

Peace and Prosperity for Liberia

A People-Centred Land Rights Act

Land
Rights
Now

Summary

The draft Liberian Land Rights Act (LRA) has the potential to become a fundamental law to the creation of a peaceful future for the country - improving the lives of over 3 million Liberians, reducing poverty, promoting sustainable development and protecting the country's forests. However, unless major changes are made to the current version that is in the hands of Senators, this transcendental opportunity will be lost. In fact, the current draft of the LRA - passed by the Lower House of Representatives in August 2017 - undermines the land rights of rural women and men, opening up their land for grabbing by more powerful actors. This is in open contradiction to the 2013 Liberia's Land Rights Policy, the 2009 Community Rights Law, and international consensus and guidelines on land governance by both public and private sectors.

Liberian civil society is voicing concerns over the current draft of the LRA and **recommends Liberian leaders revise it to align it with the African Union's Framework and Guidelines on Land Policy, the UN Declaration on the Rights of Indigenous Peoples, the UN Voluntary Guidelines on Responsible Governance of Tenure, and the Sustainable Development Goals.** In the coming weeks, the Liberian Senate and government have a historic opportunity to improve the lives of their people and to act as leaders and beacons of peace for West Africa. All they have to do is pass a people-centred version of the LRA.



The Land Rights Act. When a Law Can Change a Country

Over three million women and men in Liberia - roughly seventy percent of the population - live in rural areas.¹ The land that they own, live on, and depend on is mostly managed through community-based ownership, under customary rights.² For decades in West Africa, conflicts over land and resources have been driven by insecurity of community land rights.³ In Liberia, insecure land rights and lack of access to resources was one of the root causes of the 14-year civil war that scourged the country between 1989 and 2003.⁴ During the war, according to Global Witness, logging companies destroyed forests and abused communities, fueling corruption and conflict.⁵ Even after the civil war, acquisitions of lands held under customary ownership by rural women and men have persisted.⁶ The LRA has therefore become a fundamental and necessary component of Liberia's efforts to ensure stability, development and inclusive economic growth.

According to Land Matrix, Liberia is among the top ten target countries for large-scale land acquisitions in the world: at least 1.883.871 hectares have been sold to international investors. In terms of percentage of land affected by foreign investment, Liberia is the primary target country with roughly 17% of the entire country acquired by foreign investors.⁷ This is an area equivalent to more than 2.6 million football fields, or 215 times the island of Manhattan.

1 <https://data.worldbank.org/country/liberia>, accessed on 15 February 2018.

2 Global Witness. 2017. Liberian legislature must ensure Lands Rights Act protects rural landowners. <https://www.globalwitness.org/en/campaigns/liberia/liberian-land-law>, accessed on 15 February 2018.

3 Rights and Resources Initiative. 2017. From risk and conflict to peace and security. http://rightsandresources.org/wp-content/uploads/2017/01/From-Risk-and-Conflict-to-Peace-and-Prosperity_RRI-Annual-Review-2016-2017_English.pdf, accessed on 15 February 2018.

4 See also the Liberia's Poverty Reduction Strategy (2008-2011) - Chapter 1.2: conflict and collapse.

5 Global Witness. 2002. Logging Off. https://www.globalwitness.org/documents/14625/logging_off_september_2008.pdf, accessed on 15 February 2018.

6 See also the abuse of private use permits, with 40% of the country forest or a quarter of the land space was placed under private, commercial use. The contracts were reserved. See <https://www.theguardian.com/world/2012/sep/04/liberia-sold-quarter-land-logging-companies>, accessed on 15 February 2018.

