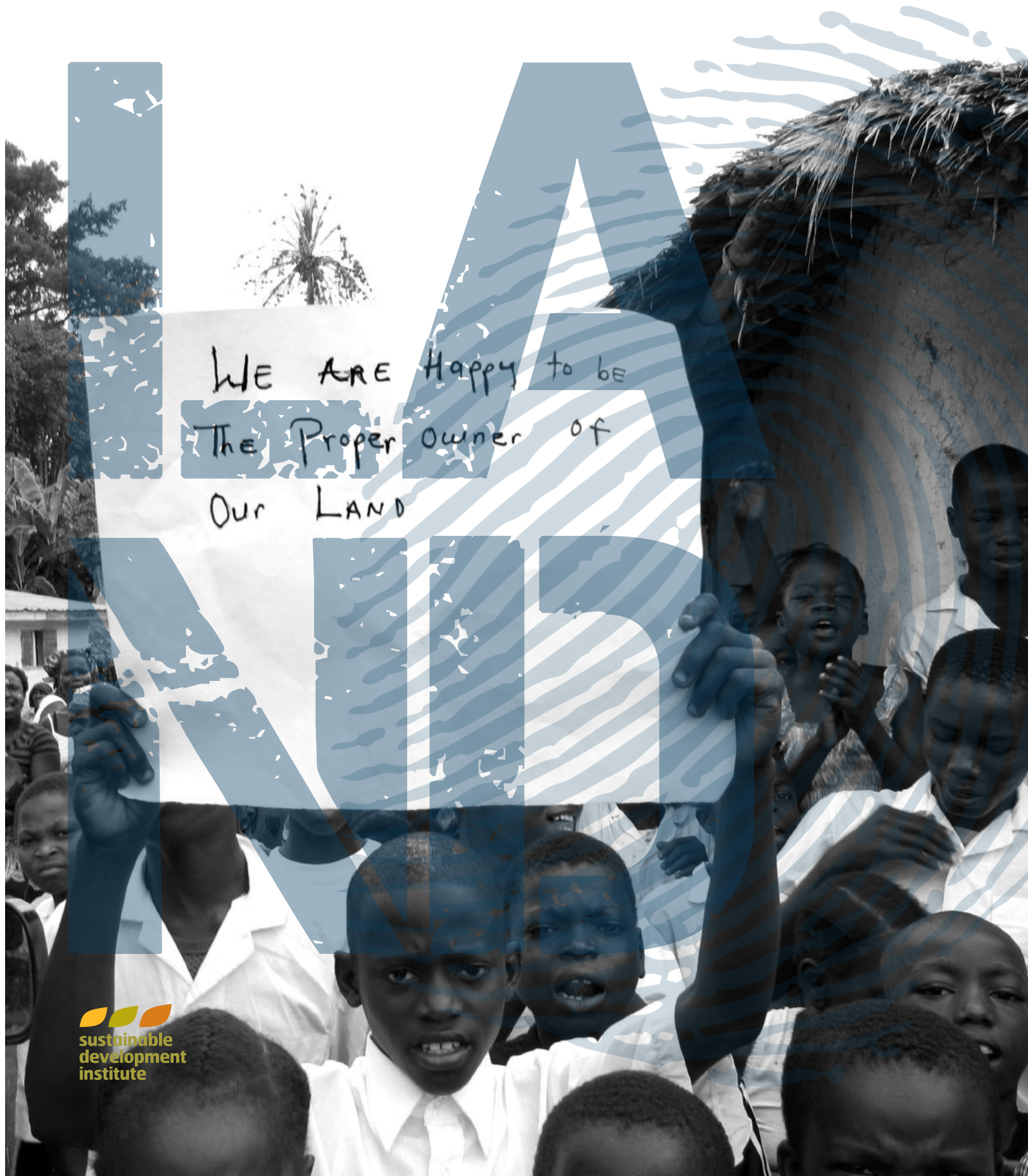


INDIVIDUAL LAND OWNERSHIP VERSUS COLLECTIVE LAND OWNERSHIP

CURRENT PRACTICES, OPPORTUNITIES, CHALLENGES & OPTIONS



REPORT | MARCH 2017



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EXECUTIVE SUMMARY

INDIVIDUAL LAND OWNERSHIP VERSUS COLLECTIVE LAND OWNERSHIP

INDIVIDUAL LAND OWNERSHIP VS. COLLECTIVE LAND OWNERSHIP

In June 2016, Rights and Rice Foundation (RRF) and Sustainable Development Institute (SDI) commissioned the conduct of a research to assess collective title versus individual title and their implications for livelihood in terms of the use and management of land and forest resources. The research was conducted based on the premise that the draft Land Rights Act (LRA) will be legislated thereby paving the way for formalized and legally protected collective ownership of land.

With this pending development there is a need for civil society, policy makers and the rural population to better understand the challenges and opportunities that will come with these changes by examining the current practices with respect to the governance and management of collective land, such as large parcels of land under collective title. The purpose of the research therefore, was to contribute to knowledge as well as to inform future policy and practices.

KEY FINDINGS

Weakened Governance Structures: Land governance by communities is weak and this threatens and undermines protecting the rights of community members to equitable land use and access to land and forest resources under customary tenure system. Awareness on community rights has not been matched by corresponding quality efforts and commitments on improving land governance and management structures.

Eroding trust in governance structures: There is growing perception among community members particularly those in concession areas that land governance structures have been compromised and manipulated by concessionaires. As a consequence, they do not fulfill their “fiduciary duty” in protecting the interest of communities.

Legal Framework: While there is a general consensus in Liberia that communities have customary rights to land ownership, their entitlement to this right is severely undermined because there is no legislation to enforce it or hold the state accountable to guarantee it. As a consequence, communities do not have “title” as proof of ownership and this undermines secure land tenure.

Lease agreements entered into by the government with concessionaires are in sharp contradictions with existing statute such as the Public Lands Law.

Representation and participation: The reforms around land and forest resource management has created an opportunity for the representation of young people and women on governance structures but this has not been actualized in terms of effective participation in influencing decision-making processes.

Voice and Accountability: There is widespread perception among women and young people that land management structures comprising mainly men dominate a “narrow channel” of communication between citizens and external actors utilizing and accessing the land and other forest products. The “narrow channel” excludes the voices of women and youth.

There is a general consensus among youths and women about the lack of transparency in the management of resources generated from the use of the land by external actors for commercial activities.

Common concerns among youths and women about the distortion of information from land management bodies related to transactions with external actors for commercial purposes.



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



BENEFITS FROM LAND AND FOREST RESOURCES

There are two categories of benefits that can be described under this theme: Non-financial and financial.

Non-financial: The major non-financial benefit that communities have gained is their knowledge that they own the land customarily.

Financial: Communities gain financially from the land through the extraction of forest products or minerals by individuals or commercial entities but men benefit more as compared to women and youths from the resources that are generated.

COLLECTIVE VERSUS INDIVIDUAL OWNERSHIP

In communities in the rural parts of the country, land is collectively owned and the sale of land to individuals whether to a member or stranger is prohibited. This is intended to protect the interest of communities against powerful actors with commercial interests. At the same time, there is a strong urge among community members notably women and youth to own land personally and have title to it.

MANAGING COMPLAINTS AND GRIEVANCES

Communities lack adequate mechanisms, channels, and processes for managing complaints emerging from the management of collective land and also from the actions or inactions of members of the governing structures.

COMMUNAL LAND LACKS PROPER DEMARCATION

Despite claims by communities to have ownership to communal land, most of the land is not surveyed and therefore clear demarcation is not established. This could be a source of inter and intra-clan and community conflicts bordering on competing claims and titles to ownership of particular acres of land.

USE RIGHT VERSUS TITLE

Until the Land Rights Act (LRA) can be passed into law, the rights of communities to communal land will be restricted or limited to "possession and use" but not "title" and therefore cannot exercise the "bundle of rights" concept to property ownership.

NON-DIVERSIFICATION OF LIVELIHOOD ACTIVITIES

While it is true that a large portion of communal land in some counties has been leased by the government to concessionaires, the current practice around communal land use is limited, to a large extent, to the production of food crops. There is little investment in diversified agricultural production and this reduces income of community members who depend entirely on the land for sustainable and improved livelihood.

