

Transparency International “Land and Corruption in Africa”

2015 Base Line Survey – part I: desk based research

Background Information on Land Governance

General information

Name of the organization/ National Chapter: Transparency International Sierra Leone

Name/ position of the contact person: Mrs. Lavina banduah (Executive Director)

Contact details (Email and phone number): Ibanduah@tisierraleone.org +23276618348

Country: Sierra Leone

Please answer the following questions – it is important to substantiate your findings with references and links to evidence and documentation. If there are no sources / evidence, please note that, too, because it might be an area for further investigation.

A. Background information on land governance and the legal framework

1. Please provide a Background / overview on the land sector in your country, including historical and current economic importance (*not more than 1 page*):

Prior to independence in April 1961, Sierra Leone consisted of two separate political entities, a Colony and a Protectorate, with differing colonial experiences. What is now the Western Area had been a British Crown Colony since 1808 with its entire territory considered as a British possession and the lands - Crown (now State) lands. The British considered and treated the lands, adjacent to the Crown Colony, as foreign territories until 1896 when a proclamation of a Protectorate over them allowed the British Crown to exercise limited sovereignty without ever claiming dominium over them. There have never been any Crown (now State) lands in the Protectorate.

Prior to the colonial era the legal system throughout the territory that is now Sierra Leone was based entirely on the customs and traditions of the people. Whatever legal institutions existed then were characterized by their relative simplicity. Disputes, whether regarding land or other matters, were subjected to informal arbitration. Moreover, the laws that were then applied, though unwritten, and therefore not easily accessible and ascertainable, were nonetheless derived from well-established and recognized customs and usages. These customs and traditions, if not uniform throughout, had significant similarities. Thus, in the field of land tenure, the fundamental traditional basis for claiming rights in land and the methods of transferring interests therein were basically the same.

This was to change dramatically with the arrival of the settlers who brought with them notions of English law which were gradually introduced into the new legal order. By the time, the settlement became a Crown Colony English law came to be applied by English-type courts to the total exclusion of customary law. This situation has persisted even after independence until the present time.

Unlike the situation in the former colony, when English law and legal institutions were introduced into the Protectorate, the indigenous legal system was allowed to co-exist alongside the received one. As far as land tenure was concerned, though the British Colonies asserted rights of the British Crown to all minerals, metals and precious stones in the Protectorate, there was no claim by the colonial administration of any specific rights of supervision or ownership over native lands in the Protectorate. Besides, throughout the colonial era no attempt was made by local legislation or otherwise to alter the status of Protectorate land. The only statutes relating to land enacted throughout the colonial era were the Concessions Ordinance (now Concessions Act, Cap 121 and Protectorate Lands Ordinance (now Provinces Land Act, Cap 122) enacted in 1927 respectively. In the preamble to the Provinces Act, it was declared for the first time that all lands in the Protectorate were vested in the former Tribal Authorities (now Chiefdom Councils) who held such land for and on behalf of the native communities concerned. This Ordinance also limited the quantum of interest which could be granted by the Tribal Authorities to “non-natives” (who for the purposes of the Act were persons who were not entitled by birth to rights in land in the Protectorate) to a leasehold term of fifty years renewable for a further term of twenty-one years. Even the Government itself was considered a non-native until an amendment of the definition in 1961.

After English law was introduced into the Crown colony there was no attempt to keep pace with the developments of the law in England. The local legislature enacted what became known as a reception clause which prescribed that only English common law, equity and statutes of general application at a cut-off date (the first been 1st January 1857) were to be in force in the Colony. The current reception clause enacted in 1965 fixes the cut-off date at 1st January 1880. In 1932 the local legislature enacted the Imperial Statute (Law of Property) Act, Cap 18, by which certain post-1880 English property legislations such as the Law of Property Act 1881, the Settled Land Act 1882 and the Trustee Act 1888 were adopted. Though Cap 18 was enacted long after the series of 1925 English property statutes which significantly reformed and modernized English land law, the opportunity was not taken by the local legislature to modernise Sierra Leone land law by adopting these post -1925 English property statutes.

Even after independence, very few property statutes have been enacted by the local legislature and most of the statutes governing land tenure in Sierra Leone were enacted during the colonial era, such as the Public Lands Act, Cap 116, the Town and Country Planning Act, Cap 81 and the Unoccupied Lands (Ascertainment of Title) Act, Cap 117. Until the enactment of the Devolution of Estates Act in 2007, the only land statute of significance enacted after independence was the Non-Citizen (Interest in Land) Act 1966 which limited the interest in land in the Western Area that a non-citizen can hold to leasehold of not more than twenty-one years.

As a result of the inactivity of the local legislature in enacting reforming statutes in the field of land law, Sierra Leone is still lumbered with the bulk of pre-1925 repealed English statutes originally enacted to suit the peculiar socio-political and economic conditions of pre-twentieth century English society.

