



FIAN
BELGIUM

FOCUS ON THE INVESTIGATION REPORT ON THE MALEN LAND DISPUTE

HUMAN RIGHTS ANALYSIS OF THE CORE ELEMENTS (AND OMISSIONS) FOR THE CONFLICT RESOLUTION PROCESS

March 2020

Title of report analysed: Government of Sierra Leone, *Report of the Technical Committee on the Malen Chiefdom land dispute in Pujehun District*, submitted to the Honourable Vice President, September 2019, https://www.farmlandgrab.org/uploads/attachment/2019_Report_Malen_TC_Final_SEPTEMBER.pdf

Introduction

FIAN Belgium welcomes the finalization of the Technical Committee's report, which concludes the investigative phase of the land conflict resolution process in the Malen Chiefdom of Sierra Leone, involving the palm oil multinational SOCFIN. As announced by the Vice-President of Sierra Leone in 2019, the next step should be a dialogue mechanism to be set up in order to find a way to resolve the long-standing land dispute.

Although tensions within SOCFIN's plantations have increased in recent months and the criminalization of community representatives and civil society organisation partners has intensified, the report seems to provide a solid enough basis upon which to continue the dialogue (mediation) process.

The purpose of this analysis of the Technical Committee's report is to contribute to the land conflict resolution process and the setting up of a mediation mechanism, in accordance with international human rights law and standards. It is limited exclusively to the Investigative Report, and as such does not seek to undertake a human rights analysis of the land conflict in its entirety. Such an analysis can be found in the comprehensive report published in 2019 under the title: *Case report: Land Grabbing for Palm Oil in Sierra Leone: Analysis of the SOCFIN Case from a Human Rights Perspective* (FIAN Belgium 2019)¹.

¹ <https://www.fian.be/Land-Grabbing-for-Palm-Oil-in-Sierra-Leone?lang=fr>

1. Contextual factors to consider:

Since the initiation of the investigation and mediation process, affected communities and allied civil society organisations have raised concerns as to contextual factors which may undermine the process. Despite their voicing of these concerns to the President of Sierra Leone, no action has been taken in relation to them. These concerns must be taken into account when reading the Investigation Report, and addressed prior to the continuation of the process, if it is to have any chance of successfully resolving the conflict. Some of the main concerns are the following:

- **Constant and increasing criminalization and intimidation:** Since the violent incident of January 2019 that led to the death of two people and the arbitrary arrest and detention of several others, the criminalization of some representatives of affected communities and leaders of MALOA has intensified. In particular, the 18 people arbitrarily arrested, detained and subsequently charged for crimes despite the absence of basic evidence to establish the case for their prosecution, are still on trial. The trial in question is currently dragging on, negatively impacting on the rights of those concerned and their ability to defend the rights of the affected communities. In parallel, NGOs at both national and international levels are being prosecuted following complaints lodged by SOCFIN. These procedures should be considered as SLAPPs (strategic lawsuits against public participation)².
- **Excessive security measures in the area:** Following the incident of January 2019, the Malen Chiefdom was overly militarized and secured. Although this measure may have had a legitimate objective, the implementation of the scheme has had a negative impact on the communities and increased tensions within the Chiefdom. After the events of January 2019, hundreds of people who had fled the Chiefdom did not dare to return. Even today, some representatives of MALOA do not dare to return for fear of reprisals for their political positions.
- **Infringements of freedom of movement and association:** Many MALOA members and others in the affected communities fear for their lives or for their persecution and arrest. These citizens believe that their names are on hit/arrest lists. On several occasions in recent years and again in recent months, the chiefdom authorities have banned MALOA members from meetings. Given that MALOA represents the affected communities, this reduces their ability to defend the rights of the communities, both in the investigation and mediation phases. Other local, national and international civil society organisations have been denied access to the Malen Chiefdom by the District and Chiefdom authorities³.
- **Lack of transparency and inclusiveness in the process:** Despite several requests, the authorities have not provided clear communication regarding the framework for the process, including its objectives, steps and timetable. No support has been given by the Government to its own citizens in the communities to ensure their informed and meaningful participation.

² See the related Press release: *New SLAPP of the agro-industrial group SOCFIN*, December 8, 2019:

<https://www.fian.org/en/press-release/article/new-slapp-of-the-agro-industrial-group-socfin-2258>

³ See last article: *Pujehun chiefs prevent donors from monitoring projects*, in Politico SL, 08-Feb-2020,

<https://www.politicosl.com/articles/pujehun-chiefs-prevent-donors-monitoring-projects>

2. Core elements of the Investigation Report - a basis for mediation

Several elements of the report confirm the allegations, which have been repeatedly made by the affected communities since 2011, as well as those documented by other non-governmental organizations at local and international levels. These should be the basis for the upcoming conflict resolution process.

