



The Government of Sierra Leone

**FINAL
NATIONAL LAND POLICY
OF
SIERRA LEONE
VERSION 6**

AUGUST 1, 2015

MINISTRY OF LANDS, COUNTRY PLANNING AND THE ENVIRONMENT

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FOREWORD

It is a great pleasure for me to have the opportunity to write a foreword to this historic Comprehensive National Land Policy Document for Sierra Leone. There is no doubt that, the current situation in the land sector is not only chaotic, but also becoming increasingly unsustainable. Therefore, moving towards a clearer, more effective and foremost, just land tenure systems in Sierra Leone is a fundamental prerequisite for ensuring the nation's continued development.

One of the key priority issues enshrined in the government's Agenda for Prosperity is the effective and efficient management of the land sector. The formulation and launch of this historic National Land Policy that addresses key land tenure issues and reform process is indeed a great achievement for the government and people of Sierra Leone.

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

Notwithstanding the complexity of land tenures in Sierra Leone, and the highly sensitive nature of land issues, a considerably significant progress has been made in addressing the multiplicity of problems currently surrounding the land sector in the country, to include issues such as access to land and tenure rights, land use planning and regulation, and the management of special land issues, land administration structures, land laws and the constitution.

The policy formulation process, which was judiciously guided by various key stakeholders to include academics, professionals, civil society organizations, MDAs and other entities, has been approached with extreme caution and transparency, taking cognizance of the very fact that land is a highly sensitive, political, social, economic and emotional issue. The consultation process has not only been intensive, extensive and exhaustive, but also inclusive, with a view of ensuring national ownership.

This historic comprehensive National Land Policy document provides a framework, which addresses the vision of the policy, guiding principles in its formulation, objectives and policy

components to give direction to, and definition of the roles and responsibilities of various governments and customary authorities, including other non-state actors in land management in Sierra Leone. Specifically, it enunciates policy statements in respect of the key components of the National Land Policy such as access to land and tenure rights, land use planning and regulation, and the management of special land issues, land administration structures, land laws and the constitution.

The National Land Policy Reform Project of the MLCPE, under the guidance of five technical working groups (TWG), Steering Committee Members (SCM), and of course a National Consultant/Technical Advisor, K.M Foray, has done a wonderful work by developing this comprehensive National Land Policy document for Sierra Leone that is very essential for the actualization of the Agenda for Prosperity and the future development of our beloved Sierra Leone.

Hon. Musa Tarawally

Minister of Lands, Country Planning and the Environment

August 2015

ACKNOWLEDGEMENTS

On behalf of the TWG and SCM of the National Land Policy Reform Project in the MLCPE, I write with high appreciation to acknowledge the invaluable contributions of various communities, individuals, institutions and other entities in the development of this Land Policy document.

Foremost, is the Recovery for Development Unit of the UNDP for financial support and the Law Reform Commission for making available relevant documents for review, not forgetting the Institute for Population Studies, Fourah Bay College, the Human Rights Commission, Civil Society Organizations, and the Sierra Leone Association of Non-Governmental Organizations, among others.

In particular, the supports of former Ministers of Lands, Dr Denis M. Sandy, Captain Momodu Alieu Pat-Sowe, and current Minister Hon. Musa Tarawally, together with his Deputy - Ahmed Khanou, were very much commendable. Also worthy of commendation were members of the TWG and SCM, officials of MLCPE, chieftom authorities, Local Councils and MDAs. The spontaneous responses of all those contacted for contributions during the consultations on the land policy reform process were highly appreciated.

August 2015

K.M. Foray

National Consultant/Technical Advisor

National Land Policy Reform Project

EXECUTIVE SUMMARY

The National Land Policy Reform Project was established by the MLCPE, in collaboration with the Recovery for Development Unit of the UNDP, after a retreat organized in Freetown on Tuesday 23rd February, 2010. The retreat, which attracted key stakeholders countrywide, was to discuss major findings from the Scoping Mission Report on Key Land Tenure Issues and Reform Processes in Sierra Leone (Sam Moyo and Mohamed K. Foray, July, 2009).

Participants were invited and given the opportunity to interact and decide on “how should the process involving the formulation of a Comprehensive National Land Policy Document for Sierra Leone be carried out?”

As a way forward, the participants broadly concurred with the consultations and technical approach proposed for the process in the Scoping Mission Report (2009). Among other issues, the participants approved the setting up of committees, to be funded by the UNDP and donor agencies, under the supervision of the MLCPE. Committees were set up to include Technical Working Groups and Steering Committee Members. Specifically, these committees were to assist the Government of Sierra Leone in the review and formulation of policies on key land tenure issues which were: Land distribution (acquisition and allocation), access to land by all Sierra Leoneans and investors, land tenure systems, land use planning and regulations, land management and administration systems and land adjudication systems.

The committee held series of consultation meetings, including the review of relevant literature and cabinet conclusions. Also, based on the advice of the Technical Advisor - K.M. Foray, the committees authorized the administration of questionnaires and suggestion boxes to generate empirical data so as to complement their theoretical research findings. The sum total of these findings constituted the TWG and SCM Report. This report, alongside other relevant documents, served as sources of reference for the formulation of this Comprehensive National Land Policy for Sierra Leone, with various versions. The first version was prepared by the Technical Advisor for discussion and approval by the TWG and SCM.

With support from UNDP, version I of this policy was evaluated by an International Consultant, Professor Sam Moyo, for international standards and best practices. Outcome of the evaluation was excellent, though with few comments, which led to the review of version

I and the preparation of version II by the Technical Advisor for approval by the TWG and SCM.

Since the policy document is to serve as a legal instrument for the effective and efficient land management and administration systems in Sierra Leone, the services of a legal consultant – Dr Ade Renner-Thomas was hired to review version II of the policy document and put it in legal context. He review and developed version III of the policy document for discussion and approval by the TWG and SCM. Subsequently, this approved version III of the policy document was presented by the Technical Advisor to the MLCPE for technical input.

After a careful review of version III of this policy document, the MLCPE, with advice from the Technical Advisor, developed a Comprehensive National Land Policy Document for Sierra Leone-version IV of November 2012. An abridged version of the National Land Policy Document was developed by the National Consultant/Technical Advisor to facilitate public education and sensitization on the provisions of the new draft National Land Policy for Sierra Leone. The outcome of such countrywide public education and sensitization exercises warranted a further review of version IV and inclusion of relevant recommendations to form version V of May 2014. In January 2015, Version V of this National Land Policy was submitted to Cabinet for consideration and approval. At that meeting, Cabinet’s conclusion was that the Ministry should seek the concurrence of all MDAs and relevant stakeholders before its approval and implementation. Therefore, a workshop was successfully conducted and relevant inputs were factored into the policy document. This version VI therefore covers major findings, on key land tenure policy issues, recommendations and strategies for implementations.

August 2015

K.M. Foray

National Consultant/Technical Advisor

National Land Policy Reform Project

LIST OF ACRONYMS/ABBREVIATIONS

ADR	Alternative Disputes Resolution
AFDB	African Development Bank
AU	African Union
CLC	Chiefdom Land Committee
CSOs	Civil Society Organisations
ECA	Economic Commission for Africa
EPASL	Environment Protection Agency-Sierra Leone
ESHIA	Environment, Social and Health Impact Assessment
FAO	Food and Agricultural Organization
GDP	Gross Domestic Product
GoSL	Government of Sierra Leone
HIV/AIDS	Human Immuno- Deficiency Virus/ Acquired Immune Deficiency Syndrome
ID	Identity Card
IFC	International Finance Corporation
LIMS	Land Information Management System
LRC	Law Reform Commission
MAFFs	Ministry of Agriculture, Forestry and Food Security
MDAs	Ministries, Departments and Agencies
MEMO	Memorandum
MLCPE	Ministry of Lands, Country Planning and the Environment
MPs	Members of Parliament
NCU	National Co-ordination Unit
NGOs	Non- Governmental Organisations
NLC	National Land Commission
NLP	National Land Policy
NLPIF	National Land Policy Implementation Framework
NLPRSC	National Land Policy Reform Steering Committee
NLPRU	National Land Policy Reform Unit
OECD	Organization of European Community Development
PCs	Paramount Chiefs

PRSP	Poverty Reduction Strategy Paper
SCM	Steering Committee Member
TBNRM	Trans- Boundary Natural Resource Management
TWG	Technical Working Group
UNDP	United Nations Development Programme
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security

GLOSSARY OF TERMS

1. **National Land:** This refers to that portion of land which constitutes the nation state of Sierra Leone. It comprises not only the surface of the earth but also the sea and air – space of Sierra Leone, as spelt out in the constitution of Sierra Leone.
2. **State Land:** This refers to land owned by the state, administered by the state Land Act of 1960 which empowers the president of Sierra Leone or a Minister appointed by the president who is responsible for land matters to make and execute grants of any state land or of any interest therein.
3. **Private Land:** This is land owned by private individuals and other corporate entities and can be freely disposed of by the owner.
4. **Public Land:** This category of land is reserved strictly for land managed by MDAs of the government, and in some cases by traditional authorities in trust for the people and openly used or accessible to the public at large
5. **Community Land:** This is restricted to land owned by a community in any of the provinces in Sierra Leone and administered mostly by customary law.
6. **Family Land:** This refers to land owned by a family and administered by family head under customary law. It includes farmland and land for construction of dwelling houses.
7. **Unoccupied Land:** This refers to land not occupied by anybody, and it includes unclaimed lands. However, the state, under the unoccupied Land Act Cap 117 of the Laws of Sierra Leone (1960), can acquire such lands by following certain provisions laid down under the Act. Consequently such lands become State Lands.
8. **Leasehold:** This is lands acquired by lease payment for a fixed period as spelt out in the terms of the lease agreement.
9. **Freehold Land:** This is land acquired by individuals and other corporate entities by payment of a “fee simple: in land purchase and sale transactions. This is however restricted only to land transactions in the Western Area of Sierra Leone.
10. **Land Grabbing:** This is the act of claiming ownership of a piece of land without following appropriate procedures recognized by statutory or customary law in Sierra Leone.

11. **Multiple Sale:** This is a situation in which an individual or a group of individuals sell a property such as land to different parties by deceitful means.
12. **Falsification of Documents in Land(s) Transactions:** This refers to a situation wherein one party prepares false documents in any land transaction with the intention of deceiving another party.
13. **Land Policy:** This term is used to refer to the guidelines (rules and regulations) in the administration, management, control, planning and execution of land matters in Sierra Leone.
14. **Access to Land and Tenure Rights:** This is used to refer to the opportunity recognized by statutory and/or customary law to acquire land and the process involved, which are to be followed by those who need land and those to whom Land can be allocated in Sierra Leone.
15. **Land Tenure System:** This is used to describe a system of land holding in Sierra Leone, which is dualistic in nature, that in the Western Area and those of the provinces.
16. **Land Use Planning and Regulation:** This refers to the activities involved in the proper control and enforcement in the use of Land in Sierra Leone for Development purposes and proper urban – rural planning.
17. **Land Administration System:** This is used to refer to the mechanisms put in place for the development of strategies for implementation and execution of policies on land matters.
18. **Land Adjudication System:** This is used to refer to the court system in the process of settling Land Disputes and Land related matters.
19. **Protection and Security of Sierra Leone’s International Boundaries:** This refers to the efforts of the government and corporate agencies to protect and secure Sierra Leone international boundaries and ensure that cross-border activities are properly managed.
20. **Customary Law:** This is used to refer to rules of law which by custom re applicable to particular communities, and are unwritten laws established by long usage is such communities in Sierra Leone.

21. **Statutory Law:** This is used to refer to rules of law enacted by parliament which are written and applicable in Sierra Leone.
22. **National Land Commission:** This refers to a body established by an Act of Parliament, charged with the responsibility of handling land matters, under the supervision of a named Authority.

CHAPTER ONE

INTRODUCTION

There is consensus amongst stakeholders that the current situation in the land sector is not only chaotic but also becoming increasingly unsustainable. This policy manifests the aspiration of our efforts to address the major issues related to land management and administration in Sierra Leone.

1.1 Scope of the National Land Policy

The aspiration of this policy is to move towards a clearer, more effective and just land tenure system that shall provide for social and public demands, stimulate responsible investment and form a basis for the nation's continued development.

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

- a) Inequitable access to land;
- b) Shortage of accessible land in the Western Area;
- c) "Squatting" on State and private lands in the Western Area due to rapid urbanisation;
- d) Insecure tenure forms and rights due to the absence of a system of registration of titles; lack of proper cadastral mapping and land information; unclear and diverging tenure forms under customary law; overlapping jurisdictions for statutory and customary law;
- e) Weak land administration and management, i.e. inadequate capacity within the Ministry of Lands, Country Planning and the Environment to carry out its scope of responsibility and meet set objectives;
- f) Lack of a proper cadastral and land use information database for State, private, and

customary lands; and

- g) Inadequate concession practices and protective mechanisms inserted to prevent “land-grabbing” in the commercial land use sector.
- h) International boundary disputes, such as that of Yenga.

1.2 The land and resource base of Sierra Leone

Sierra Leone is a small country located along the West Coast of Africa between Latitudes 7⁰ and 10⁰ North, and Latitudes 10.5⁰ and 13.18⁰ West. The country is bounded on the North, North-West and North-East by the Republic of Guinea, on the South-East by the Republic of Liberia, and on the West and South-West by the Atlantic Ocean. This sea-coast covers some 212 miles, extending from the North of the Great Scarcies River, to the boundary of the Republic of Liberia at the Mouth of the Mano River. The land area measures approximately 71, 740 sq. km (about 45,000 sq. miles). There is a low-lying coastal plain about 80km deep with the exception of the Freetown Peninsula, which is dominated by hills. It was a former British Colony, which gained independence on the 27th. April, 1961.

The 2004 National Census survey indicated that Sierra Leone’s total projected population for 2009 was 5,473,530. Of this population, about 53% or 2,900,971 represent the female population and the remaining 47% population or 2,572,559 constitute the male population. According to the same population projections, Sierra Leone’s population would reach the 6 million mark by 2012. The population consists of more than fifteen tribes, the principal people are the Temnes, Lokos, Korankos and Limbas in the north and central regions; the Mendes populate the south whilst the Kissis and Konos, the East. The Western Area is a hotchpotch of several tribes, but of course, Freetown is mostly known to be the settlement of the freed slaves popularly known as the Creoles. There is also a fair size settlement of people of non-negro descent; mainly of Lebanese and Middle-Eastern origins.

Like most developing countries, Sierra Leone has a dual economy divided into monetised sector and non-monetised sector. The former comprises business activities such as banking, insurance, etc., and mining industries, with diamond, gold, rutile and bauxite being the predominant minerals. The latter consists largely of subsistence agriculture, which accounts

for about 75% of the country's manpower. This manpower engaged in subsistence farming contributes about 30% of the gross domestic product (GDP).

According to the United Nations Human Development Index (2000), Sierra Leone was the last among the least developed countries in the world. The country's overall economic and financial performances had been weakened since the 1980s with a continuous deterioration of her balance of trade and budgetary positions which were worsened as a result of the decade long rebel war.

The majority of the population in Sierra Leone still depends directly on farming for their livelihoods. Over the years, a steady increase in food demands has escalated the dependence on imported goods. The issue of access to secure land is critical for the farming livelihoods of a variety of Sierra Leone's communities and groups, as well as for domestic and foreign commercial investments into the agriculture sector. Food security and employment opportunities require an increase in investment flows into land for agricultural development and for growth in other related sectors. Providing land for the poor in urban and rural areas, to provide shelter and security, is a fundamental element of any poverty reduction and economic development initiative.

Equitable land distribution is a key to increase standards of living and to promote political and societal stability. Furthermore, the effective management of land, particularly land use planning and regulation, is central to the supervision and development of other sectors. The scope of the current national land policy reform process therefore covers all these issues.

The NLP strategies take into account cabinet conclusions following a memorandum by the Minister of Lands, Country Planning and the Environment-CP (2009) 231, normal reference CP 17th meetings (2010) 38, including the findings in the *preliminary report of the sub-committee established for the review of the Provinces Land Act, Cap 122* and the *report of the consultative meetings in the provinces on the review of the Provinces Land Act, Cap. 122*.

1.3 The land policy review and consultation process

Prior to the past three years initiatives, attempts were made in 2005 to develop and operationalize the Sierra Leone National Land Policy of 2005, but was however never implemented because, according to MLCPE officials, the policy formulation process was not

only non-fully participatory but also the policy was more theoretical than empirical, and so, could not address the realities on the ground. Hence, this situation escalated an unprecedented land grabbing, squatting, boundary disputes, cattle rearing and farming disputes and other related matters, among others.

To ensure public participation and widespread support for the policy, the Ministry of Lands, Country Planning, and the Environment has followed the recommendations of the Scoping Mission Report (Moyo & Foray 2009) and the Framework and Guidelines on Land Policy in Africa (AU 2010), Cabinet conclusions (17th meeting conclusion 38 of 2009), by involving the general public and stakeholders in the formulation of this policy and make possible through extensive consultations to identify the issues and salient problems in the land sector related to tenure. *After the preparation of a working draft further discussions were made with the public and stakeholders.*

The project has been led by the MLCPE with the appointment of K. Mohamed Foray as Technical Advisor, with financial support from UNDP. A Steering Committee comprising of representatives from Parliament, Ministry of Lands, Law Reform Commission, Fourah Bay College, NGOs/CSOs, and private sector experts was set up to supervise the policy formulation. Five Technical Working Groups were formed to deal with the policy suggestions in detail. With assistance from UNDP, MLCPE also conducted a cross-country survey through the distribution and collection of close to six thousand questionnaire forms from citizens, chiefs and paramount chiefs residing in all 149 Chiefdoms in the Provinces and the Western Area rural and urban districts. Subsequently the Institute for Population Studies at Fourah Bay College received financial support from the UNDP to conduct an analysis of this data. The findings were published in the final National Research Report on Land Issues.

In the formulation of this policy, considerations have been given to already existing land reform experiences in other countries, particularly those on the African continent. In addition to the lessons learned from those cases, reference documents such as the Framework and Guidelines on Land Policy in Africa (2009, AU, ADB, ECA) and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security (VGGT) also helped in the making of this comprehensive

and substantive land policy reform.

The policy will be reviewed at least every five years and consensually amended as, and when necessary to adapt to changing conditions. If particular circumstances require, MLCPE or the Land Commission may, with consent from GoSL, engage in earlier reviews.

1.4 The National Land Policy Framework

This policy framework provides the vision, principles and policy components to give direction to and definition of the roles and responsibilities of various government and customary authorities, and other non-state actors, in land management. Specifically, it enunciates Policy Statements in respect of the key components of the National Land Policy such as access to land and tenure, land use, regulation and the management of special land issues, land administration structures, land laws and the Constitution.

The National Land Policy proposes to improve upon and strengthen the existing land administration systems and land laws, particularly by recognizing and working with the differentiated land tenure categories in the Western Area and the Provinces, and enhancing the capacities of relevant institutions on mobilizing sufficient national and international resources to ensure the implementation of the National Land Policy.

CHAPTER TWO

2.0 VISION AND GUIDING PRINCIPLES

2.1 Vision of the policy

The vision for the Sierra Leone Land Policy is to have an effective land tenure and management system that will provide for clearly defined ownership forms and rights, tenure security, effective and transparent land administration, and, foremost, ensure equitable access to land for all citizens and stimulate responsible investment for the nation's continued development.

