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Non-judicial grievance mechanisms in land-related disputes in Sierra Leone

Analytical Assessment within the framework of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

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Forests in the Context of
National Food Security

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FOREWORD

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) is an international instrument on the governance of tenure, which places secure access to land, fisheries and forests firmly in the context of food security. Since its endorsement by the Committee on World Food Security on 11 May 2012, the VGGT has received widespread buy-in and has been implemented in many countries. With the technical support of the Food and Agriculture Organization of the United Nations (FAO) and the financial support of the German Federal Ministry of Food and Agriculture (BMEL), Sierra Leone launched the process of implementing the VGGT on 1 February 2014 through a multi-sectoral intervention focusing on land, fisheries and forestry and on cross-cutting issues such as gender, human rights and access to justice. A multi-stakeholder platform on the VGGT, composed of an Inter-ministerial Task Force, a Steering Committee and a Technical Working Group, was established to ensure ownership, broad participation and political support.

One of the main components of the above-mentioned project, under the "right to food" theme, aimed at mapping and evaluating existing grievance redress mechanisms (GRMs) based on the principles of accessibility, transparency and accountability recommended in the VGGT, with a view to contribute to the strategy of the Government of Sierra Leone to systematize, organize and improve dispute resolution mechanisms. It feeds into the overall aim of improving the governance of tenure to improve food security in the country, especially in the context of large-scale agricultural investments.

In Sierra Leone, the structure of dispute resolution mechanisms follows the dualistic tenure system in which customary and statutory structures operate side by side. The present study is conducted with a view to better understand the types and effectiveness of the non-judicial GRMs that exist in Sierra Leone based on internationally accepted standards that are enshrined in the VGGT. To capture sectoral nuances as much as possible, the study focuses on land-related disputes, but many of its findings could apply to the governance of tenure in relation to other natural resources. Non-judicial institutions play an important role in the resolution of land disputes but their functioning has not been systematically analysed in relevant publications. FAO's three legal assessment papers on land, fisheries and forestry in Sierra Leone, for instance, focused mainly on formal policy and justice mechanisms.

Based on field surveys that were conducted in two rounds in 2014 and 2015, the study assesses the jurisdictional, procedural and remedial aspects of land-related GRMs based on the standards of accessibility, non-discrimination, gender equality, fairness, equity, transparency, timeliness and effectiveness in the resolution of tenure disputes. It proposes some options for the rationalization and coordination of the GRMs that are now at work. While the assessment has already been used as a basis for substantive contributions to the development of the Land Policy of Sierra Leone that was adopted in the end of 2015 and the draft mediation bill, its findings and recommendations are expected to inform other ongoing and envisaged legal reforms.

ACRONYMS AND ABBREVIATIONS

BMEL	German Federal Ministry of Food and Agriculture
CLO	Customary Law Officers
CSO	Civil Society Organization
DC	District Council
DO	District Officer
EPA	Environment Protection Agency
FAO	Food and Agriculture Organization of the United Nations
FSU	Family support units
GDP	Gross domestic product
GRM	Grievance Redress Mechanism
KAP	Knowledge and Perceptions
NGO	Non-governmental organization
NLP	National Land Policy
NMA	National Minerals Agency
ONS	Office of National Security
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

EXECUTIVE SUMMARY

In November 2015, the Government of Sierra Leone adopted a comprehensive National Land Policy (NLP) which aims to establish a just land tenure system which will ensure equitable access to land for all citizens and stimulate investment for the nation's development. This marked a milestone in efforts to reform the country's dual land tenure system which has for decades been plagued by "…a high degree of out-datedness, technical complexity, unclear managerial hierarchy, operational inefficiency, inadequate resources and corruption" among other challenges. Wholesale changes, have now been proposed in the policy, to the public structures and processes through which rights in land are created, defined, and recorded, land transactions are conducted, and land disputes are processed. The policy itself incorporates important provisions from the VGGT, a collection of rights-aligned principles and international best practices on the governance of land and natural resources that has been endorsed and is being implemented by Sierra Leone.

Dispute resolution or GRMs are important components of any organized system of governance of natural resources. Effective GRMs offer trusted means of clarifying claims, protecting rights and providing remedies. Like its tenure system, Sierra Leone has a somewhat bifurcated land dispute resolution system. Under customary tenure, chiefs play an important traditional dispute resolution role. Tenure disputes under the formal system are generally resolved by the High Court which has unlimited original jurisdiction. Within and sometimes straddling both systems are public, private and other community-based mechanisms involved in land dispute resolution.

Land disputes are among the most common types of civil disputes in Sierra Leone and the nature of such disputes varies depending on the tenure system. For land held under customary tenure, disputes arise as a result of lack of consent over land transfer, arbitrary exercise of power by a traditional authority over land, intra-family disputes over rights to land and boundary disputes. Causes of land disputes within the formal tenure include use of fraudulent documents, multiple rights over land, trespass and erroneous surveys. In recent years, the pursuit by the government of a policy of large-scale investment in land and natural resources has added another dimension to land-related disputes. Some big private investments have struggled to cohabit with their host communities, sometimes resulting in tension and conflicts. Disputes have arisen mainly over land acquisition processes, use of common resources and impact of company operations on livelihoods and the environment. Disputes have also arisen between companies over concessions.

Given the prevalence of land-related disputes, the poor state of access to formal justice mechanisms for citizens and the reliance of a large segment of the population on customary or informal mechanisms, an inquiry into the existence and viability of non-judicial GRMs that apply to such disputes becomes crucial. A clear understanding of how such mechanisms work and their strengths and weaknesses would be a useful lamppost for the effective implementation of the land policy and pertinent laws. The VGGT recognizes the importance of complementing judicial systems with state/public, customary and corporate mechanisms that may be used to prevent and resolve tenure disputes. Its best practice standards relating to jurisdictional competence, fair hearing and effective remedies have been applied to the evaluation of these non-judicial institutions in Sierra Leone. The study used a combination of desk research, surveys and targeted interviews across seven districts in the north, east and southern provinces to gather data on the mandate and functioning of various non-judicial GRMs and people's perceptions about the dispute resolution processes and outcomes.

Over the years, public officials such as provincial secretaries, district officers (DO), customary law officers (CLO) and council chairpersons, have presided over land disputes between and within communities and families, as well as between communities and corporations. Regulators such as the National Minerals Agency (NMA) and the Environmental Protection Agency (EPA) have also been involved in the resolution of land-related disputes. Non-governmental organizations (NGO), religious leaders, family heads and secret societies have similarly performed dispute-resolution functions in relation to land. Some companies undertaking large-scale land investments have also set up internal complaints mechanisms to deal with operational-level grievances arising from their large-scale acquisition and use of land.

When assessed in light of the VGGT principles and best practices, GRMs within customary tenure showed some vulnerabilities but remain the most accessed non-judicial dispute resolution mechanism. Chiefs, the major intra-community dispute resolvers, often arrogate to themselves powers that have been vested in local courts. They are allowed by law to arbitrate and mediate land and other disputes but many exercise adjudicatory powers. The resolution process is relatively straight-forward but the process is undocumented. Disputants are expected to pay a "hand shake" fee and to cover the costs of all meetings and field visits – costs that sometimes go beyond the means of a complainant. Traditional processes sometimes ignore provisions of statutes that provide better protection for women's property rights, choosing instead to enforce customs which may undermine women's access to land. Outcomes are often specific and include compensation, restitution, boundary re-demarcation and declaration of title. However, the absence of written records undermines long-term resolution.

A number of public institutions undertake land dispute resolution mainly in executing other primary mandate. Some of them have specific regulatory responsibility in related areas such as mineral exploitation and environmental protection. Generally, these institutions do not have clearly defined processes for receiving and resolving disputes and have not consistently documented processes and outcomes. They undertake mediation and generally adhere to fair hearing principles. They provide specific remedies such as compensation and restitution but compliance often depends on the will of the parties. For institutions with regulatory mandate such as the EPA and the NMA, the line between mediation and regulation becomes blurred for disputes within their areas of responsibility. Fines may be levied or licenses may be suspended for non-compliance with dispute resolution outcomes. There is evidence of limited collaboration between some public institutions and customary mechanisms in the resolution of disputes. However public institutions largely operate in silos, thus encouraging forum shopping.

Businesses undertaking large-scale agriculture or mining activities inevitably impact tenure rights in the course of their operations. The VGGT require them to have effective operational-level GRMs to provide remedies. Recent mining regulations, which are in line with the VGGT provisions, set out how companies in the sector should go about that. It is not clear how many have complied. Even though there is no similar regulation for agriculture companies yet, the survey showed that some of them have already set up some form of grievance redress system at the operational level. This includes multiple intake points, such as complaint boxes, grievance officers or community meetings. Some of these intake mechanisms like the complaint boxes have been criticized as ineffective as they often remain unutilized and un-serviced for long periods. It is also not clear how well informed communities are about these intake mechanisms. These companies keep record of

grievances and communicate outcomes in writing. Dissatisfied complainants may resort to other dispute resolution mechanisms.

Civil society organizations (CSOs) have been involved in resolving land disputes using mediation and other conciliation processes, as well as channelling grievances through the different mechanisms. Using a frontline force of community-based paralegals, some of them help disputants engage public, traditional and corporate GRMs. The effectiveness of organizations varies considerably and compliance with outcomes depends on the goodwill of the parties.

Despite their shortcomings, non-judicial GRMs have been an important means of land dispute resolution in Sierra Leone. In addition to being comparatively cheap, quick and accessible to the wider public, they provide justice *in situ* often employing language and form that the parties identify with and understand. Nevertheless, post war reform efforts within the justice sector have paid scant attention to non-judicial dispute resolution mechanisms. If these mechanisms are organized in clear, accessible, effective and rights-compatible ways, they can advance the rule of law and help maintain social cohesion.

With the ever increasing competition for land and the impact of climate change, it is hard to imagine a responsible governance regime without a more rationalized or dedicated mechanism for non-discriminatory, gender-sensitive, fair, equitable, effective, accessible, affordable, timely and transparent resolution of tenure disputes. In broad strokes, a number of options are possible. First, existing institutions could be strengthened by providing them with clear complaints mandate and building their capacity on rights-based land dispute resolution. Alternatively, a single non-judicial institution that deals with all types of land-related disputes with branches all over the country could be established. Another option might be to establish a mechanism to deal with certain administrative or high-level land disputes. Yet another option might be to establish an institution that serves as a secretariat coordinating the dispute resolution work of all existing non-judicial GRMs. These options are not ready-made and exclusive recommendations, but proposals to be explored in the context of policy and law reform and implementation processes.

1. INTRODUCTION

1.1 Background to the Study

The Republic of Sierra Leone is administratively divided into four regions, which are further subdivided into 14 districts and 149 chiefdoms. Chiefdoms are administrative units that are governed by Paramount Chiefs and their chiefdom councils, which are responsible for their "peace, order and good government". Sub-chiefs at section, town and village levels report to the Paramount Chief. District-level administration is provided by District Councils (DC), which exercise governance responsibility over the collection of chiefdoms that form the district. DC have oversight responsibility over chiefdom councils in respect of functions that are delegated to them from the district level (Section 20(2)(h), Local Government Act 2004). While the Local Government Act of 2004 did not envisage the administrative role of the Provincial Secretary and the DO that existed before it, these authorities continue to exist in the structures of the "Regional Offices". The DCs exercise powers of formal administration including the devolved functions of government ministries at the district level, whereas Regional Offices play the role of "native administration" with Paramount Chiefs and previously local courts under them. In practice, Paramount Chiefs report to the Ministry of Local Government but local courts are now administered by the Judiciary.

The 2015 national census estimated Sierra Leone's population at slightly over 7 million. In 2014, 72 percent of the population was judged to be multi-dimensionally poor (Human Development Report 2014). The country's economy is predominantly based on agriculture, which accounts for about half of its gross domestic product (GDP). Mining, for which the country is more known, contributes about 6 percent of the GDP. Smallholder farmers practising shifting cultivation account for the bulk of the food produced locally. However, this output does not meet local needs and Sierra Leone remains a major importer of rice, its staple food. The country is still recovering from the negative effects of its notorious decade-long civil war, which is said to have resulted from inequitable access to land, unequal power relations and conflicts over minerals (Sturgess and Flower, 2013).The recent Ebola outbreak has also adversely affected socio-economic development of the country, at least in the short term.

In recent years, the Government of Sierra Leone has pursued a policy of promoting large-scale investment by leveraging the country's vast natural land and water-based resources (Poverty Reform Strategy Paper 2013-2018; and Post Ebola Recovery Strategy 2015). A number of plantation and mining companies heeded to the call and acquired big pieces of land, while more and even bigger investments are forthcoming.[1] Critics have argued that such investments would undermine food security, deepen poverty and inequality and lead to negative environmental consequences, and called for a moratorium on large-scale land acquisitions (Oakland Institute, 2013). The government on the other hand believes that large-scale agriculture could positively impact on small-scale agriculture. Meanwhile, some large private investments have struggled to cohabit with their host communities, sometimes

1 Some of the notable investors in the country at the time of writing of the present study include Addax Bioenergy and SOCFIN, which are sugarcane and palm planters, and African Minerals and Timis Mining, both ore miners. The Chinese company Hainan Rubber was about to start agricultural investment operations on an estimated 135 000 hectares of land, http://www.osiwa.org/newsroom/from-the-field/more-transparency-needed-for-the-second-largest-rubber-plantation-project-in-africa (accessed on 15th December 2015).

resulting in tension and conflicts.[2] Disputes have arisen mainly over land acquisition processes, use of common resources and impact of company operations on livelihoods and the environment. The absence of corporate accountability and transparency has been highlighted (Amnesty International, 2013). These add to other land-related disputes relating to ownership, use, demarcation, etc., "between families and villages, between genders and between generations" (Millar, 2013).

Sierra Leone has a bifurcated land tenure system, which is generally classified into customary and statutory systems. Customary tenure operates in the provinces where traditional rulers apply rules of particular ethnic or tribal groupings that govern the control, management, use and transfer of land. In the Freetown area, land is governed by principles of common law and statutes with individual freehold rights of exclusivity, use and transfer. Following the structure of the tenure system, there is a dualistic system of land disputes resolution. Under customary tenure, land-related disputes are mainly resolved by traditional authorities, whereas courts play the main dispute resolution role under the formal system.

