



USAID
FROM THE AMERICAN PEOPLE

A STRATEGY FOR FURTHER REFORM OF LIBERIA'S LAW ON LAND

LIBERIA LAND GOVERNANCE SUPPORT ACTIVITY



ANTHONY KOLLIE, TETRA TECH, 2016

MAY 2016

This publication was produced for review by the United States Agency for International Development. It was prepared by Dr. John Bruce for Tetra Tech.

ACKNOWLEDGEMENTS

This report is an update of work on land law reform strategy that a Liberian colleague and I did earlier for the Land Commission in 2011 (Bruce and Kanneh, 2011). The update is based on a study of documents and key informant interviews during three weeks in Monrovia from November 29 to December 18, 2015, and on comments and discussions on a draft of this report. As someone who has only been in Liberia for visits of a few weeks each over the years since the first report, I have needed a great deal of input and assistance from Liberian colleagues. A list of those interviewed is included as Annex B. I thank them all for their courtesy, patience, and thoughtful comments.

My thanks also go to the Chairperson of the Land Commission, Dr. Othello Brandy, and the other commissioners. Special thanks are due to Stanley Toe, Senior Program Officer and Acting Executive Director of the Land Commission's Secretariat, who provided valuable information and insights, reviewed portions of this report in early drafts, and clarified many points. Thanks too to Dr. Jeanette Carter, Advisor to the Commission, and Atty. Kula L. Jackson, Program Officer/Law Reform, for their input.

This consultancy was supported by USAID's Liberia Land Governance Support Activity (LGSA), implemented by Tetra Tech. The consultant gratefully acknowledges the valuable substantive contributions to this paper by Dr. Mark Marquardt, LGSA Chief of Party, and F. Mulbah Zig Forkpa, Jr., LGSA Research Assistant. Excellent and helpful comments on an initial draft were provided by Dr. Chris Moore of Collaborative Decision Resources; and Jennifer Duncan, Tzili Mor, and My-Lan Dodd of Landesa. Thanks are due as well to Megan Huth and others at Tetra Tech in Burlington, VT, for their administrative support of the consultancy, and to Daryl Veal of USAID/Liberia for his interest and engagement.

I am especially grateful for the assistance and patience of the commission's staff during the busy and stressful period leading up to the end of the Land Commission's legal mandate on January 9, 2016. The work in which they have been engaged is vital to the future of Liberia, and they can take great pride in the commitment they have demonstrated and their accomplishments to date. They will hopefully be rewarded shortly with the enactment of the commission's legislative proposals for a Liberia Land Authority and Land Rights Law.¹

John W. Bruce
Consultant, LGSA, Tetra Tech
2/28/16

This publication was produced for review by the United States Agency for International Development by Tetra Tech, through Liberia Land Governance Support Activity, Contract No: AID-OAA-I-12-00032, Task Order No: AID-669-TO-15-00003.

This report was prepared by:

Tetra Tech

159 Bank Street, Suite 300
Burlington, Vermont 05401 USA
Telephone: (802) 495-0282
Fax: (802) 658-4247
E-Mail: international.development@tetrattech.com

Tetra Tech Contacts:

Mark Marquardt, Chief of Party
mark.marquardt@tetrattech.com

Zyck Baggett, Deputy Chief of Party
zyck.baggett@tetrattech.com

Megan Huth, Project Manager
megan.huth@tetrattech.com

David Felson, Deputy Project Manager
david.felson@tetrattech.com

¹ These legal proposals are before the Legislature. References to them and their provisions in this report are to the texts as they stood in December 2015, when the consultant visited Liberia.

A STRATEGY FOR FURTHER REFORM OF LIBERIA'S LAW ON LAND

LIBERIA LAND GOVERNANCE SUPPORT ACTIVITY

MAY 2016

DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

TABLE OF CONTENTS

ACRONYMS AND ABBREVIATIONS.....	II
EXECUTIVE SUMMARY	IV
INTRODUCTION	I
1.0 THE LAND COMMISSION AND ITS REFORM AGENDA	3
1.1 THE COMMISSION'S GENESIS.....	3
1.2 URGENT NEEDS INTERVENE.....	4
1.3 ORGANIZING FOR REFORM.....	4
2.0 REFORMING LAND RIGHTS POLICY AND LAW	5
2.1 REFORMING LAND RIGHTS POLICY.....	5
2.2 REFORMING LAND RIGHTS LAW	6
3.0 LAND ADMINISTRATION AND INSTITUTIONAL REFORM.....	9
3.1 REFORMING LAND ADMINISTRATION POLICY	9
3.2 REFORMING THE LAW ON ORGANIZATION OF LAND GOVERNANCE.....	11
4.0 PROFITING FROM THE LAND COMMISSION REFORM EXPERIENCE.....	13
4.1 LESSONS FROM THE LAND COMMISSION EXPERIENCE.....	13
4.2 RETHINKING THE POLICY REFORM PROCESS	17
4.3 RETHINKING THE LAW REFORM PROCESS.....	18
5.0 STRUCTURING AND EXTENDING REFORM OF LAND LAW	21
5.1 ORGANIZING FOR FURTHER REFORMS	21
5.2 IDENTIFYING FURTHER LAW REFORM NEEDS	22
5.3 TOWARD A LAND LAW REFORM STRATEGY FOR THE LIBERIA LAND AUTHORITY	30
5.3.1 First Order	31
5.3.2 Second Order	33
5.3.3 Third Order	33
5.4 A YEAR 1 LAND LAW REFORM AGENDA.....	34
6.0 CONCLUSION	37
7.0 SOURCES.....	39
ANNEX A. CONSULTANT SCOPE OF WORK	41
ANNEX B. PERSONS CONSULTED.....	43
ANNEX C. EXISTING LAWS: ASSESSMENT, ISSUES, AND RECOMMENDATIONS	45
ANNEX D. SUMMARIES OF LAWS RELATING TO LAND	65
ANNEX E. GOVERNMENT INSTITUTIONS WITH LAND-RELATED MANDATES	106
ANNEX F. MATERIALS ASSEMBLED BY THE LAND COMMISSION.....	109
ANNEX G. INTERIM GUIDELINES AND PROCEDURES FOR THE SALE OF PUBLIC LAND, MARCH 1, 2011	113
ANNEX H. AN ACT AGAINST CRIMINAL CONVEYANCE OF LAND, AUGUST 26, 2014	135

ACRONYMS AND ABBREVIATIONS

ADR	Alternative Dispute Resolution
BOC	Bureau of Concessions
CLDMA	Community Land Development and Management Association
CNDRA	Center for National Documents and Records Agency
CSO	Civil Society Organization
DLPP	Department of Land Policy and Planning
DLSC	Department of Lands, Surveys and Cartography
EPA	Environmental Protection Agency
FDA	Forestry Development Authority
GC	Governance Commission
GPS	Global Positioning System
INA	Interim National Assembly
LC	Land Commission
LCC	Land Coordination Center
LCR	Liberian Codes Revised
LEC	Liberia Electrical Corporation
LGSA	Land Governance Support Activity
LIS	Land Information System
LISGIS	Liberia Institute of Statistics and Geospatial Information Systems
LLA	Liberia Land Authority
LMA	Liberia Market Association
LNBA	Liberia National Bar Association
LRC	Law Reform Commission
LTA	Liberia Telecommunications Authority
LWSC	Liberia Water and Sewer Corporation
MCC	Monrovia City Council
MIA	Ministry of Internal Affairs
MLME	Ministry of Lands, Mines, and Energy
MOA	Ministry of Agriculture

MOD	Ministry of Defense
MOF	Ministry of Finance
MOFDP	Ministry of Finance and Development Planning (former)
MOGD	Ministry of Gender and Development
MPEA	Ministry of Planning and Economic Affairs (former)
MPW	Ministry of Public Works
NIC	National Investment Corporation
NGO	Nongovernmental Organization
NJDR	Non-Judicial Dispute Resolution
NOCAL	National Oil Company of Liberia
NPA	National Port Authority
NTA	National Transport Authority
PPCC	Public Procurement and Concessions Commission
PRC	People's Redemption Council
RIA	Roberts International Airport
UN-HABITAT	United Nations Human Settlements Programme
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

In 2007, Liberia's Governance Commission had already identified land governance as a seriously problematic area. The commission was impressed with the range and difficulty of issues posed, and so recommended a special commission on land issues be created, with a five-year time frame. A law to establish the Land Commission was enacted in 2009, and it tasked the commission with reform of land policy and law.

Early on, the Land Commission made four important choices. The first was that the commission would not move directly into legal reform but first develop land policies and, even earlier, do a major national consultation to "ground truth" tenure problems that had been raised. Then, based on the requirements of those policies, legal reforms could be proposed. Second, the Land Commission decided to break down the task of land policy reform into a number of more specific, more manageable policy domains. The five policy domains pursued were land rights, land administration, land use, land dispute management, and gender and land. A task force was organized to assess each domain and recommend policy and law reforms. Finally, it was decided that the commission would not think in terms of a single Land Policy or a single Land Law, but of more specialized policies and laws related to the policy domains.

Five years later, the Land Commission has developed and seen approved a Land Rights Policy and a Land Administration Policy. The Land Rights Policy has been the basis for development of a historic Land Rights Law, currently before the legislature, that would for the first time provide legal recognition to the custom-based land rights of many Liberians, as well as update an antiquated body of legislation on the common law of real property. The institutional recommendations of the Land Administration Policy have provided the basis for a proposed law that seeks to consolidate the badly fragmented land governance authority in Liberia into a single new land governance institution, the Liberian Land Authority, in the hope that it could tackle the confusion and mismanagement that have characterized Liberia's land resource management and land administration.

Similar policies and proposed laws were not produced by the other task forces, for a variety of reasons explored in the body of this report. There is, however, a virtually final policy on land disputes prepared by that task force and not finalized because a legal review has still not been carried out. That report includes a recommendation for a law that would provide for and legitimize non-judicial procedures to resolve land disputes and augment processes currently provided by the government's judicial system. The Liberian Land Authority should finalize this report and follow up on its recommendation for a law.

It is important, in planning for future policy and law work, to learn from the experience of the Land Commission to date. Some of the more important lessons are:

1. Policy reform efforts profit greatly from the broadest possible participation by the public and by diverse groups of stakeholders, both governmental and nongovernmental, in the development of policies.
2. Public consultation may at the outset need address not a predetermined issue but instead consult with the people on what they—not officials or consultants—perceived as problems. The person who wears the shoe can tell us if it fits.
3. Because land-related competences are often dispersed among several government agencies, a government agency seeking input on a policy reform proposal will need to draw in a number of other agencies. Participation is often by mid-level or technical staff, and there is a need for further efforts to make sure ministers and other heads of agencies or organizations are fully briefed.

4. Public consultation is critical in policy development in all cases, but the extent and nature of the public consultation required should vary depending on the potential depth and breadth of the impacts of the policy change, including those on disadvantaged groups or groups likely to be impacted differently.
5. There is no standard way to validate a policy in Liberia, but higher-level validation—by president, cabinet, or legislature—increases the authority and durability of a policy and should be pursued wherever possible.
6. Participation in the drafting of reform laws is difficult to maintain because of their more technical nature. A drafting committee supervising a draftsman will be needed. It is difficult to sustain the broad and iterative participation of stakeholders in the drafting of a law that is possible in the case of a policy. However, at least a few key participants in the policy-development exercise should be involved in the drafting of the law, to ensure consistency with the policy.
7. Once a first full draft of the law is ready, it should be widely circulated for comments. Stakeholders need to understand that it is the law and not the policy that will control, and examine the draft carefully to see if it will in fact achieve the goals of the policy. Public consultation on laws is challenging because of their more technical language, but this can be overcome through publication of summaries in laymen's terms. Consultations with organizations representing stakeholder groups and their attorneys, as well as the larger legal profession, are critical.
8. It is feasible and important for the Liberian Land Authority to provide briefings for key legislators at the policy stage, and once the proposed law has been submitted to the legislature, to proactively arrange briefings and workshops to better inform them on the content of the law, its objectives, and the attitude of their constituents.
9. While the Land Commission was designed as a policy and law reform commission, in the absence of any other trustworthy competence in this area, the commission and its senior staff were drawn into land dispute resolution, vetting of applications for public land sales, and management of tensions around poorly conceived grants of agricultural concessions. These involvements beyond the mandate of the Land Commission have been time-consuming and have limited participation by some key senior staff in the policy and law reform work of the commission.
10. Nonetheless, these “distractions” have turned out to have real positive value for the commission, including awareness of the importance of tribal certificates, familiarity with alternative dispute resolution (ADR), field experience for commission staff, and learning-by-doing experience that will be important down the line.

Many of these lessons have been incorporated into recommendations, land policy-making processes, and on land law drafting processes in the report.

With the expiration of the term of the Land Commission, and after a period of bridging by a Transitional Committee, the Liberia Land Authority would, once its foundational law is approved by the Legislature, take up the task of land policy and land law reform. The authority's proposed Department of Land Policy and Planning would take the lead in this area and, drawing upon the experience of the Commission, initiate work in a number of policy and legal domains. It is recommended that a Gender Advisory Group be created to advise the department, with a senior officer of the authority as the liaison for the group. Members of the group would be invited to join Liberian Land Authority task forces.

A number of important reform ideas are on the table, notably several proposals for legislation from the Land Administration Policy, those having to do with the many issues covered in that policy but not addressed in the Liberian Land Authority Act, including land rights registration and land use planning. Based on discussions with the Land Commission and stakeholder groups, it is recommended that a

number of further legal reforms be undertaken. They are classified as first, second, and third order. Listing in the first order suggests that work in this area should begin in the first year of the Liberian Land Authority; it does not imply a law in the first year of the authority.

In scoping out the work involved in each task, it is useful to ask certain questions:

1. How urgent is the legal reform? There are some tasks that have legally required time frames, others that are obviously urgent because of consequences that will quickly ensue, and still others that have to be done before something else urgent can be accomplished.
2. Who are the stakeholders, and how and when should they be involved? “Stakeholders” should not be read as referring primarily to government agencies, though these are stakeholders, but to affected citizens and their communities and interest groups.
3. How would the proposed legal change impact and account for gender-specific roles, experiences, priorities, knowledge, interests, opportunities, and constraints? What gender-responsive processes and analysis must be flagged? The input of the Gender Advisory Group proposed above will be critical in ensuring gender-responsive legal drafting and implementation.
4. Is there a need for public consultation? The answer will almost always be “yes,” and then the question becomes the nature and extent of the public consultation. Depending on the nature of the issue, how significantly large parts of the population are affected, or how intensively some groups or categories of people are affected, the consultation may be broad or narrow, and may rely more or less on direct consultation or consultation through stakeholder representative organizations. Focus group interviews will likely be needed, especially for those disproportionately affected or those particularly vulnerable to potential negative impacts. Women will often be a case in point.
5. Is policy clear or is there a need for a policy decision before moving to law reform? There are a number of potential legal reforms discussed here for which an adequate policy base exists, for instance in the Land Administration Policy. In other cases, there is no such clear basis.
6. Is further research needed before policy can be developed in an area? For example, there is such a need with respect to the Condominium Law to identify cultural norms now governing multiple-household housing.
7. What form does legal reform need to take? Will an administrative instruction do? Or regulations? Or must it be a law? Making a law, as the Land Commission experienced, is a slow and painful process. Good practice is to use the simplest, easiest legal tool possible to achieve the desired result. Usually a law will only be needed if a) someone needs to be compelled to do something, b) there is an existing law that is an obstacle and so must be changed, or c) property rights are affected. As the last suggests, in work on land matters, a law is often needed.
8. Is there a need for comparative/international expertise of a technical, policy, or legal nature to supplement local skills in dealing with the task?
9. Does the Liberian Land Authority need to undertake this law reform, or is there some other agency that could take the lead? There are some issues where the authority has a collaborative mandate; valuation, with the Revenue Authority, is one such case specified in the proposed act. Given the lack of expertise in this area in the new Liberia Land Authority, might it be best to ask the Revenue Authority to take the lead in a collaborative effort? Or might it be useful to rely on the Liberian Law Reform Commission in a particular case?

Below, the consultant suggests some priorities. They all have some rational basis, but opinions on this will obviously differ, and the consultant sees this as a first input into what will likely be an extended discussion of priorities.

In the first order might be included:

1. **County Land Institutions:** Two provisions of the Liberia Land Authority Act require regulations to be issued by the Executive Director within six months of the effective date of the law, dealing with the appointment, operations, and proceedings of the County Land Board (section 43.4) and the County Land Team (section 45.4).
2. **Customary Land:** Action research is needed to inform the drafting of detailed guidelines/regulations for implementation of the customary land provisions of the proposed Land Rights Act. That action research, essentially “dry runs” or pilots at field processes described in the Act, will likely consume most of the first year.
3. **Non-Judicial Dispute Resolution (NJDR):** The Land Commission task force working on land dispute resolution prepared a report on land dispute resolution policy, but it was not finalized, pending review by a legal consultant, and then the clock ran out on the commission. The Liberian Land Authority should take up this report and finalize it. It and the Land Administration Policy urge enactment of a law on ADR. The Land Authority and the Ministry of Justice should consult to determine the appropriate breadth of such a law and the appropriate agency to take the lead in developing the law.
4. **Land Rights Registration:** A comprehensive recasting of the current legal provisions on deeds registration and title registration should be developed and dealt with in a single law on land rights registration, providing for the coordination and gradual integration of the two systems. The urgency of the work on this law lies in part in the need to provide a regime for registration of customary land rights, and in part on the inadequacy of deed records and their parcel descriptions.

In the second order:

5. **Regulations on Public/Government Land:** The Liberia Land Authority Act calls for promulgation of Regulations on Sales, Leasing, and Concessions of Public and Government Land. This is an area where the Land Authority is likely to face immediate demands, and so the sooner work in this area begins, the better. Both the Land Rights Policy and the Land Administration Policy provide considerable and quite specific guidance.
6. **Land and Gender Equity:** Discussions in the Ministry of Gender over recent years, carried out with participation by the Land Commission, have produced a list of amendments to existing laws that are urged by women’s advocacy groups. It is recommended that the Land Authority develop and propose, in collaboration with the Ministry of Gender, a law on matrimonial/marital property.
7. **Land Use Planning:** The Land Administration Policy calls for development and enactment of a Law on Land Use Planning and Zoning, and there is real demand for these from Liberia’s cities and towns. Such a law should also empower municipalities to develop building codes. The Land Authority should work with the Ministry of Internal Affairs (responsible for local government) and selected municipalities to develop legislation that empowers local governments to do participatory land use planning.

Finally, in a third order:

8. **Informal Occupations and Settlements:** Informal settlements on both public and private land are common in Monrovia and the source of serious tension. There are parallel situations on rural

land, where displaced people have occupied unused farms and now find themselves in conflict with returned owners. Studies and the creation of a task force would be appropriate, with representation by a wide range of stakeholders. At this point it is not possible to say whether legal change will be needed.

9. Spatial Data Infrastructure and Land Survey Laws: These two tasks are closely linked and require complementary technical expertise, but it is recommended that the Survey Law be tackled first, drawing upon the substantial technical and other suggestions on the reforms' shape that Ford (2013) and the Land Administration Policy have provided for the Commission.

10. Land Valuation and Real Property Taxation: The Land Administration Policy calls for a new law on land valuation and amendments to the Real Property Taxation Code. There is substantial discussion of the shape of reforms for this area in Ford (2013). Given that valuation will be a mandate shared by the Land Authority with the Revenue Authority, a joint task force should be established, chaired by the Revenue Authority, to develop the needed legal proposals.

The Land Authority will likely revise these, and one can easily imagine events that might change some of them overnight, including the forthcoming elections. New tasks may be introduced, and some tasks listed here dropped. As indicated earlier, the consultant sees his ordering of priorities as a first input to what may be an extended discussion.

Assuming for purposes of illustration that the Land Authority decided to move forward along the lines suggested, what might a Year I agenda for policy and law reform look like?

It might include:

1. If the proposed Land Rights Act has not already been enacted, work for its passage by the Legislature (liaising with legislators, pressing for enactment in the media, providing public information, and collaborating with civil society organizations and others campaigning for enactment) would be the first priority for the Land Authority.
2. The Land Authority should convene a stakeholder workshop to discuss regulations on the County Land Board and the County Land Team, with participation by the Governance Commission, and then assemble a legal drafting team for the regulations; to be finished and promulgated within the six-month period required by the Liberia Land Authority Act.
3. The Land Authority should launch action research working with selected communities throughout Liberia, piloting the process envisaged by the proposed Land Rights Law, but carried out by consenting communities. The Land Authority would accumulate lessons regarding what works and aiming for a draft guideline on self-identification and demarcation by the end of Year I.
4. The Land Authority should establish a task force jointly with the Ministry of Justice and task it with urgent finalization of the draft Land Dispute Resolution Policy, and a law providing a legal basis for non-judicial land dispute resolution.
5. The Land Authority should convene, jointly with the Ministry of Gender but based in the authority, a task force tasked with developing a Land and Gender Policy and, based on that policy, a law on matrimonial/marital property.
6. The Land Authority should establish a task force with broad official and unofficial membership to explore the feasibility of a single Land Rights Registration Act, covering both deed registration and title registration and providing for registration of customary rights.

Reform of land policy and law, while only one among many responsibilities of the anticipated Liberian Land Authority, will be an important element in its work. Much remains to be done. It will be important to make sure those tasks receive sufficient attention in the press.

INTRODUCTION

Liberia's Governance Commission, led by former President Dr. Amos Sawyer, had by 2007 identified land governance as a seriously problematic sector. Impressed with the range and difficulty of issues posed, the commission decided that it should recommend a special commission on land issues, with a five-year time frame. It had a small group working on land governance, and it incubated the embryonic staff of the proposed Land Commission. The Governance Commission launched a national public consultation in 2008 to establish the nature of local concerns with the land tenure system (Governance Commission, 2008), and in that same year sponsored the drafting of an act to establish the Land Commission, enacted in early 2009. The Governance Commission had decided that the Land Commission needed to have a policy and law development focus, and avoid involvement in implementation activities. Section 3.1.3 of the law establishing the commission mandates it to "recommend remedies for inadequacies, including but not limited to, actions, programs and reforms of land policy, law and institutions."

This was a decision of historic importance, publically endorsed by President Sirleaf-Johnson. Land tenure is one of the great fault lines in Liberian society, and the thoughtful and balanced resolution of the issues simmering along that fault line is crucial to Liberia's social stability and development in years to come. Failure of this initiative could have profound consequences.

That said, it was not immediately clear how to undertake a task of this magnitude. Early on, the commission made at least five important choices as to how it would approach the issues, and it is worth noting them here at the outset, as they might otherwise get lost in the detail that follows.

The first was that the Land Commission would not move directly into legal reform but first develop land policies. This is in accord with international best practice; focusing on law reform too early often results in narrow thinking on the issue concerned and means less broad participation in decision-making.

Second, the commission began by organizing a major public consultation, a listening exercise to see what concerned people about their access to and rights in land—rather than relying entirely on its own analysis or that of experts and consultants. With that established, the nature and extent of the need for policy and legal reforms became clearer.

Third, the Land Commission decided to work on policy issues through a task force model. The first such task force focused broadly on land policy, and was chaired by Commissioner Estelle Liberty. It brought together a score of stakeholders: government agencies, research entities, and nongovernmental organizations (NGOs). The task force sought out local expertise on land tenure, accessed foreign consultants, and began to define issues. It also initiated a number of studies to address gaps in knowledge. That task force approach and the broad participation involved was replicated as other task forces were created for each policy domain, and served the commission well.

The fourth important choice facing Land Commission was to break the making of a land policy down into manageable policy domains. The commission, as it got deeper into the policy issues, realized that the number of issues that it had to study was considerable, and decided to define a number of policy domains and pursue them in parallel through several task forces, each headed by a commissioner. The domains decided upon were 1) land rights, 2) land administration, 3) land use, 4) land dispute management, and 5) land and gender.

A fifth critical decision concerned the model of land legislation to be followed. Early on, there had been discussion of development of a single Land Code. But later it was decided to go instead with several pieces of legislation. Each of these would likely be long and detailed enough. To submit a massive Land

Code to the legislature seemed, based on experience elsewhere, to be asking the legislators to absorb too much at one time. It was feared that if that approach was taken, the land law reform process might stall out. Instead, each task force would, after developing its policy, make a recommendation concerning an implementing law.

These issues were explored in a consultancy funded by the World Bank and carried out in 2010 (Bruce and Kanneh, 2011).² The report proposed both specific reforms and a strategic approach for legal reform during the five-year lifetime of the Land Commission. Six years later (after a one-year extension of the commission's mandate), with two key laws prepared by the commission before the legislature, that report and its recommendations have been overtaken by events. The Land Commission's recently approved Land Administration Policy (2015) recommends in section 8.1.1.4 a new assessment for the Liberia Land Authority of needs for reform of the law relating to land, and in section 8.3.3 draws attention to a number of needed legal reforms. This report has benefited from that report and the other numerous outputs of the commission over the past several years and in particular from its meticulous recording of process.

This report is thus an update of the 2011 report. Based on the records of the commission and inputs from it and others, this report begins by reviewing the two most substantial reform efforts of the Land Commission to date: the Land Rights Policy and the proposed Land Rights Act, and the Land Administration Policy and the proposed Liberia Land Authority Act. That review is not a substantive assessment of those documents, but rather an examination of the reform process to date. The purpose of the fairly detailed review of process is to ensure that lessons learned are articulated and can inform the Land Authority's law reform strategy going forward. The report then identifies a number of areas of land law where reforms are still needed, makes some points about those reforms, and suggests a strategy for moving forward with them. It proposes some priorities, in full awareness that these will change, as a first contribution to what will be a long discussion of priorities. The responsibility for setting the law reform agenda will ultimately fall on the Liberia Land Authority.

² The report incorporates a certain amount of material from the 2011 report where this is still relevant, updated as required, and shifted from the main text to Annexes C, D, and E.

I.0 THE LAND COMMISSION AND ITS REFORM AGENDA

I.1 THE COMMISSION'S GENESIS

Land tenure had been a major concern for many Liberian policy-makers and others since the idea of a Land Commission was raised in the Governance Commission in early 2007. The Governance Commission acted as an incubator for the new commission. During discussions there in 2007, it was decided that the new commission should be a policy and law reform commission, steering clear of implementation roles. This would ensure focus, and would minimize potential resentment on the part of government agencies with land-related mandates. At the outset, those concerned with tenure issues were able to draw on a number of land tenure studies done under donor and other funding in 2007–2008 (McCarthy, 2007; Wily, 2007; Unruh, n.d.; Bruce, et. al, 2008; and McAuslan, 2009).

In 2008, the Governance Commission sought to validate its preliminary ideas on land tenure and law reform and conducted three regional consultations on land and property rights (Governance Commission, 2008).³ A draft law establishing a Land Commission was prepared by a working group in the Governance Commission, assisted by this consultant under World Bank funding, and a draft Land Commission Act was sent to the president and enacted in August 2009. The commissioners were appointed by the president and confirmed by the Senate over the next few months.

The international and bilateral donors responded promptly and favorably to funding requests from the Governance Commission and from the president on behalf of the new Land Commission, and organized a donors' Land Coordinating Committee, which played quite a positive role as a sounding board for activities for which funding was sought, and as a means to avoid duplication of funding for some needs and neglect of others.⁴

Deliberations by the Land Commission began with a November 2009 week-long orientation workshop for the new commissioners, held at Garbanga in Bong County. Local experts explained existing legal and institutional arrangements regarding land and identified certain land rights issues as demanding attention, while international experts addressed reform experiences elsewhere in Africa and emerging international best practices.

In 2010, the Land Commission sought to fill remaining gaps in its information. It commissioned a study of the case law on land in the holdings of Liberia's Supreme Court, carried out by the Law Reform Commission and completed in 2011 (Law Reform Commission, 2011). The Land Commission also commissioned three studies under a World Bank project. These were completed and submitted to the Land Commission in 2011: a strategy for land law reform (Bruce and Kanneh, 2011), a study of land dispute management (Rose 2011), and a study of potentials of land title registration (Marquardt and Pay-Bayee, 2011). Customary land tenure was a particularly unstudied area, and in 2011 USAID contractor Tetra Tech carried out 11 case studies of customary land tenure around the country, published in early 2012 (Knox et al., 2012); a legal study of women's land rights was also carried that year (Jappah et al., 2012).

³ The consultations were held in 1) Western Region: Kakata, Margibi, January 30–31, 2008, for Grand Cape Mount, Gbarpolu, Bomi, Montserrado and Margibi counties; 2) Central Region: Cuttington University, February 4–5, 2008, for Grand Bassa, Rivercess, Bong, Nimba, and Lofa counties; and 3) Eastern Region: Zwedru, Grand Gedeh, February 8–9, 2008, for Grand Gedeh, Sinoe, River Gee, Maryland, and Grand Kru counties.

⁴ Important donors have included United Nations Mission in Liberia, UN-Habitat, the World Bank, the Swedish International Development Authority, and USAID; numerous smaller donors have been involved as well.

1.2 URGENT NEEDS INTERVENE

Requests for urgent assistance with pressing issues from the Office of the President resulted in two legislative tasks receiving urgent attention. One concerned the controversial program of public land sales, managed out of the Office of the President, which had long been associated with land-grabbing and corruption. In 2009, the Office of the President, confronted with requests to confirm deeds of sale processed earlier under the program, asked the Land Commission to investigate the claims. After an inquiry including fieldwork that sought to validate applications for land sales and the facts stated in them, the Commission proposed a moratorium on such sales. This was implemented by the Office of the President in February 2010. In March 2011, the commission proposed interim guidelines for sale of public lands. On March 30, 2011, the guidelines were adopted by the president and cabinet. However, because there was no inventory of public land in Liberia, the Land Commission recommended and the president approved the extension of the moratorium on public land sales for an additional 24 months, until March 2013, and the moratorium was extended yet again, through January 9, 2016.⁵ Public lands would continue to be an important focus of land tenure reform over the life of the Land Commission.

The second urgent need addressed by the Land Commission was that of widespread fraud and forgeries of land deeds and other documents affecting land rights. In the wake of destruction of many land right records during the war, these problems of fraud rapidly intensified, and there were public demands for strong punitive measures against such fraud. Exchanges between the commission and the President's Office produced an Act against Criminal Conveyance of Land, enacted by the legislature on September 29, 2014.⁶

Both these initiatives were managed outside the “cluster” or “task force” structure through which the Land Commission tackled the larger issues of land tenure reform, and were produced by the commission in close collaboration with the Office of the President.

1.3 ORGANIZING FOR REFORM

During 2009, the Land Commission had begun to develop a more systematic and participatory process to address the larger questions on reform. By mid-2010, the commission had established its first working group, the Land Policy Committee. That committee's practice made important contributions to the Land Commission's approach to policy-making. In 2010, the authors of the 2011 land law reform strategy (Bruce and Kanneh, 2011) drew upon the experience of that committee in recommending how to approach land policy making. That strategy, accepted by the commission, recommended that the Land Commission pursue key land issues in parallel, rather than sequentially, and suggested three policy clusters: real property rights, land use, and land administration. The commission accepted this recommendation but added a fourth cluster, on land dispute management. Later, in 2013, a joint Task Force on Gender and Land was established by the Land Commission and the Ministry of Gender, with the active participation by Land Commissioner Estelle Liberty.

⁵ The most recent executive order is EO No. 67, January 9, 2015. It has not been extended beyond January 9, 2016, but this appears to have been an oversight during the expiration of the mandate of the Land Commission. Once the anticipated Interim Committee is formed for the transition to the Liberian Land Authority, this omission seems likely to be remedied.

⁶ The text of this act is included in this report as Annex G.

2.0 REFORMING LAND RIGHTS POLICY AND LAW

In this section, the Land Commission's experience with processes of land right policy reform and development of a law on land rights is considered. The policy and law are hugely consequential for Liberia, and the enactment of the law would be a watershed event for national integration and stability.

2.1 REFORMING LAND RIGHTS POLICY

The Real Property Rights Cluster, whose work led to the Land Rights Policy and the proposed Land Rights Act, was established in September 2011. Chaired by Commissioner Estelle Liberty, who had chaired the earlier Land Policy Committee, the membership of the new cluster included primarily government agencies but also non-governmental organizations, private enterprises, and professional associations.⁷

That cluster later formed two working groups to think through approaches to two particularly difficult areas: public land policy and reforms to customary land tenure. Those two issues interacted, since most land under customary tenure was land historically claimed by government as public land. Private ownership existed in the area of colonization along Liberia's coast, and had been extended into the interior when land under customary tenure, considered public land by government, was sold under the public land sales system. This was an issue with dangerous potential for conflict. Private rights in land were seen as less problematic. Private ownership and associated land tenures needed modernization, and private ownership was a model with which most Liberians were familiar and favored, even in rural areas where local inhabitants sought it through the use of tribal certificates. The real challenges—the glaring inequities in land rights—were at the public/customary divide, and addressing the historic discrimination against customary land rights was the principal challenge facing the Commission.

By early 2012, the Real Property Cluster⁸ had received and processed considerable input from its committees on public land and customary land. It held a Consultative Discussion on Tribal Certificates on February 3, 2012, in which participants included selected chiefs, land sector agencies, NGOs, and international partners. This was a knotty issue that had come to light only during fieldwork to validate public land sales. Realization that the tribal certificate phenomenon was far more important than had been recognized⁹ led the Land Commission to launch an inventory of tribal certificates in selected areas of the country. Several tentative position papers of various topics were produced by the Real Property Cluster and its subsidiary groups and reviewed by a Land Stakeholders' Consultative Committee, which worked as a part of the cluster. In March 2012, the Real Property Cluster formed a

⁷ Ministry of Justice; National Investment Commission; Ministry of Internal Affairs; Forestry Development Authority; Transitional Justice Working Group (civil society representative); Land Commission (legal and policy program areas); Ministry of Agriculture; Ministry of Public Works; Ministry of Planning and Economic Affairs; Ministry of Lands, Mines, and Energy; Ministry of Finance (Real Estate Division); Ministry of State for Presidential Affairs; Liberia Institute of Statistics and Geo-Information Services; Center for National Documents and Records Agency; Law Reform Commission; Environmental Protection Agency; Liberia National Bar Association; Probate Court (Court Administrator); and Louis Arthur Grimes School of Law.

⁸ The cluster is sometimes also referred to as the Land Rights Cluster.

⁹ The tribal certificate had been seen as an intermediate step in the public land sale process, in which a local chief consented to a sale of public land to an applicant, and it was only later realized that the certificate had come to be treated as a title by very large numbers of rural landholders in spite of the public land sale never being processed.

Drafting Team to actually write a Land Rights Policy, and a Review Committee was appointed to review and comment on their drafts.¹⁰

The process moved well, and by September 2012 a full draft of the policy had been produced. It was received well by the full Land Commission, and released for public consultation.

Beginning in December 2012 and continuing through March 2013, Commissioners and Land Commission staff held public stakeholder consultations on the Policy draft in Tubmanburg, Bomi County; Monrovia, Montserrado County; Buchanan, Grand Bassa County; Harper, Maryland County; Zwedru, Grand Gedeh County; and Gbarnga, Bong County. Those consultations were facilitated by preparation and translation into local languages of a short consultation document: “Policy Brief on Land Rights: Public Land, Government Land, Customary Land, and Private Land.” The final draft of the policy was revised on the basis of the concerns reflected in the reports of those consultations, and on May 21, 2013, the Government of Liberia endorsed the Land Rights Policy during a National Validation Conference held at the Centennial Memorial Pavilion in Monrovia and attended by the President.

Box 1. The Land Rights Policy

“The Land Rights Policy deals with Public Land, Government Land, Customary Land, and Private Land, and a cross-cutting sub-category called Protected Areas. With respect to the new category of Customary Land, it is recommended that government abandon the previous legal position that all land not privately owned is owned by the state, and replace it with a broad recognition of customary land rights. Subsequently, state-owned land is land not privately or customarily owned. Customary land rights are to receive the same protection by law as private land rights, bringing an end to the discrimination against those customary land rights. Communities with customary land rights would be asked to come forward, establish a legal entity, rework their land governance arrangements to make them fully representative and accountable, and then be issued a deed. The Government undertakes to support communities in implementing these recommendations. For Public Land and Government Land, the Policy sets forth critical policy recommendations regarding how the Government transfers such land, and how the Government acquires land, especially through the exercise of eminent domain (i.e. forced acquisition). It proposes a fundamental distinction between Government Land (land not owned privately or customarily, so owned by the state, and possessed by and utilized by Government) and Public Land (land not owned privately or customarily, and so owned by the state, but not possessed or utilized by Government). The policy calls for gender equality in both the legislation of land reforms and their implementation. Finally, the policy calls for a legal restatement of basic land rights and recommends changes in the law on private land, in particular a shortening of the periods required for adverse possession.”

Source: excerpted/summarized from Executive Summary, Land Rights Policy

2.2 REFORMING LAND RIGHTS LAW

As the Land Rights Policy attained clear shape, the Real Property Cluster established a Real Property Legal Drafting Team.¹¹ The role of the Legal Drafting Team was to guide and supervise a legal drafter, who was to actually draft the law; the Legal Drafting Team was to keep the drafting process on track and in line with the Land Rights Policy. The Land Commission in July 2013 sought applications for the

¹⁰ The drafting team included: Land Commission (Chair); Ministry of Justice; Law Reform Commission; Liberia National Bar Association; Ministry of State for Presidential Affairs; House Committee on Judiciary; House Committee on Lands, Mines, and Energy; Senate Committee on Judiciary; Senate Committee on Lands, Mines, and Energy; and Transitional Justice Working Group.

¹¹ The Land Rights Law Drafting Group was to be composed of the Land Commission for Law Reform (chair) and included representatives of the Land Commission; the Ministry of Justice; the Liberia National Bar Association; the Ministry of State for Presidential Affairs; the House Committee on Judiciary; the House Committee on Lands, Mines, and Energy; the Senate Committee on the Judiciary; the Senate Committee on Lands, Mines, and Energy; and the Transitional Justice Working Group.

role of lead drafter, and for two legal research assistants. Cllr. Negbalee Warner (Heritage Partners and Associates) was selected as lead drafter, and George Dahn and S. Kpanbayeazee Duworko II were recruited as legal researchers.

In practice, it proved impractical to mobilize a Land Rights Act Drafting Group of the breadth initially envisaged by the Land Rights Cluster. Members provided occasional inputs, but the Land Commission found the process too slow. Work on drafting a Land Rights Act was then carried out by a Legal Drafting Team within the Land Commission.¹² The commission also formed a largely internal Review Committee, to whom the Legal Drafting Team would forward drafts for comments.¹³

An inaugural meeting of the Legal Drafting Team took place on August 12, 2013, and drafting then began, working from a draft outline of an act prepared by a consultant and the relatively detailed prescriptions of the Land Rights Policy. A first draft was produced during September–November 2013. At the end of November, the drafter met over three days with representatives of the Land Commission and partners in Heritage Partners and Associates Law Firm to discuss and refine a draft, after which the draft was formally presented to the Legal Review Team, including all the commissioners, on December 1, 2013.

The Legal Drafting Team made further modifications to the draft based on Land Commission input, and during the first three months of 2014, the draft act was distributed widely to stakeholder groups and to legal experts, national and international, with knowledge of Liberia's reform program. Comments received were compiled in a matrix and distributed again to stakeholders and others to encourage wider participation in this consultation process. New comments were reviewed carefully and if obviously compelling, resulted in adjustments to the draft law; others went into the matrix for further discussion.

Following this period of solicitation, receipt and insertion of the comments into the draft act, there was a careful review process by the Legal Review Team, composed of the Constitutional Review Commission, the Law Reform Commission, and the Governance Commission, among others. On June 12, 2014, representatives of the Land Commission and Heritage Partners and Associates met at the Land Commission's conference room to plan further refinement of and public consultation on the draft act. Over the next week, comments received on the draft act were considered, some rejected and others accommodated.

By June 19, a further draft was ready for public consultation, and invitation letters were sent out to a wide variety of stakeholders. The stakeholder consultation was held on June 23–24, 2014, in Paynesville City. This was a two-day consultative validation conference that gathered government institutions, the Liberia National Bar Association, the Association of Female Lawyers of Liberia, and civil society organizations (CSOs). They unanimously approved the Land Rights Act, but submitted comments that led to final revisions. The proposed act was submitted to President Johnson Sirleaf on July 10, 2014, and after further discussions the President submitted the proposed law to the Legislature in December 2014.

On March 27, 2015, there was a one-day legislative retreat at the Fair Ground in Buchanan City, Grand Bassa County, which brought together legislators from both houses who are members of three major committees: the Committee on Internal Affairs, the Judiciary Committee, and the Committee on Land, Energy, Environment, and Natural Resources. Counselor Warner and colleagues from Heritage

¹² The Land Commission Legal Drafting Team included the legal drafter, the two legal researchers (whose task was to conduct research to inform discussions of the draft law), Kula L. Jackson (Land Commission Program Officer/Law Reform), and Mr. Caleb Stevens, Esq. (Carter Center Law Fellow, LC).

¹³ The Review Committee was composed of all the Land Commissioners, two members of the Liberia National Bar Association, two members from the Law Reform Commission, and four members drawn from the Land Commission's relevant policy task forces.

Partners and Associates Law Firm provided detailed briefings on the draft act. This resulted in a pledge by the legislators to pass of the draft act. Consensus for the draft act was built at the retreat. Changes proposed were inserted in the draft, and the new draft was again distributed.

Using this version, the Joint Committee on Land, Energy, Environment, and Natural Resources conducted an initial public hearing on the Act on August 10, 2015, with panelists from the Land Commission; the Ministry of Land, Mines, and Energy; the Traditional Council; the Private Surveying Sector; women's groups; the CSO Council of Liberia; the Governance Commission; and the Forestry Development Authority. On September 9, 2015, a second hearing of the Joint Committee was held, and requests for changes in the Act were submitted to the Land Commission.

