

# How a structured Government-led Agribusiness Approval Process (AIAP) can stimulate RAI Compliance and strengthen CSO-Private-Sector Engagement

A Case Study from Sierra Leone

# SUMMARY

Following the end of the civil war in Sierra Leone in 2002, over a decade of unregulated land acquisitions by international agribusiness established a series of large-scale concessions on community-owned land, without the free prior and informed consent of the families whose land was being used. The resulting restrictions to existing land rights, livelihoods and land use systems led to widespread conflicts with companies and social conflicts within local communities.

In response, the government sought to introduce new Agricultural Investment Approval Procedures (AIAP) aligned with globally recognized principles for the governance of tenure, and responsible agricultural investment. With support from FAO, a dedicated technical working group (TWG) was established to validate proposed new land acquisition procedures with government, civil society and private sector stakeholders. The TWG developed new AIAP procedures through widespread stakeholder consultation at the community level and with direct participation of four private companies, and became a principal focus for civil society engagement with the private sector, led by the Land for Life Sierra Leone multi-actor platform (MAP).

The working group process established common standards of good practice for the companies involved and has promoted national policy and legislative reforms aligned with global land governance principles, as part of wider efforts by civil society, government and FAO. The AIAP TWG offers an officially recognised basis for continued stakeholder deliberation and coordination to scale-up responsible approaches to agricultural investment in Sierra Leone, and for broadening community and civil society engagement with private sector agribusiness.



Institutions and Organizations: SLIEPA ( Sierra Leone Investment and Export Promotion Authority), Ministry of Lands Housing and County Planning, FAO, Land for Life Sierra Leone (multi actor land governance platform) and the NGOs: NMJD, Namati, Transparency International, Green Scenery

Four private companies: Sierra Tropical Limited (pineapple), Miro Forestry Limited (timber), Lizard Earth (cocoa) and Gold Tree Holdings Limited (oil palm).

Locations: Pujehun, Kenema, Kailahun, Portloko and Tonkolili districts of Sierra Leone

Timescale of the activities: 2017 – 2022

Intended audience / types of stakeholders interested: CSO, private sector, international agencies, donors and other stakeholders interested in promoting responsible land-based investments and securing farmers and community land rights in investment contexts



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# 01 Case Description

Following adoption of a new Land Policy in 2015, Sierra Leone established a Technical Working Group (TWG) with the support of FAO to coordinate the roll-out and implementation of the VGGT, which offered a broad platform for stakeholder dialogue to find solutions to the policy challenges involved in harmonizing the country's dual (formal and customary) land tenure system and reforming systems for land titling and registration as well as the regulation of land-based investments. In 2017 a second TWG was established to focus on new Agricultural Investment Approval Process (AIAP) to ensure that communities retain sufficient land for crop production and access to natural resources they rely on (Myers & Sanjak 2021)<sup>1</sup>. This developed and tested proposed new procedures with the participation of civil society organisations (CSOs), members of the emerging Land for Life (Lfl), Sierra Leone land governance MAP, and four private companies (Sierra Tropical Limited, Miro Forestry Limited, Lizard Earth and Gold Tree Holdings Limited)<sup>2</sup>.

The key problem addressed by the AIAP working group process is that following the civil war in Sierra Leone (1991-2002), the country experienced unregulated acquisitions of large-scale land concessions by international investors, especially from 2010 to 2015. This led to land-related social conflicts, negative impacts on established customary land rights and livelihoods for local communities, poor community relations, and mistrust between the private sector and civil society. As international investment in the private sector continues to be the central basis of Sierra Leone's agricultural development policy, government and civil society identified the need to have clear agricultural investment approval procedures (AIAP) to ensure Free, Prior and Informed Consent (FPIC) of affected communities before land was released. This, in turn, requires fuller community consultations and engagement at investment proposal stage, prior to land allocation for concessions, as well as the need to adapt and align company practice with the RAI principles more broadly to help mitigate the resulting problems affecting land concessions and local communities, and to guard against their recurrence in future investment projects.

