

Concerns of civil society organisations and affected land users on Addax Bioenergy



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Executive Summary

This report lays out the major concerns of Civil Society Organisations (CSOs) and affected land users on the Addax Bioenergy project in Sierra Leone.

This report underlines in particular the lack of Free Prior and Informed Consent (FPIC), tax evasion and corruption risks, environmental damage, and considerations regarding ethical and international human rights law compliance.

This report starts with the findings of an Independent Study published in June 2011 that revealed that Addax made **juicy but not legally enforceable commitments** regarding the eradication of poverty and the provision of health facilities, school buildings, community centres, jobs for all the youth, etc., in order to gain the consent of the communities. Therefore, Free Prior and Informed Consent (FPIC) of the population was not ensured. The Study also reveals that Addax **took large tracks of fertile and well-watered land despite promises to use only “marginal” lands.**

Regarding tax evasion and corruption risks, the present report notes that the Sierra Leonean government granted **Addax different tax exemptions and deductions**, which will hinder the State of Sierra Leone to levy a fair share of tax from the company. Further, the corporate structure of Addax, involving tax heavens, **increases the risk that the company evades taxes.** The analysis of the value added sharing demonstrates that the project will **mainly benefit to the company**, while other stakeholders profit marginally.

Projects which involve Land Grabbing are subject to **high corruption risks**, especially in Sierra Leone, a country which is ranked under the most corrupt countries. In this context, the report strongly questions the **compensation system of Addax: it might have ensured the “cooperation” of every level of national and regional authorities**, as the District Council and the Chiefdom Administrators receive annual lease fees without suffering any damage.

In Sierra Leone, many other land lease agreements have been or are being signed by investors. The area covered under these agreements **represent in total up to 1 million hectares (or 18% of Sierra Leone’s land suitable for cultivation)**. The **cumulative impact of these land deals on Sierra Leone’s food security, food sovereignty and water availability is not yet analysed.** A study on land availability in Sierra Leone states that **“there is no remaining potential to significantly enlarge the area under cultivation anywhere in Sierra Leone”.** CSOs are concerned about the **huge conflict potential** over land for subsistence food production in Sierra Leone, a country that is still recovering from civil war.

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

Addax intends to sell its biofuel in the EU. **However, in case it wants to sell its ethanol in Switzerland, Addax would probably not benefit from the exemption of the mineral oil tax. This because biofuels in Switzerland have to fulfil tough requirements on environmental impact.**

52% of the Addax Bioenergy project is financed by development banks. It is very worrying that **such a project can be financed with taxpayers’ money under the name of “development”.**

Turning to environmental considerations, it is important to note that, even if the company claims to avoid forests, **4,000 hectares of bush will be cleared.** Further, an ecological analysis of the project highlights that carbon emissions of the Addax project are under evaluated and reveals that ethanol from sugarcane has in fact **a negative environmental impact that is up to 3 times higher than petrol.** In addition, Addax will use **26% of Sierra Leone’s largest river flow during the driest months** (February to April). This figure is not acknowledged by the company, as it tends to refer only to an annual average of 2% water abstraction.

Also, the report raises a number of concerns related to legal matters. For example, according to Sierra Leonean law, **women cannot be landowners** in the North of Sierra Leone and therefore cannot be

entitled of receiving any land lease fee from Addax Bioenergy. This **situation has the potential to worsen their situation.**

A Human Rights Impact Assessment of the Land Lease Agreement (LLA) highlights that **all disputes have to be referred to London.** This amounts to a **denial of justice** given the financial impossibility for landowners to fund their travel and legal representatives.

The Addax project intends to **transform food (sugarcane) into ethanol for cars in the EU.** The EU's biofuel target has created a large demand for biofuels and many projects, like the Addax one, have started as a response to the biofuel demand created by the EU target. However, the **EU's biofuels target alone could push up food prices by 10%-33%** until 2020 and **put an extra 140 million people at risk of hunger.** Biofuels may also **drive more than 50% of large-scale land acquisitions globally, and 66% in Africa.**

Addax received an **exemption to comply with any new law that has a “material adverse effect”** on Addax and its contractors (“change in law clause” of the Memorandum of Understanding). CSOs are concerned about this clause which prevents the Government of Sierra Leone from ensuring that Addax complies with all laws in Sierra Leone.

The National Power Authority has to buy the **electricity produced by Addax at a price of 20 US cent per kWh.** This **price seems to be too high** as the price of electricity produced by the Bumbuna Hydroelectric Project (the main source of electricity in Sierra Leone) is 11 US cent per kWh.

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

Objective of this document

This document intends to present the concerns of civil society organisations and affected land users over the Addax Bioenergy project in Sierra Leone.

