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THE SYSTEM OF LAND TENURE IN SIERRA LEONE

A dissertation submitted for the degree of Master
of Arts of the University of Durham. Lionel C. Greene.

1st April, 1966.

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TABLE OF CONTENTS

PrefacePage 4

Chapter 1
Tribal Origin and Distribution.....Page 8

Chapter 2
Existing Customary Land Practice.....Page 26

Chapter 3
Land Tenure in the Western Area.....Page 47

Chapter 4
Acquisition of Land by Government and
control of alienation to non-citizens.....Page 54

Chapter 5
Difficulties and problems with land in the
Provinces.....Page 68

Chapter 6
Present Day Trends.....Page 75

Appendix

BIBLIOGRAPHY

PREFACE

Economic development in a country like Sierra Leone in which eighty percent of the population are engaged in agriculture requires a sound policy for agriculture. Extractive industries may have a part to play and indeed diamonds, iron ore, bauxite and chromite account for a third of the country's general national product. But it is in the nature of such industries that resources become ultimately exhausted, and there is therefore no short cut around a sound agricultural policy. Therefore in order to develop our agricultural resources to produce enough export crops to pay for imports, the system of land tenure must be geared to this end. There is, however, no problem of shortage of cultivable land in this country. The basic problem is to make effective use of idle land resources. This would obviously mean reclamation and improvement of land and extension services to help cultivators to become more efficient agriculturists and so produce both food crops for home consumption and cash crops for export. The purpose of this study is to give an historical survey of the system of land tenure in this country from earliest times to present day.

The present tribes arrived in this country at different times from the 12th century onwards and occupied their various settlements which have changed over the years, during the intertribal wars. The Creoles as we know them today only occupied their present area when the British Government ceded the former dependent colony in 1787 from the Tamesse. On this point I would say that the local chiefs abrogated customary law in making an

outright sale of their land, as it was not the practice to sell land. But the British went further when they proclaimed jurisdiction over the former Protectorate in 1896. According to Fyfe C.H. "the foreign jurisdiction Act of 1890 consolidating a series of earlier Acts empowered the Crown to exercise any jurisdiction claimed in a foreign country as if by right of cession for conquest. An Order-in-Council of August 28, 1895 declared that the Crown had acquired jurisdiction in foreign countries adjoining the Colony. On August 31, 1896 a Protectorate was formally proclaimed as being best for the interests of the people of the territories lying on the British side of the British and Liberian frontiers"¹. This was the time when the Great European powers were partitioning Africa Porter A.T. in his book Creeledom puts it this way "This period was also, it must be remembered, a period of imperialism, when nations of Europe were staking their several claims on the African continent."²

However since the ratification of the treaties with the local Chiefs in 1807, the British government administered the Colony now known as the Western Area by the application and introduction of the English legal system. But in the Protectorate (Now Provinces) the system of indirect rule was adopted as a matter of expediency. Lord Lugard himself advocated this policy when he stated that "the general policy of ruling on African principles through native rulers must be followed for the present"³. The Chief was to be the pivot around which the whole of the

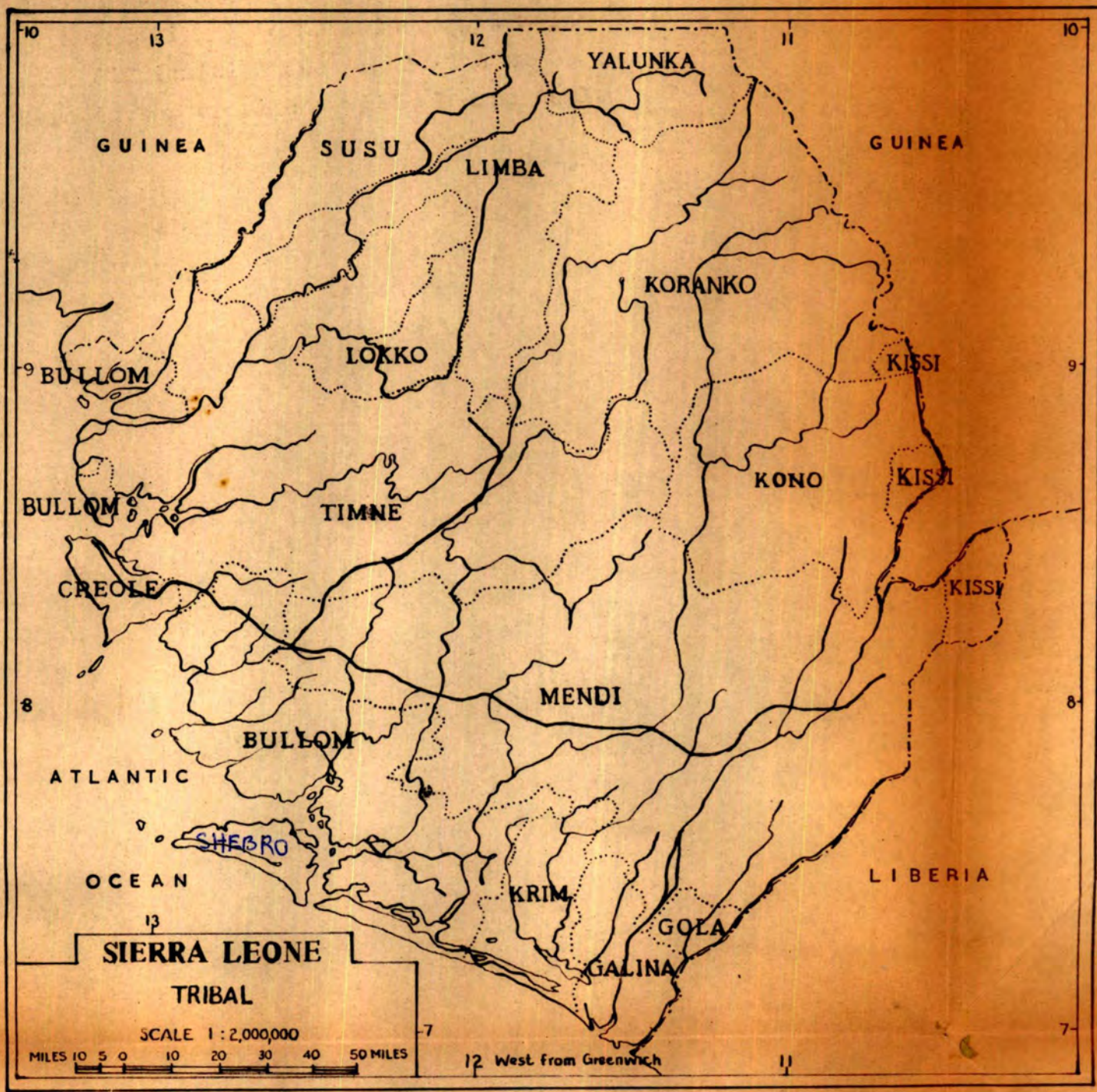
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1. Fyfe C.H. History of Sierra Leone London 1962 p.541
 2. Porter A.T. Creeledom O.U.P. 1963 p.68
 3. Perham M. Lugard the Years of Authority 1898 - 1945 London 1956 p.149.

Local administration would revolve. The Chief and his tribal council acted as the executive and legislature of the local government. Thus the system of indirect rule ensured the preservation of all tribal laws and customs including the communal system of land tenure. Any change which has taken place in the land tenure system has been the result of economic activity rather than political changes based on the conception of English property law. In fact the British Government took every measure to preserve and uphold local customary land law. This study will deal with the measures taken to help the advances that are taking place within the framework of the tribal systems.

Early in this century when the economic potentialities of the Oil Palm were realized, many concession seekers urged the British Government to grant them permission to establish plantation agriculture in West Africa, to ensure an adequate supply of the commodity as against the prevailing system of peasant cultivation. The British Government firmly resisted this trend toward plantation agriculture on the grounds that it would involve alienation of land which was contrary to the local customary land laws. The late Lloyd George Prime Minister of Britain at the time stressed in Parliament that it was their duty to protect the peoples of West Africa from the soap boilers of the world. This study will outline the system of land tenure as it developed both in the Western Area and in the Provinces.

The system of communed ownership in the Provinces, it is often said, accounts for the backward state of our agriculture. But it may be remarked that excessive fragmen-

tation is a typical feature of old European peasant communities based on individual property rights and that the undersized farm unit is the major structural problem which the European common market is now facing. Therefore if Western European agriculture faces problem of excessive fragmentation and minute farms then it is reasonable to conclude that these defects may be associated with any tenure system and are not confined to African traditional system and Sierra Leone tribal system in particular. Some of the difficulties and problems connected with, land tenure in the Provinces will also be dealt with.



GUINEA

SUSU

LIMBA

YALUNKA

GUINEA

KORANKO

LOKKO

KISSI

BULLOM

KONO

KISSI

BULLOM

TIMNE

KISSI

CREOLE

MENDI

BULLOM

ATLANTIC

SHEBRO

OCEAN

KRIM

LIBERIA

GOLA

SIERRA LEONE

TRIBAL

SCALE 1:2,000,000

MILES 10 5 0 10 20 30 40 50 MILES

12 West from Greenwich

CHAPTER 1.TRIBAL ORIGIN AND DISTRIBUTION

Sierra Leone is an independent sovereign state situated in the West Coast of Africa slightly north of the equator. The total estimated population of two and a quarter million includes fourteen tribes who are believed to have entered this country at varying times between the 12th and 17th centuries, during and following the break up of the Empires of Ghana, Mali and Songhai. These tribes may be conveniently divided into three groups: The Mande group now found mainly around Guinea and include the Mendes, Lokos, Susus, Yalunkas, Kurankos, Konos, Kissi and Vais; the Semi Bantu group of the Temnes, Limbas, Bulloms, Sherbro and Krim, the Creoles who are a heterogeneous group^{are} mainly descendants of slaves. The Fulas who are not included are not indigenous to this country.

They are nomadic in character with a predominantly pastoral background. Their immigration to this country dates back to the early part of this century when they brought in cattle forv sale. Their number has increased over the years to such an extent that their population is a sizeable one. However it may be noted that smaller groups have come in at different times, but have settled down and become identified with the tribes in the area. This chapter seeks to give a brief account of the origin of each of these groups.

MENDE

The Mende are the same as the "Manes or Mani who in the 16th century migrated from the Kingdom of Quoja on Cape Mount in the present Liberia and moved northwards along

the coast led by their Kings Sasina and Seterana."¹ They were probably fleeing from the all conquering King Askia Mohamed of Songhai. The Bulloms and Temne Kings attacked the invaders but were defeated. Felipe, a Mani emperor, made alliance with the Sapi and together with some tribes of the interior attacked the Limbas and Yalunkas in the area where they settled and is today known as Mende Country.

The Mende people who are Sierra Leones largest of the Mande speaking group inhabit an area of almost 12,000 square miles in the Southern and Eastern Provinces with a total estimated population of 600,000. It is suggested that when they arrived in the early 16th century they established themselves into little bands of warriors under a local Chief. The 'war boys' acted as the Chiefs body guard and private army in the event of a dispute with a neighbouring Chief. These war boys were mercenary soldiers who were rewarded with the spoils of the raids and expedition made on neighbouring Chiefs. In some cases they made treaties with the conquered and offered them protection in return for allegiance. In other cases whole villages were enslaved and their leaders killed. In this way individual Chiefs were able to build up large confederacies in which the Paramount Chief exercised control of a variable kind over a number of local chiefs. The sphere of influence of a Paramount Chief thus depended in a large measure upon his military strength. Before the advent of the British there were no clearly defined units and the existing ones were far larger than the present ones. For example Paramount Chiefs in Kailahun, Panguma, Bumpé and Moyamba held almost

1. Conton W.F. West Africa in History Vol. II London 1963 p.27

supreme sovereignty over all the surrounding territory and such other Mende Chiefs as existed were their vassals. In any case the units over which each Paramount Chief exercised sovereignty have varied in size a great deal over the years. There has also been a tendency for a larger units to break up into splinter groups to form their own chiefdoms. The 1898 Hut Tax rebellion also accentuated the process of splitting up these large Chiefdoms. The British authorities were so alarmed that they decided to split up these larger units and Paramount Chiefs were created in very large towns, depending on how far the administrative officers of the time could walk for a day. The Mende occupy 67 Chiefdoms in the Southern and Eastern Provinces.

LOKKOS

The Lokkos are considered to have migrated to this country in the group of the warring Mende tribe and to belong to the same stock. Miss Hirst dates their arrival in the 12th or 13th century;² but if we accept the theory that they arrived with the Mendes then it could not be earlier than the 16th century. They settled in little groups in the area between the Little Scarries and the Mobole rivers. During the inter-tribal wars they lost a good deal of their territory. The Temnes under the leadership of one of their great warriors, Bai Farina Tami succeeded in pushing them out of these areas. However tradition has it that about 1790 the Lokkos were the predominant group at Port Loko and parts of Bombali district and ruled by one Chief.

2. Hirst A.E. "Origin of the Lokkos" Sierra Leone Studies
No. 9 Dec. 1957 p.27.

In 1793 Zachary Macauley recorded in his diary that he met Signor Domingo, a Portuguese slave dealer in Kissy and "he found him at dinner with Pa. Sirey, who is nominated King of Logo-----Tradition has it that Pa. Sirey had his headquarters near Makeni and when he was too old to fight he told his warriors what to do".³ Major Laing in his

"Travels in West Africa" says the Logo or Lokko districts is so called from being inhabited by a tribe of the Timanees of that time. They are more united among themselves and pay more deference to the mandates of their chief than the Timanees of the other districts and consequently both the person and property of a stranger are in a comparative degree of safety amongst them".⁴ This comment supports the tradition that the Lokkos were ruled by one Chief but Major Laing was obviously wrong when he said that the Lokkos were a Timne group. Schlenker says "the Lokkos were a people of their own. They were formerly inhabiting Port Loko from whence they were driven by the Temnes more to the interior in a North Easterly direction where they are now living between Temne and Limba country".⁵ Port Loko in short, was so called because it was formerly occupied by the Lokkos. It may, however, be noted that Bai Bureh one of their leading warriors was the chief architect of the 1898 Hut Tax war popularly known as the Bai Bureh War. It is possible that Bai Bureh made an issue out of the payment of Hut Tax as a means of restoring the lost power and sovereignty of the Lokkos in the area. All the warriors

3. Hirst A.E. "Origin of the Lokkos" Sierra Leone Studies
New series No. 9 Dec. 1957 p.30

4. Major Laing Travels in West Africa p. 72

5. Schlenker Temne Tradition and Vocabulary London 1861 p.25

Chiefs who supported him were Lokkos. But in no time the insurrection was suppressed and order was restored.

The Lokkos whose population is reckoned to be 90,000 live in an area totaling 737 square miles and comprising the following chiefdoms all in the Northern Province:- Buya Romende, Libeisaygahun, Magbaiamba, Makari Gbanti, Paki Masabong, Pendembu-Gowahun, Sanda Loko and Sanda Tenraran.

SUSUS

The Susu originally came from Futa Jallon and belong to the Mande speaking group of West African peoples. The Susu "defeated the Empire of Ghana in 1203 and were overthrown themselves by Mali in 1240"⁶. It is very probable that after their defeat they were scattered all over West Africa and that "about 1420 sections of their now scattered people reached this country"⁷. They settled in the coastal regions in the North Western corner of Sierra Leone where they are still found today.

