

Land Grabbing: the Dark Side of 'sustainable' Investments



Irrigation system on an Addax Bioenergy sugarcane field. © BFA.

Concerns of *Bread for all* on the Addax Bioenergy project in Sierra Leone

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Executive Summary

This report lays out the major concerns of *Bread for all (BFA)* on the Addax Bioenergy project in Sierra Leone. The concerns presented in this document complement the information already published in the NGO coalition commissioned Independent Study Report¹ dated June 2011.

Not less than 17 dimensions of the Project are of concern to BFA. This report underlines in particular tax evasion and corruption risks, environmental damage, and considerations regarding ethical and international human rights law compliance.

Starting with tax evasion and corruption risks, the report notes that the Sierra Leonean government granted Addax different tax exemptions and deductions, which will hinder the State of Sierra Leone to levy a fair share of tax from the company. Further, the corporate structure of Addax, involving tax heavens, increases the risk that the company evades taxes. Finally the analysis of the value added sharing demonstrates that the project will mainly benefit to the company and that some stakeholders, like the local population, are mostly excluded or even negatively affected by the project.

A positive impact of the project will be the power production (the project will deliver 20% of the country's production). However, projects which involve Land Grabbing are subject to high corruption risks, especially in Sierra Leone, a country which is ranked under the most corrupt countries. In this context, the report strongly questions the compensation system adopted by Addax, as it might have encouraged the consent of local authorities due to the annual land lease fees they receive.

In Sierra Leone, many other land lease agreements have been or are being signed by investors. The area covered under these agreements represent in total up to 1 million hectares (or 18% of Sierra Leone's land suitable for cultivation). The cumulative impact of these land deals on Sierra Leone's food security, food sovereignty and water availability is not yet analysed. Brad for all is concerned about the huge conflict potential over land for subsistence food production in Sierra Leone, a country that is still recovering from a civil war.

This report raises the issue of producing biofuels for export in a country which is not food self-sufficient and where malnutrition affects one third of the population and is responsible for one of the world's highest child and mother mortality.

Up to 52% of the project costs are financed by development banks. Therefore the project's risks are not carried only by the company but also by public financing institutions. Bread for all and its European partner organizations stand for the principle, that no public money should be used for private sector investments in land acquisition that becomes Land Grabbing.

Turning to environmental considerations, it is important to note that one development bank (the European Investment Bank, EIB) already declined funding the Addax project due to non-compliance with the bank's environmental standards. Indeed, 4,000 hectares of bush will be cleared. Further, an ecological analysis of the project highlights that carbon emissions of the Addax project are under evaluated by the Company's Environmental Impact Assessment and reveals that ethanol from sugarcane has in fact a negative environmental impact that is up to 3 times higher than petrol. In addition, Addax will use 26% of Sierra Leone's largest river flow during the driest months (February to April) without consideration for downstream users. This figure is unfortunately not explicitly acknowledged by the company, as it tends to refer only to an annual average of 2% water abstraction.

¹ Anane, M. Abiwu, C. 2011. Independent Study Report of the Addax Bioenergy sugarcane-to-ethanol project in the Makeni region in Sierra Leone. Accra. Accessed here: http://www.brotfueralle.ch/fileadmin/deutsch/01_Service/Medien_Texte/Mediencommuniqués/Independent%20Study%20Report%20Addax%20Final.pdf

Finally, the report raises a number of concerns related to legal matters.

For example, according to Sierra Leonean law, women cannot be landowners in the North of Sierra Leone and therefore cannot be entitled of receiving any land lease fee from Addax Bioenergy. This situation has the potential to worsen their situation.

A Human Rights Impact Assessment of the Land Lease Agreement (LLA) highlights that all disputes have to be referred to London. This amounts to a denial of justice given the financial impossibility for landowners to fund their travel and legal representatives. Another clause of the Land Lease Agreement (LLA) is controversial as it might be used as a basis to deny compensation to landowners. Further, one clause of the LLA may be used so as to prevent pastoral communities from accessing land without remedy or compensation. In other words, there is a gap between the IFC Performance standards, which the project is applying, and human rights law. This is particularly true regarding due diligence procedures and grievance mechanisms.

The report concludes with a brief remark, reminding the readers that this project is set to last for the coming 50 (or even 70) years: it is a call to ensure adequate monitoring of all these concerns.

0. Objective of this document

This document intends to present *Bread for all's* concerns over the Addax Bioenergy project in Sierra Leone. Even if the company has made efforts to ensure access to information in the initial project planning process (cf. the project's Environmental, Social and Health Impact Assessment (ESHIA) reports) and has acknowledged its responsibility with regards to human rights guarantees, there are still many open questions and concerns.

The issues presented in this document complement the information already published by an Independent Study Report² commissioned by the Sierra Leone Network on the Right to Food (SiLNoRF), *Bread for all*, EED and Bread for the World in June 2011.

The main points described by the Independent Study Report were the following³ :

- Disputes have to be resolved by an arbitration tribunal in London, which may be too costly for the chiefdom councils;
- Duration of the Land Lease Agreement (50 years) is seen as dispossessing a whole generation of people of their land;
- Addax made juicy but not legally enforceable commitment regarding the eradication of poverty and the provision of health facilities, school buildings, community centres, jobs for all the youth, etc.;
- The promises by Addax to plough the lands materialized too late in 2010 and this led to very low yield on these fields. Local communities reported in 2011 to face growing food insecurity and hunger;
- Addax took large tracks of fertile and well-watered land despite promises to use only "marginal" lands;
- Water has become an ever increasing problem for some communities;
- People hired from the communities only worked as casual labourers and hardly worked longer than three months. The local people feel therefore angry and betrayed;
- Absence of an effective grievance or conflict resolution mechanism that could be accessed easily by community members and that could provide prompt and fair solutions to the problems;
- Interviews with community members reveal a simmering conflict over land acquisition, increasing poverty and failed promises by Addax.

The next chapters highlight additional points of concerns.

1. Tax analysis

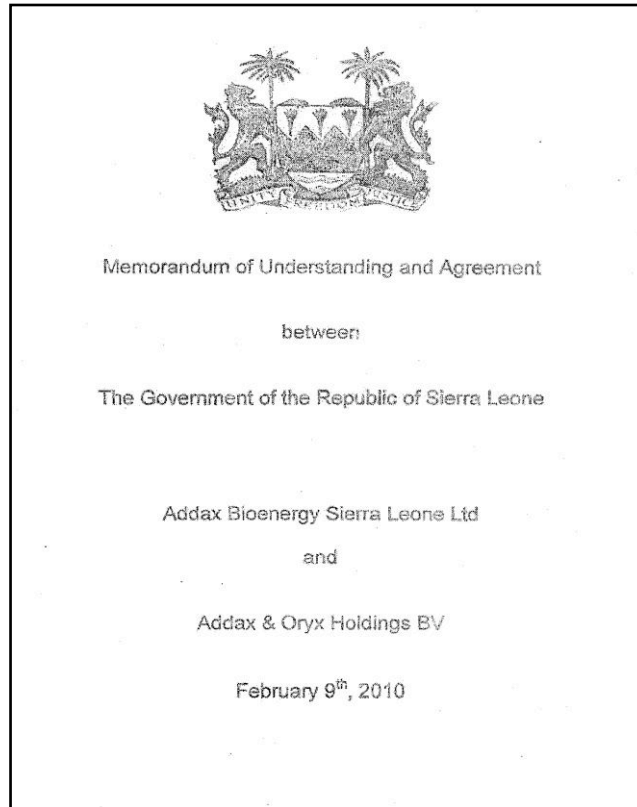
Taxes help a State to mobilize resources in order to provide services to its citizens and the population living on its territory. It is a matter of equity and more basically of a social contract nature that a company pays taxes in the country whose resources and services it uses. For these reasons, the next section gives attention to the tax return of the Addax Bioenergy project.

