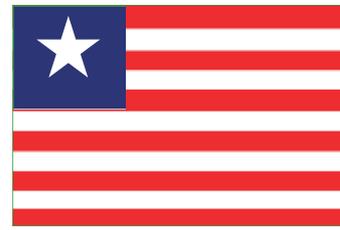




GOVERNANCE COMMISSION POLICY BRIEF



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LAND RIGHTS LAWS AND THE CONSTITUTION

Land ownership, access, tenure and security have been major challenges since the formation of Liberia as an independent nation. The magnitude and complexity of land issues which the 1986 Constitution is silent on pose a serious threat to peace and security and must be addressed for the common good of all residing in Liberia. Access to land, especially for agriculture and related purposes can assist in reducing poverty as the majority take to the soil. Even though land constitutes the main asset from which the rural poor are able to derive a livelihood, their tenure over the land they till is tenuous and insecure, leaving thousands of rural families at risk. These are some of the burning issues debated recently at the Roundtable on Land Rights and the Constitution organized by the Governance Commission (GC) in collaboration with the Constitution Review Committee (CRC) and the Land Commission (LC) held at the Monrovia City hall on December 12, 2014 in Monrovia. The Roundtable was sponsored by the United Nations Development Program (UNDP) and USAID.

There are several other critical issues that are yet to be addressed in the land rights framework of Liberia. Customary and statutory laws, while ostensibly of equal weight, still need to be aligned and protected by constitutional provisions. Unequal access or access opportunity to land for women, and for those in small holder and subsistence agriculture producing food crops require attention; the expansion of plantation-style concession rights are also among other critical challenges.

Since the inception of a democratically elected government in 2006, there has been modest progress in resolving some of the many challenges having to do with access to land and land tenure. The Governance Commission was established in 2007 and given the mandate to design and launch a process through which Liberia's land challenges would be addressed. Out of this mandate, the Land Commission was created in 2009 and has since been preoccupied with devising ways to address land challenges. Through a broad consultative process, it developed a Land Rights Policy which was promulgated by the President last year and a Criminal Conveyance Act which was enacted by the Legislature also in 2014. Unlawful conveyance of land is now a criminal offence. Despite progress made thus far, land rights challenges still rise to the level of a national crisis that must be more fully addressed. Many Liberians continue to feel that if more is not done to address land challenges the country could find itself in another round of violent conflicts.

This Policy brief captures key inputs from participants attending a one-day Roundtable on Land Rights Law and the Constitution. The purpose of the Roundtable was to discuss Liberia's land rights law which is to be passed shortly and the implementation structures which will be embodied in a new Land Authority Act with a view to determining their implications for the constitution review process which is underway in Liberia.



The Roundtable on Land Rights and the Constitution

Before discussing the issues of the Roundtable, it is important to lay out the relationship between the Land Commission and the Constitution review process in the context of the Roundtable. The Constitution Review Committee is spearheading the constitution reform initiative with the Governance Commission and the Law Reform Commission as ex-officio members of the Committee. The review process has involved broad-based consultations among Liberians in all 73 constituencies around the country as well as Liberians in many parts of the diaspora on a range of issues including the term limits of the President and the Legislature, race, citizenship and real estate property ownership, decentralization, among others.

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The review process also involves expert and technical discussion on many of the issues such as land reform. The Land Commission was able to make a direct input to the CRC's work. In addition to its direct input, the gravity of public concerns about land issues and the range of specialists and constituency views about land challenges necessitated further discussions with specialized groups of stakeholders. It is within this context that the GC, CRC and the LC organized the Roundtable on Land Rights and the Constitution as one of several forums to enhance understanding of a select number of issues deemed to have significant constitutional implications. The Deputy Speaker of the House of Representative, the Honorable Hans Barchue was special guest at the Roundtable and the Chairman of the Land Commission, Dr. C. Othello Brandy was the lead presenter. Counsellor G. Moses Paygar, a noted Liberian legal practitioner was also a presenter. Several members of the House of Representatives of Liberia, including the Chairman of the House Committee on Governance were participants in the Roundtable. Inputs from the Roundtable will further inform the constitution review process, especially the National Conference on Constitution Review schedule to take place in Gbarnga in late March 2015.



