



01 What the people say?

Citizens urge government to keep the promise to **formalize and protect customary land rights**

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A brief prepared for the Liberian Legislature and other stakeholders by

Sustainable Development Institute, Rights and Rice Foundation, Search for Common Grounds & National Civil Society Council of Liberia

“Rights to Customary Land, including ownership rights, must be secured by ensuring that these rights are equally protected as private land rights. Rights to Customary Land include rights of the community as a collective land owner and rights of groups, families, and individuals within the community.”

Liberia’s Land Rights Policy. Adopted by the Government of Liberia in 2013.

Introduction

The Government of Liberia adopted a new policy on land in 2013. Referred to as the ‘Land Rights Policy’ (LRP), the policy outlines several recommendations for addressing land tenure in post-conflict Liberia. Several civil society organizations and other stakeholders hailed the policy as progressive, in spite of concerns about some of the provisions contained therein. For example, the policy grants equal protection to customary land rights noting, “Customary Land rights are equally protected as Private Land rights.” These rights include rights of the community as a collective and the rights of individuals, groups or families within the community. The vast majority of Liberians rely on land held and used under customary tenure, i.e. based on customary norms and practices.

Liberia’s Land Commission delivered a draft Land Rights Act³ (LRA) to the President in 2014. The draft was subsequently forwarded to the Liberian Legislature in late 2014. According to various sources, relevant government agencies and ministries are reviewing the draft LRA, but it is unclear what effect this will have on the draft already before the Legislature. To date, there has been no official public consultation on the draft LRA, even though the Land Commission did convene a working session with select groups of stakeholders to review and comment on the draft LRA before submission to the President.

This brief highlights key positive provisions of the draft LRA, critical gaps and unaddressed conflicts with existing laws. It presents the perspectives of civil society and community groups generated during community outreach on land reform in 2013 and 2014, and a civil society roundtable in 2015. It is structured in three parts. Part 1, ‘What the people say?’ presents summary of recommendations generated during the community outreach in 2013 and 2014; Part 2, ‘Keeping the promise’ presents a summary of key progressive provisions in the draft LRA; and Part 3, ‘Going all the way’ outlines problematic provisions that should be addressed to strengthen the law.



Women participants at a community forum in Bong Mines. © SDI, 2014

footnotes

- 1 Land Rights Policy available at http://www.sdiliberia.org/publications_grid or directly from: www.sdiliberia.org/sites/default/files/publications/Liberia%27s%20Land%20Rights%20Policy%202013_0.pdf
- 2 Principle 6.1.1 of [Liberia’s] Land Rights Policy, 2013.
- 3 Draft Land Rights Act available at http://www.sdiliberia.org/publications_grid or directly from: www.sdiliberia.org/sites/default/files/publications/Land%20Rights%20Act_full%20draft.pdf

Acknowledgement This brief presents feedback from nine community workshops on the land reform process, and earlier drafts of the Land Rights Act. It also incorporates a joint civil society position statement on the draft Act developed by a coalition of civil society organizations including Association of Community Radio Stations, Farmers Union Network, Federation of Liberian Youths, Foundation for Community Initiatives, PARLEY, Press Union of Liberia, Rights and Rice Foundation, Save My Future Foundation, Search for Common Ground and Sustainable Development Institute. The Open Society Initiative for West Africa (OSIWA) and Swedish Development Agency (SIDA) funded the community workshops and the national civil society workshop that produced the draft of the joint CSO position statement. This paper does not however represent the views of OSIWA or SIDA.



The vast majority of Liberians depend on their customary land for their survival and livelihoods. Women farmers in northern Lofa County. © SDI, 2015



1. What the people say?

In 2013 and 2014 the Sustainable Development Institute (SDI) organized nine (9) workshops in Gbarpolu, Bomi, Grand Bassa, Rivercess, Bong, Lofa and Nimba counties on land reform.⁴ In total 589 persons, including 200 women and 389 men, participated in these workshops. Participants at these workshops included District Commissioners, Paramount Chiefs, Clan Chiefs, Women and Youth Leaders, other community residents and members, and county-level civil society organizations. Below is a synthesis of the feedbacks from these workshops.

Formalizing and protecting customary land rights

1. Recognizing, formalizing and protecting community land ownership is good. This will elevate communities from status of being mere squatters or custodians of land to the status of landowners.
2. The law should require that Free Prior Informed Consent (FPIC) of communities is respected at all times. This will ensure that communities are consulted before projects that will affect their customary land.
3. Given that land under concessions are to be returned to communities, any negotiation to extend a concession should involve the communities that own the land.
4. The government has used eminent domain to allocate community land to companies. The law should protect customary land rights by clarifying the purposes for which customary land may be taken.
5. Drop 'public land' from the different categories of land. Retain only three types of land including Government Land, Customary Land and Private Land.