There are ongoing discussions between the Land Commission and the Ministry of Justice concerning comments the ministry provided on the version of the act that went to the legislature, and these will be accommodated before the bill is taken up again by the Joint Committee. The Ministry of Justice will provide the agreed-upon draft to the Joint Committee, and a final Joint Committee hearing is anticipated before the legislators vote on the draft act. This will take place when the Legislature reconvenes in the second week of January 2016. The Land Commission has been assured that the draft Act will be considered in this session. It will, however, likely take second place to the Land Commission's proposed Liberia Land Authority Act, reversing the order of consideration originally anticipated. This is because the Land Authority Act has become urgent, given that the mandate of the Land Commission ends on January 9, 2016.

3.0 LAND ADMINISTRATION AND INSTITUTIONAL REFORM

This section of the report turns to the other area in which the Land Commission's efforts resulted in an approved policy on land administration and, implementing one set of recommendations in that policy, a proposed law to reform the institutions of land administration and governance.

3.1 REFORMING LAND ADMINISTRATION POLICY

In February 2012, the Land Commission established a Land Administration Task Force, comprising related ministries and agencies of the Government, including the Ministries of Lands, Mines, and Energy; Public Works; Planning and Economic Affairs; Finance; and Internal Affairs; the Center for National Document and Record Agency; and the Environmental Protection Agency. Its mandate was to review the policy, legal and regulatory, as well as the institutional framework for land administration in Liberia and to recommend options for reforming and improving land administration systems in Liberia. That mandate included the provision of public services to the land sector, including services provided directly by national government, such as land survey in some cases, land registration, management of public land, and government's regulation of services provided by the private sector, as in the case of private land surveyors, valuers, and real estate agents. Land registration is an important part of that picture, with direct implications for incentives and productivity.¹⁴ The Land Administration cluster was tasked with development of a Land Administration Policy and, eventually, a Land Administration Law that would, inter alia, create a new land governance institution for Liberia.¹⁵

In March 2013, Ivan Ford, an international consultant hired through the Land Policy and Institutional Support Project (LPIS) of Tetra Tech ARD, funded by USAID, arrived to work with the task force. Based on his advice, four working groups were formed: the Land Administration Processes and Functions Working Group; the Registration and Land Records Working Group; the Survey and Mapping Working Group; and the Valuation and Taxation Working Group. In line with their terms of reference, the working groups drew up questionnaires that were sent to government institutions and other stakeholders and then followed these up with site visits.¹⁶ The consultant estimated that 75–80% of the information needed was gathered in this way, and the remainder through phone calls (Ford, 2013). On March 19, 2013, the Land Commission held a workshop at which government institutions with land-related mandates were requested to present on their mandates and roles.¹⁷ On August 20,

¹⁴ It will be important to avoid confusion in discussions of land rights registration due to inconsistent terminology. The term used for registration under the 1974 law should be "title registration" and not the term used in that law, "land registration." That would allow "title registration" to be contrasted with "deeds registration" and the term "land registration" or "land rights registration" to be used for all forms of public recording of rights in land.

¹⁵ The need to create a new land institution was part of the government's thinking from the outset. In January 2013, President Johnson Sirleaf in her 2012 Annual Message to the Legislature, said she would submit a "a bill to separate the land function from the Ministry of Lands, Mines, and Energy to establish an agency with a focus on land matters."

¹⁶ Those consulted were the Ministry of Finance (Real Estate Division); the Ministry of Foreign Affairs (Archives Division); the Ministry of Lands, Mines, and Energy (MLME); the Center for National Documents, Records Agency (CNDRA); the Ministry of Justice; the National Transit Authority; the Ministry of Agriculture; the Forestry Development Authority (FDA); the Ministry of Internal Affairs (MIA); the Monrovia City Corporation; the Ministry of Public Works (MPW); the Liberia National Bar Association; the Probate Court; and the Surveyors Association of Liberia.

¹⁷ Those attending were CNDRA, Ministry of Foreign Affairs, MPW, Ministry of Finance (MOF), MLME, MIA, and the Probate Court.

2013, the Land Commission again wrote to a number of government agencies with questionnaires to gather data on their land administration and land use and management roles.¹⁸

In mid-2013, the cluster's working groups merged again as it became clear that their efforts were largely being funneled into two outputs. One was the production of a Land Administration Policy, and a new law dealing with the institutional framework for land governance. The law, rather than being the broader law on land administration originally envisaged, had at the initiative of the President become more tightly focused on the creation of a new land governance institution. Regarding the institutional reform, consultant Ivan Ford had experience with the creation of a new Land Administration Agency in Lesotho and discussed that experience with the cluster. His 2013 report has substantial discussion of the organizational issues (Ford, 2013). Land Policy Consultant John Bruce had written in this area (Bruce and Swallow, 2013) and on June 21, 2013, presented to the cluster on "Organizing for Better Land Governance."

Between August 2013 and April 2014, the evidence gathered by the task forces informed the formulation of a zero draft of the Land Administration Policy by Land Commission staff. Among its many recommendations, it called for the establishment of a new institution for land governance, the Liberia Land Authority, as a one-stop shop for land matters. In July 2014, the World Bank provided funding for Dr. Mark Marquardt, an international land consultant, to work with the task force to finalize the Land Administration Policy. The task force held a workshop on November 24–26, 2014, to further develop the draft Policy.¹⁹ In April 2015, the World Bank consultant met again with the Land Administration Task Force, and the result was the final version of the Land Administration Policy prepared in April 2015. It covered all the areas originally contemplated but also drew in significant matters that had been discussed in the Land Use Cluster, such as land use planning and zoning.

That version of the policy was presented to the Land Commission, which approved it and endorsed it as commission policy. There were plans to present the policy to the president and her cabinet, and a presentation was prepared and scheduled but then postponed by the Office of the President, on the grounds that focus for now needed to be on the draft Liberia Land Authority Act and its passage. The new Liberia Land Authority, once established, may present the Land Administration Policy to the cabinet.

Box 2. The Land Administration Policy

"This Land Administration Policy presents a framework for land administration in Liberia. It focuses on the main features of good land administration, those pertaining to the identification, ownership, use, and valuation of land. Land administration deals with information, thus this policy framework details how land information is to be collected, managed, used, and made accessible to government, the private sector, and individual citizens. This process entails the identification of land (survey and mapping), determination of rights to the land (adjudication), recording of those rights (deed or title registration), valuation of land, management of government and public land, coordination of land use planning, the establishment of the institutional framework at central and local government levels to carry out this mandate, and the broader issues of governance, policy development, and legislative and regulatory reform necessary to attain government's objectives."

Source: Executive Summary, Land Administration Policy.

¹⁸ The institutions were: FDA, MOA, MCC, MPW, LEC, LTA, LWSC, Environmental Protection Agency (EPA), MIA, MPEA, LISGIS, NOCAL, NIC, CNDRA, Governance Commission, MLME, MOD, NPA, LMA (Maritime), MOT, RIA, BOC, and NTA.

¹⁹ Those institutions participating were MLME, CNDRA, MOFDP, FDA, MPW, EPA, NTA, PPCC, Cadastral Surveyors Association, MOGD, Probate Court, LNBA, , the Initiative for Positive Change, and the Montserrado County Land Commissioner.

3.2 REFORMING THE LAW ON ORGANIZATION OF LAND GOVERNANCE

The Land Administration Task Force, while it had many other topics to consider, gave a great deal of attention to the new land agency called for by the President. While “land administration” is the rubric used by the task force out of which the new agency emerged, this law actually deals with the organization of land governance, and with institutional innovation. It aims to create a land governance institution with policy-making and land management authority as well as to provide land administration services to private landholders. It seeks to bring together, to the extent feasible, the previously fragmented decision-making on land by many government agencies (see Annex E) into one institution that can coordinate, if not take over, the land roles of sectoral agencies.

In February 2013, there was extended discussion of these issues and briefings for the commissioners on options.²⁰ In June 2013, the Land Commission, acting on the instruction of the president, prepared an initial draft of a Liberia Land Authority Act with the assistance of Dr. John Bruce, an international land lawyer. In the following months, the draft act was discussed within the Land Administration Task Force and integrated into its thinking on the Land Administration Policy. Revisions were made by the commission’s lawyers based on the above discussions.

On December 17, 2014, the Land Commission held a broad stakeholder meeting on the draft act at the Monrovia City Hall. On January 17, 2015, the technical secretariat of the task force met to review received comments requiring changes in the draft act. During February 2015, Land Commission staff met on several occasions with key stakeholders, including the Governance Commission, CSOs, and the Ministry of Internal Affairs for the related purpose of creating a chapter in the Draft Local Government Act on local land governance. On June 30, 2015, the Land Commission and the Governance Commission jointly convened a roundtable meeting in Monrovia to: 1) discuss key provisions of the draft Land Authority Act; 2) advance recommendations that would improve the document; and 3) discuss ways to strengthen ownership of the act by key institutional stakeholders and to galvanize support for its speedy passage by the legislature.

In February 2015, a draft of the act was submitted to the Office of the President informally for comments. On June 23, 2015, the Land Commission and the Governance Commission co-hosted a roundtable meeting on the draft Liberia Land Authority Act at Musu’s Spot in Monrovia. Participating institutions included the Law Reform Commission; the Ministry of Land, Mines, and Energy; the Ministry of Internal Affairs; the Ministry of Public Works; the Center for National Documents and Records Agency (CNDRA); the Liberia Revenue Authority, and other land institutions. The objectives of the meeting were to review key provisions of the draft act, discuss ways to strengthen ownership of the draft act by key institutional stakeholders, and advance suggestions for improvements prior to a planned cabinet presentation on the draft act.

A Land Commission presentation was developed for a cabinet briefing, aimed to solicit additional input from the president and cabinet, but the briefing never took place due to time constraints on the cabinet.

In September 2015, the Land Commission officially submitted the draft Liberia Land Authority Act to the President for onward submission to the legislature, and public hearings of the draft act were scheduled by the legislature for September 29, 2015, but were postponed due to disagreements among executive agencies invited to the hearings. On October 9, 2015, a committee comprising institutional stakeholders from the land sector met under the auspices of the Ministry of Justice for further consultation on the bill, and on October 14, 2015, a modified version of bill was submitted to the Joint

²⁰ See John W. Bruce, 2013. “Options for Liberia: Organizing for Better Land Governance, a Report to the Land Commission.”

Legislative Committee by the Land Commission. This version addressed concerns raised by some institutional stakeholders during the suspended public hearings.

By arrangement with the Joint Committee and the Ministry of Justice, discussions of some details of the Land Act continue between the Land Commission and the ministry with respect to outstanding issues. The two institutions will provide an agreed-upon draft directly to the committee, which is expected to call a further public hearing once the legislature resumes at the end of the first week of January.

4.0 PROFITING FROM THE LAND COMMISSION REFORM EXPERIENCE

The Land Commission's experience is of great moment for Liberia. It is also of considerable interest internationally, because other countries are looking to similar commissions as a possible organizational vehicle for tackling fundamental reforms in this sector. This section first seeks to draw some lessons from that experience. It then recasts recommendations, first for the policy reform process and then the law reform process in the light of those experiences.

4.1 LESSONS FROM THE LAND COMMISSION EXPERIENCE

The purpose of the review of the Land Commission's experience with policy-making and development of new laws in the first and second parts of this report is to inform the future activities on these fronts by the Liberia Land Authority. The 2011 strategy paper prescribed "best practices" in regard to these processes, but of course "best practices" are not feasible everywhere and at all times. They are not even good practices in some circumstances. What played out differently than expected over the last four years? Was what was done reasonable in the circumstances, or with hindsight, are there some things that should have been done differently? And what lessons can the Liberia Land Authority draw from these experiences? In fact, many positive lessons can be gleaned from the experience of the commission. Where it diverged from what was anticipated, there were usually compelling reasons and sometimes positive results.

Some suggested lessons:

- 1. Middle- and senior-level participation in policy development:** Participation in the policy clusters and task forces by organizations with land mandates and concerned CSOs was generally excellent, and provided rich stakeholder input. The clusters managed their work effectively, allocating tasks to task forces, allowing work to move simultaneously on several fronts. The strong stakeholder input is reflected in the high quality of the policy documents produced. That input was most often provided by technical and mid-level staff in the case of government institutions. Later, on several occasions it developed that the direction of the policies had not been communicated by them to their superiors, leading to unnecessary misunderstandings on the part of agency heads and ministers. The commission attempted cabinet briefings as a way of dealing with this problem, but this worked well only with the Land Rights Policy. In the case of the proposed Land Administration Policy and the proposed Liberia Land Authority Act, cabinet presentations were scheduled and prepared, but then cancelled due to limits of cabinet time.

For future work, the Land Authority will need ways to keep those in the cabinet and other very senior ministry staff in the picture more effectively, earlier in the process. Acting Executive Director of the Land Commission Secretariat Stanley Toe noted that inviting heads of agencies and ministries to the commission for briefings was not successful; deputies attended in most cases and were not consistent in reporting back to their respective agencies and ministries. Instead, he suggested, the Land Commission had had some success in at least one case with a briefing at the office of the agency head/minister. It was well attended and the discussions were good, and later cabinet discussions were facilitated because the heads knew the content of policy and legal submissions.

- 2. Authority and lifespan of policies:** While the policy development process went well, and the documents approved by the commission are very strong, the Land Administration Policy was not processed beyond its approval by the commission, while the Land Rights Policy was validated at a

national consultation attended by the president (though the cover simply describes it as a policy of the Land Commission). This kind of policy was relatively new to Liberia, where there is no standard way of validating a policy. But it is an important issue because how this is done affects the authority and durability of the policy. It suggests the answers to questions, such as whether the policy is the policy of the nation (endorsement by the legislature would be needed), the policy of government (endorsement by the president and cabinet would be appropriate), or simply the policy of the Land Commission. How this is done affects the “shelf life” of land policies. Laws survive changes of government unless subsequently repealed or amended by the Legislature, but this is not the case with policies—their applicability can be questioned after a change of government, though they tend to continue to have some influence as long as they are not specifically rejected or replaced by the new government. The question becomes important when the mandate of the commission expires on January 9 and it ceases to exist. Once the new Land Authority exists, it should consider formally reaffirming these policies and consider whether it would be helpful to obtain their endorsement from at least the cabinet level.²¹

3. **Public consultation on policies:** The initial public consultation by the commission was, commendably, largely a listening exercise; it sought citizens’ input on what they (as opposed to officials or consultants or researchers) saw as problems in the land tenure system. The discussions were wide-ranging and informative, and were meticulously recorded by the commission.

The public consultation for the Land Rights Policy was similarly strong. It is hard to say what is “enough” public consultation, but how much is possible is usually determined by the budget available. The consultation process for the Land Rights Policy was well funded, and enabled the commission to reach deeply into society; its results were again highly informative and meticulously recorded by the Commission. These initial two consultation exercises set a high standard.

By comparison, the public consultation for the Land Administration Policy was not as extensive, and tended to focus on stakeholder government institutions, which would be quite directly affected. The feedback sought related largely to technical or effective management approaches. The consultant was comfortable with the extent of public consultation, which was again carefully recorded. Certainly when one looks at diverse stakeholder participation in the work within the cluster and its working groups and then the public consultation on the draft document, the needed public input seems to have been heard, though largely through intermediary organizations. The lesson here is that the extent and nature of the public consultation required must vary depending on the policy domain being addressed, including where it fits on the spectrum between general and technical.

It is unfortunate, however, that in neither case were the draft policies published in local newspapers with invitations to comment; perhaps this was because of their considerable length, but publication of a summary should have been possible.

4. **Participation in drafting laws:** The Land Commission found that, having been quite demanding regarding iterative stakeholder participation in the development of the policies, there was less enthusiasm among stakeholders for a similar level of participation in deliberations over the proposed laws. The important points, they felt, had been decided. Early attempts at iterative participation by outside stakeholders were abandoned, at least until there was a full draft for them to consider. The legal staff of the commission took the initiative under the direction of a contracted law firm, Heritage Partners and Associates, with broader consultation postponed until later. The lesson is that there is a link between consultation on a policy and consultation on a draft

²¹ The National Policy on Decentralization and Local Governance contains a forward under the signature of President Johnson Sirleaf as an expression of the government’s endorsement of the policy, and the recently validated National Law Reform Policy of Liberia has a section that deals with publication of the policy by the Ministry of Foreign Affairs upon final approval by the president (section 8.2.).

law—a degree of cumulative impact and potential for substitution, and a danger of flagging stakeholder participation—that was not fully reflected in the drafting process recommendations of the 2011 strategy report.

- 5. Public consultation on proposed laws:** Once a full draft is approved tentatively by the commission, it needs to be publicized, and comments need to be solicited. Stakeholders need to understand that it is the law and not the policy that will control activities, and examine the draft carefully to see if it will in fact achieve the goals of the policy. Consultations with organizations representing stakeholder groups and their attorneys, as well as the larger legal profession, are critical.

For the Land Rights Act, a substantial stakeholder consultation was held on June 23–24, 2014, in Paynesville City. For the Liberia Land Authority Act, the commission held a roundtable consultation in collaboration with the Governance Commission on June 30, 2015. The outcome of that meeting substantially improved the draft. The commission held another substantial workshop and consultation with stakeholders on November 24–26, 2014. Consultation was with stakeholder organizations rather than the public. This arguably met the minimum need, given the earlier public consultations on the policies, and given the fact that the draft acts very closely tracked the policies concerned.

But the commission could have done better. As in the case of the policies, neither of the draft laws was published in newspapers with requests for comments; as in the case of the policies, length would have made this difficult, but publication of summaries would have been feasible and helpful.

- 6. Legislator participation:** The 2011 strategy report mentioned the possibility of involving key legislators in the law development process at the earliest possible date, for instance during the drafting of the concerned law. While this does not appear to have occurred, the commission did in the case of the draft Land Rights Act reach out proactively to legislators once the president had sent the bill to the legislature, organizing a March 27, 2015, one-day legislative retreat at the Fair Ground in Buchanan City, Grand Bassa County. This brought together legislators from both houses who are members of the three most relevant committees for an in-depth briefing and discussion regarding the law by the Commission and the Heritage Partners and Associates Law Firm. No comparable event appears to have been held for the Liberia Land Authority Act. The Land Authority may want to consider how to increase such interactions with legislators in its processes, especially during drafting and consultations on draft laws. This would, however, need to be done with some care. Some legislators point out that they will eventually need to vote on the legislation and that earlier involvement in development of the law might suggest partisanship and even raise suspicion of an “element of financial gain.”
- 7. The impact of unexpected demands on commissioner/senior staff time:** The Land Commission had been designed as a policy and law reform commission, without an implementation role. The commissioners and other senior staff were drawn into other activities that reduced the time and effort they could put into the policy and law development work. Actual mediation of land disputes (as opposed to development of policy regarding mediation) was not part of the mandate of the commission,²² but the commission and its staff were drawn into mediation by the Office of the President. It needed to be done, and the commission best understood how to do it, so they were asked by the President to take on this task. This included the systematic mediation work carried out by the commission itself through the land disputes cluster but also, and more important, the “firefighting” missions to deal with potentially explosive land conflicts generated by poorly planned concessions. The commissioners often had to take lead roles in these efforts. This

²² The commission developed a Land Alternative Dispute Resolution Policy, informed to a great extent by work carried out by the LCCs, for instance, their findings from piloting alternative dispute resolution methods. That policy has not been finalized.

work was clearly important but did limit the involvement of some commissioners in the systematic work on policy and law.

Other unexpected demands on staff time occurred as well. Perhaps the most substantial concerned the need to validate public land sale deeds before the President, a time-consuming effort in and of itself, and it led to the realization of the role of tribal certificates and the need for substantial research to understand that phenomenon, and the implications of the information sought for policies for dealing with it. This was a “distraction” but one with a large positive pay-off in terms of the commission’s policy work. The extent of these certificates and the major role they have been playing in rural land tenure had been missed in formal research, and the land rights policy was able to incorporate needed provisions on tribal certificates because of the findings from field research.

8. **The importance of field experience for Land Commission staff.** The item above raises an important issue regarding staff development. The commission relied heavily on donor-funded research by contractors and consultants with strong international expertise, a necessary decision in the circumstances of limited available national expertise in these areas. While Liberians were involved in that fieldwork, they were not part of the commission and so that work tended to develop capacity and expertise outside the commission. The importance of direct involvement of commissioners and staff in field activities may have been underestimated at the outset. That involvement through dispute resolution, conflict management, and action research—in connection with these unanticipated activities—has been an important vehicle for developing expertise within the staff of the commission. The Land Authority should incorporate this into its planning for staff development.
9. **The reasons why other clusters failed to produce policies and legal proposals:** The cluster working on land use did not produce a land use policy or land use legislation. The problem appears to have been weak leadership of the cluster plus tension between an urban or a more general focus that was never resolved.

The cluster working on land dispute resolution, led by Commissioner Lwopu Kandakai, took a more action-oriented direction, leading to the establishment of five Land Coordination Centers at the county level, offering alternative land dispute resolution and training for local staff in land conflict mediation. The cluster also produced a draft policy on land dispute resolution, but it was never finalized. A final review by a legal expert had been recommended, and while funding for that review was being located, the clock ran out on the Land Commission. In both cases, the group working on the Land Administration Policy consulted with the two other groups and included in its policy document recommendations for a law on alternative dispute resolution from the Land Dispute Cluster and a law on land use planning and zoning.

Finally, the commission’s Women’s Land Rights Task Force facilitated many local public consultations throughout Liberia on the Land Rights Policy, which aims to promote women’s land rights as part of the broader reforms. USAID’s LPIS project participated in extended discussions with and provided assistance to the Task Force including assistance organizing the Task Force and field research on women’s land rights. But neither a final report nor a policy document nor a legislative proposal were produced. The consultant lacks information on why the task force was not more productive, but the lack of output raises a question about whether the task force might not have better been organized within the Land Commission with Ministry of Gender participation.

In thinking through strategies for further policy and law development by the new Liberia Land Authority, these experiences will need to be considered.

4.2 RETHINKING THE POLICY REFORM PROCESS

Based in part upon the good practices of the Land Commission's initial Land Policy Task Force, the 2011 law reform strategy paper recommended a land policy-making process. What follows is a rethinking of that process based upon the experience of the Land Commission as it developed the Land Rights Policy and the Land Administration Policy.

It should be noted at this point that many of the fundamental questions about land policy in Liberia have been answered, in some detail, in the Land Rights Policy and the Land Administration Policy. One can imagine, however, some narrower but still very important policies that could be forthcoming, e.g., the almost-completed Land Dispute Resolution Policy, an Urban Land Policy, a Policy on Gender and Land, or a Policy on Land Rights Registration. There will inevitably be a range of policy reforms, some of national importance and others that have far narrower implications. The policy reform process would be somewhat different for each, but there would be common elements. In the bulleted points below we attempt to distinguish between these cases and the processes appropriate in each.

The policy reform process could move forward as follows:

- The Land Authority's Department of Land Policy and Planning (DLPP) annual work plan should identify policy and legal reforms to be considered during the year. When approved by the commissioners, these would become the policy reform agenda for the year. The DLPP should consider whether research or consultancies are needed before a working group is convened, and if so, arrange for them. The lawyer attached to the DLPP should be consulted for a preliminary assessment of whether changes in the policy area under consideration might require a legal change as well, which would suggest inclusion of one or more legal staff on the group.
- The Land Authority should consider establishing a Gender Advisory Group to assist the DLPP with its policy and law reform efforts, with a member of the Land Authority's staff (a commissioner or other official designed by the executive director) serving as liaison. Gender analysis should be a part of each policy reform, and members of the group should be asked to participate in policy reform task forces.
- The DLPP should constitute a group to consider the policy reform area under discussion. If the change is one that will have broad impacts on the public, a correspondingly broad range of stakeholders should be included on a task force. If the matter is of relatively narrow interest, perhaps very technical, a smaller working group might be appropriate, with a narrower range of stakeholders. If the reform concerns an issue internal to the Land Authority, an internal team may work on the issue.
- The DLPP should consult the executive director concerning a chair for the group—a commissioner or another individual depending on the importance of the group and issue. The chair should be appointed by the executive director.
- For task forces considering matters of importance to other government agencies and the general public, the chair should invite and seek to obtain attendance by deputy and assistant ministers from stakeholder agencies. Since this will not always be possible, and meetings will often be attended by technical-level staff, the task force should discuss both the importance of and mechanisms for participants keeping their superiors fully briefed.
- Based on the initial meetings of the group, any additional studies or consultancies identified as still needed should be contracted and scheduled. The group should then undertake a systematic review of the current policy and legal position and ideas concerning needed changes through review of relevant studies, consultant reports, earlier public consultations, key informants, invited speakers, and their own considerable knowledge of the issues concerned.

- Based on those discussions, the group should develop an initial policy statement. One or two members will need to draft this, under supervision of the chair. It should be detailed and specify what the changes should be made and how they will be carried out, including any legal changes required.
- That preliminary statement would be presented to and commented upon by the Land Authority's senior staff and the commissioners, and revised as necessary before broader distribution.
- Where the policy change impacts the work of another government agency, the group should arrange a briefing on the proposed policy change at the office of the agency concerned, organized by the office of the minister or other head of that agency.
- After such review in government, the statement should be submitted for public consultation. The launch of the consultation should involve publication of the policy statement, or a summary thereof if length dictates, in one or more newspapers of general publication and substantive discussion on radio and television.
- For policies that will have significant impact on the public, consultation should be undertaken at regional or county level, and possibly more locally if there will be localized impacts of the policy change. There should be focus group interviews with women, marginalized groups, and groups likely to be disproportionately impacted.
- The extent of the consultation will depend on the nature of the policy change under consideration. A broad public consultation may be important even on a quite technical matter if the change has important implications for the large segments of the population; the burden is then on those organizing the consultation to prepare messages that convey those implications to those being consulted.
- Even where such broad impacts are not expected, the group should consult professionals in the field as well as businesses and communities that will be especially affected.
- The result of the consultation should be carefully recorded, released publically, and taken into account when preparing a final policy document. During the consultations on the Land Rights Policy, a matrix of comments received (organized according to the institutions from which they were received) proved useful for facilitating further interactions with the commenters and in the revision process.
- The final document should be approved by task force members. It might be useful to have a public validation exercise, and it should be publicized through the media.
- The policy statement then should be forwarded by the commission to the Office of the President for cabinet review and approval, and—if the matter is of great national importance—to the legislature for endorsement. This level of approval will affect the authoritativeness and durability of the policy.

In the case of land and property rights, new policies often require legal changes to make them effective. The next section deals with the law reform process.

4.3 RETHINKING THE LAW REFORM PROCESS

Not all policy reforms require legal changes, but this is often the case when dealing with land issues. Many policy changes reflected in the Land Administration Policy will in fact require legal reforms, and the policy draws attention to several of these. Not all involve a new law or even amendments of a law, but rather are matters of regulations and other subsidiary regulatory instruments. The bullets below outline a law reform process, incorporating the Land Commission's experience with the proposed

Land Rights Act and the proposed Liberia Land Authority Act. In the list below, we attempt to distinguish between these different cases and the differences in process appropriate to each.

- The group that works on a policy reform should specify, based on their discussion with internal and outside legal expertise, whether the change in policy requires any change in law or regulations. If it does, the group's statement becomes the initial guidance for drafting the required legal instrument.
- The DLPP should then consult with the executive director and develop a Terms of Reference (TOR) for a Legal Drafting Team, to be appointed by the executive director.
- The Legal Drafting Team should be led by a chair appointed by the executive director and include several members from the policy reform group that called for the legal change, including the lawyer that participated in that group. It should include both lawyers and non-lawyers, from inside and outside the Land Authority. It should include representation from the Gender Advisory Group recommended in the previous section of this paper.
- If the legal change required is a bill that will go to the legislature, one member of the Legal Drafting Team should be from the Liberia Law Reform Commission. Key members of the relevant standing committees of the legislature should be briefed as the process goes forward, and their comments should be solicited informally. At the same time, the team should be in contact with the president's legislative liaison to ensure he/she is aware of the bill and its contents.
- The role of the Legal Drafting Team is to guide and supervise the work of a legal draftsman. The team's role is not to draft the law. Committees do not draft well; their role is to keep the legal drafting exercise on track from a policy standpoint.
- The draftsman might be from the Land Authority's legal staff, an attorney in private practice retained for the task, or a consultant with strong expertise and knowledge of the area. The DLPP would, in consultation with the group's chair, prepare a Terms of Reference. The TOR should be approved by the group and publicized to elicit submissions of interest. The size and nature of the legal drafting task will affect the TOR and choice of draftsman.
- The Land Authority should engage as draftsman a Liberian lawyer familiar with the conventions of statutory drafting, construction, and interpretation in Liberia and skilled in drafting.²³ Where appropriate, the authority may wish to engage an international legal consultant with specific subject matter legal expertise that does not exist locally and team him/her with the local lawyer. It is hard to sustain an iterative process of review for a law, given its technical nature, and review and consultation will likely need to await a full draft.
- Once a full draft is available, it should be reviewed by the team. When they are comfortable with the result, the draft should be presented to commissioners and other senior Land Authority staff for approval. For minor legal changes (e.g., a change in a deadline for submission of an application or specification of a slightly higher standard of survey accuracy for a specified task), this may be the end of the process and promulgation by the Land Authority may be the next step. In cases of laws with significant impacts on the public and various stakeholder groups, public consultation is essential. In these cases, regional and county-level consultations will be essential.
- Stakeholders need to understand that it is the law and not the policy that will control, and then ask if the law does in fact achieve the goals of the policy. If there has been a consultation on a policy,

²³ It should be noted that Liberia has a General Construction Law (Vol. III, Title 15, Liberian Codes Revised). In this context, "construction" refers to the construction (interpretation) of statutes.

then the consultation on the law should be more focused, especially on any aspects of the law that deviates from the intention of the policy.

- In any case, the draft law (or a summary and rationale) should be published in newspapers to allow for public discussion, and workshops should be held on its provisions for specific interest groups, clusters of stakeholders, and legislators. As part of the consultation process, the Land Authority should ask the head of any directly affected government agency to organize a briefing on the proposed legal change by staff of the Land Authority at his or her agency's office.
- Based on the feedback from the consultations, the bill should be finalized and presented to the Law Reform Commission, together with the required documentation on costs implied, for final review on format and structure. (See Box 3 below for details.)
- Subsequent to that review by the Law Reform Commission, the Land Authority should propose the draft law to the president for her/his endorsement and forwarding to the legislature. At this stage, the Land Authority should request that the Office of the President organize a cabinet briefing, to ensure that all members of government are on the same page. This may often not be possible to schedule, but should be sought, especially in cases where the proposed legal change is controversial.
- Once the law has been submitted to the legislature, the Land Authority should be proactive in reaching out to legislators, especially those from key committees, to ensure they understand the proposed law or amendment and are aware of public support for the measure.

Bearing those ideas about process in mind, we turn now to potential areas for needed land law reform.

5.0 STRUCTURING AND EXTENDING REFORM OF LAND LAW

How can the Liberia Land Authority address the need for further reforms of land policy and law? This section first asks how the authority can best organize its efforts to design and propose reforms. It then asks what areas of Liberia's land law still require attention. And it finally asks a "strategy question": How should work on the different areas be prioritized, sequenced, and pursued?

5.1 ORGANIZING FOR FURTHER REFORMS

The manner in which the Land Commission attacked legal reform worked well. It formed a number of clusters with broad stakeholder participation that could work on different policy domains simultaneously and could, where necessary, generate subsidiary task forces to attack particularly challenging problems. But how would an organization such as the Liberia Land Authority address the need?

Section 35 of the proposed Liberia Land Authority Act provides that the authority shall be governed by a commission with the following departments: 1) Land Policy and Planning; 2) Land Administration; 3) Land Use and Management; and 4) Administrative and Customer Services. The DLPP would be the key unit for policy and law reform purposes. It is recommended that it have both a Policy Research Unit and a Legal Advisory Unit to enable the department to pursue reforms effectively. In addition, it is recommended that the DLPP, in collaboration with the Ministry of Gender, constitute a standing Gender Advisory Group, that includes members from both inside and outside the authority, with the responsibility of ensuring gender sensitivity in the development of policies and laws and their implementation.

The DLPP is one place from which proposals for reforms may originate, but there are other sources of reform ideas. Other departments might propose reforms within their area of responsibility to the DLPP. A proposal for reform might also arise in the National Advisory Forum. Or might be proposed to the forum by the chairperson for discussion and recommendations. The recommendation of the National Advisory Forum would presumably provide a certain amount of political impetus as well as thoughtful input.

Once a decision is made that a reform initiative should be pursued, it should be managed by the DLPP. The DLPP would involve other affected departments. For example, if there were to be a reform of the policy and law on land registration, this would need to involve the Department of Land Administration. In addition, as the experience of the Land Commission shows, such reforms affect a considerable range of stakeholders—governmental and nongovernmental. The issue thus arises of how to involve these diverse stakeholders in the design of the reforms. There is every reason for the DLPP to resort to an approach similar to that taken successfully by the Land Commission: formation of a cluster or task force with a broad membership of diverse stakeholders to discuss and design the reform. The DLPP would be responsible for any research, public consultation, or advisory services needed are addressed for the task force; it would act as the secretariat for any reform initiative.

That said, some reform initiatives may need to be pursued in partnership with another organization on a relatively equal playing field. In such a case, the collaboration may need to be organized outside the Land Authority, either in the partnership or in some mutually satisfactory forum. This applies to legal drafting, and the existence of the Law Reform Commission as a resource should be considered (see section 4).

Before turning to particular areas of land law that still require attention, it is helpful to examine the experience of the Land Commission as it worked to redefine land policy and develop law reform proposals over the last four years.

5.2 IDENTIFYING FURTHER LAW REFORM NEEDS

The consultant has discussed with those he interviewed possible areas where law reform is needed. Some of these involve not new laws but regulations required under the proposed Liberia Land Authority Act and the proposed Land Rights Law. The Land Administration Policy is the source of many of the law reform proposals. This is because the decision to go with a law dealing exclusively with a new Liberia Land Authority left many law reform needs identified by the Land Administration Cluster still to be addressed. In addition, there are a few areas where legislation was recommended in the 2011 report on law reform strategy (Bruce and Kanneh) that still deserve consideration, and a few areas where other needs have been more recently raised by stakeholders.

In some of these cases, administrative guidelines may suffice; in others, regulations will be required, and in still others, a new policy and a new law will arguably be required. These are listed and discussed in this section, organized according to their origin. The number is alarming (14 legal reforms are proposed), but not all of them are the sole responsibility of the Liberia Land Authority, not all are urgent, and the work involved varies dramatically from one case to the next. Priorities and sequencing are clearly required in the face of so many proposed reforms; these are discussed in Section 5.3.

Below are the legal reforms proposed by the Land Administration Policy, many of which had also been raised in the 2011 Bruce and Kanneh report on land law reform strategy.

1. Detailed guidelines/regulations for implementation of the customary land provisions of the draft Land Rights Act: The Land Administration Policy calls for such guidelines.²⁴ The act empowers government to issue regulations of this nature and in one case mandates them for minimum requirements for governance and management of Community Land Development and Management Associations (CLDMAs).²⁵ The CLDMAs are collective owners of customary land, not the lowest level of a land administration hierarchy. The minimum requirements seem likely to focus on participation and priorities, rather substantive rules. There are, however, fundamental human rights that will need to be taken into account in discussions of those minimum requirements, such as the constitutional prohibition of gender-based discrimination. There is a further important issue of whether these minimum standards can be done as guidelines or will need to be done as regulations. Such regulations will only become possible after the enactment of the proposed Land Rights Act itself. The regulations will need to address clearly the issue of accountability of the CLDMAs for compliance with the minimum requirements. Does accountability only exist through legal challenges in the courts (as seems to be suggested by Article 36 of the proposed law) or administrative challenges addressed to the Land Authority? Or should the authority alternatively have a more proactive, supervisory role?

²⁴ 8.3.3.7 Detailed guidelines shall be developed for the implementation of the provisions of the draft Land Rights Act pertaining to customary land. These will address issues surrounding the process of community self-identification, community mapping, and the recording of all property rights within the community (7.2.1.1 and 7.2.1.4-7.2.1.9).

²⁵ The proposed Land Rights Act in section 36.10 provides: "The Government, with the participation and consent of the communities, shall promulgate appropriate regulations to govern the minimum requirements to be observed in the governance and management of CLDMAs and the collection, management, and accounting for all funds and other resources received in connection with the development and management of Customary Land."

2. Regulations under the draft Liberia Land Authority Act: Similarly, regulations will be needed and are authorized under the draft Liberia Land Authority Act. Two provisions of the act²⁶ require regulations to be issued by the executive director within six months of the effective date of the law, dealing with the appointment, operations, and proceedings of the County Land Board (section 43.4) and the County Land Team (section 45.4).

In addition, the Land Administration Policy recommends that the proposed Liberia Land Authority develop a system for recording regulatory cases, their incidence, and outcomes.²⁷ It would need to be explored whether this would require a regulation or whether simple issuance of a guideline, an administrative instruction, would suffice.

3. Land Survey Act: Liberia has no Land Survey Act, but rather a Land Surveyors' Registration Law, chapter 9.7 of the Liberian Codes Revised (PRC Decree # 23 of 1980). It is concerned with the licensing of surveyors and an association of licensed surveyors. The 2015 Land Administration Policy developed by the Land Commission makes detailed recommendations for a Land Survey Act.²⁸ The relevant recommendation of the 2011 report is #12 in Annex C and the law is summarized in Annex D.

The law is outdated in that it states qualifications for surveyors in terms of classic geodetic survey and ignores the existence of more modern survey technologies. There is need to provide authorization to some agency for creation of a Land Information System (LIS) and to require that geospatial data be produced in forms that can be integrated into the LIS. It also contains wording that makes Country Land Commissioners part of the Ministry of Lands, Mines, and Energy rather than of the Ministry of Internal Affairs, to whom they in practice belong. In addition, a new Association of Professional Land Surveyors of Liberia is in the process of formation; a charter for the association has been drafted and requires approval by the legislature. This is recommended by the Land Administration Policy. This might be done independently or as part of the proposed Land Survey Act.

²⁶ 43.4 The Executive Director shall develop and publish in the Gazette, not later than six (6) months after the effective date of this Act, regulations governing the operations and proceedings of the County Land Boards, following review and approval of the Commission.

45.4 The Executive Director shall issue, not later than six (6) months after the effective date of this law, regulations governing the appointment, operations and proceedings of the County Land Team and its members, as reviewed and approved by the Commission.

²⁷ 8.1.1.5 The proposed Liberia Land Authority, in coordination with all ministries and agencies responsible for land management shall develop an administrative framework to record regulatory cases, monitor the incidence of cases, and generate regular reports on regulatory violations.

²⁸ The policy recommends:

8.3.3.1 A Land Survey Act needs to promulgated which establishes survey standards for survey work to be undertaken in the Republic of Liberia. Specific components of the law need to delineate standards of precision for different needs (7.1.5.1), the regulation of the survey profession and the recognition of a professional surveyors' association (7.1.5.2), addresses issues pertaining to survey markers (7.1.1.4 and 7.1.5.4) and their protection (7.1.1.5), provides for the registration of all maps and parcel descriptions associated with property transactions (7.1.5.5), and review of all field surveys undertaken (7.1.5.6).

8.3.3.2 Regulations derived from the Survey Act should make detailed provisions for all survey work in Liberia. (7.1.5.3).

8.3.3.4 The Charter for the Professional Surveyors Association shall be adopted by the Legislature. (7.1.6.1).

8.3.3.5 Procedures shall be developed for the relicensing of all licensed surveyors and for the licensing of new surveyors (7.1.6.3 and 7.1.6.4).

8.3.3.6 Legislation and regulations shall be drafted to support the establishment and maintenance of a spatial data infrastructure. This legislation will also address issues related to the role of the coordinating agency with respect to spatial data, recommend core data sets, establish mandates for data set custody, management of metadata, and pricing and accessibility to information (7.1.4.2, 7.1.4.3, and 7.1.4.4).

4. Law on Land Rights Registration: The Land Administration Policy calls for this, with an excellent discussion of policy options in section 7.3 on recording and storage of land rights documents. The situation in Liberia is complex and unsatisfactory:

- Liberia currently has a deeds registration system, administered by a Deeds Registry based in the CNDRA, which is to be integrated into the Liberia Land Authority under the proposed Liberia Land Authority Act. The legal basis for deed registration, Chapter 5 of the Property Law (Vol. V, Title 29, Liberian Codes Revised, Chapters 1 to 7) is wholly inadequate, as discussed in # 8 in Annex C. The chapter on deed registration fails to provide for a wide range of necessary matters, such as organization and management of the registry and impact of priority of registration. The Property Law is summarized in Annex D.
- Liberia also has a title registration law: Registered Land Law (1974), Chapter 8 of the Liberian Codes Revised, discussed at #11 in Annex C, and summarized in Annex D. It is not currently in operation, having failed in a pilot implementation some years ago, as discussed in a report for the Land Commission by Marquardt and Pay-Bayee (2011). While a land title registration system is the best option for Liberia, this law is weak and badly needs redrafting.
- The Land Administration Policy calls for enactment of a new Title Registration Law,²⁹ a proposal with which the consultant concurs, but the policy does not recommend amendment of the Deeds Registry provisions of the Property Law. This consultant recommends that the Land Authority substantially amend and upgrade those Deed Registry provisions. The Deed Registry is the only operative system of land rights registration in Liberia. A land title registry, the model Liberia should pursue in the long run, does not now exist on the ground, and full national coverage by the new system through systematic registration will require (based on experience elsewhere) a minimum of 20 years to implement. The Deeds Registry must thus continue to serve Liberians for many years while the geographical coverage of land title registration is expanded gradually through systematic title registration. This is a complex issue, and it will require an intensive discussion among stakeholders for consensus to emerge. To assure the coordination and gradual integration of these systems, it is recommended that there be an integrated Land Rights Registration Law covering both land title registration and deeds registration.

Any land rights registration law should include provisions that specifically address the promotion of gender equity in landholding. It should not seek to compel reform but should provide for options, including joint registration of husband and wife as co-owners, and consideration should be given to making this the default option, as has been done elsewhere. For a discussion of related gender issues, see the discussion on a possible Gender and Land Equity Law, below.