However in the early 17th century following intertribal wars a good number of the Susu came down from the coastal regions and settled in Tonkoh Limba in Kambia districts which is a Limba Chiefdom. Included among them Woley Maligy, Quee Brima, Ka Modoo, Baimba Yeseh. In process of time they became influential in the country and took as wives some of their daughters. The Susu being mohamedans and educated in the Koran were more intelligent than the Limbas and several of their countrymen hearing of their renown, gradually flocked down to them. The Limbas being of a liberal disposition gave them lands in which to reside and cultivate for their use in as much as they were married to their daugh-

6. Conton W.F. West Africa in History Vol. II London 1963 p.13

7. Conton W.F. West Africa in History Vol. II London 1963 p.13.

ters. In course of time the Susu increased and became so strong in the country that they commenced to build their towns, Kukuna,⁸ Lala, and Tansing".⁹ Later on the Limbas were converted by the Susu who began to make slaves of them and sold them into slavery. This created several disputes which led to the Susu taking possession of all the lower parts of Tonko Limba as far as Kukuna on to the international boundary with Guinea. The total Susu population is estimated at 55,000 and they occupy 1473 square miles in the Northern Province. They are to be found in the following chiefdoms in the Northern Provinces:- Tambahka, Binle-Dixing, Bramaia, Samu, Loko Masama and Kaffu-Bullem.

YALUNKAS

The Yalunkas are a branch of the Susu people and originally came from Futa Jallon in Guinea. They were a subject tribe and possibly slaves of the Fulas in Futa Jallon. It is also probable that they arrived in Futa later than the Temne and Baga and occupied Sulima and Sankeran east and south of Futa. "As agriculturists they came into frequent conflict with pastoral Fula, and it is recorded that the Yalunka were enslaved by the Fula until early in the 17th century when they revolted under the leadership of a blacksmith and migrated south to their present territory".¹⁰ Manke Suri their leader assaulted the Fula Town of Tappa Fira in Guinea which he captured but did not occupy. They then proceeded south and built the towns of Kokattu, Labba Meri and Tambo Bombeh in what is today known as Guinea. They hardly settled down in these towns when they were driven out by the invading Fulas

8. Kukuna is Chiefdom headquarters of Bramaia Chiefdom in Kambia district and has remained a Susu Chiefdom up to the present.

9. African No.332. S. L. Dispatch from Administrator-in-Chief
1886 p.8

10. M^c Culoch M. Peoples of Sierra Leone Protectorate London

who pursued them south. Manke Suri and his party called a halt at a stream near which they decided to build a fortress to prevent further onslaught by the nomadic Fulas. They called the stream Falaba which in Yalunka means 'a place for consultation'.¹¹

Falaba is the headquarter town of Sulima Chiefdom. The first Yalunka Chief was installed there in 1784 and his four sons opened up the country. In 1892 Falaba was attacked by the Sofas from Guinea and this invasion brought about a great reduction in the population. Their influence, however, increased and spread in the surrounding areas and they are now to be found in considerable numbers in the following chiefdoms in the Northern Province:- Dembelia, Musala, Dembelia Sinkunia and Sulima.

The total estimated Yalunka population is 30, 000 in an area of 558 square miles.

KURANKOS

It is difficult to determine a probable date when the Kurankos migrated to Sierra Leone in the absence of proper records. Very little is known and written about them. They probably arrived in Sierra Leone from Guinea after the Limba and Lokko whom they drove East and settled in the North East of the country in what is now regarded as part of Koinadugu district. "They certainly arrived before the Yalunka who drove them further south and occupied their present territory".¹²

11. Harnetty E. Sierra Leone Studies old Series 21 1939 p.75

12. McCulloch M. Peoples of Sierra Leone Protectorate London 1950 p.88.

They occupy a greater part of Koinadugu district and their chiefdoms cover an area of about 3,000 square miles with an estimated population of 47,000.

KISSI

The greater part of the Kissi tribe live in Liberia. In 1911 when the Sierra Leone/Guinea boundary was finally settled, the present Kissi chiefdoms were formed. They now occupy part of Kailahun and Kono districts with an estimated population of 215,000.

The Kissi are believed to be part of a tribe which came from the North of Africa and settled in Guinea and Liberia. Following the break up of the Ghana Empire, it is probable they moved down south and settled in their present areas. As is common with all these tribes they organised themselves into bands under their local chiefs. As a result of inter tribal wars the tribe broke up into splinter groups and formed the three chiefdoms namely the Kissi Teng, Kissi Kama and Kissi Tongi in Kailahun. Other members of their tribe were dispersed and are now settled in parts of Kono districts.

The Kissis are noted as being the originators of a country which devised their own currency popularly known as the "Kissy penny". It was in use in Kailahun districts up to the early forties. The Monument and Relics Commission have preserved a number of this currency which are available for inspection in the Sierra Leone Museum.

KONOS

The Konos are considered to have been a former powerful tribe in the North of Central West Africa. According to

M^cCulloch "their traditional home is in the Lelli area in Guinea where there is a hill called Konnu Su, the burial place of an early Kono Chief".¹³ They arrived in Sierra Leone about the middle of the 17th century in bands of hunters and settled in their present area. There was a further influx of settlers from Guinea at the time with a resulting overpopulation of the small area in which they settled. It is also believed they arrived in this country with the Vai who are described below, but because of feebleness, sore feet and other ailments they broke away and settled in Kono country. They were told 'Mu Kono' in the madinka language which means "wait for us" and the more vigorous ones proceeded. "Following an attack by some Mende warriors they fled from the area and sought protection from their neighbours the Kuranko Chiefs who gave them land to farm and settle down. After a period of ten years one of the surviving Chiefs who had remained behind in Kono country called a meeting of their secret society the Poro on the Kono - Koranko boundary, to muster the tribe together as the Mende had returned south and the area had been deserted".¹⁴ They quickly returned and resettled the country under the leadership of "Bargoo who organised the Chiefdoms under the leadership of the leading clans and instituted a system of law".¹⁵

The Kono chiefdoms numbering seventeen in all and comprising an area of 2,200 square miles are situated in the Eastern Province of the country. The total estimated population is 80,000.

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13. M^cCulloch M. Peoples of Sierra Leone Protectorate London 1950 p.88
14. Langley E.R. "The Kono People of Sierra Leone" Africa V,1 Jan. 1932.
15. M^cCulloch M. Peoples of Sierra Leone Protectorate London 1950 p.87.

VAI

The Vai or Kalon people assert that "they as well as the Kono, are offshoots of the Mandika tribe of the Segou and Sulina sections of Guinea who came down to present Sierra Leone with the intention of obtaining permanent residence in the coast. The Vai on their way down along that long stretch of mountainous country which is the present area of Kono country left some of their group in the north and pressed on their march to the coast and founded their first town Gbandina near the Kife river".¹⁶ The Vai arrived with the Kono who were unable to continue the journey and settled in Kono country. The able bodied Vais continued their journey and settled in Gbema chiefdom which is now in amalgamation with another chiefdom and referred to as Sere-Gbema. They occupied the chiefdom with concurrence of the Paramount Chief, although a certain group went over to Liberia. The chiefdom was afterwards named Gallinas by Spaniards probably on account of the quantity of chickens they found in the country or the great number of sea birds on the beach. This area was particularly noted as the largest Spanish source of slaves in West Africa at the time and was the cause of inter-tribal wars.

The Vai occupy an area of about twenty five square miles in the extreme southern part of Sierra Leone with a population of 36,000. It must be noted however that the Vais are the only tribe in Sierra Leone which had a script believed to have been invented by one MOama Duala in about 1850. The script is now limited in its use and is dying out. No steps have ever been taken to preserve the available writings.

16. Morrison C.R. "The Vai Speaking people of the Southern Province" Sierra Leone Studies No. XIII 1939 p.104.

TEMNE

Several accounts have been given of the early history of the Temnes and how they occupied their present area. James G.W. states that "the Temnes originally came from the Northern part of the African Continent".¹⁷ Another account states that "they came from Guinea in the early part of the sixteenth century and successfully invaded "the mountain sheltered, forest clad, well watered land of the Capez"¹⁸ The Capez or Capecs as they were called by the Portuguese were the tribes who occupied the coastal area of Sierra Leone with a flourishing empire at the time and the Loko, Yalunka, Limba, Bulloms, Susu were all subject to their authority".¹⁹ Butt Thompson related that the "fighting force of the Temne came south from Guinea meeting on the way opposition from the Lokkos (an outflung tribe of the Mende nation) and from the Limbas (a tribe as nearly autochthonous as the Capez) and established themselves along the rivers".²⁰ They formed settlements up the Port Loko creek on the islands of the river and in several of the many bays that form its northern or Bullom shore.

The Temne were not allowed a peaceful settlement of the area. They were continuously attacked by the surrounding tribes. After a hard struggle of fierce opposition they were left in undisturbed possession of the area and so increased in power and people.

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17. James G.W. "A Brief Account of Temne Constitutional Law" Sierra Leone Studies No. XXII 1939 p.112.
18. Butt-Thompson F.W. Sierra Leone in History and Tradition London 1926 p.15.
19. Conton W.F. West Africa in History Vol. II London 1963 p.13
20. Butt-Thompson F.W. Sierra Leone in History and Tradition London 1926 p.15.

McCulloch in one of his accounts relates that "according to Temne and Fula Tradition the Temne ancestors and their Baga cousins occupied Futa for a considerable length of time intermarrying with the smaller aboriginals whom they found there. They were eventually driven south by pressure of Susu and other Mande-speaking peoples from the East and formed in the Coastal forests an empire which was at its greatest power in the early seventeenth century. Its wealth derived from trade again attracted the warlike Mande, and through a series of invasions the Empire was destroyed, the Baga and Temne separated, and the Mande established themselves as Chiefs in nearly all Temne country."²¹ The Temne of Guinea were called Bagas. Andrew Battell who arrived at Benguela in Angola in 1589 records" of seeing there a camp of 300 or more Bagas. These men with whom it is said he lived for eighteen months told him they came from Syrra Leona and has passed through the great city of Congo."²²

There is enough evidence to support his account as the Portuguese adventurers were the first Europeans to discover the Sierra Leone coast line. Alvaro Fernandes first sighted the coast in 1446. In 1462 Pedro da Cintra mapped the coast and his voyage was later described by Cadmisto who had explored the Gambia river with Usodimare in 1456.

There is every reason therefore to believe that the Temne are one of the oldest tribes settled in Sierra Leone by the eighteenth century. When the colony (now Western area) was ceded to the British in 1787, Temne Chiefs signed the treaty which goes to prove Temne Sovereignty over the area.

21. McCulloch M. Peoples of Sierra Leone Protectorate London
1950 p. 50

22. Butt-Thompson F.W. Sierra Leone in History and Tradition
London 1926 p. 26.

v They occupy 30 chiefdoms of the Northern Province which comprise an area of approximately 11,000 square miles with a total estimated population of 550,000.

LIMBA

The Limba are believed to have migrated from Futa Jallon region about the middle of the 18th century. According to Gorvie W.F. "the tribe must have originated from the visit of one Tonko Santigi who came down from North Guinea in a wandering visit expedition----- His friends finally joined him and by so doing the town Tonko Limba came into being. With a united force they swooped down upon the hinterland and became one of the invading tribes".²³

But it is very probable they entered this country in small bands of hunter with some pagan Fula when they were driven by warring tribes. The Limbas are also said to have occupied much of the areas which is now Temne Country. According to Utting F. "about 1505 some Temne under Bai Farima Tami marched south from French Guinea defeated Lokko and Limba and then settled the land as far as the territory of the Capez Bullom in the peninsular of Freetown".²⁴ Sayers also supports the tradition that the Limbas are among the earliest immigrants when he states that "the Limba formerly occupied much of the country to the North but lost it under Koranko and Yalunka pressure. Sengbe and up to Musaisa was Limba".²⁵ Their traditional home is in Wara-Wara Chiefdom

23. Gorvie W.F. Our people of Sierra Leone Protectorate
London 1944 p.30

24. Utting E.F. "Origion of the Limbas" Sierra Leone Studies
1927 p.87.

25. Butt-Thompson F.W. Sierra Leone History and Tradition
London 1926 p.15.

where it is believed the guardian spirit is housed in a hill and to which the spirits of dead chiefs must eventually return.

They occupy 10 chiefdoms in the Kambia, Bombali, Tonkolili and Koinadugu districts in the Northern Province covering a total area of 1799 square miles. Their total estimated population is 200,000.

BULLOM SHERBRO AND KRIM

These tribes being of the same stock will be dealt with together. The Bullom are considered to be the descendants of the Capez about whom earlier mention has been made. Butt Thompson describes them as "the earliest riverain natives of the land of whom there is any record were those called by Ogilby as the Capez".²⁶ The Capez had their settlements south from the Scarcies all clustered up along the lower side of the river and may have settled there since the twelfth century. In another account the Bullom are said to have migrated from Sherbro country to their present area of occupation since 1586. Evidence to support this is the fact that the title of their chiefs is Sherbro in origin, the apparent affinity of their language to that of the Sherbro and the existence until today in the Sherbro districts of a section of the country known as Bullom which lies to the south of Bum Kittam river. The Bulloms however have now virtually merged with the Temne and are almost indistinguishable. They occupy a few Chiefdoms in Kambia and Port Loko districts. Their population which is considered to be in the region of 12,514 cannot be absolutely determined.

26. Butt-Thompson F.W. Sierra Leone in History and Tradition
London 1926 p.15.

The Sherbros and Krim on the other hand are regarded as one of the eldest tribes who settled in this country. There is hardly any evidence of their immigration into Sierra Leone. The name Sherbro is considered to be derived from the name of the first Chief Seh-Bura. The Sherbro however "call themselves and their language Bolloa. They might be called Southern Bolloa to distinguish them from the people of the same name who occupy part of the Coastal area to the North of Freetown".²⁷ The Krim also speak a Sherbro dialect and their culture is in no way different from the Sherbro.

The Sherbro are to be found in the Bonthe and Moyamba districts and occupy the South Western Coastal region of Sierra Leone from Ribbi river South of the Sierra Leone Peninsula to the neighbourhood of the lower course of the Buncie river comprising an area of 1,431 square miles with a total estimated population of 99,225. Krim country covers an area of 25 miles of Coastal-line south east of Sherbro Coast into Pujehun district. Their present estimated population is 25,556.

CREELES

The Creoles are the descendants of freed slaves for whom the former Colony of Sierra Leone was founded in 1787. The first settlers included West African destitutes of London and other large cities, a few white men and 60 white prostitutes as well as freed slaves from the West Indies under the command of Captain Thompson R.N., who arrived in Freetown on the 9th May, 1787. Captain Thompson obtained a grant of land about 20 square miles in area from St. Georges Bay to

27. Hall H.W. The Sherbro of Sierra Leone University of Pennsylvania Press, 1938 p.1.

Gambia Island for the sole benefit of the free Community of settlers, their heirs and successors, from the immediate overlord of the land the section chief Tom who was under P.C. Nainbana of Koya Chiefdom since 1775. The area allotted to the settlers was part of Koya chiefdom in Port Loko district, and was granted for a consideration of "£59. 1. 5 (Le. 118. 14) worth of trade goods - muskets, gun powder, short swords, laced hats, cotton goods, beads, crow bars, tobacco and rum".²⁸

In no time the settlers encountered difficulties about the grant of land by section Chief Tom for their settlement. Under native customary law the consent of the Paramount Chief and the Tribal Authority must first of all be obtained before land may be allotted to non-natives. The grant of land by the section Chief was therefore invalid and ratifying treaty was concluded in 1788 between Captain John Taylor and Paramount Chief Nainbana. A copy of the Treaty is shown as Appendix 1.²⁹

In order to establish the settlement on a firmer footing and to ensure continuity following the death of a good number of the original settlers, Thomas Clarkson a director of the Sierra Leone Company went to Canada to persuade the Nova Scotians to proceed to the new colony where they would be granted the lands which they had lost for being loyal to the British government during the war of the American Independence. The Sierra Leone Company also brought in the Maroons who were descended from tribes inhabiting the former Gold Coast Colony and were shipped from the slave station at Gormantine Jamaica. They had

28. Fyfe C.H. History of Sierra Leone London 1962 p.19

29. Crooks J.J. History of Sierra Leone London 1903 p.30

revolted against their British masters in Jamaica and had been sent to Nova Scotia. For protection and government the Sierra Leone Company promised the Marrons grants of land "to all those who had attained to the age of 21 on arrival in the colony - of three acres for himself, two for his wife, and the remainder before the end of the first three years of his residence".³⁰ It was the intention of the Sierra Leone Company to allocate them lands in either Banana Islands or in the Bullom shores but the circumstances under which they arrived led to their being allocated lands in Granville Town.³¹

When the Colony grew and required more land for expansion, various other treaties were signed to confirm further grants of land. In 1807 Paramount Chief Farina and Section Chief Tom ceded the area westwards of the Colony. Governor Macarthy signed a treaty with Pa. Londen annexing the area south of Bunce river around Hastings and Waterloo. The Banana Islands were ceded by the Caulkers in 1820. The area beyond Waterloo which is known as Koya (formerly British Koya) was the last area to be ceded to the Colony. But as the population grew, some settlers went further inland and settled there illegally. The Liberated African as the settlers came to be called, some of whom did not wish to come under British protection settled in uncultivated lands in this area beyond Koya. In 1837 the Koya chiefs made strong protests against these illegal settlements and the Sierra Leone Government concluded a Treaty with the Local chiefs whereby the Government annexed the area up to Gbebai

30. Crooks J.J. History of Sierra Leone London 1903 p.56.

31. Granville Town was the name of the first settlement which was burnt down following a dispute with the Temne Chief.

Creek. Most of the villages in the Rural areas were founded to accommodate the settlers. At the same time some of the villages south of the Bance river were founded primarily in 1819 to accommodate discharged soldiers and families of the second and fourth West Indian Regiments and the disbanded Royal African Corps. These were Wellington a deserted Temne village, Hastings called after the Colonel-in-Chief in India and founded at the Temne village Rebamp; Waterloo beyond Hastings was formerly Na Porte; York formerly Re Mani renamed York after the Duke of York. A table showing the dates of the founding of the villages in the Rural Area is given as Appendix 2.

