

# Land tenure, food security and investment in postwar Sierra Leone



Jon D. Unruh and Harry Turray

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**FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS**

**Livelihood Support Programme (LSP)**

An inter-departmental programme for improving support for enhancing livelihoods of the rural poor.



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Photographs by Jon Unruh

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## The Livelihood Support Programme

The Livelihood Support Programme (LSP) evolved from the belief that FAO could have a greater impact on reducing poverty and food insecurity, if its wealth of talent and experience were integrated into a more flexible and demand-responsive team approach.

The LSP works through teams of FAO staff members, who are attracted to specific themes being worked on in a sustainable livelihoods context. These cross-departmental and cross-disciplinary teams act to integrate sustainable livelihoods principles in FAO's work, at headquarters and in the field. These approaches build on experiences within FAO and other development agencies.

The programme is functioning as a testing ground for both team approaches and sustainable livelihoods principles.

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## Access to natural resources sub-programme

Access by the poor to natural resources (land, forests, water, fisheries, pastures, etc.), is essential for sustainable poverty reduction. The livelihoods of rural people without access, or with very limited access to natural resources are vulnerable because they have difficulty in obtaining food, accumulating other assets, and recuperating after natural or market shocks or misfortunes.

The main goal of this sub-programme is to build stakeholder capacity to improve poor people's access to natural resources through the application of sustainable livelihood approaches. The sub-programme is working in the following thematic areas:

1. *Sustainable livelihood approaches in the context of access to different natural resources*
2. *Access to natural resources and making rights real*
3. *Livelihoods and access to natural resources in a rapidly changing world*

Postwar Sierra Leone presents a number of challenges in reconstruction and development. Among these is significant food insecurity and investment in the rural areas, which is especially difficult for subsistence producers who are still recovering from the effects of the war. With apparently favorable conditions in the rural areas, an important question is, why does so much arable land remain uncultivated? One suspicion is that there may be land tenure issues in rural Sierra Leone that are acting to keep lands out of production and away from investment. This study contributes to the broader development effort in the country by examining the linkages between land tenure, food security and investment.

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## 1. INTRODUCTION

This paper represents part of an area of work on land tenure in post-conflict situations. An earlier LSP paper explored post-conflict land tenure in the context of sustainable livelihoods (LSP Working Paper 18: Unruh, J. (2004). "Post-conflict land tenure: using a sustainable livelihoods approach".) The work is complemented by the FAO Land Tenure Studies 8 "Access to rural land and land administration after violent conflicts".

Postwar Sierra Leone presents a number of challenges in reconstruction and development. Among these is significant food insecurity and investment in the rural areas, which is especially difficult for subsistence producers who are still recovering from the effects of the war (MAFFS 2005). Attaining food security is a presidential priority, and the Ministry of Agriculture has set a goal for hunger eradication by 2007 (MAFFS 2005). At the same time the UN moves forward with designating food security as a human right, and this has been embraced by the Government of Sierra Leone. The prospects for food security and investment in the rural areas appear to be good. The country contains abundant fertile land, a predictable seasonality, and significant experience with the production of a variety of food and cash crops. Importantly, the country possesses 4 million hectares of prime farm land of significant arable potential that remain uncultivated after the war, even with a successful peace process that has secured the countryside, sought to address governance issues, and moved forward with development agendas; all in the context of considerable rural unemployment. Fortunately, landmines so prevalent in other conflicts on the continent are not a problem in Sierra Leone.

With such apparently favorable conditions in the rural areas, an important question is, why does so much arable land remain uncultivated? One suspicion is that there may be land tenure issues in rural Sierra Leone that are acting to keep lands out of production and away from investment. The purpose of this study is to understand the land tenure story in postwar Sierra Leone, and how it intersects with food security, and small and large-scale investment in the country.

The study examines: 1) rural social dynamics and land tenure; 2) tenure security and land access; 3) the labour problem; 4) mechanization issues for agriculture; 5) loans and land as collateral; 6) leasing and partnerships, the options for investment; 7) the problem with changing to freehold; 8) legislative reform; and, 9) themes from Mozambique's land policy reform experience. Recommendations are then suggested, followed by areas for future research.

## **2. RURAL SOCIAL DYNAMICS AND LAND TENURE**

### **2.1 Chiefs and their structure and role**

Rural land in Sierra Leone is held by landowning families (extended families or lineages), with a chieftaincy structure that plays a significant administrative and custodian role. While the chiefdoms vary in size, boundaries can be ill-defined, disagreed upon, or in some form of dispute (also see GoSL 2005; Gamanga 2004); and this has also been the case historically (Gegba 1980). Extended families are attached to particular areas within a chiefdom. While there are section chiefs at different administrative levels, the paramount chief is particularly important in land matters. In some cases the chiefs can have considerable influence over who gets what land even for members of landowning families; however the degree of influence appears to vary with the chiefdom. Regardless, in the provinces no significant land matters are final unless the paramount chief approves.

This large role for the paramount chiefs has come to take on important functions after the war, when many dislocatees and strangers are attempting to access or re-access lands. As is the case in many postwar scenarios, this “return” is complicated, and is linked to issues of: restitution, squatting, one’s land being occupied for years by others (thus potentially qualifying for any “adverse possession” claim in a land or property law), conflict, and issues of legitimate or illegitimate claims, as well as food security. In Sierra Leone the paramount chief has an important role in dealing with postwar return issues regarding land—deciding which claims are valid, and presiding over disputes while keeping in mind issues of welfare, equity, long term occupation and absence, evidence, and compensation for improvements.

Administering rural return after a conflict is a complicated, time consuming function, requiring much local knowledge, respect, legitimacy and authority. This chieftaincy reintegration function occurs as almost a free good to the long-term peace process, and is thus a significant positive aspect of postwar rural reintegration in the country. That the paramount chiefs are able to facilitate this form of postwar reintegration, and have their decisions respected, is a significant postwar social asset—although it is worth noting that this is the norm in Sierra Leone, facilitated by the present government. This is not to say however that the government and international community are not also employing very effective reintegration programs. The chiefs’ reintegration function also has a regional effect, in that the chiefs are able (through the landowning families) to allocate land to refugees from Liberia and elsewhere in West Africa. This includes both refugee camps run by the international community, and self-settlement of refugees on land in the same way that national “strangers” (those from outside a chiefdom) are provided land. This study observed no difference in the tenure rules within the chiefdoms that distinguished refugees from national strangers (also Asiama 2003).

Since their return the chiefs have become quite aware of their enhanced role in governance, but also aware of the social changes that have occurred in their chiefdoms during and after the war. Part of this awareness regarding changes is due to the information campaigns and sensitization efforts of the government, UNAMSIL, and the international community in the country (also see MAFFS 2005). Thus the

chieftaincy structure, and by extension the customary land tenure system—as an approach to land administration—appears to have re-established itself significantly after the war. This brings an important land administration point to the fore, particularly with regard to the government and general land availability, which is that according to the chieftaincy structure, there is no rural land in the country that does not reside within a chiefdom, with the exception of the Western Area, and therefore not subject to customary tenure. This was reiterated by paramount chiefs a number of times during the course of the fieldwork for this study.

The enhanced postwar role of the chiefs is moderated by the broader sensitization efforts of the peace process, which together with the disruptive effects of the war has enabled certain previously marginalized and under-represented sectors of rural society—namely women, youth and strangers—to now have a much greater voice, and have their demands considered. The many radio stations and programs currently operating in the country appear to be of significant importance and influence in the rural areas, particularly in terms of facilitating awareness regarding a number of issues on the part of the general population. Broadcasts discussing people's rights, human rights, land rights, new laws, laws being formulated, roles and responsibilities of chiefs and government at different levels, elections, and voting, as well as call-in programs are very popular. The paramount chiefs made clear that the voice of previously secondary groups is much stronger subsequent to the war, and that they are now obliged to pay attention to these voices.

The change in rural social relations in Sierra Leone are significant because it has influenced the access, value, and availability of the labour needed to clear and cultivate land—and importantly for food security, clear and cultivate enough land area. The effects of this change are that agricultural labour is now much more costly, and much less likely to operate within any obligatory framework, such that forms of forced labour have been replaced by a process of negotiation to engage labour, and this approach is supported by the government. The change has also provided the opportunity for marginalized groups (particularly within customary landowning families) to exercise rights regarding land that might not have occurred otherwise—such as land access for youth and women's groups. This is enhanced by the presence of NGOs, donors, and their contractors (WorldVision, CARE, UNHCR, PeaceWinds, etc.) who advocate for such groups, and are able to obtain land access on their behalf.

At the same time however this greater voice for previously secondary groups has, in some, but certainly not the majority of chiefdoms, had the effect of an increased reluctance to allow strangers onto land over the long-term, or in some cases at all, for fear that they will now have an ability to attempt to claim such lands fraudulently. Renner-Thomas (2004) remarks at the “new phenomenon of land grabbing” in Sierra Leone.

For the customary leadership to realize a significant role in managing rural land, governance issues will be most important. The legitimacy of the customary leadership rests upon decision-making processes, transparency, fairness, and equity issues. However given the current low regard that many customary courts are held in by smallholders, this is an area that is in need of considerable attention.

## **2.2 Landowners and their structure and role**

While the paramount chiefs hold the land in trust for those in the chiefdom, the different areas within a chiefdom (apart from community land) are held by landowning families who are able to trace their ancestry back to early arrivals in the area. Allocation of land within extended families is usually accomplished by the leadership of the family, with a variety of arrangements possible regarding permanence of allocation, crops (annual, perennial), and labour. While landowning families apparently do transact lands among themselves, the cost in time, money, and difficulty to formalize such transactions with the state (Ministry of Lands) are beyond what many landowning families are willing to consider, even if benefits did accrue from such registration. As a result such transactions go unrecorded within the formal system. The form of land holding currently in place via the extended family is a pervasively respected system with few realistic alternatives. The renewed postwar position of the paramount chiefs adds to the legitimacy of this form of landholding, as does the desire by the state to attend to the desires of voters (subsequent to the war), especially those with a strong stake in the nature of governance—customary landowning families. As a result a combination of customary tenure and more formalized approaches, or attention given to how these will legally intersect, will likely provide for the most significant opportunity for development, investment, and food security.

Strangers are usually allowed access to lands on an annual basis by landowning families. The temporary occupants are then required to pay a token amount of the crop yield to the landowning family to acknowledge that the land does not belong to them. An earlier work indicated that this token payment also served to forestall future claims to land (Johnny 1980). And Kamara (1980) describes the problems with such token payments versus more economically sound arrangements.

## **2.3 Inalienability of rural lands**

Land is the medium which holds together the extended families in Sierra Leone (Turay 1980). And extended families are the source of security for many—not only tenure security but food, livelihood, and in many cases personal security. There exists in the country a pervasive, strong notion of the fundamental inalienability of land from the landowning extended families and chiefdoms. That rural land is very difficult to permanently transfer from family and chiefdoms to other interests (local, national, or international) means that freehold tenure (outside of the urban and peri-urban areas) will not be a widespread feature of rural areas in the near future.

While there are some exceptions to this where rural landowning families are mapping and registering land, and this may increase over time (as the formal and customary system potentially co-evolve), in the time-frame that concerns food security, investment, and development, such a potential change will not be forthcoming in a widespread pattern soon. The belief that land exists for the dead, the living, and the unborn, and so cannot be permanently alienated, is a fundamental feature of landholding in rural Sierra Leone, and strongly influences current land tenure, food security, and investment. The provincial urban areas however have an effective boundary limit of a 5-miles' radius. Consequently lands within this radius are subject to mapping and registration.

In a number of postwar cases the reluctance to part with land is heightened after the war, when rural societies often become much more conservative in approaches to the land security – food security relationship (Unruh 2003). As a result the risk-taking that would normally facilitate transfers of land, use of land as collateral, etc., instead become risk-avoidance, sometimes in the extreme (Unruh 2002a). Presently, in most cases encountered in the fieldwork, the idea is that “the land is all we have” and so an willingness to part with it in a fairly fluid economic and social environment, is low. While the relevant academic literature focuses on changes in customary land tenure toward freehold in Africa, the time-frame for this change is often long-term, to the degree that it is often described as “evolutionary”. This change may or may not eventually be the case in Sierra Leone.

