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Insecurity of Land Tenure, Land Law and Land Registration in Liberia

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ABBREVIATIONS AND ACRONYMS

ABA  American Bar Association
ACS  American Colonization Society
ADR  Alternative Dispute Resolution
CAAS Comprehensive Assessment of the Agricultural Sector
DFID United Kingdom Department of International Development
FDA Forestry Development Authority
GC  Governance Commission
GoA  Government of Angola
GRC  Governance Reform Commission
ICG  International Crisis Group
ICR  Implementation Completion Report
IFC  International Finance Corporation
IFPRI  International Food Policy Research Institute
LC  Library of Congress
LLR  Liberian Law Reports
MLME  Ministry of Lands, Mines and Energy
MoA  Ministry of Agriculture
MoF  Ministry of Finance
MPW  Ministry of Public Works
NCDA  National Center for Documentation and Archives
NGO  Non-governmental organization
NBC  Norwegian Refugee Council
NTGL  National Transition Government of Liberia
PRS  Poverty Reduction Strategy
UNDP  United Nations Development Programme
UNMIL United Nations Mission in Liberia
UNTL  University of Timor Leste
USAID United States Agency for International Development
ZIORI Indian Ocean Research Institute

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The team was involved discussions in Liberia with a wide range of stakeholders in Abidjan and outside of Monrovia. These trips enabled the team to visit two communities near Monrovia, Millsburg on the St. Paul River in Montserrado County, and Tubmanburg, the seat of Bomi County. In addition, much time was spent in Monrovia, talking with officials and others working on land matters. A list of those consulted is provided in Annex B.

The team wishes to thank the staff and experts of the Governance Commission (GC), and in particular Dr. Jeanette Carter of the University of Liberia and Counselor Philip Banks, then legal consultant to the Commission, for their helpful reception and thoughtful advice. The team later had the opportunity to consult with Dr. Amos Sawyer, the Chair of the GC, in Liberia and at the Bank’s offices in Washington, to discuss plans for the Lands Commission and opportunities for donor assistance mentioned in this report. Finally, the GC facilitated a private audience with President Shirlef Johnson, who affirmed the high priority she accords land tenure in Liberia’s reform agenda. The team expresses their gratitude for the meeting and support shown by the President. The team also wishes to express their gratitude to Dr. Othello Brandy for his introduction to the community of Millsburg and its land tenure issues, and to the many officials who patiently and helpfully responded to the various questions. Those at the Ministry of Lands, Mines and Energy, the Minister and Deputy Minister E.C.B. Jones, were especially helpful, and the Ministry of Internal Affairs kindly arranged the visit to Tubmanburg.

Liberia is embarking on a searching and broadly consultative inquiry into its land tenure problems and their solutions. The conclusions and recommendations here are intended as input into that process. In addition, this report is largely a diagnostic, focused on deconstructing and assessing the complex land tenure problems in Liberia, particularly in the legal and land administration arena and discussing options for policy reforms that auger well for sustained growth. The study deliberately does not do an in-depth analysis on concessions, in part because IFC has a review of concessions and their provisions underway, but does make recommendations on some of the land-related issues. Land institutions are covered, but on a relatively formal level, in terms of their legal competences, since no study of the capacity of these institutions is available. The report focuses on the need for better coordination, consolidation and decentralization.
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List Map of Liberia

The counties which touch on the Coast (Cape Mount, Bomi, Montserrado, Grand Bassa, River Cess, Sinoe, Grand Kru and Maryland) are the areas of early Amero-Liberian settlement. These "old counties" are those in which most land is in fee simple ownership under deed. The interior counties contain some fee simple land, but the bulk of land there is used under customary land tenure.
Executive Summary

1. To implement the vision of fostering economic development, social equity, and a transparent and effective government, the Government of Liberia has outlined key transitions that need to be accomplished. These include the development of infrastructure (roads, electricity), schools, job creation and transition from war, civil conflict and social polarization to a well functioning society in which economic opportunities are fostered and distributed equitably. Yet clearly, reform of the land tenure system is also a priority of Government. This is because effective land policy makes an enormous contribution to improve the investment climate of Liberia, ensure maximum use efficiency of land, increase land based revenues and improves equity in the access and use of land, thereby reducing social polarization and violence.

2. Today, security of land tenure in today’s Liberia is weak to non-existent. Some of the key problems include the following:
   - The legal distinction between public land and tribal lands lacks clarity, resulting in tensions between government, which has long asserted ownership of and the right to alienate large areas of land occupied by traditional communities, and those communities, who regard this land as their own.
   - Fleeing citizens have left their property abandoned which in turn is occupied by squatters who can claim rights to the property through the law of adverse possession.
   - The old deed registration system which existed before the war did not adequately record land transactions, making it very difficult to track land sales. The war has resulted in missing deeds, deed records and databases, resulting in high risk in the land market and in an epidemic of fraudulent land deed and other documents, allowing sales of the same piece of land to several people.
   - As a result of problems with the deed system, the court dockets are crowded with land disputes which have to be dealt with and cleared.
   - The delineation of administrative units in the counties can be described as chaotic. Today there is often overlap and jurisdictional ambiguity between the state-supported customary units (clan and paramount chieftaincies) with the townships and cities that are subject to the statutory system. In such cases, the key question is who is the relevant authority.
   - Decision-making authority over land is fragmented among a half-dozen state agencies, without an effective coordinating institution.
   - Key land admin Key land administration agencies have lost human and technical capital, and debilitated need to be rebuilt.

3. The tenuous land tenure situation is complicated by the country’s land history and the tensions and mistrust arising from it. Liberia was formed by a colony of free slaves. The American Colonization Society (ACS) and other societies purchased land from tribes along the
coast. When settlers began arriving in the 1820s, they received land grants from the ACS. A family would receive a substantial 25 acres of farmland and a town plot. This land was given as grants of “fee simple”. This strong property right under Anglo-American common law has become what laymen today call “private ownership”. A holder in fee simple has the right to possess the land in perpetuity; the right to exclude others from it; the right to use the land and retain the fruits of its use; the right to devise land to heirs by will and to have such land pass to heirs according to rules of intestacy where there is no will; and the right to sell, mortgage, lease or otherwise alienate rights over the land, temporarily or permanently.

4. Through grants to the settlers, fee simple was introduced into a belt of land along the coast. Later, Liberia expanded by conquest southward and to the east. Land absorbed into Liberia as it expanded to the east was not purchased from traditional authorities, but simply deemed public land by right of conquest. A key decision of the Liberian Supreme Court rationalized this by reference to US Supreme Court holdings on the taking of American Indian lands.

5. The 1956 land law, still applicable today, indicates that settler land can only be sold to settlers or to “civilized” Africans. Today, even with the rapid urbanization (50% of the total population is urban) in the old settler cities, much of the land is held by these two groups. All other land to the interior is largely used by indigenous Africans and is under customary land tenure. Although it is deemed a public land, its management is largely through the chieftaincy system. Thus, in Liberia, there somewhat less than half the country held in fee simple or private property, located largely in the coastal, settler areas. The land is both urban and rural. There are some plantations and other commercial farm operations that are privately owned in the interior, as well as some very large holdings granted as concessions by government. The vast hinterlands in the interior of the country are primarily public lands, much of which is held and used by the inhabitants under customary tenure.

Key Problems with the Land Law:

6. The land law of Liberia is pluralistic, and consists of:

   a) a civil law of land, consisting of a common law of land derived from American common law at the creation of the colony and developed subsequently by judicial decision, and statutes supplementing that common law; and

   b) a customary law of land based on the practices of traditional communities and recognized by the Constitution as governing land not brought under the common law.

7. Although the application of these different laws to different areas of land is a common situation in former colonial Africa, the legal interface and interactions between these systems in Liberia is particularly vague and unsatisfactory and requires reconsideration and reform. Other countries in the common law tradition in Africa have pursued strategies of integration of customary rules into the common law by statute or judicial decision, but this process has hardly occurred in Liberia.

8. The civil law consists of the precedents of the Supreme Court of Liberia and relatively few statutes, the most significant of which deal with public land sales and the registration of land rights. This system of private property rights is fundamentally sound, promising substantial security of tenure, creating incentives for investment and good husbandry
of land resources, and allowing for the free functioning of land markets. But much in that land law is antiquated, either technically or politically, reflecting colonial perspectives which do not accord with current equity and social values. Provisions that create place the indigenous people (as opposed to Amero-Liberians) at a disadvantage in accessing formal title to land should be modified, and the constitutional prohibition of land ownership by foreigners should be carefully reassessed.

9. There is a need to re-examine the provisions of the laws concerning public land and its alienation and the law concerning the rules and regulations on the “hinterlands”. All reflect extensive claims to state ownership of land and resources on land under customary law, and such claims have been the source of political tensions which contributed to the conflicts of the past decades. There is a need for redress, and a careful rebalancing of interests to both enhance rural livelihoods and permit the exploitation of valuable resources in the national interest. Such redress must, once standards are clear, involve survey and registration of both public land and the land of rural communities.

10. The law concerning sale and concession of public land are rudimentary, outdated and require fundamental reforms. The provisions as they stand, largely in the Public Land Act, provide for prices at archaic levels, do nothing to assure that those granted land will develop it, and produce much less revenue than should be the case. They have also created substantial resentment among local people who have been denied use of the land. Legal reforms are long overdue.

11. In addition, there are fundamental issues of takings that need to be considered. Substantial areas of land taken from local communities for concessions have been only partially utilized, and some of this land should be returned to those communities. In addition, there is considerable irregular occupation of land of others, due to dislocations during the war, to be dealt with. In order to encourage utilization of such land, and ease the problems related to land access for those affect by war, consideration should be given to a variety of mechanisms that would allow those occupants who have been using the land for some time to remain on the land, while at the same time recognizing the legitimate claims of those who owned the land.

12. The customary law of Liberian ethnic groups is remarkably poorly documented, and studies to establish a fundamental typology and parameters is a priority, as is documentation of the handling of customary law by the Liberian courts. It is important to understand not only the substance of that law as applied but also its processes and the institutions. For instance, reformers will need to understand the extent to which officially recognized custom and administration have deviated from indigenous models, and the extent to which there exists a competition between recognized and indigenous models on the ground. There is a need to provide stronger recognition and protection to customary rights to land and to that end, to reorient Liberian legal education to address customary as well as other law.

13. Consideration should be given to the development, based on a clear land policy, of a new comprehensive Land Law. This will require as a first step a careful, comprehensive and critical review and assessment of the law concerning land, a task which has not yet been undertaken. A comprehensive land law would need to harmonize the operation of these bodies of law, and perhaps provide for their eventual integration.
Land Registration and Administration

14. Liberia has both a long-standing system of Deed Registration and a more recently introduced Land Registration System. The latter system is superior, and was intended to eventually replace the former, but this has not occurred due to the wars and lack of financing. Its considerable advantage is that it allows for systematic review of the confused land claims in an area and a relatively legally conclusive decided of them. It is a system with special potential in post-conflict situations. But it can only be applied gradually, and so the deed registration system must be rehabilitated and maintained at the same time the newer system is piloted, refined and expanded.

15. The Deeds Registration System is in disarray. Records under that system have been scattered, damaged and in many cases destroyed, and this is encouraging widespread fraud and malpractice in land transactions. There is an urgent need to collect, consolidate and conserve these records, and to digitalize them for easy access in both land administration and land dispute settlement. There is also a need to consider measures for simplification of deed registration processes.

16. The Land Registration System is supported by a relatively strong and modern law, enacted in 1974 but incompletely piloted in Monrovia. There is a need to reconsider some provisions of that law, in particular its treatment of customary rights and statutory rights of traditional communities. There is also a need to review carefully issues that arose during the early pilots under the 1974 law, and to carry out further pilots.

17. In order for the work above to be carried out effectively, there is a need to review the roles and responsibilities of the many government ministries and other agencies involved in land administration. There is a need to have one agency with overall responsibility for land, and for decentralization of key decisions concerning land use and allocation. The objective should be a division of authority which provided checks and balances and so minimizes abuses.

Key Problems with Land Dispute Resolution

18. Land disputes are rife in Liberia today, the result of the dislocations and illegal occupations of land coming out of the civil war, and a wave of fraud and malpractice encouraged by the loss and destruction of land rights documentation. The court system is in disarray and unable to cope adequately with the volume and complexity of these disputes.

Key Problems with Land Institutions

19. The Ministry of Lands, Energy and Mines is the key institution for lands management. However it is placed within a Ministry that has other, very pressing needs-energy and mines. The existing Land Administration and Management systems are wanting. The land tenure system - the laws, regulations, guidelines, institutional framework and administrative mechanisms by which people gain access to economic opportunities through land - can and should be improved.

20. Land administration capacities are very low at present and there is an urgent need to re-capacitate the agencies involved in land administration, notably the Lands and Survey Department of the Ministry of Lands, Mines and Energy. Urgent needs include clearer guidance for field staff, better coordination of land administration and local government,
construction of new facilities, retraining of staff, and re-equipping of survey and other technical units. As a result of this lack of capacities, particularly for skilled professionals, the practice of land surveying is now in the hands of lower level technicians and unscrupulous practitioners whose actions have filled court dockets with unresolved land disputes cases. As a result, security of tenure is virtually non-existent in Liberia; a situation which hampers development and fuels conflicts.

21. **The Department of Land Surveys and Cartography is in a deplorable state.** The Bureau of Lands & Surveys has been relocated and is now sharing space with the Liberian Cartographic Services in a dilapidated rented building with inadequate furniture, no electricity, and hardly any office or technical equipment.

22. **Most countries in Africa have a cadastre that is at least partially functional.** Currently, there is no cadastre and no effective and reliable land information system in Liberia. The cadastral survey and title adjudication activities of the Bureau of Lands & Surveys were disrupted as far back as the late 1970s and have never been resumed. Without the resumption of these activities the current deplorable land administration situation cannot be adequately addressed. There is a dire need for an integrated National Land Information System which shall be interlinked to a legal property cadastre, fiscal cadastre, a mineral property cadastre, etc. These efforts should not focus only on central government level, but should include creation of new capacity at county level, in the context of decentralization.

23. **Institutional Frameworks for Land Management:** There is no national land policy; and the national institutional framework for land administration and management is improperly designed, uncoordinated and ineffective.

24. **To assure that the land tenure strategy of Liberia addresses these issues, a multifaceted strategy to land reform will need to be adopted** that: a) addresses the conflict-related roots of land tenure; b) focuses on making the transition to a land tenure administrative system that is adaptive to the realities of the war (missing cadastres and land documents, squatters, speculative accumulation of land, emergence of a variety of land related groups, forms of proof, informal institutions, etc.) but makes administrative procedures more explicit, accountable and accessible; c) examines both short and longer-term changes to land policy and land administration using a participatory approach to ensure maximum support and buy-in; and d) determines how to ensure that land access is equitable across the rural/urban divide.

**Recommended Actions**

25. **Formation of a Land Commission is a key first step in organizing changes to the land tenure situation in Liberia.** This is because the Land Commission is an inclusive body that will allow the views of all stakeholders to be expressed while moving forward on key land policy reform issues. There is considerable positive experience with such land commissions in post-conflict and other contexts in Africa, and those lessons need to be drawn upon. Key lessons from that experience are the need for a membership that reflects the larger society and not only government, the need for a strong secretariat, the importance of a strong public consultation process, and for a commission mandate that includes follow through on development of a national law policy and a land law. The Governance Reform Commission (GRC), mandated by the President to move forward the creation of such a Lands Commission, should take the initiative to assemble a donor support group for the land sector in general and the Land Commission in particular. That group should ideally headed by a multi-national donor. Funds for the
26. Clearly, the line ministries and other agencies dealing with land cannot simply await the recommendations of a Land Commission. They will need to move forward in rebuilding their capacities, beginning to implement programs, and even with modest reforms of their processes, for instance through regulations. Because of the number of agencies dealing with land under the current legal framework, the Commission may provided, through informal working groups, the opportunity for these agencies to coordinate those initiatives and conform them to the priorities emerging from the deliberations of the Commission.

27. In terms of prioritization, there are certain rapid remediation measures that need to be made immediately. The chaos in the deeds registration and the dysfunction of the courts system in addressing these issues calls for four rapid lines of action: (1) a moratorium on issuing new deeds and sales of large tracts of land till there are more transparent measures and guidelines put in place, with ceilings on the size of future public land sales; (2) review of existing agricultural concessions to determine whether size reduction is appropriate, and an emphasis in granting new concessions upon models which allow smaller concessions for core estates with processing facilities while relying for much of the production upon outgrowers working on their own smallholdings. a (3) urgent legislation for the creation of a Land Commission; (4) an internal intervention to restructure the institutional framework and improve the effective capacity of the Department of Lands, Surveys and Cartography, in order to arrest the proliferation of unprofessional surveys and fraudulent land transactions; and (5) a donor assisted intervention to formulate a national land administration project, which will address a range of longer-term problems including policy deficiency, law reform and institutional framework.

Reforming Land Law

28. In terms of reforming land law, there is a need to re-examine the provisions of:

- the law on public land and its alienation,
- the law concerning ownership of natural forests, and
- the rules and regulations on the “hinterlands”, the interior of the country beyond the zones of early Amero-Liberian settlement.

29. All the provisions reflect extensive claims to state ownership of land and resources on land which has been governed by customary law. There is a need for a careful rebalancing of interests to both enhance rural livelihoods and permit the exploitation of valuable resources in the national interest. It is critical that government recognize the property rights of local communities. It will be important to survey and register both the land of rural communities and the remaining public land. As indicated earlier, it would be preferable if Government could move slowly and very carefully on with any public land sales and concessions until these issues are resolved. The criteria and pricing of such sales and concessions will ultimately need serious reconsideration.

30. In addition, there are fundamental issues of equity that need to be considered. Substantial areas of land taken from local communities for concessions have been left largely utilized, and some of this land should be returned to those communities. There is considerable irregular occupation of land of others, due to dislocations during the war, and to encourage utilization of such land there is a need to find ways to allow those occupants who have been using
the land productively in recent years to remain on the land, while at the same time recognizing the legitimate claims of those who own the land.

31. Consideration should be given to the development, based on a clear land policy, of a comprehensive land law that harmonizes the operation of statutory and customary law and addresses the equity issues originating in Liberia’s colonial past.

Reforming Land Registration and Administration

32. In terms of Land Administration reform, clearly the deed registration system needs change. One key problem is that there are too many institutions involved in the registry system, and there is a need to simplify and bring the system under one institution, preferably the Ministry of Lands, Mines and Energy. The Land (Title) Registration System, which is not implemented, is based on quite a good law, but it is not well known or tested. Piloting this, with lessons learnt from the past, would be important.

33. The major task in the land administration area is rebuilding the human and capital items that form the basis of the land administration system: trained staff, buildings, survey equipment, and vehicles. It will take many years for the Land Registration System to be applied systematically nationwide, and a process for sporadic registration of transactions will be needed in areas not yet covered by the new system. The Deed Registration System has been playing this role, and needs to be upgraded. In terms of Land Administration machinery, the Land Registration Law’s provisions on implementation machinery are helpful. It does not set up parallel registries. Rather, those institutions that are already involved in Deed Registration (The Land Commissioner, the Surveyor, the Probate Court, the Registrar in the National Center for Documentation and Archives) are responsible for Land Registration. At County Level, there is one system to be strengthened.

34. In the meantime, the MLME needs to take the lead in drawing together the various institutions involved to ensure the existing Deed Registration system is working. It could assemble a technical task force with members from all the key agencies to hold county-level training and problem-solving workshops with staff there. Based on four or five these workshops, a set of interim guidelines could be drafted by the task force, reviewed at a workshop of select county level staff in Monrovia, and then issued. This activity could also generate a list of proposed legal amendments regarding Deed Registration and Public Land Sales. MLME should then seek financial assistance to prepare for a re-piloting of the Registered Land Law.

35. Finally, there is urgent work to be done in the conservation of records of land rights, many of them damaged and deteriorating, in inadequate storage facilities at various locations. This is not an exercise in history, but an urgent task of conserving the proof needed to prove and defend property rights. This is an area where a Lands Commission, when such a Commission is appointed, could take the lead in an initiative that would involve the various institutions holding land records and which needs to be involved in remediating the present very unsatisfactory situation.

Improving Land Dispute Resolution Systems

36. Land disputes are endemic in Liberia today. The situation is growing worse and will do so until the land administration and justice administration systems have been fully resuscitated. The first task involved, however, should be a careful inventory and analysis of the backlog of cases, to get a better handle on the task. A second task is the categorization of disputes
to identify legal uncertainties that are contributing to those disputes, for urgent resolution. This could eliminate a substantial number of cases. The third task is development of a strategy that combines in an effective fashion the various dispute-settlement initiatives underway: 1) ad-hoc commissions for notorious and potentially explosive land disputes; 2) court adjudication of cases concerning land, and 3) NGO-led alternative dispute resolution. This would include a decision as to whether a special Land Court is needed, or as the consultant suspects, strengthening the Circuit Courts in their capacity to process land cases might be a more effective approach.

37. **In addition to institutional and process solutions for dispute settlement**, urgent rule-making on key issues affecting many disputants can have important impacts. For example, rules concerning the following matters have in other countries radically facilitated settlement of the most common types of land disputes:

- Legitimacy and legality of specific types of claim, for instance claims of former landholders from long ago, resolved by a law that clearly made those claims unviable.
- Rules affecting many cases of land disputes cause by war, such as criteria for abandonment, which once clarified resulted in the dropping of many claims;
- Creation of compensation entitlement for those affected when government dispositions of land were found to have overridden other claims, turning those claims into claims for compensation rather than land disputes.

**Improving Land Institutions**

38. **The courts and land institutions clearly need rebuilding.** They lack not only trained staff but the copies of the Liberian Code Revised and the Liberian Law Reports, which reports the decisions of the Supreme Court, the precedents which should guide the lower courts in their decisions. A common law system cannot function without these. The buildings once occupied by courts have sometimes been destroyed or co-opted for other government purposes. There is a need for rebuilding of both physical and human capital.

39. **In terms of the availability of skilled professionals, there is an acute shortage of trained land professionals;** hence, the practice of land surveying is now in the hands of lower level technicians and unscrupulous practitioners whose actions have filled court dockets with unresolved land disputes cases. There is no cadastre and no effective and reliable land information system. As a result, security of tenure is virtually non-existent in Liberia; a situation which hampers development and fuels conflicts.

40. **The Department of Land Surveys and Cartography is in a deplorable state.** The Bureau of Lands & Surveys has been relocated from its rented building on 9th Street, Sinkor, and is now sharing space with the Liberian Cartographic Services in a dilapidated rented building with inadequate furniture, no electricity, and hardly any office equipment. There is a good quantity of topographic and cadastral maps available between the two Bureaus, which are currently at risk for lack of adequate storage. These two essential national institutions must be properly housed, and adequately equipped, if they are to be effective in dealing with the chaotic land situation.

41. **The cadastral survey and title adjudication activities of the Bureau of Lands & Surveys were disrupted as far back as the late 1970s and have never been resumed.** Without the resumption of these activities the current deplorable land administration situation cannot be adequately addressed. There is a dire need for an integrated National Land Information System.
which shall be interlinked to a legal property cadastre, fiscal cadastre, a mineral property cadastre, etc. Without adequate information on real properties, the problems of land disputes, illegal sales, improper urban construction, and squatter encroachments cannot be resolved.

42. It is imperative that Liberia begins to take action now towards Land Tenure Land Administration Reform. There is currently a post-conflict window of opportunity which should not be missed, and the Government should treat this as an urgent matter. The next sections detail the specific issues and recommendations that can be followed to improve land tenure security in Liberia.
Introduction

What is Land Tenure?

1. Tenure is a system of rights regulating the ownership or use of land. It can exist formally, as a legal document, or informally, as a result of orally established local property rights for which there is a community-based consensus. It is sometimes referred to as a property rights regime. Property rights regimes have two components: property rights, which are the bundles of entitlements defining the rights and duties of the owners and users in the use of the land resource, and property rules, which are the rules under which those rights and duties are exercised (Hanna and Munasinghe, 1995). The collection of entitlements, plus the rules under which they are used, makes up the rights that often embody people's expectations about their claim to resources (Bromley, 1989).

2. Within the vast body of property rights/tenure literature, land tenure security has generally been defined as the level of assurance an individual has of his or her claim to a piece of property based on his/her bundle of entitlements. In the developed world, this level of assurance is normally high because property rights exist as legal documents giving individuals clearly defined rights, formally recorded, and backed up by effective systems of adjudication and law enforcement. In Africa, property rights may have a) a formal legal basis or, b) in the case of customary land, have no formal, legal basis but exist as informal rules that have become norms of society based on social differentiation, productivity and membership to particular sub-sets of community (Place, 1995). While both sets of arrangements can provide security of land tenure, they often fail to do so. One often finds, as in Liberia, that the customary land tenure systems have been undermined by state action and claims to public ownership. They are in addition unable to manage conflicting claims between community members and outsiders. The formal systems, on the other hand, are often weak, are not supported by effective systems of adjudication and enforcement, and lack legitimacy in the eyes of rural people.

The Role of Land Tenure Systems in the Growth Agenda

3. The central role of secure property rights in growth has been shown in the literature (North, 1981). Property rights confer to its holders an unparalleled sense of security that enhances their ability to invest in the land, fostering growth. Land tenure systems, and the land rights they confer, influence economic growth by increasing the incentives of households and individuals to invest, and sometimes will provide them with better credit access. Clearly, the ability to make use of productive land will depend on the policies in areas beyond land policies (such as agricultural policies, subsidies, input prices, etc), but at the base, without secure property rights, long term investments are unlikely to take place (Nkrumah et al. 2003).

4. If land rights are poorly defined, or restrict access to certain groups or individuals on the basis of race, ethnicity or origin, this becomes a pivotal point of conflict which can escalate, as in the case of Liberia. In these cases, valuable resources are diverted from other purposes such as investment. Without secure land rights, landowners are also less willing to rent out their land, which may impede their ability and willingness to engage in nonagricultural employment (Deninger, 2003).
5. To implement the vision of increased economic development, social equity, and a transparent and effective post-conflict government, the Government of Liberia has outlined key transitions that need to be accomplished. These include the development of infrastructure (roads, electricity), schools, job creation and transition from war, civil conflict and social polarization to a well functioning society in which economic opportunities are fostered and distributed equitably. All of these infrastructural investments are made to fuel growth in a stagnant economy. Yet, growth without an effective land policy and land rights is often fraught with conflict and confusion, and in Africa, risk to assets has been put forward as a crucial determinant of growth failure (Collier and Gunning, 1998). Clearly, land policy can make an enormous contribution to improve the investment climate of Liberia, ensure maximum use efficiency of land, increase land based revenues and improves equity in the access and use of land, thereby reducing social polarization and violence.

6. More specifically, land tenure systems have a key role to play in a country’s growth both directly and indirectly:

- In the rural sector, access to land, coupled with secure property rights, increases investment, agricultural productivity and adoption of agricultural innovations, resulting in food security and economic growth.
- In urban and peri-urban areas, secure land and property have direct links to growth and poverty reduction by the connection to land and the action of land markets, which redistribute wealth by giving access to appreciation in land values and can transfer land to more productive users.
- Secure land also promotes growth by expanding credit based on the use of secure evidence of property rights (such as titles or other evidence/proof) to collateralize loans.
- Private investments are contingent on secure forms of land tenure and, in some cases, transferability of rights to land.
- A well-established land tenure system makes possible enhancement of public investment through mechanisms, including land taxes, to provide predictable and sufficient revenues for local government, to encourage efficient land use and to discourage speculative accumulation of land for nonproductive purposes.4
- Property taxation or concession arrangements (in the case of natural resource allocations) when estimated, collected and used transparently, can be an important source of government income.
- The economic potential that is locked up in underutilized land can be made available in a wide variety of ways involving different forms of rights that improves access to economic opportunity through equitable means, thereby allowing the country to overcome high levels of inequity that have caused social polarization and violence.

The Role of Secure Land Rights in Poverty Reduction

7. For most of the African poor, land is the primary means for generating a livelihood and a principal means for any investments. It is often a source of wealth and the individuals who are able to amass more land often become the wealthiest in society. By allowing them to make productive use of their own labor (or family labor), land ownership reduces vulnerability to external shocks. This land is often the source of subsistence and marketable surpluses and impacts their ability to access financial markets. In Africa, the possession of land also confers social status and leadership within a society. According to Deninger, researchers have recognized
that providing poor people with access to land, and improving their ability to use that land is central to reducing poverty.

8. In Liberia, the poorest in society live on customary land. In many African societies, it is long recognized that customary land can confer adequate land security. However, in the particular case of Liberia, there are several historical problems that have made this security tenuous: a) Traditional communities, the country's towns and villages, have their customary territories. Shifting cultivation in Liberia on customary land has meant that traditionally farmers require relatively large allocations of land, but land is also held by the community for hunting and other less intensive land uses. While the use of this land by local people has been governed by customary land tenure, the Liberian state has long claimed ultimate ownership of this land, and large areas have been alienated by "public land sales" carried on from the office of the President.

9. The key role of land access and secure land tenure in poverty reduction is reflected in the substantial land sector reform content in the recently approved Liberian Poverty Reduction Strategy (PRS) (Government of Liberia, 2008). The relevant excerpt is appended to this report as Annex J.

Land Rights, Governance and Equity

10. The ability of local leaders to control customary land has traditionally been a major source of political and economic power. In the case above, local traditional leaders were partially responsible for the alienation and impoverishment of the youth. However, an examination of the history of Liberia shows that this issue of lands rights and governance is the root cause for many of the problems seen today. Liberia was formed by a colony of ex-slaves from the United States (Amero-Liberians) who initially carved out their territory from Monrovia and other areas such as Montserrado County, including Sinkor and Bushrod Island. This was later expanded to other areas along the coast-line. These early settler territories were based on land purchased from local chiefs and a formal body of law was created for the management and confer of ownership of these lands to settler communities. Today, though the territory under private ownership has greatly expanded, this differentiation still exists and the land law in application today was created for these settler territories. Land not titled under that system has not statute governing it and is considered as public land, left largely to the management of local chiefs. This system is markedly different from the position in other countries in Africa where the formal law usually applies to urban lands and the customary law to rural/community lands. The Liberian land laws, described later in the paper, allow settlers to apply for large tracts of public land. However, the law does not allow non-settler communities to gain access to lands in settler areas except in particular cases where the indigenous African is considered to be "civilized". This inequity in the creation and application of the laws has been a source of considerable tension, particularly since the law enables settler communities or "civilized" Africans to garner huge tracts of community land for the price of 50 cents an acre. This law still remains unchanged and while the actual market may require a higher price for tracts of communal land (about $125 an acre), it is still very cheap.

11. In summary, land under customary tenure has been treated as public land, which can be disposed by the state by sale. This uneven playing field was seen by the indigenous Africans in the interior as inequitable; the resentments this engendered contributed to the fall of the civilian government in Liberia in 1980 and the ensuing chaos. This underlying structural problem of Liberia's land tenure system should not be forgotten in reviewing the more technical issues of land law and registration.
Land Rights, Political Security and Sustainable Development

12. Enter the wars in Liberia. These have, at their core, been about equity and land. Now the dust has settled and what remains of the land tenure systems that were so carefully created, legalized and institutionalized? The institutions that were created to manage the acquisition of land were deserted during the war, their buildings bombed and most of the documentation, which existed in paper form, scattered, destroyed or burnt. The fleeing citizens, including many from the settler communities, exited with their skills and knowledge and left their properties behind. The laws on which the land tenure system was formally created still remain in effect, steeped on the adversarial societal relations of the past era. The old policies and much documentation are gone and the deed record system is in total disarray. Without a doubt, the land tenure system in Liberia of today is in dire straits. A 2006 assessment by the Ministry of Land, Mines and Energy make the seriousness of the situation clear.

13. There is no national land policy; and the national institutional framework for land administration and management is improperly designed, uncoordinated and ineffective. No agency of the Central Government seems to be responsible for or engaged in the management of public land; as such the public domain is apportioned and allocated for various uses without land use regulation; and government can hardly find land for public buildings and other essential public uses in urban areas, including specifically the capital, Monrovia.

14. There is an acute shortage of trained land professionals; hence, practice of land surveying is now in the hands of lower level technicians and unscrupulous practitioners whose actions have filled court dockets with unresolved land disputes cases. There is no cadastre and no effective and reliable land information system. As a result, security of tenure is virtually nonexistent in Liberia; a situation which hampers development and fuels conflicts.

15. This assessment is completely accurate. The World Bank team had to really turn the Libraries and Archives upside down searching for key documents, most of which were gone. A few documents, taken home by caring professionals and guarded like treasure were hunted down, quickly photocopied and returned. Critical records have been lost or destroyed. In these circumstances there are no reliable records, or sources of information, on land distribution, land transactions, or land pricing. Earlier capacities in administration of land and justice have been dissipated and must be reconstituted. A sense of insecurity has undermined the confidence of both peasant and commercial investors. The war has also created new land problems: land occupations by displaced persons and simple opportunists and an epidemic of new land disputes. Taking advantage of the disorder and loss of land records, forgery and fraudulent land claims are rampant.

16. The problem is how the nation can begin to put this system back in order without redressing the wrongs of old and without putting a new modern system in place that can truly take Liberia forward. The task is immense but has to be done. Without a functional and credible land tenure system, secure investment cannot take place. The Liberian President is right when she highlights the importance of land tenure as key to the full recovery of Liberia. One fact is certain; the very political security of this country rests partially upon making sure this land issue is addressed as a priority.

17. Despite all this distressing news of the land tenure system, there is hope for Liberia. Some African countries which experienced virtual melt-downs, yesterday’s “failed states”, have upon recovery been amongst the most innovative in reforming their land policies and land laws. Uganda and Mozambique are cases in point. Disasters disorganize and dilute vested interests, and
can create a new sense of the need to pull together to develop lasting solutions. The five years after the end of conflict is a window of opportunity not just for rebuilding what existed before, but for badly needed reforms.

The Aim of this Paper

18. Given the post-conflict situation in Liberia and the state of land tenure institutions, records and data, this paper is not many things. It is not a study of the land tenure systems in Liberia – there is little pre-existing information on the intricacies of the old tenure system, tenure maps, sociological surveys etc. The paper is equally not a study of land markets or land institutions because land markets are barely functional and where they are, are significantly distorted. Nor is it a study on land revenues and land taxes, simply because no baseline data exists that we could find. So what exactly is the purpose of the study? In discussion with the Liberian Government, it became clear that what is really needed is technical assistance to begin to reform land tenure policies in Liberia from the ground up. They didn’t want a study that would just sit on the shelves. They wanted something they could take and apply immediately and use as they began their process of land reform and they were very clear about this. They wanted something they could also take to donors and say, could you fund this aspect or this? This paper is therefore a response to what the Government of Liberia says it wants. For them, what is really crucial at this stage is to come out with a study that can show what needs to be reformed and how, starting right from the legal framework for land (because this is where the equity and security issues begin from) right through to the administration of the law. This is what the study delivers and this is why it is heavy on the legal framework - because we’re starting to build a land tenure system and you need to start from the ground-from the legal framework on up block by block.

