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United Nations

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# **Analytical Assessment Report for the Implementation of the Voluntary Guidelines on Responsible Governance of Tenure in the Land, Fisheries and Forestry Sectors of Sierra Leone**

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Analytical Assessment Report

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Report for the  
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of the Voluntary  
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Responsible  
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Land, Fisheries and  
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of Sierra Leone**

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## PREFACE

This report was produced by the Food and Agriculture Organization of the United Nations (FAO) for the Government of Sierra Leone and with the financial support of Germany as part of the project GCP/GLO/347/GER under the G7 Sierra Leone-Germany-FAO tripartite Land Partnership supporting the implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) in Sierra Leone. The report is part of a series of legal assessment reports for Sierra Leone against the VGGT, which were endorsed by the Committee on World Food Security in May 2012. The reports are:

1. Implementation of the Voluntary Guidelines on Responsible Governance of Tenure in the Land Legislation of Sierra Leone: Analytical Assessment Report, by Melinda Davies.
2. Implementation of the Voluntary Guidelines on Responsible Governance of Tenure and on Sustainable Small-Scale Fisheries in the Fisheries and Aquaculture Legislation of Sierra Leone: Analytical Assessment Report by Ibrahim Koroma.
3. Implementation of the Voluntary Guidelines on Responsible Governance of Tenure in the Forestry Legislation of Sierra Leone: Analytical Assessment Report by Floyd Alex Davies.
4. Analytical Assessment Report for the Implementation of the Voluntary Guidelines on Responsible Governance of Tenure in the Land, Fisheries and Forestry Sectors of Sierra Leone by Floyd Alex Davies.

The assessment process was technically supervised and supported by an FAO technical team consisting of Margret Vidar, Peter Deupmann, Maria Teresa Cirelli and Naomi Kenney. Technical validation workshops were conducted in partnership with Namati Sierra Leone. The Technical Working Group and the Steering Committee of the National Multi-Stakeholder Platform for implementing the VGGT in Sierra Leone were also closely involved in the process.

The reports are submitted to the relevant ministries and members of the VGGT Steering Committee.

## ACRONYMS AND ABBREVIATIONS

ACC	Anti-Corruption Commission
ADR	Alternative Dispute Resolution
AFP	Agenda for Prosperity
CAP	Chapter
CFS	Committee on World Food Security
CRC	Convention on the Rights of the Child
EIA	Environmental Impact Assessment
EPA	Environment Protection Agency
ESHIA	Environmental, Social and Health Impact Assessment
FAO	Food and Agriculture Organization of the United Nations
HRCSL	Human Right Commission of Sierra Leone
LAT	Legislation Assessment Tool
LCA	Local Courts Act
MFMR	Ministry of Fisheries and Marine Resources
NLP	National Land Policy
OARG	Office of the Administrator and Registrar General
SSF	Small-scale fishing
SSFG	Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication
UN	United Nations
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security



## 1. INTRODUCTION

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) are an international instrument on the governance of tenure, which places secure access to land, fisheries and forests firmly in the context of food security. The VGGT were officially endorsed by the Committee on World Food Security (CFS) at its Thirty-eighth Session on 11 May 2012. Since then, their implementation has been encouraged by the United Nations (UN) General Assembly (Rio+20 Declaration), the G8 and G20 summits, and other high-level meetings such as the Fifth Berlin Summit of Agriculture Ministers on 19 January 2013. With the technical support of the Food and Agriculture Organization of the United Nations (FAO) and the financial support of Germany, Sierra Leone launched the process of implementing the VGGT on 1 February 2014 through a multi-sectoral intervention focusing on land, fisheries and forestry and on cross-cutting issues such as gender, human rights and access to justice. A multi-stakeholder platform on the VGGT was established at a national workshop held on 3-4 March 2014 in order to ensure ownership, broad participation and political buy-in. To support the broader platform, an Inter-ministerial Task Force, a Steering Committee and a Technical Working Group have been established.

Furthermore, the Government of Sierra Leone announced a high level commitment to implement the VGGT in partnership with the Government of Germany and FAO through a G7 Land Partnership Agreement. This partnership intends to support the Government of Sierra Leone to effectively implement the VGGT with the overall aim of improving the governance of tenure to improve food security in the country, especially in the context of large-scale agricultural investments.

The present report, along with three sectoral reports<sup>1</sup> covering land, fisheries and forests, is part of the undertakings to implement the VGGT under the Germany-Sierra Leone-FAO partnership.

The VGGT define tenure as the relationship, whether defined legally or customarily, among people with respect to land, fisheries, forests and other natural resources. The rules of tenure define how access is granted to use and control these resources, as well as associated responsibilities and restraints. Tenure usually reflects the power structure in a society, and social stability may depend on whether or not there is broad consensus on the fairness of the tenure system. The VGGT complement and support national, regional and international initiatives that aim to provide secure tenure rights to land, fisheries and forests.

Tenure rights to land and other natural resources are very important for accessing food and shelter; they are elements of social, cultural and religious practices; and they support economic growth. In addition to food security, the guidelines also contribute to improvements in poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection, and sustainable social and economic development.

The VGGT are not legally binding on any state, but they build on and reflect principles of international law. They are put forward to serve as bases of discussion and dialogue among

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1 Implementation of the Voluntary Guidelines on Responsible Governance of Tenure in the Land Legislation of Sierra Leone; Implementation of the Voluntary Guidelines on Responsible Governance of Tenure on Sustainable Small-Scale Fisheries in the Fisheries and Aquaculture Legislation of Sierra Leone; Implementation of the Voluntary Guidelines on Responsible Governance of Tenure in the Forestry Legislation of Sierra Leone; Analytical Assessment Reports, FAO 2015.

government departments and stakeholder groups with a view to strengthen legislation, policies and programmes related to the governance of tenure of land, fisheries and forests for the benefit of all and with a particular focus on those who are poor or marginalized.

This report provides an overall assessment of the extent to which the content of the guidelines is reflected in policies and legislation of Sierra Leone, especially those relating to land, fisheries and forestry. It builds on and summarizes three sectoral reports that assess the legal and policy framework for land, fisheries and forestry tenure in light of the VGGT. It examines the extent to which the policy and legal frameworks are consistent with the principles of the VGGT and provides targeted recommendations to enhance compatibility with the internationally agreed standards.

The reports can serve as valuable resources for policy and legal reform processes with regard to the governance of tenure in the three aforementioned sectors. At the time of writing, new bills were being drafted on fisheries and forestry, while the ministry responsible for lands was in the final stages of drafting a land policy. The findings and recommendations of the present report can serve as inputs to strengthening the tenure-related components of these policy and legal instruments.

### **1.1 Objective, methodology and approach**

This study aims to analyse sectoral policies and legislation in land, forestry and fisheries and aquaculture) from the perspectives of the provisions of the VGGT with a view to:

- a) Identify policy gaps and thus provide the bases for policy recommendations.
- b) Identify provisions in sectoral legislation that portray gaps and inconsistencies with internationally accepted standards in the VGGT and thus provide the bases for legislative review/reform.
- c) Provide concrete recommendations on how to address gaps and divergences.

The method used in conducting the research involved preliminary interviews of key stakeholders, followed by an analysis of policies and legislation relevant to each sector on the basis of a “Legislation Assessment Tool” (LAT), leading to the preparation of sectoral reports.

Three consultants were contracted to produce the sectoral reports and the LATs. The consultants participated in a training workshop in April 2014 to familiarize themselves with the concepts and contents of the VGGT. Once the sectoral reports were prepared, their findings and recommendations were presented in three validation workshops that were organized by Namati Sierra Leone with a view to obtain input from relevant stakeholders. The technical committee of the Stakeholder Platform for the VGGT also reviewed the draft reports. FAO provided technical support and advice throughout the process.

The present overall report highlights the key findings of the sectoral reports with special attention to three cross-sectoral issues, namely human rights, gender and access to justice.

### **1.2 Geography and socio-economic context**

Sierra Leone has a land area of approximately 72 000 km<sup>2</sup> and is located within the Upper Guinean Rainforest Ecoregion, a region recognized as one of the hotspots for biodiversity conservation. The country is divided into four main relief regions; coastline, interior lowland plains, interior plateau and mountains, each of which can be subdivided into a number of

ecosystems. The coastline or coastal plains is relatively gentle and comprises estuarine swamps, terraces, alluvial plains and beach ridges. The interior lowland plains extend from the coastal terraces in the west to the east of Sierra Leone, occupying approximately 43 percent of the land area. At the edge of the lowland plains are the interior plateaus, made up of granite that runs from the northeast of the country to the southeast. The country has a tropical humid climate with two distinct seasons, namely the wet season from May to October and the dry season from November to April, each lasting for about six months.

Sierra Leone's economy is largely dependent on the extraction of minerals (such as iron ore, diamonds, rutile, bauxite and gold) and subsistence agricultural practices. About 75 percent of the labour force is engaged in agriculture<sup>2</sup> with rice cultivation making up the bulk of the subsistence activities. The natural resource wealth of the country has so far not led to general economic and social development. Industrial development is still in the formative stages, with import substitution comprising the major industrial activity. Sierra Leone is ranked among the least developed countries. Over 60 percent of the population lives below the national poverty line.<sup>3</sup> There is widespread malnutrition, high infant and child mortality rates, low life expectancy, deficient infrastructure, a poor education system, and insufficient availability of basic medical services to cope with tropical diseases, malaria, tuberculosis, HIV/AIDS and, more recently, Ebola. Large sections of the population remain unemployed (especially youth). There is a high level of gender inequality, with women affected far more dramatically by the consequences of poverty than men.

Despite the dire socio-economic situation, Sierra Leone remains focused on and committed to the fight against poverty and to the re-building of social capital, as articulated in its Poverty Reduction Strategy Papers. This can be exemplified by the Agenda for Prosperity (AFP), a national policy document also known as PRSP III, which lays out the government's agenda from 2013 to 2018. The AFP aims at making Sierra Leone a middle-income country by 2035. Its vision encapsulates the principles of the VGGT as it provides that, by 2035, Sierra Leone aspires to be an inclusive, green, middle-income country with the following outcomes:

- socially, economically and politically empowered women contribute to national development in various forms;
- hunger is eradicated;
- less than 5 percent of people seeking jobs are without work; and
- over 80 percent of the population is above the poverty line.

It stands on eight pillars that indicate the focus of the government by way of realizing the AFP. The following pillars particularly relate to the VGGT, which seek to improve governance of tenure of land, fisheries and forests:

- Pillar 1 – Diversified Economic Growth
- Pillar 2 – Managing Natural Resources
- Pillar 7 – Governance and Public Sector Reform
- Pillar 8 – Gender and Women's Empowerment

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2 Statistic Sierra Leone 2004 report.

3 UNDP, 2014, available at <http://povertydata.worldbank.org/poverty/country/SLE>

## 2. CROSS-CUTTING ISSUES

Within a project to implement the VGGT in Sierra Leone with the financial support of Germany, FAO has undertaken the assessment of the legal frameworks applying to land, forestry and fisheries with a view to identify gaps and provide appropriate recommendations. While the sectoral assessment reports cover various substantive, institutional and operational issues, the issues of human rights, gender and access to justice are critical issues to be addressed in any legislative or policy process that is meant to address gaps in existing frameworks. This chapter examines the cross-cutting issues of human rights, gender and access to justice.

