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# Sierra Leone

## Sierra Leone Land ASA

### Policy Note

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# Support to the Sierra Leone Land Agenda (P169681)

## Policy Note

Authors (in alphabetical order): Rexford Ahene, Arvydas Bagdonavičius, Alvaro Federico Barra, and Claire Galpin

### 1. Summary

Land administration in Sierra Leone is a complex issue. A dual land tenure system linked to the colonial period remains in effect. The preservation of the dual systems is a political compromise between competing interests of elites supporting freehold versus customary tenure. Land in the Western Area is administered under freehold with transactions registered with Office of the Administrator and Registrar General (OARG) under the Ministry of Justice while the vast majority of the country is under multiple customary tenure systems. The current process of registration in Freetown is ineffective and disorganized, leading to a widening gap in the credibility of both the cadaster and registry. The cadaster in the Western Area is outdated and inaccurate. Surveying quality is inadequate due to lack of trained surveyors in modern electronic surveying and mapping techniques, and a shortage of equipment. The Registrar General, whose physical presence is limited primarily to urban areas, registers transactions in land with minimal due diligence, further undermining tenure and creating considerable space for land disputes. The weakness of the Land Administration system has contributed to an environment where collection of taxes remains difficult, land markets distorted, and urban planning and the associated disaster risk management is undermined as evidenced by the destruction near Freetown caused by mudslides in September 2017.

The legal framework for the administration of land rights in the provinces is provided by the Provincial Land Act of 1961 which emanated from the Protectorate Ordinance of 1927 and the Tribal Authorities Ordinance of 1938. The law makes certain land held under customary tenure in the provinces is the property of indigenous land-owning families and that Paramount Chiefs or traditional rulers are not land owners but serve as trustees of such family property. Because of variations in customary land law practices among different ethnicities, there is no single, coherent and integrated prerequisite to secure property rights in the provinces; that is, right to responsible land governance activities which include the right to access and use, right to manage, right to generate income, land allocation, land development, transfer rights and even the right to compensation, demanding high standards of ethics, integrity and accountability is lacking. Thus, although the legal framework affirm customary land in the provinces cannot be bought or sold, it does not provide any safeguard mechanisms, no protective oversight and no redress/complaint mechanisms for dealing with violations. There is also limited strategic coordination between the traditional conflict resolution institutions and Civil Society initiatives in the provinces and the statutory courts. Increases in population and the advent of new rural investment trends have increased the demand for leaseholds and public infrastructure.

Most of the confusion and contradictions dominating the typology of land issues in the provinces emanates from the general absence of well-established cadastral boundaries. Boundary disputes between Chiefdoms, between communities, between communities and private individuals or investment corporations, and between extended families and individual households within families are some of the

most frequent source of conflict. Another category of issues includes situations where community land rights as well as property rights of men and women and perceptions of property rights between one or more claimants are in conflict. This is often complicated by corruption, mismanagement and gender-based discrimination. Similarly challenges due to uncertain ownership and access rights by adjacent communities with historical claims to protected areas, and the occupation of family property by long-term migrants also pitches customary tenure rights against public policy in the provinces.

## 2. Land Administration in Sierra Leone

An effective Land Administration System is crucially important for Sierra Leone. Land information is the prime requisite for making decisions related to land tenure, effective use, valuation and management. Information reduces uncertainty by helping to identify and analyze problems.

***Currently the Land Administration system does not allow for effective and successful problem resolution, as the National Land Policy is not implemented*** – many existing laws and regulations are outdated and do not meet the modern requirements, property unit formation and survey system is manual, land survey technologies are outdated and inaccurate, number of specialists is insufficient and the existing specialists do not meet the required qualifications, there is no unified and reliable system for Land data registration and storage. ***Property management procedures are long, unreliable (many decisions are verbal), expensive and do not guarantee the protection of the rights of the property user and/or owner.***

The new National Lands Policy of Sierra Leone aspires to gradually formalize land transactions while respecting the customary systems. Mandatory land transaction recording and registration could be an effective step towards the implementation of land related policy. In parallel, communication and sensitization campaigns would be carried out to avoid situations where ignorance of the requirement to register land on a first served basis may violate the rights of genuine land owners because their land could be registered to somebody more familiar with the system. The constitutional provisions in Sierra Leone stipulate that the rights holders are guaranteed a right to access the justice system to remedy a breach, however this judicial system is not reliable, and may not be accessible or may not necessarily result in timely and just decisions.

Currently, only a tiny percentage of all kind of lands in the rural and urban areas are mapped and recorded. In the Western Areas, lands are recorded in the Office of the Administrator and Registrar-General (OARG)<sup>1</sup>. In the same way, local government bodies such as local councils and the Ministry of Lands, Housing and Environment (MLHE) have only a rough inventory of lands owned under the customary system. Therefore, there is no stand-alone data on land parcel registered. Recording and mapping land would greatly improve urban land planning and security, and in rural area reduce land grabbing and reduce the complexity of negotiations between agribusiness enterprises and landowners.

### a. Land Tenure System

Historical reasons leading to the Colonial period have determined the dual land tenure system in Sierra Leone. A strong political and administrative division between the Colony (currently Western Areas) and

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<sup>1</sup> For instance, only 200 land transactions were recorded in the official land register in 2006 (Williams and Oredola-Davies, 2006)

the Protectorate (currently the Provinces) was established during the Colonial era, and this has resulted in two types of governance systems:

- **Western area** – freehold system based on “general law” that includes common law, the doctrines of equity and all enactments of the legislature in force in Sierra Leone, as well as the received English Law in force from 1880 to date.
- **Provinces** – customary law, based on the traditions, culture and customs of the ethnic groups, is applied in the rural areas. Customary laws vary from one ethnic group to another, they are often unwritten and subjected to the whims of chieftom heads, families or communities. Despite its apparent weaknesses customary land tenure system is still operative and functional, and though customary rights are not adequately protected, they are legally recognized. The Provinces are governed through a customary system of 190 chiefdoms. Local administration coordinated through Paramount Chiefs and chiefdom councils, with section or sub-chiefs.

Dual land tenure system foresees the inheritance of land within a family in the Provinces, but in Western Area it allows land sale and lease in Freetown and its environs. The competition between the land buyers in the Western Area is fierce, and most of them have the aim of erecting a building on the land plot acquired. Illegal land sales are a huge problem in the Western Area and this can be illustrated by the number of land cases in local courts, which is about 50% of all the cases<sup>2</sup>. The ways of obtaining a land plot other than the land sale may be through allocation, inheritance, gift, clearing or adverse possession. In contrast to the Western Area land acquisition in the rural areas is mainly hereditary and land is considered the property of natives who can be either a family or a community/village.

The land tenure system in Sierra Leone is based on registration of instruments of conveyance, meaning that the conveyance itself confers title. The General Registry in the OARG is the depository of “all registers, instruments, and records and copies thereof” as are directed by any act to be delivered to and deposited with the Registrar General (Section 5). Section 19 of CAP 256 stipulates that where under any act a land is required to be registered, such registration should be done in the Administrator and Registrar’s Office, and that the Registrar General shall keep such registers as is prescribed under the Act.<sup>3</sup> The Registrar-General has a duty to ensure that the document is properly drawn, signed and witnessed, and authorized by a legal practitioner. The Registrar-General does not investigate the title and therefore does not guarantee the legal validity of the document, but merely ensure that its existence can be established by an enquirer. However, a ***system of registration of deeds or instruments provides a public record evidencing a transaction has taken place but is relatively unreliable because it is not legal proof of ownership***. Proof of ownership rests within the jurisdiction of the courts. It is also important to mention laws applicable to land ownership and registration do not require neither the disclosure of beneficial land ownership nor the disclosure of the identity of beneficial owners.

***The Sierra Leone Government is in the process of implementing a new land policy that will allow the introduction of a land title registration system.*** The system of land title registration will adequately secure land rights, and will permit those rights to be traded efficiently, simply, quickly, and at low cost. It is envisaged that it will be introduced on a gradual basis, starting with the Western Area. It makes for

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<sup>2</sup> World Bank Group. 2018. Freetown: Options for Growth and Resilience. World Bank, Washington, DC. © World Bank. <https://openknowledge.worldbank.org/handle/10986/31286> License: CC BY 3.0 IGO.

<sup>3</sup> <http://www.sierra-leone.org/Laws/Cap%20256.pdf>

accurate and up to date maintenance of land records, that supports the safe and secure transfer of title, thus ensuring the security of credit against property assets.

The success of a land title system will however depend on the establishment of the required legal and institutional framework to support it such as a good cadastral system which unequivocally define the property units, their ownership, and record any financial or other encumbrances placed on them.

