

**LAND AND PRO-POOR CHANGE IN SIERRA LEONE**

**SCOPING STUDY**

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This scoping study was commissioned to inform the process of elaborating a Joint EU-DFID Country Assistance Plan for Sierra Leone about land-related issues that impact on poor people and the potential poverty reducing options for engagement in land issues.

## Executive Summary

In Sierra Leone, the poor, particularly women, have inadequate, undervalued and insecure rights to land. Increasing the amount, value and security of the land rights of the urban and rural poor has the potential to substantially reduce poverty. How, when and by whom this could be done are the questions this study seeks to address.

The existing multiple land tenure system of Sierra Leone is examined first in some detail. Land tenure in the Provinces, founded on customary law, is dominated by the heads of those lineages and families who were the original settlers, in their capacity as land stewards. Statutory law provides a cumbersome procedure for non natives to acquire leaseholds, requiring the consent of both the Chiefdom and Local Councils. Land tenure in the Western Area, including Freetown, is based on arcane, received English land law, and has become anarchic because of mismanagement of State land, widespread first time acquisition of that land by adverse possession and ineffective land administration.

Inequities and inefficiencies in relation to land are also one of the main sources of the economic and political privilege enjoyed by urban and rural elites in Sierra Leone. To date, these vested interests have been able to ensure that the importance of reforming existing land tenures and current land administration practices is under elaborated in public policy in Sierra Leone. If increasing the amount and value of the land assets of the poor involves reducing the share enjoyed by the rich, these elites are well placed to oppose land reform.

Land reform which aims to achieve the twin objectives of increased efficiency and greater equity will, therefore, inevitably involve painful trade offs and negotiated compromises. However, this study argues that land reform in Sierra Leone is both necessary and possible. However, the practical constraints on what can be achieved, given a State apparatus lacking capacity and credibility, a feudal form of social organisation struggling to adapt to changing values and a depleted capital base, are acknowledged.

States need effective property records to function as states. The centrality of land to the political structure of the country, its economy, social organization and culture requires a highly strategic approach to land reform. As the analysis presented below demonstrates, coordinated, phased tactical interventions in relation to public participation, policy, legislative frameworks and institutional strengthening and could generate substantial benefits to the poor.

Although comprehensive land reform will take along time and would create additional demands on a small donor support base, which is already managing an extensive country assistance programme, some urgent and relatively quick wins can be identified. Facilitating the participation of the private sector and civil society in the current legislative agenda would be a good place to start generating the requisite momentum for sustainable land reform. Improving coordination between donors and with the Government of Republic of Sierra Leone (GoSL) could be achieved by negotiating and obtaining agreement on a doable, demand-lead strategy to implement existing land policy. Providing short term technical and financial assistance to government in support of the current proposal to establish a statutory Land Commission to take responsibility for the management of State' land, would reduce the risk that ongoing mismanagement of State land will increase the

frequency and intensity of land disputes. If this is not done there will almost certainly be further civil unrest over land.

The other costs of doing nothing to address the land tenure and administration challenges in Sierra Leone include ongoing environmental damage around Freetown and to other areas where inappropriate land use combined with weak land use planning will continue to result in widespread degradation. Property prices inflated by high transactional risks will keep land unaffordable for the poor. Developers and financiers will remain wary of using land for investment or collateral. Ongoing land disputes will clog the courts and reduce access to justice by the poor.

Successfully addressing the land reform challenges will require the full cooperation of development partners and donors and the GoSL in line with the Paris Declaration. DFID has a distinct comparative advantage in technical assistance relating to the land law, administration and institutions: other partners have comparative advantage in other relevant areas such as land use planning. Some of the development banks could be expected to be interested in contributing to the financing of a long term land reform programme, in concert with a consortium of donors, as they are currently doing elsewhere in the region.

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## Situational analysis

### **Land Tenure**

Like most countries in Africa, Sierra Leone has multiple land tenures. A small fraction, but the most valuable proportion, of the land in Sierra Leone, located in the Western Area<sup>1</sup> is regulated by the State, mostly on the basis of nineteenth century English land law. Land tenure throughout the rest of the country is regulated by customary law. In practice, however, this distinction is not as absolute as merely reading the relevant statutes would suggest.

The Constitution of the Republic of Sierra Leone Act No. 6 of 1991 at ss. 5 (2) (a) provides that “*sovereignty belongs to the people of Sierra Leone*”, but nowhere does it state to whom the territory of Sierra Leone belongs. This omission has important ramifications, not the least of which is a recent assertion by the current Chief Justice (Renner-Thomas 2005) that the doctrine of tenure, a foundational common law principle which makes all land owners tenants of the Crown, does not apply in Sierra Leone in the same way as it does in other common law jurisdictions.

The Non-Citizens (Interest-in-Land) Act, No. 30 of 1966 restricts non-citizens, and this includes non-citizen companies, from acquiring any interest in land greater than a reserved leasehold of a term not exceeding twenty one years without first obtaining a license from a Board consisting of Ministers responsible for Trade and Industry, Lands, Finance, Development and the Attorney-General.

### **Legislated Land Tenure**

Land titles in the Western Area, including Freetown, are derived either from a grant of State' land, or, more commonly, are claims to possessory title to State land based on adverse possession. In his foreword to the National Land Policy, the Minister of Lands Country Planning and the Environment asserts that the main reason conveyance of land in the Western Area of Sierra Leone is so fraught because the received law (see Annex VI) provides that courts hearing land matters give unqualified reception to statutory declarations. This situation is, in the words of the Minister an *inherent weakness* which has been *scrupulously exploited* evidenced by *numerous land litigations in the courts* (Ministry of Lands Country Planning and the Environment: 2005:ii). This critique of abuses of arcane statutes has been reiterated in discussions between the author and senior judges.

There is currently no system of registration of titles in Sierra Leone. The Registration of Instruments Act, Cap 256 of the Laws of Sierra Leone 1960 created a system of registration of instruments of conveyance. In this system, it is the conveyance itself which confers title, not the registration of the instruments under which the conveyance was executed.

The statutory land tenure framework in the Provinces is a curious artefact of the colonial policy of indirect rule through a network of traditional authorities.

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<sup>1</sup> This is the area of land, which was originally granted by Crown to the Sierra Leone Company, that was defined in 31 Geo. III Cap LV 1791, s. 154 as *so much land as shall include the whole tract or district so commonly called or known by the name of the Peninsula of Sierra Leone bounded to the north the river Sierra Leone, on the south by the river Caramanca, on the east by the river Bunce, and on the west the sea to the west.*

Much is made of the fact that the preamble to the Provinces Land Act Cap 122 begins with this phrase.

*Whereas all land in Protectorate is vested in the Tribal Authorities (since amended to Chiefdom Councils) who hold such land for and behalf of the native communities concerned.*

This statement only appears as an aside in the declarations of the Act, where it has been inserted to justify the Act's sole purpose, which, as the preamble goes on to set out, is *making provision regulating the interests in land in which such Tribal Authorities may grant non natives*. Neither the purpose nor the effect of the Act is to invest Tribal Authorities with title to all the land in the Provinces as is frequently asserted.

The Act attempts to distinguish between the land rights which can be allocated to 'natives' and 'non-natives', however it defers to customary law in relation to what these terms mean. So the question of whether a spouse, who comes from another Chiefdom to marry a native, is a non-native or not, can only be determined by customary law. Hence the property rights that can be acquired by such people are also determined by how, and by whom customary law is interpreted and applied.

Under the Act, 'non-natives' of a Chiefdom, as determined by customary law, who are Sierra Leoneans, have the right to lease land in the provinces for a term of fifty years plus an option for renewal for a term of twenty one years with the consent of the land owning families and the Chiefdom Council.

The definition of non-natives, *persons not entitled under customary law to rights in land*, would seem to include all companies and other non natural persons. According to s. 4 of the Act, if two natives come together to form a company, that company or any other non-native legal person, cannot own a interest in land in the Provinces greater than a term of fifty years with an option to renew for a second and further terms not exceeding twenty one years. First, a non-native applicant must obtain the consent of the Chiefdom Council and the approval of the District Commissioner. Failing that such a claimant can only acquire a tenancy at will. (Renner-Thomas 2005) Then the deeds on which the grant is made must be registered within the statutory time period.

It is submitted that, under accepted rules of statutory interpretation, this much cited sentence in the preamble to the Provinces Land Act Cap 122 does not vest legal ownership of all the land in the Provinces in Paramount Chiefs. Rather, the Act merely regulates the way in which property in land can be acquired by whom ever customary law determines to be outside its jurisdiction.

The Local Government Act No 1 of 2004 in s. 28 (d) appears to be more definitive, by preserving the responsibility of Chiefdom Councils for *holding land in trust for the people of the Chiefdoms, as provided by the Chiefdom Councils Act* (previously know as the Tribal Authorities Act No 13 of 1964 as amended). The problem here is that the Chiefdom Councils Act does not anywhere give Chiefdom Councils this responsibility. The Local Government Act cannot preserve a power or an obligation which does not exist.

The Act is silent on the form and nature of the land rights that can be acquired by natives, leaving that to the dictates of applicable customary law. Therefore the source of all legal ownership of land in the Provinces of Sierra Leone, from which diverse elites, not just Chiefs but also lineage' and family' heads,

exercise differing forms of custodianship over lands in the Provinces is customary, not statutory law.

### **Customary Land Tenure**

The literature, reviewed by Unruh and Turray (2005) suggests that there are as many forms of customary law as there are language groups in Sierra Leone. This appears to distress some commentators and give rise to calls for codification and standardisation. However, different, even exotic, forms of land tenure are not as confounding for those for whom they constitute an agreed social consensus as are received or imposed systems. Even English land law, for example, which is deeply mysterious for all but those common lawyers who have spent their lives trying to understand it, has broad popular support.

That being said, some general principles of customary land tenure in Sierra Leone can be discerned from the field work for this study and from the literature. Whilst institutional responsibility for the allocation, verification and protection of land rights in the Provinces of Sierra Leone is not homogeneous, male heads of families representing the 'original' settlers or conquerors of an area appear to dominate. In Moyamba, for example, family heads claim to derive their rights to land not from their superiors but from the actions of their ancestors.

Based on fieldwork conducted in Bo, Kenema, Koinadugu, Tonkilili and Moyamba, comprising eighty four, 30-60 minute interviews, Hanson-Alp (2005:15) describes the powers exercised by and the constraints upon lineage and family heads.

*Rights to access family land must be attained through to the permission of the head of the family, whether or not the request comes from a spouse, younger family member or stranger. The responsibility of the family head is to ensure that decisions related to land are in the best interests of the family as a whole and to safeguard this land for future generations. The relationship, therefore, between younger and elder sibling, nephews and uncles, wives and their husbands is a delicate balance between traditional respect (building of alliances) and subservience (strict dependency).*

In such places where family and lineage heads appear to have control over land, the involvement of higher ranking elites seems to be restricted to validating the rights of those lineage or family heads to make the decisions in relation to land, to arbitrate between them, to make grants unallocated and forfeited land and become involved in grants to non-natives under the provisions of the Provinces Land Act Cap 122.

