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# **Implementation of the Voluntary Guidelines on Responsible Governance of Tenure in the Land Legislation of Sierra Leone**

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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

ABI	Guidelines for Sustainable Agricultural and Bioenergy Investment, 2013 (draft)
ACC	Anti-Corruption Commission
ADR	Alternative Dispute Resolution
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CLC	Chiefdom Land Committees
DLC	District Land Commissions
EIA	Environmental Impact Assessment
EPA	Environment Protection Agency
ESHIA	Environmental, Social and Health Impact Assessment
FAO	Food and Agriculture Organization of the United Nations
ICERD	International Convention on the Elimination of all Forms of Racial Discriminations
ICESCR	International Covenant on Economic, Social and Cultural Rights
IEA	Investment and Export Agency
LAT	Legislation Assessment Tool
MLCPE	Ministry of Lands, Country Planning and the Environment
NLC	National Land Commission
NLP	National Land Policy
OARG	Office of the Administrator and Registrar General
SLEDIC	Sierra Leone Export Development and Investment Corporation
SLIEPA	Sierra Leone Investment and Export Promotion Act (establishing the Agency)
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

## 1. INTRODUCTION

This report presents the findings and recommendations of a legal assessment against the provisions of the VGGT. The analysis was supported by two assessment tools, which consist of a series of questions related to land tenure generally and gender issues specifically. The annexes reproduce the findings of the tools and have been filled out in preparation for the writing of the report. Annex 1 presents the analysis of a set of indicators that were selected by the team around the key principles of the VGGT, to recognize, respect and safeguard/protect legitimate tenure rights, to promote and facilitate their enjoyment and to provide access to justice and prevent tenure disputes. Under these main headings a subset of issues deemed to be of particular relevance to Sierra Leone were identified for analysis. Annex 2 uses a Legislation Assessment Tool (LAT) previously developed by FAO to follow progress in achieving gender equitable land tenure. References to LAT indicators in this report refer to Annex 2.

### 1.1 General context

Sierra Leone is a sovereign republic, covering a total land area of 72 325 square kilometres.<sup>1</sup> The country's land area is one of West Africa's most revered natural resources rich in minerals and good for cultivation. It operates a dual land tenure system which includes the freehold tenure system and the customary land tenure system. The freehold (known as statutory land tenure) system largely operates in the Western Area. The customary tenure system is associated with the traditional practices of the people residing in the provincial areas, or what was previously known as the Protectorate of Sierra Leone.

Although they constitute 51 percent<sup>2</sup> (over half) of the population, women remain disadvantaged in relation to title to land, especially in rural Sierra Leone, and this is due largely to the cultural makeup. Up to 75 percent of the population living in the rural areas depends largely on agriculture for their sustenance.<sup>3</sup> The local population therefore depends heavily on the production of local food for rural survival. In fact, 80 percent of the rural women are primarily engaged in agriculture to provide food for their families, communities and the urban cities. It is therefore crucial that in the area of ownership, access and control of land in Sierra Leone, women should not be marginalized and discriminated against.

In Sierra Leone, research has shown that about 80 percent of rural women are primarily engaged in agriculture to provide food for their families, communities and urban cities.<sup>4</sup> The Sixth Periodic Country Report on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) showed that only about 25 percent owned a house while about 75 percent did not, only about 28 percent had access to land,<sup>5</sup> 32 percent did not have access to land, while 41 percent said it did not apply to them as they were not farmers. Women make up the majority of the country's population, and most of them live in the rural areas. Gender-based discrimination is widespread, and many women are deprived and marginalized from owning land.

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- 1 The Constitution of Sierra Leone (Act No. 6 of 1991), 1st schedule on the country's detailed delimited boundaries.
  - 2 See the country's 2004 census report.
  - 3 Statistic Sierra Leone 2004 report.
  - 4 Renner-Thomas, A. Land Tenure In Sierra Leone: The Law, Dualism And The Making Of A Land Policy Paperback, Author House, 2010.
  - 5 ActionAid Report: Establishing the link between land rights and women's empowerment; pg. 9, Section 2.4.

The Voluntary Guidelines on the 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. These guidelines, though voluntary, are built on binding international law (in particular human rights law), and are complementary to and supportive of national, regional and international initiatives that address human rights and aim to provide secure tenure rights to land, fisheries and forests.

This report provides the results from the assessment of the legal and policy framework for land tenure in light of the VGGT. It is structured along the principles of the VGGT and addresses aspects of the governance of tenure of land, with regards to rights and responsibilities, policy, legal and organisational framework, and delivery of services along applicable international human rights standards. In essence, this report looks at and evaluates the present land-related laws and policies in operation in Sierra Leone, in line with the principles embedded in the VGGT. It measures to what extent the policy and legal framework accommodates the VGGT and provides targeted recommendations to enhance compatibility with the VGGT. Among other things, this report looks at the substantive laws that govern tenure in Sierra Leone, the institutional provisions contained in the legal framework, the draft National Land Policy (NLP), 2014 and the draft Guidelines for Sustainable Agricultural and Bioenergy Investment, 2013 (draft Guidelines for ABI).

## **1.2 Overview of the legal and policy framework**

### **1.2.1 Ratification of international instruments**

Sierra Leone is a party to all the major international instruments that guarantee women's equal rights and outlaws discrimination on the basis of sex — international instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the CEDAW — yet in the area of acquisition and control of land, there is persistent discrimination against women, especially under the customary tenure system in the country.

Being a state party to the ICESCR; the CEDAW; the International Convention on the Elimination of all Forms of Racial Discriminations (ICERD); the African Charter on Human and Peoples' Rights; and a signatory to the Universal Declaration for Human Rights among a host of many others; Sierra Leone must and has attempted to adopt measures aimed at the realization of the right to adequate food, and eliminating discrimination against women and other persons in some areas of life. Further legislation must be passed to integrate the provisions of these international instruments in order to ensure that they have the force and effect of law.

In fulfilment of some of these international instruments, the country has adopted laws complying with international best practices. A practical reference is Section III of the Constitution of Sierra Leone<sup>6</sup>, which provides for the fundamental human rights and freedoms of the individual; regardless of race, tribe, and place of origin, political opinion, colour, creed or sex. This section of the Constitution relates to rights and freedom, which are

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6 The Constitution of Sierra Leone, Act No. 6 of 1991, Section III.

inextricably connected to livelihood and by implication, right to food; which does not easily come by without right/access to land, especially for the indigenous people. These issues are critical in the VGGT as they promote human dignity, non-discrimination, equality and justice, which are the thrusts of the ICEFRD and CEDAW.<sup>7</sup> Having ratified these international instruments, Sierra Leone has a legal obligation to implement the provisions of these instruments, many of which contain a guarantee of equal rights of women and men.

### **1.2.2 National legal and policy framework**

The sources of land law in Sierra Leone can be broadly categorized into two: 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 the legislature in force in Sierra Leone, as well as the received English Law in force.<sup>8</sup> 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.<sup>9</sup> This customary law is based on the traditions, culture and customs of the various ethnic groups and it varies from one ethnic group to another, both in substance and in detail. It therefore makes the system complex and conflicting, although they co-exist and interact.

Based on the dual land tenure system in operation in Sierra Leone, different land laws apply to both the Western Area and the Provinces. The Western Area applies the 'general law', which according to the Constitution of Sierra Leone means the rules of common law and the doctrines of equity and all such enactments in force in Sierra Leone.<sup>10</sup> It is important to note that in case of conflict between customary law and statutory law, laws made by parliament will prevail.

With regard to the Provinces and as far as land tenure is concerned, customary law is the predominant law that regulates rights to and interests in land. However, with regards to local enactments regulating the acquisition and disposition of land in the provinces, the Provinces Land Act, Cap 122 of the laws of Sierra Leone 1960, is of prime importance. Access to land is inextricably the primary source of food which the rural population depend on for their living, as well as the host of countless minerals and natural resources which inform the economy and forms the basis of livelihood for the people as well as investors. The competing interests with regards to access to and control over land, its allocation and its purposes should be balanced carefully to ensure responsible governance of land tenure in Sierra Leone. The right to food is not only entwined with the right to tenure but is a basic and fundamental human right. Therefore, the importance of land cannot be overstated in the drive to eradicate hunger and poverty from society. Additionally, land also serves as a basis for shelter, social, cultural and religious practices; as well as being a central factor in economic growth. The need to balance these important competing priorities serves as the underlying prompter, factoring the spirit inherent to the VGGT.

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7 CEDAW Article 14(2)(a) & ICERD Article 5(e).

8 See Section 74 of the Courts Act No. 31 of 1965 for the received English Law as at the reception date of 1<sup>st</sup> January, 1880.

9 The Constitution of Sierra Leone, Act No. 6 of 1991, Section 170(3).

10 The Constitution of Sierra Leone, 1991, Section 170(2).

### 1.3 Essential definitions

#### a) Tenure

The term “tenure” is used to describe the quality or manner of a tenant’s holding of land. (“Land” is used here to include other natural resources such as water and trees). Essentially however, tenure defines and regulates how people, communities and others gain access to natural resources. Ideally though, land tenure is an institution, that is, rules invented by societies to regulate behaviour in relation to land acquisition and disposal. These rules may be devised through formal laws and/or informal arrangements. They may be based on written policies and laws as well as unwritten customs and practices. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted through the rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions.

#### b) Customary tenure

Customary land tenure is the aggregation of rights vested in the holder with respect to a particular parcel of land that gives the holder title thereto. There may exist simultaneously and in relation to the same piece of land, various rights and differing interests vested in and held by several different entities. Where the interest owned accords the owner the fullest cluster of rights, including the maximum right of user and disposal, then it amounts to absolute or allodial ownership.<sup>11</sup>

#### c) Communal tenure

Communal tenure is a distinct form of tenure under which lands within a given community are claimed by the community as a whole either by conquest, annexation, settlement or some other means; with portions held by members as groups or individually, and with the ultimate title and overall rights of supervision and control being vested in the socio-political head of the community.

#### d) Family tenure

Family tenure can be described as the system of customary tenure in which the right to land within a particular community is claimed by various decent groups, each with a common ancestor and which constitute family units. These family units, apart from being socio-political entities, are also endowed by Customary Law with corporate legal personality for the purpose of land tenure.<sup>12</sup> Family lands may therefore be described as lands held under family tenure. However, a distinction should be made between family lands and lands held by family groups as members of a community in areas where communal tenure is the predominant and generally recognized form of tenure.

#### e) Individual tenure

This prevails where an individual acquires paramount title to land in one or more of the following ways: by clearing virgin forests, through purchase, through gift, long possession, by

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11 Renner-Thomas, A. Land Tenure In Sierra Leone: The Law, Dualism And The Making Of A Land Policy, 2010.

12 Ibid p. 148.

partition and by succession. In all the above instances however, there is always the possibility that the land could someday revert to family or communal ownership.

**f) Freehold tenure**

Freehold estates can be created either in fee simple or for life. Under English Law, a 'fee' implies an interest in land held of some lord in whom a superior title is vested, thus, it falls short of absolute ownership. However, in Sierra Leone, the fee simple can be considered as the equivalent of absolute ownership.<sup>13</sup> It follows that the fee simple owner of land in Sierra Leone enjoys all the advantages of absolute ownership and this has always been recognized and upheld by the law.

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<sup>13</sup> Ibid, p. 69.

## 2. LEGAL ASSESSMENT OF LAND TENURE

### 2.1 Legal recognition and allocation of tenure rights

First and foremost, the law should recognize all existing tenure rights, including customary tenure rights, whether recorded or not (VGGT, Section 7.3). Sierra Leone's legal and policy framework complies with this requirement. The Preamble of the Provinces Land Act, Cap 122 states that, "[...] all land in the Protectorate is vested in the Tribal Authorities who hold such land for and on behalf of the native communities concerned [...]" which in essence recognizes customary tenure rights. These lands are held in communal ownership vested in the tribal authorities who administer them on behalf of the communities in line with the customs and usages of the people. The draft NLP, in Section 5.1.1, recognizes three types of tenure: the freehold tenure, the family tenure and the customary tenure. Furthermore, according to the draft policy, the land rights of each type of land tenure shall be defined in detail so as to clarify and protect the social, economic and political security conferred on each owner, occupier and/or user.

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. As we have seen, Sierra Leone recognizes customary tenure but elements of gender-based discrimination persist in the legal framework. First, while Section 27(1) of the constitution ensures that "[...] no law shall make provision which is discriminatory either of itself or in its effect", Subsection (4)(d) of Section 27 introduces a major caveat stating that Subsection (1) "shall not apply to any law so far as that law makes provision with respect to marriages, divorce, devolution of property on death or other interests of personal law". The legal framework governing marriage and property rights shows a great disparity in the right to own and control land (see Annex 2, LAT indicator 6) depending on the type of marriage that has been entered into.

Sierra Leone recognizes civil marriages, Christian marriages, Mohammedan marriages and customary marriages. Civil marriages are still governed by Married Women's Property Act, 1882. Section 2 entitles every married woman to have and to hold as her separate property and to dispose of all real and personal property that belongs to her at the end of marriage, and that she acquires after her marriage, including wages, earning, money and property. Additionally, the Christian Marriage Act 1960 protects the rights of the spouses to agree on the control and enjoyment of their respective properties, including for the purpose of preventing one spouse from disposing, by legal procedure and means, of the other's property after death. It is important to note that the Mohammedan Marriage Act 1965 does not make any reference to property management during marriage. In the Provinces, land is predominantly family-owned wherein an older male member of the family holds the land in trust for the family. The chiefs in consultation with other community elders grant access to land. However, Section 18 of the Registration of Customary Marriage and Divorce Act 2007 empowers a wife in a customary marriage with the capacity to personally acquire and dispose of properties. It is also important to note that The Matrimonial Cause Act, 1960 does not explicitly recognize gender equality in the right to own and control property in marriage. A Matrimonial Causes Act and gender Equality Bill are pending adoption. These statutes should be passed into law without further delay to harmonize women's rights across these various regimes of matrimonial property. Additionally, the draft NLP, Section 7.1.4 acknowledges the particular challenges that women face in accessing land, and lists a

number of policy measures to strengthen women's tenure rights. Among these measures, the Government of Sierra Leone pledges to undertake the amendment of the Constitution so as to enact provisions to protect the rights of women generally. It foresees the drafting of a new basic land law and promises that appropriate provisions are inserted in this new land law to ensure and protect equal rights of inheritance and ownership of land for women and children.

The Devolution of Estates Act, 2007 has brought a number of positive changes that have strengthened gender equality in inheritance. Under the law, the surviving spouse is now granted user rights to the matrimonial house for life<sup>14</sup> (LAT indicator 17) as well as a minimum share of matrimonial property<sup>15</sup> (LAT indicator 18), including if the partners were living in a consensual union (LAT indicator 19). However, discrimination persists between brothers and sisters (LAT indicator 21). Indeed, Section 13 provides that where the intestate is not survived by a spouse, child or grandchild but is survived by a brother or sister, 75 percent of the estate shall devolve to the brother and sister in equal shares and the remaining 25 percent shall be distributed in accordance with customary or Muslim law as applicable. However, under Islamic law brothers usually receive double the share of the sisters. The legal framework also lacks a right to compensation of siblings giving up their claims on the family property (LAT indicator 22).

The legal framework should also organize 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 (VGGT, Section 7.3). It is important to note that no relevant provision exists in the legal framework that provides for such systematic legal recognition and allocation of tenure rights. Nevertheless, the draft NLP, Section 7.1.4 envisions the joint spousal registration and documentation of land rights, as well as joint spousal consent to land disposals, applicable for all forms of tenure. It lists, in Section 6.1.8, a number of special measures relating to customary land tenure including the documentation of the fundamental customary land tenure rules applicable to communities at all levels and the registration of land rights under customary tenure after the introduction of the new system of registration of titles.

## **2.2 Protection of tenure rights against threats and infringements**

### **2.2.1 Expropriation and compensation**

The protection of tenure right holders against infringement is fundamental to the responsible governance of tenure. This is particularly relevant in the context of expropriation to protect tenure right holders against the arbitrary loss of their rights.

The VGGT urge states to clearly define the concept of expropriation for public purpose in order to allow for judicial review and provide prompt and just compensation to the affected tenure right holders, including subsidiary rights holders such as the spouse (VGGT, Section 16.1). In legal terms, "expropriation" is where a person is compulsorily deprived of a right to property belonging to him or her, and the remedy is for him or her to be compensated as provided by law. In the event where the government wants to expropriate

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14 The Devolution of Estates Act, 2007, Section 15(2).

