



URBAN PLANNING PROJECT 2011-2014

Freetown City Council

The Land Tenure System in the Western Area and Access to Land by the Freetown City Council

Preparatory Components and Studies of the Freetown Development Plan:
Support to Freetown City Council and to the Urban Planning Authorities

EuropeAid/128037/D/SER/SL
Cris. No.:FED/2010/250-190.

January 2014

Legal Experts Jaqueline Hope AND Aderemi R. D. Renner-Thomas
GOPA- CES Consultants & 3BMD Consulting Engineers, financed by European Union

This overview of land tenure, related laws and regulations in Freetown is prepared for Freetown City Council to facilitate the process of getting accesses to land for urban renovation and development projects.

The manual has been prepared by the Urban Planning Project 2011-14 by GOPA-CES Consultants & 3BMD Consulting Engineers represented by Jaqueline Hope and A.R.D. Renner-Thomas.

The work has been financed by EU.

Contents

1	Introduction.....	1
2	The Land Tenure System	1
2.1	Governing Law	1
2.2	Origins of the Land Tenure system	2
2.3	Land Tenure in the Western Area.....	2
2.3.1	Freehold Tenure.....	2
2.3.2	Leasehold Tenure.....	2
2.4	Estates in Land Tenure.....	2
2.5	Types of Land ownership	3
2.5.1	Land in Public ownership	3
2.5.2	Private land	5
3	The Freetown City Council and its Access to Land.....	5
3.1	Acquisition of land by Local Government in the Western Area	6
3.1.1	Access by the FCC to private lands and the issue of compulsory acquisition	6
3.1.2	Access by the FCC to State Lands.....	7
3.1.3	Access by the FCC to State Lands/lands in public ownership that are already occupied.....	8
3.2	Financing of an Urban Redevelopment Project.....	10
4	Conclusion	10

1 Introduction

Sierra Leone has a dual legal system which has existed long before it became an independent nation and which is recognized by its 1991 Constitution despite the fact that there is an established single unified judiciary. Within the same jurisdiction, two separate systems of courts and laws operate parallel to each other. As with the dual legal system, there is also a dual system of land tenure which may at times overlap depending on the geographical area. There are established the 'English type' courts which administer the general law relating to land in the Western Area (the Colony pre independence) and there are also the local courts in the provinces which administer customary law on land related issues with the exception of the High Court which administers all land issues for which the Provinces Act is applicable.

For purposes of this paper, the land tenure system that exists in the Western Area will be discussed with reference to the general law which consists of the received law from England (common law and equitable principles) and local legislation.

2 The Land Tenure System

2.1 Governing Law

Land tenure in Sierra Leone is governed by the general law as laid down in its Constitution. However, customary law which relates to land and which forms part of the general law is restricted in its application to the northern, southern and eastern provinces of Sierra Leone.

Land tenure in the Western Area is therefore governed only by local legislation and 'received' English Law which consist of statutes of general application in force in England at the date of reception (1st January 1880); post reception date legislation, for example the English Conveyancing Act of 1881; and principles of equity and common law. Unfortunately much of the 'received' English law relating to land and which still apply in the Western Area have long since been repealed in England and therefore, Sierra Leone is in need of its own land law which will ably address issues of easier access to and fairer distribution of land, better provide for management of land and effectively regulate the tenure system. There is currently a Draft National Land Policy paper for Sierra Leone which addresses the afore-mentioned and makes proposals for a new land law which will usher in a more simplified and unified form of land tenure for the whole of Sierra Leone.

With regards to local legislation, there is in particular the *State Lands Act* as amended (*Crowns Land Ordinance*) which was enacted pre- independence and which provides for the management and disposal of State lands. It is interesting to note that to date the only land legislation enacted in Sierra Leone post-independence is the *Non-Citizens (Interest in Land) Act 1966* and this relates only to the Western Area.