²⁹ 8.3.3.8 A Land Adjudication Law or Regulations under a new Land Registration Law shall define admissible evidence for claims to land holdings and a hierarchy of evidence, will specific procedures for lodging and settling counter claims (7.2.2.1 and 7.2.2.2). These regulations will make provision for land holders residing outside of Liberia and set clear final timelines for the registering of claims (7.2.2.4 and 7.2.2.5).

8.3.3.9 The Land Registration Law (Chapter 8 of the Property Law) shall be repealed. If a decision is made to move to a title registration system a new land registration law needs to be enacted which will streamline the adjudication and demarcation process, clarify the role of the judiciary, clarify the process through which the deeds registry system will be incorporated into the new title registry, and establish an indemnification fund (7.3.1.1, 7.3.3.1, 7.3.3.3 and 7.3.3.4). Regulations shall be put in place to establish the fee structure for services to be provided (7.3.3.5).

5. Law on Land Valuation: The Land Administration Policy calls for shifting responsibility for valuation from the Ministry of Finance and the Liberian Revenue Authority to the Liberia Land Authority and for the promotion of the private valuation profession and standards and procedures for valuation.³⁰ The Liberia Land Authority Act does give the Land Authority a land valuation mandate, in section 9.1 (b) (h), but this specifies that the authority shall “value land and buildings for taxation and other purposes, in collaboration with the Liberia Revenue Authority.” In addition, there is a provision in s. 53(1) for the moveable property that was vested in the Liberia Revenue Authority for valuation of lands and buildings to vest in the Liberia Land Authority. There is a shared mandate, and it is not clear how this would work.
6. Amendment of Real Property Tax Code: The Land Administration Policy calls for work in this area as well. The law on real property taxation is the Real Property Tax Code (Chapter 20, Revenue and Finance Law, 2000), discussed at # 13 in Annex C and summarized in Annex D. Amendment is recommended on two accounts. It is suggested that section 2000 and 2001 provisions that require individual valuation of rural properties using a market value standard create a valuation burden that is unrealistic in current circumstances and that consideration be given to replacing market valuation with a “zonal” or “mass” assessment approach such as that used under the Mozambique Land Law, 1999 (World Bank, 2005, pp. 19-32). Use of a formula based on location or a matrix including location and other factors might be preferable. Carrying out market-based valuation of many small properties will cost more than the revenue collected.

The second recommendation is to amend section 2010 to remove the requirement that “...before a deed or lease agreement or any other documents passing title or interest in real property can be probated and registered, all delinquent taxes must be paid and a tax receipt produced to evidence this.” This is an important disincentive for registration of deeds. It also impacts women whose husbands say they cannot pay the tax; wives cannot therefore gain an interest in the underlying property (causing problems if the husband dies, migrates, marries another, etc.). It should be eliminated. The Land Administration Policy makes the same recommendation.³¹

The Land Administration Policy anticipates the development of a fiscal cadastre and calls for exchanges of information with the land registry to help create the cadastre and ensure consistent updating of the property and fiscal cadastre. The Real Property Code does not provide explicitly for a fiscal cadastre, and provision should be made by amendment of the code for the compilation, structure, and content of such a cadastre.

7. Law for a Spatial Data Infrastructure: The Land Administration Policy recommends a law and regulations to govern the creation and maintenance of spatial data infrastructure.³²

³⁰ 8.3.3.11 Property laws and procedures shall be amended to remove the valuation function from the Ministry of Finance and the Liberia Revenue Authority (7.5.1.1).

8.3.3.12 Property laws and procedures shall be amended to permit the establishment of private sector land and property valuers and appraisers and ultimately the establishment of a professional valuers association. (7.5.1.2).

8.3.3.13 Standards and procedures shall be established for the valuation of land and property that will ensure the uniformity of application of those standards and procedures (7.5.1.6).

³¹ 7.5.2.5 Existing legislation shall be amended whereby the seller rather than the buyer of land is obligated to settle outstanding tax obligations. Current regulations, which require the buyer to pay outstanding taxes prior to registration, has led to an avoidance of registering property transfers thus leading to a decline in the integrity of the deeds registry.

³² 8.3.3.6 Legislation and regulations shall be drafted to support the establishment and maintenance of a spatial data infrastructure. This legislation will also address issues related to the role of the coordinating agency with respect to spatial data, recommend core data sets, establish mandates for data set custody, management of metadata, and pricing and accessibility to information (7.1.4.2, 7.1.4.3, and 7.1.4.4).

8. Law on Land Use Planning, including Zoning: Liberia has no national law on land use planning, beyond certain quite limited provisions in the present Local Government Law, handled by the Ministry of Internal Affairs. The proposed new Local Government Law does not mention land use planning or zoning as a local government function under section 3.2, Powers and Authority of Local Governments. It might conceivably be done under development planning, or it might be provided under some future law on land use planning. The authority has no mandate to carry out land use planning but is responsible for promoting it. In the urban context, there is real urgency about addressing this lack of a legal framework. The Land Administration Policy recommends enactment of a law on land use planning and zoning³³ and that the authority take the lead in developing regulations that would allow communities to manage their land use.³⁴

Zoning should not be the topic of a separate law but should be handled in the law on land use planning, because it is one tool among several for enforcement of land use plans. Such a law should also empower municipalities to develop building codes; codes for particular municipalities will be more appropriate than a one-size-fits-all code for Liberia's diverse cities. Liberia has a Zoning Law (Vol. VI, Title 38, Liberian Codes Revised). While zoning is the responsibility of the Ministry of Public Works, the Ministry of Internal Affairs is currently responsible for physical planning, including land use planning. (The Ministry of Planning deals with economic planning.) This is a potentially dysfunctional bifurcation of authority, best bridged at the local government level, but there is currently no systematic coordination of these activities in law or in practice

There is effectively no Building Code, and there is conflicting information as to whether such a code has ever existed, though promulgation of regulations governing building standards is provided for in the Zoning Law. Section 5.1(3) requires the Ministry of Public Works, with approval by the Zoning Council, "to prepare from time to time building codes and subdivision regulations, which will control type of construction, construction material, and the situation, positioning, and use of buildings." A new legal basis needs to be established in this regard, one that gives local cities greater say in the content of their Building Code.

It is recommended that the Land Authority work with the Ministry of Internal Affairs (responsible for local government) and with selected municipalities to develop legislation that empowers local governments to do participatory land use planning. Recent models of such legislation are available, for instance, from Cambodia. A task force should be established to deal with this set of issues, chaired by Ministry of Internal Affairs and involving participants from the Liberian Land Authority's Land Use and Management Department and selected municipal and county governments, including Land Boards under the Liberia Land Authority Act.

The Land Commission early in its life considered urban land issues, holding a national urban land conference, and the documents from that exercise remain a valuable resource (Land Commission, 2010; McAuslan, 2009). The Land Administration Consultant provided by USAID also addressed many of these issues in his report (Ford, 2013). The Land Commission has had a valuable collaborative relationship with UN-Habitat, and the Liberian Land Authority should seek the advice and support of that agency for work in this area.

³³ 8.3.3.16 Policy and legal framework shall be developed at national level for the promotion of land use planning (8.1.2.1). This framework shall address issues of coordination between and among agencies for all land use and management functions (8.1.2.6).

³⁴ The Land Administration Policy in 2.1.2.8 envisages village and local community land use planning being developed and implemented by the communities themselves. The role of the Land Authority is to help capacitate communities and local governments.

9. A Law on Non-judicial Land Dispute Resolution:³⁵ The Land Commission has been actively engaged in non-judicial land dispute resolution, both directly practicing it and supporting the work of regional Land Coordination Center. The commission's group working on land dispute resolution has produced a draft Land Dispute Resolution Policy, which needs to be finalized and approved by the Land Authority. Both that draft and the Land Administration Policy recommend³⁶ that a new law be developed to give non-judicial dispute resolution a legal basis. Such a law is needed to ensure good practices, the enforcement by the courts of agreements reached through non-judicial procedures, and appeals into the court system in cases when mediation has failed to achieve an agreement. Those good practices should include measures to ensure that women are not, as is commonly the case, disadvantaged in dispute resolution processes.
10. Public Land Law (1973) Repeal and Regulations on Sales, Leasing, and Concessions of Public and Government Land: The Land Administration Policy calls for these legal reforms.³⁷ The Public Lands Law (Vol. V, Title 34, Liberia Codes Revised) contains rules of sale of public land. The law is evaluated at # 2 in Annex C and summarized in Annex D. The proposed Land Rights Act in s. 71(3) and (4) repeals this law in its entirety. In the case of public land sales, further reform would involve formalizing the Interim Regulations for the Sale of Public Lands developed and published by the Land Commission on March 1, 2011.
11. Informal Occupations and Settlements: The policy initiative comes from the Land Administration Policy, stated in terms of informal settlements in urban and peri-urban situations. Informal settlements are common in Monrovia, on both public and private land, and are the source of serious tension. There are parallel situations on rural land, where displaced people have occupied unused farms and now find themselves in conflict with returned owners. Consideration should be given to addressing these situations together and, if necessary, legislating with respect to both urban and rural situations. The DLPP could initiate and manage the policy and legal work for this effort. Creation of a task force would be appropriate, with representation by a wide range of stakeholders, including each department of the Liberia Land Authority, NGOs and CSOs, the United Nations Human Rights Campaign, associations of land users, and selected municipalities and local governments. Representatives from both the owner and occupier communities should be consulted, and both international policy and legal expertise should be mobilized. For the urban context, the 2010 report on an urban land law for Liberia by the late Patrick McAuslan is a valuable contribution by a distinguished legal expert. The World Bank is an important source of expertise on market-mechanism solutions, in rural or urban contexts.

Short of simple expulsion of informal occupiers that can result in violence, there are two basic models for addressing such situations. One is a mediation model where the owner, recognizing that prospects of getting rid of the “squatters” by process of law are not very good, is willing to negotiate a settlement in which he/she cedes part of the land to the occupiers and gets the other part clear of occupants. Continued occupation under leases can be part of such a settlement. Under the market-mechanism land reform model, the government helps occupants organize and

³⁵ The Land Administration Policy uses the term Alternative Dispute Resolution (ADR). But in reviewing the draft of this report, Dr. Chris Moore of Collaborative Decision Resources urged an alternative term: non-judicial dispute resolution (NJDR). NJDR is a clearer term in that it specifies to what this approach is an alternative (judicial dispute resolution), and so I introduce the term here in the hope that it will be utilized in future work on resolution of land disputes in Liberia.

³⁶ 8.3.3.10 Legislation shall be enacted to establish ADR as a valid mechanism for dispute resolution. That legislation will clarify the relationship between ADR and the formal legal system. It will specify which cases are to be addressed by ADR methodologies and also establish procedures for moving cases on appeal to from the ADR process into the formal court system regulatory framework (7.4.1.2).

³⁷ 8.3.3.20 The Public Land Sales Law (1973) shall be repealed in its entirety (8.2.1.1). Necessary legislation shall be enacted and regulations developed to formalize the Interim Guidelines on the Sale of Public Land (8.2.1.4). Similar guidelines shall be developed for the leasing and giving of concessions of Government and Public Land (8.2.1.5). Regulations shall be developed to implement the provisions of the Land Rights Policy and Act with respect to the sale and lease of Government and Public Land (8.2.1.2).

then extends credit to their organization to purchase all or part of the land involved. The seller must be willing; in this case, to poor prospects due to the weak justice system is added the incentive of payment by government.

Further research on these situations and a series of stakeholder workshops would be needed to explore appropriate approaches. It is not feasible to say at the outset whether legal change is needed; if mediation is used, legal changes may not be needed. If government is taking the initiative, the agency involved (e.g. the Liberia Land Authority) would need a mandate to commit government funds or a guarantee to a commercial lender. This would also be the case if it were desired to provide for a step beyond mediation and beyond an offer to purchase where these are unsuccessful, to the government imposing compulsory binding arbitration of the dispute or utilization of eminent domain.

The following proposed law reform originates in the 2011 Land Law Reform Strategy Report (Bruce and Kanneh, 2011), but was not recommended in the Land Administration Policy.

12. A Condominium Law: The 2011 Land Law Reform Strategy Report recommended that consideration be given to enacting a condominium law. A condominium, or condo, is a form of real property in housing where a specified part of a piece of real estate (usually of an apartment house) is individually owned while use of and access to common facilities such as hallways, heating system, roof, elevators, and exterior areas is vested in an association that jointly owns those common areas of the building and the land on which it stands. It offers the unit holders ownership instead of leasehold. There are also major advantages for developers seeking capital for construction of apartment blocks, as payments on units are made prior to construction and dramatically reduce dependence by the real estate developer on bank loans. A good condominium law would need to be based on a careful study of how Liberians currently live together in buildings and existing practices regarding access and perceptions of rights within and among families in these situations. That study would need to be attentive to gender issues that would be likely to arise. A more substantial discussion of the advantages of this property form is included in the 2011 legal reform strategy report (pp. 56–57).

Finally, an area of reform—of the Law on Land and Gender—was raised with the consultant during his discussions but has not been recommended as a discrete reform area in earlier reports.

13. A Land and Gender Equity Law: The Constitution of 1986 provides for equal rights to property among sexes,³⁸ and the Land Commission was tasked in its establishing legislation (s. 3.2.6.13) with ensuring “equitable access to and security of tenure for women, youth, and other categories of persons who may have labored under a disadvantage in this regard.” The commission engaged with the issues through a joint task force established three years ago with the Ministry of Gender, and the commission supported a study of women’s land rights in Liberia led by Landesa (Jappah et al., 2012).

³⁸ Article 11 provides that:

“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.

b. All persons, irrespective of ethnic background, race, sex, creed, place of origin or political opinion, are entitled to the fundamental rights and freedoms of the individual, subject to such qualifications as provided for in this Constitution.”

That the right of property is such a fundamental right is clarified in Article 22(a) of the Constitution:

“c. All persons are equal before the law and are therefore entitled to the equal protection of the law.”

The commission's successor, the proposed Liberia Land Authority, is not specifically mandated in this manner, but the Land Administration Policy calls for gender-equitable reforms, and the authority clearly has the responsibility under the constitution to address discrimination against women.

The most important law governing women's rights, in and after marriage, is the Domestic Relations Law, 1973. Two key laws enacted in this area earlier with the intent of reforming inheritance of land are An Act to Govern the Devolution of Estates and Establish Rights of Inheritance for Spouses of Both Statutory and Customary Marriages (December 1, 2003) (known as the ERCM Law) and the Decedents Estates Law, 1992 (Chapter 3 of Title 8, Liberian Codes Revised).³⁹

Points on land tenure made by those proposing gender-equitable reforms in the area often include the following:

- It has been suggested that the three laws noted above are internally inconsistent and fall short of achieving their stated objectives. It is recommended that these be amended and supplemented with new regulations more consistent with the objectives of the laws. At the same time, consideration should be given to covering relationships not governed by these laws (e.g., cohabitating couples and Muslim marriages). The significant body of common law reflected in judicial precedents should also be reviewed for consistency with the recent legislation. These three laws should also be reviewed closely to ensure alignment with the new Land Rights Law, once enacted, and amended as needed.
- Discrepancies in power and gender dynamics allow dispute settlement mechanisms to be manipulated by the powerful. Literacy, gender dynamics, and customs that disfavor women and women's lesser mobility and resources all disadvantage women and girls in dispute resolution processes. Reforms are needed to make these forums more accessible and fairer.
- Land administration procedures need to be changed to make recording land transfers more transparent and affordable and to reduce danger of fraud. Women are particularly affected by problems in this area. In both civil and customary law contexts, careful consideration needs to be given to how women will be affected by their weak land rights, especially when combined with trends such as the growing incidence of divorce and rural-urban migration. Registration laws need to specify options for how the land of couples is registered to them, including joint registration (which might be treated as a default option) or requiring spousal consent to land sales/mortgages.
- There is a particular need to address women's rights in customary land. It is often assumed that the Customary Marriage Law applies to all women in customary marriages on any category of land. In practice, that law is not being applied to land that is managed under customary tenure, and the law is little known in the interior. This should be considered during the action research planned to pilot implementation of the customary law provisions of the Land Rights Bill. The experience gained in that exercise should be helpful in thinking through realistic solutions to gender disadvantages.

Finally, amendments to the proposed Land Rights Law have recently been recommended by Landesa (Duncan et al., 2015): a) clarify that tenancy by the entirety is the default presumption for land held in common by spouses; b) strengthen protection for women in relation to community

³⁹ The ERCM Law is assessed under # 10 in Annex C and the Decedents Estates Law 1992 (Chapter 3 of Title 8, Liberian Codes Revised) is assessed under # 9 in Annex C. Both are summarized in Annex D.

self-identification and membership; and c) require spousal consent for mortgages of residential or agricultural land.

There is an increased need to facilitate rural women's voice in the policy and law reform process and in the gender-sensitive implementation of those reforms, and encourage a deeper national discussion of these issues. There have been proposals for an omnibus policy and law reform initiative on gender issues across sectors and law. The gender equity issue will likely come up in the forthcoming constitutional reform discussions. Some will question whether the current prohibition of gender-based discrimination is sufficient and whether it is necessary to go further in the direction of a state guarantee of equal rights for women and a provision that customary and shari'a rules that violate that standard are null and void.

As a matter of general strategy, land-related gender issues should be dealt with as they arise in the context of particular pieces of land legislation. Needed reforms should not wait for either a constitutional amendment or a broader law addressing gender discrimination in a range of contexts, though it is appropriate to consider such broader approaches. This consultant doubts that land issues would be treated with sufficient nuance in an omnibus law on gender equity and recommends instead that the authority consider proposing a Land and Gender Equity Law,⁴⁰ or perhaps, more narrowly, a matrimonial/marital property law. Any legislation in this area would need to be undertaken in collaboration with the Ministry of Gender. This consultant recommends an approach that provides options and relies on close involvement by gender-sensitive NGOs to persuade households to adopt the best option for themselves, rather than mandating a set of rules that are likely to be ignored.

Several areas of the law related to land have been identified above as requiring legislative attention. But how can they be prioritized for action by the new Land Authority? That prioritization is critical. Much remains to be done, and the new authority will have a modest staff and a modest budget. Hard choices will need to be made; attempting to do everything often results in nothing getting done. The experience of the Land Commission makes it clear that any policy and law reform initiative is both demanding and time-consuming.

5.3 TOWARD A LAND LAW REFORM STRATEGY FOR THE LIBERIA LAND AUTHORITY

A strategic approach to land law reform clearly involves thinking through the priorities to be accorded different proposed legal reforms. But it also requires thinking through the exact nature and extent of the legal reform task in each case. For instance, is there a policy basis for the proposed legal reform, i.e., an authoritative decision by someone relevant, such as the Land Commission, calling for legal change or for other changes that require legal action? If so, does the information needed to address the task exist already or does there need to be a study, consultation, or workshop to provide additional information.

Questions that need to be asked about each task are listed below. The answers will be important for developing a law reform strategy for the Land Authority.

1. How urgent is the legal reform? Some tasks have legally required time frames, others are obviously urgent, and still others have to be done before something urgent can be accomplished.

⁴⁰ These proposals are to not be confused with a "women's empowerment and gender equity law"/"Gender Equity in Politics Act" that has been unsuccessfully tabled in the legislature several times since 2010. It includes affirmative action quotas for women in political bodies and has been rejected by the legislature.

2. Who are the stakeholders, and how and when should they be involved? “Stakeholders” should not be read as referring primarily to government agencies but to affected citizens and their communities and interest groups.
3. How would the proposed legal change impact and account for gender-specific roles, experiences, priorities, knowledge, interests, opportunities, and constraints? What gender-responsive processes and analysis must be flagged? The input of the Gender Advisory Group proposed above will be critical in ensuring gender-responsive legal drafting and implementation.
4. Is there a need for public consultation? The answer will usually be “yes,” and then the question becomes the nature and extent of that public consultation. Depending on the nature of the issue, how significantly large parts of the population are affected, or how intensively some elements are affected, the consultation may be broader or narrower, direct or through representative organizations. Focus group interviews will likely be needed for those disproportionately affected or those particularly vulnerable to potentially negative impacts.
5. Is policy clear or is there a need for a policy decision before moving to law reform? There are a number of potential legal reforms discussed here for which an adequate policy base exists, for instance, in the Land Administration Policy. In other cases, there is no such clear basis.
6. Is further research needed before policy can be developed in an area (as is the case regarding a condominium law)?
7. What form does the legal reform need to take? Will administrative instruction do? Or regulations? Or must it be a law? Making a law, as the Land Commission experienced, is a slow and painful process. Good practice is to use the simplest, easiest legal tool possible to achieve the desired result. Usually a law will only be needed if a) someone needs to be compelled to do something, b) an existing law is an obstacle and so must be changed, or c) property rights are affected. As the last suggests, in work on land matters, a law is often needed.
8. Is there a need for comparative/international expertise of a technical, policy, or legal nature to supplement local skills in dealing with the task?
9. Does the Land Authority need to undertake this law reform, or is there some other agency that could take the lead? There are some issues where the authority has a collaborative mandate; valuation, with the Revenue Authority, is one such case specified in the proposed act. Given the lack of expertise in this area in the new Liberia Land Authority, might it be best to ask the Revenue Authority to take the lead in a collaborative effort? Or might it be useful to rely on the Liberian Law Reform Commission in a particular case?

In the listing that follows, law reform initiatives are discussed in a suggested order of priority. If the Land Rights Act has not yet been enacted, it would of course be at the top of the list. The other items are classified below as first order, second order, and third order. Please note that designating a reform as “first order” does not suggest one proposed law is more important than the others, only that it is more urgent that work on it begin early. It also should be clear that “first order” does not mean that drafting of a law should begin immediately; if further research is needed, that should begin, and if a policy task force is needed first, that should begin. Whatever needs to be done regarding that item should be initiated in the Land Authority’s first year.

5.3.1 FIRST ORDER

1. **County Land Institutions:** Two provisions of the proposed Liberia Land Authority Act require regulations to be issued by the executive director ***within six months of the effective date of the law*** dealing with the appointment, operations, and proceedings of the County Land Board (section

43.4) and the County Land Team (section 45.4).⁴¹ Significant policy guidance is provided by the Land Administration Policy and the proposed Liberia Land Authority Act itself. The Liberia Land Authority's DLPP should convene a workshop involving public and government land staff of the authority, an attorney from the Legal Advisory Unit in the DLPP, existing land officials at the county level, selected county superintendents, and the Governance Commission. This workshop could provide any additional policy base required and flesh out earlier recommendations, allowing promulgation of the required regulations by the authority. A drafting team could be constituted and report to the DLPP.

2. **Customary Land:** The Land Administration Policy and Land Rights Act itself call for the drafting of detailed guidelines/regulations for implementation of the customary land provisions of the proposed Land Rights Act. Regulations must wait until the Land Rights Act is enacted. It is anticipated that the Land Authority would first undertake action research and dry runs of implementation of key processes under the act with consenting communities. Based upon that experience, guidelines will be developed, and then, when the authority is confident that it has a handle on this task, regulations can be promulgated as envisaged in the act. The issues covered should include coordination between community land ownership by communities under the Community Rights Law for forestry and the proposed Land Rights Act. The Liberia Land Authority's DLPP should assemble a working group that includes a lawyer from its Legal Advisor's Office, staff from the Land Authority's Customary Rights Implementation Unit in the Department of Land Administration, selected CSOs and NGOs, and a representative of the Ministry of Internal Affairs. A limited public consultation on the draft regulations with concerned CSOs and NGOs and with selected customary communities would be appropriate. International policy expertise should be mobilized. The working group should report to the DLPP.
3. **Non-Judicial Dispute Resolution (NJDR):** The Land Administration Policy urges enactment of a law on non-judicial dispute resolution. Such dispute resolution is not listed in the Liberia Land Authority Act as a function of the authority, but its general responsibility for land policy makes it responsible for seeing that this issue is adequately addressed. There is some urgency, given the tenuous grip on life of a few of the Land Commission's County Land Coordination Centers in the wake of the commission's demise. In addition, there is an opportunity to move forward with little delay, given the virtually complete text of the Land Dispute Resolution Policy. The new law is certainly needed and could focus on NJDR generally, or more narrowly on NJDR for land disputes. The Land Authority should first finalize the draft Policy Paper on Land Dispute Resolution and then consult with the Ministry of Justice to determine the breadth of a new law and to determine which ministry should take the lead in its development.
4. **Land Rights Registration:** The Land Administration Policy calls for enactment of a new Title Registration Law. This consultant endorses this proposal and urges land title registration as the future system of land rights registration for Liberia. He also suggests that consideration be given by the Land Authority to a comprehensive recasting of the provisions on deeds registration as well, as envisaged in the 2011 legal reform strategy approved by the commission. Should the consultant's earlier recommendations ultimately be accepted, he further urges that both systems of registration be dealt with in a single law on land rights registration, providing for the coordination and eventual integration of those systems. International legal expertise should be mobilized.

To develop a consensus on the way forward with regard to land rights registration, there will be a need for a significant public education effort on options and an intensive consultation among

⁴¹ 43.4 The Executive Director shall develop and publish in the Gazette, not later than six (6) months after the effective date of this Act, regulations governing the operations and proceedings of the County Land Boards, following review and approval of the Commission. 45.4 The Executive Director shall issue, not later than six (6) months after the effective date of this law, regulations governing the appointment, operations and proceedings of the County Land Team and its members, as reviewed and approved by the Commission.

stakeholders. It is an appropriate topic for a major workshop. A task force appointed by the DLPP might include staff from the Land Registration Unit in the Land Authority's Land Administration Department, a variety of holders of deeded and customary land, and selected NGOs or CSOs representing customary communities and women. The urgency of the work on this law lies in the need to provide a regime for registration of customary land rights. International legal expertise should be mobilized. Critical gender issues arise in these programs.

5. **Regulations on Public/Government Land:** The Liberia Land Authority Act calls for promulgation of Regulations on Sales, Leasing, and Concessions of Public and Government Land. This is an area where the Land Authority is likely to face immediate demands, so the sooner work in this area begins the better. The Land Administration Policy and the Liberia Land Authority Law provide a policy basis and significant guidance, as does the Interim Guidelines on the Sale of Public Land. The task could be undertaken by a small working group assembled by the authority's Policy and Planning Office (PPO) and including an attorney from the PPO's legal advisory unit, participants from the authority's Public and Government Land Department, and the Bureau of Concessions, reporting to the PPO.

5.3.2 SECOND ORDER

6. **Land and Gender Equity:** Discussions in the Land and Gender Task Force of the Ministry of Gender and the Land Commission have highlighted a number of amendments to existing laws that are urged by women's advocacy groups. The commission's public consultations have stimulated proposals on these issues, and it has sponsored important field research on them. The Liberia Land Authority should take the initiative in this area, working in collaboration with the Ministry of Gender. Collaboration should be managed by the DLPP and involve the proposed Gender Advisory Group. The consultant is skeptical that land right issues would be addressed in a sufficiently nuanced way in an omnibus law on gender equity and instead recommends a law to reform the matrimonial/marital property regime. However, the gender issues in any area of land law being legislated upon by the commission should be addressed as they arise, in that law, rather than waiting for a broader enactment.
7. **Land Use Planning:** The Land Administration Policy calls for development and enactment of a Law on Land Use Planning and Zoning. The Land Authority has no mandate to carry out land use planning, but is responsible for promoting it. Zoning should not be the topic of a separate law but should be handled in the law on land use planning, because it is one tool among several for enforcement of land use plans. Such a law should also empower municipalities to develop building codes; codes for particular municipalities will be more appropriate than a one-size-fits-all code for Liberia's diverse cities. It is recommended that the authority work with the Ministry of Internal Affairs (responsible for local government) and with selected municipalities to develop legislation that empowers local governments to do participatory land use planning. Recent models of such legislation are available. A task force should be established to deal with this set of issues, chaired by the Ministry of Internal Affairs and involving participants from the Land Authority's Land Use and Management Department and selected municipal and county governments, including Land Boards under the Liberia Land Authority Act.

5.3.3 THIRD ORDER

8. **Informal Occupations and Settlements:** The policy basis comes from the Land Administration Policy, whose recommendation is couched in terms of informal settlements in urban and peri-urban situations. Informal settlements are common in Monrovia, on both public and private land, and are the source of serious tension. There are parallel situations on rural land, where displaced people have occupied unused farms and now find themselves in conflict with returned owners.

Consideration should be given to addressing these situations together and, if necessary, legislating with respect to both urban and rural situations. The DLPP would initiate and manage the policy and legal work for this effort. Creation of a task force would be appropriate, with representation by a wide range of stakeholders, including each department of the Liberia Land Authority, NGOs and CSOs, the United Nations Human Rights Commission, associations of land users, and selected municipalities and local governments. Representatives from both the owner and occupier communities should be consulted, and both international policy and legal expertise should be mobilized. For the urban context, the 2010 report on an urban land law for Liberia by the late Patrick McAuslan is a valuable contribution by a distinguished legal expert. The World Bank is an important source of expertise on market-mechanism solutions, in rural or urban contexts.

- 9. Spatial Data Infrastructure and Land Survey Laws:** These two tasks are closely linked and require complementary technical expertise. It is recommended that the Survey Law be tackled first, and then the Spatial Data Infrastructure Law. A Survey Law is urgently needed that accounts for spatial data infrastructure. A policy basis for these laws exists in the Land Administration Policy, and very substantial technical and other suggestions on the shape of these reforms have been provided for the commission by Ford (2013). It is proposed that the DLPP create a working group composed staff of the Land Authority's Land Survey Department, the Liberia Institute of Statistics and Geo-Information Services, the Surveyors Association, and stakeholders from the business community. International technical and legal expertise should be mobilized, but that expertise is already available to the Land Authority may suffice.
- 10. Land Valuation and Real Property Taxation:** There is a policy basis for a law on land valuation in the Land Administration Policy, including amendments to the Real Property Taxation Code. There is substantial discussion of the shape of reforms for this area in Ford (2013). Based on the provision of the Liberia Land Authority Act (section 9.1.b.h), that valuation is a mandate shared by the Land Authority with the Revenue Authority, and expertise on this topic resides principally in the Revenue Authority. It is proposed that a joint task force be established, chaired by the Revenue Authority, and that the Land Authority's DLPP and relevant staff of the Land Authority's Department of Land Administration participate. There is need to develop clear policy prescriptions and to turn these into legal provisions. International policy expertise should be mobilized.

These priorities are tentative. The consultant sees them as a first input to a discussion that will likely continue for some time. They will ultimately be for the Land Authority to decide. Assuming that the Land Authority is disposed to proceed along the lines proposed in this report, the following section seeks to imagine the shape of a Year I law reform agenda for the authority.

5.4 A YEAR I LAND LAW REFORM AGENDA

In the first year of the Land Authority, the DLPP might launch the following initiatives under the strategy proposed:

1. If the proposed Land Rights Act has not already been enacted, advocate for its passage by the legislature, coordinate with legislators, press for enactment in the media, provide public information, and collaborate with CSOs and others campaigning for enactment. These activities would clearly reduce the number of items below that can be undertaken in Year I.
2. Conduct a workshop to discuss regulations on the County Land Board and the County Land Team, including the Governance Commission, and then assemble an internal legal drafting team for the regulations, to be finished and promulgated within the legally required six-month period. Consultation should be focused on stakeholders at the county level. International expertise should not be needed, and legal drafting should be possible within the Land Authority, possibly with an external review.

3. Carry out action research on implementation of community rights registration under the Land Rights Act (pending its enactment), working with selected communities around Liberia, piloting the process of self-identification and organization envisaged by the proposed law on a consensual basis, accumulating lessons regarding what works, and aiming for drafting of an administrative guideline on self-identification and demarcation by the end of Year I. The action research should include a proactive approach to gender equity. By that time, it should be clear whether to go with administrative guidelines or whether they must at some point be promulgated as regulations. International expertise already available to the Land Authority should suffice, and the action research is an especially effective form of public consultation. The action research should be carried out so as to allow subsequent validation of its results once the Land Rights Act is passed.
4. Reconstitute a land dispute resolution task force and contract a legal consultant to assist with the finalization and approval by the Land Authority (and if possible, at a higher level) of the draft policy. Once approved, the authority should initiate discussions with the Ministry of Justice on the law recommended by the Land Administration Policy, initially with respect to which institution should take the lead in arrangements for the drafting of a law, and on the breadth of the law (land only or broader).
5. Establish a task force with official and unofficial membership to explore the feasibility of a single Land Rights Registration Act, covering both deed registration and title registration and providing for registration of customary rights. International legal expertise should be mobilized. Broad public consultation with registry users and other stakeholders is called for in such a case, and it would be appropriate to include a major workshop on options in the Year I agenda.
6. Establish a working group including an attorney from the DLPP's legal advisory unit, participants from the Land Authority's Public and Government Land Department, and the Bureau of Concessions, reporting to the DLPP. The group would produce a draft regulation on sales, leasing, and concessions of public and government land, to be submitted for broad public consultation in Year II, before finalization and promulgation.

These are the priority tasks that might be undertaken in Year I. As Year I activities are launched, the DLPP would review the second priority items listed in 5.3. It would plan for some of these to begin in Year II. In some cases, it might be possible to carry out preliminary tasks, such as a review of available information on informal occupations and identification of needs for studies to be launched in Year II related to issues to be tackled later.

Access to legal drafting expertise should not be a constraint. In-house legal expertise with external review should suffice in some cases. If the task is more challenging and complex, there are at least three options: a) legal consultants provided by donors; b) an attorney with legal drafting skills from a local law firm, hired as a consultant; and c) accessing the services of the Law Reform Commission. If legal work is spread across these options, it should be manageable.

It is worth noting a new procedure for law reform. Box 3 below introduces the requirement under the recently approved National Law Reform Policy that proposed laws go through the Law Reform Commission (LRC) for vetting and to ensure that other legal requirements are met.

Box 3. The National Law Reform Policy

In 2015, the Law Reform Commission obtained approval of a National Law Reform Policy. Bills may be developed by any executive agency, or private person, but in the interest of coordination and standardization, it is now required that every bill submitted to the Office of the President should first be reviewed by the LRC. The LRC will act as a clearinghouse. If the draft law comes to the Office of the President without receiving the approval of the LRC, the president will send it to the LRC for review.

Consultation and participation by those likely to be affected are required, though in quite general terms. The bill must also meet certain general guidelines for drafting and style. That style is detailed in 5.1.1. It is relatively straightforward, but more demanding than general practice with respect to repeals. It requires that repeals be presented as a “list of amendments of existing laws as footnotes.” This seems to mean that the broad “all legal provisions inconsistent to this law are hereby repealed” type of wording is not acceptable.

Most important, the LRC vetting is going to be used to enforce the Public Finance Management Act of August 26, 2009, which requires in section 9 that “all proposed legislation submitted for approval to the legislature be accompanied by a fiscal impact analysis, stating to the Legislature the estimated impact on revenues and expenditures for the financial year in which the legislation would become effective, as well as the legislation’s fiscal impact on multi-year planning and budgeting.” The Minister of Finance is supposed to have prepared detailed instructions for preparation of such analyses. This has not been the practice, notwithstanding the law, but now it seems there will be an attempt to enforce the requirement. Two annexes are attached to the policy: a checklist to be used by the commission to assess submissions, and a “Model Fiscal Impact Analysis of Legislation Primary Cost” that (somewhat surprisingly) seems to be concerned only with the cost of processing the legislation for enactment, rather than cost of implementation.

6.0 CONCLUSION

There remains a great deal still to be done to improve and modernize Liberia's land law. This has been a major focus for the Land Commission. Under the proposed Liberia Land Authority Act, the Land Authority has a land policy and law reform mandate, but it is also an implementer of land law and policy. Many different demands will require the time and attention of the Land Authority's staff, and there is a danger that the attention devoted to law reform may wane. This would be a mistake, at least for the next five to ten years. There are important land law reform tasks yet to be accomplished, reforms without which fraud, confusion, and disappointment will continue to characterize Liberia's land sector.

One way to prevent a loss of focus on policy and law reform is to include in the new authority a department devoted to policy and law reform, and the proposed Land Authority Act in fact does so, creating a Department of Land Policy and Planning. It is recommended that the DLPP have on its staff a lawyer whose primary responsibility is the legal dimension of policies and activities of the Land Authority. That lawyer would participate in policy task forces and in legal drafting teams. Legal representation of the authority in matters such as contracts, disputes, and personnel matters should be handled by another lawyer in the post of Legal Advisor, in the Office of the Executive Director of the Land Authority.

In time, the backlog of needed land law reforms will be addressed and the role of land law reform in the work of the Land Authority will shrink. But that time is still some years away.

7.0 SOURCES

Aldinger, Peter. 2015. Harmonizing the Community Rights Law of Liberia and the Implementing Regulations. Consultant Report and Recommendations June 2015. Monrovia: PROSPER Project, Tetra Tech for USAID.

Allot, Anthony N. "A Report on the Feasibility of Research into Liberian Customary Law," *Liberian Law Journal* 3(2): 83 (December 1967).

Bentsi-Enchill, K., and G. H. Zarr, "The Assurance of Land Titles and Transactions in Liberia," *Liberian Law Journal* 2 (1966): 94-121.

Bruce, John W. 2013. "Options for Liberia: Organizing for Better Land Governance, a Report to the Land Commission." February 2, 2013.

Bruce, John W. and N. B. Kanneh. (2011). Reform of Liberia's Civil Law Concerning Land: A Proposed Strategy.

Bruce, John W., with Anna Knox. 2009. "Structures and Stratagems: Decentralization of Authority over Land in Africa," *World Development* (Special Issue on the Limits of State-Led Land Reform) (2009) 37(8): 1360-1369.

Bruce, John W., with Kimberly A. Swallow. 2013. A Missing Dimension: How Can Governments Organize Themselves to Achieve Responsible Land Governance? Paper presented to the World Bank Conference on Land and Poverty, Washington DC, April 8-11, 2013.

Bruce, John W., et al. 2008. Insecurity of Land Tenure, Land Law and Land Registration in Liberia. Environmental and Natural Resources (AFTEN), Africa Region, Report No. 46134-LR (World Bank, Washington DC).

Duncan, J., T. Mor, and M. Dodd. 2015. Memo to Mark Marquardt, Analysis of the Land Rights Bill (Version June 14, 2014) from the Perspectives of Gender Equity and Women's Land Rights (Landesa), January 19, 2015.

Food and Agricultural Organization and Committee on World Food Security, United Nations. 2012. Voluntary Guidelines on Responsible Governance of Tenure in Land, Fisheries and Forests in the Context of National Food Security. Rome: FAO.

Ford, Ivan. 2013. Establishment of a New Land Administration Entity. July 2013. Monrovia: Tetra Tech for USAID.

Governance Commission. 2008. Regional Consultative Meetings on Land. Monrovia: Governance Commission. May 2008. Monrovia: Governance Commission.

Jappah, Ruth, Elisa Scalise, and Leslie Hannay. 2012. Women's Land Rights Study. Land Policy and Institutional Support (LPIS) Project. February 2012. Monrovia: Landesa/Tetra Tech for USAID.

Johnson, Koboi. 2006. "Property Law of Liberia, Specifically an Act to Amend the Property Law to Provide for a New System for Registration of Land and for Dealing in Land So Registered", paper presented to a Real Estate Registration and Real Property Tax Practicum, Workshop Organized by USAID/LTI and the Ministry of Lands, Mines and Energy, October 20-21, 2006.

Johnson, Koboi. 2007. Inventory of Ministries, Agencies and Other Institutions with Statutory Responsibilities for Managing and Administering Land and Real Property in Liberia. (Monrovia: Governance Commission).

Knox, Anna, et al. 2012, Customary Land Tenure in Liberia: Findings and Implications Drawn from 11 Case Studies. Liberia Land Policy and Institutional Support Project (LPIS). November 2011. Burlington, VT: Tetra Tech).

Knight, Rachael, Silas Sikor, and Ali Kaba. 2011. The Community Land Titling Initiative. Liberia Report. Rome: International Development Law Organization and the Sustainable Development Initiative.

Land Commission. 2010. Summary Report: National Urban Conference, 6-8 October 2010, Samuel Kanyon Doe Sports Complex, Paynesville City, Liberia. Monrovia: Land Commission, Norwegian Refugee Council, and UN-Habitat.

Land Commission. 2015. Report of the Proceedings of the Legislative Retreat on the Draft Land Rights Act, Fairground, Buchanan, Grand Bassa County, March 27, 2015.

Land Commission. 2015. Report on Round Table Meeting on Land Authority Bill (LLA), June 30, 2015.

Law Reform Commission. 2011. Report on Land Laws Desk Study Conducted by the Land Reform Commission in Furtherance of Collaboration between the Land Commission and the Law Reform Commission. November 18, 2011 (Monrovia: Law Reform Commission).

Marquardt, Mark, and MacArthur Pay-Bayee. 2011. Study Assessing the Potential Role of Land Title Registration in Liberia. Final Report. 10 February 2011. Monrovia: Land Commission.

McAuslan, Patrick. 2009. Better Cities for All: the way forward for an urban law reform. Report to the Land Commission. (Monrovia: UN-Habitat).

McCarthy, Nancy. 2007. Customary Land Use in Liberia: A Review of Supreme Court Decisions. (Monrovia: IFPRI and George Mason University School of Law, 2007).

Ministry of Lands, Mines and Energy. 2006. "Memorandum of Understanding for the Conceptual Understanding of the Challenges to Land Title and Registration and Corresponding Resolutions to Said Challenges" (Monrovia, MLME, October 21, 2006).

Rose, Laurel. 2011. Land Dispute Management in Liberia. Report to the Land Commission. January 2011 (Monrovia: Land Commission).

Unruh, Jon. n.d. Postwar Land Tenure in Liberia: The Intersection of Customary and Statutory Land Laws. (Monrovia: World Bank, n.d., c. 2007).

Wily, Liz Alden. 2007. "So Who Owns the Forest?" An Investigation into Forest Ownership and Customary Land Rights in Liberia (Monrovia: Sustainable Development Institute and FERN).

