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Implementation of the Voluntary Guidelines on Responsible Governance of Tenure in the Forestry Legislation in Sierra Leone

Analytical Assessment Report

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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

CSO	Civil Society Organization
EIA	Environmental Impact Assessment
EPA	Environment Protection Agency
FAO	Food and Agriculture Organization of the United Nations
LAT	Legislation Assessment Tool
REDD+	Reducing Emissions from Deforestation and forest Degradation, sustainable management of forest, conservation and enhancement of forest carbon stocks
VGGT	Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
WCA	Wildlife conservation areas

1. INTRODUCTION

The Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (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.

This fairness may be enhanced where the state endeavours to adhere to the principles of good governance of tenure as enshrined in the VGGT:

1. Recognize and respect all legitimate tenure right holders and their rights.
2. Safeguard legitimate tenure rights against threats and infringements.
3. Promote and facilitate the enjoyment of legitimate tenure rights.
4. Provide access to justice to deal with infringements of legitimate tenure rights.
5. Prevent tenure disputes, violent conflicts and corruption.

The concept of responsible governance of tenure in forestry in Sierra Leone is still a new issue. There is, however, increasing interest in it, along with an increasing recognition of the significance of forests for the livelihood of rural people rather than exclusively for their commercial and industrial potential.

Following an overview of the forestry sector (Chapter 2) and the contents of the existing policy and legislation (Chapter 3), this document highlights (in Chapter 4) provisions that are in compliance with the VGGT, as well as weaknesses of the current policy and legal framework. Where gaps or inadequate provisions are noted, some suggestions for improvement are given. Chapter 5 sums up the recommendations that are made throughout the document, in light also of the VGGT main principles of implementation. The detailed analysis of policy and legislative provisions on the basis of the VGGT is set out in the Legislation Assessment Tool (LAT) in Annex 1.

2. FORESTRY IN SIERRA LEONE

2.1 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 less than 5 percent of original forest now remains. Much of the forest has been destroyed. 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.

The following table presents the size of the country's forested areas by types of forests.¹

Forest Types	Area (ha)	Percentage of total area of Sierra Leone
Close High Forest	365 200	5.0
Secondary Forest	261 000	3.6
Forest Regrowth	3 774 400	51.5
Savannah Woodland	622 600	8.5
Mixed Tree Savannah	732 000	10.0
Lophira Tree Savannah	264 600	3.6
Coastal Woodland	50 100	0.7
Mangrove	171 600	2.3
Fringing Swamp Forest	28 800	0.4
Raphia Swamp Forest	35 500	0.5
Total Area of Forest Cover	6 305 800	86.1
Total Area of Sierra Leone	7 332 600	100

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 main uses of forests in Sierra Leone are threefold:

1. Ecological Services
Forests are a significant part of the richness of biodiversity and provide wildlife conservation. They help stabilize climate and limit global warming. Reducing deforestation may thus contribute to these objectives. Carbon sequestration has thus become one of the uses of forest.
2. Social Services
National parks such as the Gola National Park are used for Eco-tourism such as bird watching and safaris. Forests are also used for educational and academic activities.
3. Economic Services
Income generating practices such as timber exportation help with foreign exchange earnings. Wood from the forest is also used as building materials and

1 National Protected Area Agency Archives.

supplies for carpentry. Non-wood forest products frequently utilized include rattan, herbs and spices, medicinal herbs, charcoal and honey. Hunting is prohibited because civilian ownership and use of wildlife are banned.

Responsibility for Sierra Leone's forestry and wildlife sector lies with the Forestry Division of the Ministry of Agriculture, Forestry and Food Security. The Forestry Division is responsible for forest management and biodiversity conservation within Sierra Leone. It comprises three technical Units, "the three Cs" i.e.:

1. Conservation and Wildlife Unit.
2. Commercial Forestry Unit.
3. Community Forestry Unit.

The Forestry Division manages 48 forest reserves and conservation areas in Sierra Leone, covering 284 592 hectares, and an additional 11 800 hectares of community forests located on customary land but leased to the Forestry Division for management.²

The Director of Forestry (referred to in the Forest Act as the Conservator of Forests) is assisted by one Deputy Director and two Assistant Deputy Directors respectively responsible for the three Units.

2.2 Forest tenure

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. Like its legal system, Sierra Leone's land tenure system is bifurcated. While land in Freetown and the Western Areas is held under a freehold system with transferable titles, land in the provinces falls under the custodianship of the chiefs. This poses difficulty in establishing an all-encompassing tenure system as various laws and customs need to be accounted for. There is estimated to be about 249 120 hectares of designated forest reserves in Sierra Leone. Of these only 13 926 hectares are in the Western Area. The rest falls under customary holdings.³

2 Government of Sierra Leone, 2010.

3 The Sierra Leone Biodiversity Conservation Project, Ministry of Agriculture, Forestry and Food Security, Inception Report by Rowland S. V. Wright.

3. OVERVIEW OF THE LEGAL AND POLICY FRAMEWORK

3.1 Policies

3.1.1 The Conservation and Wildlife Policy

The Conservation and Wildlife Policy was formulated in 2010. Its long term vision is to move towards:

“An integrated wildlife sector that achieves sustainable, rights-based management of wildlife resources for biodiversity conservation inside and outside wildlife conservation areas which benefits present and future generations of Sierra Leone and humankind in general.”

The policy seeks to clarify institutional mandates and responsibilities for aquatic flora and fauna, in that primary responsibility for conservation and wildlife management of the relevant species, habitats and ecosystems (including marine wildlife conservation areas) lies with the designated wildlife conservation and management agency, whilst responsibility for sustainable economic development of fauna resources lies, in the case of marine resources, with the government agency responsible for coastal, marine and fisheries resources.