2.2 Origins of the Land Tenure system

Historically, the geographical area known today as the Western Area was declared a British Colony in 1808. Prior to that, this area had been purchased by the Sierra Leone Company under the Treaty of 1787 made with local chiefs as a land settlement for freed slaves. During that period the settlers applied English law to sort out their land disputes. When the area became a Crown Colony, it was then declared to be vested in the English Monarchy and came to be known as 'Crown Lands'. Any person granted land thereafter became a 'landholder' rather than a 'land owner'. The grantee became a tenant who held the land in a particular way. This is no longer the case but in the early days of the Colony, one of the incidents of a tenurial relationship was for the grantee of land to pay a 'quit rent' with an undertaking to develop the land.

2.3 Land Tenure in the Western Area

In the Western Area, there are two types of tenure that exists today and are as follows:

1. A freehold tenure;
2. A leasehold tenure.

2.3.1 Freehold Tenure

Though technically speaking under the doctrine of tenure, no one or entity owns land but holds it in a particular way, today the freehold tenure is akin to absolute ownership and all land granted by the State as a freehold is seen as transferring absolute ownership free of any tenurial relationship. The only incidents of tenurial relationship that seem to have survived are the rights of escheat and forfeiture. Under the *Administration of Estates Act, Cap 45 of the laws of Sierra Leone*, the State has a right to take unclaimed assets of persons dying intestate as *bona vacantia*. In effect, the property falls back to the State.

The grant of a freehold ensures security of tenure allowing the grantee freedom to use and dispose of land subject only to the State's power to compulsorily acquire the land; to the right of escheat or forfeiture; to the imposition of rates and local taxes and to the police power of the State.

2.3.2 Leasehold Tenure

A leasehold tenure is a person or entity's right to hold land for a fixed period after which the right to hold the land reverts to the Landlord who holds what is known as a reversionary interest.

2.4 Estates in Land Tenure

The other essential aspect in land tenure relates to how long land is held (quantum). This is known as the doctrine of estates. Each length of tenancy is known as **an estate** and the term of that estate is certain.

Under the law, estates are divided into two classes:

-
1. Freehold estates;
 2. Estates less than freehold

Freehold estates are further divided into three main categories:

1. Land which is granted for life (that is long as the tenant lives) also known as a **life estate**
2. Land which is granted in tail (that is for as long as the tenant or any of his descendants live) also known as **fee tail**. Its usage is rarely seen in Sierra Leone.
3. Land which is granted in **fee simple** (that is for as long as the tenant or any of his heirs, whether descendants or not were alive).

Estates less than Freehold are in effect leaseholds which range from a fixed term of certain duration (e.g 99 years lease), to a fixed term with duration capable of being rendered certain (periodic tenancies); or an uncertain period of uncertain duration (tenancy at will).

Estates can exist simultaneously in land in different ways. A person may have a present interest and another person a future interest in the same land at the same time. Estates can be held in possession in which a person has immediate enjoyment of the benefits that accrue from the interest); or an estate can be held in remainder or held in reversion. These are known as future interests.

2.5 Types of Land ownership

Two types of land ownership classifications are identified in the Western Area for purposes of this discussion paper and are:

1. Land in Public ownership;
2. Private land

2.5.1 Land in Public ownership

This type of land ownership can be described in the following:

1. Land owned by the State which was originally 'Crown Land' and which is generally referred to as 'State land';
2. Land owned by the Government on behalf of the State and acquired post-independence from private individuals or entities for any public purpose;
3. Land owned by MDAs and acquired post-independence from private individuals or entities;
4. Land acquired by the Government through escheat or forfeiture or land taken *bona vacantia*.

Land referred to above under items (2) and (3) is land that has been acquired either through private agreement/treaty or acquired compulsorily under applicable law in accordance with the Constitution. The following are examples of some of the applicable laws which provide for compulsory acquisition:

The Public lands Act, Cap 116
The Town and Country Planning Act, Cap 81
The Forestry Act 1988
The Sierra Leone Roads Authority Act 1992
The Mines and Minerals Act 2009

Land referred to in items (1) and (2) are defined in the State Lands Act of the Laws of Sierra Leone to include

