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WOMEN'S LAND RIGHTS IN LIBERIA IN LAW, PRACTICE, AND FUTURE REFORMS

LGSA WOMEN'S LAND RIGHTS STUDY



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MARCH 2018

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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.

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ACRONYMS AND ABBREVIATIONS

ADR	Alternative Dispute Resolution
AFELL	Association of Female Lawyers of Liberia
CNDRA	Center for National Documents and Records Agency
CSO	Civil Society Organization
DEL	Decedents Estates Law
DRL	Domestic Relations Law
ERCM	Equal Rights of Customary Marriage
FGD	Focus Group Discussion
FPIC	Free, Prior and Informed Consent
GoL	Government of Liberia
IA	Investment Act
INGO	International Non-Governmental Organization
KII	Key Informant Interview
LBI	Land-Based Investment
LCC	Land Coordination Center
LGSA	Land Governance Support Activity
LPIS	Land Policy and Institutional Support
LRB	Land Rights Bill
LRP	Land Rights Policy
LSLBI	Large Scale Land-Based Investment
MGCSP	Ministry of Gender, Children and Social Protection
MIA	Ministry of Internal Affairs
NGO	Non-Governmental Organization
NRC	Norwegian Refugee Council
OECD	Organization for Economic Co-Operation and Development
PPCA	Public Procurement and Concessions Act
RRA	Rapid Rural Appraisal
RRF	Rights and Rice Foundation
SDI	Sustainable Development Institute

TCs	Tribal Certificates
UN	United Nations
USAID	United States Agency for International Development
VGGT	Voluntary Guidelines on Responsible Governance for Land, Forestry and Fisheries
WLR	Women’s Land Rights
WLRTF	Women’s Land Rights Task Force
WONGOSOL	Women’s NGO Secretariat of Liberia

DEFINITIONS

Brideprice	“Money, property, or services paid by a groom or his family to the family of the bride.” ¹ The Liberian term used for the concept is dowry. ² (See definition of “Dowry” below.)
Communal Tenure	“A form of shared tenure” (defined below) where “[a] group holds secure and exclusive collective rights to own, manage and/or use land and natural resources.” ³
Community Property	“[P]roperty held jointly by husband and wife; specifically: property . . . acquired by either spouse after marriage that is deemed in states having a community property system to belong to both spouses as undivided one-half interests.” ⁴
Customary Rights	“Rights acquired by custom and recognized by all inhabitants of a particular place.” ⁵
De Facto Rights	“[R]ights that exist in reality or ‘on the ground’. They may be different from de jure rights.” ⁶
De Facto Union (or Consensual Union)	“Two people who choose to live together as if they were married, but their relationship is not recognized legally.” ⁷
De Jure Rights	“[R]ights that exist because of formal law, which may be different from de facto rights.” ⁸
Dowry	“Money, goods, land or other possessions that a woman brings into a marriage with her; very often paid by her family and sometimes paid to the groom’s family.” ⁹ The term dowry as used in Liberia technically corresponds to “brideprice.” ¹⁰ (Refer to definition of “Brideprice” above.)
Family Law	“A body or collection of laws dealing with matters related to the family; i.e., marriage, divorce, child custody.” ¹¹

¹ R. Giovarelli & E. Scalise, Women's Land Tenure Framework for Analysis: Inheritance [hereinafter Inheritance], (Landesa 2013), at 13, http://zmpdpd2maggwg34rgsm60didr9-wpengine.netdna-ssl.com/wp-content/uploads/LandWise_Inheritance-Framework_2013JanVersion.pdf.

² J. Carter. “Report – track changes.” Received by Jennifer Duncan and My-Lan Dodd, Nov. 11, 2017, on file with Landesa.

³ R. Giovarelli & E. Scalise, Women's Land Tenure Framework for Analysis: Land Rights, [hereinafter Land Rights] (Landesa2013), at 15, http://zmpdpd2maggwg34rgsm60didr9-wpengine.netdna-ssl.com/wp-content/uploads/Land_Rights_Framework_2013March.pdf.

⁴ “Community Property.” *Merriam-Webster.com*. Merriam-Webster, 2017, <https://www.merriam-webster.com/dictionary/property#legalDictionary> (accessed Nov. 17, 2017).

⁵ R. Giovarelli & E. Scalise, *Land Rights*, at 15.

⁶ UN FAO, 3. Land Tenure and Rural Development, FAO Land Tenure Studies, at 44, available at <http://www.fao.org/tempref/docrep/fao/005/y4307E/y4307E00.pdf>.

⁷ R. Giovarelli & E. Scalise, *Inheritance*, at 13.

⁸ UN FAO, 3. Land Tenure and Rural Development, FAO Land Tenure Studies, at 44.

⁹ R. Giovarelli & E. Scalise, *Inheritance*, at 13.

¹⁰ J. Carter. “Report – track changes.” Received by Jennifer Duncan and My-Lan Dodd, Nov. 11, 2017, on file with Landesa.

¹¹ R. Giovarelli & E. Scalise, *Inheritance*, at 13.

Fee Simple	Ownership that represents “the highest possible interest which can be held in real property and it includes all interests, present and future. It is the largest estate in land and implies absolute dominion over the land.” ¹²
Formal Property	“[R]ights that are explicitly acknowledged by the state and which may be protected using legal means.” ¹³
Heir	“Any individual that inherits property by will or by law.” ¹⁴
Informal Property	“[R]ights that lack formal, official recognition and protection. In some cases, informal property rights are illegal . . . In other cases, informal property may be ‘extra-legal’, i.e., not against the law, but not recognized by the law.” ¹⁵
Inheritance	“[T]he right to transfer property to one’s heirs. In many societies, property descends to males, and females have no or little right to inherit. In some societies, tenure rules may provide for females to inherit but, in practice, daughters are expected to give up this right on the basis that they will, upon marriage, gain access to the lands of their husbands. In matrilineal societies, upon the death of the wife, property descends through the line of the matrilineal uncle, and the surviving husband may lose rights previously enjoyed. In patrilineal societies, the widow may lose rights and be evicted.” ¹⁶
Intestate	“When a person has died without a written or oral record of how and to whom his/her assets should be divided.” ¹⁷
Joint Tenure	“A form of shared tenure” (defined below) where “[m]ore than one person or organization owns or has rights to land or other property—each person has the right to use and control the whole of the property, undivided.” ¹⁸
Land Tenure	“[T]he relationship, whether legal or customarily defined, among people, as individuals or groups, with respect to land and associated natural resources (water, trees, minerals, wildlife, etc.). Rules of tenure define how property rights in land are to be allocated within societies. Land tenure systems determine who can use what resources for how long, under what conditions.” ¹⁹ “[S]imply put, is the relationship between people and land. That relationship is typically defined in terms of various ‘land rights’ such as rights relating to possession, exclusion, use, transfer and enjoyment.” ²⁰

¹² *Kamara et al. vs. Kindi et al.*, 34 LLR 732 (1988).

¹³ UN FAO, 3. Land Tenure and Rural Development, FAO Land Tenure Studies, at 45.

¹⁴ R. Giovarelli & E. Scalise, *Inheritance*, at 13.

¹⁵ UN FAO, 3. Land Tenure and Rural Development, FAO Land Tenure Studies, at 45.

¹⁶ *Id.* at 45-46.

¹⁷ R. Giovarelli & E. Scalise, *Inheritance*, at 13.

¹⁸ *Id.*

¹⁹ UN FAO, 3. Land Tenure and Rural Development, FAO Land Tenure Studies, at 46-47.

²⁰ T. Hanstad et al., *One Billion Rising 21* (University of Chicago Press 2007).

Land Tenure Reforms	“[S]tructural and large-scale changes to the relationship between people and land.” ²¹ “It can include the legal recognition of customary tenure rights . . .” ²²
Land Tenure Security	“[E]xists when an individual or group can confidently enjoy rights to a specific piece of land on a long-term basis, protected from dispossession by outside sources, and with the ability to reap the benefits of investments in the land, at least through use and, probably desirably in most settings, also through transfer of the land rights to others.” ²³
Legal Rights	“A power, privilege, demand, or claim possessed by a particular person by virtue of law.” ²⁴
Marital Property	“All property or other assets belonging to both spouses.” ²⁵
Marital Property Regime	“Rules governing the ownership and ways of managing property of the couple during marriage and when they separate or divorce.” ²⁶
Matrilineal	“Tracing descent through the maternal line.” ²⁷
Matrilocal	“Located at or centered around the residence of the wife's family or people.” ²⁸
Occupancy	“Living in or using premises or property as a tenant or owner.” ²⁹
Ownership	“[T]he rights to land that are, in everyday language, associated with the ability to use, control, transfer, or otherwise enjoy a land parcel as long as those activities are allowed by law; (also often associated with freehold in formal law).” ³⁰
Patrilineal	“Tracing descent through the paternal line.” ³¹
Patrilocal	“Located at or centered around the residence of the husband's family or people.” ³²
Personal Law	“A body or collection of laws dealing with an individual and his or her family.” ³³

²¹ *Id.*

²² UN FAO, 3. Land Tenure and Rural Development, FAO Land Tenure Studies, at 47.

²³ T. Hanstad et al., *One Billion Rising 21* (University of Chicago Press 2007).

²⁴ R. Giovarelli & E. Scalise, *Inheritance*, at 13.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ “Occupancy.” Cornell School of Law: Legal Information Institute (citing Nolo’s Plain-English Law Dictionary), <https://www.law.cornell.edu/wex/occupancy> (accessed Nov. 17, 2017).

³⁰ UN FAO, 3. Land Tenure and Rural Development, FAO Land Tenure Studies, at 47.

³¹ R. Giovarelli & E. Scalise, *Inheritance*, at 13.

³² *Id.*

³³ *Id.*

Personal Property (or Personal Estate)	“Moveable property (not land) owned by an individual.” ³⁴
Polygamy	“A marriage that includes more than two partners.” ³⁵
Polygyny	“[T]he state or practice of having more than one wife or female mate at a time.” ³⁶
Property	“[S]omething (as an interest, money, or land) that is owned or possessed.” ³⁷
Pro-poor Land Tenure Reforms	<p>“[R]eforms that increase the ability of the poor and other marginalized groups to gain or protect access and secure rights to land. Pro-poor land tenure reforms are typically designed to advance one or more of three objectives, often in concert:</p> <ol style="list-style-type: none"> 1. Broaden access to land by the poor and other marginalized groups; 2. Improve ‘land tenure security’ [see above] for the poor and other marginalized groups concerning land rights they possess; 3. Improve, in terms of both substantive rules and process, the capacity of public sector land-related institutions to serve the public generally and protect the interests of the poor in particular.”³⁸
Real Property (or Real Estate)	“[P]roperty consisting of land, buildings, crops, or other resources still attached to or within the land or improvements or fixtures permanently attached to the land or a structure on it.” ³⁹
Right of Survivorship	“The right of a surviving joint tenant to take ownership of a deceased joint tenant’s share of the property. No will is required to transfer the property to the joint tenant.” ⁴⁰
Separate Property	“[P]roperty of a spouse that is not community property or marital property.” ⁴¹
Shared Tenure	“The broad category of rights to land and housing shared by two or more people. Shared tenure can be formal or informal. Formal shared tenure conventionally refers to co-ownership or co-lease rights. Shared tenure also includes land and/or housing which is owned, leased or occupied in shares by larger groups, such as through family tenure, community titling, women’s groups and cooperatives, or by couples who each hold a

³⁴ *Id.* at 14.

³⁵ *Id.*

³⁶ “Polygyny.” *Merriam-Webster.com*. Merriam-Webster, 2017, <https://www.merriam-webster.com/dictionary/polygyny> (accessed Nov. 17, 2017).

³⁷ “Property.” *Merriam-Webster.com*. Merriam-Webster, 2017, <https://www.merriam-webster.com/dictionary/property#legalDictionary> (accessed Nov. 17, 2017).

³⁸ T. Hanstad et al., *One Billion Rising 21* (University of Chicago Press 2007).

³⁹ “Real Property.” *Merriam-Webster.com*. Merriam-Webster, 2017, <https://www.merriam-webster.com/dictionary/property#legalDictionary> (accessed Nov. 17, 2017).

⁴⁰ R. Giovarelli & E. Scalise, *Inheritance*, at 14.

⁴¹ “Separate Property.” *Merriam-Webster.com*. Merriam-Webster, 2017, <https://www.merriam-webster.com/dictionary/property#legalDictionary> (accessed Nov. 17, 2017).

portion of property together, but which do not necessarily constitute equal shares to this property.”⁴²

Use Right “Legal right to use land for any specified period of time without legal ownership of land.”⁴³

Wife Inheritance “A relative of a deceased husband marries the widow. Wife inheritance is also known as widow inheritance, bride inheritance, and levirate marriage.”⁴⁴

Women’s Land Rights Legal or customary interests in land held by women individually or as a member of a group or community.

⁴² R. Giovarelli & E. Scalise, *Inheritance*, at 14.

⁴³ *Id.*

⁴⁴ *Id.* at 14.

EXECUTIVE SUMMARY

This LGSA Women’s Land Rights Study serves as a consolidated resource to help guide the gender-responsive implementation of Liberia’s 2013 Land Rights Policy (LRP). It is based on legal research of the formal legal system; original, exploratory field research in five communities spanning three counties; and secondary research drawing primarily from research conducted under USAID’s Liberian land projects.

This report begins with an overview of the basic legal framework that establishes women’s land rights, and then proceeds to a description of six primary thematic topics related to women’s land rights and participation in land governance: 1) land tenure systems; 2) marriage/ de facto unions; 3) inheritance; 4) land governance; 5) access to justice and dispute resolution; and 6) concessions.

LAND TENURE SYSTEMS

The authors explored four major types of tenure arrangements in this report: customary land rights, hybrid land rights as represented by Tribal Certificates (TCs), private land rights, and public land rights held in concession agreements. Within each of these arrangements, women’s access, use, control, and overall rights to land differ from (and tend to be less secure than) those of men, although women’s ownership of private land has existed for settler women for many decades in the coastal region and may be increasing in urban areas across Liberia. This section of the report discusses what these differences are, and how they affect women’s ability to access, use, control, and manage land.

MARRIAGE/ DE FACTO UNIONS

The civil law of Liberia provides for three types of marriage—civil, customary, and presumed, each with its own implications for property. Within the context of marriage, the research team made a particular effort to learn more about women’s land rights in the context of de facto unions or long-term cohabitation. Marriage informality is a rising trend in the areas visited by the authors; in these areas more than half of marriage-like relationships (and in some areas many more) have not been formalized, according to custom or civil law. Because de facto unions exist in a legal vacuum—given widespread confusion about legal framework for presumptive marriages—women and children in such arrangements have only tenuous rights to land, typically obtained through the husband’s male lineage and family.

INHERITANCE

The study explores several topics related to inheritance, including inheritance by wives and inheritance by daughters. According to participants in the five communities visited, land inheritance by widows is often contingent on their willingness to marry a surviving male relative of their deceased husband. There are also continuing cases of forced widow inheritance, in which a widow is required to marry a male relative of her deceased spouse, even though this practice is illegal. Daughters—as compared with sons—in the areas visited seem to rarely receive their inheritance. When daughters inherit land, their rights are often restricted to housing and use rights to farm short-term crops.

LAND GOVERNANCE

More could be done to ensure gender-responsive land governance in the law, in key governance institutions, and in practice. Women are generally excluded from groups that make decisions about land governance at the community level. Women’s role in official land governance institutions is limited when compared to men’s roles, with fewer women in positions of decision-making authority in both the customary system and the statutory governance system (including at the municipal, county, and national

levels). Women are also disadvantaged due to norms requiring male accompaniment, lack of consultation, and under recognition of women's land rights and inheritance rights.

ACCESS TO JUSTICE AND DISPUTE RESOLUTION

Women's access to justice and dispute resolution is closely related to their position in land governance. Women are generally excluded from groups that make decisions about land at the community level. However, women who hold positions of authority within these institutions (such as District Commissioners or officers with the Ministry of Gender, Children and Social Protection) often find themselves in high demand for assistance in mediating land conflicts involving women. When land disputes arise, many rural people have trouble accessing formal justice systems because of barriers related to cost, literacy, and travel, and rural women experience more challenges in overcoming the barriers, for example, due to higher rates of illiteracy and additional gender-specific barriers such as social norms that discourage what is seen as acrimonious behavior from women. Without this access, women must either resort to informal dispute resolution (in which they are not well-represented) or let disputes go unresolved.

CONCESSIONS

Concessions are a major concern for women and men in communities who live and farm in and near concession areas. Participants in the focus areas related that concessions have often led to displacement and loss of access to traditional farming and forest lands. Like most laws, those governing concessions are gender-neutral, but impact women in substantially different ways, and frequently in more adverse ways than men.

CONCLUSION AND RECOMMENDATIONS

In the final section, the report provides recommendations pertaining to these themes.

INTRODUCTION

Land is the most important asset for many rural Liberian women and men, and is often a family's primary source of cash income, food and nutritional security, health care, and education. Though women play a central role in agricultural production in Liberia, women's rights and access to land are often not equal to those of men due to biases in the formal legal framework and customary law.

Liberia's 2013 Land Rights Policy (LRP) calls for far-reaching reforms in land tenure relationships, including transferring ownership of public land to the customary communities that have traditionally occupied and used it. The LRP also calls for the conversion of some land within customary areas to private, fee simple ownership, establishing for each resident of a customary community the right to up to one acre of land in private ownership. Implementation of these and other changes indicated by the LRP will fundamentally alter rural land tenure in Liberia.

When designing and implementing land reforms, it is critical to consider whether such reforms will formalize existing inequities. In Liberia, individual land tenure security in rural areas depends, in part, on whether a person is male or female. Within customary communities, land passes through clan-based male lineages, and men largely control the decision-making, allocation, management, use, and inheritance of land. Daughters generally do not inherit rights to customary lands on par with men, and wives' inheritance of land occupancy and use rights is often contingent on their willingness to remain a part of their deceased husband's family by marrying a brother or other relative. In the event of separation, divorce, or death of her husband, women may be left with no rights to the land in their marital community where they have used, depended upon, and improved land during their marriage. Women in de facto unions, which may constitute most marriage arrangements in Liberia, experience even less security vis-à-vis the land they share with their partners. Land reforms must ensure that gender inequities are not perpetuated, and that women's land rights are strengthened and upheld. The first step toward this is to understand existing gendered norms and practices regarding land in rural Liberia.

The purpose of USAID's Land Governance Support Activity (LGSA) is to assist the Government of Liberia in implementing the LRP. Landesa's role in the project is twofold: to help provide and mainstream a gender-responsive lens across all project components, and to provide technical assistance on legal and policy development where requested by the government. Over two years, Landesa met with land sector stakeholders from Liberian government agencies, civil society, and academia. As a result of these meetings, Landesa noticed demand for a consolidated resource summarizing women's rights to land in Liberia and grounded in legal analysis, desk research, and community-based research.

This report provides a foundation for understanding women's land rights in Liberia. The report builds on a Women's Land Rights study produced under USAID's Land Policy and Institutional Support (LPIS) project in 2013, incorporating findings from field research conducted jointly by Landesa, LGSA, AFELL (Association of Female Lawyers of Liberia), and WONGOSOL (Women's Non-Government Organization Secretariat of Liberia) in April/May 2017. It also incorporates new research on the family and civil laws that affect women's land rights, analysis of the constitutional case law that forms an important part of Liberia's jurisprudence on women's rights to land, and prior research on women's land rights, primarily conducted under USAID's Liberian land projects. In particular, the report highlights analysis and findings from:

- R. Jappah et al.'s USAID Land Policy and Institutional Support (LPIS) Project: Women's Land Rights Study [hereinafter USAID LPIS WLR Study] (2012),
- E. Namubiru-Mwaura et al.'s USAID Land Policy and Institutional Support (LPIS) Project: Customary Land Tenure in Liberia: Findings and Implications drawn from 11 Case Studies [hereinafter USAID LPIS 11 Clan Study] (2012),

- I. Nagbe’s USAID LGSA unpublished Field Report on Interactive Discussion with Rural Women on Women’s Land Rights (2016),
- I. Nagbe’s USAID LGSA unpublished Field Report on Gender Assessment Carried out with Land Administrative and Land Management Entities in 6 Counties [hereinafter USAID LGSA Field Report on Gender Assessment of Land Entities] (2016), and
- Rights and Rice Foundation’s USAID LGSA Research on Women’s Land Rights (2016).

The report proceeds with a section on methodology; followed by an overview of land laws governing women’s land rights; a description of research findings relating to household and community land access, ownership and control; and, finally, recommendations organized by theme. Each thematic section provides the relevant legal framework according to Liberia’s formal law, including both statutory and case law, then discusses the extent to which practice reflects this framework.

METHODOLOGY

This report aims to bridge the gap in existing studies on women’s land rights in Liberia; to analyze laws that regulate women’s land rights and gender equality in land access and land ownership; to describe the basic domestic land rights and land governance legal framework, with illustrative Supreme Court decisions, juxtaposed with customary practice; and to summarize other studies focusing on gender perspectives in regard to Liberia’s land reform process. The report incorporates three major sources of information: 1) legal analysis (combining statutory law and Supreme Court decisions), 2) literature review, primarily of research conducted under USAID’s Liberian land projects, and 3) field research.

The authors first conducted a gender analysis of statutory law and Supreme Court decisions associated with women’s land rights, followed by a desk review of USAID Liberian land projects and other land-related studies. Finally, the authors conducted field research focused on women’s land rights and land governance (See annex I for the WLR field research overview and guiding questions).

The research team included a gender and land specialist from LGSA, three land tenure specialists from Landesa, and two gender/women’s rights experts from AFELL and WONGOSOL. Additionally, the team worked with community mobilizers to select communities, manage logistics, and convene meetings.

Research was conducted over a two-week period in April/May 2017 in five communities in three counties: Pleebo in Maryland County (South East), Zolowee and Ganta in Nimba County (North Central), and Buchannan and Geebeor in Grand Bassa County (South Central). All three counties are considered high poverty counties and represent different livelihood zones. In its choice of counties, the research team also sought to fill gaps in existing research on women’s land rights in Liberia.⁴⁵

The team used gender-responsive Rapid Rural Appraisal (RRA) research techniques, including focus group discussions (FGDs) in large mixed groups followed by smaller focus groups with all women, all men, and customary governance authorities. Additionally, the team conducted Key Informant Interviews (KIIs) with select individuals (see Annex 2). The team selected the RRA approach to maximize its understanding of the issues within the limited period of time available.

In Monrovia, the research team organized KIIs and an initial validation workshop with national-level representatives from government, international, and regional non-governmental organizations (NGOs), and local civil society organizations (CSOs), including women’s groups and Traditional Council representatives. At the validation workshop, the team presented preliminary research findings and the Monrovia-based stakeholders revised and clarified the information.

In total, the research involved 164 participants, composed of 94 men and 70 women, including women of different categories based on age, marital status, and social status. Participants were comprised of local customary and government leaders, farmers, youth, NGOs, CSOs, and women’s groups. (See table below for numbers and gender breakdown of research respondents from the field research.)

TABLE I GENDER BREAKDOWN OF RESPONDENTS			
CATEGORY	NUMBER OF RESPONDENTS		
	MALE	FEMALE	TOTAL
Focus Group Discussion			
Maryland County - Pleebo	13	12	25
Nimba County			

⁴⁵ County selection was also informed by criteria articulated during the November 2016 LGSA Partners Workshop, further developed by the Landesa-LGSA team with input from a Landesa senior research and evaluation specialist.

TABLE I GENDER BREAKDOWN OF RESPONDENTS			
CATEGORY	NUMBER OF RESPONDENTS		
	MALE	FEMALE	TOTAL
Zolowee ⁴⁶ (rural)	20	17	37
Ganta (urban)	12	12	24
Grand Bassa County			
Geebeor (rural)	16	10	26
Buchanan (urban)	14	6	20
Key Informant Interviews			
Maryland County	5	2	7
Nimba County	4	1	5
Grand Bassa County	5	3	8
Monrovia	5	7	12
Total	94	70	164

This report contains several limitations. First, the report focuses primarily on Liberia’s civil laws⁴⁷ and common law—not on customary law. The authors recognize this gap and recommend that future research analyze women’s land rights in Liberian customary law. Further, the report is limited to findings on targeted research about women’s land rights in just five communities across three counties. As such, the findings are exploratory and indicative and should not be generalized. Additionally, time and resource constraints⁴⁸ prevented the research team from examining the political, economic, and socio-cultural context affecting land rights and governance in Liberia. Finally, in conducting the FGDs, the team found that many participants also held a leadership position, whether as a quarter or town chief, representative of a women’s or youth group, or a municipal official. In some meetings, this led to a charged political environment, and may also have skewed findings. Despite these limitations, the team believes that the research represents a broad range of perspectives on gender issues.

⁴⁶ The groups also included some representatives from surrounding towns.

⁴⁷ Civil law is also sometimes referred to as formal law.

⁴⁸ A particular time constraint was that authors’ field research was limited to a two-week period in April/May 2017.

OVERVIEW OF WOMEN'S LAND RIGHTS

WOMEN'S LAND RIGHTS

Land rights are commonly “analogized as a ‘bundle of sticks,’ with significant emphasis given to various legal interests (sticks) into which ‘complete property’ (the bundle) may be divided.”⁴⁹ These sticks can include a right to possess, to exclude, to use, to enjoy profits and/or to withdraw (e.g., gather fuel wood, water, plants), to destroy, to transfer,⁵⁰ including to mortgage, to gift, and to bequeath.⁵¹ Land rights may be held by individuals or groups and can cover various types of land (e.g., agricultural land, grassland, forest land, and ancestral land). When women hold legal or customary interests in land (be it private, customary, or some other type of land) individually or as a member of a group or community, authors term this women’s land rights.

Land rights are “often described as being secure or insecure, though in practice, land tenure security is more accurately understood as existing along a continuum . . .”⁵² For women to have secure land rights, the bundle of rights be clearly defined. Other factors affecting the security of women’s land rights include “the breadth, scope, and duration of rights; the social, legal, and cultural legitimacy of rights; and the adequacy and enforceability of rights.”⁵³ Additional factors include whether the rights: 1) remain unaffected by changes in social status, family structure, or community leaders; and 2) are exercisable in the same way they are exercisable by men, e.g., not requiring extra approval.⁵⁴ (See box below for more information.)

Box 1. Framework for Secure Women’s Land Rights

- 1) **Legitimate and Recognized:** The degree to which land rights are legally and socially legitimate, and therefore secure, depends on who recognizes these rights.
- 2) **Clear Duration:** For rights that are granted for a fixed period of time, the longer the period the more secure are the rights. Clarity of duration is also key: land rights granted for an undetermined period may be less secure than those granted for a season.
- 3) **Unaffected by Changes in Social Status:** Land rights are secure if they do not selectively (e.g. on the basis of gender) terminate based on changes in the social status, family structure, or community leadership.
- 4) **Enforceable:** For rights to be secure, the rights holder must be able to enforce them. Enforcement options may be available in formal courts or with customary institutions.
- 5) **Exercisable without Extra Approval:** Land rights are more secure if they can be exercised without being subject to extra permissions that apply only to some based on gender, other social condition, or other status.

Source: Landesa, Framework for Secure Women’s Land Rights, on file. See also, R. Giovarelli & E. Scalise, *Women’s Land Tenure Framework for Analysis: Land Rights (Landesa 2010)*, at 15-16.

⁴⁹ T. Hanstad et al., *One Billion Rising 23* (University of Chicago Press 2007), internal citation omitted.

⁵⁰ *Id.*

⁵¹ R. Giovarelli & E. Scalise, *Women’s Land Tenure Framework for Analysis: Land Rights* (Landesa 2013), at 15.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 15-16.

Research from around the globe shows that when women’s land rights are strengthened, women are more prosperous, educated, resilient, and safe; and their children are more nourished and healthy.

Figure I. Correlation between strengthened women’s land rights and quality of life



Source: Landesa, A Better World: Strengthening Women’s Land Rights, available at <https://www.landesa.org/resources/womens-land-rights-and-the-sustainable-development-goals/>.

However, these rights and their related economic and social benefits can be hindered in plural legal settings by formal legal structures and/or customary legal structures. Barriers within these structures have been identified and conceptualized by Renee Giovarelli and Elisa Scalise in “Women’s Land Tenure Framework for Analysis: Land Rights,” as summarized in Annex 3.

WOMEN’S LAND RIGHTS IN LIBERIA: BASIC LEGAL FRAMEWORK

Various national laws and policies govern women’s land and property in land rights in Liberia. Broadly, the legal and policy framework consists of the following: 1) constitutional guarantees, 2) family laws regulating marital property, 3) inheritance laws, and 4) land laws and tenure reform (addressed in the next section).⁵⁵

⁵⁵ See, e.g., A. Knox, et al., *Connecting Rights to Reality: A Progressive Framework of Core Legal Protections for Women’s Property Rights*, International Center for Research on Women (ICRW) 3 (2007).

CONSTITUTIONAL GUARANTEES

The Constitution of 1986 is the supreme and fundamental law of Liberia.⁵⁶ Further, “[a]ny laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with it [the Constitution] shall, to the extent of the inconsistency, be void and of no legal effect.”⁵⁷ The Constitution provides several fundamental legal guarantees concerning anti-discrimination—including based on sex, equal protection of the law, and property rights. Article 11 provides explicit and robust constitutional mandates for non-discrimination and gender equality; and it explicitly guarantees equal rights for women. Articles 22, 23, and 24 provide guarantees on land and property ownership. (See Box 2 for details.)

Box 2. Constitutional Guarantees in Articles, 22, 23, and 24

Article 11: “(a) All persons are born equally free and independent and have certain natural, inherent and inalienable rights, among which are the right of enjoying and defending life and liberty, of pursuing and maintaining and security of the person and of acquiring, possessing and protecting property, subject to such qualifications as provided for in this Constitution. (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. (c) All persons are equal before the law and are therefore entitled to the equal protection of the law.”

Article 22: “(a) Every person shall have the right to own property alone as well as in association with others; provided that only Liberian citizens shall have the right to own real property within the Republic.”

Article 23: “(a) The property which a person possesses at the time of marriage or which may afterwards be acquired as a result of one's own labors shall not be held for or otherwise applied to the liquidation of the debts or other obligations of the spouse, whether contracted before or after marriage; nor shall the property which by law is to be secured to a man or a woman be alienated or be controlled by that person's spouse save by free and voluntary consent. (b) The Legislature shall enact laws to govern the devolution of estates and establish rights of inheritance and descent for spouses of both statutory and customary marriages so as to give adequate protection to surviving spouses and children of such marriages.”

Article 24: “(a) While the inviolability of private property shall be guaranteed by the Republic, expropriation may be authorized for the security of the nation in the event of armed conflict or where the public health and safety are endangered or for any other public purposes, provided: (i) that reasons for such expropriation are given; (ii) that there is prompt payment of just compensation; (iii) that such expropriation or the compensation offered may be challenged freely by the owner of the property in a court of law with no penalty for having brought such action; and (iv) that when property taken for public use ceases to be so used, the Republic shall accord the former owner or those entitled to the property through such owner, the right of first refusal to reacquire the property.”

Source: Constitution (1986).

Additionally, Articles 27 and 28 recognize and regulate citizenship, and have import given their effect on the inheritance of property.

FAMILY LAWS REGULATING MARITAL PROPERTY

The Decedents Estates Law (DEL), 1972; the Domestic Relations Law (DRL), 1973; the Equal Rights of the Customary Marriage (ERCM) Law, 1998, approved 2003;⁵⁸ and the Children's Law, 2011 are the

⁵⁶ Constitution of the Republic of Liberia [hereinafter Constitution or Const.], (1986), art. 2(a).

⁵⁷ *Id.* at art. 2(b).