2. Please provide an overview of the critical issues around land governance in your country (*not*

(more than 1 page):

A secure land tenure system is a critical element of consolidating the peace and recovery processes in Sierra Leone and it is fundamental to the nation's development. The current system contributes to a number of problems that affects land tenure, administration, and utilisation. The concern is, how to make the system more effective, transparent, and foremost just and fair towards all citizens. Some of the main problems related to land tenure currently prevalent in Sierra Leone are:

1. Inequitable access to land by citizen
2. Shortage of accessible land in the Western Area
3. “Squatting” on State and private lands in the Western Area due to rapid urbanisation;
4. Insecure tenure forms and rights due to the absence of a system of registration of titles
5. lack of proper cadastral mapping and land information
6. Unclear and diverging tenure forms under customary law
7. Overlapping jurisdictions for statutory and customary law
5. Weak land administration and management, i.e. inadequate capacity within the Ministry of Lands, Country Planning and the Environment to carry out its scope of responsibility and meet set objectives.
6. Lack of a proper cadastral and land use information database for State, private, and customary lands.
7. Inadequate concession practices and protective mechanisms inserted to prevent “land-grabbing” in the commercial land use sector.
8. International boundary disputes, such as that of Yenga a border town between Sierra Leone and Guinea

(Draft National land Policy of Sierra Leone-version 6)

-
3. Which are the existing state laws and regulations around land and tenure in your country (please include laws and regulations around individual / communal / ... land rights as well as the acquisition of land, besides others)? Briefly describe the legal provisions for acquisition/formalization of land tenure. *Please provide reference.*

The revision of Sierra Leone's land legislation is an on-going process. In particular the Provinces Land Act, Cap 122 has been reviewed under the auspices of the Law Reform Commission (LRC). The work of the Law Reform Commission is being carried out in-tandem with the formulation of a new National Land Policy. The head of the LRC is a permanent member of the National Land Policy Reform Steering Committee. A representative from the MLCPE attends relevant LRC sub-committee meetings and report back to the NLP SC to ensure alignment and coordination. Also the current national land policy reform process for the formulation of a Comprehensive National Land Policy Document for Sierra Leone is being carried out in this context which defines a wider range of problems of land adjudication and dispute resolution. A process to improve the current land adjudication system,

including the customary law framework and in the entire judicial system, is critical to the enforcement of land policy and land laws. At the moment close to 50% of the adjudication cases facing the lower courts in the provinces and chiefs entail land disputes. Many of these cases last over five years, leading frequently to litigants taking the law into their own hands (e.g. evictions and prohibitions on land use). Corruption and fraud related to the land adjudication process is on the increase. Access to justice over land issues is limited for many, particularly the poor. Those with more resources frequently influence the land adjudication system.

A variety of land disputes have emerged within the regions. These have heightened the need to improve the governance of land matters. Common land conflicts and disputes involve problems of effective land acquisition, contested land boundaries (involving family lands, chiefdoms, districts and provinces); the incidence of multiple land sales, conflicting authorities over land administration (involving land owning families, traditional authorities and various arms of the state), growing land use conversion and the weakness of the land adjudication system.

The inordinate delays for land disputes in the court system are directly related to the steady increase in the number of land cases due to the difficulties involved in establishing immutable title to land under the current system of registration of deeds. The Presidential Task Force to Examine the Reasons for the Delay in the Administration of Justice and Other Related Matters (set up in 2007) was inconclusive as to whether the establishment of fast track courts to deal with the increasing number of land cases would necessarily reduce the number of cases. The fundamental problem lies in the system of registration of deeds and the many loopholes found in the legal framework that accompanies it. (Draft National Land Policy of Sierra Leone – Version 6)

4. Which are the customary (= traditional) rights around land and tenure in your country?

The following are the main tenures that currently exist in respect of land held under customary law in Sierra Leone:

a) **Communal Tenure**

The main feature of communal tenure is that title to lands in Chiefdom or parts of chiefdom are claimed by or on behalf of the community as a whole. Membership of such a community as well as member's right to claim an interest in communal lands are based on descent from some kinship group within the community traced patrilineally. At a broader level the community is co-extensive with the chiefdom. The community is not monolithic but invariably consists of several sub-communities, sections, towns, families and even individual members holding varying degrees of interests in specific portions of communal lands.

Another feature of communal tenure is that the rights of ownership of the community are exercised on behalf of the community by the traditional socio-political heads extending from the town/section chiefs right up to the paramount chief in consultation with the other elders. They are vested with powers of management, control and supervision which they exercise together with officials of the local government administration such as the District Officer. The same is also true in respect of the right of disposal to non-members of the community.

However, as far as power to allow members of the community to access communal land is concerned this is the privilege of socio-political head at the appropriate level. The right of each member is a

usufruct which could be enjoyed in perpetuity as long as the land is not abandoned and there are heirs attached to inherit it. In the event of abandonment or failure of heirs the reversionary interest is reviewed.

As already stated above, after the coming into force of the Policy the sovereign title to communal lands shall henceforth vest in the Chiefdom Lands Committee (instead of the Chiefdom Council) in trust for the particular community concerned;

b) Family Tenure

For the purposes of classifying land in the Provinces of Sierra Leone as being family land, the term “family” refers to a group of persons standing in close blood relationship with each other invariably on the patrilineal side who constitute a descent group for the purposes of inheritance of land and other forms of collective property. Family tenure can be defined as the system of customary tenure in which title to certain lands within chiefdom is claimed by various descent groups, each with a common ancestor. The title is vested in the family as a unit. Such family lands should be distinguished from lands held by family groupings (Clans) as members of a community under communal tenure. Under family tenure, the family’s title is paramount and not dependent on or derived from that of any superior entity. Unlike stool lands in Ghana, family lands in Sierra Leone are not held or exploited by the family as a unit. Beneath the paramount title of the family, varying degrees of lesser interests are held in specific or particular portions by sub-family groups, households and even individuals. Access to such interests is accorded by the head of family ideally acting in consultation with all the principal members of the family. Powers of management, control, and disposal to non-members of the family, are also vested in the head of the family who shares customary alliance with the socio-political heads of the chiefdom at varying levels and with officials of the local government administration, albeit to a limited extent;

c) Statutory Leases

A lease granted under the provisions of the Provinces Land Act, Cap 122, is a creature of both the general law and customary law. Though the Act makes no provision for the actual landowner to be a party to the lease the right of disposal of the owner at customary law is recognized. A lease under Cap 122 is defined as a grant of possession of land by the Chiefdom Council, as lessor to a non-native as lessee, for a term of years or other fixed period with the reservation of a rent. Though the consent of the Chiefdom is a prerequisite for the grant, failure to obtain the approval of the District Officer will only create a tenancy at will in favor of the grantee.