OPPORTUNITIES IF THE LRA IS LEGISLATED

At the moment, there is a lack of clarity on title related to customary land ownership and the passage of the LRA into law will certify the legal status of customary land. This will create several opportunities:

- The first will be for communities to enter into formalized contractual agreements with commercial entities for the use of the land including forest products.
- The second will be to take advantage of their legal status in using the land as collateral that would attract investors to invest in agro-economic development interventions.
- Lastly, customary title to communal land will give communities stronger or greater negotiating power with concessionaires and reduce the tendency of government to enter into long term agreement with foreign investors without their active participation.

CORE RECOMMENDATIONS

INDIVIDUAL LAND OWNERSHIP VERSUS COLLECTIVE LAND OWNERSHIP

CORE RECOMMENDATIONS

Based on the findings and the conclusions reached, the following recommendations targeting different stakeholders are advanced for consideration.

For Civil Society Organizations and NGOs:

- Develop a long-term strategy to improve the internal organizational arrangements, decision-making processes, reports and records management, and negotiations procedures of community land governance structures.
- While the LRA is under revision by the National Legislators, begin developing a simpler and user-friendly version of the Act to engage communities so that they understand some of the complex issues contained in the Act particularly around their roles and responsibilities in the implementation of the Act when it is passed.
- Work with communities and the Liberia Land Authority (LLA) to provide technical assistance to survey lands claimed under collective ownership to enable them set clear boundaries at the clan level which will enable them to protect claims to those lands but to also reduce inter and intra conflicts arising from contested boundaries.
- Provide legal aid services to community governing structures on collective lands management to enable them negotiate effectively with concessionaires within the confines of the law.
- Support communities to engage in diversified agricultural and agro-economic development activities such as outgrower schemes in the tree crop sector (palm oil and cocoa) and entrepreneurship as a way of maximizing benefits of collective lands for sustainable livelihood.

- Engage the FDA and LLA to harmonize the various layers of community governing structures established by either statutes or practice to manage land and forest resources.
- Advocate and lobby the government particularly the National Legislators to amend the current concession lease agreements with GVL and Sime Derby to conform and be in harmony with the current Public Lands Law.

International donors and development agencies:

- Organize a multi-donor stakeholders' conference to develop a comprehensive and coherent strategy and to improve communications on how to engage government, private sector, CSOs and communities in the implementation of the LRA when it is passed into law.
- Funding provided to CSOs for land and natural resource governance programs including capacity building interventions for community land governing structures should be allocated over a longer period of time.

For Government of Liberia:

- Relevant government agencies associated with forest and land management should consider developing and strengthening where necessary, internal systems, procedures, and community engagement capacities with a skill set to operationalize the implementation of the LRA when it is enacted into law.



INTRODUCTION

PURPOSE

The report is the outcome of a research commissioned by Rights and Rice Foundation (RRF) and Sustainable Development Institute (SDI) with funding from the Open Society Initiative of West Africa (OSIWA) to assess collective title versus individual title and their implications for livelihood in terms of the use and management of land and forest resources. This is against the background that there is a possibility that the draft Land Rights Act (LRA) will be legislated thereby paving the way for formalized and legally protected collective ownership of land.

With this pending development there is a need for civil society, policy makers and the rural population to better understand the challenges and opportunities that will come with these changes by examining the current practices with respect to the governance and management of collective land, such as large parcels of land under collective title. The purpose of the research therefore, was to contribute to knowledge as well as to inform future policy and practices.

ORGANIZATION OF THIS REPORT

The report is divided into five distinct yet inter-related sections. The first section describes the purpose, methodology, and limitations of the research. The second section provides a contextual overview of land use and management in Liberia. The third section gives an overview of the legal and policy framework around land reform and some of the challenges faced in the implementation of law. The fourth section provides a conceptual framework on property ownership. The fifth section deals with the analysis and highlights general findings. The last section provides a summary of key recommendations based on the findings.

METHODOLOGY

The research employed both quantitative and qualitative data gathering tools. Under the quantitative component, major documents relevant to the study were reviewed in order to identify some of the critical issues surrounding land use and management. Documents reviewed included the 1985 Constitution of Liberia (property rights), statutes and policies on land reform and the management of forest resources, the draft Land Rights Act, the

Agenda for Transformation (AfT),¹ and research work done by other individuals and Liberian Civil Society Organizations (CSOs) working on forest governance in Liberia. For the qualitative component, tools used to gather data included Focus Group Discussions (FGDs) and Key Informant Interviews (KIIs).

Base on the outcome of the desk review, the core questions developed in the Terms of Reference (ToR) were expanded and a fieldwork plan formulated that included the identification of respondents for the (FDGs) and (KIIs). The plan also included target communities where interviews were conducted in the six selected counties: Sinoe, Rivercess, Gbarpolu, Bomi, Lofa and Bong.² The six target communities: Numopoh (Sinoe), Glanyon (Rivercess), Gbarma (Gbarpolu), Malama (Bomi), Gbaway (Lofa) and Palala (Bong) were chosen in consultation with Sustainable Development Institute (SDI).

In each of the target communities, three FGDs were held; one dealing with all men, the other with all women and the last with all young people with equal number of both males and females. KIIs targeted local and traditional leaders as well as the leadership of youth and women's group. In all there were 18 FGDs held and 18 KIIs conducted. Each FGD was comprised of 8 discussants amounting to 144 persons. The research team consisted of three persons. A lead researcher and two focus group facilitators, a male and a female. The lead researcher provided oversight supervision and leadership of the research, conducted the desk review and some of the field work and also supervised the facilitators. The two facilitators conducted most of the FGDs and KIIs. The facilitators were involved in the formulation of the final research tools and were involved in transcribing responses from the field and participated in the analysis of the data.

LIMITATION OF THE RESEARCH

The research was marked by several challenges:

Data collection: The research team made several attempts to arrange interviews with officials of concession companies but to no avail.

Document Review: The primary legislation regarding collective title and registration of collective title is still under consideration by policy makers and is not yet completed so having a strong legal framework for defining collective title and its implications for livelihood is lacking.

footnotes

¹ The AfT is the government's main development framework document

² These counties were contained in the Terms of Reference (ToR).

ONE

CONTEXT OF LAND TENURE

ONE

CONTEXT OF LAND TENURE

Despite having one of the largest rainforest reserves in West Africa, Liberia is faced with an increased pressure on access to land by communities for sustainable livelihood due to insecurity of land tenure. Insecure land tenure can be attributed to Liberia's dual land tenure system; the statutory which is based on written laws (statutes), and the customary which uses customary systems and practices with legitimacy stemming from communal or collective ownership of land.



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

Liberia has a long history of recognizing customary ownership of land as full ownership rights dating as far back as the late 1800s. Paul De Wit and Caleb Stevens have given a historical account of this recognition.³ According to them, in 1876, the government issued a deed for conditional fee simple ownership of land to an indigenous tribe. There were three conditions tied to the issuance:

- The first was that the community had to demonstrate "civilized" customs.
- The second was for the community to plant cash crops: coffee trees.
- The third was to build on the land.

The second account was in 1905 when Public Land Grant Deed was issued recognizing the rights of communities to perpetually use and possess land but not ownership. This was followed by the formulation of the Hinterland Regulation of 1949 wherein communities could establish "Tribal Reserves". In furtherance of this trend, an Aborigines Law was enacted in 1956 that recognized the rights of communities to only use and possess the land. In the same year, a Public Lands Law was enacted and re-enacted in 1973 wherein government was given the right to sell public land for 50 US Cents per acre. The buyer in return would acquire a Public Land Deed.

In the above events, there is a gradual shift from the rights of customary land ownership to recognition of usufruct rights⁴ of possession and use of undocumented customary claims to land. Furthermore, the lack of harmonization between the dual land tenure systems, the government exploits this gap to expropriate lands that communities claim are theirs and lease them to concessionaries for agricultural purposes, logging and mineral exploitation.

footnotes

³ The Legal History of Public Land in Liberia: <https://www.cambridge.org/core/services/aop-cambridge>.

⁴ A Civil Law Doctrine that recognizes the right to enjoy the property vested in another, and to benefit from the profit, utility and advantage which it may produce, provided it be without altering the substance of the said property.



Large scale plantations not only pose a threat to the livelihood of rural communities but they also contribute to deforestation with an adverse effect on the climate. There are sufficient research findings to show that the government issued leases to these companies without obtaining the free, prior and informed consent (FPIC) of communities who customarily own and use the land.