⁵⁸ An Act to Govern the Devolution of Estates and Establish Rights of Inheritance for Spouses of Both Statutory and Customary Marriages [hereinafter Equal Rights of the Customary Marriage Law, per § 1, or ERCM Law] (1998, approved 2003), § 2(9).

main statutes addressing women’s rights to land and property in the context of marriage, separation, divorce, and inheritance.⁵⁹ Other relevant laws include the Aliens and Nationality Law, 1973.

Table 2. Key statutory provisions impacting land rights in terms of marriage, separation, divorce, inheritance, and child custody

SUBJECT MATTER	STATUTORY WIFE (DRL, 1973; DEL, 1972)	CUSTOMARY WIFE (ERCM Law, 1998, approved 2003; Rules and Regulations Governing the Hinterland, 1949, re-promulgated 2001)	DE-FACTO WIFE (Civil Procedure Law; Rules and Regulations Governing the Hinterland)
Marriage Definition	<p>“<i>Marriage is a civil status, a personal relationship arising out of a civil contract between a male and female to mutually assume marital rights, duties and obligations, to which the consent of parties capable of making such a contract is essential; provided further that such marriage is not prohibited by the provisions of sections 2.2(3) and 2.3. Consent alone will not constitute marriage; consent must be followed by the issuance of a license and solemnization as authorized by this chapter</i>” (DRL § 2.1).</p>	<p>“‘Customary marriage’ means marriage between a man and woman performed according to the tribal tradition of their locality” (ERCM Law § 1(a)).</p>	<p>“Persons who live together as husband and wife and hold themselves out as such are presumed to be married” (Civil Procedure Law, § 25.3(3)). It is not clear whether the presumption of marriage means the presumption of a civil marriage or a customary marriage. A logical interpretation is that it could mean either, depending on the context and the parties’ wishes.</p> <p>Per the Rules and Regulations Governing the Hinterland, “union[s] irregularly established carry o [sic] no right to either unless such rights are eventually arranged in accordance with tribal custom” (art. 55(f)).</p>
Polygamy	<p>Prohibits polygamy (DRL § 2.3).</p>	<p>ERCM Law presumably allows for polygamy (as § 1 allows for customary marriage “performed according to the tribal tradition,” and § 3.2 refers to the “widow or multiple widows” who are entitled to the 1/3 dower right).</p>	<p>NA</p>
Marriage Age	<p>Female marriage age is 18, and male marriage age is 21 (DRL § 2.2(1)). Girls over 16 but under 18 may marry with consent from parent or guardian (DRL § 2.2(2)).</p>	<p>Female marriage age is 16 (ERCM Law § 2.9). This statutory provision presumably takes precedent over the Rules and Regulations Governing the Hinterland, which stipulates that it is “[u]nlawful to pay dowry⁶⁰ for a girl” less than 15</p>	<p>NA</p>

⁵⁹ In particular, note that the ERCM Law is also a civil law that recognizes and regulates customary marriage and inheritance; it is not a statement of customary law itself.

⁶⁰ Dowry according to Liberian usage more closely corresponds with “brideprice.” See J. Carter. “Report – track changes.” Received by Jennifer Duncan and My-Lan Dodd, Nov. 11, 2017, on file with Landesa. “Brideprice” is “[m]oney, property, or services paid by a groom or his family to the family of the bride;” whereas dowry is commonly defined as “money, goods, land or other possessions that a woman brings into a marriage with her; very often paid by her family and sometimes paid to the groom’s family. R. Giovarelli & E. Scalise, *Women’s*

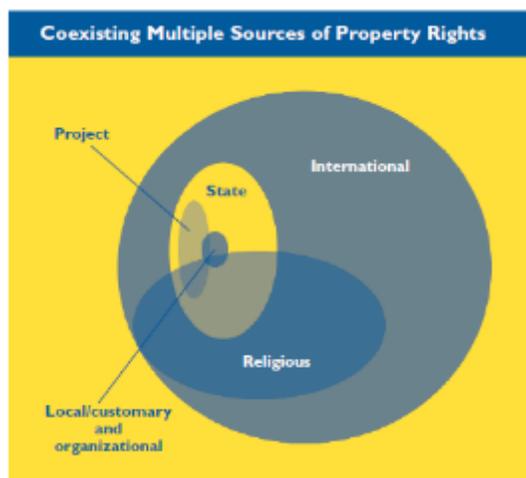
SUBJECT MATTER	STATUTORY WIFE (DRL, 1973; DEL, 1972)	CUSTOMARY WIFE (ERCM Law, 1998, approved 2003; Rules and Regulations Governing the Hinterland, 1949, re-promulgated 2001)	DE-FACTO WIFE (Civil Procedure Law; Rules and Regulations Governing the Hinterland)
		years of age (and makes such marriage voidable) (art. 55(g)).	
Matrimonial Property	Property (real and personal) the wife owns at the time of marriage is her sole and separate property (DRL § 3.4).	Each spouse has right to 1/3 of the other's real and personal property at time of marriage, whether or not s/he contributed to its acquisition (ERCM Law § 2.3). ERCM Law § 2.6(a) requires wives to get their husband's consent when transacting on her personal property (contravenes art. 23 (a) of the Constitution); yet § 2.6(b) threatens husband with felony charges if he attempts to control his wives' property.	The legal presumption of marriage is silent on the question of matrimonial property (Civil Procedure Law § 25.3(3)). Logical interpretation of the provision would be that the matrimonial property within a presumptive marriage would be governed either by DRL and DEL, if the marriage is presumed to be civil, or by ERCM Law, if the marriage is presumed customary.
	Spouses may convey or transfer real or personal property directly to one another and may partition joint real property (DRL § 3.3).	Same	The law is silent.
	Separation of property is the default matrimonial property regime (DRL § 3.4).	No provisions in the ERCM Law deals specifically with separation or divorce of customary marriages. However, if the Ministry of Internal Affairs presides over the divorce, the wife is allocated 1/3 of the property and her personal belongings.	NA
	Both spouses must consent to divide joint property held as tenants in the entirety (a regime that applies only to married couples) (DRL § 3.3).	Each spouse retains personal property.	NA
Divorce / Separation	If the wife as the plaintiff prevails in a divorce action, the court must award the wife 1/5 to 1/3 of the husband's property (real and personal, with real property enjoyed for life) (DRL § 8.7).	While no provision in the ERCM Law deals specifically with divorce or separation, the DRL is fully incorporated under ERCM Law § 2.1. Also, if the Ministry of Internal Affairs presides over the divorce, the wife is allocated 1/3 of the property and her personal belongings. Additionally, the Rules and Regulations Governing the Hinterland contains provisions related to marriage dissolution, including those related to	NA

Land Tenure Framework for Analysis: Inheritance, (Landesa 2013), at 13-14. Throughout the report, authors use the term dowry in its Liberian usage.

SUBJECT MATTER	STATUTORY WIFE (DRL, 1973; DEL, 1972)	CUSTOMARY WIFE (ERCM Law, 1998, approved 2003; Rules and Regulations Governing the Hinterland, 1949, re-promulgated 2001)	DE-FACTO WIFE (Civil Procedure Law; Rules and Regulations Governing the Hinterland)
	<p>Husband is liable for support of dependents in the case of separation and during divorce (if he meets the legal criteria and has the means), with the court having discretion over the amount (DRL § 5.3 (a)).</p> <p>In the case of divorce, the Court awards child custody and child support, based on the best interests of the child as determined by Court's discretion (DRL § 9.5). Father has first right of guardianship over minor children during separation (DRL § 4.1).</p>	<p>refunding dowry (art. 55(c)(h)(m). However, ERCM Law § 2.2 prohibits the recovery of dowry (from the wife or her parents) by the husband.</p> <p>While the ERCM Law deals with child custody in the case of death of a parent (see § 3.7), it contains no provisions governing the case of divorce or separation. However, the DRL is fully incorporated under ERCM Law § 2.1 .</p>	<p>NA (for the Civil Procedure Law).</p> <p>The Rules and Regulations Governing the Hinterland stipulates that the mother in a “union irregularly established” has custody over the children; “the man’s family has no right to their custody unless the mother and her family agree for him to take custody” (art. 55(f)).</p>
Inheritance	<p>“Every person eighteen years of age or over, of sound mind and memory, may by will dispose of real and personal property . . . ” (DEL § 2.1).</p> <p>“A testamentary disposition of property may be made to any person having capacity to acquire and hold property” (DEL § 2.3).</p>	<p>“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” (ERCM Law § 3.6).</p>	NA
Inheritance for Surviving Spouses	<p>At death of husband, if they have joint children, \$5,000 outright from the estate and 1/2 of residue for life to the surviving wife, reverting to the children of deceased at her death; if no children, \$10,000 outright to the widow and 1/2 of residue (DEL § 3.2).</p> <p>In lieu of disposition by will or a distribution under the intestacy law, a widow has the right to elect 1/3 of deceased husband's real estate for her life and 1/3 of his personal estate taken (same right as widowers) (DEL § 4.1).</p> <p>Widow (who is a resident in a home owned by the deceased husband at his death) has the</p>	<p>At death of husband, 1/3 of husband's property to widow (to share with other widows in case of polygamy) (ERCM Law § 3.2).</p> <p>Widows (but not widowers) lose their matrimonial home upon remarriage (ERCM Law § 3.3).</p> <p>ERCM Law incorporates DEL to “equally apply to all native customary marriages” immediately after the passage of the ERCM Law (§ 3.1).</p>	NA

SUBJECT MATTER	STATUTORY WIFE (DRL, 1973; DEL, 1972)	CUSTOMARY WIFE (ERCM Law, 1998, approved 2003; Rules and Regulations Governing the Hinterland, 1949, re-promulgated 2001)	DE-FACTO WIFE (Civil Procedure Law; Rules and Regulations Governing the Hinterland)
	right to remain in the matrimonial home pending settlement of the estate (DEL § 4.4).		
Inheritance for Daughters	CHILDREN (Children's Law, 2011)		
	"Every child shall have the right to benefit from any inheritance left to the child by the child's parents" (art. 3: 17.1).		
	STATUTORY DAUGHTER (DRL, 1973; DEL, 1972)	CUSTOMARY DAUGHTER (ERCM Law, 1998, approved 2003)	DAUGHTER BORN IN PRESUMPTIVE MARRIAGE (Civil Procedure Law)
	Daughters and sons have equal rights of inheritance (DEL §§ 3.2 & 3.4). No distinction in inheritance from the mother between children born in and out of wedlock; but additional requirements apply to children born out of wedlock wishing to inherit from their father (e.g., father marries the mother or must legitimate the child as his own) (DEL § 3.2, 3.4, & 3.5; DRL §§ 4.91 & 4.92).	Incorporates the DEL as applicable to all customary marriages (ERCM Law § 3.1). 2/3 of the deceased father's property must descend to his children (or in their absence, to his collateral heirs) per the DEL (ERCM Law § 3.2).	NA

The constitutional provisions and family laws outlined above are formal laws that recognize and regulate land and property rights (including in the context of marriage, separation, divorce, and inheritance). They are laws and rights acknowledged by the Government of Liberia. However, they comprise just one source of law on property rights within Liberia's plural legal system. Other sources of law that coexist with formal law include customary law, Islamic law (which applies to Liberia's sizeable Muslim population),⁶¹ and also international and regional law (highlighted in the subsequent section). (For a visual of the coexisting multiple sources of property, see image to the right.)



Source: R. Meinzen-Dick et al., *Collective Action and Property Rights for Sustainable Development: Understanding Property Rights*, 2020 Focus Vision 11 (Washington, D.C.: International Food Policy Research Institute, 2004), available at <http://ageconsearch.umn.edu/bitstream/16031/1/vf040011.pdf>.

GENDER-RESPONSIVE REFORM OF LAND TENURE AND FAMILY LAWS IN THE CONTEXT OF LIBERIA'S PLURAL LEGAL SYSTEM

⁶¹ R. Jappah et al., *Land Policy and Institutional Support (LPIS) Project: Women's Land Rights Study* [hereinafter USAID LPIS WLR Study] (USAID 2012), at 11-12.

Liberia is in the middle of a land tenure reform process which will impact its plural legal system. Reforms hold the potential to use formal law (and its implementation) to broaden access to land and to improve land tenure security for communities, men, women, and other marginalized groups.

In order for women in rural and customary settings to benefit equally alongside male counterparts, land tenure reforms must be gender-responsive. This requires understanding of and attention on intra-household and inter-family relationships as regulated in family laws but also as operating in practice, particularly within customary contexts. In such contexts, customs control marital property and inheritance rights in customary settings—the primary areas that determine intra- or inter-family access to and control over land, property, and other productive resources. When policy and law-making fail to address gender differences and inequalities embedded in these relationships, it may concretize existing gender-based inequities, may create gender inequalities where none existed, and/or may not go far enough to ensuring equal benefits for women.

In reforming formal land and family laws, there is also a need to excise provisions which are discriminatory on the face of the law and in its impact. Such action would help align these formal laws with Liberia's Constitution, which contains robust anti-discrimination and equality provisions that explicitly mention sex and guarantees of equal rights for women. It would also reduce the likelihood that the government's implementation of the formal laws would negatively bear on women's access, ownership, and use of land and property in relation to their male counterparts.

The Constitution recognizes customary law and mandates the courts to apply it along with statutory law (per art. 65). As such, courts have the onus to apply these laws alongside constitutional guarantees such as prohibitions against sex-based discrimination and equality before the law. However, where customs contain gender stereotypes and sex-based discrimination a tension exists between recognizing customary law and protecting the constitutional guarantees prohibiting sex-based discrimination and safeguarding equality before the law.

A. LAND TENURE SYSTEMS

LAND TENURE SYSTEMS: BASIC LEGAL FRAMEWORK

The legal framework governing land tenure and property rights in Liberia consists of constitutional guarantees, the Land Rights Policy (2013), a multitude of statutes governing land and land-based resources,⁶² and common law (which is based on case law precedent of the Supreme Court of Liberia). The constitutional framework guarantees the right to property (art. 22) and upholds equal protection regardless of sex and other distinctions (art. 11). The LRP provides that Liberia is to have four exclusive categories of land ownership, namely customary land, public land, government land, and private land (para 1.0 & 2.0). Current statutes regulate the following categories of land tenure: customary land tenure (including some land deeded to communities), public land, concessions, tribal certificates, and private land. In this part, authors focus on customary land rights and privately held land rights.

CUSTOMARY LAND RIGHTS

Customary land tenure, according to the LRP, has been less secure than private land since Liberia's founding. Yet "[t]he Constitution guarantees that '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,' including land rights" (LRP, para 2.5). For that reason, the LRP recommends that customary land rights must be as equally protected as private land rights. Specifically, it stipulates that "[t]he Government recognizes and protects the land rights of communities, groups, families, and individuals who own, use, and manage their land in accordance with customary practices and norms, as equal to Private Land rights" (para 4.2). Furthermore, the LRP acknowledges that "women's land rights are often less protected than those of men," and therefore articulates its "aim[] to give equal protection to the land rights of men and women" (LRP, para 2.5).

The LRP lays out the policy that ought to be reflected in the substance of the Land Rights Bill (LRB), which the legislature has yet passed.

Current statutory recognition for customary land, as described in Box 3, comprises a patchwork of laws and regulations that were adopted over the past century. As noted below, none of these legal instruments recognize, much less strengthen, community land governance.⁶³ The lack of a formal legal framework for community land governance also means there are no formal law safeguards for women, youth, and others who were traditionally excluded from relevant governance bodies.

⁶² See, J. Bruce, *A Strategy for Further Reform of Liberia's Law on Land, Liberia Land Governance Support Activity (2016)*: 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 1, 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 (1949, re-promulgated January 7, 2001).

⁶³ P. De Wit & C. Stevens, *100 Years of Community Land Rights in Liberia: Lessons Learned for the Future* (Paper prepared for presentation at the 2014 World Bank Conference on Land and Poverty, Washington DC, 2014), at 6.

Box 3. Background: Past Means of Formal Legal Recognition of Customary Land

From early on in Liberia's history, formal legal recognition of customary land was granted in an ad hoc manner through various channels. These included:

- Deeds for conditional fee simple ownership;
- Public Land Grant Deed issued to the community for perpetual use and possession and Aboriginal Land Grant Deed for individuals (but also used by communities) to gain conditional fee simple ownership on the condition of being sufficiently civilized pursuant to the 1905 Act [Act for the Government of a District in the Republic inhabited by Aborigines] / 1929 Act;
- Tribal Reserves as provided for under the Rules and Regulations Governing the Hinterland (1949), explained by scholar Liz Alden Wily as converting community ownership of customary lands to lesser formal rights of use and possession (as cited in De Wit & Stevens);
- Tribal Reserves as provided by the Aborigines Law (1956), a law which contains textual language supporting the repeal of the law allowing Public Land Grant Deeds and Aboriginal Land Grant Deeds; and
- Public Land Sale Deeds under the Public Lands Law (1929/1956/1972) to gain fee simple ownership, and used by communities for that end, although not intended for that purpose by the law.

These channels of legal recognition did not include concomitant recognition of community land governance rights.

Source: P. De Wit & C. Stevens, 100 Years of Community Land Rights in Liberia: Lessons Learned for the Future, (Paper prepared for presentation at the 2014 World Bank Conference on Land and Poverty, Washington DC, 2014).

What exactly is the nature of customary land rights established through deed? The Supreme Court has held that deeds to a community granting fee simple rights are equivalent to any other fee simple rights, conferring full ownership, including the right to alienate the land.⁶⁴ The question that then arises is who in the community has the authority to alienate the land (and to benefit from that alienation). This is a particularly important question for women, who are seldom represented among the tribal/ community leaders who may have received grants for the community in their name. The Court has generally held that granting fee simple rights to community leaders conveys a right to all community members. That is, the leaders hold the land in trust for and on behalf of all members of the community, with the implication that they could not alienate the land without consent from the broader community.

However, in one 2008 case, the Court cast doubt on this right of the broader community membership, holding that a deed conveyed to a tribal chief was presumed to be exclusively in his interest, and would only be interpreted to convey an interest to community members more broadly if this was specifically stated in the deed, and if the deed furthermore named community members as tenants in common.⁶⁵

⁶⁴ *Kamara et al. vs. Kindi et al.*, 34 LLR 732 (1988).

⁶⁵ *Id.*

Box 4. Background: Supreme Court cases that help to define the nature of customary land rights granted through deeds in the past

Common law has elaborated on the rights afforded to communities under the instruments mentioned above. In *Kamara et al. vs. Kindi et al.*, the Supreme Court articulated the legal consequence of deeds in fee simple ownership for communal land.⁶⁶ Citing outside authorities, it stated that such ownership is “the largest estate in land known to the law and necessarily implies absolute dominion over the land” in perpetuity, descendible to all the owner’s heirs, even of the remotest generations, and “confer[s] an unlimited power of alienation.”⁶⁷ In *Lartey et al. vs. Corneh et al.*, deeds executed by the President in fee simple for the chief and tribal residents “must be construed as vesting legal title in the tribal authority as trustee for the tribal residents. An equitable title or right to beneficial occupancy vests in the tribal residents.”⁶⁸ In *McGill vs. Monrovia City Corp. et al.*, the Supreme Court held that a Government land grant to “the tribal chief and elders and their heirs forever is owned by all the members of the tribe so described as tenants in common and cannot be alienated through sale without the consent of the Government.”⁶⁹ In *Nvandibo vs. Kiazolu et al.*, the Court states that with title to communal holding,

[t]he communal holders and inhabitants have entire possession of the whole property and there is a fiduciary relation among them which imposes on their mutual rights to protect, so any act which any tenant or inhabitant does for the benefit of the property must be for the benefit of the whole property and not one tenant. Independent of the many heirs and joint owners of the granted property, the administrators cannot legally claim a right to transfer title or evict individuals from the property (internal citation omitted).⁷⁰

While some parts of the law and common law secure community land rights to a degree, other cases generate insecurity. The Supreme Court, in *Nvandibo vs. Kiazolu et al.*, noted this broader issue. It stated that many cases involving aborigine land grants have created problems around who is entitled to the land and who can dispose of it, and “[i]n most cases, the descendants of the chiefs at the time the grants were given think that they are the heirs of such grants.”⁷¹ In *Kamara et al. vs. Kindi et al.*, the Supreme Court also explained that communities enjoy fee simple estates only if the deed stipulates the rights belong to the community as tenants in common. In this case, the Court reversed its early position to hold that the deed to “Chief Fahn Kendeh and families of Kendeh Town, his heirs, executors, administrators, and assigns as aforesaid forever” belonged only to the Chief Kendeh and his heirs.⁷² For the broader families of Kindi Town to be rightful owners, the Supreme Court stated that the deed should have been made out to Chief Kendeh of Kindi Town and the inhabitants thereof, and their heirs forever, and should have further denoted the inhabitants as tenants in common.⁷³ Such cases render future generations of men and women community members outside the Chief’s line more tenure insecure.

The law also provides some protection for customary communities who do not hold their land in fee simple (with a deed), but are rather living on public lands (in Tribal Reserves or otherwise owned or occupied public lands in the interior, referred to in the law and in earlier times as the “Hinterland”). The law in this case imposes a duty on state officials to ensure this protected land is not sold off to private individuals. Public Lands Law stipulates that a citizen who wants to purchase public land in the interior must “first obtain consent of the Tribal Authority” and must provide money to demonstrate the

⁶⁶ *Kamara et al. vs. Kindi et al.*, 34 LLR 732 (1988).

⁶⁷ *Id.*, citing 28 AM. JUR. 2d., Estate, § 10, at 81.

⁶⁸ *Lartey et al. vs. Corneh et al.*, 17 LLR 403 (1966).

⁶⁹ *McGill vs. Monrovia City Corp. et al.*, 28 LLR 174 (1979).

⁷⁰ *Nvandibo vs. Kiazolu et al.*, LRSC 25 (2008).

⁷¹ *Id.*

⁷² *Kamara et al. vs. Kindi et al.*, 34 LLR 732 (1988).

⁷³ *Id.*

citizen's "good intention to live peacefully with the tribesmen."⁷⁴ Further, the District Commissioner must "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."⁷⁵ In *Fallah vs. Kollie*, the Supreme Court affirmed that this law still applies in Liberia, and emphasized that duties imposed on public officers by the Legislature includes not "execut[ing] any Public Land Sale Deed except upon prior investigation and confirmation by competent tribal and/or local authorities that the land to be sold ... 'is not otherwise owned or occupied . . . ,' the consent of the tribal or local authorities to be firstly obtained in each such case."⁷⁶

The primary means by which land has appeared, in practice, to transfer out of customary land and into individual holdings is through the granting of Tribal Certificates to individuals. Under the Public Lands Law, "[t]he 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."⁷⁷ Legally, however, the granting of a Tribal Certificate does not vest title in land. The Supreme Court, in *Mananaai vs. Momo*, stated the following: "This Court has held that a tribal certificate does not vest title to any parcel of land in a party;" rather, as per the Public Lands Law, a Tribal Certificate:

is only the first step in an attempt to secure title to real property; it only evidences that a person seeking to secure a piece of property in an area in the interior of Liberia has secured the permission from the chiefs and people of the area. It must be followed by a certificate from the Land commissioner, payment must be made to the Revenue for the land, and finally the President must execute a public land sale deed in the person's favour. It is that public land sale deed, and only that deed, executed by the President that vests title to the land in the person claiming such title.⁷⁸

Because "a tribal certificate is not a deed," the Supreme Court has held that "under no circumstance can it be a basis for contesting a deed validly executed in favour of a party."⁷⁹ As an illustrative example, in *Karneh vs. Morris et al.*, two brothers who lived in Sanniquellie, Nimba County, who died intestate, had parcels on which they built mud houses and "claimed ownership to the said parcel of land on the strength of a tribal certificate."⁸⁰ At the time of their respective deaths, they left behind their widows, who were occupying the houses but lacked certificates to establish their documentary title. The two deceased brothers had a third brother who held a tribal certificate issued in 1963. This brother and the two widows ultimately lost their claim to the land when the Supreme Court held that the petitioner, another party who held the oldest certificate issued in 1950, should have priority in finalizing the tribal certificate process (completing a survey and getting issued a deed).⁸¹

PRIVATE LAND RIGHTS

Private Land under the Constitution enjoys full protection by the Government of Liberia. In *Teahjay vs. Dweh et al.*, the Supreme Court stated that the "constitutional right guaranteed under Article 22 (a) of the Liberian Constitution (1986)" is "exercisable by every qualified and competent citizen of Liberia, to

⁷⁴ Public Lands Law, Vol. V, Title 34, Liberian Codes Revised, § 30.

⁷⁵ *Id.*

⁷⁶ *Fallah vs. Kollie*, 42 LLR 545 (2005).

⁷⁷ See, J. Bruce, *A Strategy for Further Reform of Liberia's Law on Land*, Liberia Land Governance Support Activity (2016), at 5.

⁷⁸ *Mananaai vs. Momo*, LRSC 3 (2012).

⁷⁹ *Id.*

⁸⁰ *Karneh vs. Morris et al.*, 30 LLR 388 (1982).

⁸¹ *Id.*

acquire real property in his individual name or in association.”⁸² It looked to Article 22(a) and Article 23(a) of the Constitution and the Domestic Relations Law (revised) to hold that “the purchase of property by a woman during her matrimony” as well as her concomitant rights to control and alienate such property is “a constitutional right.”⁸³ Accordingly, it went on to “hold that the title vested in the appellee in her maiden name” through a prior conveyance “does not diminish, alter or weaken her constitutional and statutory right of ownership to the property on account of marital change of name.”⁸⁴

Also the Supreme Court, in *Teahjay vs. Dweh et al.*, held that an early Supreme Court case discussed “the issue of a woman purchasing real property in her maiden name as an individual person, though married at the time.”⁸⁵ Specifically, it cited *Barclay vs. Digen* as a case where the Supreme Court stated that whether a married woman bears the name of her husband is “a matter of preference and style and it does not affect the right of a woman to own property in her maiden name while married.”⁸⁶

LEGAL ANALYSIS

Liberia is in the process of considering a Land Rights Bill (LRB), which recognizes customary land rights. The LRB has undergone a number of revisions over the past three and one half years, and is still pending in the legislature. Ultimately, to align with the policy aims outlined in the LRP, the substance of the law would need to legally recognize three critical areas of rights: 1) customary land rights, 2) community land governance rights, and 3) women’s land rights.⁸⁷

Once passed, this law will be a cornerstone of the land rights legal framework. Depending on the final text, it has the potential to recognize customary land and governance rights and to include women as direct beneficiaries of land reform, particularly of customary land, regardless of marital status. This will depend on how well the law reflects constitutional guarantees, LRP mandates, and also international and regional commitments, which legally bind the Government of Liberia (for the latter, see an abbreviated listing in Box 5 and a fuller listing in Annex 4).

⁸² *Teahjay vs. Dweh et al.*, LRSC 3 (2014).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*, citing *Barclay vs. Digen*, 39 LLR 774 (1999).

⁸⁶ *Id.*

⁸⁷ See, e.g., P. De Wit & C. Stevens, 100 Years of Community Land Rights in Liberia: Lessons Learned for the Future (Paper prepared for presentation at the 2014 World Bank Conference on Land and Poverty, Washington DC 2014); J. Duncan et al., Memo: Analysis of the Land Rights Bill (Version September 27, 2016) from the Perspectives of Gender Equity and Women’s Land Rights (Landesa, 2016), on file.

Box 5. Liberia's International and Regional Treaty Obligations

Liberia has ratified and is bound by several international and regional human rights treaties, which explicitly uphold the land and property rights of women. These treaties establish parameters for guiding Liberia's land reform in a gender-responsive manner.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (ratified by Liberia July 17, 1984)⁸⁸

- **Article 2: Discrimination:** "State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women . . ."
- **Article 14: Rural Women:** 14(2) this article instructs states to facilitate equal participation in and "benefit from rural development" and in particular, women's right to "equal treatment in land and agrarian reform."
- **Article 15: Equality before the Law:** 15(2) mandates equal rights to women "to administer property"
- **Article 16: Marriage and Family Life:** 16(1)(h) extends equal rights to "both spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property" interpreted to include land.

African Charter on Human and People's Rights (ACHPR) (ratified by Liberia April 8, 1982)⁸⁹

- **Article 14: Right to Property:** "The right to property shall be guaranteed. . ."
- **Article 18: Protection of the Family and Vulnerable Groups:** "(3) The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions."

Protocol To The African Charter On Human And Peoples' Rights On The Rights Of Women In Africa (ratified by Liberia Dec. 14, 2007)⁹⁰

- **Article 2: Elimination of Discrimination against Women:** (1) States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures . . . (2) States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.
- **Article 6: Marriage:** States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that: . . . (e) the husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence; . . . (j) during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.
- **Article 7: Separation, Divorce and Annulment of Marriage:** States Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage. In this regard, they shall ensure that: . . . (d) in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.
- **Article 16: Right to Adequate Housing:** Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, States Parties shall grant to women, whatever their marital status, access to adequate housing.
- **Article 19: Right to Sustainable Development:** Women shall have the right to fully enjoy their right to sustainable development. In this connection, the States Parties shall take all appropriate measures to: . . . (c) promote women's access to and control over productive resources such as land and guarantee their right to property.
- **Article 21: Right to Inheritance:** (1) A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. . . . (2) Women and men shall have the right to inherit, in equitable shares, their parents' properties.

⁸⁸ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 Dec. 1979, United Nations, Treaty Series, vol. 1249, <http://www.refworld.org/docid/3ae6b3970.html> (accessed Dec. 7, 2017).

⁸⁹ Organization of African Unity, *African Charter on Human and Peoples' Rights* ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), <http://www.refworld.org/docid/3ae6b3630.html> (accessed Dec. 7, 2017).

⁹⁰ African Union, *Protocol on the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, 11 July 2003, <http://www.refworld.org/docid/3f4b139d4.html> (accessed Dec. 7, 2017).

To be aligned with the above-mentioned legal, policy, and international and regional commitments, the LRB would need to contain inclusive, non-discriminatory provisions related to 1) women’s land, property, and inheritance rights (in private and customary land), 2) women’s residence and membership within the community, and 3) women’s inclusion within recognized community governance bodies.

LAND TENURE SYSTEMS: IN PRACTICE

Research pertaining to I I clans across Liberia conducted under USAID’s LPIS project found four primary forms of land tenure: private deeded land, tribal certificates, public land, including those held in concessions, and customary land tenure.⁹¹ Private deeded land, tribal certificates, public land/ concessions are forms of statutory tenure. These statutory forms of tenure exist in the I I clans to varying degrees.⁹² They can be categorized as 1) clan member claims or 2) outsider or government claims. In 9 out of I I clans, the introduction of statutory forms of tenure has impacted customary tenure.⁹³

Customary tenure consists of land tenure governed by rules, which vary depending on the clans’ ethnicity and lineage systems and which evolve over time. Customary land claims are “highly nested typically ranging from claims held by the lineage-based chieftaincy or clan to claims held by towns, extended families, and households and individuals.”⁹⁴ Customary claims at the higher levels, (such as chieftaincy, clans, and towns) enjoy greater governance rights, including the right to make customary land access rules and the right to exclude non-members. Claims at the lowest level include use rights and a more restricted set of management rights over a specific parcel of land. Further, household level claims can be permanent (e.g., for house plots or tree crops) or temporary (e.g., for vegetable crops).⁹⁵

Access to customary land for farming, housing, and accessing natural resources primarily comes through lineage and quarter systems, which hold larger customary land tenure claims.⁹⁶ Authors of the USAID LPIS I I Clan Study referred to these as the “core tenure unit.”⁹⁷ Members of these units enjoy primary land rights. Non-members must borrow land.⁹⁸ The specific channels for accessing temporary or permanent land rights from the core tenure unit include the following:

- “allocation by those administering rights in the extended family unit;
- gifts of land from parents to children or from town citizen to strangers;
- inheritance of land by children;
- via marriage—including inheritance as a widow;
- borrowing land;
- planting trees.”⁹⁹

⁹¹ E. Namubiru-Mwaura et al., *USAID Land Policy and Institutional Support (LPIS) Project: Customary Land Tenure in Liberia: Findings and Implications drawn from I I Case Studies* [hereinafter USAID LPIS I I Clan Study], (USAID 2012), at xiv.