7 www.landmatrix.org, accessed on 15 February 2018;





These acquisitions often happened with little or no consultation with those directly affected⁸ and in violation of both domestic and international laws.⁹ The government awarded agricultural, logging, oil and mining contracts spurring criticism from national and international civil society.¹⁰ It claimed that these concessions - mainly to extract timber, grow palm oil and rubber - would contribute to the prosperity of the national economy.¹¹ However, while companies made large profits, local communities lost their land and livelihood.¹² Each and every one of the 237 mining and agriculture concessions had established communities living on them.¹³ Despite this, in several of those contracts the Government of Liberia ensured corporations that the land was ‘free of encumbrances’, in blatant contradiction to the reality on the ground.¹⁴

In 2009, a National Land Commission was established to resolve land conflicts and contribute to peace.¹⁵ The same year, a landmark Community Rights Law recognized “customary lands” (Section 1.3) and provided that “Any decision, agreement, or activity affecting the status or use of community forest resources shall not proceed without the prior, free, informed consent of the said community” (section 2.2[c]).¹⁶ In 2013, the government published a promising Land Rights Policy¹⁷ - which recognized the customary land rights of local communities - and set in motion the process of drafting a Land Rights Act (LRA).¹⁸ In 2014, the former President introduced the draft Land Rights Bill to the National Legislature. In August 2017, the House of Representatives passed a diluted version of earlier drafts of the LRA. This version would open up land to further large-scale acquisitions without any scrutiny or significant protection for local communities.

8 Juliana Nkono-Mewanu. Why Liberia needs to protect land rights. <https://www.hrw.org/news/2016/08/17/why-liberia-needs-protect-land-rights>, accessed on 15 March 2018;

9 See Final Report for the LEITI Post Award Process Audit by Moore Stephens, 10 May 2013 (pages 5 - 8; 9 - 10; 37 - 100)

10 <https://www.globalwitness.org/en-gb/blog/silas-film>, accessed on 15 March 2018.

11 International Growth Centre. 2017. The socio-economic impacts of land concessions. <https://www.theigc.org/project/the-socio-economic-impacts-of-natural-resource-concessions-in-liberia/>, accessed on 15 March 2018.

12 International Growth Centre. 2016. Parceling out prosperity? <https://www.theigc.org/blog/parceling-out-prosperity-tracking-and-evaluating-the-impacts-of-natural-resource-concessions-in-liberia/>, accessed on 15 March 2018

13 TMP Systems. 2016. Communities as counterparties. http://rightsandresources.org/wp-content/uploads/Communities-as-Counterparties-FINAL_Oct-21.pdf

14 Concession Agreement Golden Veroleum Liberia and the Government of the Republic of Liberia. 2010. <http://goldenveroleumliberia.com/index.php/downloadable-content/concession-agreement>, accessed on 15 March 2018.

15 See: <http://extwprlegs1.fao.org/docs/pdf/lbr115467.pdf>, accessed on 15 March 2018.

16 <http://www.fda.gov.lr/wp-content/uploads/2015/07/Community-Rights-Law-of-2009-with-Respect-to-Forest-Lands.pdf>, accessed on 15 March 2018.

17 2013 policy available at https://www.land-links.org/wp-content/uploads/2013/05/Land-Rights-Policy_-_Draft_4.14.13_Version-for-Pres-Cabinet-May-17_0.pdf, accessed on 15 February 2018.

18 2014 LRA available at http://www.sdiliberia.org/sites/default/files/publications/Land%20Rights%20Act_full%20draft.pdf, accessed on 15 February 2018



Our recommendations

The fact that the Government has recognized the centrality of land issues in the development of Liberia is a major step.¹⁹ However, national and international civil society organizations, including those that have endorsed this Policy Brief, believe that the 2017 draft “Land Rights Act” severely undermines the rights of local communities and compromises Liberia’s ability to achieve sustainable development and inclusive economic growth. Therefore, we call on the Senate and President Weah to reconsider the 2014 draft of the LRA or, at the very minimum, to revise the 2017 draft of the LRA to take into account to the following 5 recommendations.²⁰

Recommendation 1 Tribal certificates cannot be transformed in deeds without adequate scrutiny and safeguards

The 2017 draft of the LRA transforms - and legitimizes - Tribal certificates as deeds, with hardly any safeguards against past and ongoing abuses (Article 47 as well as Articles 2 and 37). Tribal certificates are documents that record the consent of tribal authorities and communities to the sale or transfer of a parcel of customary land to an “applicant” under the 1965 and the 1973 Public Land Sale Laws.

