

Customary Land Tenure, Large-Scale Land Acquisitions and Land Reform in Sierra Leone



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1. Introduction

In December 2009, a cabinet decision was made on a land policy that would form the basis for the upcoming land reforms in Sierra Leone. Since then, draft land policies have been produced by the Ministry of Lands, Country Planning, and the Environment (MLCPE), which is responsible for the management and administration of public lands, and after nearly six years, Sierra Leone's National Land Policy was formally adopted by cabinet in November 2015. The policy is a fairly voluminous and comprehensive document which takes into account the current status of land problems in Sierra Leone, as well as providing directions for land reform. It also declares in no uncertain terms that the rights of all legitimate land users, including customary land rights, are to be respected and protected (MLCPE, 2015: 12). Sierra Leone will implement its first genuine land reform since independence, which will be carried out according to a ten-year Land Policy Reform Implementation Plan (MLCPE, 2016).

Meanwhile, large-scale land acquisitions, primarily by foreign companies for agricultural development, have increased rapidly, precisely at the same time as debates around land policy have taken place. This initiative appears to have reaped significant outcomes. While doubts remain about the reliability of the data, Christian Aid, an non-governmental organisation concerned with land issues, reports that from 2009 to the end of 2012, 'foreign investors had taken out or were set to take out long leases ... on at least 1,154,777 ha, about 21.4% of the country's total arable land for large-scale industrial agriculture' (Baxter, 2013: 14). As has been the case elsewhere in Africa, such large acquisitions have been criticized by numerous experts and NGOs claiming that rather than helping to improve the living standards of those who live in rural areas, such leases exploit land titles and actually increase poverty and economic inequalities (Bread for all, 2011; Oakland Institute, 2011; Welthungerhilfe, 2012; Mousseau, 2012; ActionAid, 2013; Baxter, 2013; Fielding et al., 2015; Menzel, 2015; Yengoh et al., 2015; Millar, 2015, 2016; Yengoh and Armah, 2015, 2016; SiLNoRF, 2016).

Since the late 2000s, as the debate around a land policy that would strengthen and protect the rights of land users took place, large-scale land acquisitions by foreign companies have frequently

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come to threaten land titles of the people of Sierra Leone, in particular, the customary land titles of the rural population.

That government efforts to design and implement land policies which might stabilize and strengthen the rights of land users have coincided with large-scale land acquisitions by overseas investors is not, however, a phenomenon unique to Sierra Leone. As Shinichi Takeuchi has argued, since the 1990s, many African countries have carried out programs of land reform that have aimed at buttressing land user rights, and yet ironically, populations have lost land to so-called land grabs precisely in those countries that have introduced policies emphasizing individual rights over land in recent years (Takeuchi, 2015b: 259-260). Land grabs taking land away from populations have in fact occurred at the same time and alongside the development of policies and legislative reforms that seek to strengthen the rights of land users. Takeuchi has also argued that understanding this paradox as it is experienced in Africa today requires analysis from the perspective of ‘state-building.’

According to Takeuchi (2015a, 2015b), in those African countries where governance by the state has yet to permeate throughout society, and which have yet to complete the tasks of establishing political order since the end of the colonial period, policies promoted by donors that aim to strengthen the rights of land users are, for the most part, unable to furnish genuine and robust rights of private ownership to land users. Until now, African countries have sought to manage their societies by means of exercising power and influence over land. Granting effective private ownership rights to land users would thus imply voluntarily undermining social governability via land, a critical mechanism for establishing political order, and states are thus unlikely to choose such an option. As a result, despite the implementation of policies meant to improve the rights of land users, in many African nations, these do not often lead to the creation or endowment of genuine private ownership rights, while the state – or traditional leaders backed by state power – remains able to limit people’s land titles using various means. Under such authority-based systems of land tenure, Takeuchi argues, land grabs are more likely to occur when foreign companies are able to solicit the support of power embedded in governments or traditional leaders.

This paper applies Takeuchi’s ‘diagnoses’ of the relationship between African states, societies, and land to the case of Sierra Leone. According to Takeuchi’s view, African states have sought to govern their societies by using land as a way to bring about political order and, due to the incomplete nature of this political project, many have retained authority-based systems of land tenure. These, in turn, have become a factor behind land grabs over recent years. The paper considers the mutual relationships between customary land tenure, large-scale land acquisitions, and land reform in Sierra Leone. More specifically, this paper explores precisely what ‘customary

land tenure' signifies in the Sierra Leone context, the specific mechanisms by which large-scale land acquisitions by foreign companies have occurred there, and what amongst both Sierra Leone's customary systems of land tenure and recent land acquisitions may change or remain the same under the country's upcoming program of land reform.

The paper is divided into three main sections. The first section makes some initial comments on the duality of Sierra Leone systems of land tenure before providing an overview of the country's customary systems of land tenure, particularly in relation to rural areas. The following section describes the manner by which increasing numbers of large-scale acquisitions of land by foreign investors have occurred in rural Sierra Leone under its customary systems of land tenure. It also describes in detail the mechanisms by which such acquisitions are made possible in the context of customary land tenure. The third section describes how the National Land Policy was formed and provides an overview of its main features, before considering how the upcoming land reform might proceed under this policy.

2. Customary land tenure

2.1 Dualism

Sierra Leone is divided into the Western Area and the Provinces, the latter comprised of the Northern Province, Southern Province, and the Eastern Province. The Western Area is further divided into two districts, while there are 12 districts across the Provinces (see Map 1). The 12 districts in the Provinces are further divided into regional units called chiefdoms. There are currently 149 chiefdoms throughout the Provinces. The chiefdoms are in turn divided into sections, and each section contains towns, villages, and communities.

Historically, land tenure in Sierra Leone has varied considerably between the Western Area and the Provinces, and it is the dualism that is the most significant feature of land tenure regimes in Sierra Leone.

