

# Towards transparency in land ownership: a framework to research beneficial land ownership

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**Abstract:** In many countries, unidentified private individuals and legal entities retain significant economic benefits from land. This lack of transparency can make it harder for affected communities and or governments to hold legal entities accountable for land use decision-making and any sort of violation they commit. Building on methodology used to investigate beneficial ownership of legal entities, this paper proposes a methodology to use to investigate beneficial ownership in large (greater than 200 ha) land holdings. The methodology was tested using field research in Scotland and desk-based research in Sierra Leone.

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## Key Terms

**Beneficial owner/person of significant control** is the natural person who ultimately owns, controls or benefits from a legal entity or arrangement and the income it generates. The term is used to underscore the contrast with the legal or nominee company owners and with trustees, all of whom might be registered as the legal owners of an asset without actually possessing the right to enjoy its benefits

**Controlling:** An entity “controls” land if they are able to exercise authority through use, management, and/or exclusion rights over land, but they do not have all rights required under the “ownership” designation: the right to exclude, to due process and compensation, to sell or transfer to another entity, and to retain rights for an unlimited duration.

**Legal Arrangements:** An express trust or other similar arrangement, including fiducie, treuhand and fideicomiso

**Legal entity:** any entities other than natural persons that have legal capacity to enter into agreements or contracts, assume obligations, own property, among others. This

can include companies, bodies corporate, foundations, partnerships, or associations and other relevantly similar entities.

**Land tenure** includes all types of legal relations to land that could be described as land ownership, land use rights and

**Land use rights:** land use right is distinct and separate from land ownership. Land use right is a property right enjoyed by private parties or communities. It is enforceable. However, compared with ownership, user rights are considered more limited and subordinate

**Natural person:** that is an individual human being, as opposed to a legal person, which may be a private (i.e., legal entity or non-governmental organization) or public (i.e., government) organization

**Ownership:** an entity “owns” land if their tenure is unlimited in duration; they have legal right to exclude outsiders from using their resources (within limits); and they are entitled to due process and compensation in the face of potential extinguishment by the state of some or all of their rights.

## Acronyms

African Land Policy Initiative (AU LPI)

Environment and Social Impact Assessment (ESIA)

Ministry of Agriculture, Forestry and Food Security (MAFFS)

Ministry of Land Country Planning and Environment (MLCPE)

Mines and Minerals Act (MMA)

National Land Policy (NLP)

Office Administrator and Registrar General (OARG)

Petroleum (Exploration and Production) Act (PEPA)

Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests (VGGTs)

## Executive Summary

In the past five years, disclosure of “beneficial ownership” has been increasingly acknowledged as an essential part of fighting corruption, tax evasion, and money laundering and holding powerful entities to account. The publishing of the Panama Papers in 2016 brought these issues into the mainstream and built momentum for a spate of investigations and new legislation.<sup>1</sup>

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<sup>1</sup> Laure Brillaud, *Panama Papers Anniversary—a year of change?* (Transparency International: 2017)

Recognizing that three-quarters of people living in poverty reside in rural areas and depend on land-based livelihoods, as well as the multi-faceted ways in which sound land management can provide environmental, community, and cultural benefits, this research project set out to develop a framework for assessing transparency in beneficial ownership of land. This research framework focuses primarily on transparency for the purposes of accountability in land use and land transactions, rather than on land deals that may be tied to corruption or money laundering. Moreover, this framework focuses on individuals and entities that exercise ownership or control over “large quantities of land,” over 200 ha<sup>2</sup> as a rule of thumb.

The research framework was developed by a cross-disciplinary group of land, resource rights, and geographic experts and then tested in Scotland and Sierra Leone to assess how it works in practice, and what modifications might be needed. Though both influenced by the British legal system, Scotland and Sierra Leone have otherwise quite different political, cultural, and geographic contexts. Choosing two quite different countries was intended to insure that the methodology could be applied broadly in a range of contexts.

The purpose of this research was not to form a comparative analysis of Scotland and Sierra Leone; however, it is worth highlighting a few points of convergence and divergence that emerged through the testing of the framework. Whereas Sierra Leone does not have a national land registry, or complete land registries at any other administrative level, Scotland has a central land registry and primary legislation that makes provision for disclosure of beneficial owners of land. Barriers to public access of collected information remain in both countries, and each country also has at least some policies and provisions around stewardship responsibilities—though they are more robust in Scotland.

Additional considerations have been incorporated into the framework based on the two country research experiences, and there are additional areas that remain to be considered, such as the trade-offs between privacy rights and transparency.

The framework set forth in this paper may be useful to civil society advocates and academic researchers. The results can provide a basis for recommendations to law and policymakers and for advocacy, and additional case studies examining the links between transparency and accountable stewardship can help build global movement for transparency of beneficial land ownership.

## I. Introduction

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<sup>2</sup> The Land Matrix (<http://www.landmatrix.org/en/about/>) sets forth 200ha as the size of a land deal it considers. This framework uses 200 ha so that the findings of this framework could be set in context of other research materials and resources.

In the past five years, disclosure of “beneficial ownership” has been increasingly acknowledged as an essential part of fighting corruption, tax evasion, and money laundering and holding powerful entities to account. The publishing of the Panama Papers in 2016 brought these issues into the mainstream and built momentum for a spate of investigations and new legislation.<sup>3</sup> Yet, the implications for beneficial ownership disclosure go beyond applications to money laundering and corruption. As several exposés by Transparency International, Global Witness, and The New York Times<sup>4</sup> have revealed, in major cities around the world real estate is a prime parking ground for the assets of opaque legal entities, and this is contributing to the housing crisis and associated negative social impacts.

