

One Country, Two Systems: The Dualistic Land Tenure System in Sierra Leone, and the Need for ReformVictor Tamba Simbay Kabba^{1,2} and Jiangfeng Li³¹Department of Land Resources Management, Faculty of Economy and Management, China University of Geosciences, Wuhan, 430074, Hubei Province, PRCVictor_kabba@yahoo.co.uk

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Abstract: Several studies have indicated a strong link between poverty and insecure land tenure. In Sierra Leone like other former British colonies, two separate land tenure systems exist: an imposed British tenure in the western area, and a customary system in the rest of the country. Whilst the former allows freehold tenure, the latter does not. Seventy-five percent of its population are rural, and invariably depends on agriculture for livelihood sustainability. Statistics also show that women who form the bulk of this population are involved in food production. One of the reasons identified why the country is unable to feed its population is the existence of the customary system. In this work, we discussed the two land tenure systems in the country, and analyzed the shortcomings of the customary tenure in detail. Data were mainly desktop literature. We looked at similar cases elsewhere and drew our conclusions. We discovered that the customary system is not only discriminating against women, and other citizens (from other parts of the country), but discourages investment in agriculture and other land uses in rural areas. It is therefore a threat to food security and rural development in general. It also provokes tension between citizens from the western area, and those from the rest of the country. If the Poverty Reduction Strategy Paper, VISION 2025 and the Millennium Development Goals are to be realized, it is important that authorities step up and reform this customary system, and encourage more access to land, say freehold tenure.

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1. Introduction

For the millions of the world's poor living in rural areas and depending on agriculture, livestock or forests for their livelihoods, secured access to productive land is critical. This is because it does not only reduce their vulnerability to hunger and poverty (FAO, 2005:1), but influence their capacity to invest in productive activities and at the same time managing the resources sustainably (IFAD, 2008). In these areas, those with insecure tenure rights are the landless or near landless. They are poor, most marginalized and vulnerable. Such a strong correlation between poverty and land tenure insecurity, and improving access to land and poverty reduction have been confirmed at micro-level research on the causes and dynamics of rural poverty around the globe (FAO, 2007:1; Musahara, 2006).

Land tenure describes all the relations established among people to determine their various rights in the use of land (Kuhnen,). These rights may be fixed by custom or law and are often explained as a complex or bundle of rights which,

together, constitute the property, i.e. the right to control an economic good, in this case, land. Thus the recognition of the importance of land tenure issues for the long term growth, poverty reduction, peace and civic empowerment has been echoed in a number of policy documents. Generally, the nature of tenure a landowner has in land would affect his ability or otherwise to use the land in the most economic manner possible. In addition, the duration of the rights would affect the type of investments one would be inclined to make on the land. And as Place et al (1994, 19) observed, land tenure security only exists when an individual perceives that he or she has rights to a piece of land on a continuous basis, devoid of imposition or outside interference, as well as ability to reap the benefits of labor and capital invested in that land either in use or any other transaction to such as transfer to another holder.

Research in many African countries identified, among other things, insecure land tenure as a major reason for the set-back in its economic development. For example, a British Royal Commission set up to

investigate and recommend ways for the promotion of economic development in some of its former colonies in Africa identified the customary land tenure system as key factor retarding economic development in the region (Mugambwa, 2007).

Customary land tenure is defined by the local social organization, including its culture. It is usually based on hierarchical principles of kingship, indigenoussness and gender, with women excluded (Djire, 2005b). Several FAO and World Bank studies on customary land tenure in Africa and elsewhere indicate that customary land tenure is based on the needs of a simple subsistence economy and the social relationships that are associated with land use in such an economy. It is of a communal nature and as such has no commercial value (Mugambwa, 2007; Word Bank, 2009). For sound agricultural development to be realized, a farmer needs tenure which makes available to him a secured parcel of land and system of farming where he has an indefeasible title as will encourage him to invest in labor, and profits in the development of his farm, and also enable him to use it as a collateral for financial credit (Mugambwa, 2007; Swynnerton, 1955). And if rural areas are to develop, and the Millennium Development Goals achieved in poor countries, there is need to have a reform of customary system. This has been the focus of many research and advocacy by such bodies as The World Bank, The United Nations Economic Commission on Africa, African Union Commission (Kagwanja, 2003), to name but a few.