Thus it can be said that the Creoles are the descendants of ^{an} admixture of the Nova Scotians, Maroons and Liberated Africans and though they may not be regarded as a tribe in the true sense of the word now constitute a separate group with their own distinct language, social and economic organisation based strongly on the Western pattern. They inhabit Freetown and the Rural Areas with a total population of about 17,000.

CHAPTER 2.CUSTOMARY LAND PRACTICE OUTSIDE
THE WESTERN AREA.

Systems of land tenure differ according to the particular uses which are made of the land. The existing system at any particular time cannot be said to be the product of a conscious determination of policy. Very often they have developed without conscious direction out of the nature of society and its varying economic, social and religious needs. When a man has to clear virgin bush to make a rice farm in an area where there is an abundance of land, there is no necessity for regulations regarding the location of his farm as in other parts of the country where there is no virgin land available. On the other hand customs which are evolved to meet the needs of a static subsistence economy are necessarily being modified to meet the new conditions which a cash economy has created. This chapter seeks to give an historical account of how customary land practice developed in the Provinces and to describe the categories of rights to land. It is proposed to deal with the other related aspects of the concept of land.

I MENDE LAND TENURE

The Mende occupy almost all the chiefdoms in the Southern and Eastern Provinces and for this reason it can be said that the Mende system of land tenure typifies the customary practice in these Provinces. For this reason I shall describe the Mende system in detail.

RIGHTS TO LAND

One might consider the case of a hypothetical hunter and his family in search of a suitable place to live who select

a site, clear the virgin bush, build their houses and then settle down. In course of time they would be joined by other hunters with their slaves and dependants. In this way the settlement would grow under the leadership of the original hunter or his successors. Very often another village in the immediate vicinity would spring up in this way and only a thick strip of forest would be left between them, partly to avoid friction and partly for protection in war. At first the village head of the dominant family was probably the ultimate authority but as some villages became more powerful and well known warriors arise, a group of villages might join together for protection in war and pay tribute in kind to the man who was recognised as the leader.

In other cases a warrior chief who was in search of a new outpost would marshall a number of his 'war boys' on the spot chosen and allot portions of the bush to them. Allocation of virgin bush was a general method for rewarding mercenary soldiers and also of attracting supporters in case of attack by neighbouring chiefs. In his book "The Mende of Sierra Leone", Little K. relates that "Madam Nyaivoe came from Dama in upper Mende (Kenema districts) to Bo with 300 warriors, 100 hampers of salt, 6 bags of gun powder, 2 bags of flints, 12 boxes of caps and cases of dane guns. She presented a larger number of sheep to the big men of the town and for her kindness was given extensive lands outside which are still occupied by her descendants".¹

1. Little K. The Mende of Sierra Leone London 1951 p. 82.

Subsequent settlers or strangers as they are usually called, who may have been domestic slaves or came from adjoining chiefdom or from another part of the country were granted lands to settle and use for their subsistence. As long as they were on friendly terms and in good favour with their hosts, they were allowed free and undisturbed occupation of the lands which they in turn passed on to their descendants.

These settlers who were granted the use of land for cultivation by their overlords established rights to land which have been recognised by customary law. In this group are also included those who on account of the high esteem in which they were held by the Paramount Chief have merged themselves with his family.

The traditional custom of granting land to subsequent settlers is usually referred to as "begging land". A settler for example who wished to stay in a village offered a "shake hand" to someone who knew him and would vouch for him as his stranger. The amount of shakehand offered depended on his status, and not on the amount of land granted. The 'Shakehand' consisted of a few heads of tobacco, or a few yards of country cloth. His host then referred to his family who "hanged heads" and reported to the head of the village with part of the 'shakehand'. The village head in turn reported to the Section chief who recommended his application to the Paramount Chief. The Paramount Chief then explained the laws and customs of the chiefdom to the settler who was bound by them as any other member of the chiefdom. If the stranger were a man of influence with a number of followers he might go to the Paramount Chief first and then be introduced

afterwards to the village head in whose village he intended to settle down. Both the village head and the stranger were liable to be fined for failing to report the stranger's presence in the village. As a member of the chiefdom he was liable to pay the local tax, help in communal labour in the construction of roads and cleaning the town.

He was also expected to give periodic help on his landlord's farm or give him a present out of his farm proceeds. Provided he was of good behaviour and continued to reside there he enjoyed these privileges. He was not, however, allowed to assign his farm land to any other person, apart from members of his family without the consent of his landlord. If he wanted to leave the chiefdom, he should hand the land over to someone else from whom he might receive compensation giving first refusal to the landowner. The amount of compensation payable was determined by negotiation; otherwise it was decided by the local customary court. The original cultivator or his descendant was entitled to name someone to take over the property on payment of the agreed compensation if he was not interested himself. No stranger was deprived of his house or plantations unless he had committed a previous crime, or was quarrelsome or consistently treated the villagers with disrespect. A stranger who was deprived of his land on such grounds could take action in the local court. He was entitled to compensation as if he had left the place of his own accord. The Paramount Chief safeguarded a stranger from being dispossessed unfairly by the villagers in a case where they have made a bargain against him to acquire his property. The practice of "begging lands" still continues though with some modification in view of the changed conditions following the introduction of a market economy.

Many settlers, though, remained in the village of occupation for their lifetime and married into the family of their landlords. The two families became indistinguishable and the distinction between landlord and stranger is lost. The fact that a stranger family had occupied and cultivated a particular piece of land for over 20 or 25 years was sufficient justification for their being allowed continued possession. The local courts nowadays recognise that the application of customary law must be subject to the principle of natural justice, good conscience and equity. There is in fact in statutory provision in the laws of Sierra Leone that customary law should conform with natural justice and equity.²

It can therefore be said that the rights to occupation and use of land stem from membership of certain families or descent groups who were the first to bring the land under cultivation and subsequent settlers who settled in the area with the permission of the original cultivators of the land. The first category includes the descendants of the original hunters and their families, warrior chiefs and warriors who founded the villages which grew up into chiefdoms with Paramount Chiefs heading the chiefdoms. The second category are the subsequent settlers who were allowed to settle in the chiefdom and given land for their occupation.

RELIGIOUS IMPLICATIONS OF LAND OWNERSHIP.

It was a Nigerian Chief who was giving evidence before the West African Lands Committee of 1912 when he said "I conceive that land belongs to a vast family of which many are dead, few are living and countless members are still unborn".³ This

2. Laws of Sierra Leone Cap. 8 as amended by section 2 of the Local Courts Act. 1963.

3. Elias T.O. Government and Politics in Africa London

statement epitomises the religious implication of land ownership among the Mendes and other peoples in the Provinces and is a common notion throughout Africa. It is firmly believed that land constitutes a binding force with their ancestors. As settlements grew older and ancestral cemeteries were established in the bush, families came to identify themselves increasingly with the land which they were farming. They believed that the spirit of their ancestors who were buried in the land were in constant touch with the family through the senior members of the family and it was the sacred duty of their descendants to preserve their mutual heritage which is the tangible bridge between the past, present and future generations of the family line. Generation of ancestors is a very real part of Mende life. They believed that the spirit of their forefathers who inhabit the bush in which they lived and were buried as very definite beings. For this reason the Mende farmer does not regard himself as the absolute owner of any particular bush, but part of a family whose duty it is to hold it in trust not only for his descendants, but for his forefathers as well. A Mende land owner in a land dispute stated his case for ownership of a plot of land thus: "I did not get my land through my own powers. My great grandfather first had it. When God created being he made them to work in farms. These farms ultimately became their lands, so I inherited my present bush from my forefathers".⁴ In keeping with this religious background certain ceremonies related to the cult of the ancestors were strictly enjoined. It was usual to make sacrifice to their ancestors before the brushing

4. Little K.L. The Mende of Sierra Leone London 1951 p. 87

of their farms and also at harvesting time. The religious set up also acted as a means of keeping the family property together and the resultant cohesion of the family group which prevented the fragmentation or sale of family holdings. In fact the more land a family had, the greater the prestige it had in the eyes of the community.

FAMILY HEAD IN RELATION TO FAMILY LAND

The rights to land started on the basis of individual ownership which latter became family ownership as the family grew. In every village each family had its own distinct family holdings. In the largest developed township in the Province is still the family holding of three distinct families. The inheritance of land also implies the assumption of headship of the particular family land concerned. The head of the family is responsible for the management of the family property. He allocated portions of the family land to all applicants whether male or female members at the beginning of the farming season after due consultation with his brothers. Provided the land is available he may allocate to complete strangers. Preference is normally given to the claim of a son over that of a daughter in allocation as he has more grounds for his claim; he may claim through his father, through his mother, and her brother and through his wife's people. The family head stands supreme in the allocation of land and must be approached at all times. In a bush dispute the Section Chief in explaining his position as head of the family stated thus - "I inherited it from his own father. I have two brothers. They also inherited land from my father. I am head of the family. When a stranger arrives and wants to brush, he should come to me and not to my brothers. I and my brothers consult and decide to give him bush. If my brothers want to brush

next year, they consult with me before they make their farms. Any of my brothers son first consult with my brothers and they in turn consult with me and I allot them land to work."⁵

It is not always the case that the head of the family allocates land every year for farming purposes. By some arrangement land covering vast areas remains a permanent allocation to particular members of the family. In this way individual ownership develops over certain areas of family land, though the title remains vested in the name of the family head. Consequently the individual holders may make sub allocation to members of their own family without consulting the family head. The family head should, however, be informed in due course for his formal agreement. If a member of the family so allocated dies, the land reverts normally to the family head, but a near relation of the deceased persons may continue to farm it.

POSITION OF PARAMOUNT CHIEFS IN RELATION TO LAND

The Provinces Land Act⁶ vests the ownership of all lands in any chiefdom in the Provinces in the Paramount Chief and Chiefdom Councils. This provision does not confer absolute ownership of all lands in the Chiefdom on the Paramount Chief as such, but only right of jurisdiction and consultation which he shares with the Chiefdom Council, as it is well known that distinct families own all the lands put together. Prior to the proclamation of the Protectorate by the British Government in 1898, the Paramount Chief had powers of appropriation and disposal of family lands. But with the introduction of organised Chiefdoms administrations, the Paramount Chief could no longer make

5. Little K.L. The Mende of Sierra Leone London 1951 p.89

6. Laws of Sierra Leone Vol. II Cap. 122

arbitrary decisions as he was without the backing of his "war boys". He was therefore compelled to conform to customary law.

A Paramount Chief holds land as any other individual member of a family. He has however, no private rights over the land cultivated by families, but is simply the custodian of all lands in his chiefdom and it is his duty to preserve their rights as against each other and also as against aggression by members of other neighbouring Chiefdoms.

As Dr. T.O. Elias puts it, "the legal ruling as to the Chief's relation to the land is that he is a mere trustee or manager of the land on behalf of the land owning group, but that he is never a fee simple owner or free holder of the land which belongs to the community as a whole".⁷ The Paramount Chief has authority to allocate virgin land though there is hardly any land apart from swamp land which has not been cultivated. Unallocated land is held by the Chief on behalf of the community until new members should require more land. There is also the custom (which has never been enforced) which empowered the Chief to re-allocate land which had previously been allocated to an individual or family who failed to put it to productive use for an unreasonable period without lawful excuse.

When a Paramount Chief requires a piece of land outside his family bush, he is expected to beg the land in the same way from the landowner as any other private individual. Under normal circumstances he will give a shakehand which varies in

7. Elias T.O. Government and Politics in Africa London 1963 p.184

amount according to the size of the area to be cleared. In the case of a popular Chief who is loved by his people, the landowner would refuse to accept anything from him. Formerly the shakehand used to take the form of a chicken and some rice to enable the landowner to make some sacrifice to their ancestors thereby informing them of the transaction. It was considered bad practice and an offence if this rite was not performed. The family should also inform the village head. At harvest time the Paramount Chief should present rice and chicken to the landowner to make a further sacrifice to his ancestors to signify the completion of transaction. It should be noted however that it would be virtually impossible to refuse a Paramount Chief land and no instance is known of this occurrence. The Paramount Chief may make regulations regarding the use of the land. For example, he may pass a bye law with the consent and approval of the chiefdom council that rice farms should be burnt at a particular time of the year. He may not dispossess any individual or family of land which they have occupied and cultivated for a long time. A person or his family may be punished in many ways for various crimes, but apart from banishment, he cannot be denied access to his land by the Paramount Chief.

Thus the position of the Paramount Chief in relation to the land may be summed up as follows:- "He holds his own family land as a member of a family; he protects the rights of the other families living in the chiefdom and settles land disputes; he in conjunction with other important men (Tribal Authority)⁸ of the chiefdom, preserves the rights of the people of the chiefdom to all occupied or unoccupied lands within

8. Tribal Authority is the old designation of Chiefdom Council

the limits of the chiefdom as against people of other chiefdoms; he acts as registrar of all transfers of land within the limits of the chiefdom and in conjunction with the Tribal Authority-----pass laws regulating transfers of land, cutting of timber or other matters affecting the well being of the people as a whole".⁹

It should be noted however that customary law has been modified on the question of the transfer of land and settlement of land disputes. These issues are now dealt with by local Court with appropriate jurisdiction under the Presidency of someone other than the Paramount Chief.