d) Customary Tenancies

Under the broad heading of customary tenancies fall various forms of grants made under customary law where the intention of the grantor is to convey to the grantee an interest much less than the absolute title to the land in question. Such tenancies (or customary leasehold arrangements) may be classified according to their duration. They may range from a seasonal grant, valid for only one farming season and conferring no proprietary interest in the grantee, to a grant for an indefinite duration under which the grantee acquires an interest which is even transmissible to his heirs. A distinction could also be made between those customary tenancies granted for no consideration and those which are subject to payment of some form of economic rent or the furnishing by the grantee of some other consideration in lieu of rent.

In former times, this was the commonest way by which strangers in the chiefdom and persons that were not entitled as of right to access to land, acquired land for agricultural or building purposes. The process is sometimes described by the use of the terms “begging” and “loan”. A person in need of the land was expected to “beg” for it from the chief or a landowning family and the latter would “loan” the land in accordance with well-established practices and principles of customary law. Though this institution could not be equated precisely with the landlord-tenant relationship under English law there are certain similarities and nowadays it is sometimes difficult to differentiate between a customary tenancy and a tenancy created under English law.

5. Are “user rights” (e.g. pastoralists) acknowledged as secure tenure rights (versus individual land titles / land registration processes)? *Please provide reference.*

In the current Land Tenure System in Sierra Leone, “user rights” is acknowledged. However, for such acknowledgment to be fully recognized, it must be done under any of the following key land tenure categories.

Family Tenure, which is the absolute or permanent intent in certain land within a particular Chiefdom, is vested in various groups, each group having a common ancestral lineage which constitutes a family unit.

Communal Tenure on the other hand is where the permanent interest in the land within a given area in the Chiefdom with precise boundaries a socio-political group is held by and on behalf of the community which occupies an identifiable land area. These lands are held in common by its members but internally consist of various sections, villages that are occupied by different groups, families and individuals each holding varying degrees of interest in specific portions of the communal land.

Individual Tenure occurs when the paramount interest in a land or ownership is vested in an individual, and then such land tenure is referred to as individual tenure. This type of tenure is now scattered throughout the provincial headquarter towns of Bo, Makeni, Kenema and in other headquarter towns like Kambia, Port Loko, Pujuhun etc. (Land Right Project Report-Network Movement for Justice and Development (NMJD)

In the Western Area, the key institutions of land administration are the Land Registry in the Office of the Administrator and Registrar General (OARG), and the Surveys Department in the Ministry of Lands, Country Planning and the Environment. The General Registration Act, Cap 255 of the Laws of Sierra Leone (as amended), and the Registration of Instruments Act, Cap 256 of the Laws of Sierra Leone, (As Amended) provide the legislative framework for the registration of Deeds and all other documents required by law to be registered. Section 3 of Cap 255 created the (OARG), and makes provision for the appointment of a Deputy Administrator General and provides the legislative framework and authority for the registration of land related documents in Sierra Leone. The OARG is a department of the Office of the Attorney General and Minister of Justice.

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.

It registers transaction relating to land such as deeds of conveyances, statutory declarations, deeds of gift, leases, mortgages and discharge of mortgages, court judgments and other documents, and keeps and provides information on interests in land to the public. The following indices are maintained by the Registry: Book of Conveyances, Book of Mortgages, Book of Leases, and a miscellaneous index. The office provides information on documents registered, and the indices are open to the public to search. Searches are conducted manually which is very time consuming.

Registration of a document provides notice to the world of its existence. There is an onus on anyone who wishes to purchase, lend money or otherwise deal with land to search the Deeds Register to inspect any such documents affecting the property. A Conveyance is required to carry out an investigatory process of abstract of title, perusal, requisition, reply etc, and also make on the spot inspection and inquiries for those interests which are relatively so uncertainable that they often do not appear on the documentary title. (e.g. rights of persons in actual occupation). The Registrar-General has a duty to ensure that the document is properly drawn, signed and witnessed, and authorised 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.

The deed document is a simple record of key facts relating to the property, and remains the authoritative record of the legal facts and rights. Failure to register can result in the loss of right to land or interest in land by the unregistered owner or beneficiary, as the legal estate does not pass unless this can later be remedied by a court order for late registration, and provided there is no purchaser for value without notice. Proof of ownership of land depends on deeds kept in the Office of the Administrator and Registrar-General. The Office is responsible for maintaining indices of such deeds filed and registered in such a way that they can be accessed and viewed by anyone. (www.oarg.gov.sl)

6. Which are the existing anti-corruption laws and policies that can also be relevant to land related work? (e.g. anti-corruption, whistleblower protection, access to information, protection of human rights, freedom of the press). Please provide reference.