"The community and its members, groups, families, and individuals within the community are entitled to the full bundle of land rights. These rights include, but are not limited to, the right to: exclude all others, use and possession, own natural resources on the land (e.g. forests), and to transfer all or some of the rights."

Policy Recommendation 6.2.2 of Liberia's Land Rights Policy. Adopted by the Government of Liberia in 2013.

Registering customary land and processing deeds

1. The process of documenting and registering customary land should conclude at the county level. County Superintendents should sign land deeds instead of the President, so that local people don't have to travel to Monrovia to process their land deeds.
2. The current system that requires surveys to be approved at the national level or deeds to be signed at the national level should be abolished.
3. Cost of processing land deeds and other documents related to land ownership should be reduced so that communities can survey and get deeds for their land.

Customary land governance and conflicts

1. Community member should be defined in terms of individuals or families with longstanding ties to a community.
2. Local authorities should handle conflicts arising from the use of or related to customary land. This will ensure that parties to the conflict will have equal access to these authorities.
3. The law should protect the rights of all community members, especially women.

Benefit sharing from natural resources

1. The government should transfer a percentage of the revenue from mineral resources to project affected communities.
2. Concession companies should provide training for community dwellers before employment to facilitate local employment.

Participants that attended the community workshops stressed the need for nation-wide awareness and consultation on the draft LRA before it is enacted into law. Participants argued that this would ensure that citizens across the country have opportunities to make inputs to the law.

footnote

⁴ Two workshops were organized in Bong, Nimba and Grand Bassa. The first of these workshops preceded the drafting of the LRA and second set of workshops was organized when drafts of the LRA became available to SDI.

Insecure land tenure leaves communities and their resources vulnerable to a wide range of actors. Illicit miners have invaded Vambo Township in search of gold.

© Vambo Development Association, 2015.



2. Keeping the promise

Liberia's Land Rights Policy promises protection for Customary Land Rights; keeping the promise is key to how communities will react to the LRA that is enacted in the end. The Legislature has the tasks of either rectifying the historical injustices that most Liberians have suffered or upholding the largest land grab instituted by the Liberian state.

The draft LRA already sets out a wide range of protections for customary land rights. If retained, these provisions will fulfill the promise of tenure security for customary land rights contained in Liberia's Land Rights Policy. These key progressive provisions are summarized below:

1. Articles 2 Section 7: **Communities are empowered to self-identify and define the area of their customary land in keeping with custom, history, and norms.** "A community may thus define itself to be a single village, town, clan, or Chiefdom, or a group of villages or towns or clans"⁵
2. Article 2, Section 22: **Customary land is equal to private land.** Customary Land, owned by communities, and used and managed in accordance with customary practices, is protected just as privately held land.
3. Article 9, Section 4: **There are no written requirements to prove customary land ownership.** The community must simply demonstrate a "longstanding relationship or ties"⁶ to the customary land being claimed. This can be done through oral testimony.
4. Article 11 Section 5: **Communities have the right to harmonize their boundaries.** Two or more communities may "agree the boundaries of their respective Customary Land and thereupon execute a Stipulation of Boundaries"⁷.
5. Article 32, Section 2: **Customary ownership is automatically formalized.** With or without a deed, the moment that the Land Rights Act passes into law, Customary Land rights will be legally protected. "*The existence and ownership of Customary Land shall become enforceable as of the Effective Date of this Act.*"⁸
6. Article 33 Section 5: Use of community land requires a community's **Free and Prior Informed Consent or FPIC.** Any use of customary land, including for the extraction of mineral resources and the extension of existing concessions, requires the free, prior informed consent of the Community.
7. Article 34: **The land rights of all community residents are equally protected.** "All Residents of a community are members of the community with equal rights to the Customary Land and participation in the use and management of the community's land, regardless of age, ethnicity, religion, disability and identity."⁹
8. Articles 35 and 36: **Community members are directly responsible for the management of their land and natural resources.** The LRA requires that communities establish community bodies to be known as Community Land Development and Management Associations or CLDMAs.
9. Articles 48 Section 3: **Communities may demand rental fees** and other benefits for the lease or use of their customary land. "Any negotiation for any extension of an existing concession, contract or permit on a Customary Land granted by the Government prior to the Effective Date of this Act shall require both the participation and the free, prior, and informed consent of the community that owns the Customary Land, and it shall be the right of the community to demand and receive land rental fees, equitable benefits, or other consideration for use of its Customary Land."¹⁰
10. Article 48: **Existing concessions on Customary Land revert back to the community at the end of concession period.** Communities always retain ownership of their land, even those under concession, and that at the end of a concession period "the community which owns a Concession Area or an area subject to some Government- created contract, license or permit shall be deemed repossessed of such concession area upon the end of the certain term of the concession..."¹¹
11. Article 48: **Community must approve extension of a concession after it expires.** Any extension of a concession must be put to a community-wide vote, and must be approved by "at least two-thirds (2/3) of the entire membership of the Community present and voting at an assembly of the Community duly convened upon notice stating the purpose of the assembly."¹²
12. Article 49 Section 4: **Communities may lease their Customary Land for commercial use.** A Customary Land may be leased on such terms and conditions as the Community may determine by and thru its CLDMA for land smaller than 50 acres, and by votes of the Community Membership for land larger than 50 acres.