² Anane, M. Abiwu, C. 2011. Independent Study Report of the Addax Bioenergy sugarcane-to-ethanol project in the Makeni region in Sierra Leone. Accra. Accessed here: http://www.brotfueralle.ch/fileadmin/deutsch/01_Service/Medien_Texte/Mediencommuniqués/Independent%20Study%20Report%20Addax%20Final.pdf

³ Anane, M. Abiwu, C. 2011. Independent Study Report of the Addax Bioenergy sugarcane-to-ethanol project in the Makeni region in Sierra Leone. Accra. Accessed here: http://www.brotfueralle.ch/fileadmin/deutsch/01_Service/Medien_Texte/Mediencommuniqués/Independent%20Study%20Report%20Addax%20Final.pdf

1.1. Tax exemptions

Addax received exemptions on three different taxes from the Government of Sierra Leone. The tax exemptions are laid out in the Memorandum of Understanding⁴ signed between the company and the Government of Sierra Leone. This Memorandum is very favourable to the company and one can wonder why the Government of Sierra Leone granted so favourable conditions to the company and relinquished to the right to waive a fair share of taxes, which would enable the country to finance its development.



Picture: Memorandum of Understanding and Agreement. © Farmlandgrab.org

According to the Memorandum of Understanding signed between the company and the Government of Sierra Leone, Addax Bioenergy was granted the following tax exemptions:

1. Corporate income tax: Addax got a corporate income tax exemption for a 13 years period (2010 until 2022).⁵
2. Import tax and duty for agriculture inputs: The Government of Sierra Leone also agreed to an import tax and duty exemption for any agricultural inputs. This exemption is not limited in time.⁶
3. Import duty for non-agricultural inputs: The Government of Sierra Leone agreed to an import tax and duty exemption for any non-agricultural inputs (such as plant, machinery and equipment) during 5 years.⁷

⁴ Addax Bioenergy. 2010b. Memorandum of Understanding and Agreement between the Government of Sierra Leone, Addax Bioenergy Sierra Leone Limited and Addax & Oryx Holdings BV. Makeni. Accessed under: <http://farmlandgrab.org/uploads/attachment/ADDAX%20MOU0001.pdf>

⁵ Ibid., p.9.

⁶ Ibid., p. 7.

⁷ Ibid., p. 7.

1.2. Tax deductions

In addition to tax exemptions, the company was granted several tax deductions.

Deduction of withholding tax

Addax was granted an exemption from deduction of withholding tax on 50% of any dividend paid until 2020.⁸

Other allowable deductions for corporate tax

Addax was granted several deductions for corporate tax. This means that Addax will be able to make three deductions on corporate income tax when it will have to pay its corporate income taxes from 2023 onwards (after the 13 years exemption period (2010 until 2022)).

The following three deductions are allowed⁹:

1. Addax was granted that payments of land lease rents shall be allowable deductions for corporate tax purposes and not subject to any withholding tax.
2. Other *bona fide* business payments and expenses of Addax should also be allowable deductions for corporate tax purposes and not subject to any withholding tax.
3. A marketing fee of 5% of ethanol sales will be an allowable deduction for corporate tax purposes and not subject to any withholding tax.

1.3. Subsidiaries of Addax and Oryx Group in tax heavens

Many multinational companies do not only benefit from the tax privileges given by African governments. According to a report of CIDSE (a coalition of Catholic development organisations), they also take advantage of the “considerable trade in between their multiple companies to develop complex **mispricing strategies** in order to avoid paying taxes”¹⁰. The consequent annual loss for developing countries was estimated at USD 160 billion in 2008, more than the total amount of international aid.¹¹ This is why *Bread for all* supports the demand that companies report their annual financial figures (including taxes) on a country-by-country basis.¹²

The mother company of Addax Bioenergy, called Addax & Oryx Group (AOG), is based in the tax haven of the British Virgin Islands¹³. Moreover, a subsidiary of AOG, Addax BV, Curaçao¹⁴, is located in the tax heaven of Curaçao (Country of Curaçao, formerly Dutch Antilles). These jurisdictions are considered as secrecy jurisdictions by Tax Justice Network¹⁵.

⁸ Ibid., p. 8.

⁹ Ibid., p. 8.

¹⁰ CIDSE (2008). Upholding the Spirit of Monterrey. The Financing for Development agenda and its Unfinished Business. Bruxelles, p.8.

¹¹ Christian Aid (2008). Death and taxes: the true toll of tax dodging. London, p. 2.

¹² Petition from Bread for all and Catholic Lenten Fund with 27'000 signatures transmitted to Swiss Government on June 21, 2011: <http://www.brotfueralle.ch/fr/deutsch/generalarchiv/single-news/article/8/407/>.

¹³ Labarthe, Gilles. 2005. Pétrole africain: gros pipelines et petites ficelles du métier. DATAS. Genève. Accessed under: <http://www.datas.ch/article.php?id=241>.

¹⁴ Moneyhouse website: http://www.moneyhouse.ch/u/addax_bv_curaçao_succursale_de_geneve_CH-660.0.626.989-9.htm (accessed 07.09.2011).

¹⁵ Tax Justice Network (of which Bread for all is a member): www.taxjustice.net.



Addax & Oryx Group is located in the British Virgin Islands. © Paradise-islands.org

The Addax & Oryx Group's corporate structure involving several tax havens can easily be used to avoid taxes e.g. with **transfer pricing techniques**¹⁶. Transfer pricing could for instance take the following form: a subsidiary in Sierra Leone can sell the ethanol at an artificially low price to another subsidiary in a tax haven. The subsidiary in Sierra Leone will make little or no profit and thus will not be subject to corporate income tax in Sierra Leone. The subsidiary in the tax haven can resell the same ethanol to customers in Europe at the real market price and will make a big profit that will not be taxed as it is based in a jurisdiction with no or very little corporate income tax.

Therefore it would be very interesting to know what taxes Addax Bioenergy and other subsidiaries of AOG will pay and to which countries. The company should provide a full transparency report on these issues so that anyone can analyze whether the company pays a fair share of taxes in the countries where it actually operates.

2. Economic justice: unequal sharing of value added

In this chapter, the report analyses the distribution of the added value generated by the project among the different stakeholders. This is one of the criteria of the Global Reporting Guidelines¹⁷, a standard for corporate sustainable reporting. It is worth noting that Addax Bioenergy does not use these Guidelines for its reporting. A basic analysis of the added value generated by the project shows that the company is the major winner (cf. with 93%-98% of value added going to the company), while other stakeholders profit marginally. The table on the next page shows the unequal sharing of value added for the different groups involved in the project.

¹⁶ For a definition and an explanation of transfer pricing, please refer to the website of Tax Justice Network, of which Bread for all is a member: http://www.taxjustice.net/cms/front_content.php?idcat=139.