⁹² *Id.*

⁹³ *Id.* at xvii.

⁹⁴ *Id.* at xiv.

⁹⁵ *Id.*

⁹⁶ See J. Carter. “Report – track changes.” Received by Jennifer Duncan and My-Lan Dodd, Nov. 11, 2017, on file with Landesa.

⁹⁷ E. Namubiru-Mwaura et al., USAID LPIS I I Clan Study, at xiv-xv.

⁹⁸ *Id.* at xv.

⁹⁹ *Id.* at xiv.

Women access and gain rights to land through family membership (e.g., being a daughter or sister within a family), inheritance from a woman's natal family, gifts from parents, and marriage. Moreover, for women, marriage—as regulated by customary traditions—is a primary means of land access. Less common is for women to access land through planting life trees.¹⁰⁰

Research from the I I clans found several sources of tenure security which included ancestral links to the land, deeds, TCs, and scant resource competition (at least in some clans). Sources of tenure insecurity, meanwhile, included improper customary land transfers to elites; inadequate documentation of land claims, uncertainty around who holds the rights to private deeded land, lack of community consultations when granting to outsiders (including to the concessionaires). Other sources of tenure insecurity include government acquisition of customary land and the historical practice of government claiming undocumented land, potential claims asserted by descendants of TCs and deeds that remove land from customary tenure, unclear and unsettled land boundaries, and the possibility that land borrowers may make permanent land claims through planting life trees. The study found that one particular source of land tenure insecurity for women was their “tenuous rights to land in their husband's community or lesser access and control rights over land as compared to men more generally.”¹⁰¹

LGSA WOMEN'S LAND RIGHTS FIELD RESEARCH

In 2017, USAID LGSA conducted Rapid Rural Appraisal research on land tenure in five communities in three counties, focusing on issues related to women's land tenure. Land rights in the communities visited take four primary forms: customary lands, land held under Tribal Certificates, private land, and public land. Land under each form of tenure is acquired, managed, and transacted in different ways.

TRADITIONAL/ CUSTOMARY LANDS (QUARTERS)

Most land in the rural areas visited is held within the customary system. Though slight variations on customary tenure norms may exist among the different communities, the general tenets of this system, as discussed below, seemed to hold true across the researched areas.

A hierarchical system of chiefs and elders governs land decision-making among communities in the focus areas. Chiefs and elders exist at each level of the administrative/customary hierarchy: from the quarter level (local level, comprising a group of families with shared customs), to the town level (includes several quarters), to the clan level (includes several towns and communities), to the paramount chief, who reports to the District Commissioner, who in turn reports to the County Superintendent. Chiefs hold administrative positions,¹⁰² whereas the elders who advise the chiefs do not hold official administrative positions, and are chosen from within the customary system. The degree of influence chiefs have varies; in some instances they enjoy little to no influence while in other instances they are the authority with power to allocate the land (as reported by one expert).¹⁰³

Under the customary system, chiefs and elders allocate land within their communities. This is usually done at the quarter level. A male member of the quarter in need of land simply discusses these needs with the chief and his elders, pays a nominal fee, and is allocated a portion of brush land commensurate with his need and ability to clear and productively use the land. Female members may also be allocated

¹⁰⁰ *Id.* at xv.

¹⁰¹ *Id.* at xx-xxi.

¹⁰² Under the Constitution (art. 56(b)), the positions of Paramount, Clan and Town Chiefs must be filled through election by registered voters. They serve for a six-year term and may be re-elected. However, local elections have yet to take place in Liberia. Chiefs are appointed by the President.

¹⁰³ J. Carter. “Report – track changes.” Received by Jennifer Duncan and My-Lan Dodd, Nov. 11, 2017, on file with Landesa.

land to make their own farms. According to participants, decisions about land allocations are made “in the bush, not in the town,” meaning that male secret societies (traditional groups governing cultural norms and traditions) rather than formal administrative institutions, largely control land allocations and governance in customary communities. In the research areas, the land is held in long-term use rights rather than formal legal ownership, as it is technically owned by the state, and is also considered to ultimately belong within the customary system to a greater tribal or clan group. Rights to land granted to men in the clan or family appear to be long-term and secure vis-à-vis other clan or family members. Some communities allow for transfer of land, others do not. Within Pleebo, for example, those in Gbolobo Town said that land could not be transferred (when it was held by households prior to the concession agreements that currently control the land), but that nearby communities did allow for transfer among individuals.

Rights to customary land are passed down through patrilineages, and there is a very strong value on keeping family land intact for future generations.

Women access customary lands through their male relatives, usually via fathers (before marriage) or husbands. Women do not approach chiefs directly for land, though the team heard of one instance where a group of women successfully requested some land to farm collectively. Widows may request land to farm, but go to the chief accompanied by a male relative. One official in Harper said that women were allowed land to farm within their quarter in Maryland County; so long as a woman stayed within her quarter, she could just find a good spot and start farming, without any additional permission. This perspective was not corroborated through other responses by participants in the communities visited (or in Harper).

Male strangers (those migrating into an area for long-term or permanent residence) may request land from the chief and elders. They are not generally required to pay any substantial fee, but the expectation is that they will seek to learn and fit in with the local customs, abstaining from impolite behavior or social transgressions. Strangers may also acquire land through marrying a local woman (which is especially true for Mandingoes).¹⁰⁴ In most cases strangers are not allowed to plant “life trees” on any allocated land, as these are considered to bestow long-term, ownership-like rights. However, the Town Chief in Nimba stated that once a stranger made a social contract with the community (through adhering to the rules and practices of the male secret society),¹⁰⁵ he would be allowed to use the land allocated to him in the same ways as would other community members. In Grand Bassa, an official from the Ministry of Gender, Children and Social Protection told the team of a case where four young people—two women and two men—approached a chief for land and were granted it without consideration as to gender. A male friend from the host community accompanied them to make their request. The team did not hear of any other incidences where customary authorities granted land to female strangers (outside of a marriage context), nor did the team hear of any instances where women migrated into an area without being accompanied by men.

TRIBAL CERTIFICATES

Tribal Certificates (TCs) flow from customary land allocations. Over the past fifty years, TCs have been the way that much customary land within the three counties visited has been transferred into privately

¹⁰⁴ *Id.*

¹⁰⁵ In Liberia there are secret societies or sodalities for men and women such as Poro and Sande. The Poro and Sande are responsible for initiating young men and women into society, and regulating their behavior from a social, sexual, and political perspective. Since members have a “certain knowledge that can be revealed only to initiated members,” they are considered secret. Lavenda, Robert H. & Schultz, Emily A. 2007, ‘Secret Societies in Western Africa’, *Anthropology: What Does It Mean to Be Human?* Poro and Sande are not universal in Liberia. Rather they are prevalent and strongest in western and central Liberia. In southeast, a different set of societies exist. J. Carter. “Report – track changes.” Received by Jennifer Duncan and My-Lan Dodd, Nov. 11, 2017, on file with Landesa.

held rights when finalized (or rights considered similar to or the same as private ownership even though legally they remain customary or public land).¹⁰⁶ TCs are subject to multiple bureaucratic approvals, including those by the Paramount Chief, District Commissioner, and County Superintendent, and must (at least by law) be transformed into deeds through a complex and costly process, which includes obtaining a land survey. One county official stated that a TC lasts for 90 days after its issuance, and can be renewed. According to an expert, legal review had not established a 90 day limit to a TCs' validity, although the strongest argument has been for a seven year limit.¹⁰⁷

Participants held a range of views regarding the rights that TCs actually grant to their holders. In most areas they were seen as granting a more formalized right to the customary land, akin to private ownership. Many people—both officials and other participants—noted that most people with TCs had not completed requirements for bureaucratic approvals, surveying, and filing, and so did not have clear formalized rights to the land (in the form of a deed). Officials in Nimba noted that the bureaucratic requirements for transferring a TC into a deed were time consuming and cost intensive, making it difficult for people within customary communities to complete the process. Officials interviewed in Harper, Ganta, and Zolowee noted that many people who received TCs in the 1960s through 1980s had never been able to obtain the formal approval of the District Commissioner, and so were not able to transfer their TCs into deeds. Participants were vague about the amount of land held in TCs. Some TCs were held by individuals, others by extended families or communities. Some participants (mostly women) had never heard of TCs.

Overall, there seemed to be a fair amount of confusion among farmers and local level officials about TCs and the rights they convey. For example, participants in Gbolobo Town reported that land is held under one single Tribal Certificate, signed by the elders. (The land is now held under concession agreement granted by the government, and is not under the control of community members.) But some people within Gbolobo did report having individual TCs, or knowing people who did. One man in Gbolobo said that he requested land to clear from the chief and elders, and then proceeded to go to the town-level chief and elders for the TC. Participants said that you needed to pay a “small” price, like a cow or \$30, for a TC in the 1950s-70s, and that this price could have been one factor deterring more people from getting them. In Ganta, participants distinguished between land held in TCs and “quarter land” within the customary system, saying that people who lived in quarters rarely held TCs. In most places it appears that those holding TCs, whether or not they were transferred into a deed, could transfer that land through sale or lease as if they held it in private ownership—although those TCs which were never finalized remained customary (or public) land.

The team heard of very few (1-2) cases of women signing TCs or holding them in their own name, as women “marry out” and are therefore generally not allocated land under the customary system (for further discussion, please see the section below under “Marriage”). In Nimba, for example, FGD participants said that no women had signed TCs, but that they could have obtained them with their husbands. The bureaucratic and cost requirements for finalizing a TC (turning it into a deed) may have been particularly obstructive to women.

PRIVATE LAND

In urban areas, both men and women are able to buy, sell, and lease land in law and practice, although women were more likely to encounter social-cultural obstacles. According to participants, Americo-

¹⁰⁶ The President issued an Executive Order in 2013 calling for a moratorium on public land sales and transactions (including issuance of TCs), and extended the moratorium in an Executive Order issued in January, 2015. In issuing the moratorium, the President's office cited issues of unequal access to land, insecurity of tenure and erosion of the rule of law. Liberia: President Sirleaf Issues Executive Order No. 67 Extending the Moratorium on Public Land Sales. AllAfrica.com. Jan. 16, 2015, <http://allafrica.com/stories/201501191192.html>.

¹⁰⁷ J. Carter. “Report – track changes.” Received by Jennifer Duncan and My-Lan Dodd, Nov. 11, 2017, on file with Landesa.

Liberian women have owned private land in the coastal regions since early in the republic’s history, and now more women are beginning to buy more land in urban hubs in the interior. In Harper, for example, officials reported that women can do this “on par” with men. In Gbolobo, one woman said that she had bought a piece of urban land in her name, because she had received advice at a workshop that this would provide extra security for her children. This was the exception, however. Survey and registration costs impede some from purchasing private land; the county Land Commissioner estimated average survey costs for an urban plot in Harper Town to be \$150 USD. Customary barriers may still impede women from purchasing or renting urban land, as well. In Ganta, members of the FGD reported that women are buying land and housing more often in Ganta than they were in the past, but that women should be accompanied by male relatives, because the community might otherwise think she was using the house for some improper reason, such as prostitution.

Participants in some areas, like Harper, noted a historical divide between those who acquired private land—nearly all Americo-Liberians—and those who did not—mostly indigenous peoples. The indigenous people more often worked on the land of the Americo-Liberians. Officials in Harper said that Americo-Liberians secured legal title to much of the land in the interior of Maryland. In general, however, participants reported that individual Americo-Liberians were more likely to buy land in the coastal areas, rather than the interior. Among Americo-Liberians, it has not been uncommon for wealthy women to own vast and valuable tracts of land, usually through inheritance from their husbands or fathers.

PUBLIC LAND/ CONCESSIONS

Because customary lands have historically been considered a subset of the public domain, the government was able to make concessions agreements regardless of the communities that had traditionally occupied or used the land. In these cases, communities lost either partial or full rights and access to the land, which is now under the management and use of large scale companies, in leases for upward of 25 years, with some lasting up to 99 years. Some concession agreements granted a “reserve” area for local farmers to share for small-scale production, although in some cases these reserves were not provided. The companies provided some level of compensation to some community members for the loss of their family’s land, but this usually went to the male heads of households, and often did not take into account the full loss of the land value. When the team introduced the LRB to the focus groups in concessions-affected areas, a common response was that the Bill would not be useful to the people in the community, because their land was already contracted out to a company for many years to come by the Government of Liberia (GoL), so it would be generations from now before communities were able to realize their full ownership rights to the customary land. Please see section F “Concessions” for further information.

CONCLUSION

Communities face land tenure insecurity, especially as it relates to community-occupied public lands, lands impacted by concessions, and land held under tribal certificates. Tenure insecurity on community lands impacts both women and men. Rural women heavily depend on accessing and using community land for their housing, livelihoods, and well-being. However, they face gender-related discrimination and barriers, not experienced by men, which make their land and property in land insecure, particularly in customary settings. To address these tenure insecurity issues, it is critical to pass a version of the LRB (and implementing regulations) that reflects the LRP in its robust recognition of customary land rights and women’s land rights.

B. MARRIAGE/DE FACTO UNIONS

MARRIAGE/DE FACTO UNIONS: BASIC LEGAL FRAMEWORK

The formal legal framework regulates statutory, presumptive, and customary marriage in Liberia. It consists of constitutional provisions, statutes, regulations, and common law.

The Constitution, in Article 11, provides that “[a]ll persons are equal before the law and are therefore entitled to the equal protection of the law.”¹⁰⁸ Article 23 establishes the marital property regime as a separate property regime, and mandates the Legislature to enact laws governing inheritance for spouses of statutory and customary marriages to adequately protect surviving spouses and children.¹⁰⁹

Civil law marriages are regulated by the DRL, which regulates domestic relations between husband and wife (and every domestic relation) “except . . . Parties whose domestic relations are subject to and governed by customary laws and traditions.”¹¹⁰ The DRL in Section 2.1 defines marriage as a civil status arising out of a civil contract between a man and a woman with attendant marital rights and duties; Section 2.3 prohibits polygamy.¹¹¹ Statutory marriage legal formalities around registration are handled by the Center for National Documents and Records Agency (CNDRA).

The Civil Procedure Law (1973) also recognizes presumptive marriage in Section 25.3(3). By law, “[p]ersons who live together as husband and wife and hold themselves out as such are presumed to be married.”¹¹²

Customary marriages (and divorces) are managed by the Ministry of Internal Affairs.¹¹³ The ERCM Law legally recognized customary marriages, including polygamous marriages, for the first time. Its preamble acknowledges the constitutional guarantee to protect all persons equally before the law in the context where extent law considered the wife to be the chattel of her husband. The Supreme Court, in *Whisnant vs. Whisnant* elaborated, saying that the ERCM Law “was promulgated to eliminate certain traditional practices meted against female spouses and ensure property rights of widows under customary marriage.”¹¹⁴

In addition to the ERCM Law, some aspects of customary marriages are also regulated by Article 55 of the Rules and Regulations Governing the Hinterland (1949, re-promulgated 2001).¹¹⁵ However, some of these regulations have been prohibited by the ERCM Law. Further, some regulations in the Rules and Regulations Governing the Hinterland re-promulgated in 2001 arguably may be outside the Ministry of Internal Affairs’ authority (to promulgate regulations for local governance under the Executive Law and the Local Government Law).¹¹⁶ In either case, experts note that the Rules and Regulations Governing the Hinterland are widely recognized and observed by government officials and local people throughout customary areas in Liberia.¹¹⁷

¹⁰⁸ Const. art. 11(c).

¹⁰⁹ *Id.* at art. 23 (a) & (b), respectively.

¹¹⁰ An Act Adopting a New Domestic Relations Law [hereinafter DRL] (1973), Title 9 of the Liberian Code of Laws Revised, § 1.1.

¹¹¹ *Id.* at § 2.1 & 2.3, respectively.

¹¹² Liberia Revised Civil Procedure Law (1972), § 25.3(3).

¹¹³ Rules and Regulations Governing the Hinterland of Liberia, Ministry of Internal Affairs, (1949, re-promulgated 2001), art. 55; GoL, Ministry of Internal Affairs, Department of Administration, <http://www.mia.gov.lr/2content.php?sub=180&related=1&third=180&pg=sp> (accessed Dec. 5, 2017).

¹¹⁴ *Whisnant vs. Whisnant*, LRSC 43 (2015).

¹¹⁵ Rules and Regulations Governing the Hinterland of Liberia, Ministry of Internal Affairs, (1949, re-promulgated 2001), art. 55

¹¹⁶ See, J. Bruce, *A Strategy for Further Reform of Liberia’s Law on Land, Liberia Land Governance Support Activity (2016)*, at 63-64.

¹¹⁷ *Id.*; see also J. Carter. “Report – track changes.” Received by Jennifer Duncan and My-Lan Dodd, Nov. 11, 2017, on file with Landesa.

A more detailed summary of the key components of the civil law framework regulating marriage is provided below (see Box 6).

Box 6. Key components of the legal framework regulating marriage		
<p>Constitution:</p> <ul style="list-style-type: none"> • Article 11: “All persons are equal before the law and are therefore entitled to the equal protection of the law.” • Article 23(a): “The property which a person possesses at the time of marriage or which may afterwards be acquired as a result of one's own labors shall not be held for or otherwise applied to the liquidation of the debts or other obligations of the spouse, whether contracted before or after marriage; nor shall the property which by law is to be secured to a man or a woman be alienated or be controlled by that person's spouse save by free and voluntary consent.” • Article 23(b): “The Legislature shall enact laws to govern the devolution of estates and establish rights of inheritance and descent for spouses of both statutory and customary marriages so as to give adequate protection to surviving spouses and children of such marriages.” 		
<p>Civil Law Marriages</p> <p>Domestic Relations Law (1973)</p> <ul style="list-style-type: none"> • “<i>Marriage is a civil status, a personal relationship arising out of a civil contract between a male and female to mutually assume marital rights, duties and obligations, to which the consent of parties capable of making such a contract is essential; provided further that such marriage is not prohibited by the provisions of sections 2.2(3) and 2.3</i>” (DRL § 2.1). • Prohibits polygamy. No marriage between persons “whom has a spouse still living” (DRL § 2.3). <p><i>C. Horton vs. R. Horton</i>, 14 LLR 57 (1960)</p> <ul style="list-style-type: none"> • The Supreme Court has “authoritatively defined [marriage] as follows: ‘Marriage, in our law . . . is the civil status of one man and one woman united in law for life, for the discharge to each other and the community of the duties legally incumbent on those whose association is formed on the distinction of sex.’” 	<p>Presumptive Marriages</p> <p>Civil Procedure Law (1972)</p> <ul style="list-style-type: none"> • “Persons who live together as husband and wife and hold themselves out as such are presumed to be married” (§ 25.3(3)). <p><i>Cooper vs. Cooper</i>, 2 LLR 30 (1909)</p> <ul style="list-style-type: none"> • The Supreme Court stated that “[t]he presumption of marriage between the parties, this court considers absolute and irrefutable. For it is clear according to the records, that, the parties have lived together as man and wife.” 	<p>Customary Marriages</p> <p>Equal Rights of the Customary Marriage Law (1998, approved 2003)</p> <ul style="list-style-type: none"> • “‘Customary marriage’ means marriage between a man and woman performed according to the tribal tradition of their locality” (ERCM Law § 1(a)). • Customary marriage includes polygamous marriages. “All customary marriages shall be legal . . . and the rights, duties and liabilities of the statutory wife shall likewise be accorded to all customary wives” (ERCM Law § 2.1). <p>Rules and Regulations Governing the Hinterland (1949, re-promulgated 2001)</p> <ul style="list-style-type: none"> • Governs marital cases according to a list of regulations (some of which have been prohibited by the ERCM Law) (art. 55). • “Union irregularly established carry o [sic] no right to either unless such rights are eventually arranged in accordance with tribal custom” (art. 55(f)). <p><i>Newindeh vs. Kromah</i> LRSC 28 (1973)</p> <ul style="list-style-type: none"> • The Supreme Court noted that dowry “is a prerequisite of a valid marriage under customary native law.”

MARRIAGE REQUIREMENTS BY TYPE OF MARRIAGE

Each type of legally recognized marriage has its own requirements. For civil marriages, the female marriage age is 18, the male marriage age is 21, and consent is required.¹¹⁸ Civil marriages require the issuance of a marriage license (by the Registrars of Marriage under the amended Executive Law) and solemnization.¹¹⁹

For presumptive marriage, the couple must “live together as husband and wife” and also “hold themselves out as such.”¹²⁰ No other legal guidance is provided, including no guidance as to the amount of time the couple must cohabit in order to be considered presumptively married.

For customary marriages, the man and woman must be married “according to the tribal tradition of their locality,” according to the ERCM Law, which defines “tradition” as “those values, norms and customs which a tribe of a locality has practiced over the ages and is considered their way of live [sic].”¹²¹ It further prescribes that it is unlawful for any customary female under the age of 16 to be given in customary marriage to a man,¹²² which presumably takes precedent over the Rules and Regulations Governing the Hinterland, which stipulates that it is “unlawful to pay dowry for a girl” under 15 years of age (and makes such marriage voidable).¹²³ While the ERCM Law does not define the legal amount of dowry, the Rules and Regulations Governing the Hinterland stipulates that “legal dowry for a woman shall in no case exceed forty dollars.”¹²⁴ However for a virgin, dowry is \$48, if all parties agree.¹²⁵ It further stipulates the “[d]owry shall be paid only to the parents” (barring exceptional cases).¹²⁶ In *Newindeh vs. Kromah*, the Supreme Court noted that dowry “is a prerequisite of a valid marriage under customary native law.”¹²⁷ It further found that a zinc house built by the man at a cost of \$850 and three years of service rendered to the women’s parents “did not constitute or were ever understood to be substitutes for dowry.”¹²⁸ Because of a lack of dowry, there “was no legal union.”¹²⁹

Box 7. Unmet customary marriage requirements

According to the Rules and Regulations Governing the Hinterland, a “union irregularly established” accords no rights.¹³⁰ The exception to the rule is that rights may be established if they “are eventually arranged in accordance with tribal custom.”¹³¹ In irregularly established unions, the mother retains custody over the children—unless the mother and her family determines otherwise.¹³²

¹¹⁸ DRL § 2.2.

¹¹⁹ *Id.* at § 2.3.

¹²⁰ Civil Procedure Law § 25.3(3).

¹²¹ ERCM Law § 1(a) & (b), respectively.

¹²² *Id.* at § 2(9).

¹²³ Rules and Regulations Governing the Hinterland of Liberia, Ministry of Internal Affairs, (1949, re-promulgated 2001), art. 55(g).

¹²⁴ *Id.* at art. 55(i).

¹²⁵ *Id.* at art. 55(p).

¹²⁶ *Id.* at art. 55(b).

¹²⁷ *Newindeh v. Kromah*, LRSC 28; 22 LLR 3 (1973).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Rules and Regulations Governing the Hinterland of Liberia, Ministry of Internal Affairs, (1949, re-promulgated 2001), art. 55(f).

¹³¹ *Id.*

¹³² *Id.*

PROPERTY REGIME APPLYING TO LEGALLY RECOGNIZED SPOUSES

Civil marriages and statutorily recognized customary marriages provide for separate property regimes. For civil marriage contexts, the original owner administers property under the DRL.¹³³ Specifically, the DRL Section 3(4) explicitly provides that real and personal property owned by the women at the time of marriage or after (and the ensuring rents, issues, proceeds, and profits) “shall continue to be her sole and separate property as if she were married and shall not be subject to her husband’s control or disposal nor liable for his debts.”¹³⁴ With respect to this property:

[a] married woman has all the rights in respect to property, real or personal, and the acquisition, use, enjoyment and disposition thereof, and to make contracts in respect thereto with any person, including her husband, and to carry on any business, trade or occupation, and to exercise all powers and enjoy all rights in respect thereto and in respect to her contracts, and be liable on such contracts, as if she were unmarried.¹³⁵

In *Barclay vs. Digen* (1999), the Supreme Court held that “it is lawful for a spouse to purchase, alienate and control property during the existence or life of a marriage.”¹³⁶ Further, a married woman has capacity to buy real property in her maiden name prior to the dissolution of the marriage.¹³⁷ That property secured by a man or woman shall not “be alienated or be controlled by that person’s spouse save by free and voluntary consent;” however, “[t]his constitutional right to [exclusively] control and alienate property . . . does not bar or prevent the relinquishment of control by one spouse to the other.”¹³⁸

Under the DRL, “[s]pouses may convey or transfer real or personal property directly, the one to the other, without the intervention of a third person;” and furthermore, “may make partition or division of any real property held by them as tenants in common, joint tenants or tenants by the entireties provided that in the case of tenants by the entireties partition may only be maintained when both parties consent . . .”¹³⁹

¹³³ Women, Business and the Law: Liberia, (The World Bank 2016), http://wbl.worldbank.org/data/exploreconomies/liberia/2015#wbl_ui.

¹³⁴ DRL § 3.4(1).

¹³⁵ *Id.* at § 3.4(2).

¹³⁶ *Barclay vs. Digen*, LRSC 43; 39 LLR 774 (1999). See also R. Jappah et al., USAID LPIS WLR Study.

¹³⁷ *Barclay vs. Digen*, LRSC 43; 39 LLR 774 (1999).

¹³⁸ *Id.*

¹³⁹ DRL § 3.3.

Box 8. Co-ownership Arrangements in Common Law: Tenancy in Common, Joint Tenancy, and Tenancy by the Entirety

In 1975, in *In re Estate of Whisnant*, the Supreme Court stated that “tenants in common are owners of undivided shares so that when one dies his share passes to his heirs or devisees. The essential unity which characterizes tenancy in common is that of possession or the right to possession of the common property; if said unity exists there is tenancy in common irrespective of other unities.”¹⁴⁰

In 2012, in *Sarnor vs. Leigh-Sherman*, the Supreme Court explained a key difference between a tenancy in common and joint tenancy: tenancy in common has no right of survivorship whereas joint tenancy does.¹⁴¹ It pointed to *Hill vs. Parker*, as the case where the Court adopted the following common law definition of joint tenancy:

To create a joint tenancy, there must co-exist four unities: (1) unity of interest; (2) unity of title; (3) unity of time; (4) unity of possession; that is, each of the owners must have one and the same interest, conveyed by the same act or instrument, to vest at one and same time, except in cases of uses and executor devises; and each must have the entire possession of every parcel of the property held in joint tenancy as well of the whole.¹⁴²

Also, in *Sarnor vs. Leigh-Sherman*, the Supreme Court provided a definition of tenancy in the entirety. Namely, it “refers to a joint tenancy between a husband and wife, or one created by marriage.”¹⁴³ Further, in cases where “the conveyance is made to a man and woman in their two names while they are husband and wife, as in the case at bar, a tenancy of the entirety is created.”¹⁴⁴ This Court pointed to *In re The Estate of Lloyd K. Whisnant* as the case where the following common law principle was adopted:

An estate by the entireties is the estate created at common law by a conveyance or devise of property to husband and wife. Under such a conveyance or devise, the husband and wife, by reason of their legal unity by marriage, take the whole estate as a single person with the right of survivorship as an incident, so that if one dies the entire estate belongs to the other by virtue of the title originally vested. The estate conveyed, whether for life or for years, is held by them as a whole and not by moieties -per tout and not per my- with unities of time, title, interest, and possession. Except as the time of the estate may be limited by the instrument creating it, it is held by husband and wife together so long as both live, unless the marriage relation is dissolved by judicial decree.¹⁴⁵

For presumptive marriages, the Civil Procedure Law and the DRL are silent on the implications of this type of marriage on the man’s and the woman’s legal rights to property.

For customary marriage contexts, the ERCM Law, in Section 2.6, provides that a wife’s property is “exclusively her own.”¹⁴⁶ Specifically, a customary woman who acquires or owns property (before or during her marriage) owns it independently from her husband; “she is therefore free to do any lawful business in her own name, including the right to contract with third parties but to the full knowledge and consent of her husband.”¹⁴⁷ In the event that any customary husband “shall control, or attempts to

¹⁴⁰ *In re Estate of Whisnant*, 24 LLR 298 (1975).

¹⁴¹ *Sarnor vs. Leigh-Sherman*, LRSC 8 (2012).

¹⁴² *Id.*, citing *Hill vs. Parker*, 13 LLR 556 (1960).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*, citing *In re The Estate of Lloyd K. Whisnant*, 24 LLR 298 (1975).

¹⁴⁶ ERCM Law § 2.6.

¹⁴⁷ *Id.* at § 2.6(a).

control his wife's property, or prevents her from operating her lawful business has committed a felony of the second degree . . . ”¹⁴⁸

In addition to customary women’s rights to separately own property, the ERCM Law extends to customary spousal property rights protections enjoyed by civil spouses under the DRL and the DEL. It also reverses a prior Supreme Court decision which ruled that a customary wife cannot own property.¹⁴⁹ Specifically, the Supreme Court had ruled that customary marriage did not confer a wife with a right to dower in the property of the deceased husband.¹⁵⁰ Furthermore, the Supreme Court had considered a “native woman” to be “part and parcel of the man’s estate, and hence she cannot, under the law, claim any portion of her husband’s estate.”¹⁵¹ However, the ERCM Law overruled these common law holdings, specifically providing for customary wives a legal interest to an inchoate dower of one-third of her husband’s property immediately upon marriage—regardless of her role (or lack thereof) in acquiring the property.¹⁵²

PROPERTY UPON DISSOLUTION OF MARRIAGE DUE TO DIVORCE

Dissolution of marriage can affect the property rights of the spouses. This section discusses dissolution of marriage due to divorce. The discussion covering dissolution due to death is found in the subsequent section on Inheritance.

The Supreme Court, in *Ireland vs. Ireland* (1983), explained “the contract of marriage not only enjoys the blessings of the contracting parties but also those of the State” which “is always an interested third party.”¹⁵³ As such, “marriage contracts must be taken very seriously by the parties concerned, as the foundation of any nation rests on stable family units which in turn rest on solid marriage commitments.”¹⁵⁴ Therefore, the DRL only “allows a divorce at the instance of either the husband or the wife, for solid legal grounds . . . ”¹⁵⁵ Specifically, the DRL provides four grounds for divorce: cruel and inhuman treatment, desertion of the plaintiff for one or more years, an act of adultery, or “incompatibility of temper . . . so extremely quarrelsome and intolerably pugnacious” as to make the defendant a danger to the plaintiff.¹⁵⁶

In civil marriages, the DRL entitles a wife who prevails in an action to obtain a divorce to a final judgement of at least one-fifth and up to one-third of the defendant husband’s real property for life; the same range applies for the husband’s personal property.¹⁵⁷ According to the Supreme Court, upon an absolute divorce, a “tenancy by the entirety is automatically converted to a tenancy in common,” with

¹⁴⁸ *Id.* at § 2.6(b).

¹⁴⁹ R. Jappah et al., *USAID LPIS WLR Study*, at 7, citing *Harmon vs. Draper* 15 LLR 272 (1963); see also *Jartu vs. The Estate of Famble Konneh*, 10 LLR 318 (1950).

¹⁵⁰ *Harmon vs. Draper* 15 LLR 272 (1963), also citing *Jartu vs. The Estate of Famble Konneh*, 10 LLR 318 (1950) (summarizing its holding “that there is no provision in our law which authorizes a woman married by native customary law to be entitled to the dower of her husband’s estate”).

¹⁵¹ *Harmon vs. Draper* 15 LLR 272 (1963).

¹⁵² ERCM Law § 2.3: “Immediately upon marriage, the customary wife shall be entitled to one-third of her husband’s property personal or real and vice versa regardless of whether or not he/she helped him/her to acquire said property.”

