld.org/docid/453883bc22.html.

¹⁶⁹ *Ibid.*, para 50.

¹⁷⁰ *Ibid.*, para 47.

¹⁷¹ African Charter on the Rights and Welfare of the Child. Available at: www.achpr.org/instruments/child/#a20.

¹⁷² In particular Article 26.2 of the Child Right Act, Sierra Leone. 2007. Available at: www.sierra-leone.org/Laws/2007-7p.pdf.

¹⁷³ See Article 3 of the Act. Available at: www.sierra-leone.org/Laws/2004-2p.pdf.

¹⁷⁴ The Constitution of Sierra Leone, 1991. Available at: www.sierra-leone.org/Laws/constitution1991.pdf.



3.1.6. THE RIGHTS OF WOMEN

In Sierra Leone's 2015 National Population Census, females represented **50.5%** of the country's 2,905,097 strong **rural population**. In the country as a whole, and in particular in rural areas,¹⁷⁵ the overwhelming majority of women have traditionally worked in the **informal sector**, with women holding only a 0.17% share of positions in non-agricultural formal employment,¹⁷⁶ with more women **working or engaged in agriculture** than men.¹⁷⁷ In the **Pujehun District** in which the Malen Chiefdom is located, the **female poverty** rate was recorded at **73.5%**.¹⁷⁸

The land-lease agreements and the accompanying entry of

SOCFIN into the Malen Chiefdom had a unique impact on local women. Primarily responsible for dealing with household food needs, they were traditionally the main workers of the land in the Chiefdom, managing household gardens to meet food needs, and plantations, to generate income, whilst also searching for firewood. Their agricultural activity was of chief economic importance within communities, but also played a key social role, standing as the base of much social interaction within villages. The change in access to and control over land that stems from the lease agreements removed the base materials of this activity from local women, creating an **economic and social gap**. Academic research has underlined that: "Women and men have experienced a fall in income. (...) However, by virtue of their traditional role of household managers, the impact of the fall of women's income on households tends to be more immediate on the households than that of men".¹⁷⁹ Largely deemed unfit for the tasks demanded of workers

on the SOCFIN plantations, especially in the case of the elderly, women have frequently been faced with a barrier to work of all forms. This has had a cumulative negative social impact and severe implications for communities' rights in general, and women's rights in particular, including their right to food, water and an adequate standard of living.

The impact of the fall of women's income on households tends to be more immediate on the households than that of men.

¹⁷⁵ See Statistics Sierra Leone. *Sierra Leone 2015 Population and Housing Census – Thematic Report on Economic Characteristics*, 2017. Figure 3.19. p. 32. Available at: www.statistics.sl/images/StatisticsSL/Documents/Census/2015/sl_2015_phc_thematic_report_on_economic_characteristics.pdf.

¹⁷⁶ *Ibid.*, Figure 3.17. p. 31.

¹⁷⁷ *Ibid.*, Table 3.7. p. 20.

¹⁷⁸ See Statistics Sierra Leone. *Sierra Leone 2015 Population and Housing Census – Thematic Report on Poverty and Durables*, 2017. Table 4. 10 at p. 38. Available at: www.statistics.sl/images/StatisticsSL/Documents/Census/2015/sl_2015_phc_thematic_report_on_poverty_and_durables.pdf.

¹⁷⁹ Yengoh, G.T., Steen, K., Armah, F.A. *Women's Bigger Burden: Disparities in Outcomes of Large Scale Land Acquisition in Sierra Leone*. Gender Issues. 2015. p. 242. Available at: wedocs.unep.org/bitstream/handle/20.500.11822/18395/Womens_Bigger_Burden.pdf?sequence=1&isAllowed=y.

INTERNATIONAL HUMAN RIGHTS LAW

The rights of women are guaranteed in multiple international and regional human rights instruments, including CEDAW, in particular **Article 14**, which concerns the rights of rural women. The Article has been extrapolated by the CEDAW Committee, in its **General Recommendation No.34**. As per the Committee, State obligations flowing from the Convention include a duty to **take measures to address negative impacts** of “economic policies, including agricultural and general trade liberalization, **privatization and commercialization of land, water and natural resources**” on rural women and the enjoyment of their rights.¹⁸⁰ Furthermore, States have an obligation to take steps to address the specific problems faced by rural women as a result of “**land and soil degradation, water pollution (...) desertification, pesticides and agro-chemicals (...) monocultures, bio-piracy and loss of biodiversity**,”¹⁸¹ States must also **protect rural women from “the negative impacts of acquisition of land by national and transnational companies”** and **ensure that land-lease contracts do not violate their rights**.¹⁸² States also have duties towards the **right to food** and **right to water** of rural women “**within the framework of food sovereignty**”.¹⁸³

A further spectrum of women’s rights are protected under the **Maputo Protocol**, including the right to food security (**Article 15**), the right to a health and sustainable environment (**Article 18**), and the right to sustainable development (**Article 19**). Article 19 obliges State parties to take steps to ensure women’s access to land and natural resources, to guarantee female property rights,¹⁸⁴ and to reduce the negative effects of “globalization, trade and economic policies”¹⁸⁵ on women to a minimum.



3.1.7. CIVIL AND POLITICAL RIGHTS AND THE PROTECTION OF HUMAN RIGHTS DEFENDERS

In addition to its impact on economic, social and cultural rights, the land conflict in Malen has also triggered serious abuses of civil and political rights.

From the outset, the communities protested against the land acquisition by SOCFIN. Many of them joined forces to form the grassroots organization MALOA, in an effort to coordinate their opposition to the lease agreement and advocate for the rights of local communities. Despite formal requests, **MALOA was prevented from registering as an organization with local authorities**. On several occasions, MALOA executive members wrote to local authorities to inform them about local meetings with their

members and the organization of peaceful demonstrations to voice their demands. These actions were systematically forbidden by the Chieftdom Authorities, in **blatant violation of their rights to freedom of peaceful assembly and association and to freedom of expression and opinion**. In 2013, with the support of Green Scenery, MALOA was able to incorporate nationally as a limited company, however interference with its operations continued. In September 2015, seven MALOA affiliates responsible for the registration of members in local villages were arrested on charges of “writing down names of people in the town without the knowledge of the chiefs”.¹⁸⁶ Only as of October 2018, in the context of the new mediation process initiated by the Vice-President, has the association been permitted to register with the Pujehun District Authorities, in principle granting it permission to meet and assemble freely in the district.

Throughout the years, several protest events were organized in opposition to the land lease agreements and SOCFIN’s

¹⁸⁰ See Committee on the Elimination of Discrimination Against Women, *General Recommendation No.34 on the Rights of Rural Women 2016*, para 11. Available at: www.ohchr.org/en/hrbodies/cedaw/pages/recommendations.aspx.

¹⁸¹ *Ibid.*, para 12.

¹⁸² *Ibid.*, para 62(c).

¹⁸³ *Ibid.*, paras 64 and 85(a).

¹⁸⁴ See Maputo Protocol, Article 19 (c).

¹⁸⁵ *Ibid.*, Article 19 (f).

¹⁸⁶ See Observatory for the Protection of Human Rights Defenders. *Supra* Note 45.

activities in Malen. These were systematically **repressed by local security services, at times using violence**. They included:

- A demonstration in October 2011, during which villagers tried to block SOCFIN's operations. **Forty people were arrested** by the local police (local unit commander – LUC), and **fifteen were pursued in court** over the course of two years before the case was eventually dropped for unspecified reasons.
- Following an incident between villagers and SOCFIN's survey teams in August 2012,¹⁸⁷ four people were arrested in the village of Bassaleh. On 6 October 2012, they were **sentenced and ordered to pay fines of 800,000 each or face 12 months in prison. None of the individuals received legal representation** during the trial.¹⁸⁸
- In October 2013, after MALOA members were denied permission to meet with local authorities to present their concerns, 40 plants belonging to SOCFIN were found to have been destroyed. Despite the fact that no witnesses could identify those responsible,¹⁸⁹ **the police arrested six executive members of MALOA**. They remained in custody for more than a week and were referred to the Bo High Court for charges of "destruction of growing plants", "conspiracy" and "incitement". On 4 February 2016, they were found guilty of all charges. As MALOA's spokesperson, Mr Shiaka Sama was sentenced to pay a fine of 60,000,000 Leones (approx. €10,000) or face six

months imprisonment. The five other MALOA members were sentenced to pay fines of 30,000,000 Leones (approx. €5,000), or face five months imprisonment.