The inalienability feature of rural lands exists as a constraint to food security and investment only within a specific approach—food security and investment as connected to privatized landholdings, a robust land market, and the opportunities for land itself as collateral. However the inalienability notion is so firmly established in rural Sierra Leone, that seeking to change this via policy, information campaigns, or development, will not provide the hoped for benefits within the time-frame of the food security, investment, and development goals and needs of the country. And such needs are significantly urgent (Salazar 2004; Richards et al 2005; Hussein and Gnisci 2005). As a result the inalienability issue is not a realistic candidate for near-term policy change in rural Sierra Leone, and so should not be viewed as a realistic “constraint” that can be changed within a realistic food security policy framework. This is not meant to imply that Sierra Leone or parts of it cannot pursue effective transfers, however the connection to “most land” and to near term food security goals is what is the issue here. However other approaches offer ways ahead for food security and investment, and this study explores some of these.

A large part of the inalienability concept in Sierra Leone has to do with the way in which land functions for customary landholders, and the distinction between this functioning and the way money or other assets function. The reality that land outlives all owners and occupants, and that it “keeps on giving” (keeps producing crops, grazing, minor forest products, etc.) over time, is a significant aspect of the risk averse approach. Thus regardless of how poor the agricultural season, or how long the hungry season, there is an important predictability aspect (the “element of continuation”) regarding how land functions in small-scale agriculture that is fundamental to notions of food security. Such that, even though the quantity of food resulting from such a logic may be low, the predictability aspect of such an arrangement is significant, and important to smallholder notions of food security.

Selling land, essentially trading land for cash, is a fundamental change in the nature of the asset possessed. Land keeps on giving, cash in rural Sierra Leone, particularly after the war does not. Opportunities for investing cash so as to enable a cash asset to grow are extremely limited in rural areas for farmers. Few investment or business opportunities (even small-scale) exist. Rural farmers think about money as something that is only spent, and then it is “finished”, it does not continue to provide (including for other members of the extended family and the unborn), as land does. Thus unlike other assets (a vehicle, a shop, or even a job), all of which can at some point in time be “finished”, the land is never finished in the same way, and so keeps on providing—

like dividends that provide security of income and livelihood over time. “If I want money, I go to the land,” noted one farmer. That a large amount of this land asset is “banked” (possessed but uncultivated and unsold) is important for groups that have come out of an extremely unstable and insecure period, and provides an important service (reliable insurance) in a postwar era that is difficult to duplicate. This is a form of tenure insecurity bound up in livelihood insecurity, and is presently strong in rural Sierra Leone among the landowning families, as it is other postwar circumstances (Unruh 2002b).

The risk adverse approach to landholding and the inalienability of land is facilitated mechanically by a land transfer mechanism that involves needing to get most or all members of the landholding family together agree to any transfer. Given that such extended families are large, means that some members will be worse off (and more risk averse) than others, and some members will likely not be present. In its extreme form (which was encountered), it is impossible to get all family members together to agree to a transfer, given that most of them are not yet born (also see Johnny 1980). In such a situation, any transfers that are made can easily be seen as illegal and the land reclaimed.

#### **2.4 Internally displaced persons as ‘strangers’ able to access land**

The ability of strangers to access land (on a year to year basis) and pursue agriculture for near-term food security (as a norm in Sierra Leone) is an advantage that other postwar countries do not enjoy. Postwar agricultural situations are exceptionally fluid, even a number of years after a conflict, and particularly conflicts that have lasted for some time. In postwar situations the need to pursue interim, temporary modes of agriculture, while more permanent land access and re-access arrangements are sorted out, or alternative livelihoods are pursued is significant (Unruh 2003). The search for lands for this purpose is especially robust (and at times violent) in countries and situations where such temporary access is prohibited, discouraged, or made difficult by ethnicity, identity, or sympathy to particular sides in the conflict (Unruh 2004).

In postwar Sierra Leone, the need for agricultural land access is important, in-part due to dislocation, but also due to the manner in which the conflict was conducted, particularly by the RUF; meaning that in cases where atrocities were committed by village members, there exists a fear, or an unwillingness on the part of many ex-combatants to return to home areas. The temporary acceptance of such strangers on land outside their own chiefdom, may be suboptimal from the point of view of tenure security, investment, labour, and marginalization, but in a postwar phase it has the aggregate effect of contributing to the solidification of durable peace—which some reports argue is still an issue (Hussein and Gnisci 2005; MAFFS 2005). The positive nature of this form of social capital may change as peace endures and development gains momentum. But at present the important role that this tradition plays in a postwar phase appears under-recognized in Sierra Leone.

#### **2.5 Youth, land and community**

An important aspect of social change in postwar Sierra Leone has been the engagement of the government, UNAMSIL, NGOs, and the chiefs, on youth, youth groups, and the role of youth in governance. Youth in this sense usually meaning

young men and women. This is an important feature of recovery given the role of youth in rural community continuity, agriculture, diamond mining operations, and the RUF. While the relationship between the rural youth and local leadership prior to and during the war may have been problematic (see Richards et al 2005) presently the rural youth for the most part appear significantly sensitized, mobilized, organized, aware, and willing to exercise their now stronger voice in rural social relations, including over land. Richards et al (2005) also note substantial change in this regard. This is in line with the National Recovery Strategy, which has as a priority to develop and strengthen civil society organizations, including women and youth groups, and farmer's associations (MAFFS 2005). At present youth groups are able to lease land from landowning families in the chiefdom (facilitated by their membership in these families), meaning that they are able to plant economic trees on such land. This access to land by youth groups is relatively recent, only having appeared in the past two years.

Also relatively new is a National Youth Policy, promoted by the international community. And the president of the country has as a priority to "engage the youth" with one aspect being to involve the youth in governance. Presently the paramount chiefs appear to collabourate with youth groups, approving land transactions (leasing, loaning), and youth groups are present in every chiefdom. Elders can be part of youth groups as advisors, especially the landowning elders. As well, FAO has supported youth groups with tools and seeds, and UNDP has provided funding for their support and formation, and their involvement in Farmer Field Schools. In addition, there is a national Youth Council initiated three years ago. By and large these efforts appear to have been successful and the youth group representatives spoken to in the course of the fieldwork felt that youth organizations now have a voice in chiefdom decision-making. There are indications that prior to and during the war this was not the case, and youth were more disenfranchised, uninvolved, and disaffected. It should be noted however that marked change in rural social relations occurs on its own during periods of armed conflict, such that a priority during recovery can be one of 'management' so as to avoid the retribution and animosity that can accompany such change. Sierra Leone appears to have engaged this management with significant success with regard to rural youth.

## **2.6 Women, land and community**

While the role of women with regard to land appears to have changed somewhat after the war and with the onset of the peace process, the changes appear more variable and overall less than for youth groups. Interviews with members of women's farming groups reveal that there is a strong desire by women to be able to inherit land, but in many cases a continued inability to do so. This can be an important desire in a postwar context where many male head of households have been killed in the war, or are unable or unwilling to return to home areas. In some locations, namely the east and south of the country, women enjoy greater rights, can inherit land and property and become paramount chiefs. In the north of the country this is not the case and women continue to enjoy substantially less rights than men. In some cases women cannot rent houses in urban areas. And subsequent to becoming a widow, a woman, depending on the area of the country, can be relieved of land and property and must either return to her parent's house, or leave to find another husband. This is a significant concern for women returnees who are widowed or separated from

husbands, particularly given the large volume of this form of return and the reduced ability of the customary regimes to locate land to accommodate it (SDAA 2005).

Nevertheless after the war there are women's farmer groups and cooperatives that exist with support of donors or NGOs, and a number of groups appear to be able to obtain land for their farming activities and successfully grow and market primarily vegetables. The approach to getting land as a woman's group, occurs in much the same way as for youth groups, in that the paramount chief is approached with the request for land, and then he contacts various landowners with the request (usually a borrowing, or leasing arrangement). With the strengthening of customary norms regarding land after the war, it is perhaps not unexpected that progress regarding change in inheritance patterns, and women's rights in rural areas may be slow. Bomah (2004) as well considers the prospect of significant progress on the issue of women's rights in land to be slow, but also notes that forms of compensation based on rural credit and marketing facilities, if implemented would be a step forward.

There is a feeling on the part of some women's groups, of having little voice, including in land and agricultural matters--such as being unable to plant trees themselves on land. In other areas women's agricultural cooperatives are significantly powerful, such as in the Warawarayagla Chiefdom, and the Koinadugo District Women's Vegetable Farmers Group with sub-groups in eleven chiefdoms). In these examples women either cultivate part of their husbands land, rent additional land, or as a group ask the paramount chief for land to farm. Women's groups generally allow strangers and refugees to join. And all women farmers, including those in woman's farming cooperatives, note that labour shortage is their biggest problem.

## **2.7 Food security**

The reluctance to alienate land is a food security priority for the paramount chiefs and landowning families. Retention of land is the first step toward decreasing risks associated with food shocks and food shortage, and solidifying insurance against possibly worsening food insecurity. In this regard landlessness is to be avoided. Food security shocks (conflict, economic downturn, natural disasters) are a significant concern in the rural areas (also see MAFFS 2005) and serve to strengthen the retention of land for food security purposes. While national and international food security concerns and programs for the country may be focused on how to *improve* food security, local customary concerns are focused on how to *avoid* food insecurity from getting worse, and prevention of landlessness is seen as the primary way to go about this. It is perhaps worth noting that the activities associated with these two different approaches to food security are not only different, they can be opposed. Improving food security from its current status can require significant risk-taking on the part of the local community—such as using land as collateral for a loan, using new seed varieties, adopting new ways of farming, etc. Avoiding a worsening food security situation from its current status becomes risk averse behavior—resistance to transferring land and using land as collateral, not adopting new seed or farming approaches, etc. As such poverty reduction programs along with economic opportunities in the rural areas may impact the willingness to make land more available.

Connected to the inalienability of land, and its relationship to food security, is the prohibition against people from outside the chiefdom planting economic trees or making other long-term improvements to the land they are temporarily given access to. Thus strangers, constituting 20 – 40 percent of chiefdom populations (Salazar 2004), while generally able to access lands, are restricted to the cultivation of annual crops, and must frequently re-beg for land in the same or other locations each year. This prohibition is due to the perceived connection between planting trees or making other permanent or semi-permanent improvements, and claiming land. Such a prohibition against improvements, in aggregate, has an impact on long-term food security. In some chiefdoms the prohibition against improvements may be lifted for strangers who locate in the area, marry locally and have children, and otherwise signal a long-term intent to stay. In other chiefdoms a stranger never ceases to be a stranger (Johnny 1980). And in still other chiefdoms strangers are not allowed to settle at all due to fears on the part of landowners that they will attempt to claim land they are temporarily given. Such attempts in the past have included the use of fraudulent documents attesting to purchase.

The shifting cultivation practices for annual crops in upland areas result in an additional land-related issue for food security as there is no other option. The government's historical lack of attention on the rural sector and the associated lack of extension services and timely availability of inputs (along with a low level of farmer knowledge of these), has resulted in little other alternative than shifting cultivation for annual crops in parts of the country. The need to shift fields frequently requires a great deal of land, and decreases the willingness of landowning farmers to grant land to others on a secure basis, due to the need to have those lands available for their own shifting cultivation needs. This encourages the purposeful provision of tenure insecurity to strangers and tenants by landowning families. And while the reduction and destruction of agricultural services, human capacity, infrastructure, markets, equipment, inputs, and supplies due to the war has likely increased the reliance on shifting cultivation (thereby resulting in the retention of land to support shifting cultivation compared to more permanent forms of cultivation, the links between shifting cultivation, lack of progress made toward productivity increases per hectare, and availability of lands to others is not new, Turay (1980) having observed these in links as significant issues 25 years ago.