With years of stability following the end of the civil war, the government opened the country to foreign investors particularly in the oil palm sector. Oil palm companies are major drivers of deforestation and land grabs in Liberia. Around one fifth of Liberia's land area being granted to oil palm companies in state-awarded concessions.⁵ For instance, in July 2009, Sime Derby, one of the world's largest producers of Crude Palm Oil was awarded a 63 years lease agreement by the Government of Liberia for 311,187 hectares which is about 760,000 acres of land considered to be the gross concession area. The parties agreed that the company would plant 220,000 hectares within twenty-five years of signing the contract. According to the agreement, the company agreed to pay US\$5 per hectare per year of land it uses for oil palm cultivation and to create employment opportunities for 30,000 Liberians.

Within two years of operations, communities started reporting of challenges around food security. A 2012 research by the School of International Public Affairs at Columbia University in communities in Grand Cape Mount and Gbarpolu Counties found that Liberian communities affected by Sime Darby oil palm plantations have poorer diets, greater debts, and are less able to invest in education and agricultural development, when compared with unaffected communities in Gbarpolu.⁶

In a similar vein, the Government of Liberia in 2010 entered into a separate lease agreement with another oil palm producing company, Golden Veroleum Liberia (GVL) for 65 years for 350,000 hectares including 40,000 hectares for an Outgrower's intervention.⁷ Unlike the Sime Darby agreement,⁸ this one gives GVL the authority to identify an area of that size in five counties: Maryland, Grand Kru, River Gee, Sinoe and River Cess. The company is expected to expand its operations to full capacity over a period of 24 years.

The awarding of these concession agreements to palm oil developers severely undermined progress made by the Liberian government in recognizing collective forestland stewardship with the passage of the 2009 Community Rights Act with Respect to Forest. The CRL laid the foundation of greater protection for community rights with respect to forestlands. At the same time, the awarding of these contracts not only undercuts gains that have been made in the reform sector, it flagrantly violates the statute of Liberia related to the leasing of land to concessionaires. According to the Public Lands Law of Liberia, Chapter 5 (70); Leasing of Public Lands to Foreigners: **"The President is hereby authorized to lease any portion of the public lands not appropriated for other purposes to any foreign individual, corporation or company for engaging in agricultural mercantile or mining operations in Liberia. The term of any such lease shall not exceed fifty years, but the lessee may review the lease for another term of fifty years upon such terms as the contracting parties may agree."**⁹

The issuance of lease agreements for the use of public lands by the President to GVL and Sime Derby for 65 and 63 years, respectively, constitutes a contradiction between the legal framework and the concession agreements. Such a contradiction is a complete breach and violation of the applicable statute cited above.¹⁰ Even if the concession agreements were ratified by the national legislature or some people in government consider the Public Lands Law (Title 34) to be outdated, its contents have never been repealed nor has the section referenced above been amended. A statute remains a law until it is either repealed or amended. Without an amendment to the current statute the government is under obligation to adhere and comply with its terms when awarding contracts to concessionaires.

footnotes

- 5 Rights and Resources Group. 2013. Investments into the Agribusiness, Extractive and Infrastructure Sectors of Liberia: An Overview. Washington DC: RRG. Available from: <http://www.rightsandresources.org/wp-content/exported-pdf/countryreportliberiafinal.pdf>
- 6 Columbia School of International Public Affairs, Everyone Must Eat? Liberia, Food Security and Oil Palm, 2013. Accessible at: http://www.earth.columbia.edu/sites/files/file/students/showcase/2013/Report_Everyone%20Must%20Eat_Liberia%20Food%20Security%20and%20Palm%20Oil.pdf
- 7 Concession Agreement Between the Government of Liberia and Golden Veroleum (Liberia) Inc., 2010. Accessible at: <https://www.scribd.com/document/152067402/An-Act-to-Ratify-The-Concession-Agreement-Between-The-Republic-of-Liberia-and-Golden-Veroleum-Liberia-Inc-September-1-2010>
- 8 Concession Agreement Between the Government of Liberia and Sime Darby Plantation (Liberia) Inc., 2009. Accessible at: <http://www.leiti.org.lr/uploads/2/1/5/6/2/1569928/164828310-sime-darby-liberia-concession-agreement.pdf>
- 9 Public Lands Law, Title 34 Liberian Code of Laws Revised.
- 10 Moore Stephens, LEITI Post Award Process Audit Final Report, May 2013. Accessible at: http://www.leiti.org.lr/uploads/2/1/5/6/2/1569928/leiti_post_award_process_audit_final_report.pdf

LEGAL AND POLICY FRAMEWORK

Poor natural resource governance led to societal inequalities and this was one of the structural conditions and factors that contributed and fuelled the Liberian civil conflict. Indicative of this, the United Nations Security Council (UNSC) in 2003 imposed a ban on Liberia's timber sector. In December of the same year, the UNSC expressed the willingness to drop the measures if the government took control of the regions producing timbers and institute reforms in the sector that reflect the principles of good governance.¹¹

At the same time, natural resource governance is inherently tied to land. The rain forest occupies roughly 45% of the country's land and it is the source of its timber resources. The plateaus are cultivated for agriculture, which is 27% of land and the mountains are home to mineral resources including iron ore, gold and diamond.¹² A retrospective analysis¹³ done under the Vision 2030 framework showed that issues around land ownership and management of concessions represent one of the major sources of historical conflicts in Liberia.

Land conflicts in Liberia can also be attributed to the lack of a clear understanding of land tenure, use and ownership, compounded by tension between formal and traditional systems and practices of claim and entitlement to land. This has been further exacerbated with the introduction by the government of lease holding contracts involving agricultural, logging and mining concessions with little or no reference to communities that have over the years lived on the land and used it as a source of livelihood.

With the ushering in of the Unity Party led government and the need to generate revenue, the government's initial efforts on land reform was leaned more towards the forest sector developing the framework in addressing the rights of communities to forest ownership and forest resources. This framework includes legislation, policies and regulations that outline the process to secure community rights to their customary forestlands. The legislations relevant for the development and implementation of community forestry include: National Forestry Reform Law (NFRL),¹⁴ Community Rights Law (CRL),¹⁵ and the CRL implementation regulations.¹⁶

NATIONAL FORESTRY REFORM LAW OF 2006

The NFRL of 2006 was drafted as one of the reform processes and its objective is: to ensure sustainable management of Liberia's forest lands, conservation of the forest resources, protection of the country's environment, and sustainable development of the economy with the participation of and for the benefit of all Liberians and to contribute to poverty alleviation in the nation.¹⁷ The NFRL introduced the "3Cs approach" to forest management with a vision of demarcating areas of the forest estate for either conservation, commercial, or community forestry or some combination thereof (4.5b). It also recognizes the forest users' rights of communities and set out the requirement that legislation be passed that would govern community with respect to forestlands (10.1c) which led to the passage and development of the CRL of 2009. Most importantly, the NFRL also recognized community ownership of communal forests which are areas where no commercial activity is permitted.

THE COMMUNITY RIGHTS LAW (CRL)

The overarching objective of the CRL is "to empower communities to fully engage in the sustainable management of the forests of Liberia (2.1). This stems from the premise that communities own their forest resources (2.2a) and that the Forestry Development Authority (FDA) has the responsibility to regulate activities in the community forests (2.2b). This sets the relationship between communities and the government through the FDA in the management community forestry. Community forestry embodies the 3Cs to forest management.

footnotes

- 11 UNSC Resolution 1521 on Liberia, December 2003. Accessible at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1521\(2003\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1521(2003))
- 12 Liberia Agenda for Transformation: Steps towards Liberia Rising 2030, p. 15. Accessible at: <http://www.lr.undp.org/content/dam/liberia/docs/docs/Liberia%20Agenda%20for%20transformation.AfT.pdf>
- 13 Report is available on governancecommissionlr.org/.../VISION%202030%20%20summary%20for%20
- 14 National Forestry Reform Law of 2006. Accessible at: <http://www.fao.org/forestry/16151-05f647b84559b5d3a594a9b0240daccff.pdf>
- 15 Community Rights Law with Respect to Forest Lands, 2009. Accessible at: <http://www.fda.gov.lr/wp-content/uploads/2015/07/Community-Rights-Law-of-2009-with-Respect-to-Forest-Lands.pdf>
- 16 Regulations to the Community Rights Law with Respect to Forest lands, 2011. Accessible at: http://www.fda.gov.lr/wp-content/uploads/2015/07/Community-Rights-Law-Regulations_Printed-Version.pdf
- 17 See section 3.1 of the NFRL



REGULATION OF THE COMMUNITY RIGHTS LAW

The Community Rights Law Regulation sets out the practical steps required to implement the CRL or for communities to secure a Community Forest Management Agreement (CFMA) with the FDA. These steps are set from Step 1 which deals with the preparation and submission of an application for a CFMA to Step 9 when the CFMB prepares, negotiates, submits, and signs a CFMA with the FDA. This agreement is valid for a period of 15 years.