There does appear to be some consistency about the kinds of rights that can be acquired under customary land tenure.

Grants of mostly wetlands for cultivation of annuals (mostly rice) are annually renewable, whilst the terms of leases of land for the cultivation of plantation crops are linked to the viable life of trees and conditional upon the grantee continuing to maintain the area, particularly by 'brushing', failing which the land reverts back to the grantors. Where the allocation of the land is for the construction of a dwelling house, the grantee takes it forever or until he abandons the property, in which case it also reverts back to the grantors.

This typology of rights in Provincial land which can be acquired by grant from its stewards, applies both to subjects of traditional authorities and to strangers, to men and to women, the elderly and to youths, However, each group will have differing degrees of likelihood of receiving such grants and the



terms which apply to each of them are likely to be more or less favourable depending on the relationship to the land owning family or lineage.

Land markets are reported to be operating in many places in Sierra Leone where land tenure is determined by customary law. Land in some places (for example Kayamba Chiefdom) can be “sold” to private individuals or alternatively let out annually for farming purposes. In the latter case, an initial agreed sum of money is paid to the landowners at the end of the negotiations and, at the end of each farming season, a specified portion of the produce is given to the landowners.

### **Interrelationship between Legislated and Customary Tenures**

The relationship between received and customary land tenure systems is much more complex than merely reading the statutes suggests. Neither of these systems operates to the total exclusion of the other anywhere. When driving out of Freetown, but for the sign marking the boundary, little else signifies that one has moved from one land tenure system to another nor are land use patterns in anyway transformed. The land tenure arrangements in the main towns, particularly in the old District Headquarters, operate much as they do in Freetown. Dealings in what the Law Reform Commission describes as ‘customary freehold’ are frequent and the consent powers of the Chiefdom Councils are observed as mere formalities. Similarly in the Western Area, conveyances of land, land claims and disputes are centred around and within families. Researchers for this study were told that ‘Tribal Chiefs’ in Foulah Town, a ward of Freetown, were actively engaged in arbitrating land disputes within their subjects’ families.

The case law provided at Annex I provides a sense of how the judiciary has interpreted the way in which customary and other sources of law inter relate. The example of an attempt by the state to acquire customary land for the provision of public services provided at Annex III illustrates the difficulties presented by the current law, which limits the State’s power of compulsory acquisition to lands within the Provinces.

## ***Political Economy of Land and Land Reform***

### **The State**

States need effective property records to function as states. As has been pointed out by Scott (1998), the essential functions of states are the protection of external borders (or raiding neighbours) and the maintenance of internal security (or repressing internal dissent) Achieving these twin objectives requires the capacity to conscript and to raises taxes, both of which are in turn made possible by centrally maintained property records.

Similarly, the protection of property rights, like other governance and rule-of-law essentials such as enforcement of contracts and actions for liability, are both necessary pre-conditions for creating states and for preventing them from failing. (Rose-Ackerman, 2004)

So simply calling for land reform in Sierra Leone, (for example see Albrecht and Malan 2006:13) because the State does not have the land tenure and administration system under its control, is unlikely to succeed precisely because the State lacks the internal coherence and gravitas required to achieve it. This ‘chicken and egg’ dilemma will always be difficult to unravel. How its resolution could be played out in the Sierra Leonean context is discussed below

### **Vested Interests**

Whether or not control over land was at issue in the civil war in Sierra Leone is a subject of contention (see Abdullah 2004). However, there is broader agreement that the war did not achieve much in terms of realigning the vested interests which underwrite the existing land tenure and land administration systems. The investors, technocrats, quasi government officials, aristocrats and politicians who control the land tenure system in Sierra Leone remain pretty much in place after a tumultuous eleven years. Male dominance of the key institutions, family, village Chiefdoms and central government and agencies, has survived in tact.

Each of these actors, in post war Sierra Leone, has retained their strategic stranglehold on land distribution, management and user. Investors, aided by lawyers, surveyors valuers, petty officials and politicians have adapted their behaviours to enable them negotiate their way around the existing flaws in the system. They are therefore unlikely to embrace reforms which displace their advantage. They can, however, be expected to support reform which extend it, as demonstrated by evidence cited below.

### **Power Relations and Land**

Land in rural Sierra Leone is held by lineages and mostly transferred through patrilineal lines. Research suggests that some women in the northern part of the country do inherit land from their fathers. Labor on the other hand is universally provided by households, that is, mostly by women and strangers, those who are outside the lineage. This is core of the social compact underpinning, what Mafeje (2003) has called the *lineage mode of social organization for subsistence agricultural production in Africa*.

Access to land by the poor for cultivation, commerce and shelter is achieved principally by inheritance, gifting, renting and to a lesser extent by purchasing. Therefore the functioning of these land delivery systems, particularly in terms of mitigating inequality in land-ownership and increasing access to land by the poor, is critical to poverty reduction and economic growth. The operation of customary law, with regard to succession, marriage and other family law matters are of critical importance. Under the prevailing customary family law, women have less access to land than men have through these delivery systems. Younger male siblings also seem to have few opportunities to acquire rights in land by these means.

Descendants of village founders form elites within villages throughout the country, sitting above subsequent settlers in the local social hierarchy. The question of why social ranking should be determined by the order of arrival is under challenge as the population becomes more mobile (Richards et al 2004: i)

Even though customary land tenure is rightly condemned for subjugating women to men and outsiders to first settlers, these are the social relations which are indisputably at the heart of the politics of land tenure in Sierra Leone. Identifying the internal forces that could be championed to displace these arrangements will be very difficult. Educated, independent, urban based middle class women, and to a lesser extent men of the same class, appear to be at the forefront of attempts to change laws regulating female circumcision, marriage and inheritance in Sierra Leone.

Just as there is greater possibility for land ownership by women in the Western Area under received land laws, these other reforms may be possible within the same bubble. While economic activity and growth continues to be

restricted to Freetown, however, it is unlikely that the social relations which underpin land tenure elsewhere in Sierra Leone, are likely to change soon.

The struggle for ascendancy between the ruling aristocracies in the Provinces comprised of lineage and family heads, section chiefs, chief and Paramount Chiefs, and the new technocracy located in Local Government is quintessentially a battle over control of land and the rents which accrue from it. The Local Government Act gives supervisory control over Chieftom Treasury accounts to Local Councils. Low capacity, entrenched practices and manipulation of political uncertainty may all conspire to limit in practice the use of these powers, which are similar in many ways to the powers enjoyed by District Commissioners in the past and designed, then, as now, to limit the absolute powers of the ruling families. This time around, the result may well be the same.

Central elites are not neutral in this contest. The judicature wants to wrestle control of the Local Courts. Ministry of Mines wants to keep control over the allocation of mining licenses. In Sierra Leone, the Freetown elite wants better terms for what it sees as its rightful and inevitable appropriation of land in the Provinces. Hence the call for removal of the current restrictions on the tenure they can acquire outside of the Western Area by repealing the Provincial Land Act 1921. They argue that this restriction is discriminatory since Sierra Leoneans living in the Provinces can acquire freehold in the Western Area. Meanwhile traditional elites within provincial towns are trying to re-secure the land interests which they have alienated from their lineages.

### **Politics of Land**

So far in the pre-election campaigns, none of the main political parties' appears to be highlighting land reform as a key element in their campaign. This is to be expected given that the election will likely be fought by competing patrimonial networks based around personalities. What has been shaping recent public debate about land reform has been the candidature of the current Minister for Lands, Country Planning and Environment for the position of running mate for the SLPP Presidential candidate.

The response by President Kabbah to recent riots at Hill station, which tragically resulted in the death of one official and injury to civilians and policemen, is revelatory. This eruption of mass anger resulted from attempts by officials from the Ministry of Lands, Country Planning and Environment to destroy homes and shops built on State land, which was 'reserved' for foreign missions by other officials of the same ministry, was violently resisted by people who had previously obtained various forms of permission, including in some cases leases, to occupy these lands, by paying bribes to other officials of the same ministry.

A resolution from the Parliament and newspaper editorials supporting the 'brave' actions of the Minister in trying to bring order to the 'anarchy' which characterises the management of State land in Freetown followed. However, the President responded by removing the Minister's authority to make grants of State land, thereby depriving him of a critical source of the political and financial capital needed to maintain his campaign for pre-selection by the SLPP as the current Vice President's running mate. Despite the fact that a bill had already been tabled in Parliament to set up a Land Commission to perform this task (discussed below) the President reassigned this responsibility to the Cabinet, thereby increasing the Presidential candidates' access to the political and financial capital necessary for maintaining his and his parties' campaign for re-election.

As this example demonstrates the politics of land administration in Sierra Leone is primarily focused on the way in which it can be used to generate patronage and rents. Control of the land tenure system lies at the heart of the existing political system because it is based on patrimony. Therefore removing control of the administration of land from political interference by the direct intervention of external actors is a critical pathway towards reducing the importance of patrimony and increasing the chances of the emergence of a political meritocracy in Sierra Leone.

### ***Information Gaps and Fixes***

#### **Who Owns What, How?**

One of the critical issues in this discussion is who owns what and how. Not surprisingly given the poor state of public records, little hard evidence is available to us. A recent examination for this report of the Register of Instruments of Conveyance revealed that less than 200 transactions in Freetown had been registered in the first half of this year – which must be grossly inaccurate. An inspection of receipts held by the Chiefdom Treasury Secretariat in Tombuku for mining license development fund fees revealed the use of multiple receipt books and undated and anti executed documentation.

It is hard to argue for transparency when the data does not exist to be seen. Advocating land management objectives such as optimum plot sizes and allocation of land uses or equality of access to land by women, is impossible if there is no data about either what land is being used for or who by. Land records must be improved both for advocating and designing appropriate land administration interventions.

#### **Land Disputes**

Not enough is presently known about the incidents of specific actors and causes of conflicts over land in Sierra Leone. This matters because land policy should first focus on addressing real needs rather than on trying to build a perfect land administration system. If most of the conflicts over land in a specific area are between siblings about inheritance then it is highly likely that in this locale there is excessive demand for land, rising land prices and or fragmentation, shortening fallow periods and declining soil fertility; in which case land redistribution or resettlement might be the appropriate policy response. If, on the other hand land disputes in another area are mostly between investors over competing document-based claims for possession of the same high value parcel, then the problem is likely to be related to rules of evidence, document storage, professional capacity and administrative inefficiencies; in which case investment in strengthening land administration will be required.

Nor is much known about which fora are handling which kinds of land disputes and how well. As a consequence, beyond the anecdotal evidence we have, we do not know what, if any, are the blockages and costs associated with the current institutional architecture for dealing with land disputes and where interventions would most likely deliver significant benefits. The JSDP is planning to commission court users surveys within its pilot areas and that data will improve the capacity to undertake a critical analysis.