In many countries, unidentified private individuals and legal entities retain significant economic benefits from land, inside and outside of real estate. According to the 2011 Bribe Payers Index, several business sectors that have an interest in land control and use, such as construction, public works, and real estate, are perceived to resort to bribery to influence policy makers. However, in many sectors of land use and ownership outside of urban real estate, land registries remain fragmented and incomplete. The lack of transparency in land registries (including beneficial ownership information) and land transfers pose a major land governance challenge. Not knowing who ultimately controls and benefits from large land holdings (over 200 ha<sup>5</sup> as a rule of thumb) can make it harder for affected communities or governments to hold legal entities accountable for management decisions or any sort of violation (environmental, human rights, etc.) they might commit.

Recognizing that three-quarters of people living in poverty reside in rural areas and depend on land-based livelihoods, as well as the multi-faceted ways in which sound land management can provide environmental, community, and cultural benefits, this research project set out to develop a framework for assessing transparency in beneficial ownership of land. This research framework focuses primarily on transparency for the purposes of accountability in land use and land transactions, rather than on land deals that may be tied to corruption or money laundering.

## II. Developing the research framework

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<sup>3</sup> Laure Brillaud, *Panama Papers Anniversary—a year of change?* (Transparency International: 2017)

<sup>4</sup> Fabiano Angélico, *São Paulo: Does Corruption Live Next Door?*(Transparency International: 2017); Louise Story, *Towers of Secrecy: Piercing the Shell Companies* (The New York Times: 2015); *Surrey Mansion Used to Hide Suspect Funds* (Global Witness: 2015).

<sup>5</sup> The Land Matrix (<http://www.landmatrix.org/en/about/>) sets forth 200ha as the size of a land deal it considers. This framework uses 200 ha so that the findings of this framework could be set in context of other research materials and resources.

Developing the research framework was a collaborative effort, which drew on experts across land and resource rights, beneficial ownership and corruption, and specialists with different regional expertise from over five different organizations.

### The research framework

At the crux of assessing transparency of beneficial ownership of land lies five primary questions: 1) what information on land ownership and control is collected and how? 2) What information on land ownership and control is accessible and by whom? 3) What information on legal entity arrangements is collected and how? 4) What information on legal entity arrangements is accessible and by whom? 5) How do these systems connect to each other, if at all? The majority of the framework is organized into four sections (A-B below) addressing the first four questions, and the 5<sup>th</sup> question is interwoven into those four sections. A final section of the framework assesses the stewardship and use responsibilities that entities with land control may have. In practical terms, this final section would not be enforceable if robust land and beneficial ownership information is not collected and shared with those who can hold these actors accountable. The detailed framework is in Annex I, but summarized below:

#### Section A. Land registry structure and information collection

There is no one internationally agreed best practice for land registries. However, in the interest of transparency and collecting information which can be used to identify owners and hold them accountable, countries might have centralized land registries that contain information on the real beneficial owners (foreign and domestic) of all types of land; basic mapping coordinates; and any specific limitations on that land's use. This section of the framework examines components of a land registry or land documents in a country.

#### Section B. Access to information on land ownership and control, including long-term leases and concessions

For the purpose of enabling communities or governments to hold land owners accountable, countries might have registries open to the general public without a fee; make registries available online; and searchable by different criteria.

#### Section C. Legal entity/arrangement registry and information collection

All legal entities (national and international) would need to provide information to the government on their beneficial owners; beneficial ownership information would need to be provided before land acquisition; third parties have responsibilities for providing beneficial ownership information, and sanctions and incentives are used to encourage disclosure.

#### Section D. Access to legal entity/arrangement registry information

For the purpose of enabling communities or governments to hold beneficial owners accountable, countries might have registries open to the general public without a fee; make registries available online; and searchable by different criteria; or at a

minimum might ensure that law enforcement agents are able to access this information.

### Section E. Responsibilities of stewardship/use by entities with ownership or control

Actions that land owners are required/encouraged to undertake may both be relevant to understanding stewardship. Ideally a country would have clear, legally enforced requirements for social and environmental stewardship by landowners; the second best alternative would be to have national or international guidelines that are promoted by pro-active incentives.

### Analyzing and coding the results

After completing the full assessment, the researchers highlighted stronger and weaker components of a country's legal framework and implementation for each section. Stronger components received a "green" rating and weak components received a "red" rating, with yellow being areas in need of improvement.

There is no one internationally agreed standard that addresses all components, and these ratings are subjective, based on the researcher's knowledge of a variety of standards (e.g. VGGT, World Bank Land Governance Framework) and their own expertise. Other researchers might arrive at a different conclusion. However, such a coding can nonetheless be useful as a benchmarking exercise for policy makers and others to quickly see which areas of their policy and legal framework need improvements to promote increased transparency. It is a less useful exercise for comparing across-countries unless one specific external standard is used and one researcher conducts the coding for and has similar knowledge of all countries considered.

The two country researchers who tested this methodology chose slightly different approaches for coding.

The Scotland Framework used the following rubric:

-  A green rating indicates a positive or progressive element
-  An amber rating indicates an element that is partially positive and could be built on, OR a progressive element which is as yet untested, unevaluated, or subject to considerable amount of uncertainty.
-  A red rating indicates a substantial departure from the ideal.

Whereas the Sierra Leone framework assessed strengths and weaknesses according to the following system:

-  A green rating indicates a strong framework

- An amber rating indicates an insufficient framework.
- A red rating indicates no framework.