### 2.1 Human rights

While tenure rights are not internationally recognized as human rights as such, the VGGT stress that they are based on human rights standards and that in implementing the VGGT states should ensure respect for all human rights. Human rights of particular relevance include the right to property, the right to an adequate standard of living, including adequate food and housing, the rights of indigenous peoples and the right not to be discriminated against on the basis of race, sex, religion, social origin or other such grounds.

VGGT Section 4.8 provides:

“Given that all human rights are universal, indivisible, interdependent and interrelated, the governance of tenure of land, fisheries and forests, should not only take into account rights that are directly linked to access and use of land, fisheries and forests, but also all civil, political, economic, social and cultural rights. In doing so, states should respect and protect the civil and political rights of defenders of human rights, including the human rights of peasant, indigenous people, fishers, pastoralist and rural workers, and should observe their human rights obligations when dealing with individuals and associations acting in defence of land, fisheries and forests”.

Sierra Leone is party to all major regional and international human rights treaties including the Charter of the United Nations, whose human rights provisions have been elaborated in the Universal Declaration of Human Rights, the African Charter on Human and Peoples’ Rights, the International Covenant on Economic Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All forms of Discrimination Against Women and its protocol, the Convention on the Rights of the Child (CRC) and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa. The 1991 Constitution of Sierra Leone makes compliance with these international treaties part of the foreign policy objectives of the state.<sup>4</sup> Chapter III of the Constitution of Sierra Leone includes provisions on the protection of fundamental human rights which provide a good basis for the implementation of the VGGT and are closely related to its underlying human rights provisions and principles on responsible tenure governance (Section 3A of the VGGT). Section 15 of the Constitution provides that every person in Sierra Leone is entitled to fundamental human rights and freedoms irrespective of his/her race, tribe, place of origin, political opinion, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest. It specifically provides for the rights to life, liberty, security of person, property and equal protection of

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<sup>4</sup> Section 10, Constitution of Sierra Leone 1991.

the law; the freedom of conscience, of expression and of assembly and association; respect for private and family life, and protection from deprivation of property without compensation. The list of the constitutional fundamental rights does not include economic, social and cultural rights, such as the right to an adequate standard of living including food and housing, and collective rights, such as indigenous peoples' rights and rights relating to natural resources. However, Section 22 provides that no property or interest therein shall be compulsorily taken or acquired except where it is necessary in the general public interest, reasonable justification is afforded to any affected person and it is done in accordance with applicable law that provides for the prompt payment of compensation and right to access impartial and independent mechanisms for the determination of complaints. The aforementioned rights are closely related to the tenure rights and implementation principles that are enshrined in the VGGT.

Furthermore, the social objectives in the fundamental principles of state policy of the Sierra Leonean Constitution are defined in terms of human rights that are pertinent to the implementation of the VGGT. According to Section 8, the state shall recognize and enhance the sanctity of the human person, the equality of rights, obligations, and opportunities before the law, the right to equal opportunity to secure adequate means of livelihood as well as adequate opportunities to secure suitable employment, just and favourable conditions of work, adequate medical and health facilities, and the independence, impartiality and integrity of courts of law and unfettered access to justice. Unlike the fundamental rights and freedoms referred to above, the rights protected as principles of state policy shall not confer legal rights that are enforceable in any court of law.<sup>5</sup> Nonetheless, all organs of government are expected to comply with and enforce them.

It is important to note that the Constitution is undergoing a review process. The VGGT can serve as a good reference material for the Constitutional Review committee in relation to the recognition, respect and protection of legitimate tenure rights, especially of vulnerable groups and individuals. As the VGGT recommend in its Section 4, "States should strive to ensure responsible governance of tenure because land, fisheries and forests are central to the realization of human rights, food security, poverty eradication, sustainable livelihoods, social stability, housing security, rural development and social and economic growth." The Constitution should therefore recognize the intricate relationship between human rights and the governance of tenure of land, fisheries and forests.

Sierra Leone has further promulgated legislation that directly relates to the human rights aspects of governance of tenure. A series of relevant legislation has been adopted in 2007. These include: the Child Rights Act, which made CRC an integral part of the law of Sierra Leone, the Devolution of Estates Act, the Domestic Violence Act and the Registration of Customary Marriages and Divorce Act.

The Child Rights Act recognizes children as competent to own and enjoy property regardless of their origin or the customary law applicable to them.

The Devolution of Estates Act specifies the beneficiary interests in property left by deceased persons, including the rights of women and children to legally claim, own, as well as enjoy such property.

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<sup>5</sup> Sections 4, 14 and 28 of the Constitution of Sierra Leone 1991.

The Domestic Violence Act identifies deprivation of property rights as a domestic violence whereby such rights can be enforced.

The Registration of Customary Marriage and Divorce Act provides assurance that customary law marriage will not prevent a wife or husband from claiming a right to property belonging to the other spouse on the basis that customary law devolves property of a spouse to another person rather than the spouse.

A 2004 Act of Parliament established the Human Rights Commission of Sierra Leone (HRCSL) with the mandate to promote respect for human rights, to monitor and document violations of human rights, to investigate or inquire into complaints of human rights violations and to publish an annual report on the State of Human Rights in Sierra Leone.<sup>6</sup> Since its establishment, it has undertaken a number of activities to promote and protect human rights, including in relation to tenure rights, particularly under the rubric of protection from deprivation of property. In its 2011 report, for example, the HRCSL reported on cases of non-compensation and inadequate compensation in cases where land/property was acquired by the government or companies for road construction and agricultural or extractive projects, and on cases of conflicts and disputes related to land acquisition and transactions. The Commission recommended that the Ministry of Lands and Country Planning should adopt human rights-based approach in land acquisition and that Sierra Leone Roads Authority should establish a land property compensation redress mechanism.

Human rights are also reflected in the development policy of Sierra Leone. The agenda for prosperity, for example, prioritizes taking steps to realize food security, which is linked to the protection of human dignity including combating hunger. Realizing such objectives requires the protection of people from forced eviction from their land and property on which their livelihoods depend, and the protection of vulnerable groups and individuals against discrimination and all forms of violence.

As indicated earlier, the international and national human rights instruments and mechanisms reviewed above should inform legislative and policy processes and outcomes in the areas covered by the VGGT. Land law reform should address all forms of discrimination in the acquisition, ownership and use of land based on sex, age and social origin. The customary laws that apply in the various provinces and elements that inhibit the acquisition and ownership of land by women should be aligned to the constitutional and VGGT provisions on non-discrimination. In fisheries, the protection of small-scale fishermen, who are allowed to fish upon registration, from abuse by licensed industrial vessels, is a human rights issue that adversely affects the livelihoods and food security of the subsistence fishers and hence should be addressed in new or ongoing legislative processes. In forestry, the forced eviction of socially disadvantaged and economically vulnerable people from land (used for forestry purposes) they previously occupied is one of the major human rights issues that contravenes with the VGGT provisions on the protection of legitimate tenure rights and the prevention of arbitrary eviction.

In sum, Sierra Leone should strive to enhance responsible governance of tenure in land, fisheries and forests because this is central to the realization of human rights, food security, poverty eradication, sustainable livelihoods, social stability, housing security, rural development and social and economic growth. The constitutional review and other

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<sup>6</sup> Section 7, Human Rights Commission Act No. 9, 2004.



legislative processes should take the human rights aspects of the governance of the natural resources into account. Making socio-economic and collective rights part of the justiciable fundamental rights and freedoms is one of the major steps to be taken.

## 2.2 Gender

Women form the majority of the population in Sierra Leone and are the most marginalized group in terms of access to and ownership of land due to the land tenure system that is in operation in the country. The role that is played by women in relation to the land, forestry and fisheries sectors cannot be overstated. As mentioned earlier, about 75 percent of the population is engaged in agriculture and the bulk of that workforce is formed by women who engage in small-scale farming for their livelihoods. Women also play a key role in the fisheries sector, mainly in processing and marketing the fish in the local markets.

About 80 percent of rural women are primarily engaged in agriculture to provide food for their families, communities and urban cities. Access to natural resources is limited for women. Tenure rights for men and women are not the same because Sierra Leone recognizes some customary and religious legal regimes that bear elements of gender-based discrimination. The legal framework governing marriage and property rights shows a great disparity in the right to own and control land depending on types of marriage. Under the customary law and religious laws, ownership is patrilineal and thus women have little or no tenure rights even though they mostly work on the land. When it comes to transfer of land, women are not usually consulted in decision-making. Likewise, women have no formal role in the management of fisheries, nor are they represented in fisheries organizations to make decisions. In forestry tenure, under the communal forms of tenure that are typical in rural areas, decisions tend to be made without giving adequate consideration to women's rights.

As indicated in the previous section, equality of the sexes or the prohibition of discrimination based on gender is a fundamental human right guaranteed by the laws of Sierra Leone as well as international treaties to which the country is a party. The recognize 'gender equality' as one of its fundamental guiding principles by providing that states should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status (Section 3B.4). Among its implementation principles is 'recognising that equality between individuals may require acknowledging differences between individuals and taking positive action including empowerment in order to promote equitable tenure rights and access to land, fisheries and forests for all women and men, youth and vulnerable and traditionally marginalised people within the national context'. The VGGT place strong emphasis on the importance of gender equality for the responsible governance of tenure throughout.

The recognition of customary tenure in the Constitution of Sierra Leone runs contrary to the abovementioned principles of gender equality because customary tenure has elements of gender-based discrimination. The 1991 Constitution provides that all persons are equal under the law and free from discrimination and that no law shall make discriminatory provisions.<sup>7</sup> However, Section 27(4) provides that these same rights and freedoms are subject to customary law. As highlighted above, this provision is in effect grossly discriminatory against women. Considering that 12 out of the 14 districts in Sierra Leone are

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<sup>7</sup> Section 27(1) supra.

governed by customary law, it means that the vast majority of women in Sierra Leone are discriminated against.

Section 27(4)(d) excludes the application of equality before the law “with respect to...devolution of property on death or other interest of personal law.” Thus, the fundamental guarantees of non-discrimination enshrined in the 1991 Constitution are cosmetic in as far as the discriminatory customary laws are still preserved by the Constitution.

In the Provinces, land is predominantly community or family-owned, wherein the Paramount Chief or an older male member of the family holds the land in trust. The chiefs, in consultation with other community elders, grant access to land. Women’s claims to land within customary systems are generally obtained through their husbands or male relations and could therefore be regarded as ‘secondary’ rights. Whereas women’s land rights are dependent on their relations with men, men’s land rights are not dependent on their relations with women. Moreover, women are threatened with dispossession if divorced or widowed. Section 7.1.4 of the draft National Land Policy (NLP) addresses challenges faced by women in accessing land, and provides measures to strengthen women’s tenure rights by amending the Constitution and removing all discriminatory provisions. It also recommends the enactment of new legislation on land that will protect gender equality.

