

'SO WHO OWNS THE FOREST'

An investigation into forest ownership and customary land rights in Liberia

by Liz Alden Wily



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Editor: Kieran Cooke, Ed Fenton, Saskia Ozinga and Richard Wainwright

Design: Daan van Beek

Print: Zuidam Uithof

Photo cover: Tommy Garnett

Key words: Liberia, customary land tenure, community domain, forests, forest reform

November 2007



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Acknowledgements

Many people contributed to this study, from those who assisted the author with access to documents to villagers in the field. Although too numerous to list, sincere thanks are given to all. A special note of thanks is due Sam Koffa who led some of the field studies, ably assisted by Zlenyonoh Tarlue, Jonathan Yiah and Trokon Brown and to Lofen Keneah who collected data on land disputes in the courts. Thanks are also due Verlon Stone, who made available rare documents from the Liberia Collection of Indiana University. Others kindly devoted time to comment on a draft of this paper. They are David Brown (Overseas Development Institute), John Bruce (former Senior Counsel, The World Bank), Jeanette Carter (University of Liberia), John Gay (former researcher in Liberia), Cath Long (Rainforest Foundation), Fergus MacKay (Forest Peoples Programme), Saskia Ozinga (FERN) and Silas Kpanan'AYoung Siakor (Sustainable Development Institute). Others, such as Amos Sawyer (a former President of Liberia and currently head of the Governance Reform Commission) and Clr. Philip A. Z. Banks, III (Minister of Justice and Attorney General), have contributed important insights. To all these people heartfelt thanks are given. While every attempt has been made to take their comments into account, what remains is solely the responsibility of the author.

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Summary

Map 1 – Location of Liberia in Africa



Liberia, once a landmark case for best practice and able to be so again

“You are experts, so you tell us, what happened to our forests! All we know is that the forests belonged to our fathers and our fathers’ fathers but government gave them to logging companies before the war. We cannot say who is the legal owner of forests today. But we will not let FDA¹ give away our forests again”, said the youth of Vondeh town.

”

This quote encapsulates the confusions and conundrums of forest tenure in Liberia today, which this study set out to explore.

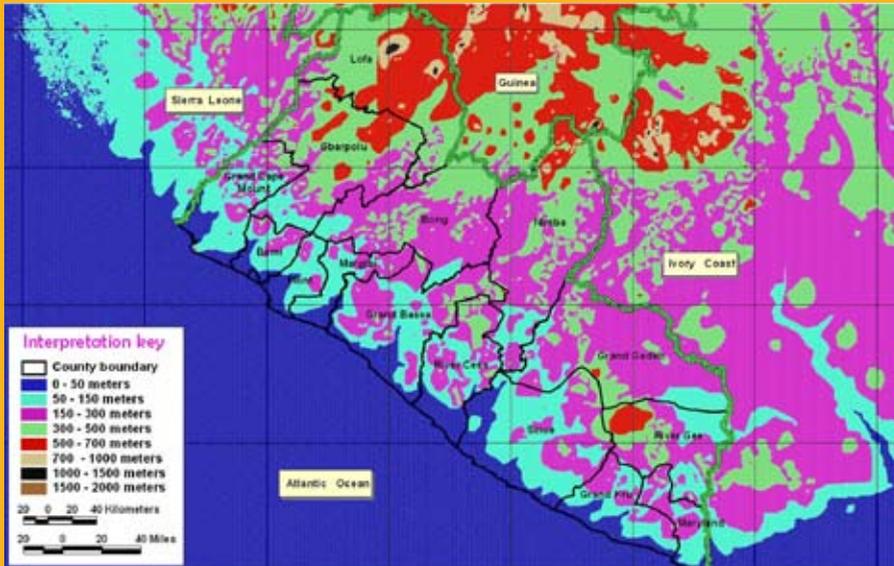
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Three ‘facts’ quickly emerged:

- Customarily, forests are an integral part of community property and this itself is surprisingly well defined in discrete land areas held by each village (town) or by clusters of towns referred to as clans or chiefdoms.
- The status of forest ownership under national law is unclear and is contradictory with customary law.
- People and the state are at odds as to who owns the forests and how the use of forests should be regulated.

The stage is set for a classical natural resource conflict. This will not go away on its own – it needs to be resolved.

Map 2 – Digital elevation model map of Liberia



Prepared by the geographic information systems and remote sensing laboratory of FDA

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Map 3 – Forest cover map of Liberia

Showing protected, proposed protected areas and national forests



Prepared by the geographic information systems and remote sensing laboratory of FDA

Positive conditions to solve the conflict

The FDA (the Forestry Development Authority) and the Liberian government in general are fully aware of the need for legislative clarity and justice, to be laid out in a Community Rights Law. This study attempts to unravel the facts and to identify a practical way forward. This, the study concludes, is achievable given the many positive conditions exceptional to Liberia. These range from the relatively recent diminishment of customary ownership of forests and the uncertainty and weakness of the judicial foundation of such moves, to the strength of collective tenure in the present day rural community, and the existence of a solid history of legal collective entitlement that includes forestlands.

Helpful circumstances also include the fact that the FDA itself has begun the process of reforming state-people forest relations through its new National Forestry Reform Law. A commitment to reforming land relations has also been made at the highest level of the government, with the expectation that this will be guided by the investigative and planning work of a land commission.

There is also a rare opportunity for progress in that Liberia has valuable forest resources but at present it has not granted any long term forestry concessions: commercial exploitation under improved terms could thus be negotiated without incurring large scale expenses.

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photo Tommy Garnett



photo Saskia Ozinga

Positive conditions also include the fact that there is unusual continuity in the socio-spatial identity of customary domains, which have been built upon existing village-based socio-spatial arrangements ('towns'). The characteristic clustering of these in the mid 20th century into 'clans' and 'chiefdoms' has not always conformed to customary administrative arrangements on a countrywide basis. Nonetheless, traditional socio-spatial relations have largely been transposed into these arrangements, with the boundaries among chiefdom, clan and town determined upon what exists and through local consensus. From 1923 a conscious effort was made to build a formal administration upon unified customary norms agreed by gatherings of chiefs, delivered in a Hinterland Law that is notable for its integration of customary and statutory law.

Also helpful is the fact that Liberia is beginning to tackle the modernisation of interlinked tenure and forest management paradigms at a time when useful models for change have emerged elsewhere on the continent, while Liberia was at war with itself. Useful lessons may be learned from the recent experiences of no less than 20 countries in Sub Saharan Africa where governments have also been forced to address the consequences of a century of unfair or unworkable rural land ownership and forest management norms.

Liberia as a landmark case of best practice?

As a small country with a relatively uniform and vibrant customary sector, combined with ambitions of the government and the people to put matters right after a long and bitter war, there would seem to be little excuse for Liberia not establishing itself as a landmark case of best practice.

However, beyond all this there is a particular circumstance which makes this especially viable and which this report investigates. This is the unusual handling of majority rural land rights since freed slaves first arrived on the coast of what is now Liberia and laid the foundations for the independent state. This provides a background of comparatively fair treatment of customary land rights and a solid history of collective entitlement that contradicts more recent revisions.

Recognising that Africans owned the land

Unlike their British, French, Portuguese, German and Belgium counterparts, the governing Colonization Societies of these immigrants did not simply help themselves to the lands of the Africans they encountered². Instead those early Societies acknowledged that the Africa they arrived in was far from empty of owners and that instead every land was owned by communities, each of these a discrete territory with known boundaries, owned collectively, and often well defended and governed by long established chiefs. Therefore they set about systematically purchasing the lands they needed for settlements, albeit at knock down prices. In due course the lands purchased became the public property of the new independent Republic of Liberia (1847) embracing around 40 percent of the total land area known today as Liberia. Much of this land was subsequently allocated to or purchased by immigrant settlers, their descendants, and emergent land using companies.

Liberia could redress land injustices more easily than almost any other country on the African continent



Less positively, not until the 20th century could the native residents or their descendants living in this coastal zone (the ‘Littoral’) be allocated or buy plots for

² Virtually the only other exception on the continent was in Gold Coast Colony where powerful Ashanti chiefs prevented the British from taking over ownership of the land in the process of establishing British sovereignty



photo SDI



photo Saskia Ozinga

themselves, still a source of considerable bitterness today. Significant areas of the Littoral became plantations, owned by Firestone and other foreign companies.

It is however the rightful recognition that Liberia was not empty of owners (*terra nullius*) that proves so important today. Liberia was not understood as just 'used and occupied' by natives – as European colonisers preferred to regard it – but was owned under recognisable indigenous property norms. This laid the establishment of a policy and legal framework that in due course would enable the expanding Liberian State, from around 1930, to offer communities in the Hinterland where lands had not been purchased, the opportunity to formalise their customary collective territorial ownership under Aborigines Land Grants. Native owning communities were even informed in law that failure to take up this opportunity to put on record their properties would not jeopardise their 'right and title'. Several million acres were accordingly titled by more aware traditional leaders who had the means to cover the survey costs for registration.

It is from the distinctiveness of Liberia's colonial history that swifter-than-usual remedy to land injustices may be found



The unravelling of the system

Perhaps inevitably this situation could not last forever. The system began to unravel when the American plenipotentiary to the Berlin Conference of colonial powers in 1885 failed to have his advice heard, concerning the need for the voluntary consent of African natives to the possession of their territories being a basic tenet of bringing civilisation to the continent. In the scramble for Africa that followed and in which the coastal Republic of Liberia duly participated in order to bring an invaluable interior under its sovereignty (and more than doubling the size of original Liberia) the principle of native rights and title was diluted.

It would take until well into the 1950s for Liberia to finally succumb to the convenient (and cheap) colonial orthodoxy that native Africans did not, after all, own the lands they had occupied, used and defended for centuries. From previously being guaranteed right and title they were assured only that their occupancy and use of lands would be protected by the passage of the Aborigines Law in 1956. Overnight Liberians became no better off than their counterparts throughout the continent from South Africa to Senegal, in effect permissive squatters on national or 'public lands'. If they wanted to become recognised

landowners, they had to buy back their lands from the government. To be fair, the prices charged were, and remain, cheap. Several million additional acres have been procured in this way, generally by more aware and wealthier communities. Meanwhile many other areas continued to be allocated to non-customary owners and even foreign companies, or were brought under mining or logging concessions.

The legal instrument for this dispossession was a familiar one. Justice officials in Liberia appear to have found a useful Supreme Court ruling of 1920 which included, within its opinions, findings from another Supreme Court ruling, this time from the US, making it a 'sad but inevitable' reality that natives should lose their property rights when new sovereign states are created. This was the 1823 Marshall ruling which established that while 'aboriginal title' existed, it was less a property title than an indication of political sovereignty and therefore could not co-exist with the superior title imposed by 'discovering' colonial conquerors. This ruling not only put an end to what had up until that point been often benign treatment of American Indian land title but was to be called upon repeatedly in empire building to justify the wholesale dispossession of millions of people around the world when new (colonial) states were created. Natives could lawfully live on the soil (and that right of practical possession would be protected) but they could not own the land itself.

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Separating political sovereignty from ownership of land within the territory

It would take into the 1970s for the contrary cautions of jurists and Supreme Court rulings on all continents to begin to take root in land laws and for accepted 'possession' of rural lands to be concretely reinterpreted. For as the New Zealand Supreme Court had ruled as early as 1847 "it cannot be too solemnly asserted that (native title) is to be respected, that it cannot be extinguished other than by the free and informed consent of Native occupiers". Or as numerous courts including the British Privy Council had offered but been ignored "a mere change in sovereignty is not to be presumed to disturb rights of private owners". Or, as the Canadian Supreme Court was to conclude in 1973, pre-sovereignty property rights of indigenous peoples cannot forever fail to be acknowledged; continued and current occupation today should be acknowledged "as proof of possession and possession to be proof of ownership". As the Appeal Court of Tanzania observed in 1994 to do otherwise is to condemn (Tanzanians) to being squatters on their own land – "a very serious proposition". In short it has taken more than a century (and several centuries in Latin America) to begin to separate the injurious merger of territorial sovereignty rightfully held by the state from real

and collective ownership of the land. It is this task that lies at the heart of much rural tenure reform today.

Aside from the question of human rights, these issues of land rights have stopped generally poor rural majorities from being acknowledged as owners of invaluable capital assets, and in the process have helped prevent them from clambering out of poverty. Though such niceties were ignored in the course of 19th and 20th century state making, the commonsense principle of land rights justice lies at the heart of global tenure reform in agrarian states today. A number of African states are actively participating – and in critical respects, leading – this process; the transformation of African use and occupation of some three billion hectares of land into recognised ownership of those long-held customary properties. Many of the critical assets within those domains are traditionally community owned pastures and forests. Forested land continues to make up the larger proportion of most community land areas in Liberia’s Hinterland.

It is this that is the primary resource governance challenge facing post-conflict Liberia and gives rise to the simple question: “Who owns the forests?”



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Map 4 – County map of Liberia

Showing Sustainable Development Institute (SDI) study areas



Prepared by the geographic information systems and remote sensing laboratory of FDA

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Map 5 – Human population map of Liberia



Prepared by the geographic information systems and remote sensing laboratory of FDA

So, who owns the forests?

This study shows how the unusual early treatment of African land rights in Liberia will make it easier for Liberia than for most other states to take the legal and strategic remedial action needed to arrive at a workable and just answer. The most critical factor is that under Liberian law, in the past, it was seen as common sense to register community land areas as private, group owned properties, through straightforward mechanisms.

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Too casual adjustment of legal norms

Additionally, the study suggests that the damage done to this situation from 1956 onwards was at least partly the consequence of a too-casual adjustment of legal norms in bringing the governance of the Hinterland territory into line with that of the original Littoral territory. In the course of bringing the two territories under a single governance system in the 1950s-1960s, their different origins in terms of land purchase and rights and therefore the meaning of 'public land' was forgotten.

Nor does this study find that officialdom has had much appetite in post-conflict times for endorsing the limitation upon rights and opportunities that has steadily resulted. At least two senior officials in the Ministry of Lands prefer to explain the role of the state as the trustee of unregistered community lands, a fair interpretation. Meanwhile the status of the offending legislation (the Aborigines Law,

1956) is in doubt; by its omission in a later codification of Liberian laws (1973-78) it may be considered no longer in force. Less positively, this leaves a vacuum in national law as to the exact status of customary land interests. New registration law (1974) does not remedy this. This, in the manner of such laws of the period in donor-advised agrarian states, focuses upon the registration of individual parcels and reinforces the idea that 'tribal land rights' covering almost all of the Hinterland do not amount to ownership and are merely encumbrances on government's 'public land'. Nonetheless, there is enough contrary legal precedent to weaken the force of these evolved new policies.

Undue influence of the forestry sector

Perhaps a more troublesome reality to be confronted is the way in which the forestry sector has, since the 1970s, used the demise in customary land rights (since the 1950s) to favourably influence its own operations. Indeed it may be concluded that the determination of the administration to capture the values of the lucrative timber-rich resources on customary lands was a key driver in those tenure policy shifts in the first instance.

Developments in the forestry sector have mirrored property relations in the mining sector, but with perhaps less justification. With the exception of near-surface gold and iron mining, minerals have not played a role in traditional livelihoods. In contrast, forests are and always have been a profoundly integral element of rural land tenure, land use and livelihood. They have never been constitutionally declared national property, unlike minerals.

Nonetheless, the exclusion of forest property rights as part of modern forest governance has continued apace with the National Forestry Reform Law, 2006.

Forests and forestland have become two separate properties. This study identifies this as designed to 'double-lock the door' against meaningful popular participation in decision-making, management and revenue sharing. These are powers, which the Forestry Development Authority tightly holds, though it insists this is not its intent.

The legal reality is that even those communities which hold formal title to their customary properties (almost all of which include substantial forestlands) have no rights to the trees that are integral to the land. In practice this may even extend to planted kola and other trees where they obstruct logging. Formal

The commercial forestry sector has taken full advantage of uncertainties in modern land law



collective legal entitlements are few, but lands held under them include most of the area proclaimed to be National Forests. It is possibly this fact that explains the desperate stratagem of parting trees from the soils they grow from, first introduced into law by a rapacious Taylor Administration in 2000.

Whatever the cause, the result is very limited reform, which does no justice to the proclaimed spirit of the 2006 forestry law. As things stand, forest-owning and dependent communities throughout Liberia may be consulted (but not necessarily heard), and may receive one third of the rent which the government charges through leasing out their lands. There is no sign that communities will gain a share of significantly more lucrative stumpage or export fees. The law is explicit: people have no say as to whether or not their forestlands are logged. Their consent to the lease of their lands (for up to 35 years) for logging or salvage is not required, although they may protest and seek compensation where crops and houses are damaged. Real gains made through the promised reform are hard to find. In real terms this is limited to the above noted promise of one third of rental fees. These fees are, however, likely to be delivered in social services

The core reconstruction needed is from paradigms where the state kindly shares some benefits with the people into paradigms where the state partners and guides the initiatives of the people

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To be fair, this does represent an improvement upon the pre 2006 situation. In fact, the promise of a rental share has been enough of a change to prompt rural communities to actively secure their community land area boundaries in order to prevent capture by the state and to be sure that they and not their neighbours will get the benefit. Just as dramatic are the frequent new community sanctions against opening up intact-forested areas for new farms. These responses would be worthy of celebration if it were not for the fact, as this study found, that most communities are unaware that they will get only a third of their rental due and no other income, nor that they will continue to have no control over their lands. They have no right to determine which of their lands, if any, are leased out to concessions, or even to protect sacred species against felling.



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Steps towards reform

Thus the reform path opened is still at best tentative and narrow. It is also far removed from the structural transformation of forest governance that best practice in the sector internationally presents today.

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Enacting fairer tenure legislation

The critical missing building block is evident: the bringing of tenure relations, which underlie the sector, into fair and therefore lasting order. As the FAO observed following its last global review of forests (2007) the continued absence of attention to land rights remains an obstacle to sustainable conservation and utilisation. For this, the rights of the 1.6 billion rural poor who are more often than not the customary but unrecognised owners of forests must be properly considered. This is not just a matter of justice but of putting the forest economy on a sound and uncontested footing. Only as recognised owners and with the natural rights of owners fairly attended to, will the immense conservation force of rural communities be harnessed. Only as recognised owners will they too, along with national exchequers and big business, have the means to secure and improve their livelihoods. Only as recognised owners will the resentments that often drive degradation dissolve.

There are many examples of shifts to tenure-based forest governance around the

world. In Africa the best-known case is Tanzania. There, nearly five million acres of forest have been added to the protected area network over the last decade in the form of around 1,000 formally declared Village Forest Reserves. Moreover, the rehabilitation, conservation and regulation of these forests are cost-free to the state. The efficiencies of community based forest management have seen an additional nearly four million acres of National Forest Reserves handed over to local communities to manage.

The issue is first and foremost a legal issue. Changes in law undercut the rights of Hinterland Liberians and changes in law must restore those rights



The legal stimulus to this development was land legislation in 1999, which finally acknowledged customary land rights as equivalent to rights secured under introduced statutory forms, and thereby due the full force of law as private property, irrespective of whether or not these rights were held by individuals, families or whole communities and irrespective of whether or not they were registered. Uganda had effected a similar constitutional change in

1995. In Tanzania, this repossession of lands was followed in 2002 by a new forest act which empowered every community in the country to secure its communal forest assets in the form of above-mentioned Village Forest Reserves. The law awards them due right to regulate, licence and enter economic partnerships, provided they adhere to laid out principles and practices. Each community devises its own by-laws, which once approved by district councils are bound to be upheld by the courts as the guiding law for that forest. Community forest owners themselves are bound by the commitments they make in those by-laws. While conservation management is well advanced, commercial logging and eco-tourism agreements with the private sector are still evolving. When this takes off, profits gained will be taxable. Such trends are not confined to Africa, but are also emerging in Central and South America, where community based logging, supported by national forestry authorities, is increasingly entrenched.

Such developments, this study explains, go hand in hand with devolutionary good governance reform. In most African States this is being delivered through the evolution of traditional authority into fully-fledged elected community governments (chiefs as ex-officio chairs as necessary in the first stages), each empowered to govern people and resources within its discrete domain, again under the watchful eye of national regulation.

Comparable changes, specifically tailored to local needs, are fully viable in modern day Liberia.

Nevertheless, the forces ranged against such reconstructed resource governance are considerable and especially where timber values are as high as in Liberia and where rent-seeking in one form or another has flourished.

Honouring land rights and economic growth are compatible

There are unfortunately already signs that issuing new rubber or other concessions over community lands can trigger violence. A main challenge facing the post-conflict administration is to withstand pressure from a cash-poor Treasury and from private business to hurriedly issue concessions over community lands without the procedures and terms being (re)constructed to avoid injustice and conflict. Integral to this is the need to improve the meagre benefit share and decision-making and management powers of customary owners. The founding challenge is to find practical ways to set aside unfounded fears that good governance, resource conservation, economic growth and honouring majority land rights are not compatible.

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



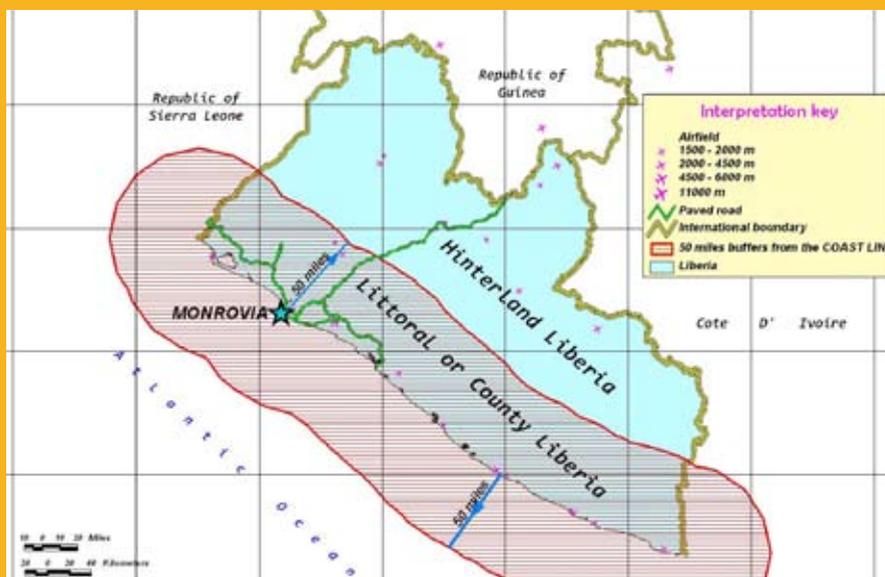
Map 6 – Map of Liberia
 Showing inter-ethnic groups



Prepared by UNMIL GIS Unit 4 October 2006

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Map 7 – Map showing approximate boundary of two territories of Liberia
 Up until 1963



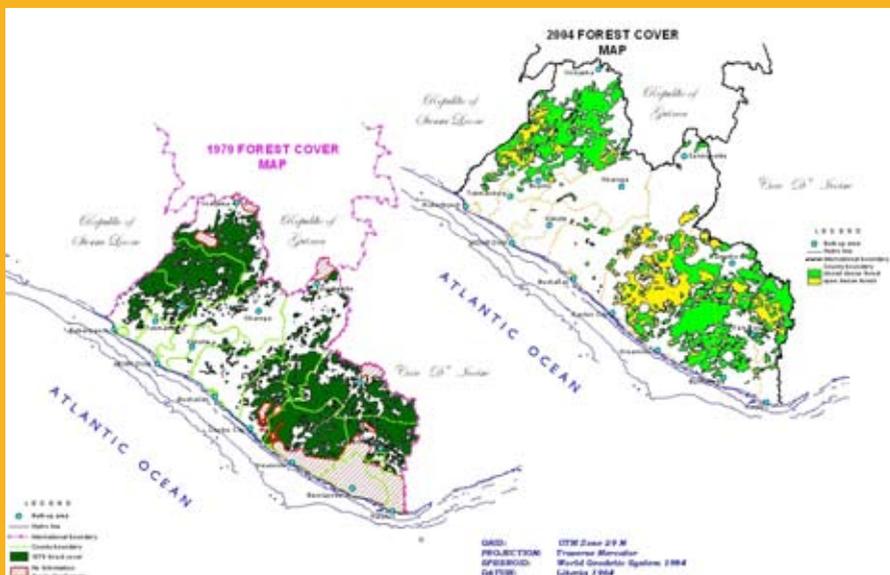
Prepared by the geographic information systems and remote sensing laboratory of FDA

partners in economic development, not end-of-chain beneficiaries. Both will indeed lose part of their (past accustomed) share of profit by the involvement of a third partner, communities, but these losses will be outweighed many times over by the gains to stability in the sector and by the conservation efforts, which communities, by being recognised as forest owners, will provide. There will also be the incalculable benefit of embarking on a path of genuine development matched by growth.

The key instrument for this is clear. Broadly, if it is changes in law which have most diminished the property rights of the rural majority, then it will be the law that restores those rights. Clarification of forest ownership is a pivotal element of this reform, for it is treatment of forestland rights that have most brought the contradictions of people's law and government's law to the fore.

*If law diminished rights
then new law must restore
them*

Map 8 – County map of Liberia showing forest cover loss 1979-2004



Prepared by the geographic information systems and remote sensing laboratory of FDA

Recognising that most forest is owned by communities

The most important legal step, the most important legal step that has to be taken by the forestry sector is to rid the new legislation of the dubious distinction of separating natural trees from the land they grow on and allow the sector to begin working with land owners (titled and untitled) not against them. Reconstruction of procedures to reflect the fact that the forest resource, not just forestland, is already privately owned on a customary basis by communities follows, so giving clarity to the constitutional rights of forest owners. This includes respecting their right to decide if logging should or should not take place on their lands and to be party to agreements from the outset. It includes enabling communities to enter into agreements themselves for the use of their forests, under the regulatory eye of the authority. 'Social contracts' between loggers and communities designed to buy local cooperation will thereby give way to more mature contractual agreements in which communities themselves are the principal partners. The terms of these agreements, guided by regulation and the facilitation services of the FDA, will of necessity cover not just how the concessionaire and salvage contractees will operate, where and with what limitations and duties, but the mechanisms through which the ground rent and other shares of revenue will be delivered to the community resource owner. Income tax and other fees may be withheld at source.

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Related, natural resource legislation needs to provide for the designation of protected areas as a management classification of forests, irrespective of their ownership. In the first instance this would remove the need to de-gazette eleven National Forests which were proclaimed as national property in 1960 without evidence that customary ownership (even as registered in fee simple Aborigines Deeds) was properly dealt with through compensation payments as constitutionally required. In the second instance, it would allow very large areas of forests to be brought under formalised community protection. In this manner Communal Forests would become the major class of forest reserve and within which commercial or conservation developments take place. Current forest law (2006) relegates Community Forests to small forest patches adjacent to settlements.

Providing clear and accessible forms for registering collective ownership

Within the property sector, restitution of the 'right and title' of customary owners to their respective collectively owned land areas needs to be made explicit in law. This should be in terms which unambiguously recognises private property

rights, to be upheld by the courts to the same degree as other private rights, registered or not yet registered, and subject to full compensation in the event of compulsory acquisition for genuine public purposes. Procedures for securing the consent of communities for alienating their lands need revisiting.

A new tenure arrangement more suited to customary property norms is also required. This is less critical for the basic entitlement of the community as landowner than to cater to the needs of individuals and families seeking greater security of tenure over respective parcels within the community property (such as for farms and houses).

Under the current system, their establishment of title alienates these parcels entirely from community ownership and jurisdiction; this allows elites to fail to use the land for the purpose claimed and opens the way to land hoarding

and speculation. A customary leasehold of varying duration and conditions, drawn from a founding collective customary deed of ownership, would be more appropriate. Several African States have developed forms in recent years which fulfil such requirements, and these deserve scrutiny for their usefulness to Liberia.

There is no basis in the constitution or property law to render forest resources the property of the state

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

Another change will be to reconstruct land classes. Tribal land is best conceived as community land and distinct from public land, itself necessarily defined as national property acquired for genuinely public purposes (schools, roads, service centres, etc.). Amendments to the Public Lands Law, still fashioned around the needs of immigrants in the mid 19th century, need to follow.

Catching up with justice and the demands of the people

Rural Liberians should also be supported in attempts to formalise their collective ownership. While systematic titling rightly raises alarm given its poor record across the continent, the conditions and demands in Liberia suggest there could be a different outcome. The number of parcels referred to in the first instance is few; areas administratively designated as clan areas number fewer than 1,000



photo Jola Lead Riesco



photo Jola Lead Riesco

collective estates. Boundaries are often rivers and streams. As a UNDP funded exercise demonstrated in 2006, the boundaries of all 73 clan areas in its pilot county were identified and mapped together with community leaders in a matter of a few weeks. Should villages (towns) within these clan areas be the target, these too are comparatively few in registration terms at around 11,000. Communities need to be free to choose at which level it is most viable for them to secure formal entitlement. This is pertinent, as administrative designation of community land areas tends to vary, some defined as towns, others as clan areas or chiefdoms.

Communities are already taking the basic steps needed to secure their founding collective property rights. The government needs to catch up

”

Demand for collective entitlement is extremely high, following years of war, displacement and the considerable efforts of communities to re-establish themselves and confirm their respective land areas. In the meantime the population has grown. In some cases larger settlements are subdividing into two or more settlements, at which point establishment of boundaries becomes important. Enclosure behaviour is everywhere visible; many communities seeking to protect their declining resources from encroachment by neighbouring commu-



photo Tommy Garnett

nities, 'notables,' and in forested counties by the Liberian State, with worries that the FDA will again ignore the fact that the forested areas of their territories belong to the communities. There is already a considerable level of dispute over boundaries, though this is mostly constructive in that the results are agreed by both parties and in the form of more clearly specified boundaries among communities. Applications for collective entitlement to county land commissioners abound. While new land laws should establish that customary rights are protected without formal registration, Liberian communities are all too painfully aware that they need the double insurance of probated deeds documenting such moves. As a senior official has observed, the demand and readiness for formal registration of community land areas is such that it is in this instance the government that needs to catch up with the people and to revise its 1970s commitment to sub-division and individualisation of tenure where this is not applicable – such as relating to forests, not well-suited to such subdivision.

Integrating land and forest reform with local governance reform

There are also good governance reasons why the current flurry of boundary agreements should not be discouraged; 'community land areas' are a vibrant governance norm. Traditionally chiefs are already 'elected' by their people and these arrangements may be readily developed into more inclusively democratic and empowering community governments. Liberian communities already

regulate not just their social lives but their internal land use and tenure relations. The evolution of this into more specific legal powers and duties is logical and overdue. Legislation and various programmes may readily guide the formation of community councils with a clear strategic vision as to their formal rights and responsibilities including primary authority over their land and other natural resources. Experiences in Africa abound in how this may be practically achieved.

One effect of recent changes is that collective identity and the desire for action are strengthening, not declining. This is typical of customary regimes today where naturally collective resources like forests or pastures are a central asset of the community



Such steps would lead to advances in good governance among rural people and of their resources. They also offer the

promise of turning a fraught state-people relationship into a working partnership. National revenue losses will be minimal, although the mechanisms through which these are obtained will alter significantly.

Drafting the community rights law with a holistic reform vision in view

A complete overhaul of land law will be needed sooner rather than later - a task already beginning under the guidance of the Governance Reform Commission. This will necessarily make the status of customary land interests a focus of rural reforms. In the short term, the proposed community rights law will be able to lead the way and should be structured to do so. Its amending effects should extend well beyond the new forestry law into standing legislation affecting Hinterland local government and particularly the existing Public Lands Law and Property Law. Precise suggestions for content and overall strategy are made in the full report.



photo Iola Leal Riesco

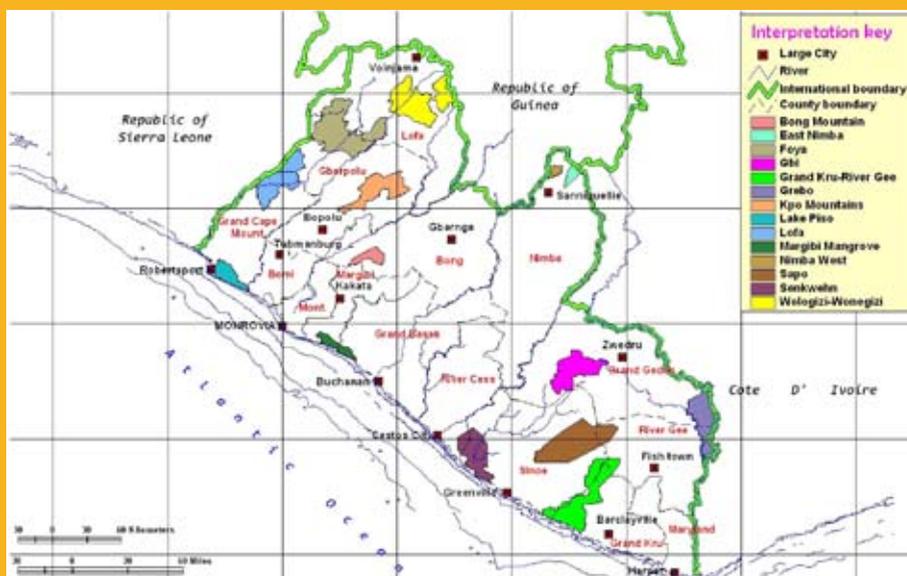
Map 9 – Overlay of 2002 concession areas on the forest cover



Prepared by the geographic information systems and remote sensing laboratory of FDA

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Map 10 – Protected area network of Liberia
Up until 1963



Prepared by the geographic information systems and remote sensing laboratory of FDA

Abstract

State/people forest relations are at a turning point in Liberia. Depending upon decisions made in the near future, including by the legislature, there could be a move towards reform or into crisis. The crux of the issue is property rights and how the interests of rural Liberians are treated in law and in practice. Central to both the problem and the solution is the status of customary land tenure.

This paper makes an investigative journey, tracking down what happened to the rights indigenous Liberians have to their lands and the valuable forests that grow on them. The driving purpose is the commitment of the Liberian Government to put a community rights law to the legislature in 2007 and the acknowledged need for forest tenure issues to be thoroughly addressed in such legislation. This links to new political commitment to reform both land ownership and local government regimes, upon which good governance ultimately rests.

This study looks back at the treatment of customary land tenure over the century-long process of forming the modern Liberian State. Through fieldwork, the study identifies customary property norms as operating today. The results are surprising. The study finds that colonial policy with regard to indigenous land interests was uncharacteristically benign in Liberia, as was the imposition of indirect rule. Together these have created a foundation upon which democratic land relations may be rebuilt.

There is also genuine vibrancy and life in collective norms of customary tenure, which is closely linked to the role of forestland in the rural economy. Interference in customary property rights is found to have been severe but recent. Favourable conditions for remedying the situation exist. These include a body of legal precedent and registration practice, which includes rather than excludes collective entitlement. Remedial rather than radical action is required. The hope for a solution to these problems is increased by the willingness of the post-conflict administration to right injustices and to put aside concern about the incompatibility of good governance, resource conservation, economic growth, and honouring majority land rights. Practical steps for moving forward are suggested. Much rests on the proposed community rights law. Suggestions for its content are given.

Glossary

Aborigines	term used in Liberia to refer to indigenous Africans living in the interior
Aborigines Land Deeds	documents issued to ‘natives’ during the first half of the 20th century either allocating mainly quarter acre town deeds to civilised ‘natives’ or later deeds acknowledging the right and title of tribes in the Hinterland
Allodial title	direct ownership of land with no higher person or entity holding ultimate title in the land
Cadastral registration	a modern form of land rights registration which identifies the parcel in map coordinates enabling it to be easily traced; a number unique to that parcel is also given against which all deeds (e.g. sale, inheritance) are logged
Commonhold	used here to describe shared legal entitlement of a parcel of land
Common law	nationally applicable rules and principles that have evolved through court decisions rather than from enactments
Communal domain	(common property, communal land, territory) a discrete area of land over which a community is acknowledged by neighbouring communities as having ownership and jurisdiction
Communal tenure	shared holding of land, characteristic of indigenous or customary systems of tenure
Community	a social group such as a village, village cluster or chiefdom normally having its own discrete territory
Customary land tenure	a pre-state system of arranging ownership and rights of access to land
Customary law	rules made and followed by a community and which may meet punishment if broken; like national laws they are periodically amended to meet new circumstances
Derivative rights	interests in land which are less than ownership, including use rights (usufructs) and seasonal access rights
Domain	the land area or territory of a community
Estate	a parcel or tract of land
Fee simple	the most complete form of land ownership in Anglo-American law and often imported with colonialism; in English law referred to as freehold
Forest concession	a grant of rights to log a large area of forest subject to agreed practices and conditions
Hinterland	the interior larger half of modern Liberia formally incorporated into Liberia in the 1920s

Indigenous tenure	(customary tenure) indigenous and customary tenure may be used interchangeably as pre-State regimes
Land deed	a document which has been registered in a court or official records describing a grant, sale, gift, inheritance, or other transaction relating to a parcel of land
Land rights, land interests	these cover any rights to land; they may be absolute rights of ownership, usufruct rights, access rights, lease rights, etc
Leasehold	a right to use land for a specified period given by a land owner to another, usually on payment or agreement of an annual rent
Littoral	coastal Liberia extending around 40-50 km inland as brought under settler control from 1821 and prior to incorporation of Hinterland areas into Liberia in the early 20th century
Natural rights	the fundamental rights to which all persons are entitled without interference by the state
Ownership	the exclusive right to use, possess, and dispose of property
Parcel	a plot of land, large or small, but with boundaries known and described
Possession	actual control of property, combined with intention to use it, rightly or wrongly, as one's own
Pre-emption	the right of first refusal to purchase land in the event that the owner should sell
Prescription	acquisition of land through uninterrupted and unchallenged use over a long period
Private land	used here to mean land for which the owner holds a registered title; the owner of private land may be an individual, couple, family, group, community, company or other entity
Probate	a court procedure for validating a deed of any kind including wills
Property rights	rights of ownership, use or access to land, as acquired and held either under customary or statutory law
Public land	varies in meaning from land owned by the nation, the state or government to land without known or registered owners and held therefore by government in trust for those owners
Public land Certificate	a consent form permitting an applicant to survey a parcel of land with a view to getting a title deed; used mainly in coastal Liberia; same effect as tribal land certificate
Public Land Sale Deed	a document attesting to fact that the holder has bought a specific parcel of public land from government
Register	an official register recording grant, allocation, gift, sale, inheritance or other transaction in land including between individuals
Registration	formal recordation of the status of a parcel of land, the owner and the type of ownership
Title deed	document attesting to grant, gift, purchase or allocation of a parcel of land, describing the parcel and naming the owner

Tribal land Certificate	a consent to survey a parcel of land within a tribal territory, signed by tribal authorities and declaring that the parcel is no longer part of tribal land; used in the Hinterland
Sovereignty	supreme political authority of a state exercised over a specific territory ('country'); not to be confused with ownership of land within the territory
Statutory law, national law	laws which are passed by a state-making body or legislature and which apply nationally. Customary laws may gain the force of national law by being placed within an enactment
Tenure system, tenure regime	the constructs and procedures by which real property is acquired, held and disposed of; the system may be determined by statute (statutory tenure), by agreed precedent (common law) or by customary practice and rules (customary law) – or by a combination of these
Terra nullius	the convenient colonial notion that indigenous communities did not own their land, that the land was empty of owners
Title	a right of ownership of property
Torrens system	an Australian system of cadastral registration linking the owner of a land estate to its geographic location, introduced by the Land Registration Law 1974 but not applied outside central Monrovia
Town	used in Liberia to refer to village settlements of almost any size
Warranty deed	a land transfer deed issued when an already owned parcel is sold, gifted, etc. Does not require the signature of the President to be legal but must be probated

Acronyms

ACS	American Colonization Society
CIFOR	Centre for International Forestry Research
CPA	Comprehensive Peace Agreement
DfID	UK Department for International Development
ECOMIL	The Nigerian-led forces of ECOWAS deployed to Liberia in 2003
ECOMOG	Economic Community Monitoring Groups established by ECOWAS in 1990
ECOWAS	16 member Economic Community of West African States
FAO	Food and Agriculture Organization (UN)
FDA	Forestry Development Authority
FERN	Forests and the EU Resource Network
GDP	Gross Development Product
GoL	Government of Liberia
GRC	Governance Reform Commission
IDP	Internally Displaced Person
IGNU	Interim Government of National Unity
LAC	Liberian Agricultural Company
LISGIS	Liberian Institute of Statistics and Geo-Information Services
LPC	Liberian Peace Council
LURD	Liberians United for Reconciliation and Democracy
MLME	Ministry of Lands, Mines and Energy
MODEL	Movement for Democracy in Liberia
NFMS	National Forest Management Strategy
NFRL	National Forestry Reform Law of 2006
NGO	Non Governmental Organisation
NIMAC	National Information Management Centre
NPFL	National Patriotic Front of Liberia
NPP	National Patriotic Party
NRC	Norwegian Refugee Council
OTC	Oriental Timber Company
RUF	Revolutionary United Front (Sierra Leone)
SDI	Sustainable Development Institute
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	The United Nations High Commissioner for Refugees
ULIMO	United Liberian Movement for Democracy
UNMIL	UN Military Mission in Liberia
VAM	Vulnerability Analysis and Mapping
WFP	World Food Programme (UN)

Introduction



photo David Brown

1 The study

This paper reports on a study of forest tenure in Liberia with particular reference to community interests. The Sustainable Development Institute (SDI) in Liberia commissioned the study to be able to provide input towards drafting a law governing community rights in Liberia. SDI has taken on this task in cooperation with the Forestry Development Authority of Liberia (FDA) and other agencies as well as NGOs.

The Government of Liberia was directed to submit a community rights law to the legislature in 2007 by Article 10 of the National Forestry Reform Law 2006 (hereafter NFRL). The decision to enact a special law governing community rights arises from concern expressed in the public domain that while the new forestry law marks a new era in citizen-friendly forest management it fails to sufficiently address the rights of populations upon whose traditional lands forests grow. These people number around one million, or a third of the total population of Liberia. Map 3, page 8, shows the substantial area of Liberia that is forested.

The precise purpose of the study was fourfold:

- to identify the customary tenure relationship of people with forests today;
- to examine how this is or is not supported in national law;
- to examine the legal and governance implications;
- to articulate strategic ways forward.

Inevitably, reform in one degree or another is suggested in the construction of land relations underpinning forests and other customary assets. This is timely given the Johnson Sirleaf Administration's commitment to land reform, preparations for which are under way under the leadership of the Governance Reform Commission (GRC).³ The findings of this study suggest that the position of customary tenure in state law will necessarily be a key focus for reforms affecting rural areas. The community rights law provides an important opportunity to make first changes. It is increasingly accepted that its provisions will have an amending effect not just upon the new National Forestry Reform Law 2006 but also on other land and governance legislation.

3 GRC 2007a, 2007b, The Analyst 2007.

The urgency cannot be over-emphasised. The financially hard-pressed new administration and specifically the FDA want to issue new logging concessions but are concerned about jeopardising community interests by prematurely doing so. Interim strategies are difficult to arrive at, given the lengthy term of concessions and the likelihood that the community rights law will alter their terms. Thus, while more research is needed, for the purposes of the proposed law, the tenure information provided here must suffice.

2 Implementation

The study has been limited in scope and time. Only customary tenure directly relevant to forest ownership has been thoroughly covered. Several trips have been made by the author, initially to design and test field studies, largely implemented by resident SDI staff.⁴

The legal status of property interests is pivotal to land relations past and present. Much difficulty was encountered finding and analysing the law. As the new Minister of Justice has observed, it is not just the war which has caused documents to be difficult to access or confusion as to their status to reign, but also past systemic failures in the justice service.⁵ Land deed information is known to exist in several archives but is hard to access, as well as remaining essentially uncatalogued.⁶ Relevant scholarship on the subject of tenure in Liberia is minimal.⁷

Fieldwork with customary landholders in 37 villages proved more straightforward. However this was limited to small study areas in five of Liberia's fifteen administrative counties (map 4, page 16). Although similar as clusters of related villages, three of these areas are administratively defined as 'clan areas' while two are defined as 'chiefdoms'. The selection of counties was made with a bias towards forested areas, but spread geographically to ensure coverage of coastal and hinterland zones, to sample main ethno-linguistic differences and different levels of population density and permanent tree crop farming. Map 5, page 16, illustrates population density in 2004. Table 1, page 52, provides an overview of selected counties against the above criteria.

4 Led by Dr. Sam Koffa, an experienced social forester, and ably assisted by Zlenyonoh Tarlue, Jonathan Yiah and Trokon Brown, with additional inputs examining court disputes by Dr. Lofen Keneah, a part-time legal adviser to SDI.

5 Banks 2006.

6 Various held in the Ministry of Foreign Affairs, the National Archives and the President's Mansion, the last due to the fact that original title deeds are signed by the President.

7 Even a detailed profile on tenure was able to cite only one or two studies (Knox 1998).

Table 1 – Broad differences among study counties against primary criteria

study counties	Rivercess	Gbarpolu	Grand Cape Mount	Grand Gedeh	Nimba
extent of forest cover	medium	high	low	high	medium
location	Coastal (central)	Hinterland (north)	Coastal (north-west)	Hinterland (south-east)	Hinterland (east)
dominant ethno-linguistic group	'Bassa' (mixed)	Kpelle and Gbandi	Vai	'Krahn' (mixed)	Mano and Gio
population density* (persons per sq km)	very low (5.6)	low**	low (7.2)	low (9.2)	very high (46.3)
% households growing tree crops***	medium (27%)	low (18%)	low (10%)	medium (26%)	high (47%)
<p>* Using official 2004 figures. ** Gbarpolu County is a new county (2006) and 2004 population data does not coincide with its boundaries. *** Using WFP 2006 data.</p>					

About a month was spent in the field between March and May 2007. Additional days were spent visiting County Land Commissioners and courts in Bong and Margibi Counties for comparative information on land cases. About 1,100 men and women were interviewed, mainly in the course of 40 group meetings. Meetings were also held with more than 100 local officials and leaders. Around 35 officials or agency representatives were visited in Monrovia (annex A).

3 Presentation

Half-way through fieldwork, the author produced an interim report for limited circulation. This laid out provisional findings (March 2007).⁸ The intention was to alert policy-makers to the need for significantly more change in tenure and forest governance than appeared to be anticipated. The opportunity was also taken to point out positive conditions that exist for reform in the land sector and in ways that will contribute to, not derogate from, the need for balanced socio-economic change with growth. The tentative findings are largely confirmed in this final paper.

This final paper is presented in five chapters.

Chapter 1 provides the background on Liberia with special attention to the historical conditions which determined state-people land relations in forested and mainly Hinterland areas of Liberia today. An overview of the events leading up to the commitment towards a community rights law is also given.

Chapter 2 analyses the legal treatment of customary land rights in national law (statutory law). This is prefaced by a comment on what is meant by customary law and customary land tenure.

Chapter 3 looks at key elements of customary land tenure as practised today, based on field studies in 37 villages ('towns'). This includes identification of property disputes to determine where relations are most stressed.

Chapter 4 focuses on forests to understand how they are considered owned in peoples' law and state law. The policy and strategy of the new National Forestry Reform Law 2006 as affecting community interests are examined.

Chapter 5 turns to practical remedies. The chapter opens with broad conclusions. Recommended actions are elaborated within a framework emphasising the mutually supportive demands of securing majority property rights, good governance of forests and local government evolution towards formal community-based government in rural areas.

8 An Interim Comment on Customary Land Tenure in Post-Conflict Liberia, Alden Wily, L. for SDI, Monrovia, April 2007. Available at www.loggingoff.info

As explained in previous chapters, optimal changes do not amount to radical surgery. They do require a shift in mindset and, at the practical level, a change in how the forestry sector does business. The paper suggests how this may be practically achieved through building upon clearer acknowledgement of property rights. The choice, the study illustrates, is not between meeting social rights and serving the needs of investment and revenues but in restructuring resource tenure and governance to allow the two to serve each other.

Chapter 1 **The context**

This chapter examines the evolution of state/people land relations in its historical context. This information is necessary to understand why land law affecting rural Liberians is as it is today. The chapter concludes with an overview of the forest resource and the events leading to a political decision to draft and enact a community rights law.



photo David Brown

1 Liberia: an overview

Although one of Africa's smaller countries in area and population,⁹ Liberia is principally famous for being one of the wettest countries in Africa (mean of 4,650 mm annually), for containing more than half of the rich Upper Guinean tropical forest left in West Africa (4.4 million ha of ca 8 million ha) and for its substantial mineral wealth (iron ore, gold, diamonds, manganese and silica).¹⁰

It is also famous as having been the first in Africa to declare itself an independent state (1847), as being one of only two states who were signatories to the formation of the League of Nations, and being the first African country to elect a female President (Ellen Johnson Sirleaf, 2005) (box 1, page 59).

Liberia is also known for being the home of the largest rubber plantation in the world (Firestone's one million acres) and for 10% of its area being under long lease to agri-business, still partly foreign-owned (annex B). It is also famous as offering a 'flag of convenience' to shipping through its maritime registry, an institution borne out of the longstanding sea trade along the coast in the 19th century.

Conflicts over land ownership were not a direct cause of civil war – but could become the trigger for conflict in the future



Less glamorously, Liberia stood accused of slavery by the League of Nations in 1929 in face of its government dispatching indentured labour to the off-shore Spanish territory of Fernando Po along with accusations that it was operating a coerced native labour regime at home.¹¹ Plantation labour conditions within Liberia remain an international concern today, the country's accession to relevant international treaties as listed in annex G notwithstanding.¹²

9 Liberia is the 12th smallest mainland country in Africa at 11,370 sq km (including water), roughly the size of Benin, or 1/20 the size of Sudan. Current population data vary widely by agency and this paper uses 2004 government figures, considered the most reliable pending the 2008 Census. The preliminary estimate by LISGIS is 3.7 million people.

10 Information in this section is sourced from internet and other resources, including: Huberich 1947, Guannu 1997, Richards et al. 2005, Richards (ed.) 2005, Utas 2005, Hodson de Otaola 2005, WFP 2006, Population Reference Bureau 2006, UNMIL 2006a and 2006b, NRC 2006, US Department of State 2007, UNFPA 2007 and Solomon, 2006.

11 Report of the Christy Commission, 1930. www.globalsecurity.org See Huberich, 1947:908ff for legal analysis.

12 UNMIL 2006a.

Yet more recently there has been the infamous and tragically brutal civil war waged between 1989 and 2003, with a respite in the early 1990s. Box 2, page 60, provides an overview. The roots of the war are multiple and difficult to decipher. This study found that, unusually, there is no evidence that the conflict was directly triggered by conflict over land access or land rights although this doubtless was inherent in the tensions which most clearly aligned along an 'Americo-Liberian' and 'native' divide.¹³ As this paper will elaborate, the chance of such conflicts arising in the future is real.

Recovery from the war is under way.¹⁴ GDP has risen from \$ 548 million in 2004 to \$2.3 billion in mid-2007. Liberia's per capita GDP rank as 210 among 231 states has accordingly risen. USAID, associated with Liberia since the 1960s, remains the major donor in reconstruction including underwriting the costs of UN peacekeeping. 15,000 soldiers have been in place since 2007.

Nonetheless, the country and its people are struggling. WFP reports that only one fifth of Liberians are literate, and only six other countries in the world have higher rates of fertility or a lower mean life expectancy. Over half the population is classed 'food vulnerable or insecure'. Unemployment is 'incalculable'.¹⁵ The fate of a generation deprived of education, and with lurid experiences as child soldiers, is a particular concern.

13 Compare for example the prominent role of land dispute in Afghanistan (Alden Wily 2003a), Rwanda and Burundi (Huggins et al. 2005), Sudan (Johnson 2003) and the Balkans and Guatemala among many other civil wars (Van der Molen and Lemmen (eds.) 2004). Clarifying the role of land tenure conflicts in civil wars is important given a tendency to exaggerate this after the fact and a failure to disaggregate disputes caused by the war and those that may have helped bring a country to civil war. For relevant literature see Fearnley and Chiwandamira, 2006, Hurwitz et al. 2005, Unruh, 2004 and for specifically Liberia see Richards passim, NRC 2006, 2007 and Solomon 2006.

14 UNMIL, WFP, the National Human Development Report and the US Department of State are among those regularly updating indicators, available on internet sites.

15 WFP 2006.

Box 1 – Timeline of the Liberian State

- 1821-1839 Establishment of the private Colonies of Liberia (Montserrat, New Georgia, Bassa Cove, Edina, Mississippi in Africa, Maryland in Africa)
- 1839 The Commonwealth of Liberia: Montserrat and New Georgia, Bassa Cove and Edina combine to form a Commonwealth, joined by Mississippi in 1842
- 1847-1980 Declaration of Independence by the Colony, establishment of the Republic of Liberia ('First Republic'). Remains throughout a one-party state under the True Whig Party
- 1980 Second Republic of Liberia established by Master Sergeant Samuel Doe, Chairman of the People's Redemption Council (PRC). New Constitution 1986
- 1985 Doe elected President in fraud-ridden election. Attempted coup fails. Reprisals begin
- 1989 In December, around 100 rebels led by Charles Taylor invade from Côte D'Ivoire, reaching outskirts of Monrovia in 1990
- 1990 Bloody civil war begins and lasts until 1997. ECOWAS intervenes and prevents Monrovia being taken. Prince Johnson breaks from Taylor, forms Independent National Patriotic Front (INPF) and kills Doe. Other rebel groups join in (LPC, ULIMO-K and ULIMO-J). Interim Government of National Unity (IGNU) formed in Gambia under auspices of ECOWAS, headed by Amos Sawyer (1990-1993). Five presidents follow until elections
- 1997 Charles Taylor wins election (1997-2003)
- 1999 Civil War restarts led by two coalitions of rebels (LURD and MODEL)
- 2003 ECOWAS facilitates peace talks among factions. Special Court for Sierra Leone indicts Taylor for actively supporting rebel groups in Sierra Leone. Fighting continues, particularly around Monrovia. Taylor persuaded by international community to depart for Nigeria. ECOWAS sends 3,600-strong peacekeeping mission (ECOMIL). Comprehensive Peace Agreement (CPA) signed among rebel groups, political parties and civil society on August 18. National Transitional Government of Liberia (NTGL) formed under Gyude Bryant. UN takes over security with 15,000 peacekeepers (UNMIL)
- 2005-06 Presidential elections held in October with run-off in November, won by Ellen Johnson Sirleaf, inaugurated January 2006. Twelve of 30 registered political parties are represented in the bicameral legislature (30 Senators in the Senate and 64 Representatives in the House of Representatives).

Box 2 – The Liberian civil war, 1989-2005

The immediate trigger to the Liberian civil war was the formation of rebel groups in protest at the corruption and ethnic bias of Samuel Doe's regime. Charles Taylor's National Patriotic Front of Liberia (NPFL) was prominent among them. Doe's regime had been launched by a *coup d'état* in 1980 and was acclaimed for bringing the first indigenous president to power. Many argue that it was this act of lifting the lid on 133 years of subordination of indigenous Africans, which triggered upheavals in society. This was exacerbated by Doe's failure to do other than consolidate inter-ethnic rivalries. Those accused of oppressive policies were the Americo-Liberian elite, born of immigrant settlers from 1821, who gathered around them a limited indigenous elite during the mid 20th century in order to sustain a political oligarchy in the form of the True Whig Party (Solomon, 2006). The combined elite had maintained a stranglehold on the political and economic life of the evolving nation, built upon characteristically colonial attitudes towards the indigenous majority ('uncivilised aborigines'). Broadly a coastal and Hinterland divide pertained in political, economic and labour relations. This was sustained in the way in which the Hinterland was governed (e.g. Brown *passim*). Richards et al. 2005 argue that a key fault-line was dissatisfaction among younger men due to their economic exclusion, compounding traditionally oppressive inter-generational norms.

Civil war in 1989 gave way to a West African-engineered veneer of peace, under the guiding hand of ECOWAS. Peacekeeping began with a mainly Nigerian force of 5,000 soldiers in 1990 (ECOMOG). Its first act was to prevent Charles Taylor from taking Monrovia in 1990 and enabling the establishment of a series of unstable Interim Governments of National Unity (IGNU). Taylor refused to work with IGNU and war restarted until peace accords were signed and an election was finally held in July 1997. This was won by Taylor. Dissatisfaction continued and the insurgency persisted. Taylor's forces became known for brutality, his Administration notorious for corruption and his own accumulation of wealth at the expense of struggling citizens was despised. But it was his support for rebel groups in neighbouring countries that finally brought his demise.

This reflects one of the most important elements of the Liberian war years, in the way it both fed and became inseparable from wider conflict in the region, now often referred to as 'The Mano River Conflicts'. Sierra Leone, Guinea, and Côte D'Ivoire were all involved. Taylor's use of rebel groups in Sierra Leone in his fight to gain and then hold onto power at home led to his coerced removal from office by the international community and exile in Nigeria (August 2003) and his indictment by the Special Court for Sierra Leone for crimes against humanity, now sitting in The Hague (2007).

At home, the war left an estimated 270,000 Liberians dead and generated massive displacement with around 90% of households affected. While most who fled have returned, large numbers have not, with urbanisation rates soaring since 2005. The war deprived a generation of stable education and created the largest child-soldier contingent ever known. The ill effects are seen today, not helped by lack of employment opportunities. Illegal chain sawing of forests and gold mining are two of the more productive activities, which former combatants have adopted. There is evidence that young miners from other countries are also involved in illegal mining activity, including the alleged export of diamonds (UNMIL 2006b).

Meanwhile the legitimate economy was crippled. Business and exports in 1989 were heavily controlled by foreign enterprise and as foreigners fled, these industries collapsed, including the most important contributor, iron ore. While the Taylor presidency from 1997 saw timber and rubber exports grow, mismanagement, corruption and conflict minimised the benefits except for an elite. Collapse accelerated with imposition of UN 'smart' sanctions against timber and diamond exports in May 2001. Although since lifted, only diamond exports have resumed.¹⁶ Rubber production was maintained and along with income from the maritime registry, is now the main contributor to the Treasury.¹⁷

¹⁶ See later for timber. Diamond sanctions were terminated by the UN Security Council on April 27, 2007 by Resolution 1753, and with a pledge that all future exports will be certified through the Kimberley Process Certification Scheme. A moratorium on diamond exports was sustained by the Liberian Government until July 31 2007.