15 Ibid, Section 8.

any piece of land, there should be adequate and prompt payment to the person whose land is in question. In simple terms therefore, compensation is the amount of money received in view of land taken compulsorily by the state, which is determined by the owner with regards the potential of the land and the market value.

Without referring specifically to “expropriation for public purposes”, Section 21(1)(a) of the Constitution lists some conditions under which individual lands can be expropriated and compensated, which would normally fall under “public purpose”. Section 21 reads as follows: “no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired except [...] in the interest of defence, public safety, public order, public morality, public health, town and country planning, the development or utilization of any property in such a manner as to promote the public benefit or the public welfare of citizens of Sierra Leone[...]”<sup>16</sup>. Additionally, paragraph (c)(i) of Subsection (1) of Section 21 provides that prompt payment of adequate compensation should be given to the rightful owner<sup>17</sup>, and where the aforesaid is not complied with, the aggrieved party is protected under law to seek redress in the court of law. But the law remains silent on compensation to subsidiary right holders such as the spouse. These provisions are in line with the VGGT in relation to expropriation and compensation which among other things provide that states should expropriate only where rights to land are required for a public purpose. However, there is no specific law on expropriation, where the constitutional principles would be further developed.

It should be noted that the land laws of Sierra Leone contain several other instances where land can be expropriated, followed by compensation. The Public Lands Act (Cap 116 of the Laws of Sierra Leone, 1960) provides at Section 4 that the Minister on the advice and with the consent of Parliament shall declare any land for public work. The legislation further provides for the owners or persons interested to be served a notice, as well as for such notice to be published in the local gazette for 21 days, following which the land will be marked out by the Director of Surveys and Lands and vested in the state. Where the owner refuses to give up possession, the Act empowers the Minister to employ the necessary judicial process to have possession of such land delivered to the state. However, the Act provides for the owners and occupiers of such land to be entitled to the amount of compensation which is to be ascertained and agreed upon. Provision is also made for cases where compensation is disputed, and for an application to be made by the Attorney-General to the Chief Justice, who has jurisdiction to hear and determine such cases. Also, the Mines and Minerals Act of 2009 makes some provisions with regards this aspect. Section 36 of this Act states that the Minister may by order published in the gazette, make compulsory acquisition of private land or rights over or under private land for use by the holder of a large-scale mining license. It goes on to provide in Section 37 that when land is acquired compulsorily under Section 36, those persons having an interest in or rights over the land concerned shall be paid adequate compensation by the holder of the mineral right, determined on the same basis as compensation for disturbance of rights under Section 35.

Looking further into the provisions of the draft NLP, Section 5.1.2 reasserts the sovereign power of the state to acquire or take possession of land throughout Sierra Leone compulsorily [...] subject to the payment of compensation. It envisages the prescription of a “uniform method for the exercise of the power of compulsory acquisition to include

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16 The Constitution of Sierra Leone, Act No. 6 of 1991, Section 21.

17 Ibid, Section 21(1)(c)(i).

adequate prior notice to and consultations with all persons to be affected, payment of prompt and fair compensation and due recourse to justice in the event of any dispute.” Section 10.1.2 makes provision for restitution of properties taken unlawfully by the government from any individual land holder. It also requests the state to provide a publically accessible mechanism for the right to appeal if people believe their tenure rights have not been fully recognized. Where such is the case, such tenure right should be compensated. Such a mechanism shall be managed by an Ombudsman on Land within the judicial or land administrative institutions. The need for compensation cannot be over-emphasised since it is enshrined in the Constitution of Sierra Leone<sup>18</sup> which calls for fair and adequate compensation, and in accordance with open market values.

Another area in the legal framework of Sierra Leone that creates an infringement on the enjoyment of the rights of land tenure holders is the Town and Country Planning Act, Cap 81 of the Laws of Sierra Leone which is applicable mainly in the Western Area of the county. This legislation establishes a board responsible for town and country planning in the country. The Board is mandated, after consultation with the city council of any town, to make representations to the Minister accompanied by a plan, that the area specified in the plan is a planning area<sup>19</sup>. When an area is declared a planning area, the value of any building or land in such area, for the purpose of determining compensation is deemed to be the value of the building at the date of the declaration<sup>20</sup>. Further, when an order declaring a planning area has been made, no person within a planning area should carry out any development of land or any construction of building until a detailed scheme is approved for the area containing such land or building. Compensation is also paid under the Act to any person adversely affected by the execution of any work under the scheme or the coming into effect of the provisions of the scheme, but this is to a person who makes a claim within the time limited for claims<sup>21</sup>. These provisions impinge on the enjoyment of the rights of tenure right holders and should be addressed by the draft NLP.

### **2.2.2 Investments**

Under the laws of Sierra Leone, the concept of investment is understood as the direct investment of foreign or domestic capital into a business in the country,<sup>22</sup> which is geared towards the development of production and value adding activities meant to improve exports and provide employment opportunities, and to generally create an environment conducive to related matters. This area is of major importance with the enlargement of the mining industry and other areas of investment in land in the country. There is the need therefore to protect tenure right holders, while at the same time to encourage investors to expand and consolidate their businesses in the country. Accordingly, state and non-state actors do acknowledge investment (be it public or private) as a venture essential not only to improve food security but to enhance other areas of production that augment the labour market. Leaning on the fact that they are making investment in the country’s land resources, increasing sustainable agricultural production, job creation and generating income as required by the VGGT (Section 12), the negative impacts of large scale investments should be identified and contained.

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18 The Constitution of Sierra Leone, Act 6 of 1991, Section 21(1)(c)(i).

19 The Town and Country Planning Act, Cap 81 Laws of Sierra Leone, Section 6.

20 Ibid, Section 6(4).

21 Ibid, Section 25.

22 The Investment Promotion Act 2004, Section 1.

The VGGT call for all states to acknowledge and encourage both private and public investments that boost the socio-economic activities of its population, large scale investments should be supporting broader social, economic and environmental objectives (VGGT, Section 12.1) under a variety of farming systems. Additionally, the state should ensure that its actions in this respect are consistent with its existing obligations under national and international laws and with due regard to voluntary commitments, respect to legitimate title holders and protection of tenure rights.

Section 5(1) of the Investment Promotion Act 2004 provides for the Sierra Leone Export Development and Investment Corporation (SLEDIC),<sup>23</sup> to champion the facilitation of any investment (foreign or otherwise). Also, in 2007, the Government of Sierra Leone enacted the Sierra Leone Investment and Export Promotion Act which established the Sierra Leone Investment and Export Agency (SLIEPA) to conduct the business of investment promotion for Sierra Leone and to develop and diversify the export of traditional and non-traditional produce.<sup>24</sup> Among other things, these institutions only serve as incentives in promoting investment and export. In essence, there is no relevant provision in the legal framework that provides for investors to seek partnerships with local tenure right holders. For instance, Section 15 of the Investment Promotion Act 2004 only states that “government acknowledges that access to land is vital to the operations of a business enterprise and will take the necessary steps to facilitate an investor’s access to land. It does not contain any safeguard for the protection of legitimate tenure rights against threats and infringements. Section 4 provides that “any investor whether domestic or foreign may invest in any legitimate form of business enterprise”.

Also, there is the Goods and Services Tax Act (No. 6) of 2009, the National Revenue Authority Act (No. 11) of 2002 and the Registration of Business Act of 2007; but all of these legislations only set up regimes and provide for taxation of goods imported into the country, the collection of revenue from permits, licenses or fees, as well as provide the structures for setting up and registering any business enterprise in Sierra Leone. They do not encourage investors to seek partnerships with local tenure right holders. Furthermore, under the Sierra Leone Investment and Export Promotion Agency Act (No. 3) of 2007, the mission of the agency is to promote investment in Sierra Leone and export of Sierra Leone products, and does not target responsible investment. While the draft Guidelines for ABI set up at target of 80 percent of feedstock to be purchased from out growers, local cooperates or local farmers, no relevant statement/measure could be located in the draft NLP on the subject matter. It only aims at creating an enabling environment to attract investments (both domestic and foreign) in accordance with established laws and procedures. Section 7.1.5 of the draft NLP on access to land for investment does not set up any safeguard to contain these investments. It aims to set up a framework for investment in Sierra Leone but does not target responsible investment and does not provide the necessary checks and balances to ensure that all investments in Sierra Leone contribute positively to the development of the country and preserve the livelihoods of its citizens.

The law should set ceilings on permissible land transactions to protect legitimate tenure rights, human rights, livelihoods, food security and the environment (VGGT, Section 12.6) from risks that could arise from large-scale transactions in tenure rights, though with

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23 SLEDIC was established by section 2 of the Sierra Leone Export Development and Investment Corporation Act, 1993.

24 [www.sliepa.org](http://www.sliepa.org)

reservations. The current legal framework does not place any restrictions on the amount of land that can be transferred, which leaves tenure right holders unprotected against the risks associated with large scale land transaction. The draft NLP does not contain any relevant statement which is all the more lacking that guiding principle 3.1(b)(ii) of the NLP recognizes that “due to increasing demands on food imports and inadequate domestic food supplies, it is necessary to incorporate measures that will stimulate local production with the ultimate goal of guaranteeing food security and realizing the right to food for everyone, particularly the vulnerable and marginalized.”

Transactions exceeding the ceiling should require parliamentary approval (VGGT, Section 12.6). As mentioned above, Sierra Leone’s current legal framework lacks a ceiling on permissible land transactions that would protect legitimate tenure rights. However, the draft Guidelines for ABI provide that for all bioenergy investment over 5 000 hectares, a memorandum of understanding is required which must be approved by Parliament. And for all investment below 5 000 hectares, the Chiefdom Council where the investment is located must approve it. It is therefore of crucial importance that draft guidelines on ABI is adopted quickly. The draft NLP (Par. 7.1.5) envisions the adoption of guidelines for setting ceilings on the size of land controlled by any one person, group of persons or organizations. Planning and development conditions are to be strictly monitored and where necessary, punitive tax incentives imposed to prevent speculative holding of agricultural and urban development land, regardless of the tenure classification.

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). Responsible investments should respect human rights (VGGT, Sections 3A and 3.2) and at the same time, promote food security and sustainable use of the environment. The Environment Protection Agency Act, 2008 (EPA Act) provides that an environmental, social and health impact assessment license is required for all projects according to the first and second schedules of the Act, and at Sections 24 and 25. Additionally, it is important to note that the draft Guidelines for ABI also refer, in some measures, to the EPA Act, but in the draft NLP investors seeking to acquire land for investment through the government are merely required to submit a sound feasibility study of the proposed activity and evidence of ability to develop the said parcels or plots. It makes no mention of an impact assessment on tenure rights or on the sustainability of the project.

In addition, agreements for investments should be required by law to clearly define the rights and duties of all parties to the agreement (VGGT, Section 12.8). No relevant provision could be located in the legal framework. As it stands, the Investment Promotion Act, 2004 does not provide an adequate framework, defining the rights and duties of the parties. It is designed to promote and attract private investment both foreign and domestic and generally create an environment conducive to private investment. The draft Guidelines for ABI and draft NLP are equally silent on the matter. This Act is designed to promote and attract private investment, both foreign and domestic, and generally creates an environment conducive to private investment. Furthermore, no relevant statement/measure could be located in the draft NLP on the matter. The Policy is silent on the specification of rights and duties to parties to investment, and does not out rightly state these rights and duties as would be required in any strong governance of tenure. This is a grave lacuna in the laws of Sierra Leone which needs to be addressed.

Similarly, no relevant provision exists in the legal framework that requires agreements for investors to comply with national legislative and investment laws (VGGT, Section 12.8). Also,

Section 4 of the Investment Promotion Act 2004 only provides that investors, whether domestic or foreign, may invest in any legitimate form of business enterprise, but does not provide any definition of what is legitimate and does not explicitly require investors to comply with national legislation and investment laws. No such statement/measure can be found in the NLP. Section 7.1.5 of the draft NLP merely enjoins the government to ensure the protection of the land rights of citizens, access to land by vulnerable groups and small-scale landholders in the face of large scale foreign investments.

Importantly, the VGGT urge the state to provide for the consultation of all stakeholders prior to the transaction of tenure rights, including partnership agreements (VGGT, Section 12.9). Consultation with local tenure right 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. 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 defines one of the major reasons for disgruntlement in various mining and other foreign large scale investment communities in Sierra Leone. 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 existing tenure rights are compromised. This is not consistent with the VGGT which provide in Section 3B(6) that such consultation with the local tenure right holders is a working tool because it ensures a balance between foreign investors and the people.

The draft Guidelines for ABI, however, proposes that ahead of the agreement, representatives from the lead ministries and the Ministry of Local Government and Rural Development should visit the communities with the enterprise. All potentially affected communities would be identified through the review of the Consultation Plan, and are encouraged to participate through radio broadcast, publication at local town halls and/or public notice boards and/or dissemination among local civil society groups, as appropriate. Enterprise and communities legal representative would record data regarding each consultation including the main questions and concerns that will be raised by both parties, and the demographic information of participants, and any agreements that will be reached.

It should be noted that little or no professional assistance is available to the right holders to ensure that they are made aware of their rights and given the opportunity to participate in the consultations with investors (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. The Legal Aid Act 2012, which was enacted for the establishment of a legal aid board responsible for providing affordable, credible and sustainable legal aid services to persons who cannot afford to hire the services of a legal practitioner has not yet come into operation, meaning that the legislation is in existence but the institution through which this legal assistance is to be implemented is yet to be established. Besides, it only provides for legal support in criminal matters.

Also, there is no relevant statement in the draft NLP on professional assistance to ensure men and women are aware of their tenure rights. However, in the draft Guidelines for ABI, the general public and affected communities have 30 days to review the Environmental, Social and Health Impact Assessment (ESHIA), with legal assistance if required through the Justice Fund, and to request revisions in the ESHIA and/or make suggestions for inclusion in the Impact and Benefit Assessment. It is important to note that this lack of professional

guidance to right holders has affected many lease agreements that have been contracted over the years. Some of these negotiations involving the local people are usually done at higher levels, involving the Chiefdom Council members who are the custodians of the land for and on behalf of their people. After negotiations, whatever agreement is reached and signed is done by the Paramount Chief for and on behalf of the people of the Chiefdom who will then be notified. This is inconsistent with the VGGT<sup>25</sup>. 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). However, the draft Guidelines for ABI aim to ensure that lawful land tenure rights, including customary rights, informal rights, and use rights, are respected. The draft NLP is silent on this matter. In general, it places very few obligations on investors.

Similarly, no relevant provision could be located in the legal framework that requires an independent assessment to be carried out to identify the potential positive and negative impact of large-scale transactions of tenure rights on men and women's tenure rights (VGGT, Section 12.10), and no relevant statement exists in the policy. However, under Section 7.1.5 of the draft NLP on access to land for investment, the Government of Sierra Leone is to put in place measures to mitigate the negative impacts of investment and to deliver equitable and sustainable development. The approach seems to favour mitigation over pre-screening of potentially negative investments, but does not identify any of these negative impacts and merely acknowledges that data on the impacts of such investments is lacking. In fact, this is all the more lacking that guiding principle 3.1(c)(ii) of the NLP promotes a sustainable balance between accommodating investments while simultaneously safeguarding local interests, particularly relating to gender equality and rights of women.

In the same vein, there is hardly any relevant provision in the legal framework that requires an independent assessment to be carried out to identify the positive and negative impact of large-scale transactions of tenure rights on food security and the realization of the right to adequate food (VGGT, Section 12.10); neither any such relevant statement/measure exists in the draft NLP. Again, this is all the more lacking that guiding principle 3.1(b)(ii) of the NLP recognizes that "due to increasing demands on food imports and inadequate domestic food supplies, it is necessary to incorporate measures that will stimulate local production with the ultimate goal of guaranteeing food security and realizing the right to food for everyone, particularly the vulnerable and marginalized".