World Bank. 2005. An Economic Analysis of Natural Resources in Mozambique; Rural Land Issues and Policies (Washington DC: The World Bank).

ANNEX A. CONSULTANT SCOPE OF WORK

Mr. John Winfield Bruce, hereinafter referred to as the "Consultant," will work in Monrovia, Liberia, for Tetra Tech ARD in support of the U.S. Agency for International Development-funded Land Governance Support Activity (LGSA), Contract No. AID-669-TO-15-00003, T.O. No. AID-669-TO-15-00003.

The Scope of Work for this assignment is found below.

Project Name: Liberia Land Governance Support Activity (LGSA)

Task Order No.: AID-669-TO-15-00003

Consultant Name: John Bruce

Consultant Title: Land Policy Specialist

1.0 BACKGROUND

The Land Governance Support Activity supports the establishment of more effective land governance systems, ready to implement comprehensive reforms to improve equitable access to land and security of tenure, so as to facilitate inclusive sustained growth and development, ensure peace and security, and provide sustainable management of the environment. LGSA interventions will strengthen the policy, legal and regulatory framework for land governance; improve the functionality of land governance institutions; field-test and support phased implementation of key elements of the Land Rights Policy; and strengthen stakeholder engagement in land governance.

USAID/Liberia contracted Tetra Tech ARD as the Prime Contractor to implement the LGSA Task Order TO under the Strengthening Tenure and Resource Rights (STARR) Indefinite Quantity Contract (IQC). In collaboration with the Land Commission John Bruce drafted the Reform of Liberia's Civil Law Concerning Land in 2011. This document helped guide the Government of Liberia in their land policy and legal reform processes over the last four years.

Through LGSA John Bruce will provide a current analysis of legal status and gaps of land legislation in Liberia by updating this document which will provide a legal mapping for all land reform under the anticipated Land Authority. The research is expected to inform key policy decisions and serve as a guiding document for future land reform priorities. Project partners will review and provide inputs as it relates to gender and land, customary land rights, dispute resolution, and land administration.

2.0 OBJECTIVE/PURPOSE OF THE SOW

The objectives for this SOW are for the Tetra Tech ARD Land Policy Specialist to provide technical assistance to LGSA to achieve the following:

- An updated version of Reform of Liberia's Civil Law Concerning Land to serve as a guide for the Government of Liberia policy and legal reform.
- Ongoing remote support to LGSA Chief of Party and Land Governance Advisor in support of the legal and institutional transition to the Land Authority.

3.0 TASKS

The main tasks of this SOW include, but are not limited to the following:

1. Review recent policies, laws and regulations (Land Rights Act, Land Authority Act, Land Administration Policy, Decentralization Act) prior to arriving in country.

2. Consult with the Land Commission and other Government of Liberia authorities, such as the Governance Commission and Ministry of Gender and Development, to solicit input.
3. Meet with Liberian legal experts and civil society for input.
4. Review and draft an update to the 2011 document, Reform of Liberia's Civil Law Concerning Land.
5. Incorporate input from Land Commission, LGSA partners, and civil society.
6. Provide input into the transition strategy to be drafted by the Land Governance Advisor for the Land Authority.
7. Plan for introductory institutional formulation workshop, a three to five day training workshop for the Land Authority transition team and associated institutions to be held in January 2016.

4.0 DELIVERABLES

The following deliverables are required as part of this SOW:

1. Draft updated Reform of Liberia's Civil Law Concerning Land.
2. Final updated Reform of Liberia's Civil Law Concerning Land, incorporating feedback from the Government of Liberia, LGSA partners, and civil society.
3. Written input into the Land Authority transition strategy.
4. Outline of introductory institutional formulation workshop.

5.0 LEVEL OF EFFORT (LOE)

The LOE includes a two week in-country visit with 15 additional days of LOE for on-going technical support to be conducted remotely. This LOE for the assignment will be broken down as follows:

- 8 days of remote support from home of record between November 16 – 27, 2015
- 18 days of in-country STTA and travel days between November 28 – December 18, 2015 (providing USAID approval for a 6-day work-week)
- 9 days of remote support from home of record between December 17, 2015 and January 15, 2016, for an overall level of effort of 35 days.

6.0 COORDINATION

Mr. Bruce will coordinate with LGSA COP, Mark Marquardt.

ANNEX B. PERSONS CONSULTED

Harriette Badio (Cllr), Deputy Minister, Codification, Ministry of Justice.

Othello Brandy (Dr.), Chairman, Land Commission

Jeanette Carter (Dr.), Advisor, Land Commission.

Kou Dorliae (Atty), Assistant Minister for Economic Affairs, Ministry of Justice.

Ivan Ford, Land Governance Advisor, Land Governance Support Activity, Tetra Tech.

Kula Jackson (Atty), Program Officer (Law), Land Commission.

Ali Kaba, Sustainable Development Institute (NGO)

Antony Lamba, Country Director, UN-Habitat.

Estelle Liberty, Commissioner (Land Policy), Land Commission.

Mark Marquardt (Dr.), Chief of Party, Liberia Land Governance Support Activity, Tetra Tech.

Greg Myers (Dr.), Lead Land Administration Specialist, World Bank.

Amos Sawyer (Dr.), Chairman, Governance Commission.

Bloh Sayeh, Director, Center for National Documents and Records/Agency.

Hardwick Tchale, Task Team Lead, Liberia Land Administration Project, World Bank.

Stanley Toe, Senior Program Officer and Acting Executive Director, Secretariat, Land Commission.

Daryl R. Veal, Land Governance Adviser, USAID/Liberia

T. Negbalee Warner (Cllr), Senior Partner, Heritage Partners and Associates, chief legal draftsman for proposed Land Rights Act.

James Yarsiah, Rights and Rice (NGO)

ANNEX C. EXISTING LAWS: ASSESSMENT, ISSUES, AND RECOMMENDATIONS

This Annex is drawn from the body of the 2011 Land Law Reform Strategy report, with necessary updating. It reviews particular laws, assesses their adequacy, notes issues that need to be explored further, and recommends whether the statute is adequate as it stands, requires amendment, or requires repeal and replacement. General summaries of many of the laws covered here are presented in Annex D.

1. The Constitution, 1986
2. Public Lands Law (Vol. V, Title 34, Liberian Codes Revised)
3. Public Procurement and Concessions Law (Sept. 18, 2010)
4. Minerals and Mining Law (September 20, 2000), Part I, Title 23, Liberian Codes Revised
5. Natural Resources Law (Vol. IV, Title 23, Liberian Codes Revised)
6. National Forestry Reform Law of 2006
7. Community Rights Law with respect to Forest Lands (2009)
8. Property Law (Vol. V, Title 29, Liberian Codes Revised, Chapters 1 to 7)
9. Decedents Estates Law, 1992 (Chapter 3 of Title 8, Liberian Codes Revised)
10. Devolution of Estates and Establishment of Rights of Inheritance for Spouses of both Statutory and Customary Marriages (December 1, 2003)
11. Registered Land Law (1974), Chapter 8 of the Liberian Codes Revised
12. PRC Decree # 23 of 1980, providing for the Licensing and Registration of Land Surveyors and for the Control and Regulation of Surveys and Survey Methods and for the Protection of Survey Monuments, Markers, Beacons and other Reference Appurtenances within the Republic of Liberia. (Chapter 9.7 of the Liberian Codes Revised).
13. Real Property Tax Code (Chapter 20, Revenue and Finance Law, 2000)
14. The Investment Act of 2010
15. Local Government Law (Vol. IV, Title 20, Liberian Codes Revised)
16. Zoning Act for the City of Monrovia
17. Zoning Law (Vol. VI, Title 38, Liberian Codes Revised)
18. Aborigines Law (Title I, Vol. I, 1956)
19. Rules and Regulations Governing the Hinterlands of Liberia, Ministry of Internal Affairs (January 7, 2001)

I THE CONSTITUTION, 1986

The 1986 Liberian Constitution includes a number of provisions related to real property rights.

Article 22 provides that “Every person shall have the right to own property alone as well as in association with others.” It limits that right to Liberian citizens, but makes an exception for non-citizen missionary, educational and other benevolent institutions. Such provisions are common in constitutions and pose no problem from a human rights standpoint. Discriminations on the basis of citizenship and non-citizenship are explicitly noted as acceptable in the International Convention for the Elimination of All Forms of Racial Discrimination (Art. 1.2).

But Article 27 provides that citizenship is limited to persons who are “Negroes or of Negro descent”, in effect barring persons not meeting that racial qualification from land ownership. This raises serious questions under the same International Convention for the Elimination of All Forms of Racial Discrimination, to which Liberia has acceded, which explicitly prohibits racial qualifications for citizenship (Art. 5 (d) (iii)). In 1985 the Interim National Assembly legislated to allow non-citizen

ownership of land but retained the racial limitation on citizenship (INA Decree of December 11, 1985). This was almost immediately reversed by the 1986 Constitution. Consultations held by the Land Commission in 2009 indicated strong popular support for the restriction of citizenship and access to land ownership.

Article 22 provides that private property rights do not apply to mineral resources, which belong to the Republic and are to be used by and for the entire Republic. This provision is more limited than the parallel provisions of many constitutions, which often list other resources as by their nature belonging to the state and not susceptible of private ownership. These may include resources such as the beds of lakes and rivers, a coastal zone or beaches, or a defense zone along international borders of the country.

Article 23 protects the rights of men and women against their spouses and the creditors of their spouses and further requires the enactment of a law on decedents' estates to ensure the protection of surviving spouses under both statutory and customary marriages. That law has since been enacted and is reviewed later in this section.

Article 24 indicates that the state guarantees the inviolability of property rights but then provides, as do most constitutions, for the expropriation of property for public purposes. It requires prompt payment of just compensation where this occurs. There is a lack of procedural provisions.

Article 65 contains the provision that, "The courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature". This provides the constitutional basis for the application in the courts of the customary land tenure rules under which many rural Liberians hold their land.

These provisions are for the most part sound and unobjectionable. A few are questionable, for instance the relatively narrow provision on resources which by their nature belong to the state, and the racial citizenship qualification with its property ramifications. These call for attention, but realistically constitutional amendment is almost never done without substantial political impetus, often provided by the accumulation of several needed amendments over many years. The issues identified here are likely to have to wait for an occasion when the Government is inclined to review the Constitution. It is thus not recommended that they form a part of the immediate legislative reform program of the Land Authority.

2 PUBLIC LANDS LAW (VOL. V, TITLE 34, LIBERIAN CODES REVISED)

The Public Lands Law is one of the two or three most influential laws dealing with land, and is treated here in some detail. It is an antiquated statute, still referring to the "hinterlands" some decades after this public administration category ceased to exist. It provides for County Land Commissioners (Chapter 1) and Public Surveyors (Chapter 2) to be appointed for each County by the President, and for a program of public land sale through the Office of the President (Chapter 3). The County Land Commissioners serve as part of the MIA's local government structure and report to the County Superintendent. The Resident Surveyor is appointed by the President on the advice of the Ministry of Lands, Mines and Energy and is supervised by that Ministry's Department of Lands, Surveys and Cartography, but works very closely with the County Land Commissioner. The duties of these officials are framed by the law largely in terms of their role in the public land sale program, by which all deeds in Liberia originated, but they are also involved in the processes for registration of subsequent deeds of sale, probate deeds and other instruments affecting land.

The public land sales program has played a controversial role in Liberian history as the primary vehicle by which land in the interior (what was once referred to as the "hinterlands") has been subtracted from land held under custom by the original inhabitants and titled to elite Liberians. The program has

been associated with political patronage by Presidents, and has been and remained until very recently a program fraught with abuses by officials and surveyors. While some who have traditionally occupied the land have been able to “purchase their own land”, this seems an anomalous and even offensive approach to validating customary rights, and the amount of land covered by those deeds is limited.

The absence of a definition of public lands in the statute is a key defect. While the juridical basis for the position is questionable, most commentators would agree that the Liberian government has quite consistently behaved as if all land which is not under deed is public land. But the survey, mapping and registration of deeded land is so imperfect that it makes it difficult to identify the residual public land. This renders unrealistic the requirement of the statute that the County Land Commissioner keep a record of all public land in the county, and in fact today’s government allocations of presumed public land often run afoul of earlier deeded land of which the allocators were not aware.

While the statute prohibits sale of lands which form part of tribal reserves, tribal reserves are not defined beyond a general reference to community “need” and very few of these reserves have been demarcated. While the law specifies that they exist and are valid regardless of whether they have been demarcated, from a practical standpoint it makes the protection of the reserves difficult. A further complication is that the requirement of obtaining a tribal certificate from tribal authorities before sale of the land as public land takes place does not always result in consultation with those who actually represent communities in land matters.

In addition, the provision in the statute of antiquated land sale prices far below the actual value of the land has both fostered corruption and led to non-compliance with the limits by local officials. The President has suspended public land sales, and at her request the Land Commission has been vetting land sale applications and preparing interim procedures and guidelines for public land sales to be in place before the moratorium is lifted. These cannot amend the law, however, and do not do away with the need for a thorough reconsideration of these provisions on public land sales.

The Commission, asked by the Office of the President to vet existing proposed land sales, proposed and obtained a moratorium on public land sales while that process went forward and while the Commission prepares interim procedures and guidelines for public land sales, to deal with some of the more serious defects in the program and so address some of the issues raised in public consultations and expert testimony to the Commission.

In addition to provisions on public land sales, the Public Lands Law also has provisions on:

- Allocation and titling of land to immigrants and provision of deeds in fee simple for “aborigines” which have attained a necessary degree of civilization (Chapter 4), which provisions are today irrelevant and/or offensive and should be repealed;
- Leasing of public lands to foreigners and legations (Chapter 5), which could profitably be expanded to include leasing to citizens as well, as an alternative to public land sales, to be used to allocate land for larger commercial operations and subject to development conditions;
- Provision on escheat (reversion of land to the state where there are no heirs to a deceased owner) (Chapter 6), a reasonable provision but one which would be better included in a Real Property Law;
- Provision for correction of deeds by the President, but only after cancellation of the deed containing the error by a court of equity (Chapter 7), which might better be in the Deed Registry Act and should in any case not require the direct participation by the President.

Aside from the problems with particular provisions of this law, it falls well short of a comprehensive legal regime for public land management. The Commission is giving priority to policy development on

public land and development of a new Public Lands Law. In its deliberations, it is suggested that the Commission consider the following possible reforms:

- Propose a new law relating to public land which defines public land and clearly distinguishes between public land and land held by local communities under customary land tenure;
- Require an inventory of public land, including clear data on the extent to which such land is encumbered by other rights;
- Allow leases and concessions of public land to citizens as well as foreigners (this is the normal practice internationally);
- Limit public land sales to relatively modest amounts of land, resorting instead to leases with development conditions for somewhat larger scale operations, and to concessions for large plantation enterprises and mineral exploitation;
- Provide for sale prices and rentals in a schedule in a regulation rather than in the law itself, making it possible to adjust those values over time without going back to the legislature; the new prices should closely approximate market value, and provision should be made for public land sale by public auction;
- Provide specifically for those who have been in long-term occupation of the land they wish to purchase (for instance those who have held the land under customary land tenure) to be allowed to purchase that land at a price that simply covers the administrative costs of the purchase;
- Provide for a robust program of public land management rather than focusing on public land sales;
- Task the County Land Commissioners and County Surveyors with a much more varied and substantial mandate for public land management, equipping and retraining the cadre and dismissing those who have been involved in corrupt practices; and
- End the presidential appointment of Land Commissioners and Public Surveyors, breaking the long historical association of these appointments with political patronage, and provide for their integration into the decentralized staff of the Ministry of Lands, Mines and Energy or such other institution as may be responsible for land. (Part 6 of this report deals with institutional reforms.)

3 PUBLIC PROCUREMENT AND CONCESSIONS LAW (SEPT. 18, 2010)

While not defined in the law, the generally accepted definition of a concession is a partnership in which Government, in order to accomplish a government purpose, makes land available to a private entity such as a corporation and that corporation agrees to carry out certain activities on that land to achieve that government purpose. Rents to government for the land may be involved but there will more typically be a sharing of the revenue from that activity. Common concession types in Liberia are mineral concessions, forestry concessions, mining concessions and agricultural concessions. These are typically large-scale operations for which the private partner brings both expertise and investment capital. Concessions in Liberia have been associated with direct foreign investment, but Liberian firms can equally apply for and receive concessions.

The Law creates a Public Procurement and Concessions Commission. The Commission under S. 6 of the law includes a chairperson, three public sector members (including a lawyer from the Office of the Attorney General), and three persons nominated by the private sector. The Commission deals with both simple procurements of goods and services and with concessions. The Commission has a regulatory role. Concessions continue to be made by the sectoral ministries. The Law refers to the Ministries or other government agencies entering into the concession as the Concession Entity. It

seems that where a ministry does not have an explicit authority under law to make concessions (as in the case of the Ministry of Agriculture), this competence is assumed to flow from the general power of the ministry to promote the activities for which they are responsible.

The Law seeks to ensure certain processes are observed in the making of concessions. An Inter-ministerial Concession Committee is created to monitor and ensure that the provisions of the law are observed for each concession. Competitive bidding is provided for in some detail, but sole source procurement is permitted where certain conditions are met, such as the concession requiring specialized expertise that is available from only one candidate for the concession (S. 101(1) (a)). More significant, unsolicited bids are provided for (S. 101(3)), undermining many of the process protections provided by the law; the consultants have the impression that many concessions are in fact awarded in response to such unsolicited proposals.

The process by which land or other natural resource for a concession is identified and its availability ascertained is obscure. Section 90(1) provides for public consultations to be carried out by the Concession Entity (not the Concession Committee) prior to finalization of bid documents, but there is no indication of how, when or where such consultations should occur, and no suggestion that this should concern those who may have been using the land. Land is similarly not mentioned in the article that lists issues to be considered in negotiations (S. 119). Section 117 provides in general terms for a legal opinion from the Ministry of Justice; this could conceivably include assurances from Government that the land concerned is in fact public land and unencumbered by other rights, but the provision is in general terms and does not mention land. Section 125 provides a right to review but only in those cases where in the granting of the concession this law or its regulations have been violated. The right to review does not appear to be available to those whose use or ownership in the land is adversely affected by the concession, because the law places no responsibility upon the concession entity to ensure that this does not occur.

Stories abound of concessions which overlap existing private rights in land, or even other concessions. The Law does not provide an effective mechanism for coordinating the concession granting activities of the concerned ministries and other government agencies. There is no data base of public land that would allow them to effectively do so. The international consultant has seen concessions that commit government to use its eminent domain power to secure any privately owned land inadvertently included in the concession. The fact is that government does not have an inventory of public land available for large-scale concessions. The land is often self-identified by the investors in consultation with local officials, and then becomes the subject of an unsolicited bid. The failure of the PPC law to require a thorough local consultation and respect for both deeded and customary land rights in the area creates a situation parallel to that which has long existed for public land sales and has generated considerable local resentment. It is ironic that at the point in time when the Land Commission is working with the Office of the President to remedy the situations regarding public land sales, the same problems are being generated on a much larger scale by a growing rush of concessions.

The consultants consider that while this law seeks to provide for the badly needed coordination of concessions, it is likely to be ineffective. This is because it mandates neither measures to identify public land that might be available for such purposes nor measures to ensure that investors do receive clear property rights in the land under concession. While forestry sector legislation includes substantial provisions on forestry concessions, and mineral sector legislation contains some but much sketchier provisions on mineral concessions, there is no such provision for agricultural concessions. There is a need for the promulgation of a general legal framework for concessions, including protections of the rights and livelihoods of local people affected by them, and this would best be handled within the Public Lands Law. The provision of the law now under review is woefully vague and inadequate with regard to public consultation, and could be greatly improved. Mozambique has recently revised its procedures in

these cases; these could provide a good basis for discussion of future provisions of such procedures in the context of a new Public Lands Law.

This law requires reconsideration and amendment, in particular to provide protections to existing land users in the area of a concession and to require a process to ascertain the claims and needs of those land user communities.

4 MINERALS AND MINING LAW (SEPTEMBER 20, 2000), PART I, TITLE 23, LIBERIAN CODES REVISED

This law reaffirms state ownership of all minerals established by the Constitution but clarifies that minerals once mined can be private property (Ss. 2.1, 2.3). In S. 10 it declares as zones protected from mining “land owned within the boundaries of cities, commonwealth districts, municipal districts, cemeteries, transportation or communication facilities, aqueducts, military bases, ports, Poro or Sande grounds, and other grounds reserved for public purposes”. Government’s claim overrides any landowners’ right, but promises “just, prompt and adequate compensation for any diminution in the value of the land caused by the disturbance, disfigurement or other factors caused by the exercise of the government’s right...” (S. 11.3). Those negatively affected have a right to petition the Minister (S. 11.5).

Once there is a clear general framework for concessions of public lands, it would be appropriate to reexamine this law, which might require amendment to realign it with the new Public Lands Law.

5 NATURAL RESOURCES LAW (VOL. IV, TITLE 23, LIBERIAN CODES REVISED)

This law seems to have been reduced in scope and rendered less coherent by the enactment of other more specialized legislation on natural resources and the amendments they made to this law. For example, protected areas, which might be covered in this law, are dealt with in the National Forestry Reform Law of 2006. In its present form, the law primarily addresses conservation of fishery resources and has some fragmentary provisions relating to diamonds. It needs to be fundamentally reconsidered, most usefully in the context of a broader review of the law on conservation of natural resources such as biodiversity.

6 NATIONAL FORESTRY REFORM LAW OF 2006

Because of the concern of the Liberian government in the immediate post-war years to resume exports of forest products as soon as possible, discussions of forest policy and law reform were given priority. This had the effect of some fundamental property rights issues regarding land, a multi-purpose resource, being discussed and legislated upon from a single-purpose (forestry) perspective, with some questionable results.⁴²

The definition of forest land is provided in S. 1.3: “A tract of land, including its flora and fauna, capable [authors’ emphasis] 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.” Section 2.1 of the Law goes on to proclaim that “All Forest Resources in Liberia” are “held in trust by the Republic for the benefit of the People”, though it excludes forest resources located in communal forests and forest resources that have been developed on private or deeded land through artificial regeneration. These provisions

⁴² For an excellent discussion of these issues, and the most useful recent work on customary land tenure in Liberia, see Wily, Liz Alden. 2007. “So Who Owns the Forest?” An Investigation into Forest Ownership and Customary Land Rights in Liberia (Monrovia: Sustainable Development Institute and FERN).

radically privilege forestry as a land use, and bring the vast majority of land in Liberia into the forest sector and under the authority of the Forestry Development Authority. This includes most of the land from which Liberians derive their food; land in farm/forest fallow would now come under the management of the Forestry Development Authority (FDA).

The law recognizes commercial forests, protected forests and communal forests, and is tasked with developing and validating a plan indicating the specific areas to be in each type of forestry (Ss. 4.4 and 4.5). A fundamental objective of the law is to ensure that no commercial cutting occurs without the permission of the FDA (S. 5.1). It provides in Section 5.3 for Forestry Management Contracts for areas between 50,000 and 400,000 hectares, which may be subject to forestry management contracts or cutting contracts. For forest management contracts between 50,000 and 99,000 hectares, only bidders of 51% Liberian ownership will be accepted for the first bidding cycle, while larger forest management contracts are open to both Liberian and international investors. The law also provides for Timber Sale Contracts, Forest Use Permits and Private Use Permits. Timber sale contracts are sales of the right to cut timber by a government authority (S. 5.4) while Forest Use Permits (S. 5.5) may be granted for limited commercial purposes, including only for (i) production of charcoal, (ii) tourism, (iii) research and education, (iv) wildlife-related activities, (v) harvesting of small amounts of timber for local use, (vi) harvest or use of non-timber forest products. Forest use permits are awarded through a concessions process under the Public Procurement and Concessions Act if the value of Forest Resources exceeds US\$10,000 "during the term of the permit". The Authority is to restrict issuance of forest use permits to specified classes of persons, such as "subsistence farmers, forest-dependent communities, residents of a particular county or district, academic researchers, artisans and persons undertaking tourism, eco-tourism and similar conservation-based activities." Finally, Private Use Permits (S. 5.6) for commercial use are awarded to owners of private forest land.

In granting forest management contracts and timber sale contracts, the FDA is required to comply with the requirements of the Public Procurement and Concessions Act and other applicable laws (S. 3.3). The Forestry Reform Law very usefully adds additional requirements to those set out in the Public Procurement and Concessions Law. It requires that there be an environmental assessment (S. 5.3.b.4), and that the holder "establish a social agreement with local forest-dependent communities, approved by the Authority, that defines these communities' benefits and access rights" (S. 5.3.b.6).

Private owners of forest land are subject to the law's regulatory framework. They are required to have the requisite permits, a management plan, and a written social agreement attested by the Authority that defines benefits and access rights for local forest-dependent communities. Section 11.2 provides that land owners can only prospect, log and hunt in accordance with the law, and Section 11.3 says that if government grants permission to use forest resources, no land owner can bar the use, but the land owner is entitled to "just, prompt and adequate compensation for any diminution in value." The power of government to grant private ownership of forest lands requires FDA approval: "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" (S. 8.2).

The law also provides for protected areas and national forests. Section 9.1 provides that Protected Forest Areas Network shall cover at least 30% of existing forested area, covering about 1.5 million hectares. Section 9.10 provides that the Authority, "in consultation with local communities, counties and other local authorities" must issue Regulations "governing activities in Protected Forest Areas." The Authority is to in consultation 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."

Section 10.1 provides for communal forests. The FDA is to issue regulations granting local communities "user and management rights", "transfer to them control of forest use", and "build their capacity for sustainable forest management." The concept of community forest reflected in the law

seems limited to subsistence use of forest resources. Section 9.1 provides that, "No Person shall . . . in Communal Forests, prospect, mine, farm, or extract Timber for Commercial Use." Minimum content for the regulations are specified, but recognizing the inadequacy of these provisions, the law also provides that within one year of the law entering into force the Authority must present a community rights law to the Legislature.

This is a relatively recent law, and in many ways reflects good practice in forestry legislation. But it is flawed in two ways. First, the extremely broad definition of forestry land radically privileges forestry as a land use and expands the regulatory authority of the FDA far beyond its realistic reach. It is a classic case of regulatory overreach, and is a regrettable instance of land, a multi-purpose resource, being legislated on from the point of a single use. Most rural communities in Liberia are forest-dependent to a significant degree, and here the law particularly falls short; the mindset reflected is paternalistic: Forests must be protected from the rural Liberians who have long used them. The pattern is not uncommon elsewhere: the state legislates to impoverish local people by depriving them of their most valuable resource, arguing that those resources are needed for the larger national interest. This is possible because of the weak and poorly defined rights of rural people in the resources whose use they have long enjoyed.

The Community Rights Law with respect to Forest Lands (2009), reviewed below, has alleviated these problems to some degree, but the Commission should consider amendments to some key provisions of this law, in particular the definition of forest land, the community forestry provisions (for better alignment with the 2009 law), and some of the restrictions on private landowners regarding forestry activities on their land.

7 COMMUNITY RIGHTS LAW WITH RESPECT TO FOREST LANDS (2009)

In Section 1, the definitions section, the law defines "community", making it clear that the term can include a single village or town, or a group of villages or towns, or chiefdom. Most critically, it expands the definition of "community forestry" from the 2006 Forestry Reform Law to include commercial forestry by communities: "The governance and management of community forests by a community for commercial and non-commercial purposes to further the development of the community and enhance the livelihoods of community members." In the definition of "community-based forest management" it makes a critical connection to customary land tenure: "Forest management activities that are carried out by a community with respect to forest resources for which the community has customary tenure or other forms of proprietorship or guardianship."

This is the missing element in the Forestry Reform Law, the connection between community land rights and community forestry, and making the connection in this statute becomes the basis for asserting community rights in community forestry, rather than something created by a permit from government. Further, in the definition of "community forestry land" it uses the term ownership to characterize that tenure relationship: "Forested or partially-forested land traditionally owned or used by communities for socio-cultural, economic and development purposes." The definitions of community land area and customary land similarly convey that the control of this land is not by permit but by historic right, and the latter repeats the provision of the old Hinterlands Regulations that recognition of the customary rights does not require its registration under statutory entitlements.

Section 2.1 states the objective of the new law: to "empower communities to fully engage in the sustainable management of the forests of Liberia" in accordance with Chapter 10 of National Forestry Reform Law of 2006 "by creating a legal framework that defines and supports community rights in the management and use of forest resources". Among the "guiding principles" set out in 2.2 are that (a) "All forest resources on community forest lands are owned by local communities, (d) "recognition of

community land tenure rights shall apply to tenure systems recognized by the Constitution and laws of Liberia", and (e) matters related to land tenure to be handled by the Land Commission."

Section 2.3 on Community Forest Land provides further: (a) Forest land areas between 5,001 and 49,999 hectares "may be" Community Forest Land; (b) Community Forest Land is Aborigines Grant Deeds, Public Land Deeds, Public Land Sale Deeds, Tribal Land Deed Certificates⁴³ and Warranty Deeds; (c) Deeds mentioned in (b) that have been authenticated as certified are Community Forest Land, and (d) forest land and community land recognized under this law are Community Forest Land. Section 3.1 on community rights gives communities the right to control the use and management of community forestry resources, to enter into small-scale commercial contracts, to negotiate and enter into social contracts with concessionaires, and to take at least 55% of all revenues and income from large-scale commercial concessions.

This said, the regulatory role of the FDA remains clear. Community forestry is an activity carried out under its supervision. But the Community Rights Law dramatically changes the orientation of the Forestry Reform Law with regard to community land and community forestry, and with regard to the ability of those communities to participate in commercial forestry. While the law does not contain a repeals provision, it stresses in S. 9.1 that, "Where there are conflicts of law existing between the National Forestry Reform Law of 2006 and the Community Rights Law of 2009 with respect to forest lands, the Community Rights Law takes precedence and becomes binding." It remains the fact, however, that both the 2006 and 2008 laws deal with what are fundamental land tenure issues from a forestry perspective. If an adequate land tenure regime is to be constructed for land under customary right, there will be a need to rework some of the provisions of both laws to nest these reform provisions within the larger reform program.

8 PROPERTY LAW (VOL. V, TITLE 29, LIBERIAN CODES REVISED, CHAPTERS I TO 7)

The law of property in most common law countries resides primarily in judicial precedents and not in statutes. The typical property law statute in most common law jurisdictions looks a bit like this Liberian law: an accumulation of specific provisions enacted when the legislature felt a need to supplement the common law. It is not remotely a comprehensive setting out of the law on real property or property generally.

Chapter 1 deals with the probate and registration of instruments dealing with real property. Such instruments, including deeds, mortgages and other conveyances, must be signed by at least two parties. It must then first be probated, with an opportunity for objections, and then registered in the register of deeds. A conveyance not probated within four months of its execution is said to be void.⁴⁴ These brief and antiquated provisions do not constitute an adequate regime for deeds registration, and should be replaced by a modern Deeds Registration Law (or provisions on deed registration nested within a broader law on registration of rights in land, discussed in the next section of this report).

Chapter 2 is entitled "landlord and tenant" but deals only with leases to foreigners. Since foreigners are barred by the Constitution from land ownership, the option of leasehold is provided. The term is limited to 21 years, but two extensions for the same period are possible. Rent increases are restricted.

⁴³ This wording is unfortunate, not in the inclusion of a reference to tribal certificates but in the use of the term "tribal deed certificate." A tribal certificate is not itself a deed, though its issuance by tribal authorities is a step in the process toward issuance of a deed. The usage in this law may strengthen the existing misperception on the part of many that a tribal certificate is the equivalent of a deed.

⁴⁴ The Liberian Supreme Court has held that "void" here means "voidable," if another comes and timely probates and registers a transaction. The court concludes, "The fact that an agreement relating to real property has not been admitted to probate within the time required by law does not render the instrument void but only voidable as to third parties who are not contracting parties." *Clark v. Snyder*, 9 Liberian Law Reports 111, 114 (1945).

Leases may be more than 21 years for foreign businessmen for major investments. The details of these provisions may need to be reexamined in light of new legal provisions on concessions, but something similar would need to go into a new real property law.

Chapter 3 is the Alien Mortgage Guaranty Act, which deals with the issue of a foreign lender who cannot own land in Liberia foreclosing on a mortgage from a Liberian borrower who has secured that loan with land. It also applies to local firms with majority foreign shareholding. It provides for sale by foreclosure but denies the foreign lender the opportunity to bid on the property at foreclosure. If the foreclosure sale produces less than the debt secured, the Government guarantees payment of the remainder of the debt. The arrangement seems odd, and may no longer be utilized by lenders. This should be verified and if it should prove to be the case, there is no need to maintain such a provision in law.

There is no Chapter 4, that chapter having been repealed.

Chapter 5 deals generally with foreclosure of mortgages. It provides for foreclosure sales, and has detailed if antiquated provisions of the notice required for such a sale. It provides that the mortgagee may purchase the property. Provision is made for probate and registration of any resulting deed. This is a very partial statement of the law concerning mortgages, and, in a new real property law, a far more robust coverage is recommended.

Chapter 6 deals with partition of land owned jointly or in common. The provisions allow the co-owner to petition the local Circuit Court for partition and sets out a process by which this occurs. It gives the court the authority to appoint commissioners to conduct such partitions, and sets out the process of partition. Where the commissioners find that the parcel cannot be partitioned without “great injury to the interests of the owners”, the commissioners may recommend and the court may order sale of the property by auction to the highest bidder. The provisions are sound so far as they go, but such provisions have been seen to have limitations in countries where large properties have over generations gone undivided or been divided only informally among heirs. We understand this to be the case in Liberia, as it is within many African-American communities in the United States. Last year a model law on “heir property” was approved in the US for possible enactment in states where this situation is common, and those involved in law revision in this area should examine that model law to see if it contains provisions that might be useful in Liberia.

Chapter 7 provides a process for exercise of the widow’s common law right of dower, a right to a third of the deceased husband’s real property. It begins with filing of a petition by the widow in the probate court where the property is located. Appointment of commissioners by the court to assess the dower is provided for. Where it is impractical to partition the property involved in the dower, the widow may receive a third of the rents on the property rather than a third of the property itself. The provisions seem to apply only to “freehold estates” (S. 90) and they need to be examined closely and made consistent with the much more recent law on equal rights for women in customary marriages, reviewed below.

How to proceed with this law? As suggested at the outset, its general character is similar to many property laws in American states; it supplements the common law on real property in fragmented but useful ways. On the other hand, many of the particular provisions have problems that suggest that they should be reexamined and amended if not replaced. The Deed Registration provisions are particularly inadequate, failing to provide for the organization of the registers, their maintenance and security, and a variety of other important matters. It has already been suggested that new legislation is needed in that area.

But there is a broader issue here. Many countries in Africa have enacted comprehensive Land Laws in recent decades. In countries in the French legal tradition, this is no innovation; they have always had

extensive real property provisions in their Civil Codes. But it is an innovation in common law countries, part of a broader trend of restating the common law in statutes which can be more easily accessed by law students, members of the bar and the judiciary, not to mention citizens without formal legal training. Such laws have been enacted in several countries with a common law heritage including Nigeria, Tanzania, Sudan and Uganda. They typically have several pages of basic provisions on real property, providing a clear general legal framework (an outline that is often hard to discern in fragmented judge-made law), and providing basics on ownership, leaseholds, mortgages and easements. These provisions restate and to some extent modernize the common law, making it far more accessible. They do not replace the common law, as judges continue to resolve disputes by reference to both the statute (for general rules) and to the common law embodied in judicial precedent (where needed to resolve how to proceed in the special circumstances of a particular case).

Such an act might be denominated the “Private Land Law”. The consultants recommend that this option be given very serious consideration. Models for such a statute are available from the other African countries mentioned, though of course the content should be specific to Liberia’s policy and legal values. The models from the US are not very helpful in this case. There is no Uniform Real Property Act, and the Restatement of Law on Real Property (initiated by the American Law Institute in 1937) now fills several dense volumes and deals with real property matters at a level of detail that is not very useful as a model for a law focused on basics. (It would however be appropriate in developing such a Liberian law to refer to the Restatement for ideas on how to frame particular basic rules.)

9 DECEDENTS ESTATES LAW, 1992 (CHAPTER 3 OF TITLE 8, LIBERIAN CODES REVISED)

The Decedents Estates Law confirms the rights of all persons, including “tribal persons” to make last wills and testaments disposing of their property upon their death, subject to certain limitations imposed by law, such as the widow’s right of dower. The Law provides for the rules (rules of intestacy) by which estates, including both real and personal property, are to be divided among heirs in the absence of a will. It also contains a codification of the widow’s common law right of dower, a right to 1/3 of the deceased husband’s realty.

The new owner of the land (the heir) is responsible for registering the inheritance. It would be better if the law required the probate court to send the record of the probate directly to the deed registry with instructions to register any probate deed or other instrument relating to the land. Section 2.28 protects land purchasers from the risks of land under undisclosed wills by providing that a good faith purchase for a valuable consideration cannot be upset by a will not probated for two years after the devise.

Because the law on decedents’ estates involves not just real property but also personal property, this area of law should not be subsumed within a proposed Law on Private Land. It should remain a separate statute but can, however, be referenced within a Law on Private Land, particularly with respect to the dower right and the right provided for a wife or wives to remain in the residence of the deceased to administer the estate.

10 DEVOLUTION OF ESTATES AND ESTABLISHMENT OF RIGHTS OF INHERITANCE FOR SPOUSES OF BOTH STATUTORY AND CUSTOMARY MARRIAGES (DECEMBER 1, 2003)

This law, often referred to as the “Equal Rights of the Customary Marriage Law”, provides that certain common law rights of widows, such as the right of dower, also apply to customary marriages. Chapter 2 is a broad declaration of the rights of women in customary marriages. It affirms the human rights of such women, makes the right of dower applicable to them, and provides that land acquired by such

women shall belong to them alone. Chapter 3 makes the Decedents Estates Law applicable to women in customary marriages, specifically affirming a number of the rights set out in that law, including the right of “tribal persons” to dispose of their estates by will.

This statute is sound in its intention but not well drafted. It would be appropriate at some point to import its provisions into the Decedents Estate Law, so that these would be a single statute. As suggested earlier, because the law on decedents’ estates covers both personal and real property, this does not necessarily form a part of the land reform task of the Commission, but might be taken on by the Commission if the Commission considered it deserved priority.

II REGISTERED LAND LAW (1974), CHAPTER 8 OF THE LIBERIAN CODES REVISED

This is a Torrens-style title registration law, enacted on May 20, 1974, after a decade of discussion of the need for an improved system for recording rights in land.⁴⁵

This is a model favored by most commentators and donor agencies over deed registration, principally because it allows for systematic adjudication and registration of titles within declared adjudication areas, based on comprehensive mapping. There is a parcel file for each parcel, showing the property rights in the parcel, and that file has a unique number that links it to the parcel as shown on the survey map for the area. The parcel on the map bears the same unique number. It also by the very act of registration clears the title of most defects, rendering the register highly reliable.

The intention in 1974 was to replace deed registration with this system, and this is still the inclination of the Ministry of Lands, Mines and Energy. But pilot work in the late 1970s and early 1980s in Monrovia experienced difficulties. Implementation had to be abandoned and has never resumed. The World Bank is interested in helping Liberia resuscitate and apply this system, but the Commission has advised caution in light of the failed pilot work. A study is currently underway to determine the causes for the implementation difficulties experienced in the first pilots.⁴⁶

The law preserves the special role of probate courts under the Deed Registry System (S. 8.6). It makes the Registrar of Deeds also the Registrar of Land (S. 8.7.1), and the National Archives the location for the Registrar of Lands, as it is for the Registrar of Deeds (S. 8.7.3). Implementation of the law takes place when the Minister of Lands, Mines and Energy through the Probate Court declares that titles within a given area are to be adjudicated (S. 8.11). A referee to decide conflicting land claims and a Demarcation/Recording Officer for the adjudication area are appointed by the Chief Justice, and a Survey Officer is appointed by the Minister of Lands, Mines and Energy (S. 8.21). Where there are disputes which cannot be negotiated by the Demarcation and Recording Officer, these are referred to the Referee for decision, except that inheritance disputes go to the Circuit Court. Appeals may be taken from both to the Supreme Court (S. 8.51).

The law sets out the principles binding upon the referee (S. 8.52) in deciding on claims:

- If there is a good documentary title which would prevail if challenged, he records that person tentatively as the owner of the parcel;

⁴⁵ For an early discussion of the problems with the deeds registry system and proposed reforms, see Bentsi-Enchill, Kwamena, and Gerald H. Zarr, “The Assurance of Land Titles and Transactions in Liberia,” *Liberian Law Journal* 2 (1966): 94-121.

⁴⁶ For a 2006 discussion of the issues regarding implementation of this law, see MLME. 2006. “Memorandum of Understanding for the Conceptual Understanding of the Challenges to Land Title and Registration and Corresponding Resolutions to Said Challenges” (Monrovia, MLME, October 21, 2006). See also Johnson, Kobo. 2006. “Property Law of Liberia, Specifically an Act to Amend the Property Law to Provide for a New System for Registration of Land and for Dealing in Land So Registered.” Paper presented to a Real Estate Registration and Real Property Tax Practicum, Workshop Organized by USAID/LTI and MLME, October 20-21, 2006.

- If there is open, peaceful and interrupted possession for twenty years or more, the possessor should be recorded tentatively as owner (the possessor must not have acknowledged the title of any other and must have used the land to the exclusion of others);
- If there is a possessor who is unable to provide sufficient proof to be registered as an owner, he can be tentatively recorded as owner subject to substantiation within six months. If no private rights are established, the land should be recorded as public land.

There is no reference here to registration of the customary law landholdings of individuals or families. Instead, they would be covered under the provisions on long-term occupations and use of the land. It is important to note that an individual's customary right is neither registrable, nor is its existence the basis for registration of a common law right. Possession is, and so extended possession can be the basis for registration of land under a customary right. However, the right registered will be a freehold or other common law right: the law makes no provision for registration of customary rights of individuals or families as customary rights. This changes existing rights, and often involves ignoring customary rights that do not fit the common law models. This aspect of the Law deserves reconsideration in light of innovative approaches in a number of other African countries in recent years toward registering customary rights, i.e., the pilot work now being carried out in Ghana with MCC support.