## Policy Context

### *Global Policy*

#### **Poverty and Land**

Grossly inadequate income is not the only manifestation of poverty. The poor also have inadequate, undervalued and insecure rights over too few assets. However poverty and land have a complex interrelationship. Ironically, the very poorest people in Sierra Leone, 85% of whom are located in rural areas (Thurton 2005), have the greatest proximity, if not the most access to land. Neither proximity to space, nor mere access to it, are the most critical parameters determining the extent of control over land and the benefits which it can provide; what matters most is the distribution of power within the socio political context.

#### **MDG and Land**

In relation to the targets nominated for determining the progress in relation to MDG 1, increasing the return from land-based primary production could be expected to directly contribute to economic empowerment of the poor. Similarly, because food security in Sierra Leone is dependent on access to land for subsistence and commercial cultivation, land reform focused on increasing that access, could be expected to make a valuable contribution to the eradication of hunger.

Currently there are no economic empowerment targets for women under MDG 3. However, the CEDAW (Arts 15 and 14.2.g), to which Sierra Leone is a signatory, but has yet to internalize, provides unequivocal antidiscrimination objectives in relation to land reform, which would also contribute to economic empowerment the Sierra Leonean women.

Progress in relation to MDG 7 is to be measured against two land specific targets. Target 9, *integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources*. Given that land administration capacity is an essential tool for mediating private land use practices to accommodate the public interest and to control the external costs of that use, increasing capacity for land use planning and land management could be expected to contribute to meeting this target.

Importantly, slum dwellers, distinguishable by their poverty and tenurial status as squatters, are specifically nominated in Target 11, *Achieve significant improvements in the lives of at least 100 million slum dwellers by 2020 for the implementation of MDG 7*. This prioritisation means that development assistance within the MDF in respect of land reform in Sierra Leone must be directed toward the increasing numbers urban poor.

However, as we will discover, identifying the specific interventions which are going to deliver on all these land related MDG Targets in Sierra Leone will require careful consideration of a complex context.

#### **Land and Livelihoods**

There is great deal of smoke, some heat, but not much light in the vast literature about the relationship between livelihoods and land. DFID has commissioned several policy papers (Adams 2004, Daley and Hobley 2005) in recent times that have attempted to clear up some of the confusion surrounding this issue. The only substantial area of agreement amongst all the rural livelihood analysts is about the risk of negative impacts of land

reform on livelihoods, as Adams (2004: 12) has pointed out. Daley and Hobley (2005) make a similar point about the potential for land reform to negatively impact on the livelihoods of the urban poor.

As Borrás et al (2005) have concluded from their recent review of the literature, the debate about the contribution land reform can make to poverty reduction economic growth has been dominated by half a century of sniping between the champions of smallholder versus larger commercial farming and about the primacy of the role of markets versus the role of states in achieving land reform objectives. This ideological tussle has led to insufficient emphasis being given to the social relations that underpin tenures and to urban land issues such as the right to land for shelter.

There is little consensus, either, in policy documents in Sierra Leone about the role access to land plays in prescribing sustainable livelihoods (Thurton 2005). Recent research (Salazar, 2004 cited in Unruh and Turray 2005) has produced convincing proof that land access is not the major obstacle to boosting agricultural production in Sierra Leone.

### **Social Exclusion and Land**

Social exclusion is clearly a core element of both individual ownership of land (under English common law land is held 'as against the rest of the world') and in relation to the exclusive control of customary land currently asserted by male lineage elders throughout Africa. All systems of land tenure seek to solve the difficult problem of balancing competing claims to scarce, valuable resources. Diverse land tenure systems contain novel solutions to this same problem. What matters most to those who are subjected to these tenures, is their internal consistency, equitable mechanisms and institutional capacity for enforcement and adaptation. As is the case everywhere, social exclusion in Sierra Leone privileges access to the requisite political patronage for acquiring grants out of both State and customary land.

Customary tenures clearly hold greater promise in relation to equitable access to land and to the rents that can be derived from land held in trust for founding lineages and citizens than does privately held land. Customary land tenures have amply demonstrated their flexibility and capacity to accommodate the thousands of people displaced by the civil war in Sierra Leone.

However safety nets and checks against land being a cause of social exclusion which are an integral feature of indigenous land tenure systems are being sorely tested throughout Africa as customary tenures struggle to meet the Malthusian challenges of increasing population and lowering returns from agriculture.

### **Labour and Land**

Wage employment is often posited as an alternative to or a way out of subsistence agriculture. However this neat distinction is somewhat unwieldy. It is extremely doubtful that pure subsistence agriculture is being practiced anywhere, with most poor farmers selling their labour to each other and selling their produce so they can buy cheaper sources of food. Many of the recommendations currently going around about how to boost agricultural production involve investments in draft animals and agricultural machinery that would substitute capital for labour, rather than increase employment.

### **Food Security and Tenurial Insecurity**

Tenurial insecurity and poor land management undoubtedly contribute to food insecurity. However, how land reform in Sierra Leone could positively contribute to food security is a much more difficult problem to unravel. This is in part because the production systems commonly deployed on customary land in Sierra Leone (for example swiddening for tree harvesting, growing rain-fed crops or open range grazing) are dependent for their viability on long fallow periods and are highly labor intensive over short periods. Supervising fallows and marshalling labor for clearing and 'brushing' depend in turn on the control of lineage elders over land allocation and marriage. As food insecurity intensifies, these forms of social control tend to break down. Younger farmers try to cultivate exhausted land and inadequately mobilized labor, partly due to urban drift, prevents clearing of land which has been adequately rested and the 'brushing' of land under cultivation to increase yields. Thus the shifts in the political economy of land use, precipitated by food insecurity, tend to inhibit the very land tenure mechanisms which could restore food security.

### **National Policy**

Four core elements of national policy in Sierra Leone; the PRSP, Decentralisation, the National Land Policy and the National Housing Policy are critiqued below with respect to how they treat the potential of land reform to contribute to poverty reduction and economic growth.

#### **PRSP**

As the analysis in Annex IV below shows, the rhetoric in the Sierra Leone PRSP narrative in relation to land policy is quite ambitious. However, this analysis is not reflected in the critical annexes to the paper. Critically, Pillar II targets in relation to land are limited to land policy elaboration and no funds are identified for any priority actions in relation to land reform.

#### **Decentralisation**

Decentralisation is a key pillar of the Government of Sierra Leone post conflict recovery programme. Recent legislation, discussed below, mandates the devolution to local councils of land administration and the capacity to raise revenues from land to occur within the next two years. This element of decentralisation will be critical for both the political independence and the fiscal autonomy of local government.

This timetable is overly ambitious. Opposition from those who currently administer land in the Provinces to this reform is a certainty. Serious questions must be asked about how a weak state with low land administration capacity itself in these areas, can or should devolve this function to less capable, lower level institutions.

#### **National Land Policy**

The recently promulgated National Land Policy (Ministry of Lands, Country Planning and Environment 2005), is an ambitious document, loaded with normative and prescriptive statements and light on concrete plans of action. An analysis of the policy is provided as Annex V.

Importantly, the National Land Policy acknowledges the problems besetting land administration and land tenure in Sierra Leone.

- A) *General indiscipline in the land market*
- B) *Indeterminate boundaries*
- C) *Illegal acquisition of State lands*

- D) *Inadequate security of land tenure*
- E) *Difficulty to access land for development purposes*
- F) *Weak land administration and management systems*
- G) *Low level consultation, coordination and cooperation*
- H) *Inadequate coordination with neighbouring countries*

Evidence of the problems cited in the policy document are **conflicts (A, B, D, E) endless, protracted litigation (A, B); slow pace of adjudication of land cases (D); encroachments (A, C); racketeering (D); falsification of documents (A); illegality (C) improper survey practices and the use of unapproved maps (B); improper management (H); inadequate institutional capacity (F).**

Whilst this appears to be a frank, somewhat brave admission of past failures, the question still remains - are these the problems that have to be resolved to ensure that, in the future, Sierra Leoneans have a system of land tenure and land administration which will enable them to overcome impoverishment and destitution? A sensible test for making this assessment would be to ask if and how tackling these issues will put more land in the hands of those who need it the most and could use it best. Before answering this question it is important to understand how the current land tenure works and what it is delivering to whom.

### **National Housing Policy**

A revised National Housing Policy is being developed by the Government of Sierra Leone with the assistance of UNDP and UN-Habitat. Somewhat limited nation-wide consultations have been completed and a final draft is ready to go before Cabinet for endorsement. The policy describes the destructive impact of the civil war on housing stocks in towns in the Provinces of Sierra Leone and discusses the land delivery challenge to building them back up to meet rising demand. The policy needs more work, wider input and has quite frightening funding implications.

The high cost of land in Freetown, attributed in part to risks associated with purchase of good titles and the associated survey costs and the unreliability of survey plans are clearly obstacles to land delivery for increasing the national housing stock. A critical issue raised in the policy is the absence or the failure to implement the development planning and control provisions of the Town and Country Planning Act, 1948, Cap 81 and the lack of cooperation between the divisions of the Ministry of Lands, Country Planning and the Environment. Other critical issues cited in the policy, all requiring further investigation, include poor performance by government in meeting leasing obligations on customary land and the consequent reluctance of the land owning families and Chiefdom Councils to extend the area of their land under lease to government.

### **Tentative conclusions**

#### ***Disconnect between Policy and Reality***

Most land in Sierra Leone is "legally owned", whether by way of customary or statute law, by trustees; the State, Paramount Chiefs, Town Chiefs, Section Chiefs, heads of lineages, heads of families. However, the beneficial owners of those lands are in turn, the citizens of Sierra Leone, the subjects of the Chiefdoms and the members of the lineages and families. Trustees owe a



fiduciary duty to the beneficiaries whose equitable entitlements overreach any dealing in the property of the trust by the trustee into any resultant capital. The single most important measure of the trustees' discharge of these obligations is the amount of rent they are collecting and distributing from this vast store of national capital.

All of the land-owning trustees in Sierra Leone are in fact struggling with their onerous obligations. All land in the colony, now the Western Area, was *fully and absolutely vested* in the Crown by the Sierra Leone Company Transfer Act 1807, without any reservation protecting pre existing indigenous rights. Therefore, as pointed out by the current Chief Justice in a paper commissioned by the Law Reform Commission (Renner-Thomas 2004: 3).

*.....all persons claiming documentary title to land in the Western Area must either have derived such title directly or indirectly from the Crown now the State. All other titles per force must be possessory acquired by adverse possession*

The land claims of many (or some would say most) of the older Freetown families are based and have subsisted on the mostly unregistered conveyances of possessory title and they are still doing so, without the blessing or sanction of the State. In these cases, title to land has been constituted by self authenticated, long user, *by behavioural fact rather than documentary record* (Gray and Gray 2005: 240). In the vacuum there has been a widening gap between locally recognised legitimacy and principle. As the researchers discovered during fieldwork in Mountain Cut in Freetown, this vacuum has been filled by *sodalities* (secret societies) providing public goods such as justice and order (Richards et al 2004: 9).