¹⁷ Rubber exports rose from \$ 19.4 million in 1997 to \$ 57.4 million in 2002 (UNMIL 2006a). Annual revenue from the maritime registry is \$ 15 million (US Department of State 2007).

2 Land and territorial relations in early Liberia

Five features in the evolution of the Liberian State have special bearing upon land relations today, only the first of which is not unique to Liberia.

In summary, these are:

1. The territory now known as Liberia was not 'terra nullius' when American colonists arrived in 1821; that is, it was far from empty, unsettled or un-owned.

2. Although Liberians are rightly proud of having never been colonised by another nation state, the reality is more complex: privately sponsored colonisation did occur and the Declaration of Independence made by its settlers in 1847 marked their independence from those sponsoring societies. The indigenous majority continued to live under 'colonial' norms led by these settlers and their descendants throughout the era now designated as the *first* Republic (1847-1980). This greatly affected their land rights.

3. The area established as colonial Liberia ('the Littoral' or later 'County Liberia') embraced well under half of the territory of modern Liberia. Political sovereignty over the greater half (the Hinterland) was not seriously sought before 1880 or achieved until 1930. The history of land relations with indigenes (native Africans) in the two areas accordingly evolved in different ways.

4. The Hinterland was officially governed separately from the Littoral until 1964 and in many respects continues to be governed under different norms. The most important is that although reshaped, tribal administration and customary law has had unbroken continuity in that territory. Ironically, the unification of the two areas in 1964 would prove to the detriment of majority land rights in the Hinterland.

5. The approach which the early US-backed colonies in Liberia adopted to the land rights of Africans was almost unique on the continent.¹⁸ They recognised the land belonged to Africans and bought their settlement areas from them. This was not to be the case in the Hinterland.

18 The other main exception is in Central Ghana, where powerful Ashanti chiefs prevented Britain capturing legal ownership of their lands in the course of establishing the Gold Coast colony and who have retained allodial ownership since; Woodman 1996, Ubink 2007.

These five features are elaborated below within a narrative overview of the territorial history of Liberia and through which their significance will become clear.

2.1 The pre-colonial era

The historical orthodoxy is that three successive great empires rose and fell in West Africa, including the Sahel, during the 12th to 17th centuries. As a result of the periodic dispersions, steady migration into the deeply forested area that is now Liberia followed, particularly between 1300 and 1600.¹⁹ Broadly, these groups came either from the South (what is now Côte D’Ivoire and Ghana) or from the North (now Guinea and Mali).

By 1460 Portuguese traders found the coast well settled as did the Dutch in 1602 when Vai chiefs refused permission for them to establish a trading post. By 1700 trading between Africans and Europeans along the coast was brisk, initially for

Collective ownership of discrete territories was well-established before the settlers arrived



locally-mined gold, ivory and then for slaves. All peoples in what is now Liberia were eventually involved in the ‘Great Atlantic Slave Trade’. This expanded until 1808 when the main market, the USA, banned the trade.²⁰

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An important aspect of pre-colonial settlements relevant to this study was that these were sedentary and broadly stable. These were not stock-owning nomads of drier Northern and Western zones, and cultivation and forest product use were entrenched. Territoriality among groups shows signs of having been intense, given the strong oral history of recurrent warfare, each community protecting its own forested domain (full of wildlife, ivory and gold) against raids for these resources and for women and slaves.²¹ It may be safely assumed that the notion of ‘our land’ was tangible.

Additionally there are features of settlement patterns encountered from 1821, which suggest that each self-defining community (‘tribe’) had its own discrete area and among which rivers were the main boundaries. Language differences

19 Including the Ghana Empire, the Malian Empire and largest and strongest, the Sahara Songhai Empire.

20 This section draws upon Guannu 1997, Ministry of Education Undated, Richards (ed.) 2005, Wikipedia and other internet resources. The author is also grateful for the insights of Jeanette Carter and David Brown on matters relating to tribal identity and formation.

21 Guannu 1997, and as taught in school textbooks, Ministry of Education Undated.

show that groups moving from the North and North-west mainly settled in the North and West of modern Liberia and those from the South and East, in the South-eastern part of modern Liberia. Carter, an anthropologist with long experience in Liberia, suggests a broad line may still be drawn between those living in the five Southern counties of Liberia and those living in the remaining nine central and Northern counties, the most ethnically mixed Montserrado County (Monrovia) being the exception.²²

For socio-spatial considerations, the 'North-South' distinction has relevance. The more numerous Northern groups appear to have brought with them or developed more complex territories within which several levels of alliance and authority existed; this began and still begins at the village, ascending to a village cluster (or 'clan'), to an ultimate superior chief or 'king', who exerted varying degrees of authority, by military might of agreed alliances.

In contrast, those in the South appeared to favour smaller and more autonomous units in line with dialect differences. Even today the Gei (Glio, Gleiwe) living on the Côte D'Ivoire border possibly number no more than 1,000 people.²³ Nor did Southern groups so commonly pay allegiance to overlords or establish hierarchical alliances.²⁴ Some were even without chiefs of their own, elders fulfilling leadership functions. As formalised tribal authority was established from the 1920s along lines encountered in Central and Northern areas, such groups would find themselves 'creating' chiefs and 'chiefdoms'.

Nonetheless, whatever the differences among self-defining ethnicities in the pre-colonial period or thereafter, a singular method of socio-spatial organisation is uniformly apparent; that each group, no matter how complex its definition, possessed its own discrete land area or territory. This was everywhere the village. It is how these relate to each other that is more varied.

The above is relevant to the way in which tribes are defined today in Liberia. It is common for both the Liberian Government and assisting agencies to refer to sixteen tribes or ethnic groups, arranged in three language groups: Krahn or

22 Pers comm. J. Carter.

23 Pers comm. D. Brown.

24 Pers comm. D. Brown.

Kwa, Mande and Mano speakers, and Kpelle,²⁵ distributed as shown in UNMIL's representation (map 6, page 24).

This over-simplifies a much more numerous and distinct range of ethnic groups. It is notable in this regard that the great legal scholar, Charles Huberich (whose work in Liberia will be drawn upon frequently in this report) referred in 1947 to 'twenty-eight distinct tribes'.

Again, those in the South/South-east of the country are most affected, typically being designated as 'Krahn', 'Grebo', 'Bassa', 'Sarpò' or 'Kru' which are more descriptions of people living in the same region than a tribal identity per se. An example from one of the case study areas is where the people in the area designated Konobo in Grand Gedeh County name themselves Klowe but have been designated Konobo by coastal peoples for many decades.²⁶ They and neighbouring Gleiwe are classified as Krahn among others even though they do not even understand each other's languages.²⁷

2.2 The era of the private colonies

The motives of the private colonisation societies were various but did not include an intention of capturing vast natural resources or establishing a colonial empire in Africa. The aim was to find and organise places to which freed slaves could emigrate (partly in fear that they would become a problem if they remained in the US)²⁸. It also became convenient for the US Navy to deposit in these coastal colonies slaves captured from illegal slave ships on the high seas before they reached America.

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Thought went into how their settlement would be organised. From the outset, immigrants were prohibited from trying to buy land from natives themselves.

25 For example as from UNMIL, NRC, UNDP etc. and most recently WFP 2006. Usually the following are listed: (i) Kruan or Kwa language group, said to comprise Bassa, Dei, Grebo, Kru, Belleh, Khrahn and Gbee; (ii) Mande, said to comprise Vai, Gbani, Kpelle, Loma, Mende, Gio, Mandingo and Mano speaking groups; and (iii) Kpelle, the largest ethnic group today, 27% of the total population in 2004, and the most widely scattered. Descendants of former slaves from the USA and West Indies and also freed slaves from Congo and West Africa who never reached the USA account for less than 5% of the population. They are referred to as Americo-Liberians or 'Congos'. This group is urban and not covered in this study.

26 The origins of such naming may go back to even pre-colonial trading and slaving times when people from one or other part of the interior were referred to. Brown (pers comm.) suggests that consolidation of Krahn, Grebo or Bassa identities as one people may have very recently occurred due to local alliances forged during the civil conflicts.

27 Pers comm. D. Brown.

28 And to Christianise and civilise 'the benighted African' (the two were seen as synonymous): see later in 1824 Laws agreeing that missionaries could also be allocated plots.

Box 3, page 66, reproduces the explanation for this.²⁹ Inter alia, this illustrates that the American Colonization Society (ACS), the first of the societies to set up colonies, recognised that the land belonged to Africans and that it would have to buy the natives' land; not to do so would bring havoc to both parties. In any event, the agent explains, the natives couldn't be trusted not to sell the same land twice.

Box 3 – Preventing direct purchase of native land by immigrants

'No colonist shall deal with the natives of the Colony' (1820)

The Agent of the American Colonization Society recorded the following in notes attached to the rule which became law in 1824.

'This prohibition is demanded by several important considerations: It secures the invaluable right to the Society; the right of disposing of its own acquisition for the advancement of its own ends. Even the power of holding the lands which individuals acting contrary to the prohibition might possess is wholly derived from the original purchase of the territory ... The ends for which this acquisition has been made³⁰ are very diverse from the aggrandizement and enriching a few rapacious individuals at the expense of a whole race of people – the certain and direct effect of suffering individual speculations with the natives of Africa for their lands. Were the Society to allow this practice, it would by implication suffer individuals to withdraw the territory of the Colony from their government and jurisdiction and gradually create a new government of their own. For the jurisdiction which the Government of the Colony claims over its soil, is chiefly sustained by the act of acquiring that soil originally from the natives and granting the property of it only to individuals, who by accepting it ... recognise the authority of the Colonial Government ... Conflicting title would inevitably follow the practice here prohibited, as it would not be possible to avoid a plurality of purchases of the same tract, nor prevent repeated sales of the same lands by the same and different native claimants to different purchases. The certain consequences of such a state of property would be civil strife, and open hostilities with the native land merchants.'

Source: reprinted in Huberich, 1947: 1229, 1289

29 With several exceptions the source for deeds reviewed is mainly the Liberia Collection, Indiana University.

30 Ashmun is perhaps referring here to developments in other colonies.

Box 4 – The first sale of native land (‘The Ducor Contract’)

December 15, 1821

Deed for Mesurado

Know all men, that this contract, made on the fifteenth day of December in the year of our Lord One Thousand eight hundred and twenty-one, between King Peter, King George, King Zoda, King Long Peter, their Princes and Headmen, of the one part, and Captain Robert F. Stockton and Eli Ayres on the other part; witnesseth, that whereas certain Citizens of the United States of America are desirous to establish themselves on the Western Coast of Africa, and have invested Captain Robert F. Stockton and Eli Ayres with full powers to treat with and purchase from us the said Kings, Princes and Headmen, certain lands, viz: Dozoa Island and also all that portion of land bounded North and West by the Atlantic Ocean and on the South and East by a line drawn in a South-east direction from the North of Mesurado River.

We, the said Kings, Princes and Headmen, being fully convinced of the pacific and just views of the said citizens of America and being desirous to reciprocate the friendship and affection expressed for us and our people DO HEREBY, in consideration of so much paid in hand, viz: six Muskets, one Box Beads, two hogsheads Tobacco, one cask Gunpowder, six bars Iron, ten iron Pots, one dozen knives and forks, one dozen Spoons, six pieces blue Baft, four Hats, three Coats, three pair Shoes, one box Pipes, one keg Nails, twenty Looking-glasses, three pieces Handkerchiefs, three pieces Calico, three Canes, four Umbrellas, one box Soap, one barrel Rum, and to be paid the following three casks Tobacco, one box Pipes, three barrels Rum, twelve pieces Cloth, six bars Iron, one box Beads, fifty Knives, twenty Looking-glasses, ten iron Pots different sizes, twelve Guns, three barrels Gunpowder, one dozen Hats, one dozen Knives and Forks, twenty Hats, five casks Beef, five Tumblers, and fifty Shoes – FOR EVER CEDE and relinquish the above described Lands with all thereto appertaining or belonging or reputed so to belong to Captain F. Stockton and Eli Ayres to have and to hold the said Premises for the use of these said Citizens of America; and We, the said Kings, Princes, and Headmen do further pledge ourselves that we are the lawful owners of the above described land without manner of condition, limitation or other matter.

The contracting Parties pledge themselves to live in peace and friendship forever; and do further contract not to make war or otherwise molest or disturb each other. We the Kings, Princes and Headmen, for a proper consideration by us received do further agree to build for the use of the said Citizens of America six large houses on any place selected by them within the above tract of ceded Land.

In WITNESS whereof, the said, Kings, Princes and Headmen of the one Part, and Captain Robert F. Stockton and Eli Ayres of the other Part, do set their hands to this Covenant on the day and year above written

Finding the land for the colony was more difficult.³¹ Having lost most of its first shipload of 86 settlers to malaria in what is now Sierra Leone, the Colonization Society (ACS) began negotiations afresh in a more healthy area much further South.

King Jack Ben, a well-known leader from these parts, provided the contacts. An agreement to buy land was reached on 15 December 1821 for the area known as Cape Mesurado (Montserrado, within which Monrovia City would evolve). The text of this 'Ducor Contract' is reproduced in box 4, page 67. The price paid in kind is precisely listed there, a paltry mix of pots and pans and guns and rum, much desired by the land sellers. The total value is estimated as around \$ 300 or around \$ 3,000 in today's prices.³² Whatever the facts of such an exploitative arrangement, an outright purchase was agreed. The contract represents the very first land deed of Liberia.

A significant event was to occur at this point. Some of the subordinate chiefs and people were infuriated by the sale of their land to the Americans. Historians record that their complaint was that 'no one, not even the King, has the right to sell the land which belongs to all of us'.³³ They rebelled, supported by some neighbouring chiefdoms.³⁴ It was not until an influential king from the interior (Sao Boso of Bopolu Kingdom) intervened that the dispute was resolved, in favour of the colonists. Guannu noted that sight of an American man-of-war on the horizon no doubt helped seal the agreement.

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Later land purchase deeds illustrate the effects of this dispute on property matters:

– First, more battles were to be fought between natives and settlers over the land, which some said had not been given forever to the settlers, just given to them to use for as long as they needed it. One of the larger battles occurred in 1834 between Grebo and settlers. At the very least, indignant Africans wanted the immigrants to submit themselves to the authority of their chiefs, as was customary for strangers.³⁵

31 The ACS was formed in 1816. It initially tried and failed to get permission from the British Government to settle freed slaves in the Sierra Leone colony, which the British had already founded to settle slaves who had fought on its side during the American War of Independence.

32 In 1820 what could be bought in 1980 for US \$ 1 cost only 0.14c or around seven times less. In 2006, the same items cost \$ 2.45 or 2.5 times less (internet resources).

33 Guannu 1997.

34 The famous Twin Battles of Crown Hill and Fort Hill in 1822, led by Vai, Mambahn and Bassa chiefs.

35 Guannu 1997.

– Second, while both the ACS and other following societies systematically acquired more land for the immigrants they brought with them, this was never gifted by tribesmen to those societies. Nor did the settlers try to take the land by force. Acquisition was routinely by purchase (or in some instances, long lease), ‘forcefully persuaded’, or otherwise.

– Third, the details of these transactions became more precise. On their side, societies were more careful in ensuring that what they meant by purchase

The exceptional feature of early Liberia was that the colonisers bought the land they wanted

was clearly spelt out and in terms which American courts were familiar with, should their help be needed in due course. Most important was to make clear to the African chiefs that they were not paying for the use of the land but were taking it over absolutely. Nor would the land remain under local African jurisdiction. The agents were also careful to write into bills of sale that

this included all the resources on the land; forests, swamps, water and minerals. Terms like ‘fee simple’, ‘enfeoff’ (in fee of) and ‘alienation’ began to appear in land purchase contracts. Boxes 5 and 6, pages 70 and 71, are illustrative. This was a first lesson for Liberian leaders in the ways of Anglo-American land law.

On their side, Africans became more wary of the implications of such ‘sales’ and had their concerns put into the agreements. Thus when five kings met with the ACS agents in 1825 it was agreed

“That, whenever hereafter any wild lands between the St. Paul’s and Montserrado Rivers may be required by the American Colony for plantations or other purposes, the authorities of the said Colony shall previously call a conference of the Kings herein named and settle equitably the conditions on which said lands shall be occupied...”³⁶

Or, in agreeing to lease Young Sessters Territory in 1825, King Freeman made sure that his people would be employed by the settlers.³⁷ Agreements permitting only occupation of small areas of native lands were also made.³⁸

36 Agreement between King Peter, King Long Peter, King Governor, King Zoda and King Jimmy with J. Ashmun, Agent for the American Colonization Society and C.M. Warring, Vice-Agent, at a meeting at Gourah on Bushrod Island, May 11 1825. Included in 11th Annual Report of the American Colonization Society (1828), 63-64.

37 Deed of Perpetual Lease of Young Sessters Territory, Executed October 27 1825, as copied in full in the 11th Annual Report of the American Colonization Society (1828), 71-72.

38 Such as between the ACS Agent and Junk Chiefs on October 11 1826.

Box5 – Deed for 'Timbo' country. Purchased 29th October, 1847

THIS INDENTURE... made this twenty-ninth day of October, in the year of our Lord one thousand eight hundred and forty-seven, between Jack Purser, Phigh alias Old Tom, and Gheah, King and Chiefs of Timbo, of the one Part and J.J. Roberts, Governor of the Commonwealth of Liberia, and Agent for the American Colonization Society, of the other part,

WITNESSETH: That we, the aforesaid King and Chiefs, for and in consideration of the sum of two hundred and sixty dollars seventy-nine and two twelfths cents, to us in hand paid, by John H. Chavers and William J. Roberts, commissioners on the part of J. J. Roberts, aforesaid – the receipt whereof we do hereby, individually, acknowledge – have bargained, granted, sold, aliened, enfeoffed, and confirmed and by these presents do bargain, grant, sell, alien, enfeoff, and confirm, unto the said J.J. Roberts, in trust for the American Colonization Society, all the tract of country know as the territory of Timbo, on the West Coast of Africa, and bounded as follows: Commencing at the North boundary line of the territory known as Timbo, at a river called 'Beco'; from thence, running along the line of the sea coast to the territory known as 'Fenwin', or the Southern boundary line of Timbo, said river forming the boundary line between said territory of Timbo, and the territory known as Grand Colah; said territory of Grand Colah forming the boundary line of said territory of Timbo on the North, and said territory of Fenwin forming the boundary line of said territory of Timbo on the south, and said territory of Timbo extending from the sea coast into the interior the distance of fifty miles. Said description of above boundary is intended to include all the territory known by the name of Timbo.

To have and to hold all the territory aforesaid, together with the harbours, islands, lakes, woods, ways, water, water-courses, mines, minerals, and appurtenances thereto belonging or appertaining, unto the said J.J. Roberts, and his successors in office, in trust for the American Colonization Society. And we, the said Jack Purser, Phigh alias Old Tom, and Gheah, of the territory aforesaid, do covenant to and with the said J.J. Roberts, Governor and Agent as aforesaid, that at and until the en sealing hereof we had good right and lawful authority to sell and convey the aforesaid territory in fee simple; and that we, the said Jack Purser, Phigh alias Old Tom, and Gheah, King and Chiefs of the country aforesaid, for ourselves, our heirs, and successors, will forever warrant and defend the said J.J. Roberts, Governor and Agent as foresaid, and his successors in office, against any person or persons claiming any part or parcel of the above named territory.

Signed, sealed and delivered, in presence of Henry Chase by all the above-mentioned.

**Box 6 – Deed for the New Sessters territory. Purchased, November 19, 1847
(extract only)**

THIS INDENTURE... made between Prince Williams and John Freeman, King and Chiefs of New Sessters, of the one part and J.J. Roberts, Governor of the Commonwealth of Liberia, and Agent for the American Colonization Society, of the other part,

WITNESSETH: That we, the aforesaid King and Chief, for and in consideration of the sum of two thousand dollars, to us in hand paid ... do hereby bargain, grant, sell, alien, enfeoff, and confirm into the said J.J. Roberts, in trust for the American Colonization Society, all that tract of country know as the territory of New Sessters, on the West Coast of Africa, and bounded as follows: Commencing on the west by a part of the North-west bank of the Po River; commencing at its junction with the ocean and extending a few miles up along the North-west bank of said river; on the South-west by the Atlantic Ocean; and commencing at the angle formed by the aforesaid boundaries, and running in a line along the sea coast in a South-easterly direction, about ten miles more or less to the boundary line which separates the said New Sessters territory from Trade Town; from thence along the said boundary line between New Sessters and Trade Town; from whence along the said boundary line ... in a North-westerly direction, back into the interior as far as said New Sessters territory extends, about forty miles; from thence running in a North-westerly direction, about eighteen miles; from thence running in about a Southerly direction down to the North-west bank of the Po River and forming a junction with the North-east extent of the western boundary of said territory, known as the entire New Sessters country.

Said description of above boundary is intended to include all the territory known as New Sessters. To have and to hold all the territory aforesaid, together with harbors, islands, lakes, woods, ways, water, water-courses, mines, minerals and appurtenance thereto belonging or appertaining, unto the said J.J. Roberts and his successors in office, in trust for the American Colonization Society. And we the said Prince William and John Freeman, of the New Sessters territory ... had good right and lawful authority to sell and convey the aforesaid territory in fee simple; and that ... our heirs and successors will forever warrant and defend the J.J. Roberts ... against any person claiming any part or parcel of the above named territory.

Signed, sealed and delivered in presence of Samuel S. Henting and Ap. P. Davis

It is uncertain whether local leaders in the South-east later to be absorbed by the Maryland in Africa Colony learnt from the experience of those further North, or whether the Maryland Colonization Society was more liberal, but their agreements suggest a more equitable approach to local land rights. Contracts more routinely referred to 'our common country' and guaranteed a range of local rights to natives including

“The advantages of schools, which the children of native parents shall enjoy in common with the American children”

and the land deeded to the Society usually excluded

“...so much of the territory as is now under cultivation by the inhabitants thereof, of such places as are occupied by us or our dependents as towns and villages”³⁹

Finally, a *fourth* trend is observed in the deeds; the price of land rose. By 1847 if not earlier, Colonization Societies were paying in cash, not kind, and in quite large sums.

The clash of Anglo-American and indigenous tenure as to land rights began early on

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2.3 From colony to commonwealth to independent state

The first Mesurado Colony (quickly renamed Liberia) was only the first of seven coastal colonies, all but one established by different societies. These quickly began to unite mainly to create a larger military force to protect immigrants against periodic attacks from 'natives'.⁴⁰

In 1839 all but Maryland in Africa united to form the Commonwealth of Liberia. It was this entity which declared itself an independent country less than a decade later (1847) initiating the (First) Republic of Liberia. The impetus for the declara-

39 As in contracts made for example with King Neah Weah of Bowreh on November 25 1835, with King Barrah Keaby of Bulyemah on October 21 1835, with King Freeman and King Will of Cap Palmas on February 14 1834. Archives of the Liberia Collection, Indiana University, suggest around 20 distinct land sales made between 1921-1935.

40 In 1824 the Cape Mesurado Colony joined with neighbouring New Georgia Colony, established to settle 'Congo' slaves rescued on the high seas. Two Colonies established further South by New York Societies (Edina and Bassa Cove) united in the 1830s to form Grand Bassa Colony. From 1835 to 1842 Mississippi in Africa Colony was formed in the area now Sinoe County. Expansive lands for Cape Mount Colony to the north were purchased from Vai Chiefs in 1830 by the ACS Agent for Mesurado (Jehudi Ashmun) but its first immigrant settlement ('town') Robertsport was not started until 1855.

tion was not to consolidate their multiple land purchases nor to better deal with internal governance problems with the immigrants,⁴¹ but to enable the settlers to legally tax under international law the British ships using its fast developing ports.

The Declaration of Independence represented the immigrants' independence from the society, not from the US Government. While the US Government had given the ACS a charter to colonise (1816) and backed it up with finance, it had kept its distance. Nor did independence spell liberation for Africans in Liberia. If

Having sold their ownership 'natives' became tenants of the state on government land

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anything their position was now comparable to that experienced by Africans under colonial powers elsewhere, subject to the same mix of oppressive domination and benign paternalism.⁴² One of the main roles of natives was to labour for the immigrants in their houses, farms and enterprises, their behaviour and rights bound by a host of rules, including the necessity to wear European clothes (and hats). They were not defined as citizens and could not vote for the representatives of the new government.⁴³ Nor were they eligible for allocation of quarter acre lots to build houses or for larger plots to farm. Broadly, indigenous Africans retained their own settlements. Already in 1825, chiefs were making sure that sale of their vast territories would not result in eviction of their people, that they would be permissive occupants.

“You agree by this document”, the Bassa Kings wrote in 1825, “that the Colonization Society ... will never disturb the Kings whose signatures are attached to this instrument, nor the people, in their quiet possession and use of the lands which they now occupy, or may hereafter require for building their towns or making plantations ...”⁴⁴

Nonetheless as the decades passed the chiefs' peace was increasingly disturbed.

41 One of which was periodic protests by immigrants resentful that they were allocated the same sized town and farm plots, as laid out in evolving laws (see chapter 2). A first demand for greater say in the colony's government was dispatched to the ACS in 1823 and again in 1833. Immigrants actually rioted in 1834 when the ACS Agent attempted to set up a supreme court (rather than dealing with disputes administratively) and over which there would be less public influence (Huberich 1947, Guannu 1997).

42 The latter was delivered in growing initiatives 'to civilize the natives', the package being literacy and Christianisation and coerced abandonment of customs repugnant to the immigrants. 'Instruction in the arts of agriculture' was added in 1847.

43 All this is made clear in the multitude of regulations that appeared from 1824 onwards. Most are short and recorded in full in Huberich 1947.

44 Agreement by five Kings with ACS Agent, 11 May 1825.

Box 7 – The territorial limits of Liberia in 1848

(i.e. excluding Maryland Colony, voluntarily annexed in 1857)

'A line commencing at the mouth of the Grand Cape Mount River, on the North-west, running along the centre of that river to its source, or to the interior frontier of the Cape Mount section of the Vey territory, thence by a line running Eastwardly, separating the territory of the Vey and Dey tribes, from the territories of the contiguous interior tribes, until it strikes the Northern boundary of the Millsburgh purchase, and through the trace of country lying between the said Millsburgh purchase and Junk, until it strikes the Northern angle of the purchase of Junk territory, thence along the interior boundary of the territory of the Atlantic tribes from whom the purchases were made, until it reaches the South-eastern front of the Grand Sessters territory; thence in a South-westerly direction to the ocean at Grand Sessters in 40 and 41 degree latitude; and the 80 and 61 west longitude, being a mean parallel distance from the Ocean of Forty-Five Miles; thence along the sea coast in a North-westerly direction to the place of commencement including all rivers, harbors, bays, islands and such a distance out in the ocean as is determined by the law of nations, to be just and proper in such cases, or as security, protection and as a wholesome jurisdiction may demand'.

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Source: From an Act passed on February 1, 1848 as reproduced in Huberich, 1947:1011-1012

Although few in number the immigrants were comparatively wealthy. Leading settlers were able to expand their holdings way beyond the original town lot or farm lot allocated. They did this through purchasing the land from their new government. Exactly how much of this public land remained to the indigenous population is not known, other than it declined especially rapidly after the turn of the century. This left a bitterness that still permeates Americo-Liberian and coastal indigenous relations today.

2.4 Creating a two-territory dominion

The area that was declared the Republic of Liberia in 1847 comprised the aggregate lands, which the societies had bought. The lands beyond were simply the interior ('the Hinterland'). This was a zone in which the new republic had gathering interests (gold and ivory among them, and increasingly trading posts) but neither sovereignty nor landed property.

Today the Hinterland is firmly part of Liberia. How this came about is important for understanding the conundrums of land policy and law today. First, we need

to be clear as to the area involved, and exactly when it became part of today's Liberia.

As to the former, the boundary of the new state was described at the first post-independence assembly of its legislature in February 1848. This is reproduced as box 7, page 74. It will be noted that the description confirms the Republic as a territory that had been cumulatively *purchased*. The document also confirms recognition that Africans were owners of the land they sold, and that this indigenous ownership was structured on a tribal basis, in the form of discrete territories. The perimeter boundaries of these domains were sufficiently clear and known for the territorial document to need only to refer, for example, to the line 'separating the territory of the Vey and Dey tribes from the territories of the contiguous interior tribes' for the all-important new national boundary to be understood.

As to where this described boundary exactly runs this may be easily determined by those fully familiar with the sites listed above and as more precisely detailed in the land purchase deeds. In broad terms, Liberia comprised a coastal strip extending between 40-55 miles inland, as sketched in map 7, page 24. It commenced at a point in the North which is today well within modern Sierra Leone but at the time was Vai territory bought in 1830 by the ACS. It ended in the South around modern-day Greenville, this Southern portion having been bought by the Mississippi in Africa Colonization Society.⁴⁵

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The first expansion of Liberia occurred in 1857 when the Maryland in Africa Colony agreed to be annexed by the new Republic. Acquisition of its area had followed the same course as elsewhere, parts purchased from African leaders between 1834 and 1849. Significantly the local signatories of these sales tend to be more numerous than in the deeds for lands further North, reinforcing the impression that territories were smaller and more numerous than in the North, where Kings oversaw larger areas.⁴⁶

The state territory as in 1857 would not hold. Part of the far North and far South would be lost to the British and French in 1885, 1892 and 1919 as the scramble for Africa unfolded.⁴⁷ Ultimately the Liberian Republic made up those losses many times over through its formalisation of sovereignty over the Hinterland. Officially, this only occurred through the above Liberian-British and Liberian-

45 Refer Huberich 1947:1011ff for detailed description.

46 The full set of Maryland in Africa deeds as made available from the Liberia Collection, Indiana University.

47 The Geographer 1972 and 1973.

French agreements; that is, by *international* treaty. Not until 1930 would the last disputed area be signed over as accepted by the British Government, at which point Liberia as it is known today technically came into being.⁴⁸ In practice, the coast's power over the interior was by then quite entrenched. Coastal or Littoral Liberia began to be referred to as County Liberia to distinguish it from the Hinterland. This came from its governance system since 1848 on the American system of counties and 'towns' as even the smallest settlements or villages were known. Each county had its origin as an original colony.

2.4.1 Different paths to sovereignty

The local process towards extending sovereignty over the Hinterland was incremental, and different from the way in which authority over coastal County Liberia had been established. Although sovereignty (i.e. territorially-based political jurisdiction) and property ownership within the national territory are entirely distinct, as often the case with colonisation they were closely intertwined.

In Liberia, as we have seen, the dramatic declaration of sovereignty in 1847 came on the back of voluntary secession of real property on a (large) parcel by parcel basis and through face to face negotiations between Colonial Agents and African owners, or rather with their representative kings and princes or chiefs and headmen. While the majority inhabitants were at best token parties to the actual declaration that recreated the ceded territories as a modern country, they had doubtless become used by 1847 to having lost not just their land but their customary jurisdiction over it.

The opposite was to be the case in the interior. Broadly African communities first surrendered ultimate political authority and then slowly lost their property rights over their respective lands and resources. Although areas for trading posts were possibly gifted or even sold by chiefs, there is no evidence that any territory was sold to colonial agents or to the subsequent Liberian administration after 1847. As far as they were concerned, Hinterland Africans owned their lands, but, one by one, agreed to subordinate themselves to the greater authority of the new Liberia on the coast.⁴⁹

48 Boundary determinations and demarcation went back and forth with the British re the boundary with the Sierra Leone Colony between 1885 and 1930. Final agreements of Liberia's boundary with French Guinea and Côte D'Ivoire took almost as long, from 1892 to 1929 (The Geographer, 1972 and 1973).

49 Huberich records that the legal status of native inhabitants in the Hinterland was dealt with in a case in 1862 (Davis v. Republic of Liberia, 1 Lib. L.R.) but the case was not available to this author.

Even the process of ceding political authority seems to have been only partially voluntary; achieved through near force in some cases, through semi-coerced acquiescence in many others, and in the case of a few tribes by their own request.⁵⁰ Certainly Monrovia battled periodically with indigenous groups who resented incursions into their lands.⁵¹

The big difference in the status of land rights in the Hinterland and the Littoral was that the Hinterland was never bought and paid for by government: a different route to extinguishing their rights was eventually found



Nonetheless, the links between Liberia and the interior chiefdoms grew, especially after 1900. If any date were to be selected as the point at which the Hinterland's inclusion into Liberia became a reality, it would be 1923, ahead of international confirmation in 1930. This was the year that Monrovia called chiefs from the Hinterland together for the first time, for the purpose of agreeing common rules as to how their areas would be governed (the Suehn Conference). It is clear by their cooperation and the outcome of the meeting (described in the next chapter) that they accepted their membership of

Liberia. By this time (1923) all Hinterland communities had indeed placed themselves (or found themselves placed) under the protection and ultimate judicial and legal authority of Monrovia. Many of their young men were employed in the Republic's army, the elite of each tribe were beginning to reap the benefits of missionary and educational opportunities extending into the Hinterland and coastal/Hinterland trade was flourishing.

2.4.2 Making the Hinterland Monrovia's 'colony'?

It may be speculated that the calling of the Suehn Conference was triggered by an important Supreme Court ruling in 1920, which put the legal uncertainties of sovereignty over the Hinterland to rest.

This had been brewing since the British and French began to push for more territory after the Berlin Conference in 1885. What sovereignty meant on the ground came to the fore in 1916 when a court case pitted departmental officials

50 Huberich 1947, Guannu 1997, Wikipedia among others.

51 As for example in 1893 with Kru, Grebo and Gola; GRC 2007b.

in charge of relations with chiefs and aborigines in the Hinterland against the Frontier Force in the handling of a theft by 'an aborigine' (as Hinterland residents were termed). At dispute was whether the executive or judicial arm of government should decide the issue and whether Liberia's 1847 Constitution applied to the defendant from the Hinterland. The Attorney General had argued in 1916 that the Constitution did *not* apply because Liberia had no such authority over the area.⁵² The reason was, he argued, that the natives in the Hinterland had not given their consent to being under the rule of Monrovia and its laws.⁵³

This in itself is telling. Chief Justice Dossen, in ruling against this position, did not waste time trying to demonstrate that the Hinterland natives had given their willing consent, or that this '... had been expressed in the form of written treaties and compacts between the two parties' such as the Attorney General felt necessary.

In concluding that '...our sovereignty over what is called the Hinterland of Liberia is perfect, complete and absolute ...' Chief Justice Dossen argued that it was unnecessary to seek or secure the willing consent of uncivilised people as through this they gained civilisation. If anything, establishing such authority over them was a noble duty. Application of the Constitution was the instrument for extending to native peoples the superior civil rights and tranquillity enjoyed by civilised peoples.⁵⁴

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2.4.3 Establishing the basis for denying that Hinterland populations own their land

In reaching his conclusion that the Constitution did apply in the Hinterland, Dossen drew upon a plethora of evidence in the practice of European powers to support his argument. This is crucial to understand the eventual demise in customary land rights. Therefore space is devoted below to describing this.

52 He had argued that 'the territories acquired by the Republic outside the forty-mile zone fixed in the statutes as the boundaries of the Republic are governed only by the such Regulations as the Legislature may prescribe ...' as these areas 'do not belong to constitutional government', and therefore any actions by the Secretary of the Interior cannot be tested against the Constitution (Huberich; 1947:1210-1211).

53 Ballah Karman v. John L. Morris, Secretary of the Interior and Major John H. Anderson, Commanding the Liberia Frontier Force, decided by the Supreme Court, May 2, 1920, and the full opinion delivered by Justice Dossen reproduced in Huberich; 1947; 1207-1221.

54 Dossen argued that this was an obligation of Liberia as a member of the Family of Nations; Huberich, 1947:1214-1215.

Dossen began his case by quoting the 1494 grant by the Pope permitting the King of Portugal to possess Latin America, proceeding to more recent and topical practices of colonial powers in Africa, whom Dossen appears to have admired.⁵⁵ He cited at length the Act arising out of the Berlin Conference in 1885 as having made no mention of the need to buy lands or make treaties with natives on the continent. He observed (with a note of approval) that even when the American plenipotentiary of the United States had suggested to the Berlin Conference participants that the American Government would ‘gladly adhere to ... a principle which should aim at the voluntary consent of the natives whose country is taken possession of ...’, the plenipotentiary had been ignored.

Dossen’s own conclusion was that the ‘International Canons’ (the Berlin Agreement) settled the matter. Local consent or sale of lands was not required in the noble cause of colonisation/civilisation. He acknowledged that Liberia had not followed this international practice in the past:

“It is true that in the original method of acquiring territory, the Agents of Liberia treated the tribes whose territory was subsequently made a part of the Republic’s domain as possessing sovereign rights over the territories they occupied, and our title thereto was conveyed by deeds of cession and treaties. By this method our rights were established over a radius of about forty miles from the Atlantic littoral. This was regarded as the limit of our territory interiorward when the Republic was erected in 1847 ...”

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But, the judge somewhat vaguely noted

“... subsequent to this date, we have in the one or the other forms recognised by modern international practice extended political influence, and with it the right of sovereignty and governmental supervision, over territories beyond and which have been recognised to the Republic by conventions between this State and the neighbouring countries the boundaries of whose territories marches with our frontiers”.

Thus the matter was closed. If it was good enough for the British, French, Portuguese, Belgians, Dutch and Germans to help themselves to the property of native Africans, it was good enough for Liberia to follow suit.

To this extent the manner of the Hinterland’s amalgamation into a greater Liberia and the clear approval for this from the highest court in the land, fell in line with

the coercive approach adopted by European powers and which they justified in Berlin in 1884-85. One could well argue that in the end, it was the Hinterland, not the Littoral that was accordingly more genuinely a colony.

2.4.4 The pernicious elision of sovereignty with property

Legally, what happened is significant. Establishment of political and territorial control (sovereignty) became muddled with specific rights to the land within that territory (property). As Dossen's ruling was slowly absorbed over following decades, this would shape the government's handling of tribal land rights in the Hinterland.

For in drawing upon the treatment of African's rights by other colonial states Dossen laid down the position that extension of political sovereignty diminished any local title that existed to a right of lawful possession. The title now belonged to the sovereign state. In this he drew support from an old and well-used ruling from the US Supreme Court which had been widely drawn upon in the 19th century to justify what were, in real terms, myriad land thefts, such as considered acceptable at the Berlin Conference in 1884-85.

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The old ruling referred to was by Chief Justice Marshall in 1823, addressing American Indian land rights. In sum, while he did not deny that American Indians owned the land, he decided that they could not retain this once 'discovered' (conquered). The new sovereign entity became the owner. The effect was, and Dossen in 1920 concurred, that

“In the establishment of these relations, the rights of original inhabitants were, in no instance, entirely disregarded; but were necessarily to a considerable extent impaired. They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it and to use it according to their own discretion; but their rights to complete sovereignty as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it.”⁵⁶

Technically, this was a clever device. Of course original inhabitants lost overriding *political* jurisdiction – i.e. sovereignty – when brought willingly or

otherwise under the control of another power. Yet the accusatory assumption that if they were allowed to continue owning their land they would also be politically independent ('sovereign nations') was injurious – and nonsensical when set even against the American reality of the time that even the Chief Justice himself owned land in absolute title in the sovereign United States. It was convenient to forget that sovereignty and property were not the same.

Judge Marshall felt compelled to do so for two reasons, first because his task was to secure for the American Government complete control over Indian lands,⁵⁷ and second because so many colonists had already bought land from the Indians that he could not deny that Indians had prior to discovery owned their lands. Therefore he had to settle upon another strategy.⁵⁸

In the process the nature of indigenous land interests were remade.⁵⁹ On the one hand the collective ownership of the soil by a tribe or group was *upgraded* to territorial sovereignty (well expressed in the term 'Indian nations'). On the other hand, their access rights to the shared land were (correctly) noted as less than property rights in themselves, but now thoroughly dislocated from the founding collective ownership right from which they stemmed. Natives indeed became no more than 'permissive occupants' on public land.⁶⁰

57 McAuslan 2006b in his excellent commentary shows after other sources how Marshall also had a good deal of self-interest to protect, being party to land dealings, which would be affected by his decision.

58 Chief Justice Marshall's argument ran thus: 'An absolute title to lands cannot exist, at the same time, in different persons, or in different governments ... All our institutions recognise the absolute title of the crown, subject only to the Indian right of occupancy ... This is incompatible with an absolute and complete title in the Indians ... Conquest gives a title which the Courts of the conqueror cannot deny, whatever the speculative opinions of individuals may be ... Although we do not mean to engage in the defense of those principles, they may, we think, find some excuse, if not justification in the character and habits of the people whose rights have been wrested from them ... Humanity however ... has established ... that the conquered shall not be wantonly oppressed ... Most usually they are incorporated with the victorious nation, and become subjects or citizens of the government with which they are connected ... But the tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness; to govern them as a distinct people, was impossible, because they were as brave and as high spirited as they were fierce ...' (p.587-591). Finally, after examining virtually all instances of land acquisition from Indians in the US, Marshall concluded: 'It has never been contended that the Indian title amounted to nothing. Their right of possession has never been questioned. The claim of government extends to the complete ultimate title, charged with this right of possession, and to exclusive power of acquiring that right' (p. 603). Thereafter, Marshall established, only the State could acquire the ultimate title of Indian land and only the state could issue grants from that land; US Supreme Court 1823.

59 It should be noted that the Marshall Ruling of 1823 is often still given more respect than this author thinks it deserves, on the grounds that it at least recognised pre-state Aboriginal Title. It is the interpretation of what constituted 'Aboriginal Title' that needs revisiting. McAuslan 2006b provides insightful commentary more in line with the interpretation of the influential Marshall ruling given here. Also see an excellent summary of Aboriginal Title jurisprudence by Fergus MacKay in Colchester (ed.) 2001.

60 And for which he found plenty of precedent in the treatment of Indian rights in various statutes. 'These statutes seem to define sufficiently the nature of the Indian title to lands; a mere right of usufruct and habitation with power alienation. By the law of nature, they had not acquired a fixed property capable of being transferred ...' US Supreme Court; 1823: 569-570.

An aside to this important ruling is due; the plaintiffs in this case argued that native Indians did own their land and in the process described this ownership. The commonalities of customary regimes are such that these descriptions could as well be describing Liberian (or most other African) customary tenures a century or even two centuries later. Thus Indian tribes

“were free and independent, owing no allegiance to any foreign power whatever, and holding their lands in absolute property; the territories of the respective tribes being separated from each other, and distinguished by certain natural marks and boundaries to the Indians well known; and each tribe claiming and exercising separate and absolute ownership, in and over its own territory, both as to the right of sovereignty and jurisdiction, and the right of soil ...” (p.548)

and

“from time immemorial ... all the Indian tribes ... held their respective lands and territories each in common, the individuals of each tribe or nation holding the lands and territories of such tribe in common with each other, and there being among them no separate property in the soil; and that their sole method of selling, granting, and conveying their lands ... always has been ... and now is, for certain chiefs of the tribe ... to represent the whole tribe in every part of the transaction ... and that the authority of the chiefs, so acting for the whole tribe, is attested by the presence and assent of the individuals composing the tribe ...”⁶¹

The answer to securing state ownership of indigenous lands was ironically found in recognising Aboriginal 'nation states'

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The timing of the US Supreme Court ruling for Liberia seems significant. It came two years *after* the ACS first landed in Montserrado and began buying land from the natives as if they did indeed own their land. It must be a matter of conjecture whether the ACS and following societies would have bothered to buy land from the natives along the coast, had Marshall's ruling come some years previously and been absorbed as the orthodoxy it was to become. As it was, the societies set a precedent on African soil that even Dossen's ruling a century later had difficulty entirely dislodging, as described in chapter 2.

61 US Supreme Court 1823; 543-604.

3 Governing the Hinterland

How the Hinterland was in practice to be governed is integral to these changes. Attempts to establish operational governance beyond the boundaries of 1847 did not get underway until 1892 with the reorganisation of the Interior Department. Although this was first created in 1869⁶² in the form of a secretary in charge of Native Affairs, his role was more emissary in respect of inland chiefs, available arbiter in their disputes and regulator of trading posts set up by Liberians in the interior.⁶³ Restructuring the department in the 1890s was in response to the international land-grab under way in the region and Liberia's need to get involved; its claim to inland areas had to be given the stamp of reality.

The system began to take shape in the 1900s and was entrenched in 1905 by an 'Act Providing for the Government of Districts within the Republic Inhabited by Aborigines'. This decided that 'each territory inhabited exclusively by an aboriginal tribe' would be regarded as a township. It also provided for native courts to be formalised in such areas, with appeal to district commissioners.

Former Minister Morais records that one of the more active commissioners was one Morris Mitchell, who developed the first set of regulations for governing the Hinterland tribes (the 'Mitchell Regulations'). It is possible that these provided the basis of a new law in 1914, 'An Act Making Regulations Governing the Interior Department of the Republic of Liberia.'⁶⁴ It was this law that established the two grand divisions: the County Jurisdiction and the Hinterland.

The law gave great powers to the Interior Department as in effect governor of the Hinterland. This included judicial powers for his supervisory travelling commissioners. It was this that was ruled unconstitutional by Judge Dossen in 1920 and within which ruling the sovereignty issue arose as above described. The 1914 Act was amended in 1918 as a result of his ruling, limiting the powers of administrators.

62 Act of the Legislature of Liberia, approved January 23 1869.

63 The establishment of the department was the result of growing interest in the peoples of the area, first by President Benson (1856-1864) who took it upon himself to learn several native languages and who had established an 'Interior Parish' to provide protection for those wanting to travel to the area or even settle there (Morais Undated). Then, following excited exploration in the Hinterland by a young surveyor, President Warner (1864-1868) announced in 1866 that Liberia and the people beyond 'should be brought into closer relationship ... They are our brethren, deluded though they often appear; and our Constitution expressly declares that their improvement is a cherished object of this government' (Huberich 1947: 1233).

64 Morais Undated does not mention Mitchell's years of office.

3.1 Adopting indirect rule

The Suehn Conference of 1923 mentioned earlier took place against this background. Huberich records that chiefs from the Hinterland met daily for almost a month and that it was the largest gathering of its kind in the history of the Republic, chiefs and their attendants numbering five to six hundred persons.⁶⁵ Chiefs presented grievances, which were investigated. As the meeting came to an end they collaborated in making unified laws and regulations. The result was rules of native laws and customs for the governments of the native districts. These were the foundation of Hinterland governance thereafter.

These rules were approved by President King on March 29, 1923 and published by government as Department Regulations.⁶⁶ They were added to in 1929, superseded by new Regulations in 1936,⁶⁷ and revised again in 1949 as 'The Revised Laws and Administrative Regulations of the Hinterland' (hereafter the 'Hinterland Law'). Over time they came to represent an integration of custom and imposed and/or adopted modern regulation. In 1947 Huberich noted with approval that the laws and laws are

“precise as to the duties of the native rulers, always having regard to tribal customary law, but given greater protection to native subjects, and gradually putting in operation in the Hinterland the general criminal and civil laws. Native customs regarding family law are preserved”
(1947: 1239).

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The Hinterland Law itself expresses the arrangement most clearly in these two articles:

“It is the policy of government to administer tribal affairs through tribal chiefs who shall govern freely according to tribal customs and traditions so long as these are not contrary to law” (art.29).

“For the purpose of administration, a tribe shall consist of clans according to tribal traditions, and shall be ruled or governed by a Clan Chief”
(art.21(b)).

65 Huberich 1947: 1234.

66 Departmental Regulations, Supplementary and Revisory Existing Regulations Governing the Administration of the Interior of the Republic of Liberia: Including General Circulars One and Two (Monrovia, August 1923).

67 An Act Approving Hinterland Regulations, December 19 1936.

3.2 Building upon what existed

As noted earlier, tribal tradition in the South/South-east was not necessarily that villages grouped themselves in self-defining clans or chiefdoms, and in these areas some new Clan Chiefs must have been created. However, participating traditional authorities appeared to have agreed to the proposed hierarchy at Suehn. There was sufficient enthusiasm for representation in this hierarchy (or more exactly, for the benefits of being a Clan Chief or Paramount Chief) for a flurry of small chiefdoms to declare themselves. This would eventually lead to guidelines in the 1950 and 1960s specifying the minimum number of households needed to constitute a clan or chiefdom.⁶⁸

Meanwhile the fundamental settlement pattern was not disturbed; no one was moved to create a new town, clan or chiefdom. In fact the Hinterland Law and Regulations made it illegal to do so.⁶⁹ Overall the pattern of communities, each with its discrete land area, was not interfered with at all, although definition of authority was to an extent. Chiefs themselves seem to have been the principal actors in this transition.

3.3 Whose rules, people or state?

The chiefs themselves increasingly operated under the two-hat paradigm of indirect rule strategies pursued elsewhere in Africa.⁷⁰ Both confirmed traditional leaders as well as newly identified leaders had to be elected by their people from the 1930s onwards. On the one hand they served as hut tax collectors for Monrovia (and able to retain 10% as a stipend and incentive to collect as much as they could) and carried out related duties ordered or advised from Monrovia, such as relating to public works and the coerced labour regime established to deliver this.⁷¹

68 Pers comm. J. Carter.

69 As per article 83, Hinterland Law.

70 Although not drawing the comparison, Brown (1982a, 1982b, 1984, 1989) provides a fascinating picture of Hinterland governance in Liberia which echoes 'Indirect Rule' in other African States (e.g. Salih 1982 and Babiker 1998 for Sudan; Bryceson 1980 and Iliffe 1972 for Tanganyika (Tanzania); and Colson 1971 and Chanock, 1982 for Northern Rhodesia (Zambia). Broadly, as Brown describes it the system was towards incorporation into a single society, but on the terms of the settler elite and without disturbing its political control, or by raising Hinterland elites up so high that they could challenge this, or estrange the tribal mass in such a way that their role in organising and providing cheap labour would be jeopardised. At the same time, the communal solidarity of tribal society was advantageous 'in underwriting the welfare component of the industrial wage'. Thus while being 'kept in their place', chiefs were encouraged to govern using the same rules as in the past.

71 Including, for example, compulsory production of crops for the market (article 23 j).

On the other hand, chiefs governed in customary ways and in accordance with customary rules. The substance of rules altered over time, variously through coercive persuasion by the government, changes engendered by expanding education and opportunities, land use changes, and through periodic consultation of chiefs in large chiefs meetings, through the 1950s and 1960s.⁷²

As is the case throughout Africa, it is difficult to draw a clear line between customary law as existing in pre-colonial times and how it evolved during the colonial period.⁷³ This is a matter, which preoccupied the better part of anthropological research in the 1960s and 1970s as these systems began to be reinvented

as rural local governments in early post-colonial periods.⁷⁴ That the balance in Liberia eventually fell on the side of characteristic co-optation of traditional powers is suggested in Huberich's argument in 1947 that the Hinterland could not be considered a 'colony' precisely because the chiefs were servants of the state. 'The Hinterland is not a colony!' he protested.

The Hinterland Law is an unusually genuine case of building on customary law to make state law



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“The Hinterland forms an integral part of the territory of the Republic, and the jurisdiction of the Republic is unrestricted by any reserved rights of the tribal Chiefs ... the native Chiefs exercise their governmental powers by delegation or at sufferance, not in their own right” (1947: 1227).

However Huberich himself was contradictory on this matter, in support of a different issue insisting that each tribe has its own laws and customs, and that these are rigorously applied by the native and national courts – unless they contravene the Constitution or the statute law applicable to natives.⁷⁵

72 Alteration by 1936 was most visible in the rules relating to pawning, domestic slavery, the regulation of secret societies and harmful practices such as the extraction of confessions by ordeal, and over which the chiefs had debated long and hard in 1923, but likely affected many other norms.

73 On the subject of forced labour, for example, and which so strongly characterized the 1920-1970s period in the Hinterland, it is a moot question as to how far this contradicted or supported the customary control of chiefs over the communal labour of communities. The commentary of Richards et al. 2005 is among those suggesting commonalities. Many other examples exist; for example, a great deal was written by the Government of Liberia itself during the late 1920s as to the customary practices of domestic servitude and their links with what the League of Nations declared was slavery.

74 For example Biebuyck 1963, Colson 1971, Chanock 1982, Snyder 1982 and Le Roy 1985.

75 Huberich 1947: 1231.

3.4 Ending separate development

What Huberich could not deny in 1947 was that the governance regime was entirely separate for the two ‘grand divisions’ of the country. He argued this was necessary because of the different levels of civilisation between the two areas, or rather, the immigrants and the indigenes:

“The area of County Jurisdiction is inhabited by a small population that has grown up in surroundings of a Christian Western civilization, in large part descended from emigrants from the United States and the British West Indies, and with a common language and common system of laws and customs and governmental institutions and a political philosophy based on American traditions ... The vast Hinterland has a population ... comprising about twenty eight distinct tribes of widely divergent physical types and cultural development, ranging from barbarism to the refinements of the Vai and Mandingo civilizations...” (1947:1230-31).

Despite being periodically challenged as to its attitudes towards the ‘aborigines’ of the Hinterland, the Liberian Government sustained this separate development until the 1960s. The archives of President William Tubman (1944-1971) record his shock at the inequity and tension between the two territories while canvassing for votes in 1943. He determined to launch a unification program then and there.⁷⁶ A decade later he was to tell 500 chiefs gathered from the Hinterland that:

“It has been proved that the civilized population cannot get along without the uncivilized; neither can the uncivilized get along without the civilized ... For more than 80 years we have tried to destroy each other by internal wars. Both sides have failed. Now let us bury the hatchet”⁷⁷

Action was slow, and its sincerity in doubt given the strengthening demand for Hinterland labour and little obvious intention to lessen the economics of political power relations between the settler descendant and indigenous populations.⁷⁸

A carrot and stick approach was pursued, on the one hand promising the vote to people in the Hinterland (achieved partially in 1950 then 1963) and on the other

76 Tubman Archive, Undated.

77 The First National Executive Council, 1954; Tubman Archive, Undated.

78 Brown 1982b.

hand upbraiding aborigines for their laziness in failing to contribute cash crops to the national economy, to build roads and schools and so on – and threatening the use of force to make them do so.⁷⁹

Finally in 1960 President Tubman ordered a commission to review the separate governance regimes.⁸⁰ Support was drawn from the above-described Supreme Court decision of Judge Dossen made 40 years earlier. While that ruling had been concerned with the judicial distinctions between the two territories, this was used to infer that any form of separate governance or development was unconstitutional.

The result was a 1964 law reconstructing the two areas as nine counties, each governed in the same way and from the same supervisory source in Monrovia.⁸¹ These have since been subdivided into 15 counties as population increased. Table 2 lists the counties of today, with mainly 2004 population data. This is outdated but indicative, pending the results of the 2008 Census.

Box 8, page 90, outlines the system of governance that still operates. Significantly chiefs remain the bedrock of the system, as does the spatial context of village (town), village cluster (clan) and chiefdom. At the same time all chiefs are elected (to varying degree in practice). If anything, the now uniform system is a more awkward fit in the Littoral where the traditional basis of leadership of elected 'chiefs' is often non-existent. The new arrangements were also amalgamated into the Constitution of 1986.⁸² As a matter of routine, the minister in charge is able to regulate on a range of matters but none specifically mention land ownership.⁸³

88

79 Tubman Archive undated.

80 Chapter XIII of Local Government Law Liberian Codes Revised Vol. IV An Act to Authorize the President of Liberia to Set Up a Special Commission to Make a Comprehensive Survey and Study of the Territorial and Political Subdivisions of the Republic and to Prescribe its Powers and Functions and Make Provision for its Expenses.

81 Act of Legislature approved by the President on April 30 1963. President Tolbert (1971-1980) moved responsibility for local government out of the Ministry of Interior into a Ministry of Local Government, Rural Development and Urban Reconstruction (1971). A decade later, President Doe renamed this Ministry of Internal Affairs (1981).

82 This declares that 'Liberia is a Unitary Sovereign State divided into counties for administrative purpose' (article 3)

83 The 'administrative purpose' was delivered in powers granted the ministry to oversee local government by statutory laws, with appointed superintendents in place in each county but assisted by locally elected Paramount Chiefs, Clan Chiefs and Town Chiefs article 56 b). In the executive law relating to that ministry (chapter 25), the minister is charged with relevant responsibilities. These included 'managing tribal affairs and all matters arising out of tribal relationships', 'overseeing the orderly function of tribal government and drafting rules and regulations to effectuate this purpose' and 'overseeing the collection and publication of the laws and customs of the Liberian tribes' (section 25.2).

In the course of unification the Hinterland laws and regulations would change, as they were upgraded, downgraded then left hanging in uncertain legal territory. Changes in the substance of the law that occurred along the way are of the utmost importance to land rights of Hinterland residents. This is examined in the next chapter.

Table 2 – Area, administrative units and population by county⁸⁴

county	area (sq km)	districts	clans	towns / villages	popula- tion 2004	persons per sq km
Rivercess	5263.40	12	36	431	28,750	5.46
Gbarpolu	9235.29	6	13 (28)*	578	115,077	12.46
Grand Gedeh	10276.07	3	15	245	96,358	9.37
Grand Cape Mount	4797.78	5	12	440	36,260	7.55
Nimba	11901.80	6 (17)*	34 (73)*	716	526,007	44.19
Lofa	10313.04	6	20	1,005	263,388	25.53
Bomi	2122.15	2	14	382	21,344	10.05
Bong	8378.55	8	39	1,041	315,761	37.68
Montserrado (Monrovia)	1802.01	4	22	697	906,778	503.20
Margibi	2811.24	4	16	803	201,804	71.78
Grand Bassa	7440.86	6	44	2,463	157,733	21.19
River Gee	6195.98	2	10	434	60,816	9.81
Grand Kru	3684.86	4	14	282	24,642	6.68
Maryland	2187.44	2	12	235	124,374	56.85
Sinoe	9340.25	7	34	691	70,255	7.52
	95750.72		335	10,266	2,852,989	29.7

* Figures in parentheses are from field study.
Sources: LISGIS, often based on pre-war figures.

Box8 – Local government in 2007

The system of local government comprises Tribal Authority overseen by government representatives appointed by the President on the advice of the Ministry of Internal Affairs. Geographically each county is sub-divided into administrative units. The clan is the core unit; this is a composite of villages ('towns'). Several clan areas make up a chiefdom area. Several chiefdom areas make up a district. Several districts make up a county. Although exceptions exist, every attempt is made to relate areas to the traditional or acquired territorial extent of respective chiefs.⁸⁵ Oversight in each county is carried out by a superintendent, assisted by a deputy superintendent for development. Each district is headed by a district commissioner.