1. **Unlawful land lease agreements:** A significant part of the report lists irregularities in the principal and sublease agreements, and states in particular that:
 - SOCFIN uses a larger surface area than authorized by the three successive land lease agreements (651 hectares in excess).
 - The first two Deeds were “*unilaterally abandoned and rescinded by the company, without recourse to the landowners*”.
 - Certain deeds were registered outside of statutory time limits and are therefore voidable.
 - The deeds “*did not delineate or describe the quantum of land, given by individual landowning families*”. By consequence, SOCFIN is “*paying, uniformed lease rent to all landowning families that gave land, irrespective of the size of the land a family gave*”.
 - “*The exact locations of the land given are not adequately described or delineated, in both the lease Agreements and the survey plans attached thereto*”
 - On repeated instances, the deeds fail to comply with the Provinces Land Act of 1927 (CAP 122 of the Laws of Sierra Leone 1960), including articles concerning excessive leasing terms, the lack of approval by the Senior District officer, the absence of the senior District Officer and the Resident magistrate, the absence of an illiteracy protection clause, and the absence of specific consent or approvals required by law,
 - “*Most of the people who signed the principal leases to government as landowners were not chosen by the landowning families they purport to represent. They were kind of imposed on those landowning families by the government, with active collusion and connivance of the Chiefdom Council. The majority of the landowners therefore felt unrepresented in the transaction [...]. The Company was unfortunately misled by greedy and corrupt politicians both at local and national level [...]. Payment of lease rent and other land charges [was done] to the wrong persons [...]. The proceeds of the land were misdirected to the wrong persons due to the corrupt antics of politicians*”.

In this regard, the Technical Committee makes several important recommendations, including that:

- the principal leases to the Government should be revoked and expunged, and that the Sub-leases should be reviewed;
- the State should not be the intermediary in the land agreement;
- the parcels of land in the concessions granted to the company are to be resurveyed and re-plotted at the expense of the company;
- a landowner’s identification committee should be created in order to identify the actual landowners and their representatives.

2. **Buffer zones:** the “*investigation revealed that, ESIA [Environmental and social impact assessment] report recommended buffer zones of 500 meters around villages and 50 meters from swamps, streams and river banks. [...] but that the company do not comply with the standard buffers as contained in their ESIA Report*”:
 - “*Of the 19,123.9879 hectares or 47,256.40325 acres of land in the company's concession, only 1,297.50 hectares or 3,206.20 acres of it left, as green belt or buffers, for the communities in the concession. This is inadequate and does not meet the land needs of the people and unduly exposes them to the hazardous effects, if harmful chemicals is used by the company*”.

- *“In strict compliance with the customary law, all inland valley swamps in the concessions should be returned to the people”.*
 - The Committee *“recommends that, the company be encouraged to leave the requisite green belts and buffers around villages and along swamps, streams and river banks”.*
3. **Misconduct of the Paramount Chief:** On several instances, the report acknowledges the behaviour and practices of the Paramount Chief as problematic or illegal:
- It denounces the violation of the *“Chieftaincy Act. which makes sub chieftaincy offices, save the speakership, elective and not appointive”;*
 - It is stressed that *“The communities also claimed to be suffering under repressive and oppressive by laws. Their freedom of movement and Association are unduly restricted. Meetings are prohibited and no palm oil goes and comes into the Chieftdom, save by the company”*
 - The Committee *“recommends that, the paramount chief and his council, give a full and frank account to their people, of the use of the \$45,647/00, they receive each year, since 2012, as their twenty percent share of the lease rent”.*
4. **Inadequacy of SOCFIN's development projects:** the Committee recommends the creation of a Development Committee, to be charged with *“identifying and channeling the development needs of the community”.*
5. **Environment and pollution:** The report points out that failures of the EPA, along with its lack of capacity, *“seriously inhibit the committee's enquiries, on the environmental impact of the company's operations, on the ecosystem and the community as a whole”.* The Committee recommends that *“the services of an independent and credible environmental impact assessment outfit, be contracted by government, through the assistance of right based organizations, to conduct a standard scientific assessment of the environmental impact of the company's operations on the community and the preventive and safety measures put in place by the company”.*

3. Shortcomings and problematic elements of the Investigation Report

The nature of this first phase of the conflict resolution process, as well as the Report, should be clarified. It had been announced by the Vice-President of Sierra Leone that the Investigation Report would serve as the basis for a mediation process, but that is not apparent from the Report. The Report mixes findings and recommendations and refers to an “agreed position,” without clarifying what this refers to. Taking into account the process established by the Vice-President of Sierra Leone, the report should have been limited to listing findings and documenting the parties' allegations.