Furthermore, although the law recognizes legitimate formal and informal tenure rights of men and women to be registered, including spousal rights through the office of the Registrar General, it is important to note that the legal framework of Sierra Leone does not provide for the registration of titles but for the registration of deeds (VGGT, Section 12.10). The present Deeds Registry is set up under the General Registration Act (Cap 255) which establishes a general registry for the whole country. This Act is intended to be read together with the Registration of Instrument Act (Cap 256) which also effectively provides for the registration of instruments generally, and of those affecting land in particular. However, Section 6.1.8 of the draft NLP lists a number of special measures relating to customary land tenure including the registration of land rights under customary tenure after the introduction of the new system of registration of titles. Again, Section 7.1.4 envisions the joint spousal registration and documentation of land rights, as well as joint spousal consent

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25 See 3B(6) which requires consultation and participation of legitimate tenure right holders prior to decision being taken.

to land disposals applicable for all forms of tenure. Under Section 8.1.4, the National Land Commission (NLC) will be responsible for the introduction of a system of registration of title to land in accordance with the relevant legislation to be enacted. It is important to note that these Sections do not offer an adequate solution to the registration of customary rights. However, the draft Guidelines for ABI recommends a land-use assessment of the project area including mapping of all tenure rights, including customary rights, informal tenure in investment area and secondary land-use rights (e.g. crop cultivation, gathering, and herding) especially of women and vulnerable groups. Under the VGGT, investors should have the obligation to recognize and respect tenure rights (VGGT, Section 12.12). No relevant provision could be located in this assessment. The Investment Promotion Act, 2004 does not compel investors to respect tenure rights, and the draft NLP is silent on the matter too. In general, the draft NLP places very few obligations on investors. However, the draft Guidelines for ABI aim to ensure that lawful and legitimate tenure rights, including customary rights, informal rights, and use rights, are respected.

There is no explicit law that provides for the monitoring, implementation and impact of agreements involving large-scale transactions on tenure rights (VGGT, Section 12.14), and the draft NLP does not address this gap. However, under the draft Guidelines for ABI, SLIEPA is commissioned to coordinate monitoring with the relevant ministries and the Human Rights Commission of Sierra Leone, based on specific aspects of the investment. Enforcement is led by the EPA and the relevant technical ministry on each issue, under the existing legal framework. If an audit reveals non-compliance with any minimum criteria and/or any false claims, the enterprise is given 180 days to reach full compliance or the license to operate is revoked.

A grievance mechanism should be in place to ensure that affected parties can seek corrective action (VGGT, Section 12.14). A number of grievance mechanisms are in place to ensure that affected parties can seek corrective measures. In the provinces, the Local Court is the principal means of a grievance mechanism over title to land. Under Section 13 of the Local Courts Act 1963, the local courts have jurisdiction to hear and determine civil matters that are governed by customary law other than cases between Paramount Chiefs or Tribal Authorities involving a question of title to land. It is important to note that the Local Courts have exclusive jurisdiction in that area in the provinces. There are also other courts in the general legal system ranging from the Magistrates' Courts to the Supreme Court. These general courts form part of the grievance mechanism in Sierra Leone, but at different levels. Unlike in the Provinces, the general courts have original jurisdiction over title to land in the Western Area. All of these form part of the grievance mechanism through which affected parties may seek redress. In the hierarchy of the courts system in Sierra Leone, the judiciary forms the centre part of the grievance mechanism, with trained and qualified legal practitioners as professionals. These court men and women have the professional knowledge and capacity to facilitate women's access to the mechanism and ensure that men and women's tenure rights are equally protected. Additionally, under the draft Guidelines for ABI, grievance mechanisms are established during consultation and are reviewed with community committees to determine effectiveness for monitoring on an annual basis and ensure that they are continuing to meet the needs of communities. In addition, Section 8.1.7 of the draft NLP 2014 foresees the enactment of a statute to establish an Administrative Lands Tribunal which will have jurisdiction to handle 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. At the decentralized level, the District Land Commissions (DLCs) and the Chiefdom Land Committees (CLCs) will 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, resulting in delayed justice. There is however no relevant provision in the legal framework that eliminates unnecessary legal and procedural requirements relating to tenure rights. Nevertheless, Section 7.1.5 of the draft NLP proposes the removal of bureaucratic inefficiency and corruption in the land institutions; this is in fact only envisaged to facilitate the delivering of land for investment. The document therefore lacks administration for the benefit of other tenure right holders.

In a bid to protect tenure rights, Section 3 of the Provinces Lands Act<sup>26</sup> provides that no land in the provinces shall be occupied by a non-native unless he/she has first obtained the consent of the tribal authority to his occupation of such land. The Act defines a non-native as a person “not entitled under customary law to right in land in the Provinces”.<sup>27</sup> Additionally, any non-native who occupies land in the Protectorate/Provinces without the approval of the District Commissioner (in today’s application, the Paramount Chief) is deemed as a tenant at will.<sup>28</sup> A ‘tenancy at will’ is defined in the interpretation section of the Act as a tenancy in which the lessee holds at the will of the lessor and which may be determined without notice by the lessor. Furthermore, Section 4 states that “no non-native is to acquire an interest in land in the protectorate than a tenancy for a term of fifty years”, and such acquisition is necessarily for large-scale investment, limited by leasehold which can be renewed for a second or “further term of not more than twenty-one years.”<sup>29</sup> This in essence means that non-natives are only entitled to leasehold and not to a freehold. Simply put, they are not allowed to buy and own title to lands in the Provinces.

In addition, the Non-Citizens (Interest in Lands) Act 1966 which applies in the Western Area prohibits individuals who are not citizens of Sierra Leone, or any such company, association or body of persons with more than half of its members of whom are not Sierra Leoneans from getting a freehold interest in land.<sup>30</sup> At Section 3, the Act states categorically that no non-citizen shall purchase or receive in exchange or as a gift any freehold land in the Western Area. Although the Act protects tenure rights, it however deviates from the VGGT (Section 7) with regards to tenure right which calls for non-discrimination of all persons irrespective of nationality or race. Section 4 of the same Act limits tenure right for all non-citizens to only leasehold, and this is also tailored alongside what is called “reserved leasehold” with a limited term not exceeding twenty-one years, and must be obtained with a license from a board headed by the Minister of Lands.<sup>31</sup> Moreover, where any freehold land or reserved leasehold is received by a non-citizen by way of any conveyance, lease, transfer, settlement or other disposition, and such land has not been authorized by a license from the Board, such interest shall be vested in the Board and the Board can cause the sheriff to sell it by public auction.<sup>32</sup>

Again, the complete disposal of state land by sale or otherwise is prohibited without the permission of the Minister being sought and obtained, but the Minister can make grants of state land as and when he deems fit, provided that the required provisions are met.<sup>33</sup>

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26 The Provinces Land Act (Cap 122 of the Laws of Sierra Leone), Section 3.

27 Ibid, Section 2.

28 Ibid.

29 Cap 122 of the Laws of Sierra Leone 1960.

30 The Non-Citizens (Interest in Lands) Act, 1966, Section 2.

31 Ibid, Section 4(1).

32 Ibid, Section 5.

33 The State Lands Act 1960, Part II, Section 3-9.

Measures should be taken for proper governance of state land to ensure that vulnerable people are not deprived. It is important to note that a person who can prove to the court of law that he or she has right to the land through a bona fide claim of right, such person shall not be deprived. This is in accordance with the VGGT (Section 6.6) which provides for additional measures to support the vulnerable or marginalized groups of persons who cannot otherwise access administrative and judicial services (VGGT, Section 6.6).

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

### **2.3.1 Administration of tenure**

In order for tenure rights to be recognized, there is a need for a structured and uniform land interest registration applicable nationwide. The General Registration Ordinance (Cap 255) provides in Section 5 for the establishment of the OARG which is the general registry and depository of all registers, instruments and records and copies delivered. It is therefore apt to say the registration system organizes the recording (VGGT, Section 17.1), but not specifically any updating and publication of tenure rights and duties of the holder, including his or her family status and associated spousal rights. In its current form, the Registration of Instruments Act, Cap 255 appears to be inadequate and unable to overcome the many challenges that it faces. One of such challenges remains with the office of the Registrar-General which is centralized in Freetown, the capital city, amidst long standing calls for decentralization and devolution of the functions of central government. Because of the centralization of the registration of title to land, many land holding persons in the Provinces find it very difficult to have proper documentation for their land due to the long distance they have to cover to Freetown in order to register their interest in land. There is the need therefore for government to decentralize and devolve the functions of the office of the Registrar General to regional and districts bodies throughout the country as a way of correcting such unnecessary legal and procedural requirement. Nevertheless, in Section 6.1.8 of the draft NLP, a number of special measures relating to customary land tenure, including the registration of land rights under customary tenure after the introduction of the new system of registration of titles are listed. Furthermore, Section 7.1.4 envisions the joint spousal registration and documentation of land rights, as well as joint spousal consent to land disposals applicable for all forms of tenure.

It is important to note that in some parts of the Provinces currently, the identification and recognition of land squarely depends on memory and folklore. That is, people claim title to land based on what stories they are told by their grandparents, traditional leaders or elderly persons in the community. This gap has been identified in the draft NLP, and is accordingly provided for in paragraph 8.1.8. The draft NLP states that the government shall re-structure, modernize and simplify the land rights delivery systems, and with the view to undertake implementing measures that will include the establishment and operationalization of regular maintenance of community land registries for the recording and certification of land rights under customary law. The draft policy further proposes the introduction of modern technology in land rights management that will include the computerization of all land registries, commencing with those established in urban areas. Government is to simplify all land registry practices through the use of modern transaction documents, and regularize the fees and charges for effective control by local governments. To achieve this, the reform procedure by the policy will include but is not limited to the creation of a semi-autonomous state agency that will be charged with the responsibility to manage and appropriately sequence the services of physical planning, land development, land registration, land

surveys, valuation and mapping; allocation of rights and interests in government and communal land, and land information services. However, this requires capacity building for effective and efficient management of such innovation.

Although land administration services are accessible (VGGT, Section 17.3), no relevant provision exists on matters relating to personnel having appropriate knowledge to deliver information on tenure rights of men and women, including spousal rights and the capacity to ensure that woman's tenure rights are protected. There are no existing requirements in the legal framework on the necessary knowledge and/or skills for those involved in the local land administration. However, Section 8.1.10 of the draft NLP on land rights demarcation, mapping and survey notes the shortage of qualified personnel in some areas, administrative bottlenecks in the preparation and approval of deed plans, and prohibits survey costs. This Section contains a number of measures to address the issues including the training of land rights adjudication, demarcation, and survey and mapping personnel by public or private sector agencies, and the recognition and formalizing of community-based boundary marking systems for land held under customary tenure.

Under ease of access to land, the draft NLP proposes among other things that government shall wholly and fundamentally restructure the lands rights administration systems meant to enhance efficiency, ease of access, and cost-effectiveness. The two existing land rights administration system will be reviewed and measures taken to harmonize the formal system administered by the Ministry of Lands, Country Planning and the Environment (MLCPE) mainly in the Western Area under the general law, and the informal and traditional system governed mainly by customary law applicable exclusively in the Provinces. In order to deal with the diverse issues raised by the present complex institutional framework, the policy further proposes to achieve its goal through the establishment of three key land management institutions which include the NLC, the DLCs, the CLCs and Village Area Land Committees. The existence and mandate of these institutions shall be founded in the Constitution of Sierra Leone and shall be detailed in a statute enacted for that purpose. With the introduction of such measures, the issue of reliance on word- of mouth handed down from one generation to another will be minimized, and this will greatly enhance the recognition and allocation of tenure rights. On the whole, the proposals are innovative and it is hoped that when implemented they will capacitate and strengthen the existing system.

The MLCPE has the political mandate for land administration services in the country, while title or interest in land must be registered in the office of the Registrar General. But, whether the personnel have the appropriate knowledge to deliver information on the tenure rights of men and women, including spousal rights and the capacity to ensure that woman's tenure rights are protected cannot be vouched. In fact, gender disaggregation in service delivery in Sierra Leone is not a common practice in general, of cause not in tenure administration. According to the draft NLP, the proposed land commission and committees are to be staffed with representatives within the land sector, ministry, agencies and civil society. The majority of members will be elected by a majority of eligible voters in the jurisdiction of candidates who shall meet the eligibility criteria. As per statutory provision, the NLC according to the policy shall have the mandate to hold title to and administer all state/government lands in Sierra Leone, and in this respect, shall perform all those functions currently performed by the MLCPE under the States Lands Act 1960.

It should be noted that the law does not set quotas for the appointment of women in any institution in the country let alone in land management and administration committees (LAT indicator 29). This has been a point for advocacy by women's organizations in the country,

though it is yet unsuccessful. 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), it 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 with men and women of initiative who are knowledgeable in 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.

### **2.3.2 Valuation**

Valuation has yet to be addressed in the legal framework (VGGT, Section 18.4) and no relevant statement/measure could be located in the draft NLP on the matter. In essence, the law does not provide for valuation and the draft NLP does not address valuation except in Section 8.1.8, where it provides for “modernization of existing land rights delivery systems”, envisioned to create a semi-autonomous state agency to manage and appropriately sequence the services of physical planning, land development, land registration, land surveys, valuation and mapping. Valuation systems that take into account non-market values such as social, cultural, religious, spiritual and environmental values where applicable (VGGT, Section 18.4) are of course not in existence, neither does the policy propose measures on that. In essence, there is no known provision regulating this aspect of land tenure in Sierra Leone. These non-market values to be taken into consideration when valuation is being done play a big role in provincial lands, as land is not only sacred for its agricultural or mineral wealth but also has spiritual and social values. However, in determining compensation, the law does not require such non-market values to be contemplated. In any responsible land governance system, it is important to note that valuation is of great importance though as it helps to determine the correct value for any land or property. Furthermore, the basis upon which compensation shall be payable for damage to the surface of any land shall be the extent to which the market value of the land upon which the damage has occurred has been reduced by reason of such damage, and not necessarily taking into account any enhanced value due to the presence of minerals. This is the more reason why land valuation is of great importance.

On the issue of transparency in valuing tenure rights (VGGT, Section 18.4) the law and the draft NLP are silent; in fact, no provision can be located on the subject matter. But for the purpose of using land for mining, Section 159 of the Mines and Minerals Act 2009 provides for transparency. Here the law makes provision for some amount of transparency, though not valuation. This is an area of concern too. A wide gap is left in the legal framework contrary to the provisions of Section 18.1 of the VGGT which provides that “states should ensure that appropriate systems are used for fair and timely valuation of tenure rights for specific purposes such as operation of markets, security for loans, transactions in tenure rights as a result of investments, expropriation and taxation.” No such information on sale prices and other relevant information are recorded, analysed or made accessible to provide a basis for accurate and reliable assessments of values. However, the Right to Access Information Act No.2 of 2013, Section 8(1)(m) provides for the publication of particulars of concessions, permits or authorizations granted by public authorities. It is important to note however that it does not provide specifically for the publication of sale prices; the policy is also silent on it, with no statement/measure that can be located on it.

Furthermore, such valuation information and analyses are not in existence, and cannot therefore be made available to the public (VGGT, Section 18.5). The requirement on valuation systems as provided by the VGGT is quite absent in the legal framework and nor does the draft NLP make any mention of this area. Although the Right to Access Information Act requires making available such information, it is misleading to say it provides specifically for valuation information and analyses on land to be made available to the public. Therefore this is an area of concern. Also, sale prices are not recorded and the yardstick used to arrive at sale prices is haphazard. As far as the laws of Sierra Leone are concerned, the parameter for valuing land is quite non-existent, and is something that should be incorporated in the legal framework or land policy.

## **2.4 Access to justice**

In all societies where the potential for conflicts is foreseeable, there is the need for judicial mechanisms to be in operation as well as the opportunities for all parties to have access to such fora. States should 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 should provide effective remedies and a right to appeal (VGGT, Section 21.1). This mechanism is in place in Sierra Leone.

Sierra Leone has a dual court system, a general system and a system of recognized customary courts. The Constitution frames the powers and functions of the judiciary, while the Local Courts Act 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 shy away from the judicial system. Under Section 120(4) of the Constitution, the judicature consists of the Supreme Courts of Sierra Leone, the Court of Appeal and the High Court of Justice, which shall be the superior courts of record in Sierra Leone and which shall constitute one Superior Court of Judicature, and such other inferior and traditional courts as Parliament may by law establish. Section 2(1) of the Local Courts Act 2011 establishes a Local Court in each Chiefdom of Sierra Leone which consists of a Chairman, Vice-Chairman and such other members as the Local Government Minister may determine and, under Section 39(1), any person aggrieved by an order or decision by the Local Court can appeal to the District Appeal Court. According to Section 41(1) of the Local Courts Act, 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 confirms the competence of the Local Courts established under the Local Courts Act (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.

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 have 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." These principles operate in all the different courts established by law in Sierra Leone. However, as explained above, the exception clauses in the Constitution diminish the effect of the non-discriminatory clauses

with regard to customary law. These courts include both the inferior and superior courts of judicature and any other courts as Parliament may by law establish.<sup>34</sup> These courts afford avenues for redress, and according to their jurisdictions the courts are supposed 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 for the delivery of decisions to wit: every court established under the constitution must deliver its decision in writing and not later than three months after the conclusion of the evidence and final addresses or arguments of appeal. It must also provide all parties to the cause or matter with duly authenticated copies of the decision on the date of the delivery.

