Large scale land investments and Sierra Leone’s draft National Land Policy

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1. Introduction

A series of short videos on the website of Sierra Leone’s investment promotion agency (SLIEPA) tout the country as one of the most attractive oases for investment. “Business friendly reforms.... tough anti-corruption laws.... attractive incentives....abundant natural resources.... and 5.4 million hectares of arable land make Sierra Leone one of the best destinations for investment in Africa”, according to one.

Globally, the competition for foreign direct investment (FDI) is fierce but sub-Saharan Africa seems to be holding its own quite well. According to Ernst and Young’s 2014 Africa attractiveness survey, the continent’s share of FDI projects in 2013 was nearly 6%, the highest level in a decade. Four countries- South Africa, Kenya, Ghana and Nigeria- were the biggest gainers in a year that saw sub-Saharan Africa’s continental share of FDI projects leaping from 58% to 71%. United Nations Conference on Trade and Development (UNCTAD) estimates that FDI flows to Africa in 2013 reached $ 56 billion.

Sierra Leone aspires to increase its comparatively minuscule share of FDI. Its current poverty reduction strategy- a five-year development blueprint- aims to initiate the country’s transformation to middle income status by 2030. The “motor” for this change would be “responsible natural resource exploitation”, with the private sector playing a leading role.

The draft National Land Policy picks up on this refrain. Part of the vision for a new, improved system of land tenure and management is to “stimulate investment for the nation’s continued development”. Sierra Leone is in effect staking its future on its land and natural resources.

Some have, however, questioned what they call the unrestrained “open for business” approach in relation to land and natural resource exploitation. They worry that large-scale investments in land and natural resources would undermine food security, deepen poverty and inequality, and lead to negative environmental consequences.

This article discusses key provisions of the draft land policy and examines whether they offer a proper framework for balanced and responsible large-scale land investments. It is part of a series discussing the major changes proposed
by the draft national land policy. The aim is to inform and motivate discussions of the policy content with a view to generating suggestions for improvement.

2. Context

Sierra Leone scored 183 out of 187 countries in the 2014 Human Development Report, one place higher than the previous ranking. In spite of this positive progress, the country still lags behind in key areas. The report found that 72% of Sierra Leoneans are multi-dimensionally poor. The country was also judged poorly on gender development.

Ironically, Sierra Leone’s profile on the Food and Agriculture Organisation (FAO) website reads like an Eldorado: “nearly 75% of the total land area is arable…. the country is well endowed with natural resources….has abundant water resources, with huge growth potentials in fisheries.” The country’s mineral map is equally impressive- diamonds, rutile, gold, bauxite and iron ore are some of its key mineral deposits. Previously unknown minerals like zircon and cobalt are now being discovered and exploited. By April 2012 there were, according to SLIEPA, 234 companies with various trading, exploration and mining licenses.

The economy is still predominantly agricultural, even though the country is more known for its diamond deposits. Smallholder farmers practising shifting cultivation account for the bulk of the food produced locally. This output, however, does not meet local needs and Sierra Leone remains a major importer of rice, its staple food. The plan to achieve food security and growth in the sector seems simple: - commercialise smallholders, improve infrastructure and services and invite the big players to take up surplus land for large-scale agriculture.

Yet, this vision has not been realised. The smallholder commercialisation programme seems to have hit some snags. The introduction of mechanised inputs has not worked out as expected, agricultural business centres have been under-utilised and the majority of farmers still use traditional techniques. The tapering ebola crisis has also severely affected productivity.

Big private investments have struggled to cohabit with their host communities, sometimes resulting in tension and violence. While some are genuine investors, others are essentially speculators working in league with local agents to turn a quick profit.

The private sector desk at the Ministry of Agriculture does not have accurate data on all the companies involved in large-scale land transactions or the amount of land currently held by them. Some have estimated that as much as 20% of the country’s arable land may already be in the hands of companies.
With so much poverty in the midst of plenty, it is understandable for any government to want to leverage its natural resources for growth and development. Doing this in a fair, responsible and balanced manner however remains the challenge.

3. What does the draft policy propose?

As stated earlier, one of the goals of the draft land policy is to “stimulate investment for the nation’s development”. To this end, it urges government agencies to create an environment that attracts foreign and domestic investments by, for instance, “removing bureaucratic inefficiencies and corruption in land institutions”. The policy also makes the following specific proposals:

3.1 Make more land available for big investments

The draft policy notes that the amount of land government owns and which it could avail to investors, particularly in the provinces, is limited. It therefore proposes systematically setting aside land for large-scale investment. This process, the policy stipulates, would be community-led with support from the government.

In many places, land banks have gained notoriety as vehicles for dispossessing land owners particularly in rural areas where land is assumed to be plentiful and idle. This fact may have influenced the policy framers’ decision to accept a civil society proposal to make communities the drivers of this new move. While the emphasis on community control is reassuring, the policy needs to provide more detail about the scope and mechanics of the land banking process and the nature of the “support” from government. Already some communities have had very testy relationships with land investors, and government’s perceived investor-leaning stance in some of these conflicts has generated suspicion. A more specific framework is required to inspire confidence in the proposed new arrangement. For instance, the policy needs to set out (i) a mechanism for mapping local resources and land use patterns (ii) the category of lands that would be available for banking (iii) a transparent and inclusive process for community consultation and decision-making (iv) how common resources would be shared (v) the right of families and communities to opt in or out of the land bank (vi) directly enforceable environmental and social obligations (vii) mechanisms for addressing grievances. The draft policy should also rule out the use of eminent domain to acquire land for investors.