### Parameters of the framework

Land and beneficial ownership transparency and access to associated information are technical subjects, which can take on a variety of characteristics in different countries. A number of trade-offs had to be made in this framework in order to arrive at an approach that was focused, concise, and practical for testing and replicating in many contexts. Some specific areas that were discussed but set-aside in this first framework include: further consideration of gender and specific formatting of available information. In an effort to strike a balance between depth and practicality of this type of research undertaking, the research team agreed on a primary framework, which was used for the country case studies in this report. A few areas for further research are also included in the full framework in Annex I.

In order to make the framework manageable and as focused as possible, the research team ultimately agreed on a few parameters and limitations for the primary framework:

1) The framework provides a basic structure for researching beneficial land ownership at one primary unit of geographic analysis (e.g. a country's national level framework; a specific province or state within the country; or in the case of a country of the United Kingdom, the national and UK laws that have bearing on that country);

2) The framework focuses on individuals and entities that exercise ownership or control over "large quantities of land," using the Land Matrix threshold of over 200 ha as a rule of thumb. The reason for this was to limit the amount of time spent on assessing completeness of land registries at smallholder levels, which while important, is of less relevance to beneficial ownership arrangements. This parameter helps to keep the framework and analysis focused on assessing completeness of registries at the level at which powerful actors hiding behind legal entity structures might be interested in land ownership;

3) The framework focuses on land per se; it does not, for example, consider transparency in certain types of land use, such as oil gas and mining, as covered by the Extractives Industry Transparency Initiative.

### III. Testing the Framework

The research framework was tested in Scotland and Sierra Leone to assess how it works in practice, and what modifications might be needed. Though both influenced by the British legal system, Scotland and Sierra Leone have otherwise quite different political, cultural, and geographic contexts. The purpose of choosing two such

contrasting countries was to generate a number of different lessons and ensure a final framework that would have relevance across many different contexts. Scotland was also chosen in recognition of how advanced it is in terms of beneficial ownership and land transparency legislation.

Given the focus of the framework not just on legal frameworks but also on their implementation, ideally each country would have been assessed through field-based research. Ultimately, Scotland was tested using a field-based approach and Sierra Leone using a desk-based approach.<sup>6</sup> Brief summaries of both country studies follow; full reports are also available.

## A. Testing the Framework in Sierra Leone: A desk review of laws, policies, and secondary sources

Access to information on who has the right to own, control, and benefit from land and natural resources is of critical importance for the promotion of responsible land governance and sustainable development. Yet in Sierra Leone, information on how much (and which parcels of) land and natural resources have been allocated to investors, and which investors and other entities have beneficial ownership rights, remains fragmented and inaccessible. Currently, the government of Sierra Leone does not have a national land registry and has not maintained an official record of the amount of land being leased or otherwise allocated by the central government, local governments, and land-owning families to private individuals, companies, and other legal entities.<sup>7</sup> A law or policy guideline that requires public disclosure of land deals, and “thus there are no measures to ensure even a minimum level of transparency and accountability.”<sup>8</sup>

At the same time, there has been a surge in large-scale land-based investments since the conclusion of the Civil War in 2002. Land Matrix research shows that at least 24 land deals were concluded between 2000 and 2015, and these deals cover an area of 773,999 hectares.<sup>9</sup> Without a robust national land registry with information on who has the right to benefit from land and resources, and information on how much (and which parcels of) land and natural resources have been allocated to investors, landholders may be unable to effectively identify and hold accountable investors and entities with beneficial ownership rights to land and resources.

This report tests the framework on beneficial land ownership in Sierra Leone and provides key insights related to the land tenure system, land registries, company

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<sup>6</sup> Despite several rounds of advertising for in-country researchers, the research team did not receive applications for a suitable in-country researcher in Sierra Leone, so a desk-based approach was used.

<sup>7</sup> Oakland Institute, 2011: p. 20

<sup>8</sup> Oakland Institute, 2011: p. 20.

<sup>9</sup> Land Matrix, *Sierra Leone Country Profile: Large-scale land acquisitions in Sierra Leone, 03 November 2016.*

registries, and beneficial ownership requirements. This report examines whether there are legal and voluntary frameworks in place to ensure those who own, control, and benefit from land are responsible for protecting human rights, the environment, and food security. The main finding from this report is that Sierra Leone currently lacks an adequate legal framework for publicly disclosing information about private individuals, companies, legal entities, and other beneficial owners, so the public can identify and hold these actors accountable.

## Background

In Sierra Leone, there are three main categories in which tenure can be classified: state land, private land (i.e. freehold tenure), and communal land governed by customary law.<sup>10</sup> In the Western area of Sierra Leone, the law recognizes freehold tenure, which is governed by common law and statutory law that has existed since 1880.<sup>11</sup> The Northern, Eastern, and Southern Provinces (hereinafter “Provinces”) are primarily rural areas with 149 chiefdoms and tenure arrangements that are governed by customary laws.<sup>12</sup>

For land investors and other entities and individuals, access to land can be obtained through expropriation, purchase, lease, allocation, inheritance, gift, clearing or adverse possession.<sup>13</sup> The process of acquiring, leasing, transferring or otherwise allocating land differs depending on the tenure type.

*The findings from the analysis are color-coded (red= no framework, yellow= insufficient framework, and green= strong framework).*

## Land Registration System and Information Collection

<ul style="list-style-type: none"> <li>● A national registry of land ownership information does not exist.</li> <li>● There is no land registration system in the Provinces (communal land areas).</li> <li>● Systems for mapping and recording collective rights on communal lands in the Provinces currently do not exist.</li> <li>● The following information is missing from the OARG (Office Administrator and Registrar General) registry: type of land, valuation of land, buy/sell date, names of previous owners, whether the owner is a business or legal entity,</li> </ul>	<ul style="list-style-type: none"> <li>● The OARG maintains a deed registration system that applies only in the Western Area and does not maintain a cadastre that shows the location, boundaries, and rights attached to land and resources.</li> <li>● Only the Full Name, Volume, Page Number and Land Address are shown in the OARG's online land registry.</li> <li>● The 2015 National Land Policy also calls for the current system of deed registration to be replaced with a land title registration system.</li> </ul>
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<sup>10</sup> “Country Profile: Property Rights and Resource Governance in Sierra Leone” *United States Agency for International Development (USAID)*, 2010.