- Between 2 and 10 December 2013, protest events took place around Libby village to prevent SOCFIN from expanding in the area. On 9 December 2013, a protest march was dispersed by a police squad from the Operations Special Division of Malen (OSD). According to a report by Green Scenery, the police used live bullets in the operation.¹⁹⁰ Fifty-seven people were arrested by the police in Pujehun and taken to Bo where they were held in custody. Villagers also reported a night raid in Libby village in the early

hours of 10 December, during which gunshots were fired.¹⁹¹

- Between 28 January and 26 February 2015, two MALOA executive members and nine supporters were arrested in Malen on charges of "conspiracy, malicious damage", "riotous conduct", "destroying growing plants", "stoning" and "carrying offensive weapons". This followed a shooting incident at Bamba village in Malen on 14 January 2015, involving two SOCFIN personnel. According to information received by FIAN Belgium, several hearings took place but the case is still pending.
- In June 2017, a massive strike and protest event was organized by a new group



¹⁸⁷ The villagers opposed the arrival of the investigation team tasked with delineating SOCFIN planting areas for the second phase (zone B) of the company's operations in the Chiefdom.

¹⁸⁸ FIAN Belgium. Minutes - Interviews with Prisoners FFM 2012.

¹⁸⁹ The judgment confirmed that no witness could identify the defendants.

¹⁹⁰ Green Scenery, *Report on the incident of police arrest and highhanded measure of fifty seven citizens in Malen Chiefdom, Pujehun District*. December 2013.

¹⁹¹ *Ibid.*

called Youth Affected by SAC (YASAC). An ultimatum was given to SOCFIN's managers to resolve a series of issues related to working conditions on the company plantations. Between 10 and 12 June, four executive members of YASAC were arrested. According to media reports, two were found guilty on charges of "writing threatening letters". They were ordered to pay fines of 150,000 Leone or face two months imprisonment.¹⁹²

- **In January 2019, a demonstration escalated between villagers and military and police forces, who were protecting SOCFIN's assets** (see above 2.6. Conflict Escalation throughout 2019). **Two people were killed by gunshot and one policeman was wounded.** Following this incident, police and military raids were carried out at night. An excessive use of violence was reported, including beatings, vandalism and lootings.¹⁹³ **Fifteen people (most of them MALOA members) were arrested** and brought to the Criminal Investigation Department (CID) in Freetown. Among them was Shiaka Sama, newly elected MP and former spokesperson of MALOA. According to the information M. Sama has received so far (at the time of finalizing this report), his parliamentary immunity has been lifted for an in-depth investigation into his activities. He was told that charges against him may include: incitement; murder of the two persons who were killed; obstruction of the SOCFIN's operations; allowing the illegal Poro Society to operate; and forcefully grabbing a piece of land in

Sahn.¹⁹⁴

- These cases have been **denounced as acts of arbitrary detention and judicial harassment** by international human rights organizations. The Observatory for the Protection of Human Rights Defenders launched several urgent appeals to call for the protection of MALOA members.¹⁹⁵ In December 2015, three UN Special Rapporteurs also expressed their concerns regarding the systemic criminalization of MALOA members and sent a formal letter to the Government of Sierra Leone asking for specific protection measures to be taken.¹⁹⁶ This letter remains unanswered. The issue was again brought up recently by a further UN Special Rapporteur after their visit to Sierra Leone in 2017.¹⁹⁷

These cases have been denounced as acts of arbitrary detention and judicial harassment by international human rights organizations.



¹⁹² See "Sierra Leone News: Pujehun land rights activists freed", AWOKO Newspaper, 27 June 2017. Available at: www.farmlandgrab.org/27238.

¹⁹³ See Sierra Leone Human Rights Organization Coalition. *Supra* Note 53.

¹⁹⁴ See SiLNoRF, Green Scenery et al. *Supra* Note 51.

¹⁹⁵ The Observatory for the Protection of Human Rights Defenders. *Supra* Note 45.

¹⁹⁶ See Communication of the UN Special Rapporteurs on Human Rights Defenders, Freedom of Expression, and Freedom of Assembly and Association. *Supra* Note 42.

¹⁹⁷ See *Report of the Special Rapporteur on the implications for human rights of the environmental sound management and disposal of hazardous substances and wastes on his mission to Sierra Leone*. *Supra* Note 44, para. 51-52.



As SOCFIN's operations in Malen have expanded, the **theft of palm fruits** has become a serious issue, raising tensions in the Chiefdom. Dozens of people have been arrested by SOCFIN security guards and referred to the local police for theft. In some instances, security guards have used violence against villagers in arresting them, and confiscated palm fruits. Despite requests by

of the freedom of movement of citizens of Sierra Leone.

National and international NGOs assisting local communities have also faced difficulties in the exercise of their activities. This has been most acutely the case with Green Scenery, a Freetown-based environmental and human rights organization that has monitored the case since 2011, providing support to MALOA. In the course of its activities, **Green Scenery has faced continuous intimidation by the company and by local authorities**, including a libel suit initiated by SOCFIN in 2012.¹⁹⁹ NGOs were also directly obstructed in their monitoring role in the Malen Chiefdom. For example, in March 2016, Green Scenery and FIAN Belgium were **banned from entering Pujehun District by a police injunction**. As the basis for this, the police claimed a Presidential visit, which was to take place more than a week after the planned field trip.²⁰⁰ This has not been an isolated case; local civil society organizations in Bo were also prevented from visiting the communities for several unjustified reasons.²⁰¹ In 2017, the Paramount Chief wrote a letter to the district authorities informing

them that he **would definitively ban any operations by Green Scenery, the Rural Agency for Community Action Program and Welthungerhilfe in the chiefdom**, accusing them of "causing and fermenting trouble".²⁰²

Leaders of MALOA and NGOs have regularly been cited in **defamatory articles in media outlets close to the company**. These articles were largely disseminated via SOCFIN's website and social media accounts. In 2016, after a series of particularly infamous articles published in the Spectator newspaper, Green Scenery initiated a complaint before the Independent Media Commission of Sierra Leone. The Commission acknowledged the defamatory nature of the articles and asked them to be removed, and a letter of apology to be sent to Green Scenery. Despite this decision, the articles remain available on SOCFIN's website. As we finalize this report, the Director of Green Scenery has again received a request for an appearance from the High Court of Sierra Leone, on complaint of SAC (SOCFIN) for defamatory publication and for damages (including \$50,000 for specific damages).

Leaders of MALOA and NGOs have regularly been cited in defamatory articles in media outlets close to the company.

NGOs, no proper investigation has been undertaken by the police into the use of violence by security guards.¹⁹⁸ According to testimonies, the Paramount Chief has taken new measures to allow police to immediately arrest people traveling with palm fruits in their possession in the concession area. If confirmed, this would amount to a clear violation

¹⁹⁸ Green Scenery. *Fighting over palm fruits lands sick man in hospital – a case of human rights abuse in Malen in Malen Chiefdom*. 18 August 2016.

¹⁹⁹ As of today no hearings have taken place.
²⁰⁰ FIAN Belgium. Minutes – Interviews FFM 2016.
²⁰¹ FIAN Belgium. Minutes – Interviews FFM 2016. 01 April 2016. Interviews covered the 2016 prohibition made by the police (at SOCFIN's request) against the Network Movement for Justice and Development (NMJD), preventing their entry into SOCFIN's concession to meet with the communities.

²⁰² "Incitement by some NGOs in Malen Chiefdom". Letter from the Paramount Chief to the District Council rejecting the operations of 3 NGOs in Malen Chiefdom. 27 February 2017. Available at: www.fian.be/IMG/pdf/20170227_letter_paramount_chief_-_incitement_by_some_ngos_in_malen_chiefdom.pdf



3.2. OBLIGATIONS ARISING FROM THE TENURE GUIDELINES

The Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (**Tenure Guidelines**)²⁰³ represent a new international legal instrument, adopted in 2012 by the United Nations Committee on World Food Security (CFS) at the FAO. Although an instrument of ‘soft law’, the Tenure guidelines are considered as the first

international reference regarding land governance and human rights. The inclusive 2-year negotiation process at the CFS added to its authority. The Tenure Guidelines exist as an instrument to aid States in their management, monitoring and development of national tenure systems, including where this involves meeting their human rights obligations. They enshrine five general principles of good governance of tenure systems:

- **Recognize and respect** legitimate tenure rights holders and their rights;
- **Safeguard** legitimate tenure rights against threats and infringements;
- **Promote and facilitate** enjoyment of legitimate tenure rights;

- **Provide** access to justice to deal with infringements of legitimate tenure rights;
- **Prevent** tenure disputes, violent conflicts and corruption.²⁰⁴

In 2014, the Government of Sierra Leone, in partnership with FAO and the German Federal Ministry of Food and Agriculture, began to implement the Tenure Guidelines. They were subsequently incorporated into the new NLP of 2015,²⁰⁵ with large sections of the NLP closely mirroring the Guidelines. Tenure systems govern access to and control over natural resources. As a result, many aspects of the Guidelines, and the commitment of the Government of Sierra Leone to implement them, hold relevance for the conflict in Malen.