INHERITANCE OF LAND

Land being considered the most important of family property passes on at death to the heirs who according to Mende custom, are his brothers, then next in order are his sons and then his daughters. On the death of the father, the eldest surviving brother was appointed the head of the family and it was his duty to hold in trust family property for use of the family. Sometimes the family land may be divided among the children who may wish to keep their own portion separate from the family holding. The sons have a stronger claim over the daughters but daughters may still claim their father's land even though they are married. The daughter may return and cultivate the family land for herself and her children. In the absence of brothers or if the man's children are under twenty one on the death of their father his 'mother's brothers son' may inherit the land with the agreement of the family. On his death the land reverts to the descendants in the male line of the original owners,-----

9. Goddard T.N. Handbook of Sierra Leone London 1926 p.76

In view of the polygamous nature of Mendi society the division of land among the children is not encouraged as it might lead to complete fragmentation of family lands. Thus when the head of a family dies, a new head is appointed immediately to replace him to ensure that the family affairs are properly taken care of. Little K. explains this principle when he says "the ownership of the land involves a combination of individual and group rights. It means that all the relatives on the patrilineal side have a right to the usufruct of the land vested in its present holders, and this right they never relinquish even if they leave the district. If they move away, the trees they have planted, such as cocoa, coffee, kola nuts etc, and the houses they have built remain their personal property".¹⁰

The making of wills is unknown in Mende law, although it is not uncommon for a man to bequeath certain portions of bush to members of his family. These bequest are only valid if witnessed at the time. In his book, Goddard T.N. states that "Family ties are so strong that they cannot conceive of any man disinheriting his own family for strangers, he might disinherit a member of his family who had offended him and give the whole or part of his share to other children".¹¹ An individual who inherits land as described above has a free and uninterrupted use and usufruct of such land to do as he pleases provided he does not abrogate customary law. He may also with the consent of his family delegate these rights temporarily to a stranger he can vouch for while he remains

10. Little K. The Mende of Sierra Leone London 1951 p.86

11. Goddard T.N. Handbook of Sierra Leone London 1926 p.26

on his land. Such an arrangement should be approved by the Paramount Chief.

II TEMNE LAND TENURE

Temne land tenure is essentially the same as the Mende system with very little significant difference. Ownership of land is based on descent from original cultivators and subsequent settlers as in any other tribe. On the other hand and in contrast with the Mende these rights of usufruct are more tightly held. Only unfelled mangrove forest is considered to be communally owned.

It is also the case that the system of inheritance prevalent among the Temnes has made fragmentation of family land so easy that every measure is being used to curb this tendency. For example, when a family head with say four wives makes a different farm for each wife in a different part of the family bush and then dies, the children of each wife have the right to farm the land allocated to their mother. In a bush dispute the usual question put by the plaintiff to the defendant would be "which bush did your father brush for your mother". As most Temnes have more than one wife, the tendency has been for the family lands to be sub divided into plots too small for the system of shifting cultivation to be carried on without serious consequences to the upland bush. This system of shifting cultivation which is very wasteful of land had been the farmers method of combating the high infertility of the soil. The land is cropped once in every seven years.

The system of lending land is another customary practice of the Temnes. Land is lent for a year upwards by one individual to another for various reasons; an individual may be unable to make full use of his land, and so he lets out a portion to a tenant for a year at a rental of Le.4 (£2) (rent paid for a small farm). Free tenancies are also granted for farms overrun with weeds on the proviso that no rent will be demanded if the farm is returned clean. A farmer who wishes to make a particular large farm may ask a neighbour in the same or adjoining village to lend him land. It is not always the case that payment is made in cash. The tenant sometimes makes payment by giving a portion of the produce obtained from the farm. This share is usually about ten percent of the yeild, but it is sometimes smaller. This system, however, is the source of disputes in the future as the borrower very often would claim the land after cultivation for a long period.

On this point of landownership, it must be remarked that the original owner never relinquishes his right even after the second or third generation. As Goddard T.N. puts it "The second or third generation however, may bring forward the claim that the land was merely lent. A man who has been deprived of his land by war merely waits for the opportunity and he or his descendants will endeavour to get possession again. This has been shown by claims made by natives to land of which their ancestors had been dispossessed by inter-tribal war fifty or more years before and in which the others side had been in continuous possession since then."¹²

12. Goddard T.N. Handbook of Sierra Leone London 1926 p.83

(b) OWNERSHIP OF ECONOMIC TREES

The customary practice relating to the ownership of economic trees, uncultivated Oil Palm, Inland Swamps regulations regarding pasture is uniform throughout the Provinces; for this reason they will be dealt with here.

Permanent economic trees such as Kola nuts, oranges, Oil Palm, Coffee and Cacao are the property of the individual or family who planted them. In some cases these may be planted on another man's family land and in such cases the owner of the tree is expected to pay a small "right bone" to the landowner when he comes to harvest the crop. The payment of 'right bone' may take the form of cash payment from proceeds of the sale or portion of the harvested crop. There is no hard and fast rule whether this payment should be made annually or only at the harvesting of the initial crop, but it is very probable that the landowner would expect a small proportion of the crop each year.

In the case of cash crops such as coffee and cacao the planter must have evidence in the form of witnesses that he actually planted them; otherwise the landowner may easily lay claim to them in the future. This is so particularly because of the phenomenal rise in the value of these crops immediately after the second world war.

A belt of uncultivated Oil Palm is to be found concentrated in most parts of the Northern Province as well as in some portions of the South and Eastern Provinces. Such

oil palms as are found within the boundaries of a town or village were formerly collectively owned by the group. It was customary for the Town or Village Chief to restrict the cutting of the palm fruits, the pericarp of which is processed for our local palm oil when the fruit was ripe. The period of restriction was usually referred to as "putting a Ferre on the trees". When this period was over, all the people were then at liberty to collect as much fruit as they and their dependants required irrespective of the substantive owner of the land. There was, however, an exception to this, that the fruit on any land under cultivation at the time should be collected only by the person having the farm or with his consent. With the introduction of a cash economy the Palm trees belong to the landowners who harvest the fruit for sale to the Sierra Leone Produce Marketing Board.

Formerly no land was set aside in any part of the Provinces for cattle grazing and the cattle were left un-attended to feed on any uncultivated land. Sometimes farms were roughly fenced to prevent cattle getting on the land actually under a crop. But now under the system of organised administration with chiefdom councils most chiefdoms have passed bye laws regulating the native customary law on cattle. The Dasse Chiefdom Cattle Bye law is an example.¹³

(c) LANDOWNERSHIP IN AREA COVERED BY WATERS AND RIVERS

Water and rivers on any land in a chiefdom belong to the Paramount Chief who holds them in trust for individual landowners. It follows therefore that individuals own rights over waters or rivers on their respective lands. Any member

13. The Chiefdom Council Act P. N. of 1961

of the public is permitted to fish on any main river. The rights on small tributaries belong to the landowners in so far as they are accustomed to farm right up to the edge of them.

Small swamps are regarded as belonging to families within whose bush they fall but the large swamps are often regarded as the property of a whole village who use it for various purposes, such as collection of thatching materials and making rice barns.

III KONO LAND TENURE

Kono Land Tenure up to quite recently was the very essence of communal ownership in the traditional sense. It will therefore be of historic interest to describe briefly the system as it obtained in former years. In accordance with the traditional concept of land ownership, land in Kono country was held collectively. It was communally owned under the supervision of the village headman who was in turn responsible through the Section Chief to the Paramount Chief. The Paramount Chief was formerly called "Mansa" which implies that he was the final authority on all land matters.

It was not uncommon formerly for a man to cultivate his farm in an area outside his village boundary without any serious consequences. An individual who wished to farm in a particular piece of land had to go out early in the year and mark out the plot he wanted with cleft stakes in which bunches of leaves would be tied. This gave him a complete right over the land for one farming season only. If he marked out a larger area than he could really farm, he would lay himself open to criticism and

in some cases fine by the chiefdom local court. There were no distinct family land as such. An individual who wanted to build his house would have to go through the process of applying for the particular plot through his village head. According to J.S. Fenton "the Section Chief or local head may still point out, year by year, where the village as a whole is to farm in that year. Even so the farms made there would be distinct family farms, not communally cultivated; and the practice of directing the villages all to farm in the same section of the village bush is obsolescent".¹⁴

The system of communal ownership does not obtain any longer in Kono district. There is now evidence of distinct and permanent family holdings in many parts of the district. Individual families which have been cultivating particular areas have established usufructory rights in such areas. There are other factors which have led to the abandonment of the system. Land values have had a phenomenal rise owing to the discovery of diamonds in the district. Landowners receive mining rents if their lands are mined for diamonds. The cultivation of permanent economic crops has also accentuated the tendency to individual and family holdings.

IV SWAMP LAND TENURE IN SCARCIES AREA - NORTHERN PROVINCE

The Scarries area comprises the chiefdoms of Wambolo Magbema and Samu with a mixed tribal population of Temnes, Susu, and Bulloms. The main principles of native customary land law apply equally to the uplands in this area, but because of the significant differences in the swamp land tenure, it is

14. Fenton J.S. Outline of Native Law in Sierra Leone
Government Printer 1948 p. 31.

considered appropriate to consider the problem separately.

RIGHTS TO LAND

The cultivation of tidal swamps is a comparatively recent development and the circumstances leading to the acquisition of these lands may be dated in the early part of this century. Hitherto unfelled mangrove swamps were regarded as chiefdom land communally owned for the benefit of the Chiefdom. Any member of the chiefdom had a right to cut wood or collect mangrove bark on payment of a small 'shakshand' to the Paramount Chief. But when the value of the tidal swamp was realized the area reclaimed for cultivation increased at an amazingly rapid rate so that within a period of about fifty years an area equal to nearly a total area of the three chiefdoms had been brought under cultivation. During this period the traditional custom that each town had its land as a unit within the chiefdom had broken down.

The early realization of the fact that the tidal swamps were far more suitable for cultivation than uplands - the tidal swamps could be cropped annually, in some cases biennially as opposed to the once in seven years system of shifting cultivation for uplands led to a migration of people from the comparatively densely populated areas up the Great Saccalis river to the more sparsely populated chiefdoms of Mabelo and Samu.

The chiefdom Councils made no attempt to check the sudden inflow of population possibly because there was more than enough land for everybody.

Anyone who wished to farm virgin mangrove had to obtain the consent of the Paramount Chief by offering a small present to him in cash or a few heads of tobacco or native cloth.

As usual the value of the present reflected the wealth and standing of the individual. In the case of strangers to the Chiefdom, they should be introduced to the Paramount Chief. The size of the farm cleared depended absolutely on the size of the family, in some cases farms were cleared to the extent of fifty acres. In short the only limit to the size of the farm depended on the amount of labour available to the family for which slave labour was used extensively in former years. In consequence many strangers from other chiefdoms made large farms and settled in these chiefdoms and so acquired ownership of the lands. Mackenzie describes the situation in this way, "swamp farms cultivated by strangers to a Chiefdom are regarded as their property and they have the same rights and privileges over their land as those enjoyed by any native of the chiefdom. In comparison with the portion of settlers or strangers on upland farms who since there is little virgin forest left, can generally only be granted usufruct of land and can be dispossessed by the original owner at any time subject to rights in any standing crops, the security afforded to strangers clearing original mangrove in swamp areas is a great attraction and a valuable asset to the immigrant farmer".¹⁵

A virgin area which has been cleared and cultivated by an individual or family with the permission of the chiefdom council remains in their possession in perpetuity and the cultivator cannot in any circumstances be dispossessed. As mentioned above, the polygamous nature of our tribal society makes for a number of children inheriting the fathers property, but it is the accepted practice that the eldest son of the first wife succeeds as the head of the family

15. Mackenzie A.F. Sierra Leone Agricultural Notes No. 8
Freetown 1944 p.4.

provided he is not under twenty one. In such circumstances the fathers brother accept the property in trust until such time as the son attains the age of twenty one years. It was however a common practice for the land to be cultivated as a whole for the benefit of the family. But when there is disagreement, the land is divided among the sons and in some cases the daughters.

CHAPTER 3.LAND TENURE IN THE WESTERN AREA(a) FREETOWN

Land tenure in Freetown is based on the freehold system. This system evolved as a matter of policy as the British Government in the administration of the Western Area which had been acquired by Treaty with the native chiefs introduced the English Legal system. I shall therefore endeavour to describe the different stages in its development and the problems involved.

The first group of settlers including the Nova Scotians and the Maroons were granted lots of land both for building their houses and farming for their subsistence. The Sierra Leone Company which was the administering authority at the time in making these grants of land levied a form of tax described as quit rents on each occupier. Quit rents were a survival of mediaeval land tenure in England and were levied on newly granted land in Britain's dependencies in the eighteenth century to safeguard the rights of the crown rather than to raise revenue. In this case it was intended as a land tax to raise revenue for the company. The settlers protested strongly against its payment and advocated that they had been induced to come and settle in the colony on the promise that they would be granted rent free land of 20 acres for each individual with a further 10 acres for his wife and 5 acres for each child. This rent had to be revoked and land was then offered at a nominal rent of 25 cents (2/6d) per acre per annum payable only after two years occupation.

Early in the 19th century during the regime of Governor Maxwell the crown tried to settle all the outstanding claims

to land and to give all land holders a secure title. Commissioners were appointed for the purpose to hear claims and to confirm all lands grants. This exercise did not achieve its purpose as the landholder could not produce a legal title. Consequently an Act was passed providing that all lands in use or occupation which might be cultivated before the 1st January 1810 should become the freehold property of the cultivator and his heirs irrespective of any other claims.

At this stage it seemed as though the land problem was taking some shape as far as possessory titles were concerned. By 1825 it could be said that land in Freetown was completely freehold. "It could not be seized for debt, so investment was secure as well as paying. Importers complained that builders would buy slates and bricks on credit and die with their bills unpaid, leaving their children a secure freehold house".¹

No attempt however was made for promulgating legislation on the registration of title until approximately fifty years later when the Registration Ordinance was passed. The Registration Ordinance was passed on 9th February 1857, establishing an office in Freetown called the Registry Office and authorising the Governor to appoint a Registrar - General. Following the Registration of titles ordinance, a land commission was also set up to investigate titles, many of which were unrecorded. This commission was finally abolished in 1867 and a land court under the Puisne Judge substituted to deal with the arrears pending since 1857. In spite of this there were a considerable number of people who refused to establish their claims to the Court. Another obstacle was the absence of pro-

1. Crooks J.J. History of Sierra Leone London 1903 p. 200

per plan from which claims could be clearly established. The then government surveyor a Mr. J. M. Jenkins made a master plan of Freetown showing lot numbers based on the old plans which he found in his office, but the plan was defective from the start.

After this period, since provision had been made for the registration of all crown grants, the onus of proving title to land rested with the individual.

(b) RURAL AREAS

With the formation of villages dotted along the peninsula, the settlers had every opportunity of making a living by working on the land. There was an abundance of land in the rural areas and no problem arose about the allocation of land as in Freetown. Consequently most of the lands were unregistered and even today there are still a considerable number of unregistered lands. Another factor which contributed greatly to this was the inability of the landowners to mark and clearly define their farm lands which were in scattered bits owing to the practice of the system of shifting cultivation. Farmers exceeded their boundaries and had their farm lands interspersed with bush. No accurate maps of the area was available and boundaries rapidly became obscured by bush. In short there was every difficulty to secure registration of title and today it is no small wonder that few satisfactory titles to land exist.

Another factor which accentuated the situation was that a good number of settlers died with out successors, others migrated to Freetown or as in the case of the Liberated Africans occupied unallocated land in order to keep away from the jurisdiction of the colony government. For this reason a bill entitled "A Bill for appointing certain commissioners for the purpose of ascertaining the true and rightful owners of land within this

colony"² was passed in 1827 to regularise the situation. Unfortunately the Bill did not achieve the desired objective and the position has remained muddled until today. The immigration of tribal people from the Provinces has increased the complexity of the situation. However according to the historical evidence much of the land in the Rural areas was allocated to the Creoles without any legal instrument to ratify the allocation. The Creoles in their pursuit of white collared jobs have neglected the land. There has however been a steadily increasing influx of tribal people from the Provinces who have occupied the land and continued their subsistence agriculture in these villages.

In 1903 the Crown land conservancy Ordinance was passed.³ By this ordinance the Director of Survey and Lands was empowered to control all crown lands and to issue licences for the cutting of firewood and the getting and removal of trees. This Ordinance primarily affected the tenure of land in the Rural Areas, but it was not enforced. Richardson and Collins in their Economic and Social Survey of the Rural Areas of Sierra Leone give the following as the main reasons why the ordinance was not enforced.