Guiding Principles include:

- maintain viable populations of indigenous species of flora and fauna in their natural habitats;
- maintain viable populations of migratory species according to international agreements and best practice approaches;
- control those species of flora and fauna that have detrimental impacts;
- manage wildlife conservation areas according to international best practice; and
- ensure that permissible offtake of indigenous flora and fauna is sustainable.

3.1.2 The Poverty Reduction Strategy II

The Sierra Leone Poverty Reduction Strategy of 2008 specifically addresses forestry, urging the formulation of new forest policy and legislation based on resource inventory information and the principles of sustainable forest management (Section 11.4).

The Strategy also recognizes that sustainable forest management can be consistent with poverty reduction strategies such as eco-tourism, community management, and commercialization of forestlands. It also identifies certified timber markets as a means of promoting “principles of the rule of law, governance and sustainable trading”.

3.1.3 The Forestry Policy

The Forestry Policy was formulated in 2010. Its long-term vision provides for:

“An integrated forest sector that achieves sustainable, rights-based management of forests for economic, social, cultural, aesthetic, and environmental benefits for the present and future generations of Sierra Leone, and for humankind in general.”

The Policy is directed by nine Guiding Principles:

- Sustainability
- Rights-based Governance
- Economic Benefits and Livelihoods
- Integration
- Capacity Development
- Research/Science-based Management of Resources
- Public Awareness and Education
- Adaptive Management
- Consideration of Cultural Heritage

The Policy is presented under a series of headings each containing one or more Policy Statements. Each Policy Statement has a set of strategies to implement and ultimately accomplish that Policy Statement.

The implementation of most strategies will require participatory engagement of a range of stakeholders for success, though the Policy does not attribute such roles and responsibilities as these are operational and not policy issues.

A strategic approach is taken in the implementation of the Policy. While forestry officers in government will take the lead responsibility, diverse stakeholders are expected to participate in its implementation.

As the Policy's Guiding Principles, many of the Statements included in the Policy are in line with the VGGT.

The Policy calls for land use and planning processes, involving all stakeholders, to reconcile land uses (Policy Statement 1).

It also aims at collaborative partnerships with rural communities and other stakeholders, for adequately managing forest reserves and community forests, to ensure a sustainable stream of economic, social and environmental benefits (Policy Statements 2 and 3).

The Policy expressly calls for the development a supportive legal and regulatory basis for forest management planning based on inventories and resource assessments in collaboration with relevant stakeholders (Policy Statement 1, Strategy 6).

The equitable distribution of benefits deriving from sustainably managed forests is also a major objective of the Policy (Policy Statement 10).

With a view to guaranteeing transparency, the Policy calls for competitive bidding for the allocation of harvesting concessions (Policy Statement 8, Strategy 4).

3.2 The Forestry Act, 1988

The Act is the principal legislation guiding the management and protection of forestry in Sierra Leone. The Forestry Regulations, 1989, provide rules and procedures for the implementation of the Act.

3.2.1 Forestry administration

The Act establishes that subject to the direction of the Minister, the Chief Conservator is responsible for the implementation of the Act and in particular for:

- the efficient management and rational utilization of the country's forest resources;
- the preservation of the forest environment and the environmental role of forest land;
- promoting and assisting the practice of forestry in agricultural, pastoral and other areas of the country in order to ensure the continued local supply of forest products and the protection of soil and water resources;
- conducting forest research, education and extension;
- conducting inventories and preparing management and working plans;
- afforestation and silvicultural treatment of forests;
- conducting sales and issuing licences for the disposition of forest produce; and
- negotiating concessions agreements for the plantation and utilization of production forests and processing of their products and ensuring performance of such agreements. (Section 3).

The Chief Conservator must keep and update a national inventory of forest resources (Section 6) and prepare national and area management plans in accordance with the Act (Sections 7 and 8).

A Reforestation Fund is to be created (Section 4). Among provisions of the Regulations concerning the Fund, there is a requirement for the Conservator to invest moneys in enterprises involved in reforestation (Reg. 45).

3.2.2 National forests, licences and concessions

The Minister may designate any land owned or leased by the state as a national production forest or a national protection forest (Section 10, Forestry Act). The notice published in the Gazette for this purpose must contain a description of all confirmed usage rights affecting the forest (Section 10(3)(c)). National forests are managed by the Chief Conservator who may issue licences to fell trees for fuelwood or timber, plant trees, graze animals and other purposes (Section 11).

The Regulations specify provisions on applications for licences and other conditions, foreseeing, in addition to timber licences, protected tree, clearance, grazing and minor forest produce licences (Regs. 12-17).

The Minister may also grant concessions for the utilization of forests on state land. The concession may convey rights to fell trees, extract timber, build roads, sawmills, factories and for other purposes. In addition to other applicable terms and conditions, a concession agreement must specify customary and other rights affecting the concession area and a programme for training and employment of Sierra Leoneans (Section 13). Concessions are also subject to a forest management and reforestation plan (Section 14).

The Regulations also set out a procedure for the issue of concessions, specifying that tenders must be in the form of a bonus bid per cubic meter in addition to regular fees. Publicity

requirements for the invitation to submit bids are specified and evidence of the tenderers' competence may be requested (Reg. 28).

3.2.3 Community forests

The Minister may designate any state land or any land for which an agreement has been made for this purpose with the concerned Chiefdom Council as a community forest. The agreement is valid for 99 years (Section 18).

A community forest on state land is managed by the Forestry Division of the Ministry of Agriculture, Forestry and Food Security, or upon agreement with it by a local council or any association. A community forest on customary land is managed by the concerned Chiefdom Council, or upon agreement with it by an association or the Forestry Division. The Forestry Division must in any case provide technical advice and oversee the management of community forests (Section 19).