¹⁵³ *Ireland vs. Ireland*, LRSC 73; 31 LLR 249 (1983).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ DRL § 8.1.

¹⁵⁷ *Id.* at § 8.7.

no right of survivorship, as was held in *In re The Estate of Lloyd K. Whisnant*.¹⁵⁸ The Supreme Court “fully adhere[d] to the general rule” that “such divorce destroys the unity of the spouses and consequently destroys the unity of seisin in estates by the entirety.”¹⁵⁹ In this case, the former wife’s tenancy by entireties shared with her former husband converted to a tenancy in common upon divorce, entitling the former wife to one-half of the property—not to the whole property.¹⁶⁰

In customary marriages, the ERCM Law is largely silent on divorce. The Rules and Regulations Governing the Hinterland, in Article 55, lists several provisions related to dissolution of marriage. In the case where a husband who is “an unmarried civilized man” enters a customary marriage, and the woman subsequently seeks to dissolve the union, “dowry must be refunded.”¹⁶¹ Further, “if a woman declares her resolve not to continue living with her husband, the husband may appeal to her parents for a refund of dowry.”¹⁶² If a customary wife “deserts, abandons, and leaves” her husband “without being able to show any cause of cruelty,” the customary wife and/or her parents owes \$40 to be paid prior to the dissolution and also owes \$100 in damages.¹⁶³ However, the ERCM Law (approved two years after the re-promulgation of the Rules and Regulations Governing the Hinterland) prohibits the recovery of dowry (from the wife or her parents) by the husband (under section 2.2); and any husband who “collects or attempts to collect dowry from his wife or her parent by use of force, directly or indirectly, has committed a felony of the first degree . . .”¹⁶⁴

LEGAL ANALYSIS

Various issues pertaining to Liberia’s formal legal structure (as outlined in the Overview of Women’s Land Rights) can be identified within Liberia’s marriage laws. Identified below are two key issues related to the legal recognition of various types of marriage, and its implication for women’s land rights.

The first issue relates to the shortcomings in extending the same rights to both customary and statutory marriages. Specifically, the property rights and protections afforded to women married under custom have in effect only applied on privately held land. Regrettably, they do not cover the majority of Liberian women who live on customary land tenure.

The second issue is that Liberian law does not adequately cover women in presumptive marriages and does not cover de facto unions—which comprise the largest and growing number of family unions in Liberia (see Marriage/ De Facto Unions: In Practice section for statistics). With regard to presumptive marriages, Jappah et al. explain that:

[A]t present there is no clear legal guidance on the property rights that arise in such relationships. While these relationships may be governed by the legal *presumption of marriage*, this provision is not widely known (even among many women’s rights advocates) and is rarely applied in practice. Moreover, it is not clear what elements must be proved for the presumption to apply, nor is it clear whether the presumption establishes a civil or a customary marriage.¹⁶⁵

¹⁵⁸ *In re The Estate of Lloyd K. Whisnant*, 24 LLR 298 (1975).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Rules and Regulations Governing the Hinterland of Liberia, Ministry of Internal Affairs (1949, re-promulgated 2001), art. 55(c).

¹⁶² *Id.* at art. 55(h).

¹⁶³ *Id.* at art. 55(m).

¹⁶⁴ ERCM Law § 2.2.

¹⁶⁵ R. Jappah et al., USAID LPIS WLR Study, at 11.

As such, formal law fails to provide security of property for women living under customary tenure rights in presumptive marriages and de facto unions.

MARRIAGE REQUIREMENTS BY TYPE OF MARRIAGE

Another category of issues relates to marriage requirements. A key concern is marriageable age. There is a contradiction in regard to age of marriage under civil marriage law. The law provides a different age for boys and girls, ages 21 and 18, respectively. Additionally, the law provides for different marriage ages for girls under civil marriage and girls under customary marriage, ages 18 and 16, respectively. Furthermore, while the ERCM Law stipulates the minimum marriage age for girls, it provides no minimum age for boys. As such, the law discriminates against boys by protecting girls but not boys from marrying at an age of minority in customary settings.

Box 9. Rationales for harmonizing marriageable ages of girls and boys

Irrespective of the rationale behind adopting a different age for customary marriage and statutory marriage, the law must protect all Liberian women equally under the Constitution.¹⁶⁶ The rationale behind majority age for boys should also apply in similar manner if women are to compete in the development arena, including asserting their land and property rights.

While adopting a lower marriage age might be to recognize the wife's contribution to the family, it might also or alternatively reinforce the stereotype that women depend on men as bread winners and protectors, which is one of the major factors that subject women to men's control. If a lower marriage age is adopted, it should serve as an exception to the law and subject to approval by an authority, advisably, at a decentralized level.

Finally, the law should equally protect its citizens. Deeper analysis of the law indicates that women under customary law are not equally protected as women under civil law when it allows marriage at age 16, which is considered a minor age in all other matters. For example, at age 16 a married woman's rights to writing a will or carrying on other transactions permitted to persons of majority age is impeded. It also contradicts the Children's Law, 2011, which prohibits marriage under the age of 18.¹⁶⁷

In order to protect young women in marriage under majority age, the law should emancipate such persons to all other benefits that accrue to married couples of majority age. Considering that in most cases it is women who marry under majority age and who are more likely to be the one to lose rights.

Another concern is proof of the marriage. For civil marriage, marriage is proved by a certificate. For customary marriage, the ERCM Law statutorily recognizes the marriage by operation of law so long as it is "performed according to the tribal tradition of the [] locality of the man and woman."¹⁶⁸ The Ministry of Internal Affairs now issues marriage certificates (and divorce decrees) for those appearing before it.¹⁶⁹ However, in the absence of a customary marriage certificate, there may be confusion, which is likely to affect women more than men when things go wrong, either between the wife and the husband or with in-laws (when the husband dies) and the wife(s) has to prove marital status.

¹⁶⁶ Const. art. 11(c).

¹⁶⁷ Children's Law, art 4.4 (a & b).

¹⁶⁸ ERCM Law § 1(a).

¹⁶⁹ GoL, Ministry of Internal Affairs, Department of Administration; GoL, Initial Report to the International Covenant on Civil and Political Rights, National Human Rights Action Plan Steering Committee (Monrovia: 2016), at para. 156; R. Jappah. "[T]ech[nical] [R]eview." Received by My-Lan Dodd, Nov. 7, 2017.

PROPERTY REGIME APPLYING TO LEGALLY RECOGNIZED SPOUSES

Another category of issues relates to the formal legal structures regulating property rights amongst spouses. Marital property regimes are important elements of marriage because they impact women's land and property rights, including ownership, control, and use of property. Marital property regimes also determine who gets what in case of separation, divorce and death.

One key issue relates to how the marital property regime providing for separation of property (per the Constitution and DRL Section 3(4) and ERCM Law Section 2.3) under-promotes women's land and property rights in customary settings. While the separate property regime enables a woman to benefit from retaining and controlling her personal property and its produce, most women, especially those living in the rural communities, have less direct ownership of property than do men before and/or during marriage. For the majority of women, their contributions to the relationship are limited to non-monetary values such as care of the husband, children and other relatives, and domestic work, including farming the land. Women's separate control over property offers little value to women if women have little to no property. It also limits women's ability to accumulate property over the life of the marriage.

Therefore, many gender and law experts believe that a community property regime more equitably benefits the spouses. Marriage under community property is viewed as a union of partnership and co-dependency where the couples should enjoy equal rights to family property. By operation of the regime, both spouses enjoy ownership over the marital estate in equal shares. Further, joint titling of the property shared by the spouses is presumed, enabling married women to access to a greater pool of titled property.

Consequently, making community property the default marital property regime in the law would yield more rights to rural women and their families, and it would protect these women's property and land rights along with their contributions to the family's wellbeing and development.

Aside from the separate versus community property regime issue, Liberia's marriage law has gaps in the area of joint ownership of matrimonial property. The DRL "does not give any indication as to how joint property arises and is managed within marriage."¹⁷⁰ Common law, however, provides that a joint tenancy is presumed when two or more people acquire property together through an instrument of conveyance without an expressed indication that the property should be divided; and, if such conveyance is made to a married couple in their two names, a tenancy by entirety is created.¹⁷¹ In cases where the property is in one (not both) of the spouse's name, spouses are left to decide whether to convey, or transfer property to each other—without benefiting from clear options or presumptions. To remedy this, the law should clearly provide spouses or spouses-to-be with matrimonial property regimes to choose from, and should set a default that is gender equitable and sufficiently protective. The explicit provision of matrimonial regimes to choose from will increase women's awareness, and will also protect women's property rights as soon as they enter into a marriage. Further, clear provisions on how joint property arises within marriage will facilitate "the systematic documentation of land rights"¹⁷² for women.

¹⁷⁰ UN FAO, Liberia: Women's Property and Use Rights in Personal Law, available at http://www.fao.org/gender-landrights-database/country-profiles/countries-list/national-legal-framework/womens-property-and-use-rights-in-personal-laws/en/?country_iso3=LBR.

¹⁷¹ *Sarnor vs. Leigh-Sherman*, LRSC 8 (2012).

¹⁷² See, UN FAO, Liberia: Women's Property and Use Rights in Personal Law.

PROPERTY UPON DISSOLUTION OF MARRIAGE DUE TO DIVORCE

The DRL requires a husband to support his wife in case of separation and during the divorce process.¹⁷³ It does not mention whether this support is conditional on the woman's inability to support herself. However, the wife's support for her husband is conditional on the husband's inability to support himself.

MARRIAGE/ DE FACTO UNIONS: IN PRACTICE

Liberia is undergoing demographic changes, including as it relates to the institution of marriage. According to the 2007 Liberia Demographic and Health Survey, nearly two-thirds of women (from ages 15-49) were married, or in marriage-like unions, with the breakdown as follows: 42 percent of women were married and 22 percent of women were living with a man.¹⁷⁴ Six years later, the 2013 Liberia Demographic and Health Survey captured an interesting trend: the percentage of women reporting to be married, or in marriage-like unions, dropped from nearly two-thirds to 58 percent.¹⁷⁵ The figures for men, meanwhile, also dropped: for married men or men in marriage-like unions, the percentage was 57 percent in 2007 and 54 percent in 2013.¹⁷⁶

Significantly, there has been a change in trends in terms of the proportion of married women versus women living with men: In 2013, the number of women living informally with a man overtook the number of married women. Specifically, the percentage of women who were married dropped from 42 percent to 28 percent, and the percentage of women living with a man increased from 22 percent to 30 percent.¹⁷⁷

In terms of those never been married, the 2007 Demographic and Health Survey reported 26 percent for women and 38 percent for men while the 2013 survey indicated that these percentages increased from 26 to 31 percent among women, and from 38 to 42.5 percent among men.¹⁷⁸

In terms of polygyny, in the 2007 Survey, 16 percent of women who were married were in such an arrangement (13 percent reporting to have only one co-wife, and 3 percent reporting two or more).¹⁷⁹ Additionally, there were higher rates of polygyny in rural areas as compared to urban areas: the percentage in the South East was between 23 to 24 percent while it was at a low in Monrovia at 6 percent.¹⁸⁰ In the 2013 Survey, the percentage dropped from 16 percent to 13 percent of women who were married and in polygynous arrangements.¹⁸¹ The survey also noted that the portion of women with co-wives was higher for women who were older—it was 19 percent for women age 45-49 and only 6

¹⁷³ DRL §§ 5.3(a), 9.3, & 9.4.

¹⁷⁴ Liberia Institute of Statistics and Geo-Information Services (LISGIS), et al., *Liberia Demographic and Health Survey 2007* [hereinafter *LDH Survey 2007*] (Monrovia, Liberia: LISGIS and Macro International Inc. 2008), available <https://dhsprogram.com/pubs/pdf/fr201/fr201.pdf>, at xxi.

¹⁷⁵ LISGIS, et al., *Liberia Demographic and Health Survey 2013* [hereinafter *LDH Survey 2013*] (Monrovia, Liberia: LISGIS and ICF International 2014), available at <https://dhsprogram.com/pubs/pdf/FR291/FR291.pdf>, at 57.

¹⁷⁶ LISGIS, et al., *LDH Survey 2007*, at xxi; LISGIS, et al., *LDH Survey 2013*, at 57.

¹⁷⁷ LISGIS, et al., *LDH 2007*, at 30; LISGIS, et al., *LDH Survey 2013*, at 58.

¹⁷⁸ *Id.*

¹⁷⁹ Liberia LISGIS et al., *LDH Survey 2007*, at 78.

¹⁸⁰ *Id.*

¹⁸¹ Liberia LISGIS et al., *LDH Survey 2013*, at 58.

percent for women age 15-19.¹⁸² In 2007, polygyny was also more common for women who had lower education levels,¹⁸³ a situation that held in 2013.¹⁸⁴

In terms of marriage dissolution, in the 2007 Survey, women were divorced, separated, or widowed at higher percentages than men—around 10 percent of women as compared to 5 percent of men.¹⁸⁵ In the 2013 Survey, women continued to more likely be divorced, separated, or widowed as compared with men (11 percent for women as compared to 4 percent for men).¹⁸⁶

These statistics and trends around women’s marital status are relevant because they impact women’s security of tenure. In 2016, an LGSA field report on interactive discussions with women in seven communities, spanning six counties, found that marital status (and children and children’s sex among other factors) affects women’s land rights and the security of those rights.¹⁸⁷ For example, in Margibi County, in the Duazon community, the majority of women are not entitled to inherit their deceased husband’s land or property—whether or not they have children. In Grand Kru County, widows are entitled to their husband’s farmland and property only if they have children.¹⁸⁸

The LGSA field report noted that if a woman marries a man from a different community—that is, a stranger, this also affects her land rights as well as the status and land rights of her husband and children. Strangers have different rights to land than community members. Land given to strangers cannot not be sold or transferred. In five counties, Maryland, Grand Kru, Grand Bassa, Margibi, and Lofa, if a woman marries a stranger, she cannot transfer land to her husband or children. (Bomi County was the only exception to this practice.) In Lofa County, in the Zorzor District, if a woman marries a stranger and has children, her children are regarded as strangers.¹⁸⁹

The field report also found that the dissolution of marriage impacts women’s land and housing rights. For example, in Grand Kru County, in the event that a married man decides to separate from his wife, he may keep the house while his wife may retain the cassava farm and a portion of the profits from the rice farm.¹⁹⁰

¹⁸² *Id.*

¹⁸³ Liberia LISGIS et al., LDH Survey 2007, at 78.

¹⁸⁴ Liberia LISGIS et al., LDH Survey 2013, at 58.

¹⁸⁵ Liberia LISGIS et al., LDH 2007, at 30.

¹⁸⁶ Liberia LISGIS et al., LDH Survey 2013, at 58.

¹⁸⁷ I. Nagbe, *Field Report on Interactive Discussion with Rural Women on Women’s Land Rights* (Unpublished: USAID LGSA 2016).

¹⁸⁸ *Id.* at 4-5.

¹⁸⁹ *Id.* at 3 & 5.

¹⁹⁰ *Id.* at 4-5.

Box 10. Socio-cultural Setting for Marriage in Liberia

In the researched areas, marriage and marriage-like unions occur within a socio-cultural context that features 1) patrilineal systems, 2) customs of patrilocal exogamous marriages/de facto unions, and 3) polygynous arrangements. Under patrilineal systems, membership through birth derives from the father's lineage, and land is passed through sons from generation to generation (please see the section below on Inheritance for more detail). Patrilineality creates a strong bias for patrilocal marriage. Male lineal descendants remain on and preserve family land claims. As such, it is customary to have patrilocal marriage arrangements whereby landholding male lineal descendants bring wives/female partners to the husband's community to live with him and his extended family. Relatedly, the custom is that daughters will marry out (although the team encountered cases where women brought husbands/male partners into the community). Furthermore, customary marriage in the traditional Liberian society is often polygynous, with the man having more than one wife. One customary leader from rural Grand Bassa explained that historically multiple wives gave rise to a large number of children (e.g., 30 children) under one male family head, which were needed to make a farm. Today, polygyny is still practiced in the context of customary and de facto unions.

Authors conducted Rapid Rural Appraisal research on the theme of marriage and marriage-like unions in three counties. Research participants provided information about Liberia's socio-cultural context (see Box 10 for more information) and also about civil marriage, customary marriage, and de facto unions.

CIVIL MARRIAGES

Participants spoke of civil marriages as statutory marriages conducted through the church, mosque, or court and formalized by a marriage license. In rural areas, there were almost no instances of civil marriage among the research participants.

DECLINING CUSTOMARY MARRIAGES

Although customary marriages are perceived as more accessible in rural areas than civil marriages, women in customary marriages were few in number in the studied communities. In rural Nimba County, one woman participant said she would not be able to find even three families where dowry was paid. In rural Maryland County, the women's focus group, which had 13 women, had no women married under custom (including even the elderly women in long-term de facto unions with adult children). The community mobilizer had searched for married women to invite to participate in focus group discussion but found that there were only six or seven in the whole town. In rural Grand Bassa County, around half of the women's focus group participants had partners that had not paid dowry.

Customary marriages were reported to be declining as de facto unions were on the rise. Reasons for these trends, as reported by research participants, included the following: men do not want to formalize the relationship through customary marriage; a breakdown in societal and parental morals and values; increased promiscuity; economic insecurity; and routes for women to escape family pressure and to avoid stigma and poverty. (More detail on the reasons for the increase in de facto unions may be found below on the section titled "De facto unions.")

CUSTOMARY MARRIAGE TRADITIONS

According to research participants, customary marriage is understood as a process, rather than an event, involving various arrangements, negotiations, and traditions. The reported traditions for official

customary marriage include courting and engagement rituals,¹⁹¹ dowry fulfillment, and a traditional ceremony.

The payment of dowry is a critical component of completing a customary marriage. In Grand Bassa County, the cost of dowry for a woman was reported to be \$40, or \$48 if the woman is a virgin. These are the same amounts as the legal dowry maximum stipulated in the Rules and Regulations Governing the Hinterland. In Maryland County, the cost of dowry is \$48 USD. In rural Nimba County, one town chief said dowry used to be \$40 but that today it is \$140. Where the man cannot afford dowry, the man might stay and work (e.g., farm) for bride's family for a certain amount of time before getting married. No instances were reported of customary marriage occurring without dowry.

On one hand, dowry is advantageous for women because it completes a customary marriage and accords the woman in question some social status and belonging. On the other hand, the payment of dowry was said to give the husband rights over the woman (and children), according to custom or practice. A male respondent in Maryland (with consensus from other participants) mentioned that a husband owns his wife and affirmed his statement with a saying that seemed common among the participants present: "property cannot own property."

POLYGyny

Polygyny is central to the culture of the communities visited. It is the custom or practice of keeping more than one wife at the same time. A participant from rural Nimba County said that in older times men might have 10 to 15 wives. Today, polygyny is still widely practiced, with men in most cases having two to three wives.¹⁹² Participants across the study area said that it is normal for men to have up to four wives. Further, polygyny exists within the context of increased de facto unions.

Polygyny affects housing and land within the family. Both land allocation and housing patterns differ regionally, however.¹⁹³ In some study areas, participants said that depending on the husband's wealth or the communities' norms, each wife might have their own homes. In other areas, participants said that usually the husband does not buy a new house, but provides a new room for each new wife. In many cases, a wife does not get farmland of her own but shares the husband's land with his existing wives. For example, in rural Nimba County, participants reported on conflicts between first and subsequent wives, which were handled by the elders who intervened to divide the property.¹⁹⁴

While polygyny exists, the practice and beliefs surrounding it are not static. In rural Nimba County, one male participant said he would have only one wife. In Grand Bassa County, one longtime women's advocate believed that western marriages have improved women's situation. In all the research areas, women participants broadly supported the legal recognition of customary wives and equal inheritance for all wives.

DIVORCE AND THE EQUAL RIGHTS OF THE CUSTOMARY MARRIAGE LAW

In the case of divorce in customary marriages, in the studied areas, the custom is that if the husband requests a divorce, the woman leaves the husband's household. Sometimes the woman takes the children,

¹⁹¹ In the engagement process, the man typically proposes, and his family then informs the women's family of their son's proposal. The process also involves the man's family giving the woman's family small assets (e.g., \$2 to \$10 USD, 3 to 5 dwarf goats) and sometimes the man staying and working on the land with bride's family before getting married.

¹⁹² J. Carter. "Report – track changes." Received by Jennifer Duncan and My-Lan Dodd, Nov. 11, 2017, on file with Landesa.

¹⁹³ *Id.*

¹⁹⁴ Note: The research did not probe into whether elders handled the conflict in a predictable manner, in terms of dividing the property in accordance with custom or community norms.

if they are very young. If the divorce is requested by the woman, custom dictates that she has to return the dowry to her husband's family—which largely aligns with the provisions in the Rules and Regulations Governing the Hinterland. In most cases, either she or her family finds it difficult to refund the payment. Most women in the studied areas did not know that the ERCM Law prohibits the return of dowry.

DE FACTO UNIONS

De facto unions are relationships in which a couple lives as if married but have not formalized the union under civil or customary law. De facto unions are prevalent in the studied areas. In rural Maryland County, the practice is widespread and widely acknowledged. De facto unions were reported to be more common than marriages. In rural Nimba County, one participant reported that around 80 percent of couples were not considered married because dowry had not been paid. In Ganta, in Nimba County, one participant guessed that 60 to 80 percent of couples were cohabitating. In Grand Bassa County, a participant estimated that 70 percent of women were cohabitating and the remainder were married.

Box 11. Insecurity of women in de facto unions in customary settings

In Maryland and Nimba Counties, participants shared that women in de facto marriages in rural areas are insecure. For example, women and their children risk abandonment. Further, the woman's children's use of family housing and land is contingent on the woman's relationship with the father. At the death of the male partner, the woman is at risk of being sent away by the in-laws.

Some are cohabitating during a process that may lead to customary marriage, for example, in situations where dowry comes many years or even decades after the start of the relationship. But other factors are also at play. Participants gave numerous reasons to explain the trend toward increased de facto unions, citing the following: a breakdown in societal and parental morals and values; increased promiscuity; economic insecurity (coupled with the high costs of customary marriage); interest by men to test the reproductive capacity of their partners; and efforts by women to escape family pressure and to avoid stigma and poverty.

According to participants, these unions are not just among young people but also between long-standing couples, including those with adult children, grandchildren, and property. Almost no one was aware of presumptive marriages afforded by law.

The impact of de facto unions in terms of women's land and property is not totally clear, since women have very few rights to land in practice within customary marriages. Nevertheless, it appears that women in de facto marriages enjoy no recognized rights upon separation or abandonment, even where she helped to amass property for the use and enjoyment of the couple and their children.

CONCLUSION

The law of Liberia provides for civil, customary, and presumed marriage. Each type of marriage has different implications for land. There are various inconsistencies and gaps in the marriage laws and their application. Key issues include the failure to view the ERCM Law as applying on customary land and the lack of a clear property regime associated with presumptive marriage, particularly in customary settings. There are also various issues related to marriage evidence in practice in the studied areas. They include the following: civil marriages are rare, customary marriages are on the decline, and marriage informality is a rising trend. Women in de facto unions and their children have less secure rights to land.

C. INHERITANCE

INHERITANCE: BASIC LEGAL FRAMEWORK

Liberia's plural legal system complicates understanding and pursuance of women's land rights in many ways, and this is especially true regarding inheritance.

The legal framework governing inheritance for widows and children is comprised of customary norms that vary across the country, against an overlay of written laws including constitutional provisions, the DRL, the ERCM Law, the DEL, the Civil Procedure Law (regulating presumption of marriage), the Children's Law, and common law.

The Constitution endows the Legislature with the authority to "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."¹⁹⁵ Furthermore, the Constitution, in Article 2, prohibits laws, customs, and regulations contradictory to its principles, and Article 65 mandates that the "courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature."¹⁹⁶

Under the statutory intestate inheritance regime (that is, the legal regime by which the state prescribes how property is to descend to heirs in the absence of a will), the DEL grants widows with children \$5,000 outright (or a widow without children \$10,000 outright) from the estate and half the remaining property of the deceased husband in the form of a life estate.¹⁹⁷ Upon the death of the widow, the life estate reverts to the children.¹⁹⁸ In lieu of distribution under the intestacy law or disposition by will, a widow may elect a dower right of one-third of her deceased husband's real estate and personal estate.¹⁹⁹ She also has the right to purchase the matrimonial home (if the widow was a resident of a home owned by the deceased at the time of his death).²⁰⁰

Under the customary marriage regime, the ERCM Law grants the widow(s) a dower right of one-third of her deceased husband's estate, which widows in a polygamous marriage share; the remaining two-thirds of the deceased's estate goes to the children.²⁰¹ Upon the death of the husband, the widow has the ability to remain on the property of her deceased husband or to remarry; however, if she remarries, she must vacate the property.²⁰² The ERCM Law also incorporates the DEL, making it "equally apply to all native customary marriages."²⁰³

Section 25.3(3) of the Civil Procedure Law, which recognizes presumptive marriages, does not itself contain explicit provisions on how property is regulated at the death of a spouse. While inheritance laws should apply, Section 25.3(3) is silent on whether civil law or customary law would apply.

Box: 12. Key Provisions on Inheritance Rights for Widows and Daughters

¹⁹⁵ Const. art. 23(b).

¹⁹⁶ *Id.* at arts. 2(b) & 65, respectively.

¹⁹⁷ DEL § 3.2.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at § 4.1.

²⁰⁰ *Id.* at § 4.2.

²⁰¹ ERCM Law § 3.2.

²⁰² *Id.* at § 3.3.

²⁰³ *Id.* at § 3.1.

Widow/s	Statutory Marriage	Customary Marriages	Presumptive Marriage
	At death of husband, \$5,000 outright from estate for a widow with children (or \$10,000 outright for a widow without children); 1/2 remaining property for life to widow (with the reversionary interest in the children) (DEL § 3.2). In lieu of disposition by will or a distribution under the intestacy law, right to elect 1/3 of deceased husband's real estate for her life and to 1/3 of his personal estate (same right as widowers) (DEL § 4.1).	At death of husband, 1/3 of husband's property goes to widow (to share with other widows in case of polygamy) (ERCM Law § 3.2). Widows (but not widowers) lose their matrimonial home upon remarriage (ERCM Law § 3.3).	Not regulated—no inheritance by operation of the Civil Procedure Law, § 25.3(3).
Children Born in Wedlock	Daughters and sons have equal rights of inheritance (DEL §§ 3.2 & 3.4; Children's Law art. 3:17.1).	Daughters and sons have equal rights of inheritance (ERCM Law § 3.1, incorporating DEL). All children share 2/3 the deceased father's property (ERCM Law § 3.2).	Children (should be) presumptively born in wedlock, and subsequently they should inherit.
Children Born out of Wedlock	Inheritance rights from the mother, but no inheritance rights from the father unless children are legitimized or recognized by the father (DEL § 3.5 (a)(b)(c)(d) & (e); see also, <i>Catholic Relief Services vs. Junius et al.</i> , LRSC 5; 49 LLR 397 (1999)).	Inheritance rights from the mother, but no inheritance rights from the father unless children are legitimized or recognized by the father (DEL § 3.5 (a)(b)(c)(d) & (e); see also, <i>Catholic Relief Services vs. Junius et al.</i> , LRSC 5; 49 LLR 397 (1999)).	Customarily children are automatically presumed to be born out of wedlock; no inheritance rights from the father.

In addition to the statutory legal framework, common law also regulates inheritance rights broadly and also specifically for widows and daughters. Broadly speaking, the Supreme Court defines heirs as “those persons appointed by law to succeed to the real estate of a decedent in case of intestacy,” but notes that “in modern usage, the term as implied comes in any manner to the ownership of any property by reason of the death of an owner . . .”²⁰⁴ In the broad use of the term inheritance, a wife who holds a tenancy by the entirety, upon the death of a husband, “automatically takes title to the deceased spouse’s share.”²⁰⁵ That is, the widow takes title to the whole estate; this estate does not constitute “part of the decedent spouse's estate and the law of descent and distribution does not apply to property passing to the survivor.”²⁰⁶

For statutory widows’ dower right, the Supreme Court affirmed that:

The constitutional right of a widow to one-third of her deceased husband’s real estate during her natural life and to hold one-third of his personal estate in her own right subject to alienation by her, by devise or otherwise, is hereby preserved. A widow has the personal right to elect to take such share in lieu of any testamentary disposition or distribution on intestacy . . .²⁰⁷

²⁰⁴ *Kamara et al. vs. Kindi et al.*, 34 LLR 732 (1988).

²⁰⁵ *Sarnor vs. Leigh-Sherman*, LRSC 8 (2012).

²⁰⁶ *Kpoto vs. Williams*, LRSC 14 (2008), internal citation omitted.

²⁰⁷ *Testate Estate of the late Bernard et al. vs. Intestate Estate of the late Stubblefield-Bernard*, LRSC 34 (2016), internal citation omitted.

The Supreme Court defined the widow's dower right as a life estate in fee tail, that is, "a tentative title for the life time of a widow," after which the property interest reverts to the estate of the deceased husband's lineal heirs.²⁰⁸

Further, the Supreme Court, in *Whisnant vs. Whisnant*, made two key holdings. First, it held that a widow's re-marriage does not deprive her of the right of dower in the estate of her late husband. Specifically, the Supreme Court stated that "[o]ur Decedent Estates Law defines a widow as a woman whose [] husband is dead, making no exclusion as to her status when she remarries."²⁰⁹ Second, despite a widow's failure to exercise the right of dower within the stipulated time, the court inferred election of her dower right through her conduct: she exercised control over the property for over forty years.²¹⁰

For a customary widow, the Supreme Court stated that she, "like a statutory widow is also entitled during her life to one-third of her husband's estate upon his death."²¹¹ Further, the (procedure for) right of election of the dower right applies not only to statutory widows but also to customary widows. Different from a statutory widow, a customary widow "would most likely be sharing her dower rights of one-third with other widows of the decedent," and also "relinquishes her right in the one-third upon her remarrying."²¹²

For daughters' inheritance rights, the Supreme Court has affirmed and protected their equal right to inherit, including vis-à-vis their brothers. The Supreme Court, in *Cole vs. His Hon. Wah et al.*, held that male and female siblings born out of wedlock have equal rights to inherit as well as equal legal capacity to serve as co-administrators of the estate.²¹³ In this case, the brother born out of wedlock had challenged the inheritance rights of the sister born out of wedlock. Addressing the matter, the Supreme Court held that such a male sibling is "in no position and has no legal standing or status to question any of the other children born out of wedlock . . . He has no greater inheritable right than any of his siblings to the intestate" estate left by the deceased father because he also was born out of wedlock.²¹⁴ As such, in this case where all the children were born out of wedlock, the court departed from the issue of legitimization to focus on the children's equal inheritance rights.

Additionally, an illiterate daughter's inheritance rights are protected against bad faith dealings of literate heirs. In *Gbollie vs. Flynn et al.*, a case concerning the deceased's illiterate daughter, the literate son, and the son's literate granddaughter, the latter tried to dispossess the illiterate daughter in bad faith. The Supreme Court's holding protected the illiterate daughter, who was a rightful heir and co-administrator, from the literate granddaughter, who finagled a sale of the property without the knowledge of the illiterate daughter. The Supreme Court chided the Probate Court for its "substandard" and "questionable" performance in allowing the illiteracy of a co-administrator to be exploited for another's gain, stating "[i]t is worth repeating that the Probate Court is the court authorized by law to protect all interests in decedent estates, intestate as well as testate."²¹⁵

LEGAL ANALYSIS

²⁰⁸ *Whisnant vs. Whisnant*, LRSC 43 (2015).

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Cole vs. His Hon. Wah et al.* LRSC 9 (2014).

²¹⁴ *Id.*

²¹⁵ *Gbollie vs. Flynn et al.*, LRSC 5 (2010).