After the approval of a CFMA, the CFMB can approach the FDA and other government agencies and donors for help in preparing a 15 year Community Forest Management Plan (CFMP), which is reviewed every five years. The CFMP is to be approved by the FDA. After the CFMP is approved, the CFMB implements it and periodically reports on progress to the Executive Committee, Community Assembly and FDA. The CFMB must establish a bank account for the purpose of receiving and disbursing funds for the operations of the community forestry program.

These laws are progressive because prior to 2003, the engagement of the forests was predominantly for commercial purposes and the forest was used primarily for the extraction of logs or converted to plantations. Logging was being carried out throughout the country with very little consideration or benefits for local communities. Contracts were issued that overlapped one another, if it had continued, the forest would have been significantly depleted¹⁸ and invariably having an adverse effect on communities dwellers in terms of their ability to access and utilize land for livelihood purposes.

In recognition of this threat, the international community worked with the Government of Liberia and in 2006 the NFRL was passed to govern the forest sector. It identified three types of forest management: commercial, conservation and community and this was the introduction of a new forest management regime. Under the law, commercial lands are supposed to be identified for logging and are to have no community claims. Conservation lands are areas of scientific value, for example, the East Nimba Natural Reserve, Sapo National Park and Lake Piso. Conservation lands contain areas that are important for certain types of animals and their ecosystems.

footnotes

¹⁸ (See: A Roadmap to legal operations in Liberia at 2007 Forest Trend (http://www.forest-trends.org/documents/files/doc_1320.pdf))

Community lands are forests that are owned (either with or without deeds) used and managed by the community in partnership with the FDA. In 2009, the Community Forest Law was passed which set out the procedure for communities to secure their rights over the forest.

DRAFT LAND RIGHTS BILL

Parallel to the forest reform initiatives, the government also embarked upon wider reform around land. In 2010, the Land Commission (LC) developed a national land policy following a nationwide consultative process. This policy set the basis for the formulation of the Draft Land Rights Bill that has been before the National Legislature since 2015. The draft Bill protects private and communal interest in land. Article 10.1 states: “all interests and rights in land, irrespective of the identity of ownership or the nature of ownership, constitute property entitled to the protection provided by the Constitution of Liberia for all property rights.” The Draft Bill recognizes customary rights to land ownership. Article 32(1) states: “Customary land is acquired and owned by a Community in accordance with customary practices and norms based on long period of occupancy and/or use.” If passed into the law, the LRA will provide land tenure security for communities in the rural parts of the country that depend on the land for their livelihood.

The Draft Bill also defines four categories of land ownership in Liberia. They including Public Land, Government Land, Customary Land and Private Land. Until this bill is passed into law, all lands in Liberia are either classified as private or public land. However, the government has placed a moratorium on the sale of all public land.



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

THREE

CONCEPTUAL FRAMEWORK ON PROPERTY OWNERSHIP

THREECONCEPTUAL FRAMEWORK
ON PROPERTY OWNERSHIP

Land comprises the physical environment, including climate, relief, soils, hydrology and vegetation, to the extent that these influence potential for land use. It is also defined as real property, and ownership of real property may be private, collective, or common. Determining ownership in law involves determining who has certain “rights and duties” over the property. These rights and duties, are usually called a “bundle of rights”, which can be separated and held by different parties. The bundle of rights concept is used to explain the complexity surrounding property ownership including land which includes the right of possession/use, right of control, right of exclusion, right of enjoyment, and right of disposition or transfer.

The right of possession refers to the rights given to a title holder of a particular property. These rights may be limited in certain instances, such as when a title holder fails to pay required property taxes, but in most regards, the title holder is considered the owner of the property. The right of control allows the title holder the ability to manage the use of the property in any means deemed legal within the jurisdiction in which the property exists. The right of exclusion allows the title holder to limit who may or may not enter or use the property. The right to enjoyment asserts the title holder’s right to participate in any activities he finds pleasurable while on the property. The right of disposition protects the title holder’s right to transfer ownership, either permanently or temporarily, to another party at will.

The bundle of rights concept is tied to title holders and unfortunately in Liberia, the current legal framework does not allow communities to exercise these rights particularly the aspect that has to do with disposition or transfer because communities do not have title whether statutorily or customarily to community land.

COLLECTIVE LAND VERSUS INDIVIDUAL LAND**Definition of collective land**

“Communal land” or “Collective land” is land that the State grants to groups or collective but this concept is not adequately or fully defined within Liberia’s current legal framework. Article 22 (a) of the Liberian Constitution states: “Every person shall have the right to own property alone as well as in association with others; provided that only Liberian citizens shall have the right to own real property within the Republic.” This provision does not explicitly include communal ownership.

The most developed definition of “communal land” can be found in the Draft Land Rights Act Article 32 (1) which states: “Customary land is owned and acquired by a Community in accordance with customary practices and norms based on long period of occupancy and or/use”. Article 33 of the Draft LRA defines the scope and extent of community ownership of lands. Subsection 1 of Article 33 describes that communal land shall be in the form of a “community property”. While it is clear how a community can own collective land, the draft Land Act does not explicitly state whether a private collective of individuals within a community may form an organization as a farmers’ union that qualifies for collective land. Subsection 2 of the same Article goes further to state that ownership of Customary Land consists of a bundle of land rights which include:

- The right to exclude all others;
- The right to possess and use the land along with all non-mineral resources thereon;
- The right to manage and improve the land including planting crops, harvesting forest products, directly or through third parties by way of management contracts or similar agreements or arrangements; and
- The right to transfer some of the land or the use or possession thereof through lease or other lawful means consistent with the provisions of the Act and any regulations promulgated hereunder.



Even though the Draft Land Rights Act is yet to be passed, the government recognizes land use rights of rural communities through the NFRL and CRL. In a similar vein, the Land Rights Policy (Section 6) recognizes communities' rights to customary land and the rights to ownership of said land must be equally protected as private land rights. This means that the bundle of rights concept applies to this provision. A weakness, however, is that while Cabinet endorsed the Land Rights Policy it has no legal enforcement capacity.

Despite the gains that have been made in reforming the forest and land sector, the land tenure rights of rural communities will remain insecure if statutory provisions do not protect their ownership, access, and use of land. For now, the government recognizes only usufruct¹⁹ rights of possession and use of undocumented customary claims.²⁰ As a result of this policy, the government has granted vast track of customary land to concessionaries for planting cash crop mainly oil palm. This is a source of conflict as communities have lost their source of livelihood because they depend on the land for agricultural activities.

Types of land that qualify as collective land

According to the draft LRA, the acquisition and or ownership of a particular Customary Land by a specific community is established by one or more of the following (Article 32:3):

- i. That the Customary Land, prior to the effective date of the LRA, was deeded to the community;
- ii. The land is considered to be Customary Land by common and long standing understanding among members of the Community, and it includes land that has been used and or possessed exclusively or continuously by the Community or some of its members for socio-cultural and economic purposes over a period spanning 50 (fifty) or more years, as established by oral testimonies of communities and their neighbors, and or by land scape-based customary evidence;

- iii. The use or claim of use or possession of the land by the community through historical activities and ties is (a) acknowledged by some or all neighboring communities and/or (b) recognized by rules of customary practice, as established by oral testimonies of communities and their neighbors and/or by landscape-based customary evidence.

Under the proposed Liberia Land Rights Act, customary land rights will be treated like the rights associated with private property. The Liberian Constitution (Article 24) provides for the expropriation of private property. According to Article 24 (a): "While the inviolability of private property shall be guaranteed by the Republic, expropriation may be authorized for the security of the nation in the event of armed conflict or where the public health and safety are endangered or for any other public purposes, provided:

- i. That reasons for such expropriation are given;
- ii. That there is prompt payment of just compensation;
- iii. That such expropriation or the compensation offered may be challenged freely by the owner of the property in a court of law with no penalty for having brought such action; and
- iv. That when property taken for public use ceases to be so used, the Republic shall accord the former owner or those entitled to the property through such owner, the right of first refusal to reacquire the property.