19. Chapter one of the papers focuses on describing the post-conflict situation in Liberia and how this has impacted land security in Liberia. Finally, it asks, how can we restore land tenure security to Liberia? Chapter two and chapter three tackle this question by delving into the legal framework for state land and then for customary land. The chapter assesses the legal issues and makes recommendations for strengthening the legal system to provide adequate security for all users. Chapter four examines the land administration system-what exists, what are the problems and how can the nation repair this defunct system while moving into the 21st century and using a registration system that has been modeled throughout the world. Chapter five examines land institutions and their capacity constraints and Chapter six breaks down all the problems with recommended and prioritized solutions. Finally, Chapter seven assesses the ways in which the World Bank and other donors can assist Liberia as it moves forward with its land reform agenda. Within these broad chapters, the main pressure points are discussed - a) the disconnect between customary tenure and statutory land tenure; b) land appropriation and customary tenure; c) problems with deeds; d) land registration and administration on settler & urban lands; e) land institutions and f) land disputes. A legal and policy lens is applied as an overlay to discussing and relieving these pressure points.

20. What is encouraging is that at the time this study was launched, at least 4 other donors and researchers arrived in Liberia to study the land tenure question and a coordination group among these donors and researchers has been formed. Part of this response was because the Government had solicited help from international groups to assist them on helping to put the land tenure system to rights. A study on the legal competences of the various state institutions with land roles has been conducted and major study on customary land tenure and gender has been launched, one which will take several years to complete. The Governance Commission (GC) has begun to form a Lands Commission and the World Bank, through this study’s funds, has provided technical assistance to the GRC on the formation of the Land Commission.
21. Liberia needs to seize these opportunities, and the call by the President for the creation of a Lands Commission augurs well for the future. The experience with such Commissions elsewhere is encouraging; they have achieved breakthroughs in reforming land policy and law. The international donor community is aware of the centrality of land matters, and will hopefully be willing to support both the design of reforms and their implementation.
Chapter One

The Post-Conflict Policy Context: Restoring Security of Land Tenure

1.1 The Historical Context

1. There is a dual land tenure system in Liberia—formal and customary land tenure. The formal land law written in 1956 primarily refers to Amero-Liberian settlers/immigrants from the U.S in what was primarily their territory. This land is under a deed system and is considered private property or freehold. All other land to the interior is considered public land and is largely used by indigenous Africans. This land is mainly under customary land tenure. Thus, in Liberia, there is a limited amount of land held in freehold or private property, located largely in urbanized, settler areas. There is some plantation and other commercial farm operations that are privately owned and the vast hinterlands are public lands under customary tenure.

2. According to the 1956 Public Lands Law which remains largely unchanged, and the 1974 amendment which deals with the land registration system, land in the settler areas of Liberia, such as Monrovia, is held in fee simple, going back to the earliest settlers to Liberia who were entitled to either a town lot or ten acres of farm land (or twenty-five if married). A deed in fee simple for this land was obtained when the settler became a naturalized citizen or had 2 acres of land under cultivation (if the land was farm land) or a house erected if it was town land. When evidence was provided that this land had added value, the land commissioner or register of deeds gave the user a deed for the land which was then submitted to the President for signature. According to the law, land could only be transferred after title was obtained but use-right could be transferred to heirs if the title had not been obtained before death. Land, then and now, can only be held by Liberian citizens who have to be of black racial origin. In terms of access by indigenous Africans, public lands in settler areas would only, by law, be deeded in fee simple to “civilized” indigenous people if they either erected a house, similar to settlers or planted trees bearing marketable produce, in the case of farm land.

3. Thus, according to the same law, African indigenous people, who constitute the majority of Liberian society, could not usually access public lands for ownership under fee simple or deed. This aspect of the law remains legally unchanged. Indigenous African access to land was through customary land tenure unless he/she became “civilized”. In terms of customary land tenure, there is no formal written customary land law in Liberia. However, all lands in the designated indigenous areas come under a system of tenure based on traditional customary law. Within that system, there is no individual ownership, but instead the state recognizes the communal right to land. Hence, individuals have land use rights but cannot own land. Land is under the control of the chief who has a communal deed to tribal areas and administers its distribution. The size of the area farmed depends on the household size and the labor requirements it can meet. In the early 1980s, the average subsistence household of 5-7 people cultivated 3 acres of upland rice and 1 to 2 acres of other crops. Amero-Liberian settlers can purchase public land held by rural communities but first have to first go to the chief to get permission and pay a token of good intention. The purchaser then follows the letter of the law and the procedure to have this land deeded. This unequal access to private land has become one pressure point that the Government is seeking to address as it moves forward with the land reform agenda.
1.2. Post-Conflict Competition and Confusion over Land in Rural and Urban Lands

4. **There are many land-related reasons for the wars in Liberia.** The military coup which brought Samuel Doe to power and began the descent of Liberia into political chaos was fuelled by resentment by indigenous Liberians of Amero-Liberian appropriations of land and more generally the Amero-Liberian dominance of politics and society. But the indigenous Liberians were not a unified force, and conflict among them over land and territory emerged. The different points of competition for land are: a) the separate and unequal access to land and other resources of Amero-Liberians compared with indigenous Liberians and alliances created by leaders who stood for one group or the other; b) the inter-tribal conflict between the Mandingos and other indigenous ethnic groups, spurred in part by their close relationship to the ruling elites (Konneh, 1996); and, c) a long-term agrarian crisis based on inter-generational crisis and the failure of rural institutions, providing the warring militias with a ready supply of young recruits (Richards et al, 2005). This was because the chiefs used the traditional system as key means to control land and labour in the rural areas. Nimba and Lofa counties were the hardest hit by the war as a result of these issues (Richards, 2005). Liberians differ as to the relative importance of these in the descent of Liberia into civil war. It is difficult, for instance, to distinguish competition for land from competition for political control of territory. Conflict over land figures prominently in most serious studies of the issue (e.g., Levitt 2005), but further studies are needed to provide a more nuanced understanding of the relative role of the different factors noted.

5. **In addition, the land problems in Liberia have been acerbated by the conflict, which only exposed the root of the problem.** Concurrently, the administrative and judicial systems required to handle land matters have been crippled by the war. Unruh points out that during the conflict, multiple new administrative units with poorly defined boundaries were created, so that today “there is often overlap and jurisdictional ambiguity between the state-supported customary units of clan and paramount chieftaincies with the townships and cities subject to the statutory system... and boundary disputes between rural communities are being brought to the Ministry of Internal Affairs almost daily.” Finally, he notes that authority over land itself is under challenge, both the authority of pre-conflict legal constructs and the authority of today’s officials to implement them:

> “Questions are arising regarding the authority of officials in land matters, particularly did (and do) they have the authority to sell land or to grant squatters’ rights? In communities, which rely upon usufruct rights, people (especially youth) are questioning the process by which chiefs were able to authorize the deeding of the community’s land, either to “strangers” or local elites during and before the war...”

6. **Today’s chaos in the land sector (see Box) is therefore a result of the pre-war land context and the disrupting effect of the war.** Trying to piece out the underlying causes means both going into the historical context (section 1.1) as well as examining the impact of the war on land arrangements on both customary land and land under formal tenure.
1.3 Endemic Land Disputes: Symptoms of Land Tenure Problems

7. The most significant indicator that there is something wrong with the tenure system in Liberia is the number of dispute cases in the courts. According to all verbal reports, this number was extremely high. It was difficult to find hard data on levels of land disputes, but the Governance Reform Commission’s 2007 draft paper on “The Way Forward” notes that in 2006 the Norwegian Refugee Council found that land and property disputes were among the top four security issues in communities in ten of Liberia’s fifteen counties, and that in four counties (Lofa, Grand Gedeh, Sinoe, and Maryland), land disputes were the most common issue.

8. In Liberia, disputes take many forms (Box 2). There are disputes caused by persons displaced in the war taking up cultivation on the land of others, who may be absent. This has occurred on abandoned farms and, in some case, local inhabitants who worked on commercial operations before the war have done the same, when these estates were abandoned. This was evident in the former sugar cane operations visited in Millsburg in Montserrado County, not far from Monrovia. Second, in some cases those farming the land had negotiated annual leases with share rents with the owners or their agents from Monrovia, in other cases they had not. Disputes also occur when displaced landowners return and want their land back. This occurs throughout
the country, but has drawn attention especially in the Hinterlands. Some of these disputes can have an ethnic edge and threaten new hostilities. In Nimba County, Mandingos refugees returning from Guinea found Gio and Mano inhabitants in possession of their urban commercial premises. This has stirred old resentments and drawn public attention. However, those who know these areas well note that the disputes of this nature also exist between members of the same tribe and among members of other tribes. In the Nimba case, the President has appointed an ad hoc presidential commission chaired by the Minister of Internal Affairs to try to find solutions. It had not given its final report as of November, 2007, though it had produced a brief interim report.

9. Unruh (2007c), reviewing the experience in dispute settlement in post-conflict states, cites the case of Mozambique to make the point that disputes often exist because the substantive law is inadequate. This means that clarification of areas of legal ambiguity can dramatically reduce outstanding cases. He notes the positive role played there by the effective categorization of disputes. This allowed some categories of disputes to be resolved en masse by a new law, decree or legal action. He lists: 1) legitimacy and legality of specific types of claimants, in particular former colonialists, resolved by a law that resulted in the dismissal of large numbers of claims; 2) disputes of a type that came about due to the war, such as the criteria for abandonment which once clarified, resulting in the dropping of many claims; 3) disputes due to government dispositions of land having overridden other claims, by turning those other claims into entitlements to compensation, and 4) dismissal of disputes involving claims made in bad faith.

10. But even when the law is clear, there will be disputes, and as in Liberia, those discussing the problem turn to more effective forms of dispute resolution. Internationally, the primary trend notable internationally is the increasing reliance on Alternative Dispute Resolution (ADR). In has been increasingly appreciated that courts, not just in Liberia but in most places, are too formal and expensive to be used effectively by the poor. Complex laws, corruption of judicial processes, and the “law’s delays” make many potential litigants happy to settle for cheaper and more expeditious procedures of dispute resolution. In addition, finding compromise solutions that do not humiliate a clear “loser” can help in the restoration of more-or-less normal relations among the parties. That is especially important when the parties must continue to live and work together. It can also be especially useful where there have been periods of normative confusion, and claimants all feel that they have a clear right, perhaps under different laws of different governments or dispositions of different local officials.

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**Box 2: In Liberia disputes within the formal tenure systems involve issues where:**

1. Conflict over private land where claims were made when the owners were absent during the war,
2. Documents proving claim are missing (as a result of the war), altered, fraudulent or mistaken, providing for a boundary dispute or ownership dispute with another party,
3. Land is sold and resold with no or little reference to original owners or registration procedures (this is related to the nature of the current deed system)
4. The dockets of the statutory courts are crowded with land disputes that include approximately 90% of the civil cases. Cases that should be solely civil are appearing in criminal courts,
5. Disputes which emerge due to the problematic deeds system in the country, whereby searches cannot / were not made when transactions were made,
6. Problems resulting from the wars include a missing cadastre, laws, regulations, land documents for the state and for private citizens, missing deeds,
7. Concessions hold overlapping claims,
8. Disputes over abandoned privately held rubber farms, especially when original owners are absent.
9. In communities that were destroyed during the conflict, disputes over house plots are frequent.

11. In general, two broad distinctions can be made between lands in Liberia- a) settler lands, which correspond not exactly but largely to urbanized areas in Monrovia and along the coast, and b) hinterland areas, which are customary land areas largely occupied by rural indigenous smallholders in the interior or the country. Approximately 50% of Liberia’s population now lives in urban areas (Figure 1), many of whom have no access to land. The key problems on settler lands are squatters, deed fraud, missing deeds, land disputes and confusion regarding who can access land in these areas. The key problems on customary lands are appropriation of lands, inadequate management of customary land under the law, lack of clarity regarding adjudication of disputes, overlap and jurisdictional ambiguity between neighboring ethnic groups, lack of access to lands in the case of women and youth groups and insecurity of tenure for certain groups. At the National level, the land institutions that are to govern the land tenure arrangements are understaffed, lack relevant skills and have little or no access to records, databases, equipment, etc that is essential for their job.

![Urbanization level(Liberia)](image)

Figure 1: Projected Urbanization Level (Unhabitat, 2000)

12. For the settler/urban and smallholder sector there are five broad types of land holding, with different levels of tenure security: 1) deed holders with a comparatively high degree of tenure security, particularly before the war; 2) customary occupation without a deed
resulting in relative security within the customary domain; 3) rental or leasing of land with lower security; 4) 'strangers' or 'borrowers of land who are not from a local area who do not rent, but are allowed very temporary and insecure access to land, and must supply a token amount of crop produce to the owner to acknowledge that the land is owned by another—in essence acknowledging that the land is being loaned; and 5) squatters, who although can be evicted at any time they are discovered by the owner, are also the most aggressive about attempting claim through different forms of adverse possession. While there is a comparative difference in tenure security between the types of holding, all suffer of poor tenure security and issues emerge when the different types interact. The subsections below describe the primary problems with each type of holding.

- **Deed / document holdings** - This applies largely to land in settler areas. While a deed holder is one of the most secure arrangements for a small or large holder, the actual insecurity of this form of holding that although he holds the deed, in a post-conflict situation, the fact that you have the deed may not necessarily make you the owner. The lack of a registry in land means that no systematic records system exists whereby one can determine the true owner of land, to whom all or part has been sold, boundary locations, inheritance, the role and validity of historical deeds, and fraud. This puts the legitimate deed holder in a vulnerable position. Thus the fear of counter claims (based on investments made by tenants or documents held by others) is based on commonplace experience. The lack of a national land registry results in two problems, 1) the growth over time of enormous confusion over what has been sold, subdivided, inherited, etc., to whom. The result is an inability to be certain of the owner, area purchased, or existing counter claims. 2) The creation of a situation whereby opportunists are able to purposefully make multiple sales regarding the same land, with little or no repercussions. In one sense this is a variation of the 'culture of impunity' that exists after a war. This has resulted in the value of a deed as a piece of evidence (argument for claim) being decreased relative to other forms of evidence for claim. So that while a deed can be a good piece of evidence, because there are so many problems regarding land deeds it is not near as good as it could be, and thus does not provide adequate tenure security in the current institutional environment. In addition, individual deeds are generally issued for land in settler areas.

- **Customary holdings** - While there are equity issues with regard to customary versus deeded land, the very nature of the informal structure of customary land meant that the sector played a large and positive role in the reintegration and resettlement of dislocates after the war. There are only a few issues of significant and immediate concern with regards to this type of land in terms of direct impacts of the war—there is a profound lack of confidence among smallholders regarding forms of customary courts and their ability to fairly adjudicate land issues. This has led to an increase in "trial by ordeal" for many issues including land conflicts.

- **Rental and leased holdings** - For tenants, their comparative insecurity relegates them to annual crops only, with trees crops or other forms of permanent improvements specifically prohibited. Often rented land is only for one cropping season in order to ensure that permanent claims will not be pursued. Rental price varies and often is tied to a percentage of the crop yield. Often however, rented and leased land only occurs between neighbors and relatives who know each other well and are able to operationalize forms of informal trust. Even so, those renting or leasing land notes that if the crop is too successful, the agreement may be broken so that the owner can
retake the land including the standing crop. This is a disincentive to make even
temporary investments in land. Contract rental/leasing arrangements among people
who are not familiar with each other are rare. This is most likely due to the low
capacity of the legal structure to enforce contracts, and the low trust in the legal
structure by customary smallholders. This situation is particularly difficult for the
poorest in society and the marginalized such as migrants from other ethnic groups or
the youth.

- **Borrowed holdings** - Those who borrow holdings can involve both people who know
each other (lender and borrower) as well as strangers to the lender who essentially is
‘begging land.’ In this case planting trees is strongly prohibited, and a token amount
of the crop yield is provided to the owner, in order to acknowledge that the borrower
is not the owner of the land and will not claim land. This is a significantly insecure
form of tenancy and the smallest infraction can see the borrower evicted.

- **Squatter holdings** - Squatter holding constitute a large problem in both rural and
urban areas. In some cases squatters can be seen as the most aggressive in pursuing
forms of land claim involving tree planting or other improvements, and adverse
possession. In Monrovia, after many settlers fled, squatters moved into these
properties. According to the law of adverse possession, squatters can legitimately
claim land after 20 years of occupation with no attempt by the property owner to
evict. There is some discussion among the legal sector in Monrovia as to whether the
14 year civil war period should or should not be counted toward the 20 year period
regarding adverse possession claims. A formal legal decision is needed in the near-
term on this issue, as many claims using the 14 year war period will be likely soon.
Eviction of squatters risks social unrest if carried out on a large scale, is very visible,
or if it involves ex-combatants. Tenure security is so low for squatters that in cases
they can have little to lose, and so can attempt to claim land in the hopes that any
resulting dispute will result in some form of compensation at a minimum.

1.4 The Impact of Post-Conflict Insecurity on Liberia’s Land Tenure System

13. **Baldly stated, the most damaging impact of failure to resolve post-conflict
confusions over land is the danger that Liberia will slide back into conflict.** Liberian policy-
makers are well aware of this danger and the Government will certainly seek to address it. The
challenge is not simply restoring the past, but framing land policy and law that enhance both
equity and efficiency objectives. Any new land policy and law must facilitate economic
development, improving access to and stimulating investment in land. New land policy and law
cannot be simply a long negotiation of past and present grievances.

14. **What does the economic development of Liberia require in terms of a system of
real property and land administration?** It requires an end to the uncertainties discussed above.
Uncertainty equals risk and discourages investment and good husbandry. What is required is
security of tenure? It is a state of mind: the confident expectation by a landholder that the holder
and his or her family can continue to use the land indefinitely, or at least for a very long time.
That belief strengthens a landholder’s incentives to husband and invest in the land asset. It means
that he or she can expect to hold the land long enough to recoup the returns from investments.
15. Security of tenure is often treated as a matter of titling and registration of rights, but this is too narrow a focus. At least four elements are needed for security of tenure: 1) property rights of long duration, conferring freedom of management, that are inheritable and protected against state as well as private takings; 2) recognition of those rights as held by particular individuals or groups in particular land; 3) registration of those rights in a manner that makes them easier to prove and confirms them legally, and 4) a rule of law environment in which those rights will be respected and defended by officials and courts.

1.5 Recommendations

16. How does one restore tenure security to these different levels in post-conflict Liberia? The figure below seeks to show what legal requirements are required for tenure security and how these seek to impact security in Liberia. However, it is clear that it is not just the legal framework that needs to change to improve the management of land records and improve equity in access to land. Clearly, the social underpinnings which produce the land tenure system of any society also need to change to create real security under a solid legal framework.

Figure 2: Land Tenure, Land Administration and Security of Land Tenure

The figure illustrates a conceptual framework linking legal requirements related to land with security of tenure and investment outcomes. The logic of the figure can be summarized briefly:

- Legal reforms must provide robust property rights of long duration, rights that confer freedom of management and that are inheritable and protected by law from easy taking by the state, and the means to prove rights. This must take place within a rule of law environment that allows for effective vindication of rights in courts or other fora. These together provide security of tenure, vital for both the social security and commercial production functions of land.
If the right to alienate land is also part of the bundle of rights, the land may be transferred as needed or mortgaged to obtain credit. Once the land is marketable, the market will move land to those who can pay more for it and who will, in economic theory (if not always in practice), use it more efficiently.

Security of tenure increases investment incentives, and the ability to use land as security for loans is expected to make access to credit easier. Anticipated results include increased productivity per unit of land and profitability.

Not shown in the figure, and not given much attention in the early work by agricultural economists but highlighted in Hernando de Soto’s The Mystery of Capital, is the potential of the same measures to increase the market value of land, speed up the economic capitalization of developing countries, and allow development of secondary markets in securities.

Not shown in the figure is also the social milieu, which must change to create equal access and opportunities for all. This is because the legal framework may exist but small holders may still be unwilling to invest in their land if it can be taken away by a dominant ethnic group or a corrupt local leader. Building up the legal framework is a challenging task, but an even more difficult task and the hardest aspect of improving land tenure in Liberia is creating the milieu where the state makes people accountable to the law and where all Liberians feel they have equal access to and rights under that law. It is only this that will create the real security under the law.

17. There have been suggestions that a special court for land disputes be established to deal with the high and growing volume of land dispute cases. The argument against this proposal is one of resources and their allocation. Generally, channeling greater human and capital resources to the Circuit Courts, with such funds targeted at land dispute resolution, may well be more effective than creating a special Land Court in Monrovia. The World Bank has generally found such specialized land courts not to be terribly useful, though no hard and fast rule is possible. In addition to the regular courts, traditional authorities and local administrators have long dealt with land disputes, especially in the Hinterland. They continue to do so, but their roles and the extent of their success in this area have not been documented.

18. Another approach being used in dealing with land disputes is Alternative Dispute Resolution (ADR). The principles of arbitration and mediation are not foreign to Africa, and in fact the early work on ADR was informed by the legalanthropological literature from Africa and elsewhere. The essence of ADR is negotiation of solutions acceptable to all parties, rather than reliance upon an authoritative adjudication according to law. Judicial decisions tend to result in winner-take-all solutions. In land disputes, typically one party gets the land, the other does not. ADR on the other hand allows for compromises.

19. ADR has been introduced through the efforts of a number of international NGOs working on conflict management in Liberia, including the American Bar Association branch in Monrovia and the Norwegian Refugee Council (NRC). Most of the NGOs concerned have been drawn into this area through their work on ensuring the human rights of Liberia’s many returnees after Liberia’s 14-year civil war. The NRC has been active in mediation of land disputes in Nimba County, working in the rural areas where such disputes are less politicized. The NRC is also conducting training on the land law for officials and community residents, and on alternative dispute resolution itself. There are thus four modes of dispute resolution being deployed: traditional dispute resolution, adjudication by the courts, political resolution by Presidential task forces, and alternative dispute resolution. These are not however being mobilized in any systematic way, and there is a clear need for a more strategic approach.
20. **Land disputes are within the original jurisdiction of the Circuit Courts, one in each County seat, but it seems that those courts have a limited capacity to deal with the cases coming before them.** An October 2006 International Crisis Group report on resurrecting the Liberian justice system notes that in August 2005 twenty circuit court judges were sworn in, but that they found at least five circuit courts were "completely defunct or barely operational". It notes cases of circuit court judges still residing in Monrovia because of lack of decent accommodation at their posting, or for personal reasons, and urges government to dismiss them if they do not take up their posts. It concludes that "Circuit court inactivity is paralyzing the justice system in parts of the country", and notes that the circuit courts have original jurisdiction over serious crimes and land disputes. The Probate Courts, again supposedly operational in each county, are critical in the creation of deeds and the deed registration process, but are in the same state of disrepair as the Circuit Courts. The ICG report notes that most such specialized courts are not functioning, or staffed with woefully unqualified appointees. In the Circuit Court in Tubmanburg, only one Circuit Judge performed the role of the Probate Court Judge, that post being vacant. ABA/Africa director Anthony Valcke noted that many land disputes are ending up in the criminal courts, when a litigant seeks to use the police in his or her behalf. Criminal mischief charges may be filed against a party to returns and tries to reclaim his land. False assertions of fraud are common, also attempts to engage the police on one side of what is a civil dispute.

21. **Figure 2 has references to rights, titling and registration. These involve the legal dimension of land.** These legal dimensions are fundamental to building the framework for land tenure security in Liberia. The legal framework, if you will, is therefore the first step in beginning to create some form of tenure security in Liberia and because of this, this paper will spend the next chapter assessing the legal problems, the land disputes and determining what steps need to take place to begin to build a secure land tenure system in the country. It first examines state/public lands, which are the most documented in Liberian law. Chapter three will examine customary lands. It is only possible to get information on customary informal law through fieldwork and discussions at the local level. This is because very little exists in terms of documentation regarding customary law. The paper therefore assesses the existing law (and the informal customary law) and suggests possible reform directions that could help reconstitute security of tenure in the realities of post-conflict Liberia.
Chapter Two

Liberia’s Law of Real Property on State/Public Lands

2.1 The Common Law Base: The Introduction of Fee Simple in the Historical Context

22. Perhaps the most salient single fact about Liberia’s land law is that it is, like most jurisdictions in the Anglo-American legal tradition, part of a common law system, a system in which most law does not originate in statutes but has instead been built up out of judicial decisions over centuries. National systems of common law typically begin when a new colony, as yet having no law of its own, “receives” (adopts) the common law of England or another common law country. It is then modified over the years by locally-enacted statutes and decisions of the local courts.

23. In Liberia, it is the common law of the United States that was received. In 1827, only six years after the arrival of the first settlers sponsored by the American Colonization Society, the Society’s local managers promulgated a “constitution” which provided in Article 6 that “The common law, as in force and modified in the United States, and applicable to the situation of the people, shall be in force in the settlement.” Liberia’s 1847 Independence Constitution in Article V (1) continued the effectiveness of laws already in force, including the common law. Liberia is thus the heir to a rich, complex body of land law developed initially in England and modified over some decades in the United States. This inheritance consists largely of a vast body of decisions of superior courts concerning land. Such decisions of superior courts make law, and are precedents which lower courts are required to follow and which even the same superior courts cannot lightly alter. In the course of Liberian legal history, this inheritance has been modified and interpreted by the Supreme Court of Liberia. The resultant body of “case law” is embodied in the forty-one volumes of Supreme Court decisions, a series unfortunately discontinued in 2003.

24. The received common law on land applied only to land distributed to settlers or AmeroLiberians who were ex-slaves from the US. They received their land in common law tenure. The American Colonization Society, organized to resettle freed slave or other free persons of African descent in Africa, in the early 1800s established contacts with peoples of the Grain Coast. After successful military encounters, the Society’s representatives were successful in purchasing land from native traditional authorities along the coast. A degree of duress was certainly present, but in prevailing situations of relative land plenty, giving land to groups of immigrants was traditional. It was advantageous to the chiefdom, since new subjects were often a source of wealth.

25. The traditional authorities who sold land to the American Colonization Society (ACS) almost certainly did not appreciate (any more than chiefs dealing with colonialists in other parts of Africa) that they were alienating land permanently and conclusively from their people. A paper prepared for a 2007 GRC workshop by the Historical Context subcommittee of the GRC’s Working Group on Lands notes:

During the period of penetration and pacification land disputes of consequence involved government and a tribe (or portions of a tribe). In 1822, the year Liberia was founded, a violent conflict erupted between the settlers and the indigenes over land purchased for them by the American Colonization Society (ACS). The repatriates were of the view that the land bought from
the African leadership was theirs forever. The Africans held a contrary view. For them, the land was never sold but rather given to the ACS for the resettlement of their kinsmen who were returning from slavery and would sooner or later place themselves under the authority of local kinds. Conflicting concepts of ownership found its first expression in the Battle of Crown and Forth Hills fought at the end of 1822. 19

26. For the ACS, their aim was to move this land decisively out from under traditional authority and convert it to a “modern” land tenure conducive to the individual initiative and enterprise of the settlers. When settlers began arriving in the 1820s, they received land grants from the ACS. A family would receive a substantial 25 acres of farmland and a town plot. This land was given as grants of “fee simple”. This strong property right under Anglo-American common law has become what laymen today call “private ownership” . A holder in fee simple has the right to possess the land in perpetuity; the right to exclude others from it; the right to use the land and retain the fruits of its use; the right to will land to heirs and to have such land pass to heirs according to rules of intestacy where there is no will; and the right to sell, mortgage, lease or otherwise alienate rights over the land, temporarily or permanently.

27. Through grants to the settlers, fee simple was introduced into a belt of land along the coast. Later, Liberia expanded by conquest southward and to the east. Land held by the settler occupants of these areas was deemed public land by the State, which did not bother to purchase the land from the indigenous Africans. The juridical basis for this land being considered as public land, while this is the long-standing legal assumption, is not clear.21 As Liberia threw off the control of the American Colonization Society (ACS) and became independent in 1847, Government enacted laws governing the sale of this “public” land to applicants.

28. By 1900 Liberian settlers controlled a strip 600 miles long and roughly 50 miles inland. Most of the fee simple is in this area, much of it concentrated in the coastal “old counties”. There are some coastal counties, especially further south along the coast, such as Grand Jeddah, River Cess, and Sinoe, where fee simple predominates, but there is also considerable public land under customary land tenure. The “old counties” of early settlement account for considerably less than half the territory of modern Liberia.

29. It is difficult to say how much land in Liberia has been alienated (granted or sold) by Government into fee simple over almost two centuries. It has been estimated to constitute about 20% of the land in country, but that estimate should be treated with great caution – the data does not exist for more than an “educated guess” and the actual figure is likely to be much higher than estimated. There is an active land market, and informants indicated that an acre of rural land near Monrovia would cost something on the order of $125/acre.

30. There are a few additional statutes on real property which have been included under the law in more recent times- see Section 2.2. These have not significantly changed the nature of the simple fee law that has existed since the 1900s.

2.2 Statutes on Real Property: A Supplement

31. Since the original law on property, the Liberian legislative branch has enacted a modest body of statutes which supplement and in some case modify this body of “case law”. The statutory contributions to Liberian land law are modest in number, but important (see Box 3). This Property law is the lineal descent of a version first enacted in 1861.22 It does not attempt to restate the whole body of property law but consists of several chapters each of which supplements
or modifies some specific aspect of the common law of real property. It is now Title 29 of the Liberian Code Revised.

**Box 3: Liberian Property Law**

- Chapter 1 deals with Probate and Registration of Deeds, and is covered in section 3.1. of this report. It provides for an effectively voluntary system of registration of instruments relating to real property, similar to those in effect in many states in the United States.
- Chapter 2 provides certain rules altering the Common Law norms with regard to the law of landlord and tenant, most of them of a technical but some quite archaic (Section 20 restricts leasing in ways that require reexamination.).
- Chapter 3 is the “Alien Mortgage and Guarantee Act” which allows mortgaging of land to a foreign lender and foreclosure on such land and a foreclosure sale of such land by the foreign lender. This was included because of doubts raised in this regard by the Liberian Constitutions prohibiting of ownership of land by foreigners.
- Chapter 5, 6, and 7 deal with foreclosure of mortgages, partition of land among co-owners, and calculations of “dower” (the common law right of a widow to a share, normally a third, in her late husband’s estate).
- Chapter 8 is the Registered Land Law, which will be examined closely in Section 3.2 of this report.
- Chapter 9 is Decree 23 of 1980, “A Decree to Provide for the Licensing and Registration of Land Surveyors…”, enacted by the People’s Redemption Council.
- Chapter 10 is the “Chattel Mortgage Act”, dealing with mortgages of moveable property rather than land.

There are undoubtedly issues raised by some of these provisions that bear more careful examination, but it is impossible to assess them without review of the overall common law of real property embodied in the decisions of the Supreme Court. That is a task well beyond the scope of this study, but one which should be undertaken with some urgency. No such review exists.

### 2.3 The Public Lands Law of 1956

32. The best known and arguably the historically most important land statute in Liberia is the Public Lands Law, which appears in Title 34 in the Liberia Code Revised. Its principal purpose is to provide for the sale or other alienation of public land and for registration of deeds to such land. It is the latest in a long line of laws providing to this effect, but the fundamentals do not appear to have changed much over the years.

33. The Law provides for Land Commissioners for every County be appointed by the President, with the advice and consent of the Senate (s. 1), and those Commissioners can issue certificates that land is free for purchase and also draw up public land sale deeds. A Commissioner is responsible for keeping records of public land sales (s. 3) and making quarterly reports to the Ministry of Justice and monthly reports to the Bureau of Revenues (s. 4). The Commission is legally responsible for damages sustained due to his mismanagement or neglect (s.5).

34. The Law also provides for the Public Surveyor for each county to be appointed in the same fashion (s. 10). The role of the Public Surveyor is to survey land for immigrants and also, when ordered to do so by the President, public lands which are to be sold (s. 11). Reports are to be made quarterly to the Circuit Court in the County and eventually filed in the National Archives (s. 12). There are statutorily fixed fees for surveying and fines for fraud (s. 13), which have been rendered irrelevant by inflation and bear no relation to fees actually charged.
35. For sale of public lands, the Law provides for process that begins in the case of land in the interior with the purchaser identifying the land he wishes to purchase and approaching the traditional authorities within whose jurisdiction the land is located to obtain their consent to the sale. The purchaser must pay the chief "a token of his intention to live peacefully with the tribesmen". A detailed process is provided in the Box 4.

**Box 4: Process for the Sale of Liberian Public Lands**

1. Consent obtained from traditional authorities, upon token payment.
2. Certificate of availability by the traditional authorities.
3. Submission of that certificate to the District Commissioner, who acting as Land Commissioner for the District, satisfies himself that the land is not part of a Tribal Reserve or other right that would prevent its sale, and issues a certificate to that effect.
4. The applicant takes the certificate to the Bureau of Revenues, pays the price of the land and obtains a receipt.
5. The applicant then files an application to the President to purchase this public land, attaching the receipt and certificate.
6. The President upon approving the application orders the surveyor to survey the land concerned.
7. The applicant presents this order to the surveyor and pays surveyors fees.
8. Once the land has been surveyed, a public land sale deed is drawn up by the Land Commissioner, authenticated by him, and given to the purchaser.
9. The purchaser submits the deed with the accompanying certificates to the President for signature.
10. Once signed, the deed is probated.

Once probated, the deed can be registered. The process is the same for sale of public land within original counties, where traditional authorities are not involved, except that the process begins with an application to the District Commissioner, corresponding to step 3 above.

36. While sale of public land is the main way in which land is accessed today, the Law still has provisions for fee free allotments of public lands. One law deals with settlers. A person of Negro descent arriving in Liberia and declaring the intent to become a citizen is entitled to draw a town lot and a farm lot of ten acres, or larger amounts for a married couple (s. 50). Once this person has obtained citizenship, built a house on the land and brought two acres of the land under cultivation, he is entitled to receive the land in fee simple under a "settlement deed" from the Lands Commissioner for the County (s. 51). Any transfer before the settlement deed is transferred is invalid (s. 52).

37. A similar provision is made for allotments of public lands and grants of such land to "aborigines (indigenous Africans) who become civilized" (s. 53). These are subject to similar requirements with regard to its development. An aboriginal deed is a deed in fee simple, with the characteristic "to his heirs, executors and assigns forever" wording. Imprecise and inconsistent wording in some such deeds has created confusion and resulted in bitter disputes and controversial judicial decisions. It appears from the practice that such an allotment or grant can be to an individual or to a group.
38. Both settler deeds and aboriginal deeds, like deeds under public land sales, must be signed personally by the President. This Presidential monopoly of the creation of property rights is an expression of what some commentators have referred to as the "imperial" tendencies of the Presidency in the Liberian constitutional tradition.27

39. Finally, foreign individuals or corporations can obtain the use of land in Liberia for agricultural, mercantile or mining operations through a lease from the President for not more than fifty years, renewable for a further fifty years, which lease or renewal must be ratified by the Legislature in order to be valid (s. 70). Leases may be made to foreign governments for their legations for up to ninety-nine years (s. 71). Liberian Constitutions have since colonization barred foreign ownership of land, most recently under Article 22 of the 1986 Constitution, though an exception to the prohibition has long been provided for foreign "missionary, educational and other benevolent institutions" and such institutions in fact own considerable land in Liberia.

40. While the law covering sales of public lands has been presented here in relatively neutral tones, such sales of public land are at the heart of the contention over land between Amero-Liberians and indigenous peoples, or perhaps better, between the educated and urban-base elites who can use the land purchase mechanism and the occupants of land in the interior. A 2007 report prepared for a GRC workshop by its Steering Group on Land’s sub-committee on historical context states: "Large acquisitions by the right and powerful displace the population living on the land and practically reduced them to serfs. Such acquisitions alienated the inhabitants from their sacred groves, tree crops such as kola nuts, and shrines. Huge purchases deprived local people of land for cultivation." This will be an issue that will need to be addressed by the anticipated Land Commission.