The Anti-Corruption Act 2008

Part 1V – 36

- (1) A person who misappropriates public revenue, public funds or property commits an offence
- (2) A person misappropriates public revenue, public funds or property if he willfully commits an act, whether by himself, with or through another person by which a public body is deprived of any revenue, funds or other financial interest belonging or due to the public body
- (3) A person guilty of an offence under this section shall on conviction be liable to a fine not less than Thirty Million Leones or to an imprisonment for a term not less than three years or to both such fine and imprisonment

The Right to Access Information Act 2013

Part II – 2

- (1) Every person has the right to access information held by or is under the control of a public authority
 (2) Every person has the right to access information held by or is under the control of a private body where that information is necessary for the enforcement or protection of any right

Part IV – 27

(1) Every public authority shall record and maintain records of its activities in a manner that facilitates the right to information, as provided for in this Act and in accordance with the Code of Practice referred to in sub-section (2)

Part IX – 50

(1) No person shall be penalized in relation to any employment, profession, voluntary work, contract, membership of an organization, holding of any office or in other way, as a result of having made or proposed to make a disclosure of information which the person obtained in confidence in the course of that activity if the disclosure is one which is in the public interest

7. Who are civil society (and other) actors advocating for good land governance in your country (NGOs, CBOs, and academia, media)?

The following are the key civil society organizations advocate for good land governance in Sierra Leone

1. Network Movement for Justice and Development
2. Campaign for Good Governance
3. Action Aid Sierra Leone
4. Campaign for Just Mining
5. Green Scenery
6. Conscience International
7. Journalist on Land Grabbing
8. Journalist on Mining and the Extractives
9. Friends of the Earth
10. Sierra Leone National Conservation Society

8. Which are the (a) government and (b) traditional institutions and (c) informal groups / other groups involved in managing the access to land and what are their roles?

	Stakeholders	Roles
1.	Government	
	Ministry of Lands, Country Planning and the Environment	<ul style="list-style-type: none"> • Develop policy for land governance and administration • Serve as custodian for government owned or state lands in the Western Area District • Register and authenticate land deeds
	Office of the Administrator	<ul style="list-style-type: none"> • Register land deeds

	and Register General	
	National Minerals Agency	<ul style="list-style-type: none"> • Develop policies relating to lands used for mining purposes
	Ministry of Mines and Mineral Resource	<ul style="list-style-type: none"> • Develop laws, policies and contracts relating to lands used for mining purposes
	Ministry of Agriculture Forestry and Food Security	<ul style="list-style-type: none"> • Develop laws, policies and contracts relating to lands used for Agricultural purposes by multi-lateral companies
2.	Traditional Institutions	
	Paramount Chiefs	<ul style="list-style-type: none"> • Custodians of lands in the provincial areas • Negotiate land lease agreement with government and multi-lateral companies on behalf of their subjects
3.	Informal Groups/Others	
	Communities	<ul style="list-style-type: none"> • Evaluate and negotiate land lease agreement on the use of community lands • Represent the interest of their communities during negotiations (However, this role is mostly compromised as a result of alleged bribery)
	Families	<ul style="list-style-type: none"> • Evaluate and negotiate land lease agreement on the use of family lands • Represent the interest of the families they represent during negotiations
	Individuals	<ul style="list-style-type: none"> • Evaluate and negotiate land lease agreement on the use of individual owned lands

B. Information on Land Deals

9. Which are large investments made by (a) multi-laterals, (b) bi-laterals, (c) private sector in land in your country in the last 10 years and what was the objective (e.g.: agriculture, tourism, environmental initiatives, foreign direct aid, resource acquisition)? *Please provide links to documentation of these deals.*

No.	Name of Investor Company	Country of Origin	Category	Objective	Hectares

1.	Addax Bio-energy Sierra Leone Ltd	Switzerland	Private Sector	Sugarcane/Ethanol (export). Electricity 15 MW for sale	2 phases, each 10,000 ha total 20,000
2.	Quinfel Agribusiness (SL) Limited Quifel Natural Resources	Portugal	Private Sector	Rice, pineapple, cassava and vegetable cultivation	125,000 ha
3.	Sepahan Afrique Ltd	Iran	Private Sector	Palm oil cultivation	10,117 ha
4.	Sierra Leone Agriculture (SAL) CAPARO	United Kingdom	Private Sector	Palm oil plantation	46,000 ha
5.	Socfin	Belgium/Luxemburg	Multi-lateral	Palm oil and rubber plantation	6,475 ha
6.	Siva Group Bio-palm Energy	India	Private Sector	Palm oil cultivation	80,000
7.	Vedico Mange Bureh Ltd	Germany/Vietnam	Multi-lateral	Rice cultivation	50,000 ha
8.	Koidu Holdings Ltd		Private Sector	Diamond mining	148 km
9.	London Mining Company		Private Sector	Iron Ore mining	13.82 km

Reference: Adapted from the Oakland Institute, Understanding Land Investment Deals in Africa, Country Report: Sierra Leone. <http://media.oaklandinstitute.org>

10. Who (a) is more likely to profit from the investments and (b) is negatively affected? Is any particular group eg women/ indigenous communities more susceptible to effects? *Provide evidence / examples with links if available*

Research indicates that approximately 1,000,000 (one million) hectares (ha) of arable land have already been leased or are under negotiation for lease in Sierra Leone. That is 18 percent of the country's arable land (suitable for farming). At least 20 chiefdoms in 9 districts are affected. In Pujehun and Port Loko District, for example, one third of the districts areas has been leased or is about to be leased to foreign investors for large-scale industrial plantations (rubber, oil palm).