<sup>11</sup> USAID, 2010.

<sup>12</sup> World Bank, *Sierra Leone: Land Governance Assessment Framework (LGAF) Draft Final Report*, 2015.

<sup>13</sup> USAID, 2010.

<p>business/corporation ID numbers maps/boundary information, and beneficial ownership information.</p>	<ul style="list-style-type: none"> <li>● There been an attempt to automate the link between OARG and MLCPE in the transfer of land documents through the implementation of the Land Registration Project at MLCPE and the Electronic Documentation of Land Records Project at OARG.</li> </ul>
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**Access to Information on Land Ownership and Control**

<ul style="list-style-type: none"> <li>● The government has not maintained an official record of the amount of land being leased or otherwise allocated by the central government, local governments, and land-owning families to private individuals, companies, and other legal entities.</li> <li>● There has not been a law enacted or policy guideline adopted that requires public disclosure of land deals.</li> </ul>	<ul style="list-style-type: none"> <li>● Although the General Registration Act Cap 255 and the Registration of Instruments’ Act CAP 256 establish some legal requirements designed to ensure adequate recordation of recordation of public land allocations to private investors and public accessibility of these records, these legal requirements are often not complied with in practice, leading to situations where such records are only partially kept.</li> <li>● The government passed the Right to Access Information Act, 2013, However, in addition to the unavailability of information and the limited capacity of governments to respond to information requests, many people are not aware that they have a legal right to request information.</li> </ul>
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**Beneficial Ownership Framework**

<ul style="list-style-type: none"> <li>● Sierra Leonean laws applicable to land ownership and registration do not include provisions that require disclosure of beneficial land ownership or stipulate that the identity of beneficial owners must be publicly disclosed.</li> </ul>	<ul style="list-style-type: none"> <li>● Beneficial ownership provisions exist in other laws enacted in Sierra Leone, such as Petroleum (Exploration and Production) Act, 2011, the Mines and Minerals Act (MMA) 2009, the Companies Act, 2009, and the Anti-Money Laundering and Combating of Financing of Terrorism Act 2012.</li> </ul>
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Extractive Industries Transparency Initiative (EITI), with support from the German government, commissioned a study of beneficial ownership in the extractive

industries in Sierra Leone in 2015.<sup>14</sup> The study concluded, "the current legal framework in Sierra Leone is insufficient to provide the powers needed by government agencies to mandate disclosure by companies operating in the extractives sector or wishing to do so."<sup>15</sup>

### Access to information about businesses and other legal entities

<ul style="list-style-type: none"> <li>● There is no official, publicly available registry of businesses operating in the Provinces.</li> <li>● In the OARG There is no established link between the Business Registry and Land Registry that shows on a map which companies own what land and where</li> <li>● There are no incentives and/or sanctions for not reporting beneficial ownership information, except if individuals or entities are being investigated under the Anti-Money Laundering and Combating of Financing of Terrorism Act 2012.</li> </ul>	<ul style="list-style-type: none"> <li>● The OARG hosts a registry of businesses; however, the registry is not yet posted online.</li> <li>● The OARG website contains a "Business and Company Name Search" feature, but, there is no beneficial ownership information listed on the website.</li> <li>● The Companies Act states that companies have the discretion to require members of the company to disclose beneficial ownership information and beneficial interests in shares, but this is discretionary---companies are under no legal obligation to do so.</li> </ul>
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### Responsibilities of land-owning entities

<ul style="list-style-type: none"> <li>● The National Land Policy 2015 calls for measures that will stimulate local production with the ultimate goal of guaranteeing food security and realizing the right to food for everyone, particularly the vulnerable and marginalized, but this Policy is not legally binding.</li> <li>● The National Land Policy 2015 acknowledges the VGGTs and calls for business enterprises and other non-state actors to address human rights concerns, but these obligations are not legally binding.</li> <li>● The Human Rights Commission has recently developed "Guidelines for Monitoring Business and Human Rights in Sierra Leone", and is currently sharing the Guidelines with members of the private sector</li> </ul>	<ul style="list-style-type: none"> <li>● Pursuant to the Environment Protection Agency Act, 2008, an Environmental Impact Assessment is required if landowner activities will cause environmental degradation.</li> </ul>
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<sup>14</sup> Sierra Leone Extractive Industries Transparency Initiative (SLEITI), *Sierra Leone Beneficial Ownership Roadmap 2016-2020*, 2016.: p. 4.

<sup>15</sup> SLEITI, 2016: p. 4.