‘All lands which belong to the State by virtue of any treaty, cession, convention or agreement, and all lands which have been or may hereafter be acquired by or on behalf of the State, for any public purpose or otherwise howsoever and land acquired under the Public Lands Act and includes all shores, beaches, lagoons, creeks, rivers, estuaries and other places and waters whatsoever belonging to, acquired by, or which may be lawfully disposed of by or on behalf of the State’

The *State Lands Act*, originally the *Crown Lands Ordinance* only applies to the Western Area. The Act has not been amended to extend its provisions to the rest of Sierra Leone and therefore at present, the application of the Act’s provisions are limited to the Western Area. Subsequent amendments to the Act have provided for the delegation of powers of management and disposal of State Lands by the Ministry of Lands, Country Planning and the Environment (MLCPE) and its officials.

To date it is not certain in terms of acreage how much ‘State land’ there is in the Western Area. Those specific parcels identifiable by survey, include the Defence Lands, Admiralty Lands, War Department Lands, former Ordinance Lands and the Kroo Reservation which were handed over to the government at Independence. Because of the lack of any system for the registration of titles and also inadequate surveying of lands, there is also uncertainty as to all lands that were subject of a Crown grant prior to independence and even today. ‘Squatting’ and land grabbing have further hindered all measures for bringing about certainty.

In the early 1900s, the *Unoccupied Lands (Ascertainment of Titles) Act* was passed to ensure that all those who owned land had a registered instrument proving their possession of the land; or a document evidencing title of ownership to such lands. Under this Act, the Director of Surveys and Lands can cause an area of land to be marked out, a notice put up which reads ‘Claimed as State Land’ and the onus then lies with any person or entity to prove otherwise. The standard for such proof in such cases is not high and a person who does not possess documents must show that he has been in possession of the land as a beneficial user for more than 12 years. The Act does not apply to lands recorded in the Public Register and those contained in the plans of town lots for Freetown (Central Business District). It is worth noting that the provisions of this Act have not been used that much and because of challenges the Government faces with identifying all lands that belong to it in the Western Area, this has resulted in squatting, land grabbing and sometimes the granting of the same plot of land to different persons.

As a point of note, the *Local Government Act 2004 (LGA)* lays out the leasing of ‘government land’ as one of the devolved functions to the local councils. Though the term ‘government land’ is not expressly defined in the Constitution or any other legislation, any land the MLCPE acquires or disposes of on behalf of government anywhere in Sierra Leone apart from the Western Area may be referred to as ‘government land’. Technically speaking, all land acquired by government on behalf of

the State in the Western Area is 'State Land' and should be described as such to fall within the provisions of the *State Lands Act*. However, to eliminate any doubt as to what constitutes 'government land' and what is its distinction with State Land, the draft National Land Policy paper proposes that there be no distinction and that both come under the term 'government land'. To substantiate any argument that 'State Land' is 'Government land', one can also refer to the *National Assets and Government Property Commission Act 1990* which includes within the definition of 'Government Property' '*real estate,or other immovable, moveable property belonging to the Government, or provided for the use of any Government establishment, service or Department*'.

Again as a point of note, it is arguable that the term 'Government' in the definition above refers to both central and local government though at the time of its enactment, only Central government existed.

2.5.2 Private land

This is land in the Western Area that is held by an individual or entity under the land tenure regime existing under the general law. All private land was originally owned by the State (Crown), such land in the Western Area having been vested in the Crown pursuant to the *Sierra Leone Company Transfer Act 1807*. Title to private land has since then been acquired as a result of grants of land made by the Crown (either directly or indirectly) including title derived or land acquired through adverse possession. The latter occurs where a person can show that he has been in undisturbed and continuous possession of the land for 12 years and that the title of the former owner's title to the land has been extinguished under the *Limitation Act, No 51 of 1961* by virtue of the former owner being statute barred from bringing a claim to recover possession of the land.

There are instances where private land will fall to the Government and become 'State land'/'Government land' in cases of forfeiture by the Government or if it takes the land *bona vacantia* where a person dies intestate without heirs and no one makes claim to it within a given time.

Though a person or entity who owns private land is entitled to enjoy his land quietly without restriction, such land is subject to the Eminent Domain and Police Power of the State and also subject to the imposition of local taxes and rates.