#### b. Legal Basis

Sierra Leone's **Constitution of 1991**<sup>4</sup> acknowledges the existing dual land tenure system. It endorses the right to property and preserves the rights and freedoms of the individual, including the protection from expropriation without payment or adequate compensation, and guarantees the protection from deprivation of property including compulsory possession. However, the Constitution does not address the land transfer or the ownership of land.

Because all ethnic groups in Sierra Leone practice patrilineal decent, except the *Sherbros*<sup>5</sup> who practice matrilineal decent in family holdings, the prevailing customary law with respect to succession, marriage and other family matters severely discriminates against women. ***Under customary family law, women have less access to and control over land than men.*** In fact, in traditional customary law, the wife was herself considered property of the husband and whatever the wife owned devolved to the surviving husband on her death. **The Devolution of Estates Act of 2007** removed the customary prohibition against women owning property and made men and women equal in the distribution of estate. However, in many cases, women are denied the right to inherit and own land. In Sierra Leone's dominant patrilineal and patrilocal rural communities, a woman's continued interest in land and property owned by her husband remains dependent on two factors; whether she bore children with the husband or she chooses to remarry the male relations of her deceased husband. In the absence of these factors, a widow or divorced woman loses every right or interest in her husband's property.<sup>6</sup>

Another important act in the land administration system is the **State Lands Act No. 19 of 1960**<sup>7</sup>, which is only applicable to the Western Area. It foresees the situations where the government may want to acquire certain lands in order to undertake 'public works in the Western Area. According to the Sec. 3 of the Act, the Minister can authorize his agents or servants to enter into any land to survey and do other acts as may be necessary with a view to appropriating such land. Where the Minister together with Parliament decides that such land is needed for Public works, the Minister is then to issue a warrant to direct that such land should be acquired for the service of the State.

**Local Government Act of 2004**<sup>8</sup> concerns local councils (including District Councils) and grants them power to acquire and hold land with *responsibility for the development, improvement and management*

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<sup>4</sup> [www.sierra-leone.org/Laws/constitution1991.pdf](http://www.sierra-leone.org/Laws/constitution1991.pdf)

<sup>5</sup> The Sherbro people are a native people of Sierra Leone, who speak the Sherbro language; they make up 3% of Sierra Leone's population or about 201,000. The Sherbro are found primarily in their homeland in Bonthe District, where they make up 45% of the population, in coastal areas of Moyamba District, and in the Western Area of Sierra Leone, particularly in Freetown.

<sup>6</sup> According to a 2013 survey by the Ministry of Social Welfare, Gender and Children's Affairs, nearly 60% of rural women are illiterate and unaware of the legal protections for women. Only 28% of rural women had access to adequate farm land, while 32% did not.

<sup>7</sup> [www.sierra-leone.org/Laws/1961-37.pdf](http://www.sierra-leone.org/Laws/1961-37.pdf)

<sup>8</sup> [www.sierra-leone.org/Laws/2004-1p.pdf](http://www.sierra-leone.org/Laws/2004-1p.pdf)

*of human settlements* (under Sec. 20 (2) (d) of the Act). Subsection (e) also provides that local councils shall *draw up and execute development plans*. Subsection (j) provides that local Councils shall *approve the annual budgets of Chiefdom Council*. The Act also included a detailed timetable for the execution of decentralization process by transferring functions from central government to local councils. It stated that the MLHE will pass over land surveying by 2008, survey units within local councils will be established starting 2006, training will commence 2007, actual surveying by 2008, including setting up land registration units, training and commencement of registration, and collection of data for land use planning shall be passed over by 2007. However latter timetable was not implemented.

**Unoccupied Lands Act, Cap 117 of Laws of Sierra Leone 1960**<sup>9</sup> provides the definition of Unoccupied Lands, stating that it is a land not proved by the person who is claiming it that beneficial use thereof for cultivation or inhabitation, or for collecting or storing water or for any industrial purposes, has been made for twelve years before the commencement of this Act. By Sec. 3 of this legislation, it is provided that whenever the Director of Surveys and Lands is of the opinion that any land is unoccupied land, it shall be lawful for him to cause such land to be marked out and a notice to be posted on a conspicuous part of the land that such land is 'Claimed as state Land'. Such notice is to be signed by the Director of Surveys and Lands and dated.

**The General Registration of instruments Act Cap 255, Act, Cap 256 of 1960**<sup>10</sup> provides a list of conditions for the registration of different legal instruments, such as the time limits within which certain legal instruments are to be registered, as well as the territory where such documents are to take effect (West Area or the Provinces). By Sec. 11, the Registrar-General is empowered to register any State Grant upon the production and request of the holder of such grant, and to cause to be copied and registered in a Register Book kept for that purpose. Each instrument (except for the will) is required to have a certificate of registry and a plan of the land signed by the person who made it, describing the land or referring to the allotment of land as numbered or described in the instrument of conveyance from the State.

Access to land information is yet another example of how existing legal provisions differ from actual situation. **Right to Access Information Act, 2013.7111** adopted by the government of Sierra Leone stipulates that "every person has the right to access information held by or under the control of a public authority...(or) a private body." and information requests must be complied with "as soon as possible, and in any event within fifteen working days of receipt of the application." However latter commitment has not been fulfilled and the existing land records in Sierra Leone are not accessible to the public. This is due to several reasons. First of all, the government has failed to deliver the implementation plan, secondly the institutions involved in land administration have neither tracked the land transactions nor properly maintained the existing land records, therefore in most cases access to the information cannot be granted as the information does not exist. Only less than 50% of records on private land are recorded in the registry can be identified in maps. What is more the maps are also outdated and do not reflect the current situation. Yet another issue is the lack of information and illiteracy, many people are not aware of their right to request for information or they are simply unable to submit requests for information.

**Effective and sustainable land management is one of the government's strategic objectives in Sierra Leone.** It was indicated as one of the priorities in the Agenda for Prosperity (AfP) for 2013-2018, which was the economic strategy paper of the country, and in the current Medium-term National Development

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<sup>9</sup> [www.sierra-leone.org/Laws/Cap%20117.pdf](http://www.sierra-leone.org/Laws/Cap%20117.pdf)

<sup>10</sup> <http://www.sierra-leone.org/Laws/1960-19.pdf>

<sup>11</sup> <http://www.sierra-leone.org/Laws/2013-02.pdf>

Plan (2019–2023) (thereinafter – MTNDP). The main distinction of the MTNDP from previous plans is said to be its emphasis on the implementation and result tracking. One of the policies' sub-clusters indicated in the MTNDP is the Land and Housing, the main strategic objective of which is to ensure effective land management and administration that is environmentally sound and sustainable for equitable access to and control over land, including providing affordable housing for low- and middle-income groups to alleviate poverty and promote economic growth. The MTNDP suggests that managing the country's valuable land resources and scarce housing stock is the precondition for achieving sustainable development and social inclusion.

### c. National Land Policy 2015

The National Land Policy Reform Project was established by the MLHE, in collaboration with the Recovery for Development Unit of the United Nations Development Program, following a meeting that took place in Freetown in 2010. Latter meeting attracted key stakeholders to discuss major findings from the Scoping Mission Report on Key Land Tenure Issues and Reform Processes in Sierra Leone. The resulting Draft Land Policy was skewed towards urban land use planning and was rejected for its lack of completeness. However, in 2014, the Government of Sierra Leone requested technical assistance from FAO to use the VGGT multi-stakeholder consultations to undertake a more comprehensive public dialogue on all land governance issues in Sierra Leone. At the end of FAO consultations, a new VGGT compliant National Land Policy for Sierra Leone was drafted, and the provisions discussed in a second round of public consultations before it was approved in 2015<sup>12</sup>.

**The NLP recognizes land rights as a human right and gender equitable rights for access, distribution and ownership for all citizens.** It identifies the vital role land plays in supporting livelihoods, its function as a basis for infrastructure, service provision, and economic development and affirms the use of land as an asset for the benefit of the people and communities of Sierra Leone. This policy manifests the aspiration to move towards a clearer, more effective and just land tenure system that shall provide for social and public demands, stimulate responsible investment and form a basis for the nation's continued development. The policy proposes radical changes in land administration and management and outlines the new institutional framework for achieving this purpose. It presents best practices and ambitious plans for protecting land rights, ensuring equitable access to land, guaranteeing security of tenure, getting communities involved in land management and creating better conditions for major land investments.