19 See former President Sirleaf’s statement on the Land Rights Policy at <https://www.land-links.org/wp-content/uploads/2013/05/As-delivered-Presidents-Statement-at-Policy-Validation-Conference.pdf>

20 For an elaborate discussion of the changes that have been made to earlier drafts of the LRA and a full list of recommendations see “Suggested changes to the 2017 Land Rights Bill” by Civil Society Organizations Working Group on Land Rights.

However, Tribal certificates were often irregular, and issued without respect to the law. The 2017 draft of the LRA (Article 47 Section 2) allows Tribal certificate holders to claim 100% of “developed” land and 50% of undeveloped land. It is expected that this provision will force many communities away from their land without their consent. In addition, the government has not yet made an inventory stating how many Tribal certificates exist and how much land is currently being claimed under them. Such confusion is one of the major causes of tenure insecurity in Liberia.

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We ask, at the very minimum, for a revision of Article 47 (2) of the 2017 draft of the LRA to state that a holder of a public land sale deed is only entitled to the land if it is truly developed. And that an officer of the Liberia Land Authority be sent to confirm, with the consent of the community, that the land concerned has been developed by the date of the passage of this Act. The undeveloped land shall then be returned to the community as customary land.



Recommendation 2

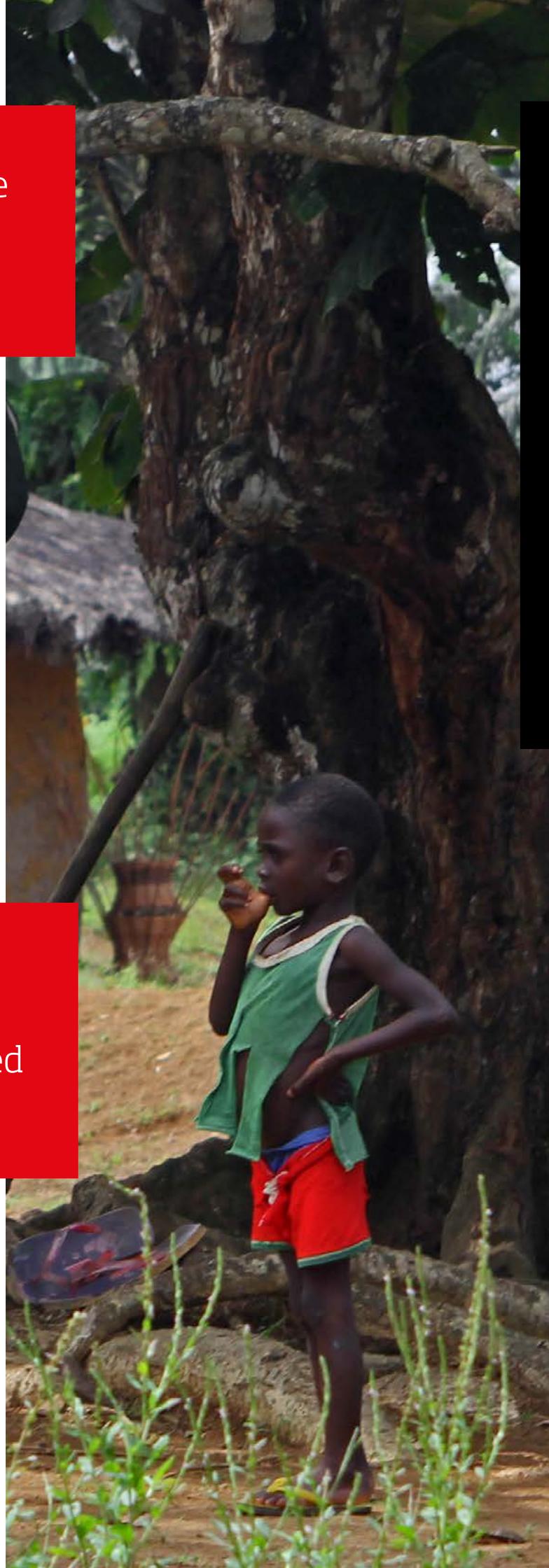
Customary lands cannot be re-classified or designated as public lands without community consent