²⁰³ Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. Available at: www.fao.org/docrep/016/i2801e/i2801e.pdf.

²⁰⁴ Tenure Guidelines. Article 3.1 pp. 3-4.
²⁰⁵ Government of Sierra Leone. *Final national land policy of Sierra Leone. Version 6*. Freetown, 2015, p. 4 and p. 102. Available at: extwprlegs1.fao.org/docs/pdf/sie155203.pdf.

3.2.1. PARTICIPATION, CONSULTATIONS AND FREE, PRIOR AND INFORMED CONSENT (FPIC)

*“SOCFIN never holds participatory consultation processes in the villages. They tried only to achieve the consent of two or three landowners in the villages by making promises, and after that they claim that the whole village accepted to lease the land. Sometimes the survey team assigned other people as landowners in exchange of money. In other towns, town chiefs who didn’t agree to lease the land were just suspended.”*²⁰⁶

*“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.”*²⁰⁷

In the Provinces of Sierra Leone, land is largely held under informal, customary ownership. Whilst the identity of land users may be clear, and the make-up of plots of land well defined, responsibility for the administration of land lies with Chiefdom authorities.

In this arrangement, **Paramount Chiefs** act as the **custodians** of Chiefdom land, holding it in trust for individuals within the communities who ultimately retain decisive power over their land.²⁰⁸

Following the Tenure Guidelines, States should safeguard legitimate tenure rights from infringements. This safeguarding process should involve engaging individuals and communities whose tenure rights may be affected by decisions concerning their land in the decision-making process itself. This **participation**, and the **consultative process** that encapsulates it, should be **“active, free, meaningful and informed”**.²⁰⁹ Where it leads to a change in tenure rights, the change should be **fully consented to** by those affected **on the basis of consultations and participation** characterised as such. This implies the necessary possibility for consent to be withheld. These principles are included in multiple sections of the Tenure Guidelines,²¹⁰ whilst the will to establish guidelines around giving free, prior and informed consent where tenure rights may be affected was also clearly outlined in the NLP.²¹¹ Furthermore, the principle was voluntarily incorporated into SOCFIN’s activities as a matter of policy in the company’s 2017 Policy for Responsible Management (see Box 8).

BOX 8. THE SOCFIN GROUP POLICY FOR RESPONSIBLE MANAGEMENT, 2017

Approved by the SOCFIN Group’s Board of Directors on 22 March 2017, SOCFIN’s Policy for Responsible management is wide-ranging, stretching over five predominant thematic areas:

- **Participation;**
- **Transparency;**
- **Respecting the rights of local communities;**
- **Workers’ rights;**
- **Environmental protection.**

It was laid out as **“applicable, without exception, to all operations of the SOCFIN Group, and those of its subsidiaries, including all the factories, palm oil mills and plantations that the Group owns, manages...”**²¹²

The Paramount Chief, Hon. P.C BVS Kebbie, instructed the chiefs and land owners to thumbprint documents.

²⁰⁸ Johnbull, P. N. A *Legal Analysis of the Lease Agreement between the Government of Sierra Leone and the Tribunal Authorities of the Malen Chiefdom Pujehun District, Southern Province of Sierra Leone and the Sublease Agreement between the Government of Sierra Leone and the SOCFIN Agricultural Company Sierra Leone Limited*. 2011. Available at: www.fian.be/IMG/pdf/legal_analysis_latest_version-1.pdf.

²⁰⁹ Tenure Guidelines, 3B.6 at p. 12.

²¹⁰ *Ibid.*, paras 9.2, 9.9, 11.2, 12.7 and 12.11.

²¹¹ Government of Sierra Leone. *National Land Policy*. *Supra* Note 205, para 6.4(vii), p. 81.

²¹² SOCFIN. *Group policy for responsible management*. 2017. Available at: www.socfin.com/frontend/files/userfiles/files/2017_03_22_Policy_responsible_management.pdf.

²⁰⁶ FIAN Belgium. *Minutes – Interviews FFM 2012*, Bas-saleh Town, 19 October 2012.

²⁰⁷ MALOA. *Grievances of land owners in Malen Chiefdom*. *Supra* Note 27.

Whilst consultations were undertaken with the communities in Malen in 2010 within the SOCFIN's environmental impact assessment (ESHIA), elements surrounding the agreement of the initial land lease between community landowners and the Government strongly suggest that in many cases this did not result in free or informed consent.

Several village chiefs who were opposed to the agreement were removed from their positions in order to ensure the signing of the lease.

Contentions over the nature of these consultations continue, with some land owners claiming to **never have been involved** in any such process, and others reporting **substantial misunderstandings** of their role in the process and the manner in which the decision to lease the land was taken. In a sample survey of seven affected communities carried out in 2016, it was recorded that there was a large degree of confusion as to who made the decision: landowners predominantly located the power at play within the hands of the Paramount Chief, the State and the District Council.²¹³ Members of the communities have also reported

that they were informed of decisions concerning their land by the Paramount Chief, but having no further say in the decision-making process.²¹⁴ Testimonies converge to denounce the fact that several **village chiefs who were opposed to the agreement were removed** from their positions in order to ensure the signing of the lease.²¹⁵

Further doubts have been cast on the **quality** of any consultation process that may have taken place. Documentation relating to the proposed lease during the 2010 process was **in written form in English**, however the large majority of Malen's population is **illiterate** and only **speaks Mende**. Whilst direct verbal translation of documents may have taken place, doubts remain over whether such a hasty process could have allowed communities enough time for sufficient reflection, to then be able to give meaningful consent to the leasing of their lands.²¹⁶ The lease agreement was read in full publicly for the first time in June 2011, three months **after** the lease agreements had been signed and SOCFIN's activities in the Chiefdom had begun. It was partly translated into Mende.²¹⁷

The timeframe for the various stages concerning the "consultation" of communities reveal **serious gaps that make the so-called community free, prior and informed consent impossible**. These stages go from the Environmental, Social and Health Impact Assessment (ESHIA) and the public disclosure of the ESHIA report, impacts and mitigation measures, to

community questions, the signature of agreements and the start of activities. It should be noted in particular that the public disclosure of the ESHIA report (May 2011), which allowed communities to ask specific questions, took place only after the agreements were signed (March 2011). Besides, the communities had no access to hard copies of the ESHIA report beforehand.²¹⁸

Furthermore, it was noticed that **promises** made by the company played a significant role in winning the support of local elites for the agreement, and in some cases, subdued immediate opposition to the agreement among the communities.²¹⁹ Chief amongst these were promises of **long-term employment opportunities, technical training and scholarships for children**, reportedly made to land owning families directly. More broadly, promises pertained to the building of hospitals and schools, and the general socio-economic development of the Chiefdom.²²⁰ The **large majority of these promises, however, have gone unfulfilled**. When coupled with the significance of the promises for locals during the company's process of gathering consent for the initial land lease agreement, this raises serious questions as to the level of good faith in the consultation process, the extent to which local community members were properly informed about the proposed work of SOCFIN in the Chiefdom, and the nature of any consent that may have been given by local communities at the time.

This is reflected in allegations of coercion aimed at gathering signatures, including through the presence of armed guards at a meeting to sign the contract,

²¹³ Yengoh, G.T., Steen, K., Armah, F.A., Ness, B. *Factors of Vulnerability: How large-scale Land Acquisitions Take Advantage of Local and National Weaknesses in Sierra Leone*. Land Use Policy 50, 2016. p. 333. Available at: lup.lub.lu.se/record/8761328.

²¹⁴ Melsbach and Rahall. *Supra* Note 21. p. 12.

²¹⁵ FIAN Belgium, Minutes - Interviews FFM 2018, MALOA meeting, 24 March 2018; Sierra Leone Network of Journalists against land grabbing (SLENJALG), *Forceful acquisition of land by Socfin Agricultural Company in Sahn Malen Chiefdom, Pujehun District, Southern, Sierra Leone*. 2014.

²¹⁶ Yengoh, G.T., Steen, K., Armah, F.A., Ness, B. *Supra* Note 213. p. 333.

²¹⁷ Melsbach and Rahall. *Supra* Note 21. p. 14.

²¹⁸ Star Consult. *Supra* Note 133.

²¹⁹ Baxter. *Supra* Note 19. p. 43 and 47.

²²⁰ *Ibid.* p. 334 and 337.

along with bribes.²²¹ What is more, 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 (Protection from deprivation of property) and the Provinces Land Act (CAP 122). 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*”.²²² This view is reinforced when assessing the agreement of the second lease agreement, which duplicates the first jointly with the MoU in 2012.



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An analysis of the company’s corporate social spending accounts reveals significant payments made to the paramount chief, local authorities and the police, for their direct or indirect benefit.