Additionally, Section 12(1) of the Local Courts Act 2011 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, whilst Section 8.1.7 of the draft NLP envisions 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 OARG and the Director of Surveys and Lands. At the Chiefdom level, the CLCs and the DLCs will maximize the opportunity to apply ADR mechanisms such as negotiation and mediation to reduce the number of cases that end up in the court system, resulting in delayed justice. It is important to note that it does not however contain any specific measure to reduce the costs and provide timely and effective remedies to disputes over tenure rights.

The right to appeal in justice systems, including in customary justice systems (VGGT, Section 21.1) exists in the judicial system of Sierra Leone and this is seen in both the customary justice system and the general 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 High Court itself serves as an appellate court for magisterial matters going on appeal. An appeal lies to the High Court from any final decision or order given or made by a Magistrate. Further, a right of appeal exists from the local courts pursuant to Section 29(1) of the Local Courts Act to the District Appeal Court and accordingly, Section 39 of the Local Courts Act 2011 provides for any such aggrieved person by an order or decision of the court, an appeal to the District Appeal Court. The 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. It is important to note further that an appeal at the District Appeal Court is by way of complete rehearing of the matter, and parties may be represented by legal practitioners before the District Appeal Court, unlike the Local courts and the Group Local Appeal Court where lawyers have no right of audience.<sup>35</sup> And the aspect of lack of professional representation being denied at the local court level is incompatible with the rule of law, as it serves as an impediment to access to justice, but this is part of the legal processes of the country.

Under Section 41(1), 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 is only advisory on questions of customary law. And there is a right of appeal from this point to the Court of Appeal and to the Supreme Court in Sierra Leone. It is worthy of note that the Local

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34 The Constitution of Sierra Leone (Act No. 6 of 1991), Section 120 (4).

35 Ibid 34.

Courts Act 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. But Section 8.1.7 of the draft NLP confirms the competence of the Local Courts established under the Local Courts Act, 2011. And it 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 court 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 level.

An Anti-Corruption Commission has been established with a mandate to curtail corruption in the country. This is in line with the VGGT that recommend that clear mechanisms are in place to prevent corruption in dispute resolution mechanisms (VGGT, Section 21.5). This has complemented efforts in the legal sector to combat corruption in the justice apparatus. Accordingly, the Anti-Corruption Commission Act 2008 (ACC Act) applies to the judiciary, and according to paragraph 3.3(g)(ii) of the draft NLP, corruption may be combated through transparency in the processes of decision-making, making decision-makers accountable and ensuring decisions are delivered promptly. This does not however amount to the policy proposing measures to combat corruption in land adjudication in the judiciary. However, 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. This Act, as rightly stated above, applies to all public bodies including the judiciary. Therefore, there are clear mechanisms in place to prevent corruption in dispute resolution mechanisms in these courts, at least in theory.

Furthermore, the law makes provision for legal assistance in civil procedures (VGGT, Section 21.6). 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 alternative dispute resolution, advising on legal issues, and assisting with the drafting of documents. This Act establishes a body known as Legal Aid Board with the object 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 it requires the Legal Aid Board to be set up to provide the above stated services to the public. Until it comes into force, there are no other measures in place for aiding title holders on matters of law in relation to their rights and obligations, and no such relevant statement/measure could be located in the policy for such services.

## **2.5 Prevention of disputes, conflicts and corruption**

In a bid to prevent disputes, conflicts and corruption, states should strive to eliminate all unnecessary legal and procedural requirements related to tenure rights (VGGT, Section 6.3). While Section 7.1.5 of the draft NLP proposes to remove bureaucratic inefficiency and corruption in the land institutions, this is only envisaged to facilitate the delivery of land for investment. The document therefore lacks a specific policy statement on strengthening land administration for the benefit of other tenure right holders.

## 2.6 Natural disasters

There are no provisions in law or policies in Sierra Leone that aim at protecting, restoring or reallocating tenure rights in cases of emergencies or because of climate change. With the increasing trend in rural–urban migration, there are a lot of 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 hillsides of the Western Area, which creates the potential for large-scale disasters to occur in these newly created areas. The lack of proper planning in these areas has also led to a situation wherein it is merely a matter of time for such disasters to occur as nature has to take its course.

In order to salvage this situation, the draft NLP<sup>36</sup> 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. This is in line with the VGGT which stipulates that “parties should ensure that tenure aspects of land, fisheries and forests are addressed when preventing and preparing for natural disasters and in their responses to them. Regulatory frameworks for tenure, including spatial planning, should be designed to avoid or minimize the potential impacts of natural disasters” (VGGT, Section 24.1) – 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.

The EPA Act of 2008 serves as the principal legal and substantive instrument responsible for the regulation of the environment. According Section 25 of the Act, within fourteen days of receiving an application for the use of land, the EPA should decide whether an Environmental Impact Assessment (EIA) is required of the project in question. In the 2<sup>nd</sup> and 3<sup>rd</sup> schedules of the Act, an EIA<sup>37</sup> is required to determine the location of the project and its surroundings, the principle, concept and purpose of the project, and the direct or indirect effects that the project is likely to have on the environment. Further, it is required that the social, economic and cultural effect that the project is likely to have on people, society and the communities as well, should be assessed, and interested parties including government ministries should be consulted accordingly. These are the indicators which the Agency uses in assessing all projects being implemented within Sierra Leone, and it is supposed to be done annually. In an event where a particular project fails to meet these criteria in their assessment, the Agency has the statutory mandate to ensure the compliance of such company.<sup>38</sup> These measures and environment protection procedures have been put in place by the legal framework and are being observed in Sierra Leone.

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36 Section 9.3, draft National Land Policy 2014.

37 The Environmental Protection Agency Act, 2008, Third Schedule, Section 26.

38 Ibid, Section 12(i).

### 3. RECOMMENDATIONS

#### 3.1 Recommendations on the draft National Land Policy

##### a) Recognizing and protecting legitimate tenure rights

It is recommended that Section 3.2(d) on cultural principles be rephrased in order to give more prominence to the recognition and protection of all legitimate tenure rights as per Section 3 of the VGGT. The following rephrasing is recommended:

- i) The NLP recognizes the social, cultural and legal foundation that customary law carries in society, particularly in the Provinces and takes measures to prevent tenure disputes and corruption.

It is also recommended that the following be incorporated into the section dealing with cultural principles set in Section 3.2(d):

- ii) The NLP shall safeguard legitimate tenure rights against threats and infringements. Tenure right holders shall be protected against the arbitrary loss of their tenure rights.
- iii) The NLP shall set out measures to promote and facilitate the enjoyment of legitimate tenure rights.
- iv) The NLP shall facilitate access to justice to deal with infringements of legitimate tenure rights.

##### b) Strengthening the right to participate and be consulted

It is recommended that a paragraph on consultation and public participation should be incorporated in Section 3.2 of the draft NLP, echoing Principle 6 (3B) of the VGGT. Such a paragraph would ascertain the commitment of the Government of Sierra Leone to consult and provide an opportunity for tenure right holders to participate in the decision-making processes that will affect their tenure rights. Also, such a paragraph would provide a guiding framework for the policy measures that are set in this study. The NLP should be implemented and tenure rights administered in accordance with the principle of participation and consultation. The government and all relevant institutions and bodies that take decisions affecting the legitimate tenure rights of groups and individuals, should ensure their active, free, effective, meaningful and informed participation. Decision-making mechanisms shall redress existing power imbalances between different parties.

##### c) Strengthening gender equality and women's rights

It is recommended that the principle on gender equality be incorporated in Section 3.2, echoing Principle 4 in Section 3B of the VGGT. Such a paragraph would ascertain the commitment of government to gender equality and would provide a guiding framework for the policy measures that are set forth in this study. The NLP should ensure equal right of women and men to the enjoyment of all human rights, acknowledging differences between women and men and taking specific measures aimed at accelerating *de facto* equality when necessary. Also, the NLP should ensure that women and girls have equal tenure rights and access to and control over land, independent of their civil and marital status, and the policy

should commit to the elimination of all persisting discrimination in the Constitution, laws, policies and customary practices.

**d) Strengthen the framework for responsible investments in land**

It is recommended that government adopt the Guidelines for Sustainable Agricultural and Bioenergy Investment, 2013 and the principles of these draft guidelines should be reflected in the NLP, and suggestions of such elements of the principles incorporated. In this vein, government should target and encourage responsible investments that have the potential to contribute to food security, nutrition, poverty eradication and environmental resilience. Such investment should do no harm and must safeguards against dispossession of legitimate tenure right holders. It should protect against environmental damage, and must respect human rights. Further, responsible investments should be made working in partnership with relevant levels of government and local holders of tenure rights to land, respecting their legitimate tenure rights.

Additionally, government should refine the policy statement in Section 7.1.5 on Access to Land for Investment and develop an implementation strategy to strengthen the policy and legal framework for responsible investments. Therefore, it is further recommended that government adds to Section 7.1.5 of the policy statement three new points that will include adopting measures to ensure that investors act responsibly, respect human rights and legitimate tenure rights, and do no harm to food security, local livelihoods and the environment; put in place an effective system to monitor the implementation and impact of agreements involving large-scale transactions in tenure rights, and set up a grievance mechanism to ensure that affected parties can seek corrective action.

In view of the above, it is recommended that the following points form part of the implementation strategy:

- i) Government shall review and strengthen the Investment Promotion Act, 2004 to encourage responsible investments.
- ii) Government shall adopt the draft Guidelines for Sustainable Agricultural and Bioenergy Investment.
- iii) Government shall require investors to recognize and respect all legitimate tenure rights (VGGT, Section 12.12).
- iv) Government shall put in place regulations for responsible investors to seek partnerships with local tenure right holders (VGGT, Section 12.6).
- v) Government shall require consultation with all stakeholders prior to the transaction of tenure rights, including partnership agreements (VGGT, Section 12.9).
- vi) Government shall set up clear and transparent procedures and criteria to ensure the full participation of all relevant stakeholders, landowners and land users  
in the identification (systematic or ad hoc) of land suitable for responsible investment or for establishing of land banks for the purpose of allocating land to investors (VGGT principles 3A and 3B).
- vii) Prior to allocating land for responsible large-scale investments in land, an independent assessment be made to identify the potential positive and negative impact of large-scale transactions of tenure rights on: a) tenure rights of men and women; and b) food security and the realization of the right to adequate food (VGGT, Section 12.10).

- viii) Government shall 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).
- ix) Government shall establish a legal assistance fund for legal and paralegal assistance to communities, land owners and land users in negotiations with potential investors in land for agriculture and bioenergy (draft Guidelines for ABI).
- x) Government shall require investors in agriculture and bioenergy to obtain the free, prior and informed consent of the community where land investment is proposed (draft Guidelines for ABI).
- xi) Government shall 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 (draft Guidelines for ABI).
- xii) Government shall promote revision clauses in long-term land leases with regard to compensation (draft Guidelines for ABI).
- xiii) Government shall establish a mechanism to monitor the outcome of allocation of land, including the gender-differentiated impacts on food security and poverty eradication as well as their impacts on social, economic and environmental objectives (VGGT 8.11) and introduce corrective measures as required.
- xiv) Government shall facilitate access to justice in case of grievances over investments in land and also require large-scale investors to establish internal grievance mechanisms.

Again, government should strengthen land use planning provisions to ensure participation of stakeholders by amending the policy statement to include: “special areas for various investments shall be identified and set aside for allocation to investors by the government, with the participation of stakeholders and bearing in mind the safeguards listed in Section 7.1.5.”

#### **e) Institutional issues**

It is recommended that a careful review of institutional mandates be done to avoid overlap between the roles and responsibilities of the different ministries, departments and agencies and the new institutions to be established under the NLP, and the incorporation of gender equality and affirmative action in the institutions be considered to promote gender equality meant to ensure proportionate representation of women in institutions dealing with land at all levels of the institutions envisaged. The right to affirmative action is integral for the purposes of redressing the imbalances created by history, tradition and custom.

#### **f) Registration system**

The draft NLP acknowledges the various challenges with the current land registration system. Registration of customary land may be thorny, and all tenure rights would have to be registered: this would include the rights of women to access land, the rights of “strangers” as tenants and clearer identification and distinction between the different types of land (community, family, individual land). Consideration should be given to prioritizing the identification and demarcation of boundaries within communities in customary land registration. Development of a registration system for lands under customary law requires a high degree of consultation and participation by the affected persons and their

representatives. It is therefore recommended not to commit in the NLP to courses of action that could prove detrimental to legitimate tenure right holders in the country and leave sufficient policy space for further development of the various ideas and options during implementation of the NLP.

Provisions should be made that when providing legal recognition to informal tenure, this be done through participatory, gender-sensitive processes, having particular regard to tenants. These processes should facilitate access to legal services and minimize costs, and technical and legal support should be provided to communities and participants.

#### **g) Valuation**

- (i) The draft NLP should build on the existing Right to Access Information Act, 2013 and require all relevant public authorities involved in land administration to adopt and disseminate widely, including on their website, a publication scheme as per Section 8(2) of the Act. Valuation information and analyses should be made available to the public through various media including community-based radios.
- (ii) The draft NLP should include provisions on valuation being based on the prevailing market prices as this will determine the amount of compensation to which tenure right holders are entitled to.

### **3.2 Recommendations on the national legal framework**

#### **a) Constitutional amendment of discriminatory provisions**

The Constitution of a country is its highest law and thus influences other legislations that could be enacted. In this respect, Section 27(4)(d) of the Constitution of Sierra Leone which states that discrimination “with respect to adoption, marriage, divorce, burial, devolution of property on death or other interest of personal law” are not covered by Subsection (1) of Section 27 which prohibits any provision of law which is discriminatory either in itself or in its effects, should be completely repealed and all subsequent laws that draw strength from it whether they are customary laws or statutory laws. The customary law which governs land tenure in the provinces varies from tribe to tribe and is not cohesive. However, the common thread running through most of the regions is that it discriminates against women with regards to ownership and use of land. The Provinces Land Act, Cap 122 limits the interest which a non-native can have in land in the provinces to a period of not more than 50 years. The introduction of the term non-native and its definition should be revisited because on the one hand it is discriminatory; on the other hand it serves as a deterrent to investors who may wish to make long-term investments.

Section 27 of the Constitution should therefore be amended to recognize customary law and religious law insofar as they do not violate constitutional rights, and gender equality in particular.

It is further recommended that the Constitution be amended to include provisions that protect the rights of women generally, including through special measures such as quotas to ensure women’s equitable representation at all levels.

## **b) Amendment of the legal framework for investments**

The Investment Promotion Act, 2004 should be amended to provide an adequate and enabling framework for responsible investments to take place.

In particular:

- i) The Act should contain a definition of “responsible investment”. This definition should cover both domestic and foreign investments that protect legitimate tenure rights, human rights, livelihoods, food security and the sustainable use of the environment.
- ii) Provision should be made for an independent assessment to be carried out to identify the potential positive and negative impacts of investments on the tenure rights of men and women, on food security and the realization of the right to adequate food.
- iii) Provision should also be made for the consultation of all stakeholders, including women, prior to the transaction of tenure rights.
- iv) The Act should contain a provision that requires agreements for investments to clearly define the rights and duties of all parties to the agreement and to comply with national legislation and investment laws.
- v) To ensure that professional assistance is available for men and women to participate meaningfully in these consultations, a Justice Fund should be established as per the draft Bioenergy guidelines. The Investment Promotion Act, 2004 could be the legal basis to define the role, responsibilities of the Justice Fund and enact the conditions and procedures to seek legal assistance.

## **c) Amendment of the legal framework for registration**

- i) The Registration of Instruments Act (Cap 256)  
Currently, the law on registration in Sierra Leone requires that instruments of land transactions are registered and not the interests that is created. This situation is untenable as there may be several transactions in respect of the same piece of land there by creating multiplicity of interests as well as being a source of conflict. It is therefore recommended that this Act be amended to make provision for the registration of interests in the land as well as the deeds.
- ii) The General Registration Ordinance (Cap 255)  
The Ordinance should be amended to provide for the establishment of Offices of the Administrator and Registrar-General (OARG) in the Provinces and other locations.

## **d) Institution of land valuation system**

The current legal framework of the country does not make provision 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 setting up of an independent board that will be taxed with carrying out this exercise. The guiding principles of valuation can be laid out in the form of regulations, but these must follow international market standards.