NLP is only a framework, therefore in order for it to have a binding effect, the government of Sierra Leone should have moved quickly to enact the implementing legislation. However, partly due to the lack of political commitment, limited financial resources, lack of wider private sector engagement and other obstacles that have delayed its implementation the NLP reform initiative remain stagnant and without teeth. Therefore, ***the future implementation of the new institutional framework and tenure reforms in the provinces recommended by the NLP framework remains a priority.***

**The main idea behind the Land reform introduced by the NLP is to harmonize dual land tenure system** by expanding land surveying and registering of lands from the Western Area to the Provinces. Therefore, the main tool for improving land title management and strengthening the rights of land users should be

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<sup>12</sup> <http://extwprlegs1.fao.org/docs/pdf/sie155203.pdf>



surveying and registration. NLP has also provided for separation of title registration system for land titles from the existing deed registration.

Regarding institutional changes, NLP provided a scheme introducing land commissions and committees, which would be established at national, district, chiefdom and village levels in order to ensure the proper management of land titles. **National Land Commission would be the central body that would introduce and operate the new land title registration system** and would also be responsible for managing public and government-owned land previously overseen by the MLHE.

The NLP has also allowed for foreign enterprises and individuals that are not citizens of Sierra Leone, to acquire land title at a district level under a 50-year lease rights. However, a threshold has been introduced stating the maximum land area acquired for any single investment should generally not exceed 5000 hectares.

#### d. Institutions Involved in Land Administration

Dual land tenure system has stipulated the institutional fragmentation in Sierra Leone. **Responsibility for land tenure, management and administration is spread throughout several governmental institutions which makes it impossible properly coordinate their actions and avoid overlaps.** Most often those institutions are underfunded and lack resources for basic operational need and it aggravates the situation even further, therefore there is an eminent gap between the existing legal provisions and actual situation. The main institution operating in land sector is the Ministry of Lands, Housing and Environment, however it lacks the capacity to coordinate and enforce compliance. The 2004 Local Government Act grants local councils the right to acquire and hold land, and it gives them the responsibility to create Development Plans. The Chieftaincy Act of 2009 establishes that the paramount chiefs are responsible for tax collection and for the promotion of improved land governance aimed at ensuring development at the regional level. In 2015, the government agreed on the principles guiding land tenure in the country; the 2015 National Land Policy promotes the protection of national and communal land and calls for the protection of existing rights of private ownership and the engagement of the private sector as the engine for the growth and development of the country. In fact, the process of decentralization in Land Administration is sluggish at best, and the dominant role of central government persists. Despite initial expectations that local municipalities will take over various functions of Land Administration, the powers of decision-making and control remains within MLHE.

#### *Ministry of Lands, Housing and Environment*

MLHE is the leading institution responsible for all land related matters in the country, such as land acquisition and transfer, land ownership and use, and national development in a planning capacity. It provides advisory services to the public on land matters as well as physical planning and management of the forestry resources.

There are four divisions of the MLHE: Administration; Environment; Housing; Surveys and Lands. Latter Surveys and Lands division has the mandate to develop State topography, in particular: to provide cartographic and topographic data; implement a standardized national coordinate system; survey all lands (including urban, sub-urban, and rural territories); demarcate private and state land boundaries, conduct a comprehensive registration of land titles; compile and maintain a comprehensive record of lands in the country; map and provide relevant statistics on total land parcel mapped and unmapped nationwide.

The Surveys and Lands Division at MLHE is entrusted with a task to prepare land use plans. In the course of implementing its functions the Surveys and Lands Division verifies the accuracy of surveying computations submitted by Licensed Surveyors for private land and by Government Surveyors for State Lands, however the Division is not empowered to verify ownership of land.

Some tasks of other ministries such as Ministry of Works, Housing and Infrastructure (MWHI) are closely related to those performed by the MLHE. The Housing Department of the MWHI conducts a Housing Needs Assessment, therefore it could cooperate with the MLHE in order to provide land for such housing development, and however there is no proper collaboration between the two institutions. The Housing Department should also issue construction permits based on approved Survey Plans and Planning Permits obtained from the MLHE, but the Planning Permits are no longer been issued by MLHE.

#### *Office of Administrator and Registrar General*

The Office of Administrator and Registrar General (OARG) has its headquarters in Freetown with branch offices in Bo, Makeni and Kenema, and is mandated to ensure an efficient and effective administration of and registration of entities such as business registration, land transactions, industrial property, marriages and administration of the estates of deceased persons as mandated by law. The OARG is supervised by the Office of the Attorney General and Ministry of Justice.

Following the General Registration Act of 1960 (Cap 256), the OARG is responsible for registering land instruments (survey plans and conveyances), however registration by the OARG does not provide the security of tenure and cannot be used as legal proof of land rights. Such registry of deeds or instruments is only considered as an evidence that a transaction has taken place, therefore courts have the discretion to determine who has rights to land. The OARG does not maintain a cadaster, therefore boundaries, location and rights are not recorded and the OARG relies heavily on the data provided by the MLHE, such as cadastre information from all survey plans that have been signed and sent on a weekly basis (“weekly returns”). An attempt has been made to automate the link between OARG and MLHE for land document transfer, however it has ended without any meaningful results.

The OARG is financed from the budget funds as it is not self-sustainable and could not cover its operating costs through fee collection as such fees only cover 50% of the total registry operating cost. This is due to the following reasons: property owners do not declare the true value of their property due to high taxes; over 80% of the cost of land transaction cost is paid to the private surveyors and lawyers, which discourages most people from utilizing the official systems and probably results in far less revenue being generated to government than if much lower costs were involved. Slow pace of government decentralization also impedes the rate and speed of registering property.

#### *Other Institutions*

**Ministry of Agriculture, Forestry and Food Security:** The Ministry of Agriculture is responsible for the sustainable management of resources in agriculture and forestry to attain food security, poverty reduction and environmental sustainability. The mandates of the Ministry relating to agricultural production and forestry are closely related to land.

**Ministry of Mines and Mineral Resources.** National Minerals Agency. The Ministry’s role is policymaking, oversight and evaluation of the mining sector. Agency issues various types of mining-related licenses and

can also suspend or revoke mineral rights for infringements of the act or the terms of issue. Considering that a sizable amount of land in some districts is used for mining, the Agency's mandate is quite pertinent to land administration.

**Ministry of Local Government and Rural Development.** The Ministry oversees the implementation of the country's local government reform and decentralization program.

**Local Councils.** Sierra Leone is administratively divided into four regions, which subdivided into 14 district and 149 chiefdoms. Chiefdom are administrative unit that are governed by Paramount Chief and their chiefdom councils. The Local Government Act 2004 established Local Councils as the highest political authority within a locality with legislative and executive powers. These Councils have been assigned arrange of general and specific duties which ministries, departments and agencies used to carry out. Some of the general responsibilities include, the development, improvement and management of human settlements and the environment in the locality and the provision of basic infrastructure, works and services. Many of the mandates of the Councils are clearly related to land.

**Chiefdom Councils.** Land tenure in the provinces under customary law is vested in the paramount chief as trustee for the community. There are several layers of tenure or vested interests shared between the paramount chief (s), the family and the individual. Most of the land under customary tenure is held by extended families, the members of which have access and use rights. Anyone who is not entitled by birth to land in the provinces can only occupy land in the provinces with the consent of the Chiefdom Council. Sierra Leone is administratively divided into four regions, which subdivided into 14 district and 149 chiefdoms. Chiefdom are administrative unit that are governed by Paramount Chief and their chiefdom councils. In the process of decentralization, local authorities should play a very important role in solving the issues of customary land tenure and ownership.

**Courts and tradition rulers.** Customary tenure operates in the provinces where Paramount Chiefs apply rules of particular ethnic or tribal groupings that govern the control, management, use and transfer of land. In the Freetown area, land is governed by principles of common law and statutes with individual freehold rights of exclusivity, use and transfer. Following the structure of the tenure system, there is dualistic system of land disputes resolution. Under customary tenure, land-related disputes are mainly resolved by traditional authorities, whereas courts play the main dispute resolution role under the formal system.

#### *Donors, NGO's and Civil Society.*

**FAO** has been a leader supporting initiatives aimed to build a more efficient and transparent registration process in rural part of Sierra Leone. It also implements various projects promoting sustainable governance and management of natural resources. Major progress towards reducing the social tensions surrounding the governance and ownership of natural resources, especially with respect to access to land, was achieved in a FAO project to facilitate the application of the Voluntary Guidelines on the Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT).

**FAO's support for implementation of the VGGT in Sierra Leone has been provided and sustained since 2014 by the Government of Germany<sup>13</sup>.** The government of Sierra Leone, through the MLHE reached out to FAO for support in an overhaul of the National Land Policy and signed a tripartite agreement with the German Federal Ministry of Agriculture and FAO for their implementation. In this agreement the German government committed to funding the process and FAO to providing technical expertise. The core principles and the premise for VGGT implementation adopted in Sierra Leone derives from a commitment to transparent, accountable and inclusive governance of tenure of land, fisheries and forests.<sup>14</sup> To capitalize of the momentum gained from the successes of the VGGT, **Irish Government (Irish Aid)** support was provided **to better understand the practical realities of women's customary land rights in Sierra Leone** and to develop and implement methodologies to empower women to self-advocate for customary land governance reforms.