There is no legal or policy framework on affirmative action or quota system for the representation of women in decision-making and management positions. Thus, such a system is absent in the lands, fisheries and forestry sectors. This has been a point for advocacy by women’s organizations in the country, although it has not had a meaningful impact as yet. The Gender Equality Bill, which advocates for the 30 percent quota for women in leadership positions, is yet to be passed into law. The status quo is contrary to Section 5.4 of the VGGT which calls on states to consider the particular obstacles faced by women and girls with regard to tenure and associated tenure rights and to take measures to ensure that legal and policy frameworks provide adequate protection for women, and that laws that recognize women’s tenure rights are implemented and enforced.

The VGGT further urge states to develop relevant policies, laws and procedures through participatory processes involving all affected parties, ensuring that both men and women are included from the outset. One issue that is prevalent in all three sectors is the lack of consultation with tenure right holders before transactions are entered into, which adversely impacts their future. Women and girls are the most affected by this lacuna, and the necessity to adhere to this principle of the VGGT is even more urgent. When consultation takes place, the special interests of women must be addressed.

Although small-scale fishers are found in the riverine areas of the coastline, the right to fish, however, is not dependent on the right to own land as these two are regulated by different legal regimes. Therefore, with regards to fishing rights, women can only be allowed to play the role of by-standers, especially in the provinces where such lands are owned by the family or the community. In the fisheries sector itself, women play important roles in the processing and marketing of the product, but without possibility of participating in the management of the resources. The failure of the draft Fisheries Bill to recognize women and give them more emphatic roles in the management and decision-making institutions of the industry needs to be addressed.



It is estimated that about 249 120 hectares of designated forest reserves exist in Sierra Leone. The greater portion of this land mass is in the provinces, which is communally owned and is governed by customary law. Accordingly, customary law is the law in operation in the vast portion of the forest area under the communal forms of tenure found in the rural areas/provinces. Decisions on tenure rights are as a result made without to the involvement of women.

## RECOMMENDATIONS

### *General*

Amend the constitution to remove discriminatory provisions, in particular related to customary law and family law.

### *Lands*

A principle on gender equality be incorporated in NLP in the format of Principle 4 in Section 3B of the VGGT. Such a provision would ascertain the commitment of the Government of Sierra Leone to gender equality, and would provide a guiding framework for the policy measures that are set forth in this study (see Chapter 3).

### *Fisheries*

1. There should be explicit recognition that women play an important role in fisheries and should be involved in planning and decision-making. Equal access to fishing resources should be explicitly recognized and gender equity in the application of legislation should be ensured.
2. The draft Fisheries Bill should establish a ministerial task to promote capacity development, especially for women and the small-scale fishing sector, so that they may effectively represent their interests and be involved in the management and policy-making processes that may affect their livelihoods.
3. There should be requirements for consultation and participation of women, along with small-scale fishers and representative organizations of stakeholder groups who may be affected by fisheries management plans and decisions.

### *Forestry*

1. As has been recommended for the fisheries sector, there should be explicit recognition that women play an important role in forestry and should be involved in planning and decision-making. There should also be an express requirement for the administration to promote capacity development specifically for women.
2. If representative bodies are created at any level to provide advice on forestry decision-making, the law should guarantee that women are represented in specified quotas.
3. In community forestry or any similar initiatives, the law should require that women are expressly consulted and ensure that an account is given of such consultation.
4. Forestry initiatives undertaken by women could qualify for certain special benefits such as any available funding opportunities or technical assistance.

5. Where the law already requires concessionaires to devise programmes for the training and employment of locals, an express reference to training and employment of women should be made.

### 2.3 Access to justice

One of the guiding principles of responsible tenure governance is to provide access to justice to deal with infringements of legitimate tenure rights. The State should provide effective and accessible means of resolving disputes over tenure rights to everyone, through judicial authorities or other approaches, and it should guarantee affordable and prompt enforcement of outcomes. This is reflected in the recommendation of the VGGT that states provide access through impartial and competent judicial and administrative bodies to timely, affordable and effective means of resolving disputes over tenure rights, including alternative means of resolving such disputes, and provide effective remedies and a right to appeal (Section 21.1).

Dispute resolution mechanisms are in place in Sierra Leone, which has a dual court system:

- a) a general/regular court system; and
- b) a system of recognized customary courts.

The Constitution of Sierra Leone defines the powers and functions of the judiciary, while the Local Courts Act (LCA) of 2011 frames the adjudication powers of the customary courts. The legal framework does not place any restriction on women's ability to access these courts but in practice, they tend to have comparatively less access to the judicial system.

Under Section 120(4) of the Constitution, the judicature consists of:

- a) The Supreme Courts of Sierra Leone
- b) The Court of Appeal
- c) The High Court of Justice

Section 2(1) of the LCA establishes a Local Court in each Chiefdom of Sierra Leone. Each Local Court consists of a Chairman, Vice-Chairman and other members. Section 39(1) provides that any person aggrieved by an order or decision by of the Local Court can appeal to the District Appeal Court. According to Section 41(1) of the LCA, appeals from the District Appeal Court are heard by the Local Appeals Division of the High Court. Furthermore, Section 8.1.7 of the draft NLP 2014 confirms the competence of the Local Courts established under the LCA 2011 to exercise original jurisdiction over land matters involving title to land within the Chiefdom, with right of appeal to the hierarchy of the national court system.

In line with resolution of disputes over tenure rights, the law guarantees gender-equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights. The Constitution of Sierra Leone (Section 8(1)) states that every citizen shall have equality of rights, obligations and opportunities before the law, and the state shall ensure that every citizen has an equal right and access to all opportunities and benefits based on merit. Also, Section 27(1) of the Constitution states that "...no law shall make any provision which is discriminatory either of itself or in its effect." Section 27(2) states further that "...no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any

public authority.” The principles of equality and non-discrimination that are enshrined in the aforementioned articles of the Constitution are expected to be applied by all the different courts established by law in Sierra Leone. However, as explained above, the exception clauses of the Constitution (Section 27(4)) diminish the effect of the non-discriminatory clauses with regard to customary law.

The courts afford avenues for redress, and according to their jurisdictions are expected to be impartial and competent, providing timely, affordable and effective remedies to disputes over tenure rights (VGGT, Section 21.1). Accordingly, Section 120(16) of the Constitution of Sierra Leone sets a timeframe of three months for the delivery of judgements after the conclusion of the evidence and final addresses or arguments of appeal. The Courts must also provide all parties to the cause or matter with duly authenticated copies of the decisions on the date of the delivery. Additionally, Section 12(1) of the LCA provides that the court holds session at such times and places as may be necessary for the convenient and speedy dispatch of the business of the court.

Therefore, Sierra Leone does provide equal access to grievance mechanisms. But there are barriers to this access as well:

- Nearly 60 percent of the population is illiterate and even among those that are literate most people are unaware of the procedures of courts of law, including the procedures concerning the filing of a complaint. There is very little knowledge about existing legislation, the functioning of the state’s justice system, and on human rights. The literacy rate among women is lower than that among men; in the age group 15-24, for example, it is 70.5 percent for men but only 52.1 percent for women.<sup>8</sup> Thus women find it more difficult to access the justice system than men.
- Court fees in both the regular courts and local courts are often too high for users. Due to the inadequacy of legal aid structure, poor litigants are expected to pay their own court fees, including solicitor’s fees. Unlike in the formal court structure which has statutory limits on court fines, the rules for fees and fines in customary courts are unwritten and therefore unpredictable. Some chiefs and local court members in the past abused this situation by charging excessive fees and imposing large fines. But the new LCA<sup>9</sup> has imposed limitations on court fines.
- Every district is supposed to have a Magistrates’ Court. But there are limited numbers of functioning Magistrates’ Courts in Sierra Leone and these are sometimes located far away from remote towns and villages. Litigants may have to spend a lot of money on transportation, sometimes through bad roads, to make court appearances. Often long delays in the processing of cases require parties to make several trips to court. These entail financial and physical difficulties for most people who live in rural areas to access formal courts. Some local courts are also located far away from some local villages.
- Anecdotal evidence shows that most citizens believe that the justice system is biased and corrupt and that the judges are compromised and accept bribes from the rich and connected. Due to this perception there is the possibility that less connected or wealthy people avoid instituting court cases against their wealthy and more powerful opponents.

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8 UNSTAT <http://unstats.un.org/unsd/mdg/data.aspx>

9 The Local Courts Act, 2011.

The VGGT (Section 21.2) urge states to consider introducing specialized tribunals or bodies that deal solely with disputes over tenure rights, and creating expert positions within the judicial authorities to deal with technical matters. States may also consider special tribunals to deal with disputes over regulated spatial planning, surveys and valuation.

The draft NLP in Section 7.3 makes provision for the creation of Land Dispute Tribunals which will have jurisdiction in respect of minor land disputes and administrative complaints against land related institutions such as the Office of the Administrator and Registrar General (OARG) and the Director of Surveys and Lands.

There are no special tribunals as regards fishery and forestry sectors. But the draft Fisheries (Fisheries and Aquaculture) Bill mentions summary administrative procedures which can be undertaken by the ministry. Parties aggrieved by a decision may appeal against the director's decision to the High Court (Section 168(10)).

The VGGT (Section 21.3) further require states to strengthen and develop alternative forms of dispute resolution, especially at the local level.

With regard to lands, the draft NLP (Version 6, Section 7.2) proposes the setting up of administrative and dispute tribunals to maximize the opportunity to apply Alternative Dispute Resolution (ADR) mechanisms such as negotiation and mediation to reduce the number of cases that end up in the court system and result in delayed justice. It is important to note however that there is no specific measure foreseen to reduce the costs and provide timely and effective remedies to disputes over tenure rights. Such mechanisms are also absent in the fishery and forestry sectors.

As mentioned above, the VGGT (Section 21.1) require states to provide the right to appeal in their justice systems. The right to appeal exists in Sierra Leone in both the regular court system and the customary justice system. The judicial system of Sierra Leone consists of the Appellate Courts which are the Court of Appeal and the Supreme Court to which matters go on appeal from the High Court of Justice. The Supreme Court has original jurisdiction for all constitutional matters and matters that require the interpretation of the legislation. The High Court itself serves as an appellate court for any final decision or order issued by a Magistrate.

Further, a right to appeal decisions of local courts to District Appeal Courts is given pursuant to Section 29(1) of the LCA. A District Appeal Court exists in every district, and in this case, the Magistrate for that district will sit with two assessors selected by him or her from a list of experts in customary law. An appeal to a District Appeal Court is by way of complete rehearing of the matter, and parties may be represented by legal practitioners, unlike in the Local courts and the Group Local Appeal Court where lawyers have no right of audience.<sup>10</sup> The aspect of professional representation being denied at the local court level raises an issue of rule of law, as it may pose an impediment to access to justice.

Under Section 41(1) of the LCA, 2011, appeals from the District Appeal Court are heard by the Local Appeals Division of the High Court, constituted by a High Court judge who sits with two assessors where questions of customary law are in issue. Here, the role of the assessors

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<sup>10</sup> The Local Courts Act, 2011, 34.

is only advisory on questions of customary law. Appeals pass from the Division of the High Court to the Court of Appeal and to the Supreme Court of Sierra Leone.