The State's trusteeship of the remaining public land, mostly located in the Western Area is notoriously corrupt and inept. Prior to his appointment, the current Chief Justice made (Renner-Thomas 2004: 17) made the startling accusation that

*.....it is common practice for officials of the Director's office to connive with land speculators to turn a blind eye when a plan in respect of land which is in fact State land is presented for processing and countersignature [as is required prior to registration of an instrument of conveyance.*

The post independence state of Sierra Leone had persistently co-opted, corrupted and subverted the capacity of the Chiefs to discharge their fiduciary duty to their subjects in relation to their land and has effectively constrained the beneficiaries from being able to enforce the fiduciary obligations of their trustees. Some Paramount Chiefs have been illegally asserting their authority as the final arbiters of what their powers and responsibilities are under customary law.

Some of this confusion is the result of the profound, but yet to be addressed legal issues affecting the creation, enjoyment, assignment and termination of property rights in Sierra Leone, as illustrated by the case notes provided in Annexes I and II.

### ***Winners and Losers in the Status Quo***

As Richards et al (2004:1) has pointed out, concern to avoid the conditions of the 1898 war (chiefly an uprising against the British attempts to weaken the control of Chiefs over land) even today is cited as a political reason to soft-pedal reform of key rural institutions (marriage rules and land rights) which continue to serve to reproduce the advantages of leading lineages, and thrust

others into relationships of poverty and dependency. But as the population becomes more mobile, more people become late comers, forced into dependency on the original settlers' capacity to supply them with adequate land on terms which allow them to generate surpluses from their labors.

As can be seen from the examples of current cases provided at Annex II, many titles derived from either possessory title or grants out of state land are the subject of multiple sales and other forms of illegal assignment because of fraud, inefficiency and ignorance. Lawyers conducting conveyances on behalf of clients cited instances where developers have paid four vendors for the same piece of land to avoid costly and lengthy disputes. Investors, land developers and lawyers interviewed for this study told researchers about incidences when purchasers were forced to buy the same plot from as many as four different people to secure clear title to land. Others spoken to concurred saying that secure title to land in the Western Area would be worth more than 100% of the purchase price.

Judges, lawyers and land developers interviewed for this study observed that the same individuals keep reappearing as claimants and defendants in court cases involving land disputes in the Western area. This evidence suggests that class of professional land speculators has emerged who are exploiting their knowledge of the weakness in the current legal framework for property rights in Sierra Leone. The same sources suggest that they are often in cahoots with officials in the MLCPE in these adventures. There is also evidence, cited above, that judicial officers may themselves be party to these manoeuvres.

The losers in relation to this organised racketeering are all those involved in land markets. Costs associated with removing vexatious claims or investors trying to protect themselves against them are passed onto the consumer by inflating land prices which makes less land available to those who could otherwise afford to enter the market and use land more productively.

Large Creole families in Freetown are locked into intense battles with each other over rival claims to their patrimonies. Many of the cases seem to involve battles between the wives and offspring of polygamous marriages over control of family homes.

High demand from the Sierra Leonean Diaspora and foreign investors (including aid missions) are pushing up prices for premium commercial and residential land in Freetown, making lower quality land unaffordable for the poor. Those with powerful connections are manipulating the land use planning weakness in the current system by building on unsuitable sites with great views. This activity generates externalities, such as loss of forest, which increases the risk of earth slides falling on those living in valleys and along watercourses and restricts access for cultivation, grazing, foraging or hunting. Slum landlordism is rife in Freetown. Poor 'squatters', who are 'renting' from landlords claiming possessory title to land owned by the State, have less protection and security than do their slum landlords under current law.

The slackness of state' husbandry of its own lands has benefited those who have flocked in to the Western Area because of the civil war or beckoning opportunities. They have been able to set up *pan sheds* along Freetown's beaches and edges of state forests in the hills above the city. Under the current legal framework this has started the clock ticking in relation to future claims of adverse possession, which could see them eventual acquire documentary title to areas ill suited for residential land use.

## ***What are the Key Land Reform Issues?***

### **Land Tenure**

Tenurial reforms are what many analysts have recommended. Individual private rights in urban land and the markets they create have to be heavily mediated by states in the public interest for obvious social, environmental and economic reasons. Weak or failed states such as Sierra Leone struggle with this responsibility, particularly in the face of rapidly expanding urban populations.

This incapacity is clearly evidenced in Sierra Leone by warehousing of war damaged prime sites in provincial towns and in Freetown and the erection of minimum structures on vacant plots to comply with statutory usage requirements and prevent invasions. These activities have reduced the areas of land within urban areas available for development and inflated land values thereby reducing the fraction of capital available for construction, which, combined with weak enforcement, has led to building codes and zoning regulations being comprehensively compromised. Perhaps more importantly, the failure of public institutions in Sierra Leone to mediate private ownership of land in the public interest in its towns and cities has made urban property unaffordable for the poor, which has led to increase illegal occupation of un-serviced and unsuitable private and public land.

Some have argued that the tenuous nature of most property rights granted under customary law provides little incentive to take up agriculture and causes insecurity and low investment responses from those who do so. But others have reached the opposite conclusion looking at the same data a few years on. Unruh and Turray (2005: 16) for example, argue that insecurity on the part of landlords, rather than insecurity felt by tenants, is the main constraint on strangers getting access to land.

Doing something about the latter could seriously contribute to exacerbating the former, thus decreasing the likelihood that landowners will want to provide more access to land, either to strangers or investors, especially to those more powerful than landowners.

Security of tenure, the equilibrium between the rights of landlords and tenants, is a foundational element of social organisation for production. A critical balance which neither deters landlords from letting, nor enslaves tenants has to be the policy objective of land reform.

### **Land Administration**

Increasing support to land titling and registration has also been recommended in various reports. The recent study by FIAS, World Bank and DFID of the administrative barriers to investment in Sierra Leone (DFID 2005) provides an excellent overview of weaknesses in land administration in the Western Area.

The breakdown in the administration of individuated, private land tenure has generated costly externalities such as frequent or semi permanent utility outages, traffic congestion, garbage build up, water and air pollution and loss of open space. Extensive, privately funded measures to protect property rights, such as fences, signs, watchmen and half completed structures which dominate all the cities in the region, are powerful evidence of the relative insecurity of this form of received tenure. However, the ongoing, gross mismanagement of State land is also undermining security in Freetown, as evidenced by the recent riots in Hill Station.

In relation to land tenure in the Provinces, administered under customary law, by traditional authorities, equitable concerns, rather efficiency issues predominate. Field work for this study and interviews with key informants suggest the administrative capacity of traditional authorities is less than basic. Procedures adopted for land allocation are opaque and frequently exclude women. Customary law in relation to property rights can be arbitrarily interpreted to benefit dominate families, without recourse to appeal.

### **Land Dispute Resolution**

The Local Courts are the only judicial forum available for many embroiled in land disputes, as they are the courts of first instance for matters relating to customary law. They re empowered by the Local Courts Act, No 20 of 1963 to dispense justice on consonance with the doctrines of equity, good conscience and natural justice. However, they have been widely criticized for the low standard of justice they provide, referral of cases to higher courts under the control of Customary Law Officers, the close association which exists between Local Court Chairman and ruling families and the barriers to access by women created by the dominance of Local Courts by men. Although a recent survey in Moyamba District suggest that Local Courts have a significantly higher rating amongst those polled that do Magistrates Courts.

Local Courts presently operate outside the mainstream judicature as they are agencies of the Ministry of Local Government. Magistrates Courts at present are not handling civil matters such as land dispute cases. Petitioners in relation to these matters are forced to take their disputes to the High Court for adjudication, which is an unaffordable option for most.

As Richards et al have argued (2004: 53), given the flexibility inherent in customary land tenures, the most important area for reform, is not tenurial reform, but *the supervision of local justice*.

In the Western Area, land cases are reported to be dominating the agendas of higher courts. One Justice of the Court of Appeal interviewed for this study estimated that as many as seventy per cent of cases coming before that court are land related. Despite widespread public and official allegations of corruption amongst land administration officials (see the comments of the Chief Justice below), and the strife, this is casing as measured by land disputes reaching the higher courts, the Anti Corruption Commission has filed no land related reports and no reports relating to the Ministry of Lands, Country Planning and the Environment have ever been referred. (Anon. 2006: 4)

### **Options for intervention**

#### ***Participation***

What is lacking in the current debate about land in Sierra Leone is the organised, informed voice of the poor. Whether they are equitable beneficiaries of trusts of customary land or squatters renting from others who claim possessory title over state land, the rights of the poor are being negotiated away by their representatives, landlords and the State, with the active complicity of urban based elites.

This could be addressed by generating and distributing information to the public. Standard pro forma wills, leases, short term tenancies and other conveyances could be drafted and distributed. Multilingual pamphlets (based on case head notes and précised statutes) describing in simple terms the

land rights of beneficiaries, squatters, renters and investors could also be commissioned and published.

The effectiveness of this approach will depend on finding suitable partners for this enterprise: candidates would include the Law Society, and other groups of lawyers, media organisations and international and national and local NGO and traditional authorities. ENCISS could perhaps provide the vehicle for cultivating and resourcing these partnerships. Alternatively, work should commence as soon as possible on the formation of a civil society, private investors, land owner and landless constituted land reform task force.

This initiative will be important tactically as well as strategically because the success or failure of any attempt to undertake fundamental land reform will be determined by the extent and durability of the consensus which underpins it.

## ***Policy***

### **Poverty Reduction Strategy**

PRSP should be reworked to incorporate the known poverty reduction potential of land tenure, administration and distributional reforms. As the analysis above demonstrates, increasing the return to customary landowners from the rents collected on their behalf by their trustees, by improving the management of customary land, would directly contribute to the economic empowerment of the poor in the Sierra Leone context.

Priority attention should also be given in the PRS to strengthening the institutions that have responsibility for applying the equitable mechanisms and safeguards which underpin the various extant indigenous land tenure systems.

Improving land administration in urban and rural areas is essential for mediating private and public land use practices to accommodate the public interest and to reduce the burden on the poor of the external costs of unregulated use of land.

Given the specificity of Target 11, Millennium Development Goal 7, discussed above, more emphasis must be given to those aspects of development policy which directly impact access by the poor to shelter and associated services in urban areas. Decriminalizing and legitimizing the occupancy of slum dwellers in viable locations in Freetown would substantially decrease the costs and improve the quality of their shelter, access to services and security.