Tribal Authority remains as defined in the 1949 Hinterland Law, then chapter 5 of the Aborigines Law:

- It is the policy of the government to administer tribal affairs through Tribal Chiefs. No chief shall be penalized for imposing sanctions when his legitimate orders are not obeyed, provided such sanctions do not exceed the limited fixed by the law (s.71)
- Each tribe of chiefdom shall be governed by a Paramount Chief, who shall be a member of the tribe ...
- For purposes of administration a tribe shall consist of clans according to tribal traditions. Each clan shall be ruled by a Clan Chief who shall be elected for his natural life by members of the clan who have reached their majority and are owners of huts and not delinquent in their taxes.
- A Town Chief shall be elected for life by the permanent residents of each village (s.70).
- In the discharge of his duties the Paramount Chief shall be assisted by a Council of Chiefs, which shall be composed of the Chiefs of the Clans of his tribe or chiefdom (s.74).

Note: Paramount, Clan and Town Chiefs no longer receive 10 percent of hut taxes collected but receive a fixed stipend. Cities and large towns ('townships') such as district capitals are governed by an elected Council advising a Town Commissioner. 'Election' is informal and sometimes token in practice.

Sources: Aborigines Law 1956 chapters 4 and 5 Local Government Law Title 20

85 John Gay observes that in the 1960s the authority of the Gbanzu chief for example extended across the St. Paul's River into the Gola Forest (pers comm.)

4 Forests

Finally, a short background on forests in Liberia is needed.⁸⁶ Forests cover 59% of Liberia. They are part of the Guinea Tropical Forest belt, which stretches from Cameroon to Guinea, famed for its timber values, fast growth cycle, and the abundance of flora and fauna biodiversity.

The forest falls broadly into three distinct agro-ecological zones. Mangroves and evergreen forest occur along the lowland coastal belt. Inland there is a higher altitude belt of plains and hills with high rainfall and forest. Further inland again, there are yet higher plateaux and dense deciduous mountain forests. That zone is drier and with better soils a great deal of forest has been cleared for farming. The forests fall within two distinct massifs in this zone. The most forested administrative counties are Gbarpolu, Grand Gedeh, Rivercess, Sinoe and River Gee, the first three of which were represented in the field study.

Forests amount to 5.7 million ha (tables 3 and 4). Of this 4.3 million ha are classified as ‘permanent forest’. The remaining 1.3 million ha are scattered in farming zones and unlikely to be retained. Forest loss has been steady over the century and severe since 1989, with estimated annual loss of 0.3% of area (12,000 ha) due to expanding agriculture and uncontrolled logging.⁸⁷

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Forests began to be purposively managed from the 1950s (box 9, page 92). Eleven National Forests were proclaimed during the 1960s. One was later converted into the Sapo National Park (1983), currently proposed for expansion. As commercial logging flourished, management was removed into a parastatal Forestry Development Authority (FDA) in 1976. This also holds authority over wildlife. The current law (2006) entrenches the international classification of protected areas, namely National Forests, Nature Reserves and Strict Nature Reserves and National Parks, and confirms Liberia’s support for the many international conservation conventions (annex G).

⁸⁶ Information in this section derives mainly from Blundell 2003, Bayol and Chevalier 2004, UNEP, 2004; Government of Liberia et al. 2004, Government of Liberia 2004 and 2005, CIFOR and ICRAF 2006, FAO, 2005, 2007; Talking Drums Studio, 2005, FPP, 2006, Vohiri et al. 2004, FDA 2007a, 2007b.

⁸⁷ FAO estimated forest loss as 2% between 1990 and 2000 compared to the continental rate of 0.8% overall (FAO 2005).

Box9 – Timeline of forest reform in Liberia

- 1953 Forest Act, creates Bureau of Forest Conservation. Amended in 1957
- 1976 Law repealing 1953 law and creating FDA. Amendments in 1988, 2000 and 2003
- 1988 Wildlife and National Parks Act, providing for network of protected areas
- 1997 10 Year Forestry Development Plan (1997-2007). Taylor promotes large-scale investment and reduces small logging concessions. The Asian-owned Oriental Timber Company formed with 1.5 million ha concession with 600 foreign workers. Company believed to have bribed Taylor
- 2000 National Forestry Law, 2000 enacted. President to appoint most FDA board members
- 2001 Only one fifth of \$ 20 million taxes paid to FDA accounted for. UN demands reform in the sector
- 2002 Environmental Protection Law
- 2003 Protected Areas Network Law, pledging to conserve 30% of the forest area. Nimba Nature Reserve gazetted
Taylor claim timber exports being used to buy weapons for rebel groups
7 July: UN Sanctions imposed on export of logs and timber by UNSC Resolution 1478
28 October: Sanctions renewed by UNSC 1521 mainly due to use of timber revenue supporting rebel groups in Liberia. UN demands government and industry reform
October: UN Panel of Experts created to monitor sanctions. Its role extended to May 30 2004 at which time sanctions were to be reviewed. Makes recommendations for reform
Revenue Reform: Executive Order No. NTGL/002 withdraws power of FDA to collect revenue by allowing only the Ministry of Finance to receive taxes and revenues
NTGL establishes a committee to review recommendations December 4th. Public call for evidence of concession ownership. USAID-funded Roundtable plans Forest Sector Reform (December)
- 2004 Concession Review undertaken from May 2004 to May 2005. NGOs contribute evidence of concession corruption and abuse at local levels
Multi-partner inventory of the resource undertaken (Liberia Forest Re-assessment)
- 2005 May: Concession Review Committee reports findings and recommends all concession permits be cancelled

- 2006** Concessions cancelled, government declares moratorium on timber exports in February 2006 (Executive Order #1) ahead of lifting of sanctions
 June: UNSC Resolution 1689 lifts sanctions
 October: National Forest Reform Law enacted and comes into force
- 2007** NGOs, donors and FDA collect information for Community Rights Law
 June: FDA presents draft Forest Management Strategy

Liberian forests have always provided livelihoods to many people and, over the 20th century, rising revenue for the government. The issue of concessions for commercial extraction of products began in 1903 with the handover of sand and beach rights for the extraction of pearls and lime. This was for a renewable term of eight years.⁸⁸ A lease of a small area of land to Firestone for rubber production followed in 1906, to grow into a one million acre lease for 99 years in 1926. By 1970 over three quarters of the country was variously under agri-business lease or mining and logging concessions. The forestry industry boomed under President Doe (1980-1989) with an all-time high of three million cubic metres exported in 1989. This stagnated during the civil war but was revived by President Taylor (1997-2003), representing half the total exports in value and 20% of GDP in 2002. Virtually the entire forest resource was being logged.

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Concern both at home and abroad grew that the resource was being ‘looted’ and revenue misappropriated. Largely through investigations by NGOs (such as SDI) it also became clear that ordinary rural Liberians had endured a great deal of abuse at the hands of the concessionaires. These went beyond characteristic labour exploitation and involved incidents of rape and murder, destruction of settlements and farms. Local anger was palpable.⁸⁹ The legal rights of many concessions to operate in the first instance began to be doubted. Some large companies were sponsored and protected by Taylor via his control of the FDA board. A first call for action by the UN concerning the situation was made in 2001.

88 Granted by an Act of the Legislature, January 1903, and recorded in Sinoe County Register, 12 June 1903 (Liberia Collection, Indiana University).

89 Blundell, 2003, Talking Drum Studio, 2005, Government of Liberia 2004, 2005.

Table 3 – Surface area classification in Liberia

	class	area (ha)	percent
1	Urban area	46,047	0.5
2.1	Rural agricultural	436,747	4.6
2.2	Agricultural area with limited forest presence	3,042,091	31.7
2.3	Mixed agricultural and forest area	1,317,873	13.7
3	Agriculture degraded forest	949,615	9.9
3.2	Open dense forest	1,013,993	10.6
3.3	Closed dense forest	2,424,078	25.3
4	Water	7,649	0.1
5	Savannah or bare soil	13,312	0.1
6	Coastal ecosystem (including mangroves)	161,390	1.7
7	Agro-industrial plantation	178,294	1.9
	Total	9,591,088	100.00
	<i>Summary, forested and non-forested area</i>		
	Total forest area	5,705,559	59
	Total non-forest area	3,885,530	41

Source: FDA 2007a after Bayol and Chevalier 2004.

Two years later UN sanctions were imposed (2003), finally triggered by evidence brought forward by Sierra Leone that Taylor was using revenue from timber and diamond exports to fund rebels operating within Sierra Leone. As box 2, page 60, describes Taylor was forced into exile and the Transitional Government (NTGL) ordered to reform the sector.

With significant USAID and other donor support, NGTL launched five programmes: regulatory and institutional reform, revenue reform, concession reform, inventory and planning reform, and protected area development. The Concession Review was pivotal and was carried out in close cooperation with civil society representatives (annex H). The total area of concessions was found to be twice the area of forests in Liberia. With not one of the 70 foreign or local operating companies identified meeting the minimum criteria, the committee recommended wholesale cancellation (May 2005) of concessions. This was not put into effect until President Ellen Johnson Sirleaf took office in January 2006.

Table 4 – The target forest estate

classification	area (ha)	percent	% of permanent forest
<i>Non-permanent forest</i>			
Mixed agricultural and minor forest area	1,317,873	23.1	
<i>Permanent forest</i>			
Agriculture degraded forest	949,615	16.6	21.64
Open dense forest	1,013,993	17.8	23.12
Closed dense forest	2,424,078	42.5	55.24
	5,705,559	100	100 = 4,387,686 ha

Source: FDA 2007a after Bayol and Chevalier 2004.

Reforms in the FDA, systems for accounting and expending revenue,⁹⁰ establishment of new legislation for protected areas, creation of an environmental protection agency, and the drafting of a new National Forestry Reform Law (NFRL) led to the lifting of UN sanctions in June 2006.⁹¹

The government retained a moratorium on allocation of concessions until other criteria had been met, including the enactment of the draft forestry law in October 2006. The legislature was broadly pleased with the bill and noted the intention to share some returns from logging with communities. However, awareness raised through the concession review led many Liberians and their elected representatives to sense that more was at stake than benefit sharing and that a profounder reform was needed. This led to a requirement that a comprehensive law relating to community rights be presented to the legislature within a year (October 2007).

As it stands the NFRL 2006 adopts a liberal approach focused upon a three ‘Cs’ policy towards commercial, community and conservation development. These are embedded in a series of objectives, most recently summarised as eight objectives in a draft National Forest Management Strategy (NFMS) (June 2007). The commercial strategy proposes to re-launch logging as soon as possible in just over three million hectares of the total 4.3 million hectare resource (70%). This includes all gazetted National Forests (table 5). It also exceeds the total area of past legal concessions.

90 Including by Executive Order NGTL/002 of October 24 2003 and the establishment of a Procurement and Concessions Commission in 2005.

91 UNSC Resolution 1689 of June 2006.

Conservation objectives rank highly, with 1.14 million hectares (26.5%) proposed to be brought into the formal reserve sector of national parks and reserves (table 6). This would increase the current protection area more than six times.

Community objectives are modest to say the least, as reviewed in chapter 4. The FDA considers only one third of the area with commercial potential suitable to any form of local participation. At this stage only 52,000 ha are scheduled for possible non-commercial management as community-owned Communal Forests (table 7), a mere 1.2% of the total forest resource.

Table 5 – National Forests in Liberia

name	county location	hectares
Gola	Gbarpolu and Grand Cape Mount	179,944
Kpelle	Gbarpolu	163,423
Yoma	Gbarpolu	2,696
Gbi	Grand Gedeh	62,132
Krahn Bassa	Grand Gedeh, Nimba, Sinoe and Rivercess	518,436
Grebo	Grand Gedeh	259,345
North Lorma	Lofa	73,961
South Lorma	Lofa	37,858
West Nimba	Nimba	8,484
East Nimba	Nimba	8,540
Gio	Nimba	36,454
	located within seven counties	1,351,273

Data source: FDA, 2007.

Table 6 – Existing and proposed protected forests in Liberia

	name	county location	hectares
existing	East Nimba	Nimba	13,569
	Sapo Park	Sinoe and River Gee	180,363
	sub-total		193,932
proposed	Lofa Mano	Gbarpolu and Lofa	282,769
	Wologizi	Lofa	76,833
	Wonegizi	Lofa	30,141
	Lake Piso	Grand Cape Mount	51,459
	West Nimba	Nimba	8,540
	Cestos	Grand Gedeh	83,207
	Cestos Sehnkwehn	Sinoe and Rivercess	146,413
	Grebo	Grand Gedeh and River Gee	164,571
	sub-total		843,933
located within eight counties		1,037,865	

Data source: FDA, 2007a.

Table 7 – Proposed community forests in Liberia

name	county location	hectares
Community 'A'	Lofa	4,990
Community 'B'	Gbarpolu and Bomi	4,695
Community 'C'	Grand Cape Mount	1,580
Community 'D'	Grand Bassa	4,502
Community 'E'	Nimba	3,610
Community 'F'	Nimba	4,941
Community 'G'	Sinoe	6,207
Community 'H'	Grand Gedeh	6,035
Community 'I'	Grand Gedeh and River Gee	5,213
Community 'J'	Sinoe	4,313
Community 'K'	Sinoe	5,905
located in nine counties		51,991

Data source: FDA, 2007a.

Chapter 2 Law and the customary right to land

This chapter has three purposes: to elaborate the legal context within which customary land rights operate; to analyse exactly what the law says about those rights and the implications; and to conclude with an assessment of how large an area and how many people are today within the customary land sector. First a short background is given on what is meant by 'customary law' and 'customary land tenure'.



photo SDI

1 Customary law ('community law')

Since 1821 Liberia has seen the co-existence of customary and statutory law that has characterised agrarian states over the last century or so. It is the interface of the two that produces most contradiction and conflict. Arriving on the West African coast, the colonisers found a population, which already had its own legal system, since designated as 'customary law'. That is, each ethnic group lived in accordance with practices, customs and rules. The last amounted to law in that if the rules were transgressed, punishments were bound to follow.

Differences in the rules of each indigenous group were not dramatic, as President King was to find when he brought chiefs together in 1923. The opportunity for chiefs to arrive at common positions was not surprising. Even the enlarged Liberia was small and fairly uniform in its environment. For example, there were no arid zones, which might have necessitated overlapping rights for vast pastures. Additionally, the interrelationship among many of the ethnic groups was close.

When examining the common rules that evolved from 1923 to 1936 it is notable that only two of 83 articles specifically address land tenure. The first of these clearly bears the hand of Monrovia trying to order its own relationship with native lands, as later assessed. Yet this is deceptive, for the prescriptions laid down were founded on customary norms. And as we have seen, the Hinterland Law as a whole was rooted in co-option and formalisation of a largely prevailing pattern of settlement and land domains.

This provided (and still provides) the territorial framework for land rights. The system for this is *customary land tenure*. But what exactly does this mean? Intimations of its character have been given in chapter 1. Below ten general comments are made on its nature and status today.⁹²

92 There is a vast literature on customary tenure that in respect of African regimes dates from the 1930s. No single source is fairly identified as uniquely authoritative or comprehensive. General Africa-centric commentaries on the state of customary tenure today include Alden Wily 2006b and Cotula (ed.) 2007 but there are many others, especially at country specific level. A rich source of information is found in the commons literature, which focuses upon the collective aspects of customary regimes; Capri publications are a good starting point: www.capri.cgiar.org

2 Customary land tenure

1. Customary land tenure is an indigenous system for acquiring, holding and regulating land, and is sometimes so described ('indigenous land tenure'). That is, it is distinct from Eurocentric systems, which are imported into a country, often with colonisation.

2. Customary land tenure is *agrarian* in nature. It is rarely carried over into industrial economies or urban settings where wage employment rather than land use underpins the family economy.

3. This makes customary land tenure a major property system today despite the fact that by the end of 2008 half the world's population will live in cities.⁹³ *One third* of the world's population access to land is through customary mechanisms, and their numbers will grow.⁹⁴

4. Most customary landholders are classified as 'poor'.⁹⁵ This is both because many are subsistence farmers and because wealthier people tend to have the means and incentives to secure their property in non-customary ways, which have clearer support in national laws. This delivers 'legal entitlement' or 'statutory land rights'. Until very recently, the process of securitisation necessitated conversion of customary rights into imported forms as these were the only forms embedded in national law. This is now changing in many countries.

5. Although national laws always have something to say about customary land rights, this has usually been inappropriate. As earlier recounted, legal failure to understand or recognise customary land interests lies at the heart of this. The causes are various, including a genuine difficulty felt by policy makers to correlate the collective aspects of indigenous tenure with property as European society understood it. This bolstered reluctance to acknowledge rights, which could interfere with colonial resource grabbing. Many post-colonial governments found no reason to amend this. Nor did investors or donors encourage them to do so. For mid-20th century development ideologies reinforced the dominance of western-derived land ownership systems, rooted in individualism, as superior and more secure. Without proper protection under national law, this became a self-fulfilling reality for millions with customary rights.

93 UNFPA 2007.

94 An estimated 2.1 billion people (Alden Wily forthcoming).

95 As defined by the international standard of living under US \$ 2 a day (Population Reference Bureau 2006).

6. The property under customary tenure amounts to billions of hectares and has extraordinarily high values. In Sub-Saharan Africa less than one tenth of the land area is under non-customary formal entitlement and three quarters of the remaining 2.68 billion ha are under customary ownership and access regimes.⁹⁶ However much of this area is overlaid with the status as ‘public lands’, ‘state lands’, ‘trust lands’ or ‘tribal lands’ with strong connotation as ultimately owned by governments. The common effect globally has been to diminish customary rights to occupancy and use. This has turned millions of customary landowners into tenants of state on their own land.

7. This situation is changing in the developing world and also in the developed world where indigenous minorities often also own property by customary means.⁹⁷ Chapter 5 outlines shifting policy in Sub-Saharan Africa, as more governments recognise they cannot subordinate their rural populations to yet another century of denial that they and their forefathers did not have priority rights of ownership over their lands, or to a system in which that possession does not amount to property in today’s capitalised world.⁹⁸ An element of importance to governments is belated recognition that failure to do so ultimately impeded rather than aided socio-economic transformation through the 20th century.

Customary tenure is no more and no less than a community controlled system for holding and administering rights to land resources. This makes it unusually strong – and modern

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8. While each customary tenure regime is home-grown and thus distinct, there are significant commonalities. Whether in Sri Lanka, Zambia, Bolivia, Afghanistan or Norway, the regime normally operates within a specific and bounded territory or domain. The source of authority is always from within the community.⁹⁹ Collective ownership of all or some parts of the domain is characteristic, although in populous settled areas this tends to disappear as collective assets decline though usually leaving communal jurisdiction over the disposition of family properties active.¹⁰⁰

96 Augustinus 2003, Alden Wily and Mbaya 2001.

97 New Zealand, Papua New Guinea and Australia have led on this in different ways, followed by Canada, the US and most recently Norway: refer McAuslan 2006b, Colchester (ed.) 2001, Ravna 2006, White and Martin 2005.

98 South Africa, Namibia, Mozambique, Malawi, Uganda, Tanzania, Ethiopia, Ghana and Côte D’Ivoire are important examples in different respects, as was Botswana in the 1960s. Refer Alden Wily and Mbaya 2001 and Alden Wily 2006a and 2006b, van den Brink et al. 2005, FAO 2002.

99 Although the extent to which this authority is vested in one individual or one family varies; at one extreme are semi-feudal arrangements, common in India and one or two other Asian states but rare elsewhere.

100 Cotula (ed.) 2007.

9. The most singular feature of customary tenure is that it is a community-based regime. This holds over time, even when the composition of the community changes and when it alters the rules to be observed. These rules may or may not have a long history (tradition). What does not change is the source of their authority – the living, known community. Therefore, far from being an archaic residue of tradition, customary land tenure exists because it represents the land ownership and access norms of the living community.

10. The ways in which the rules (customary law) change are quite similar and predictable given that pressures upon rural land use tend to be common across countries and continents. Arable land shortage due to population growth is a common pressure in Africa as is agri-business interests in many Asian and Latin American countries. In Africa, these trends in changes in customary tenure rules may be identified:

- a maturing of family based usufructs into ownership as shifting cultivation gives way to settled farming;
- strengthening of community territories as explicitly understood as 'our property' (or real estate);
- consolidation of boundaries;
- declining sanction against sale of farms and particularly houses although rarely without being subject to community determined rules;
- increased limitation on access by outsiders;
- increased pressure upon already weaker rights within the community, most commonly those of women, and more recently, of orphans;
- widening of decision-making beyond traditional authorities to include ordinary community members.

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Finally, it may be observed that customary regimes around the world are vibrant and show every sign of remaining so. While a puzzle to many, this is less so in light of its nature as an operating community-based system, where usually at least some resources are owned on a collective basis. For as long as these remain unsuited to subdivision into individual parcels (forests, pastures), communal identity and solidarity are enhanced. Even without such assets, for as long as rural community wants a say over its internal and external land relations, a community based regime is not just an old tradition but a useful foundation for modern administration and protection of land interests. Although very late in the day a growing number of states are taking advantage of this.

3 The evolution of statutory land law (‘national law’)

Liberia’s land law began the day the settlers landed in 1821 and drew up a contract for the purchase of land, rooted in Anglo-American law. They also brought with them a set of rules in the form of a brief ten-article ‘Constitution for the Government of the African Colony of Liberia’ (1821). The articles were quickly added to by successive agents of the ACS.

The second colony agent, Jehudi Ashmun, is recorded as finding the immigrant settlers resistant to rules, and he departed in frustration in 1824.¹⁰¹ His planned replacement persuaded him to return and together they put the operating rules into a clearer form of 25 laws (Digest of Laws, August 19 1824). A ten-article plan of action for governing the colony was attached (Plan for the Civil Government of Liberia August 19 1824), along with the original Constitution.

The three documents were approved by the ACS a month later and became the foundation for the national law of Liberia. While ACS agents could make new laws from time to time they were instructed that these had to be consistent with the common law as in force in the United States.¹⁰² The Constitution itself could only be modified by the ACS back in Washington.

Many new laws were devised in Liberia as illustrated in the first Code of Laws At Liberia (1828), revised and expanded in 1840, and in periodic new collations (‘Digests’).¹⁰³ The last of these is the Liberian Codes Revised (1973), with a new codification under way today. New laws passed by the legislature enter the law as chapters under different titles in these codes. Thirty-nine titles existed in 1972-73.¹⁰⁴ Unfortunately only two of the four volumes of titles were produced, making access to laws difficult.

101 Guannu 1997. Huberich 1947 records all the laws of this early period.

102 The common law being the legal principles of the society as expressed through court decisions not just formal enactments.

103 Particularly in the early years these laws were often no longer than a single declaration by agents, over time evolving into full enactments by legislatures. Huberich 1947 reproduced most of the 19th century and early 20th century laws.

104 For example, Civil Procedure Law, Natural Resources Law, Property Law, Public Health Law

Box 10 – The evolving national land law of Liberia

- 1821 Constitution for Governing the Colony of Liberia (10 articles)
- 1824 1821 Constitution with attached Plan for the Civil Government of Liberia August 19, 1824
- 1824 Digest of Laws Now In Force in the Colony of Liberia August 19th, 1824. Lists 26 laws
- 1828 First Code of Laws at Liberia
- 1840 Code of Laws ('Blue Book')
- 1841 Law pertaining to lands, reservations, apportionments and improvements of the same
- 1841 Public Domain Law
- 1843 An Act Pertaining to Lands and Reservations
- 1847 Constitution of the Republic of Liberia
- 1847 Public Domain Law
- 1850 Act Regulating the Sale of Public Lands
- 1863 Public Domains Law
- 1887-88 Digest of laws including all the above
- 1895 Act for the Government of a District in the Republic inhabited by Aborigines
- 1904 Public Lands Law
- 1905 Administrative Regulations for Governing the Hinterland
- 1923 Act Approving the Regulations Governing the Administration of the Interior of the Republic of Liberia
- 1924 Act approved January 25 (Acts 1923-1924) on subject of chiefs and land
- 1929 Public Lands Law
- 1936 An Act Approving Hinterland Regulations
- 1949 An Act Approving the Revised Laws and Administrative Regulations for Governing the Hinterland
- 1956 Liberian Code of Laws 1956: including Aborigines Law, Title 1; Local Government Law, Title 21; Natural Resources Law, Title 24; Property Law, Title 29; Public Lands Law, Title 32
- 1960 Act to Authorize the President of Liberia to set up a Special Commission to make a Comprehensive Survey and Study of the Territorial and Political Subdivisions of the Republic
- 1963 Repeal of key chapters in the Aborigines Law relating to tribal courts and tribal administration. Chapter 11 on Tribal Lands retained
- 1972-73 Liberian Codes Revised, including Local Government Law, Title 20; Natural Resources Law, Title 23; Property Law, Title 29; Public Lands Law, Title 34
- 1974 Land Registration Law, enters Property Law as chapter 8
- 2000 Revised Laws and Administrative Regulations for Governing the Hinterland (same as 1949 version)

3.1 Bringing customary law into national law

Meanwhile local customary law was evolving into a written and unified form. As chapter 1 has shown, this reached fruition in the set of customary norms agreed by chiefs at Suehn in 1923 for governing people in the Hinterland (annex D). In 1956 most of the content of this Hinterland Law would enter the statutory Liberia Code of Laws as Title 1, Aborigines Law. While this marked the final step in the integration of customary and statutory law it would in due course be renegeged upon. Box 10, page 106, lists the laws that mark the evolution of land and property law in Liberia. Four stages may be identified, following roughly the dates below:

1. The ‘immigrant’ era: 1821-1895
2. The ‘civilized natives’ era: 1895-1920
3. The ‘Hinterland’ era: 1920-1956
4. The ‘appropriation’ era: 1956 to the present.

3.2 The ‘immigrant era’: 1821-1895

Eleven of the 25 laws laid out by the ACS agent in 1824 focused on how immigrants would be allocated land and their rights and duties regarding that land. This was still the focus in the first Code of Laws At Liberia in 1828, with 17 laws (box 11, page 108). The origins of the current Property Law and Public Lands Law are clear in these short directives.

107

Only one of the 17 land laws concerned ‘natives’, the sanction against immigrants buying land directly from them. The 1847 Constitution (published in 1848) contained eight articles relating to property. The sanction was entrenched in a manner that defined ‘natives’ by default as ‘not citizens’ (s.14) (annex C).¹⁰⁵

The public domain laws are important. All land bought from tribes became public land from which government allocated the plots to immigrant settlers. Specified areas and conditions remain much the same in today’s Public Lands Law.

By the 1850s the fundamentals of today’s land administration system were also in place. Each county (defined on the basis of original settler colonies) was to have

105 Section 15 also made it a duty of government to help native tribes learn the ‘wholesome arts of agriculture and husbandry’ (annex C).

a land commissioner, appointed by the president. He was to keep an accurate record of which plots or parcels had been allocated to whom with an indication of surveyed boundaries (a Register). Records for Grand Cape Mount and Sinoe both show entries from 1856.¹⁰⁶ Unusually in Africa, there has never been a central land register in Liberia: instead this has been devolved to the counties. This is helpful for needed reforms today (chapter 5).

Box 11 – The first land laws of Liberia 1823-1827

'Every holder of a building or town lot shall put a sufficient fence around on half of the same on the parts contiguous to his next neighbours ...' *Passed, August 13, 1823*

'Persons trespassing on lands by cutting or removing timber or other property are liable to exemplary damages.' *Passed, August 19, 1827*

'No person is to reside on the lands of the Colony without permission of the Colonization Society or their Agent ...' *Passed, August 19, 1827*

'...In all cases of banishment (from the Colony) where the banished person has no heir in the Colony, the lands held by him shall revert to the Colony.' *Passed August 19, 1824*

'All persons are permitted to dispose of property by will ...' *Passed, August 19, 1824*

'In all lands, appropriated to settlers, every third lot shall, when practicable, be reserved for public uses.' *Passed, August 19, 1824*

'No person shall own lands who does not reside in the Colony, and cultivate at least two acres, or carry on, with consent of the Agent, some mechanical trade; and build a substantial house on his town lot, within two years from the time when the lands shall have been laid off to him.' *Passed, August 19, 1827*

'A house, to answer the requirement 'substantial' must be first, of sufficient size to accommodate all the family of the proprietor; and secondly, built of stone, brick or other substantial materials and workmanship, or of frame, or logs, weather boarded, and roofed with tile, slate or shingles.' *Passed, August 19, 1824*

'All settlers, on their arrival, shall draw town lots or plantations for which the Agent is to give them a certificate, specifying their number and the time of drawing. If within two years from that date, two acres of land on the plantation shall have been brought under cultivation, the town lot cleared and enclosed,

and a legal house built, the said certificates may be exchanged for title deeds of such lands, to be held thereafter, in fee simple'. *Passed, August 19, 1824:*

'Every married man shall have for himself a town lot or five acres of plantation land; together with two more for his wife and one for each child if they are with him; *provided* that no single family have more than ten acres'. *Passed, August 19, 1824*

'Women not having husbands, immigrating to this Colony, with permission and attached to no family besides their own shall receive each a town lot or two acres of plantation lands on their own account and one acre on account of each of their children'. *Passed October, 1824*

Undated addition: 'Liberated African, incorporated in the Colony, and who shall be judged capable of managing, shall receive small grants of land' (referring to liberated slaves take from ships).

'All unmarried men of the age of twenty one years, either arriving in the Colony from abroad or attaining their majority while resident in the same, and having taken the oath of allegiance, shall be admitted to draw and hold a building lot, or five acres of plantation lands, on the same conditions as married men. In the case of marriage afterwards, the person herein respected, is to draw on account of his family no additional lands, but shall be entitled to hold whatever his wife may have previously drawn in her own right, or inherited from a former husband, or other person, provided she shall not have alienated such lands at the time of her marriage'. *Passed October 22, 1827*

'No bargain, transfer, exchange, sale, deed, or lease of lands, by or with the grantee of lands for the same, before a legal and complete title obtained for them in fee, shall be valid or lawful'. *Passed, October 22, 1827*

'The imperfect right in lands acquired by the draft of the same, shall, in the event of the decease or expulsion of the drawer, before the expiration of the probationary term, descend to his heirs in the Colony'. *Passed, October 22, 1827*

'No COLONIST shall deal with the natives of the country for lands'. *Passed, August 19, 1827*

Missionaries coming out with the approbation of the Society are permitted to reside so long as they devote themselves to their sacred functions'. *Passed August 19, 1827*

'All authentic projections of land surveys, in and for the Colony, constructed by or under the immediate discretion of the Agent, whether entered or not in the Records of the Colony, comprehending the explanations, numbers and every other part essential to the same shall have the authority of law in determining questions of boundary, situations, and quantity arising about the said lands'. *Passed October 24, 1827 (in Digest, 1928 as art.XLIX)*

3.3 The turn of the century 'The 'civilised natives' era – recognising some natives as due property rights

Towards the end of the 19th century land policy began to change. As well as refining procedures for selling, renting or mortgaging parcels held by immigrants, the 1904-1905 laws provided clearly for 'allotment of public land to aborigines who become civilized'.¹⁰⁷

Becoming civilised meant wearing (western) clothes, going to church, being literate to some degree, owning houses made of stone or brick evidencing wealth etc.¹⁰⁸ Although these grants were classified as 'Aborigines Land' entitlements, the holders were not necessarily from the Hinterland; on the contrary, most (save perhaps a few leading Paramount Chiefs from the interior who wanted to settle in coastal towns) were likely indigenous elites long resident in the Littoral.

This is important, for the terms of these allocations were little different from those imposed upon immigrant settlers. This would *not* be the case with grants of land made in the Hinterland in following decades.

The distinction comes from the fact that the objective in these early years was entirely related to whether or not the individual (and his family) were considered fit to be voting citizens or not, for this was its evident purpose, or rather, its result: a registered landowner could vote. These deeds had little to do with the individual's historical association with land or right to land. Among the few grants recorded, some were almost certainly not even located in areas where the grantee was born.

The first 'natives' to get property rights were a handful of coastal elites – whose political support was needed



As to the allotments themselves, most were one-quarter acre residential town lots. Some were larger areas clearly encompassing an extended family or settlement of about 25 acres, such as routinely allocated as 'farm lots'.¹⁰⁹

107 This may already have been provided in 1888 but this author did not have access to that law.

108 An Act Regulating the Residence of Native Africans in the Commonwealth of Liberia, 1838. Broadly Liberia comprised three classes: elites and 'honorable', 'civilized' natives (minor officials, teachers, etc.) and 'tribals' ('uncivilized', aborigines). See Brown 1982b.

109 One such grant was made to Chief Murphy Sone in 1906 for 25 acres, but interestingly it does not appear in the Grand Cape Mount Land Register for that period. McCarthy 2007 describes later disputes over this grant due to re-registration of the land in 1931 to the leading family of the settlement.

Box 12 – Register entries of Aborigines Land Deeds for Grand Cape Mount

‘Whereas it is the true policy of this government to induce the aborigines of the country to adopt civilization and to become Loyal citizens of this Republic and whereas one of the best means thereto is to grant land in fee simple to all those showing themselves fit to be entrusted with the rights and duties of full Citizenship as voters, and where William T. Sherman of the Territory of Grand Cape Mount has shown himself to be a person fit to be entrusted with said rights and duties, Now therefore know ye, that I, A. Barclay President of the Republic of Liberia, for and in consideration of the various duties of citizenship hereafter to be legally performed by said William T. Sherman of Grand Cape Mount for myself and my successors in office have granted William T. Sherman in Robertsport Lot No. 132 – ¼ acre. June 16, 1906. Signed by Arthur Barclay, J.S. Hoff, Land Commissioner, T.G. Cape Mount.’

‘Aborigines Land – Charles Benson of Terr, of Grand Cape Mount in Settlement of Tallah, No. 17 commencing at SW angle of adjoining lot No. 16 – S 15o E 2 chains, SW 1 chain and 25 links, N 15o W 2 chains, N 150 E 1 chain and 25 links – ¼ acre. Signed by Arthur Barclay, February 28, 1911. James S. Hoff, Land Commissioner.’

‘Aborigines Deed – Henry K. Freeman, in Robertsport, No. 327 commencing S.E. angle of the main and cross street – N 12o W 5 rods, S 78o W 8 rods S 170 E 5 rods, N 78o E 8 rods – ¼ acre. Signed by Arthur Barclay, Pres. Jas. S. Hoff, Land Commissioner. Entered R. A. Sherman, Register. May 3, 1912.’

‘Aborigines Land – Povanda of Robertsport granted No. 278 in Robertsport commencing N.W. angle of lot – N 78o W 8 rods, S 12o E 5 rods – ¼ acre. Jan. 20, 1913. J.S. Hoff, Land Commissioner. D.E. Howard, Pres. Registered June 30, 1913.’

‘Aborigines Deed to Mohamadu Larminie in ? commencing the (1) and bounded and described as following – commencing at S.W. angle of a Kala tree N 30o E 10 chains, S 60o E, 10 chains, S. 30o W 10 chains, N 60o W 10 chains – 10 acres. Daniel E. Howard, Pres. July 30, 1914. J. S. Hoff, Land Commissioner. Probated August 3, 1914. Registered August 4, 1915.’

The number of allocations is not clear from the limited records available. Review of the land register for the Grand Cape Mount shows a first entry for Aborigines Land in 1906, probably the first allocation of Aborigines Land in that county. Only four other such entries appear up until 1916¹¹⁰ (box 12, page 111). Others are known to have been issued, especially in and around Monrovia and Robertsport, including some that would be the focus of later disputes.¹¹¹ Notably, the (incomplete) records accessed for Sinoe for 1860-1922 show no registration of Aborigines Land.

It is not known what limitations were placed upon indigenous Africans buying lots already owned by immigrant families ('citizens'), although by omission it was probably possible. Huberich makes a relevant observation in 1947 when discussing the constitutional position of the Hinterland and its inhabitants. He notes the curious possibility that while an aborigine could buy land from a non-aborigine, as an aborigine he could not sell that land.¹¹²

3.4 The 'Hinterland era': 1923-1956

Attention to tribal land entitlement came about in the 1920s and was part of the changing status of the Hinterland. At one and the same time the Hinterland was officially opened up to expansion from the Littoral (land acquisition) and also became a formal part of greater Liberia.

Concerning the former, citizens (those who already held a registered house, plot or farm property and were thereby enfranchised) were now able to buy land in the Hinterland, so long as they obtained consent from the relevant tribal authority. For natives in the Hinterland (still termed aborigines in laws up to the present) their tenure and land relations with others began to be defined in national law.

The instruments concerning this were the Hinterland *Laws and Administrative Regulations* (1905, 1923, 1929, 1936 and 1949). No evidence has been found to suggest that land ownership issues were a particular bone of contention between

110 Of 267 entries in the 1906-1916 period most are not first allotments of public land but registration of transactions (sale, inheritance, assignment, leases, etc.) and including occasional registration of vessels and other property.

111 McCarthy 2007.

112 Huberich 1947: 1229.

the chiefs and the administration in the process of their formulation.¹¹³ Nor is it known exactly when the only two articles in the law which specifically address real property were introduced. The relevant articles are reproduced in box 13.

In summary, the articles laid down these principles:

1. Territorial title to Liberia vests in the Sovereign State.
2. Property title in the Hinterland belongs to respective tribes, irrespective of whether or not they acquire and hold official deeds describing those areas.
3. Their respective domains must be of sufficient size to meet their livelihood needs.
4. Tribes may convert their estates into a fee simple communal holding, as long as they pay for the prerequisite survey themselves.
5. In such cases the chief will hold the land as trustee for the community.
6. The only condition of receiving fee simple titles will be that the land cannot be sold or transferred.
7. However the tribe may in due course, if it wishes, petition government to subdivide the entitlement into 25 acre family lots.
8. Non-members may rent land in the domain (i.e. not own it). Chiefs were encouraged to take up the opportunity offered under (d). Evidently only those with connections and education did so. Box 14, page 115, gives an example of a resulting collective deed issued in 1938 to Belle Chiefdom in present-day Gbarpolu County.

113 In contrast, a heated topic in 1923 was pawning, over which much time was spent by the chiefs at Suehn to formulate agreed rules, only to be abolished as a permitted practice in 1928 and 1930, in the face of great protest; Huberich 1947: 902-906. Chiefs and government also argued in the 1930s as to whether they should be elected or not as noted by President Barclay in his annual message of 1937; Huberich 1947: 1237.

Box 13 – Tenure provisions of the 'Hinterland Law' 1949

Article 66: lands

(a) Title to the territory of the Republic of Liberia vests in the sovereign state. The right and title of the respective tribes to lands of an adequate area for farming and other enterprises essential to the necessities of the tribe remain inherent in the tribe to be utilized by them for these purposes; and whether or not they have procured deeds from Government, delimiting by notes and bounds such reserves, their rights and interest in and to such areas, are a perfect reserve and give them title to the land against any person or persons whenever.

(b) This land interest may be transmitted into communal holding upon application of a tribe made to the Government for that purpose, and such communal holding would be surveyed at the expense of the tribe concerned.

(c) The communal holding will be vested in the Paramount Chief and Tribal Authority as trustees for the tribe.

(d) The trustees, however, cannot pass any fee simple title in these lands to any person whatever.

(e) Should the tribe come sufficiently advanced in the arts of civilization, they may petition the Government for a division of the land into family holdings in which event the Government will grant deeds in fee simple to each family for an area of 25 acres in keeping with provision of Act of 1905.

Article 67: use of lands by strangers

If any individual enters the territory of a tribe of which he is no a member for the purpose of farming, he shall observe the following procedures:

(a) Obtain permission of the Tribal Authority prior to commencing his activities;

(b) Agrees to pay some token in the nature of rent, such as fine or six bunches of rice out of every farm;

(c) Pay taxes to the appropriate tribal chief on all huts on the said lands erected or occupied by him.

The Tribal Authority may cancel the authority granted and confiscated the corps, subject always to appeal to the District Commissioner provided he neglects to comply with all or any of foregoing provisions.

Box 14 – Example of Collective Aborigines Deed (1938)

Republic of Liberia

TO ALL WHOM THESE PRESENTS SHALL COME, KNOW YE: Whereas it is the true policy of this Government to induce the Aborigines of the Country to adopt Civilization and to become loyal citizens to this Republic and Whereas one of the best means thereto is to grant lands in fee simple of those showing themselves fit to be entrusted with rights and duties of full citizenship as voters and whereas the Chiefs, Elders and Citizens of Belle Chiefdom Western Province have shown themselves to be persons fit to be entrusted with said rights and duties, Now Therefore Know Ye, That for and in consideration of the various duties of Citizenship hereafter to be legally performed by the said Chiefs,

Elders and Citizens of Belle Chiefdom, Western Province, I, Edwin J. Barclay President of the Republic of Liberia, for myself and my successors in Office have grant and by these presents do give, grant and confirm unto said Chiefs, Elders, and Citizens of Belle Chiefdom, their heirs, executors, administrators or assigns forever, all that piece or parcel of land situated, lying and being in Belle Chiefdom, Western Province and bearing in the authentic records of said Chiefdom and W.P. the number N/N and bounded and described as follows:

Commencing at the Upper Lofa River where the Lawa River and Wandleli Creek join the said Lofa and running magnetic bearings as follows....[detailed description] ... to the place of beginning and containing Six Hundred Ninety Thousand (690,000) Acres of land and no more.

TO HAVE AND TO HOLD the above granted premises together with all and singular the buildings, improvements, appurtenances thereof and thereto belonging to the said Chiefs, Elders and Citizens of Belle Chiefdom, their heirs, executors, administrators or assigns forever.

And I, the said Edwin J. Barclay President as aforesaid for myself and my successors in Office do covenant to and with the said Chiefs, Elders and Citizens of Belle Chiefdom, their heirs, executors, administrators or assigns that at and until the ensealing thereof, I ... had good right and lawful authority to convey the aforesaid premises in fee simple. And I, the said Edwin J. Barclay President as aforesaid and my successors in Office will forever Warrant and Defend the said Chiefs, Elders and Citizens of Belle Chiefdom, their heirs, executors, administrators or assigns against the claims and demands of all persons to any part of the above granted premises.

IN WITNESS WHEREOF I the said Edwin J. Barclay President of Liberia have hereunto set my hand and caused the seal of the Republic to be affixed this 3rd day of September A.D. 1938.

Sgnd. Edwin J. Barclay

ENDORSEMENT

ABORIGINES GRANT from Republic of Liberia to the Chiefs, Elders and Citizens of Belle Chiefdom, Western Province, Lot No. N/N situated in Belle Chiefdom, Western Province, 'Let this be Registered', Edward Summerville, Judge Circuit Court, Mo. Co. Probated this 29th day of September A.D. 1938, J. Everett Bull, Clerk of said Court, Mo. Co. Registered according to law in Vol. 50, pages 13-14, Reuben B. Logan Registrar, Mo. Co.

Source: FDA, March 2007b

Several features in this deed are important:

1. Contrary to instructions, title is not vested in the chief but equitably in all members of the community.¹¹⁴
2. The area of land is immense at 690,000 acres, showing that the law considered the large forests part of the tribal area, not outside it, and necessary to livelihood, not just limited to farmed areas.
3. The entitlement was in the form of fee simple, the introduced Anglo-American construct for ownership. A natural and normally applied part of fee simple is that its owner may dispose of the property at will (by sale, gift, bequest or otherwise).¹¹⁵ In this case, the tribe was bound over not to dispose of the ownership. In practice this condition only erratically appears in the several Aborigines Deeds seen by this author, raising the question as to whether such owners are in fact prevented from selling the estate.

114 Deeds suggest this became the norm. One reason may have been local resistance to chiefs holding land on their behalf. There was also an apparent need for clear wording by this time, as illustrated in a case recorded by McCarthy 2007 where an allocation in an early deed in 1906 was open to interpretation as made to the chief and/or to inhabitants of the town.

115 Fee simple in normally in absolute possession; fee indicates ownership that is not liable to end on the owner's death. Absolute means that the owner's rights are not conditional. In possession means the owner owns it immediately, irrespective of whether or not he occupies the property. Most of the modified forms relate to how this ownership is held, and is highly relevant to cases where communities are the owner. For example, fee simple held jointly means that when one member of the owning body dies s/he may not dispose of his share of ownership independently. Fee simple with ownership in common means that the part-owner may dispose of the share independently, such as by gifting it to a relative. Where whole communities are involved, fee simple may run into trouble as the community is a never-ending entity, neither quite fitting the fee simple in common tenancy version nor the fee simple in joint tenancy version. McCarthy 2007 provides an interesting analysis of case law in Liberia within which the manner in which fee simple has occasionally been part of the issue at dispute.

4. The sanction against sale does not prevent the owners from renting out the land. In fact, elsewhere the Hinterland Law provides explicitly for the Paramount Chief to supervise the deposit of rents from tribal lands to be deposited in the relevant tribal treasury (art.26(i)).

5. It is not known how many land grants were made and registered. Table 8 lists the 14 Aborigines Land Deeds submitted to FDA in March 2007 in response to its call for the submission of all entitlements to forestland.

6. Only one of those submitted was an Aborigines Land Deed seemingly granted to an individual family. It is known that some communities outside forested areas and the Hinterland (i.e. in coastal areas) also applied for and received Aborigines Lands on a collective basis around this time. These would have been for lands not already allocated to immigrants or their descendants.¹¹⁶

Table 8 – Aborigines Land Deeds as submitted to FDA in 2007

named area	acres in deed	county	date probated
Gbehzohn, District 5	4000	Grand Bassa	1924
Gbehzohn, District 5	5000	Grand Bassa	1929
Camp Wood	442200	Bong	1930
Teemah Section	1000	Grand Bassa	1935
Belle District	690000	Gbarpolu	1938
Bopolu District4	790982	Gbarpolu	1949
Tappita District	920	Nimba	1950
Putu Reserved	280000	Grand Gedeh	1953
Owensgrove Township	600	Grand Bassa	1957
Chan clan, District # 2	40000	Grand Bassa	1959
Gbarzohn	0	Grand Gedeh	1960
Webbo	21000	Grand Gedeh	0
Tchien, Manyea Clan	71336	Grand Gedeh	1968
Baileyville	13	Grand Gedeh	1982
13 chiefdom/clan areas and 1 individual	2,347,651 acres (950,466 ha)	5 counties only	1924-1982

Source: FDA 2007b. Note: latter dates for probate could be re-issue of lost deeds.

116 Cases identified by this study include Pynesville and Greytown in Montserrado. Tombey Chiefdom and one other in Grand Cape Mount, and Chief Sone's Vai Town.

Box 15 – Tribal land in the Aborigines Law

Title 1, Liberian Code of Law, 1956

Chapter 11: Tribal Lands

270. Extent of tribal rights in lands

Each tribe is entitled to the use of as much of the public land in the area inhabited by it as is required for farming and other enterprises essential to tribal necessities. It shall have the right to the possession of such land as against any person whatsoever.

The President is authorized upon application of any Tribal authority to have set out the metes and bounds or otherwise defined and described the territory of the tribe applying. A plot or map of such survey or description shall be filed by reference in the archives of the Department of State within six months after the completion of such survey. The omission of a tribe to have its territory so delimited shall not, however, affect in any way its right to the use of the land.

271. Communal holdings

The interest of a tribe in lands maybe converted into communal holdings upon application to the Government. The proposed holding shall be surveyed at the expense of the tribe making the application.

The communal holding shall be vested in the members of the Tribal Authority as trustees for the tribe, but the trustees shall not be able to pass title in fee simple to such lands to any person whatsoever

272. Division of tribal lands into family holdings

If a tribe shall become sufficiently advanced in civilization, it may petition the Government for a division of the tribal lands into family holdings. On receiving such a petition, the Government may grant deeds in fee simple to each family of the tribe for an area of twenty-five acres.

273. Use of tribal land by strangers

A person who enters the territory of a tribe of which he is not a member for the purpose of farming, shall observe the following procedure:

- a. Obtain permission of the Tribal Authority prior to commencing his activities;
- b. Agree to pay some token in the nature of rent such as five or six bunches of rice out of every farm;
- c. Pay taxes to the appropriate tribal chief on all huts on the lands occupied by him.

In the case of failure to comply with any of the foregoing requirements, the Tribal Authority may cancel the permission granted and confiscate the crops, subject always to appeal to the District or County Commissioner.

3.5 Aborigines Deeds as recognition of indigenous ownership

The nature of the large collective entitlements as recognition of existing customary land rights needs to be emphasised. Traditional communities were not buying, nor even being allotted land, such as occurred in the Littoral in respect of individual natives who became ‘civilised’ and who received quarter acre town lots or 25 acre farm lots. Instead their right and title to the land they already occupied was being formally acknowledged as legal title. These deeds would have been better referred to as Tribal Land Deeds or Community Land

Liberia’s provision for collective legal entitlement was nearly unique in Africa



Deeds to distinguish them from the allocations or purchases out of public land being made in the Littoral.

It also needs to be appreciated how unusual it was for a government to offer communities such collective legal entitlement in commonhold, especially given that this was the 1920-1940s.

In fact, this author has been unable to find comparable examples elsewhere in Africa.¹¹⁷ Only now are opportunities for collective entitlement being engineered in new land laws (e.g. Uganda in 1998, Tanzania in 1999, Mozambique 1997 and South Africa in 2002). Often the routes are a good deal more complex than achieved in Liberia in the issue of Aborigines Land Deeds. In South Africa and Uganda for example, it is necessary for the community to form a registered legal entity in order to be granted land; this was not the case in Liberia where the community itself was accepted as much as a legal person as is an individual.¹¹⁸

It is unfortunate that in mid century more customary communities in Liberia did not take up this opportunity, for it was to disappear.

3.6 The ‘appropriation’ era: 1956 until the present

The ending of this form of legal entitlement to land began with a few word changes made to the Hinterland Law when it was brought into full statutory force as Title 1 Aborigines Law in the formally collated and published Liberian Code of Law (1956-58). Articles 66 and 67 of the Hinterland Law became chapter 11

117 Even in Ghana where it has been mentioned earlier Chiefs retained allodial title, there is still no clear avenue for this to be registered, although a customary freehold for individual entitlements has been provided for in 1986 law; Alden Wily and Hammond 2001.

118 Alden Wily 2006a, 2006b.

Tribal Lands. The text is reproduced in box 15, page 118. The changes made in the process are presented below.

Box 16 – The critical tenure change from Hinterland to Aborigines Law

The Hinterland Law (Revised Laws and Regulations for Governing the Hinterland, as approved by the legislature as the laws and regulations in force on December 22, 1949:

This –

Art.66a The *right and title* of the respective tribes to lands of an adequate area for farming and other enterprises essential to the necessities of the tribe remain inherent in the tribe to be utilized by them for these purposes; and whether or not they have procured deeds from Government delimitating by metes and bounds such reserves, *their rights and interest* in and to such areas are a perfect reserve *and give them title to the land* against any person or persons whosoever.

The Aborigines Law (Title 1 Liberian Code of Laws, 1956-58) chapter 11 Tribal Lands

Became this –

Sec. 270 Each tribe is entitled to the use of as much of the public land in the area inhabited by as is required for farming and other enterprises essential to tribal necessities. It shall have *the right of possession of such land* as against any person whomsoever... The omission of the tribe to have its territory so delimited shall not affect in any way its *right to the use of the land*.

(Author's emphasis)

Definitions: Oxford Dictionary of Law

Title: a person's right of ownership of property.

Possession: actual control of property combined with the intention to use it, rightly or wrongly, as one's own.

3.7 Diminishing native land rights

The changes appear minor: a mere switch of the words 'right and title to the land' to 'right of use and possession of the land'.¹¹⁹

119 Two versions of the Hinterland Law exist; in the version reproduced by the Louis Arthur Grimes Law School in the University of Liberia, 1973, article 66 (a) uses the term 'perfect reserve' whilst a version of unknown origin but marked 1949 uses the term 'perfect usufruct'. This would be highly significant if the two references to 'right and title' had also been removed from that sub-article, but they were not.

In fact the changes represented silent land theft of a considerable scale. From having been consistently recognised since 1821 as the owners of their land ('right and title') (or in the parlance of early Anglo-American law, 'owners of the soil') Hinterland tribes people now became no more than *possessors* of the land.

In its strictest legal sense 'possession' is significantly less than 'right and title'. Its effect is to render possessors as *lawful occupants and users*. Land has to have an owner and now that customary ownership was not recognised, the land fell by default (or design) to the State. Government ceased to be the trustee of community owned lands ('tribal land') and became the owner. The distinction in tenure between 'tribal land' and 'public land' blurred.

There is no evidence that those affected in the Hinterland were consulted, or indeed that this transformation was noted or made public. It is unlikely that the legislature was alerted to the change when it approved the new Liberia Code of Laws containing the new Aborigines Title. It could be that officials and representatives assumed that the appearance of the content of the Hinterland Law (Administrative Laws and Regulations for Governing the Hinterland) as the Aborigines Law was more a matter of codification along with a name change.¹²⁰ The consistency with which the Hinterland and Aborigines Laws are spoken of even today as one and the same suggests this was the case.

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3.8 Shifting ground as to understanding and intentions on native rights

However it is as likely that administrative and judicial understanding of native land rights had taken on some of the prevailing ideas of the mid-20th century; that customary land interests were inherently no more than use rights, not being held on an individual basis nor tradable in the market place. The fact that such use rights stemmed from ownership (collectively held) was repeatedly overlooked. Moreover, policy makers, administrators and legal drafters must have been imbued by 1956 with the notion that ownership had to be demonstrated in 'legal deeds'; those not holding such deeds by inference did not own their land.

120 It is notable that in 1959 in the course of presenting a Supplement to the Liberian Code of Laws of 1956 to the legislature that the Attorney General wrote a Certificate of Conformance attached to 'An Act Adopting a Cumulative Supplement to the Liberian Code of Laws of 1956' stating that only the form of the laws had been changed 'and that they are the same in substance and intent as the original acts' (February 23 1959). A similar Certificate of Conformance was probably issued when the Code came into being in 1956, but this was not traced.

Added to this could be the Dossen legacy, the principle he laid down in 1920, using the 100-year-old Marshall Ruling, that in his view Aborigines could not be landowners, only lawful occupants of the land. It could be the case that it had taken 36 years for this ideology to be absorbed in the Liberian administration and in the content of its laws. This is not an unreasonable assumption; it would take until the 1960s for Dossen's ruling to impact upon how the interior was governed, ending distinctive governance of Hinterland Liberia. It would also

Up until 1949, in the Hinterland, public land was acknowledged as customarily owned land ('tribal land')



take that long for the implications of his ruling on the powers of tribal courts to be absorbed, with belated repeal of a crucial chapter on the courts in the Aborigines Law in 1963.

In light of the above it is difficult to determine that even the legal drafters knew what they were doing when they changed words in the process of the Hinterland Law

becoming the Aborigines Law. It may be that the drafters may even have thought all they were doing was clarifying what they understood as 'right and title' given the attitudes to customary tenure that were prevalent by this time.

3.9 A casualty of unification?

It may also be speculated that the change in wording came about as an incidental casualty of Tubman's unification programme of 'civilised' and 'uncivilised', and not unrelated, of bringing the County territory and Hinterland territory into line with each other. The argument could run thus: under unification all procedures and all areas in the country had to be treated in the same manner. Thus, what was public land in the Hinterland had to mean the same as public land in County Liberia.

In the Hinterland, up until 1949, public land was acknowledged as customarily-owned ('tribal land') but was not registered. Government's role was as trustee on the tribes' behalf and overseer and regulator of the process of entitlement that was envisaged (establishing communal holdings in fee simple, in the first instance). In County Liberia, the situation was different. The area had been sold by natives to the colonial societies and thence taken over by the new 1847 government, so public land could be fairly construed as 'government land' in terms of where formal title was first vested. In unifying the norms, it was inevitable that the dominant construction of County Liberia would win the day.

Either way, the losers were several million people in the Hinterland whose property rights were diminished to the status of those inhabiting County Liberia without legal title; they were lawful occupants, not owners.

3.10 Consolidating the effects

Unintentional or not the new orthodoxy seems to have taken root as the Tubman administration progressed (1944-1971). Donor influence should not be discounted. The individualisation of peasant lands emerged as the orthodoxy in the late 1950s-1960s, outlined clearly in the British Report of the Royal East African Commission on Land Tenure in 1955.¹²¹

This was to have an immense impact far beyond British colonies and protectorates. As well as firmly imprinting as fact the idea that Africans did not own their lands, only used them, the report decided that any form of communal holding of land was anathema to progress. Accordingly natives had to be assisted to turn the land into individual plots and to have them so titled. Only these registered parcels would be recognised as *private property*. A land market would also develop, enabling richer and more efficient farmers to buy out poorer farmers. Echoes of this are heard in President Tubman's exhortations to aborigines in the Hinterland to modernise agriculture.¹²²

The prevailing view from the 1950s onwards was that only lands that are owned individually and registered are 'property'



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By the end of the 1950s the British had a mass titling programme under way to individualise, title and register peasant lands in Kenya and Uganda. The French did similarly in Senegal. These and the many other programmes that followed elsewhere were in due course to fail in large degree. Nonetheless, the orthodoxy held until the 1990s, at which point purposive individualisation began to be discarded as unviable and unsound.¹²³ National land policies and international aid policies from the mid-1990s slowly began to look to titling what existed on the ground.¹²⁴

121 British Government, 1955, 1956.

122 As during the First National Executive Council with Chiefs convened in May 1954; Tubman Archive, Undated.

123 A great deal has been written on this; Bruce and Migot-Adholla (eds.) 1994 is an excellent source. Also see Hunt 2005, McAuslan 2006c, Jacoby and Minten 2005.

124 No better example of this is found in the comparison between the land policies of The World Bank in 1975 and 2003; refer The World Bank 1975 and Deininger 2003.

In the interim, international aid rose steadily in the 1960-1980 period, including in Liberia.¹²⁵ *Inter alia*, governments from Afghanistan to Brazil to Somalia to Liberia were firmly guided towards enacting land registration laws to house the mass individualisation and titling programmes envisaged. In Liberia this delivered the 1974 Land Registration Act.