While the law does not deal with individual's customary rights, there are two provisions that address local communities' group rights under customary land tenure. These prescribe how tribal reserves and communal holdings should be shown on the register, as so provide insight into the official thinking on their legal nature.

- The first is a specific instruction in Section 8.52(d) on registration of a tribal reserve or communal holding: "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." The land in these categories is assumed to be public land and is to be registered as such, subject to use rights involved in the tribal reserve or communal holding.
- The second provision is Section 8.123, which provides that, "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 which is registrable under the provisions of this chapter." Such land is thus to be registered as public land, and the communal right or tribal reserve as an encumbrance on that public land. To the extent that the land can be disposed of under the Public Lands Law and other laws (and these rights cannot be freely transacted), then once the land is registered, the transfer must be by registered transfer.

As noted earlier, rights registered under this law (as under most land registration laws) are relatively conclusive. A registered title can be set aside if fraud is proved in an action filed within ten years from the final order for registration in the court where registration proceedings were held. Where the right has been transferred to an innocent purchaser for value without notice of the fraud, he will be protected even where fraud was involved in the earlier registration (S. 8. 58). Absent a fraud raised within that period, however, registration confers clear title: "Registration vests title and free of all encumbrances except those shown on the register and claims created by the operation of law..." Encumbrances or transfers that are required by law to be registered do not take effect until registered (S. 8.121(1) and (2)), and registered land is not affected by prescription or adverse possession (S.

8.124). Given the widespread land document fraud in recent years, there probably needs to be careful consideration of whether this limitation on raising objections of fraud is still appropriate. Of course it affects only parcels registered under this law.

Finally, the Government will indemnify anyone who relies on the information shown on the Register and suffers thereby. But there will be no indemnity for anyone who substantially contributed to the error or omission (S. 8.193). Compensation may not exceed prescribed amounts (S. 8.194). Claims are made to a Permanent Claims Commission, which awards indemnity (S. 8.95). [Note: The Permanent Claims Commission, referred to in several statutes, has never been created.]

Review of this law suggests a number of problems. Few modern title registration laws involve such a heavy involvement of the court system in the adjudication process, and the role of the Chief Justice may be unique to Liberia. Instead, the tendency is to rely heavily upon mediated resolutions by community-based committees formed for this purpose, and then allowing any unresolved disputes to make their way through the court system. The process in the current law seems unduly cumbersome; it may reflect the conservatism of the Liberian legal profession. A more expeditious process should be considered, but where mediation fails the disputes should be moved into the court system for final resolution.

Similarly, the procedures for notification of adjudication work seem unduly complex, involving public notification of the activity, newspaper ads and then verification and re-verification that notice has been given. Simplification may be possible, but there are many more Liberians living abroad today than in 1974, and it may be appropriate to include new provisions on notifications aimed at them, as in other countries with large numbers of citizens living abroad.

Perhaps most serious, the law has no provision for the process of sensitization of the local community prior to systematic adjudication. This is today recognized as essential, and its absence has been cited as undermining numerous pilot registration efforts in Africa. Without adequate explanation of the potential benefits of the process to landholders and assistance in understanding what is expected of them during the process, the process will be regarded with suspicion and receive poor cooperation from the community. Moreover, the system depends upon voluntary updating of information by those involved in transfers and this will not happen unless they are convinced of the value of the system.

Finally, the definitions section of the act refers to “precise” boundaries. This might be read to require boundaries established by classic geodetic survey, and it is important to clarify that other methods such as GPS and even “general boundaries” based on physical features may be used in some cases. It is a mistake to prescribe survey methods in laws because the technology is evolving so rapidly; instead, the law should simply provide that survey standards will be dealt with in regulations, which can be more easily updated. The order for survey and adjudication of an area should specify which of the allowable methods (or combination of those methods) is to be used in that particular case. In the same technological vein, it is important to provide in law for the use of computers and electronic copies of legal instruments in the title (and deed) registration systems.

While the consensus among surveyors and other specialists is supportive of conversion to title registration, the process is costly and time-consuming. This has led to increasing interest in more participatory, community-based efforts, such as the recording of household land rights being implemented in parts of Ethiopia and the community delimitation and rights certification being carried out in Mozambique with NGO assistance. Liberia should consider these options as well, and should have a law on land registration which leaves room for experimentation with new approaches to recording property rights. It should also, however, include a clear notion of how they relate to the more formal title and deed registration systems and how they may be incorporated into those systems if desired.

How to proceed with this law? It is relatively recent, reflects good practice in many regards, and a good deal could be accomplished through selective amendments to it. However, since this report urges the need for new provisions on Deeds Registration to replace the fragmentary provisions in the current Property Law, consideration should be given to a single law covering all forms of registration. This could help greatly in the coordination of the two systems, which will need to operate in parallel for at least a generation. This is because title registration is implemented systematically, locale by locale, and takes many years to replace the deed registration system, and the deed registration system must in the interim continue to function as well as possible in the areas of the country not yet brought under the newer system. Finally, such a consolidated law might provide as well for more community-based and participatory recording of land rights, including recording of community land rights.

12 PRC DECREE # 23 OF 1980, PROVIDING FOR THE LICENSING AND REGISTRATION OF LAND SURVEYORS AND FOR THE CONTROL AND REGULATION OF SURVEYS AND SURVEY METHODS AND FOR THE PROTECTION OF SURVEY MONUMENTS, MARKERS, BEACONS AND OTHER REFERENCE APPURTENANCES WITHIN THE REPUBLIC OF LIBERIA. (CHAPTER 9.7 OF THE LIBERIAN CODES REVISED).

This decree provides for the appointment by the Minister of Lands, Mines and Energy of a Land Surveyors Licensing and Registration Board, which is responsible for licensing and registration of surveyors in Liberia. It provides for the qualifications of surveyors, and the procedures of the Board, including how the Board should proceed in cases where surveyors are accused of malpractice. It also creates a number of crimes including the unauthorized practice of surveying and various malpractices by surveyors. In addition, in Section 9.16, it provides that all Land Commissioners shall become personnel of the Ministry of Lands, Mines and Energy. This last provision is surprising, given that the consultants were told repeatedly and consistently that while the County Surveyors reported to the Ministry of Lands, Mines and Energy, the Land Commissioners reported to the Ministry of Internal Affairs. This inconsistency requires clarification, and needs to be considered within the more general context of reform of land administration institutions.

There is a need for a law on surveys, and this to some extent fills that need. It needs substantial amendment, however. There is a need to clarify the matter of the supervision of County Surveyors and County Land Commissioners. There is also a need to amend the provisions on qualifications of surveyors to recognize the role now being played by GPS technology in land survey. At this point they are framed in terms of classic geodetic survey, and a bachelor's degree in a relevant technical field is required. It is a mistake to try to prescribe survey technologies in laws. Technologies change rapidly. Regulations are a more appropriate place for this, because they can be amended easily. A new set of provisions on land survey needs to be developed, perhaps within a large statute on land administration, and a set of regulations prepared and promulgated.⁴⁷

13 REAL PROPERTY TAX CODE (CHAPTER 20, REVENUE AND FINANCE LAW, 2000)

This is again a relatively recent law, part of the Revenue and Finance Law which was revised in 2000. The Ministry of Finance's Real Estate Tax Division assesses and collects the real property tax. Its current implementation is partial to say the least. Finance targets some large businesses holding land where collection will pay major dividends. Most property owners such as homeowners and farmers are left to decide if they want to pay. Some do, conscientiously. Others do not, but if they want to get a

⁴⁷ A set of regulations entitled "Cadastral Survey and Mapping Regulations" was drafted at some point after 1980, but the copy available to the consultants does not bear a date or a signature of the minister. Consultant discussions with long-time ministry staff confirmed that this was simply a draft, and was never promulgated.

loan secured by the property, or transfer the property, then they need to show that there is no tax lien against the property, which will involve getting a valuation done in many cases and may involve payment of back taxes. There is a public assessor in the Real Estate Tax Division at Finance.

Section 2000 provides for a tax on each parcel of unimproved land at a rate depending on geographical location, and a tax on each parcel of improved land as percentage of assessed value, the rate depending on the use classification of buildings and other improvements on the land. For unimproved farmland, the tax is \$5/acre with a maximum of \$200/parcel. Where values are to be assessed, the standard under Section 2001 is market value as of the date of the assessment.

This law is relatively recent and based on reasonable models, but it could be improved significantly. Its dependence on assessment of market values of individual holdings seems unrealistic for most land in rural areas. A tax high enough to cover the costs of assessment and collection would be quite high. The global \$ 5/hectare rate is too general. It charges too little for valuable agricultural land and too much for many rural smallholders to pay. Other African countries which have grappled with these issues, such as Mozambique, have sometimes adopted an admittedly rough and ready “zonal” or “mass” assessment approach. All parcels in zones defined by law pay a common rate/hectare. The rate for the zone is based on factors such as the quality of land in the area and the proximity of land in the zone to roads and markets. Smallholders are typically exempted entirely, or charged some standard fee similar to a “hut tax”.

In addition, the Code in Section 2010 creates a direct link between tax payment and land registration. Before a deed or lease agreement or any other documents passing title or interest in real property can be probated and registered, all delinquent taxes must be paid and a tax receipt produced to evidence this. The title cannot vest in the purchaser until this has been done. This needs to be reconsidered. It is a selective enforcement of property taxes and really functions as a tax on the transaction. It can pose problems in other areas. There is a broad consensus among those who work on land registration systems that use of the land registry system for policing property tax payments (or to extract “transaction taxes” or “stamp duties” on transactions) only creates incentives for landowners to avoid the registry system through informal transactions and non-formalization of inheritances. This undermines government’s attempts to maintain accurate records of rights in land, and also the potential of this source of revenue. A number of countries have recently eliminated such charges, or radically limited the amounts that can be collected. In Egypt several years ago, the reduction in fees resulted in an increase of revenue because far more transactions were then conducted within the formal regime and registered.

The suggestion is often heard that land taxation be used by government to push land held idle onto the market and avoid land speculation. It is quite true that any system that does not impose a cost on holding large areas of land encourages speculation and the holding of land out of use. It is sometimes suggested that there should be a progressive tax on land, or a penalty tax on unutilized land. The former may be manageable, but the latter, while arguable in principle, seems in attempts in other countries to have proven difficult to implement in practice. This is largely because it is difficult to define satisfactorily what constitutes “underutilization”. Penalties for such are typically avoided by the owner at modest cost by establishing herds of cattle on the land, or establishing nature conservancies for wildlife or bird viewing by tourists.

Amendments to this law should be considered. FAO has strong expertise in this area, and it is recommended that expertise from that organization be drawn upon by the Commission.

14 THE INVESTMENT ACT OF 2010

The only relevant provisions of this law concern expropriation. Section 7 essentially repeats the constitutional standards for expropriation and compensation, presumably to reassure investors. The

Law does not however provide any indication of how investors can proceed to access land for investment purposes, or contain any provisions regarding their holding and use of such land. The consultants were told that still another version of this very recent law is being discussed in the Legislature. Any new investment law should set out clearly the terms on which and process by which investors can obtain land, the tenure options open to foreign investors, and standards to determine the nationality of firms. These areas are covered in most modern investment laws.

15 LOCAL GOVERNMENT LAW (VOL. IV, TITLE 20, LIBERIAN CODES REVISED)

This local government law is badly outdated, still containing references to the county areas and hinterlands. It contains virtually no references with regard to the role of local government in land administration and management. This area needs to be covered in new legislation on local government, which is planned. In the context of decentralization, the Governance Commission is working on the policy basis for a revision of this law. While the Land Commission thus need not consider this as part of its policy and law reform agenda, it should coordinate closely with the Governance Commission and the Ministry of Internal Affairs on these issues. This will be particularly important in relation to the development of an Urban Land Code.

16 ZONING ACT FOR THE CITY OF MONROVIA

This Zoning Law is a standard and quite adequate law as far as it goes, that is, with respect to zoning. It provides in considerable detail for a variety of residential districts, business districts, and mixed districts, and for continuance of non-conforming uses. The law is enforced by the Ministry of Public Works in coordination with the Municipality. It applies to the City of Monrovia, but it is expressly provided in Section 1.2 of the law that it should be used as a model by other Liberian municipalities. The exact effect of that provision is not clear, but in any case the statute has been reenacted virtually unaltered with broader applicability as the national Zoning Law (see below).

17 ZONING LAW (VOL. VI, TITLE 38, LIBERIAN CODES REVISED)

While the Zoning Law for the City of Monrovia has been reenacted as a national zoning law, it is applied only in the City of Monrovia. There is a Zoning Council which sits only for Monrovia, and the Ministry of Public Works collaborates with this Council in implementing the law. The only Zoning Office nationally is that of the Zoning Officer for Monrovia, who is from the Ministry of Public Works.

Interviews with municipality staff and others indicated that this law was historically implemented well in the City of Monrovia. Sinkor is within the city, but major urban areas such as Paynesville, Congotown, and Gardnersville are not. The law does not apply outside the city, and it needs to be extended to apply to the greater Monrovia metropolitan area but also needs to be examined carefully to determine whether the standards it provides can be applied realistically to land use in the expansion areas. It may be that new zoning classifications will be required.

The larger problem is not the substance of the Zoning Law, though some details may need reconsideration if the law is to be more broadly applied, but the lack of other elements of a coherent regulatory framework for land in the urban context. Some problems:

Zoning as a regulatory tool should be employed within a broader framework of urban land use planning, but there is no national law on land use planning, beyond certain quite limited provisions in the Local Government Law, handled by the Ministry of Internal Affairs.

Control of public land within the municipalities remains the responsibility of county land commissioners, rather than the municipal governments. There is a need to reconsider this position,

and in the proposed law on public land to vest ownership and management of such land in the municipalities themselves. An inventory of public land within the municipalities is an urgent need.

There is effectively no Building Code, and conflicting information as to whether such a code has ever existed, though promulgation of regulations governing building standards is provided for in the Zoning Law.

There is currently no legal framework for urban land regularization/readjustment, a major gap considering the extent of informal land occupation in and around Monrovia and some other Liberian cities. The Urban Transformation Law proposed and outlined by McAuslan during his UN-Habitat consultancy for the Land Commission⁴⁸ can provide a useful basis for preparation of such a law.

While Zoning is the responsibility of the Ministry of Public Works, the Ministry of Internal Affairs is currently responsible for physical planning, including land use planning. (The Ministry of Planning deals instead with economic planning.) This is a potentially dysfunctional bifurcation of authority, best bridged at local government level, but there is currently no systematic coordination of these activities in law or in practice.

The First National Urban Land Conference in 2010 recommended revision of both the Zoning Law and the Building Code. The Zoning Law/Zoning Act for the City of Monrovia, in Section 5.1(3) requires the Ministry of Public Works, with approval by the Zoning Council, "to prepare from time to time building codes and subdivision regulations, which will control type of construction, construction material, and the situation, positioning, and use of buildings." The consultants received unclear information on whether a Building Code was ever enacted and applied. One official indicated that such a code once existed but has been lost.

A thorough overhaul of the law in this area is indicated. A comprehensive approach is needed. It would be appropriate to work toward an Urban Land Code, encompassing provisions from the existing Zoning Law and development of a Building Code. (Caution will be needed in the development of the Building Code. Anecdotal evidence suggested that the municipality has sometimes discouraged construction using mud blocks and tin roofs. These components, if fabricated and used in modern ways, can help provide affordable housing in Liberia's rapidly expanding urban areas.) These bodies of law need not only to be updated but coordinated with other related bodies of law and their implementation nested within an integrated structure for municipal land administration that reflects government's decentralization priorities.

In addition, there is a need for new provisions on a) municipal ownership and management of public lands, b) urban land use planning, and c) regularization of urban lands informally occupied. Such a Code should deal in detail with the roles and coordination of the different agencies involved, and in line with the policy of decentralization, aim to strengthen the power and role of municipalities in urban land administration and management.

18 ABORIGINES LAW (TITLE I, VOL. I, 1956)

This enactment is important to any discussion of the legal status of customary rights in land, a major issue facing the Commission. In Section 600 it repealed and replaced a succession of "Rules Governing the Hinterlands of Liberia" enacted as a law in 1949 but then reissued from time to time by the Ministry of Internal Affairs with minor but sometimes significant modifications.⁴⁹ The Aborigines Law

⁴⁸ McAuslan 2009, Better Cities for All: The Way Forward for an Urban Law Reform. Report to the Land Commission. (Monrovia: UN-HABITAT).

⁴⁹ Ch. 30: art. 600. Repealed. Statutes repealed include "Hinterland Regulations app. L. 1949-50, Ch. XXXVI, except arts. 37, 54 (j) and 70."

is, as its title suggests, clearly a law from another, earlier and less sensitive time. Its language is offensive and it certainly should not form part of Liberia's corpus of law.

That said, it is this enactment which provides the legal foundation for key concepts in Liberia's law concerning land under customary land tenure, in particular the concepts of "communal land" and "tribal reserves".⁵⁰ In Section 75, it follows through on the Constitution's mandate for application of customary law by making the clan chief responsible for application of the customs of his community. Its Chapter 11 has provisions (especially Ss. 270-273) dealing with customary land tenure, specifically on tribal reserves, communal lands and their subdivision into family holdings in fee simple, and leases of tribal land to outsiders. It also provides in general terms for the free exercise by tribal authorities of tribal customs and traditions "insofar as these are not contrary to statute or administrative regulations" (S. 350), and for a right of equal protection of the property rights of aborigines (S. 370). Only a few sections of the law deal with land, but if they are not in force, that would leave a large gap in Liberia's property law.

The legal status of this law is in question because it was not included in the Liberian Codes Revised in 1973. Notes by the compilers suggest that some items were excluded because they were antiquated. It is not clear if that was the basis for excluding this law, but if so, it would be entirely understandable. Does omission of the law from the revised code mean that it is no longer in force? Did the omission accomplish an implied repeal? The argument that an implied repeal took place draws strength from the fact that the revised code was not just compiled by a publisher but enacted by the legislature to bring it into force, replacing earlier laws. That would seem a basis for considering the law to have been repealed. On the other hand, it is clear that the legislature considered this law might be in force after 1973, as evidenced by the fact that at a later date it enacted other laws which referred to and repealed particular articles of the Aborigines Law. The legal position is muddy, to say the least.

That said, the Commission's task is not to ascertain existing law but to recommend what shape the law should take in the future. This law needs to be replaced, and this needs to happen in two contexts. First, its provisions on local administration should be replaced by a modern local government law, applicable throughout Liberia. Work on such a law is underway under the aegis of the Governance Commission. With respect to the land matters, the concern of the Commission, its provisions would be replaced by provisions of the bill for a Land Rights Law proposed by the Commission and currently before the Legislature.

19 RULES AND REGULATIONS GOVERNING THE HINTERLANDS OF LIBERIA, MINISTRY OF INTERNAL AFFAIRS (JANUARY 7, 2001)

These rules are a successor to the earlier Law and Regulations on the Hinterlands noted in the prior section as repealed by enactment of the Aborigines Law. The 2001 rules were as the earlier rules promulgated by and administered by the Ministry of Internal Affairs. While earlier versions had referred to the "Hinterland Law and Regulations" this version refers only of "Rules and Regulations". Substantively, it is identical with the earlier versions. These regulations apply not only to the Hinterlands but to land under customary land tenure in the older counties of Liberia as well.

The re-promulgation of this document as "rules and regulations" appears to be an attempt by the Ministry to fill with a regulation the lacuna left by the absence of the Aborigines Law from the statute books after 1973. The Ministry of Internal Affairs has the authority to issue regulations for local governance under the Executive Law (Title 12, LCLR 1973) and the Local Government Law (Title 20, LCLR 1973), and may have issued this document in exercise of that authority. Some of the matters

⁵⁰ The lack of a good database on customary land tenure in Liberia is a long-standing problem and has been noted by numerous authors. For an early discussion see Allot, Anthony N. "A Report on the Feasibility of Research into Liberian Customary Law," *Liberian Law Journal* 3(2) (December 1967) 83.

provided for in the document, in particular those dealing with property rights, should normally not be done in a regulation but in a law, and the re-promulgation is arguably an unconstitutional overreach by the Executive and thus invalid. In practice, most officials and local people in Liberia consider these rules to still be in force and behave accordingly. They are part of the “law in action” on the ground, and an aspect of rural realities.⁵¹

Again, the task of the Commission is not to decide the constitutional issue, but instead to suggest how to move toward a sound legal regime for such land in the future. The consultants recommend that the areas of the Hinterland Rules dealing with land under customary land tenure should be replaced by provisions of a Land Rights Law.

This concludes the review of existing pieces of legislation. Now, before proposing a strategy and structure for law reform, the report diverts to discuss in the following two chapters two substantive areas which have important implications for the law reforms: 1) harmonization of customary and civil law concerning land, and 2) institutional arrangements for land administration and management.

⁵¹ The ministry more recently promulgated rules and regulations concerning local government. These appear to apply throughout the country. They cover some of the same matters covered in the Hinterland Rules and Regulations regarding the structure of local government, but there is nothing in these new regulations with regard to land under customary tenure and nothing in them to suggest that there was an intention in promulgating them to repeal the Hinterland Regulations. See Rules and Regulations Governing Local Government Officials of the Political Sub-Divisions of Liberia (Revised Edition), Ministry of Internal Affairs (February 24, 2005).

ANNEX D. SUMMARIES OF LAWS RELATING TO LAND

In the preparation of the 2011 report, key laws were summarized by staff of the Land Commission. The summaries were included as an annex there and have been retained here, with any needed updating.

1. Aborigines Law
2. An Act Creating the Forestry Development Authority, Public Authorities Law
3. An Act Adopting the National Forestry Reform Law of 2006
4. An Act to Amend the New Executive Law To Create an Autonomous Bureau To Be Known as a Center for National Documents and Records and To Repeal Other Laws in Relation Thereto
5. An Act to Establish the Community Rights Law of 2009 with Respect to Forest Lands
6. An Act to Establish the Land Commission
7. An Act to Govern the Devolution of Estates and Establish Rights of Inheritance for Spouses of Both Statutory and Customary Marriages
8. An Act to Repeal the Act Creating the Commonwealth District of Monrovia and To Create In Lieu Thereof the City of Monrovia, County of Montserrado and to Grant It a Charter
9. Constitution of the Republic of Liberia
10. Decedents Estates Law
11. Executive Law
12. The Investment Act
13. Local Government Law
14. Minerals and Mining Law
15. Land Surveyors Registration Law
16. Property Law
17. Public Lands Law
18. Public Procurement and Concessions Law
19. Real Property Tax Code
20. Registered Land Law
21. Revised Rules and Regulations Governing the Hinterland of Liberia, Ministry of Internal Affairs
22. The Rules and Regulations Governing Local Government Officials of the Political Sub Divisions of Liberia, Ministry of Internal Affairs
23. Zoning Act for the City of Monrovia/Zoning Law

24. An Act against Criminal Conveyance of Land

I. **ABORIGINES LAW (TITLE I, VOL. I, 1956)**

Note: The Proposed Land Rights Law currently before the Legislature will if enacted repeal this Law.

- Section 75, Duties of Clan Chiefs; Council of Elders
 - Clan Chief is responsible, under the direction of the Paramount Chief, with “enforcement of all laws, customs, and regulations in his clan”
- Section 270, Tribal right to possession
 - Tribes are "entitled" to "use" the "public land" in its "inhabited" area as is required for "farming and other enterprises essential to tribal necessities."
 - Tribes have right to possession against any other "person".
 - Procedure: (1) Tribal Authority applies to the President, (2) President "defines" and "describes" the tribal "territory", (3) "plot or map" of the "survey or description" filed in Department of State archives "within six months after the completion of the survey."
 - If the tribe does not follow this procedure it will not "affect in any way its right to the use of the land."
- Section 271, Conversion of tribal interest
 - Tribes can convert their "interest" in lands into "communal holdings" if apply to the government
 - Area of the communal holding is surveyed
 - Tribe applying for a communal holding pays for the survey.
 - "communal holding" is "vested in the members of the Tribal Authority as trustees for the tribe"
 - Trustees cannot sell the communal holdings as fee simple title to any "person"
- Section 272, Making tribal land fee simple family holdings
 - If tribe becomes "sufficiently advanced in civilization" it can "petition" the government to divide "tribal land" into "family holdings"
 - The Government "may grant deeds in fee simple to each family of the tribe for an area of twenty-five acres."
- Section 273, Strangers
 - A person
 - who enters the territory of a tribe
 - of which he is not a member
 - for the purpose of farming, must:
 - (a) Obtain permission of the Tribal Authority

- (b) Pay a token "in the nature of rent, such as five or six bunches of rice out of every farm", and
 - (c) Pay taxes to tribal chief for all huts on land occupied
 - "In case of his 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."
 - Section 350, Tribal customs and traditions
 - Government administers "tribal affairs through tribal chiefs who shall govern freely according to tribal customs and traditions" so long as not contrary to statute or regulation
 - Section 370, Right to property protection
 - "All aborigines residing in the Republic of Liberia shall have full protection for their . . . property"
- 2. AN ACT CREATING THE FORESTRY DEVELOPMENT AUTHORITY, PUBLIC AUTHORITIES LAW, TITLE 12, LIBERIAN CODES REVISED**
- Section 1: Repeals Chapters 1 through 4 of the National Resources Law
 - Section 4: Powers of the Authority
 - "In addition to the powers conferred on the Authority by the Public Authorities Law," the authority has the following powers
 - Take all necessary actions for creation of Community Forestry Reserves, Native Authority Forest Reserves, Communal Forests, and national parks
 - "To prescribe the form of all licenses, permits, agreements, and other instruments dealing with the use of forest resources"
 - Administer these reserve areas
 - Section 16: Form and Content of Forest Products Utilization Agreement
 - In negotiations over Forest Product Utilization Agreements the Republic is represented by the Managing Director of the FDA and the Minister of Finance
 - Agreement is only valid if approved by the President and Legislature
 - Section 17: Performance Bond and Minimum Expenditure
 - A Forest Concessionaire is required to deposit with the Authority a Performance Bond or Manager's check for \$150,000 "warranting that the Concessionaire shall faithfully and promptly commence survey and other operations" and all the terms of the Forest Product Utilization Agreement within 2 years
 - Within 2 years of the effective date of the Agreement spend \$500,000 on processing plant
 - Salvage Permit Holder must deposit with Authority a Performance Bond or Property Valuation of \$50,000 or Manager's Check of \$50,000 and invest at least \$200,000 within two years "of the operation"
 - Section 18 Protection of Liberian Salvage Permit Holders

- No law or regulation can be passed depriving Liberian citizens of the right to hold Forest Salvage Permits “if such category of forests is available for leasing”
- Section 19 Land Rental Fee
 - Concessionaire under Forest Product Utilization Agreement must pay annual land rental fee to the Government of .50 cents per acre
 - Forest Salvage Permit Holders must pay annual rental fee of .30 cents per acre
- Section 20: Import Duties
 - Concessionaire gets duty free privilege for importation for any machinery or equipment having a “useful life of 5 years” during the first two years “upon coming into force of the Forest Product Utilization Agreement” but only if
 - Similar items of comparable price and quality are not available in Liberia
 - Same for Forest Salvage Permit Holders
- Section 22: Wood Processing
 - Concessionaires must comply with FDA rules and regulations concerning “the percentage of total production to be sawn or otherwise processed”
 - “Beginning 1990, the percentage of processed wood for export shall be a minimum of 5% (five percent) and a maximum of 10% of export logs, it being understood that all Forest Salvage Permit Holders shall process at least 5% (five percent) of their total log production for either local or export market.”

3. AN ACT ADOPTING THE NATIONAL FORESTRY REFORM LAW OF 2006

- Preamble, “. . . Our forests are part of the Nation's heritage, belonging not just to this generation but to our children and to our children's children"
- Section 1.3: Definitions
 - Commercial Use: “Any use of Forest Products or Forest Land, other than direct use for personal purposes or infrastructure development. Commercial Use includes uses involving Trade or any other disposition of Forest Products or Forest Land for direct or indirect financial benefits.”
 - Communal Forest: “An area set aside by statute or 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 livelihoods 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.”
 - 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 Management Contract: “A long-term Forest Resources License issued by the Government under Section 5.3 of this Law that allows a Person to manage a tract of Forest Land and harvest or use Forest Products.”
- Forest Product: “Any material or item derived from 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 microorganisms.”
- Forest Resources License: “Any legal instrument pursuant to which the Authority allows a Person, subject to specified conditions, to extract Forest Resources or make other productive and sustainable use of Forest Land. Includes, without limitation, Forest Management Contracts, Timber Sale Contracts, Forest Use Permits, and Private Use Permits.”
- Private Use Permit: “A Forest Resources License issued by the Government under Section 5.6 of this Law to allow Commercial Use of Forest Resources on private land.”
- Protected Area: “Any area set aside under Chapter 9 of this Law as a National Forest, Nature Reserve, National Park, Strict Nature Reserve, or other special category for Conservation purposes.”
- Timber Sale Contract: “A short-term Forest Resources License issued by the Government under Section 5.4 of this Law that allows a Person to harvest Timber from a specified tract of Forest Land.”
- Section 2.1 Ownership of Forest Resources
 - “All Forest Resources in Liberia . . . are held in trust by the Republic for the benefit of the People.”
 - Except the following: (i) Forest Resources located in Communal Forests; and (ii) Forest Resources that have been developed on private or deeded land through artificial regeneration.
 - The Prospection, use, transport, processing, Trade, and export of all Forest Resources and Forest Products are subject to this Law.
- Section 3.3 Application of Procurement Laws
 - “In granting Forest Management Contracts and Timber Sale Contracts, the FDA shall follow the requirements of the Public Procurement and Concessions Act and other applicable laws.”
- Section 4.4: National Forest Management Strategy
 - FDA must prepare a National Forest Management Strategy which must identify:
 - Areas suitable for Commercial Use under a Forest Management Contract or a Timber Sale Contract
 - Areas to be protected under Chapter 9
 - Areas that should be managed as Communal Forests “or for the purposes of Community Forestry”
- Section 5.1 Basic Prohibitions and Regulatory Powers
 - No Commercial Use of Forest Resources without permission from the FDA

- FDA's permission can only be through Forest Management Contracts, Timber Sale Contracts, Forest Use Permits, or Private Use Permits
- Section 5.2 Basic Qualifications for commercial forest operations
 - Following Persons cannot conduct commercial forest Operations:
 - (v) Liberian President, Vice President, members of the National Legislature, Supreme Court Justices and other Judges, Cabinet Ministers, Managing Directors of Public Corporations and Agencies, and Superintendents,
 - (vi) Employee of FDA, member of FDA's Board of Directors, or Government official "exercising authority under the Public Procurement and Concessions Act or any other law governing public contracting",
 - (vii) "A Person associated through investment, ownership, effective control, or other similar means with an individual covered under Paragraph (iv), (v), or (vi) of this Subsection.
 - If Person has received permission to conduct commercial forest Operations and later becomes Person prohibited from receiving permission, then that Person must assign permission or transfer ownership
 - Government officials who cannot obtain permission for commercial forest Operations and whose salary equals or exceeds the base salary of a Regional Forest Officer must file an annual report with the FDA declaring in the previous year any instance of the "Person or the Person's spouse, parent, sibling, or child having traded, as principal or agent, in commercial quantities of Timber or other Forest Products, or holding any financial interest in any Forest Products, or in any contract for working any forest, whether in or outside the Republic"
- Section 5.3 Forest Management Contracts
 - FDA "may" award Forest Management Contracts "in accordance with the requirements of this Section and those in the Public Procurement and Concessions Act or its successor legislation governing public concessions"
 - Forest Management Contracts must have the following:
 - Land must be identified as potential concession in the National Forest Management Strategy,
 - Land cannot be private land,
 - Land must be between 50,000 and 400,000 hectares,
 - Holder must prepare "all environmental impact assessments required under the laws governing environmental protection."
 - Holder must "establish a social agreement with local forest-dependent communities, approved by the Authority that defines the communities' benefits and access rights."
 - Forest Management Contract are effective when signed by the President and ratified by the Legislature
 - Only bidders with at least 51% of Liberian ownership are accepted for Forest Management Contracts for 50,000 to 99,999 hectares. For first bidding cycle "qualified Liberian bidders" have priority. If none then FDA "may" open the second bidding cycle "only to qualified bidders that demonstrate 51% ownership by Liberian citizens."
 - Forest Management Contracts of 100,000 to 400,000 hectares are open to all Liberian and international investors

- Section 5.4: Timber Sale Contracts
 - Requirements for Timber Sale Contracts:
 - Must be consistent with National Forest Management Strategy
 - Land must not be private land
 - Contract cannot be for more than 3 years
 - Land cannot be more than 5,000 hectares
 - Holder of Timber Sale Contract must prepare annual operations plan, and
 - Holder must pay fee bid in concessions process and any other applicable fees and taxes
- Section 5.5: Forest Use Permits
 - FDA may issue regulations governing issuance of Forest Use Permits
 - Forest Use Permits must have “sufficient conditions to ensure the Conservation of Forest Resources”
 - Forest Use Permits may be issued only for the following Commercial Uses:
 - Production of charcoal,
 - Tourism,
 - Research and education,
 - “Harvest of small amounts of Timber for local use within the County or community,” and
 - “Harvest or use of non-timber Forest Products”
 - Forest Use Permits are awarded through a concessions process under the Public Procurement and Concessions Act if the value of the Forest Resources under the contract exceeds US\$10,000 “during the term of the permit”
 - FDA must restrict Forest Use Permits “to specified classes of Persons, such as subsistence farmers, forest-dependent communities, residents of a particular county or district, academic researchers, artisans, and Persons undertaking tourism, eco-tourism, and similar Conservation-based activities.”
- Section 5.6: Private Use Permits and Other Commercial Use on Private Land
 - FDA can issue Private Use Permits only if:
 - Applicant is the land owner or has written permission from the land owner “to undertake the Commercial Use”
 - Commercial Use is consistent with National Forest Management Strategy
 - Applicant is not disqualified from receiving a Forest Resources License under Section 5.2
 - Applicant must have a five-year land management plan that satisfies the FDA
 - Applicant and land owner must “commit in writing to a social agreement that shall be attested to by the Authority and that defines benefits and access rights for local forest-dependent communities”
- Section 8.2:
 - “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.”
- Section 9.1: Protected Forest Area Network and Conservation Corridors

- FDA must create a Protected Forest Area Network and Conservation Corridors, which must include existing National Forests, “to cover at least 30 percent of the existing forested area of Liberia, representing about 1.5 million hectares.”
- “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.”
- Section 9.10:
 - FDA must, “in consultation with local communities, Counties, and other local authorities, issue Regulations governing activities in Protected Forest Areas.”
 - “No person shall . . . In Communal Forests, prospect, mine, farm, or extract Timber for Commercial Use.”
 - FDA must, “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.”
- Section 10.1: Community Empowerment
 - “To manage natural resources based on principles of Conversation, 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.”
 - Regulations under this Section must at a minimum:
 - Specify the rights and responsibilities of communities
 - Promote “informed community participation”
 - “allow communities far access to Forest Resources”
 - “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.”
- Section 11.2: Obligation to Observe this Law and Regulations
 - “No Land Owner shall undertake any Prospection, logging, or Hunting, except pursuant to this Law and the accompanying Regulations.”
- Section 11.3: Government’s Power to Permit Use
 - “Where the Government has granted permission for 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.”

4. AN ACT TO AMEND THE NEW EXECUTIVE LAW TO CREATE AN AUTONOMOUS BUREAU TO BE KNOWN AS A CENTER FOR NATIONAL DOCUMENTS AND RECORDS AND TO REPEAL OTHER LAWS IN RELATION THERETO (FEBRUARY 19, 1979), TITLE 12, LIBERIAN CODES REVISED

- Section 81.1: Definitions
 - Archives: “those official records that have been determined by the Director General of the Bureau of National Documents and Records to have sufficient historical or other value to warrant their indefinite preservation by the Government for purposes of research, historical investigation, or patriotic inspiration, or because of other national significance”
 - Records: “books, papers, maps, photographs, or other documentary materials regardless of physical form or characteristics, made or received by any Government agency in pursuance of law or in connection with the transaction of public business and preserved by that agency or its legitimate successor as evidence of the organization, functions, policies, decision, procedures, operations, or other activities of the Government or because of the informational value of data therein contained and shall include library and museum material, made or acquired and preserved for references or exhibition, purposes. Extra copies of documents preserved only for convenience or reference, and stocks of publications and of processed documents are not included within the definition of ‘records’ as used herein.”
- Section 81.2: Center Created
 - Center for National Documents and Records is an autonomous bureau under the Executive Branch
- Section 81.10: Registrar of Deeds
 - President, with advice and consent of the Senate, appoints a Registrar of Deeds for each county “who shall serve under the immediate direction and supervision of the Director General” of the National Archives
 - Duties of the Registrar of Deeds are:
 - In accordance with the Property Law record chattel mortgages and “all instruments, including government grants and patents, relating to the title of real property situated in the county . . . for which he is appointed.”
 - Record all other instruments “under seal” and “other documents which the parties concerned may desire to have recorded” or which must be registered pursuant to statute
 - “Countersign and endorse in accordance with the Public Lands Law deeds for Public lands in his county . . . which are sold or which are allotted to immigrants”
 - Register and file documents “relating to realty” received from the Circuit and probate courts
 - “On application of interested persons” provide certified copies of public documents
 - Provide “regular quarterly reports” to the Director General “showing all transfer of title of real estate in the county”
- Section 81.13: Legal Status of Reproductions:
 - “Whenever records that are required by Statute to be retained indefinitely have been reproduced by photographic, microphotographic, or other processes, in accordance with standards established by the Director General, the indefinite retention of such reproductions will be deemed to constitute compliance with legal requirements for the indefinite retention of such original records. Such reproductions shall have the same legal status as the originals thereof.”

5. AN ACT TO ESTABLISH THE COMMUNITY RIGHTS LAW OF 2009 WITH RESPECT TO FOREST LANDS

• Section 1.3

- Community: “A self-identified and publicly and widely-recognized coherent social group or groups, who share common customs and traditions, irrespective of administrative and social sub-divisions, residing in a particular area of land over which members exercise jurisdiction, communally by agreement, custom, or law. A community may thus be a single village or town, or a group of villages or towns, or chiefdom.”
- Community-based Forest Management: “Forest Management activities that are carried out by a community with respect to forest resources for which the community has customary tenure or other forms of proprietorship or guardianship.”
- Community Forestry: “The governance and management of community forests by a community for commercial and non-commercial purposes to further the development of the community and enhance the livelihoods of community members.”
- Community Forestry Land: “Forested or partially-forested land traditionally owned or used by communities for socio-cultural, economic and development purposes. This term is interchangeable with the term ‘community forest.’”
- Community Forest Resources: “Anything practical, commercial, social, religious, recreational, educational, scientific, subsistence or other potential uses to humans that exists in a community forest, including but not limited to flora, fauna, and microorganisms.”
- Community Land Area: “An area over which a community traditionally extends its proprietorship and jurisdiction, and is recognized as such by neighboring communities.”
- Customary Land: “Land, including forest land, owned by individuals, groups, families, or communities through longstanding rules recognized by the community. To be recognized as customary land, it is not necessary for the land to have been registered under statutory entitlements.”
- Forest Land: “A tract of land, including its flora and fauna, producing or capable of producing forest resources, or land set aside for the purpose of forestry, but not including land in permanent settlements and land that has been in long-term use for non-shifting cultivation of crops or raising livestock.”
- Medium-scale commercial use: “Commercial activities of forest resources which may be export or domestic oriented in their market for the sale and delivery of forest products, and which generate total revenue in excess of that specified by regulation as determined by the Authority in consultations with communities,”
- Large-scale commercial use: “Commercial activities of forest resources which are predominately export oriented in their market for the sales and delivery of forest products, and which generate total revenue in excess of that specified by regulation as determined by the Authority in consultations with Community Assembly”
- Small-scale commercial use: “Commercial activities of forest resources which are predominately local in their markets for the sale and delivery of forest products, and which do not generate total revenue and/or occupy a land area greater than that specified by regulation as determined by the Authority in consultation with Community Assembly”

- Section 2.1: Objective
 - “Empower communities to fully engage in the sustainable management of the forests of Liberia” in accordance with Chapter 10 of the National Forestry Reform Law of 2006 “by creating a legal framework that defines and supports community rights in the management and use of forest resources.”
 - Define the communities rights and responsibilities to “own, manage, use and benefit from forest resources”
 - “promote informed and representative community participation”
 - Define the FDA’s roles and responsibilities concerning Community Forest Resources
- Section 2.2: Guiding principles are:
 - "All forest resources on community forest lands are owned by local communities,
 - all forest resources regulated by the Authority,
 - anything affecting the "status or use of community forest resources" must have "prior, free, informed consent" of the community,
 - "recognition of community land tenure rights shall apply to tenure systems recognized by the Constitution and laws of Liberia",
 - “matters related to land tenure to be handled by the Land Commission”
- Section 2.3: Community Forest Land
 - Forest land areas between 5,001 and 49,999 hectares "may be" Community Forest Land;
 - Community Forest Land is Aborigines Grant Deeds, Public Land Deeds, Public Land Sale Deeds, Tribal Land Deed Certificate and Warranty Deeds;
 - Deeds mentioned in (b) that have been authenticated as certified are Community Forest Land,
 - forest land and community land "recognized under this law" are Community Forest Land
- Section 3.1: Community rights
 - Right to “control the use, protection, management, and development of community forest resources” under FDA regulation
 - Right to enter into Small-Scale Commercial contracts
 - Right to enter into “social contracts” with concessionaires
 - Communities "will have the rights" to at least 55% of all "revenues/income" from large-scale commercial contracts
 - Right to “full management of forest resources”
- Section 4.1: Community Assembly
 - Community Assembly is the highest decision-making authority of the community regarding community forestry matters

- Community Assembly includes members of the legislature from the county where the communities are located, Chairman, Vice Chairman, Secretary, and Financial Officer. Community Assembly elects its officers and none can be a sitting government official.
- Community Assembly is charged with, inter alias, ensuring "sustainable management of community forest resources"
- Executive Committee of the Community Assembly is composed of members of the legislature from the county where the communities are located and four elected officials
- Section 4.2: Community Forestry Management Body
 - Manages the "day-to-day activities of community forest resources"
 - The Community Forestry Management Body, inter alias, represents "the community in all matters related to community forest resources"
 - Must "periodically" report to the Community Assembly Executive Committee
- Section 6.1: A community "may" enter into Small-Scale Commercial Use contracts, but not on a competitive basis
- Section 6.2: A community "may" enter into Medium-Scale Commercial Use contracts for Community Forest Land ranging from 5,000 to 49,999.99 hectares, but not on a competitive basis
- Section 6.3: Community Forest Management Body "in collaboration with the Authority may enter into Large-Scale Commercial use contracts", on a competitive basis "applying national and international competitive bidding for large scale commercial activities".
- Section 9.1: Conflicts between laws

"Where there are conflicts of law existing between the National Forest Reform Law of 2006 and the Community Rights Law of 2008 with Respect to Forest Lands, the Community Forestry Law takes precedence and becomes binding."