Chiefdom Councils may determine the conditions, including fees and prices, at which community forests may be utilized. Such conditions may be more favourable for local people (Section 20). In constituting a community forest on customary land, the Chiefdom must enter into an agreement with the ministry responsible for agriculture. Among other provisions, the agreement must include the geographical area of the forest, describe the forest resources and potentials, indicate the purpose for which the forest should be utilized and contain an inventory of any rights that will be suppressed and the compensation required for constitution of such land into a community forest (Section 18 (2)). The ministry is also required to prepare management plans for community forests on customary land (Section 19(3)). There are no restrictions as regards the possibility of using produce for commercial purposes.

The Chiefdom Council or other entity responsible for management must keep records regarding utilization and report information to the Forestry Division (Section 20). The administration reports that in practice the latter requirement is not followed.

Village forest associations may qualify for financial assistance if they establish a satisfactory agroforestry demonstration plot (Reg. 44). But in practice village forest associations are no longer in place and this provision has remained dead letter.

3.2.4 Protected areas and trees

The Minister may also designate certain areas as protected areas for the purposes of the conservation of soil, water, fauna or flora, and "protected trees" (Sections 21 and 22).

3.3 The Wildlife Conservation Act, 1972

The Act is the principal legislation guiding the management and regulation of wildlife and protected areas. The Act and regulations under it cover taking of animals including birds, trade in trophies, declaration of certain protected areas and associated enforcement and penalty provisions. The Act is used to regulate the taking of fish, turtles and aquatic mammals. It gives effect to the International Convention relating to the Protection of Fauna and Flora in the Natural State, 1933.

Permits are required for killing or capturing any animal or for taking any birds eggs for certain purposes including educational and scientific research, wildlife conservation and defence of property.

Dealers in, and manufacturers of, trophies are required to have a trophy dealer's license. Special provisions apply to finding remains of elephant or rhinoceros with tusk or horn intact. The Minister is authorized to make regulations, for example, to prescribe forms and fees for any licences, permits or other documents required under the Act. Eight schedules are provided, including schedules on prohibited and protected animals, game animals, dangerous animals, animals whose destruction must be reported, and vermin.

3.4 The Environmental Protection Agency Act, 2008

The Act established the Sierra Leone Environment Protection Agency (EPA), to provide for the effective protection of the environment (Section 2). The EPA has overall responsibility for environmental management in Sierra Leone.

One of the main functions of the EPA is to coordinate with government ministries, local councils and other agencies on matters relating to environmental protection and management (Section 12).

Certain activities are prohibited unless a valid license is obtained from the EPA (Section 23). Among these are projects that involve substantial changes in renewable resource use, for e.g. conversion of land to agricultural production, forestry or to pasture land, rural development and timber production (First Schedule).

To obtain a license, an application must be made to the EPA (Section 24), which may request an Environmental Impact Assessment (EIA) (Section 25). After receiving an EIA, the EPA must circulate it to "professional bodies or associations, government ministries and non-governmental organizations for their comments." It must also give notice to that effect in two consecutive issues of the Gazette and two issues in a newspaper (Section 27).

The Agency must also monitor all projects in respect of which licenses have been issued in order to assess their effect on the environment or ascertain compliance with the Act (Section 37).

The law therefore expressly requires collaboration between the Ministry of Agriculture, Forestry and Food Security and the Agency in the management of forests, although officials interviewed from both institutions report that little or no collaboration takes place.

The EPA Act is also relevant for the VGGT in that it ensures that non-state actors, including business enterprises, respect human rights and legitimate tenure rights. In accordance with Section 26 of the Act, before a license is granted to a person or business enterprise to engage in forestry activities, an EIA is required. The Third Schedule of the Act requires the content of an EIA to contain a description of the social, economic and cultural effect that the project is likely to have.

3.5 The Local Government Act, 2004

Local councils were re-established in 2004 when the government re-introduced the system of decentralization through devolution of functions. Pursuant to the Act, various functions have been devolved to local councils including some functions of the Forestry Division of the Ministry of Agriculture, Forestry and Food Security, namely:

- sensitization campaigns on forest conservation;
- fire prevention and control;
- village forest nurseries;
- community forest woodlots;
- national production forests;
- national production forests catchments; and
- central nurseries (Third Schedule, Section 20).

These functions should have been devolved to local councils while the ministry's role should be that of providing oversight and technical support. But in actual practice, these functions are still being performed by the ministry.

The Forestry Act also foresees the possibility for local councils to manage community forests that are on state land, if so agreed with the Forestry Division (Section 19(1)).

The Local Government Act also supports equal representation of men and women, for example by establishing that three of the four members of the Local Government Service Commission who are not representatives of institutions must be women (Section 36). The same Commission must "promote equal opportunities practices" (Section 38(f)).

4. COMPLIANCE OF FORESTRY POLICY AND LEGISLATION WITH THE VOLUNTARY GUIDELINES AND RECOMMENDATIONS FOR REVISIONS

This section analyses the extent to which the forestry legislation and policy comply with the VGGT. A selection has been made in the LAT of the VGGT that are more directly relevant to the forestry sector. The tool identifies the legislative provisions in Annex 1 that are relevant to such guidelines and references are made for more specific citations of the legislation.

4.1 Legal recognition of tenure rights and duties

The VGGT include a number of provisions aiming at a clear and effective recognition of legitimate tenure rights. The Forestry Act, in line with the VGGT,⁴ 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.⁵ For example, in Section 8(1)(a), the Forestry Act provides that the Chief Conservator must describe the various tenure rights affecting the area in preparing area forest management plans.

In Section 10(2) the Act 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(1)(d)). If the proposal concerns land not owned by the state, the land must first be acquired, subject to confirmed usage rights.

However, the process of recognition of legitimate rights should take place in consultation with concerned stakeholders in order for it to be realistic and reliable. The need for consultation is also strongly supported by the VGGT.⁶

In this respect, a gap in the existing legislation must be noted. 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 people. 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.