<p>● Land was identified as a priority issue of the Human Rights Working Group (a group chaired by the Commission with members from government, INGOs, NGOs, civil society, donor agencies).</p>	
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### Recommendations to improve transparency in Sierra Leone

Based on the findings and analysis, this study provides a set of evidence-based recommendations for the government to consider adopting:

1. Enact a law or regulation that requires beneficial ownership and other information to be included in a land registry system that covers the whole country. The land registries should include maps and cadastral information for each parcel, including the land type, last buy/sell date, name of current owner, name of previous owner, business or corporation identification, type of business/organization, start and end date of a lease or concession, as well as information on beneficial ownership. The law should also regulate the protection of and rights to communal resources.
2. Regularly update the information included in the land and business registries and require private companies and other entities to disclose beneficial ownership information.
3. Ensure that all information about land leases and concessions is regularly updated and easily accessible to the public.
4. Build government and public capacity to utilize land registries through training workshops, pamphlets, and other capacity-building tools, with a particular focus on ensuring communities are able to access and recognize land registration systems as valid, legitimate, and binding.
5. Provide the public with assistance mechanisms that remove or reduce language, literacy, financial, and other barriers that need to be overcome for communities to embrace and effectively utilize land registration information.
6. Enable the public to understand their legal rights to access information, obtain redress through the justice system, and hold government and private actors accountable for violating the environment, human rights, and food security principles as established in the NLP and other frameworks.

### B. Testing the Framework in Scotland: A field study

[To be inserted by TI]

## IV. Feedback and suggestions for improving the framework:

Although the framework sought an understanding of policy around beneficial ownership specifically, the research process necessitated a more fundamental examination of transparency in land ownership. Ultimately this means that a sub-

portion of the framework could be used for research on land registry transparency that does not go as far as beneficial ownership considerations; however, it also makes the framework quite long. Some specific suggestions for modifications have been made to the framework since testing, and are indicated as additions in Annex I. There are also three high-level recommendations that need to be explored further:

1. The framework implicitly assumes a connection between transparency and enforcement of responsibilities; or at least that transparency is a necessary even if insufficient condition for enforcement of responsibilities. Further research might examine whether indeed there exists in practice a link between transparency and enforcement of responsibilities, or whether enforcement and remedy can be provided even when ultimate beneficial owners are unknown.
2. In countries without a robust, comprehensive national land registry system (e.g. Sierra Leone), the framework should include more questions on what are the barriers that must be overcome to develop an effective land registration system in order to make it practically useful for government and advocates. Barriers may include lack of financing and capacity as well as corruption, but it may be useful for researchers to consider these barriers in their research.
3. Privacy concerns must be weighed with interests of transparency, and should be considered in this framework as possible reasons why transparency or access to information may be limited.

## VIII. Concluding remarks

The research framework successfully yielded critiques of two very different countries—Sierra Leone and Scotland. The purpose of this research was not to form a comparative analysis of Scotland and Sierra Leone; however, it is worth highlighting a few points of convergence and divergence. Whereas Sierra Leone does not have a national land registry, or complete land registries at any other administrative level, Scotland has a central land registry and primary legislation that makes provision for disclosure of beneficial owners of land.

Barriers to public access of collected information remain in both countries, and each country also has at least some policies and provisions around stewardship responsibilities—though they are more robust in Scotland. Testing access to information in both countries proved difficult or impossible given resource constraints of time and money; this is a finding in itself. In order to hold owners accountable to

these laws and policies, ownership information needs not only to be collected, but also accessible. This framework did not yet consider privacy concerns, which need to be carefully weighed with the objectives of public access to information.

Finally, we hope that the framework set forth in this paper may be useful to civil society advocates, academic researchers, and even government officials who are working to improve transparency in their country. The results can provide a basis for recommendations to law and policymakers, and additional case studies examining the links between transparency and accountable stewardship can help build global movement for transparency of beneficial land ownership.

IX. Annexes

I. The detailed framework

Throughout the framework [❖] symbol denotes suggestions for how the research could be taken further if demand allows. [◆] Indicates additions that were made to the research after testing.

	Suggested methods
<p><b>A. LAND REGISTRY STRUCTURE AND INFORMATION COLLECTION</b></p> <p>There is no one internationally agreed best practice for land registries. However, in the interest of transparency and collecting information which can be used to identify owners and hold them accountable, countries might have centralized land registries that contain information on the real beneficial owners (foreign and domestic) of all types of land; basic mapping coordinates; and any specific limitations on that land’s use.</p>	
<p>1. How is the land registry in the country structured? (Is there a centralized registry for all types of land ownership and control, including long-term leases and concessions? Does it include customary or communally used land)? At the national level? Subnational level? Are records of different types of land ownership kept at different levels?) Which administrative body controls the registries? Please specify if there is a specific type of land (e.g. communal land or land controlled by customary law) that is <u>not</u> included in a registry</p>	<p>Legal review</p>
<p>1.1) In practice, are the registries maintained according to the law?</p>	<p>Interviews with registry officials, CSOs working on</p>