The Western Area dates back to the late 1780s, when freed blacks from England ('the Black Poor') settled in the area, resulting in the founding of the Colony of Sierra Leone. After the Colony was founded, various ordinances were enacted by successive governors and colonial administrations, and legislation in effect in England was applied in the Colony in largely the same form. In today's Sierra Leone, 'general law' is used as a generic term for the body of statutory and non-statutory laws other than practices and customs. Such general law has served as the legal source for the English-style system of land tenure that developed in the Colony of Sierra Leone and, following independence, the Western Area.

The Provinces of Sierra Leone, on the other hand, originated from the Protectorate of Sierra

Leone, which was founded by Britain in 1896. From the time of the declaration of the Protectorate until today, the primary legal source for land-related matters in the Provinces has been ‘customary law’, and traditional authorities, particularly Paramount Chiefs, have had a strong influence on the distribution, transaction, and leasing of land.

The main purpose of this chapter is to discuss customary land tenure regimes in Sierra Leone, and will not consider the English-style land tenure regimes found in the Western Area. In order to consider in detail the systems of customary land tenure in the Provinces, firstly the primary decision-making bodies within the chiefdoms, the Chiefdom Councils, and the Paramount Chiefs that lead them are discussed below.

Map 1. Administrative Divisions



2.2 Chiefdom Councils and Paramount Chiefs

Chiefdom Councils were established after independence in 1961 as administrative bodies within the 149 chiefdoms throughout the Provinces, and were previously called Tribal Authorities during the colonial era. In addition to Paramount Chief, a Chiefdom Council includes the following office-holders: Chiefdom Speaker, who augments the duties of the Paramount Chief; Section Chief, the head of a Section; Ceremonial Chief, who presides over ceremonies; and Member of

Parliament. Aside from these office-holders, a Chiefdom Council is further comprised of ‘a number of Chieftain Councillors, each representing every twenty taxpayers in the chiefdom’ (Chieftaincy Act, Article 4). While a Chiefdom Council is the highest decision-making organ in the chiefdom, in practice, the sheer size of Chiefdom Councils (there are several hundred members) means they are scarcely convened. Most of the day-to-day chiefdom administration is channelled through the Chiefdom Committee, which consists of only several dozens of members, chaired by a Paramount Chief.

What must be noted in regard to customary land tenure in the Provinces is the fact that, at least in name, all land within the chiefdom is ‘owned’ by the Chiefdom Council. Amongst the few written laws regarding land in the Provinces is the Provinces Land Act, which states that ‘all land in the Provinces is vested in the Chiefdom Councils who hold such land for and on behalf of the native communities’ (Preamble).

In reality, however, land within the chiefdom is not actually owned by the Chiefdom Council itself. Neither have the Chiefdom Councils, so rarely convened, played any significant role with regard to land management and use. The importance of the Chiefdom Council is in name only. The only parties that have had a voice in, and influence concerning, customary land management and use within the Provinces are the heads of the Chiefdom Councils, the Paramount Chiefs, who have come to be seen as the ‘custodians’ of chiefdom lands.

The Chieftaincy Act of 2009 defines a Paramount Chief as ‘a chief who is not subordinate in his ordinary jurisdiction to any other chief but does not include an acting chief or a regent chief’ (Article 1). In principle, Paramount Chiefs are appointed for life, but the President may remove them from office (Article 19). The Act provides that when a vacancy occurs in the office of Paramount Chief (by death, removal or otherwise), the Chiefdom Council shall elect a new Paramount Chief no later than 12 months after the vacancy occurs (Article 2). Each chiefdom has ruling houses which are officially entitled to produce Paramount Chiefs, and candidacy in a paramount chieftaincy election is limited to those who are from such houses (Article 8).

Apart from the Paramount Chief, each chiefdom is also headed by a range of other traditional leaders including a Regent Chief, Ceremonial Chief, Section Chief, and a town or village Headman. Nonetheless, the Paramount Chiefs, of which there are 149 across all Provinces, enjoy a particularly special rank even amongst these other traditional roles. For instance, while a Section Chief below the Paramount Chief manages the land within their section in the customary manner, as does the Headman in his town or village, these subordinate traditional leaders are, of course, proxies of the Paramount Chief, from whom all of their authority as managers of the land is essentially derived. Accordingly, when discussing the roles of traditional leaders in Sierra Leone’s customary systems of land tenure, it is appropriate to draw a distinction between the

Paramount Chiefs and all other chiefs which are subordinate to them.

Below, we consider the specific roles of land managers within customary land tenure, focusing on that of the Paramount Chiefs. In doing so, the customary authority of Paramount Chiefs in terms of land management is contrasted with the customary land rights of landholders in the Provinces.

2.3 Ownership and custodianship of customary land

While Paramount Chiefs have come to be seen as the customary managers of chiefdom land, neither they nor the Chiefdom Councils are the actual landowners.

In the Provinces, at least three different types of land tenure arrangements are recognized under customary law – family tenure, communal tenure, and individual tenure. Of these, family tenure is the most widespread (Renner-Thomas, 2010: 145-158). In many cases, lands now under family tenure were formally ownerless territories occupied by various kinship groups such as families, clans or lineages; were wilderness areas opened up by these groups; or were the trophies or rewards received by a group that had defeated another in warfare. Today, lands as having come under family tenure arrangements through such historical processes are not infrequently transferred or granted into the ownership of other families.

Excluding community-owned lands defined by customary law and government-owned lands defined by common law, the majority of provincial land is privately owned by the family unit, and in this sense, they can be understood as private lands. The 2015 National Land Policy places these family-owned lands, comprising the majority of land in the Provinces, in the category of ‘private lands’, while at the same time they also fall under customary tenure (MLCPE, 2015: 53). However, private land under customary tenure – essentially what could even be called ‘customary private land’ – is not of the sort of private land one might normally imagine. This is because all provincial lands are nominally under the jurisdiction of the Chiefdom Councils, while the council heads – the Paramount Chiefs – hold significant customary powers as custodians of the land.