The issues presented in this document in Part I and II are a compilation of two documents:

1. **“Independent Study Report of the Addax Bioenergy sugarcane-to-ethanol project in the Makeni”**¹ commissioned by the Sierra Leone Network on the Right to Food (SiLNoRF), *Bread for all*, EED and Bread for the World and published in June 2011.
2. **“Land Grabbing: the Dark Side of ‘sustainable’ Investments. Concerns of *Bread for all* on the Addax Bioenergy project in Sierra Leone”**². Published by *Bread for all* in November 2011.

Part III presents other and new issues of concern brought by Civil Society Organisations (CSOs).

Part I: Concerns highlighted in the “Independent Study Report”

The main points described by the “Independent Study Report of the Addax Bioenergy sugarcane-to-ethanol project in the Makeni region in Sierra Leone” of June 2011 were the following, among others³ :

- Disputes have to be resolved by an arbitration tribunal in London, which may be too costly for the chiefdom councils;
- Duration of the Land Lease Agreement (50 years) is seen as dispossessing a whole generation of people of their land;
- Addax made juicy but not legally enforceable commitment regarding the eradication of poverty and the provision of health facilities, school buildings, community centres, jobs for all the youth, etc.;
- The promises by Addax to plough the lands materialized too late in 2010 and this led to very low yield on these fields. Local communities reported in 2011 to face growing food insecurity and hunger;
- Addax took large tracks of fertile and well-watered land despite promises to use only “marginal” lands;
- People hired from the communities only worked as casual labourers and hardly worked longer than three months.

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

² http://www.brotfueralle.ch/fileadmin/english/Business_and_Human_Rights/20111121_Study_Addax_Bread_for_all.pdf

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

Part II: Concerns highlighted in “Land Grabbing: the Dark Side of ‘sustainable’ Investments”

1. Tax issues

1.1. Tax exemptions

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

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

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

1.2. Tax deductions

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

Deduction of withholding tax

Addax was granted an **exemption from deduction of withholding tax on 50% of any dividend paid until 2020.**⁸

Other allowable deductions for corporate tax

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

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

⁵ Ibid., p.9.

⁶ Ibid., p. 7.

⁷ Ibid., p. 7.

⁸ Ibid., p. 8.

1.3. Subsidiaries of Addax and Oryx Group in tax heavens

Many multinational companies do not only benefit from the tax privileges given by African governments. According to a report of CIDSE (a coalition of Catholic development organisations), they also take advantage of the “considerable trade in between their multiple companies to develop complex **mispricing strategies** in order to avoid paying taxes”⁹. The consequent annual loss for developing countries was estimated at USD 160 billion in 2008, more than the total amount of international aid.¹⁰

The mother company of Addax Bioenergy, called Addax & Oryx Group (AOG), is based in the tax haven of the **British Virgin Islands**¹¹. Moreover, a subsidiary of AOG, Addax BV, Curaçao¹², is located in the **tax heaven of Curaçao** (Country of Curaçao, formerly Dutch Antilles). These jurisdictions are considered as **secrecy jurisdictions by Tax Justice Network**¹³.

The Addax & Oryx Group’s corporate structure involving several tax havens can easily be used to avoid taxes e.g. with **transfer pricing techniques**¹⁴. Therefore it would be very interesting to know what taxes Addax Bioenergy and other subsidiaries of AOG will pay and to which countries. The company should provide a full transparency report on these issues so that anyone can analyze whether the company pays a fair share of taxes in the countries where it actually operates.

⁹ CIDSE (2008). Upholding the Spirit of Monterrey. The Financing for Development agenda and its Unfinished Business. Bruxelles, p.8.

¹⁰ Christian Aid (2008). Death and taxes: the true toll of tax dodging. London, p. 2.

¹¹ Labarthe, Gilles. 2005. Pétrole africain: gros pipelines et petites ficelles du métier. DATAS. Genève. Accessed under: <http://www.datas.ch/article.php?id=241>.

¹² Moneyhouse website: http://www.moneyhouse.ch/u/addax_bv_curaçao_succursale_de_geneve_CH-660.0.626.989-9.htm (accessed 07.09.2011).

¹³ Tax Justice Network: www.taxjustice.net.

¹⁴ For a definition and an explanation of transfer pricing, please refer to the website of Tax Justice Network: http://www.taxjustice.net/cms/front_content.php?idcat=139.

2. Economic justice: unequal sharing of value added

In this chapter, the report analyses the distribution of the added value generated by the project among the different stakeholders. A basic analysis of the added value generated by the project shows that the company is the major winner (cf. with 80% of value added going to the company), while other stakeholders profit marginally. The table below (updated with information of June 2012) shows the unequal sharing of value added for the different groups involved in the project.