²²¹ Melsbach and Rahall. *Supra* Note 21. pp. 15–16.
²²² For a full analysis of the legality of the lease, see Johnbull. *Supra* Note 208.



3.2.2. TRANSPARENCY AND CORRUPTION

Within the Tenure Guidelines, a strong focus is placed on enhancing transparency.²²³ This is envisaged as a means of enabling meaningful participation of affected groups in the development of good governance around tenure, allowing for FPIC to be reached, and preventing corruption. It is included in several sections of the Guidelines,²²⁴ and in the NLP.²²⁵

There has been an alleged lack of transparency in the land lease agreements and the subsequent development of SOCFIN's

operations in the Malen Chiefdom, undermining the potential participation of local communities in decisions affecting the control of their lands, and in ensuring the protection of their tenure rights and related human rights, whilst giving rise to allegations of corruption.

Increased transparency has been a **long-standing demand** of local communities that were opposed to the land lease agreements and SOCFIN's operations in Malen, as they have developed to date.²²⁶ This demand pertains to **access to key documents** relating to the agreements, including the **land lease agreements** themselves.²²⁷ A request was made for both copies of the 'head-leases' between the Government and local landowners, along with the sub-leases between the Government and

SOCFIN, to be made available. Further requests pertain to **data gathered by the company** around land in the Chiefdom, including mappings of individual lands. Additional calls for transparency focus on the manner in which compensation payments are paid by the company to affected landowners: **irregularities in the compensation-payment process** have given rise to repeated **accusations of corruption** along the line of payment. As SOCFIN's activities have developed, local demands around transparency have extended to documents associated with these activities, in particular in connection to employer-employee relationships, including access to contracts and proper payslips for employees. Records of these documents have at no point been provided by the company,²²⁸ despite

²²³ Tenure Guidelines, para 1.2.3, p. 8.

²²⁴ *Ibid.*, paras 6.9, 10.5 and 12.3.

²²⁵ Government of Sierra Leone, *National Land Policy*, *Supra* Note 205, para 2.3(f), pp. 25-26.

²²⁶ MALOA, *Grievances of land owners in Malen Chiefdom*, *Supra* Note 27.

²²⁷ Sierra Leone CSO Coalition (23 local and national CSOs), *Concern over recent overtures in Sahn Malen at the inauguration of the SOCFIN oil mil.* Letter to the President, 16 June 2016.

²²⁸ SOCFIN, *Supra* Note 1. It is only in January 2019, in SOCFIN's response, that the company has for the first time transmitted certain requested documents, without however sending the basic documents requested by the communities.



Without properly demarcated land, there are doubts about how the land would be returned to landowners in the communities in the event of the land lease expiring.

numerous requests by the local communities and others, including FIAN Belgium, who asked for transparency on these matters through SOCFIN's own online grievance mechanism.²²⁹

An analysis of the company's corporate social spending accounts²³⁰ reveals **significant payments made to the paramount chief, local authorities and the police**, for their direct or indirect benefit. These payments have lacked any evident social objective.²³¹ Furthermore, these payments have been made in addition to the payment that the Chiefdom Authorities receive according to the lease agreement, an amount set at 20% of the annual rental payment. Set at

\$12.50 per hectare, this amounts to \$46,182.50 per year. Despite requests from FIAN Belgium, no information has been provided by the Chiefdom Authorities as to how this money is spent.

In recent years, there have been consistent allegations of **corruption** by civil society organizations against the company, as well as against local and national policy makers and officials.

²²⁹ SOCFIN, Grievance Mechanism N°SAC-01-2018, 25/06/2018.

²³⁰ SOCFIN, *Corporate social responsibility report from 2011 to 2017*.

²³¹ SOCFIN, *Supra* Note 1. The objectives of these payments, as presented by SOCFIN in their response in January 2019, do not seem to be proportionate to the recurrences and amounts involved: "SAC assists the local authorities (chiefdom authorities, Ministries, Pujehun district...) in terms of transport (fuel, repairs of vehicles) in regard to meetings, reports, investigation, annual assessments or audits".

3.2.3. COMPENSATION, RESOLUTION AND RESTITUTION

Within the land lease agreements, compensation for the transfer of control over the lands in question was fixed. This came in two forms.

Firstly, a **single lump payment was fixed for private palm oil plantations** that communities lost out on. This was set at 1 million Leone (\$233) per acre, or 2,471,050 Leone (\$570) per hectare. Evaluation of the size of plots was to be carried out by SOCFIN in the presence

of landowners and community representatives, with lists of plot sizes and amounts of compensation to be kept by SOCFIN and the Chiefdom authorities.²³² All the testimonies converge to affirm that **no compensation was paid for any other form of cash crop** (kola nuts, cassava, coffee, cocoa, etc.) grown on private plantation lands in the communities.

Secondly, a **yearly rental payment** was to be paid to all affected landowners. This was set in the lease agreement at **\$5 per acre** per year (\$12.5 per hectare). The total payment due (\$230,912, on the basis of 18,473 hectares leased), an amount which was reached by multiplying the price

per hectare by the size of the concession area, was to be divided between local landowners (50%), the District Council (20%), the Chiefdom Authorities (20%), and the Government, through the Ministry of Agriculture (10%). Rules governing contractual relations would require SOCFIN to pay the rent to the Government, as the sub-lease party, and then for the Government to pay it directly to landowners, as the head-lease party. Yet the practice has been different. The share of the rental payment due to local landowners has been **paid by SOCFIN to the Paramount Chief** (representing the Chiefdom administration), who has then been responsible for distributing it amongst communities through **local chiefs**, who divide it between households.

²³² SOCFIN Agricultural Company, "SOCFIN (SAC) Development Project Executive Summary and Achievements". June 2014.

2013



2016



2018



© Google

SOCFIN CONCESSION - ZONE C

Multiple concerns have been raised by communities in relation to the nature and amount of compensation, and the procedure for the yearly payments.

Firstly, these relate to the company's **valuation** (per acre) of private plantation land, which has been assessed as **falling short of the real value of the crops**.²³³ In this regard, it is worth highlighting that SOCFIN provided a price per single palm tree in their submission concerning the case of six MALOA members who were arrested in 2013 on charges of destruction of 42 trees, among others. In their submission, the company valued the total cost of damages for 42 trees at \$40,000, which equates to \$952.38 per tree. Local communities claim that on average, a hectare of community land holds 60 palm trees, and yet the valued price for land does not reflect this.

“How to justify SOCFIN estimating the value of one hectare of oil palm trees at \$57,120 dollars when the land owners received \$570 per hectare of a family’s plantation, 100 times less!”

Joseph Rahall (Director of Green Scenery)

A further issue raised by the communities is related to the **valuation of the size of land plots**. Two issues have been at play here. Firstly, the **undervaluation** of plot sizes, and, secondly, the **lack of access of local communities to SOCFIN’s lists detailing the size of lands**, and the landowners’ names. Connected to this are concerns over the failure of SOCFIN to effectively demarcate separate plots of land prior to their transformation for palm oil production, a process that largely removes natural markers traditionally used for demarcating land in

the Chiefdom. Considering the importance of land for individuals, families, communities and their individual identities, these worries are justified. Furthermore, without properly demarcated land, there are doubts about how the land would be returned to landowners in the communities in the event of the land lease expiring.

Substantial problems have also been identified with the payment process (See Box 9). Some landowners report receiving **no compensation** for their plantation lands, whilst others report **regular inconsistencies in the payment of the yearly rent**. Some have never received rent, while others have received varying amounts across the years since the initial agreement was signed. In this regard, consistent **allegations of corruption** have been made, primarily against Chiefdom authorities, who have been accused of with-holding payments and inequitable distribution in the exercise of their responsibility to distribute the rental payment. Despite the many requests by MALOA and others to both SOCFIN²³⁴ and to local authorities²³⁵ to obtain **lists of payments** made in compensation or annually, the **communities have never had access to these lists**.²³⁶ Only in November 2018 was a list of payments made public in several newspapers.²³⁷ This list shows that 96 individuals declared to have received a sum of 3 million leones (375 USD) each on 29 August 2018. “SOCFIN sets the records straight” read the headlines in

²³⁴ Letters sent by MALOA and FIAN Belgium and grievance complaint submitted by FIAN Belgium in June 2018 (Grievance number SAC-01-2018). Available at: ffmemberdashboard.com/socfin/progress/grievances/.

