5. Analysis I Sierra Leone

The first empirical chapter deals with Sierra Leone. The small West African country is thinly populated, with an estimated 7.2 million people living on 72 thousand km^2 (World Bank 2018b). The country is divided into the Western Area, making up the peninsula around Freetown, and four Provinces – the North-Western, Northern, Eastern and Southern Provinces. They are, in turn, made up of 16 districts, which are divided into 190 chiefdoms – the lowest administrative level in the country. Historically, the Western Area was a full colony of the British Empire, while the Provinces had the status of a Protectorate. This division had consequences for the regulation of land tenure, which plays a decisive role until today (Conteh/Yeshanew 2016; Sturgess/Flower 2013; Maru 2006).

Local land conflicts are endemic in the country (Sturgess/Flower 2013; Moyo/Foray 2009) and are regarded as one driving force for the 11 years of civil war between 1991 and 2002 (Unruh 2008: 99). The civil war left considerable devastation and the country still counts as one of the poorest in the world, ranking 179th out of 185 countries of the latest Human Development Index (UNDP 2016: 200). However, the political system seems to be stabilizing: Since the end of the war in 2002, four rounds of parliamentary and presidential elections (2002, 2007, 2012 and 2018) have taken place, including peaceful transferals of power. While political tensions are high around elections and a cause for violence at times, "the nation state's legitimacy is currently not questioned in principle by any relevant group in Sierra Leone" (Bertelsmann Stiftung 2016: 6).

Before I apply my analytical framework, I will first provide some background information on large-scale land deals in the country (chap 5.1), including the agricultural background, government policies attracting these deals and reactions by the civil society. In a next step, I will begin with the first part of the analysis looking at the national legal opportunity structure in the country (chap 5.2). I will show that from a human rights perspective, local populations are insufficiently protected. This is mainly due to the outdated nature of land legislation in the country, which leads to a gap between customary and statutory law.

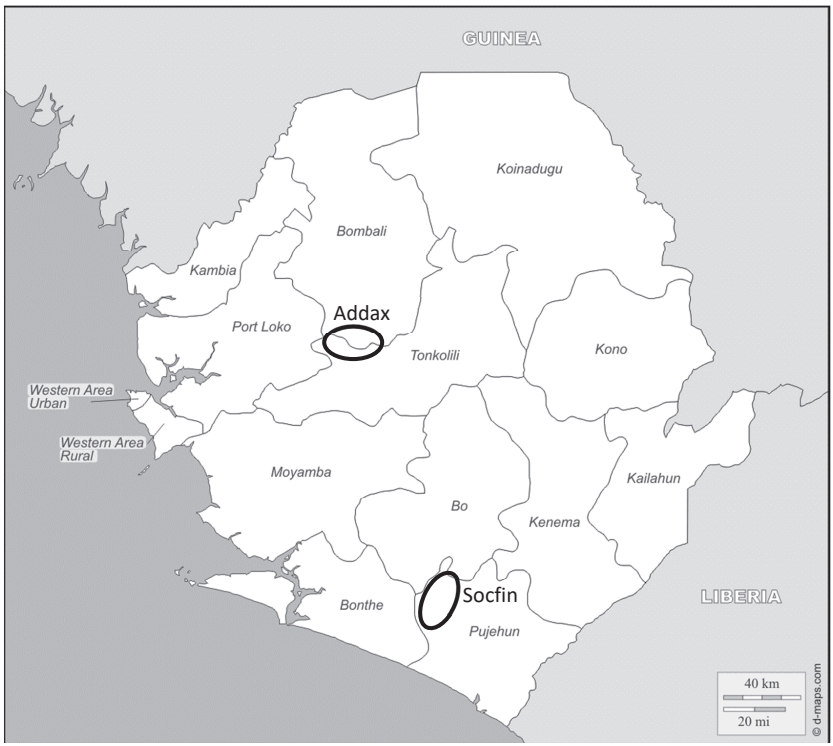

Figure 5 Map of Sierra Leone (with districts)

(source of basic map: http://d-maps.com/carte.php?num_car=4922&lang=en, last visited 15/12/2017)

In the two following chapters, I will show the consequences of this weak legal opportunity structure and the possibilities local actors still have in two cases of large-scale land deals.

The investment of Addax (chap 5.3) is located in the districts of Bombali and Tonkolili and involved 12,000 hectares of sugarcane plantation as well as a bioethanol plant. When they started the investment, the company hailed it as sustainable development and was certified by the Roundtable for Sustainable Biofuels. My research suggests that this background made the company more willing to listen to local demands, which they did in the case of one community, which had the support of a pro-bono lawyer.

The second case is the investment of Socfin (chap 5.4), located in Pujehun district, in the South of the country. The company created an oil palm

plantation covering 12,500 hectares in Malen chiefdom. Protests against the conditions of the land deal appeared early on in the project and local actors appealed to the Sierra Leonean Human Rights Commission to intervene. However, their mediation attempt failed as well as international advocacy campaigns. The case shows how difficult it is to influence a company, which is not receptive to soft law arguments and has the support of the local as well as the national government.

Finally, I will discuss overall findings for Sierra Leone (chap 5.5) by comparing results from both cases.

5.1 Large-scale land deals in Sierra Leone

In this chapter, I will start by looking at the overall trends in large-scale land investments in Sierra Leone (Chap 5.1.1). Chapter 5.1.2 takes a closer look at government policies behind the investments, while chapter 5.1.3 gives an overview of the response by civil society actors in the country.

5.1.1 Current trends and agricultural background

According to 2016 Land Matrix data, 24 concluded and seven intended deals were recorded since the year 2000, with a spike in interest in the years 2010 and 2011. While the number of deals closed per year has decreased since 2011, interest in farmland by foreign investors remains unabated in Sierra Leone (interview SL32).

The size of the land deals varies greatly with 11 deals smaller than 5,000 hectares, while three deals range between 120,000 and 130,000 hectares. Ten deals reach a size between 10,000 and 80,000 hectares (Land Matrix 2016: 3). However, only half of the concluded land deals entered into an active production phase and the size currently under production is smaller than the original leases. Investors come from 16 different countries with companies from the UK being the most active – accounting for six investment projects. Sierra Leonean companies were involved in none of the concluded deals (Land Matrix 2016: 5).

30 % of the land under lease is for palm oil production followed by forestry (24 %), agrofuel (23 %) and food crops (19 %). Investment in food crops usually entails smaller surfaces, whereas palm oil and forestry deals cover bigger areas (Land Matrix 2016: 6). Former land use was only recorded for 11 of the concluded deals and was mainly subsistence agriculture.

Data for community negotiations, compensation paid, employment or community benefits were mostly missing.

Table 11 No. of intended/concluded deals in Sierra Leone

year	No. of deals
No year	5
2003	1
2006	1
2007	1
2008	1
2009	1
2010	5
2011	12
2012	2
2013	1
2015	1

(Source: Land Matrix 2016)

The existing agricultural system in Sierra Leone is primarily based on smallholder farms with sizes ranging between 0.5 and 2 hectares. The primary staple foods grown are rice and cassava followed by sorghum, maize, millet, groundnut and sweet potato (Asenso-Okyere/Workneh Kebede 2012: 60). Sierra Leone was self-sufficient in rice production up until the 1970s; however, the agricultural sector suffered from government policies that led to an underprizing of local products while subsidizing cheap imports (Maconachie/Fortin 2013: 259). Structural adjustment programs fostering the privatization of the agricultural sector in the 1980s did not improve the situation, as prizes for farm products remained low and smuggling escalated (Keen 2005: 23). Rice production was profoundly affected during the civil war and considerably reduced food security. After the war, rice production rates increased but are not able to cover the consumption in the country (Asenso-Okyere/Workneh Kebede 2012: 53–54).

Most of the farmers in Sierra Leone are subsistence-based, usually without any kind of mechanization[19] and often lacking access to credit, seeds and fertilizers (PRSP II 2008–2012: 26). A bush fallow system is used for non-tree crops; however, the time in between planting one field declined – leading to a decrease in soil fertility. Other challenges include missing expertise on planting and stock-keeping methods, making the introduction of new crops a challenge (interviews SL3, SL12, SL32). Against this backdrop, the need to support agricultural development in the country becomes apparent.

Sierra Leonean agriculture is mostly based on smallholder farming and does not – unlike the Philippines – have a lot of historical experiences with bigger plantations. That does not mean that there are no plantations by foreign investors. The best-known case is probably the Magbass Sugar Complex set up as a Chinese development project in the 1970s. The farm of 1,800 hectares of sugar cane and a sugar processing factory faced a multitude of problems, including economic sustainability and conflicts with local communities. Up until today, the project depends on financial and technical aid from China (Cheng/Taylor 2017: 76–84). Consequently, the Magbass Sugar Complex is usually regarded as a negative example for foreign investment.

Overall most Sierra Leoneans do not have previous experience with large-scale agricultural plantations by foreign investors. Encounters with transnational companies usually stem from the natural resources sector, mainly iron ore, rutile, gold or diamonds. The experiences with these companies are typically mixed: On the one hand, communities are excited about the economic opportunities. On the other hand, environmental pollution is often drastic, working conditions difficult, local livelihoods are not improving and conflicts are simmering (Wilson 2013; Zulu/Wilson 2012).

The previous paragraphs show the following: The number of large-scale land investments closed in the last decade means an unprecedented influx of foreign investors in the agricultural sector in Sierra Leone – something the population as well as the government does not have much experience with. Apart from one or two exemptions, most experience with foreign investors stems from the natural resource sector, where the benefits for the local population are at best mixed. Set against this background, the

19 Tractors are sometimes available for hire, but remain out of reach for most smallholders. Reports indicate that this was different in the 1970s, when the government provided the technical infrastructure (Unruh/Turray 2006: 16).

question of how the government manages the large-scale investments in agriculture and how the population reacts to it gains relevance.

5.1.2 Government policies to attract foreign investment in agriculture

Agriculture is regarded as a central element for economic growth and poverty reduction in Sierra Leone. The second Poverty Reduction and Strategy Paper (PRSP) for the period 2008 to 2012 explicitly made agriculture one of its four top priorities (energy, transport and human development being the other three). Support for commercial agriculture – be it small or large-scale – is seen as crucial for increasing productivity for the domestic market as well as for export (PRSP II 2008–2012). In line with these priorities, the Government of Sierra Leone (GoSiL) adopted the National Sustainable Agriculture Development Plan for the period 2010–2030. The Plan contains different sub-programs – among them support for small-scale farmer commercialization, but also improving the investment opportunities for medium and large-scale agriculture through a review of land and investment policies. The overall idea is to encourage commercialization through linking small-scale to large-scale agriculture, which is supposed to open access to markets (NSADP 2010–2030: 29–33).

The two central actors in implementing these policies are the Ministry of Agriculture Forestry and Food Security (MAFFS) and the Sierra Leone Investment and Export Promotion Agency (SLIEPA). The MAFFS formulated the vision to "[m]ake agriculture the 'engine' for socio-economic growth and development through commercial agriculture" (Ministry of Agriculture Forestry and Food Security 2009). To fulfill this vision, it created incentives and rules for private investment in agriculture. Investors who provide a Five-Year-Investment Plan are eligible for exemptions from import taxes and duties for agricultural inputs as well as a general tax holiday for five years. In individual land deals, more generous tax exemptions can be granted, as I will describe in more detail when introducing the concrete cases.

The MAFFS also determined the lease rent of 5 USD per acre per year, which is then divided among landowners (50 %), district councils[20] (20 %), local administration (20 %) and the national government (10 %). In the end, a landowner gets 2.50 USD per year per acre (Ministry of Agriculture

20 District Councils govern on the district level and are composed of elected officials and the Paramount Chiefs of the district.

Forestry and Food Security 2009). Apart from these incentives, the MAFFS also sets rules for the investors, which I will describe as part of the legal opportunity structure in chapter 5.2.2.

The Sierra Leone Investment and Export Promotion Agency (SLIEPA) is another central actor, as this often is the first government agency in contact with investors. The agency was founded in 2007 with support from the World Bank. It acts independently of the ministries, even though it is formally attached to the Ministry of Trade (Oakland Institute 2011a: 13–14). SLIEPA heavily advertises investment in agriculture by emphasizing the availability of 5.4 million hectares of arable land, favorable climatic conditions and duty-free market access to the European Union and the Unites States[21]. SLIEPA promises a first-mover advantage as well as "[e]asy access to land with smooth facilitation process" (SLIEPA website 2018).

More specifically, investment in palm oil and sugar cane are advertised by emphasizing high government support combined with low costs for land and labor. Furthermore, both commodities are suitable for energy production – another focus of government policies, as only a small share of the electricity needs in the country is met so far (SLIEPA 2010a, 2010b). Apart from promoting investment in Sierra Leone, SLIEPA provides information and support in the land lease process as well as predefines possible concession areas (Oakland Institute 2011a: 14).

In 2010, a report commissioned by SLIEPA, claimed that agribusiness investments would create income for 50,000 families, make the country self-sufficient in electricity production and increase average household income by $250 per year (Thomas 2/15/2010). The report further claimed that 3 million hectares of land could be leased to investors without risking food security in the country (Thomas 2/15/2010). These numbers show the enormous expectations government authorities linked with large-scale land investments, while concerns about food security were minimalized.

Critique of these government policies comes from civil society and academics.

First, critics question the availability of unused land. They point out that the numbers used by the government are unreliable and do not mirror current cropping systems. For many crops, a field rotation system is used in which soil is left fallow for up to 25 years. During the fallow period, the soil restores itself but is used, for example, for gathering building materials or as hunting grounds. It is estimated that fallow periods reduced consider-

21 Granted to Sierra Leone as a least developed country.

ably in the last decades (Oakland Institute 2011a: 16–17; Melsbach/Rahall 2012: 5) (interview SL3). In consequence, the narrative about 'unused' land is questioned.

