

# ECHO

## Special Edition

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# So Who Owns The Forest?



*The future of these children will be dramatically transformed when the President of Liberia signs into law the Community Rights Law. They now have a reason to HOPE.*

**F**orests or forested areas are an indisputable part of each community land area in rural Liberia. Ownership of this area is vested collectively in the community. Although there has been increasing

damage to the quality and extent of forest land in Liberia since 1980, an area of nearly six million hectares or over half of Liberia's land mass is still covered by forests. Forests are a critical asset for local communities and have always been an integral part of

the livelihood of Liberia's people.

The issue of 'who owns the forests?' has preoccupied the minds of many people, especially forest communities, in Liberia recently. It is perhaps the single most important rural tenure issue needing clear resolution. This was deservedly made

a key component of the Act Establishing Community Rights with Respect to Ownership and Use of Forest Lands Resources.

The Community Rights Law, as the Act is called, provides that all forest lands in Liberia are owned by local communities; with some exceptions. The Act es-

tablishes the rights of local communities or forest dwellers to receive and control revenue from commercial activities on their forest lands. Commercial activities on community forest lands will only occur after they have negotiated and agreed a revenue sharing agreement with the forestry authorities.

**The Sustainable Development Institute (SDI) is working to transform the decision-making processes relative to natural resources and promote equity in the sharing of benefits derived from natural resource exploitation in Liberia. The organization's vision is a Liberia in which natural resource management is guided by the principles of sustainability and good governance and benefits all Liberians. Its activities cover a range of cross-cutting issues including governance and management, environment, state and corporate social responsibility, economic and social justice for rural populations and the democratic participation of ordinary people in how government manages their natural resources.**

**The organization was founded in 2002 and received the Goldman Environmental Prize for outstanding environmental achievements in Africa in 2006. The Goldman Environmental Prize is the world's largest prize honouring grassroots environmentalists.**

# Charles Taylor's Legacy

## The Forestry Development Authority

### Claim Of Ownership Of Forests

Loss of real property rights became a harsh reality in 2000 with the passage of a new forestry law, which separated the forests from the forestland. Forests became a separate asset from the land they grew on. This seems to have been designed to enable Government to claim ownership.

AMD/40/98-2

March 3, 1998

H.E. Dahkpanah Dr. Charles G. Taylor  
President of the Republic of Liberia  
The Executive Mansion  
Capitol Hill  
Monrovia, Liberia.

Dear Mr. President:

I have the honour and pleasure of writing, apprising your Excellency of the circumstances and situation relating to the Forest Lands within BOKOMU DISTRICT and the PUTU PEOPLE NATIVE RESERVE FOREST, areas which Messrs EXOTIC TROPICAL TIMBERS ENTERPRISES has expressed their interest in acquiring to conduct Logging and Wood Processing Operations in Liberia.

Mr. President, for the Forest Lands within Bokomu District, Lower Lofa County; we would inform your Excellency that the Chiefs, Elders and Peoples of Bokomu District have a Public Land Sale Deed from the Republic of Liberia for over 856,000 acres. Furthermore, the People of Bokomu District through their authorized representatives, have informed the Forestry Development Authority of their willingness to conclude a Forest Utilization Contract with Messrs Exotic Tropical Timbers Enterprises for approximately 470,600 acres. We will attest this Forest Utilization Contract when same is presented to us by the Bokomu people and Exotic Tropical Timbers Enterprises.

Mr. President, with regards to the PUTU PEOPLE NATIVE RESERVE FOREST, in Grand Gedeh County, we would inform your Excellency that even though the People of Putu District have a Public Land Grant - Tribal Territory Deed; since the 1980's, Government has awarded portions of this Native Reserve Forest to various Logging Companies. The Logging Companies together with the acreage of the PUTU PEOPLE NATIVE RESERVE FOREST that they have, amongst other areas within the Republic, are:-

COMPANY	ACREAGE
United Logging Co., (ULC)	63,633
LLWPC	55,298
Cape Palmas Logging Co., (CLC)	45,833
Prime Timber Products (PTP)	94,044
United Logging Co., (ULC)	69,994
River Cess Logging Co., (RLC)	39,107

Your Excellency, our records indicate that the above Logging Companies owe Government substantial arrears for Land Rental, Stumpage and other Forest Products fees, dating back to before 1990. Also, Mr. President, these Companies have not filed with the Forestry Development Authority any operational plans for their respective portions of the PUTU PEOPLE NATIVE RESERVE FOREST for the year 1998.

