



## POLICY BRIEF #6

# PROTECTED AREA EXPANSION: A CALL FOR RESTRAINT

## PEOPLE, RULES, AND ORGANIZATIONS SUPPORTING THE PROTECTION OF ECOSYSTEM RESOURCES

### SUMMARY

This brief argues that expansion of the Protected Area system through support from the Norway/Liberia partnership requires careful scrutiny of existing land rights in the proposed Protected Areas. Areas that have been proposed for Protected Area management should be carefully surveyed to identify existing community rights to land so as to provide communities with the option of managing the land as community forests. Alternatively, under the proposed Land Rights Legislation, communities could receive benefits if the land is recognized as customarily owned, but “taken” for inclusion in the Protected Area network. Finally, because of the potential that much of the proposed Protected Areas will fall within community’s customary lands, this brief urges consideration of the option to funnel resources for Protected Area management through community forest management mechanisms.

### BACKGROUND

The Letter of Intent (LoI) signed between the Governments of Norway and Liberia in mid-2014 memorialized a commitment by both governments to form a partnership that will improve forest governance, strengthen law enforcement, and support efforts to reduce greenhouse gas emissions from deforestation and forest degradation (REDD+) in Liberia. This partnership will also facilitate the development of a deforestation-free agricultural sector in the country.

The LoI contains an ambitious agenda of activities covering over 40 specific, targeted actions organized under nine strategic areas that will be undertaken between 2014 and 2020. A number of factors will challenge the implementation of this ambitious agenda, including limited capacity of relevant government institutions, poor infrastructure (affecting the ability to engage in meaningful consultations with rural populations) limited resources and

#### Box 1: What is a Protected Area

“A protected area is a clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long term conservation of nature with associated ecosystem services and cultural values.” (IUCN Definition 2008). In Liberia, the proposed Protected Area network will comprise a number of different land management units defined in the National Forestry Reform Law by activities that are not permitted within their boundaries. This includes:

**Strict Nature Reserves** where no activities are permitted other than conservation management and research;

**National Park, Nature Reserve, and Game Reserve** where only non-consumptive tourism, recreation and tourism are permitted;

**Communal Forests** where prospecting, mining, farming, and commercial timber extraction activities are prohibited;

**Cultural Sites** where prospecting, mining, farming, hunting and forest resource extraction activities are prohibited;

**National Forests** where farming, prospecting and mining are prohibited; and

**Multiple Sustainable Use Reserve** where farming and timber extraction for commercial purposes are prohibited.

conflicting demands for decision-makers time and efforts. Accordingly, it is advisable for forestry stakeholders to prioritize activities and focus on those that can be accomplished relatively easily, in order to set the stage for other activities and actions.

## THE PROPOSAL: EXPANSION OF A PROTECTED AREA SYSTEM

Protected Areas Expansion and Strengthening is one of nine strategic areas that the partnership will focus on to achieve the partnership goals. An important part of this strategy involves the placement of 30% of Liberia's forest estate under the Protected Area network. This goal is something that was first identified in the 2003 National Biodiversity and Strategic Action Plan (NBSAP) and formalized in the 2006 National Forestry Reform Law (NFRL) §9.1(a).

However, the expansion of the Protected Area network must be examined within the existing and evolving legal context. Of particular note is the recent introduction of the Community Rights Policy and proposed implementing legislation - the Land Rights Act (LRA) – that seeks to recognize customary ownership rights on a par with private ownership. This policy and legislation will provide communities with a means to secure ownership over their customary lands (inclusive of forests). This policy is not retroactive (LRP §2.0) and so will not immediately apply to more than 23% of Liberia's land base that is currently under some type of concession management. That said, the proposed LRA could permit ownership to revert to customary ownership at the expiration of a concession agreement (Draft LRA Art. 2§13) In addition, it is important to note that currently, there is a decided lack of information about the current land ownership rights and claims to Liberia's forestlands. Given this, a move to place so much forestland under government ownership as Protected Areas has the potential to spark conflicts between communities and government and may also serve to undermine the intent of the new Land Rights policy that recognizes community ownership over land.

### Box 2: How much is 30%?

While the reported total area of the permanent forest estate varies, the official figure used by the FDA and unchanged since 2007, is 4.4 million hectares. However, with an estimated deforestation rate around 1.0% per year<sup>1</sup> between 2000 and 2010 (during five years of which there was a logging moratorium in place), it is likely that this this is an overestimate. Further, forests are defined for this study as areas of "more than 0.5 hectares with trees higher than 5 meters and a canopy cover of more than 10 percent", while the official figure covers degraded/agriculture land.

More recently, satellite imagery analysis suggests that forest cover (defined by 75% forest cover) has declined from more than 3.6M ha. in 2000 to less than 3.5M ha. in 2012. While representing a less dramatic annual deforestation rate, overall this analysis suggests that there is significantly less forestland in Liberia than the official figures suggest.