- (1) "In most cases the descendants of the non-native settlers have no documents which can be produced as evidence of title to land.
- (2) The migration of such descendants from their villages has depleted the number of creole claimants to the land and the situation arises in which an individual claims land belonging formerly to people in varying degrees of relationship with him.
- (3) Some of the tribal settlements have histories which go back to before the settlement of the creoles.

2. Richardson E.M. and Collins G.R. "Economic and Social Survey Areas of the Colony of Sierra Leone Freetown 1959 -.21

3. Laws of Sierra Leone Cap.118.

- (4) The tribal immigrants have tended to become the people actually working the land and the production of crops has been treated as all important by the authorities.
- (5) There have been numerous difficulties in the way of survey and registration, difficulties which have, moreover, tended to increase".⁴

In 1911 the unoccupied lands Ordinance was enacted which vested authority in the Director of Survey and Lands to claim as Crown land all unoccupied lands. This Ordinance materially affected the land tenure in the rural areas but was not enforced for much the same reason as for the Crown land conservancy ordinance. Furthermore all the lands which were considered to be unoccupied provoked such large number of claimants that it was administratively impossible to look into each case and the matter was dropped. For example the areas outside the Forest Reserve in the peninsular near Charlotte referred to as Porcupine Bridge which had not been worked at all for a considerable period was surveyed in accordance with the ordinance in 1945; but it brought in immediately a flood of claims, many of which were from educated creoles, some from inhabitants of the neighbouring villages and some from illiterate farmers. They all based their claims on possessory titles. It is however difficult to believe that the whole of the Bridge which was apparently waste/is a mosaic of numerous freehold ownerships.

4. Richardson & Collins G.R. "Economic and Social Survey of the Rural Area of the Colony of Sierra Leone Freetown p.53

The Land tenure position in the Rural Areas was summed up by Richardson and Collins mentioned above as follows:-

"In non-creole villages the immediate position is sometimes not too unsatisfactory, due largely to the fact that the reputed owners of the land are also the people actually working it. Complications may be caused by inter village quarrels but these are relatively infrequent.

"Usufructory rights may be acquired by strangers or may be begged for a limited period by people with insufficient land. In fact such non Creole villages have a mixture of tribal land laws and the laws of the Colony (such as individual freehold and the possibility of sale). In practice this mixture of laws does allow access to land for many of the people wishing to work it. Legally in the Colony only Christian marriage and marriage performed strictly in accordance with Mohamedan law are recognised. Hence in Rural Areas legally land cannot be inherited by an offspring of a marriage carried out in accordance with tribal custom. In such cases the only way for rights in land to be handed down is for these rights to be willed to the person concerned. Otherwise each generation must establish its own rights by "undisturbed occupancy" under the Unoccupied lands Ordinance.

"In the Creole settled villages the land situation is dependent upon the number of creole left in the village. Around Gloucester the Creoles have managed to maintain their ownership of much of the land although tribal people have succeeded in buying certain areas and in any case much of the surrounding land is not very satisfactory for farming. At Rokel on the other hand the number of Creoles is small and likely

to get rapidly smaller, while the tribal immigration has been very great. There some of the Creoles claim to land have gone as far as it were 'by default' and renewed interest by some of the Creoles in the land has led to a number of disputes with tribal people".⁶

6. Richardson E.M. and Collins G.R. "Economic and Social Survey of the Rural Area of the Colony of Sierra Leone, Freetown, 1950 p.p. 415 - 416.

CHAPTER 4.

ACQUISITION OF LAND BY GOVERNMENT AND
CONTROL OF ALIENATION TO NON-CITIZENS

I now wish to give an account of how government acquired land both in the Western Area and in the Provinces and measures introduced to control its alienation to non-citizens.

I ACQUISITION OF LAND BY GOVERNMENT
WESTERN AREA

By a series of treaties between 1807 and 1872 with the Paramount Chiefs of the Provinces, the British government acquired the Western Area to accommodate the settlers. These treaties conferred absolute ownership over all lands in the Western Area. As mentioned earlier on grants of land usually described as 'crown grants' were made to the settlers for their occupation and use. But it was discovered that many people did not receive a grant of land although they were entitled to it, in accordance with the promise held out to them. Nevertheless they occupied land which they used for making their farms and building their houses. There was thus a tendency towards indiscriminate use of crown lands as there was no law to control its use. The crown land Conservancy Act was passed in 1903 which provided for the control of all crown lands by the Survey and Lands Department. Licences for cutting firewood or felling and removing trees and for occupying and using these lands were to be given by the Director of Survey and Lands. The Management and disposal of crown lands have now been crystallized in the Crown Lands Act 1960¹ which provides for the complete control of all crown

1. Supplement to the Laws of Sierra Leone 1960

lands. At the time of the passing of the Act crown land could only be bought, sold or leased by the Governor and his power of disposal was granted by the crown in letters patent. An amendment to letters patent permitting the Governor to delegate the Authority was introduced just before the achievement of full independent status in the British Commonwealth and the Governor duly delegated his authority to the Minister charged with the responsibility for lands.

In as much as the government was endeavouring to make crown grants to the settlers, it soon realized towards the end of the nineteenth century that it had made no provision for essential public services such as Defence, Education, Health, and Public Works in the Western Area. The Public Lands Act Chapter 116 of the Laws of Sierra Leone was passed in 1898 which provided for the acquisition of land for public purposes. Public purpose according to the Act did not include such matters as Town Planning improvement or the provision of sites for new industries, but any project which was to be financed with the public purse. The Act specifically excluded the Railways for which provision was made in a separate Act - The Railway Act.² The Public Lands Act has been considerably amended over the years and now prescribes in detail the manner in which compensation should be assessed. It specifically states that no payment should be made in excess of the market value of the land and no increase because the acquisition was compulsory.

In 1911 the Unoccupied Lands Act chapter 117 of the Laws of Sierra Leone was passed in order to ascertain which lands were not occupied and to provide a simple process for ascertain-

2. Laws of Sierra Leone Cap. 134.

ing the ownership of land in the Western Area. The Act as explained above specifies that action under the Act may be taken where land appears to be unoccupied and it makes provision for the issue of crown grants to people who can prove unchallenged written title.

In 1960 the Crown Lands Act No. 19 of 1960 Laws of Sierra Leone was passed for the purpose of removing unnecessarily onerous provisions in crown grants which might affect their commercial value and for simplifying conveyancing by the reduction of the number of special rules applying to crown grants.

In this Act crown lands is defined as "all lands which belong to the crown 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 crown, for any public purpose or otherwise howsoever and land acquired under the provision of 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 crown."

During the last war powers³ were provided for government to acquire lands for defence purposes under the Defence Lands Acquisition and Airfields and Defence lands (Acquisition of clearing rights) Act.⁴ This Act was made applicable not only to the Western Area but to the Provinces. There are however no records to show that this Act has ever been used to acquire land in the Provinces in view of the customary practice of rights to land. It will be necessary to enlarge on this issue when the acquisition of land by government in the

Airfields and Defence Lands Laws of Sierra Leone Cap. 120

3. Defence Lands Acquisition Laws of Sierra Leone Cap. 119

4. Airfields and Defence lands (Acquisition of Clearing Rights)
Laws of Sierra Leone Cap 120

Provinces is being dealt with. However under section 14 of the Defense Lands Act there is a provision that land so obtained in the Provinces is not to be sold but is to be offered to the Chiefdom Council having jurisdiction within the area in which the land is situated.

(b) PROVINCES

So far I have described the system of acquisition of land by government in the Western Area and the various enactments made over the years. I now wish to discuss the practice which prevails in the Provinces.

Historical developments in the Provinces gave a different direction to the acquisition of land by the then Colonial government. The treaties made with Paramount Chiefs when the British government proclaimed jurisdiction over the Provinces in 1896 gave it no general rights over land. Included among the various reasons for the Hut Tax war which followed two years later is the fact that the simultaneous imposition and collection of the Hut Tax meant that the government had thereby become absolute owners of their land and that they had been made tenants of the Government to whom they must pay rents for their houses. The Colonial government itself took measures to preserve these rights which as has been mentioned earlier on are included in the Province Land Act.

For these reasons whenever government requires land for whatever purpose, lease agreements have to be negotiated with the Chiefdom Council having jurisdiction in the area to be leased. The Colonial government made a number of such leases for residential purposes, educational concerns and quite recently for agricultural plantations. The terms of the leases will be

dealt with under Lease Rents later on in this chapter.

In the early forties the government attempted to introduce compulsory acquisition of land in the Provinces by the 1947 Land Acquisition bill. The bill provoked a flood of criticisms from the Press and fierce opposition from the then Protectorate Assembly that it had to be dropped. Since then the government has always followed the established practice of leasing land from Chiefdom Councils when required for public purposes. (See appendix III for full details explaining the circumstances under which the bill was withdrawn).

II CONTROL OF ALIENATION TO NON-CITIZENS

(a) WESTERN AREA

Land in the Western Area evolved as freehold and no attempt was ever made to control alienation to non-citizen until quite recently. The Registration of Titles Act which was introduced in 1857 gave every landowner the opportunity to record his title and make it secure. In the 19th century European shopkeepers bought and sold land and property without restraint. For example Fyfe C.H. refers to one Nathaniel Isaacs a European born in Canterbury in 1808 who "spent nearly £1,700 on houses and mortgages in Freetown". By the middle of the nineteenth century a sizeable class of European property owners had grown up as against the settlers.

Early in this century commercial enterprises established their concerns on freehold property bought either from the government or from private persons. Most of them also bought crown land from government at Hill Station for residential purposes. Possibly because these European trading concerns did not create a settler problem in the sense of Europeans

living in the country with a stake in the future of the country, the question of controlling land alienation did not arise. The arrival of the Lebanese and Syrians who seemed to have a flair for business changed the picture. T.J. Alldredge commented on them thus:- "The Syrian trader has annexed the West Coast; he has come and come to stay.....He is more than a clever man of business; his tact is wonderful amounting to genius".⁶ In this way they came to dominate the retail trade in the Western area as well as in the Provinces. By the end of the Second World War they established themselves as large property owners. Many of the descendants of settlers who had taken to the professions of Law and Medicine sold their property and businesses which their parents had established to the Lebanese. It could therefore be said that by the fifties almost all the three storeyed buildings in the centre of Freetown were owned by Lebanese. A situation thus arose in which a good deal of the property owners in the centre of Freetown and the rural areas were non citizens. Government therefore decided to introduce certain measures to reverse this position. A Bill entitled "Land Development(Protection) was introduced in Parliament in 1962. The declared intention of the bill was to control the purchase of freeholds and long leases by non-citizens, prevent the improvident disposal of property by citizens who might be unduly tempted by an offer of ready cash and to ensure that a reasonable proportion of valuable land in the country is held by citizens. According to sections three and four of the bill, "No non-citizen shall purchase or receive in exchange or as a gift any freehold land in the Western Area. No non-citizen shall purchase or receive in exchange or as a gift any reserved leaseholds in the Western Area. No non-citizen shall purchase or receive in exchange or as a gift any reserved leaseholds in

6. Alldredge T.J. A Transformed Colony. London 1910 p.67

the Western Area without first obtaining license from the Board".⁷ Under the provisions of the bill a board was formed to include the Ministers responsible for Trade and Industry, Lands, Finance and Development and the Attorney-General of which the Minister of Lands was the chairman. Non-citizen means an individual who is not a citizen of Sierra Leone and any company or partnership which is controlled by a person or persons who are not citizens of Sierra Leone. Reserved leaseholds means leaseholds of which the unexpired term exceeds twenty one years.

The views of the representatives of the Chamber of Commerce, the Employers Federation and the Commercial Banks were obtained. They represented that though they agreed it was desirable to have some form of control on the alienation of land to non-citizens, yet they felt that the bill would inhibit investment; it would remove security of tenure of any future investor and the value of existing investments in property in good faith would be subsequently lowered; it would deprive the country of the benefit of foreign money for development purposes. They also pointed out that the financing of development projects was often made possible by using the land and building thereon as security for such loans; the Act would remove the possibility of such loans being forthcoming nor will they be able to foreclose on the property. Their representations were considered though it is not apparent whether any action was taken on them. The bill passed the House of Representatives on the 14th December, 1962.

It may be noted that the most objectionable point that the Bill would inhibit investment as Banks and recognised Finance houses would not accept land and house property as security for

7. Land Development Protection Act. No.61 of 1962.

leases, was duly considered. In accordance with the powers conferred on the Board for the issue of licenses under section 4, such licenses are issued subject to the following conditions:- Any Bank or recognised Finance house will be granted a license to foreclose the mortgage giving rise to the application to the Board provided a copy of the mortgage agreement was deposited with the Board before the expiration of six months from the date of issue of the letter informing the applicant this application has been approved. Any sale which shall arise out of the exercise of powers from the mortgage should be exercised by the Bank by first offering the properties mortgaged for sale to citizens of Sierra Leone at a public auction subject to reserve price equivalent to the outstanding mortgage debt plus interest, legal and other costs. In the event of the properties not being sold at the auction, the leasehold interest of the properties should be sold on the open market to any person or company regardless of whether such person or company is a citizen of Sierra Leone.

Since 1962 a non-citizen generally cannot obtain freehold land in the Western Area but may if the Board as described above issues a license specifying conditions of ownership. He can now only lease land for his occupation and use; the longest lease is 21 years.

(b) PROVINCES

In the Provinces non citizens cannot obtain freehold land in view of the customary land practice of communally holding land with land rights vested in particular families. When the British government proclaimed jurisdiction over the Provinces in 1896 they preserved these rights and in 1905 and 1907 the Acts No. 16 of 1905 and 16 of 1907 were passed vesting all lands in the tribal people.

The 1927 Provinces Lands Act stated that all lands in the Provinces were vested in the Chiefdom Council which hold such land for and on behalf of the families concerned. This Act chapter 122 of the Laws of Sierra Leone crystalizes all the Provinces Lands Acts up to date and include the following:-

Nos. 16 of 1927, 34 of 1928, 32 of 1933, 1 of 1935 and Rules No. 1⁸ of 1930 and 24 of 1933.

Under the Provinces Land Act of 1927 a non citizen in the Provinces can obtain land legally by way of a lease. Lease in this context is described in section 2 of the Act as "a grant of the possession of land by the chiefdom council as lessor, to a non citizen, as lessee for a term of years or other fixed period with reservation of a rent."

A non-citizen wishing to obtain land first of all approaches the Paramount Chief of the Chiefdom in which he resides. The Chief is presented with a shakehand which varies in amount depending on the status of the individual in the community. The Paramount Chief in consultation with his principal men, elders and the land holding family concerned would then make available the area required. A memorandum of agreement would then be prepared incorporating the annual consideration to be paid by the non-citizen for occupation of the land; the area of the land to be occupied; the duration of the term which should not be more than fifty years with option of renewal for twenty one years; any special conditions with which the non-citizen has to comply in consideration of occupying the land without payment or at a reduced rental, whether or not the interest of the non-citizen may be assigned or in case of death, is intended to devolve on his executors, ~~assistants~~ or administrators.

Any such agreement must be registered in the Registrar General's Office within three months of its execution as well as entered in the District Office Decree book of the district concerned.