Below, this case study explains how agreement on the investment approval procedures that are needed was achieved, and the wider implications for agricultural investments in Sierra Leone:



*Photo by Welthungerhilfe*

## NOTES:

**1** FAO's support was provided through the project: "Enhancing the enabling environment for responsible investment in agriculture and food systems" (GCP/INT/920/GER). This aimed to promote the application of CFS RAI principles globally and in national legal and policy frameworks, specifically in Lao PDR, Liberia and Sierra Leone, and to raise stakeholder awareness.

**2** AIAP TWG members include FAO, Ministry of Lands, Housing and the Country Planning (MLHCP), Ministry of Agriculture and Forestry (MAF), Environment Protection Agency (EPA), Sierra Leone Investment and Export Promotion Agency (SLIEPA), and the NGOs: Welthungerhilfe (WHH), Solidaridad, Transparency International, Human Rights Commission of SL, Green Scenery, Namati, and Network Movement for Justice and Development (NMJD)

# 01. Case description

## | Main AIAP working group activities

The AIAP- TWG met regularly during 2017 – 2021. The principal government agency involved was SLIEPA (Sierra Leone Investment and Export Promotion Agency), together with representatives of other relevant ministries, departments, and agencies. Government bodies took the chair while CSOs provided the secretariat, on a quarterly rotational basis. In practice, along with the focus on investment approval procedures, the TWG became the principal forum for stakeholder discussions on responsible land investment in Sierra Leone. Its main activities were:

- Four agribusiness investors that expressed interest in engaging with other stakeholders to test out new procedures were approached and agreed to participate. These were Goldtree Holdings Limited (oil palm), Miro Forestry Limited (timber), Lizard Earth (cocoa) and Sierra Tropical Limited (pineapples) with operations in Pujehun, Kenema, Kailahun, Portloko and Tonkolili districts.
- A scoping mission led by SLIEPA (assisted by FAO) was carried out in November 2018 to gain first-hand information on the four companies to develop a better understanding of the actual situation on the ground from the companies' perspective. The communities were not directly engaged at this point but later through a separate activity by Solidaridad shortly after.
- Blended training was carried out by the TWG in Feb 2019 with the draft AIAP and related content to CSOs and district and community stakeholders' level for their input. Training consisted of several presentations by the TWG on RAI and VGGT principles and on stages of the AIAP process and support
- A two-day workshop was organized by Solidaridad West Africa in August 2019 for staff of the four pilot companies to conduct training and sensitization for traditional authorities, communities, and staff of the pilot agribusiness companies on the AIAP.
- Nation-wide sensitization via radio broadcasts took place in February 2019 on the AIAP draft document to solicit more comments and recommendations from the wider populace.
- An AIAP "pilot" process was undertaken in December 2019 with the participation of key stakeholders via interviews and organised focus groups in Tonkolili, Bo and Kenema. These included the AIAP TWG members, government agencies and regulatory bodies, private sector agriculture suppliers, 30 community members including landowners and family/smallholder farmers, as well as the four participating agribusiness companies and some of their workers (FAO, 2021).
- An assessment study was carried out by Welthungerhilfe (WHH) with funding support from FAO, for a baseline assessment of the enabling environment for responsible investment in agriculture and food systems in Sierra Leone.
- In March 2021, FAO funded NMJD to carry out a capacity need assessment of Non-State Actors (including CSOs, smallholder farmers, large-scale investors, youth and women groups) for their compliance with RAI.