Sierra Leone, one of the poorest countries in Africa has a dualistic land tenure system: a free-hold and customary land tenure systems. But unlike other countries which have made strides in reforming their customary system, no major development has been made in that direction. And if some of the aims of the Poverty Reduction Strategy Paper (GOSL, 2003a) and the Millennium Development Goals are to be achieved, it is believed reforming the customary system would play a pivotal role. This paper is therefore calling for the need to have a reform of this system, and if possible, harmonization of the entire land tenure in the country. There is need to develop a land policy that would promote agricultural and economic development as well as poverty eradication in the country. The challenge for the reform is to have a balance between the needs of the population and their traditional sector on one hand, and the developing cash economy on the other.

2. Materials and Methods

2.1 Study Area

Sierra Leone is found on the west coast of Africa, between latitudes 7 and 10 degrees north, and

10 and 14 degrees west. With an area extent of 73,326 square kilometers, its people depend heavily on natural resources, including land. Statistics show that seventy percent of the 4.8 million people live in abject poverty; three-quarters of which are rural and depend on the land for livelihood sustainability. Twenty-six percent of the poor are described as “food poor” and cannot afford a basic diet (SSL, 2004; GOSL, 2005). Subsistence agricultural and “small scale” or artisanal mining are done in the poorer districts where 8 out of 10 are considered poor. The subsistence agriculture, otherwise known as the “hoe and cutlass” aims to grow food for consumption, with little or nothing left for commercial purposes.

Characteristic of its poverty include, poor housing, high illiteracy rate, poor health, and high infant and maternal mortality, insufficient food, limited access to clean water, and lack of money. With the help of the World Bank, and other international bodies, a Poverty Reduction Strategy document was produced, which serve as a blue-print for addressing the poverty situation in the country. The issue of land is a stake in alleviating the poverty menace. However, more than five years after the document, there is little sign that the majority of the poor, who form the bulk of the population and live in the rural areas, would ever get out of the poverty trap. This is because, among others, the existing customary tenure that in the rural areas in the country.

This research is therefore trying to discuss the land tenure system in the country; in particular, we focus on the demerits of the customary tenure, which is seen as providing an unfavorable climate for poverty reduction, and rural development as a whole. We have not dealt with the mechanism of how this customary system should be reformed nor have we addressed the issue of land titling and agrarian reforms in general. We have basically identified the bottlenecks this system poses as opposed to the freehold system.

2.2 Data source

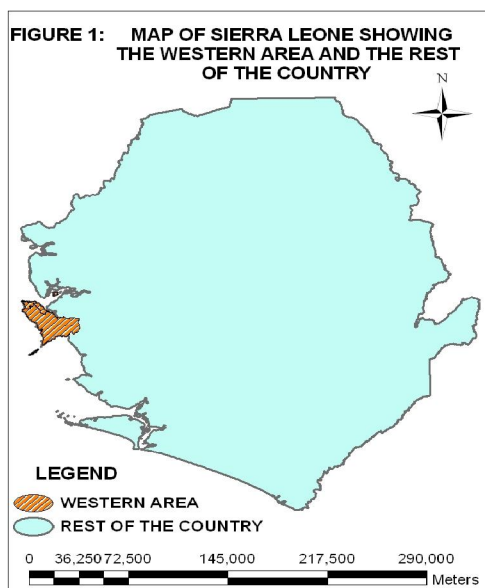
The main source of data is desktop literature on the land tenure system in Sierra Leone, and other related literature.

3. The evolution of land tenure in Sierra Leone

3.1 First British influence

As a former British colony, Sierra Leone has a dualistic land tenure system: an imposed external system practiced in the western area, including the capital city, and a peasant proprietorship in the remaining parts of the country (Figure 1). A local ruler, King Naimbana offered the British crown in 1788 several square kilometers of land for the

establishment of a free community of British subjects. This land was later converted in 1808 to the base for freed slaves (GOSL, 1933). Thenceforth, to the end of the 19th century, the crown extended domain through treaties with tribal Kings.