We might describe land titles held by people who own land under customary tenure as pertaining to ‘customary land ownership’, while the powers of Paramount Chiefs in managing that land as derived from ‘customary land custodianship’. The latter would include the sorts of powers described in the following.

For example, when an individual seeks to buy, sell or lease land, the authority to formally and conclusively recognize such transactions rests with the Paramount Chief. In other words, without the approval of a Paramount Chief in their capacity as a land manager, in principle, any land transactions within the Chiefdom are not officially recognized. Provincial lands include those located within communities and villages as well as urban areas such as towns (i.e. areas with

higher concentrations of buildings). People who have newly acquired lands in these latter areas will frequently hire surveyors to produce survey plans, which are to be registered with the MLCPE in order to strengthen their land titles under customary land tenure. In other cases, some will also go to the length of hiring a solicitor to complete a conveyance, which is then submitted alongside survey plans with the Registrar-General's Office in Freetown. In such cases, survey plans and other documents to be registered must include the signature and stamp of the Paramount Chief in whose Chiefdom the relevant land is located. Accordingly, under the customary system of land tenure within the Provinces, any documents related to land that have not been approved by a Paramount Chief not considered genuine, and cannot be used for any official land registration requests.

In short, people living under the customary system of land tenure in the Provinces are, in principle, unable to undertake any official land transactions or officially register any land-related documents without the approval of the traditional leadership, in particular, that of the Paramount Chiefs. The power to regulate all such land transactions and registrations forms the basis of the Paramount Chiefs' customary authority to manage land. Paramount Chiefs also commonly receive money and gifts in return for approving the transfer of lands or when signing or affixing their stamp to land related documentation. In broad terms, this may also be considered as part of the customary custodial land rights enjoyed by Paramount Chiefs.

In addition to these powers around the transfer and registration of land, Paramount Chiefs carry a significant amount of authority and influence over all aspects of land management and exploitation within their Chiefdom and play an important role in a wide variety of contexts related to the management of land. For instance, they often transfer or lend community land belonging to the Chiefdom Council on their own discretion alone, coordinate the supply of lands for government and business developments within their Chiefdoms and act as arbiter in land related disputes.

In this way, customary land tenure in the Provinces of Sierra Leone, while broadly recognizing customary ownership rights, also grants wide-ranging powers of land management to the Paramount Chiefs. The land management rights of Paramount Chiefs also take precedence over the ownership rights of the people. The tight restrictions placed on the latter has meant that the scope to make decisions about one's own land (that is, 'customary private land') in the Provinces is much more limited compared to that commonly found in Western countries.

This is but the roughest overview of the system of customary land tenure, to which Paramount Chiefs are central, found in the Provinces of Sierra Leone today. After providing a rough overview of the customary land tenure, here it should be pointed out that, as strange as it may sound, there is, in fact, nothing 'customary' at all about Sierra Leone's system of customary land tenure.

2.4 Customary land tenure as an instrument for state-building

Today, customary land tenure in the post-colonial Africa is considered to be qualitatively different from that prior to colonization. Catherine Boone draws a clear distinction between pre-colonial and later systems of customary land tenure in Africa, describing the former as ‘customary’ and the latter as ‘neocustomary’ as a way to highlight the significant level of difference between the two (Boone, 2014: 25).

The system of customary land tenure as found in the Provinces of Sierra Leone today is no exception. It is neither a facsimile of the customary land tenure practices of traditional society before the Protectorate, nor is it an institution left over from that period. Rather, customary land tenure in the Provinces is a system established as part of a process of modern state-building since the establishment of the Protectorate. In essence, this system was built and improved upon as a political device for the indirect control of areas located at a distance from the centre of state power both during the colonial era (i.e. the Protectorate) and following independence (the Provinces) that uses traditional leadership structures. In this sense, far from being ‘customary’, the system is, in fact, neo-customary, and may even be described as modern without fear of error. After all, this system is closely linked to the modern state. Of course, this is not to say that customary land tenure in Sierra Leone is wholly unrelated to traditions and customs. Yet it is a system predicated and maintained by the existence of the modern state, and thus a line should be drawn between it and customary land tenure within traditional society prior to the advent of the Protectorate, which did not rely on the existence of the modern state.

This section has provided a broad overview of customary land tenure in the Provinces of Sierra Leone, highlighting its closeness to the modern state. The following section will focus on large-scale acquisitions of land by foreign enterprises and considers how these have occurred in the context of customary land tenure.

3. Large-scale land acquisitions

3.1 Promotion of foreign investment and the increase of large-scale land acquisitions

Until now, the Provinces of Sierra Leone have witnessed the active development of their mineral resources such as iron ore, bauxite, and diamonds, while large-scale agricultural production of oil palm, sugar cane, and rubber has not been as common compared to other West African countries. One reason for this has been the less than proactive stance taken by the Sierra Leone government toward establishing a coherent legislative framework for agricultural development as well as policies to attract foreign investment.

However, a turning point came in the 1990s, when Sierra Leone experienced a serious civil conflict. Following the end of the civil war in 2002, the government completely changed its approach to agricultural development in the Provinces. In 2007, the government established the Sierra Leone Investment and Export Promotion Agency (SLIEPA) for the purpose of facilitating direct foreign investment and export development. Using this agency as a liaison body, the government now takes a proactive stance toward foreign investment, particularly in the agricultural sector. Specifically, the government now designates in advance tracts of arable Provincial land suitable for large-scale cultivation of crops such as oil palms and sugar cane, and offers to act as an intermediary for private firms with respect to such candidate areas. Where foreign firms show strong interest in investing, the government proactively facilitates the leasing of the land of interest by sending officials from SLIEPA or the Ministry of Agriculture, Forestry and Food Security (MAFFS) to mediate between the private foreign investor and the Paramount Chiefs and landowners of host communities (Renner-Thomas, 2010: 290).