²³⁵ *Ibid.*

²³⁶ As we finalize this report, SOCFIN has published a partial list of annual rent payments that would have been made in August 2018. See Sierra Express Media. “Controversy Over Hectares Of Land Leased – SOCFIN Sets The Records Straight”. 16 November 2018. Available at: sierraexpressmedia.com/?p=86184

²³⁷ *Ibid.*

some newspapers. However, this copy of partial payments raises further questions. Firstly, the list seems to be incomplete as only 18 towns and villages from zone C and D of the concession area are included. Secondly, the total sum amounts to 288,000,000 leones (35,973 USD), which is still far below what the landowners should receive for the 18,473 ha of leased land (115,456 USD).²³⁸ Thirdly, it is surprising that all individuals receive the same amount of money, given that rent is supposed to be proportional to the size of land previously owned by landowners. Lastly, it is not clear who receives the money for those parts of land that were not privately owned (like cemeteries, roads, sacred forests, villages, etc.). Indeed, SOCFIN has always claimed that they are paying a rent for the whole concession area even though some parts cannot be planted.

A further concern relating to rent is the **failure to perform any review of the rental conditions. According to the lease agreements the rent was to be reviewed every seven years, (with a maximum of 17.5% increase)**.²³⁹

Yet to this day no revision has taken place, despite almost eight years having passed since the initial concession agreement in 2011.

As a consequence of all of these complaints, MALOA – in representation of local communities – has demanded a review of the compensation set in the land lease agreements, and has raised the question of possible **restitution** of the lands in question.

²³⁸ The calculation is as follows: 18,473 ha x 12,5 USD x 50% = 115,456 USD.

²³⁹ Baxter. *Supra* Note 19, p. 43.

²³³ *Ibid.* p. 42.



BOX 9.

LANDOWNER TESTIMONIES CONCERNING COMPENSATION PAYMENTS

“Regarding compensation, we received the very first payment, but we never got an annual rent payment. The Paramount Chief and the town chief keep the money.”

– Testimony of an elderly woman in Bannaleh Town, Malen, 2018

“We had 60 acres of palm trees but after the survey, they considered it was only 10. We got 10,000,000 leones as compensation but we never received any annual rent.”

– Testimony of a resident of Gandorhun Town, Malen, 2018

Compensation for land lease agreements is not directly discussed in the Tenure Guidelines, however, resolution and potential restitution are. States should provide access to avenues to justice where there has been an infringement of legitimate tenure rights. These should be proven to be a “timely, affordable and effective means of resolving disputes” and should involve “impartial competent judicial and administrative bodies.”²⁴⁰ Remedies, when decided upon, should be enforced by States.²⁴¹ As a possible remedy to a dispute, restitution is considered directly in the Guidelines, and should be considered by States where appropriate.²⁴² Where restitution is necessary and appropriate, where possible the land in question should be returned to those who suffered the infringement on their tenure rights. Where this is not possible, States should provide just

compensation.²⁴³ The process for enabling restitution should be clear, transparent, gender-sensitive and provided for by law.²⁴⁴ These guidelines were transformed into the 2015 *National Land Policy*,²⁴⁵ where it was held that access to natural resources must be considered in the determination of the necessity of restitution.²⁴⁶

Some landowners report receiving no compensation for their plantation lands.

²⁴³ *Ibid.*, para 14.2, p. 31.
²⁴⁴ *Ibid.*, para 14.4, p. 31.
²⁴⁵ Government of Sierra Leone. *National Land Policy*.
²⁴⁶ *Supra* Note 205. 9.1.2.
²⁴⁶ *Ibid.*, 9.1.2 (d).

²⁴⁰ Tenure Guidelines, para 21.1, p. 39.
²⁴¹ *Ibid.*
²⁴² *Ibid.*, para 14.1, p. 31.

3.2.4. RESPONSIBLE INVESTMENT

The Tenure Guidelines include a detailed framework to guide **State and non-State actors** concerning responsible investment and its potential effects on tenure rights, calling on such actors to “acknowledge that responsible public and private investments are **essential to improve food security**.”²⁴⁷ States should promote responsible investment in land with a particular **focus on smallholders**,²⁴⁸ and provide **safeguards against large-scale transactions** in tenure rights negatively affecting human rights, the environment, livelihoods and food security.²⁴⁹ They should ensure consultation and participation,²⁵⁰ based on comprehensive information²⁵¹ and make provision for **independent assessments** of impacts of proposed transactions on **tenure rights, the right to food, livelihoods and the environment**,²⁵² and **monitor** the implementation of measures resulting from these assessments.²⁵³ Responsible investments should “do no harm, safeguard against dispossession of legitimate tenure right holders and environmental damage, and should respect human rights.”²⁵⁴ They should not contribute to food insecurity or environmental damage.²⁵⁵ Overarching these responsibilities is the obligation of businesses to “act with **due diligence to avoid infringing on the human rights and legitimate tenure rights** of others.”²⁵⁶ The

framework was subsequently incorporated into the NLP,²⁵⁷ in which it was stated that the “Government shall adopt measures to ensure that investors act responsibly, respect human rights and legitimate tenure rights, and do no harm to food security, local livelihoods and the environment.”²⁵⁸

Within the 2012 MoU it was foreseen that SOCFIN would develop a **corporate social responsibility plan** that would guide the development of their operations in Malen, offsetting any negative social impact of their activities. This was to be elaborated in consultation with local communities, representatives of land owning families, and chieftdom and local government authorities.²⁵⁹ Additionally, the plan was to be accompanied with a detailed outline of proposed spending. The plan’s implementation was to be **monitored and assessed by the MAFFS** on the basis of **periodic monitoring visits** and **quarterly reports** submitted to the Ministry by the company.²⁶⁰

Major gaps between the company’s promises and the reality of what it has implemented in Malen.



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247 Tenure Guidelines, para 12.1, p. 26.

248 *Ibid.*, para 12.2, p. 27.

249 *Ibid.*, para 12.6, p. 27.

250 *Ibid.*, para 12.9, p. 28.

251 *Ibid.*, para 12.11, p. 29.

252 *Ibid.*, para 12.10, p. 28.

253 *Ibid.*, para 12.14, p. 29.

254 *Ibid.*, para 12.4, p. 27.

255 *Ibid.*, para 12.12, p. 29.

256 *Ibid.*, para 3.2, p. 11.

257 Government of Sierra Leone, *National Land Policy*, *Supra* Note 205, 2.2.1 (c) and section 6.4.

258 *Ibid.*, 6.4, (d)(v).

259 Memorandum of Understanding and Agreement,

2012, Investor’s Obligations No.1, p.7. *Supra* Note 28.

260 *Ibid.*, Investor’s Obligations No.3, p.7.

BOX10.

SOCFIN'S COMMUNITY DEVELOPMENT SPENDING PLAN

TABLE 26 COMMUNITY DEVELOPMENT SCHEDULE AND BUDGET BETWEEN THE YEARS 2011 AND 2025

| YEAR | Direct social investment (US\$) | Direct social investment (US\$) | Indirect social benefits (US\$) | Indirect social benefits (US\$) | Indirect social benefits (US\$) | Total annual investment (US\$) |
|--------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|--------------------------------|
| | SCHOOLS | HOSPITALS | SHOG PURCHASES | ROAD CONSTRUCTION & MAINTENANCE | BUILDINGS AND HOUSING | TOTAL |
| 2011 | \$80,000 | | | | \$950,000 | \$1,030,000 |
| 2012 | \$80,000 | | | | \$1,512,500 | \$1,592,500 |
| 2013 | \$80,000 | \$150,000 | | | \$1,785,000 | \$2,015,000 |
| 2014 | \$80,000 | \$150,000 | \$652,000 | | \$1,490,000 | \$2,372,000 |
| 2015 | \$80,000 | \$100,000 | \$652,000 | \$84,545 | \$1,762,500 | \$2,679,045 |
| 2016 | | | \$652,000 | \$246,092 | \$2,025,500 | \$2,923,592 |
| 2017 | | | \$652,000 | \$469,238 | \$2,700,000 | \$3,821,238 |
| 2018 | | | \$652,000 | \$638,638 | \$2,700,000 | \$3,990,638 |
| 2019 | | | \$652,000 | \$754,292 | \$1,590,000 | \$2,996,292 |
| 2020 | | | \$652,000 | \$808,346 | \$1,603,000 | \$3,063,346 |
| 2021 | | | \$652,000 | \$831,600 | | \$1,483,600 |
| 2022 | | | \$652,000 | \$831,600 | | \$1,483,600 |
| 2023 | \$50,000 | \$50,000 | \$652,000 | \$831,600 | | \$1,583,600 |
| 2024 | | | \$652,000 | \$831,600 | | \$1,483,600 |
| 2025 | | | \$652,000 | \$831,600 | | \$1,483,600 |
| Total | \$450,000 | \$450,000 | \$7,824,000 | \$7,159,151 | \$18,118,500 | \$34,001,651 |