3.2 Colony and protectorate divided

In 1901, Ordinance 33 defined the main administrative division of the country into two: the colony, which included the capital and the lands bought by the crown in the western area, and the protectorate, the lands of the rest of the country. The colony, under direct British rule, adopted English law where private ownership of land (for both sexes) is recognized, to date. In the Protectorate, land was acquired through a concession Ordinance 8 of 1902. Beyond this, any policy development was in the hands of indigenous tenure systems. All Acts and Regulations passed for the administration and management of land and its resources were totally different between the western area or colony (under direct British rule), and the Protectorate, which was under an indirect rule (Renner-Thomas, 2004).

3.3 Land laws of the western area/colony

Despite the ultimate advantages of freehold ownership of land by both sexes in the Western Area, and registration of such rights, the Colonial authorities seemed somewhat heavy handed in their powers over such areas as “unoccupied” and “crown lands”. Ordinance No.1 of 1872 was enacted to allow the Administration’s acquisition of land for public purposes in the colony area. In 1898, this power was

translated into “Crown land”. The “Crown Land” covered a small area, compared to the needs for construction, especially in the capital, Freetown (Renner-Thomas, 2004). The administration sought to control indiscriminate claims to land and to preserve some of it. This led to the ultimate definition of “Crown Land” in No.19 Ordinance of 1960. Crown lands were considered to be: -i) those lands that were acquired by, or for the Crown, either through treaty, convention, concession, or agreement, for public use, or otherwise, and ii) lands acquired under the provisions of the Public Lands Ordinance (Turay, 2006).

In 1906, Ordinance Cap 117 established the “Unoccupied Lands (Ascertainment of Title) as well as the Registration of Instruments Ordinance (Cap 256). Registration of land titles was not recognized but a deed. This meant acquisition of land between generations of family members was done without a real right holder title. The main aim of the “unoccupied” lands Ordinance was to curb land grabbing while the provision was made to prove ownership through Statutory Declarations based on the 1835 Act of England (Turay, 2006).

Two other ordinances, the Forestry Ordinance No.8 of 1912 permitted the setting aside of Reserves on Crown Lands (Forster, 2004), while the Survey Ordinance 20 of 1927 allowed surveying an individual landowner’s or occupier’s property in preparation for registration and conveyance. Statutory declarations also came into existence (for proof of title to land) through declaration under oath showing how the title was possessed. Such a declaration of ownership was to be supported by two witnesses and a survey plan for registration under the registration of Instruments Act 256 of 1960 (GOSL, 2003b).

3.4 The Protectorate (Provinces) land laws

Apart from Ordinance 1 of 1872 which made provision for the Crown to acquire land for public purposes, the Protectorate was largely left to develop its own land policies based on communal tenure. The Concessions Ordinance 8 of 1902 enabled land acquisition for such use as plantation agriculture, construction for central government and other such uses (Turay, 2006).

In 1903, the Protectorate Court jurisdiction Ordinance was enacted to empower the local rulers, known as Paramount Chiefs to decide all cases of land dispute except those between two Paramount chiefs. Ordinance 16 of 1905 solved the problem of non-native infiltration to Provincial lands. This ordinance conferred the vesting of land to the *tribal authority*, with the exception of land under the

concessions ordinance and land for public purposes. In general, lands in the protectorate are meant for the indigenes and exclude “non-natives”, including those from the western area of the country. Immigrants are however allowed to hold land on lease. The central government could also possess land through the Paramount Chief and or *tribal authority* (GOSL, 2005). This is made possible by the Protectorate Law (Amendment) Ordinance No.15 of 1961, which states that the expression “non-native” shall not include the government. Government can therefore, at any time, anywhere possess land for its use (Turay, 2006).

Indigenes are not allowed to own land in their own names. Plots of land are given to heads of families for agricultural purposes. Such lands could be transferred from one member of the family to another. Female members of the family are however not allowed to hold land on behalf of their families, even where they are the head, mother or widows.

From the aforementioned, the following comes out clearly on the land tenure issue in Sierra Leone.

-two separate land tenure systems exist: a freehold system (in the western area and capital city), and a customary tenure (in the rest of the country).

-no freehold under customary system;

-the customary system discriminates against both non-natives and women.