# 02 Changes and outcomes

There have been two successful broad outcomes from the AIAP TWG process:

- Organised dialogue involving CSOs, private sector companies and government stakeholders: The AIAP TWG is the only platform for discussion of RAI issues with other stakeholders. Prior to this, it was difficult for CSOs to communicate their concerns or identified community issues to private companies, but FAO's support provided a framework for engagement that was acceptable to government, civil society and the four participating private companies. The process worked well, because the LfL platform, NMJD, and FAO had conducted joint awareness raising and skills training for CSOs, youth women and other non-state actors on large-scale land acquisitions, and ways to defend the rights of local communities. Notably, the four companies that agreed to participate were already seeking to address tensions with local communities in their concessions and were open to dialogue with government and civil society.
- Stakeholder agreement of new investment approval procedures to avoid problems caused by ad hoc approvals and lack of transparency in negotiations between companies, government officials and traditional chiefs. Previously, approval processes were centralized between government and the paramount chiefs without seeking consent from communities and land holding families whose land was used (Ryan, 2018). This led to widespread discontent and land related conflicts with companies and within communities in and around land concessions. There was a lack of trust between communities and companies that were unaware of the need to respond to community concerns or engage with CSOs supporting local communities.



Photo by Berns K. Lebbie

## 02. Changes and outcomes | New approval process

The seven steps of the AIAP as agreed through the TWG process in Sierra Leones include:

### Step 1:

A potential investor contacts SLIEPA - an umbrella agency responsible for overseeing agricultural investments

### Step 2:

SLIEPA and the potential investor visit and engage with local communities – an important step in building confidence and assessing issues and concerns to be addressed.

### Step 3:

The investor undertakes feasibility studies and identifies legitimate landowners; a critical step to ensure that all the necessary information is available to both investor and communities, and to understand the specific impacts the project will have on land rights.

### Step 4:

The investor negotiates with landowners: the essential condition that all rightful landowners and users are included to ensure they have opportunities to negotiate and give their informed consent. This is likely to require prior discussion within land owning families and village communities, and open meetings with the investors, with all community stakeholder groups represented, including women youth.

### Step 5:

The investor conducts environmental, social and health impact studies: importantly these must be informed by the negotiations and take account of the full range of land rights affected and any necessary mitigation measures; the studies may raise issues that need to be taken back to the community for further discussion.

### Step 6:

Signing of agreement: to be based on full information and consent of affected landholders.

### Step 7:

Start of operations: in the past operations were often started based on superficial and incomplete consultation and without documentation of how community land rights would be affected.

Although the new procedures have been drawn up and agreed by the RAI-TWG members and other stakeholders based on wide stakeholder consultation, they have not yet been approved by government or incorporated into official policy or national law.



Source: Solidaridad

## 02. Changes and outcomes

### | Other outcomes of the AIAP process

A nationwide sensitization was conducted by the Technical Working Group on RAI, in all the districts where the four companies operate concessions. This allowed the wider public to appreciate the issues involved and comment on draft AIAP procedures. It also informed the wider public to direct all foreign investors to SLIEPA as the central agency responsible for dealing with external investors. The sensitization was widely welcomed and regarded as a laudable venture, the first of its kind in the country. Had something similar been initiated in previous years, it could have prevented irresponsible investment in agriculture, the resulting conflicts, at times leading to violent confrontations, and environmental damage in land concessions (FAO and Government of Sierra Leone 2019)

Before the AIAP process, most companies in Sierra Leone were completely unaware of the provisions of the VGGT and RAI Principles. Differences can now be observed between companies that are aware of responsible investment approaches and the possibilities of a more inclusive business model, and those that had never been approached.

Concerns and complaints raised in all the areas covered revealed that agricultural investment in Sierra Leone had not been responsible <sup>3</sup>. Previously, many would-be investors bypassed the government office and started operating in the chiefdoms, without the consent of the actual landowners <sup>4</sup>. Nevertheless, some companies were already self-moderating to develop more responsible and collaborative land tenure arrangements, for instance through outgrowing, contract farming and profit-sharing schemes (Myers and Sanjak, 2022). In this vein, according to Myers and Sanjak (2022), the private sector has been seen as part of the solution and not just part of the problem and has started to understand that “doing the right thing” can be economically beneficial, but firms reported this can be costly and the role of development partners, impact investors or foundations are critical safety nets to taking changes with new more collaborative investment models.

A few firms, such as Miro Forestry Limited, report making or amending existing land-based investments in agriculture and forestry to better align with the AIAP.