2.2 Guiding principles of the policy

The following principles have guided the shaping of this National Land Policy (NLP) and will shape its implementation. The National Land Policy should be read in accordance with these principles:

2.2.1 Principles of development

a) Political principles and conflict sensitive principles

- i. Land is a highly sensitive political issue and as such the process of developing a policy must be inclusive and participatory;
- ii. Issues related to land are often causes of conflict and therefore any reform should aim to be conflict-sensitive.

b) Socio-economic principles

- i. In promoting security and development, priority should be given to reforms that will support disadvantaged groups, such as internally displaced persons, women and squatters in society (to minimise social exclusion);
- ii. 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 realising the right to food for everyone, particularly the vulnerable and marginalised ;

- iii. The rapid urbanisation of the Western Area demands urgent measures to mitigate some of the growing problems, such as squatting, associated with shortage in accessible land.

c) Economic principles

- i. Development in the agricultural sector is a crucial element in any pro-poor strategy and the National Land Policy aspires to promote an attractive business environment based on fair and responsible investments in land for both small and large scale businesses;
- ii. The NLP promotes sustainable balance between accommodating investments while simultaneously safeguarding tenure security and livelihoods, particularly relating to gender equality and rights of women.

d) Principles of consultation and participation

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

e) Cultural principles

- i. The NLP recognises the social, cultural and legal foundation that customary law carries in society, particularly in the Provinces and takes measures to prevent tenure disputes and corruption, and to ensure that legitimate tenure rights are promoted and protected under customary law;
- ii. The NLP shall reflect the social, cultural, economic and environmental significance of land, fisheries and forests as livelihood assets to be managed efficiently to promote social equity and gender equality;
- iii. The NLP shall safeguard legitimate tenure rights against threats and infringements. Tenure right holders shall be protected against the arbitrary loss of their tenure rights;
- iv. The NLP shall facilitate access to justice to deal with infringements of legitimate tenure rights;

- v. The customary land tenure systems of Sierra Leone are acknowledged as the main legal body in dealings with land for the larger part of the population and shall be strengthened to facilitate and promote its orderly evolution into a modern productive land tenure system. Impact assessment of the practical effects that any legislative reform will have on society and the traditional modes of land tenure in Sierra Leone should be part of a NLP implementation review 5 years after the coming into force of such legislative reforms.

f) Gender equality principles

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

g) Administrative principles/implementation strategy principles

- i. All other land-related policies, which derived their mandate to manage and use land-based resources should be harmonized to align with and recognize the primacy of the land stewardship aspirations of the National Land Policy.
- ii. In the making of this policy it is critical to allow for the reform to be enclosed with an implementation strategy specifically describing the practical measures needed to fulfil the policy objectives;
- iii. Financial and administrative limitations are recognised as potential impediments to the implementation of this policy. In light of these constraints implementation will be prioritized and phased over time and necessary financial resources sought to ensure full and effective implementation.
- iv. The NLP intends to eliminate opportunities for corruption and work against corruption in all its forms and, all levels and in all settings;

- v. This policy values officials and public agencies that are responsible and accountable for the actions and decisions in the administration of land.
- vi. To assure access to justice to deal with infringements of legitimate tenure rights, the NLP shall, through judicial authorities and other approaches to dispute resolution, provide effective and accessible means to resolve disputes over tenure rights and ensure prompt enforcement of outcomes.

h) Monitoring and evaluation and policy adjustment principles

- i. The policy will be provided with mechanisms for the continuous monitoring and analysis of its content and take steps to develop evidence-based programmes during implementation, including the making of amendments for its improvement in a transparent and participatory manner.

2.2.2 General principles

The Government shall:

- i. Recognize and respect all legitimate tenure right holders and their rights. It shall take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights.
- ii. Safeguard legitimate tenure rights against threats and infringements and protect tenure right holders against the arbitrary loss of their tenure rights, including forced evictions that are inconsistent with their existing obligations under national and international law.
- iii. Promote and facilitate the enjoyment of legitimate tenure rights; take active measures to promote and facilitate the full realization of tenure rights or the making of transactions with the rights, such as ensuring that services are accessible to all.
- iv. Provide access to justice to deal with infringements of legitimate tenure rights; provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes. It should

provide prompt, just compensation where tenure rights are taken for public purposes.

- v. Prevent tenure disputes, violent conflicts and corruption; take active measures to prevent tenure disputes from arising and from escalating into violent conflicts; endeavour to prevent corruption in all forms, at all levels, and in all settings.

Non-state actors including business enterprises have a responsibility to:

- i. respect human rights and legitimate tenure rights. They should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights. They should provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms, where appropriate, where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights. They should identify and assess any actual or potential impacts on human rights and legitimate tenure rights in which they may be involved.

2.2.3 Principles of implementation

- i. *Human dignity*: recognizing the inherent dignity and the equal and inalienable human rights of all individuals.
- ii. *Non-discrimination*: no one should be subject to discrimination under law and policies as well as in practice.
- iii. *Equity and justice*: recognizing that equality between individuals may require acknowledging differences between individuals, and taking positive action, including empowerment, in order to promote equitable tenure rights and access to land, fisheries and forests, for all, women and men, youth and vulnerable and traditionally marginalized people.
- iv. *Gender equality*: Ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality

when necessary. The Government should ensure that women and girls have equal tenure rights and access to land independent of their civil and marital status. Commit to the elimination of all persisting discrimination in related laws, policies, customary practices and services.

- v. *Sustainable approach*: recognizing that natural resources and their uses are interconnected, and adopting an integrated and sustainable approach to their administration.
- vi. *Consultation and participation*: engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.
- vii. *Rule of law*: adopting a rules-based approach through laws that are widely publicized in applicable languages, applicable to all, equally enforced and independently adjudicated, and that are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.
- viii. *Transparency*: clearly defining and widely publicizing policies, laws and procedures in applicable languages, and widely publicizing decisions in applicable languages and in formats accessible to all.
- ix. *Accountability*: holding individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law.
- x. *Continuous improvement*: The Government should improve mechanisms for monitoring and analysis of tenure governance in order to develop evidence-based programmes and secure on-going improvements.

2.3 Objectives of the policy

The specific objectives of this National Land Policy are:

- a) To clarify the complex and ambiguous constitutional and legal framework for sustainable management of land resources;
- b) To promote law reforms that will further harmonize the two separate jurisdictions of the current land tenure systems;
- c) To ensure the security of tenure and protection of land rights to all legitimate landholders, regardless of their form of land tenure;
- d) To promote equitable access to land
 - i. To ensure equitable access to lands for all citizens regardless of sex or sexuality, race, colour, language, religion or conviction, political or other opinion, social origin, ethnicity, age, economic position, ownership of property, marital status, disability, birth or other status;
 - ii. To facilitate access to land for fair and responsible investment and development by citizens and non-citizens alike and so stimulate the contribution of the land sector to overall socio-economic development, wealth creation and poverty eradication in Sierra Leone.
 - iii. To rationalise and formalise all informal landholdings;
 - iv. To protect state lands and ensure the equitable access to these and their optimal utilisation.
- e) To promote and enforce sound land use, regulation and management
 - i. To build capacity for and promote land use and country planning strategies for sustainable development in both urban and rural areas;
- f) To streamline and decentralise land administration to be more efficient, transparent and effective
 - i. To ensure the establishment of new institutional framework that will guarantee democratic and transparent administration of land;

- ii. To eliminate corruption through transparency in processes and decision-making, making decision-makers accountable, and ensuring decisions are delivered promptly.
- g) To modernize and streamline land information system
- i. To transform current registry system to a modern land registration and management systems based on (the registration of) title to ensure efficiency and transparency and minimise the number of land disputes;
 - ii. To initiate the making of comprehensive and centralised records for State/Government lands, private lands (including customary lands) and land information through cadastral mapping using modern survey technology;
- h) To promote the eradication and/or avoidance and efficient settlement of land disputes by rationalising and strengthening the capacity of traditional institutions, local and national courts in the speedy and effective resolution of land disputes;
- i) To ensure protection and security of Sierra Leone national boundaries in accordance with international conventions as enshrined in the International Law of the Sea, Anglo-Francophone Protocols and Joint Border Commissions;
- j) To build capacity for the effective monitoring and evaluation of the implementation and impact of the national land policy.

CHAPTER THREE

3.0 THE LAND QUESTION

The above context has shaped the evolution of Sierra Leone's dual land tenure problems such as inequitable access to land, shortage of accessible land especially in the Western Area, insecure tenure forms and rights due to the absence of a system of registration of titles, lack of proper cadastral mapping and land information, unclear and diverging tenure forms under customary law, overlapping jurisdiction for statutory and customary laws, weak land administration and management, inadequate concession practices and protective mechanisms to prevent land grabbing in the commercial land use sector, among others.

3.1 Historical and Legal Background to Land Problems in Sierra Leone

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

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

This was to change dramatically with the arrival of the settlers who brought with them notions of English law which were gradually introduced into the new legal order. By the time

the settlement became a Crown Colony English law came to be applied by English-type courts to the total exclusion of customary law. This situation has persisted even after independence until the present time.

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

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

the local legislature to modernise Sierra Leone land law by adopting these post -1925 English property statutes.

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

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

3.2 Land access and distribution issues

There is an increasing demand for land, following the upsurge of new settlement related to expansive migration during and after the war. The incidence of confrontations over land in Freetown and of illegal settlements has indeed become alarming, since violent land conflicts are not uncommon. As a result, the capacity of the land management system to deliver secure land rights in general, (for urban residential purposes and small entrepreneurs especially in Freetown and Bo) has been stretched tremendously.

Thus, land rights especially in the Western Area have become unclear owing to the legacy of civil unrest, increased informal land occupations, encroachment on public lands, increasing land grabs, suspect land transactions, and the deterioration of paper records and the land registration process. In the Provinces, most of the conflict ensues between the state and local councils on one hand and the landowning families and chiefs on the other hand over the control, access to and use of family owned lands, lands reserved for the state and leased customary lands.

At present in Sierra Leone, there is growing interest in promoting responsible investments in land by domestic and foreign ‘investors’. However, hardly any systematic or reliable inventories of such land can be found in most of the provincial or Western Area land management offices. There has, nonetheless, been a rapidly palpable growth in the scope and rate of land access through leasing transactions among various stakeholders involving public or State controlled land and lands owned under customary tenure by land owning families, within the Western Area and the Provinces, respectively. Information on these trends, as well as emerging land utilization pattern is scanty.

The current and future impacts of such access to land are unknown while regulations to guide and ensure transparency and fair benefit sharing do not widely exist. Meanwhile, the government is actively promoting this foreign “land grabbing” phenomenon while domestic land speculators are also increasingly capturing lands within their family land areas. Without adequate data on the available quality land vis-à-vis the deeds of families, particularly the poor, our knowledge on the impacts of this process is hollow.

International perspectives regard the large scale leasing of land as providing both a threat and an opportunity to development, while many international civil society see this process as speeding up land alienation and the marginalization of the African poor, especially the women and other vulnerable groups. These groups are generally discriminated against under the customary law and their access to land is indirect and insecure.

Culture and traditions continue to support male inheritance of family land while there is lack of gender sensitive family laws. There is conflict between constitutional and international provisions on gender equality vis-à-vis customary practices that discriminate against women in relation to land ownership and inheritance. Women are not sufficiently represented in institutions that deal with land. Their rights under communal ownership and group ranches are also not defined and this allows men to dispose of family land without consulting women. Few women have land registered in their names and lack of financial resources restricts their entry into the land market. Moreover International Conventions on women’s rights relevant to women’s land rights ratified by the Government of Sierra Leone have not been translated into policies or laws.

The HIV/AIDS pandemic has had a significant impact on economic productivity, specifically on utilization and production from land based resources. It has affected the most productive age bracket. The pandemic has thus raised the need to re-organize rural settlements with a view to rationalizing agricultural production systems. Further, it has adversely impacted on the land rights of widows and orphans, who are invariably disinherited of their family land whenever male house heads succumb to illnesses occasioned by the pandemic. The HIV/AIDS pandemic underscores an urgent need to reform cultural and legal practices that discriminate against women and children with respect to access and ownership of land. Children and youth require special protection in matters related to land rights because they are minors under the law and may not be considered as grantees of land rights. Additionally, some cultural and traditional practices exclude children and youth from accessing, and making decisions over land.

3.3 Land use, planning and regulation

The current proliferation of competing land uses, increasing unofficial settlements and buildings, and the inadequate provision for streets, thoroughfares, and other amenities are a result of ad hoc decision making and inadequate land use, planning and regulation systems. Public space and activities are not adequately catered for in urban areas, as the State has limited and /or ineffective control of land for public purposes in most cities in the Provinces. The state has little control of urban land uses in Freetown; in spite of the frequent clean ups it undertakes. Tourism resources are being undermined by the unplanned land use system while the mining sector is so weakly regulated that its footprint of degraded lands is on the rise. The precise environmental impacts of the increased utilization of Boli lands for large scale farming is not well known, while the coastal mangroves are shrinking, all as a result of a weak land use, planning and regulation systems.

The land question within the coast region is potentially explosive owing to its peculiar historical and legal origins. In spite of this situation no serious systematic efforts have been made by subsequent Governments to resolve them. Specifically, this is manifested in form of “squatters” on Government land, absentee land owners, tenants-at-will, idle land, mass evictions and lack of access to the sea.

The slow land adjudication process and delay in finalization of coastal settlement programmes have denied the locals secure access to such land. The granting of freehold and leasehold tenure to beaches, some islands within the Atlantic Ocean to foreigners has further complicated land issues at the Coast by hampering public access to beaches, movement along the beaches for leisure, security maintenance or for fishing purposes and making development controls difficult to implement.

The coastal region provides unique opportunities for responsible investment, including thorough joint ventures involving local communities and government. Some of the coastal lands have been allocated to private developers without fully developing it and without due consideration of the future development plans. Private developments along and around navigation beacons, ship leading lights and other control points are not effectively maintained.

3.4 The land administration framework

3.4.1 Land administration authorities

Land allocation decisions are considered ridden with conflicting interests in the land by policy makers, chiefs and other functionaries. In particular, land held by the State is considered not to be managed in a transparent, accountable, and efficient manner. The land administration system, particularly its authority, in the Western Area is fragmented and experiencing a bureaucratic impasse resulting in inadequate planning and oversight and strewn with uncoordinated activities, and facing the potential of inefficient use of assets and donor aid.

Numerous stakeholders, particularly among potential foreign investors, banks, and aspiring domestic investors, some donors and experts argue that the land tenure administration processes within the provinces are cumbersome, uncertain, not uniform and not transparent, such that transaction costs are high. Yet the chiefs argue that the problems lie less with their administration than with some of the abusive investors. As a result some actors call for the codification of the customary tenure system to enhance uniformity and transparency of the rules.

Whereas land administration is a “techno-legal procedural and political process”, the process of allocation and enjoyment of land rights cannot be separated from the civil, political and human rights of the citizenry. The realization of these rights is dependent on the political, administrative and professional will to ensure fair treatment and equal opportunities for all. Many stakeholders believe that such a will is lacking, and that the control over land rights is, primarily being used as a means of accumulating and dispensing political and economic power and privilege through patronage, nepotism and corruption.

Numerous ad hoc and short term measures are being undertaken by the government to improve the effectiveness of the existing land administration system, particularly at central government level in the Ministry of Lands, Country Planning and the Environment. In the Western Area and the Provinces various pilot efforts are being discussed in order to improve the management of land and resolve the diverse demands for land, including the emerging land disputes. Land use and urban planning systems are also being interrogated.

A number of new laws and land management institutions have been discussed and/or proposed since 2005, by various donors. However, these are not adequately rationalized or harmonized with existing institutional structures governing the wider land administration system. As a result there are growing conflicts over land, and competition over land management authority; between line ministries (such as the MLCPE, Mines and Mineral Resources and the Registrar General’s Office) and, between these and local authorities, including the chieftaincy institution.

3.4.2 Land information management system (LIMS)

A critical requirement of an effective land management system is the establishment of an effective and publicly accessible land information management system, within the entire land administration and land adjudication system. Existing land records throughout the country are not well kept and are either degraded or not available. Few people have access to those records that exist. Local authorities and officials are alleged to be corrupt and fraudulent. Many land transaction records are manipulated. There is need for an entire revamp of the land management information system.

The recent impetus of growth in urban development and agricultural investment, means that the land administration systems particularly of demarcation, surveys and registration of

land transfers is unable to cope and is visibly weak. These systems are in various conditions of 'disuse' and mismanagement. They are still based on hard paper copy and manually operated, while being inaccessible and expensive to the ordinary people who require public land services. Furthermore, the inadequate records of State land and cadastral information in general renders it nearly impossible to establish a specific parcel without risk of future revocation. These inadequacies inevitably facilitate the making of false documentation and the practice of fraudulent claims to land.

3.5 Legal framework of the land policy

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

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

A variety of land disputes have emerged within the regions. These have heightened the need to improve the governance of land matters. Common land conflicts and disputes involve problems of effective land acquisition, contested land boundaries (involving family lands, chiefdoms, districts and provinces); the incidence of multiple land sales, conflicting

authorities over land administration (involving land owning families, traditional authorities and various arms of the state), growing land use conversion and the weakness of the land adjudication system.

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

3.6 International context of the land policy

Commonly in Africa, land is regarded not simply as an economic or environmental asset, but also as a social and cultural resource. Land remains an important factor in the construction of social identity, the organization of religious life and the production and reproduction of traditional society. The link across generations is ultimately defined by the complement of land resources which families, lineages and communities share and control. Indeed land is fully embodied in the very spirituality of society. These are dimensions which land policy development must address if prescriptions for change are to be internalised (AU 2009), in the context of African Union (AU) cooperation initiatives and the Framework and Guidelines for Land Policy in Africa.

A critical dimension of the land question is the effective management of the Sierra Leone international boundaries. The issues of concern include: cross-border activities such as farming, mining, cattle grassing and rustling, human settlements and smuggling across Sierra Leone's international borders.

These require effective domestic capacity to collaborate with governments and land users across the boundaries.

3.7 Key Issues Addressed by the National Land Policy

The above context has shaped the evolution of Sierra Leone's dual land tenure problems such as inequitable access to land, shortage of accessible land especially in the Western Area, insecure tenure forms and rights due to the absence of a system of registration of titles, lack of proper cadastral mapping and land information, unclear and diverging tenure forms under customary law, overlapping jurisdiction for statutory and customary laws, weak land administration and management, inadequate concession practices and protective mechanisms to prevent land grabbing in the commercial land use sector, among others.

The following issues have informed the formulation of this draft National Land Policy:

- CONSTITUTIONAL AND LAW REFORM ISSUES;
- LAND TENURE ISSUES;
- FACILITATING EQUITABLE ACCESS TO LAND;
- INSTITUTIONAL FRAMEWORK FOR LAND RIGHTS ADMINISTRATION;
- LAND USE, PLANNING AND REGULATION FOR LAND DEVELOPMENT;
- LAND ISSUES REQUIRING SPECIAL INTERVENTION; AND
- LAND POLICY IMPLEMENTATION FRAMEWORK.

3.8 The Structure of the Policy

The following seven chapters constitute the main body of the document. The approach adapted in chapter four to ten of this document is to give an overview of the principles underlying each issue identified highlighting, as briefly as possible, the current challenges and the rationale for the proposed policy intervention. There then follows the Policy Statement (or statements) backed by suggested policy implementation strategies indicating measures to be adopted.

In formulating each Policy Statement and implementation strategy the draft policy has given due consideration to the following factors:

- a) the significance of views expressed by stakeholders throughout the several consultations and validations processes;
- b) consistency with the vision, goal and objectives of the national land policy;

- c) professional suitability and feasibility of the policy options proposed, weighing the possible risk of jeopardizing the process of the overall socio-economic development of Sierra Leone as a whole;
- d) international “best practice” from:
 - i) Approximation to practices of sister jurisdictions with similar historical and political experiences as well as African Union Guidelines to Member States on the Formulating of Land Policies; and
 - ii) Past and current experiences of other African countries;
- e) Expert opinion.

CHAPTER FOUR

4.0 ISSUES RELATED TO CONSTITUTIONAL REFORM

4.1 Constitutional Issues

Sierra Leoneans, like citizens everywhere, regard access to land as a fundamental right to be guaranteed by the constitution. Land should therefore be treated as a constitutional issue. In sister African countries, such as Uganda and Ghana, to name just a few, the constitution sets out the broad principles on land, and establishes an efficient and equitable institutional framework for land ownership, administration and management. Since land policy reforms are not likely to succeed in the absence of such a sound constitutional framework, this policy would be providing for the land reforms being recommended to be accompanied by constitutional changes if they are to be effective.