In areas of postwar resettlement, these issues are particularly acute, and most resettled farmers have been unable to redevelop their seed stock (MAFFS 2005). Prior to the war over 50 percent of planting material was acquired through social exchange networks, which have disintegrated due to the conflict (MAFFS 2005). As well, private sector support of rural economic activities is negligible, with facilitating policies appear to be slow to come about. Additional factors combine to create disincentives to bringing more land into cultivation. Farmers must spend a good deal of money in transportation and processing of any surplus food to a market or trader. The lower availability of transport, and poor state of many roads and loss of rural processing facilities due to the war makes this very costly. The machinery that was used in rural areas to process palm oil, can mangos, and process other cash crops was destroyed or removed and has yet to be replaced. The labour shortages in cash crops are particularly acute. As well, the services and supplies that would facilitate transport of food subsequent to harvest (manufacture and supply of bags, spare parts, etc.)

would go a long way toward reducing the high in-field post harvest losses presently experienced.

Cassava is particularly popular after the war, it grows quickly virtually anywhere, and so serves as a quick food producing crop that can contribute to a certain degree of food security subsequent to the war when the timeliness of food supply of any quality is a particular concern. Beyond this however, cassava is notoriously low in nutritive value, so that its role in continuously improving food security, particularly at the national or aggregate level is limited.

A particular food security concern in the country is the decimation of the livestock population that occurred during the war. Livestock herds of reproductive utility require long periods to recover. Presently a single female cow in reproductive age can cost one million Leones (\$350 - \$400 USD). During the war the RUF shot a great deal of livestock, both for food and to decimate the countryside. In the north of the country the Fulani lost a great deal of livestock and moved their remaining herds across the border into Guinea. For the most part the Fulani herders have yet to return to be able to contribute to recovery of the national herd. Prior to the war ox traction was common in some areas, particularly in the north. Goat and poultry restocking programs are currently underway, and these can contribute to food security more quickly than cattle restocking programs. However it is the cattle that can assist in farming activities, primarily plowing and transportation. Getting access to the needed grazing land apparently is not a problem.

### 3. TENURE SECURITY AND LAND ACCESS

The primary constraint on making lands available for cultivation is the tenure insecurity of the customary landowning families—not the insecurity of tenants or strangers, although the latter is connected to the former. Tenure insecurity by landowning families results in an extreme reluctance to allocate lands to others in a secure way, due to a fear that ‘others’ may make claims. Insecurity also results in a reluctance to disconnect improvements made to land by tenants or strangers—including even occupation of the same land for a number of years—with the perception that these improvements are forms of claim, and therefore represent a real threat to customary ownership. The perceived risks of land loss then fuel a widely-held and pronounced fear of landlessness, and the food and livelihood insecurity which would apparently follow. There are several indications of, and processes which contribute, to the tenure insecurity of landowning families.

Indications of insecurity include:

- a. Prohibitions against tree planting, construction of irrigation facilities, and other permanent or semi-permanent improvements in land for those not belonging to the extended family;
- b. Prohibitions against strangers from cultivating land beyond a one-year time frame before needing to “beg” land again;
- c. A lack of tenant – landowner relationships based on rent, or other economic arrangements;
- d. The many and ongoing land disputes in the rural areas (GoSL 2005; also see Renner-Thomas 2004; Gamanga 2004 for further descriptions of land disputes);
- e. The use of “offenses” and “good behaviour” in a degree of apparent capriciousness on the part of customary landholders in order to quickly retrieve land from temporary allocation;
- f. The presence of a certain “fear of agreement” (that agreements are too binding) on the part of many customary landowners;
- g. A postwar socio-political environment where a degree of social capital involving trust has been compromised;
- h. Fear of government taking land.

Processes which contribute to the tenure insecurity of customary landholding families:

- a. An annual hungry season, food insecurity shocks;
- b. A significant distrust of government in matters relating to land issues, particularly with regard to laws, surveying, and land registration. Such distrust is not new. Turay’s 1980 data revealed that a primary reason for rejecting land registration by landowning families is that they feared the government would take their lands (also Williams 1980);
- c. The fear, often through experience, that the terms of agreement for rent, lease, or improvements in land, can be ignored or changed at will by the more powerful member of the agreement. This occurs together with little perceived opportunity for recourse for customary farmers under formal structure (weak legal structure, particularly objective and effective enforcement);
- d. A peace process environment where much attention has been and continues to be given to “people’s rights”, particularly for previously marginalized groups—strangers, women, etc. While this is laudable generally, it can be misused or

- misunderstood to pursue land claims as part of rights connected to perceived or invented wrongs (verifiable or not). This can be a particular concern for landowning families if such claims are part of an organized, mobilized effort, coupled with the now large numbers of IDPs, refugees, and demobilized combatants in the country;
- e. A history of renters, borrowers, and lessees of land engaging in claim via fraudulent documents (see GoSL 2005), together with the large-scale loss of documents both in the provinces and in Freetown during the war;
  - f. A past land policy (of colonial era derivation) that specified disadvantageous terms of lease for the customary landholding sector. Land legislation (prior to the new policy) existed as an ad hoc set of old legislation (including pre-independence laws, some over 100 years old), and ad hoc decisions (GoSL 2005);
  - g. A new land policy which is largely unknown and undefined from the point of view of the customary landholding sector;
  - h. A lack of clarity regarding rules of tenure (formal and customary) and who is subject to them;
  - i. A history of illegal acquisition and encroachment of lands (GoSL 2005).

The combination of these processes and circumstances result in a high “uncertainty factor” and a form of tenure insecurity whereby the current customary landowning families are reluctant to engage in secure temporary transfers of land due to a lack of sufficient confidence that they will be able to get their land back, or otherwise retain control over lands. This is fundamental to the “access to land” issue which results in a large quantity of uncultivated land in the country, while food security and rural unemployment continue to be national problems. In this regard this study concurs with a statement by Richards et al (2005) (although not in the way intended) which argues that “the rights of land-owners are over-protected...” In reality the landowners and chiefs go out of their way to over-protect their claims, with a series of prohibitions, rules, and decisions regarding in-access, while retaining the right to quickly retake land for whom temporary access has been given—resulting in tenure insecurity for tenants, strangers, leasees, or purchasers. The “guaranteed tenancies” described by Richards et al (2005) as needed, will only be achieved when those owning the land are convinced that strangers/tenants will not (or cannot) attempt, or receive, permanent claims, even when permanent or semi-permanent improvements are made.

If the situation existed in Sierra Leone whereby a significant percentage of tenants and strangers were already settled on land (on more than just an annual basis), and there was little additional large-scale temporary granting of access rights to these actors, then it might be valuable to examine the strengthening of tenant’s rights with regard to landowner rights, particularly with regard to problems of eviction. But such is not the case. Granting access to “strangers” is an ongoing process, in-part due to dislocation caused by war, but in-part due to the ongoing dislocating features of current agrarian social relations between strangers/tenants and landowners, with effective policy to address this now needed.

Policies or interventions which strengthen only stranger/tenant tenure security, or strengthen these prior to increasing tenure security for landowning families, will very likely have a negative effect on the already problematic granting of temporary land access by landowning families. The outcome may very well be that such granting will

decline markedly; possibly resulting in more land remaining uncultivated, and more strangers unable to access land. This is because increasing tenure security for tenants/strangers only, will serve to decrease the tenure security of the landowning families, given that the reason they do not want tenant/stranger improvements in land is due to a fear of claim. Thus land is held tightly by landowning families because they view such holding as the only way to ensure their own future food and livelihood security, and to ensure that future generations are able to access family land—given the limited mitigation strategies to forestall poverty. The fear of landlessness by the customary landholding sector is quite pervasive in the country, as the fieldwork for this report observed, and has been noted earlier by Turay (2004; 1980b). A central question is, what are other ways that tenure security could occur for landholding families, other than holding onto lands, and therefore free up lands in the near term?

Of course tenants/strangers are also tenure insecure due to the apparent capricious way that land is administered under customary tenure, and the effects of the various prohibitions against staying on the land for very long, or making improvements to agricultural land. The tenant/stranger tenure insecurity is of a different form than what the landowners experience. For tenants/strangers the insecurity involves the fear of being removed off of land to which temporary rights have been granted. The distinction between the two forms of tenure insecurity for these two groups (those who own land, and those who seek temporary rights of access) while perhaps subtle, is important because they interact. Not only does insecurity on the part of landowners cause insecurity on the part of tenants/strangers, but again, increasing tenure security on the part of tenants/strangers prior to strengthening security for landowners, would very likely be counterproductive, and discourage land from being allocated to tenants/strangers by the landowners. The repercussions for forms of rights transfer for investors (leasing, renting) would also likely be influenced.

The recommendations as a result of rural consultations in preparation for the drafting of the Commercial Use of Land Act included a number of items that reveal significant concern regarding the tenure security of landowning families as well as tenants (LRC 2004). A selection of these recommendations are listed here.

- a. Legal recognition should be given to the following types of landholders in the provinces: indigenous/original landholders, Sierra Leoneans, non-Sierra Leoneans;
- b. Landlords and tenants should be protected via forms of registration;
- c. Provide laws that will protect citizens rights to land against government;
- d. Government must involve the communities and land-owning groups in granting mining and other concessions;
- e. Government should keep proper inventory of state lands so as to avoid interference in other people's property;
- f. Customary laws should be enacted to protect landlords and tenants;
- g. Identification of landowners should be by inheritance or by lineage;
- h. All the lands leased to government and other functionaries must be reviewed and the payment of outstanding lease rent paid;
- i. Formal laws should be made to protect those who want to lease their lands, and tenants;
- j. Customary land laws should be codified;
- k. Rightful landowners of provincial land should be identified;

1. Ministries of Land and Justice should endeavour to demarcate original boundaries in the provinces.

This study concurs with the Agriculture Sector Review (also Salazar 2004), in that access to arable land is not the problem. Local landowning families grant access, but their own tenure insecurity regarding their perceived ability to retain rights to land in a secure manner, along with livelihood insecurity aggravated by the war and the lack of alternative livelihood strategies, encourages them to hold on tightly to what they have. Thus the reluctance to making an economic or financial renting or leasing arrangement that is binding (especially with regard to strangers, and investors who are more powerful than landowners), and instead insisting on a token portion of the harvest, is very likely to avoid having to make agreements that will prevent the easy retaking of lands if they are needed. Retaining the option to quickly retake land is an indication of this tenure insecurity.

#### 4. THE LABOUR PROBLEM AND MECHANISATION ISSUES FOR AGRICULTURE

Agriculture in rural Sierra Leone is very labour intensive. The natural ecosystem (tropical forest) and the historical conversion of rainforest to bush and savanna, means that a great deal of labour is needed to clear, plough, and cultivate enough land under current technology to be food secure. As well this ecosystem also means that in a shifting cultivation context (in primarily upland areas), soil rapidly loses fertility after the first year, and weediness and insect pests increase, necessitating (without inputs, or more robust land management practices) a fallow period and moving on to clear other lands. A primary issue in postwar Sierra Leone is the large need for labour on fields (in both upland and lowland areas), but the now much lower availability, and higher cost of labour. According to Hussein and Gnisci (2005) one reason for any purported labour facilitation via marriage, offenses, etc., previous to and during the war, were due to shortages of labour, and attempts by those more powerful to obtain it. Prior to the war there appeared to be significant participation in communal labour efforts—particularly by the younger members of rural society. This occurred in a couple of ways. One variation is that families would add one or more of their older children to a group of labourers, and then receive one or two days of the group's labour on the family's land in exchange. The land – labour intersection is an important one with regards to food security, and the changes in labour availability and labour cost influences the amount of land that can be put under cultivation. It is also worth noting that there were expressions of interest on the part of land users for agricultural practices that require less land: piggeries, poultry production, etc.