Of concern also is the fact that the draft policy seems to play up large scale agriculture investments at the expense of smallholders. It makes generic references to “small-scale land holders” in a couple of places but does not
concretely address their challenges, either with respect to accessing land or livelihood support. Given their contribution to the national economy and growing evidence of their potential to tackle food insecurity, it would be foolhardy for the draft policy to fail to deal with small scale farming.

3.2 Benefit sharing arrangements

The draft policy proposes long term benefit-sharing arrangements between companies and land-owning families or communities instead of one-off payments for their land. This benefit-sharing, the policy notes, could be in the form of contract farming and out-grower schemes for smallholders, equity-sharing and joint ventures.

Whilst long term benefits from land transactions is an attractive approach, serious thought should be put into how those schemes are designed and rolled out. The policy unfortunately is short on details. Besides, not all the examples mentioned are genuinely benefit sharing arrangements. The draft policy needs to at least set out a benefit sharing framework which should among others provide for (i) consultation with families and communities about the type of benefit-sharing arrangement they desire (ii) legal protection for families and communities (iii) clear enforcement mechanisms.

Most importantly, for any equity-sharing or joint venture arrangement to work, the draft policy needs to roll back the economically crippling and artificial practice of rent fixing. To ostensibly attract private investment, the Ministry of Agriculture in 2009 adopted the Investment Policies for Private Sector Promotion in Agriculture. Clause 8 of that document stipulates that “the investor will pay US $5 per acre a year for any lease agreement reached”. The Ministry also centrally fixes the level of compensation that investors pay for trees or crops that are destroyed. On both accounts, this amounts to an overreach by the government to maintain the illusion of cheap land. Land owners and other right holders have always protested against this interference. It is improper for the government to unilaterally determine the rent to be paid for land that it does not own. If this persists, it would undermine any benefit-sharing arrangement, as the value of the asset that communities could contribute has been artificially undercut. Rent-fixing also prevents competition among lessees. Healthy competition among investors is likely to increase rental value, making more resources available to families and communities.
3.3 Progressive tax on land for commercial investments

Taxes are important for many reasons. They help fund public services infrastructure and social safety nets. They can also be used to discourage undesirable practices. The draft policy reflects this awareness and proposes to introduce a tax regime on land held for commercial investments that would “facilitate efficient utilisation, discourage land speculation and hoarding” and provide funding for public services. Land in rural and urban areas would be subject to a range of taxes including capital gains tax and a special “development levy” for undeveloped land. Additionally, land in urban areas would attract unimproved site value and improvement value taxes. The tax regime would apply to land holding above two hectares and there would be remission or exemption for persons who are poor and those who depend on their land for subsistence.

Undoubtedly, a progressive tax regime for land-related commercial transactions improves revenue collection and could make more funds available for essential services. However, all of this could be undermined by the practice of subjectively granting sometimes decade-long tax exemptions and duty waivers to investors. It is logical for government to want to retain some flexibility in negotiations with investors, but such discretion should be tempered to prevent rent seeking and corruption. The draft land policy needs to set out, as part of this progressive tax regime, an objective criteria to govern the grant of tax exemptions and duty waivers in large scale land transactions. Additionally, the draft policy needs to address the 50% reduction in rent income occasioned by the Investment Policies for Private Sector Promotion in Agriculture 2009 and Mines and Minerals Act 2009. By a distribution matrix set out in both documents, land owners only get 50% of the rent. The central government, district council and chiefdom administration split the remainder. In effect, from the $5 set by the government as rent for agricultural land, landowners only actually get $2.5. By national tax standards- 10% of rental income- this is a very high threshold indeed. It is unconscionable for landowners to forfeit 50% of their rental income to the government. The draft policy should replace the current distribution matrix with the applicable tax rate.

4. A vital missing piece: correcting power asymmetries

Interactions between large-scale land investments and communities are often marked by huge asymmetries of power and information. Contract negotiations have been lopsided. Not only have rural communities faced companies with enormous resources and expensive, often politically connected lawyers, some companies have even sought to control communities’ access to legal assistance. Many lease agreements, particularly for big agriculture investments, are often
heavily weighted in favour of companies. These companies then run into trouble with communities when they attempt to implement their leases.

The draft land policy however fails to appreciate this reality and consequently does not contain provisions to empower communities interfacing with investors.

To address the power variance, the draft policy needs to include provisions that (i) strengthen local land governance in relation to investment decisions (ii) support communities negotiating with investors (iii) support communities seeking compliance or redress. In practical terms this would mean facilitating fair and transparent community decision-making processes, independent legal assistance and representation during negotiations and accessible complaint mechanisms for non-compliance by investors. Additionally, the draft policy should outline a system to fund this effort which could include investor contributions to a basket fund. A rebalancing of the power dynamic between communities and investors could improve trust and confidence and ensure a harmonious co-existence.

5. Conclusion

The draft national land policy should address in greater detail large scale land investments, particularly in relation to investor/community interactions. It has generally good provisions on land investments but contains many half measures, which lack essential details regarding how these concepts would be operationalised. In addition to addressing the issues raised in this piece, the draft policy should also incorporate, where relevant, the Poverty Reduction Strategy Paper 2013-2018 and the draft Guidelines for Sustainable Bioenergy Investment 2012. The latter sets out best practices for bioenergy investments in Sierra Leone. For example, it provides for the creation of a basket fund to pay for independent legal and other professional services for communities engaging in negotiations with investors. It also sets out a model impacts and benefits agreement which is directly enforceable. At the very least, both of these provisions should be reflected in the draft land policy. Sierra Leone stands a real chance to prison-break from the jail of poverty through the “judicious use of its extensive natural resource endowment”. But this would require setting the right kind of rules and playing by them.