A comprehensive national land policy for Sierra Leone should not only include the policy, legal and organizational framework by which issues relating to access, the content and protection of land rights, the control of the use of land based resources by the State and traditional organs, but it must also include an analysis of the constitutional context in which land is held and used in Sierra Leone.

This framework concerns itself with the sovereign powers of the State over land in Sierra Leone as expressed in Section 5 (2) of the 1991 Constitution which deals with the constitutional provisions relating to-

- Vesting of sovereignty generally in these terms:
“Sovereignty belongs to the people of Sierra Leone from whom Government through this constitution derives all its powers, authority and legitimacy”.
- The exercise of the powers of compulsory acquisition (eminent domain) and the State’s control of land use (the police power);
- The power of the State to levy tax on land; and
- The State’s duty to guarantee and protect the land rights of citizens in general and of women in particular.

4.2 Vesting of the Sovereign Title to Lands in Sierra Leone

A first vital issue to be addressed by this Policy is to clarify the question of the vesting of the sovereign title to lands in Sierra Leone by making appropriate provision in the Constitution and in the new comprehensive land statute to be enacted after this Policy is adopted. The formulation in section 5(2) of the Constitution could be amended to read: "Sovereignty and sovereign title to land belong to the people of Sierra Leone from whom Government through this constitution derives all its powers, authority and legitimacy".

POLICY STATEMENT

- a) After the coming into force of this Policy the sovereign title to Government/State lands and public lands shall vest in the National Lands Commission as follows:-
 - i. as to Government/State lands in trust for the citizens of Sierra Leone as a whole; and
 - ii. as to public lands in trust for the citizens of Sierra Leone as a whole or in trust for the particular community that originally owned the land as prescribed by the statute or other law creating the same; and

- b) The sovereign title to private lands shall henceforth vest as follows:-
 - i. as to land held under freehold tenure in the Western Area in the individual, group of individuals or Corporate entity absolutely;
 - ii. as to communal lands in the Provinces in the new Chiefdom Lands Committee (instead of the Chiefdom Council) in trust for the particular community concerned;
 - iii. as to family lands held under family tenure in the Province in the family as a unit;
 - iv. as to land held under Customary tenure in the Provinces in the Chiefdom Lands Committee/Village Area Lands Committee or the family which made the grant of usufructuary rights in perpetuity to the groups or individuals or corporate entity subject to the grantor's residuary rights.

Implementing Strategies

Measures shall be taken to

- i. Amend the Constitution and the State Lands Act by inserting therein appropriate provision for such vesting of the sovereign title to all Government/State lands and public lands in Sierra Leone in the National Lands Commission;
- ii. Amend or repeal the Provinces Land Act, Cap 122 by a new enactment providing for (a) the vesting of communal lands in the Chiefdom Lands Committee in trust for the particular communities concerned (b) the vesting Village Area Lands in the Village Area Lands Committee (c) vesting of Family Lands in the Family as a unit;
- iii. Make provision in the new comprehensive land statute to recognize the conversion to family tenure under customary law.

4.3 Exercise of the Sovereign Power of Compulsory Acquisition

Compulsory acquisition is the power of the State to acquire or extinguish any title or other interest in land for a public purpose. This power is expressly provided for in the constitution of most African countries to be exercised subject to the payment of compensation and other conditions, such as right of access to justice in the event of dispute over non-payment or inadequacy of the compensation. Thus, section 237 of the Constitution of Uganda expressly provides that-

“The Government or a local government may, subject to Article 26 of this Constitution, acquire land in the public interest; and the conditions governing such acquisition shall be prescribed by Parliament”

There is no such direct or express provision in the Sierra Leone Constitution. The power is to be implied from section 21(1) the main objective of which is to ensure protection against deprivation of property as a fundamental right. The power of compulsory acquisition is provided for as an exception to the prohibition against such deprivation to be exercised subject to three conditions. First, the acquisition must be necessary in the interest of:-

1. Defense;
2. Public safety;
3. Public order;

4. Public morality;
5. Public health;
6. Town and Country Planning; and
7. The development and utilization of the property to promote the public benefit;

Secondly, there must be reasonable justification for any hardship suffered; and a law must exist, such as Cap 116, that enables the person deprived to have recourse to the courts for relief if need be.

Ironically, the Public Lands Act, Cap 116 enacted as far back as 1896, and still in force in Sierra Leone, made express provision for the exercise of this power on behalf of the Crown in respect of land needed for “public works” in the Colony. It provided for the payment of compensation for any expropriation and gave a right of an action before the High Court with final right of appeal to the Privy Council in case of dispute as to the quantum of compensation payable.

Not only has the post-independent legislature failed to extend the application of Cap116 applicable throughout Sierra Leone, it has over the years made the situation more confusing by the enactment of certain pieces of legislation which, whilst providing expressly for exercise of the power of compulsory acquisition of land by certain State organs and agencies, have at the same time tended to perpetuate the dichotomy between land rights in the Western Area and those in the Provinces by relying on Cap 116 where the land is situate in the Western Area and Cap 122 where the land is located in the Province.

Other statutes have plainly failed to comply with the provisions of some of these statutes and have also failed to comply both with the letter and spirit of section 21(1) of the Constitution. Thus, section 10 (2) of the Forestry Act 1988 provides that;

“whenever the Minister intends to constitute a national forest over any land not owned or leased by the state, he shall first acquire the land by purchase or lease on such terms as to him seem just”

Another example is the Mines and Minerals Act 2009 Section 36 (1) of which simply provides that;

“The Minister may, by order published in the Gazette compulsorily acquire private lands or rights over or under private land for use by the holder of a large-scale mining license.

Under section 35 the Act provides that the question of compensation is for the Minister to determine on the advice of the Minerals Advisory Board and that if the claim is not made within a period of two years from the date when the compensation became due, it ceases to be enforceable.

For now, this issue may be of academic interest only as the provisions of the relevant statutes dealing with compulsory acquisition are seldom invoked. This is because most of the Chiefdom Council(s), family(ies) or even individual(s) involved voluntarily allow their lands to be used to fulfil the government’s development obligations and as their own contribution to national development.

For all the above reasons, under this Policy the relevant provisions of the Constitution and other statutes dealing with the power of compulsory acquisition of land by the State and/or its agencies shall be reviewed and streamlined.

POLICY STATEMENT

- a) The sovereign power of the State to acquire or take possession of land throughout Sierra Leone compulsorily for public purposes, but subject to payment of compensation, shall be expressly provided for in the Constitution of Sierra Leone and any statute vesting similar power in any organ or agency of Government shall provide that such power be exercised subject to the Constitution.
- b) Provisions will be made in the Constitution and/or accompanying legislation and policies to:
 - i. Clearly define the concept of public purpose in law, in order to allow for judicial review.
 - ii. Ensure that all actions are consistent with national laws as well as their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.

- iii. Respect all legitimate tenure right holders, especially vulnerable and marginalized groups, by acquiring the minimum resources necessary and promptly providing just compensation in accordance with national law.
- iv. Ensure that the planning and process for expropriation are transparent and participatory, and should provide information regarding possible alternative approaches to achieve the public purpose.
- v. Be sensitive where proposed expropriations involve areas of particular cultural, religious or environmental significance, or where the land, in question is particularly important to the livelihoods of the poor or vulnerable.
- vi. Ensure a fair valuation and prompt compensation and provide options for compensation. To prevent corruption, particularly through use of objectively assessed values, transparent and decentralized processes and services, and a right to appeal.
- vii. Government shall ensure that implementing agencies have the human, physical, financial and other forms of capacity.
- viii. Where the land expropriated are not needed due to changes of plans, give the original right holders the first opportunity to re-acquire these resources. In such a case the re-acquisition shall take into consideration the original amount of compensation received in return for the expropriation.
- ix. Where evictions are considered to be justified for a public purpose as a result of expropriation of land and land-based resources, conduct such evictions in a manner consistent with the obligations to respect, protect, and fulfil human rights.

Implementing Strategies

- I. The State shall exercise the power of compulsory acquisition uniformly and consistently throughout Sierra Leone and strictly in the public interest for national development purposes and in accordance with the conditions laid down in the Constitution and other relevant statutes;

- II. A uniform method of valuation shall be prescribed for the exercise of the power of compulsory acquisition to include adequate prior notice to and consultations with all persons to be affected, prompt payment of fair compensation and due recourse to justice in the event of any dispute;
- III. The scope for exercise of the power of compulsory acquisition shall be limited to developmental purposes only and in particular to ensure resettlement, physical planning, and orderly development;
- IV. Where the State's power of compulsory acquisition is delegated to State organs or agencies the power should be exercised in strict accordance with the conditions prescribed in the Constitution;
- V. Prescribe, in a set of regulations and guidelines, the specific conditions under which property may be compulsorily acquired, procedure for prior notice and consultation, the exact and proper roles and responsibilities of the different State organs and agencies in the exercise of this power; and
- VI. Any existing provision of a statute which gives arbitrary power to any government organ, agency or other entity to compulsorily acquire land in private ownership or arbitrarily fix compensation shall be repealed;
- VII. Where those affected are unable to provide for themselves, to the extent that resources permit, take appropriate measures to provide adequate alternative housing, resettlement or access to productive livelihoods.

4.4 The Constitution and State's Power of Development Control (Police Power)

The police power of development control is derived from the State's responsibility to regulate use of private rights in land so as to ensure that any such use of land is not injurious to this public interest or does not sabotage the public welfare and/or orderly development. This power is without prejudice to the landowner's right of absolute ownership. So in those jurisdictions, such as Sierra Leone, where the landowner holds his land independent of any sovereign rights of the State, the police power may be derived from the constitution or alternatively from various statutes. In Sierra Leone the Constitution is silent on the exercise of this power and it is left with various statutes, such as the Town and Country Planning Act

(Cap 81) as amended, the Local Government Act 2004 and the Freetown Improvement Act, Cap 66, to authorize its use by the Central and local governments respectively. As a result, because of lack of coordination among various agencies that exercise this power, the existing regulatory framework is largely ineffective. Over the years, the State and local authorities have been inefficient and have lacked transparency in the exercise of this power. The split in the exercise of the power across different sub-sectors of natural resources is also responsible for the inefficient enforcement and widespread disregard of the relevant legislation and regulations on land use/physical planning regulations, environment, and natural resources throughout the country. Besides, regulations have been limited to urban areas instead of a uniform application.

POLICY STATEMENT

The State shall exercise the power of public regulation of land use, strictly in the interest of environmental sustainability, socio-economic welfare and development

Implementing Strategies

Measures shall be taken to:

- I. Review existing legislation expressing the police power of the State to conform with the provisions of the national land policy, constitutional guarantees and international human rights obligations generally;
- II. Prescribe guidelines for the exercise of the police power by the State and local councils for purposes of harmony of application by all stakeholders;
- III. Ensure that the use of police power by State agencies take account of sub-sectoral policies and laws on land use, the environment and natural resources.
- IV. Ensure compliance with the laws and regulations for land use, both in urban and rural areas by securing compliance through incentives and rewards as well as through sanctions and penalties;

4.5 The Constitution and the Guarantee and Protection of Land Rights

Though the protection from discrimination on grounds of gender, ethnicity, race and other forms of discrimination is one of the fundamental rights guaranteed by the Constitution the impact of the relevant provision is severely attenuated by a claw-back clause. Section 27 (4)

of the Constitution which provides that no law shall make any provision which is discriminatory either of itself or in its effect is made subject, inter alia, to Section 27 (4) which states that subsection (1) shall not be applicable where the discriminatory law makes provision

(e) “with respect to adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law or for the application in the case of members of a particular race or tribe or customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons;”

There has been no attempt made by the legislature to redress the situation by outlawing discriminatory cultures, customs and practices in land ownership, occupation and use. This policy is recommending that provisions be inserted in the Constitution to protect women’s rights generally, and rights relating to land, in particular, will be protected in the basic land statute to be enacted after the coming into force of this policy. This statute will not only cater for the rights of spouses, but also of widows, unmarried daughters, divorcees, women in co-habitation and children.

POLICY STATEMENTS

Government shall:

- a) Guarantee and protect the right to land in the constitution without discrimination;
- b) Maintain and/or provide policy, legal and organizational frameworks that promote responsible governance of tenure of land and land-based natural resources that are dependent on, and are protected by existing laws and broader reforms to the legal system, public service and judicial authorities;
- c) Ensured that policy, legal and organizational frameworks for land tenure governance are consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments;

- d) Ensure that frameworks reflect the social, cultural, economic and environmental significance of land and land based resources, and are non-discriminatory and promote social equity and gender equality.
- e) Ensure that tenure governance recognize and respect, facilitate, promote and protect the exercise of tenure rights including legitimate customary tenure rights that are not currently protected by law;
- f) Ensure that frameworks reflect the interconnected relationships between land, fisheries and forests and their uses, and establish an integrated approach to their administration.
- g) Consider the particular obstacles faced by women and girls with regard to tenure and associated tenure rights, and take measures to ensure that legal and policy frameworks provide adequate protection for women and that laws that recognize women's tenure rights are implemented and enforced.

Implementing Strategies

- I. Government shall undertake the amendment of the Constitution so as to enact provisions to protect the right to land of everyone;
- II. Government shall ensure that appropriate provisions are inserted in a new basic land law to protect the rights of access to inheritance and ownership of land for everyone especially women and children;
- III. The Government shall address the existing gender inequality and ensure that under the constitution both men and women enjoy equal rights to land before marriage, in marriage, after marriage, and on succession to rights in land under customary law, and shall ensure the harmonization of the two regimes under which land is held in Sierra Leone.
- IV. Frameworks for implementation shall ensure that women can legally enter into contracts concerning tenure rights on the basis of equality with men and should strive to provide legal services and other assistance to enable women to defend their tenure interests.

4.6 Miscellaneous Constitutional Amendments

Quite apart from the need to mainstream specific land issues in the Constitution, the necessity to eliminate from the Constitution provisions which tend to perpetuate discriminatory laws, traditions and cultural practices and which militate against the protection of the land rights of women and other marginalized members of society could justify inclusion into the Constitutions amendments of a more general nature.

In this regard it is proposed that provision be made for the protection not only of women's land rights in particular but also for the protection of women's rights generally.

POLICY STATEMENT

The Government shall ensure that the Constitution is amended to include a specific provision dealing with the protection of women's rights generally and in accordance with the principles of implementation of this policy.

Implementing Strategies

- I. Such a provision shall ensure that women have the right to full and equal protection by the law and have the right not to be discriminated against on the basis of their gender or marital status which includes right-
 - i. To be accorded the same rights as men in civil law generally and in the law of succession in particular, including equal capacity to acquire, use control and maintain rights in property, independently or in association with others, regardless of their marital status;
 - ii. On dissolution of marriage to a fair disposition of property whether or not held jointly with a husband;
- II. Any law or practice that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women, particularly practices such as-
 - i. Discrimination in work, business, public affairs, and participation in decision making in matters that affect their rights generally; and
 - ii. Deprivation of property, including property obtained by inheritance.

- III. Without prejudice to the above provisions, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition and custom.
- IV. The NLP shall ensure effective, accessible and affordable access to justice for women whose rights are infringed and prompt enforcement of outcomes.

4.1.6 The Sovereign Power of the State to Levy Tax on Land

This is one of the sovereign powers over land that is normally provided for in the constitution or some other law. It is absent from the Sierra Leone Constitution. What is commonly encountered in Sierra Leone is the power vested by statute in certain Government organs and agencies to assess and collect a variety of taxes, fees and charges (such as capital gains, income tax on rents, stamp and estate duty) relating to certain land transactions and power given to local councils to demand property rates on residences in urban areas for services rendered by the local council.

There is also provision in the Mines and Minerals Act for a certain percentage of the surface rent paid to landowners by holders of mining concessions to be deposited or paid to the chiefdom treasury as a form of development levy. There is also a practice in some chiefdoms for one-third, out of the rent proceeds derived from leases under Cap 122 to be paid to the Chiefdom Treasury, another third to the Paramount Chief and the landowner to retain only a third. In the *Investment Policies and Incentives For Private Sector Promotion In Agriculture in Sierra Leone* formulated by MAFFS in January 2009, it is being proposed that rent paid to for the leasing of private land by investors for large scale agricultural use be divided into four parts as follows; -

1. To the landowners-50%;
2. To the district Council-20%;
3. To the [chiefdom] Administration-20%; and
4. To the National Government -10%.

The MAFFS document further propose that-

“the bulk of Nos. 1-3 must be used to support community development initiatives to be determined by the community /Chiefdom Development Committee or the District Council.”

The purpose of land taxation being proposed by this policy is to provide raise revenue through taxation related to tenure rights so as to contribute to the achievement of its broader social, economic and environmental stewardship objectives. Speculative holding of land greatly interferes with the objective of Government to encourage a fair allocation of land especially in the Western Area as it creates an artificial shortage of development land. It is imperative therefore that reform measures be put in place that will discourage land speculation, promote proper land stewardship and at the same time enhance revenue collection for Government.

Policy Statements:

The Government:

- a) has the power to raise revenue through taxation related to tenure rights so as to contribute to the achievement of its broader social, economic and environmental objectives.
- b) shall strive to develop policies, laws and organizational frameworks for regulating all aspects pertaining to taxation of tenure rights.
- c) shall administer taxes efficiently and transparently. Staff of implementing agencies shall receive training that includes tax administration and valuation methodologies.
- d) Tax rates shall be based on appropriately assessed land values. The assessment of values and taxable amounts shall be made public and should provide taxpayers with a right to appeal against valuations.
- e) shall endeavour to prevent corruption in tax administration, through increased transparency in the use of objectively assessed values.
- f) shall levy progressive land tax on all lands allocated to commercial investments in rural and urban areas, beginning with landholdings above 2 hectares in rural areas.

Implementing Strategies

To facilitate the efficient utilization of land and land-based resources, the Government shall:

- I. Apply both the Unimproved Site Value and Improvement Value Taxation to all land in urban areas;
- II. Introduce a development levy on undeveloped land;
- III. Apply the Development and Capital Gains Tax in order to capture some of the value created through public infrastructure improvements;
- IV. Apply these new taxes subject to the remissions to be enjoyed by certain types of properties and ownership to safeguard interests of the poor and persons wholly dependent on their land for subsistence; and
- V. Improve the capacity of public institutions, including local authorities, to assess and collect taxes.
- VI. Apply an objective criteria to tax exemption and waiver decisions on land investments.

4.1.7 Land Valuation and Professional Practice

POLICY STATEMENT

The Government shall:

- i. Develop policies and laws to support the development of the Surveying and Land Management profession, professional associations, professional ethics and standards that encourage and require transparency in land valuation and land surveying and other land sector professions consistent with relevant international standards;
- ii. Develop and publicize national standards for valuation and require public disclosure of valuation records and other relevant information for comparative analysis and reliable assessment of values. National standards shall be consistent with relevant international standards;
- iii. develop policies and laws related to valuation that strive to ensure that valuation methods take into account markets as well as non-market factors, such as cultural, religious and environmental factors, where applicable.

- iv. Ensure that appropriate methods of valuation are used for the fair and timely valuation of tenure rights for specific purposes.
- v. Training of staff in valuation and surveying should include methodologies and licensing requirements based on comparable international standards
 - i. strengthen capacity of Land Sector Institutions and Professional Associations to regulate all professions in the land sector;
 - ii. develop partnerships for providing professional skills upgrading programs, licensing and ethics of professional practice for practicing Surveying and Land Management practitioners.

4.1.8 The Need for Land Law Reform and Review of out-dated Legislation

One of the major recommendations that underpins the various land reforms that are being proposed in this Policy is the need for the enactment of a comprehensive basic land statute that would be applicable throughout Sierra Leone and would serve as a legal framework for the Policy to take into account the dual legal system and multiplicity of tenure regimes currently in force in Sierra Leone.

As a prelude to the drafting of such law, and as a separate exercise, the Law Reform Commission shall be required to undertake a thorough review of all English received land law (statutes, common law and equitable principles) as well as those statutes adopted under the Imperial Statutes (Law of Property) Act, Cap 18 of the Laws of Sierra Leone 1960 and all land legislations enacted by the local legislature.