Another, more general critique is the emphasis of the GoSiL on top-down commercialization and the promotion of agribusiness in the agricultural sector. This focus on the private sector is criticized as ensuring profit for big business but not smallholder farmers. In this context, the role of the World Bank is described as pushing for a pro-investment climate, land privatization and investor protection (Oakland Institute 2011a: 14–15). In fact, "[t]he Bank ranks Sierra Leone as number two in Africa and number 27 worldwide for investor protection" (Oakland Institute 2011a: 15). Other authors link the government agenda to the 'liberal peace project', which expects a 'trickle-down peace' through free markets and macro-economic growth (Castañeda 2009: 237; Millar 2016: 570).

5.1.3 Civil society responses and network formation

The first civil society actors to warn of the detrimental effects of large-scale land deals were international NGOs active in the country. Most likely influenced by the global outcry about the massive increase in large-scale land deals globally, development NGOs started to pay attention to this issue in the country. In some cases, their work was directly impacted by land deals, as was the case for the German Welthungerhilfe, who was not able to implement a planned livelihood project due to the Socfin land deal (interview SL6). In other cases, NGOs learned about land investments from their local counterparts (interview SL11) or reached out to local actors because they were from the country of origin of the investor (interviews SL51, SL53). This is the case for the Swiss organization Bread for all, or the Belgium section of FIAN International (FoodFirst Information and Action Network). In addition, internationally specialized civil society actors like the American Oakland Institute, a critical policy think tank that publishes extensively on land grabbing, got interested in Sierra Leone.

Locally, these international actors cooperated with Sierra Leonean development or human rights organizations, which already existed but usually did not have a specific land rights focus (interviews SL19, SL34, SL51). The Freetown based environmental organization Green Scenery became one focal point for collaboration between international and Sierra Leonean civil society actors (interview SL2). Several fact-finding missions and reports (Melsbach/Rahall 2012; Rahall/Schäfter 2011; Oakland Institute 2011a; Ac-

tion Aid 2013; Christian Aid 2013) were produced by these national and international organizations. The criticized missing transparency, insufficient community consultations, inadequate compensation, broken promises and warned of detrimental socio-economic effects, especially on food security.

In the beginning, cooperation between local Sierra Leonean civil society actors and activists was limited. As land rights had not been a central issue, there was no preexisting civil society network in that regard. Eventually, local actors and organizations were brought together in April 2012 for the first 'Land Owners and Land Users Conference', which was organized by Green Scenery and the Sierra Leone Network on the Right to Food (SiLNoRF) and financed by the Oakland Institute. The conference led to a joint communique and the foundation of the 'Action for Large Scale Land Acquisition Transparency' (ALLAT) Network (Oakland Institute 2012). The network comprises both national Freetown-based NGOs as well as locally-focused organizations throughout the country. Since its inception, the network, which was set up as a watchdog for large-scale land deals, has evolved considerably. (interview SL6). Funding comes from international donors such as the Welthungerhilfe (through the German Ministry for Economic Cooperation and Development), Search for Common Ground or Christian Aid (interviews SL9, SL33). The network is regarded as an important way to exchange information, expertise and experience (interview SL9). Regular national land conferences that provide space for sharing stories and disseminate information have taken place in the last years (interviews SL2, SL6). At the same time, the network funds project of individual organizations that work on large-scale land deals and land rights issues (interview SL9, SL19, SL48).

Most importantly, the network is regarded as a way to amplify the voice of single organizations and to make issues around specific large-scale land deals known to the national and international public (interview SL6).

> "For us we think ALLAT came really at the right time. It's a blessing for us. Because the government is taking us seriously now, because we are together – a network. The companies are taking us seriously now because they know, I mean, our voice does not only stay at the community level." (interview SL33)

Apart from specific advocacy in regards to large-scale land investment, Sierra Leonean civil society organizations and the ALLAT network more specifically are involved in two interrelated policy processes: the implementation of the Voluntary Guidelines on the Responsible Governance of

Tenure (VGGT) and the development of a new land policy. Sierra Leone was chosen as a pilot country for the VGGT (Koch/Schulze 02/12/2017). The process, which is led by the FAO in cooperation with five Sierra Leonean ministries, grants civil society actors a permanent space for participation with three seats in steering committees and working groups (interview SL4). This access opens up a direct communication channel to relevant ministries for the civil society (interview SL33).

Apart from the VGGT, a process to develop a new land policy has been going on since 2009. This land policy is regarded as an essential step to reform outdated land legislation and create a coherent system for land governance. Civil society actors, as well as the VGGT working groups, were able to comment on the drafts. Many of the suggested changes were accepted by the government. In consequence, the National Land Policy, which was launched in 2017, received a lot of positive feedback from civil society actors. The new policy provides CSOs with a new advocacy tool and is currently promoted extensively in the country (interviews SL4, SL19, SL26).

The issue of large-scale land deals seems to have fostered civil society activism around land rights in Sierra Leone. Funded through international NGOs, a broad network, including local and national-level organizations, has developed. Civil society actors do not only organize around specific land deals but also support the implementation of the VGGT and advocate for a change of laws and policies on the national level.

5.2 National legal opportunity structure in Sierra Leone

The existing land governance system in Sierra Leone has received considerable criticism. The new National Land Policy, which aims to reform the system, describes it as "not only chaotic but also becoming increasingly unsustainable" (Government of Sierra Leone 2015: 1).

This chapter will first take a closer look at the land tenure system with a particular focus on the right to transfer use rights (chap 5.2.1). It will become clear that national statutory law and customary law are not in line, which leaves customary landowners without formal legal protection. In a second step, I will turn to specific laws and regulations concerning large-scale land deals (chap 5.2.2). The last subchapter (chap 5.2.3) will then use this information to assess the NLOS against the criteria formulated in the methods chapter. The current national legal opportunity structure has to be regarded as mostly unfavorable to local concerns, a situation the new National Land Policy tries to remedy in the future.

5.2.1 Existing land tenure system and central laws

The land tenure system in Sierra Leone is usually described as bifurcated or pluralistic (Conteh/Yeshanew 2016; Sturgess/Flower 2013; Maru 2006) being ruled by statutory law and private land ownership in the Western area, and by customary law in the Provinces. As all large-scale land deals in the country are located in the Provinces, I will focus on the tenure system and the relevant laws regulating land transfers there and exclude the Western area from my discussion.

The Sierra Leonean constitution does not make any reference to the governance of land or the function of land in the socio-economic context of the society (Republic of Sierra Leone 1991). Socio-economic human rights such as the right to an adequate standard of living or the right to food are not mentioned in the text, even though the country is party to all major international human rights treaties. However, the protection of property from unlawful expropriation is in the constitution (Davies 2015: 4–5). The constitution does, however, acknowledg that the state should "place proper and adequate emphasis on agriculture in all its aspects so as to ensure self-sufficiency in food production" (Republic of Sierra Leone 1991: para 7.d). However, this stipulation is only meant to guide the government and does not imply any rights or enforcement in court (Republic of Sierra Leone 1991: para 14). Furthermore, the constitution acknowledges existing customary regulations, which are mostly unwritten, as law of the country but does not make any further provisions, for example, in case of conflictive contents (Republic of Sierra Leone 1991: para 170). In consequence, the constitution has to be regarded as weak when it comes to the protection of land rights in general and, in particular, of customary land rights.

The silence of the constitution on land issues is filled by the Provinces Land Act Cap 122, which governs land transactions in the Provinces. The law was signed in 1927 under the colonial administration and was simply taken over by the independent Republic of Sierra Leone 1961. The law defines that "all land in the Provinces is vested in the Chiefdom Council who hold such land for and on behalf of the native communities concerned" (Cap. 122: Preamble). Regarding land transactions, it is then the Chiefdom Council[22], under the chair of the Paramount Chief, who decide about rent-

22 ""Chiefdom Council" means paramount chiefs and their councillors [sic], and men of note, or sub-chiefs and their councillors [sic], and men of note" (Cap. 122: sec 2).

ing[23] land to 'non-natives', which is "any person who is not entitled by customary law rights in land in a Province" (Cap. 122: sec 2). Lease agreements can be up to 50 years with a possible extension of 21 years. These provisions of Cap 122 grant the main decision making power to the Chiefs, making no provisions for the consultation of other stakeholders in the case of foreign land investments (Davies 2015: 17). At the same time, the law contains far-reaching competencies for the president of Sierra Leone[24], such as the right to fix the "settlers' fees", to prescribe "the terms to be embodied in leases" or to define how the rents are distributed (Cap. 122: 16.).

Officially a concessions Act Cap 121 was put in place in 1931, regulating land concessions larger than 5000 acres; however, it was never used and is not applied today (SLIEPA 2010c: 4). The Provinces Land Act is, therefore, the only statutory law regulating land transfers in the Provinces.

The Provinces Land Act largely ignores realities on the ground. Customary 'landowning families' control land in the Provinces. 'Outsiders' or 'land users', who are not a member of a landowning family, have to seek permission to use a piece of land and usually pay rent in the form of parts of the yield. The chiefdom authorities typically have to approve these arrangements; however, their degree of influence over these questions varies from region to region. Despite this variation, a household survey in seven districts shows that in most regions, the central authority to control land lies with the landowning families. In six out of the seven districts, the respondents ascribed landowners more than 70 % of the power over land (Conteh/Yeshanew 2016: 5–6). So, while the Paramount Chief has to approve all land matters, the main decision-making power lies with the landowning families:

> "The way it works under the customary tenure system is the following: If I, as a stranger, want to use land, I go to the landowning family. I have to meet the head of this family and sign an agreement with them. The PC will then sign the agreement as well. It is a sort of control function." (interview SL36)

In this way, statutory law, as instilled in the Provinces Land Act, clearly contradicts customary norms and disregards customary ownership rights. Yet, even more, land users' rights are neither mentioned by Cap 122 nor

23 Purchase of land is not allowed in the Provinces.

24 The law itself actually speaks about the "Governor in Council" referring to the President today (SLIEPA 2010c).

do they receive much protection in customary law. Land users make up between 20–40 % of the population in the chiefdoms and their use rights vary considerably from region to region (Unruh 2008: 102). Sometimes they are banned from making permanent improvements to the land such as growing tree crops (Unruh 2008: 102). Similarly to land users, women have relatively little control over land in many regions, even if they belong to landowning families (Conteh/Yeshanew 2016: 6).

Local grievance mechanisms in the case of tenure disputes do exist. In most cases of local land conflicts, the population calls on the chiefs to mediate and arbitrate[25]. Yet, the fairness of these processes is regularly called into question (Conteh/Yeshanew 2016: 23–24). A formalized mechanism are local courts, which use both customary and statutory law and are part of the formal judiciary in the country (Conteh/Yeshanew 2016: 8). However, the jurisdiction of local courts is limited to 'native' parties, excluding cases against companies (Kabbah 2014). If local actors have complaints about large-scale land deals, they can not file it with a Local Court but are restricted to chiefdom or district authorities.

5.2.2 Regulations regarding foreign land investments and grievance mechanisms

Apart from the characteristics of the land tenure system in the country, specific laws and guidelines exist regarding foreign investors in agriculture. The most relevant law is the Environmental Protection Agency Act, which creates an oversight agency equipped with authority. Other policies create some guidelines for investors but are not clear in their consequences. The new National Land Policy, sets out an ambitious reform of the land tenure system, but has only been developed lately and not yet been implemented.

One of the laws relevant for large-scale land deals is the Environmental Protection Agency Act of 2008, which created the Environment Protection Agency (EPA) and defined its mandate. The act requires investing companies to conduct an Environmental Impact Assessment prior to the investment, for which the EPA will then provide a license (Davies 2015: 17). The EPA can react to complaints and investigate individual cases. It does have the power to change or withdraw a license in the case of environmen-

25 Other customary means of solving land disputes are the calling on family heads, religious leaders, or secret societies, which receive high respect in rural Sierra Leone (Conteh/Yeshanew 2016: 23–25).

tal misconduct (Conteh/Yeshanew 2016: 16). The agency, therefore, has possibilities to sanction companies, making these provisions ard law according to my definition. Yet, these competencies only refer to environmental issues (Conteh/Yeshanew 2016: 16).

In addition to hard laws like the EPA Act or the Provinces Land Act, soft law policy documents formulate rules specifically for foreign large-scale land-based investments. Especially interesting are the investment policies formulated by the Ministry of Agriculture Forestry and Food Security (MAFFS) and the guidelines for investors by the Sierra Leone Investment and Export Promotion Agency (SLIEPA).

Apart from describing investment incentives, the document of the MAFFS makes some recommendations for large-scale land-based investments, which are meant to ensure socio-economic benefits for the local population. For example, land targeted for biofuels production should not be land used for food growing, investment plans should contain provisions for youth employment, 5–20 % of company shares should be offered to Sierra Leoneans and every investment should contain an out-grower scheme (Ministry of Agriculture Forestry and Food Security 2009). However, it is not clear how these provisions are implemented, translated into technical procedures or monitored. In fact, it seems that investors simply ignore these recommendations (Kaindaneh 2015: 73).

In addition, the policy of the MAFFS describes the option that the Government can act as an intermediary and lease land from the communities for the investors (Ministry of Agriculture Forestry and Food Security 2009: para 7). Interestingly, the consultation of local communities or even just of landowning families is not mentioned in the policy[26]. Overall, the policy has the main aim to attract investors and only contains some provisions in regards to ensuring socio-economic benefits for local communities. Yet, those provisions remain unspecific and enforcement unregulated.

In contract to the MAFFS policy, the guidelines for investors by SLIEPA go into more detail about the actual leasing process: They specifically mention landowners and recommend that they be included in the lease process. The document furthermore spells out that the Environmental, Social and Health Impact Assessment (ESHIA) requires that the process is adapted to the needs of the communities whose free, prior and informed consent (FPIC principle) is necessary. In making these provisions, the docu-

26 The only time agreement of communities is mentioned is in regards to the development of social responsibility packages (Ministry of Agriculture Forestry and Food Security 2009: para 14).

ment refers to the Equator Principles. However, the far-reaching FPIC principle only applies to the ESHIA process and not the lease agreement, which is supposed to be signed with the Chiefdom Council and 'representatives' of landowners (SLIEPA 2010c). The SLIEPA guidelines, therefore, go further than the MAFFS policy when it comes to the inclusion of landowners and other community members. Especially the ESHIA is regarded as a way to inform and receive the consent of affected communities. However, the process is suggested as 'best practice' and does not present enforceable rules (SLIEPA 2010c).