It is worth noting that the LCA does not allow claimants to opt out of customary processes and appeal to the general system. This may be detrimental to claimants, especially to women who may face discriminatory practices. Nevertheless, Section 7.3 of the draft NLP confirms the competence of the Local Courts established under the LCA, and reaffirms the court's authority to exercise original jurisdiction over land matters involving title to land within the Chiefdom, with right of appeal to the hierarchy of the national courts system. These rights of appeal which exist in the judicial system ensure that grievances are addressed at every level and whatever injustice meted is dealt with at any given higher level. The draft NLP also calls for specialized Land Tribunals, but it is not clear how this will operate in relation to land disputes in the provinces.

As stated hereinbefore, there is a widespread belief that the justice system is biased and corrupt. An Anti-Corruption Commission (ACC) has been established with a mandate to curtail corruption in the country. This is in line with the VGGT (Section 21.5) recommendation that states should put in place clear mechanisms to prevent corruption in dispute resolution. This complements broader efforts to combat corruption in the justice apparatus. Accordingly, the ACC Act, 2008 applies to the judiciary, and pursuant to Paragraph 2.2(h)(iv) of the draft NLP, corruption may be combatted through transparency in the processes of decision-making, ensuring that decision-makers are accountable and that decisions are delivered promptly. Section 2(1) of the ACC Act gives the Commission powers to take all steps as may be necessary for the prevention, eradication or suppression of corruption and corrupt practices as well as to investigate and prosecute all instances of alleged or suspected corruption referred to it by any person or authority, or which has come to its attention whether by complaint or otherwise. The ACC Act, as stated above, rightly applies to all public bodies including the Judiciary. Therefore, there are clear mechanisms envisaged to prevent corruption in dispute resolution mechanisms in these courts.

The VGGT (Section 21.6) further recommend that states strive to provide legal assistance to vulnerable and marginalized persons to ensure safe access for all to justice without discrimination. The law of Sierra Leone makes provision for legal assistance in civil matters. Section 1 of the Legal Aid Act, 2012 defines legal advice and assistance as the provision of information in both criminal and civil cases about the relevant law and legal processes, assisting with ADR, advising on legal issues, and assisting with the drafting of documents. This Act establishes a body known as Legal Aid Board with the objective of providing, administering, coordinating and monitoring the provision of Legal Aid. It is however important to note that this Act has not yet been implemented as the Legal Aid Board it envisaged has not been established at the time of writing the present report. Until the Board is established, there are no other measures in place for aiding title holders on matters of law in relation to their rights and obligations, and no relevant provision is made in the land policy for such services.

## **RECOMMENDATIONS**

Strengthening access to justice:

- i) Implement the Legal Aid Act, 2012 by setting up the Legal Aid Board.
- ii) Amend the Local Courts Act, 2011:

- (a) to allow claimants to opt out of the customary system;
  - (b) to remove sexist language by replacing all references to “he” by “he/she”; and
  - (c) to include minimum requirements for the representation of women on local courts.
- iii) The future Act that will establish the Land Dispute Tribunals as per the draft NLP should contain requirements and timeframes to ensure the smooth delivery of justice in disputes over tenure rights. The Act should limit the administrative burdens that increase the costs and legal assistance should be made available to indigents as per the Legal Aid Act, 2012.

### **3. IMPLEMENTATION OF THE VGGT IN LAND LEGISLATION**

This Chapter summarizes the analytical assessment report prepared by the consultant on the land sector review. The Chapter provides the results from the assessment of the legal and policy framework for land tenure in light of the VGGT. It evaluates the present land laws and policies in operation in Sierra Leone in line with the principles embedded in the VGGT, and provides recommendations to enhance compatibility with the VGGT.

#### **3.1 Overview**

Sierra Leone has a dual land tenure system composed of the freehold tenure system and the customary land tenure system. The freehold system operates in the Western Area, whereas the customary tenure system is associated with the traditional practices of the people residing in the provincial areas. About 75 percent of the population living in the rural areas depends largely on agriculture for their sustenance. Access to land is inextricably linked to food production as well as the exploitation of minerals and natural resources, both of which are mainstays of the economy and the bases of livelihood for the people. Thus there are competing interests with regards to access to and control over land, its allocation and the purposes for which it is committed. Balancing of the different interests is a key task for land tenure governance in Sierra Leone.

#### **3.2 Developments on policy and legal instruments**

Based on the dual land tenure system in operation in Sierra Leone, land law in Sierra Leone can be broadly categorised into two sources: the general law, and the customary law. The general law includes the rules of law known as the common law, the doctrines of equity and all enactments of parliament in force in Sierra Leone, as well as the received English Law in force. The customary law on the other hand is defined by the Constitution as rules of law which, by custom, are applicable to particular communities in Sierra Leone.

The Western Area applies the 'general law'. There is a myriad of very old legislation covering this area, for e.g.:

- General Registration Act, Chapter 255 of the Laws of Sierra Leone
- Public Lands Ordinance, Chapter 116 of the laws of Sierra Leone
- Survey Act, Chapter 128 of the Laws of Sierra Leone
- The Crown Lands Ordinance, 1960
- The Improvement of Land Act, 1899
- The Non-Citizen (Interest in Land) Act, 1966
- The Registration of Instruments Act , Chapter 256

In the Provinces, customary law is the predominant law that regulates rights to and interests in land. However, with regards to the acquisition and disposition of land in the Provinces, the Provinces Land Act, Chapter 122 of the laws of Sierra Leone 1960, is of prime importance.

In the event of conflict between customary law and statutory law, the latter prevails. There is currently no existing land policy in Sierra Leone. But the ministry responsible for lands and country planning has been developing one and a working draft was under consideration at the time writing the present report.

### 3.3 Legal recognition and allocation of tenure rights

The VGGT (Section 7.3) provide that the law should recognize all existing tenure rights, including customary tenure rights, whether recorded or not. Sierra Leone's legal and policy framework complies with this requirement. The Provinces Land Act, Chapter 122 vests all land in the provinces in the Tribal Authorities. The draft NLP, in Section 4.1.1, recognizes three types of tenure: the freehold tenure, the family tenure and the customary tenure.

The VGGT also place a strong emphasis on the importance of gender equality for the responsible governance of land tenure. Section 7.4 urges states to grant men and women the same tenure rights, including in customary systems. These rights extend to marriage, divorce and inheritance. This is of course subject to the effects of the recognition of customary law under Section 27(4)(d) of the Constitution.

#### RECOMMENDATIONS

It is recommended that:

1. The Matrimonial Causes Bill and the Gender Equality Bill be passed into law. These statutes should guarantee men and women equal rights to property, including land, during marriage and upon divorce. In particular:
  - i) The Matrimonial Causes Bill:
    - should make spousal consent mandatory for any transaction involving matrimonial property;
    - should include a definition of "spouse" that mirrors the one adopted in the Devolution of Estates Act, 2007 and which includes unmarried couples; and
    - should include a presumption of joint ownership of property for unmarried couples who have cohabitated for a period of not less than five years.
  - ii) The Gender Equality Bill should be passed into law without further delay.

### 3.4 Protection of tenure rights against threats and infringements

Protection of tenure rights must be weighed against its effects on development and investment in a country's economy. They are essential to improve both infrastructure and food security and in generating higher incomes for a country's citizens. But as required by Section 7.1 of the VGGT, such investments must be made responsibly and not infringe on tenure rights.

Section 21 of the Constitution of Sierra Leone, 1991 allows for expropriation of land for several purposes including public safety, public health and town and country planning but albeit provides that prompt payment of adequate compensation should be given to the rightful owner. There are other instances in the laws of Sierra Leone where land can be expropriated upon the payment of compensation. Section 4 of the Public Lands Act (Chapter 116 of the Laws of Sierra Leone, 1960) provides that the Minister with the consent of Parliament shall declare any land for public works against payment of adequate compensation. Provision is also made for cases where compensation is paid pursuant to the Minerals Act, 2009, where land is expropriated compulsorily for mining.



These provisions are in line with the key principles of the VGGT in relation to expropriation and compensation, which among other things provides that states should expropriate only where rights to land are required for a public purpose and upon the payment of prompt, just compensation. The draft NLP is forward looking in that as much as it reasserts the state's power to acquire land compulsorily, it also provides for payment of prompt and fair compensation and due recourse to justice in the event of any dispute. In Section 9.1.2, it provides for restitution of properties taken unlawfully by the government from any individual landholder. It also requests the state to provide a publicly-accessible mechanism for the right to appeal if people believe their tenure rights have not been fully recognized. Where this is the case, such tenure right should be restored.

The VGGT support the adoption of legislation that encourages responsible investments that respect human rights, promote food security and sustainable use of the environment (VGGT, Section 12.8). The Environmental Protection Agency (EPA) Act, 2008 provides that an Environmental, Social and Health Impact Assessment (ESHIA) license is required for all projects according to the first and second schedules of the EPA Act, and at Sections 24 and 25.

Importantly, the VGGT urge the state to provide for the consultation of all stakeholders prior to the transaction of tenure rights, including partnership agreements (Section 12.9). Consultation with local tenure rights holders and other stakeholders before initiating investment transactions affecting the resources for which the communities hold rights, as described in Section 9.9 of the VGGT, remains a problematic area. Owing to the type of land tenure system that operated in the provinces, wherein land is held by the Paramount Chiefs as custodians for and on behalf of the people of the Chiefdom, negotiations for land transactions with investors are made by the Paramount Chiefs directly and not with the tenure right holders. Contracts are signed long before the tenure right holders become aware of them and several ugly situations have cropped up in this regard.

Accordingly, no relevant provision exists in the legal framework that provides for the consultation of stakeholders prior to the transaction of tenure rights. Also, no relevant measure could be located in the draft NLP on the subject matter. This happens to be a major reason why communities in various mining and other foreign large-scale investments communities in Sierra Leone have been disgruntled. Most often, the legitimate tenure right holders are not provided with comprehensive information that will enable them to get the best possible agreement in the negotiations. This is one of the ways in which existing tenure rights are compromised. This is not in line with the VGGT (Section 3B.6), which considers consultation with the local tenure rights holders as a tool that ensures a balance between the interests of foreign investors and local communities.

It should be noted that little or no professional assistance is available to the rights holders to ensure that they are made aware of their rights and given the opportunity to participate in the consultations with investors (see VGGT, Section 12.9). In fact, no relevant provision can be located in the legal framework on professional assistance to ensure that men and women are aware of their tenure rights and can participate in related consultation.

Currently, the law does not require investors to recognize and respect legitimate formal and informal tenure rights of men and women (VGGT, Section 12.10). The draft NLP is silent on this matter and places very few obligations on investors.