There is a wide consensus among all major stakeholders that virtually all the statutory land laws are in need of urgent review. This is so because, among many other reasons, most of them are old and obsolete, derived mostly from English law but predating the great English property legislative reforms of 1925. Those which were inspired and enacted locally predate Sierra Leone's independence in 1961 or were enacted immediately thereafter. As a result, most of these statutes are no longer relevant to the needs of an emerging economy.

The grammar of the received law of real property is for the most part archaic and irrelevant to the realities of Sierra Leone today. In the day to day administration of the law it is always an extremely difficult task, in the absence of statutory guidance or a judicial decision, to decide whether a particular English statute is or is not in force in Sierra Leone by virtue of

the reception clause. Besides, large proportion of the English statute law in force in Sierra Leone are not readily available to legal practitioners and those responsible for administration of the law, as very few, if any libraries in Sierra Leone have a complete set of pre-1880 English enactments.

The objective of the review process will be to modernize the law, getting rid of anachronistic notions of English law, such as the doctrines of tenures and estate, the rule against perpetuities, the right of survivorship, the distinction between the fee simple estate and the fee tail, to name but only a few.

POLICY STATEMENT

Government shall ensure that the relevant land laws still in force in Sierra Leone are systematically reviewed, modernized, and made more relevant to the conditions now prevailing in Sierra Leone.

Implementing Strategies

- I. As a matter of principle, any received English law that has been repealed or amended in England shall be subject to review and, if necessary, repealed;
- II. The following locally-enacted statutes shall be reviewed to bring them in line with the changes advocated in this policy; and amended or repealed as may be justified:
 - a) **The Provinces Land Act, Cap 122**: enacted in 1927, this statute which is responsible for the distinction between “native “ and “non-native” as far as access to provincial land is concerned is generally perceived as an hindrance to proper use of such land for development purposes. The need for its repeal has been generally recognized and work on its replacement is in progress by a committee appointed by the Cabinet sub-Committee on lands headed by the chairperson of the Law Reform Commission;
 - b) **The Concessions Act, Cap 121**: This statute was enacted in 1931 for the express purpose of regulating the rights which “natives” could grant to “non-natives”, with the consent of the Governor by way of concession for mining or agricultural purposes. Concessions under the Act could be granted for a term as long as ninety-nine years and could cover an area of one thousand acres and above.

However, the procedure for the grant of a concession was very complicated and time-consuming. Not only must a special Concession Court under section 11 of the Act validate the grant, but, if the extent of the concession exceeded five thousand acres, the Governor had to give his assent subject to the approval of Parliament. Though the Act still remains in the statute books and was even amended in 1976 to exclude mining concessions from its provisions, the Act has not been invoked in recent times for the purpose of granting access to provincial land to foreign investors in agriculture;

- c) **The Non-Citizens (Interest-in-Land) Act, 1966:** Criticisms of restrictions imposed on foreign investors who wish to access land in Sierra Leone are usually aimed at the provisions of the Provinces Land Act, Cap 122, which limit the interests which non-natives could hold in provincial land to a leasehold of not more than fifty years with an option to renew for a further term of twenty-one years. It normally comes as a surprise when mention is made of the provisions of the Non-Citizens (Interest in Land) Act 1966. Section 4 of this Act prohibits any non-citizen or entity, (that is one in which non-citizens own more than fifty per cent of the equity) from holding of a freehold interest in land in the Western Area. The Act goes further to limit the duration of any leasehold interest to a term of not more than twenty-one years unless a Board established under the Act extends the term. Needless to say to improve access to land in the Western Area for investment in tourism and other related investments the quantum of the interest which non-citizen individuals and corporations could hold in land under the Non-Citizens (Interest in Land) Act 1966; will have to be revised upwards;
- d) **The State Lands Act, 1960:** It is being proposed in this Policy that there should no longer be a distinction between State lands, presently administered by the MLCPE under the State Lands Act, and government lands that are outside the definition of State lands as contained in the Act. As a result, this Act would be re-designated '**The Government Lands Act**' to be administered by the proposed National Land Commission. Meanwhile there is an urgent need to ascertain what lands are still available to the MLCPE for the purposes of allocation under the State Lands Act. Until recently the Ministry could declare with reasonable certainty the status of all

lands in the Western Area. An endorsement of the word “clear’ on a survey plan countersigned by the Director of Surveys and Lands was a guarantee that the piece of land delineated in that plan was not State land. This is no longer the case. There is an urgent need to ascertain what lands are still State lands if the Ministry is to be able to make grants that will not give rise to litigation by rival claimants as is often the case presently. There is also an urgent need for clarity in the law and procedure governing recovery of vast tracts of State land occupied or claimed by individuals and more recently by so-called communities who did not derive any title thereto from the State. This problem is not new. It predates independence hence the need to enact the Unoccupied Lands (Ascertainment of Title) Act, as far back as 1911. However, the problem has gotten worse and more complicated, especially with the influx into the Western Area of a large numbers of persons from the Provinces, including those internally displaced by the country’s civil war. It is still a moot point whether a claim by the State for the recovery of State Lands could be statute-barred. One point that will eventually have to be clarified by the courts is whether the provisions of the Limitation Act 1961 bind the State. Section 30 of this Act stipulates that the provisions of the Act shall apply to proceedings by and against the State in like manner as it applies to proceedings between private citizens. However, this provision would appear to be in direct conflict with that contained in section 32 of the State Lands Act 1960, which stipulates that:

“the right of the State to sue for the recovery of State land shall not be barred or affected by any statute, Act or other law of limitation”.

A simple amendment of either section can remove a doubt that might be inhibiting the MLCPE of instituting action for the recovery of State Lands where the rival claimant had been in adverse possession for over 30 years;

- e) **The Unoccupied Lands (Ascertainment of Title) Act, Cap 117:** This statute is relevant to the question of recovery of State lands. Under its provisions the Director of Surveys and Lands can claim any land considered to be unoccupied within the meaning of the Act as State land. For the purposes of the Act:

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

If the claim is disputed the matter could end up in court and be added to the ever-increasing number of land disputes pending before the courts. Though the provisions of this Act have for long remained dormant there are signs that its provisions are now being invoked more frequently as the Government embarks on a drive to identify and recover illegally occupied State land. Since the socio-economic circumstances and the policy imperatives that led to the enactment of this law in 1911 no longer exist there might be a need to review and amend, if necessary, not only the substantive grounds upon which the State can claim lands under this statute as State land but the procedure laid down in the Act which is bound to give rise to litigation in each case ought to be revisited;

- f) **The Survey Act, Cap 128:** One of the major functions of the MLCPE is the administration of the Survey Act, Cap, 128, and the regulation of the land survey process. This function is one that not only impacts on virtually all dealings in land whether for the demarcation, acquisition and transfer of land rights. Save as therein provided, section 12 of the Registration of Instruments Act makes it compulsory for every conveyance deed or other instrument submitted for registration to have a survey plan annexed thereto, such plan to be prepared by a surveyor and countersigned by the Director of Surveys and Lands in accord with section 15 of the Survey Act as amended. Certain flaws in this statute need to be put right. Pending the introduction of a legal cadastre which is a prerequisite for the introduction of the envisaged system of registration of title, action need to be taken to minimize the opportunities for abuse of the present process of land surveying under the Surveys Act;
- g) **The Registration of instrument Act, Cap 256:** The defects in the law regulating the present system of registration of deeds are dealt with in greater detail elsewhere in this policy document. Pending the introduction of a system of

registration of title to replace the present system of registration of deeds it is envisaged that some of the provisions of the Registration of Instruments Act, Cap 256, which render the Act so ineffective, will be revised by the Committee appointed by the Cabinet Sub-Committee on Lands under the chairmanship of the ARG to review this statute and prepare for the introduction of a system of registration of title will minimize, if not entirely eradicate, some of the blatant anomalies referred to later in this policy.

- h) **The Foreshores Act, Cap 149:** Coastal areas in Freetown and the Provinces are coming under increasing threat of degradation mostly through illicit mining activities. Cap 149 needs to be reviewed and strengthened to afford adequate protection to our rapidly depleting coastline. The Foreshores Act was enacted to apply only in the former colony leaving huge swathes of coastal terrain in the provinces unprotected.

CHAPTER FIVE

5.0 LAND TENURE FRAMEWORK

This framework is concerned with the analysis of the structure of various tenure regimes in force in Sierra Leone. Because the incidents of and the relationships among these regimes are not clearly defined in any legislation they tend to give rise to overlapping land rights, uncertainty, insecurity of tenure and problems of internal conflict in land management and administration.

There is a need to clarity in respect of the terms and conditions under which rights to land are acquired, retained, used, disposed of, or transmitted under each tenure regime. It is also essential to distinguish and recognize the various classifications of the land tenure regimes in force in Sierra Leone.

5.1 Tenures under the Different Legal Regimes

The first classification to be recognized is in terms of the legal regime governing each tenure. In this regard, land in Sierra Leone can be held under either the general law (consisting of the rules of common law, equity and enactments in force in Sierra Leone) or customary law.

The general law recognizes two main types of tenure;

Freehold; and

Leasehold.

The Freehold

The term 'freehold' was introduced into the Colony as part of the English feudal doctrine of tenures and estates. Under English land law all land belonged to the Monarch. Landholders are tenants of the Crown entitled to various types of estates. The term expresses not only the quality of the estate but the quantity of the estate. There could be three types of estates, a fee simple which could be inherited by any heirs without restriction, the fee tail (seldom encountered in Sierra Leone) which restricts inheritance to particular heirs and the

life estate which lasts only for the life of the grantee or the life of some other named person.

The freehold was introduced into the Colony bereft of all the incidents of feudal tenure and is currently, for all intents and purposes, equivalent to absolute ownership. As a result, a freehold under the general law has some unique incidents that confer security of tenure and freedom of user and disposal subject only to the State's power of compulsory acquisition, escheat or forfeiture after due process, the State's regulatory or police power and the right to have the property vested in the State as *bona vacantia* if the freeholder dies without leaving any heirs.

However, though the freehold does exist and is generally recognized in Sierra Leone, it remains a very complex concept governed by very complex common law rules, particularly relating to its creation. A violation of some of these rules may render the grant null and void.

The Leasehold

In practice, leaseholds are probably of greater importance in Sierra Leone than freehold estates, the fee tail or the life estate. The main characteristic of a typical leasehold is the certainty of its duration. For this reason only fixed term tenancies and periodic tenancies are recognized and classified as leaseholds whereas a tenancy at will and a tenancy at sufferance because they only last for an indefinite period are not classified as leaseholds.

Tenures under Customary Law

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

a) Communal Tenure;

The main feature of communal tenure is that title to lands in a chiefdom or parts of chiefdom are claimed by or on behalf of the community as a whole. Membership of such a community as well as member's right to claim an interest in communal lands are based on descent from some kinship group within the community traced patrilineally. At a broader level the community is co-extensive with the chiefdom.

The community is not monolithic but invariably consists of several sub-communities, sections, towns, families and even individual members holding varying degrees of interests in specific portions of communal lands.

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

However, as far as power to allow members of the community to access communal land is concerned this is the privilege of socio-political head at the appropriate level. The right of each member is a usufruct which could be enjoyed in perpetuity as long as the land is not abandoned and there are heirs attached to inherit it. In the event of abandonment or failure of heirs the reversionary interest is reviewed.

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

b) Family Tenure;

For the purposes of classifying land in the Provinces of Sierra Leone as being family land, the term “family” *refers to a group of persons standing in close blood relationship with each other invariably on the patrilineal side who constitute a descent group for the purposes of inheritance of land and other forms of collective property.* Family tenure can be defined as the system of customary tenure in which title to certain lands within chiefdom is claimed by various descent groups, each with a common ancestor. The title is vested in the family as a unit. Such family lands should be distinguished from lands held by family groupings (Clans) as members of a community under communal tenure. Under family tenure, the family’s title is paramount and not dependent on or derived from that of any superior entity.

Unlike stool lands in Ghana, family lands in Sierra Leone are not held or exploited by the family as a unit. Beneath the paramount title of the family, varying degrees of lesser interests are held in specific or particular portions by sub-family groups, households and even individuals. Access to such interests is accorded by the head of family ideally acting in consultation with all the principal members of the family. Powers of management, control, and disposal to non-members of the family, are also vested in the head of the family who shares customary alliance with the socio-political heads of the chiefdom at varying levels and with officials of the local government administration, albeit to a limited extent;

d) Statutory Leases

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

e) Customary Tenancies

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

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

5.2. Types of Ownership

The next classification is according to the ownership and/or the manner in which the land is used. Thus the following categories of land shall henceforth be recognized:

- a) Government (inclusive of State) land;
- b) Public land; and
- c) Private land (inclusive of land held under customary tenure)

5.3. The Merging of State Lands and Government Lands

At present the only instance when the State asserts full ownership rights over land is where the land is situated in the Western Area and is State Land. In this regard, though this is not expressly provided for in the Constitution or any other law, State land is for all intents and purpose separate and distinct from what may be defined as Government land and Public Lands.

According to the State Lands Act, State lands are defined as-

“all lands which belong to the State by virtue of any treaty, cession, convention or agreement, and all lands which have been or may hereafter be acquired by or on behalf of the State, for any public purpose or otherwise howsoever and land acquired under the provisions of the Public Lands Act and includes all shores, beaches, lagoons, creeks, rivers, estuaries and other places and waters

whatsoever belonging to, acquired by, or which may be lawfully disposed of by or on behalf of the State.”

Though this definition seems very wide and all embracing, giving the impression that it covers all land owned by the State throughout Sierra Leone, it is of very limited application. First, the Act was passed by the colonial administration and was meant to apply only to Crown lands in the Colony as expressly stated in Section 1 of the Act. This limited application has never been altered and the State Lands Act still only applies to the Western Area. The effect of the amendments which have been made is to delegate the powers of management to the Minister and officials of the MLCPE and disposal of State lands vested in the Government and later the President as successor of the Crown.

The questions that arise are: what is the status of lands acquired by or on behalf of the State out of the Western Area, i.e. in the Provinces (or abroad)?; in whom is the sovereign title vested?; and who is responsible for their management and disposal?.

In Chapter 11 of Constitution a distinction is made between the Republic of Sierra Leone which is the State and the Government, the principal organs of which are the executive, legislature and the judiciary, deriving its powers, authority and legitimacy from the Constitution. Like other property, where land is acquired by or on behalf of the Government, title thereto should vest in the Government and such lands could properly be described as ‘Government lands’.

Unlike the situation with State lands, there is no express provision in the Constitution or any other legislation as to the institution that has the power of management and disposal of such lands. However, it could safely be implied that such power is impliedly vested in the MLCPE as it is the agency that normally acts on behalf of Government when it acquires or disposes of land as provided for in the Public Lands Act (Cap 116). This power is tacitly recognized by the fact that the “leasing of government land” is one of the functions the MLCPE is supposed to devolve to the local councils under the Local Government Act, 2004.

One of the functions of the National Land Commission being proposed in this Policy is to hold and be responsible for the management and disposal of what are now considered as State lands as well as Government lands as described herein. Since in practical terms the

distinction between State lands and Government lands is of very little significance, it is proposed that the distinction in designation be discarded so that there will be only one category of Government land to include State land in the Constitution with clear regulations and guidelines to control the management and use, including disposal of these lands in an appropriately drafted legislation.

POLICY STATEMENT

As a matter of principle, there shall no longer be any distinction between State land and Government land. All lands which have been or may hereafter be acquired by or on behalf of the State or the Government for any public purpose or otherwise howsoever and had acquired under the provisions of the Public Lands Act (Cap. 116 and including all shores, beaches, lagoons, creeks, rivers, estuaries and other places and waters whatsoever belonging to, acquired or which may be lawfully disposed of by or on behalf of the State of Sierra Leone or the Government shall be designated Government lands.

Implementing Strategy

Government shall amend the State Lands Act 1960 to rename it 'the Government Land Act', extend its application throughout Sierra Leone and substitute the National Land Commission for the MLCPE as the agency responsible for the administration and management, inclusive of disposal, of all Government lands.

5.4. Public Lands

At present, there is no legislation defining Public lands. Any attempted definition can only be inclusive. *Public lands shall be defined as lands reserved and held and/or used by the central government, local councils and communities for public purposes such as forest reserves, community forests, national parks, community parks, common grazing fields, wildlife sanctuaries, road reserves and lands carrying public infrastructure and similar land categories which are fully protected in the long term public and national interest.* Presently, the responsibility for the management and control of the use of such lands are vested in various Ministries, Departments and Agencies (MDAs), local councils and chiefdom councils.

Invariably, there is no clear distinction in the Constitution and the laws of Sierra Leone between State/Government land and Public land. There are also no clear guidelines to

control the management and use, including disposal, where this is permissible, of such lands.

POLICY STATEMENT

- i. As a matter of principle, a clear distinction shall henceforth be drawn between State/Government land and Public lands.
- ii. Ownership, management and control of use of these lands currently regulated by relevant statute or other law by which they are created shall be amended, harmonized and placed under the overall supervision of the National Land Commission in accordance with the law and principles of public trusteeship, transparency and accountability.

Implementing Strategies

The Government should:

- a) where it owns or controls land, determine in light of broader social, economic and environmental objectives, the use and control of land and ensure that all actions are consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.
- b) strive to establish up-to-date tenure information on public land by creating and maintaining accessible inventories. Such inventories should record the agencies responsible for administration as well as any legitimate tenure and/or land access rights held by indigenous peoples and other communities under customary tenure and the private sector. Where possible, the States should ensure that the publicly-held tenure rights are recorded and linked by a common framework to the National Land Registry.
- c) develop and publicize policies covering the use and control of public land and strive to develop policies that promote equitable distribution of benefits from State-owned land and land-based resources. The administration of, and transactions concerning, these resources should be undertaken in an effective, transparent and accountable manner in fulfilment of public policies.

- d) develop and publicize policies covering the allocation and management of public land use rights to others and, where appropriate, the delegation of responsibilities for tenure governance. Local communities that have traditionally used the land and land based resources should receive due consideration in the management of tenure and access rights. Such policies should ensure that the allocation of management rights does not threaten the livelihoods of people by depriving them of their legitimate access to these resources.
- e) ensure Government and non-state actors take appropriate measures to prevent corruption in the allocation of public land rights.
- f) where responsibilities for public land governance are delegated, the recipients should receive training and other relevant support so they can perform those responsibilities.
- g) monitor the outcome of public/government land management programmes, including the gender-differentiated impacts on food security and poverty eradication as well as their impacts on social, economic and environmental objectives, and introduce corrective measures as required.

5.5. Private Lands

*Private land refers to land in respect of which the sovereign title is held by a community, by a family, an individual, group of individuals or other entity under any one of the tenure regimes in force in Sierra Leone. All private lands are held on terms subject to the power of compulsory acquisition and the police power of the State; and in cases where it is held under the general law, subject to the State's right to take as *bona vacantia* (escheat) in case where the owner dies without any heirs or, if held under customary law, subject to the community or family's residual right of reversion if the owner dies without heirs or abandons the land.*

POLICY STATEMENT

Government shall respect, protect and secure rights in and over private land.

Implementing Strategies

Government shall:

- a) Ensure that subject to land use planning, the owner of private land has the right to exclusive possession, user and disposal without seeking government's approval;
- b) Ensure that neither the Government nor any of its agencies shall arbitrarily deprive the owner of his/her rights to his/her land;
- c) Ensure that neither the government nor any of its agencies shall set conditions, such as rent or price fixing, for disposal of private land;
- d) Ensure that private land is held, alienable and transmissible without discrimination on grounds of sex, ethnicity or religion; and
- e) Ensure that the alienation of rights to private land takes into account all other legitimate rights or interests held or claimed by other persons over the affected land.
- f) Provide effective, accessible and affordable access to justice for those whose rights are infringed and prompt enforcement of outcomes.

5.6. Incidents of Ownership

The third classification to be recognized under this policy is in terms of the quantum of rights held by any particular entity under each form of tenure i.e. whether absolute/sovereign/paramount or less than absolute/derivative/time-bound.