Overall, both policy documents are designed to attract investors and the provisions they provide for the protection of the local population seem to be mere guidelines with no oversight and enforcement procedures.

Another policy document, which is a lot more far-reaching, is the new National Land Policy, which was adopted in 2015 and officially launched in March 2017. The process of developing the new policy was very inclusive (interviews SL4, SL26). The document mirrors many recommendations of the VGGT and is therefore not only described as a significant step for land reform in Sierra Leone but also a best practice example for the implementation of the VGGT (Koch/Schulze 02/12/2017). The Land Policy suggests substantial changes such as streamlining statutory and customary law, protecting customary tenure rights and creating land committees on the national, district and local levels (Government of Sierra Leone 2015).

Regarding foreign land investment, the National Land Policy limits the lease for non-citizens to 50 years and a size of 5000 hectares. Local land banks are supposed to be developed with the participation of the local population, to identify suitable land for investment. The Land Policy furthermore demands that the *"free, prior and informed consent of communities, land owners and users"* (Government of Sierra Leone 2015: 67) has to be obtained for a planned land investment. Also, legal assistance should be made available to local communities through a special fund. Grievance mechanisms should be set up by the company but also by the government. Impact studies, including expected effects on food security, need to be conducted before an investment as well as monitoring of ongoing projects (Government of Sierra Leone 2015: 66–67).

The National Land Policy is undoubtedly an important step in the direction of better protection of local tenure rights; however, the implementation process is just beginning. While the Land Policy can play a role in the revision of existing leases (Government of Sierra Leone 2015: 67) in the

next couple of years, it was not yet of relevance in the cases studied in chapter 5.3 and 5.4.

From the discussion of the existing law and policy documents produced by the MAFFS and SLIEPA it becomes clear that formal grievance mechanisms for local actors affected by large-scale land deals are limited. The only hard law mechanism is the EPA and the possibility to file a complaint, which is then processed through an investigation and can lead to the imposition of fines or the withdrawal of the environmental license (Conteh/Yeshanew 2016: 17). The policy documents do not prescribe clear responsibilities and enforcement possibilities. In consequence, different government agencies do get involved in mediating or arbitrating in conflicts between local communities and companies, for example, the Ministry of Lands[27], the Office of National Security chaired by the President, the Human Rights Commission or District Councils (Conteh/Yeshanew 2016: 14–19). However, these agencies often act in an ad-hoc manner and are limited to mediation and fostering dialogue. In many instances, local complainants did not receive any responses from administrative officials (Conteh/Yeshanew 2016: 29). Overall, both formal, as well as informal grievance mechanisms, do not receive a lot of trust form large shares of the population, who regard them as unfair and corrupt (Conteh/Yeshanew 2016).

5.2.3 Evaluating the national legal opportunity structure

Set against the background of the previous two chapters, I will now turn to evaluating the national legal opportunity structure against the criteria formulated in chapter 4.1.1. It will become clear that Sierra Leone presents an unfavorable legal opportunity structure for local actors affected by large-scale land deals.

The first element of a veto right for smallholders is fulfilled neither through the statutory land tenure system, which omits customary rights in the process of land transfers, nor through additional policy documents specific to foreign investment in land. While the SLIEPA guidelines explain the importance of including customary landowners, they are not binding but rather 'best practices' for investing companies. Smallholders, be they members of landowning families or land users, do not have a formalized veto right.

27 Full name: Ministry of Lands, Country Planning and the Environment.

The second element of ensuring that smallholders can make informed decisions is only fulfilled to a limited degree. The EPA does require investors in land to submit an Environmental, Social and Health Impact Assessment (ESHIA) before they receive an environmental license. SLIEPA furthermore makes some recommendations on how the ESHIA process should be organized, including the translation into the local language (SLIEPA 2010c). Yet, affected communities usually do not receive any kind of legal advice or assistance in order to make an informed decision:

> "In fact, no relevant provision can be located in the legal framework on professional assistance to ensure that men and women are aware of their tenure rights and can participate in related consultation." (Davies 2015: 17)

The third element of ensuring that land investments are economically beneficial is nearly wholly absent. The policy document of the MAFFS makes some provisions as described in the previous chapter. Yet, as pointed out these provisions are not very specific and lack any kind of implementation and enforcement rules. Even more, incentives for companies as described earlier led to a situation in which the country can hardly profit at all:

> "There seems to be no government policy to ensure that the public captures benefits arising from changes in permitted land use. On the contrary, investors are given subsidies in the form of tax holidays. Agricultural investments benefit from 10-year corporate tax holidays and zero import duty. The country allows 100 percent foreign ownership of enterprise ownership in all sectors; there are no restrictions on foreign exchange, no limits on expatriate employees and full repatriation of profits, dividends and royalties." (Kaindaneh 2015: 71)

Similarly to the third element, the fourth element is mostly absent. Apart from the Environmental Protection Agency, which overlooks environmental concerns and has the mandate to enforce legislation in this regard, most government agencies and administrators only act on an ad-hoc basis. While these mechanisms are often easier and cheaper to access than the formal judiciary system, "these institutions do not have clearly defined processes for receiving and resolving disputes and have not consistently documented processes and outcomes" (Conteh/Yeshanew 2016: ix). At the same time, no ministry seems to have an explicit mandate for oversight over all large-scale land investments in the country and there are, for example, no official statistics about how much land has been leased in the Provinces (Kaindaneh 2015: 70).

Overall, the NLOS does not present favorable opportunities for local actors affected by large-scale land deals. Statutory land law does not explicitly recognize customary ownership and use rights and therefore does not give smallholders a possibility to veto an investor. Furthermore, there are no binding regulations that would ensure that the local population profits from an investment. Local actors, therefore, will have difficulties to draw on the law in achieving their goals. I will show this in the next two chapters, in which I analyze legal mobilization attempts in the case of the Addax and the Socfin investment.

5.3 Case I: Addax Bioenergy – success through legal representation

The large-scale land investment by Addax Bioenergy[28] was considered a big win in the attempts of the Sierra Leonean Government to attract foreign investment in biofuels. Its goals overlapped with the second PRSP (2008–2012) and the investment received widespread support as a private development project (African Development Bank Group 2011b). The investment was hoped to be a *"model for sustainable investment in Africa"* (Addax Bioenergy 2013) and the company went beyond national legal obligations in securing the consent of local landowners (Addax Bioenergy/FAO).

In the case study, I argue that this picture of a responsible and sustainable investment following international standards created some space for local actors to achieve their demands. One community – the community of Masethleh[29] – did so successfully. Nonetheless, they relied on outside support to get their voice credibly across to the company. The case, therefore, shows that international market-based instruments can create some leverage for local actors if locals have the necessary outside support. However, the case also shows the limits of these instruments. The degree of what the community was able to decide about, was minimal – mainly due to the insufficient national legal framework in place at the time.

In a first step, I will provide an overview of the investment of Addax Bioenergy with a focus on the consultation stage leading up to the signing

28 In 2016 the majority shares of the project were sold to Sunbird (Awoko 3/10/2016). However, as I focus on the phase leading up the signing of the lease agreements I refer to the investment project as the Addax case in my analysis.

29 In some reports the name of the village is spelled Masethele (Conteh 2015) or Masetheleh (African Development Bank Group 2011a: 20), I did however stick to the spelling used by the local NGO (SiLNoRF 2013), which corroborates the spelling my translator used.

of the agreements (chap 5.3.1). These elaborations provide the necessary background to understand the story of the community of Masethleh, which was able to negotiate their own agreement with the company (chap 5.3.2). In a next step, I will show the relevance of the conditions identified in the analytical framework. I argue that the company's reputation as a poster child for responsible biofuels investment in Africa and the standards set by development banks created a space for local agency (chap 5.3.3). However, support by NGOs and a pro bono lawyer was a necessary condition for local actors to make use of that space (chap 5.3.4). The case can be seen as an example of possible positive impacts of private soft law regulation, but also shows limitations of what can be achieved. I will discuss these chances and challenges in chapter 5.3.5.

5.3.1 Overview of the investment of Addax Bioengery

The Swiss company Addax Bioenergy invested 400–500 million USD[30] (Lanzet 2016: 27) in a 12,000-hectare sugarcane plantation, a bioethanol refinery and a power plant in the North of the country. The investment reaches across the three Chiefdoms of Makari Gbanti, Bombali Shebora and Malal Mara, located in the districts of Bombali and Tonkolili. The project intended to export bioethanol to Europe, produce electricity for the national grid and employ between 3000 and 4000[31] people (Memorandum of Understanding and Agreement 2010). The Environmental, Social and Health Impact Assessment prepared in 2011 estimated that about 13,500 people living in 60 villages were affected by the investment project.

While only 77 people needed to be directly resettled, other affected people faced economic displacement due to the loss of access to land (African

30 There are no exact numbers of how much money was invested by the company and its successor to date, however, it could be as much as up to 500 million USD (Lanzet 2016: 32) – a number which was also confirmed in an interview with a former staff member from the management level (interview SL54).

31 These numbers do of course vary and include different forms of employment. In 2015, 3850 Sierra Leoneans were employed of which 132 had fixed monthly salaries, 1472 had permanent contracts but were payed on a daily basis and 2243 causal workers, which were only contracted for three to six months (SiLNoRF 2016: 13). In one interview frustration was expressed about the way workers were counted: The official numbers were the total amount of people who got a contract throughout the year, even though most people only had short-term contracts and were not employed at the same time (interview SL13).

Development Bank Group 2011b: 7). To adequately compensate for the loss of farmland, the company set up a Farmer Development Program, which included the provision of land, seeds, farmer's training and farm services (African Development Bank Group 2011b: 11; SiLNoRF 2016: 14). Apart from these mitigation measures, the company implemented a stakeholder engagement program including village level committees, grievances and community liaison officers as well as a multistakeholder-forum. During forums meetings, senior management staff inform chiefdom councils and influential landowners about the company's actions (interview S15).

Despite efforts to create a 'socially responsible' project, the company received considerable criticism in regards to the consultation process (Action Aid 2013), insufficient compensation payments, unfair recruitment practices (interview SL15), lack of training and job opportunities (interviews SL13, SL14, SL17), problems with the Farmers Development Program (Action Aid 2013: 7) and issues around the change of watercourses and drinking water contamination (SiLNoRF 2016: 20–21). Addax reacted to criticism and usually tried to solve the problems, which was positively acknowledged by a monitoring NGO (SiLNoRF 2016: 12). Nonetheless, the project got under extreme pressure from international NGOs, and was labeled a 'land grab' by some (FIAN Österreich 2015; Action Aid 2013: 3).

Between 2009 and 2011, consultations and negotiations took place at the government level, with Chiefdom Councils and with local landowners leading to the signing of three types of agreements (African Development Bank Group 2011b: 2). In February 2010, a Memorandum of Understanding was signed with the Government of Sierra Leone, in which the project was roughly outlined and certain guarantees and tax incentives were granted. Apart from some vague language regarding possible benefits for the local population through the creation of infrastructure and jobs in the recitals of the contract, no obligations of the company towards the local population or in regards to customary land use rights were defined in the document (Memorandum of Understanding and Agreement 2010).

Besides the MoU, the lease agreement was signed with each of the three Chiefdom Councils, who are the decisive land authority as defined in the Provinces Land Act Cap 122 (as described in chap 5.2.1). Initially, 57,000 hectares were leased for 50 years, but Addax surrendered most of the land not needed in the first five years of the lease (African Development Bank Group 2011b: 2) and now holds 23,500 hectares (SiLNoRF/Bread for All 2017: 4). The rent was set at 5 USD per acre per year as defined by the recommendations of the MAFFS (Ministry of Agriculture Forestry and Food Security 2009). The lease agreement does not only cover land used for

plantations but the villages and surrounding environment as well. The agreement guarantees the company sweeping rights such as the right to change any watercourse or restrict access to certain areas (Land Lease Agreement: para 4.4 & 4.6).

In addition to the lease agreement, Addax also signed so-called Acknowledgement Agreements (AA) with landowners, thereby recognizing the customary tenure system. According to the company, "[t]his is the first time that landowners' rights are contractually confirmed by a company in Sierra Leone" (Addax Bioenergy/FAO: 3). In addition to part of the lease money, the landowners, who signed an AA with the company, receive some extra annual payments. The explanatory note of the lease agreement stipulates that the wishes of the landowners will be respected even though that is not guaranteed:

> "If a traditional landowner is unwilling to acknowledge ABSL's lease rights, then no amount will be paid directly to that landowner and it is likely that ABSL will surrender that area back to the Chiefdom Council (so no rent will be payable)." (Land Lease Agreement: explanatory note para 1.4)

Essentially, these three types of agreements, the Memorandum of Understanding, the Lease Agreement and the Acknowledgement Agreements (AAs), constitute the legal ground for the investment. In a next step, I take a closer look at the local consultations surrounding the lease agreements and AAs.