## RECOMMENDATIONS

It is recommended that the NLP address the issues referred to above by making new provisions:

1. To safeguard legitimate tenure rights against threats and infringements. Tenure right holders shall be protected against the arbitrary loss of their tenure rights.
2. To set out measures to promote and facilitate the enjoyment of legitimate tenure rights.
3. To facilitate access to justice to deal with infringements of legitimate tenure rights.
4. To support consultation and public participation incorporating in Section 2.2(e) of version 6 of the draft National Policy, elements of Principle 3B.6 of the VGGT. (Such a paragraph would ascertain the commitment of Government of Sierra Leone to consult and provide an opportunity for tenure rights holders to participate in the decision-making processes that will affect their tenure rights.)
5. To encourage responsible investments that will contribute to food security, nutrition, poverty eradication and environmental resilience. Such investment should do no harm and must safeguard against dispossession of legitimate tenure right holders.
6. To amend Section 4.1.5 of the draft policy with three new points that will include the adoption of the following measures:
  - i) ensure investors act responsibly, respect human rights and legitimate tenure rights, and do no harm to food security, local livelihoods and the environment;
  - ii) put in place an effective system to monitor the implementation and impact of agreements involving large-scale transactions in tenure rights; and
  - iii) set up a grievance mechanism to ensure that affected parties can seek corrective action.
7. To set up clear and transparent procedures and criteria to ensure the full participation of all relevant stakeholders, landowners and land users in the identification of land suitable for responsible investment or for the establishment of land banks for the purpose of allocating land to investors (VGGT Principles 3A and B).
8. To address existing power imbalances by ensuring the availability of professional assistance to ensure that men and women are aware of their tenure rights and can participate in consultations (VGGT, Section 12.9).
9. To require investors in land for agriculture and bioenergy to negotiate with landowners and users about land leases and to provide them with full and prompt compensation.

### **3.5 Promotion and facilitation of the enjoyment of legitimate tenure rights**

States should provide tenure recording systems appropriate for their particular circumstances, including their available human and financial resources. Socio-culturally appropriate ways of recording rights of indigenous peoples and other communities with customary tenure systems should be developed and used (VGGT Section 17.2).

The General Registration Act (Chapter 255) provides in Section 5 for the establishment of the OARG which is the general registry and depository of all registers, instruments and records. But the OARG is centralized in Freetown, the capital city. Due to this centralization, many landholding persons in the Provinces find it very difficult to have proper documentation for their land owing to the long distances they have to cover to get to Freetown in order to have their interest in land registered. There is therefore a need for government to decentralize and devolve the functions of the OARG to regional and district offices throughout the country to make the services more accessible.

With regard to women's involvement in land administration, it must be noted that the law does not set quotas for the appointment of women in any institution in the country, and the same applies to land management and administration committees (LAT Indicator 29, see Sectoral Report on Land). As indicated earlier, the Gender Equality Bill, which advocates for the 30 percent quota for women in leadership positions, is yet to be passed into law in Sierra Leone. However, if these proposed land reform institutions are established with the necessary personnel empowered with the requisite legal knowledge on land issues (including tenure rights of both men and women), they will go a long way in improving the administration of tenure in the country. What then is needed at this material time is for the institutions concerned to be composed of men and women of initiative who are knowledgeable in the law, customs and traditions of the land, and most importantly are interested in promoting, and at the same time standardizing the land laws to meet the level of the VGGT.

Currently, the legal framework in the country does not offer much on the aspect of valuation (VGGT, Section 18.4). Also, no relevant statement/measure could be found in the draft NLP on the matter. In any responsible land governance system, a valuation system is of great importance as it helps to determine the correct value for land or property. Furthermore, it is the basis upon which compensation is paid for expropriation or for damage to land from mining activities, for example.

## **RECOMMENDATIONS**

1. The Registration of Instruments Act, Chapter 256 Act should be amended to make provision for the registration of interests in the land as well as the deeds.
2. The General Registration Act (Chapter 255) should be amended to provide for the establishment of OARG in the provinces in a devolved manner.
3. New legislation should be introduced for effective valuation of land in cases where compensation is required after land has been compulsorily acquired. There is a need for such a legislation for the setting-up of an independent Board that will be tasked with carrying out this exercise. The guiding principles of valuation can be laid out in the form of regulations, but these must follow international best practices.
4. Establish a mechanism whereby just compensation can be worked out by an independent body that will ensure that compensation is paid to landowners within a specified time.
5. Consultations should take place with tenure right holders before land transactions. All rights holders, including women, should be identified and consulted prior to the signing of any contract.

### 3.6 Natural disasters

The VGGT (Section 24.1) require that tenure aspects of land are addressed when preventing and preparing for natural disasters and in response to them.

In Sierra Leone today there is an increasing trend in rural-urban migration. There are many newly built-up areas in places that were not intended to host shanty towns. Dependence on the environment as a source of fuel for domestic consumption has led to an alarming rate of deforestation, particularly on the hilltops in the Western Area, which creates the potential for large-scale disasters. The surge for land to build houses has led people to dig craters in the hilltops around Freetown. The lack of proper planning in these areas has led to the categorization of Sierra Leone as one of the top three nations in the world most vulnerable to natural disasters<sup>11</sup> and to impacts of climate change leading to flooding, landslides, etc.

There are no provisions in law in Sierra Leone that aim at protecting, restoring or reallocating tenure rights in cases of emergencies due to natural disasters. The need to put in place clear mechanisms for disaster management cannot be overemphasized. This will go a long way towards preserving the environment and also ensuring food security for all.

In order to salvage this situation, the draft NLP (Section 9.5) has proposed that government rationalizes the legal, policy and institutional framework for the prevention and management of land-related disasters and strengthen the legal and administrative framework for resettlement in the event of natural disasters.

#### **MORE RECOMMENDATIONS ON NATIONAL LEGAL FRAMEWORK**

1. The laws dealing with land in the Western Area are old and archaic, and need to be reviewed in line with the changing trends in society and international treaties and conventions.
2. New land law must be enacted to reflect the new policy under development. It must contain the following:
  - i) Provisions on land valuation. Special attention should be paid to the principles of consultation, transparency and gender equality. In particular, the rights of vulnerable groups – including widows and women heads of households who have weak bargaining power – should be protected and strengthened.
  - ii) Appropriate provisions regarding the equal right of men and women to own and hold property, regardless of marital status or the type of marriage. It should also include provisions facilitating acquisition of land by women through purchase and allocations.
  - iii) A number of specific requirements to ensure that:
    - the personnel in land administration have the adequate knowledge and skills to carry out their tasks; and
    - the provisions of the draft NLP to strengthen the skills of the personnel involved in the adjudication, demarcation and survey recognition stretch beyond the Western Area and facilitate the formalization of land held under customary tenure.

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11 5th Assessment of the Inter-governmental Panel on Climate Change. Sierra Leone is ranked just below Bangladesh and Guinea Bissau.

## **4. IMPLEMENTATION OF THE VGGT AND SSFG IN FISHERIES AND AQUACULTURE LEGISLATION**

This Chapter summarizes the analytical assessment report prepared by the consultant on the fisheries and aquaculture sector review. It focuses on the small-scale fishery sector and provides an overview of different types of use and access rights to the resources. It also provides an analysis of the implementation of the VGGT and the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSFG), and then provides recommendations to address identified weaknesses.

### **4.1 Overview of the sector**

Fishery is among Sierra Leone's abundant natural resources and they include high-value fishery and other aquatic resources found in both marine and inland areas. The fishery sector contributes significantly to sustainable development in the country both in terms of food and nutrition security and livelihoods. The bulk of catches are derived from small-scale fisheries. The Ministry of Fisheries and Marine Resources (MFMR) estimates that small-scale fishery contributes 60 percent of fish protein consumed in Sierra Leone and provides approximately 45 percent of employment for coastal communities in the country.

At present, the fishery sector is producing over 150 000 tonnes of fish annually; an approximate 10 percent of national gross domestic product. In addition to the large small-scale sector, there is a semi-industrial fleet and at least one industrial fleet operating locally. Also, there is a sizeable foreign industrial fleet of mainly Southeast Asian crews who operate under some formal agreements or an authorization/licensing system.

Recently, there have been serious concerns regarding the sustainability of the fisheries sector in the long term as well as the distribution of benefits from the sector due to the poor manner in which it is managed.

### **4.2 Policy development and legal instruments**

The laws presently covering this sector are:

- Fisheries (Development & Management) Act, 1994
- Fisheries (Development & Management) Regulations of 1995
- Local Government Act, 2004

The MFMR have made progress with the development of a policy for the fisheries sector by formulating a fisheries development strategy in 2013 and is also in the process of reviewing a new draft Fisheries (and Aquaculture) Bill.

There is also an approved management and functional review document for MFMR, the structure of which is being included in the Bill. The implementation plan is to further the objectives contained in the government development policy blueprint "Agenda for Prosperity" which targets ordinary Sierra Leoneans, like small-scale fishers, in a transformative and sustainable poverty alleviation attempt by increasing earnings and improving social life.

### 4.3 Recognition and respect for tenure right holders and their rights

The Fisheries Act, 1994 provides that the exclusive management and control over fish, fisheries and other aquatic resources within the fisheries' waters is vested in the government (Section 3). It provides specific recognition to artisanal and semi-industrial fisheries by giving the Minister the discretion to exempt such fisheries from licensing obligations and fees; by establishing reserved areas for artisanal or semi-industrial fishing; by giving priority to artisanal or semi-industrial fisheries and the allocation of licenses or quotas; and by taking other actions, deemed necessary for the promotion and protection of these fisheries (Section 13).

The Fisheries Policy of 2010 does recognize tenure rights in its Parts II and III. Fisheries, like other natural resources, are owned by the state (see Page 4, Paragraph 3 of the Fisheries Policy 2010).

Laws that provide for the recording of legitimate rights are in place. The Fisheries Act provides the procedure for applying for fishing licenses for local fishing vessels, fixed fishing gear or beach seines (Part IV). Part VIII of the Fisheries Act applies to licensing in general, including to non-local fishing vessels, and provides, that the Director shall keep a register of all licenses issued in accordance with the Act (Section 60), including details on the nature of the licensed activity, the vessel, person or establishment licensed and the period of validity of the license. But the law and regulations do not provide details on the register and procedure to consult it.

The Fisheries Act and the Fisheries Regulations, 1995 do not address rights in relation to related resources (land adjacent to fishing/landing sites) explicitly. As regards the sea fisheries, the practice of the ministry responsible for fisheries and marine resources is to ensure that targeted fishing communities (in this case those occupying land adjacent to fishing landing sites) benefit from the use of landing sites constructed at particular communities for value addition.

The Fisheries Act and Fisheries Regulations do not address the promotion of women's access to fisheries, user rights and related rights. The Fisheries Policy of 2010 addresses participation of women in the fish industry, cognisant of the fact that women are playing a key role in fish processing and marketing in local markets in the country. However, the policy does not promote or provide details on the way in which women can be allowed access to user rights. But the draft Bill provides that in the application of the Bill, the promotion of gender equality and the empowerment of women is one of the principles that must be given effect (Section 5(p)).

There are no laws or policies which allow for or promote indigenous people's access to fisheries user rights. The Fisheries Act and Fisheries Regulations and the draft Fisheries Bill do not address this issue explicitly. The Fisheries Policy 2010 maintains that the resources are being managed as a valuable and common property resource for all Sierra Leoneans (see Part II, Vision), and although this is a useful general principle, it does not provide sufficient detail as to how to implement this policy statement.

Policies and laws are not in place to provide for transparent and accessible allocation mechanisms to small-scale fisheries. The Fisheries Act and Fisheries Regulations do not provide explicit provisions to this end.