Policies seeking to attract foreign investment into the agricultural sector were originally begun under the government of Ahmad Tejan Kabbah of the Sierra Leone People's Party (SLPP). The push to attract foreign capital picked up pace following the formation of a government by the All People's Congress (APC) and the election of Ernest Bai Koroma as President in 2007. Though Koroma was elected as a candidate for the APC, then in opposition, he had previously been the CEO of an insurance company and sought to utilize his business experience and abilities following his election to the presidency. The slogan used to refer to his administration of government was 'Running the country like a business concern' (Koroma, 2009). Under the new Koroma administration, improving the productivity of the agricultural sector was highlighted as a key concern by President Koroma. To this end, the government introduced the Smallholder Commercialization Programme (SCP), aimed at organizing smaller farmers and introducing mechanization, and actively sought out foreign investment (Menzel, 2015: 9).

The Sierra Leone Trade and Investment Forum, held in London in November 2009, was a large event signalling the beginning in earnest of efforts by the Koroma-APC administration to attract foreign investment to the country's agricultural sector (Oakland Institute, 2011: 12). At the forum, President Koroma actively encouraged investment by foreign enterprises in Sierra Leone agriculture, stating that 'Our soils are fertile and our land under-cultivated, offering ideal conditions for new investments in rice, oil palm, cocoa, coffee and sugar' (Koroma, 2009).

This forum marked one point after which both agricultural investments and large-scale land acquisitions by foreign enterprises increased dramatically in Sierra Leone. Specifically, the countries of Nigeria, China, Malaysia, the United States, Portugal, Iran, England, Belgium, India, and Germany announced they would pursue direct foreign investment to Sierra Leone agriculture,

and very quickly entered into contracts for land leases (Oakland Institute, 2011: 22-23). As a result, between 2009 and 2012, huge swathes of land – totalling around 20 percent of all arable land in Sierra Leone – was either leased or likely to be leased to foreign enterprises or their local subsidiary companies (Baxter, 2013: 14).

3.2 The ethanol production project by Addax

Land acquisition process

Amongst the large-scale agricultural projects carried out in recent years in the Provinces of Sierra Leone by foreign enterprises, one of the flagship projects of the Koroma-APC government is that of Addax Bioenergy Sierra Leone, a local subsidiary of Swiss corporate group Addax and Oryx Group (AOG), which aims to produce biofuels. With this project, Addax aimed to create large-scale sugar cane plantations on land under a fixed-term lease in three chiefdoms within Bombali and Tonkolili districts in the Northern Province to produce ethanol biofuel for export to European markets.

From 2008, Addax entered into negotiations with the relevant parties and also commenced a pilot project. In February 2010, the Sierra Leone government, AOG, and Addax signed a joint memorandum of understanding that outlined the method of land leasing and preferential taxation arrangements for Addax. In May of the same year, contracts between Addax and the three Chiefdom Councils were signed, leasing a total of 52,000 hectares of land to the company for a period of 50 years. Under the terms of the contract, land is leased at a uniform rate of 8.89 USD per hectare per annum. Of this amount, 50% (4.45 USD) is to be paid to the land owner, 20% (1.78 USD) to the relevant Chiefdom Council, 20% (1.78 USD) to the District Council, the local government at the District level, and the remaining 10% (0.89 USD) to the central government (ActionAid, 2013: 5; English and Sandström, 2014: 14-20; SiLNoRF, 2016: 9).

Addax's measures to acquire land appropriately

One of the key aspects of Addax's large-scale land acquisition was its various efforts to ensure informed consent and protection of landowner rights occurred, largely as a way to avoid any criticism that it was making a land grab. As part of these efforts, the company introduced a so-called Acknowledgment Agreement, a completely new form of contract that had not been seen previously in former transactions of land in the Provinces.

Foreign companies seeking to acquire land in the Provinces of Sierra Leone are unable to purchase land, and as a general rule, are instead obliged to enter into lease agreements of a maximum length of 50 years (through renewable for up to 21 years) (Provinces Land Act, Article 4). Roughly half of the rent paid by these companies goes to the landowner, while the remaining

half is distributed amongst the Paramount Chiefs, Chiefdom Councils, District Councils and the central government. This arrangement for sharing land rents was created during the Protectorate and is an implicit form of 'taxation' by local and central governments. Under this arrangement, local and national governments essentially intercept half of the rent paid on lands, while the actual land owner receives only half of the full amount. The system has thus been the object of criticism and complaint for some time.

In light of this, in meetings with the Sierra Leone government, Addax introduced the new Acknowledgement Agreements, separate from the lease contracts signed between the company and Chiefdom Councils, and gradually set about signing these agreements within the local communities in the relevant chiefdoms. Under these agreements, each landowner agrees to lease their land to the Chiefdom Council, which is to be subleased for use by Addax. In return for owners agreeing to not interfere with Addax operations on their lands, the agreement also promises an additional annual payment of 3.46 USD per hectare to the land owner. With both the land lease contracts and the Acknowledgement Agreements, the total amount paid in rent by Addax came to 12.35 USD, the standard amount recommended by the Ministry of Agriculture, of which 64% (7.90 USD) would be paid to the land owner (English and Sandström, 2014: 18-20).

There are at least two reasons behind the introduction of these Acknowledgement Agreements by Addax. One reason was to increase the amount of rent received by landowners. Another was to ensure a more thorough level of informed consent amongst the community people who actually owned the land, by signing Acknowledgement Agreements with these in addition to leasing contracts with the Chiefdom Councils, who are nominal landowners in the Provinces.

In addition, Addax also used the latest technologies – the Global Positioning System (GPS) and Geographic Information System (GIS) – to produce accurate survey plans, which were submitted to the Registrar-General's Office along with deeds. Previously unclear boundaries between communities and the acreages of individual titleholders were clarified for the first time while registering of the survey data helped to bring these titles under the protection of common law. Throughout the whole land acquisition process, Addax was thus not merely concerned with securing adequate amounts of land, but also made at least some contribution toward strengthening the rights of landowners (English and Sandström, 2014: 20)

Several years after launching the project in 2010, Addax ran into business difficulties and by 2016, the company's ethanol production project was bankrupt (SiLNoRF, 2016). Yet despite its eventual failure, the project was considered quite advanced at the time in terms of its approach and care taken when acquiring land, inasmuch as the company made considerable efforts to achieve informed consent, promote the interests of landowners by introducing the Acknowledgement Agreements, and aimed to protect their land title via surveying and registration

of lands. Indeed, some NGOs reviewing the Addax project rated it as one of the best agricultural investment projects in that field (Swedish FAO Committee, 2014: 15).