<p>❖ Please additionally assess at the sub-national level or less-primary registries</p>	<p>transparency, governance, and land rights.</p>		
<ul style="list-style-type: none"> <li>◆ Is a specific type of land that (legally) should be included in the registry consistently missing in practice? (E.g. customary held land or communally used land).</li> <li>◆ Do specific groups of people or types of land face barriers to registration? (E.g. access to surveyors, knowledge of registration protocols, etc.) Do you need to be able to identify legitimate interest or pay a fee?</li> </ul>			
<p>2. For each registry in the country, does the law specify what information should be contained? If yes, please select all that apply.</p> <table border="1" data-bbox="147 800 1117 1335"> <tr> <td data-bbox="147 800 610 1335"> <ul style="list-style-type: none"> <li>• Type of land</li> <li>• Type of tenure</li> <li>• Valuation</li> <li>• Chain of transactions in the past or at minimum the last buy/sell date</li> <li>• Name of current owner</li> <li>• Names of previous owners</li> <li>• Business ID number of a corporate owner</li> <li>• Personal ID of a natural person</li> </ul> </td> <td data-bbox="610 800 1117 1335"> <ul style="list-style-type: none"> <li>• Start and end date of a lease or concession</li> <li>• For public land, specific purpose for which a concession or lease was granted</li> <li>• Maps</li> <li>• Beneficial ownership information</li> </ul> </td> </tr> </table>	<ul style="list-style-type: none"> <li>• Type of land</li> <li>• Type of tenure</li> <li>• Valuation</li> <li>• Chain of transactions in the past or at minimum the last buy/sell date</li> <li>• Name of current owner</li> <li>• Names of previous owners</li> <li>• Business ID number of a corporate owner</li> <li>• Personal ID of a natural person</li> </ul>	<ul style="list-style-type: none"> <li>• Start and end date of a lease or concession</li> <li>• For public land, specific purpose for which a concession or lease was granted</li> <li>• Maps</li> <li>• Beneficial ownership information</li> </ul>	<p>Legal Review</p>
<ul style="list-style-type: none"> <li>• Type of land</li> <li>• Type of tenure</li> <li>• Valuation</li> <li>• Chain of transactions in the past or at minimum the last buy/sell date</li> <li>• Name of current owner</li> <li>• Names of previous owners</li> <li>• Business ID number of a corporate owner</li> <li>• Personal ID of a natural person</li> </ul>	<ul style="list-style-type: none"> <li>• Start and end date of a lease or concession</li> <li>• For public land, specific purpose for which a concession or lease was granted</li> <li>• Maps</li> <li>• Beneficial ownership information</li> </ul>		
<ul style="list-style-type: none"> <li>◆ If the owner is a legal entity (e.g. limited liability company) or a legal arrangement (e.g. Trust) which information is available in the land registry?</li> </ul>			
<p>2.1) In practice, which elements of this seem complete and which are systematically missing information? If the country has more than one registry, do stakeholders perceive some to be more complete than others? Which?</p>	<p>Interviews with registry officials or local government to understand in practice what common gaps are (if any); CSOs working on land rights. If the registry is publically available, the</p>		

	<p>researcher should examine the registry herself.</p> <ul style="list-style-type: none"> <li>❖ For simple research, researchers should choose whichever tool they believe will be easiest in their context; for more complex assessments, both should be used.</li> </ul>
<p>3. Does the government regularly update registry information? Are others, such as landowners, responsible for such updates? (Please answer for each registry)</p>	<p>Legal review; interviews with registry officials If the registry is publically available, the researcher should examine the registry herself.</p>
<p>4. Do any of the laws or regulations that govern land ownership and control, including long-term leases and concessions, require beneficial ownership be provided? (If no, does the country have any policies or standards that address beneficial ownership in land?)</p>	<p>Legal review</p>
<p>4.1) Are there any incentives to encourage individuals or entities to meet voluntary disclosure standards even if not required by law? (If yes, what?)</p>	<p>Legal review + interviews with corporate law firms in the country; country EITI reports, <a href="http://openlandcontracts.org">openlandcontracts.org</a></p>

**B. Access to information on land ownership and control, including long-term leases and concessions**

For the purpose of enabling communities or governments to hold land owners accountable, countries might have registries open to the general public without a fee; make registries available online; and searchable by different criteria.

1. Can the public access information about land ownership and control? Please select all that apply. If the country has different registries for different types of land, please answer separately for each primary registry.
- ❖ Can this information be analyzed in aggregate or only by individual titles/land use certificates?
  - ❖ What are the technical specifications and formatting of this data?
  - ❖ If registries exist at the subnational level, please assess the registry in a representative (by population or GDP/capita) region/state.
  - ❖ Can land registry information be disaggregated by gender?

<u>How and Who</u>	
<ul style="list-style-type: none"> <li>• Free</li> <li>• Online/email/mail</li> <li>• Within a specified timeframe</li> <li>• Any member of the public</li> </ul>	<ul style="list-style-type: none"> <li>• For a small specified fee</li> <li>• In person only</li> <li>• Ad hoc timeframe/ not specified</li> <li>• Only an individual or entity who can prove a relationship to the land</li> </ul>

<u>What type of information</u>	
<ul style="list-style-type: none"> <li>• All land record information collected by law</li> <li>• Valuation</li> <li>• Last buy/sell date</li> <li>• Name of current owner legal owner</li> </ul>	<ul style="list-style-type: none"> <li>• Start and end date of a lease or concession</li> <li>• For public land, specific purpose for which a concession or lease was granted</li> <li>• Maps</li> </ul>

Legal review; desk based research for any citizen report cards/user feedback surveys with gender lens if available; if the law provides a simple procedure for submitting a request, try submitting a request at the start of the research and see what is received.