Group	Number of people affected	Benefits	Breakdown of added value
Addax Bioenergy	One company with one major shareholder ¹⁵	Return of USD 42 million per year ¹⁶	80%
Workers	2000 Sierra Leonean workers plus some expatriates	Yearly wages: USD 3.5 million ¹⁷	6.7%
Land owners	A few hundreds (out of a total of 14'000 project affected persons)	Land lease fees per year of USD 348'000 ¹⁸ . This corresponds to USD 2 per affected person per month.	0.7%
District Councils and Chiefdom Administrators	2 District Councils and 3 Chiefdom Administrators	Land lease fees per year of USD 157'000 ¹⁹ .	0.3%
Government	NA	Land lease fees per year of USD 39'000 ²⁰ . No corporate income tax in the first 13 years ²¹ . Income tax from workers: appr. USD 200'000. Water fees of USD 54'000 per year ²² .	0.6%

¹⁵ Jean-Claude Gandur is the major shareholder of Addax & Oryx Group (AOG), the parent company of Addax Bioenergy Ltd. (source: Le Temps, "Addax Bioenergy investit 200 millions de dollars en Sierra Leone", February 13, 2010).

¹⁶ The planned investment is of EUR 267 million (source: Addax Bioenergy. 2012. A new model for Sustainable Biofuels. Accessed here: <http://www.addax-oryx.com/AddaxBioenergy/pdf/Addax-Bioenergy-Fact-Sheet-April-2012>). The planned return is 15% (source: Direct communication of Nikolai Germann, CEO of Addax Bioenergy at the Symposium Business and Human Rights – The Business Perspective, organised in Geneva by Bread for all (among others), October 2010). This corresponds to an annual return of 15% x EUR 267 million = EUR 40 million (USD 42 million).

¹⁷ Addax claims that it will have USD 3.5 million employment expenditure. Source: Meeting of SiLNoRF and Bread for all with Derek Higgs, Health, Safety, Social, Environment Manager, Addax Bioenergy, on June 6th, 2012.

¹⁸ The affected landowners will receive USD 3.20 per acre (50% of USD 3.6 plus USD 1.4) (or USD 7.9 per hectare as one hectare is 2.47 acre). In total, Addax will pay for 44'000 ha of land). The total land lease fees for landowners will be as follows: 44'000 hectare x USD 7.9 per hectare = USD 348'000.

¹⁹ The District Councils and Chiefdom Councils will receive USD 1.44 per acre (40% of USD 3.6) (or USD 3.56 per hectare as one hectare is 2.47 acre). In total the project will require an area of 14'300 hectare (source: African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis. P. 2). The total land lease fees for the district and Chiefdom Councils will be as follows: 44'000 hectare x USD 3.56 per hectare = USD 157'000.

²⁰ The Government of Sierra Leone will receive USD 0.36 per acre (10% of USD 3.6) (or USD 0.89 per hectare as one hectare is 2.47 acre). In total the project will require an area of 14'300 hectare (source: African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis. P. 2). The total land lease fees for landowners will be as follows: 44'000 hectare x USD 0.89 per hectare = USD 39'000.

²¹ Please refer to the chapter "Tax analysis" for a detailed analysis on tax.

²² Addax will abstract a total amount of water of 80 million m3 per year (source: African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis. p. 1.) and will pay SLL 3 per m3 (source: Addax Bioenergy. 2010b. Memorandum of Understanding and Agreement between the Government of Sierra Leone, Addax Bioenergy Sierra Leone Limited and Addax & Oryx Holdings BV. Makeni). The total water fees paid by Addax will be SLL 240 million (USD 54'000) per year.

		Total: USD 293'000.	
Local suppliers	Unknown.	USD 6.3 million ²³ .	12%
Total value added		USD 52.6 million	100%

In the table above, one can notice that the main beneficiary of this project is the company and the development banks: Addax will receive an annual return of USD 42 million while the 2'000 workers will receive 6.7% of value added. Landowners who leased their lands will receive as lease fees 0.7% of value added (this corresponds to USD 2 per project affected person and per month). Even the District Councils, Chiefdom Administrators and the Government will get comparatively small amounts (and yet these small amounts are enough to ensure sufficient political support to the project, see Chapter on "Corruption and Collusion"). It is to note that Addax will pay no or little taxes as the Government of Sierra Leone granted several tax exemptions and deductions to the company (see Chapter "Tax analysis").

3. Climate impact of ethanol

The climate friendly nature of bioethanol was and is often praised as its main advantage. This was for a long time largely uncontested. However, in the last few years, scepticism has risen and several studies contested the climate friendly image of bioethanol and biofuel in general, highlighting the climate-harming impact of Indirect Land Use Changes (ILUC)²⁴, as these are not taken into account in life cycle assessment of biofuels. Indirect Land Use Changes relates to the "unintended consequence of releasing more carbon emissions due to land use changes around the world induced by the expansion of croplands for ethanol or biodiesel production in response to the increased global demand for biofuels²⁵". Indeed, natural lands, such as grasslands, store and sequester carbon in their soil and biomass as plants grow each year. Therefore the clearance of wilderness for new monoculture plantations translates in a net increase in greenhouse gas emissions, and "due to this change in the carbon stock of the soil and the biomass, indirect land use change has consequences in the GHG balance of a biofuel²⁶".