2.4 Recommendations: Reform State Law on Real Property to Improve Tenure Security

41. Given the long establishment of private ownership and the broad understanding of the basics of ownership in those areas where it predominates, Liberians might be best served by continued reliance on private ownership in those areas where it predominates. There seems to be little purpose in introducing further uncertainty at this point in time, and private ownership does provide maximal security of tenure. It is the tenure developed for market economies. Liberia would then take the path followed by South Africa, leaving private ownership in place for the security of tenure it provides, while seeking to address directly, through a variety of means, the inequities in the land tenure system. The solution for land which has continued under customary land law may need to be different, as is discussed in Section 3 of this report.

42. That said, Liberia’s common law on real property is antiquated and needs revision. It would be appropriate in current conditions to think in terms of a consolidated Land Law, pulling together and supplementing to the extent necessary the existing statutory law. This law should a) set out the organizational framework for land administration and the competences of government agencies, b) set out a framework of private ownership and other rights to land (to some extent codifying the common law of ownership); c) provide an equitable legal framework for land under customary tenure, d) define and provide standards for allocation of public land, and e) update the law concerning requisitioning of land for public purposes.

43. There is also an important need to assess how far land reform – in the sense of redistributive land reform – is needed in Liberia. It is difficult to answer this question because
the data sources are so poor. There is no reliable data on land distribution. In the absence of such data, it is difficult to frame a policy response. The issue is discussed further in Chapter 6.

44. Liberia has a moderately well-developed system of common law rights in land. The basic rules and concept are well known to Liberians living in the parts of the country where the system prevails, and even among rural elites in the hinterlands. Different authorities have different preferences as between full private ownership and tenures such as leasehold from the State, but it seems inappropriate to revisit this basic choice in Liberia, which would increase insecurity of tenure. What is needed however is a careful review of this body of law – both case law and statute law -- to determine whether it has become seriously antiquated through lack of regular revision in light of advancements in real property law in other countries?

45. Clearly, the Law on Public Lands requires fundamental revision. It needs to reflect a new political consensus currently in the process of formation about what land belongs to local communities and what land is actually public land, who can access public land and for what purposes. It should also reflect the acceptance of customary land rights as full property rights, whether on an individual or a community basis. Serious consideration should be given to a decentralization of decision-making over alienation of public lands. The running of all public land sales through the President’s office is an anachronism, and contributes to the politicization of the land sale process. Any such requirement of approval of a land sale at that high level would better be reserved for cases in which, for example, major concessions above a specified number of hectares are involved.

46. The most fundamental problem, however, is that land records do not allow government to determine with confidence what land is unencumbered, publically owned land. The team saw recent concessions that reflect recognition by government of this reality. They provided that if land under private deed was later discovered within a concession, government would encourage the owner to work out a deal with the concessionaire, but failing this, would at the request of the concessionaire utilize its eminent domain powers to acquire the land compulsorily, and then make it available to the concessionaire. This is arguably an unconstitutional taking since it is for a private and not a “public purpose”, as required by the Constitution. Another concession term provided that if a tribal reserve was later discovered to exist within the concession, the government would undertake to demarcate it, and the reserve as demarcated would then no longer constitute part of the concession. The existence of such provisions highlights the need to establish clear rules and records regarding public and private land.

47. There is a need for a moratorium on public land sales, and for development of more effective and impartial processes, however ad hoc, for (a) assessing the ability of the applicant to develop the holding, and (b) for examining whether the land concerned is in fact available. Clear limits should be set upon the size of parcels to be sold, and prices should be increased to approximate market value, with some exceptions, for instance where the purchaser or purchasing community has long be in possession of the land. Parcels over a certain size should not be sold but where a compelling case is made, can be made available under concessions (long-term grants of use of land similar to leases).

48. Concessions have a troubling history in Liberia, largely because excessively large areas of land have often been granted, interfering with the use of that land by local communities. The Comprehensive Assessment of the Agricultural Sector (CAAS-Lib) proposes a viable alternative for concessions for agricultural crops: a “nucleus estate-cum-small landholder” strategy for oil palm and rubber, Liberia’s two most important plantation crops. This is an economically sound approach. It is in input supply, crop processing and marketing that large
operations exhibit significant economies of scale, while in actual production activities smallholders often have an advantage. The model seeks to incorporate both these strengths, and has had notable successes, such as those in Indonesia. These were reviewed at a recent IFC-sponsored workshop24, which raised most of the pertinent land issues. A number of suggestions were made at that workshop that are worth endorsing here:

a) Only smallholders in the area who choose to contract with the nucleus estate should be required to market the product to the estate (i.e., no more general monopoly should be conferred);
b) Safeguards should be in place to ensure against overpricing of inputs and services provided by the nucleus states or prices paid by the nucleus estate, and
c) Smallholder outgrowers should be provided with security of tenure, perhaps through titling and registration of their holdings.

49. From the standpoint of investment, the issue in property rights that will undoubtedly claim most attention is the effective prohibition of ownership of land by those of non-Negro ancestry. Article 27 (b) provides that “In order to preserve, foster and maintain the positive Liberian culture, values and character, only persons who are Negroes or of Negro descent shall qualify by birth or by naturalization to be citizens of Liberia.” Since the Constitution in Article 22 limits prohibits land ownership by non-citizens, the Constitution effectively bars foreign investors from land ownership, a bar that applies even to long-standing resident communities of foreign nationals important to commerce and investment, such as the Lebanese community. Liberia is perhaps the only country in the world with such a racial requirement for citizenship. Its historical roots make it understandable, but it is time to reconsider and debate this, not ideological terms but in terms of its actual impact on foreign direct investment in Liberia. The actual impacts of such restrictions in fact vary substantially from country to country, and international experience must be reviewed and related to Liberian circumstances.

50. A more difficult question is whether Liberia should retain the restriction that denies land ownership to non-citizens. Such provisions are not unusual. The extent to which such a provision discourages direct foreign investment is a subject on which there is not a consensus, and this is because that extent depends on the circumstances of the county. In Lesotho, such a prohibition is in force and it almost certainly discourages foreign investment, especially since foreign investors can access land in ownership in the country which surrounds Lesotho, South Africa. In Mexico there is a similar prohibition, and it is probably all that has prevented Americans from buying up that country. It does not appear to have discouraged American direct investment in Mexico, which is very substantial. The decision about non-citizen ownership of land needs to be made not on the basis of ideology or fear but on a serious assessment of risks and benefits. Is there evidence that existing access to land through leases from the state or private owners of land does not adequately meet the needs of foreign investors? It is likely that what concerns investors is not so much that they have access to land only on lease, but that the government and the courts cannot be relied upon to enforce and protect property rights.

51. This question of public ownership of land not under deed is complicated significantly by the provisions of the new law on forestry reform. The constitutionally questionable provision for state ownership of natural forests and the extremely broad definition of forest lands in that law may be seen by communities in the hinterlands as an extension of a history of dispossession, the further taking of the land and land-based resources on which their livelihoods depend. The forestry sector, because of the urgency of the need to lift the embargo on forestry exports from Liberia, has moved out ahead of the general land and property rights policy making process reflected in plans for a Land Commission (see below). At that stage, a more
diverse set of claims to land and the forest resources on them will be brought forward and will need to be reconciled. Much will depend on on-going efforts to frame an adequate community forestry program, but this in turn may depend on a better-balanced, more community-based approach to ownership of forest land and resources. That balance will not be easy to achieve.

52. **The appropriate vehicle for tackling all these issues would be a new Land Law, into which all the legal reforms mentioned about could be consolidated.** This would not necessarily prescribe a uniform real property law for the whole country but rather a harmonization of statutory and customary systems and a balancing of diverse user interests, creating a functional national system. There is a good deal of public mistrust of government around this issue, and it would be a mistake to attempt anything too elaborate, which could easily be misunderstood and increase suspicion. One simple approach is straightforward recognition of customary rights as property rights with legal protections equivalent to that of fee simple. Another is their conversion to fee simple. The interface between the systems, and how land moves back and forth between them, will need to be carefully planned. Such a law should be drafted with the eventual integration of the two systems into a single system in mind.

53. **In addition, those working on a law on community rights in forests need to give urgent attention to the expansive assertion of state ownership of natural forests embodied in the recent National Forestry Reform Law.** While well-intentioned, that law so broadly defines forest resources and forest land as to infringe in a most substantial way on the property rights of rural Liberians, both owners of forest land and communities holding and using forest land under customary right. The taking of rights over forests may well be unconstitutional. For traditional communities, it amounts to depriving them of their main economic resource. There is no reason in fairness why such communities should not be recognized as holding full property rights over their forested land. They could then be allowed to commercially exploit those forests. Affirming their property right does not preclude commercial exploitation of those forests. It simply empowers them in their participation in plans for such exploitation, ensures them a fair share of the income from operations, and gives them a veto power if they are not to receive a fair share. The role of government would then be to facilitate such negotiations, and to ensure their fairness to all concerned. Government need not own the land to play this role, and while forestry must generate revenues for government; this can be done through taxation rather than direct management. The difficult questions here will be: 1) which communities have the authority over forests, and 2) do those communities have the institutional structures, capacity and accountability to manage forests responsibly?

54. **In the end, it is likely that some balance will need to be found between the community forest ownership model and the model of community forestry on state-owned land, involving definition and surveying of tribal reserves.** Establishing the criteria to be used in such a process will be the challenge. The experience of Mozambique, which has for some years been going through a similar process, may be helpful. A new Land Law will likely need not only to establish criteria, but to establish a process along these lines.
Chapter Three

Liberia’s Customary Land Law

3.1 The Historical context of Customary Land

55. Customary land “law” governs access to and use of land by most rural indigenous Liberians. By “customary law” this report means a body of norms governing land use, generated and enforced by a sub-state polity, often quite local in nature. Such norms and the polities which give rise to them may or may not be recognized by the national state. Customary law has roots in tradition, and reflects the cultural values of the people concerned, but contrary to what is sometimes assumed, it is not static. Its norms tend to evolve to meet new needs or may even be purposefully amended by those in the polity responsible for law. States which do recognize customary law have often sought, with some success, to alter the content of custom to achieve state objectives. There is every indication that this customary law in Liberia is alive and robust, and governing most smallholder access to land.30

56. The geographic domain of customary land law has historically been the “Hinterland” of Liberia, that area beyond the counties initially established by the settlers. The Hinterlands were long ruled by the Government in Monrovia through traditional authorities under an “indirect rule” model not unlike that in Britain’s African colonies. The Hinterland were inhabited by numerous tribes (the figure generally cited is 17), each with its own customary land tenure system. Those customary norms continued -- and continue today -- to govern most access to and use of land by the inhabitants of the Hinterlands.

57. Until 1945, the Hinterlands were divided into “districts” and subject to a legal regime for public administration distinct from that of the “organized counties”. In 1945, President Tubman’s Unification Policy extended the right to vote and occupy office to the peoples of the interior. New counties covering the entire country have been created. The intention has been for these new counties and the old counties to move toward a unitary system of local administration, but the distinction between the counties in the Hinterland and the rest of the country continues under the Local Government Law (Title 20 of the Liberian Code Revised).31

58. There is perhaps no country in Africa where less is known of customary systems of land tenure than in Liberia.32 This is not surprising given Liberia’s history, where has been little interest or incentive in studying indigenous customary laws. In Liberia, as in other African countries, the “customary” has been distorted for state purposes. Chiefs, who are government designates, have been given an authority over substantial areas of land without making clear the extent to which that authority is purely administrative or involves a property right in the community that lives there. Clearly, customary rights and norms will differ due to ethnicity, gender, etc. This will not be uniform around the country and the content of Liberia’s customary land tenure systems call for urgent investigation.

59. Instead of trying to quantify these differing norms within the customary sphere (a study of this nature will take considerable financial resources and time), this report deals instead with the legal position of customary land law within the national legal system, a formal matter which is somewhat easier to characterize and assess. The key issue is how far and in what manner has Liberian law recognized and protects rights under customary land law and how has this impacted both equity and security.
3.2 The Legal Status of Customary Land Law

60. Today the foundational authority for the continued legal applicability of customary law is the 1986 Constitution itself, which provides in Article 86: “The courts shall apply both statutory and customary law in accordance with the standards enacted by the legislature.” The key legal instrument by which this is accomplished is the “Revised Rules and Regulations Governing the Hinterlands of Liberia”.

61. The “Revised Rules and Regulations Governing the Hinterlands of Liberia” deals less with land and more generally with governance in the Hinterlands, including the system of indirect rule through chiefs. While there are versions of this instrument from earlier in the century, the earliest seen during visits to Liberia is a 1949 version, a law approved by the Legislature and entitled “Revised Laws and Administrative Regulations for Governing the Hinterlands”. This was repealed by Section 600 of the Aborigines Law (Title 1 of the 1956 Liberian Code of Laws), which covers much of the same material. But that Aborigines Law was in turn arguably repealed by implication when it was excluded from the 1973 revision of the Liberian Code of Laws. Since that time, the earlier text from 1949 has been resurrected as a regulation rather than a law, and republished on a number of occasions by the Ministry of Internal Affairs. The authority for the Ministry doing so has been suggested by various local legal experts to derive from the Executive Law (Title 12, LCLR 1973) or the Local Government Law (Title 20, LCLR 1973). The most recent version of the Hinterlands Rules and Regulations seen is dated 2001. The current version is identical to the earlier versions. These regulations apply not only to the Hinterlands but to land under customary land tenure in the older counties of Liberia as well.

62. The Hinterlands Regulations provide in Article 29 that “It is the policy of the Government to administer tribal affairs through tribal chiefs who shall govern freely according to tribal customs and traditions so long as these are not contrary to law.” The key article of the most recent version of Hinterland Rules and Regulations is Article 66 (“Lands”):

> Title to the territory of the Republic of Liberia vests in the sovereign state. The right and title of the respective tribes to lands of an adequate area for farming and other enterprises essential to the necessities of the tribe [gap in text] main interest of the tribe to be utilized by them for these purposes; and whether or not they have procured deeds from Government, delimiting by notes and bonds such reserves, their rights and interest in and to such areas, are a perfect reserve and give them title to the land against any person or persons whatsoever. This land interest may be transmitted into communal holdings upon application of a tribe made to the Government for this purpose, and such communal holding would be surveyed at the expense of the tribe concerned. The communal holding will be vested in the Paramount Chief and Tribal Authorities as Trustees for the tribe. The Trustees, however, cannot pass any fee simple title in their lands to any person whatever. Should the tribe become sufficiently advanced in the arts of civilization, they may petition the Government for a division of the land into family holdings in which even the Government will grant deeds in fee simple to each family for an area of 25 acres in keeping with the provision of the Act of 1905.

63. The remarkable first sentence which indicates that all land is owned by the state (see above) occurs in the 1949 Law as well. There is no parallel constitutional provision. It could be read as an assertion of a radical title in the state, similar to that traditionally held by the Crown under English common law. But it is the United States common law that was received in Liberia, and the state courts of the newly independent United States rejected the “doctrine of tenure” (the existence of an ultimate title in the Crown or the State and that all land is held from it
on "tenure"), embracing instead the revolutionary French notion of a fully private ownership. Oddly, the provision seems to purport to apply to all land in Liberia, not just land in the Hinterlands. The provision would presumably be unconstitutional if applied to properties alienated by the State in fee simple, as contrary to the guarantee of property in successive Liberian Constitutions. But what of land under customary tenure in the Hinterlands? Is this provision, or some earlier version of it, the legal root of the common legal assumption that all land in the Hinterlands which has not been deeded to community/tribal groups is public land, and therefore accessible to concessions and other uses?

64. There are other important contradictory issues concerning the nature of the rights recognized by this Article. What is the nature of the "title" which a tribe holds to its Tribal Reserve? The use of the term title seems to imply more than a use right, though later in the same section it is described as a "usufruct". This is a use right, potentially perpetual, but assuming an underlying ownership in another, in this case the state. This suggests that the land is public, and the "title" only covers a use right. The extent of the reserve depends upon the needs of the tribe. While there is a reference to farming, those needs are not confined to that use but are more broadly stated. The term "necessities" might be interpreted to refer to subsistence needs only, but this would fairly clearly be unreasonable; yesterday’s and today’s necessities are not the same. Note that the legal existence of the reserve does not require delimitation by Government; it exists by operation of law, for the land needed by the tribe. It need not be enshrined in a grant or demarcated or registered. Of course it would be helpful if it were demarcated, since that would make its extent clear, but it is not necessary to its existence. It appears that the usufruct is vested in the group as an entity. Legally, it is important that it is a "title", not simply an administrative allocation of land. As such, it is a property right and constitutionally protected. Use of land by members of the community living in the Tribal Reserve remains governed by customary law.

65. Similarly for the "Communal Holding", what is the tenure in which this land is held by the community? It is ultimately divisible into household fee simples, for which title deeds can be granted, but it is itself a fee simple in the group? Or might it be a tenancy in common? It is subject to the trusteeship of traditional authorities, and while they are specifically prohibited from passing it in fee simple, this does not mean that it is not held in fee simple (indeed the prohibition on passing it in fee simple might be considered evidence that it is held in fee simple). In general, however, government appears to have considered the "communal holdings" a usufruct, like the reserve. It would at least appear to be a "title", with the same implications for constitutional protection of property rights as in the case of a Tribal Reserve. Again, the use of land by members of the community continues to be governed by customary law.

66. Section 8.52(d) of the 1974 Registered Land Law reflects the common understanding that land under both tribal reserves and communal rights remains public land. Section 8.123 of that law indicates that in such a case the land is to be registered as public land and the tribal reserve or communal holding is to be shown as an "encumbrance". This is consistent with how other real rights, such as leases or mortgages, are shown on the register.

67. Article 67 of the Hinterlands Regulations also deals with the use of land by "strangers". It allows someone not a member of the community who wishes to farm in the tribal territory to obtain land there, requiring him to "(a) obtain permission of the Tribal Authority prior to commencing his activities; (b) agree to pay some token in the nature of rent such as five or six bunches of rice out of every farm; (c) pay taxes to the appropriate tribal chief on all huts on the lands erected or occupied by him." Unlike purchases under the Public Lands Law, in this case no formal change in the nature of land tenure appears involved. The customary right to cultivate normally held only by members of the group is simply extended to an outsider.
3.3 Problems with the Duality of State Law and Customary Rights

68. The existence of both statutory and customary land tenure systems in Liberia is often seen in most African counties. Such duality per se is not problematic, but rather the way it is handled. In Liberia, it has also fostered inequity in access to land and rights to land between Amero-Liberians and “civilized Africans” and the wider African population at large. There needs to be much more mutual recognition, equity in the ability to access land and connection between the two systems than there presently is.

69. The purposeful separation of the two systems over a good deal of time has led to their non-integration, discrimination when they do come into contact, and has prevented the evolution of positive and mutually beneficial ways of interacting. New formal land and property laws and policies would do well to pursue considerable connection with customary forms of land tenure, particularly in terms of court systems, evidence, levels of dispute resolution and appeal structure, claim, consultation, and issuance of concessions, titles, deeds, and use. The advantage of encouraging such connection is that the state will then not be in a position attempting to administer and enforce statutory law in all areas of the country—which it will not be able to do in any case. Thus recognizing and cooperating with customary law offers the advantage of obtaining a free good by the government—an administrative capacity and functioning located pervasively in rural Liberia. Such a connection between formal and customary tenure systems should avoid re-instituting aspects of the customary tenure system that may have contributed to the onset of war.

70. One of the key problems in the current legal and customary law is that the dualism is structured in law so that the state system is always expanding at the expense of the customary system, with areas of land under customary law being granted or sold by the state into fee simple ownership. What happens is that customary land can move (sold, transferred) under state tenures but there is no way for land under the state system to move (sold, transferred) under the customary system? This has meant that historically, for the most part, that land has moved from the tribes and their members to Amero-Liberians, reducing the supply in the hinterlands and causing resentment and tension among the indigenous tribes.

71. In these circumstances, it is natural that the few inhabitants of the Hinterlands who can have sought statutory law protection for their land rights. Liberian law contains a few provisions (see Box 5) that are intended to allow tribal communities or individuals to obtain state law titles to land (i.e., when civilized Africans obtain public individual plots or tracts/allotments of community land), all of which have been mentioned before. In some rare cases, the community can apply to government to partition its landholding into household parcels, with each household receiving a fee simple title to its land. The land ceases to be public land and becomes privately, individually owned. Those classified as aborigines can also apply for an allotment or grant of public land, within or outside of areas for which they have traditional land rights. In addition, the traditional community can purchase the fee simple in its own land from the state. In all such cases, the land ceases to be public land and becomes privately owned by the individual or group. Wiley (2007) notes that where a traditional community has purchased land, the land has usually been deeded to the community itself and not to a trustee, such as a chief.

72. In addition, tribes and other traditional communities have taken advantage of the public land sales to purchase their own land. Wiley (2007) notes that there may be substantially more land in this category than is generally imagined. Traditional communities can also apply to have their land under customary land tenure demarcated as Tribal Reserves. This provides proof of a
historical claim of right to the land and a clear description of the land. The use of the land by members continues to be governed by customary law. Alternatively, such communities can request that their land be constituted a Communal Holding, in which case members of the Tribal Authority are constituted trustees for the tribe with regard to the land. In both cases, the land appears to have been considered public land subject to these real property rights of the community. Under the Registered Land Law, these are registrable and function as encumbrances on the public ownership. In both cases, the use of the land by community members remains governed by customary law.

Box 5: Laws that Allow Tribal Communities to Obtain Title to Land

1. Article 66 of the Hinterlands Regulations, paragraphs (b) through (d), provides for both “Tribal Reserves” and “Communal Holdings”. These appear to be registrable real rights under the 1974 Land Registration Law.

2. Article 66 (e) of those Regulations, provides for “division of tribal lands into family holdings” of 25 hectares per family with titles in fee simple.

3. Section 53 of the Public Lands Act provides for allotments and grants of public lands by the President to “aborigines who become civilized”, as individuals or groups, typically in fee simple, the so-called “aboriginal deed”.

4. The Public Land Act’s provisions on sale of public land have been utilized by some traditional communities to obtain security of tenure in their land, with those communities in effect purchasing their own land.

Clearly, the principal tension in Liberian land law lies in the conflict between provisions affirming and protecting customary land rights of tribal communities and other provisions providing for sale of that land, as public land, to outsiders. While the Public Lands Law in Section 30 requires consent of tribal authorities to such sales within their territories, informants made it clear that the consent provisions have often been skirted or consents bought with bribes of traditional authorities. The Public Lands Law in the same section makes it clear that such land for sales must not be part of a Tribal Reserve, or “otherwise owned or occupied by another person”. But in the absence of demarcation of Tribal Reserves, the provision appears to have little independent value. The assumption appears to be that if the tribal authorities consent to the sale, the land is not part on the Tribal Reserve. This is questionable, given the incentives that such authorities may have to approve such sales, which often extend beyond the “token” payments mentioned in the law.

3.4 Customary Land Law in the Courts

In many countries the law taught at universities provides little or no instruction in the handling of customary law. Today, the development of a “common law” of customary land rights is at quite different stages in different common law countries. In the more advanced countries, there have been published comprehensive analyses of the case law concerning land and even volumes analyzing the customary law of land in the courts. 42
75. In Liberia, the applicability of customary law in the courts is clear. In Manney v. Money, 2 LLR 618 (1927), the Supreme Court wrote “It is to be observed that unless contrary to plain rules of equity and justice, the native custom will be supported in our courts when the proper proceedings are instituted.” The Supreme Court reiterated this in Watson v. Ware, 10 LLR 158 (1946), though it slightly different terms, when it wrote: “It has always been the policy of the government that insofar as native customary law and customs are not in violation of the Constitution or of express provisions in statutory law, they will be applied and upheld by the courts here.”

76. That said, very few cases indeed concerning customary law are heard in Liberia’s courts. McCarthy (2007) contains a valuable and far more searching discussion than is possible here of the periodic assertions by the courts of authority over disputes, whether they involve custom or statute and whether they come from the Hinterlands or elsewhere, and of the continuing practice of resolution of such disputes by the Executive, even on questionable legal grounds. The Supreme Court as early as 1919 (Karmo v. Morris, 2 LLR 317 (1919)) asserted exclusive authority to adjudicate, and this has been echoed in some more recent cases such as Jitco Inc. v. Sisay, 36 LLR 695 (1989), but in the end the courts have respected the administrative adjudications that have come before them.

77. Disputes concerning customary land tenure are resolved by traditional authorities in accordance with the Hinterland Rules and Regulations, and those involving clashes between customary and civil law claims by the state administrators there. Article 38 of the Hinterland Rules and Regulations. McCarthy has summarized this system nicely:

Disputes over civil matters are first subject to Court of the Clan Chief (if the “subject matter” is less than $25), then to the Court of the Paramount Chief (if the “subject matter” is greater than $25 but less than $100), then to the Court of the District Commissioner, on to the Court of the Provincial Commissioner, then to the Provincial Circuit Court of Assize. Article 81 states that the duties of the Superintendent of Native Tribal Affairs include that to “hear all cases on appeal arising from the District and Provincial Commissioners”, and that “all appeals from him shall lie with the President’s final hearing and determination”. Indeed, most land rights disputes have thus been adjudicated by the Executive. On the other hand, Title 20: Executive Law, §25.3, which establishes a Liaison Officer for Liberian Tribal Societies, does not give such direct rights of appellate review to Bureau of Tribal Affairs within the Ministry of Internal Affairs, nor does it state the President as having final powers of hearing and determination. To the extent that such adjudicative powers remain, they would need to be implied from §25.2(1), which states one of the duties of the Minister as “administering the system of tribal courts”.

In addition Section 38 on the Hinterland Rules and Regulations provides that disputes between a “civilized person” and a “native” are to be heard in a joint court of the District Commissioner and the Paramount Chief (S 38(iv)).

78. The British legal scholar Anthony Allot, writing of the need for research of Liberia’s customary land law, reached a conclusion in 1967 which has equal force today: “Practically no cases involving the substantive rules of customary law have ever reached the Liberian law reports. The problem of internal conflict of laws – when to chose to apply the common or general law, and when to apply customary law, and if the latter, which system to apply – has received little if any legislative or judicial attention.” Allott notes that the only substantive rules that have been recognized by the courts concern dowry, but does refers readers
to two cases that have a more general discussion of the complexities of pleading and proving customary rules and integrating statutory law and custom.45

79. McCarthy’s 2007 review of cases concerning land refers readers to the discussion in Grimes’ dissent in Harmon v. Tayler, 8 LLR 416 (1944) for a good historical development of formal land concerning customary land rights. McCarthy located and analyzes several interesting cases on the construction of state grants in deeds to traditional groups, but her review of Supreme Court cases found virtually none dealing with the substance of customary land law. A 2006 ICR report confirms this picture: “[C]ircuit courts are technically empowered at present to hear appeals from state-sponsored customary law forums but rarely do, because of the lack of operating circuit courts, the distance between the circuit court and most towns in a county, and the fact that ordinary citizens lack the knowledge or financial resources to file such an appeal.” Is the “Provincial Circuit Court of Assize” referred to in Section 38 of the Hinterlands Rules and Regulations the same as today’s Circuit Court at county level, from which an appeal would lie to the Supreme Court? The ICR report cited above seems to suggest that this is the case, and that a case concerning customary land law could come to the Supreme Court from that court, but that such appeals are not taken for practical reasons. This requires clarification.

80. The failure to process customary land law disputes in the courts has important and negative implications for the evolution of customary land law. In other common law jurisdictions in Africa, customary rules have been reviewed and groomed by the courts for absorption into a larger body of common law. There has in Liberia been no such process, which Unruh terms “co-adaptation”. Customary land law and formal law generally have functioned in isolation, within a virtual black box. Unruh (2007b) calls for the creation of mechanisms that “allow, and facilitate, the exposure and intrusion of formal and customary law into each other”, and comments: “This will be a primary challenge for the formal legal system in the near future, and recent experience does not bode well.” “The Liberian legal establishment has not”, he notes, “been much exposed to what else has gone on in Africa and the rest of the world regarding approaches to managing legal dualism.” He calls for the addressing of legal ambiguity, a more balance approach to the interaction between state and customary law, elimination of antiquated elements in the received law, opening up of space for co-adaptation processes, ending of chiefly abuses and increasing accountability of local governance, and enacting formal laws that “work with the grain” of custom, reflecting the values that underlay customary law.

3.5 Customary Lands and Takings

81. As the Governance Commission states in its 2007 draft paper “The Way Forward”:

“Small holder agricultural use and political control of land were the focus until the 1920s when Firestone was established as the first rubber concession. The statutory system provided the legal basis for the development of the rubber, timber, and mineral concessions that were often foreign-controlled and for private commercial farming. Increasing acreage in rural Liberia came under the control of these concessions or was transferred from the customary system to the statutory by the acquisition of land deeds by Liberians. Unchecked land appropriation and land speculation became sources of uncertainty and conflict.”

82. The GC goes on to note that the granting of deeds in area under customary tenure was a contentious issue by the outbreak of civil conflict in 1990, the educated people from the hinterlands having become aware of their exclusion and marginalization in the interface between the customary and statutory systems. It concludes that access to land was in fact one of the root
causes of the civil conflict, and warns that “People are openly stating that “if we fight again, we will fight about land”.

83. Certainly the most dramatic form of land taking from local populations has been the concession. Early allocations of land for commercial forestry, including rubber production, were prior to 1944 often deeded as fee simple. After that date, most were done as concessions. These are extensive, and Unruh (2007a) notes that it is generally considered that “a concession, while issued for the purpose of exploiting timber, rubber, minerals, or agriculture, is in reality a very broad issuance of rights to claim and exploit land resources in whatever way suits the concession holder; although this may have little to do with the business proposal that was used to obtain the concession.” Further, “there are significant problems with the actual areas of concessions, with the total area granted as concessions in some counties adding up to more than the area of the county itself.”

84. Because concessions have been granted so liberally, much of the land included in them has never been used by the concessionaires, a point of resentment of the part of local people. The Minister of Agriculture cited a study of rubber plantations by the UNMIL Civil Affairs Office showing that on one million acres granted for rubber development since 1926, less than 20% has been developed. It would be entirely appropriate for such land to be excised from the concessions concerned, and future concession agreements should make such land hoarding impossible.

85. The NTGL established a Forest Concession Review Commission, which recommended the cancellation of concessions. In February 2006, the President cancelled forest concessions through Executive Law No. 1, which also established a Forest Reform Monitoring Commission. A new forestry law was enacted. Concessions are being renegotiated as this is written, but it is unclear how far this process will free up land for direct use by rural people, for instance through community forestry. Information on the extent of reduction of the size of existing concessions is not readily available. The Ministry of Agriculture should make systematic information on this public, including plans for the use of such land.

86. Is there substantial concentration of those lands in the hands of a few? Certainly there are some very large farms. One source suggests a considerable concentration of ownership, indicating that 75% of arable land is held by 7% of the population.

3.6 Recommendations: Integrate Customary Land Tenure into the National Land Law for Improved Land Security

87. In the years after most African countries came to independence, many of those working on land tenure issues in the region were anxious to toss customary land tenure and the traditional institutions that supported it into the trash can of history. The critique was thorough: the customary norms emphasized status rather than contract or plan; they were outdated and incompatible with development; traditional political institutions were undemocratic and authoritarian; and in any case, those institutions had been compromised by their cooption by colonial governments. Critics differed radically, according to ideological orientation, on where land tenure should go, but there was a consensus that it should not fall back on custom. Only a few countries, notably Botswana, Ghana and Niger, made a serious effort to work with customary land tenure. Examining these works, including the written Ghanaian Customary Law should provide some direction on the way forward. Those systems, while definitely not perfect, do have a coherence between the two types of laws so that any person can decide to purchase land and
follow the appropriate system to getting it surveyed and registered with relatively clear-cut guidelines.

88. The resilience of custom and traditional institutions reflects popular disillusionment with distant state institutions and their performance. Local chiefs are accessible to rural people through their own social networks, while even elected officials are remote except at election time. In recent years, a number of countries have been rethinking the role of custom and traditional authorities, and donor agencies such as the World Bank have acknowledged that in some circumstances, customary land tenure can deliver the security of tenure rural people need. Customary land tenure should not be idealized, but discussions have shifted from the assumption that it will die out to the process by which it can be adapted and harmonized with statutory law.

89. There are several basic approaches for doing this. They are not mutually exclusive, and are found in different combinations. Some of them are:

1) The classic common law solution, selective absorption of customary law into the nation’s common law by judicial recognition of customary rules;
2) Ascertaining customary land law and making its content more readily available;
3) Registration of customary land rights as customary rights (rather than converting them to statutory forms of land tenure);
4) Modification by legislation of negative aspects of customary land law, such as gender biases, and creating mechanisms for appeals of abuses to administrative or judicial authorities of the state;
5) Creation of hybrid institutions that administer customary land rights, involving both officials and traditional authorities; and
6) Modernization of traditional land administration institutions through mechanisms such as registration of land allocations and dealings, and increased public participation in and transparency of decision-making.

90. To move forward on building security on customary lands, Government must address the fraught relationship between the Government’s broad historical claims to public land, and the sense of many rural communities in the interior that the land they use is in some sense “theirs”. Both individual and community rights under custom should be entitled to the same status and protection as the rights of those holding fee simple. Government may want to consider backing off its historically very broad legal assumption of public land ownership in the Hinterland. This issue, long off the table, is likely to be raised forthrightly in the discussions of the anticipated Lands Commission.

91. Substantial reform of the law on real property is needed, and in the case of areas under customary law, there is a special need to reexamine the Hinterland Rules and Regulations. It is inappropriate to have the land rights of most of the country’s people governed by an administrative regulation, and many of the provisions are offensive or simply antiquated. This is widely realized among legally literate Liberians. Simple repeal of those regulations would however leave an unfortunate legal vacuum. They need instead to be replaced by a law dealing with local government in the hinterlands that addresses the role of traditional authorities in land management. The present system should be reexamined, not just the substantive rules but the structural and institutional dimension as well. How well does the official administrative structure of district and clan chiefs created by the state serve the people of the interior today? It is not an accurate reflection of customary authority structures, though it is unclear how far it has been warped in the interests of state administration. Have there survived
more culturally grounded systems of authority and divisions of territory that enjoy greater legitimacy, or have these withered and died?

92. The major alternative to recognition of customary law and traditional authorities is building local-level institutions of a non-traditional nature that will take over administration of land. These may use customary law or statutory law, but the expense of putting such a system seems beyond the resources of the Liberian government at this time. A recent International Crisis Group report on the justice system notes that while there is some sentiment in favor of a national system of statutory law which ends the current legal dualism, the collapse of the formal justice system in many areas has left local disputants with no option but to turn to customary law and customary dispute settlement fora. Traditional authorities represent a very low-cost dispute settlement option, whatever their limitations. Increasingly, African countries are seeking ways to work with traditional authorities to build upon but gradually transform existing customary law.
Chapter Four

Land Administration: Deeds Registration and Land Registration

4.1 The Deeds Registration System

93. The previous chapters have discussed reforms that are needed in the legal and customary system, which are the framework or skeleton of the tenure system. This chapter now examines the substance within that framework. Legal reforms that address equity issues or customary and formal tenure systems disconnects are important to improving land security but unfortunately these may exist largely on paper, without proper implementation. The more important question is what can one actively do to bring order to the chaotic land tenure system that exists in Liberia? The detailed machinery that has to go hand in hand with general legal land reforms is the creation of a well functioning and rational land administration system that can take the land, survey it, register it and assign it as yours and this can be handed down through generations. It is this that puts land security right into the hands of the land-user.