This statistical disparity serves to point out the tremendous lack of information about the most basic information regarding Liberia's forest resources. With regard to the 30% Protected Area goal, this represents the difference between 1.31 million ha. and 919,275 ha., or almost 400,000 hectares.

## Protected Areas, Production Areas and Community Forests

While there is a need to understand what forest resources exist, existing classification of land also must be better understood since the management goals and objectives, as well as governance mechanisms and responsibilities vary tremendously between forest production areas, protected areas, community forests, agricultural concession areas, and mineral development concession areas. Information regarding land classification, ownership claims, and management rights is currently housed at different ministries and agencies (e.g. Ministry of Lands, Mines and Energy, Ministry of Agriculture, Forestry Development Authority) and is not consistently shared or coordinated.

For example, of the official forest area, more than 31% is currently classified as a production forest (or 39% if using the more recent unofficial forest cover data, see Box 1). The three Protected Areas (Sapo National Park, East Nimba Nature Reserve, and Lake Piso) cover 291,169 ha., representing 6.6% of the official forest cover, or 8.4% if using the unofficial estimates cited in Box 1 above. In contrast, the five USAID-supported community forests officially verified and recognized by the FDA represent 20,932 hectares, with more than 8,000 ha. (or almost 40% of the total area) overlapping with the proposed West Nimba Protected Area<sup>1</sup>. While these forests represent a fraction of the Liberian forest estate, it should be noted that a Presidential Special Independent Investigating Body found that more than 50 communities claimed over 2.2M hectares of

<sup>1</sup> It should be noted that the other 5 community forests cover more than 200,000 hectares. No accurate information is currently available from the FDA as to whether these overlap with proposed Protected Areas.

community forest land<sup>2</sup>. Whether all of these claims are legitimate remains to be seen, but given the scale of claims, some of these will likely overlap with both proposed Protected Areas as well as Production Areas.

Finally, it is important to note that a number of existing agricultural concessions include rights to clear associated land for agricultural development. This includes more than 240,000 hectares in the southern part of the country under the Golden Veroleum Liberia (GVL) oil palm concession, and 169,000 hectares for Equatorial Oil Palm. Here too, there is overlap with two of the officially recognized community forests<sup>3</sup>. Finally, it should be noted that it is not uncommon for Mineral Development Agreements to include provisions that allow mining concessionaires to clear forestlands for their concession development<sup>4</sup>. Such a provision includes the Gba, Zor and Bleih CFs, all of which are located within the Arcelor Mittal Liberia concession area. It is assumed that such a provision would not be included in future MDAs located on community forestland without community approval.

### Who owns the land?

The 2007 National Forest Management Strategy Forestry explicitly states that FDA will not permit “land use activities (neither commercial, community nor conservation) without first establishing that there are no prior land tenure claims in the area”. Since then, most pre-existing national forests have been organized into concession areas. The underlying assumption is that forestlands eligible for concession are owned by the government<sup>5</sup>. Communities living around production forest concession areas are considered “affected communities” but not owners of the forestland (See FDA Core Regulation §61(c)(3) ). However, USAID is currently working with four clans in Nimba County, all of whom claim customary ownership to parts of the Big Gio National Forest, an area classified as an unallocated Concession or Production Forest.

Similarly, Protected Areas are considered government land. This is reinforced in the proposed Land Rights Law where communal land that is “taken” for inclusion in a Protected Area is treated as an eminent domain taking<sup>6</sup> [Art. 42.5].

In contrast, community forest resources are considered owned by the community although they are regulated by the FDA<sup>7</sup> (See Community Rights Law §2.3(d) ). While all customary forestlands, and forests covered under an Aborigines Grant Deed, Public Land Deed, Warranty deeds and other instruments conveying communal ownership are eligible for Community Forest status, this classification is not official until a Community Forest Management Agreement is signed between the FDA and a CF governance body is elected. (see Chapter 2 of the Community Rights Law regulation for this process).

Potentially confusing this further, it should be noted that the draft LRA proposes to recognize customary land ownership (including forests) and will create new mechanisms and means by which communities’ customary ownership rights can be legitimized<sup>8</sup>. Because customary ownership will cover forestlands under this law, there may be competing means by which communities could acquire rights to forests. Unless the registration of community forest rights and community title to forests is coordinated between agencies (or housed within one agency) there is huge potential for conflict and overlap.

In addition, the LRA proposes to recognize that community lands may fall within existing concession lands and so has provided a means by which communities may re-acquire the land following the expiration of the concession agreement [Art. 48]

<sup>2</sup> Please see Special Independent Investigation Body (SIIB). (2012). *SIIB Report on the Issuance of Private Use Permits (PUPs)*, presented to the President of the Republic of Liberia, H.E. Ellen Johnson Sirleaf December 19, 2012. Monrovia.

