

08 Implementing The Land Rights Law Of Liberia: A Critical Test For Stakeholders

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1. INTRODUCTION

The passage, in September 2018, of the Land Rights Law (LRL) in Liberia was a critical moment in the country's long and tortuous path to legislative reforms in the land and natural resource sector. The LRL secures the rights of over 3 million Liberians to own and manage their land, particularly those in rural areas that have been historically marginalized and denied formal legal recognition of their customary land and resources.

It is important to understand that the land question has always been at the heart of poor governance, poverty, conflict, and underdevelopment in Liberia, where land laws and land use systems have been directed to benefit a handful of elites (private estates) and commercial interests at the expense of rural communities. The result has been a contested landscape with a number of unresolved conflicts. The LRL – which has been widely celebrated in Africa and around the world as an important achievement for land reform in Africa – is expected to remedy the defects of the past by empowering the people and their customary institutions with the legal right to govern their land and natural resources.

However, beyond the text of the law, realities on the ground and malleable lending loopholes in the law pose real challenges to realizing the promise of Liberia's Land Rights Law. While the policy landscape surrounding Liberia's land reform has continued to evolve, unequal access to information and power relations between customary communities and urban elites, gaps in the LRL, and weak technical and institutional capacity are factors that combine to threaten and potentially derail Liberia's hard-fought gains in land reform. In order to avert these risks militating against the promise of the new land law, this policy brief highlights key challenges and priority areas to effectively protect customary land rights in the application of the land law.

2. THREE KEY CHALLENGES IN THE LANDSCAPE

While there are various implementation challenges, three are particular worth highlighting:

2.1. A CULTURE OF LARGE SCALE EXTRACTION ON RURAL LAND

The statutory land tenure system in Liberia has had a long history of rural neglect, with laws and practices systematically excluding rural communities. Policies on land use and management have been dominated by foreign investors seeking large land areas for mining, plantation (mainly, palm oil), and logging concessions, and in the process squeezing communities into isolated enclaves of “project affected communities”. Just few years ago, the government had promised over 50% of the country's land space to foreign investors – areas claimed and actively used by communities. Currently, about 20% of the land remains bound up in concession agreements (agro-business, mining, and logging), including more than 1 million hectares transferred to agricultural concessions, especially to palm oil companies. Interestingly, a large percentage of the land space allocated to palm oil companies remains unidentified, which provides fertile ground for conflict with customary land.

2.2. ELITE COLLUSION WITH FOREIGN BUSINESS INTEREST

One of the byproducts of post war land reforms in Liberia has been a sharp increase in large scale land acquisitions by government officials and their businessman friends. In 2012, under the infamous Private Use Permits (PuP) scandal, commercial forestry stakeholders, the national elite, and high level government officials colluded on a massive scale with local leaders to defraud the country and local communities and hand over 40 percent of country's rich forest land to commercial logging interests.

Similar cases are currently being reported in Community Forest Management Agreements (CFMAs),

FOOTNOTES

¹<http://iredd-lr.org/wp-content/uploads/2018/10/Signed-Land-Rights-Act.pdf>

²Historically, the Liberia political class moved from small holders and exerting political control over the territorial limits of the state to engaging in large scale land transfers to foreign investors, symbolized by the famous firestone rubber concession in the 1920s.

³See Poverty Reduction Strategy, p. 18, REPUBLIC OF LIBERIA (Apr. 2008), [http://siteresources.worldbank.org/INT/PRSI/Resources/Liberia-PRSP\(Jul2008\).pdf](http://siteresources.worldbank.org/INT/PRSI/Resources/Liberia-PRSP(Jul2008).pdf).

⁴De Wit, “Land Rights, Private Use Permits and Forest Communities,” http://eeas.europa.eu/archives/delegations/liberia/documents/press_corner/20130916_01.pdf

with a handful of elites working with commercial logging interests to divert community forestry into commercial logging ventures. These incidents revealed a troubling link between commercial interests and highly placed state officials; which if left unchecked, could lead to massive social and environmental abuse.