The Truth and Reconciliation Commission Reports that were issued after the civil war pointed to a catastrophic failure of justice mechanisms in addressing rights violations and justice needs of the people (Conteh, 2012). Since the end of the conflict, efforts to reform laws and institutions have been widely undertaken, mostly in relation to improving the local business climate to attract foreign direct investment. According to the Justice Sector Reform Strategy and Investment Plan II (2011-2014), approx. 70 percent of the population of Sierra Leone do not have access to formal justice structures. They rely on easily accessible and generally less costly customary or informal mechanisms for their justice needs. Nevertheless, these mechanisms have often been criticised for being exploitative and discriminatory. The formal justice mechanisms are not also without their own share of challenges. Apart from being far removed from the population and generally more expensive to access, a 2010 national perception survey on corruption put the judiciary in the six topmost institutions where corruption was most prevalent.[3]

Given the prevalence of land-related disputes and the poor state of access to formal justice for citizens, an inquiry into the existence and viability of non-judicial GRMs that apply to such disputes becomes crucial. Such an inquiry becomes particularly important at a time when some major steps are being taken in the justice sector and land governance in Sierra Leone. The 2011 Local Courts Act, which was enacted to better align traditional courts with the formal courts and to improve the quality of local justice, is being implemented. In 2015, the Government adopted a NLP that envisages comprehensive national land reform. A clear understanding of how non-judicial grievance resolution mechanisms work, their strengths and weaknesses, will be a useful lamppost for the elaboration and effective implementation of the pertinent policies and laws.

2 Aggrieved landowners and land-users in Malen chiefdom, Pujehun, call on the Human Rights Commission to intervene against human rights violations by Paramount Chiefs and chiefdom authorities in SOCFIN operation area: Green Scenery Press Release, 4 December, 2012.

3 This survey was commissioned by the Justice Sector Coordination Office in collaboration with the Anti-Corruption Commission and had a predetermined sample size of 1 000 respondents across the four regions of the country.

1.2 Analytical framework and methodology

Sierra Leone has signed and endorsed a number of binding and non-binding international instruments that relate to the use and governance of land. For example, it is a party to the International Covenant on Economic, Social and Cultural Rights, a binding treaty which protects a host of relevant rights such as the right of everyone to adequate food and the fundamental right to be free from hunger (International Covenant on Economic, Social and Cultural Rights, 1966). Important components of the right to food include the obligation to take measures to ensure food security for all and to create access to "effective judicial and other appropriate remedies" when violations of the right occurs (Committee on Economic, Social and Cultural Rights, General Comment No. 12, 1999, para 32). In agrarian economies like Sierra Leone, access to land is an essential component of the enjoyment of the right to adequate food and hence food security. In this connection, the country has endorsed and is currently implementing the VGGT, an internationally negotiated instrument that enshrines principles and best practices on secure tenure rights and equitable access to land, fisheries and forests. In addition to outlining the responsibilities of state and non-state actors, the VGGT incorporate accountability as an implementation principle and henceforth require that effective and accessible systems of dealing with infringements with legitimate tenure rights, including effective operational-level GRMs, be put in place (Guideline 3).[4]

GRMs are formal or informal, legal or non-legal, judicial or non-judicial processes in which disputes that arise between two or more parties engaged in legal, administrative, economic or social relationships are received, considered and decided or resolved. They may be found within administrative, corporate, customary, traditional and CSOs. GRMs provide local people with avenues to voice their concerns and give public authorities and other relevant non-state actors opportunities to address community concerns. To be effective, they should be easily accessible, rights-compatible, culturally appropriate, and follow prompt, predictable and transparent processes.

The VGGT recognize the importance of complementing judicial systems with state/public, customary and corporate GRMs that may be used to prevent and resolve tenure disputes. The focus of the present study is on the range of non-judicial GRMs, which deal with land disputes arising ordinarily within/among communities or as a consequence of large-scale land acquisitions through various processes including arbitration, mediation, conciliation and negotiation.[5] Despite the huge number of disputes that are settled through these mechanisms in Sierra Leone, the jurisdictional, procedural and remedial aspects of the relevant institutions remain underexplored. The study assesses the extent to which relevant formal and informal, public and private GRMs enhance accountability in relation to the governance of tenure based on standards drawn from the VGGT.

4 The *Principles for Responsible Investment in Agriculture and Food Systems* that were endorsed by the Committee on World Food Security in 2014 similarly underscores the need for grievance mechanisms that provide effective, accessible, equitable, affordable, timely and transparent resolution of disputes.

5 Arbitration is a dispute resolution process in which the parties to a dispute select or appoint one or more independent persons who hear their case, consider the evidence and issue a binding decision. In mediation, the parties freely choose a mediator who assists them to understand the dispute, conduct structured discussion and reach a dispute settlement agreement, without making a decision and closing other options to settle the case. Conciliation is a process similar to mediation in which a Conciliator guides the parties to a settlement, and the parties decide in advance whether they will be bound by the Conciliator's recommendations for settlement. In negotiations, the facilitator's role is to keep the parties talking and bargaining, to keep record of party positions and points of agreement, and prepare a memorandum of agreement which the parties may formalize.

Evidence for the examination of relevant GRMs in Sierra Leone has been collected in two rounds of surveys. In 2014, FAO engaged a national consultant (Mr. Abdulraman Sesay), who conducted a knowledge and perceptions (KAP) survey across seven districts in Sierra Leone (Port Loko, Bombali, Tonkolili, Kono, Moyamba, Pujehun and Bo districts) with people from different walks of life, including farmers (76 percent), traders (13 percent), teachers (5 percent) and housewives (4 percent). The survey administered semi-structured questionnaires with 20 randomly chosen households per chiefdom (in a total of 35 chiefdoms) in the 7 districts with a view to gauge the awareness of the respondents on land laws and their perceptions regarding ownership and control of land and land-related conflict resolution. A provisional study was produced on this survey, but the completion of the data collection on the existing GRMs and the overall study writing was interrupted because of the Ebola crisis.

To supplement the data collected in 2014 and to further investigate the structures involved in the provision of non-judicial grievance redress for land conflicts, FAO engaged Namati Sierra Leone which conducted two sets of defined interviews in various chiefdoms in Bo and Bombali districts in 2015. Considering the difficulty of collecting a representative sample, Namati first identified the institutions and individuals to be interviewed based on preliminary scoping missions and through the deployment of its paralegals in the field to screen out people with past or present land-related disputes. Accordingly, the first set of survey specifically identified and questioned individuals who had been involved in land disputes, which had been dealt with through non-judicial means. A total of 34 randomly selected individuals provided responses to 12 structured questions aimed at eliciting information about, *inter alia*, their perception of the process, satisfaction with outcomes and enforcement of remedies.[6] The second set of interviews targeted institutions/persons involved in the resolution of land disputes by non-judicial means as "arbiters." A mixed group of 35 governmental, non-governmental, customary and corporate entities provided responses to 19 structured questions aimed at eliciting information about, *inter alia*, types of disputes handled, resolution methods and processes, remedies offered and enforcement capacity. Selection of institutions was based on information from disputants and other sources (such as the VGGT workshops) about the most frequently approached institutions/persons for the resolution of land disputes by non-judicial means.

The questionnaires for both sets of interviews were developed based on internationally accepted standards relating to GRMs that are enshrined in the VGGT and related instruments. It is nonetheless important to acknowledge that the surveys do not pretend to be exhaustive and that they did not involve formal consultations with the institutions. The questionnaires are presented in Annex 1 to this report.

Finally, several primary and secondary materials were consulted in a desk review. These included local legislation, text books, articles, news articles and government and NGO reports on land and land-related dispute resolution.

6 The 2014 survey also investigated the issue of effectiveness of remedies.

2. LAND TENURE AND LAND ADMINISTRATION SYSTEMS IN SIERRA LEONE

2.1 Land tenure systems

Sierra Leone has a plural legal system in which customary rules and English-type laws co-exist. This duality is recognized and upheld by the 1991 Constitution, the highest law of the land, and reflected in myriad other laws.[7] It is the product of the country's colonial history and affects all aspects of life and governance, particularly, its land tenure system. As stated earlier above, customary tenure operates in the provinces mainly through 'family land owning' system, whereas land tenure in the Freetown area is governed by principles of common law and statutes[8] with individual freehold rights. Some have however argued that the land tenure system has evolved into a more complex system, including substantive variations within and among both forms (Moyo & Foray, 2009). In addition to the ones based on statutory law (freeholds, state land) and customary laws (family lands), there are now expanding and increasingly controversial forms of tenure called 'declaratory holdings', the validity of which is questioned by the perception that they represent the grabbing of state land.

Land is generally classified as state land, private land or communal land. In the western area, which constitutes less than 3 percent of the total land space in the country, much of the land is now held in private ownership with freehold rights of use and transfer (Table 1).

Table 1: Authority to control and/or own land (2014 KAP Survey)

		Local Council	Paramount Chief	Land owner	Government
District	Port Loko	5.0%	5.0%	90.0%	
	Bombali		10.0%	90.0%	
	Tonkolili		20.0%	80.0%	
	Kono		60.0%	40.0%	
	Moyamba		10.0%	90.0%	
	Pujehun		15.0%	80.0%	5.0%
	Bo		30.0%	70.0%	
Total		**0.7%**	**21.4%**	**77.1%**	**0.7%**

By law, all private land in the western area should be traced to title obtained from the state (State Lands Act 1960), however, much of what was state land has been lost to private individuals either through adverse possession or other non-transparent ways. The vast majority of the country's land is located in rural areas and is under customary tenure. Traditionally, chiefs are meant to serve as custodians of the land but statute law transferred

7 Section 170 of the 1991 Constitution stipulates that the laws of Sierra Leone comprise statutes, English common law, rules of equity, rules of customary law as well as written and unwritten laws in force before the constitution came into effect. The constitution also recognizes and upholds formal and traditional courts as well as the institution of chieftaincy.

8 The Imperial Statutes (Law of Property) Adoption Act, Cap 18 adopted a number of English property statutes. These include the Conveyancing and Law of Property Act 1881 and the Settled Land Act 1884.

that responsibility to Chiefdom Councils in which all land in the provinces are vested (Provinces Land Act, Cap 122). Paramount Chiefs, however, continue to share this responsibility as they head these councils. Most of the land under customary tenure is held by extended families, the members of which have access and use rights. Older males often designated "family heads" wield enormous control over family holdings and make allocation decisions. The KAP survey that gauged public perceptions in the provinces about the control of land and the source of authority for such control and ownership underscored the powers of land-owning families. They come first (approx. 77 percent), followed by Paramount Chiefs, as sources of authority to control and own land.

Women in the provinces have generally little control over family land and comparatively less influence on allocation decisions. This is attributable to the rules of customary law in force in those areas. The 1991 Constitution of the country appears to allow the continuation of this practice as it subjects its provisions on the fundamental rights of equality and non-discrimination to customary law and excludes the application of equality before the law "with respect to…devolution of property on death or other interest of personal law" (Constitution of Sierra Leone, 1991, Sec 27). The results of the survey conducted in 2014 seem to confirm that women have less control over land, although the views of many interviewees also appear to be based on the perception that women own and control land together with other family members (Table 2). The survey further shows that rules of customary law in the south and east of the country are less discriminatory than those in the northern parts.

Table 2: Women's right to own and control land in districts and communities (2014 KAP Survey)

		Yes	No
District	Port Loko	35.0%	65.0%
	Bombali	35.0%	65.0%
	Tonkolili	60.0%	40.0%
	Kono	70.0%	30.0%
	Moyamba	90.0%	10.0%
	Pujehun	70.0%	30.0%
	Bo	80.0%	20.0%
Total		**62.9%**	**37.1%**

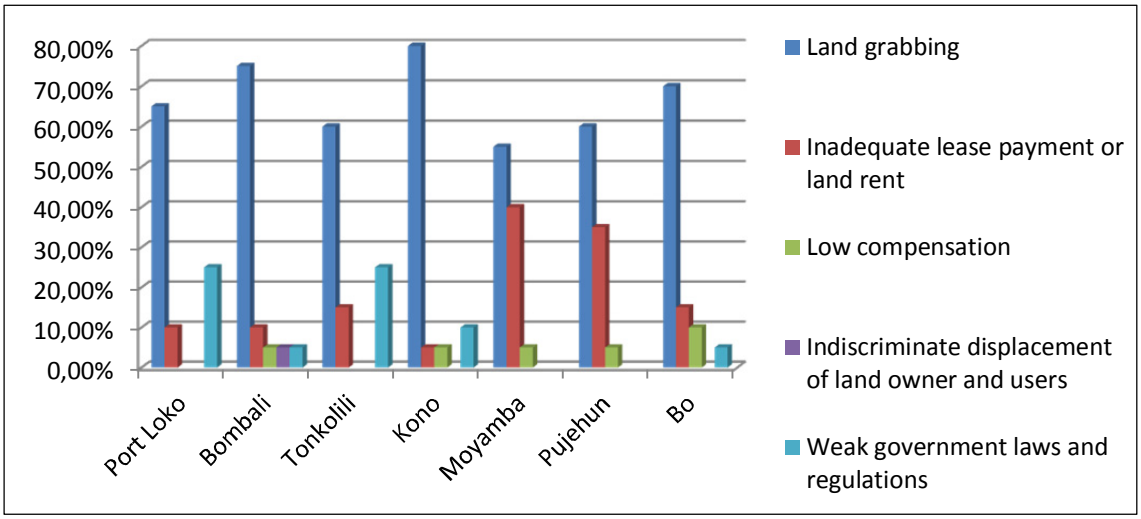
Outsiders or "strangers" who wish to farm may obtain permission from landowning families to use land on a periodic basis against the payment of a nominal amount or a percentage of the crop-yield to the family as use rent (USAID, 2010). There is no right of outright alienation of land under customary tenure although in recent years the practice of executing conveyances for land transactions in the big towns in the provinces has gathered pace. Anyone who is not entitled to rights in land in the provinces (companies and descendants of settlers in the former colonies called *krios*) may only acquire a leasehold for 50 years (Laws of Sierra Leone, Cap 122). Many largescale agriculture and mining companies have acquired thousands of hectares of land over the past 10 years using this provision of law.

The diversity of the landholding systems is accompanied by legal and administrative pluralism. As indicated above, a plethora of relatively old statutes, common law principles

and customary laws that are not well known to the public govern the different landholding systems. While a sizable number of the respondents (47.1 percent) to the KAP survey of 2014 indicated that they know something about the land laws of Sierra Leone, deeper scrutiny of the matter would show that most people have little or no knowledge of the laws. Furthermore, there are differing views on land management authority, in particular with respect to the relative powers of the government (e.g. ministries in charge of land, housing, country planning, agriculture, forestry and food security) and those of the chiefs. Related to this are the divergent meanings ascribed to the legally specified custodianship (or trusteeship) role of the chiefdom councils over land in the provinces and the control and/or 'ownership' of land by land owning families. There are also differences in relation to the nature of authority of family heads and the place of women and the youth over land allocations and leasing out of family-owned land to non-natives or to investors. Women and the youth do not often participate in decision-making processes.