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

footnotes

¹⁹ The legal definition of usufruct means the right of temporary possession and enjoyment of the property which belongs to another and to draw from the same all the profits, utility, and advantage which it may produce, provided it be without altering the substance of the property.

²⁰ USAID-Liberia working paper on Property Rights and Resource Governance in Liberia and can be accessed at www.usaidlandtenure.net/liberia

THREE

CONCEPTUAL FRAMEWORK ON PROPERTY OWNERSHIP

CONCEPTUAL FRAMEWORK ON PROPERTY OWNERSHIP

CONTINUED

If the state requisitions collective land does the collective receive compensation?

Under the proposed Land Rights Act, customary land rights to land will be treated like the rights associated with private property. The Liberian Constitution (Article 24) provides for the expropriation of private property. According to Article 24 (a): “While the inviolability of private property shall be guaranteed by the Republic, expropriation may be authorized for the security of the nation in the event of armed conflict or where the public health and safety are endangered or for any other public purposes, provided:

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- iv. That when property taken for public use ceases to be so used, the Republic shall accord the former owner or those entitled to the property through such owner, the right of first refusal to reacquire the property.

Similarly, Article 54 of the draft LRA lays out conditions under which the acquisition of customary land by Eminent Domain can take place. Article 54(2) states: “Before exercising Eminent Domain to acquire a piece of Private Land or Customary Land, the Government shall make a reasonable, good-faith effort to first lease, and then if absolutely necessary for the public purpose intended, acquire the Private Land or Customary Land through mutual agreement that provides just and timely compensation in accordance with fair market value and the principles”.

The nuance of this provision is the introduction of the concept “through mutual agreement” between the government and the community. In the event wherein the Government and the owner of community land cannot reach a mutual agreement for sale or transfer a Customary Land needed by the government as cited above, the Government shall have the right to institute a condemnation or expropriation proceedings of the land in accordance with the Constitutional provisions reference above or the Civil Procedure Law.

The Constitutional Provisions mentioned above as well as the provisions cited in the draft LRA set the legal framework for communities to receive compensation in an event wherein the state acquisition communal land. The compensation must be just and reflective of fair market value of the land in question. In providing compensation for any land in question, that parcel of land must be condemned.²¹ There must be a clear description of the land sought to be expropriated and the purpose for which the land sought will be used. In property law and backed by the Liberian Constitution referenced above, the use must be for the public interest.



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

footnotes

- 21 Condemnation is the legal process of implementing Eminent Domain whereby the government takes private property for public use.



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CURRENT PRACTICES IN GOVERNING AND MANAGING COLLECTIVE LAND

Except for Gaynimah Community in Gbarpolu County, where land is privately owned, all the other five communities have collective land ownership. The privately owned land in Gaynimah is deeded and owned by one family (Armeh Sannoh), which is not contested by the community. According to interviewees, the land is around 600 acres. In Madina, Cape Mount County, there is communal land that is fully deeded. The collective lands in the other target communities, however, are not deeded but communities claim ownership. Community members in Gaynimah have usufruct right to the land to do farming activities but this does not include the planting of tree crops. The lack of access to communal land is hindering their ability to engage in diversified farming and this undermines their livelihood and potential to generate income.

At the same time, community members of Gaynimah asserted that there is a parcel of land that is considered as a reserve land but the community mentioned that the above family is claiming ownership to the land. Community members said that they have a tribal certificate to the land but the document cannot be readily located. In addressing this concern, members of the community have consented to engage this family to negotiate portion of the land that can be used by the community members not just to make rice farm but to plant tree crops to enable them generate resources. If this pending negotiation fails, community members who migrated from other areas are considering returning to their communities of origin.

In all of the target communities, there are established structures for governing and managing collective land. In Siahn Clan, Rivercess County, the structure is called the Land Governor Council elected by several communities. In the Glanyon town community in Rivercess, elders and town chiefs manage the land. In Deedo and Nyanpan Communities in Sinoe, there is the Land Management Committee (LMC), which serves as a link between the communities and concessionaries. In Gaynimah, there is the Community Forest Management Committee (CFMC) that collects information on individuals who wish to use the private land in order to be aware of individuals who are using the private land to make farm. In case of any incident on the land during usage by an individual, the community can guard itself against any form of liability. In Madina, Grand Cape Mount County, the structure is called Land Committee (LC). In Gbanway, Lofa County, the Land

Lord is the highest decision-making person around land management and mediating conflicts arising from the use of land. Lastly, in Malama Community, Bomi County, there is a Land Committee that was established in 2013.

In Sinoe, Bomi and Rivercess Counties, clans have written by-laws to regulate and manage the use of collective lands particularly to protect the interest of communities and negotiate benefits as they relate to the operations of concessionaires. However, individual communities do not have written laws but rely on the use of traditional norms and cultural practices. Under the traditional practices, collective land cannot be sold or transferred but inherited based on the long-term use by family members. Unlike Bomi and Lofa where the use of the land is based on family heritage and lineage, individual households can access land for farming activities. Land used over time by a particular family or household for farming can be possessed and inherited by younger generations of that particular family or household. The possession, however, is limited to land use. It cannot be transferred and it reverts to the community when an individual or family is no longer using it.

While it is true that some communities have written by laws to govern the management of collective land, most community members notably women are not knowledgeable about the contents of the laws. In some communities, however, collective land can be leased. In Madina, for instance, the community entered into an agreement with Madina Rock Crusher for this company to crush rocks from the community land. In return, the company pays yearly royalties to the community. The income is managed by the Madina Development Association (MDA) established by the community. Community members are now fully aware of the amount of money that has been paid thus far to the MDA. However, community members feel satisfied with the operation of the MDA, pointing to numerous development projects that are taking place in the community.

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ANALYSIS CONTINUED

EXTENT TO WHICH COMMUNITY MEMBERS FEEL THAT THE CURRENT GOVERNANCE ARRANGEMENT IS PARTICIPATORY, EQUITABLE, TRANSPARENT AND ACCOUNTABLE IN IMPLEMENTING THE BY-LAWS

The governance arrangements in the target communities are at different levels in terms of decision-making around land matters. The structures were established to help protect the interest of the communities and to promote equitable distribution of forest and land resources. Men dominate all of the governing structures and they were elected by community members for a set period of time. For instance, in Malama, the Land Committee is comprised of seventeen persons. Of this number there are two women. In other areas, the involvement of women on the leadership is based either on adherence to FDA's guidelines or community's by-laws. In other instances, the involvement of women on these structures is driven or influenced by external actors such as civil society organizations (CSOs).

Some of the criteria used to elect the leadership include knowledge of the community, which includes the management of land, and one must be a resident of the community. Women interviewed mentioned that the domination by men is due to their traditional role they have played over the years as leaders in the communities. Others said that men traditionally handle land matters, therefore this creates the context for them to easily assume leadership role on the land governing structures. Even though women are represented on almost all of the governing structures, they do not appear to have any influential role in decision-making processes regarding land issues. Women interviewed in some of the communities could not name the other representatives on the leadership structures. The influential members of the leadership or governing structures are the chiefs and elders.

While it is true that community members participate in the selection of members of the governing structures, on the overall, the structures have not demonstrated equitable distribution of land and forest resources. Men of the leadership structures interviewed asserted that they usually distribute resources generated from the land equally among members of the community. However, the views of women and youth contradict this assertion by the men. Women and youths interviewed also mentioned that they have little or no knowledge regarding decisions that the governing structures make on behalf of the communities regarding the use of communities' land and forest.

In all of the communities, women and youths further claimed and asserted that they do not have knowledge on the amount of money the community generated from the land and forest. However, members of the management team interviewed in Glanyon Town in Rivercess County claimed that money generated from the land is in safe keeping and that the money will be used to carry out a community project that has been identified. Members of the community, however, could not confirm this information.

For example, in Glanyon Town and Malama, community members mentioned they observe individuals engaged in pit sewing on the community land but they do not have knowledge on the terms of the negotiation between the individuals and the governing structures as well as the fees paid to the leadership structures. Women interviewed in these communities claimed that some members of the leadership or management teams are involved in pit sewing but they do not report to the communities on their operations.