Mr. President, we have learned that the People of Putu District are willing to conclude a Forest Utilization Contract with Exotic Tropical Timbers Enterprises for Logging and Wood Processing operations. Furthermore your Excellency, we appreciate and concur with the People of Putu District in their need for Development.

Mr. President, with your directive, the Forestry Development Authority can delete the acreage that any of the above listed Companies have within the PUTU PEOPLE NATIVE RESERVE FOREST from their Concession Agreements, and with the consent of the People of Putu District, we will be willing to Attest the Forest Utilization Agreement they will conclude with Exotic Tropical Timbers Enterprises, represented by Mr. Fernando R. Robleda.

As we await your instructions, Mr. President, kindly accept our sentiments of highest esteem and we beg to remain your son and obedient servant.

Most respectfully yours,

  
Wynn G. Bryant Sr.  
ACTING MANAGING DIRECTOR, F.D.A.

As recently as 1998, FDA recognized ownership of forests by communities with titles. In a letter to President Taylor, FDA then acting Managing Director, Wynn Bryant, advised the president to allow these title holding communities to negotiate and enter into agreements for logging on their forestlands. This and communities challenges over ownership of forests were perhaps the motivations behind changing the forestry law to clearly state that the Government owned the forest. In 2006 the wordings were changed to state instead that the forest is held in trust by the Government; but the interpretations remain the same.

The physical looting of forests and misappropriation of revenue that accompanied these changes led to the imposition of UN sanctions against international purchase of Liberian timber in 2003. These were lifted after President Ellen Johnson Sirleaf introduced radical measures, including the cancellation of all the existing logging concessions and the adoption of the new forest law in 2006.

Without sufficient tenure information to guide it, the new forest law retains the unfortunate and constitutionally dubious separation of forests from the lands they grow upon ('forestland'). Additionally, its new procedures are shaped around an assumption that most of the forest resource is on 'un-owned' and therefore de facto government land or 'public land'.

The issue of forest ownership threatens to become a source of conflict between people and the state. This is particularly so because the post-conflict population is a good deal more aware and demanding of its rights than before the civil war.

These conditions explain why there is a focus upon tenure in the Community Rights Law. One effect of recent changes is that collective identity and the desire for action are strengthening, not dwindling. This is typical of customary regimes today where naturally collective resources like forests are a central asset of the community

# Recognizing Community Ownership Of Forests

The issue of 'who owns the forests?' is the single most important rural tenure issue needing clear resolution. This was deservedly made a key component of the Community Rights Law.

The Community Rights Law removes the separation of trees and lands introduced in 2000 forestry law, and retained in the 2006 law. This reconstruction also reflects the fact that the forest resource is largely already privately-owned on a customary basis by communities and much of which has been formally titled as such.

This will allow the government to pay proper attention to the natural and constitutional rights of land owners.

The role and powers of the Forestry Development Authority is reconstructed to allow the FDA to function primarily as facilitator and technical adviser.

The legal opportunity for issue of concessions or other use rights in the absence of free prior and informed consent by forest owners has now been removed. Arrangements as to the share of benefit of forest-owning communities in forest utilization will now be discussed and negotiated on a basis of equity and fairness.

Given the fact that communities will now have the powers to establish their own protected areas, this could be used as an opportunity to de-link the implication that creation of a protected area necessarily implies national or government ownership. This is now in line with internationally accepted best prac-

tices. As many countries now demonstrate, it is perfectly possible for a community-owned forest asset to be made subject to protection regulation without extinguishing their ownership, in much the same way that urban properties are subject to planning legislation.

Much greater advantage needs to be taken regarding the potential and duties of communities as forest resource conservators and managers. Plenty of experience now exists on the continent for the kind of powers, mechanisms and checks required to ensure that rural communities become the major force of forest conservation and management.

While the logging sector itself is obviously anxious to begin felling as soon as possible, it too is fully aware that a return to 'business as usual' would result in instability.

There is now a real opportunity to reconstruct the treatment of forest governance in such a way that, for the first time in Liberia's history.