Land disputes are among the most common types of civil disputes in Sierra Leone and the nature of such disputes vary depending on the tenure system. For land held under customary tenure, disputes arise as a result of lack of consent over land transfer, arbitrary exercise of power by a traditional authority over land, inter- and intra-community and family claims of land ownership and boundary, and various land use disagreements. Causes of land disputes within the formal tenure include use of fraudulent documents, multiple rights over land, trespasses and erroneous surveys. Some authors have even suggested that one of the causes of the civil war was the tension between land-owning elites seeking labour for their farms and impoverished rural youth (Richards, 2005). In some areas, Paramount Chiefs supplied labour to landowners by restricting access to land and imposing excessive fines and fees on local youth, who were then required to work, sometimes under exploitative conditions to pay off the fines. This arguably created an incentive for the youth to join the insurgency (Richards, 2005). Tenure disputes have certainly changed and have become more sophisticated in the post-conflict era as demand for agricultural land increased and use patterns changed. The respondents of the KAP survey of 2014 pointed to land grabbing, as in the acquisition of land without the consent of owners and users, as the main cause of land disputes in the provinces (Table 3). The survey further identified the incidence of multiple land sales, conflicting authorities over land administration (involving land owning families, traditional authorities and various arms of the state) and the growing land use conversion as additional causes of conflicts.

Table 3: Causes of land disputes (2014 KAP Survey)



In keeping with the duality of the land tenure system in Sierra Leone, resolution of land disputes is also generally bifurcated. Under customary tenure, chiefs play an important traditional dispute resolution role. Tenure disputes under the formal system are generally resolved by the High Court, the Magistrate Courts and the Local Courts, but alternative dispute resolution mechanisms are also recognized (Constitution of Sierra Leone 1991, Sec 132 – see also Commercial and Admiralty Court Rules 2010, and the Arbitration Act, Cap 25 of 1927). Within and sometimes straddling both systems are public, private and other community-based mechanisms involved in land-related dispute resolution, often as part of the execution of their primary mandates.

In the western area, courts reportedly entertain a large number of land cases. It is estimated that 70 percent of the higher courts' dockets are land disputes (Ainley *et al*, 2014). Court processes are slow and expensive, with matters easily lasting up to three or more years. Simple land disputes like trespass could be handled by Magistrates' Courts, the most junior level within the formal judicial system. More serious land disputes such as land ownership are handled in the High Court. A right of appeal exists from both courts. Outside the courts, the Arbitration Act, Cap 25 of 1927 allows parties to an agreement, such as a lease to stipulate arbitration as the method of dispute resolution. Also, the rules of procedure of the fast track commercial court, a division of the High Court provide for alternative dispute resolution. Rent tribunals could inquire into issues of unfair rent increases between landlords and tenants but these have not been put in place for a while.

Under customary tenure, the first port of call for land disputes has been the chief even though they no longer have powers of adjudication. Although some intra-family land disputes are first brought to the attention of the family head, an aggrieved person usually goes to the level of the accessible chieftaincy structure, normally the village chief, for assistance. More serious cases or appeals (on the basis of seniority) are handled by a more senior chief - a section chief before they get sent to the Paramount Chief. Land disputes may also be addressed to a religious leader or "secret society" (Manning, 2009). With the enactment of the Local Courts Act 1963, the power to adjudicate or hold court was removed from the Paramount Chiefs and vested in Local Courts. These Courts apply both customary and formal law and could hear and determine land disputes except those between Paramount Chiefs or chiefdoms. Such disputes had to be determined by the DO or the Provincial Secretary. In 2011, a new Local Courts Act was enacted, bringing Local Courts under the aegis of the Judiciary. Local Courts now form part of the formal justice mechanism, but they continue to apply both customary and formal laws. They can also hear and determine land title disputes between Paramount Chiefs or chiefdoms, taking over the powers of DOs and Provincial Secretaries who used to decide such land disputes (Local Courts Act 2011, Sec 15(6)). Chiefs are allowed to arbitrate or mediate disputes including land-related disputes under the new Local Courts Act, but they are forbidden from adjudicating.[9] Decisions from a Local Court could be reviewed by a CLO, who is a state counsel attached to the Ministry of Justice, or appealed in the Magistrate's Court.

9 Arbitration is carried out only with the consent of both parties to the dispute, whereas any party can approach the court for redress.

2.2 Land administration institutions and challenges

Land rights administration comprises the public structures and processes through which rights in land are created, defined and recorded or certified, land transactions are conducted, and land rights disputes are processed. The Land Policy of Sierra Leone that was adopted at the end of 2015 identifies a number of problems besetting land administration, including "…a high degree of out-datedness, technical complexity, unclear managerial hierarchy, operational inefficiency, inadequate resources and corruption". There are a number of institutions that have direct and indirect responsibilities to manage and administer land or rights in land in Sierra Leone. This section presents these institutions[10] and highlights some land administration challenges in the country.

2.2.1 Land administration institutions

Ministry of Lands, Country Planning and the Environment: Established under the 1991 Constitution, the Ministry is currently responsible for policy formulation. Its mandate includes managing state lands, carrying out compulsory acquisition, surveying and mapping, planning and development. Under the NLP 2015, many of the Ministry's operational roles will be devolved to a new national Land Commission. The Ministry's residual role would mostly revolve around policy making, oversight, coordination, resource mobilization and monitoring and evaluation.

Ministry of Agriculture, Forestry and Food Security: Similarly established under the 1991 Constitution, the Ministry of Agriculture is responsible for the sustainable management of resources in agriculture and forestry to attain food security, poverty reduction and environmental sustainability. It supports the production of all crops and livestock in an environmentally sustainable manner to achieve food security. It is also responsible for the management of forests and forest resources. The mandates of the Ministry relating to agricultural production and forestry are closely related to land.

Ministry of Mines and Mineral Resources: With the establishment of the NMA in 2012 by an Act of Parliament, the Ministry's role has largely been reduced to policy making, oversight and evaluation of the mining sector. Operational responsibilities of the Ministry have been transferred to the new agency. The Ministry is established under the 1991 Constitution.

Ministry of Local Government and Rural Development: Established under the 1991 Constitution, this Ministry oversees the implementation of the country's local government reform and decentralization programme. The Local Government Act 2004 provides for the devolution and decentralization of functions, powers and services previously exercised by ministries, departments and agencies at the central level to local councils. The Ministry oversees 13 District Councils, 5 Town Councils and 1 City Council. Additionally, by virtue of the Chieftaincy Act 2009, the Ministry exercises responsibilities in relation to the election of Paramount Chiefs. The mandate of Local Councils includes the development, improvement and management of human settlements and the environment.

National Minerals Agency: The NMA was set up by an Act of the same name in 2012. It is responsible for the administration and regulation of mineral rights and minerals trading and other technical functions like geological survey and data collection. The agency may also

10 The list of institutions is not exhaustive. It does not include some institutions such as the National Protected Area Authority, whose mandate of conservation of biodiversity relates to land.

advise and make recommendations to the Minister responsible for mining for purposes of improving mining laws and policies. It has a specific mandate to administer and enforce the Mines and Minerals Act 2009, the major legislation governing the operation of mines and the acquisition of mineral rights in Sierra Leone. It issues various types of mining-related licences and can also suspend or revoke mineral rights for infringements of the act or the terms of issue. Considering that a sizable amount of land in some districts is used for mining,[11] the Agency's mandate is quite pertinent to land administration.

Environmental Protection Agency: The EPA was set up by the Environment Protection Agency Act 2008 to protect the environment. Its mandate is quite expansive ranging from advising on policy formulation to issuing environmental permits and licences and ensuring compliance with environmental laws and regulations. The Agency can suspend, cancel or modify licences and permits for non-compliance. Major agriculture, fishing, mining and construction projects are required under the 2008 law to obtain renewable environmental licences before and during operations.

Office of the Administrator and Registrar-General: The Office of the Administrator and Registrar-General is a department of the Ministry of Justice which serves as the public registry of transactions or instruments relating to land such as conveyances, statutory declarations, deeds of gift, leases and mortgages. The Registry is accessible to the public on payment of a prescribed fee. The Office was established by the General Registration Act, Cap 255. Together with the Registration of Instruments Act, Cap 256, both laws constitute the legal framework for the registration of all documents required by law to be registered. Failure to register may result in the loss of a right or interest in land. The Office of the Administrator and Registrar-General does not investigate ownership of or interest in land that is registered and as such does not guarantee the legal validity of the deeds or interest registered. This archaic system of registration of instruments has exacerbated land conflicts across the country because it allows multiple registration of documents in respect of a single piece of land. While the NLP 2015 foresees a new land registration system, Cap 255 and Cap 256 were under revision at the time of writing the present study.

Chiefdom Council: Previously known as Tribal Authorities, Chiefdom Councils exercise authority over chiefdoms, which are the basic units of local and native administration in the provinces. There are currently 149 chiefdoms across the country. Constituted by the Chiefdom Councils Act, Cap 61 of 1938, Chiefdom Councils are headed by Paramount Chiefs and comprise councillors and "men of note" elected by the people within the chiefdom in accordance with customary law. By an amendment to Cap 61, members of parliament became members of Chiefdom Councils in 1975. Chiefdom Councils are mandated to maintain "order and good government" within their areas. Importantly, all land in the provinces is vested by the Provinces Land Act, Cap 122 in the Chiefdom Council, which holds such land in trust for the community. Anyone who is not entitled by birth to land in the provinces can only occupy land in the provinces with the consent of the Chiefdom Council. This provision is particularly relevant for companies seeking to hold land in the provinces.

Local Councils: The Local Government Act 2004 established Local Councils as the highest political authority within a locality with legislative and executive powers. These Councils have been assigned a range of general and specific duties which government ministries,

11 Respondents to the 2014 KAP Survey in Moyamba, Kono and Tonkolili indicated that 5-10 percent of the land in their localities is used for mining.

departments and agencies used to carry out. Some of the general responsibilities include, the development, improvement and management of human settlements and the environment in the locality and the provision of basic infrastructure, works and services. Many of the mandates of the Councils are clearly related to land. Government ministries are, at least in theory, left with policy oversight, technical assistance and monitoring responsibilities.

2.2.2 Land administration challenges

The discussion relating to tenure rights recognition and causes of land disputes in Section 2.1 provided some insight into issues in land administration in Sierra Leone. With the recent expansion in urban development and agricultural investment, the limitations of the land administration systems became even clearer, particularly in the areas of demarcation, surveys and registration (Moyo and Forey, 2009). The NLP of 2015 characterizes these systems as being in various conditions of 'disuse' and mismanagement. Public land services are generally believed to be time consuming and not easily accessible.

As indicated earlier, the land instruments registration system is archaic and fraud-prone. As of the time of writing of this study, the system, for example, allows for multiple transactions over a single piece of land to be registered without any robust filtering or detection mechanism. Over the years, unscrupulous vendors and imposters have been able to sell land they already sold or did not own to unsuspecting buyers. These have led to many court cases. The new land policy envisages the replacement of this system with one that registers title.

In the past decade or so, the government has enacted a number of legislation aimed at improving service delivery. In particular sectors, it has sought to separate oversight from operations. In mining, for example, the government established the NMA to manage operational responsibilities whilst the Ministry of mines retains oversight and policy duties. Similarly, the EPA was set up with operational responsibilities for the environment, with the Ministry of Lands, Country Planning and the Environment retaining oversight and policy functions. Unfortunately, such transitions have had some challenges as ministries have tried to exercise operational powers to the annoyance of the new entities. This has sometimes played out in the open, sending confusing messages to the public.

Another challenge of land administration has been somewhat overlapping institutional mandates, especially among newly created agencies. The NMA and the EPA have often clashed over which agency has responsibility for environmental issues in the mining sector. Both agencies have sometimes worked for cross-purposes and feuded over operational responsibilities (Conteh M., 2015).

In the context of customary land administration, one major challenge relates to the custodianship of the Chiefdom Council over provincial land as per the Provinces Land Act, Cap 122. The Council, of which the Paramount Chief is merely a chief executive, manages and controls land within the chiefdom. However, Paramount Chiefs have increasingly arrogated land control powers of the Councils to themselves, unilaterally making decisions on alienation of land, particularly to investors, sometimes in ways that contradict the interest of legitimate tenure right-holders. This has led to charges of arbitrariness and lack of consultation and consent-seeking. In some cases, communities have sought legal redress against such chiefs. For example, in 2016, land owners of Nimiyama Chiefdom in eastern Sierra Leone obtained judgment against their Paramount Chief and a Chinese company,

annulling the sale of land by the former to the latter and awarding damages (Awoko Newspaper, 2016).

Many of the respondents to the KAP survey of 2014 expressed lack of confidence in the land administration processes, especially decisions through which access to and use of land are made. According to a scoping mission report of 2009, land allocation decisions are considered to be ridden with conflicting interests among policy makers, chiefs and other functionaries (Moyo and Forey, 2009). In particular, the finding that land held by the state is considered to be not managed in a transparent, accountable, and efficient manner is confirmed by the more recent survey. The land administration system in the western area has been characterized by fragmentation of authority, bureaucratic impasse, inadequate planning and oversight and lack of coordination (Moyo and Forey, 2009). Similarly, land tenure administration in the provinces has been criticized for being cumbersome, uncertain, opaque and fragmented, resulting in high transaction costs. The NLP 2015 aims to address many of these challenges. Coupled with the lack of clarity and weaknesses in institutional arrangements and the arbitrary use of power, the perceptions of ineffectiveness in land administration processes provide insight into the actual and potential prevalence of land-related disputes.

3. NON-JUDICIAL GRIEVANCE MECHANISMS OPERATING IN SIERRA LEONE: MANDATES, PROCEDURES AND REMEDIES

Many of the institutions or authorities involved in land management, administration or oversight have also been identified or self-identify as being involved in the resolution of land disputes and the provision of non-judicial redress. The present section presents the non-judicial institutions that are involved in the resolution of land-related disputes and the perceptions of disputants who took cases to some of these institutions. Based on the data gathered through targeted surveys/interviews and criteria drawn from the VGGT, this section discusses institutional mandates, procedures and remedies in relation to land disputes on the one hand and people's perceptions about the processes and outcomes on the other.

3.1 Institutions resolving disputes by non-judicial means

The VGGT provide an important comparative framework for assessing the effectiveness of existing non-judicial GRMs. Their recommendations can be categorized under three broad criteria against which public, customary and private dispute resolution mechanisms could be evaluated. These are: (i) the competencies of the institution; (ii) its processes and procedures; and (iii) the remedies offered and enforcement capacity.

A major objective of the targeted interviews of 2015 was to discover which institutions or authorities, other than courts, in practice receive, process and provide redress in land-related complaints. Four broad categories of institutions, namely, governmental, customary, non-governmental and corporate bodies, provided responses to structured questionnaires. The issues covered by the surveys include the types of disputes the institutions deal with, the methods and processes of dispute resolution they follow, and the remedies they provide and enforcement mechanisms they deploy. It is important to note up front that for some of these institutions, resolving land disputes is not their core responsibility.