The effects of the war, diamond mining, dislocation, and postwar organization of youth groups, have significantly changed labour relationships in rural areas. In the postwar period, labour is quite expensive, people are much less willing to work for community efforts, or participate within traditional labour relationships with elders and other community members. At the same time a proportion of the available youth labour is concentrated on youth farming cooperatives, or have ended up in Freetown, Bo, or other urban centers due to wartime dislocation, or limited opportunity in rural areas (also see Njai 2004; Turay 2004). Njai (2004) notes that many of the displaced are unlikely to move back to areas of origin. At the same time school attendance is a priority with the current government, supported by internationally funded efforts. The result is that much more of the rural youth is now in school as opposed to being available for farm labour. As well the postwar surge in HIV/AIDS prevalence rates—0.5 percent prior to the war to seven percent postwar (SDAA 2005), will mean added stress on labour shortages in rural areas. This will occur both due to direct labour subtraction via the disease, and secondary labour subtractions from the social effects, i.e., people needed to care for sick family members, orphans, and widows' ability to make a living (including issues related to land and inheritance).

The labour problem in shifting cultivation may be mitigated to a significant degree if more permanent cultivation approaches were available and implemented in upland areas. A study completed in 1980 in the country asked 4503 people if they would stop shifting cultivation and move into permanent cultivation if they were provided with significant assistance (Turay 1980). In response 77 percent indicated they would stop shifting cultivation in favor of more permanent forms of agriculture. More

permanence of agriculture (together with greater tenure security for landowning families) would also make more lands available for others.

The postwar reduction in labour availability has not been replaced by mechanized farming; and is exacerbated by the large-scale wartime loss of livestock able to engage in animal traction for plowing and transport. The result is the cultivation of smaller plots, with the associated problems in food production, especially surplus food production able to adequately feed the now large (postwar) urban population. That the population growth rate for the country stands at 3.2 percent (SDAA 2005) is also a concern for access to land in rural areas, as well as national food security. Thus while the growth rate is high, this does not translate into cheap labour.

With labour availability and cost made more difficult after the war, opportunities for mechanization in agriculture become important. The desire for tractors is particularly acute and widespread, and was mentioned in almost every rural interview. While there are tractor-renting opportunities for farmers via the Ministry of Agriculture, this option is quite expensive (requiring a large deposit), the number of tractors is few, and their availability in a timely manner is unreliable. Farmers mentioned that there are no private tractors available to rent, although there were in the 1970s. The tractors that were available prior to the war have been destroyed or used as parts or taken elsewhere, and new mechanized implements are hard to obtain. Mechanized opportunities as they are currently constructed are thus too expensive for most farmers, too unreliable in terms availability, and the cost of fuel and spare parts (when available) is too high. At the same time animal traction has been reduced due to the war.

## **5. LOANS, LAND AND COLLATERAL**

With little else to use as collateral in a loan arrangement, land is an obvious alternative in rural areas. However there are a number of constraints to using rural land as collateral to secure a loan. Banks are centralized in Freetown, and do not participate in long-term loans, particularly long-term agricultural loans. If a farmer wants to put land up as collateral for improvements to land under cultivation, the rest of the extended family would need to agree to it. Two points of view are considered in this section—the bank’s view, and the landowner/chief’s view—in order to explore the constraints and opportunities for agricultural loans, collateral, and security for the parties involved.

### **5.1 The bank’s perspective on loans and collateral**

National banks in Freetown for the most part find it difficult to use rural land as collateral for loans. In conversations with officers from one national bank, and personnel from the National Chamber of Commerce, the problem of the lack of a land market in rural areas emerged as a significant constraint—as a bank would be faced with attempting to sell land it had gained through a defaulted loan. Leases can be difficult to use as collateral according to the Chamber of Commerce, because many times it cannot be proven that the person who leased the land is really the owner. However banks do accept long term leases for urban properties as collateral. There was some consideration as to whether a bank would accept as collateral, a lease signed by the customary landowner, the paramount chief, and the district officer. While the bankers thought that such a form of security would be acceptable, there remains the issue of finding buyers for such a lease. Banking personnel did mention the possibility of group guarantees for loans, whereby a group, not just an individual is responsible for repayment. This then is thought to exert customary control and sanction on the individual responsible.

Additional constraints emerge. Banks concentrate their loaning efforts in urban centers, are extremely risk averse, and have apparently lost a good deal of money due to non-repayment of loans, with this connected to a weak legal structure in the country. Moreover banks can view the rural areas as poor, degraded, and difficult to work with, such that businesses to be located in rural areas can appear less than lucrative and quite risky. Bank personnel noted that frequently the most risky loans are to agriculture, and in particular to smallholder agriculture. It was also noted that banks need long-term resource flows in order to direct money into agriculture, and currently in Sierra Leone such flows are not present. As well, the time required to achieve a return in agriculture is a problem for loaning. With the exception of annual crops, such as rice cultivation, the banks are unwilling to make loans for agricultural improvements that may take longer than five years to realize a return, due to the perceived excessive risk. Thus loans for irrigation, drainage facilities, leveling fields, tree crops, the construction of processing facilities, farm equipment, etc., are not considered for loaning arrangements. Part of the issue with the banks is that there is little history in the country of using rural land as collateral. Turay (1980) noticed the same reluctance in loaning 25 years ago. The bankers indicated that what is needed in Sierra Leone for banks to make loans in the agriculture sector, is land reform and a capital market.

What arrangement would a bank consider as effective collateral for an agricultural loan? According to bank officials, a business plan, including projected cash flows, description and ownership details of other properties, projected profits, as well as secure arrangements for the land on which the business operates, would interest them. Such a business could be considered as effective collateral. In other words a bank would consider making a loan for a “bankable project”. Such that if a loan was defaulted on, the entire business would move into the bank’s possession, including the arrangements for the necessary lands. While this would appear to offer some potential, it would require either a partnership, or for the local community to have the necessary contacts, and organizational and administrative skills to put together such a viable project. But with illiteracy high in rural areas, and the low availability of water supplies, electricity, transportation, and support businesses (supplies, processing, etc), subsequent to the war, it is much more difficult to put together a viable business plan in rural areas. Importantly however, bank personnel note that the problem with loaning and using a land lease as part of a bankable project for collateral is not with tenure security, they do believe the chiefs in terms of who owns the land (although they also noted that there is little uniformity country-wide regarding customary practices). The problem instead is being able to use the land to access funds.

## **5.2 The landowners’ and chiefs’ perspective on banks, loans, and land as collateral**

Customary landowners have a particular perspective regarding the prospect of using land as collateral for bank loans in order to make improvements in agriculture. The trust in and knowledge of banks is low. The thinking that banks would take land, even if the loan is repaid, is widespread. The manner in which banks operate is perceived of as unknown, unfair, exploitive, and discriminatory. But perhaps most importantly, the risk of losing land is too great, and the price for losing land too high (future food insecurity) for land to be seriously considered as collateral for a loan even if the necessary institutional structure were present.

But for more entrepreneurial, larger-scale, or wealthier farmers operating within the customary tenure system, the problem remains, how would local individual landowners use land as a form of collateral for a loan—given that it is held by an extended family. For a form of privatization to occur within the family, the entire family would need to agree on the arrangement, and the same is the case for using a piece of land to secure a loan. Such a loan would then need to benefit the entire extended family, and not just one parcel of improved land for one household. For the individual to receive privatized holdings would need to prove to the wider extended family that he is responsible. If the purpose for using the land that is privatized changes, then the family members must again be consulted. However the land in such an arrangement cannot be sold, which would preclude the possibility for using it as collateral as far as a bank is concerned. When queried, farmers did mention that they would accept the possibility of a bank taking over a lease involving their land, as long as the bank honored the terms of the lease that had been negotiated previously.

Other issues emerge which discourage farmers from taking out loans from banks. Interest on loans are quite high and can range from 20-30 percent. As well inflation can be so high that by the time the loan can be used, it is worth a great deal less.

Activities such as harvesting (including the now expensive labour), transportation, storage, and processing of a harvest can cost much more at the time it is needed, than at the time the loan was taken out. This extra cost must then come from the profits of the yield, which decreases the amount available to the farmer as both profit and to repay the bank. Additional problems, according to farmers, include: customary farmers have never before done business with a bank, they have no documents that a bank will accept, family land is not documented so there is nowhere to start the process, farmers do not qualify for loans, there is a bad history with banks, banks are not friendly toward farmers, and loans for women farmers from banks are seen as very unlikely.

The chiefs interviewed likewise did not look positively on using land as collateral. The primary issue is the possibility of losing the land permanently and the resulting landlessness for people within the chiefdom. The idea of the “risk of landlessness” and what would result once one is landless, for both the landowners and the paramount chiefs, is critical, and real or imagined, it operates to strongly influence decision making, opportunities, risk-taking, and trust. From the perspective of some chiefs, it would be acceptable to have a bank use a lease arrangement as collateral for a loan, if the bank is willing to take over the lease terms. In other chiefdoms the perspective is different, one paramount chief stating that “land has no value.” As well there is also a low level of knowledge on the part of chiefs with regard to how banks function.

## 6. LEASING AND FREEHOLD

### 6.1 The prospect of leases

Leasing arrangements are much preferred over selling land by all chiefs and landowning farmers consulted. That lease payments provide money appears in many cases to be secondary to the fact that it continues to provide over time. Thus engaging the “element of continuation” with forms of leasing holds promise. And given that value can be created in land via leases, leases theoretically could be privatized, with a market in leases potentially emerging. As well a lease does not violate the ‘custodian rule’ of the chiefs and the landowning families.

Approaches to providing security for leasing contracts for customary landholders and investors is an issue that needs some attention—particularly given the poor history of leases. Obtaining (and providing) such security needs to progress beyond a signature on a document, and engage methods of contract security that will apply to customary realities. Different than a one-time signature to make an agreement binding, contracts need to be “maintained” in a customary context by ongoing forms of benefit and relationships between the customary farmers and the partner. In a leasing context the notion of periodic payments is a good beginning in terms of engaging the “element of continuation” with regard to land. However periodic lease payments in the form of money is unlikely to benefit the number of people who, due to their membership in the landowning family, may attempt to annul, claim, or enter into a dispute with one or more parties to a lease. As well lease payments tend not to trickle down to the farmers as they should.

During the course of the fieldwork a pervasive desire was expressed by both chiefs and farmers to have additional tangible features of a lease engage the “element of continuation” in ways that benefit a broader community (as access rights to land does) even if the inclusion of such features meant a reduction in periodic monetary payments. Items mentioned that would engage the “element of continuation” function of land, and serve to significantly secure, or continue to make binding, the leasing arrangement over time, include: hiring and training local workers, investor—smallholder relationships regarding mechanization and processing of agricultural products and other out grower arrangements, shares in the business, dividends, schools, health clinics, extension services, a proportion of the earnings of the business, roads, wells, medicines, veterinary services, piped water supply, teachers, and new seed varieties. With regard to a percent of the profits of a business, some farmers encountered had an unrealistic expectation as to what an acceptable percentage of the business profit would be, with proportions as high as 20 percent not uncommon.

The utility of periodic payments, as well as other features of “continuation” and benefit for an extended family or community, is particularly useful in engaging the prospect of a family member appearing after the lease agreement is signed and claiming they were not part of the agreement and do not receive benefits. As community/family members, they would benefit from other group-based continuation features of the lease. In a few chiefdoms the issue of absent family members delaying

the negotiation of a lease is solved by a rule that the presence of 75 percent of the extended family is enough for a lease agreement to proceed ahead. In others the eldest, or a group of elders of a landowning family has greater authority, and negotiations can proceed with these family members.

Other suggested aspects of securing lease agreements include:

1. Having the landowning family and chiefs act as a guarantor for a lease for the investor;
2. Chiefs and farmers spoken to indicated that they would be willing to have the government be a guarantor for leasing arrangements regarding an investor;
3. That the successor to any paramount chief that has signed the lease agreement, also honor the agreement. This is an issue of some concern in government and the business/banking sector—particularly if the succeeding chief is from a different ‘ruling house’. While the customary communities and chiefs spoken to uniformly indicated such succession is not a problem, customary law remains unwritten, and variable across different chiefdoms. However including an article in the lease that attends to the succession issue (in essence documenting customary law in leases) may reduce the fears of some elements of the business community in Freetown who believe that there are “always problems with the next chief.”

