

TWELVE STEPS

Community Protocol for Large scale Investments in Land



TWELVE STEPS

PREFACE

The issue of land ownership, acquisition and utilisation has always been a very sensitive matter in Sierra Leone primarily because of the socio-cultural and economic value attached to it as a natural resource. There is often a view by majority of Sierra Leoneans that the country has large tracts of fertile land for agriculture and other socio-economic usage which is adequate relative to the country's 6,000,000 population. This position has lately been subject of debate based on recent research findings which now informs the previously held views that were not evidence based. There is no available data on the general land holdings in the provinces since pre-independence and post independence.

Since the end of the war in 2002 and the surge in efforts at national reconstruction in Sierra Leone, there has been a lot of focus on economic development through the promotion of large scale foreign direct investment. This move towards promotion of economic growth has witnessed a lot of pressure on available natural resources including land for both domestic (personal and small holder use) as well as to cater for the large acreages required by numerous multinational national companies (MNCs) that are desirous of investing in the agro business and mining sectors. The resultant effect of all these forces has been less land available to support livelihood, as well as food and nutrition security of individuals and communities specifically in areas of high pressure demand and generally on national food and nutrition security.

The disproportionate allocation of land for livelihood versus large scale land acquisition to support industrial agri-business and mining investment has seen the emergence of CSOs working on the protection and preservation of citizen's tenure rights and their rights to access land. This has mostly been through joint advocacy to ensure transparency and that citizens' prior and informed consent are sought and respected in an event land belonging to communities and clans are demanded to support investment with the promise of provision of vital community development needs such as; water and sanitation and hygiene (WASH) facilities, feeder roads, health and educational facilities, general community infrastructure and other pertinent needs.

The country's natural resources such as land are collectively owned by the citizens and by extension most state policies dictate that the government and state authorities can influence use and acquisition for the purposes of development. The recent practice in the country is for the government and other state and traditional authorities to enter into agreement with foreign investors for the acquisition of large tracts of land without the involvement of land owning families and clans. Such transactions have often left land owners and users not only marginalised but with threats to their livelihood and rights to live dignified lives. It is against this backdrop that Green Scenery decided to design and implement a project whose objective was to respond to issues around citizens concerns over the mode of large scale land acquisition for investment in Sierra Leone.

The "***Community Protocol***" for large scale land acquisition in Sierra Leone is prepared by Green Scenery as part of the ALLAT network in an attempt to ensuring fairness and equity in the land management system in the country to guarantee understanding between all the parties (land owners, community leaders, corporate bodies and state authorities). The Protocol is simply designed and presented in twelve (12) steps which should guide all the parties in initiating and entering into formal arrangements for any large scale land acquisition which could ensure that all interests are fully catered for leading to greater efficiency and improvement in land management processes for investment in the country. The Twelve Steps is developed in a participatory manner involving community members and state actors with the facilitation and support of Green Scenery. ALLAT has played a significant role in the process, as it has committed funds to the printing and wide circulation of this document. We wish to extend our sincere thanks to all our donors for their support and the Government of Sierra Leone for creating space for our work.

Joseph Rahall
Executive Director

June, 2014.

TWELVE STEPS

We acknowledge the efforts of all members Action for Large Scale Land Acquisition Transparency (ALLAT):

Green Scenery, Freetown

Sierra Leone Network on the Right to Food (SiLNoRF), Northern Region

Malen Affected Landowners' Association (MALOA), Pujehun District

Affected Land Users' Associations (AFLUAs), Tonkolili and Bombali Districts

Partners Initiative for Conflict Transformation (PICOT), Bo and Bonthe Districts

Search for Common Ground (SFCG), Freetown

Centre for Democracy and Human Rights (CDHR), Bombali District

Campaign for Good Governance (CGG), Freetown

Rural Agency for Community Action Programme (RACAP-SL), Pujehun District

BIOSALONE, Freetown

Centre for Coalition of Human Rights Activists (CCHRA), Tonkolili District

Community Empowerment for Poverty Alleviation (CEPA-SL), Kailahun District

Sierra Leone Adult Education Association (SLADEA), Freetown

United for the Protection of Human Rights (UPHR), Port Loko District

Women's Network for Environmental Sustainability (WORNES), Freetown

TWELVE STEPS

Introduction

Sierra Leone has been witnessing a rapid growth in the commercial agriculture and mining sectors in the last 10 years (since 2004). This has had a concomitant effect on land acquisition and land use regime in the country. This is necessitated by the mass influx of foreign investors into the country and especially to the rural communities where the majority of the county's land holdings are located.