Criticisms against Addax's project

This judgement was not shared by all. As with other cases involving large-scale land acquisitions in Sierra Leone, the Addax project also had its fair share of detractors. The international NGO, ActionAid, headquartered in South Africa, condemned Addax for not strictly adhering to the principle of 'free, prior and informed consent (FPIC)' in this project (ActionAid, 2013).

According to a report by ActionAid, despite the claim made by Addax that numerous meetings were held with local residents prior to land leases being signed, only 66% of people surveyed by ActionAid stated that they had attended such a meeting. The meetings were also described by respondents as forums for Addax and government officials to list the merits of the project, while neither sufficient information nor any opportunities for dialogue were given. In addition, land lease contracts were signed only by Paramount Chiefs and some elder leaders, while 78% of people interviewed by ActionAid stated they had never seen the contracts themselves (ActionAid, 2013: 13). Gearoid Millar also surveyed residents in the area where the Addax project occurred. Millar's report was highly critical, stating that, amongst respondents, not one was found to have understood the details of the lease contracts with Addax, none had indeed read the contracts, and the level of understanding with regard to the project was extremely limited (Millar, 2016: 221).

Prior to making the land transactions, Addax established a significant preparatory period, holding numerous meetings with relevant parties and local residents. Upon acquiring land, Addax went beyond the usual lease contracts, and introduced Acknowledgement Agreements, a new type of mechanism, in order to increase the amount of rent received by landowners and to shore up the agreement of titleholders. The company also sought to reinforce people's titles by registering survey plans and deeds to the relevant public body. Such efforts lead to the Addax agricultural development project being praised as one of the best of its sort by some NGOs.

Why was the Addax project later attacked by other NGOs and researchers in regard to the acquisition of land?

While Addax claimed to have made significant business efforts around the land acquisition issue, NGOs and researchers alike criticized the project for not providing adequate information to local residents, resulting in land being acquired without sufficient informed consent. In the personal view of the author, these opposing positions do not necessarily contradict each other. Put very simply, they are likely the result divergent perspectives amongst those promoting the project and those on its receiving end.

Admittedly, from the perspective of those pushing for the project, Addax, and the Sierra Leone

government, it may appear that efforts were made to, as far as was possible, establish adequate measures to ensure both adherence to the principle of free, prior, and informed consent, and the protection of the rights of landowners. However, from the perspective of local residents on the receiving end of the project, those usually focused on by NGOs and researchers, a rather different picture comes into view. For these people, the transaction of land with Addax was not negotiated by residents acting independently, neither was it agreed to on the basis of a determination based on the free will of residents possessed of all necessary information. Rather, the transaction was nothing more than a basic agreement first reached amongst Addax, the Sierra Leone government, and the Paramount Chiefs that become somewhat of a *fait accompli* put unilaterally to residents. Undoubtedly, many local residents probably did understand to some degree the nature of the Addax project and agreed to it in the hope that it would lead to new employment opportunities and social services. Nonetheless, the report by ActionAid shows that at least some titleholders agreed to the leasing contracts and Acknowledgement Agreements without necessarily understanding the details of the land transaction and that some landowners agreed to the project somewhat passively, unable to publicly express their complaints about the rent price or compensation on offer.

The case of Addax's large-scale acquisition of land in Sierra Leone perhaps highlights the inadequacy of businesses efforts alone which, while both necessary and extremely important, are not enough to prevent problems that might occur due to the divergent perspectives of those promoting a project and of those who must bear its consequences. While by no means limited to Sierra Leone, large-scale land acquisitions in the Provinces indicate the existence of structural factors that make appropriate land acquisitions based on informed consent highly difficult to achieve, that almost inevitably give rise to the divergent perspectives mentioned above, and that are difficult to overcome by the efforts of companies acting alone.

3.3 Why appropriate land acquisitions are so difficult

One such structural difficulty impeding appropriate land acquisitions in the Provinces of Sierra Leone is what can only be described as an 'overwhelming gap in social agency', which is plainly evident when we compare the position of those promoting a project, such as a foreign enterprise or the national government, and that of local residents. Addax and the Sierra Leone government maintain a clearly dominant position over local residents in terms of financial, technical and negotiating power.

For example, in a survey of the region affected by the Addax project, Genesis Tambang Yengoh et al. (2016: 333-336) found that 86% of residents who had agreed to the land transaction had no experience with formal education. Such low levels of education amongst residents are a factor

limiting the likelihood of FPIC occurring. In addition, according to Millar, the GPS and GIS technologies used by Addax in preparing for its land acquisition were not aimed at increasing the scope of free choice by local residents in relation to the leasing contracts of Acknowledgement Agreements or to bolster their titles. Rather, Millar's analysis suggests these have functioned as 'the new technology of control'. These were used by the company to control local residents who did not have access to it (Millar, 2016).

By its very nature, informed consent is a principle that is called for not when relationships are on an equal footing, but precisely when power relationships are uneven. In the context of land acquisitions in the Provinces of Sierra Leone, however, corporations and governments are exceedingly powerful in material, financial, informational and technological terms when compared to local residents, who in turn are remarkably powerless. In social environments that are defined by such extreme disparities of social agency, genuine informed consent is never a straight-forward proposition, regardless of efforts made to that end by those implementing a project. Likewise, technologies used with the best of intentions by companies and governments may end up working as a tool of oppression, limiting people's intentions and decisions.

Yet the differences in financial and technological power between groups on either side of projects are not the only hindrance to the fair acquisition of land in the Provinces of Sierra Leone. Another structural factor is the customary system of land tenure detailed in the previous section.