3.11 Signing the death-knell of customary ownership

As elsewhere, this new enactment was to pay no attention to collective entitlement. Given the significant history of collective titling through Aboriginal Grants, this is both curious and suggestive of a shift in policy. Such a shift would fit the times; the 1950s began a period of dramatic growth in foreign investment and use of Liberian lands, for timber, gold and iron ore extraction and for rubber production. This was the era of Tubman's famed Open Door Policy and through which virtually any foreign company could help itself to resources with ease and face little demand for taxes or accountability (Liberia was nicknamed 'Firestone Republic'). Regulation was lax and government itself reputedly grew lax and corrupt. Most of the desirable resources were in the Hinterland.

Rapacious interest in the resources of the Hinterland may have helped entrench dispossession



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In short, it would not have been expedient for the administration to contemplate the costs of acquiring that property should it wish to hand over those lands as concessions on a *de facto* or real leasehold basis.

Sometime between 1949 and 1956 Tubman had been concerned enough about rapacious land appropriation to amend the Hinterland Law to require that tribal territories be delimited 'prior to any land within that territory or chiefdom could be made available for private purpose of any kind whatsoever'.¹²⁶ It is not known if this was carried over into the 1956 law or beyond.¹²⁷

In practice, increasingly cavalier attitudes to the land rights of Hinterland communities were evident; the concession sector expanded, government itself

125 By the US in particular, which gave more per capita to Liberia than it did elsewhere, in return for complete freedom to establish military and intelligence facilities.

126 As amendment to the Revised Laws and Regulations for Governing the Hinterland (section 83).

127 Only chapter 11 Tribal Land was available to the author.

co-opted 1.5 million ha of community forest lands as proclaimed National Forests described as national property with no evidence that due compensation for those properties was paid to affected tribes. Despite millions in foreign investment and development aid, little benefit reached the Hinterland population. The phrase ‘growth without development’ was first coined in respect to Liberia.¹²⁸

3.12 Creating mass land insecurity

Diminishment in legal and effective title by rural communities was probably part of this. In the process Liberia became the coloniser of the Hinterland it had prided itself on never being. It may be argued that from having been exceptional in its treatment of indigenous land rights on the continent, Monrovia became just another run-of-the-mill ‘thief’ of native lands, like neighbouring colonial administrations.

Issue of Aborigines Land Deeds accordingly gave way to entitlements by Public Land Sale.¹²⁹ Field work in Grand Cape Mount and Gbarpolu suggests that the respect for Aborigines Land Grants crumbled; they began to be indicated as not in themselves entitlements, more of a reservation of the described tribal land. Of such shifts in meaning dispossession may be obtained. In practical terms, if

communities wanted secure rights to their customary properties after 1956 they had to buy their land back from the government.

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There is no basis in the constitution or property law to render forest resources the property of the state



Some 20 or more communities acquired formal recognition of their property rights through this mechanism (table 9). Box 17, page 126, provides an example; the Tarweh and Dropoh clans of Sinoe formally secured 100,000 acres at a cost of US \$ 50,000. Most

communities could not afford the fees. Like Tubman, Tolbert encouraged rural farmers to buy land, promising it was cheap. This was true. Registration fees were (and remain) at \$ 1 per acre for farmland. Survey fees were more expensive (now officially \$ 2.50c per acre, more in practice).

128 Growth without Development was the title of a book by Robert Clower and George Dalton (1966) (North Western University Press) which examines why Liberia had phenomenal growth rates in the 1950s and 1960s but with little evident structural or social development.

129 There is some confusion as to whether Aborigines Land Deeds ceased altogether. It will be noted from Table 8 that one Aborigines Deed was obtained in 1982, although this date could easily refer to a certified replacement.

Many chiefs responded by issuing permits to survey (Tribal Land Certificates) even for land that was already held under Aborigines Land Deeds. Chief Jallah Lone of Gbarpolu County for example issued no less than 200 such consents to towns within his chieftdom, out of land that was already collectively titled under Aborigines Deeds. Only one has since proceeded to survey and final entitlement by signature of the President – his own parcel.

Box 17 – Example of Public Sale Deed to a community

Republic of Liberia Sale of public lands

KNOW ALL MEN BY THESE PRESENTS, THAT I Jerry S. Wayne, Commissioner of Public Lands for the County of Sinoe in the Republic of Liberia having in conformity to an Act entitled 'An Act Regulating the Sale of Public Lands' approved January 5th, 1850 exposed to sale by public auction a certain piece or parcel of land hereinafter named and described which piece of land was purchased by Tarweh and Dropoh having paid into the Treasure of the Republic the sum of Fifty Thousand (\$ 50,000) Dollars being the whole amount of the purchase money as per Certificate of said Land Commissioner, THEREFORE I William V.S. Tubman President of the Republic of Liberia, for and in consideration of the sum paid as aforesaid (the receipt whereof is hereby acknowledged) have given, granted, sold and confirmed and by these presents do give, grant, sell and confirm unto the said Tarweh and Dropoh, their heirs, executor, administrators and assigns forever all that lot or parcel of land situated and lying and being in the Tarweh in Sinoe County and bearing in the authentic Records of said Sinoe County the number N/N and bounded and described as follows:

Commencing at a Soap Tree planted ... (details) ... to the place of Commencement and containing 100,000 (one hundred thousand) acres of land and no more.

TO HAVE AND TO HOLD the above granted premises together with all and singular the buildings, improvements and appurtenances thereto belonging to the said Tarweh and Dropoh their heirs, executors, administrators or assigns. And I the said William V.S. Tubman President of Liberia for myself and my successors in Office, do covenant to and with the said Tarweh and Dropoh by virtue of my office and authority given me by the Act above-mentioned has right and lawful authority to convey the said premises in fee simple, and I the said William V. S. Tubman president of Liberia and my successors in office will forever Warrant and Defend the said Tarweh and Dropoh their heirs, executors, administrators and assigns against any person or persons claiming any part of the above granted premises.

IN WITNESS THEREOF I the said William V.S. Tubman president of Liberia have hereunto set my hand and caused the Seal of the Republic to be fixed this 4th day of June A.D. 1962 and of the Republic the 125th year.

Sgnd. W.V.S. Tubman, President

ENDORSEMENT

PUBLIC LAND SALE DEED from Republic of Liberia to Tarweh and Drapoh Native Reserved Lot No. N/N situated at Tarweh Kpanyen District, Sinoe County, 'Let this be Registered' J.C. Lewis presiding Judge Monthly and Probate Court, Sinoe County, probated this 3rd day of September A.D. 1962, Abraham Brown Clerk of Monthly and Probate Court, Sinoe County, Registered according to law in Volume 1955 page 528, J.C. Thomas Registrar, Sinoe County. Re-registered in Vol. N/N -95 pages 328-327 due to mutilation of the original Vol.

Source: FDA, 2007

Table 9 – Collective public land sale deeds as submitted to FDA in 2007

districts and clans	acres	county	date probated
Kongba	576,250	Gbarpolu	1942
Putu, Dropoh and Tartwah	400,000	Sinoe	1988
Seekon Clan	32,000	Sinoe	1961
Bokomu District	856,373	Gbarpolu	1962
Marblee Clan	336,000	Grand Bassa	1968
Gbeh Section	250,000	Grand Bassa	1967
Tappita District	198,920	Nimba	0
Kiteabo Chiefdom	35,000	Grand Gedeh	1976
Butaw-Geetroh Chiefdom	250,000	Sinoe	1958
Kpayan-Dropoh and Tartwah clans	100,000	Sinoe	1962
Palama Clan, Kpelle Chiefdom	250	Lofa	1981
Gblor Clan	14,277	Nimba	0
Kongba District	400	Lofa	0
Dowen Section	70	Grand Bassa	1967
Kaikpo Zahn Town	800	Grand Bassa	1961
Tuobo chiefdom, Webbo District	21,000	Grand Gedeh	1968
Garr clan	100,000	Nimba	1950
Tarweh	100,000	Sinoe	1962
Tienpo Chiefdom	562,620	Grand Gedeh	1986
	3,833,960 (1,552,210 ha)		
Source of data: FDA 2007.			

4 The Land Law in force today

Box 18, page 130, lists national laws which directly impact upon the land rights of customary land holders. These include the Public Lands Law and the Property Law discussed below. They also include the Customary Marriage Law described in chapter 3 for its effect upon women, and the National Forestry Reform Law discussed at length in chapter 4.

4.1 The curious case of the missing law

It may be noted that the Aborigines Law, Title 1 of the 1956 Liberian Code of Law is not included above. This is curious as no other law has more direct impact upon customary property interests. The fact is that even senior judiciary officials are not fully sure of its status today.

This needs explaining. Around the time the Land Registration Act, 1974 was being drafted, the 1956-58 Liberia Code of Law was being revised. This would become the Liberian Code Revised (1973-78).

As well as amendments and repeal of laws being taken into account to update the Code, the Titles (sectors) were reordered. Title 1, previously the Aborigines Law, became the Civil Procedure Law. The 39 Titles were listed in the Index. The Aborigines Law is nowhere to be seen. In the event, only two of the planned four Volumes were prepared and published.¹³⁰ Titles 3-33 were to remain until today in loose leaf form (handbills). This allowed it to be assumed the law was somewhere there, tucked under perhaps the Local Government Title.

The assumption by officials and lawyers interviewed for this study was that the Aborigines Law had merely been mistakenly omitted in editing. They were sure the law was still in force. The omission would be remedied in the revision of the Code in process.¹³¹ They were also insistent that the Aborigines Law was the same as the Hinterland Law and could as well be referred to. This we have seen is not the case.

130 Volume I in 1973 containing only two titles, the Civil and Criminal Procedure Laws, Titles 1 and 2 and Volume IV containing Titles 34-39.

131 This began in 1997 and has recently been revived; Banks 2006.

Box 18 – National law in force pertinent to customary lands

National Constitution of Liberia, 1986

Articles 5, 11, 13, 22, 23, 24, 56, 65

Public Lands Law, Title 34, Liberian Code of Laws Revised

Chapter 1: Land Commissioners

Chapter 2: Public Surveyors

Chapter 3: Sale of Public Lands

Chapter 4: Allotment of Public Lands

Chapter 5: Leasing of Public Lands

Chapter 7: Miscellaneous

Property Law, Title 29, Revised Liberian Codes

Chapter 1: Instruments Affecting or Relating to Real Property: Probate and Registration

Chapter 2: Landlord and Tenant

Chapter 5: Foreclosure of Mortgage

Chapter 6: Partition

Chapter 7: Admeasurements of Dower

Chapter 8: Registered Land Law, 1974

Chapter 9: Licensing and Regulation of the Practice of Land Surveyors and Matters Connected Therewith

National Forest Reform Law, 2006

Part II, Title 23 Revised Liberian Codes

Local Government Law, Title 20, Liberian Code of Laws Revised

Chapter 1: Territorial Divisions of Liberia

Chapter xxii: Election of Chiefs

The Executive Law, Title 12, Liberia Codes Revised

Part II Section 25 Ministry of Interior

Equal Rights of the Customary Marriage Law, 1998 (in force 2003) read with New Decedents Estates Law, 1972 Title 8, Liberian Code of Laws Revised

Act Adopting a New Domestic Relations Law (1973) Title 9, Liberian Code of Laws Revised

While copies of the Aborigines Law were extremely difficult to access, copies of the 1949 Hinterland Law were less so. Three versions of the Hinterland Law were found; one of unknown provenance but dated 1949, another reproduced in 1973 by the Louis Arthur Grimes School of Law, and a third reproduced on January 7 2000 by the Ministry of Internal Affairs. The Ministry had found it necessary to re-issue the law, a senior official said, because copies of the Hinter-

land/Aborigines law were hard to find. In recent years the Minister has referred to the Hinterland Laws and Regulations as being in force.¹³²

Several other indicators suggest the 1956 Aborigines Law to be still in force, its inaccessibility as even a handbill notwithstanding. Two amendments to its content were found; one in May 1963, stemming from the removal of the distinction between County and Hinterland Liberia to allow for a unified local administration regime. This law was enacted to repeal three chapters and one section of the Aborigines Law. The remainder by implication was still in force.¹³³ Several other articles of the Aborigines Law were then repealed in 2003 by the Equal Rights of the Customary Marriage Law.¹³⁴ In 1973, the Louis Arthur Grimes School of Law Customary Law Project made three present-tense references to provisions of the Aborigines Law.¹³⁵

Uncertainty as to the status of the Aborigines Law and the Hinterland Law is unhelpful to the rural majority



On the other hand, there is a strong case that the omission of the Aborigines Law from the Liberian Code Revised in 1973 was deliberate. The recently appointed Minister of Justice points to the Preface of the Code in 1973 in which the then Attorney-General noted that in the course of revision it had been found necessary to omit those laws which were outdated. No law is specifically mentioned.

131

It is not known if the Senate and House of Representatives were told exactly which laws had been omitted, but they did in event pass the new code during several sittings as the body of statutes in force. Omission therefore may be taken as repeal. How then was the law still being amended as late as 2003? The Minister may have given the explanation for this a year earlier in his damning critique of the judicial system. He noted the frustrations and ill effects of the absence of law reports or a comprehensive set of the promised codified volumes of law. He concluded:

“Because the laws are generally published and available only in hand bills, most of them have not been readily available, not even to legislators, causing that body to enact laws that are also inconsistent, repeal laws

132 Morais Undated.

133 An Act to Repeal Certain Chapters and Sections of the Aborigines Law with Respect to Hinterland Administration, approved May 1, 1963.

134 Chapter 3, Section 2.

135 In footnotes 1-3 to article 34 of the Hinterland Law.

that were previously repealed, and reference laws no longer in existence” (Banks, 2006; 3.6.9).

The emphasis placed by the Ministry of Internal Affairs on the Laws and Administrative Regulations for Governing the Hinterland ('Hinterland Law') is interesting, for no mention is made of the Aborigines Law. The Executive Law (1972) makes mention of neither the Hinterland Law nor the Aborigines Law in making the Ministry of Internal Affairs responsible for 'managing of tribal affairs and all matters arising out of tribal relationships' and for

“verseeing the orderly functioning of tribal government and drafting rules and regulations to effectuate this purpose' and oversight 'for the collection and publication of the laws and customs for the Liberian tribes”.¹³⁶

The confused status of the Hinterland Law (1949) is muddled up with the fate of the Aborigines Law (1956). It is known that only one chapter of the Hinterland Law was repealed in 1956 by the Aborigines Law and yet almost all its content entered the Aborigines Law.¹³⁷ This suggests that at least by 1956 the Hinterland Law was not treated as full statute, its explicit approval by the President and the legislature notwithstanding (annex D). It must be concluded that as of that date if not before, the Hinterland Law was regarded as only statutory regulation.

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There is support for this conclusion in the curious way in which the Hinterland Law 1949 rather than the Aborigines Law 1956 was used by the Customary Law Project of the University Liberia as the basis of its codification of customary law in 1973 and that its citation of the Aborigines Law 1956 in footnotes was for historical reasons. The editorial foreword observes that

“It is our hope, however, that the study, recording and preservation of Liberian Customary Laws will not serve as a deterrent to our efforts in fostering a uniform national legal system by which all our people will be governed. Customary Law will therefore be of historical significance only, but not parallel to another legal system in Liberia” (Barnard, 1973).¹³⁸

136 Art.25.2. (i) and (n), chapter 25 Ministry of Internal Affairs (the former ministry of Local Government), Executive Law Title 12, Approved May 11 1972.

137 The Repealers refer only to Hint. Reg. (app. L. 1949-50, chapter xxxvi) except arts. 37, 54 (j), 70. It is not clear from the 1949 Hinterland Regulations what constituted chapter xxxvi. None of the copies of the Hinterland Law accessed divide the law into chapters. Many other laws are also listed as repealed (from 1835-1951) but are not named or numbered, making it difficult for anyone without a complete set of laws to know the implications.

138 Toye Barnard, Director, Customary Law Project, 1973.

It may be supposed that a main source of this confusion was again the process of unification under way in the early 1970s. It could have been the case that it was considered inappropriate to maintain a special law for the counties of the Hinterland, and that therefore the Aborigines Law 1956 should lapse.

At the same time (and fairly) the administration may neither have wished nor been able to abolish the many customary elements of the Aborigines Law, both

Rural Liberians need to know how their community laws are viewed by state law.



on principle and given the difficulties of clarifying the fine line between customary and introduced principles that had been so well integrated in these laws. The solution may well have been to return the Aborigines Law to its original status as less statute than administrative regulation, on the basis that this was customary law. Thus the Hinterland Law, 1949, or, to use its

full title, the Revised Laws and Administrative Regulations for Governing the Hinterland, began to be reissued, but as legally approved customary law and/or regulation from the Ministry of Interior, meeting its mandate as outlined above.

If this is the case, then it could be said that the Liberian State retracted its successful history between 1923 and 1956 of embedding customary law in statute; it dropped the Aborigines Law and has not replaced some its key articles in statute. This would be almost as unfortunate as the detrimental modification that occurred in that initiative of legal integration.

133

The lack of clarity in 2007 as to the real status of either the Hinterland Law or the Aborigines Law is unhelpful to majority customary owners. The options are these:

- That the Aborigines Law is after all still in force, in which case customary owners are tenants on state land
- that the Aborigines Law has lapsed and the only state law provisions for tribal land rights are therefore in the Public Lands Law and Property Law, the treatment of which is incomplete and ambiguous (see below); or
- that the Aborigines Law has lapsed but the Hinterland Law is still in force, though only as an approved regulation and/or codified customary law. Any provision in the Liberian Codes Revised will always take precedence.

The Constitution is not particularly helpful in its provision that 'The courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature' (art.65). Nor is its pledge that no person shall be deprived of property without due process of law helpful (art.20a); without the Hinterland Laws and Regulations having clear and superior force on the subject, definition of customary rights as property is severely weakened.

Rural Liberians need to know how their community laws are viewed by state law. Will their norms be upheld when a case involving a customary land right comes before a court? Problems arise when national law says one thing and customary law another. The Property Law and Public Lands Law are the only relevant laws indisputably in force. As shown below, these leave gaps where gaps are not needed. A vacuum prevails on the critical subject of the legal status of customary ownership. This provides fertile ground for liberal or illiberal interpretations of what customary land rights amount to. Unfortunately, the latter has eventuated in the forestry sector (chapter 4).

The confused status of key laws means that the legal status of tribal rights must be speculative



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Boxes 19 and 20, pages 135 and 136, provide relevant extracts from the Public Lands Law and Property Law. Commentary then follows.

4.2 The Public Lands Law and Property Law

The Public Lands Law comprises seven short chapters (other than a list of repealed provisions): providing for the appointment and duties of (1) land commissioners and (2) public surveyors, (3) laying down procedure for the purchase of public lands, (4) the allotment of public lands, (5) leasing of public lands (specifically to foreigners), (6) how a claimant may seek return of land that has reverted to government, and (7) a miscellaneous section which deals cursorily with how errors in deeds to public lands may be remedied and to whom claims against the government for public land shall be addressed.

The law does not put to rest troubled questions as to the status of customary interests in the Hinterland. In the first instance, what is meant by *public lands* is not defined; that is whether it is conceived as un-owned land; land owned by the nation; land owned by the state or its agent (government land); or land that is only defined as public because the owners do not have documented title – i.e. *unregistered* land rather than un-owned land.

Box 19 – Sections of Public Lands Law pertinent to customary lands

Section 30. Procedure –

A citizen desiring to purchase public land located in the Hinterland shall first obtain consent of the Tribal Authority to have the parcel of land deeded to him by the Government.

The District Commissioner shall satisfy himself that the parcel of land in question is not a portion of the Tribal Reserve and that it is not otherwise owned or occupied by another person and that it therefore may be deeded to the applicant. He shall thereupon issue a certificate to that effect.

A citizen desiring to purchase public land in the County Area* shall apply to the Land Commissioner of the county in which the land is located and the Land Commissioner if satisfied that the land in question is not privately owned and is unencumbered shall issue a certificate to that effect.

** County Area refers to the 1847-1963 division of the country into County Area including all territory extending from the seaboard 40 miles inland (the old Republic area).*

Section 53. Allotment of public lands to aborigines who become civilized –

Aborigines of the Republic of Liberia who shall become civilized shall be entitled to draw public land to the same amount as immigrants and to receive deeds to such lands under the provisions of section 51, paragraph 2 of this chapter; provided that an aborigine who has drawn or shall draw lands under the provisions of this section shall be entitled to a deed in fee simple for such land only when (a) He shall have completed a frame dwelling house thereon covered with plank, sheet iron, tiles, or shingles, or a house of stone, brick, logs, or mud, of sufficient size to accommodate himself and family; and (b) If the land is farmland he shall have brought at least one quarter thereof under cultivation by planting coffee trees, palm trees, rubber, cocoa, or other trees or planting bearing marketable products.

Box 20 – Sections of Property Law pertinent to customary lands

Chapter 8: Land Registration Law (1974)

Sub-Section 8.3 Definitions

'interest in land' means any right or interest in or over land which is capable of being registered under the provisions of this chapter, and includes absolute ownership of land'

'land' includes land covered with water, all things growing on land, and buildings and other things permanent affixed to the land

8.44 Safeguarding of rights of Government in Public Lands

Public Lands

As soon as conveniently possible after an adjudication section has been designated, the Demarcation and Recording Officer in charge of such section shall consult with the Land Commissioner of the area involved and examine such of the records in his office as are relevant to the location of public lands in the adjudication section. A schedule of any such public lands shall be made by the Demarcation and Recording Officer for inclusion in the Demarcation Plan described in section 8.45 (c). Neither the Government nor the Land Commissioner shall be required to file claims to protect the Government's rights thereto. The Land Commission, however, shall attend on behalf of the Government, whenever a notice of demarcation of land is issued which will affect public land. However, any person aggrieved by the designation of any parcel of land as public land may challenge determination by way of the appeal procedure provided in this chapter.

8.123 Effect of registration of land as Public Land

The registration of land as public land, subject to any registered encumbrances, which shall include without limitation, interests in and rights over such land granted in concession and other agreements made under authority of law, and by way of delineation of Tribal Reserve areas and communal holdings, shall enable such land to be disposed of in accordance with the provisions relating thereto contained in the Public Lands Law and in any other law providing for dispositions of public lands, by a disposition registrable under the provisions of this chapter.

8.52 Principles of adjudication

(b) If he the Referee) is satisfied that a person is in open and peaceable possession of a parcel of land and has been in such possession, by himself for his

predecessors in title, for an uninterrupted period of twenty years or more, he shall that person tentatively as the owner of the parcel. A person is deemed to be in possession of land if he does not acknowledge the title of any other person to that land and by himself, his agents, tenants or servants, has the use of the land to the exclusion of the public.

(d) If he is satisfied that a parcel of land is entirely free from any private rights or that the rights existing in or over it would be insufficient to entitle a person to be registered as owner of the parcel under the provisions of this chapter, he shall record the parcel of land tentatively as public land. If such land is part of a Tribal Reserve or communal holding, he shall further record the fact that such public land is subject thereto and, if feasible, shall describe the boundaries of the reserve or communal holding and the name or names of the tribe or tribes entitled to Tribal Reserve rights or holdings therein.

8.53. Additional adjudication guidelines

...Except as otherwise provided in section 8.44, all unclaimed land shall be deemed to be public land until the contrary is proved.

The balance of favour falls upon the government *as owner* of public lands. After all, the law is about how to acquire parts of public land from the government. Re this, government may lease any portion of public land not appropriated for other purposes to foreigners or foreign companies. There is no requirement that it be demonstrated that the land is not owned or even encumbered (s.70) although this is required when outright purchase of public land is sought. It is through this article that concessions to customary property have been 'lawfully' issued.

Encumbrance is used in regard to an interest in land held by someone other than the owner of the land itself (e.g. an easement, lease, mortgage, restrictive covenant). However, when an encumbrance amounts to 'tribal land', it is sufficient to prevent the purchase of that land if not its lease.

Underlying this is clear acknowledgement that public land in at least the hinterland is possessed by customary communities. Accordingly, a citizen seeking to purchase public land in the Hinterland must first obtain consent of the tribal authority to have the land deeded to him by the government (s.30).

*Customary land tenure is
alive and well in Liberia,
and responding well to
the demands of
modernisation*



That this possession is not considered to amount to ownership is suggested in the need for the purchaser to pay the chief only 'a sum of money as token of his good intention to live peacefully with the tribesmen' (s.30). That is, neither chief nor community receive the payment for the land. That is paid to government. This reinforces the position of the Aborigines Law that customary occupants are possessors not owners of their land and that this possession is no more than an encumbrance on land owned by the government.

On the other hand, tribal land may not be sold by the government, implying that it is indeed owned not just possessed! When a purchase is sought, a main task of the land commissioner is to satisfy himself that the parcel of land in question is not a portion of tribal land (tribal reserve). In reality this is what the consent form is all about: confirming that the desired land is not tribal land. Somehow (although it is not clear where such lands exist) property for purchase has to be found outside tribal lands. Therefore, in practice what chiefs and the County Land Commissioner are forced to do when they sign the Tribal Land Certificate is to remove the desired parcel from tribal land into government-owned public land. This is manipulative in the extreme.

Most of the shortcomings of the Public Lands Law stem from its age, with clear origins in the provisions of 1824, with critical meanings transposed too casually from the Littoral to the Hinterland. The provisions were drafted specifically with immigrants in mind, and in circumstances where public land was the rightful property of the state acquired between 1821 and 1853. This is why the law distinguishes between *immigrants* and *aborigines* and also between *citizens* and *aborigines who become civilised*.

The Public Lands Law manipulates tribal interests by getting chiefs to declare desired parcels are not tribal land after all



As this is the law in force, the effects that may be seen are not just unjust but somewhat ludicrous. Say, for example, a Ghanaian is accepted as an immigrant to Liberia today. As an immigrant the law gives him advantages over Liberian citizens. Provided he declares his intention to become a citizen he is due a free allotment of a quarter acre town lot, a 10 acre farm lot or a 25 acre farm lot if he is married. Final entitlement is conditional upon evidence of occupation and use (farming or building a house) (s.50 and 51).

In contrast, Liberians may only purchase public land, unless of course they are 'aborigines who have become civilized' (s.53). Then they too are eligible for allot-

ments of similar acreage. However, in their case, they have to bring at least one quarter of the farm allotment under cultivation to secure the fee simple title deed. The Ghanaian need only bring one fifth under cultivation. Moreover, the citizen must establish rubber, cocoa or other tree crops as cultivation. This is not required of immigrants.

Most seriously for customary owners, the law makes no explicit provision for collective entitlement out of public land, by grant, allotment or purchase. The first was left to the Hinterland and Aborigines Laws. Those laws, it will be recalled, provided for fee simple entitlement on a collective basis (commonhold) but without the right to sell the land.

*Built upon settler interests
the Public Lands Law is
dangerously unjust for the
rural majority*



In practice, communities may buy public land in their capacity as citizens (s.30), which does not limit the size of the parcel to 25 acres. As shown earlier, this is precisely what communities have been doing (Public Land Sales).

4.3 The Property Law – unclear and unhelpful for customary owners

The critical part of the Property Law for customary owners is chapter 8, the Registered Land Act, 1974. Like the Public Lands Law, this is less than clear as to the position of customary rights. As an encumbrance on public land they must be recorded and protected (in the event of systematic registration) as ‘tribal reserves’ or ‘communal holdings’ (s.8.52 (d)). This means they cannot be casually extinguished; the indicated standard procedure of adjudication and compensation for loss of those land interests would be required should those lands be granted or sold to another.

In this sense, the law tends to reinforce the idea that a distinction should be drawn between public land and tribal land because they are different in their effects; one is freely open for sale, the other may be leased out to others but not sold. At the same time the law does not provide properly for the registration of tribal land. Again, this was the function of the Hinterland and Aborigines Laws.

As conventionally the case, the Property Law does offer protection to those individuals who have occupied the land in open and peaceable possession for 20 years or more and who recognise no other owners than themselves. Such persons

may be registered as owners (pending due adjudication) (s.8.52(b)). The fact that a community is in precisely the same position is ignored in the Property Law.

In sum, the Public Lands Law and Property Law are not serviceable when it comes to the rural majority of Liberians – those in the Hinterland. As immi-

Current land law is individual and settler-centric: this is not helpful for collective owners – the rural majority



grant-centred in the one case and individual-centric in the other, the laws are not constructed to take care of collectively owned property which so clearly underwrites the rural sector. Nor do they unambiguously answer questions posed as to how national law regards those collective rights; as real property interests or as rights of occupation and use?

Lack of clarity as to the status of both the 1949 Hinterland Law and the Aborigines Law exacerbates uncertainties. It is not clear, for example, how far the commitment of both those laws to protecting the tenure of communities to their tribal lands 'irrespective of whether not they have the land described in metes and bounds' still applies.

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Even should that sanction be considered statutorily still in place, the Public Lands and Property Laws provide insufficient protection for unregistered property. At the end of the day the law has made it easy for rural communities to find their lands leased out by the government to others. This is so irrespective of how their tenure is perceived; as ownership or permissive occupancy on land owned by government. Only outright sale without their consent is not allowed.

To gain security, communities and individuals within the rural community have no choice but to pursue formalisation of ownership in fee title. To achieve this they must deny their own customary rights and declare the land they want to be outside tribal lands, even when it is the tribal (community) land they are seeking to secure. Then they must buy the land back from the government. A probated and registered Public Land Sale Deed finalises the transaction. The procedure for this is given in box 21, page 141.

Box 21 – The procedure for acquiring legal title out of Public/Tribal lands

Consent Form

1. Applicant obtains a Tribal Land Certificate or Public Land Certificate signed by the local elder, Town Head, Clan Head and Paramount Chief. The Certificate confirms that the parcel is not occupied, used or owned by another and may be sold by Government to the applicant. The location and estimated acreage of the parcel is given. The Certificate is no more than a *permit to survey* the land. *Note:* Tribal and Public Certificates are in the same format and have the same effect but are used in different circumstances; Tribal Certificates are used in the Hinterland where the public land is subject to customary rights.
2. The signed Certificate is submitted to the County Land Commissioner. Often the Applicant is accompanied by elders to confirm in person that permission was properly granted. The Commissioner inspects his records and if necessary, the plot, and confirms it is available. He adds his signature to the Certificate.
3. The Applicant takes this to the County Superintendent for his approval. His signature is added.

Survey

4. If the Applicant has funds, he then hires a licensed surveyor or asks the County Land Commissioner to direct the Public Land Surveyor to survey the area ('Survey Order' or 'Green Letter of Authorization to Survey'). In this event a fee of US\$ 2.50 per acre is paid directly to the Surveyor and receipted
5. The Surveyor reports to the County Land Commissioner when the survey is complete, in the form of a Certificate of Survey and a completed draft Public Land Sale Deed in favour of the Applicant. This includes a sketch map to scale, coordinates and description of the perimeter recorded on the back, along with his signature.

Draft Public Land Sale Deed

6. The Applicant takes the Certificate and draft Public Land Sale Deed to the Government Revenue Office in the County capital and pays a fee of US\$ 0.50 per acre for farmland and US\$ 7.50c for a township plot ('lot') which is one quarter of an acre. A receipt is issued, and the receipt number recorded by the Revenue Office.
7. The Applicant then takes all documents and receipts to the County Land Commissioner who records the details in his Register and forwards the draft Deed to the County Superintendent. The Superintendent attaches an Approval Letter and forwards the draft Deed to the Ministry of Lands, Mines and

Energy for technical certification and spot-checking by the Lands and Surveys Department, or in practice simply recording and forwarding.

Approved Public Land Sale Deed

8. On completion the draft Deed is sent to the President's Mansion for the President's signature.¹³⁹

Registered Title

9. This is returned to the Applicant who must within four months have the approved Deed registered in the Probate Court and also sent to the National Archives. Under the 1974 law the County Land Commissioner is supposed to maintain the Land Register but in practice the same information should be retrievable from the Ministry, the courts and archives. All subsequent transactions by the registered owner have to be probated (taken to the Probate Court) to be legal.

Sources: Field Study, MLME, Public Lands Law Title 32.

139 The Public Lands Law actually requires Presidential signature at two points; survey first has to be approved by the President and then the final deed (s.30). This is not the practice today.

5 The extent of the customary sector

It may be fairly safely assumed that customary land is all rural land that is *not* under probated or registered entitlement (deeds).

We have seen earlier how private land/registered land has been established through different procedures. The land may be *allotted* (the case with original allocation of town lots and farm lots to immigrants or to ‘civilized’ aborigines), *granted* (the case with Aborigines Land Deeds) or *bought* (from the government, in the form of a Public Land Sale Deed). Land may also obviously be bought from someone who already holds an ownership deed, formalised through the probate of a Warranty Deed (Transfer Deed) (box 22, page 143). There are also deeds or registered observations reflecting that the land has been bequeathed, shown in a probated will or in the form of a court order passing the land to a named beneficiary or descendant.

Other estates which fall into the Private Land category include leaseholds. Given the areas of land involved, the prominent landlord in Liberia is the State.

Box 22 – Main forms of statutory entitlement (‘legal titles’)

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Land Deed	registered allocations of land from 1821
Aborigines Land Deed	collective entitlement granted to communities during 1920-1950s
Public Land Sale	purchase of public land, either on individual or collective basis
Warranty Deed	purchase of land already registered as owned
Leasehold	a legal form of possession of land which is owned by another (person or government), for a specified period and often with conditions applying

Note: Public Land Certificates or Tribal Land Certificates are not entitlements, only permits to survey towards a finalized entitlement

Records of exactly what land is deeded exist in Monrovia in three archives: the Ministry of Foreign Affairs which still holds older deeds; the National Archives, now the official repository, and the presidential mansion, due to the fact that the president must sign every original allotment, grant or sale of public land.

Access to these archives was not secured by this study. However it is believed that despite the war many of these records are intact, although uncatalogued. In due course these will be revelatory.

There is no central register which brings together records as to how much land has been surveyed and titled. The only systematic titling was carried out in the late 1970s on a pilot basis in Monrovia. This applied the Torrens cadastral system as is laid out in chapter 8 of the Property Title (Land Registration Law of 1974). Under one third of Monrovia was covered.

A senior official in the Ministry of Lands, Mines and Energy guesses that no more than 20,000 parcels of deeded land exist in Liberia.¹⁴⁰ He says almost all refer to town lots/buildings and coastal area grants or purchases. This study was able to count less than 1,000 entries in copies of land records for Grand Cape Mount between 1856 and 1916, and under 250 title deeds for Sinoe County between 1860 and 1922.¹⁴¹ Many of these reflected transfers of already allotted or purchased parcels with some subdivisions.

The general view is that there are few entitlements for land outside the original coastal Littoral/County Liberia. Findings from the field study suggest this is so; no more than 33 formal entitlements were identified in Gbarpolu County, with a much higher number estimated in coastal Grand Cape Mount. Among the 37 rural communities visited, less than 1% of households had acquired formal entitlements for their houses or farms (chapter 3).

The only other tangible source of entitlements available to the study was the submissions made to the FDA in March-April 2007.¹⁴² These refer only to forested areas of the country. Submitted deeds derived from 11 counties. Although around 70 submissions were made, many were duplicates or were Public Land Certificates or Tribal Land Certificates; that is, not deeds per se, just consents to proceed towards entitlement. Only 47 submissions were rated as formal deeds (table 10).

140 J. Johnson pers comm.

141 Liberia Collection, Indiana University.

142 FDA 2007b.

5.1 Few deeds, many hectares

Few as they are, these forestland deeds cover many hectares. The 47 deeds add up to 6.8 million acres (2,770,744 ha) or 29% of the total land area of Liberia. Assuming these are validated, this is a much greater area of titled land than normally assumed.

More startling, 90% of these deeds are collective entitlements, held by towns, clans and chiefdoms (table 11). These cover around six million acres as shown earlier in tables 8 and 9. The size of the parcels varies widely from 30 to 300,000+ha. The average collective property affecting forestlands is 75,829 acres (30,700 ha).

Table 10 – Summary of deeds submitted to FDA in 2007

land deeds	number	total acres	range acres	counties and number
Aborigines Grants	14	2,347,338	300 - 790,982	Bong: 1 Nimba: 1 Grand Bassa: 6 Gbarpolu: 2 Grand Gedeh: 3
Public Land Sale Deeds	32	4,486,401	13 - 856,373	mixed 5 counties
Warranty Deeds	1	10,000		Grand Gedeh: 1
Total Entitlements	47	6,843,739 (2,770,744 ha)	13 - 856,373	11 counties
other documents				
Tribal/Public Land Certificates (Permits to Survey)	20	593,717	300 - 147,511	mixed 4 counties
Management Agreement	1	393,000		Bopolu: 1

Added to this substantial area of private property is the 3.7 million acres known to be held under long leasehold to government as rubber plantations (annex B). There are also the many smaller entitlements to individuals and families.

Overall, it may be estimated that around 44.5% of the total land area of Liberia is private land. This is extraordinarily high for any agrarian state. As noted earlier only 10% of Sub-Saharan Africa as a whole is subject to registered entitlement.

Validity in the described boundaries and especially the acreage of land parcels is no small consideration. Older collective entitlements made under Aborigines Deeds or even under newer Public Land Sales were very poorly surveyed. Their

A surprisingly high proportion of Liberia is under titled ownership



proclaimed acreage is almost certainly excessive in some cases. This may be illustrated in the case of Gbarpolu County: its four large entitlements amount to more acres than exist in the county even as existing in its former iteration as a district of Lofa County. This is a concern as it

places these collective ownership deeds in jeopardy. Most and perhaps all these surveys were undertaken by public surveyors. With government officers exempt from being brought to account under the Property Law, communities have little remedy.¹⁴³ It would seem fair that formal re-survey be undertaken in due course at the cost of the state.

Table 11 – Known Communal Deeds by county

county	known no. Aborigines Deeds claimed	known no. Communal Public Land Sale Deeds claimed	total ha	% total county area
Gbarpolu	2	2	1,179,597	100+*
Nimba	1	3	127,172.87	11.08
Gr. Cape Mount	2	1	no data	no data
Rivercess	0	3	1,740.28	0.32
Grand Gedeh	4	3	401,202.02	37.90
Grand Bassa	5	4	258,085.02	32.73
Bong	1	no data	179,028.34	0.21
Sinoe	no data	5	357,085.02	0.37
Lofa	no data	2	263.15	0.26
Margibi	0	no data		
Montserrado	(2)*			
Bomi	0			
River Gee	no data			
Maryland				
Grand Kru				

* The areas of the four collective deeds is clearly unreliable as their total area exceeds the area of the county.

143 Section 8.197 of the Land Registration Act 1974 states that no claim or suit may be made against the government on account of any surplus or deficiency in the area of measurement of any registered land disclosed by survey showing an area or measurement differing from the area.

6 Conclusion

The most obvious conclusion to be drawn as to the statutory effects upon customary law is simply that its provisions are discriminatory, dangerously outdated, insufficient, and confused. Among other effects this makes the law vulnerable to speculative interpretation – as has been necessitated by this study.

There may be little doubt that tenure law reform is needed for both clarification and justice for the majority. Chapter 5 suggests what needs to be done. That some of the uncertainty derives from poor judicial procedures presents another facet for redress, beyond the scope of this study.

It also has to be concluded that intentionally or otherwise land theft at scale was delivered in law in the 1950s. Although possibly only a hapless casualty of benign nation-making, the effect has been the same. While typical of colonial and post-colonial land relations between governments and their people, the handling of tribal land rights in the Tubman era may now be seen as a seriously retrograde step in the case of Liberia; what should have been Liberia's 'great pride and joy' in its superior handling of African land rights became instead the characteristic 'great shame' of colonisation.

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Although opaque and therefore still open to a degree of positive interpretation, it may be concluded that in statutory law rural Liberians are landless tenants of state. They live on lands held by their forefathers (sometimes from the 16th century) but are denied right and title to these properties. Their right extends no further than acknowledgement of their holding, not ownership. As values of land and resources soar, this becomes ever-more repugnant abuse. Foreign legal opinions and Eurocentric donor missions have, at different times, aided the demise.

If the issue were to be determined strictly within jurisprudence then there is plenty of recent precedent which could come to the rescue of this unhappy status. Canadian courts have at least established common sense and moral rights as embodied in common law, suggesting long 'occupation to be proof of possession' and 'possession proof of ownership'.¹⁴⁴ The USA, Canada, Norway, New Zealand, Australia, Malaysia, Norway, Mexico, Guatemala, Colombia, South Africa, Uganda, Mozambique and Tanzania are among countries which have

144 *Delgamuukw v. British Columbia* 1997 and *Calder v. Attorney-General of British Columbia* 1973, as recorded by Colchester (ed.) 2001.

been forced to reconsider the implications of indigenous land rights over the last several decades, reconstructing their land law regimes accordingly.¹⁴⁵ So too, it may be safely argued that in Liberia if unjust law wrecks injustice then new and fairer law will restore justice.

The issue is ultimately a political issue; there were reasons why, belatedly, it became inconvenient for the Liberian state to continue recognising due right and title, and these reasons may still prevail. In the interim what has been created since the 1950s is a steady rise in land anxiety – tenure insecurity. Customary communities and individuals within them are right to rush to secure formal entitlement for their lands. Without this, even their acknowledged possession of their lands is vulnerable. As will become clear in the field study areas, the sharp end of insecurity of tenure being felt in Liberia today is not internal to the community or even among communities but in their relation to the state.

The golden advantage of land law in Liberia is that the precedent of collective legal entitlement has been set and sustained



Still, amongst the quagmire of uncertainty and land rights abuse is a peculiar advantage that Liberian communities hold up until the present; a history of precedent of collective entitlement, and addition-

ally, without the tiresome disincentive of having to form a legal entity first. It is this commonsense opportunity that sets Liberia apart. Community right and title may not be recognised but communities may still acquire this through a relatively straightforward path. Few communities elsewhere on the continent or beyond have had this opportunity.

The fact that modern Liberian communities still seek collective entitlement and thereby keep the route open even in the face of less than supportive registration law since the 1970s is testimony to the relevance and importance of community based ownership today. The next chapter will examine why this is so.

145 Colchester (ed.) 2001, McAuslan 2006c, Ravna 2006, White and Martin 2005, Alden Wily 2000, 2006a, 2006c, Forthcoming.

Chapter 3 Customary land tenure today

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This chapter turns to the practice of customary land tenure in Liberia today. This derives directly from field study in five different parts of the country. A primary concern is to identify just how rural Liberians conceive of their land rights today and how they organise and regulate these. Land conflicts are also examined to highlight points of tension. Traditional norms and how they are changing are identified.



photo by Lea Leat Risco

1 Settlement patterns and change

Information for this chapter derives from field studies. This comprised general meetings and individual interviews in 37 communities in five purposively selected counties (tables 12 and 13 page 151/152, map 4 page 16, annex A, page 294). These represent a tiny proportion of Liberia's estimated 10,000-11,000 settlements.

How villages are arranged is central to understanding customary ownership patterns. History, both past and recent has been important in determining current features and transitions.

Table 12 – Field villages of the SDI tenure study

county	Rivercess County	Gbarpolu	Grand Cape Mount	Grand Gedeh	Nimba
villages	Garpu	Totaquelleh	Bolomie	Banglor	Burtein
	Saykpayah	Lomon	Falie	Barwu	Guahn
	Sanway	Sapima	Latia	Delayee	Kanwee
	Bolezar	Dorley	Mandoe	Doweh	Kpallah
	Poekpei	Ginnemar	Sembehun	Dweh	Kpeikpor
	Vondeh	Bamboo	Toesur	Drouglor	Torkopa
	+Glanyon	+Vanikanneh		Vaglor	Zahn
	+Gblorseo		Wulu	Dohn	
clan	Dorbor	Bondi-Mandingo		Konobo	Leepeah and Yarpeah
chiefdom	Dorbor/Dohwein	Bopolu	Tombey	Konobo	Leesohnon
district	Central 'C'	Bopolu	Commonwealth	Grand gedeh	Nimba
% Communities of selected clan or chiefdom area surveyed	60%	44%	100%	28%	73%
+ signifies that does not fall within the selected clan area but just outside it.					
Note: Recent administrative redesignation of areas in Nimba means that the chiefdom is today perhaps called Leepeah and Yarpeah with four clans: Guahn Clan (Glehsounon), Kpai-Kpoa Clan, Dohn Clan and Kpallah Clan.					

Table 13 – Relevant characteristics of the five field study counties

administrative counties	Rivercess	Gbarpolu	Cape Mount	Grand Gedeh	Nimba
extent of past logging	significant*	significant**	limited***	significant	medium to low
immediate study area logged in past	around half logged	yes but still rich	never	yes but still rich****	yes: 5 of 8 town areas
extent current chain sawing timber	active but not in study sites	active	none	active	active: in 5 of 8 towns
mineral wealth of county	medium: gold only	rich (gold, iron ore, diamonds)	medium 11 camps prospecting gold and diamant	medium	low (iron ore)
extent current mining	high for gold: 5 camps in chiefdom alone	high: iron ore, diamond mining*****	none	medium mining interest in 2 of 8 towns visited	none
county area sq km	5,077	9,235	4,798	10,276	11,902
total population 2004	28,750	115,055	36,260	96,358	526,007
population density	5.6	12.4	5	9.2	46.3
# households*****	5,134	20,545	6,475	17,207	93,930
# districts	12	6	5	3	17
# chiefdoms	17	11	nd	18	34*
# clans	37	28*	12	15	73*
# towns	431	578	440	245	716
mean # towns per clan	11.6	20.6	36.6	16.3	9.8
mean # hh per clan	139	734	540	1,147	1,287
mean # hh per town	12	35	15	70	131
dominant rural livelihood	food farming hunting palm oil	food farming hunting palm oil contract labour	trading fishing cash crops	food farming hunting trading	cash crops trading

main food crops produced by % population	rice 84% cassava 77%	rice 83% cassava 33%	rice 53% cassava 50% vegets. 32%	rice 93% cassava 35%	rice 80% cassava 78% vegets. 35%
cash crops produced by % population	27% (plantain rubber)	18% (cacao coffee)	10% (palm oil)	26% (cacao)	47% (rubber cacao)
livestock ownership by % population ¹¹	1%	0%	0%	15% goats 2% sheep	13% goats 6% sheep 20% pigs
fishing by % population	60%	63%	69%	68%	66%
<p>* Six major companies logged the area for 20 years. ** Five companies named but due to inaccessibility, up to half intact forest never logged (e.g. all of Belle District). *** Confined to Waaco and Garwale Districts. **** A main area of past logging; six companies. Five of eight towns visited had been logged but incompletely. ***** Includes key gold mining areas Weaua (Gbarma District) and Henry Town (Koninga Chiefdom) with reports of illegal mining by aliens and movement of diamonds (UNMIL 2006b). Three major iron, diamond and gold companies. ***** Using WFP 2006 national mean of 5.6 persons per household</p> <p>Sources: Survey and WFP 2006 for livelihood, crop, stock and fishing data. * = field data, and contradicting 2004 data.</p>					

As described in chapter 1 villages are called towns in Liberia. These are both historically lodged within larger socio-spatial units, unevenly referred to as clans or chiefdoms.

This unevenness was immediately encountered in the study areas: in Grand Cape Mount County the six towns visited were discrete sub-parts of an equally discrete area referred to as a chiefdom. There was no intervening level of clan cluster. In contrast in Gbarpolu County, the six main surveyed towns were members of the Bondi-Mandingo Clan, itself one of two clan areas of the Bopolu Chiefdom. Current transitions in the administrative classification of settlements mean that in Nimba and Grand Gedeh County, there was inconsistency in how towns named the larger area of which they were part. Some respondents called it a clan, some a chiefdom. In Rivercess County, there was more certainty; the six towns visited see themselves as member components of Dorbor Clan. However only a year previously this same area was designated a town, the sub-parts of which (quarters and hamlets) are now towns in their own right. The reasons for current administrative reclassification are returned to shortly.

Two of the five counties fall within the Littoral purchased by Colonization Societies and settled by freed American slaves between 1822 and 1847. Three are

in the Hinterland. This distinction is not enough on its own to explain levels of stability in settlement patterns or the extent of formal entitlement.

Cape Mount County on the North coast represents the most settled and also the most formally titled area among the five study counties. It was already well settled by Vai and Dei in 1600 and the study area was in the heart of this area. Four of the six towns surveyed claim to have been already in existence when their forefathers sold the area to the American Colonization Society in 1830. The other two towns are off-shoots, created in 1930 and 1944. The six towns constitute Tombey Chiefdom. Exactly 100 years after they became occupants on public land, the chiefdom was granted an Aborigines Deed for the whole area. At least one other Aborigines Deed for another part of the county is known to have been issued around the same time.¹⁴⁶

The Tombey Aborigines Deed of 1930 has since been subdivided into six discrete town entitlements, each holding a Public Land Sale Deed. The communities own these respective areas collectively. Three were able to show copies of the titles, purchased between 1968 and 1982. The reasons given for seeking entitlement were threefold. First, from the late Tubman era villagers were led to understand that Aborigines Deeds were not as secure as Public Land Purchases, although none could recall being formally informed of this. Second, the sub-parts of the chiefdom had grown sufficiently for each to feel they wanted clearly ownership and control over their respective sections. Third, the area is valuable next to Robertsport City and insecurity is felt.

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One of the presented titles covers 7,000 acres bought from government in 1982. Another covers 2,245.5 acres, secured in 1981. This village observed that:

“We are determined no one will take out land. President Tubman got a house by the lake and now his daughter wants to reclaim it but the people told her, ‘no, your Daddy doesn’t have this house’. We gave him the land to live on but he doesn’t own it. It was never sold to him. He was our guest.”

This has interesting echoes of plaintiff claims since 1821 that customary land is not for sale. A third town has a deed for 368,000 acres obtained in 1968-69, paid for by a town notable, a ‘Congo’ politician, who holds the deed in Monrovia for safekeeping. No further subdivision is anticipated due to limited resources. Excess population migrates to neighbouring Robertsport or other cities.

Rivercess County falls within the larger area bought by the Grand Bassa Cove Colony, established by two Societies from New York from the 1830s. Boxes 5 and 6 in chapter 1 (pages 70/71) reproduced copies of the two deeds of sale for the area that is now Rivercess (Timbo and New Sessters in 1847). At the time most of the area was densely forested and very lightly settled. Population density in the modern county is still very low (5.6 persons per square kilometre in 2004).

The entitlement history of the county since those times is unclear. Several large tracts may have been privately acquired and the Liberian Agricultural Company (LAC) holds a long-term leasehold over a substantial part of one of the county's districts (Morweh). Only 23 deeds have been registered since 1956 according to County files. Of these 13 (56%) are for quarter acre house lots in the county capital Cestos. Seven others are for private family farms, averaging 15 acres. Three other titles are for two towns (298.5 acres in 1978 and 500 acres in 1982). One is for a clan area (3,500 acres, registered in 1968). Excluding the LAC long leasehold, the total area placed under registered entitlement appears to be around 4,400 acres (1,785 ha). This is 0.03% of the total land area in the county.

The study area within Rivercess County, Dorbor Clan, makes up an area formerly referred to as Dray Ni (Dray Creek). These were the hunting lands of the Dohwein people. No one settled in the area until 1902, when a forest village known as Gion was formed, established by the forefathers of the current small town of Bolezar. All but one of the ten towns, which comprise modern Dorbor Clan, descend from that settlement. Neither the clan nor individual towns hold title deeds. Nor are there any individual parcels that are titled.

Although falling outside the Littoral, Gbarpolu County shares coastal colonial connections to the extent that the famed King of Bopolu was the mediator in the dispute between the ACS Agents and the Bassa Kings over the sale of Cape Mesurado (Monrovia) in 1821. This was King Sao Boso. His father, a Mandingo, had migrated South from Guinea during the 18th century and married a local Gbandi (or Bondi) girl. King Boso is reputed to have travelled frequently to the coast and served for some years as a stevedore on British ships. He learnt English.¹⁴⁷ By 1821 he had established his headquarters at Totaquelleh, one of the towns surveyed. His influence extended over a wide area, within which semi-autonomous chiefdoms existed, and still exist. It is reputed that his influence extended to the coast.

147 Guannu 1997, Ministry of Education Undated.

Totaquelleh itself was allegedly an important stopping place for coastal to Sahara trading. Boso and his descendant kings, defined as Paramount Chiefs in the 1920s, have always enjoyed cordial relations with Monrovia. It is no surprise that his own chiefdom was granted an Aborigines Deed for 790,000 acres in 1949, an area that covers a substantial area of the county as defined today.

Bopolu Chiefdom, of which the study area is part, is only one of eleven chiefdoms into which the modern Gbarpolu County has recently been subdivided.¹⁴⁸ The County itself is the newest, previously part of Lofa County to the North. The eleven chiefdoms are now a composite of 28 clan areas.¹⁴⁹ Bondi-Mandingo Clan is one of these. Contrary to known disputes among Mandingo and other ethnic groups in Lofa and Nimba Counties, relations between the Gbandi and Mandingo were consistently reported as close in this area. The constituent 16-17 towns of the study clan area refer to themselves however as distinctively Gbandi or Mandingo and it is likely that should further administrative divisions be undertaken as population doubles or triples, then this distinction will be the basis of such a divide.

Some 33 deeds were identified as existing in the county (other than pending certificates), although there could be more (the County Land Commissioner is newly in post and records in the county were destroyed during the war). Four are very large collective entitlements to chiefdoms covering an estimated one million ha, two by early aborigines deeds and two by later public land purchases. At the other extreme there are two known house lots in the county capital known to be registered. There are also 27 larger private holdings including two owned by missions. These 27 entitlements amount to 1,943 ha. The collective deeds are among those known to have been poorly surveyed but inaccurate or not, they mean that Gbarpolu as a whole is almost entirely titled under Aborigines or other large entitlements.

Grand Gedeh County and Nimba County are also within the area traditionally designated the Hinterland. Their populations originally derive respectively from the South (Ivory Coast) and the North (Guinea). Grand Gedeh remains heavily forested and lightly populated (9.3 persons per sq km). Nimba is noted for its high population (46.3 persons per sq km) and its developed cash crop sector. Communities surveyed in both areas comprised a mixture of old settlements and their offshoots, the newest of which was established in 1948.

148 The county name Gbarpolu draws its name from a combination of Bopolu and Gbarma Districts.

149 UNMIL 2006b.

The chiefdom area of Grand Gedeh surveyed is Konobo, a coastal name for the Klowe tribe, a small ethnic group estimated as under 10,000 people.¹⁵⁰ Their territory today falls into two main sections, administratively referred to as chiefdoms. Brown describes Klowe society as traditionally without royal family or chiefly hierarchy suggesting that for this as some other groups in the South, the appointment of Clan Chiefs and Paramount Chiefs was an innovation.¹⁵¹ Villages were and remain lineage-based (or comprising several lineages or ‘quarters’) generally led by a senior elder, now referred to as Town Chief. These

Collective entitlement is common, individual entitlement limited



towns traditionally operate as autonomous units, although as population grows and their number rises, the linkages among neighbouring towns are close.

None of the eight towns surveyed in Grand Gedeh hold title deeds in their own right or as integral to a larger Konobo/Klowe chiefdom. Nor do any individuals within these communities hold fee simple entitlements for their farms. The farms themselves remain widely scattered within town area boundaries.

Nonetheless, formalised entitlement of Grand Gedeh County as a whole exists; at least four other communities hold Aborigines Deeds (700,000+ acres) with another 56,000 acres under Public Land Sale Deeds. A small number of individual entitlements also exists. Seventeen towns, clans and chiefdoms have recently received consent to survey for 566,867 acres of community properties (Tribal Land Certificates). More may exist, although the County Land Commissioner indicated that most deeds are for quarter acre house plots in the county capital and other larger towns.

The picture of formal entitlement gained from County Land Commissioners, interviewees and FDA records is therefore diverse in the five study counties. This ranges from less than 1% of the county area under probated deeds (Rivercess) to most if not all of Gbarpolu County under early collective entitlements (Aborigines Deeds) and around one third in Grand Gedeh County. It is possible that quite a number of towns in Grand Cape Mount hold individual town entitlements as did all the Tombey Chiefdom towns. This suggests a rather high level of overall entitlement, echoed in the overall statistics given in chapter 2.

150 Pers comm. D. Brown

151 Brown 1984.

A key feature of the entitlement encountered is the dominance of collective deeds in terms of area. Most of the small parcel deeds are quarter acre house lots in county capitals. Less than 1% of all households in the 37 communities sampled, hold legal title for their farms and/or houses (0.08% of the 3,737 households). Applications to survey towards this in the form of Tribal Land Certificates are much more common; the Paramount Chief of Bopolu Chiefdom says he has issued 200 over the last several decades, although the new County Land Commissioner has record of only 50 or so, 39 of which are for mostly for house lots in the county capital. This is similarly the case in Rivercess; most certificates held by the commissioner are for lots in Cestos City. Nimba and Margibi land commissioners respectively hold 65 and 16 certificates. Many of these certificates pre-date the war, a minority proceeding to survey, or acquisition of fee simple entitlement.

This low level of individual entitlement in rural areas is consistent with the views expressed by the Ministry of Lands. It does not tally with the finding of the WFP survey in 2006 which concluded 20% of farms are owned by title deed. It may be that the villages in this study, not randomly selected, are unrepresentative. It is more likely that respondents in the WFP survey confused permits to survey (i.e. Tribal Land Certificates) with final registration deeds. Or respondents in the WFP survey were referring to farms which are under stable long-term customary usufruct, always the case where houses or cash crops like rubber trees are in place.

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1.1 Liberia's towns are small villages

Information on household size and town size relied upon the often-uncertain information of leaders. Part of the reason for such uncertainty are the changes in settlement still occurring. All agencies and studies eagerly await the findings of the 2008 census. With this caveat it may be noted that all towns surveyed except one were self-evidently small, demonstrating their real character as villages in the conventional sense, their designation as towns notwithstanding.

Table 14 shows an average of 101 households falling to 73 when the single very large town surveyed in Nimba County is excluded. Having said that, official data collected by a sister district to Bopolu District in Gbarpolu County produces a mean town size of 123 households. The variation among counties is striking.