The 2017 draft of the LRA gives the government the power to re-classify or designate 30% of customary land as public land, without the free, prior and informed consent of the affected community or, even, compensation (Article 33). Communities who own and manage these lands and depend on them should have the right to give or withhold their consent to this large irreversible transfer of land rights. Should expropriation happen, it should be executed in line with international standards, including standards on compensation, prior to any land transfer by the government.

Recommendation 3

All concessions and land-based investments require the Free, Prior and Informed Consent of the affected community

Article 33 of the LRA, in its earlier versions, provided communities with the Right to Free, Prior, and Informed Consent (FPIC) in all concessions and investments on their lands. This norm has been excluded from the 2017 draft of the LRA,



in violation of international norms²¹ best practices, including those of the private sector. An FPIC process helps reduce social conflict by requiring good faith negotiation, and it increases the legitimacy of a project in the eyes of all stakeholders and provides social license for corporate operations. For this reason, a growing number of companies are making broader commitments to FPIC.⁵ As noted by the investment consultancy TMP Systems, “the risk posed to investors by disputes with local populations is widespread, materially significant and growing”²². The right to FPIC is critical to promote inclusive development for all Liberians and to attract positive investments in rural economies.



Recommendation 4

Public land and protected areas need to be designated in a transparent and participatory way

Earlier versions of the LRA made clear that portion(s) of customary lands may be set aside as protected areas and remain owned and managed by community members. The 2017 draft of the LRA undermines this fundamental recognition. The current Article 42 (1) and (2) provide that once the government designates a portion of a community’s customary land as a protected area, the land will lose its categorization as customary land, and will automatically become public land, and by extension, government land.

This is not only a matter of violating human rights. Evidence shows that effective environmental protection is best achieved through

community-based approaches²³. Community-owned and managed forests have proven to deliver greater carbon storage²⁴, essential to mitigate climate change, which in Liberia is expected to add to already existing stresses and enhance vulnerability to shocks and crises.²⁵ We therefore ask that article (42) be replaced with the 2014 version.

21 See, among the others, the UN Declaration on the Rights of Indigenous Peoples and the UN Guiding Principles on Business & Human Rights.

22 In Oxfam, ILC, RRI. 2016. Common Ground. Securing land rights, safeguarding the Earth.

23 Rights and Resources Initiative. 2016. The Science Is In: Community Governance Supports Forest Livelihoods and Sustainability. <http://rightsandresources.org/wp-content/uploads/Factsheet-Community-Governance.pdf>, accessed on 15 March 2018.

24 AIPP and al. 2017. Secure indigenous and community land rights contribute to fighting climate change. https://landrightsnow.contentfiles.net/media/assets/file/Factsheet_Indigenous_and_Community_Land_Rights_and_Climate_Change.pdf, accessed on 15 March 2018.

25 Drakenberg et al. 2014. Liberia. Environmental and climate change policy brief. http://sidaenvironmenthelpdesk.se/wordpress3/wp-content/uploads/2014/01/Liberia_EnvCC-PolicyBrief-2013-Final-Draft.pdf, accessed on 15 March 2018.