94. Liberia has two systems for registration of instruments and rights in land. The first is a deed registration system, imported from the U.S. in the early years of the settlement, in which the state provides a facility for those dealing in land to make a public record of their dealings. The second system, based on a law enacted in 1974 and piloted in sections of Monrovia during the 1970s, is a land registration system. The newer land registration system was expected to have gradually replaced the deeds registration system. This did not happen due to events after the 1980 coup, and today the operational system (even in the piloted areas under the new law) is still the deeds registration system.57 Chapter 1 of the Property Law (Title 29 of the Liberian Code Revised) deals with Deed Registration.58

95. What is the problem with using a Deeds Registration System? In a Deed Registration System (see Box 6), the documents, not the parcels, are registered. While the system of document registration makes them available for public scrutiny, their recording in the official record does not in any way certify their validity, or freedom from forgery or other fraud that might render it invalid. Deed Registration's only legal effect is that it gives the registered transfer priority over any conflicting unregistered transfer. The first transfer registered prevails, so it is the date of probate and registration rather than date of signature that determines what claim prevails and, in the case of conflicting deeds of sale, which claimant will actually get the land (s. 6).59 So for example if A sells to B and B does not probate and register the deed of sale, and then A sells to C and C does go through these formalities, C will gets the land.

96. Bentsi-Enchill and Zarr (1966) review these provisions in some detail and make several critical points. The provisions resemble closely those still in operation in some US states. Those states are however largely regarded as retrograde in their registration laws, providing weak tenure security only made tolerable by landholders purchasing insurance policies for their titles. The breadth of coverage of the Liberian law is however much wider, including not only with major dealings in land such as sales and mortgages but "all" instruments affecting land. In Liberia though, while registration of an instrument is technically mandatory (the statute uses the word "shall"), it is in fact effectively voluntary, as no penalty is imposed for failure to register.
Today, a more significant problem with the deed system in Liberia is its partial collapse. For example, the deed documents are located in several different institutions rendering it impossible to conduct any searches of sales, transactions, etc. In the current system, at the county level, the registers are maintained by the clerks of the probate courts. Those registers, when filled up, are sent to the Office of the Registrar of Deeds, now located in the National Center for Documentation and Archives (NCDA) for conservation. This is the case for recent dealings in land. However, prior to 1977 the archives and the deed registers were located in the Department of State, which later became the Ministry of Foreign Affairs. While the deed registers and other land documents in the possession of the Department of State should have been transferred to the NCDA once it was created, the staff responsible for these documents resisted the move, and today the Minister of Foreign Affairs certifies copies of deeds registration from these older volumes. The deed registrations after 1978 are in the Deed Registry at NCDA. In addition, important land documentation is also stored in at least two other repositories in Monrovia, one being the Department of Lands, Mines and Surveys, the other being the Presidential Mansion, where records of original deeds from public land sales, settler allocations, and aboriginal deeds are said to have been retained. So a lawyer seeking to trace a chain of title to verify the validity of a deed may need to begin at NCDA and later, move back along the chain of title into the registers at Foreign Affairs and then perhaps to the Department of Lands, Mines and Surveys. Needless to say, this is dysfunctional and results in confusion and an inability to track where one’s documents are. In addition, there is no adequate indexing by grantors, make finding records of particular transactions extraordinarily difficult, and rendering these records much less “public” than the law requires.
98. Another problem is that these records are in dire condition. Many have been destroyed or lost during the conflict. Officials remember that during the worst times they bought seeds and nuts from street vendors in paper spills that on closer examination proved to be deeds or pages from deed registries. Other records are simply in an advanced state of decomposition, being kept in conditions that ensure rapid disintegration. At Foreign Affairs, damp sea air blows in on them through open windows. They are not secure from tampering, and there are reported incidents of tampering with registers involving suborned staff.

99. To make any headway to restoring to reforming land tenure in Liberia, it is urgent that these documents be gathered together in one location for professional management, and that they are properly indexed, digitally copied, and entered into a computer-based system. Some fragmented efforts have been made, including those of UNMIL (in Tubmanburg, UNMIL had distributed a form for Land Commissioners to use in recording land rights and documents), but a far more coordinated and urgent effort is needed. It seems clear that the NCDA is the most appropriate venue, and the Office of the Registrar of Deeds in the NCDA is doing its best. But the NCDA has lost the building designed for it to the National Investment Commission, and it is clear that the job cannot be done in the present very constrained and inappropriate premises of the NCDA. Restoration of the original building to the NCDA should be a priority.

100. Apart from the conservation of existing records, the system for adding new deeds and other instruments affecting rights in land to the registers is also in difficulty. In each Country, there is a County Lands Commissioner appointed by the President. Working under his supervision is the County Land Surveyor, who is a part of the staff of the Ministry of Lands, Mines and Energy. The Probate Court of the County is a key step in the process by which new deeds make their way to the NCDA. The Finance Office at County level must collect the requisite fees before probate is completed and the document sent for registration. That is too many offices to go through, and not all of them are able to play the role expected of them. They lack the resources they need. The Minister of Lands Mines and Energy estimated that there are over 200 surveyors in the country, but warned that many of these have very low levels of technical competence. Those surveyors posted to county governments lack access to vehicles and equipment, even the most rudimentary equipment, and there is no up-to-date fee schedule on the basis of which these staff can charge for their services.

101. Equally important, however, these local officials do not appear to have adequate direction from the center. The incumbents of these offices sometimes do not know the criteria they are to apply or the procedures required by law. They do not have copies of law or regulations. They are in many cases “winging it”, for better or for worse. They need urgent interim guidance from the agencies responsible for them, on how they are to perform their duties in present difficult circumstances. Because of the number of different agencies involved, this will be challenging. Re-equipping these officers is perhaps less urgent that providing them with that direction. A possible approach to improving the system would be to assemble a central government technical task force headed by MLME with members from all the key agencies, to hold country level training and problem-solving workshops with staff there. Based on the first four or five of these workshops, a set of interim guidelines could be drafted by the task force, reviewed at a workshop of select county level staff in Monrovia, and then issued.
4.2 The Land Registration System

102. During the 1960s, there was a growing chorus of criticism of Liberia’s Deed Registration System and calls for adoption of a Land Registration System (also called a Title Registration System). The latter is based upon Australian practice, the so-called “Torrens System” Model, first used in New South Wales. The defining characteristics of a Land (Title) Registration System are:

   a) The Register is organized by parcel, each parcel (and parcel register sheet) bearing the same unique identifier.

   b) The coverage is comprehensive, with the Register for a locality being created through a systematic and participatory field process in which all claims in the specified area must be brought forward and are vetted for inclusion in the Register.

   c) Very strong, often conclusive legal effect is given by law to a right shown in the Title Register, that right being unchallengeable by other claimants except in very narrowly defined circumstances.

103. Such a system registers each parcel of land and the rights attaching to that parcel, rather than registering deeds which embody claims to rights to land. Such a register is known as a Land Register, because parcels rather than just documents are registered, but also as a Title Register, because the title to the parcel is authoritatively registered, rather than just documents. The term used in Liberia is Land Registration.

104. Such a system is widely and quite correctly regarded as superior to Deeds Registration. The World Bank and other donor agencies have generally limited their support of land registration to systematic registration under land registration systems.

105. In 1974, a “Registered Land Law” was enacted, becoming Chapter 8 of the Liberian Code of Laws Revised. This is a land registration law. UNDP sponsored the new law, and mobilized DFID technical assistance to produce it. It is long by Liberian standards but well-ordered, clear and precise, with considerable attention to procedural detail. This is appropriate in a land registration law, because the integrity of the process of adjudication of title is essential to the relatively conclusive legal effect provided to the result of that adjudication. The 1974 Law is in most respects a model, though of course there are some particular provisions that might be improved. Annex E provides a more detailed review of this law, including citations to particular sections. A more summary treatment will be provided here.

106. The Registration Law applies throughout Liberia, and is intended to be implemented as expeditiously as possible to replace the Deed Registry system. The Deed Registry System would thus remain operational in the rest of the country, until they were reached in time by the systematic registration process. This means that the country must run two systems in parallel for some years. This is the normal approach in such transitions, and necessary because the new system can only gradually be extended throughout the country.

107. The organizational structure for implementation for the new law draws upon the existing machinery used for Deed Registration. There is still a special role for the Probate Court, and the Registrar of Deeds is also the Registrar of Lands. The National Archives is the location of the Registrar of Lands, as it is for the Registrar of Deeds. Systematic registration is set in motion when the Minister of Lands, Mines and Energy declares through the local Probate
Court that titles in a specified area will be adjudicated and registered. Holdings are demarcated and the claims recorded. A referee hears and decides disputes, and in deciding upon claims is to base decisions upon good documentary title, or failing that, open, peaceful and interrupted possession for twenty years or more. If there is a possessor who is unable to provide sufficient proof to be registered as an owner, he can be tentatively recorded as owner subject to substantiation within six months. If no private rights are established, the land should be recorded as public land. A party unhappy with the decision of the referee may appeal to the Supreme Court.

108. It is important to note that a customary right is neither registrable, nor is its existence the basis for registration of a common law right. Therefore, customary rights cannot be registered and utilizing this system as is could cause more inequity in the already distorted land system. The Law prescribes how tribal reserves and communal holdings should be shown on the register, as so provide insight into the official thinking on their legal nature. The land over which such rights exist is to be registered as public land, and these tribal reserve or communal holding rights are to appear on the register as encumbrances upon that public title, as would leases or mortgages or other real rights encumbering an ownership title. Possession is, and possession is to some extent a surrogate for customary right. Such possession will in most cases have originated in a right under customary law, but reference to the fact of possession rather than the customary right makes it clear that a common law or statutory tenure is to be registered. This aspect of the Law deserves review and possibly reconsideration in light of innovative approaches in a number of other African countries in recent years toward registering customary rights.

109. Registered rights are under this law (as under most land registration laws) are relatively secure. A registered title can be set aside if fraud proved in action filed within ten years from final order for registration filed in the court where registration proceedings were held. Where the right has been transferred to an innocent purchaser for value without notice of the fraud, he will be protected. Absent a fraud raised within that period, however, registration actually confers a clear title unaffected by any unregistered rights. The Government will indemnify anyone who relies on the information shown on the Register and suffers thereby. Registered land is not affected by prescription or adverse possession.

110. Although this system never became active, systematic registration was piloted in several locations in Monrovia in the second half of the 1970s, running into the 1980s. UNDP initiated the work, but other donors including USAID and the World Bank later provided fund for different sites, the Bank under its Monrovia Urban Development Program. In all, nine pilot areas in Monrovia were surveyed and adjudicated. The process moved more slowly than expected, not unusual in a pilot context, and the 1980 coup and its aftermath prevented the work for most pilot areas being carried through probate stage to final registration of title. Staff of the Ministry of Land, Energy and Mines who were involved in the process estimated that perhaps 560 titles, from areas 1 and 6, were finally registered. Most of the work was not brought to conclusion because of the political uncertainty into which the country declined after 1980. Many of the records of this work, partially completed, have been lost or destroyed. In fact, the administration of this law was never fully established, and there is at present no working system under the 1974 Law for registering dealings in the land covered in the pilots. Because of this, landholders in the pilot areas have reverted to the system of Deeds Registration.

111. The fact that the 1980 coup and uncertainty that followed brought this work to an end should not obscure the fact that problems and delays seems to have affected the pilot work. The Bank's assessment of the activity notes conflicts between the Ministry of Lands and the Ministry of Urban Development that crippled implementation of its pilot project. It indicates
that of the 1,700 parcels surveyed under the project, only 241 titles were registered, and that after 1984 no further claims or registrations were made. The report cites several issues identified during project design but were never resolved, and which plagued the implementation of the pilots. These included (p. 13) ambiguities concerning the authority of customary and government officials, opposition by large landowners and the African Methodist Church to land taxation facilitated by registration; uncertainties about the impact of measures to clear titles on low-income residents, and lack of cooperation by the courts and various government agencies.

112. For the time being, then, the Deed Registry is the operational system. That system is valuable in itself, but it also provides an important basis for proving rights when systematic registration takes place under the newer Land Registration System. The Deed Registration System should ultimately be replaced by the Land Registration System, but it will take several years to accomplish that replacement, locale by locale. Based on the time needed in other countries, the very rough estimate of the period required to implement land registration for those areas where deeds predominate and are intact and traceable is ten to fifteen years, and for the entire country thirty years and likely more. This means that the Deed Registry system, though “on the way out”, cannot be neglected or allowed to deteriorate.

4.3 Recommendations for Improving the Deed System and Moving forward with Land Registration

113. The Deed Registration System is in a state of substantial disrepair, as suggested earlier in this report. This means that the old system must be gotten back up and running reconstructed and maintained. At the same time, the new land registration systems should be assessed, piloted and then gradually expanded.

114. The Ministry of Land, Energy and Mines is the key institution in the management of both these systems. The needs are pressing and the priorities will not be easy to set, with resources so limited. Financial and technical support of assistance in this area should be a priority for the Bank and the donor community as a whole. The Ministry of Land, Mines and Energy has been activity seeking consensus on key tasks in the land sector. Two documents are particularly helpful in understanding the state of work. The first is 150-Day Plan of Action by MLME, March 1, 2006. It identifies a number of key needs in the land sector, citing the lack of a national land policy, a national institutional framework for land administration that is “improperly designed, uncoordinated and ineffective”, confusion as to responsibility for management of public lands, and a dismal lack of trained staff, facilities and equipment. It is however relatively weak in concrete proposals for the land sector, as opposed to the mines and energy sectors. The lands portion is attached to this report as Annex F.

115. The second document is a “Memorandum of Understanding for the Conceptual Understanding of the Challenges to Land Title and Registration and Corresponding Resolutions to Said Challenges,” October 21, 2006. It identifies problems as “1) lack of coordination between ministries, 2) lack of transparency, 3) lack of information, 4) lack of coordinated adjudication system, 5) lack of complete clear chain of title and land records.” There is a list of recommended solutions and points about the way forward, some quite generic such as institutional coordination and capacity strengthening, but other more specific, such as “ensure the effectiveness of the deed system while fast tracking the conversion to a title registration system.” This Memorandum is provided as Annex E.
116. In terms of starting to put together a pilot testing program for the land registration system, clearly a first step would be the review of earlier project experiences, and through donor post-facto evaluations. It seems likely that some key policy and institutional issues would need to be resolved before pilot work should begin. These extend to the judiciary, in that the ultimate resolution of disputes raised during adjudication rests with the courts, and in the past – even before the years of troubles -- they appear to have lacked the will and integrity to resist political pressures. Any national legal process depends ultimately upon judicial enforcement. In addition, while some staff trained in the pilots remains in the Ministry, most have moved on. Substantial re-equipping and training would be necessary.

117. The difficulties in implementation of the 1974 Land Registration Law seem to have had less to do with any defects in the Act itself than with lack of clarity in policy and land law, and institutional issues. Three areas stand out for rethinking. The first is institutional, in the sense of organizational. Involvement of a multiplicity of government agencies in the titling process, such as occurs in Liberia, tends to seriously undermine efficiency. The World Bank and other donors have increasingly stressed that for effective implementation, locating all needed functions in a single institution is paramount. Effective implementation requires locating all needed functions in a single institution. Donors sometimes delay commitment to projects until such changes are made or include the institutional changes as conditions on their grants or loans.

118. The MLME (its Survey and Lands Department, including its Adjudication Unit) play the key role in land registration. (See the organizational chart of the Ministry in Annex E.) But the involvement of the Probate Court needs review for value-added, as does the location of the Land Registry in the NCDA (an arrangement which is quite unusual though not necessarily inappropriate) and arrangements for payments of fees and taxes to the Ministry of Finance. The unified management for the two registries under the 1974 Law is an unusual feature of the institutional arrangements, but one which makes sense.

119. In moving forward with land registration, there is a clear role for private surveyors. It seems that the survey under the Law must currently be done by the Department of Lands and Surveys. This is well enough during the pilot stage, but for effective replication on any scale, use of private surveyors is necessary.

120. There is also the more fundamental matter of customary land rights. As noted earlier, recent decades have seen a substantial rethinking of the viability of customary land tenure systems, and it is generally accepted that these have a continuing role to play in many African land tenure systems. One approach now being taken in a number of countries, including South Africa, Ghana, Ivory Coast and Malawi, is the registration of customary rights. In some cases the emphasis is on registration of a community, communal right, in others on the registration of inherited individual rights under custom. This depends in part upon the content of the particular land tenure system but also partly on the development ideology of the country concerned and its relative affinity for individual or community land rights.

121. It is important to realize that any land registration on customary land may risk elite capture. In many African countries governments have decided that registration of land rights in such circumstances should be to the community in the first instance, with registration of individual holdings as a subsequent step. Mozambique is an example of a well thought-through approach on those lines. However, this will only work if there is a level of integrity at the customary level. Clearly, corrupt or power-wielding chiefs can make land access untenable, particularly if they oversee the land allocation process. This risks elite capture and a return to
conflict. Sociological studies and a clear understanding on what constitutes “community” and how the land allocation works on customary land will help improve administration of communal lands.

122. In Liberia, customary rights recognized by law, such as the Tribal Reserve and the Communal Holding, are registrable interests. Under the 1974 Land Registration Law, those interests are registrable as encumbrances on the public ownership right, as discussed earlier. But there is no provision for the registration of the customary land rights of individuals and families as customary rights. During systematic registration, long term possession may be the basis for recognition of private ownership of land originally held by customary right, but this alters the nature of the right. It makes it fully individual, typically in the male head of household. The question is, is this necessary a good thing? There is a good deal of experience with individualization (often referred to incorrectly as “privatization”) of customary land rights through systematic land registration in Africa, with Kenya the most fully documented case. Work beginning there during the colonial period and still being carried forward today has been the subject of considerable research and analysis. Such individualization often strips the land concerned not only of community interests (an anticipated impact) but also -- and this was not appreciated by the planners -- of secondary customary interests of other individuals, such as wives or other family members. Such individualization proved unsustainable, with most individuals continuing to manage the land under custom and refusing to register successions or transactions, leading to the registry rapidly going out of date. After a generation, the reality on the ground bore little resemblance to the picture shown by the registry records.

123. A comparative study funded by the World Bank and USAID in the early 1990s found that in several African countries such individualization of peasant holdings had not produced the benefits that economists imagined would flow from individual property rights. Noting the evolving nature of customary rights, the authors instead recommended limited use of land registration but put a greater emphasis on adaptation of customary land tenure. Given the rethinking which has gone on concerning this issue in other countries in the region, this and other issues should be reassessed in Liberia if it wants to move towards individualizing customary rights. If Liberia chooses not to register customary rights, the question becomes how to ensure ease of access to land as well as improved security on customary lands. The most frequently discussed alternatives are the community-based land certification program in Ethiopia and the program for registration of community lands in Mozambique.

124. In the final analysis, one issue is clear- there is a need for Liberia to have a clear policy on the nature, legal status and registration of customary rights, and a viable program for recording and protecting those rights.
Chapter Five

Land Institutions in Liberia

5.1 Fragmented Authority in Land Administration and Management

125. This chapter seeks to highlight some issues concerning land administration institutions in Liberia. Even for formal sector institutions, the relevant agencies of Government, there are little information available on capacity, but a study commissioned by the Governance Commission (Johnson 2007) does make clear the extent of the fragmentation among different agencies of key roles with regard to land. This is of concern, because a more efficiently organized and strengthened land administration machinery will be pivotal to the implementation of a coherent new land policy for Liberia. Without immediate action to improve land institutional capacity, many of the actions prescribed in this paper cannot be implemented.

126. The listing of roles of different agencies below will give a sense of the degree of fragmentation of land functions among different agencies under the present legal framework:

- Ministry of Lands, Mines and Energy: responsibility for supervising Country Surveyors and so involved in public land sales. Responsible for land registration, and has a broader mandate than it is currently able to address.
- Ministry of Agriculture: negotiates and administers agricultural concessions, including industrial crops such as rubber and palm oil.
- Ministry of Internal Affairs: responsible for land matters including interactions with traditional authorities over land, and supervision of the Country Land Commissioners, who play the key role in public land sales and deed registration?
- Ministry of Public Works: responsible for land use zoning.
- Ministry of Justice: responsible for Probate Courts which play major certification roles under the country’s two land registration systems.
- The Ministry of Foreign Affairs: holds early deed registers and issues certified copies of those documents.
- National Center for Documents and Records/National Archives: holds more recent deed registers and land registers from pilot systematic land registration.
- The Forestry Development Authority has broad legal authority over forests and forest land, covering much of the land of the interior of Liberia.
- The Environmental Protection Agency administers rules and guidelines for protection of wetlands, wildlife and biodiversity that impact land use in some areas of the country.
5.2 Capacity Constraints in the Key Land Institution

The main institution that is responsible for key land management and policy decisions is the Ministry of Lands, Mines and Energy. The vision of the Ministry (Excerpt, MLME, One Hundred and Fifty Day Action Plan, March, 2006) is “to achieve a satisfactory level of responsible land administration and effective public land management, whereby a national land policy is adopted and enforced, security of tenure is guaranteed, disputes are reduced, equitable access to land is available to all Liberians, and land based economic production is enhanced.” Achieving this will take time and hard work. Existing Land Administration and Management systems are wanting. The land tenure system- the laws, regulations, guidelines, institutional framework and administrative mechanisms by which people gain access to economic opportunities through land- can and should be improved. It must be revisited and reformed. This reform intervention must start as soon as possible. This will involve legislation and will take time, but in the short term, efforts must be made to improve the current situation, to the extent possible, within the framework of existing laws.
128. Other problems abound: There is no national land policy; and the national institutional framework for land administration and management is improperly designed, uncoordinated and ineffective. No agency of the Central Government seems to be responsible for or engaged in the management of public land; as such the public domain is apportioned and allocated for various uses without land use regulation; and government can hardly find land for public buildings and other essential public uses in urban areas, including specifically the capital, Monrovia.

129. There is an acute shortage of trained land professionals; hence, the practice of land surveying is now in the hands of lower level technicians and unscrupulous practitioners whose actions have filled court dockets with unresolved land disputes cases. There is no cadastre and no effective and reliable land information system. As a result, security of tenure is virtually non-existent in Liberia; a situation which hampers development and fuels conflicts.

130. The Department of Land Surveys and Cartography is in a deplorable state. The Bureau of Lands & Surveys has been relocated from its rented building on 9th Street, Sinkor, and is now sharing space with the Liberian Cartographic Services in a dilapidated rented building with inadequate furniture, no electricity, and hardly any office equipment. There is a good quantity of topographic and cadastral maps available between the two Bureaus, which are currently at risk for lack of adequate storage. These two essential national institutions must be properly housed, and adequately equipped, if they are to be effective in curbing the undesirable land situation.

131. The cadastral survey and title adjudication activities of the Bureau of Lands & Surveys were disrupted as far back as the late 1970s and have never been resumed. Without the resumption of these activities the current deplorable land administration situation cannot be adequately addressed. There is a dire need for an integrated National Land Information System which shall be interlinked to a legal property cadastre, fiscal cadastre, a mineral property cadastre, etc. Without adequate information on real properties the problems of land disputes, illegal sales, improper urban construction, squatter’s encroachments cannot be resolved.

132. All three of the activities of the Liberian Cartographic Service- national topographic base mapping, national geodetic control establishment, and national geographic research - have also ceased since the late 1980s. The UN system in Liberia has established its own facilities, neglecting our national institutions. Almost all the thematic maps published by the UN system are derived from base maps produced by the Liberian Cartographic Service; but without any reference. Liberia cannot develop without maps; hence the national mapping agency, the Liberian Cartographic Service, must be reactivated urgently.

5.3 The Creation of a Lands Commission to guide the Reform

133. Strengthening institutions and putting together land reforms takes time, careful planning and above all, stakeholder participation. The President has indicated that she intends to appoint an independent Commission to deal with land issues. This is an incredibly important initiative, and there has been quite positive experience with Commissions of this nature in other countries in Africa. Clearly, prospects for significant reform and coherence in reconstructing the land system are poor in Liberia without such an initiative. Such a Commission can be a political plus for government and can help generate not only good policy and strategy but the enthusiasm and popular support needed to achieve important ends in the land sector.
The Governance Commission was asked by the President to take the lead in the creation of a Land Commission. A Steering Group on Land was established within the GC, pulling in a number of stakeholders, especially on the official side. A number of working groups have been established, including those for a) legal issues, including customary and statutory law, b) natural resources, including land, minerals, and forests, c) local governance, d) historical context, e) technical, including GIS, f) investment, g) public awareness and education, and h) lessons learned, including review of land tenure in other African states. Until the Land Commission is organized, the GC is serving as a secretariat and, in cooperation with the Institute of Research of the University of Liberia, is coordinating the research activities of the working groups. The GC held a Data Reconciliation Workshop for the working groups on Land and Property Rights in Liberia on May 25, 2007, with each of the working groups presenting a preliminary paper, in the nature of issue identification papers.76

The creation of a Land Commission required enactment of a law by the Legislature. Compliance with a constitutional requirement of establishment of autonomous commissions by law (Article 89 of the Constitution) needs to be met in the case of the Land Commission as was the case for the Governance Commission. The GC has submitted a draft act to create the Land Commission to the President, which the President will, perhaps after further discussion with the GC, forward to Cabinet for discussion and then on to the Legislature for enactment. The GC hopes for enactment by September 2008.

While there is considerable diversity in the nature and tasks of such commissions in Africa, it seems that it is the Policy and Law Review Commission model that is most relevant to the current needs in Liberia. Commissions with a mix of functions, involving them not only in policy and law reform but in dispute resolution or in land administration, will have difficulty accomplishing any of those ends. Generally implementation should remain in the hands of the line ministries, though there may be some exceptions to this, for instance where there is a need for an initiative of a time-bound nature that no one government agency can do effectively by itself, since several agencies need to be involved and coordinated.77 . (See Annex C for a presentation on the creation of National Land Commissions by John Bruce).

Creating an independent commission to carry out such work has several benefits:

1) Expanding participation in decision making from within and beyond government;
2) Independent fact-finding and public consultation to inform decision-making;
3) Limiting influence of vested interests in government;
4) Bridging institutional competition between ministries and other public agencies;
5) Providing a forum for forging compromises;
6) Limiting direct political influence over outputs, and
7) Achieving credibility and political durability for outcomes
Based on the experience with Land Commissions elsewhere, it is suggested that:

1) The Commission should have a diverse and non-partisan membership (including both official and civil society members), which should result in more durable policy and law reforms.
2) If the relevant ministries have staff on the Commission, they should be in a minority and serve in personal, technical capacities rather than as Ministry representatives.
3) Critical assets for such a Commission include a strong and respected Chair, a high-capacity secretariat (administrator, secretary and finance officer), fact-finding capacity and transport.
4) The secretariat should be hired directly rather than seconded and must be full-time.
5) Technical experts should be appointed to secretariat, and contracted for particular tasks.
6) Broad public consultation with stakeholders is critical to quality and ownership of recommendations and decisions; good process and transparency are key.
7) The primary stakeholders to be consulted are the public, especially land users, not officials.
8) Studies of a participatory appraisal nature are most effective for fact-finding.
9) Consultation must hear concerns but also provide an opportunity to getting feedback on potential solutions; it should not be only a forum for venting complaints.
10) Publicity can build expectations and momentum for recommendations.
11) The policy and law reform role should include participation in the supervision of legal drafting and presentation of revised laws for enactment.

The President should take prompt action to establish this Commission. If the Commission is soundly constituted, with clear responsibilities and terms of reference. It is likely that the Government of Liberia will be able to mobilize the financial support needed for the Commission from international and bilateral donors. The Commission with its limited financial management capacity will be overwhelmed if it must deal with the reporting and other requirements of several donors. Considerable should be given to one multilateral donor institution taking the lead in providing such assistance (the World Bank and FAO both have the capacity and experience to do so), with bilateral funds channeled through that institution.

5.4 Recommendations on Strengthening Land Institutions

The Deed Registration System has the generic limitations of Deed Registration Systems but one key problem is that there are too many institutions involved in the registry system, and there is a need to simplify and bring the system under one institution, preferably the Ministry of Lands, Mines and Energy. But the system does work, if slowly, and many people understand it well. The Land (Title) Registration System, which is not implemented, is based on quite a good law, but it is not well known or tested. This needs to happen. The failure to provide for registration of customary rights is also an unfortunate omission, and needs to be remedied at the first opportunity. The characterization of tribal reserves and communal lands as use rights over state land also deserves to be re-examined. But selective amendments should be sufficient.

The larger issue will be the extent to which the land titling system should be expanded into the lands currently under customary rights, especially in the interior, and if it is to be extended to those lands, how it would be applied. A paper prepared by the Legal Issues Sub-Committee of the GRC Steering Group on Lands for a 2007 GRC workshop voices a common concern: "Titling may put the rural poor and illiterate at the mercy of the rural elite (the very group who should be speaking on behalf of rural communities) as is reported to be
happening currently... How does the land tenure system handle land as a social asset which may change to a commodity to be sold to the Monrovia-wise “sons of the soil”?79

142. The major task in the land administration area is rebuilding the human and capital items that form the basis of the land administration system: trained staff, buildings, survey equipment, and vehicles. While the Land Registration System will in time replace the Deeds Registration System, both will be needed for a generation. This means that their problems need to be tackled in parallel. In terms of Land Administration machinery, the Land Registration Law's provisions on implementation machinery are helpful. It does not set up parallel registries. Rather, those institutions that are already involved in Deed Registration (The Land Commissioner, the Surveyor, the Probate Court, the Registrar in the National Center for Documentation and Archives) are responsible for Land Registration. At County Level, there is one system to be strengthened.

143. This strengthening will take time. In the meantime, the MLME needs to take the lead in drawing together the various institutions involved to ensure the existing Deed Registration system is working. It could assemble a technical task force with members from all the key agencies, to hold county-level training and problem-solving workshops with staff there. Based on four or five these workshops, a set of interim guidelines could be drafted by the task force, reviewed at a workshop of select county level staff in Monrovia, and then issued. This activity could also generate a list of proposed legal amendments for Deed Registration and Public Land Sales.

144. At the same time, MLME should be seeking the assistance need to prepare for a re-piloting of the Registered Land Law. The evaluations of the pilots of the late ‘70s and early ‘80s, cut short by political events, indicated some problems. This experience should be consulted closely to avoid repeating those problems, and there are staff in the MLME who were involved in this pilot work and are themselves a valuable source of information. Once capacity in MLME is upgraded, the system needs to be re-piloted. That capacity to do a pilot does not now exist, and a short-term objective should be creating the capacity needed to carry out a pilot.80

145. The courts and land institutions clearly need rebuilding. They lack not only trained staff but the copies of the Liberian Code Revised and the Liberian Law Reports, which reports the decisions of the Supreme Court, the precedents which should guide the lower courts in their decisions. A common law system cannot function without these. The buildings once occupied by courts have sometimes been destroyed or co-opted for other government purposes. There is a need for rebuilding both physical and human capital.

146. Finally, there is urgent work to be done in the conservation of records of land rights, many of them damaged and deteriorating, in inadequate storage facilities at various locations. This is not an exercise in history, but an urgent task of conserving the proof needed to prove and defend property rights. This is an area where a Lands Commission, if such a Commission is appointed, could take an initiative that would involve the various institutions involved in remedying the present very unsatisfactory situation.
Chapter Six

A Synthesis of Recommended Actions

6.1 Rapid Remediation Measures

147. The chaos in the deeds registration system and the dysfunction of the courts system in addressing land disputes may call for four rapid lines of actions: (1) a 6 month moratorium on issuing new deeds and sales of large tracts of land till there are more transparent measures and guidelines put in place (2) an immediate formation of the land commission; (3) an immediate internal intervention to restructure the institutional framework and improve the effective capacity of the Department of Lands, Surveys and Cartography, in order to arrest the proliferation of unprofessional surveys and fraudulent land transactions; and (4) a donor assisted intervention to assess the prevailing situation and formulate a donor acceptable national land administration project, which will address a range of problems including policy deficiency, law reform and institutional framework.

6.2 Short-to-Medium Term Interventions

148. The discussion below and suggestions in this chapter are preliminary in nature because they require further discussion within Liberia itself. They come at a very early stage in the Government’s attempt to think through these issues, which are expected to be the topic of a Land Commission. They are not intended as the last word, but as grist for that mill. The chapter first describes and discusses the issues and then puts forward some detailed recommended options. At the end of the chapter, a priority matrix is presented.

Insecuritv of Tenure in a Post-Conflict Context

149. Issue: Security of land tenure in today’s Liberia is weak to non-existent, the result of a combination of factors:

- dislocations and illegal occupations of land caused by civil war;
- loss and disorganization of land rights documentation;
- increasing fraud and malpractice in the land sector resulting from the first two factors;
- debility of agencies responsible for land administration, and
- weakness of the courts and other land dispute settlement institutions.

150. The situation has a political edge, provided by the country’s quasi-colonial history, in which governments dominated by Amero-Liberian settlers and their descendants asserted public ownership of land from the territories of traditional local communities of the interior and the right to alienate that land to outsiders. Alienations of land and the resentment it aroused contributed to the descent of Liberia into near-anarchy. Those tensions continue, muted by exhaustion, but very real. Unruh (2007) warns that “Left unattended, land issues can provide significant potential for renewed confrontation”.

49
**Options**

151. The restoration of security of tenure on an equitable basis is essential to the development of Liberia’s economy and democracy.

- There is an urgent need for major investment in reconstructing the systems of land law, land administration and land dispute settlement.
- There needs to be a thorough review of land policy and law, and reconstruction of the system of records of land rights.
- The declared intention of government to create an autonomous commission to deal with land policy and law is promising, as such commissions have been important vehicles of progress in land sectors elsewhere in Africa, and the proposed commission deserves the support of all stakeholders, including the donor community.

**Land Law: The Need for Reform**

152. **Issue:** The land law of Liberia is pluralistic, and consists of a civil (statutory and judicial) law and customary law. The interface and interactions between these systems in Liberia is vague and unsatisfactory and requires reconsideration and reform. Other countries in the common law tradition in Africa have pursued strategies of integration of customary rules into the common law by statute or judicial decision, but this process has hardly occurred in Liberia.

153. **Issue:** The formal system of private ownership of land is fundamentally sound, with private property rights promising substantial security of tenure, creating incentives for investment and good husbandry of land resources, and allowing for the free functioning of land markets. But much in that land law is antiquated, either technically or politically. Provisions which reflect ethnic distinctions should be eliminated and prohibition of land ownership by foreigners should be carefully reassessed.

**Options**

154. In particular, there is a need to re-examine the provisions of:

- the law on public land and its alienation,
- the law concerning ownership of natural forests, and
- the rules and regulations on the “hinterlands”, the interior of the country beyond the zones of early Amero-Liberian settlement.

155. All reflect extensive claims to state ownership of land and resources on land which has been governed by customary law. There is a need for a careful rebalancing of interests to both enhance rural livelihoods and permit the exploitation of valuable resources in the national interest. It is critical that government recognize the property rights of local communities. It will be important to survey and register both the land of rural communities and the remaining public land and the land of rural communities. It would be preferable if Government could move slowly and very carefully on with any public land sales until these issues are resolved. The criteria and pricing of such sales will ultimately need serious reconsideration.