Even though the extent of the impact of ILUC is a contentious issue, the idea that ILUC can lessen the carbon saving contribution of biofuel is broadly accepted, including by the European Commission²⁷. A study made by the International Food Policy Research Institute (IFPRI)²⁸ on behalf of the European Commission **concludes that the GHG savings of sugar cane ethanol in Brazil compared to fossil fuel drops from 71% to 51% if ILUC is included.**²⁹ This gives the order of magnitude of the impact of indirect land use changes, which puts into perspective the claim made by Addax that its sugar cane ethanol saves 71% GHG emissions compared to fossil fuel³⁰ (since this figure does not take into account ILUC). The figure of 51% is actually very close to the greenhouse gas saving threshold of 50% required by the Renewable Energy Directive of the European Commission³¹.

²³ Addax claims to have awarded 12.7 million USD contracts to local contractors (April 10- March 12). On a yearly basis, this corresponds to USD 6.3 million. Source: <http://www.swedfund.se/wp-content/uploads/2012/05/Addax-Bioenergy-World-Bank-conference-on-Land-and-Poverty-26-April-2012.1.pdf>.

²⁴ Al-Riffai P., Dimaranan B., Laborde D. (2010). Global Trade and Environmental Impact Study of the EU Biofuels Mandate, IFPRI, p. 9.

²⁵ Wikipedia.org. Accessed under : http://en.wikipedia.org/wiki/Indirect_land_use_change_impacts_of_biofuels .

²⁶ Wikipedia.org. Accessed under : http://en.wikipedia.org/wiki/Indirect_land_use_change_impacts_of_biofuels .

²⁷ European Commission (2010) Report from the Commission on indirect land-use change related to biofuels and bioliquids. COM(2010) 811 final, 22 December. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0811:EN:HTML:NOT> (accessed 09.09.2011).

²⁸ International Food Policy Institute (2010), Global Trade and Environmental Impact Study of the EU Biofuels Mandate.

²⁹ Client Eearth et al., Joint submission for public consultation on indirect land-use Change, p. 22.

³⁰ African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis. p. 14.

³¹ European Parliament. 2009. Directive on the promotion of the use of energy from renewable sources. Accessed under: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0016:0062:en:PDF> Citation: „With effect from 1 January 2017, the greenhouse gas emission saving from the use of biofuels and bioliquids taken into account for the purposes referred to in points (a), (b) and (c) of paragraph 1 shall be at least 50 %. From 1 January 2018 that greenhouse gas emission saving

4. Environmental impact of ethanol

The carbon impact of ethanol is often praised as its main advantage (see previous chapter). However, GHG emissions are only one environmental impact among many others, like surface and ground water pollution, air and soil pollution, waste production, biodiversity destruction and resource consumption. Taking into account all environmental impacts gives a more accurate view of the overall impact of a project or a product. A study conducted by the EMPA³², a Swiss research institute, calculated that **ethanol from Brazilian sugarcane has a 30% resp. 200% higher environmental impact than low sulphur petrol depending on the impact assessment method used** (“ecological scarcity method” and “Eco Indicator 99”³³ respectively).

This means that, in Switzerland, the bioethanol of Addax would probably not be exempted from the mineral oil tax. **This because biofuels in Switzerland have to fulfil tough environmental requirements** (set in the Biofuels Ordinance) **to be granted an exemption**: they have to emit at least 40% less greenhouse gas emission than petrol. Moreover, their environmental impact (measured with the ecological scarcity method) cannot be more than 25% higher than the impact of petrol.³⁴ If biofuels do not fulfil these criteria, they are not exempted from the mineral oil tax. And without the tax exemption, biofuels cannot be economically viable.

5. Corruption and conflict of interests

Land Grabbing projects are known for high corruption risks. According to the UN Special Representative on the Right to Food, Olivier de Schutter, “there is no doubt that, in many cases, corruption is involved in such land deals”³⁵.

Moreover, Sierra Leone is ranked 134th out of 183 countries in the Corruption Perception Index³⁶ of Transparency International. The rating for Sierra Leone is 2.5, which means that Sierra Leone is considered as a highly corrupt country and that corruption is systematic within the country. **Given this context, the project of Addax Bioenergy could be exposed to very high corruption risks.**

This report strongly questions the compensation system under the Land Lease Agreement. The compensation system foresees that 20% of land lease fees go to the 3 Chiefdom Administrators, 20% to the 2 District Councils while the Government of Sierra Leone will receive 10%³⁷ (this means that the 3 Chiefdom Administrators will receive annual payments of USD 78'500, and the 2 District Councils USD 78'500). **This compensation system might have ensured the “cooperation” of every level of national and regional authorities**, as the District Council and the Chiefdom Administrators receive annual lease fees without suffering any damage. How can this compensation system prevent that they don't act in their own interests but rather in the interests of the landowners?

shall be at least 60 % for biofuels and bioliquids produced in installations in which production started on or after 1 January 2017.”

