



Makeni region. Picture Credit : Julien Eyrard – www.eyrard-photo.com

Addax Bioenergy – Sugarcane-to-Ethanol Project compliance with the Human Right to Water

(Joint-Evaluation)

September 2011



BROT FÜR ALLE
PAIN POUR LE PROCHAIN
BREAD FOR ALL

Executive summary:

This report is a Private Sector Human Rights Impact Assessment (HRIA) in the field of the Human Right to Water as defined under international Human Rights Law. This research is based on public available documents as well as the responses provided by the Company.

In the given case, Addax Bioenergy, the company, must be commended for acknowledging in its ESHIA Reports and Management Plans its responsibility with regards to human rights guarantees, and it must be acknowledged that the company has made efforts to ensure access to information in the initial project planning process. It must be further noted that the company has agreed to pay for the water used. These practices are an exception compared to other existing large scale and export oriented agricultural projects in Sierra Leone.

However, several aspects still present high risks which could lead to complicity in human rights violations during and after the implementation period of the project. Indeed various sources could witness that, even if the project is only in its starting phase, several communities' access to water is already negatively impacted.

This report identifies in particular lack of guarantees to ensure local population's access to safe drinking water given the destruction of some traditional drinking water collecting points, the ground water pollution by Nitrates and Phosphates which are to occur and the lack of purification systems available. Further it also identifies risks for the mere access to sufficient water downstream during the dry season. Indeed, regarding the water abstraction from the River Rokel, the report revealed that the project will use 26% of the river flows during the driest months (February to April). This figure is unfortunately not explicitly acknowledged by the company, as it tends to refer only to an annual average of 2% water abstraction.

Further, it appears that the local population does not seem to be aware of the risks presented in this document regarding the enjoyment of their human right to water. The authors of this report therefore question the Addax mechanisms to get indeed the prior informed consent of the affected communities. Finally, the report highlights the lack of local population's access to effective remedy mechanisms.

The report concludes with a set of recommendations addressed to the company.

Table of contents

Introduction 4

 Definition of the ‘Right to Water’ compliance Requirements for the company 4

I. Evaluation of compliance with ‘right to water’ objectives..... 6

 Access to Water in Sufficient Quantity 6

 Access to Water in Sufficient Quality 8

 Physical access to Water..... 9

 Financial affordability of Water 10

II. Evaluation of compliance with ‘right to water’ procedural rights guarantees 11

 Local population’s Access to information & participation..... 11

 Local population’s access to a Remedy 11

Conclusion 13

Partners..... 14

INTRODUCTION

*Addax Bioenergy*¹, a division of the Swiss-based energy corporation Addax & Oryx Group (AOG) is developing an agricultural project in the Makeni region (Sierra Leone) to produce fuel ethanol for European markets. This project has been closely followed by the Swiss NGO *Bread for all* (Pain pour le prochain), EED and Bread for World, Germany, in conjunction with its local partners (Sierra Leone Network on the Right to Food, SiLNoRF). As an important agricultural project, one of the main risks associated is its impact on local population's physical and affordable access to water in sufficient quality and quantity. The following joint-research undertaken in collaboration with WaterLex, an international Human Rights organization specialized in the water and sanitation sector, provides a risk-analysis with regards the project's impact on the population's access to water, as well as an analysis of the project's compliance with the human right to water.



Pivot irrigation on an Addax sugarcane field. © BFA

DEFINITION OF THE 'RIGHT TO WATER' COMPLIANCE REQUIREMENTS FOR THE COMPANY

Human Rights are obligations committed by States to ensure peace and security in their country and region. They are key benchmarks which list the worst activities States are forbidden to undertake (cf. obligations to respect), as well as the minimum activities States have to undertake to protect and improve the local population's access to development, which includes access to safe drinking water. With regards the activities to protect the local population, States need to ensure availability of appropriate policies, regulations and most of all law enforcement (cf. obligations to protect),² whereas with regards the activities to improve the situation (cf. obligations to fulfill), States need take positive action in terms of activities and expenditures, to improve and guarantee a minimal basic access to development, as a matter of priority over other areas which are not recognized as human rights. Above all, in all these three areas, States are required to ensure the involvement of affected populations in State activities' definition, funding allocation and implementation.