The scoping exercises with the four participating companies and the AIAP TWG discussions raised a wide range of practical concerns for both the private sector and CSOs on how to ensure agricultural investments are responsible. These issues go beyond the investment approval and land acquisition process itself.

They result from the lack of mechanisms for stakeholder engagement and from gaps and overlapping responsibilities in the mandates of different government institutions. These need to be harmonised and updated to deal with large-scale land concessions. The following suggestions were made by stakeholders from the four companies and District Councils during a scoping process (FAO and MAF, 2018)

- Broaden the RAI-TWG to include representatives from the Association of Local Councils and Council of Paramount Chiefs
- Strengthen the capacity of the Chiefdom and Community-Based Land Associations
- Establish Conflict Redress Mechanisms in land concessions
- Set up Investment Monitoring Committee (IMC) in each chiefdom where investments take place
- Engage with investors to gain their support for Community Development

Lyttelton Braima, a participant from Sierra Tropical Limited stressed that effective community consultation processes will ensure a smooth take-off of any agribusiness project since all stakeholders would have been well informed. He appealed to his colleagues to ensure that companies set up multi-stakeholder platforms at their investment sites to promote effective consultations

(AYV news report January 2020)

<sup>3</sup> Source: Berns Komba Lebbie, National Coordinator Land for Life Sierra Leone Consortiums

<sup>4</sup> Source: interview with Mry Aruna Bangura, Social Manager, Miro Forestry Limited



## 02. Changes and outcomes | Other outcomes of the AIAP process

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## 02. Changes and outcomes

### | Outcomes for private sector companies

The outcomes of the AIAP process for companies are illustrated by perspectives from Miro Forestry Limited (MFL) one of the companies that participated in the process coordinated by the working group.

According to the MFL social (including community development) manager, Mr. Aruna Bangura, the company was already adopting a similar process to community engagement and acquisition of land for planting as recommended by the AIAP process, because of the need to maintain its Forestry Stewardship Council (FSC) certification status for its produce. To date, of the total 21,000-hectare land concession, only 3,000 hectares have been developed, as local communities would not consent to release the other 17,000 hectares. Local communities wanted to change the land lease issued for the whole concession which had not been granted on a basis of their free, prior, informed consent (FPIC). As a result, the company also approaches communities outside of the original concession to access additional land, and 4000Ha land has so far been cultivated.

Instead of approaching the paramount chief to ask for land, the company deals directly with community landowners in a more bottom-up approach. Bangura pointed out that “when CSOs who are

part of the AIAP are cross-checking company activities and each time they engage with community, they come back with positive feedback”. This has been one positive outcome for the company from the AIAP process: a strengthening of community relationships and engagement by the company is now evident in this case.

Another change made by the company is the formula for distribution of land lease revenue: although the rent levels paid by MFL have not increased, 90% is paid directly to the land holding family members, rather than being channeled through the Paramount Chief and Chieftom Council. The remaining 10% is split between the district council and central government. Another point of good practice is the level of compensation paid to land users for crops lost because of land transfers to the company. MFL pays a higher uniform rate of compensation of \$25 per hectare, independent of the type of crop, significantly more than the low levels of compensation stipulated by the Ministry of Agriculture and Food (MAF) which vary according to the crop and have not been updated to account for inflation. As a result of the AIAP process, MAF intends to review its crop compensation policy, and the new rates established should apply to all companies making use of community land.

In line with the findings of the AIAP process, MFL considers the needs of all land users, including the impacts of its operations on women and youth, and seeks to take an inclusive approach and provide employment opportunities. According to Mr. Bangura, MFL’s Social Manager, a main benefit of the AIAP process for the private sector is that there is now a standard of best practice for companies to engage communities and that CSOs can now engage to monitor and validate a company’s actions. For MFL, the approach has now resulted in a reduction of grievances and other social risks. Previously, there was strong resistance, which had a negative financial impact on company business. The main direct benefit for the company has been for “its reputation as a result of responsible engagement amongst stakeholders” including CSOs, companies, communities, and government officials.