As discussed, under these systems of customary land tenure the rights of Paramount Chiefs as managers of the land supersede, and tightly control, people's land ownership rights. Accordingly, without the approval of the Paramount Chief, it is not possible to carry out any transactions of land or even to officially register land-related documents. The customary land management rights of Paramount Chiefs may not merely influence and restrict people's 'desired land transactions', but in the context of large-scale land acquisitions, they may also give rise to transactions that have not been sought by local residents. Those who live in the Provinces are subject to the limitations placed on their preferred land transactions by the Paramount Chief. In addition, depending on the extent of the Paramount Chief's involvement or interference, they may be forced into land transactions which they have not consented to. This makes the Provinces of Sierra Leone a potential hotbed for improper, large-scale acquisitions of land.

When carrying out any large-scale land acquisition, it is, of course, critical that the company behind the project makes all efforts in order to ensure that the local residents' agreements are adequate. It is not possible to overemphasize the importance of such efforts. Nonetheless, as can be seen from the case of Addax, under Sierra Leone's system of customary land tenure, company efforts alone are not able to ensure that people can freely make decisions about their own land. As a result, they also appear unlikely to be able to prevent the inappropriate large-scale

acquisition of land, in which informed consent has not occurred. On the contrary, if the form of customary land tenure now present in the Provinces persists, efforts by companies, including the Acknowledgement Agreements of the sorts used by Addax described above, will not only not lead to informed consent, but may indeed serve as a smokescreen to hide improper large-scale land acquisitions or land grabs. Of course, the more efforts companies make to achieve informed consent and to increase the profits of landholders, the more that claims that such efforts have been made are liable to accumulate one-sidedly or become more elaborate, such that the gap between those promoting a project and those on the receiving end may become even wider, as the former may believe more fervently that sufficient efforts were made to ensure proper land transactions took place, while the latter may feel these efforts to be inadequate.

Given this, ensuring that land is acquired justly in the Provinces of Sierra Leone will require a re-evaluation of the system and operations of its customary land tenure. In doing so, it will be important not only to strengthen customary land rights that encompass land ownership rights of local people, but rather re-evaluate the land management rights invested in the Paramount Chiefs that override customary land rights, and to prevent their misuse.

Up until this point, we have discussed the case of large-scale land acquisitions by foreign companies as they have been occurring in the Provinces of Sierra Leone in the context of customary systems of land tenure. The following section provides an overview of the 2015 National Land Policy, and will consider the land reform that is likely to emerge from this policy.

4. Land reform

4.1 National land policy

After the armed conflict in Sierra Leone was officially declared over in 2002, the MLCPE, with the support of the United Nations Development Programme (UNDP), began the work of reviewing the country's entire system of land management. In 2005, the National Land Policy was drafted under the administration of Ahmad Tejan Kabbah. Nevertheless, this policy document was primarily outlined by the government alone and did not involve significant stakeholder input. Moreover, the document itself was an overly theoretical paper without an implementable program. Accordingly, the policy never reached the implementation stage (MLCPE, 2015: 3-4).¹

When the Koroma administration took power in 2007, however, there was a push to establish a new set of policies that would deal with land issues. A Scoping Mission Report (Moyo and Foray, 2009) that outlined the scope of Sierra Leone's main land problems was released in September 2009, following which a cabinet decision in December of the same year declared that a new national land policy would be put in place. With the MLCPE operating as secretariat, a

Steering Committee made up of government bodies, universities, and NGOs was established alongside five Technical Working Groups comprised of various experts, and work commenced on producing a new land policy. This work involved efforts to gather opinions from a broad cross-section of society on land problems and land reform. Close to 6000 surveys were distributed to local residents and chiefs in all 149 of the chiefdoms in the Provinces, and public hearings were held in various places in order to collect opinions on draft land policies (MLCPE, 2015: 4). The result of continuous collection and analysis of these opinions is the current National Land Policy, a set of guidelines for the upcoming land reform, which was approved by cabinet in November 2015.

The preamble to the National Land Policy expresses the concern that the ‘land sector is not only chaotic but is becoming increasingly unsustainable’, and espouses the need 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’ (MLCPE, 2015: 1). The policy document is divided into seven themes which are discussed in detail and outlines policy approaches for each. They are: (1) Issues Related to Constitutional Reform; (2) Land Tenure Framework; (3) Facilitating Equitable Access to Land; (4) Land Rights Administration and Institutional Framework; (5) Land Use Planning and Regulation for Land Development; (6) Land Issues Requiring Special Intervention, and (7) Land Policy Implementation Framework.

Sierra Leone’s National Land Policy is, thus, a comprehensive policy document encompassing all aspects of the country’s land problems and is not merely devoted to issues relating to customary land tenure and large-scale land acquisitions. In this section, we will consider only those parts of the National Land Policy that relate to these two issues. The national policy response to these is assessed and critiqued below.

With regard to customary land tenure, the National Land Policy aims to harmonize Sierra Leone’s dual land tenure systems – that based in common law in the Western Area and that based in customary law in the Provinces – and to protect the land rights of all legitimate users of the land, including those under customary land tenure arrangements (MLCPE, 2015: 12). While a number of policy measures are outlined for these purposes, two such measures are considered particularly significant in relation to the subject of this section.

The first of these relates to reforming systems relating to surveys and registrations. Currently, site surveys are carried in Sierra Leone by surveyors in accordance with the Survey Act. If required, completed survey plans are submitted to the Director of Surveys and Lands within the MLCPE and are registered with the Ministry on the approval of the Director (Article 15). At the same time, Sierra Leone also has a system of general registrations based on the General

Registration Act and the Registration of Instruments Act. Under this system deeds registration – the filing of land related documentation – occurs in the order that requests are made to the Registrar-General’s Office. In the Western Area, where the legal system is based on common law, land deeds must be registered by law and, as survey plans must be provided when registering land, site surveys are of necessity carried out extensively. In the Provinces, where customary land tenure prevails, surveying and registration of lands is, in principle, optional, and the only areas for which this is performed are urban zones with large numbers of buildings, or sites leased under contracts based in provincial land laws.