Chairman of Land Commission, Dr. Othello Brandy and Deputy Speaker Hans Barchue



CURRENT LAND RIGHTS CHALLENGES

With the existence of both customary and statutory laws on land, parties to land conflicts often adopt opportunistic strategies through forum shopping, thus increasing the jurisdictional confusion in land dispute settlement. Yet court dockets remain crowded with cases involving land. Some relief is emerging through the Alternative Dispute Resolution program which the Land Commission has been piloting and is now about to establish across the country. ADR process, though with its limitation, is considered a legitimate mechanism for land dispute settlement in many communities around Liberia. ADR must not be seen as a substitute for the courts but as a complement to the courts; therefore improving the processing of land related cases is a critical challenge.

One of the other significant land challenge is the penetrating reach of rubber, mining and oil palm concessions ceded to foreign companies by the Liberian government, often without consent of local people and without proper on-the-ground surveys. Of the 9.5million hectares of total land in Liberia, 57% has been given out in plantation-style rubber and oil palm concessions to foreign companies. Under many of these agreements villages are becoming isolated enclaves and local people are feeling denied access to farmland for subsistence and small-holder agriculture.

Women are the greatest victims in land alienation since they are the largest producers of food in Liberia. But land access challenge experienced by women as a result of the impact of plantation agriculture is only one dimension of the gender challenge related to land. Inheritance rights are often denied women through customary practices, even where laws are being enacted to correct this situation.

Finding answers to address these and many other challenges require the collective and coordinated initiatives of a range of stakeholders including ministries and agencies of government, local ethnic communities, faith-based, civil society organizations, concessionaires and the donor community, as well as the media. The Land Commission has been leading the initiatives to address land challenges and has produced some results. What has been the result of these initiatives and how do they impact the constitution review process? It is to these questions that this policy brief now turns.

TOWARDS A PARADIGM SHIFT IN LAND RIGHTS LAW AND GOVERNANCE

Historic Law Rights Policy

The major point made by the Chairman of the Land Commission is that the Land Rights Policy which was formulated in 2014 by the Land Commission and approved by the President of Liberia marks a paradigm shift in property rights in land in Liberia. The new Land Rights Policy makes two fundamental achievements: first, it marks the first time in the history of Liberia, that policy on land ownership rights has become clear, comprehensive and properly articulated. Second, the new policy identifies four categories of land ownership: private land, government land, public land and customary or community land. The legal and unequivocal recognition of the community land ownership rights is unprecedented and a game changer in property rights law in Liberia.

The recognition of community land ownership rights has huge implications for future concessions and natural resources management, especially in the areas of forestry, rubber, oil palm and other agro-businesses. Local people now have wider latitude in land-related transactions, including the right to organize joint ventures in agriculture and forest development schemes or to undertake those schemes on their own.

The distinction also made between government owned land and public land is also significant. The category of government-owned land has reference to land upon which government buildings and related facilities are built or land to be acquired for such purposes. This category of land ownership rights designated for government purposes is distinct from the category of public lands designated for public purposes such as public parks and recreation centers, national parks and nature reserves, among others. Thus this confirms that while nature reserves and public recreation centers may be situated within the confines of clans or local communities, such lands are considered owned by the public at large and not by the local communities or the national government.

Protecting Land Rights and Land Governance Laws

Both Dr. Brandy and Counsellor Paygar noted that the new land rights policy standing alone could not offer sufficient protection to the ownership rights it delineated; that is why further protection of these categories of land rights, especially community ownership rights, are sought by the enactment of the Land Rights Act which has been submitted to the Legislature by the President. But should the statutes when passed be further protected through a constitution amendment? A consensus seemed to have emerged from the contributions of various participants that, in view of the contentious nature of land rights challenges and their impact on peace and security, it would be prudent to entrench the protection of these rights, especially community land rights, in the Constitution. Therefore, the constitution review process should seek to enshrine in the constitution the protection of community land rights.

The Roundtable discussions also emphasized that this paradigm shift which recognizes community land rights, giving local people standing in negotiation of concessions agreements must ensure the establishment of local institutions and human capacity to protect the interest of local communities in negotiations as well as in local land management. The Land Commission is also leading an initiative to establish a land governance regime through an Act of the Legislature. The new Land Authority Act seeks to provide institutions for the governance of land at the national and sub-national levels.

Aligning and Harmonizing Land Rights and Local Governance Institutions

In addition to the Land Authority Act, the Local Government Act which is to be enacted as the statute authorizing decentralization also calls for establishing county and sub-county jurisdictions and mechanisms which will have to do with land rights governance. Joining these is the Community Forest Act which has already been passed into law. The Roundtable discussions stressed the need for aligning these acts to ensure that the land rights law is implemented as an integral part of Liberia's system of local governance.