According to the landowners and chiefs interviewed, the terms of a lease regarding lands are open to considerable negotiation; and all land matters must be approved and signed by the relevant paramount chief. A couple of items involving leases however emerged as particularly important for the customary landowning farmers. Perhaps most relevant is the periodic updating of the lease terms. This is different from the duration of the lease. The communities interviewed favored a seven year, or five year review of the terms, particularly regarding the amount of lease payments and other benefits. The reason for this is that at current and historical rates of inflation the value of any lease payments can decline significantly. Such a review, according to those interviewed, should also take into account how well the business is doing and the growing value of the land. The need for this review is a pervasive notion within the customary sector as well as the government in Sierra Leone, including important entities within the legal establishment. Whether a potential investor would look upon such an arrangement favorably or not is open to question, and most likely would depend on the nature of the proposed business. However depending on the terms to be renegotiated, potential investors might not view seven years as long enough for investments to begin to pay off, particularly given that agricultural investment is usually a long-term activity. One might imagine however that ongoing, tangible, non-monetary benefits over time, might mitigate to some extent the change needed with any periodic re-negotiation of terms. In any case contractual inventiveness may hold potential. Salazar (2004) notes that the lack of contracts in general and leasing contracts in particular has had a negative effect on using farmlands to qualify for credit assistance.

## 6.2 Problem issues in leasing

### *“Fear of agreement”*

While forms of leasing would appear to offer some potential, there are nevertheless a couple of important problems that would need to be managed. During the fieldwork a significant ‘fear of agreement’ was noted in some rural areas which is relevant to leasing arrangements. Part of this has to do with the literate – non-literate divide in the country, which results in certain levels of distrust for arrangements where many documents are involved and the language includes formal legal terms. There is a sense that farmers do not know or understand how leasing arrangements work. Even a few paramount chiefs indicated that they were uncomfortable with the extensive documentation, bureaucracy, and language contained in leasing arrangements and the laws referred to. And then there is the suspicion that the literate will concoct the documentation in their favor.

An additional aspect of this fear of agreement extends to a fear of the binding nature of leasing contracts, which from a certain customary perspective has the effect of reducing livelihood options (reducing the possibility of retaking the land, and using the land in livelihood support options). This is likely connected to the uncertain socio-political and food security environment, where risk reduction and keeping options open are priorities. The result may be reluctance to engage in a leasing agreement in the first place, or adhere to an agreement over time, or insist that unrealistic monetary or other features be included in the terms of the lease. A significant question in this regard is, would the approach to securing the lease agreement mentioned above (securing the agreement over time, with ongoing benefits) mitigate this fear of the binding nature of a contract, and allow more leasing? It was suggested by a number of farmers that the government should play a role in approving potential investors for local communities, including the wording of lease agreements, so that the customary sector would have more confidence in the fairness of the agreement. It is worth noting that this fear of agreement is likely aggravated by the tenure insecurity of the customary landowning sector, in that they fear that an agreement, even a lease, may result in loss of land, particularly if the leasing partner is powerful or wealthy, which virtually all partners will be compared to the customary farmers.

### *The demarcation problem*

Most forms of leasing and investment would need to have a land area demarcated. Surveying services are difficult to come by in Sierra Leone, with the Ministry of Agriculture and the Ministry of Lands having separate services. These two services have slightly different mandates, and both are significantly under-resourced and debilitated after the war, and uncoordinated with each other. But demarcation in rural Sierra Leone has an added problematic dimension. In a number of locations there exists low-level, long-term disagreements between landowning families, and between chiefdoms, over boundaries (also see GoSL 2005; Renner-Thomas 2004; Gamanga 2004). Often such disagreements are not a problem because the land is not farmed or occupied, or land area is not a constraint. According to Ministry of Agriculture survey personnel however, as soon as a demarcation exercise begins in such an area, the disagreement can change into a dispute, sometimes severe. In a number of cases survey personnel have been turned away from a demarcation exercise by local

landowners over such an issue. The spatial definition brought about by demarcation into a low-level disagreement over boundaries that depended on ambiguity for customary management of the disagreement, can change the situation into a potentially difficult conflict. As well there is the perception in some locations that official demarcation will result in land confiscation by the government. The benefits of demarcation are not well known to the customary agricultural sector, nor are the connections between a demarcation exercise, and the formal land tenure system, including leasing, and land registration. A recent letter by one Paramount Chief strongly urged that any surveying and mapping associated with the new land policy be transparent and accountable to the chiefs (Gamanga 2004). Considerable sensitization is needed in order to begin the process of understanding on the part of customary farmers as to what goes into securing an investment.

### *Poor history of leases*

There is a poor history of leasing in the rural areas which influences current perceptions of customary landowners. Turay (n.d.) discusses the problems of leasing earlier in the independence period. In the past, investors frequently received approval from the government for a lease without consulting the chief or the landowning families who claim the land (also see Williams 1980). As well, prior to independence the colonial power leased land from customary landowners for an annual sum. At independence the government took over the leases for the same land, but lease payments were frequently not made. As well the amount of payment remained the same (as stated in colonial era law) but the cost of living has increased substantially in the decades after independence. As a result landowning families have been acting to retake these lands. At present there is some interest by the state in selling or leasing these state lands (Forster 2004). This may result in disputes between the landowning families who believe they are the original owners to whom lease payments have not been made, and the state, who may believe it owns such lands. The destruction of documentation during the war, both in rural areas and Freetown (also see Gamanga 2004), will further complicate this issue.

An additional problem with regard to leasing for the customary communities, is that under the current leasing regulations the payments do not go entirely to the landowning families, but is divided. Percentages go to the chief and government at different levels, with the landowning family ending up with only 40 percent of the total. Forde (1980) noted the problems with such an arrangement for both parties in leasing arrangements over two decades ago, and argued for its change then. It is not known with certainty if such a low percentage going to the landowning family acts to discourage landowners from engaging in leasing, particularly given the perceived risk. The low percentage received by landowners may be one reason for the large percentages of any profits that the landowners indicate they need in order to engage in a lease.

The weak legal structure has also impacted on the leasing history of the country. Significant caution was expressed by customary farmers interviewed regarding the ability of a more powerful party in a lease, or a more powerful neighbor, being able to ignore or unilaterally change the lease terms, or encroach on neighbors with impunity, particularly if special arrangements were made with members of the legal establishment (also see Bomah 2004).

### **6.3 Problem issues in leasing**

Partnerships are seen as a viable way to not permanently alienate rural lands, but at the same time engage investors in a more secure fashion (for both the investor and customary landholder) than purchasing land would. This greater security is important given the different notions of what “purchase” means between investors and many in the customary agricultural sector (see the section below on “The Problem with Changing to Freehold”). The distinction between partnerships, lease arrangements, and joint venture companies (JVCs) is perhaps less useful than their potential similarity—the provision of community – investor relationships which constitute more than just monetary payments, and which engage the “element of continuity”, that focus on aspects of community development.

While partnerships can be complex (definition and monitoring of sharing rules, and a series of agreements to be negotiated regarding which partner does what), there exists the added issue that a loss in profits for the business means a loss for all partners—although there are a variety of constructs possible. Exploring these is not exclusively the purview of negotiation between investors and customary agriculturalists. It is also the responsibility of those in the legal sector (including the Customary Law Officer), to establish what is workable and attractive, given the operational characteristics of the customary sector, and the needs of the private sector.

### **6.4 Problems with changing to freehold**

Part of the advantage of leasing arrangements is that they offer greater tenure security for the investor/lessee than does purchasing land in Sierra Leone. This section outlines some tenure security problems for investors/leasees connected to the purchase of land.

The idea is common in the customary sector that a purchase price paid for land in the past will be less than the current price for the same piece of land, so that the original customary landholders will need to be paid additional monies based on the current value—long after (even a generation or more after) a sale has occurred. This results in tenure insecurity for the purchaser, and particularly an outside investor who may be much less willing to engage such a custom. Such insecurity is the case even if the purchaser refuses to pay any additional payment and is backed by formal law, because customary family members can seek to reclaim or use the lands in question. As well, there is a literacy issue, where assertions are made that previous transactions with non-literate family members are void, citing their non-understanding of the permanent nature of the transaction and any documents relevant to the transaction. Formal court support of this argument can add to the insecurity of the purchaser.

Even if the case does not go to court or a decision supports the purchaser, the ways in which continued dissatisfaction by the original customary landowners are many, and can involve damage to the land or to improvements, cultivating illegally, or extracting timber or tree crop produce in an attempt to reclaim use of the land. Part of the issue may be due to the fundamental difference in understanding of what “sell land” actually means. Thus while the words “sell”, “purchase”, “private”, and “freehold” are used in reference to rural land in the country, there are clearly fundamental differences in understanding as to the rights which are given up versus retained in any alienation of land. The resulting tenure insecurity on the part of a purchaser is then considerable.

Small parcels of urban or peri-urban land appear to operate somewhat differently than rural areas. These are sold, sometimes with complications and often unofficially, but in general the idea is that much fewer members of an extended family need to be consulted. And, once the land in question is no longer agriculturally viable due to its existence as small parcels in urban or peri-urban locations, it loses to a large degree the time element in terms of continuing to provide, that larger rural land parcels have. Bomah (2004) describes further the issue of land sales in peri-urban areas.

Family members who were not present at the decision to sell, or who did not receive proceeds from the sale, can be a further source of tenure insecurity for investors. Such claims can have the effect of annulling the transaction in certain cases, because they are made against the purchaser and not against the family members who were present and agreed to the transaction. What also cautions any potential buyer is the low probability of subsequently selling purchased land, due to the lack of available buyers. And, according to local custom, any such sale would need the approval of the initial customary landholders. Thus the definition of “private” for customary landholders is more restrictive than in the traditional Western sense. There are cases where an investor will unwittingly buy land, and when the customary sellers have spent the money, they will want the land back.

A purchase can also become a problem if the new owner “offends” customary law in some way. If such an offense (which are undefined and unwritten) is deemed serious enough, then under customary law the sellers can get the land back. So the condition on buying “as long as local custom is not offended” (also meaning the local community or customary law) is problematic for the tenure security of any potential purchaser. According to the Law Reform Commission, in such a case customary law would prevail and the community could get the land back, because customary law is enforceable in formal courts.

Selling of rural land does occur, and when it does is often via a “deed of gift” which in certain circumstances local communities have agreed to. Payment is made, and the documents are prepared for the “deed of gift”, which is legal under the formal legal structure. However such a document is not recognized as representing land ownership by a bank, and so cannot be used as collateral. As well the land cannot be resold without first checking with the customary community who provided the “gift”, thus illustrating the difference between this gifting and concepts of selling property as a commodity in a Western context. The character of the gift (involving which rights, for how long) is also apparently unspecified.

Efforts at privatization for the purpose of creating a land market can be difficult in a situation where the tenure security of the purchaser is such a problem. Who defines who was originally on particular pieces of land for the purpose of privatization? Who determines which individual family members will and will not get land via a privatization process? What criteria are to be used? What happens to customary smallholders who are excluded from lands they previously had rights to? Even if the answers to such questions were known, resistance by those who would perceive of themselves as “losing out” would likely be serious—in a country with near-term food security and peace requirements (Hussien and Gnisci 2005).

## **7. LEGISLATIVE REFORM**

### **7.1 The Current legal situation**

The formal legal environment regarding land in Sierra Leone is currently undergoing significant change. This is a much needed undertaking given that a number of the prevailing laws dealing with land and property date from the colonial era, and the need for postwar agricultural recovery for food security and investment. The primary pieces of legislation regarding land to date are: The Land Policy, The Land Commission Act, and The Commercial Lands Act. All are new. The Land Policy is in final form while the others are still within the process outlined below:

1. The relevant ministry proposes and submits a law to the Cabinet,
2. Cabinet discusses the proposed legislation,
3. Once approved by the Cabinet the legislation then goes to the Attorney General's Office for legal drafting,
4. It then proceeds to parliament, where it is further discussed and debated, and either approved, changed, or sent back to the appropriate ministry to be reworked,
5. Once approved by the parliament the relevant ministry begins to draft implementing regulations.