POLICY STATEMENT

- a) In the basic land law to be enacted, there shall be several categorizations of lands as follows:
 - i. Land held under the general law or under customary law;
 - ii. Government Land and Public Land, and
 - iii. Private Land;
- b) In the basic land law to be enacted, the following land tenure systems will be recognized: Freehold tenure, Customary tenure, Leasehold tenure, including Statutory Leasehold tenure, and Customary Tenancies according to the quantum of interest of the landholder in the land.
- c) 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.

Implementing Strategies

- i. Legislative and other measures shall be put in place to remove all structural and normative impediments, internal to the operation of each tenure system, particularly those under customary law;
- ii. Mechanisms shall also be put in place to:
 - a) Guarantee that access to land under any tenure system, by way of transfer or transmission, does not deny any person of rights in land on the basis of gender, ethnicity, or social and economic status;
 - b) Ensure equity, transparency and accountability in the allocation and management of land rights and preserve and conserve land resources for future generations.
 - c) Ensure the full protection of use rights and right to commons for all without discrimination.

5.7. Special Measures Relating To Customary Land Tenure

Customary land tenure remains a complex system which is not always capable of precise definition. Rights in land held under customary law are invariably not documented except where the grant is one under the Provinces Land Act, Cap 122, or the transaction involves a grant made in a form known only to the general law, an attempted conversion from a customary tenure, such as a family tenure, to a freehold under the general law. Invariably, this absence of any documentary title is not only the main reason for insecurity of tenure under customary law but it is a factor that impedes development as it fails to facilitate the easy transfer of land rights under customary law. This has always been the case and is likely to remain that way because customary land rights, being trans-generational are protected by rules of allocation and transmission designed to keep land resources within communities, lineages and families.

POLICY STATEMENT

Customary tenure shall be strengthened to facilitate and promote its orderly evolution into a modern productive land tenure system.

Implementing Strategies

Measures shall be taken to:

- I. facilitate the evolution and statutory recognition of customary land tenure by the documentation of the fundamental customary land tenure rules applicable to communities in order to eliminate customs rules repugnant and in-consistent with the constitution and international human rights;
- II. design and implement a land registry system to record all land rights and transactions under customary law;
- iii. develop and systematically implement plans for comprehensive registration of land rights under customary tenure after the introduction of the new system of registration of titles.

5.8 Customary Land Governance Reforms

Customary land institutions maintain their traditional power and social responsibility to allocate the rights to use land, resolve conflicts, and carry out overall management of customary land rights. Weak customary land governance has also been linked to lack of comprehensive regulatory framework governing security of tenure, insufficient or incoherent and improperly enforced legal provisions, lack of transparency and access to information, inequity and unfairness, lack of accountability, irresponsiveness of institutions to the plight of land users, and an inability for all citizens to participate effectively in customary land governance. Therefore, it is important to effective implementation of the NLP to clearly define the role of customary land governance and institutions and to establish measures of efficiency and effectiveness of customary land delivery processes, equity in distribution and allocation of land rights, accountability of stewardship, and participation of community members in land management activities and decision-making.

POLICY STATEMENT

- a. In the effort to facilitate the evolution and streamlining of customary land governance procedures, Government in consultation with communities shall develop and mainstream customary land governance guidelines and administrative procedures to include

transparency and access to information essential to the evolution of good governance in customary land delivery processes.

- b. Land related statutory institutions and MDAs should provide the necessary guidelines for regulating the role, duties and obligations of customary land governance institution to ensure that they adhere to the principles of the National Land Policy and good land stewardship.

Implementation strategies

Government shall:

- i. take measures to develop policies, guidelines, assessment tools and organizational frameworks for regulating, and where appropriate, streamlining administrative procedures pertaining to good customary land governance;
- ii. develop a regulative framework that enforces more accountability within customary tenure institutions, in particular a rule making them submit financial statements for external auditing;
- iii. facilitate and promote indigenous knowledge and build the capacity of customary tenure institutions to enhance land governance in all areas consistent with the principles and aspiration expressed by the National Land Policy.
- iv. develop appropriate tools and measures for improving local community capacities to hold their Chieftdom Land Committees and Area Land Committees as trustees and customary land managers and decision makers accountable to their communities;
- v. ensure the administration of, and transactions concerning customary land resources are undertaken in an effective, transparent and accountable manner in fulfilment of public policies.
- vi. allocate tenure rights and delegate tenure governance in transparent, equitable and participatory ways, using simple procedures that are clear, accessible and understandable to all, especially to communities with customary tenure systems. Information in applicable languages should be provided to all potential participants, including through gender-sensitive messages;
- vii. require and ensure that existing and newly allocated customary tenure rights are recorded with other tenure rights in a single recording system, or are linked by a common framework. The Government and non-state actors should further endeavour to prevent corruption in the allocation of tenure rights;

- viii. to the extent that resources permit, that competent bodies responsible for customary land governance have the human, physical, financial and other forms of capacity. Where responsibilities for tenure governance are delegated, the recipients should receive training and other support so they can perform those responsibilities;
- ix. develop and publicize policies, guidelines, administrative procedures, assessment tools and organizational frameworks for regulating customary land governance and where appropriate, the delegation of responsibilities for tenure governance;
- x. monitor the outcomes of customary land governance reform programmes, including the gender-differentiated impacts on land access rights distribution, food security and poverty eradication as well as their impacts on social, economic and environmental objectives, and introduce corrective measures as required.

CHAPTER SIX

6.0 FACILITATING EQUITABLE ACCESS TO LAND

Sierra Leoneans, like the peoples of all countries, regard access to land as a fundamental right. Indeed, every Sierra Leonean has need for land, not necessarily for the land itself, but for subsistence, for human settlement (residence) and for investment purposes. For the majority of Sierra Leoneans, particularly women in the Provinces, land is a crucial resource in their lives. Invariably, it is a principal source of livelihood and material wealth. However, the great majority of women do not have ready access to land and most of them could be described as landless as they are invariably tenant farmers engaged in subsistence agriculture. Over the years, for a multiplicity of reasons, some of which will be highlighted below, the demand for access to this basic resource has never been satisfied.

The problem of access to land is also inextricably linked to the dual system of land tenure in force in Sierra Leone. Where access is sought to land in Sierra Leone the following factors need to be taken into account:

- a) **The status of the land;** that is, whether it is State/Government land, Public land or private land (defined to include freehold tenure, customary tenure, leasehold tenure). At present State lands are available only in the Western Area and access to such lands is administered by the MLCPE on behalf of the President in accordance with the provisions of the State Lands Act, 1960; there is no access to Public lands for personal use. For example, a national park exists for the benefit of the general public at large and a community forest created under the Forestry Act, 1978, for the benefit of the particular community;
- b) **The location of the land,** whether it is located in the Western Area or in the Provinces. Land tenure in the Western Area is governed exclusively by the general law; in theory all landowners should be able to trace the root of their title back to a Crown or State grant; such lands could only be held for a freehold or leasehold estate by an individual, group of individuals or corporate entity as community/communal landholding and family landholding are not recognized in the Western Area;

- c) **The legal status of the potential grantee:** This factor combines with the location of the land to determine the nature of the interest which the potential grantee can acquire in a particular piece of land. Thus, a citizen who is a native as defined by the Provinces Land Act, Cap 122, can, in theory at least, acquire any interest in land anywhere in Sierra Leone; in contrast a non-native (inclusive of a corporate entity in which all the shareholders are natives) can only acquire a leasehold for a term of fifty years renewable for a further term of twenty-one years if the land is located in the Provinces. In the Western Area, under the provisions of the Non-Citizens (Interest in Land Act, 1966, non-citizen individuals and corporate entities in which non-citizens hold more than fifty percent of the equity can only hold a leasehold for a term of twenty-one years renewable for the same term;
- d) **The tenure under which the land is held:** In the Western Area, the tenure under which the land is held only becomes relevant where the potential grantee is a non-citizen and where the land is held under a freehold tenure. However, in the Provinces it is important to know whether the land is held under communal tenure or family tenure. A native who is a member of a community where a piece of communal land is located or is a member of the family owning the land can, and is ordinarily entitled to have that piece of land allocated to him or be appropriated by him if the communal land is in a virgin forest. However, as discussed more fully below, because of certain traditions and cultural restrictions prescribed by the rules of succession under customary law, women are often denied access to such communal or family land. In addition, a native who is not a member of any landowning community or family can only acquire customary tenure, if he can afford to purchase land, otherwise he has to be content with some lesser customary interest, such as a seasonal tenancy to be used for subsistence farming or remain landless. This as shown below is the fate of young persons and most women , especially those who are unmarried and poor;
- e) **The availability of land in a particular location, or generally:** Sierra Leone is a relatively small county with a total area of approximately 72,000 square kilometers and a population of approximately 6 million. However, a disproportionate part of the population is to be found in the Western Area with only 694 square kilometers of total land area. Several reasons have been advanced for the influx into the Western

Area the most prominent of which is the forced migration and internal displacement due to the recent civil war. One thing is certain that the pressure on land in the Western Area will continue to increase as the one directional movement of the population is not halted.

6.1. Problems Affecting Access to Land in the Western Area

As could be gleaned from the above factors, the problem of access to land in the Western Area presents itself differently from that encountered in the Provinces. Since customary land law does not apply in the Western Area, there are no socio-legal restrictions to the free access to land. However, the present demand for land could not be fully satisfied because there is just not enough land to satisfy the existing and increasing demand.

Another factor is that the bulk of available and unoccupied land in the Western Area is, in theory at least, State land. In principle, the easiest way for a citizen to access land in the Western Area is to have one allocated by the State under the provisions of the State Lands Act 1960. However, because of the failure of successive Governments to lay down any consistent, equitable and transparent procedures and criteria for the allocation of such lands the legitimate demands of many citizens remain unsatisfied. Often, this obliges the hapless to resort to self-help and the speculators to land grabbing on a very large scale bringing with it the attendant problems of informal settlements, unplanned developments and conflicts among multiple claimants.

6.2. Problems of Access to Land Peculiar to the Provinces

Indeed, the problem of access to provincial land presents itself in a completely different manner from that in the Western Area. The present position in the Provinces is that access to land is governed almost exclusively by customary law and only to a limited extent by the general law, particularly the provisions of the Provinces Land Act, Cap 122.

Under customary law, for one to be entitled to rights in land in the Provinces one has got to be a member of a land-owning community or family in a particular chiefdom; membership is based on kinship relationship determined in most cases, patrilineally. Even for a member, access to the land itself or the right to make use of and enjoy land rights is not automatic. Though there are no written rules under customary law that determine how allocation is

made to members, there are traditions, customs and cultural practices which, to a certain extent, have the force of law that determine to whom allocation is made. In the case of the land itself, communal land has got to be allocated to the member by the paramount chief, or other traditional leader at a lower level, as the socio political head or, in the case of family land, by the head of the family. Other land rights have got to be claimed and used in common with other members or even strangers to whom access might have been granted.

Once the National Lands Commission has been established and is fully operational with branch offices at the district, chiefdom and village levels the role of the traditional leaders and the local government will be formalized in this regard and the procedure for gaining access to land should be less complicated, more democratic and transparent.

The Provinces Land Act, Cap 122 also contains a discriminatory distinction between “native” and “non-native” citizens of Sierra Leone as far as access to provincial land is concerned. It limits the interest that non-native citizens can acquire in lands in the provinces, putting them in the same position as foreigners. There are no legal provisions limiting the interest that natives can acquire in land anywhere in the country. Cap 122 should be amended to get rid of this discriminatory distinction.

6.3. Discrimination and Denial of Land Rights of Women and Children

Because of the rules of patrilineal succession, children born to a woman from a land-owning community or family cannot inherit land in that community or family unless their father hails from the same community or family; they have to look to their father’s community or family for entitlement to land. If their father is not entitled to rights in land in his own community or family, the children will be landless. In making allocations to members, preference is normally given to heads of households who invariably are adult males; unmarried women and youths are discriminated against;

Women are not only at a disadvantaged position as far as inheritance to land is concerned. Due to the prevalence of customary rules of succession based on the patrilineal system in Sierra Leone, they are also unable to access land due to the fact that they are, invariably, not economically or otherwise adequately endowed to acquire land rights in the open market. Demographic and economic pressures as well as the lack of capacity of many in the

marginalized groups, such as women and youths, to mobilize capital or to obtain secured credit to develop land affect demand. Access to land is also affected by the number of people wanting to hold land as an investment and the incentives to do so as a form of security.

For the purposes of the Provinces Land Act, Cap 122, a person who is not entitled by birth to land in any province is a non-native; until the 1961 amendment of Cap 122, even the Government itself was considered a non-native; there are no State lands in the Provinces that the Government might dispose of as it does in the Western Area. In chiefdoms where a native is not entitled to land by birth, he is considered a stranger and access to land therein is governed by rules of customary law applicable in the *lex situs*. In theory, there is nothing under customary law that denies a native who is not entitled to land rights under one of the methods described above from acquiring same from a landowning community or family in any chiefdom; However, persons who are landless or who are deprived access to land rights in their own community or family invariably lack the capacity to mobilize capital or access credit for this purpose.

Under this policy all the land tenure systems recognized in Sierra Leone must guarantee access to land and security of tenure for all citizens. They must ensure equity in the distribution of land resources, eliminate discrimination in ownership/access and transmission of land resources, and preserve and conserve resources for future generations. The new basic land law to be enacted will ensure that all structural and legal impediments internal to the operation of each tenure system are to be removed to guarantee that access to land by way of transfer or transmission does not deny any person rights in land on the basis of gender, ethnicity, or social and economic status.

Though protection from discrimination on grounds of gender, ethnicity, race and other forms of discrimination is one of the fundamental rights guaranteed by the Constitution the impact of the relevant provision is severely attenuated by a claw-back clause in section 27(4) of the Constitution. Section 27 (4) of the Constitution which provides that no law shall make any provision which is discriminatory either of itself or in its effect is made subject, inter alia, to Section 27 (4) which states that subsection (1) shall not be applicable in certain circumstances.

Meanwhile, there has been no attempt made by the legislature to redress the situation by outlawing discriminatory traditions, customs and practices in land ownership/access, occupation and use. This policy is recommending that provisions be inserted in the Constitution to protect women's rights generally and rights relating to land in particular will be protected in the basic land status to be enacted after the coming into force of this policy. This statute will not only cater for the rights of spouses but also of widows, unmarried daughters, divorcees, women in co-habitation and children.

POLICY STATEMENTS:

- a) Government shall undertake to amend the Constitution so as to enact provisions to protect the rights of women generally;
- b) 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.
- c) Government shall ensure that citizens can acquire land throughout Sierra Leone without discrimination.
- d) Government shall ensure that citizens can exercise their tenure rights and rights to related services without discrimination.

Implementing Strategies:

To protect the rights of women generally, the Government shall:

- i. Insert in all relevant legislation effective protection of women's rights to land and other related resources and services;
- ii. Enforce existing laws and establish a clear legislative framework to protect the rights of women in issues of access/inheritance to land and use of land-based resources and to exercise their tenure rights in general;
- iii. Enhance and guarantee women's access to land and their security of tenure; Facilitate the acquisition of land by women in their own right not only through purchase but also through allocations;

- iv. Make provision for joint spousal and adult titling registration and documentation of land rights, and for joint spousal consent to land disposals, applicable for all forms of tenure;
- v. Secure access/inheritance rights of women, especially unmarried daughters in accordance with law;
- vi. Ensure proportionate representation of women in institutions dealing with land at all levels;
- vii. Amend the Provinces Land Act Cap 122 to remove the discriminatory distinction between native and non-native citizens.

6.4. Access to Land for Responsible Investment

Government and its agencies will do more to create an environment that attracts responsible investment, both domestic and foreign. At present in the Western Area, a non-citizen can only acquire a leasehold interest for a term of twenty-one years renewable for the same period whether for residential or commercial/industrial purpose. The corresponding period under the Provinces Land Act is fifty years with an option for a further period of twenty-one years. Though most leasehold terms for industrial and commercial purposes are generally far less than 50 years, in the interest of flexibility, the term of 21 years should be extended subject, in each case, to the responsible investment objectives of the non-citizen. In any event, the standard leasehold term for responsible investment purposes in the provinces or Western Area shall not exceed 50 years with an option to renew for the same or lesser term.

Since the amount of land Government owns, particularly in the Provinces, that it can make available for responsible domestic and foreign investment and for other special purposes is limited, the Government will, through the various land committees work with tenure holders to systematically identify and set aside land that may be used for responsible large scale investment. Such lands will form the nucleus of a community-led land bank scheme for responsible investment purposes.

POLICY STATEMENT

Government shall create an enabling environment to attract responsible investments (both domestic and foreign) in accordance with established laws and procedures without exceptions. Government shall adopt measures to ensure that investors act responsibly, respect human and land rights, do no harm to food security, local livelihoods and the environment.

Implementing Strategies

- a) Non-citizens shall not be granted interest in land greater than leasehold for 50 years in respect of all land in Sierra Leone; the exact term to be determined in accordance with the investment objectives of the non-citizen;
- b) Land area to be acquired for any single investment shall generally not exceed 5000 hectares. Additional land may be acquired in accordance with Guidelines to be developed;
- c) Government and all agencies involved in attracting responsible investments, both local and foreign, shall take measures to:
 - i. Support a community-led land bank scheme for responsible large-scale investments, with among others, clearly defined rules on participation and decision-making;
 - ii. Set up clear and transparent procedures and criteria to ensure the full participation of all relevant stakeholders, landowners and land users in the systematic or ad hoc identification of land suitable for responsible investment or for establishing of land banks for the purpose of allocating land to investors;
 - iii. Review, consolidate and strengthen the Investment Promotion Act 2004 and the Sierra Leone Investment and Export Promotion Agency Act 2007 to encourage responsible investments;
 - iv. Adopt the draft Guidelines for Sustainable Agricultural and Bioenergy Investment 2013 and set up clear and transparent procedures to include adherence to best practices such as the FAO principles for responsible agricultural investments and the African Union guiding principles on large scale land based investments in Africa;

- v. Require investors to recognize and respect legitimate tenure rights;
- vi. Provide incentives for investors to seek partnerships with local tenure right holders;
- vii. Establish clear guidelines for obtaining free, prior and informed consent of communities, land owners and users where land investment is proposed and for transactions that affect land tenure rights, partnership agreements and revision clauses in long term land leases with regard to compensation;
- viii. Conduct prior to allocating land for responsible large scale investments in land, an independent assessment to identify the potential positive and negative impact of large scale transaction on the tenure rights of men and women, food security and the realization of the right to adequate food;
- ix. Address power imbalances between tenure rights holders and investors by promoting inclusive local land governance structures and ensuring the availability of independent legal aid and other relevant professional assistance;
- x. Establish a legal assistance fund for legal and paralegal assistance to communities, land owners and land users in negotiation with potential large scale land investors;
- xi. 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 and introduce corrective measures as required;
- xii. Facilitate access to grievance redress mechanisms for disputes over investments and require large-scale investors to establish effective internal complaints mechanisms.
- xiii. Provide reliable and easily accessible land-based information to guide potential responsible investors;
- xiv. Maintain and update comprehensive, publically accessible inventories of all large-scale land transactions in the country, including leases, maps, and acknowledgment agreements.

d.) Government shall require that:

- i. Government land is allocated to investors according to their ability to develop same;
- ii. Depending on the type of activity and location of the land, guidelines will be established for setting ceilings on the size of land controlled by any one person, group of persons or organizations. Similar guidelines to prevent extreme land fragmentation will also be determined;
- iii. Investors seeking to acquire land for investment will be 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;
- iv. Planning and development conditions shall be strictly monitored and where necessary, punitive fines and withdrawal of tax incentives imposed to prevent speculative holding of agricultural and urban development land, regardless of the tenure classification.
- v. Government shall adopt 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;
- vi. Government shall put in place an effective system to monitor the implementation and impact of agreements involving large-scale transactions in tenure rights;
- vii. Government shall set up a grievance mechanism to ensure that affected parties can seek corrective action.