PICTURE CREDIT, GLOBAL WITNESS

2.3.A CONTESTED LANDSCAPE

In recent years, national and foreign business elites, and influential (rural and urban) community members, are increasingly privatizing customary land. In one extreme case, a community located in River Cess County leased out over 20,000 hectares of the community land "to a son of the community." Cases of a similar nature – the transfer of customary space into private holdings – has been documented in Montserrado, Bomi, Gbapolu, Lofa, and River Gee counties. Overwhelmingly, these individuals have tended to appropriate community land by leveraging state power or family, tribal or ethnic connections in bad faith, thus creating a mosaic of overlapping tenure rights on customary land.

3. THE RISKS OF GAPS IN THE LAND RIGHTS LAW

The picture presented above illustrates a historical trend that points to a culture of corruption and lack of respect for community land rights. More significantly, the Land Rights Law of 2018 has important contradictions that pit customary land right against powerful private and commercial interests, which could further pressure communities to commercialize their customary land. For instance, the recognition of tribal certificates and the possibility to transform them into Public Land Sale deeds without clear guidelines of consent and compensation undermines communities' right to their land. Moreover, concessions and protected areas remain inadequately addressed by the

LRL, even when they are located on customary land. The same holds true for customary land that has been placed under private holdings or designated as public land. Taken together, and without an implementation framework that includes as a priority 1) appropriate regulatory guidelines to close legal loopholes and information gaps, 2) a robust national awareness campaign and monitoring mechanisms, and 3) appropriate institutional and technical supports for the Land Authority, Civil Society Organizations, and local communities, customary land rights of communities will remain vulnerable to whole sale land grab on a national scale.



PICTURE CREDIT, CLIENTEARTH

4. RECOMMENDATIONS

To ensure customary land and resource rights are protected during the implementation of the Land Rights Law, three key areas must be prioritized by stakeholders:

4.1. IMPLEMENTATION REGULATIONS AND GUIDELINES

While the 2018 Land Rights Law provides protection for rural communities, the Law has significant loopholes that can easily be exploited, and for which urgent and appropriate regulations and amendments to the law would be required. For example, there is a need for regulatory clarity on the transfer of customary claimed land into any other category of land, including Tribal Certificate, concessions, private land, public land, and protected areas.

There is also a need to develop regulations and guidelines on leaseholds or large scale transfer of customary land to commercial interests, including agricultural out-grower schemes and community forestry under the Community Rights Law (CRL) of 2009. To address these gaps, it is important that community representatives, CSOs and other key stakeholders participate in the formulation of regulations and guidelines. An essential aspect of formulating regulations is to consider identified gaps, but

FOOTNOTES

⁵Civil Society Coalition Statement on Oil Palm Concessions in Liberia, p.3, SAVE MY FUTURE FOUNDATION & SUSTAINABLE DEVELOPMENT INSTITUTE (2014), http://rightsandresources.org/wp-content/uploads/2014/01/doc_5720.pdf.

⁶It is worth noting that agriculture concession contracts do not identify a specific location for operation, instead the contracts indicate a large territory declared "encumbered" by the government.

This has resulted into tensions in rural communities with violent conflicts between communities on the one hand and government and companies on the other hand. Meanwhile, companies have found it difficult to access community land. see <https://frontpageafricaonline.com/business/liberia-major-foreign-company-to-sell-out-investment-amid-troubling-conditions/> and <http://projects.aljazeera.com/2015/10/liberia-palm-oil/>

⁷Private Use Permit is a provision in the Community Rights Law to give private land with forests resources to engage in commercial activities.

⁸<https://www.telegraph.co.uk/news/worldnews/africaandindianocean/liberia/10104422/Liberia-and-the-vanishing-rainforest.html>

⁹<https://loggingoff.info/organisations/sustainable-development-institute-liberia/>

importantly to use regulations as means to guide behavior, checkmate bad actors, and minimize conflicts and abuse. Although the state has primary responsibility for these efforts, lessons learned over the years – especially reflected in the drafting of the Land Rights Policy – show that processes that engage all stakeholder groups are more likely to promote the land rights of the poor and rural communities, help build consensus among stakeholders, and present the political will upon which the successful implementation of the law can take place.