In all of these land deals, the investors stand to benefit the most because of the following reasons.

- The Government of Sierra Leone maintain that there are 5.4 million ha of arable land in the country and that less than 15 percent of this is being “used”, so there is abundant land for foreign investors.
- The country is also advertised as an attractive investment destination for foreign investors in sugar cane and oil palm because of soil fertility, favorable climate conditions, the

- extremely low cost of labour and land, generous 10 year-tax holidays for agricultural investments,
- There are no limits on bringing in skilled and unskilled labour, 100 percent foreign ownership is permitted as is 100 percent repatriation of profits.
- Water rights agreements offer unlimited access to water at low rates of three Leone per cubic meter of water use.

Some 3.5 million Sierra Leoneans, (about 60 percent of the population), depend on smallholder agriculture for their livelihoods. The notion that less than 15 percent of the country is currently cropped each year and that vast areas of “un-used” or “under-used” land are available for foreign investors is a “misconception”. The 2011 in-depth “Study on Rural and Agricultural Finance in Sierra Leone” commissioned by the Bank of Sierra Leone and the German Ministry of Economic Development and Cooperation, calls for a “reality check” on arable land and productive capacity.

It concludes that “there is no remaining potential to significantly enlarge the area under cultivation anywhere in Sierra Leone” and warns that if the large-scale commercial farm investments continue, “a major conflict over land for subsistence food production is pre-programmed”.

The agreements with investors do not stipulate how many permanent jobs must be created, how many Sierra Leoneans must be employed or trained, how many schools, hospitals and other infrastructure will be created? Promises are made in public by investors and the government. But in agreements social provisions are described vaguely. There is no legal obligation.

Again, most of the land that is leased for industrial agriculture and also mining have not done environmental, health and social impact assessment. With so much farmland being devoted to industrial estates for non-edible cash crops (ethanol, palm oil and rubber) for export, will have serious impact on smallholder food production and food price and security in the country.

Many farmers will lose their land, their livelihoods? Where will they go? Will this lead to tension and conflict. This will have serious impact on rural women who produce at least half of the country’s food and whose only livelihood is farming, with which they feed and educate their children.

11. Please describe the situation of land security in urban areas and any cases of investments / land deals in urban areas leading to demographic changes. Please provide links to documentation / evidence where possible

There is an increasing demand for land in the urban areas, following the upsurge of new settlement related to expansive migration during and after the war. The incidence of confrontations over land in Freetown and of illegal settlements has indeed become alarming, since violent land conflicts are not uncommon. As a result, the capacity of the land management

system to deliver secure land rights in general, (for urban residential purposes and small entrepreneurs especially in Freetown and Bo) has been stretched tremendously.

Thus, land rights especially in the Western Area have become unclear owing to the legacy of civil unrest, increased informal land occupations, encroachment on public lands, increasing land grabs, suspect land transactions, and the deterioration of paper records and the land registration process.

The current and future impacts of such access to land are unknown while regulations to guide and ensure transparency and fair benefit sharing do not widely exist. Meanwhile, the government is actively promoting this foreign “land grabbing” phenomenon while domestic land speculators are also increasingly capturing lands within their family land areas, without adequate data on the available quality land vis-à-vis the deeds of families, particularly the poor. (Draft National Land Policy of Sierra Leone – Version 6)

12. Does the government in your country publish (a) large scale land deals / land investments and (b) tax / revenue it might gain from these investments? *Can you give examples (references)?*

Though this is a requirement, it is sad to note that large scale land deals are not currently published by the government. However, one can find scanty information on land deals on the website of some of the companies. (Key informant interview)

C. Corruption in the Land Sector

13. What in your perception are the main corruption risks in the land sector? *Where possible, provide concrete examples, references, evidence.*

- Land allocation decisions are considered ridden with conflicting interests in the land by policy makers, chiefs and other functionaries.
- Land held by the State especially in the Western Area is considered not to be managed in a transparent, accountable, and efficient manner.
- The land administration system, particularly its authority, in the Western Area is fragmented and experiencing a bureaucratic impasse resulting in inadequate planning and oversight

- The land tenure administration processes within the provinces are cumbersome, uncertain, not uniform and not transparent, such that transaction costs are high.
- The control over land rights is, primarily being used as a means of accumulating and dispensing political and economic power and privilege through patronage, nepotism and corruption. (Draft National Land Policy of Sierra Leone – Version 6)

14. Which are the gaps in the national legal system and land governance system opening the door to corrupt practices? *Please provide reference.*

The following are the gaps in the national legal system and land governance system opening the door to corrupt practices.

a) **The Provinces Land Act, Cap 122:** enacted in 1927, this statute which is responsible for the distinction between “native” and “non-native” as far as access to provincial land is concerned is generally perceived as an hindrance to proper use of such land for development purposes. The need for its repeal has been generally recognized and work on its replacement is in progress by a committee appointed by the Cabinet sub-Committee on lands headed by the chairperson of the Law Reform Commission;

b) **The Concessions Act, Cap 121:** This statute was enacted in 1931 for the express purpose of regulating the rights which “natives” could grant to “non-natives”, with the consent of the Governor by way of concession for mining or agricultural purposes. Concessions under the Act could be granted for a term as long as ninety-nine years and could cover an area of one thousand acres and above. However, the procedure for the grant of a concession was very complicated and time-consuming. Not only must a special Concession Court under section 11 of the Act validate the grant, but, if the extent of the concession exceeded five thousand acres, the Governor had to give his assent subject to the approval of Parliament. Though the Act still remains in the statute books and was even amended in 1976 to exclude mining concessions from its provisions, the Act has not been invoked in recent times for the purpose of granting access to provincial land to foreign investors in agriculture.