However, in countries which experience armed conflicts or which emerge from a conflict period, low governance is a fundamental barrier to guarantee the enjoyment of basic human rights. This is due to the fact

¹ Company website: <http://www.addax-oryx.com/uk/index.html>.

² UN HRC, Business and Human Rights: Towards Operationalizing the 'Protect, Respect and Remedy' Framework - Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, UN Doc. A/HRC/11/13, Geneva, 2009.

that low governance directly impacts the procedural guarantees, which are the mere conditions to give effect to any human right, namely access to information, participation of local population in policy making and budget allocations, and finally access to effective remedies with appropriate monitoring systems and legal enforcement mechanisms.

In such contexts of low governance, companies can be charged with **complicity in human rights violations**, if they don't act with due diligence to prevent any form of complicity. The challenges for the company start with the fact that national laws and policies are often not yet meeting human rights standards. It is therefore not sufficient to abide by national laws. In other words and in order to be on the safe side, Companies are strongly advised to systematically undertake the following steps to **assess the quality of governance in the country**:

1. Evaluation of consistency of national laws with the countries' international human rights commitments
2. Evaluation of current law enforcement status in the country (cf. effectiveness of complaint mechanisms)

If these two steps show either inconsistencies in terms of laws and policies or insufficiencies in terms of law enforcement, then Companies need to undertake additional steps which are:

1. Public acknowledgment of responsibility to respect human rights standards
2. Evaluation of the companies' activities impact on the enjoyment of human rights (cf. Human Rights Impact Assessment)
3. Integration of specific human rights guarantees, both in terms of objectives and processes (cf. access to information & participation), in project planning and implementation
4. Development of additional para-legal systems to ensure at least neutral, and if desired positive impact of the companies' activities on the enjoyment of basic human rights of the local population

In the current case, the situation of Sierra Leone clearly identifies the country as a low governance zone.³ This situation was acknowledged by the Company, and it therefore moved to the additional steps by clearly **meeting step one regarding the public acknowledgment of responsibility to respect human rights standards**: in its Environmental, Social and Health Impact Assessment (ESHIA), the company explicitly listed the international conventions whose guarantees it commits to respect. Among these, we find one of the main Human Rights Conventions which enshrines the 'right to water' (cf. General Comment 15)⁴, namely the 1966 UN Covenant on Economic, Social and Cultural (ICESCR)⁵, as well as the 2007 UN Declaration on the rights of indigenous peoples. The following analysis takes therefore as benchmarks for the company the content of the 'human right to water' as characterized by General Comment 15 issued by the compliance committee (Treaty Body) of the ICESCR.

³ See the US State Department background note on Sierra Leone, available at : <http://www.state.gov/r/pa/ei/bgn/5475.htm>.

⁴ In 2002, the compliance committee of the Convention ICESCR issued a general comment formulating its understanding of the obligations of States regarding the human right to water. This General comment is available at: <http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94?Opendocument>.

⁵ "3.3 In addition to Sierra Leonean legislation, the international conventions which the Addax project will comply with include: the International Labour Organization Conventions (ILO), the United Nations (UN) International Covenant on Economic, Social and Cultural Rights, the UN International Convention on the Elimination of All Forms of Racial Discrimination, the UN Declaration on Rights of the Indigenous Peoples,[...]", AfDB, Executive Summary of the Environmental, Social and Health Impact Assessment, p.3, Available at: <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Environmental-and-Social-Assessments/Addax%20Bioenergy%20-%20ESHIA%20summary%20-%20Final%20EN.pdf>.

I. EVALUATION OF COMPLIANCE WITH 'RIGHT TO WATER' OBJECTIVES

ACCESS TO WATER IN SUFFICIENT QUANTITY

The General Comment states that “The water supply for each person must be sufficient and continuous for personal and domestic uses.⁶ These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.⁷ The quantity of water available for each person should correspond to World Health Organization (WHO) guidelines.⁸ Some individuals and groups may also require additional water due to health, climate, and work conditions”, (GC15, para.12).