An important way in which collective governance is manifested to support responsible governance of tenure is through so called **multi-stakeholder platforms**. These platforms bring together the government, civil society, and the private sector to address complex challenges in securing tenure rights that no one party has the capacity, resources, and know-how to do alone. Sierra Leone's multi-stakeholder platform was established in April 2014 comprising over a hundred participants including women and youth from CSOs, NGOs, the private sector, the media, development partners, landowners and traditional leaders. Meetings are held annually and close with the signing of an official document tracking progress over the previous twelve months<sup>15</sup>. Outside of the multi-stakeholder platform discussions, community outreach was required. **Civil Society Organizations such as Namati, Action for Large-scale Land Acquisition Transparency (ALLAT), Women's Organization for Human Rights and Democracy (WOHFRAD), Green Scenery and Trócaire joined FAO to undertake a massive VGGT and land governance awareness-raising campaign, which brought them in contact with local community people.**

The VGGT implementation model adopted in Sierra Leone recognized the need for greater sectoral coordination and goes beyond the standard VGGT Multi-stakeholder platform. First, FAO encouraged the creation of a high level **Inter-Ministerial Task Force** that allowed for the first time, the ministers responsible for Lands, Agriculture, Fisheries, Justice and Local Government meet periodically to discuss and coordinate inter-sectoral activities. Second, a **Technical Working Group** composed of technical officers from the land sector ministries and stakeholder agencies work together to synthesize stakeholder ideas and suggestions and produce technically sound position papers for high level policy consideration and action. This unique VGGT implementation framework has allowed strong, sustainable, gender equitable participation and policy coordination and ownership among all the land and based natural resource sector agencies, private sector and civil society groups in Sierra Leone.

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<sup>13</sup> On 1 February 2014 Sierra Leone with technical support by FAO and financial support by Germany launched the process of implementing the VGGT focusing on land, fisheries and forestry and cross-cutting issues such as gender, recourse mechanisms and the legal framework.

<sup>14</sup> *The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (Voluntary Guidelines on the Right to Food), which were adopted by the FAO Council at its Hundred and Twenty-seventh Session in November 2004, and the 2006 *International Conference on Agrarian Reform and Rural Development* (ICARRD). The Guidelines were endorsed by the Committee on Food Security at its Thirty-eighth (Special) Session on 11 May 2012.

<sup>15</sup> FAO VGGT Implementation in Sierra Leone, Draft Brochure, 2015.

#### e. Technical Barriers for an effective Land Administration

One of the main issues in Sierra Leone is the **absence of digital geospatial foundation** to build property registration system on. This problem manifests itself in (i) lack of georeferenced grid, (ii) an acute lack of competent surveyors equipped with precise instruments, (iii) unutilized and unconsolidated digital cadastral data gathered by surveyors.

Existing **legal acts** foresee the requirement to perform cadastral measurements, prepare new land plot plan and file each time a land transaction is performed. The land plot plans must always be reconciled with the MLHE, which marks the boundaries of the plot on the map. This reconciliation procedure is one of the longest stages of the transaction, however it does not provide any guarantees to the land owner. During the meeting with MLHE, it became clear that the available **technical resources and software solutions** do not ensure that all the verified parcels are recorded in the system (i.e. some of the verified parcels are deleted from the system in order to record the data of the new parcels). However, it is important to highlight that there is no clear explanation to justify the above-mentioned requirement for mandatory re-performance of cadastral measurements and preparation of new land plot plan and file, each time a land transaction takes place.

The MLHE does not **share graphical data** neither with the OARG nor the local governmental institutions. The OARG is responsible mainly for the deed registration system, it does not maintain a cadastre that shows the location, boundaries and rights attached to land and resources, therefore land record information has no clear links to the maps. The survey plan is generated each time by surveyor and signed by the Director of Surveys and Lands at the MLHE, as the survey plans are not accessible online.

Land administration institutions and agencies rely on **budgetary financing**, fixed salaries do not encourage the employees to perform their functions efficiently. **Qualifications** are another major problem in land administration in Sierra Leone. It is still important to highlight that in the context of Sierra Leone Land Administration entities are very bad **IT equipped** to ensure the automatization and digitalization of the processes, as well as to organize and digitize the data archive. Latter circumstances make it difficult to obtain additional income from the efficient use of property data.

To achieve sustainable results in Land administration major attention should be directed towards attaining high quality of the data, this requires not only the adequate resources allocated for this purpose, but also increased collaboration between the institutions involved in land administration and management.

**Decentralization** and the distribution of functions to local councils has been a major challenge. It became clear that local councils are facing problems in most of the areas especially in land surveying, land registration, control of illegal sale of land, preparation of land use plans, strategic local plans, issuance of building permits, property valuation and taxation.

### 3. The Land Sector in Freetown and the Western Area

As many of other Africans Cities, Freetown's recent growth is remarkable. The city's population has increased roughly 10-fold in the last 50 years; for similarly-sized European cities it took 150 years to

achieve this increase. Freetown is also the nerve center of the Sierra Leone economy. If the city was removed, Sierra Leone would lose 28% of GDP. Thus, ensuring Freetown's effective management is of national importance. The growth and importance of Freetown is expected to increase. Freetown is projected to welcome more than 535,000 residents in the next decade. This growth can't be stemmed. Even if the capital was moved outside of Freetown, international experience suggests that people would still gravitate toward Freetown, given its central role in Sierra Leone's economy<sup>16</sup>.

Freetown is the largest city in Sierra Leone and plays a central role the of the Sierra Leone national economy. Freetown one of the most densely populated cities in the world. The Western Area or the Freetown peninsula is divided into two districts – Western Area Urban and Western Area Rural. Freetown is a coastal city, most part of which is below sea-level, it is surrounded by steep mountains, therefore the space for the urban expansion is very limited. The climate is tropical in Freetown, temperatures are high, and the rainfall is heavy in most months of the year. Due to its topographical location and its climate Freetown is exposed to landslides, floods and sea-level rises. Significant part of the built-up area (approx. 38%) is located in medium or high-risk areas – on steep slopes or below sea level. Although local laws forbid the illegal constructions and/or constructions in high-risk areas, these prohibitions are often ignored, therefore the number of households settled in the high-risk area has only increases over the years. Unplanned constructions in natural waterways as well as huge amounts of waste aggravate the existing drainage system contributing to the flood risk and blockage of the drainage channels. Another factor that has immensely increased the risk of natural hazards is deforestation, caused mostly by the scattered urban developments and increase in population density.

Rental prices in Freetown have increased at rates faster than inflation rates, negatively affecting housing affordability. Many urban dwellers in Freetown have been priced out of the formal property market. Over the years, more and more households have settled in high-risk areas. Uncontrolled urban expansion and the lack of affordable housing has also led to an inefficient allocation of land within the city, characterized by the proliferation of slums near the city center. Residential buildings in Freetown (Western Urban Area) are highly overcrowded, with an average of 10 people living in one accommodation. Buildings are made of shared units and less durable construction materials – 40% of the housing stock is made with cement block walls and zinc sheet roofs, 35% have walls made from mud bricks. About 60% of households are tenants.

Most of the residential building in the Western Area Rural have been built in the last 15 years using more durable construction materials. Walls of the buildings are constructed with cement blocks or mud bricks, while the roofing is made of zinc sheets. 37% of residential buildings are detached single family homes and almost half of them are owner-occupied<sup>17</sup>.

Freetown's expansion has resulted in a fragmented urban form, which is crowded but not compact. This kind of urban growth pushes up costs and lowers the efficiency of infrastructure investments and service delivery. Disaster risk, continuous deterioration of living conditions and spatial planning issues requiring

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<sup>16</sup> The Freetown Urban Sector Review, WB, 2019.

<sup>17</sup> Joseph M Macarthy, Lansana Kanneh, John Tura. Sierra Leone 2015. Population and Housing Census. Thematic Report on Housing Conditions.

rapid decisions are directly linked to the functioning of the Land Administration system, the ability to provide complete and accurate information.

#### a. Freetown City Council's role In Land Administration

The FCC is the municipal government of the city of Freetown, it is responsible for finding solutions to the multitude of problems that the city is facing. Major problems are related to urban planning (unplanned slum settlements, lack of spatial planning coupled with the prevalent urban growth and etc.), creation of infrastructure, disaster management and investments. The FCC has no financial resources to make much-needed urban investments.