Table 14 – Demographic data in the study areas

	overall average	Rivercess	Gbarpolu	Cape Mount	Grand Gedeh	Nimba
mean hh size in county (vam 2006)*	5.6 (national)	5.5	4.9	4.6	6.1	6.1
mean hh size (study 2007)	7.8	5.5	6	8	9.6	8
mean # house members (study 2007)	15	17	10	11	13.8	18.3
mean # hh in towns (study 2007)	101 (73)**	24	81	62	57	268**
range of no. hh in towns (study 2007)	4-1104	4-63	21-200	32-125	13-114	36-1104
% hh never displaced (WFP 2006)	14	8	7	8	9	18
currently displaced (VAM 2006)	7	8	3	5	5	6
% hh has member working outside (WFP 2006)	15	6	11	14	13	15
* WFP uses Household as the family. One House may contain several generations or 'families'. This Study 2007 defined Household as all persons living under one roof and cooking and sharing food together.						
** This includes one very large village of 1,104 households.						

1.2 Settlements are in flux

It will also be observed that figures from this study, such as they are, are significantly higher than town sizes collected by WFP in its larger survey in 2006. While sampling explains some of the discrepancy it is also a fact that settlements are still in flux. Over 80% of the population was displaced during the conflict years and by no means all have returned to their home areas, or intend to return.¹⁵² Table 15 gives a snapshot of the difference in pre and post war population in eleven study villages. Even by March 2007, these communities still had respectively one third and 19% fewer people than they said had lived in the villages prior to the war.

152 A main reason given to this study was the better work and educational opportunities in larger towns and cities. The main reason identified by the WFP survey a year earlier was lack of funds to make the journey home.

Table 15 – Sample of population disturbance due to civil war

county and villages	# hh today	# hh before war
Rivercess		
Garpu	35	75
Zanway	20	42
Bodezar	10	19
Poekbei	14	17
Vondeh	63	70
Mean	28.4	44.6
Gbarpolu		
Totaquelleh	200	240
Lomon	50	60
Sapima	87	100+
Dorley	21	52
Ginnemar	53	70
Bamboo	75	80
Mean	81	100.3

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Meanwhile settlements themselves are often being reshaped as people rebuild their houses often in different places in the community area. While this periodically occurs (see below) transition in settlements is at an apparent all-time high. Additionally, there is a tendency for villages to be reconstructed along main roads which pass through the community land areas; this was the case with five of the 37 villages, mainly in Rivercess County.

Over 80% of the population was displaced during the conflict and not all have returned to their home areas



Table 16 illustrates an aspect of settlement patterns, in the form of satellite hamlets in Gbarpolu County. Hamlets associated with a larger settlement were not uncommon in the past. In Gbarpolu County surveyed towns average three associated hamlets. Newly-collected data for Gbarma District shows hamlets in 2007 to be numerous, averaging 10 households with 79 persons.

A prominent explanation was that conflict ended later in this county than elsewhere so that many families are still scattered in the bush and the rebuilding of houses in centralised locations is taking time. Some Town Chiefs emphasised the need for people to now cluster for security and services, preferably along main roads. This, they say, will occur over the coming years.

At the same time it was acknowledged that some households are reluctant to return to larger settlements, enjoying expansive access to the forest to clear and cultivate and to freely hunt. This too has traditional origins in a widespread practice in low density areas of the country to open farms at widely dispersed locations within the community area, and where these are particularly remote, to spend the year at more than one site. How far one trend will win over the other has yet to be seen. It may be expected that interest in modern services, administrative encouragement (and perhaps a degree of coercion), declining per capita land areas, and community decisions to limit the opening of farms in old forest areas, may combine to encourage concentration.

Table 16 – Sample extent of satellite homesteading in 2007

county	clans sampled	# aowns	# attached hamlets	average hamlets per town	average # hh in hamlet
Rivercess	Dorbor	10	3	0.3	4
Gbarpolu	Bondi-Mandingo	15	45	3.0	4
	Fallah	13	41	3.1	3
Gbarma district	Zuo	7	23	3.2	6.2
	Yahgayah	5	23	4.6	17.6
	Dewah	12	13	1.0	11.3
Cape Mount	Tombe	6	0	0	0
Grand Gedeh	Konobo	8	0	0	0

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Many towns have of course seen no relocation at all. Additionally, changes that are occurring may have more to do with the status of settlements being given by the new post-conflict county administrations.

Traditionally and administratively, towns are sub-divided into sections (known as ‘quarters’). These represent kin clusters, often maintaining active totems, taboos or ancestral cults or secret societies. In Totaquelleh in Gbarpolu County for example, the town is divided into one section which does not eat leopard and another which does not eat cola nut. Quarters cultivate different parts of the town area. As later discussed, conflicts frequently arise when members from one quarter overstep the boundary into the farming zone of another.

There is no fixed number of sections or quarters in a town. In Grand Cape Mount, three study towns have four quarters and three others have six or seven quarters. Grand Gedeh towns surveyed averaged three. Quarters are numerous

in Nimba but less so as each of these now acquires designation as a town in its own right. This was also the case in the towns surveyed in Rivercess but where towns are so small it is hard to see how the administration can classify these as towns; six of the eight surveyed had fewer than 25 households.

Differences among settlement patterns and their fluidity at this point should not be misunderstood as implying there is no inherent instability in social formations or the socio-spatial context within which they exist. The opposite was

*Settlements are
underwritten by strong
territoriality* ””

found to be the case in all five study sites. The idea of 'our area' or 'our territory' is highly developed, boundaries well known, and with a long history of warlike defence of wider community land areas. That is, the people of one ethnic-linguistic group ('tribe') tend not to invade/be permitted to invade the area of another. Virtually all

the relocation and rearranging of settlements occurs within the bounds of these areas, primarily in the identity of their composite towns (villages).

However, as observed earlier, the way in which the government classifies and names tribal areas and their sub-parts as chiefdoms, clans and towns, has not necessarily been helpful. While association among neighbouring villages existed and still exists, this may not be in the kinship terms that the adoption of the term clan implies. Contrarily, the importance of cluster chiefs in other areas may also have been diminished at times; by being overseen by a higher Paramount Chief, they may have lost, or felt they lost, strength in the own more local level of traditional authority.

Secondly population growth tends to give birth to more towns over time. As towns multiply, the numbers of clans and then chiefdoms, and then districts also increase. This is illustrated in LISGIS data which lists 65 official districts and 305 clans in 1984 increasing to respectively 73 and 339 by 1997 (annex A). Using local rather than national data, the increase was much greater between 1984 and 2007, the number of clans increasing by 258% (annex A).

Just how widespread current increase in numbers of recognised towns is across the country will be illuminated by the upcoming 2008 Census. It is likely to vary by county and be commonest where there is space for a town to have a meaningful land area of its own. Only in Grand Cape Mount among the counties surveyed was it found that town boundaries have remained exactly the same since the 1960s. However this does not necessarily mean that these stable towns have become virtual cities; population surplus to land capability is fed into

neighbouring Robertsport or other cities. Therefore the 2008 Census may well find that towns (villages) are not significantly larger than in decades past, just more numerous.

An interesting perspective on the size of towns was given in Gbarpolu. There one Town Chief observed that people don't like towns to get too large. A fair speculation is that there is a natural inclination towards retaining the core community at a reasonably manageable level in terms of its population. Therefore, as population grows, towns may eventually divide, even without

Current proliferation of administrative units is more confusing than problematic; there is no mass movement out of traditional land areas



administrative interference or the disturbances of displacement through civil conflicts. It could well be found that the average size of towns is not visibly rising; the number of towns is. Non-demographic factors (e.g. local politics, family considerations and changing farming needs) doubtless colour how and when fission occurs.

Government policy tends to reinforce these changes in the number of chiefs it will recognise and subsidise. Current proposals to recompense Town Chiefs may be a main factor encouraging hamlets or quarters of towns to declare themselves as towns in their own right. In the process, authority may take time to find its

The constructs of territoriality are stable with the 'town area' at its heart



new centre point. This may hover between the town and the higher clan unit during transition. The effect of this, noted in the towns visited, is that Clan Chiefs have substantial authority during the transition (Gbarpolu, Rivercess).

Uniformly the centre of gravity in all five areas is the town (village). It is its boundaries that are consistently most important. However as the identity of the town changes with fission the town area boundaries also change. The pivotal town land area (village land area) becomes smaller. Land is after all finite; no corner of Liberia is un-owned land; every acre is part of one or other community land area. At this point the average size of town land areas is not known but will be certainly much smaller than average town areas in the 1960s.

1.3 Consolidation of community land areas

Official reclassification of administrative units was most explicit in Gbarpolu and Rivercess (the former as a direct consequence of becoming a county in its own right). This is a main driver in those two counties for the high level of boundary identification encountered in the local study areas. There are cumulatively throughout the five study counties other reasons for current attention to bound-

Community territories are increasingly conceived as real properties



aries, including: confirmatory behaviour as to the limits of each community's area as community life and community jurisdiction over resources is re-established; raised awareness of the vulnerability of resources to casual attrition by inattention to unplanned settlement and semi-coerced cooption of land by notables or conces-

sionaires; and greater awareness of the value of forest resources and the proffered opportunity by new forestry policy to gain a share of this.

This sense of community property is mirrored throughout local land relations encountered, from how outsiders are handled to permissible fallow periods, to reasoning as to why legal registration is important. 'It is expensive for us to get a title deed but we have to get one to protect our land from outsiders,' said Dorbor clansmen in Rivercess. 'He thought it was anyone's land to take, but it is not, it is our property,' said Burtein town in Nimba. 'The Government says it owns all the land but it does not. This is our property,' said Bamboo town in Gbarpolu.

The nature of boundaries now being defined is necessarily changing as town land areas become smaller. In the study villages, large named forest areas were referred to as the boundary between communities in decades past. While this is still the case in very low population density Grand Gedeh, it is increasingly the

Waterways are the outstanding boundary marker between communities



case that a specific stream within the forest is defined as the boundary, as the line beyond which neighbours may not lay traps or farm.

Several communities observed that between the 1930s and 1970s the key trigger to defining boundaries on the ground was the obligation to make and keep clear roads, ordered by government. This was initially for the security and ease of passage of officials, and for whom natives in the Hinterland were also bound to provide porter services. 'Road brushing' was a monthly activity right up until

the 1980s, enforced as due unpaid communal labour for public purpose.¹⁵³ This had been an active requirement of immigrants in the Littoral from 1827.¹⁵⁴ The practice of providing communal labour had an even longer history within many of Hinterland tribes. The Hinterland Law from 1923 conjoined these origins in making communal labour obligatory for all male citizens for public works projects, as administered by chiefs (art.34).

The link between boundary demarcation and entrenchment of territorial identity is not that roads were used as boundaries (sometimes they were) but because each community only had to maintain the road up to its perimeter boundary. Therefore it became important to know at exactly which point along the path or road the authority of one community ended and the neighbouring community's began.

In every area surveyed district and chiefdom boundaries are almost all defined by rivers, as are most but not all clan boundaries. From time to time a territorial jurisdiction extends across a major river¹⁵⁵ but this is uncommon. The use of rivers and streams is more difficult in the case of town boundaries as these become scarcer at these more localised levels. Nevertheless, as shown in table 17 over half of town boundaries in the 37 study communities are waterways, usually very small creeks. Even though these may dry up during the dry season they leave a gully as evidence of the boundary line.

153 No person is 'to be compelled to labour on any construction project outside the limits of the tribal territory of which he is resident' (article 34 (b)). Road-clearing ('side brushing') is the main communal labour task specified and is to be carried out 'at least once a month' (art.34 (j)).

154 This also goes back to 1827 laws which demanded compulsory public service and provision for which labour was only avoidable with a sick note, if the man is able to '... afford satisfaction of his inability to labour to the Committee of Health of the Colonial physician': Digest of Laws 1828; article xxvii, article xxix (October 17 1827 and article xxx, October 17, 1827). Fines against those who failed to provide due 'labour tax' was justified as a '... simple remedy against a selfish spirit, and indolent habits, operating to the common injury of the citizen.'

155 John Gay notes such a case in Gbanzu where the chief's jurisdiction extended across St. Paul's River into the Gola Forest (pers comm.).

Table 17 – How town (village) boundaries are defined

Sample N = 35 towns	Grand Gedeh	Nimba	Cape Mount	River-cess	Gbar-polu	Total	Percent
Rivers	0	1	2	6	2	11	52.2
Creeks*	18	23	6	9	6	62	
Road	0	0	0	1	4	5	3.6
Special Trees**	5	5	0	3	6	19	13.6
Settlements***	1	0	3	0	4	8	5.7
Swamps/reeds	3	1	1	0	0	5	3.6
Hilltops	1	1	0	1	3	6	4.3
Concrete pegs****	0	0	3	0	0	3	2.1
Mine	0	0	0	0	1	1	0.7
Ocean	0	0	4	0	0	4	2.8
Lake	0	0	4	0	0	4	2.8
Forest	2	1	0	1	0	4	2.8
Undefined	1	1	0	5	0	7	5.0

* Includes one bridge and several dry gullies where rivers run in the rainy season
 ** Soap trees, cotton trees (Ceiba Patiendra) and walnut trees.
 *** Includes football field.
 **** Includes one cleared survey line.

2 The nature of customary ownership

The first issue which the field study tried to answer was ‘do people customarily own the land or just *use* the land?’ The answer to this is that they do both. The land is owned by the community. Member families have use rights to their shared property and to its products. This use is organised in accordance with rules made by the community itself.

Responses were similar across all five areas and relatively certain. This was less so in specific regard to forest resources at which point awareness that government claims ownership was reflected in more mixed responses (chapter 4).

Communities did not volunteer much information as to what ownership means beyond the repeated ‘it is ours’, ‘the land belongs to us’, ‘by tradition we are the owners of the land’. Responses to further questioning suggest this ownership is *allodial, absolute, collective, exclusive, un-ending* and the land itself *non-transferable*. It is, in short, not too far off the mark to describe customary ownership as very like fee simple in absolute possession, the imported Anglo-American form. Perhaps a more accurate description would be ‘customary freehold’. Ownership as meaning a controlling right was also indicated, making ownership an *active condition*.

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2.1 Allodial tenure and communal jurisdiction

Allodial tenure means that the land is not held subsidiary to any other party such as a feudal landlord, government or head of state. By tradition ‘we own the land’ was the common position. This contradicts the law which suggests that customary owners do not own the soil and that their overlord in law is indeed government. If this is so, it has not penetrated community thinking. The question ‘who owns *public land*’ produced the response ‘government’. The understanding is however that community land is ‘tribal land’ and that this is distinct from public land.

‘God owns nature, we own the land’



In two towns in Grand Gedeh the question ‘who owns the land?’ at first received the response ‘God’. On further exploration it was clarified that God owns nature in all its parts but the controlling rights over specific lands belongs to communities. God is the only possible superior owner to communities. Government

cannot fit itself between people and God. 'By custom governments can't own the land, people do.'

When asked to describe what rights ownership gives, villagers mainly point to the right to control who uses the land and how they use it. By custom this right is localised, meaning 'we control the land', not government or officials. In all communities surveyed, this local jurisdiction was amply declared. At the same time, the realities of government control over land hovered in the background, again particularly in relation to forests, and minerals: 'This is our land but government controls it'.

Just how important this controlling right is, was demonstrated from the early years of colonial settlement, when, it will be recalled local people were periodically frustrated that American settlers refused to subject themselves to native authority.

In principle, the right to control was expressed as communal, stemming from the community as a whole. The power of the Town Chief in land decisions, for

'Ownership means being able to control who uses it and how'



example, was described as not exclusive. He cannot make decisions entirely on his own. He needs the support of elders and accordingly consults them. This is so to the extent that in many towns visited the Town Chief appears as more senior elder than a leader set apart from the community. Moreover his authority and that of elders depend upon the community's willingness to adhere to those decisions: 'If people don't agree with the chief the matter is discussed.' The authority of Clan Chiefs appeared more autonomous. One Clan Chief interviewed, a female chief, emphasised her authority and the need to be firm with villages. 'They

'Chiefs manage the land, they don't own it'



look to me to make decisions. Sometimes I have to be very firm and order them'. This authority may stem from the position of clan and chiefdom chiefs as government employees. In land matters the Clan Chief is more mediator than decision-maker.

In several communities it was made clear by young people that jurisdiction is not so communal that everyone is part of decision-making. They wanted more say. An argument on this subject played out in front of the survey in Sapima Village in Gbarpolu County; youths and elders argued openly as to how decisions on land access and use by outsiders is made. The youths complained that elders do not pay enough attention to their opinions.

2.2 Collective ownership

Modern communities of the study areas were adamant that ‘we all own the land’, that neither chiefs nor elites own the land. Moreover, they profess this collective tenure is equitable; the share of owning by one family is no stronger or different from that of another family. This is delivered practically in the simple principle that *every family has a right to use the domain and its resources*. In addition by custom, ownership shares are indivisible; no family may take out its share and sell it to another.

This proclaimed inclusiveness and equity may be quite new. It is known for example that the hierarchical nature of some Liberian ethnicities almost certainly precluded this in past times. Aside from slaves, who were by virtue of that status without any rights, poor client families are said to have been historically dependent upon stronger families for land and even wives.¹⁵⁶

Nonetheless, the proclamation of genuinely collective right and title to the soil is impressive. No case was encountered where chief or elite were identified as the owner of the community area. Nor did study communities know of such cases. The idea even aroused amusement. This is interesting given the intention of the Hinterland Law noted earlier that chiefs should hold the land as trustees on behalf of their people, something that in the event was never adopted in practice.

It is also notable in light of the fact that in the West African region chiefs are quite frequently held to be the owner of the land, albeit in trust for their people. In some places, like Ghana, this has become more, not less entrenched, to an extent that it is today a bone of contention between chiefs and their subjects.¹⁵⁷ In Liberia, this trend has not been fostered or tolerated. If anything, the collective nature of ownership of community land domains is strengthening. The evidence of this goes beyond comments by villagers into real action towards collective entitlement of their domains.

156 Richards et al. 2005. John Gay pers comm.

157 The fact of chiefly ownership of community lands is now difficult for ordinary Ghanaians to uproot or counter. This is not least because colonial and post-colonial law including the Constitution 1992 chose to favour the interests of chiefs for political reasons; Alden Wily and Hammond 2001, Nyari 2006, Ubink 2007.

2.3 The community domain as indivisible

There is also a trend that suggests that collective property is by no means indivisible. It has been shown how some members of the community, usually the better off, including chiefs, may withdraw a share of the collective property through fee simple entitlement. It has been concluded above that the trend is not pronounced, with a limited number of titles or even certificates to survey. The most extreme case was in Totaquelleh Town, the largest and oldest village in Gbarpolu County. There eleven rich and educated people (in a town of 242 households) have received consent to survey their farms and one has already hired a surveyor. The result will be to remove these parcels entirely from community ownership or jurisdiction. The explanation given for this development was that 'people want to have permanent farms to grow rubber' and especially 'government encourages us to get farm deeds'.

The Paramount Chief confirmed this, expressing pride in the fact that he had signed off on 200 Tribal Land Certificates in his chieftom over the years. 'This has always been the policy'. Indeed this is so; it will be recalled that the Hinterland Law encouraged 'aborigines' to subdivide their properties into family holdings when they become 'sufficiently advanced in the arts of civilization' (art.66 (e)).

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In practice wholesale subdivision has rarely occurred outside urban and peri-urban zones, nor is it sought. The study found the main preference for formalisation to be for collective entitlement of the community property as a whole. There was even palpable anxiety that town, clan or chieftom deeds be secured, as later described. The stronger individualising trend is towards partial subdivision; lands within the domain designated for farming may be over time secured as the private property of families but that well forested areas of the territory may not. The Paramount Chief of Bopolu Chieftom for example, assured the study that even if everyone gets a permanent farm 'there will be plenty of forest left for communities together to use'.

The study found a strong preference for the formalisation of collective entitlement of community property as a whole



Neither he nor some other leaders were fully cognisant of the legal effects of issuing Tribal Land Certificates; their position is that these land may be reclaimed and reallocated should the grantee fail to develop his farm as he said he would or misuse the land in any unacceptable way, such as selling it. Some chiefs were shocked that this is not the legal situation and especially not so once the certifi-

cate proceeds to final entitlement. As noted earlier this does not often happen. This is partly because of costs but also because the certificate is viewed as a form of entitlement in itself, its issue granting the holder *exclusive use* of that part of the community property, but not ownership of the soil. Strictly speaking, even this is not the legal situation; the issue of the certificate already declares the parcel to be no longer part of tribal land and therefore outside community jurisdiction.

A reluctance to give up customary property was everywhere apparent; none of the 37 communities visited believe the community land area may by custom be sold, either by themselves or by their chiefs. Parts of the land may be leased, but never sold. ‘The land belongs to us and our forefathers and to those who follow us’ was the theme of responses.

In actual fact, it will be recalled, whole domains have been sold in the past such as occurred a century past when colonisation societies bought coastal territories. In the Hinterland however this is not conceived as possible – and as shown earlier, this too may not have been the real intention of some of the chiefs who thought they were only selling access, not the soil.

*‘Community land is not
for sale’*



Today, from villager responses, a reluctance to lose ‘our land’ seems to have hardened into conscious determination *not* to see their territories lost to them by sale or otherwise, borne out of bitter experience. Rural communities acknowledge that they have been unable to stop concessions or other allocations of their land, but the driving force of sharp interest in formalisation of rights is precisely to pre-empt this. It is fair to conclude that currently communal properties in Liberia are ‘not for sale’. This is not to say that certain assets *on* or *from* the property cannot be sold (e.g. timber, gold and even sometimes houses) but the land itself cannot.

3 The nature of use rights

Nested under the collective title to the land is the second layer of property interests, access, use, and occupancy rights. In reference to farmland these are usually referred to as usufructs. These rights descend from ownership; only co-owners of the estate automatically hold use rights. Broadly, the distinction between usufruct and ownership is kept clear. In practice, a usufruct may become so strong and lasting that it begins to take on the character of de facto ownership. More generally when a farmer is referred to as the 'owner of the land', it is the ownership of the use right he holds, not the soil itself.

3.1 Houses

Not unexpectedly, house tenure was found to bring use rights closest to ownership, but not to the extent of absolute ownership. Community buildings 'belong' to the community and private houses 'belong' to their occupants. The holders are referred to as owners. Ownership is nonetheless conditional upon occupation and use. When the house is abandoned it reverts to the community. The land upon which the house stands was consistently named as the property of the community, not the house owner.

Houses are privately owned but not the land they sit on



This is not the case for the contents of the house; even when a house is abandoned, those items remain the property of the holder and every effort is made to find relatives to whom to return these. This includes valuable materials used in the construction of the house, especially iron roofing sheets, window frames and glass windows; these are the fine line to fully private ownership of the house, for in these instances, should the house pass to someone outside the family, a gift is expected of those valuable items.

In principle it was reported that houses may not be sold (table 18). Nor were any examples of houses being sold given. Gifts at transfer are permitted. In Nimba in particular a tradition of giving a sack of rice when a house changes hands was reported. In Gbarpolu, a near-sale was described; a man who returned recently to the area paid for a standing house but was promptly ordered by the town council to reimburse the original owner.

“No house, even a good house, may be bought or sold in this town because the land the house sits on belongs to the community. All he was allowed to do was to pay for a feast for the owner and his relatives and neighbours”.

In another town it was recorded that a man had been required to pay the elders for a tree he cut down to build his house ‘because that was a special tree and belonged to all the community’.

Table 18 – Means of house acquisition

means of acquisition	Rivercess	Gbarpolu	Cape Mount	Grand Gedeh	Nimba
purchase	none 'not allowed'	none 1 of 7 villages say possible in theory only	none 'not allowed'	none 3 of towns say possible but not practised	none 1 of 8 towns say it is possible to give a sack of rice or hold a feast if given a house
self-built	most	all	many	all except those inherited or lent	many
inherit	common	common practice but currently most houses newly built	common	common	common practice
on loan	several absentees lend houses to relatives	at least one case in all towns	several cases in all towns	several cases from rich relatives or absentees	cases in all towns, all from absentee relatives
gift	none	two cases from relative leaving area permanently	rare	usual practice when relatives leaves town for good. 3 towns have given plots to churches	none
rent	none	none	none	none	none

3.2 Farms

By custom, farm tenure is everywhere a use right and limited by occupancy and use (usufruct). Most farms are cleared by the holder or his or her parents or sometimes grandparents. Findings are summarised in tables 19 and 20. In only a handful of cases were farms owned under titled deeds (0.08% of 3,737 households). It has been noted that this very low level of formal entitlement is not echoed in the larger WFP Survey in 2006. WFP data for the five study counties is collated in table 21 for reference.

*Farms are owned for only
as long as they are used*



Only two instances where farms had been bought or sold were found in the 37 villages and no cases of land renting. Sharecropping was limited to several households in one village in Nimba, and operated in the sense that a stable labouring family was paid in kind with a share of the crop he produced on the owners land.

As often the case, first land clearers in an area have stronger use rights. They may receive a gift when pointing out where the newcomer, even a kinsman, may clear and cultivate. Chiefs may also receive a gift when allocating land. Even if the first clearer does not wish to re-use the plot, he is generally consulted. This is out of respect, to know his intentions, and to know where the boundary of his area. Often this first clearer is, or becomes, the leader of a settlement (headman or chief) so that his interest may conjoin with his position, suggesting he has this right as a result of his authority, not the fact he was the first clearer of the land.

The strength of the first clearer's usufruct should not be exaggerated. Even the first comer may not refuse access to an area he has established priority over if he is unable or does not wish to use the land or re-cultivate fallow areas. A number

*First clearers have
strongest usufruct*



of villages reported that intra-community disputes arise as a result of a person clearing too near to an existing (but fallowed) plot. The original holder does not always win the dispute.

Farmers retain the use right throughout the permissible maximum fallow period. Thereafter they must begin cultivating the plot again to retain the usufruct. When a farming area lies unfarmed for a longer than usual period, this reverts to the community. Community in this context is the section or quarter of the town where these exist. In this respect they, not the Town Chief or town council, serve as the land administration authority.

Freedom to plant any food crop was uniformly asserted. Permission is required in most areas to plant tree crops. The reason given was that tree crops tie up the land for 30 or so years. By then, the usufruct holder is the de facto owner of the land. Even then the farm holder will not be able to sell the land, it was said, for by custom the land is still owned by the community.

Table 19 – Means of farm acquisition

means of acquisition	Rivercess	Gbarpolu	Cape Mount	Grand Gedeh	Nimba
clearing	'most'	70% (mostly young bush and swamps)	all originally cleared by forefathers	many	no data
inheritance	'some'	30%	common	many	no data
allocation by chief	in cases where land known to be abandoned or owner absent for long period	approval needed even to clear land	not known as no spare land to allocate	permission from chief to clear needed	no data
gift	parents sometimes give a plot to daughter or son	sometimes living parents give part of their land to children	not known except from parents	occasionally	churches in 4 of 8 towns have given land
loan	common as many unused plots due to high absentee rate; elderly given first. may not plant trees	common for elderly, disabled	only for those in true need (no capacity to walk far or to farm difficult area)	absentees give farm to relatives to use	sometimes from relatives
purchase	none	none	1 case only	none	1 case only
rent/lease	none	none	1 lease to ecotourism venture (2 ac.)	none	none
share-crop-ping	none	none	none	known but not in study area	several cases in 1 town

Table 20 – Nature of farm ownership

attribute	Rivercess	Gbarpolu	Cape Mount	Grand Gedeh	Nimba
tenure	usufruct	usufruct	usufruct	usufruct	usufruct
indicated owner of usufruct	family	family household head	family household head	family household head	family household head
duration of usufruct	for as long as holder wishes but if he fails to re-cultivate within a reasonable period, the plot is open for others to ask to use	right weakens post-harvest but is still consulted before others farm. usually reverts to bush as community property	farmland is permanently owned collectively by the town with access right to the first user	until he abandons the land, owner allows others to farm there, including non-relatives	only for as long as used, including reasonable fallow period
permission from first clearer needed to use fallowed plot	yes for as long as farm under reasonable fallow period	yes even if does not re-use area after fallow, should be consulted as first clearer, as has first option to use adjacent plot	yes i. for as long as he lives ii. for 10-15 years only iii. only if come from outside the quarter	yes i. for several successive fallow periods ii. only for 10-15 years (6 of 8 towns) iii. 'indefinitely'	yes to know his intentions following fallow
permission needed to open farm next to existing plot	yes the holder has first option to expand in same area	yes to know boundaries and holder's intentions	yes first clearer has first option to expand. if does not do so, no permission needed, only courtesy and to know boundaries	yes always need to consult and negotiate with first clearer of area, because he is in charge	yes but only to find out where boundary lies
permission needed to plant tree crops	yes from community leaders (but no tree crops yet in clan area)	yes from community leaders	no only if a stranger or orphan. residents can plant anything they want.	mixed. strangers must grow only food crops, unless agreed with owner that stranger gets only share (sharecropping); town members can grow trees only if they are not first users. in one village relatives can ask chief to use absentee plot to plant tree crops	yes town members need permission because trees tie up scarce food crop land. strangers can only grow food crops or need permission of owner and chief.

Rubber and oil palm were grown by tiny proportions of the study communities and these crops had not reached the end of their first rotation, so actual practice was not confirmed. The planted trees themselves are uniformly considered the property of the planter. This is so even if the tree eventually exists on another's land. Private ownership of planted trees extends to indigenous species not planted for production, like kola and soap wood trees.¹⁵⁸

3.3 Changing land use and tenure norms

The above illustrates a feature of changes underway in the customary tenure of farms. In effect, the usufruct over tree crop land is being strengthened towards virtual ownership. A contrary trend exists in respect of food crop farmland; these farms are being more tightly defined as strictly a use right. The evidence for this is in the decline in permissible fallow periods. In the 1980s fallow periods lasted from seven to 15 years. Today they last from two to five years. Some farmers rest their plots for only one year. Table 22 collates the information collected.

Table 21 – Tenure data from WFP survey 2006

	national average	Rivercess	Gbarpolu	Cape Mount	Grand Gedeh	Nimba
% hh without land	34	22	33	48	12	28
average size farms (acres)	3.3	4.2	2.3	2.8	2.8	2.6
family has ownership deed	20	6	17	60	10	48
personal or community land without deed	67	79	70	24	78	46
rented/leased land	2	0	0	2	2	2
squatter agreement	10	15	13	14	9	5
owns house/lives free	94	97	96	93	99	97

Sources: WFP 2006.

158 John Gay gives an example of kola trees being not just planted in a person's name but reinforced as such through depositing of a woman's placenta with the seed (pers comm.).

Table 22 – Past and current fallow periods in years

Rivercess		Gbarpolu		Cape Mount		Grand Gedeh		Nimba	
<i>current</i>	<i>past</i>								
4	7	7	7	2-3	5-10	3-5	5-15	5-7	10-15
3	7	3-4	7	4-5	8-6	1-7	6-15	3-5	6-14
2-4	7	3-4	7-10	2	8	3-5	5-15	4-5	10-15
2	7	4-5	7-10	1-3	6-10	4-7	5-10	2-5	10-15
3	7	2-3	7	2	10-15	6-7	10-15	3-4	10-15
		2-3	7	2-3	5-10	3-6	9-15	3-5	10-15
						1-3	10-15	4-5	10-15
						4-5	10-15	3-5	8-15
<i>range</i>									
2-4	7	2-7	7-10	1-5	5-15	1-7	5-15	2-7	6-15

3.4 Shortening fallow

The reasons for shortening fallows are usually complex. The reason is not changes in the need to leave farmland fallow. Fertilisers are not being used more than in the past and post-harvest weeds in the year following cultivation remain as problematic as ever. Nor has the pattern of upland family plots much changed; these still tend to be kept apart to limit damage by porcupine, monkeys, wild pigs and buffalo. The number of farm sites is actually quite high, as illustrated in table 23.

A potent factor in shortening fallows is labour shortage



Reasons that were offered included: a decline in upland land availability; changing labour relations within families and within communities; rising interest in permanent tree crop farming and a decline in the proportion of families able, interested or permitted by the community to open old growth forests for new farms. These variously encourage a farmer to begin cultivating a fallowed plot earlier than he would have done in the past. A person opening a rubber plantation may not have the time to clear a new food crop farm and may return earlier than in the past to older plots.

Table 23 – Number of farm plots in one town in Rivercess County

sample (100%)	persons in hh	number of farm plots	total acres*	clears forest for new farm annually	retains usufruct all plots
1	15	13	16	yes	yes
2	6	10	10	yes	yes
3	15	8	7	never	yes
4	22	20	25	yes	yes
5	2	5	5	not now, in past	2 of 5
6	6	7	8	every 2-3 yrs	yes
7	25	40	50	every 3rd yr	yes
8	1**	8	8	every 3rd yr	yes
9	6	25	25	every 2nd yr	yes
10	17	7	10	every 2-3 yrs	yes
11	10	15	15	every 3rd yr	yes
12	7	21	21	never	yes
13	5	10	10	not now, in past	yes
14	20	14	15.5	yes	yes
14	155	203	225.5		
averages	11 persons	14.5	16.1	28.5% clear forest annually 43% clear after 2-3 yrs 28.5% never now clear forest for farming	99.1%
* Each household has a large number of plots, only 2-4 acres of which are annually farmed (usually around 2 acres for rice and two for cassava).					
** The only female headed household, a widow.					

Incomplete return as yet of many families and family members in the community is partly behind a shift in labour relations on the one hand and additionally avails families the use of other people's farms on the other. In addition 'everyone is in a hurry to start farming again after the war'. There is also some anxiety (noted only in Nimba County) that if land is left uncultivated too long it is more vulnerable to capture by strong outsiders or elites from within the community. People who have not re-started cultivation may find their usufruct challenged by others, often by younger returnees, looking for areas to farm.

Common effects in these changes are suggested: a possibly declining mean farm size per household, and which may at least partly be due to the fact that cultivation is only restarting in some areas; a change in the extent to which old forest is being opened for new farms; a shift in land use towards a rising proportion of the community property being brought under permanent crops; a possibly stagnant proportion of the area being devoted to upland food crop farming and a rising proportion of swampy areas being used for farming (table 24).

Table 24 – Average farm size in study communities with comparisons from WFP survey 2006

study counties	Stated range of active farm size (acres)	WFP 2006 average size (acres)*	WFP 2006 % farms smaller than before war	% study hh clearing old forest annually for new farms	swamp land now being cultivated where rarely cultivated before war
Rivercess	2-5	4.2	39	28.5	yes
Gbarpolu	0.5-8	2.3	31	15.0	yes
Grand Cape Mount	1-4	2.8	23	(has not been undertaken for some time: little forest)	yes
Grand Gedeh	4-8	2.8	38	fewer hh than in the past	yes
Nimba	3-8	2.6	59	uniformly reduced	yes
	1-8	3.3 (national)	41 (national)	reduced	100%

* Unclear if this is active farm size or total farm asset

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3.5 Land shortage: does it really exist?

In the process of discussing shortening fallows claims of land shortage were made. This is not expected in a generally fertile environment and where population density is low against comparable regional figures. Although it is true that a significant proportion of rural Liberia is devoted to large estate farming (mainly vast rubber plantations) none of the study villages were in these areas. Nor was there evidence that access to farmland is so skewed in favour of elites that maldistribution of land within the community domain is the reason for shortages.

Various explanations emerged; first that many parts of community domains are not in fact useable for farming, including large bodies of water, mangroves and

the wetter swamplands. Strictly speaking, 'National Forests' are also not available for cultivation although no community mentioned this as a constraint. Rather, the view was that deep forest areas are not considered viable for farming due to their poor soils, the work involved in clearing (which returns to the labour constraint), the nature of these areas as valuable for hunting, and social discouragement to open farms in deep forest for cultural reasons (i.e. using certain forest areas for ritual activities) or for security and reservations about their 'remoteness'.

A general result is that a relatively small proportion of land in Liberia is in practice traditionally or currently farmed: 3.4% of the total land area is used for food crops and 1.98% under permanent crops (total of 5.41%).¹⁵⁹ This produces a surprisingly high agricultural land population density in Liberia, and indeed most felt in higher population areas.

Reasons given for opening swampland for farming included shortage of upland farmland but also the wish to protect the forest from clearing, the introduction by German aid agencies of swamp farming techniques and availability of suitable swampland rice seeds (Grand Gedeh), reduced fear of diseases or leeches from the swamp, and limitation of flooding through swampland farming (Nimba). Swampland farming also may affect the land use regime overall; by permitting year round cultivation but may limit labour for upland farming.

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Among the five areas surveyed, claims of farmland shortage varied. In fact many communities in Gbarpolu, Grand Gedeh and Rivercess consider they still have 'plenty of land' within their respective community land areas. Nonetheless they too are reducing fallows and limiting expansion into forested parts of their territories for above labour and other reasons. Land shortage is given as a main factor for shortening fallows in Grand Cape Mount and Nimba Counties. This is triggered by adoption of cash crops (trees) placing genuine pressure on the availability of food crop land, explicitly recorded in two Nimba villages.

'Increased population' was also given in two Nimba villages as a cause of localised land shortage, as this has generated stricter enforcement on access; respondents complained that one town or even one quarter may have ample land available and spare land whilst its neighbour does not, but is today unwilling to allow needy persons to open farms on their land.

159 National Human Development Report, 2006. WFP 2006 provides a figure of 6.5% for permanent and food crop lands for the same year.

Rarely in the study villages was land shortage so severe that genuine landlessness exists in the sense of families being entirely able to access land they need for farming.¹⁶⁰ In two towns in Nimba County three families were described as having no land of their own. On investigation, this meant they had no food crop land of their own; they had made themselves 'landless' by planting their land with rubber and then found elders had no new land to give them for rice and cassava production.

*Although land borrowing
is common real
landlessness is not*



However a much larger number of families might be described as landless if their kin were not lending them land. This was true in all counties. Most land borrowers are using the fields and often houses of absent relatives. Most expect to do so over the longer term as the owners have no plans

to return to farming (usually living and working in cities). For all intents and purposes the property has been given to the relative. There were other occasions when it was said that should the owner return, the family would look for other land or build its own house.

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The tendency to confuse absolute landlessness with land borrowing may explain the extraordinarily high rate of landlessness reported in the WFP survey of 2006 – 34%, and affecting all counties (table 21). The inclusion of semi-urban or roadside communities in the WFP sample could be a factor, as could interviews with displaced young men.

3.6 Labour shortage

Labour factors were an issue in all study areas including in land-rich areas like Grand Gedeh. In fact the study encountered more one year fallow periods in the Grand Gedeh town samples than elsewhere, largely due to changing labour relations. Unfortunately it was not explored whether or not this included reduction or abandonment of past collective activity in farming by men and women. Volunteered reasons for labour availability changes in Grand Gedeh, Gbarpolu and Nimba, included:

160 This is especially relevant in African customary regimes (cf. Asian regimes) where a fundamental customary right is the right to land to farm and live on and where there is no history or institutionalisation of tenancy, in which a whole sector of the community is deliberately deprived this right, generation to generation; see for example Lastarria-Cornhiel and Melmed-Sanjak 1999 for South and East Asia and Alden Wily 2004a for Afghanistan.

- Many younger people are absent, in education, ‘not yet returned’, ‘busy with other jobs’ in other areas including mining and chain sawing, and ‘more interested’ in other activities than farming.
- The reluctance of many younger men to carry out the hard work of opening new farms; young people were said to be ‘less patient’.
- Diversification in sources of income, particularly noted as including ‘earning cash by selling things in town’ (petty trading).
- The disturbances of the war years and current preoccupation with activities like house building.

Labour shortage could become the main factor in changing norms



One main reason given for reduced fallow areas in study towns in Gbarpolu, Rivercess and Grand Gedeh stemmed from decisions to limit the opening of new farms in old forest. This in turn is driven mainly by public information that communities will be given a share of revenue from logging.

Even without this promise there were signs in several communities of local determination to limit random expansion into well forested parts of the community property, to ensure wildlife is sustained and a more vaguely stated intention to keep the forests for the future (potentially logging). Rules against opening new farms in the forest were quite widespread. Additional reasons for reduced forest clearance included:

Attitudes to using the forest for new farms is changing



- Security: ‘people these days don’t want to go far into the bush and be there on their own’ (Grand Gedeh).
- Wildlife conservation: ‘we wish to protect the animals as we depend upon them for our livelihood’ (sale of meat and skins) (Gbarpolu).
- ‘To protect medicines from the forest’ (Rivercess).
- The absence of forest clearing assistance from the young whose parents therefore increasingly turn to older plots more quickly to save labour and time (Grand Gedeh).

- No necessity: 'The war left our farms fallow and we are able to return to them' (Gbarpolu, Grand Gedeh).
- Difficulties in opening new fields in semi-forested or 'young forest' areas due to the high growth of weeds following first clearance after such a long period; preference to stick with less fertile, already well established areas (Rivercess, Gbarpolu, Grand Gedeh).

4 Differences in the strength of access and use rights

Not all use rights are equal. The outstanding distinction is between the access rights of co-owners and those who do not belong to the community – ‘strangers’.

4.1 Outsiders

Limitation upon access by outsiders to community land has a long history in Liberia as it does in West Africa generally, and with the same tendency to induce conflict, although fortunately not to the extent generated in Côte D’Ivoire.¹⁶¹

At the broadest level this may be inter-ethnic. However definition of ‘strangers’ is sustained to the most local level of customary land tenure relations and irrespective of ethnicity. In fact, distinction between community members and outsiders is the most consistent indicator of territorial dominion existing village to village, clan to clan.

It is therefore not unexpected that one of the only two tenure articles in the integrated customary/official norms is about strangers (Hinterland Law, art.67). This makes it clear that strangers have no automatic freedom of settlement that they must obtain permission from the chief and are bound to pay a token ‘in the nature of rent’ to do so.¹⁶² Strangers may be evicted for failing to follow local rules. In addition, local authorities are strongly forbidden to relocate one group of people into the domain of another (art.83).

Information from the field confirmed all the above as operational although implemented in a more nuanced manner. Strangers are not treated as a homogenous group. Even those marrying into a community are treated as a degree of strangers, as are in-laws. Even daughters marrying outside the community may find themselves classified as virtual strangers when it comes to land access in their home village. Strangers from next-door towns, clans and chiefdoms have diminishing rights the further away their place of origin is. People from entirely different language groups have to have a special reason for wanting to settle in

161 The right of strangers is an especially contentious issue in West Africa and well-covered in the literature: e.g. see Lavigne Delville et al. 2002, Chaveau et al. 2006 and Quan 2007. This shows sign of becoming an issue in some Eastern and Southern African States; e.g. Peters 2002.

162 This is notwithstanding the constitutional principle of freedom of movement and settlement (art.13, Constitution 1986).

any one of the study villages. This usually coincides with being from a faraway county.

Nevertheless, it is possible for strangers to secure rights on an incremental basis, and even to become a full member of the community. The process of achieving membership is similar in all five study areas. The stranger requires sponsorship from a resident who becomes his spokesman, protector and warrantor. Constructing a house and pledging to live in the village is obligatory, and without which farmland cannot be accessed. In the first one to three years the stranger is typically lent accommodation and land to grow food. In no case is he or she permitted to clear old forest. While almost all 37 towns forbid cultivation of permanent tree crops by strangers in principle, implementation is more flexible. Sharecropping may be the first step, representing a labour agreement with payment in kind (a share of the crop). In due course, he may be able to plant trees on his own land, especially if he marries into the community, the most common reason for living there.

*Treatment of strangers is
the strongest barometer of
proprietary behaviour*



4.2 Insiders

No *class* of families was identified whose rights are inherently less than others groups. Wealth, labour availability, health and preference for an activity other than farming (e.g. hunting, trading) determine how far a family takes up its standing right to land as a shareholder of the collective domain. The elderly and handicapped usually have small or no farm plots of their own, depending upon loans of already cleared land from better-off relatives or other families known to them. Wealthy members of the community almost always have larger farms.

However discrimination may occur. One group identified as having weaker rights to land is orphans. Should they be of an age to farm their deceased parents' farm, they will generally be able to take this over as their own farm. If they are minors, their guardian relatives are bound to sustain the farm on their behalf. This includes management of rubber or other permanent trees which the orphans will in due course manage themselves. This does not always come about, two towns reported. When they come of age orphans may find they have less access to farmland than their un-orphaned cohorts. This is especially so if their father did not come from the community originally. The orphans may find that they cast as strangers, although they may have been born and brought up in the community.

Absentee families may also find themselves with weaker than usual rights, to the extent that when pressure upon farmland grows, they, like orphans are among those who face more difficulty making their standing use rights real.

The norm in all five areas is that absentees may designate relatives to farm their plots, irrespective of how long they are absent. Depending upon how much time passes this may amount to a permanent gift. Should near kin of the absentee not wish or be able to farm the land (or live in the house) elders will always find someone else in need and this will be arranged with the kin's permission. Houses and farms are dependent upon use and ownership lapses if the absentee owner cannot find someone to use them. They may then find it difficult to secure new plots in their home village; they need to be living in the village for this to be accepted (Nimba and Grand Cape Mount).

While the land access rights of absentees are weakened by absence, their membership of the community is not. Their prestige often rises with the economic support they provide to their kin in the village and the contacts and wisdom they bring to the community. Several communities (most notably Rivercess and Gbarpolu) observed that absentees earning incomes in Monrovia are those being asked to cover the costs of securing Tribal Land Certificates for towns or clan areas and are those most promoting the need for formal entitlement in the first instance.

4.3 Women

The greatest distinction encountered among the customary land rights of community members is gender-determined. This is typical of many customary regimes. From the information collected these conclusions are drawn:

- Practices across the five study areas are similar
- Women are capable of owning land; i.e. it is not the sole domain of men
- Women may be given land by their parents and this is frequently the case
- On marriage a woman does not lose her rights to a field given her; depending upon the location, she may continue to farm the farm jointly with her husband, or pass it to a sibling to farm on her behalf
- Although the field she brings into the marriage is farmed as family land this remains her property and is the most likely asset to be inherited by her own daughter

- Daughters are due a share of land inheritance, but not in equal measure to sons
 - The amount of land which a daughter inherits is pragmatic; those daughters most in need (e.g. spinsters, widows, or very poor members) and those living close enough to the land to be able to use it will gain more. It also depends upon the goodwill of the brothers
 - Sons, and notably eldest sons, determine the distribution of land assets of the parents, usually in consultation with family elders (mostly male)
 - The right to inherit farmland is limited to cropland; sons normally inherit land on which rubber or other permanent crops are growing
- Age and gender count*

””
- The hierarchical relations among wives internal to the family extend to land relations; first wives have both the greatest say over farming and their children are first in line to inherit family land; second and subsequent wives must negotiate with the first wife on almost all land and property matters
 - A woman born in a community has much stronger rights than a woman who marries into the community
 - Land like other assets may be lost to a women should she leave the marriage without her family repaying dowry received, even if the dowry did not include farmland
 - Women are a main group in the society whose land rights are demonstrably vulnerable to diminishment in the face of land shortages.

Box 23 illustrates some of these norms.

Box 23 – The views of five women as to their tenure security

Five women described the tenure of 78 plots they farm in Saykpayah village in Rivercess County. Of these plots 44% had been brought by the women into the marriage, having either inherited the plots or (mainly) having been given these by their parents. The remaining 56% had been opened by the married couple jointly. Both sets of plots were described by the women as jointly managed and farmed, but the former remained their property. Each woman insisted that should she die, those plots will be disposed of in accordance with her wishes. If still living, her husband will have authority over those plots but their daughters would expect to inherit those from him in due course. Should their husbands die before the women, they did not think they would suffer land losses. They would not be evicted from the home and not prevented from farming any fields, even those which the husband had established himself, prior to marriage, but since then jointly farmed. All the plots farmed by the couple would remain with the family, principally under the widow's jurisdiction. However, if they had too much land, relatives could ask for some plots. Should the children be grown, the plots would normally distribute on the death of the husband, eldest sons being in charge of decisions. This would not include any plots which the wife had brought into the marriage. The women all came from the village and were less certain that a wife from another village would be able to keep many plots.

Overall, modern Liberian women in the customary sector do better than many of their sisters around the continent, who may possess little or no right to farms or houses at all.¹⁶³ It is not the case that this has always been so. Changes over the last century have influenced gender relations considerably if not yet apparently sufficiently. Given that women were widely held to be chattels, their rights may have improved along with diminishment in this status.¹⁶⁴

It is indicative of just how great a change has occurred that the codified customs of Hinterland Law (1923-1949) did not specify intra-family property rights or inheritance. Reference to women is limited to protection against their personal

163 See for example Amanor 2006 for Ghana, Andre and Platteau 1998 for Rwanda, Englert and Daley (eds.) for East Africa, Lastarria-Cornhiel 2006, Action Aid International 2005 and The World Bank 2005.

164 Richards et al. 2005 describe it thus: in the past 'chiefs accumulated women for more than their work. They also controlled and redistributed women's sexual and reproductive services ... The situation remains recognisably similar in many parts of Liberia today. Chiefs and elders still build alliances through exchanging women. Descent groups compensate each other at marriage by refundable bride wealth transfers, with the effect that a woman fleeing an unsatisfactory or abusing relationship risk losing access to land, property and children if her family is unwilling or unable to refund the marriage payment. Wealthy men accumulate multiple wives and still bind clients to them by monitoring extra-marital affairs' (p.17).

abuse, wrongful use of their labour and treatment as chattels.¹⁶⁵ A section covers marital matters (art.55) but does not specify land portions or partition over property, except in respect of dowry, and in a manner which suggests dowry may not have widely been paid in land.

The statutory situation as to women's property rights in land is clear. This has a long history in respect of the immigrant community; in 1824 the ACS agent passed a law dictating that single female immigrants were entitled to allocation of town or farm lots albeit to slightly less acreage than for single male immigrants. In due

course this evolved into a less gender specific provision (1929). Most recently, women's land rights were revisited within a law designed to bring customary unions into line with statutory unions (box 24, page 191).

Liberian women seem to have as secure access to land as most African women – not quite enough



Sections 2.6 and 3.2 of the law are most relevant; the first roots in law the practice found in the field of retaining land they bring into the marriage. The second guarantees widows the right to one third share of their husbands' property. The rights of divorcees are not mentioned.

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4.4 Youth

Youths and especially male youths pose a special challenge to customary tenure. This is because their status changes over their lifetimes; they bear the brunt of changing conditions (e.g. land shortage); have most energy and often education to take up opportunities which alter the pattern of land and labour relations (e.g. uptake of commercial crops, expanding the basis of family livelihood to include petty trading, employment, etc.); and because they have the most incentive to challenge government or community land policies which they do not like.¹⁶⁶

165 Women are not to be porters and women are not to be employed in civil or military camps for other than 'rubbing of houses' (article 34 (q) (r). Internal Administrative Courts, presumably Clan Courts or lower, were to have exclusive jurisdiction in matters of Women's Palaver, described as matters relating to domestic violence, adultery, separations and divorce, and disputes among women, and were to rule in accordance with custom (art.42). Women were not to be held as security for debts or fines by government officials or chiefs (art.46). Marital relations were governed by customs laid out in article 55.

166 For example, Andre and Platteau 1998 elaborate how it became impossible for inheriting eldest sons in Rwanda to meet their obligation to ensure all siblings have enough land to cultivate. Amanor 2006 shows how younger generations have borne the brunt of land shortage in Ghana due to their parents renting out land to strangers.

Box 24 – Provisions of the Customary Marriage Law 2003

Chapter 2: Rights, duties and liabilities of customary marriages

- 2.1 Customary marriages fully legal
Same rights and duties as statutory wives
- 2.2 Illegal for husbands to recover dowry
- 2.3 On marriage, wife automatically entitled to one third of husband's property should he die
- 2.4 Illegal to force wives to labour but they should work in partnership as best they can
- 2.5 Wife can seek redress in court for any abuse of her human rights
- 2.6 Property brought into the marriage by the wife is hers alone
Any attempt by husband to control his wife's property is a felony
- 2.7 No husband can force or encourage wife to confess to illicit intercourse
- 2.8 It is illegal for wives to name lovers in order for husband to collect damages
- 2.9 Illegal for females to marry under age 16 years
- 2.10 Illegal for parents to choose or force husband on daughter

Chapter 3: Devolution of estates and rights of inheritance

- 3.1 Title 8 New Decedents Estates Law applies to customary marriages
- 3.2 Widow/s will automatically get one third of estate; two thirds to his children
- 3.3 Widow/s at liberty on death of husband to stay or leave in house unless remarries
- 3.4 It is illegal to force widow/s to marry husband's kin
- 3.5 Widow/s have right to administer estate of deceased along with children and collateral heirs
- 3.6 Males and females under customary or tribal law have right to make a Will
- 3.7 Minors remain with the surviving parent.

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The experiences of civil war add to the likelihood of youths challenging the social order they find on their return home. Added to this is a real threat that they may leave the community altogether. Many displaced youths told the WFP survey in 2006 that they did not want to return home. This echoed a study two years earlier which found that only one in ten ex-combatants seemed 'seriously interested in returning home to do agricultural work'.¹⁶⁷ This was also a finding of this study.

Many youths obviously *have* returned to rural life, but with changed demands. Utas reports, for example, that young ex-combatants returning to Sinoe have abandoned the traditional practice of helping their parents to farm until their mid- to late twenties; youths as young as 15 years are establishing independent farms.¹⁶⁸ We have already seen that youth in Grand Gedeh and Nimba study towns are reluctant to devote all their time to farming, finding ways to earn cash incomes on the side. Families are feeling the absence of their labour.

Authority in land relations is also predicted to change. The traditional handover of lands and control over land access from one generation to the next has always required firm handling but may be expected to be less smooth than in the past. Several times in the field study, youths expressed frustration at land decisions made by elders (Nimba, Grand Cape Mount), and openly blamed their fathers and grandfathers for failing to stop loggers, miners, chain sawers, elites or 'honourables' from taking community land (Gbarpolu, Rivercess, Nimba). They expressed strong views on a number of occasions including in one case recommending that women should surrender farm plots they had been given if they marry outside the village (Grand Cape Mount). Their views were sometimes strident, particularly as relating to rights over forestlands. Some complained that they were not represented in decision-making, a complaint which one elder endorsed: 'As long as I have lived in the village youth have never had a say' (Gbarpolu).

*The rights and interests
of young people are the
cutting edge of shifting
norms*



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Everywhere, the study found high interest in land matters on the part of young people; they attended public meetings in numbers and actively contributed. As Quan has concluded to be the case in Africa generally, the conventional view that young people are 'disinterested' in land matters is not borne out in practice.¹⁶⁹ If anything they are more concerned and more active when their access or rights are frustrated – and those of their communities.

Similarly, care has to be taken not to misinterpret returnee and youthful discontent as evidence of disenchantment with *customary land tenure* per se. The study found their positions reinforce the fundamental constructs of rural tenure, particularly as relating to collective ownership and the maturation of 'our

168 Utas 2005.

169 Quan 2007.

land’ into ‘our real property’. They are not visibly at the vanguard of demand for the subdivision of community properties into individual family properties. On the contrary, they are among those most insistent upon collective entitlement. Not unrelated, it was young participants who were the strongest advocates of protecting the forest against random expansion of cultivation, seeing in the forest significant opportunities for income generating in the future.

The challenges of youth may be seen as a demand for more say in customary land governance, not to do away with community based governance itself. While unremarkable, such trends strengthen, not weaken, customary land norms. For customary tenure is, after all, a system operated by a living community to regulate their living land relations, not forever a repository of elderly traditions dictated by elderly men. However, each generation has to remind their elders of that, and when circumstances are stressed, it seems from the field study, more harshly than usual.

*Youths may be
disenchanted with farming
and unaccountable
chiefs but not with
community based tenure*



5 Land conflicts as an indicator of tenure concerns

Land disputes are a normal occurrence in agrarian societies. Tribes and communities have routinely fought over territory (and livestock and access to water). Within communities disputes over inheritance and boundaries are legion.¹⁷⁰

In transitional states where customary and state norms come into conflict, land disputes typically clog up the courts on matters such as determining if customary or non-customary norms may settle inheritance issues, to claims against the state for wrongfully allocating customary land and/or failing to pay compensation.¹⁷¹ Another layer of dispute is added where failure in formal titling systems and especially malfeasance interfere with the assumed sanctity of title deeds.¹⁷² These and other property conflicts almost certainly existed in Liberia prior to 1980. Semi-urban properties were likely most affected given characteristic sharp rises in the value of land when it changes from being farmland to housing land. Land grabbing, injustices and disputes are routine at this interface.¹⁷³

Civil war induces a new layer of land disputes, stemming from the breakdown in the rule of law and centre on alleged wrongful occupation and use of properties, especially houses or other buildings.¹⁷⁴ Peace brings these to the fore as people attempt to retrieve their properties. To this is added pressure upon unregistered land holders in the face of flourishing reestablishment of housing stock and business premises in urban and peri-urban areas, disputes that arise from much more freedom of movement than prior to a war, with groups of strangers found to have embedded themselves on local lands and usually a sharp rise in urbanisation. Uncontrolled occupation of semi-urban lands is especially common. Reduced tolerance for long-standing injustices as to land rights is also frequently shown to emerge in post-conflict situations, even where this was not a conscious cause of the war.¹⁷⁵

Care has to be taken not to confuse land disputes after a war as the cause of war



170 Cotula (ed.) 2007.

171 Alden Wily and Mbaya 2001.

172 Deininger et al. 2003, Alden Wily and Mbaya 2001

173 Hurwitz et al. 2005, Fearnley and Chiwandamira 2006, Ubink 2007.

174 FAO, 2002, Hurwitz et al. 2005, USAID Undated, Van den Molen and Lemmen (eds.) 2004, Huggins et al. 2004, Unruh 2004.

175 See above footnote and Alden Wily 2003a.

It is no longer a surprise when UNHCR, NRC and other agencies produce data that show problematic access to housing and land to be a main source of dispute in post-conflict states, nor that these often have an inter-ethnic dimension.¹⁷⁶ Nor is it a surprise that conflict analysis increasingly looks to land and property issues as a likely cause of war.¹⁷⁷ Care needs to be taken to not exaggerate their importance, misinterpret the implications, or to assume that land disputes necessarily imply that land anger caused civil conflict in the first instance.