Taking this into account, the National Land Policy indicates that surveying and registration – that is, the scheme by which land titles are managed – are to be re-examined with the objective of strengthening and stabilizing the rights of land users. Specifically, it proposes a title registration system for land titles, separate from the current system of deed registration, to be introduced. This new land registration system will be managed in an integrated way with the survey system, and the effectively forced surveying and registering of lands will be expanded from the Western Area to the Provinces (MLCPE, 2015: 81-89).

The second significant part of the National Land Policy in relation to customary land tenure is its introduction of a land commission and committee scheme. Under the policy, new land commissions/committees responsible for the management of land titles are to be established at the national, district, chiefdom and village levels. The first of these, the National Land Commission, will manage public and government-owned land previously overseen by the MLCPE and will be responsible for introducing and operating the new land registration system mentioned above. District Land Commissions will play a supporting role in land registrations as the district branches of the National Land Commission. Chiefdom Land Committees and Village Area Land Committees will be established at the chiefdom and village levels, and are to be composed of elected amongst land title owners. Of the two, the Chiefdom Land Committees are expected to play a particularly important role with regard to customary land tenure. These committees will hold the titles to and be responsible for the overall management and oversight of community owned lands which until now nominally belonged to the Chiefdom Councils, though were in practice managed by the Paramount Chiefs. Moreover, the Chiefdom Land Committees will be given the role of scrutinizing and approving all land transactions within their chiefdom. The Village Area Land Committees will carry out similar but lesser functions to the Chiefdom Land Committees at the village level (MLCPE, 2015: 71-73).

With regard to large-scale land acquisitions, the National Land Policy allows non-Sierra Leone citizens such as foreign enterprises access to land titles obtainable at the district level under the same 50-year lease rights. However, it also limits the acreage of land for a single project to an in

principle maximum of 5,000 hectares. The policy also establishes Land Banks to pool land for potential acquisition in order to promote domestic and foreign investment, and proposes that these be led by communities (MLCPE, 2015: 66).

4.2 Discussion

The previous sections touched on three areas found in Sierra Leone's National Land Policy: (1) changes to the surveying and land registration systems; (2) the introduction of land commissions/committees; and (3) limitations on land acquisitions by foreign enterprises and the establishment of land banks. Below, these three areas are discussed briefly in relation to the overall discussion of this paper.

Firstly, based on what has been described previously, changes to Sierra Leone's systems for surveying and registering land will have deep ramifications for the customary land rights of people living in its Provinces. As mentioned, registering land in the Provinces, where customary land tenure prevails, is as a general rule voluntary, and surveying is carried out in limited areas. If, as part of future land reform based in the National Land Policy, the current deed registration system is replaced by a title registration system – such that the compulsory registration of land will take place not only in the Western Area but now also in the Provinces – this should go some way to strengthening and stabilizing the customary land titles of people in the Provinces, which until now have been regarded as fragile.

Of course, land registration (formalizing land titles) will not be a panacea. In the Western Area, for instance, where registration of land deeds has been compulsory since the colonial period, inaccurate or irregular surveys, slipshod data management by government, improper access to information, a poorly functioning judiciary, and a massive population influx due to the civil war have all meant that not only are land rights not stable, but indeed, that they suffer from quite serious instability, such that many more land-related conflicts exist in the Western Area compared to the Provinces. Accordingly, the formalization (registration) of land titles may not always directly strengthen them. Nevertheless, the basic argument can be made that adequate registration of land, and the accurate site surveys on which they are predicated, will more than likely help stabilize the land rights of residents in Sierra Leone's Provinces, provided that the conditions for land governance are met. These conditions include far-reaching and equal access to information, and an effective and fair administration and judiciary in the exercise of land rights. If the upcoming land reform in Sierra Leone is able to introduce to the Provinces a well-functioning system of formal land title management via surveying and registration – one that is moreover administered as far as possible on the basis of proper land management – the customary land rights may be transformed (or strengthened).

If the changes to survey and land registration systems amount to a reform affecting customary land titles of provincial residents, the introduction of the land commissions/committees will be a reform affecting the customary land management rights of Paramount Chiefs. As discussed previously, until now the Chiefdom Councils and Paramount Chiefs have played an important role both in name and in practice under customary land tenure in the Provinces. The National Land Policy will modify this form of customary land management and establish land committees at the chiefdom and village levels, which will be comprised primarily of landowners to ensure the democratic management of land. Nonetheless, the author remains sceptical as to whether citizen-led, democratic land committees, particularly Chiefdom Land Committees, will actually lead to any serious constraints on the existing land power of Paramount Chiefs or prevent the abuse of these powers, for the following three reasons:

Firstly, under the National Land Policy, Paramount Chiefs will chair the Chiefdom Land Committees, and in that capacity will likely continue to be able to exert significant influence on the management and oversight of land (MLCPE, 2015: 73). Secondly, while the Chiefdom Land Committees are to be comprised primarily of landowners, members of powerful land-owning families are often themselves traditional leaders or are relatives or acquaintances of traditional leaders. Accordingly, it will be difficult for land committees made up of traditional leaders, or those close to them, to oppose the views of their Paramount Chief and to ensure they do not misuse their authority. Thirdly, while the policy indicates that Chiefdom Land Committees will now replace Chiefdom Councils in managing community-owned lands and in reviewing and providing approvals for all land transactions within the Chiefdom, it does not make any direct reference to reviewing the role of Paramount Chiefs in relation to land management. In other words, at least from this author's perspective, the Chiefdom Land Committees – civilian-led, democratic land management bodies – proposed by the National Land Policy may replace the Chiefdom Councils in their role as the nominal owners of land within the chiefdom, but they do not appear likely to compel any significant change from the Paramount Chiefs, the actual managers of the land. It is highly likely that the establishment of Chiefdom Land Committees will amount to a surface level 'reform' around the Chiefdom Councils.