Communities are now poised to be partners in economic growth and development, not merely its possible beneficiaries. This may be achieved with relatively little radical alteration to the norms that already exist, and which have function well in the past. The President, as head of the Government, should be encouraged to take advantage of this unusual opportunity.

For, as is always the case, the advantageous conditions will not last forever.

## Securing Majority Customary Forestland Interests

### An Issue Of Social And Economic Justice For People In Rural Liberia

When Liberia's first colonizers arrived on the West African coast in 1821, they found a population which already had its own legal system - 'customary law'. Each tribe lived in accordance with established practices or 'customs' and rules. An important element of this law related and still relates to how respective community territories are defined and how the use of resources within those domains is regulated.

This is customary land tenure and its rules amount to customary land law. This system has endured, due to its considerable strengths and advantages - and not just in Liberia. One third of the world's population administer their property interests through customary tenure, and with increasing national law support. Whereas in the mid 20th century it was assumed that these would disappear with capitalist transformation, modern agrarian governments recognize that this will not and need not occur.

On the contrary, the community-based nature of these systems and their deep roots in active land use patterns provide an excellent foundation upon which to build modern democratic land and resource governance systems. The system is cheap to run, self-regulated by landholders themselves, and naturally inclusive of collective property assets like forests. Imported individual-centric systems have tended to ignore this need. They also have the potential for genuine accountability; this was found to be particularly so in Liberia where chiefs have not sought to claim community lands as their own property and where the fifty-year-old practice of electing community leaders provides a useful start to more inclusive decision-making. The point is, customary land tenure is alive and well in Liberia, and responding well to the demands of modernisation.

Customary regimes fall into one of several distinct paradigms depending upon the patterns of land use. In Liberia, where shifting cultivation still dominates and where substantial parts of community land areas are unfarmed forests, the characteristic paradigm is one in which the land area as a whole is collectively owned in undivided shares by all members of the community (root title). Access by these members to specific parts of the collective property is through a usufruct system. The study found important transitions currently underway; many communities are beginning to limit the duration of food crop land usufruct, to increase the usufruct term for houses and tree crops, and to limit random expansion of farming into old-growth forest areas; this represents a community-driven form of simple land use planning.

When the study examined recent trends, for instance with regard to land disputes, it found that insecurity of tenure is quite limited within community and even inter-community land relations, but that it is high in respect of the state, 'notables' and commercial enterprise. One widespread response has been to try and gain formal entitlement to the land. Most applications were found to be collective. This is because communities feel their collective forest assets (rather than current house or farm lands) are most at risk of being wrongfully allocated by government.

Many communities resent the fact that the only way they can formalise their rights today is by buying their own land back from Government through 'public land purchases'. Some are also concerned that the only way a member family may formalize its right to an acknowledged part of the community estate is by removing this entirely from community ownership and jurisdiction, through fee simple entitlement. Others, including some chiefs, are not aware that formalization has this effect and incorrectly think they will be able to recall the parcel into the common pool should the owner fail to develop the land, or hoard the land for profitable sale.

The greatest fear of communities in all five counties visited is the power of the State to reallocate its customary lands (including for medium term concessions) and the power of influential individuals to persuade chiefs to issue consent for this. Post-conflict conditions have heightened insecurity and also the awareness of what is at stake.

The choice is not between meeting social rights or serving the needs of investment and growth, but in the restructuring of resource tenure and governance to allow the two to serve each other.

It is blessing for Liberia that no one has yet gone to war over this issue. This is not said lightly, given the role of deprivation of land rights in so many civil wars and conflicts this last century, including Sudan and South Africa.

The Government of Liberia should build on the positive conditions that exist.

# Statement by the NGO Coalition for Liberia

*The Non Governmental Organization (NGO) Coalition for Liberia over the weekend issued a statement in support of the Act Establishing Community Rights with Respect to Ownership and Use of Forest Lands Resources. Here is the full text of the NGO statement.*

## Government of Liberia Recognizes Communities' Ownership of Forests

The Non Governmental Organization (NGO) Coalition for Liberia welcomes the passage of the Act Establishing Community Rights with Respect to Ownership and Use of Forest Lands Resources by the Liberian Legislature.

The Act was adopted by the Liberian Senate on September 11, 2008. The House of Representatives unanimously concurred with the Senate on September 19, 2008.