³² Zah, Rainer, et al. 2007. Life Cycle Assessment of Energy Products: Environmental Assessment of Biofuels. St-Gallen. EMPA, p. V and IX. Accessed here: <http://www.news-service.admin.ch/NSBSubscriber/message/attachments/8514.pdf>

³³ The “ecological scarcity” method permits impact assessments of life cycle inventories according to the “distance to target” principle. Eco-factors, expressed as eco-points per unit of pollutant emission or resource extraction, are the key parameter used by the method. Source: Swiss Federal Office of the Environment FOEN (2009). The Ecological Scarcity Method Eco-Factors 2006 *A method for impact assessment in LCA.* Berne. <http://www.bafu.admin.ch/publikationen/publikation/01031/index.html?lang=en>. The Eco Indicator 99 method is a damage oriented method for Life Cycle Impact Assessment. Source: Goedkoop, M. and R. Spriensma, The Eco-indicator 99: A damage oriented method for Life Cycle Impact Assessment. 2001, PRé Consultants B.V., Amersfoort, NL.

³⁴ Ordinance on Proof of the Positive Aggregate Environmental Impact of Fuels from Renewable Feedstocks (Biofuels Life Cycle Assessment Ordinance, BLCAO), of 3 April 2009. Accessed here: <http://www.admin.ch/ch/e/rs/6/641.611.21.en.pdf>.

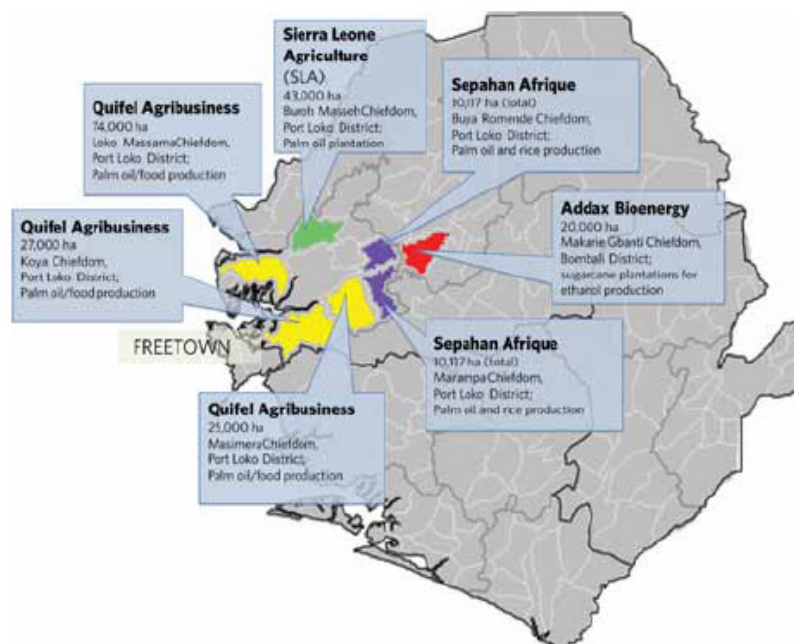
³⁵ Swiss Television, 20.06.2011. Schweizer Firma lässt afrikanische Bauern verzweifeln. Accessed under: <http://www.videportal.sf.tv/video?id=2cba21ec-d555-44f6-8bcb-371f17597c6a>.

³⁶ Transparency International. 2011. Corruption Perception Index 2011. Accessed under: <http://cpi.transparency.org/cpi2011/results/>.

³⁷ Calculations of Bread for all based on data included in African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis.

6. Land Grabbing in Sierra Leone

In June 2011, the Canadian think-tank, Oakland Institute, published a report where it identified at least 14 other investors in large-scale investment projects in Sierra Leone³⁸. The graph below shows some of the investment projects and their areas.



Overview of the Land Grabbing projects in Sierra Leone³⁹.

As of June 2011, the listed land lease agreements represented a **total area of 500'000 hectares**⁴⁰. This figure doubles if all land deals involving foreign carbon credit schemes and “preidentified” land availabilities are taken into account⁴¹. This represents between **9% and 18% of Sierra Leone’s land suitable for cultivation** (5.36 million hectares). One open question is the **cumulative impact of these 15 land deals on Sierra Leone’s food security and food sovereignty**, now and in the next decades.