When describing the project, the African Development Bank Group declares: “The project is located adjacent to the Rokel River, which is a significant river system and will provide water to the project. The flow of the Rokel is controlled upstream by the Bumbuna Hydropower Dam (BHP), which increases water flow during the dry months when irrigation water is needed. The project water requirements will range between 4-7 m³/second whereas the total water flow of the Rokel ranges from 27-338 m³/second. Therefore, **there is adequate water flow to meet the project’s needs without endangering water supply for consumption or environmental needs.** [Emphasis added]”⁹ This statement unfortunately bases its assumption that there is no endangering of water supply for consumption or environmental needs on **annual average figures**. The details provided by the ESHIA clearly acknowledge that that “the quantity of water required for the project peaks at up to 7m³/s in the driest months (February to April)” (ESHIA, p.2)¹⁰. If this figure is put in parallel with the table provided on p. 112 of the ESHIA pasted below, it appears that **the project will use 26% of the river flows in February, 25% in March and again 26% in April.**

Table 5.1 Mean inflow and outflow predicted at the Bumbuna Dam over the period of a year (Bumbuna Hydrological studies update 2006)

m ³ /s	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
inflow	31	17	7.6	5.4	24	103	168	266	339	300	135	66
outflow	33	27	28	27	39	73	128	255	338	302	138	67
% diff	6	55	267	473	57	-28	-23	-4.2	-0.3	0.7	2	2

⁶ “Continuous” means that the regularity of the water supply is sufficient for personal and domestic uses.

⁷ In this context, “drinking” means water for consumption through beverages and foodstuffs. “Personal sanitation” means disposal of human excreta. Water is necessary for personal sanitation where water-based means are adopted. “Food preparation” includes food hygiene and preparation of food stuffs, whether water is incorporated into, or comes into contact with, food. “Personal and household hygiene” means personal cleanliness and hygiene of the household environment.

⁸ See J. Bartram and G. Howard, “Domestic water quantity, service level and health: what should be the goal for water and health sectors”, WHO, 2002. See also P.H. Gleick, (1996) “Basic water requirements for human activities: meeting basic needs”, Water International, 21, pp. 83-92.

⁹ ADDAX Bioenergy Project – African Development Bank, available at: <http://www.afdb.org/en/projects-and-operations/project-portfolio/project/p-sl-aag-002/>.

¹⁰ The complete citation: “2.3 The factory feedstock of sugarcane will be sourced from the company plantation, over the sugarcane season of about 220 days. The estates will require partial irrigation (using centre pivots) during the dry season (November to May). The quantity of water required for the project peaks at up to 7m³/s in the driest months (February to April) and the total demand of about 80 million m³ per annum will be drawn from the Rokel River which flows adjacent to the site and is Sierra Leone’s third largest river with a an annual flow of about 3.8 billion m³. Therefore the water abstraction is only about 2% of the river water flow. As the Rokel river flow is now regulated by the upstream Bumbuna dam, the project does not cause changes to the natural base flow profile.”, Executive Summary – ESHIA, p.2.

These figures are unfortunately not explicitly acknowledged by the company, as it tends to refer only to the 2% average.¹¹ Further, if the ESHIA acknowledges the risk regarding over abstraction¹², it doesn't include evaluations regarding the cumulative impact of this project in conjunction with other existing agricultural or industrial projects downstream which also require access to the river in the dry season.



Addax pumping station on the River Rokel. © BFA

In this context, it must be underlined that the Company confirmed that its water abstraction rights must respect the 'ecological baseflow' which gives priority to human needs and environmental protection (ref. to be signed 'Water Abstraction Licence').¹³ However this commitment is apparently not yet legally binding.