### **Portfolio Policy**

The National Land Policy is more a statement of principles, some of which are contradictory, than a viable platform for reform. The policy has to be transformed into a phased and costed land reform implementation strategy, which sequences the order which reforms should be tackled.

Similarly the National Housing Policy will have to be transformed into viable plan of action.

## ***Legislation***

A new land law providing a statutory system for the registration of title in areas where land markets are active and land is valuable enough to warrant the expense of setting such a system up, and is one obvious reform which will eventually have to be addressed. Whether it is affordable or feasible given the current economic and political conditions will have to be carefully tested.

Rather than attempting the massive and, perhaps, impossible task of codifying a new legal framework for property rights in the currently parlous political climate, more limited legislative housekeeping is more feasible.

Despite the current lack of a definitive statutory prescription for proof of title and the widespread absence of copies of title deeds in the hands of landowners, unqualified reception of statutory declarations is not a necessary requirement for the courts of Sierra Leone to be able to decide land cases. The repeal of arcane received law by the national Parliament would have the entirely satisfactory effect, in relation to disputes over ownership of land, of restoring the common law presumption in favor of those in possession, subject to evidence, as defined in the ordinary sense, to the contrary.

Advice commissioned by the Law Reform Commission from the current Chief Justice (Renner-Thomas 2004:19) contained the following, quite modest proposals for reform of regulatory framework for land administration in both the Western Area and in the Provinces.

- Amend s. 4 of the Registration of Instruments Act to prevent documents being registered out of time
- Amend the Survey Act to make it mandatory for all documents submitted for registration to be processed by the Director General and to contain enough detail to precisely identify the purported owner and location
- Carry out a cadastral survey to allow each parcel to be fully and uniquely identified and set up a register of titles
- Passing a law to which would allow a mortgagor to *retain the fee simple...* and to use *...the equity of redemption so he will have the possibility of creating further legal mortgages if the value of his property justifies such a move.* (p. 19)
- *The law regulating the determination of commercial tenancies, particularly the form and length of notices to quit, should be modernised by making it more certain and reflective of the socio-economic realities of our community.*

This legislative reform is eminently achievable and would have an immediate impact on the chaos which currently characterizes the operation of the land market in Freetown. These reforms however face stiff opposition from the bureaucrats who currently extract rents from the existing system. The political will to surmount this opposition has not been forthcoming.

There are also currently three land-related bills at foot in Sierra Leone; the *Commercial Use of Land Bill*, *Land Commission Bill* and the *Customary Courts Bill*. An analysis of these Bills is provided in Annex VI. These proposals touch on key issues for land reform in Sierra Leone; the retention of customary law as the primary source of property rights in the Provinces or its replacement with statutory law and the management of State owned land. Land tenure and administration in the Provinces will have to be improved if asset and income related poverty is to be tackled. The maintenance of a register of public land is the most vital reform in relation to improving the management of State land and the stabilisation of the land market in Freetown.

However, these proposals appear unlikely to succeed in the near term. This is, in part, because these initiatives do yet have the requisite elite or public support. Entirely predictable, entrenched opposition from key technocrats has not been effectively diluted by, for example, the deployment of peer pressure or the cultivation of peer competition. Inadequate public participation to date

in the crafting of these proposals has deprived these reforms of a political constituency. Overcoming these obstacles for reform are very prospective fields of future intervention.

Related legislation could also be tidied up. Existing mining laws, local government law (see Annex I) and forestry laws are contributing to low returns from natural capital, which is contributing to the prevalence of endemic poverty. Reforming the legal and administrative interface between mining and agriculture, specifically by ensuring that the cost of rectifying environmental damage is borne by miners, would contribute to increasing food security in some areas.

## ***Administration***

### **Ministry of Lands, Country Planning and the Environment**

The Governance and Civil Service Reform Programme should prioritise a functional review of the Ministry of Lands Survey and Country planning, focusing specifically on the distribution of existing resources and the mechanisms for cooperation and coordination between the two divisions of the Ministry and the Environment Commission.

The reason priority attention should be given to this ministry, rather to other perhaps equally dysfunctional State institutions, rests on the crucial role the management, administration and use of land in the economy, polity and society of Sierra Leone. Most of the country's wealth is stored in land. Land administration will be the key to successful decentralization, by providing the records required for local government to achieve fiscal independence. The key indicator of the re-emergence of civil society in Sierra Leone will be broad based agreement about who owns what.

In an interview with the researchers, the Minister, Permanent Secretary and one Divisional Director indicated that they would be in favour of such a review. The recent public outcry about corruption in the Ministry may have extended the constituency for a functional review to take place.

### **Building Capacity for Managing State land**

Building on the past work by the Law Reform Commission and the Ministry, by supporting and funding an autonomous but accountable State Land Commission with the powers needed to draw up and maintain an inventory of all State lands and to manage its assignment, would be a good place to start. Insisting that government puts its own house in order first, before it attempts to get other players in the land market to do the same, would significantly improve its chances of being able to do so.

This information would also provide a valuable tool for land management by providing key data about the available supply of land for expansion and social programmes.

### **Improving the Delivery of Land for Public Housing**

Given the stress laid in the PRSP on the urgency of building up the housing stock, the latter initiative assumes critical proportions. Both the delivery of sufficient amounts of land for housing and the enforcement of sensible building codes and environmental protection standards will stretch the capacity of the relevant ministries. Technical assistance will be required to ensure institutional capacity building, sustainability, participation of end users and efficient project management. How and from where funding can be sourced for the massive capital outlay which will be required to rebuild

housing stocks and to acquire the land to build on will come from is possibly the most critical issue.

### **Building the Capacity to Resolve Land Disputes**

Although their expertise in relation to local customary law is invaluable, Local Courts of first instance are under resourced, ill equipped and badly placed to deal with land disputes. Circuit Courts headed by Magistrates aided by local experts could be expected to give better service and should be given jurisdiction and the resources to hear land matters.

The higher courts and courts of appeal should be reorganised to deal with land matters more quickly and effectively. Long delays and high costs could be overcome by establishing a special Land and Environment Division of the Supreme Court with direct control over officials charged with responsibility for keeping land records.

A potentially useful contribution could be made by mounting carefully timed test cases which would be of sufficiently general application so as to provide some certainty in these areas.

### **Strengthening the Management of Provincial Land**

The great mass of land in Sierra Leone is not being adequately administered or managed under existing customary law: the stewards of that land are without the means to do the job. At this point in time, it is not feasible to tackle head on the power relations which underpins customary land tenure in Sierra Leone. Rather, priority attention must be given to strengthening the institutions that have responsibility for applying the equitable mechanisms and safeguards which play a crucial role in indigenous land tenure systems.

### ***Aid Coordination***

The current level of engagement by other donors in relation to land reform is at best tentative. UNDP are engaged in land reform both as partners with DFID in the Mining Cadastre Project and in partnership, with UN-Habitat, through its support to the Government of Sierra Leone for revising and updating a National Land Policy and in relation to the proposal for a project to develop National Housing Act and Regulations. Partnerships exist between DFID and UNDP and the World Bank in respect of decentralisation and democratising local governance. Valuable technical work on land tenure has been done by FAO. NGO in Sierra Leone are working on land issues in programmes focusing on livelihoods, human rights and gender. UNDP, World Bank and DFID are engaged in reforming the Justice Sector. DFID and the World Bank are working on removal of land administration barriers to investment. Further collaboration between World Bank and DFID in relation to agriculture is in preparation.

However, coordination between donors in relation to land reform in Sierra Leone appears to be poor; duplication, overlaps, and outright competition were frequently cited by those interviewed for this study.

DFID has vast experience in this field in Africa. EU has access to highly skilled land management technical assistance. Other donors are less equipped to lead on this. The pilot programme in Ghana to establish Customary Land Secretariats, which DFID is funding, should soon provide valuable lessons about how this can be done.



### ***How to Tackle the Land Reform Agenda***

Given the limited extent of current engagement by donors in land issues, the realistic options for the next five years and onwards are twofold. Either existing programmes will have to beef up the resources they have allocated to land-related sub components and to coordination with each other, or a new stand-alone land reform programme will have to be commissioned, which absorbs the land related sub components of the existing programmes.

In relation to the first option for engagement, the most effective way to achieve improvements in the current approach would be to establish a pool of technical assistance (including land economists, lawyers, surveyors, administrators, sociologists and anthropologists) which could be drawn down as required by all DFID/EU programmes that touch on land issues. A virtual regional Land Tenure Resource Centre incorporating locally based experts, some the expertise currently being deployed in Ghana (Antwi 2006) as well as the pool of international experts available to DFID, could be independently financed from a budget line or funded out of existing budgets on a user pays basis.

The second option could be best tackled by a phased approach. First step would be to establish common cause with the Government of Sierra Leone by assisting them to transform their National Land Policy into a phased and costed Land Reform Implementation Strategy. Then DFID/EU could work with other donors to bring them on board an Investment Plan which could either establish a Land Reform Trust Fund or see specific donors committing to financing different elements of the Lands Reform Implementation Strategy.

Regardless of which of these options is pursued, what is obviously, (even from this rapid research) critical, is that there is both widespread confusion in relation to land rights issues throughout Sierra Leone society and that this is costing the country dearly in terms of transaction costs, uncertainty, risks, corruption and insecurity.

### ***Risks as Opposed to Value-Added***

The moral hazard associated with external development partners funding the upgrading of land administration – the risk that if someone else pays for it, there will be little incentive to maintain such the system, which can be easily and quickly degraded by neglect – must be addressed. The main motive for maintaining an improved system of land administration is likely to be fiscal. Land records provide the basis for collecting property taxes, which are potentially substantial, especially in areas where there are active land markets for valuable land. However care must be taken to ensure that these taxes are not set so high that they depress demand for land and investment on it and that they are not applied to those who can ill afford to pay them. An excessively usurious land tax regime will also drive people into informal transactions that will also degrade land records and defeat the purpose of setting it up. The level of charges levied against users should be set high enough to pay the costs of land administration, but not be so high that few people can afford to use it.

Workable, affordable land administration systems do not record all transactions in property rights; assignment of short term, subsidiary rights, such as short tenancies and licenses are not usually required to be recorded because the cost of doing so outweighs the benefit. The poor typically depend on just these kinds of rights to access to land for cultivation,

commerce and shelter. So it has been argued that investing in land administration benefits the rich rather than the poor.

However as the analysis above demonstrates, the poor bear most of the cost of anarchical land management, and costs involved in mitigating the risks associated with informal land transactions of superior rights are passed on down through the land market in the form of exorbitant rents.

Equally there is a danger than an enhanced land administration could be recaptured by the elites who currently exploiting the existing system and used for their further enrichment at the expense of the poor. Transparency, guaranteed by ease of public access to land records, balanced against privacy considerations is the key to reducing this risk. Low levels of literacy, lack of mobility and a tradition of authoritarian bureaucratic culture, will make achieving this difficult.