The Act recognizes community ownership of forests in Liberia. The Community Rights Law, as the Act is called, provides that all forest lands in Liberia are owned by local communities. The Act establishes the rights of local communities or forest dwellers to receive and control revenue from commercial activities on their forest lands. Commercial activities on community forest lands will only occur after they have negotiated and agreed a revenue sharing arrangement with the forestry authorities.

The NGO Coalition for Liberia views this as radical break with the past when communities were marginalized and excluded from decision making processes related to forests. The centralization of forest related decision making, especially the development of forest laws and regulations in Monrovia, is now a thing of the past.

Communities will now develop their own by-laws and rules to govern their forest.

Contracts to harvest timber or conduct other commercial activities on community forest land will only be granted by the Government after it has obtained the written permission and approval of forest communities to be affected by such activities.

There is now a reason to hope that revenue from commercial activities in the forest sector will go directly towards poverty reduction in rural communities. This is a major step towards the economic empowerment of local communities and the realization of objectives of the Poverty Reduction Strategy of the Government of Liberia.

The NGO Coalition for Liberia applauds the Liberian Legislature for its unanimous support for the Act. This act of the Legislature truly reflects the will and aspiration of the people.

The NGO Coalition for Liberia, therefore, call on the President, Her Excellency Ellen Johnson Sirleaf, to immediately sign the Act into Law when the Legislature submits it to her office next week. This will close the door on the past and Liberia will further consolidate its position as a regional leader on forest sector reform.

### Editor's note:

*The NGO Coalition for Liberia is an informal network of organizations working to promote sustainable management of natural resources in Liberia. The Coalition comprises of fifteen (15) organizations working on a range of issues relating to natural resource management and conservation.*

# The Liberian Forest

*The relationship between the people and the forest is older than the Liberian state*

Although there has been increasing damage to the quality and extent of forest land in Liberia since 1980, an area of nearly six million hectares or over half of Liberia's land mass is still covered by forests. Around a million people, or a third of Liberia's population, live on forest land, within village or town and larger socio-spatial formations. These are surprisingly well-defined by inter-community agreement and often bounded by permanent features such as rivers and creeks.

Forested areas are an indisputable part of each community land area. Ownership of this area is vested collectively. Access is by a simple but workable regime of usufruct by member families to different parts of the community property.

Formal or 'legal' land entitlements are few in Liberia and mainly relate to urban parcels. However, around fifty very large entitlements embrace nearly one third of rural land. Around 90% of these are collective entitlements to tribal, clan or town communities and include

much of the forested land area. Most titles were issued between the 1920s and 1960s and pre-date the declaration of National Forests. There is little evidence of the legal extinction of these interests through constitutionally required compensation procedures.

Forests have always been an integral part of the livelihood of Liberia's people. Over the last half century forests have been a growing source of revenue for the Government and for commercial harvesters. Revenue has also come from the transformation of

forestland into industrial plantation, mainly rubber.

A sharp rise in the loss of customary control over forested lands has accompanied these developments in especially recent decades. In 2002 this culminated in a situation wherein the entire forest resource was under commercial concession, over which local communities had no control or rights, and from which they derived no benefit. Rural populations became acutely aware that their customary ownership was no longer respected.

This erosion of land rights gained some legal support through a shift in the legal description of tribal land rights in 1956. The new legal description was of doubtful legitimacy and was effectively abandoned in 1973; but there remained a desire to redefine customary property rights as amounting to no more than occupancy and use rights on national lands, and extending only to house and farm lands. Ironically, these positions echoed 19th century colonial treatments of land rights by the British, French and others in their rush to capture valuable resources in much of the African continent; which Liberia had managed to avoid until that point.

# The Liberian Legislature Adopts An Act To Establish Community Rights With Respect To Ownership And Use Of Forest Lands Resources

**T**he Government of Liberia is on the verge of making history. An Act Establishing Community Rights with Respect to Ownership and Use of Forest Lands Resources

has paved the way for forest dwellers to play a lead role in forest governance and management. The Act recognizes community ownership of forests in Liberia. Upon the signature of the President, the Act will legally bring to an end decades of marginalization and exclusion of forest dwellers from forest related decision making. Communities in the past did not also benefit meaningfully from forest exploitation.