Yet another severe issue is the elevated health and environmental risks. Freetown is a center of attraction for individuals searching for work and wishing to have at least basic amenities, therefore rural-urban migration numbers are high, which results in overcrowding. Many households can only afford to live in small basic accommodations that are usually located in areas with limited access to safe water, sanitation and other social facilities. As a result, such living conditions become a serious threat to the health of the most vulnerable individuals as well as the environment.

Although the Central Government is ineffective in implementing the National Land Policy, the FCC has a great interest in the effective implementation of it. Actual Mayor attempts to address the lack of financial resources by involving local communities and maintaining good relations with them. A strong sense of unity can be felt even in the urban communities. These communities have organized structures and are highly involved in the search for solutions and organizing their implementation. Communities are actively involved in the development and maintenance of infrastructure management (e.g. water drainage, garbage disposal). There are some qualified people in the communities who have technical education, can organize and supervise the works, they are well accepted by the locals and have more information on the situation in the residential area (community). Help of local communities could be used for systematic asset registration and other asset management work.

***The importance of local communities shall increase together with the increasing input in government decentralization actions.*** Management of decentralization model is currently under consideration; this model could potentially result in greater efficiency than the current centralized system.

#### b. Collection of property taxes, a key challenge for FCC

Local Councils are authorized to ***collect property taxes as one of their own revenue sources, however collection of property taxes is very low across the country.*** Councils appoint valuers, who are responsible for the assessment and valuation of structures for the purpose of taxation, and Assessment Committees to oversee and approve the valuation rolls prepared by valuers. Most local councils had valuers who did not have any training on valuation, this was due to the fact that the Local Government Act of 2004 does not provide for the minimum qualification of valuers and no valuation body or institution that would set standards and regulate the activities of valuers, exists.

The Valuation department of the FCC has its own valuation database and provides property valuation services to the city council for the purposes of rating, however the quality of the database needs to be improved. Land Registry data is used to compile the valuation database, but due to the weak technical

level and the fact that both systems are paper-based and handled manually, there is no data exchange between the Land Registry and the valuation database.

The property tax database has been digitized not so long time ago and currently covers only 21% of the housing stock, however more work needs to be done to improve the quality of the data. The main focus is on adding new constructions to the database rather than re-assessing existing valuation, this is mostly due to the cost of staff expenses. The Valuation Department is also responsible for cadastral measurements of the constructions and preparation of premises plans, but these processes are not yet digitized, and the data is fragmented. Property valuation process is only focused on the improvements and does not consider the value of the land. Nonetheless taxes and fees and charges are linked to the acquisition of land and depend on the type of acquisition. Having no single definition of the Assessed Annual Value (AAV) has led councils to adopting fundamentally different approaches towards the AAV, e.g. some used area (square meter) occupied by the building, while others – number of bedrooms to arrive at the AAV.

The FCC has also started an asset inventory and data digitization processes, as the centralized property management system does operate effectively and does not meet the needs of the FCC. The FCC is using its valuation team and formed a working group (since September 2018) for property identification and value tax determination. Working group consists of FCC and members of the private sector. A group of 16 people with mobile devices and appsheet.com apps collect information about 70-100 property units per day. The information includes property description (area, wall, roof materials, engineering infrastructure, owner or user data). The described constructions are marked in google maps, and boundaries of parcels are formed visually. It is planned to collect data on 250,000 units of property. The data is oriented on the property taxation. The owner or user of the property is indicated declaratively. Data is not cross-checked with the registers.

Freetown City Council has also entrusted the Valuation Department to perform a rigorous control of property tax accounting. Some of the information from taxpayer paper books has been transferred to Excel tables and contracts with private sector representatives have been concluded in order to collect data on unregistered property. At the moment, there are digital tables created containing about 60 000 units of property that are subjected to the property tax. It is planned to collect information about additional 20,000 property objects this year.

Finally, to proof evidence of property ownership, courts use information on property tax held by the FCC, therefore property owners are interested in registering their properties not only in the OARG register, but also in the FCC's property tax register. Using the transaction information submitted the FCC Valuation department creates records about the owner and/or user of the property, location and other descriptive data on the property. FCC utilizes What3words application for address determination, which provides a simple way to describe location. Since there is no functioning address register system in the country, this solution allows for temporary settlement of property issues, but cannot be the sole basis for a sustainable address system.

### c. Potential interventions to improve Land Administration in Freetown and the Western Area.

Sierra Leone's willingness to recognize the shortcomings of its current Land Administration System along with a perceived political will for change, should rest on best practices available. Examples to be inspired



for building Sierra Leone approach include Rwanda's Land Tenure Regularization reform which provides compelling roadmap for establishing efficient first registration system. There's also a new trend outside Africa where countries are implementing land administration reforms by means of Private-Public Partnership (PPP) including but not limited to Indonesia, India (Maharashtra), Philippines, etc. The Government should focus on creating and implementing a unified legal environment for reform.

Potential intervention to improve Land Administration:

- Legal regime and structure of land registry should be applied uniformly across all areas of Sierra Leone;
- Utilization of municipalities and local councils as the main engines of the reform;
- Fit for purpose Land Administration approach is a way to set out and Systematic property registration and mapping of all Land rights, beginning with what it is possible to reach
- Pilot and implementation of simple Land Information Systems (LIS) such as FAO's Solutions for Open Land Administration (SOLA);
- Considering PPP Opportunities to implement the approach Land Administration System.

In terms of space, time and resources made available by reform implementation, Freetown and Western Part of the country will require considerably more time per property unit to determine property/tenure rights with adequate level of accuracy. Yet, economic benefits resulting in registration of property/tenure rights in the said part of the country are expected to prove most rewarding. Positive results would be multiplied by urban planning, increased resilience and more effective disaster management made available by reliable data and tax revenues collected along the way<sup>18</sup>.

In organizational terms, ongoing decentralization of country's administration implies utilization of municipalities and local councils as the main spatial planning and physical development engines of the reform. Self-government institutions retain both financial incentives (namely, tax collection and promoting local development) and intimate ties with local communities to pursue reform's goals. Moreover, initial progress made by some of them - especially that of the FCC - is well worth adopting in scale in the rest of the country. Local self-government bodies should also be encouraged to combine cadastre and registry into singular system accumulating and disseminating all necessary property data to achieve maximum synergy and efficiency. That would create positive predispositions to take administrative burden off property owners in regards of supplying MLHE with cadastral and registry entry data.

In terms of surveying and cadastral map there are two major approaches: (i) training and equipping necessary personnel by the state or (ii) to contract a private entity to do the job based on PPP model or procurement or delegation of public service. The former solution might prove unbearably costly both in time and financial resources while later approach offers less strenuous financial obligations extended in time with tangible results available in a shorter period. Alternatively, (or in addition), para-surveyors might be trained in an expedient manner to solve small discrepancies on a local (neighborhood) level using basic geo-measurement tools, as it has been done in most of Africa's francophone countries. Similar approach established by the FCC for identification of taxable property in Freetown has proved itself as a viable fit-for-purpose solution worth to be repeated in scale.

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<sup>18</sup> <http://www.fao.org/3/a-i0830e.pdf>

The MLHE requirement to provide new survey data with each transaction of the same property should be abandoned all along as unjustifiably costly and burdensome. Instead, efforts along with digitized data of registry archives on a newly established cadastral basemap. Current and resources should be directed towards combining previously collected digital geodetic data requirement to conduct mandatory “precise” geodetic property surveys - enforced mainly in Freetown and Western Part - should be abandoned for now as inadequate. For it’s only fair to recognize that the lack of capacity, competence, reliable equipment, and proper georeferencing makes current system inefficient if not detrimental to the reform. High price of determining fixed boundaries is yet another negative factor making securing property rights even less accessible.

Multiple success stories of emerging economies around the world provide compelling enough proof that Fit-For-Purpose (FFP) method of determining general boundaries of property is sufficient to secure property rights and promote economic growth of the country. Moreover, FFP method involving active participation of local communities has been already employed successfully in rural areas of Sierra Leone. In summary, fixed property boundaries surveying should be abandoned in FCC and Western Part and replaced by general boundaries mapping, and systematic property registration should be utilized all across the country. That would result in creation of country-wide property registry that would be at first utilized by local administration for taxation and land tenure-empowerment purposes, and later consolidated as an extensive property registry by OARG while extending its geographical operational capacity. FAO-inhibited practice of general boundaries’ reconciliation through local community mediation should be adopted by FCC while retaining teams of para-surveyors to calibrate spatial property data in areas inaccessible to aerial mapping (e.g. slums).

Considering limited capacity of Sierra Leone’s institutions - both in funds, skills and technological means - PPP-based implementation scheme should be considered to spur desired outcomes of the reform. Most promising area of such collaboration is Freetown and the Western Part. Private actor(s) should work in close coordination with OARG and FCC with later acting as the main client in early stages of reform implementation. Viable financial model for such PPP is yet to be determined.