It is not certain whether policies and laws allow for the transfer of user rights that benefit Small-scale fishing (SSF). The Fisheries Act provides that local fishing licenses are not transferable from one vessel to another (Section 18(1)) unless the vessel changes ownership, subject to specific conditions (Section 18(3)). However, licenses in respect to fixed gear or beach seines may be transferred under certain conditions (Section 18(2)), although beach seine has been categorized as illegal fishing activity. Similarly, Section 57 provides that licenses (for non-local fishing vessels) are not transferable except with the written permission of the Director and in accordance with applicable access agreements. The Act does not address transferability of registration and it is not clear whether vessels should be re-registered when the ownership changes, or when the vessel is used by others than the person who originally registered the vessel. The policy or laws do not also provide for specific types of user rights.

### **Draft Bill provisions**

The draft Bill requires the establishment of a register of fishing licenses and authorizations (Section 70), but does not provide for the registration of rights of artisanal or small-scale fishers. In addition, the draft Bill provides for measures to ensure that local communities are not deprived from traditional access to fishing grounds by aquaculture activities (Section 55(a)). It also provides that licenses are issued to a specific fishing vessel or activity and are personal to the holder of the license (Section 82(1)). It allows for the transfer of an industrial fishing vessel license under certain conditions, upon written authorization by the Director and endorsement of the Minister (Section 82(2)).

### **RECOMMENDATIONS**

1. State institutions should identify and protect the user rights that are provided through the registration to those vessels exempted from the licensing obligation.
2. The law and policy should recognize the dependence of certain communities on fish resources for their livelihoods and of the right of these communities, including indigenous communities (linkage with Element I.5), to continue to engage in fisheries, subject to principles of sustainable use and with due regard for the ecosystem approach to fisheries and the precautionary approach.
3. MFMR should develop a policy on relevant functions devolved to local councils in accordance with Section 22 of the Local Government Act, in particular in relation to licensing procedures by local councils in relation to registration.
4. MFMR should establish a transparent and accessible registry that will specify the following:
  - registration procedure; and
  - the rights that registration secure.
5. MFMR should establish a record of registered vessels, and specification of the accessibility of the record.
6. MFMR policy or fisheries law should clarify the relationship between the licensing and registration procedures and the powers of local government, to ensure that the local government authorities are compatible with the powers provided in the Fisheries Act.
7. The law should include a clear statement of intent to ensure that SSF tenure rights and informal rights are recognized, identified and recorded in a transparent and fair manner.



8. A provision could be included in the law to ensure that access to traditional fishing grounds is protected, and that alternative access solutions must be found. Access is limited by other developments, and damages must be paid, if this is not possible.
9. An advisory body should be established in which representatives of stakeholder groups are consulted in management planning and decision-making, explicitly including representatives of women's groups.
10. Policy-level recognition that transferability of user rights in certain SSF settings is necessary for the protection of livelihoods and statement on the need to allow for transferability of user rights under certain circumstances, most appropriate for the support of SSF.
11. The law and policy should provide for specific user rights that benefit SSF communities, including territorial user rights.
12. Community-based catch quotas should be provided for the law and policy.

#### **4.4 Safeguard legitimate tenure rights against threats and infringements**

The 1994 Fisheries Act and 1995 Fisheries Regulations do not provide for the representation of SSF interests before entering into fishing agreements. In practice however, the ministry has considered the interests of small-scale fisheries in negotiating agreements including the 2014 Russian Access Agreement and the Public Private Partnership Agreement 2015 for the operation of four fish receiving centres, including jetties.

Section 23(2) of the Fisheries Act provides that fishery allocations under access agreements shall not exceed a level consistent with the conservation and management of fishery resources and the protection of fishing by Sierra Leone citizens. While this provision is intended to protect national fishing interests, the provision does not call for the consultation of stakeholders representing such interest prior to the conclusion of access agreements, and no specific reference is made to the special interest of small-scale and artisanal fishers.

The Fisheries Act and Fisheries Regulations do not provide for mechanisms that support communities to protect legitimate SSF tenure rights from infringements by other resource users. The 2010 Fisheries Policy refers to consultations and stakeholders' participation in resource management and not exclusively to protecting tenure rights from infringement, especially in Part III.2, which calls for the facilitation of in particular the participation of small-scale fishers in policy planning and decision-making and of enabling resource users to assume more of a role in operational decisions. To this end, the ministry has supported the establishment of Community Management Associations in the fishing areas. The policy does not however provide mechanisms for ensuring this.

There are no policy or laws in place that provides for special support (training, judicial) to communities to protect legitimate SSF tenure rights from infringements by other resource users. The 2010 Fisheries Policy (III.1.2.) indirectly and in general terms have statements for developing/improving human resource development to meet the challenges of the fishery sector.

Both the Act and Regulations and the 2010 Policy do not provide for consultations to take place to formally represent SSF interests prior to large-scale development projects.



### **Draft Bill provisions**

Section 8(2)(m) of the draft Bill provides that the Director is responsible for holding consultations with stakeholders as he/she deems appropriate. This provision is general in design and does not contain an obligation to consult or involve small-scale fishers in decision-making and management for the protection of their legitimate tenure rights.

More detailed provisions related to co-management by artisanal fishers are provided in Section 16 of the draft Bill, which provides that the Director may make arrangements with local councils, competent fishers' organizations and such other stakeholders' organizations that may be recognized for their fisheries management skills and knowledge, and which have the capacity to co-manage any fishery or area, for the development of shared responsibility for the management of artisanal fisheries and marine protected areas.

Section 46(1) and (2) of the draft Bill provide for consultation in entering into access agreements.

### **RECOMMENDATIONS**

1. The government should consult with local communities and small-scale fisheries that may be affected prior to concluding fishing agreements.
2. Establishment of an advisory body through which representatives of stakeholder groups are consulted and involved in management planning and decision-making, including explicitly representatives of small-scale fishers and women's groups. Situations for binding advice or collective agreements with fisheries management may be provided.
3. Policy-level recognition of the potential negative effect of access agreements on fishing opportunities of SSF, and mechanisms that ensure that interests of SSF are taken into consideration before access agreements are concluded.
4. Establishment of an advisory body through which representatives of stakeholder groups are consulted and involved in management planning and decision-making, including explicitly representatives of small-scale fishers and women's groups.
5. Specific task of the ministry to provide capacity development activities, targeting explicitly: women, the small-scale fishing sector and related sector.
6. Process for providing meaningful compensation for damages, including compensation that benefit communities as a result of large scale developments which may affect the marine environment or fishing opportunities of SSF. A statement that mechanisms need to be found to ensure that interests of SSF are taken into consideration before such large-scale developments are authorized to ensure that appropriate mitigation measures are taken.

#### **4.5 Sustainable development and tenure right holders**

The 1994 Fisheries Act provides in general terms and makes applicable to all fisheries certain principles related to the long term conservation and sustainable management of resources, for example by providing that fishery management plans need to specify conservation measures to be enforced to protect the fishery resources from over-exploitation (Section 11(5)(i)). Fishery management plans are to be developed for each fishery (Section 11(4)(a)) and with the involvement of all those affected by the plan (Section 11(6)(b)). In taking management decisions, the Director is obliged to ensure proper conservation of the fishery

resource through the prevention of over-fishing and the taking of a precautionary approach toward harvesting when data are lacking (Section 12(b)).

Policies and laws provide for participation of SSF communities in developing management strategies and decisions over resources that affect the livelihoods of fishing communities. The 1994 Fisheries Act provides that the Director is responsible for the planning, management, development and conservation of all fish and fisheries in Sierra Leone (Section 11(1)). It also provides that during the preparation of fishery management plan, he/she must consult, as required and appropriate with any committee which may be established under the Act and with local fishermen, local authorities and others affected by the plan (Section 11(6)). While this provision allows for consultation of stakeholders, including SSF stakeholders in the development of management strategies and decisions that affect their livelihoods, the wording of the provision leaves the Director with substantial discretion as to whether and how stakeholders should be involved. In practice, the Director has always consulted with senior management of the ministry with approval from the Permanent Secretary and the Minister.

The 1994 Fisheries Act and the 1995 Fisheries Regulations do not address the issue of co-management arrangements for the management of resources, nor for the participatory agreement on roles and responsibilities of SSF communities in co-management of resources.

The 1994 Fisheries Act enables the development of intergovernmental arrangements for cooperation on management of trans-boundary and shared stocks. The Minister must consult with foreign governments and in particular with governments of states sharing the same or interrelated stocks to harmonize or coordinate respective fisheries management and development plans, to develop regional fisheries management and development plans and to establish bilateral and regional arrangements to this end (Section 14). Section 14(6) of the draft Bill provides that the Director of Fisheries shall consult with appropriate fisheries management authorities of other states in the region and in particular with those sharing the same resources with a view to ensuring harmonization of their respective fishery management plans.

The Act and the Regulations do not address the issue of fishing overcapacity, nor does it grant a formal role to SSF communities to monitor, control and surveillance. Although one may argue that the functions devolved to local councils empower the councils to provide supervisory and monitoring functions over the sector. But this is not being actualized.

The Act and the Regulations subject artisanal fishing vessels to the obligation of registering fishing vessels. Although they have to be licensed, at the discretion of the Minister they may be exempted.

For industrial fishing license, the Regulations provide rules on the documentation of activities (Section 11(5)-11(13)), which are part of the license conditions. These do not apply to artisanal fishing vessels which the Minister is at liberty to exempt.

The instruments do not provide details on the procedure for registration, the transferability of boats that have been registered, the accessibility of the records of registration, among others. Registration documentation must be produced for inspection upon request of an authorized officer or inspector (Section 4(3) of the 1995 Fisheries Regulation).

### **Draft Bill provisions**

The draft Bill makes provision for a number of principles related to conservation and sustainable use, including conservation of resources and habitat in accordance with international principles, sustainable use, economic viability and ecological balance, precautionary approach, ecosystem approach (Section 5). The draft Bill recognizes that all resource users share the obligation to use the resources sustainably (Section 27(3)a)).

The draft Bill makes specific reference to traditional practices in the context of sound fisheries management and provides that the Director, when developing plans, policies and strategies for conservation and management must consider the need for ensuring that traditional practices that are consistent with responsible fisheries are maintained and that the needs and interests of local fishing communities are protected and implemented (Section 13(f)).

Section 8(m) of the draft Bill provides that the Director is responsible for holding consultations with stakeholders as he/she deems appropriate, including for purposes of developing policy recommendations to the Minister. This provision allows for the participation of stakeholders, including SSF communities, in policy making processes. In Section 14(5), the draft Bill requires that in the development of a fishery management plan, the Director shall consult with any committee established under the Act, and with stakeholders that may be affected. This provision provides a basis for involving SSF communities in the development of fishery management plans by which they may be affected.

The draft Bill imposes a registration obligation in respect of artisanal fishing vessels (Section 89) and provides that registration numbers must be displayed on the boat while fishing (Section 89(2)).

### **RECOMMENDATIONS**

1. Explicit obligations that all fisheries, including small-scale fisheries are carried out and planned in accordance with principles and approaches supporting the conservation and sustainable use of the resources and that access is regulated by way of such principles as the precautionary approach and ecosystem approach to fisheries.
2. Specific reference that traditional practices must be taken into consideration, but will be subject to principles of sustainable management, including the ecosystem approach to fisheries and to the precautionary approach.
3. Explicit reference to involvement of advisory body, which should include a representative of among others small-scale fisheries' interest in the development of management strategies and decisions over resources that affect livelihoods of small-scale fishers.
4. Mandatory hearing and participation of small-scale fishers and other stakeholders potentially affected by decisions and management plans.
5. Explicit provision for processes to obtain compensation for small-scale fishers in case development and management decisions unnecessarily affect their livelihoods.
6. Policy calls for establishment of mechanism to be developed to facilitate involvement of SSF in co-management of resources that affect their livelihoods.