<ul style="list-style-type: none"> <li>Names of previous legal owners</li> </ul>				
<p>2. If a registry cannot be access by the public, what (if any) authorities are able to access it? (E.g. law enforcement, tax agencies, etc.)</p>		<p>Legal review; interviews with registry officials</p>		
<p>3. Are there exceptions under which people can be denied access to land ownership or concession information? If so, who has control to decide an exception? Or are there circumstances in which owners can request certain information be included in the register, but not be made public? If so, please list them.</p>		<p>Legal review + interviews with transparency/governance CSOs and journalists</p>		
<p>4. Can the land registry be searched by:</p> <p>Please select all that apply. If the country has different registries for different types of land, please answer separately for each registry at the national level.</p> <ul style="list-style-type: none"> <li>If registries exist at the subnational level, please also assess the registry in a representative region/state by population or GDP/capita. (If there is no national registry, please use these instructions for the primary assessment, too.)</li> </ul> <table border="1" data-bbox="170 976 1136 1197"> <tr> <td data-bbox="170 976 657 1197"> <ul style="list-style-type: none"> <li>Land owner/lease holder name</li> <li>Parcel/plot #</li> <li>Beneficial owner</li> </ul> </td> <td data-bbox="657 976 1136 1197"> <ul style="list-style-type: none"> <li>Type of concession</li> <li>Type of land use</li> <li>Legal entity registration # of owned by a business/trust/other legal entity</li> </ul> </td> </tr> </table>		<ul style="list-style-type: none"> <li>Land owner/lease holder name</li> <li>Parcel/plot #</li> <li>Beneficial owner</li> </ul>	<ul style="list-style-type: none"> <li>Type of concession</li> <li>Type of land use</li> <li>Legal entity registration # of owned by a business/trust/other legal entity</li> </ul>	<p>Legal review</p>
<ul style="list-style-type: none"> <li>Land owner/lease holder name</li> <li>Parcel/plot #</li> <li>Beneficial owner</li> </ul>	<ul style="list-style-type: none"> <li>Type of concession</li> <li>Type of land use</li> <li>Legal entity registration # of owned by a business/trust/other legal entity</li> </ul>			
<ul style="list-style-type: none"> <li>Are there any laws in the country that require publication of concession data and contracts? If yes, which types of concessions? What type of information does the law require to be published?</li> <li>Does the law require information on beneficial ownership be provided during the application for a long-term lease or concession? If so, is this information made available (and where/how?)</li> </ul>		<p>Legal review</p>		

### C. Legal entity/arrangement registry and information collection

All legal entities (national and international) would need to provide information to the government on their beneficial owners; beneficial ownership information would need to be provided before land acquisition; third parties have responsibilities for providing beneficial ownership information, and sanctions and incentives are used to encourage disclosure.

<p>1. What types of legal entities/arrangements (e.g. national or international companies, trusts, etc.) operate in the country?</p> <ul style="list-style-type: none"> <li>❖ For more advanced methodology, please map out the primary types that are used to own and control land in the country.</li> </ul>	<p>Interviews with land rights and transparency CSOs; investment law firms; land registry officials; review of concession auction bidder list (if any)</p>
<p>2. Does the country have a definition of beneficial ownership? If so, please describe the different disclosure requirements for beneficial ownership and control of each type of legal entity/arrangement in C1.</p>	<p>Legal review</p>
<p>3. Does the country have a company registry and/or trust registry?</p> <p>3.1) Does each type of legal entity have its own registry or is there one centralized registry for all?</p> <p>3.2) Are these registries at the national level or at sub-national level?</p> <p>3.3) Do these registries contain information on domestic and international entities? Does it contain the same information on each?</p> <p>3.4) What types of information are collected in these registries, particularly as relates to beneficial ownership?</p> <ul style="list-style-type: none"> <li>❖ What format is this information in?</li> </ul>	<p>Legal review</p>
<p>4. What responsibilities, if any, do third parties have to register information on beneficial ownership of these legal entities? How is it registered?</p>	<p>Legal review + interviews with corporate law firm, accountant firm</p>
<p>5. Are real estate agents/notaries/land agents/brokers/lawyers who engage in land transactions required by law to identify the beneficial owner of their customers?</p>	<p>Legal review + interviews with real estate lawyers or businesses</p>
<p>6. Are there any incentives and/or sanctions on third parties or on legal entities themselves for not reporting required beneficial ownership information?</p> <ul style="list-style-type: none"> <li>❖ Are these different across industries or foreign or domestic ownership?</li> </ul>	<p>Legal review + interviews with corporate law firm, accountant firm</p>

<p>7. To what extent are land registry and legal entity registries automatically synchronized? If someone is searching for information do they have to search through different registries to get the information about the same natural person / legal entity / plot of land?</p> <ul style="list-style-type: none"> <li>❖ For a more comprehensive assessment, the researcher should test this herself.</li> </ul>	<p>Legal review + Interviews with registry officials of both types of registries</p>		
<p>8. Do foreign companies; trusts, or other legal entities/arrangements need to register with the relevant registry before purchasing, leasing, or seeking to acquire a concession (through auction, etc.) in the country?</p>	<p>Legal review; interviews with real estate brokers or ministries/government offices in charge of approving or allocating concessions</p>		
<p><b>D. Access to legal entity/arrangement registry information</b>  For the purpose of enabling communities or governments to hold beneficial owners accountable, countries might have registries open to the general public without a fee; make registries available online; and searchable by different criteria.</p>			
<p>1. Can the public access ownership information?</p> <table border="1" data-bbox="261 1041 1084 1310"> <tr> <td data-bbox="261 1041 721 1310"> <ul style="list-style-type: none"> <li>• Free</li> <li>• Within a legally specified period of time</li> <li>• Online</li> <li>• Any member of the public</li> </ul> </td> <td data-bbox="721 1041 1084 1310"> <ul style="list-style-type: none"> <li>• Published fee (how much?)</li> <li>• Ad hoc time</li> <li>• Only in person or by written request</li> </ul> </td> </tr> </table> <p>2. Are there exceptions under which people can be denied access to ownership information? Who has authority to decide an exception? If so, please list. Or are there circumstances in which owners can request certain information be included in the register, but not be made public? If so, please list them.</p>	<ul style="list-style-type: none"> <li>• Free</li> <li>• Within a legally specified period of time</li> <li>• Online</li> <li>• Any member of the public</li> </ul>	<ul style="list-style-type: none"> <li>• Published fee (how much?)</li> <li>• Ad hoc time</li> <li>• Only in person or by written request</li> </ul>	<p>Legal review; desk based research for any citizen report cards/user feedback surveys; interviews with journalists and transparency CSOs</p>
<ul style="list-style-type: none"> <li>• Free</li> <li>• Within a legally specified period of time</li> <li>• Online</li> <li>• Any member of the public</li> </ul>	<ul style="list-style-type: none"> <li>• Published fee (how much?)</li> <li>• Ad hoc time</li> <li>• Only in person or by written request</li> </ul>		
<ul style="list-style-type: none"> <li>◆ Is the information about the ultimate ownership of the company available, and if so, does it easily integrate with the country's company register? Is the data itself open and in CSV format?</li> </ul>			
<p>3. Please describe who is able to access the beneficial ownership information and the process to access it.</p>	<p>Legal review + interviews with corporate law firms + registry officials</p>		

## E. Responsibilities of stewardship/use by entities with ownership or control

Researchers should consider both required and voluntary actions that land owners are required/encouraged to undertake. Ideally a country would have clear, legally enforced requirements for social and environmental stewardship by landowners; the second best alternative would be to have national or international guidelines that are promoted by pro-active incentives.