¹⁷ Global Reporting Initiative. 2011. Sustainability Reporting Guidelines. Criteria EC1. Direct economic value generated and distributed, including revenues, operating costs, employee compensation, donations and other community investments, retained earnings, and payments to capital providers and governments. <http://www.globalreporting.org/GRIPortal/Indicator%20Files/EC1.htm>.

| Group | Number of people affected | Benefits | Breakdown of added value |
|---|--|--|--------------------------|
| Addax Bioenergy | One company with one major shareholder ¹⁸ | Return of USD 53 million per year ¹⁹ | 93%-98% |
| Workers | 2000 Sierra Leonean workers plus some expatriates | Yearly wages: between USD 1.1 million ²⁰ and USD 4 million ²¹ (daily wages of USD 2.3) | 2%-7% |
| Land owners | A few hundreds (out of a total of 14'000 project affected persons) | Land lease fees per year of USD 113'000 ²² . This corresponds to less than USD 1 per person per month. | 0.2% |
| District Councils and Chiefdom Administrators | 2 District Councils and 3 Chiefdom Administrators | Land lease fees per year of USD 50'900 ²³ . | 0.1% |
| Government | NA | Land lease fees per year of USD 12'700 ²⁴ . No corporate income tax in the first 13 years ²⁵ . Water fees of USD 54'000 per year ²⁶ . | 0.2% |
| Local suppliers | Unknown. | Unknown. | NA |
| Total value added | | USD 53.3-57.2 million | 100% |

¹⁸ Jean-Claude Gandur is the major shareholder of Addax & Oryx Group (AOG), the parent company of Addax Bioenergy Ltd. (source: Le Temps, "Addax Bioenergy investit 200 millions de dollars en Sierra Leone", February 13, 2010).

¹⁹ The planned investment is of EUR 258 million (source: Addax Bioenergy. 2011. A new model for Sustainable Biofuels. Accessed here : <http://www.addax-oryx.com/AddaxBioenergy/Addax-Bioenergy-Fact-Sheet-050711.pdf>). The planned return is 15% (source: Direct communication of Nikolai Germann, CEO of Addax Bioenergy at the Symposium Business and Human Rights – The Business Perspective, organised in Geneva by Bread for all (among others), October 2010). This corresponds to an annual return of 15% x EUR 258 million = EUR 38.7 million (USD 53 million).

²⁰ Daily wages of Sierra Leonean low skilled workers amount SLL 10'000 (USD 2.26) (source: Direct communication with Addax workers and communities, November 2010 and May 2011). Yearly wages per worker are calculated as follows: SLL 10'000 x 230 (average number of working days) = SLL 2'300'000. Addax will have 2'000 workers. Total wages: 2'000 x SLL 2.3 million = SLL 4'600 million. The very large majority of workers are unskilled workers and a small minority of workers will be technicians or engineers, so the wage figure is corrected by a factor of 1.1 to SLL 5'000 million (USD 1.1 million). The very small number of expatriates who receive higher salaries is not included in this calculation. If one compares this calculation with the USD 4 million employment expenditure cited by Addax, the difference could be with the few dozens of expatriates receiving high to very high salaries.

²¹ Addax claims that it will have USD 4 million employment expenditure. Source: The Standard Times, "Environmental Protection Agency investigates Addax activities in Makeni communities", dated 28.06.2011, Freetown, available at: <http://farmlandgrab.org/post/view/18887>.

²² The affected landowners will receive USD 3.20 per acre (50% of USD 3.6 plus USD 1.4) (or USD 7.9 per hectare as one hectare is 2.47 acre). In total the project will require an area of 14'300 hectare (source: African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis. p. 2.) The total land lease fees for landowners will be as follows: 14'300 hectare x USD 7.9 per hectare = USD 113'000.

²³ The District Councils and Chiefdom Councils will receive USD 1.44 per acre (40% of USD 3.6) (or USD 3.56 per hectare as one hectare is 2.47 acre). In total the project will require an area of 14'300 hectare (source: African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis. P. 2). The total land lease fees for the district and Chiefdom Councils will be as follows: 14'300 hectare x USD 3.56 per hectare = USD 50'900.

²⁴ The Government of Sierra Leone will receive USD 0.36 per acre (10% of USD 3.6) (or USD 0.89 per hectare as one hectare is 2.47 acre). In total the project will require an area of 14'300 hectare (source: African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis. P. 2). The total land lease fees for landowners will be as follows: 14'300 hectare x USD 0.89 per hectare = USD 12'700.

²⁵ Please refer to the chapter "Tax analysis" for a detailed analysis on tax.

²⁶ Addax will abstract a total amount of water of 80 million m3 per year (source: African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis. p. 1.) and will pay SLL 3 per m3 (source: Addax Bioenergy. 2010b. Memorandum of Understanding and Agreement between the Government of Sierra Leone, Addax Bioenergy Sierra Leone Limited and Addax & Oryx Holdings BV. Makeni). The total water fees paid by Addax will be SLL 240 million (USD 54'000) per year.

In the table above, one can notice that the main beneficiary of this project is the company: Addax will receive an annual return of USD 53 million while the 2'000 low paid workers will receive 2% of value added (7% if one relies on the company's assertion). Landowners who leased their lands will receive as lease fees 0.2% of value added (this corresponds to less than USD 1 per project affected person and per month). Even the District Councils, Chiefdom Administrators and the Government will get comparatively small amounts (and yet these small amounts are enough to ensure sufficient political support to the project, see Chapter on "Corruption and Collusion"). It is to note that Addax will pay no or little taxes as the Government of Sierra Leone granted several tax exemptions and deductions to the company (see Chapter "Tax analysis").



Information board of Addax Bioenergy. © BFA

3. Climate impact of ethanol

The climate friendly nature of bioethanol was and is often praised as its main advantage. This was for a long time largely uncontested. However, in the last few years, scepticism has risen and several studies contested the climate friendly image of bioethanol and biofuel in general, highlighting the climate-harming impact of Indirect Land Use Changes (ILUC)²⁷, as these are not taken into account in life cycle assessment of biofuels. Indirect Land Use Changes relates to the "unintended consequence of releasing more carbon emissions due to land use changes around the world induced by the expansion of croplands for ethanol or biodiesel production in response to the increased global demand for biofuels²⁸". Indeed, natural lands, such as grasslands, store and sequester carbon in their soil and biomass as plants grow each year. Therefore the clearance of wilderness for new monoculture plantations translates in a net increase in greenhouse gas emissions, and "due to this change in the carbon stock of the soil and the biomass, indirect land use change has consequences in the GHG balance of a biofuel²⁹".

Even though the extent of the impact of ILUC is a contentious issue, the idea that ILUC can lessen the carbon saving contribution of biofuel is broadly accepted, including by the European Commission³⁰. A

²⁷ Al-Riffai P., Dimaranan B., Laborde D. (2010). Global Trade and Environmental Impact Study of the EU Biofuels Mandate, IFPRI, p. 9.

²⁸ Wikipedia.org. Accessed under : http://en.wikipedia.org/wiki/Indirect_land_use_change_impacts_of_biofuels .

²⁹ Wikipedia.org. Accessed under : http://en.wikipedia.org/wiki/Indirect_land_use_change_impacts_of_biofuels .