The land owning families and populations of the chiefdoms are aware of the newly emerging land policy, and a number of chiefs were asked for their input. However there is some concern as to what will be the formal legal outcome of the new policy and how that will impact their tenure. There is the sense that much of the landowning population and the chiefs have adopted a "wait and see" attitude toward allocation of their lands. This is especially the case given that other components of the land and property legal structure are still under preparation or approval (The Land Commission Act, The Commercial Use of Lands Act), and their ultimate contents are also not known. The proposed Land Commission may be of some concern in this regard. The Commission will have broad powers, and a mandate, but its ultimate role, and how it treats the tenure security of different components of rural society, will only become known through the actual operation of the Commission. The "learning curve", based on experience, for the landowning customary population with regard to what the policy is about, and what it allows and does not, may be long. This experience will be important to the confidence held by the landowning families regarding the Commission and the security provided to landowners. An information campaign would assist in moving beyond the "wait and see" approach, and complement any experience landowners may have with the new legislation and the Commission. Sierra Leone has had significant success with previous postwar information and sensitization programs in the country.

### **7.2 The Land Policy**

The new National Lands Policy (GoSL 2005) articulates sufficiently the urgent need for a more coherent approach to land administration since the war. The policy is divided into sections: background, the general policy framework, policy guidelines,

and finally a series of policy actions to be implemented by government in the short, medium and long-term.

Several aspects of the policy are notable.

1. The background to the policy takes a candid look at the current tenure situation and the problems of the land sector that have resulted from the war, inadequate tenure insecurity, outdated laws, problems involving state lands, disputes over lands and the problems in solving these, indeterminate boundaries, illegal acquisition of lands, and a weak land administration and management system.
2. One aspect of the land categories mentioned in the policy appears to differ somewhat from the general understanding of the rural population. The policy differentiates between “communal” land, also known as “chiefdom” land or “community” land, in which land is held in trust by the chief on behalf of the community; and “family land” in which the principle interest is held by a family group with a common ancestry. However in many chiefdoms while there can be commons lands, family land is also regarded to be held in a form of trust by the chief, such that all land matters of substance on family held lands must also pass through the chief.
3. The policy notes that the paramount chiefs are to have a large role in dealing with investors. For an outside investor to get land, they must first contact the paramount chief, who consults with local customary landowners, then with these decisions and approvals the investor goes to the ministry of agriculture to get government approval for land access. Thus the paramount chiefs are a fundamental part of the official, formal procedures for accessing land for outside investors.
4. A couple of aspects of the policy would appear to simultaneously impact on the tenure security of landowners, and any future process of privatization of rural lands. These include specific policy objectives and guidelines:
  - a. “[E]ffectively protect the rights of landowners and their descendants from becoming landless or tenants on their own land,”
  - b. “Discourage [but apparently not prohibit] the outright sale of land,”
  - c. “No ownership of any communal or family land can pass to any individual, nucleated family or descendants of the individual, who by customary practice holds that land in trust for the community or family, other than what any other member of the land holding community is entitled to, and in accordance with the customary practices and usages of the particular community and guidelines of the appropriate Local Authority.” This would appear to discourage privatization of customary lands by individuals belonging to landowning families.
  - d. “[A]s much as possible land disposal or acquisition of any kind for all types of land uses should not render a land title holder, his kith and kin and descendants completely landless or tenants on the land to which they originally had legitimate title, save in the case of compulsory acquisition in the public interest.” In this regard it is worth noting that customary land ownership is equal to legitimate title.

These statements in the policy appear to support the inalienability of land with regard to the landowning families, and the role of descendants in claiming rights to land. In so doing the evolution toward freehold tenure in the rural areas appears to be discouraged, thus focusing on leasing arrangements as the primary way ahead for investment. However the policy does acknowledge that land is sold in urban areas in the provinces.

Other parts of the policy attend to particular issues that have contributed to tenure insecurity of landowning families. The policy will:

5. "Provide laws that will protect citizen's right to land against Government,"
6. "Ensure the payment, within reasonable time of fair and adequate compensation for land acquired by government,"
7. "Instill order and discipline into the land market to curb the incidence of land encroachment, unauthorized development schemes, multiple or illegal land sales, falsification and multiple registration of land documents, land speculation and other forms of land racketeering",
8. "The primacy of a land title derived from customary or common law sources takes precedence over any other interests in the event that land acquired compulsorily by the government is not utilized for the purpose for which it was acquired or not used in the public interest."
9. "Review the phenomenon of landlessness and take steps to eliminate, or at least, minimize conditions contributing to migration and encroachment",
10. "Minimize, and eliminate, where possible, the sources of protracted land boundary disputes, conflicts and litigations in order to bring their associated economic costs and their potential for socio-economic upheavals under control."

The tenure security of strangers/tenants on land is also dealt with in the policy, albeit in a way that still positions them at the dependence of what is or becomes defined as customary law. Thus, while,

11. "Interest in land by virtue of any right contractual or share cropping, or other customary tenancy arrangement, are recognized as legitimate sources of land titles and are to be classified as such,"

This is conditioned on the tenant:

12. "agree[ing] with the land owner to adhere to the covenants and other customary practices governing the disposal of the land" and,
13. "the tenant of land anywhere in Sierra Leone is obliged to respect the customary or common law covenants governing the tenancy of land of which he is a tenant."

Given that such customary covenants, laws, and practices are unwritten, two questions emerge. Does this put the tenant in a position of being undefended against capriciousness on the part of landowners, and the resulting tenure insecurity? And, are investors who are part of lease agreements also seen as 'tenants' and subject to

undefined customary law? The policy would do well to include a section on definitions.

In one sense, the policy is attempting a difficult task, both reassuring the current landowning families that their role in land administration via customary law is intact, thus contributing to their tenure security, but at the same time also seeking to contribute to the tenure security of strangers/tenants, while subjecting them to unwritten (and therefore potentially unknown) customary law. It should be noted however that land use and tenure are often more dynamic than the customary laws that govern them. The policy acknowledges that customary law is unwritten, and seeks to move forward to attend to the problems that can result, noting that the government intends to:

14. "Collabourate with the traditional authorities and other land stakeholders to review, harmonize and streamline customary practices, usages, and legislations to govern land holding, land acquisition and use and land disposal,"
15. "Institute an administrative mechanism to guide the allocation and disposal of land by traditional authorities and family land owners throughout the country."

Additional aspects of the Policy outline approaches to managing important issues in a postwar context where the emergence of unforeseen land issues is common, and dissemination of new legislation is important. Regarding the management of emerging issues, the Policy states that the following are priorities:

16. "Promote research into all aspects of land ownership, tenure, and the operations of the land market and the land development process,"
17. "Establishment of an Early Warning Mechanism to detect potential areas of land disputes for the purpose of taking preventive measures,"
18. "The Ministry of Lands Country Planning and the Environment shall initiate and coordinate an inter ministerial technical working group to resolve user conflict and harmonize land resource use among competing users,"
19. "Establish inter-ministerial and interagency co-operation to coordinate land-use policies, plans and programmes, identify land policy priorities and resolve policy ambiguity or conflicts,"
20. "The provisions of this policy document and the legislations derived therefrom will be reviewed and adjusted periodically, to reflect emerging realities and land administration challenges as and when necessary."

Regarding communication with the public:

21. "Educate, on systematic and continuous basis, the public on the new Land Policy and all measures instituted to achieve policy objective,"
22. "Establish the necessary mechanism for enhancing active collabouration with the traditional authorities and all land stake holders to educate all traditional landowners on the need to keep proper land records, conserve land for sustainable use, avoid protracted land disputes, litigation and conflicts, as well as involve them in making decisions affecting the allocation, disposal, management and development of their own lands,"

23. “Organize public fora whenever it is desired that all stakeholders and land agencies contribute to decisions aimed at resolving land use priorities and incompatible competing end-uses,”
24. “Ensure the continuous education of the general public on land matters.”

### **7.3 The Land Commission Act**

The overall purpose of this Act is to establish a Lands Commission with offices at the federal, provincial, and district levels, in order to: grant rights to lands; impose restrictions; implement policies on land and rural development; advise government, local councils and traditional authorities on the policy framework for the development of particular areas; recognize and establish the content of land tenure rights as well as transform ownership rights of such lands; advise and assist in the execution of a registration programme; and perform other functions as necessary. The idea behind the Land Commission is that it is to be permanent and will operate independently. The Land Commission will interpret the policy, apply it, and review existing laws.

Thus the nature of the Commission is that it remains open, able, and empowered to handle a variety of situations as needed and as they arise. The positive aspect of this is that the Commission will be able to deal with issues and problems which are presently unforeseen—a function that is needed given how fluid the current land tenure situation is. The potentially negative aspect is that such a broad and unspecified mandate may make it difficult for customary landowners to be assured of predictable treatment by the government, with possible impact on tenure security. Of particular interest in this regard is the function to, “recognise and establish the content of land tenure rights as well as transform ownership rights of such lands.” Landowning families are likely to believe that the “content of rural land tenure rights” are already established, and that the direction of any transformation of ownership rights would need to be decided primarily by the families themselves together with the chiefs.

### **7.4 The Commercial Use of Land Act**

The law project to formulate legislation on the commercial use of land was the first major activity of the Law Reform Commission. The purpose of the project was to find approaches to modernizing the laws dealing with the commercial use of land, particularly in the provinces where customary law predominates, with the purpose to attract foreign and local investment to set up large scale commercial activities involving land. This is thought to help the government realize its goal of food self sufficiency by 2007 (LRC 2004).

The Commercial Use of Land Act, in Cabinet as of July 2005, promotes leasing with the option to renew. The bill also positions the issue of a member of an extended family turning up subsequent to a lease agreement to claim land or compensation, as a matter between the claimant and the head of the extended family, and not between the claimant and the investor or other partner in a lease agreement. This puts any such dispute within the domain of customary court. However these courts are by and large viewed with considerable distrust with regard to objectiveness, and fairness; and for some are seen as a way for court employees to obtain money. Richards et al (2005) likewise describe the legitimacy problem with local courts. Thus while this may be seen as an efficient formal legal arrangement, it may also encourage the “fear of

agreement” by the head of a family, as it almost guarantees that the family will need to deal with future disputes.

Aspects of the bill deal with important tenure issues in the provinces: investment, leases, sale and freehold, trees as forms of land claim, mortgages, tenancy, and joint ventures.

1. The Act changes the terms “native” and “non native” as used in the Protectorate Lands Ordinance to ‘Sierra Leonean” and “non Sierra Leonean” in order to end any prohibitions against inhabitants of the Western part of the country investing in land in the provinces.
2. Leases are extended in the Act from 50 to 90 years with an option for renewal, in order to encourage more investment in rural lands. To be included in leases is a revision of the rent (only) every seven years.
3. The sale of lands in the provinces is articulated in a number of locations in the Act (articles 2, 3, 4), describing contracts, the ability of any citizen to acquire land in any part of the country, and the need for “other family members” to be consulted regarding any sale. This appears to contradict the National Lands Policy which seeks to discourage land sales. However the Commercial Use of Land Act is still in draft form (as of July 2005) and the final version may reconcile the issue. The need to “consult the members of the family” (article 4 (2)) is left undefined and therefore open to interpretation as to the meaning of “consult” and “family members.” This may become problematic when some family members are away at the time of sale, or if “family members” are taken to mean those not yet born. Ideally any implementing regulations would need to provide greater specificity in this regard, so as to manage the prospect of annulment of sales. In any case the Act acknowledges that there is no realistic departure from the involvement of family members in any land transaction in the near or medium term, such that embodying it formally may contribute to the tenure security of landowning families, by making land transfer by individual family members, difficult.
4. Tenancies are dealt with in terms that allow for both a continuation of the current situation of year to year land access informally, as well as a more secure form of tenancy via a deed. Thus the current practice of allowing informal land access to strangers (including IDPs, refugees, ex-combatants) on year to year basis, and the protection of landowners from claim by tenants without a contract or deed is made legal by the Act, as is the ability of landowners to evict such tenants at any time (although now only with three months notice). This would appear to serve two purposes. First to increase the tenure security of landowners, that lands granted on an informal basis cannot be claimed by tenants. Second, with such protection this may potentially encourage the informal granting of additional lands to strangers—resulting in more land under cultivation, and more people with land to cultivate on this basis. However the bill also allows for more secure and multi-year tenancy arrangements involving a contract that provides greater security for the tenant. This arrangement involves the participation of witnesses, and the paramount chief, and allows for the possibility of assigning the interest of the tenancy to another party (subletting) with the permission of the Chiefdom Council. This

has the potential for creating an “interest in land” which is seen as an important opportunity seen by both the Law Reform Commission, and the World Bank.

