

Public Summary by Milieudéfensie of: ‘Independent Research Report on the Socfin RSPO Certification Process’ in Sierra Leone by Theophilus Sahr Gbenda, February 2021’ and additional stakeholder information

May 2021

The Milieudéfensie-commissioned research was conducted from December 2020 to January 2021. It documented the RSPO audit and consultation process run by SCS Global Services (SCS) for Socfin Agriculture Company Limited (SAC) in Sierra Leone. The researcher analysed documents and conducted 12 interviews and several focus-group discussions with representatives from communities, media, SAC workers and staff, one local authority, a landowners’ association and civil society. At the time of writing this summary, SAC has not received the RSPO certificate, and no public information on the audit is available from SCS.

Analysis of research findings against RSPO-PRO-T01-002 V2.0 ENG (2017)¹: RSPO certification systems for principles and criteria, June 2017.

ON PUBLIC ANNOUNCEMENTS (ARTICLE 4.6.1)

1. Did SCS Global Services (SCS) respect requirements for the timing of the announcement and invitations to stakeholders, selection of stakeholders, means and formats, language?

Malen Radio broadcasted information about the audit two weeks before the audit in September 2020. One community leader stated he was informed by a company liaison officer who visited the communities 5 days in advance. Some civil society groups said they received notice 3 to 5 days in advance, while others were not notified at all. Civil society organisations from Pujehun district said they did not receive a formal invitation or agenda, which made it difficult to prepare. A second audit took place in early November 2020, according to SCS,² because they were unable to process all stakeholder comments from the first audit or meet with newly identified stakeholders.

SCS did not reach out proactively to international and national civil society organisations to prepare and inform the audits, despite publicly available reports, media statements and other communication about SAC and Socfin as well as news items on Socfin and Bolloré SLAPP suits against those organisations and individuals. Eventhough their internal communication shows that SCS was well aware of the controversial nature of the company and the high credibility risk.³

ON STAKEHOLDER CONSULTATION (ARTICLE 4.6.3)

2. Did SCS consult all relevant stakeholders and identify all relevant information to assess compliance?

According to a SAC representative, the SCS audit concluded that SAC complies with all but one RSPO criterion on conservation. If this is correct, it implies that significant information on land rights disputes, pollution and human rights abuses was not collected or not considered to lead to critical non-conformities by the auditors. Civil society actors said they informed the auditors about the need to review the SAC lease agreement, address legal representation from the communities, and start to properly deal with community concerns and controversies about the role of the paramount chief and his involvement in the company’s grievance committee, amongst others. One civil society organisation based in Freetown fears their input was not included because the auditor neither took note nor recorded the meeting. They informed the audit team about the urgency to review the SAC lease agreement in order to respect communities’ land rights, something that should have been done since 2019. When a technical government committee documented a number of legal and factual shortcomings for the SAC lease agreement and concluded it should be revoked and the subleases renegotiated. There is a clear need to give back the unused land to the communities, in order to achieve the necessary living space. Communities and landowners said they were not involved in and do not have a copy of the lease agreement, which was a deal between the company and the government.

An important stakeholder group called the Malen Affected Land Owners and Land Users Association (MALOA) stated they were not properly consulted.⁴ Although several leaders met informally with one of the auditors, their proposal for a proper consultation meeting with MALOA members was not agreed to by the auditors, reportedly because of security concerns. One company representative confirmed to the researcher that SCS had to return for a second field audit because several stakeholders were not consulted, including MALOA. However, even during

¹ The audits took place in September 2020, before the new version of the Standard for Certification Systems was approved in November 2020.

² SCS response to Fian Belgium, April 2021

³ Internal email SCS in email string to Synaparcam, 29 September 2020: “We are probably going to get a lot of negative stakeholder comments coming about Socfin at all their various operations.”

⁴ MALOA, 6 November 2020, Press statement

that second visit, the auditors failed to consult MALOA. MALOA leaders also stated that the list of stakeholders the company provided to the auditors was heavily biased towards its proponents.