**e) Ensure prompt and just compensation**

The Public Lands Act and the Mines and Minerals Act 2009, among others, provide for compulsory acquisition of property. However, there is no prescribed time limits stated within which the owner of the land is to receive compensation for the land. There is further no prescribed method of determining what is adequate and just compensation for owners of land that will lose all rights to their land forever. There is therefore the need to put in place a mechanism whereby just compensation can be worked out by an independent body that will ensure that such compensation is received by the landowners within a reasonable time. The draft NLP foresees the adoption of a uniform method for the exercise of the power of compulsory acquisition to include adequate prior notice to and consultations with all persons to be affected, payment of prompt and fair compensation and due recourse to justice in the event of any dispute. It is recommended that this method set out criteria to determine what is prompt and fair compensation.

**f) Introduce consultations with tenure right holders before land transactions**

Due to the type of land tenure system that is being 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 is done by the paramount chiefs directly, and not with the tenure right holders. The situation that is created as a result of this is that land transactions are carried out for large portions of land without the knowledge or consultation of the tenure holders. Contracts are signed long before the tenure right holders become aware of them and several ugly situations have cropped up in this regard. For this reason, all tenure right holders, including women, should be identified and consulted prior to the signing of any contract. Even though not everyone will be empowered to negotiate with the investors, all tenure right holders must be made aware of any possible transaction that is underway in a language that they understand, and this should be supported by the representation of the main title bearers being respected. Furthermore, they should be represented at such transactions by independent and knowledgeable people who will seek their interests when contracts are being signed.

**g) Provide for post-transaction monitoring**

There is no provision in the legal framework currently for monitoring the effects of land agreements on the rights of men and women (interest holders) after such agreements may have been concluded by the government. This lacuna in the legal framework has not been addressed by the draft NLP. The land commissions being proposed by the policy should be tasked with the responsibility of monitoring the effects of land agreements on the tenure right holders.

**h) Updating outdated tenure laws**

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. Most of the received English laws which are in operation in the Western Area (former Colony) are outdated and have long lost their relevance in modern times. These laws need to be updated to accommodate current legal issues in present day Sierra Leone.

**i) Strengthen gender equality in the legal framework**

It is recommended that 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:
  - (a) It should make spousal consent mandatory for any transaction involving matrimonial property.
  - (b) It should include a definition of “spouse” that mirrors the one adopted in the Devolution of Estates Act, 2007 and which includes unmarried couples. To wit: “an unmarried man and woman who have cohabited for a period of not less than five years”.
  - (c) It should include a presumption of joint ownership of property for unmarried couples who have cohabited for a period of not less than five years.
- ii) The Gender Equality Bill

It covers diverse areas and its main object is to ameliorate the condition of women in all aspects of life, and at all levels. The Gender Equality Bill is still undergoing the test of political pressure and is yet to be passed into law in Sierra Leone. Among other things, the Bill advocates for 30 percent of women in the house of parliament but more so advocates for women’s proper and adequate representation in other institutions, including the local councils. The Bill deals with diverse issues including tenure right and its administration. It is recommended that it is passed into law and without further delay.
- iii) The Devolution of Estates Act, 2007

This Act should be amended:

  - (a) To ensure that 100 percent of the share that devolves to the children is devolved in equal shares between brothers and sisters.
  - (b) To include a right to compensation of siblings giving up their claims on the family property.

**j) 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”.
  - (c) To include minimum requirements for the representation of women in the local courts.
- iii) The 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 the indigents as per the Legal Aid Act, 2012.

**k) Recommendations on the future basic land law to be drafted**

The forthcoming land law will be a crucial instrument in strengthening the governance of land tenure. It should strive to find the appropriate balance between the necessary procedural requirements, the smooth running of land administration and the burdens placed on tenure right holders.

It is recommended that the following points be considered when drafting the new basic land law:

- i) It is important that the new law mitigates the negative impact of large-scale investments in land on tenure rights and food security. The draft Guidelines for ABI set a ceiling of 5 000 hectares of land beyond which land transactions will require parliamentary approval. It is recommended that the new basic land law mirrors this requirement.
- ii) It should include 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.
- iii) To ensure that information on valuation is available, the forthcoming land law should include a cross-reference to the existing Right to Access Information Act, 2013 and require all relevant public authorities involved in land administration to adopt and disseminate widely, including on their website, a publication scheme as per Section 8(2) of the Act.
- iv) The ability of the personnel to deliver information on tenure rights, including spousal rights is at the centre of effective land administration. The new basic land law should therefore contain a number of specific requirements to ensure that: i) the personnel have the adequate knowledge and skills to carry out their tasks; and ii) that the efforts 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.

Gender equality in tenure is at the heart of the VGGT. The new basic land law should also contain 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.

## ANNEX 1 — ANALYSIS OF LEGAL FRAMEWORK FOR LAND

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

### Guiding Principle 1: Recognition and respect of all tenure right holders and their rights

#### Legal recognition and allocation of tenure rights and duties

VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
7.3	The law recognizes all existing tenure rights, including customary tenure rights, whether recorded or not.	1	3	<p><b>Law:</b></p> <ul style="list-style-type: none"> <li>The Provinces Land Act, Cap 122</li> </ul> <p>The Preamble states “Whereas all land in the Protectorate is vested in the Tribal Authorities who hold such land for and on behalf of the native communities concerned:...” which in essence recognizes customary tenure rights. These lands are held in communal ownership vested in the tribal authorities who administer it on behalf of the communities in line with the customs and usages of the people.</p> <ul style="list-style-type: none"> <li>The Non-Citizens (Interest in Land), Act 1966</li> </ul> <p>Section 4(1) limits non-citizens’ rights to purchase or receive in</p>	

Guiding Principle 1: Recognition and respect of all tenure right holders and their rights					
Legal recognition and allocation of tenure rights and duties					
VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
				<p>exchange or as a gift any reserved leaseholds in the western area without first obtaining a license from the Board.</p> <p><b>Policy:</b> the draft National Land Policy, 2014.</p> <p>Section 5.1.1 recognizes three types of tenure: freehold tenure, family tenure and customary tenure.</p>	
7.4	Under the law, men and women have the same tenure rights, including in customary systems.	1	2	<p><b>Law:</b> Persistence of gender-based discrimination in the legal framework.</p> <ul style="list-style-type: none"> <li>The Constitution of Sierra Leone, 1991</li> </ul> <p>Section 27(4) specifies that no law shall make provision which is discriminatory either of itself or in its effect except (<i>inter alia</i>) with respect to marriage, divorce, devolution of property on death or other interests of personal law. This provision serves to justify the persistence of gender-based discrimination in property rights</p> <p>Sierra Leone recognizes civil marriages, Christian marriages, Mohammedan marriages and customary marriages.</p> <ul style="list-style-type: none"> <li>Civil marriages are still governed by the Married Women's Property Act, 1882. Section 2 entitles every married woman to have and to hold as her separate property and to dispose of all real and personal property that belongs to her at the end of marriage, and that she acquires after her marriage, including wages, earnings, money and property.</li> <li>The Christian Marriage Act, 1960 protects the right of the spouses to agree on the control and enjoyment of their respective properties, including for the purpose of preventing one spouse from disposing, by legal procedure and means, of</li> </ul>	<ul style="list-style-type: none"> <li>Amend the Constitution:                             <ul style="list-style-type: none"> <li>To ensure that customary law and religious law are recognized insofar as they do not violate the principles of gender equality and non-discrimination.</li> <li>To include a provision legitimizing the use of special measures to redress discrimination in tenure rights.</li> </ul> </li> <li>Adopt the Matrimonial Causes Bill and the Gender Equality Bill.</li> </ul> <p>These statutes should guarantee men and women equal rights to property, including land, during marriage and upon divorce.</p>

**Guiding Principle 1: Recognition and respect of all tenure right holders and their rights**

**Legal recognition and allocation of tenure rights and duties**

VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
				<p>the other's properties after death.</p> <ul style="list-style-type: none"> <li>• The Mohammedan Marriage Act, 1905 does not make any reference to property management during marriage</li> <li>• In the Provinces, Section 18 of the Registration of Customary Marriage and Divorce Act, 2009 provides a wife in a customary marriage with the capacity to personally acquire and dispose of properties.</li> <li>• The Matrimonial Causes Act, 1960 does not explicitly recognize gender equality in the right to own and control property in marriage.</li> </ul> <p>A Matrimonial Causes Act and a Gender Equality Bill are pending adoption.</p> <p><b>Policy:</b> The draft National Land Policy, 2014.</p> <p>Section 7.1.4 acknowledges the particular challenges that women face in accessing land and lists a number of policy measures to strengthen women's tenure rights. Among these measures, the Government of Sierra Leone pledges to undertake the amendment of the Constitution so as to enact provisions to protect the rights of women generally. The draft NLP envisions the drafting of a new basic land law and promises that appropriate provisions are inserted in this new land law to ensure and protect equal rights of inheritance and ownership of land for women and children.</p>	
7.4	The law or policy provides for the systematic legal recognition and allocation of tenure rights of men and women, families and	1	0	<p><b>Law:</b> No relevant provision could be located in the legal framework.</p> <p><b>Policy:</b> The draft National Land Policy, 2014.</p>	<ul style="list-style-type: none"> <li>• Clarify the registration process for land held under customary tenure. Ensure that joint spousal registration and documentation of land rights applies to customary tenure as well as</li> </ul>

**Guiding Principle 1: Recognition and respect of all tenure right holders and their rights**

**Legal recognition and allocation of tenure rights and duties**

VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
	communities to provide full opportunities to acquire legal recognition of their tenure rights.			<p>Section 6.1.8 lists a number of special measures relating to customary land tenure including the documentation of the fundamental customary land tenure rules applicable to communities at all levels and the registration of land rights under customary tenure after the introduction of the new system of registration of titles.</p> <p>Section 7.1.4 envisions the joint spousal registration and documentation of land rights, as well as joint spousal consent to land disposals, applicable for all forms of tenure.</p>	freehold tenure.

**Guiding Principle 2: Protection of tenure rights against threats and infringements**

**Investments**

VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
16.1	The legal framework provides a clear definition of the concept of expropriation for public purpose.	1	3	<p><b>Law:</b> The Constitution.</p> <p>Section 21 lists some conditions and provides that prompt payment of adequate compensation should be given to the rightful owner.</p> <p>However, Sierra Leone has yet to adopt a law to give effect to this provision.</p> <p><b>Policy:</b> The draft National Land Policy, 2014.</p> <p>It asserts the sovereign power of the state to acquire or take possession of land throughout Sierra Leone compulsorily [...] subject to the payment of compensation. It envisages a constitutional amendment to protect this right and a set of regulations and guidelines to frame its exercise. It is important that these go beyond guidelines as they would have no legally-binding force and would be unlikely to provide sufficient protection against abusive state acquisitions.</p>	<ul style="list-style-type: none"> <li>The forthcoming land law should contain provisions on expropriation for public purposes. Importantly, it should provide a clear definition of “expropriation for public purpose”, in order to allow for judicial review.</li> </ul>
16.1	The legal framework provides for prompt and just compensation to the affected tenure right holders, including to subsidiary right holders such as the spouse.	1	0	<p><b>Law:</b> The Constitution.</p> <p>Section 21 lists some conditions and provides that prompt payment of adequate compensation should be given to the rightful owner.</p> <p>However, Sierra Leone has yet to adopt a law to give effect to this provision.</p> <p><b>Policy :</b> The draft National Land Policy, 2014.</p> <p>Section 5.1.2 of provides for the “prescription” of a uniform method for the exercise of the power of compulsory acquisition</p>	<ul style="list-style-type: none"> <li>As per the draft NLP, the forthcoming land law should contain provisions on expropriation for public purposes. It should provide safeguards to protect legitimate tenure rights, including adequate prior notice to and consultations with all persons to be affected, payment of prompt and fair compensation and due recourse to justice in the event of any dispute.</li> </ul>

Guiding Principle 2: Protection of tenure rights against threats and infringements					
Investments					
VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
				which is to include adequate prior notice to and consultations with all persons to be affected, payment of prompt and fair compensation and due recourse to justice in the event of any dispute. It makes no mention of subsidiary rights.	
12.6	The legal framework sets ceilings on permissible land transactions to protect legitimate tenure rights, human rights, livelihoods, food security and the environment from risks that could arise from large-scale transactions in tenure rights.	0	0	<p><b>Law:</b> No relevant provision could be located.</p> <p><b>Policy:</b> No relevant statement could be located.</p> <p>This is all the more lacking that guiding principle 3.1(b)(ii) of the NLP recognizes that due to increasing demands on food imports and inadequate domestic food supplies, it is necessary to incorporate measures that will stimulate local production with the ultimate goal of guaranteeing food security and realizing the right to food for everyone, particularly the vulnerable and marginalized.</p>	<ul style="list-style-type: none"> <li>The forthcoming land law should set ceilings on permissible land transactions. It should also set up an enabling framework to support responsible investments both domestic and foreign that protect legitimate tenure rights, human rights, livelihoods and food security.</li> </ul>
12.6	The legal framework requires parliamentary approval for transfers exceeding the ceiling.	1	0	<p><b>Law:</b> No relevant provision could be located.</p> <p><b>Policy:</b> The draft Guidelines for Sustainable Agricultural and Bioenergy Investment, 2013.</p> <p>For investments over 5 000 hectares, the MoU and a Lease Agreement are presented to Parliament for approval and the Memorandum of Understanding and Agreement is signed by the Lead Ministry(ies) together with the Ministry of Trade and Industry.</p>	<ul style="list-style-type: none"> <li>The forthcoming land law should require parliamentary approval for transfers exceeding the ceiling that have been deemed responsible following independent assessment.</li> <li>Adopt the draft Guidelines for Sustainable Agricultural and Bioenergy Investment, 2013.</li> </ul>
12.6	The legal framework provides incentives for investors to seek partnerships with local tenure right holders.	1	0	<p><b>Law:</b> No relevant provision could be located in the legal framework.</p> <ul style="list-style-type: none"> <li>The Investment Promotion Act, 2004</li> </ul>	<ul style="list-style-type: none"> <li>Amend the definition of “investment” in the Investment Promotion Act, 2004 to include a definition of “responsible investment”.</li> <li>Amend Section 11 of the Sierra Leone</li> </ul>

Guiding Principle 2: Protection of tenure rights against threats and infringements					
Investments					
VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
				<p>Section 15 of states that the government acknowledges that access to land is vital to the operations of a business enterprise and will take the necessary steps to facilitate an investor’s access to land. It does not contain any safeguards for the protection of legitimate tenure rights against threats and infringements.</p> <p>Section 4 provides that ‘Any investor whether domestic or foreign may invest in any legitimate form of business enterprise.</p> <ul style="list-style-type: none"> <li>• The Goods and Services Tax Act No. 6 of 2009,</li> <li>• The National Revenue Authority Act No. 11 of 2002</li> <li>• The Registration of Business Act, 2007</li> </ul> <p>They all set up regimes and provide for the taxation of goods imported into the country, the collection of revenue from permits, licenses or fees, as well as provide the structures for setting up and registering any business enterprise in Sierra Leone. They do not encourage investors to seek partnerships with local tenure right holders.</p> <ul style="list-style-type: none"> <li>• Under the Sierra Leone Investment and Export Promotion Agency Act, 2007 [No. 3 of 2007] the mission of the Agency is to promote investments in Sierra Leone and export of Sierra Leone products. It should target responsible investments.</li> </ul> <p><b>Policy:</b> The draft Guidelines for Sustainable Agricultural and Bioenergy Investment, 2013.</p> <p>Over 80 percent of feedstock is purchased from out growers (local cooperatives or local farmers).</p> <p>No relevant statement/measure could be located in the draft</p>	<p>Investment and Export Promotion Agency Act, 2007 [No. 3 of 2007] to ensure that the Agency facilitates responsible investments including by encouraging investors to seek partnerships with local tenure right holders.</p> <ul style="list-style-type: none"> <li>• Adopt the draft Guidelines for Sustainable Agricultural and Bioenergy Investment, 2013.</li> </ul>