The company described the local negotiation and consultation process as follows:

> "The land lease draft was discussed and negotiated in several meetings over a period of eleven months. It was first introduced to the Districts and Chiefdom officials and traditional landowners, who in turn were tasked with discussing the document further with their communities. Meetings were subsequently held with affected villages. Invitations to meetings were sent out to landowners and transport costs were provided to attend meetings. During the period following the meetings, stakeholders were encouraged to send their questions and comments relating to the lease agreement to their lawyer for further discussion with Addax Bioenergy." (Addax Bioenergy/FAO)

This process seems very thorough at first sight. However, the actual process appeared more problematic. The mentioned lawyer was paid by Addax, which arose the suspicion of affected people that he would not work in

their interest (interview SL14). Some communities do not seem to have ever been in contact with the assigned lawyer (interviews SL13, SL14). In consequence, chiefdom authorities and landowning families did not receive proper legal advice (Conteh; SiLNoRF 2013: 14). At the same time, community members were told during village meetings that the government, as well as the chiefdom authorities, stood behind the investment project. It seems that the Member of Parliament for the region also made promises about boreholes, schools and clinics – something the company had never agreed on (SiLNoRF 2014: 6). This combination of a missing understanding of the details of the agreements and the social pressure built up through local elites seems to have led to a situation in which landowners often did not understand what they were signing. A member of the University of Makeni, who mediates between communities and the company, described the process in these words:

> "So communities looked at community leaders and ended up signing those documents without having a proper understanding. And, in some isolated cases, they would even be given instructions by members of parliament, or maybe the paramount chief. They said: go ahead and sign." (interview SL10)

Apart from the social pressure, the potential compensation paid as well as the outlook of having salaries was something that convinced local farmers to agree. However, they often had no clear understanding of how much value they generated for their own consumption through the land (Anane/Abiwu 2011: 37). In consequence, the process leading up to the signing of the lease agreements was criticized as not fulfilling FPIC standards by international NGOs (Action Aid 2013; Oakland Institute 2011b).

In the end, all communities signed the Acknowledgement Agreements without any further negotiation – apart from one: the village of Masethleh.

5.3.2 Legal representation for the village of Masethleh

The story of the village of Masethleh stands out in the overall investment project of Addax. Unlike all other communities, the landowners of the village refused to sign the Acknowledgement Agreement. Through the support of a pro bono lawyer organized by a local NGO, the community negotiated with the company and achieved the outcome they had wanted: The agreement contained a smaller portion of their land than initially envisaged.

The community of Masethleh consists of 66 houses and lies in the middle of the project area. The community name means 'enough' in Temne, the local language, and was given to the village, as food was abundant (interview SL14). When the company first approached the community, an Addax representative explained to them about the planned sugar cane plantation in two subsequent meetings in the village. Some of the villagers also attended outside meetings where community members from all three chiefdoms were present. In these meetings, the Paramount Chiefs told them that they had agreed to the investment and that the company would now be approaching the landowners.

At one particular regional gathering, the community members learned that a lawyer had been hired by the company to represent the affected landowners. According to one interviewee, this news was not well perceived as the community members did not believe that the lawyer would act in their interest, as the company paid him. They furthermore never had any personal contact with the lawyer (interview SL14).

In the meantime, the project went ahead with Addax using GPS to survey the land and identify landowning families, of which there are seven in the community (interview SL27). Company representatives tried to convince the landowners to sign by explaining to the community that they would pay lease for all of the land but only use a small part for the plantation (interview SL14). This arrangement was used in all communities: The whole land, including the villages themselves, was leased, while only parts of it were used for the actual plantation (interview SL54)[32]. However, this plan seemed to have made community members suspicious, and they decided not to sign.

One community member described the decision in the following way: "We don't have money neither education, all we have is the land. So if we see people are coming to take away the only thing we have, we would not accept" (interview SL27). The community was furthermore worried about the prospects of future generations, who would not have land left to work on. The villagers also consulted with community members living in the city and overseas. They advised them to lease only a smaller portion of the land (interview SL27).

At the same time, the company, as well as chiefdom authorities, repeatedly asked the community to sign. The people in the community felt that

32 According to an interview with a former company employee, this was done to make planning of surrounding infrastructure such as water-pipelines easier (interview SL54).

they could not wholly reject the agreement, as the government and the chiefdom authorities were behind the deal. They furthermore wanted to profit from the company in terms of jobs, the Farmer Development Program and other possible benefits (interviews SL14, interview SL27). However, they felt uncomfortable with what was presented to them. Through a radio show (interview SL 28) community members learned about the local NGO Sierra Leone Network on the Right to Food (SiLNoRF), which is based in Makeni and monitored the investment project right from the start (interview SL11). Staff members of the NGO came to the village to find out more about the issue and promised to help. In the meantime, all the other communities in the region had signed the agreements and Addax representatives revisited Masethleh to convince the community to agree and to pay them their lease money (interview SL14). Amidst this mounting pressure, SiLNoRF connected the villagers with a lawyer from the legal empowerment NGO Namati. The lawyer presented much needed legal support for the community:

> "We are not educated, so in that respect, we want somebody who is legally grounded to represent us. We have some issues of land with Addax and they have been all along asking us to sign an agreement with them; but we told them that we cannot just sign like that, we need to understand the details of the agreement before we sign, but unfortunately, none of us can read." (interview SL14)

SiLNoRF, together with staff from Namati, organized various community meetings. One aim was to find out what the community wanted and if the community was united in their opinion. Another aim was to educate the community about the content of the lease and the acknowledgment agreements and their rights (interviews SL26, SL28). Meetings were held with different groups within the community, such as women and youth, to include not only the landowners but everyone. NGO staff also tried to identify the possible impacts of the investment (Conteh 2015: 166). At the same time, the NGOs were aware of the legal limitations in this case:

> "We advised the community to give them something, because legally the company controls all the land in the whole area anyway – even the houses and the villages, legally it's all theirs and they know that." (interview SL29)

In the end, the community decided to lease 622 acres of their land instead of the envisaged 2622 acres the company had wanted (interview SL14). However, conflicts arose, as some of the leaders of the community, who

were also landowners, wanted to sign away more land. Leasing more land meant more lease money for the landowning families – and especially the elders in those families. This situation created considerable confusion as the lawyer of the community recounts:

> "You had some of the community leaders, who allowed the company to get through to them. […] after they would have agreed in the meeting that this is what we will do and then once we leave, come back to Freetown and go back to our offices, you would begin to hear complaints […] the Addax guy would call me: Your clients are not really sure of what they want." (interview SL51)

The NGO staff addressed this issue openly in a meeting with the whole community. Community members stood up against their leaders to defend the decision they had taken together:

> "[T]he community was quite forthright in addressing those leaders: 'Listen, what we've agreed on here is the way forward, and if you don't like it we'll remove you as the leader, because you're not seeking the interest of the community […].' So that was quite amazing, the fact that the community could stand up, men and young folks, they actually said no, we do not want this, what we've said is what we've said." (interview SL51)

With all the back and forth, the negotiations had been dragging on for over two years, before the community of Maselthleh and Addax finally agreed on the lease area of 622 acres (interview SL14). The agreement was signed during a meeting in the village, witnessed by the lawyer from Namati and representatives from SiLNoRF. The lawyer read the deal to the present community members and showed a map of how the land would be accorded (Poindexter 3/14/2013). The landowners then thumb printed the agreement, and representatives from SiLNoRF signed as a witness (interview SL27). To this day, the community seems very content with the result of the negotiations. They were able to keep most of their land while profiting from the company through the Farmer Development Program as well as employment for some of the young men[33] (interview SL27).

33 This does not mean that there were no complaints raised in the village. Village members demanded an extension of the Farmer Development Program beyond the three years, skills training, more jobs, a hospital and a school (interviews SL14, SL27).

The success of Masethleh in protecting their interests can be ascribed to two elements: First, it was the setup of additional Acknowledgement Agreements, which opened up the possibility for local actors to voice their interests. Even though in most cases affected communities were not aware of their option, the community of Masethleh used the opportunity to raise their concerns. Essentially, the AAs recognized local landowners as relevant stakeholders, something not done by national law. Second, outside supporters of the community did not only help to enter into negotiations with the company but also facilitated joint decision-making and unity within the village. The role of NGO staff was, therefore, broader than that of mere legal representation and included inner-community mediation.

5.3.3 The Addax project: a poster child for responsible investment

Right from the beginning, the project was supported by the African Development Bank, which meant that AfDB's environmental and social policies were applied as well as IFC Performance Standards. Fulfilling these standards was essential to secure further funding from developing banks, which covered over half of the initial financing (FIAN Österreich 2015: 2). A total of seven development banks issued individual loans of up to 25 million Euros, and two banks, the Swedfund and the Dutch FMO, even became shareholders (Lanzet 2016: 27).

Together with national laws, IFC standards presented the framework for the Environmental, Social and Health Impact Assessment (ESHIA) (African Development Bank Group 2011b) and the Comprehensive Resettlement Policy Framework (African Development Bank Group 2011a), the two documents outlining the Social and Environmental Management Program of the investor. One of the main socio-economic concern was the "loss or reduced access to livelihood assets" (African Development Bank Group 2011b: 10). To mitigate against the issue of land loss and possible economic displacement, the Acknowledgement Agreements, which include direct payments to landowners, were regarded as one instrument. Together with the Farmers Development Program, skills training, lease payments and crop compensation the AA payments were hoped to "adequately deal with impacts related to food and livelihood security" (African Development Bank Group 2011b: 19).

The idea for the Acknowledgement Agreements arose when company managers had concerns about the district authorities' capacities to pay out the lease shares to landowning families properly. In consequence, Addax

decided to make direct payments to landowners in the communities, for which they needed a legal basis (interview SL54). In a way, the AAs represent the company's willingness to take seriously IFC Performance Standard 5 for the mitigation and compensation for possible loss of livelihood and economic displacement (IFC 2012: 33).

Similarly to the funding from development banks, the certification of the Roundtable on Sustainable Biofuels required the company to keep certain standards. As discussed in chapter 2.2.2 the RSB principles demand that all land rights, including land-use rights, need to be determined before an agreement is closed, for which the FPIC principle needs to be applied (RSB 2016: principle 12). Addax Bioenergy fulfilled the first part by surveying and mapping the land of all affected communities and landowners (African Development Bank Group 2011b: 2). As described in chapter 5.3.1 the company also led extensive community consultations. Even though it remains doubtful whether the process of signing the lease and acknowledgment agreements included the full free, prior and informed consent (FPIC) of all landowners and users, the project received certification by the RSB in February 2013 as the first African biofuels project (Awoko 1/3/2013).

The local NGO SiLNoRF and the Swiss NGO Bread for all launched a complaint against the RSB certificate amongst others on the grounds that FPIC had not been present (SiLNoRF/Bread for All 2013). The complaint led to a follow-up evaluation, which was, however, not able to find enough evidence to verify the accusations. As a consequence, the certificate was upheld[34] (Sierra Express Media 12/5/2014).

International standards did play a considerable role in the way the company tried to handle community relations and let to the picture that Addax was doing a lot more than other investors. A former international staff member put it this way:

> "[…] but the idea that all investors are bad guys doesn't hold. The difference between Addax and other investors is that they had all these DFIs pouring all over them the whole time. And they had the RSB as well to watch out for." (interview SL54)

34 The follow up evaluation in 2014 was limited by the Ebola outbreak and noted the need for further verification in future on-site visits (SCS Global Services Report 2015). Based on the report the certification was extended until March 2017 when it expired. The operation under Sunbird has not been certified yet according to the RSB website (RSB 2019).

The former employee voiced considerable frustration about the 'bad press' the investment project got and the criticism raised by international NGOs, even though social affairs were managed 'by the book' (interview SL54). Similarly, a local staff member pointed out that the investor went beyond national law, which need to be changed:

> "We were expecting the civil society to have mounted pressure on the policy makers, rather than on the business people. What is available as a legal instrument is what the country will go by. But if the legal instruments are so old [...], what do you expect the investor to do? […] So what we have done on our own, it's far more what the NGOs are even expecting." (interview SL15)

The picture of Addax being rather cooperative was repeated by local civil society members (interviews SL10, SL11). The main difference, for example, to mining companies in the country was better communication:

> "My own personal opinion is that the relationship of Addax and the community is better than with those mining communities. That's my own opinion. […] several companies are even not talking to people [...]. They tell you I have relationships with the government, and not you. (interview SL10)

Addax also tried to regularly share information and numbers with SiLNoRF, the leading local critic of the company (interview SL54). The transparency was appreciated by the NGO, whose relationship with the investor improved as a consequence[35].

All in all, the central characteristics of Addax Bioenergy incentivized the company to introduce the Acknowledgement Agreements. First, the company relied largely on funding from development banks to make the investment possible. It had to comply with IFC standards. Second, export to the European market had been a goal of the investment right from the start, which led Addax to seek RSB certification. Third, the company was regarded from outside actors but also identified itself as a poster child for responsible investment. There were, therefore, financial, economical but also ideational incentives for the company to go beyond national law and introduce the Acknowledgement Agreements. Once they had been put in

35 However, this more cooperative relationship was disturbed by the scale-down and sale of the project. At the time of research, the relationship with the new investor seemed less open and cooperative, possibly because the new investor blames SiLNoRF for the failure of the project (interview SL29).

place, it would have been impossible to simply ignore the missing consent of the community people of Masethleh.

5.3.4 The support network: SiLNoRF and Namati

Without the support of SiLNoRF and Namati, the community would not have been able to enter into negotiations with the company on an equal footing. At the same time, the NGOs' interventions seemed to have helped in solving within-community conflicts and creating unity among community members. It, therefore, makes sense to take a closer look at these two organizations and their contribution to the negotiation success for Masethleh.

The Sierra Leone Network on the Right to Food was founded in 2008 as a response to the global food price crisis. The impetus to form a network on the right to food came from the 2007 World Social Forum in Nairobi, where civil society organizations decided to create an African Network on the Right to Food. The focal point for Sierra Leone then became the national coordinator of what became SilNoRF. The organization is both a network with local member organizations as well as its own NGO (SiLNoRF 2018). Interestingly the first funding came in 2011 from the Swiss NGO Bread for All (interview SL11), which had followed the investment of the Swiss company right from the start (Bread for All). The development of SILNoRF can, therefore, be in part explained by the Addax investment. Other funding comes from Bread for the World, Cordaid and Action Aid as well as capacity training through organizations like FIAN. These trainings seemed to have immense influence on the work of SiLNoRF:

> "We too – I have to be honest – had very little knowledge about food and land rights issues at the time. […] But the workshops and seminars we attended at the international level actually paved the way […] for us to get a better understanding of what was actually going on in the country and that pushed us into the advocacy we are doing today." (interview SL11)

With this support, SiLNoRF started to monitor the investment project of Addax (SiLNoRF 2012, 2013, 2014, 2016) and built up relationships with communities, company representatives as well as politicians and government officials. The organization tries to keep in touch with all the commu-

nities affected by Addax through identifying focal points[36]. Apart from training and supporting local communities, advocacy on the national level is done in cooperation with other civil society actors and the ALLAT network. In the last years, SiLNoRF grew considerably from 4 to 15 staff members (interview SL11).