4.2 AWARENESS CAMPAIGN AND MONITORING MECHANISMS.

Making the public aware of their new land ownership rights, especially on provisions of the law that protect rural communities, is a critical step in creating an environment where the Land Rights Law (LRL) will be effectively implemented. Public awareness should include: a) undertaking strategic awareness campaigns and b) setting up a robust monitoring and reporting system:

a. *Awareness campaigns:* Over the legislative reforms process, there were many outstanding successes in delivering messages on the Land Rights Act and promoting customary land rights to the people. Both the government and Civil Society Organizations were instrumental in taking the law to key stakeholders and the Liberian citizens, including holding a series of small and large-scale forums, broadcasting radio programs, using phone (text messaging) and social media outlets, and creating and disseminating educational materials. Going forward into implementation, there is a need to increase the level of awareness of the LRL, especially to familiarize media practitioners and key decision makers (i.e. local officials and customary leaders) in the community with actionable information. For example, *such an awareness campaign must target gaps in the law as well as highlight provisions that empower communities and vulnerable groups to protect their land rights and promote good governance.*

b. *Monitoring Mechanisms:* The Land Rights Law will require a robust monitoring system to evaluate implementation impacts and trends. Such a system should be inclusive of tools like the Land Authority's

Community Self-identification Guide (CSI) and the Sustainable Development Institute's Community Land and Resources Protection Guide. Such tools working in tandem with other mechanisms such as SDI's Customary Land Protection's Early Warning and Response System, TIMBY, the Community Investor Guide (CIG), Community Sketch Map Manual, and the Community Visitation Logbook provide a useful starting point to monitor and report on the implementation of the LRA. Furthermore, there is a need to establish a stakeholder platform that provides space for information sharing, and reporting on implementation challenges and opportunities. Such a platform should include active civil society and community participation, and must comprise of an independent grievance reporting and redress mechanism. The Liberia Voluntary Partnership Agreement Monitoring model presents a useful learning that can be optimized.

4.3. INSTITUTIONAL SUPPORT

It is an 'open secret' in Liberia that relevant government institutions more often than not lack the capacity to regulate and monitor the various laws, regulations, and agreements it has enacted. In other cases, the political will is lacking.

Against this background, there is an urgent need for an institutional assessment within the Land Authority to boost capacity in key oversight areas like developing implementation guidelines and operating a monitoring and evaluation system.

While the Land Authority may need a wide range of support, priority areas may include 1) monitoring and reporting on the implementation of the LRA, 2) setting up a) alternative dispute mechanisms and b) an independent grievance redress system, and 3) providing oversight and coordination support for various activities related to the implementation of the LRL. As an integral part of effective land governance, it is critically important to also strengthen the capacity of Civil Society to play its monitoring role, and to ensure that there is transparency and accountability in the implementation of the law.

¹⁰<http://namati.org/wp-content/uploads/2015/01/Lesson-from-Field-Liberia-Holding-Leaders-Accountable-and-Ensuring-Participation-in-Land-Transactions-LR.pdf>

¹¹ Tribal Certificates (TCs) are a poorly defined instrument used, as one of the steps, to transform customary land into private holding.

The amount and location of land claimed by TCs is currently unknown.

¹² It is worth noting that there is no inventory of how many Tribal Certificates exist and how much land is being claimed under these tribal certificates.

In light of this, it becomes critically important to properly vet and validate TCs through a robust, independent, and transparent vetting system that includes civil society and relevant affected communities. Otherwise, it risks opening the door to large-scale privatization of Customary Land without genuine of the community.

5. CONCLUSION

The Land Rights Law is an ambitious and expansive piece of legislation. If implemented correctly, however, the law is an excellent tool that could positively affect millions of Liberians and help consolidate peace and development in the country. The Weah administration and the international community must recognize this contentious historical fact about Liberia; and they must work with the various stakeholders to address rural inequality and improve food and livelihood security through the protection of customary land rights.



LOFA COUNTY: SARMODU TOWN, QUARDU GBONI DISTRICT, SDI



The Sustainable Development Institute (SDI) works to transform decision-making processes in relation to natural resources and to promote equity in the sharing of benefits derived from natural resource management 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 crosscutting issues including governance and management, the environment, state and corporate social responsibility, economic and social justice for rural populations, and the democratic participation of ordinary people in government management of natural resources. The organization received the Goldman Environmental Prize (the world's largest prize honouring grassroots environmentalists for outstanding environmental achievements) in 2006

¹³https://www.sdiliberia.org/publications_grid

¹⁴<http://www.euflegt.efi.int/background-liberia>