There has been justifiable scepticism about using aid to buy land for resettlement and housing for the poor from those who have acquired it by dubious means, often by misusing their political connections. Equally acquiring land by seizure without compensation is likely to cause serious political, social and economic disruption. Redistributive land reform must be approached with great caution and be executed on the basis of good property records. Vigilance for unintended consequences must be maintained.

The lead up to only the second election since the end of a civil war is not the ideal time to embark on the complicated and risky business of land reform. However it is a good time to start laying the ground work for such a project by beginning to build up the broad based, durable consensus required to sustain such an enterprise. Because of the length of time it take to give effect to land reform, which will span the life of several administrations, bipartisan support is an essential precondition for its success. The approaches required to generate agreement about a reform agenda are central to the options for intervention outlined above.

Land reform is a high risk area of intervention e.g. Kenya, Uganda, Zimbabwe, Ethiopia etc. However it is happening anyway in Sierra Leone in through the appropriation of public space in urban areas by immigrants moving into the towns and cities and the permanent assignment of customary land outside the land owning lineages. These trends, like land invasions in Zimbabwe, are of themselves high risk phenomena. There will be high costs, as have been demonstrated by the demise of Zimbabwe, of donors not engaging in land issues in Sierra Leone.

### ***Complimentary Policy Reforms***

Fixing the inefficiencies in land markets and improving the equity of land distribution will not of themselves bring about poverty reduction and economic growth in Sierra Leone. Reforms and regulation of the markets for other equally significant factors of production and for outputs will also be required to achieve the levels of growth required to reduce poverty. Technological innovations in agricultural, enhanced access to upgraded communications networks, better affordable health care and education will all make land reforms more efficacious and durable.

Removing barriers to people moving away from hopelessly unsustainable livelihoods and finding new starts in different and more prospect circumstances could also have important benefits, not just for those who move but also for those stay.

### ***Harmonization***

Successfully addressing the land reform challenges in Sierra Leone will require the full cooperation of development partners and donors and the Government of Sierra Leone. Global experience in land reform indicates that donors who engage with the GoSL in land reform should be looking at a 10 year plus horizon for these changes to take root.

Land is not a 'sector' like health or education, so a SWAP approach is not the most appropriate framework for coordinating support for land reform. A donor-harmonised, perhaps DFID led, partnership with government around an agreed investment programme linked to a feasible implementation plan, which tied to a credible national land policy will be the way forward.

A land reform donor coordination and cooperation forum should be established, perhaps initially in virtual form, but with the potential to become corporeal. Donors could then establish common cause with the Government of Sierra Leone by assisting them to transform their National Land Policy into a phased and costed Land Reform Implementation Strategy.

Based on this strategy, donors could devise an Investment Plan which could either establish a Land Reform Trust Fund or see individual donors committing to financing different elements of the Land Reform Implementation Strategy.

## **ANNEX I: Decided Land Disputes Cases from the Provinces<sup>2</sup>**

(1) Sitia Tribal Authority v. Official Administrator of Intestate Estates (1937)  
A.L.R.S.L 411

The Plaintiff representing the Tribal Authority of Sitia Chiefdom, claimed a piece of land that had been sold for valuable consideration and conveyed by a predecessor in 1879 to one Solomon Macfoy, a British subject. The land formed part of Sherbro Island, an area of the Protectorate that had been ceded to the Crown in 1861 and had remained part of the Colony of Sierra Leone until, under the provisions of the Protectorate (Amendment) Ordinance, 1926, s.3, it was again included in the Protectorate. Solomon Macfoy and his successors in title enjoyed undisturbed possession of the land for 70 years, at the end of which the plaintiff instituted the action to recover the land from the defendant, the Official Administrator of Intestate Estates and the representatives of the estate of Solomon Macfoy.

The Supreme Court held, that applying the principles of equity to which the court was bound, it would be wholly inequitable to deprive the defendants of property of which they have held undisputed possession and in respect of which they had collected rents for so long with the knowledge and acquiescence of those who now dispute their title. Furthermore that the principles of equity would not permit the Court to grant the claim of the plaintiff and deprive the defendant of land with which the plaintiff's predecessor voluntarily parted for valuable consideration and which the defendant and his predecessors in title occupied for 70 years openly, to the knowledge and consent of the plaintiff or his predecessors for at least 21 or 22 years after the Ordinances under which they claim had been enacted.

(2) Kamanda Bongay, Paramount Chief of Big Bo Chiefdom, for and on behalf of the Tribal Authority of Big Bo Chiefdom v. F.S.Macauley (1932) 1 W.A.C.A. 225

Here again land had been granted to a non- native by the Paramount Chief for the purpose of farming and the defendant had been in possession of the land for 30 years. At some later stage, he started planting economic trees without the consent of the Tribal Authority. Furthermore, he had instructed his sub-tenants not to pay tribute to the paramount Chief. The Tribal Authority subsequently brought an action for forfeiture citing among other things, disloyalty and misconduct. On appeal to the West African Court of appeal, it was held that under customary law, the conduct of the defendant was sufficient ground for forfeiture of the customary tenancy.

(3) Brima Kormor v. Nicholas Coosah and Ano. (1960 – 61) S.L.L.R 66

In this case the plaintiff, an old illiterate man, was the owner of a building at Morfindor Road, Kailahun, He had taken the second defendant into his home after the later had been kicked out of his premises and the same granted to the newly crowned paramount Chief. The plaintiff allowed the second defendant to occupy a room in his house together with a shop. Subsequently, the second defendant asked the plaintiff to sign a document that he had drawn up, which according to him was to confirm that he had his permission to occupy the room and shop. The plaintiff signed by affixing his thumbprint but it later turned out that the document was in fact a conveyance of the house and shop to the second defendant. The second defendant subsequently leased the house and shop to the first defendant for three years

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<sup>2</sup> Case summaries were written by Pamela Oredola-Davies, Advocate, Freetown

and on the strength of this, the later attempted to evict the plaintiff from the premises.

In an action for possession, damages and mesne profits, it was held for the plaintiff:

- (a) That under native law and custom, the Conveyance was invalid, because the prior consent of all the relatives of the plaintiff was not obtained prior to the execution of the Conveyance.
- (b) The second defendant could not rely on the Conveyance since its contents and effects were not properly explained to the plaintiff, and he did not appreciate the full effects before executing it.
- (c) The lease granted to the first defendant was invalid because the first defendant was not the owner of the premises but merely a tenant at will.

(4) Jah v. Deen and Bayoh A.L.R S.L 1970-71, Civil Case No.156/69

Held: That it is clear and settled customary law in Kono District that once land had been allocated to a member of the Tribe by the Tribal Authority, he acquires a right to occupy the land which is transmissible to his successors, and if he builds a house on the land, he is free to sell or pledge it.

The same principle had earlier been applied in the case of Tongi v. Khalil, decided by the West African Court of Appeal, where it was held that where land had been allocated to an individual member of the family and which had been developed by him with the construction of a house, such property was transferable on his death to his immediate heirs, i.e. his wife and children as apposed to members of the wider family group.

(5) In Sawaneh v. Bayoh, the action was for specific performance of a contract for the sale of a house in Kono. Here the defendant was trying to avoid a sale on the ground that he had not obtained the consent of the other family members. The defendant was the head of the family. The trial judge awarded damages for breach of contract. Unfortunately, the Court of Appeal did not permit arguments on the question of 'consent' on procedural grounds, but upheld the award of damages, thereby implying that the action could have been a suitable one for ordering specific performance.

(6) In Kebbie v. Bernard Kamara, the purchaser was claiming specific performance in respect of a house bought in Bo. He relied on a receipt issued in respect of the transaction. The wording on the receipt was "We the undersigned people have received the sum of Le.60.00 being the payment for a land at the Bo/Kenema Highway from Mr.Kebbie, the details included hereunder". The Local Court upheld the sale as valid, but the Bo Local appeals Division of the High Court overturned the decision on the ground that the receipt was inadmissible as it did not comply with the requirement of stamp duty.

(7) In Fulla v. Kondowa (1970-71) A.L.R. 300, it was held that under Mende customary law, when a man marries and he and his wife are granted family land by the wife's family, they are entitled to use and occupy it, though ultimate ownership always remain with the grantor's family. The right to use and occupation continues even though the wife dies without issue and the husband remarries, provided that he and his family continue to give respect to the grantor's family, though the payment of annual tribute is not necessary. If the husband or his new family challenge the grantor's ownership of the land, they may be required to give up possession, but otherwise they retain their

rights over it until their line becomes extinct, when the land reverts back to the grantor's family.

(8) Agip (SL) Ltd. V. Edmask and Paramount Chief of Kakua Chiefdom and Chiefdom Council, 1972-73 A.L.R.S.L. 218.

Here the Court held inter alia that failure to register a lease in compliance with s.9 of the Provinces Land Act (Cap 122) renders the lease voidable, not void.

That the terms of s.9 of the Provinces Land Act (Cap 122) which provides that a lease should contain certain stipulations and be executed and registered within a certain time, are not mandatory; failure to comply with these provisions renders the lease voidable, not void and the irregularity may therefore be waived; a breach of s.9 does not give a right of re-entry.

**ANNEX II: Current Land Disputes in the Western Area.<sup>3</sup>**

1. A bought land from B in January 2005. B had acquired the land for valuable consideration and had a Deed of Conveyance registered for the purchase in 1958. C entered upon the land and destroyed some of A's beacons, claiming that he owned the land by virtue of a Statutory Declaration in which he deposed that the land had belonged to his late grandfather. A brought an action through his Attorney for declaration of title, damages for trespass and a perpetual injunction against C. At the time, A was residing in the United States. A returned to Freetown in December 2005 and had a meeting with C, who thereupon conceded that A is the true owner and both parties agreed to enter a Consent Judgment in favour of A, on the promise that he will not go after C for damages and costs. A has gained full possession of the land.
2. D consulted his Solicitor to prepare a Deed of Conveyance in respect of a piece of land he intended to purchase from E, who was described as an old illiterate man of about 80 years. E's nephew, F, who was acting as his agent in the negotiations, claimed that E had been on the land for over 50 years, but that he had no title deeds. F however produced a signed survey plan prepared in 2001 and 'purportedly' signed by a licensed surveyor and countersigned by the Director of Surveys and Lands. F explained that a Statutory Declaration establishing E's possessory title to the land had not been executed because of lack of funds. The land is in Grafton Village, which is in the Far East end of Freetown in the Western Area. Upon further investigations by the Solicitor, it was discovered that the 2001 survey plan was a forgery and that the plan was registered in the Surveys and Lands Department in the name of a different owner and for a piece of land situate at Pipe Line, off Wilkinson Road in the west end of Freetown.
3. G bought land in the east end of Freetown in 1988 and had his conveyance registered in that same year. He was out of the jurisdiction for several years and upon his return in 2001, he discovered that two houses had been constructed on the land by separate individuals, H and Z. G consulted his Solicitor who as a first step invited the two encroachers H and Z to meet with G and produce their title deeds. Subsequently, H has opted for an out of court settlement whilst Z is contesting the action on the ground that he purchased the property in 1998 for valuable consideration. Negotiations are ongoing in respect of H for G to be compensated to the present true value of the portion of the land that G has illegally acquired, whilst litigation has commenced in respect of the second defendant, Z.
4. J acquired a piece of land at Juba Hills in Freetown in 2001. The vendor, K, had claimed that the piece of land formed part of his deceased father's estate in respect of which K had obtained Letters of Administration and registered a Vesting Deed. A Conveyance was executed in J's favour in which the root of title made references to the Letters of Administration and the Vesting Deed. J contracted with a third party, L, for the sale of the land. It was then discovered upon a search at the Probate Registry that the assets declared in K's Letters of Administration were only in respect of land situate at Regent Road, Lumley and there was no mention of any land at Juba Hills forming part of the intestate's estate. J is now trying to locate K and hopefully recover the purchase price.