6. AN ACT TO ESTABLISH THE LAND COMMISSION

Note: In Force but Term of Commission has expired and so it no longer exists

- Section 1.3: Definitions
 - Public land = "Land which is publicly owned under the Constitution, statutes and common law of Liberia
 - Private Land = "Land which is owned or otherwise held under private rights by persons, communities or other corporate entities under the Constitution, statutes and common law of Liberia."
 - Land Use Planning = "Planning for and regulation by the state, county or local governments of the utilization of land."
 - Land Taxation = "Taxation levied by government upon private land."
- Section 2.2: Nature of Commission

- Commission is an "independent body of the Government," "financially autonomous," "operationally independent and generally free in the pursuit of its mandate," submit quarterly financial statements to the Legislature and President
- Section 3.1: Commission Mandate
 - Mandate = "propose, advocate and coordinate reforms of land policy, laws and programs in Liberia.
 - "It shall have no adjudicatory or implementation role."
 - Objectives are:
 - equitable and productive access to public and private land,
 - security of land tenure and rule of law concerning land,
 - effective land administration and management, and
 - investment and development
 - Mandate of the Commission extends to "all land and land-based natural resources"
- Section 3.2 Commission Duties
 - Commission has the following duties and functions:
 - carry out fact-finding "with a view to identifying inadequacies that deserve remedial action";
 - "recommend remedies for inadequacies, including, but not limited to actions, programs and reforms of land policy, law and institutions";
 - call together government ministries and agencies and other entities [sic] or institutions, including creation of task forces;
 - propose to the President actions to deal with urgent problems;
 - propose legislation and supervise its drafting, including amendments to the Constitution;
 - consider and make recommendations concerning
 - rights in real property, "dichotomy between common law and customary land rights" and their reform and "equitable harmonization and/or integration," public land management, sale, and leasing," acquisition of land by the state, land administration, rationalization of government for improved land management, land use planning, education/short term training needs, organization and regulation of professions important to land, land taxation and "other land-based revenue," land markets and rights, investors' access to land, "equitable access to and security of tenure in land" for women, youth, and other disadvantaged groups, "prompt and fair resolution of disputes over land", and "such other issues as the Commission may see fit and as related to its mandate;"
 - carry out ancillary activities;
 - in its activities the Commission shall "maintain transparency and accessibility," identify best practices nationally and internationally, foster broad-based public discussion, consult regularly with concerned stakeholders, provide forum for discussion and coordination
- Section 5.1: Commission Powers
 - "The Commission shall have, enjoy and exercise such powers as are necessary for the fulfillment of its mandate, duties and functions"
- Section 5.2: Commission Authority

- "The Commission shall have, and exercise such authorities as are in the full implementation of all of its duties and functions as are made and provided for in this Act."
- Section 7.1: Funding
 - Funding is from the Government of Liberia and "possibly by development partners" and "such other sources as the government may invite"
- Section 7.2
 - Commission shall adopt "sound financial management principles"
- Section 8.1: Budget
 - Commission has an independent budget and submit annual financial report of its expenditures to the President and copies to donors
- Section 8.2: Annual Report
 - Annual report submitted to the President which includes impact assessment of Government's "initiatives, strategies, and recommendations" concerning land policy, law, and programs
- Section 8.3
 - Commission must report to the President on its activities and performance of its mandate
 - Recommendations for new land policy or draft legislation must be given "directly to the President" for executive action or transmission to Legislature
- Section 8.4
 - Commission must submit other reports as requested by the President or Legislature

7. AN ACT TO GOVERN THE DEVOLUTION OF ESTATES AND ESTABLISH RIGHTS OF INHERITANCE FOR SPOUSES OF BOTH STATUTORY AND CUSTOMARY MARRIAGES (DECEMBER 1, 2003)

- Section 1: Definitions
 - Customary marriage: "marriage between a man and a woman performed according to the tribal tradition of their locality"
 - Tradition: "those values, norms and customs which a tribe of a locality has practiced over the ages and is considered their way of life"
 - Dower: "the one-third (1/3 interest of the tribal husband's property to which his widow is entitled as of right regardless of whether or not the widow and children for her late husband, or whether or not she assisted him in acquiring the property"
 - Tribal or customary spouse: "either the husband or wife who is married according to tribal tradition"
- Section 2.1: Equal right to be Accorded Customary Wife
 - Customary wives have all the "rights, duties and liabilities" accorded a statutory wife
 - Domestic Relations Law is fully incorporated into this law

- Section 2.2: Recovery of Dowry Prohibited
 - Wife’s dowry cannot be taken by her parents or her husband
 - Section 2.3: Husband/Wife’s Inchoate Dower
 - Customary wife is entitled to 1/3 of the husband’s property upon his death immediately upon marriage whether or not the wife helped the husband acquire the property
 - Section 2.4: Compulsory Wife Labor Prohibited
 - Customary spouses must “work in partnership and adequately maintain and support their household”
 - Section 2.5: Wife’s Human Right to be Respected
 - “Every customary husband shall respect his Wife’s Human rights; any violation of this Section shall entitle the wife to seek redress in a court of law”
 - Section 2.6: Wife’s Property Exclusively Her Own
 - Customary wife’s property owned or acquired prior to marriage is hers to the exclusion of her husband
 - Felony if the customary husband controls or attempts to control his customary wife’s property
 - Section 3.1: Decedent Estates Law Applicable to Customary Marriage
 - Decedent Estates Law “shall equally apply to all native customary marriages immediately after the passage of this Act”
 - Section 3.2: Widow’s Dower Right
 - Widow or multiple widows, upon the husband’s death, are entitled to 1/3 of the deceased husband’s property
 - Section 3.6: Right of Tribal Inhabitants to Make Last Will and Testament
 - “Every male and female of legal age under customary or tribal law shall have the right to make his/her Last Will and Testament, describing how his/her property is to be distributed after his/her death.”
8. **AN ACT TO REPEAL THE ACT CREATING THE COMMONWEALTH DISTRICT OF MONROVIA AND TO CREATE IN LIEU THEREOF THE CITY OF MONROVIA, COUNTY OF MONTERRADO AND TO GRANT IT A CHARTER, AUGUST 16, 1973**
- Section 5:
 - “The City of Monrovia shall have full power and authority to make and fulfill contracts, take and hold real and personal estate to the value of ten million dollars. Subject to the approval of the President, it shall pass all necessary municipal laws and ordinances and levy all taxes as may be necessary for City purposes; and shall perform all other necessary acts not incompatible with the general laws of this Republic.”

9. CONSTITUTION OF THE REPUBLIC OF LIBERIA, 1986

- Article 11
 - “All persons are born equally free and independent and have certain natural, inherent and inalienable rights, among which are the right of . . . acquiring, possessing and protecting property, subject to such qualifications as provided for in this Constitution.”
- Article 20
 - “No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provision laid down in this Constitution and in accordance with due process of law. Justice shall be done without sale, denial or delay; and in all cases not arising in courts not of record, under courts-martial and upon impeachment, the parties shall have the right to trial by jury.”
- Article 22
 - “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.”

Note: This invalidated the Interim National Assembly Decree of December 11, 1985, which stated, “That immediately upon the passage of this Decree, non-Liberians, irrespective of color, except those of whom socio-economic and political ideologies are alien to ours, shall have the right to purchase and own real property in fee simple in the Republic.”

- “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.”
 - “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.”
 - “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
 - Prohibits one spouse’s property “at the time of marriage or which may afterwards be acquired as a result of one’s own labors” from being used to satisfy the debts of the other spouse; “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”
 - 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.

Note: This law has been promulgated (An Act to Govern the Devolution of Estates and Establish Rights or Inheritance for Spouses of Both Statutory and Customary Marriages)

- Article 24
 - “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:
 - that reasons for such expropriation are given;
 - that there is prompt payment of just compensation;
 - 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
 - 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.
 - 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.
 - 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 27
 - “only persons who are Negroes or of Negro descent shall qualify by birth or by naturalization to be citizens of Liberia”
- Article 65
 - “The courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature.”

10. DECEDENTS ESTATES LAW, 1992 (CHAPTER 3 OF TITLE 8, LIBERIAN CODES REVISED)

- Section 2.1:
 - “Every person eighteen years of age or over, of sound mind and memory, may by will dispose of real and personal property and exercise a power to appoint such property.”
- Section 2.28:
 - Good faith purchaser of real property, for “valuable consideration,” “from a distribute of a person who died owning such property shall not be affected by a testamentary disposition of such property by such decedent, unless within two years after the testator’s death the will disposing of the property is admitted to probate.”

Chapter 3: Descent and Distribution of Intestate Estates

- Section 3.1:
 - Abolishes distinction between “persons who take as heirs at law and next of kin”
- Section 3.2: Succession to property, real and personal, on intestacy
 - If a spouse “and one or more lineal descendants” survive then property “to the value of \$5000” and 1/2 of the residue goes to the spouse “for life with the remainder thereof to the children and to the issue of any deceased child” and “one half of the residue outright” to the children “and to the issue of any deceased children
 - If no spouse but “one or more lineal descendants” survive the entire estate goes to the children and “the issue of any deceased child”
 - If a spouse and “one or more brothers and sisters but no lineal descendant or parent” property “to the value of \$10,000” and 3/4 of the residue goes to the spouse, and “the balance to the brothers and sisters and to the issue of any deceased brother or sister”
 - If a spouse survives but “no lineal descendant, parent, brother or sister, the entire estate” goes to the spouse
 - If one or both parents and one or more brothers and sisters survive but not the spouse or a lineal descendant property “to the value of \$10,000” and 1/2 of the residue to the parent or if both survive then to each equally and “the balance to the brothers and sisters and to the issue of any deceased brother or sister”
 - If one or both parents survive but no spouse or lineal descendant or brother or sister the entire estate goes to the parent or if both survive to them equally
 - If no spouse, lineal descendant or parent, then estate goes to the following persons “living at the death of the decedent” in order of first to last
 - Brothers and sisters and to the issue of any deceased brother or sister, if none then
 - To the grandparents equally, if none then
 - To the uncles and aunts and to the issue of any deceased uncle or aunt, but if none then
 - To the Republic of Liberia

Chapter 3: Devolution of Estates and Rights of Inheritance

- Section 3.1: Widow’s Dower Rights
 - Upon husband’s death the “widow or multiple widows” are entitled to 1/3 of the husband’s property
- Section 3.6: Right of Tribal Inhabitants to Make Last Will and Testament
 - “Every male and female of legal age under customary or tribal law shall have the right to make his/her Last Will and Testament, describing how his/her property is to be distributed after his/her death.”

II. EXECUTIVE LAW, TITLE 12, LIBERIAN CODES REVISED

Chapter 25: Ministry of Internal Affairs

- Section 25.2: Duties of the Minister

- “The successful conduct and improvement of local government through supervision and direction of the activities of the political subdivisions of the central government”,
- “Managing tribal affairs and all matters arising out of tribal relationships”,
- “Overseeing the collection and publication of the laws and customs of the Liberian tribes”
- “Initiating and organizing programs for the planned growth of urban areas with emphasis on projects to provide for adequate and satisfactory housing accommodation and other facilities

Chapter 28: Ministry of Agriculture

- Section 28.2: Duties of the Minister of Agriculture
 - “To oversee the conservation and judicious use of the soil, the forests, and the fish and wildlife resources of the nation”,
 - “To administer all laws relative to agricultural subjects or rural improvement, including regulatory laws designed to protect the farmer or agricultural means of production or farm commodities”

Chapter 33: Ministry of Lands, Mines and Energy

- Section 33.2: Functions of Ministry
 - Charged with “administration of the Mining and Survey Laws of the Republic”
 - Review and grant or deny “applications for prospecting, exploration, and mining rights except concessions”
 - “To promulgate all regulations affecting lands, mines and energy in Liberia”
 - “To monitor compliance with, as well as enforce, all laws and regulations affecting lands, mines and energy”

12. THE INVESTMENT ACT OF 2010

- Section 2.7, “‘Enterprise’ means any corporation, company, partnership, association, foundation, trust or other organization or entity, for profit or not for profit, organized and subsisting under the laws of any jurisdiction”
- Section 7.1 Expropriation
 - (a) Government cannot expropriate or nationalize enterprises
 - (b) Government cannot compel anyone to “cede his interest in the capital or equity” of an enterprise to another
- Section 7.2 Standard for Lawful Expropriation
 - Expropriation must be
 - In the national interest for a public purpose
 - least burdensome available means to satisfy that overriding public purpose
 - made on a non-discriminatory basis
 - in accordance with due process of law, and

- under a law which provides for: fair and adequate compensation, and "right of access" to court for determination of "investor's interest or right" and compensation, which is "fair market value"
- Section 7.3 Compensation for Expropriation
 - Compensation must be made "without undue delay"
 - If currency exchange controls then must authorize compensation "in freely convertible currency"
- Section 7.4 Compensation for Expropriation
 - Compensation for expropriation is "fair market value" of the expropriated property "taken as whole"
 - Fair market value determined: without consideration of impact of expropriation, and just before expropriation announced or "generally anticipated in the marketplace, whichever is earlier"
- Section 7.5 Compensation for Expropriation
 - Government and investor "may determine fair market value of the expropriated property by other agreed means"

13. LOCAL GOVERNMENT LAW (VOL. IV, TITLE 20, LIBERIAN CODES REVISED)

- Section I: County Area and Hinterland
 - "The territory of the Republic shall be divided for the purpose of administration into the County Area and Hinterland"
 - "The Minister of Internal Affairs shall be the chief officer of the local governments of both the County Area and the Hinterland."
- Section I0: Division into counties
 - "The County Area of the Republic shall be composed of the counties of Grand Gape Mount, Montserrado, Grand Bassa, Sinoe, and Maryland, Bong, Nimba, Lofa, Grand Gedeh, Bomi, Grand Kru, Margibi, and Rivercess"

14. MINERALS AND MINING LAW (SEPTEMBER 20, 2000), VOL. I, PART I, TITLE 23, LIBERIAN CODE REVISED

- Section I.3: Definitions
 - Ministry: "Ministry of Lands, Mines & Energy of the Republic"
- Section 2.1: Property Rights in Minerals
 - "Minerals on the surface of the ground or in the soil or subsoil, rivers, streams, watercourses, territorial waters and continental shelf of Liberia are the property of the Republic and anything pertaining to their Exploration, Development, Mining, and export shall be governed by this Law."
- 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.”
- Section 3.1: Administration
 - “Subject to, and in keeping with the provisions of this Law, the Minister shall be responsible to see that this Law, and the Regulations, shall be so administered as to achieve their purposes and promote the policies set forth herein.”
- Section 10.1: Lands not Subject to Mineral Rights
 - “Mineral Rights shall not be granted with respect to any lands located within the boundaries of any cities, commonwealth districts, municipal districts, cemeteries, transportation or communication facilities, aqueducts, military base, port, Poro or Sande grounds, and other grounds reserved for public purposes, except with the consent of the officials-authorized to administer or control the affairs of such entities, and subject to such special terms and reasonable conditions as may be prescribed for the protection of surface users.”
- Section 11.3: Supremacy of Government Right
 - “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 11.5: Procedure on Refusal of Land Owner or Occupant to Grant Access to Land for Exploration of Mining
 - “In the event of the refusal of a Landowner 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.”

15. PRC DECREE #23 OF 1980: LAND SURVEYORS REGISTRATION LAW, CHAPTER 9.7 OF THE LIBERIAN CODES REVISED

- Sub-section 9.3: Definitions
 - Board: “the Land Surveyors Licensing and Registration Board”
 - License: “a certificate issued by the Surveyors Licensing and Registration Board in the prescribed manner under this chapter”
 - Licensed Land Surveyor: “any person proficient in survey theory and practice, or survey methods, and holding a certificate of qualification issued under the provisions of this chapter”
- Section 9.4: Administration
 - Ministry of Lands, Mines, and Energy has power to enforce this law
- Section 9.5: Land Surveyors Licensing and Registration Board

- Ministry of Lands, Mines and Energy has power to appoint, “with the approval of the Head of State,” seven land surveyors to serve as the Land Surveyors Licensing and Registration Board
- Section 9.6: Powers of the Land Surveyors Licensing and Registration Board
 - Board must require “all Land Surveyors residing within the Republic of Liberia to register” and must require the maintenance of a register of all licensed land surveyors. Only land surveyors so registered are qualified to survey land in Liberia
 - Board is responsible for determining qualifications for receiving a survey license
 - Board empowered to conduct hearings of all complaints against surveyors
 - Board can “suspend or debar” surveyors
- Section 9.7: Criminal Violations and Remedies
 - Felony for unlicensed surveyors to hold themselves out as surveyors
 - “Criminal violation” for surveyor not appointed as a Survey Officer by the Minister of Lands, Mines, and Energy under the Registered Land Law (1974) to survey land in an adjudication area
 - “Malicious mischief” for anyone to remove “permanent monuments, markers, beacons and other survey reference appurtenances lawfully established”, without legal right to do so, and with the “intent to defraud, cheat and maliciously deprive another person of his land in fee simple or the beneficial use and possession thereof in whole or in part”
 - Misdemeanor for anyone or survey land “without first obtaining due cognizance and observation” of existing plans or maps and “as a result . . . there is an encroachment” on another’s land
 - “Criminal violation” to survey without first issuing “an adequate notice in writing to the owners of adjoining lands”
 - Misdemeanor to survey land without any authority to do and such survey causes the plot of land to vary from the “official theoretical layout”
- Section 9.9: Qualification for License
 - Must have certificate or bachelors in land surveying and acquired at least one year of land surveying field experience in Liberia, or
 - Acquired five years of land surveying field experience as an apprentice surveyor in Liberia, and
 - Passed both practical and written examinations administered by the Board
 - Pay the professional registration fees
- Section 9.10: Hearing Procedure of the Surveyors Licensing Board
 - Must file written complaint, which must contain: a concise statement of facts, state the name of the place where the complained of act occurred, state “exactly” the injury received, and “state the basis of . . . title”
 - Defendant must file an answer
 - Board hears oral and written evidence

- There is a written record of the proceedings before the Board
- Decision requires at least simple majority of the Board members
- Section 9.16: Land Commissioners
 - Land Commissioners are made “personnel” of the Ministry of Lands, Mines, and Energy in the Department of Lands, Surveys and Cartography. The Minister of Lands, Mines, and Energy recommends to the President people to serve as Land Commissioners

16. PROPERTY LAW (VOL. V, TITLE 29, LIBERIAN CODES REVISED, CHAPTERS I TO 7)

- Section 2: Probate of conveyance or mortgage
 - Must appear before probate court within 3 months of date of execution of instrument (whether deed, mortgage or other instrument relating to real property)
 - Does not apply to interests in land acquired prior to October 1, 1962
- Section 5: Penalty for registration before probate
 - A Registrar of Deeds is guilty of a misdemeanor punishable by a fine not exceeding “one hundred dollars” if he or she registers any deed, mortgage, or other conveyance not endorsed by the probate judge with the words, ‘Let this be registered,’ over his or her signature.
- Section 6: Failure to probate and register
 - If do not probate within 4 months of execution then title is void “as against any party holding a subsequent instrument affecting or relating to such property, which is duly probated and registered”
- Section 20: Leases to foreigners
 - Leases are limited to 21 year terms, but there may be two optional periods of 21 years each “in addition to the twenty-one year period of a term certain.” For each additional term the rent is increased by “not less than ten per cent.”
- Section 20A: Leases to foreign businessmen and business concern
 - Foreign businessmen or foreign business concerns may be leased real property for longer than 21 year period if
 - For building and investment “is the extent of \$150,000” the lease period may be 25 years with renewal option no longer than 25 years
 - Investment is for more than \$150,000 but less than \$250,000 the lease term may be 35 years with renewal option no longer than 35 years.
 - Investment is for more than \$250,000 but less than \$350,000 the lease period may be for 40 years with renewal option no longer than 40 years
 - Investment is for more than \$350,000 the lease term may be for a maximum of 50 years with renewal option no longer than 50 years
- Section 31: Loans by aliens secured by mortgage

- Any foreign person may lend money to a Liberian citizen, Liberian corporation, or foreign corporation “engaged in business in Liberia”. The borrower or any person can give security to the foreign lender for repayment and loan interest by mortgage on real property
- Loan interest cannot exceed “the legal authorized rate”
- Section 32: Rights and remedies of alien creditor
 - Foreign mortgagee has the same rights as Liberian mortgagee except the right to bid on property at foreclosure
- Section 33: Security by Republic of Liberia
 - Loans under Section 31 may be secured by the Republic of Liberia by the Ministry of Finance approving the loan in writing by using “substantially the following form”
- Section 34: Payment of deficiency by the Republic
 - If net amount realized by “alien mortgagee” from sale of mortgaged property is less than full amount owed (principle plus interest, court costs, and taxes) and within 1 year from the date of the judicial confirmation of the foreclosure proceedings the “mortgagee” has not recovered full amount owed, then the Republic of Liberia shall pay the remaining amount owed. Republic of Liberia then substitutes for the alien mortgagee with respect to all financial claims against the mortgagor.
- Section 35: Suit by alien mortgagee
 - Disagreements about amount to be paid by the Republic of Liberia to the alien mortgagee under Section 34 must be settled in court
- Section 36: Alien mortgagee rights extended to certain Liberian corporations
 - Corporation formed under Liberian law and more than 50% of voting stock is owned by “alien person” or “alien corporation” treated the same as a foreign corporation
 - Any reference to “foreign corporation, foreign lender, foreign mortgagor, alien mortgagee and alien person” means also “foreign owned Liberian corporation”
- Section 60: Mortgages to which this chapter applies
 - Mortgage may be foreclosed in “manner provided in this chapter” if mortgage has been registered, default has occurred, and no action in law of any kind is pending against the mortgagor
- Section 61: Notice of foreclosure sale
 - Notice must give date and hour of foreclosure sale and
 - Clerk of the circuit court publishes notice “at least once in a newspaper, if any be published in the county”
 - Sheriff must post the notice in front of the courthouse of the Circuit Court in which foreclosure action is brought and in “at least two other conspicuous public places”, and on premises to be sold by foreclosure
 - A copy of the notice must be served on the mortgagor or legal representative
- Section 63: Place of sale: purchase by mortgagee

- Sale by sheriff is by public auction in daytime in the county where mortgaged property is located
- Mortgagee may purchase the property
- Section 67: Execution of deed
 - The Sheriff's and Clerk's written statements must be presented to the judge of the Circuit Court
 - If he or she "finds such statements sufficient in form and content" he directs the Registrar of Deeds to draw, execute, and register the deed
- Section 80: When partition available
 - If Joint tenants or tenants in common, and
 - One or more of them have estates in inheritance or for life/lives, or "for years"
 - Any one of them may partition their share of the land or sell their share of the land if "it appears that partition cannot be made without great injury to the interests of the owners"
- Section 81: Filing petition for partition
 - Petition for partition shall be filed in Circuit Court of county in which property is situated
 - Clerk shall issue "writ of summons" commanding parties to appear and answer within 10 days after service of the writ
 - Copy of petition must be attached to the writ and served
 - Petition must "clearly describe the lands sought to be partitioned" and "shall set forth the rights of the parties"
- Section 82: Determination of issue; appointment of commissioners
 - Petition "may" be heard and disposed of by the judge
 - If petitioner entitled to have partition then judge must order
 - appointment of three commissioners
 - Commissioners must be "reputable and disinterested freeholders for the purpose of making such partition"
 - Lands to be partitioned
 - Time when commissioners must report to the court
- Section 85: Confirmation or setting aside of report; direction to sell.
 - Judge can confirm the commissioner's report or set it aside and "appoint as often as may be necessary new commissioners"
 - If judge confirms a report by the commissioners that the property cannot be sold without greater injury to the interests of the owners, the court 'may' order the commissioners to sell the land at public auction to the highest bidder
- Section 86: Confirmation of partition sale
 - Partition sale must be confirmed by the court

- Section 90: Filing of petition
 - May be filed by widow in probate court of county in which property is located
 - Petition must be served on heirs of widow's husband "at the time of filing" or if heirs are not owners of the land "subject to dower" then upon the persons claiming a 'freehold estate' over the land or their legal representatives
- Section 91: Determination of issue; appointment of commissioners
 - Petition may be heard and disposed of by the judge
 - If judge determines that widow is "entitled to have her dower admeasured" the judge must issue an order appointing three commissioners
- Section 94: Confirmation or setting aside of report
 - Judge may confirm the report or set it aside and may appoint new commissioners "as often as may be necessary"
- Section 95: Determination of rental value in lieu of laying off of property
 - If commissioners report that it is "not practicable, or that it is not in the best interests of all the parties" that 1/3 of the property be admeasured and "laid off"
 - The judge may order that the sum equal to 1/3 of the annual rental value of the land be paid to the widow "upon competent evidence being adduced as the net rental value of such property"
- Section 96: Writ of possession
 - If judge confirms report of commissioners that 1/3 of the land should be laid off for the widow after 30 days from the date of the report's confirmation the widow is entitled to a writ of possession for that 1/3 of the land

17. PUBLIC LANDS LAW (VOL. V, TITLE 34, LIBERIAN CODES REVISED)

- Section 1: Appointment of Land Commissioners
 - President appoints Land Commissioners with the advice and consent of the Senate for each county
 - "The duties performed in the counties by the Land Commissioners shall be performed in the Hinterland by the District Commissioners."
- Section 2: Duties of Land Commissioners
 - If Land Commissioner is "satisfied" that "land about to be sold is not privately owned and is unencumbered" he/she issues a "certificate to the prospective purchaser to that effect."
 - Also charged with drawing up deeds of sold public land
- Section 10: Appointment of Public Surveyors
 - President appoints Public Surveyors with the advice and consent of the Senate for each county
- Section 11: Duties

- Upon being ordered by the President the Public Surveyor surveys public land “about to be allotted to immigrants or others” and public land about to be sold
- Section 30: Procedure for the Sale of Public Lands
 - “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. In consideration of such consent; he shall pay a sum of money as token of his good intention to live peacefully with the tribesmen. The Paramount or Clan Chief shall sign the certificate, which the purchaser shall take to the office of the District Commissioner who acts as Land Commissioner for the area. 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.”
 - “An applicant for the purchase of public land, having received from the District Commissioner or Land Commissioner a certificate as provided in the foregoing paragraphs, shall pay into the Bureau of Revenues the value of the land he desires at a minimum rate of fifty cents per acre. He shall obtain an official receipt from the Bureau of Revenues which he shall attach to this application to the President for an order directed to the surveyor of that locality to have the land surveyed. If the President shall approve the application, he shall issue the order to the surveyor to have the land surveyed. The applicant shall then present the order to the named surveyor who shall do the work. The applicant shall pay him all his fees. A deed shall thereafter be drawn up in the office of the Land Commissioner, authenticated by him, and given to the purchaser, who shall submit it with all the accompanying certificates to the President for signature. The deed shall then be probated.”
- Section 31: Prices of public lands
 - “Marshy, rocky, or barren land” may be sold to the highest bidder
 - Following types of public land must be sold at the stated prices:
 - “Land lying on the margin of a river”: \$1 per acre
 - “Land lying in the interior”: 50 cents per acre
 - “Town lots”: \$30 per lot
- Section 50: Drawing of land by immigrants
 - Single immigrants 21 years or older who have “filed a declaration of intention to become a citizen” are entitled to take 1 lot or 10 acres of farmland from the public lands
 - Husband and wife are permitted to take only 1 town lot or 25 acres of farmland for both
- Section 53: Allotments of public lands to aborigines who become civilized
 - “Aborigines of the Republic of Liberia who shall become civilized shall be entitled to draw public lands to the same amount as immigrants and to receive deeds to such lands . . . 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 plants bearing marketable products.”

- Section 70: Leases to foreigners
 - President can lease any public land “not appropriated for other purposes” to foreigner persons and business entities “for engaging in agricultural, mercantile, or mining operations”
 - The lease cannot be for more than 50 years with renewal for another 50 years
 - Terms of the lease require ratification by the Legislature
- Section 71: Leases to legations
 - President can lease any public land to “foreign governments for their use as legation sites”
 - These leases cannot be for more than 99 years
- Section 90: Claims against the Government for escheated lands
 - Person who claims real property that has escheated to the Government may bring a court action or claim to the Ministry of Justice
- Section 110: Correction of deed to public lands
 - If a person holds a deed for public lands which he/she “believes to contain errors” the President investigates “as he may deem advisable,” and if an error “does in fact exist,” the erroneous deed must be canceled by a court of equity, and the President delivers the corrected deed to the applicant

18. PUBLIC PROCUREMENT AND CONCESSIONS LAW (SEPT. 18, 2010)

- Section 2: Interpretation
 - Certificate of Concessions: “a certification by the Minister responsible for Economic Planning that a project is qualified to be a subject of a Concession procurement process.”
 - Entity: “a ministry, department, agency, or county of the Republic of Liberia”
- Section 5: Functions of the Commission
 - Monitor compliance with this Law,
 - Disseminate information related to this Law,
 - “Develop rules, instructions, regulations and related documentation on public procurement and concessions procedures, including designing formats in furtherance of this Act”,
 - “Formulate, promote, support and implement human resource development programs in furtherance of the aims of this Act”,
 - “Review procurement and Concessions documents”,
 - “Formulate policy and prepare standards for procurement and Concessions”,
 - Assess and improve upon the public procurement and concessions process,

- Provide an annual report to the Legislature,
- Convene an annual procurement forum,
- Publish a quarterly magazine on public procurement and concessions,
- “Advise the Government on issues related to this Act”,
- “Investigate and debar business entities and bidders who have seriously neglected their obligations under a public procurement or Concessions contract”,
- Maintain and publish a list of debarred business entities, and
- Independently review complaints and appeals “related to the procurement and Concessions process”
- Section 6: Membership and Appointment
 - Composed of 7 Commissioners
 - Commissioners nominated by the President and with the consent of the Senate appointed by the President
 - Commissioners include:
 - A chairperson “who shall be knowledgeable in public procurement and Concessions procedures and practices and financial management”
 - 3 persons “with experience in the public sector, as follows:”
 - Lawyer from the Attorney General’s office “other than the Attorney General” but who is nominated “on the advice of the Attorney General”, and
 - 2 persons, at least of which must be a woman, “and each of whom shall have prior experience in public procurement and/or Concessions procedures and practices and/or be familiar with governmental operations; and also possess training in management and economics”
 - 3 persons from the private sector
- Section 21: Procuring and Concessions Entities
 - “Every Procuring or Concession Entity shall be responsible for procurement or Concessions carried out by the Entity.”
- Section 77: Entity Concession Committee
 - If a Concession Entity wants to grant a concession the “Head of the Entity shall designate an Entity Concession Committee
- Section 80: Concession Structures
 - “There shall be established for each Concession proposed to be awarded under this Act an Inter-Ministerial Concessions Committee” and a “Concessions Bid Evaluation Panel”
- Section 82: Functions of the Inter-Ministerial Concessions Committee
 - Review and approve Concession Procurement Plan prepared by the Entity Concession Committee “prior to any request for expressions of interest; provided that the Inter-

Ministerial Concessions Committee shall not approve a Concession Procurement Plan unless it has concluded that the proposed Concession is in the best interests of Liberia and that the benefits of the proposed Concession cannot be substantially achieved other than through Concession”,

- Create a Concessions Bid Evaluation Panel when provided for in the Law
- “Review and approve prior to their issuance all documents to be included in a request for expressions of interest or an invitation to bid”,
- “Review the bid evaluation report prepared by the Concession Bid Evaluation Panel . . . to ensure that procedures were in strict conformity with the criteria, the Act and relevant regulations”
- Section 90: Presentation of Concession Option to the Public
 - “A Concession Entity shall undertake public stakeholder consultations with respect to each proposed Concession prior to the finalization of the bid documents to be included in the invitation to bid.”
- Section 95: Competitive Bidding
 - Concession bidding proceedings done by “advertised open bidding proceedings, to which equal access shall be provided to all eligible and qualified bidders without discrimination
 - Concession bidding must use prequalification of bidders unless the Inter-Ministerial Concessions Committee determines “that only a small number of bidders will be interested, in which case bidder qualifications shall be evaluated post-bid
- Section 96: National Competitive Bidding
 - Use national competitive bidding for Concessions when
 - International competitive bidding is not required, and
 - “Inter-Ministerial Concessions Committee has reasonably concluded that the project is so limited in scope that it is unlikely to be of interest to foreign investors”
 - Must use national competitive bidding when concession “falls within an area of the economy which is by law restricted to Liberians”
- Section 97: International Competitive Bidding
 - Must use international competitive bidding when:
 - “Project requires international expertise”,
 - “Project requires technology not available in Liberia”, or
 - “Project requires capital outlay not ordinarily available in Liberia”
- Section 101: Sole Source and Unsolicited Bids
 - “A Concession may be granted on a sole source basis only upon a determination by the Cabinet, after consultation with the Commission, that sole source procurement is the only reasonable way of obtaining the resource controlled by the bidder and one or more of the following conditions is determined to exist:”
 - “Concession requires specialized expertise that is available only to one specific bidder;”
 - “Concession involves an innovation the patent for which is held by one particular bidder”,

- “Concession requires specialized research, or experiment that only one person is prepared to undertake”, or
- “Concession is in respect of strategic national interest or national defense or security and it is not in the national interest to have more than one bidder”
- Unsolicited bid is a “bid or proposal for a Concession provided by a person at the suggestion of a Ministry or agency of the Government that has not been approved as a sole source bid . . . and that is not submitted in response to a formal invitation to bid”
 - Concession Entities have no obligation to entertain unsolicited bids
 - Concession Entities that want to entertain an unsolicited bid must request the formation of an Inter-Ministerial Concessions Committee which forms a Concession Bid Panel “to conduct an independent assessment of the quality of the unsolicited bid and the qualifications and reputation of the bidder”
 - Concession Entity cannot negotiate with the unsolicited bidder unless the Concession Bid Evaluation Panel concludes that the bidder “has the technical and financial capacity to perform its obligations under such agreement,” “there is no reason to believe that the terms offered by the bidder could be improved through submission of the proposal to a competitive bidding process,” and “the award of a Concession to that bidder would not lead to a situation in which it would be difficult or impossible for an effective competitive operation to arise”
- Section 117: Form of Contract; Role of Ministry of Justice in Developing Contract
 - “The Concession agreement as executed shall be approved by the Minister of Justice as complying with the requirements of this Act and any other applicable law before submission to the President and Cabinet for approval.”
- Section 125: Right to Review
 - Bidders who have suffered or “is at risk of suffering a loss or damage as a result of a violation of this Act or its regulations”

19. REAL PROPERTY TAX CODE (CH. 20, REVENUE AND FINANCE LAW, 2000)

- Section 2000
 - Unless the land is exempt from taxes the following applies:
 - tax on unimproved land at rate depending on geographical location, and
 - tax on improved land" at rate as percentage of "assessed value," which depends on "use classification of building" and "other improvements" on the land
 - Unimproved land tax rates:
 - Unimproved land units in cities, towns, municipal or commonwealth districts taxed at rate of 7% of the unit's value
 - Tax on city or town lot is 7% "of the assessed value thereof"
 - Parcel of land not divided into city or town lots and used as farmland subject to tax of 10% "of the assessed value", with minimum tax of \$5 on each parcel
 - Parcel of land not divided into city or town lots and "used for any purpose other than farmland" subject to tax of 5%

- Unimproved land units outside cities, towns, municipal or commonwealth districts subject to the following:
 - Land used as farmland or “for any purpose other than” farmland: Tax of \$5 "on each acre or fraction thereof", but minimum tax is \$200 on each parcel
- Improved land, "no matter where situated"
 - Business or commercial use: 1% tax "of assessed value" for building "and other improvements" used for "business or commercial purposes, in whole or in part" if assessed value is less than US\$10 million or Liberian dollars equivalent; .5% if assessed value is over US\$10 million
 - Industrial Use: .5% tax of "of assess value" for building "and other improvements" used for "industrial purposes, in whole or in part" if assessed value is less US\$10 million or Liberian dollar equivalent; .5% of "one third of the assessed value" if the assessed value is more than US\$5 million; tax of L\$100 if a hut
 - Residential Use: Tax of .25% "of assessed value" for building "and other improvements" used "exclusively for residential purposes"; L\$100 it a hut
 - Farm use in urban areas: Tax of .33% "of assessed value" for building "and other improvements" on parcels of land used as farmland in "corporate limits of any city, town municipal or commonwealth district or village" and "used exclusively for farm purposes"; L\$100 if a hut
 - Farm use outside of urban areas: Tax of .25% "of assessed value" for building "and other improvements" on parcels of land used as farmland and outside "corporate limits of any city, town municipal or commonwealth district or village" and used "exclusively for farm purposes"; L\$100 if a hut
- Buildings and other improvements situated on public land
 - For building "and other improvements"
 - On "public land owned by the Government of the Republic of Liberia", and
 - leased by private persons "under license or otherwise", and
 - building used for residence then tax is 1/7%, or building used for "commercial purpose" then tax is 1%, or building is hut then tax is L\$100
 - Tax is only against "buildings and other improvements"
 - "solely for the purposes of this subdivision" private persons are "deemed" owners of the real property
- (D) Definitions
 - 'Business or commercial use' means "buildings or improvements used mainly for the purpose of private profit or gain in the buying and selling of goods, the engaging in trade and commerce including retail trading, the provision and setting up of office accommodations for commercial and professional purposes, the letting of houses or apartments and includes motor vehicles service stations, motor vehicle sales rooms and garages together with any workshops associated therewith"
 - 'City lot' or "town lot" means "parcel of land of such dimensions as has been or may be so designated by competent authority or so described and delimited on any official map or plot of the city, town, municipal district or commonwealth district within the corporate limits of which such lot is situated;" a fraction of a lot separately owned is a whole lot

- 'farmland' means "area of land or lot less than five acres in area which is used primarily for agricultural, horticultural, for the growing of tree crops, grazing, poultry or pig raising, or other farming purposes"
- 'Improved land' means "land upon which improvements, as defined in this paragraph, have been effected"
- 'Improvements' means "those physical additions and alterations to land buildings and all works carried out for the benefit of land which have the effect of increasing its value"
- 'Industrial use' means "buildings or improvements occupied and used for the purpose of private profit or gain as a factory workshop, brewery or canning plant, or which are engaged in the manufacture and processing of goods for sale, provided that in assessing the value of any such premises such value shall not include the value of any plant, machinery, tools, or other appliances which are not fixed to the building or improvements or which are only so fixed that they may be removed there from without structural damage thereto"
- 'Market value' is the "capital sum which land, building or improvements might be expected to realize as at the date of assessment if offered for sale on such reasonable terms and conditions as a bona fide seller would require"
- 'Residential use' means "buildings or improvements wholly or principally used, constructed or adapted for human habitation and if wholly used and occupied by the taxpayer as his or their primary place of residence and dose [sic] not include any such building or improvement which are let out either wholly or in part for the private profit or gain of the taxpayer"
- 'Under-improved land' means "where the value of physical additions and alterations thereto or buildings thereon and all works carried out for the benefit of the land are of low [sic] value than of the land itself."
- 'Unimproved land' means "on which no improvement, as define [sic] in this paragraph, have been affected and includes underimproved land as defined in this paragraph."
- Section 2001: Assessed Values and Method of Assessment:
 - Parcels of land assessed based on market value "as at [sic] the date of inspection"
- Section 2010
 - Must show "official tax receipt evidencing that all delinquent real property taxes" have been paid in full before deed, lease agreement, or "other instrument affecting or relating to the passage of title or other interest in real property" can be probated and registered.
 - Purchaser cannot be vested with title or other interest until all delinquent taxes have been paid.
 - The sale of public land is exempt from this requirement.
 - The probate court judge, Registrar of Deeds and "any other person or agency responsible for effectuating the passage of title or any other interest in and to real property or responsible for giving due notice of such passage interest in and to real property" must withhold action until official tax receipt is produced

