



01 What the people say?

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

BRIEFING SUMMARY | APRIL 2015

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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.

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.



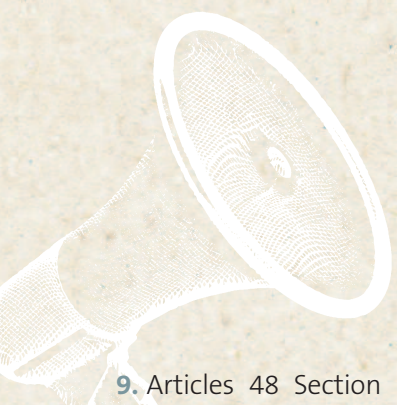
Women participants at a community forum in Bong Mines. © SDI, 2014

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.

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



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.

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. A major change that will strengthen the draft LRA and deliver full security for Customary Land is highlighted below.

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.

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footnotes

- ¹⁰ Article 48 Section 3. ¹³ Article 54 Section 1.
¹¹ Article 48 Section 4. ¹⁴ FAO, Compulsory acquisition of land and compensation, 2008. Available at: <http://www.fao.org/3/a-i0506e/>.
¹² Article 48 Section 3.