Given the exploitation of ethnicity under President Doe and the consequent ethnically-aligned character of ensuing civil conflict, the post-conflict State and UNMIL is particularly wary of land disputes which have a communal base. The most significant has been a series of disputes between Mandingo and especially Gio and Mano, centring upon the alleged wrongful occupation of houses owned by the former.¹⁷⁸ Ganta in Nimba is the main site of this inter-ethnic conflict but is also reported in Lofa, Bong and Margibi and also in Gbarpolu (but where this study encountered no such disputes). The cause is variously attributed to longstanding socio-economic rivalries and opposing social mores and in which the Mandingo are now cast as ‘strangers’, accused of maintaining their separate identity and strong links with their country of origin, Guinea.¹⁷⁹ As Mandingo fled the war local Gio and Mano admitted to occupying their homes, not just as punishment for Mandingo allying with an opposing rebel group but because ‘the land is rightfully ours’.¹⁸⁰ A special commission was appointed to look into the disputes, now largely in the county court as shortly outlined.¹⁸¹

5.1 Land disputes in the study communities

As generally the case, the study found rural land disputes are typically dealt with from the most local level upwards. Intra family disputes are resolved within the family, as needed mediated by elders or quarter or Town Chief. Inter-quarter disputes are resolved by Town Chiefs and inter-town disputes by Clan Chiefs, inter clan disputes by the Paramount Chief. Where resolution is difficult the two towns or two clans may involve the County Land Commissioner, who is legally

176 Alden Wily 2003a, Williams 2007, Hurwitz *et al.* 2005, Unruh 2004.

177 E.g. well documented as the case in Afghanistan, Guatemala, Burundi, Rwanda, Sudan, the Balkans and Chile among others; Van Molen and Lemmen (eds.) 2004.

178 GRC 2007a, Richards *et al.* 2005, Solomon 2006, de Otaola 2005, The Analyst 2007.

179 As above.

180 Solomon 2006.

181 UNMIL has also recorded inter-ethnic disputes affecting County boundaries between Nimba and Grand Gedeh and Grand Gedeh and Sinoe, but without detail or subsequent information which can be relied upon. See Solomon 2006.

mandated to mediate, with the costs of his time paid equally by the disputants. Cases taken to the court are usually only where the issue involves outsiders.

Box 25, page 198, provides a snapshot of current or recent land disputes in the study towns. Boundary disputes dominate, especially among communities as to their respective communal domains. In only one community could no land dispute be recalled. 'We are one extended family so we know how to control ourselves' (Bamboo Town, Gbarpolu County). As a whole disputes over land are less common than might be expected, averaging one per community per year.

5.2 Land disputes reaching the county level

In Rivercess County the County Land Commissioner has dealt with only eight land disputes since being posted in the county in 2000 (i.e. around one a year). Seven were about boundaries; five of these concerned inter-town boundaries, the sixth a clan boundary issue but triggered by a dispute as to the forest area of two towns either side of the clan boundary. The seventh conflict involved a town protesting against the expansion of Cestos City into its area. One inter-town dispute is ongoing.

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The eighth land dispute concerns outsiders; several towns in the Ju area of Morweh District have lodged a complaint against the Liberian Agricultural Company (LAC) for wrongful expansion of rubber planting into customary domains. LAC was granted a concession over 600,000 acres in 1959, half of which falls within Grand Bassa County and half within Rivercess County. In 2004 the company began expanding planting; many of the communities were unaware that LAC had been granted rights to their lands. Affected communities in both counties submitted complaints. The case is now being addressed by a Presidential Task Force under the Ministry of Lands, Mines and Energy.

The Land Commissioner has dealt personally with all but this last conflict. In one case his decision was challenged and has now gone to the Circuit Court. He provides no mediation service unless requested by both parties, and this occurs when the clan and chiefdom authorities have failed to get the towns to agree. His costs are paid by the disputants ('facilitation fees').¹⁸² His most recent case took eight days of hearings, with a final agreement signed by four representatives on both sides.

182 These vary: 'The facilitation fees for an officer to go to Saclepea will not be the same for someone who lives in Ganta' (County Land Commissioner, Nimba).

“The boundary had been in dispute for several decades. The road in the past had been used as the boundary but it had not been cleared during the war. They were fighting over where the boundary was” (Rivercess Land Commissioner).

The Gbarpolu County Land Commissioner had been posted to the county less than a year earlier and had not yet been asked to mediate any land disputes.

Village land disputes are mainly about inter-community boundaries



Only two land cases are with the County Land Commissioner in Grand Cape Mount. One concerns a rubber farm in Gola Kanneh District that has now reached 500 acres. The owner claims the land was purchased by his grandfather from a traditional owner. The community is claiming that the area granted was less than half and want the overspill returned to their tenure. An absence of available records is hindering resolution.

Rural land disputes are relatively rare and dealt with from the local level upwards



The second case concerns the disputed ownership of Massatin Island (191.8 acres). The chiefdom of Tombey claims this as its traditional property and agreed its use by the government as a leprosy camp before the civil war. An Americo-Liberian now

claims ownership and ‘returned with 40 white men to see the island to plan it as a tourist site in December 2006’. The Land Commissioner acknowledges that he signed a five acre deed for this claimant who became a senior person in the Ministry of Lands and Mines but is ‘mystified as to how five acres has somehow turned into 191.8 acres overnight’.

The court in Grand Cape Mount has no land case currently on its 18 case docket.

“In fact, I can tell you that, in Cape Mount here, we have not a single land related case for more than a year. I can remember, we had one land case, that was two years ago, but the complainant came and withdrew the case”.

Over the decade, land cases have been few:

“... except for some which stay on the books for many years. The complainants do not have the money to pay the costs of hearing it” (County Court Clerk).

Box 25 – Overview findings on land dispute in 37 study towns

Rivercess County

Land disputes are fewer than domestic disputes which are common including rape. No disputes over land inheritance recorded. Most land arguments are minor *farm boundary* infractions between farmers solved by the two men agreeing a boundary. One a year in each town at most. None this year.

Three of the 10 towns have had *inter-town boundary disputes* within last five years. All triggered by expansion of a farm in the forest that serves as boundary. The Clan Chief resolved all and precise boundary fixed as result. These disputes arise because 'not long ago the clan area was the town area with different quarters but now each quarter is a town and wants to define its own area'.

Gbarpolu County

Land disputes are fewer than social disputes. The most common social dispute in between men and women and also with youth; they get drunk and we fine them \$250 Liberian dollars for fighting and abusing. If they steal then the Town Chief sends them to the Police and the thief has to pay for the stolen goods or return them and if he can't he goes to gaol.

All towns note that there is periodic dispute at *farm boundary* level. For example 'why are you making a farm behind me? You did not ask. That is my expansion area'. Or 'this is my land as my father had this farm here, so you cannot open a farm here without asking me'. 'The compromise in this case is usually that the occupant can continue to open his farm as the inheritor does not use the land. He left the field unused for too long'. Around one such dispute each year in each town. Usually resolved by farmers themselves, sometimes involve the Quarter Chief.

In one of the most dispersed settlement areas there was a rumbling conflict between two families who had moved to either side of the main road each claiming the other had entered his traditional area. Neither had approached the Town Chief to get resolution.

Inter-town boundary disputes recorded in 3 of 7 towns but none active. In 2006 one town caught for hunting in the area of another and opening a farm. Resolved by elders and a creek agreed as the boundary. A second dispute also caused by hunting. The third dispute caused by opening farm in forest of neighbouring community.

Only recent land case involved a chain saw gang which claimed it had a license from FDA but stopped by elders. Case taken to the Police but culprits not caught. Rising intolerance for such encroachment: "We are not prepared any more to accept loggers or chain sawers with them asking permission and coming to an agreement with our share for the town".

Dispute between youth and elders over complaints that the latter had not been firm enough in limiting logging, were corrupt, had never shared benefits. Wanted more say in how land and forest use decisions.

Grand Cape Mount County

Eight 2007 conflicts reported among six towns. Six triggered by alleged encroachment. Four are *inter-town boundary disputes*, including Robertsport City. One is internal to the town between two quarters as to their respective farming zones. Four caused by opening of a farm in the disputed area, the fifth by felling a tree on the boundary, resolved by sharing the timber. One town claims constant battle with encroachers from Robertsport “who try to cultivate our hill forest for rice, cassava and plantain. We try to resolve it traditionally but sometimes we have to take a person to the Circuit Court for settlement”.

Seventh land dispute addresses a customary law issue; whether or not a woman may retain her farm when marries out of the town. Leaves her farm to relatives to cultivate. Custom says yes; the youth say no; she must surrender the land as farmland is scarce.

Eighth dispute is current but stems from 1975 between a town and outsider and involves customary versus statutory claims of ownership. A government hospital was built on community land in 1975 then claimed as private land of a company owned by Tolbert family. Case reported to the circuit court in 1977, judge resolved case in favour of town. The company responded by transferring the case to another court in 1988 and the case is still not heard.

Grand Gedeh County

Six of the eight towns visited in Grand Gedeh County have one dispute ongoing. All concern inter-town boundaries, all triggered by expansion of farming into the area. ‘Clear boundaries only fixed by dispute’. No inheritance disputes were recalled; ‘these are solved inside the family’.

Nimba County

Eight disputes noted among the eight towns. First concerns alleged land-grabbing by a politician in 1970; town filed a case with the court still not heard. Second concerns the collection of money to acquire a land deed; dispute is over accountability of the collector and whether the deed will cover one or more quarters of the town. The remaining six disputes are boundary disputes; three between quarters within towns and three between towns. One dispute reaches back to 1961 and involves planting of rubber. Another began in 1974 and taken to court. “Bribes are paid not to hear the cases... there is nothing we can do. Meanwhile the man keeps the land”. Communities attribute most disputes to the rise in rubber planting: “this takes up land and there is now not enough land for food crops. This makes people encroach into other communities’ land. We don’t encroach on each other inside the community lands”.

The Grand Gedeh County Land Commissioner had not a single rural land conflict on his docket. He did have housing and urban property conflicts to deal with. Most relate to returnees finding others had begun to build houses on lots allocated to others or occupy houses already constructed. In several cases a relative has sold the house in the owner's absence.

“All cases are because of the war, when owners fled the area” (Grand Gedeh Land Commissioner).

Land disputes are more numerous in Nimba County than in the other study counties. The Land Commissioner has dealt with 17 land disputes since starting his job in 2006. All but two were related to house lots in larger towns. Disputes have again been catalyzed by wrongful sale, use of fake deeds, wrongful occupancy of houses due to the absence of owners, and construction of houses on other people's lands.

Only two rural cases were described. One concerned a surveyor who was supposed to receive 150 acres as payment for surveying another 500 acres for a town quarter but which was never forthcoming. Through the intervention of

The vast majority of court cases relate to wrongful occupancy of houses



the Commissioner a compromise of 75 acres was reached. The second case made reference to an above-mentioned dispute over a 30 acre rubber plantation planted by an Honourable from one clan on land claimed by the neighbouring clan. As noted, no progress on this case has been made for more than 30 years.

The Nimba Court reported that of 147 criminal and civil cases in 2006, twelve concerned real property (8%) and in both rural and urban areas. Some were very old cases that were not being finalised for one or other reason.

“Many cases are pending cases. Often the parties resolve the case out of court but do not inform us. Or they simply do not have the means to pay the costs or the time to come and make assignment” (Nimba County Attorney).

However the number of land cases in Nimba County is rising steeply. Among 72 criminal and civil cases since February 2007, 21 relate to real property (29%). Only one involves community land at town or clan level. The remainder concern town lots between individuals. Most of these are between Gio or Mano and Mandingo.

“During the war many people went into exile and other people illegally occupied their properties. Some of these people are refusing to give these properties up to the rightful owner. Therefore the owner has to come to court for resolution. Sometimes the wrongful occupants are relatives. Deeds and misuse of deeds is usually involved” (County Attorney, Nimba).

The study also looked at disputes in Margibi and Bong counties for comparative purposes. Margibi is a well-settled old commonwealth county and with limited forest or unfarmed areas. The Land Commissioner had dealt with 23 cases since taking up the position in 2004. Sixteen cases have since been resolved, two went to court and are still pending, and five are under investigation. Most related to houses, not farmland or community land areas. Encroachment, double sale of plots or houses and building on other people’s lots were again the common cause of dispute. Mainly individuals were involved. The main exception is a current case involving the Weala Rubber Company, which is extending rubber plantations beyond the area local people believe is in its concession.

Land cases filed with the Margibi Court number thirty, most of which are pending, some of them very old. Among the eight criminal and civil cases heard over the last term (three months) none were land related. Most of those pending are town lot related and concern encroachment, use of fake deeds and selling of a plot twice. The County Court Clerk confirmed that

“Such cases are rising now as people return from exile and find their properties taken by others. These cases were never there in the past”.

Although land cases are numerous in Bong County these are not rising in number, according to both Land Commissioner and Court Clerk. Exactly half

Most land cases in the courts are about wrongful occupation of properties during the war



the cases filed in the County Civil Court over the last 12 months are property related (36 of 72 cases) and 10% of criminal cases filed (7 of 72 cases) or 30% overall. Most are pending, complainants either ‘abandoning the case or not making the effort to follow up’. Again almost all cases concern wrongful occupation or sale of the property and which is usually a house

and/or town lot. The Bong County Land Commissioner said that of the 36 cases he had mediated since 2003, ‘most were in the city’. One third of cases are not resolved. Only 14% concerned lots held by formal deed. The Commissioner has seen few new rural cases in recent years:

“This is because we have taken preventative measures such as public education, sensitizing people to lay out tribal land before obtaining Tribal Certificate. This is guarding people against public land sales on land the community wants to keep” (Bong County Land Commissioner).

5.3 Conclusions on land conflict

In summary, these conclusions may be drawn from the above along with relative other findings of the study:

1. Land disputes are prolific and focused in two areas: (i) wrongful occupation or sale of houses in mainly county capitals, stemming from displacement during the war; and (ii) territorial disputes over boundaries between mainly two town areas.
2. Boundary disputes are also the result of war to the extent that the process of returning to settled life reactivates old disputes over ‘our land area’ or creates these as newer settlements define themselves. It is also a post-conflict issue in that the new administration in seeking to restore order at local levels and increase representation and is aiding and abetting the process by adjusting their designation as variously towns or clan areas. Population increase also plays a role; the formation of new villages after several decades (or possibly longer) would have in due course evolved, and with a similar level of boundary clarification required, and giving rise periodically to dispute.
3. While town lot disputes usually need court resolution (especially where wrongful sale or fake deeds are involved) disputes among communities are almost entirely resolved at community level and/or with the assistance of County Land Commissioners.
4. Inter-community boundary disputes may be regarded as constructive in the sense that the decision is necessarily agreed by both parties (i.e. no winners or losers); results in practical clarification of the boundaries, often very precise and usually recorded. This is immensely important in limiting future dispute.
5. Farm boundary disputes are also common but mostly resolved on the spot. While it might have been expected that the number of farm boundary disputes would have risen sharply due to the restarting of farming, village information did not suggest this to be so, except where new farms are being opened in *inter-community boundary areas*.

Table 25 – Proportion of real property cases as collated by NRC in 2006

county	communities reviewed	total cases	property cases	percent
Bomi	486	88	8	9
Gharpolu	529	91	7	1.3
Grand Cape Mount	348	33	0	0
Lofa	678	82	28	34
Bong	1034	135	9	6.6
Grand Gedeh	250	456	93	20.4
Sinoe	339	505	87	17.2
Rivercess	323	72	0	0
Maryland	201	103	13	12.6
River Gee	116	95	7	7.4
Grand Kru	125	35	6	17.1
Montserrado	1558	137	13	9.5
Grand Bassa	2275	99	11	11.1
Margibi	1467	156	0	0
Nimba	571	236	30	12.7
	10,300	2,323	312	13.43

Source of data: LRRRC and NRC 2006.

6. Although the number of land disputes has risen and in respect of wrongful house occupancies may rise further in the next year, land and property disputes remain fewer than domestic and other inter-personal disputes in the rural community. This finding is endorsed by NRC findings in 10,300 communities in 2006 in respect of 2,323 cases recorded, with a focus on returnees: 70% of these cases involved personal abuses. Only 13.4% involved real property (tables 25 and 26). This rises to 14.6% for the five study areas, mainly due to Grand Gedeh statistics which included a host of house disputes involving returnees (table 27). Although NRC has been unable to give a breakdown of the issue at dispute in the property cases, informally NRC confirms that most concern wrongful occupation of property, particularly houses.¹⁸³

7. Although the customary sector (rural villages ('towns')) has seen a rise in disputes, it is highly likely that most of this rise is located in main County towns

or cities. 81% of study communities average only one significant dispute a year, in the sense that it requires mediation by the Town chief or higher authorities.

8. Most rural disputes are boundary disputes between two communities (79%) and overwhelming between two towns. In the few cases where clans are involved this is in support of two towns falling either side of a clan boundary. Only 18% of boundary disputes are *internal* to a town, involving two sections (quarters).

9. With the exception of two cases triggered by 'illegal hunting' in a neighbouring domain and one case caused by the felling of a tree in the boundary area, inter-community boundary disputes are started when a farm is opened in the boundary area. Often this area is forested.

10. The incentive to resolve cases locally is very high. County land commissioners have to be paid for their time to mediate. Court cases take time and money and are rarely resolved. Communities feel acutely disadvantaged where the government, honourables or companies are involved.

11. A high proportion of cases remain on court books for years and even decades. The judicial system readily allows cases to be moved among classes of courts. Partly this reflects steps in the case (e.g. trespass handled in the criminal branch then followed by eviction of the losing party by the civil court).¹⁸⁴ Movement of cases is as often a stratagem for getting a better result. There are a handful of chronic land cases which date from the 1970s.

Inter-community boundary disputes are often a necessary step to consolidating communal property rights ”

12. In the one study county where rubber planting is widespread (Nimba) villagers consider this to be a potent trigger to conflict. Rubber farming makes community lands attractive to local politicians and outsiders and vulnerable to elite capture within the community. A main concern is that rubber production has reached levels which are now interfering with availability of upland food crop land. Respondents say that it is this which is encouraging food hungry farmers

184 The majority of land cases are treated as criminal trespass (covers encroachment) and criminal mischief. In the civil court, the main land-related action is ejection. Both courts therefore hear land cases. The procedure is standard: the complainant files a complaint with the Clerk of the Court, a Writ is served on the defendant, costs paid by the complainant. Often at this point the case is resolved out of court, to avoid costs or the complainant is unable to continue the case. Cases accordingly stay on the books for years without it being clear if the cause has been resolved.

to wrongfully expand farming into previously intact inter-town or inter-quarter forested boundary areas.

13. The number of rural land disputes brought to County Land Commissioners is very low, at 13 disputes among the five study counties over the last 12 months. Over half (53%) concern inter-community land boundaries. Wrongful occupancy cases affecting houses and involve individuals are many times more numerous but tend to go straight to the court.

Table 26 – Classification of cases recorded by NRC between January-May 2007

cases recorded	total cases	percent	collated categories
killing	35	2.7	896 cases 70.3%
attempted murder	10	1	
rape	95	7.4	
sexual exploitation	16	1.2	
underage marriage	28	2.1	
child beating	103	8	
physical assault	221	17	
harassment	30	2.3	
domestic violence	281	22	
traditional harmful practices	27	2	
child labour	50	4	
property dispute	147	12	12%
unlawful arrest/detention	22	2	
financial disputes	34	3	
theft of property	32	3	
kidnapping	8	0.6	
armed robbery	9	0.7	
others	126	10.1	
total	1274	99.50	

Source of data: NRC 2007.

14. While the number of cases internal to rural communities and at the inter-community level do not vary widely by county, cases that reach the Courts do. While few to no land cases are on the books in Grand Cape Mount or Gbarpolu, land cases in Nimba County represented 8% of cases heard in 2006 and 29% of

new cases since January 2007. 30% of cases filed in the Bong County Court are also land-related. The reason is the high number of wrongful house occupancy or sale petitions.

15. Although very few in number the land cases involving large rubber estates are important. Whether involving the LAC concession in Bassa and Rivercess counties or the Guthrie estate in Grand Cape Mount, or other cases, sentiments in study communities strongly suggest the habit of leasing community property to companies is decreasingly tolerated.

Table 27 – Comparison of property and personal abuse cases recorded by NRC

In study Counties in 2006

county	total cases	no. personal abuse cases*	%	no. property cases	%
Gharpolu	91	72	79	7	1.3
Grand Cape Mount	33	30	91	0	0
Grand Gedeh	456	302	66	93	20.4
Rivercess	72	67	93	0	0
Nimba	236	201	85	30	12.7
5 study areas	888	672	75.7	130	14.6

* Personal abuse cases include: domestic violence, murder and attempted murder, physical assault, rape and attempted rape, sexual exploitation, child beating, child labour, underage marriage and traditional harmful practices.

Source of Base Data: NRC 2006.

6 An overview of the state of customary land tenure

At the risk of drawing too much out of field findings and thereby being overly speculative, broad conclusions as to the practice and trends in customary land tenure are suggested below. A general indisputable fact is that customary land tenure is alive and well; there is nothing about this community based system of owning and arranging rights that suggests it is in demise or dying out. If anything, it is consolidating as collective interest at this point takes high precedence.

6.1 Norms

1. A main conclusion of the study is that customary norms are similar among the five study areas. The liberty is taken to extrapolate these findings to the national level with a conclusion that customary land tenure regimes are today fairly uniform across Liberia and among ethnic groups. The use of traditional land areas and authorities as the basis of formal governance since 1923 encouraged uniformity. Given the similarity of land use arrangements across the country, this probably built on an already similar set of paradigms. There is not much evidence that community regimes were dramatically divergent during the 19th century although the authority systems of communities appear to have been more diversely structured.

2. Customary land tenure demonstrates itself in Liberia to have always been a regime of *property rights*, within which 'lawful occupancy and use' (usufruct) under customary law is nested as a secondary layer of interests. These use rights are a benefit and exercise of ownership; they cannot be held or fully exercised by those who do hold a share in the ownership of the land. The collective club is an exclusive club.

3. Special arrangements may however be made by non-members of the community to access and use land. This right of strangers may mature into full membership of the community and thence deliver the same automatic rights as other members. This does not always happen. Many strangers are eventually permitted to open their own field but are not permitted to plant tree crops.

4. Customary ownership is rooted and sustained on *territoriality*. This is tangible in discrete areas defined as 'our land'. These domains today exist within a nested hierarchy of towns, clans and chiefdoms, and many always did exist in such a hierarchy although differently named. The chiefdom is a composite

of clans, a clan a composite of towns. The consistently core domain in all areas surveyed is the town (the village) and its land area.

5. Each town area is a discrete and bounded territory. It comprises mixed resources of land, water, hills, forests, etc. These are accessed either in discrete parts (e.g. as house plots or farm plots) or communally (forests, hills, swamps, water).

6. The distinction between farming areas and forest areas is neither stable nor discrete. Farming may take place sometimes within the forest. Most families maintain a number of farm plots in different parts of the communal domain to diversify risk particularly against wild animals, limit weeds and to maximise fertility. Although it is customary for many families to open a virgin plot annually, a minority currently do so. Main reasons are that old fields are now well-rested due to the war, people are preoccupied with reestablishing houses and community life, and the strong young labour needed to open new forest farms is less available than before the war.

7. Due primarily but not only to population growth, the number of towns (villages) increases every two or three generations as quarters or hamlets establish themselves as independent towns. In normal circumstances the size of the social group may be a key determinant as to when this fission occurs. This appears to stem from long experience as to how small the group needs to be in order to be accountable in land relations and how large it needs to be to have the power to entrench its ownership over a discrete domain.

8. There are two main effects of this fission: the perimeter boundary of the new land area has to be defined later if not sooner, usually catalysed by a dispute as to the use of land in the periphery area; and the average size of community land areas declines. It is not necessarily the case that the per capita land area also declines in real terms as urbanisation appears to absorb surplus population.

9. Ownership of the community land area is genuinely collective and broadly equitable across member families of the owning group. Neither chiefs nor land owning proto-feudal classes own the land. No family in the modern customary community has less shareholding or less inherent rights stemming from ownership. This is suggested as a 20th century evolution of customary tenure in Liberia where previously some classes in the community had no direct rights to the land. Cases of this may still exist but were not encountered.

10. The distribution of access rights as descending from shared ownership by families of the community is much less equitable. This is most expressed within

family land relations. Youth find it less easy to access land than elders, as do orphans. Women may access land, especially via their husbands or parents but may have to work harder to hold onto those plots. No cases of women actually being denied land were recorded such as for one or two orphans. Again, evolving equality between men and women may well be a 20th century innovation as rural women reject status as chattels. The literature, but not field work by this study, amply suggests that residual treatment of women as chattels continues, but this does not seem to be profoundly expressed in current gender land relations. Rural Liberian women are not specifically a class of landless in the community.

11. Land access, occupancy and use rights are strictly usufructuary, dependent upon occupancy and/or use. The usufruct therefore may be short (as for food crop farms) or long (houses, tree farms). Even when of very long duration and passed down several generations, the usufruct cannot mature into absolute ownership as the soil belongs to the community. As so often in African societies, planted trees are personal property, owned for as long as they stand.

12. Authority over customary tenure is community-based. It is vested in authority figures, but whose authority is sustained only because of community adherence. The study found that Town Chiefs hold far less than absolute authority and depend upon the support of elders to make decisions. It is however at this level (the village) that the most important decisions about land access and use are made. Clan and Paramount Chiefs are much stronger authority figures but

derive this authority in large part from their status as paid albeit 'elected' officials. Their role in land matters is primarily one of mediation. They do not determine who may or may not use land within a town area or how it is used.

*Customary land tenure is
alive and well in Liberia*



13. Customary land tenure rules of today have four sources: traditional practice, national policy, changing land use, and increased pressure upon security of tenure. Most state policy (as especially integrated into hinterland law) has endorsed or been consistent with customary principles over the past century and where it has not, or is against local interests, communities instinctively but persistently resist. An example is widespread reluctance to accept the idea that people do not own the land, government does. The idea of public or tribal land as ultimately government property is in any event unevenly promoted, most prominently delivered by the concession sector. It may also be speculated that communities resisted mid-century intentions that chiefs be recorded as owners on behalf of communities.

14. Norms abound as to how any part of the domain may be used and the most important could be referred to as customary law to the extent that they cannot be easily changed and bring punishments if broken.¹⁸⁵ Most of these relate to ownership rather than how owners use the land.

15. By custom, community land areas are not for sale. Nor are discrete parcels of land within the community property permitted to be openly or freely traded, even within the community. Renting out of lands to outsiders was not widely encountered but reputedly exists, but at non-commercial rates and circumscribed by conditions.

16. At the same time, alienation of parcels entirely out of the customary domain has been a feature in rural areas for many decades, guided by legislation and encouraged by the administration (policy). The real extent of individual formal entitlement within rural communities is low. Informal entitlement in the form of issue of Tribal Land Certificates is more common but also limited in real terms. It is closely related to the establishment of rubber and other personal plantations.

6.2 Trends

1. Customary land tenure is always in flux to one degree or another and given the watershed conditions of return to normality following a long civil war, the flux is greater than usual.

2. The most important trends are associated with changes in settlement patterns. While chaos may seem to reign, this is superficial for the process is underwritten by clear and firm customary principles. In the process these are being refined, revitalised and even politicised as a result of civil conflict experiences. That is, communities express views that suggest that are much more consciously aware of their land assets and land rights and more protective of these that was probably the case before the war. These entrenching principles are that land is *owned*, that this ownership is *collective*, and that the town area (village area) is the pivotal community property, possibly to the extent of now being perceived as the only essential socio-spatial unit in tenure terms. Because of current changes and naming inconsistencies there are many cases where these towns are described as clans.

185 The content of punishments was not explored by the study.

3. The nature of Liberian customary tenure regimes as a community-based system is also being reemphasised. Authority figures are being challenged to be more transparent and accountable to owners (the community). If there were any doubt in the past as to land owning powers of chiefs this is not borne out currently in the consistent reference to chiefs as in effect, no more than land administrators and regulators.

4. Current settlement changes reflect both fission and fusion or simply relocation. On the first and most striking is subdivision of a former town into two or more towns, not in real terms of people moving but in the way these hamlets or sections name themselves and/or are officially recognised. This may be confusing for sometimes an area formerly known as a town was already in reality a clan in the sense of being a cluster of related settlements. Or vice versa, hamlets or sections now described as towns are really still sub-units of a larger town entity.

5. Both fission and fusion may also be occurring to the extent that a community now consolidates itself as a dispersed or closely aggregated set of settlements. There is a current tendency for some or all of a community to relocate its houses nearer a main road.

6. A flurry of boundary definition accompanies these transitions. Effects being seen include:

- frequent dispute, generally resolvable
- less ease in defining boundaries given that rivers and creeks are less available to serve this function as smaller areas are considered
- more precise definition of boundaries, such as where a forest zone once was the boundary it now becomes necessary to identify a specific gully, path or creek within the forest as the boundary line
- consolidation with some recreation of what defines the community and its land area as community life is restarted and/or as sub-units are defined; and
- revitalisation of the idea of customary land as a collective asset.

7. Territory is also being more clearly conceived as an estate. ‘Our land’ is becoming ‘our property’. Conditions encouraging this include:

- more awareness of land as a finite resource as community domains become smaller (but in absolute terms are still usually very large)
- more awareness of the value of the land resource, aided by FDA offers of some benefit-sharing from logging
- conscious and freely expressed resentment of past co-option of

community lands by outsiders and the extractive forestry sector in particular

- some resentment of the capture of community assets by elites from within the community, and
- absorption of private ownership ideologies (not necessarily as owned by individuals) with rising recognition that to retain control over their lands they need to define these specifically as property.

8. The customary distinction drawn between citizens of the community and outsiders ('strangers') is going through a period of strengthening in more cautious consideration of their applications for farmland and in consolidation of domains. Inter-ethnic conflicts during the last decade may have helped stimulate this.

9. Enclosure behaviour extends right to the community edge and into the community itself. Comments suggest that the community forest is less available than in the past to occasional use by people from neighbouring communities (e.g. hunting, digging for gold, cutting wood). Community members living outside the community may find their assumed ready access to village land truncated. Women marrying outside the community are most affected.

10. The importance given to dominion at this time in the process of securing areas against outsiders or lease by government is having a limiting affect upon individualisation of land. Villagers often declared themselves more cautious in seeing large parts of their shared property taken over as the *de facto* private property of better-off families. Nor does there seem to be a drive towards subdivision of the whole estate into family plots in the study areas, although this must be expected as occurring in peri-urban areas.

11. There is also an overall increase in rules relating to access and use to community resources by community members including a reduction in past freedom to open a new farm wherever one wants and new rules defining exactly where tree crops may and may not be planted. Some communities are now sending such farmers a full hour away from settlement, reserving nearer lands for food crop farming. Family rights to the collective property is also being consolidated as usufruct, and just at a point where it might have been expected to be gaining rather than losing force as a stepping stone to privatisation. There are opposite trends but with consistent effect in the hardening rather than relaxation of the customary idea of access rights as dependent upon occupation and use. Just because a grandfather opened the area originally some decades past does

not seem to be sufficient grounds for claiming the land as one's own.¹⁸⁶ Thus food crop farms are more explicitly defined as lands which the holder may not presume to be his own forever, without farming. Farms with rubber and other long term crops are being defined as long term rights that amount to de facto ownership.

12. Not unrelated, the acceptable term of fallow periods is everywhere shortening. This has a mix of drivers, mainly in a declining supply of labour or control over the crucial young labour needed to open new farms or real upland land shortage in some cases (e.g. Grand Cape Mount, Nimba).

13. The rights of women exhibit predictable contradiction; on the one hand women have clearly gained stronger rights over recent decades. On the other, these remain subordinate to men's rights and show signs of being vulnerable under land pressure.

14. Awareness and resentment of customary land, territories and resources being interfered with through mining, forest and rubber concessions is high. The issue is politicised in that this is not confined to the community but is in the public arena. Rubber concessions are increasingly a target of disputes that question the right of government to issue leaseholds over customary lands and/or without the owners' permission. Resistance to the idea of the forestry sector following suit is widespread (chapter 4).

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15. Whereas in the past swamplands were a definitive communal asset, use rights to which are product-related (e.g. reeds, fishing), by being farmed they are entering the realm of usufruct, held privately by families in the same way as upland farmland generally.

16. Conversely, forests in the domain are being more firmly articulated as not unused land that may be subject to individual usufruct, but as a collectively owned, used and regulated asset.

17. There is also sign of an imminent trend towards simple land use planning within some community land areas. This is occurring both in the process of redefining or consolidating their areas, and also as a consequent of greater awareness that resources are limited and intentions to set aside some forestlands for longer term forest extraction.

¹⁸⁶ The study asked if young men were having trouble regaining lands of their parents following the war, but the war years do seem to be being taken into account.

18. Community-based land governance is maturing with greater demand by ordinary community members for inclusion in decision making affecting the status of the area or its use by outsiders, notably forest harvesters or miners.

19. Of note are also trends that are not happening as classical evolutionist theories of land tenure change predicts.¹⁸⁷ In practice there is an absence of land sales, a known market in farmland or the multiplication of sales of land to outsiders. Nor did the study find a noticeable increase in land renting (or mortgaging, for which no evidence at all was found). Sales still tend to be described as gifts or loans. Most of these proto-sales are confined to houses, not farms.

20. Individualisation of the community property at scale is not widely occurring. Young people are not leading the way to subdivision of community land areas or rejecting communal authority or collective ownership of the land area. They are at the forefront of those defending the interests of the community against outsiders (including government). They are demanding a stronger say in land related affairs.

21. The dominant trend is one of enclosure and entrenchment of the land as a private property but at a communal, not individualised level. Given the unusual level of support in Liberian law for registration of communal property, this is not as surprising as it would be were there not a long history of collective entitlement. In other Sub-Saharan states increased demand to be recognised as owners of collective property tends to embrace only some parts of the domain, notably forests. This allows farms and houses to be regarded as the absolute private property on individuals. This dual pattern is very common where agriculture is firmly settled.

22. To some extent this same dual trend could be emerging in Liberia, aided by incipient zoning of different parts of the community property for different purposes. For individualisation is occurring to the extent that there is no sanction against families setting aside some part of the communal domain for their exclusive use. However this is circumscribed by conditions; holding onto such areas without using them is unacceptable. The *modus operandi* would then be one in which communal jurisdiction and root title of the property remains firmly collective, but within which certain parcels are properties held in the hands of member families under long usufructs potentially held in perpetuity, beyond which the residual forest estate is collectively used as well as owned.

23. The desire to get legal entitlement is high. Although only three of the 37 towns (villages) visited by the study have any formal entitlements to hand in the form of Public Land purchases, every town thought it important. Ten have taken concrete steps towards this, collecting signatures from chiefs for the Tribal Land Certificate which underwrites the process. In some cases, the decision is still being made as to whether the entitlement should be in the form of a single entitlement for the clan area or in the form of titles for each town that makes up the clan area. The Rivercess Land Commissioner reported that seven towns in Fen Wein had recently sat together and decided to get a deed as a clan as they were closely related settlements, and that this is a trend in Rivercess. Taken as a whole, the greater interest seems to be for town area entitlements. County land commissioners and superintendents encourage this as reported in Bong and Gbarpolu counties.¹⁸⁸

24. Finally, land disputes and conflicts echo the pronounced feature of customary tenure at this point in time; that it is consolidating and along strongly defined community lines. Enclosure behaviour, and on a community basis, is everywhere evident and intolerance for interference in customary properties is explicit, whether from government, private enterprise or simply people from next door villages.

188 For example, it will be recalled that all 19 towns in Gbarma Chiefdom (2 clans) have received Tribal Land Certificates in recent years.

Chapter 4 Forest rights and the forest law

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This chapter turns specifically to the forest resource. It begins with an elaboration of the widening gap between community and government positions as to forest ownership. The implications of the new National Forestry Reform Law are then examined.



photo Saskia Ozniga

1 Forest ownership: the customary position

The previous chapter showed that forest is an integral element of community domains and is thus collectively owned. This section provides more details. The clash of people's law and government law is no where clearest than in respect of forests. Government law (statutory law) is itself ambiguous.

In the study communities uniformly conceive of the forest as traditionally their own in both a territorial and mystical sense. How could it be otherwise, they ask? Forests have always been part of our territories.

“God blessed us and gave these lands to our ancestors. We keep the forests for them”.

“There is no difference between our land and the forest. All our land was forest land in the past”.

“The forests were there to protect us. The more forest you had in your land the better. Our forefathers made no paths so outsiders could not find us to thief our women and take our people as slaves”.

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“When our forefathers controlled the paths, they controlled the forest”.

Wildlife was central.

“Bush meat and skins were the most important things from the forest”.

“The reason we made boundaries among us and fought wars was because of the forest. Each community had to have its own hunting area. Our forefathers defended them fiercely”.

Rules of access and use applied. Non-members of the community could not randomly hunt, fell trees, farm, or take products without the permission of the owning community and those found in the forest would be brought to the chief and elders for punishment. Community members also could not enter deep forest, clear land for farming there, or fell trees without permission of elders.

“The forest was not one place. There are many forests in our land. We have some forests for some things and some forests for another. Everyone knows”.

“These were special forest reserves for men and their activities. Women also had their places. We still have these today”.

“You could not wander into the forest. You had to have a reason. Even when you went you had to leave a trail so other hunters would not shoot you”.

“Some parts of the forest were out-of-bounds during the wildlife breeding season. We had our own off-season even before government told us rules”.

The forest is and always was an integral part of community domains



Certain tree species could not be touched at all, as sacred, or prayer trees, or the markers of graves. *Ceiba patienda* (cotton wood tree), kunja and sassy wood, are commonly mentioned as protected.

“Elders still call for a sacrifice if a cotton tree is even damaged. And special trees deep in the forest. Certain trees must always be left standing for our descendants to know the place we lived or to know our boundary”.

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Much of this changed with commercial logging. Customary regulation was thrown into disarray.

“Loggers came and broke all our rules even though we begged them not to. They felled our sacred trees, our prayer trees, our medicine trees. They opened the forest and took it from us. Now the winds blow”.

“We learnt to cut trees and make planks and wanted to make timber houses and furniture but government stopped us. Even today you are fined if a wooden table is found in your house even though the timber came from our own forest”.

“No one knows anymore who owns the forest. We thought it was ours but FDA sends people all the time”.

Responses as to who legally owns the forest today are uncertain. While no one interviewed thinks private logging companies are the legal owners they are less certain about themselves or the government. Majority opinion in one third of community meetings was that the government or FDA is the ‘legal’ owner (table 28).

“The reason we are afraid to say who legally owns the forest is because government has power over the forest. The forest is ours but government is the power”.

To the study team, a group of youths in Rivercess demanded:

“You are experts so you tell us what happened to our forests! The forests belonged to our fathers and our fathers’ fathers but government gave them to logging companies before the war. We cannot know who the legal owner of forests is! But we will not let FDA give away our forests again!”

Table 28 – The legal owner of forest: summary of responses

majority view in 37 public meetings	government or FDA	people	details of people ownership		
			town community	clan of chieftom community	ancestors
Rivercess	4	4	2	2	
Gbarpolu	–	7	5		2
Cape Mount	2	4	4		
Grand Gedeh	4	4	3		1
Nimba	3	5	3		2
total	13	24	17	2	5
	35%	65%	71%	8%	21%

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1.1 Entrenching Communal Forest ownership

Five trends are evident in attitudes and actions to their forest resources.

1. The functional use of the forest is changing, out of necessity and opportunity.

Income-generating from logging, chain sawing for planks, mining and eco-tourism are contemplated. Sale of firewood and charcoal has long been common in Grand Cape Mount. Fish from streams in the forest, production and sale of rattan chairs, processing of wild foods and especially herbal medicine are common income earners.¹⁸⁹

189 The WFP 2006 survey confirms the importance of all these activities in livelihood.

Table 29 – Current forest uses in study communities

	Rivercess	Gbarpolu	Cape Mount	Grand Gedeh	Nimba
<i>sold</i>					
firewood			•		•
charcoal			•		
plant foods*	•	•		•	
palm wine			•	•	•
bush meat		•		•	
fish					•
thatching grass					•
herbs/medicines	•	•			•
gold	•				
rattan chairs				•	
<i>household</i>					
wood products	•	•		•	
firewood	•	•	•	•	•
building poles	•	•		•	
plant foods*	•	•		•	
honey	•		•	•	
fish	•	•	•	•	•
bush meat	•	•	•	•	
skins		•			
palm wine	•		•	•	
thatching grass	•	•	•		•
basket grass	•	•			
bamboo	•			•	
rattan				•	
monkey rope		•		•	
medicinal plants	•	•		•	
gums and resins		•			•
farms	•	•		•	
sacred sites	•	•	•	•	•
* Nuts, seeds, berries, bitter roots, mushrooms, snails, bush pepper.					

2. Tolerance of invasion of ‘our forests’ is declining.

“We need dollars to live. We pay our own teachers as there is no money from government for teachers. We do everything for ourselves. But government takes our things, our lands and our trees. Government sent companies to our areas. They ruined our forests. We are natives and poor and uneducated but we will not let them do that anymore”.

Not only FDA is blamed.

“We get angry when Senators and powerful people give people permission to use the forest. We see letters telling us that someone is coming to use our forest”.

Although young men are most vocal in their pledge to resist officialdom, they look to their elders to act. Elders themselves in meetings in Gbarpolu and Rivercess described actions recently taken against chain sawers who enter the forests without permission. In one town –

“We closed the roads and they had to leave the timber lying. We bought zinc for our roofs when we sold the planks. Everyone got a share”.

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Only one chain saw gang was interviewed.¹⁹⁰ The youths admitted they could no longer enter forests freely. Their view on who owns the forests?

“The forests must belong to the people because it is only permission from the people that matters. All of us pay the Town Chiefs and elders. The rate is one piece in ten or sometimes now two pieces in ten. Sometimes they ask us to build a bridge for them with felled trees. There are thousands of us doing this work and it is always the same. Forests belong to people and you have to respect that. Even where you put your camp and which trees you cut, you have to ask first. FDA is only interested in collecting money when we sell the timber. It doesn’t care if towns lose their forest”.

3. Actions to reinforce community forest ownership are being undertaken.

As shown in the previous chapter virtually all communities are concerned to bring their domains, forest included, under clearer definition and control.

190 A group of young ex-combatants using forests in Gbarpolu District.

Boundary disputes among towns often trigger action. While most disputes are caused by the opening of forests for farming in the boundary areas, enclosure of the forest for its own sake is also more pressing than in the past. In the view of communities, defining boundaries as to each community's forest area is prerequisite to collecting on the publicly announced promise that they will in future get the benefit of logging.

A good example is from Grand Gedeh, where no less than 20 communities rushed to formally agree their boundaries and began the process of registering these, following the visit of a logging company in 2006 to identify its preferred concession area.¹⁹¹ Some 15 now hold Tribal Land Certificates, establishing their right to survey. The area concerned amounts to one quarter million hectares or an average of 15,400 ha per community.

Communities are actively asserting forest ownership



Even without such a prompt, determination to entrench community rights over forestland is intense, as witnessed also in

Gbarpolu and Rivercess Counties. 'Keeping the forest' was, the District Superintendent of Gbarma District in Gbarpolu noted, the reason for every town in the district to have now been issued Tribal Land Certificates. 'People want to establish clearly that the forest belongs to them.'

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The anticipated benefits go beyond timber. In Grand Cape Mount for example, towns on the edge of Lake Piso want town deeds to ensure their rights in planned eco-tourism developments. Where mining is underway or predicted, this too is proving an incentive to formalise customary rights. Aside from imminent entry of large companies, rampantly uncontrolled digging for gold and diamonds by outsiders is angering local communities. This is so even though the mining sector has not offered an official share of benefits to communities, and has not even paid obligatory compensation for damage caused by mining to community properties (annex F).

A salient feature of this trend is that local sentiments and actions are community driven. Although there has been a long history of periodic encouragement towards collective legal entitlement, modern rural communities in Liberia hardly need persuading.

191 From Tchien District, as seen in the submissions to FDA in March 2007.

Several aspects of intentions need note:

a. In not a single case encountered did rural people consider that forests could exist or be registered separately from the land they grow on. The idea of forests and forestland being different resources aroused bemusement as not being possible.

b. In not a single instance are communities making an attempt to subdivide forests into family parcels. Forests are firmly conceived as collective property. The idea of an individual claiming ownership of a forested area is anathema. Individual ownership is spoken of as only possible in regard to houses and farms. As one town meeting put it:

“No one would get permission to survey for a deed if they wanted to keep the land as forest. Deeds can only be got for land which the person wants to bring under rubber or oil palm”.

Another community explained that should a person get a deed for land in the area and then left it forested for a long time, *the land would automatically revert to the community* (not in fact the legal situation once the land is titled).

c. The identity of the community which owns the forest is sometimes unconfirmed at this point.

This derives from the flux in some settlements at this time and more widespread alteration in how local administrations designate towns. For some communities which have declared themselves or been declared towns in their own right, a question is sometimes raised as to whether individual town areas in this case is the right framework for vesting ownership of the forest. This is obviously mostly so where the forest resource is limited or unevenly distributed in the previously larger town area (now clan). It is possible that similar questions are arising at times at clan and chiefdom level, where an area formerly tagged as a clan area has been reclassified as a chiefdom.

Dorbor Clan in Rivercess is a good example. As shown in chapter 3 this clan area now comprises ten towns, until recently designated as one town comprising these same ten settlements, most of which still remain no more than hamlets. While definition of boundaries among these hamlets/towns has become important for the sake of establishing the limits of respective farming zones, forest quality is highly various. The best forest, known as Gion, lies in one corner of the original town area (now clan area). Formal entitlement in ten parts as ten town areas would mean eight towns lose their share of Gion Forest. The alternatives being

considered by the ten towns is to formalise ownership of the whole clan area or to subdivide the clan area into ten town areas but excluding Gion, registering it separately as a clan forest. A further option has been dismissed as unviable: to subdivide Gion among the ten towns; the forest is too small and too varied, including in the location of its invaluable gold streams.

4. There is a conscious revival of community forest rules as integral to the process of communities reasserting their authority over the forest.

Forest rules have changed/are changing. There is less sanction today against wandering into the forest alone although it is frowned upon as unsafe. Hunting by members of the community seems less regulated than described as the case even a generation past, stating the free-for-all of the conflict years as a main cause of breakdown. At the same time, outsiders, including people from immediately adjacent villages are being firmly refused access for hunting. The ban against damaging or felling sacred trees, including a determination to prevent loggers doing this, has hardened.

5. Simple land use planning of the community land area is evident.

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Traditional considerations as to where farms are, or may be, opened within the territory are gathering a more nuanced set of considerations that amount to zoning, or simple land use planning. Once again, the driving force is new government policy. One villager put it well:

“Before FDA was driving us to clear and farm the forest. If the land stayed as forest they took it from us. Now the new government will give us our rights back. We will get one third of the logging benefits. We have a reason to keep the forest.”

The effects upon farming have been noted earlier, *contributing* to hints of intensification in the fact of shortening fallows, and consolidation of existing cleared and once used farms.

2 Forest ownership: the statutory position

2.1 A recap of the legal treatment of customary land interests in the Hinterland

Chapter 2 traced the legal treatment of customary land rights, and with this, the fate of forest ownership, an inseparable asset of traditional communal properties.

To recap in the briefest of terms, the 1920s saw Monrovia begin to attend to the tenure of the Hinterland territory. In consultation with gathered chiefs it drew up a codified set of laws and regulations which included recognition of both traditional jurisdiction over discrete tribal areas, and along with this, acknowledgement of Aborigines ‘right and title’ to those domains in the form of tribal reserves (‘Hinterland Law’, 1923-1949).

Opportunities were provided for the geographic extent of each to be formally surveyed and registered as collective properties (commonhold) under a fee simple non-transferable deed. Those Aborigine communities who showed they had ‘acquired the arts of civilisation’ could choose to subdivide these into family properties. Those who did not want (or could afford) to have their lands registered in metes and bounds as commonhold were nonetheless guaranteed secure right and title. Right and opportunity were thereby afforded. Some communities did secure the commonhold entitlements. Most did not. Few if any communities in the Hinterland chose to take the offered next step of wholesale subdivision into family plots. The reason was the manner of shifting cultivation combined with the importance of forest, a naturally collective asset.

Meanwhile outsiders, usually immigrant descendants (Americo-Liberians) living in the original Littoral territory of Liberia were given permission to buy land in the Hinterland. They could not buy the land directly from Aborigines but from the state. A positive interpretation is that this was designed to take account of the non-transferability of customarily-owned lands. It also made it easy for the administration to control the process, limiting purchases not to its liking and/or to the detriment of the native populations. Chiefs would also have to consent to the land being purchased (in the form of tribal land certificates) releasing those parcels from customary ownership by testifying that they were not after all a part of the tribal reserve. The Public Lands Law and Revised Laws and Regulations for Governing the Hinterland laid all this out.

A degree of ambiguity underpinned this approach. This concerned the interpretation of 'right and title'. Did this amount to a *real property right* or was it more in the vein of a *territorial interest*? This was important because the first allowed for tribal reserves to be considered private, collectively-owned real estate, whether registered or not in fee simple deeds. The second could suggest that even at this early stage (and before the Dossen ruling had time to take effect) native 'right and title' was not in itself a property right, just a reservation right, enabling their areas of occupation to be protected. In any event, this ambiguity lessened as real cases of legal entitlement materialised and with ownership firmly rooted in all members of the community (Aborigines Land Deeds).

This we have seen was not to last. The 1956 Aborigines Law chose to describe Aborigine land rights as firmly limited to possession on state-owned land (public land). The distinction between *tribal land* and *public land* dissolved; it was all government land. We have seen how this shift in interpretation was timely; by then the enormous advantage of interpreting customary interests as less than ownership was clear; the Hinterland was full of invaluable resources. As the owner of the land, the state could freely allocate these to whomsoever it chose and by concessions did so.

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Still, this was not the end of the story. For even the judicial service is uncertain whether this crucial legislation, the Aborigines Law 1956, is still in force. While the original Hinterland Law seems to be still operating it appears to do so only as subsidiary recognised customary regulation. Other land laws, notably the Public Lands Law and Property Law do not unambiguously solve the questions of the nature of communal land ownership in national law. The former is still structured around the interests of immigrants and their descendants. The latter (chapter 8) is as narrowly shaped around registration of individually held properties. This contradicts continuing reality in the Hinterland. As we have seen, the land itself in the hinterland is owned collectively and steadfastly so. It is only *use rights* to that shared property that are customarily owned on an individual basis, mainly by individual families. Meanwhile the opportunity to secure collective entitlement has far from disappeared. Even into 2007 towns, clans and chiefdoms set out to secure collective ownership in fee simple. They do this by buying their own land back from government.

The incentive to seek (expensive) formalisation is very high; experience compounded by legal uncertainty warns rural communities of the dangerous costs of failing to do everything possible to entrench communal ownership in modern title deeds. Recognition of possession is not enough; it is the ownership of the land that needs to be entrenched.

2.2 The forestry sector has taken ample advantage of uncertainty

Meanwhile the forestry sector has built substantially on the back of legal and real diminishment in the protection of customary land rights over the last half-century.

Thus, broadly from a policy where forests were a resource the use of which was controlled and regulated by the government, the policy has become one in which the government owns, controls and regulates the resource in its entirety. Just to be sure, forest law firmly separates forests from the land they grow on. In this way rural Liberians have seen their land ownership ‘de-secured’ and its primary values removed entirely from them.

The following section will trace this process. First, these basic questions need to be asked:

- Is there anything in superior law which says forests belong to the state?
- Does land law separate what grows on the land from the land itself?

The answer to both is a straightforward no. Neither the First Constitution (1847-1986) nor the Second Constitution specifically mention forests or forest land.¹⁹² They do mention minerals and establish these as national property.

“Private property rights, however, shall not extend to any mineral resources on or beneath any land or to any lands under the seas and waterways of the Republic. All mineral resources in and under the seas and other waterways shall belong to the Republic and be used by and for the entire Republic” (1986, article 22 (b)).

The separation of forests from the land has no foundation in the Constitution. Land law assures communities that legal landowners own the forests on their land

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This was then embedded in the Minerals and Mining Law of 2000 (annex F).¹⁹³ Thus by omission forests are not national property and the resource is capable

¹⁹² Although the latter does commit to management of natural resources ensuring participation of citizens (see art.7 annex C).

¹⁹³ By concession, the holders of Mineral Rights do acquire the ownership of what they extract (s.2.3) much in the same way as loggers own the trees they fell (annex F).

of being privately owned, whether by individuals, families, groups, legal persons or communities.

Nor can this study find any evidence of trees being separated as a resource from the land they grow on. Indeed there is a contrary history otherwise.

As reproduced in chapter 1 even the earliest title deeds specified that the land purchase included all that was on the land ('...with all the harbours, islands, lakes, woods, ways, water-courses, etc..'). By 1974 there could be no doubt (if there ever was) that the tenure of forests may not be separated from the land. The Property Law states that:

"Land includes land covered with water, all things growing on land, and buildings and other things permanently affixed to the land" (chapter 8, title 29 s. 8.3).

Clearly all those Liberians in any part of the country who legally own land, individually or collectively, also own the forests growing on their properties.

This is important, for even should the tenure of communities who hold customary rights have a cloud hanging over them, there is a great deal of natural forest which is subject to formal entitlement by other communities. This includes entitlements in fee simple, held variously by towns, clans and chiefdoms. It will be recalled that in forested areas these include at least 14 Aborigines Deeds and 19 Public Land Sale Deeds which together amount to over six million acres (or 2.5 million ha). Additional entitlements affecting forested areas may exist.

*Even communal
landowners without
formal title have
substantial rights to forests
in land laws*

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The question of forest ownership on lands for which there is no title deed (and therefore described as 'public land') is more complex. For if the root title of customary owners to their traditional areas is in doubt then their outright ownership of trees on the land is also in doubt.

Against such diminishment are four provisions as elaborated in chapter 2; viz:

1. Even should the Aborigines Law 1956 be shown to still be in force, it does at least guarantee the *right of possession* of land, and 'as against any person whomsoever'. Moreover, 'The omission of the tribe to have its territory delimited shall

not affect in any way its right to the use of the land' (Aborigines Law 1956 s.270). The latter is also provided in the Hinterland Law, considered to be in force albeit as officially recognised customary regulation.

2. Modern property law reinforces this possession. Chapter 8 makes it clear that during systematic registration, areas identified as tribal reserves or communal holdings shall be recorded in ways which exclude others from registering those lands (s.8.52 (d)).

3. The same law provides for those holding land 'in uninterrupted peace and recognition of their tenure for 20 or more years' to be eligible to be recorded provisionally as owners, even without documentary evidence (s.8.52(b)). While this was drafted with individuals in mind, there is nothing preventing this important right being secured by collective owners.

*The law says communities
are rightful possessors and
users of forest*



4. Finally, as to specifically forest property, the Aborigines Law (as the Hinterland Law before it) provides for a tribal reserve or communal holding to not be limited to the farming area, but to comprise an area 'adequate for farming and other enterprises essential to the necessities of the tribe' (art.270). Accordingly, large areas of forestland have been appropriately included where these customary properties have been brought under legal entitlements either evidenced in Aborigines Deeds or Public Land Sale Deeds.

On these bases, it is difficult to conclude that even in national law rural communities are not at the very least, the effective possessors and rightful users of forested lands, and in many instances, their titled owners. Nor are there legal grounds for assuming that their land does not include forestland and forests.

3 Past forest law and forest ownership

3.1 Laying an adequate foundation

The first forest law was enacted in 1953, the Forestry Act, creating a Bureau of Forest Conservation in the new Department of Agriculture and Commerce (1948). Its core policy was to establish a permanent forest estate and it was empowered to create Government Forest Reserves, Native Authority Forest Reserves, Communal Forests and National Parks (s.IV and v).

The law took care not to claim all forests (or forestland) as public property. Instead it acknowledged that the lands where it would wish to establish Government Forest Reserves *were owned* and that those rights would have to be adjudicated and settled prior to their proclamation and the vesting of all rights, title and interest in them in government (Forest Act 1953 s.vi).

An interim category of protected forests was provided for in the form of Native Authority Reserves. These were described as potential Government Reserves and would be established over lands within one or more tribal chiefdoms pending their conversion into government-owned reserves (s.vii), eventually termed National Forests.

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The adjudication and settlement referred to meant compulsory acquisition in the public interest and payment of compensation, in accordance with constitutional law at the time (1847-1986). It was clear that protection of property rights was a basic human right and that 'Private Property shall not be taken for public use without just compensation' (s. 13th article 1).

Examination of one of the eleven Proclamation Orders for establishing National Forests in 1960 claims that:

“all rights and claims of the original owners have been duly adjudicated and satisfactorily settled”¹⁹⁴

Unfortunately, this does not seem to have been the case. Predictably all of the 1.3 million hectares embraced by National Forests were far from empty and

194 Presidential Proclamation (W. V.S. Tubman) for Krahn-Bassa National Forest Reserve, 1,270,000 acres on April 4 1960.

un-owned. But no rights seem to have been formally extinguished and no compensation seems to have been paid. It may be that native rights were simply ignored. This fitted the emergent ‘policy’ of the time; that unregistered land = un-owned land = government land.

However the problem does not end there. For as the FDA found in March 2007, by far the greater area of the National Forests is not only occupied and used by rural Liberians on a long-standing customary basis, but their tenure has been formally embedded in fee simple entitlements.

These pre-date the declaration of the National Forests around 1960. How this occurred without communities being aware of the contradiction is mysterious. It may have been that owners were led to believe that the declaration of National Forests did not involve a change in land ownership status, but only in how the forests might thereafter be used. Needless to say, copies of community deeds have been submitted to FDA and forwarded for verification by the Ministry of Lands, Mines and Energy.

In laying out the reserves which would in due course become government land, the Forest Act 1953 did not entirely forget the people. A gesture bespeaking the trend at the time (‘little forests for little people’)¹⁹⁵ provided for communities to bring little forests under protection as Communal Forests. These were to comprise:

“...small described forest areas immediately adjacent to one or more native villages, and use of these forests will be confined to the local population ... as a source of forest products for (their) use ...”
(1953, s.vIII).

Commercial use of forest products was forbidden in these Communal Forests. None were proclaimed.