A process for consultation towards the determination of legitimate rights should therefore be introduced in the law. For example, the principal act could require that relevant proposals be adequately publicized and that adequate time be given for concerned people to raise objections and provide suggestions. The process should be devised in such a way as to ensure that consultation is accurate and that all members of society, including the most vulnerable, are considered. The legislation should require that clear information be provided through means that can easily be understood by concerned people, in line with the principle

4 Pursuant to VGGT Section 7.1, safeguards should be in place to avoid infringing legitimate tenure rights of others when tenure rights to land or forests are recognized or allocated.

5 Legitimate tenure rights of individuals and communities on land owned or controlled by the state should be recognized, respected and protected (VGGT Section 8.2). The Guidelines also expressly require that publicly owned land or forests ("commons") that are collectively used and managed should be recognized and protected (VGGT Section 8.3).

6 Pursuant to VGGT Section 7.3, all existing tenure rights should be recognized, including customary tenure rights and any other legitimate rights, whether recorded or not, following a consultation process.

of free, prior and informed consent. Adequate information of concerned communities is essential to allow them to engage in informed, non-coercive negotiations regarding any investments to be undertaken on their own land.

The Forestry Policy is silent on the requirement of a consultative process. The Policy can be amended to provide more certainty that people did receive information and are consulted. Indigenous people may not be in a position to adequately acquire information and may not be familiar with applicable procedures. They should therefore be supported and enabled to effectively participate in the consultations, as is also suggested by the Guidelines.⁷ This type of assistance is sometimes provided by Civil Society Organizations (CSO) specialized in certain sectors. The Forestry Policy Statement 15 makes provision for public awareness by stating that CSO develop and disseminate public awareness materials through print and electronic media that is culturally appropriate and relevant. Additional provisions of forestry or other relevant legislation should envisage adequate means of publicity as well as specific assistance towards actual community participation.

The VGGT also require that the legal recognition of legitimate tenure rights be “systematic” (VGGT Section 7.4). Therefore, records should be kept and regularly updated. Listings should clearly specify whether rights are recognized to individual men, or women, or whole communities. An appropriate mechanism for these purposes, however, should be in place with respect to all land rather than only forest land, so revisions of general land legislation rather than forestry legislation would be preferable.

4.2 Allocation and transfer of forestry tenure rights and duties

Pursuant to the VGGT, 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 example 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 concerned by investments, which is further suggested in the VGGT, since it requires the listing of rights that affect concession areas.⁸

However, the VGGT also recommend that a framework for allocating forest tenure rights in a transparent and participatory manner be in place (VGGT Section 8.9).⁹ This requirement is not fully met by the existing legislation. As regards the award of concessions, for example, the degree of discretion left to the administration remains very wide: the Conservator is empowered by the Regulations to request evidence of the tenderers’ competence, but there are no set criteria for evaluating such competence. The legislation should therefore be improved and require that the competence of applicants be based on objective criteria, which should also be made public.

7 The poor and vulnerable should be provided with full opportunities to acquire legal recognition of their tenure rights (VGGT Section 7.4). The VGGT also recommend that assistance be provided to ensure that men and women are aware of their tenure rights and can participate in consultations (VGGT Section 12.9).

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

9 The VGGT also recommend transparency in transactions in tenure rights as a result of investments, focusing on smallholders (VGGT 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 (VGGT Section 12.11).

Other provisions regarding concessions only partly meet transparency requirements. As regards the award of concessions, invitations to submit bids are required to be publicized by the existing legislation, but further publicity requirements should be set out for the subsequent phase of the selection process: for example, the administration could be required to publish the final decisions resulting from the process, along with the reasons for the selection made.

Unless reference is clearly made to some other legislation regulating the issue of public contracts and relevant competitive procedures for the allocation of rights, and appropriate specifications are given for the forestry sector, more specific provisions on the allocation of concessions will have to be introduced into the forestry legislation.

It would also be important to ensure consultation of local residents and other people that may be concerned in the process of allocation of a concession, as is suggested by the VGGT.¹⁰ The absence of adequate provisions for mandatory consultation of concerned stakeholders 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.

The legislation should also require cooperation among relevant levels of government and local holders of tenure rights in the investment processes.¹¹ For example, it should require local governments, along with other concerned stakeholders, to participate in consultations to be held before issuing a concession.

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. This is in line with the VGGT suggesting that agreements should clearly define the rights and duties of all parties (VGGT Section 12.8).

The VGGT also suggest that a system should be in place to monitor the implementation and impact of agreements involving large-scale transactions in tenure rights (VGGT Section 12.14). This should not necessarily be a specific requirement in the forestry legislation, as it could be addressed at a more general level. If, for example, the provisions regarding recognition of local rights in concession agreements were to be violated, concerned persons will need to have effective access to justice as for any other violation. It would be important, however, to improve coordination among all institutions that may be concerned, such as the forestry and environmental authorities and the courts.

10 Pursuant to the VGGT, the consultation of all stakeholders prior to the transaction of tenure rights, including partnership agreements, should be envisaged (VGGT Section 12.9). Good faith consultations should be held with indigenous people before initiating investment projects affecting forest resources for which they hold rights (VGGT Section 12.7).

11 The VGGT suggest that investments should be made working in partnership with relevant levels of government and local holders of tenure rights (VGGT Section 12.4).

The Forestry Act also provides a framework for community forestry, based on which local councils, chiefdom councils or associations may be involved in the management of forests. Effective community-based management can significantly contribute to responsible governance of tenure. However, it would be important to ensure that equal opportunities to participate in such arrangements are offered to all members of societies and benefits are equitably shared.¹²

For example, provisions regarding village forest associations, the “rural institutions through which community forests may be developed” could be expanded with minimum requirements for the establishment of such associations, with a view to guaranteeing adequate involvement of disadvantaged members of society. There could be a requirement to consult all members of society and to report on how this has been done, along with requirements for the democratic appointment of representatives by the association.