³⁰ European Commission (2010) Report from the Commission on indirect land-use change related to biofuels and biofuels. COM(2010) 811 final, 22 December. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0811:EN:HTML:NOT> (accessed 09.09.2011).

study made by the International Food Policy Research Institute (IFPRI)³¹ on behalf of the European Commission concludes that the GHG savings of sugar cane ethanol in Brazil compared to fossil fuel drops from 71% to 51% if ILUC is included.³² This gives the order of magnitude of the impact of indirect land use changes, which puts into perspective the claim made by Addax that its sugar cane ethanol saves 71% GHG emissions compared to fossil fuel³³ (since this figure does not take into account ILUC). The figure of 51% is actually very close to the greenhouse gas saving threshold of 50% required by the Renewable Energy Directive of the European Commission³⁴.

4. Environmental impact of ethanol

The carbon impact of ethanol is often praised as its main advantage (see previous chapter). However, GHG emissions are only one environmental impact among many others, like surface and ground water pollution, air and soil pollution, waste production, biodiversity destruction and resource consumption. Taking into account all environmental impacts gives a more accurate view of the overall impact of a project or a product. A study conducted by the EMPA³⁵, a Swiss research institute, calculated that ethanol from Brazilian sugarcane has a 30% resp. 200% higher environmental impact than low sulphur petrol depending on the impact assessment method used (“ecological scarcity method” and “Eco Indicator 99”³⁶ respectively). This is mainly due to the fine particles emitted by the burning of sugarcane by-products, the use of trucks for harvesting the sugarcane and the transport. As no data is available yet on ethanol production in tropical Africa, the analysis of ethanol production in Brazil can be taken as a proxy of ethanol production in Sierra Leone, as both countries offer similar conditions.



Sugarcane harvesting machine. © Mike Eng.

³¹ International Food Policy Institute (2010), Global Trade and Environmental Impact Study of the EU Biofuels Mandate.

³² Client Eearth et al., Joint submission for public consultation on indirect land-use Change, p. 22.

³³ African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis. p. 14

³⁴ European Parliament. 2009. Directive on the promotion of the use of energy from renewable sources. Accessed under: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0016:0062:en:PDF> Citation: „With effect from 1 January 2017, the greenhouse gas emission saving from the use of biofuels and bioliquids taken into account for the purposes referred to in points (a), (b) and (c) of paragraph 1 shall be at least 50 %. From 1 January 2018 that greenhouse gas emission saving shall be at least 60 % for biofuels and bioliquids produced in installations in which production started on or after 1 January 2017.”

³⁵ Zah, Rainer, et al. 2007. Life Cycle Assessment of Energy Products: Environmental Assessment of Biofuels. St-Gallen. EMPA, p. V and IX. Accessed here: <http://www.news-service.admin.ch/NSBSubscriber/message/attachments/8514.pdf>

³⁶ The “ecological scarcity” method permits impact assessments of life cycle inventories according to the “distance to target” principle. Eco-factors, expressed as eco-points per unit of pollutant emission or resource extraction, are the key parameter used by the method. Source: Federal Office of the Environment FOEN (2009). The Ecological Scarcity Method Eco-Factors 2006 *A method for impact assessment in LCA*. Berne. <http://www.bafu.admin.ch/publikationen/publikation/01031/index.html?lang=en>. The Eco Indicator 99 method is a damage oriented method for Life Cycle Impact Assessment. Source: Goedkoop, M. and R. Spriensma, The Eco-indicator 99: A damage oriented method for Life Cycle Impact Assessment. 2001, PRé Consultants B.V., Amersfoort, NL.

5. Weaknesses of the Farmer Development Programme

Addax states that “2,000 ha [are] developed as part of the project’s Farmer Development Programme (FDP) [...]” However, in June 2011, the Independent Study report³⁷ noted that: “According to many interviewed informants in the Pilot Phase Area (Lungi Acre, Romaro; Madrisa, Yainkisa, Woreh Yeama), the promised ploughing, harrowing and seeds arrived too late in 2010, planting usually begins in May 2010 but the seeds arrived in July 2010. [...] As a consequence, there is less food in the communities as farmers were not able to plant on time. Now the community members stated that they are starting to worry that they will soon not have enough food.”³⁸

Addax managers recognized that the **FDP failed in 2010 in the Pilot Phase Area**³⁹. Addax trains farmers to new agricultural techniques (that need fertilizers) and the first farmers graduated in January 2011. When interviewed by *Bread for all* in May 2011, farmers trained by Addax mentioned that **they cannot apply the new techniques as they have no money to buy fertilizers**⁴⁰. Moreover, in order to access subsidised fertilisers from the Government, farmers reported they should create and register a farmer cooperative and open a bank account but they lack the knowledge to do it. The Addax system is not sufficiently adapted to the social context and farmers face the risk to have too low yields to ensure their food security.

6. Manipulation of a petition in support of Addax

On its website, Addax Bioenergy mentions a petition in support of its project⁴¹. This petition was sent to *Bread for all* by the „Civil Society Coalition for Peace and Development” (CSOPAD), based in Makeni, in March 2011⁴². The petition says among others that “the communities are well informed about the project and welcome the development”. The petition was signed by around 180 landowners and farmers in the affected villages. During a visit in Sierra Leone in May 2011, *Bread for all* conducted an investigation on this petition and interviewed many land owners and farmers who had signed it.

The **interviewed owners and farmers were completely unaware of the content of the paper they signed with their thumbs** (as the vast majority of farmers cannot read and write). In different villages, they were told by local politicians and/or Addax managers that they should sign the document for the following reasons:

- a) If they do not sign, Addax will not fulfil its promises, or
- b) It would help solve a land dispute with a neighbouring village more quickly, or
- c) farmers had to acknowledge that they have received some money.

Some persons even claimed not to have signed and that their signature (i.e. their thumb) was a fraud.

In conclusion, **this so-called “Civil Society Coalition for Peace and Development” does not seem to defend the interests of all the farmers and landowners but rather the interests of the local elite**

³⁷ Anane, M. Abiwu, C. 2011. Independent Study Report of the Addax Bioenergy sugarcane-to-ethanol project in the Makeni region in Sierra Leone. Accra. Accessed here: http://www.brotfueralle.ch/fileadmin/deutsch/01_Service/Medien_Texte/Mediencommuniqués/Independent%20Study%20Report%20Addax%20Final.pdf

³⁸ Anane, M. Abiwu, C. 2011. Independent Study Report of the Addax Bioenergy sugarcane-to-ethanol project in the Makeni region in Sierra Leone. Accra. P. 32.

³⁹ Denham King, Farmer Development Programme Manager, Addax Bioenergy. Direct communication on May 29, 2011.

⁴⁰ Villagers in Lungi Acre and Maronko, Direct communication on May 28, 2011 and May 31, 2011.

⁴¹ What Others are Saying. Addax Bioenergy website. Accessed under: <http://www.addax-oryx.com/AddaxBioenergy/What-Others-Are-Saying.pdf>.

⁴² Petition from the Civil Society of Bombali and Tonkolili, Members of Parliament, Ministries, Paramount Chiefs, District Councils, Chiefdom Councils, Landowners/users and Traditional Authorities. March 2011.

which will receive a proportion of the land lease fees as enshrined in the Land Lease Agreement (see below, Chapter on Corruption and collusion).

7. Corruption and collusion

Land Grabbing projects are known for high corruption risks. According to the UN Special Representative on the Right to Food, Olivier de Schutter, “there is no doubt that, in many cases, corruption is involved in such land deals”⁴³.