The governing structures exist but are not constantly active. For example, meetings are not regularly held. In most communities members interviewed could not recall the last time a community meeting on land matter was held. However, in communities where concessionaires are operating the governing are a little more active but their activeness is dependent on issues that arise from the operations of the concessionaires such as employment or social benefits requests from communities to concessionaires and request from the concessionaires for expansion on the land. Even with these engagements, the governing structures do not regularly report back to the larger community on the outcomes.

The establishment of the governing structures whether by community themselves or driven by external forces, the overall objective is to put in place mechanisms and systems to have a more participatory and transparent governance process for the equitable management of land and forest resources. However, views and perspectives from community members reflect that chiefs and elders who in most cases are men heavily control decision-making and negotiation processes regarding land and forest resources.

Moreover, the inclusion of women and youths on the governing structures has not made any significant difference in protecting the interests of these two categories of people, as those representing their interest on the committee also do not report back to their constituency. Furthermore, the inability of the



governing structures to hold regular meetings to report back to the larger community is also contributing factor to the lack of transparency and accountability in the management of forest and land resources for the benefits of all members of the communities.

SATISFACTION AMONG COMMUNITY MEMBERS IN MANAGING COLLECTIVE LAND

Historically, what is termed as collective land has been managed by traditional leaders and they were clothed with the authority to make decisions regarding land management and use. With the coming of concessionaires in some counties like Sinoe, Grand Cape Mount and Bomi, there has been the establishment of new governance structures. Some traditional leaders are also represented on these structures. The primary function of these governing bodies is to negotiate with concessionaires regarding benefits communities are to enjoy in keeping with companies' Corporate Social Responsibilities (CSR) as well as serving as a point of entry through which companies can engage and access communities. This is intended to increase trust between concessionaires and communities as a way of improving relationship and managing emerging conflicts. On the other hand, communities where concessionaires are not operating, the elders and traditional leaders manage land use, and funds generated from the forest through pit-sawing or chainsaw milling.

Access to collective land is governed by traditional customs and practices that community members term as laws. Unlike Deedo and Nyanpan communities in Sinoe where community members do not seek permission to use the land, in other target counties, land use is based on permission from the elders and traditional chiefs. In all of the target counties, the sale of communal land to community members or outsiders is prohibited but can be leased for commercial purposes.

In areas where there are no concessionaires operating, women and youths are largely excluded from decision-making structures and processes. Women and youth interviewed asserted that they have no voice over the management of land. Specifically, women from Gbanway, who were interviewed mentioned that: "collective land is a burden on women". In explaining what this means, they asserted that women who marry men from outside of the community find it difficult to access the land even though women are legitimate

members of the community. They further explained that children of women who are married to men from different communities or counties are not treated like those whose fathers are from the community, and they do not have equal rights to the land; if they wish to use the land they can do so through their uncles.

Another area of dissatisfaction with the land governing bodies is the lack of a reporting mechanism or system wherein these structures will report back to community members on the management of the land. Furthermore, women in most of the target communities expressed concerns that they are allowed to plant rice and other kinds of crops with shorter life-span such as sugar cane and peanuts, but denied the right to plant cash crops with longer life-span such as cocoa, coffee, palm oil or rubber.

Like women, young people are also disillusioned with the excessive control by men particularly the elders regarding decision-making on land use and the management of forest resources. Even though some young people are represented on land governance structures in concessionaire areas, their representation is nominal. For instance in Malama Community, Bomi County, young people made a proposal to the community for certain portion of land to be given to Sime Darby to expand its operation in exchange for jobs for young people. The elders turned down the request. The elders confirmed this assertion made by the young people. The reason given by the elders was that Sime Darby has not performed on promises made on the use of the first portion of land they now occupy and therefore they do not trust the company that it can live up to future promises. In areas where there are no concessionaires, young people are totally excluded from decision-making bodies on land use and forest resource management.

Despite the existence of national and international instruments to promote and protect equal rights for men and women coupled with national efforts by CSOs and the government to create awareness on the rights of women, the participation of women in decision-making regarding land use and management remains a challenge.

ANALYSIS CONTINUED

CHALLENGES ON GOVERNANCE STRUCTURES REGARDING COLLECTIVE LAND

The governance structures regarding the management of collective land and forest resources are marked by several challenges that need to be addressed. According to women respondents, elderly men heavily dominate the structures and this minimizes women's participation in decision-making. In the views of women one action that needs to take place is the re-configuration of the governing structures, for example by replacing the current leadership through elections. Women want the re-configuration because leaders of the governing structures are not fulfilling the mandate for which they were elected or selected. Women also highlighted the need for the formulation of community laws that are documented which will lay out the authority, roles and responsibilities of those holding leadership positions in the management of land. Young people also shared similar view.

Furthermore, women and young people expressed the view that there are no higher decision-making bodies than what they have put in place that can hear their grievances emerging out of the management of collective land and forest resources. This means that internal grievances and complaints are not heard or addressed because the men who control decisions around the land are their husbands, fathers, uncles and brothers and traditionally they do not have the courage to confront them.

ASPECTS OF THE GOVERNANCE PRACTICES THAT COMMUNITY MEMBERS WANT TO CHANGE

One of the common themes emerging from the interviews from all target communities is the inclusion of more women and youths on the governing structures. On the overall, respondents think with increased representation, the voices of women and youth will be mainstreamed in the decision-making process. Current practices on decision-making processes on land and forest resource management rely on customs and traditions that are directed and influenced by the elders. Women and youth respondents think that community laws or regulations need to be established to guide how their land is managed. Another aspect of the governing structure that needs to be changed is the failure on the part of the current leadership to hold regular meetings where they will make reports on funds generated from the commercial use of the land and forest. The formulation of laws and regulations will create the

opportunity to hold the leadership of management teams accountable for decisions they make on behalf of the communities.

CHALLENGES WITH MANAGING LAND OWNED UNDER COLLECTIVE TITLE

In concession communities in Deedo, Sinoe County, there are committees established such as the Forest Management Committee, which serves as a link between the communities and concessionaires. Community members alleged that the Forest Management Committee negotiated with Golden Veroleum Liberia (GVL) for additional land from their reserve land to expand its operations. Community members claimed that they are not pleased with the negotiation but are being coerced and forced by the Forest Management Committee to accept the negotiation. Community members further claim that on several occasions, the committee brought out the "Country Devil" as a means of intimidating community members to agree to the company's request. As part of the intimidating technique, the Forest Management Committee banned the community from participating in any district activity and further imposed a fine of 15,000 LD, three goats and two bags of rice. The Forest Management Committee comprising high-level authorities from the district appears to be a powerful structure whose decisions made on behalf of the community cannot be challenged.²²

In another scenario, members of the Mardina Community in Grand Cape Mount County mentioned that Sime Darby had occupied portion of their land. They claimed that a letter was sent to the Ministries of Justice and Internal Affairs requesting the two ministries to intervene on their behalf to receive their benefits from the company as a result of the occupancy. There has been no intervention by the named ministries. The issue of community members not having the avenue to seek redress beyond local structures when there are dissenting views on the management of their collective land seems to be a problem that cuts across communities where concessions are operating.

In other communities where there are no concessionaires operating, one of the major challenges faced in the management of collective land is the failure on the part of some community members to adhere to the rules laid down regarding land use. For instance, in Glanyon Town community, Rivercess County, there is a rule that says before any citizen access the forest to do farming



or pit sawing, he or she must pass through the Land Management Committee (LMC)²³ established to manage the forest but in many instances this is ignored.

Local authorities such as the Unification Town Chief, District Commissioners and Paramount Chiefs are aware of the existence of the LMC and the established laws in managing the land. However, when complaints are brought before them against someone who has violated a provision within the law, nothing is done to hold them accountable. Interviewees asserted that violators of the law do so because they feel that the land is collectively owned and there has been no record of punishment levied against individuals who violate the law. Some key informants mentioned that some of the violators of the law are members of the LMC who use the forest for pit sawing without the consent of the community.

Another challenge related to collective title is the unequal access to land mainly by women. As briefly discussed above, there are certain limitations and constraints placed on women by men who are the decision-makers when it comes to land. According to women discussants, women who marry men from different communities do not have equal access to the land as compared to men who marry women from other communities. The men from different communities who marry women are perceived as strangers by the community members and because strangers do not own land, the woman and her husband are denied full entitlement to the land particularly as it relates to the planting of tree crops.