As to the rest of Sierra Leone’s territory, reasonably faster pace of the reform may be foreseen along with less costly solutions employed. This part of the country is better suited for aerial surveying and systematic property registration following example Indonesia. Immediate economic benefits of securing property rights in the vast part of Sierra Leone most likely would be modest in the short term, yet long term economic yield should prove itself. Expedience of property rights reform in the rural part of the country to be facilitated by the initial progress made with application of FAO’s Solutions for Open Land Administration (SOLA) system which also provides GIS functionality along with aerial imaging.

FAO is supporting the government in implementing SOLA, a land administration and registration software to demonstrate the feasibility of adopting fit-for-purpose technological innovations to improve both the efficiency of the existing deed registration systems and also cost effectively demarcate and record previously unrecorded land rights in the provinces. Land plot plans are made using the abovementioned SOLA software, whereas mobile devices are used to determine the coordinates of the land plot boundaries. Fit-For-Purpose mapping of general boundaries of properties in rural areas should follow the trail laid out by FAO initiatives. Finally, despite the existence of different approaches to the reform implementation, the NLP also endorses the use a fit-for purpose cadastral mapping methodologies to extend land title registration to secure customary tenure rights in the provinces. However, following the

trend in Malawi, Uganda and Tanzania, it recommends that legitimate customary land rights will be registered as owned by families and individuals to streamline the dual property rights regimes that currently exist in Sierra Leone.

## 4. The Land Sector in the Provinces

Sierra Leone's legal framework for land in the provinces recognizes customary tenure as a set of rules and norms that govern community allocation, use, access, and transfer of land and other natural resources in the provinces. The term "customary tenure" invokes the idea of "traditional" rights to land and other natural resources: "the tenure usually associated with indigenous communities and administered in accordance with their customs, as opposed to statutory tenure usually introduced during the colonial period" (FAO 2002). Customary land law is unwritten, varies across chiefdoms, and had dynamically evolved over time.

### a. Overview of Customary Land in Sierra Leone

The policy of dualism allowed traditional tenure systems to coexist with introduced European tenure concepts in Sierra Leone. As a result, statutory tenure in the Western Areas and traditional tenure applicable in the provinces are compartmentalized and were not allowed to mix. As a result, the customary tenure system in the provinces manifests itself in three ways: The Paramount Chief is the custodian of all communal land within the precisely defined boundaries of a **chiefdom**. These lands are held in common but internally consist of various **sections** or groups of villages that are occupied as **family tenure** by various lineage descent groups. Individual families hold **usufructuary tenure** in allocated portions of the community's land holdings. Thus, in reality, much of the customary land, although not formally demarcated or registered, has been individualized *de-facto* in the names of lineages, families, and individuals. However, because paramount chiefs hold the land in trust for those extended families or lineages attached to the chiefdom, no significant land-related decision is final until the paramount chief approves<sup>19</sup>.

Effective customary land administration and land access distribution is controlled by **section chiefs** and **family heads** who manage the land-access rights to extended families and allocations among individual family members respectively. The rules through which customary land is distributed – allocated to families and households and to men and women within the family unit – and who participates in determining these rules is governed by traditional norms, customs and practices which often discriminate against women. These barriers are, in the dominant ethnicities in provinces, manifested systematically through traditional paternalistic leadership, institutions and governance arrangements that results in decision making being regarded as exclusively male, with women relegated to silent observers in both the public and domestic spheres. Families have rights of access, use, and transfer by inheritance, gift or lease. The family head presides over land disputes and determines which claims are valid. However, appeals can be heard by the section chief and if unresolved, can be referred to the Chiefdom Council for final resolution.

The right to sell customary land is generally limited to sales within the family or community and are not recorded. Under the current laws of Sierra Leone, the sale of customary land to non-family or non-

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<sup>19</sup> Unruh, Jon D. and Turay, Harry. 2006. Land Tenure, Food Security and Investment in Postwar Sierra Leone. FAO Livelihood Support Programme (LSP) Working Paper 22.

community members is prohibited. In some areas people from outside the chiefdom, including migrants, tenants, and foreigners (collectively known as “strangers”), make up 20–40% of the chiefdom populations<sup>20</sup>. Landowning families lease land to strangers who are required to pay a nominal amount of the crop-yield or ground rent to the family on an annual basis. Such customary leasehold arrangements restrict strangers from planting trees and perennial crops as a reminder that they have no long-term interest in the land. Some lineage descent land is also retained as communal land for use by all members of the community<sup>21</sup>.

The Constitution of Sierra Leone prohibits discrimination on the basis of gender and provides for equal rights for women to all opportunities and benefits based on merit. However, the Constitution exempts laws regarding marriage, divorce and devolution of property from the mandate of nondiscrimination. Similarly, the 2007 Devolution of Estate Act recognizes marriages entered into under customary law and the rights of polygamous spouses. The act also provides for a woman’s right to inherit her deceased husband’s property if he dies without a will and mandates support for a surviving spouse and any children of the deceased. But again, the Devolution of Estates Act does not extend to property held jointly by several family members or property held collectively by a community and is therefore inapplicable to most rural land in the provinces<sup>22</sup>.

Despite these provisions in the formal law supporting women’s rights, prevailing customary practices continues to deny most rural women’s right to own land in their own accord. Women in the northern region do not have the right to inherit land and are also denied the right to rent a plot in urban areas. Local custom may also prevent women from activities that create rights to land, such as tree planting but they can also be forced from their marital home at the death of their husbands. However, there are some limited exemptions. Members of the Limba tribe recognizes women’s rights to inherit land under certain circumstances, and in the southern and eastern regions of the country, including among the Temne tribe, women’s rights tend to be stronger: some women report inheriting land and forming cooperatives to gain and retain access to land for cultivation and also for housing and commercial activities (FAO, 2018).

Because of the dominant application of customary laws in the provinces, tenure insecurity is fueled by the lack of codification and ad-hoc decision making by land authorities; subjective interpretation of the rules and regulations applicable to land transfers; the absence of a reliable record of landholdings; difficulty obtaining consent among a large number of family members with an interest in a single landholding; and a culture of ignoring agreed terms of land leases, pledges and gifts. Other sources of insecurity include customary tenure prohibitions against planting tree crops or long-term production enhancing capital investments by strangers, a preference for one-year leases, and the absence of tenancy agreements based on contract rents or other economic arrangements.<sup>23</sup>

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<sup>20</sup> Sierra Leone: Property Rights and Resource Governance Profile 1. USAID

<sup>21</sup> Williams, Shaun. 2006. Land and Pro Poor Change in Sierra Leone: Scoping Study. EU-DFID Country Assistance Plan. <http://www.britishcouncil.org/land-and-pro-poor-change-in-sierra-leone.pdf> (accessed 26 May 2019).

<sup>22</sup> Government of Sierra Leone. 1991. Constitution of Sierra Leone. <http://www.sierra-leone.org/Laws/constitution1991.pdf>; The Devolution of Estates Act 2007. <http://www.sierra-leone.org/Laws/2007-21p.pdf> (accessed 26 May 2019).

<sup>23</sup> Richards, Paul. 2005. To Fight or Farm? Agrarian Dimensions of the Mano River Conflicts (Liberia and Sierra Leone). *African Affairs*. 104/417:571–590.

## b. Community Land Demarcation: Experiences from FAO Pilots

### *Background*

First, among several of the NLP implementation priorities, is to safeguard Sierra Leone's land tenure system. Equally important as a cross-cutting priority is protection of legitimate tenure rights with a specific focus on the customary rights of women and girls. But in practice, tenurial arrangements in the predominantly agricultural rural provinces denies the right to secure tenure for women who carry the bulk of the load of household food security. Thus, from the government, as well as FAO's perspective, gender-based land access discrimination, especially on the key factor of agricultural productivity does not only mean personal hardship for women and their households but it also abrogates national food security. Furthermore, the unique characteristics of discriminatory land use and restrictive governance practices affecting women's land access rights are often not clearly articulated in their specific localized patrimonial context to provide a stronger framework for addressing women's land rights.

Given the national significance of these observations, FAO decided to capitalize on the achievements of the ongoing VGGT-implementation in Sierra Leone, undertake a pilot project to; (a) to better understand how to clarify and protect women's customary land rights; and (b) to develop cost effective fit-for purpose methodologies using SOLA Open Tenure tools to systematically determine and register customary tenure rights in the provinces; to establish an initial public record of land rights held by the communities. Its aim was to strengthen the capacity of rural women to understand their land rights and to self-advocate for the protection of their customary land rights and the elimination of discriminatory barriers.