5. Perhaps one of the most valuable aspects of the Act is article 10 “Reversion of fixtures.” This deals with the fate of improvements to lands for both movable and permanent fixtures. The article assigns the legal status of ‘fixtures’ to items to which compensation is paid to the tenant at the end of the contract in terms of fair market value, and outlines the options in compensation and damage, as well as the involvement of the Provincial Secretary in dispute resolution regarding value of any fixture. Importantly, economic trees are explicitly included in this article. In this regard trees and any other permanent or semi-permanent fixtures do not serve as forms of land claim—a primary concern for landowning families regarding tenants on their land. Thus articles 7 and 8 on tenancies, together with article 10 appear to provide for a much needed legal detachment between economic trees in particular, and forms of land claim by tenants or strangers. That forms of rent are available (article 5, 6) that allow for the landowner to retake land at the end of a contract, including trees and other fixtures, is important in encouraging landowners to engage in rental contracts without fear that improvements will be used as forms of permanent claim to lands.
6. Part IV of the Act details the use of rural lands in mortgaging arrangements, including to secure loans. Article 17 makes it illegal for a lender to refuse to accept land as security for the payment of a loan because it is located in the Provinces. While banks may find other means of refusing loans, this is a step forward in encouraging a land market in rural areas.
7. Adverse possession is provided for in article 19, where occupation of land for 12 years entitles the occupant to be registered as the owner, with published notice of intention to claim ownership three months prior to registration. Adverse possession does not apply to state land in the Western Area or to community land in the Provinces. This option may apply to some IDPs and others who have been on land for the required time, however proving occupation for 12 years will require access to specific forms of evidence attesting to occupation. The type of evidence that will serve this purpose is likely open to differences in interpretation. In any case the 12 years required to gain ownership via adverse possession is unlikely to cause significant concern among landowning families, given the attention paid to who is on what land on a year to year basis.
8. The act encourages joint ventures and outlines the fairly simple procedures for legally engaging in such ventures. Security for the agreement is countersigned by the relevant paramount chief, and this is seen as sufficient to make the agreement binding.
9. The Act differentiates the responsibilities for administration of public lands (the Land Commission) versus land in chiefdoms (Chiefdom Councils). However the wording of the Land Commission Act is unclear with regard to such jurisdictional differences.

While aspects of the Act provide for opportunities that may not be realized soon (selling land, land in mortgage arrangements, economic trees as separate from establishing claim, etc.), it nonetheless provides a regularization of legal concepts, procedures, and options that is needed to move forward with providing greater opportunity in tenure arrangements.

A number of relevant comments from the public consultations that went on in preparation of the bill were outlined above in the section on Tenure Security and Land Access. Additional relevant comments from the consultations on the commercial use of lands bill:

10. Leases should be made transferable to any investor on the same or better conditions as long as it is not disadvantageous to landowners
11. Establish rural banks in the chiefdoms
12. That the Home office in London, be contacted for confirmation of the extent of the territory of Sierra Leone,
13. Create improved access to funds for commercial use of land

## **7.5 Customary law regarding land**

Customary law regarding land is unwritten in Sierra Leone, apart from reference to it, or to aspects of it within formal legislation. A significant legal issue is that customary law is enforceable in formal court, according to the Law Reform Commission (also see Local Courts Act 2003). This is why a purchaser of land must contend with the ‘offense’ feature of any purchase, whereby the security of the purchase remains in effect as long as customary law, society, individuals and groups are not ‘offended’ with the definition of offended undefined and unwritten. And more generally, if there is an issue that the formal legal structure does not deal with, then the procedure is to first look to customary law for guidance. If none is available, then the formal structure can attempt to pass legislation dealing with the issue. While the way ahead in Sierra Leone is with a merging of customary law with formal law, the governance issues regarding the former is of utmost importance. Governance in the customary sector needs to be seen as fair, reliable, and objective as priorities for this merging to be effectively realized.

## 8. THEMES FROM MOZAMBIQUE'S LAND POLICY REFORM<sup>1</sup>

This section outlines some relevant themes of Mozambique's experience. The postwar land law in Mozambique engages a particularly difficult national issue for land and property, which is the ongoing and problematic relationship between the many relatively large commercial interests (foreign and national), and the indigenous or smallholder sector. These two groups frequently claim the same land, but under different regimes of authority, legitimacy, and proof. Thus like Sierra Leone there are two tenure systems, formally documented tenure, and informal customary tenure. However unlike Sierra Leone, these two systems exist in the same places at the same time in rural areas, as opposed to occupying different locations. But like Sierra Leone, Mozambique needed to reconcile these two tenure systems in rural areas so as to facilitate investment and achieve food security goals. In Mozambique a new land policy was adopted in 1995, a new land law was passed in 1997, regulations for dealing with rural land parcels were promulgated in 1998, and a technical annex to these regulations (regarding delimitation of community lands) was passed at the end of 1999. The focus of the new law is on rural properties, where most of the population lives and where previous problems have proved quite contentious.

### 8.1 Land availability

The new law embraces several approaches to make lands available for use by investors or small-scale agriculturalists, depending on the category of claim. The first approach involves obligatory resubmission of the large number of pending formal land applications under which numerous interests had been claiming lands for years under various policies, often for the purpose of speculation. Article 46 of the Land Law Regulations, introduced a 12 month period within which all pending formal applications and pending claims to lands had to be renewed, making them immediately subject to the new land law and regulations. Toward the end of this period the government "archived" all those applications that had been pending. And the national department responsible for land rights registration and mapping then canceled the remaining titles and applications. For Zambezi province alone (the primary agricultural province) 1,234 applications were cancelled, representing over three million hectares. This provided significant availability of lands to local communities who had lost land prior to, during, and after the war, often under questionable circumstances, and as well made land available for possible investment, including joint ventures between investors and local communities.

The second approach under the current land law mandated that all holders of land use rights (called DUAT, *direto de uso e aproveitamento da terra*) have an approved development or business plan. For foreigners, only those residing in Mozambique for a period of five years or more, and foreign companies registered in Mozambique may submit such a plan. Subsequent to a two year period for implementation of the plan the government grants 50-year use rights (renewable for another 50 years). If the plan is not justifiably implemented by two years after provisional approval for foreigners (five years for nationals), land rights are revoked. This is the primary way for the

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<sup>1</sup> See also LSP Working Paper 17: Norfolk, S. (2004). "Examining access to natural resources and linkages to sustainable livelihoods: a case study of Mozambique; and LSP Working Paper 27 by Tanner et al. (2006). "Making rights a reality: participation in practice and lessons learned in Mozambique".

government to reclaim (for purposes of making such lands again available) land use rights from foreigners who may have for a number of years claimed rights under previous legal regimes, including the colonial regime. As well, rights are terminated if the time-frame for DUAT (50 years) or its renewal comes to an end, or if the DUAT holder renounces rights. Foreign DUAT holders may also lose rights via conflict resolution, including with smallholder communities.

This approach also seeks to manage the issue of restitution of lands based on bad faith transactions. In this regard the approach has less to do with complying with transaction procedures, or forms of intimidation, than recognition of good faith “occupancy”, and complying with the terms of a “development plan”. Because under the earlier law, bad faith transactions primarily had to do with those able to obtain title taking land and property from those without title, and not between two title holders, the new law seeks to address this through the occupancy and proof articles. Technically the bad faith aspect of the problem occurred primarily by the title applicant not adequately providing notice to any current inhabitants that a title application was pending for a specific area. This was a step that was often skipped when applying for title in Mozambique. The new law does not nullify titles issued improperly on land already occupied by someone else. Instead, titles may be reversed by reason of noncompliance with the plan under which it was granted. As well if a conflict emerges on such land, then the current law and its articles (which elevate customary evidence, and smallholder occupation in dispute resolution), would prevail.

## **8.2 Land availability issues merged with investment objectives**

With the new legal requirement that all renewed applications for DUAT first pass through a consultation phase with local communities or individuals that may also be occupying the land in question, two options emerge for restitution of rights or making lands available. The first is potential loss of largeholder rights due to smallholder occupation of the land in question and the strength of rights that customary occupation provides for in the new law. In this case, if new or pre-existing formal rights holders find in their application or reapplication process that the area is occupied and claimed by smallholder communities, transfer of rights to the smallholder communities can then occur. The second option is the more innovative and desired option from the point of view of the law, and the government desire to attract and retain foreign investment. This option seeks to encourage investors (foreign and national) to negotiate on their own with in-place local communities by: 1) providing for an empowered position to local communities via the rights provided by occupation, and the community participation requirement in determining what areas are really “open” or not; and, 2) the significant role given to local communities in terms of participation in natural resource management, conflict resolution, and in the process of titling and setting the limits of new areas requested by private investors. This negotiation is the case for those attempting to pursue pre-independence claims and for those who wish to pursue forms of restitution related issues under the current law. Ideally then, such an arrangement would provide land availability opportunities for both large and smallholders, even over the same land.

The latter option also encourages negotiation by allowing a formal DUAT to co-exist with smallholder community rights of occupation, in what is called the “open border model.” In this option, if an old title or reapplication under the new law finds that the

land in question is occupied by customary landholders, then this does not necessarily compel loss of rights on the part of the investor (foreign or national). This is especially important given the notion in Mozambique that there is no land in the country that is unclaimed by a local community in some form (as is the case in Sierra Leone with chiefdoms). The option includes the possibility of delimiting smallholder land under occupation either before or at the same time a DUAT is granted to an investor. This is the case for new DUAT applications or re-applications for rights holders who held rights under a previous law. The “open border model” refers to the legal recognition of the boundary around a specific community and the rights of the smallholder community within it, together with the ‘open’ character of the boundary, which encourages investors, particularly foreign investors, to negotiate an arrangement regarding the exact nature of use rights by the investor within such a boundary. In other words the land within a community boundary (often quite large) is both occupied and farmed by the local community, and exploited by the investor. Under this approach there is partial transfer of rights, particularly for largeholders reapplying for DUAT (who would no longer have exclusive rights), to smallholder occupants with whom a negotiated arrangement is potentially achieved. The logic behind this arrangement is to attend to desires for land availability and restitution, while at the same time avoiding having the country zoned into smallholder and commercial areas (particularly given the negative history of similar arrangements in southern Africa), as well as to help alleviate smallholder poverty by encouraging linkages with investors.

In this regard there was the expectation that many land availability and restitution issues would “resolve themselves” through either non-reapplication for formal title (lands returned to smallholder communities) or through a negotiated arrangement with reapplication. One important situation that emerges under this arrangement involves largeholder claims that must re-apply under the new law, now needing to negotiate with smallholder occupants that may not have been present (due to previous colonial, wartime, or government policy dislocation) when the application or claim was first lodged under previous laws. However given that such smallholder occupation, or re-occupation of lands occurs with restitution as its purpose, such a negotiated encounter is what the new law hopes will achieve both restitution and investment goals. The new law in this sense gives vastly expanded restitution rights to peasants. The idea of restitution for larger-scale land interests (foreign, commercial, etc.) who departed during the war, appears to be focused on encouraging those pursuing such restitution to also engage in investment partnerships with local communities as part of their development plan.