4. Discussion of Implications

Like other former British colonies (example, Nigeria, Ghana, Zimbabwe, Uganda, Papua New Guinea etc.), the customary land tenure system has been identified as an impediment to the socio-economic development of developing countries. In most of these countries, reforms were made after civil strides (Kenya), tribal wars (Uganda), land invasions (South Africa, Zimbabwe) and political tensions. As Mugambwa (2007); Adams (1995) noted, such reform involves the individualization or distribution of property or rights in land for the benefit of the landless, tenants and farm laborers. Ezigbalike and Cyprian (1999) went further to assert that it goes beyond redistribution. It also involves such rural development initiatives and facilities as improved farm credit, cooperatives for farm-input supply and marketing, and extension services which would promote the productive use of the land reallocated.

Whilst there has not been any major resentment (for example, tribal conflict, land invasion/grabbing etc) against the customary tenure system in Sierra Leone, it is however characterized by issues that provoke tension and social instability. The following have been identified as the main bottlenecks of the customary system in Sierra Leone, and which calls for the reform.

4.1 Lack of freehold means little or no empowerment

As seen above, the main characteristic of customary tenure is the lack of freehold of land by individuals. Tenure is vested in the hands of local authorities and their subjects, with the former determining who should own land as determined by societal rules and regulations. There is no permanent hold on such lands though, as official titling is completely absent, and so cannot be used as an economic good. We argue in this paper that this tenure be reformed into a freehold.

While critics of such a reform would argue that changing the customary tenure to individual freehold would destroy the cultural ties of the society which are the very fibre holding them together, the reality is that it is only the free hold tenure that empowers indigenes, and owning such lands amongst kinsmen raises the social status of individuals.

In Sierra Leone, the customary tenure emphasizes cultural values at the expense of economic and financial gains of the land. To empower the rural populace and help develop the rural areas for example, capital in the form of land is a necessity. Reforming the customary system to a freehold increases the value of land, as the economic forces of demand and supply would determine its price. This introduces a land market where land could be sold, leased, mortgaged, exchanged or otherwise deal with commercially. The existence of land market facilitates access to land ownership with financial means, including women and immigrants. Moreover, trade in land can produce financial resources for vendors. Land is also a source of social status and bargaining power (Doss et al 2007).

In urban areas, those with land are guaranteed more revenue which could enable them to engage in more productive ventures such as setting up private businesses and partnership with landless non-investors. In the same vain, lands become collateral in such areas. Land owners could also mortgage or lease their lands to gain access to cash for other ventures. Ownership to land is in itself liberation from poverty, as its guarantees investment in whatever measure.

4.2 Threat to food security and poverty alleviation

As the primary source of sustenance, land is used by members of society for livelihood sustainability (James, 1987). Generally, access to land is a critical factor in the eradication of food insecurity and rural poverty (FAO, 2003:2). Inadequate access to land and insecure tenure of

those rights often result in entrenched poverty and lead to rural underdevelopment and food insecurity (FAO 2003:2). More secured access to land enhances productivity and improve the financial status of the rural populace. And as spelt out in Pillar Two of its Poverty Reduction Strategy Paper, the aim of the food security strategy in Sierra Leone is to empower poor rural and urban households to improve the food they consume, and encouraging farm families to produce more. Government aims at supporting small-scale subsistence farmers who dominate agriculture, to diversify and increase production, improving crop storage, feeder roads and market access; and encourage private agriculture investment.

However, from every indication, the customary tenure has made such dreams impossible. The country still imports more than eighty percent of the staple food it consumes, and the populace is still entrenched in abject poverty, in both the rural and urban areas. In terms of investment and agricultural development, the customary tenure does not provide adequate incentives for growth in the agricultural sector. And with the country relying on imported food to feed its population, the need for large scale investment (into the agricultural sector) by the private sector is seen as a way towards achieving self-food sufficiency, poverty alleviation and increasing the country's GDP. One fact that has emerged in recent times is that there has been a significant reduction in the agricultural population (MOAFS, 2007; 2008). One of the reasons could be as a result of lack of secured tenure in land. Indigenes, in whose care land parcels are, also charge renters high rent on such lands. Renters refuse to pay, citing little profit after particular planting season. This results in abandoning agricultural activities all-together. Whilst holders of such lands abandon the countryside for the city, investors with the cash stay away from the land because of lack of tenure. Urbanization is therefore taking its toll on the major cities, with unemployment figures swelling, and the number of people going down the poverty line also increasing.