The importance of local capacity in all areas of local governance cannot be overstated if local governance is to work. Local communities must have sufficient capacity for planning, development and implementation of community development projects using County Development Funds and Social Responsibility Funds and other income derived from land related transactions. Taxing powers and tax collection capacity will have to be established and strengthened at the level of local governance. District and county level government institutions will have to be seized of these responsibilities, so also should relevant civil society organizations. Dispute resolution mechanisms both courts and ADR must not only be available but must be efficient in resolving conflicts and dispensing justice.

If the paradigm shift is to enhance the empowerment of local people and their institutions, these and other local level institutions must be properly organized to meet the new opportunities and challenges presented by the new paradigm. Thus, there is a critical need for the harmonization of the Community Forestry Law which has already been enacted, and the draft Land Rights Law and the draft Local Government Law which are soon to be submitted to the Legislature and a review of their joint implications for constitutional review.

Local Economic Empowerment

Other developments associated with devolved ownership of land include access to banking facilities and small business investment capital. Potentially available small business investment capital for rural development is said to be in excess of US\$100 million. As property rights regimes are strengthened in rural Liberia through the new Land Rights Law when passed, it is expected that investment opportunities for small holders and local artisans, among others, will be unlocked.

Contentious Issues for Constitution Review Debate

There are a few controversial issues yet to be resolved in agreeing upon a land rights law; one of which has to do with sub-soil rights. These rights which are the rights in minerals and other resources to be found under the ground are by current law reserved to the national government to be used for the benefit of the entire nation. Local people around Liberia are of a different view on the question of ownership of sub-soil rights. Most feel that resources found beneath their land should be their property wholly or at least should be shared with the national government. This is an issue for constitutional debate.

Other issues of contention involve limits proposed in the new Land Rights Law on amount of land any one person can own. The maximum of 500 acres, the law seeks to establish, is considered by some a violation of the constitution. This is likely to be an issue for constitutional debate. A related contentious issue has to do with the proposal to impose a punitive tax on land owned but unused for an extended period of time. For a variety of reasons there are land holdings, often of high commercial value, left for decades undeveloped by their owners. In many cases they contribute to increased costs of public health and sanitation, and public safety and security

CONCLUSIONS AND RECOMMENDATIONS

The following are among the conclusions and recommendations drawn from the Roundtable:

Significance of land and local governance laws to local service delivery, participation and empowerment

With the passage and coordinated implementation of proposed laws on land rights, land governance and local governance, the modest progress made thus far in improving land rights and land governance will be accelerated, the delivery of public services to the Liberian people vastly improved, local participation in governance will be deepened and the economic empowerment of local people and communities will be strengthened. Due care must be taken to ensure resolving implementation challenges as the passage of the laws will not by themselves ensure progress. The proper structuring of institutions and the capacitating of local institutions are of critical importance in ensuring sustainability. The role of local people in these initiatives must not be compromised. Failure to include local voices ensures failure. Local voices must include the voices of women, youth, and people living with disabilities, among others.

Harmonizing land rights and related laws

More specifically, the Roundtable noted the historic nature of the Land Rights Law and the Local Government Act and urged the harmonization of both laws with the community forest and related laws with a view to ensure their effective implementation.

Strengthening protection of land rights

As historic gains, laws that clearly provide land rights to local people, especially local communities must be protected not only by statutes but also by the Liberian Constitution. The Constitution review process must address the issue of strengthening the land rights of local communities.

Empowering local communities and local people

The Roundtable noted that the passage of laws and the entrenchment of constitutional protections might well ring hollow without the empowerment of local people through the provision of local entrepreneurial opportunities. Policy measure to ensure the stimulation and growth of local economies by the empowerment of local people must be strengthened and expanded.

Ensuring equity

Inequity and uneven access is a perennial pitfall of local governance. There is need for constitutional protection for women, youth, local ethnic minorities and people living with disabilities, among others. Land rights law and other community rights laws must be enforced with special sensitivity to the rights of these groups. To the extent possible, the constitution review process must endeavor to prevent the tyranny of local majorities against local minorities both in institutional decision-making arrangements as well as in the provisions of opportunities and delivery of services.

Sub-soil rights

Local ownership of sub-soil rights is an issue argued by local people in all consultations regarding local governance. It will be useful for the constitution review process to address this question. Views from the Roundtable were unclear on this point. A consensus is yet to be reached.

Limits of land ownership

There seems to be a consensus both from comments made at the Roundtable as well as from consultations around the country that there should be a limit of how much land a single person should be allowed to own. Consensus did not emerge at the Roundtable on the magnitude or the method of enforcement. The constitution review process will do well to be seized of this issue.