### *Project Description*

The project had four components; Diagnostic study of practical manifestations of customary land rights of women in three ethnically diverse customary tenure communities; Training and Capacity Development for women as community land rights leaders, advocates and trainers with the appropriate skills and technical competence to participate in land rights clarification decisions; Pilot Customary land rights ascertainment, demarcation and recordation using SOLA Open Tenure in three ethnically different customary tenure (Temne, Limba and Mende) communities; and FAO Program management supervision and oversight and Contingency Budget Allowance.

These components were implemented sequentially. The results from each previous component was subjected to public validation and the lessons learned used to refine activities and the results expected from the other components. The diagnostic study and analysis used survey interviews, focused group discussions and multi-criteria analysis to specifically focus on understanding the practical realities of women's customary land rights and to identify potential areas of tension between the legitimate land rights of women. Particular attention was given to customs that define family patrimony and traditions that operate in practice to limit women's land rights. The choice of approach is to provide a stronger framework for policy reforms. The findings from the diagnostic study informed the design of a customized gender land rights training program for 54 women and men community leaders. The trainees were selected from the pilot communities to be trained as trainers for them to strengthen knowledge about gender and rights in general and the capacity of rural women to understand their customary land rights.

The pilot customary land rights ascertainment, demarcation and recordation component deployed the SOLA software developed by FAO to implement a computerized cadaster (survey and mapping functions)

At the commencement of the pilot community land protection phase of the project, 24 recorders including field surveyors from the Ministry of Lands Housing and Environment were trained in the use of android tablets, which were used to record land coordinates. The MLHE recorders provided technical oversight and quality assurance and quality control throughout the community land delimitation process. In each of the village communities that participated in the pilot project, about 12 – 15 local youth were selected, trained and certified as para-surveyors and were used to capture all the field survey data.

### *Project Results and Outcomes*

The results revealed large gender gaps in land rights knowledge. The results across several Chiefdoms consistently revealed women know far less than men in their households about their rights with respect to land tenure and the transfer of land rights.<sup>24</sup> It was also clear that, at the local level, building women's capacity cannot be fully separated from public awareness about gender-equitable land rights. Customary land governance reforms and increased transparency in land administration procedures are equally important for achieving a sustained and socially respected change in cultural attitudes. But most of all, how best to secure women's land and property rights, taking the complexities of local cultural traditions into consideration is to listen to the women themselves and to use their experiences as context specific opportunities to educate community leaders and to advocate changes in cultural attitudes towards the land rights of women.

The training program equipped each participant with the appropriate knowledge and technical competence to participate in land rights clarification, access distribution, documentation and rights enforcement decisions. The trainees returned to their communities as change agents and played a central role in helping to conduct sensitization training and community mobilization activities critical for executing the boundary harmonization and SOLA mapping operations under the third component of the project. At the end of the program, the community leaders understood the different types of women's and men's customary and legal rights over land.

With the central database in place, a two-stage pilot systematic delimitation of (a) Village land boundaries and (b) boundary coordinates of family parcels in the field began. Collecting data in the field was followed by checking and processing using SOLA Open Tenure tools to generate cadastral maps for communities using the GIS capabilities at MLHE. In all, 12 village communities selected in Bombali District, Bo District, Kenema and Port Loko Districts participated in the pilot mapping exercise. Forty-eight family land holdings in 12 villages scattered over four Chiefdoms were systematically mapped in 6 months. For example, the first ever map establishing the boundary of Mashema village land, in Paki Massabom chiefdom was validated on the 4th June 2018. The validation ceremony was attended by more than 200 persons from the Mashema, Mafina, Mapaki & Rosint villages.

### *Lessons Learned*

The customary land demarcation and land rights protection program received full support from the district leadership including other paramount chiefs from surrounding chiefdoms, the Office of National Security, and the Human Rights Commission. The findings indicate that community land documentation is not just a documentation exercise. The process has the potential to:

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<sup>24</sup> FAO (2018) "*Diagnostic study of practical manifestations of customary land rights of women in three ethnically diverse customary tenure communities in Sierra Leone.*"

- Serve as an effective conduit for sustained community sensitization and training on customary land governance and institutional reforms, customary land stewardship, conservation and sustainable natural resource management and for changing cultural attitudes and respect for gender-equitable land rights.
- Improve customary land governance and establish mechanisms to hold chiefs, family heads and community leaders accountable.
- Enforce transparency, inclusiveness and accountability and creates an environment that can prevention of intra-community relations, including conflict resolution.
- Brings customary community norms and cultural practices in line with national laws;
- Most importantly, the process strengthens the rights of women and vulnerable groups;

Most of these potential benefits are clearly outlined in the NLP provisions calling for nationwide registration of customary community land rights. The results of the pilot project demonstrate the feasibility of the need to support scaling up implementation to protect the customary tenure of legitimate right holders in the provinces.

According to UN Habitat, the failure to adopt, at all levels, appropriate rural and urban land policies and land management practices remains a primary cause of inequity and poverty. The analysis of security of tenure and rights to land for women needs to take into account the absolute dependence on rural women on secure access to land for household food security in Sierra Leone. The benefits of strengthened rights for women go beyond gender equity and extend to poverty reduction and sustainable economic growth and development. Evidence from rural communities in the municipal vicinity of Bo city and Selenga, for example, indicates that women with stronger property rights earn more money, have more savings, and are less likely to experience domestic violence. Women who own land also have access to credit and tend to have income generating business activities, have more resilient families and more money dedicated to education and health needs of children (FAO, 2019). However, because Sierra Leone’s culture is predominantly patrilineal, most areas of land governance decision making continue to be dominated by men. Local power holders, who often dominate community land management decisions, appear to entrench class differences and also perpetuate discriminatory practices, especially against women, widows, orphans, etc.<sup>25</sup>

However, the pilot community land delimitation exercise conducted by FAO stopped short of including formal registration of customary community land rights for several reasons:

- First, the **process would require an enabling legal framework** that would support gender-equitable real-property conveyancing and devolution of estate laws, ensure efficient, just and equitable recognition and formalization of customary land rights and would also establish proper regulations and administrative protocols for managing the cadastral systems.
- Second, the literature is also replete with evidence supporting the **risk that trustees and custodians of customary land sometimes act corruptly and manage land and land based natural resources unsustainably or may personally capture economic rents from investments**<sup>26</sup>. The diagnostic study revealed several instances of self-dealing by paramount chiefs and family heads making land deals without FPIC, especially in areas with high economic potential for large scale commercial investments or mining potential. As Sierra Leone moves to scale up customary rights

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<sup>25</sup> Rachel Knight, S. Kpanan’Ayoung Siakor, Ali Kaba (2013) in Protecting Community Lands and Resources: evidence from Liberia. IDLO, Namati.

<sup>26</sup> Rexford Ahene, Rethinking Customary Land Governance

registration as stipulated by the NLP, the custodians of customary land may have to be legally registered and held to a standard of accountability similar to that required of common law trustees, so beneficiaries can hold their trustees fiducially responsible. If the leadership breaches their fiduciary duties, good governance would require the trustees to account for failure to manage community land and natural resource assets to achieve the most benefit for the community or for self-dealing to the detriment of the beneficiary communities.

- Third, **proper and efficient system of land use management that is consistent with customary land governance aspirations should include among others; the facilitation of land utilization and development to optimize the income and welfare benefits to the community.** In theory, securing land rights through registration and the introduction of a cadastral system is not supposed to create new interests in land, nor abolish existing ones. Instead, it may lead to more secure title or faster land transactions and transfer of interests in land. More secure title and easier transactions may translate into more economic activity on the land in the provinces and more incentives to invest. These in turn may translate into wealth creation, poverty reduction and changes in the power relationships derived from the ownership of customary land.
- Fourth, boundary harmonization and formalization process should be comprised of the following activities: community sensitization and training and the streamlining of customary land governance including the creation of local community by-laws and the establishment of the VALC; community boundary negotiation, conflict resolution and asset mapping; and boundary demarcation, processing and validation.
- Finally, Chiefdom **Land Registries need to be established and their capacity built to sustain their role as a secure public repository of customary land records.**

Altogether, the community boundary harmonization and delimitation exercise produces very important gains:

- most communities desire peaceful co-existence with their neighbors and a transparent documentation of their lands create a strong and compelling desire to work together, to negotiate compromises and resolve long-standing disputes in order to regularize their customary land claims;
- negotiated resolution of long-standing inter-community and intra-family conflicts by adult members of the community with active involvement of local youth para-surveyors produces multiple positive impacts; it ensures overall tenure security and it provides a unique opportunity for the older generation to share institutional knowledge with local youth, who otherwise had no interest in customary tenure legacy of their communities;
- it localizes national land policy aspirations for gender-equitable land access, productive utilization of customary land contextualizes the need for sustainable management as a responsibility of community leaders;
- Forces facilitating agencies to place implementation of the core principles of VGGT and its implementation principles as the central component of the documentation process and to proactively prepare non-violent communication, land conflict resolution and a range of creative mediation and dispute resolution mechanisms and compromise strategies.