4.3 Discourages investment and job creation

The lack of investment outside of the capital such as large-scale commercial agricultural projects, and other business ventures can partly be attributed to the problems associated with acquiring land for such economic activities. For the country to develop, it demands investment from both indigenous and private entrepreneurs. This is enshrined in the Millennium Development Goals, and VISION 2025- to attain a competitive private sector-led economic development with effective indigenous participation. Investment outside of the capital has a number of

positives to it. For example, it would reduce unemployment among the indigenes. Associated with this is the fact that it would reverse the rural-urban drift which has been observed in the country in the last 10 to 20 years, prompted by lack of jobs and underdevelopment in the rural areas.

Under the customary system also, landowners do not gain access to financial institutions because such lands are not accepted as collateral for example, agricultural loans. With the bulk of the rural population that is poor, access to loan encourages agricultural expansion and a move from the subsistence type of agriculture into a commercial one. This empowers the rural populace and reduces poverty. Improved access to land enables a family to increase household income by producing surpluses for sale, and help improve the ability of a household to access credit. Secure access to land provides a valuable safety net as a source of shelter, food and income in terms of hardship, and a family land can be the last available resort in the instance of disaster (FAO, 2003:2).

The customary tenure thus discourages large-scale foreign investors, especially if such investors find it difficult to obtain large parcels of land during a single transaction. The lack of investment in an area such as agriculture means the country would rely on imported food to feed its growing population. This in itself is unhealthy to the country's economy.

Aside agriculture, investment in other land uses such as ecotourism, education and skill training centres, and shopping areas, also address unemployment, increase literacy and empower the populace, and attract other line-investment from overseas investors (FAO, 2002).

4.4 Gender bias

Women do the bulk of the farm work in Sierra Leone. They are not only involved in food production, but also in knowledge dissemination and skills related to food, agriculture, and management of natural resources (MAFFS, 2004). Unfortunately, they are not entitled to land under the customary tenure system. This is because places outside the capital practice patrilineal descent and has a patrilineal residential system. Women are therefore unprotected and disadvantaged in areas having customary land tenure. It is therefore believed that security of tenure in the rural areas could empower them, and at the same time encouraging those with capital to invest on the land, and adopt sustainable farming practices with better care of other resources.

Another characteristic of rural women in Sierra Leone is the fact that they are the heads of their households. The situation is as a result of most men

abandoning rural areas to find employment in the city or mining areas. In their absence, the lack of makes it impossible for women to put to use family plots without the consent of the husband or male members of the family. This is because women in Sierra Leone are considered to be property of either their husbands, or parents. And in the event of divorce or death of a husband (or head of family), female members and their dependants do not lay claim to land. They and the land are considered property of relatives, husbands or male subjects and are transferable.

4.5 Discrimination against other citizens

The customary tenure prevents other citizens (*non-natives*) from owning land outside of their places of birth, apart from the western area. This could be described as social injustice. This could lead into conflict and alienation. Clearly, access to land (for all citizens) plays an important role in social harmony and the overall development of the country. Indigenes from other parts of the country are possible investors, in not only the agricultural sector but social services, infrastructure, and education. Reform would provide a more equitable distribution of land resources and reduce social injustices.

5. Conclusion

Like many developing countries that depend on agriculture, Sierra Leone needs to reform its customary system to allow individual freehold not only for *non-natives*, but women as well. Food insecurity and agrarian reform are closely linked, and until individualized access to land is ensured for the majority of the rural people, the reduction of poverty, elimination of hunger, and rural development in general, will not be achieved. The poor, who make up the bulk of the population and live in rural area, should have access to land, in order to improve their lives. Free and unhindered access to land encourages investment into rural areas and other urban settings outside of the capital. This would help develop these areas and hence would not only bring in employment to the youths, but also minimize the rural-urban drift that has strained the limited resources in the cities, in particular the capital. And if the Poverty Reduction Strategy Paper and VISION 2025 are to be achieved, it is necessary for policy makers to make swift response to reform the customary tenure system into one of more access to land.

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