footnotes

5 Article 2 Section 7.
6 Also restated in Articles 11 Section 3; 32 Section 3; 34 Section 1 & 37 Section 1.

7 Article 11 Section 5.
8 Article 32 Section 2.
9 Article 34 Section 4.

10 Article 48 Section 3.
11 Article 48 Section 4.
12 Article 48 Section 3.



3. Going all the way

A progressive LRA could have transformative effects across Liberia. These could range from positive economic impacts, by creating more revenue generation possibilities at the local level and actually delivering funds for integrated rural development, to social benefits such as improved relationships between host communities, government and concession holders. To ensure that the LRA is transformative, it must go all the way in fulfilling the promises of the Land Rights Policy. As noted above, the draft LRA contains several progressive provisions.

However, there are also few problematic provisions. Addressing these provisions will ensure that the paradigm shift introduced in the Land Rights Policy is fully legislated. This is about going all the way in rebalancing the state-concessionaires-community relationships and securing customary land to the fullest. Additional changes that would strengthen the draft LRA are summarized below:



Local people are holding their breath and hoping that the Liberian government will recognize their rights to their customary land. © SDI, 2014

a Eminent Domain

The Government maintains the right to take private or customary land “in the event of armed conflict, where the public health and safety are endangered, or **for any other public purposes**”¹³ provided they comply with the Liberian Constitution.

The unspecified ‘any other public purpose’ is opened to, and could be abused significantly, which could then trigger conflicts with customary landowners or communities. Keeping this provision vague may create a loophole that could then be exploited by unscrupulous individuals acting under the guise of their statutory authority. However, this provision could be further improved by listing the purposes for which Eminent Domain may be used for in the body of this article.

For example, the FAO developed a guideline for Compulsory Acquisition,¹⁴ which lists five commonly accepted purposes for which Eminent Domain may be used. These include:

- Transportation uses including roads, highways, railways, bridges, and airports;
- Public buildings including schools, libraries, hospitals, factories, religious institutions and public housing;
- Public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs;
- Public parks, playgrounds, gardens, sports facilities and cemeteries;
- Defense purposes.

The Land Rights Policy also includes excellent provisions that provide protections for the use of Eminent Domain. It will therefore be useful if the government could include language from the policy in the body of the draft LRA.

At the very least, the draft LRA should state clearly that Eminent Domain should not be used to promote private investment.

footnotes

¹³ Article 54 Section 1

¹⁴ FAO, Compulsory acquisition of land and compensation, 2008. Available at: <http://www.fao.org/3/a-i0506e/>.

Left: Community Animators in Gbarpolu map threats to their customary land. © SDI, 2015



Right: A community sugarcane mill used for processing local alcoholic beverages. Sugarcane farmers report they have tripled their household incomes using their land in the four years they have had the mill. © SDI, 2015



b. Customary Land Deeds

While the draft LRA does not require a written document to prove customary land ownership, Article 37, Section 4 states that the Government will complete a confirmatory survey of customary land, and that the survey document, a formal government-issued map, will serve *'in lieu of a deed'*. This government-issued map will serve as proof of a community's ownership of its Customary Land.

Viewed positively, this provision removes the administrative and bureaucratic obstacles to communities acquiring formal documentation for their Customary Land. Rather, once GPS-ed and registered, a community's land is then formally documented as belonging to a community. However, by saying that the map is *'in lieu of a deed'* the law creates a two-tiered system, whereby private land get deeds, and customary land get maps.

Two problems may arise from retaining this qualifier. First, rather than equating Customary Land with Private Land, different types of documentation for the two categories of land will reinforce the notion that one is more protected legally than the other. A likely result of this system may be that despite the law's clarity that communities own their customary land just as individuals own their private land, deeded land will be taken more seriously as *'owned'* than the customary land that are only mapped.

The draft LRA should be amended to establish that once a community has drafted and adopted its by-laws and elected its CLDMA, the government has done a confirmatory survey of a community's land and issued a GPS map, then a deed must be automatically issued as soon as practicable but no more than six (6) months after the GPS mapping or confirmatory survey.

c. Women's Land Rights

All over Africa, when land becomes scarce, women and widows are the first to have their land taken either by their own brothers and uncles or by their late husband's family. To address this situation, the draft LRA currently does an excellent job of weaving protections for women's land rights into various articles throughout the body of the law. However, these are generally rights of women as part of the community or the collective, which are generally easier to address. There remains a critical gap with regards to the rights of a woman within her natal family or husband's family. These are perhaps some of the most contentious and controversial – but critical - rights issues that the new land law must address. This will not just deliver equity and protection of women today, it will also address the historical injustices that women have suffered in Liberia.