There are sixteen respondents self-described as "government institutions or authorities". These are (i) National Minerals Agency (NMA) – Regional; (ii) Office of National Security (ONS); (iii) Environment Protection Agency (EPA); (iv) Human Rights Commission; (v) Provincial Secretary (x 2); (vi) District Officer (DO) (x 2); (vii) Ministry of Lands; (viii) Police (x 3); (ix) District Council Chair (x 3); and (x) Customary Law Officer (CLO).[12]

3.1.1 State/public institutions or authorities

In relation to state or public institutions, the VGGT require the following in terms of institutional competence, processes and remedies of GRMs:

1. Competence/capacity: The state should provide impartial and competent administrative bodies (or alternative means) for resolving disputes over tenure rights (Guidelines 4 & 21). While the state may establish specialized tribunals or independent review mechanisms such as ombudsman for land disputes, implementing agencies may also address land-related disputes within their technical expertise through administrative review (Guidelines 6 & 21). These bodies should preferably be set up by law to do so and should ideally carry out dispute

12 This list does not pretend to be exhaustive because other public institutions with direct and indirect land administration responsibilities may also be involved in resolving land-related disputes.

resolution consultatively and in a bid to prevent future conflicts. It would further be wise to put in place multi-stakeholder platforms to prevent or address land-related disputes (Guideline 26).

2. Process: Public GRMs should provide timely and affordable means of resolving disputes and vulnerable and marginalized persons should have access to the mechanisms with legal or technical support through paralegals or parasurveyors (Guidelines 4, 6 & 21). They also require that decisions are delivered in writing with reason.

3. Remedies/enforcement: The GRMs provide effective remedies including restitution, indemnity, compensation and reparation as well as prompt enforcement (Guidelines 4 & 21). The Guidelines also require that a right of appeal to a judicial authority exists from these outcomes.

These benchmarks have been applied in examining institutional mandates and processes and in analysing the responses of the institutions to determine how they compare. The benchmarks have also been applied in the analyses of specific case studies (see Annex 2) that attempt to show the functioning of various types of GRMs.

(1) The National Minerals Agency (NMA)

The Mines and Minerals Act 2009 is the principal law regulating the exploitation of minerals in Sierra Leone. Section 2 of the Act vests ownership and control of minerals in, on or under any land in the state, irrespective of any existing rights. The Agency is responsible for all activities associated with administering mineral rights and monitoring mining operations (Section 12(2)(a) National Minerals Agency Act 2012). It may grant one of five types of mineral rights: reconnaissance licence, exploration licence, artisanal mining licence, small-scale mining licence and large-scale mining licence (Section 22). Mineral right-holders are required to obtain surface rights from persons in possession of land over which a mineral right has been granted (Section 34). In the event of disagreement or failure to pay for the surface right or compensate for other disturbances, the Agency may step in to resolve the matter (Section 35(6)). Where land owners refuse to grant surface rights to holders of mineral rights, the Agency may dispense with their consent and authorize the holder to exercise the mineral right (Section 32(1)(iv)). The agency may suspend or cancel a mineral right if the holder violates the terms of issue or the provisions of the act (Sections 52 and 53). The forgoing provisions indicate the Agency's mandate to resolve disputes relating to land and minerals. Anyone dissatisfied with a decision of the Agency may apply to the High Court for review (Section 175).

In its response to the survey, the agency stated that it has handled disputes relating to large-scale land investments in the mining sector arising either between companies or between a company and a community. These included disputes over concessions, ownership of land, boundary demarcations, payment of surface rent and flooding. It did not handle disputes between or within communities or families.

There is no complaint procedure in the Mines and Minerals Act or the National Minerals Agency Act that aggrieved persons could follow. In many instances, complainants simply write to the director or the regional head of the Agency. This means that those who are unable to write may find it difficult to present their complaints. The agency often relies on its in-house technical expertise.

In handling disputes, the Agency applies various methods like mediation, arbitration and conciliation, sometimes in combination. It also holds community dialogue sessions and town hall meetings. In terms of process, the agency receives and records complaints from an aggrieved party and later would invite the other side to a meeting with the complainant. Agency officials would then listen to both sides, after which, they would explain the relevant legal provisions applicable to the matter in dispute. Both parties would then be encouraged to reach a compromise. Sometimes, some of these sessions would be conducted with the help of traditional authorities. The Agency is required to put its decisions in writing with respect to matters within its primary mandate such as refusal of an application for mineral rights or revocation of an existing one.

The Agency's role as a regulator makes it a very peculiar grievance mechanism. It is able to provide effective remedies in respect of its core mandate; it can suspend or revoke licences for mineral rights for infringements of the Act or the terms of issue. Depending on the nature of the dispute, a variety of specific remedies or solutions could be "suggested" in practice. They include re-demarcation of boundaries, compensation, relocation, compliance with terms, e.g. payment of surface rent, or review of company practices. To ensure compliance with outcome of dispute resolution, fines may be levied. Continued non-compliance could result in the recommendation to the Director for suspension of a company's licence to operate. There is a right of appeal to a judicial authority although it is limited to certain outcomes.[13]

As indicated above, the NMA is set up by law to regulate and administer mineral rights and minerals trading in Sierra Leone. It may be considered as an implementing agency with mandate to redress grievances. The staff of the Agency are required to have the requisite technical expertise. Because it raises funds by selling mining-related licences there are doubts as to whether the Agency may be impartial in a dispute between a licence holder and a non-licence holder. In a recent dispute involving communities and two feuding mining companies, the Agency called a multi-stakeholder meeting to resolve the problem but fell short of addressing community complaints as its officials simply identified the company that is authorized to carry out operations and read the riots act to the attendees.[14]

(2) Office of National Security (ONS)

Section 17(1) of the National Security and Central Intelligence Act 2002 established the ONS as a secretariat of the National Security Council. The Council is a high-level forum which considers and determines matters relating to the security of the country and is chaired by the President (Sections 2 and 4). The ONS is the principal adviser to the President and government on state security issues and coordinates the security sector (Section 18). It also issues licences to persons operating private security firms (Section 18). The institution draws a broad dispute resolution mandate from the 2002 Act, which makes it responsible for internal and external security.

In its response to the survey questionnaire, ONS stated that it has handled disputes relating to large-scale land investments arising between companies and communities as well as land

13 There is a right of appeal in relation to decisions concerning all of the mineral rights covered by the act except artisanal mining.

14 See Sierra Leone: NMA Challenges EPA's Suspending of AMR Gold Operations, available at <http://allafrica.com/stories/201506030680.html> (accessed on 17 February 2016). The Agency was accused of not being concerned with the views of the community on the matter. Tension persisted in the community at least as of the time of writing of the present study.

disputes between or within communities and families. Examples of company-related disputes include delay in rent payment or omission of land-owning family members entitled to receive rent. Intra- or inter-community disputes handled by ONS included boundary disputes between families and chiefdoms and questions of ownership or control of land.

The main tools of conflict resolution have been mediation, company/community conciliation and arbitration or a combination of these methods. In terms of process, the Office would receive a complaint from an aggrieved party and then invite the other side. Both sides would tell their stories after which officials would embark on fact-finding. Following this investigation and the submission of documents, a decision would be reached. For some land disputes, the ONS would enlist the help of traditional leaders. In terms of remedies, it could suggest boundary re-demarcation or compliance with the terms of an existing agreement. The institution does not enforce decisions in the event of non-compliance. It relies on the confidence of the public in the ONS as an all-encompassing security institution to secure compliance. It may also refer matters or parties to court for adjudication.

This Office has no direct responsibility to resolve disputes over tenure rights. However, the argument has been made in some quarters that land conflicts, especially over large-scale acquisitions, are matters of national security. This appears to be the basis for the involvement of ONS in land-related dispute resolution. Given that it is an implementation agency that was not expressly set up as a tenure conflict-resolving outfit, it does not fully meet the requirements envisaged by the VGGT in terms of procedures as well as the provision of effective remedies.

(3) Environment Protection Agency (EPA)

As stated earlier, the functions of the EPA include issuing environmental permits, licences and pollution abatement notices, ensuring compliance with environmental impact assessments and conducting investigations into environmental issues.[15] One of the key departments of the Agency is the Environmental Compliance and Enforcement Department. The Agency issues environmental licences to persons wishing to undertake certain large-scale projects.[16] Before licences are issued, comprehensive consultative impact assessments should be carried out in the proposed project area (Section 26). Section 34 of the Act empowers the agency to modify, suspend or cancel an environmental licence. Anyone dissatisfied with the decision to suspend or cancel a licence may apply to the High Court for review. In addition, the Agency may require the holder to "take measures to abate such adverse effects on or remedy any damage to the environment where necessary" (Section 34(3)). The Agency may enforce its mandate by notices, the breach of which constitutes an offence (Sections 53 & 54).

In its response to the survey, the EPA stated that it has handled disputes relating only to large-scale land investments within its core area of responsibility, i.e. environmental protection. Examples include land degradation by companies, improper disposal of chemicals, pollution and abandoned mines.

15 The functions of the Agency are quite extensive. Section 12, Environment Protection Agency Act 2008 lists 21 specific functions of the Agency.

16 Schedule 1 of the Environment Protection Agency Act 2008 lists the projects out. They include infrastructure, largescale mechanized farming, extractives and industrial forestry projects.

Those who can write could send their complaints to either the executive chairperson or the head of its regional offices. Again this means that those who are illiterate or vulnerable and marginalized persons will have difficulties presenting their complaints unless they receive technical and legal assistance. In addition to receiving written complaints, the EPA carries out its own investigations in the course of which it may be involved in dispute resolution. In handling complaints, the Agency holds mediation, arbitration, community dialogue sessions or a combination of these mechanisms to resolve disputes.

Like the NMA, the Agency's role as a regulator makes it a very peculiar arbiter or mediator. It can, separate from any mediated conclusion, order compensation and mitigation of harm. The Agency can also impose fines, suspend environmental licences or halt the operations of companies. In some cases, the Agency would go to court.

As indicated above, the EPA also issues environmental licences to companies and ensures that they comply with the terms of the licences and the law. As a result, like in the case of NMA, there are concerns about the impartiality of the Agency in a dispute involving a licence holder and a non-licence holder.

The fact that the Agency can provide remedies that extend from suspension or revocation of licenses to requiring measures to abate adverse effects and payment for damages shows that it has some of the basic features of GRMs envisaged in the VGGT. However, a case documented by the present study shows that the EPA sometimes does not exercise its decision-making powers and rather seeks negotiated solution to disputes (see case study 5 of Annex 2). While such an approach could be good in terms of reaching amicable results, it may also run counter to the imperatives of providing effective remedy.

(4) Ministry of Lands, Country Planning and the Environment

In its response to the survey, a regional office of the Ministry of Lands, Country Planning and the Environment stated that the Ministry has dealt with disputes relating to large-scale land investments as well as land disputes between and within communities and families. Examples of the former include blasting and other forms of environmental disturbance. Community-level land disputes mostly concern boundary demarcation.

The regional office's principal tool of conflict resolution is mediation and conciliation. Once it receives a complaint, both parties are invited, statements are recorded and relevant documents are presented. Officials then carry out site visits. For boundary disputes they carry out demarcations based on chiefdom maps and prepare composite plans to show overlaps or encroachments. Based on the outcome of this exercise parties are encouraged to reach a settlement. The office draws authority from the Surveys Act 1951.

Some of the outcomes parties may agree to include re-demarcation of boundaries, restitution or relocation. The office does not have the power to compel compliance and so it may advise the parties to seek redress in court.

More or less similar findings apply to the procedure and outcome of the Complaints Unit at the Ministry of Lands, which at the time of the writing of the present study existed at the headquarters. Complainants write to the Ministry (often addressed to the Director of Surveys or the Permanent Secretary) with regard to technical issues such as boundary demarcation and "development control issues". The Unit invites and hears the parties, looks at their evidence and may conduct field visit. It makes use of technical expertise at the

Ministry to ascertain boundaries and land use claims, and passes recommendation to be acted upon by the Permanent Secretary.

The Ministry's role in policy formulation makes it a less than practical mechanism for land-related dispute resolution. It does not obviously have clearly set out complaint procedure. Entities with operational responsibilities, like EPA or NMA are in a much stronger position to discharge that function.

(5) Human Rights Commission

The Human Rights Commission of Sierra Leone Act 2004 established the Commission to promote and protect human rights in the country. The Commission has a rights promotion and protection mandate. Under rights promotion, it can undertake public awareness programmes, but can investigate complaints or allegations of rights violations under the rights protection mandate (Section 7). The Commission can review laws and policies and recommend to the government ways of making them compliant with international rights obligations. The Commission has developed its own rules of procedure.

The Commission has received complaints relating to large-scale land investments. While it normally investigates and reports on cases of violations of human rights, it sometimes conducts mediation between complaining communities and responsible entities.[17] However, it does not process complaints or provide remedies for land disputes *per se*. Such complaints are normally referred to the appropriate authority depending on the nature of the case. The Commission records the complaints and monitors how they are resolved by the institutions handling them. It also passes recommendations for the establishment of GRMs by different actors including government, CSOs and companies.

The Commission has investigated and reported on human rights issues relating to land or natural resource exploitation. For example, in its 2011 report, it reported on cases of non-/inadequate compensation in cases of land/property acquisition by government or companies for road construction or agricultural or extractive projects. It recommended that the Ministry of Lands and Country Planning should adopt human rights-based approach in land acquisition and that Sierra Leone Roads Authority should establish land/property compensation redress mechanism.

(6) The Police

The Sierra Leone Police is established under the 1991 Constitution but its mandate is contained in the much older Police Act of 1964. Broadly, it is responsible for maintaining internal security for persons and property and law and order.

Following post-war restructuring, aided in large part by the Commonwealth, the police adopted a "community-policing" posture. This has been described by the police as "proactive, non-conflictual policing" which includes local community authorities and other agencies in the decision-making process of policing.[18] This new form of policing has led to the creation of several community-level police partnership boards and a community relations department within the police. It has also led to the adoption of new ways of

17 For example, the Commission attempted to mediate in a case where a community in the Malen chiefdom of Pujehun district complained about the adequacy of compensation in lieu of land given to a company and requested other benefits.

18 http://police.gov.sl/information/community-relations/ (accessed on 22 November 2015).

dispute resolution by the police, such as mediation. With the enactment of the Domestic Violence Act 2007, the police rallied to respond to the growing problem of violence and infractions in the private sphere by setting up family support units (FSU) to deal with issues of domestic violence and other forms of private disputes including land.[19]

The survey received responses from the FSU and general duty personnel. The former has dealt with intra-family land distribution and inheritance disputes. The common method of resolution has been mediation, although they sometimes refer cases to other entities. The FSU is guided by the Domestic Violence Act, the Devolution of Estates Act and the Criminal Procedure Act. It also sets rules with the parties before embarking on mediation. Unit personnel obtain statements from the parties and witnesses, examine documents and visit disputed property, if necessary. Parties are then urged to reach a settlement. If the matter involves complicated legal issues, the Unit would refer it to the state counsel for legal advice. Compensation and restitution are common outcomes of the process. Records of the proceedings are maintained and at the end disputing parties sign an "informed resolution document" which sets out the terms of the outcome. Referrals to other redress mechanisms are made in the event of non-compliance. The Unit does not mediate serious infractions. They are investigated in the normal way and charged to court.