A traditional leader reported that there was a name list for community meetings and any person not on the list was not allowed to enter. He further noted that along with the positive social benefits that the company provides, communities also reported on negative impacts. Amongst others, these include the lack of access to safe drinking water, unacceptable payment methods and amount of annual surface rents, lack of (management level) jobs for community members. There are concerns about community livelihoods, because “we no longer have enough land to plant on and [...] our youth remain unemployed and therefore badly frustrated.” Also, communities ask to be involved in the government review of the SAC lease agreement.

Workers, both casual and employees, told the auditors in a group meeting that they are not satisfied with the salaries, that the union is imposed by the company and does not stand up for their interests, and that casual workers injured at work get treatment but no payment for workdays lost. Most are casual workers and, to avoid permanent jobs, are only given very short-term contracts with the option to re-apply. One worker said he was a casual worker for 4 years and 8 months. Workers find it hard to protest for fear of dismissal.

SCS wrote that they cannot inform us exactly how and if stakeholder input from FIAN Belgium and others was considered because the audit report is not public. FIAN Belgium provided documented evidence to SCS about SAC’s violations of RSPO criteria, including 3.4 on Social and Environmental Impact Assessments, 4.1 on respect for human rights and human rights defenders, 4.2 on grievance processes, 4.3 on livelihoods, 4.4 on FPIC and 6.2 on workers’ rights.

In November 2020, several civil society actors filed a complaint with SCS, alleging violation of RSPO’s standard for Certification Systems. SCS informed complainants⁵ that confidentiality during the complaints process cannot be guaranteed. This prevented stakeholders from sending in detailed verified evidence of harm to the plantations and violations of the Certification Systems standard. Hence, this information is potentially not included in the assessment.

3. Did SCS provide a safe space for stakeholders, guaranteeing confidentiality where needed, and facilitate comments from stakeholders?

In the words of ex-president Ernest Bai Koroma of the last All People’s Congress (APC) regime, “Anyone who attempts to disrupt the operations of the company will be guilty of committing a crime against the state and shall face the full force of the law.”

The communities are divided internally, the position of traditional authorities is controversial and community members engaged in land disputes have repeatedly and publicly stated that those authorities do not represent them. The paramount chief and his inner circle are promoting the company and call out organisations and community members that criticize the company and stand up for their rights as “enemies of progress” or “troublemakers.” They further informed the researcher that it is “their duty to protect the huge investments of the company as it is part of the arrangement” that “no one was forced to give up their land,” and they confirmed they have created a breakaway group called HOPANDA “to show that MALOA is no longer popular.”

Communities and specifically MALOA members live in a climate of fear. They have been harassed, intimidated, criminalised based on trumped up charges, arrested arbitrarily, put in jail and faced violence over the past years. One civil society leader summarised this as follows: “The first protest against the land grabbing by Socfin in 2011 was violently repressed, forty people were arrested by the police and fifteen were pursued in court. In 2012, four others were arrested because they opposed the survey team of Socfin. In 2013, another fifteen people were arrested and detained. In 2014, six leaders of MALOA were arbitrarily arrested and pursued in court. Following a partial trial, they were in prison for several months; in 2015 another eleven people were arrested. In 2019, the tensions led to a conflict on the plantation that left two people dead and eighteen MALOA activists arrested, sometimes beaten and arbitrarily detained for several weeks. I was sued for defamation by Socfin for my evidence-based statements or writings.”⁶

Although one company representative denies this, another SAC staff member, confirmed in a WhatsApp conversation with the researcher that she acted as a stand-in translator during consultation sessions, including in