As a country, the general governance landscape is saddled with major policy and legal issues. The most important of these issues are the absence of an appropriate legal and legislative framework and poor implementation of existing laws to respond to the rapidly changing investment environment. The reasons for this state of affairs range from lack of political will, weak capacity of staff in the various Ministries, Departments and Agencies, the Local councils as well as perceived or real cases of collusion and outright corruption.

The issue of land and its acquisition has become very topical and is reaching worrying proportions where communities are at the brink of open confrontations and conflict with investors and their backers. There are references to poor and often inadequate consultations with the critical stakeholders – land owning clans, traditional authorities and local councils in the negotiations and acquisitions of large track of land. This is common in almost all chiefdoms in the country that are endowed with land to support commercial agriculture and or mining/ extraction.

The land situation and its management requires focused intervention to avoid outright conflict as well as ensure that livelihood for especially women, children and other vulnerable groups within the communities are secured. The campaign and advocacy targeting land grab is mainly in support of fairness, equity and responsible land acquisition and management to the benefit of all key stakeholders – community, the investors and the State actors (mainly national and local governments).

This draft Community entry protocol is an attempt to address the short comings in the community entry and subsequent negotiation of land leases and concessions.

Rationale for the Community Protocol

This document has been prepared by Green Scenery to support a number of critical considerations among which are the following:

- i. To provide a simple and easy to access reference for Community actors in handling contacts with investors relating to actions leading to acquisition and concessions at the within communities.

TWELVE STEPS

- ii. The manual is also to provide a 'step by step' guide of how to approach cases of investor contact with communities in search of land for agribusiness and the extractives.
- iii. As a reference guide, it could be used by CBOs as a frame to review the negotiation of land acquisition agreements and protocols in conducting advocacy on land use and livelihood.
- iv. The manual could also support capacity building initiatives on land management at the community level.
- v. It is expected that prudent investors could use this protocol to guide the preparations for community entry thereby insuring themselves against controversy and doing business in presumed 'bad faith'. This document will permit them to be aware of what should be the acceptable community expectations thereby protecting their business integrity from unethical local collaborators/ partners within the Country.

In order to ensure user friendliness, this Protocol is written and presented in a chronological manner so that users will be made familiar with the (12) steps and also taught on the relevance of being systematic and avoiding side stepping as there could be negative consequences for either parties (but more often for the community).

TWELVE STEPS

THE TWELVE (12) STEPS APPROACH

STEP 1: A potential investor establishes contact/ link with a community for possible land acquisition.

The immediate next step for any investor after arriving within the Country and undertaking the necessary immigration and entry requirements is to ensure early contact with the Community that h/she intends to undertake business/ investment. This will be referred to as step (1) and shall involve the following actions:

- i. The investor should be associated with a credible personality/ personalities who should serve as their 'point person' within the country as well as link to the community. It is the investor's responsibility to chose this credible 'point person'.
- ii. It is important that the individual serving this ' point person' and community contact role fulfill one of the following criteria;

An indigene – that is a native of the community who has links by birth that is recognized in the community

An affiliate – someone who is recognized as having good record of associating with the community either through links with an indigene, prior business or marriage as examples (this is not exhaustive)

Acquaintance – someone who is known by members of the community as reputable and with good character which qualifies him/ her to be considered as someone who can work in the interest of the community.

Step 2: The 'Point person' leads the investor to the community.

The 'Point person' leads the potential investor to the identified Community (chiefdom headquarters) and from there to the other parts where the Business will be located/ conducted.

The 'Point person' will be required to establish contact with the hierarchy of the Traditional leadership (including some or all) of the following:

The Neighborhood Head: This is the traditional leader living very close to the area where the land is located and is often a close associate of all families living the.

The Village/ Town Head: This is a superior authority that is head of a number of neighborhoods that makes up a small village or town within the Chiefdom and although not as close to all of the families but in most cases knows at least the heads of those families.

TWELVE STEPS

The Section chief: This is the authority that often rules a section of the Chiefdom.¹ The section is a cluster of towns and villages and has a number of neighborhood and town heads and chiefs who are supervised by him/ her.

The Chiefdom Speaker: This is the 'vice/ deputy' to the Paramount chief. The Chiefdom speaker is often the principal adviser to the Paramount chief and with his/her absence from the Chiefdom or most functions deputises the Paramount chief and reports back.