1. Absence of a human rights approach and weak reference to the relevant legal and regulatory framework:

- The Report does not comply with basic human rights principles and creates confusion by considering affected communities and SOCFIN as victims on an equal footing. According to broadly accepted international human rights standards, affected people need to be considered as rights holders, whose human rights need to be respected, protected and guaranteed by the State (as the duty-bearer). Accordingly, the analysis of the case needs to focus on the impairments of the rights of the affected communities, as a basis for the mediation process. SOCFIN, as private entity, is to be considered as a

third party, whose rights and responsibilities need to be clarified as well, but which are situated on a different level. In addition, the Report does not address the land conflict's specific and important adverse impacts on women's rights.

- The Report would have benefited from a better legal basis under both national and international law, and in particular the New National Land Policy; International human rights law; and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

2. Limited analysis of the land acquisition process: the lack of primary consent by landowners to the leases concerning their land is hardly addressed. Irregularities in the process that was carried out, which did not allow communities to give, or withhold, their free, prior and informed consent, are not clearly identified.

3. Limited investigation into the boundaries of the land concession: Studies have shown that a significant area covered by the concession (about 500 hectares) lies within another chiefdom (Bagbo) and district (Bo). This should have been investigated in order to avoid future conflict between chiefdoms.

4. No real analysis of the impact of the loss of agricultural land on the communities' right to food : while the Report recognised in various instances that *“left with little or no alternative source of livelihood, the people are mulcted in hardship, in terms of their daily subsistence and maintenance”*, a more in-depth analysis would have been necessary, given the importance of this issue for the conflict resolution process.

5. Pollution levels and specific environmental impacts are not specified: the Report's coverage is weak or non-existent when it comes to environmental impact and pollution (including pesticides) linked to the land agreements and SOCFIN's activities in the Chiefdom. It only acknowledges the EPA's lack of capacity and the uselessness of the reports obtained.

6. Total absence of the serious aspect of criminalization: As mention above, the rising criminalization of community representatives and civil society organisations supporting them is a major factor in the land dispute that must be recognized and documented.

7. Almost no investigation into working conditions: Without arable land, the only income opportunities for the affected communities are the few jobs offered by SOCFIN. The very problematic working conditions on the company's plantations have not been investigated despite this being an essential question for the communities. The Report only mentions that *“the task (barra) assigned to them is excessive and for the most time, not commensurate to the emoluments”*

8. No mention of the significant gaps in the implementation of SOCFIN's corporate social responsibility action plan: reports have documented that a major gap between the promises made by SOCFIN and the projects actually implemented by it. While it appears that only 16% of the corporate social responsibility budget allocated by the company between 2011 and 2017 has actually been spent, there is no mention of this in the Report.

- 9. Inappropriate and unfounded moral considerations:** the parts of the report recommending that NGOs and MPs refrain from tarnishing the company's image are inappropriate, and undermine the rights to defend human rights and to freedom of expression. The Committee is mandated to hear allegations from all parties, investigate them and come to a conclusion, but not to reproduce the position and allegations of one party only, in particular where this goes against Sierra Leone's human rights obligations.
- 10. No investigation into alleged bribery and corruption practices:** while the report expressly recognizes "corruption practices of politicians" and questionable payments to Chiefdom authorities, there has not been a comprehensive investigation of all allegations of corruption.

4. Recommendations for the upcoming steps in the conflict resolution process

As stated, concerns of civil society organisations regarding risks to the integrity of the investigation and mediation process, along with the overall context of the process and the land conflict, must be taken into account when considering the Technical Committee's Investigation Report. It is essential that these concerns be addressed prior to the continuation of the process. The following recommendations are made in their light.

- 1. Ensure an enabling environment for the free, peaceful and meaningful participation of affected communities:** as highlighted above, this includes:
 - Putting an end to all forms of criminalization and ensuring the protection of human rights defenders and communities;
 - De-securitizing the Malen chiefdom and ensuring the safe return and freedom of movement of citizens and activists;
 - Guaranteeing the freedom of movement and association for all civil society organisations, and ensuring that all CSOs engaged in defending the human rights of affected communities can work without restrictions.

- 2. Establish a fair, human rights-based, inclusive and transparent 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 (the 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 linked to the land conflict. In this regard, particular attention must be given to:
 - **Transparency:** Information about the mediation process must be made available to all parties and stakeholders to enable them to prepare before they are engaged. This should include, among other items: clear terms of reference that describe the objective of the process as well its principles and procedures, who will participate in the process and what the roles of different actors are, the steps to be taken and a timetable of schedules. The access to all relevant documents must be granted to affected communities in advance of the mediation process.
 - **Support the effective participation of community representatives:** 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.

- **Independent mediation facilitators:** the facilitator team for the upcoming mediation should have a clear mandate and should be totally independent from the Government, the company, and other involved actors. It should include international experts to ensure independence and compliance with international human rights standards.
- **Necessary resources:** The mechanism must have the necessary human, financial and logistical resources to carry out its mission successfully. To this end, if necessary, 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 European States or the permanent EU delegation).

3. **Initiate the mediation process within the shortest possible time**, in collaboration with the affected communities and maintain ongoing and regular communication with all parties.