CHAPTER SEVEN

7.0 LAND RIGHTS ADMINISTRATION AND INSTITUTIONAL FRAMEWORK

Land rights administration comprises the structures and processes through which rights in land are created, defined, and recorded or certified; the integrity of land transactions is assured and guaranteed, land rights disputes are processed, land revenue is generated, and land information is inventoried, provided or otherwise archived. It is, thus, the primary public vehicle through which land needs of the public and individuals are processed, satisfied and secured.

This framework is typically beset by a number of malfunctions, prominent among which is a high degree of out-datedness, technical complexity, unclear managerial hierarchy and operational inefficiency. It is bedeviled by corruption, it is inadequately resourced and it is performing poorly in service delivery. This state of land administration has tended to impede the development of the land sector and those productive sectors with which it has intimate linkages.

7.1 Duality of the Existing Land Rights Administration System

Land rights administration operations have contributed to severe land rights insecurity especially as a result of lack of proper record keeping, persistent inaccuracies in land registry information, corruption and fraud and general mistrust of the land rights administration system. Land rights administration needs to be treated as a professional function, removed from the realm of politics and insulated from political pressures, often bent on appropriation of land resources.

In Sierra Leone, land rights administration operates within two parallel systems consisting of:

1. The informal customary/traditional systems governed by customs and norms of given communities; and
2. The centralized formal system administered by the MLCPE, governed by the general law consisting of mostly outdated and uncoordinated statutes.

The two are not in harmony, as exemplified by:

- a) Institutional and systemic conflicts that exist between the formal systems and traditional /customary systems;
- b) Inconsistencies in the customary/traditional system with regard to standards, rules and procedures which are common;
- c) Parallel practices, leading to confusion and conflict because the distinct roles of the various institutions under customary/traditional and general law institutions are not spelt out.

Malfunctions endemic in the existing land rights administration cannot be permanently addressed unless the system as presently established is dismantled and re-engineered. This exercise must recognize the empirical realities associated with operating parallel systems of land rights administration; comprising customary institution as part and parcel of the social and political organization of territorial groups, and formal systems governed by statutory law.

POLICY STATEMENT

Government shall wholly and fundamentally restructure the lands rights administration system to enhance efficiency, ease of access, cost-effectiveness and security of title.

Implementing Strategy

- a) Government shall review the two existing land rights administration systems and take measures to harmonize the formal system administered 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.

7.2. New Institutional Framework for Land Rights Administration

In order to deal with the diverse issues raised by the present complex institutional framework, Government shall set up a single, autonomous, decentralized land

administration and land management institution to be known as the National Land Commission (NLC). The existence and mandate of the Commission shall be founded in the Constitution and shall be detailed in a statute enacted for that purpose. The Commission shall function at district, chiefdom and village levels with membership drawn primarily from tenure right holders and with a great degree of autonomy.

The National Land Commission shall:

- a) Hold title to and administer all State/Government lands in Sierra Leone and shall perform all those functions currently performed by the MLCPE under the States Lands Act 1960;
- b) Compile an inventory and keep records of Public Lands which are vested in the State or Government and manage or superintend the management and administration of all such Public lands;
- c) Be responsible for the introduction of a system of registration of title to land in accordance with the relevant legislation to be enacted;
- d) Be responsible for the setting up a modern cadastral registration system and operation of electronic title registries at district, and where possible, at chiefdom levels;
- e) As part of the process of the introduction of a system of registration of title, assist in the setting up of Land Adjudication Tribunals as and when necessary, to undertake adjudication as a prelude to systematic title registration;
- f) Levy and facilitate collection of, and manage all land tax revenues except rates levied by local authorities.

Decentralized structures of the NLC

The NLC shall have branch structures at the district, chiefdom and village levels. These shall be known as district land commission (DLC), chiefdom land committee (CLC) and village area land committee (VALC).

The DLC shall be the agent of and shall perform the functions of the NLC at the district level and its activities shall be coordinated and supervised by the NLC; the core members of the DLC shall be the district representatives of all the land sector ministries, agencies and civil

society. However, the majority of members shall be elected by a majority of eligible voters in the jurisdiction from candidates who shall meet the eligibility criteria set by the Act.

The DLC shall perform all those functions performed by the NLC at the regional and district levels and those expressly devolved by the MLCPE to the localities under the Local Government Act, 2004. In addition, it shall have the mandate of promoting equitable access to land and shall have all the departments needed to facilitate an effective and efficient land administration;

It shall be responsible for coordinating and overseeing the work of the Chiefdom Land Committees (CLCs)

Membership of the CLC and VALC shall be drawn primarily from landowners within the respective chiefdoms and village areas and from persons ordinarily resident therein. The other criteria shall respect gender, ethnic diversity, socio-political dynamics and sustainability. Under the present system ownership, management, control of use and disposal of lands held under different forms of tenure in the chiefdoms are regulated as follows:-

- In respect of communal land under which the sovereign title is vested in the community as a group, the chiefdom council headed by the paramount chief and assisted by other traditional rulers at various chiefdom levels who are currently responsible for their administration, management, control of use and disposal with limited input by the local governments at the district level;
- In respect of family land under which the sovereign title is vested in the family/clan/lineage as a group, the head of family is responsible for its administration and management in consultation with other family elders with input from the traditional rulers (and to a limited extent the local government at the district level) in matters of control of use and disposals to non-members of the chiefdom;
- In respect of land where the paramount interest has been acquired outright from a community or a family the sovereign title is vested in the grantee subject to the reversionary rights of the original owners, the jurisdictional rights of control and supervision currently exercised under customary law by the traditional authorities

at chiefdom level and by the local government authorities at the district level in accordance with statute;

Under the institutional reform being recommended by this policy, the Chiefdom Land Committee shall be the third institution of the devolved administration and management system for all land in the chiefdoms held under any one of the three forms of tenure under customary law as described above. As the sovereign title to communal lands will now vest in the CLC in trust for the respective communities, the CLCs shall be elected bodies headed by the paramount chief. It shall vet/approve all land transactions and perform all other functions relating to disposal of communal lands presently performed by the Chiefdom Councils. All administrative functions needed to facilitate land transactions, such as land information services, verification of survey plans and registration will be carried out at the district level through the DLCs which will be responsible for the establishment of standards and a regulatory framework. VALCs would perform functions similar to CLCs.

7.2.1 Roles and Responsibilities of key Stakeholders of the National Land Policy: Who Does What?

INSTITUTION/AGENCY	ROLES/RESPONSIBILITIES
Presidency	<ul style="list-style-type: none"> • To launch the approved National Land Policy Document for Sierra Leone, stating clearly Government’s position on the provisions therein at a National Forum • To monitor the finalization and implementation of the National Land Policy
MLCPE	<ul style="list-style-type: none"> • To consider the Draft National Land Policy Document for Sierra Leone and critically examine the provisions therein for approval • To educate and sensitize the public, in collaboration with development partners on the provisions of the new draft National Land Policy for Sierra Leone • To present the draft National Land Policy document to the President and his team (cabinet) for consideration and approval of the provisions in the Land Policy Document • To supervise the implementation of the policy
Parliament	<ul style="list-style-type: none"> • To enact Land Laws, using the National Land Policy as a basis • To enact amendments to harmonize existing policies and

	<p>laws related to land and the management of land based resources in order to comply with and recognize the primacy of the National Land Policy</p>
Local Councils and NGOs	<ul style="list-style-type: none"> • To assist in Educating and sensitizing the public on the provisions of, and the implementation of the National Land Policy
Proposed National Land Commission, District Land Commission and Chiefdom Lands Committee	<ul style="list-style-type: none"> • To administer, plan and manage land use and development control, regulate the utilization of lands as provided for in the Policy
Proposed Sierra Leone Land Title Registry	<ul style="list-style-type: none"> • To handle the functions of land use planning, adjudication, surveying and mapping, non-judicial land conflicts and dispute resolution and title registration in the country
Law Reform Commission	<ul style="list-style-type: none"> • To review relevant laws in-force and recommend the amendment or repeal of any or all of such laws as may be justified
MDAs and other entities	<ul style="list-style-type: none"> • To review all their relevant policies and amend them so as to align with the provisions in the new National Land Policy document
Communities	<ul style="list-style-type: none"> • To educate members of the provisions in the National Land Policy and build capacity of appropriate community institutions and community organizations to comply with the provision of the National land Policy.
Rent Tribunals	<ul style="list-style-type: none"> • To protect small businesses and poor tenants every wherefrom too increases in the level of rent
Administrative and dispute tribunals	<ul style="list-style-type: none"> • To handle non-judicial land disputes and administrative complaints and land related institution such as OARG and the Director of Surveys and Lands, District Land Commission and Chiefdom Land Committee. • To develop and optimize the use of alternative dispute resolution (ADR) mechanisms such as negation and mediation
Attorney General's Office/ Judiciary	<ul style="list-style-type: none"> • To assist the MLCPE in the development of the new Land Bill and the harmonization of all land related laws for enactment by Parliament; • To facilitate the development and approval of Administrative regulations for implementing the Land Act and amendments of the same for all land related laws. • To interpret laws enacted by Parliament from the land policy document and determine penalties

Development Partners	<ul style="list-style-type: none"> • To provide financial support and technical assistance in the formulation and implementation of the National Land Policy for Sierra Leone
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7.3. Support Agencies

In addition to the institutions described above, other important institutions shall be involved in the land administration and management framework. These shall include the following:-

1. **The Ministry of Lands Country Planning and Environment:** After the establishment of the National Lands Commission, the main tasks of the MLCPE will be to:
 - a) Rationalize the role of the Ministry to help it devolve its land administration and management functions to the proposed new structures i.e. the NLC, DLC CLC and to the local institutions at various levels;
 - b) Develop the residual role of the Ministry around the core functions of policymaking, coordination of policy implementation, programming/implementation, environment, gender and redress of social equity concerns;
 - c) Focus on sector resource mobilization, and providing policy advocacy and political leadership,, public accountability and facilitating implementation of the land policy reform programme to its logical conclusion;
 - d) Monitoring and evaluation of sector performance, especially with regard to enhanced accountability;
 - e) Drive the reform process through the Land Policy Reform Unit; and
 - f) Coordinate and oversee, through the various statutory bodies created for the purpose, the regulation of the land related professions.

2. **Local Councils/ Traditional Leaders:** The functions of land use, planning and enforcement of approved development plans/controls will continue to be carried out by local councils in line with the Local Government Act, 2004, and the Town and Country Planning Act, Cap 81 as amended, which statutes will be amended to conform to changes introduced by this land policy. Also relevant to this function will be the harmonization with the relevant agriculture, forestry, mines and minerals, tourism and culture and environment policies and legislations;

3. **Rent Tribunals:** At present there is only one tribunal with jurisdiction to regulate rents for residential and business premises located in the Freetown municipality and established under the Rent Restriction Act, Cap 52. This legislation will be reviewed to ascertain whether there is a necessity to extend its application to other urban areas in the country so as to protect small businesses and poor tenants everywhere from too rapid increases in the level of rents. However it is also necessary to review upwards the rent for government leases, which are now invariably relatively low;
4. **Land Dispute Tribunals:** There shall be enacted a statute to establish an Administrative Lands Tribunal 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 Surveys and Lands. At the Chiefdom level the CLCs and the DLCs will develop and maximize the opportunity to formalize the application of 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;
5. **The Judiciary:** At the Chiefdom level the Local Courts established under the Local Courts Act, 2011, will continue 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 division of the High Court currently assigned to deal with Land and Property matters will be further sub-divided to create one dealing exclusively with land matters and, for the short-term, operating as a fast-track court on similar lines as the recently established fast-track commercial division of the High Court. Special rules and procedure to speed up the process will include those authorizing the court to apply ADR mechanisms where appropriate.

Prevention of Forum Shopping

A diffused system of dispute resolution mechanisms presently operate in the country in relation to customary land rights, including traditional structures and ad-hoc committees involving civil society and some implementing agencies. These dispute resolution structures operate in parallel with Local Courts and should be rationalized to prevent forum shopping. Forum shopping is the informal name given to the practice of litigants repeatedly looking for a venue or court or a friendly jurisdiction

thought most likely to provide a favourable judgment for their land dispute until one is found. This allows some litigants to strategically undermine final resolution of disputes by moving the same dispute among dispute resolution institutions, not simply to find which institution is likely to come closest to the complainant's ideal ruling against the defendant, but where the resulting outcome will be more useful in the future, sometimes enabling the complainant to bring additional litigation against other members, rather than resolving the dispute. Forum shopping offer alternatives to dispute settlement with different levels of enforcement authority.

Implementation strategy

- i. An institutional structure that closely relates to the Chieftom Land Committees and Village Area Land Committees, with a composition that ensures the participation of representative and relevant traditional and state institutions, with a clear supporting role for civil society organizations should be established and formalized;
- ii. This non-judicial/administrative dispute resolution mechanisms should be accessible, impartial and effective as a Chieftom and village-level mechanisms of dispute prevention and resolution;
- iii. Should allow appeal (or administrative review) to a similarly constituted mechanism at the district level and should provide effective remedies, including enforcement of restitution, indemnity, compensation and reparation, and the right of appeal to judicial authorities.
- iv. Business enterprises should provide for and cooperate in non-judicial/administrative mechanisms to provide remedy, including effective operational-level grievance mechanisms, where appropriate, especially where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights.

7.4. Modernization of Existing Land Rights Delivery Systems

Land rights delivery serves the dual purpose of receipt and processing of land rights and interests under all tenure regimes. Land rights delivery under customary tenure is based largely on memory and folklore, which though not less authoritative, lacks an institutional framework for recording. The statutory system is still manually organized and has not yet benefited from automation and computerization.

Neither of the systems of land rights delivery and recordation (statutory and traditional) serve the land sector well, making land transactions slow, expensive, and corruption-prone, often leading to forged titles. The systems, therefore, require urgent modernization and simplification. There is growing concern that the concentration of land rights administration services in government institutions and agencies is the primary cause of inefficiency and wastage. It is now generally agreed that some of these functions should either be privatized or divested.

POLICY STATEMENT

- a) Government will re-structure, modernize and simplify the land rights delivery systems by developing, maintaining and sustaining a comprehensive GIS based land information management system (LIMS).
- b) The government will ensure that everyone is able to record their tenure rights and obtain information without discrimination on any basis;
- c) To facilitate the use of records of tenure rights, implementing agencies shall be required to link information on the rights, the holders of those rights and the spatial units related to those rights. Records should be indexed by spatial units as well as by holders to allow competing and overlapping rights to be identified;
- d) In order to enhance transparency and compatibility, an integrated LIMS framework should be developed that integrates recording systems and other spatial information systems. In each jurisdiction, records of tenure rights of the State and public sector, private sector and communities with customary tenure systems should be kept within the integrated recording system;
- e) The Government should ensure that information is accessible to the public, easily searchable by the public and not subject to privacy restrictions;
- f) References should be included in the system to identify areas that have not been recorded, so as to avoid infringing on existing legitimate tenure rights.

Implementing Strategies

Measures shall be put in place to:

- i. Develop and install modern technology and infrastructure for land rights administration and land management including computerization and integration of land records held in all land registries commencing with those established in urban areas;
- ii. establish and operationalize the regular maintenance of community land registries for the recording and verification of all land rights, including those under customary law;
- iii. simplify all land registry practices through the use of model transaction documents;
- iv. through an Act of Parliament, regularize the fees and charges for effective control by local governments;

Reform measures shall include:

- i. creation of the Land Commission as a semi-autonomous State agency to manage and appropriately sequence the services of:
 - a) physical planning, land development, land title registration, land surveys, valuation and mapping;
 - b) allocation of rights and interests in government and communal land; and
 - c) land information services;
- ii. ability to engage the services of qualified private sector service providers to facilitate delivery of limited number of land rights administration services under guidelines established by the semi-autonomous agency;
- iii. provision of professional and technical oversight and supervision of land sector public institutions under the jurisdiction of the Land Commission at all levels of government
- iv. retention, at the center of the power of policy formulation, professional and technical standards setting and supervision in respect of the performance of all land delivery services;
- v. Continuous monitoring and evaluation of performance of the land agency by

private sector institutions.

7.5. Land Information System

An important function of the land rights administration systems is to ensure that accurate and regularly updated land information is available on the physical attributes for base mapping and on land sizes, location and proprietary characteristics, substantive and anticipated values, and land use quality. It is also important that information should be available on utilities, infrastructure, topographic details, geodetic controls, socio- economic and demographic parameters and environmental media. This is important for land use, planning and the design of a fiscal cadastre.

Currently, land information is mostly held in paper form, manually managed, and not optimally utilized. Absence of technological infrastructure (including equipment) to guarantee access to accurate land information is one of the problems haunting land information management in Sierra Leone. Additionally, such information system needs to be operated with due regard to social, cultural, and intellectual property considerations.

POLICY STATEMENT

The Government shall establish and maintain a reliable, technology - driven, non-discriminatory, integrated and user-friendly Land Information Management Systems (LIMS) as a public good for national development.

Implementing Strategies

Measures shall be taken to:

- i. Develop, operationalize and maintain a modern, comprehensive, interactive, cost effective and accessible land information management technology and network infrastructure capable of providing reliable, spatially referenced parcel based land information to support land administration and land management;
- ii. develop *data standards* for geo-information comprising feature definitions, data content, spatial referencing, and accuracy;
- iii. prepare and implement *national guidelines*, to improve the quality and

- quantity of land information;
- iv. amend all relevant laws to enable application of modern technology;
 - v. procure *technological infrastructure* needed for the establishment of a decentralized system able to deliver land services close to all citizens;
 - vi. rehabilitate, re-organize, upgrade, authenticate, and digitize existing *land records* in readiness for the establishment of a computerized land information system;
 - vii. computerize existing land records to support the Land Information System and to create and maintain a disaster recovery system; and
 - viii. decentralize and present the proposed land information system in a simple, affordable, cost effective system easily understood by community-level land managers and users.

7.6. Land Rights Demarcation, Mapping and Survey

One very important aspect of land administration that any policy document must address is the current absence of any system for a modern, comprehensive and systematic land survey in Sierra Leone. The current legal framework and supporting technology for the survey of land outlined in the Survey Act, Cap 128 is outmoded and unable to accommodate advances in surveying technology and/or practice.

The Act provides for surveys to be undertaken both by private licensed surveyors and by officials of the Department of Surveys and Lands of the MLCPE but is weak on quality control and quality assurance. Though there is a registry in the Department of Surveys and Lands where records of all survey plans deposited with the Department are kept, there is no obligation on private landowners to have their land surveyed. Prior to the amendment of section 15 of the Surveys Act, Cap. 128, by Act No. 14 of 1960 there was no obligation to have a survey plan produced by a private licensed surveyor countersigned by the Director of Surveys and Lands or to even deposit copies of plans with the Department of Surveys and Lands. Section 15 of Cap 128 simply provided that a licensed surveyor who has prepared a plan may submit the same to the Director of Surveys and Lands for countersignature. Even now that the countersignature of the Director is mandatory for the authentication of a

survey plan, as long as the Director of Surveys and Lands is satisfied that the technical details of the survey plan are correct and that the land in question is not State land he is obliged to countersign the plan and retain a copy for record purposes. It is the practice for officials of the Department of Surveys and Lands to record the details such as the serial or LS number of each plan submitted for countersignature on the master plan or Ordinance Survey map for the area where the land is located.

However, since the Director of Surveys and Lands is not empowered by the Act to provide instructions prior to the execution of surveys or the authority to reject any survey plan submitted for countersignature, except on the grounds of technical inaccuracy, it is not unusual for there to be over-lapping and encroachments delineated on survey plans that would not be evident except on a physical inspection of the respective sites. Another weakness of the present system is that no publicity is given to the fact that a survey plan in respect of a particular piece of land has been deposited with the Director of Surveys and Lands for countersignature. Invariably, most private landowners never bother to prepare a survey plan of their land except when they intend to enter into a transaction which would entail the preparation and registration of a deed or some other instrument, such as a mortgage, lease or sale of the land or part thereof. On such occasions, they often find that when they get round to doing so some unauthorized person, frequently unknown to them and laying a false claim to the same land, had already prepared a survey plan thereof and succeeded in obtaining the countersignature of the Director of Surveys and Lands. In fact, this is the way most landowners first learn of any adverse claim to their title. The problem for the landowner is often compounded by the fact that very often he is unable to take any legal action as the competing survey plan has been prepared in the name of a fictitious person in whose name a Statutory Declaration or a Conveyance has been prepared, executed and registered.