General duty personnel reported that they handle a range of land-related disputes including trespass, malicious damage, encroachment, boundary and multiple sales. One response claimed to have handled a case of "illegal demonstration" by communities against a company by informing communities about the proper procedure for obtaining permits for demonstration. The most common methods employed have been investigation and mediation, following similar processes of fact-finding as the FSU. Restitution and re-demarcation are some of the remedies provided.

(7) District Council Chair

Local Councils – comprising city, district and town councils – are established by the Local Government Act 2004. They are headed by elected chairpersons and comprise elected councillors and Paramount Chiefs. Local Councils are the highest political authority in their locality with legislative and executive powers. They are responsible for the development of their locality and the welfare of their people. Some of their key functions include management of human settlements and the environment. Resolution of land disputes has also now formed part of this broad mandate of Local Councils. The DC chairpersons included in the survey reported dealing with land disputes between communities and companies as well as community and family level land disputes. Examples of the former include flooding, lack of consultation in land deals, non-payment of surface rent, boundary disputes and non-recognition of land owners by companies. Disputes of the latter types include title, boundary and inheritance disputes. DC chairs also reportedly deal with cattle trespass disputes, which usually manifest themselves as land disputes, involving local communities and cattle owners.

The most common tools used to resolve disputes include mediation, negotiation and community dialogue. Disputants meet, narratives are presented, documents are considered and site visits are carried out if necessary. The DC authorities often consult with local leaders including Paramount Chiefs and sub-chiefs, provincial secretary, DO and sometimes CSOs. Both the process and the outcome are recorded. Likely remedies include review of

19 Under the Domestic Violence Act 2007 it is an offence to damage or destroy property in which a victim has an interest.

agreement, compensation, re-demarcation, payment of rent and, in the case of cattle trespass disputes, injunctions. For compliance, the office relies on the confidence of the parties in the process. Parties may be referred to other institutions such as the local court.

(8) Provincial Secretary and District Officer

Before the enactment of the Local Government Act 2004 and the start of the decentralization process, the Provincial Secretary and the DO were responsible for implementing central government activities throughout the provinces. They played a key role in the implementation of the land policy of the government (Renner-Thomas 2010, pp 11-12). With decentralization, DC have been created with chief administrators in charge of local administration. The Local Government Act 2004 does not expressly carve a role for Provincial Secretary or DO. However, the positions of Provincial Secretary and DO continued to exist in law (Provinces Act, Cap 60) and a few years ago they were reintroduced into local governance.

The DO and his/her superior, the Provincial Secretary, were explicitly vested with dispute resolution authority by the Provinces Act Cap 60. Section 28 provided that a "district officer shall have the power and authority to inquire into and decide as hereafter provided any matters which have their origin in poro[20] laws, native rites or customs, land disputes, including land disputes arising between Paramount Chiefs, or any other disputes which, if not promptly settled, might lead to breaches of the peace." The decision of the DO was binding on all parties and it may be reviewed, varied or set aside by the Provincial Secretary. This direct mandate to adjudicate land and other customary disputes was clearly removed with the enactment of the Local Courts Act 2011 (Section 15(6)). Local courts now adjudicate tenure disputes, including those between Paramount Chiefs. However, the Local Courts Act allows any person to conduct arbitration, mediation or similar settlement of disputes on various matters including land (Section 44(2)).

<u>Provincial Secretary</u>

Responses to the survey questionnaires from the northern and southern Provincial Secretaries offices were similar. They have dealt with conflicts relating to large-scale land investments as well as disputes between, and within, communities and families. Some examples of community-company land disputes they said they have resolved include non-recognition of company lease by landowners, denial of access to land, disagreements over residual land, delayed or under-payment of surface rent and failure to fulfil corporate social responsibility. Community-level disputes mainly concerned title to land, partition and boundary demarcation.

The Provincial Secretary uses a range of dispute resolution methods including mediation, negotiation, arbitration, community dialogue meetings and conciliation. The Secretary would be approached by disputants to carry out this function and at least in one case it took over and satisfactorily resolved a case that was pending before a court (see case study 3 in Annex 2). Parties to the dispute would be invited to the Office of the Secretary to state their cases or would do so at community meetings depending on the nature of the matter. The Office may also conduct fact-finding before arriving at a conclusion. One of the Provincial Secretaries stated that he draws authority from the Local Government Act 2004, but the latter makes no reference to the Office of the Secretary. They apply a mixture of customary

20 Poro is a traditional male secret society.

rules, common law and statutes to land disputes. Often, they include Paramount Chiefs in the dispute/conflict resolution process.

Outcomes from this process may include compensation, specific performance, boundary delimitation and the recognition of ownership. The Provincial Secretary does not have the capacity to enforce outcomes, but because Paramount Chiefs are often involved, the parties usually comply. Parties who are dissatisfied are advised to seek redress in court.

District Officer

Responses from the DOs in the Bo and Bombali districts were broadly similar. They have dealt with community-level disputes, including those resulting from large-scale land investments. Examples provided include encroachment by companies, breach of lease agreements, inadequate compensation and non-fulfilment of corporate social responsibility. Community disputes range from boundary issues to land grabs by Chiefs and local elites. Traditional leaders are often part of the resolution process.

The dispute resolution tools that are usually employed include mediation, arbitration, community/company conciliation and negotiation. Parties and their witnesses would explain their stories, which would be recorded. Site visits would then be conducted and independent witnesses would be engaged. An outcome would then be reached. The DOs stated that they draw authority from the Provinces Act, Cap 60 of 1933 and apply both customary and formal law to disputes, but their quasi-judicial powers under this Act have been removed by the Local Courts Act 2011.

Outcomes of the process include compensation, boundary demarcation and restitution. The office is unable to directly enforce outcomes and relies on the traditional authorities to do so. Parties to a dispute before the DO may take their case to the Provincial Secretary if they are dissatisfied. They may also be advised to seek redress in court.

In addition to their role of coordinating government business and government officials in the rural areas, DOs and Provincial Secretaries performed an important quasi-judicial function in tenure disputes. However, in the wake of the Local Courts Act 2011, they have lost the legal mandate to adjudicate land disputes to local courts. Nevertheless, they continue to participate in the resolution of land-related disputes.

(9) Customary Law Officer

Customary Law Officers are lawyers within the Attorney-General's office supervising the operations of Local Courts. Under the Local Courts Act 2011, they have power to review any decision of the Local Courts in criminal or civil proceedings where there is a miscarriage of justice or where there is an error of law on the face of the record. While CLOs review cases/decisions of Local Courts, proceedings in courts are stayed. A CLO may pass a decision that reverses or is different from that of a Local Court and such a decision would be binding and effective like any order issued by the Court. A proper reading of the Act shows that the CLO's power of review is not a power to receive cases as an alternative dispute resolution forum. However, many people choose to forward complaints, especially land-related complaints, directly to the CLO thus by-passing Local Courts. There are also instances where the CLO used its supervisory powers improperly to withdraw cases that were being considered by a Local Court with a view to deciding them (see case study 2 in Annex 2).

In response to the survey, the CLO reported handling land disputes relating to large-scale land investments as well as community, family and individual land disputes. Examples of the former include competing claims between companies and this includes title to land and boundary disputes. Mediation and negotiations are the most common dispute resolution tools employed. These processes are sometimes undertaken with Chiefs. Parties and their witnesses narrate their stories and documents, if any, are examined. A common outcome is then pursued. If parties are unable to agree, the matter is referred to the Local Court. Compensation and refund of costs are some of the available remedies. Proceedings and outcomes are recorded.

(10) Local Courts

Even though the present study examines non-judicial GRMs in the context of land disputes, a discussion of such mechanisms would not be complete without a reference to Local Courts. These Courts were established as hybrid, formal-customary institutions within the "native" administration system. While they were previously managed by government ministries, according to the Local Courts Act 2011, they are established within and managed by the Judiciary. They are more in number than any other adjudicatory body in the country, with at least one found in each chiefdom. They are courts of record, applying both customary and general law. They have power to hear and determine criminal and civil (including land) cases. Though formally within the judicial structure they are still supervised by CLOs within the Office of the Attorney General. These officers have powers to review the decisions of the Local Courts.

3.1.2 Customary mechanisms

The VGGT consider customary mechanisms as alternative forms of dispute resolution that states should strengthen, especially at the local level. Guideline 21 provides: where customary or other established forms of dispute settlement exist, they should provide for fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights. In Sierra Leone, the chieftaincy is an established customary structure that has administrative as well as dispute resolution functions in the provinces. Apart from Chiefs, there are other customary or community based mechanisms that perform important land dispute resolution functions. These include family heads, religious leaders and secret societies. The family head is normally the first port of call for intra-family land disputes if s/he is not implicated in the dispute. Secret societies have significant influence over their members and are also held in awe by the community. In some communities, their pronouncements carry as much weight as that of Paramount Chiefs.

This section presents an analysis of the role of Chiefs, family heads, secret societies and religious leaders in dealing with land-related disputes against the above-mentioned VGGT standards. Some specific examples from cases settled through these mechanisms have further been analysed based on the Guidelines and are presented in Annex 2 of the present study.

(1) Chiefs

Chiefdoms are the basic units of local and customary administration and are headed by Paramount Chiefs who are chosen by tradition from one of the ruling houses, i.e. descent groups whose ancestors established the chiefdom (Renner-Thomas, 2010, p. 13). Each chiefdom is subdivided into "sections" headed by section chiefs and sections are further subdivided into smaller units called "towns" or villages. A town chief or village headman

controls these smaller units. The functions of a Paramount Chief and by extension the sub-Chiefs, are enumerated in the Chieftaincy Act 2009. These include supervision and collection of local taxes, crime prevention, the maintenance of order and good government and preservation of customs and traditions (Section 29). Chiefs are the guardians of the customs and traditions of their chiefdoms. While they are mostly men at present, there are also women Chiefs in the Southern province.

Section 44 of the Local Courts Act 2011 prohibits anyone, apart from local courts, from exercising judicial powers within the chiefdom. However it is lawful, with the consent of the parties, for any person to conduct "an arbitration or like settlement in any matter in accordance with the relevant customary law or any enactment." This particular provision was inserted in the Act to allow chiefs to continue to perform their traditional dispute resolution functions without usurping the role of the Local Courts.

In the survey of 2015, fifteen responses were received from authorities that self-identified as customary or traditional. They include town and section chiefs, chiefdom speakers, heads of families and heads of secret societies. Responses from chieftains were similar, with one notable exception from the Chiefdom Speaker from Bombali. These traditional authorities stated that they have only dealt with land disputes arising between and within communities and families using rules of customary law. Disputes typically include ownership/use of land, encroachment, intra-family allocations, boundary demarcation and multiple transactions over land. The Chiefdom Speaker from Bombali stated that he has also handled large-scale land disputes.

The Chiefs either mediate or arbitrate in closed or open sessions depending on the nature of the case. The proceedings combine features of arbitration and mediation and sometimes take the form of adjudication as the Chiefs assert seemingly binding authority when they receive complaints, even though they are divested of such authority by the Local Courts Act. In terms of procedure, parties state their cases orally and may call witnesses or produce documents. Site visits may be conducted, sometimes in the company of officials from the Ministry of Lands. Apart from the Chiefdom Speaker in Bo, the other traditional authorities do not record complaints or keep record of proceedings.

Remedies that Chiefs offer include compensation, restitution, boundary re-demarcation and declaration of ownership or use. Parties to a dispute generally comply but when there is non-compliance, these Chiefs have several referral pathways. Usually, they refer cases to a more senior traditional authority, which in some cases is the Paramount Chief. They could also refer matters to the Local Court or the CLO.

Chiefs have been identified as the major traditional or customary tenure dispute resolution mechanisms for the majority of Sierra Leoneans. Established by custom, they are the first port of call for many disputants. They are involved in both land administration and dispute/conflict resolution. As shown above, the Chieftaincy Act of 2009 set out what has always been seen as the customary functions of Chiefs, whereas the Local Courts Act 2011 limits their power to arbitration and mediation of disputes including those relating to land. In dispute resolution, Chiefs may sit with elders. Chiefs and elders do not normally have any formal training on arbitration or dispute resolution skills, but acquire "expertise" over years of learning by doing.

Many Chiefs do not record their decisions in writing nor are processes documented. Disputants rely on witnesses to keep decisions alive. The death of a Chief may lead to the re-

ignition of long resolved disputes. Chiefs' processes have been criticised for being exploitative and discriminatory, especially against women (Conteh, 2010). The disputants are expected to pay a "hand-shake" fee to the Chiefs and to cover the costs of all meetings and field visits – costs that sometimes go beyond the means of a complainant. Chiefs are further accused of ignoring provisions of statutes that provide better protection of women's rights, choosing instead to enforce customs which undermine women's access to land through, for example, patriarchal inheritance regimes (IRIN, 2012).

(2) Family heads

Heads of families perform multiple functions in respect of family land holdings. They ensure protection of the family property against external threat or interference. They are also the lead and sometimes the sole representative of families in land transactions with third parties. Crucially, they act as internal administrators and trustees presiding over allocation and distribution of family land to members. The heads of households interviewed stated that they resolve a range of complaints including boundary disputes, cases of trespass and denial of female members' access to land. They seek to resolve these disputes mainly through mediation or negotiation at family meetings guided by the customs and traditions of the community and practices of the family, but they may also pass decision on issues in dispute. Disputants are allowed to explain their versions of events and call witnesses. Sometimes fact-finding visits are conducted to the disputed parcel after which a settlement or decision is reached. Outcomes include payment of compensation, restitution, redistribution, re-demarcation or reservation. For compliance with outcomes, they rely on family unity and respect for traditions. In some cases, non-compliance leads to a referral to the Chief or the local court. Proceedings and decisions are not recorded but because they are normally made in family meetings, many are not left in doubt about the outcomes.

(3) Secret society

Traditional male and female secret cultural societies have influence over land matters in Sierra Leone (Renner-Thomas 2010, p 12). Recent studies for instance have highlighted the positive role of secret societies in conserving forests in the country (Martín *et al*, 2011). The increased demand of commercial agriculture is, however, eroding this pattern.

The influence of secret cultural societies in local communities is undeniable. They command complete obedience from adherents and deep respect from (non-members) of the community. They also play a role in land dispute resolution.