(d) MINING LEASES

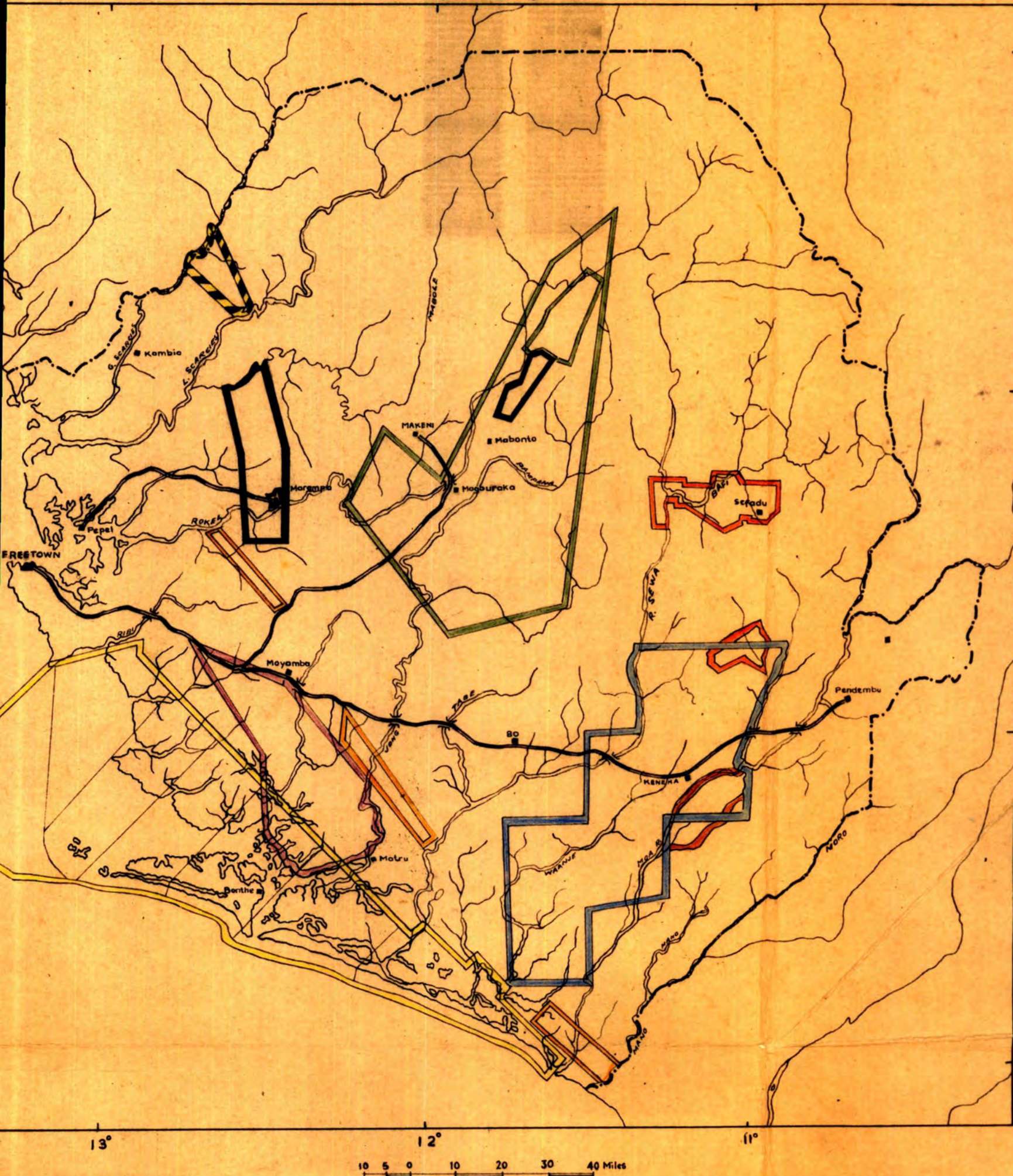
Leases for the mining of minerals are granted in the main to non-citizens. For this reason the mining of minerals was made subject to special enactments and will be treated separately. All mining leases are governed by the Minerals Act and are granted by the Governor-General on the recommendation of the Minister of Mines in whom the property and control of all minerals is vested by law. But before a mining lease is drawn up, it is usual for the interested company to take out an exclusive prospecting licence to determine whether the particular mineral could be found in economic quantities for commercial production.

Exclusive mining prospecting Licenses are issued for a period of five years and renewed annually by the Minister of Mines depending upon whether the area was being adequately prospected. Embodied in the conditions of the special exclusive prospecting licence would be a clause giving the company right to apply for and be granted a Mining lease for up to a maximum period of ninety nine years with the option of renewal. During the period the company does not pay any lease rent but a royalty which is paid into government revenue and shared by the chiefdom Council and landholders of the chiefdom within which the deposits are situated.

Mining leases have been granted for the prospecting and mining of the following minerals:-

Diamonds, Iron Ore, Chromite, Bauxite, Rutile and Oil. The Sierra Leone Development Company have an exclusive mining lease for an area covering 164 square miles in Marampa Masemara chiefdom for mining iron ore, taken out in 1927 for 99 years. The Company has another mining lease at Tenkolili on all minerals within the lease area of 63 square miles including diamonds and mineral oil. The Tenkolili iron ore deposits are of commercial importance although still untapped, but gold and almost - rutile are also known to occur. This lease was granted in 1944 under a special

Mining Leases and Prospecting Licences in Sierra Leone



- | | | |
|---|--|--|
| ■ Sierra Leone Selection Trust Ltd.
Yengema Tongo Field | ■ Sierra Leone Ore and Metal Company | ■ Northern Industries Inc. |
| ■ Sierra Leone Chrome Mines Co. Ltd. | ■ Sierra Leone Development Co. Ltd. | ■ Government Closed Areas |
| ■ British Titan Products | ■ Mineral Research Syndicate | ■ Tenness Inc Oil Exploration Licences |

exclusive mining licence which lapses 30 years from the date of the first commercial shipment of iron ore with an option of renewal for a further 30 years. It appears that in 1930 the Marampa deposit was thought to have a life of 10 years and so the Tonkolili deposits were held in reserve till the Marampa deposits approached exhaustion. The fact that the company is increasing the milling capacity at Marampa would seem to indicate that the reserves at Marampa are still very considerable. It is therefore possible that these deposits would remain untapped for a long time. Apart from the annual lease rents, surface mining rents and royalties are being paid to the Chiefdom Council and Government. The Landowners also received compensation for economic crops and existing buildings at the site at the time the agreement was concluded.

The Sierra Leone Selection Trust had the monopoly for prospecting, production and marketing of diamonds in this country until 1955 when the government entered into fresh agreement about the mining and disposal of diamonds. By the terms of the agreement signed in 1933 the Company granted an Exclusive Prospecting and mining licence for an area of approximately 500 square miles in the Kono and Kenema districts, but the bulk of the lease covers Kono district. In addition to the annual mining lease rent of Le.5088.24 (£2544.2.6) payable by the company, it is also obliged to pay the sum of Le.20000 (£10,000) annually "By way of a contribution to the budget of those authorities and such payments shall be utilized solely for the development of the Kono country the benefit of the Kono people having special regard to the local population in the neighbourhood of the company's mining areas"⁸ Since the Diamond Agreement was signed in 1956 the Alluvial diamond scheme has introduced whereby Sierra Leone citizens can pro-

8. Laws of Sierra Leone Vol.IV, Cap.209 Diamond Agreement p.217

pect and mine for diamonds in selected areas. Such areas are usually declared by government to be licensed alluvial diamond mining areas for the purpose of the Act.⁹ According to the Act the holder of an alluvial diamond mining licence is required to pay compensation for any damage done by himself, his agent, labourers or tributaries within the area in respect of which he holds a licence. He also pays a surface rent at the rate of Le.20.80 (£10. 8.0) per annum to the landowner for using his land. Before any individual is granted a licence the paramount chief of the area would certify that he agrees to the granting of such a licence and for this a 'shakehand' would be required depending on the diamond potentiality of the area.

The Sierra Leone Chrome Mines held a special exclusive prospecting licence for the production of chromite, but the Company ceased production in 1963.

Bauxite is being prospected for by the Sierra Leone Ore and Metal Company under an Exclusive Prospecting licence in the Mekanji Hills in Pujehun district. The Exclusive prospecting licence covers an area of 387 square miles for which the Company pays government Mining rent at the rate of Le.10 (£5) per annum for each square miles embraced within the licence. The licence also includes a clause that the Company upon application to government will be granted a mining lease at any time during the life of the licence. The lease would run for a period of 15 years with option of renewal for a further 15 years and mining lease rent will be paid at the rate of Le. 320 (£160) per annum for each square miles of land within the lease. The company would also be required to pay an annual surface mining rent for all the land occupied by the lease. However no royalty would be paid until production begins for shipment of the aliminum ore

in commercial quantities from Sirra Leone. Royalty would then be assessed at the rate of 15 cents per ton of 2240 lbs bauxite exported.

Rutile was also being prospected for by Consolidated Zinc Corporation and the Pitts-burg Plate Glass Company under an Exclusive Prospecting Licence in an area covering 2360 miles in Bonthe, Bo and Pujehun districts. The annual rent payable is Le.4720 (£2360). The Company has now taken out a Mining lease under the name of Sherbro Minerals to exploit the ore now that it has been ascertained that the estimated reserves are in the region of 30 million tons.

The Tennessee Gas Transmission Company an American Company was granted eight exploration licences to prospect for oil in the South West corner of Sierra Leone, provision being made for changing the areas subject to a maximum overall holding of 4,000 square miles. Under the 1958 Minerals Act (Mineral Oil). Regulations, chapter 197 of the Laws of Sierra Leone, oil exploration licences are not to be granted for areas of more than 500 square miles each. The duration of the licence was for two years with provision for renewals for two yearly periods. Entry upon or occupation of land is made subject to provisions of the Mining (Mineral Oil) Act which safeguards the rights of landowners. The Company did not strike oil in commercial quantities for exploitation and so have since ceased operations in the area.

(d) LEASE RENTS

The amount of lease rent payable depends largely on the area to be leased and whether it is for residential purpose, trading concern, agricultural plantations, educational purposes, or for mining rights. Leases required for Church organisations, educational institutions and charitable concerns were hitherto subject to a nominal lease rent of Le.2 (£1) per annum irrespective of the size of the land. Now that the value of land has increased considerably such organisations do pay up to Le. 40 (£20)

per annum. There is no uniform practice obtainable throughout all the provinces. In Bo Town for example, lease rent for the main shopping area is calculated on the foot frontage of the area to be leased in a sliding scale according to the commercial importance or otherwise of the area. In the main commercial area the lease rent payable is Le.1(10/-) per foot frontage, other areas are rated at 50 cents (5/-) per foot frontage.

Non citizens are normally given a leasehold interest of twenty one years with an option of renewal for another twenty one years for residential purposes as well as for trading sites. Formerly expatriate firms like the United Africa Company or Paterson Zochonis were given a term of fifty years with the option of renewal for twenty one years. The present trend is to grant leases to expatriate firms for not more than twenty one years with an option of renewal for another twenty one years.

The government is included in this class of non-citizens and pays lease rents for all lands leased to it by Chieftom Councils. Such leases are made on the most favourable terms to government. The duration of such leases is for a minimum period of 99 years with an option for renewal. The lease rents payable are usually not commensurate with the acreage of the land. For example the lease for Kenema Government Reservation comprises a total area of approximately 500 acres and only Le.484 (£242) is paid in lease rents annually.

Until twenty years ago there was no government directive on the distribution of lease rents with the result that the landowning family received the full rent. The government de-

cided in the fifties to institute a new policy on the issue and directed that the rent from leases should be distributed in the ratio of $\frac{1}{3}$ to the Paramount Chief, $\frac{1}{3}$ to the Chiefdom Treasury and $\frac{1}{3}$ to the landowning family. A policy statement was issued which defined in broad outline the distribution of the rent as follows:-

"For mining leases 20% of the rent was to be distributed in thirds between the Paramount Chief, Tribal Authorities and landowners. 40% should be paid into the Treasury of the District Council of the District in which the lease was situated for use on approved development projects. The balance of 40% should be paid into the Chiefdom revenue to be used on approved development schemes. In case of leases other than mining leases the rent was to be distributed in thirds as described above. All other payments relating to the use of land but not governed by formal lease was to be divided equally, i.e. half to the particular District Council and the other half shared equally between the landowner and the Tribal Authority.¹⁰

10. Memo. No. CCp 623(59) dated 27th February, 1956 from the Chief Commissioner to the Commissioner Northern Province.

PROBLEMS WITH LAND IN THE PROVINCESI PLEDGING OF LAND

Pledging of land is a practice which obtains in several parts of the Provinces. It resembles a legal mortgage and has been a recognised custom in our tribal societies over the last century. Lord Hailey in his 'African Survey' describes it as the custom whereby "The creditor has the use of the land till the debt is paid..... the pledger and his kindred do not lose the equity of redemption. A pledgee of which circumstances have prevented the redemption may constructively amount to sale; the basic principle however, is that of a redeemable pledge".¹ There are several reasons for this practice of land pledging. An individual may wish to raise money for political advancement such as to stand for one of the hereditary posts - a speakership, Court President, Section Chief or even Paramount Chief in a Chiefdom; he may also be faced with court expenses and court fines which may have been initiated against his family for political reasons and has no means whatsoever of meeting such sudden financial contingencies and resorts to land pledging. But the main reason is usually indebtedness which stems from the prevailing system of subsistence farming. It is not unusual for a farmer to pledge his crop during the planting season in order to live.

When a farm is pledged it is taken over by the pledgee who retains the usufruct of the land till the debt is repaid in full. The pledgee is also entitled to harvest the crop in its entirety. Pledging is usually for an indefinite period and remains effective until the pledge is redeemed. In the Scarcies area where farming

1. Hailey Lord African Survey London 1938 p836.

land is considered very valuable nowadays, many poor farmers have been unable to redeem their farms and have become landless. It happens sometime that a person who is unable to redeem his farm gets other members of his family to do so, particularly so if his family are powerful and wealthy. However there are safeguards which if strictly adhered to make certain that the landowner does not lose his claim to his land and prevents land disputes. The pledgee is expected to pay a tribute to the pledger who in turn pays it to the Chief. When a piece of bush has been pledged and the pledger is able to repay his debt before the agreed date, the pledgee is entitled to harvest from the land the crop he has planted. It may be noted however that farmers pledge their lands as well as their crops, although the money Lending and Standing Crop transaction Act² is against the pledging of crops.

These safeguards have often been circumvented thereby making the system open to abuse. The wealthier people acquire the farm lands of the poorer classes by these pledges which usually do not amount to more than a year's farm crop or less. Although they admit that the land is pledged to them, some take the view that it will never be redeemed and let it out on yearly tenancies to desirous farmers at considerable profit. A persistent increase in land pledging puts a large area of land into the hands of these wealthier classes and increases the number of landless people. In the absence of written records of these transactions, the question of establishing ownership of land in the long run becomes a serious problem.

In spite of all these defects, the practice has continued in different parts of the country, though it may be noted that it has not resulted in the dispossession of the poor farmer from his land in the country as a whole.

2. Laws of Sierra Leone Cap. 242.

It may desirable, however, to regulate the system if it would not be practicable to abolish it altogether. One Mackenzie A.F. former Agricultural Officer in Sierra Loene made the following suggestion:- "where a farm is pledged for a year's crop, a time limit should be fixed, at the end of which the farm would revert to the pledger, and the following terms are also suggested as indicating the general lines along which land might be redeemed from pledge:-

After 1 year	farm handed back	on repayment	of full amount					
" 2 years "	" " " "	" " " "	" " " "	" "	" "	" "	$\frac{3}{4}$	of amount
" 3 " "	" " " "	" " " "	" " " "	" "	" "	" "	$\frac{1}{2}$	" "
" 4 " "	" " " "	" " " "	" " " "	" "	" "	" "	$\frac{1}{4}$	" "
" 5 " "	" " " "	" " " "	" " " "	" "	" "	" "		Without any payment.

Another idea which suggested itself is that the pledgee should have a lien on, say one fourth of the total crop each year for a period of five years as payment of his loan.³ Mackenzie also recommends the establishment of Cooperative societies which is the surest way of overcoming indebtedness - the farmers main problem. Government has encouraged the development of Cooperative societies all over the country to take care of the farmers problem. Today there are over five hundred Cooperative societies of which the greatest number are the ones for thrift and credit.

In 1960 the Minister of Natural Resources our present Prime Minister produced a White Paper on Natural Resources which introduced among other things a scheme for giving out loans to farmers as a mean of solving the problem of indebtedness and at the same time promoting the growth of small scale agricultural plantation in the country. The scheme is known as the Agricultural Loan Scheme;

3. Mackenzie A.F. Sierra Leone Agricultural Notes No. 8 Freetown 1948 p.17.

for the short time it was started, it has benefitted many farmers.