## 9. CONCLUSIONS AND RECOMMENDATIONS

The suggestions below are intended to assist the government, FAO and other donors as Sierra Leone moves forward with considerations of land tenure in development policy. The recommendations are divided into priority recommendations, and then other suggestions intended to assist in the smooth functioning of tenure relationships:

### 9.1 Priority recommendations

1. The customary landowning families need to have greater tenure security so as to have the confidence to lease land, enter into partnerships, rent to tenants, and pursue loaning arrangements. Such confidence, backed by the new Land Policy, together with the Land Commission Act, and the Commercial Use of Land Act, would encourage customary landowners to allow permanent improvements to land by others, and not feel as though such arrangements translate into risks of permanently losing land, or problematic land claims. While the tenure security of tenants, renters, strangers, etc. is important, improving security of tenure for these prior to improving security for landowners, will likely result in lands held more tightly by landowners as they deny access to outsiders for fear that the increased security of this group will result in permanent land claims. Regardless of the measures taken to increase tenure security of landowners, to a significant degree, it will be experience over time with the legal structure (now poor) that will be the ultimate assurance. A couple of possibilities exist for increasing this security. An increased role of the customary law officer (including more of them), trained in land matters in both customary and formal institutions, and better supported, would be a worthwhile effort. These could be used to inform the landowners of the new legislation and their security in it. Richards et al (2005) also makes a strong recommendation regarding such “legal literacy.” Landowning families need significant representation on the Land Commission, not only at the national and provincial levels, but particularly at the district and town council levels. While the Land Commission documents describe the participation of landowners on the Commission at the different levels, this should be examined to ensure that full participation and influence is available through this membership. Communication of what goes on in the Commission proceedings to other landowning families would also appear to be quite important.
2. The transparency, strengthened information systems, and increased accountability as presented in the Poverty Reduction Strategy Paper (MAFFS 2005), if applied to the current legislative efforts regarding land, would contribute to landowner understanding of the new laws and landowner confidence in their ability to retain lands.
3. Significant consideration should be given to forms of lease that are able to engage the “element of continuation” beyond simply lease payments.
4. The current land policy is clearly a well thought out piece of legislation, and will contribute significantly toward the regularization of tenure in the country. One concern however, might be that aspects of it are focused on measures that require a good deal of capacity and technology that is to be distributed around the

country, compared to the resources currently available to the Ministry of Lands and the Ministry of Agriculture. Articles 5.4 and 5.5 of the Land Policy in particular outline what is needed in terms of capacity building, staffing, and technology. While all items listed are needed, it is not clear how achievable these would be without significant donor provision of funds and other resources in a sustained way. One important implication, is that investment in the rural areas of the country (partnerships, joint ventures, etc.) will require that significant administrative and technical capacity be available, and survey, archival, and other technologies accessible—with the existence of these, influencing investor tenure security.

5. The survey units at both the Ministry of Agriculture and the Ministry of Lands need to be significantly upgraded, including ongoing training and capacity building, and a connection to universities so as to facilitate a steady flow of trained people. As well, the two units need to be coordinated, or perhaps merged, so as to avoid duplication of equipment, vehicles, personnel, etc. For the survey unit at the Ministry of Agriculture, no major resource surveys have been undertaken in the country since 1981. This is a significant obstacle for potential investors in the agricultural sector. Moreover the survey unit is unfortunately not involved in any government discussions regarding leasing. In addition the private sector surveying services need to be encouraged.
6. An overt effort to move toward freehold tenure in the rural areas is unwarranted at this time. Such an effort would by necessity be long-term, and if pressed, would involve considerable confrontation, opposition, and resistance over a range of issues—this is ill advised after a war. Significant opportunity exists with options for leasing and partnerships under a wide variety of arrangements that are likely to be achievable in the near-term.
7. The local chief's courts need to be examined and measures taken to improve the delivery of what are seen as legitimate, fair, equitable, objective proceedings. Primary problems for land issues are the fairness and objectivity of the personnel that operate the courts, and the opportunity for some individuals involved in cases to pursue private arrangements with these personnel. In aggregate the resulting legitimacy problem is likely contributing to the insecurity of the landowning families. How disputes are dealt with, and effective recourse for perceived transgressions are fundamental to tenure security. As these local courts deal with land issues (and this responsibility will increase with the new Land Policy, and Land Commission Act, and the Commercial Use of Land Act) their legitimacy is fundamental to increasing tenure security—both for landowners, and for tenants. Judgments based on evidence, argument, clearly known rules, and the character of agreements will add to tenure security. On the other hand, special, or temporary arrangements and compromised proceedings and judgments detract from tenure security.
8. There is a significant need for specialized banking institutions or loaning programs for agriculture in the provinces. The current arrangement with the national banks in Freetown are not facilitating to agriculture, customary or formal. Rural banks need to be able to handle leases as collateral for loans to agriculture projects, both small and large scale. In 1980 Turay (1980b) recommended at a land tenure conference, that financial institutions derive a loan package that is

tailored (particularly with regard to loan guarantees) to the tenure system in Sierra Leone. Such a recommendation also seems wise today. The establishment of a system of rural banks is also noted as a priority for involvement of the private sector within the Ministry of Agriculture's Food Security Framework (MAFFS 2005). Such banks would need to offer attractive interest rates. The current 20 to 30 percent available from banks is a significant disincentive to use land or leases involving land, as collateral.

9. Over the longer term, significant attention needs to be placed on increasing productivity per hectare in upland areas via extension and other outreach services, and importantly the timely availability of enough inputs so that farmers can reliably count on this availability. This would encourage the move toward more permanent forms of agriculture, and away from the perceived need by landowning families to keep an abundance of land available for shifting cultivation (which is presently the case) (also see Turay 1980a).
10. Those that work in land issues may benefit from access to the various partnerships and platforms and other groups on the topic of land tenure. LANDNET and the Land Coalition are examples, but there are several. These could be used as resources for the exchange of ideas.

## **9.2 Other suggestions**

11. Because most benefits involved in an "element of continuation" regarding leases are also community development, designs might be considered that would be able to connect leasing arrangements to development efforts. For example, there could be a option whereby a potential investor would be able to see a reduction in any state taxes or fees, linked to the community development that is part of leasing arrangements. Donors might be interested in such an arrangement, and could conceivably pay the taxes to government for the investor. The donor thus contributes to development, the investor gets a tax reduction and is thus encouraged to make leasing arrangements that benefit the community over the long-term thus securing the investor's lease, and the government gets much needed revenue in the form of taxes. This is not to recommend this particular arrangement, but rather that innovations are possible for several objectives to be achieved.
12. Customary farmers by and large do not know the benefits of demarcation, and have little experience with the requisites of investment, yet all paramount chiefs and farmers spoken to want outside investment. Sensitization is needed in order to bring greater understanding regarding what goes into securing an investment, and what realistic investor relationships are.
13. Mechanized farming services need to be greatly expanded: rental, easy purchase, tractor cooperatives, etc. The problems of bureaucracy involving tractors donated by the international community need to be overcome, in order to ensure that they arrive and are usable by farmers in their intended destination.
14. Reconstitution of the national livestock herd should also focus on the needs of animal traction.

15. The government and donor community may want to consider establishing an “investment promotion office” for agriculture, or that includes agriculture and land tenure related issues. In this regard the National Chamber of Commerce would become important. However this organization would need to come to a consensus as to their position on leasing from the customary sector, and come to an agreement with the banks on this same issue, as there are significant differences. For the banks, the issue is not that there is no documented proof that the landowners are who they say they are, they have significant trust in the customary land tenure system and the role of the chiefs. This perspective however is not shared among the different entities in Freetown that would be among the first to interact with outside investors. Such confusion and disagreement among these important investor-related players in Freetown does little to instill confidence as to the investment climate in the country.

### **9.3 Concluding Observations**

1. The new lands Policy along with the Commercial Use of Lands Act, together with the functions of the Land Commission will play a large role in the way forward for property rights and development in the country;
2. Landowners’ views about partnership with investors, direct sales of part of family holdings and adaptive lease terms that have adequate security provisions for all parties are important considerations in leasing arrangements;
3. The concern against landlessness calls for a Lands Commission capable of advising on what land areas can be disposed of without generating landlessness;
4. Risk reduction, prevention, mitigation and coping strategies are not adequately addressed in rural economic activities. Consequently poor subsistence farmer communities see land as the main means of a life supporting system;
5. Government has a responsibility to secure and maintain guarantees on security for both investor and landowner;
6. There is need for Government to speed up the process of establishing the Lands Commission and the new regulations for access to land for commercial exploitation.

### **9.4 Areas for Future Research**

Two issues emerge as most important for future research, the tenure security of landowning families and its relationship to allowing greater land access; and the specifics of leasing arrangements that provide for viable opportunities for investment by both customary and large-scale investors.

Regarding tenure security for landowning families, specific questions focus on: What specific policy, development, or institutional constructs or event (e.g. legal cases) would improve tenure security the most, and the quickest, in a way so as to allow more secure land access to outsiders? In other words, what are the various ways that this security could occur? What would the landowners need to successfully

decouple the planting of economic trees and other improvements from notions of attempted land claim by strangers/tenants? Such a decoupling would likely be an important step toward greater investment in land and its impact of food security. What is the relationship between greater tenure security on the part of the landowning families, and greater willingness to enter into rent relationships with tenants, as opposed to land “begging” or good behavior or other non-economic relationships with strangers/tenants? How quickly might this occur? What forms of guarantees would the landowners need? How would such an arrangement be made binding in ways that are acceptable? How might the problematic issues of demarcation for customary landowners be resolved so that investment opportunities can be facilitated?

The variations on joint ventures and partnerships would seem to provide for considerable investment and development potential. Existing examples from other countries could be reviewed for their potential in Sierra Leone.

Further research is needed on how governance of the customary sector can be improved, particularly with regard to the customary courts. While there is variation in the legitimacy, capacity, and objectivity of these courts throughout the country, they are generally regarded as weak, and often of questionable priorities in terms of effective, fair decision-making.

Regarding leasing arrangements:

1. How might the details of the “element of continuation” be articulated to potential investors so as to encourage this feature of leasing?
2. What are the most important aspects of the “element of continuation” for customary landowners—number, type, duration, quality, ability to deter additional family members from disputing the agreement, ability to ensure the binding nature of the agreement, etc.
3. What might be the different potential arrangements between investors, donors and government to both attend to the “element of continuation” and community development?
4. Would inclusion of a significant “element of continuation” in leasing agreements, mitigate any fear of agreement? What would need to be included, e.g., type, duration, for whom, etc.

Regarding customary law, a form of codification of existing rules, practices, norms of customary leaders etc., is clearly desired by the land policy and by many local leaders as well. However flexibility and adaptability can frequently be important aspects of customary law regarding land, such that attention given to differences in interpretation, the creation of by-laws, would be worthwhile. A review of existing examples where institutional adaptability has proven successful in this regard would be an important endeavor.

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The Livelihood Support Programme (LSP) works through the following sub-programmes:

### **Improving people's access to natural resources**

Access of the poor to natural assets is essential for sustainable poverty reduction. The livelihoods of rural people with limited or no access to natural resources are vulnerable because they have difficulty in obtaining food, accumulating assets, and recuperating after shocks or misfortunes.

### **Participation, Policy and Local Governance**

Local people, especially the poor, often have weak or indirect influence on policies that affect their livelihoods. Policies developed at the central level are often not responsive to local needs and may not enable access of the rural poor to needed assets and services.

### **Livelihoods diversification and enterprise development**

Diversification can assist households to insulate themselves from environmental and economic shocks, trends and seasonality – in effect, to be less vulnerable. Livelihoods diversification is complex, and strategies can include enterprise development.

### **Natural resource conflict management**

Resource conflicts are often about access to and control over natural assets that are fundamental to the livelihoods of many poor people. Therefore, the shocks caused by these conflicts can increase the vulnerability of the poor.

### **Institutional learning**

The institutional learning sub-programme has been set up to ensure that lessons learned from cross-departmental, cross-sectoral team work, and the application of sustainable livelihoods approaches, are identified, analysed and evaluated for feedback into the programme.

### **Capacity building**

The capacity building sub-programme functions as a service-provider to the overall programme, by building a training programme that responds to the emerging needs and priorities identified through the work of the other sub-programmes.

### **People-centred approaches in different cultural contexts**

A critical review and comparison of different recent development approaches used in different development contexts is being conducted, drawing on experience at the strategic and field levels in different sectors and regions.

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### **Sustainable Livelihoods Referral and Response Facility**

A Referral and Response Facility has been established to respond to the increasing number of requests from within FAO for assistance on integrating sustainable livelihood and people-centred approaches into both new and existing programmes and activities.

For further information on the Livelihood Support Programme,  
contact the programme coordinator:  
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