An effective legal means to strengthen community based forestry initiatives, improving security of tenure, is the possibility for communities to establish their own rules and enforce them, thus protecting their own tenure rights. The Forestry Act already includes basic provisions to this effect, establishing that the entity managing a community forest (without distinctions between state or community lands) must determine applicable conditions for its utilization. The VGGT include a provision that concerns all communal land (not only forested land, and not necessarily community forests) and is wider in scope, suggesting that means should be given to communities against unauthorized use of their land (VGGT Section 9.8).

In light also of this provision of the VGGT, the Forestry Act should strengthen the possibility for communities involved in community forestry to adopt their own rules and enforce them. It could specify that the “conditions of utilization” that the entity managing a community forest may set out could include rules limiting access of third parties into the forest, and expressly make such rules enforceable before the courts. Some forms of enforcement in which local people are involved, such as local enforcement committees, could also be allowed and regulated by the law.

The Policy recognizes that there is limited awareness among the general population of the importance of forest management, and knowledge of applicable rules. Public awareness campaigns are said to be limited, and the ability of officials within the forestry sector to disseminate such information is limited by the financial and human resource capacity. As a result, meaningful public participation in the forestry sector is limited.

Several strategies have been highlighted in the policy to remedy this situation such as creating an up to date forest information database to monitor sustainable forest management and establishing a program to collect, update and disseminate this information.

12 Pursuant to the VGGT, where indigenous peoples and communities exercise self-governance of forests, equitable access and participation to women and all other members of the community should be guaranteed (VGGT Section 9.2).

4.3 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 Section 12.4).¹³

The provision of the forestry legislation aiming at the sustainable management of forests are generally adequate, as they require an inventory of forest resources (VGGT Section 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 EIAs 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 consulted. 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. If so, the forestry legislation should specify to what extent EIAs are required for forestry activities, providing, as a minimum, that the issue of any concession agreement is subject to an EIA. Otherwise, a separate, specific consultative process should be set out in the forestry legislation.

An aspect that has become increasingly significant in sustainable forest management is the need to consider forestry in an integrated perspective with other interrelated activities such as agriculture, grazing, watershed management and where appropriate even fisheries. Forest management plans should therefore take an integrated approach that should be supported by the legal framework. In this regard, the VGGT more generally require that spatial plans reconcile various land uses. Forestry regulations could be more specific and list aspects to be addressed in the plans, requiring that any plans regarding related matters, if any exist, be adequately taken into account (VGGT Section 20.1).

The Forestry Policy includes provisions along these lines by encouraging land use planning processes on forest land, involving stakeholders, to reconcile land uses (Policy Statement 1). The legislation, however, is not in line with this requirement. It should therefore be expanded on the basis of the considerations that forest management is not limited to technical forestry aspects and that plans should analyse and consider the many activities that may take place in forests, such as grazing and collection of non-wood forest produce, in an integrated perspective.

A significant contribution of concerned stakeholders will also have to be required if realistic plans are to be put in place.¹⁴ The legislation should therefore set out a consultative procedure leading to the adoption of integrated management plans.

In line with the VGGT, it would also be important to consider traditional practices in the forest management, and a specific requirement to this effect should be introduced, establishing that traditional practices have to be considered in forest management plans.

13 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 Section 12.10).

14 The law should require spatial planning to consider methods used by indigenous people and wide participation in their development (VGGT Section 20.2).

The VGGT also recommend the adoption of adequate systems to record, update and publicize individual and collective tenure rights over land and forests (VGGT Section 17.1). In Sierra Leone, formal records exist, but are limited to the Western Area. There are no such arrangements in place for customary land in the provinces, as the Registrar-General's Office has not yet been fully decentralized, even though it should have been devolved to local councils since 2008.

The forestry legislation does require declarations of national forests and community forests to be published in the Gazette, and this is probably sufficient for the purpose of recording the status of concerned land, while a more general system for recording tenurial rights should be introduced for all land rather than only forests. This may be expected only if the devolution process is fast-tracked and the Registrar-General's Office is fully decentralized and enabled to record and update tenure rights. These desirable developments, however, do not require specific revisions of the forestry legislation.

4.4 Climate change and natural disasters

The VGGT 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 (VGGT Section 23.1). They also require that participation of concerned holders of legitimate rights be facilitated in negotiation and implementation of mitigation and adaptation programmes (VGGT Section 26.3).

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 legislation should therefore expressly require the involvement of concerned stakeholders in any initiatives regarding climate change mitigation or adaptation, including communities and other legitimate tenure holders. 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, sustainable management of forest, conservation and enhancement of forest carbon stocks).

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

The current policy and legislation do not address this issue. Sustainable forest management should necessarily address watershed management and other protective functions of forests, so adequate provisions on public participation in forest management planning can meet the purposes of this guideline as regards some types of natural disasters. Other more specific provisions concerning tenurial arrangements in other types of disasters and conflict situations will have to be introduced.

4.5 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 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 substance be difficult for women, especially where ownership is based on patrilineal lines.

Therefore, specific provisions will have to be included into policy and legislation for supporting gender equality. For example, if representative bodies are created at any level to provide advice in forestry decision making, the law should guarantee that women are represented in specified quotas. 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. Initiatives undertaken by women could qualify for certain benefits. Where the law already requires concessionaires to devise programmes for training and employment of locals, an express reference to training and employment of women could be made.