The Paramount Chief: This is the head of the Chiefdom and wields all administrative and traditional authority in the Chiefdom. The Paramount chief by custom and tradition holds the land in trust for and on behalf of the people (and in particular- land owning families). This is the authority that is often the recognized signatory of land titles (which should be done) in consultation with land owning families and the sub-chiefs listed above.

The main purpose of (Step 2) is to introduce the potential investor, his/ her mission and what his/her expectations are from the Community. This step also gives an opportunity to the investor to know the traditional authority hierarchy and how 'power and authority' operates within the locality that he/she intends to undertake the investment.

The Traditional authorities (listed above) in close consultation will assess the mission/ objective of the potential investor and based on their judgment and assessment of the mission could decide to proceed to Step (3).

Step 3: The traditional authorities invite property/land owners to a consultation

The traditional authority (depending on the mission/ objective) of the potential investor will invite the property/ land owning families for briefing and consultation. This meeting is mostly for 'head of the clan' and immediate sub chiefs in the traditional authority hierarchy.

It is important at this point for the traditional authority and clan membership to undertake a background check on the investors 'point person'. This is to check on any past history of such a 'point person' associating with investors, his/her personal records in terms of openness, transparency and accountability etc. This is to make sure that the 'point person' bringing the investor is not of a questionable character which could potentially disadvantage the clan or community if the whole business is not properly managed.

In the meeting following the invitation, the 'Point person' is introduced alongside the potential investor. There shall be a spokesperson among the traditional authority that will

¹ The Chiefdoms of Sierra Leone are divided into administrative Units known as 'Sections' which vary from an average of three sections to anything up to 16 Chiefdoms. The number of Sections and population size is the basis of classification of Chiefdoms into Classes; A, B and C.

TWELVE STEPS

steer the meeting. The mission of the potential investor could either be presented by the 'point person' or by one of the traditional authorities to the family/ clan leadership.

Step 4: The clan membership/ family is allowed time for internal consultations:

This internal clan/ family consultation is very important as this is an opportunity to not only inform other clan members within the community, but it is advisable to even contact those living outside the community but who also have stake in the land and property that is being targeted for acquisition and investment. *This consultation should be allowed to go on until the clan/family members either arrive at consensus or disagreement (either of which they as a group will be prepared to present) to the traditional authorities for considerations. There is always a huge risk of such internal consultations not being conducted or done, or if done often hastily or improperly involving only a few members to the exclusion of all others.*

In this clan/ family consultation, all recognized members (men, women, young people and people with disabilities) must be involved so that it is as inclusive as possible and each member's voice, concerns and interests are heard, considered and factored into the final decision making for report back to the traditional authorities.

Step 5: The Clan membership/ family organizes a report back Session to the traditional authorities:

The clan/family headship will give notice to the traditional authority that internal consultations have been conducted and completed and that they will require time and venue for feedback on the outcome of the internal consultation. In the feedback/ debriefing meeting, the following should be anticipated;

- Clarifications
- Concerns
- Benefits/ advantages to the Clan/ family
- The loss/ disadvantages to the Clan/ family

This will be followed by a group (Clan/ family) position in response to the traditional authorities demand on them to 'let go' portions/ part of their property. The anticipated responses could normally fall into any one/ two of the following categories:

- i. Concession agreed
- ii. Agreed on conditions
- iii. Refusal with reasons

TWELVE STEPS

Step 6: Traditional authority provides a Community response to the Clan/family on their feedback/ debriefing:

The traditional authority must provide the Clan/family with its reaction(s) to their decisions communicated after the internal consultations. In the course of doing so the traditional authority will be required to give reasons why a particular clan/ family and their land / property has been identified by the investor, the potential benefit to the clan/ family, to the community, the chiefdom and the country at large.

The nature of the response that will be provided by the traditional authority and timeframe between receiving the feedback from Clan/ family members and giving them a response could be determined either in part or whole by some or all of the following;

- i. Could have shorter time frame with low intensity of negotiation
- ii. Could be slightly longer with medium intensity (negotiation)
- iii. Much longer with high intensity (negotiation, education concession)

Step 7: The Clan/ family is allowed extended internal consultation to reflect on traditional authority reaction to 1st consultation feedback/response:

If there are still reservations from the Clan/ family, the traditional authority should again allow time for some guided internal consultation on the request to proceed. In such a follow up consultation, the Clan/ family could now request external support/ assistance from informed sources (CBOs, NGOs, traditional authority members whom they trust) etc to provide further education, guidance and support.