MFL also reported some limitations of the AIAP process. Up to now it has not fully captured and promoted the business case for companies to make improvements such as these. Governmental processes have been too slow to incentivise companies, and a one-stop shop approach is needed, with a single agency responsible for oversight and regulation of practice in land concessions that companies can engage with.

## 02. Changes and outcomes | Outcomes for private sector companies

Moreover, Government has not produced any report in the last few years that sets out the results and recommendations of the AIAP process for companies. “We can’t police ourselves”, Bangura concluded: as there has not been a lot of engagement with the government, for MFL, it is hard to say what the overall impact of the AIAP process has been.

The activities of this working group have increased the awareness of the companies involved for the need to improve general community engagement practice in line with the new investment procedures and of the different stakeholders to be engaged. In the past, the private sector did not actually engage with the most relevant local stakeholders and did not understand the dynamics of their local social and political contexts, and this created a lot of operational problems. The AIAP guides companies through a step-by-step process which companies can also apply retrospectively to identify and address people's concerns by strengthening community engagement practice to find acceptable solutions to problems that both companies and local communities face. Although many investment projects have already been approved, constructive changes can still be made to them.

## 02. Changes and outcomes

### | Policy context and implications of the AIAP TWG process

The AIAP process makes investment more responsible in that legitimate landowners can negotiate directly with companies and sign agreements with them, while the government (MAF) simply signs an MoU drawn up between the parties as a witness. This replaces the previous practice of composite leases for large land areas being signed by the government, without the agreement of community landowners.

The AIAP pilot process served to showcase and help to further improve the practices of a small number of companies, but at the time of writing the wider implementation of the AIAP has not yet begun, as SLIEPA recognises. SLIEPA submitted the new procedures for approval by Government's Inter Ministerial Task Force (IMTF) in 2020, and although they have since been adjusted and finalised, at the time of writing, a further task force meeting will be needed to approve them. As a result, it is still unclear how Sierra Leone will incorporate the new investment approval procedures into law and apply the associated new standards of good practice in community engagement identified by the AIAP process to the existing operations of international investors and local firms, and to new investment proposals.

The ongoing VGGT process in Sierra Leone, which includes the AIAP TWG stakeholder engagement process has influenced government policy, law, and

the conceptualization of programmatic interventions. However, to be effective for individuals and communities, it had to be combined with specific technically driven reforms in land law and administration and in the sustainability and inclusiveness of agricultural investment projects and tailored to local conditions (Myers and Sanjak 2022). This applies particularly to the community consultation processes, conflict mitigation and benefit sharing by private companies developing and managing land concessions, identified by the AIAP TWG as important requirements.

A progressive National Land Policy (NLP) was launched in 2015 integrating many key provisions of the VGGT, and in November 2019, two major legal reform projects were launched – the draft National Land Commission and Customary Land Rights Bills. These Bills have been taken to Parliament in October 2021, but not yet enacted. CSOs on the VGGT-TWG including Land for Life, have engaged the Ministry of Lands, Housing and Country Planning, FAO, the administration of Parliament and other stakeholders for a reactivation of the reform process, but more so to communicate further concerns raised by community people – land owners, land users, private sector investors and traditional chiefs consulted at local communities on the proposed legal reforms process.

These CSOs have continued to push for the implementation of the NLP whilst equally insisting on sufficient time and resources to facilitate an inclusive and participatory legal reform process. But in a dramatic change, the National Council of Paramount Chiefs have held regional level meetings with their members in the bid to object the entire reform process, citing in a made comment and leaked position paper that the proposals in the new laws will disempower them and as well threaten their economic, cultural and traditional stake in land governance. They prefer the existing 1927 Protectorate Land Ordinance which places them as 'custodians of the land' to continue over any new law. The private sector agribusiness investors also made similar effort to communicate their concerns on the bills through a UK funded investment promotion initiative, 'Invest Salone' at a roundtable engagement organized for CSOs and these private sector actors to dialogue.