The survey obtained responses from both male and female secret cultural societies from the north and south of the country. The responders indicate that they deal with community and family-level land disputes such as sale of land without proper consent, multiple sale of a single parcel, ownership or use rights to land, women's access to land and cases of trespass. They use mediation, arbitration and related methods to resolve disputes. Parties and witnesses narrate their stories and if necessary the disputed parcel would be visited. While the dispute is being addressed and depending on its nature, an injunction might be imposed on the disputants. The property would be "flagged" and neither party would access it until determination. Resolution processes either take place in publicly accessible locations or in the sacred society bush. Rules of customary law are applied to land disputes together with the rules of the secret society. Remedies include compensation, restitution, redistribution and fines. Proceedings and decisions are not recorded. One respondent indicated that human rights principles are taken into consideration when resolving disputes. However, it is observed at least in one case that the hearing of cases may fall foul of principles of fairness

in terms of not allowing women or disputing parties to participate in proceedings, especially when the secret society in question is implicated in the case (see case study 1 in Annex 2). Compliance with outcomes is expected, driven by the high regard of the community for secret societies. The respondent from the female secret society uses the threat of a referral to Local Courts to ensure compliance. One of the standout responses on remedies and compliance came from a secret society in the south. It indicated that outcomes, such as fines or compensation are immediately enforced and refusal to comply with a decision is an offence akin to disrespecting a Paramount Chief.

(4) Religious leaders

Over 90 percent of the population of Sierra Leone identify with one religion or another, with Islam and Christianity being the most widely practised (Sierra Leone Demographic and Health Survey 2013). Followers of these religions hold their leaders in high esteem and often resort to them to help resolve various types of disputes, including those that are land-related, especially where one or both parties adhere to the religion. Religious leaders, according to the survey, deal with intra-community/family and individual land disputes mostly relating to ownership and boundary complaints. The main tools used are mediation and negotiation, with their sacred texts as authority. Parties present their stories and may call witnesses or produce documents. Outcomes include re-demarcation of boundaries or restitution, and enforcement relies on the good faith of the parties. Sometimes referrals are made to the Ministry of Lands.

3.1.3 Business enterprises/private corporations

The VGGT requires business enterprises to provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level GRMs, where appropriate, [especially] where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights (Guideline 3.2). With the increasing trend of large-scale agricultural investment, the importance of company-based GRMs becomes quite important. The actual establishment of such mechanisms to an extent requires public and customary structures to see to it that companies/investors take action in that respect. For such mechanisms to be effective, they should be known and accessible to users and follow clear processes that lead to the redressal of grievances. This section presents how a Sierra Leonean environmental protection regulation and the practice of two responding companies measure up to the standards.

(1) Addax Bioenergy Limited's grievance mechanism

In a way that essentially reflects the requirement of the VGGT, Section 61 of the Environment Protection (Mines and Minerals) Regulations 2013 requires holders of mineral rights to establish formal GRMs in accordance with principles of legitimacy, predictability, equitability, transparency, etc. The right holder should designate a grievance officer to manage grievances and document complaints. The officer should work with community members to resolve informal complaints. Where grievances remain unresolved, the regulations require the head of the agency and the community concerned to jointly appoint an arbitrator. The community will select an appropriate person to represent them throughout the arbitration, the costs of which shall be borne by the company. It is a requirement for the right-holder to "inform" local communities and to raise awareness about the grievance mechanism. Although these regulations are meant to apply to businesses engaged in mining, the grievance mechanism provisions could easily apply to

other types of companies. However, as progressive as the regulations are, they are yet to be effectively applied in practice (see case study 4 of Annex 2).

Many large-scale agriculture companies include arbitration mechanisms in lease agreements as the preferred means of dispute resolution for disputes arising from or connected to their leases. An example is the lease agreement between Addax Bioenergy and the Chiefdom Council of Malal Mara chiefdom (dated 3 May 2010 and registered as No.144/2010 in the Book of Leases at the Registrar-General's office). Clause 5.2 stipulates that "all disputes shall be referred to and finally resolved by arbitration in London under the Rules of Arbitration of the International Chamber of Commerce". Other companies' lease agreements would stipulate arbitration in Sierra Leone under the Arbitration Act, Cap 25, 1927.

Addax provided responses to the survey questionnaire.[21] At the time of the preparation of the present study, it was the largest agricultural and bioenergy investment in the country.[22] According to its response, Addax established a Community Service and Development Department, which deals with conflicts relating to its land holding. The Department mostly dealt with boundary disputes between or within communities in the area where it operated and conflicts in relation to distribution of surface rent among families. The Department also handled cases of encroachment by persons into the residual land (land that was not in use) of the company. The company used negotiation, community dialogue and conciliation to resolve disputes.

Complaints were forwarded to the Department where they were recorded in a Grievance Book. The Department sent a Grievance Officer to investigate and make assessments. The company then engaged the parties concerned until a settlement/conclusion was reached. To ensure that outcomes are implemented, traditional authorities were co-opted into the dispute resolution process.

The company had also reportedly put up a complaint box outside its premises where community members were allowed to drop their written complaints relating to its activities. While this could at least potentially have served as an accessible channel of dispute resolution, the level of awareness about the existence of the complaint box and the requirement of written submissions posed significant limitations to the utility and effectiveness of the mechanism.

In designating a system of handling complaints within its structure, Addax Bioenergy was at least partially in compliance with the provisions of the Environmental Protection Regulation 2013 and the recommendations of the VGGT. It is, however, difficult to say the same thing about how the company actually dealt with complaints against its operations or its staff and how much awareness it had raised about the mechanisms. A number of reports have criticized the company's complaint mechanism as being very ineffective (Anane and Yao Abiwu, 2011). In some communities, it constituted nothing more than a complaint box, which remained un-serviced and inaccessible considering the level of literacy in the area of its operations (the Oakland Institute, 2011, p. 24).

21 At the time of the survey Addax was in full operation but scaled down significantly in the aftermath of the Ebola crises. None of the mining companies targeted by the survey were able to turn in their responses.

22 As of June 2016 Addax has sold a large proportion of its business to Sunbird Bioenergy Limited.

(2) Miro Forestry Company

According to its website, Miro Forestry Ltd is a sustainable plantation forestry company (http://www.miroforestry.com/). Around 2012 it began acquiring thousands of acres of land in Sierra Leone to grow eucalyptus, teak and pine for logging. Miro submitted responses to the survey questionnaire. The company addresses issues relating to its investment mostly in relation to the environment, compensation, land acquisition and livelihood issues within its areas of operations. It uses mediation, negotiation and community dialogue to resolve disputes. It has a grievance redress manual which sets out its grievance redress processes. Complaints are received in several ways, including through Chiefs, at community meetings, through a suggestion box or through the company's community liaison officer. The company acknowledges receipt and records the complaint in its grievance redress form and grievance database. It then investigates the complaint and reaches a conclusion which is then formally communicated to the complainant. Some of the remedies it offers include compensation, restitution and apology. According to the company, it evaluates satisfaction with its complaints process. A dissatisfied complainant may resort to other mechanisms.

Like Addax, Miro has a designated system to address complaints within its structure. Better still, the system deals with disputes arising from its operations. The multiple intake mechanism improves accessibility considerably and the evaluation mechanism is a useful feedback tool.

3.1.4 Civil society and non-governmental organizations

The VGGT encourages the participation of CSOs in the promotion and implementation of its recommendations, obviously including those on GRMs (Guidelines 2 & 26). Where CSOs are involved in dispute resolution, they are expected to follow the best practices and principles enshrined in the VGGT including impartiality, gender sensitivity, professionalism and accessibility.

Three non-governmental organizations provided responses to the survey questionnaires, one of them a women's rights group. The women's group deals with issues relating to inheritance and compensation for women in large-scale land transactions. The other two raise awareness on corporate social responsibility of corporations and the content of large-scale land leases. They use mediation, community dialogue and conciliation to resolve disputes brought to their attention. They record complaints, obtain statements from parties and their witnesses and encourage parties to reach resolution in open meetings. Examples of outcomes that parties may reach include compensation and restitution. They rely on the good faith of parties to implement outcomes. In the event of non-compliance they refer parties to the court or the police.

CSOs and NGOs can effectively act as channels of communicating grievances into public, customary and private mechanisms (see case study 5 in Annex 2). In this respect, they are critical partners in the development of effective mechanisms for redressing tenure disputes. A very good example of such activities is provided by the work of CSO-sponsored paralegals in providing legal aid and empowerment services to rural communities.

Over the past 12 years or so, community-based paralegals have been deployed by CSOs as a creative and flexible frontline force to provide a range of basic justice services to

communities in distant rural areas.[23] Community paralegals or grassroots legal advocates put the power of law in the hands of people. These paralegals are trained in basic law and in skills such as mediation, organizing, education, advocacy and negotiation. They are able to engage formal, traditional and corporate mechanisms alike. Paralegals are community based, they understand local dynamics, and they speak the local language. This creates a level of trust that other methods of legal assistance may struggle to reach. Apart from assisting persons seeking redress, paralegal assistance can also improve GRMs. Their ability to collect data about the substance, process and outcome of the mechanism on a case-by-case basis can inform policy and practical changes in the GRMs.

3.2 Perception of disputants about processes and outcomes of non-judicial GRMs

Evaluating the internationally accepted standards of effectiveness, accessibility, equitableness, affordability, timeliness and transparency of GRMs that are enshrined in the VGGT requires, in part, gauging the perceptions of their users about the mandates, procedures and remedies of the mechanisms. It is with this in mind that the surveys of both 2014 and 2015 sought the views of land owners/users about some procedural aspects of the mechanisms that exist in Sierra Leone. In the KAP survey of 2014, while a great majority of the respondents (81.4 percent) stated that they were involved in land disputes, only 32 percent agreed that the GRMs were transparent and accountable to the public. Some 62 percent felt that they were not treated fairly during the dispute resolution processes, whereas 88 percent believed that compensation as an outcome of the processes was inadequate. The targeted interviews of 2015 went deeper into examining the views of disputants about the competence of institutions, the processes of dispute resolution and their outcomes.

Of the respondents who were involved in land disputes, nearly 61 percent took their cases to a customary mechanism (Chief, family head or secret society head), 6 percent went to the police, 3 percent went to non-governmental organizations and 15 percent went to a district level public or administrative mechanism. Some 12 percent of the respondents went to the Local Courts. This provides a sense of the diversity of the channels traversed by people in pursuit of non-judicial redress for land disputes and the extent to which complainants use them. The analyses of the data are presented under the broad categories of customary and public or hybrid mechanisms.

3.2.1 Customary mechanisms

The most common types of disputes that are handled by customary mechanisms were intra- and inter-family land disputes.

Process-wise, respondents who went to Chiefs indicated that: (a) parties were allowed to state their complaints and “testify”; (b) witnesses were called; (c) documents were tendered, where available; (d) site visits were conducted; (e) experts were invited to interpret plans, in some cases; and (f) decisions were then made by the Chiefs.

23 Namati, a legal empowerment organization champions this method of frontline advocates working with clients to tackle justice problems. As a testament to the innovative and enduring work of paralegals, parliament in 2012 enacted the Legal Aid Act which formally recognized paralegals as providers of legal aid services.

Of the respondents who sought redress from Chiefs, 80 percent reported that their matters reached conclusions and there were outcomes. The reasons advanced for those complaints with no outcomes include the high demands of the Chiefs (costs of litigation), which forced complainants to abandon their claim, and conflict of interest (feeling of Chief's partiality). Outcomes included fines, "injunctions", restitution of property and refund of purchase price. In some cases, respondents wanted compensation in addition to the other remedies but none was awarded.

On the question of satisfaction, respondents gave the "thumbs up" when the outcome was in their favour. For those whose matters with Chiefs did not conclude, they indicated that an unfavourable outcome would have been better than no outcome. Respondents noted that decisions were generally accepted, but in a number of cases, they resorted to other mechanisms. Some respondents whose matters were not concluded by the Chiefs appealed to the CLO for redress.

A number of respondents also reported taking land-related complaints to Local Courts. One of the important feedbacks from the respondents was that intrusion by CLOs with the processes of Local Courts was common and problematic. In two cases, as soon as Local Courts commenced proceedings, CLOs would withdraw the matter from the Courts (case study 2 in Annex 2). Once that was done no further action was taken by the CLOs leaving matters unresolved. It should be noted that the power of CLOs to review cases under the Local Courts Act 2011 should only be exercised under specific circumstances, i.e. where there is a clear case of miscarriage of justice or error of law. According to the Act, cases should only be transferred on "reasonable cause" either to another Local Court or to a higher court. The Act does not permit transfers of cases pending before Local Courts to CLOs.

The surveys further sought to find out why most land disputes still go to customary authorities in spite of the presence of Local Courts with their hybrid formation that involve customary law and authorities. For an average "native" person, whatever their limitations, the Chief and other traditional authorities happen to be the first port of call in land disputes. S/he identifies more with the processes of the traditional institutions than those of Courts. The customary authorities are also more accessible than the Local Courts. According to one Paramount Chief, they do not just deliver justice; their mechanism of dispute resolution "deliver peace and social cohesion which courts are incapable of providing" (interview with Paramount Chief of Kono District , Sheku A.T. Fasuluku-Sonsiama III, on 30.09.15, Freetown).

3.2.2 State/public or NGO grievance mechanisms

For disputes between companies and communities or between a person of authority such as a Chief and ordinary persons, respondents approached either district-level administrative officers or NGOs, if not the regular courts.

Many of the respondents reported no action or inconclusive outcome on complaints referred to administrative officers – in some cases there was not even an acknowledgement of receipt of their complaint. These are indications of the malfunctioning of administrative redress mechanism.

NGOs generally attempt to mediate disputes that come to their attention by creating opportunities of dialogue between the parties involved; but they also bring such cases to the attention of the responsible government authorities. However, at least in one dispute that

was referred to an NGO, a village level mediation effort was attempted with both sides telling their stories but the matter was not concluded.

In a complaint to the police, both sides were invited and statements were obtained. Competing documents were examined and the police thereafter decided in favour of one of the parties. The other party accepted the outcome. In another case taken to the police, no action was taken after the other party was asked to provide documentary evidence to support his claim. The matter was inconclusive.

Overall, there are mixed views about the effectiveness of public and NGO GRMs, with some administrative institutions performing below expectations in terms of responding to people's grievances.

4. KEY FINDINGS, CONCLUSION AND RECOMMENDATIONS

Agriculture and natural resource exploitation constitute the most important bases of the economy of Sierra Leone and the livelihoods of its citizens. Some observers have raised concerns about the compatibility of the country's development strategy of support to large-scale investment in these sectors with the prevailing smallholder agriculture and problems of access to land, especially by the youth. Various assessments have highlighted actual and potential conflicts and disputes over land involving companies, communities, landholding families, individual claimants and public/customary authorities. The types of disputes range from intra-family land claims, through boundary demarcation issues, to disagreements with the conduct of public or private actors.