3 The Freetown City Council and its Access to Land

Much of the land held by the FCC at present may be described as 'land owned in public ownership'. These include schools, markets, cemeteries, clinics etc. Land and buildings presently belonging to the FCC were vested in it by statute, namely the *1965 and 1973 Freetown Municipality Acts* which have since been repealed by the *Local Government Act 2004 (LGA)*. Whether or not these lands were the subject of survey at the time of vesting is uncertain as there is no indication in the schedule to the Acts.

An issue raised in this paper is the FCC's need to access land for carrying out its functions under the *LGA*, specifically to develop and manage human settlements pursuant to *Section 20* of the *LGA*.

One of the components of the development of human settlements is urban planning as is reflected in the functions devolved from the MLCPE to local councils. The devolved functions are listed in the Schedule to the *LGA* and include strategic local plans; preparation of land use plans (local plans); and the issuance of building permits. In preparing plans at local and action area level, land must first be identified.

The holding of land by the FCC is not essential for urban planning however, if a local council wishes to be involved in the development stage, then its access to land does become an important issue. Under the *LGA*, the FCC has an express power to acquire property movable or immovable, for carrying into effect its functions.

3.1 Acquisition of land by Local Government in the Western Area

A local council can acquire land through

1. Lease/purchase of private land;
2. Lease/purchase of land in public ownership;
3. Lease/purchase of State land under the State Lands Act;
4. An allocation of land through a grant from the MLCPE made under the State Lands Act;
5. A declaration of land to be vested in the local council by Statute

3.1.1 Access by the FCC to private lands and the issue of compulsory acquisition

The FCC has power under the *LGA* to acquire land. This includes its ability to acquire private land through agreement or private treaty. The *LGA* does not however make express provision for compulsory acquisition as is the case in both the *1965 and 1973 Freetown Municipality Acts*.

Therefore, where there is a hindrance to the acquisition by purchase of private land for public purposes or in the public interest, for instance where the local council may wish to purchase private land for urban development and is not able to do so by private agreement, then there are several options that may be available to it and which are subject to the provisions of the Constitution.

1. Provision can be made by statute through either amendment of the existing *LGA*; or a separate enabling statute enacted to expressly give the FCC, local councils and other bodies the power to compulsorily acquire land and to provide the procedure for acquisition and rules for assessment of compensation. The *Sierra Leone Roads Authority Act 1992* is an example of a statute where provision is made for compulsory acquisition. The Minister of Works, Housing and Infrastructure (MWHI) may order proceedings for compulsory acquisition in accordance with the *Public Lands Act, Cap 116* where the land is situated in the Western Area; or in accordance with *Provinces Land Act, Cap 122* where land is to be leased in the provinces. The land to be acquired will be deemed to be for a public work; and the land so acquired will vest in the Authority by a certificate issued under the hand of the Minister which describes the land and states that the land is so vested.
2. Application can be made by the FCC to the President requesting compulsory acquisition be made on its behalf. However, this would require an enabling provision of law similar to that un-

der the repealed *Freetown Municipality Act 1973*. Under *Section 46* of the Act, an application had to be made by the Corporation (now FCC) directly to the President, who after such enquiry, could declare that the land or building was required for a public purpose and then could order that proceedings be taken under the provisions of the *Public Lands Act* for acquisition and assessment of compensation. The President would then vest such land or building in the Corporation by means of a certificate under his hand and the Public Seal of Sierra Leone to the effect that the same has been made over to the Corporation. All compensation and incidental expenses had to be refunded to the Central Government in accordance with provisions of the Act.

3. The following third option may be workable if certain criteria are fulfilled. As mentioned earlier, the responsibility for the preparation of land use plans (local plans) by the MLCPE has been devolved to local councils by virtue of the *LGA*. Nevertheless, the power to make compulsory acquisition remains with the Minister of the MLCPE under the *Town and Country Planning Act (TCPA)*. Until such time as the *TCPA* may be revised to reflect decentralization of government, the FCC may consider making an application to the MLCPE requesting the Minister of the MLCPE to act on its behalf to compulsorily acquire the land for 'Town and Country purposes'. This application would have to be supported by a planning scheme. However, under the *TCPA* the land to be acquired must fall within an area which has been declared a 'planning area' and there must be an approved planning scheme within three years of the area so being declared.