Moreover, Sierra Leone is ranked 134th out of 170 countries in the Corruption Perception Index⁴⁴ of Transparency International. The rating for Sierra Leone is 2.4, which means that Sierra Leone is considered as a highly corrupt country and that corruption is systematic within the country. **Given this context, the project of Addax Bioenergy could be exposed to very high corruption risks.**

This report strongly questions the compensation system adopted by Addax. How can this system prevent and not encourage the collusion of local authorities? Indeed, the compensation system under the Land Lease Agreement foresees that 20% of land lease fees go to the 3 Chiefdom Administrators, 20% to the 2 District Councils while the Government of Sierra Leone will receive 10%⁴⁵ (this means that the 3 Chiefdom Administrators will receive annual payments of USD 24,540, the 2 District Councils USD 25,450 while the Government of Sierra Leone will get USD 12'700⁴⁶ each year). **This compensation ensures the co-operation of every level of national and regional authorities**, as the District Council and the Chiefdom Administrators receive annual lease fees without suffering any damage. How can this incentive system prevent that they don't act in their own interests but rather in the interests of the landowners?

Moreover, while landowners get a part of their compensation directly from the company through the Acknowledgement Agreement, the other part of their compensation is paid by Addax to the District Councils⁴⁷. Landowners have to require District Councils to transfer their share of the money. We consider the risk that landowners' money might be partly or fully embezzled by District Councils as quite high.

8. Investors' connections to the Government of Sierra Leone

A report of the Oakland Institute⁴⁸ questions **investors' connections to the government of Sierra Leone regarding land deals**. Indeed, “the law firm of Franklyn Kargbo & Co. represented local landowners and chiefdom councils in the Addax deal and represented the foreign investor, Quifel, in their land lease. At the time of the lease negotiations Franklyn Kargbo was an advisor in the Strategy and Policy Unit in the Office of the President. Later, in December 2010, Franklyn Kargbo was appointed Minister of Justice and Attorney General, with a key role in the development of land leases and with the responsibility of the ongoing land tenure reform process⁴⁹”.

⁴³ Swiss Television, 20.06.2011. Schweizer Firma lässt afrikanische Bauern verzweifeln. Accessed under: <http://www.videportal.sf.tv/video?id=2cba21ec-d555-44f6-8bcb-371f17597c6a>.

⁴⁴ Transparency International. 2010. Corruption Perception Index 2010. Accessed under: http://www.transparency.org/policy_research/surveys_indices/cpi/2010/in_detail#1.

⁴⁵ Calculations of Bread for all based on data included in African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis.

⁴⁶ Calculations of Bread for all based on data included in African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis.

⁴⁷ African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis.

⁴⁸ Oakland Institute. 2011. Understanding Land Investment Deals in Africa. Country Report: Sierra Leone. Oakland. http://media.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_SierraLeone_Land_Investment_report_0.pdf

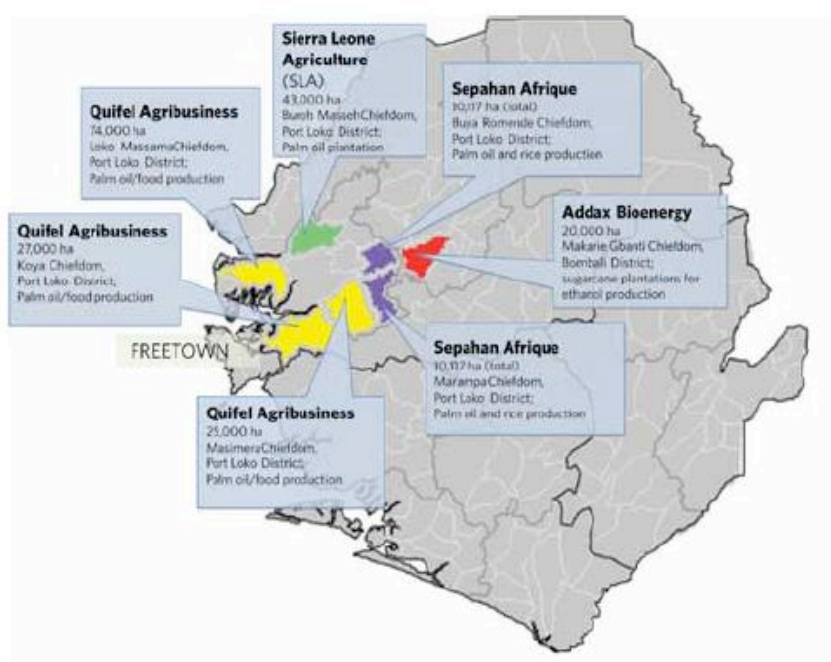
⁴⁹ Oakland Institute. 2011. Understanding Land Investment Deals in Africa. Country Report: Sierra Leone. Oakland. P. 2. http://media.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_SierraLeone_Land_Investment_report_0.pdf

9. Gender aspects

According to Sierra Leonean law, women cannot be landowners in the North of Sierra Leone⁵⁰ (where the Addax project is located). Therefore they cannot be entitled to receiving any land lease fee from Addax. **This situation has the potential to worsen their situation.** Moreover, during a field visit on the ground, *Bread for all* could witness that very few Sierra Leonean women were employed by Addax, even as casual workers⁵¹. A plausible justification is that the work of casual workers is considered to be very hard and requires strength, which is normally attributed to men.

10. Land Grabbing in Sierra Leone

In June 2011, the Canadian think-tank, Oakland Institute, published a report where it identified at least 14 other investors in large-scale investment projects in Sierra Leone⁵². The graph below shows some of the investment projects and their areas.



Overview of the Land Grabbing projects in Sierra Leone⁵³.

As of June 2011, the listed land lease agreements represented a **total area of 500'000 hectares**⁵⁴. This figure doubles if all land deals involving foreign carbon credit schemes and “preidentified” land availabilities are taken into account⁵⁵. This represents between **9% and 18% of Sierra Leone’s land suitable for cultivation** (5.36 million hectares). One open question is the **cumulative impact of these 15 land deals on Sierra Leone’s food security and food sovereignty**, now and in the next decades.

⁵⁰ Food and Agriculture Organisation. 2006. Land tenure, food security and investment in postwar Sierra Leone. Rome.

⁵¹ Bread for all field visit, May-June 2011.

⁵² Oakland Institute. 2011. Understanding Land Investment Deals in Africa. Country Report: Sierra Leone. Oakland. P. 22-23. http://media.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_SierraLeone_Land_Investment_report_0.pdf

⁵³ Oakland Institute. 2011. Understanding Land Investment Deals in Africa. Country Report: Sierra Leone. Oakland. Accessed under: http://media.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_SierraLeone_Land_Investment_report_0.pdf

⁵⁴ Oakland Institute. 2011. Understanding Land Investment Deals in Africa. Country Report: Sierra Leone. Oakland. P. 1. http://media.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_SierraLeone_Land_Investment_report_0.pdf

⁵⁵ Oakland Institute. 2011. Understanding Land Investment Deals in Africa. Country Report: Sierra Leone. Oakland. P. 1. http://media.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_SierraLeone_Land_Investment_report_0.pdf

Moreover, the Addax project as well as many other current and planned projects are located along the Rokel river, which the main river of Sierra Leone. The **cumulative impact of these projects on water availability** can be questioned, as Addax will use 26% of the river flow during the driest months (February to April) (see Chapter “Compliance with the Human Right to Water”).