The law regulating inheritance in Liberia contains various gaps. While the Constitution guarantees gender equality of property ownership for all citizens (arts. 11 & 23), it does not define discrimination nor explicitly provide for remedies to address gender-based discrimination and inequalities.

The Constitution also does not go far enough in protecting women's land and property rights from customary gender discriminatory norms and practices and from the discriminatory and vague statutory laws. Furthermore, the majority of the laws which govern women's rights to land and property, especially the DRL, ERCM Law, and DEL, seem to violate the Constitution by formalizing gender discriminatory customs. These laws are ambiguous and inconsistent; they do not "treat[] all 'wives' equally, do not treat men and women equally or equitably, do not cover all categories of land, and do not cover all relationships where property rights matters arise."²¹⁶

Box 13. Legal inequities in Liberia's inheritance laws

"[A] surviving spouse in a civil marriage is entitled to one half of her deceased husband's property during her life, while a surviving spouse in a customary marriage is entitled to 1/3 of her deceased husbands property – to be shared with other wives – until she remarries."

Source: R. Jappah et al., USAID LPIS WLR Study, at 10

Presumptive marriage, as recognized by Section 25.3(3) of the Civil Procedure Law, lacks clarity on what marital and inheritance regime applies for couples holding themselves out as married in customary settings. In this grey area of the law, women in such situations are in practice not enjoying inheritance rights. While it might be difficult to apply the presumption of marriage clause to the widow's inheritance due to the ambiguity of this law, an argument can be made for children born out of a socially recognized de facto union to inherit their father's property just as children born under customary or civil marriage.

Liberia's civil law on inheritance allows the widow to inherit from her husband's land and property. However, effectively the ERCM Law has only applied to private land. As such, widow(s) are not inheriting from their husband's share of family or community property; and if not by the mercy of her in-laws or marriage to one of her in-laws, the widow (sometimes with her children, especially daughters) returns to her natal family or community, who may not have any land for her. As Jappah et al. argue "it is assumed that the Equal Rights of the Customary Marriage Law applies to all women in customary marriages on any category of land. However, in practice, the ERCM [Law] is not being applied to land which is managed under customary tenure, and the law is little known in the interior."²¹⁷

A gender legal analysis of the DRL, ERCM Law, Civil Procedure Law, and DEL shows that these laws have varying implications on a wife's/partner's inheritance rights to land and property as an individual and as a mother. The implications also differ by whether the property owned is private or customary land and whether the children are born in or out of wedlock:

- In civil law, the surviving spouse is entitled to one-half of her deceased husband's property for her lifetime, while a surviving spouse in a customary marriage is entitled to only one-third of her deceased husband's property and only until she remarries—a restriction not applicable to civil marriage.
- Unlike the ERCM Law, the DEL seems to be gender-equal in terms of inheritance. Application of the law in favor of women is limited, however, because relatively few women have significant amounts of "separate property" within a marriage.
- The ERCM Law also appears to fail the woman's heirs beyond the children, such as the woman's parents or siblings. The husband and wife's property should devolve equally to both sides of the couple's family heirs.

²¹⁶ R. Jappah et al., USAID LPIS WLR Study, at 1.

²¹⁷ *Id.*

- The law regulating children born out of wedlock is gender-neutral. However, when it comes to legitimizing girl children and their inheritance, it may be more challenging than for boy children due to the operation of male preference in Liberian patriarchal societies, which favors inheritance by sons. Daughters are often perceived as strangers who are in transit to their marital family where they will also be seen as strangers, and who are often ineligible for inheritance under customary law.
- Legally and socially acknowledging and granting sole custody to a mother who had a child/ren born out of wedlock may make it hard for the woman to claim her children's inheritance from the father. The woman is at the mercy of her children's father to legitimize them, or after his death, she is at the mercy of her children's legitimate siblings to acknowledge them as half-siblings.
- Failure to recognize a widow's inheritance rights on customary land under the ERCM Law doubly victimizes a widow with children born out of wedlock, in that she may have sole custody of her children in the context of being dispossessed from the land and property she shared with the deceased. In customary land tenure, the surviving spouse of a de facto union or customary marriage should inherit and continue to enjoy family, clan, and even community land and property rights that the deceased enjoyed.

The GoL is committed to equality between women and men and girls and boys through the Constitution, other laws (such as DEL and DRL), and regional and international human rights instruments that obligates the GoL to not only provide for parity and equality of opportunities between women and men and girls and boys, but also to combat all discriminatory legal and customary practices against women and girls.

Under gender equitable legislation and gender-responsive enforcement, the government should not only provide for gender equality but should also provide for equality of outcomes by repealing all discriminatory and ambiguous laws, providing for gender equity and equality of women in all social categories, synchronizing all laws relating to land rights, and ensuring that a plan to reinforce laws is adopted and implemented.

INHERITANCE: IN PRACTICE

Research has largely found that women do not enjoy land inheritance rights or else experience serious conditions impairing those rights. The Organization for Economic Co-Operation and Development (OECD) found that in Liberia, in practice, married women are “treated as property, and neither they nor their daughters can inherit, nor can wives return to their home of origin upon the death of their husband.”²¹⁸ USAID in its LPIS II Clan Study found that:

- “In all Clans, daughters inherit an entitlement [that is a privilege the community or family extends to the daughter to access and] to farm on their extended family's land or the land of their town.”
- “As a matter of practice daughters may not inherit land [outright] (expected to receive land once married). Trend is changing in some clans. Daughters staying in natal communities, reportedly more responsible. Smaller portions inherited.”
- “[Patrilocal] Marriage precludes women from inheriting land from their parents.”²¹⁹

The 2016 LGSA women's land rights field report (covering interactive discussions with women in seven communities in six counties) likewise found limitations to or a lack of women's inheritance. The table below highlights reports of women from communities in Maryland, Margibi, Grand Kru, and Lofa.

²¹⁸ Gender Equality in Liberia, Social Institutions & Gender Index (SIGI), OECD Development Center, http://www.genderindex.org/country/liberia/#_ftn4 (accessed Aug. 29, 2017).

²¹⁹ E. Namubiru-Mwaura, *Women and Customary Land Tenure in Liberia*, (Unpublished: presentation prepared for the Annual World Bank Conference on Land Policy and Administration, Washington, 2012), http://www.landandpoverty.com/agenda/pdfs/ppt/namubiru-mwaura_powerpoint.pdf (accessed Dec. 7, 2017).

Box 14. Women's inheritance rights findings from interviews within the 2016 LGSA women's land rights field report

Community in Maryland County: In customary marriage settings, interviewees shared that unless a woman re-marries a member from her husband's family, she loses all her rights and profits from the land she once owned with her husband. If the marriage has produced children, then the males are entitled to the land and property owned by the father, and at their discretion have the option to share any profits with their female siblings.

Duazon Community in Margibi County: According to interviewees, women are not entitled to their husband's land and property (whether or they have children) and are expected to re-marry within her husband's family.

Community in Grand Kru County: Women are entitled to their husband's farmland and property if they have children. However, if a woman re-marries, her late husband's family may ask her to return the property. In the event that a man decides to separate from his wife, he may keep the house; while his wife may retain the cassava farm and a portion of the profits from the rice farm (cassava and rice farming are the main sources of livelihood). If a will is present, it is respected. In most cases, land and property is distributed equally among male and female children.

Zorzor District in Lofa County: In the Zorzor District, interviewees relayed that women are considered property and cannot inherit land on their own. In a marriage, if the husband dies, the wife is expected to re-marry a member from his family and to transfer any property to him. If a woman is in a marriage with a stranger (member from a different lineage) and has children, her children are regarded as strangers. The community will do anything to prevent her and her children from inheriting any property.

Source: I. Nagbe, *Field Report on Interactive Discussion with Rural Women on Women's Land Rights*, (Unpublished: USAID LGSA 2016).

Research conducted by Rights and Rice Foundation (RRF), commissioned by USAID LGSA in 2016, examined women's inheritance rights in six customary communities located in Lofa, Bomi, Grand Cape Mount, and Gbarpolu, counties all located in North Central and North West Liberia. It found the following:

Despite knowledge of the Inheritance Law when the husband dies, women's access to property (land plantations or housing) is usually denied by the deceased's family. In most cases, they are denied access to this property or cannot re-marry outside of the deceased husband's male kin, if they want to gain access to said property.

Women incur significant social cost for going against cultural norms. These costs include social ridicule and the possible loss of social benefits such as being denied opportunities to represent [the] community during training programs and being treated as an outcast. In some cases[,] a backlash of domestic violence . . . or even death against women who claim their land and other property rights.²²⁰

In a presentation elaborating on the research, RRF shared a reason for why community members deny inheritance rights to customary land for women marrying into her husband's community. At the husband's death, in certain cases, the community views the widow as no longer part of the community. Upon the death of her husband, she loses her primary member status and reverts to the status of stranger and secondary member. As such, she loses access and rights to land. The conditional path for regaining primary membership and land access and rights is to marry her deceased husband's kin.²²¹

The RRF researchers also relayed that women community members shared many examples of custom depriving women of inheritance rights (both within their community and outside their community).

²²⁰ Rights and Rice Foundation, *Research on Women's Land Rights*, (USAID LGSA 2016), at 9.

²²¹ F. Golanyon et al. "Research on Women's Land Rights", Presentation to USAID LGSA, 8 Nov. 2016, USAID LGSA Headquarters, Monrovia, Liberia.

Additionally, women expressed strong feelings about how unjust and unfair this practice was, and also how they felt no improvement would come from pushing the issue of their inheritance rights.²²²

Denying women and girls the right to inherit land and property undermines their tenure security.

LGSA WOMEN'S LAND RIGHTS FIELD RESEARCH

Research utilized for this study indicated that, in the larger part of Liberia, in particular the interior, inheritance is patrilineal (passed through the male lineage) and marriage is patrilocal (the married couple resides in a dwelling place provided by the man or his agnatic kin). This social order affects land rights for women and men, and girls and boys differently. While a son is seen as belonging to the natal family and will continue the family descent, a daughter is perceived as being in transition because she will eventually get married after which she belongs to her husband. In the studied areas, research participants reported that in general rural women were not inheriting in customary areas. There was also some evidence that social norms and practice hindered some rural women from enjoying land inheritance rights on private land. In Monrovia, especially within elite families, where land is held privately, anecdotal evidence suggests that women are inheriting land.

INHERITANCE BY DAUGHTERS

As mentioned above, inheritance of land and other valuable family property, such as life trees, is patrilineal. Sons inherit while girls enjoy land use rights, which can become difficult or impossible to exercise or which can be lost when they marry outside their natal communities. Subsequently, sons inherit their father's land rights for life while daughters may receive access to land through their male relatives. Additionally, a daughter's access to inherited land is more likely to be lost if she has no biological brother/s. If the deceased is survived by only daughters, the participants mentioned that the land remains within and is controlled by the man's family - taken over by the deceased's male relatives, such as his brothers, parents, or paternal uncles.

In this case, if a widow refuses to be inherited by her in-laws and she only has daughters, she is more likely to be evicted from the land with her daughters. In Zolowee in Nimba County, for example, authors were told that daughters do not share in the inheritance within their natal communities because they will marry out, while sons usually stay in their communities upon marriage, and keep family land. Compared to sons, daughters' inheritance rights are also undermined when they are denied the right to pass-on inheritance to their children (who are considered to belong to and inherit from the lineage of the children's father).

While the Constitution provides equality in relation to property (art. 23), and outlaws customary norms that contravene the principles enshrined in the Constitution (art. 2), Liberian women and girls are discriminated against by their natal and biological families, and local authorities and judicial officials in different ways as discussed in the following paragraphs.

The first male child is generally endowed with the power to manage land and other family property on behalf of all family members, including the widows. The team encountered one interesting exception to the patrilineal practice on land inheritance: in River Gee a female participant stated that in her family boys and girls could inherit family land but only if they are present/living on that land. That is, if either she or a brother resided elsewhere, neither could inherit the land. The team did not find further evidence of this practice. Also, despite the patrilineal ideology and practice, the respondents mentioned

²²² *Id.*

that women, amidst myriad hurdles, have started to challenge this practice by demanding land inheritance from their brothers.

DAUGHTERS/ CHILDREN BORN OUT OF WEDLOCK

In case of de facto unions, male-child-preference is more likely to disadvantage girls born out of wedlock as compared to boys born out of wedlock in terms of being accepted and legitimized by their biological father and his kin and in terms of access to land rights. For example, while boys born out of wedlock might be able to plant life trees to claim land rights, daughters born out of wedlock, as women, are not traditionally allowed to plant life trees for the very reason that it might give them long-term rights.

INHERITANCE BY WIDOWS AND WIDOW INHERITANCE

Participants in the three counties were of the view that inheritance of land is customarily the reserve of men. They stated that it is either the oldest son or the deceased's brother that inherits land because land is passed on from generation to generation. As a result, the men control and make all decisions concerning property controlled by the family, particularly inheritance of land.

In Nimba, however, the women reported that while a legally married woman can claim deeded land and family property inheritance, in various the cases in rural communities, women were denied inheritance rights on privately owned land, just as in customary land. The women stressed that in such cases, they were discouraged by the cumbersome process of justice and that sometimes judicial personnel encouraged them to give up on their land rights in fear of physical violence and/or witch-craft from the offender.

Customarily, widows have no power to determine allocation of family land and property upon death of her husband or male partner. The respondents mentioned that where the sons were too young to succeed their father's land and property, the family heads decided among themselves who would inherit the widow together with the children and the property. They said that the widow who objected to their decision was scorned and evicted from the property and that her in-laws would determine whether she could/not stay on the property. If the woman's relationship with her in-laws is not considered to be "good," she is evicted from the land and the home she lived in with her husband. Sometimes the widow is asked to leave with her children.

Jappah et al. noted that if a divorced woman returns to her natal community with children, "the children are generally not entitled to inherit rights to use natal lineage land from their mothers, and it is expected that they will inherit rights to use land held by their father's lineage."

Source: R. Jappah et al., USAID LPIS WLR Study, at 21.

In all studied areas, only two to three participants from Grand Bassa mentioned a practice in some families whereby a widow was given a choice to select a husband from the men that were presented to her. In one case the woman picked a young boy to become the head of her family, to avoid having to have any true spousal relationship. However, the participants also mentioned that this was detrimental to the young boy's rights because he was traditionally considered to be married to an elderly woman, and he left school at a very early age. This practice also violates marriage law and children's law in regard to the abolition of widow inheritance against her will and children's marriage age.

Also in some places, upon the death of a husband, a widow may sometimes remain on her husband's ancestral land and continue to use it, especially if she has (male) children in the marriage. The property is not taken away from her but rather remains with her to support her young children. Where a widow does not have children, and is not an original resident of that community, a portion of the land is given to her to continue farming to sustain her.

PROPERTY DIVISION DURING INHERITANCE

Division of property between heirs (wife/s and children) is carried out after the burial ceremony, and in some cases this includes an inventory of property to be inherited. In Grand Bassa, for example, women in the focus group mentioned that male relatives of the deceased conduct a property inventory and the oldest son gets all the property and becomes the head even when the deceased's oldest child is a girl.

In polygamous arrangements, the participants mentioned that it is not clear who inherits common property and usually this gives rise to conflicts between (male) children and the wives. A woman in Maryland shared her situation. She was a daughter from a legal marriage who was being denied a portion of her late father's property by her half-brother who was born out of wedlock. She went on to say that when the concession company came and took the land, she was also denied a share from the amount paid as compensation for the land taken.

INHERITANCE IN DE FACTO UNIONS

After a male partner in a de facto union dies, his family decides how to allocate family property, irrespective of the woman's contributions to the property and land in question. A woman in Nimba, described how she was not given time to grieve the loss of her husband before her late husband's relatives demanded she hand over all property documentation in her possession.

Additionally, children born in de facto unions are often considered to be born out of wedlock and to solely belong to the mother. In such cases, women talked about the burden of shouldering custody and care of children. The respondents, however, mentioned that this differed from family to family and largely depended on the kind of relationship between the widow and her in-laws.

While the team found that the norms for widows inheriting were practiced slightly differently in the three counties and by different families, norms regarding inheritance of land and property in de facto unions were more uniform. When the male partner of a woman dies, the widow/s are not allowed to inherit land and property, although some families could allocate a small amount of land for the woman to farm, especially if she/they have children with the deceased.

As discussed in the marriage section, de facto unions appear to be more common than formal marriage and are steadily growing. These trends have a negative impact on the security of land rights of de facto widows as formal law grants clear inheritance rights only to recognized wives.

CONCLUSION

Despite the efforts taken to grant women in customary marriage some level of inheritance rights to land, women and daughters in customary settings in practice do not enjoy formal legal rights to inherit land and property. Land inheritance is nearly always patrilineal and the decisions are taken by men. The marital status of the woman determines her and her children's chances of inheriting and/or staying on the deceased's land. A formally married woman's right to inheritance is largely dependent on her being inherited by her in-laws (e.g., marrying a relative of her deceased husband), her relationship with in-laws, and on whether she has (male) children with the deceased. Wife inheritance is still a significant problem in the interior, and it appears to play a key role in denying women and their children the right under formal law to their own land inheritance. The general practice in the three counties studied shows that women have inheritance rights from neither their natal nor their marital families. Cumbersome processes of accessing justice, coupled with the fear of witchcraft, render these challenges even greater for women. Despite the legal gaps in the ERCM Law and the Civil Procedure Law recognizing presumption of marriage, if enforced, these laws can offer some protection to women's property inheritance rights. The lack of awareness of these laws is a great impediment to the attainment of women land and property rights.

D. LAND GOVERNANCE

LAND GOVERNANCE: BASIC LEGAL FRAMEWORK

The legal framework regulating land governance in Liberia consists of constitutional provisions; various laws, policies, and regulations; and common law. Key land governance institutions include the Liberia Land Authority—which consolidates land governance authority in Liberia and includes a comprehensive mandate on land matters; the Ministry of Internal Affairs and its tribal government structure comprised of the Paramount, Clan, and Town Chiefs; and other sectoral ministries, such as the Forestry Development Authority with its remit over forest land governance and the Ministry of Gender, Children and Social Protection with its cross-cutting governance focus on gender, women, and children issues. (For more information, see box below.)

Box 15. Key components of the legal, institutional framework regulating land governance

Constitution (1986)

- Article 5(a) stipulates that “the Legislature shall enact laws promoting national unification and the encouragement of all citizens to participate in government.”
- Article 7 requires the government to “manage the national economy and the natural resources of Liberia in such manner as shall ensure the maximum feasible participation of Liberian citizens under conditions of equality as to advance the general welfare of the Liberian people and the economic development of Liberia.”
- Article 23(b) specifically mandates the Legislature to “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.”

Liberia Land Authority, pursuant to the Land Authority Act (2016)

- Articles 2.1 and 4.1 establish the Liberia Land Authority.
- Article 7.1 defines the primary mandate of the Liberia Land Authority to be “to develop policies on a continuous basis, undertake actions and implement programs in support of land governance, including land administration and management.”
- Article 3.17 defines land governance as “[c]oncern[ing] the policies, laws and regulations, processes, and institutional structures through which decisions are made about access to land and its use, the manner in which decisions are implemented and enforced, and the way that competing interests in land are managed.”
- Article 8 delineates the functions and powers of the Liberia Land Authority, which include, but are not limited to “implement[ing] programs to support implementation of property rights in land, and in particularly, programs for the security of tenure of those holding land under customary rights.”

Other Governing Authorities and Instruments

- The Executive Law, the Local Government Law, the Aborigines Law (now largely repealed), the Rules and Regulations Governing the Hinterland, and the National Policy on Decentralization and Local Governance support the land governance structure under the Ministry of Internal Affairs, which is comprised of a tiered system of chiefs, namely the Paramount, Clan, and Town Chief structures. The Rules and Regulations Governing the Hinterland provides for a policy whereby the GoL “administer[s] tribal affairs through tribal chiefs who shall govern freely according to tribal customs and traditions so long as these are not contrary to law.”²²³ Per the Executive Law, the Minister in the Ministry of Internal Affairs 1) “manag[es] tribal affairs and all matters arising out of tribal relationships,” 2) “supervis[es] the elections of Paramount, Clan Chief and Town Chiefs in cooperation with the Election Commission,” 3) “oversee[s] the collection and publication of the laws and customs of the Liberian tribes,” and 4) “oversee[s] the orderly functioning of tribal government and drafting rules and regulations to effectuate this purpose,” including as it relates to

²²³ Rules and Regulations Governing the Hinterland of Liberia, Ministry of Internal Affairs, (1949, re-promulgated 2001), art. 29.

tribal domestic relations.”²²⁴ The Ministry of Internal Affairs regulates all traditional marriages and divorces in Liberia.²²⁵

- The Forestry Development Authority also plays a role in forest land governance as do the community forest governance and management bodies provided for in the Community Rights Law of 2009 with Respect to Forest Lands.
- The Ministry of Gender, Children and Social Protection whose mandate under Section 38.3 of the Act Establishing the Ministry of Gender and Development includes “[e]stablish[ing] an inter-ministerial policy coordinating committee, relevant taskforces and bodies to ensure the addressing of the concerns and interests of women and children in a holistic and well-coordinated manner.”

Land governance in Liberia is also embedded within the broader context of decentralization. A new Local Government Bill has been developed and is waiting for approval by the Legislative. Preceding it, Liberia’s National Policy on Decentralization and Local Governance was approved in 2009 and formally launched in 2012.²²⁶ The policy acknowledges that Liberia’s highly centralized governance system has hindered broad participation and local initiative and has created gaps in terms of “equal access to social and economic opportunities and human wellbeing between Monrovia and the rest of Liberia.”²²⁷ Accordingly, it recognizes “the need to ensure greater participation of the Liberian people in their own developmental processes and for equitable distribution of the nation’s resources.”²²⁸

Specific to land governance, the LRP states that aligned with decentralization, “Customary Land management, use, and allocation decisions [should] be made by communities within a framework of shared responsibility with the Government” (para 6.4). In its recognition of the link between secure customary land rights and improved local governance (para 6.0), a key recommendation is to bolster communities’ “governance arrangements to make them fully representative and accountable” (para 1.0). This includes “establishing the community as a legal entity” (para 6.6.1.).

Furthermore, several recommendations outlined in the LRP call for gender-responsive land governance institutions and decision-making processes. For example:

- “Communities must establish themselves as legal entities with management institutions that are fully representative and accountable to all community members, including women, youth, and minorities” (para 6.1.5).
- “Management authority over Customary Land will be vested in community members and their representatives. Community representatives must be selected in a manner that is fully representative and accountable to all community members, including women, youth, and minorities” (para 6.4.1.).
- “Customary Land rights of groups, families, and individuals within the community will be decided by the community in a way that is fully representative and accountable to all community members, including women, youth, and minorities” (para 6.3.3).
- “Decisions regarding formal transfer of Customary Land to community members or non-members, including sales, leases, concessions, commercial use rights, or any other formal transfer, must be

²²⁴ Executive Law (1972), § 25.2(b)(j)(n) & (i).

²²⁵ GoL, Ministry of Internal Affairs, Department of Administration, <http://www.mia.gov.lr/2content.php?sub=180&related=1&third=180&pg=sp> (accessed Dec. 5, 2017)

²²⁶ L. Fox and F. N. Muwonge, *An Assessment of Decentralization and Local Governance in Liberia: A Strategic Review with Recommendations for USAID/Liberia’s Cross-Cutting Decentralization Strategy 9* (USAID 2012), http://pdf.usaid.gov/pdf_docs/PA00J1FK.pdf.

²²⁷ GoL, Governance Commission, National Policy on Decentralization and Local Governance (January 2011), at preamble, http://governancecommissionlr.org/pg_img/National%20Policy%20on%20Decentralization%20and%20Local%20Governance%20.pdf.

²²⁸ *Id.*

made in a manner that is fully representative and accountable to all community members, including women, youth, and minorities” (para 6.4.2.).

Liberia has also taken modest steps to mandate the participation of women in governance broadly and in land governance specifically. For example, the Election Law calls for political parties or coalitions to strive to ensure that lists of candidates comprise no less than 30 percent of candidates of each gender.²²⁹ National-level advocacy efforts are pushing for legislation to include affirmative action quotas for women in political bodies. Examples include the Gender Equity in Politics Bill, 2010, and the Equitable Participation and Representation Bill, 2016—although they have not yet gained traction. The Community Rights Law with Respect to Forest Land requires one woman on the five-member Community Forestry Management Body.²³⁰ The Land Rights Bill (dated September 27, 2016) calls for the Community Land Development and Management body to be “inclusive of a fair number of women” and to include an equal number of adult women, adult men, and youth—to the extent possible.²³¹

LEGAL ANALYSIS

More could be done to ensure gender-responsive land governance called for in the LRP and the broader constitutional mandate under Article 5 which requires the Legislature to pass laws “promoting . . . the encouragement of all citizens to participate in government.” Legislation ought to provide for gender equitable quotas for women in national and decentralized decision-making bodies, particularly land bodies in customary settings. This could include adopting the Equitable Participation and Representation Bill of 2016, and ensuring that the LRB includes quotas that require at least 33 percent representation by women in the Community Land Development and Management body. Additional measures could include establishing gender mainstreaming organs, such as a gender unit within the Liberia Land Authority. Such measures could bolster gender-responsive land governance and increase women’s numeric participation in governance at the national and sub-national levels.

Moreover, land governance institutions require clear laws on women’s land rights in order to be able to adequately protect women, of all categories on all types of land, through the stages of their life course (including upon marriage, divorce, death, and abandonment). However, Jappah et al. found that the laws governing women’s land and property rights are not clear, not internally consistent, and “do not achieve their intended purpose of treating all ‘wives’ equally, do not treat men and women equally or equitably, do not cover all categories of land, and do not cover all relationships where property rights matters arise.”²³² Rather, “[t]hose charged with applying the law are left to their own discretion to fill the gaps not adequately addressed by the law, often relying on customary norms about property rights.”²³³

LAND GOVERNANCE: IN PRACTICE

Various studies examine land governance in Liberia in practice, both in general and with respect to women, in particular. These are discussed below.

The USAID LPIS II Clan Study broadly examines land governance.²³⁴ It observes that layers of statutory and customary authorities govern land and natural resources in the II studied clans. Statutory

²²⁹ An Act to Amend Certain Provisions of the 1986 Election Law (2014), § 4.5.

²³⁰ An Act to Establish Community Rights Law of 2008 with Respect to Forest Lands (2008) § 4.2(a).

²³¹ Land Rights Bill (dated September 27, 2016), arts. 35(1)(c) & 36(5), respectively.

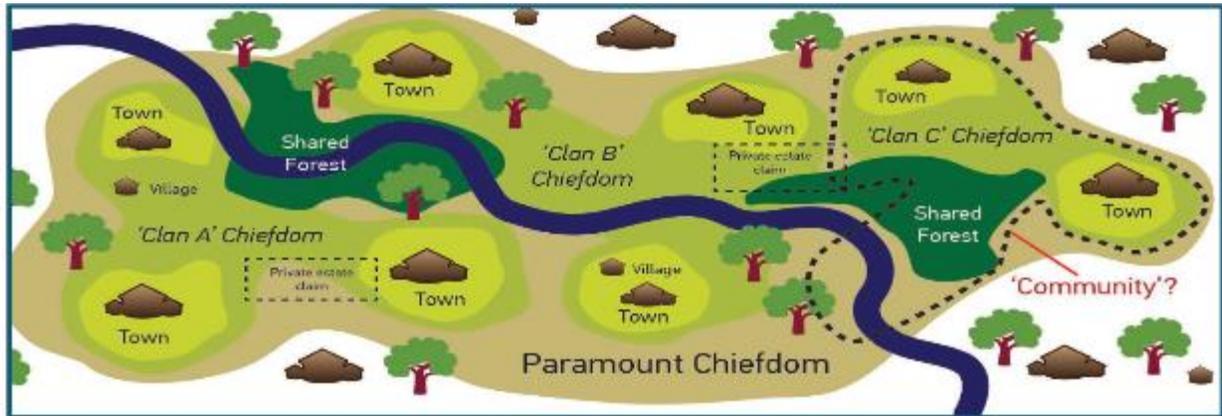
²³² R. Jappah et al., USAID WLR Study, at I.

²³³ *Id.*

²³⁴ E. Namubiru-Mwaura et al., USAID LPIS II Clan Study, at x.

authorities from the Ministry of Internal Affairs include Superintendents, District Commissioners, and Chiefs—including Paramount Chiefs, Clan Chiefs, General Town Chiefs/ Zonal Chiefs/ Sectional Chiefs, and Town Chiefs,²³⁵ although the Town Chiefs fill a hybrid position between the statutory and customary systems.²³⁶ Customary authorities include Quarter Chiefs, elders, Chairmen, Chairladies, and family heads. (See box below for definitions and a visual.)

Figure 2. Jurisdictions and Chiefs as Governing Authorities (as depicted and described by SDI²³⁷)



"Community" can exist at many nested levels of social and geographic organization – such as towns, Clans, and Paramount Chiefdoms in Liberia.

Paramount Chiefdom & Paramount Chieftaincy

“A Paramount Chiefdom is the largest customary governance unit, both geographically and socio-politically. Historically, this level of customary governance reflected traditions observed only in the north of Liberia, but in the 1950s the state standardized Paramount Chieftaincies as the top customary authority throughout the country.²³⁸ A Paramount Chiefdom is typically responsible for two to three Clans.²³⁹ Paramount Chiefs are paid by the state, report to District Commissioners in the Ministry of Internal Affairs’ local governance structure, and are supposed to bridge statutory laws and customary norms. A Paramount Chief’s mandate is to participate in traditional activities, regulate and enforce statutory and customary rules, and resolve social and resource challenges in or between clans.”²⁴⁰

Clans & Clan Chieftaincy

“The Clan Chiefdom is the second highest governing body in the customary structure. Historically, Clan Chiefdoms comprised [of] settlements of closely-related families with shared historical links. A clan usually shared an area of common land that includes a common forest for hunting and gathering. Today, Clans contain anywhere between three to thirty towns.²⁴¹ A Clan Chief governs alongside Clan elders (important family heads and opinion leaders from towns within the Clan), with a mandate to participate

²³⁵ *Id.* at 67-78.

²³⁶ *Id.* at xvii.

²³⁷ A. Kaba, *Complexities of Community Self-Identification in Liberia*, Lessons from the Field (Namati 2015), <https://namati.org/wp-content/uploads/2015/09/Lesson-from-Field-SDI-Community-Definition-LR-final.pdf>.

²³⁸ “Historically Paramount Chiefs were appointed by the President but in 1985 a constitutional change mandated that they be elected. However, public records indicate that very few have been elected since 1985 and most Chiefs continue to operate like appointed employees of the President.” *Id.* at 3.