7. Explicit obligation to take into consideration the interest of small-scale fisheries' communities in relation to shared stocks, when deciding on shared management arrangements with neighbouring states.
8. Obligation to involve small-scale fisheries' communities in negotiation process for co-management arrangements for shared stocks with neighbouring states, if their interests are affected.
9. Explicit obligation to address over-capacity in the fisheries sector.

#### **4.6 Social development, employment**

The 2010 Fisheries Policy promotes organizational development for SSF communities in Part III.2.2. but the 1994 Fisheries Act and the 1995 Fisheries Regulations do not address this issue explicitly in relation to organizational development.

With regards to occupational health and unfair working conditions of SSF and fish workers, Articles 9-16 of Regulations of Wages and Industrial Relations Act, 1971 provides that employers are under duty to provide a safe and healthy work environment for all workers of all categories. The 1994 Fisheries Act and the 1995 Fisheries Regulations do not address this issue directly. It provides that a license or authorization issued under the Act shall not relieve the licensee, or master or crew, of any obligation or requirements imposed by law concerning navigation, health, customs, immigration or any other matter (Section 58). While this provision would cover legislation on matters including labour standards and working conditions, there is no specific reference to occupational health and unfair working conditions in terms of SSF; the obligation does not extend to fishing vessel owners, crew or masters of vessels that are not licensed (including artisanal fishing vessels).

#### **RECOMMENDATIONS**

1. Policy recognition of the importance of SSF as an organisation and recommendation to develop ways to facilitate the establishment of such organizations, including by recognizing their existence and by involving their representatives in decision-making and co-management processes.
2. Explicit recognition of the process by which representatives are selected, their duties and responsibilities.
3. Explicit reference to obligations in relation to occupational health, labour standards and working conditions where reference is made to the applicable law in relation to issued licenses and authorizations.
4. Policy recognition that occupational health and unfair working conditions may be/are an issue in the country. Statement that an assessment of the situation must be made. A statement that takes measures to address this problem should be developed, with involvement of relevant stakeholders and organizations.

#### **4.7 Gender equality**

Gender equality is not mainstreamed in policies and laws relevant to SSF, nor do they address discrimination against women in line with international law, nor involve women in having a formal role in decision-making processes for SSF policy development, or encourage them to participate. They are basically silent on gender issues.

### **Draft Bill provisions**

The draft Bill provides that in the application of the Act, the promotion of gender equality and the empowerment of women is one of the principles that must be given effect (Section 5(p)). The draft Bill does not provide further details on ways in which to accomplish this.

### **RECOMMENDATIONS**

1. Explicit reference to the need to ensure gender equity in the application of the legislation including specific actions to be taken to ensure gender equity, including:
  - iv) representative of women's interest in advisory body;
  - v) organizational development of women's interests and their recognition; and
  - vi) support in capacity-building specifically targeting women.
2. Explicit reference to the need to address discrimination, including against women, in the application of the law, in accordance with international instruments.
3. Provide at policy level for a clear intention and mechanism to facilitate the involvement of women in decision-making processes, especially where related to or affecting retail.
4. Provide at policy level for a clear intention and mechanism to facilitate the involvement of women in management of SSF, especially where related to or affecting retail.

### **4.8 Natural disaster risks and climate change**

The 1994 Fisheries Act and the 1995 Fisheries Regulations does not address this issue. It is to a large extent addressed in other laws.

The Fisheries Policy 2010 recommends that the EPA established in 2002 and other relevant institutions be consulted to identify sections relevant to fisheries and aquaculture as well as continue discussions on collaboration with relevant institutions on approaches, mechanisms and processes for integrated coastal zone management.

The Office of National Security under the National Social Security Act is empowered to address disaster risk management together with the EPA under the EPA Act, 2002 as amended in 2008. There is also now established a Climate Change Secretariat dealing with emerging issues of climate change and in collaboration with the Office of National Security, for disaster management and response. This is done in collaboration with relevant bodies.

### **Draft Bill provisions**

The draft Bill does not address disaster risk management and climate change in the context of fisheries or small-scale fisheries. The draft Bill refers broadly in Section 5(f) to the ecosystem approach and to ensuring that decisions are taken in an integrated manner. Integrated coastal zone management and the role of SSF are not referred to explicitly.

## RECOMMENDATIONS

1. Explicit reference to the need to ensure that stakeholder representatives of small-scale fisheries' interests are heard and involved in the development of climate change adaptation strategies, based on data on small-scale fisheries sector and the way climate change adaptation may affect their livelihoods.
2. Explicit reference to take into consideration needs and interests of small-scale fisheries' communities in the development and application of emergency response and disaster risk management strategies.

### 4.9 Policy coherence, institutional coordination and collaboration

Provisions are not explicitly made in policy and laws concerning policy coherence, institutional coordination and collaboration. There are no rules for spatial planning and integrated coastal zone management, considerate of customary tenure systems and decision-making processes.

The 1994 Fisheries Act and the 1995 Fisheries Regulations address ecosystem approach to fisheries, but not in the context of SSF. The policy of 2010 addresses these principles in a similar fashion, especially in Part II. The 1994 Fisheries Act and the 1995 Fisheries Regulations address ecosystem approach to fisheries, but not in the context of SSF. The policy of 2010 addresses these principles in a similar fashion, especially in Part II.

There are no policies or laws in place to establish formal institutional linkages, including national, regional and global, for policy coherence and cross-sectoral collaboration.

#### Draft Bill provisions

Section 8(2)(a) of the draft Bill provides that the Director is responsible for the coordination with other ministries, departments or agencies of the Government of Sierra Leone and, in Section 8(2)(i). A duty to consult with foreign governments, especially in relation to interrelated stocks, exists (Section 17(1)), which may take place either directly or through existing appropriate regional and sub-regional organizations or agencies (Section 17(2)).

## RECOMMENDATIONS

1. Provisions should be made to ensure consideration and where possible application of spatial planning and integrated coastal zone management.
2. Reference should be made for the need for cross-sectoral consultation.
3. Reference should be made to the long term vision for sustainable fisheries, including small-scale fisheries, and the eradication of hunger, based on the ecosystem approach to fisheries.

## **5. IMPLEMENTATION OF THE VGGT IN FORESTRY LEGISLATION**

This Chapter summarizes the analytical assessment report prepared by the consultant on the forestry sector review. The report highlights the strengths and weaknesses of the current policy and legal framework in the light of the relevant provisions of the VGGT. Suggestions for improvement are made.

### **5.1 Overview of the sector**

Sierra Leone is estimated to have a total forest cover of approximately 2.75 million hectares (c. 38 percent of the land area) and a historical deforestation rate in excess of 3 percent per annum. About 70 percent of Sierra Leone was formerly covered by forest, but much of the forest has been destroyed and less than 5 percent of the original forest remains. The main direct cause of deforestation is agriculture, such as shifting cultivation practices, along with large scale agricultural investments that are increasingly taking up large tracts of arable and forest land. Other causes of deforestation are logging (both legal and illegal), mining, and unregulated use of wood for construction and fuel wood, e.g. charcoal production.

The forests of Sierra Leone may be considered to provide economic, ecological and social services.

Like the land tenure system, forest tenure in Sierra Leone operates under a bifurcated legal structure which incorporates both elements of traditional or customary law and a formalized system based on English Common Law. Currently, 85 percent of Sierra Leoneans fall under the jurisdiction of customary law. There is estimated to be about 249 120 hectares of designated forest reserves in Sierra Leone. Of these only 13 926.4 hectares is in the Western Area. The rest falls under customary holdings. The dual tenure system poses difficulty in establishing an all-encompassing forest tenure system as various laws and customs need to be accounted for.

### **5.2 Policy and legal framework**

Sierra Leone has ratified a range of international treaties that affect the forestry and wildlife sectors, although there is no international agreement specifically addressing forests. The reform of domestic legislation on forestry will have to reflect these instruments. These include:

- The Convention on Biological Diversity, 1992
- The United Nations Framework Convention on Climate Change, 1992
- The United Nations Convention to Combat Desertification, 1994
- CITES, 1973
- The Ramsar Convention, 1971

The Conservation and Wildlife Policy of 2010 seeks to clarify institutional mandates and responsibilities for flora and fauna, placing primary responsibility for conservation and management of the relevant species, habitats and ecosystems (including marine wildlife conservation areas) with the designated wildlife conservation and management agency.



The Forestry Policy of 2010 aims at collaborative partnerships with rural communities and other stakeholders, for adequately managing forest reserves and community forests and to ensure a sustainable stream of economic, social and environmental benefits.

Numerous pieces of legislation are relevant to the forestry sector:

1. The Forestry Act, 1988 is the principal legislation guiding the management and protection of forestry in Sierra Leone.
2. The Forestry Regulations, 1989, provide rules and procedures for the implementation of the Act.
3. The Wildlife Conservation Act, 1972 is the principal legislation regulating wildlife and protected areas.
4. The Environmental Protection Agency Act, 2008 established the Sierra Leone EPA, which has overall responsibility for environmental management in Sierra Leone.
5. The Local Government Act, 2004 established 19 local councils and devolved functions relating to forestry.

This section analyses the extent to which the forestry policy and legislation is congruent with the VGGT.

### **5.3 Legal recognition of tenure rights and duties**

The Forestry Act, in line with the VGGT, provides a number of safeguards for the rights of individuals and communities, mainly through provisions that require the express identification of such rights, whether formally recorded or not, on state as well as customary land. For example, the Act provides that the Chief Conservator must describe the various tenure rights affecting the area in preparing area forest management plans (Section 8(1)(a)). The Act also provides that before the creation of national forests, ownership, usage and other rights affecting the area must be described in the proposal, with recommendations for confirming or acquiring them and an analysis of effects on local activities (Section 10(2)). If the proposal concerns land not owned by the state, the land must first be acquired, subject to confirmed usage rights.

However, contrary to the VGGT, the process of recognition of legitimate rights is not required to take place in consultation with concerned stakeholders, as would be essential in order for it to be realistic and reliable. In this respect, there is a gap in the existing legislation. Any determination of existing rights allowed by the current Forestry Act is basically left to the forestry administration, which is not necessarily required to consult with concerned stakeholders. The fact that the administration may consult with the people simply as a matter of practice is not a sufficient guarantee that consultations are adequate and regularly take place. The Forestry Policy is silent on the requirement of a consultative process.

The VGGT (Section 7.4) also recommend that the legal recognition of legitimate tenure rights be “systematic”. Therefore, records pertaining to tenurial rights must be kept and regularly updated. For this purpose, it may be appropriate to revise applicable land legislation together with forestry legislation.



## RECOMMENDATIONS

1. The process of recognition of legitimate rights should take place in consultation with concerned stakeholders in order for it to be realistic and reliable. A process for consultation towards the determination of legitimate rights should therefore be introduced in the law.
2. The forestry policy should be amended to provide more certainty for people to actually receive information and to be consulted.
3. Requirements to keep and update records on forest tenure should be introduced in forestry and land legislation as appropriate.