Even the State is not immune from the effect of such fraudulent practices. Instances abound where persons who have been able to have survey plans in respect of State land prepared in their names have even had the audacity to sue the State for a declaration of title in respect of such lands. This is made possible mainly because the Department of surveys and Lands does not have any accurate record of State lands nor is there any reliable means of identifying the same.

Shortage of qualified personnel:

Performance of land rights demarcation, survey, and mapping functions have also been impeded by a variety of other factors, chief amongst which are shortage of qualified personnel in some areas, administrative bottlenecks in the preparation and approval of deed plans, and prohibitive survey costs.

In addition to shortage of qualified personnel,

- infrastructure to effectively support surveying functions within Government, and amongst private, services providers are limited due to the absence of equipment;
- inadequate decentralization has constrained deployment and regulation of the profession through the Surveyors Registration Board, which is itself currently non-effective given the proliferation of the profession by un-qualified practitioners;
- as regards the accessibility and affordability, there is an outcry on the exorbitant cost of privatized survey services;
- the destruction of survey points and coordinates has often fuelled land conflicts and disputes;
- With regard to customary tenure, it is necessary to recognise traditional boundary-marking systems and to sensitize communities on surveying and its role in adjudication, as well as on systematic demarcation.

POLICY STATEMENT

Capacity for land rights demarcation, survey, and mapping services shall be enhanced and technologically updated into a modern system.

Implementing Strategies

Measures shall be taken to:

- i. provide facilities for the *training* of land rights adjudication, demarcation, survey, and mapping personnel by public or private sector agencies and communities;

- ii. privatize cadastral surveys, engineering and typographical surveying subject to strict standard-setting and public regulation;
- iii. retain as the basic framework for surveys and mapping geodetic surveys, hydrographic surveys and base mapping as public functions;
- iv. systematically recognise and confer official status on community- based boundary marking systems for land held under customary tenure;
- v. set and enforce clearly *achievable standards* for the preparation of maps, cadastral and deed registry plans by public and private agencies;
- vi. creatively *over-haul standards, systems and laws* on demarcation, cadastral surveys and mapping;
- vii. regulate the cost of surveys and mapping to facilitate registration of land under customary tenure;
- viii. amend existing laws to allow for the use of modern technology such as Global Positioning Systems (GPS) and remote sensing data; and
- ix. sensitise the community on the functions of surveys and mapping.

7.7. The Present System of Registration of Deeds

The present Deeds Registry operates 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, as well as stipulating the legal consequences of non-registration of certain documents.

The defects in the present system of deeds registration could be summarized as follows:-

- a) A registered deed does not in itself prove title or anything else;
- b) Registration is merely a record of an isolated transaction and does not purport to confer upon any document or instrument any authority or validity which it would not otherwise have had;

- c) The party or parties to the transaction may not even have been legally entitled to carry out the transaction;
- d) The deed tendered for registration may be inconsistent with a previously registered deed affecting the same land and may have been executed by a rival claimant thereto;
- e) Nothing in either of the General Registration Act, Cap 255 or the Registration of Instruments Act, Cap 256 empowers the Registrar-General to decline to register any document or legal instrument for any other reason other than non-compliance with a formal requirement or failure to prove its execution, as required by law.

The gravity of the present situation may be judged from the fact that nine out of every ten land cases currently before the High Court in Sierra Leone involve claims and counter-claims for a declaration of title with the opposing parties invariably being purchasers who had acquired the land in dispute from two different vendors. Because of the prevailing uncertainty of land title generally, and in the absence of any other mechanism for proving ones title, rival claimants are obliged to have recourse to a multiplicity of legal actions in an attempt to protect or prove their rights of ownership.

7.8. Registration of Title

Probably one of the most fundamental requirements of the average private landowner, under any system of land administration is the need for some effective machinery for assuring the title to his land. This is needed to protect his rights of ownership against wrongful claimants, as well as to facilitate whatever transactions he might desire to enter into with respect to such rights. The same applies to persons dealing with the landowner, such as potential purchasers, lessees or mortgagees, local or foreign investors, banks and other financial institutions to whom the land may be offered as security for any transaction. Such persons need to be assured by some independent means that whatever interest they are acquiring from the landowner will vest in them free of any unexpected competing claims.

It has been suggested that the ideal solution would seem to be machinery which provides;

“an authoritative record, kept in a public office, of the rights to clearly defined units of land as vested for the time being in some particular person or body, and or the limitations, if any, to which these rights are subject”

This implies a system of land title registration. In Sierra Leone at present, the only facility available for achieving the above objective is the Deeds Registry and the law governing the registration of instruments in general.

Though there is a great deal of support for the view that the title registration is the ultimate solution to the problem of uncertainty of title, there is no uniformity of view as to the various approaches and patterns for the ascertainment of title on first registration and the operation of the scheme thereafter.

POLICY STATEMENT

Government shall ensure that as a matter of top priority a land title registration system is created for Sierra Leone that incorporates lessons learned in other jurisdictions and best practice principles for such systems as developed over many years of implementing new titling systems in developing countries.

Implementing Strategies

The best practice principles of modern land title registration system that should be utilized can be summarized as follows:

- i. **Compulsory registration:** Modern registration systems are usually “compulsory” in the sense that the state is not compelled to afford equal protection to unregistered land, and unregistered rights are, with few exceptions, subordinated to registered rights. The NLP shall ensure a staggered, accessible and affordable process of compulsory registration;
- ii. **Comprehensive coverage:** The system shall be comprehensive in the sense that all rights and claims to land will need to be registered, including ownership, possession for a term of years (leases, usufruct, etc.), mortgages and other liens (e.g. judgment liens), servitudes and covenants, hostile claims (caveats), and possessory rights not amounting to legal title;

- iii. **First in time, first in right:** The general principle of the new registration law will be that earlier registered rights will be superior to later registered rights, subject to exceptions including fraud or dishonesty ;
- iv. **Protection of unsuspecting owners and bona fide purchaser:** The new system shall provide balanced protection to both unsuspecting owners and “*bona fide purchasers*” or any person dealing with the land, e.g. creditors without notice of unregistered and conflicting claim to the land;
- v. **Legal formation of property objects;** the link between cadastre and registration of titles: The new system will establish as a condition of registration of a right to land that the land parcel first be “created” as a legal object through the process of cadastral survey. Rights to a land parcel that is not surveyed cannot be registered;
- vi. **Indemnification:** Like most modern registration systems the new system will provide for some amount of indemnification to users of the system that are harmed by misfeasance or malfeasance of the registration office;
- vii. **Administrative adjudication:** It is proposed that the new registration system provides for administrative “adjudication’ or ‘settlement’ of land rights, meaning that properly constituted administrative tribunals will rule on the validity of land rights and order entry into the registry (or denial of entry). Appeals to the High Court will be permitted in contested cases, but under the usual principles of administrative law the decisions of the administrative bodies are entitled to deference in the absence of clear abuse of rules or procedure.

7.9. Institutional Structure of the Proposed Land Title Registration System

POLICY STATEMENT

In accordance with current best practice Government shall consider the unification of the physical functions of government (survey and mapping) and the title registration functions in a single agency (The Sierra Leone Land Title Registry).

Implementing Strategies

Unification of the survey and title registration functions in a single agency should lead to the following benefits:

- A single entity with a clear mandate and common goals should reduce the trend toward functional disintegration, which is a root of problems with many land administration systems.
- A unified system can achieve economies by reducing the amount of middle and senior management required for operation of the system, as well as the need for duplicate physical facilities and equipment. Once implemented, duplication of electronic data processing systems is particularly unnecessary given the high capacity of modern systems and the low marginal cost of adding additional capacity.
- A unified cadastral and title registration agency and data management system will decrease likelihood of data conflicts between the systems, provide greater data security, and assure better data base management in service of a common product. Problems frequently occur in separate agencies because of the different objectives of the agencies leading to selection of different data standards and applications.

7.10. Registration of Land Held under Customary Tenure

The problem is rendered even more complex if the new system is required to cater for registration of titles under the two different systems of tenure in force in Sierra Leone. Though, strictly speaking, registration of title is a device to give certainty to the ownership of land to enable dealings to be conducted quickly and cheaply, it could serve as means of effecting changes in the substantive land law and the system of land tenure as a whole.

The registration statute to be enacted should therefore combine rules drawn from both customary law and the general law regulating the interests of rights which are to be recognized and the mode of transfer of such interests or rights. Under such a system customary law interests could, as far as possible, be assimilated or equated to their statutory law counterparts. This could be done without necessarily using English law terminology or expressions such as “fee simple” or “freehold”. The register could also provide for the recording of group as well as individual ownership. In the case of a family or a community, the names of those authorized to act on behalf of the group could also be entered on the register. Rights of individual members in family or communal lands could be recorded in a separate register as encumbrances on the ownership of the family or community. Customary land governance reforms coming into force as a result of this

National Land Policy will strengthen the principles of trusteeship and agency laws necessary to facilitate the formal registration customary land rights.

POLICY STATEMENT

Government shall set up a unified land title registration system that registers collective and individual rights and interests in land under customary tenure.

Implementing Strategy

Government shall:

- a. Enact a registration statute that combines and provide statutory recognition to legitimate tenure rights from customary law and general law.
- b. Provide for the recording of group, family and individual rights and interests
- c. Create a related register of encumbrances

CHAPTER EIGHT

8.0. LAND USE PLANNING AND REGULATION FOR LAND DEVELOPMENT

8.1. Land Use Planning Principles

It is recognized that land use planning is essential to the efficient and sustainable utilization and management of land and land based resources with a view to benefiting all Sierra Leoneans. Along with the planning emphasis on social stability, housing security, rural development, environmental protection and sustainable social and economic development, land use planning should be cognizant of the needs of vulnerable and marginalized people. Therefore, land use planning should also accommodate the goals of food security and the progressive realization of the right to adequate food, poverty eradication and sustainable livelihoods.

POLICY STATEMENT

- i. The Government will conduct regulated spatial planning, and monitor and enforce compliance with those spatial plans, including balanced and sustainable territorial development, in a way that promotes the objectives of this policy. In this regard, spatial planning will reconcile and harmonize different objectives of the use of land and land based natural resources.
- ii. National, regional and local spatial and structure plans will be developed and coordinated, and appropriate risk assessments for spatial planning will be required.
- iii. The Government will develop and publicize, through consultation and participation, policies and laws on regulated spatial planning. Where appropriate, formal planning systems will consider methods of land use planning and territorial development used by indigenous peoples and other communities, and decision-making processes within those communities.
- iv. The Government will ensure that a National Spatial Development Plan is developed in a manner that recognizes the interconnected relationships between natural resources and their uses, including the gendered aspects of their uses.

- v. The Government will strive towards reconciling and prioritizing public, community and private interests and accommodate the requirements for various uses, such as rural, agricultural, nomadic, urban and environmental. Spatial planning will consider all tenure rights, including overlapping and periodic rights.
- vi. The Government will ensure that there is a wide public participation in the development of planning proposals and the review of draft spatial plans to ensure that priorities and interests of communities including indigenous peoples and food-producing communities are reflected. Where necessary communities will be provided with support during the planning process.
- vii. Implementing agencies will disclose how public input from participation was reflected in the final spatial plans. The Government will endeavour to prevent corruption by establishing safeguards against improper use of spatial planning powers, particularly regarding changes to regulated use.
- viii. Spatial planning will take duly into account the need to promote diversified sustainable management of land, and land-based natural resources, including agro-ecological approaches and sustainable intensification, and to meet the challenges of climate change and food security.
- ix. Provisions will be made to ensure that a functioning monitoring and enforcement system exists. Implementing agencies will report on results of compliance monitoring.
- x. In order to enhance transparency and compatibility an integrated framework will be developed that includes recording systems and other spatial information systems.
- xi. Land ceilings shall be fixed by government on the basis of use, location, investment viability and proven ability of the applicant to develop the said parcels of land, based on verifiable feasibility and environmental studies, and approved project implementation proposals;
- xii. Land hoarding shall be discouraged by strict enforcement of development conditions and by the use of local by-laws, planning and land use regulations;

- xiii. Special areas for various responsible investments shall be identified and set aside for allocation to investors by the government through a community-led process.

8.2. Land use planning and regulation systems

8.2.1. National and regional land use planning system

POLICY STATEMENT

Government shall establish a comprehensive national land use planning and mapping system, based on agro-ecological and economic potentials and social requirements, in line with the provisions of Town and County Planning Act, Cap 81, as amended.

Regional planning structures are required to manage urban growth that spreads across administrative boundaries. Spatial planning in these contexts should provide a framework for the coordination of urban policies and major infrastructure projects, harmonization of development standards, comprehensively addressing the ecological footprints of urbanization, and a space for public discussion of these issues.

Implementing Strategy

The Government shall:

- a) Develop a comprehensive National Development Plan and strategic spatial plans at national, regional, district and local levels that focuses on areas or aspects that are strategic or important to the overall planning objectives; including mining and agro-industrial areas, tourism development areas, ecologically sensitive areas, etc.;
- b) Develop strategic spatial development plans with zoning regulations at national, regional and local levels as a basis for human settlement development, responsible investment and sustainable utilisation of land and natural resources, taking cognisance of the local land use practices and tenure rights;
- c) Formulate new urban policy and planning laws, which offers alternatives to the forced removal of informal/illegal settlements, ways of using planning tools to strategically influence development actors, ways of working with Local Councils to manage public space and provide services, and new ideas as to how planning laws can be used to capture rising urban land values;

- d) Develop land use and zoning regulations for the development of human settlements for easier provision of infrastructure and to stop uncontrolled urbanization and subdivision of land; and
- e) Identify and map areas which are prone to natural disasters like floods, landslides, drought, etc. for national preparedness by relevant sectors.

8.2.2 Rural and agricultural land use planning

POLICY STATEMENT:

Government shall pursue effective and efficient rural land use planning.

Implementing Strategies

Government shall:

- a) Review the current laws related to planning to provide for rural land use planning;
- b) Recognise rural settlement planning as a tool for sustainable resource management, alignment of infrastructure standards and provision of public sites;
- c) Provide for rural land use strategies to assist communities achieve optimum productivity;
- d) Make rural land use planning an integral part of land adjudication process;
- e) Secure/preserve wetlands (lowlands, inland valley swamps, mangroves swamps) exclusively for urban agricultural development and conservation of biodiversity (not for construction of dwelling houses and playing fields or otherwise);
- f) Ensure the sustainability of land for agricultural development programmes; develop specific agricultural land use plans for every district. Such plans shall define productivity targets and principles, land sizes; plans for pastoral land uses and ecological services in consultation with appropriate public constituencies and government agencies;
- g) The Ministry of Agriculture shall develop comprehensive training packages in land use and capability assessment for trainers of small farmer organisations to facilitate best practice in land resource management.

8.2.3 Urban and peri-urban land use planning

All local authorities shall be required to design plans for the use and allocation of peri-urban lands taking into account the need to preserve prime farming lands and social housing programmes. Development of land in urban and peri-urban areas has been inhibited by poor planning, rapid growth of human settlements and activities, urban sprawl and inadequate provision of infrastructure. Proper planning shall provide for well-coordinated development of urban and peri-urban areas in terms of housing, commercial, industrial and infrastructure development to accommodate changes in lifestyle and economic activities.

POLICY STATEMENT:

Government shall pursue effective and efficient urban and peri-urban land use planning.

Implementing Strategies

Government shall:

- a) prepare and implement local area development plans for all urban and peri-urban areas in the country in a participatory manner;
- b) establish an effective coordinating mechanism for the preparation, implementation of spatial plans and development control; and
- c) encourage development of underutilized land within urban areas.

8.2.4 Planning for urban agriculture and forestry

Urban agriculture has not been properly regulated and facilitated. The following principles shall be implemented to provide a framework for the proper carrying out of urban agriculture and forestry: To promote multi-functional urban land use; and put in place an appropriate legal framework to facilitate and regulate urban agriculture and forestry.

POLICY STATEMENT:

Government shall pursue effective and efficient urban agriculture and forestry planning.

Implementing Strategies

Government shall

- a) promote tree plantation projects in deforested areas;
- b) support village community forest development initiatives;
- c) design and promote effective ways of harvesting quality forest products while ensuring re-forestation and conservation measures;
- d) promote staff training and ensure provision for critical staff needs;
- e) Ensure participation of National Research Institutions in forestry research and staff training activities.

8.2.5 Planning for informal sector and informal settlement activities

Informal sector activities are a key feature in many parts of Sierra Leone both in areas designated for specific uses and in other restricted areas, and they form a crucial part of the economy as a source of livelihood. Informal sector activities have not been adequately accommodated in formal urban and rural plans. Informal sector activities have arisen spontaneously as a result of rural-urban migration without corresponding availability of formal employment opportunities and other income generating activities.

POLICY STATEMENT

Government shall pursue efficient and effective informal sector and informal settlement planning

Implementing Strategies

The Government shall:

- a) facilitate the provision of land and land use planning to enable the development of informal commercial activities in a more ordered and sustainable manner;
- b) put in place mechanisms to allow for informal activities in planned areas;
- c) designate areas where informal activities can be carried out; and
- d) Institute mechanisms to manage rural-urban migration such as decentralizing development to rural areas and minor urban areas.

8.2.6 Land issues peculiar to coast region

POLICY STATEMENT

Government shall address land use and management issues in coastal areas, including areas reserved for tourism.

Implementing Strategies

Government shall:

- a) take an inventory of all Government land along the coastal strip and other parts of the Provinces where the problem is prevalent and come up with a framework for conversion to community land for eventual adjudication and resettlement;
- b) vest all that land in the respective community structures within whose jurisdiction they are situated as trustees for the persons ordinarily resident in the area;
- c) establish suitable legal and administrative mechanisms to address historical claims;
- d) provide a legal framework to protect tenants at will; and areas reserved for tourism;
- e) establish convenient public utility plots along the coastline to serve as landing sites and for public recreation, and open up all public access roads to the beach;
- f) institute controls to limit construction of walls along the high water mark;
- g) provide a framework for beach management and for protection, conservation, and management of land that has been created through natural recession of the sea or through reclamation from the sea;
- h) establish a framework for consulting indigenous occupants of land before establishing settlement schemes and other land use projects;
- i) protect and conserve the ecosystems in collaboration with contiguous communities;
- j) sensitize and educate people on their land rights and land administration and management procedures;
- k) provide a framework for sharing benefits from land and land based resources with communities; and
- l) Initiate and support the preparation of an integrated coast resource management plan.

- m) Protect access by coastal communities, particularly fisher folks to all beaches, foreshores and waterways.

8.2.7 Planning for Ministries, Departments and Agencies (MDAs) in Land Use

Planning for MDAs whose operations are in one way or the other directly or indirectly related to land use in urban and rural areas is at the centre of national land use and development planning. These MDAs include, but not limited to education, health, tourism, mines and minerals, transport and aviation, agriculture, forestry and food security, works, housing and infrastructure, trade and industry.

POLICY STATEMENT

Government shall pursue efficient and effective land use planning for MDAs whose operations are directly or indirectly related to land in every part of Sierra Leone.

Implementing Strategies

To ensure efficient and effective spatial planning, including land use planning for MDAs, Government shall ensure that:

- a) A long, medium and short term National Spatial Development Plan is developed to facilitate land allocation for national development.
- b) Lands allocated for the operations of a named MDA is identified, secured and protected. In other words, lands allocated and identified for purposes such as education, health, tourism, mines and minerals, transport and aviation, trade and industry, works, housing and infrastructure, agriculture, forestry and food security are fully secured and protected.
- c) MLCPE and NLC collaborates with other relevant MDAs to identify and adequately secure and protect lands allocated for education, health, tourism, mining, housing, infrastructure, trade, and industry, with a view to preventing potential land disputes between and among MDAs.
- d) All policies developed by the various MDAs, whose operations are directly or indirectly related to land use, are reviewed and streamlined so as to capture the provisions contained in this National Land Policy when once it has been approved by Cabinet and ratified by Parliament.