²³⁹ “Paramount Chiefdoms in the south tend to cover larger areas but smaller populations because of low population density, while those in the north tend to govern smaller areas but much larger populations.” *Id.*

²⁴⁰ *Id.*

²⁴¹ “Differences in population density mean that northern Clans tend to have fewer, but larger towns while in the south Clans tend to encompass more, but smaller towns – some of which may be a single homestead.” *Id.*

	in traditional activities, regulate and enforce social norms and common rules, and resolve social and resource challenges in or between towns. He or she is also a salaried agent of the state and reports to the Paramount Chief.” ²⁴²
Sections & Sectional Chiefs	“Some large Clans are sub-divided into ‘Sections’ with Sectional Chiefs reporting to the Clan Chief.” ²⁴³
Towns & Town Chieftaincy	“Towns are only weakly regulated by the state and are often poorly defined. Recognition as a town is determined primarily by neighboring towns and the Clan Chief. SDI has found that recognized and self-identified ‘towns’ can average from 3 to 600 households composed of related family networks. Town households tend to live close to shared common resources, including residential space, water holes, farmland, thatch bush, and low forest areas. A Town Chief governs alongside town elders and other local leaders, such as Quarter Chiefs (see below). Unlike the Clan or Paramount Chief positions, the Town Chief position is a volunteer position with limited influence and resources. While the position is relatively unencumbered by national politics or external manipulation, the position is shaped by internal town politics between ‘town owners’ (people with high degrees of influence and/or a strong sense of entitlement to power and rights) and common ‘town men’ (usually the majority).” ²⁴⁴ “Individual and family rights to access to land and natural resources are managed and negotiated at the town level. Towns are thus a key social unit in the protection of community land rights. However, geographic boundaries between and within towns are weakly regulated. Most towns have several contested boundaries.” ²⁴⁵
Quarters & Quarter Chiefs	Quarters are “town subdivisions determined by prominent landholding families, often descended from the first-settler families, sometimes governed by ‘Quarter Chiefs’ in large towns.” ²⁴⁶
Village	“A village is the smallest customary unit, consisting of 1 to 10 households from a single family. A village is managed by the family that lives there and its customary legitimacy relies upon its ties to a town. As villages grow, they may demand town status, along with increased customary privileges and responsibilities.” ²⁴⁷

Source: A. Kaba, *Complexities of Community Self-Identification in Liberia*, Lessons from the Field (Namati 2015) available at <https://namati.org/wp-content/uploads/2015/09/Lesson-from-Field-SDI-Community-Definition-LR-final.pdf>.

Other governance authorities identified in the USAID LPIS II Clan Study include cultural societies—chiefly Poro and Sande, religious organizations, community based organizations, other governmental agencies, NGOs, and international organizations.²⁴⁸ According to this study’s findings, in the studied clans, women may serve as authorities in growing numbers, with researchers meeting those in positions of Township Commissioners, Clan Chiefs, Town Chiefs, Chairladies, and elders; however, “men constitute the clear majority in positions of authority.”²⁴⁹

Other studies highlight the gender disparities in Liberian governance structures. UN Women observed that while “Liberia has had a woman President for twelve years and women account for more than half of the country’s population, they remain largely underrepresented in decision-making and governance

²⁴² *Id.* at 3-4.

²⁴³ *Id.* at 4.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ E. Namubiru-Mwaura et al. USAID LPIS II Clan Study, at xviii.

²⁴⁹ *Id.*

processes. For example, women comprise around 12 percent of members of parliament.”²⁵⁰ However, women have and do hold positions such as mayors and superintendents.²⁵¹

Women’s underrepresentation in governance also extends to land governance performed by statutory bodies. In 2016, the USAID LGSA Institutional Audit of the Key Liberian Land Governance Institutions found that in the Ministry of Internal Affairs, the former Land Commission (including Land Coordination Centers) was comprised of 65 percent male staff and 35 percent female staff.²⁵² A gender assessment that accompanied the USAID LGSA Institutional Audit found that County Land Commissioners in all counties, except Margibi, are headed by men.²⁵³

These gender-based disparities are present in other land governance bodies as well. The Department of Lands, Surveys and Cartography and the Land Bank and Land Services office²⁵⁴ has a staff of 217 working on surveying and mapping—only 14 percent of which are women.²⁵⁵ Out of 132 surveyors, there are only two women—both are trainees.²⁵⁶ At the Monrovia offices, there are 137 staff members, 16 percent of which are women.²⁵⁷ The 15 Resident County Surveyors Offices (not including the Fiamah main office) have 80 staff—only 5 percent are women.²⁵⁸ In CNDRA, women comprise 35 percent of the total staff of 75 associated with functions involving deed registrations throughout Liberia’s counties.²⁵⁹

In addition, the USAID LGSA Institutional Audit identified that Land Commissioners in the Ministry of Internal Affairs had “little to no land related training,” yet were generally knowledgeable about the socio-cultural dynamics of land allocation at the local level.²⁶⁰ The accompanying gender assessment found that County Land Commissioners had limited knowledge of the laws and policies that promote women’s land rights, and did not have copies of the laws.²⁶¹

Moreover, access to government land services is challenging, particularly for women. For example, the USAID LGSA Institutional Audit found that most of the county-based Deeds and Titles Registry offices “are not up to basic standards for a functional office providing service to the public. Offices are small with no space for any private consultations, are poorly furnished, are without technology, and without electricity for several hours of the working day (frequently have no power for several months at a time).”²⁶² In the accompanying gender assessment, it was found that women seek services at the Land Coordination Centers less than men. Reasons suggested for this includes the following: women seek to avoid conflict with “powerful men;” case intake managers’ social and gender prejudice toward female clients (includes officials not being trained in gender sensitivity); cultural barriers and norms, including the traditional norm against women challenging men; and women’s lack of awareness about the role of

²⁵⁰ UN Women, *Liberia Elections: Making 2017 Count for Women* (UN Women 2017), <http://www.unwomen.org/en/news/stories/2017/8/feature-liberia-elections-2017>.

²⁵¹ J. Carter. “Report – track changes.” Received by Jennifer Duncan and My-Lan Dodd, Nov. 11, 2017, on file with Landesa.

²⁵² USAID, *Institutional Audit of the Key Liberian Land Governance Institutions: Land Governance Support Activity (LGSA)* (2016), at 11.

²⁵³ I. Nagbe, USAID LGSA Field Report on Gender Assessment of Land Entities, at 5.

²⁵⁴ These bodies are under the Ministry of Lands, Mines, and Energy; now named the Ministry of Mines and Energy.

²⁵⁵ USAID, *Institutional Audit of the Key Liberian Land Governance Institutions: Land Governance Support Activity (LGSA)* (2016), at 13.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.* at 4.

²⁶⁰ *Id.* at 17.

²⁶¹ I. Nagbe, USAID LGSA Field Report on Gender Assessment of Land Entities, at 5-6.

²⁶² USAID, *Institutional Audit of the Key Liberian Land Governance Institutions: Land Governance Support Activity (LGSA)* (2016), at 19.

the centers and services due to inadequate community outreach.²⁶³ In terms of access to County Land Commissioners, of the few cases brought by women, they were educated or semi-educated women. Other barriers to women's access to government land services included that women are not seen as dealing directly with land issues; rather, they usually rely on their husbands. Moreover, as it is the norm for men to make land requests, it is more challenging for single rural women to go through the process to acquire land.²⁶⁴

Studies additionally highlight gender disparities in land governance at the customary or community level. USAID LGSA research conducted in 2016 in six counties found that men are generally custodians of the land.²⁶⁵ Some communities have committees to manage land matters, which are headed by male elders. Land requests are handled through these committees. Land requests by women must be done through a male relative (see, for example, Maryland County and Zorzor district in Lofa County). In some counties, slots to participate in these committees are given to women. However, their involvement is limited only to their name; due to their domestic responsibilities, they do not have the time to attend meetings or to participate in land identification and distribution processes. Furthermore, they are afraid to engage in matters usually handled by men.²⁶⁶

Further, research by De Wit and Stevens noted that in the “Northwestern regions, deeded customary land and their holding institutions do not provide equal security of tenure for all community members. Customary land holding institutions are questioned by male youths and women.”²⁶⁷

LGSA WOMEN'S LAND RIGHTS FIELD RESEARCH

Across areas researched by the authors in Maryland, Nimba, and Grand Bassa Counties, women's participation in land governance is low, and in certain cases absent, in both statutory and customary governance systems. Men predominately occupy positions that endow them with higher-level decision-making powers with customary communities.

Women face challenges in accessing these authorities and participating in land-related discussions. Formal land governance authorities also under-deliver on gender-responsive land governance and the protection of women's land and inheritance rights.

WOMEN'S LOW NUMERIC PARTICIPATION

Research in Maryland, Nimba, Grand Bassa, and Monrovia confirmed that women are numerically underrepresented in land governance. In statutory governance systems, there are disproportionately fewer women leaders than men leaders. For example, in Nimba County, one government official reported that out of 19 District Commissioners, there are only two women. Rural women in Nimba County also observed that women do not participate in the land-related decision-making

USAID LPIS II Clan Study finds broad land governance positions occupied by women

Research conducted in the II clan study finds women occupying a growing number of positions of authority. Researchers “met women serving as elders, chairladies, Town Chiefs, Clan Chiefs, and Township Commissioners.” In the research, some “attribute women's growing occupation of these positions to the introduction of principles of gender equity from external sources.” Despite these positive trends, women's land-related is limited “as land is often still viewed as the domain of men and male decision-making.”

Source: E. Namubiru-Mwaura et al., USAID LPIS II Clan Study, at xviii.

²⁶³ I. Nagbe, USAID LGSA Field Report on Gender Assessment of Land Entities, at 3.

²⁶⁴ *Id.* at 5.

²⁶⁵ I. Nagbe, Field Report on Interactive Discussion with Rural Women on Women's Land Rights (Unpublished: USAID LGSA 2016), at 3.

²⁶⁶ *Id.*

²⁶⁷ De Wit & C. Stevens, 100 Years of Community Land Rights in Liberia: Lessons Learned for the Future (Paper prepared for presentation at the 2014 World Bank Conference on Land and Poverty, Washington DC 2014), at 17-18.

process. In customary land governance systems, women are also underrepresented in the areas visited. Research participants holding positions as customary authorities are overwhelmingly men. Women largely do not serve as Chiefs. One Chairlady stated explicitly that women were not allowed the opportunity to be Chief. (According to her personal story, after the death of the Paramount Chief, she was asked to serve as Paramount Chief. After the papers were prepared, the chiefs and elders decided that a woman could not lead them, and the documents were changed overnight, making a man Paramount Chief.) However, they serve as elders and Chairladies. Chairladies occupy a position below that of Town Chief, as reported by one Chairlady. They also serve as members of secret societies, such as the Sande, and according to one expert, women there may be represented at the highest level.²⁶⁸ However, as a rule, women are generally excluded from the male secret societies that make behind-the-scene decisions on land allocations and governance within communities. Research participants made no mention of these all-female groups making land allocation and governance decisions.

WOMEN'S LIMITED ACCESS TO LAND GOVERNANCE AUTHORITIES

In the researched areas, women's lower level of numeric participation in land governance is compounded by related challenges. First, because there are fewer women in formal land governance positions, particularly at the higher levels, women encounter disproportionately more male authorities and likely are exposed to more adverse gender stereotypes when they pursue land-related issues. Secondly, while men are able to independently access relevant land governance authorities, social taboos prevent women from independently accessing these same authorities. Rather, rural women in the areas studied often must be accompanied by men when meeting both statutory and customary authorities about matters directly affecting women's access and rights to land. (See Box 16 for details.)

Box 16. Male mediation of women's land access and rights in rural and urban settings

In rural areas, male accompaniment is regularly required for women to access customary authorities to request traditional allocations of land for housing and farming. For example:

- In Nimba County, a woman who wants access to customary land for tilling or housing must have a male relative accompany her and advocate on her behalf. Customary leaders affirmed this norm, stating that traditionally male relatives (e.g., husband, male partner, brother, or sons) must access customary governance authorities on behalf of women. On the other hand, men—even those not from the community, can request and receive land after negotiating directly with the Chiefs and elders.
- In Pleebo in Maryland County, it was reported that anyone could go through the Quarter Chief to request a parcel of land to farm or to build a home. However, this was contradicted by participants who stated that women that marry and move to their husband's community could not access land through the Quarter Chief but instead had to go through their husband.

Women—unlike men—did not go through the tribal certificate (TC) process independently (except in one or two exceptional cases) to access and formalize land rights. Women, however, could join their spouse/partner or another male relative in acquiring land. It is important to note, however, that research participants shared no cases where they themselves had a TC where both the woman and man were named jointly on a TC, though participants in Ganta said they had heard of such cases.

Some urban areas also have male mediation in women's attempt to attain land rights. In the urban center of Ganta in Nimba County, research participants said it would be difficult (although not impossible) for women to buy and to rent land on their own. This is in part due to the community's perception of impropriety on the part of the woman. For example, some alleged that women would use the premise for prostitution. The process is more feasible with male accompaniment. Men, however, had the absolute ability to go independently to engage in these urban land transactions.

²⁶⁸ J. Carter, "Report – track changes." Received by Jennifer Duncan and My-Lan Dodd, Nov. 11, 2017, on file with Landesa.

Third, various research participants raised the issue that women are not consulted in matters related to land and properties (such as formalizing land). For example, they said that administrative land bodies and chiefs do not consult women in the communities—yet authorities consult men on various matters such as land allocation and formalization. One government official in Maryland County explained that women do not have a voice; all the decisions are already made by chiefs and elders. What is clear from the authors’ research is that much land governance within customary settings takes place within male-dominated associations deemed “secret societies”, rather than through other more transparent governance channels. As one customary authority noted in a FGD in Nimba, “Land decisions? These are always made in the bush, never in town.”

WOMEN’S LOW LEVELS OF MEANINGFUL PARTICIPATION

In addition, women largely do not substantively engage in land-related matters (such as land allocation and formalization), particularly in customary settings. Men tend to dominate land governance, and women largely lack information about their rights to land. In Nimba County, a woman explained that men have the decision-making power. Another woman shared that people do not listen to women; they only listen if the women can point to a high status man.

Particularly in the rural areas of the study, social beliefs and norms undercutting women’s participation in land-related matters appear linked to the view that land is not for women and more broadly that women hold an inferior social status as compared with men. One participant explained one cultural belief by way of critique, explaining that women are viewed as property and “property cannot talk about property.” In Nimba County, one participant explained that women are considered second class citizens; that is the reason why men must accompany them on land-related business.

KNOWLEDGE AND PERCEPTIONS OF WOMEN’S LAND RIGHTS

Furthermore, research from this limited study indicates that there are gaps related to governing in a gender equitable manner and enforcing women’s legal rights, particularly those related to land. Research participants shared various examples of shortcomings of the statutory system. Many examples related to women’s access to land and property (refer to the section on Land Tenure Systems Overview).

In the customary settings researched, the gaps are more pronounced with regard to gender equitable land governance and enforcement (which also includes knowledge) of women’s land rights. Many customary governance authorities were not aware or knowledgeable about women’s legal rights, particularly related to land and inheritance. They also were not enforcing these rights (e.g., due to a lack of familiarity, cultural fit, or willingness). Out of those interviewed some opposed women’s land rights, some were supportive, and others appeared puzzled by the women’s land rights provisions that contradicted their customary beliefs. For example, the respondents in all the three counties seemed to be surprised by the mention of women’s dower rights.

Box 17. Illustrative examples of land governance authorities views on women’s land rights

- **Opposed:** In Maryland County, the all-men focus group discussion, including many customary authorities, agreed with one man that the dominant view was “property cannot own property.”
- **Supportive:** A District Commissioner in Nimba County commented on how a rural community gathering on women’s land rights is very new and rare but useful. It provides a forum to share progressive ideas that counter notions such as viewing that women do not have land rights.
- **Puzzled:** A customary authority in Nimba County found the concept of women’s land rights “strange.” He said “[i]t’s my first time for hearing about women’s land rights.” He stated that “[w]e never have seen any women say ‘I want land,’” and explained that the GoL only gives land to men.

Moreover, gaps in the customary and statutory systems, and the lack of law dissemination and awareness, combine to compound the barriers faced by women in accessing and enforcing their rights to land (see section E “Access to Justice and Dispute Resolution”).

CONCLUSION

In summary, more could be done to ensure gender-responsive land governance in law (as called for by the constitution and the LRP), in key governance institutions, and in practice. These are needed to overcome the barriers to gender equity in land governance that exist in practice. For example, research findings indicate that women are disadvantaged in both statutory and customary land governance systems due to underrepresentation, customary norms requiring male accompaniment, lack of consultation and information, under recognition of women’s legal rights to land and inheritance, and the dual system of land governance, which both contain biases against women.

E. ACCESS TO JUSTICE AND DISPUTE RESOLUTION

ACCESS TO JUSTICE AND DISPUTE RESOLUTION: BASIC LEGAL FRAMEWORK

Liberia's legal framework regulates the resolution of disputes through formal and tribal systems. It consists of constitutional provisions, statutes, regulations, common law, and customs (including religious norms). The Constitution establishes the powers of the Judiciary and regulates this branch of government,²⁶⁹ while formal courts are further regulated under the Judiciary Law (1972). The law vests the judicial power in a unified judicial system consisting of the Supreme Court and its subordinate courts,²⁷⁰ but not the Tribal Courts, "whose organization and exclusive jurisdiction over tribal persons in tribal matters" are provided for in the Local Government Laws.²⁷¹ Under the Judiciary Law, several courts have jurisdiction over property-related matters. The Criminal Court of the Circuit Courts, for example, has jurisdiction over offenses against property.²⁷² The Monthly and Probate Court of Montserrado County, the Provisional Monthly and Probate Courts, and the Probate Divisions of the Circuit Court have original jurisdiction over probating wills that affect property, granting letters testamentary and letters of administration, enforcing inheritance, effectuating the admeasurement of dower to widows, probating deeds and mortgages, determining the adoption and legitimation of children, etc.²⁷³

Under the Civil Procedure Law, a court is permitted to exercise personal jurisdiction (that is, the court's power to bring a party to court and to make decisions regarding that party) in actions 1) to annul a marriage or for divorce (if the marriage falls under the jurisdiction of Liberian courts), and 2) that affect property rights (real and personal) in Liberia.²⁷⁴ Further, rightful possessors of real property are entitled to bring an ejectment action against wrongful possessors, and widows may recover their dower through ejectment.²⁷⁵ Under the Property Law, additional adjudication guidelines stipulate that the Referee shall deem all unclaimed land public land (until proven otherwise) and shall determine whether co-land rights holders are joint owners or owners in common.²⁷⁶

²⁶⁹ Const. art. 65 (vests the judicial power in the Supreme Court and its subordinate courts). The Supreme Court, in *Jitco Inc. vs. Sesay*, 36 LLR 695 (1990), re-enforced this separation of powers, and it held that "[t]he determination of property rights lies within the province of the court." Constitutional Article 65 also mandates courts to "apply both statutory and customary laws in accordance with the standards enacted by the Legislature." Under Article 66, the Supreme Court is the "final arbiter of constitutional issues" and "exercise[s] final appellate jurisdiction in all cases . . ." Additionally, the Constitution guarantees citizens access to the Judiciary and affords due process and equal protection. For example, Article 26 entitles a person injured by an act of Government the right to bring suit to seek redress. Article 20 prohibits the deprivation of a person's "life, liberty, security of the person, property, privileges or any other right except as the outcome of a hearing judgment consistent with" the Constitution and due process.

²⁷⁰ Per the Judiciary Law (1972), the Magistrates' Courts, which are courts of limited jurisdiction, exercise jurisdiction over tribal matrimonial causes arising under tribal customary law in certain magisterial areas, with appeals taken to the tribal courts system (§§ 7.3 & 7.4). These areas include Bondiway, Bomi Hill, Bong, Mano River, Lamco, Gedetarbo and African Fruit Company. The Clerks of Monthly and Probate Courts records all wills, real property conveyances, and another document offered for and admitted to probate and are in charge of all records and providing copies as required (§ 5.9.). Further, the 2008 amendment to the Judiciary Law established a new criminal court with exclusive jurisdiction over crimes of rape and sexual abuse.

²⁷¹ Judiciary Law (1972), § 1.1.

²⁷² *Id.* at § 3.2.

²⁷³ *Id.* at § 5.2.

²⁷⁴ Liberia Revised Civil Procedure Law (1972), § 3.3(a) & (b) respectively; see also *Liberia Agriculture Co. (LAC) vs. Associated Dev. Co. (ADC)*, LRSC I (2012).

²⁷⁵ *Id.* at § 62.1.

²⁷⁶ Property Law, § 8.53 (a) & (c), respectively; see also R. Jappah et al., USAID LPIS WLR Study, at 35.

Furthermore, the formal court system in Liberia is charged with application of both formal and customary laws. The Supreme Court, in *Jartu vs. Konneh*, stated that Liberia’s “statutes provide that the courts . . . shall take notice of and administer the native customary laws of the particular tribe or tribes interested in the dispute, and this has been done in several cases heretofore.”²⁷⁷ In this case, the Supreme Court looked to customary laws governing marriage and inheritance to decide a case brought by one of four wives regarding her deceased husband’s estate.

In addition to formal courts, tribal courts are provided for under the Rules and Regulations Governing the Hinterland (covering the jurisdictions not covered by the Judiciary Law). It covers the administration of justice in the interior, and calls for establishing various courts, which include:

- The courts of general jurisdiction: the Provincial Circuit Court of Assize (County Circuit Courts), the Administrative Court of the Provincial Commissioner (now the County Superintendent), and the Administrative Court of the District Commissioner.
- The Joint Court of District Commissioner and the Paramount Chief.
- The District Commissioner’s Court, which hears appeals from the Paramount Chief’s Court.
- The Paramount Chief’s Court, which has jurisdiction over: 1) civil cases within a tribe or chiefdom for matters ranging between \$25 and \$100; 2) criminal cases where the fine is under \$10 or imprisonment is under three months; 3) appeals from the Clan Chief’s Court; and 4) cases between strangers and tribal members.
- The Clan Chief’s Court, which has jurisdiction over: 1) civil cases within the clan for matters under \$25; 2) cases within the clan relating to personal status, marriage, and divorce under customary law; and 3) misdemeanors where punishment is less than one month—but not cases involving the Clan Chief, which are tried in the Paramount Chief’s Court.
- The Interior Administrative Courts, which have exclusive jurisdiction over “woman palaver” as adjudicated under the particular tribe’s customary law.²⁷⁸

The Rules and Regulations Governing the Hinterland also provides a list of court costs and fees (art. 54), permits the Poro and Sande to exist as cultural societies (art. 68), and regulates trial by native ordeal, prohibiting ingestion of sassywood²⁷⁹ and allowing trial by ordeal of a minor nature (art. 73).

Furthermore, the Ministry of Internal Affairs, specifically, the Legal Affairs Section in the Department of Administration, “handle[s] and adjudicate[s] all legal matters” arising from the counties, including “conduct[ing] on the spot investigation in tribal land cases.”²⁸⁰ Within the Legal Affairs Section, the Chief Land Arbiter “investigate[s] all land disputes” within the counties; the Superintendent Appellate Court and the Assistance Minister for Legal Affairs “conduct[s] administrative investigations, including

²⁷⁷ *Jartu vs. Konneh*, LRSC 6; 10 LLR 318 (1950).

²⁷⁸ Rules and Regulations Governing the Hinterland of Liberia, Ministry of Internal Affairs, (1949, re-promulgated 2001), arts. 38-42. Also, note that the Aboriginal Law (now largely repealed) also provided for Provincial Circuit Court of Assizes (County Circuit Court) (§121), Court of the Provincial Commissioner (now known as the County Superintendent located at the top of the tribal court system with appellate powers over tribal issues adjudicated by other tribal courts) (§122), the Joint Court of the District Commissioner and Paramount Chiefs (which presides over issues between “aborigines” and “non-aborigines” in the Hinterland) (§ 125), the Court of the District Commissioner (adjudicates matters between “aborigine” parties in the Hinterland and also charges against the Paramount Chiefs) (§ 123), the Court of the Paramount Chief (has civil and criminal jurisdiction and may hear cases between “aborigines” even if they are part of different tribes, can hear cases against the Clan Chief, and has appellate jurisdiction over the Court of the Clan Chief) (§ 126), and the Court of the Clan Chief (hears lower level civil and criminal cases, presides over customary marriage and divorce, and hears cases against Town Chiefs) (§ 127) per Jallah Barbu, 2009, *An Analysis of the Formal Legal Framework Governing Customary Law in the Republic of Liberia*, Unpublished: United States Institute of Peace.

²⁷⁹ Sassywood is a traditional form of trial by ordeal used against individuals charged with committing crimes or those suspected of witchcraft, VOA, *Controversial Practices: Trial by Ordeal in Liberia* (2006).

²⁸⁰ GoL, Ministry of Internal Affairs, Department of Administration, available at <http://www.mia.gov.lr/2content.php?sub=180&related=1&third=180&pg=sp>, access 12/05/2017.

Traditional Divorce cases;” and the Commissioner of Tribal Appellate Court “review[s] all Tribal appeal cases.”²⁸¹

Box 18. Illustrative case law example of Liberia’s dual court structure

The Supreme Court, in *Posum vs. Pardee*, heard a case involving a man claiming he was legally entitled to possess two women of the Kru tribe as provided under custom, which another man was withholding.²⁸² The case arose out of “woman palaver,” was heard by the Clan Chief, appealed first to the Superintendent of Sinoe County, and then to the Circuit Court, where it reached a decision based on traditionally administering sassywood. The Supreme Court examined two issues: 1) whether the Superintendent had jurisdiction and 2) whether the Circuit Court could order the issues to be determined by trial by ordeal. The Supreme Court answered both questions in the negative.²⁸³ Addressing the first issue, it held unconstitutional legislation prescribing other branches to engage in judicial work, and found executive officers attempting to engage in judicial functions to be “committing usurpations on the constitutional powers of the courts.”²⁸⁴ Addressing the second issue, it held that “[t]he administration of sassywood is equivalent to a trial by ordeal and violates the constitutional provision that: ‘No person . . . shall be compelled to furnish or give evidence against himself.’”²⁸⁵

On the subject of land ownership disputes, the Supreme Court, in *Sheriff vs. Mulhab*, stated “that there has been brewing in our society controversies relating to ownership of land . . .”²⁸⁶ Land disputes heard by the Supreme Court include but are not limited to:

- competing claims between a widow’s claim to a parcel owned with her husband as tenants by the entirety prior to the husband’s death and parties claiming land under an aboriginal land grant held under communal holding;²⁸⁷
- disputes between an ex-wife and second wife over property distribution triggered by the ex/husband’s death;²⁸⁸ and
- conflicts between a tribal member and a stranger claiming the same land in a tribal reserve.²⁸⁹

LEGAL ANALYSIS

In Liberia’s plural legal system, the legal framework regulating the population governed by custom is complex. Julian Graef notes that Liberian common law precedent and statutory law enabled “jurisdictional segregation,” placing individuals in the interior under the Ministry of Internal Affairs instead of the Judiciary.²⁹⁰ Graef quotes Counselor Jallah A. Barbu who stated that an early Supreme Court precedent sanctioning this segregation “allowed the [C]onstitution [specifically its separation of powers clause] to be negated because of its holding that the [Minister of Internal Affairs] could exercise judicial power over the natives.”²⁹¹ Barbu further explained that this dual but contiguous system, the

²⁸¹ *Id.*

²⁸² *Posum vs. Pardee*, 4 LLR 299 (1935).

²⁸³ Note, the Supreme Court pointed to *Jedah vs. Horace*, 2 LLR. 265 (1916), which had resolved both issues.

²⁸⁴ *Posum vs. Pardee*, 4 LLR 299 (1935).

²⁸⁵ *Id.*

²⁸⁶ *Sheriff vs. Mulbah et al.*, LRSC 22 (2011).

²⁸⁷ See, e.g., *Id.*

²⁸⁸ See, e.g., *In re The Estate of Lloyd K. Whisnant*, 24 LLR 298 (1975).

²⁸⁹ See, e.g., *Richardson et al. vs. Gbassie*, 15 LLR 50 (1962).

²⁹⁰ J. Graef, *Practicing Post-Liberal Peacebuilding: Legal Empowerment and Emergent Hybridity in Liberia*, (Palgrave Macmillan UK 2015), internal citation omitted.

²⁹¹ *Id.*, quoting Counsellor Jallah A. Barbu.

customary legal system exists apart from the formal legal system; however, customary cases can move into the formal legal system.²⁹²

On the backdrop of the dual legal system, the adjudication of women's land and property rights has added complexity. The issue of Liberian women's land and property rights itself is complicated, involving constitutional guarantees, personal/ family laws regulating marital property and inheritance, and land and tenure reform laws, which as of yet do not adequately recognize rights in customary land. Further, many of these laws lack explicit guidance on the substantive rights, and therefore the subsequent enforcement and adjudication of the rights of women, of all categories on all types of land, through all stages of their life course (including upon marriage, divorce, death, and abandonment), particularly as applied in customary governance and tenure systems. For example, the ERCM Law Section 2.1 and DRL Section 1.1 contains contradictions. While the ERCM Law (which is the most recent law compared to DRL) incorporates DRL, this can be confusing to the judiciary if the two laws are not read together. It bears repeating a quotation from the study by Jappah et al. shared earlier regarding how in light of ambiguity in the law "[t]hose charged with applying the law are left to their own discretion to fill the gaps not adequately addressed by the law, often relying on customary norms about property rights."²⁹³

The complexity of the laws and the amount of discretion permitted in their enforcement create barriers that adversely impact women, due to issues surrounding their class and gender. It makes it harder for dispute resolution actors, much less women themselves, to understand whether and when these rights apply, when they have been violated, and how to proceed toward redress. Women are disadvantaged where laws fail to treat men and women equally and where there are gaps in key matters required to adequately protect women's land rights. This may result in adjudicators' implementation of discriminatory provisions in law or in their use of discretion in ways that systematically disadvantage women.

Furthermore, women must navigate multiple dispute resolution bodies charged with adjudicating disputes on land-related issues within both the formal and customary structures. They must figure out which body to turn to for their case, which will vary from depending on the land issue, the land type, and their marital status. In bringing a case within these bodies, women may encounter laws or customs that overtly discriminate against them. While there is an opportunity for women to seek redress, including all the way up to the Supreme Court, the cases taken up predominately serve those women whose rights are more clearly articulated in the laws, such as women (single or marriage under formal law) who have clear, documented rights to private land, and also those women who likely are sufficiently well-endowed to access the formal court system.

ACCESS TO JUSTICE AND DISPUTE RESOLUTION: IN PRACTICE

Research examines how land disputes, access to justice, and dispute resolution play out in practice in Liberia, in general and with respect to women in particular.

The USAID LPIS II Clan Study focused on these issues in general. It identified land disputes over access to land and natural resources (including competing statutory and customary claims), inheritance, encroachment, and boundaries.²⁹⁴ The study noted that research participants in all II clans found that land disputes are growing and that the trend will continue.²⁹⁵

²⁹² *Id.*

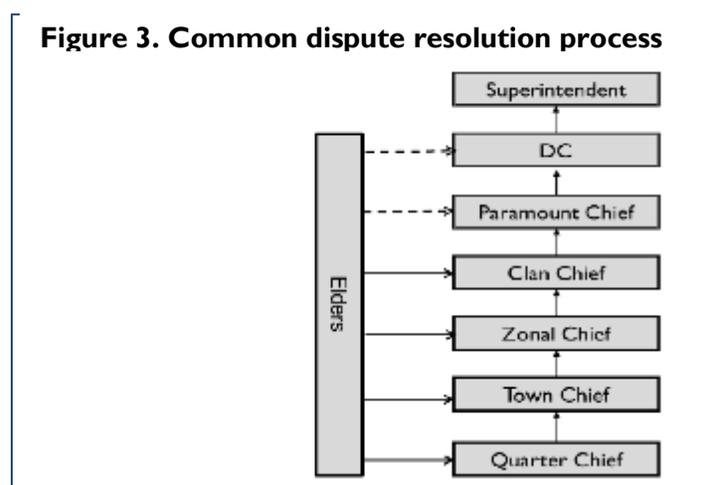
²⁹³ R. Jappah et al., USAID LPIS WLR Study, at 1.

²⁹⁴ E. Namubiru-Mwaura et al., USAID LPIS II Clan Study, at xix.

²⁹⁵ *Id.*

The study also described the commonly accepted dispute resolution process that customary community members' access. Namely, in all 11 clans, parties brought their cases to clan-level statutory and customary authorities, which included the Quarter or Town Chief, as the first point of access, before going to the Zonal/General Town Chief (depending on whether such authorities existed in the clan), and subsequently to the Clan Chief. If one or the other disputing parties did not agree upon the resolution, the dispute moved up the hierarchy of authorities. In the event of an inability to resolve the dispute within the clan, the dispute was referred to the Paramount Chief, next to the District Commissioner, and finally to the Superintendent.²⁹⁶

Furthermore, in nearly all 11 clans, individuals consult elders before going to local-level chiefs and/or authorities higher up the hierarchy. Often elders play an advisory role.²⁹⁷ (See figure 3 for an illustration of the common dispute resolution process.)