11. Misconception on land availability

In November 2011, the Sierra Leonean NGO Green Scenery supported by the Canadian think-tank Oakland Institute, published a briefing⁵⁶ stating that “it is frequently said that just 15 percent of the country’s arable land is under cultivation, suggesting that the rest is available for long-term lease [...] to foreign investors”. However, this fact is a “misconception” according to an in-depth study⁵⁷ commissioned by the German Ministry of Economic Development and Cooperation. The study states that “**there is no remaining potential to significantly enlarge the area under cultivation** anywhere in Sierra Leone” and warns that if the large-scale commercial farm investments continue, “**a major conflict over land for subsistence food production is pre-programmed**”. This conflict potential is particularly worrying in Sierra Leone, a country that is recovering from a civil war. The study calls for a “reality check” on arable land and productive capacity.

12. Malnutrition in Sierra Leone

Bread for all raises concerns regarding the production of biofuels for export in a country which is **not food self-sufficient as it has to import 80’000 tonnes of rice in 2010**⁵⁸ and where malnutrition is responsible for one of the **world’s highest child and mother mortality**⁵⁹. Unintended but possible effects of investment projects have to be taken into account in order to prevent undesired backlashes or other risks (according to the “do no harm” principle). As 52% of the financing is provided by public development banks⁶⁰, *Bread for all* intends to monitor this investment model and its consequences for Sierra Leone.

13. Involvement of development banks

In June 2011, Addax announced that it got the support of several development banks⁶¹, namely:

- the African Development Bank (AfDB),
- the Emerging Africa Infrastructure Fund (EAIF),
- the Netherlands Development Finance Company (FMO),
- the German Development Finance Institution (DEG – Deutsche Investitions- und Entwicklungsgesellschaft mbH),

⁵⁶ Green Scenery. 2011. Green Scenery Briefings: Land Investment Deals in Sierra Leone September 2011. Accessed under: www.greenscenery.org.

⁵⁷ Bald, Joachim and Schröder, Peter. March 2011. Study on Rural and Agricultural Finance in Sierra Leone: Product Innovation and Financial Access. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) and German Federal Ministry for Economic Development and Cooperation (BMZ). Cited in: Green Scenery Briefings: Land Investment Deals in Sierra Leone September 2011. Accessed under: www.greenscenery.org.

⁵⁸ Oakland Institute. 2011. Understanding Land Investment Deals in Africa. Country Report: Sierra Leone. Oakland. P. 10. Accessed under: http://media.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_SierraLeone_Land_Investment_report_0.pdf

⁵⁹ World Food Programme. 2010. WFP in Sierra Leone: Annual report 2009. Freetown. <http://www.wfp.org/sites/default/files/Sierra%20Leone%20Annual%20Report%202009.pdf>

⁶⁰ EUR 133 million are provided by development banks out of a total investment of EUR 220 million. Source: Addax Bioenergy Signs Loan Agreement for €258 Million Renewable Energy Project in Sierra Leone, Press release of Addax Bioenergy of June 17th, 2011. Accessed under: www.addax-oryx.com.

⁶¹ Addax Bioenergy Signs Loan Agreement for EUR 258 Million Renewable Energy Project in Sierra Leone, Press release of Addax Bioenergy of June 17th, 2011. Accessed under: www.addax-oryx.com.

- the South African Industrial Development Corporation (IDC),
- the Belgian Development Bank (BIO), together with Cordiant managed ICF Debt Pool.

These institutions provide debt financing of EUR 133 million.

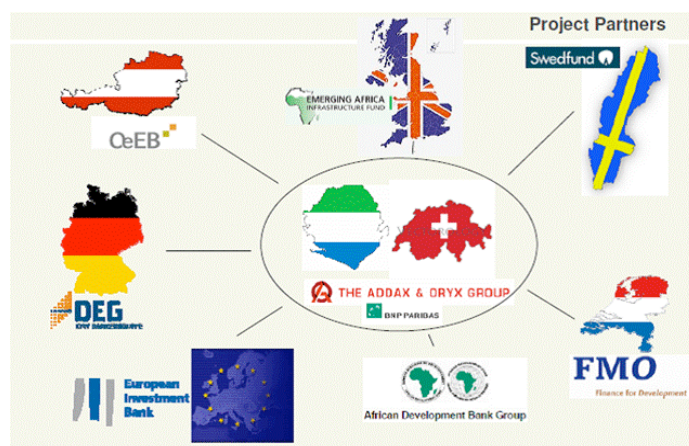
Moreover, the Swedish Development Fund (Swedfund) and FMO will join the mother company of Addax Bioenergy, Addax & Oryx Group, as equity partners (i.e. they will buy shares of this company). The total size of the investment is estimated at EUR 258 million⁶².

This means that 52%⁶³ of the Addax Bioenergy project is financed by development banks (i.e. by public money) and 48% by the company.

Addax & Oryx Group borrows money from development banks and intends to achieve a return on investment (ROI) of 15%. **If the money is borrowed at a low interest rate, it means that Addax will be able to cash the difference. Bringing development banks on board also means that the project's risks are not carried only by the company but also by financing banks. This allows the company to reduce its own risks with the help of public money.**

14. European Investment Bank's decline to finance Addax

The graph below shows the banks that should have financed Addax as of 2009.



Source: Addax & Oryx Group website.

In this graph, one can notice that the European Investment Bank (EIB) was supposed to be one of the financing banks of the project. However, on October 17, 2011, at the EIB Civil Society Seminar, EIB President Maystadt as well as the Director for ACP-IF Department, Patrick Walsh, declared that EIB had **declined funding the Addax Bioenergy project due to non-compliance with EIB environmental standards**⁶⁴. The European Investment Bank said that that “there is and won't be any written information on decline of an approval of funds due to commercially sensitive information”. In this context it would be interesting to know why and how the Addax project was able to comply with the standards of other development banks.

⁶² Addax Bioenergy Signs Loan Agreement for €258 Million Renewable Energy Project in Sierra Leone, Press release of Addax Bioenergy of June 17th, 2011. Accessed under: www.addax-oryx.com.

⁶³ EUR 133 million from development banks out of a total of EUR 258 million. This is 52%.

⁶⁴ Direct communication of Patrick Walsh, Director for ACP-IF Department, European Investment Bank to Karin Ulmer, Senior Policy Officer, Trade and Gender, Aprovev, at a EIB Civil Society Seminar in Luxembourg on 17 October 2011.

15. Power production

It has to be highlighted that the project will also supply power⁶⁵. The installed capacity is 15MW. The power will represent about 20% of the country's production. This fact is welcome in a country that faces frequent power shortages.

16. Destruction of bush and biodiversity

The planned sugarcane monoculture on more than 10'000 hectares will very likely lead to a decline in biodiversity in the area. As compensation, Addax Bioenergy will protect 1800 hectares of forests that are not cleared and renamed "ecological corridors"⁶⁶. On its website, the company claims to have completed the planting of 3'500 trees⁶⁷.

However, a closer look on the types of cleared vegetation leads to the conclusion that 4,000 hectares of bush⁶⁸ will be cleared to make space for the sugar cane monoculture.