### c. [How to improve tenure security in the Provinces?](#)

The need to better secure tenure in the provinces is part of a national program to reform customary tenure institutions and procedures associated with access to and control of rights in land. This is concerned with the narrower objectives of remodeling of tenure rights and the redistribution of land



access, in directions consistent with the multiple objectives of Sierra Leone's long-term national development:

- To achieve a more equitable distribution of access to land resources in the provinces and redress gender inequalities due to cultural norms and practices inconsistent with national laws;
- To streamline the procedures of customary land allocation, distribution and general management and to facilitate access to land for development projects; and
- To facilitate the creation, streamline the operation, efficiency, effectiveness and performance of a national cadastral system.
- To make land holdings more secure so that land owners can obtain development funds on the basis of secured land rights.

The initial step for protecting the full range of customary land rights of rural communities in the provinces is to ascertain the boundary and prepare a cadastral plan to determine the quantum of a community's land assets. The results of the community boundary harmonization and clarification of gender land rights provides strong evidence that community land mapping and documentation has across the board support with a strong desire for scaling up at all levels of government. What remains to be done is:

- To refine the methodology for systematic cadastral survey of community land holdings, supported by the establishment of the Village Area land Committees, and gender-equitable customary land governance and land use management by-laws as an integral part of the process.
- Accelerate the establishment of Chiefdom Land Registries to serve as local repository of customary land records. The Customary Land Secretariat model currently being deployed for a similar purpose in Ghana could serve as a basis for this concept. This is an NLP priority essential to protect customary land rights of communities in the Provinces.
- Complete the devolution of land services by establishing the workflow linkage between the community land rights protection and Chiefdom Land Registry programs and the policy and technical oversight of the Ministry of Lands and the statutory registration mandate of the Office of the Administrator and Registrar General.
- Device strategies and level of support required to establish and sustain non-judicial dispute redress institutions and mechanisms for resolving disputes; to provide a more predictable due process, ensure social justice and enforcement mechanisms to protect the land rights of women and other vulnerable groups and to prevent intra community discrimination.

Securing customary community tenure rights should not only focus on the documentation to obtain formal recognition of community land rights. It should be accompanied by improved land governance. In this regard, any policy and documentation procedures should include participatory land governance procedures for managing the community's land and natural resources and process for maintaining information updated.

## 5. Conclusions

Sierra Leone's rural and in urban Land Administration System development problems are becoming so complex that only a goal-oriented approach and close collaboration between all the institutions involved will solve them. Population expansion rates in Sierra Leone are extremely high, especially in Freetown, which puts a great pressure on the land and its resources. The poorest and most socially vulnerable

individuals concentrate in far reaching areas of urban slums and squatter settlements, where access to basic resources is restricted. The rights of women and their status in the society is yet another problem, although it is not elaborated in this paper, but it should be addressed in further researches and analysis.

**Government decentralization and empowerment of municipalities should improve the process efficiency.** Municipalities have a direct interest in the efficient use of land and its inclusion into economic activities. Property tax is an important part of municipal finances and is used for development of infrastructure and other land improvements. Therefore, having accurate land accounting in place, more property tax can be collected. Extension of cooperation between FCC and OARG both in the areas of collecting and managing land registration data would allow for systematic and integrated management of Land register and achieving its comprehensiveness (e.g. supplementing it with various data: addresses, engineering infrastructures, unregistered land plots and their users).

**Land administration require fundamental and prompt changes both locally and countrywide.** National Land Policy was approved in 2015, but its implementation has stalled due to absence of clear implementation strategy. Most of the Land Administration system participants have a self-oriented approach to solve the problems relating solely to their own interests: they rarely collaborate in order to seek for joint solutions that would satisfy the needs of other institutions involved; execution of works is mostly formal and does not always guarantee that the results created shall satisfy the system requirements.

**The poor functioning of the Land administration system, unprotected ownership and other rights, cause inefficiency in the real estate market, inadequate land price levels and restrict the ability to acquire land.** High risk always stipulates the increase in the real estate prices, limits the possibilities to acquire property and absence of mortgage market.

**A Crucial requirement in order to build an effective and modern land administration and management system is to abandon the manual recording system and move towards a digital/computerized one.** This shift towards digitization requires in-depth analysis of the existing land administration and management system. Digitization of the land administration and management system could not be effective without an adequate level of collaboration between the institutions, such as government, ministries, land councils, departments, agencies etc. Links between latter institutions should be strengthened and promoted, e-Governance and interoperability solutions could be introduced in order to facilitate the collaboration. Municipalities must also play an important role in the development of the system. Changes in the existing legal regulation and/or new laws should be introduced in order to shift towards the digitization. Creating a digital archive covering both documents and data, opening this data to decision-makers as well property owners and other users would provide the foundation for a sustainable property administration system. Digitization of processes requires all the inner processes and procedures to be set out clearly. Monitoring of the system is also necessary to ensure that all the processes and procedures are adhered to. Nonetheless it is important to ensure that electronic backups of the information stored in the databases are made periodically and that there is a disaster recovery plan in case of any emergency. To ensure the data quality and relevance, requirements for regular updates to the information should be included in the Land Registry, especially the ones related to information about land leases, concessions and beneficial owners. Data stored in the Land Register should be accessible to the public.

**All Land administration and local government institutions should have coordinated spatial planning strategies in their development plans,** it would allow for harmonization of urban and ecological policies,

strategically important infrastructure projects and basic standards. For this purpose, cadastral maps should be updated using GIS/GPS techniques together with satellite imagery, as well as single National Land Information System database created on the basis of GIS and managed by the MLHE.

**An inclusive property address system must be created**, having not only unique textual, but also geospatial identification. The Address System is important for unique and unified determination of property location. This would prevent land plots from overlapping and eliminate situation where the same property is registered twice indicating different owners.

**More resources should be allocated for the land administration purposes** as currently this area and institutions (OARG and MLHE) responsible for land administration are underfunded. As a consequence, institutions are not able to provide high quality services due to lack of funds for basic needs such as cadaster maps update, qualified and trained staff, equipment, transport and etc.

**Comprehensive registration of customary tenure rights is feasible using cost effective, participatory fit-for-purpose approaches:** Customary land registration can completely replace oral transfer of land rights and the need to document all transactions can significantly reduce land-related disputes such as double allocation of the same parcel of land. In addition to reducing boundary disputes, unauthorized encroachments and illegal occupations can also be avoided. These advantages leave no doubt that communal land registration can accelerate social and economic development and also encourage more permanent investments without fear in the provinces. As demonstrated by the FAO pilot community land delimitation project and successful community land registration experiences from Tanzania, Namibia, Uganda and Malawi, the challenge is to minimize unintended consequences by understanding the established legal paradigm and recording gender-equitable customary property rights into registered tenures.

**Gender Considerations:** Although the language of the NLP is gender-neutral, it does not contain explicit protections for women's rights on customary land, where customary rules typically discriminate against women's land rights. There is also no references to protection for spousal property rights. Given the current denial of women's customary land rights, leaving women vulnerable to the loss of land they shared with their spouses upon separation, divorce, or death of the husband. Any future law has to adequately address the question of who will be entitled to compensation for land that is compulsorily acquired by the State; without explicit protections for women, it is likely that they will be excluded from compensation due to gender discrimination in customary rules of land ownership. The NLP draws broadly from international best practices on land rights and governance perspectives that highlights the need for equitable and secure land rights for customary land holders and (especially) for women. This reflects the belief that land can be most productive when it is securely held by those who farm it. Therefore, it may be important to include safeguards to address constraints that prevent active land rights advocacy on behalf of women, which can include less access to cash, lack of transportation, higher rates of illiteracy, and social/cultural norms that discourage women from accessing available services or pursuing enforcement of their rights through the courts.

**Giving Importance to Capacity Building:** Sustained capacity building is essential for an effective land administration. The lack of capacity, defined as the ability of individuals, agencies, or organizational units to perform functions effectively and sustainably, means the approaches most necessary for transforming the land sector has to be a dynamic and sustained process. For example, it is preferable to use experts as trainers and co-managers in partnership with local trainees; to continue to focus on support and have in mind the results when implementing a customary land regularization project of the magnitude being proposed by the NLP. However, because of different context and culture, it may be easier to use experts, including PPP contractors to do the work which for sure will bring good results but may be difficult to sustain at the end of the cooperation. Close cooperation and interaction at individual levels are crucial for transferring the skills and competencies required to support transformative reforms.