4.6 Resolution of disputes

A number of specific provisions of the VGGT tend to make access to justice equally open to all members of society,¹⁵ to encourage consideration of customary approaches¹⁶ and to ensure that assistance for access to the courts is provided to all.¹⁷

Sierra Leone does provide access to grievance mechanisms in customary law courts. It also recognizes customary approaches to the settlement of disputes. Customary courts, however, have limited jurisdiction on tenurial matters, partly because their jurisdiction does not extend to disputes between different chiefdoms, while poor people tend to have difficulty in accessing regular courts. There is provision for legal assistance to indigents in court procedures, but the system is not fully operational and organisations like the Sierra Leone Bar Association provide these services intermittently.

Another problem is that although the law does not discriminate on the basis of gender, under customary law, which varies from tribe to tribe, access to courts may be limited to the male folk, especially where (as in the Northern Province) ownership is based on patrilineal lines. The progress made at the level of general legislation of the country towards effective participation of women is limited. Although women have been granted the right to inherit property, this is rarely enforced in the provinces due to lack of knowledge and difficulty in

15 There should be a grievance mechanism to ensure that affected parties can seek corrective action (VGGT Section 12.14). Gender-equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights should be guaranteed. A right of appeal should also be granted (VGGT Section 21.1).

16 The law should recognize customary approaches to resolving tenure conflicts (VGGT Section 9.11). Gender-equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights should be guaranteed. A right of appeal should also be granted (VGGT Section 21.1).

17 Vulnerable persons should have access to legal assistance in court procedures (VGGT Section 21.6).

accessing justice. Furthermore, in most rural cultures land is owned on a communal basis, under male leadership.

While these issues remain to be addressed, the current forestry legislation may be considered adequate in its part that sets out offences and includes a mechanism to compound them.

5. CONCLUSIONS ON FORESTRY POLICY AND LEGISLATION

The analysis and recommendations that have been made take into close consideration the contents of the VGGT that are most directly relevant to the forestry sector. The analysis shows that the current framework does include many provisions that are in line with the VGGT. Others will be needed, along with an evolution of customary rules and practice, to achieve full compliance with the guidelines.

It may be useful at this point to consider the same analysis and recommendations in light of the “principles of implementation” that are listed at the outset of the VGGT and are considered to be essential for responsible governance of tenure.

Most of the gaps that have been identified in the forestry legislation of Sierra Leone concern the principle of consultation and participation. The Forestry policy recognizes this gap in public awareness and participation (Section 2.4.6) and calls for the “improvement of public participation in the sector through consultative processes related to future design and implementation of this policy” (Section 5.4).

Thus, as has been noted in various recommendations, the legislation will have to devise one or more adequate consultative processes, particularly for:

- a) the adoption or revision of forestry policy and legislation;
- b) the adoption or revision of integrated forest management plans;
- c) the process of identification of legitimate tenure rights before the creation of national forests, as well as before the allocation of concessions; and
- d) the process of creation of community forests.

The first step towards the genuine involvement of stakeholders is to facilitate access to information. The current legislation is also not adequately equipped for this purpose. New provisions should provide a framework requiring that relevant information, such as the forest inventory and management plans, be made easily accessible. Information to be used as a basis for significant decisions, such as draft policy, legislation or plans, should be required to be publicized through means that are easily understood by the concerned audience.

A consultative process is already devised in the EPA Act as regards to an EIA. The experience made thus far in the implementation of that process should guide in the determinations concerning the forestry sector. If that process has worked successfully, a similar one could be envisaged for the forestry sector. Otherwise, alternative arrangements should be sought and appropriate provisions should be formulated.

Special efforts should be made in this context to promote gender balance and representation of all sectors of society, so the participation of women and other possibly disadvantaged persons should be expressly required.

A useful instrument that is used in many countries to allow involvement of different stakeholders in decision making in the forestry or other natural resource sectors is the creation of an advisory body including representatives of various institutions, as well as private and community actors. Bodies of this type usually have the task of advising the responsible minister and their consultation is mandatory in specified cases, although their opinion may not be binding. They may exist at central and also at the local level, where they

may contribute to addressing issues of local significance. Sierra Leone should consider establishing a body of this type for its forestry sector.

New legal provisions envisaging a forestry advisory body should specify which institutions and other stakeholders are to be represented, how they are to be appointed, what the role of the body exactly should be and any other useful aspects. The representation of persons that might be disadvantaged, such as women and youth, in specified quotas, should be required also in this context.

The Policy does call for a “national-level committee [...] to oversee coordination of intra-governmental aspects of implementation of this Policy and resolve specific issues of overlapping mandates and interagency collaboration [...]. The committee may invite external non-government specialist stakeholders, including international partners, to provide information and advice as required” (VGGT Section 7.2). However, this is an inter-ministerial body that could be useful to facilitate coordination, but might fall short of guaranteeing representation of non-governmental interests if the external specialists are not invited, or only technical specialists are invited. The participation of different stakeholders representing various interests, including communities and private sector, would have to be mandatory rather than optional in order for the committee to be an adequate forum for consultation.

As regards community based forest management, the basic provisions that exist will need to be complemented by others, especially with a view to ensuring that all members of indigenous societies are given equal opportunities to participate and receive benefits. It would therefore be useful, for example, to envisage selection criteria for the case in which more than one group or community may be interested. It will also be important to require that mechanisms to identify representatives of every village forest association are transparent and equitable, that they are documented and that representatives are periodically reappointed also in a democratic manner. It would be very useful to require the participation of women in specified quotas.

The legislation will also have to clarify ownership and tenure rights over produce and other benefits that may derive from community forestry and require that benefit sharing mechanisms among members of the community (as well as between the community and the administration if applicable) be clearly set out.

Arrangements must also be made for adoption of rules governing the area by the community and for their enforcement, including where appropriate enforcement by members of the group.

Another principle of implementation which is not adequately taken into account in the legislation is transparency. In accordance with the Guidelines, transparency requirements apply to policies and laws, as well as to any significant decisions of the administration.