c) **The State Lands Act, 1960:** It is being proposed in this Policy that there should no longer be a distinction between State lands, presently administered by the MLCPE under the State Lands Act, and government lands that are outside the definition of State lands as contained in the Act. As a result, this Act would be re-designated ‘**The Government Lands Act**’ to be administered by the proposed National Land Commission. Meanwhile there is an urgent need to ascertain what lands are still available to the MLCPE for the purposes of allocation under the State Lands Act. Until recently the Ministry could declare with reasonable certainty the status of all lands in the Western Area.

d) **The Unoccupied Lands (Ascertainment of Title) Act, Cap 117:** This statute is relevant to

the question of recovery of State lands. Under its provisions the Director of Surveys and Lands can claim any land considered to be unoccupied within the meaning of the Act as State land. For the purposes of the Act:

“all land shall be deemed to be unoccupied where it is not proved by the person claiming the same that beneficial user thereof for cultivation or habitation, or collecting or storing water, or for any industrial purpose has been made for twelve years next prior to the commencement of the Act.”

If the claim is disputed the matter could end up in court and be added to the ever-increasing number of land disputes pending before the courts.

e) **The Survey Act, Cap 128:** One of the major functions of the MLCPE is the administration of the Survey Act, Cap, 128, and the regulation of the land survey process. This function is one that not only impacts on virtually all dealings in land whether for the demarcation, acquisition and transfer of land rights. Save as therein provided, section 12 of the Registration of Instruments Act makes it compulsory for every conveyance deed or other instrument submitted for registration to have a survey plan annexed thereto, such plan to be prepared by a surveyor and countersigned by the Director of Surveys and Lands in accord with section 15 of the Survey Act as amended.

15. Are principles of no-tolerance-to-corruption, whistleblower protection, access to information, human rights embedded in land legislation or other accepted and applied land related mechanisms in your country? *Please provide reference.*

In the current land laws in Sierra Leone which are considered inadequate and outdated, there are no significant provisions that uphold the principles no-tolerance-to-corruption, whistleblower protection and access to information. However, in the National Constitution (1991) there is scanty and contradictory provisions that protect one from discrimination on grounds of gender, ethnicity, race and other forms of discrimination is one of the fundamental rights guaranteed by the Constitution the impact of the relevant provision is severely attenuated by a claw-back clause. Section 27 (4) 33 of the Constitution which provides that no law shall make any provision which is discriminatory either of itself or in its effect is made subject, *inter alia*, to Section 27 (4) which states that subsection (1) shall not be applicable where the discriminatory law makes provision

16. Does the media investigate and cover land-corruption cases in your country? *Please provide links to examples where possible.*

Currently in Sierra Leone, the media does not do extensive coverage of land –corruption cases. This is so because such coverage requires in-depth investigations which require huge sums of money and equipment. However, few media houses from time to cover stories of this nature though not extensively. (allafrica.com & standardtimespress.net)

D. Land Governance Processes and Redress Mechanisms

17. Are there any land governance reforms going on at national level in your country at the moment?

Currently in Sierra Leone the land sector is not only chaotic, but also becoming increasingly unsustainable. Therefore, moving towards a clearer, more effective and foremost, just land tenure systems in Sierra Leone is a fundamental prerequisite for ensuring the nation's continued development. In view of this, the government through the Ministry of Lands, Country Planning and the environment has put together a comprehensive land legislature titled the National Land Policy of Sierra Leone. The draft has been developed, and will be later validated before tabled in Parliament earlier next year. In addition, the Ministry of Lands and its partners are currently developing a comprehensive standard document to ensure the effective use of Community Development Funds in large scale mining and agricultural communities.

This legislation proposes to improve upon and strengthen the existing land administration systems and laws, particularly so, by recognizing and working with the differentiated land tenure categories in the Western Area and the provinces, enhancing the capacities of relevant institutions on mobilizing sufficient national and international resources to ensure the implementation of the policy.

18. Are there any examples of best practices in land governance, people centered land governance mechanisms in your country? (*please provide links to documentation*)

In the National Land Policy (NLP) that is currently being developed, there is the provision of people centered land governance mechanisms, based on international best practice. For example,

Principles of consultation and participation

The NLP shall be implemented and tenure rights administered in accordance with the principle of participation and consultation. All relevant institutions and bodies that take decisions affecting the legitimate tenure rights of groups and individuals shall ensure their active, free, effective, meaningful and informed participation and shall take into account existing power imbalances between different parties.