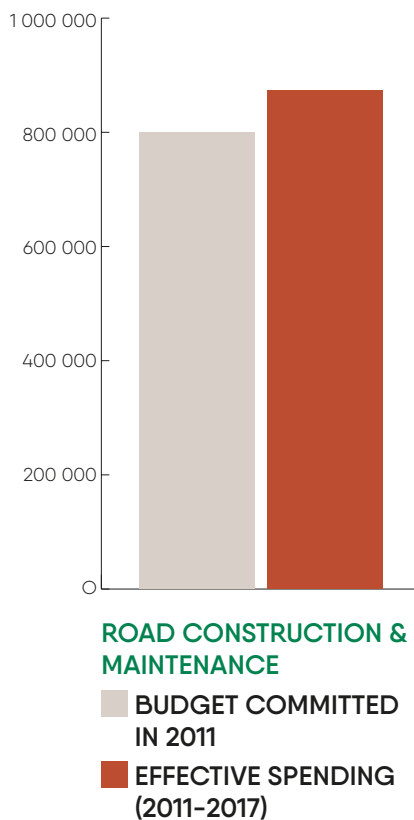
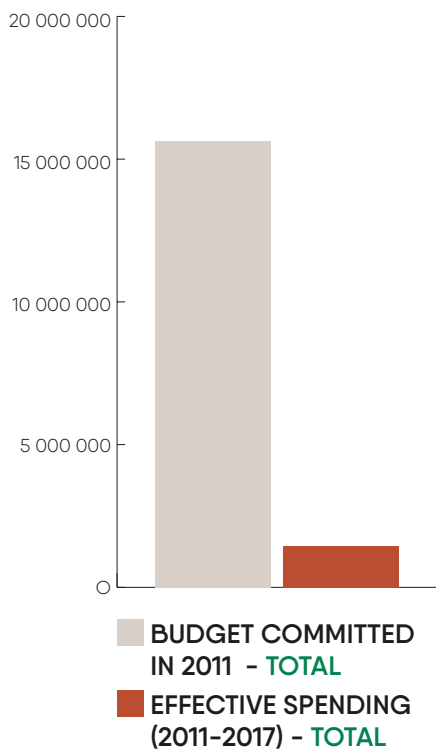


Despite SOCFIN's refusal to provide its corporate social responsibility plan, FIAN Belgium was able to obtain a copy of SOCFIN's spending accounts for the plan between the start of the company's operations in the Chiefdom in 2011 and the end of 2017.²⁶¹ An analysis of these documents reveals **major gaps between the company's promises, stated intentions, continued claims about their social corporate responsibility, and the reality** of what it has implemented in Malen to offset the social, economic and cultural impact of its operations. This represents an overall failure to fulfil commitments made by the company to the communities at the outset of its operations in Malen.

Between 2011 and 2017, **\$16,433,375** was set as the planned budget for the implementation of SOCFIN's social corporate responsibility plan. The large bulk of this was earmarked for **'indirect social investments'** including **buildings, houses, roads, and the smallholder out-grower scheme**. A second category was identified as **'direct social investments'** including money spent on **hospitals and schools**.

Of this, the company's corporate social spending accounts reveal that between these years a **total** of only **\$2,583,784** was spent. More than six times less than what was initially announced.

²⁶¹ SOCFIN. *Supra* Note 1. SOCFIN attached an updated list (2011–2018) of corporate social expenses to its response in January 2019. This document confirms the accuracy of the document received by FIAN Belgium, which was used to analyze the implementation of the corporate social projects planned and presented to the communities in 2011. It appears that SOCFIN has made some minor changes in the list of expenses for previous years (notably in 2017) but this does not affect the conclusions of this chapter (difference of less than \$16,000 over 2017).



If these figures are analysed in order of budgetary importance, within ‘**indirect social investments’ programs**, the two largest budget commitments have simply not been respected.

Of the **\$12,225,500** that should have been allocated between 2011 and 2017 for the construction of “**buildings and housing**”, **not a single dollar has been spent**. SOCFIN justifies itself by explaining that: “it was initially foreseen to build new houses for the affected communities outside the concession; however the communities preferred to keep their current settlements and have opportunities to rent accommodation to company workers, creating additional income.”²⁶² It is true that no resettlement has taken place within the concession area. However, if such resettlements were foreseen in the initial phase, it should have been extensively discussed with the communities and areas for relocation should have been clearly identified. In addition, it seems fair that if parts of the CSR program are not used for their original purpose, the

budget should be reallocated to other development needs.

The second category in budgetary importance is the **smallholder out-grower scheme**. Between 2011 and 2017, **\$2,608,000** was projected for the establishment of the scheme. However, **no money was ever spent on the scheme, which has gone entirely unimplemented**. This was also prominent amongst of the promises used by the company, highlighted as key to the project in the 2011 ESHIA, and a requisite as per the 2012 MoU.

The third most important budget concerns “**roads**”. Out of the \$799,875 budget, **\$873,457** was actually allocated to the development, repair and upkeep of roads. This is the only category in which SOCFIN’s planned corporate social responsibility spending has been matched, and actually exceeded. Nonetheless, the benefit of this spending for local communities has been queried to the point of refutation. In a survey of affected communities carried out in 2013, respondents raised doubts about the positive social impact of roads developed by SOCFIN,

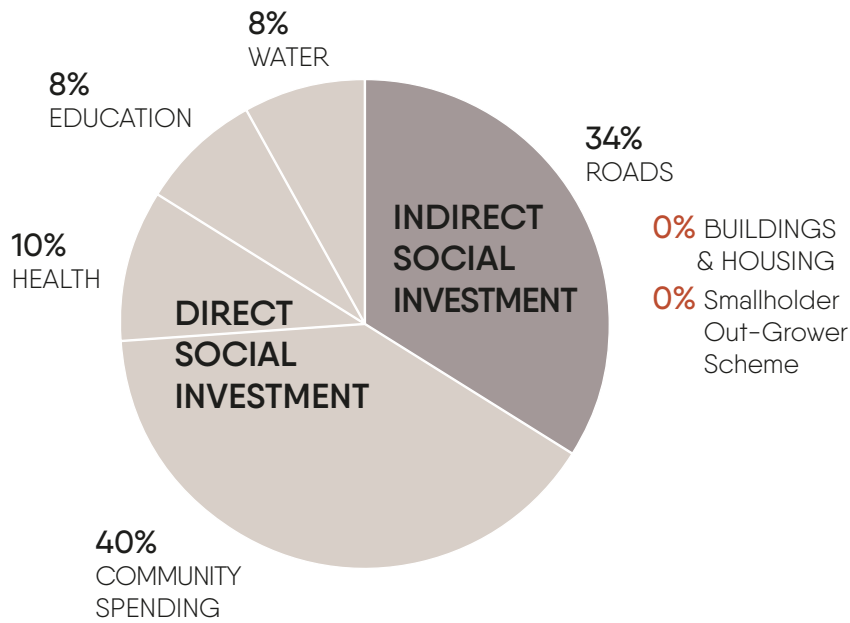
highlighting that, predominantly, these roads only benefit the company and its operations.²⁶³ The most recent testimonies confirm this assessment. As we will see, this category of expenditure represents **more than one third of all the expenditure** actually made by SOCFIN over the period 2011-2017 as part of corporate social expenditure for direct and indirect “benefit” of the communities.

In SOCFIN’s Community Development Spending Plan of 2011, planned expenditures as ‘**direct social investments**’ were distributed to **hospitals and schools**. The analysis of SOCFIN’s spending accounts 2011-2017 reveals that other categories have finally been added to health and education: **water and community spending**.

Altogether, SOCFIN concludes that between 2011 and 2017 it spent about \$1,700,000 for the direct benefit of communities in one of these four categories, Health, Education, Water and Community spending.

²⁶² SOCFIN. *Supra* Note 1.

²⁶³ Baxter. *Supra* Note 19, p. 54.



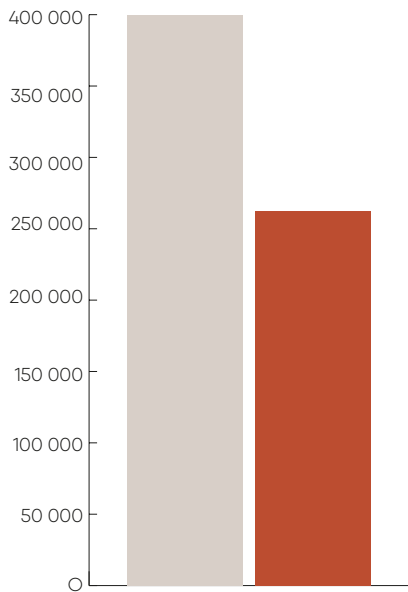
The largest proportion of these four categories is ‘**Community spending**’ in direct social investment, amounting to **\$1,045,492**. This category is quite vague, and include a wide range of projects that are supposed to respond to the needs expressed by the communities. However, some **unclear expenditures should be excluded from corporate social expenditures**:

expenses that are either highly questionable in terms of their social impact, that do not bring any direct or indirect benefit to Malen communities, or that may be related to corrupt practices. Some examples include: \$25,000 to the Paramount Chief for the construction of a guesthouse; direct payments to the police and the military amounting to \$20,678; and lastly direct payments with no

clear purpose to the District and Chiefdom Authorities amounting to \$79,920. It is worth recalling that this money is added to the rent payment that the Chiefdom and District authorities already receive as part of the land deal.