Similarly to SiLNoRF, the Sierra Leonean office of Namati worked on foreign large-scale land deals right from its inception. Namati is a legal empowerment NGO with headquarters in the United States but originating from an earlier Sierra Leonean organization – Timap for Justice. The NGO is funded by various foundations and donor organizations, amongst others Open Society Foundation, DFID or UNDP (Namati). Even before the founding of Namati in the country in 2012, the later director was already involved in the Addax case. Bread for All had asked him to do a legal audit of the draft lease agreement and present it to the investor in Switzerland. However, even though the company's CEO promised to address some of his concerns, this was not done and the final lease agreement was pretty much the same as the draft (interview SL51).

Namati itself mainly works with paralegals who are based throughout the country and are in regular contact with communities. They engage primarily in cases where foreign investors come in for agriculture or mining. At the same time, the organization only starts acting once landowning families have agreed to be legally represented by them. The preferred mode is dialogue; litigation rarely takes place (interview SL26). The aim of the work of Namati is legal empowerment:

> "We go to radio stations, we hold community meetings. In every meeting we hold, we have to pass on our education. That's what we stand for. We are not just voicing out things to people. We want – wherever we work – that by the end of the day the people are empowered, that they know the law and that they are prepared to take actions and decisions for themselves." (interview SL26)

Both NGOs developed considerably due to international funding to support their work around supporting local communities affected by foreign

36 However, not everybody in the regions seems to appreciate the work of the NGO: While community members in Masethleh and other communities were appreciative of SiLNoRF (interviews SL27, SL17), chiefdom elders in one of the affected chiefdoms were rather skeptical: "They don't do anything for us here, they just try to sabotage the company" (interview SL13). These were however chiefdom authorities, who profit substantially from the lease payments which go in part directly to them.

investments. Both organizations helped the village of Masethleh to negotiate with the company successfully. Two elements seemed relevant for their success:

First, SiLNoRF and Namati provided the necessary information about the lease and acknowledgment agreements as well as potential benefits and costs of the investment project (interviews SL26, SL28, SL29). This enabled community members to decide what they wanted to do.

Second, the NGOs included everybody in the community in the decision-making process and intervened when there were signs of some leaders going behind the back of the community. They helped community members to hold their leaders accountable. What seemed to have been crucial in that phase was to have regular phone contact with different community members, not just the leaders:

> "Long periods of no communication can create openings for companies to negotiate bad deals with communities or for leaders to make decisions that are not in their community's interest. If advocates have an ongoing relationship with a diversity of community members, including women and youth, it is possible to receive more frequent and more representative updates on a community's situation" (Conteh 2015: 168)

Also, the engagement of the NGOs and especially the lawyer from Freetown might have helped the community to be taken seriously by company representatives. That was at least the impression left behind in the community:

> "We benefited a lot from them [referring to SiLNoRF and Namati], and we believed Addax did other things as a result of their involvement. Had it not been for them, Addax would have treated us the way they wanted." (interview SL27)

Community members also recounted that company representatives accused the NGOs of negatively influencing them, which they were adamant in denying. One of the interviewees in Masethleh emphasized their agency in making decisions about what and when to sign: "We were the ones who used to tell them [the NGOs] what we wanted – out of which they advised us or guided us" (interview SL27).

Summarizing the role of the NGOs in the Masethleh case, two elements stick out. The NGOs did not only provide needed information and education but also facilitated the unity of the community. Both aspects were central for the success in the negotiations as they enabled the community

to make an informed decision about what they wanted, but also to be taken seriously by the company.

5.3.5 Discussion and additional issues

The case of Addax investment in general, and the community of Masethleh in particular, show the relevance of all three core conditions identified in my theoretical chapter as well as a couple of additional issues.

First, the case shows the limitations of the Sierra Leonean national statutory law regarding land. As discussed in chapter 5.2.1, only the chiefdom authorities have to agree to a large-scale land deal; the customary landowners are entirely excluded from this arrangement. Only because the company introduced the Acknowledgement Agreements did the landowning families get an indirect voice. At the same time, there was no possibility for landowners to negotiate, for example, the lease price, which was set according to MAFFS guidelines, or set concrete limits for the company in terms of land use. The negotiation in the village of Masethleh was, therefore, only about the amount of land which would be used by the company and no other terms.

Second, the best-practices approach by the company, which followed international soft law standards like the IFC standards or the RSB principles, led to the introduction of the Acknowledgement Agreements. They, in turn, opened the space for community members to voice their concerns. Nonetheless, negotiations with landowning families and land users about the actual terms of the lease were not expected – meetings seemed to have a rather consultative and informative character. Only the community of Masethleh had more extensive negotiations about one part of the agreement.

Third, outside support for the community of Masethleh was central for them to understand the lease and the AAs. Both Sierra Leonean NGOs are supported and funded by international partners. The NGOs did not only provide information but supported the decision-making process among different groups in the village and the creation of unity. This unity was essential in speaking to the company with one clear voice.

Apart from these findings regarding the three core conditions, two additional issues regarding the overall investment of Addax deserve some attention.

One issue, which has not been mentioned yet, is the distribution of the rent payments among landowners and land users. As described in chapter 5.2.1, landowning families have the right to allocate land for use to so-called land users. The lease money further engraved this differentiation. The elders of the landowning families receive rent payments, and it is up to them if and how they share it within the family but also with land users. Especially youth and women receive very little – between 10 000 and 30 000 Leone (1,20–3,60 USD) per year – which does not make a big difference for them (interview SL10). The land users who are not members of a landowning family can be even worse off:

> "If you are a stranger and a piece of land was given to you to work, no matter the number of years you have worked on it – if it happens that it is part of the land given to Addax you will not benefit from the lease fee paid by Addax for that piece of land. The money goes to the original owner." (interview SL16)

These accounts are confirmed by data from a household survey, which shows that the amount of lease money people receive varies considerably (Hansen et al. 2016: 14). This issue displays the limits of customary law when it comes to tenure rights of certain parts of the population – especially land users but also women, youth and others who are possibly marginalized by the heads of a landowning family. These findings show that relying on customary law to regulate large-scale land deals and distribute benefits can reinforce existing inequalities and power imbalances.

Another issue worth discussing is the economic failure of the initial investment project. While the investment project focused on getting social and environmental standards right, the commercial side went downhill. The company had to scale down production in the middle of 2015 and lay off significant parts of its workforce (SiLNoRF 2016: 28). The yields of the sugarcane had only reached one third of the initial projection. At the same time, infrastructural difficulties and theft had driven up the costs (interview SL54). Falling market prices for bioethanol might have also contributed to the decision of Addax Bioenergy to give up the project (Lanzet 2016: 30). In the following year, the takeover of 75,1 % of the operations by Sunbird Bioenergy Africa Limited meant the continuation of the bioethanol project (Awoko 3/10/2016). However, at the time of research (in spring 2017), the investment project did not seem economically stabilized yet. During a stakeholder meeting, the company described successful experiments using the elephant grass, which grows naturally in the region, to produce ethanol. Sunbird/Addax also had to delay lease payments. The

plan of the company was at that time to create a cassava out-grower scheme in which local farmers will produce the cassava and deliver it to the bioethanol plant (Sunbird Bioenergy Africa 01/07/2017).

Overall, the case study showed the usefulness of international private governance standards in incentivizing companies to go beyond what was required by national law. This opened up the possibility for local actors to raise their concerns. To do so, the local community needed the support of NGOs to understand their options and to facilitate negotiations with the company. However, the options of what could actually be negotiated were limited by the structure of the overall agreement defined by national law. The case study, therefore, shows the positive effects of international best practice standards but also shows its limitations. International standards furthermore do not pay attention to local distribution issues or possible safeguards for the case of economic failure.

5.4 Case II: Socfin Sierra Leone – unsuccessful legal mobilization

The investment of Socfin, located in the South of Sierra Leone, received a lot of attention, similar to the Addax case. The deal was closed around the same time – in spring 2011. The land investment in the Chiefdom of Malen, in the district of Pujehun, became well known for creating local conflict – especially between chiefdom authorities and the local population (interview SL36). A local protest group, the Malen Landowners and Users Association (MALOA), tried to use legal mobilization to enforce a renegotiation of the lease agreement as well as a stop to local oppression. They involved the Sierra Leone Human Rights Commission, who tried to mediate but failed to achieve an outcome (interview SL42). At the same time, supporters of the Socfin investment have used the legal system of Sierra Leone to stop the local protest group. The case, therefore, not only represents a case of unsuccessful legal mobilization but also shows how the law can be used to counter the activism of affected people.

I will start this chapter by giving an overview of the investment of Socfin (chap 5.4.1) before I turn to processes of legal mobilization (chap 5.4.2). I will then turn to the characteristics of the company (chap 5.4.3) and the role of the outside support network (chap 5.4.4) before discussing my main findings (chap 5.4.5).

5.4.1 Overview of the investment of Socfin Agricultural Company

In 2011, Socfin Agricultural Company Sierra Leone Limited (thereafter Socfin), belonging to the Belgian-Luxembourgian Socfin Group, leased an initial 6500 hectares of land in Pujehun district, in Malen chiefdom. SLIEPA had explicitly promoted the district of Pujehun as one of the areas fit for palm oil investment in the country (SLIEPA 2010a). In March 2011, a land lease was signed between the Paramount Chief, section chiefs and some landowners on one side and the Ministry of Agriculture, Forestry and Food Security (MAFFS) on the other side. The MAFFS subsequently leased the land to Socfin in a sublease[37]. The lease lasts for 50 years, and annual lease payment per hectare is 12.50 USD (five USD per acre) as recommended by the government. It was planned from the start to enlargen the lease later on (Melsbach/Rahall 2012: 11–12).

By 2016 12.000 hectares of land had been planted and the construction of the oil mill was finished. An estimated amount of 25,000 people live in Malen Chiefdom (Star Consults 2011: 129), which is mostly covered by plantations today, as can be seen in satellite imagery. Once in full operation the company employed 2460 seasonal and 1091 permanent workers (Socfin Agricultural Company Sierra Leone 13/04/2016). While exact numbers about the investment are not available, it seems that at least 300 million USD were invested over the years (Fofana 1/19/2015). In the beginning, an out-grower scheme had been planned but did not materialize to the time of research. The company promised and fulfilled many social responsibility projects such as building toilets in all communities, solar streetlights in the main town, the extension of the local hospital, an ambulance, a mosque, water wells, school furnishing and a scholarship program (interview SL37) (John 2/20/2014). Nonetheless, severe criticism and local conflict arose around the investment.

Soon after the start of the project in spring 2011, criticism was raised by affected locals and civil society actors, who argued that local consultations and information about the project had been insufficient. The German NGO Deutsche Welthungerhilfe paired up with the Sierra Leonean NGO

37 Even though the land was officially leased by the government, they do not seem to have been involved in the local process leading up to the lease. Furthermore, the rent payments are not channeled through the government but are made directly to local people. It appears that the arrangement through the government was mainly made on paper, whereas the company was in direct communication with local authorities.

Green Scenery to conduct a fact-finding mission (Rahall/Schäfter 2011) and an in-depth study (Melsbach/Rahall 2012). The findings from both reports, as well as findings from my interviews, drew a rather problematic picture of the local consultation process: Some early meetings took place in 2010, during which the Paramount Chief informed people living in the chiefdom about an investor coming to start a plantation.

However, it seems that most people had not been aware of the size and the extent of the investment. Many thought that it concerned mainly an earlier palm oil plantation, which had been run by the state-owned Sierra Leone Production and Marketing Board and included about 1200 hectares of land (Melsbach/Rahall 2012: 12). The experiences with this previous plantation had been positive and were mentioned as a point of reference (interviews SL38, SL40, SL41). After the 50 years lease had expired, the used land had been returned to the landowning families, who saw the new investor as a chance to repeat the experience. However, the size of the investment of Socfin was wholly different and today covers almost the whole chiefdom. It seems like most landowners only started to understand the extent of the deal during a chiefdom meeting in February 2011. Landowners reportedly refused to give up all their land, which is used in this region for cash crops such as palm oil, cocoa, coffee, groundnuts and kola nuts (Melsbach/Rahall 2012: 10).

The Paramount Chief (PC) reacted with threatening people that their land would be taken anyway, whether they give it up voluntarily or not (Rahall/Schäfter 2011: 7). In the end, the lease agreement was signed by the Paramount Chief as well as section and town chiefs, who could have been dismissed had they not followed the order of the PC (interview SL41).

During the meeting for the signing of the lease agreement on March 5th, 2011, company representatives presented the first rent payments for the whole chiefdom on a table – an amount of 40 000 USD, 173 million Leones at the time. Armed forces guarded the money, a situation that seems to have intimated landowners further (Melsbach/Rahall 2012: 14; Rahall/Schäfter 2011: 7).

After the signing of the lease agreement, landowners and users received a one-time compensation of one Million Leones per acre of planted land, an amount which was considered too low to make up for the lost income accumulating over the years (interview SL41). At the same time, considerable confusion and conflict developed over who would receive lease money. Some critical landowners never received any rent money (interviews

SL38, SL41), while it seems that other people profited. An interviewee described the process:

> "There was no consultation; there was no transparency, no accountability. They just did this because they have the political power or influence. They did it with force. […] According to the protocols, you have to consult the family. We have to call family meetings and do other things, consult our elders, consult those who are outside. But what they did […]. They came at night, fish out some people, take them to the headquarter, give them an amount that they had never had before. […] A lot of people, who signed these agreements are not landowners. They are not even the heir of their families." (interview SL41)

Comments like these, as well as the NGO reports, show that the land deal was closed with insufficient consultations and transparency.

Faced with the criticism raised by locals and the NGOs, the Paramount Chief and his speaker assured that sufficient consultations had been held and that all landowners had received enough information (Melsbach/Rahall 2012: 13). They instead blamed the Member of Parliament (MP) for the region for being behind the accusations and for instilling disgruntlement among the people (Moiguah 5/4/2011).