Cultural principles

- i. The NLP recognises the social, cultural and legal foundation that customary law carries in society, particularly in the Provinces and takes measures to prevent tenure disputes and corruption, and to ensure that legitimate tenure rights are promoted and protected under customary law;

- ii. The NLP shall reflect the social, cultural, economic and environmental significance of land, fisheries and forests as livelihood assets to be managed efficiently to promote social equity and gender equality;
- iii. The NLP shall safeguard legitimate tenure rights against threats and infringements. Tenure right holders shall be protected against the arbitrary loss of their tenure rights;
- iv. The NLP shall facilitate access to justice to deal with infringements of legitimate tenure rights;

Gender equality principles

- i. The NLP shall ensure equal rights of women and men in the enjoyment of all human rights acknowledge differences between women and men and shall take specific measures to accelerate de facto equality where discrimination exists.
- ii. The NLP shall ensure equal tenure rights and access to land for women and girls independent of their civil or marital status.
- iii. The NLP shall ensure the repeal, modification or elimination of all laws, policies, customs and practices that discriminate on the basis of gender. (DRAFT NATIONAL LAND POLICY OF SIERRA LEONE -VERSION 6)

19. Is the principle of “free, prior, informed community consent” embedded in land legislation or other accepted and applied land governance mechanisms in your country? *Please provide reference.*

There were no clear cut provisions in the existing land laws that make provisions for free, prior, informed community consent. However, the current National Land Policy has provisions for citizens’ consultation and respect for human and cultural rights (Key informant interview)

20. Which social accountability mechanisms exist for citizens to participate in land governance at (a) local and (b) national level? *Please provide reference.*

Currently, there are no social accountability mechanisms for citizens to participate in land governance. Local citizens are only consulted during Environmental Impact Assessment Surveys or when there is dispute between mining and agricultural companies and the community people. (Key informant interview)

21. Which educational mechanisms exist that inform people about a) all procedures related to land acquisition and the governing legislation, and b) social accountability mechanisms which allow for citizen participation?

Currently, there is inadequate mechanism to educate people about land acquisition and the existing legislations. The only way that people get information from the government is through radio discussion programs that are usually unsustainable and mostly concentrated in the urban areas. Much focus is not given to rural areas where there are several issues regarding land acquisition and utilization. To fill this information gap, Civil Society Organizations and Non-Governmental Organization also provide some amount of information to people, especially

those in the rural area on land acquisition and existing land legislations.

22. What are the existing redress mechanisms for land issues in your country? (here describe institutions, processes as well as legal provisions available for redress)

The only available system of lodging complaints is through the local authorities and the police force. There are also instances where the Ministry of Lands is approached to clarify land demarcation when there is dispute between and among land owners. However, there are claims that these institutions are either too weak or may have been compromised by the investors and their local elites. In order to address this problem and improve relationship between communities and investors, there should be an independent, well designed and managed system to handle complaints. (key informant interview)

E. Impact on people

23. Can you provide examples (*if possible, with links to documented evidence*) of how people in your country were affected by land deals either at small or large scale, urban or rural

Increase in Social Problems

Serious influx of people coming to seek jobs and their presence is creating further social problems like teenage pregnancy and increased dropout rate for girls, increased use of drugs prostitution and high cost of living.

Loosing Cultural Heritage

In Port Loko for instance, it was reported that the grave site of one of their illustrious sons Bai Bureh of the famous “Hut Tax War” was part of the land given to Sierra Leone Agricultural Company.

Children are losing out of their Education

Community teachers who used to volunteer to teach children in these communities, gained employment with these companies and have abandoned the schools and children.

No environmental Safeguards

There is serious pollution in most of these communities resulting from the intensive use of agrochemicals has led to contamination of local water reserves and damage to local bio-diversity.

Loss of livelihoods and Food Security

Young men and women are taking up casual labour in corporate farms. As a result they have

little time to work in their own family farms resulting to serious implication for the family food supply and food security in general.

24. How are communities informed and consulted about land deals and resulting displacement in your country? *Please provide reference to documentation where possible.*

Communities are informed and consulted about land deals through letters to the respective Paramount Chiefs and through town hall and community meetings. (Key informant interview)

25. In your country how are land displacement social impact assessments conducted and what is covered by them? *Please provide reference and documentation where possible.*

The Mines and Minerals Act, (MMA) 2009 and the Sierra Leone Environmental Protection Agency Act, (SLEPAA) 2008 including its supplementary Act, 2010 describe the requirements for securing the EIA license. The process of obtaining the license is outlined in a ‘Checklist’ obtainable at the EPA-SL Office in Freetown. Usually, the client hires the services of an independent firm to conduct an assessment of the environmental and social impacts of their planned operations on neighbouring ecosystems and communities. A report is prepared at the end of the study and submitted to the local regulatory body, EPA-SL for review. If approved, the client will then be requested to conduct public disclosure meetings with relevant stakeholders on the findings and recommendations of the study, and incorporate comments, suggestions and requests made during those meetings into a public consultation and disclosure report. Finally, all reports are then forwarded to the Board of EPA-SL for a decision on the issuance of the license. Additional components of the EIA report, as are repeatedly pointed out by the EPA-SL Board, are a Community Development Plan (CDP), an Environmental Management and Monitoring Plan (EMP), a Resettlement Action Plan (RAP) and a closure plan or strategy.

The Environmental Impact Assessment Report usually covered the following

- A background information on the proposed project; description of the layout of the environmental impact assessment report; and the political and administrative framework at the national and local levels;
- An overview of the national and international policies, regulations and legislations governing or guiding the realization of such a project.
- An elaborate description of the prevailing biophysical and socio-economic environments from a scientific perspective involving comparative review of literature materials and primary data acquisition through measurements, sampling and the administration of questionnaires.
- A description of the mining infrastructure, methods, operations and processes
- A discussion on the impacts from various perspectives: positive and negative impacts,

major and minor, significant and less significant, direct and indirect, reversible and irreversible etc at various stages of the lifetime of the mine ranging from construction to termination.

- Consists of an Environmental Management Plan that discusses the organization and co-ordination of mitigation, rehabilitation and monitoring measures that would serve as a guide in the implementation of the project.
- A reviews a number of alternative scenarios or options to facets of the mining project (www.niminigold.com)

26. How are communities (men and women) compensated after being displaced and resulted?

Please provide reference and documentation where possible.