This provision of the draft LRA should therefore include an article explicitly setting out what a woman's individual land rights are within her natal family or her husband's family, i.e. should she leave her natal community and move to join her husband on his land. It should also consider the right of women to common land and resources. This article should take into account and be in harmony with Liberia's 2003 Inheritance Law.



d. Overlapping and shared use

Significant land conflict may occur in those locations where people with different livelihoods use the same land for very different purposes. There are times when two communities may have customary claims to the same land – both of which may be valid. Allowance for overlapping and shared use rights between users with pre-existing claims to the same land will be useful in minimizing land related conflict arising from such shared use. Therefore, rather than force them to divide the land in half, the LRA should provide for the sharing of overlapping ownership and use rights.

On overlapping use and ownership rights language to address this could include:

- In instances where two communities have overlapping claims to the same piece of land, joint use rights to the land in question shall be issued, with the names of both communities on a deed or certificate specific to the shared land. An MOU shall be drafted between the two communities detailing how they will cooperate to jointly use and manage the land, and the rules that are to govern the specific land in question.
- In instances where the communities agree that only one of them will have a deed to the land, that community must grant the other community a formal right of way, license, permit and/or explicit use rights.
- If one community refuses to either seek joint ownership or grant a right of way, license or permit to the second community, the matter may be appealed to the relevant Land Authority established by Government.

e. The role of civil society organizations

As currently drafted, the LRA does not have a defined role for Civil Society Organizations (CSOs). However, learning from recent experience in other reform initiatives in the country and building on emerging trends in best practices, CSOs have played important supportive role in helping communities, government, and investors to forge synergy and engage in constructive dialogues. CSOs have also provided training and other technical skills to communities, as well as reinforcing general principles of good governance, i.e. transparency, accountability and rule of law, and sustainability in natural resource management.

In the forestry sector, for example, CSOs are monitoring and reporting on law enforcement and other governance issues to stakeholders, while supporting community bodies such as the Community Forestry Development Committees to meet their obligations under the law. CSO monitoring has helped point out weak law enforcement and illegalities in the forestry sector, which has helped the government to address destructive forestry operations – especially when the forestry authorities were directly implicated in these illegal operations.

It is therefore important, for the LRA to include provisions defining roles of CSOs in implementing the LRA, including monitoring and reporting on activities at the local, county and national levels.

“The community and its members, groups, families, and individuals within the community are entitled to the full bundle of land rights. These rights include, but are not limited to, the right to: exclude all others, use and possession, own natural resources on the land (e.g. forests), and to transfer all or some of the rights...” **Policy Recommendation 6.2.2 of [Liberia’s] Land Rights Policy, 2013.**

f. Repeals, amendments and coherence with existing laws

Efforts should be made to ensure that the Act is reconciled with existing laws and policies around community land and resource rights. Of specific note are the provisions in the draft LRA that provide for establishing CLDMAs, the provisions in the forestry law that provide for Community Forestry Development Committees, and the provisions in the Community Rights Law that provide for the creation of Community Forest Management Bodies. Furthermore, the Local Government Act provides roles for traditional chiefs and council members in natural resource governance. All of these bodies are to be created at the level of communities. However, multiplicity of community bodies will more likely lead to conflicts and power struggle than help address weak governance at the community level. Reconciling the LRA with existing legislations will address this situation.



Kpana Massaquoi (Gainayma Town, Gbarpolu County) has used this 3-acre plot of land for the last six years. From rotating food crops, she now grows sugarcane. She reports that her income has tripled since 2013. © SDI, 2015



Conclusions

The draft LRA has several progressive provisions. If enacted in its current form, the LRA will have positive effects on the majority of Liberians, especially rural populations that have been marginalized and excluded from decision-making about natural resources in their communities. Recognizing and formalizing customary land rights will address the historical injustice that was meted out to communities when the government unilaterally changed the laws in the second half of the 20th century to declare all land in Liberia public land. The Legislature could go a step further by strengthening the draft LRA before passage by addressing the gaps identified in this brief; this will make the act transformational. The Legislature should work with the Land Commission in this regard.

The current Legislature, elected by communities that stand to benefit from these changes in the legal framework governing land, has the tasks of either addressing the historical injustices that the majority of Liberians suffered when the government declared their land public land or upholding the largest land grab instituted by the Liberian state; against the wishes and interest of their constituencies.



Will he transfer his customary land to his daughter? The action of the Legislature will significantly impact her future. © SDI, 2015

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