Guiding Principle 2: Protection of tenure rights against threats and infringements					
Investments					
VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
				<p>National Land Policy, 2014.</p> <p>The draft NLP aims to create an enabling environment to attract investments (both domestic and foreign) in accordance with established laws and procedures.</p> <p>Section 7.1.5 on access to land for investments does not set up any safeguards to contain these investments. It aims to set up a framework for investments in Sierra Leone but does not target responsible investments and does not provide the necessary checks and balances to ensure that all investments in Sierra Leone contribute positively to the development of the country and preserve the livelihoods of its citizens.</p>	
12.8	The legal framework encourages responsible investments that respect human rights, promote food security and sustainable use of the environment.	1	3	<p><b>Law:</b> The EPA Agency Act, 2008.</p> <p>An Environmental, Social, and Health Impact Assessment license is required for all projects according to the First and Second Schedules of the Act, Section 24 and 25.</p> <p><b>Policy:</b> The draft Guidelines for Sustainable Agricultural and Bioenergy Investment.</p> <p>They refer to the EPA Agency Act of 2008.</p> <p>In the draft NLP, investors seeking to acquire land for investment through the government are merely required to submit a sound feasibility study (or studies) of the proposed activity (or activities) and evidence of ability to develop the said parcels or plots. It makes no mention of an impact assessment on tenure rights or on the sustainability of the project.</p>	<ul style="list-style-type: none"> <li>Amend the definition of “investment” in the Investment Promotion Act, 2004 to include a definition of “responsible investment” that respect human rights, promote food security and the sustainable use of the environment.</li> <li>Adopt the draft Guidelines for Sustainable Agricultural and Bioenergy Investment, 2013.</li> </ul>

Guiding Principle 2: Protection of tenure rights against threats and infringements					
Investments					
VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
12.8	The legal framework requires agreements for investments to clearly define the rights and duties of all parties to the agreement.	0	0	<p><b>Law:</b> No relevant provision could be located in the legal framework.</p> <p>The Promotion of Investments Act, 2004 does not provide an adequate framework, defining the rights and duties of the parties. It is designed to promote and attract private investment both foreign and domestic and generally create an environment conducive to private investment.</p> <p><b>Policy:</b> No relevant statement/measure could be located.</p>	<ul style="list-style-type: none"> <li>Amend the Investment Promotion Act, 2004 to provide a framework for agreements, defining the rights and duties of the parties.</li> </ul>
12.8	The legal framework requires agreements for investments to comply with national legislation and investment laws.	0	0	<p><b>Law:</b> No relevant provision could be located in the legal framework.</p> <p>Section 4 of the Investment Promotion Act, 2004 provides that any investor, whether domestic or foreign may invest in any legitimate form of business enterprise. It does not provide any definition of what is legitimate and does not explicitly require investors to comply with national legislation and investment laws.</p> <p><b>Policy:</b> No relevant statement/measure could be located.</p> <p>Section 7.1.5 of the draft NLP merely enjoins the government to ensure the protection of the land rights of citizens and access to land by vulnerable groups, small-scale landholders in the face of large scale foreign investments.</p>	<ul style="list-style-type: none"> <li>Amend the Investment Promotion Act, 2004 to require investors to comply with national legislation and investment laws.</li> </ul>
12.9	The legal framework provides for the consultation of all stakeholders prior to the transaction of tenure rights, including partnership	1	0	<p><b>Law:</b> No relevant provision could be located.</p> <p><b>Policy:</b> The draft Guidelines for Sustainable Agricultural and Bioenergy Investment, 2013.</p>	<ul style="list-style-type: none"> <li>Amend the Investment Promotion Act, 2004 to provide a framework for agreements, providing for the consultation of all stakeholders, including women, prior to the transaction of tenure rights.</li> <li>Adopt the draft Guidelines for Sustainable</li> </ul>

**Guiding Principle 2: Protection of tenure rights against threats and infringements**

**Investments**

VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
	agreements.			<p>Ahead of the agreement, representatives from the Lead Ministry and the Ministry of Local Government and Rural Development request to visit communities with the enterprise. All potentially affected communities identified through the review of the Consultation Plan, are encouraged to participate through radio broadcasts, publication at local town halls and/or public notice boards, and/ or dissemination among local civil society groups, as appropriate.</p> <p>Enterprise and community legal representative record data regarding each consultation including the main questions and concerns raised by both parties, the demographic information of participants, and any agreements reached.</p> <p>No relevant statement/measure could be located in the draft NLP. Section 7.1.5 does not provide for the consultation of all stakeholders prior to the transaction of tenure rights.</p>	Agricultural and Bioenergy Investment, 2013.
12.9	Professional assistance is available to ensure that men and women are aware of their tenure rights and can participate in consultations.	1	0	<p><b>Law:</b> No relevant provision could be located.</p> <p>The Legal Aid Act, 2012 which is yet to be implemented, provides for legal support in civil procedures.</p> <p><b>Policy:</b> The draft Guidelines for Sustainable Agricultural and Bioenergy Investment, 2013.</p> <p>The general public and affected communities have 30 days to review the ESHIA, with legal assistance if required through the Justice Fund, and to request revisions in the ESHIA and/or make suggestions for inclusion in the Impacts and Benefits Agreement.</p> <p>No relevant statement/measure could be located in the draft NLP.</p>	<ul style="list-style-type: none"> <li>Define the role and responsibilities of the Justice Fund, and enact the conditions and procedure to seek legal assistance.</li> <li>The Investment Promotion Act, 2004 could be the legal basis to establish the Justice fund or a separate statute could be enacted.</li> <li>Adopt the draft Guidelines for Sustainable Agricultural and Bioenergy Investment, 2013.</li> </ul>

**Guiding Principle 2: Protection of tenure rights against threats and infringements**

**Investments**

VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
12.10	The legal framework requires an independent assessment to be carried out, to identify the potential positive and negative impact of large-scale transactions of tenure rights on men and women's tenure rights.	0	0	<p><b>Law:</b> No relevant provision could be located.</p> <p><b>Policy:</b> No relevant statement/measure could be located.</p> <p>Under Section 7.1.5 of the draft NLP on access to land for investment, the Government of Sierra Leone is to put in place measures to mitigate the negative impacts of investments and to deliver equitable and sustainable development. The approach seems to favour mitigation over pre-screening of potentially negative investments. It is also worthy of note that the draft NLP does not identify any of these negative impact and merely acknowledges that data on the impacts of such investments is lacking.</p> <p>This is all the more lacking that guiding principle 3.1(c) (ii) of the NLP promotes a sustainable balance between accommodating investments while simultaneously safeguarding local interests, particularly relating to gender equality and rights of women.</p>	<ul style="list-style-type: none"> <li>The Investment Promotion Act, 2004 should be amended to require an independent assessment to be carried out to identify the potential positive and negative impacts of investments on the tenure rights of men and women.</li> </ul>
12.10	The legal framework requires an independent assessment to be carried out to identify the potential positive and negative impact of large-scale transactions of tenure rights on food security and the realization of the right to adequate food.	0	0	<p><b>Law:</b> No relevant provision could be located.</p> <p><b>Policy:</b> No relevant statement/measure could be located.</p> <p>Under Section 7.1.5 on access to land for investment, the Government of Sierra Leone is to put in place measures to mitigate the negative impacts of investments and to deliver equitable and sustainable development. The approach seems to favour mitigation over pre-screening of potentially negative investments. It is also worthy of note that the draft NLP does not identify any of these negative impact and merely acknowledges that data on the impacts of such investments is lacking.</p> <p>This is all the more lacking that guiding principle 3.1(b) (ii) of the</p>	<ul style="list-style-type: none"> <li>The Investment Promotion Act, 2004 should be amended to require an independent assessment to be carried out to identify the potential positive and negative impact of large-scale transactions of tenure rights on food security and the realization of the right to adequate food.</li> </ul>

**Guiding Principle 2: Protection of tenure rights against threats and infringements**

**Investments**

VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
				NLP recognizes that due to increasing demands on food imports and inadequate domestic food supplies, it is necessary to incorporate measures that will stimulate local production with the ultimate goal of guaranteeing food security and realizing the right to food for everyone, particularly the vulnerable and marginalized.	
12.10	The legal framework requires legitimate formal and informal tenure rights of men and women to be identified and recorded, including spousal rights.	1	0	<p><b>Law:</b> No relevant provision could be located.</p> <p>The legal framework of Sierra Leone does not provide for the registration of titles but for the registration of deeds.</p> <p>The present Deeds Registry is set up under the General Registration Act, Cap 255, which established a general Registry for the whole country. This Act is intended to be read together with the registration of Instruments Act, Cap 256, which effectively provides for the registration of instruments generally, and of those affecting land in particular.</p> <p><b>Policy:</b></p> <ul style="list-style-type: none"> <li>The draft NLP, 2014</li> </ul> <p>Section 6.1.8 lists a number of special measures relating to customary land tenure including the registration of land rights under customary tenure after the introduction of the new system of registration of titles.</p> <p>Section 7.1.4 envisions the joint spousal registration and documentation of land rights, as well as joint spousal consent to land disposals, applicable for all forms of tenure.</p> <p>Under Section 8.1.4 the National Land Commission will be responsible for the introduction of a system of registration of title</p>	<ul style="list-style-type: none"> <li>The forthcoming land law should provide for the systematic recording of freehold, family and customary tenure rights, including spousal rights.</li> </ul>

## Guiding Principle 2: Protection of tenure rights against threats and infringements

### Investments

VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
				<p>to land in accordance with the relevant legislation to be enacted.</p> <p>These sections do not offer an adequate solution to the registration of customary rights.</p> <ul style="list-style-type: none"> <li>The draft Guidelines for Sustainable Agricultural and Bioenergy Investment, 2013</li> </ul> <p>They recommend a land-use assessment of the project area including mapping of all tenure rights, including customary rights, informal tenure in investment area, and secondary land-use rights (e.g. crop cultivation, gathering, and herding) especially of women and vulnerable groups.</p>	
12.12	Under the law, investors have the obligation to recognize and respect tenure rights.	1	0	<p><b>Law:</b> No relevant provision could be located.</p> <p>The Promotion of Investments Act, 2004 does not compel investors to respect tenure rights.</p> <p><b>Policy:</b> The draft Guidelines for Sustainable Agricultural and Bioenergy Investment, 2013.</p> <p>They aim to ensure that lawful land tenure rights, including customary rights, informal rights, and use rights, are respected.</p> <p>The draft NLP is silent on this matter. In general, it places very few obligations on investors.</p>	<ul style="list-style-type: none"> <li>The Investment Promotion Act, 2004 should be amended to require investors to recognize and respect tenure rights.</li> <li>Adopt the draft Guidelines for Sustainable Agricultural and Bioenergy Investment, 2013.</li> </ul>
12.14	An effective system is in place to monitor the implementation and impact of agreements involving large-scale transactions in	1	0	<p><b>Law:</b> No relevant provision could be located</p> <p>The legal framework has not yet set up a monitoring system to monitor the impact of agreements involving large-scale</p>	<ul style="list-style-type: none"> <li>Amend the Sierra Leone Investment and Export Promotion Agency Act, 2007 [No. 3 of 2007] to set up a monitoring system and make the Agency responsible for the monitoring of</li> </ul>

**Guiding Principle 2: Protection of tenure rights against threats and infringements**

**Investments**

VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
	tenure rights.			<p>transactions in tenure rights.</p> <p><b>Policy:</b> The draft Guidelines for Sustainable Agricultural and Bioenergy Investment, 2013.</p> <p>SLIEPA coordinates monitoring with relevant ministries and the Human Rights Commission of Sierra Leone, based on specific aspects of the investment. Enforcement is led by EPA and the relevant technical Ministry on each issue, under the existing legal framework.</p> <p>If audit reveals non-compliance with any minimum criteria and/or any false claims, the enterprise is given 180 days to reach full compliance or the license to operate is revoked.</p> <p>The draft NLP is silent on the monitoring of agreements.</p>	<p>investments.</p> <ul style="list-style-type: none"> <li>• Adopt the draft Guidelines for Sustainable Agricultural and Bioenergy Investment, 2013.</li> </ul>
12.14	A grievance mechanism is in place to ensure that affected parties can seek corrective action.	1	3	<p><b>Law:</b> A grievance mechanism is in place to ensure that affected parties can seek corrective action.</p> <ul style="list-style-type: none"> <li>• The Local Courts Act, 1963</li> </ul> <p>Under Section 13 local courts have jurisdiction to hear and determine civil matters that are governed by Customary Law other than cases between Paramount chiefs or Tribal authorities involving a question of title to land.</p> <p>There are also other courts in the legal system ranging from the Magistrates Courts to the Supreme Court which forms part of the grievance mechanism but at different levels.</p> <p><b>Policy:</b></p> <ul style="list-style-type: none"> <li>• The draft Guidelines for Sustainable Agricultural and Bioenergy</li> </ul>	<ul style="list-style-type: none"> <li>• The forthcoming land law should provide for dispute resolution. It could expand the competence of the Administrative Land Tribunals (as envisioned in the draft NLP) to include disputes over tenure rights. The composition of these tribunals should reflect a fifty-fifty participation of men and women to encourage women to seek corrective action.</li> <li>• The Justice Fund should facilitate the resolution of disputes over tenure rights.</li> <li>• Adopt the draft Guidelines for Sustainable Agricultural and Bioenergy Investment, 2013.</li> </ul>

**Guiding Principle 2: Protection of tenure rights against threats and infringements**

**Investments**

VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
				<p>Investment, 2013.</p> <p>Grievance mechanisms are established during Consultation and are reviewed with Community Committee to determine effectiveness for Monitoring on an annual basis and ensure that they are continuing to meet the needs of communities.</p> <ul style="list-style-type: none"> <li>• The draft National Land Policy, 2014</li> </ul> <p>Section 8.1.7 foresees the enactment of a statute to establish an Administrative Lands Tribunal which will have jurisdiction to handle minor land disputes and administrative complaints against land-related institutions such as the OARG and the Director of Survey and Lands.</p> <p>At the Chiefdom level the CLCs and the DLCs will 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 resulting in delayed justice.</p>	

Guiding Principle 3: Promote and facilitate the enjoyment of legitimate tenure rights					
Administration of tenure					
VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
17.1	The registration system organizes the recording, updating and publication of tenure rights and duties of the holder, including his or her family status and associated spousal rights.	1	3	<p><b>Law:</b> The General Registration Ordinance (Cap 255).</p> <p>Section 5 provides for the establishment of the Office of the Administrator and Registrar-General (OARG) which is the general registry and depository of all registers, instruments and records and copies delivered.</p> <p><b>Policy:</b> The draft National Land Policy, 2014.</p> <p>Section 6.1.8 lists a number of special measures relating to customary land tenure, including the registration of land rights under customary tenure after the introduction of the new system of registration of titles.</p> <p>Section 7.1.4 envisions the joint spousal registration and documentation of land rights, as well as joint spousal consent to land disposals, applicable for all forms of tenure.</p>	<ul style="list-style-type: none"> <li>The General Registration Ordinance (Cap 255) should be amended to provide for the establishment of OARG offices in the provinces and other locations</li> <li>Clarify the registration process for land held under customary tenure. Ensure that joint spousal registration applies to customary tenure as well as freehold tenure.</li> <li>Provisions should be made that when providing legal recognition to informal tenure, this should be done through participatory, gender-sensitive processes, having particular regard to tenants; that these processes should facilitate access to legalization services and minimize costs; and that technical and legal support should be provided to communities and participants.</li> </ul>
17.3	Land administration services are accessible and the personnel have the appropriate knowledge to deliver information on the tenure rights of men and women, including spousal rights and the capacity to ensure that woman's tenure rights are protected.	1	0	<p><b>Law:</b> No relevant provision could be located.</p> <p>There are no existing requirements in the legal framework on the necessary knowledge and/or skills for those involved in local land administration.</p> <p><b>Policy:</b> The draft National Land Policy, 2014.</p> <p>Section 8.1.10 on land rights demarcation, mapping and survey notes the shortage of qualified personnel in some areas, administrative bottlenecks in the preparation and approval of deed plans, and prohibitive survey costs. It contains a number of measures to address the issue, including the training of land rights adjudication, demarcation, survey, and mapping personnel by public or private sector agencies, and the recognition and formalizing of community-based boundary marking systems for</p>	<ul style="list-style-type: none"> <li>Ensure that the efforts 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.</li> <li>The forthcoming land law should contain a number of specific requirements to ensure that the personnel have the adequate knowledge and skills to perform these tasks.</li> </ul>