The last time any area was declared a 'planning area' under the provisions of the *TCPA* was in 1999 when the whole of Sierra Leone was declared a planning area. However, since no planning scheme was approved within the three year period pursuant to *Section 6* of the Act, the whole area has ceased to be a planning area.

For the provisions of the *TCPA* to be used for compulsory acquisition, the aforementioned criteria would have to be fulfilled. In so doing and following the procedure set out in the *TCPA*, the Minister of the MLCPE might declare the land be taken for 'Town and Country planning purposes', vest such land or building in the FCC evidenced by means of a certificate bearing its public seal and which must be registered with the Office of the Administrator and Registrar General.

Compensation must be paid to the private owner of the land and this will in most cases be in accordance with the rules of assessment laid out in the *Public Lands Act* though *The Town and Country Planning (Amendment) Act 2001* appears to have omitted provision for rules of assessment of compensation. Whatever the case, the FCC will be expected to refund this amount to the MLCPE including all expenditure incurred which is incidental to such acquisition.

3.1.2 Access by the FCC to State Lands

Taking into consideration the question of availability of finance with regards to the acquisition of private land, a more reasonable route for the FCC to take in accessing land for urban development in the Freetown area would be to look to Central government for an allocation of State Land by grant, for little or no consideration. The Minister of MLCPE has power under the *State Lands Act* to make grants and this includes

'generally, any grant, licence or right whatsoever relating to any State lands which may lawfully be made, given, granted, assigned or otherwise disposed of by or on behalf of the State'.

There is nothing that should preclude the MLCPE from granting land to the FCC for development purposes and which is in the public interest. The *LGA* states that a local council

'...shall be responsible generally for promoting development of the locality and the welfare of the people in the locality with the resources at his disposal and with such resources and capacity as it can mobilize from the central government and its agencies, national and international organizations, and private sector'.

However, in support of an application for allocation of land, the FCC should put forward a case which is in line with the Government's national policies, in particular the current 'Agenda for Prosperity' policy. The application should also be supported by a plan (structure/local or action area).

3.1.3 Access by the FCC to State Lands/lands in public ownership that are already occupied

3.1.3.1 First Option where there is an issue of relocation

In developing a structure plan for the municipality of Freetown, the FCC has identified areas for redevelopment and these include;

1. The Murray Town Barracks, which houses various military installations;
2. The area in New England Ville which houses various government ministries, departments and agencies.

These two areas are extensive but under-utilized. Area (1) has military installations which ideally should not be located in the city itself. In area (2), some parts of the government buildings lie unused and there is wastage of space.

Both these areas can be redeveloped and the only issue which may arise is as to whether the FCC can have access to lands which are already being occupied by Central Government. Though there does not appear to be any legal restrictions preventing this from taking place, having such access would depend mainly on the prevailing Central government policy at the time and the issue of relocation of those already occupying the land and /or buildings. However whatever the case, the FCC should be prepared to put forward a strong argument in support of any application to have such lands allocated to it.

Procedure for accessing State land/Government land

Though there are no fully prescribed guidelines on the process for accessing State lands/government land which are already committed to Government use, the following steps ought to be taken (These steps should also apply to unoccupied lands):

1. The FCC must liaise with the Ministry of Local Government regarding any proposed large scale project for the carrying out of urban development in the Freetown Municipality and keep it well informed at all the stages especially in the process for the allocation of land;
2. The FCC must then apply in writing to the Minister of the MLCPE for a grant of land; stating fully reasons why it wishes to acquire such land; laying out the aims and objectives of the project etc.; in particular expressing its intention to plan and develop identified areas in the municipality of Freetown which are necessary for the carrying into effect of its function to develop, improve and manage human settlements under the *LGA*;