This interpretation is reinforced on the basis observations made by various sources. A few cases were among others revealed by an Independent Report¹⁴ commissioned by the *Sierra Leone Network on the Right to Food* (SiLNORF) and *Bread for all*. The report found that a serious water crisis had hit the Maronko village because two waterways („Kirbent,, and „Domkoni,,)¹⁵ were canalised and covered with earth¹⁶ by Addax. Moreover, in Woreh Yeamah, Addax Bioenergy apparently plans to “fill a natural water source with debris so the company can use the surrounding land for their monoculture plantations”¹⁷.

These cases show that, even if the project is in its starting phase, several communities are negatively impacted by the company in terms of access to water in sufficient quantity. These situations need to be addressed by the company in an appropriate manner.

In the light of these observations, as well as lack of information regarding other uses and needs of other regional stakeholders that could potentially lead to over extraction of water due to the sum of all the water

¹¹ Idem, and Email exchange between WaterLex and Addax Bioenergy, response from Addax dated 22.05.2011.

¹² “The cumulative impacts of the project on the Seli/Rokel River could result in very high impacts if unmitigated. These would include sedimentation, eutrophication, leaching of fertilisers and pest control agents and **over abstraction** [emphasis added].” (ESHIA, p.166)

¹³ Idem.

¹⁴ Anane, M. Abiwu, C. 2011. Independent Study Report of the Addax Bioenergy sugarcane-to-ethanol project in the Makeni region in Sierra Leone. Accra.

¹⁵ Idem, p. 39.

¹⁶ Villagers in Maronko, Direct communication with Bread for all on May 31, 2011. Direct observations of Bread for all on May 31, 2011.

¹⁷ Anane, M. Abiwu, C. 2011. Independent Study Report of the Addax Bioenergy sugarcane-to-ethanol project in the Makeni region in Sierra Leone. Accra, p. 39.

uses (farmers, local population, private sector), including downstream ones, **the current report considers that not all the guarantees are provided to ensure that the overall project will not impact negatively the enjoyment of the right to water of the local population living in the region (not just the project site), in terms of the mere water availability.**

ACCESS TO WATER IN SUFFICIENT QUALITY

General Comment 15 states that *“The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person’s health.”*¹⁸[Emphasis added]”

If on the one hand, it is important not to expect the company to fill the development gap due to the government’s failure to guarantee basic human rights, it is also fundamental to hold the company to account if its activities deteriorate the existing access to water, which is already in some aspects not meeting right to water standards.

The ESHIA deals from p. 162 on with the contamination of the soils and groundwater due to the broadcast application of lime and/or phosphate fertilizers (cf. Impact 7 & 8). The authors of the present report disagree with the ESHIA authors who consider that “Mitigation for the pollution of soils and ground and surface water is achieved by undertaking soil analysis to ensure that the amount of lime and/or phosphate fertilizer applied is not in excess to the requirements” [of the sugar cane growth]. Such a “mitigation” is deemed insufficient to rank down the impact from severe - high to severe - moderate.

Further, in no place the report tackles the impact of the use of agro-fertilizers and pesticides on the drinking water quality of the local population. It only ranks down on Impact 21: “Community health issues associated with pest control agents” from a very high risk to low, based on appropriate spraying techniques & clothing by workers. Again, this “mitigation” does not offer any guarantee with regards the safe drinking water quality of the local population and the associated pollution risk by pesticides.

On the other hand, the ESMP¹⁹ acknowledges the application of the WHO guidelines for drinking water quality and ambient air quality to the Addax project.²⁰ Further, the company committed to guarantee as a minimum baseline the situation “ex ante” (the beginning of the project) to all the local population. Finally, the company already established water treatment systems for the local staff of the plantation.²¹

In this context, it is important to note that on June 25, 2011, the Environmental Protection Agency (EPA) of Sierra Leone made a monitoring visit in two villages as a result of the Independent Report of SiLNoRF (referenced above).²² Among others, the EPA representative witnessed that, in Romaro, there is no clean water

¹⁸ The Committee refers States parties to WHO, Guidelines for drinking-water quality, 2nd edition, vols. 1-3 (Geneva, 1993) that are “intended to be used as a basis for the development of national standards that, if properly implemented, will ensure the safety of drinking water supplies through the elimination of, or reduction to a minimum concentration, of constituents of water that are known to be hazardous to health.”