156. In addition, there are fundamental issues of equity that need to be considered. Substantial areas of land taken from local communities for concessions have been left largely
utilized, and some of this land should be returned to those communities. There is considerable irregular occupation of land of others, due to dislocations during the war, and to encourage utilization of such land there is a need to find ways to allow those occupants who have been using the land productively in recent years to remain on the land, while at the same time recognizing the legitimate claims of those who own the land.

157. The customary law of Liberian ethnic groups is remarkably poorly documented, and studies to establish a fundamental typology and parameters is a priority, as is documentation of the handling of customary law by the Liberian courts. It is important to understand not only the substance of that law as applied but also its processes and the institutions. There is a need to provide stronger recognition and protection to customary rights to land and to realize that objective, to reorient Liberian legal education to address customary as well as other law. Best practice in other African countries suggests a number of options, not all of which are mutually exclusive:

- The classic common law solution, selective absorption of customary law into the nation’s common law by judicial recognition of customary rules;
- Ascertaining customary land law and making its content more readily available;
- Registration of customary land rights as customary rights (rather than converting them to statutory forms of land tenure);
- Modification by legislation of negative aspects of customary land law, such as gender biases, and creating mechanisms for appeals of abuses to administrative or judicial authorities of the state;
- Creation of hybrid institutions that administer customary land rights, involving both officials and traditional authorities; and
- Modernization of traditional land administration institutions through mechanisms such as registration of land allocations and dealings, and increased public participation in and transparency of decision-making.

158. Consideration should be given to the development, based on a clear land policy, of a comprehensive Land Law. This will require as a first step a careful and critical review of the law concerning land, a task which has not yet been undertaken. A comprehensive land law would need to harmonize the operation of the statutory and customary law, and perhaps provide for their eventual integration. A Lands Commission could initiate and frame the basics of such a law.

Dispositions of Public Land

Issue:

159. 1. Extensive and often ill-considered dispositions of public land through public land sales and concessions have left valuable land idle, beyond the reach of local communities, and this has generated a heritage of resentment. This Government has been reluctant to resume these land allocations, and is thinking through precautions. But pressure will build to resume these dispositions and this is now taking place. How can the mistakes of the past be avoided?
Options:

160. There has been a de facto moratorium imposed for public land sales, and it should only be resumed when more reliable and transparent processes for assessing applications and determining land availability are in place. There is a need to move away from the archaic statutorily determined land prices to price approximating market value, with an exception to communities purchasing the land they occupy.

161. Where larger areas of land are needed for development, they should be provided on concession. Strategies that limit concessions to an appropriate economic size and limit impacts of community land use should be pursued, such as models involving a nucleus estate and smallholder outgrowers, with provision made for titling and registration of the land belonging to the smallholders.

162. The Public Lands Act is badly in need of revision and it will not be possible to deal with some of these matters, such as prices for public land sales, without amending that law.

Land Administration: The Need to Rebuild

163. **Issue**: Liberia has two systems for recording rights in land: a long-standing system of Deed Registration and a more recently introduced Land Registration System. The latter is superior, and is intended to eventually replace the former, but this will take many years. The former system must be rehabilitated and maintained at the same time the latter must be piloted, refined and expanded.

164. **Issue**: The Deeds Registration System is in disarray. Records under that system have been scattered, damaged and in many cases destroyed, and this is encouraging widespread fraud and malpractice in land transactions.

165. **Issue**: The Land Registration System is supported by a relatively strong and modern law, enacted in 1974 but incompletely piloted at some locations in Monrovia. It is a title registration law, and its strong points are that:

- The Register is organized by parcel, each parcel (and parcel register sheet) bearing the same unique identifier.
- The coverage is comprehensive, with the Register for a locality being created through a systematic and participatory field process in which all claims in the specified area must be brought forward and are vetted for inclusion in the Register.
- Very strong, often conclusive legal effect is given by law to a right shown in the Title Register, that right being unchallengeable by other claimants except in very narrowly defined circumstances.

166. There is a however need to reconsider some provisions of that law, in particular its treatment of customary rights and statutory rights of traditional communities. There is a further need to review carefully issues that arose during the early pilots, as a basis for further piloting.

Options:

167. In order for the work above to be carried out effectively:
• There is a need to review the roles and responsibilities of the many government ministries and other agencies involved in land administration. Both simplification and decentralization are required.

• Land administration capacities are very low at present and there is an urgent need to re-capacitate the agencies involved in this task, notably the Lands and Survey Department of the Ministry of Lands, Mines and Energy. Urgent needs include clearer guidance for field staff, better coordination of land administration and local government, construction of new facilities, retraining of staff, and re-equipping of survey and other technical units. These efforts should not focus primarily on central government level, but on creation of new capacity at county level, in the context of decentralization.

• While the Land Registration System will in time replace the Deeds Registration System, both will be needed for a generation. This means that their problems need to be tackled in parallel. In terms of Land Administration machinery, the Land Registration Law’s provisions on implementation machinery are helpful. It does not set up parallel registries. Rather, those institutions that are already involved in Deed Registration (The Land Commissioner, the Surveyor, the Probate Court, the Registrar in the National Center for Documentation and Archives) are responsible for Land Registration. At County Level, there is one system to be strengthened.

• The MLME needs to take the lead in drawing together the various institutions involved to ensure the existing Deed Registration system is working. There is an urgent need to collect, consolidate and conserve deed records, and to digitalize them for easy access in both land administration and land dispute settlement. There is a need for clear interim instructions to officials involved in the deed registration process, and for simplification of deed registration processes.

• In terms of ensuring a functioning Deed Registration system, MLME should assemble a technical task force with members from all the key agencies, to hold county-level training and problem-solving workshops with staff there. Based on four or five these workshops, a set of interim guidelines could be drafted by the task force, reviewed at a workshop of select county level staff in Monrovia, and then issued. This activity could also generate a list of proposed legal amendments for Deed Registration and Public Land Sales.

• MLME should also, at the same time, seek assistance need to prepare for a re-piloting of the Registered Land Law while ensuring that lessons from earlier piloting are incorporated into the new approaches. For example, the pilot might best be carried out not in a complex and difficult area of urban Monrovia, but in a more manageable peri-urban area, such as the Millsburg area, a heavily fee-simple area with important commercial potential, close to Monrovia. In discussing possible pilot sites, the Minister of Internal Affairs warned against starting in Monrovia. “Monrovia is a sinkhole in which titling could bog down for fifty years,” he warned, referring to complexity and politicization of conflicts over land in the capital.

Land Dispute Resolution: The Need for Diverse Approaches

168. Issue: Land disputes are endemic in Liberia today, the result of the dislocations and illegal occupations of land coming out of the civil war, and a wave of fraud and malpractice encouraged by the loss and destruction of land documents. A 2006 study by the Norwegian Refugee Council found that land and property disputes were among the top four protection issues in communities in ten of Liberia’s fifteen counties, and that in four counties (Lofa, Grand Gedeh, Sinoe, and Maryland); land disputes were the most common issue.
169. **Issue:** The court system is in substantial disarray and unable to cope adequately with the volume and complexity of land disputes. The county-level circuit courts have original jurisdiction of those disputes. An October 2006 International Crisis Group report on resurrecting the Liberian justice system found that at least five circuit courts were “completely defunct or barely operational”, notes that many appointed circuit court judges are still residing in Monrovia because of lack of accommodation at their posting, and concludes that “Circuit court inactivity is paralyzing the justice system in parts of the country”. The Probate Courts, again supposedly operating in each county and critical to the deed registration process, are also in a state of disrepair. It is said that a major backlog of unresolved cases has developed, and there is discussion of a special “land court” to handle them The ICG report notes that most such specialized courts are not functioning, or staffed with woefully unqualified appointees.

170. **Issue:** ADR is often implemented by NGOs, and experience elsewhere shows that NGOs can be quite effective in this role. However, there is often not enough attention paid to enforceability of agreements reached through ADR. They are of course contracts, and enforceable as such. But how can that be facilitated? How are the contracts to be recorded, and given legal recognition? What does the law require, and what is practically attainable? Should the agreement with registered with a court, or a notary? Should the document be registered in the Deed Registry where the land is located?

171. **Issue:** There has been some recent experience with “backlogs” of court cases that should induce caution. In Ghana, at the outset of the multi-donor Land Administration Project four years ago, the Judiciary was estimating a backlog of over 70,000 land cases in the High Courts. As work went forward, it gradually became clear that the actual numbers were much smaller, on the order of 7,000 cases. Many cases shown as pending on court records had in fact been settled or abandoned and their retention on the court dockets as pending was simply a matter of poor record management. For this reason, a key early step in the development of a strategy for clearing the backlog is an inventory and analysis of the backlog itself, to better understand the work at hand. Within a few years, over 97% of the backlog was eliminated, the remaining cases being resolved effectively by retired judges using ADR within the court system; Ghanaian law specifically provides for use of ADR in the courts.

172. **Issue:** There are aspects of each tenure system that is utilized by the other. As a result informal documents of various kinds (not deeds or titles) can find their way into the customary system as forms of proof of claim. At the same time informal, customary forms of evidence (the existence of economic trees, tombs, testimony) can be introduced into formal dispute resolution proceedings where titles, deeds, or other formal evidence is problematic. As well the distinction between customary and formal can be used as a form of appeals step, whereby if resolution is not satisfactory within the customary system using customary dispute resolution approaches, the same dispute and claimant can move the dispute to the formal system. Overall however most postwar countries experience an aggravation of the formal – informal dualism in land tenure after the conclusion of the war, and so attending to the large disputing problem is often approached with this dualism in mind.

**Options**

173. A critical first step is to understand the nature and extent of these disputes, and in particular the backlog of cases in the courts. It may be that strengthening the courts of normal jurisdiction at county level may be more effective than creation of a special land court in Monrovia. A careful assessment and strategy development exercise is indicated. Ghana has
successfully dealt with a major backlog of land disputes in recent years, and offers a model for consideration.

174. In addition to institutional and process solutions for dispute settlement, urgent rule-making on key issues affecting many disputants can have important impacts. For example, rules concerning the following matters have in other countries radically facilitated settlement of the most common types of land disputes:

- Legitimacy and legality of specific types of claim, for instance claims of former landholders from long ago, resolved by a law that clearly made those claims unviable.
- Rules affecting many cases of land disputes cause by war, such as criteria for abandonment, which once clarified resulted in the dropping of many claims;
- Creation of compensation entitlement for those affected when government dispositions of land were found to have overridden other claims, turning those claims into claims for compensation rather than land disputes.

175. Today, a variety of approaches are being utilized to settle land disputes. In addition to court adjudication, some with political dimensions are being tackled by a special commission appointed by the President, while NGOs are using alternative dispute resolution approaches (mediation, arbitration) to settle land disputes arising illegal occupations by displaced persons and refugee return. A viable approach in this area will require re-capacitating the courts to deal more effectively with land disputes and making alternative dispute resolution more broadly available. Disputes of political import will require higher level initiatives, such as special commissions.

Moving Forward: The Potential of a National Land Commission

176. **Issue:** The constitution of an independent Lands Commission by the Government of Liberia is a critical and urgent step. Such commissions have several advantages over normal policy-making processes:

- Expanded participation in decision making from within and beyond government;
- Independent fact-finding and public consultation to inform decision-making;
- Limited influence of vested interests in government;
- Bridging of competitive relations between ministries and other public agencies;
- Provisions of a forum for forging compromises;
- Limitation of direct political influence over policies developed, and
- Creditability and political durability for outcomes.

**Options**

177. There is considerable positive experience with such land commissions in post-conflict and other contexts in Africa, and those lessons need to be drawn upon. Key lessons from that experience are:

- the need for a membership that reflects the larger society and not only government,
- the need for a strong secretariat,
- the importance of a strong public consultation process, and
- the need for a commission mandate that empowers it to follow through on its recommendations for a national land policy and land law.
178. The Governance Commission has been mandated by the President to move forward the creation of a Lands Commission and should take the initiative to assemble a donor support group for the land sector in general and the Land Commission in particular. That group should ideally be headed by a multi-national donor. Funds for the Commission should be channeled through that multi-national organization, simplifying the burden on the Commission connected with receiving and accounting for those funds.

179. It should be recognized by all concerned that the line ministries and other agencies dealing with land cannot simply await the recommendations of a Land Commission. They will need to move forward in rebuilding their capacities and implementing mandated programs, including modest reforms of their processes through regulations. Because of the number of agencies dealing with land under the current legal framework, the Commission may provide, through informal working groups, the opportunity for these agencies to coordinate those initiatives and conform them to the priorities emerging from the deliberation of the Commission.

6.3 Assessing the Viability of Land Reform

180. Land reform is a legitimate policy tool. Donors have supported land reform in circumstances such as those of South Africa, where constitutional provisions for compensation are robust and are honored by the government implementing the reform. On the other hand, because of the abuses, high costs of land and high levels of political conflict connected with compulsory land taking and redistribution of land (the classical land reform model), the donor community approaches proposals for land reform very cautiously. The land reforms of the 1990s in Latin America proved difficult and were in many cases rolled back by later governments, leaving the net benefits of the programs in question.81 This has left some major donors, in particular those which supported the Latin American reforms such as USAID under Kennedy’s Alliance for Progress, decidedly uncomfortable with land reform as a policy option.

181. Recently, a model of “community-based land reform” has been piloted that utilizes the land market as the mechanism of transfer of land to the poor. It is a “willing seller – willing buyer” model. Subsidized funding is made available by the Government to poor communities to purchase land for their members. This is arguably less costly in the long run than compulsory acquisition when costs of conflict, delay and legal challenges are factored in. The model is now moving out of the piloting stage, and in Africa it is being used in South Africa and Malawi.82

182. There are other approaches that might deserve consideration in the Liberian context. There are areas in Liberia, some of them formerly large private holdings along the coast and rivers, where land has been abandoned or the owners have fled and there are now illegal occupants farming the land, either local people or persons displaced by the war. In such cases, the Government may want to consider options that would allow those cultivators to remain on the land in the interest of getting production going again.

183. One option would be a shortened period of prescription ("adverse possession"),83 a common law rule in which open occupation for a specified period without acknowledging the right of the owner gives the occupant title to the land. Unruh (2007c) notes that there is considerable uncertainty concerning the application of the twenty-year period of adverse possession, because it is not clear whether the fourteen years of civil was can be counted toward that period.
Another would be creation of a right of pre-emption, through a law that gives such occupants the right to purchase the land they are using from the owner, at a regulated price.\textsuperscript{64} Of course in the case of truly abandoned farms, which revert to Government, Government could consider taking them over and redistributing them to occupants and other poor families.

Land reform is not to be undertaken lightly, and the need and potential benefits must first be clearly established. Even where injustices have been done, it is often not realistic to try to remedy these too far back into the past. South Africa found that it needed to limit claims to restitution of land to lands from which Africans were displaced after 1939. The history of land in many African countries is a succession of displacements. It will not be feasible to remedy all old injustices, and it is important that efforts to remedy past injustices do not distract policy-makers from the need to avoid future injustices. A fair reconciliation of the extensive claims of the state to public land with local communities' sense of right to that land is the key to the avoidance of such future injustices.

### 6.4 Restoring Land Tenure Security: A Priority Matrix

The matrix which follows is far from exhaustive, but indicates some priority areas for action:

<table>
<thead>
<tr>
<th>PRIORITY CONCERN</th>
<th>INTERIM MEASURE</th>
<th>LEAD INSTITUTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continued Deed registration in this confused environment will lead to higher levels of land fraud and confusion.</td>
<td>A 6 month moratorium on issuing new deeds while interim and transparent guidelines and a crash-training course of staff is put in place. This will help avoid fraud and to ensure consistent application of the guidelines across counties</td>
<td>Ministry of Lands, Mines and Energy, GRC</td>
</tr>
<tr>
<td>Land Grabbing in Customary Areas continues without clear rule of law</td>
<td>A moratorium on sale of large tracts of land in customary areas is put in place till a credible arrangement with sound land allocation and pricing criteria</td>
<td>President, Ministry of Lands, Mines and Energy, GRC</td>
</tr>
<tr>
<td>IMMEDIATE NEEDS</td>
<td>ACTIONS</td>
<td>LEAD INSTITUTIONS</td>
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<td>--------------------------------------------------------------------------------</td>
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<tr>
<td>An institutional basis and mandate for a comprehensive, independent review of land law and policy, including land institutions and administration.</td>
<td>Creation by law of a Land Commission, mandated to review policy and law for the land sector in Liberia and to propose a National Land Policy and a consolidated Land Law.</td>
<td>Governance Commission, working with the Presidency and the Legislature.</td>
</tr>
<tr>
<td>Rescue and conservation of deeds, deed registers and other records related to rights in land.</td>
<td>Clarification of responsibility of government agencies for conservation, consolidation of those records in a single secure and safe facility; preservation of fragile documents, and digitalization of records in a format compatible with uses in land registration systems.</td>
<td>Governance Commission, with support of Presidency, working with National Center for Documentation and Archives.</td>
</tr>
<tr>
<td>Rehabilitation of Deeds Registration System and piloting and expansion of Land Registration System.</td>
<td>Systematic assessment of needs, development of a strategy and priorities for reconstruction of facilities, retraining of staff, and equipment re-supply.</td>
<td>Ministry of Lands, Mines and Energy</td>
</tr>
<tr>
<td>Review of the law of real property law</td>
<td>Consultancy for legal experts to produce comprehensive and critical review of real property law, including the legal status of customary law, with recommendations for reform.</td>
<td>Governance Commission/Land Commission</td>
</tr>
<tr>
<td>Studies of customary land tenure and institutions, and the interactions between these and statutory land law.</td>
<td>Development of terms of reference for rapid appraisal studies and contracts for such research with research institutions.</td>
<td>Governance Commission/Land Commission</td>
</tr>
<tr>
<td>Development of a law on community forestry</td>
<td>Process which recognizes importance of both forestry and other land uses for rural people, and addresses the potential conflict between state claims to natural forest ownership and local communities’ sense of ownership of such resources.</td>
<td>Sustainable Development Institute, Forestry Development Authority, Ministry of Lands, Energy and Mines.</td>
</tr>
<tr>
<td>More effective land dispute resolution</td>
<td>Systematic assessment of the causes and extent of land disputes and potential approaches to facilitating their resolution, resulting in a strategy which both strengthens judicial dispute resolution and utilizes ADR and other approaches.</td>
<td>Governance Commission/Land Commission, Ministry of Justice</td>
</tr>
<tr>
<td>Resources to support a Lands Commission and reforms of land policy, law and administration, and implementation of both short-term reforms and longer-term reform initiatives.</td>
<td>Constitution of a donor support group at the initiative of the GC to provide coordinated assistance to a Land Commission and other government agencies with land sector responsibilities. This will need to include general budgetary support for the operation of the Commission. There will also be needs for rehabilitation of the Deed Registry System in the longer term.</td>
<td>Governance Commission/Land Commission</td>
</tr>
</tbody>
</table>
Chapter Seven

Opportunities for Development Partners

7.1 Immediate Areas for Financial Intervention

186. The current land tenure situation in Liberia offers development partners two critical opportunities to make contributions to sound policy development and implementation. First, there is the prospect of the Lands Commission. In this case, the government is already firmly and publicly committed to doing so. Such a commission is the best hope by far for the fundamental policy and legal changes that are needed in Liberia. Needed preparatory work could be done through GRC, which has been asked to take the lead in setting up the Commission. There is an urgent need for donor support for that preparatory activity. Some critical inputs could include support for:

- **A Review of Liberian Land Law:** The Land Law of Liberia is largely common law, that is, it consists of judicial precedents, embodied in the thirty-some volumes of decisions of the Supreme Court of Liberia. This common law has been supplemented over the years by a number of statutes dealing with specific areas, focused on public land sales, land registration and inheritance. There exists no serious comprehensive description of this body of law. On the customary law side, there is no country in Africa where less has been written about customary law, and since customary law matters only very rarely come before the courts, judicial decisions provide little information. It is essential that such a study be prepared for the use of the Commission, and this should include data generated by rapid rural appraisal fieldwork on customary law, aiming to establish a basic typology of customary tenure systems. This is a need to establish a baseline for legal reform and to highlight key areas of uncertainty and potential for reforms. There are local lawyers who specialize in land law who are quite capable of carrying out this work, possibly in conjunction with researchers at the University of Liberia.

- **A Strategy for Dealing with Endemic Land Disputes:** There is a real sense of urgency about dealing with the endemic land disputes, including what is frequently described as a “backlog” of land cases in the courts. These have a broad range of causes, but the most important is the occupation of lands belonging to those who fled during the conflict, complicated by the destruction of many records of land rights. The courts are in disarray. There is said to be a substantial backlog of disputes but there is also a critical question of how many of these are still “live” disputes or have been overtaken by events such as settlements not recorded with the courts or simple abandonment of claims. There is discussion of creation of special land court or courts.

There is a need for systematic study of these issues, in both sectors, and development of a strategy for dealing with such disputes. An inventory of the backlog and analysis of the reasons behind it would be helpful in devising a strategy for addressing it. There appears to be an opportunity for the Bank and/or other donors to assist by funding an assessment and strategy development exercise focused on land dispute resolution. It would be best to do this through the GRC, which would of course need to work closely with the Ministry of Justice.
• **Reconstitution of the Deeds Registry:** This is a priority for two reasons, in spite of the inadequacy of this older system. First, the Deed Registration System will continue to operate for at least fifteen years over most privately owned land, pending the systematic registration of those holdings to bring them within the Title Registration System. The Deeds Registration must be able to function effectively. Second, the ability to access deeds to land and registry records for them is critical to successful systematic registration. They are the primary source of proof of existing land rights. The registries are the way in deeds can be cross-checked to detect forged deeds, which are rampant.

But the Deeds Registration System is in chaos, as described earlier in this paper. Records of land rights are scattered and poorly stored, rapidly deteriorating in a number of locations and institutions around Monrovia: the Ministry of Lands, Mines and Energy; the Executive Mansion, the National Center for Documentation and Archives (NCDA), and the Foreign Ministry. An adequate approach to reconstituting a viable Deeds Registry would require consolidating the registers in a single location. The legal mandate for keeping such records clearly belongs to the NCDA, but NCDA lacks the capacity to carry the task out on its own, and especially the power to compel the cooperation of the other agencies involved. It will be necessary to digitalize these records, work that will need to be done with great care, given the fragile and deteriorated state of many of the records. The digitalized registrations would need to be organized for computerized reference, in a data base to which subsequent deeds could be added. The Bank has substantial experience with the digitalization and computerization of systems of land registration. The first step would be development of a strategy and proposal for funding. It would be appropriate for GRC to take the lead on this given the number of institutions with custody of these records.

• **Land Tenure Consultant(s):** The Lands Commission will need to be able to access land tenure expertise, both local and international, rapidly and flexibly. While certain specific needs have been identified here, others will arise as the Commission begins its work.

### 7.2 Investment in Land Administration – Land Titling and Registration

187. The second important opportunity lies in the land administration area. Liberia has an excellent Title Registration Law, enacted in 1974 and piloted only briefly before Liberia fell into an extended period of violence and confusion. The system was never really established institutionally. The equipment and much of the investment in training by several donors has been lost, as well as many of the records of the pilot work. Few titles were in the end issued. Still, the prospects for resuscitating the system are excellent, and it is a priority for the Ministry of Lands, Mines and Energy.

### 7.3 Investment in Capacity Building for Land Institutions

188. Because of capacity problems in the Ministry, there is a need to focus initially on rebuilding capacity, with further pilots deferred for a time. On the positive side, there is a substantial institutional memory in the Ministry of Lands, Mines and Energy regarding how a Title Registration System is implemented through systematic land registration, including materials such as the original adjudication handbook, and the Ministry has expressed a desire to revive this system. Unfortunately, the Department of Lands and Surveys is not in a position to carry out a pilot. It does not have the equipment required, and not a single vehicle for the entire department. There are only three surveyors still with the Ministry who were trained to the skill level needed for such work, though there are others in other jobs in other institutions. These individuals are an important
resource. With some retraining by a consultant, they could become trainers for a larger cadre. There is a need for up-front investment in the equipment upon which such training would be carried out.

189. The Ministry could easily absorb funds for capacity-building, perhaps including a) development by a consultant working with the Ministry of a strategy for capacity building, to lead to a pilot, b) training for a cadre of trainers, and c) equipment purchases related to training, including one or more vehicles. An input by an international consultant would be needed to assist the Ministry in thinking through the most effective use of these funds, and in training. Careful review of the experience of the earlier aborted pilots would be a critical element in developing a strategy for a new pilot. This would put the Ministry in the position to make a proposal for a substantial land administration project to the Bank and other donors.

190. The current situation, while certainly challenging, poses two major opportunities for a potential program of assistance to the Government of Liberia by the World Bank

- First, there is a declared intention on the part of the President to create an autonomous Land Commission to review land policy and law. The World Bank and other donors often labor long and hard (and not necessarily successfully) to convince governments of the need to establish such a Commission. A law will be needed to create the Commission. The Governance Commission is mandated to develop the law to establish the Commission, and early drafts have been prepared.

- Second, Liberia has a generally acceptable title registration law with provisions for systematic titling and registration. The enactment of such a law is often an objective of donor dialogue with governments. Here it is already in place, and there is a valuable body of experience with implementation from earlier piloting, just before Liberia fell into conflict. At the same time, the deed registration system must be resuscitated.

7.4 Conclusion

191. The restoration of security of tenure and the rule of law concerning land is a precondition for continued peace and the hope of prosperity in Liberia. The challenges are great, but so are the opportunities. It is to be hoped that Liberians will seize those opportunities and that the donor community will provide the substantial support needed for them to succeed in that task. This report will hopefully help the Bank’s staff and management understand better the needs and opportunities presented today in Liberia’s land sector, but also, in the longer term, be useful grist for the mill of the GRC and, when it is established, the Land Commission.

7.5 Next Steps

192. The President of Liberia met with the team, represented by Emmanuel Fiadzo and John Bruce, as well as members of the GC, to discuss her interest in the land tenure agenda for Liberia. She has also expressed this interest directly to the Country Director for Ghana, particularly the need to press forward with this study so that the recommendations can be realized. Given this basis, it presents a real basis for the Bank to engage in further dialogue regarding real financial support to Liberia to enable land tenure reform.
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Annex A. Persons and Institutions Consulted

Philip A.Z. Banks, Legal and Judicial Reform Consultant, Governance Reform Commission

Othello Brandy, Commissioner for Millsburg (former Minister of Agriculture; CAAS-LIB manager.

Alfred Brownell, Green Advocates

Beverlee Bruce, Researcher, Yale University, co-author of Community Cohesion in Liberia (2004).

Jeanette Carter, Co-Director, Institute for Research, University of Liberia, and Governance Reform Commission

Clifford M. Daitouah, Registrars of Deeds, Montserrado County.


Anne Golla, International Center for Research on Women.

Taiwan Gongoloe, Solicitor-General, Ministry of Justice.

Carsten Hansen, Country Director, Norwegian Refugee Council Liberia.

Susan Heintz, Project Manager ILCA, Norwegian Refugee Council, Liberia.

Sandra Howard, Commissioner, Governance Reform Commission.

Justice Kabina Ja’neh, Deputy Chief Justice, Judiciary

Abraham B.S. Jones, Sr., Land Commissioner for Bomi County.

Ambulai Johnson, Minister of Internal Affairs.

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Eugene H. Shannon (PhD), Minister of Lands, Mines and Energy.

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Liz ADRen Wiley, land tenure consultant, provided to Sustainable Development Institute (Silas Siakor) by DFID.

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Annex B. Supplements to the Liberian Land Law

The Law on Succession

1. The Law on Decedents’ Estates is Title 8 of the Liberian Code Revised. It allows the making of a will by all persons age 18 or older, and does not make any distinction between land held under common law or customary law title. Section 3.2 on intestacy provides for a spouse (in the common case where there is a spouse and lineal descendents) to receive $5,000 and ½ of the residue of the estate for life, the other half going to the lineal descendents. Section 3.5 makes in clear that illegitimate as well as legitimate children are heirs. Complex probate provisions follow that would render this law difficult to apply in the circumstances of Liberians living under custom, and in fact it does not appear to have been often applied in such circumstances. Instead, the Hinterlands Regulations contain provisions that appear to have been applied, though these have been recently amended.

2. In 2003 Title 8 was supplemented by an Act to Govern the Devolution of Estates and Establish Rights of Inheritance for Spouses of Both Statutory and Customary Marriages, approved October 2003. The 2003 Law addresses the retrograde provisions on women’s inheritance of land under the Hinterland Regulations. Section 2.1 confirms the legality of all customary marriages, and provides that “... all rights, duties and liabilities of statutory wives shall likewise be accorded all customary wives...” Section 3.2 specifies that this includes the common law right of dower, entitling a widow or widows to a third of their late husband’s property. Under Section 3.3, the widow is entitled to stay “on the premises” to administer the estate, or may take another husband of her choice, in which case she must vacate the premises. The new marriage “automatically reverses the said rights and same property return to the heirs or children of the late husband.” Section 2.6 renders property acquired before marriage by customary women exclusively their own even in marriage, but Section 2.3 says that one-third of a husband’s property vests in a wife upon marriage. There is a lack of balance here that may deserve re-examination. Perhaps most important, however, the law for the first time specifically allows men or women under customary law to make a Last Will and Testament, describing how their property is to be distributed after death. None of these provisions distinguish between personal and real property, and so include real property.

2.2.4. The National Forestry Reform Law of 2006

3. This law was approved October 4, 2006, and is in effect a new Forestry Law, though it is said to amend the National Forestry Law of 2000. It provides for a variety of forest regimes, including Protected Areas and National Forests, and for various means of accessing and exploiting forest resources, including concessions. The significance of this law for land will only be seen when the areas involved are noted. A 2004 presentation on the “Current State of the Forest Cover in Liberia” (Monrovia, World Bank, 2004) indicates a predominant rural agricultural domain of only 4.6% of the surface area of the country, which agricultural area with a forest presence accounts for 31.7%, mixed agricultural and forest area for 9.9%, opened dense forest for 10.6% and closed dense forest 25.3%. Due to the urgency of ending the UN ban on exportation of timber from Liberia, unusually substantial data is available for the forest sector.

4. The law’s provisions on ownership of forest resources have major implications for the rights of landholders. Section 2.1 on Ownership of Forest Resources provides that “All Forest Resources in Liberia... are held in trust by the Republic for the benefit of the People.” “Forest resources” are very broadly defined in Section 1.3 to include anything of “potential use to humans that exists in the forest environment...” “Forest land” is defined as “a tract of land, including its
flora and fauna, capable of producing Forest resources, not including land in urban areas, land in permanent settlements, and land that has been in long-term use for non-shifting cultivation of crops or livestock in a manner that precluded producing Forest Resources.” These are extraordinarily broad definitions.

5. Exceptions to state ownership of forest resources are provided for in Section 2.1. The first is for “forest resources that have been developed on private or deeded land through artificial regeneration”. On private or deeded land, planted forests can thus be private property but natural forest cannot, and its use and exploitation is regulated. The landowner or occupant has no right to use or exploit the forest resources on his land (Section 11.2), though he can apply for a “private use permit” under Section 5.6. He cannot prevent Government giving the right to cut or harvest the forest on his land to someone else, but he is entitled to “just, prompt, and adequate compensation for any diminution in the value of his property occasioned by the use” (S. 11.3). The expropriation of privately owned natural forests by the Act, which does not appear to have any obvious basis in the Constitution, may well be challenged in the courts. The compensation requirement could help save the provision, but this might depend on whether “diminution in value” is interpreted to include the value of the timber itself, rather than just loss of value of use of the land. In any case, a serious constitutional issue appears to be raised.

6. The other exception to the taking of natural forests is for communal forests. A communal forest is defined by Section 1.3 as “an area set aside by statute or regulation for the sustainable use of Forest Products by local communities and tribes on a non-commercial basis”. Section 9.10(b) (iii) prohibits any person from prospecting, mining, farming, or extracting timber from a communal forest for commercial use. Forest use permits under Section 5.5 are intended to allow charcoal production, local use timber harvesting and harvesting of forest products by forest-dependent communities (subsection (f)), but it does not appear that this applies to Communal Forests. Section 10.1(b)(1) calls for the Forest Authority to issue regulations to “specify rights and responsibilities of communities with respect to ownership and uses of Forest Resources”, but again the relationship to Communal Forests is not clear.

7. While the question of rights of owners of land with natural forest are important, it may be dwarfed by the issue of natural forest on land in Tribal Reserves or, where they have been established, Communal Holdings. The key question here from a property standpoint would appear to be whether communities whose land is governed by customary law and who largely practice shifting cultivation still own and can exploit for commercial purposes the natural forest on their land. Do they even own their land, given the expansiveness of these definitions? Ownership could be preserved if these areas are designated Communal Forests under the law, but this then bars commercial exploitation. But ownership of land, without ownership of the resources that occupy it, means little.

8. The answer under existing law is not clear, but it is of great moment to those rural communities. How it is resolved will cast a clear light upon the intentions of the government toward the historically disadvantaged peoples of the Hinterland. The mandated regulation now being drafted to deal with ownership and use of forest resources by communities will hopefully reaffirm the rights of the communities over the forests they have use and their right to derive not only subsistence but commercial incomes from those forests. The most secure basis for this would be confirmation of the communities’ property rights in their lands and forests. The provisions of the Forestry Law regarding ownership of forest resources, and the breadth of the definition of those resources, should be reconsidered.

Annex C. Detailed Discussion of the Land Tenure Problem in Liberia and how other countries have addressed these issues
Lessons learned from other countries as applied to Liberia

1. This section looks at the current land tenure problems in Liberia with a view to compare these to how other post conflict countries have handled similar problems. The Liberian problems noted here are drawn from the GRC and World Bank concept notes, and the author’s own work in Liberia. The problems are grouped here according to type, and then the experience of other countries is discussed as to the type of problem. Six categories of problems are elaborated upon. Within each category, a brief description of the relevancy of the topic to postwar land tenure is followed by a description of the Liberian problems. This in turn is followed by a discussion of how other countries have approached these problems.

Disputes

2. The role that land dispute resolution plays in postwar reconciliation and economic recovery is significantly important. That such resolution occurs in a timely fashion is critical to the secure re-engagement of agricultural populations in familiar land uses, food security, and agricultural contributions to economic recovery and associated trade opportunities. That it happens in ways that are seen as legitimate and equitable by most claimants is important because disenfranchisement of local populations from land and water rights is a major factor contributing to instability and resource degradation (Unruh 2002; 2003).