Finally, limitations on large-scale land acquisitions by foreign enterprises and the establishment of land banks is the third area of the National Land Policy closely related to the discussion advanced by this paper. The policy indicates that in the future, the area obtainable under large-scale acquisitions shall be limited to 5,000 hectares. However, this restriction is in principle only and acquisitions exceeding this limit will be permissible on a case-by-case basis. Furthermore, the policy retains the current 50-year limit on land leases by foreign enterprises and makes no proposal for this to be shortened. The policy also proposes the establishment of

community-led land banks containing land for potential future acquisitions. Such proposals make it hard to avoid the conclusion that the National Land Policy is not aimed at curtailing large-scale land acquisitions overall. While the policy makes reference to the term ‘responsible investment’ in various locations (e.g. MLCPE, 2015: 1, 6, 7, 12, 19, 65, 66, 92, 114), and as such references themselves make clear, it does not seek to place any strong restrictions on foreign enterprises’ acquisition of land itself, but rather seeks to create reform through which such acquisitions shall occur under the banner of responsible investment. The National Land Policy thus embraces responsible investment while eschewing limits on large-scale land acquisitions, per se, and is clearly aligned with the position and basic line of the Sierra Leone government, which has long promoted foreign investment in the country’s agricultural sector and large-scale land acquisitions by foreign enterprise. Accordingly, under the National Land Policy and in the future land reform that will be guided by the policy, there will likely be no significant restrictions on large-scale land acquisitions by foreign enterprises. If anything, these will continue to occur in the form of ‘responsible investment’ aimed improving the productivity of agriculture and economic development in Sierra Leone.

5. Conclusion

After gaining independence in 1961, Sierra Leone did not implement any form of genuine land reform. This resulted in the country’s dual system of land tenure being maintained essentially unchanged until the present day. This dual system arose during the colonial period, with British-style land tenure regimes in the Western Area and customary land tenure regimes prevailing in the Provinces. The momentum for land reform which emerged since the 1990s in many other African countries has only now begun to mature in Sierra Leone.

Nevertheless, despite a cabinet decision to approve a National Land Policy in November 2015, at the time of this writing (March 2017) the actual work of implementing land reform on the basis of this policy has yet to commence in earnest. According to the National Land Policy implementation plan, the land reform is slated to be carried out over a ten-year period between 2016 and 2026, and will require an estimated budget of 69.66 million USD (MLCPE, 2016: 13-14), yet nowhere near this amount of money has so far been secured to fund the reform. Thus, while the National Land Policy may have paved the way for land reform, no actual results have as yet been achieved, and it must be said that the future of the reform remains unclear.

For this reason, it may presently be too early to ask what will change and what will remain the same in the course of land reform in Sierra Leone. Nonetheless, based solely on the limited information found in the National Land Policy, we may venture to ask this question with regard

to Sierra Leone's system of customary land tenure and large-scale land acquisitions. As discussed in the previous section, there are at least three areas in which one might seek an answer to this question.

Firstly, land reform may result in changes to customary land titles in Sierra Leone's Provinces. The National Land Policy clearly indicates that the current system of land administration via surveying and land registrations will be reformed and extended to the Provinces, and makes numerous proposals aimed at bringing this about. If this reform is carried out adequately, it will more than likely result in the strengthening and stabilization of the customary land titles held by local people of the country's Provinces.

Secondly, the customary rights of Paramount Chiefs to administer land will not be significantly changed, or it is simply too difficult to tell at the present time whether they will be changed or not. The National Land Policy does provide for the establishment of resident-led, democratic land committees at the chiefdom and village levels and entrusts customary land management to these bodies. Nonetheless, the Chiefdom Land Committees are to be chaired by Paramount Chiefs and there is a possibility that the membership of these committees will be comprised of large landowners who are close to their Paramount Chiefs. In addition, despite the statement made in the National Land Policy concerning the establishment of Chiefdom Land Committees, there are no specific references to any limitations on the customary land management powers of Paramount Chiefs, perhaps to circumvent any opposition from traditional leadership groups. Considering these aspects of the policy, at present, it is difficult to conceive of any significant changes occurring to the customary powers of Paramount Chiefs to manage land under any future land reform.

Sierra Leone's National Land Policy discusses at length reforms relating to changes to customary land titles (i.e. their strengthening and stabilization) and to this extent appears to be a progressive policy. However, it does not contain any clear and direct reference to changes to (or limitations on) the customary powers of Paramount Chiefs to manage land, and it appears hesitant, or perhaps extremely cautious when it comes to reviewing these powers. If, within the course of land reform, the strengthening of the rights of land users in the Provinces is limited in scope despite all efforts, and if there is no qualitatively significant change in how Paramount Chiefs manage the land, this may in fact be evidence that customary land tenure arrangements centred around traditional leadership continue to function effectively as a governance mechanism of the state which, for this reason, may not be able to easily dispose of it.

Thirdly, despite the fact that there will be some strengthening of regulations around large-scale land acquisitions as an important tool in raising agricultural productivity and behind economic development, such acquisitions will continue to be the object of policy support.

Considering what land reform may change or leave untouched – namely, (1) that customary land titles in the Provinces may be reinforced via the extension of surveying and land registration systems but, (2) customary powers and application of these powers by Paramount Chiefs in managing the land, which take precedence over the people’s land titles, will be left largely the same and (3) large-scale acquisitions of land will likely continue to be encouraged – under the customary system of land tenure administered by Paramount Chiefs – it is difficult to dismiss the likelihood that large-scale land acquisitions in the Provinces of Sierra Leone will continue to occur without the informed consent of land users.

This is the author’s view regarding what may change and what may remain untouched by future land reform in Sierra Leone with regard to customary land tenure and large-scale land acquisitions. Assessing the validity of this view shall be left to readers of future generations.

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Notes

- ¹ For the details of the National Land Policy of 2005, see, for example, Unruh and Turray (2006: 26-30).