¹⁹ Costal & Environmental Services (CES), Framework Environmental and Social Management Plan (ESMP) for Addax Bioenergy’s Sugar Cane to Ethanol Project, Sierra Leone (October 2009).

²⁰ Idem, p.15.

²¹ Ref. Email between WaterLex – Addax Bioenergy, response from Addax dated 22.05.2011.

²² The Standard Times, “Environmental Protection Agency investigates Addax activities in Makeni communities”. June 28th, 2011, Freetown. Accessed under: <http://farmlandgrab.org/post/view/18887>.

to drink except the dilapidated hand pump.²³ Following his visit, the EPA representative “called the company to provide boreholes in all the villages [in which] the company is operating”²⁴. The provision and maintenance of a new hand pump with purification system would indeed fall within the scope of responsibility of the company if the deterioration of the water quality was confirmed.

As a consequence, the lack of firm legally binding commitment to guarantee such a minimum baseline of situation “ex ante” the beginning of the project, leads the authors of **this report to consider that not all the guarantees are provided to ensure that the project will not impact negatively the enjoyment of the right to water of the local population living in the region, in terms of the water quality.**



Road to the future ethanol factory. © BFA

PHYSICAL ACCESS TO WATER

The General Comment requires that “water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace. All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, life-cycle and privacy requirements. Physical security should not be threatened during access to water facilities and services;”

In this context the right of the company to “*stop up or alter the course of any watercourse*” (cf. §4.4(d) of the Land Lease Agreement signed by Company with each Chiefdom Council) as well as the mere possibility for the company to impose “*exclusive possession [over] rivers*”, and to be entitled to determine *rights and obligations* regarding use of such water access, **is in clear contradiction with the guarantees to be offered to the population to respect and secure their basic human right to water.**²⁵

²³ idem.

²⁴ idem.

²⁵ “4.6 The Company as against the Chiefdom Council shall be entitled to have **exclusive possession over all that forms part Demised Premises including villages, rivers, forests and all other forms of environment**. The Company shall be entitled to designate such areas as it wishes within the Demised Premises as areas for its **exclusive use and occupation** and such other areas as it wishes within the Demised Premises as areas of shared use and occupation with others as it shall permit subject to such conditions, **rights and obligations as it shall determine**, save that the Company shall not be entitled to require a Permitted Third Party to cease to reside on any part of the Demised Premises except in exceptional circumstances and then it shall not be done without agreeing to pay to the affected party compensation agreed by the Chiefdom Council, the affected person and the Company each acting reasonably.”

On the other hand, the company clearly asserted that the water it will require for its project will only be extracted from the Rokel river (and in no case from the ground water).²⁶ Further it also asserted that no water course modification will take place.²⁷ Unfortunately this latter statement is in contradiction with the findings of the Independent Report on the project: indeed two waterways („Kirbent,, and „Domkoni,,)²⁸ have already been canalised and covered with earth²⁹ by Addax.

Further, regarding water points (wells) of the local population, the Company stated that in situations where water points must be modified it would build a new water point in closer proximity to the village and this has indeed taken place in the Woreh Yeamah village.³⁰ At the same time, in June 2011, the Swiss Television reported that women in the village of Romaro now needed to walk long distances to fetch water.³¹

As a summary, the opened door in the land lease agreement regarding alteration of water courses, and the available information on the company's practices, leads the authors of this report to **consider that not all the guarantees are provided to ensure that the project will not impact negatively the enjoyment of the right to water of the local population living in the region, in terms of the water physical access.**

FINANCIAL AFFORDABILITY OF WATER

General Comment 15 states that “Water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights”.

In the context of the Addax Project in Sierra Leone, the pollution risk associated to the plantation directly raises the question of the financial capacity of the local population to **afford water purification mechanisms**. The basic chlorination installations and their maintenance are already costly, and they are not sufficient to clean the water from the high levels of natrium and phosphates which are most likely to be present in the water.