In order to protect the interest of the land owning families/clans as well as being mindful of the investor's, it is proposed that traditional authorities request the clan/family heads in consultation with the clan members to suggest an indicative time frame which could be negotiated and agreed to by all parties.

Step 8: If there is more than one Clan/ family involved the steps are repeated – 1-7:

There are some instances where the quantity of land required by the potential investor is spread across the locality (chiefdom) involving several Clans/ families. In this type of situation, the traditional authorities, the 'point person' and the potential investor should give time for making the necessary contacts, traditional authorities engagement of Clans/ families and opportunities for internal consultations and feedback. It will therefore be a good practice to redo (steps 1 – 7) in a chronological order. This should be done until all the Clans/ families on the one hand and the traditional authorities and potential investor on the other hand reach some form of common grounds/ position.

TWELVE STEPS

Step 9: Traditional leadership will meet to assess the responses of the general Clan/ family feedback:

The traditional authority as custodians for land on behalf of families as well as agents for community development will now meet, to reflect on the collective clan feedback.

In this meeting, the traditional authorities should be guided by principles such as what benefits will accrue to the Clan/ family and the community as a whole as well as what short, medium to long term disadvantages (if any) will the granting of concession to the potential investor cause the Clan/ family and the community.

If the benefits outweigh the disadvantages and there is unanimous agreement on the part of all community actors that were consulted, the traditional authorities will also (if needed) but advisable call for/ request expert advice on how to proceed in engaging the ' point person' and potential investor to ensure that the anticipated benefits are acquired / attained by all stakeholders.

Step 10: Outcome of the traditional authority meeting is publically presented to the 'point person' and potential investor:

The traditional authorities after successfully completing (steps 1 – 9) and reaching a position that can best be considered favorable for all the Stakeholders (Clan/ family; traditional authorities representing the wider community's interest and the potential investor) will undertake the mandatory obligation of Public disclosure. The entire community and the wider public should be thoroughly informed/ briefed about what the Community is planning to enter into (lease/ concession) of portions of land for the purposes of investment, community and national development.

This step should involve conducting a joint meeting of (Clan/ family members; traditional authorities; potential investor; CBOs; the Media) and other interested members of the Public. The main information tips should be (but not limited) to the following since any additional information in support of greater transparency and accountability could also be shared:

- i. Processes of consultations
- ii. Position of various clans
- iii. Negotiations involved to arrive at common concession
- iv. The harmonized community position as presented at the public meeting (a pre negotiation position of outcome)

TWELVE STEPS

Step 11: Background check on Potential investor

It shall be incumbent of the community under the leadership and direction of traditional authorities to conduct a detailed and thorough background check on the potential investor. The objective is to determine the history of the investor's business entity, its past and current performance especially in operating on the basis of sound corporate governance and ethical norms and more importantly (records of not only compliance with agreements and but actual performance) in meeting agreed obligations.

Since background information gathering and analysis for informed opinion and decision making is technical, time consuming and often expensive, it will be helpful if the community will involve other pertinent stakeholders (such as) the following:

- i. District office Personnel
- ii. District council Personnel
- iii. Members of Parliament in the District
- iv. CBO'S,NGO'S,INGO'S
- v. Descendants of the community (both within and outside the country)

Step 12: Investor formally invited by traditional leaders in the community for briefing on outcome of negotiations.

This step shall be referred to as the 'pre-formalisation' step. This is when the potential investor is invited by the community (often in the presence of either the Paramount chief or his Chieftom speaker) for the official position of the community to be communicated to the investor through his/ her 'point person'.

The position should also include any 'concerns and reservations' that the community may have arising from the background check that was also conducted during the course of the community consultations and internal consensus building to arrive at the decision/ position that is to be communicated.

If the communities have a positive response (in agreement) with the potential investors request and plan for investment based on acquisition of land lease/ concessions, the communication of community approval is followed by negotiations and contracting. Since this should be rigorous and based on expert interactions, the community could hire the services of pro-bono land/ commercial lawyers, paralegals and CBOS/ NGOs working on land issues for support to ensure fairness and equity in the negotiation of contract terms prior to signature.

TWELVE STEPS

TWELVE STEPS

Sponsors



For a world without hunger