II LAND DISPUTE

The present system of land tenure in the Provinces has a number of defects one of which is the frequent land disputes. There are no permanent beacons and boundary fences demarcating farm lands in particular, although the land owner can trace on the ground within reasonable limits of accuracy the lands he owns. Land disputes are bound to occur even where these measures for demarcating the land are strictly followed. A striking feature of most land disputes is the fact that the issue is always between two families, villages or sections in a chiefdom. This really stems from the fact that the land is vested in the community as a whole with distinct families owning the usufruct of the particular area. Thus when a dispute arises between two individuals about land, one has to take action against the head of the family and not the individual who is farming the land. Very often a dispute between the families develops into a village dispute and the village Head would lead evidence to establish that the land in question had been used by the village from time immemorial. In fact a claim of ownership is always traced back to their ancestors who first brought the land under cultivation.

"Begging" land, land pledging and borrowing land are frequent sources of land disputes. A stranger for example, who begs land from a land owner may continue to use the land for twenty years or more until the original owning family makes a claim for the land. In such cases if the matter is brought up in the local courts decision is usually given against the land owning family as twenty years is considered long enough in modern conditions to allow any objection to be raised. But some courts take the opposite view

that the land remains the property of the original landowners who even though absent from the Chiefdom for a period of twenty years may retake it. When such issues come up for review in the District Officers Court, the rule that customary law should be subject to natural justice, good conscience and equity is applied.

Land disputes in urbanised areas in the Provinces are assuming increasing proportions. There are several instances of double dealing in land in places like Bo Kenema and Makeni. The prevailing practice for obtaining a building plot in towns is to give the landowner a shake hand, the amount of which depends on your status in the community and the size of the plot. Formerly this was done in the presence of a witness, mostly the Section Chief. The person who begged the land was then at liberty to put up his house which would be of a temporary structure made up of wattle and mud. If he vacated the Chiefdom altogether or the house fell down, the land would revert to the original landowner. As has been mentioned above a landowner may give out one plot of land to several persons and receive "shakehands" from each in turn as these transactions are not recorded and there is no machinery to give legal effect to such land transactions. For example a landowner gives out a plot to some one who does not develop the plot immediately but waits for some years. When the landowner discovers that the plot is undeveloped he gives it out to another would-be purchaser. In consequence the first purchaser finds out that he has been cheated and a land dispute begins.

All land disputes are settled by the local Courts composed of a President and five members of the Chiefdom Council with

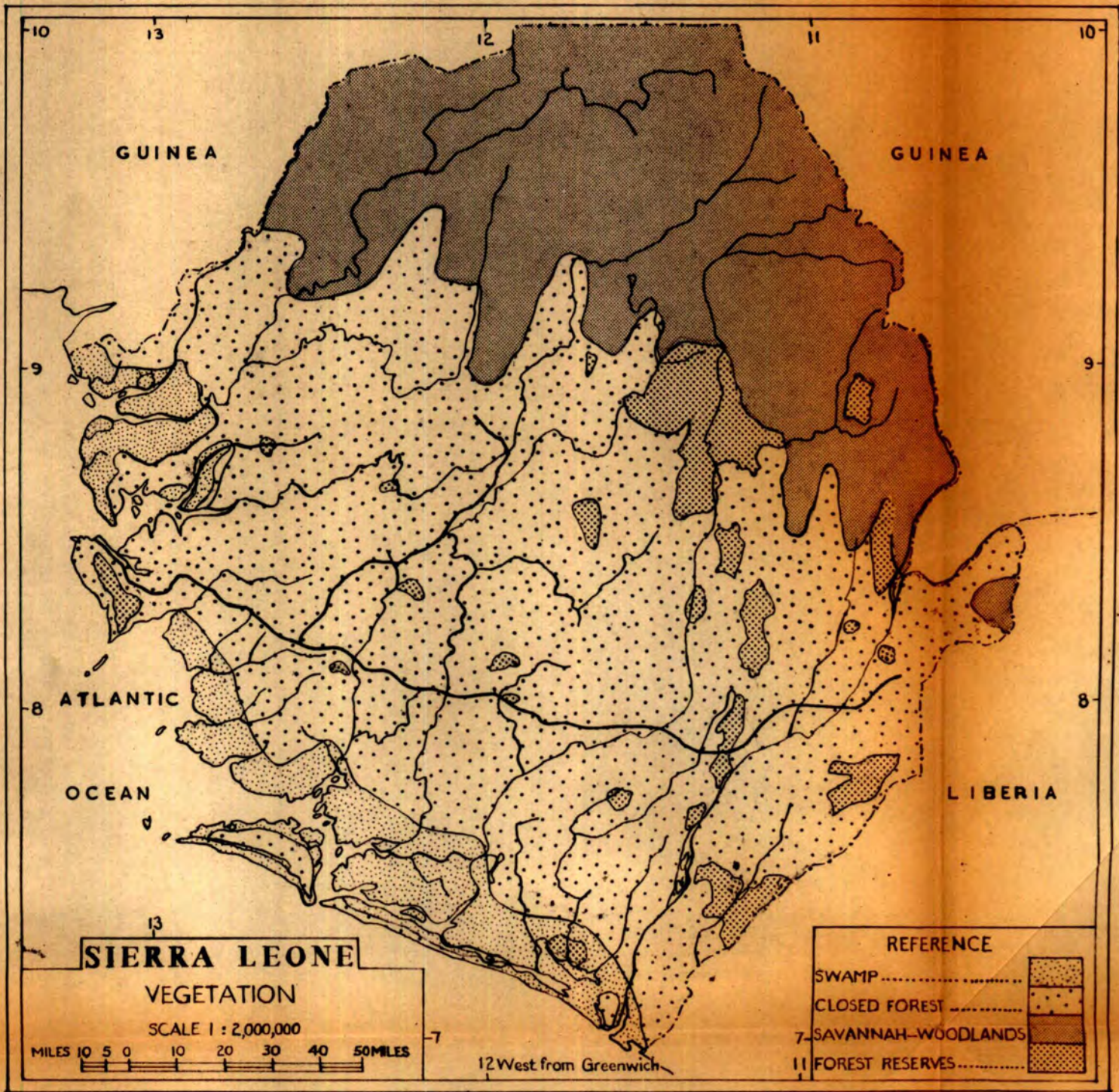
the exception of cases between Paramount Chiefs in accordance with Cap. 8 - Laws of Sierra Leone amended by the Local Courts Act, 1963. Before 1958 the Paramount Chief sat as President of the Local Court in his chieftom, but he was relieved of this duty by ministerial directive and replaced by a President appointed by the Minister responsible for legal and Judicial matters. Any person who is not satisfied with the decision of the local court may appeal to the Group Local Court in his Chieftom. The Group Local Appeal Court is made up of a panel of members from other Chieftoms in the same district. Alternatively he may be appeal to the District Appeal Court which consists of the Magistrate of the District with two assessors selected by the Magistrate from a list of experts in customary law drawn up by the District Officer. Appeal may also be made to the Local Appeals division of the Supreme Court.

Cases between Paramount Chiefs involving title to land i.e. boundary disputes between two Chieftoms are governed by Section 28, Cap. 60 of the Laws of Sierra Leone. Land disputes arising between families which if not promptly settled might lead to breaches of the peace are also dealt with under this clause. In such cases the District Officer would hold an enquiry if necessary with the assistance of one or more assessors. At the end of the inquiry, he announces his decision. Any party who is not satisfied with his decision has a right of appeal to the Provincial Secretary.

Formerly a common practice for the settlement of bush disputes was the administration of a swear. One party would swear

on native medicines and then be granted possession of the whole bush. If any of the parties or his relation dies even after twenty years it is believed that the swear had 'caught' him. When an individual is sworn, he is publicly ostracized, his wives desert him, his debtors do not pay him and he lives a miserable life. If he agrees to give up his claim on the land, the swear would be 'pulled' by a special ceremony. This practice is not looked upon with much favour nowadays. In some cases both parties are ready to be sworn on native medicines. The best solution has always been demarcating the bush between the parties after taking into account their individual claims. The most dreaded medicines in the swearing ceremony are the Tomei Medicine in Moyamba districts, the Kawula medicine in Kambia district, the Gbangbane medicine in Koinadugu district and the Thunder medicine in Kenema district.

There are many land disputes in areas where the values of land have risen steeply due to the high price paid for crops since the end of the last war. Kailahun district is the worse hit as it produces about half of the country's export crop of cocoa and coffee. It is very common for a man who has been away from his Chiefdom for over 20 years to lay claim on land which has been developed into Cocoa or Coffee plantations. The claimant usually endeavours to establish ownership of the land and damages for the use of the land for the period of his absence from the Chiefdom. The courts have always endeavoured to throw out such spurious claims.



CHAPTER 6.PRESENT DAY TRENDSI LAND USE

The traditional system of shifting cultivation has been widespread throughout the undulating uplands of the country. The farmer has had recourse to leave the land to lie fallow for six or seven years before recropping particularly in the cultivation of rice which is the main crop of most farmers. The system of farming is very wasteful of land and the yields from farms have been low and not very encouraging. The government has through its Ministry of Agriculture advocated proper land use by encouraging the annual farming of inland, riverain and mangrove swamps for rice production as alternatives to the cultivation of uplands and leaving the uplands for cattle production and the planting of permanent tree crops such as oil palms, cocoa and coffee.

In pursuance of this policy the Ministry of Agriculture over the years set up a number of experimental farms in different parts of the country to demonstrate to the farmers the soundness of its policy. This has borne fruit and may be said to have made a great impact on the agricultural development of the country. Rice which hitherto had been cultivated mostly in the uplands is now confined to the coastal belt characterized by its tidal mangrove swamps and riverain grasslands. The cultivation of permanent tree crops such as coffee and cocoa is concentrated in the high forest areas in the South Eastern part of the country. Oil Palm one of our crops of major importance is now grown in the central and south west areas of the country. The production of cattle is centred in the North with its orchard savannah and tall grass. This policy has also ensured the promotion of a number of major development schemes with disrupting outright the indigenous system of land tenure. A few of such schemes include the Scarries land

Reclamation, Cattle Resettlement in Bombali and Koinadugu districts and Oil Palm Development by the Sierra Leone Produce Marketing Board in Bo, Pujehun and Port Loko districts.

11 EVOLUTION OF INDIVIDUAL OWNERSHIP IN THE PROVINCE

The traditional concept of vesting title in the family or the community is already giving way to individual ownership in certain areas particularly in large Provincial towns. This may be due to a variety of reasons: the spread of a market economy, pressure of population, the cultivation of permanent tree crops and possibly the wind of change bringing in its train English ideas of absolute and individual ownership. Marshall J.R.N. puts it thus: "As society develops in sophistication and as population density increases land becomes more and more a commodity with a cash value, and (subject to legal restrictions) saleable, whereas at an earlier stage of social evolution it tends to be regarded rather like air, or water in the river as an asset of general utility, but not belonging to or saleable by an individual".⁴

In the Southern Eastern part of the country particularly in Kailahun district where the cultivation of permanent economic crops has been taken up in response to new market conditions before the initiation of Ministry of Agriculture's policy on proper land use, farmers have assumed ownership of the land in which they have planted their crops. Some farmers have demarcated their lands with permanent trees as their boundary marks. On the death of the owner of a plantation, a member of the family who is financially capable of maintaining the plantation irrespective of whoever is the head of the family takes over the plantations and assumes individual ownership. Very often it

4. Marshall J.R. "Journal of African Administration Overseas
Vol. II No. 4 1963 p.222.

transpires that other members of the family sue him in the local court in the area for assuming individual ownership of the land. His ownership of the plantation is seldom at issue; it is his right to the land which is always in dispute. In many instances the local court gives judgement in favour of the defendant of ownership of both the land and the plantation if he produces evidence of continuous cultivation of the plantation in the disputed areas for a period of twenty years or more. According to customary law such a decision is ultra vires, but the local courts have usually advanced the following reasons for arriving at such decisions; It would be inequitable to dispossess a farmer who has spent considerable sums of money in the development of his family's plantation for a period of years; and secondly it would be meaningless for rights to land to remain vested in the family and ownership of the plantation on the defendant when once he has established permanent economic crop on the land. These decisions are usually upheld by the Appellate Courts. The farmer consequently assumes individual ownership of the land and considers the courts decisions as having conferred such a title on him.

It may be pointed out that the spread of a market economy has been a direct result of the evolution of this type of individual ownership in these areas. A member of a family who invests considerable sums of money in his coffee or cocoa plantation finds out that he makes huge profit when he sells his crop. He therefore makes every effort to ensure that he secures some form of individual title to the land. The local courts at the same time by their decisions strengthen the hands of the farmer who invests in his family plantations. It is not uncommon to see large plantations revert to bush because members of the family are afraid to invest their money because of insecurity of tenure. Professor Jack B.T. in his "Economic Survey of Sierra Leone"

3. Jack B.T. "Economic Survey of Sierra Leone" Freetown 1962 p.74.

brought out this point when he said "the remarkable growth of coffee production despite a good deal of official discouragement is evidence of the way in which the indigenous population will respond to new market conditions.....It is in this connection that it is urged that a re-examination of land tenure systems should be undertaken with a view to promoting wherever possible titles to ownership".⁵

This process of individualisation of land holding is even more marked in large Provincial towns such as Bo, Kenema and Makeni. Under the present system an individual who requires land for building or farming can only 'beg' it from the family in whom the rights to land are vested. In Bo for example 'begging fees' for building land range from Le.10 (£5) upwards per town lot (one tenth of an acre) depending on the size of the plot required for the building. In accordance with customary practice he will retain possession of the land as long as the house remains on the plot and subject to his behaviour. If the house falls down (formerly most houses were temporary structures made of wattle and mud) the land reverts to the land owner. Nowadays individuals construct modern permanent buildings which they dispose of at will to any would be purchaser. Although customary practice does not permit the sale of land, yet the parties to the sale of a building draw up an agreement which purports to convey both the land, the building and all its appurtenances from the holder to the purchaser. Many such agreements have been drawn up and the purchasers rights to the land has never been questioned. The landholders have themselves relinquished all their rights to the land in such transactions. This process of individualisation of building land is gaining

grounds very rapidly in these large provincial towns and it would be virtually impossible to reverse it.

III LAND REFORM IN THE PROVINCES BY GOVERNMENT

The present indications are that there is a need for a re-examination of the system particularly in the Provinces to ensure that customary practices which may be an embargo to the proper development of our agricultural resources should give way to conditions operative in a modern market economy. For example the tribal system does not provide enough incentive for additional effort and does not favour the ambition of the individual pioneer. Government realized this need and thought it would be practicable and desirable to help the advances that are taking place within the framework of the tribal system by administrative, organizational and financial means rather than attempt to make any structural changes in the system by legislative or other means. For this reason it was decided to procure the services of a land tenure expert under the aegis of the United Nations Food and Agriculture Organization to study the existing problems and make recommendations.

In 1960 Dr. Jacoby E.H. came to this country on a preliminary mission and made the following report:-

"In my opinion the time has not yet arrived for a unified and homogeneous tenure system in Sierra Leone since the institutional framework has to be cautiously adjusted to the needs of industrial regions. The unrestricted freehold system of the Colony does not exercise much attraction in the Protectorate. There, public opinion gives specific attention to the short coming of the freehold system which in an increasing scale,

facilitates loss of properties to economically superior foreigners.³

"In general the tribal population in the Protectorate seem to consider custom as satisfactory and as their best protection against economically superior forces. They are very conscious of their economic weakness and of their lack of bargaining capacity. They are particularly afraid of concentration of land ownership and many interviewed persons expressed the fear that foreigners, diamond miners and even of the colony, might buy agricultural land and establish large estates at the expense of the tribal population. This fear is reality and has to be taken into serious consideration, since it expresses a realistic valuation of the risks of individualisation and of the protection which custom still provides."⁴

In 1961 the government obtained the services of a land tenure expert who studied the problems in detail. The expert Mr. Hussain M. A. of Pakistan was appointed by the Food and Agricultural organisation.