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

³⁸ Oakland Institute. 2011. Understanding Land Investment Deals in Africa. Country Report: Sierra Leone. Oakland. P. 22-23. http://media.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_SierraLeone_Land_Investment_report_0.pdf

³⁹ Oakland Institute. 2011. Understanding Land Investment Deals in Africa. Country Report: Sierra Leone. Oakland. Accessed under: http://media.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_SierraLeone_Land_Investment_report_0.pdf

⁴⁰ Oakland Institute. 2011. Understanding Land Investment Deals in Africa. Country Report: Sierra Leone. Oakland. P. 1. http://media.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_SierraLeone_Land_Investment_report_0.pdf

⁴¹ Oakland Institute. 2011. Understanding Land Investment Deals in Africa. Country Report: Sierra Leone. Oakland. P. 1. http://media.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_SierraLeone_Land_Investment_report_0.pdf

7. Misconception on land availability

In November 2011, the Sierra Leonean NGO Green Scenery supported by the Canadian think-tank Oakland Institute, published a briefing⁴² stating that “it is frequently said that just 15 percent of the country’s arable land is under cultivation, suggesting that the rest is available for long-term lease [...] to foreign investors”. However, this fact is a “misconception” according to an in-depth study⁴³ commissioned by the German Ministry of Economic Development and Cooperation. The study states that “**there is no remaining potential to significantly enlarge the area under cultivation** anywhere in Sierra Leone” and warns that if the large-scale commercial farm investments continue, “**a major conflict over land for subsistence food production is pre-programmed**”. This conflict potential is particularly worrying in Sierra Leone, a country that is recovering from a civil war. The study calls for a “reality check” on arable land and productive capacity.

8. Malnutrition in Sierra Leone

Civil Society Organisations (CSOs) raise concerns regarding the production of biofuels for export in a country which is **not food self-sufficient as it has to import 80’000 tonnes of rice in 2010**⁴⁴ and where malnutrition is responsible for one of the **world’s highest child and mother mortality**⁴⁵. Unintended but possible effects of investment projects have to be taken into account in order to prevent undesired backlashes or other risks (according to the “do no harm” principle).

9. Involvement of development banks

In June 2011, Addax announced that it got the support of several development banks⁴⁶, namely:

- the African Development Bank (AfDB),
- the Emerging Africa Infrastructure Fund (EAIF),
- the Netherlands Development Finance Company (FMO),
- the German Development Finance Institution (DEG – Deutsche Investitions- und Entwicklungsgesellschaft mbH),
- the South African Industrial Development Corporation (IDC),
- the Belgian Development Bank (BIO), together with Cordiant managed ICF Debt Pool.

These institutions provide debt financing of EUR 133 million.

Moreover, the Swedish Development Fund (Swedfund) and FMO will join the mother company of Addax Bioenergy, Addax & Oryx Group, as equity partners (i.e. they will buy shares of this company). The total size of the investment is estimated at EUR 258 million⁴⁷.

⁴² Green Scenery. 2011. Green Scenery Briefings: Land Investment Deals in Sierra Leone September 2011. Accessed under: www.greenscenery.org.

⁴³ Bald, Joachim and Schröder, Peter. March 2011. Study on Rural and Agricultural Finance in Sierra Leone: Product Innovation and Financial Access. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) and German Federal Ministry for Economic Development and Cooperation (BMZ). Cited in : Green Scenery Briefings: Land Investment Deals in Sierra Leone September 2011. Accessed under: www.greenscenery.org.

⁴⁴ Oakland Institute. 2011. Understanding Land Investment Deals in Africa. Country Report: Sierra Leone. Oakland. P. 10. Accessed under: http://media.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_SierraLeone_Land_Investment_report_0.pdf

⁴⁵ World Food Programme. 2010. WFP in Sierra Leone: Annual report 2009. Freetown. <http://www.wfp.org/sites/default/files/Sierra%20Leone%20Annual%20Report%202009.pdf>

⁴⁶ Addax Bioenergy Signs Loan Agreement for EUR 258 Million Renewable Energy Project in Sierra Leone, Press release of Addax Bioenergy of June 17th, 2011. Accessed under: www.addax-oryx.com.

This means that 52%⁴⁸ of the Addax Bioenergy project is financed by development banks (i.e.) and 48% by the company. It is worrying that **such a project can be financed with taxpayers' money under the name of "development"**.

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

10. Destruction of bush and biodiversity

According to Addax, the planned sugarcane monoculture on more than 10'000 hectares "has the potential to further impact on biodiversity"⁴⁹ in the project region. As compensation, Addax Bioenergy will protect 1800 hectares of forests that are not cleared and renamed "ecological corridors"⁵⁰. On its website, the company claims to have completed the planting of 3'500 trees⁵¹.

The company claims to avoid forests with its project⁵². However, a closer look on the types of cleared vegetation leads to the conclusion that 4,000 hectares of bush⁵³ (mainly lophira scrubland) will be cleared to make space for the sugar cane monoculture.