Recommendation 5

Women should have equal rights to land, and equal participation in governance

The 2017 draft of the LRA states that the governing body of any Community Land Development and Management Committee (CLDMC) should include one representative of the women in the community, one men's representative, one youth representative, and the chief of the community (Article 36 Section 6). In a patriarchal society such as Liberia, this provision threatens to further marginalize women in decision making. This norm is far below international guidance on gender equality and land governance²⁶, and does not recognize the critical role of women in rural areas in Liberia. Evidence shows that concessions and investments, particularly for palm oil, mining and logging, can be granted without any of the women's consent or even knowledge.²⁷ Discrimination against women in land governance seriously undermines the potential of the LRA to promote food security and inclusive development.²⁸ According to FAO, closing this gap could boost agricultural output and decrease global undernourishment by up to 17 percent.²⁹

We call for the governing body of each CLDMA to consist of at least 33% of women³⁰, or to retain Article 36 Section 4 of the 2014 version of LRA that calls for equal number of representatives of each of the three stakeholder groups - women, men and youth - within the community to serve on the CLDMC. Any decision that denies women's rights of customary land or contravenes the norms of the Convention on the Elimination of Discrimination Against Women (CEDAW) should be null and void.

26 See the Africa Union's Framework and Guidelines on Land Policy; the Voluntary Guideline on the Responsible Governance of Tenure, the 2030 Sustainable Development Agenda, and the CEDAW General Recommendation n.34.

27 Kalliongji. 2017. Large scale concessions violate women's land and resource rights. <https://rightsandresources.org/en/blog/case-study-large-scale-concessions-liberia-violate-womens-land-resource-rights-fail-deliver-promised-benefits/#.WowtsyOZNmA>, accessed on 15 February 2018.

28 SIDA. 2015. Women and land rights. <https://www.sida.se/contentassets/3a820dbd152f4fca98bacde8a8101e15/women-and-land-rights.pdf>, accessed on 15 March 2018.

29 FAO. (2016). The State of Food and Agriculture 2016: Climate Change, Agriculture, and Food Security. <http://www.fao.org/publications/sofa/2016/en/>, accessed on 15 February 2018.

30 Rights and Resources. 2017. Op. cit.

A People-Centred Land Rights Act: A transcendental opportunity for Liberia

Evidence shows that there is correlation between insecure land rights and conflict.³¹ This undermines investments in rural areas and undermines the ability of families across Liberia to achieve prosperous and peaceful lives. Conflict and violence are part of the recent history of Liberia. A people-centred Land Rights Act would create the conditions to consolidate peace and democracy in the country. Governments across Africa and globally have affirmed a correlation between secure and equitable land rights and food security, sustainable development, and positive economic outlook.³² According to the World Bank, improving tenure security and increasing land access and tenure for vulnerable families has a positive effect on countries' development. Recently, the EU encouraged Liberia to secure the land rights of rural women and men as a strategy to improve agricultural productivity and food security.³³ Secure land rights for communities contributes significantly to their civil, political, economic, social and cultural rights.³⁴



The time is now

Liberia is at a crossroads. Passing the Land Rights Act in its current form would undermine the country's stability, economic development and ability to protect the environment.

By adopting the recommendations included in this brief and delivering a genuinely pro-community Land Rights Act, the Senate and President Weah have the power to pass a law to transform the lives of millions of Liberians, protect the country's forests and build a future of peace and prosperity.

31 TMP Systems and Rights and Resources Initiative. 2017. Tenure and investment in Africa. http://rightsandresources.org/wp-content/uploads/2017/01/Tenure-and-Investment-in-Africa_Synthesis-Report_TMP-Systems-RRI_Jan-2017.pdf, accessed on 15 March 2018. 3

32 Among the others the Africa Union's Framework and Guidelines on Land Policy.

33 EU. 2017. The European Union launches a Land Rights for Liberia Project. https://eeas.europa.eu/delegations/liberia/22847/european-union-launches-land-rights-liberia-project_en

34 See International Covenant on Civil and Political Rights (Article 1) and International Covenant on Economic, Social and Cultural Rights (Article 1)



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Land Rights Now

Land Rights Now is an international alliance campaign to secure indigenous and community land rights. More than 800 organizations and communities worldwide have endorsed the goal of Land Rights Now. More info on www.landrightsnow.org

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