### 5.4 Allocation and transfer of forestry tenure rights and duties

The guidelines provide that the range of forest tenure rights and right holders and the means of allocation of such rights must be clearly identified (VGGT, Section 8.8). A number of provisions in the current legal framework satisfy this requirement, for instance, by establishing rules on licences and concessions and a framework for community forestry. The legislation is also adequate from the point of view of consideration of existing tenure rights over forest areas considered for investments, which is further recommended by the VGGT, since it requires the listing of rights that affect concession areas.<sup>12</sup>

The requirement of the VGGT (Section 8.9) that a framework for allocating forest tenure rights is done in a transparent and participatory manner<sup>13</sup> is not fully met by the existing legislation.

As regards the award of concessions, the degree of discretion left to the administration is very wide: the Conservator is empowered by the Regulations to request evidence of the tenderers' competence (Reg. 28), but there are no set criteria for evaluating such competence.

Provisions regarding concessions only partly meet transparency requirements. In the award of concessions, invitations to submit bids are required to be publicised by the existing legislation, but further publicity for the subsequent phase of the selection process is not required.

The absence of adequate provisions for mandatory consultations of concerned stakeholders prior to the transaction of tenure rights is a significant gap in the existing legislation. Although consultations with local people are generally considered to be a good practice, they rarely take place. Discussions are usually held with Paramount Chiefs who in turn tend to make decisions without consulting their people. This has led to a lot of disgruntlement, especially in the Northern Province of Sierra Leone, where land has been allocated to bio-energy and mining companies in non-transparent ways.

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12 Existing legitimate tenure rights and claims over forest areas concerned by investments should be systematically and impartially identified (VGGT 12.10). The law should require investors to respect tenure rights of others (VGGT 12.12).

13 The VGGT also recommend transparency in transactions in tenure rights as a result of investments, focusing on smallholders (Section 12.3). They also suggest that contracting parties should be required to provide comprehensive information to ensure that all concerned stakeholders are informed and engaged in a non-discriminatory and gender sensitive negotiation process (Section 12.11).

Other aspects of forestry concessions are adequately addressed in the current legal framework. For example, the Forestry Act clearly specifies requirements for the concession agreements, which must include respective rights and obligations of the parties, boundaries, duration and other conditions (Section 13(3)). This is in line with the VGGT suggesting that agreements should clearly define the rights and duties of all parties (VGGT 12.8).

## RECOMMENDATIONS

1. The legislation should be improved and require that the competence of applicants for concessions be evaluated on objective criteria to be made public. And the administration could be required to publish the final decisions resulting from the process, along with the reasons for the selection made.
2. Consultation of local residents and of concerned stakeholders before the award of concessions must be made mandatory in the legislation.

## 5.5 Sustainable forest management and administration of tenure

The VGGT call for responsible investments that respect human rights, promote food security and sustainable use of the environment (VGGT 12.4).<sup>14</sup>

The provisions of the forestry legislation aiming at the sustainable management of forests are generally adequate, as they require an inventory of forest resources (in line with VGGT 8.4) to be kept and updated and management plans to govern the issue of licences. Other provisions aiming at sustainability of wood production are also included.

Social aspects are also taken into account in the forestry legislation, for example by requiring concessionaires to devise a programme for training and employment of nationals of Sierra Leone. The provisions on Environmental Impact Assessment (EIA) in the EPA Act, 2008, require EIAs to address the social, economic and cultural effect that a project is likely to have, consulting communities and other interested parties. Publication in the gazette and newspapers allowing a period of 14 days for the submission of comments is required. These provisions may be sufficient as an applicable framework also for forestry projects.

The Forestry Policy makes provisions for land use planning processes on forest land, involving stakeholders, to reconcile land uses (Policy Statement 1). But this is not reflected in legislation.

## RECOMMENDATIONS

1. Legislation should make provisions for land use planning processes on forest land, involving stakeholders to reconcile land uses as specified in the policy.
2. The legislation should set out a consultative procedure leading to the adoption of integrated management plans and further provide that traditional practices must be considered in forest management plans.
3. Adequate systems to record, update and publicize individual and collective tenure rights over land and forests especially for customary land in the provinces

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14 The VGGT also suggest that when investments involve large-scale transactions of tenure rights, the law should require prior independent assessments be conducted of impact on human rights, food security, livelihoods and environment (VGGT 12.10).

must be in place. The functions of the Registrar-General must be decentralized. The devolution of functions to local councils provided by the Local Government Act, 2004 should be implemented, with a view to facilitating the process of registration of tenure foreseen in the VGGT (Section 17.1).

## 5.6 Climate change and natural disasters

The VGGT (Section 23) recommend the protection of legitimate tenure rights to land, fisheries and forestry, also with the aim to prevent and respond to the effects of climate change. They also require that participation of concerned holders of legitimate rights be facilitated in negotiation and implementation of mitigation and adaptation programmes. In the case of forestry, given that deforestation and forest degradation are major causes of climate change, the implementation of these recommendations can significantly contribute to addressing climate issues.

The Forestry Policy does require that communities be “linked” to climate change programmes and mechanisms for the development of economic benefits such as Payment for Environmental Services (Policy Statement 14). The existing forestry legislation however does not include any specific provisions in this regard.

The VGGT (Section 24.1) further recommend that tenure aspects be addressed in the prevention of natural disasters and reduction of their impact.

The current policy and legislation do not address this issue. However, sustainable forest management should necessarily address watershed management and other protective functions of forests, so that adequate provisions on public participation in forest management planning can meet the purposes of this guideline as regards some types of natural disasters.

## RECOMMENDATIONS

1. The legislation should expressly require the involvement of concerned stakeholders in any initiatives regarding climate change mitigation or adaptation, including communities and other legitimate tenure holders.
2. The legislation should also envisage mechanisms for a clear sharing of benefits deriving from forests, including for the case of participation in relevant programmes such as REDD+ (Reducing Emissions from Deforestation and Forest Degradation including the role of conservation, sustainable management of forests and enhancement of forest carbon stocks).

## 5.7 Gender equality

The VGGT consistently call for adequate approaches for the promotion of equality between men and women.

The policies and legislation relating to forests do not expressly discriminate against women, but generally remain silent as to the protection of their rights. In practice, however, under the communal forms of tenure that are typical in rural areas, decisions tend to be made without giving adequate consideration to women’s rights. Access to courts in relation to

forest tenure disputes may in practice be limited for women, especially where ownership is based on patrilineal lines.

## **RECOMMENDATIONS**

1. Specific provisions should be made into the policy and legislation to support gender equality.
2. Where the law already requires concessionaires to devise programmes for training and employment of locals, an express reference to training and employment of women should be made.
3. In community forestry or any similar initiatives, the law should require that women are expressly consulted and ensure that an account is given of such consultation.

## 6. SUMMARY OF MAIN FINDINGS

The constitutional and legal framework for Sierra Leone is in many ways already in line with the VGGT. However, as discussed above there are also a number of gaps in the policy and legal instruments of Sierra Leone covering land, forestry and fisheries with regard to the principles of governance of tenure as enshrined in the VGGT. The major gaps that cut across all sectors are:

1. There is no provision for consultations to be done before land/rights, as the case may be, are granted to foreign and national companies for investment purposes. This defines one of the major reasons for disgruntlement in the various communities that are directly affected by investments in Sierra Leone. There is no process for consultation towards the determination of legitimate rights. Most often, the legitimate tenure right holders are not provided with comprehensive information that will enable them to get the best possible agreement in the negotiations.
2. There is little or no professional assistance available to the right holders to ensure that they are made aware of their rights and given the opportunity to participate in negotiations with investors. The law or policy does not recognize the fact that that men and women must be aware of their tenure rights and should participate in related consultations. The existing legal framework does not provide requirements for transparency in the provisions regarding concessions, nor is there a clear selection criteria or a need to publish and substantiate the results of selection procedures.
3. Tenure rights are not properly recorded in all three sectors due mainly to the fact that the system of registration of titles has not been properly decentralized, while in the case of fisheries, a proper registry system has not been created.
4. There are no rules specifically promoting women's right in the sectoral laws/policies except in the land sector. In some contexts, as in customary law, gender balance is undermined. Furthermore, as regards the rights of women to own land or to have a stake in fishery, the law does not set quotas for women or categorizes them as a special interest group in organisations that represent the interests of communities. So the participation of women and other possibly disadvantaged persons is undermined. Thus women remain marginalized and are not involved in land management and administration committees.
5. There is difficulty in accessing courts, especially by indigenous people. Even though the draft National Land Policy makes provisions for the setting up of special tribunals like the land tribunal, for example, it is yet to be adopted and implemented. The Legal Aid Board envisaged by the Legal Aid Act to aid litigants in judicial matters has not been established.
6. There seems to be a lack of synergy and harmonization of mandates in the three sectors. The conflict of interests that arise from the conflicting roles and overlapping mandates by ministries and agencies of government has been a long-term threat to the holistic management of resources in the three sectors.
7. There are no provisions on climate change. Forestry and fishery stock are being depleted and land is being misused especially in the Western Area which may lead to environmental disaster if swift action is not taken to combat it.
8. Even though there are policies and laws in place (though inadequate) and strategies and actions developed and implemented on the ground, little has been done to assess their impact. No monitoring system has been put in place to regularly assess their impact.

## 7. CONCLUSION

Many developments have been occurring in the land, forestry and fisheries sectors of Sierra Leone in recent years. There has been progress in terms of legislative and policy review. For example, a Land Policy Bill and a Fisheries Bill have been drafted with great improvements on existing legislation. There is room for further improvement in terms of reflecting internationally-accepted principles on the governance of tenure that are enshrined in the VGGT. With the requisite political will and resources, the adoption and implementation of the laws and policies are likely to make a difference in the lives of people.

The land sector requires much more work. As highlighted above, the applicable laws are outdated and there has not been clear and effective policy over the years. But the draft Policy is at an advanced stage and it is hoped that it incorporates the recommendations provided by the present report. As the draft Policy envisages, new land legislation must be enacted consolidating and updating the existing ones.

In the forestry sector, there has not been much development in the existing legal framework in forestry management in almost three decades. The ministry is working on a revised draft Act. But the best way to proceed is to follow the process adopted by the ministry responsible for lands wherein the policy is revised before legislative review. The forestry policy requires overhauling to reflect internationally-accepted principles of governance of tenure enshrined in the VGGT. Furthermore, the issues of forest conservation and protection have expanded into fields that were never contemplated by the drafters of the existing legislation. Certain concepts like climate change, carbon footprints, benefit sharing, public participation in forestry management, empowerment of local communities, REDD and REDD+ initiatives and transboundary issues were never considered as relevant or applicable to conservation in those days. However, recent developments clearly indicate that there is now far more to conservation and protection than simply guarding and protecting certain locations. These call for policy review in the forestry sector.

For the policy and legislative reforms in the three sectors to be complete they must address the gaps identified above in the present report with regard to the principles of governance of tenure, namely:

- the need for consultation towards the determination of legitimate tenure rights;
- the need for right holders to be made aware of their tenure rights;
- the need to decentralize the process of registering tenurial rights;
- the need to promote gender equity especially women's rights; and
- courts and other means of redress should be easily accessible to all.

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