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<sup>3</sup> Case summaries were written by Pamela Oredola-Davies, Advocate, Freetown

5. M obtained a lease of a piece of state land from the Ministry of Lands. The adjoining property was also leased to N, a registered organization. M commenced the development of his portion of land by starting to lay the foundation for a house. On three separate occasions, members of the N organization led by the Chairman entered upon M's portion and damaged the ongoing construction, claiming that both pieces of land had been leased to them. M made reports at the police station, but after the third attack, consulted a Solicitor. An action was commenced in 2000 for declaration of title, damages for trespass and the value of the goods destroyed and an injunction. In the course of the proceedings, the plaintiff, M, made an application for the court to move to the locus and this was done. The key witness in the trial was the government surveyor (the current Acting Director of Surveys) who surveyed both properties. Judgment was given in favour of the plaintiff in 2005, but the defendants, N, have since filed an appeal based on some procedural grounds. The appeal is pending.
6. O acquired a piece of land at Goderich in 1972 by virtue of a devise from her grandfather. By virtue of an increased grant of Letters of Administration in 2003, P claimed that property measuring over 150 Acres including O's belonged to him and his brother as the beneficiaries entitled in the Intestacy. The Survey Plan upon which P is relying was purportedly done in 1950 at which time O's grandfather had purchased the property for valuable consideration. The matter is pending in court.



### **ANNEX III: Land Dispute in the Provinces (Moyamba)**

Land in this Chiefdom is “owned” by the family and managed by the family head. The head of the family contracts for the sale or lease of the land with the consent of the other family members and the concurrence of the Paramount Chief. Land can be “sold” to private individuals or alternatively let out annually for farming purposes. In the latter case, an initial agreed sum of money is paid to the landowners at the end of the negotiations and, at the end of each farming season, a specified portion of the produce is given to the landowners.

The UNAMSIL battalion which was deployed in the Kayamba Chiefdom had offered to construct a new prison block away from the centre of the town. Upon request by UNAMSIL for a piece of land on which to construct the new prison block, the Paramount Chief as “Custodian” of all land in the Chiefdom, approached the “landowners” and requested that a piece of land be granted on the grounds that this will contribute to the general development of the Chiefdom. A portion of land for a new prison was identified, surveyed and the construction effected. However, the landowner (Alhaji Tunkara family) was not compensated. This was a requirement under customary law before the transaction was complete.

Prior to the withdrawal of UNAMSIL, the almost completed structure was handed over to the Prisons Department. Subsequently, the Prisons Department asked a further portion of adjacent land on which to construct living quarters for the prison staff and their families. Landowners agreed, but again stressed that they had to be “compensated”. For two years, the Prisons Department failed to fulfil their obligation i.e. to pay compensation. The land was thereafter “sold” to three (3) other persons. This action on the part of the land owners put pressure on the Prison Department to settle.

At a recent conference of the parties organised by the local JSDP Coordinator, the land owners demanded Le.10,000,000.00 (ten million leones) as “compensation”. The amount was derived by reference to previous ‘sales’ in the area to UN agencies representing the Sierra Leone Army (SLA). The Director of Prison’s counter offered Le.9,000,000 (nine million leones) of which twenty per cent would be fronted by the Department of Prisons and JSDP would be asked to contribute the remainder. There was some confusion at this meeting about of the powers of the Director of Prisons vis-à-vis the acquisition of land for the department and subsequently about the legality of using aid funds for the purchase of land.

Prior to this meeting JSDP secured internal advice that the maximum legal interest in land which could be secured was a lease hold for a term of fifty years with an option for an extension of a further twenty one years. The landowners on the other hand made clear that their offer was for a leasehold of ‘million years” The Paramount Chief (acting) advised the parties that, under customary law currently in force in this Chiefdom that a outright purchaser for value could hold the land forever and can henceforth dispose of it as he chooses. Whereas with respect to a leasehold or a devise by gift, the land will revert back to the original owner i.e. the family. For example, the site of the old prison was said to revert back to the landowners once it was abandoned by the Prisons Department.

The matter remains unresolved at the time of writing.

#### **ANNEX IV: Land in the Current PRSP**

In Annex 2, which lists *Policy Objectives and Priority Programmes/Activities for the PRSP*, the Ministry of Land, Country Planning and the Environment has only been given direct responsibilities under Pillar Three for actions under the policy areas of Housing and Environment, both of which are now no longer within its mandate.

Several *Progress Indicators* that are likely to be considered to be within the scope of the land reform have also been included in Annex 3. The relevant Pillar One indicators relate to *improving the processing of land dispute cases, eliminating corruption within land administration and building local government capacity for providing land administration services*. In relation to Pillar Two the relevant progress indicators are specified as *putting in place legal and regulatory framework for mining and tourism and completing land tenure reform policies*. The indicators under Pillar Three relevant to land reform are *implementing and adopting a legal framework for women's empowerment*, which could include land tenure and family law reforms, and producing *updated guidelines and strengthened enforcement of EIA recommendations*.

Unfortunately, the *Priority Actions* for which *Indicative Costings* are provided in Annex 4 are slightly different from those set out in the previous annexes. None of the specific actions in relation to land reform have been included in these costings. Nor is any of the land reform *Progress Indicators*, for which the Government of Sierra Leone could be asked to account, specifically funded in this budget. Under the *Peace Building* component of Pillar One funds have been provided for the empowerment of women. Under the *Good Governance* component money has been set aside for improving access to justice by the poor. Under Pillar Two, limited funds have been identified for creating an enabling environment to bolster and sustain agricultural development for food security. No funds have been identified which are relevant to the land reform indicators under Pillar Three.

The current PRSP is well overdue for revision.

## **ANNEX V: Analysis of National Land Policy**

In his introduction, the Minister Ministry of Lands, Country Planning and the Environment, Dr Alfred Bobson Sesay, states that the **National Land Policy** provides a foundation for the review of existing laws and the enacting of new ones...to regulate and streamline access to, and the use of, land...The National Policy is in two parts, *policy guidelines* and *policy actions*.

The categories of land ownership which are to be recognised in Sierra Leone are

- *State public land*; defined as  
.....lands ceded by the Colonial Government to the Government of Sierra Leone after Independence in 1961, Unoccupied Land, and land compulsorily or other acquired by the government
- *Private land*;  
.....land in which the owner has a freehold interest
- *Communal (Chieftdom or Community) land*;  
.....land held in trust by the Chief on behalf of the community
- *Family land*;  
.....is that in which the principle interest in the land is vested in a 'family' group with a common ancestry. (p. 1-2)

In a later section that provides *policy statements intended to guide policy actions and execution* (p.8) the following *traditional sources of land tenure and rights as well as those derived from common law* are listed. These sources of land tenure are a somewhat confused mixture of property in land and right' holders.

- *The allodial owner*
- *Customary freeholder*
- *An estate of freeholder (sic) vested in possession or an estate or interest less than freehold under common law*
- *Leasehold interest*
- *Interest in land by virtue of any right contractual or share cropping, or other customary arrangement*

These are all recognised as *legitimate sources of land titles and are to be classified as such* (p. 11)

The mandate of the Ministry of Lands, Country Planning and Environment described in the National Land Policy is very broad, giving it a central role in the management of State land, compulsory acquisition, surveying and surveyors, mapping, planning, town planning schemes, development standards, building codes etc, but not registration of deeds.

The National Land Policy contains the standard twin headed objectives of *equal opportunity of access and sustainable social and economic development*. (p. 4)

The principles which are said to guide policy includes that of protecting the *common national or communal property held in trust for the people*. However the *existing rights of private ownership* must not be violated in the *long term interests of the people of Sierra Leone* (p.5). These principles also include

both *private sector as the engine of growth and development subject to national land use guidelines and rights of land owners and their descendents to be respected.* (p. 6) The *Objectives of Policy* similarly contain elements which contradict these principles. For example

- *Effectively protect the rights of landowners and their descendents from becoming landless or tenants on their own lands*
- *Discourage the outright sale of land* (p. 7)

However some of these objectives are directly targeted at the problems articulated in the opening section i.e. *instil order and discipline into the land market and minimise .....the potential for socio-political upheavals.....Establish statutory recognition and protection of public records and documents* (p. 7)

The next section (4) provides *policy statements intended to guide policy actions and execution* (p.8). This is divided into sub sections

*Facilitating Equitable Access to Land* (4.2) seems to be about acquiring private interests in land.

- *Every Sierra Leonean can access land in any part of Sierra Leone subject to availability, adherence to covenants, utilisation in conformity with land use plans.*
- *Transactions in private land are only valid if there is no conflict of interest within, between or among and category of private landowners or stakeholders, with respect to land which has not been declared a protected area or over which a planning scheme has been approved (Town and Country Planning Act, s 12 (1) and 7 (1) refers)*
- *Local Authority Assemblies (District and Town Councils), in conjunction with Ministry of Lands, Country Planning and Environment, land owners and Lands Commission shall prepare planning schemes for all land uses to facilitate dispositions of land for development.*
- *All land transaction are to be made by public notice and by the placement of appropriate signposts in prominent locations of the land one month prior to the commencement of the transaction*
- *Planning permission before survey*
- *Price determined by open market or negotiated land values*
- *Compensation for compulsory acquisition fair and adequate(ly) ...determined...through negotiations that take into consideration government's investment in the area.*
- *Local Authority Assemblies (District and Town Councils) can acquire land by negotiation for concessionary prices or as a gift*
- *Register agents or developers will have to abide etc*

The most complex issues in relation to *Security of Tenure and Protection of Rights* (4.3) arise not from grants made by allodial right holders to outsiders, but grants of estates in land made to their subjects (lineages or even families) in some form (up to the equivalent of estates in freehold or lesser interests) that are encumbered by covenants (as provided by custom and or the terms of a specific grant), held in some form of trust for a (currently extant or past or future members of a common descent) group of beneficiaries, which can

subsequently be assigned in some form (up to the equivalent of estates in freehold or less) to others (relatives or outsiders).