The Ministry of Lands, Housing and Country Planning, out of its coordination role, had to organize a large town-hall roundtable engagement on the 20th May, 2022 for the three groups – CSOs, traditional leaders and private sector investors – to dialogue and agree on some of the contentious issues at stake. Based on commitments made at the end of the session, the bills would be reviewed for the second time and re-sent to Parliament for the rest of the enactment process.

# 03 Challenges and lesson learned

- The AIAP process engaging CSOs, and private companies provided a good foundation for improving the recognition of community land rights and the practices of agricultural investors in Sierra Leone, but the process needs to move forward. The mandate and composition of the existing technical working group need to be reviewed and sources of continuing support identified, as the current phase of FAO funding support comes to an end during 2022.
- The new AIAP itself is still being challenged by CSOs and gender-based advocates for its silence on the active participation of CSOs at every level and the failure to be sufficiently gender-sensitive.
- Thus the application and replication of the existing AIAP good practices needs to focus on strengthening the inclusion of underrepresented groups such as women, youth and people in community consultations, local stakeholder platforms and negotiations with private investors, as there are still risks that their voices will not be heard and informal rights to use land will not be recognised.
- There is also criticism that the AIAP is focusing on large-scale investments opportunities, and not giving any consideration for smallholder enterprises and other agribusiness investments in activities such as cattle-rearing.
- Political uncertainties: SLIEPA, the key government partner in the AIAP TWG was a structure established and supported by the previous government. The current government is establishing a new Investment Board which has its own remit operating under the presidency, to facilitate new investment in all sectors, not only agriculture. SLIEPA's capacity is seen to be being diminished, and its future is uncertain, although the Investment Board could complement its efforts, as its secretariat has recognised.
- The AIAP process has identified the need for a government agency to monitor, supervise and support private companies in responsible management of land concessions and to facilitate engagement between companies, communities, CSOS and other stakeholders at local level. This is a more specialised role that the Investment Board could delegate to SLIEPA or a similar agency and which could enable less centralised decision-making on agricultural investment, that takes local conditions into account.

# Way Forward

## For civil society:

- Active collaboration with government-convened working- group can provide opportunities for CSOs to dialogue with private investors and understand better how to work with them to address RAI and land rights issues locally at project and community level.
- The AIAP TWG process was however limited in involving only a small number of companies that were already seeking to make their operations responsible. The process was not able to engage the wider range of agricultural investors to raise their awareness and promote better practice around land use and social conflicts more widely on land concessions nationwide.
- As a result, the indirect engagement between civil society and the private sector through mechanisms such as the AIAP TWG, although constructive, and foundational for wider progress, is not enough. Direct engagement by CSOs with agribusiness investors is also needed, accompanied by efforts to progress the legal and regulatory reforms required and improved monitoring and enforcement of compliance with agreed and equitable global principles.

- CSOs that have gained relevant experience can potentially work directly with and alongside companies to help them improve their practices by introducing tried and tested community engagement approaches, monitoring company performance and community impacts, organising local stakeholder platforms for dialogue, and remedying problems.

## For Private sector:

- Companies need to recognise the fundamental business case that compliance with AIAP principles and processes is a foundation for sustainable returns to business operations through a major reduction in conflict-related reputational and financial risks in the longer run despite an initial higher level of costs of investment in better community engagement apparent and conflict, and more cautious and consensual AIAP approach to land acquisition.
- Companies need to adapt their community engagement, concession management procedures and business models to protect the legitimate land rights of local communities and ensure that women, youth, different stakeholder interests and marginalised groups are all included, and that equitable benefit sharing, and grievance mechanisms are introduced. CSOs can help them directly with this.

## For Government:

- Responsible agricultural investment is not just a question of the investment approval process. The AIAP TWG identified a wider range of RAI issues which illustrate the need to sustain and broaden the stakeholder engagement process and appoint a specialised regulatory and supervisory agency that can assist companies to engage with effectively with local communities and civil society.
- Government is likely to need continuing international partnership to formulate a set of good practice standards for responsible agricultural investment and community engagement, incorporate this into regulatory policy, and disseminate the business case to incentivize its adoption more widely across the private sector in Sierra Leone.



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