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Federal Department of Foreign Affairs (FDFA)
Human Security Division
Human Rights Policy Section
Rémy Friedmann, Deputy Head
Desk Human Security and Business
Bundesgasse 32
3003 Bern

SIERRA LEONE: INDEPENDENT INVESTIGATION IN THE SOCFIN/MALEN CASE

Dear Mr. Friedmann,

we refer to the meeting we had on 16 October at the UN in Geneva between you, your colleagues Jasna Lasarevic, Amina Joubli and Nadia Meier, the representatives of Sierra Leone, Fassia Vandy from the organisation MALOA and Joseph Rahall from the organisation Green Scenery, and the representatives from FIAN, Hanne Flachet from FIAN Belgium and myself.

The case

Since 2011, the transnational company SOCFIN acquired a 12,500 ha land concession from the government of Sierra Leone and the Paramount Chief of Malen Chiefdom in Pujehun District in the South of Sierra Leone. The concession area has further been increased to over 18,000 ha. The land is owned by families or clans and they were not part of discussions that led to the bad acquisition of the land. The free, prior and informed consent of the land owners was never sought. The company never applied the necessary due diligence that would have helped prevent conflict and abuse of human rights. At today's situation, there is practically no land left for land owners, users and small scale-food producers to farm and to be assured of their livelihood, and hence of their right to self-determination.

The communities organised themselves in 2013 in order to form Malen Land Owners and Land Users Association (MALOA). Since it was established, they have always been criminalised, arrested for fictitious reasons or for peacefully demonstrating. MALOA was never permitted by the local authorities to meet.

Because there is hardly any land available for farming, communities and especially women are heavily impacted. They are not able anymore to pay their children's school charges, to meet medical expenses and to provide decent clothing for the family. Food and nutrition are negatively impacted because different crop varieties are no longer farmed. All food stuff and energy needs are now bought at market value. Many families in the chiefdom hardly get enough meals a day. The level of poverty in the chiefdom has increased over this period as only a few peasants and women can access casual labour jobs.

More information:

- letter of 28th August 2018 from Green Scenery, FIAN Belgium, and the Oakland Institute, to the Vice-President of Sierra Leone, Mohamed Juldeh Jalloh (attached)
- letter of 12th October 2018 from MALOA to the President of Sierra-Leone (attached)
- for further information, please consult the background information online: <https://www.fian.be/Landgrabbing-by-SOCFIN-in-Sierra-Leone-documentation?lang=fr>

The window of opportunity

After the national elections of early 2018, a new government and a new President were elected. The President has taken steps to engage with the issues and to find a solution for the land issues of SOCFIN. Two meetings have been held of which the President was in attendance of one. The second was a public meeting in which SOCFIN, the Paramount Chief and MALOA were present, and government ministers and local authorities presided over the public meeting. In that meeting a clear message of “instituting an independent investigation” was sent to the Vice President. An independent investigation is paramount because its outcomes/findings will set the necessary and adequate basis for any further engagement such as dialogue, negotiation or mediation. Amidst growing apprehension of the communities, this is a window of opportunity that presents itself for a lasting solution to the long and protracted land conflict in the country. We warn however, that this window of opportunity may be short-lived and therefore some concrete steps must be taken to encourage the Government of Sierra Leone to commission this investigation, which should be followed by an impartial and inclusive dialogue process.

The window of danger

While the window of opportunity exists with an independent investigation, there is a concomitant danger if this investigation is not commissioned. Communities are very desperate, wanting to move back into their land and reclaim it. A scenario of such development would only increase the conflict, lead to abuse and violations of human rights, and other outcomes that cannot be presumed. This danger is currently looming as is evident in the recent letter dispatched to the President of Sierra Leone by MALOA.

The connection with Switzerland

SOCFIN is present in Sierra Leone with its subsidiary «SAC» (Sierra Leone Agricultural Company) according to the organisation chart (see below, in green frame) from the SOCFIN website¹. Although headquartered in Brussels, the **operational centre** is based in Fribourg, Switzerland, as a press article reveals, that is also published on SOCFIN's website²: «Basée au Luxembourg, ou elle est cotée en bourse, Socfin (pour Société financière des caoutchoucs) dispose de bureaux à Bruxelles. Mais c'est depuis Fribourg, face à la place Python, que cette discrète multinationale, active dans la production d'huile de palme et de caoutchouc, gère près de 200 000 hectares de plantations dans dix pays d'Afrique et d'Asie du Sud-Est.»