A further challenge faced by communities is that they claim ownership to the land but they do not have title. As a consequence of this, they are excluded from the negotiation process between the government and concession companies on the use of land that communities claim ownership to. Because they are excluded from this process, communities do not have the strength to negotiate benefits from concessionaries regarding the land.

Other than the National Forestry Reform Law of 2006 (NFRL) and CRL that lay out governing structures of Forest Lands, most communities do not have by-laws to regulate the use of communal land and the funds that are generated from it and how they should be used to benefit the entire community. In the

absence of such regulation, men and elders will continue to decide how the land is used and the distribution and apportioned of resources that are accrued from it.

THE ROLE OF WOMEN AND YOUTH IN THE MANAGEMENT OF COLLECTIVE TITLE IN TERMS OF LIVELIHOOD OPTIONS

As has been discussed lengthily in previous sections, women and youth have very limited role in the management of collective title and this has an implication on their livelihood. There is no disagreement among community members that the land they occupy and use is collectively owned. Despite this recognition, women and youth do not have the same voice, representation and influence on how land is apportioned different families within a given community.

In all of the communities where interviews were conducted, women respondents highlighted that the use of the land is limited to fishing and farming related to food crops and this includes planting of rice and cassava based on the traditional agricultural practices of particular communities. When women own farms that have cash crops such as sugarcane planted on them, they inherit the farm from a male relationship and it is the father, husband or a brother. Similarly, young people's access to the land is restricted to a large extent to rice farming, planting of cassava and hunting.

On the other hand, men are allowed to grow rice, plant cassava, hunt, and produce palm oil in addition to planting other cash crops such as rubber, cocoa and coffee that are of higher economic values. With the diversification of planting tree crops plus rice and cassava, men have access to multiple sources of income thereby having a more secure and stable livelihood as compared to women and youth. Livelihood security is also strengthened and improved when community members who depend on the land for survival have the opportunity to get engaged in diversified agricultural activities.

The prices of cash crops are constantly influx but experience of global market trends have shown that the prices of cash crops on the world market do not plunged at the same time. This means that a reduction in the global price of one type of cash crop can be balanced by an increase in price for another commodity. For example, at the moment there has been a dramatic reduction in

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²² This assertion was made by Key Informant Interviewees

²³ The Land Management Committee is governing structure for the entire Siahn Clan, Central Rivercess.

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the price of rubber on the world market while at the same time the price of cocoa has increased so the loss in income from rubber can be gained from the sale of cocoa at a higher price.

Investment in palm oil (Makinto) planting is a new agricultural venture and is seen as one of the most sustainable forms of livelihood activity for agrarian communities because it has multiple uses including the production of oil and soap on the local market. Oil Palm takes three years for harvesting and each tree produces between 5-7 heads of palm.²⁴ The relatively short duration of time to harvest and the quantity produced per tree is attracting many farmers and business people into the sector.

Currently, GVL is engaged with communities in the concession areas to support out-grower scheme in Sinoe County. The scheme has not yet started because funds are being mobilized by international development partners working in this sector.

BENEFITS OF COLLECTIVE LAND OWNERSHIP: MONETARY AND NON-MONETARY

There are several benefits that community members enjoy from having collective title to land. In almost all of the target communities, respondents, mainly from KILs mentioned that one of the main benefits they enjoy from the communal land is the ability to use the land to farm without paying due to anyone. A second benefit from collective land is the opportunity to plant life crops but this is limited largely to men. However, in Gaynimah, Gbarpolu County, where the majority of the land is privately owned, community members can access it to plant food crops but are not allowed to plant cash crops. In communities such as Numopoh, Madina, and Malama that are located within the vicinity of the operations of concessionaries, few of the community members are hired as contractors by the companies. In communities in concession areas, respondents spoke about improvements in community roads network which has made their movement easier.

In Madina, funds generated from land leased to a rock crushing company were used to build a mineral water factor that is sold to community members at an affordable price. The construction of the water factory has improved their livelihood due to access to safe drinking water. In addition to accessing safe drinking water, some vulnerable members both men and women of the community receive zinc from income generated from the land. From this same agreement, women benefit from a loan scheme to improve their livelihood. An additional benefit is that community members have access to electricity. Those who can afford to pay a small service fee are connected to the community current and this has contributed to improving commercial activities in the community and reducing the crime rate. From this same source of income, housing for teachers has been constructed and a monthly stipend is provided to the teachers.

According to interviews, this has increased the enrollment of students in the public school. Children of communities within the operational areas of Sime Darby have the opportunity to attend secondary schools that are built by the company. In Malama, youth and elders discussants mentioned that if the company had not constructed the school, it was going to be challenging for young people to complete secondary school.

In Malama, the community realized that a portion of their land was being operated on by a Chinese Company to extract mineral mainly gold. In realization of this, the community mobilized its members including other surrounding towns and engaged the company. Through a negotiated process, the company consented to pay a social responsibility fee in the amount of \$US20,000 for mining in the community's land. Of this amount, Malama received US\$8,000.00.

This amount was used to construct a guest house that is currently being used by health workers assigned in the area. A town hall was also built and contributions made to the religious communities to improve their church and mosque. Elders, youth and women groups interviewed confirmed that the amount received was the figure mentioned above. However, the women asserted that during a community meeting where the amount was apportioned, they made a proposal for the money to be used to survey the community's collective land. Their proposal was opposed by the men and youth in favor of the aforementioned

footnotes

²⁴ Interview conducted in Sinoe with individuals working as community animators at one of the plantations operated by GVL.



projects. Elders and youth discussants affirmed the claim made by the women but mentioned that their opposition to the women's suggestion was based on the fact that the survey of the land was going to cost US\$35,000 which the community could not afford.

In Nyanpan's town, Sinoe County, the community received the amount of Liberian Dollars 3,000 from individuals who were given authority to operate pit sawing on the land. Portion of this amount was used to repair damages to the community's hand pump and the balance is kept to contribute towards bereavement of community members.

PASSAGE OF THE LRA AND OPPORTUNITIES FOR ECONOMIC DEVELOPMENT

The movement towards the recognition of customary right to land ownership is driven by the desire to protect rural agrarian communities from powerful national and international companies. This protection includes the preservation of land and the draft LRA makes a provision by proposing a governance structure that will be responsible to solicit the views of all in determining whether the community will sell or lease a piece of land. This protection limits the ability of an individual chief or elder from taking unilateral decisions on land matter.

Since the Bill was drafted since 2014 CSOs have been advocating for the passage of the Bill into law. At the same time, community members interviewed in the target counties have not heard about the draft Bill. However, they do know that when customary land right is recognized, it will bring opportunities to their communities. One of the opportunities named is that communities will have greater control and ownership of the land. The second opportunity is that communities will be able to negotiate directly with national and international investors who want to use the land for commercial activities and this will generate income. The third opportunity mentioned is that communities will be able to make informed decisions when engaging with commercial entities. The fourth one is that land tenure will be secure for communities and they can decide on what kind of investment to make on it. The fifth opportunity is that communities can engage in productive agro-economic activities for sustainable livelihood.

ADVANTAGES AND DISADVANTAGES OF COLLECTIVE TITLE

In all of the discussions, community members highlighted certain benefits that they enjoy from collective title. Below are some of the key ones:

Advantage 1: Communal land cannot be sold or lease by any member of the collective including traditional leaders and heads of the land governing structures. According to them, this is beneficial because companies wishing to lease large plots of land from the community will not be able to do so in negotiation with a single person.

Disadvantage 1: The disadvantage to this assertion is that they do not have title to the land so they are aware that the government has the power to lease the land to foreign companies.

Advantage 1.1: Individuals in the communities who have resources and want to buy land for investment cannot do so because collective land cannot be sold.

Advantage 2: Collective land with title can be leased or used as collateral for obtaining loan from the bank. Community forestland can be leased.

Disadvantage 2: Communities cannot lease any land at the moment because they do not have claim of title. The state may requisition the land and because it is currently a public land, the state may not provide compensation.

Disadvantage 2.1: The management of the communal land is determined by the collective and the management process can be manipulated or dominated by a few influential individuals. Their decisions may be to protect the interest of a few people and not the whole group. This can lead to internal conflict and grievances.

Advantage 3: Communal land can be used to protect the vulnerable members of the community because it can be used for farming and community members can access it for a longer period of time.

Disadvantage 3: Decisions to increase farm production is not depended on the potential of the individual but rather on the decision of the collective.