However, even looking at formal documents it looks like consultations were at best superficial. The Environmental Social and Health Impact Assessment (ESHIA) prepared for the company recorded one public disclosure meeting in the main town of Malen chiefdom in November 2010 attended by 30 people. The ESHIA report, which also includes data gathered from three neighboring chiefdoms[38], further mentioned that people were excited about the prospect of the investment. They agreed that "as long as adequate arrangements are reached with local authorities and landowners, the project can take off" (Star Consults 2011: 94). There seems to have been initial excitement about an investor coming in; however, even in the early stages, locals demanded proper customary procedures, which should have been part of the overall consultation process.

The ESHIA, which was published in January 2011 – before the actual signing of the lease agreement – does not make any provisions on how

38 The project was originally planned to eventually include a size of 30 000 hectares in four Chiefdoms. The ESHIA conducted three group discussions in each Chiefdom (Star Consults 2011).

consultations with communities should take place. Instead, the report refers to the Provinces Land Act Cap 122:

> "It is important to note that the Act makes no express reference to land owners; therefore a lease under the Act must be made between the chiefdom council and the non-native. SAC in this case is considered as the non-native. The general public approval of the project appears to cover all segments of the communities including the Chiefdom Councils which provide good prospects that the current land negotiation between SAC and the Malen communities in progress, at the time of this study, will be successful." (Star Consults 2011: 185)

This quote shows two things: First, despite referring to international guidelines, the relevant legal framework identified in the ESHIA is national land law: In the end, only the chiefdom authorities matter. Second, some general approval about welcoming an investor in the region by three communities visited in the Chiefdom during the ESHIA process is equated with consent to the specificities of the investment by Socfin. This shows a rather broad understanding of what consultations mean.

Apart from the ESHIA consultancy company and the customary authorities, company staff had communicated directly with communities in the Chiefdom since 2009. According to company information, landowners had the option not to lease their land (Environmental Resources Management 2015: 6); however, I couldn't verify this information. At the same time, there are reports that Socfin tried to buy off critics of the investment. The local MP, who had warned people of accepting the deal, claimed company representatives offered him 2000 USD if he would stay quiet (Melsbach/Rahall 2012: 13). Other critics of the investment supposedly did drop their resistance after they had received jobs at the company (interview SL42). While it is unclear what role precisely the company played in the process leading up to the signing of the agreement, it seems as if they did not take a lot of effort to ensure a transparent and open consultation process.

To this day, the investment of Socfin in Malen is overshadowed by the missing consent of local landowners. The project has gained prominence as a case in which an investment has created local conflict and led to the oppression of activists. Other Sierra Leonean communities who are faced with incoming investors cite it as a negative example that they do not want to happen to them (interview SL36).

5.4.2 Calling on Sierra Leonean legal institutions – whose side is the law on?

As described in the previous chapter, criticism about missing local consent and transparency ensued as soon as the lease agreement was signed. The dispersed voices by critical landowners were united in autumn 2011 when the Malen Affected Landowners and Users Association (MALOA)[39] was created. On October 3rd, landowners and community members blocked the road to the nursery and halted operations of Socfin. They demanded renegotiations of the lease agreement, higher compensation and more social programs (Bah 7/10/2011). After a failed mediation attempt by the District Council Chairman, the blockage was dispersed by the police and 39 people were arrested (Akam 12/10/2011). Fifteen protestors were charged and remained in custody for weeks (interview 42).

The incident can be seen as the starting point of the mobilization efforts of MALOA. They began to organize themselves under the leadership of the local MP, mentioned in the previous chapter (interview SL38). The MP later became the spokesperson of the group, which is organized by an executive committee, a chairperson, a secretary and section and village speakers (interview SL34). The group has about 1300 (interview SL2) to 2000 (interview SL38) individual members. Apart from some early protests and resistance vis-à-vis the company, the main activity of the group is the writing of complaint letters to different levels of the administration (interview SL38). The goal of MALOA is the renegotiation of the land lease agreement with the proper inclusion of all landowners and users. They are not against the investment per se, as this female member of the organization summarizes it:

> "We do not want the company to leave because it is development. We only want to sit and dialogue with them on an agreement that will make us and them happy. […] We want them to put demarcations between the palm trees, […] to revisit the agreement and to give us some portion of the land for our private farming." (interview SL38)

MALOA's activism was answered harshly by chiefdom authorities, which prohibited the group from holding any meetings inside the chiefdom. Group members have been imprisoned on several occasions and complain about harassment by the local police and chiefdom authorities (interview SL33, SL34, SL42, SL43). There are reports that people were sacked for

39 It seems that the name of the organization in the beginning only included landowners, 'users' were added later.

criticizing the company vis-à-vis NGOs or the media and there seems to be an atmosphere of fear of the company and the chiefdom authorities (interview SL53). While it is challenging to verify different accounts, Table 12 gives an overview of all cases of police presence and arrests, which were recorded in NGO or media reports and were related to the conflict around the Socfin investment.

Table 12 Overview of police incidences in Malen Chiefdom related to the investment

Date	Incidence	Sources
10/2011	Police disperses roadblock and arrests 39; 15 people are charged for 'causing public disorder'	(Akam 12/10/2011; Melsbach/Rahall 2012: 15)
2012	Police arrests four persons, who fought company workers in trying to protect their land; the accused are fined 200 USD or jail time	(Green Scenery 10/15/2013)
06/2012	Police oversees the destruction of local plantations to make way for a road	(Green Scenery 6/27/2012)
10/2013	Six high-ranking members of MALOA are arrested for allegedly destroying oil palm seedlings; they are sentenced to high fines in 2016	(Green Scenery 10/15/2013; Jenkins 5/2/2016)
12/2013	Police fires shotguns into a protesting crowd of people, who the police claims were armed; 57 people are arrested	(Rahall/Kainyande 2014; Human Rights Commission of Sierra Leone 2014: 42)
01/2015	11 MALO members are arrested after 2 international employees of Socfin have been attacked	(Fofana 1/17/2015; International Federation for Human Rights 26/03/2015)
09/2015	Arrest of 7 MALOA members for "writing down names of people in the town without the knowledge of the chiefs"	(International Federation for Human Rights 09/02/2016)
2016	Clashes between community members and security personnel of Socfin over the alleged theft of palm oil kernels	(Green Scenery 18/08/2016)

The overview shows that MALOA members were targeted by the police on a number of occasions. The incidence that stands out the most, is the case of the 'MALOA 6' – six high-ranking members of the organizations who

were sentenced to high fines under dubious circumstances. The six activists, among them the spokesperson and the secretary of MALOA, were arrested in October 2013 for allegedly having destroyed 40 palm trees. In what seems to be a politically motivated process, the six were found guilty of conspiracy, destroying the plants and incitement by the High Court of Sierra Leone (Green Scenery 10/03/2016). The fines added up to 36,000 USD or half a year of imprisonment each. The penalties followed the evaluation of the company and seemed exceptionally high:

> "Despite the fact that Socfin only paid 1 million Leones (less than $200) for each acre of 60 palm trees including the land on which they grew, they valued the 40 destroyed trees minus the land at 200 million Leones ($36,000). What can I say? I have the feeling, the rules of the game have been made by someone else." (spokesperson of MALOA in Green Scenery 10/03/2016)

Through national and international fundraising by Sierra Leonean and international NGOs the money was raised and all six convicted MALOA members could be freed after spending weeks in prison (FIAN Belgium 16/06/2016b). Nonetheless, the organization continues its work and meets either in secret or outside the chiefdom (interview SL34, SL43).

In the following, I will go into detail into one example of legal mobilization by the group by calling on the Human Rights Commission of Sierra Leone.

In December 2012, MALOA wrote a letter to the Human Rights Commission of Sierra Leone (HRCSL) demanding its intervention. The letter shows the legal references used by MALOA to argue their case. They claim that their land hand been taken unlawfully and that their human rights had been violated, as the letter starts:

> "I hereby write for and on behalf of the land holding families of Malen Chiefdom […] to complain to you about the blatant disregard and abuse of our fundamental human rights to wit unlawful occupation of our family land by the Socfin agricultural Company" (MALOA 2012)

Two issues are emphasized in the letter: One, it is made clear that the customary landowners had not given their consent to the lease agreement and that the operation of Socfin is therefore unlawful. While it is not explicitly mentioned, this clearly refers to customary law and not to national statutory law as discussed in chapter 5.2. Second, the group lists cases of police harassment and intimidation of MALOA activists by the Paramount Chief.

Both, the taking of the land and the repression of activism, are framed as human rights violations and the Commission is asked to intervene. Attached to the letter are three resolutions signed by 80 people. In the resolutions, MALOA members distance themselves from the lease agreement and announce their resistance to the investment project: "[…] we shall no longer allow the Socfin Agricultural Company personnel and or their machines to enter upon and operate on our land" (MALOA 2012). In the final resolution, MALOA reiterates its willingness for dialogue. Overall, the letter, therefore, not only contains accusations towards chiefdom authorities and the company but also justifies the landowner's actions of resistance, while at the same time calling for dialogue.

In a first step, the legal mobilization attempt of MALOA was successful: The Human Rights Commission did intervene with an effort to mediate between the different parties: MALOA, chiefdom authorities and the company. The Human Rights Commission visited the Chiefdom on three fact-finding missions between January and May 2013 before holding a two-day mediation meeting in June. "Representatives from MALOA, SOCFIN Agricultural Company, the Paramount Chief and his Chiefdom Council, the Police, CSOs and other stakeholders attended the meeting at the Malen Chiefdom Court Barry" (Human Rights Commission of Sierra Leone 2014: 36). During the meeting, 19 issues were discussed and solutions were found for 14 of them. The HRCSL decided to come back for a second round of negotiations to resolve the outstanding five issues and sign a final agreement (interview SL42). However, when the next meeting took place in November 2013, the Paramount Chief, the Minister of Agriculture and the Minister of Justice, who were all supposed to attend, never showed up, leading to the failure of the meditation attempt (Human Rights Commission of Sierra Leone 2014: 36). Without the Paramount Chief, as a central figure to the conflict, no agreement was possible. A member of MALOA recalls from the meeting:

> "I think, that was going to be the final day and things were going to work out in other ways of what he [the Paramount Chief] wanted. So, he kept himself out. Like the agricultural minister too. The land minister came and declared himself […]. According to him, he has got no documents in his office concerning the land issues for this company. That he declared openly." (interview SL42)

It seems telling that the Minister of Agriculture as the one having signed the lease agreement with the chiefdom authorities was not present and that the Minister of Land openly admitted to have no documentation of

the lease. The Ministry of Land should generally be involved in all land investment projects by foreign investors (interview SL32).

For the mediation attempt by the Human Rights Commission the meeting in November 2013 meant the end. A MALOA member claims that the HRCSL wanted to continue its efforts in resolving the issue but was stopped 'from above'[40] (interview SL42). However, I was not able to verify this impression.

In the end, the legal mobilization attempt by MALOA was not successful. They were not able to change the general conditions of the lease agreement, nor did they get any of the land back. Nonetheless, members did acknowledge the benefits of legal arguments:

> "They don't listen to us. Socfin doesn't listen to us – personally. Except when we infer rights, anything legal […] like the Human Rights Commission. They worked together with us for peaceful negotiation." (interview SL42)

Essentially the case of MALOA and the mobilization of the Human Rights Commission of Sierra Leone shows two things: On the one hand, even though the statutory law is not on the side of the landowners, they had a formal institution to call on with the HRCSL. Human rights, therefore, served as an entry point to create space for possible renegotiations with local authorities and the company. On the other hand, the case clearly shows the influence of customary authorities and state officials in stopping local legal mobilization efforts, especially in a rather soft-law process such as the mediation attempt by the HRCSL. The Paramount Chief (and most likely the Minister of Agriculture) were able to derail the process by simply not showing up. Furthermore, the PC regularly uses his power to suppress local mobilization efforts. Overall, Socfin seems to rely on local and state-level officials to silence critics, instead of dealing with them in an open dialogue.

5.4.3 Socfin, the chiefdom authorities and the Sierra Leonean state

Unlike Addax, the investment project of Socfin did not receive funding from any DFIs and was not certified by any private sector scheme. I argue

40 However, the HRCSL still follows the case, regularly includes updates in their general reporting and calls on the government to help resolve the conflict (Human Rights Commission of Sierra Leone 2017: 48).

that in regard to the land lease process and proper consultations with local communities, the company only pays lip service to international standards. Instead of engaging with critics, they resolve to delegitimize them or using legal measures to silence them. The company relies on customary authorities to ensure the smooth setup and operation of the plantation. They thereby condone repression of local activists and possible human rights violations. Finally, the company enjoys the support of high-ranking Sierra Leonean government officials – at least to a certain degree.

Socfin Sierra Leone is part of the Socfin Group, which manages nearly 200.000 hectares of palm oil and rubber plantations in 10 developing countries. It regularly emphasizes its commitment to sustainability standards (Socfin Group 2018: 14). One of its subsidiaries, the Indonesian based Socfindo is a member of the Roundtable on Sustainable Palm Oil (RSPO) and has all its plantations there certified. The Socfin Group plans to certify all other estates in the future – including the one by Socfin Sierra Leone (Socfin Group 2018: 22). However, at the time of research it has not been certified.

Socfin frequently assures its compliance with international standards. In the ESHIA, several standards are listed, among them the RSPO and IFC principles, as well as the United Nations International Covenant on Economic, Social and Cultural Rights and the United Nations Declaration on Rights of the Indigenous Peoples (Star Consults 2011: 39). However, while the ESHIA lists these international standards and conventions, it is not clear how it applied them in detail to the land leasing process. The RSPO Principles, for example, are clear on requiring a documented FPIC process (RSPO 2013: No 2.2 & 2.3); yet, the ESHIA does not even mention the principle of free, prior and informed consent in regard to the lease agreement[41].