<p>1. In the national-level laws and regulations, what responsibilities are imposed on entities that own and control land to consider environmental and social impacts of their activities? (E.g. avoiding environmental pollution, allowing access or harvesting rights to other individuals, etc.)</p>	<p>Legal review, with particular attention to ESIA laws, investment law, environmental law</p>
<p>1.1) What mechanisms exist to enforce these laws? 1.2) Does the country have any related voluntary standards or policies in place?</p> <p>❖ Do sub-national units have different incentives to promote adherence to voluntary standards?</p>	<p>Interviews with legal entities that have chosen to voluntarily disclose ownership information or contract information about the decision to do so (check <a href="http://openlandcontracts.org">openlandcontracts.org</a> and EITI reports)</p>
<p>2. If the country has voluntary policies/standards outlining landowner/ controller best practice relating to environmental and social benefit of the land under their control, are any incentives provided to encourage people to meet these standards? (If yes, what are they?)</p>	<p>National EITI framework; investment law</p>
<p>❖ If legal entities/arrangements owning land or concessions in a specific country primarily stem from one or two source countries, do those source countries have any laws or policies that require certain environmental or social standards be applied in the legal entity's operations?</p>	<p>Review published contracts and registry to find source country; conduct legal analysis of source country laws on overseas operations (e.g. Alien Tort Claims Act, in USA)</p>

<p><b>F. Suggested Case Studies</b></p> <p>When research is conducted for advocacy purposes, case studies can help to demonstrate the impact of lax beneficial ownership requirements or land registry transparency in a country.</p>	
<p>a. Testing access to information: <i>Attempt to secure a land contract for a specific parcel of land or specific owner; did the process work according to the law? What information was contained in the disclosure? Were you able to verify any ownership information with a corporate registry?</i></p> <p>b. The G20 principles on beneficial ownership use a threshold of 25% share in a legal entity to define a beneficial owner. Is this an effective threshold? <i>Find a case study where beneficial ownership has been significant but below the 25% threshold. What have been the implications of this in terms of accountability?</i></p>	

## II. Instructions for Researchers

### Time allocation

The desk-based researcher took 7 working days to complete his report; the field-based research required 15 working days. This is not enough data to determine how or why these times differed, but may be a helpful reference for others planning similar assessments.

### Using the framework

**Suggested documents and legislation for collection and review:** primary national land laws that cover how land is managed and acquired; relevant government policies and other guidance pertaining to land; primary investment laws (national and international investors); primary laws governing companies, trusts and other legal vehicles; primary freedom of information law and any related regulations or policies that specifically govern access to land and/or company data; governing structure and transparency of state owned enterprises and concessions; ESIA Law/procedures.

- ❖ Any subnational policies or regulations covering land acquisition, investment approvals, or land registration and management.

**Background information:** The researcher should begin by providing background information on the country, specifically as it relates to the legal system that governs land, legal entities, and access to information.

- Land management in the country: What are the primary land tenure arrangements in the country? What is the country's overall economic profile

(% GDP derived from natural resource extraction, agriculture or other land-based activities) Does the country's legal system recognize customary law and / or community land ownership? What government entities are allowed to lease or allocated concessions for public land?

- Management of land for social or environmental welfare: Does the country acknowledge the VGGTs, AU LPI guidelines? Are there guidelines for FPIC or community participation in decision-making?
- Access to information & justice framework: Does the country have freedom of information laws? Does the country have an independent judiciary? Is there an anti-corruption law that relates to land sales?
- Beneficial Ownership framework: Which laws or standards regulating the disclosure of beneficial ownership did the country commit to? What does the country commit to with regards to money laundering and tax evasion?

In each assessment, the following framework should focus on one geographic unit of analysis.

- ❖ In countries with federal systems, where answers could differ between administrative units, the researcher should provide responses for a) highest level and b) a “representative” state or region (could be with average GDP/capita, average population size) or in the case of the United Kingdom, country-level.
- ❖ Apply a gender lens: can women equally own and inherit land according to the law? Does this happen in practice?

### Coding/Analyzing the Results

Researchers may choose to conduct the coding themselves, or to convene a group of experts to assess the framework against an agreed standard.

For categories C and A and F, countries can be analyzed in terms of the presence and enforcement of laws and presence and incentives of policies/standards.

For categories B and D, countries can be assessed in terms of the range of the stakeholders who are able to access information according to the law; the scope of information that can be accessed under the law compared with the scope of information collected; and any discrimination in access or restrictions on access that appear in report cards/interviews.

For category E, the presence of a systematized exchange of information between registries will be considered strong, and ad-hoc exchange of information via enabled individuals will be considered positively, but not as strongly.

### Peer Review

We recommend securing “peer reviewers” who are experts on the country of interest to review the assessment findings. For each of the test studies (Scotland and Sierra Leone), this approach was used.