<sup>3</sup> The Numopoh and Nitrian Community Forests representing 8,267 hectares are located within the GVL concession area.

<sup>4</sup> The provision legitimizing this practice is found in the Mining Law of 2000 § 6.7d(4).

<sup>5</sup> Concessions, by definition are “the grant of an interest in a public asset by Government (PPC §73(1)). For agriculture or forestry, the asset would include the land. In the case of mineral concessions, the assets are the actual minerals, all of which are owned by the State under the Constitution (art. 22).

<sup>6</sup> The proposed legislation recognizes that “[t]he establishment by the Government of a Protected Area within a Customary Land without the consent of the Community shall constitute a taking of land not belonging to the Government and must comply with the procedural and substantive requirements for the exercise of eminent domain as provided in Article 53 of this Act and the Constitution of Liberia”.

<sup>7</sup> However, it should be noted that community forests would be included in communal lands under the proposed Land Rights Law which has introduced questions about regulatory authority.

<sup>8</sup> One of the goals of the Land Rights Law is to rectify past wrongs and recognize the customary rights of the local population in Liberia’s hinterland. Accordingly, the proposed LRL reinforces the LR policy and places customary rights on par with private land ownership rights.

Finally, Minerals Development Agreements and Exploratory concessions can be allocated on private, community, and public lands.

### Risks associated with PA Expansion

The overlaps between the relatively small number of CF and proposed protected areas, concessions and production forests serves to illustrate the potential overlaps and conflicts that could arise from the expansion of the protected area system in the hinterlands of Liberia.

Operationally speaking, the expansion of the PA would also present formidable challenges. The FDA is currently responsible for the management of 3 protected areas. These areas are managed by few staff who lack the resources and capacity to manage these areas. What is being proposed under the Liberia/Norway partnership will increase the area under PA management and will more than triple the amount of land under FDA management. With the current resource and capacity limitations, creation of additional protected areas poses the risk of establishing “paper parks”: areas that exist only on paper but cannot be managed for their stated objectives. While this in and of itself is of concern, the challenges associated with implementing this aspect of the agreement are compounded by the legal issues associated with this in the face of the proposed Land Rights Act. Specifically,

- Under current law, Protected Areas are considered government lands. If the press to identify and classify protected areas is done within the current timeline (before June 2015) and the Land Reform Law is not passed, communities will lose their customary rights to these lands unless they are able to secure them through the Community Rights Law (this would be unlikely, since the FDA has ultimate approval over the classification of these forests).
- If the LRA is passed, considerable work will be required to identify and register customary land claims. Although the proposed law states that customary land does not require a deed to be authenticated as customary land, the process to establish the customary land status will take time. In the interim, there is the possibility that PA could be created and thus removing that land from the pool of potential customary lands. However, if this is done, communities would have some legal recourse, provided their claims have been recorded, because the law does state that any PA taking must be treated as an exercise of eminent domain.
- Some existing community forest areas are already located in proposed Protected Areas. This includes the Gba CF that comprises nearly the same footprint as the proposed West Nimba Nature Reserve. Other CFMA that were not properly constituted but may still be legitimized are also located in proposed protected areas in Grand Gedeh, Sinoe and Lofa counties. If these forests are categorized as CF and not PA, the 30% PA goal will be nearly impossible to obtain. That said, the goal of conservation management could still be obtained under CF management but is not provided for in the Norway/Liberian agreement.

## RECOMMENDATIONS

**Recommendation 1: Ownership Inventory.** An inventory of forest resource and associated ownership is badly needed and should be a necessary pre-condition before additional forestlands are classified as protected area, production forest or community forest. An inventory of the forestland is envisioned in the National Forest Management Strategy and in the Land Rights Policy and proposed Law. The government of Liberia and donors should prioritize and operationalize this long overdue action.

**Recommendation 2: Capacity building based on strategic planning.** The FDA has been asked to implement an ambitious agenda without the necessary commitment of resources by government and donors. Prior to the expansion of a protected area system, a strategic plan to build the capacity of the FDA Conservation Department should be put in place, resources allocated and technical support provided for implementation of the plan by the government and its donors.

**Recommendation 3: Add Community Forests to the Protected Area network.** Because community forests can be managed for conservation objectives, community forest classification should be considered for the proposed protected areas where communities hold customary tenure rights. Empowering communities to manage their forests, rather than alienating them from their resources has the potential to avoid conflict between communities and the government, while at the same time, may provide cost-effective means of managing Liberia's valuable forest resources and providing communities with income from such management. With the possible expansion of customary rights through the LRL, this may be the best opportunity to ensure sustainable conservation of Liberia's forest resources.

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