In this context, the Company clearly acknowledged that it established water treatment systems for the local staff of the plantation.³² However this commitment doesn't apply yet to the rest of the local population. The ESHIA doesn't specify at any stage the responsibility of the company to ensure to the affected population at the very minimum the same standard of drinking water quality during the project, in comparison to the standard before the project (cf. respect of situation *ex ante*). Again, the company asserted its commitment to guarantee at the very minimum the situation *ex ante*, but this information was not found in any legally binding commitment. **Meeting adequate international pollution standards is not sufficient, if the local population doesn't benefit from appropriate water purification installations.** As a consequence, the authors of the report consider that not all the guarantees are provided to ensure that the project will not impact negatively the local population's capacity to afford safe drinking water.

²⁶ Ref. Email between WaterLex – Addax Bioenergy, response from Addax dated 22.05.2011.

²⁷ Idem.

²⁸ Anane, M. Abiwu, C. 2011. Independent Study Report of the Addax Bioenergy sugarcane-to-ethanol project in the Makeni region in Sierra Leone. Accra. P. 39.

²⁹ Villagers in Maronko, Direct communication with Bread for all on May 31, 2011. Direct observations of Bread for all on May 31, 2011.

³⁰ Ref. Email between WaterLex – Addax Bioenergy, response from Addax dated 22.05.2011..

³¹ Swiss Television, ECO report, 20 June 2011, accessed under:
[http://www.sendungen.sf.tv/eco/Nachrichten/Archiv/2011/06/20/Uebersicht/Schweizer-Rohstoff-Firma-laesst-afrikanische-Bauern-verzweifeln. .](http://www.sendungen.sf.tv/eco/Nachrichten/Archiv/2011/06/20/Uebersicht/Schweizer-Rohstoff-Firma-laesst-afrikanische-Bauern-verzweifeln.)

³² Ref. Email between WaterLex – Addax Bioenergy, response from Addax dated 22.05.2011.

II. EVALUATION OF COMPLIANCE WITH 'RIGHT TO WATER' PROCEDURAL RIGHTS GUARANTEES

LOCAL POPULATION'S ACCESS TO INFORMATION & PARTICIPATION

Human Rights Law requires prior and informed consent of local populations which might be affected by a development project. In this context, the UN Declaration on the Rights of the Indigenous Peoples, to which the company agreed to abide by states in Article 32:

"1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain **their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.** [Emphasis added]³³

It is commendable to underline that the company in contrast to other similar projects (cf. Chinese Magbass sugar complex)³⁴, made many information on the project available, including the ESHIA that has been publicly posted on the consultant's website and free available for any civil society organization interested in the project.

However, the authors of the report **regret the non-disclosure of the water agreement signed between the Company and the State.** Further, **they question the validity of the prior informed consent of the local population, based on the fact that the later might have not foreseen the risks presented in this document with regards the enjoyment of their right to water.**

LOCAL POPULATION'S ACCESS TO A REMEDY

Article 32 of the UN Declaration on the Rights of Indigenous Peoples further States that "3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact."

It must be noted that the company established a grievance mechanism. The mechanism "has been developed and presented to community stakeholders for concerns about the project and ESHIA process and receive responses in a formalized manner". It involves in particular 5 steps: Receipt of Grievance; Assessment; Acknowledgement of complaint/grievance, followed by investigation, resolution of the grievance and closure. The grievance mechanism takes indeed into consideration the need to send the feedback "in the local language to ensure all interested parties understand the response" (p.17), and agree to put in record the exchange.

The authors of this document however **regret the lack of guarantees for the plaintiff regarding his rights to a due process**, especially in the light of the provision set out in the land lease agreement at para.1.4: "*If a traditional landowner is unwilling to acknowledge [Addax Bioenergy Sierra Leone,] 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*

³³ 2007 UN Declaration on the rights of indigenous peoples, available at: <http://www.un.org/esa/socdev/unpfii/en/drip.html>.

³⁴ "The Magbass sugar complex is owned by the China National Complete Plant Import & Export Corporation. It provides a handy counterpoint to the inclusive, bottom-up model of land leasing. The **Chinese** company provided a lump sum to government, which gave them the land. Locals were not consulted, nor properly recompensed. As a result, there are often industrial disputes." Available at: <http://www.theafricareport.com/archives2/business/3292654-sierra-leone-green-pastures-for-biofuels.html>.