CONCLUSION

INDIVIDUAL LAND OWNERSHIP VERSUS COLLECTIVE LAND OWNERSHIP

CONCLUSION

Access to and ownership of land has been and will continue to be a contentious issue in Liberia with the potential to undermine development and a major source of conflict in the country. There are statutes, policies, and clear procedures on how private lands can be owned and documented. This is not so with communal lands. The current Constitution of Liberia does not explicitly recognize the right to communal land ownership. Despite this backdrop, communities in the rural parts of the country continue to claim ownership to the lands. However, this claim to ownership is based on customs and not substantiated by law.



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

Rights are conceived as “entitlements” and can be enforced if they are protected by law which makes it binding on the state to guarantee and enforce those rights. Unfortunately, the claim of entitlement to lands by communities cannot be challenged legally because there is no law upon which a legal challenge can be pursued as one would do with one’s right to private land is being threatened.

Proof of title as a civil action depends on a “preponderance of evidence” and one of the justifications of title is “metes and bounds” and communal lands lack this fundamental ingredient. In essence, communities over the years have lived on the lands, used it but can’t legally claim ownership because they lack title. Without title, it is difficult to make a legitimate claim of right to property. It is a legally recognized ownership, by which one can exercise possession and exercise rights under the “bundle of rights” concept.

Despite this limitation, the government took some positive steps in recognizing the rights of communities to manage their forest and reap benefits from forest resources through the enactment of the Community Rights Law and a nationwide consultation that culminated in the formulation of the Land Rights Policy. As good as it is, the CRL is restricted to forest management and set specific conditions under which communities can operate in order to benefit from the forest resources. The Land Rights Policy, which recognized customary title to land ownership and greater protection for community land rights, does not have enforcement mechanism.

With no legislation that recognizes customary rights to land ownership, the government leased lands that communities claimed were theirs, to foreign multi-national plantation developers companies for over fifty years in contravention of existing statute and without the participation and consent of communities. The communities can’t fight back to take what belongs to them because there is no legal instrument that can be used to pursue their legal interests. Similarly, CSOs and other international partners are faced with this dilemma and cannot help affected communities for the same reason.



“Recognizing and formalizing customary or collective land rights has promises in lifting households out of poverty. It will give communities hope, increase the choices they make, and contribute to a more cohesive and stable social order – where the risks of intra communal violence driven by social inequalities can be minimized.”

At the same time, the government through the Land Commission took a further step in the right direction to draft and submit to the National Legislators the Land Rights Act to implement the Land Rights Policy. The Land Rights Act will legally recognize for the first time, customary right to land ownership. At the time of writing this report, the draft Bill had not been passed into law. If passed into law, the Act may be responsive to communities where concessionaires have not taken place given the fact that most communal lands have been already leased to concessionaires for plantation purposes.

However, the passage into law of the Act that recognizes the full customary rights of communities to land ownership will not only be in the right direction, it will also create huge opportunities for how lands are acquired by foreign companies to do business. The passage will also set the framework for a more equitable distribution of land and a reduction in communal conflicts around land. While the passage of the Bill into law is an important first step, its implementation will require political will and financial resources from the government to support its agencies required to implement the law. The institutions identified for the implementation of the law will also need to develop new skills and orientations in terms of community engagement informed by a participatory approach. In addition, CSOs will need to be actively engaged with communities in a sustained manner in the implementation but from an innovative perspective grounded within the framework of the law. In order for CSOs to remain meaningfully engaged, donors need to commit to a longer term support and not based on a one-year project life cycle.

The management of collective lands as compared to privately owned land is more complicated because of the communal nature of the property. Some of the complicated issues are linked to benefits sharing, representation, inclusive decision-making processes, grievance management, documentation, reporting, accountability and negotiating with stakeholders particularly with concessionaires. This study has shown that land governing structures in communities are not strong enough to effectively perform these responsibilities.

Deficiencies exist in all of the areas mentioned but that they are more acute in the areas related to benefit-sharing and reporting. At the level of benefit sharing, women and youth complained of inequitable distribution of benefits from the land. With regards to reporting, community members recounted that governing structures do not give them report and this undermines accountability and transparency in managing community benefits.

Communities are aware of their rights to the land and this is due largely to the work of many CSOs over the years and a few government agencies. Much of the interventions by CSOs and the FDA have been focused on the recognition of this right but without equally investing time and resources in the organizational development of the governing structures. The government is under greater obligation to ensure that these structures are not only established but that they function effectively because their creation is a result of laws passed by the government. If the Land Rights Act is passed, communities governing structures will be given greater responsibilities and tasks to perform. Awareness by CSOs on the contents of the Land Rights Act as it relates to the rights of communities will be important but this should be correspondingly done with equal or more investment in the organizational development of the governing structures.

The passage of the Land Rights Act into law will formalize communities’ rights to customary title to land and give them legal status. It will also provide some clarity on the roles and responsibilities of communities in land management and create the climate and opportunities to attract outside investments. With the legal status, communities will be entering into direct contractual arrangement and negotiations with external actors regarding the lease or selling of land and this has legal implications because they can initiate a legal suit and they can equally be sued. Technical assistance to the governing structures through the provision of legal aid will be critical for preparing communities for any negotiating process.

CONCLUSION

INDIVIDUAL LAND OWNERSHIP VERSUS COLLECTIVE LAND OWNERSHIP

CONCLUSION CONTINUED

Unlike Bong and certain parts of Gbarpolu Counties where large portions of lands are owned by private families and individuals, individual ownership of land in communities in the other target counties (Lofa, Rivercess, Bomi, and Sinoe) is strongly resisted. In these counties the focus is on the collective use of the land. However, productive use of the land is limited to a large extent to the planting of food crops mainly rice, cassava and plantain. The yield from this level of agricultural activities is not adequate to generate income for sustainable livelihood of households' members.

This means that community members are not benefiting economically from the land for sustainable livelihood. One of the ways of assuring sustainable livelihood of the land is the engagement of communities in diversified farming: Food crops for daily consumption and small scale commerce and different tree crops that will withstand fluctuation in world prices. In areas where plantations are operating, the outgrower scheme and entrepreneurship are two of the ways for communities to sustainably use the land for economic development. Because women have limited control and decision-making power regarding land use, special agro and outgrower schemes need to be developed that will be responsive to the needs of women.

There is a general consensus among development practitioners that the long term economic growth and development of Liberia rest in the agricultural sector and this is about land use and ownership. Land can either be privately or collectively owned with advantages and disadvantages of each category. Privately owned land can be used for large scale agricultural productivity and a source of employment for community members. However, the correct labor policy and laws need to be instituted backed by political will to enforce the law so that individuals who work on privately owned farms can benefit economically from their labor. The experience in Liberia does not point in this direction. Privately owned land means a greater decision-making power and control by the owner over its use and disposal. Privately owned land can yield economic benefits to the owner when he or she invests time and resources in its development.

On the other hand, for communities that depend on the land for survival, communal title is one of the ways of ensuring the long term use of the land by community members. However, collective land may not be cared for and protected equally because the equitable distribution of benefits between men and women that accrued from the land is not guaranteed due to cultural practices and social inequalities associated with power dynamics. The management of collective land requires institutionalizing internal processes around decision-making so that when the community makes a decision on the use of their land, that decision must reflect the voices of all members and responsive to the needs of vulnerable members of the community.

When these internal organizational challenges are addressed, sustainable livelihood of communities that live off the land lies squarely in collective title. It has promises in lifting households out of poverty, it gives communities hope, increases the choices they make with their lives, and contributes to a more cohesive and stable social order where the risks of intra communal violence driven by social inequalities can be minimized.



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

ACRONYMS

AfT	Agenda for Transformation
CFMB	Community Forest Management Body
CSOs	Civil Society Organizations
DFMC	District Forest Management Committee
LMC	Land Management Committee
FDA	Forestry Development Authority
FMC	Forest Management Committee
GoL	Government of Liberia
GVL	Golden Veroleum Liberia
SDI	Sustainable Development Institute
RRF	Rights and Rice Foundation
UNSC	United Nations Security Council
CRL	Community Rights Law
NFRL	National Forestry Reform Law
LLA	Liberia Land Authority
LRA	Land Rights Act
LC	Land Commissio
LRP	Land Rights Policy
PRS	Poverty Reduction Strategy



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

INDIVIDUAL LAND OWNERSHIP VERSUS COLLECTIVE LAND OWNERSHIP

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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.

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