20. REGISTERED LAND LAW (1974), CHAPTER 8 OF THE PROPERTY LAW

- Section 8.2

- Purpose “is to substitute as expeditiously and as relatively inexpensively as possible, with the highest regard to due process, for the present system of recording rights to and over land [the Deed Registry System] a system of land registration.”
- Section 8.3: Definitions
 - Referee = “the judicial officer appointed to adjudicate claims to land and rights and interests in land within an area under Section 8.21”
 - Unregistered land = “land, and every estate, right and interest therein which, though recorded in accordance with the probate procedure contained in Chapter I of the Property Law, has not been ‘registered’ in accordance with the provisions of this chapter”
- Section 8.4: Registered land subject to the same rights and burdens as unregistered land
- Section 8.6: Preserves the special role of probate courts under the Deed Registry System
 - Probate courts have jurisdiction over “all proceedings and matters in connection with the registration of land and any estate, right and interest therein, and with respect to dealings therein, authorized by the provisions of this chapter.”
- Section 8.7:
 - The Registrars of Deeds in the several counties are made the Registrars of Land in their respective counties
 - The National Archives and Records Service is charged with being the location of the Registrar of Land as well as for the Registrar of Deeds
- Section 8.11:
 - “Whenever it appears expedient to the Minister of Lands and Mines” that estates, rights and interests in the registration of land in a specified area (‘adjudication area’) “shall be effected”, he or she may file a petition with the probate court for the adjudication and registration of titles in the adjudication area
- Section 8.12
 - When petition for adjudication and land registration is filed under Section 8.11 the Minister of Lands and Mines must also file notice with probate court clerk and with the Circuit Court
- Section 8.21
 - A referee to decide conflicting land claims and a Demarcation/Recording Officer are appointed by the Chief Justice, and a Survey Officer by the Minister of Lands, Mines, and Energy
 - The referee is an officer of the probate court and “shall be in charge of the adjudication and shall have jurisdiction of all claims made under the provisions of this chapter relating to the land in designated adjudication area”
 - Referee has supervisory powers over the Demarcation and Recording Officers and Survey Officers
- Section 8.22
 - Chief Justice of Supreme Court “shall appoint” Demarcation and Recording Officers “as may be necessary”

- Section 8.23
 - Minister of Lands and Mines “shall appoint” Survey Officers “as may be necessary”
- Section 8.44: Safeguarding of rights of Government in public lands and of persons in default in filing presumably valid claims; appointment of guardians ad litem for minors and incompetents
 - Public lands: “As soon as conveniently possible after an adjudication section has been designated” the Demarcation and Recording Office must consult with the Land Commissioner and examine records relevant for locating public lands in the adjudication section
 - Schedule of public lands must be made by the Demarcating and Recording Officer for inclusion in the Demarcation plan
 - “Any person aggrieved by the designation of any parcel of land as public land may challenge such determination by way of the appeal procedure provided in this chapter.”
- Section 8.45: Duties of Demarcation and Recording Officer
 - Must demarcate each parcel of land “which is the subject of the claim”
 - Indicate boundaries of public lands and public rights of way
- Section 8.47: Duties of Survey Officers
 - Conduct a precise survey
 - Prepare survey plan
- Section 8.51
 - Where there are disputes which cannot be negotiated by the Demarcation and Recording Officer, these are referred to the Referee for decision, except that inheritance disputes go to the Circuit Court.
 - Appeals may be taken from both to the Supreme Court
- Section 8.52: Principles binding on the referee in deciding on claims:
 - If there is a good documentary title which would prevail if challenged, he records that person tentatively as the owner of the parcel
 - If there is open, peaceful and interrupted possession for twenty years or more, the possessor should be recorded tentatively as owner (the possessor must not have acknowledged the title of any other and must have used the land to the exclusion of others)
 - If there is a possessor who is unable to provide sufficient proof to be registered as an owner, he can be tentatively recorded as owner subject to substantiation within six months.
 - If no private rights are established, the land should be recorded as public land.
 - (d) registration of a tribal reserve or communal holding
 - “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.”
- Section 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.”
- Section 8.58
 - A registered title can be set aside if fraud proved in action filed within 10 years from final order for registration filed in the court where registration proceedings were held.
 - Where the right has been transferred to an innocent purchaser for value without notice of the fraud, he will be protected.
- Section 8.121: Rights of owners of registered private land
 - “the registration of a person as the registered owner of parcel of land shall vest in that person the absolute ownership of that parcel . . . and he shall hold the same free from all encumbrances . . . except those shown on the register” and following: liens, claims, or rights under Liberian law which are not required “to appear on record”; tax that becomes a lien on the land after initial registration and for which there have not been foreclosure proceedings; and a lease agreement not exceeding 3 years where there is “actual occupation of the land under the lease”
 - Encumbrances on registered land do not take effect until the encumbrances are also registered except those shown on the register and the following: liens, claims or rights under Liberian law which are not required “to appear on record”; tax that becomes a lien on the land after initial registration and for which there have not been foreclosure proceedings; and a lease agreement not exceeding 3 years where there is “actual occupation of the land under the lease”
- Section 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 registerable under the provisions of this chapter.”
- Section 8.124: Registered land not affected by prescription or adverse possession
 - No interest in registered land can be acquired by prescription or adverse possession
- Section 8.193: Right of indemnity
 - Anyone who suffers damage because of “rectification of the register” provided that required notice was inadvertently not given, “any mistake or omission in the register” which cannot be corrected except for “a mistake or omission on an initial registration,” or “any error in a certificate of official search by the Registrar” or other certified document, map or plan
 - No indemnity to any person who “caused or substantially contributed to the damage by his fraud or negligence” or whose “interest” “derives” from a person “who caused or substantially contributed to the damage”
- Section 8.194: Amount of indemnity
 - Indemnity shall not exceed the following amounts:

- If register is not rectified, “the value of the interest at the time when the mistake or omission which caused the damage was made”, or
- If register is rectified, “the value of the interest immediately before the time of rectification”
- Section 8.195: Procedure for claiming indemnity
 - Claims for indemnity are brought to the Permanent Claims Commission

Note: The Permanent Claims Commission has never been created

21. REVISED RULES AND REGULATIONS GOVERNING THE HINTERLAND OF LIBERIA, MINISTRY OF INTERNAL AFFAIRS (JANUARY 7, 2001)

- Article 66
 - "Title to the territory of the Republic of Liberia vests in the Sovereign [sic] State.
 - "Interest" [sic?] in the tribe is the "right" and "title" to "lands of an adequate area for farming and other enterprises essential to the necessities of the tribe"
 - Even if a tribe has not been granted a deed from the Government "delimitating . . . such reserves" the tribes "rights and interests in and to such areas, are a perfect reserve" giving them "title to the land against any person"
 - If the tribes apply to the Government this land interest can be converted into "communal holdings" upon application to the Government; the communal holdings must be surveyed at tribe's expense
 - "Communal holding" "vested in the Paramount Chief and Tribal Authority as Trustees for the tribe".
 - Trustees cannot transfer the communal holding as fee simple title to any "person".
 - If tribe becomes "sufficiently advanced in the arts of civilization" it can "petition" the government to divide "land" into "family holdings"
 - 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, Strangers
 - If an individual enters the territory of a tribe of which he is not a member (the stranger) for the purpose of farming he shall observe the following procedure:
 - (a) Obtain permission of the Tribal Authority
 - (b) Pay a token "in the nature of rent, such as five or six bunches of rice out of every farm", and
 - (c) Pay taxes to tribal Chief on "all huts" "erected or occupied"
 - Tribal Authority "may cancel the authority granted and confiscate the crops" if the stranger does not follow the above procedures
 - Stranger can appeal to District Commissioner

- Article 71
 - tribe owns "proceeds of each communal farm"
 - Proceeds used for the "general benefit of the tribe as a whole"
 - (b) Proceeds from "all communal farms" deposited by "proper tribal authority into the Tribal Treasury and is disbursed as provided in Article 26 hereof."
- Article 83, Delimitation of Tribal Reserve
 - Before any "Territory of the Chiefdom" can be used for "private purposes" or granted must delimit the Tribal Reserve "in adequate area for farming purposes of tribesmen"

22. **THE RULES AND REGULATIONS GOVERNING LOCAL GOVERNMENT OFFICIALS OF THE POLITICAL SUB-DIVISIONS OF LIBERIA, MINISTRY OF INTERNAL AFFAIRS (FEBRUARY 24, 2005)**

- Provides for the "job description and channel of operation of rural administration of the Ministry of Internal Affairs' officials, Ministry of Internal Affairs, Monrovia":
 - County Superintendent: "executive head of the county"
 - County/District Commissioner: Represents superintendent at the district level
 - Land Commissioner
 - "responsible for all land matters within the county"
 - Responsible to the superintendent's office and "shall conduct all land investigations between any opposing parties"
 - Endorses all "land certificates issued by tribal and municipal authorities"
 - Township Commissioner
 - Municipal authority within townships and responsible to County Commissioner
 - Paramount Chief
 - Head of the "chiefdom, clan, zones, elders and indigenous Administrators within the chiefdom"
 - Acts as "middle man between the central government and the indigenous people within the chiefdom"
 - "He shall adjudicate all domestic and cultural matters, including relevant matters from the chiefdom and to the clan chief's office"
 - Clan Chief
 - Head of the clan and represents the paramount chief within his clan
 - Investigates "all indigenous matters from his clan and report same to the Paramount chief of the chiefdom, for his perusal and consideration"
 - Issues "all tribal land certificates in coordination with the general town Chief in the clan and in collaboration with the elders"

- General Town Chief
 - “head of that zone whose have 250 huts within the clan” and responsible to the clan chief
 - First hearing officer for all cases and reports to the clan chief
- Tribal Governor
 - Representative of tribal people within given area
 - Investigates “all tribal matters between his tribal men and settle all disputes As the case may be from time to time”
 - Responsible to the superintendent through the city mayor, township or district commissioner

23. **ZONING ACT FOR THE CITY OF MONROVIA/ZONING LAW (VOL. VI, TITLE 38, LIBERIAN CODES REVISED)**

- Section 1.2: Law regulates "location and use of buildings and structures, the nature and extent of the uses of land, and the density of population" “within the City of Monrovia”, and "may" be applied to other municipalities and "shall" serve as a model for other zoning regulations
- Section 2.1: Zoning Districts
 - Monrovia divided into 8 classes of districts: (1) Residence R1 Districts, (2) Residence R2 Districts, (3) Residence R3 Districts, (4) Residence R4 Districts, (5) Business B1 Districts, (6) Business B2 Districts, (7) Business B3 Districts, and (8) Industrial M1 Districts
- Section 2.3: R1 Districts
 - Include: single-family dwelling, church, public school, public library, public park, or playground, agriculture or horticulture (except farm stock or poultry, commercial greenhouses)
- Section 2.4 R2 Districts
 - Uses: "any use permitted in residence R1 districts"
- Section 2.5 R3 Districts
 - Uses: (1) any use permitted under R1 and R2 districts, (2) Two-family dwellings and "customary accessory uses and buildings"
- Section 2.6 R4 Districts
 - Uses: (1) any use permitted by R1 and R2 districts, (2) Two-family dwellings and customary accessory uses and buildings, (3) apartment dwellings and customary accessory uses and buildings
- Section 2.7 Business B1 Districts
 - Uses: "primarily for the conduct of commerce, general business, and the retail sale of commodities."
 - Joint occupancy dwellings and boarding houses are also permitted
 - Prohibited Uses

- Manufacture, assembly or treatment, except for retail goods sold on the premises; any process where more than 20% of floor area of building is used or 10% of the lot area is used; any process that is "an unusual fire risk or explosion hazard" or is a "nuisance by reason of odor, dust, noise, vibration, smoke, or glaring lights."
- Bakeries with more than 5 employees.
- Laundries or dyeing and cleaning works with more than 3 employees.
- Milk bottling or processing plants, or any other bottling plants.
- Lumber and building materials storage yards, coal yards, places for handling of fuels or storage warehouses.
- Repair or machine shops.
- Storage of crude oil or "any of its volatile products" or "other highly inflammable liquids".
- Bulk storage of fireworks, explosives, or inflammable or poisonous gas.
- Junk yards, used car lots, and automobile wrecking yards or disassembling plants.
- Public garages and gasoline filling stations.
- Any process or use prohibited in B2 or B3 districts and in industrial districts
- Section 2.8: B2 Districts
 - Uses: Same as for B1 districts, but gasoline filling stations are permitted when approved by the Zoning Council
- Section 2.9 B3 Districts
 - Uses: "primarily for the conduct of commerce and light manufacturing processes."
 - Details further permitted uses, such as wholesale businesses, cold-storage plants, laundries and dry-cleaning plants, and automobile repair shops. Prohibited uses are, for example, slaughtering and processing of animals, junk yards, hog farms, motor courts, storage of volatile and highly inflammable liquids, manufacture of heavy chemicals
- Section 2.10: M1 Districts
 - Uses: "primarily for the conduct of light manufacturing processes."
 - Permitted Uses: slaughtering and processing of animals, junk yards, garages, automobile repair shops.
 - Prohibited uses: dwelling or living quarters, hog farms, manufacture of heavy chemicals
- Section 5.1 Zoning Officers, Ministry of Public Works
 - Zoning Act administered under authority of Ministry of Public Works
 - Details appointment and duties of zoning officer
 - Zoning officer must prepare the building codes and subdivision regulations
- Section 5.3 Zoning Permits
 - Zoning permits must be obtained from the Zoning Officer

- Section 5.7 Powers of the Zoning Council; voting system
 - Zoning Council powers are:
 - (1) To hear and decide appeals of error by the Zoning Officer,
 - (2) decide on special exceptions,
 - (3) Authorize variance of strict application of Zoning Act when strict application would "result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner"
 - Must have vote of 3 members to change decision of Zoning Officer
- Section 5.8 Appeals to the Zoning Council
 - "Any person aggrieved" or any office, department, or board of Monrovia affected by a decision of the Zoning Officer can appeal

24. AN ACT AGAINST CRIMINAL CONVEYANCE OF LAND

Note: This law has not been summarized because it is relatively brief and is included in its entirety in this report as Annex H.

ANNEX E. GOVERNMENT INSTITUTIONS WITH LAND-RELATED MANDATES

In Liberia, the key institutions are the ministries and other agencies, including both those with cross-cutting responsibilities with regard to land and the sectoral ministries dealing with land in specialized uses. The major source of the competences of these institutions is the Executive Law, LCR Title 12.⁵²

THE MINISTRY OF LANDS, MINES AND ENERGY

This is the ministry with “land” in its title, and the one that might logically be expected to have a robust mandate with respect to land. That is not the case. The mandate of the Ministry is set out in Chapter 33.2 of Title 12, the Executive Law. The preamble to 33.2 mentions that the Ministry is charged with administration of the Mining and Survey Laws, but the actual listing of competences is focused very heavily on the minerals sector, with a quite specific listing of responsibilities in that regard. Sub-section (2)(a) appears to exclude the Ministry from making mining concessions, but this would seem to have been in effect amended by the Minerals and Mining Law, under which the Ministry is clearly empowered to make concessions.

By contrast, the only references to land come toward the end of a long list of competences, in the sub-sections dealing with the Ministry’s responsibility for promulgating regulations and enforcing laws and regulations:

(m) To promulgate all regulations affecting lands, mines and energy in Liberia;

(n) To monitor compliance with, as well as enforce, all laws and regulations affecting lands, mines and energy;

While degraded by the long period of conflict, this Ministry’s Department of Lands, Surveys and Cartography (DLSC) remains the center of competence in surveys and mapping in Liberia. Its surveyors are essential to the operation of the public land sale program, and provide services to government in many other contexts. But its mandate is quite narrow and technical. Unlike many lands departments in other countries, it does not have any specific authority to manage public lands. Nor does it appear from its legal mandate to have a role in land policy or law reform. It does not carry out deed registration, which is the mandate of the CNDRA. The Ministry does however play an important role in the land (title) registration process under the 1974 Law, carrying out the necessary survey and adjudication; an Adjudication Section exists in the Department, created at the time of the pilot systematic land registration in the late 1970s.

The Ministry does under other statutes have nominal authority over key local government officials dealing with land, in particular the County Land Commissioners and the County Land Surveyors, but this appears to be exercised effectively only with regard to the Surveyors. The consultants were told repeatedly that the County Land Commissioners report to the County Superintendent and through him or her to the Ministry of Internal Affairs. This seems to fly in the face of the provision of Section 9.16 of the Decree on Licensing and Control of Land Surveyors, reviewed in Part 4 of this report, that all Land Commissioners “shall become personnel of the Ministry of Lands, Mines and Energy”. This anomaly needs further exploration.

⁵² For an earlier discussion of the existing institutional arrangements done for the Governance Commission, see Johnson, Kobo. 2007. Inventory of Ministries, Agencies and Other Institutions with Statutory Responsibilities for Managing and Administering Land and Real Property in Liberia. (Monrovia: Governance Commission).

The picture that emerges, from this legal review and discussions with Ministry officials, is one of a Ministry with a weak land mandate and one which accords a relatively low priority to land matters, by comparison with mining and energy. The DLSC remains in an inadequate rented facility in Sinkor, away from the main office of the Ministry. The Ministry has in the past budgeted for a new building for DLSC on the headquarters site, but the project has not gone forward, according to ministry officials, because the ministry received less than the budgeted funding. It remains to be seen whether the conditionality relating to this new building under the MCC Threshold Program will make a difference. It seems unlikely that land as a sector will ever receive the attention it deserves unless these institutional arrangements are fundamentally reformed.

The consultants recommend that primary responsibility for land be shifted to a new institution, one with a much strengthened land mandate. Land has long been a resource considered plentiful and taken for granted. This is no longer a viable approach in today's world of skyrocketing demand for land. Some institutional options that could enable the state to play its role in this area more effectively are discussed in 6.3 below. First, however, it is useful to examine the roles of sectoral ministries and other agencies with land functions.

SECTORAL MINISTRIES AND OTHER AGENCIES

The role played by sectoral ministries in the land sector is considerable, especially with regard to concessions for activities which fall under the mandate of the concerned ministry. In some cases there is clear legal authority for this role, in other cases it must be implied from general provisions in the Executive Law.

The Ministry of Lands, Mines and Energy's mandate with respect to land for mining derives less from the Executive Law than from the more recent Minerals and Mining Law. The Ministry has explicit authority to grant concessions. While the MLME's Department of Lands, Surveys and Cartography indicated that they are not often consulted on land availability by other ministries making concessions, the Department is regularly consulted where mineral concessions are concerned, these being processed within the same ministry.

The Ministry of Internal Affairs under Section 25.2 of the Executive Law makes that Ministry responsible for the management of "tribal affairs," including the development of regulations for that purpose, and administration of the tribal courts. It is also mandated to collect and publish the customs of the tribes, a task it does not appear to have undertaken. There is no specific mention of land or land tenure.

The Ministry of Agriculture's mandate under Section 28.2 of the Executive Law again does not explicitly mention land or land tenure, or concessions. The only relevant item listed would be its broad responsibility for "administering all laws relative to agricultural subjects or rural improvement, including regulatory laws designed to protect the farmer or agricultural means of production or farm commodities."

The Forestry Development Authority, whose authority is set out under the Public Authorities portion of the Executive Law, has clear authority to grant forest concessions (Ss. 4 and 16), and to charge a prescribed land rental fee of .50 cents per acre. The more recent Forestry Reform Law reviewed in Part 4 of this paper contains much more elaborate provisions on forest land.

The Municipality of Monrovia has by the Act constituting the City (1973)⁵³ the power to take and hold real estate up to a value of 10 million dollars, an authority that may not extend to Liberia's other cities.

⁵³ An Act to Repeal the Act Creating the Commonwealth District of Monrovia and to Create in Lieu Thereof the City of Monrovia, County of Montserrado, and Grant It a Charter. August 16, 1973, in section 5.

On the other hand, it does not have legal authority (though it may have a degree of de facto control) over public land within the city. The need to address such matters in the context of local government reform has already been mentioned.

The Center for National Documents and Records Agency (CNDRA) was created under a 1979 law,⁵⁴ now a part of Section 81 of the Executive Law. It is the custodian for both the Deeds Register and the Land Register under the 1974 Law. (While the Ministry of Foreign Affairs retains control of the older registers, this is without legal basis.⁵⁵) The CNDRA is thus an important government actor in the land sector, with land responsibilities that cut across sectors.

Section 81.10 of the CNDRA law provides that the President, with the advice and consent of the Senate, shall appoint for each County and territory a Registrar of Deeds who shall serve under the immediate direction and supervision of the Director General, and lists several responsibilities and competences of the Registrars. The provisions are reasonable as far as they go, but do not provide a level of detail comparable with most deed registration laws on administration and conservation of the registers. A much fuller treatment of these points is needed. This could best be accomplished through a new law dealing with the full range of land registration options available to government. There are some specific changes that are needed as well. One is provision for the appointment of a Registrar-General, supervising the County Registrars for the Director of CNDRA and acting as Registrar of Lands under the 1974 Registered Land Law. Another needed change is amendment of the definition of “records” in Sections 81.1 (2) (a) and 81.13 to allow for electronic records.

There are many countries where the deed or land registry is within a unit of the Ministry responsible for lands. Sometimes the registers are managed as part of the department dealing with lands and surveys. The World Bank and a number of other donors often support the development of a “single land agency” which includes the land registry function. There are other jurisdictions however, notably Scotland, where the deed registers are part of the national archives, and others where they are a function of the judiciary. There is clearly a trend away from the latter. Courts are tools for careful, deliberate and often slow consideration of complex matters, not efficient delivery of a service to the public. The Scottish deed registry enjoys a very high reputation and this suggests that the archives-based approach can work well.

⁵⁴ An Act to Amend the new Executive Law to Create an Autonomous Bureau to be Known as a Center for National Documents and Records and to Repeal Other Laws in Relation thereto (February 19, 1979), Title 12 of the Liberian Codes Revised.

⁵⁵ The Act repeals the provisions of the Executive Law that entitled the Ministry of Foreign Affairs to maintain the Deed Registers. In Section 1 of the preamble, the law provides that Sections 20.50 thru 20.59, sub-chapter B of Chapter 20, and Sections 81.1 thru 81.10 constituting Chapter 81 of the Executive Law, are repealed and replaced.

ANNEX F. MATERIALS ASSEMBLED BY THE LAND COMMISSION

This listing of materials held by the Land Commission, prepared by staff of the Commission and appearing in an annex to Bruce and Kanneh (2011), has been updated.

SOURCES OF LIBERIAN LAW RELATING TO LAND

- Constitution of Liberia (1986)
- Opinions of the Supreme Court

STATUTES/REGULATIONS

- Aborigines Law (Title I, Vol. I, 1956)
- Revised Laws and Administrative Regulations for Governing the Hinterland (1947)
- Revised Rules and Regulations Governing the Hinterland of Liberia (January 7, 2001)
- Departmental Regulations: Supplementary and Revising Existing Regulations Governing the Administration of the Interior of the Republic of Liberia Including General Circulars Number one and two
- Local Government Law (Vol. IV, Title 20, Liberian Codes Revised)
- Decedents Estates Law (Vol. II, Title 8, Liberian Codes Revised)
- An Act to Govern the Devolution of Estates and Establish Rights of Inheritance for Spouses of both Statutory and Customary Marriages (December 1, 2003)
- General Construction Law (Vol. III, Title 15, Liberian Codes Revised)
- Maritime Law (Vol. IV, Title 21, Liberian Codes Revised)
- Natural Resources Law (Vol. IV, Title 23, Liberian Codes Revised)
- Property Law (with Registered Land Law) (Vol. V, Title 29, Liberian Codes Revised)
- An Act to Amend the Property Law to Provide a new System for Registration of Land and for Dealings in Land so Registered (May 20, 1974)
- An Act to Amend the new Executive Law to Create an Autonomous Bureau to be Known as a Center for National Documents and Records and to Repeal Other Laws in Relation thereto (February 19, 1979)
- An Act to Establish the Land Commission (August 11, 2009)
- Public Authority Law
- Public Contract Law
- Public Lands Law (Vol. V, Title 34, Liberian Codes Revised)

- Public Safety Law
- Transportation and Communication Law
- Zoning Law (Vol. VI, Title 38, Liberian Codes Revised)
- Zoning Act for the City of Monrovia
- Public Procurement & Concession Act of 2005
- Investment Act of 2010
- An Act Adopting a New Minerals and Mining Law
- An Act to Revise the Boundaries of Montserrado, Grand Bassa, Sinoe, Maryland and Grand Cape Mount Counties. To Repeal all Prior Laws Fixing their Boundaries and to define the Boundaries of the new Counties of Grand Gedeh, Nimba, Bong and Lofa. (1962-1963)
- An Act to Establish the Community Rights Law of 2009 with Respect to Forest Lands (October 20, 2009)
- PRC Decree # 13: Decree by the Interim National Assembly of the Republic of Liberia Granting to Foreigners the Right to own Real Properties within the Republic.
- PRC Decree # 23 providing for the Licensing and Registration of Land Surveyors and for the Control and Regulation of Surveys and Survey Methods and for the Protection of Survey Monuments, Markers, Beacons and other Reference Appurtenances Within the Republic of Liberia
- PRC Decree # 61: Decree by the People's Redemption Council of the Armed Forces of the Republic of Liberia Empowering the Monrovia City Corporation to Collect all Real Property Taxes Within the City Corporation of Monrovia
- PRC Decree No. 56 Amending Chapter 33, Section 33.2 of the Executive Law of Liberia and Providing Sub-section K through O.
- PRC Decree # 83: Decree by the People's Redemption Council of the Armed Forces of the Republic of Liberia Declaring and Proclaiming that the Heirs of the late G. Koffa Nagbe are the Legitimate and Rightful Owners of the 42.5 and 54 Acres of Land Situated Between the Southwestern Bank of the St. Paul River and Stockton Creek Bushrod Island, Montserrado County, and Restoring to the said Heirs all the Rights and Privileges Thereto in Perpetuity.
- Surveying and Land Sale Regulations (No date)
- Real Property Tax Code (Chapter 20, Revenue and Finance Law, 2000)
- An Act to An Act Against Criminal Conveyance of Land (August 26, 2014)

AVAILABLE LITERATURE ON THE ENVIRONMENTAL PROTECTION AGENCY OF THE REPUBLIC OF LIBERIA (EPA)

- An Act Creating the Environmental Protection Agency of the Republic of Liberia (November 26, 2002)
- An Act Adopting the Environmental Protection and Management Law of the Republic of Liberia (November 26, 2002)

- The National Environmental Policy of the Republic of Liberia (April 30, 2003)
- Environmental Protection Agency: Environmental Impact Assessment Procedural Guideline (2006)

AVAILABLE LITERATURE ON THE FORESTRY DEVELOPMENT AUTHORITY (FDA)

- An Act Adopting the National Forestry Reform Law of 2006 (September, 2006)
- Guidelines for Forest Management Planning (June, 2007)
- Forestry Development Authority Ten Core Regulations (2007)
- Forestry Development Authority: Implementing the Community Forestry Rights Law (April 16, 2009)

COMMISSION LEGAL MEMORANDA

These memoranda and papers were prepared by Caleb Stevens Esq., Carter Center Law Fellow with the Land Commission.

- Desk Study: Review of Work to Date Relevant to Customary Land Implementation, Aug. 21, 2013
- Memo Re Overview of International Refugee Law and Land, Aug. 6, 2013
- Memo Re Possible Changes to Liberian Land Laws upon Adoption of the Land Rights Policy, Dec. 10, 2012
- Memo Re Adverse Possession on Public Land, Feb. 9, 2012
- Memo Re History of Community Land Under Liberian Law, Feb. 3, 2012
- Memo Re Abandonment under Liberian Law, Jan. 23, 2012
- Memo Re Summary of Processes for Obtaining Concessions in the Forestry, Agricultural, Mining, and Petroleum Sectors of Liberia, Nov. 23, 2011
- Memo Re Legal Issues Raised by the Interim Policy on Land Surface Rights Where Minerals Are Found, Oct. 17, 2011
- Memo Re Liberia's International Legal Obligations with respect to Land Reform, Apr. 5, 2011
- Memo Re Definition of Public Land under Liberian Law, Mar. 8, 2011
- Memo Re Racial Qualifications for Land Ownership, Mar. 24, 2011
- Memo Re Liberia's Citizenship Law and the CERD, Feb. 15, 2011
- Memo Re Pricing Public Land as a Percentage of the Market Price for Land, Jan. 19, 2011
- Memo Re Legal Basis for Claim that Tribal Certificates Are Valid for 7 Years, Jan. 8, 2011
- Memo Re US Probate Courts Registering All Land Transactions, Jan. 7, 2011
- Memo Re Public Access to and Privatization of Beachfront Property, Dec. 27, 2010
- Memo Re Radical Title, Nov. 5, 2010

OTHER PAPERS/WORKS

- Liberia: Insecurity of Lands Tenure, Land Law and Land Registration in Liberia (October 22, 2008)
- Policy Brief: Debating Land Reform, Natural Resources and Poverty by: Cousins, Hornby, Kingwill, Royston and Smit (October, 2005)
- Excerpts from Bruce 2008 and Wily 2007 Concerning Development of Liberian Law on Public Land in Relation to Customary Land Tenure.
- ABA Journal- In the Cross-Heirs (posted May 1, 2009)
- Republic of Namibia National Assembly Sectional Titles Bill (2008)

- Regional Consultative Meetings on Land (Governance Commission of Liberia- May, 2008)
- Comments on Liberia's Statute of Intestate Succession
- The Assurance of Land Titles and Transactions in Liberia by: Kwamena Bentsi-Enchill and Gerald H. Zarr
- The 1973 Sale of Public Lands Law from an Economic Perspective vis-à-vis the Poverty Reduction Strategy (PRS) by: Dr. Byron Tarr (August 3, 2010)
- The Relevance of Pricing of Public Land as Enshrined in the 1973 Sale of Public Lands Law on the Operation of Sectoral Activities: e.g. Agriculture, Mining Concession by: Prof. Wilson K. Tarpeh
- Transactions and Concessions in the Land Sector: A Presentation to the Land Commission by: J. Chris Toe (August 5, 2010)
- Registering and Administering Customary Land Rights: Current Innovations and questions in French-Speaking West Africa by: Philippe Lavigne
- Statutory Recognition of Customary Land Rights: A Preliminary Investigation into Best Practices for Lawmaking and Implementation
- Special Presidential Nimba Land Dispute Commission: Findings and Recommendation (June 30, 2010)

ANNEX G. INTERIM GUIDELINES AND PROCEDURES FOR THE SALE OF PUBLIC LAND, MARCH 1, 2011

INTERIM GUIDELINES AND PROCEDURES FOR THE SALE OF PUBLIC LAND



Approved by the Land Commission, Republic of Liberia on March 1, 2011

1.0 ISSUE

Given the urgent need to lift the moratorium on the sale of public land and to ensure that public land sales proceed in as just, fair, and clear manner as possible within the legal framework established by the current Public Lands Law, this document lays out the Interim Guidelines and Procedures for the Sale of Public Land (IGPSPL or Interim Guidelines) that will function from the date the moratorium is lifted and until the current Public Lands Law is amended or a new Public Lands Law is enacted. Therefore, this document is being submitted to support a decision by the President to lift the moratorium on the sale of public land and to approve the proposed interim guidelines and procedures regarding the sale of public land, the allotment of public land, the price of public land, and tribal certificates contained herein.

2.1 SUMMARY

After the President imposed a moratorium on the sale of public land the Land Commission established an Interim Public Land Policy Task Force charged with preparing the IGPSPL. After extensive consultations with international and national experts, and numerous stakeholders the Public Land Policy Task Force proposed and the Land Commission approved the following:

- Definition of Public Land

Given the extensive research and debate required to address the issue of defining public land, this issue should not be addressed on an interim basis.

- Procedures for the Sale of Public Land

The procedures for public land sales differ slightly depending on whether the public land is located in rural communities, townships, or cities. In rural communities the „traditional authorities“ must issue a provisional public land certificate and public land certificate as well as convene a consultation of the affected community(ies) prior to the issuance of the provisional public land certificate and public land certificate. In the townships and cities, the “local authorities” must do this.

Regardless of the location of the public land, the interim procedures center on the following phases: (1) the prospective buyer must obtain a provisional public land certificate with the permission of the traditional or local authorities and the affected community(ies), (2) the prospective buyer must obtain permission to survey from the County Land Commissioner and President, (3) the survey is conducted following a public service announcement, (4) the prospective buyer must obtain a public land certificate with the approval of the traditional or local authorities, (5) the prospective buyer must obtain a public land sale deed after paying the specified fee for the land and securing the approval of the Ministry of Lands, Mines and Energy and the President, (6) the prospective buyer must pay all applicable taxes, probate the deed, and register the deed with the Center for National Documents and Records/Archives.

- Allotments of Public Land

- Public land allotments for residential use are not to exceed 1 acre.
- Public land allotments for commercial use are not to exceed 25 acres.
- Public land allotments for farmland are not to exceed 150 acres.
- Public land allotments from 151 to 1000 acres must be covered by a long-term lease agreement.
- Public land allotments of more than 1000 acres must be as concessions.
- Public land allotments of farmland to philanthropic or faith-based organizations are not to exceed 50 acres, while such allotments in the cities are not to exceed 5 acres.

- Price of Public Land

- Communities buying land which they and their ancestors have traditionally used in accordance with longstanding customary rules or practice are to pay US\$0.50 per acre. Such land may not be resold.
- Buyers purchasing land in fee simple when the buyer is a subsistence farmer and the land is that which the buyer and their ancestors have traditionally used in accordance with longstanding customary rules and practice are to pay US\$0.50. Such land may be resold.

- Buyers purchasing in fee simple land within a city's limits are to pay between US\$150 to US\$500 per lot.
- Buyers purchasing in fee simple land in townships and large towns are to pay between US\$75 to US\$150 per lot.
- Buyers purchasing in fee simple farmland in clans, towns, and villages are to pay US\$100 per acre.
- Tribal Certificates
 - All tribal certificates the holders of which have not completed the process for obtaining a public land sale deed as of the date the moratorium is lifted shall be submitted to a task force, which shall be established by the National Screening Committee. The task force shall collect all existing tribal certificates within 12 months and analyze/vet all collected tribal certificates within another 12 month period.
 - Any tribal certificates in existence after a given date shall be void.

3.1 BACKGROUND AND CONTEXT

3.2 INTRODUCTION

On February 22, 2010 the President of Liberia, acting on the recommendation of the Land Commission, constituted a ten-member National Screening Committee¹ to vet all public land sale deeds awaiting her signature. The President further placed a three month moratorium on all public land sales effective February 22, 2010. After the elapse of the initial three months of the moratorium, the Screening Committee requested and was granted approval for the extension of the moratorium to the end of October 2010 to allow the “Commission the time needed to develop policies, propose legal reforms, and establish guidelines and procedures for effecting Public Land Sales.”² Then in October 2010 the moratorium was extended until such time as the IGPSPL are approved by the President.

On further advice of the Land Commission, the Screening Committee established an inter- ministerial Technical Sub-Committee³ which in turn formed a Vetting Team to amongst other activities: (a) physically inspect the land included on the deeds, (b) pay particular attention to the procedures involved in obtaining tribal and township land certificates to ensure the authenticity of certificates issued, and (c) ensure that relevant agency/ministry regulatory concerns contained on a questionnaire⁴ prepared by the Land Commission are addressed.⁵

The vetting exercise commenced in May 2010, with a total of 27 public land sale deeds from the Office of the President. In the ensuing months, an additional 25 public land sale deeds were submitted for a total of 52 deeds as of November 2010.

3.3 METHODOLOGY FOR THE VETTING OF PUBLIC LAND SALES

The work of the Vetting Team⁶ was subsumed under the following categories:

- **Mobilization-** Involved the selection of team members from sector agencies, logistics and administrative arrangements for trip support by the Land Commission. The Land Commission's information, education and outreach team aired public service announcements and published newspaper advertisements to inform citizens of the scheduled investigation as well as encourage their participation.

- **Investigation-** Involved working with the Vetting Team led by the Land Commission for fact finding and information gathering on the deeds to be vetted, location of the deed owners and, where feasible, verification that the following documents are attached to the deeds:
 - Public land sale certificate from the community, city or township authorities;
 - Flag receipt issued by the Ministry of Finance acknowledging payment for the land;
 - Letter from the Office of the Superintendent submitting the deed to the Office of the President for the issuance of an executive order for a survey;
 - Survey authorization letter from the Land Commissioner to the Resident Surveyor; and
 - Copy of the survey report.
- **Briefings/Debriefings-** Members of the investigation team met to compare notes and review documents. The team leader explained the overall objective of the exercise, the proper mode of conduct during the exercise, (i.e. what to say and what not to say) and expected outputs including the use of the field questionnaire.
- **Field Verification-** This exercise was conducted at the site of the properties using a mixture of: focus group discussions; in-depth interviews; and consultations with relevant stakeholders, community members, and government officials. Questionnaires were completed on-site to ensure that the properties being vetted are in compliance with regulations set by various government ministries and agencies. The GPS7/ etrex vista HCX Garmin was used to validate the location of properties and their consistency with the deed information on location.

The following property markers were used:

- Concrete monument/corner stone
- Spot pointing of soap tree

For distances and bearings, the following were used:

- Measurement in feet
- UTM8 coordinates specifying position

- **Review, Evaluation, and Recommendations-** This process involved the actual writing and production of the report. To arrive at the findings contained in the report, the Vetting Team and the Technical Sub-Committee operated on the basis of consensus after an extensive debate and exchange of ideas. In determining the land area, GPS technology with a threshold of plus or minus 18% was used.

3.4 FINDINGS AND IMPLICATIONS

All 52 public land sale deeds submitted as of November 2010 have been inspected by the Technical Sub-Committee. Of the 52 deeds, 12 have been reviewed by the Technical Sub- Committee, approved by the Screening Committee, and signed by the President.

Of the remaining 40 inspected deeds, 13 have been reviewed by the Technical Sub- Committee for the approval of the Screening Committee. While 27 have been reviewed and not recommended to the Screening Committee on account of environmental concerns (violation of EPA wetland regulations), technical irregularities (metes and bounds on deeds not corresponding with ground readings), unresolved disputes over ownership and/or boundaries, and falsification of documents.

The inspection also found that the tribal certificate issued by chiefs and elders is the single most important instrument used for acquiring public land in the local communities. However, the team discovered that some of these certificates were back dated and had been tampered with. Further, as the certificates do not reflect survey diagrams and other technical information, high incidences of boundary disputes and conflicts were discovered coupled with resentment from certain local community elements who felt that they had been left out of the process leading to the sale of public land in their areas.

The findings above suggest: (a) the need to inventory the number of tribal land certificates issued for public land sales, (b) the need for a fundamental re-thinking of the existing guidelines and procedures to allow for changes that address technical irregularities and regulatory concerns, and (c) the creation of a space for entertaining the views of all community stakeholders on public land sales. These findings also have a direct impact on the development of the larger policy framework as explained below.

3.5 POLICY FRAMEWORK

The development of guidelines and procedures for effecting public land sales as a condition precedent to the lifting of the moratorium on the sale of public land is addressed within the wider framework of the Public Land Policy (PLP) drafting process. The PLP has been drafted by an inter-agency/ministerial task force under the chairmanship of the Land Commission and is in the final stage of revision, to be followed by public consultation and validation. In general, the PLP seeks to:

- Provide a framework and recommend policy measures required to address some of the critical issues (e.g. the definition of public land) regarding public lands;
- Clarify the definition of public land, community (communal) land, and their relationship to one another;
- Set clear rules for the alienation (sales, leases, or concessions) and use of public land, and
- Provide a roadmap for the participatory development of a comprehensive land policy for Liberia with the objective of reforming the land sector and ensuring access to land for all Liberians, especially small holders.

3.6 THE PROCESS FOR DEVELOPING THE POLICY FRAMEWORK

The process began with nationwide consultative meetings on land matters held between March and April 2010. Then in June 2010 an inter-disciplinary and sectoral Public Land Policy Task Force (Task Force) was established by the Technical Sub-Committee. The Task Force was charged with formulating the PLP. After seminar presentations by national and international experts⁹ on topics relevant to public land such as pricing, procedures, and allotment under the 1973 Public Lands Law, the Task Force prioritized the formulation of the Interim Guidelines. The Interim Guidelines were given priority because of the urgent need to lift the moratorium on public land sales. However, the Task Force continued to work on the PLP with the aim of replacing the Interim Guidelines with a new public lands law as soon as it is feasible to do so. The Task Force's work on the PLP has been informed by, not only the above mentioned presentations, but also the outcome of the vetting of public land sale deeds conducted between May and November 2010.

Additionally, since September 2010 the Commission's efforts to formulate both the Interim Guidelines and the PLP have been greatly helped by two World Bank consultants and a national consultant thoroughly reviewing the 1973 Public Lands Law, as well as legal research and drafting provided by a lawyer through the Carter Center Liberia Law Fellowship program.

4.1 CONSIDERATION AND THE WAY FORWARD

This section will expand on the issues created by the 1973 Public Lands Law, and propose interim solutions to those issues, specifically: procedures, allotments, and price. In addition, this section will address the issue of what to do with existing tribal certificates the holders of which have not completed the process for obtaining a public land sale deed.

4.2 PUBLIC LAND SALES AND THE NEED FOR REFORM

The legal basis for the sale of public land is contained in the 1973 Public Lands Law. Chapter 3, section 30 of the law prescribes the procedures, price structure, allotment, and surveyor fees. The law has resulted in a complex public land management system that is characterized by numerous problems. These problems are delineated under the broad categories below, with specific policy recommendations contained in the PLP.

- Legal- In a broader context, the current 1973 Public Lands Law „raises constitutional issues concerning lack of equal treatment under the law. The absence of any provision for recognition of any pre-existing customary rights and the fact that public land sales are the only route to acquire public land means that most Liberians in the interior do not have legally protected rights to the land they use.“¹⁰ Further, the current law contains procedures, prices and allotments that are cumbersome, unrealistic and unclear;
- Administration, management, and institutions- Public land management system is bedeviled by corruption, unclear institutional responsibility and very poor performance in service delivery. There is no inventory of public land. As performance standards have eroded, the public has lost confidence in the entire public land management system (surveying profession, land commissioners, and land records system) with operational activities uncoordinated and increasingly dysfunctional;
- Definition- The absence of a clear definition of public land is a key defect in the 1973 Public Lands Law. There is no distinction between public land dedicated to a public purpose and public land available to be assigned to private users, as well as confusion regarding the legal relationship between public land and community (communal) land. A definition of community (communal) land will also have to be provided in any future legislation recommended by the Land Commission. These definitional problems cannot be solved on an interim basis but only after thorough research and analysis. A clear definition of public land will be provided in the Land Commission's proposed amendments to the existing law or new public lands law;
- Inventory and registration- There are no data on the total stock of public land and no system for registration of public parcels; and
- Inventory of tribal land and town lot certificates-The tribal and town lot certificate is the single most important instrument used in acquiring public land in the local communities. Some of these certificates are back dated and tampered with and do not reflect survey diagrams and other technical information. Furthermore, issues ranging from perceptions of tribal certificates as deeds and their legal duration remain unresolved.