17. Compliance with the Human Right to Water

The compliance of the Addax Bioenergy project in Sierra Leone with the Human Right to Water has been analysed in a separate report⁶⁹ written by WaterLex in October 2011. The following text highlights the key findings of this report.

On behalf of *Bread for all*, WaterLex conducted a Private Sector Human Rights Impact Assessment in the field of the Human Right to Water as defined under international Human Rights Law. The research is based on public available documents as well as the responses provided by the Company.

The joint report starts by commending the company for acknowledging in its ESHIA Reports and Management Plans its responsibility with regards to human rights guarantees. WaterLex also acknowledges that the company has made efforts to ensure access to information in the initial project planning process. Further, the report also welcomes the fact that the company has agreed as well to pay for the water used. These steps are indeed an exception compared to other existing large scale and export oriented agricultural projects in Sierra Leone.

However, several aspects of the project still present high risks which could lead to complicity in violations of the human right to water of the local population during and after the implementation period of the project.

The report identifies in particular lack of guarantees to ensure local population's access to safe drinking water given the destruction of some traditional drinking water collecting points by the company, the ground water pollution by Nitrates and Phosphates which are to occur through the project and the lack of purification systems available to the local population. Further it also identifies risks for the mere access to sufficient water downstream during the dry season. Indeed, regarding the water abstraction from the River Rokel (Sierra Leone's biggest river), the report revealed **that the project will use 26% of the river flow during the driest months** (February to April), without

⁶⁵ Addax Bioenergy Signs Loan Agreement for EUR 258 Million Renewable Energy Project in Sierra Leone, Press release of Addax Bioenergy of June 17th, 2011. Accessed under: www.addax-oryx.com.

⁶⁶ African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis. p. 1.

⁶⁷ Addax Bioenergy website. 2011. www.addax-oryx.com.

⁶⁸ African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis. p. 7.

⁶⁹ WaterLex. 2011. Addax Bioenergy – Sugarcane-to-Ethanol Project compliance with the Human Right to Water. Geneva, published by Bread for all (2011), available at: www.breadforall.ch/english.

consideration for downstream users. **This figure is unfortunately not explicitly acknowledged by the company, as it tends to refer only to an annual average of 2% water abstraction.**

So far **various sources could witness that, even if the project is only in its starting phase, several communities' access to water is already negatively impacted.** It therefore appears that the local population does not seem to be aware of certain risks which might directly affect the enjoyment of their human right to water. The report therefore questions the validity of the prior informed consent of the affected communities. The report also highlights the lack of local population's access to effective remedy mechanisms in case of violations of their basic human right to water.



Rokel river: the Addax project will use 26% of the river flow during the driest months. © BFA

18. Human Rights Impact Assessment

Bread for all with the support of WaterLex conducted a Human Rights Impact Assessment of the Land Lease Agreement (LLA), whose conclusions are described in the following chapters.

18.1. Right to access justice

Bread for all is concerned about the provision stated in section 5.2(a) and (d) of the Land Lease Agreement⁷⁰ (LLA) which might prevent the local population from suing the company before national courts in Sierra Leone:

“(a) All Disputes shall be referred to and finally resolved by arbitration in [London] before [three] arbitrators under the [Rules of Arbitration of the International Chamber of Commerce] from time to time in force. This Clause incorporates those Rules except where they conflict with its express terms.”

“(d) None of the parties may appeal to any court on a question of law arising out of an award made in the arbitration. The parties irrevocably waive any rights of appeal they might otherwise have had.”

The usual purpose of such external arbitrator is to prevent a host State to apply arbitrarily its “police power”. **Given the universality of human rights commitments, such arbitrariness can’t be justified today. Further, arbitrators tend to apply only international investment and commercial law, rather than all laws *ratione materiae* applicable to the case (i.e. such as international human rights law).** Finally, jurisprudence has shown that arbitrators have had the tendency in the past to interpret narrowly the State exemption on the basis of “police power” and quite broadly ‘indirect

⁷⁰ Addax Bioenergy. 2010. Land Lease Agreement. Accessed under: <http://farmlandgrab.org/uploads/attachment/ADDAX%20-%20Land%20Lease%20Agreement.pdf>

expropriations' to the extent that States became limited in their legislative activity even in areas of labor, environment and human rights.⁷¹

18.2. Right to compensation

Bread for all is concerned that the interpretation of paragraph 1 (as stated in the explanatory note to the Land Lease Agreement) might be used as a basis to deny compensation to landowners:

“If a traditional landowner is unwilling to acknowledge Addax Bioenergy Sierra Leone’s lease rights, then no amount will be paid directly to that landowner and it is likely that Addax Bioenergy Sierra Leone will surrender that area back to the Chiefdom Council (so no rent will be payable).”, (para 1.4)

Further, *Bread for all* is also concerned about paragraph 1.9 of the explanatory note, which might exclude the land owner from the compensation negotiation (and allow to company to bring in a so-called “expert” favorable to the companies’ interests):

“1.9 [...] in such cases compensation would be provided agreed by the Chiefdom Council, Addax Bioenergy Sierra Leone and the affected land owner/user or an independent expert;”

Given the fact that the Chiefdom Council is receiving 20% of the annual rent, *Bread for all* is concerned about the impartiality and due process to be guaranteed in the definition of the compensation amount owed to the land owner.

18.3. Right to housing

***Bread for all* is concerned about the planned evictions. The company does not have any authority to engage in such a process;** only public authorities are under very specific conditions.⁷² The company argues that the Chiefdom has full power and title to grant the lease, however *Bread for all* questions this assertion based on the fact that **family land tenure prevails** (as confirmed in p. 43 of Resettlement Policy Framework⁷³ (RPF)):

“3.2. The Chiefdom Council has full power and title to grant this Lease and this Lease is granted to the Company **free from any right or interest of any third party [...]**”, (p. 69 RPF)

Bread for all questions the powers of the Chiefdom council to take decisions on behalf of communities, **without the expressed informed consent of each affected individual**. *Bread for all* regrets that the opinion issued by a Freetown lawyers’ firm (*Basma & Macaulay*) is not enshrined in Law or Jurisprudence (no citations)⁷⁴:

⁷¹ For more information see, HAMILTON, Calvin; ROCHWERGER Paula, “Trade and Investment: Foreign Direct Investment through bilateral and multilateral Treaties”, Winter 2005, 18 N.Y. Int’l L. Rev. 1.

⁷² The RPF quotes several laws which justify evictions by the government (for public projects, e.g. roads, dams etc. cf. compulsory acquisition of land for public use in Sierra Leone is the Public lands Ordinance of 1961). However the company asserts that it follows a same course for private sector activities which is legally speaking wrong: “Legislation is generally silent on the issue of the private sector but assumes that they would follow a similar course”, p.20.

⁷³ Addax Bioenergy and Costal & Environmental Services. 2009. Resettlement Policy Framework. Grahamstown.

⁷⁴ Expect p.20 of RPF: “« The force of customary law in the provinces is established by section 76 (1) of the Courts Act 1965. However, the validity of customary law is contingent on it being compatible with statutory law. Three statutes are directly relevant to customary landholding practices in Sierra Leone.