11. Gender aspects

According to Sierra Leonean law, women cannot be landowners in the North of Sierra Leone⁵⁴ (where the Addax project is located). Therefore they cannot be entitled to receiving any land lease fee from Addax. **This situation has the potential to worsen their situation.** Moreover, CSOs could witness that very few Sierra Leonean women were employed by Addax, even as casual workers⁵⁵. A plausible justification is that the work of casual workers is considered to be very hard and requires strength, which is normally attributed to men.

⁴⁷ Addax Bioenergy Signs Loan Agreement for €258 Million Renewable Energy Project in Sierra Leone, Press release of Addax Bioenergy of June 17th, 2011. Accessed under: www.addax-oryx.com.

⁴⁸ EUR 133 million from development banks out of a total of EUR 258 million. This is 52%.

⁴⁹ "Although previous farming activities by the local population, including de-forestation and slash and burn agriculture have adversely affected most original bio-diversity in the area, the nature of the Addax project, introducing industrial activities and monoculture, has the potential to further impact on biodiversity". African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis. p. 12.

⁵⁰ African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis. p. 1.

⁵¹ Addax Bioenergy website. 2011. www.addax-oryx.com.

⁵² African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis. p. 1.

⁵³ African Development Bank. 2010a. Executive Summary of the Environmental, Social and Health Impact Assessment. Tunis. p. 7.

⁵⁴ Food and Agriculture Organisation. 2006. Land tenure, food security and investment in postwar Sierra Leone. Rome.

⁵⁵ SiLNoRF and Bread for all field visits, May 2011-June 2012.

12. Compliance with the Human Right to Water

The compliance of the Addax Bioenergy project in Sierra Leone with the Human Right to Water has been analysed in a separate report⁵⁶ written by WaterLex in October 2011. The following text highlights the key findings of this report.

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

Several aspects of the project presents high risks which could lead to complicity in violations of the human right to water of the local population during and after the implementation period of the project.

The report identifies in particular **lack of guarantees to ensure local population's access to safe drinking water given the destruction of some traditional drinking water collecting points by the company, the ground water pollution by Nitrates and Phosphates which are to occur through the project and the lack of purification systems available to the local population.** Further it also identifies risks for the mere access to sufficient water downstream during the dry season. Indeed, regarding the water abstraction from the River Rokel (Sierra Leone's biggest river), the report revealed **that the project will use 26% of the river flow during the driest months** (February to April), without consideration for downstream users. **This figure is not acknowledged by the company, as it tends to refer only to an annual average of 2% water abstraction.**

13. Right to access justice

CSOs are concerned about the provision stated in section 5.2(a) and (d) of the Land Lease Agreement⁵⁷ (LLA) which might prevent the local population from suing the company before national courts in Sierra Leone:

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

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

The usual purpose of such external arbitrator is to prevent a host State to apply arbitrarily its “police power”. **Given the universality of human rights commitments, such arbitrariness can't be justified today. Further, arbitrators tend to apply only international investment and commercial law, rather than all laws *ratione materiae* applicable to the case (i.e. such as international human rights law).** Finally, jurisprudence has shown that arbitrators have had the tendency in the past to interpret narrowly the State exemption on the basis of “police power” and quite broadly ‘indirect expropriations’ to the extent that States became limited in their legislative activity even in areas of labor, environment and human rights.⁵⁸

⁵⁶ WaterLex. 2011. Addax Bioenergy – Sugarcane-to-Ethanol Project compliance with the Human Right to Water. Geneva. Available at: http://www.waterlex.org/resources/documents/2011-HRIA_AddaxBioenergy.pdf.

⁵⁷ Addax Bioenergy. 2010. Land Lease Agreement. Accessed under: <http://farmlandgrab.org/uploads/attachment/ADDAX%20-%20Land%20Lease%20Agreement.pdf>

⁵⁸ For more information see, HAMILTON, Calvin; ROCHWERGER Paula, “Trade and Investment: Foreign Direct Investment through bilateral and multilateral Treaties”, Winter 2005, 18 N.Y. Int'l L. Rev. 1.

14. Right to compensation

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

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

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

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

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

Part III: Other concerns from CSOs

1. Using food crops for biofuel production

The Addax project intends to transform food crops (i.e. sugarcane) into ethanol for cars in the EU. The EU's biofuel target of 10% of biofuel by 2020 has created a large demand for biofuels and many projects, like the Addax one, have started as a response to the biofuel demand created by the EU target. This EU's biofuel target has however many negative consequences on the Global South.

Among these, the following consequences are the most worrying:

- The EU's biofuels policies alone could push up **oilseed prices by up to 33%, maize by up to 22%, sugar by up to 21% and wheat by up to 10%**, between now and 2020⁵⁹.
- Achieving a 10 per cent biofuels share in transport fuel globally by 2020 **could put an extra 140 million people at risk of hunger**, with the poor urban population, subsistence farmers and the landless in developing countries particularly at risk⁶⁰.
- **Biofuels may drive more than 50% of large-scale land acquisitions globally, and 66% in Africa**⁶¹.