- (1) "to deal with general aspect of land tenure, and specifically with aspects associated with the emergency of the concept of property in the protectorate.
- (2) to determine the area where individual rights have matured.
- (3) to advise the government with respect to land survey activities, problems of adjudication land consolidation and land registration.
- (4) to assist in the modification of existing legislation and administration in the field of land tenure".⁵

3. The Land Development Act 1962 mentioned above restricted sale of land to foreigners.

4. Jocoby E.W. Report on visit to Sierra Leone 27th Feb-16th Mar, 1960

5. Hussain M.H. Land Tenure Report Sierra Leone F.A.O. 1964.

Mr. Hussain who arrived in this country on 29th November, 1961 studied the problems and finally left on 15th March, 1964. His report which was submitted on 12th August, 1964 included the following recommendations:-

Customary land law should be developed and built up into a systematic body in stages. The first stage should be the collection of information on all aspects from Paramount Chiefs, Chieftom Councilors, Section farmers and individuals on a tribal basis. The second stage should be the preparation of a text book on the material collected in stage one. A third and final stage should be the codification of customary law though it is suggested that this stage should be deferred as long as possible.

Some rules of customary law, he stated, needed clarification and modification. He therefore suggested that government directives, legislation and rules by District Council under Section 40 of the District Council Act, Cap.79, may be used in effecting the changes. The following are examples of customary law which require modification:-

- (a) The principle that land holding rights of original cultivators can never be extinguished;
- (b) The practice of families claiming land in their surrounding neighbourhood in excess of their foreseeable needs for several generations.
- (c) In regard to economic tree crops, the planters right are subordinate to those of the land holder with the result that he has no security for continuity of tenure.

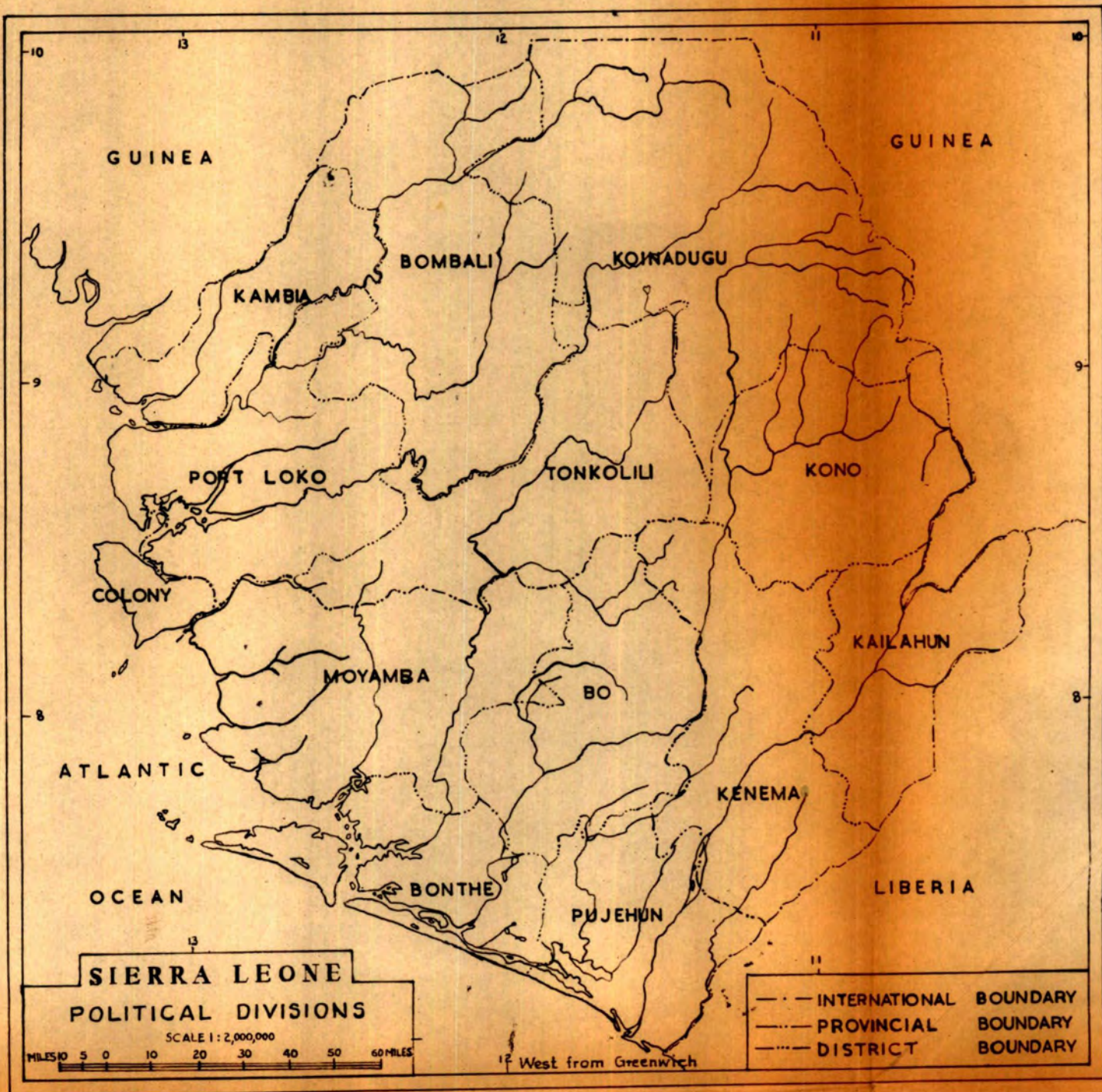
A system of registration of land should be introduced and spread out in two phases. The first phase should include the determination of presumptive boundaries of large blocks of land and family reserves. This should be done by a preliminary public enquiry conducted by special communities of the Chieftom Councils. The boundaries should then be surveyed and mapped after that the rights and a more detailed public enquiry conducted by the same committee. Disputed claims should be settled by an Adjudication Committee

appointed by the District Officer or with his approval. Such rights and interests as are proved should be entered in Chiefdom registers which may be given some such name as "General Register of Existing Rights" and which should show only broad categories of rights, that is, ownership usufruct or occupation. The maps should be revised in accordance with the entries in the Register. In the course of these proceedings, an attempt should be made by the Tribal Authorities to resume jurisdiction over surplus family lands.

The second phase should be the determination of existing individual rights within the large blocks. The phase will involve more detailed surveys and registration of rights. In implementing this phase legislation on the Registration of land in the Provinces should be introduced. The Act should make a distinction between the two phases - the registration of existing rights and the registration of titles and empower the Government to give effect to either phase at the most opportune time. Registration of land in the Provinces should be made compulsory.

Finally he recommended the establishment of a number of Committees and courts for land administration and adjudication. A high level inter-Ministerial organ should be formed to coordinate all matters on land. An adviser should be appointed who will exercise supervisory jurisdiction over the departments concerned with land tenure and land use. Inter Departmental land Committees ^{should} also be set up under the Chairmanship of District Officers. Land Officers should be appointed to serve in the districts. Finally special land Courts should be set up where necessary.

The report is actively being studied by government and no pronouncement has yet been made as to its acceptance and implementation.



APPENDIX I

TREATY NO. 1 OF 22ND AUGUST, 1788

Know all men by these presents that I, King Naimbana, Chief of Sierra Leone, on the Grain Coast of Africa by and with the consent of the other Kings, Princes, Chiefs and Potentates subscribing there to, consideration of the presents, as by a list annexed now made me by Captain John Taylor, of his Britannic Majesty's Ship "Miro" on behalf of and for the sole benefit of the community of free settlers, their heirs and successors, lately arrived from England, and under the protection of the British Government have granted, and by these presents do grant and forever quit claim to certain district of land for the settling of the said free community, to be theirs, their heirs, and successors for ever, that is to say all the land, wood water etc etc which are now contained from the bay commonly called Frenchman's Bay, but by these presents changed to St. Georges Bay, Coastwise up the river Sierra Leone and Gambia Island and Southerly or inland from the river side twenty miles should further be it known unto all men that I King Naimbana do faithfully promise and swear for my Paramount Chiefs, gentlemen, and people likewise most Gracious King George the III King of Great Britain, France and Ireland, etc, etc, and protect the said free settlers, His subjects to the interests and my power, against the insurrections and attacks of all nations or people whatsoever.

John Taylor
Richard Wever
Thomas Peel
Benjamin Elliott

King Naimbana
James Dowdu
Pa Bongie
Dick Robbin

APPENDIX II

DATES OF THE FOUNDING OF VILLAGES IN
THE WESTERN AREA

<u>VILLAGE</u>	<u>DATE OF FOUNDING</u>	<u>VILLAGE</u>	<u>DATE OF FOUNDING</u>
Leicester	1809	Waterloo	1819
Regent	1812	York	1819
Wilberforce	1812	Kent	1819
Gloucester	1816	Sussex	1819
Kissy	1818	Campbell Town	1827
Bathurst	1818	Allen Town	1827
Charlotte	1818	Lumley	1828
Wellington	1819	Murray Town	1829
Hastings	1819	Aberdeen	1829
		Rokel	1833

APPENDIX III

LAND ACQUISITION BILL

In 1947 the Government introduced the Land Acquisition Bill. The occasion for this legislation arose in the course of framing the Town and Country Planning Bill No.19 of 1946 now in-corporated in the Laws of Sierra Leone as Chapter 81 Vol. 11, when doubts were expressed as to the legality of acquiring land in the Provinces for Town Planning purposes. In view of these doubts, it was decided to apply the Town and Country Planning Act to the Western Area only in the first instance and to get further directive on the question of land acquisition in the Provinces.

The Secretary of States for the Colonies to whom the matter was referred advised that it would be proper for the Government to have powers to acquire land in the Provinces for the purposes of any measure necessary or desirable for good government of the territory, and Government did not intend to depart from the established practice of leasing lands whenever this was a possible course. The powers which the bill would give would normally only be invoked when a lease proved to be unobtainable. The purposes for which land might need to be acquired under the Bill were for Town Planning, Communications including roads, Wharves, Jetties, Agricultural Stations, Government Stations, Government public works i.e. erection of hospitals dispensaries, schools, water supplies and electric power schemes. When it was put before the Protectorate Assembly it was vehemently opposed. At the second meeting of the Protectorate Assembly at Bo between 12th -- 16th August 1947 several Paramount Chiefs spoke against the Bill. One of the speakers former P.C. A.C. Demby of Baoma Chiefdom Bo district spoke thus:- "Most of the Chiefs in this Assembly have the Bill regarding the acquisition of land and they have gone into consultation and come to a conclusion. We have thought it fit

that if we allow Government to acquire land in this way we will never have the benefits of our country in any shape or form. We feel that if this Bill were passed the Chiefs and Tribal Authorities of the country would have no right to the land, would merely be subject to the people who were working on the land".¹

The speech of Paramount Chief Mana Luseni was significant as it highlighted the fact that there was hardly an occasion when any Tribal Authority raised objection to leasing land to Government. "Since Government made a Treaty of Friendship with our people Government has been getting land whenever it wants it for public purposes. We are not aware that at any time Government wanted land for a public purposes ~~and~~ the Tribal Authority and the Chiefs had refused to grant land for such a course".²

Another speaker former P.C.Kai Tongi of Kissi Tongi Chiefdom Kailahun district spoke in this vein - "If this Bill become law it will make the Chiefs and Tribal Authority have no control over their subjects. The Bill talks about the acquisition of land and if it becomes law we shall have no power to prevent land from being acquired even if we are not prepared to sell the land. If we agree to this Bill the people will be pushed into a corner and we may also not have sufficient land for farming purposes. If land is acquired in this way the coming generation will only be strangers in their own land and I think they will blame their fathers for selling the land. In the past, something of this nature was brought before the people but they refused to accept it. This Bill is therefore repeating what has been done in the past and it has been rejected. When Government came to the colony it was first a small portion of land that was bought. But now most of the lands in the colony have become crown land from the chiefs and the people."³

1. Protectorate Assembly proceedings 12th - 16th August, 1947 F/town.
2. " " " " " " 1947 p.54.
3. Op Cit. p.57.

Thus the Bill was rejected by the Protectorate Assembly in its entirety. The Late Paramount Chief Bockari Samba of Jawi Chiefdom, Kailahun District read a resolution at the end of the debate which was to be submitted to the Secretary of States for the colonies - "We the members of the Protectorate Assembly resolve that we are entirely opposed to and are against the institution of the Bill entitled" An Ordinance to make provision for the Acquisition of land in the Protectorate of Sierra Leone for Public Purposes and are vigorously protesting to government for their attempt to violate the treaties they made with our forefathers and also abrogate the laws of the trusteeship. We request that this matter be placed on record and also that it be communicated to the Secretary of States because of its grave importance to the people of Sierra Leone Protectorate".⁴

The Press also strongly attacked the Bill and urged that it should be dropped. One Thomas Decker now Permanent Secretary, Ministry of Information and Broadcasting in an article in the Daily Guradian for January, 24 1949 commented on the interpretation of "Public Purposes" in the Bill.

"Public Purposes might easily include the creation of a reservation for Government Officials. And such reservation might easily mean a European reservation such as we have at Bo and New England which benefits only Europeans and their families. On page five of the annual report of the Public Works Department for 1945 which however was published in 1947, reference is made to bungalows built from public funds in what is described as European reservation. Things like these bring awful thoughts of the unfortunate situation in East Africa with the European settlements in that part of the world".

It may be observed that the apprehensions expressed in the Protectorate Assembly may have arisen from a misunderstanding of the purposes of bill, that it would lead to the creation of a landless, dispossessed population and that the Government by acquiring land would leave insufficient land ^{for} farming. There was also the feeling that the intention of Government in taking this power of compulsory acquisition was to facilitate the acquisition of land on a large scale for plantations, But this was the time when the British Government introduced the East African ground nut scheme and the people could not be blamed for thinking in this direction. However the Governor, Sir Beresford Stooke during the twenty fifth session of the Legislative Council allayed the fears of the public when he said "I want to make it quite clear that I have no intention whatsoever of forcing this Bill through against the wishes of the people. But the people must realize that if progress is to be made with the development which they themselves cry for and so urgently require, there must be acquisition of land on an indefeasible title by the Government on their behalf. These powers are required for the acquisition of land for public purposes only, and would not be used when land can be obtained on reasonable terms, as of course it usually can be. I should also add that acquisition would not necessarily be on free hold terms. I see no reason why adequate safeguards should not be devised. For instance, it might be provided in the legislation that no acquisition should be made except with the approval of a standing Committee appointed for the purpose by the Protectorate Assembly. In any case I am confident that good will and common sense will lead to a solution of this question.

It has, I am told, been rumoured that this Bill has been drafted with the sinister intention of depriving the people of their land for the benefit of European settlers. Honourable members will of course require no assurance from me that such a

radical departure from the policy of His Majesty's government and the government of Sierra Leone is in no way contemplated.

But for the benefit of a wider public some of whom may have been ~~CARRIED~~ away by this rumour, I should like to say categorically that the rumour is completely and absolutely unfounded. The final draft of the legislation will I trust, provide, without any possibility of doubt that the powers cannot in any circumstances whatsoever be used for such purpose".⁵

The Government then held discussions with the Protectorate Assembly and alternative proposals were suggested. If the Government were to acquire land under compulsory powers, it should be on the basis of leasehold and not outright acquisition. The power to approve compulsory acquisition by this means was to be vested in the Protectorate Assembly and not the Legislative Council. In spite of these suggestions, it was decided in the interest of good government to drop the bill. Whatever may be said about the merits and demerits of the bill, it is certain, however, that it was introduced at a time when the question of European settler population was assuming increasing proportion in Africa.

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