⁵ Email SCS to Milieudéfense, 10 December 2020

⁶ More detail here: FIAN Belgium, Land Grabbing for Palm Oil in Sierra Leone : Analysis of the SOCFIN Case from a Human Rights Perspective", 2019, <http://www.fian.be/Land-Grabbing-for-Palm-Oil-in-Sierra-Leone?lang=fr> & Landgrabbing by SOCFIN in Sierra Leone - documentation / Background documents, <http://www.fian.be/Landgrabbing-by-SOCFIN-in-Sierra-Leone-documentation?lang=fr>

Taninahun. The audit team moved around in a SAC vehicle and used its lodging and other services and buildings for the consultation sessions. For the civil society meeting in Pujehun, a SAC staff member joined the audit team, but was asked to leave when the meeting started. The communities perceived the audits as a company exercise, which prevented free sharing of grievances during consultation sessions. SCS stated that they organised the second audit also to “help local stakeholders feel comfortable meeting with SCS auditors without the presence of SAC personnel or vehicles” and they said they hired an independent translator for the return audit.⁷ A reaction to the numerous concerns filed with SCS by stakeholders about the first audit. Still they failed to consult the prominent MALOA group during the second audit as well.

ON LAND DISPUTES (ARTICLE 4.6.4)

4. Did SCS review whether oil palm operations have been established in areas which were previously owned by other users and/or are subject to customary rights of local communities and indigenous peoples? Did it consult directly with all of these parties to assess whether land transfers and/or land use agreements have been developed with their free, prior and informed consent and check compliance with the specific terms of such agreements?

MALOA members and leaders stated they have not been properly consulted. Therefore, it is likely that the auditors did not take into account their evidence on land disputes. Their grievances include: landowners were sidelined during lease agreement negotiations, FPIC was not respected, physical land demarcation disappeared, some families have lost all their land, lands were taken without due compensation, right to food is undermined, the annual lease payments are too low and the payment method is not inclusive, alternative livelihoods are not available and employment is too low, and communities are separated because the company changed roads. MALOA pleads for a return of land to communities.

The government’s official Technical Committee on the Malen Chiefdom land dispute in Pujehun district investigated and concluded several irregularities and breaches of the lease agreements and MoU: the plantation concession size is larger in reality than on paper, rules on awarding land to non-natives are violated, the lack of an illiteracy protection clause and importantly, the lack of consent from local landowners and authorities, the lack of personal legal representation of landowners in the deal, a glaring lack of living space for communities, wrongful inclusion of swamp lands in the concession, inadequate social and environmental impact studies, alleged collusion of the paramount chief with the company, amongst others.⁸ The Committee found the leases should be redone through an extensive mapping and well organised process with landowners and communities. Also, lands should be returned to the communities. SCS informs FIAN Belgium that this report is “out of scope for this audit”⁹ because SCS was unable to establish the validity of the report. This is incredibly alarming, because the report is vital evidence to analyse RSPO criteria on land rights and it is currently unclear if this information was taken into account in the assessment. Milieudefensie is not aware in what ways and with what rigour SCS tried to establish its validity.

Conclusion

According to the independent research report and additional information from rightsholders and stakeholders in the consultation process, SCS violated several RSPO requirements for consultation. It did not reach out proactively to relevant stakeholders in time which means that SCS lacked crucial information to prepare the audit and stakeholders could not prepare for the consultation sessions. Affected landowners were not properly consulted, and a crucial government report that orders revocation of the principal lease and a participative process to solve the current land disputes is not included in the evidence. Therefore, important information on land disputes is omitted from the assessment. Stakeholders found that the audits were not independent from the company and have to deal with an incredibly high risk of reprisals when speaking out. A safe space for consultation was not provided, and SCS could not guarantee confidentiality in the complaints process.

⁷ 23 April 2021, letter from SCS to Fian Belgium

⁸ Report of the Technical Committee on the Malen chiefdom land dispute, submitted to the honourable vice president, September 2019, <https://www.fian.be/Landgrabbing-by-SOCFIN-in-Sierra-Leone-documentation?lang=en>

⁹ 23 April 2021, letter from SCS to Fian Belgium