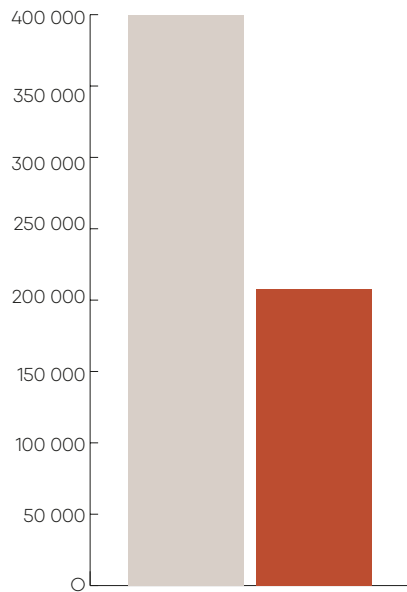
\$198,349, or 8% of the total expenditure, was allocated to the development of **water** systems in the Chiefdom. This investment





HOSPITALS

■ BUDGET COMMITTED IN 2011
 ■ EFFECTIVE SPENDING (2011-2017)



SCHOOLS

■ BUDGET COMMITTED IN 2011
 ■ EFFECTIVE SPENDING (2011-2017)

focused exclusively on the building and repairing of **water wells** within the communities.

Promises of spending to improve education and access to health care have also not been met. Although, these were also a determining factor when the project was presented to communities prior to the land lease agreement. Between 2011 and 2017, a total of **\$472,915** or **18%** was spent on **medical and educational services combined**. \$262,164 (10%) and \$210,751 (8%) were spent on health and education respectively, less than two thirds of the amount proposed in the company's community development budget (See Box 10).

It is unclear to what extent SOCFIN has fulfilled its intention to provide quarterly reports to the Government on the implementation of its community development plan. Similarly, it is unclear to what extent

the Government has fulfilled its obligations to monitor the company's activities in this regard. However, this issue had been decisive during negotiations with the communities, in order to obtain the consent of certain landowners to the leasing of their land. On several occasions, landowners had been told that:

"the project implementation will be monitored in line with what has been written in that document [ESHIA report]. Besides, the services of STAR Consult will be retained to conduct yearly independent monitoring and evaluation of the project activities, and provide feedback to both SAC and stakeholders."²⁶⁴

Nevertheless, there is no indication of any oversight of the motivation and impact of spending earmarked by the company's corporate social plan.



²⁶⁴ Star Consult. *Supra* Note 133, p. 18.



TRANSPORT OF PALM FRUITS, AS
WAS COMMONLY PRACTICED IN
MALEN BEFORE SOCFIN'S ARRIVAL.



4: Conclusions

Considering the **principles of human rights law** and **responsible social investment** that have been discussed in this report, and especially bearing in mind the **right to food** and its **underlying determinants** of a healthy environment and access to natural resources, including water, it can be concluded that a **huge gap exists between facts and norms** in the context of the conflict in Malen.

Implied within this conclusion is the observation that the **Government of Sierra Leone, SOCFIN, and the home States of the company**, as well as the **international community**, have **failed** in their duties to **respect and protect the rights of local communities** who are threatened in the context of the land deal in the Chiefdom. They have **not gone far enough** in the steps they may have taken **to fulfil the communities' rights**.

It can be further concluded that this **gap has grown** since the beginning of the conflict, and that it **continues to grow** today, with **profound, continuous and worsening effects** on **local communities** and the **enjoyment of their human rights**.

Finally, it can be concluded that **immediate steps by all actors must and can be taken** to provide **remedies** for harm suffered by local communities since the initial land lease agreement, and that such steps, along with others aimed at providing a **stable ground for local communities to enjoy their rights**, are **essential** to finding a **resolution** to the conflict.

5. Recommendations

A photograph of a rural village street in Sierra Leone. The scene is viewed from a narrow alleyway between traditional mud-brick buildings with corrugated metal roofs. The ground is a dirt path. In the background, there are palm trees and a hammock strung across the path. The overall atmosphere is that of a traditional, rural settlement.

TO THE STATE OF SIERRA LEONE

In line with the human rights obligations of States under international human rights law, and in line with the Voluntary Guidelines on the Responsible Governance of Land, Fisheries and Forests specifically (hereafter the Tenure guidelines), and based on the demands of the Malen communities, **we call on the Government of Sierra Leone to take the necessary measures, as soon as possible, to prevent cases of land grabbing and resolve existing cases, while securing access to land for vulnerable populations, including peasants and other small-scale food producers.**

AT CASE LEVEL, IN THE SPECIFIC CASE OF MALEN,

and based on the demands of the Malen communities, **we call on the Government of Sierra Leone, and the competent State institutions, to:**

- **Disclose all relevant information** regarding the case, in particular with regard to the land lease agreements, the Memorandum of Understanding and the actions and obligations arising therefrom, such as head- and sub-land lease agreements, maps identifying each leased plot of land, lists of affected landowners, of payments and of compensation made, procedures for payment of compensation, corporate social responsibility program and budget, environmental impact studies and reports emanating from government Ministries on compliance by SOCFIN with national laws, and to **facilitate the obtaining of additional information from other State and non-State actors;**
- **Undertake an urgent investigation into the recent violent incidents that caused the killing of two people and the allegedly excessive use of force by the police and military.** Immediately release the community people who are under arrest, including MALOA members, unless there is clear evidence that they committed a crime. Stop the arbitrary arrests and judicial harassment against MALOA members.
- **Ensure the protection and security of community members and land rights activists,** including members of MALOA and organizations and individuals supporting them, and to effectively guarantee their rights to freedom of assembly and freedom of expression;
- **Initiate a thorough independent investigation into the social and land conflict.** The investigation team should have a clear mandate and should be totally independent from the government, from the company and from other stakeholders. It should be composed of Sierra Leoneans of high standing and credibility in society, representatives from national independent agencies, such as the Human rights Commission of Sierra Leone, and other human rights experts. It should associate international experts to ensure independence and compliance with international human rights standards. The team must have the necessary human, financial and logistical resources to carry out its mission successfully. To this end, the Government should seek support from regional intergovernmental organizations (such as the African Commission for Human and Peoples' rights and/or ECOWAS), relevant United Nations agencies (OHCHR, FAO, among others), and other international partners (e.g. Embassies of involved states or the permanent EU delegation). The terms of reference of such an investigation should clearly define its scope and be drawn up **in consultation with the affected communities and supporting civil society organizations,** and should aim to provide results which may serve **as the base for establishing a conflict resolution mechanism;**
- **Set up,** in consultation with the affected communities, **a fair, transparent, effective and independent conflict resolution mechanism,** enabling the parties to the conflict (State, SOCFIN and affected communities as well as representatives chosen by them) to find a solution to end and repair human rights violations and abuses. Such a mechanism needs to be **based on human rights** and ensure accountability, and involve civil society organizations and independent actors (see above) as observers or as active members. Communities need to be given all the necessary support for their **effective participation** in the mechanism. If necessary, the Government of Sierra Leone should seek the assistance of the international community to provide technical assistance, including financial and human resources, to ensure the independence and effectiveness of the mechanism;
- **Provide adequate assistance to the communities, including legal assistance,** during the conflict resolution process and the mechanism's implementation phase, ensuring their active, free, effective, meaningful and informed participation;

- Ensure that the outcomes of the conflict resolution mechanism include:

- **A review of the land lease agreements** and the Memorandum of Understanding;
- **A review of the distribution of control and use of the land** under concession to SOCFIN, so as to guarantee community access to, use of and control over sufficient land to realize their right to food and other human rights, including those of future generations;
- **A clearly defined process to implement and monitor** any agreement that parties have agreed to, including the necessary **measures to be taken by the State to ensure that human rights are respected, protected and fulfilled**, and especially the rights of affected communities to the right to adequate food and nutrition, their right to water and a healthy environment, their rights to decent work and fair employment, their right to education and the specific rights of women as well as relevant civil and political rights;
- **A review of the corporate social responsibility plan** with meaningful participation of community representatives, especially those representing the most marginalized groups (women, elders, children, disabled, etc.), and the implementation of a proper governance mechanism to monitor the execution of any agreed new plan (replacing the current social and grievance committee).
- **Ensure the regular monitoring of the operations of SOCFIN** with the overarching aim of protecting the human rights of the communities and of monitoring the compliance with national and international legislation, as well as renegotiated agreements.
- Initiate an **investigation into the Anti-Corruption Commission's** money transfers related to the land deal, and their use, in order to assess their legality and compliance with international best practices, and take the necessary measures and sanctions if the rules have not been followed.