Source: USAID LPIS 11 Clan Study, at 88.

The USAID LPIS Study also identified other customary dispute resolution mechanisms at the local level. In addition to elders, there are Chairmen and Chairladies, youth leaders, and cultural and religious authorities, such as the Poro and Sande, pastors, and imams.²⁹⁸

Other land-related dispute resolution channels have been offered by NGOs, such as the Norwegian Refugee Council, as well as the government.²⁹⁹

The Norwegian Refugee Council (NRC) provided alternative dispute resolution (ADR) for local communities in Liberia for several years following the civil war. Based on a NRC Dispute Resolution Durability Survey of cases handled by the NRC during the period from 2007 to 2013, the NRC and Parley Liberia found differentials between women and men in terms of land disputes, access to justice, and dispute resolution. These included the following:

- Liberian women in land disputes are 23 percent more likely than men to have a house plot in dispute.
- Liberian women in land disputes are 21 percent more likely to be un-married than men.
- Liberian women in land disputes are 26 percent less likely to be literate than men.

²⁹⁶ *Id.* at xx.

²⁹⁷ *Id.*

²⁹⁸ *Id.* at 89-90.

²⁹⁹ *Id.* at xviii.

- Liberian women in land disputes are 22 percent more likely to have been in a refugee during the civil conflict.
- Liberian women in land disputes are 33 percent less likely to have paid money to resolve a land dispute.
- Liberian women in land disputes are 27 percent less likely to have ‘forum shopped’ to resolve a land dispute.³⁰⁰

These statistics highlight that women are more insecure than men in their housing and land rights and are in less advantageous bargaining positions when they seek to resolve their land disputes.

In addition to ADR mechanisms provided by NGOs, there are those provided by the government. For example, through the former Land Commission, Land Coordination Centers (LCCs) provided land dispute consultations services and piloted ADR services in six counties.³⁰¹

A LGSA report from 2016 identified various gender gaps related to the provision of ADR services by the pilot ADR committees.³⁰² The research found that women made up less than 25 percent of trained practitioners in most of the counties (e.g., in Bong County, out of 102 trained practitioners, only 15 were women). However, such gender-based disparities in trained ADR practitioners need not be the norm. For example, Margibi County reported to have a 50-50 male to female representation.³⁰³

One cause for the low level of representation of women is because most females do not meet the selection criteria for an ADR practitioner: applicants must be a community leader or influential person within their community, and must have knowledge about land dispute resolution. Within communities, leadership positions are usually held by males. Furthermore, serving as an ADR practitioner requires a considerable amount of voluntary time (as settling land disputes is a time-consuming process). Most rural women have neither the time nor the financial means to serve this role, despite their potential interest.³⁰⁴

Another finding from the report was that some ADR practitioners strongly hold gender stereotypes that may undermine the fair resolution of land disputes.³⁰⁵

LGSA WOMEN'S LAND RIGHTS FIELD RESEARCH

In 2017, research conducted by USAID LGSA in three counties, with a specific focus on women, had access to justice and dispute resolution as a key thematic area. Similar to the USAID LPIS Study, this research found that in the three counties studied, people access justice through the formal court system, alternative dispute resolution ADR processes, and customary/traditional means.

TYPES OF DISPUTES REPORTED BY RESPONDENTS

In the researched communities, there were four major forms of land disputes reported: disputes over parents’ land—that is siblings fighting over who inherits the land left by their late parents (mostly between male and female siblings); wives in dispute with in-laws over late husbands’ land/property; wives

³⁰⁰ Norwegian Refugee Council / Parley Liberia (2013) (G. Kitt / Parley Liberia. “Re: Seeking women’s land rights sources developed by Parley & NRC . . .” Received by My-Lan Dodd and Jennifer Duncan, Aug. 8, 2017, on file with Landesa).

³⁰¹ USAID, *Institutional Audit of the Key Liberian Land Governance Institutions: Land Governance Support Activity (LGSA)* (2016), at 11.

³⁰² I. Nagbe, *Field Report on Gender Assessment of Land Entities*, at 4.

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Id.* at 6.

in dispute with husband over property upon separation from marriage; and disputes over compensations/benefits and benefits from land taken by concessions.

HOW ARE DISPUTES HANDLED?

When there is a dispute over land and property, the first point of contact is usually with the elders within the community. When the elders cannot settle the dispute, it is referred to the town chief and if the conflicting parties are not satisfied with the ruling from the town chief, the case is then taken to the clan chief or district commissioner. The formal court system is most often seen as the last resort and women would usually go to it only when it is a matter of privately owned land and not community land.

Other parties, including the Ministry of Gender, Children and Social Protection (MGCSP) and some NGOs, provide support to women during these processes, but were not said to be decision makers. The Gender Coordinator of the MGCSP, for example, would refer women to the court and advocate for proper adjudication of the case.

BARRIERS TO JUSTICE FOR WOMEN

Though the team was informed by respondents that women use existing ADR processes more often than formal court channels; it was ascertained in all researched communities that women faced constraints accessing justice regardless of the channels used. The barriers presented by the respondents to accessing the formal justice system included limited or no awareness on the laws and court processes, courts were not very accessible to the communities, and court locations were far. Other barriers included the high cost of taking a case through the court process, as many women cannot afford legal fees, and legal aid is not available in all the research communities. Further, the courts' justices are dominated by men, increasing the likelihood that treatment, advice, or judgements may contain male bias. Sometimes women are discouraged from seeking redress on land and property matters by court practitioners. Some judicial officers who are influenced by cultural beliefs may deny women's rights to land. In rural Nimba, women participants expressed the need for having more women in the judiciary.

TRADITIONAL DISPUTE RESOLUTION

Traditional norms appear to hinder justice for women in the areas studied, as women are not allowed to own property in most studied communities. At the same time, most disputes are handled by local authorities who are predominantly men. As land is passed on through the male lineage in all researched communities, decisions on land disputes are usually influenced by preference and validity of patrilineal inheritance. Many women are afraid of the repercussions of defying cultural norms (such as being subject to ostracism or violence), thus they do not defy the decisions of the elders even if they know they were biased against them.

CONCLUSION

Given the above-mentioned challenges and barriers that women faced in enforcing their rights to land within the areas of research, ensuring women's full rights under the LRB will require a well-designed strategy. Additionally, there is a need to disseminate and raise awareness about the laws among both traditional authorities and the people the law seeks to protect. Unless the law is known, gender discriminatory customs and repealed laws will continue to apply in the interior justice systems.

F. CONCESSIONS

CONCESSIONS: LEGAL FRAMEWORK

Liberia's legal framework regulates concessions in Liberia, through both constitutional provisions and statutes. The Constitution protects private property but authorizes expropriation “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 the reasons are given and there is prompt and just compensation (among other provisos).³⁰⁶ Additionally, two key investment statutes are the Public Procurement and Concessions Act (PPCA) (2005, approved 2010) and the Investment Act (IA) (2010). The PPCA provides the definition for “concession” and its objectives.³⁰⁷ Further, Section 90(1) instructs the concession entity to conduct public consultations before the bid is concluded. The IA broadly covers investment procedures between the government and business enterprise in regard to establishing and regulating the enterprise and ensuring its legal security.

LEGAL ANALYSIS

The PPCA and IA appear to be inadequate in terms of providing a gender-responsive, socially responsible legal framework for investment in land. The PPCA, for example, does not require the concession entity to include men, women, and other vulnerable land users in the consultation processes. Failure to include affected men and women land users can lead to land rights violations, and such practices violate regional and international laws (discussed below) that call for State Parties to respect the human rights of rural and vulnerable farmers.

Bruce elaborated on the PPCA's shortcoming in 2016, stating that:

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 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 land is often self-identified by the investors in consultation with local officials, and then becomes the subject of an unsolicited bid . . .³⁰⁸

Despite mentioning that direct investments and concessions are undertaken for sustainable development, the PPCA does not have the provisions necessary for gender equitable and socially responsive investment in land. The law should provide clear guidelines on how the affected community members will participate in and benefit from the concession, and explicitly provide for gender balanced participation in the decision-making process, such as in the selection of a concession and in dispute resolution.

³⁰⁶ Const. art. 24.

³⁰⁷ Public Procurement and Concessions Act (PPCA) (2005, approved 2010), arts. 73 & 74, respectively.

³⁰⁸ J. Bruce, *A Strategy for Further Reform of Liberia's Law on Land, Liberia Land Governance Support Activity (2016)*, at 49.

In terms of the IA, a key problem is that the investment contract regulated by it concerns only the government and the investor. It pays no regard to land users' participation, land rights security, or compensation. According to Bruce, the only provision of the law that is relevant to land rights, namely Section 7, relates to 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.³⁰⁹

In other words, the IA does not provide for socially responsible investment in land because it fails to provide for the consultation, protection, and compensation of the land users within the process of making and implementing a concession agreement. Furthermore, the IA does not provide for gender-responsive investment in land. In not protecting land users, it fails both the women and men who rely on the land in the concession affected area. It also does not provide for gender equitable participation in the land-based investment agreement processes and decision-making.

While there are gaps in Liberia's domestic laws relating to large scale land-based investment (LSLBI), Liberia is a signatory to regional and international laws that protect the land rights of women and men land users. Both the African Union and the United Nation guidelines for LSLBI have provisions that protect land users generally and in particular women's and vulnerable groups' land rights. Some key principles are discussed below.

The African Charter on Human and People's Rights obligates State Parties to respect human rights in business.³¹⁰ In particular, Article 18(3) mandates State Parties to eliminate all discrimination against women. This includes state and customary practices in Liberia that discriminate against women in terms of access to and control of property both in the family and the community.³¹¹

Under the UN Guiding Principles on Business and Human Rights, State Parties and business enterprises should take all necessary measures to promote and to protect human rights in all their

Box 19. Some key principles from the UN Guiding Principles on Business and Human Rights

Principle I.A (1): "States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication."

Principle II.A (11): "Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved."

Source: UN Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011).

³⁰⁹ *Id.* at 60-61.

³¹⁰ Organization of African Unity, *African Charter on Human and Peoples' Rights* ("Banjul Charter") (1982), arts. 14, 17(3), 18(3), & 21.

³¹¹ See, e.g., Green Advocates International, *Gender-differentiated Impacts of Large-scale Land Acquisitions in Liberia: A case study based on the publication of the report titled: "Women: The Least Secure Tenure,"* (2017).

dealings.³¹² While corporations are under obligation to employ due diligence and respect for women and other vulnerable groups in business (generally and in LSLBI specifically), governments have the prime responsibility to ensure that they protect and promote land rights through policy, law, and implementation processes of any business taking place in their territories. The key human rights principles are found in Principle 1 and Principle 2.³¹³ (See box 19 for some key principles.)

Additionally, under the Voluntary Guidelines on the Responsible Governance for Land, Forestry and Fisheries (VGGT), adopted by the UN General Assembly in 2012, governments should recognize, clearly define, and publicize legitimate land tenure rights within customary systems.³¹⁴ Specifically, the VGGT provide that:

Where States own or control land, fisheries and forests, the legitimate tenure rights of individuals and communities, including where applicable those with customary tenure systems, should be recognized, respected and protected, consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. To this end, categories of legitimate tenure rights should be clearly defined and publicized, through a transparent process, and in accordance with national law.³¹⁵

The VGGT also contain several important sections on gender equality and tenure security. In particular, “States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status.”³¹⁶ Moreover, “[a]ll forms of tenure should provide all persons with a degree of tenure security which guarantees legal protection against forced evictions that are inconsistent with States’ existing obligations under national and international law, and against harassment and other threats.”³¹⁷ Land tenure security, including for women, should be respected in the context of making and implementing concession agreements.

In Liberia, acquisition and expropriation laws are inadequate in regard to protecting land users’ land rights, especially in concession areas. Thus, the authors endorse a key recommendation provided by Bruce in “A Strategy for Further Reform of Liberia’s Law on Land”:

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 . . .³¹⁸

Additionally, any general legal framework that is promulgated ought to be gender-responsive and aligned with regional and international laws (to which Liberia is a signatory) that protect the land rights of women and men land users.

CONCESSIONS: IN PRACTICE

³¹² UN Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (2011), http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

³¹³ *Id.* (specifically, Principles I.A; I.B (3), (8) & (9); II.A (11), (13) & (15); II.B 17, 18 & 19(a)).

³¹⁴ UN FAO, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security* (2012), at para. 8.2, <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.

³¹⁵ *Id.*

³¹⁶ *Id.* at para. 3B.4.

³¹⁷ *Id.* at para. 4.4.

³¹⁸ J. Bruce, *A Strategy for Further Reform of Liberia’s Law on Land, Liberia Land Governance Support Activity* (2016), at 49.

The historical and contemporary situation of land rights in concession areas in Liberia can be summarized by excerpts from the research on *Governance of Agricultural Concessions in Liberia: Analysis and Discussion of Possible Reforms* conducted by Allard K. Lowenstein International Human Rights Clinic:

Liberia has a long history of working with private companies to harness the benefits of its many natural resources, including fertile lands, valuable timber species, and metal ores. As early as 1926, Liberia granted a 99-year lease to Firestone for up to one million acres to be developed into a rubber plantation. In 1956, the Liberian government passed the Public Lands Law, effectively granting state ownership over customary lands and permitting the President to concede land to agriculture and mining companies.³¹⁹

. . . [C]oncessionaires have dispossessed communities of control over and benefits from their own lands. . . . Under the Aborigines Law and the Public Lands Law in 1956, the Liberian government has treated all land not under fee simple private ownership as public property owned by the state. Consequently, central government officials have negotiated concessions without consulting the affected communities, and often without the knowledge of which communities in fact live on the land in question. Further, negotiations have also deviated from the formal legal procedures required of them . . .³²⁰

Concessions in Liberia have also had a particularly negative impact on women. A study by Green Advocates International found that women “have been displaced and involuntarily resettled. Where compensation has been paid for land rights, such compensation has been channeled through their husbands, sons, brothers or fathers” (unless they had deeds).³²¹ In addition:

Large-scale land acquisition has a profound impact on the livelihood of local communities, especially women and threatens not only their livelihoods but also their cultural heritage. The destruction of farm lands, food crops, cash crops and the pollution of drinking water makes it impossible for women to sustain their lives. Some women workers employed by concessions are being dismissed for questioning maltreatment at said concessions. This has resulted into serious conflicts, contests, complaints, grievances and protests.³²²

LGSA WOMEN'S LAND RIGHTS FIELD RESEARCH

The dominant concessions mentioned by the interviewees included mining, agriculture, and forestry concessions. Interview analysis suggests that the concessions in the researched areas were large scale direct foreign investments in land and had caused large displacements of land users. The common issues in all three counties included the following:

- community members were not meaningfully consulted at any stage of the business negotiations;
- they were evicted from (their traditional) land without a relocation plan; and
- they were denied rights to access common natural resources (such as water ways and forests), roads and community paths, and cultural sites (such as shrines).

Largely based on the fact that community members depended on agriculture for their livelihoods and economic activity, their livelihoods and wellbeing were drastically affected for the worse by the concessions. Unique to Maryland, the respondents mentioned that all farmland in some communities was taken by the concessionaires.

³¹⁹ A. K. Lowenstein International Human Rights Clinic, *Governance of Agricultural Concessions in Liberia: Analysis and Discussion of Possible Reforms*, (2017) at 4 (internal citations omitted), https://law.yale.edu/system/files/area/center/schell/document/liberia_final_2017.pdf.

³²⁰ *Id.* at 6.

³²¹ Green Advocates International, *Gender-differentiated Impacts of Large-scale Land Acquisition in Liberia* (2017), at 10.

³²² *Id.* at 16.

The interviewees reported that in all three counties the concessions were assigned by the government to international corporations without involvement of community members. Additionally, the government did not consider whether the land in question was customarily or privately owned by individuals or by communities.

The Monrovia- and county-based policy-makers who were interviewed suggested that community members were not consulted because any land that is not private is considered to be public land, suggesting that undeeded customary land is considered by government authorities to belong to the government irrespective of how long it has been occupied by the community in question.

Furthermore, land tenure insecurity and lack of awareness of existing remedies appears to exacerbate socially irresponsible LSLBI. In Nimba, for example, participants said that while crop compensation was the same no matter the size of the land, most dispossessed farmers were still waiting for compensation for their crops.

In addition, in the studied areas, the concessions exacerbated inequities in women's land rights and also worsened women's livelihood opportunities, workload, and general wellbeing. The women in the three counties described how concessions have made their lives worse. They stated that the concessions took away their livelihoods and broadly affected their wellbeing by increasing their daily workload related to family responsibilities, ruining their water supply, and endangering their physical housing structures and their daily work areas. Key issues particularly affecting women mentioned by female respondents include:

Increased scarcity of food and medicinal herbs

Many Liberian women depend on farming and collecting natural resources to provide for their families. Women in concession-affected communities in all three counties visited mentioned that they were faced with scarcity of food and could not gather herbs to treat ill family members.

Limited access to common and public goods

Women and girls in the counties visited shoulder the burden of supplying water and firewood to their families. The respondents mentioned that the concessions took over water sources, roads to their farms, and firewood sources, making it hard or impossible for the women to access these crucial life necessities. The women in Nimba County mentioned that even the few water streams that were still accessible were said to be contaminated by waste from the concessionaire.

Destruction of women's economic activities

Women described how the concession agreements had destroyed their economic activities. They mentioned that they were no longer able to engage in normal economic activity, including small-scale palm-oil production and selling crops in the local markets. They said that this is because of land loss, demolition of local markets, and inaccessible market distances. Consequently, distortion of sources of women's livelihood and welfare increased poverty within the household, and has reinforced gendered relations within families; thereby, reinforcing women's and girl's vulnerabilities.

Inadequate compensation for women's crops

As a result of customary restrictions on land use, women plant more short-term, less valuable crops as compared to their male relatives. In situations where the investor compensated farmers' crops, women's crops were given a lower value, making women's lives more difficult after the land acquisition. While the majority of the women mentioned that they were still waiting for compensation from the investor, even those who were compensated stated that the compensation was not sufficient to start a new life. Some women with male partners mentioned that the compensation for their crops was physically handed to the men, thus never reaching women.

Lost land-based socio-cultural benefits

In many rural settings, women depend on their social networks and on social events and religious festivals rooted in land for leisure and social support. The women lamented that the forest sites for women's secret society rituals were destroyed. This contributed to moral "decay" because it made it hard to initiate young women into adulthood. Furthermore, the concessions in the three counties appeared not to compensate for the cultural, socio-economic long-term land use value.

Slow breakdown of communities and family institutions

As a result of loss of land to concessions, communities have been dislocated, distorting the cultural, social, and economic order. Respondents believe this contributes to family breakdown and amplifies women's and girl's vulnerability. It was mentioned that more men abandoned their wives and children in concessions-affected communities, leaving women to be the sole providers for the family in an economically deprived community.

Increased workload for women

The participants mentioned that, as men leave their communities in search of work, the women assume both traditional male and female roles. In addition to domestic roles, such as care and subsistence farming, in the absence of men, the women have to find ways to provide for other family necessities, such as money for food, clothing, education, shelter, and children's fees.

Limited access to health services

The women interviewed noted that environmental hazards (such as water contamination) are affecting their health, and yet the concession clinics often offer basic health services only to the families whom they employ. When women face work-related injuries, they are sometimes dismissed from work without fair compensation. Also, female respondents who work within the concessionaires (predominantly as porters and traditional farmers) mentioned that they have no maternity leave, which was likely to affect both the woman's and her baby's health.

Box 20. CSOs involvement in Concessions

Positive impact by CSOs in the context of grave concession-related problems experienced by communities

Researchers found that CSO involvement is slowly influencing government decisions in a positive direction. In Grand Bassa, for example, our research found that after resistance to a palm oil company's concession extension, with the help of Sustainable Development Institute (SDI), community members managed to push the government and the investor to promise that future contract extensions would involve the community. The vehicle for community involvement would come through the application of the doctrine of Free, Prior and Informed Consent (FPIC). A promise of FPIC appears to be a step in the right direction. However, in this case, FPIC is a promise for future re-negotiations; yet families are currently breaking up and living standards are deteriorating day-by-day. Despite some small positive signs, the gravity of the extortions experienced by the concession-affected community members in the three counties will have long lasting effects, especially for women and children.

Best practices for government involving CSOs

The government can work with CSOs that have the capacity to understand the multiplicity of land rights, especially the land rights of women, and the short and long term effects that will result from the LSLBI in question. Due to the intricacies of gender perspectives, the CSO identified to conduct a gender assessment and to develop measures to address subsequent inequalities should have the skills to tap into gender-blind-spots occurring within the formulation and implementation of the concession agreement.

CONCLUSION

While the government might exercise its power of eminent domain for concessions, it is important that it consults with the affected land users and applies just and fair compensation before dispossessing them from the land. For women, it is even more crucial that the relocation site, compensation, and alternative livelihoods are established before destroying existing ones. While existing domestic law is as of yet inadequate to the task, Liberia is a signatory to regional and international conventions that protect land users, including women's land rights, and provides guidance.

Additionally, while gender-responsive law and policy is fundamental to the protection of women's land rights, there is urgent need for a cultural shift to redress gender inequalities in the area of LSLBI and in the land rights field in particular. This can only take place if the government displays political will and commitment to protect the land rights of all rural female and male farmers. The task for gender equitable and socially responsible LSLBI (as indicated by the laws, standards, and guidelines described above) requires transparency, involvement of various stakeholders, and informed participation of the communities affected by the concession in question, including women. Although UN guidelines on business and human rights call on both States and corporations to uphold human rights, the GoL has the primary duty to safeguard land users' rights during the allocation and implementation of concessions.

CONCLUSION AND RECOMMENDATIONS

Women's land rights in Liberia are protected to some extent within the constitutional and legal framework. The laws, as reinforced by the Supreme Court, are not ideal from a gender perspective, and attention could be paid to strengthening women's rights to land in legal and regulatory frameworks, particularly in the context of the pending Land Rights Bill and future implementing frameworks.

However, the most striking gap appears to be that between rights recognized in law and those realized by women at the community level. Currently, many communities in Liberia face land tenure insecurity, especially as it relates to community-occupied public lands, lands impacted by concessions, and also land held under tribal certificates. Tenure insecurity within community lands impacts both women and men, but in this report, authors highlight the ways in which women face particular barriers, both in law and on the ground.

Rural women heavily depend on accessing and using community land for their housing, livelihoods, and well-being. However, small-holder farmers and others living and depending on Liberia's farmland face a good deal of tenure insecurity, and women within these communities face additional gender-related discrimination and barriers, not experienced by men, that make their land and resource tenure particularly insecure. Pervasive issues include land access that varies depending on women's relationships with male relatives, the growing prevalence of de facto unions, bars against inheriting land, male dominated land governance, barriers to accessing justice, and concessions which consume farmland and inadequately compensate women for their land rights and crops, upon which they depend to sustain themselves and their families through their life course.

Given social realities on the ground, which create particularly acute tenure insecurity issues for women regardless of legal safeguards, it will be important to focus consistent attention on identifying and responding to gender issues and women's land rights gaps that arise throughout Liberia's land reform process.

Summary of Recommendations

The table below contains recommendations organized according to the themes laid out in this study.

Table 3. Recommendations by theme

Theme	Recommendations
<p style="text-align: center;">Women's Land Rights</p>	<p>Legal reform</p> <ul style="list-style-type: none"> • Amend gender discriminatory laws, and adopt laws that redress gender inequality in access, use, and control of land, especially in customary settings. In order to inform specific statutory and customary laws, the Constitution should be amended to reinforce gender equality in citizenship, community membership/ residence, property ownership, and women's participation in decision-making. • Harmonize the gap between customary law and statutory law regulating women's land rights, and ensure that ambiguous laws are reviewed and made clearer for easier application. • Domesticize regional and international laws guaranteeing the land and natural resources rights of women (of all categories). Specifically, include ratifying the Optional Protocol to CEDAW, which to-date has only been signed. This would commit the GoL to recognize the competence of the Committee on the Elimination of Discrimination against Women, and would allow individual women or other interested groups to submit complaints against violations of women's rights to the Committee for investigation, creating a legal enforcement mechanism. <p>Land reform implementation</p> <ul style="list-style-type: none"> • Ensure implementation of regional and international laws guaranteeing women's land and natural resources rights (of all categories), especially CEDAW and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (see relevant provisions highlighted in Box 5 of this report). • Broadly disseminate to citizens (particularly in rural, customary settings) laws, policies, and binding international and regional commitments on women's land rights and domestic relations. • At the national, county, and local level of government, systematically promote women's legal rights awareness and capacity development, focusing on the link between land rights and other domestic relations laws for statutory authorities, including Superintendents, District Commissioners, and Chiefs (i.e., Paramount Chiefs, Clan Chiefs, General Town Chiefs/Zonal Chiefs/Sectional Chiefs, and Town Chiefs). <p>Awareness raising, education, and/or capacity development</p> <ul style="list-style-type: none"> • "Invest in social interventions that influence attitudes and behaviors limiting women's land rights" (e.g., legal literacy, organizing women and other champions to push for the evolution of customs).³²³ For instance, initiate nationwide women's legal rights awareness and capacity development campaigns for customary authorities (e.g., Quarter Chiefs, elders, Chairmen, Chairladies, and family heads), community members (especially, women, men, and female and male youth farmers), and CSOs working in the land or women rights sector. Support women organizations working at the national level to address women's land rights issues. Encourage and facilitate the creation of forums and networks on women's land rights at local levels. Engage men and other opinion leaders (such as community and religious leaders and teachers) in campaigns for women's land rights. Disseminate women's land rights awareness messages at Town Hall meetings and also through town criers, and provide training to support such activities. Use community forums, the media (especially community radio), and theatrical performances to raise awareness about land rights, highlighting women's and children's land rights.
<p style="text-align: center;">Land Tenure Systems</p>	<p>Legal reform</p> <ul style="list-style-type: none"> • Ensure the Land Rights Bill (and its implementing regulations) robustly recognizes community land governance rights and secures customary land rights on par with private land rights. Further, ensure the LRB provides equal land access and rights for men and women, regardless of marital or parental status, particularly within communities.

³²³ E. Namubiru-Mwaura et al., USAID LPIS II Clan Study, at xxiv.

Theme	Recommendations
	<ul style="list-style-type: none"> Review legislation to ensure that land laws and family laws (including proposed laws) 1) align with the Constitution’s robust anti-discrimination and equality provisions, 2) reinforce equitable land and property rights, in particular, 3) are unambiguous (especially in terms of their applicability to the various tenure categories), and 4) adequately account for socio-cultural realities. <p>Land reform implementation</p> <ul style="list-style-type: none"> Ensure that customary land recognition (and its documentation) is principally based on gender-responsive self-identification (that is, ensure women and men are equally protected and included within the customary land owning community) with strong consideration for recognizing rights in the unit that provides the primary means for accessing land and controlling land governance.³²⁴ To enable this, clearly identify a gender-responsive driving force for community self-identification. Establish a systematic process for 1) renegotiating TCs that exclude community members with historic customary rights to the land³²⁵ and 2) ensuring that any formalization of TCs does not entrench unequal gender relations and male land ownership. Further, where TCs in the name of a male spouse are to be converted to deeds, require and ensure that the name of the female spouse(s) and all members of the household are included. Where TCs in the name of a family are to be converted to deeds, require and ensure that the rights and interests of all family members (both female and male) are clearly recognized and memorialized (e.g., by denoting that that all are communal owners holding the land as tenants in common). <p>Awareness raising, education, and/or capacity development</p> <ul style="list-style-type: none"> Design and implement targeted communications and outreach activities to ensure that women are included from the beginning and throughout all steps in the customary land rights recognition process. In the customary land rights recognition process, ensure gender and women’s land rights sensitization (for women, men, and customary authorities) is provided as an initial step.
Marriage/ De Facto Unions	<p>Legal reform</p> <ul style="list-style-type: none"> Per constitutional provisions and CEDAW directives, eliminate discrimination against women 1) within marriages (civil, customary, presumptive) and de facto unions and 2) upon the dissolution of such relationships. This includes taking measures to protect their economic rights, including to land. In terms of marriage laws, review Article 23 in the Constitution to consider community property as the default matrimonial property regime for civil, customary, and presumptive marriages with an exception of allowing the couple to choose separation of property or any other matrimonial regime that suits their marriage arrangement. Amend the DRL to explicitly provide for how joint property arises and is managed within marriage in the context of stipulated default and elective matrimonial regimes. Amend the ERCM Law to make clear that its provisions apply to both private land and customary land. Amend Section 25.3(3) of the Civil Procedure Law to better define presumption of marriage³²⁶ and the marital (property) regime (civil or customary) that would apply and in which context in order to provide equitable land and property rights for individuals in marriage-like unions.³²⁷ Equalize the minimum marriage age for boys and

³²⁴ See, *id.* at xxii.

³²⁵ *Id.* at xxiii.

³²⁶ For example, provide the legal elements for what constitutes “holding oneself as husband and wife” and specify a minimum period of cohabitation. Based on comparative experience, authors recommend two to five years, with two being more common in many jurisdictions.

³²⁷ As an alternative, state that presumptive marriages are governed under the DRL, the DEL, and the ERCM Law, as applicable.

Theme	Recommendations
	<p>girls (including girls in civil or customary marriages). Update the marriage provisions in the Rules and Regulations Governing the Hinterland to harmonize it with the formal legal framework and with current customary law and practice.</p> <ul style="list-style-type: none"> In terms of land tenure reforms laws, ensure the LRB (and/or its implementing regulations) contains no facial gender-based discrimination and mitigates possible discriminatory effects. E.g., explicitly include married-in spouses as members of the customary land owning community. In Article 2 of the LRB's definition of the term "Resident," create an exception to the 15-year residency requirement for spouses,³²⁸ and add a definition of "Marriage" that includes civil marriage, customary marriage, and presumptive marriage.³²⁹ Legally protect women (and men) from losing community membership and related land rights upon changes in marital status. Clarify in Article 31(1) of the LRB that tenancy by the entirety is the default co-ownership regime for spouses holding land together in order to protect spousal rights (especially of wives in rural areas), and provide for partition (or cash compensation where impractical) of land co-owned by women and men in their natal and marital villages in cases of marriage, separation, divorce, or widowhood. Institute laws that require both spouses' consent and joint signature in processes concerning land registration, titling, and other land transactions. <p>Land reform implementation</p> <ul style="list-style-type: none"> Ensure that LRB implementation, especially in the allocation of individual private land rights to community residents, equally benefits men and women, including various categories of women (including those in marital and marriage-like relationships)³³⁰ so as to be aligned with constitutional anti-discrimination and equality provisions and CEDAW directives in Article 14 that require women's right to "equal treatment in land and agrarian reform." Promote services and interventions that massively increase the number of formally recognized and registered customary marriages to protect the land rights of women in relationships within customary settings, in tandem with customary land rights recognition processes. <p>Awareness raising, education, and/or capacity development</p> <ul style="list-style-type: none"> Raise awareness among community members (including women, men, and customary authorities) on constitutional anti-discrimination and equality provisions and CEDAW directives, and develop their capacity to advocate on the same. Raise awareness about Section 25.3(3) of the Civil Procedure Law, which recognizes presumptive marriages. Pending amendment to this law, women in de facto unions should be trained to understand the legal consequences of de facto unions, to recognize the importance of signing their name on the deed to the land held by the couple, and to consider registering and/or keeping evidence of their property so that they can claim their property in the event that the relationship fails or the male partner dies.
Inheritance	<p>Legal reform</p> <ul style="list-style-type: none"> Close gaps in laws impacting women's inheritance. For example, amend the Constitution to explicitly protect women's property rights (including those acquired under inheritance laws) from customary laws (to be applied by the courts) that discriminate based on gender. Prescribe community of property regime as the default marital property regime to equally recognize the contributions of both spouses

³²⁸ The exception could take place automatically upon marriage, or after a shorter period of time such as two years.