Guiding Principle 3: Promote and facilitate the enjoyment of legitimate tenure rights						
Administration of tenure						
VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations	
				land held under customary tenure.		
18.4	The law requires transparency in valuing tenure rights.	0	0	<p><b>Law:</b> No relevant provision could be located.</p> <p><b>Policy:</b> No relevant statement/measure could be located.</p> <p>The draft NLP does not address valuation except in Section 8.1.8 on “Modernization of existing land rights delivery systems” where it is envisioned to create a semi-autonomous state agency to manage and appropriately sequence the services of physical planning, land development, land registration, land surveys, valuation and mapping.</p>	<ul style="list-style-type: none"> <li>The forthcoming land law should include provisions on the valuation of land. They should guarantee transparency in valuing tenure rights and ensure that women are included in the valuation process.</li> </ul>	
18.4	The law ensures that valuation systems take into account non-market values, such as social, cultural, religious, spiritual and environmental values where applicable.	0	0	<p><b>Law:</b> No relevant provision could be located.</p> <p><b>Policy:</b> No relevant statement/measure could be located.</p> <p>The draft NLP does not address valuation except in Section 8.1.8 on “Modernization of existing land rights delivery systems” where it is envisioned to create a semi-autonomous state agency to manage and appropriately sequence the services of physical planning, land development, land registration, land surveys, valuation and mapping.</p>	<ul style="list-style-type: none"> <li>The forthcoming land law should include provisions on the valuation of land.</li> <li>Special consideration should be given to the rights of vulnerable groups, including widows and women heads of households who have weak bargaining power.</li> </ul>	
18.4	Sale prices and other relevant information are recorded, analyzed and made accessible to provide a basis for accurate and reliable assessments of values	0	0	<p><b>Law:</b> The Right to Access Information Act, 2013 [No. 2 of 2013] Section 8(1)(m) provides for the publication of particulars of concessions, permits or authorizations granted by public authorities.</p> <p>However, it does not provide specifically for the publication of sale prices.</p> <p><b>Policy:</b> No relevant statement/measure could be located.</p>	<ul style="list-style-type: none"> <li>The draft NLP should build on the existing Right to Access Information Act, 2013 and require all relevant public authorities involved in land administration to adopt and disseminate widely, including on their website, a publication scheme as per Section 8(2) of this Act.</li> <li>The forthcoming land law should contain provisions on valuation and include a cross reference to this act to ensure coherence in the legal framework.</li> </ul>	

Guiding Principle 3: Promote and facilitate the enjoyment of legitimate tenure rights					
Administration of tenure					
VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
18.5	Valuation information and analyses are available to the public	0	0	<p><b>Law:</b> The Right to Access Information Act, 2013 [No. 2 of 2013] does not cover property rights.</p> <p>Section 8(1) (m) provides for the publication of particulars of concessions, permits or authorizations granted by public authorities.</p> <p>However, it does not provide specifically for valuation information and analyses to be made available to the public.</p> <p><b>Policy:</b> No relevant statement/measure could be located.</p>	<ul style="list-style-type: none"> <li>The draft NLP should build on the existing Right to Access Information Act, 2013 and require all relevant public authorities involved in land administration to adopt and disseminate widely, including on their website, a publication scheme as per Section 8(2) of this Act. Valuation information and analyses should be made available to the public.</li> <li>The forthcoming land law should contain provisions on valuation and include a cross reference to this act to ensure coherence in the legal framework.</li> </ul>
17.1	The registration system organizes the recording, updating and publication of tenure rights and duties of the holder, including his or her family status and associated spousal rights.	1	3	<p><b>Law:</b> The General Registration Ordinance (Cap 255).</p> <p>Section 5 provides for the establishment of the Office of the Administrator and Registrar-General (OARG) which is the general registry and depository of all registers, instruments and records and copies delivered.</p> <p><b>Policy:</b> The draft National Land Policy, 2014.</p> <p>Section 6.1.8 lists a number of special measures relating to customary land tenure, including the registration of land rights under customary tenure after the introduction of the new system of registration of titles.</p> <p>Section 7.1.4 envisions the joint spousal registration and documentation of land rights, as well as joint spousal consent to land disposals, applicable for all forms of tenure.</p>	<ul style="list-style-type: none"> <li>The General Registration Ordinance (Cap 255) should be amended to provide for the establishment of OARG offices in the provinces and other locations.</li> <li>Clarify the registration process for land held under customary tenure. Ensure that joint spousal registration applies to customary tenure as well as freehold tenure.</li> <li>Provisions should be made that when providing legal recognition to informal tenure, this should be done through participatory, gender-sensitive processes, having particular regard to tenants; that these processes should facilitate access to legalization services and minimize costs; and that technical and legal support should be provided to communities and participants.</li> </ul>
17.3	Land administration services are accessible and the personnel have the appropriate knowledge to	1	0	<p><b>Law:</b> No relevant provision could be located.</p> <p>There are no existing requirements in the legal framework on the necessary knowledge and/or skills for those involved in local land</p>	<ul style="list-style-type: none"> <li>Ensure that the efforts to strengthen the skills of the personnel involved in the adjudication, demarcation and survey recognition stretch beyond the Western Area and facilitate the</li> </ul>

Guiding Principle 3: Promote and facilitate the enjoyment of legitimate tenure rights						
Administration of tenure						
VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations	
	deliver information on the tenure rights of men and women, including spousal rights and the capacity to ensure that woman's tenure rights are protected.			administration.  <b>Policy:</b> The draft National Land Policy, 2014.  Section 8.1.10 on land rights demarcation, mapping and survey notes the shortage of qualified personnel in some areas, administrative bottlenecks in the preparation and approval of deed plans, and prohibitive survey costs. It contains a number of measures to address the issue, including the training of land rights adjudication, demarcation, survey, and mapping personnel by public or private sector agencies, and the recognition and formalizing of community-based boundary marking systems for land held under customary tenure.	formalization of land held under customary tenure.  • The forthcoming land law should contain a number of specific requirements to ensure that the personnel have the adequate knowledge and skills to perform these tasks.	
18.4	The law requires transparency in valuing tenure rights.	0	0	<b>Law:</b> No relevant provision could be located.  <b>Policy:</b> No relevant statement/measure could be located.  The draft NLP does not address valuation except in Section 8.1.8 on "Modernization of existing land rights delivery systems" where it is envisioned to create a semi-autonomous state agency to manage and appropriately sequence the services of physical planning, land development, land registration, land surveys, valuation and mapping.	The forthcoming land law should include provisions on the valuation of land. They should guarantee transparency in valuing tenure rights and ensure that women are included in the valuation process.	
18.4	The law ensures that valuation systems take into account non-market values, such as social, cultural, religious, spiritual and environmental values where applicable.	0	0	<b>Law:</b> No relevant provision could be located.  <b>Policy:</b> No relevant statement/measure could be located.  The draft NLP does not address valuation except in Section 8.1.8 on "Modernization of existing land rights delivery systems" where it is envisioned to create a semi-autonomous state agency to manage and appropriately sequence the services of physical planning, land development, land registration, land surveys,	<ul style="list-style-type: none"> <li>• The forthcoming land law should include provisions on the valuation of land.</li> <li>• Special consideration should be given to the rights of vulnerable groups, including widows and women heads of households who have weak bargaining power.</li> </ul>	

Guiding Principle 3: Promote and facilitate the enjoyment of legitimate tenure rights					
Administration of tenure					
VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
				valuation and mapping.	
6.3	Elimination of unnecessary legal and procedural requirements related to tenure rights.	1	0	<p><b>Law:</b> No relevant provision could be located.</p> <p><b>Policy:</b> While Section 7.1.5 of the draft NLP proposes to remove bureaucratic inefficiency and corruption in the land institutions, this is only envisaged to facilitate the delivery of land for investment. The document therefore lacks a specific policy statement on strengthening land administration for the benefit of other tenure right holders.</p>	<ul style="list-style-type: none"> <li>The forthcoming land law should strive to find the appropriate balance between the necessary procedural requirements, the smooth running of land administration and the burdens placed on tenure right holders.</li> </ul>

Guiding Principle 4: Access to justice					
Resolution of disputes over tenure rights					
VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
21.1	The legal framework guarantees gender-equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights.	1	3	<p><b>Law:</b> Sierra Leone has a dual court system, a general system and a system of recognized customary courts. The Constitution frames the powers and functions of the judiciary, while the Local Courts Act, 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 shy away from the judicial system.</p> <ul style="list-style-type: none"> <li>• The Constitution of Sierra Leone, 1991</li> </ul> <p>Under Section 120(4), the Judicature consists of the Supreme Court of Sierra Leone, the Court of Appeal and the High Court of Justice which shall be the superior courts of record of Sierra Leone and which shall constitute one Superior Court of Judicature, and such other inferior and traditional courts as Parliament may by law establish.</p> <p>Section 8(2) (c) mandates the Government to ensure unfettered access to the courts, and that the operation of the legal system promotes justice on the basis of equal opportunity.</p> <ul style="list-style-type: none"> <li>• The Local Courts Act, 2011</li> </ul> <p>Section 2(1) establishes a Local Court in each Chiefdom of Sierra Leone.</p> <p>Under Section 39(1) any person aggrieved by an order or decision by the Local Court can appeal to the District Appeal Court.</p> <p>Section 41(1): Appeals from the District Appeal Court are heard by the Local Appeals Division of the High Court.</p> <p><b>Policy:</b> The draft National Land Policy, 2014.</p> <p>Section 8.1.7 confirms the competence of the Local Courts established under the Local Courts Act, 2011 to exercise original</p>	

Guiding Principle 4: Access to justice					
Resolution of disputes over tenure rights					
VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
				jurisdiction over land matters involving title to land within the chiefdom with right of appeal to the hierarchy of the national court system.	
21.1	Impartial and competent judicial and administrative bodies provide timely, affordable and effective remedies to disputes over tenure rights.	0	3	<p><b>Law:</b></p> <ul style="list-style-type: none"> <li>• The Constitution, 1991</li> </ul> <p>Section 120(16) sets a timeframe for the delivery of decisions. Every Court established under the Constitution must deliver its decision in writing and no later than three months after the conclusion of the evidence and final addresses or arguments of appeal. It must also provide all parties to the cause or matter with duly authenticated copies of the decision on the date of the delivery.</p> <ul style="list-style-type: none"> <li>• The Local Courts Act, 2011</li> </ul> <p>Section 12(1) provides that the Court hold sessions at such times and places as may be necessary for the convenient and speedy dispatch of the business of the Court.</p> <p>The Act also lists some requirements to guarantee the competence and impartiality of the Chairman and Vice Chairman of the Court.</p> <p><b>Policy:</b> Section 8.1.7 the draft NLP envisions the creation of Land Dispute Tribunals which will have jurisdiction in respect of minor land disputes and administrative complaints against lands related institutions such as the OARG and the Director of Survey and Lands. At the Chiefdom level the CLCs and the DLCs will 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 resulting in delayed justice. It does not contain any specific measure to reduce the costs and provide timely and effective remedies to disputes</p>	<ul style="list-style-type: none"> <li>• The Act that will establish the Land Dispute Tribunals should contain requirements and timeframes to ensure the smooth delivery of justice in disputes over tenure rights.</li> <li>• The Act should limit the administrative burdens that increase the costs. Legal assistance should be made available to the indigents as per the Legal Aid Act, 2012.</li> </ul>

Guiding Principle 4: Access to justice					
Resolution of disputes over tenure rights					
VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
				over tenure rights.	
21.1	A right to appeal exists in justice systems, including in customary justice systems.	1	3	<p><b>Law</b></p> <ul style="list-style-type: none"> <li>The Local Courts Act, 2011</li> </ul> <p>Under Section 39, any person aggrieved by an order or a decision of the Court may appeal to the District Court.</p> <p>Under Section 41(1), appeals from the District Appeal Court are heard by the Local Appeals Division of the High Court.</p> <p>It is worthy of note that the Act 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 discrimination in customary courts due to the persistence of discriminatory practices.</p> <p><b>Policy:</b> The draft National Land Policy, 2014.</p> <p>Section 8.1.7 confirms the competence of the Local Courts established under the Local Courts Act, 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.</p>	
21.5	Clear mechanisms are in place to prevent corruption in dispute resolution mechanisms.	1	3	<p><b>Law:</b> The Anti-Corruption Act, 2008 applies to the judiciary.</p> <p><b>Policy:</b> No relevant statement/measure could be located.</p>	
21.6	The law makes provision for legal assistance in civil procedures.	0	3	<p><b>Law:</b> The Legal Aid Act, 2012.</p> <p>Section 1 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 alternative dispute resolution,</p>	<ul style="list-style-type: none"> <li>Implement the Legal Aid Act, 2012 by setting up the Legal Aid Board.</li> </ul>

Guiding Principle 4: Access to justice					
Resolution of disputes over tenure rights					
VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
				<p>advising on legal issues, assisting with the drafting of documents.</p> <p>This Act as not yet been implemented as it requires a Legal Aid Board to be set up to provide, administer, coordinate and monitor the provision of legal aid in civil and criminal matters.</p> <p><b>Policy:</b> No relevant statement/measure could be located.</p>	

Guiding Principle 5: Prevention of disputes, conflicts and corruption					
VGGT Sect.	VGGT Indicator	Policy	Law	Basis for assessment	Recommendations
25.3	A policy supports the revision or repeal of discriminatory legal instruments.	1	N/A	<p><b>Policy:</b> the draft NLP, 2014.</p> <p>Section 7.1.4 of the draft NLP calls upon the state to amend the Constitution so as to enact provisions to protect the rights of women and to ensure that appropriate provisions are inserted in the new basic land law to ensure and protect equal rights of inheritance and ownership of land for women and children.</p> <p>The draft NLP also highlights the need to repeal the Provinces Land Act, Cap 122 which is responsible for the distinction between “native” and “non-native” citizens as far as access to provincial land is concerned. Such a distinction is inconsistent with the principle of non-discrimination in the VGGT.</p>	<ul style="list-style-type: none"> <li>• Amend the Constitution:                             <ul style="list-style-type: none"> <li>– To ensure that customary law and religious law are recognized insofar as they do not violate the principles of gender equality and non-discrimination</li> <li>– To include a provision legitimizing the use of special measures to redress discrimination in tenure rights.</li> </ul> </li> <li>• Adopt the Gender Equality Bill.</li> <li>• Include a stand-alone principle on gender equality in the draft NLP.</li> </ul>

**ANNEX 2 — ANALYSIS OF LEGAL FRAMEWORK FOR GENDER-EQUITABLE LAND TENURE  
USING LEGISLATION ASSESSMENT TOOL (LAT) INDICATORS DEVELOPED BY FAO**

Key element 1: Ratification of human rights instruments		Yes/No		Basis	Recommendations
1	The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is ratified.	Yes Ratified by Sierra Leone on 11 November 1988.		The key principles of this convention can be found in the three Gender Acts i.e. The Devolution of Estates Act, 2007; the Domestic Violence Act, 2007; and the Registration of Customary Marriage and Divorce Act, 2007.	
2	The African Charter on Human and Peoples' Rights (ACHPR) is ratified.	Yes Ratified by Sierra Leone on 21 September 1983.		The three Gender Acts of 2007, The Human Rights Commission Act, 2004.	
3	The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is ratified.	Sierra Leone is a signatory to this protocol but has not yet ratified it.		N/A	<ul style="list-style-type: none"> <li>Ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).</li> </ul>
Key element 2: Elimination of gender-based discrimination in the constitution		Law	Policy	Basis	Recommendations
4	The constitution prohibits gender-based discrimination.	3	N/A	<p><b>Law:</b> The Constitution, 1991.</p> <p>Section 6(2) of the Constitution of Sierra Leone states that the state shall discourage discrimination on the grounds of place of origin, circumstance of birth, sex, religion, status etc. Section 27(1) states that no law shall make any provision which is discriminatory either of itself or in its effect.</p>	
5	The constitution recognizes customary law but states that gender-based discrimination in customary law is superseded by the principle of	0	1	<p><b>Law:</b> The Constitution, 1991.</p> <p>Section 27(4) customary law is exempted from the principle of</p>	<ul style="list-style-type: none"> <li>Amend Section 27(4) of the Constitution to recognize customary law insofar as it</li> </ul>

	non-discrimination in the constitution.			<p>non-discrimination.</p> <p><b>Policy:</b> The draft National Land Policy (NLP), 2014.</p> <p>Section 7.1.4 contains a statement that the Government shall undertake the amendment of the Constitution so as to enact provisions to protect the rights of women generally.</p>	<p>does not violate Constitutional rights, including in particular gender equality.</p>
6	The constitution recognizes religious law but states that gender-based discrimination in religious law is superseded by the principle of non-discrimination in the constitution.	0	0	<p><b>Law:</b> No relevant provision could be located The Constitution, 1991.</p> <p>Section 170 lays down the laws of the country and makes no mention of religious laws.</p> <p><b>Policy:</b> No relevant statement could be located.</p>	<ul style="list-style-type: none"> <li>Amend Section 27(4) of the Constitution to recognize religious law insofar as it does not violate Constitutional rights, including in particular gender equality.</li> </ul>
7	The constitution promotes the adoption of special measures for the advancement of women.	0	1	<p><b>Law:</b> No relevant provision could be located.</p> <p>The Truth and Reconciliation Commission Report recommends the implementation of a 30 percent quota system for women to be elected into parliament and appointed to positions of leadership but this has not yet been included in the constitution.</p> <p><b>Policy:</b> The draft NLP, 2014.</p> <p>Section 7.1.4 contains a statement that the Government shall undertake the amendment of the Constitution so as to enact provisions to protect the rights of women generally.</p>	<ul style="list-style-type: none"> <li>Amend the Constitution to include provisions that protect the rights of women generally, including through special measures such as quotas to ensure women's equitable representation at all levels.</li> </ul>
<b>Key element 3: Recognition of women's legal capacity</b>		<b>Law</b>	<b>Policy</b>	<b>Basis</b>	<b>Recommendations</b>
8	Men and women have the ability to conclude contracts under the same basic conditions, rights and obligations.	3	N/A	<p><b>Law:</b> The Registration of Customary Marriage and Divorce Act, 2009.</p> <p>Under Section 18, a wife in a customary marriage shall have</p>	<ul style="list-style-type: none"> <li>Amend the Constitution to prohibit gender-based discrimination, including in customary law.</li> </ul>