3.2 Losing the forest in practice

In any event by the mid 1970s the timber industry had taken off, resulting in the repeal of the 1953 law and its replacement with ‘An Act Creating the Forest Development Authority 1976’. The objective was to bring forests under business-minded management. Mention of reserves was scant in this new law its focus

being FDA's formation and role, but there was no other forest law. The institution was hardly independent, its board members and managing director directly or indirectly presidential appointees. Its control over forests was impliedly complete. Its officers could even fell trees in (yet-to-be established) Communal Forests (s.14).

With logging booming under President Doe, eight new regulatory sections on concessions were added to the 1976 law in 1988.¹⁹⁶ These included a requirement for concession holders to pay an annual ground rent to the government, as if the millions of hectares by then covered by concessions were not already on land owned by custom or formal entitlement to resident communities, and rent indeed due these customary owners.

While the boom lapsed during the 1989-1996 civil war years, Charles Taylor's election in 1997 saw its revival, with corruption, and abuse of local communities, as would in due course be amply reported to the Concessions Review Committee (annex H). More or less every tract of forest in Liberia was under active extractive logging and salvage concessions. Few rural communities could escape their presence. Luckily their inefficiencies did not entirely denude the forest but deforestation and degradation soared, doubling already shocking losses in the previous decade.

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3.3 Losing the forest in law

A new National Forestry Act 2000 was introduced during this period. The law was even more detailed than its predecessor as to commercial use. The main provision for local communities was that loggers were not to deny them access to the forests (s.7.1). Significant attention was paid to wildlife protection and utilisation.

Community forestry was introduced as

“a forest concept which advocates the involvement and empowerment of local communities in the development and sustainable management of forests”.

¹⁹⁶ An Act to Amend An Act Creating the Forest Development Authority, 1998. The law included provisions requiring loggers to employ no less than four Liberian Foresters and encouraged Liberians to apply for Salvage Permits.

In the text of the law this amounted to exhortation to farmers to adopt land use planning and planning to help them establish wood lots (s.8.3d and s.8.3j (i)).

Communal Forests retained their 1953 definition as

“... small forests allocated adjacent to one or more village for the exclusive use of the local inhabitants” (s.1.3).

The law also bluntly declared forests the property of the Republic.

“All forest resources in Liberia are the property of the Republic except Communal Forests and all private forests developed through artificial regeneration” (s.2.1).

However ‘forests’ as defined did not include the land they grew from; this could be privately owned.

“Government’s right as the owner of all forest resources in Liberia to allow prospection or extraction of forest products shall supersede the right of any owner of land containing forest products, provided that all such owners or lawful occupants of land shall be entitled to prompt, adequate and just compensation for any diminution or disturbance of their rights as owners or lawful occupants of land affected by prospection or extraction carried out pursuant to this law” (s.10.4).

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Should the owner protest the entry and use of the Permit Holder on his land, the latter could appeal to the FDA which would summon the owner to appear within 60 days. FDA would hear the grievance of the owner and

“assess the damages to be caused and the amount of money to be paid to the owner of the land for disturbance of his or her surface right and for any actual damages for loss or destruction of goods or property which may be necessary in order that prospection or logging be carried out” (s.10.5).

That is, damage but not the costs of losing the use and benefit of the land for several decades would be paid for.

Thus the dislocation of forests from forest land was established. Ownership (by title deed) and lawful occupancy (by customary practice) were acknowledged but these holders of land deprived ownership of the natural resources on their land. Not only was this not constitutional and contradicted property law as indicated

above, it contradicted the forest law's own definition of forest, as being 'a tract of land consisting of flora and fauna' (s.1.3).

Meanwhile, those privileged enough to acquire utilisation permits (mainly logging concessions, available in classes up to 1.5 million acres) thereby acquired the ownership of those forest products, if and when sold to them by the now declared owner of those resources, the state (s.2.3).

4 Current forest law

None of the above would be significant if it were not for the fact that the spirit of the Taylor legislation in 2000 had not been so fulsomely carried over into the National Forestry Reform Law 2006 (NFRL) thereby further entrenching injustice. The new law does this – intentionally or otherwise – by abusing the natural rights of ownership, misusing principles of public purpose and compounding the whole within an insufficiently devolved governance regime.

At the same time and contrarily, the new forest law proclaims its intention to protect and support community forest rights. Communities may be granted rights to manage forests, may even be able to own unspecified forest resources, and will be consulted in decision making. Access (to their own forests) will be ‘fair’. ‘Equitable’ benefits will accrue (box 26, page 237).

Box 26 – The better spirit of the National Forestry Reform Law, 2006

Section 10.1

- a. To manage natural resources based on principles of Conservation, Community and Commercial Forestry, and to ensure that local communities are fully engaged in the sustainable management of the forests of Liberia, the Authority shall by Regulation grant to local communities user and management rights, transfer to them control of forest use, and build their capacity for sustainable forest management.
- b. The Regulations promulgated under this Chapter must, at a minimum:
 - I. specify rights and responsibilities of communities with respect to ownership and uses of Forest Resources;
 - II. Establish mechanisms to promote informed community participation in forest-related decisions.
 - III. Create a framework that allows communities fair access to Forest Resources; and
 - IV. Establish social, economic and technical procedures for capacity building to ensure that communities can equitably participate in and equitably benefit from sustainable management of the forests.
- c. In addition to satisfying the other requirements of this Section, the Authority shall, within one year of the effective date of this Law, present to the Legislature for consideration and passage a comprehensive law governing community rights with respect to Forest Lands.

4.1 Unpacking the contradictions

First, it is necessary to identify exactly how the NFRL proposes to deliver on its community-related assurances. Five concessions may be identified.

a. It is, for example, just possible that one or two ordinary forestland owners among a million of so people *may* be included in the future on the Forestry Management Advisory Committee, but only if they are represented in a registered civil society organization (s.4.2.b). Unfortunately even if they are, the Committee is toothless, merely able to *advise* the Authority, and with notable absence of any clause requiring the Authority to show evidence that it has addressed the Committee's advice. This is similarly the case with all-important Forest Management Strategy bound to be publicly available ahead of finalization (s.4.4.e).

b. Communities *may* be able to get loggers and other permit users to let them enter and use their own forestlands, perhaps even get them to stop felling sacred trees, or provide a little timber for the school building, desks and chairs, and the like. This is because for the first time logging companies will be obliged to enter *social contracts* with 'affected communities' (s.5.3.b.iv) and these companies could lose their Permits if they fail to comply with what they agree to therein (s.5.6.1.d).

c. Communities *will* receive ground rent to be paid by (Permit Holders) (s.14.2.e.ii). A positive theme through this review has been the way in which this promise is encouraging communities to limit farm expansion into their old forest areas and helping to drive initiatives to define and formalise their respective community land areas inclusive of such forest lands. Unfortunately, as the study found, not many communities are aware that the law obliges government to share only one third of the rent due on the lease of their lands to concessionaires for several decades at a time. Nor is there awareness that there is no legal obligation for this revenue to reach them directly, that it may very well be delivered in the form of supported social services managed by county authorities. Nor is there any awareness that no legal commitment has been made to share a small percentage of lucrative stumpage and export fees with the forestland owners and possessors (s.14.2.e.i).

d. Communities *may* still secure forests directly adjacent to their settlements for their own use (s.1.3). As we have seen eleven such community forests are proposed at an average of 5,000 ha each, and FDA is promising more (Draft National Forest Management Strategy, June 2007). As structured community forests remain small, token and self-limiting. Not only may no meat, firewood or medicine or other product be sold from these patches, no logging or timber

salvaging may be undertaken to cover, say, much-needed supplementary teacher salaries. The draft Strategy holds out promise that communities may be involved in the management of forests under commercial contract of conservation protection, but with no legal obligation in the law that they must be so involved.

e. And finally, communities *may* be able to access more information about FDA's plans; information is to be made 'freely available to the public' (s.18.15) – although access to contractual details may be constrained.

All the above give cause for concern. These are indeed mere concessions; the opening of the door just enough to release a little of the public pressure that has mounted, so that business may proceed as usual. This may not have been what FDA intended. Nor can it be what rural Liberians hoped for. As the implications of the law come to bear, rural communities may be excused concluding that little has really changed. The legislature and public are right to demand that the troubling paradigms be revisited, through a community rights law.

4.2 A governance failure

In order to understand the extent of alteration required it is important to analyse how and why the National Forestry Reform Law 2006 has fallen so short. In this the outstanding problem is one of governance vision, a failure to democratise the way in which the resource is controlled, conserved, regulated and its benefits shared.

*Communities may be
consulted but not heard*



The first intimation of this is the manner in which communities may be consulted but need not necessarily be heard. In such respects the NFRL compares poorly with most new forest acts on the continent and beyond (see annex I). Their thrust is towards genuine devolution of decision-making to locally-instituted bodies and especially community forest committees. There is also routinely a clear legal process laid out for joint decision-making on national management strategies.¹⁹⁷ By no stretch of the imagination do the

197 See these documents: Kohler and Schmithusen 2004 for analysis of this in 12 African States, Alden Wily and Mbaya, 2001 for examination of 20 new forest laws in Eastern and Southern Africa, Texier and Young in Cirelli et al. 2001 for examination of new forest legislation in specifically Francophone African States; Potters, Reeb and Crollius in FAO 2003, Alden Wily 2003b; FAO, 2002: chapter 10, which looks globally at new forest enactments; Pierce Colfer and Capistrano (eds.) 2005, which approach the subject as a governance issue, as do Ribot and Larsson (eds.) 2004 with more African cases.

provisions provided in the NFRL amount to genuine community empowerment in relation to forest resources. Communities remain throughout a subject of forest policy, not actors.

The enduring weakness of how community forests are constructed in the law is pivotal in this. These remain 'little forests for little people', a token nod to livelihood requirements. Their construction is a far cry from the rich and vast areas which, for example, some countries are now assisting communities to bring under formal conservation and production management.¹⁹⁸ Significantly a main function of most new forest laws on the continent and beyond is to lay down transparent procedures through which rural populations may themselves govern these substantial resources. The Tanzanian Forest Act 2002, for example, devotes no less than 30 articles to this subject, making it abundantly clear that community forests are the spearhead of forest management, not a token add-on, and through which conservation and utilisation governance is focused and developed.

There is nothing in Liberian law to suggest such a paradigm shift. Instead, as of old, Protected Forest Areas are to be withdrawn from community ownership or their managerial jurisdiction, no matter how logical the latter is given their proximity to the resource and their knowledge of it. Communities as rightful forestland owners

are not party to contracts with commercial users, they are potential end-of-line beneficiaries of those contracts and over which they have no control. Even the broad strategies by which the sector will be governed are kept well beyond meaningful popular grasp.

The needed democratic transition is simply not made by the new forest law



Such failures are curiously out-of-step with the power-sharing nature of modern forest strategies globally. In these, communities move from a position of subordination to equality; from permissive users to forest managers; from controlled to controllers; from minor beneficiary and consultee to decision maker; from rule follower to rule maker, and the State authority itself moves from being de facto resource owner and controller to its more rightful governance role as technical adviser, regulator and monitor of how the resource is sustained and exploited.

198 A great deal has been written on this, not least by this author; see Alden Wily 2000, 2002, 2003b and 2005a. Also see Sayer (ed) 2005, Cirelli et al. 2001, Kohler and Schmithusen 2004, FAO passim, Colfer and Capistrano (eds.) 2005, Ribot and Larson (eds.) 2005, Warner 2003, World Forestry Congress 2003, Bruce and Mearns 2002. These are just few of a many analyses of the democratisation of forest governance underway globally.

These reflect a democratic transition that is simply not being made in the Liberian law. This insufficiency matters; not because it is out of step with modern thinking or delivery, and not just because of the human rights abuses implied, but because by its own hand the new law additionally deprives Liberia of the primary source of forest conservation, good governance and equitable use and benefit; forest communities.

At the heart of the above lies the law's legal treatment of forest ownership and the rights that naturally extend from such ownership. It is in short from the handling of forest tenure that much of the misconstruction of governance derives and builds.

4.3 Finding the means to remove forests from owners

The founding problem for community rights in the law is in the sustained and constitutionally-doubtful separation of forests from forest land. It does this by drawing a distinction between forests and forest resources (trees, wildlife etc) (s.1.3). As in 2000 this dislocation has all the signs of being little more than a deceit in order to secure the benefits of valuable land-based products to the cost of landowners.

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The law itself is uncertain of its ground. Thus, like its predecessor in 2000 it correctly defines forest land as including its flora and fauna and echoes this in the definition of community forestry (s.1.3). Contrarily it forcefully retains provision that

“All forest resources in Liberia, except as provided in Subsection (b) of this Section, are held in trust by the Republic for the benefit of the People. The following types of forest resources are neither owned nor held in trust by the Republic: (i) forest resources located in communal forests; and (ii) forest resources that have been developed on private or deeded land through artificial regeneration (s.2.1)”¹⁹⁹

199 The single modification needs note. Rather than forests being owned directly by government as provided in 2000, they are rather held in trust for the people by government. The real effect of the distinction is minimal.

4.4 Retaining 'little forests for little people'

Had the definition of Communal Forest been revised the above might not be so problematic, but this was not the case. A Communal Forest is defined as

“An area set aside by statute of regulation for the sustainable use of Forest Products by local communities or tribes on a non-commercial basis” (s.1.3).

That is, Communal Forests have to be purposively defined and proclaimed. They do not already exist in the eyes of law as the millions of acres of forest already existing within each clan or town domain and conceived as communal property – and a portion of which as shown earlier is additionally so formally titled under collective entitlements.

Nor, if the new Draft National Forest Management Strategy (June 2007) is any indication, is there real intention that a large number will be proclaimed. This is less so through the fact that 1.2% of the forest area is thus far earmarked as potential Communal Forests than in the realities of limited residual area that will be available for such forests, once logging and protection needs have been met outside these small areas. This at most will amount to 3.5% of the forest area.

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4.5 Entrenching rather than devolving the powers of management

Meanwhile the iron hand of FDA is enhanced. Unreasonable interference with the grant of Forest Resource Licences is declared Economic Sabotage (s.2.3.b). Communities are still unable to veto the allocation of their domains to loggers or salvage permit holders. This is so for both those holding title to their lands and those who without collective deeds in hand are nonetheless lawful possessors of the land.

“Where the government has granted permission for the use of forest resources, no land owner or occupant has a right to bar that use” (s.11.3).

Either group may still petition against the issue of permits, but with the crucial procedures for this as laid out in the 2000 law omitted, to be elaborated in regulations (s.11.3 and 11.4). Given the dimensions of rights at stake, this could prove to be an unsafe derogation.

For a moment the proposed regulations under the new law showed signs of revisiting the main law on this matter, providing that

“The Authority shall not proceed with offering a proposed Forest Management Contract unless the Authority has obtained free prior informed consent in writing from Community Forest Management Committees representing all affected communities identified.”

The handling of forest ownership is the root of weaknesses in the new forestry law



However, it transpires that this is not in order to veto logging or salvage in their areas, only to:

“negotiate a social agreement with the winning bidder and subject themselves to independent arbitration should those negotiations not reach a satisfactory conclusion” (s.22 of Draft Regulation 104-07).

The 2000 law does not remedy the situation caused by communities losing their land to 35 year concession leases. It is likely that communities will fight for compensation for the damage to property that logging or salvage will cause, but not the loss of land and use values over those long periods.

4.6 Defying existing legal provisions for security of tenure

Underlying this is inconsistent treatment of land ownership itself. On the one hand the NFRL’s declamatory intent cannot be faulted. Although obliquely, the law acknowledges tenure within its definition of ‘community forestry’ by noting that community means

“... a group of local residents who share a common interest in the use and management of forest resources, within tradition or formal rights to the land and the forests in it” (s.1.3).

The act also pledges to take measures to institutionalise measures towards community participation including

“Recognition and protection of community land tenure rights” (s.5.1.f.1).²⁰⁰ The law then proceeds to ignore the most basic principles of tenure, and whether

²⁰⁰ Section 18.11 also declares that ‘when issuing permissions to use forest land or to harvest or use forest resources, the Authority shall make such permission subject to the existing rights of other Persons’ but this refers to persons already holding permissions, i.e. other permit holders.

held customarily or by legal titles. It does this first by falling into line and then entrenching the evolved orthodoxy that customary interests on public land or tribal land do not amount to ownership and worse, ignore the privilege of possession, by removing from titled or untitled customary communities the 'right to defend their title against any person whosoever' (as laid out in both the Hinterland Law and the Aborigines Law).

It then denies communities an assurance they have had in national regulation and law since 1923 that their rights to enough land to live upon will be secured (Hinterland Law and Aborigines Law). In the retained construction of Communal Forests significant less is guaranteed.

Insult to injury is added by denying both customary owners who have legal title to their land and those with at least acknowledged possession the natural right to determine if and how these resources are used. The NFRL simply coopts this right *in toto*.

4.7 Ignoring constitutional procedure for lawfully extinguishing customary rights

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The new forestry law ignores constitutional procedure for lawfully extinguishing tenure. Thus the NFRL takes upon itself the liberty of freely disposing of public land held in lawful possession by customary communities, without evident adjudication procedure and payment of compensation required. The law only offers that

“The government shall not grant title over forest land to private parties without giving public notice, allowing 60 days opportunity for public comment, and obtain written approval from the Authority” (s.8.2.b).

Somehow, the law governing the sale of public land (and which requires the *consent* of tribal authorities as per section 30 of the Public Land Law) and the procedure for adjudicated registration of title as laid down by the Property Law has been sidestepped in favour of only FDA's *permission* being required. Nor is the government required any more, according to the NFRL, to fully investigate and adjudicate rights when it wishes to establish protected forests like national parks or nature reserves.

As far as local landowners and communities are concerned, the most that is required is for them to be consulted. FDA will 'consider' their views (s.9.1-9.3). Among other things this is a sad departure from the law of 50 years past which

was at least attentive to the most basic necessities in procedures of extinguishing rights for supposed public purpose.

The effects of this would be less severe had the NFRL adopted the more modern designation of Protected Areas as being a matter of designating precious areas as subject to specific regulation, irrespective of their ownership. Some millions of hectares of vulnerable forest are thereby now being protected in Africa today as outlined shortly. This possibility is provided for by the NFRL only in a token manner by including Communal Forests in the planned Protected Area Network, which we have seen will amount to a tiny percentage of the resource.

Meanwhile precedent ahead of the enactment of the NFRL is ominous, in the creation of East Nimba Nature Reserve (2003) and the proposed extension of Sapo National Park (2003), neither of which addressed tenure of these invaluable estates.²⁰¹ The suggestion is that it is such an entrenched ‘fact’ that public land belongs to the state and that no legal entitlements exist over the planned areas that tenure need not even be addressed. Needless to say who owns these lands is a matter of rising dispute.²⁰²

4.8 Hoisted upon its own petard

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Nonetheless a critical provision in the law may yet come to the rescue of customary landowners and particularly those who hold legal entitlement to around six million acres of forested land. This is because the NFRL is adamant that no concession (Forest Management Contract) or salvage operation (Timber Sales Contract) may be issued on private land (s.5.3.b.ii and 5.4.b.ii).

To a real extent FDA has been hoisted on its petard in this respect. For the workability of its paradigms rests upon an assumption that most of the forest of Liberia is *public land* and that public land means government land. In this the important distinctions between tribal land and public land are done away with. The NFRL chooses to ignore this in its assumption that all public land is equally the property of the government, save for those estates which have been alienated as fee simple entitlements. With such an understanding in hand it seemed sufficient that any rights to natural forest could be safely removed by simply stating that forests are distinct from forestland and the former given status as national property.

201 And even the founding act for establishing a Protected Areas Network, 2003,

202 S. Koffa pers comm.

It is clear that at the time of drafting the NFRL, FDA and its legal drafters were unaware just how much of the natural forest resource is in fact on private land; that even much of the National Forest estate, the major proposed site for restarted logging and salvage, is owned under variously Aborigines Deeds and Public Land Sales held by communities. It has also been observed that while the authority may now hope that these entitlements are demonstrated as invalid or extinguished, neither is likely; frequent poor survey of such large areas may be readily laid at the door of the government's own surveyors and constitutional procedures for extinction of customary rights or legally titled rights show no signs of having been sufficiently met, not least in the apparent absence of owners' awareness that their land interests were so extinguished.

Meanwhile the NFRL helpfully provides a caveat to its overall failure to seek or secure community support or permission for the issue of concessions over their lands. It allows that commercial uses on private land may not be made without the owners permission (s.5.6.a). The manner in which the article is structured leaves ambiguity as to how far the authority itself is bound to not issue a 'Forest Management Contract' or 'Timber Sale Contract', the assumption being that these would not (and could not) be issued over private land. Moreover the landowner him or herself may acquire and hold a 'Private Use Permit' (s.5.6.c) The commercial uses referred to appear to be limited to small scale harvesting and other uses. It is likely the case that the drafters had in mind rubber other plantation forests such as:

"Forest resources that have been developed on private or deeded land through artificial regeneration" (s.2.1.b.ii)

and set aside along with small Communal Forests as only those forest resources not held owned by the government ('held in trust by the Republic'). Nevertheless, these two contradictions in the law do allow small windows of opportunity for at least titled communities to argue that the new law after all provides scope for the natural right of free, prior and informed consent of landholders to be exercised.

4.9 Defeating the security of lawful possession and ownership

In summary, the NFRL has little to recommend it as it currently stands. Most of the damage is done through the constitutionally dubious, and strategically unsound separation of forests from forest land for ill-concealed capture of its values. The effects of this are myriad; the land rights of both titled and untitled customary owners are diminished; they lose ownership and control over the

most accessible product value of their properties, the forests. By this even the privileges of lawful possession as retained in the otherwise unsatisfactory 1956 law are done away with; customary owners cannot, as the Aborigines Law promised, maintain the possession and use of their forested lands ‘against any person whosoever’. Even less, should the rightful implications of Hinterland Law be considered to be in force after all, may they defend customary title ‘against any person whosoever’.

Through the same stratagem the law denies customary communities a resource from which they might be able to improve their livelihoods in significant ways. Given that the land is already owned and lawfully possessed by rural communities, the ‘generous offer’ of one-third the value of their ground rent is meretricious.

The absence of the very basics of devolutionary resource governance compounds the shortfalls, holding onto an outdated exploitation paradigm that cannot possibly last into even another decade of the new century, given the conflicts it will engender. The new law also misses an outstanding opportunity to use the vibrant potential of the rural community as the nation’s forest conservators.

The extent of shortfall in resource governance strategy is highlighted by the way in which the law comes nowhere close to the requirements of international best practice nor meets the minimum requirements of treaties and protocols to which Liberia is signatory or otherwise bound (annex G). These share a commitment to the respect of customary rights, titled or otherwise and including the principle of ‘free, prior and informed consent’ of landholders being obtained ahead of developments affecting their land.²⁰³ Perhaps this is best laid out in the most recent UN Declaration, pertinently concerning indigenous peoples and their rights. Box 27, page 248 provides relevant extracts. Article 32 might be most immediately noted.

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More immediately, the law offends Liberia’s own Constitution and provisions of land related laws and regulations. Its own terms are unhelpfully contradictory. It is not difficult to imagine the ease with which many of its provisions may be judicially struck down. Thankfully, the opportunity for less dramatic remedy lies in the hands of FDA itself in its important role in leading the presentation of a community rights law to the legislature as soon as possible.

203 There is a great deal of explanatory literature on these protocols and which may be themselves be accessed on the internet, an accessible site which is www.forestspeoples.org Also see FPP 2006.

Box 27 – Extracts from UN Declaration on the Rights of Indigenous Peoples

Adopted by the General Assembly on 13 September 2007

The General Assembly of the United Nations...Solemnly proclaims that the following United Nations Declaration on the Rights of Indigenous Peoples be the standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 8

States shall provide effective mechanisms for prevention of, and redress for ... Any action which has the aim or effect of dispossessing indigenous people of their land, territories or resources (2.b)

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous people concerned.

Article 27

States shall establish and implement in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognise and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

Article 29

1. **Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.**

Article 32

1. **Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.**
2. **States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories or other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.**

Source: UN General Assembly A/61/L.67 Sixty-first session Agenda Item 68

Chapter 5 **So which way forward?**

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A summary of conclusions opens this chapter. Recommended actions are outlined and then elaborated under respective forestry and tenure headings. Supporting tenure text for the community rights law is proposed.



photo David Brown

1 Conclusions

So where does this lengthy investigation into land and forest tenure take us? These broad conclusions stand out.

1. Forest tenure is an outstanding rural governance issue

The future of forests, secure tenure and good governance are integral matters. Forests are the least secure asset of rural communities. Whether formally titled or not, forest ownership is rooted in communal (community-based) norms. Attention to forest tenure is necessarily attention to customary tenure rights. Attention to forest governance is necessarily attention to the extent to which forest owners are involved and empowered. The absence of customary tenure security including respect for the natural rights of ownership is the outstanding impediment to good governance of the sector, its stability and modernisation. It also inhibits good governance of rural society.

2. The main route to resolution is the law

While both a matter of law and development strategy, it is the terms of the law which define and sustain impediments to good governance and hence changes in the law are the first route for remedy.

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3. The founding issue is a ‘colonial’ issue

Abuse of the property rights of indigenous populations/customary tenure is usually in first instance an effect of colonialism. While Liberia stood almost alone in protecting its Hinterland population from this, it followed suit a century later, and in service of the same interest to capture valuable assets held by local populations. Through this the ‘Hinterland territory’ did in the end become the colony of Littoral Liberia and its people, the colonised.

4. The issue has descended into abuse of human rights

The matter did not end there. Ironically, unification of the two territories in the 1960s-1970s compounded the diminishment of Hinterland property rights. Distinction between tribal and public land dissolved and public land was uniformly entrenched as state property. Customary owners became no more than lawful occupants on their own land.

As if to remove any residual claim to the values of their property, a new forestry law in 2000 removed the natural rights of jurisdiction and benefit from their forests. Forests became the property of the Republic in 2000, further entrenched in the so-called reform law of 2006.

5. Characteristic people-state conflict threatens

Insecurity of tenure and resentment of land losses by the hand of government is palpable if inchoate. As realisation grows that the promised reforms amount to little more than returning to communities one third of the ground rent that the government earns by leasing out *their* lands to logging concessions, conflict may be expected. This may gather as 25-35 year concessions over their land are issued.

6. Contradictions between customary and statutory law reflect differences

In legal terms the conflict is reflected in a characteristic battle of norms between customary and statutory law, still appropriately termed people's and government's law in this instance. The two bodies of law began to seriously part in the 1950s. This too was unnecessary revisionism. Liberia had managed a distinctive level of *integration* between the two bodies of law and practice in its Hinterland, not achieved elsewhere on the continent. Many colonial states had codified customs and instituted comparable regimes of indirect rule through co-opting chiefs as its agents. Few had so conscientiously attempted to make customary norms the basis of statutory governance.

7. Fortunately, diminishment of majority land rights is not deep rooted

Legal demise in customary rights is relatively recent. Public and even official understanding that customary rights are no longer conceived as property rights is uneven. The judicial basis upon which customary 'right and title' is denied is shaky. Doubts prevail as to the status of the Aborigines Law 1956, the legal source of the travesty. Nor is all customary property equally affected. A small number of communities have already secured their communal areas under fee simple entitlement, and the areas cover a large proportion of forested lands.

8. Positive and timely conditions for change exist

The better spirit and contradictions of laws affecting Hinterland land rights may be drawn upon. Even while appropriating millions of hectares of customary

property, the Aborigines Law 1956 was adamant that ‘all aborigines resident in the Republic shall have full protection for their persons and property ...’ (s.370), and the Constitution remains the guiding source on such principles. Although reduced to status as subordinate administrative regulation and codified customary law, the predecessor Hinterland Law 1949 amply pledges the same. Even the new Forestry Law 2006, while declaring state ownership of forests and its exclusive right to determine their use declares itself committed to honouring community rights ‘with respect to ownership and uses of forest resources’ (s.10).

The history of collective entitlement is a major advantage to swift and do-able reform. That is, in spite of clear legal proclivity since 1974 for registration of properties held by individuals, the prior history of registering collective entitlement has continued, albeit through different mechanisms. A precedent of both recognising communities as legal persons in their own right and in awarding them collective title is unusually entrenched and active.

Even a minimal change to law will be highly effective; restoring to customary owners their right and title such as held up until 1956, and irrespective of whether or not they have had these surveyed and titled. Removing the right of the government to lease lands to foreigners without consulting owners provided for in Section 70 of the Public Lands Law is essential. Removing the odious separation of ownership of trees from their soil may as easily be remedied. The upcoming community rights law provides a viable first opportunity to make these two basic changes.

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The popular environment for addressing these issues is supportive. Readiness for mass securitisation of communal properties is high. Communities are already actively clarifying and entrenching the boundaries of their respective community land areas in inter-community agreements. Boundaries are often rivers and creeks, easy to identify and map. Communities have amply demonstrated they are able to manage inevitable disputes and arrive at shared agreement.

On its part the forestry sector is not burdened with concession leases or other agreements to cancel at great expense should it revise terms and procedures for their issue. Time for reflection has been afforded by the cancellation of all forest contracts in 2006 and now the process towards drafting a community rights law. It may be assumed that FDA is aware that new contracts must do more than just feed a few more benefits to rural communities, if stability in the sector’s commercial operations is to be secured.

9. A more devolutionary approach to forest governance is needed. Excellent building blocks for this already exist

The structural framework for devolved resource governance need not be developed from scratch in Liberia respectively. The socio-spatial basis of popular administration does not need recreating. Nor will this involve substantial shifting of populations to be effective.

Machinations have certainly been performed over the last century as to the ordering and especially administrative classification of rural communities. Current flux in settlements as people return to settled life adds to an undue sense of confusion. Meanwhile the core of these changes remains rock-solid. The village ('town') persists as basis of both community land area and community governance (and whether defined at this point as a town or clan). This territorial dominion provides an ideal framework for forest governance; each community already has clear rights over a distinct and discrete land area, within which virtually all the forested resources of Liberia fall.

Added to this is an uncommon level of cooperation between traditional and introduced governance regimes. An unusual feature is that traditional authorities are now mainly elected. Other helpful elements pertain, such as the fact that there has never been a centralised land administration system in Liberia, requiring Liberians to travel to Monrovia in order to secure formal title for their properties. The register, such as it is, has always been maintained at County level.

10. A special advantage to conservation and management exists in the strength of collective ownership of forest resources

Part and parcel of the above is the important finding of the study that interest in holding some assets collectively has not given way to rampant individualisation with determined subdivision of their entire communal property into family properties. This is not to imply that individualisation is not occurring. On the contrary, this already exists and will strengthen as slash and burn agriculture eventually has no choice but to give way to settled farming and related intensive agricultural techniques, including rotational fallowing.

It is to imply that Liberians are sensitive to logic; that it doesn't make sense to subdivide all valuable resources like forests into family plots, that while agriculture will always be central to livelihoods, there will never be 'enough land' even if the entire forest is cleared for farming; later if not sooner, a generation will face land shortages. A shift into intensive agriculture is inevitable. *Losing the valuable forest resource in the process is not.*

Clearest evidence of this logic at work is seen in frequently encountered intention to set aside the most precious forestlands of community properties against any cultivation, to confine slash and burn to already once-cleared or degraded areas. This bodes well for forest conservation and for local retention of a resource of enormous value to future livelihoods. The forest need not disappear into a myriad of cleared lands.

The needed catalyst to this, FDA must have already seen in its offer of ground rent, is for owners to be formally recognised as the owners of the values of their land.

11. The challenges of achieving real change cannot be under-estimated

No matter how obvious reforms in approaches are, the difficulty of realising them should not be underestimated. Delay in issue of new contracts is frustrating to both the business community and a revenue-poor administration. There were reasons over the last half century why rural Liberians lost rights to their land and these drivers remain. This is tangible in the ambitions of the private sector, often backed up by as ambitious international interests. Liberia would not be the first modern administration to simply find it ‘inconvenient’ to recognise local forest ownership. It is also a fact that governments are generically not well disposed to surrender powers they have awarded themselves, at least not without popular pressure.

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A more modern approach to economic development may help crystallise the benefits of reform. This has its roots in rising awareness that the choice is not, after all, between supporting the interests of people or the state, nor is it between meeting either the demands of social justice or economic growth. The challenge lies in a structural change to forest governance that integrates the two, enabling the sector to offer a genuine strategy of development with growth. Recognising communities as lawful owners of forests and necessarily equal partners in all decisions and contracts as to how their properties are used is the route forward.

12. State-people relations in the mining sector should not be ignored

Finally, although not the subject of this study, implications for the mining sector need brief comment. The currently different legal position of mineral *ownership* must be observed. National ownership of minerals has a long constitutional basis (1847). National ownership of forests does not. The reason stems from the higher values of minerals, which governments much more routinely keep for themselves. It also has to be acknowledged that with the exception of surface gold and iron mining minerals have not featured prominently in rural life and

livelihood. In contrast, forests have always been a central asset of the rural community and forested lands a critical component of community properties. On this basis alone, the absence of a declaration of forests as national property may be explained.

Still, the issues confronting the forestry sector also confront the mining sector. This affects the way in which licences to mine are awarded and the way in which landowners' rights to minerals under their land is conceived.

An abundance of more modern practice as to mineral ownership and related international jurisprudence exists on such issues and will in due course need consideration. One would expect to see paradigms that avail the landholder a rightful share of benefits, as well as compensating the owner more appropriately for the effects mining have upon their access and use of resources thereby lost and to the condition of their resources following mining. There is also the more immediate issue as to how licences are issued to extract gold from streams and rivers within community properties, and to whom. This is an expressed concern of rural communities who currently have no formal right to limit access or a right to charge fees to the many miners who enter their lands and dig for gold.

2 Suggested actions

The following actions are recommended to assure rural communities due rights in the forestry sector. At the same time, clarification and entrenchment of customary tenure rights will be advanced. Modernised governance of forests will be advanced. The three objectives are integral. Real *forest* reform cannot occur without addressing rural land rights. Real *tenure* reform cannot occur without insuring the forestry sector has provided concretely for the implications, as the major asset of rural communities is their forests. Without a more devolutionary approach to the control and management of forests, neither the basic rights of communities nor a sound and lasting system for resource governance can be achieved.

The Liberian Government needs to consider and act on the following points:

1. Restore to customary land holders legal recognition of their collective title.
2. Provide a more relevant tenure construct than fee simple for registration of customary rights.
3. Adjust land classes to reflect the fact that most public land is community property.
4. Actively assist all communities to clarify the boundaries of their respective communal domains and entrench these in registered collective entitlements.
5. Remove the dislocation of forests from forestland in forest law.
6. Remove legal implication that forested areas of community lands are not integral to community properties.
7. Reconstruct forest management strategy and associated legal provisions to allow properly for incremental devolution of forest governance to community level, building upon what exists at the local level.
8. Related, ensure from the outset that all decision-making affecting national strategy, designation of forest suitability, and developments affecting the forested areas of community properties subject to the approval of the affected communities.

9. Reconstruct Communal Forests as the leading construct through which most forest resources will be conserved, regulated and their utilisation managed.
10. Reconstruct forest law and procedures to enable forest owners to exercise due authority as owners in determining as to how their resources are protected, managed and used, including being party to decisions related to issue of all commercial use permits.
11. Make the establishment of protected areas independent of forest ownership.
12. Reconstruct the role and powers of FDA as primarily an agency assisting the population to conserve, manage and benefit from forests, rather than its current position as the agency organizing those activities in isolation from customary or titled forest owners.

The above are elaborated below, with supporting actions. For institutional ease of reference, key tasks are located under distinctive forestry and land sectors. Most of these tasks require changes in forest or land law.

3 Moving reform forward in the forestry sector

1. Re-joining forests with forest land

The dislocation of forests from the land they grow on was disingenuous in 2000 and remains so, a barely-concealed instrument to ensure local rights did not interfere with logging or require benefit-sharing.

There is no need for this today. The Liberian Government may readily secure its due share of revenue for national development from the capital assets of its people without stooping to unfair and conflict-fuelling stratagems, and which do not in this instance have a basis in the Constitution or land law.

So too, the state (viz. FDA) need not be deprived of its rightful role in regulating how forests are used, or its rightful power to bring those owners who break the law before the courts.

2. Separating protected area status from ownership

There is no need for protected areas to be owned by government and/or to be designated national property. It is feasible for even high protection areas (nature reserves) to be owned by communities (or indeed, as relevant, by individuals). When it is determined that a forest resource should be subject to protection regulation, then the owner is duly obliged to adhere to regulations as prescribed for that estate. Of necessity for workability these will be formulated in close consultation with the owner/s.

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This separation is also the only way to resolve currently overlapping interests affecting Liberia's National Forests, proclaimed around 1960 even whilst formal and informal property rights to those forests existed. By revoking the proclaimed status of National Forests as national properties, challenge to their gazettelement may be avoided. Their use under regulation may be sustained. Local owners may be productively involved as designated managers, guided and assisted by FDA.

3. Reverting to established legal practice that recognition of community tenure is not and never has been limited only to lands which are currently farmed or subject to housing settlement

As currently presented, the forestry law (NFRL 2006) and forestry policy (Draft National Forest Management Strategy, June 2007) attempt to minimise recognition of forests lawfully or legally owned by rural communities. By their own

terms these are limited to rubber or other plantations and to minor Communal Forests immediately adjacent to settlements and reinforced by disallowing any commercial extraction from these areas.

Aside from being an abuse of public power this failure to recognise ownership has no legal standing in Liberia's land law. Many forests are already titled to communities as fee simple properties held under Aborigines Deeds or more modern Public Land Sales Deeds. Liberian law has also consistently recognized that customary tenure embraces all areas and assets essential to local livelihoods and accordingly, when collective properties have been placed under legal title, have ensured that these rights were included.

4. Recognising that forest owners have jurisdictional rights

Nor is it sufficient to acknowledge customary communities as forest owners (as the NFRL 2006 at times at least in principle does) and then exclude these owners from their rightful role in determining how their most precious assets are used or not used, and benefits shared and delivered. This is not a matter for consultation. It is a matter for formal shared decision-making, partnership and equity.

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To recap, under the NFRL communities still have no authority to use their forests as they would like, even for subsistence purposes outside of minor village-adjacent designated community forests. Nor may they control the use of these areas by concessionaires or other permit holders imposed upon them, or have a meaningful role in determining how their forests that fall under Protected Area status will be used.

In this sense they will continue to lose resources over many thousands of hectares, for assumed public purposes but without proper compensation. While they may receive side benefits from loggers under social contracts, even these will not be determined by themselves although they will be consulted. They may indirectly receive one third of the value of the renting out of their lands, but have no legal commitment to even a small share of stumpage fees. They have no power to veto the leasing or licensing of their resources to outsiders, exclusively the asserted prerogative of the FDA.

Nor is it clear that land owners may enter into contractual agreements directly with permit holders themselves, although where they hold legal title to the land, their consent could be construed as required. As the law currently stands customary owners without legal title (the majority) are not considered landowners. Even their status as landowners is in doubt in the new forestry law for

no land owners of other than rubber and other plantations or minor Communal Forests owns the forest on their land.

Specific changes need to be made to the NFRL on all these counts. These follow logically from reuniting forest ownership with forestland ownership, reconstructing Communal Forests to encompass those many community-owned forested properties. It means providing simple procedures for their speedy registration as communal properties. It means providing community owners with technical guidance towards formulating viable plans for the use of their forest resources. It means entering into the law clear procedures for the manner in which community forest owners may be involved in contracting suitable areas as advised by FDA for commercial extraction.

5. Making Communal Forests the main construct for forest management

Most of the forest resource is owned by communities as integral to their community land areas. The definition of Communal Forests needs to be expanded to encompass most or all of these resources. This also means reconstructing the meaning of Communal Forests to allow as suitable for parts thereof to be variously protected against any use or made available for commercial use.

6. Facilitating simple land use planning to establish Communal Forests

Simple land use planning of community land areas is a logical step towards the definition of Communal Forests. In practice, communities show signs of being perfectly able to identify which land areas they wish to set aside for permanent forest cover (to be logged, partly farmed or otherwise) and which areas will in due course be entirely converted to agriculture. Technical guidance will be useful. In the process of defining areas and their appropriate use over the immediate, medium and longer term, community based regulation can be easily developed.

Piloting to arrive at workable sub-sets of Communal Forests is essential. This may well conclude that Communal Forests fall into two or even three classes; for example: forest viably subject to sustainable logging and other commercial extraction (Community Production Forests); forests which communities and/or with the advice of FDA are considered best retained as un-logged assets (Community Protection Forests); forests that will in due course be available to clear for farming (Farm Reserve Forests). Determination of exactly where farming may and may not take place in each class (or not at all) will be a practical task of local regulation. Formal registration of Communal Forests with the FDA should be contingent upon demonstration that viable rules of access and use

for each class of forest (or zone, if retained as a single forest estate) have been devised.

7. Mobilising communities as economic partners and agents of conservation

Technical assessment of community decisions as to whether its forestland is or is not suitable for award of concessions is a logical next task. It would fall on the community to devise appropriate conditions of access, benefit share, and applicable rules. The law needs amending to ensure that no contractual agreements are made by the FDA with logging or salvage companies without community representation and signature.

In practice, companies would in time not bother applying for licences in these areas without first engaging in preliminary negotiations with these communities. This need not interfere with FDA proposals to auction logging rights. This would not proceed without the FDA already having worked with communities to determine the viability of their areas to participate having secured provisional consent from the FDA to proceed.

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Land rental agreements should ideally all be signed directly with communities, under FDA supervision, such as already possible where the current law recognises the land holder as land owner.

Mechanisms to ensure that community roles are underwritten by majority community approval are necessary. The function of the FDA (among many others) as controller of revenue collection and shares remains practical. FDA may implement a tax on community profit from its share of stumpage to cover costs of facilitation and advisory fees.

In practice, the FDA already has priority areas it wishes to see commercially harvested and is able to systematically target affected communities to arrive at workable agreements and to put the basic institutional community forest governance frameworks in place. Again, such a shift in people-state relationship is not momentous to the extent that its logic is already showing tentative signs of delivery in the significantly altered intentions of still early draft regulations under the NFRL 2006. At this point the text of the law threatens to truncate and trivialise such beginnings and should be amended to allow for a genuine partnership approach to commercial exploitation of the resource.

8. Introducing a legal consent clause

Underlying much of the above is a founding need for entry into the law of unambiguous requirement for community consent to any externally driven or implemented use of forestland. The issue of logging concessions for up to 35 years, each potentially covering one million acres, is obviously the most important intention for which local consent must be secured.

Such provision presents the frankest challenge to forest management: it requires an approach that is nowhere evident in the NFRL; willingness to trust ordinary Liberians as decision-makers in the sector and a duty to ensure they are sufficiently armed with the knowledge they need to make informed decisions. This should include ensuring that communities are aware of options for forest income-generating which do not rely on commercial extraction of their trees (eco-tourism etc). Should a community determine *not* to presently lease (or to see leased on its behalf) its forestland for logging or salvage exploitation or at least on the longer-term basis available under the NFRL, then this veto should be respected.

3.1 Shifting paradigms

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The above outline first-line steps to genuine forest reform. They and subsequent actions would occur on an evolutionary basis over a well-planned time-line. Their overall implications are worth highlighting:

- a. The forest moves from being a state asset to a private resource of ordinary citizens, mainly in the form of rural communities.
- b. Forest governance is reconstructed around this reality; Communal Forests, with various sub-classes, become the dominant construct through which conservation and regulated use is exercised.
- c. The FDA becomes the regulator of forest governance, not the day-to-day manager or de facto owner. Its main function is to assist the population (forest-owning communities) to achieve forest conservation and management objectives.
- d. Community share of revenue from the commercial use of forest resources becomes a natural right of owners, not a gifted 'benefit'.

- e. Forest revenue evolves as a major source of increased rural livelihood, reinforcing local commitment to forest conservation and sustainable utilisation.
- f. Community participation in all relevant decision-making becomes a democratic and strategically essential right and duty, not a privilege.
- g. The burden and duties of forest retention and conservation fall to the population; ordinary citizens (rural communities) become 'forest conservators'.

4 Launching practical rural land reform

A commitment to address land ownership and administration problems is already under way in Liberia. Plans are advanced towards the proposed establishment of a Land Commission to spearhead the process. Recommendations made below are suggested subjects for the commission's attention in respect of rural tenure.

1. Getting the focus right: rural land reform as land tenure and administration reform

This study focused upon the ownership of forests. How forests are owned quickly shows distinctions between local and national norms; people and government look at the ownership of forests in different ways. These differences are legally expressed in customary and statutory law. This led the study to look closely at how the customary right to land has been treated in state law over the years for the forest is a central asset of communities and community-based law.

The study also found that it is forest ownership that is the tenure issue of most concern to rural Liberians. Land distribution is not.²⁰⁴ Nor are land relations within the community troubled; communities appear to have these under control.²⁰⁵ They and their neighbours within the broader customary community are also able to work out their differences.

Rural Liberians do feel they have lost control over their forests. They are not even sure that the government recognises them anymore as owning forests. This is a concern for it challenges their way of life, their livelihood and their basic right to land. For the forest is not distinct from their other land assets; it is an integral part of each community's territory.

There is a second issue of concern, in more communities than others. This is that influential outsiders may bully their way to getting parts of their land. Part of the problem is the way chiefs make decisions; they may be corrupted and made to agree. Part of the reason is the strength of state control over public land and the many mechanisms that may be engineered to remove parts of this land from

204 This is important for the major thrust of 'land reform' until the 1980s was redistributive agrarian reforms. This has never been a main thrust of reform in Sub-Saharan Africa where landlessness and related contract labour is not a prominent feature of agrarian society.

205 Women's rights, as in most other states, stand out as an area for intervention. However this is best addressed once the community's ownership of the land is secured.

community jurisdiction, from issue of concession leases to issue of certificates consenting to its release without community wide approval.

The primary issue for reform is therefore tenure; one of ownership relations. Closely related is how modern communities and states make decisions about land matters; land administration reform becomes a logical corollary.

The economic implications of recognising majority land rights are important. Having rock-solid tenure security becomes not just a matter of human right in the modern agrarian world but a socio-economic necessity in order to progress. Rural Liberians in the Hinterland need rights recognised more now than ever before, as a stepping-stone to income generation. Government and the concession sector have shown them how this may be done beyond petty product sales. The upshot is that while land reforms have always been deeply embedded in economic objectives, its lodgement today in an explicitly pro-poor growth is not just desirable for the poor but holds a promise for more significant rural transformation than has yet been seen in African economies.²⁰⁶ Helpfully, opportunities to make money from their forested lands other than through logging now abound for their due consideration, with guidance from the assisting FDA. The agency is now taking increasing interest in the potentials of eco-tourism and carbon credit sales offers to Liberian communities, and indirectly itself as duly rewarded technical facilitator and adviser to forest owners and as recipient of its share of duly taxed community income.

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2. Taking the essential first step: recognising customary land interests as private property rights

As the American Colonization Societies recognised in the 19th century, indigenous Africans owned the lands they lived on. Their properties were arranged and remain arranged today in a series of non-overlapping domains, and the boundaries of which were known, periodically challenged and defended. The owner was the community, not the chief (who was, we have seen, correctly upbraided from time to time for taking actions not in the community's interest). They restricted use of their territory to members of the group. Outsiders could ask to use land but as the guests of the owners, and they had to follow the community's rules. One of these rules was that a member family only had control over the land it

206 This is a theme being currently scrutinised by the global Commission for the Legal Empowerment of the Poor www.undp.org/legalempowerment The Commission is expected to articulate the importance of nations ensuring customary rights over assets are fully entrenched among its upcoming recommendations towards a 'Global Social Contract'. The subject is also addressed by most donors in their land strategies; see Deininger 2003 for The World Bank and DfID 2007.

used for cultivation for the period it was used; it could not sit on the land or leave the area and still claim the plot belonged to it; it was a use right, not a ownership right and was termed a usufruct. Therefore there were two layers of rights: the ownership right of the soil shared by the community as a whole, and a complex of use rights to that soil and its products for various purposes and time periods. Access to forest products for example was continuous; it did not lapse on failure to activate it.

As we have seen, as the Hinterland areas became more attractive and valuable, it became less convenient for the administration to continue recognising the ownership of the soil by respective communities, and selected international jurisprudence suggested it didn't have to. The law was changed to reflect this. Hinterland communities lost ownership but retained their usufruct interests.

This did little to alter local realities. Hinterland domains are to the majority owned now as they ever were, and in fact more tenaciously so given the pressures upon their lands. This is not so surprising. History tells us that no amount of legal manipulation will wish such realities away.²⁰⁷ Recognising that customary landowners are already private proprietors, not merely permissive occupants on un-owned or government land is proving non-negotiable and not just in Africa where the problem has been comprehensive and chronic.²⁰⁸

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Finding the right mechanisms to restore legally recognised ownership becomes the outstanding technical task of rural reform. A basic necessity is that the right pertains and is upheld by the courts irrespective of whether or not the community has a legal document stating it owns the land. Liberia would not be the first African state to now have to make this crystal clear in law.²⁰⁹ However for Liberia this does not even depart from past practice, albeit placed in jeopardy in recent decades.²¹⁰

207 And perhaps best witnessed in the issue of new legislation to that effect in even highly developed States facing similar conflicts between customary and statutory land rights; e.g. in Australia's Commonwealth Native Titles Act 1993 and The Native Title Amendment Act 1998; in New Zealand's Te Ture Whenua Maori Act, 1993; in Canada's amended Section 35 of the 1982 Constitution and Norway's Finnmark Act, 2005.

208 For analysis of the trend refer Colchester (ed.) 2001, FAO 2002, McAuslan passim, Alden Wily 2006b, Alden Wily Forthcoming and Bruce et al. 2006. Note also the salutary fact that even after a long and expensive history of conversionary subdivision of common assets into individual parcels through mass titling in Kenya since 1958, the new draft Constitution and national land policy has found it necessary to introduce a class of Community Lands to cater for the millions of hectares which have remained determinedly collectively possessed by rural Kenyans; Government of Kenya, 2006.

209 . For example the Tanzania Land Act, 1999 and Village Land Act, 1999, the Uganda Land Act, 1998, the South African Communal Land Reform Act, 2002.

210 That is, the protection of title or possession irrespective of land being delivered into registered metes and bounds; Hinterland Law and Aborigines Law.

3. Giving the customary sector the constructs it needs to work

At the same time, having those ownership rights formally registered is important. This is because Liberia, like all modern countries, has a system for recording who owns which parcel of land. Once operating this becomes the main source of ownership surety. Customary owners need to be able to benefit from this.²¹¹ Holding probated documents helps remove doubts that the land is ownerless or is government property. The process of adjudication towards issue of the deed also helps clarify land relations among communities.

Liberian land law does not yet provide an appropriate form of registered entitlement. The construct available is a fee simple entitlement. Because this is an imported construct it does not meet the sophisticated requirements of customary property. One attempt to make it relevant was the sanction against sale of lands under Aborigines Deeds. A further positive change was made in dropping the requirement that chiefs serve as the trustee owners. This led to title being vested directly in all members of the community.

Its terminology aside, the Aborigines Deed proved resilient until the foundation of these entitlements was undercut in the 1950s by allowing that communities only had rights of possession, not ownership. Thereafter communities were not merely securing an already existing ownership right in deeds, they were acquiring the land from government, as if no interest already existed. A form of title already operating in the coastal areas, a Public Land Sales Deed, became the framework for entitlement.

Aside from having to buy their own land back from the government, the Public Land Sales Deed is unsatisfactory to the extent that the sanction against sale is *not* retained in these collective entitlements and no procedure has been laid out as to how such a sale would take place.

This de-secures a critical element of collective entitlement in agrarian settings. For the nature of community ownership is not quite like ownership as practised in industrial societies. Community members own the property as the living members of the community. In the same way as they inherit their share of ownership in the soil from their parents they expect their children to inherit that share and their children after them. While the power of community members

211 This is aside from the possibility that deeds might open doors for communities to access loans, or less likely, as collateral for loans. In Sub-Saharan Africa there is not a great deal of evidence that this occurs easily (Bruce and Migot-Adholla (eds.) 1994, Alden Wily 2006a, Hunt 2005, Jacoby and Minten 2005).

today is likely much greater than enjoyed by ordinary community members a century or more past, in the absence of an explicitly democratic system of decision-making, communities might see their chiefs 'sell off' their property, rather like occurred in some of the early sales by kings and chiefs to immigrant Americans in the 1821-1847 period. Experiences in some other countries (e.g. Ghana) suggest that such events may occur today.

The shortcomings of the imported fee simple construct are most felt in relation to one set of secondary rights – usufructs. These generally apply to continuous use by a family or individual, such as for a house plot or farm. The constraint is that the only way an individual/family may secure a formal title for the land under usufruct is by removing the parcel entirely from the community property and therefore also from community jurisdiction. As a fee simple right, no conditions apply. The community cannot revoke the title if the land is not used for the purpose promised. This allows the freeholder to simply sit on the farm acquired without using it and even to sell it on to others, including outsiders, at huge profit.

While communities are supportive of individuals and/or families gaining stable rights to certain parts of the community property, they have reservations about this kind of land alienation and the potential for hoarding and speculation, and to which only the better off in the community can ascribe to. So far most don't often have to face this problem; the costs of survey and registration for alienating this land into fee simple are so high that most people who get a Public or Tribal Land Certificate do not pursue the process to its conclusion. Instead, the certificate becomes a form of security in itself; as declaration that a particular tract of land is earmarked for that person or family. Reversion of land that is abandoned by the owner or unused for long periods as held under a Tribal Land Certificate to the community is not legally possible; by that certificate the land is already removed from community control.

These and related constraints suggest the need for a more attuned instrument to reflect the kind of arrangements that are logical, and supported within communities. A non-transferable founding Customary Right of Collective Ownership for the collective owner would be suitable. The allodial nature of the imported fee simple should be retained (i.e. that it is held independent of any higher landlord or authority, including the state). The description of its incidents in the law should be laid out in law, along with obligatory procedures through which any part of this estate would be leased to members of the community or to outsiders, including concessionaires.

The procedures would necessarily be geared to protect majority shareholder interest in the property, that is, majority decision to lease such parcels would be required. A Customary Leasehold is suggested as fitting the purpose for such secondary rights. Ethiopia, Ghana, South Africa, Uganda, Botswana, Côte D'Ivoire and Tanzania are among African countries, which have already developed like constructs to meet similar requirements and these are worth rigorous assessment for applicability to Liberia (see annex J).²¹²

The status of already existing fee simple entitlements within tribal lands would need to be clarified in the law; for the sake of stability, these should be sustained, given that they already represent land alienated from community properties no matter how small these parcels are. However, the option should be available for those landholders to re-register at no cost those parcels as 66-99 year customary leaseholds held out of community land. Or, the law could automatically so convert them.

4. Reconstructing the meaning of public land

The need to modify current land classes goes hand in hand with changes in tenure. Currently there are two or possibly three classes of land: 'private land', 'public land' and 'tribal land' as a sub-class of public land. None are precisely defined in the laws.

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In practice, private land refers to properties, which are formally registered and therefore considered 'legal title'. Public land is a less certain class. At times it is used to mean national land, government land or merely as the obverse of private land. Tribal land is land over which communities have rightful possession,²¹³ irrespective of whether or not these are delimited in metes and bounds or converted into registered communal holdings. As we have seen once communities lost recognition as owners of tribal lands, the distinctions between tribal land and public land faded.

212 To one degree or another, these constructs enable community owners of discrete Community Land Areas to issue or authorise the issue of registrable rights of long usufructs to specific parcels within the Community Land Area. The power to determine the parameters (e.g. maximum acreage), terms, and conditions is necessarily vested in the community and accordingly subject to at least some degree of flexibility within the broad parameters of the law. The latter might prescribe for example that no farm usufruct exceeds 50 years and no house usufruct exceeds 99 years but is renewable. Development conditions could be automatic (as defined in the law) or specific to each case, to pre-empt land grabbing and speculation. Some communities might prefer to authorise issue of renewable 25 or 33 year leases. The choice would be up to them, determined through a community assembly (see below). Refer Van den Brink et al. 2005, Alden Wily and Mbaya 2001, Alden Wily 2006b, Lindsay 2004 and Fitzpatrick 2005.

213 Or ownership if the Hinterland Law is followed.

It is tribal lands, which would more accurately be described as community lands. This would clarify the rightful role of government as ultimate administrative authority, not owner, including a duty to protect the rights of the rural land-owners (communities) and to facilitate their orderly registration as and when necessary.

Public land remains an important class to encompass those properties that are indisputably national property on the basis of their utilisation for public purpose assets like schools, roads, hospitals, water, electrical and other such facilities. Ideally in due course this class would have sub-classes of National and County Lands, should county councils eventuate into autonomous local governments.

5. Making formalisation of community land rights a priority

Programmed systematic registration is not strictly necessary so long as new law directly protects customary land rights irrespective of whether or not these are registered. Moreover, experience with systematic titling in Africa has not been positive on the whole.²¹⁴ Considerable effort is being invested in defining cheaper, quicker and more localised mechanisms for mass titling.²¹⁵ For later if not sooner, formalisation of rights becomes an essential aid to ownership security.

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Several factors make titling of customary interests quite viable in Liberia and with less risk of quagmire:

- The outstanding requirement at this point is for collective rather than individual titling, greatly reducing numbers of titles needed.
- Demand for formal entitlement is high, concretely evidenced in applications to County Land Commissioners.
- The key prerequisite to formalisation is that people agree that the property as described is owned; many communities are undertaking precisely this task, agreeing boundaries to their respective properties with their neighbours; the number of disputes over collective boundaries is evidence of this.

214 Bruce and Migot-Adholla (eds.) 1994, Jacoby and Minten 2005, Hunt 2005.

215 Deininger et al. 2007, van der Molen and Lemmen (eds.) 2006, ILD-Mkurumbita 2005.

- Nor are many communities getting bogged down in irresolvable disputes, which may greatly slow progress. Resolution is generally achieved by communities themselves, or sometimes with the intervention of mediators (County Land Commissioners). Costs are kept quite low.
- Distances are not immense in Liberia; it is usually possible for communities to reach the boundaries they want to discuss in one day.
- Boundaries are readily identifiable and permanent in Liberia in the existence of bountiful waterways and are used for this purpose wherever possible. As well as removing the need for artificial boundary marking and maintenance, this makes boundaries map-able without ground survey. The NIMAC UNDP mapping initiative demonstrated this was viable in Nimba County in 2006. It was able to identify and map the boundaries of all 73 clan areas in a matter of a few weeks using even low-resolution imagery.²¹⁶ It did this by sitting down with chiefs and elders in meeting places. The semi-autonomous LISGIS agency is currently identifying all administrative units throughout the country for the purpose of defining enumeration areas for elections and censuses. Although the extent to which they will define boundaries is unknown, the exercise will be highly indicative and helpful to planning.