The compensation package for displaced communities is usually embedded in the Land Lease Agreement signed between the company, the government and the local authorities. Usually the community and their authorities are summoned to a meeting where they will be informed about the compensation package. The community is relocated to a new area. The company is then charged with the responsibility to construct dwelling houses, schools and provide other amenities like water and toilet facilities in the new settlement. In most case, cash is also provided to victims to help them settle down in their new community. For farming communities, alternative land is provided for them to farm, to enhance their livelihood. Owners of affected lands are also compensated in cash. For agricultural lands for example, the payment recommended by the Sierra Leone is 5 USD per acre or about 12 USD per hectare.

According to World Bank standards, the land lease fee has to properly reflect the value of the lands. As this differs from plot to plot, a thorough assessment will be done in the implementation phase to assess if and what supplementary compensation is required. According to World Bank standards, nobody in the project area should be worse off than before. This aims at protecting vulnerable people like so-called land tenants who have been farming land or raising cattle on lands belonging to traditional landowners.
www.thepatroticvanguard.com

However, there is the growing need among civil society organizations in the land and natural resource sector for the development of a comprehensive framework on compensation and relocation packages.

27. Are there any groups in society especially affected (e.g. indigenous communities, women) and if yes, how? *Please provide reference and documentation where possible.*

Group	Effect of Land Displacement
1. Women	women that have lost their land and thus their livelihoods have no viable or safe alternative livelihood, and thus are the most vulnerable
2. Indigenous Communities	<ul style="list-style-type: none"> • There is no effective environmental management of land, water and vegetation in lease areas to prevent destruction of resources, water sources, native herbs and wildlife and to protect the livelihoods of those that depend on these • Loss of cultural heritage and a decline in the levels of cultural activities because of loss of income

F. Gender, Minority Groups and Young people

28. Are there differences in land administration / management practices for men and women, minority groups and young people? If yes, please describe the different customs and legal regulations that govern inheritance, access to tenure and the rights of men and women. *Please provide reference and documentation where possible.*

According to the current land administration and management practices there are no separate land regulations for men and women, minority groups and young people. However the recent Devolution of Estate Act, under customary marriage made some specific provision protecting the right of women to inherit land from their deceased husbands.

29. How different is the (a) economic (b) social and (c) spiritual importance of land to men and women of different generations? *Please provide reference and documentation where possible.*

No.	Group	Economic Importance	Social Importance	Spiritual Importance
1.	Women	<ul style="list-style-type: none"> • Backyard garden • Subsistence farming to family • Construction of houses and Cooperative offices 	Traditional practices and festivities	Shrine for traditional gods
2.	Men	<ul style="list-style-type: none"> • Subsistence farming • Mining activities 	Traditional practices and festivities	<ul style="list-style-type: none"> • Shrine for traditional gods • Construction of religious places of worship (churches and mosques)
30. Which forms of corruption are men more likely to face in the land sector and which forms of corruption are women more likely to face in the land sector? <i>Please provide reference and documentation where possible.</i>				
<p>Women and men alike, face the same forms of corruption in the Land Sector. They are as follows:</p> <ul style="list-style-type: none"> • Bribery to acquire land • Extortion by paying illegally for land acquisition 				
31. Which forms of corruption are young people more likely to face in the land sector? <i>Please provide reference and documentation where possible.</i>				
<p>Young people like women and men following forms of corruption the Land Sector.</p> <ul style="list-style-type: none"> • Bribery to acquire land • Extortion by paying illegally for land acquisition 				

G. TI National Chapter involvement

32. Has your organization carried out projects / activities on integrity in the land sector? If yes, please provide details.

As part of its Program on Land and Corruption, Transparency International Sierra Leone (TI-SL) has engaged in the following: Sensitization and awareness raising in land related corruption issues, through Radio Discussion Programs, jingles and posters. TI-SL has also conducted advocacy campaign activities with relevant stakeholder institution, including the Ministry of Lands, Housing and the Environment, to develop a comprehensive national law on Land Management. Furthermore, in 2014, TI-SL engaged women in an Interactive Session on corruption in land management.

33. Has your organization developed any partnerships on the land topic

TI-SL is part of the Natural Resource Governance and Economic Justice (NARGEJ) Network which focuses on ensuring that land and other natural resources benefit the citizens' of Sierra Leone. TI-SL is the Co-Lead of this network. Further, TI-SL works in partnership with the Sierra Leone Network on Right to Food (SILNORF) and the Ministry of Lands, Housing and the Environment. TI-SL will continue to establish partnerships with other related groups.

34. What are your current capacities to develop projects/ activities on the topic: a) please list relevant key staff and their expertise which can contribute to the project at national level and regional level; b) please list whether you receive funding for land activities from any other donors (not channeled through TI-S)

TI-SL has competent and well experienced staff who have an appreciable knowledge on the issues of land management and corruption.

Mrs. Lavina Banduah, Executive Director has been engaged in corruption related work since 1998 as a civil society activist. She has worked extensively on land management issues.

Mr. Edward Koroma, Senior Program Officer has been engaged in corruption related work since 2007 and has also worked relatively on land management issues

Mrs. Adenike Temple, Program Officer of TI-SL has been engaged in corruption related work since 2012 and has considerable experience in land management issues.

TI-SL has not received any other funding from another donor for land related work. Project

proposals for support for land related work are currently being developed.