-
3. The FCC should also present its plans (structure/local and or action area plans) with the application. Since there is at present no national spatial framework development policy for the country, the FCC should make out its case in line with the policies laid down in the current national policy, the 'Agenda for Prosperity';
 4. The MLCPE will have to consider the application for grant of land and it may take into account factors such as the change of existing use and whether it is in keeping with all planning legislation; also other socio economic factors may have to be considered;
 5. The MLCPE will have to liaise with the Ministry of Finance and Economic Development (MLFED) in considering the cost of relocation of the existing occupants if necessary;
 6. The MLCPE may have to hold consultations with those who may be affected by a decision for any relocation;
 7. Based on the application, a paper will have to be drawn up and presented before Cabinet for its consideration and the concurrence of the relevant MDAs will be sought before Cabinet reaches its decision;
 8. If there is a decision in favour of the FCC for the allocation of land already being used by Government MDA's etc., then there will have to be a formal surrender of such land to the MLCPE. This may take the form of a deed of re-conveyance if the land had been originally conveyed by deed or a formal declaration by the Minister of the MLCPE that certifies that all lands vested in for example the military at Murray town have been surrendered to the MLCPE.
 9. There should be a formal vesting of such lands in the FCC through a legal instrument which is then registered at the Office of the Administrator and Registrar General with the survey plan of the area attached.

Before Public Utility Lands/Lands committed to government use can be re allocated, or allocated for any other purposes in other countries like Kenya for instance, the lands must be subjected to all the legal processes which relate to user change contained in the relevant statutes and then re-planned in accordance with the Areas' Master Plan. This will thus make the lands available for allocation. Once the processes are completed, the land will be re-allocated in strict accordance with the Government's Lands Act. This means that there must also be a formal surrender of those lands which are to be re-allocated, to the Commissioner of Lands into a pool of un-alienated land. An issue for the Kenyan Land Commission has been that of part-development planning or haphazard planning which has been considered not to be sufficient to change alienated land to un-alienated land for allocation.

3.1.3.2 Second Option where there is no need for relocation

Another option available to the FCC in applying for access to State Lands/government lands which are already occupied, is not to have the existing occupiers divested of their land and/or buildings but to reach an agreement through negotiation with all parties having an interest in the land, whereby the FCC is able to partner with them, to improve and develop the occupied area so that it is better utilized and which will bring about both an economic and social benefits. One advantage is that the cost of relocation does not arise.

The main outcome of any agreement should be for the FCC to become a shared owner /lessee of the land dependent on how the land is held. An arrangement could be made for the provision of multi partners wherein the FCC sources private sector funding; and where another partner possibly the FCC itself takes on the management and maintenance of the finished development.

There are no prescribed procedures for access to State land/government land in this second option, however, the FCC should keep the Ministry of Local Government informed and involve it in negotiations. MLCPE is the Planning Authority and under the current planning law – the *TCPA*, it is responsible for the approval of planning schemes and for the granting of planning permission. Therefore, it will have the final say on whether such development is permitted. Nevertheless, proposal has been made by the partners of the ‘Urban Planning Project’ for a revision of the planning laws which will allow for local councils to approve plans following set legal procedures and to be endorsed by the MLCPE, the overall effect of which will be to make the plans legally binding.

3.2 Financing of an Urban Redevelopment Project

One of the major constraints the FCC will face in respect of any project for urban development is financial and therefore it must also look for private sector investment at local or international level to partner with it in any venture.

To be able to finance an urban development project, the FCC has several possible options which can also be combined and are as follows:

1. It can enter into a public private partnership for a housing infrastructure project where the private sector developer provides the financing.
2. The FCC has powers of borrowing under *Section 65* of the *LGA* which may be subject to approval from MoFED.
3. The FCC can use its own revenue subject to the provisions of the *LGA*
4. It can apply to the MoFED for a grant.
5. It can seek donor funding.

4 Conclusion

The FCC can access State land for the purpose of carrying out its functions but will also need Central Government backing. It must assure Government that it will be able to develop land that is being allocated to it and which has already been committed to government or public use particularly showing that it is of greater benefit to the public and in the public and national interest to house the growing population taking into account all social and economic factors.

References

Land Tenure in Sierra Leone – Ade Renner Thomas