Considering the constraints of access to formal justice, the perceptions of corruption and delayed justice and the bifurcated system of landholding and land administration in the country, non-judicial GRMs have been an important means of dispute resolution. In addition to being comparatively cheap, quick and accessible to the wider public, non-judicial GRMs provide justice *in situ* often employing language and form that the parties identify with and understand. Nevertheless, post war reconstruction and reform efforts within the justice sector have paid scant attention to non-judicial dispute resolution mechanisms, while resources were mostly directed at formal justice mechanisms to bring them up to speed and improve the investment climate. If non-judicial GRMs are organized in clear, accessible, effective and rights-compatible ways, they can advance the rule of law and help maintain social cohesion.

The present study is an assessment of the various formal and informal non-judicial mechanisms of resolution of land-related disputes based on internationally accepted standards and best practices that are enshrined in the VGGT. The VGGT recognizes the role of governmental institutions, customary and religious authorities as well as other non-state actors in tenure-related dispute resolution. It recommends that such institutions be impartial, competent, reliable, accessible and known to the people, that they follow affordable, timely, fair, non-discriminatory and inclusive processes in reaching decisions or settlements, and that they provide effective remedies, including restitution, indemnity, compensation and reparation, from which appeal lies to regular courts of law (Guidelines 2-4, 6, 21).

Through field surveys that were conducted in 2014 and 2015 based on structured and semi-structured interviews, information has been gathered from public, customary, private and CSOs and community members on jurisdictional, procedural and remedial aspects of non-judicial mechanisms for the resolution of various types of land disputes in Sierra Leone. The data collected in the various provinces of the country was analysed and supplemented by other published and unpublished sources of information. These served as good bases for the assessment of the various types of non-judicial GRMs and how they are viewed by their users against the VGGT standards. The analysis of the data has allowed us to identify strengths and weaknesses in the different mechanisms, and to develop a set of hypotheses on ways of strengthening and rationalizing non-judicial GRMs in land-related disputes.

4.1 Existing grievance mechanisms

The formal public institutions that are involved in dispute resolution are ministries and regulatory agencies in charge of land, mineral resources, national security and the environment, the police and provincial and district level local government structures. While

their founding instruments provided them with implied or express power to deal with land disputes, the institutions mainly carried out dispute resolution as part of the execution of their other primary responsibilities. The independent national Human Rights Commission mainly forwards land-related disputes that it receives or identifies to appropriate authorities and monitors and reports on their resolution. The Provincial Secretary and the DO, which are formalized customary structures, operated based on a formerly explicit mandate to resolve land-related disputes, which was removed by the Local Courts Act of 2011. CLOs provide another avenue of dispute resolution in the formalized customary constellation. While they have clear legal authority to review decisions of Local Courts in cases of 'miscarriage of justice or error of law', they also handle land-related disputes in their own right, sometimes withdrawing cases from the Local Courts. The Local Courts have a hybrid formation that combines the customary with the formal – a trait that should make them suitable fora of dispute resolution for those within the "native" administration. However, the Courts face challenges arising from the perception of their formality and accessibility on the part of people in the provinces on the one hand, and their incomplete transition into the judicial branch of government on the other.

Informal or customary GRMs include the different levels of the chieftaincy structure, religious leaders, family heads and secret societies that mainly deal with land disputes arising between and within communities and families by applying rules of customary law in process that combine traits of mediation, arbitration and adjudication. While the Local Courts Act 2011 allows anyone to conduct "an arbitration or like settlement in any matter in accordance with the relevant customary law or any enactment", the Act does not set out the parameters of the process or provide any further guidance. Chiefs are reputed to be the custodians of custom and may not have any difficulties dealing with disputes of a purely customary nature. However, where a dispute transcends customs and involves other laws, they may not be able to deal with it effectively or comprehensively. This could lead to unfair outcomes. This is in addition to the limitations of customary and traditional dispute resolution mechanisms in terms of gender equality, fair hearing, evidence building and other human rights issues.

Company-based operational GRMs provide invaluable additions to the formal and customary non-judicial dispute resolution mechanisms, especially if they are actually required by law and their functioning is monitored by a public institution. It is notable that the Environment Protection (Mines and Minerals) Regulation 2013 requires miners to set up formal GRMs, although not all concession right-holders have complied with it. In line with the VGGT requirement that businesses provide effective GRMs, other types of companies should be required by law to do so, not just mining companies. From the surveys, some companies have put in place GRMs through which they attempt to address community complaints relating to boundary disputes, the environment, compensation and surface rent payments. The usage of the mechanisms by local communities has a lot of room for improvement.

CSOs are involved in *ad hoc* land dispute resolution, but they also play actual and potential catalytic role in testing and contributing to the improvement of the public as well as the customary and private GRMs. They can actually help people bring complaints to these mechanisms and document the processes. CSOs that sponsor community-based paralegals in providing legal aid and empowerment services to rural communities have been playing crucial dispute resolution role in Sierra Leone. CSOs may further advocate for the strengthening of GRMs or the adoption of other relevant measures based on evidence they gather from their participation in dispute resolution.

4.2 Procedures and outcomes

Although most of the non-judicial GRMs do not have clearly defined complaints procedure, many of them follow a modicum of due process in hearing the parties, marshalling evidence and issuing remedies. The formal and informal institutions alike understand the importance of parties telling their stories, calling witnesses and presenting documentary evidence where they exist. The processes by which many of the non-judicial GRMs resolve disputes combine some features of mediation, arbitration and adjudication. For example, a case may be brought to a Chief either by the agreement of both parties or by one of them, in which case the Chief "assumes" authority and "summons" the other party. The process of hearing and evidence-gathering more or less follows the format of adjudication and the Chief finally passes a non-binding decision. The adjudicatory traits of the grievance mechanism of Chiefs (and of the DO and the Provincial Secretary) are continuations of the dispute resolution practices that they carried out under the legal regimes that allowed that before the coming into force of the Local Courts Act, which limited their powers to mediation and arbitration.

Some of the public institutions involve traditional authorities in the resolution of disputes. Although some of the institutions record the applications, most of them do not keep proper documentation that leads to issuance of evidence to the parties or reporting to relevant public authorities. Record keeping is a major problem with the customary mechanisms as some disputes may be reignited with the passage of time, whereas company and CSO GRMs fare much better in this respect. The documentation of cases and processes could be useful to bring about improvements across all GRMs and to inform policy measures that address underlying causes.

Most of the GRMs do not have inherent enforcement powers but rely on the confidence of the parties for compliance with their recommendations or decisions. Despite some expressed concerns about the lack of promptness, impartiality, transparency and accountability of customary and religious mechanisms, parties often comply with their recommendations. Most of the institutions refer cases to courts of law and disputants have the right of appeal to the courts.

4.3 The way forward

From the analysis in the foregoing sub-sections, it is evident that none of the administrative or public sector mechanisms have been deliberately designed to redress tenure disputes *per se*. They are either sector-based regulators with somewhat narrow mandates (e.g. the NMA and the EPA) or entities with completely different objectives (e.g. the ONS) or institutions or offices with mandates that have changed (e.g. the DO and Provincial Secretary). The practice of some of these institutions to interpret their mandates expansively to confer legitimacy on themselves carries the serious risk of abuse of power and overreach by these institutions. The traditional institutions follow their well-trodden path to dispute resolution that may not necessarily be compatible with the precepts of fair hearing, gender equality and, sometimes, impartiality. Despite the appreciable interest in and efforts to resolve land-related disputes, the dispute resolution mechanisms remain uncoordinated, not formalized and amenable to forum shopping. Many of them operate on *ad hoc* basis and have unclear mandate and procedures of dispute resolution.

With the now increasing large-scale investments in land, it is hard to imagine a responsible governance regime without a more rationalized or dedicated mechanism for non-discriminatory, gender sensitive, fair, equitable, effective, accessible, affordable, timely and

transparent resolution of tenure disputes. Several alternative suggestions could be made along the lines of strengthening and rationalizing the existing mechanisms or integrating and coordinating the non-judicial land disputes resolution systems. Some options were presented and discussed at a multi-stakeholder workshop in September 2015 and in a validation workshop of stakeholders in February 2016. They more specifically include: (1) strengthening existing institutions by providing them with clear complaints mandate and building their capacity on issues such as gender equality, fair hearing and record-keeping; (2) creating one non-judicial institution that deals with all types of land-related disputes with branches all over the country; (3) instituting one such body to deal with certain administrative or high-level disputes; and (4) establishing an institution that serves as a secretariat coordinating the dispute resolution work of all existing non-judicial GRMs. However, it is important to state upfront that these are not ready-made and exclusive recommendations, but proposals to be explored in the context of policy and law reform and implementation processes.[24] It should also be pointed out that there appeared to be an emerging preference during the validation workshop for options (1) and (4). Some of these recommendations are discussed in more detail below.

(a) Rationalizing and strengthen existing non-judicial GRMs: The mandate of existing institutions that are involved in the resolution of land-related disputes could be rationalized and their capacity strengthened to deal with such disputes in ways that respect fair hearing and equality principles. This could include expanding the mandate of entities with regulatory functions, such as EPA and NMA, to include wider tenure dispute resolution. Their enabling laws could be amended to reflect this additional mandate. All government institutions that are actually involved in the resolution of land-related disputes could further assign the task to a unit or at least focal persons that enjoy internal independence. The personnel should then be equipped with knowledge and skills on basic norms that apply to the responsible governance of tenure and accepted standards relating to the procedures and remedies in dispute resolution. The institutions should further have clear and easily accessible systems of receiving, processing and reporting administrative and other complaints that relate to land.

    In terms of capacity building, the knowledge and expertise of the customary authorities that is developed through years of their engagement in dispute resolution could be augmented by their exposure to and training on the internationally accepted normative and procedural guidelines provided by the VGGT and other relevant instruments. To facilitate the attainment of competence and process-reliability that the VGGT envisages, customary mechanisms could be linked to public grievance structures that may provide capacity building, monitoring and mentoring without affecting their unique identity. CSOs as well as companies could also benefit from training and materials on complaint processes by strengthened public GRMs.

(b) Create an integrating or coordinating institution with country-wide branches: Another option could be to follow the line of integrating and coordinating the now diffuse system of dispute resolution by creating a new administrative structure with a specific tenure-dispute resolution mandate. Such an entity could be created by an Act of Parliament with the appropriate level of independence, flexibility and clout. The “integrating institution”

24 The 2nd Multi-Stakeholder VGGT workshop that was held in Freetown, 26-28 September 2015, discussed this options and recommended that the VGGT Inter-Ministerial Committee consider them along with evidence to be availed by partners with the view to take policy/legal measures.

could be an administrative tribunal with mandate to handle all types of land-disputes, including complaints against other institutions dealing with land, and/or one with mandate to deal with certain large-scale or high-level land disputes instead of all types of land disputes. The NLP 2015 appears to have followed this latter option in deciding to establish an *Administrative Lands Tribunal*.

The "coordinating institution" choice proposes coming up with a secretariat that coordinates the work of existing non-judicial GRMs by deciding on the question of which institution deals with what type of cases and hence avoiding forum shopping. This would be similar to the proposal to set up Land Coordination Centres in Liberia, to coordinate the activities of various GRMs on land.[25] The secretariat would not act as a GRM in itself but coordinate the work of other GRMs and provide capacity development support to the other mechanisms. These would include standardizing processes and developing uniform case intake procedures, assisting disputants on forum selection and coordinating referrals. The integrating as well as coordinating institution would have branch offices in all the districts of the country. This proposal would face the obvious criticisms of proliferation of institutions and resource implications. If the option is taken, it could be argued that one more institution may be better than disintegrated and inefficient mechanisms, whereas the long-term benefits of integrating or coordinating these mechanisms could justify directing some of the returns of the large-scale investments to the new institution.

(c) Maintain status quo: Yet another alternative that could be pursued in the interim is to allow these redress institutions continue in the current informal and *ad hoc* manner without necessarily tying them to each other or any centralized structure. To improve quality, consistency and compliance, specifically tailored capacity-building trainings could be organized for selected GRMs periodically. Such trainings could take them through simple mediation or arbitration skills and steps, fair hearing and equality principles, drafting of simple resolution agreements and basic record keeping. Simple templates could be developed and disseminated to make their work easier. If this is followed, non-compliance with recorded outcomes could more easily be enforced in court or by the relevant quasi-judicial structure.

At the time of the finalization of the present study, the Law Reform Commission of Sierra Leone was working on a mediation bill and an arbitration bill. At a general level, such bills should reflect the realities of dispute resolution mechanisms in the country and accommodate the work of existing non-judicial GRMs with the necessary provisions to make up for their deficiencies. At least the mediation bill provides for a coordinating structure and capacity building for mediators, provisions that could serve as entry points for the application of some of the above-mentioned recommendations.

The options laid out above are in line with the VGGT's recommendation for the authorization of impartial and competent administrative bodies or implementing agencies to deal with land disputes in their technical areas, and for the introduction of specialized tribunals or bodies that deal solely with disputes over tenure rights (Guideline 21).

25 A Study on Alternative Dispute Resolution Systems in the Republic of Liberia: Strategies for Coordination and Operationalization of Systems to Enhance their Effectiveness, Report to the Liberia Land Commission and the Land Dispute resolution Task Force (Draft) March, 10, 2011.

In order to maximize the utilization of the mechanism/s of choice: (1) there should be mass awareness-raising and sensitization across the most popular media platforms in widely used local languages on dispute/conflict prevention and resolution mechanisms; (2) complaint processes should be clear, simple and flexible and the mechanism/s should be physically and economically accessible; and (3) legal assistance should be available to the parties and its availability should be widely publicised. Community-based paralegals can play an important role in sensitization as well as the provision of legal aid. When it is instituted in the provinces, the Legal Aid Board of Sierra Leone will have to play a crucial role in this respect.

Finally, the VGGT requires that multi-stakeholder platforms and frameworks be set up at local and national levels to collaborate on the implementation, monitoring and evaluation of rules for the responsible governance of land tenure (Guideline 26). It is important that such platforms either include or be created on the specific subject of non-judicial GRMs. Considering the bifurcated landholding and administration system and the disintegrated and *ad hoc* mechanisms of land-related dispute resolution, such a multi-stakeholder platform should discuss ways of strengthening, rationalizing, coordinating or integrating the various GRMs. It would further discuss the more specific problems of jurisdictional and procedural non-clarity in existing arrangements and the forum shopping that result from the proliferation of dispute resolution mechanisms. The existing multi-stakeholder platform for the implementation of the VGGT in Sierra Leone, including a Technical Working Group, a Steering Committee and an Inter-Ministerial Committee, could provide such a forum. The different suggestions made here could be discussed and the outcome can feed very well into the ongoing and upcoming policy and legal reforms and their implementation. Multi-stakeholder frameworks can also provide the all-important forum for exchange of experience and the systematic documentation of land-related disputes and conflicts that are of crucial significance to broader policy measures to address core challenges.