Apart from the operational centre, **six subsidiaries** of SOCFIN are based in Switzerland (also in Fribourg), as the organisation chart shows (see below, in red frame). SOGESCOL FR is a particularly important one as it is marketing most of SOCFIN's palm oil and rubber production worldwide. Additionally, according to the trade register, there are **branch offices** of SOCFIN itself and of SOCFINAF and SOCFINASIA established in Fribourg. These circumstances establish doubtlessly a very close link between SOCFIN and Switzerland.

¹ www.socfin.com/en/socfin-group/organisation-chart

² www.socfin.com/en/news/detail/un-empire-tr%C3%A8s-exotique-%C3%A0-fribourg

c) as regards business enterprises, where the corporation, or its parent or controlling company, has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned;

d) where there is a reasonable link between the State concerned and the conduct it seeks to regulate, including where relevant aspects of a non-State actor's activities are carried out in that State's territory; [...]

27. Obligation to cooperate

All States must cooperate to ensure that non-State actors do not impair the enjoyment of the economic, social and cultural rights of any persons. This obligation includes measures to prevent human rights abuses by non-State actors, to hold them to account for any such abuses, and to ensure an effective remedy for those affected.

V. Obligations to fulfil

28. General obligation

All States must take action, separately, and jointly through international cooperation, to fulfil economic, social and cultural rights of persons within their territories and extraterritorially, as set out in Principles 29 to 35.

31. Capacity and resources

[...] Each State must separately and, where necessary, jointly contribute to the fulfilment of economic, social and cultural rights extraterritorially [...]

33. Obligation to provide international assistance

[...] States, acting separately and jointly, that are in a position to do so, must provide international assistance to contribute to the fulfilment of economic, social and cultural rights in other States [...]

VI. Accountability and Remedies

37. General obligation to provide effective remedy

States must ensure the enjoyment of the right to a prompt, accessible and effective remedy before an independent authority [...] for violations of economic, social and cultural rights. Where the harm resulting from an alleged violation has occurred on the territory of a State other than a State in which the harmful conduct took place, any State concerned must provide remedies to the victim.

To give effect to this obligation, States should: [...]

d) ensure access to remedies, both judicial and non-judicial, at the national and international levels [...]

38. Effective remedies and reparation

Remedies, to be effective, must be capable of leading to a prompt, thorough and impartial investigation [...]

Based on these principles, the human rights obligation of Switzerland to contribute to protecting and fulfilling the human rights of the local communities affected by SOCFIN's subsidiary SAC, and to providing effective remedy in this case, are clearly established.

The expected support from Switzerland

Although Switzerland could and should contribute to protecting the local communities, the undersigned organisations at present ask for remedial measures. In order to make use of the above described window of opportunity and to avoid the window of danger, MALOA, Green Scenery, FIAN Belgium and FIAN Switzerland propose and kindly ask the Swiss Government to undertake the following steps:

- to communicate to the Vice-President of Sierra Leone, Mohamed Juldeh Jalloh, that the Swiss government welcomes the recent initiative taken by the government of Sierra Leone to resolve the Malen land conflict;
- to encourage the government of Sierra Leone to commission an independent investigation and to task an independent body, that should include persons of high moral standing (nationally or internationally);
- to offer support for the independent investigation as may be in the capacities of Switzerland;
- to give notice that Switzerland will consider to support the outcomes of the investigation as may be in the capacities of Switzerland.

Welcoming an initiative, encouraging an investigation and offering support will not signify a violation of the national sovereignty of Sierra Leone, but rather a kind gesture.

We reiterate the conviction that there is no sense to try a mediation in the framework of the OECD National Contact Points as previous proceedings had to be laid down due to insufficient engagement from the part of SOCFIN and as SOCFIN constantly refuses to disclose relevant information.

Dear Mr Friedmann, we, the undersigned organisations, would like to express our gratitude for seriously considering the measures proposed and for informing us on your next steps. We are available for any further information and exchange.

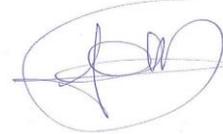
Kind regards,



Michael Nanz
FIAN Suisse/Schweiz



Joseph Rahall
Green Scenery (for MALOA)



Florence Kroff
FIAN Belgique

Attachment

- letter of 28th August 2018 from Green Scenery, FIAN Belgium, and the Oakland Institute, to the Vice-President of Sierra Leone, Mohamed Juldeh Jalloh
- letter of 12th October 2018 from MALOA to the President of Sierra Leone (due to difficult connection only available in the form of photographs)