The Land Commission's effort at reforming the public land sector is facilitated by: (a) the on- going work of formulating an interim public land policy, (b) current studies by World Bank consultants on the land laws of Liberia, and (c) engagement with the Law Reform Commission. The cumulative outcome of these processes and engagements is the development of a public land policy that will inform changes in regulations and laws. This requires time for careful review and public consultation. Given this, the Commission considers it expedient to put in place interim measures and procedures to guide the sale of public land based on lessons already learned from the vetting of public land sale deeds as mandated by

government. These interim guidelines and procedures seek to compliment procedures under the 1973 Public Lands Law, and do not contradict the provisions of that law.

Accordingly, the Commission hereby recommends for government's review and approval, the following IGPSP during the intervening period prior to the completion of a public land policy and the enactment of a revised or a new public lands law. The IGPSP seeks to clarify and improve upon the following areas of the 1973 Public Lands Law:

- Procedures,
- Allotment, and
- Price

4.3 INTERIM PROCEDURES FOR THE SALE OF PUBLIC LAND

This section concerns the interim guidelines and procedures for the sale of public land, with the exception that swamps or wetlands, lakes, rivers, ocean shore lines, riverbanks and the sub-soil shall not be sold. The following types of public land are addressed: (1) Public land in rural communities, (2) Public land in townships, and (3) Public land in cities.

For the purposes of the Interim Guidelines and Procedures for the Sale of Public Land, the term „public land certificate“ shall replace the term „tribal land certificate“ and be used for all public land sales, regardless of the location of the public land.

4.3.1 INTERIM PROCEDURES FOR THE SALE OF PUBLIC LAND IN RURAL COMMUNITIES

The following procedures shall govern the sale of public land in rural communities:

1. The prospective buyer must obtain the signatures of at least three traditional authorities on the provisional public land certificate. The three traditional authorities shall include the “owner of the land”/elder, clan chief, and a female representative designated by the women in the affected community (ies). Prior to obtaining the signatures of the three traditional authorities, the prospective buyer shall pay to the affected community(ies) a sum of money as token, to be determined by the affected community(ies), as an expression of his or her good intention to live peacefully with the affected community(ies).
- (2) No provisional public land certificate shall be issued without prior consultation with the community (ies) affected by the prospective land sale. The three traditional authorities who signed the provisional public land certificate shall determine the best means for consulting the affected community(ies), provided the means selected adhere to the following minimum standards: (1) the consultation must be transparent, (2) the affected community(ies) must be notified of the prospective public land sale, (3) the County Land Commissioner, with the assistance of the County Land Surveyor, must convene the consultation, and (4) the members of the affected community(ies) must attest to having been consulted, and such attestations must be attached to the provisional public land certificate and, if issued, the public land certificate. The attestation shall clearly describe the parcel of land that was the subject-matter of the consultation with the affected community (ies).
2. The prospective buyer must submit the provisional public land certificate to the County Land Commissioner. If, after a thorough review, the County Land Commissioner is satisfied that the land described in the provisional public land certificate is not part of a Tribal Reserve, disputed land, privately owned, used or needed for a public purpose, or encumbered in a fashion that would substantially interfere with its beneficial enjoyment by the purchaser and which encumbrance is not disclosed in the deed, he or she shall so certify. The provisional public land

certificate shall be void if the prospective buyer has not been issued a public land certificate within one (1) year of the date the provisional public land certificate was issued.

3. The County Land Commissioner, through the Superintendent, shall forward the provisional public land certificate to the Office of the President along with a request for an executive order directing the County Land Surveyor to conduct a survey of the land described in the provisional public land certificate.
4. If the President issues an executive order in accordance with Procedure 4, the County Land Surveyor shall issue a public service announcement. The public service announcement shall be in the form of: a conspicuous posting in the local market for thirty (30) days prior to conducting the survey; daily broadcasts on the national radio station for thirty (30) days prior to conducting the survey; and weekly announcements by the town crier on the local market day up to the week of the survey. The purpose of the public service announcement shall be to notify the surrounding deed holders and the affected community (ies) of the date, time, and place of the survey. The prospective buyer must pay the costs of the survey and the public service announcement prior to the issuance of the public service announcement.
5. If the three traditional authorities who signed the provisional public land certificate are satisfied with the results of the survey, they may sign and issue a public land certificate. The prospective buyer must also obtain the signature of the County Land Commissioner on the public land certificate. The public land certificate shall supersede the provisional public land certificate. The public land certificate shall be void if the prospective buyer has not been issued a deed within one (1) year of the date the public land certificate was issued.
6. The prospective buyer must deliver the public land certificate to the Bureau of Revenues at the Ministry of Finance, pay the specified fee for the land, and obtain a revenue receipt.
7. If the County Land Surveyor receives confirmation that the prospective buyer fulfilled the requirements in Procedure 7, he or she shall prepare a public land sale deed signed by the County Land Surveyor and the County Land Commissioner.
8. The County Land Surveyor shall then deliver the public land sale deed, public land certificate, and revenue receipt to the Office of the Superintendent, who shall then deliver these documents to the Office of the President.
9. Upon receipt of the public land sale deed, public land certificate, and revenue receipt, the Office of the President shall deliver these documents to the Ministry of Lands, Mines and Energy for review and technical validation.
10. If the Ministry of Lands, Mines and Energy is satisfied with the public land sale deed, public land certificate, and revenue receipt it shall deliver the public land sale deed to the Office of the President for his or her signature and issuance to the prospective buyer.
11. The prospective buyer shall deliver the public land sale deed to the Ministry of Finance for payment of all applicable taxes.
12. The prospective buyer shall deliver the public land sale deed to the probate court with jurisdiction over the prospective land sale.
13. If approved by the probate court, the public land sale deed shall be registered at the Center for National Documents and Records/Archives to form part of the national record.

4.3.2 INTERIM PROCEDURES FOR THE SALE OF PUBLIC LAND IN TOWNSHIPS

The following procedures shall govern the sale of public land in townships:

1. The prospective buyer must obtain the signatures of the Township Commissioner, the Chairperson of the Township Council, and a traditional elder (Local Authorities) on the provisional public land certificate. Prior to obtaining the signatures of the Local Authorities, the prospective buyer shall pay to the Local Authorities a sum of money as token, to be determined by the Local Authorities.
2. No provisional public land certificate shall be issued without prior consultation with the community (ies) affected by the prospective land sale. The Local Authorities who signed the provisional public land certificate shall determine the best means for consulting the affected community(ies), provided the means selected adhere to the following minimum standards: (1) the consultation must be transparent, (2) the affected community(ies) must be notified of the prospective public land sale, (3) the County Land Commissioner, with the assistance of the County Land Surveyor, must convene the consultation, and (4) the members of the affected community(ies) must attest to having been consulted, and such attestations must be attached to the provisional public land certificate and, if issued, the public land certificate. The attestation shall clearly describe the parcel of land that was the subject-matter of the consultation with the affected community (ies).
3. The prospective buyer must submit the provisional public land certificate to the County Land Commissioner. If, after a thorough review, the County Land Commissioner is satisfied that the land described in the provisional public land certificate is not part of a Tribal Reserve, disputed land, privately owned, used or needed for a public purpose, encumbered in a fashion that would substantially interfere with its beneficial enjoyment by the purchaser and which encumbrance is not disclosed in the deed, he or she shall so certify. The provisional public land certificate shall be void if the prospective buyer has not been issued a public land certificate within one (1) year of the date the provisional public land certificate was issued.
4. The County Land Commissioner, through the Superintendent, shall forward the provisional public land certificate to the Office of the President along with a request for an executive order directing the County Land Surveyor to conduct a survey of the land described in the provisional public land certificate.
5. If the President issues an executive order in accordance with Procedure 4, the County Land Surveyor shall issue a daily public service announcement. The public service announcement shall be in the form of: daily publication in a newspaper, if one is locally circulated, for thirty (30) days prior to conducting the survey; daily broadcasts on the national radio station for thirty (30) days prior to conducting the survey; and, if the local township uses a town crier, weekly announcements by the town crier on the local market day up to the week of the survey. The purpose of the public service announcement shall be to notify the surrounding deed holders and the affected community (ies) of the date, time, and place of the survey. The prospective buyer must pay the costs of the survey and the public service announcement prior to the issuance of the public service announcement.
6. If the Local Authorities who signed the provisional public land certificate are satisfied with the results of the survey, they may sign and issue a public land certificate. The prospective buyer must also obtain the signature of the County Land Commissioner on the public land certificate. The public land certificate shall supersede the provisional public land certificate. The public land certificate shall be void if the prospective buyer has not been issued a deed within one (1) year of the date the public land certificate was issued.
7. The prospective buyer must deliver the public land certificate to the Bureau of Revenues at the Ministry of Finance, pay the specified fee for the land, and obtain a revenue receipt.

8. If the County Land Surveyor receives confirmation that the prospective buyer fulfilled the requirements in Procedure 7, he or she shall prepare a public land sale deed signed by the County Land Surveyor and the County Land Commissioner.
9. The County Land Surveyor shall then deliver the public land sale deed, public land certificate, and revenue receipt to the Office of the Superintendent, who shall then deliver these documents to the Office of the President.
10. Upon receipt of the public land sale deed, public land certificate, and revenue receipt the Office of the President shall deliver these documents to the Ministry of Lands, Mines and Energy for review and technical validation.
11. If the Ministry of Lands, Mines and Energy is satisfied with the public land sale deed, public land certificate, and revenue receipt it shall deliver the public land sale deed to the Office of the President for his or her signature and issuance to the prospective buyer.
12. The prospective buyer shall deliver the public land sale deed to the Ministry of Finance for payment of all applicable taxes.
13. The prospective buyer shall deliver the public land sale deed to the probate court with jurisdiction over the prospective land sale.
14. If approved by the probate court, the public land sale deed shall be registered at the Center for National Documents and Records/Archives to form part of the national record.

4.3.3 INTERIM PROCEDURES FOR THE SALE OF PUBLIC LAND IN CITIES

The following procedures shall govern the sale of public land in cities:

1. The prospective buyer must obtain the signatures of the City Mayor, the Chairperson of the City Council, and a representative designated by the affected community (ies) (Local Authorities) on the provisional public land certificate.
- (2) No provisional public land certificate shall be issued without prior consultation with the community (ies) affected by the prospective land sale. The three traditional authorities who signed the provisional public land certificate shall determine the best means for consulting the affected community(ies), provided the means selected adhere to the following minimum standards: (1) the consultation must be transparent, (2) the affected community(ies) must be notified of the prospective public land sale, (3) the County Land Commissioner, with the assistance of the County Land Surveyor, must convene the consultation, and (4) the members of the affected community(ies) must attest to having been consulted, and such attestations must be attached to the provisional public land certificate and, if issued, the public land certificate. The attestation shall clearly describe the parcel of land that was the subject-matter of the consultation with the affected community (ies).
2. The prospective buyer must submit the provisional public land certificate to the County Land Commissioner. If, after a thorough review, the County Land Commissioner is satisfied that the land described in the provisional public land certificate is not part of a Tribal Reserve, disputed land, privately owned, used or needed for a public purpose, encumbered in a fashion that would substantially interfere with its beneficial enjoyment by the purchaser and which encumbrance is not disclosed in the deed, he or she shall so certify. The provisional public land certificate shall be void if the prospective buyer has not been issued a public land certificate within one (1) year of the date the provisional public land certificate was issued.

3. The County Land Commissioner, through the Superintendent, shall forward the provisional public land certificate to the Office of the President along with a request for an executive order directing the County Land Surveyor to conduct a survey of the land described in the provisional public land certificate.
4. If the President issues an executive order in accordance with Procedure 4, the County Land Surveyor shall issue a daily public service announcement. The public service announcement shall be in the form of: a conspicuous posting in the local market for thirty (30) days prior to conducting the survey; daily publication in a newspaper, if one is locally circulated, for thirty (30) days prior to conducting the survey; and daily broadcasts on the national radio station for thirty (30) days prior to conducting the survey. The purpose of the public service announcement shall be to notify the surrounding deed holders and the affected community (ies) of the date, time, and place of the survey. The prospective buyer must pay the costs of the survey and the public service announcement prior to the issuance of the public service announcement.
5. If the Local Authorities who signed the provisional public land certificate are satisfied with the results of the survey, they may sign and issue a public land certificate. The prospective buyer must also obtain the signature of the County Land Commissioner on the public land certificate. The public land certificate shall supersede the provisional public land certificate. The public land certificate shall be void if the prospective buyer has not been issued a deed within one (1) year of the date the public land certificate was issued.
6. The prospective buyer must deliver the public land certificate to the Bureau of Revenues at the Ministry of Finance, pay the specified fee for the land, and obtain a revenue receipt.
7. If the County Land Surveyor receives confirmation that the prospective buyer fulfilled the requirements in Procedure 7, he or she shall prepare a public land sale deed signed by the County Land Surveyor and the County Land Commissioner.
8. The County Land Surveyor shall then deliver the public land sale deed, public land certificate, and revenue receipt to the Office of the Superintendent, who shall then deliver these documents to the Office of the President.
9. Upon receipt of the public land sale deed, public land certificate, and revenue receipt the Office of the President shall deliver these documents to the Ministry of Lands, Mines and Energy for review and technical validation.
10. If the Ministry of Lands, Mines and Energy is satisfied with the public land sale deed, public land certificate, and revenue receipt it shall deliver the public land sale deed to the Office of the President for his or her signature and issuance to the prospective buyer.
11. The prospective buyer shall deliver the public land sale deed to the Ministry of Finance for payment of all applicable taxes.
12. The prospective buyer shall deliver the public land sale deed to the probate court with jurisdiction over the prospective land sale.
13. If approved by the probate court, the public land sale deed shall be registered at the Center for National Documents and Records/Archives to form part of the national record.

Upon approval of the IGPSP, the Land Commission will design and implement a training program for officials and other local authorities involved in the public land sale process, to ensure their understanding of and compliance with these procedures. Periodically, the Land Commission may audit the process for selected deeds to ensure compliance.

4.4 ALLOTMENT OF PUBLIC LAND AS FEE SIMPLE, LEASEHOLD, OR CONCESSION

The Land Commission, in the execution of its mandate, considered the concerns of citizens expressed in consultative meetings held in the 15 counties in March and April 2010. The Governance Commission held similar consultations in 2008. In these consultations people overwhelmingly expressed their concerns over the history of allocation of public land. In the case of concessions, people consistently indicated that they had not been consulted prior to the awarding of the concession and felt that they had not received just compensation or benefits from the concessions. They were concerned that large acreages of public land were often acquired by individuals with political connections to the presidency or by local government officials or elites who have often failed to develop the land. In some cases people reported that they had been presented with tribal certificates originating from Monrovia. Local people are effectively denied the opportunity to acquire public land themselves. Those in the consultations were virtually unanimous in the view that “it is not good for any one individual to own too much land” or for a concession to have “too much land,” especially when these lands are undeveloped or underutilized.

Accordingly, the people consulted recommended that there should be a limit on the quantity of land owned by individuals or held by concessions. There was no consensus on what constitutes “too much,” especially because many local people do not have a clear idea of what constitutes an acre. The people consulted generally recognized that the quantity of land to be allocated is linked to the nature and amount of the proposed investment. The limits frequently suggested were: 1 lot or 1 acre for a house, 100 acres for farmland, and 100,000 acres for concessions.

Notwithstanding the challenges posed by the lack of data on the total stock of public land, the Land Commission views as expedient the need to establish ceilings on public land allotment given that land is a finite asset and its sale amounts to permanent alienation of the land, which if left uncontrolled could produce catastrophic consequences in terms of access to public land by current and future generations. Further, the Land Commission recognizes that public land allotment should be principally for investment, human settlement, farming and the performance of core government functions. Finally, the Land Commission considers that clear standards should exist to determine whether the allocation of public land in a particular case should be by sale in full ownership, lease, or concession.

Accordingly, the Land Commission proposes the following limitations on the allotment of public land:

- Allotment of Public Land as Fee Simple
 - Contiguous allotments in fee simple to a natural person(s) for residential use shall not exceed one (1) acre.
 - Contiguous allotments in fee simple to a natural person(s) or legal entity (ies) for commercial use shall not exceed twenty-five (25) acres.
 - Contiguous allotments in fee simple to a natural person(s) or legal entity (ies) for farmland shall not exceed one-hundred and fifty (150) acres.
- Allotment of Public Land as Leasehold
 - Allotments ranging from one-hundred and fifty (151) to one-thousand (1000) acres, shall be covered under a long-term lease agreement that must be accompanied by a development plan.
 - If a leaseholder fails to perform in accordance with the lease agreement, the lease agreement shall be subject to revocation by the Government of Liberia.
- Allotment of Public Land as Concession

- Allotments of more than one-thousand (1000) acres shall be as concessions and in accordance with applicable laws.
- If a concession holder fails to perform in accordance with the concession agreement, the concession agreement shall be subject to revocation by the Government of Liberia.
- Allotment of Public Land to Philanthropic and Faith-Based Organizations
 - Allotments of farmland, as fee simple, leasehold or otherwise, to philanthropic and faith-based organizations shall not exceed fifty (50) acres.
 - Allotments of public land in the cities, as fee simple, leasehold or otherwise, to philanthropic and faith-based organizations shall not exceed five (5) acres.

4.5 THE PRICE OF PUBLIC LAND

Table I shows the price structure for the sale of public land as prescribed in the 1973 Public Lands Law. The existing prices of public land are not market-driven. The difference between the official price and the actual, market value of a parcel of public land represents an opportunity for corruption of the public land sale process, and should be eliminated so far as possible. Based on the concept of public land as a „fund“ of public wealth and the free market principles underlying the structure of the Liberian economy, allowing market forces to determine the price of public land is the preferred choice. However, „assessing a market price for public land may be difficult at this time given capacity constraints“, ¹² coupled with the limited land market and price information.¹³

TABLE I-EXISTING PRICES FOR PUBLIC LAND

TYPES OF LAND	SALE PRICE
Land lying on the margin of a river	\$1.00 per acre
Land lying in the interior	\$0.50 per acre
Town lots	\$30.00
Marshy, rocky or barren land	Price offered by the highest bidder

Liberian law has not always required the sale of all public land at the prices listed in Table I. Rather, for most of Liberian history public land was to be sold primarily through public auction and only secondarily through private sale. In the 1956 Public Lands Law, public land prices were changed from minimum prices to the current mandatory prices for all public land sales. Prior to that law, the prices of public land were stipulated in the 1904 Public Lands Law, enacted as part of the Revised Statutes of Liberia in 1929. The 1904 Public Lands Law required first that the public land was offered at public auction. If the public land went unsold then the Land Commissioner was allowed to sell it through a private transaction. The minimum public land prices only applied to this private sale, requiring that the Land Commissioner sell the public land at or above the following minimum prices: \$1 an acre for “[l]and lying on the margin of a river,” 50 cents per acre for “[l]and lying in the interior,” and

\$30 per lot for town lots. This public auction system and these minimum prices for public land not sold at public auction, but sold through a private transaction, date from at least 1850, with passage of An Act Regulating the Sale of Public Lands. Note that these values are the same as those found in the 1956 Public Lands Law and the 1973 Public Lands Law. The crucial difference is that they are minimum prices for public land that had not been sold at public auction and which was being sold through a private transaction, rather than mandatory prices for all public land sales.

In view of the foregoing, the Land Commission recommends the prices for public land contained in Table 2. The Land Commission recognizes that because the prices for public land sales are specified in the 1973 Public Lands Law, they could best be changed by amending that law. This should however await the more general revision of that law under discussion in the Land Commission. The Land Commission would like

to discuss with the Office of the President whether it might be possible to change these prices in the interim by executive order or some other instrument short of amendment of the Law.

TABLE 2: PROPOSED PRICES FOR THE SALE OF PUBLIC LAND (ALL PRICES ARE IN US DOLLARS)

Category	Types of Land	Proposed Prices
1	Communities buying land which they and their ancestors have traditionally used in accordance with longstanding customary rules or practice	\$0.50 per acre*
2	Buyers purchasing land in fee simple when the buyer is a subsistence farmer and the land is that which the buyer and their ancestors have traditionally used in accordance with longstanding customary rules and practice	\$0.50 per acre
3	Buyers purchasing in fee simple land within a city's limits, defined as a radius of 8 square miles from the city center.	\$150 - \$500 per lot
4	Buyers purchasing in fee simple land in townships and large towns	\$75 - \$150 per lot
5	Buyers purchasing in fee simple farmland in clans, towns, and villages.	\$100 per acre

*Shall not be resold

There are five important features to the Land Commission's proposed prices in Table 2. First, Category 1 is only for communities buying land which the community has held under customary tenure. Consistent with its customary status, such land shall not be resold. Second, Category 2 is only for subsistence farmers who wish to purchase land as fee simple which they and their ancestors have held under customary tenure. Such land may be resold. Third, the reason for the 50 cents per acre price for Categories 1 and 2 is the general distaste for the idea that subsistence farmers and communities must purchase land which they and their ancestors have possessed and used since „time immemorial.“ The 50 cents per acre price for these farmers and communities, merely meant to cover the administrative costs of the purchase, recognizes that these farmers and communities should only be required to pay a token price for land over which they and their ancestors have long enjoyed possession and use.

Fourth, the proposed price structure contains three additional categories based on the location of the land: cities; townships/large towns; and farmland in clans, towns, and villages. These categories, while imperfect, reflect that land values differ significantly between these three types of locations. Indeed, the use of a price range for city and township/large town lands is designed so that the actual sale price will more closely track the local market price.

Finally, the Commission recognizes that the proposed prices in Table 2 are unsupported by long-term studies and data on land prices and uses throughout Liberia. Because these are interim measures for which there is an urgent need, there was insufficient time to undertake long-term studies and gather the requisite data. The proposed prices represent the Commission's best estimates as to workable interim public land prices that will prevent corruption, speculation, underutilization of land, and other problematic practices.

4.5 TRIBAL CERTIFICATES

The issue of tribal certificates is one of the most politically sensitive and controversial issues to confront on an interim basis. However, it is essential to address this issue. A failure to do so would continue the misunderstanding of many Liberians who regard tribal certificates as equivalent to a deed. Moreover, some

existing tribal certificates are fraudulent and the legal enforceability of even lawfully obtained tribal certificates is uncertain after the passage of many years. The Land Commission considers the following options to be the best available choices in dealing with existing tribal certificates. Of the three options listed below, the Land Commission favors Option 1(A) because it strikes a balance between thoroughly reviewing existing tribal certificates and ensuring finality to the review process. That said, the below three options do not represent all possible policy choices, and should be not be viewed as such.

- **Option 1:** Submit to a task force all tribal certificates the holders of which have not completed the process for obtaining a public land sale deed as of the date the moratorium is lifted. The task force shall be established under the auspices of the Screening Committee and appropriate stakeholders at the county and local levels. The task force shall be financially supported by the government and charged with: (a) collecting within a period of 12 months all tribal certificates and related documents, and (b) analyzing/validating within another period of 12 months the tribal certificates and make recommendations for their approval or rejection. The institutional composition of the task force will be determined if the option is accepted. It is important to note that this option would not require that tribal certificates complete the review process within 12 months, only that they begin that process in the first 12 month period by submission to the task force.
 - **Option 1(A):** In addition to the process laid out in Option 1, any tribal certificate in existence after a given date shall be void.
 - **Option 1(B):** In addition to the process laid out in Option 1, no time limit for submitting tribal certificates to the task force will be imposed. Rather, a new land agency, which will most likely be created after the Land Commission's mandate expires, will continue the task force's work by vetting on a rolling- basis tribal certificates the holders of which have not completed the process for obtaining a public land sale deed as of the date the moratorium is lifted.

Option 1(B) is not favored by the Land Commission because it could needlessly prolong the tribal certificate problem for many years.

- **Option 2:** Declare by Executive Order that all tribal certificates in existence as of the date the moratorium is lifted are void and require those who possess them to begin the interim process for acquiring a deed.
 - **Option 2(A):** In addition to Option 2, provide no compensation for voiding the tribal certificates.
 - **Option 2(B):** In addition to Option 2, provide some compensation for voiding the tribal certificates.

Option 2 and its sub-options are not favored by the Land Commission because many Liberians regard tribal certificates as equal to a deed and voiding them will be perceived as unduly harsh and likely spark deep resentment. Even if some compensation is paid it is not likely to be regarded as sufficient given that many will interpret this act as taking away their ownership rights.

- **Option 3:** Convert by executive order tribal certificates into provisional public land certificates in the interim procedures and require that the process be completed beginning at Procedure 3— sending them to the County Land Commissioner.

Although seemingly an easy way to integrate existing tribal certificates into the IGPSPL, this option is not favored by the Land Commission for two reasons. First, it would nullify the benefits of Procedures 1 and 2. Second, it would probably generate a great deal of confusion among the public and government officials.

4.6 IMPLEMENTATION

Implementing the foregoing will require informing and educating the public and stakeholders on the IGPSPL. The vehicle for this is a robust communication campaign led by the Land Commission. The active role of the Ministry of Information, the Liberia Broadcasting System, and the Ministry of Internal Affairs through county stakeholders in land and the network of nation-wide community radio stations will be imperative. The IGPSPL will be published in newspapers to allow for public discussion, and small workshops on its provisions will be held for specific interest groups, especially traditional authorities as well as local and national government officials directly involved with public land sales (e.g. County Land Commissioners, County Surveyors, Probate Judges, and relevant staff at the Center for National Documents and Records/Archives and the Ministry of Finance).

Cost estimates of all associated activities and programs will be established once approval is obtained. A funding request to the Government of Liberia will be submitted at a later date as the Land Commission is inadequately resourced to undertake this program single handedly without budgetary support.

5.1 RECOMMENDATIONS

The Land Commission recommends the following actions by the President and Cabinet:

- Approve the IGPSPL, including approval of Option I(A) for addressing existing tribal certificates;
- Issue an executive order or some other instrument short of amendment to the 1973 Public Lands Law giving the force of law to the proposed guidelines and procedures concerning the sale of public land, allotment of public land, price of public land, and tribal certificates; and
- Provide budgetary support to cover the costs associated with implementing the IGPSPL.

APPENDIX A

Members of the National Screening Committee (listed in alphabetical order)

Name	Organization	Position	Term of Service
Dr. Alfred N. Amah*	Environmental Protection Agency	Executive Director	
Dr. Cecil T. O. Brandy	Land Commission	Chairman	February 2010 to Present
Hon. Florence Chenoweth	Ministry of Agriculture	Minister	February 2010 to Present
Hon. Peter Kamei	Ministry of Internal Affairs	Acting Minister for Internal Affairs	
Dr. Eugene Shanon	Ministry of Lands, Mines, and Energy	Minister	February 2010 to November 2010
Hon. Christiana Tah	Ministry of Justice	Minister	February 2010 to Present
Dr. Richard Tolbert	National Investment Commission	Chairman	February 2010 to November 2010

Hon. Moses Wogbeh	Forestry Development Authority	Managing Director	February 2010 to Present
Hon. Samuel Woods	Ministry of Public Works	Minister	February 2010 to Present
Mr. James Yarsiah (NGO Representative)	Rice and Rights, Inc.	Director	February 2010 to Present

* Deceased

APPENDIX B

Members of the Technical Sub-Committee (listed in alphabetical order)

Name	Organization	Position
Atty T. Robert Lee Chattah	Ministry of Justice	Legal Counsel and Prosecutor
Mr. Nathaniel G. Dole	National Investment Commission	Director for Research
Hon. Peter Z. N. Kamei	Ministry of Internal Affairs	Deputy Minister for Research & Planning
Mr. John Kartor	Forestry Development Authority	Technical Manager for Research and Development
Mr. Jerome Vanjahkollie	Transitional Justice Working Group (Civil Society Representative)	Steering Committee Member
Hon. Estelle K. Liberty	Land Commission	Commissioner with Oversight for Land Policy and Programs
Hon. James Logan	Ministry of Agriculture	Deputy Minister
Hon. James Mendscole	Ministry of Public Works	Deputy Minister
Hon. George Miller	Ministry of Lands, Mines, and Energy	Assistant Minister
Mr. Milton Quage	Ministry of Finance, Division of Real Estate	Acting Director for Enforcement
Ms. Cecilia G. Rogers	Ministry of State for Presidential Affairs	Director for Deeds
Hon. P. Bloh Sayeh	Center for National Documents and Records	Director General
Mr. Stanley N. Toe	Land Commission	Program Officer for Land Policy and Programs
Mr. Henry Williams	Environmental Protection Agency	Manager for Inter-Sectoral Coordination
Hon. Walter Wisner	Land Commission	Vice Chairman with Oversight for Land Administration

APPENDIX C

Sample of the Questionnaire Used During the Vetting Exercise

C. FINDINGS AND OBSERVATIONS USING THE QUESTIONNAIRE AS GUIDE

QUESTIONNAIRE CHECKLIST

Vetting of Public Land Sale Deeds (Less than 500 acres)

Date of exercise:

Name(s) Owner:

Property Location:

Surveyor of Deed:

Arrival Time:

Departure time:

Names of Officials Interviewed: (Please use notes section if you need additional space)

Number of Community Members Interviewed:

Land Commission

Were the local authorities consulted prior to the sale? Yes ☐ No ☐

Is there dispute over the ownership of the subject property? Yes ☐ No ☐ If yes, please explain:

Is there dispute over the boundary of the subject property? Yes ☐ No ☐ If yes, please explain:

Ministry of Finance

Does the deed-holder possess a flag receipt for this property? Yes ☐ No ☐

Environmental Protection Agency (EPA)

Does the subject property border a national park or reserve? Yes ☐ No ☐

Is there a swamp on this property?

Do you, the stakeholders or any members of the community have reason to believe that the property may contain critical habitat for endangered or protected species? Yes ☐ No ☐

If yes, please explain.

Are there any notable environmental hazards or concerns? Yes ☐ No ☐

If yes, please explain.

Forestry Development Authority (FDA)

Does the land contain or border a natural forest? Yes ☐ No ☐

Is the property being used for commercial logging? Yes ☐ No ☐

Does the land contain non-timber forest products? Yes ☐ No ☐

If yes, please explain.

Ministry of Agriculture

Is the subject property in an agricultural concession area? Yes ☐ No ☐

Does the land contain tree crops? Yes ☐ No ☐

Do the deed-holders intend to farm tree crops in the future? Yes ☐ No ☐

Is the land farmland? Yes ☐ No ☐

If yes, what does the deed-holder grow or intend to grow on the land?

Is the land being used or intended to be used for aquaculture? Yes ☐ No ☐

Ministry of Internal Affairs

Is the subject property in a concession area? Yes ☐ No ☐

Is the subject property considered tribal land? Yes ☐ No ☐

If the land is tribal, are the locals aware of the existence of a tribal certificate for this land? Yes ☐ No ☐

Is the subject property considered communal land? Yes ☐ No ☐

Is the land revered or considered sacred by the local inhabitants? Yes ☐ No ☐

If yes, please explain.

Ministry of Lands, Mines & Energy

Is the subject property in a mining concession area? Yes ☐ No ☐

Has the area been surveyed? Yes ☐ No ☐

If yes, when?

Are the cornerstones/markers placed at the correct location? Yes ☐ No ☐

Does the deed accurately reflect the property? Yes ☐ No ☐

APPENDIX D

National Experts (listed in alphabetical order)

Name	Organization	Position	Presentation Topic
Mr. Lindsay Haines	Formerly of the National Bank of Liberia	Former Deputy Governor	The Impact of Public Land Price Adjustment on Taxation and Valuation
Cllr. Kobo Johnson	Formerly of the Ministry of Justice	Former Minister	The 1973 Law on the Sale of Public Land
Dr. Nevada Ricks	United Nations Mission in Liberia		The Implications of the 1973 Public Lands Law on Liberia's International Relations
Prof. Wilson Tarpeh	Formerly of the Ministry of Finance	Former Minister	The Relevance of Pricing of Public Land as Enshrined in the 1973 Public Lands Law on the Operations of Sectoral Activities
Dr. Byron Tarr	Formerly of the Ministry of Planning & Economic Affairs	Former Minister	The 1973 Public Lands Sale Law from an Economic Perspective vis-à-vis the Poverty Reduction Strategy (PRS)
Dr. J. Chris Toe	Formerly of the Ministry of Agriculture	Former Minister	Transactions and Concessions in the Land Sector
Mr. Jerome M. W. Vanjahkolle	Transitional Justice Working Group	Steering Committee Member	Perspective on Public Land: Pricing, Allocation and Procedures

International Experts (listed in alphabetical order)

Name	Organization	Position	Presentation Topic
Dr. John Bruce	World Bank	Consultant	Land Tenure Dualism and Decentralization of Local Administration
Dr. Mark Marquardt	World Bank	Consultant	What is Land Policy and Why Does it Matter?
Dr. Laurel Rose	World Bank	Consultant	Managing Land Disputes

1 See Appendix A for the membership of the National Screening Committee.

2 Executive Order of February 22, 2010, page 2.

3 See Appendix B for the membership of the Technical Sub-Committee.

4 See Appendix C for a copy of the questionnaire.

5 Minutes of the 1st meeting of the National Screening Committee establishing a Technical Sub-Committee and its composition.

6 The Vetting Team consists of the following institutions: Land Commission; Forestry Development Authority;

A member of civil society; Ministry of Lands, Mines, and Energy; Ministry of Internal Affairs; and the Environmental Protection Agency.

7 GPS stands for global positioning satellite.

8 UTM stands for Universal Transverse Mercator Geographic Coordinate System.

9 A table of the national and international experts is provided in Appendix D. Assistance was also provided by: Dr. Jeanette Carter, Advisor to the Land Commission; Guglielma da Passano, UN-Habitat; and Caleb Stevens, Esq., Carter Center Law Fellow.

10 Comments of Dr. John Bruce, World Bank Consultant, October 2010.

11 Governance Commission, Regional Consultative Meetings on Land (May 2008).

12 Comments of Dr. John Bruce, World Bank Consultant, October 2010.

13 Comments of Dr. John Bruce, World Bank Consultant, October 2010.

14 Section 1285 of the 1904 Public Lands Law states, “All lands surveyed and offered at auction and not sold may be sold by the Land Commissioner at private sale, payment to be made in the same manner as for land sold at auction; provided that the minimum price of land lying on the margin of rivers shall be one dollar an acre, and those lying in the interior of the lands on the rivers shall be fifty cents per acre, and town lots shall be thirty dollars each, except marshy, rocky, and barren lots, which may be sold to the highest bidder.”

ANNEX H. AN ACT AGAINST CRIMINAL CONVEYANCE OF LAND, AUGUST 26, 2014



"AN ACT AGAINST CRIMINAL CONVEYANCE OF LAND"

APPROVED AUGUST 26, 2014

**PUBLISHED BY AUTHORITY
MINISTRY OF FOREIGN AFFAIRS
MONROVIA, LIBERIA**

PRINTED SEPTEMBER 2, 2014

An Act Against Criminal Conveyance of Land

An Act to Amend Chapter 15 Subchapter B, Section 15.21 (4) of the Penal Law and creating subchapter AB, section 15.23 captioned Criminal Conveyance of Land.

WHEREAS, for decades criminal minded Liberians have engaged in sale of land to non-Liberians;

WHEREAS, criminal minded Liberians and non Liberians have engaged in the multiple sale of parcels of land previously conveyed by issuance of deed to the first buyers;

WHEREAS, under Liberian Law, once a parcel of land has been sold by the owner, title to it passes to the buyer and the seller immediately loses title and the right to exercise any lawful authority regarding such conveyed land;

WHEREAS, under Liberian Law, title to land can only be conveyed by the lawful owner, such owner having acquired title in accordance with law, either by purchase from a person whose title can be traced to the Republic of Liberia or through gift or inheritance from an owner whose title can be traced to the Republic of Liberia or by any other lawful means;

WHEREAS, despite the clarity of Liberian law that only a lawful owner of land can convey land and that the same parcel of land cannot be sold to more than one person, group of persons, institution, entity, or group of institutions, or group of entities, criminal-minded Liberians and non-Liberians have, for decades engaged in the multiple sale of land to Liberians and non-Liberians, thereby creating conflict between and among claimants competing for ownership;

WHEREAS, land-based disputes, all over Liberia, but particularly in urban Liberia is reaching a crisis point, thereby making it difficult for institutions and courts established for dealing with civil issues to adequately resolve these disputes as civil matters;

WHEREAS, the criminal conveyances of land bear the potential of undermining the peace, stability, harmony, unity, national reconciliation and the economic growth, development and prosperity of Liberia;

WHEREAS, there is a need to raise the profile of criminal conveyances of land beyond its current status, merely as part of section 15.21 of Subchapter B of Chapter 15 of the Penal Law, captioned Criminal Trespass and make it a serious crime under Liberian Law;

NOW THEREFORE, IT IS ENACTED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES IN LEGISLATURE ASSEMBLED AS FOLLOWS:

Section 1. Section 1 Subsection 15.21(4) of Subchapter B is hereby amended to remove the aspect relating to conveyance of land, and shall henceforth read as follows: "Unauthorized occupation or possession of property: A person commits an offence if he or she is not licensed or privileged to do so enters upon, occupies and improves real property not having fee simple title thereto, or permission of the owner. An offence under this paragraph constitutes a felony of the third degree. In case where the said property thus illegally entered upon, occupied and improved is part of a public domain, no damage shall be assessable; but in case of private property the rightful owner shall be entitled to redress in damages for trespass for him or her. In each such case, evidence of ownership must be shown by proof of a deed or other property instrument of conveyance." The last paragraph in the amended Subsection shall remain unchanged.

Section 2. There is enacted a new section AB of the Penal Law as Subsection 15.23 thereof captioned Criminal Conveyance of Land.

15.23. Criminal Conveyance.

1. Definitions

As used in this subchapter:

conveyance- the voluntary transfer of a right or of property in land

convey - to convey means to transfer or deliver something, such as a right or property to another person, especially by deed or other writing.

criminal conveyance - to knowingly, willfully, or purposely transfer or deliver something such

as a right or property to another person or persons, or group of persons or an institution or institutions, entity or entities, including all natural and juridical persons.

lease - a contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, most often rent.

occupied structure - any structure, vessel, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.

night - the period between SIX o'clock in the evening and six o'clock in the morning.

mortgage - a conveyance of title to property that is given as security for the payment of a debt or the performance of a duty and that will become void upon the payment of the debt or performance according to the stipulated terms.

multiple sale - the transfer of the same right or property to more than one buyer.

urban area - a place located in a township or a city.

2. Offense.

(a) A person is guilty of criminal conveyance of land, a felony of the second degree, if he/she conveys to another through sale, gift or mortgage or lease, a parcel of land that he/she has no title to by purchase, gift or inheritance evidenced by a deed, traceable to the Republic of Liberia, from the lawful owner or by any other lawful means.

(b) A person is guilty of third degree felony if he knowingly purchases a parcel of land which he knows or have reason to know does not belong to the seller or is being criminally conveyed.

(c) A surveyor who encourages, persuades, surveys, uses his influence or in any other way participates or conspires with anyone in the sale or purchase of a parcel of land,

knowing or being in the position to know that the seller of such land has no lawful title is guilty of a first degree felony punishable by both a fine to be determined by a court of competent jurisdiction, and a prison term of not less than ten years.

- (d) A surveyor who surveys a parcel of land without a notice to all adjoining property owners, consistent with existing law, regulation or executive order or procedure, is guilty of a felony of the third degree.
- (e) A district commissioner, land commissioner, city mayor, township commissioner, or any other local government official, or a person charged with the responsibility to archive land deeds and records, or traditional chief, elder, or any person holding a powerful traditional position, who abuses his/her authority to unduly influence or compel an individual or group of individuals to convey a parcel of land or any portion thereof, knowing or being in position to know that the land so conveyed belongs not to the person or persons conveying same or knowing or being in the position to know that without the use of such influence or compulsion a conveyance of said land is not possible is guilty of a felony of the second degree.
- (f) A legislator or a person holding a national level position such as minister, deputy minister, director general, deputy director general, any ranking officer of a law enforcement agency, or any other public official or law enforcement officer, who abuses his/her office by influencing or compelling the conveyance of a parcel of land, knowing or having reason to know that without the use of such influence or compulsion a conveyance of said land is not possible is guilty of a second degree felony.

Affirmative Defense

It is not an affirmative defense that at the time of the conveyance the seller did not know that he/she did not have lawful title. It shall be an affirmative defense, however, that the purchaser did not know or could not have known or had no reason to know, that the seller of the land conveyed did not have title and that the land was purchased in good faith based on representation made by the seller. In that case the purchaser shall be considered a good faith purchaser and therefore, a victim and shall be entitled to restitution from the seller of the amount paid for the land and the total amounts spend to develop the criminally conveyed land.

3. Penalty.

A person guilty of Criminal Conveyance of land may be sentenced in the following manner:

- (a) A person guilty of a second degree felony shall be given a prison term of not more than five years and made to restitute an amount equal to double the gain received from the criminal conveyance of land, for the first offense.
- (b) A person guilty of criminal conveyance for the second time shall be given a mandatory five year prison term, the maximum prison term for a second degree felony and required to restitute the amount equal to double the gain received from the criminal conveyance of land. Any other repeated offense shall be punished similarly, with no right of parole or probation.
- (c) A person guilty of a third degree felony under this law shall be punished by both a fine to be determined by court, the maximum which shall not be more than double the gain and a prison term of not more than three years.
- (d) A surveyor guilty of a first degree felony under this law shall be punished both by a fine and a prison term of not less than ten years and a permanent revocation of his license to practice as a surveyor.
- (e) The minimum length of time a person guilty under this subchapter shall be imprisoned for is one year for a third degree felony, three years for a second degree felony and five years for a first degree felony.

ANY LAW TO THE CONTRARY NOT WITHSTANDING



U.S. Agency for International Development
Liberia Mission
502 Benson Street
Monrovia, Liberia