The existing legal framework would be significantly improved by introducing further requirements for transparency in the provisions regarding concessions. The administration should be required to set out clear selection criteria and to publish and substantiate the results of selection procedures in light of the same criteria.

In light of the principle of transparency, it would also be important to widely publicize policies, laws and procedures in applicable languages and in formats accessible to all.

ANNEX 1 — ANALYSIS OF POLICY AND LEGAL FRAMEWORK FOR FORESTRY

Policy - Stage of development	Law – Stage of development	Score
Policy absent	Law absent	0
Policy in early stage of development (informal draft available)	Law in early stage of development (informal draft available)	1
Policy in formal adoption process (usually formal draft available)	Draft law in formal adoption process (formal draft available)	2
Policy formally adopted	Law adopted	3
Element of policy appears in multiple implementing policy instruments (strategies, plans, programmes, etc.)	Element of law appears in multiple implementing legal instruments	4
Not applicable	Not applicable	N/A

VGGT REFERENCE	KEY ELEMENTS ADDRESSED IN POLICIES AND LAW	SCORE		REFERENCE TO NATIONAL LEGISLATION OR POLICY
		law	policy	
LEGAL RECOGNITION AND ALLOCATION OF TENURE RIGHTS AND DUTIES – SAFEGUARDS				
7.1	Safeguards are in place to avoid infringing legitimate tenure rights of others when tenure rights to land or forests are recognized or allocated.	4	2	The Forestry Act provides safeguards against infringement of legitimate tenure rights. The Chief Conservator must describe the various tenure rights affecting the area in preparing area forest management plans (Section 8(1) (a)). For 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(1)). If the proposal concerns land not owned by the state, the land must first be acquired, subject to confirmed usage rights (Section 10(2)).
7.3	The law or policy recognizes all existing tenure rights, including customary tenure rights and any other legitimate rights, whether recorded or not, following a consultation process.	0	0	Although there are various provisions for the recognition of many existing tenure rights, including customary rights, the determination of such rights is basically left to administration, which does not necessarily have to consult with concerned stakeholders.
7.4	The law or policy provides for the systematic legal recognition and allocation of tenure rights of men and women, families and communities to provide full opportunities to acquire legal recognition of their tenure rights.	0	0	There are no such provisions in the laws or policy.

LEGAL RECOGNITION AND ALLOCATION OF TENURE RIGHTS AND DUTIES – PUBLIC LAND				
8.2	Legitimate tenure rights of individuals and communities on land owned or controlled by the state are recognized, respected and protected.	4	0	Legitimate tenure rights are recognized in concession agreements for the utilization of national forests. The agreement must specify the utilization rights and customary rights affecting the concession area (Forest Act, Section 13(3)(b)).
8.3	Publicly owned land/forests (“commons”) that are collectively used and managed are recognized and protected.	3	1.5	The Forestry Policy - provides for the sustainable management of publicly owned land/forests outside the forest reserve (Policy Statement 5). Community forests may be created on such lands in accordance with Sections 18-20 of the Forestry Act.
8.4	There is a legal requirement to keep and update a forest inventory.	3	0	This is a legal requirement in accordance with Section 6 of the Forestry Act.
8.8	The range of forest tenure rights and right holders and the means of allocation of such rights are clearly identified.	3	0	Rights, right holders and means of allocation are clearly identified in the sections of the Forest Act regarding issue of concessions and licences and on community forestry. For instance: Section 11 of the Forestry Act provides for the issuance of licence for utilization of national forests. Section 20 provides for community forestry. Section 32 empowers the minister to make regulations to prescribe the forms in which the tenure rights are allocated and other applicable conditions.
8.9	There are requirements for transparent, participatory allocation of forest tenure rights.	0	0	There are no such requirements in the laws or policies.
LEGAL RECOGNITION AND ALLOCATION OF TENURE RIGHTS AND DUTIES – CUSTOMARY TENURE SYSTEMS				
9.2	Where indigenous peoples and communities exercise self-governance of forests, there is provision for them to guarantee equitable access and participation to women and all other members of the community.	0	0	There are no provisions in laws or policies. Where such rights exist, it is on an <i>ad-hoc</i> basis.
9.7	Participation of communities is required in the development of relevant policies, law and implementing instruments regarding tenure.	0	1.5	The “Manual for the Preparation of Cabinet Memorandum for the Purpose of Legislation and for Making Legislative Proposals to the Law Officers’ Department” includes a requirement for public consultations.
9.8	Protection is granted to communities against unauthorized use of their land.	0	0	General provisions regarding powers to suspend and cancel licences in the case of violations, as well as enforcement powers of officers,

				exist in the Forestry Act, but there are no provisions specifically protecting communities against unauthorized use of their land.
9.11	Customary approaches to resolving tenure conflicts are recognized.	3	0	Customary law is recognized as part of the laws of Sierra Leone in the 1991 Constitution of Sierra Leone, which thus implies that customary approaches to resolving conflicts in the local courts are recognized.
TRANSFERS AND OTHER CHANGES – INVESTMENTS				
12.3	The law ensures that transactions in tenure rights as a result of investments - for example in allocating concessions - are done transparently.	0	0	There are no specific requirements ensuring that allocation of tenure rights is done transparently.
12.4	The law encourages responsible investments that respect human rights, promote food security and sustainable use of the environment. It also requires that investments be made working in partnership with relevant levels of government and local holders of tenure rights.	3	1.5	The Forestry Act does require sustainability in forest management, making the issue of licences subject to management plans, and recognizes the “prior rights of other persons” (Section 11(1)). Concession agreements must include a programme for the training and employment of Sierra Leoneans (Section 13(3)(f)). Concessions may be extended from 10 to 20 years if the agreement provides for an integrated wood based industry aiming at converting wood into highly processed products (Section 15(1)). The Constitution of Sierra Leone further restricts activities that may negatively undermine forestry reserves. The Forestry Policy also promotes sustainable environmental benefits for the management of forests for economic benefits. Among its “Guiding principles” is the development of forest-based and ecosystem service-based industries, and equitable benefit-sharing arrangements from those industries (Principle 4.3). The Policy also aims at the development of collaborative partnerships with rural communities and other relevant stakeholders for the sustainable management of Forest Reserves to ensure a sustainable stream of economic, social and environmental benefits (Policy Statement 2). However, the law does not specifically address cooperation among relevant levels of government and local holders of tenure rights.