3. There are different types of disputes in Liberia, but because operationally, legally, and administratively, the dualistic land tenure system in the country is the overriding context, disputes generally fall into one of three types: 1) disputes between parties who both operate within the formal, statutory tenure system; 2) disputes between parties who both belong to the customary land tenure system, which exists in several variations; and 3) disputes between parties where one of them operates within the formal tenure system and the other belongs to the customary system. There is some overlap between these three types, as when claimants within the customary system seek to have the dispute resolved in the formal system (particularly boundary disputes between communities, between chiefdoms, etc.). As well there are aspects of each tenure system that is utilized by the other. As a result informal documents of various kinds (not deeds or titles) can find their way into the customary system as forms of proof of claim. At the same time informal, customary forms of evidence (the existence of economic trees, tombs, testimony) can be introduced into formal dispute resolution proceedings where titles, deeds, or other formal evidence is problematic. As well the distinction between customary and formal can be used as a form of appeals step, whereby if resolution is not satisfactory within the customary system using customary dispute resolution approaches, the same dispute and claimant can move the dispute to the formal system. Overall however most postwar countries experience an aggravation of the formal – informal dualism in land tenure after the conclusion of the war, and so attending to the large disputing problem is often approached with this dualism in mind.
4. In Liberia disputes within the formal tenure systems involve issues where:

- Documents proving claim are lacking, altered, fraudulent or mistaken, providing for a boundary dispute or ownership dispute with another party,
- Land is sold and resold with no or little reference to original owners or registration procedures,
- The dockets of the statutory courts are crowded with land disputes that include approximately 90% of the civil cases. Cases that should be solely civil are appearing in criminal courts,
- Conflict over private land where claims were made when the owners were absent during the war,
- Disputes where documents are in hand but considerable confusion exists—at time purposefully—over which document prevails,
- Disputes which emerge due to the problematic deeds system in the country, whereby searches cannot / were not made when transactions were made,
- Problems resulting from the wars include a missing cadastre, laws, regulations, land documents for the state and for private citizens, missing deeds,
- Concessions are which hold overlapping claims,
- Disputes over privately held rubber farms, especially when original owners are absent.
- In communities that were destroyed during the conflict, disputes over house plots are frequent.

5. Given the very high volume of disputes within the formal system after the war, as well as confused nature of certain aspects of the tenure situation, other country experiences have found that it is not realistic to pursue an approach in which all cases or even topics that need to be resolved are attended to individually in the courts—in other words, attempting to unravel the history of all transactions in an environment where many documents are missing, or fraudulent or improperly executed. While some cases involving acute (particularly security) problems, and high-profile cases would need particular attention with regard to what went on when, where and with whom, in many cases and on many topics this is not likely to be possible, particularly in a timely manner. Rather, categories of problems, or a typology of similar cases can be derived, and then provided with a legal approach to deal with the entire category. This has the advantage of quickly reducing the overload on courts, as well as the time, money and effort needed to go through each and every case. Mozambique and East Timor have experienced some success with this approach.

6. While the categorization of disputes does take time and effort to carefully delineate the categories, once accomplished the approach can save considerable time, money and effort in the resolution of significant quantities of disputes.

7. In Mozambique some of the categories that were delineated and decided en masse by a new law, decree, or legal decision, included:

1. Legitimacy and legality of specific types of claimants. In Mozambique returning Portuguese colonists and their descendents constituted a large number of claimants in disputes. The Mozambican government determined that claimants and claims made under colonial entitlement, or colonial era law were not valid. The result was to dismiss from court a significant number of cases.
2. Disputes of a type that have come about due to specific circumstances during the war. Lands that were abandoned during the war, whose occupants fled due to the war, were not to be involved in disputes due to the absence of the owners during the war, thus defining the nature of the term ‘abandoned’. Thus additional cases were dismissed.

3. Disputes that had come about due to specific lands having been allocated to a particular use, group of people, or individuals as stipulated in the peace accord. Such disputes were turned into compensation cases and not dispute cases.

4. The Mozambican government also created a class of disputes that came about due to clear ‘bad faith’ transactions. In this case the disputes were not to be allowed in court. Because under the previous Mozambican law, bad faith transactions primarily had to do with those able to obtain title taking land and property from those without title, and not between two titleholders, the new law sought to address this through the occupancy and proof articles (articles 12, 15). Technically, the bad faith aspect of the problem was primarily caused by the title applicant’s failure to adequately provide notice to any current occupants that a title application was pending for a specific area. This was a step that was often skipped when applying for title in Mozambique. The new law does not nullify titles issued improperly on land already occupied by someone else. Instead, titles may be reversed by reason of non-compliance with the plan under which it was granted (MPPB 1997).

8. The Mozambican government also sought to create categories of claims, which could be dealt with. In this instance two objectives coincided—decreasing the volume of disputes, and making land available for restitution. Mozambique passed a new law after its war, which facilitated these objectives, among others. The new law embraces several approaches to make land available for restitution, depending on the category of claim. The first approach involves obligatory resubmission of the large number of pending land applications under which conflicting claims had been made in the past. Article 46 of the current Land Law Regulations, which came into effect on December 8 of 1998, introduced a 12 month period within which all pending applications and pending land claims had to be renewed, subjecting them to the provisions of the new law and regulations. The government also allowed additional periods of three months in 1999 after a very low rate of renewal, and then a further period of four months in 2000. The latter occurred through the delivery of individual letters to approximately 2500 applicants affected by the requirement, together with announcements on the radio (Norfolk and Liversage 2003). Toward the end of this period, the government ‘archived’ all those applications that had been pending as of August 8, 1998 and which had not yet been renewed. However, applicants were still permitted to renew their applications after the cut off date, until July 2001. In August 2001, DINAGECA (Direccao Nacional da Terras, the national department responsible for land rights registration and mapping) cancelled the remaining titles and applications (Norfolk and Liversage 2003). For Zambezi Province alone (the primary agricultural province), 1,234 applications were cancelled, representing over three million hectares (Norfolk and Liversage 2003). This provided significant restitution of land to African communities who had lost land prior to, during, and after the war, often under questionable circumstances (Tanner 2002).

9. Liberia has just accomplished a form of this approach in deciding to cancel and review all forestry concessions as a category. Such categories can be as narrow and as numerous as deemed necessary to capture the important differences between sets of problems, and to deal with certain problems in a short time frame. While not all tenure problems can be dealt with in this manner, it does, again, have the effect of reducing the volume of cases.
10. A separate approach to reducing the burden on the court system due to the large volume of land disputes is to create a separate, if temporary ‘land and property tribunal’ that hears only land and property cases. This would entail with land tribunals in the rural districts as well as the capital. This can be accomplished in a couple of ways, given the problem of a lack of trained personnel. In East Timor the rural adat customary tenure system was empowered to handle land disputes, removing some of the burden off of the courts in rural and some peri-urban areas. Such empowerment brings into the effort local elders who are familiar with customary forms of dispute resolution and land administration (in other words, trained in customary tenure). Such capacity then becomes a free good to the state. This approach serves when customary claimants wish to move their case into the formal system because the customary system is lacking in some way, and necessitates that the formal system recognize and respect decisions made by the adat system.

11. The difficult situation in Liberia whereby documentary evidence is made very problematic due to missing and destroyed, fraudulent, and partial documentation, has the effect of reducing the value of such documents in an evidentiary context. The result is to increase the relative value of other, non-documentary evidence in disputes. Such a scenario is common after a war. Such was the fate of many land documents in Ethiopia when the Derg military regime took power in the mid 1970s, and again a decade and a half later when the Tigrayan-Eritrean forces took over. In another example the decision by the international community to allow the Bosnian Serbs to keep lands seized from Bosnia and Herzegovina meant that virtually no evidence other than ethnicity was legitimate subsequent to the conflict. Property holders who were 'cleansed' from certain areas were no longer able to use what were once legitimate titles or other documents as evidence for possession of property (Holbrooke 1998). In East Timor Prior to the violent departure of the Indonesians in 1999 and the accompanying social upheaval, the only formal state evidence of ownership was an Indonesian land title. The conflict resulted in the destruction of most documents relating to land and property, such that use of titles and other documents as evidence of ownership and access became extremely difficult. Moreover most of the rural land held by customary communities was never titled. Research in East Timor revealed that other evidence (other than titles and accompanying documents) increased in importance in terms of making a claim. What the East Timorese found, was that this other set of evidence was held by more people and a wider variety of people than titles ever were—a potential equity issue. The result was that after the war, both rural state officials, and customary smallholders found general agreement as to what should constitute valid evidence for a claim in a dispute. Thus the East Timorese land policy reform effort was able to use this set of circumstances (decrease in value of documentary evidence, increase in value of other, informal evidence, and agreement between the state and customary smallholders as to what constituted legitimate evidence) to work toward greater harmonization between the formal and customary land tenure systems, This presented an opportunity for the East Timorese land law reform to utilize such compatibility in lawmaking (Unruh 2006).

12. While Liberia has not experienced the wholesale destruction of land and property documentation as East Timor has, the widespread destruction, together with fraudulent cases, confusion over what land has been transferred to whom via the deed system, results in a similar reduction in the value of deeds as evidence, and the relative increase in the value of other, including customary and informal, evidence. For Liberia this includes evidence not usually allowable into land and property cases—testimonial evidence.

13. Angola however provides a different scenario. The lack of documentation after the war allowed for utilization and promotion of certain, specific pieces of historical evidence that was able to gain sufficient political support for a small elite sector of the population. With a similar
lack of commonly held documentation attesting to lands after the war, a colonial era map has emerged as a particularly powerful piece of evidence attesting to the colonial existence of large landholdings in the country’s central highlands—the agricultural breadbasket of the country. Arguments are then made by those who supposedly were provided with the concessions for these lands at independence and then transferred them (or not) to others. Because large land interests stand to benefit from this piece of evidence, it has considerable backing, and has been used numerous times in claims.

14. **Land disputes between the formal and customary systems**
In Liberia these include problems between concessions and other commercial holdings on one hand, and the customary sector on the other, with the latter often disputing the process under which concessions were made, and land was (and is) transferred. This takes another form as squatters in urban and peri-urban areas occupy land otherwise owned formally.

15. Angola has similar problems after its long war, with these set to become worse. In Angola there is an explicit prohibition in the new land law to addressing issues of restitution for large-scale (commercial) and small-scale (peasant, including ex-combatant) dislocatees during the war. There is significant retention by the new formal law of the ability to nationalize, confiscate, expropriate, and intervene in lands held customarily by rural communities attempting recovery of agricultural lands after the war in order to achieve near term food security (GoA 2004). Thus post-war Angola presents a case whereby greater divergence between customary and formal tenure systems after the war is likely, and hence is more a case of what to avoid.

16. Mozambique on the other hand has had significant success in dealing with the disputes between formal and customary tenure systems, and constitutes one of the better examples. With the requirement (in the postwar 1997 law) that all commercial rights to lands were to be re-applied for, renewed applications first needed to pass though a consultation phase with local communities or individuals that may also be occupying the land in question. As a result, two options emerged in this process. The first is potential loss of largeholder rights due to smallholder occupation of the land in question and the strength of ‘occupation rights’ provided for in the new law. In this case, if new or pre-existing formal rights holders find in their application or reapplication process that the area is occupied and claimed by smallholder communities, then transfer of rights to the smallholder communities can occur (article 13; Tanner 2002). The second option is the more innovative and desired option from the point of view of the law, and is more likely to satisfy the government’s desire to attract and retain foreign investment. This is the option that seeks to encourage investors (foreign and national) to negotiate on their own with established local communities by: 1) empowerment of local communities via the rights provided by occupation (new law), and the community participation requirement in determining what areas are really ‘open’ or not; and, 2) enabling a significant role for local communities in terms of participation in natural resource management, conflict resolution, and in the process of titling and setting the limits of new areas requested by private investors. This negotiation is necessary for those attempting to pursue pre-independence claims and for those who wish to pursue restitution under the current law (Tanner 2002; Hanlon 2002; Norfolk and Liversage 2003).

17. The latter option also encourages negotiation by allowing a formal commercial rights system to co-exist with smallholder community rights of occupation, in what is called the ‘open border model’ (Tanner 2002; Norfolk and Liversage 2003; Hanlon 2002; MPPB 1997). With this option, if an old title or reapplication under the new law finds that smallholder Mozambicans occupy the land in question, then this does not necessarily compel loss of rights on the part of the investor (foreign or national). This is especially important given the notion in Mozambique that there is no land in the country that is unclaimed by a local community in some form (De Wit
as in Sierra Leone’s chiefdoms. The option includes the possibility of delimiting smallholder land under occupation either before or at the same time a set of commercial rights are granted to an investor. This is the case for new applications or re-applications for rights holders under a previous law (Norfolk and Liversage 2003; Tanner 2002). The ‘open border model’ refers to the legal recognition of the boundary around a specific community and the rights of the smallholder community within it, together with the ‘open’ character of the boundary, which encourages investors, particularly foreign investors, to negotiate an arrangement regarding the exact nature of use rights by the investor within such a boundary (Tanner 2002). In other words, although the land within a community boundary (often quite large) is both occupied and farmed by the local community, it could also be exploited by the investor. Under this approach there is a partial transfer of rights, particularly from largeholders reapplying for rights (who would no longer have exclusive rights), to smallholder occupants with whom a negotiated arrangement is potentially achieved.

18. In this regard there was the expectation that many dispute cases between large and smallholders would ‘resolve themselves’ (in other words, become ‘self managed’) through either non-reapplication for formal title (lands returned to smallholder communities) or through a negotiated arrangement with reapplication. One important situation that emerges under this arrangement involves largeholders who must re-apply under the new law, now needing to negotiate with smallholder occupants that may not have been present (due to previous colonial, wartime, or government policy dislocation) when the application or claim was first lodged under previous laws. However, given that such smallholder occupation, or re-occupation of lands occurs with restitution as its purpose, such a negotiated encounter is what the new law aims at as a means of achieving both dispute resolution and investment goals. The new law in this sense gives vastly expanded rights of proof to claim lands to peasants (Hanchinamani 2003).

19. **Land disputes within the customary system:**

In Liberia as elsewhere many cases of within-customary system land disputes are resolved by local, customary authorities rising to the occasion and facilitating resolution after a conflict. Also like elsewhere there are cases, or larger problems that reveal that such ability has broken down. In Liberia appears to be the case as the ethnic dimension has extended from tension between the settlers and indigenous ethnic groups to tensions between Mandingo and Mano/Gio (in Nimba) or Loma (in Lofa). These latter tensions are the focus as refugees return to Liberia. In Monrovia and other areas, land disputes focus on land that was ‘abandoned’ as owners fled the country, allowing others to occupy the land. The original owners are now returning to claim their properties. This case however also embodies the issue of returnees and those that stayed seeking to use both customary and formal tenure systems in their pursuit of claims. As well in Liberia boundary disputes between rural communities are being brought to the Ministry of Internal Affairs almost daily.

20. **Zimbabwe,** earlier in its history experienced considerable success in managing customary land disputes after its independence war. In this case ‘land boards’ were instituted that comprised leaders from different segments of the population, who were responsible for overseeing disputes, allocations, use, etc. Their decisions were then made legal by formal law. The value in this arrangement is that a single land board can include representatives from different tribes and other groups, and so can handle issues that are larger that what occur internal to specific groups only.

21. In both Sierra Leone and India, ‘customary law officers’ can offer their official state position in ways that seek to use a hybrid of means (formal, customary, ad hoc) to achieve some form of resolution to customary disputes (Unruh 2006; Bavnick 1998, respectively for the two cases). Such positions offer considerable flexibility in possible resolution outcomes, and can
enjoy an advantage by being a ‘third party’ able to negotiate freely. This might be a possible resolution to the Liberian cases where boundary disputes between rural communities are a problem. In such cases formal adjudication frequently do not hold, as the ‘loser’ in any decision has the option of not abiding by the decision with the logic that it is a customary problem and formal law should not interfere. Such border cases can be particularly problematic for formal law to attempt to resolve. In East Timor such border disputes often flared up, and then calmed down. But they became most acute when formal law attempted to resolve them permanently. This was because the ongoing nature of the dispute (sometimes becoming aggravated, at other times becoming a low level issue) had utility to both sides for a variety of political reasons. And so there were reasons to keep the dispute alive and instead of resolving it, opting to ‘manage’ it. This is because for the customary communities in East Timor as elsewhere, group-on-group political conflicts can translate into, or become manifest as land disputes, or have a land dispute dimension through which the larger political problem is dealt with—such as the issue between the returning Mandingos and Mano/Gio/Loma groups in Liberia. In East Timor, involving the state in resolution (with its implications of finality), or threatening to, served to push the groups with boundary problems to resolve or manage them informally but not permanently (purposefully not permanently) – hence the management of the larger political issue as well. With such management the land boundary part of the problem still existed, but as a low level, neglected (until needed again) dispute.

**Confusion and Ambiguity**

22. One of the larger problems in Liberia is the massive confusion that exists on a range of administration, boundary, claim and ownership issues. The link between this kind of confusion and wide-ranging tenure insecurity is explicit (Bruce et al 1994). Some of the more important issues regarding this confusion in land tenure are noted here.

- Rights of access to and use of natural resources, including land, minerals, forests, and water, are shrouded in a state of tenure insecurity, vague and ambiguous legislation, conflicting and competing tenure arrangements and constant and persistent clashes of customary and statutory rights over the management, authority and control of these resources.

- The legal mechanisms for acquiring land deeds, especially in areas under customary tenure, are a confused and contentious issue.

- The legal distinction between government land, public land, and aborigine or tribal land deeds lacks clarity.

- The delineation of administrative units in the counties can be described as chaotic. Today there is often overlap and jurisdictional ambiguity between the state-supported customary units of clan and paramount chieftaincies with the townships and cities subject to the statutory system. This creates the question, of who is the authority on land matters?

- Attempts to survey or re-survey land are increasingly being resisted by local residents, sometimes resulting in violence.

- There is confusion regarding the overall status and application of polices and laws regarding land and property. Those that exist are often unclear, lack effective implementing regulations, and are often very dated and so do not adequately serve
the present Liberian reality. As well the existence of a good deal of received law from England via the US can be unsuited to the present Liberian reality and lead to further confusion. The physical absence of these laws complicates this problem.

- There is a good deal of ambiguity about what rights are and are not included in a concession. Particularly important in this regard is the right to exclude local communities.

- Fraudulent and ambiguous land transfers have created a great deal of ambiguity regarding who has rights to what lands, and how defensible these might be. Some of the cases in this category are explosive.

- Despite the new inheritance law, there continues to be a great deal of confusion around issues of inheritance—between siblings, between children, and between families—this is an equity land tenure issue.

- Adverse possession is a problem, whereby if land is occupied in an uncontested manner for 20 years, the occupant gains ownership. It is currently unknown if the 14 years of war are to be included in the 20 year period needed. This is relevant to squatters, their eviction, what constitutes 'uncontested' when the owners fled the war and the court system was crippled.

23. These and other issues in Liberia highlight a couple of issues. First, postwar land tenure scenarios are extremely messy and chaotic, and while it can be tempting to attempt to untangle and resolve with clarity all outstanding issues and cases as an overall approach to 'the chaos'—particularly as the notion of, and application of, 'law' tends toward defined, deterministic outcomes, the reality is that the chaos is best 'managed' in various ways as a large, first step. This was the logic behind Mozambique’s ‘category’ approach noted above, and East Timor’s intent at providing a number of smaller land and property laws (instead of a single, all encompassing law) that dealt with specific issues.

24. As well, East Timor’s further elaborated on this approach by putting different aspects of the confusion problem in different levels of lawmaking in addition to different laws. Realizing that a good deal of confusion surrounds issues that can be dealt with in a specific legal ruling, the construct of ‘decrees’ was used as subservient to a law, but more precise than law. Something more akin to a ‘legal ruling’ which would benefit Liberia considerable on a number of topics. Such a ruling can provide clarity to specific issues, and when the ruling is then effectively disseminated, can have the effect of pre-empting the occurrence of some dispute cases and resolving others outside of court. From the list above of Liberia’s issues causing confusion, the following would likely benefit from such specific legal rulings, similar to East Timor’s ‘decrees.’

1. The legal distinction between government land, public land, and aborigine or tribal land deeds;

2. What rights are and are not included in a concession;

3. The issue of adverse possession, are the war years to be included?

4. A decision regarding what constitutes a ‘bad faith’ versus ‘good faith’ land transfer;
5. Which laws are and are not still to be applied in Liberia—including old laws, ‘received laws;’

6. The legal steps for acquiring land deeds;

7. Who (which position in government, customary society) has authority over land matters, and who does not;

8. A legal decision about how to handle specific problems, in other words what criteria will be used for certain issues.

25. Such approaches however need to be implemented with some caution. Sierra Leone found that there was great resistance to increased clarity by surveying boundaries and clearly defining them. As in Liberia, this resistance at times was violent. This reveals that for some, ambiguity is a positive feature of the tenure landscape. It also, for Sierra Leone, revealed that in the customary sector, boundaries at times are not the discrete, clearly demarcated features that they are in Western-based land law. Often they are zones, which can vary in use, rights, and precise location over time, and for different members of different groups. As well, some of the ‘rulings’ or decrees are time specific. For example a decision regarding who has the authority to handle land matters, would need to have a start date and not operate retroactively, which would have the effect of invalidating many land and property decisions, adding to the confusion problem.

26. This ‘legal ruling’ or ‘decree’ approach can also be carried to extremes. In Ethiopia the rework of subnational boundaries into ‘ethnic regions’ and the rulings by the state to have traditional authorities of certain ethnic groups (and not others) be authorities on land and property matters (along with a variety of other issues) has led to clearer notions of authority, but also considerable animosity by groups of different ethnicities.

**Legal Pluralism**

27. The existence, emergence, and questioning of different approaches to land tenure after conflicts in a ‘legal pluralism’ format is one of the more pervasive features of postwar land tenure. Such legalities, or ‘local rule of law systems’ (Kamphius 2005; Plunkett 2005) encompassing formal, customary, ad hoc, and smaller emergent normative orders can cause significant problems, as in Liberia, but as well present certain opportunities. The problems in Liberia that are connected to a legally pluralistic tenure environment include:

1. The educated rural people had become aware of their exclusion and marginalization in the interface between the customary and statutory systems. Such increased awareness if common after a war. In Guatemala returning refugees were very well versed in a variety of rights issues, including land rights, due to their residence in refugee camps run by the international community. When juxtaposed with the tenure ideas of those who stayed behind however problematic pluralism in how to go about tenure issues result.

2. During the years of conflict, multiple new administrative units with poorly defined boundaries were created by different legislative bodies. Today there is often overlap and jurisdictional ambiguity between the state-supported customary units of clan and paramount chieftaincies with the townships and cities subject to the statutory system.
3. Questions are arising regarding the authority of certain officials in land matters, e.g. do they have the authority to sell land or otherwise engage in or approve land transfer? In communities which rely upon usufruct rights, people (especially youth) are questioning the process by which chiefs were able to authorize the deeding of the community's land, either to "strangers" or local elites. Some are suggesting that this system is in fact creating a feudal structure in rural Liberia in which the deeded owner can exclude the local population from any use of the land.

28. With a problematic state, and inadequate legislation to resolve important land and property rights dilemmas, the utility of purposefully engaging pluralism in a peace process deserves examination. In this context the literature describing 'forum shopping' with regard to land tenure is significant, and is one of the more valuable applied aspects from the field of legal pluralism. A number of authors note the existence of situations where there are opportunities to choose between fora belonging to different normative orders (Benda-Beckmann 1981). While legal pluralism in land can present significant problems, pluralism can potentially offer certain possibilities with regard to choosing which normative orders and institutions an individual or group believes offers the most advantageous arena in which to pursue important property rights issues. The effect of such forum shopping for land tenure institutions is to create a situation where there can be considerable 'room for maneuver' or negotiability within the political-legal sphere (Lund 1996). This creates the possibility for less violence in a peace process if claimants feel that there are not rigid, uncompromising legal structures of questionable legitimacy confining their options (Berry 1993). After a war this approach can be useful for a time, but then begins to cause problems unless converted from a horizontal arrangement of equal fora from which to choose, to an 'appeals' arrangement whereby first one fora is attempted, and then if the resolution is unacceptable to one of the parties, an appeal can be made to another fora. This 'realignment' from the horizontal to the vertical can sometimes happen on its own, as it did in Somali Region of Ethiopia subsequent to the long war with the Derg that ended in the early 1990s.

29. State recognition of a legally pluralistic land and property situation in a peace process is especially important to a weakened state of questionable legitimacy emerging from civil conflict; as such a state will need the customs and controls within local communities for administration of land. But Griffiths (1986) notes that recognition by the state of legal pluralism adds a "formidable layer" of complexity on the state legal system, with the resulting situation generally regarded as defective and messy. It can be argued, however, that postwar scenarios are already considerably messy, and that the priority should be the peace process.

30. In this regard Ethiopia will be an interesting place to watch. After several decades of civil conflict, significant legal pluralism exists and has been formally recognized in a number of important domains. Ethiopia's constitutional article 78 (5) accords full recognition to customary and religious courts of law and their legal guarantee is ensured. In Ethiopia significant room appears to be allowed for litigants to 'forum shop' because such customary and religious courts only hear cases where both contesting parties consent to the forum (Unruh 2005). In El Salvador's Chapultepec peace agreement, as in the Mozambican peace accord and subsequent legislation regarding land, state recognition of pluralism have contributed much to the success of the peace processes in these two countries, particularly considering the large role that land issues have played in these conflicts. In both cases such recognition was a primary vehicle to facilitate the re-integration of much of the population into productive activities (de Soto and del Castillo 1995; Unruh 2006).

31. After the war in Sierra Leone there was considerable separation between the two land tenure systems of the country (formal and customary), and as well between the many forms of
customary tenure as practiced in the 149 chiefdoms in the country. Such pluralism constituted a serious problem toward harmonizing tenure for the country after the war, and constituted a significant obstacle to commercial investment, rule of law, equity, gender and 'stranger' discrimination, and postwar reintegration. The Law Reform Commission (whose purpose is to find approaches to modernizing laws dealing with the commercial use of land, particularly in the provinces where customary law predominates, with the goal of attracting foreign and domestic investment), saw as the primary problem of such pluralism, the low level of contact and communication between chiefdom leaders over time, coupled with the non-publication of customary and formal land tenure decisions, also over time. The result, had such communication and publication occurred, according to the Law Reform Commission, would have been to share experiences, and allow different chiefdoms to learn about and therefore use, the different reasonings and logic behind the tenurial decisions made in the various chiefdoms and with the state. The overall effect would have been an eventual harmonization of important aspects of land tenure over time between chiefdoms.

32. Formal recognition of multiple orders with regard to land and property does not mean that such a situation would remain static. Recovery from armed conflict is a time of significant social change. Such change can see forms of legal pluralism evolve significantly during recovery, with such evolution a fundamental aspect of legal pluralism generally. Several studies articulate the progressive expansion or infiltration of state law into non-state normative orders over time, so that in many cases these can come to resemble state law. And the reverse can also be the case, with state law borrowing concepts and symbols from other normative orders (Silliman 1985; Hayden 1984).

33. However, this change in normative orders through interaction is not always slow and incremental. In work relevant to post conflict land tenure situations, Lund (1996) argues that when negotiation is a central feature of land tenure conflicts, "open moments" become important in which intense periods of social rearrangement can occur. An open moment is an opportunity where the room for "situation adjustment is great and hence where the capacity to exploit it is crucial for the actors". In war and postwar situations, legitimacy, authority, and rules are much more fluid and open than perhaps at any other time. Thus an important feature in postwar situations is the rapidity with which social relationships change to reflect the rapid change in society. Open moments are thus very likely to occur in peace process situations when much about land tenure, legitimacy, rules, and authority are being challenged by the forces associated with recovery.

34. Griffiths (1985) notes the existence of the direction of a path of interaction in legal pluralism toward eventual unification with state law, which acts to put pressure on social reality toward this eventual goal. Griffiths thus observes the relationship between legal pluralism and nation building as one in which legal pluralism is something that is often allowed to recalcitrant parts of society on the path toward and in the process of nation building.

Authority

35. Issues regarding authority are manifest in a number of ways regarding land tenure in Liberia, some of which have been elaborated upon above. Two remaining, yet important issues about authority in land tenure involve, a) one of the causes of the war, where generational conflict was central as young people saw themselves excluded and marginalized as the elders controlled access to land; and the role of authority in the approach used to formulate new laws in order to get 'buy in' from the populace at large. The former involves relationships of perceived power,
and the latter involves the degree to which a consultative approach to new land and property laws will be carried out and be effective.

36. **Generational Authority.** A country with a generational aspect of the war in agrarian relations most similar to Liberia is neighboring Sierra Leone. Here considerable effort has been advanced (primarily by UNAMSIL, but also by other donors and NGOs) toward reworking power relations among the youth, particularly disenfranchised youth, and the elders and chiefs of their respective home areas. The postwar role of the chiefs is moderated by the broader sensitization efforts of the UNAMSIL driven peace process, which together with the disruptive effects of the war has enabled certain previously marginalized and under-represented sectors of rural society—such as youth, but also women, and strangers—now have a much greater voice, and have their demands considered. The many radio stations and radio programs operating in the country appear to be of significant importance and influence in the rural areas, particularly in terms of facilitating awareness regarding a number of important issues. Broadcasts discussing not only land rights, new laws, and laws being formulated, but also people’s rights, human rights, roles and responsibilities of chiefs and government at different levels, elections, and voting, as well as call-in programs are very popular. The paramount chiefs in Sierra Leone have made clear that the voice of previously secondary groups is much stronger subsequent to the war, and that they are now obliged to pay attention to these voices. Thus the change in social relations that has occurred with regard to such groups and the power structure (common after a war), and the large presence of the international community in the country, together with the information campaign, provide the recognition that previously marginalized groups now have possible access to recourse outside the district and/or chiefdom. Thus while the position of the paramount chiefs subsequent to the war has been strengthened, so has the position of certain previously secondary groups, leading to the development of a different form of governance in the chiefdoms.

37. The changes in rural social relations in Sierra Leone are significant because it has influenced the access, value, and availability of the land. One effect of this change is that agricultural labor is now much more costly, and much less likely to operate within any obligatory framework. This makes fine-related, communal, and wage labor much harder and more costly to obtain, with repercussions on the spatial extent of areas that can be cultivated. The change has also provided the opportunity for marginalized groups to exercise rights regarding land that might not have occurred otherwise—such as land access for youth and women’s groups. At the same time however this greater voice for previously secondary groups has, in some chiefdoms, had the effect of an increased reluctance to allow ‘strangers’ onto land over the long-term, or in some cases at all, for fear that they will now have an ability to claim such lands fraudulently. Renner-Thomas (2004) describes the “new phenomenon of land grabbing” in Sierra Leone.

**Authority and the consultative approach to postwar land legislation**

38. There are various arguments for and against a process of consultation by the state authorities in postwar land tenure efforts. Those against include: 1) it is time consuming, 2) the national population is not educated enough to be able to have knowledgeable input, 3) societal divisiveness can become aggravated, and 4) a national debate about certain topics can grow out of the control of the government, with this becoming a problem if the government is sensitive to specific topics. Arguments for conducting a consultative process in the formulation of postwar land laws and reform include, 1) in order for the populace to ‘buy into’ the new laws, they must provide input, 2) innovative ideas for solutions to problems, and nuanced understandings of existing problems and situations can come from a population who experiences the problems first hand, 3) an airing of different views regarding land rights, problems, and solutions can take the
place of a violent expression of such views, 4) national consultation can serve to fill the time gap between researching the nature of the need for specific laws, and the drafting and passage of such laws, thereby allowing the population to see that the government is pursuing land issues—as opposed to the populace feeling that the government is doing little on land issues and therefore feel compelled to take matters into their own hands.

39. The last item deserves particular mention. There is a significant time issue with regard to land tenure after conflicts, and Liberia is an important example of this. Given that there is a legal, capacity, financial, administrative, and equipment vacuum after conflicts, during which individuals and groups, must make decisions regarding various aspects of land tenure on their own, it is important to influence aspects of this vacuum so that events and processes do not develop into severe problems. Thus while it takes time to derive new laws and policies—particularly given the poor record that quickly importing legal constructs from elsewhere has—filling the period between the end of the war and when such laws and policies come on line is important. In this regard a government needs to be seen as active in the land issue by the population at large. This can be accomplished in a variety of ways, including a consultative process, and by holding conferences and workshops for stakeholders at different levels and in different locations in the country (Unruh 2003; 2005). In an example from Rwanda, approximately 2.3 million refugees entered the country between 1994 and 1997. And the formal re-establishing land tenure system was slow to handle the influx and did not make overt, high profile measures to move forward with land issues. As a result, the direction that the refugee resettlement took in some areas was little influenced by the state, and included violent property takeovers, and other forms of self-settlement in lands and properties that were abandoned, or held by the remaining Hutu occupants (Huggins 2004). In Liberia the timing of work on land reform needs to be coordinated with other aspects of national recovery, including the phased withdrawal of UNMIL. It is important that the public knows that work is being undertaken and that it will take some time for results, solutions, and reforms to emerge. National and regional workshops can serve the function of making the public aware that their concerns are taken seriously and that serious, balanced work is underway.

40. Four countries serve here can serve as in a ‘lessons learned’ capacity for this issue. In Mozambique a three year process involving large-scale consultation took place, including three national land conferences at which a large variety of stakeholders were involved. While the resulting Mozambican land law that came about is regarded as largely positive for tenure security in postwar recovery and investment, the process was long. As well there were various attempts by the state to control the debate on land issues, with NGOs and donors having a large role in the forcing the opposite. Thus where there are significant natural resources and agricultural export opportunities in a country (as there are in Mozambique and Liberia) the maneuverings among different groups on the sidelines to the consultative process are intense, with sometimes unpredictable outcomes, and foreign interests become involved. Some of the more contentious issues included, 1) was land to remain the ultimate property of the state, or was private property to be invoked, 2) were former Portuguese colonists to be allowed restitution of lands, 3) how large of a role should foreign donors, embassies, and other interests have in attempting to influence the consultative process and the debate on specific land issues, and 4) was the country to be zoned into various areas: commercial, native, state, private.

41. East Timor took a different approach. Unlike Mozambique which has one new land law which seeks to cover all topics (hence the time the consultative process took), East Timor has
pursued an approach whereby a larger number of laws covered specific topics: Land dispute mediation, Land/title registration, Land & title restitution - formal & traditional rights, Compliance with East Timorese constitution by foreign owners, State property administration, and the Cadastre system law. In this approach, the consultative process was approached in a much more specific way, attending to the specific law (and specific topics) that was under consideration at the time. This is quicker, but the process then needs to be repeated each time a new law comes up for consideration. However with repeated consultative processes, each one is easier and more streamlined. Also problematic in this approach are the different interests connected to specific topics and therefore laws, who then attempt to influence the consultative process in some way. In East Timor the authorities in the Ministry of Justice were not overly interested in a sustained consultative process that would air all views; their view was more one of expediency. Donor interests played a role here and in the end there was an effective consultative effort.

42. Sierra Leone pursued a similar approach of having several laws instead of only one, these include: The commercial use of lands act, The legal practitioners act, National lands policy, Lands commission act, Local government act, and Restitution – the Chaytor Committee. While the topics covered by the laws are different than in East Timor, it does reflect a division of the broad, chaotic nature of postwar land tenure into more easily managed components, particularly in terms of consultation.

43. For both East Timor and Sierra Leone, the ultimate time period when all postwar land and property laws have been passed and implemented may be just a long, or longer as in the Mozambique case. However the advantage is that certain problematic topics that need quicker attention (restitution for East Timor, commercial use of land for Sierra Leone) can be dealt with first, thereby attending to the most problematic societal, land-related issues quickly.

44. Angola again provides a negative example where very little consultation took place with the populace. What did occur (largely on its own or with the assistance of NGOs) resulted in very little input into the actual land law. The result is ongoing expropriation of lands after the war, no restitution of lands, opportunism, and a governance approach overall seen as heavy-handed. Some NGOs were able to provide, with foreign assistance, field research conclusions as input into the overall legislative process. While a few of these were vocal, and attempted to garner attention to the issues they felt needed outside input on, ultimately the influence was weak. It remains to be seen if Angola will experience problems in the near future regarding the land tenure in the country.
Legal and Administration Systems

45. The issues in Liberia that constitute problems involving legal and administrative systems fall into two categories; training, and administration and system mechanisms.