³²⁹ This recommendation is based on the latest publically available Draft Land Rights Bill (dated September 27, 2016).

³³⁰ Key questions include the following: Would a "wife" in a de facto union be considered a resident in her "husband's" community? What would be the starting date when? Would she co-own the allocation with her partner, or would she be entitled to her own individual allocation? How could de facto unions or presumptive marriages be proven at the time of allocation or registration?

Theme	Recommendations
	<p>in inheritance rights arising from marriage. Amend Section 25.3(3) of the Civil Procedure Law to make clear what marital and inheritance regime applies to presumptive marriages and children born from such unions.</p> <ul style="list-style-type: none"> • Amend the DRL, DEL, and ERCM Law to make them unambiguous and consistent in terms of inheritance rights for widows and daughters. For example, ensure the DEL and ERCM Law provide equal treatment of inheritance rights for men and women (for wives of all categories concerning all categories of land). Make explicit in the ERCM Law that its provisions apply to customary land. To align with the substantive provisions in the DEL, review the ERCM Law with attention toward allowing customary wives to inherit one-half of her deceased husband’s property and to retain the rights (or its equivalent value) even after she re-marries and to enable property to devolve equally to both sides of the couple’s heirs, even beyond the children. • In order to advance the LRP’s dual goals of securing community’s customary land rights and women’s land rights within customary settings, review the ERCM Law in the context of the LRB’s new customary land category and alongside field research investigating how provisions in the ERCM Law affect customary law’s operation as a coherent system. Additionally, in formal law, adequately and appropriately articulate customary inheritance laws and/or its interaction with formal law, attending to how to adequately regulate and prohibit discrimination based on gender. • Review the Children’s Law and the DEL to automatically “legitimize” all children born in de facto unions and to automatically allow them equal inheritance rights, including allowing daughters to retain inherited property at marriage. <p>Land reform implementation</p> <ul style="list-style-type: none"> • Implement and enforce laws to uphold women’s inheritance rights. As a prerequisite, at the national, county, and local level of government, systematically train government officials on women’s inheritance and land rights and their role in enforcing those rights. • Use GoL’s implementation efforts to bolster gender equitable aspects of local customary inheritance law and practice and prohibit government actions that discriminate against women. <p>Awareness raising, education, and/or capacity development</p> <ul style="list-style-type: none"> • Provide women’s inheritance and land rights awareness raising activities across Liberia, particularly in the interior, including for traditional and local leaders, women and men community members, and CSOs.
Land Governance	<p>Institutional capacity for land governance</p> <ul style="list-style-type: none"> • Ensure that the Liberia Land Authority is a gender-responsive land governance institution. Specific actions could include the following: <ul style="list-style-type: none"> – Establish systems to vet all land-related laws, policies, programs, and institutional plans for their gender responsiveness. – Coordinate with the MGCSP and other relevant line ministries to ensure gender-responsive land governance that aligns with constitutional anti-discrimination and equality principles and binding international and regional commitments, especially CEDAW and the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa. Specifically, partner with the MGCSP to implement Liberia’s Revised National Gender Policy (2018-2022) provisions related to women, land tenure, and property rights. – Adopt a long-term gender integration strategy for the Liberia Land Authority and its decentralized bodies. – Establish a gender unit tasked to secure women’s land rights, especially in customary settings, which is adequately staffed and financed. – Enable the gender unit to serve as an administrative hub for the Women’s Land Rights Task Force (a multi-stakeholder body with representation from government and civil society).

Theme	Recommendations
	<ul style="list-style-type: none"> • Leverage the legal mandate and institutional capacity of the MGCSP to support gender mainstreaming in the land sector. For example, increase financial and political support for the MGCSP to ensure it can fulfill its legal mandate to “[c]oordinate effectively the Government-wide gender mainstreaming efforts” and to “[a]dvise government on all matters affecting the development and welfare of women and children”³³¹ as it pertains to gender, land tenure, and property rights. Establish institutional mechanisms for enabling the MGCSP to fulfill its mandate to “[m]onitor and report on the impact of national policies and programs on women and children”³³² as it relates to land rights. • Continue to decentralize land governance and to ensure sufficient coordination among the statutory authorities and customary authorities to promote gender equitable governance, particularly on the key issues of women’s land and inheritance rights, marriage/ de facto unions, and women’s effective participation in land governance structures. <p>Legal reform</p> <ul style="list-style-type: none"> • Review with a gender lens all land governance-related laws, policies, and regulations. • Pass a constitutional amendment and/or law that provides for constitutionally equitable participation of men and women and female and male youths in all areas of decision-making (emphasizing political posts and local/customary governance bodies) by establishing minimum quotas and quorum. For the national-level legislature, adopt the Equitable Participation and Representation Bill of 2016. For the LRB, include quotas that require at least 33 percent representation by women in the Community Land Development and Management body. • Adopt a law that defines and articulates the elements of gender-based discrimination for land governance authorities (i.e., executive, judicial, and customary authorities and their official actions and law-related functions). Include penalties for any authorities who apply gender-based discriminatory actions. • Support legal reforms to recognize local/customary land governance structures and their governance of customary land according to customary laws that do not contravene constitutional and legal anti-discrimination and equality provisions—especially with regards to land. Additionally, support legal reforms that increase accountability to their constituencies, especially women and youth. <p>Land reform implementation</p> <ul style="list-style-type: none"> • Support collaboration between the GoL and stakeholders in the areas of land, human rights, gender equality, and women’s land rights around synchronizing efforts to address women’s land rights for responsive and effective results pending and during the LRB’s adoption. • Develop and enforce regulations under the LRB that explicitly detail what is required to secure the land rights of women of all categories and in all situations affecting those rights (such as marriage/ de facto unions, separation, divorce, and widowhood). • Actively support community-level land institutions/bodies to ensure gender equitable representation and the representation of women’s specific interests, especially with regard to land. <p>Awareness raising, education, and/or capacity development</p> <ul style="list-style-type: none"> • Systematically create opportunities for women (at the national, county, and local levels, particularly in rural customary settings) to develop the capacity required for effective participation in land administration and governance structures.

³³¹ Act Establishing the Ministry of Gender and Development (2001), § 38.3.

³³² *Id.*

Theme	Recommendations
<p style="text-align: center;">Access to Justice and Dispute Resolution</p>	<p>Legal reform</p> <ul style="list-style-type: none"> • Reform Liberia’s women’s land rights legal framework³³³ to adequately recognize, regulate, and streamline both customary land rights and women’s land rights—free from gender-based discrimination and to a degree where subsequent enforcement and adjudication is legally unambiguous for all land-related disputes involving women (of all categories, on all types of land, through all the stages of their life course, and especially as applied in customary settings). • Ameliorate jurisdictional segregation by statutorily recognizing the legal capacity of local-level customary land governance authorities to resolve local land disputes and require resolution aligned with constitutional anti-discrimination and equality provisions, especially for disputes involving women’s land, inheritance, and marital rights. • Support gender-responsive alternative dispute resolution policies and laws that are applicable in customary settings. <p>Land reform implementation</p> <ul style="list-style-type: none"> • Promote government-supported alternative dispute resolution interventions and programs that meet the increasing demand for land dispute resolution at the community level. Further, ensure these ADR mechanisms are accessible to women (in terms of location, costs, and personnel) and effective in realizing women’s land and inheritance rights, particularly in customary settings. Increase the numbers of dispute resolution/ADR practitioners, particularly at the county and community levels; ensure gender equitable representation by women; and obligate (and equip) practitioners to provide gender-responsive services. • Within the customary land recognition process, build in gender-responsive dispute resolution mechanisms and safeguards that ensure procedural and substantive due process (e.g., ensuring that negotiated processes and outcomes that impact women’s land rights align with constitutional, regional, and international legal guarantees of equality and non-discrimination). <p>Awareness raising, education, and/or capacity development</p> <ul style="list-style-type: none"> • Disseminate women and land-related laws and provide training on women’s land rights to government officials at the national and local level (in the judicial and executive branches), customary leaders, and legal advocates involved in dispute management and resolution. Also, provide robust awareness raising on existing laws to communities (including male and female members), particularly in rural areas. • Support the establishment of community-based legal aid providers that are gender-responsive.
<p style="text-align: center;">Concessions</p>	<p>Legal reform</p> <ul style="list-style-type: none"> • Legislate “a general legal framework for concessions, including protections of the rights and livelihoods of local people affected by them,” or which includes robust public consultation provisions.³³⁴ Ensure that such a legal framework is gender-responsive and aligned with regional and international laws (to which Liberia is a signatory) that protect the land rights of both women and men land users.³³⁵

³³³ This includes constitutional guarantees, personal/ family laws, and land and tenure reform laws as discussed in the sub-section titled “Women’s Land Rights in Liberia: Basic Legal Overview.”

³³⁴ J. Bruce, *A Strategy for Further Reform of Liberia’s Law on Land, Liberia Land Governance Support Activity (2016)*, at 49.

³³⁵ Key aspects of the general legal framework ought to provide for the following:

- Consultations with communities, including men, women, and other vulnerable land users, that occur in good faith at the start of and throughout all stages of the concession negotiations. Consultations procedures should be appropriate for and accessible to all community members.
- Impact assessments that cover pre-existing land and natural rights (whether privately owned or customarily occupied or accessed) completed before granting the concession.

Theme	Recommendations
	<ul style="list-style-type: none"> • In particular, pass a LRB that transfers land governance to rural communities and secures land tenure rights for communities, female and male farmers, and other rural dwellers within the context of concessions. Include the ability to renegotiate irregularly acquired concessions and to require the reversion of land to the community at end of the existing concession.³³⁶ • Additionally, reform the Public Procurement and Concessions Act and the Investment Act to require the GoL and concession entities to operate in a gender equitable, socially responsive manner. <p>Land reform implementation</p> <ul style="list-style-type: none"> • Adopt and apply gender equitable, socially responsible investment guidelines that will protect all categories of female and male land users, and their land rights, while creating conducive environment for LBI. Includes adopting and applying FPIC at all stages of the investment with particular attention to ensuring that investment affected communities—and their female and male members—are informed, consulted, and participate in all decisions. • Allow community members (especially those who privately own land) who are not willing to lease their land to be able to opt out of the business contract. • Support government in working with CSOs that have the capacity to understand the multiplicity of land rights, especially the land rights of women, and the short and long term effects that will result from the LBI in question. With help of CSOs and NGOs, ensure that early social assessments on gender and women’s land rights are conducted. • Put in place alternative livelihoods for women before evicting them from the acquired land. • Monitor investor commitments to rural communities to ensure their fulfillment in a timely manner. <p>Awareness raising, education, and/or capacity development</p> <ul style="list-style-type: none"> • Develop capacity for rural farmers to understand and exercise their legal land rights in the context of concessions.

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- Respect for pre-existing land and natural resources—to be limited only with consent by the community and upon fair, timely compensation. Such compensation should encompass the economic and social value of the land and natural rights and livelihoods (for both women and men) that were taken. In compensating women for their losses, compensation must be given directly to women and comparable to the compensation given to men.
 - Sound, long-term relocation plans, in the event of displacement and forced relocation (in addition to compensation).
 - Legally binding community benefits (to which women and men equally enjoy the benefits) commensurate to community losses.
 - Robust right for the community to review the concession.
 - Dispute resolution mechanisms accessible to the community, particularly women.

³³⁶ *Id.* at xxiv.

Summary of Next Steps for Research

In addition to the recommendations provided above, the authors conclude by outlining areas for further research. Firstly, additional research is needed to build on the preliminary body of women's land rights-related findings contained in this report to verify, nuance, deepen, and generalize findings carefully across all categories of women in a larger number of communities located across Liberia's 15 counties.³³⁷

Secondly, research is needed to examine the various gaps, listed below, that lay outside the scope of this preliminary review.³³⁸

- 1) The political, economic, and socio-cultural context in which people—including men, women, and youth of all categories—access and exercise their land rights, particularly in the context of lineage systems.
- 2) The customary law system's operation as a coherent system, including how robust and widespread it is and how it impacts the land rights of women, men, and children—of all categories (particularly as captured by embedded ethnographic research).³³⁹
- 3) The interface between customary law (including where it is fully, partially, or no longer operative) and the statutory system.
- 4) The class and gender relations between men and women and boys and girls and their relative roles in producing disparities, discrimination, and barriers related to land rights and land tenure insecurity, particularly in customary settings.
- 5) Land tenure security for men and women and boys and girls in rural, urban, and peri-urban settings, including its relevance for each group in the context of urbanization; the land issues key to each; and benefits, risks, opportunities, and challenges associated with land tenure in each setting.
- 6) Other critical issues relevant to and/or distinct from land issues, such as the key issues of housing access and ownership (under both statutory and customary law),³⁴⁰ access to and control of the labor of others in customary areas (particularly where land is plentiful), and the

³³⁷ Some examples of areas requiring deeper research and/or verification include the following:

- the issue of women's access to land, for example, in terms of the various customary means for access, the degree to which women have their own farms (and under what circumstances), and male-mediated access to land (its context, prevalence, and logic within customary systems);
- the issue of customary marriages reported to be declining as de facto unions were on the rise to ascertain 1) if the trend holds across Liberia's 15 counties and 2) the reasons for the trend;
- the prevalence and land tenure implications of post-marital residence (e.g., patrilocal, matriloc, neolocal) across Liberia's 15 counties;
- the issue of widow eviction, including its prevalence, causes, and the land tenure and socio-economic ramifications on women of all categories (and their children) in both their natal and marital communities, across Liberia's 15 counties;
- the issue of how superstitions and social beliefs may exacerbate violations of women's land rights, especially in the context of dispute resolution and access to justice in the formal system, and how prevalent the issue is;
- the issue of how concessions impact women's land rights, particularly attuned to differences between different types of concessions (e.g., agriculture, forestry, and mining) as well as differences between areas affected by concessions compared to areas without concessions.

³³⁸ Authors extend gratitude to Dr. Jeanette Carter for her insights around identifying critical areas for further research. The listing summarizes her contribution.

³³⁹ Key categories include women in their natal and marital communities, women in de facto unions, male and female strangers, and the male and female children of strangers. Another key issue is the impact that increased de facto unions has on the community-level system, especially as it pertains to land tenure and marriage.

³⁴⁰ Includes examining customary access and ownership when housing is built by women or their male relatives, when housing is considered to be joint property held by a married couple, and what happens with housing claims upon the dissolution of a marital relationship. Another issue also relates to women renting houses and owning rental properties.

growing numbers of youth in need of meaningful livelihoods/employment (for which they are interested and equipped) in the rural and urban sectors.³⁴¹

The listing provided above outlines key areas for future research. The knowledge and evidence developed from such lines of research are critically needed to inform Liberian land reform, particularly for customary land tenure systems.

Furthermore, there also remains broader lines of inquiry such as how to develop a common theoretical approach capable of encompassing both statutory and customary law, how to harmonize statutory and customary systems given different underlying principles, and how to legally recognize traditional rights to land and culture as well as land rights broadly given the large socio-economic changes taking place in Liberia?³⁴² These are some of the big questions for future researchers and reformers.

In conclusion, this report contains a foundation for understanding women's land rights in law, practice, and future reforms and also lays the groundwork for what more needs to be researched to support land tenure reforms in Liberia that adequately attend to gender, class, and customary systems. Liberia is well poised to continue on its path of historic land reform, especially given its robust land rights policy, the creation of the Liberia Land Authority, the formulation and critical debate of the LRB, continuing research and scholarship, and growing demand for women's land rights in communities and within civil society.

³⁴¹ J. Carter. "Review Comments." Received by Jennifer Duncan and My-Lan Dodd, Nov. 13, 2017, on file with Landesa.

³⁴² *Id.*

ANNEX I: LGSA WLR FIELD RESEARCH OVERVIEW AND GUIDING QUESTIONS

Objectives include:

- Determine where the policy, legal, and regulatory framework could better secure women's land rights and promote women's participation in land governance;
 - Identify impacts, opportunities, and risks for women's land rights and participation in land governance related to implementation of the Land Rights Policy (and ensuing legislation)
 - Ascertain areas where land rights for women and men diverge;
 - Identify areas where customary practices do not reflect current legal rights; and
 - Provide concrete recommendations on the formulation of the customary land rights recognition methodology and implementation.
-

High-level research questions:

- How to best ensure gender equitable outcomes related to implementation of the Land Rights Policy (and ensuing legislation)?
 - How to best ensure gender equitable structures, processes, decision-making, and dispute resolution related to land at the community level?
 - Whether and how gendered issues related to land (such as marriage, cohabitation, divorce, separation, abandonment, widowhood, and inheritance) implicates community membership and how this may require particular attention and safeguards in implementing the LRP?
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Key considerations for ensuring gender equitable outcomes related to implementation of the LRP:

1. **Legitimate & Recognized:** The degree to which land rights are legally and socially legitimate, and therefore secure, depends on who recognizes these rights.
 2. **Clear Duration:** For rights that are granted for a fixed period of time, the longer the period the more secure are the rights. Clarity of duration is also key: land rights granted for an undetermined period may be less secure than those granted for a season.
 3. **Not Selectively Susceptible to Change:** Land rights are secure if they do not selectively (e.g. on the basis of gender) terminate based on changes in the social status, family structure, or community leadership.
 4. **Enforceable:** For rights to be secure, the rights holder must be able to enforce them. Enforcement options may be available in formal courts or with customary institutions.
 5. **Exercisable without Extra Approval:** Land rights are more secure if they can be exercised without being subject to extra permissions that apply only to some based on gender, other social condition, or other status.
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Outline of WLR Study Interview Schedule:	Key Question(s) by Theme
1. Community organization and membership <ol style="list-style-type: none"> a. General community organization b. General community membership c. Women and community membership 	<ul style="list-style-type: none"> • Given how a community is organized and might want to be organized under the LRB, how can we ensure that all categories of women are considered members who enjoy the full membership benefits?
2. Access to and ownership of land and property <ol style="list-style-type: none"> a. Community land-generally b. Commons/natural resources c. Community land and natural resource conflicts affecting the entire community d. Women’s access to land and property e. Use and improvement rights & responsibilities f. Co/Management of land g. Possession and (co-)ownership of land h. Women’s tenure (in)security 	<ul style="list-style-type: none"> • How do women access land (inheritance, marriage, purchase, and allocation by government)? • What are their rights to land independently and vis-à-vis their spouses/partners, families, and communities? • How secure are those rights?
3. Marriage / de facto unions (including polygamous relationships)	<ul style="list-style-type: none"> • How do marital/cohabitant relationships impact women’s land rights?
4. Inheritance <ol style="list-style-type: none"> a. General questions b. Widows’ Inheritance c. Daughters’ inheritance 	<ul style="list-style-type: none"> • Can women and girls inherit land? Why/why not?
5. Community land governance <ol style="list-style-type: none"> a. Decision-making bodies b. Women’s effective participation—Women as individuals c. Women’s forums / collective voice d. Women’s participation looking forward e. Institutional capacity for land governance 	<ul style="list-style-type: none"> • Do women (individually or collectively) effectively participate in their community’s land governance bodies? • Is there institutional capacity for including women in land governance and protecting women’s rights to land?
6. Access to justice/ Dispute Resolution mechanisms <ol style="list-style-type: none"> a. Land justice bodies b. Women’s access to justice c. Resolving issues after the end of a marriage/de facto union d. 	<ul style="list-style-type: none"> • What are the barriers to accessing justice for women?
7. Women’s land tenure in the context of concession <ol style="list-style-type: none"> a. Community consultations and information b. Informed consent c. Compensation d. Relocation / resettlement e. Positive and negative effects f. Dispute resolution / right to appeal 	<ul style="list-style-type: none"> • Are/how are women involved in the land-based investment processes? • How are women impacted by these investments?

ANNEX 2: LISTING OF INDIVIDUAL KEY INFORMANTS

Maryland County		
Name	Organization	Position
Nathaniel Toe	Office of the Superintendent	Development Superintendent
Tarlee Thompson	Office of the Superintendent	County Project Planner
Rosetta Wilson	Office of the Superintendent	Gender Focal Point
Isaac Weah	Office of the Superintendent	County Inspector
Robert H. Moore	Office of the Superintendent	County Land Commissioner
Amos Nyemah	Federation of Liberian Youth	Youth Leader
Condeh J. Keita	Ministry of Gender, Children and Social Protection	County Gender Coordinator
Nimba County		
Shirley F. Brown	Ministry of Internal Affairs	District Commissioner
G. Dumba Gbanlon Sr.	Ministry of Internal Affairs	District Commissioner
Bob Emmanuel Paye	Office of the City Major, Ganta	Administrative Assistant
Joseph S. Brown	Zolowee	Development Chairman for Affected Community
Grand Bassa		
Josiah B. Marks	Ministry of Internal Affairs	Governor
James Harris	Ministry of Internal Affairs	Land Commissioner
Mac A. Willis Sr.	Grand Bassa Service Center	Coordinator
Andrew Nimely	Justice of Peace Commission (JPC)	Monitor
Rebecca M. Zonoe	Women in Peacebuilding Network (WIPNET)	Coordinator
Jullie Flanjay	Bassa Women Development Association	Administrator
Sarkor Freeman	Liberia National Police	Commander
Martha C. Treh	Civil Society Organizations Council	Coordinator
Monrovia		
Anthony Borlay	Ministry of Gender, Children and Social Protection	Director, Research, Planning and Policy
Joseph S. Monibah	Ministry of Gender, Children and Social Protection	Director
Harrison Cole	Ministry of Gender, Children and Social Protection	Assistant Director, Research, Planning and Policy
Patricia Togba	Ministry of Gender, Children and Social Protection	Administrative Assistant
Madea Martin-Wiles	Ministry of Gender, Children and Social Protection	Deputy Minister for Research Planning and Policy
Setta Saah	Liberia Council of Chiefs and Elders	
Kou Dorliae	Ministry of Justice	Assistant Minister for Economy Affairs
Harriet Badio	Ministry of Justice	Deputy Minister for Codification
Dr. Cecil T. O. Brandy	Liberia Land Authority	Chairman
Adams Monibah	Liberia Land Authority	Commissioner
Ellen Pratt	Liberia Land Authority	Commissioner
Jeanette Carter		Advisor to the Liberia Land Authority

ANNEX 3: WOMEN'S LAND TENURE FRAMEWORK FOR ANALYSIS: LAND RIGHTS

Framework conceptualized by Renee Giovarelli and Elisa Scalise in *Women's Land Tenure Framework for Analysis: Land Rights* is summarized in the box below.

<p style="text-align: center;">Barriers to women's land rights in plural legal settings</p> <p>Civil legal structure</p> <p>In the civil (sometimes referred to as “formal”) legal structure various issues may create barriers to strengthening women's land rights. These include, but are not limited to, the law's failure to recognize (or adequately recognize) as broad principles:</p> <ul style="list-style-type: none">• Private property rights, customary rights to land, or women's rights to land or property;• Relevant categories of land, such as customary land;• Men's and women's equal rights generally;• Discrimination based on a person's sex or gender as illegal; and• Custom as a source of law—including how to manage conflicts between formal and customary law, especially with regards to women's land rights. <p>Further, issues can arise in the civil legal structure, which are specific to individuals and households. These include issues concerning the legal legitimacy of women's land rights, marital status, shared ownership or tenure, and property division upon divorce or death. Issues include the law:</p> <ul style="list-style-type: none">• limiting (explicitly or implicitly) the category of land women can own or inherit;• using marital status to negatively impact women's land rights;• failing to (adequately) recognize or regulate the various types of legal marriage, including the property rights arising from those marriages;• recognizing different marriage ages for boys versus girls and/or allowing for under-aged children to marry;• failing to (adequately) recognize polygamous marriages and the property rights arising from those relationship in a non-discriminatory manner;• regulating dowry or brideprice in a manner that undercuts women's rights in marriage or marriage-like relationships;• failing to recognize or (adequately) regulate co-ownership over land, e.g., for certain categories of persons, such as de facto partners or certain categories of land;• lacking clarity around co-ownership defaults and presumptions upon marriage, divorce, or death,• lacking mandatory joint documentation or registration for spouses' marital property;• failing to equally allow divorce and inheritance for men and women; and• failing to equally divide property upon divorce, death, or abandonment. <p>The formal legal structure also raises issues with regards to customary land rights. They include the following:</p> <ul style="list-style-type: none">• to what degree does the land law or land tenure reform law recognize the nature and scope of customary land rights;• does the law allocate customary land rights to group/community members or individuals, and does that allocation include women;• if so, how, and based on what criteria (such as membership or residence);• are the rules governing customary land governance codified;• does/what does the formal law recognize in terms of women's rights in a particular customary group; and• in what cases may women lose customary land rights (such as due to divorce, death, or abandonment)?
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Other key issues in the formal legal structure relate to the enforcement of individual or household rights and legally recognized customary land rights. These include the following: What institutions have jurisdiction to hear land rights cases (including cases relating to marital property), and are women represented there? Where there are plural systems, how is the law applied by the adjudicative body chosen, and do women and men equally have a right to choose what law or body applies? For traditional court decisions, who has the duty to enforce? Can both men and women equally access dispute resolution bodies, or are intermediaries required for women? For women, what are the other barriers to accessing justice in the formal legal system?

Customary legal structure

In addition to the issues above, there are a range of issues impacting women's land rights in the customary legal structure, which arise in practice. Key issues arising related to the legitimacy of women's land rights include the following:

- Are women's land rights, including the right to own, control, and use land, recognized by the customary land governance system;
- Does the community practice matrilineal or patrilineal inheritance, matrilineal or patrilineal marriage residence, or polygamy; and what is its/their impact on women's rights to land;
- Who makes decisions around marriage (such as who and when to marry);
- Does marriage require dowry;
- Who provides land and housing in a new marriage; and
- Within marriage, what is the system for allocating land rights?

Issues relating to the vulnerability of women and girls include the following:

- The marriage age for girls;
- The requirements for finalizing customary marriage;
- The rules, norms, and practices around what happens to a woman in the event of divorce or death of her spouse (e.g., can she remain on the land or must she return home?);
- The return of dowry or brideprice in the case of separation and divorce; and
- Variance in rules in the event that a woman is a first or subsequent wife or in the event of (boy or girl) children.

Issues relating to the enforcement of women's land rights in customary settings include the following:

- Women's knowledge of their rights (or lack thereof);
- Women's first point of contact for resolving a land-related dispute;
- The systems available for resolving disputes, and women's access (or lack thereof);
- Barriers faced by women in accessing justice; and
- Dispute resolution actors' awareness and support of women's rights, including women's land rights.

Based on: R. Giovarelli & E. Scalise, *Women's Land Tenure Framework for Analysis: Land Rights*, (Landesa 2013) available at http://zpmppd2mgwg34rgsm60didr9-wpengine.netdna-ssl.com/wp-content/uploads/Land_Rights_Framework_2013March.pdf

ANNEX 4: INTERNATIONAL AND REGIONAL INSTRUMENTS RELATING TO LAND RIGHTS SIGNED, RATIFIED, OR ACCEDED TO BY LIBERIA

Overview

The Government of Liberia has signed and ratified a number of international and regional instruments pertinent to human rights in general and land and property rights in particular. The laws and human rights bodies listed in the following table relate and/or have an indirect relationship with land rights for all or land rights specific to women.

International Instruments of Human Rights	Signature ³⁴³	Ratification ³⁴⁴	Accession ³⁴⁵
<u>International Covenant on Economic, Social and Cultural Rights</u>	18 Apr 1967	22 Sep 2004	
<u>International Covenant on Civil and Political Rights</u>	18 Apr 1967	22 Sep 2004	
<u>Optional Protocol to the International Covenant on Civil and Political Rights</u>	22 Sep 2004		
<u>Convention on the Elimination of All Forms of Discrimination against Women</u>			17 Jul 1984
<u>Optional Protocol to the Convention on the Elimination of Discrimination against Women</u>	22 Sep 2004		
<u>Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages</u>		16 Sep 2005	
<u>Convention on the Rights of the Child</u>	26 Apr 1990	4 Jun 1993	
<u>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</u>	29 Sep 2004		
<u>Sustainable Development Goals</u>			

³⁴³ “Where the signature is subject to ratification, acceptance or approval, the signature does not establish the consent to be bound. However, it is a means of authentication and expresses the willingness of the signatory state to continue the treaty-making process. The signature qualifies the signatory state to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.” United Nations Treaty Collection, Glossary of Terms relating to Treaty Actions, citing Arts.10 and 18, Vienna Convention on the Law of Treaties 1969, available at https://treaties.un.org/pages/Overview.aspx?path=overview/glossary/page1_en.xml.

³⁴⁴ “Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of . . . multilateral treaties the usual procedure is for the depositary to collect the ratifications of all states, keeping all parties informed of the situation. The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty.” United Nations Treaty Collection, citing Arts.2 (1) (b), 14 (1) and 16, Vienna Convention on the Law of Treaties 1969.

³⁴⁵ “‘Accession’ is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. The Secretary-General of the United Nations, in his function as depositary, has also accepted accessions to some conventions before their entry into force. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty. A treaty might provide for the accession of all other states or for a limited and defined number of states. In the absence of such a provision, accession can only occur where the negotiating states were agreed or subsequently agree on it in the case of the state in question.” United Nations Treaty Collection, citing Arts.2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969.

African Union Conventions	Signature	Ratification	Accession
<u>African Charter on Human and Peoples' Rights</u>	31 Jan 1983	4 Aug 1982	
<u>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa</u>	16 Dec 2003	14 Dec 2007	
<u>African Charter on the Rights and Welfare of the Child</u>	14 May 1992		
Large-Scale Land-Based Investment (LSLBI) Global Guidelines and Regional Standards			
<u>UN Guiding Principles on Business and Human Rights</u>			
<u>Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security</u>			
<u>African Charter on Human and Peoples' Rights</u>			
<u>Guiding Principles on Large Scale Land Based Investments in Africa</u>			
<u>Agenda 2063</u>			
Membership to Human (Land) Rights Bodies			
<u>International Criminal Court</u>			
<u>African Commission on Human and Peoples' Rights</u>			
<u>African Court on Human and Peoples' Rights</u>			
<u>Economic Community of West African States (ECOWAS)</u>			
<u>Court of Justice of the Economic Community of West African States (ECOWAS)</u>			

Status of International Law in Liberia

Article 2(2) of the Constitution of the Republic of Liberia of 1986 acknowledges treaties but renders void those “found to be inconsistent with it . . . to the extent of the inconsistency.” This article seems to limit application or to nullify treaties that are contradictory to Liberia’s Constitution.³⁴⁶ The Constitution also defines the process for concluding an international treaty, convention, and similar international agreement. It includes 1) the President signing the instrument on behalf of the Republic of Liberia (per Article 57) and 2) the Senate and House of Representatives then approving that instrument (per Article 34(f)). Such instruments must be domesticated to have the force of law in Liberia.³⁴⁷

³⁴⁶ However, it is important to read this together with Article 95(b) which states that “All treaties, executive and other international agreements and obligations concluded by the Government of the People’s Redemption Council or prior governments in the name of the Republic prior to the coming into force of this Constitution shall continue to be valid and binding on the Republic unless abrogated or cancelled or unless otherwise inconsistent with this Constitution.” Reading the articles together suggests that any regional or international instrument ratified by GoL before 1986 retains its content irrespective of the fact that some clauses might be inconsistent with the Constitution.

³⁴⁷ H. Kabbah, Guide to the Liberian Legal System and Legal Research (2014), <http://www.nyulawglobal.org/globalex/Liberia1.html>.



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