Even "BioFuels Switzerland" (the Swiss association for biofuels) has a "very clear position" on the food vs. biofuel debate. On its website, it states: "Food crops must first be used for human food, then animal feed and lastly for biofuel production⁶²".

The former World Bank's President, Robert Zoellick, also stated in 2008 that "while many worry about filling their gas tanks, many others around the world are struggling to fill their stomachs. And it's getting more and more difficult every day⁶³".

As of September 2012, the European Union planned to impose a limit on the use of crop-based biofuels over fears they are less climate-friendly than initially thought and compete with food production⁶⁴. CSOs warmly welcome this move which would represent a major shift in Europe's much-criticised biofuel policy. Many CSOs considered that the EU's 2020 biofuel target was flawed from the outset.

⁵⁹ ActionAid. Fuel for thought. Addressing the social impacts of EU biofuels policies. April 2012. Accessed under: http://www.actionaid.org/sites/files/actionaid/fuel_for_thought.pdf.

⁶⁰ Oxfam International. EU renewable energy strategy ignores impact of biofuels on food security. June 2012. Accessed under: <http://www.oxfam.org/fr/node/26506>.

⁶¹ International Land Coalition. Land Rights and the Rush for Land. Findings of the Global Commercial Pressures on Land Research Project. January 2012. Accessed under: http://www.landcoalition.org/sites/default/files/publication/1205/ILC%20GSR%20report_ENG.pdf.

⁶² Biofuels Platform (internet site). Accessed under: <http://www.biofuels-platform.ch/en/infos/food.php>.

⁶³ Larry Elliott and Heather Stewart (2008-04-11). "Poor go hungry while rich fill their tanks". London: The Guardian.

⁶⁴ EurActiv. EU proposal would limit use of crop-based biofuels. September 2012. Accessed under: http://www.euractiv.com/climate-environment/eu-legislation-limit-use-crop-ba-news-514714?utm_source=EurActiv%20Newsletter&utm_campaign=10ec3d04c1-newsletter_climate_environment&utm_medium=email

2. Change in law clause

Addax received an exemption to comply with any new law that has a “material adverse effect” on Addax and its contractors. This so-called “change in law clause” is laid out in the Memorandum of Understanding⁶⁵ signed between the company and the Government of Sierra Leone. The Government of Sierra Leone undertakes to grant to Addax and its contractors an exemption to comply with certain new laws to ensure that Addax interests, rights and economic return are not materially adversely affected⁶⁶. CSOs are concerned about this clause which **prevents the Government of Sierra Leone from ensuring that Addax complies with all laws in Sierra Leone.**

3. Price of electricity sold

The National Power Authority entered into a Purchasing Power Agreement with Addax Bioenergy. According to this agreement, the NPA has to buy the electricity from Addax at a price of 20 US cent per kWh. This price is laid out in the Memorandum of Understanding⁶⁷ signed between the company and the Government of Sierra Leone. **This price seems to be too high as the price of electricity produced by the Bumbuna Hydroelectric Project (the main source of electricity in Sierra Leone) is 11 US cent per kWh⁶⁸.**

⁶⁵ Addax Bioenergy. 2010b. Memorandum of Understanding and Agreement between the Government of Sierra Leone, Addax Bioenergy Sierra Leone Limited and Addax & Oryx Holdings BV. Makeni. Accessed under: <http://farmlandgrab.org/uploads/attachment/ADDAX%20MOU0001.pdf>

⁶⁶ Addax Bioenergy. 2010b. Memorandum of Understanding and Agreement between the Government of Sierra Leone, Addax Bioenergy Sierra Leone Limited and Addax & Oryx Holdings BV. Makeni. Accessed under: <http://farmlandgrab.org/uploads/attachment/ADDAX%20MOU0001.pdf>

⁶⁷ Addax Bioenergy. 2010b. Memorandum of Understanding and Agreement between the Government of Sierra Leone, Addax Bioenergy Sierra Leone Limited and Addax & Oryx Holdings BV. Makeni. P. 11. Accessed under: <http://farmlandgrab.org/uploads/attachment/ADDAX%20MOU0001.pdf>

⁶⁸ African Development Bank, APPRAISAL REPORT SUPPLEMENTARY LOAN, BUMBUNA HYDROELECTRIC PROJECT. Accessed here: <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/SIERRA%20LEONE%20-%20Bumbuna%20Hydroelectric%20Project%20-%20APPROVED.pdf>

Conclusion

This paper described the issues of concern regarding the sugarcane-to-ethanol project of Addax Bioenergy in Sierra Leone.

All these issues of concern will have to be monitored in the future to assess the true impacts of the project on the affected persons, on the region and on the country as a whole, and this during the next 50 (or even 70) years.