46. Training
There is a wide variety of training needs in Liberia regarding land and property rights. Specifically there is a lack of trained personnel to manage the overall system and to in particular to adjudicate disputes. Unauthorized surveyors are taking advantage of the fluid situation. There is little information on the current adjudication of land disputes by elders, chiefs and commissioners within the state-supported customary system.

47. Sierra Leone, East Timor, and Angola, present examples of how to jump-start the acquisition of trained personnel for the many needs of a recovering land tenure operational structure. In all three cases an initial approach was to try to find already experienced personnel who had worked in the land and property rights system(s) (at the different levels, in different locations throughout the country). In these cases there were a number of individuals who held positions in land and property rights units in previous (pre-war, wartime) governments who had training and/or knowledge of how these units operated, and so at a minimum were familiar with operations, problems, and administration of such units.

48. While the above is a very worthwhile approach contributing to the shortage of trained personnel in the near-term, there exist a couple of problems. One problem is that at times these personnel are attached to different sides in the conflict and so there are inter-personal professional issues to overcome. Another is how to locate such individuals, and a third is that the longer a conflict has lasted, the less available such individuals are. East Timor provides the best example of the utility of this approach to overcome these problems. With the departure of the Indonesian Civil Service subsequent to the referendum and ensuing violence, East Timorese workers in the Land and Property Unit were easily located at the site of the burned down land and property archives office (one of the first buildings destroyed, along with most of the records in the violence). Subsequent to the end of a conflict, particularly a short-lived conflict, workers often show up at their former places of employment to see what remains of, their jobs, buildings, office infrastructure, and personal or professional possessions and documents. UNMISET personnel in East Timor located a number of employees of the land and property unit who spent their days loitering around the burned out building, and hired them in the new Land and Property Unit. But because the Indonesian Civil Servants occupied the upper positions in the Unit, those East Timorese who were available were largely the technical and not the administrative staff. Nonetheless they were very aware how the operations of the Unit took place, and several were able to be promoted into administrative positions. The advantage of the East Timor case was that the conflict was short compared to Angola’s, Sierra Leone’s, or Liberia’s. However the location of former (prior to the war) land and property administrative buildings are still valuable in that neighbors in the vicinity often know who worked in the buildings and potentially their current whereabouts.

49. Apart from the location of already trained personnel, the training of new personnel can involve a series of activities. In Sierra Leone, and Mozambique former employees from ministries, universities, and NGOs were located and attracted to training efforts (usually funded by donors) designed for individuals who already possess significant administrative and/or technical skills. Such training is then of shorter duration than that associated with unskilled individuals.
50. The third type of training resides largely in the educational system of the country and is the most time consuming—due both to the often crippled status of the education system after a war, and the length of time it takes to get a degree in an field appropriate to land and property administration and techniques. As well some aspects of this training require considerable physical assets (such as law books, surveying equipment) that are likely to have been looted or destroyed during the war, and can be costly to replace. In order to provide a short-cut to producing the needed trained personnel to work in land and property, Mozambique, East Timor, Sierra Leone, have all created or recreated specific training and research units within universities just after the war in order to specifically address both research issues pertinent to land policy reform, survey, registration, and dispute resolution, as well as the needed training. In the case of Mozambique and East Timor, USAID donor efforts worked with the University of Eduardo Mondelane in Mozambique and the University of Timor Leste (UNTL) to establish social science research centers, with specific, solid links to the land tenure policy making and technical activities in government—in Mozambique’s case with the Interministerial Land Commission and the Ministry of Agriculture, and in East Timor the Ministry of Justice.

51. Two objectives were accomplished with the establishment of such centers at the universities. First, the needed research (legislative, field) on topics of importance to land policy reform is not a one-time need or effort that ends once the near-term needs of legislation and technical (survey, registry, etc) activity have been met, and donor funding has gone elsewhere. Because land tenure for any country evolves over time, there is an ongoing need for information and data gathering regarding a wide range of issues. This is particularly the case in the years after a war (approximately a decade) when socio-political, agricultural, investment, reintegration, restitution, and urban residential issues change often and rapidly. The second objective is the training issue. Both faculty and students from different disciplines can become involved in the work of the center and hence train and receive training. An important need in land policy reform after a war is the fieldwork in different parts of the country, needed to inform the legislative process. Locating literate personnel for such an activity is difficult—particularly when there are different languages involved in different parts of a country. The use of university students for this activity is an advantage, because the pool of experience, areas of origin within a country, and languages is large.

52. In such a context the link with the government’s legislative process is important and is facilitated in both East Timor and Mozambique by a specific donor who took the lead on the land tenure effort. This link was accomplished in-part by locating the offices of the donor-funded land policy reform work in at the newly created research unit at the university, together with a purposeful and strong link made between the legislative process and the research unit, as suggested and supported by the donor.

53. In Angola there was less interest on the part of donors in the postwar land tenure efforts, and so less of a connection between a research unit at an Angolan university. Instead this function, both training and ‘research to inform policy,’ took place within the NGO community. But because there was not a formal, overt link with the Angolan legislative process and institutions, there was less input, and so now a great disconnect between the new Angolan land law and Angolan reality exists.

54. In Zanzibar, subsequent to the violence that has marred several recent elections, an independent research center, the Indian Ocean Research Institute (ZIORI), located next to the national university, and funded by northern European donors, is emerging with an ability to train students and carry out relevant research to policy-making.
55. The activities of such centers, if established quickly enough, can also serve to attend to the timing problem, noted above whereby the general population, particularly in problematic areas of the country, need to see movement on the land issues, so as to gain confidence in a new government and not take land matters into their own hands. The presence of a research activity in different areas of a postwar country does not go unnoticed by the local population and can serve to be another indication (apart from the consultations) that the government is underway with important land tenure issues, and is interested in learning about local problems. In the latter regard such research can be seen as a form of consultation as well, since it seeks to gain input as to the local reality. In Liberia two such important timely issues (but there are others) in need of research are: 1) the status of large numbers of refugees returning to Liberia, particularly from Guinea and Sierra Leone; and 2) the issue of ex-combatants—some cannot go back to home areas, others do not wish to, and others are taking land. The nature of this problem and what to do about it are time sensitive, and would be well served by informed action.

56. Administration and Mechanics of System
The needed linkage between understanding what the tenurial reality is among the population and the legislative process and institutions has been covered above in ‘Training.’ A separate administrative problem in Liberia is that the administrative and judicial systems required to handle land matters are underdeveloped, nonfunctional, or overstretched. Apart from the needed land tribunal for judicial issues noted above, administratively other components of postwar tenure often need to be derived. Some countries have dealt with the need to derive new administrative units, purposes, and procedures, by seeing where within the current land and property structure (from policy making to cadastres and registry) the needed administrative components should be located, and then either moving it there (if it exists elsewhere in the current system) from a different location where it is less effective, or deriving it for the first time. The implementation of a registry for example in a country that has not previously had one (Liberia), will need to undergo this exercise. As well countries which have had no previous institution in which to hear dispute cases where one party operates under the statutory system and the other under the customary system (also Liberia), would need to undergo this exercise.

57. In East Timor this effort was done by relocating specific functions from different Ministries into the Land and Property Unit under the Ministry of Justice, where focused donor and UN supported projects could best support them. In Mozambique and Sierra Leone some of the needed institutions and administrative purpose were in place, but not the needed physical infrastructure or sufficiently trained personnel—surveying, vehicles, materials and training for registry procedures, etc.). Such efforts are cost intensive, and are often borne by donors. However there is a caution here which Sierra Leone has experienced. This is, that the provisions by donors to a recovering land and property system must match or nearly so, the expected capacity (financial, administrative) of the receiving country to sustain what is provided. Sierra Leone was in need of much after its war, and requested a long list of needed institutions, training, administrative procedures, infrastructure, and tenure system components that were more appropriate to a developed country, and that Sierra Leone would be unable to sustain itself subsequent to donor support.

58. An additional tenure problem after a war is how to rework a clearly non-functional or inappropriate tenure system that has accumulated a great deal of problems both previous to and during the conflict, and continues to do so subsequent to the conflict. While a needed corrective, or new system (such as a registry instead of a deed system) can be proposed that would more closely suit the needs of the country, often a misconception is how to go about applying it. What is needed is to separate what the country should have (future), with the current problematic cases (backlog of individual, group, state, commercial disputes, confusion, etc). Here Mozambique
serves as the best example, whereby the new system had specific dates in time after which it came into effect for new applications, but already existing cases were dealt with differently. But Liberia is perhaps its own best example of what to avoid. Prior to the war a USAID/World Bank project sought to move toward a registry system, but the project viewed the current state of affairs and the needed future tenure system as one issue, and so proceeded registering titles only upon adjudication of current disputes. The result was that progress was extremely slow—much slower in fact than the growing pool of problem cases. The result was that the adjudication / registration effort would never have caught up with the growing size of the overall problem. The approach used by Mozambique, was again to initiate a set date, after which the new system is applied for all new title applications. This way the size of the chaos problem does not continue to grow. Separate efforts can then attend to the pool of pre-existing problem cases—adjudication leading to registration, re-application of certain categories of claim under the new procedures, legal rulings leading to registration, mediation leading to registration, political decisions and resolutions leading to registration (for very high profile cases involving specific powerful interests)—all of which Mozambique pursued, with considerable success.

Commercial (foreign, domestic) Investment and the Land Law

59. The constitution only allows Liberians to own property. However a variety of countries in Africa have similar arrangements and they are not constraints on investment. What is needed are innovative forms of conveyance other than private ownership. While the assumption for many international investment interests is that only with private property will the necessary tenure security be conferred, in the developing world often the reverse is the case. Private property—even when enshrined in formal law—can be among the most difficult of arrangements to securely hold. Leasing however provides considerable promise, and is clearly preferred by many countries and communities in Africa. In Mozambique a robust leasing environment exists, with protections available to all parties in a lease. In Sierra Leone innovative leasing arrangements are in the offing, which much more easily mesh with local, customary ideas and logic about land tenure, and is therefore much easier to deliver in terms of secure holding for a particular use.

60. Mozambique also had, after its war a ‘foreign investment office’, which served to interface with interested investors, and act as a liaison between the investor on one hand, and customary society and formal legalities on the other. It is here where innovation is needed in terms of the derivation of specific forms of ‘conveyance’ needed to make forms of leasehold act to both ensure customary occupants that their future use and occupation of land is not compromised, and to move such land into a productive investment environment.

61. In Sierra Leone, the current legislation seeks to work ‘with the grain’ regarding the ‘element of continuation’ for the landholding lineages—that the land ‘belongs’ to the lineage in perpetuity. However in order to both support the element of continuation and fully explore opportunities for pursuing a range of postwar land access goals, the legal logistics for such opportunities must mimic the way land functions within the ‘element of continuation’ in customary society. In this context the question is, how can land inalienability and the ‘element of continuation’ be used as tools in postwar land tenure? More specifically, what forms of rights transfer can both satisfy these conditions, and provide secure land access to a range of strangers, from ex-combatants and IDPs, to foreign investors? The new legislation in Sierra Leone is attempting to connect formal and customary land tenure, while attending to the overall goals of both in a postwar setting. The current land legislation seeks to use innovative forms of
‘conveyance’ to achieve this. Thus by placing greater attention on tailored forms of conveyance and less attention on actual law, significant potential for innovation is possible.

62. The formal legal notion of ‘conveyance’ is the transfer of a right to another, but under a very wide variety of concepts, conditions, and circumstances (Garner 2000). The distinction between law and conveyance is that land law deals with legal rights in land, whereas conveyancing is “law in motion” (Burn 2005). In other words, legal concepts about property reside in law, but the mechanics of applying the concepts is what constitutes conveyancing (Onalo 1986). Kenya has some successful experience in this regard (Onalo 1986), as has Mozambique. One advantage of focusing on conveyances is that the variety and flexibility of different forms of conveyance is an important fit with the fluidity of postwar land tenure, and also engages the element of continuation and land inalienability.

Concluding Notes

63. Post-conflict situations are unique settings in their combination of a weakened and chaotic formal system, robust, vigorous, but fluid, informal tenure activity, along with the presence of a peace accord, political demands and concessions regarding land, and international actors that can have a large interest in the success of the peace process. While this combination carries risks, it also represents real opportunity. In this regard the tenure reorganization and reform efforts, need to look outside the confines of ministries and missions, to assess how the development of tenurial institutions, problems, and processes are proceeding ‘on the ground’ in what will be a very lively rural smallholder tenure sector—so as to draw legitimacy from these processes into reformulating national structure, policy, and law. Without this purposeful connection, tenure institutions at different levels risk evolving in different directions, with considerable difficulty later on in attempts to connect them. With such a connection, new policy can support what people are already doing, and engage in real ongoing problems of disputing, resettlement, restitution, proof of claim, and development.

64. Such an improved relationship can begin as a peace accord attempts to resolve land issues involved in the conflict itself (particularly if the conflict was about land, or came to involve a significant land-based resource component—oil, diamonds, timber, wildlife, export crops). As well, because the international community presence in post-conflict settings can be much larger, and much more empowered, it can have more influence on a weakened government than in peacetime. The result can be a significant effort, pushed by the international community, to resolve important or contentious issues, including attempting to craft laws which support livelihoods of the poor. This was the case in Mozambique (Unruh 2004b), Ethiopia (Unruh 2005), and Nicaragua (Barquero 2004) in various ways and is a process currently underway in East Timor (Marquardt et al 2002). In Rwanda it was noted that “the post-conflict environment represented a great opportunity for land reform” (Huggins 2004). Thus positive reform of formal structures pertaining to land can take place within an opportune period subsequent to conflict. A period in which input from the rural informal sector can be influential.

65. In postwar countries it is common to have a surge of land tenure problems three to five years after fighting has stopped. This is because in the immediate postwar lull, people are upgrading livelihoods in rudimentary ways. But at about three to five years continued upgrading needs a property rights system and it is then that the problems now facing Liberia emerge. While social unrest connected to land and property issues is unlikely while UNMIL has a large presence in the country, at some point the peacekeeping forces will be stepped down and the rule of law needs to step up.
66. Liberia holds significant similarity with other postwar countries in terms of land tenure; either because features are common to postwar land tenure situations, or specific characteristics are shared by other countries for a combination of geographic, historical or cultural reasons (e.g. Sierra Leone). While some countries have successfully pursued innovative approaches to certain land tenure problems after a war, others have had difficulty. And while the ingredients for well functioning land tenure systems in both developed and developing countries are known, the primary question for postwar scenarios is how to achieve such ingredients and assemble them in a workable format and in a timely fashion. Thus while it can be tempting import land tenure systems that work elsewhere, in whole or part, the dilemma is that postwar land tenure situations are unique, because the specific tenure needs of the affected population will operate in distorted fashion compared to stable situations. Some issues will be magnified, others minimized. For example the issues of managing rampant opportunism, and dealing with individual and group grievances, as well as land resources for near-term food security will be magnified after a war. On the other hand issues dealing with taxation of land and property will be less of an immediate priority.

67. While certain solutions seem attractive, it matters how they are implemented. The implementation of a land registry is an example of this, as is the clogged nature of the courts. If the implementation of a registry seeks to freeze land and property transactions while it is assembled and implemented, the result will be the creation of a black market in land and property, thereby constituting a third land tenure system in the country. This is because a society cannot ‘freeze’ land and property transactions. These go on as part of livelihoods regardless of the existence of laws or the decrees by a government. Transacting land and property will go on during a freeze, and will adopt the norms it needs to in order to both get around the freeze, and allow transactions. Integrating a black market in land and property back into a formal property rights system is not easy. As well a government decree regarding a freeze is not the only way a black market can be encouraged. An ineffective court system over prolonged periods, due either to legitimacy problems, or the system being clogged (Liberia has both), also results in incentives to participate in black market mechanisms as an alternative. However while a freeze may not be possible there are ways to slow the rate of transactions so that the volume is less while new land tenure constructs are put into place. One of these is to pursue a vigorous, well-publicized consultation program, in particular the regional to national conferences on land and property. If it is clear that such consultation will have input into new policy and law regarding land and property, then many parties in potential transactions will adopt a ‘wait and see’ approach transactions, claims, and disputes. This can have valuable utility and allow a period of time to formulate successful solutions.
Annex D. Presentation on Lands Commission

Land Commissions: Experience and Lessons
Governance Reform Commission, Liberia
John W. Bruce, World Bank Consultant
June 28, 2007

The Presentation
• Rationale
• Diversity of Functions
• Type 1: Policy and Law Reform Commission
• Type 2: Adjudicatory Commissions
• Type 3: State Land Commissions
• Type 4: “Comprehensive” Land Commissions
• Some Lessons

Rationale
Purposes that Land Commissions serve include:
• Expand participation in decision making from within and beyond government
• Undertake fact-finding and public consultation to inform decision-making
• Limit influence of vested interests in government
• Provide a forum for forging compromises
• Limit direct political influence over outputs
• Achieve creditability and durability for outcomes

Diversity of Functions
Institutions called “Land Commissions” perform quite different functions. They include:
• Land Policy/Law Review Commissions
• Adjudicatory Land Commissions
• Public Land Management Commissions
• Multi-Purpose Commissions

Type 1: Land Policy/Law Review Commissions
• Tanzania, Mozambique
• Review and evaluate land policy and law and recommend reforms, producing draft policy and law.
• Temporary: two to four years
• Report to the President, exceptionally to a Minister
• Strong chairperson, virtually full-time; some members make major time commitments
• Strong inquiry/consultation role
• Issues: legal basis, funding, secretariat, contractual capacity, sitting allowances, point of closure

Type 2: Adjudicatory Land Commissions
• Examples: South Africa Land Restitution Commission, Cambodia Cadastral Commission
• Limited sub-set of land claims/disputes (SA) or general (C)
• May adjudicate (SA, Niger) or only mediate/arbitrate (C)
• Temporary (SA) or permanent (C)
• Centralized (SA) or decentralized (C)
• Chairs, members may be legal professionals if adjudication (SA) or trained officials if mediation (C)
• Issues: legal basis, funding, fact-finding capacity, procedures, judicial enforcement/review

**Type 3: Public Land Management Commissions**

- Examples: Land Commissions in Ghana, Uganda
- Commission approves leases/grants of public land, makes policy recommendations and may hear appeals regarding Ministry actions on public lands.
- Semi-autonomous within Lands Ministry, often with constitutional status, often appointed by President
- Typically created to combat corruption within Lands Ministry
- Members are officials and respected members of civil society
- Commissioner is Ministry official and supervises Ministry implementation staff
- Issues: independence vs. low accountability, relation to courts

**Type 4: Multi-Purpose Land Commissions**

- Example: Niger Land Commissions
- Local commissions in highly decentralized system to implement Code Rurale
- Functions include local rule making, dispute resolution, and land allocation
- Chaired by local official; members include local officials, traditional leaders and elected members
- Issues: limited local implementation capacity, and questionable combination of roles

**Some Key Lessons (1)**

- The mode of creation of a commission depends on national law, it but should have legislative or at least presidential mandate
- Diverse and non-partisan membership (including both official and civil society members) results in more durable policy and law reforms
- Representation of relevant ministries will ease enactment/implementation of reforms
- Officials should be in a minority and serve in personal capacities rather than as Ministry representatives

**Some Key Lessons (2)**

- Critical assets: strong and respected Chair, high-capacity secretariat (administrator, secretary and finance officer), fact-finding capacity and transport
- Secretariat may be hired directly or seconded from an existing institution, but must be full-time
- Technical experts may be included on commission, appointed to secretariat, or contracted
- A policy and law reform role should include supervision of legal drafting and presentation of revised laws for enactment

**Some Key Lessons (3)**

- Studies of a participatory appraisal nature are most effective for fact-finding
- Broad public consultation with stakeholders is critical to quality and ownership of recommendations and decisions; good process and transparency are key
- The primary stakeholders to be consulted are the public especially land users, not officials
- Consultation must hear concerns but also provide an opportunity to discuss potential solutions; it should not be simply a forum for venting complaints

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Some Key Lessons (4)

- Publicity can build expectations and momentum for recommendations.
- An adjudicatory role requires clear rules on procedures and on judicial enforcement and review of commission decisions.
- Commissions with which mix functions of the different types of commissions noted here have difficulty accomplishing any of them.
Annex E. Summary of Key Provisions of the Land Registration Law 1974

1. The Law’s initial sub-sections explain that it applies throughout the Republic (8.1) and that its purpose “is to substitute as expeditiously and as relatively inexpensively as possible, with the highest regard to due process, for the present system of recording rights to and over land [the Deed Registry System] a system of land registration” (8.2).

2. These provisions preserve the special role of probate courts under the Deed Registry System (8.6). They make the Registrar of Deeds also the Registrar of Land (8.7.1), and the National Archives the location for the Registrar of Lands, as it is for the Registrar of Deeds (8.7.3).

3. Adjudication of titles in a specified area is declared by the Minister of Lands, Mines and Energy through the Probate Court of the area (8.11). A referee to decided conflicting land claims and a Demarcation/Recording Officer are appointed by the Chief Justice, and a Survey Officer by the Minister (8.21). Where there are disputes which cannot be negotiated by the Demarcation and Recording Officer, these are referred to the Referee for decision, except that inheritance disputes go to the Circuit Court. Appeals may be taken from both to the Supreme Court (8.51).

4. The law sets out the principles binding upon the referee (8.52) in deciding on claims:
   
   a) If there is a good documentary title which would prevail if challenged, he records that person tentatively as the owner of the parcel;

   b) If there is open, peaceful and uninterrupted possession for twenty years or more, the possessor should be recorded tentatively as owner (the possessor must not have acknowledged the title of any other and must have used the land to the exclusion of others);

   c) If there is a possessor who is unable to provide sufficient proof to be registered as an owner, he can be tentatively recorded as owner subject to substantiation within six months. If no private rights are established, the land should be recorded as public land.

5. It is important to note that a customary right is neither registrable, nor is its existence the basis for registration of a common law right. Possession is, and possession is to some extent a surrogate for customary right. Such possession will in most cases have originated in a right under customary law, but reference to the fact of possession rather than the customary right makes it clear that a common law or statutory tenure is to be registered. This aspect of the Law deserves review and possibly reconsideration in light of innovative approaches in a number of other African countries in recent years toward registering customary rights.

6. There are two provisions in this Law that deal with local communities’ rights under customary land tenure. These prescribe how tribal reserves and communal holdings should be shown on the register, as so provide insight into the official thinking on their legal nature.

7. The first is a specific instruction in s. 8.52 (d) on registration of a tribal reserve or communal holding: “If such land is part of a Tribal Reserve or communal holding, he shall further record the fact that such public land is subject thereto and, if feasible, shall describe the boundaries of the reserve or communal holding and the name or names of the tribe or tribes entitled to Tribal Reserve rights or holdings therein.” The land in these categories is assumed to
be public land and is to be registered as such, subject to use rights involved in the tribal reserve or communal holding.

8. The second provision is s. 8.123, which provides that “The registration of land as public land, subject to any registered encumbrances, which shall include without limitation, interests in and rights over such land granted in concession and other agreements made under authority of law, and by way of delineation of Tribal Reserve areas and communal holdings, shall enable such land to be disposed of in accordance with the provisions relating thereto contained in the Public Lands Law and in any other law providing for dispositions of public lands, by a disposition registrable under the provisions of this chapter.” Such land is thus to be registered as public land, and the Communal Right or Tribal Reserve as an encumbrance on that public land. To the extent that the land can be disposed of under the Public Lands Law and other laws (and these rights are not freely transactable), then once the land is registered, the transfer must be by registered transfer.

9. Registered rights are under this law (as under most land registration laws) are relatively conclusive. A registered title can be set aside if fraud proved in action filed within ten years from final order for registration filed in the court where registration proceedings were held. Where the right has been transferred to an innocent purchaser for value without notice of the fraud, he will be protected, however (8. 58). Absent a fraud raised within that period, however, registration actually confers clear title: “Registration vests title and free of all encumbrances except those shown on the register and claims created by the operation of law...”, and encumbrances or transfers that are required by law to be registered do not take effect until registered (8.121 (1) and (2)). Registered land not affected by prescription or adverse possession (8.123).

10. Finally, the Government will indemnify anyone who relies on the information shown on the Register and suffers thereby. But there will be no indemnity for anyone who substantially contributed to the error or omission. (8.193). Compensation may not exceed prescribed amounts (8.194). Claims are made to a Permanent Claims Commission established under s. 56.1 of the Executive Law, which awards indemnity (8.95).
Annex F. Summary of MLME Proposal: Jump-Starting Land Administration, September 2006

The Summary “Brief Description” for the Proposal to the USAID Ambassador is as follows:

1. The project will initiate actions to actualize the President’s inaugural call for a revisit of the Land Tenure System of Liberia, by jump-starting a Land Administration Reform Program through a series of quick-impact activities aimed at:

   - Identifying through broad-based stakeholders’ consultations, technical, administrative and legal interventions that are practically feasible, and socio-politically acceptable; and can achieve immediate results;
   - Educating the public on the prevailing situation, its negative effect on national and personal economic recovery and development; as well as on its potentials as a catalyst for possible social conflicts; and building positive public opinion and consensus on the need for land administration reform;
   - Formulating and adopting a memorandum of understanding that commits all Agencies with land-related statutory functions to cooperating and collaborating in a fight to eradicate corruption in land administration;
   - Formulating and promulgating joint administrative regulations (a) to improve administrative effectiveness (b) to arrest fraudulent land transactions - tempering with records of the Deed registry and/or the Bureau of Lands & Surveys, etc. (c) to ensure adherence to existing property and fiscal laws; (d) to ensure information sharing between Agencies with land-related statutory functions; and (e) to discouraged and eventually arrested through an agricultural land-use regulation that provides farmers with security of tenure through the allocation of definite parcels of land by government, with title Deeds;
   - Establishing a means through which the public will have easy and if necessary anonymous access to channeling information and tips on acts of land fraud and professional malpractices by surveyors, lawyers and government officials, as well as contributions of solution suggestions;
   - Encouraging private individuals and institutions to make available to government Land Deeds, maps, and other valuable land information they may have; and providing the Department of Lands, Surveys & Cartography with a basic capacity to copy and preserve said resource materials;
   - Drafting of an Executive Order for the establishment of a National Land Tenure Advisory Council which will steer all land reform interventions; and
   - Drafting and dissimilation of a Land Administration Reform Program identification Document, and terms of reference for Preparatory Technical Assistances.
   - Conducting an In-Service Training Workshop for Land Administrators and Surveyors of the Ministry of Lands, Mines & Energy.

2. The project will be coordinated by a local expert, to be selected jointly by all the implementing partners. The Project Coordinator will be attached to the Office of the Deputy Minister for Operations at the Ministry of Lands, Mines & Energy which will provide
administrative facilitation and backstopping. The heads of participating agencies will ensure Cabinet approvals where necessary.

3. The Ministry of Lands, Mines & Energy shall provide resource personnel, office facilities and all available land information. The US Ambassador to Liberia is requested to source funding for this project to the extent possible and to assist in facilitating donor coordination. USAID/OTI, UNDP, EC and UN Habitat have also been approached for assistance for the overall Land Administration Reform Project.
Annex G. Memorandum of Understanding on Land Registration, October 21, 2006

There follows the main text of this memorandum of agreement, negotiated and agreed upon during a conference organized by USAID’s Office of Transition Initiatives in October 2006. The memorandum was signed by personnel of a number of key ministries and other government agencies including the Ministry of Land, Mines and Energy, the Governance Reform Commission, the Ministry of Justice, the Ministry of Public Works, the Ministry of Foreign Affairs, the Ministry of Finance, and the Ministry of Internal Affairs, and also one NGO (Green Advocates). The signature page and an annex consisting of a matrix expanding on the memorandum are not reproduced here.
MEMORANDUM OF UNDERSTANDING
FOR THE
CONCEPTUAL UNDERSTANDING OF THE CHALLENGES TO LAND TITLE AND
REGISTRATION AND CORRESPONDING RESOLUTIONS TO SAID CHALLENGES
OCTOBER 21, 2006

Preamble

USAID/Office of Transition Initiatives awarded a grant to the Ministry of Lands, Mines and Energy to provide support to the Liberia Government on Land Policy, and

The objective of the project was to provide the Government of Liberia with a review of the existing land identification records and taxation records in Monrovia and to provide guidance on how to improve the systems that effect identification of land ownership, and

For which the review culminated in a two day working session structured to gain the input of all stakeholders who have responsibility for and influence on the issuance of title and land ownership, and

For which the working session provided the foundation for the following Memorandum of Understanding.

Introduction

In order to guarantee land rights we must provide security of tenure. Given the current state of Liberia’s land tenure system, we must agree to launch a national program to improve our land tenure system. We must recognize that security of tenure includes certain measures and activities related to land, which we should define before we proceed. These activities include:

- A widely accepted national land policy;
- A modern, up-to-date cadastral system and register;
- A functional, efficient and effective land assessment system;
- Legal recognition of formal and informal institutions for conflict resolution;
- Spatial data infrastructure for surveying and mapping infrastructure;
- Effective and efficient record management; and
- Creation of a system which is transparent, and allows civil society to access said system.

Objective

Create a Land Tenure System that includes policies, laws, regulations and guidelines in a national institutional framework for the administration and management of our sovereign lands.

Justification of the Problem

The purpose of the Registered Land Law is to substitute as expeditiously and as relatively inexpensively as possible, with the highest regard for due process, for the present system of recording rights to and over land, a system of land registration (Section 8.2, Amended property Law of 1974). In practice challenges to land title is defined as:

1) Lack of Coordination between Ministries.
Memorandum of Understanding

For the

Conceptual Understanding of the Challenges to Land Title and Registration and Corresponding Resolutions to Said Challenges

October 21, 2006

2) Lack of transparency.
3) Lack of information.
4) Lack of coordinated adjudication system.
5) Lack of complete clear chain of title and land records.

These challenges are further elaborated in Attachment A.

Recommended Solutions

1. Review the mandate of all line ministries and agencies as it relates to land issues for possible interactions and inclusions.
2. Recognize the need for and develop a clear land transaction settlement process which is enhanced by a computerized exchange system or a complete Data Bank on Land.
3. Property owners should be educated on their rights of ownership and on how to develop their land.
4. Identify the stakeholders that are responsible for information dissemination as it relates to land ownership.
5. Require that all deeds prior to probation must be examined by officials of the probate court and attested to by at least 2 or more witnesses without prejudice.
6. Institute the title certificate system.
7. Adjudicate Title Certificates attaching all legal actions of title and land to the certificate.
8. Improve transparency.
9. Enact a law requiring a transparent legal and fiscal cadastral system.

Way Forward

1. Build the capacity of all land stakeholders.
2. Ensure the effectiveness of the deed system while fast tracking conversion to a title certificate system.
3. Acquire and allocate the capital for the purchase of a computerized system and modern survey equipment.
4. Build the capacity of human resources to manage the above facilities.
5. Build an institutional framework to substantiate the maintenance of title.
6. Improved incentives to promote accountability and transparency.
7. Identify and implement actions that will resume the adjudication system.
8. Declare land information as public and ensure unhindered public access to land information.

The signatories below recognize the importance of and agree to call to action of the reform of the land tenure registry system as articulated in this Memorandum of Understanding.

Page 2 of 3
LAND REFORM LEGAL ISSUES

The Land Tenure Reform issue is a sensitive one in all environments which take on the delicate task of equitable distribution of real property resources. Liberia is no exception to that rule. While the issues Liberia faces are by no means unique, Liberia’s history does pose the possibility of unique approaches to land reform. Some of the general issues and approaches to consider is the promotion of tenure security in rural areas in the form of titling of group or communal property as the solution to lack of long-term investment in property. Titling may put rural poor and illiterate at the mercy of rural elite (the very group who should be speaking on behalf of rural communities) as is reported to be happening currently. In short, what are the alternatives to titling? What are the pros and cons of titling? How does the land tenure system handle land as a social asset which may change to a commodity to be sold to the Monrovia-wise “sons of the soil”?

On a broader basis, land tenure security, should be seen as necessary for development and economic growth because removal of the uncertainty invites national and international investment. Tenure security does not necessarily mean a rural community can go to the bank—not now anyway. But it can mean that communal land ends up in the hands of “sons of the soil” as private property.

However those unique specific issues are handled, the general issue on land reform begins with how land ownership is originally established in Liberia and goes all the way down to how land is managed and encumbered. The general issues will find a resolution in further review and amendment of the following instruments: the Constitution, national statutory laws related to land ownership, uses and management and the Rules and Regulations Governing the Hinterlands, et. al. Most importantly, the review of those instruments raise the following major legal issues vis-à-vis land reform in Liberia as a first step in a way forward. Ultimately, the land reform process needs to answer the salient question of: What kind of property rights system do we want for Liberia—to accommodate the 3Cs with the “community C” including urban/per-urban communities?

The Legal issues Working Group has identified the following as some of the issues that need to be addressed:

1. Land Ownership: Who owns the land/who should own land? Who should decide land ownership and property rights in Liberia?
   - Who has valid claim to the forest, land and natural resources?
     - Government as holder of “life to sovereign territory of the Republic of Liberia” (Hinterland Rules and Regulations)
     - State as steward of the land in the Interest of the people (2006 forestry Law)
     - Clarification of definition of public and private lands—how is communal/group ownership of land in Liberia determined?
     - Lack of an effective demarcation system to identify: community vs. tribal, public vs. government
     - The people who depend on these resources (evolving concept)
     - Anyone who lives in Liberia—citizen or non-citizens?
       - What mechanism or legal provision to accomplish the objective of barring non-citizens from land ownership? Prohibit straw transactions? Require principles and straw comply with constitutional requirement?
       - The Citizenship requirement — is it outdated? Should we retain it? Given the current economic environment and long-term economic goals, does this requirement serve or hinder development of the economic infrastructure? Does this requirement preserve the possibility for greater economic participation amongst Liberians (i.e. greater distribution of wealth amongst Liberians) or does it hinder development of regional and global economic participation? Does it hinder domestic development of economic systems? Does it prevent the retention of income for the country?
Land Reform – Legal issues Workgroup

- Legal basis of ownership under each of the following
  - Constitutional
  - Customary: social practices and norms
  - Statutory Law
  - Common law
  - International conventions and agreements to which Liberia is party

- Kinds of land holdings/ transfers
  - Inheritance: What is the effect of the amendment of the Inheritance Law? Are there further amendments required? Should and how can ‘illegitimate’ children inherit from their parents, if they are recognized (i.e. in the case of intestate succession). Again, what are the intersections between customary and statutory law vis-à-vis inheritance?
  - Sale: Other than the citizenship requirement, should there be other restrictions imposed on to whom land can be sold? Other than a deed, property description, etc. what documentary requirements should be applied for the sale of land?
  - Gift: What should be the documentary requirements for gifting real property?
  - Citizenship requirement: While non-citizens cannot own property, are the long term leases (i.e. 20 year lease restriction w/ ability to renew for additional 20 years) de-facto ownership? If the citizenship requirement is preserved, should we revisit the long-term lease requirements? Should laws be put in place to prohibit straw transactions? Should the lease allotments be shortened?
  - Landlord/Tenant: There needs to be an entire body of landlord-tenant law created. There are few regulations which set out each party’s rights and obligations relative to property leases. Further there are few, if any, safeguards to protect either party in the event of wrong-doing by the other party. What are the intersections with customary law and tenancy? How should that be handled?
  - Mortgage: There needs to be a review of the entire mortgage system, vis-à-vis the financial and banking system in the country. How will this affect land ownership, transfers, gifting? Leaseholds?