The Community Rights Law, as the Act is called, provides that all forest lands in Liberia are owned by local communities; with some exceptions. The Act establishes the rights of local communities or forest dwellers to receive and control revenue from commercial activities on their forest lands. Commercial activities on community forest lands will only occur after they have negotiated and agreed a revenue sharing arrangement with the forestry authorities.

Silas Kpanan' Ayoun Siakor one of Liberia's new generation of community rights activists described the Act "as landmark piece of legislation" and underscored the need for the Government of Liberia, especially the forestry authorities, to rapidly move towards implementation.

The Act was adopted by the Liberian Senate on September 11, 2008. The House of Representatives unanimously concurred with the Senate on September 19, 2008. Liberian civil society and the timber industry have welcomed the passage of the Act.

The NGO Coalition for Liberia, in a



statement issued over the weekend, said they viewed this as a "radical break with the past" when communities were marginalized and excluded from decision making processes related to forests. "The centralization of forest related decision making, especially the development of forest laws and regulations in Monrovia, is now definitely a thing of the past" the coalition statement concluded.

National Forestry Reform Law of 2006 and the FDA regulation on Public Par-

ticipation partially opened the door for communities. The Community Rights Law has finally opened the door for communities to play a critical role in forest governance in Liberia.

For example, communities will now develop their own by-laws and rules to govern their forest.

According to Attorney at-law Alfred Brownell, president of Green Advocates, "The Community Rights Law represents a fundamental paradigm shift in favor of

the economic and democratic empowerment of poor rural forest communities; in that revenue from commercial activities in the forest sector will now go directly to forest communities. This is a major step towards the realization of the objectives of the Poverty Reduction Strategy of the Government of Liberia."

The timber industry also welcomed the adoption of the Act. Mr. Isaac Manneh, a spokesperson of the industry, commended the Legislatures saying "the passage

of the Act is a demonstration that legislators truly represent the interest of their people; by adopting this Act the legislators have not only empowered the people economically they have acted to restore the people's authority over their forest."

The NGO Coalition for Liberia, in its statement applauded the Liberian Legislature for its unanimous support for the Act. The House of Representatives unanimously passed the Act; with absolutely no objection.

## Study Found Need To Clarify Forest Ownership In Liberia: *Findings support argument for community ownership as a step towards integrating economic growth with social justice in the forest sector*

Forests are a critical asset for local communities. People in rural areas depend almost entirely on the forest for their wellbeing; food, shelter, income and as experiences during the recent conflict showed - security.

Relations between the Liberian state and its people over the issue of the country's forests are at a crucial point. The formal decisions that are made in the near future will determine whether these relations degenerate into

crisis or move towards constructive reform.

A series of articles in this edition of ECHO summarise key findings and recommendations of a land tenure study, commissioned by the Sustainable Development Institute (SDI) in 2006, with a focus upon the customary rights of rural Liberians to forests. The study was led by Dr. Liz Alden Wiley, an internationally acclaimed land tenure specialist. A Liberian scientist, Dr. Sam N.

Koffa and a Liberian Lawyer, Cllr. Loffen Keneah also participated in the study.

The study investigated the realities of customary property norms today in thirty seven (37) rural communities in five of Liberia's fifteen counties. It scrutinized the legal and political treatment of majority land interests over the century-long process of forming the modern Liberian state; and it carefully considered the implications of the National Forest Re-

form Law of 2006.

The overall findings were unexpected.

In summary, the study found that policy on indigenous land interests has been uncharacteristically benign up until recent decades as has been the treatment of tribal authority. This has left a legacy upon which more democratic land relations affecting forests may be easily rebuilt. There is genuine vibrancy in collective norms of customary tenure. This

stems from a continuing founding role of forestlands in the peasant economy. Interference in customary property interests was found to have been relatively recent, not fully intentional, uncertainly entrenched and without firm judicial foundation.

The handling of customary property rights has never been ideal, but until 1956 it was better in Liberia than almost anywhere else in Africa

Along with other positive fac-

tors, the study concluded that significant favourable conditions exist for adopting a more modern and developmentally sound approach to the issues. Remedial, rather than radical surgery is required. The chances for uptake are improved by the will of the post-conflict Administration to put injustices to right, and to set aside unfounded fears that good governance, resource conservation, economic growth, and honouring majority land rights cannot be compatible.

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