8.3. Environmental Management Principles

8.3.1. Conservation and sustainable management of land based natural resources

Sustainable management of land based natural resources depends in large part on the governance systems, which defines the relationship between people, and between people and the resources. To achieve an integrated and comprehensive approach to the management of land based natural resources, all policies, regulations and laws dealing with land based natural resources shall be harmonized with the framework established by the Act .

POLICY STATEMENT

Government shall adopt an integrated and comprehensive approach to management of land based natural resources.

Implementing Strategies

To sustainably manage land based natural resources, the Government shall:

- a) encourage preparation of participatory environmental action plans by communities and individuals living near environmentally sensitive areas to preserve cultural and social-economic aspects;
- b) identify, map and gazette critical wildlife migration and dispersal areas and corridors in consultation with the communities and individual land owners;
- c) encourage the development of wildlife sanctuaries and conservancies and involve local communities and individuals living contiguous to the parks and protected areas in the co-management of protected areas;
- d) provide mechanisms for resolving grievances of communities arising from human/wildlife conflicts;
- e) review the establishment of forests and protected areas to ensure that they are protected for their ecosystem values and not merely to physically exclude human activities;

- f) create an effective institutional framework and capacity to implement International Conventions especially those touching on access to land based natural resources; and
- g) facilitate partnership with neighbouring countries to foster Trans-Boundary Natural Resource Management (TBNRM) in the interest of national land.

8.3.2 Restoration and conservation of land quality

POLICY STATEMENTS

Government shall restore the environmental integrity of land and facilitate sustainable management of land based resources.

Implementing Strategies

Government shall:

- a) introduce incentives to encourage the use of technology and scientific methods for soil conservation;
- b) encourage use of traditional land conservation methods;
- c) put measures to control degradation of land through abuse of inputs and inappropriate land use practices; and
- d) put in place institutional mechanisms for conservation of quality of land for environmental conservation purposes.

8.3.3 Ecosystem protection and management principles

POLICY STATEMENT:

All lands declared as Wildlife Conservation Areas or similar land categories shall be fully protected in accordance with the Conservation and Wildlife Policy (2010)

Implementing Strategies

- i. The National Agriculture Policy shall be amended to take into account this policy.
- ii. Promote the exploitation of surface and underground water to increase agricultural production through irrigation and bore holes for multiple and off-season cropping.

- iii. The Mines and Minerals Act 2009 shall be amended to take into account this policy.
- iv. All policies of MDAs and other entities associated with land use planning, management and administration shall be amended to take into account this policy.

8.3.4 Urban environmental management principles

Efforts made shall assess and take into account other relevant policies such as the *National Water and Sanitation Policy (2010)* and the *National Wash Policy Implementation Strategy (2010)*.

8.3.5 Environmental assessment and audit as land management tools

The Ministry of Land, Country Planning, and the Environment shall initiate a comprehensive National Land Use Plan to map and register State lands, Areas for Tourism, Wildlife Conservation Areas and other State related land parcels (such as acquisitions for development projects) for the purpose of reference and public information.

CHAPTER NINE

9.0 LAND ISSUES REQUIRING SPECIAL INTERVENTION

The Government of Sierra Leone recognizes that a number of land issues require special attention, including ensuring that land distribution enhances gender equity, the land rights for socially vulnerable and poor groups, internally displaced persons and minorities are catered for, that informal settlements are judiciously managed, that disaster and border management are effectively undertaken.

9.1 Specific mechanisms for resolving special land issues

The following mechanisms shall be used to resolve special land issues.

9.1.1 Redistribution and resettlement

Land redistributive land reform projects managed by the government of Sierra Leone shall be pursued as and when necessary to provide for special social and environmental requirements using legal and administratively approved procedures of land acquisition and compensation, and based on suitable and consultative process to determine allocation criteria.

The Government would consider providing non-discriminatory and gender-sensitive assistance based on clearly defined eligibility criteria to affected persons or households to acquire tenure rights to sustain themselves, to gain services of implementing agencies and judicial authorities, or to participate in processes that could affect their livelihoods. Such accommodation will apply in particular cases where the purpose of land redistribution is to provide the disadvantaged and the poor with access to land for residential and productive purposes, and to redress unplanned development, environmental degradation, gender inequalities and trans-generational discrimination.

POLICY STATEMENT

Government shall pursue land redistribution and restitution to provide for the disadvantaged and the poor and to redress environmental degradation, gender inequalities and discrimination.

Implementing Strategies

Government shall

- a) Facilitate the development of consultations, consistent with the implementation principles of the NLP, on the redistribution, including balancing the needs of all parties, and on the approaches to be used;
- b) Define eligible beneficiaries of redistributive reforms and indicate land exempted from such redistribution;
- c) Establish a clear legal framework and policies, through participatory processes, for identifying, verifying and recording genuine and other potential beneficiaries;
- d) Establish a clear legal framework for identifying suitable land for redistribution and use constitutional and legally defined procedures of land acquisition; and
- e) Establish clear and equitable criteria for allocation of settlement scheme plots;
- f) Ensure equal access and equal treatment of men and women in redistributive reforms;
- g) Facilitate the development of consultations, consistent with the principles of the VGGT, on the redistribution, including balancing the needs of all parties, and on the approaches to be used.
- h) Endeavour to prevent corruption in redistributive reform programmes, particularly through greater transparency and participation;
- i) monitor and evaluate the outcomes of redistributive reform programmes, including associated support policies, and their gender-differentiated impacts on access to land and food security of both men and women and, where necessary, introduce corrective measures.

9.1.2 Expropriation, Compensation and Restitution

The Government should:

- a) Develop gender-sensitive policies and laws that provide for clear, transparent processes for restitution. Information on restitution procedures should be widely disseminated in applicable languages.

- b) Provide a publically accessible mechanism for the right to appeal if people believe their tenure rights have not been fully recognised and that this needs to be resituated. Such a mechanism shall be managed by an Ombudsman on Land within the judicial or land administrative institutions;
- c) Compensate for lands acquired by Government for resettlement, re-development, and other purposes must be fair and adequate in accordance with open market value;
- d) Where appropriate, restitution for the loss of legitimate tenure rights to land, and access to natural resources must be considered;
- e) Ensure that all actions are consistent with environmental and social safeguards assessment (ESIA) laws and regulations and existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments;
- f) Claimants should be provided with adequate assistance, including through legal and paralegal aid, throughout the process. States should ensure that restitution claims are promptly processed. Where necessary, successful claimants should be provided with support services so that they can enjoy their tenure rights and fulfill their duties. Progress of implementation should be widely publicized;

9.2. Land rights for the vulnerable groups and minorities

9.2.1 Vulnerable social groups

Vulnerable social groups include HIV and AIDS, EVD and other rights of children and youth, elderly and women. In view of the precarious situation regarding the problems related to HIV/AIDS/EVD, children and youth require special protection with regard to their land rights.

POLICY STATEMENT

Government shall adopt measures to provide access to land, infrastructure and basic services to internally displaced or historically disposed persons and other vulnerable groups like those living with HIV/AIDS.

Implementing Strategies

Government shall:

- a) Develop mechanisms for identifying, monitoring and assessing the vulnerable groups;
- b) Facilitate their participation in decision making over land and land based resources; and
- c) Protect their land rights from unjust and illegal expropriation.
- d) Put in place mechanisms to protect the land rights of people living with HIV and AIDS and ensure that these are not unfairly expropriated by others to the detriment of such persons and their families; and
- e) Facilitate public awareness campaigns on the need to write wills to protect land rights of dependants in the event of death.
- f) Enforce the legislation/laws and supervise the appointment of guardians for orphans to safeguard their land rights;
- g) Review the legislative framework to provide that minority does not constitute a barrier to proprietorship where circumstances indicate that conferring ownership rights upon a minor would be appropriate;
- h) Review, harmonize and consolidate all the laws relating to children's inheritance of family land in order to recognize and protect the rights of orphans;
- i) Review the laws on trusts and administration of estates with a view to ensuring that trustees act in the best interests of the beneficiaries of trusts and estates; and
- j) Carry out public education campaigns so as to encourage the abandonment of cultural practices that bar children and youth from inheriting family land.

9.3. Internally displaced persons and Refugees

9.3.1 Internally displaced persons

A significant number of Sierra Leoneans have been or were displaced from their land as a result of the recent civil war and political and land conflicts. These people, who are currently displaced persons, are in various areas. The legal, policy or institutional frameworks for dealing with these issues need to be rationalised.

POLICY STATEMENT

Government shall adopt measures to address the challenges faced by persons genuinely displaced by the civil war.

Implementing Strategies

The Government shall:

- a) after conflicts respect applicable international humanitarian law, related to legitimate tenure rights;
- b) settle displaced persons and others affected by conflict in safe conditions in ways that protect the tenure rights of host communities. Violations of tenure rights should be documented and, where appropriate, subsequently remedied. Official records of tenure rights should be protected against destruction and theft in order to provide evidence for subsequent processes to address such violations and facilitate possible corrective action, and in areas where such records do not exist, the existing tenure rights should be documented as best as possible in a gender-sensitive manner, including through oral histories and testimonies. Legitimate tenure rights of displaced persons should be recognized, respected and protected. Information on tenure rights and unauthorized use should be disseminated to all affected persons.
- c) undertake an inventory of all genuine internally displaced persons;
- d) identify problems associated with the presence of internally displaced persons such as additional land pressure and competition for land based resources;

- e) establish legal, policy and institutional frameworks for dealing with the issues that arise from internal displacement; and
- f) re-settle as appropriate all internally displaced persons.

9.3.2. Refugees

Sierra Leone needs to have a clear policy framework for hosting refugees from neighboring countries. The unpredictable nature of refugee influxes can affect the optimal utilisation of resources such as land, fuel wood, water and pasture are overstretched in already stressed environments and the economic and social equilibrium in host communities. Appropriate infrastructure is normally required to effectively manage affected areas. The location of refugee camps in fragile eco-system causes systematic ecological degradation. Safeguards should be established to avoid infringing on existing tenure rights of others, including those that are currently not protected by law.

POLICY STATEMENT

Government shall adopt clear measures to ensure access to land, infrastructure and basic services for refugees from neighbouring countries

Implementing Strategies

The Government shall:

- a) establish safeguards to avoid infringing on existing tenure rights of others, including those that are currently not protected by law.
- b) ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments, including as appropriate those of the Convention relating to the Status of Refugees and its Protocol, and the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (“Pinheiro Principles”).
- c) ensure that the establishment of refugee camps is subject to development planning and control;

- d) put in place a legislative and administrative framework for establishing, planning and managing refugee camps taking into account this Policy, the Environment Protection Act and other sectoral laws on natural resources;
- e) build the capacity of relevant ministries, communities and the private sector to appreciate and address land-related environmental concerns in refugee camps;
- f) involve host communities in setting up, planning and managing refugee camps; and
- g) ensure the provision of adequate resources for the conservation and rehabilitation of refugee camps.
- h) Settle refugees and others affected by conflict in safe conditions in ways that protect the tenure rights of host communities. Violations of tenure rights should be documented and, where appropriate, subsequently remedied.
- i) Official records of tenure rights should be protected against destruction and theft in order to provide evidence for subsequent processes to address such violations and facilitate possible corrective action, and in areas where such records do not exist, the existing tenure rights should be documented as best as possible in a gender-sensitive manner, including through oral histories and testimonies.
- j) Legitimate tenure rights of refugees should be recognized, respected and protected. Information on tenure rights and unauthorized use should be disseminated to all affected persons.

9.4. Informal settlements

The essence of 'informal' or 'spontaneous' or 'squatter' settlements is the absence of security of tenure and planning. Many Sierra Leoneans live as squatters in slums and other squalid places. Squatters are found on public, community and private land. Squatters and informal settlements therefore present a challenge for physical planning and land development.

POLICY STATEMENT

Government shall adopt measures to address informal or squatter settlements and make provision for resettlement where required in accordance with international obligations and best practices.

Implementing Strategies

To deal with the difficulties experienced and caused by squatters and informal settlements, the Government shall:

- a) take an inventory of squatters and people who live in informal settlements;
- b) determine whether land occupied by squatters is suitable for human settlement;
- c) where informal tenure to land exists, the Government should acknowledge it in a manner that respects existing formal rights under national law and in ways that recognize the reality of the situation and promote social, economic and environmental well-being;
- d) promote policies and laws to provide recognition to such informal tenure. The process of establishing these policies and laws should be participatory, gender sensitive and strive to make provision for technical and legal support to affected communities and individuals;
- e) The Government should take all appropriate measures to limit the informal tenure that results from overly complex legal and administrative requirements for land use change and development on land.
- f) Development requirements and processes should be clear, simple and affordable to reduce the burden of compliance.
 - i. facilitate planning of land found to be suitable for human settlement;
 - ii. ensure that land subject to informal settlement is developed in an ordered and sustainable manner;

- iii. formalize and facilitate the registration of squatter settlements found on public and community land for purposes of upgrading or development;
 - iv. formalize and facilitate the registration of squatter settlements found on public and community land for purposes of upgrading or development;
 - v. develop, in consultation with affected communities, a slum upgrading and resettlement programme under specified flexible tenure systems;
 - vi. put in place measures to prevent further slum development on private land and open spaces;
 - vii. facilitate the carrying out of informal commercial activities in a planned manner; prohibit sale and/or transfer of land allocated to squatters and informal settlers;
 - viii. where necessary, put in place appropriate mechanisms for the removal of squatters from unsuitable land and their resettlement;
 - ix. put in place an appropriate legal framework for eviction based on internationally acceptable guidelines.
- g) Where it is not possible to provide legal recognition to informal tenure, the Government should prevent forced evictions that violate existing obligations under national and international law, and consistent with relevant provisions made with regard to expropriation and compensation in this policy.

9.5 Disaster management

The country does from time to time experience disasters that should be managed in order to avoid the loss of both human and animal life, the negative impacts on agriculture, the natural environment and the destruction of property. Such disasters include floods and landslides. The policy and institutional frameworks for the prevention and management of land-related disasters need to be strengthened. There is also a dearth of appropriate technologies and financial resources to deal with these disasters.

POLICY STATEMENT

Government shall adopt measures to address land related disasters.

Implementing Strategies

The Government shall:

- a) rationalise the legal, policy and institutional frameworks for the prevention and management of land-related disasters;
- b) strengthen the legal and administrative frameworks for resettlement in the event of natural disasters;
- c) regulatory frameworks for tenure, including spatial planning, should be designed to avoid or minimize the potential impacts of natural disasters;
- d) ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.
- e) all parties should act, taking into consideration relevant international principles, including as appropriate, the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (“Pinheiro Principles”), and the Humanitarian Charter and Minimum Standards in Disaster Response;
- f) address legitimate tenure rights in disaster prevention and preparedness programmes. Systems for recording legitimate tenure rights should be resilient to natural disasters, including off-site storage of records, to allow right holders to prove their rights and relocate their parcels and other spatial units;
- g) legitimate tenure rights of displaced persons should also be recognized, respected and protected. Information on tenure rights and unauthorized use should be disseminated to all affected persons;
- h) during the reconstruction phase. Persons who are temporarily displaced should be assisted in voluntarily, safely and with dignity returning to their place of origin.
- i) Means to resolve disputes over tenure rights should be provided. Where boundaries of parcels and other spatial units are to be re-established, this should be done consistent with the principles of consultation and participation.

- j) Where people are unable to return to their place of origin, they should be permanently resettled elsewhere. Such resettlement should be negotiated with host communities to ensure that the people who are displaced are provided with secure access to alternative livelihoods in ways that do not jeopardize the rights and livelihoods of others;

9.6 Sierra Leone border management and enforcement

POLICY STATEMENT

Government shall protect and secure Sierra Leone's international boundaries in accordance with international conventions as enshrined in the international law of the sea, Anglo-francophone protocols and joint border commissions.

Implementing Strategies

The government of Sierra Leone shall:

- a) ensure that Sierra Leone's international boundaries are protected, secured and managed by the joint border commissions of Sierra Leone, Liberia and Guinea;
- b) ensure that cross-border activities such as farming, mining, cattle grassing and human settlements are properly managed so as to prevent any negative effect on the local economy;
- c) ensure that the smuggling and cattle rustling across Sierra Leone's international borders are not only prohibited but also controlled at all times;
- d) strengthen field staff capacity through adequate budgetary provision for training, logistical support, competitive wages and incentives;
- e) ensure the recruitment and training of security personnel to protect and secure Sierra Leone's international boundaries;
- f) encourage existing security agencies to cooperate with the Government in protecting and securing Sierra Leone as a state and her international boundaries at all times;
- g) cooperate, in the framework of appropriate mechanisms and with the participation of affected parties, in addressing of trans boundary tenure issues affecting

communities, such as with rangelands or seasonal migration routes of pastoralists, and fishing grounds which lie across international boundaries;

- h) Where appropriate, harmonize legal standards of tenure governance, in accordance with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. Where appropriate, this should be coordinated with relevant regional bodies and with affected parties;
- i) with the participation of the affected parties as appropriate, develop, coordinate and strengthen existing international measures to administer tenure rights that cross international boundaries;

CHAPTER TEN

10.0 LAND POLICY IMPLEMENTATION FRAMEWORK

The Ministry shall, in consultation with other sectorial agencies and development partners, set out a framework for the implementation of this National Land Policy. The envisaged framework shall provide for the establishment of an interim administrative mechanism to operationalize this Policy pending the establishment of the NLC. In addition, the framework shall provide for capacity building and mechanisms for financing the implementation of this Policy.

10.1 National Land Policy and Reform Unit

The Ministry of Lands shall establish a National Land Policy and Reform Unit (NLPRU) to support the implementation of this National Land Policy, led by a senior MLCPE officer to coordinate the implementation of this Policy. The specific tasks of the Unit shall be:

- (i). facilitating the review and consultation over specific land policy proposals and legislation necessary to implement this National Land Policy;
- (ii). facilitating the establishment of proposed land institutions;
- (iii). facilitating the recruitment and training of required personnel;
- (iv). facilitating the mobilisation of financial and other resources;
- (v). facilitating the organisation of civic education;
- (vi). ensuring a smooth transition to this National Land Policy, and
- (vii). facilitating the preparation of a National Land Policy Implementation Framework plan (NLPIF plan).

10.2 Capacity building for land reform

The National Land Policy and Reform Unit (NLPRU) shall commission a study to identify the appropriate skills required to implement the NLP.

Training shall be undertaken to build capacity of ministerial staff and staff of the NLPRU, at national and local level institutions that will be involved in policy coordination, land administration and management, and arbitration functions.

10.3 Policy enforcement

In order to instil good governance in land administration and management, it is necessary to put in place integrated enforcement measures and protect the Policy from political and, or other interference. This policy shall form the basis for, and be recognised as the overall guide to all other land related policies.

10.4 Financing the land reform programme

Experiences show that land policy formulation and its implementation often fail because of inadequate budgetary allocations to pay for the cost of land policy development and implementation, capacity gaps, and for monitoring and evaluating the process. The MLCPE shall carefully define the financial and technical resources required to undertake comprehensive policy development. Donor support for policy development shall be complemented by national financing and inputs in kind, to ensure national ownership and sustainability of the land reform process.

10.4.1 Resources required to implement the policy

The financial resources that will be required to implement the project over the first five years, requires a budgetary framework, which adequately covers a range of project components. The NLPRU coordinator, supported by consultants and donors, shall be responsible for preparing the budget.

10.4.2 Coordination of international support

The MLCPE shall work closely with the country's development partners to coordinate better their support to the national land policy priorities, including those concerned with promoting private sector responsible investment in land for agriculture, mining, tourism and urban development, as well as those aimed at enhancing pro-poor land policy issues. These coordination efforts shall also be engaged by the MLCPE, to define how best to involve NGOs, particularly regarding alternative approaches to mediating land disputes, protecting

the land rights of the poor and monitoring the processes of land leasing, and in order to strengthen civil society initiatives in land matters.