				<p>the capacity to personally acquire and dispose of properties and to enter into contracts in her own behalf.</p> <p>Men and women have equal rights under Sierra Leone laws to conclude contracts. But in practice under customary law, some men do not rent or sell landed property to women.</p>	
<b>Key element 4: Gender-equality of rights with respect to nationality</b>		<b>Law</b>	<b>Policy</b>	<b>Basis</b>	<b>Recommendations</b>
<b>9</b>	Men and women are able to apply for identity documents under the same conditions.	3	N/A	<p><b>Law:</b> The National Registration Act, 2008.</p> <p>Under Sections 6 &amp; 7 every citizen and non-citizen resident shall apply to the Registration Officer of his/her registration area to be registered under this Act.</p>	
<b>10</b>	A female national can confer citizenship to her non-national spouse under the same conditions as a male national.	0	0	<p><b>Law:</b> The Sierra Leone Citizenship Act, 1973.</p> <p>Section 7 of provides that a woman who is not a Sierra Leonean citizen but who marries a Sierra Leonean man can apply to become a citizen but there is no provision for a non-Sierra Leonean man who marries a woman who is a citizen of Sierra Leone.</p> <p><b>Policy:</b> No relevant statement/measure could be located.</p>	<ul style="list-style-type: none"> <li>Amend the Sierra Leone Citizenship Act, 1973 to allow female Sierra Leoneans to confer citizenship to their non-national spouse.</li> </ul>
<b>11</b>	Women can confer citizenship to their children under the same conditions as men.	3	N/A	<p><b>Law:</b> The Citizenship (Amendment) Act, 2006.</p> <p>Section 3 provides that a person whose father, mother or any of the grandparents was born in Sierra Leone is a citizen of Sierra Leone.</p>	
<b>Key element 5: Gender equality in property rights</b>		<b>Law</b>	<b>Policy</b>	<b>Basis</b>	<b>Recommendations</b>
<b>12</b>	The law recognizes gender-equality in the right to own or control property regardless of the type of marriage.	2	1	<p><b>Law:</b> Persistence of gender-based discrimination in the legal framework.</p> <p>In Sierra Leone, a person's personal law is governed by the type of marriage contracted, and in this regard, there are</p>	<ul style="list-style-type: none"> <li>Adopt the Matrimonial Causes Bill and the Gender Equality Bill to ensure gender equality in the right to own or control land across all</li> </ul>

				<p>three different types of laws which are in operation: 1) The Christian Marriage Act, cap 95, The Mohammedan Marriage Act, Cap 96 and the Customary Law. The statutory provisions are silent on the right to own or control property during the person's lifetime. The Customary law is unwritten and differs from tribe to tribe, but one thread that is common is that it is vastly in favour of men in most respects.</p> <p>The Matrimonial Causes Bill and the Gender Equality Bill are pending adoption.</p> <p><b>Policy:</b> The draft National Land Policy, 2014.</p> <p>Section 7.1.4 contains a statement that the Government shall ensure that appropriate provisions are inserted in the new basic land law to ensure and protect equal rights of inheritance and ownership of land for women and children.</p>	<p>property regimes in the country. A new basic land law should also contain appropriate provisions regarding the equal right of men and women to own and hold property, regardless of marital status or the type of marriage.</p>
13	The law recognizes full or partial community of property as the default marital property regime.	0	0	<p><b>Law:</b> The Married Women's Property Act, 1882 Section 2 sets out a regime of separate property.</p>	<ul style="list-style-type: none"> <li>Recognize full or partial community of property as the default marital property regime.</li> <li>The law should provide couples with the option to enter a regime of separate property if they request it.</li> </ul>
14	Spousal consent is mandatory for any transaction involving matrimonial property.	0	1	<p><b>Law:</b> No relevant provision could be located.</p> <p><b>Policy:</b> The draft National Land Policy, 2014.</p> <p>Section 7.1.4 proposes to make provision for joint spousal registration and documentation of land rights, and for joint spousal consent to land disposals, applicable for all forms of tenure.</p>	<ul style="list-style-type: none"> <li>Make spousal consent mandatory for any transaction involving matrimonial property in the proposed new land law.</li> </ul>

15	The law establishes a presumption of joint ownership of property in consensual unions.	0	0	<p><b>Law:</b> No relevant provision could be located.</p> <p><b>Policy:</b> No relevant statement/measure could be located.</p>	<ul style="list-style-type: none"> <li>• Include a definition of “spouse” that mirrors the one adopted in the Devolution of Estates Act, 2007 to include unmarried couples. “an unmarried man and woman who have cohabited for a period of not less than five years”.</li> <li>• Include a presumption of joint ownership of property for unmarried couples who have cohabited for a period of not less than five years.</li> </ul>
16	The legal framework includes provisions for the promotion of women’s rights to land, property, and/or productive resources.	0	1	<p><b>Law:</b> No relevant provision could be located.</p> <p><b>Policy:</b> The draft National Land Policy, 2014.</p> <p>Section 7.1.4 proposes to facilitate the acquisition of land by women in their own right not only through purchase but also through allocations.</p>	<ul style="list-style-type: none"> <li>• The forthcoming land law should include provisions facilitating acquisition of land by women through purchase and allocations.</li> </ul>
<b>Key element 6: Gender equality in inheritance</b>		<b>Law</b>	<b>Policy</b>	<b>Basis</b>	<b>Recommendations</b>
17	The surviving spouse is granted user rights to the matrimonial house for life.	3	N/A	<p><b>Law:</b> The Devolution of Estates Act, 2007.</p> <p>Under Section 1, the Act applies to every person who dies leaving property in Sierra Leone irrespective of religion or ethnic origin.</p> <p>Section 15(2) of the same Act states that a surviving spouse shall have the right to reside during his lifetime in any family property, chieftaincy property or community property in which he cohabited with the deceased as their matrimonial home.</p>	

18	Under the law of succession, the surviving spouse is entitled to a minimum share of matrimonial property.	3	N/A	<p><b>Law:</b> The Devolution of Estates Act, 2007 Section 8 provides that where the intestate is survived by a spouse, child and parent, the spouse shall have 35 percent, surviving child 35 percent, 15 percent to the parent and 15 percent in accordance with customary law or Muslim law, as applicable.</p>	
19	The law allows partners living in consensual union to inherit from each other.	3	N/A	<p><b>Law:</b> The Devolution of Estates Act, 2007.</p> <p>According to the interpretation section “spouse” means:</p> <ul style="list-style-type: none"> <li>a) a person married to the intestate or testator</li> <li>b) an unmarried woman who has cohabited with an unmarried man as if she were in law his wife for a period of not less than five years immediately preceding the death of the intestate or testate.</li> <li>c) an unmarried man who has cohabited with an unmarried woman as if he were in law her husband for a period of not less than five years immediately preceding the death of the intestate or testate.</li> </ul> <p>From the above interpretation, it can be construed that partners who fall within this definition can inherit from each other.</p>	
20	Brothers and sisters have an equal right to inherit.	3	1	<p><b>Law:</b> The Devolution of Estates Act, 2007.</p> <p>Section 1 provides that the act applies to every person who dies leaving property in Sierra Leone irrespective of religion or ethnic origin.</p> <p>Section 7(2) states that where an intestate is survived by two or more children and no spouse, parent or grandchild, the estate shall devolve to the children in equal shares.</p> <p><b>Policy:</b> The draft National Land Policy, 2014.</p> <p>Section 7.1.4 contains a statement that the Government shall ensure that appropriate provisions are inserted in the new basic land law to ensure and protect equal rights of inheritance and ownership of land for women and children.</p>	

	The law guarantees brothers and sisters an equal share of inheritance	0	0	<p><b>Law:</b> The Devolution of Estates Act, 2007.</p> <p>Section 13 provides that where the intestate is not survived by a spouse, child or grandchild but is survived by a brother or sister, 75 percent of the estate shall devolve to the brother and sister in equal shares and the remaining 25 percent shall be distributed in accordance with customary or Muslim law as applicable.</p> <p>Under Islamic law brothers usually receive double the share of the sisters.</p> <p><b>Policy:</b> No relevant statement/measure could be located.</p>	<ul style="list-style-type: none"> <li>Amend the Devolution of Estates Act, 2007 to ensure that 100 percent of the share that devolves to the children is devolved in equal shares between brothers and sisters.</li> </ul>
21	A right to compensation of other siblings giving up their claims on the family property exists.	0	0	<p><b>Law:</b> No relevant provision could be located.</p> <p><b>Policy:</b> No relevant statement/measure could be located.</p>	<ul style="list-style-type: none"> <li>Amend the Devolution of Estates Act, 2007 to include a right to compensation of siblings giving up their claims on the family property.</li> </ul>
<b>Key element 7: Gender-equitable implementation, dispute mechanisms and access to justice</b>		<b>Law</b>	<b>Policy</b>	<b>Basis</b>	<b>Recommendations</b>
22	Decentralization of land administration services is effected through customary land institutions.	3	1	<p><b>Law:</b></p> <ul style="list-style-type: none"> <li>The Provinces Land Act, Cap 122 of the Laws of Sierra Leone 1960.</li> </ul> <p>The preamble states that “all land in the protectorate is vested in the Tribal Authorities who hold such land for and on behalf of the native communities concerned.”</p> <ul style="list-style-type: none"> <li>The Tribal Authorities Act, Cap 61.</li> </ul> <p>Under Section 2 Tribal Authority means the Paramount Chief, the chiefs, the councilors and men of note elected by the people according to native law and custom, approved by the President and appointed a Tribal Authority under the Act.</p> <p><b>Policy:</b> The draft National Land Policy, 2014.</p>	<ul style="list-style-type: none"> <li>Clarify the procedure for the registration of customary rights, including spousal rights in the draft NLP.</li> </ul>

				<p>The special measures relating to customary land tenure listed Section 6.1.8 include:</p> <ul style="list-style-type: none"> <li>- facilitating the evolution of customary land tenure by the documentation of the fundamental customary land tenure rules applicable to communities at all levels;</li> <li>- designing and implementing a land registry system to record all transaction under customary law; and</li> <li>- preparing for registration of land rights under customary tenure after the introduction of the new system of registration of titles.</li> </ul>	
23	Decentralization of land administration services is effected through formal land institutions.	3	1	<p><b>Law:</b> The General Registration Act, Cap 255.</p> <p>Sets up a Deeds Registry for the whole country and provides for the appointment of the Registrar – General and other matters related to the production of registered documents in court proceedings. However, in practice it only covers the Western area. There is also a Registration of Instruments Act which provides for the registration of instruments generally and of those affecting land in particular.</p>	<ul style="list-style-type: none"> <li>• Decentralize the deeds registries to facilitate access.</li> </ul>
24	The law guarantees equality before the law.	3	N/A	<p><b>Law:</b> The Constitution, 1991.</p> <p>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.</p>	
25	The law guarantees gender-equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights.	3	1	<p>Sierra Leone has a dual court system, a general system and a system of recognized customary courts. The Constitution frames the powers and functions of the judiciary, while the Local Courts Act, 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 shy away from the judicial system.</p> <ul style="list-style-type: none"> <li>• The Constitution of Sierra Leone, 1991</li> </ul> <p>Under Section 120(4), the Judicature consists of the Supreme</p>	

				<p>Court of Sierra Leone, the Court of Appeal and the High Court of Justice which shall be the superior courts of record of Sierra Leone and which shall constitute one Superior Court of Judicature, and such other inferior and traditional courts as Parliament may by law establish.</p> <ul style="list-style-type: none"> <li>• The Local Courts Act, 2011</li> </ul> <p>Section 2(1) establishes a Local Court in each Chiefdom of Sierra Leone.</p> <p>Under Section 39(1) any person aggrieved by an order or decision by the Local Court can appeal to the District Appeal Court.</p> <p>Section 41(1): Appeals from the District Appeal Court are heard by the Local Appeals Division of the High Court.</p> <p><b>Policy:</b> The draft National Land Policy, 2014.</p> <p>Section 8.1.7 confirms the competence of the Local Courts established under the Local Courts Act, 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.</p>	
26	Men and women can opt out of customary processes and appeal to formal justice systems for redress.	0	0	<p><b>Law:</b> The Local Courts Act, 2011.</p> <p>According to Section 15, local courts have jurisdiction to hear and determine matters involving question of title to land in the provinces. They have jurisdiction to hear and determine all civil cases governed by customary law other than cases between paramount chiefs or tribal authorities involving a question of title to land.</p> <p>Under Section 39, a person aggrieved by a decision of the Local Court may appeal to the District Appeal Court. An Appeal from the District Appeal Court goes to the Local Appeals Division of the High Court which is the branch of the formal justice systems which deals with customary cases.</p>	<ul style="list-style-type: none"> <li>• Amend the Local Courts Act, 2011 to allow claimants to opt out of the customary system.</li> </ul>

				There is no possibility to opt out of customary justice. <b>Policy:</b> No relevant statement/measure could be located.	
27	The law makes provision for legal support in civil procedures.	3	N/A	<b>Law:</b> The Legal Aid Act, 2012.  Under Section 1 "legal advice and assistance" means providing information in both criminal and civil cases about the relevant law and legal processes, assisting with alternative dispute resolution, advising on legal issues, assisting with the drafting of document.  This Act as not yet been implemented as it requires a Legal Aid Board to be set up to provide, administer, coordinate and monitor the provision of legal aid in civil and criminal matters.	<ul style="list-style-type: none"> <li>Implement the Legal Aid Act, 2012 by setting up the Legal Aid Board.</li> </ul>
28	A human rights commission or gender-specific institution is in place.	3	N/A	<b>Law:</b> The Human Rights Commission of Sierra Leone Act, 2004.  But there is no gender-specific institution to handle violations of women's rights.	
<b>Key element 8: Women's participation local institutions enforcing land legislation</b>		<b>Law</b>	<b>Policy</b>	<b>Basis</b>	<b>Recommendations</b>
29	The law sets quotas for the appointment of women in land management and administration committees.	2	1	<b>Law:</b> The Gender Equality Bill, 2011.  This Bill provides for the appointment (inter alia) of 4 women as Paramount Chief Representatives and of 112 women in local councils. It further provides that 30 percent of all appointed officials must be women.  <b>Policy:</b> the draft National Land Policy.  Section 7.1.4 aims to ensure proportionate representation of women in institutions dealing with land at all levels.	<ul style="list-style-type: none"> <li>Adopt the Gender Equality Bill, 2011.</li> <li>Amend the Constitution to ensure proportionate representation of women in institutions at all levels.</li> <li>The new basic land law should ensure proportionate representation of women in institutions dealing with land at all levels.</li> </ul>

30	The law sets quotas for the appointment of women in land dispute resolution committees.	0	0	<p><b>Law:</b> No relevant provision could be located.</p> <p><b>Policy:</b> No relevant statement/measure could be located.</p>	<ul style="list-style-type: none"> <li>• Amend the Local Courts Act, 2011:             <ul style="list-style-type: none"> <li>– to remove sexist language by replacing all references to “he” by “he/she”; and</li> <li>– to include minimum requirements for the representation of women in the local courts.</li> </ul> </li> </ul>
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