2. Customary and statutory legal systems (explore legal pluralism)
   - Outline where there are intersections between the two systems. How do they contradict, overlap and coincide? (ownership, accessing rights, eligibility, etc)
   - Places which are now exclusively governed by customary law, should they be under statutory law review, or provided the option to move into the statutory law system? Likewise, should there be matters which are exclusively governed by the statutory law system with some review by the customary law system? When and how should this happen?
   - How do these contradictions, overlaps impact land administration? How do they contribute to land conflicts and disputes?
   - Clarification of tenure systems under the Customary and Statutory
   - Under what conditions should statutory codes and customary rights apply?
   - Gender and property rights/tenure under both systems
   - How to integrate—to what extent can the two systems be integrated?
     a. National statutory law recognition of group/communal ownership
     b. Mechanism for conflict/dispute resolution when the two systems conflict

3. Land Management: Institutional framework for land tenure/property rights—who should manage the land?
   - What short-term solutions to resolve the backlog of existing land disputes in both rural and urban areas. Should there be a special civil court created to resolve real property issues? On a long and/or short term basis?
   - Adequacies/inequacies of current management framework
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- Which institutions should manage the sale, use, encumbrance of public and private lands?
- How should roles amongst and between land management institutions be shared?
- What capacities are needed to effectively manage the land tenure system?
  - Decentralization as a policy—role of government and role of local peoples
  - Capacity building for effective decentralization
  - Tribal/communal lands: What mechanisms should be established for local/tribal authorities to regulate and administer lands? Should the MIA solely govern the attribution of these lands? Should national statutory law supersede customary law when it comes to these matters? As Customary Law provides for variation in how land tenure is treated, if the Customary Law system continues, then should there be a review to attempt to achieve consistency of processes and results regardless of the ethnic group?
- Taxation: Should we revisit and review the system of real property taxation?
- Registration and Title
  - How do we track and capture the improper transfers of titles which have and continue to occur? What mechanisms need to be put in place to determine ownership and what to do with those who have invested in improperly acquired titles (should there be a knowing or should have known standard in making the disposition of those cases?)
  - As title is transferred, what are the current flaws in the registration and title system? Should a new system be created and if so, then what? Should it be centralized? Decentralized in the counties?
  - What are the modifications which prevent or have imposed unnecessary barriers to effective transfer of title and registration (i.e. what to do with illiterate title holders)?
  - What modifications to the processes need to be put in place to improve the title tracing process (i.e. to establish effective title)?
  - What corruption in the process exists? What modifications need to be implemented in the system to curb such corruption?

To echo discussion at the workshop on land use planning held in March 2005, the policy and legal framework for the equitable use and management of land and natural resources in Liberia should:
- ensure conservation of biodiversity and rare ecosystems and their environmental services
- promote sustainable management of land resources
- provide for development of agriculture, agro forestry as well as mining
- recognize community/common ownership of and access to and management of land and resources to support rural lifestyle, livelihood and cultures
- provide for conflict resolution mechanism(s) for uses and users of land
- provide for a transparent planning process that involves all sectors of the Liberian population.

RESOURCES

Research, which may involve piloting, is required on all of the issues listed

Accessing information, data-collecting, storing and retrieving for decision making is a major issue to be addressed in the process. Land tenure and property rights information we are searching for, if available at all, are fragmented, spread out across various sectors (formal
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...and non-formal) and levels of government, may be unreliable, may reflect differences in the concepts and policies of social actors, etc.

➔ Until all of the Forest sector information/data collected under the Liberia Forest Reassessment Project (LFRI), the Liberia Forest Initiative (LFI) and current studies and results of formal documentary search have been compiled, there is no way of knowing what documentary resource is still outstanding.

FINANCIAL

➔ The Government of Liberia must show its commitment by budgeting for the process. However, given the resources needs for land use reform initiative, partners will have to be invited; encouraged to assist with funding and expertise while being sensitive to the need for Liberia to have ownership of the process. What is the appropriate role of the International community in the process?

Result of Research

List of some of the data categories relevant to Land tenure/land rights reform:

- Legal framework: Laws, decrees, acts, regulations, etc.
- Policies (formally stated from practice)
- Land titles, deeds, administrative certificates (Tribal Certificates?)
- Documentation of claimed but unregistered lands such as community lands
- Land sale agreements
- Maps
- Tax records
- Result of disputes: statutory and customary resolutions
- Information validating informal land transactions and disputes
- Concessions contracts and agreements
- Workshop Reports: Land use/tenure security/property rights
- Farm/agriculture land documents
- Inventories
- Minutes of land use related meetings,
- Correspondence that may contain information on land issues
- Sectoral Annual reports
- Official speeches setting policy direction
- Lessons learned from other countries

All documents unearthed by the Legal Issues Working Group so far, fit into one or more the categories above.
Annex I. Land Policy and Tenure in Liberia’s Poverty Reduction Strategy

pp. 67-69: 7.5 Land and Environmental Policy

1. Poverty, land, and the environment are inextricably linked. The rural poor of Liberia depend almost entirely upon land and other natural resources for their livelihoods, including their food, fuel, shelter, water and medicines. Unequal access to and ownership of land and other resources have contributed significantly to economic and political inequities throughout Liberia’s history, and have exacerbated tensions and conflict. The existing systems of land acquisition favor the wealthy and the elite. Women in particular have had limited land and resource rights. Poverty and the paucity of technical skills leave most Liberians with limited options and few incentives to protect the natural resource base, and make coping with and adapting to environmental changes more difficult. These issues may become even more difficult in the near future as global warming changes climatic patterns, which may affect coastal flooding and rainfall.

2. Access to land and its resources and security of tenure are essential for economic revitalization, growth, and poverty reduction. Smallholder farmers, who make up the majority of Liberia’s rural population, require access and security of tenure to move beyond subsistence farming into more profitable and sustainable livelihoods that will achieve food security and increased export crop production. Commercial users of land and its resources also need security of tenure for investments. Establishing a working system to promote the reconciliation of land disputes during the PRS period, and which can also improve public perceptions about mechanisms and the Government’s capacity for dealing with land conflicts, will have a significant impact on promoting private sector participation in the economy and the overall stabilization of Liberia.

3. In Liberia, the main engines of growth for the next several years are natural resource-based activities – principally mining, timber production, and rubber and other plantations. None of these activities can expand without affecting the resources upon which the rural poor depend. Moreover, new investment in almost any area depends crucially on clear property rights. In addition, the limitations on who can own land in Liberia and the uncertainty about land titling both add to the costs and risks of investments in a wide range of activities, and create prohibitive barriers to investment in some cases.

4. Land policy is one of the most sensitive and important policies for Liberia in the quest for rapid, inclusive and sustainable growth, and for consolidating peace and security. The challenges, however, are many and complex. There is no comprehensive national policy or strategy on land allocation and use, whether for private users, community, concessions, or Government. Laws pertaining to land are outdated and do not serve the country’s development goals. In the past, concession agreements have had inconsistent provisions, often providing land areas significantly in excess of what can reason-ably be developed, while local communities have experienced significant land pressure. Current provisions for the access to land and security of tenure by communities under customary tenure are inadequate. Residents feel that their livelihoods and security are threatened by current laws and practices, and those subject to customary law do not have equal protection as provided by the 1986 Constitution.

5. The judicial system is over-burdened and without sufficient capacity to adjudicate land matters in a timely manner and as a result, fraud is common and entrenched. Moreover, the administration and management of land is inadequate and outdated. Land records are in disarray,
are located in several places, and are open to tampering and fraud. There are overlapping or conflicting functions of ministries and agencies, and capacity is extremely limited.

6. The Government’s primary goal with respect to land is to develop a comprehensive national land tenure and land use system that will provide equitable access to land and security of tenure so as to facilitate inclusive and sustainable growth and development, and ensure peace and security.

7. To achieve this goal, the Government’s strategic objectives and priority actions include:

- Promoting equitable and productive access to the nation’s land, both public and private, especially for the poor, women, and other marginalized groups. The Government will review and reform land policy and law, and develop comprehensive national land use surveying and mapping.

- Promoting security of land tenure and the rule of law with respect to landholding and dealings in land. The Government will review customary land tenure and existing local government institutions, and will recognize and protect rights of use and ownership of land and other resources by local communities. It will undertake an adjudication process to determine current claims to land, review mechanisms for land dispute resolution under statutory and customary law and propose, if appropriate, alternative dispute resolution mechanisms, and develop procedures for equitable and fair enforcement of laws pertaining to land and other property. The Government will also review the process of issuing public land sale deeds by the Office of the President.

- Promoting effective land administration and management. The Government will secure and conserve deeds and other records related to rights in land. It will clarify the roles of, and build the capacity within, the Ministry of Lands, Mines & Energy (specifically the surveys unit), the Ministry of Agriculture, and the Forest Development Authority. By building capacity, it expects to be able to undertake a land cadastre in coming years to determine claims to land. However, during the PRS period, the Government will pilot a land registration system.

- Promoting investment in and development of the nation’s land resources. The Government will review and revise laws pertaining to land and real estate taxation, with the view to discouraging large undeveloped land holdings. Policies and programs will also be developed that enable small-holders to move to more profitable and sustainable livelihoods, and develop national zoning regulations.

8. Because of the critical nature of land in Liberia, the Government will address the issue in a comprehensive manner by establishing a Land Commission. The Land Commission will further identify, guide, and facilitate reforms in land policy, law, and programs. It will aim to facilitate land tenure arrangements that are conducive to sound land use and appropriate farming, forestry, and mining systems that are supportive of inclusive growth and sustainable natural resource management. It will help devise means that balance competing demands on land use, e.g., forest versus farm land, agrarian structure (smallholders versus plantations), and agricultural production (food crops versus export crops). The Governance Commission is working to help establish the Commission by July 2008.
9. To address issues of climate change and the adverse effects of a changing environment, the Government will also consider revitalizing the National Disaster Relief Commission and its secretariat to educate the public about disaster risk reduction and to coordinate the Government's response to disasters when they do occur. In addition, the Government will endeavor to develop an integrated coastal zone management plan, a wetlands management policy and a water resources management plan to govern the use of, and interaction with, these valuable natural resources.
Goal: To develop a comprehensive national land tenure and land use system that will provide equitable access to land and security of tenure so as to facilitate inclusive, sustained growth and development, ensure peace and security, and provide sustainable management of the environment.

### Strategic objective 1: To establish the Land Commission and enable it to address its mandate

<table>
<thead>
<tr>
<th>Task Description</th>
<th>Action</th>
<th>Timeframe</th>
<th>Responsible Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>The nonexistent and/or inadequate land policies and laws require comprehensive review by a Land Commission.</td>
<td>Establish a Land Commission by legislative enactment and secure funding to address land issues</td>
<td>July 2008</td>
<td>GC, Legislature, President</td>
</tr>
<tr>
<td></td>
<td>Appoint and orient Commissioners and the Commission’s Technical Secretariat</td>
<td>September 2008</td>
<td>GC, President</td>
</tr>
<tr>
<td></td>
<td>Support the Commission’s work in conducting studies and consultations pertinent to its mandate</td>
<td>2008 – 2011</td>
<td>LC</td>
</tr>
</tbody>
</table>

### Strategic objective 2: To promote equitable and productive access and security of tenure to the nation’s land, both public and private, especially for the poor, women, and other marginalized groups, and to promote the rule of law with respect to landholding and dealings in land

<table>
<thead>
<tr>
<th>Task Description</th>
<th>Action</th>
<th>Timeframe</th>
<th>Responsible Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inequities exist in access and utilization of land, favoring the wealthy and elites. Outdated and inadequate laws do not serve the country’s development goals. Disputes are common and are not being equitably resolved.</td>
<td>Review and reform public land policy and property laws to develop comprehensive and coherent policy and legal framework and to remove or revise outdated or outmoded provisions</td>
<td>2011</td>
<td>LC</td>
</tr>
<tr>
<td></td>
<td>Conduct a comprehensive national land use survey and mapping to identify current and future utilization of land</td>
<td>2011</td>
<td>LC, MLME, MoA, FDA</td>
</tr>
<tr>
<td></td>
<td>Review customary land tenure and existing local government institutions to identify best options for equitable and effective management of land and other natural resources</td>
<td>2011</td>
<td>LC, MIA</td>
</tr>
</tbody>
</table>
Recognize and protect rights of use and ownership of land and other resources by local communities

Review mechanisms for land dispute resolution under statutory and customary law and propose alternatives

Develop procedures for equitable and fair enforcement of laws pertaining to land and other property to minimize fraud and other illegal practices pertaining to land

Strategic objective 3: To promote effective land administration and management

Outmoded systems of land administration and management encourage-age fraudulent behavior. Capacity in the ministries and agencies is limited.

Secure and conserve deeds and land records at one location under the supervision of trained staff

Develop and implement records management system at the national and local level so that land records are available to verify claims and expedite land transactions

Clarify roles, build capacity and equip the staff of MLME (especially the survey unit), MoA and FDA

Pilot a land registration system in an area outside central Monrovia that is primarily held under fee simple

Strategic objective 4: To promote investment in and development of the nation’s land resources

Policies to promote investment and development are nonexistent or inadequate. Taxation and zoning rules are inadequate and/or outdated.

Review and/or develop policies on agricultural, forestry, and mining concessions, including activities, provision of services, taxation, etc.
<table>
<thead>
<tr>
<th>Year</th>
<th>Activity</th>
<th>Responsible Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>Develop land policies and programs to provide security of tenure and to enhance access in order for smallholders to move to more profitable and sustainable livelihoods</td>
<td>LC, MLME, MoA, FDA</td>
</tr>
<tr>
<td>2009</td>
<td>Develop and implement national zoning regulations and land taxation regulations that support and facilitate national development objectives</td>
<td>LC, MPW, MoF</td>
</tr>
</tbody>
</table>
END NOTES

1. Adverse possession occurs when the land is occupied in an uncontested manner for 20 years. After this, the occupant (squatter, or otherwise) gains legal ownership of the property.

2. Fee simple was the tenure that prevailed in England once reforms during the 18th and 19th centuries had stripped away the many conditions imposed by feudal law. Under fee simple, the landholder and "his heirs and assigns forever" hold the land in perpetuity. This is sometimes referred to as "free simple absolute" to distinguish it from fees simples subject to conditions or other limitations, but the use of the term "fee simple" alone denotes a fee simple absolute. Of course no estate in land is absolute, because the state retains some privileges (for example, the power to expropriate land for public purposes subject to compensation), and because even full private ownership is subject to a wide variety of public regulatory measures, from taxation to zoning to public easements. For a scholarly discussion of whether there is a significant difference between "fee simple" and "ownership" in the African context, see Anthony N. Allot, and S.R. Simpson, "Towards a Definition of Absolute Ownership, I and II", Journal of African Law 5 (1961): 99-102 and 145-150.


5. The word "youth" in this context does not mean adolescents or young adults as it does in the European sense. It generally refers to anyone from 21-45 years old who is not in the category of the "old".


7. Footnote from the original text: "The Tolbert Administration earmarked and some cases expropriated parcels of land for the construction of public building and other government uses; but documents to that effect are unavailable and squatters, with the help of municipal officials have encroached upon said lands."

8. The 1974 law was an Act to Amend the Property Law to provide a New System for Registration of Land and Dealings in Land. However, this amended law did not affect acquisition of public lands which are still governed under the 1956 land law.

9. These were indigenous Africans who were educated, wore western dress, and were school teachers, clerks and minor officials.


13. It had however produced "A Preliminary Report of the Ad Hoc Presidential Commission on the Land/Property Dispute in Nimba County", October 2006. That report notes the 80% of structures in Ganta have been destroyed, and that this acerbates the conflict. Information received from an official familiar with the work of the Commission notes that a significant rebuilding program will be required if a solution is to be found, and the Government may be approaching the donor community for assistance in mounting such a program.

14. Trial by ordeal in Liberia involves (among several approaches) use of poisonous plant materials applied to an individual in various ways with the result indicating innocence or guilt. As well the prohibitions against renters or 'borrowers' of land acting to apply improvements to land, and specifically prohibitions against tree crop planting, is explicit. To a degree, this can act as a disincentive to allow 'strangers' onto...
customary land for rental or loaning in the first place. The result is that land goes uncultivated, strangers are
without land, and food security is not what it could be.

15 The figure and bullets below are drawn from John W. Bruce et al., 2007. Land and Business
Formalization for the Legal Empowerment of the Poor. Strategic Overview Paper. (Burlington VT: ARD for
USAID).


17 Norwegian Relief Council, 2007. NRC Liberia. (Monrovia, NRC): p. 6. The program concerned is
NRC’s Information Legal Assistance and Counseling Program.

April 2006, paint a dire picture of the situation in Liberia’s courts.

19 This paper is one of those prepared for a GRC Data Reconciliation Workshop on Land and Property
Rights in Liberia on May 25, 2007, with each of the sub-committees of the GRC Working Group on Land
presenting a preliminary paper, in the nature of issue identification papers.

20 Fee simple was the tenure that prevailed in England once reforms during the 18th and 19th centuries had
stripped away the many conditions imposed by feudal law. Under fee simple, the landholder and “his heirs
and assigns forever” hold the land in perpetuity. This is sometimes referred to as “free simple absolute” to
distinguish it from fees simples subject to conditions or other limitations, but the use of the term “fee
simple” alone denotes a fee simple absolute. Of course no estate in land is absolute, because the state
retains some privileges (for example, the right of escheat on failure of heirs, and the power to expropriate
land for public purposes subject to compensation), and because even full private ownership is subject to a
wide variety of public regulatory measures, from taxation to zoning to public easements. For a scholarly
discussion of whether there is a significant difference between “fee simple” and “ownership” in the African
context, see Anthony N. Allot, and S.R. Simpson, “Towards a Definition of Absolute Ownership, I and II”,

21 It is not clear to the consultant upon what theory or when land in the hinterland came to be considered
public property. Typically, under international law, conquest confers sovereignty but does not nullify
existing property rights. On the other hand, other colonial powers in Africa – especially in settler colonies –
similarly ignored customary land rights and declared large areas of conquered land to be public or in the
case of Britain, “Crown” lands. One possible source is the odd provision of the Hinterlands Law of 1949,
or a prior enactment that it replaced. See the discussion in Section 3.2 below.

22 The current Constitution, promulgated in 1986, provides in Article 65 that “The courts shall apply both
statutory and customary law in accordance with the standards enacted by the Legislature.” While the
common law is not referred to here, it applies by virtue of statute and so is in a sense “statutory law”.

23 Unless the contrary is specifically indicated, all citations to statutes in this report are to them as they
was an earlier compilation published in 1958, and a subsequent publication in 2001, but this appears to be a
reproduction of the 1973 version, using the same typeface.

24 The full title of this decree is “A Decree to Provide 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”. A
December 29, 2006 memo from the Deputy Minister for Operations of the Ministry of Lands, Mines and
Energy appended to a copy of this law reminds staff that the Ministry is mandated to enforce this law, and
mentions a regulation being drafted for the implementation of the law. The study team did not see a copy of
this regulation, and it is not clear if it has been promulgated.

25 There are prices specified in the law. Section 31 specifies that “Except marshy, rocky, or barren land,
which may be sold to the highest bidder, public land shall be sold at the following prices:

Land lying on the margin of a river . . One dollar per acre
Land lying in the interior . . . . . Fifty cents per acre
Town lots . . . . . . . . .Thirty dollars per lot.

A Lands Commissioner takes a fee of 5% on each public land sale he carries out (s. 32). These prices have
been rendered irrelevant by inflation, and the consultant found that higher prices were being charged but
was unable to identify the legal instrument authorizing them. In Bomi County, the consultant was told that
the Revenue Office as charging $400 for a lot (1/4 acre) of town land and $200/acre plus two years taxation for rural land. One transaction was cited in which $6,817.50 was paid for 27.27 acres of rural land.

For example, see Armah Kamara and Henry Kollie, Appelants, v. Bindu Kindi, Terni Kindi et al, Heirs of the late Kahn Kindi, appelants, Liberian Law Reports 34: 732. There the Supreme Court struggled with wording from a 1916 aboriginal deed to a chief in Montserrat County. The deed first indicated that the grant was “To Fahn Kendeh and Families of Kendah Town” but later in the document it was provided that the grant was to “Chief Fahn Kendeh and families as aforesaid, his heirs, executors and assigns forever’. The Court, placing the emphasis on the use of the word “his” rather than “their” to characterize the “heirs”, reached the conclusion that the land had been granted in fee simple to Fahn Kendeh and his lineal heirs only, denying the claims of descendents of other families of Kendah Town. A dissent makes a very good case for the opposite conclusion.

The consultant was asked in his field visits whether the President has suspended such land sales, as the local land commissioners noted that approvals did not seem to be forthcoming. A moratorium on these sales is worth considering.

"IFC Model Concession Framework Project (Oil Palm and Rubber), Stakeholder Consultation workshop, “Future Directions for Agricultural Concessions: The Framework for Oil Palm and Rubber”, Krystal Oceanview Hotel, Monrovia, May 13, 2008.


The most recent affirmation of the vitality of customary law comes from Liz Alden Wiley, An Interim Comment on Customary Land Tenure in Post-Conflict Liberia. (Monrovia, Sustainable Development Institute, April 6 2007).

Section 1 of the Local Government Law provides: “The territory of the Republic shall be divided for the purpose of administration into the County Area and Hinterland. The County Area shall include all territory extending from the seaboard forty miles inland and from the Mano to the Cavalla Rivers. The Hinterland shall commence at the eastern boundary of the County Area; i.e., forty miles inland and extend eastward as far as the recognized limit of the Republic. It shall be bounded on the north by Sierra Leone, and on the south by the Ivory Coast. The Minister of Internal Affairs shall be the chief officer of the local governments of both the County Area and the Hinterland. He shall have power to make from time to time such regulations as are conducive to their successful government, subject to the approval of the President.”

Anthony N. Allot, “A Report on the Feasibility of Research into Liberian Customary Law”, Liberian Law Journal 3(2) (December 1967) 83, notes that “...there have been practically no investigation by trained anthropologists or suitably trained lawyers into the indigenous customary laws of the country” and that “…basic sociological studies of Liberian ethnic groups are also generally lacking -- with one or two notable exceptions (e.g., the work of Gibbs and Gay on the Kpelle and d’Azavedo on the Gola)” (p. 83). The cited works are from the 1960s, and while they may be valuable as background, they should not be assumed to accurately reflect current custom.

Personal communication from Counselor Philip Banks, then legal advisor to the GC. Most of the provisions concerning land were taken from and still exist in the Hinterlands Rules and Regulations, but one potentially important provision appears to have been lost as a result of that implied repeal. Section 370 of the Aborigines Law provided that “All aborigines residing in the Republic of Liberia shall have full protection for their persons and property, and shall enjoy all the rights, privileges and immunities granted to all citizens of the Republic.” There is no parallel provision in the Hinterland Regulations. Wiley (2007, 120) also notes that the Aborigines Law in its Section 270 replaced wording in the Hinterlands Law of 1949 that implied ownership of tribal lands with wording that only implied a right of possession and use of those lands. Which document is currently in force thus has serious implications. It is an issue that should be resolved by new legislation.

The relevant provision of the Executive Law is Section 10.5 dealing with the regulatory power of heads of ministries or other agencies. It provides: “The head of each ministry or independent agency in the Executive Branch is authorized, subject to the approval of the President, to prescribe regulations not inconsistent with the law of the operation of the ministry or agency, the accomplishment of its lawful functions, the official conduct of its officers and employees, and the distribution and performance of its business.”

The 1949 Hinterland Laws and Regulations provide to this effect, and that provision is reproduced in the later republications of the regulations. It specifies in Section 2 that “The provisions of the Laws and
Regulations hereby approved and enacted shall apply within the organized Counties, to such areas as are wholly inhabited by uncivilized natives in the same manner as if those areas were within the Hinterland Districts."

This gap in the text exists in both the 2000 and 2001 versions and appears to be a typo. In the 1949 version, the sentence reads: "The right and title of the respective tribes to land of an adequate area for farming and other enterprises essential to the necessities of the tribe remain inherent in the tribe to be utilized by them for these purposes...".

The 1949 version wording is "perfect usufruct" rather than "perfect reserve".

"Notes and bonds" is a mistyping of "metes and bounds" in the 1949 original.

The impliedly repealed Aborigines Law in Section 270 included this provision but had an additional provision for the deposit of such survey documents in the Archives of the Department of State.

Karpai, et al. v. Sarfloh, et al., 26 LLR 3, 5-7 (1977), held that where a grant is a communal holding, surveyed at the expense of the tribe, and that holding is vested in members of the tribal authority, as trustees for the tribe, the tract of land cannot be sold, transferred or alienated without the consent of the Government of Liberia. The case report is confusing, as Article 66(d) flatly prohibits the Trustees from selling such land, with or without government consent.


Karpah v. Manning, 5 LLR 162 (1936), and Jartu v. Estate of Koneh, 10 LLR 318 (1950).


Unavailable for this report.

Such figures need to be used very cautiously, as the source acknowledges. Anna Knox, "Liberia Country Profile", at pp. 83-87 of John W. Bruce et al. (eds.), African Land Tenure Country Profiles (Madison, WI. Land Tenure Center, University of Wisconsin-Madison, 1996). The consultant found no credible source of data on land distribution, old or new. Such figures are sometimes repeated over and over in reports until they are treated with more confidence than they deserve.


West African examples have already been referenced earlier in this paper, but for a lucid account of the use of custom to build a national common law, see Zaki Mutafa, The Common Law of the Sudan; An Account of the 'Justice, Equity and Good Conscience Provision. (Oxford: Clarendon Press, 1971).

What is needed, it is suggested, are studies that can identify current change-patterns in custom and help us understand contemporary custom, rather than codification, which robs custom of its dynamism and capacity to evolve.


Ghana is currently experimenting with Customary Land Secretariats assisting traditional authorities, an initiative supported by DFID under the multi-donor Land Administration Project.


The only contemporary account of the system of land rights recording in Liberia that came to the consultant’s attention is Koboi Johnson, “Property Law of Liberia, Specifically an Act to Amend the Property Law to Provide for a New System for Registration of Land and for Dealing in Land So Registered”, a paper presented to a Real Estate Registration and Real Property Tax Practicum, Workshop Organized by USAID/LTI and the Ministry of Land, Mines and Energy, October 20-21, 2006. It is a quite useful summary of the Registered Land Law of 1974. This workshop was held under the auspices of the USAID’s Office of Transitional Initiatives, by the USAID contractor LTI. There is another brief paper, apparently prepared by the USAID contractor, LTI, though that is not clearly indicated on the document: “An Investigation of the Real Estate Registration and Property Tax System in Liberia for USAID/OTI and the Ministry of Lands, Mines and Energy” (Monrovia, October 2006). It appears to be an attempt to summarize the results of the workshop. Finally, the MLME provided the consultant with a copy of a “Memorandum of Understanding” among concerned institutions, developed out of that workshop at dated October 21, 2006. It is discussed later in this section.

This is the latest iteration of a series of laws dealing with deed registration, beginning in the earliest days of the colony. The earliest appears to be a Plan of Civil Government enacted in 1827. For a review of the law in this area see Kwamena Bentsi-Enchill and GerADR H. Zarr, “The Assurance of Land Titles and Transactions in Liberia”, Liberian Law Journal 2 (1966): 94-121. The article still accurately reflects the situation regarding deeds registration; its arguments for a title (land) registration system prevailed with the enactment of the 1974 Land Registration Law.

Section 6 provides that “If any person shall fail to have any instrument affecting or relating to real estate probated and registered as provided in this Chapter within four months of its execution, his title to such real property shall be void as against any party holding a subsequent instrument affecting or relating to such property, which is duly probated and registered.”

The full text of Section 20.58 reads:

“The President with the advice and consent of the Senate shall appoint for each county a Registrar of Deeds who shall serve under the immediate direction and supervision of the Director. A Registrar of Deeds shall perform the following duties:

(a) Record in the manner prescribed by the Property Law chattel mortgages and all instruments, including government grants and patents, relating to the title of real property situated in the county for which he is appointed;

(b) Record all other instruments under seal such as assignments for the benefit of creditors, bills of sale, partnership deeds, articles of incorporation, and other documents which the parties concerned may desire to have recorded or which are required by statute to be registered in the office of the Registrar;

(c) Countersign and endorse in accordance with the Public Lands Law deeds for public lands in his county which are sold or which are allotted to immigrants;

(d) Receive from the clerks of the Circuit and Probate Courts papers of record relating to realty and register and file them in alphabetical order so that they may at all times be in safe keeping in his office and accessible to persons desiring examine them;

(e) On application of interested persons, furnish certified copies of instruments or public documents held in his custody; and

(f) Furnish the Director with regular quarterly reports accompanied by charts showing all transfer of real estate in the county.”

Bentsi-Enchill and Zarr in 1996 made a case for Liberia to switch to a title (land) registration system. The article cites a number of government reports recognizing the existing system of Deed Registration as “admittedly inadequate and defective” and notes that the Attorney-General of Liberia on two occasions between 1958 and 1961 recommended adoption of a title (land) registration system (pp. 95, 99).
It can be argued that this is not technically a requirement for a title (land) registration system, as it does not exist in Australia, where the system originated. But it is invariable a characteristic of the system when introduced into developing countries, and is seen as a major attraction of the system.

The Bank had a number of urban development projects with land registration components in the 1970s, including this project and Ghana Urban II. Those land registration components faced major implementation problems. A free-standing project, focused on land registration and providing very intensive technical support in the early stages, is needed to make a success of such initiatives. A valuable resource for possible future piloting, the Manual prepared for the earlier systematic adjudication and registration pilots, is still available in Lands and Surveys.

Mr. Jonathan Mongar, the Chief Demarcation Officer, was involved in this work and knows the extent to which the adjudication records and maps have been conserved or lost.


This is an outcome of the workshop sponsored by USAID’s Office of Transitional Initiatives, cited at the beginning of this section.


The complexity of the organizational chart is misleading to the extent that it gives the impression of a more robust institution than in fact exists today, certainly with regard to the units working on land matters.

This characterization is flawed because such rights are already private in nature. They may be individual or communal depending upon the particular customary system and the particular land concerns. It is quite common for customary systems to recognize individual rights in residential and farm land but communal rights in pastures or forests.


Certainly, if customary rights (beyond the Tribal Reserve and the Communal Holding) are to become registrable interests, the 1974 Land Registration Law would need to be amended to provide for this.

The Tolbert Administration earmarked and some cases expropriated parcels of land for the construction of public building and other government uses; but documents to that effect are unavailable and squatters, with the help of municipal officials have encroached upon said lands.

This possible Commission has been referred to as the “Land Reform Commission”. The term “land reform” suggests taking land away from some and giving it to others, and the consultant has suggested that the term “Lands Commission” be used instead. It may be that the Commission will, in the end, recommend that some redistribution of land is needed, but the title of the Commission should not take that decision for granted. And in any case, there are a wide range of additional land issues that need urgent attention, so “land reform” is too narrow.

There are no proceedings for this workshop but the brief (3-4 pages on average) papers from the various working groups are available from the Governance Reform Commission. The report of the Legal Working Group is included as Annex I.

An example in the Liberian case is the conservation of records of land rights. These are scattered among several government agencies at this point in time, but should be in the national archives as provided by law. The authority of the President, exercised through the Commission, may be needed to accomplish this. This will greatly facilitate the conservation of these documents and access to them by right-holders and their lawyers.
The consultant is of course in no way committing the sponsor of this consultancy or any other organization to support the Commission. This is simply his best judgment on prospects for funding given his observations of donor interest in supporting such policy and law reform commissions in other countries. The consultant makes the point because it was suggested to him that uncertainty about prospects for funding may have resulted in delay in creation of the Commission, and he wishes to ease this concern.

The GRC held a Data Reconciliation Workshop for the working groups on Land and Property Rights in Liberia on May 25, 2007, with each of the working groups presenting a preliminary paper, in the nature of issue identification papers. Proceedings have not been published.

The pilot might best be carried out not in a complex and difficult area of urban Monrovia, but in a more manageable peri-urban area, such as the Millsburg area visited by the consultant: a heavily fee-simple area with important commercial potential, close to Monrovia. In discussing possible pilot sites, the Minister of Internal Affairs warned against starting in Monrovia. “Monrovia is a sinkhole in which titling could bog down for fifty years,” he warned, referring to complexity and politicization of conflicts over land in the capital.


While the right of prescription is a basic element of the common law of real property, the consultant was unable to discover the legal basis for recognition of a right of prescription in Liberia. There is most likely a court decision recognizing the right. A “normal” period would be ten to twenty years, and a “shortened” period might be on the order of five or six years.

This was the approach adopted by some US states after independence from Britain, when in the late 18th and early 19th centuries conflict arose on the new country’s western frontier between the original grantees of the British Crown or their successors in interest on one hand and on the other, farm communities who had established themselves on that land. In 1777, Virginia passed a statute that gave settlers who had squatted on its western borders the right to pre-empt (to buy from the owner) the land they had improved. Other states followed suit. See Hernando de Soto, The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else (Basic Books 2002): 106.

For reasons that are not clear, this law enacted in 2003 requires in Section 1 that it be cited as the “Equal Rights of Customary Marriage Law of 1998”. It in fact affects both customary and common law marriages.

Section 3.7.2 of the Law repeals several articles of the Aborigines Law, which appears to have been repealed earlier, by its exclusion from the Liberian Code Revised. This is symptomatic of the legal confusion that prevails in post-conflict Liberia. The lack of access to laws and court decisions has left what approaches an information vacuum concerning law. The public and even administrators simply do not know what the law is.

This section references and incorporates by that reference the provisions contained in the Act Adopting a New Domestic Relations Law, Title 9 of the LCLR, 1973, and Section 3.1 similarly incorporates the Decedents’ Estate Law, Title 8 of the LCLR, 1973.

A memorandum from John T. Woods, Managing Director of the Forestry Development Authority, to Silas Siakor, Executive Director, Sustainable Development Institute, “Forest Data”, April 16, 2007, provides forest data by classes of land use by county, and references a number of relevant deeds involving forest land collected by the FDA.

The Constitution in Article 22(b) provides that “Private property rights, however, shall not extend to any mineral resources on or beneath any land or to any lands under the seas and waterways of the Republic. All mineral resources in and under the seas and other waterways shall belong to the Republic and be used by and for the entire Republic.” Forest resources are not included. Under the common law rule, ownership of land extends to the trees upon land as “fixtures”. But what of the right of Tribal Reserves under the Hinterlands Rules and Regulations, which is in the nature of a usufruct. Does the usufruct include the right to use of the trees upon the land of the Tribal Reserve? Normally it would, and in practice it has done so, but again clarification of this point is needed.
Perhaps anticipating this, the final section of the Law (23.3) provides that if a portion of the law is found invalid, the court shall only strike that portion as invalid and preserve the remainder.

The Sustainable Development Institute, a Liberian environmental NGO who lobbied for this provision, has been asked by the Forestry Development Authority to take the lead on development of regulations. DFID is providing technical assistance to SDI, including the consultant services of Dr. Elizabeth Alden Wiley. Dr. Wiley very kindly shared information and her informative interim report with the consultant.

The interests created by law include liens created for taxes, water rates, and there is also an exception for "any lease or agreement for a lease made after or pending registration, for a period not exceeding three years, where there is actual occupation by the lessee".