12.6	The law requires that where transactions regarding forest tenure rights exceed specified ceilings, specified procedures apply.	0	0	There are no specified “procedures” applicable to transactions exceeding specified limits. The Forest Act does provide for extension of forest utilization concessions.
12.7	The law requires that the state and other parties hold good faith consultations with indigenous people before initiating investment projects affecting forest resources for which they hold rights.	0	0	There are no such requirements in the laws or policies.
12.8	The law requires agreements for investments to clearly define the rights and duties of all parties to the agreement.	3	0	The Forestry Act specifies relevant requirements for agreements for forest utilization concessions (Sections 13-16).
12.9	The law provides for the consultation of all stakeholders prior to the transaction of tenure rights, including partnership agreements.	3	0	Since most forests are either state owned or Community forests, it’s the chiefdom council that usually represents stakeholders in transaction of tenure rights and partnership agreements (Section 20, Forestry Act). Customarily, a good paramount chief will consult family heads before decisions are made.
12.9	The law requires that assistance is available to ensure that men and women are aware of their tenure rights and can participate in consultations.	0	0	The law in Sierra Leone is silent on such issues.
12.10	The law requires that when investments involve large-scale transactions of tenure rights prior independent assessments of impact on human rights, food security, livelihoods, environment, be conducted.	3	0	The Environment Protection Act, 2002, makes provision for independent impact assessments.
12.10	The law requires that existing legitimate tenure rights and claims over forest areas concerned by investments are systematically and impartially identified.	0	0	There are no such requirements in the laws or policies.
12.11	The law requires contracting parties to provide comprehensive information to ensure that all concerned stakeholders are informed and engaged, in a non-discriminatory and gender sensitive negotiation process.	0	0	There are no such requirements in the laws or policies.
12.12	The law requires investors to respect tenure rights of others.	3	0	Forest concession agreements must specify customary and other rights affecting the area (Section 13(3)(b) of the Forest Act).
12.14	The law establishes an effective system to monitor the implementation and impact of agreements involving large-scale transactions in tenure rights.	3	0	There are provisions in the Environmental Protection Act and the Environment Protection Agency Act to monitor the implementation and impact of large-scale transactions in tenure rights, but

				there is no effective implementation.
12.14	A grievance mechanism is in place to ensure that affected parties can seek corrective action.	3	0	There are grievance mechanisms in place in customary law through local courts. And under general law affected parties may seek redress. But often times, they are poor and do not have access to the courts, while customary courts may have limited jurisdiction to handle such matters.
LAND CONSOLIDATION AND OTHER READJUSTMENT APPROACHES				
13.6	The law requires participatory and gender-sensitive approaches taking into account the rights of indigenous people in case consolidation of forest parcels or changes in utilization of forest land are considered.	0	0	There are no such requirements in the laws or policies. Customarily, decisions concerning communal ownership are made by Paramount chiefs, thus gender-sensitive approaches are not considered.
ADMINISTRATION OF TENURE				
17.1	The law provides systems to record, update and publicize individual and collective tenure rights over land and forests.	4	0	There are systems to record and update ownership in land especially in the Western Area. But there are no such structures in place for customary land in the provinces as the Registrar-General's Office has not yet fully decentralized. Tenure rights over land and forests are also published in the Gazette by virtue of Section 10(3), Section 18(3) of the Forestry Act.
SPATIAL PLANNING				
20.1	The law requires spatial plans to reconcile various land uses.	0	0	The Forestry Policy makes provision for land use planning processes on forest land, involving stakeholders, to reconcile land uses (Policy Statement 1).
20.2 & 20.4	The law requires spatial planning to consider methods used by indigenous people and wide public participation in their development.	0	0	There are no such requirements in the laws or policies.
RESOLUTION OF DISPUTES				
21.1	The law guarantees gender-equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights.	3	0	The law does not discriminate per se with regard to access to judicial systems. Under general law there are equal rights. Under customary law which varies from tribe to tribe, this right may be limited to the male folk especially in the northern province due to the fact that ownership is based on patrilineal lines.
21.1	A right to appeal exists in justice systems, including in customary justice systems.	4	0	There are rights to appeal both under general law and customary law.
21.5	Clear mechanisms are in place to prevent corruption in dispute resolution mechanisms.	0	0	The Anti-Corruption Act prohibits and discourages acts of corruption.

21.6	The law makes provision for legal assistance to vulnerable persons in court procedures.	4	0	The Legal Aid Act, 2012 makes provision for legal assistance to indigents in court procedures. But the system is not fully operational.
CLIMATE CHANGE AND NATURAL DISASTERS				
23.1	Protection of legitimate tenure rights with the aim to prevent and respond to the effects of climate change.	0	0	Not addressed by law and policy.
23.3	Participation of concerned holders of legitimate rights be facilitated in negotiation and implementation of mitigation and adaptation programmes.	0	4	Policy Statement 14 requires that communities be “linked” to climate change programmes and mechanisms for the development of economic benefits such as Payment for Environmental Services.
24.1	Tenure aspects addressed in the prevention of natural disasters and reduction of their impact.	0	0	Not addressed by law and policy.
CONFLICTS IN RESPECT TO TENURE				
25.3	A policy supports the revision or repeal of discriminatory legal instruments.		0	There is no such policy.

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