AT POLICY LEVEL, these measures should, *inter alia*, aim to:

- **Implement the National Land Policy**, which was adopted in 2017, in line with the Tenure Guidelines, in particular the provisions regarding the **regulation of large-scale land acquisitions** by national and foreign economic actors and those aimed at protecting and strengthening secure **access to and control over land for peasants**;
- **Improve the governance of land, fisheries and forests from a human rights-based approach**. In this context, the Sierra Leonean State must **refrain from promoting large-scale land acquisitions** as well as acting as an intermediary for investors, and should **no longer facilitate sub-leasing**. The State must, above all, maintain its duty to **protect the human rights of the population** and ensure, where land deals take place, that the conditions surrounding them respect human rights, including their legitimate tenure rights. Furthermore, the State must support affected communities and civil society organizations (CSOs) supporting those rights, and establish and guarantee **clear procedures for consultations** that ensure that communities are consulted and informed in advance so that they can grant, or withhold, their active, free, meaningful and informed consent to land deals, in line with the Tenure Guidelines;
- **Assess past and current land deal projects facilitated by SLIEPA**, in order to evaluate their impact on the realization of local communities' human rights and tenure rights, and put an immediate end to those with negative impacts. Such assessment must be conducted by an independent body and with public participation, and their results must be made public, including measures to prevent, cease, and remedy the harm identified. In addition, SLIEPA's mandate and the procedures guiding its work need to be revised in order to **ensure that SLIEPA's activities do not conflict with Sierra Leone's international human rights obligations**. This includes mandatory rules for human rights-based impact assessments of planned land deal projects, as well as a clearly defined monitoring and remedy framework;

- **Increase transparency and disclose information related to land acquisitions** (past, current and planned), in order to make information accessible to affected communities, relevant CSOs and public entities. This includes putting in place mandatory disclosure rules that require public and private actors involved in such projects to provide all information relevant to assess human rights risks and impacts in relation to their activities, and to report on their subsidiaries, wherever incorporated and operating, as well as their business relationships. Furthermore, on this basis, **adequate monitoring structures and procedures** need to be put in place to ensure the accountability of public and private actors involved in land deals;
- **Report periodically and publicly on land governance processes** to the relevant legislative bodies;
- **Develop policies and legal frameworks for the conduct of corporate and financial actors** (adapting existing regulations or introducing new regulations) to effectively regulate them, through a process of dialogue with individuals and communities affected by human rights abuses, taking into account their experiences and needs. Civil, administrative and criminal regulation should clearly define the duties of corporations and financial actors, including rules on impact assessments, responsibility of due diligence and victim-centered criteria for the determination of liability, and contain clear provisions on legal accountability by these actors for human rights abuses and crimes;
- **Allocate** to the ministries and public institutions (and in particular the Environment Protection Agency, Ministry of Labor, Ministry of Agriculture, Ministry of Land, local authorities, etc.) in charge of monitoring compliance with the agreements and regulations in force by private investors, **the necessary resources to carry out these assessments and report** them to the relevant legislative bodies;
- **Ensure access to effective judicial remedies to communities affected by land deals.** **Non-judicial redress mechanisms**, such as independent conflict resolution mechanism with clearly defined rules and procedures, and which are accessible to affected people, can complement judicial remedies;
- **Ensure the protection and support of human rights defenders**, including members of communities affected by land deals as well as lawyers and CSOs supporting them. The State of Sierra Leone should strengthen local associations and CSOs as well as their networks as part of efforts of making land governance more democratic.

We call on the Government of Sierra Leone to set up a fair, transparent, effective and independent conflict resolution mechanism.

TO THE INTERNATIONAL COMMUNITY AND COMPANY HOME STATES

In line with the Extraterritorial Human Rights Obligations of States (see Box 11) as well as their obligation of international cooperation, derived *inter alia* from article 2 of the International Covenant on Economic, Social, and Cultural Rights and the obligation of international cooperation, **we call on the international community to support the Government of Sierra Leone** in the conflict resolution and to ensure that the human rights of the Malen communities are respected, protected and fulfilled. In particular, **we demand to:**

- **The States of Belgium, Luxembourg, France and Switzerland**, as home states of SOCFIN and Bolloré Groups:

- to take the necessary measures to **regulate SOCFIN and to ensure that the activities of SOCFIN in Sierra Leone do not nullify or impair the enjoyment of economic, social and cultural rights**. These include administrative, legislative, investigative, adjudicatory and other measures, like the monitoring by diplomatic bodies of the compliance by SOCFIN with national law and human rights standards, providing monitoring reports to relevant national and European institutions. To this end, States whose civil, administrative and criminal regulation does not **clearly define the duties of corporations and financial actors** (including rules on impact assessments, responsibility of due diligence and victim-centered criteria for the determination of liability), and does not contain clear provisions on legal accountability by these actors for human rights abuses and crimes, need to fill these gaps. The frameworks for conduct should also impose a legal duty on parent companies to exercise **due diligence** by controlling their subsidiaries to prevent human rights abuses and make it a criminal offence for companies to contribute to human rights abuses abroad;
- **to closely monitor the situation in the Malen Chiefdom**, with particular attention to the security of community members, land rights activists and organizations and individuals that

support them.

- **The FAO and the State of Germany**, which are engaged in a Land Partnership with the Government of Sierra Leone:
 - **to ensure the respect, protection and guarantee of all legitimate tenure rights and human rights** in the context of land governance, including in the context of land deals, and specifically to support the Government in the resolution of the land conflict in Malen;
 - **to consider the use of the “multi-stakeholder platform”**, that has been created in the context of the Land Partnership, **as a space to monitor and discuss** existing land conflicts, and to provide a forum where affected people can articulate their demands and concerns.
- **The European Union** (through the European External Action Service (EEAS) and its permanent representation in Sierra Leone):
 - **to offer the necessary support to the Sierra Leone Government in resolving land conflicts;**
 - **to monitor the situation**, in particular the situation of community members, land rights activists and the organizations and individuals supporting them, and **participate as observer** in any conflict resolution process.
- **The European Union and the World Bank**, which promoted the land deal through their support to the Sierra Leone Import and Export Promotion Agency (SLIEPA):
 - **to carry out an assessment** of how SLIEPA is contributing to land grabbing and violations of tenure and human rights, and – based on the results – **reassess their support** and put in place effective **monitoring and accountability mechanisms**, including accessible complaint mechanisms for affected people;
 - in cases where SLIEPA's activities have led to the impairment of rights, such as in the in the Malen conflict, the EU and the World Bank should **provide international assistance** to the communities and to the Sierra Leone Government to solve the land conflict.
- **All States** concerned:
 - to ensure the **protection of the human rights defenders** addressing economic, social and cultural rights.²⁶⁵

²⁶⁵ Resolution of the Human Rights Council Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights. Doc A/HRC/31/L.28.



BOX 11: EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS OF STATES

States' extraterritorial obligations originally derive from articles 55 and 56 of the United Nations Charter, which obligate states to promote the universal respect of human rights and to take joint and separate action to this end, which clearly implies that their obligations do not stop at their borders. Subsequently, the jurisprudence of UN Treaty Bodies, but also the Inter-American Commission on Human Rights, have reaffirmed the extraterritorial nature of states' human rights obligations.

In light of international law and this jurisprudence, in 2011, a group of experts drafted the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, summarizing and clarifying the extraterritorial obligations of states.²⁶⁶

The Maastricht Principles are based on underlying principles of international law and constitute an international expert opinion adopted by international law experts from all regions of the world, including current and former members of international human rights treaty bodies, regional human rights bodies, former and current special rapporteurs of the Human Rights Council, and recognized scholars.

These principles are a source of international law, in line with Articles 38 c) and d) of the Statute of the International Court of Justice. Rather than establishing new elements of international law, the principles clarify extraterritorial obligations of states on the basis of standing international law, as explained in the Commentary to the Maastricht Principles.²⁶⁷

²⁶⁶ Available at: www.etoconsortium.org/en/main-navigation/library/maastricht-principles.

²⁶⁷ Available at: www.etoconsortium.org/en/main-navigation/library/maastricht-principles.

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The additional sources consulted are available on a specific web page: *Landgrabbing by SOCFIN in Sierra Leone – documentation – Background documents* (FIAN Belgium Website)

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