In 2015, the IFC seemed to have considered funding Socfin's operations in Sierra Leone as they commissioned a report identifying gaps in regards to both IFC as well as RSPO standards. The report listed several gaps but did not go into more detail regarding the land lease process[42], as the com-

41 The principle is briefly mentioned in the context of possible resettlement activities (Star Consults 2011: 187). However, nobody was resettled over the course of the project so the provision was never applied.

42 The report makes it clear that it is not a full impact assessment nor a proper audit, but rather "an evaluation of the Company's current and planned environmental and social management practices" (Environmental Resources Management 2015: 20).

pany did not intend to lease additional land (Environmental Resources Management 2015: 6). Nonetheless, concerns seem to have been big enough at the IFC, as it has not funded the investment project so far. As of today, no independent audit in regards to the IFC standards or the RSPO principles has taken place and the commitment of the Socfin Group to international standards seems unclear. In the case of the Cameroonian subsidiary SOCAPALM, a complaint was filed with the OECD National Contact Points of France and Belgium due to environmental and labor rights concerns. However, the process was not successful due to the unwillingness of Socfin to cooperate and fully implement a negotiated agreement (OECD Watch). The Socfin Group does not have a positive track record that would show a commitment to international voluntary standards.

Locally, the company's reactions to the criticism raised by MALOA and civil society actors ranged from denial and emphasizing social projects to delegitimizing and openly accusing NGOs of destroying the country's economy and threatening legal measures. Criticism is usually discredited as being untrue, while numerous newspaper articles list the social responsibility projects of the company (John 2/20/2014). From the perspective of the company, protesting activists only represent a minority (Akam 12/10/2011) and are politically motivated:

> "We're seen as land grabbers, but it was actually all done through consent. […] There will always be some opposition, like Sama [the local MP] and his followers, but those are muddy water because he has political motives" (Socfin Manager cited in Acland 3/29/2017)

While officially, the company argues that only a few people were against the investment, they did seem to feel threatened. When the country manager of Socfin left the country in summer 2016, he was bitterly pitted against national and international NGOs involved in the case. He mentioned that a loan he had secured from a bank failed because of complaint letters written by the NGOs (Daramy 5/7/2016). He subsequently blamed civil society actors for destroying the Sierra Leonean economy through discrediting the country:

> "The NGOs are destroying this country…No serious investor in the agribusiness sector will come to Sierra Leone again…The government has allowed NGOs (like Green Scenery and FIAN-Belgium) to give the country a bad name…" (Socfin Country Director cited in Daramy 5/7/2016)

Representing himself as the victim of denunciation, he ends with what seems to be a call for limiting the space of civil society: "I hope that in the long run the government will review the NGO policy and make it more responsible" (Socfin Country Director cited in Daramy 5/7/2016).

The backlash against NGOs and local activists is not refined to Sierra Leone but also reaches NGOs abroad. FIAN Belgium, the Belgian branch of the FoodFirst Information and Action Network, has been threatened with a lawsuit for denunciation on a couple of instances (interview SL52). This is not an unrealistic threat, as the Socfin Group, together with Bolloré, a major shareholder of the company[43], has filed a total of 20 defamation lawsuits against various journalists and media outlets reporting on operations of the Socfin Group between 2009 and 2018. One complaint was filed in Sierra Leone against the Sierra Leonean NGO Green Scenery as well as the American Oakland Institute (GRAIN 25/01/2018).

Attempts to delegitimize and stop critics can also be found on the side of local chiefdom authorities. In many instances, the attempts are based on the accusation that MALOA and involved NGOs do not represent the interests of affected communities as this citation shows:

> "[…] Chief Moiguah was also cheerful to make known to the public that the so-called Malen Affected Land Owners Association (MALOA) does not have any recognition in the chiefdom, and the public should give them deaf ears. '80 % of this individuals posing to be land owners are not, they are doing monkey business in the chiefdom'" (Showers 4/15/2014)

The chiefdom authorities furthermore warned of the Sierra Leonean NGO Green Scenery, which supports MALOA:

> "[…] the local Chiefs are left with no option but to call on all law abiding residents of Malen Chiefdom to henceforth stop from attending meetings and doing business with Green Scenery with the view of putting an out all end to illegal activities perpetrated by Green Scenery […]" (press release local chief in Socfin Agricultural Company Sierra Leone 05/04/2014)

Criticism of NGOs was not only raised through media reports but also through a protest as well as a petition by local chiefs, who warned Green Scenery and FIAN Belgium to stay out. In photos of the rally, posted on

43 According to their own data the Bolloré group holds 38.8 % of the Socfin Group (Bolloré).

Facebook by the company, people were holing up signs, which read "To FIAN Belgium and Green Scenery Stop Interfering in our Business" (Socfin Sierra Leone 2016/06/27). However, the protest seemed to be orchestrated: During my interviews in Malen Chiefdom, most people, including the chiefdom speaker had never heard of FIAN.

As another strategy, the Paramount Chief formed a local organization, the Malen Youth and Development Union, to counter MALOA and to represent it as the voice of the people in Malen Chiefdom (interview SL38, SL45, SL52).

Overall, the chiefdom authorities seem to follow a strategy of delegitimizing MALAO, intimidating people from collaborating with NGOs and inhibiting the activists from meeting and organizing. All these strategies show that the chiefdom elites are highly supportive of Socfin. At the same time, chiefdom authorities cooperate closely with the company: The Paramount Chief is, for example, the chair of the grievance committee through which affected people have the possibility to channel complaints to the company (Environmental Resources Management 2015: 7). The PC is furthermore reportedly the one choosing other members for the grievance mechanism (interview SL48). At the same time, the Paramount Chief and section chiefs control the lease money and seem to decide who receives what (interviews SL43, SL53). In return, the PC received a car from the company as "he had to move and talk to people if there were any issues" (Socfin manager cited in Acland 3/29/2017). Therefore, the Paramount Chief seems to profit personally to quite a considerable extent from the investment.

In addition to local chiefdom authorities, Socfin also enjoys the support of the Sierra Leonean government. Right from the start, acting president Koroma repeatedly underlined his support for the investment (Awoko 9/18/2012), as well as for the Paramount Chief[44] (Sama 12/29/2017). Government support also became visible when a fact-finding mission to the district of Pujehun of Green Scenery and FIAN was stopped by order of the Sierra Leonean police in March 2016. As a formal reason a visit of the president to the region and the risk of international terrorism was named;

44 The Paramount Chief belongs to the same party as President Koroma, the All People's Congress, which is traditionally rather weak in the South of the country, which is usually dominated by the Sierra Leone People's Party. The PC was at the time also a member of parliament as he held one of the 14 seats reserved for traditional leaders.

however, no clear conditions for future travel plans were ever formulated (interviews SL2, SL52, SL53).

At the same time, government officials[45] do not seem to want to support Socfin at all costs. In 2017, the new Minister of Agriculture called for a review of the agreement. He suggested that lease payments were not high enough and that it could be a possibility for the company to share some proportion of their profits with the local population (Awoko 12/6/2017). The statement came, as attempts of the Office of the President were underway to mediate in the conflict, which did however not result in any tangible outcome (interview SL52).

Summing up, the company seems only to pay lip service to international standards instead of making provision for an FPIC process. The company does react to criticism by local activists and NGOs by discrediting their legitimacy or threatening legal procedures. It seems that as long as Socfin has the support of Chiefdom elites and the government, this will not change. The company, therefore, has to be regarded as mainly unreceptive to local claims.

5.4.4 The support network: Green Scenery and FIAN Belgium

As mentioned in the previous chapters, MALOA has the support of the Sierra Leonean NGO Green Scenery and several international NGOs, among them FIAN Belgium. I will take a closer look at the contributions of these two actors to the activism of the local group. I will, however, take a quick look at the capacities of MALOA itself first.

MALOA was able to establish itself as an important critic of Socfin because of the leadership of Shiaka Sama, who was a Member of Parliament until 2012[46]. He was the initial person to connect MALOA to Green Scenery (interview SL34) but also to bail out some of the imprisoned members (interview SL38) and get a lawyer for the group (MALOA 2012). At the same time, he was well known in the Chiefdom and was able to mobilize people and consequently acted as the spokesperson of the group. While the role of the MP was crucial in setting up MALOA and in connecting the group to outside support, his role as a politician made it easier for the chiefdom authorities and the company to question the legitimacy

45 It is also likely, that different people in different ministries and in the parliament also have different opinions on the investment.

46 He was re-elected as MP in 2018 after my field research was already finished.

of the group. Yet, apart from Shiaka Sama, there are a couple of other leading figures within MALOA who are well educated. Right from the start, the group wrote letters to different levels of authority and asked for their intervention (MALOA 2011, 2016). In addition, the organization was formally registered in Freetown as a community-based organization (interview SL43). MALOA showed considerable capacities in reaching out to officials in the administration; nonetheless, outside support was necessary in terms of resources, capacity training and bringing advocacy efforts to the national and international level.

One of the biggest supporters of MALOA is the Sierra Leonean NGO Green Scenery, based in Freetown. Initially founded in 1989 to fight deforestation, they focused on peacebuilding in the post-war years and started working on the issue of large-scale land deals in 2010 when a number of massive deals became known in the country (interview SL2). Green Scenery supported the local MP and MALOA right from the beginning. Green Scenery supports MALOA in various ways: First, local activists are regularly invited to civil society workshops, trainings and conferences in Freetown or other cities in the country (interview SL2). Second, The NGO regularly pays lawyers for the defense of imprisoned activists, most notably for the 'MALOA 6'. Third, Green Scenery acts as a link between international NGOs and the local group. During the hot period of the 'MALOA 6' campaign, regular skype calls with updates took place between Green Scenery and international civil society actors such as FIAN Belgium, GRAIN or the Oakland Institute (interviews SL2, SL53). Fourth, Green Scenery engages in advocacy on the national level, regularly putting out reports and press releases on the Socfin case and the MALOA activism (Green Scenery 18/08/2016; Rahall/Schäfter 2011; Green Scenery 10/15/2013). Apart from the specific case of Socfin, the NGO is heavily involved in the process of formulating and disseminating the new land policy (interview SL2, SL4). In this context, Green Scenery works closely with the Ministry of Lands, where employees value the inputs and expertise of the organization (interview SL 50).

A number of international NGOs have supported MALOA, especially during the case of the 'MALOA 6', when 42 international civil society organizations submitted a letter to the Sierra Leonean president (FIAN Belgium 2016). Nonetheless, there are only a few central players who have continuously supported MALOA – the most important one probably being FIAN Belgium. The NGO first took up the case in 2012 as they were looking into large-scale land investments with the involvement of Belgian companies. They heard first reports about local conflicts and got in touch

with Green Scenery, who connected them with MALOA (interviews SL52, SL53). As FIAN always commits long term to activist groups, they support MALOA in an ongoing process (interview SL53) through a variety of methods. First, they provide information to the public through releasing press statements on the situation of MALOA and background information on the case on its website (FIAN Belgium 20/03/2017, 16/06/2016a). Second, FIAN Belgium engages in advocacy vis-à-vis the Sierra Leonean government, European governments or banks in order to garner support for the case of MALOA. Third, the organization stages public protest events in front of Socfin headquarters and invited the spokesperson of MALOA and the director of Green Scenery to Europe, where they talked to a number of institutions. Fourth, FIAN Belgium does not provide direct funding to either MALOA or Green Scenery; however, they helped both actors to receive funding from other institutions such as the International Federation for Human Rights or the European Union (interview SL53).

Overall, the support by NGOs is highly appreciated by MALOA members:

> "I mean it's very important because we do not have resources. And members cannot pay membership contribution because things are very difficult. So, for example FIAN Belgium raised funds for us to travel and we gained a lot from travelling meeting people. And we are getting training and capacity building from Green Scenery and from ALLAT. So, and whenever we are arrested the partners will put up with an action alert." (interview SL34)

The collaboration in raising the fine for the 'MALOA 6' is regarded as the biggest success of the coalition between the organizations. The money was raised locally, on the national and the international level, making it a transnational effort (interviews SL2, SL8, SL34). After the failed mediation attempt of the Human Rights Commission, the international civil society coalition tried to revive the dialogue process in a letter to the President:

> "[…] the mediation work on the case initiated in 2013 by the Human Rights Commission of Sierra Leone (HRC) could be revived and serve as starting point. However, given the previous difficulties experienced in the mediation process, we believe that the work of the HRC needs to be reinforced in order to ensure sufficient capacities and strong independence of the procedure." (FIAN Belgium 2016)

This passage shows the role of international civil society in supporting the process from the outside and encouraging international involvement in the process. However, so far, these calls have been left unheard.

Summing up, MALOA itself has some capacities in formulating complaints and reaching out to lawyers. Yet, they are also dependent on outside support, especially when it comes to finding resources and raising international awareness. One of the main contributions of national and international civil society actors it to help keep MALOA members out of jail, such as the fundraising efforts for the fines of the 'MALOA 6'. However, the support has not changed the situation in favor of the local landowners and users represented through MALOA.

5.4.5 Discussion and additional issues

The case of Socfin and the failed legal mobilization attempt by MALOA show a number of things. I will first take a look at the three core conditions derived from my theoretical chapter before discussing additional inhibiting factors that could be relevant beyond this case.

First, the case shows, once again, the weak legal opportunity structure presented by Sierra Leonean statutory law. Landowners, who should have had the option to give or withhold their consent according to customary law, were not systematically involved in the consultations to the lease agreement. The process did follow statutory law, which gives the Paramount Chief as the custodian of the land the right to make the decision. The Sierra Leonean legal system, therefore, only offered limited options for the affected local population, who did end up calling on the Human Rights Commission of Sierra Leone. In this way, human rights provided an entry point for MALOA to call on the intervention of a state institution. However, in the process, the Commission seemed to miss the backing of some parts of national state and local authorities, which derailed the process.

Second, the operation of Socfin Sierra Leone has not undergone any independent auditing. The company has neither received any funding from the IFC nor been certified by an international roundtable. Company's public commitments to these standards have, therefore, to be treated with caution. At the same time, Socfin receives considerable support from local authorities who help them in delegitimizing and silencing dissent. While it is difficult to determine what kind of role company managers play in the oppression of activists, they do at least condone it. Also, so far, the investor

has enjoyed the support of the Sierra Leonean government. This backing by both local and state authorities has possibly reinforced an unreceptive position by the company.