These are:

- The Provinces Lands Act Chap 122
- The Chiefdom Councils Act Chap 61
- The Local Government Act 1994”. However, the context of these quotation in the document serve the purpose to justify “communal ownership” and the sole involvement of the Chiefdom council: “[...] land in the rest of the country (the Provinces),

“In terms of legal requirements, the existing arrangement is that if a third party intends to lease land, a surface rent payment needs to be made to local authorities in compensation for the loss. The arrangement with the government is that the Paramount Chief and his Native Administration, the District Council and the landowners, sign an agreement/lease and share the surface rent in equal proportions. Compensation is also required if housing and crops of local people within the surface rent area are affected. The payments for such compensations are negotiated separately.” (RPF, p.44).

Bread for all has the impression that this shine-legal foundation could be used to justify the partial payments to the land owner (50% of the rent) and the payment of the rest to the Paramount Chiefs/Chiefdom administrator (20%), District Council (20%) and National government (10%).⁷⁵

In other words, without the prior informed agreement of the land owner and its **direct payment** (cf. Footnote 13 (below) and the risk of the high risk to see the chiefdom administrator not even paying the 50% to the landowner), the company would be complicit in the violation of the right to housing of the local population.

“12.1.2 Government of the Sierra Leone

It is envisaged that the Government of the Sierra Leone will act as the primary support agent to resettlement with **Addax implementing the resettlement**. Addax will work in close association with the local authorities and the Traditional Leaders, who will represent the Sierra Leone Government.” (p.71)

Further, *Bread for all* is concerned that the provision mentioned on p. 52 of the RPF, might prevent the land owners from challenging the company’s resettlement if they were to argue on the basis of “insufficient information” (cf. prior informed consent):

“After moving to the new homestead, the resettled individuals will **agree to forego all claims & rights in relation to the previous homestead**. The household head should sign a document to this effect. All trees and materials left at the old homestead site then become the property of Addax.”, p.52

18.4. Right to food

Bread for all is concerned that **some language used in the agreement might affect negatively pastoral community’s local food production** (cf. contradiction with the Netherland’s Cramer Commission Guidelines on Biofuels). Indeed, *Bread for all* is concerned about the fact that some language may be used so as to prevent pastoral communities (cf. Fullah’s) from accessing remedy and compensation:

“It should be noted that the affected populace potentially include the Fullah households, as well as those not currently residing or cultivating in the project area but who lay historical claim to agricultural resources. Identifying those households who cannot demonstrate a current linkage between the proposed planting areas to be appropriated for the project, but who claim to have worked the area in the past is likely to be fraught with the pre-conditions for **opportunistic claims**”, p. 45”

These concerns are reinforced by the fact that the company apparently didn’t make the effort to evaluate the indirectly negatively affected people:

including that required for the Addax project, is held in communal ownership under customary tenure and is controlled by traditional rulers who administer it on behalf of their communities in accordance with customary principles and usage.”

⁷⁵ “The rent stated in the land lease will be US\$ 3,60 per acre per year. The rent will be paid to the Chief Administrative Officer and requires this to be split in 20% to the District Council, 20% to the Chiefdom Administrator and 10% to the National Government, and 50% to the Landowners on the Leased Area which has not been surrendered. As no rent will be payable to the landowner directly through the land lease, strategies to deal with potential consequences of this will need to be investigated in the RAP.”, p.18.

“A full (100%) survey of these households is required. Indirectly affected are those who have claims to land in the project area that are more tenuous, e.g. potentially using communal land resources, or seeing the land used as part of their fallow cycle, or the Fullah households. A sample will be drawn from these marginally/indirectly affected households for the purposes of the survey. **Only a sample is viable as the numbers of marginally or indirectly affected is (a) difficult to demarcate in terms of boundaries of impact and (b) likely to be numerous.**”, p.29

18.5. Misleading language

Further, *Bread for all* is concerned about the language used by the Land Lease Agreement, which suggests that the company will build medical, educational, religious and other facilities, whereas legally speaking the company doesn't commit to anything in that area.⁷⁶

18.6. Critics to the IFC Guidelines

According to a short notice⁷⁷ available on the company's website, the project is applying among others the IFC Performance standards⁷⁸. Although the respect of these standards improves the situation of local population in comparison to the situations when companies only apply local laws (when available), it is at the same time important to note the gap between these standards (in particular the IFC Performance Standards) and human rights law. A recent report issued by a coalition of NGOs⁷⁹ characterizes the gap in three areas, namely **substantive standards**⁸⁰, **due diligence procedures**⁸¹ and **grievance mechanisms**⁸².

Conclusion

This report showed that there are many points of concerns regarding the sugarcane-to-ethanol project of Addax Bioenergy in Sierra Leone. These points will have to be monitored in the future to assess the true impacts of the project on the affected persons, on the region and on the country as a whole, and this during the next 50 (or even 70) years.

⁷⁶ « §2.2(d) [The permitted use are for] the construction of accommodation and ancillary facilities which may include any medical, educational, religious, social, and recreational facilities, as in each case determined by the Company; »,

⁷⁷ Q&A: Addax Bioenergy sugarcane ethanol project in Makeni, Sierra Leone. Available at: <http://www.addax-oryx.com/AddaxBioenergy/Addax-Bioenergy-Questions&Answers.pdf>.

⁷⁸ “Over the last several years, the International Finance Corporation's (IFC) Performance standards have become the most widely-accepted framework among international project financiers for managing environmental and social risks of projects in the developing world. In addition to their lending, more than 60 leading international institutions have committed to adhere to the IFC's Performance standards in their project-finance lending under the rubric of the Equator Principles.” CIEL, BIC, BankTrack, Oxfam Australia, World Resources Institute, *The IFC's performance standards and the equator principles: Respecting Human Rights and Remediating violations?*, August 2008, available at: http://www.ciel.org/Publications/IFC_Aug08/Ruggie_Submission.pdf.

⁷⁹ CIEL, BIC, BankTrack, Oxfam Australia, World Resources Institute, *The IFC's performance standards and the equator principles: Respecting Human Rights and Remediating violations?*, August 2008, available at: http://www.ciel.org/Publications/IFC_Aug08/Ruggie_Submission.pdf.

⁸⁰ **Substantive standards:** The IFC standards do not address many critical human rights issues and address others only partially or in ways that do not meet international norms and standards.

⁸¹ **Due diligence procedures:** The standards do not provide an adequate procedural framework for conducting human rights due diligence. Although the standards require a comprehensive and social assessment for high-impact projects, they do not require explicit assessment of potential impacts on human rights.

⁸² **Grievance mechanisms:** While the standards require projects sponsors to implement project-level grievance mechanisms, these mechanisms are not required to meet minimum due process standards.

Author: Yvan Maillard Ardenti, Programme Officer, *Bread for all*.

November 2011

Bread for all – Pain pour le prochain – Brot für alle

Founded in 1961, *Bread for all* is the Development Service of the Protestant Churches in Switzerland. *Bread for all* empowers people in Asia, Latin America and Africa to free themselves from poverty and dependency and it motivates people in the North to commit to a fairer world. *Bread for all* empowers people to build sustainable livelihoods through over 350 development projects and programs in 50 countries in Asia, Latin America and Africa. It also informs and provides educational services about development policy issues for the public at large in Switzerland. The involvement of *Bread for all* is based on the conviction that poverty and misery can only be overcome if all people can assert the rights they are entitled to: civil and political rights, gender equality, rights to education, to health, to food, to an intact environment, to peace.

Bread for all is a member of ACT Alliance.

For more information: www.breadforall.ch