Chiefdom Council (so no rent will be payable). “ as well as the provision set out in paragraph 1.9 of the explanatory note (to the Land lease agreement) which might exclude the land owner from the negotiations by bringing a so-called “expert” probably favorable to the companies’ interests.³⁵

Further, if more fundamental violations are to occur, the **authors are concerned about the provision stated in section 5.2(a) and (d) of the land lease agreement which might prevent the local population from suing the company before national courts in Sierra Leone.**³⁶

These inconsistencies are confirmed by the practical implementation of the grievance mechanism, as reflected in the *Independent Study*. Indeed the local population already feels “the absence of an effective grievance or conflict resolution mechanism that could be accessed easily by community members and that could provide prompt and fair solutions to the problems unleashed on them by Addax’s operations”³⁷.

As a conclusion, the authors of this report are concerned about the mere existence of the right to water for the local population affected by Addax’s project, given the lack of effective accountability mechanisms available to them.

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

³⁶ “(a) All Disputes shall be referred to and finally resolved by arbitration in [London] before [three] arbitrators under the [Rules of Arbitration of the International Chamber of Commerce] from time to time in force. This Clause incorporates those Rules except where they conflict with its express terms.”

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

³⁷ Anane, M. Abiwu, C. 2011. *Independent Study Report of the Addax Bioenergy sugarcane-to-ethanol project in the Makeni region in Sierra Leone*. Accra. P. 43.

CONCLUSION

As a result of the Human Rights Impact Assessment, in the field of the 'Right to water', *Bread for all* and WaterLex recommend to Addax Bioenergy:

1. To ensure availability of information regarding river basin negotiations (ref. Water Extraction License and establishment of Rokel River regulatory body) among all stakeholders (especially local populations). Further such negotiations should define the **priority allocations/quotas of water in times of scarcity**, and respect the following priorities: first covering local population's basic water needs, secondly for the local population's needs to ensure survival of its cattle and subsistence agriculture, and only last for the company's needs³⁸;
2. To ensure that the local population affected by the groundwater and river pollution, alterations of small water courses or the destruction of traditional drinking water collecting points gets **access to alternative water wells and water purification systems**, to guarantee at the very minimum the situation *ex ante*, and at best water respecting WHO quality standards (free from any fertilizers and/or pesticides).³⁹ Further, in order to guarantee the population's financial affordability of the systems, the maintenance of these new water points should be beard by the Company for as long as the pollution lasts.
3. To revise some of the provisions of the land lease agreement to ensure local population's **access to an effective complaint process** which would guarantee that the landowner is able to claim from the company the "respect guarantees" provided by the enjoyment of his basic human right to water. In this context, the authors further recommend a regular **monitoring of the project through independent bodies** with regards the *de facto* situation in affected villages and communities in terms of their access to drinking water, as well as to **make these monitoring reports available to all concerned stakeholders**.

³⁸ Note : Model legislations are available from WaterLex on demand.

³⁹ This recommendation goes beyond the one already issued by the Environmental Protection Agency (EPA) which explicitly "called the company to provide boreholes in all the villages the company is operating", Source: The Standard Times, "Environmental Protection Agency investigates Addax activities in Makeni communities", dated 28.06.2011, Freetown, available at: <http://farmlandgrab.org/post/view/18887>.



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

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

For more information: www.ppp.ch



WaterLex

Founded in 2010, WaterLex is an international think tank, specialized in the field of governance of water and water related sectors. A legally registered public interest association in France and Switzerland, WaterLex intends to play a facilitating role in governance processes, while providing the various stakeholders with reports and tools developed on the basis of the current state of knowledge, training activities adapted to their needs, and mediation and counseling services in the field of human rights, particularly the right to water and sanitation. WaterLex provides in particular Human Rights Impact Assessments to any non-State actor (incl. Companies), while focusing on the activities impacting on the local population's access to water and sanitation.

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