Third, MALOA itself possesses considerable capacities, for example, in terms of involving state authorities; however, they also have a strong civil society network with national and international links. This network was crucial, for example, in raising funds to free imprisoned activists. In consequence, I consider the support network as strong.

The Socfin case hints to one additional condition that needs to be discussed. As described in the previous chapters, the chiefdom authorities played an essential role in this case. They were the ones who signed the lease agreement without sticking to proper customary procedures. Furthermore, they tried to silence local contestation through repression and delegitimizing strategies. At the same time, they control which complaints by locals get channeled to the company through the grievance mechanism. Finally, the Paramount Chief was able to derail the mediation process by the HRCSL by not showing up.

The case, therefore, demonstrates the power customary authorities, especially Paramount Chiefs, have in Sierra Leone in the shaping large-scale land investment deals. This observation was shared by some of my interviewees, who describe the problematic role of some chiefs in the country:

> "They just do not want people to be educated about their own rights. When you educate people, their dubious deals will be unearthed. Some chiefs just want the money and they don't want to talk to their own people." (interview SL36)

This finding is in line with existing research from Sierra Leone, which emphasizes the power of customary authorities over many community matters (Acemoglu et al. 2014). The issue deserves further attention as a possible addition condition. I will discuss this on a more abstract level in chapter 5.5.

Another somewhat related issue is the negative role the legal system plays in this case. The case of the 'MALOA 6' showed the use of the Sierra Leonean judiciary system to the disadvantage of local activists. The imprisonment and the high fines seem to have been politically motivated (Green Scenery 10/03/2016). As this was not the only case in which MALOA members faced prosecution (International Federation for Human Rights 09/02/2016), it seems like legal measures are used as a threat to intimidate activists and to stop local mobilization activities. This form of legal repres-

sion (Ellefsen 2016: 444) can substantially hamper local actor's activities and question their legitimacy in the eyes of outsiders. So far, the repression was not able to stop the mobilization by MALOA; yet, their activities in the Chiefdom are severely limited (interview SL42). In consequence, the question remains what would have been possible without the oppression. The long term effects of legal repression are certainly an important point for future research (Ellefsen 2016).

Overall, the case of Socfin represents a case in which the company is not receptive to local demands and is protected through local customary authorities and, to a certain degree, the government. In consequence, the legal mobilization attempt of the local protest group MALOA failed. The national legal opportunity structure did not provide them with laws that sufficiently protected their customary ownership and use rights.

5.5 Within country comparison and discussion of findings

I now turn to compare the two cases in regard to the three pre-identified conditions and additional issues, which appeared during the research (chap 5.6.1). Chapter 5.6.2 will then provide a summary of my findings and discuss them on a more abstract level.

5.5.1 Comparison between the cases of Addax Bioenergy and Socfin Sierra Leone

In this chapter, I will discuss commonalities and differences between the two cases, Addax Bioenergy and Socfin Sierra Leone. I will take a closer look at the three core conditions identified in the theoretical framework and how they played out in the two different investment projects. I will not only draw on the evidence described in the two case studies but also on some data from a comparative survey. Apart from the three core conditions, I also discuss one possible additional condition and other issues identified in the case analyses.

The problematic legal opportunity structure for local smallholders in Sierra Leone became apparent in both cases: Landowners and land users had no veto possibility concerning the investment. Legally binding lease agreements were signed with the respective Chiefdom Councils. However, in the case of Addax, additional agreements with landowners opened a space

for negotiation for local communities. These acknowledgment agreements were legally not necessary but were the result of the company's commitment to international best practice standards. In the case of Socfin, most landowners and users were not consulted and did not have any possibility to influence the signing of the agreements. They, therefore, called on the Human Rights Commission of Sierra Leone to interfere. Yet, the involvement of the HRCSL was not able to solve the conflicts. In consequence, both cases show the limited possibilities of local actors to achieve their goals through legal mobilization, even though small gains could be made in the case of the company receptive to local demands.

Support networks played an essential role in both cases. In the case of the community of Masethleh, who entered into negotiations with Addax, the support of a local NGO and a pro-bono lawyer were important conditions for them to understand the agreement and identify their goals. In the case of Socfin, the local network MALOA itself has considerable capabilities for voicing demands and getting authorities involved in the case. However, they also profit from national and international NGO support, especially when it comes to defend local activists and keep them out of jail. Both cases, therefore, fulfill the condition of strong support networks.

The biggest difference between the two cases was the role of the companies, which vary in their approach towards local communities. Addax, on the one hand, was committed to international best practice principles and presented the investment as a 'development' project. In consequence, they put a lot of effort and resources into developing a good relationship with communities and, at times, also with civil society (interviews SL10, SL15, SL54). Socfin, on the other hand, claims to keep international standards; however, this seems to be mere lip service. The primary response to criticism seems to be the delegitimization of critics and the use of legal threats against them. Interestingly, the company fulfilled several social responsibility projects such as the extension of the health center, the construction of toilets for all communities or the overhauling of water wells. Yet, these CSR projects do not seem to be able to replace proper grievance mechanisms and transparent negotiations.

A comparative survey between affected populations of large-scale land investments, including both the Addax and the Socfin project, provides some interesting data in this regard (Bandabla 2014). Over 80 % of the respondents in the Socfin case mentioned the construction of toilets as a CSR project, compared to only 2 % in the Addax case (Bandabla 2014: 9). At the same time, 80 % of Socfin affected respondents answered that the Paramount Chief made the decisions about which community projects to

implement. In communities affected by Addax, only 7 % gave that answer. In comparison, 65 % mentioned community meetings (7 % in the Socfin case) and 54 % needs assessment surveys (0 % in the Socfin case) (Bandabla 2014: 31), showing the different approaches towards CSR projects and community participation by the two companies.

When asked about land conflicts, 95 % of people in Pujehun (Socfin case) reported hearing about them in the last three months, whereas this number is 49 % for Bombali (Addax case). Most of the reported conflicts were between communities and investors (Bandabla 2014: 24). These numbers underline the findings that the investment by Socfin was more contested and conflictive than the Addax project. Finally, impressions on grievance mechanisms also diverged considerably between the two projects: 66 % of respondents in Pujehun versus 9 % in Bombali thought that platforms "to ensure citizen's participation in the decision making process" (Bandabla 2014: 30) were not functioning.

Overall, these comparative findings underline the company's approaches towards local communities: Socfin mainly deals with the Paramount Chief and surrounding elites, whereas Addax tries to involve communities directly[47]. In consequence, local actors in the Addax case have better chances to have their demands heard and responded to.

In addition to the three core conditions, one possible additional condition and additional issues came up in both cases.

One possible relevant condition is the role played by local elites. In the case of Socfin, local authorities considerably support the company and profit from it at the same time. They oppress and delegitimize local activism and therefore protect the company from having to reply to criticism. Yet, it is difficult to estimate the extent of this 'protection'. Would Socfin react positively to local demands if these were not delegitimized and suppressed by the Paramount Chief? My data does not show Socfin as very receptive to local demands generally, but would they have to give in if they lost support by local and national authorities? Unfortunately, evidence from Addax is not helpful in that regard. As the company decided to interact with landowners and the affected communities directly, chiefdom authorities did not play such a big role. Nonetheless, chiefdom authorities strongly supported the investment as did the national government.

47 This does not mean that the survey did not raise critical points in regards to the Addax investment too. For example 76,5 % of respondents felt that the compensation system was not functional (90 % in the Socfin case) (Bandabla 2014: 29).

Provisions of rent sharing by the government further increase the power of customary authorities. According to MAFFS guidelines, district councils and chiefdom authorities each receive 20 % of the rent payments, which amounts to large sums considering the large sizes of land rented. And while the MAFFS guidelines demand that these sums should be spent for 'community development initiatives' (Ministry of Agriculture Forestry and Food Security 2009: para 9), it seems to be unclear in most cases how the money is actually used. In the case of the Addax investment, one interviewee, for example, voiced considerable frustration about chiefdom elites, who in his view profit personally from the payments:

> "He [member of the Chiefdom Council] is one of the people who eats the money, which Addax has given for the chiefdom. That is why he was praising Addax […] he was defending Addax because that is how he is enjoying the proceeds that are coming from the company." (interview SL16)

In essence, the rent sharing of the MAFFS guidelines creates considerable incentives for district and customary authorities to support companies even against the will of the local population (Melsbach/Rahall 2012: 19).

Aside from the possible additional condition, other issues appeared in the case studies. In the Addax case, I noted the problem of differences between landowners and land users in customary law. The case shows the difficulty of using customary rules for the allocation of lease money. While the arrangement ensures that customary owners do receive a share of the rent, it further engraves existing inequalities and marginalizes land users. This shows the complexity in setting up 'socially responsible' investments in contexts that have not previously seen this kind of monetarization of land.

The differences between landowners and land users also affect relationships in the case of Socfin. However, in that context, both landowners and land users lost land and are equally dissatisfied with the negotiation process. Their interests therefore align, and both landowners and users are members of MALOA. However, the question arises how the differences would be dealt with in the case that a deal with the company would be struck. Would the interests of land users be respected, for example, through receiving a share of the rent money?

The second issue noted in the case of Addax was the issue of the economic failure of the company. This does currently not apply to Socfin. However, the Addax case can provide a lesson for the formulation of future national laws and international guidelines of what should happen in such a

case. If the legal provisions would be in place, this situation could, for example, be an opportunity for communities unhappy with the current agreement to renegotiate the deal.

Another issue shown by the Socfin case is the use of legal measures against local actors. The case shows the negative side a legal system can have for local activists. So far, I only portrayed the law as providing local actors with opportunities; however, on the downside, the legal system can and is often used by companies to stop or intimidate criticism[48] (Garvey/Newell 2005: 396). The short and long-term effects of such tactics should be scrutinized further. Interestingly, legal action was never threatened by Addax against its critics and can be understood as one indicator for a willingness to listen to and deal with criticism.

Summing up, the two cases from Sierra Leone underline the need for legal reform in the country. The discrepancy between customary and statutory law leads to a situation in which most smallholders do not have a say in large-scale land deals, let alone a veto right. In consequence, legal mobilization attempts can only be based on soft law regulations, or on general norms such as human rights. In consequence, legal mobilization was only successful in the case of the company open to such arguments. However, one additional condition could be relevant in explaining the outcome: Local and national level support for Socfin might not make it necessary for the company to respond to local demands.

5.5.2 Summary of findings from Sierra Leone

Overall, my findings from Sierra Leone illustrated the usefulness of my analytical framework and created new insights. I will shortly summarize this analytical chapter before I will discuss my results and the possible additional condition on an abstract level.

This chapter started by giving an overview of the issue of large-scale land deals in Sierra Leone. It became clear that the influx of a number of foreign investments in agriculture was a new phenomenon in the context of Sierra Leone. This rush for land in the country was not only caused by global drivers but also by incentives and promotion activities set by the

48 Strategies of companies to intimidate critics through lawsuits, even if those might not be successful, have been described as SLAPP tactics: Strategic Litigation Against Public Participation (Garvey/Newell 2005: 396).

government. Civil society activities, funded through international NGOs, formed quickly around the issue and a network of different organizations helped to link local to national and international actors. In this way, the issue of large-scale land deals brought the topic of land rights on the political agenda and highlighted problems with the land governance system.

The legal system around land tenure issues has been notoriously problematic in the country. The main Sierra Leonean law regulating land transfers in the Provinces has bestowed the decision making power on Chiefdom Councils, omitting customary land ownership and use rights. Other elements of the collective optimum formulated in chapter 4.1.1 were not fulfilled either, showing the unfavorability of the national legal opportunity structure in the country when it comes to the rights of smallholders.

The two cases of Addax and Socfin then demonstrated the effects of an unfavorable NLOS: In both cases, only the Chiefdom Council under the chair of the Paramount Chiefs had to agree in principle to the lease agreements. Yet, in the Addax case, the company also signed additional agreements with landowning families and thereby opened up the space for maneuver for local communities. This opportunity was taken up by one community, which negotiated successfully with the company. In the case of Socfin, local actors mobilized to no avail. The local activist group MALOA called on the Human Rights Commission of Sierra Leone to intervene. However, their mediation attempt failed due to the behavior of the Paramount Chief and national politicians.

Breaking the findings down into a truth table summarizes the two cases on a very abstract level.

Table 13 Empirical truth table Sierra Leone

	national LOS	**network support**	**company**	**outcome**
Addax	unfavorable	strong	receptive	success
Socfin	unfavorable	strong	unreceptive	failure

Viewed in such a way, the relevance of the receptivity of the company becomes apparent under the same legal circumstances and similarly strong support networks. However, the relevance of another condition needs to be discussed: The role of local and national elites in hindering legal mobilization attempts and suppressing local dissent. On an abstract level, the question is how such a condition relates to the receptivity of the company: Does it change the receptivity of a company? Does it make the condition of

the receptivity obsolete? Or is the role of local authorities only relevant in certain contexts? The material from the Socfin case is not conclusive in this case, as local authorities and the company seem to cooperate closely. It could be that unreceptive companies, who are supported by local and national authorities, become even less receptive towards local demands. This would be in line with the following observation from a Sierra Leonean civil society member:

> "But we also have very stubborn companies. Yes, they think, because they have connections, they have powers from above, so they think they are so protected, so fearful, so big that they do not need to listen to us." (interview SL26)

This quote shows that unreceptive companies tend to use their connections to not have to answer to local demands. However, what about the receptive companies? As discussed in chapter 5.5.1 Addax also enjoyed the support of local and national authorities, yet the company did choose to communicate directly with landowners because they wanted to fulfill international best practices. They, therefore, did not purely rely on local authorities to deal with customary right-holders. This would imply that the receptivity of the company made the behavior of local authorities less relevant for the specific case of individual communities negotiating with the company. It could be that the role of political elites (local and national) becomes more relevant in the case of unreceptive companies.