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The basic elements of adjudication are integral to the above. The main hurdles to successful collective titling tend to be vast distances to be covered, lack of demand, lack of will to invest time in the work needed to agree and mark boundaries, and a tendency for communities to get bogged down in dispute.²¹⁷ None are likely to be significantly problematic in Liberia.

How would such a titling exercise be carried out? Towns are the core unit of community property, and this is where boundary agreements are being concentrated at this time, for reasons earlier elaborated. However what the administration defines as towns are often very small units, more like hamlets, and when it comes to recognising the community property area as a whole, the preference may be to title the clan area. The NIMAC exercise found this to be the case in Nimba County. Piloting is needed to explore this.

216 NIMAC 2007.

217 As for example in the USAID funded Customary Land Security Project where rural communities in two States of Sudan are undertaking boundary agreement and demarcation exercises, each Community Land Area however running into sometimes hundreds of square kilometres. In Afghanistan inter-community dispute is the major cause of slow agreement. See Alden Wily 2005b and 2006c.

In any event, identification of which domain should be formally registered as community property, is necessarily a voluntary decision by communities. Irrespective of whether town, clan or chiefdom is the selected domain for legal entitlement, that entitlement itself may be uniformly referred to as a Customary Deed of Collective Ownership and the parcel itself, the Community Land Area. In practical terms should systematic titling be advanced, the number of parcels would not be excessive. Ahead of the LISGIS exercise identifying settlements and administrative units on the ground, chiefdoms number several hundred, clan areas under one thousand, and self-identifying towns around 10-11,000.

Ideally, a facilitated exercise of entitlement of clan domains would be rapid and straightforward. Within a year or two, the troublesome absence of tangible formalised entitlement would be removed. The distinctions between tribal land (Community Land) and residual public land would be clear. Together with legal declamation that customary rights are to be upheld by the courts if challenged, irrespective if they are so registered or not, Liberia would afford its rural population swift and effective tenure security.²¹⁸

Under such a strategy, should a clan wish to subdivide its entitlement into discrete town area properties, this could be undertaken on an ad hoc and self-driven basis, much as already underway in some of the less populated areas where town areas remain quite large. Provision for the subdivision of clan ‘mother deeds’ into sub-units without losing the collective basis of each may easily be built into reformed land law. Flexible options would be covered, such as enabling a community to choose between subdivisions of the area or leaving a forest estate in one part of the clan area to be retained under clan ownership.

Again, trial piloting in one or two areas would help decide the optimal and preferred patterns of collective tenure and procedures. It is usually the case that not until a community seeks to define its property that important considerations arise and in turn reshape the decisions made.²¹⁹

218 A useful contributory step to the above will be in an exercise to draw clearer distinction between urban and rural areas. The current automatic eight square kilometre designation of urban areas is too large (e.g. in county towns) or too small (cities and large towns). The LISGIS exercise referred to above will be helpful in this.

219 This is clearly the experience of comparable initiatives in Tanzania, Sudan and Afghanistan; refer Alden Wily 2005b and 2006c.

6. Linking tenure development, natural resource management and community-based governance

Communal jurisdiction or what may in modern terms be phrased community-based land administration is an integral development to recognising customary land rights. That is, especially when collective ownership is recognised, community jurisdiction is also being recognised. If an objective is that communities better regulate the use of their natural resources, community natural resource governance is a logical outcome. Often these institutions provide a stepping-stone to modernised community governance overall.²²⁰

Both findings from this study and experiences elsewhere suggest that a priority requirement for local land, forest and general governance is towards more formally inclusive and democratically exercised decision-making, whatever their primary focus. Chiefs of necessity already consult, but an elected community council approach may be preferable. Mechanisms for accountability to constituent assemblies of all adults would ideally be laid out. A related requirement is that community councils (chaired or otherwise by *ex officio* chiefs) attain legal recognition as formally empowered governance agencies, and even as the most local level of local government. This is immediately important for how they administer their forest resources; they need to be granted legal powers to be effective, including for example, being able to fine those who do not follow forest management rules, and to have their decisions upheld by the courts as necessary.

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220 Ribot and Larson (eds.) 2005, IIED 2002, Alden Wily 2003b, McAuslan 2006c, Chaveau et al. 2006, FAO 2005, Katon et al. 2001, Kohler and Schmithusen 2004, Nyari 2006, Pierce Colfer and Capistrano (eds.) 2005.

Box 28 – Lessons to be learned from Tanzania

Experiences abound in how formalised community governance may eventuate and embrace the full range of relevant functions, powers and responsibilities. Botswana, Ethiopia and Tanzania are among those providing active models, which deserve consideration. The most advanced is Tanzania given that elected village governments have been in place since 1975 and matured in the interim. *Inter alia* new land law (1999) endowed these 10,000+ village councils with authority as land managers (and includes the right to establish their own land registers to record allocations and transactions). New forest legislation (2002) endowed village councils with the power to set aside forested areas as community owned and managed Village Forest Reserves. These are generally zoned for conservation and extractive use. Village council powers include authority (in fact ‘duty’) to regulate on land and resource matters in the form of village bye-laws which have the force of law once approved by the district council. Village forest bye-laws typically lay down how the forest may and may not be used, the fines levied for breaking the rules, the power of the council to see fees and issue licences, to enter contracts with other parties, etc. In all aspects appropriate central government agencies are bound to technically advise village governments and retain oversight and watchdog functions.²²¹

5 The Community Rights Law

The immediate focus upon a community rights law provides an early context for important changes to be made. If duly enacted, the law will have an amending effect upon other legislation as well as triggering more comprehensive overhaul of these laws over the medium term, as new policies are devised.

In the case of tenure, laws that may be affected would include these titles: Aborigines Law (if in force), Property Law, Public Lands Law and Local Government Law. Below some provisional ideas for tenure content in the community rights law are suggested (box 29, page 278).

Box 29 – Suggested text relating to forest tenure in the community rights law

1. Status of forests on forestland

Forest growing naturally on land is attached to the land and may be referred to as forestlands or forests with no differentiation in meaning in respect of property rights.

2. Status of customary land ownership

- 2.1 Customary land ownership whether held by individuals, families or collective groups of persons in accordance with tradition is a lawful category of land ownership and will be upheld as property with due right and title.
- 2.2 Customary property includes forests which fall within the traditional land area of that community and which have not been legally alienated from tribal or community tenure through any of the following procedures:
 - a. registration as fee simple or long leasehold estates to other than the traditional owning community;
 - b. purchase of public land with the consent of Tribal Authorities through Public Land Sale Deeds or subsequent Deeds of Transfer;
 - c. voluntary sale to the Republic of Liberia or previous purchases by Colonization Societies; and
 - d. involuntary compulsory purchase by the Government of Liberia for public purpose as effected through due legal process of adjudication and payment of compensation in accordance with procedures laid out in The Land Registration Law 1974 or as effective under prior legislation and in accordance with the National Constitution.

2.3 For the avoidance of doubt, Government forest excludes all forests owned customarily which have not been lawfully alienated through formal sale of those lands or otherwise extinguished by legal procedure.

2.4 All forests that are not alienated as under section 2.2 are classified as Communal Forests.

3. Identification of customary forest owners

3.1 The Authority is bound to identify and involve customary owners ahead of all decision-making relating to the non-customary classification or exploitation of forest that falls within their customary property and to accord customary owners due respect as lawful owners, including subjecting all agreements relating to their forests to their appointed representatives for approval.

3.2 Regulations will be made under this law for the procedure of identifying and recording customary owners whose lands include forests to facilitate classification of a forest area for conservation or other purposes.

3.3 Regulations referred to in Section 3.2 will accord with the principles of adjudication as laid out under chapter 8 of title 29 and will

- a. ensure that neighbours to the forested area are consulted in the process and agree as to the ownership of the forested land in question and the boundaries thereof;
- b. lay out simple means by which the boundary of the forested area of the community property is described and recorded; and
- c. afford the owners the freedom to determine if the forest area is owned on a town, clan or chiefdom basis.

3.4 No licence, lease or concession or any kind affecting forests within customary properties will be awarded by the Authority without the consent and partnership of the forest owner.

4. Duties of customary owners of Communal Forests

4.1 All customary owners of communal lands which include forested areas are bound within two years of passage of this law to review the condition of their forested areas and to identify which parts shall be set aside as not available for permanent farming, extensive clearing, or settlement and which shall be known as Communal Forests.

4.2 All customary owners shall zone as appropriate these Communal Forest areas as variously suitable and available for

- I. timber and salvage extraction
- II. commercial uses other than timber and salvage extraction
- III. uses other than commercial use.

- 4.3 Communal Forest owners are bound to appoint a Forest Council within one year of passage of this law in accordance with guidelines provided by the Authority, to take responsibility on behalf of the community owners for all matters relating to the protection and use of the Communal Forests.
- 4.4 Each Community Forest Council will be responsible for drawing up rules, subject to community approval, which regulate access and use to the Communal Forest with a view to ensuring the sustainable condition and use of the resource.
- 4.5 The Community Forest Council is bound to submit its proposals for the use and management of the Communal Forest to the Authority for technical review and guidance.

5. Rights of customary owners of Communal Forests

- 5.1 Owners of land which includes forests shall have these rights:
 - a. the right to determine if and how the forest resources shall be used by its members or by others;
 - b. the right to be consulted and to approve or refuse any proposal relating to the use of the forest by any party other than community members;
 - c. the right to all land rental charged to permitted licensees with the exception of a percentage withheld by the Authority to cover administration costs and technical advisory services to the community in respect of forest management and administration and supervision of licensees;
 - d. the right to reserve with good cause certain areas, groves or specific species or trees against felling by permitted licensees provided that these reservations are presented prior to any agreement leading to issue of a licence by the Authority;
 - e. the right to enter into direct negotiation and agreement with any party as to the exploitation of Communal Forests provided that this is approved by the Authority.

6. Ownership of protected forest areas

- 6.1 Classification of forests for purposes of protection, production or other management purpose does not refer to its ownership status.
- 6.2 Any forest which is already classified or to be classified as a National Forest, Nature Reserve, National Park, Strict Nature Reserve or other special category for conservation purposes shall not necessarily be construed as Government, State or public land but will be subject to all conservation regulations due that class of conserved forest area and owners shall be bound to adhere to those regulations and responsibilities as owners.

- 6.3 The Authority is bound to investigate the procedure through which existing National Forests and other protected area forests were proclaimed and should it be found that the procedure of adjudicating and extinguishing customary ownership and payment of compensation were not properly fulfilled in accordance with the law at the time it shall advise the Ministry of Lands, Minerals and Energy of the need to reclassify the area as a customarily owned National Forest, National Park or National Wildlife Reserve as appropriate.
- 6.4 The Authority may recommend to the President the appropriation of a forest land area from customary to Government tenure where it can demonstrate reasonable grounds that the forest cannot be satisfactorily conserved or otherwise managed but shall do so strictly in accordance with Article 24 of the Constitution and adjudication procedures laid out in chapter 8 of title 29 of the Liberian Codes Revised and any other principles which assure the dispossessed community full and adequate compensation at current market values for the loss of the forestland and the wildlife, wood and non-wood assets and access to future farmland that will result.

7. Conservation of Communal Forests

- 7.1 The Authority shall take every step necessary to avoid appropriation of forests from customary or non-customary owners in order to achieve forest conservation and to this end shall encourage and assist affected communities to take necessary protective action including supporting guidance in relation to declared Communal Forests.
- 7.2 Any community owning forest may declare part or all of that Communal Forest as a protected or otherwise conserved forest area and the Authority shall afford such community assistance to achieve conservation objectives including formal registration of the concerned forestland as a Community Protected Area.

7 A final word

Suggested strategies made in this chapter are in line with more advanced forest and land reforms underway around the world. Sub-Saharan Africa has been an active participant. More than 35 countries have new national forestry policies and laws in place since 1990 (annex I). Almost all provide significantly for community based forest management. Over 20 Sub-Saharan countries have land reform processes underway, including enactment of important new chapters in National Constitutions on the subject and/or new national land laws. Examples of how this is impacting upon customary land rights are provided in annex J. Institutional governance legislation is also seeing widespread reform, providing for new district and community governments.²²²

The scope and strength of reform suggests that the forestry, land and related governance sectors may find useful precedents to build upon and to tailor to Liberian realities. Commission of evidential studies by land, forest and governance sectors will be helpful as will arrangements which enable sector leaders to become directly familiar with best practices and the challenges being faced in delivery.

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Still, undue reliance is not best placed upon what goes on elsewhere. The needs in Liberia are quite clear, common as they may be with other states. Much has been said in this paper on the abundance of positive conditions and precedence upon which the post-conflict state may readily build.

A pragmatic contribution to the process of arriving at relevant decision-making is to advance by doing pilot initiatives. While these may draw upon best international practice to initially guide them, having to deal with the real and practical in the field tends to quickly lay a relevant and do-able path for policy and action. Such an approach also helps remove the doubts and anxieties which often colour theoretical debates as to how to move forward and what is workable and what is not.

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Annexes



Photo Iolá Lapa Risco

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Annex A – Field interviewees and additional field data SDI tenure study

Table 1 – Field interviewees in SDI tenure study March-June 2007

county	River Cess	Gbarpolu	Grand Cape Mount	Grand Gedeh	Nimba
no. district capital meetings	4 Cestos	3 Bopolu	5 Robertsport	5 Zwedru	5 Sanniqele
offices interviewed	Superintendent, Information Management Officer, Land Commissioner, City Mayor, 8 District Commissioners, 8 Paramount Chiefs	Superintendent, Land Commissioner, Court Clerk, District Commissioner, UNMIL/ UNDP, Deputy Mayor, Paramount Chief, Former Superintendent	Rep. of Superintendent, Land Commissioner, County Land Surveyor, UNMIL Civil, County Attorney, Court Clerk, City Mayor, 1 Paramount Chief	Superintendent, Land Commissioner, County Attorney, Unmil Civil Information Management Officer	Repres. Superintendent, District Commissioner, Land Commissioner, Rep. Of County Attorney, Court Clerk, City Mayor
total city interviewees	30	1	25	20	15
sample district	Central	Bopolu	Commonwealth	Konobo	Saclepea-Mah
sample clan or chiefdom	Dorbor/ Dohwein	Bondi-Mandingo	Tombey	Konobo	Yarpeah and Leepeah
# clan areas in chiefdom	2	3	2	3	2
clans visited	Dorbor	Bondi Bamboo Gongbeyah	Upper Tombey Lower Tombey	Upper Gibilibo Lower Gibilibo Gbredu	Leepeah Yarpeah
field days excluding travel	4 days (3 persons)	4 days (3 persons)	4 days (2 persons)	5 days (2 persons)	5 days (2 persons)
# rural towns/ villages visited	8	7	6	8	8
# community meetings	8	8	6	8	9
# community participants	250	190	173	200	298
- males	164	150	111	120	225
- females	86	40	62	80	73
# total persons consulted	280	200	198	220	313

Table 2 – Increase in numbers of districts and clans 1984-2007²²³

county	1984		1997		2002 and 2007	
	district	clans	district	clans	district	clans
Bomi	2	14	2	14	2	14
Bong	8	39	8	39	8	39
Bassa	6	44	4	42	6	44
Cape Mount	5	12	5	12	5	12
Grand Gedeh	3	15	5	25	5	15
Grand Kru	4	14	4	14	4	14
Lofa	6	20	11	33	6	20
Margibi	4	16	5	18	4	16
Maryland	2	12	2	12	2	12
Montserrado	3	22	4	30	4	22
Nimba	6	34	6	36	6	34
Rivercess	2	6	2	6	2	36
Sinoe	6	34	7	35	7	34
River Gee	2	10	2	10	2	10
Gbarpolu	5	13	5	13	5	13
15	65	305	73	339	68	335

Source of data: lisgis, using official figures from ministry of internal affairs.

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Table 3 – Rise in districts and clans in three study areas

	1984		2002		2007 (study)		% increase	
	district	clan	district	clan	district	clan	district	clan
Rivercess	2	6	2	36	12	36	600	600
Gbarpolu	5	13	5	13	6	28	120	215
Nimba	6	34	6	36	17	73	284	214
	13	53	13	53	35	137	269	258

Source of data: lisgis and field study.

223 The rise in counties from nine in 1964 to fifteen today complicates the above picture.

Annex B – List of largest rubber plantation concessions

concession company	date terms	location of concession	concession area (acres)	area developed	employees	estimated population within concession area
Firestone inc.*	1926 for 99 years renewed 1976 amended 1987 renewed 2005 for 36 years (2041)	Margibi and Bassa	1,000,000	85,000	8,500	100,000
Liberian Agricultural Company, Inc. (LAC) currently owned by a Luxembourg company, Intercultures	1959 for 70 years ratified 1966	Bassa and River Cess	300,000	10,000 +10,000 currently proposed	2,800	35,000
Cavalla, now government	1983 for 99 years	Maryland	20,000	9,662	1,350	20,000
Guthrie Rubber Plantation, now government	1954 Goodrich 1981 government acquired	Bomi Grand Cape Mount	300,000	18,000	No data	38,000
Mesurado Corporation Consolidated Ltd, Liberian-owned**	1953 German AFC Company, 1973 bought by Tolbert	Sinoe	600,000	50,000	No data	5,000
2 international companies 1 local company 4 government	1926	Bassa River Cess Bomi Sinoe	2,520,000	182,662		198,000+
<p>* A subsidiary of Firestone called Bridgestone, now owned by a Japanese company. Bridgestone was the first company to gain a concession, in 1906.</p> <p>** Owned by the former President Tolbert's family; he purchased the company and its assets</p> <p>Main source of information: Unmil 2006a.</p>						

Annex C – Extracts from constitutions of Liberia relevant to property rights

Constitution 1847

Extracts from the original version, published in March 1848

Article I – Declaration of rights

Section 1st All men are born equally free and independent, and have certain natural, inherent and unalienable rights; among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property and of pursuing and obtaining safety and happiness.

Section 8th No person shall be deprived of life, liberty, property or privilege but by judgment of his peers or the law of the land.

Section 13th Private property shall not be taken for public use without just compensation.

Article V – Miscellaneous provisions

Section 10th The property which a woman may be possessed at the time of her marriage and also that of which she afterwards become possessed, otherwise than by her husband, shall not be held responsible for his debts; whether contracted before or after marriage. Nor shall the property thus intended to be secured by the woman be alienated otherwise than by her free will and voluntary consent and such alienation may be made by her either by sale devise or otherwise.

Section 11th In all cases in which estates are insolvent, the widow shall be entitled to one third of the real estate during her natural life and to one third of the personal estate which she shall hold in her own right subject to alienation by her, by devise or otherwise.

Section 12th No person shall be entitled to hold real estate in this Republic unless he be a citizen of the same. Nevertheless this article shall not be construed to apply to Colonization, Missionary, Educational or other benevolent institutions, so long as the property or estate is applied to its legitimate purposes.

Section 13th The great object of forming these Colonies, being to provide a home for the dispersed and oppressed children of Africa, and to regenerate and enlighten this benighted continent, none but persons of color shall be admitted to citizenship in this Republic.

Section 14th The purchase of any land by any citizen or citizens from the aborigines of this country for his or their own use, or for the benefit of others, or estate or estates in fee simple, shall be considered null and void to all intents and purposes.

Section 15th The improvement of the native tribes and their advancement in the arts of agriculture and husbandry, being a cherished object of the government, it shall be the duty of the President to appoint in each county some discrete person whose duty it shall be to make regular and periodical tours through the country for the purpose of calling the attention of the natives to these wholesome branches of industry, and of instructing them in the same, and the Legislature shall, as soon as it can conveniently be done, make provisions for these purposes by the appropriation of money.

Constitution 1986

The Liberia 1986 Constitution replaced the Liberia 1847 Constitution which was suspended on April 12, 1980, following the coup d'état which overthrew the presidency of H. E. William R. Tolbert, Jr. The process of writing a new constitution began on April 12, 1981, who chaired a 25 member Committee. It completed its work in December 1982, and submitted the draft constitution to The People's Redemption Council (PRC) in March 1983, and which published the draft for public debate. On July 3, 1984, the new constitution was submitted to a national referendum and approved. On January 6, 1986 the Constitution came into force and remains in force today.

Chapter II – General principles of national policy

Article 5

b) preserve, protect and promote positive Liberian culture, ensuring that traditional values which are compatible with public policy and national progress are adopted and developed as an integral part of the growing needs of the Liberian society;

Chapter III – Fundamental rights

Article 11

a) All persons are born equally free and independent and have certain natural, inherent and inalienable rights, among which are the right of enjoying and defending life and liberty, of pursuing and maintaining and security of the person and of acquiring, possessing and protecting property, subject to such qualifications as provided for in this Constitution.

Article 13

a) Every person lawfully within the Republic shall have the right to move freely throughout Liberia, to reside in any part thereof and to leave therefrom subject however to the safeguarding of public security, public order, public health or morals or the rights and freedoms of others.

Article 22

- a) 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.
- b) Private property rights, however, shall not extend to any mineral resources on or beneath any land or to any lands under the seas and waterways of the Republic. All mineral resources in and under the seas and other waterways shall belong to the Republic and be used by and for the entire Republic.
- c) Non-citizen missionary, educational and other benevolent institutions shall have the right to own property, as long as that property is used for the purposes for which acquired; property no longer so used shall escheat to the Republic.
- d) The Republic may, on the basis of reciprocity, convey to a foreign Government property to be used perpetually for its diplomatic activities. This land shall not be transferred or otherwise conveyed to any other party or used for any other purpose, except upon the expressed permission of the Government of Liberia. All property so conveyed may escheat to the Republic in the event of a cessation of diplomatic relations.

Article 23

a) The property which a person possesses at the time of marriage or which may afterwards be acquired as a result of one's own labors shall not be held for or otherwise applied to

the liquidation of the debts or other obligations of the spouse, whether contracted before or after marriage; nor shall the property which by law is to be secured to a man or a woman be alienated or be controlled by that person's spouse save by free and voluntary consent.

- b) The Legislature shall enact laws to govern the devolution of estates and establish rights of inheritance and descent for spouses of both statutory and customary marriages so as to give adequate protection to surviving spouses and children of such marriages.

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.
- b) All real property held by a person whose certificate of naturalization has been cancelled shall escheat to the Republic unless such person shall have a spouse and/or lineal heirs who are Liberian citizens, in which case the real property shall be transferred to them in accordance with the intestacy law.
- c) The power of the Legislature to provide punishment for treason or other crimes shall not include a deprivation or forfeiture of the right of inheritance, although its enjoyment by the convicted person shall be postponed during a term of imprisonment judicially imposed; provided that if the convicted person has minor children and a spouse, the spouse or next of kin in the order of priority shall administer the same. No punishment shall preclude the inheritance, enjoyment or forfeiture by others entitled thereto of any property which the convicted person at the time of conviction or subsequent thereto may have possessed.

Article 56

- b) There shall be elections of Paramount, Clan and Town Chiefs by the registered voters in their respective localities, to serve for a term of six years. They may be re-elected and may be removed only by the President for proved misconduct. The Legislature shall enact laws to provide for their qualifications as may be required.

Chapter VII – The judiciary

Article 65

The Judicial Power of the Republic shall be vested in a Supreme Court and such subordinate courts as the legislature may from time to time establish. The courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature. Judgments of the Supreme Court shall be final and binding and shall not be subject to appeal or review by any other branch of Government. Nothing in this article shall prohibit administrative consideration of the justiciable matter prior to review by a court of competent jurisdiction.

Annex D – The Hinterland rules and regulations 1949

With extracts directly relevant to customary land administration

Note: from the original 1949 text.

Hinterland law, 1949

N. Rules and regulations governing the Hinterland of Liberia 1949

Amendments

It is enacted by the Senate and House of Representative of the Republic of Liberia in Legislature assembled

Section 1.

That the Revised Laws and Administrative Regulations proposed by the Secretary of the Interior for the Government of the Hinterland of the Republic, in schedule hereto attached, be and the same are hereby approved with the following amendments:

Section 2.

That the provisions of the laws and Regulations hereby approved and enacted shall within the organized counties, to such areas as are wholly inhabited by uncivilized natives in the same manner as if those areas were within the Hinterland Districts.

Section 3.

That with a view of promoting more efficient administration the President be and he is hereby authorized from time to time as may be necessary for his purpose, to modify and enlarge the provisions of the Regulations hereby approved, or to introduce new Regulations. These new Regulations shall be submitted to the Legislature annually for their approved, and shall be effective as law after the approval of the Legislature.

Any law to the contrary notwithstanding.

Approved:

December 22, 1949.

(SGD) William V. S. Tubman

President of Liberia

Extracts:

Article 13: Administrative duties of District Commissioners:

The District Commissioner shall, under the direction and supervision of the provincial Commissioner, have general administrative supervision over all Governmental activities in his District.

He shall be responsible for the enforcement of all laws and regulations and for the maintenance of public peace and order in the District.

He shall supervise Tribal Administration, making frequent patrols at least twice a year in each section in order to keep himself informed through personal observation of existing conditions and activities. Paramount Chiefs shall exercise administrative authority to the fullest extent, but District Commissioners shall be held responsible to prevent these tribal officials from indulging in lawful administrative practices, abuses or oppressive measures

Article 21: Tribal Government:

Each tribe of chiefdom shall be governed by one Paramount Chief who shall be elected to that position by the council of chiefs and elders, subject to the approval or disapproval of the President (amended later to elections by entire Electorate of the Chiefdom)

For purpose of administration, a tribe shall consist of clans according to tribal traditions, and shall be ruled or governed by a Clan Chief.

A Clan Chief shall be elected by members of the clan who have reached their maturity and are owners of huts and not delinquent in their taxes.

No person who is not a member of a tribe shall be eligible for election to the office of Paramount Chief; and Clan Chiefs shall also be selected for selection from their respective clans.

A Town Chief shall be elected by the paramount residents of the village.

In no circumstance may a Paramount, Clan or Town Chief be appointed by any official whatsoever, except in instance of suspension for official misconduct or gross dereliction of duty and such appointments shall not exceed the period of three calendar months when either permanent restoration to office must be made or election held. In case such suspension if done by any official other than the President or Secretary of Interior, immediate approval of the Secretary of Interior must be obtained and the suspension shall not be effective until approval is given by said official in case of clan Chiefs. In case of Paramount Chiefs, the approval of His Excellency, the President must be evoked and said suspension shall not be effective until said approval shall be given.

Article 22: Duties of Paramount Chiefs:

The duties of the Paramount Chief shall be under the direction of the District Commissioner to supervise the administration of the tribe; to carry such lawful instructions which may be given him from time to time by the District Commissioner in relating to the collection of taxes; construction of roads and bridges; improvements of agriculture, trade, the sanitation of his tribal areas, and other matters affecting the general welfare of this chiefdom or tribe.

A tribal Treasury shall be established in each chiefdom, with a tribal treasurer to be elected by the council of chiefs. The Paramount Chief shall ensure that no expenditures are made from this treasury without the majority vote of the council of chiefs. And such expenditures should only be made of proper payrolls or vouchers under warrant of the District Commissioner.

There should be an annual budget prepared by the Tribal authorities with the approval of the District Commissioner in respect to be general improvements of the tribal chiefdom.

A copy of all District approved budgets should be sent to the Secretary of Interior through the office of the provincial Commissioner who shall retain a copy there of on the files of his office.

He shall make quarterly patrols of his chiefdom for the purpose of correcting evils in the administration of the various clans under this control. At the end of each patrol, a report thereof shall be made immediately to the District Commissioner. This report shall include also the administrative behavior and activities of all chiefs and officials.

If the Paramount Chief desires to leave his chiefdom for a long period, he shall obtain permission from the District Commissioner and inform his council of chiefs in a meeting of this fact. A member of the council of chiefs shall be designated by him to act in his stead during the period of his absence. This arrangement should be immediately forwarded to the District Commissioner.

He or his designate shall always be associated with the assessor in the tax assessment of the tribal area, and shall be furnished with a copy of the approved assessment list of list of his chiefdom.

Article 25: Duties of Town Chiefs:

A Town Chief shall be subject to all lawful orders of the Clan chief and shall not refuse to carry out any such lawful orders which may subject him to a fine, suspension or both.

Before a suspension, penalty is inflicted the prior approval of the District Commissioner must be obtained through the Paramount Chief.

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Duties of Chiefs:

In a discharge of his duties, the Paramount Chief shall be assisted by a council of chiefs which shall be composed of the chiefs of the clan of his tribe or chiefdom.

The council of chiefs shall be an Administrative board which shall fully cooperate with the Paramount chief in every matter affecting tribal economy. This council shall meet at least once every quarter at chief at chiefdom headquarters and at each other time as the Paramount Chief may require.

The Paramount Chief and Council of Chiefs shall be styled tribal authority.

Upon the death, deposition, or resignation of the Paramount Chief, the Council of Chiefs and elders according to their tribal customs, where it is not in conflict with law or regulation, shall direct and nominate for appointment by the President, another chief to serve as Paramount Chief.

The Tribal Authority shall prepare a budget covering the local development of the chiefdom, including salary payments to clerical assistants, to be forwarded to the District Commissioner to be included in the District Budget for approval of the Provincial Commissioner. A record of all business transactions of the Tribal Authority must be kept in a book provided for that purpose and the chiefdom clerk shall be its secretary. Such record shall be opened for inspection by the Provincial or District commissioner or their higher authority at all times. All such transaction shall be immediately reported to Central Government.

Whenever necessary the District Commissioner may assemble the Tribal Authority of the Tribe or of all tribes within the District in a general council at Headquarters for conference on any district affairs or measures of vital public interest affecting the welfare of the people progress in the development of the district.

The District Commissioner may in his directions or upon the invitation of the Tribal Authority, or the Paramount Chief, visit any and all meetings of the council of chiefs during which he may advise them as to whatever is deemed in the interest of the District.

A District Commissioner shall not preside over a meeting of the council of chiefs when convoked at the instance of the Tribal Authority unless in case of inspectional tours or when they are summoned by him, in which case he will preside. At all other meetings, the Paramount Chief shall preside except in cases when he is personally interested in the question before them or on account of illness or other disability he cannot be present, when a Can Chief designated by the Body shall preside.

Fines or fees authorized by the Tribal Authority to be imposed or collected shall be deposited in the Tribal Treasury together with any funds which may arise from other sources of tribal income, such the rents from tribal land, or proceeds from the product of communal farms or other income from any source whatever. These funds are subject to audit by the central Government but may be expanded from time to time by vote of the council of chiefs subject to approval by the District Commissioner for tribal projects and purposes.

The Chief composing the Tribal Authority may be formed into various committees to deal with different questions affecting the tribal economy such as a committee on roads and bridges, a committee on finance; a committee on trade; and such other committee as may from time to time be found necessary.

The District Commissioner or Paramount Chief may summon a meeting of the tribal authority at any time to any extra ordinary meeting or such meeting may be called upon the request of a majority of the chiefs composing the council of chiefs who shall state the object for which such extra ordinary meeting should be summoned.

Article 29: General Rule of Administration

It is the policy of Government to administer tribal affairs through tribal chiefs who shall govern freely according to tribal customs and traditions so long as these are not contrary to law.

Article 61: Mortgages:

When a mortgager cannot redeem his property within the period agreed upon, the mortgages may enter upon and take over the specific property mortgaged and apply the proceeds thereof to his debt, plus twelve and a half percent, unless a lower rate of interest has been agreed upon. The mortgager shall account to the mortgagee, for the sum deprived from the use of the property. After the mortgager shall have satisfied his claim plus twelve and a half percent interest, the property must be turned over to the owner in good condition. All mortgages of this character must notify to the Clan Chief and reported to the District Commissioner through the Paramount Chief. Any rate of the interest above twelve and a half percent is declared to be usury and shall render the dealer liable to criminal prosecution and the loss of his investment.

Article 65: Right to strangers:

Persons who immigrate into territory belonging to a Chiefdom of which they are not citizens shall subject themselves to the tribal administration. Such immigrant group cannot have a chief, but may elect a headman, as provided herein who shall be responsible to the Paramount Chief of the Tribe:

The Headman of an immigrant group is responsible to the Paramount Chief of the Tribe in matters affecting general administration, but in matters between members of their

community purely of tribal nature, he shall have the right to exercise all functions and powers of a Clan Chief and appeal therefore lie in the court of the District Commissioner.

A service certificate shall be issued to an Immigrant Group Headman as a token of official recognition, by the Provincial Commissioner upon recommendation of the District Commissioner after an election.

Article 66: Lands:

Title to the territory of the Republic of Liberia vests in the sovereign state. The right and title of the respective tribes to lands of an adequate area for farming and other enterprises essential to the necessities of the tribe main interest in the tribe to be utilized by them for these purposes; and whether or not they have procured deeds from Government, delimiting by notes and bounds such reserves, their rights and interest in and to such areas, are a perfect reserve and give them title to the land against any person or persons whenever.

This land interest may be transmitted into communal holding upon application of a tribe made to the Government for that purpose, and such communal holding would be surveyed at the expense of the tribe concerned.

The Communal holding will be vested in the Paramount Chief and Tribal Authority as trustees for the tribe.

The trustees, however, cannot pass any fee simple title in these lands to any person whatever.

Should the tribe come sufficiently advanced in the arts of civilization, they may petition the Government for a division of the land into family holdings in which event the Government will grant deeds in fee simple to each family for an area of 25 acres in keeping with provision of Act of 1905.

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Article 67: Use of lands by strangers:

If any individual enters the territory of a tribe of which he is no a member for the purpose of farming, he shall observe the following procedures:

Obtain permission of the Tribal Authority prior to commencing his activities;

Agrees to pay some token in the nature of rent, such as fine or six bunches of rice not of every farm;

Pay taxes to the appropriate tribal chief on all huts on the said lands erected or occupied by him.

The Tribal Authority may cancel the authority granted and confiscated the corps, subject always to appeal to the District Commissioner provided he neglects to comply with all or any of forgoing provisions.

Under article 83: Amendments:

Wholesale immigration of tribesmen

- a) The wholesale immigration of tribesmen from their original home to another town, clan or chiefdom for the purpose of either breaking down or diminishing the strength of their town, clan or chiefdom shall be prohibited.
- b) It shall be unlawful for any official or clan to induce the people of another town, clan or chiefdom to leave their homes or towns to live in another district or territory.

Delimitation of Tribal Reserves

The Tribal Reserve of the respective tribes shall be limited in adequate area for farming purposes of tribesmen before any land within the territory of a Chieftom shall be available for private purpose of grant of any kind whatever.

Annex E – Extracts from the National Forestry Reform Law 2006 of most relevance to community rights

Section 1.3 – Definitions

Communal Forest: An area set aside by statute of regulation for the sustainable use of forest products by local communities or tribes on a non-commercial basis.

Community forestry: The governance and management of forest resources in designated areas by communities for commercial and non-commercial purposes to further their livelihood and development. 'Community' in the sense of community forestry means a group of local residents who share a common interest in the use and management of forest resources, with traditional or formal rights to the land and the forests on it.

Encroachment: An infringement of or interference with another's exercise of exclusive rights pursuant to a Forest Resources License.

Forest land: A tract of land, including its flora and fauna, capable of producing forest resources, not including land in urban areas, land in permanent settlements, and land that has been in long-term use for non-shifting cultivation of crops or livestock in a manner that precludes producing forest resources.

Forest resources: Anything of practical, commercial, social, religious, spiritual, recreational, educational, scientific, subsistence, or other potential use to humans that exists in the forest Environment, including but not limited to flora, fauna, and micro-organisms.

Land Owner (or Owner): A person who owns land by legal title.

Occupant: A person who is in lawful possession of the land.

Person: Any individual, partnership, joint venture, association, corporation, trust, estate, un-incorporated entity, community, Government, or state, and any branch, division, political sub-division, instrumentality, authority or agency thereof.

Section 2.1 – ownership of forest resources

- a. All forest resources in Liberia, except as provided in subsection (b) of this section, are held in trust by the Republic for the benefit of the people.
- b. The following types of forest resources are neither owned nor held in trust by the Republic:
 - i. Forest resources located in Communal Forests; and
 - ii. Forest resources that have been developed on private or deeded land through artificial regeneration.

Section 4.2 – Forestry management Advisory Committee

- a. The Authority shall appoint at least seven and no more than twelve people to constitute a Forest Management Advisory Committee that shall advise the Authority on forestry policy.
- b. (i) In making appointments to the Committee, the Authority shall:
 - A. Select at least one member from among nominees advanced by each of the following types of stakeholders within the Republic: registered civil society organizations (local, regional or national); professional forester associations; forest labour organizations; logger associations; universities or other academic institutions; and the Environmental Protection Agency; and

- B. ensure that the interests of women and youth are fairly represented.

Section 4.4 – national forest management strategy

(will include)

- (III) Specific areas that the Authority intends to propose for management as Communal Forests or for purposes of community forestry...
- e. The FDA shall offer the public and the Forestry Management Advisory Committee... the opportunity to comment on a full draft of the Strategy...

Section 4.5 – Validation

- a. Before committing an area identified in the National Forest Management Strategy to a proposed land use, the Authority shall validate the suitability of the area for the proposed land use. ...
- d. The FDA management shall offer the public and the Forestry Management Advisory Committee the opportunity to comment on a full draft of the report...

Under chapter 5: commercial and other use of forest resources

Section 5.1 – Basic Prohibitions and Regulatory Powers

- f. The Authority shall, by regulation or otherwise, undertake measures to institutionalize the participation of communities in forest management. Such measures may include, but are not limited to:
 - (I) Recognition and protection of community land tenure rights;
 - (II) Formulation of a code of conduct to govern relationships between holders and communities;
 - (III) Requirement to complete a social agreement between holders and communities that defines the parties' respective rights, roles, obligations and benefits with respect to one another;
 - (IV) Provision for security of access by communities to non-timber forest products and other forest resources; and
 - (V) Provision of technical assistance to community foresters.

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Section 5.3 – Forest Management Contracts

- b. Forest Management Contracts must meet all of the following requirements:
 - (II) The land involved must not include private land.
 - (VI) The contract must require the holder to establish a social agreement with local forest-dependent communities, approved by the Authority that defines these communities' benefits and access rights.

Section 5.4 – Timber Sale Contracts

- b. Timber Sale Contracts must meet all of the following requirements:
 - (II) The land involved must not include private land.
 - (I) ... The Authority may award Timber Sale Contracts for the purpose of allowing forest land to be cleared for agriculture or for the establishment of plantations.

- j. In awarding a Timber Sale Contract... the Authority shall
 - (i) Take into account the terms of any existing contract, deed, or similar instrument pertaining to the ownership or management of the forest land...
 - (ii) Respect established contractual and property rights, if any ...

Section 5.5 – Forest Use Permits

- c. The Authority may issue Forest Use \Permits only for the following commercial uses: (Production of charcoal, tourism, research and education, wildlife-related activities, harvest of small amounts of timber for local use within the county or community, and harvest or use of non-timber forest products)
- d. (i) (If less value than US \$ 10,000 will be issued) ... free of charge (or) at a price fixed by Regulation...
- h. No person shall harvest forest resources on private land under a Forest Use Permit without the land owner's permission.

Section 6.1 – Termination of Forest Resources Licences

- d. Failure to satisfy... any financial obligations to the Government or to local communities...

Section 8.2 – Sustainable Management and Utilization of forest resources

- b. The Government shall not grant title over forest land to private parties without giving public notice, allowing 60 days opportunity for public comment, and obtaining written approval from the Authority.

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Under chapter 9: Protected Forest Areas network and wildlife conservation

Section 9.3 – Authority to transmit proposal to President

Based on the results of surveys, scientific research, and other relevant data and information, and following public notice and a 60 day opportunity for public comment, the Authority may submit to the President a proposal to establish one or more National Forests, National Parks, nature reserves or strict nature reserves, setting forth: ...

- d. A summary of any consultations held with Government agencies and persons affected by the proposed establishment and especially the view of local communities;

Section 9.10 – Protected Forest Area regulations and prohibitions

- a. The Authority shall in consultation with local communities, Counties and other local authorities issue Regulations governing activities in Protected Forest Areas.
- b. No persons shall...
 - (iii) In Communal Forests, prospect, mine, farm, or extract timber for commercial use.
- c. The Authority shall, in collaboration with local communities, non-Governmental organizations, and interested international organizations, undertake efforts to provide alternative livelihoods for communities adversely affected by the establishment or maintenance of Protected Forest Areas.

Under chapter 10: Community rights and forest management

- a. To manage natural resources based on principles of conservation, community and commercial forestry, and to ensure that local communities are fully engaged in the sustainable management of the forests of Liberia, the Authority shall by regulation grant to local communities user and management rights, transfer to them control of forest use, and build their capacity for sustainable forest management.#
- b. The regulations promulgated under this chapter must, at a minimum:
 - (i) specify rights and responsibilities of communities with respect to ownership and uses of forest resources;
 - (ii) establish mechanisms to promote informed community participation in forest-related decisions;
 - (iii) create a framework that allows communities fair access to forest resources; and
 - (iv) establish social, economic and technical procedures for capacity building to ensure that communities can equitably participate in and equitably benefit from sustainable management of the forests.
- c. In addition to satisfying the other requirements of this Section, the Authority shall, within one year of the effective date of this Law, present to the Legislature for consideration and passage a comprehensive law governing community rights with respect to forest lands.

Chapter 11: Rights of land owners and occupants

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Section 11.3 – Government power to permit use

Where the Government has granted permission for the use of forest resources, no land owner or occupant has a right to bar that use; however, the land owner or occupant shall be entitled to just, prompt, and adequate compensation for any diminution in the value of his property occasioned by the use.

Section 11.4 – Procedure on refusal of land owner to allow operations

- a. If a land owner refuses to grant permission to the holder of a forest resources license to conduct operations, the holder may petition the Authority to intervene, setting forth all relevant facts and circumstances, including any financial offers made to the land owner or occupant.
- b. The Authority shall, by regulation, establish appropriate procedures for the hearing and determination of these petitions.

Section 14.2 – Forestry fees

- e. The Government shall allocate and distribute fees collected annually pursuant to this Section as follows:
 - (i) Ten percent of stumpage fees to support operational costs for the Protected Forest Areas Network...
 - (ii) Thirty percent of land rental fees to communities entitled to benefit sharing under Forest Resources Licences...

Section 18.11 – Existing rights

When issuing permission to use forest land or to harvest or use forest resources the Authority shall make such permission subject to the existing rights of other Ppersons.

Section 19.2 – Duty of authority to consult

- a. The Authority shall publish regulations proposed to be issued for at least 60 days prior to their effective date in order to allow for public comments on all such proposed regulations. The Managing Director shall collect and summarize all comments and refer them along with the proposed regulations to the Board of Directors for its comments and advice not later than fourteen days before their effective date.

Section 20.10 – Citizen suits and civil enforcement

- a. A person harmed by a violation of any provision of this Law, the accompanying regulations, or the Code of Forest Harvesting Practices, may bring an action against any responsible person except the Government and its employees...

Annex F – Extracts of relevance to community rights

In the Minerals and Mining Law 2000 (title 24 Liberian Codes of Laws revised)

Section 2.3 Right of ownership

Holders of mineral rights shall acquire ownership of and title to the minerals they extract by mining pursuant to this law.

Chapter 11: Rights of owners or occupants on land affected by this law

Section 11.3 – Supremacy of Government's rights

Government's right as owner of minerals in the Republic of Liberia are absolute and supersede the rights of any landowners or occupants of land in respect of the exploration or mining of minerals, provided that such landowner or occupants of land shall be entitled to just, prompt and adequate compensation for any diminution in the value of land caused by disturbance, disfigurement or other factors occasioned by the Government's exercise of its rights.

Section 11.4 – Rights of land owners or occupants of land in respect of mineral rights

The legal owner or lawful occupant of property on which minerals are discovered shall be entitled to a right of first refusal in any application for obtaining Class A or Class B Mining Licenses as against any third party or parties.

Section 11.5 – Procedure on refusal of land owner or occupant to grant access to land for exploration or mining

In the event of the refusal of a landowners or occupant of land to permit the holder of a mineral right to conduct exploration or mining the holder may petition the Ministry to intervene setting forth all relevant facts and circumstances including any financial offers made to such landowner or occupant of land. The Minister shall by regulation, establish appropriate procedures for the hearing and determination of such petitions.

Annex G – International treaties, conventions, agreements and protocols relevant to human rights to which Liberia is signatory

UNFCC (United Nations Framework Convention on Climate Change. Concluded at New York on 9 May 1992. No. 30822, Multilateral).

CBD (Convention on biological diversity. Concluded at Rio de Janeiro on 5 June 1992. No. 30619, Multilateral), WITH Agenda 21, as annex to the above, relating to forestry

CITES (Convention on international trade in endangered species of wild fauna and flora (with Final Act on 2 March 1973). No. 14537, Multilateral)

UNCCD (Convention TO combat desertification in those countries experiencing serious drought and/or desertification, particularly in Africa (with annexes). No. 33480, Multilateral. 14 October 1994

ITTO (International Tropical Timber Agreement, 1983 with annexes. Concluded at Geneva on 18 November 1983. No. 23317, Multilateral

ITTA (International Tropical Timber Agreement, 1994 with annexes and process-verbal of rectification on 12 April 1995). Concluded at Geneva on 26 January 1994.No. 33484, Multilateral

International Convention on the Elimination of All Forms of Racial Discrimination (1969) (entered Liberian law in 1976)

International Covenant on Civil and Political Rights (1976) and **Signed Optional Protocol** (entered Liberian Law in 2004)

International Covenant on Economic, Social and Cultural Rights (1976) (entered Liberian law in 2004)

Convention on the Elimination of All Forms of Discrimination against Women (1981) and signed **Optional Protocol 2000** (first entered Liberian law in 1984)

International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987) (entered Liberian Law 2004)

International Convention on the Rights of the Child (1990) (entered Liberian law 2003)

International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (2003)

UN Declaration on the Rights of Indigenous Peoples, 12 September 2007

Regional Treaties:

African Charter on Human and People's Rights (1986)

African Charter on the Rights and Welfare of the Child (1999)

African Convention on the Conservation of Nature and Natural Resources (2003)

Annex H – The concession review and communities

The Forest Concession Review was conducted between 2004 and May 2005. The final report was published in mid 2005 (*Report of the Concession Review Committee*, 31 May 2005). Around 70 permit holders, those who did not submit data, were automatically eliminated as not meeting criteria for sustaining their concessions or permits (23). A three stage process was then adopted. In Stage I the remaining 47 concession holder had to clear specific minimum requirements (e.g. bone fide business entity, has a legal contract in force, no prior rights to the same concession area). In Stage II, it had to clear the threshold for criteria related to civil disturbance, insurrection and forceful acquisition of concession areas. Stage III evaluated cumulative criteria relating to tax obligations, posting a bond, compliance with community development obligations, follows all requirements and procedures legally and follows labour law, social security taxes and health insurance provision. No concession holder met all requirements of Stage I. Twelve of 47 failed to comply with Stage II and no concession holder complied with Stage III.

On the demand of prominent new NGOs the review included public awareness raising and consultation. This was undertaken in seven regions and discussion revolved around the activities of 46 of 70 identified operating logging and salvage companies. Findings were published by Talking Drums Studio *What the People Say Enhancing Civil Society Awareness and Engagement in Forest Concession Review and Reform*, July 2005.

Findings included:

1. Some companies harassed local people, had armed militia and behaved as if above the law;
2. Only one of 46 companies (Tropical Farming Company) provided benefits for local people other than minor temporary reconditioning of roads, bridges or hiring a few locals as unskilled labourers; three others contributed to some public works;
3. No communities involved in any negotiations or agreements, even for Tribal Land Forests and Communal Forests affected; they never knew what rights they had or what benefits they were due; sometimes County authorities were aware of agreements but did not inform communities;
4. Extension of logging into community areas was routine;
5. Salaries for local workers delayed or never paid; minimal wage often not paid, no benefits and no contracts, on daily paid terms, dismissed at will, no insurance cover even when working as chain saw operators, trailer drivers loaders at ports; intimidation through arbitrary dismissal of complainants, use of militia to harass and torture personnel refusing to report to work, and some cases of murders, none prosecuted; some opened fire on communities;
6. Community lands routinely taken, people evicted, and logged and resistance met with violence; in one case Government got involved and threatened the people if they resisted the company even though the area was a deeded tribal reserve forest;
7. Often cash crops and family graves destroyed; and
8. The Forestry Development Authority undertook no protection of communities or monitoring of companies, gave no advice to communities, and perceived as part of the criminalization of the industry, individuals working for their individual benefit during the war.

Community recommendations included:

1. Communities should be involved as forest managers (stewards).
2. FDA should be active mediator and protector.
3. Communities should be involved in all negotiations from the outset.
4. Communities should receive a percentage of revenues where logging is undertaken.
5. Information should be made public on all aspects, with copies of all agreements shared with communities.
6. Communities should be part of a tripartite Joint Forest Management Team in each area (FDA, companies, communities).
7. Benefits should be laid out in each contract.
8. Communities should have the role of monitoring diameters and species.

The recommendation of the Review was that all concessions and salvage permits be cancelled with immediate effect. This was not done until President Johnson Sirleaf was inaugurated in early 2006.

Source: Talking Drums Studio 2005.

Annex I – An overview of forest reforms

Forest reform over the past several decades has made community forestry and by implication, improvement in community rights, a key subject of new policy and legislation. Legal provision and practical implementation has proceeded through several stages over this period.²²⁴ To paraphrase, in 1980 communities were impliedly an irritant to state-run forest management that resignedly had to be tolerated, whose 'felt needs' had to be acknowledged, usually delivered in the award of free access to forest products for subsistence. By 1990 the price of their cooperation has risen but still being bought in the increasingly ubiquitous benefit-sharing schemes. Meanwhile the critical role of forest areas and forest products in the land relations and livelihoods of forest communities had become a major issue around which programmes were being structured.

By 2000 a tipping point was reached, and the fundamental flaws in the structural forest relationship of state and people were beginning to be baldly exposed, continent to continent. A critical element of misfit was distinctive versions as to how the resource itself was owned, frequently expressed in contrary statutory and customary law.

Explicit attention to forest tenure has been the result. Recognition that there is no better incentive to conservation and sustainable management than being acknowledged as the resource's owner has begun to permeate policies and new legislation. Already by 2000 more than 20 states had provided opportunities for communities to serve as owner-managers of non-gazetted forests.²²⁵ By 2002 communities officially owned and/or managed 22 percent of the world's natural forests, a figure predicted to double by 2015.²²⁶ In 2007 FAO observed with some concern that especially in Asia, failure by highly forested states to acknowledge customary ownership of forests was possibly reaching crisis point.

Better progress on this is being made in Latin America and Africa. This is most developed in Eastern and Southern Africa.²²⁷ In Tanzania for example, more than one thousand villages have established Community Forest Reserves since 1995 embracing two million acres of forestland, formally recognised under the Forest Act, 2002 as owned and managed by those communities. The number and hectareage rises annually. This is aside from an additional two million acres of National Forests also managed by these communities as designated Managers.²²⁸ The hectareage of forest under protection and low-cost and sustainable management has therefore risen sharply.

224 On every continent the transition can be marked in community forestry since (and is remarkably easy to track in the regular assessments of FAO; FAO 2002, 2003, 2005, 2007, Arnold 2001.

225 Alden Wily, 2000.

226 White and Martin, 2002.

227 Alden Wily and Mbaya 2001 and Kohler and Schmithusen 2004.

228 FBD passim, Blomley, 2006, Blomley et al. 2007.

Annex J – Recent changes in the status of customary land rights in Sub Saharan Africa

Improvement in the legal status and protection of customary rights

- Customary rights may now be directly registered without conversion into introduced forms in Uganda, Tanzania and Mozambique and proposed in Lesotho, Malawi and Madagascar. Customary properties other than common properties may be registered in Namibia and Botswana (since 1968). Although not defined as customary rights given their abolition in 1975, existing occupancy may also be registered 'as is' in Ethiopia.
- Customary rights in Mali, Niger, Burkina Faso, Benin, Cote D'Ivoire, Ghana and South Africa may be certificated with substantial effect, but with required or implied conversion into existing statutory forms on final registration.
- Described incidents of customary rights reflect 'customary freehold' and/or as customarily agreed by the modern community. Most laws allow for customary rights to be held in perpetuity, raising their status above that of leasehold or similar statutory forms common to most of Africa (Freehold is available mainly only in Southern Africa).
- Only Tanzania and Mozambique endow customary interests with unequivocal equivalency with imported tenure forms. Uganda proclaims this but also provides for conversion of customary certificates into freehold tenure which lessens the impact. Lesotho and Malawi propose something similar. Mozambique does not practice what it preaches, giving investor interests in customary lands more support than customary interests.
- The status of unregistered customary rights (90+% of all rural landholding) is often ambivalent and continues mainly to be permissive, pending registration. Customary rights that are not registered are most explicitly protected in Uganda, Tanzania, Mozambique and South Africa and in a different manner in Ghana. Customary owners in Cote Ivoire have a time limit within which their rights must be registered to be sustained.
- The movement of customarily-held land out of Government land/public land classes is clearest in Uganda (where public land is abolished) and in Tanzania (where it becomes 'village land'). Community Land is the major new proposed class of lands in Kenya.

More than individual title is recognised

- Family title is quite widely provided for especially in Ethiopian law and Malawian policy.
- Adoption of procedures which limit transfers of family land without the support of spouses is provided in Uganda and Rwanda and proposed in Malawi and Lesotho.
- A presumption of spousal co-ownership exists in Tanzania land law. Efforts to secure such a presumption failed in Uganda. Ethiopia and Eritrea recognise male and female property rights distinctly.
- Secondary rights as encumbrances to primary rights is not well provided for in many laws but with significant development of certified contracts in West African states where migrant landholders have inferior security even after generations, due to not belonging to the tribe which holds root title (Ghana, Cote D'Ivoire).

Recognition of collective title and common property as community private property is still incomplete

- Some new policies and laws provide in principle for any ownership cluster to be recognised as the lawful owner e.g. ‘by a person, a family unit or a group of persons recognised in the community as capable of being a landholder’ (Tanzania, Uganda) providing various levels of collective entitlement.
- While communal property is widely acknowledged in new laws as existing, few laws go so far as to provide clear or easy routes for registering these as private, group owned estates. Indirect routes exist in South Africa and Uganda through expensive and complex formation of legal bodies by community members, rarely adopted. Similar routes are proposed in Malawi and Lesotho and in many Francophone States. Only in Amhara/Ethiopia are common properties un-ambivalently registrable as private group owned properties.
- Often the distinction between the community as land controller and owner of real property is not clear in new policies and laws. In Mozambique and Cote D’Ivoire collective entitlement represents more delimitation of the area controlled by the community that outright shared ownership.
- Francophone rural land plans and mainly draft laws helpfully draw a distinction between land managers and land owners, critical given the history in West Africa of chiefs transforming jurisdiction and custodianship into outright ownership.
- Tanzania overcomes the problem by distinguishing between the area over which the community has authority (‘village land area’) and specific community owned estates within this (commons). The location, size and use rights of common properties within the village area (forests, pastures, swamps and hills) must by law be recorded in the Village Land Register prior to adjudication and registration of individual or family properties to protect these against encroachment or claim during registration. This amounts to registration of the commons as private community owned properties but in unclear terms.

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Formal land administration over customary lands is devolving

- The logical need to recognise (and revitalize) customary land administration once customary rights are recognised, is carried through into most new policies and laws.
- Complete devolution of authority to community levels is in practice limited. Tanzania is a main exception where each elected village Government is declared the lawful land manager and has substantial independent regulatory powers. Partially elected community bodies in Ethiopia, Burkina Faso and Lesotho also have significant powers.
- Bodies at community level are being recognised or created but most are committees advising and assisting higher Government or Government-serviced bodies (e.g. Botswana, Namibia, Uganda, Benin, Cote D’Ivoire, Senegal and Mali).
- Most local institutions are being remade with declining chiefly authority. In some cases chiefs have no representation (e.g. Tanzania, Ethiopia, Eritrea, Rwanda and Uganda). Mostly chiefs are advisers or carry out minor functions reporting to higher bodies (e.g. Namibia, Botswana, Angola) or are members of community land bodies (e.g. Malawi, Lesotho, Niger, Mali, Senegal, Benin, Cote D’Ivoire). In Ghana, Mozambique and Nigeria chiefs retain dominant roles as customary land administrators.
- Reining in rent-seeking histories or potentials by chiefs is specifically provided in newer

proposals (e.g. Malawi, Lesotho) but insufficiently managed in others (e.g. Ghana, Niger, Mozambique).

Registration of rights is still a primary objective

- While some countries make some or all customary rights directly registrable, this process is rarely being devolved to community level. Only Tanzania provide for registration of all customary rights at village level (Village Land Registers). Ethiopia and Uganda provide for part of the process at sub-district level, Namibia and Botswana at district level, also proposed in Lesotho and Malawi. Registration of customary rights in Ghana and Mozambique is through a central register at provincial level.
- District level bodies are generally arms of central Government and accountable upwards rather than to communities (e.g. Niger, Burkina Faso). Others are legally autonomous but still accountable upwards through other mechanisms (e.g. Botswana, Uganda).
- Accountability of community or parish level bodies and especially chiefs to community members is nowhere thoroughly elaborated.
- Simplification of registration procedure correlates directly with the extent of devolution of registers; the closer the register is to landholders, the easier the legal procedure (e.g. Tanzania, Ethiopia, and Lesotho (proposed)).
- Procedures contributing to registration are being widely devolved to local committees but they do not have the power to actually register the rights (Benin, Côte D'Ivoire, Burkina Faso, Mali, Guinea, Ghana, Namibia, and Botswana and South Africa). This includes adjudication and community based mapping.
- Mapping requirements are reduced where registration is devolved (e.g. Tanzania, Uganda, Mali, and Niger). Reluctance to abandon cadastral survey correlates with formal encouragement to private sector roles in these spheres (e.g. Ghana, South Africa, Mozambique, Malawi, and Zambia).