ANNEX 1

SURVEY ON NON-JUDICIAL GRIEVANCE REDRESS MECHANISMS FOR LAND DISPUTES AND THE PERCEPTIONS OF DISPUTANTS

Questionnaire on assessment of non-judicial grievance redress mechanisms for land disputes in the context of the VGGT

1. Name of person/body/institution/ ……
2. Type of person/body/institution: Govt. ☐ Private ☐ NGO. ☐ Customary ☐ Company ☐ Others ☐(specify)……..
3. Address:……
4. Phone:……
5. Do you address issues relating to large scale land investments?

   Yes ☐ No ☐

   If yes, please mention the key types of issues that you address

   ……

   ……

   ……
6. Do you resolve land-related disputes between communities and companies?

   Yes ☐ No ☐

   If yes, what type of disputes

   ……

   ……
7. Do you address land disputes between/within communities, families or individuals?

   Yes ☐ No ☐

   If yes, what types of land disputes?

   ……

   ……
8. What methods do you employ to resolve these disputes? Mediation ☐

   Town hall meeting ☐ Negotiation ☐ Litigation ☐ Community/company conciliation ☐ Community dialogue meeting ☐ Other……

9. Please briefly explain step by step what the process is like ……..

   ……

   ……..

   (Note: these steps could include (i) statement-taking (ii) fact-finding (iii) oral testimony)

10. Are you authorised to resolve these disputes by law/custom/practice?

    Yes ☐ No ☐

    If yes, which law/custom/practice? .....

    ……

11. Which law, custom or practice do you apply when you resolve land-related disputes between communities and companies or between communities or individuals?

    ……

    ……

12. Why do you think you are one of the best to perform such role? .....

    ……

13. What remedies or solutions do you offer/reach often? Please provide examples (Remedies could include (i) compensation (ii) demarcation (iii) restitution

    ……

    ……

14. How do you get the parties to comply with the outcome of your dispute resolution process?

    .....

    .....

15. If one or both of the parties refuse to comply, what do you do?

    .....

    ……

16. Do you have a system to record these disputes and keep track of them?

    Yes ☐ No ☐

    If yes, can you please share copies?

17. Do you use your records/reports on land-related disputes to influence policy or strategy relating to land? If so, how do you do that? If not, how do you think that linkage should be done? .....

    .....

    .....

Questionnaire on assessment of perception of disputants of non-judicial grievance redress mechanisms for land disputes in the context of the VGGT

1. Name:.....
2. Address: .....
3. Phone: .....
4. Have you ever reported a land case to any authority? Yes ☐ No ☐
5. If yes, to which authority did you report?.....
6. What was the nature of the case? .....

   .....
7. Who was the respondent? .....
8. How was the case handled? .....
9. What was the outcome? .....

   Were you satisfied with the way the case was handled? Yes ☐ No ☐
10. If no, what were you not satisfied with? .....

    .....
11. What do you think they could have done better in handling your case? .....

    .....

    .....
12. How was the outcome enforced? .....

    .....

    Did you take the case to another person or authority? Yes ☐ No ☐
13. If yes, which authority or person?.....

    .....

    .....

ANNEX 2

NON-JUDICIAL GRIEVANCE REDRESS MECHANISMS ON LAND: CASE STUDIES[26]

The case studies below are real examples of land disputes that were handled by the respective non-judicial GRMs. Since the VGGT provide an important comparative framework for assessing the effectiveness of existing non-judicial grievance redress mechanisms, these cases have been analysed using the three broad criteria against which public, customary and private dispute resolution mechanisms could be evaluated. These are: (i) the competencies of the institution handling disputes; (ii) the clarity and fairness of their processes and procedures; and (iii) the effectiveness and enforcement of the remedies they provide.

Case study 1. Trespass: Poro society, Chiefs and elders

The Boma family in Nwaya-Lenga Chiefdom, Bo District, owned a stretch of land for many generations. Several years ago, the dominant male secret society in their village took over a portion of their land and converted it into a sacred bush, where the society carried out its activities. Non-members are not allowed into the sacred bush. At the time the society took over the land, no compensation was paid to the family. In 2012 it was announced that the sacred bush would be relocated and the land would become "free" again and revert to the original owners. However, for a sacred bush to be decommissioned, certain rituals must be performed by the members before it is declared fit for ordinary use.

As a result of this news, some members of the family began working on the land abutting the sacred bush in anticipation of the exit, but did not venture into the sacred bush itself. Over the years, trees and other resources in the sacred bush had flourished as the area was off limits to most people in the village. Many weeks after the announcement, restless younger members of the Boma family could not resist the lure of profit and decided to go into the sacred bush to cut down trees to sell as timber. They claimed the society was taking too long giving back the land to their family. Following their action a complaint was laid by members of the secret society with the leadership of the secret society, which confiscated the timber pending the determination of the matter.

The dispute was heard in the secret society bush with chiefs, elders and leaders of the secret society present. Non-members were not allowed into the meeting and women were not permitted to attend. It is not clear what procedure was adopted to determine the dispute but it was subsequently ruled that the Boma family members who entered the sacred bush had violated the rights of the secret society and carried out an illegal activity. The family was fined Le 800,000 (US$150) and also required to present a goat. The timber was permanently confiscated by the secret society. Payment of the fine was immediate. The family appealed to the Paramount Chief but was told that there was no right of appeal from a decision of the secret society. Such decisions were final. The family then sought help from a local human rights organization without success. The sacred bush has still not been turned over to the Boma family as previously announced.

26 Names in the actual cases have been altered.

Guideline 21 of the VGGT provides that where customary or other established forms of dispute settlement exist, they should provide for fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights.

Section 170(2) of the 1991 Constitution recognizes as part of the laws of Sierra Leone, "rules of customary law." It defines "customary law" to mean "the rules of law which by custom are applicable to particular communities in Sierra Leone". This very broad definition, it could be argued, gives room for any structure, institution or system that exists within the customs and practices of particular communities to claim general legitimacy.

However, in relation to dispute resolution, it is unclear if secret societies could properly claim competence/legitimacy in respect of non-members. On several levels, the case study discloses some basic non-compliance with Guideline 21. The secret nature of the redress process and the exclusion of women and non-members (parties to the dispute) violate accessibility, non-discrimination and due process principles. It also offends basic rules on fairness for the secret society to be a resolver of dispute to which it is a party. The punitive nature of the outcome contradicts the characteristics of non-judicial GRMs and the absence of a right to appeal is a clear violation of due process.

Case study 2. Inheritance dispute: Local Court and Customary Law Officer

After Pa Sidikie died in 2011 in Mamak Village in the north of Sierra Leone, his brothers took possession of the house that he built, kicking out his children. The children argued that they were supposed to inherit their late father's house but the uncles would have none of it. They claimed that Pa Sidikie had built his house on family land. Dissatisfied with the action of their uncles, the children filed a case in the Local Court asking the court to pronounce that the house belonged to their father and that they be restored back in possession.

In court, the dispute followed the normal procedure; witnesses were called and there was a site visit by court officials. However, before the court could conclude the matter and give a decision, one of the uncles filed a complaint with the Customary Law Officer (CLO)[27] responsible for the northern region. The CLO immediately dispatched a letter to the Local Court chairperson instructing that the matter be stayed as he was now dealing with it. The court complied and the parties began attending proceedings at the CLO's office. However, the matter has not been concluded as the CLO kept adjourning the proceedings and eventually informed the parties to wait until he summoned them. He attributed the delay to the fact that he had too many cases to address. The children are still out of the house as he refused to give any temporary relief. One of the parties is contemplating taking the matter to a higher court.

The VGGT require impartial and competent administrative bodies resolving tenure disputes to be preferably set up by law and carry out their functions in accordance with the law (Guideline 26). The Guidelines also provide that resolution processes should be participatory, timely and affordable with decisions being made in writing (Guidelines 4, 6 & 21). These bodies should provide effective remedies and allow for a right to appeal (Guidelines 4 & 21). The conduct of the CLO in this matter is not congruent with some of the aforementioned VGGT principles. Removing the case from a court that has the power to hear and determine such matters by improperly exercising

27 Government lawyer in the office of the Attorney-General with responsibility for advising and supervising local courts. Under the Local Courts Act 2011 they have power to review the decisions of local courts.

supervisory powers, was an abuse of authority. It was not in the least consultative. The adjournments and later cessation of the process before the CLO violates the principles of timeliness and affordability and the absence of any decision means that the parties did not have access to any effective remedy.

Case study 3. Title to land - Provincial Secretary

Several years ago, the Kamara family in Makeni, northern Sierra Leone leased several acres of family land to the government. However, the land was not developed by the government and was left to lie unoccupied. While some time was still left on the lease, a certain well-connected and resourced individual (Mr. Bob) began laying claims to the land. He started demarcating and selling portions of it. At the time, the family members with whom the government signed the lease had grown old or died. The younger members of the family attempted to stop him, but they did not succeed in doing so. Mr. Bob instructed a lawyer who filed a case against them in the Magistrates' court. The Kamara family then decided to submit a complaint to the Provincial Secretary (PS) as they did not have the resources to match Mr. Bob in court. The PS requested that the court allow him resolve the matter, which it did. Both sides presented their facts, called witnesses and submitted documents. Officials of the Ministry of Lands were asked to provide technical assistance and also to submit plans and documents in relation to the lease that was granted. The PS was assisted by the local leaders. In the end, it was decided, based on the testimonies and documents that the Kamara family and not Mr Bob, was entitled to the reversion. Mr Bob's claim was ruled unsubstantiated. The PS informed the court of the conclusion. Mr Bob was informed that he could still pursue formal legal options if he was dissatisfied with the outcome, but he did not do so. The Kamara family was restored to their property.

Provincial Secretaries and District Officers used to have important land dispute resolution functions. These quasi-judicial powers were however transferred to Local Courts by the Local Courts Act of 2011. In spite of this, these government officials in rural areas continue to deal with land disputes.

The VGGT require impartial and competent administrative bodies resolving tenure disputes to be preferably set up by law and carry out their functions in accordance with the law (Guideline 26). The Guidelines also provide that resolution processes should be fair, consultative, timely and affordable with decisions being made in writing (Guidelines 4, 6 & 21). These bodies should provide effective remedies and allow for a right to appeal (Guidelines 4 & 21).

Even with the loss of important statutory land dispute resolution powers, the PS and other persons or bodies could draw legitimacy from Section 44(2) of the Local Courts Act 2011, which allows any person to conduct arbitration or similar settlement of disputes on various matters including land. So, the PS has legal power to arbitrate as it did in the case. The manner in which the case was handled suggests compliance with the VGGT procedural requirements for a public GRM. By including Ministry of Lands officials and local leaders in the examination of the case, the PS was employing a consultative approach. The hearing process appeared to have happened speedily with all sides to the dispute being able to tell their stories. There is also an indication that the outcome of the process was in writing with a real remedy for the successful party. Crucially, the right to appeal to a judicial body was contemplated by the PS and the unsuccessful party duly informed. This is a very good example of compliance by a public GRM with the standards, principles and best practices of the VGGT.

Case study 4. Compensation for damage to palm trees - Paramount Chief and Mining Company

In 2014, an exploration company operating in the south of Sierra Leone caused damage to oil palm plantation as it carried out scoping for minerals. The company had obtained an exploration license from the National Minerals Agency to prospect in that area. However, the company had not informed the community beforehand about its activities. When the community members whose plantations were destroyed approached the company for compensation, the company refused to pay. The matter was reported to the Paramount Chief who then organized a meeting between the affected landowners and the company to resolve the issue. During the meeting, all sides presented their facts after which the Chief determined that the company should pay for the crops damaged. However, he stopped short of determining the quantum. The company agreed to pay compensation but offered amounts lower than those set out in a government policy[28] and only for certain crops. One of the farmers who received compensation felt it was better than nothing as the company had initially refused to pay any compensation, claiming it had a license from the government.

The VGGT requires business enterprises to provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms, especially where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights (Guideline 3.2). The facts reveal that the mining company departs from this standard in two material respects. First, the company did not provide for its own operational level grievance mechanism that the VGGT envisages and that is now mandated under the mining regulations of Sierra Leone.[29] Second, the company did not fully cooperate with the customary GRM which the landowners approached for redress when the company refused to address their grievances. Both of these lapses resulted in a less than effective remedy.

Case study 5. Environmental damage – the Environmental Protection Agency

Late in 2014 a community in Northern Sierra Leone started to notice that their drinking water, which is taken from a nearby stream, tasted different. Some community members fell ill and believed that their illness was linked to chemicals being introduced into the water by nearby agricultural operations; the community ceased using the stream as a source of drinking water. Nearby the stream, a timber producing company had planted new trees. The community complained to the company that the chemicals poured on the young trees had been draining into their streams causing contamination. After some back and forth between the community relations department of the company, the community consulted with a local CSO, which wrote to the Environmental Protection Agency (EPA) with the concerns, hoping that the complaint would be processed by the Environmental Compliance and Enforcement department. The EPA visited the site in order to broker a solution between the company and the community. This mediation effort failed because, in the view of the community, the simple solution was to require the company to cease polluting their water supply and clean up the damage done. The CSO tried to obtain a copy of the environmental impact assessment, but was unsuccessful. After much pressure from the CSO, the company agreed to provide a certain amount of water to the community on a monthly basis. By early 2016, the company still failed to implement any long term measures such as clean-up of the contaminated area. Some members of the community remain dissatisfied with the situation and would like to take further action.

28 The Ministry of Agriculture Forestry and Food Security has set out specific amounts to be paid for various crops that may be lost or destroyed during large-scale land acquisitions in its Crop Compensation Guidelines.

29 See Section 61 of the Environment Protection (Mines and Minerals) Regulations 2013.

The EPA is set up by law as the national regulator responsible for protecting the environment. The Agency issues environmental licenses, permits, and pollution abatement notices in order to control waste discharges and emissions which are hazardous or potentially hazardous to the environment.

The VGGT require impartial and competent administrative bodies resolving tenure disputes to be preferably set up by law and carry out their functions in accordance with the law. The Guidelines also provide that resolution processes should be fair, consultative, timely and affordable with decisions being made in writing. These bodies should provide effective remedies and allow for a right to appeal. Similarly, the VGGT require business enterprises to provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms, especially where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights (Guideline 3.2).

The EPA has a clear legal mandate on the environment with real enforcement powers. However, based on the facts of this case, the EPA seems to have opted to find a mediated or agreed solution to the community's complaints. It is not clear if the outcomes of the mediation were documented or whether there was any plan to address non-compliance. The lack of any concrete remedial action by the company is directly referable to the informal approach adopted by the regulator. The conduct of the environmental regulator, as a public GRM runs counter to the principles and best practices of the VGGT. In addition, the absence of an effective, operational-level GRM within the company puts the community at a disadvantage and could potentially create tensions with adverse consequences for company operations. The case further provides an example of the role of CSOs in facilitating access to or testing the function of public grievance mechanisms.

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