The policy guidelines provided here attempt to address some of these issues, but without the precision of statute, the authority of the common law or the safeguards of equity these statements are ambiguous and potentially contradictory.

*No interest in or any right over any land belonging to an individual or family can be disposed of without consultation with the owner or occupier of the land*

*No ownership of any communal or family land can pass..... other than..... in accordance with customary practices and usages of the particular community and guidelines of the appropriate Local Authority*

*The primacy of a land title derived from customary or common law sources takes precedence over any other interest in the event that land acquired compulsorily by the government is not utilised for the purpose for which it was acquired or not used in the public interest.*

*As much as possible land disposal or acquisition of any kind for all types of land should not render the title holder, his kith and kin and descendants completely landless or tenants on the land to which they originally had legitimate title, save in the case of compulsory acquisition in the public interest.*

Some of the difficulties that are obvious here arise from trying to create principles which could apply to all classes of land, right holders and assignments. With regard to State land, protections offered (or the extent of the reversionary rights of the State) here in this policy seem to be quite weak. (para 4.3 (j) refers)

The subsection on *Enhancing Land Capacity and Land Conservation* (4.5) deals with soil conservation etc, but also covers management of sacred sites (d), local land use planning (e) and joint management of conservation areas

The next section (5) relates to *Policy Actions*. No timeline is attached to this ambitious reform menu. Actions to be taken towards *Facilitating Equitable Access to Land* (5.2) include the following.

- *Review.... landlessness and eliminate ..... migration and encroachment*
- *.....review, harmonise and streamline customary practices, usages and legislation*
- *.....land banks*
- *.....negotiable land bonds*
- *.....unutilised and other land taxes*
- Register real estate agents
- *Remove pricing subsidies on Government land*
- *.....support the traditional authorities and other stakeholders to improve land management, land administration record keeping and establish land secretariats*

The radical nature of the policy is revealed in the subsection which deals with *Security of Tenure and Protection of Land Rights* (5.3).

*....tenurial reform process, which .....recognises the registration and classification of titles under*

- *The allodial owner*
- *Customary freeholder*

*The subsection on Developing Effective Institutional Capacity and Capability(5.5) contains a most practical set of proposals, strengthening land administration agencies, standardised Geospatial Framework Database in Surveys, LIS, (e)ncourage international cooperation and support in all aspects of land policy, land administration and sustainable land development, cooperation with traditional authorities, codification of legal framework, public education*

Revision of the National Policy Document is sensibly nominated as periodic. Land policy must be an ongoing iterative process rather than a document carved in stone.

## ANNEX VI: Analysis of Land Related Legal Framework

### ***Land Related Legislation***

Statutory Declarations Act 1835 s. 15 provides as follows;

*In any action or suit...in any court....within any of the territories, plantations, colonies or dependencies abroad.....relating to any lands, tenements or hereditaments....the plaintiff or defendant or any witness can verify or prove any thing relating thereto by declarations .....made before any justices of the peace, notary public duly admitted and practicing or other officer*

Colonial legislatures have had the power since Colonial Affidavits Act of 1859 to *repeal, alter or amend any such provisions* (Halisbury's Laws of England Vol. 9, General Note page 551 refers) and many did so. Unfortunately the colonial legislature of Sierra Leone did not avail itself of these powers nor has the independent State of Sierra Leone subsequently used its constitutional sovereign powers (Constitution of the Republic of Sierra Leone Act No 6 of 1961, s. 176 refers) to do so either.

The original intention of the Imperial Parliament in enact this legislation was to protect expatriate landowners (referred to in the Act as *persons residing in Great Britain or Ireland*) from the inconvenience of having to give evidence in person in court cases involving land disputes. The same Act, for example, in s. 16, makes similar provisions in relation to

*..... attesting witness to the execution of any will or codicil, deed or instrument in writing*

Written evidence of wills is exceptionally given absolute authority because of the impossibility of the deceased being able to appear in court.

However, because of its general application, s. 15 has also been available for use by anyone, Sierra Leoneans or foreigners, resident or not, to bring or defend property claims supported by statutory declarations against others seeking to rely on contrary oral testimony or other forms of documentary evidence of possession.

The Mining Decree 1994 at s. 14(1), (2) clearly vests ownership of minerals in the Republic of Sierra Leone regardless of how the surface rights are allocated. This gives rise to the curious situation where the allodial rights to land in the provinces are vested in the Chiefdom Councils as custodian, whilst the subterraneous rights to minerals are vested in the State. As we saw during field work in Tombodu Village in Koidu District, this anomaly creates all sorts of complications and inequities, including the ridiculously low levels of ground rent for miners set by the Minister for Mines on highly fertile alluvial lands which would otherwise generate much higher revenues for land owners from agriculture.

The Decree also prescribes the duties and powers of Director of Geological Survey, including s. 10 (1)(b) *the undertaking of the geological mapping of Sierra Leone* This gives Sierra Leone three official surveyors in ministries of Land, Agriculture and Mineral Resources.

The Local Government Act 2004 at s 3 (2) gives local councils, which include District Councils, the power to acquire and hold land. They are also provided under s. 20 (2) (d) with *responsibility for the development, improvement and management of human settlements*. Sub section (e) also provides that local councils shall *draw up and execute development plans*. Sub section (j)

provides that local Councils shall *approve the annual budgets of Chiefdom Council.*

Pursuant to s 126 of the Act, the Minister for Local Government was required to issue a timetable for the devolution of functions from central government to local councils. Ministers' devolution timetable is outlined in Local Government (Assumption of Functions) No. 13 of 2004. According to that timetable, the Ministry of Lands, Country Planning and Environment will pass over land surveying by 2008, survey units within local councils will be established starting 2006, training will commence 2007 and actual surveying by 2008. Furthermore land registration will be devolved this year in three phases, setting up land registration units, training and commencement of registration. Collection of data for land use planning is also set to be passed over by 2007. Given the openly acknowledged existing capacity weaknesses within the Ministry of Lands, Country Planning and Environment, this timetable seems highly ambitious.

### **Current Legislative Proposals**

The **Commercial Use of Land Bill** was prepared (as a lay draft) by Land Reform Commission, based on advice from the current Chief Justice (Renner-Thomas 2003), and submitted to the Minister for Justice in 2004.

Unfortunately that authoritative advice was either ignored or poorly incorporated into the draft, which was subsequently and rightly challenged by the parliamentary draftsman and the Minister for Lands, Country Planning and the Environment and as a consequence appears to be dead-in-the-water. However the land reform proposals contained in the Bill clearly spell out where an important faction in the land reform debate, Freetown-based elites and some foreign investors, want unfettered access to fee simple absolute in possession throughout the country.

The Minister's view, that the lineages are not ready yet to alienate their lands permanently, is also argued by some Sierra Leone academics. These putative tenurial preferences of landowners seem eminently sensible to some analysts, such as Unruh and Turray (2005: 16).

*Leasing arrangements are much preferred over selling land by all chiefs and landowning farmers consulted. That lease payments provide money appears in many cases to be secondary to the fact that it continues to provide over time. Thus engaging the 'element of continuation' with forms of leasing holds promise. And given that value can be created in land via leases, leases theoretically could be privatized, with a market in leases potentially emerging. As well a lease does not violate the 'custodian rule' of the chiefs and the landowning families.*

The problems with leasing noted by these authors include the following; fear of agreement; demarcation constrained by or causing inter-landowner boundary disputes; poor past performance by leasees, resulting in over protection or capriciousness on the part of lessors.

As Richard et al note (2004: 52) some critics of land reform have argued that disturbing the current basis of most land claims in the country, first come-first served, could lead to a resurrection of the tensions that lead to the rebellion against the British in 1898. Richards and his colleagues also point out that this argument *prioritize the causes of the 1898 war....over the causes of the 1991 conflict.*



A **bill entitle the Land Commission Act** has been laid before the parliament. The Bill was hived off from the ill-fated Commercial Use of Land Bill. The Bill if passed, would establish the Land Commission (s. 2,1), a body corporate (s 2, 2), with a Chairman and 6 members appointed by the President, approved by Parliament (s. 4).

The Bill proposes removing the discretion current enjoyed by the Director of Surveys in relation to the allocation of state land and vesting that discretion in a the Commission. Its functions would include

- (s. 9, a) *grant rights to the use of state land.....*
- b) *impose restrictions on the use of public lands.....*
- c) *implement policies on land and rural development.....*
- d) *advise.....on policy framework for the development of particular areas.....*
- e) *recognise and establish the content of land tenure rights as well as transform ownership rights of such lands*

The Bill is inadequate on a number of counts and is a much reduced version of the Law Reform Commissions original prescription for dealing with corrupt and inefficient management of state lands. There is no mention in the current Bill of decentralising these functions or of vesting title to State land in the Commission as trustee for all public land.

The **Customary Law Courts Bill**, drafted by the Law Reform Commission, funded by JSDP, seeks to takes responsibility for Local Courts away from the Ministry of Local Government and put them under the control of judicature. Section 5 provides that officers of the Customary Law Courts shall be appointed by the Chief Justice in consultation with the Judicial and Legal Services Commission. They must be literate in English s. 6 (a).

The jurisdiction of the Customary Law Courts shall include s. 16 (1) *all civil and criminal matters arising within the local limits of its authority or transferred to it by a Magistrates Courts pursuant to s. 35* (although what constitutes *local limits* is not defined in the Bill) other than cases *between Paramount Chiefs and Chieftom Councillors involving a question of title to land*, s. 16,3(a), but only in land matters where *claims for recovery of possession where the annual rental value of the property does not exceed fifty thousand leones and the term does not exceed five years* s. 16,3,(c).

This means that, if the Bill were to become law, matters of customary tenure with involving relatively low leases (>GBP10 pa) and short terms (>5 yrs) would be taken away from local courts and be determined by higher courts.

The Bill as it stands does not appear to do anything about improving women's access to their local courts of first instance. It also legitimises jurisdiction of Customary Courts in matters involving *customary wrongs of women palaver, woman damage and wife detention*, s. 16,4,(c)

**ANNEX VII: Documentary Resources*****Statutes***

<u>Sierra Leone Company Act (31 Geo. III)</u>	1791 Cap 54
<u>Sierra Leone Company Transfer Act</u>	1807
<u>Statutory Declarations Act</u>	1835
<u>Protectorate Native Law Ordinance</u>	1905
<u>Protectorate (Amendment) Ordinance</u>	1926
<u>Native Courts Act</u>	1960 Cap 8
<u>Imperial Statutes (Law of Property) Act</u>	1960 Cap 18
<u>Administration of Estates Act</u>	1960Cap 45
<u>Summary Ejectment Ordinance</u>	1960 Cap 49
<u>Chieftancy Council (Tribal Authorities) Act</u>	1960 Cap 61
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