

AIR COMMAND AND STAFF COLLEGE

AIR UNIVERSITY

Land Disputes Unearth Shaky Legal Foundation:  
Will Liberia's Land Reform Provide Stability?



by

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A Research Report Submitted to the Faculty

In Partial Fulfillment of the Graduation Requirements

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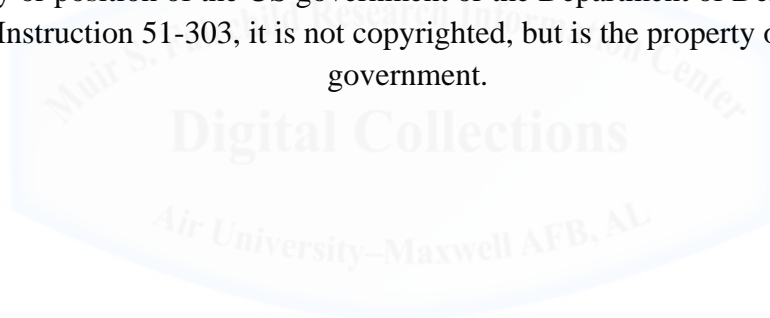
April 2014

## Contents

Disclaimer .....	3
Global Land Grabs and New Colonialism .....	4
Case Study: Liberia.....	7
History of Land Tenure and Internal Conflict in Liberia.....	8
Customary Land Tenure in Liberia .....	13
Types of Land Tenure Issues in Liberia .....	16
The Government of Liberia’s Efforts to Resolve Land Tenure Issues.....	18
Requirements for Successful Implementation of the Land Tenure Reform Policy.....	20
The Government Must Have the Political Will for Reform.....	21
The Government Must Eradicate Fraud, Corruption, and Abuse of Power.....	22
The Government Must Provide a Fair Legal System Honoring Customary Rights.....	29
The Government Must Provide Affordable and Fair Access to Institutions.....	33
Conclusion.....	34
Bibliography .....	39

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Three weeks into my 6-month tour in Liberia, I was just beginning to get used to navigating the city on roads without traffic laws. One morning, I tested my skills on the way to an early meeting with the Armed Forces of Liberia legal staff. While enroute, I encountered a crowd forming in the street, which quickly began blocking the road. One of the children in the neighborhood started directing traffic, ordering cars to turn around or take an off-road detour. My paralegal asked the boy why the crowd had formed, to which the boy replied, “land dispute.” We turned around just before the assembly turned into a riot, shutting down a main thoroughfare out of the city for hours. Eventually the Liberian National Police was called in to break up the riot. This particular riot followed a lengthy court battle between squatters and post-conflict returnees.<sup>1</sup> Land disputes like this one have tied up Liberian courts and are the leading cause of disputes in the country.<sup>2</sup> This was the first time I experienced the potential destabilizing effect of land disputes, particularly on a post-conflict state like Liberia. This experience inspired me to investigate the cause, effects, and potential solutions to the many land tenure issues in sub-Saharan Africa.

### **Global Land Grabs and New Colonialism**

Globalization and the global competition for resources have inspired large-scale acquisition of tracts of land by foreign investors in the developing economies of Africa, South America, and Southeast Asia, primarily facilitated by government appropriation of resource-rich land. Twenty-first century land grabs, as this phenomenon is referred, are fueled by international trade agreements, foreign direct investment in the global south, US and European desires for bio-fuels, like soybeans and palm oil, and depletion of water reserves. “As of May 2012, it was estimated that between 32 and 82 million hectares (between approximately 80 and 200 million acres) of global farmland had been brought under foreign control, with the amount constantly

increasing.”<sup>3</sup> Land grabs of farmland around the world have resulted in the exploitation and displacement of customary collective landholders.

The phenomenon of land grabs, also referred to as the “new colonialism,” is particularly widespread in Africa where resource rich land is considerably susceptible to exploitation. Land in Africa is so susceptible to exploitation because of the commoditization of land, the individualization of landholding, and the appropriation of land by governments.<sup>4</sup> Additionally, “in post-colonial societies of West Africa, land is seen as a form of political space — territory to be controlled both for its economic value and as a source of leverage over other people” by both governments and local officials.<sup>5</sup> As a result, within post-colonial and post-conflict African states, years of exploitation and displacement of customary collective landowners has fostered resentment. This resentment combined with the competition over land has resulted in “conflict, sometimes violent, about legitimate authority over land among traditional leaders, government at multiple levels, and land-users.”<sup>6</sup> Many theorists have over-emphasized the ‘ethnic’ character of current conflicts in Africa, and have failed to acknowledge that “so-called ‘ethnic conflicts’ are linked simultaneously to ‘preoccupations about land’ and to contests over political power.”<sup>7</sup>

With the rise of resource competition, globalization, and spread of terrorist organizations, stability in Africa is of increasing importance to the international community. The stability of West Africa is of particular importance in light of recent conflict in Algeria and Mali stirred up by radical Islamist organizations, like Al-Qaeda in the Islamic Mahgreb, the continued attacks by Boko Haram in Nigeria, and potential conflict in the Niger-Delta over oil resources between impoverished local communities and the government and oil companies.

Many states in sub-Saharan Africa have attempted to implement land tenure reform in order to return customary land to the communities. Several motives for land reform include: a

desire to make legal land sales available to foreign investors; concerns about land scarcity; a desire to restore community lands to displaced people; to reduce ethnic and class tensions; and to give order and accountability to corrupt or inefficient land management.<sup>8</sup> Many African states have struggled with implementing land reform. Ambreena Manji noted five reasons for slow progress in land reform implementation in Africa: 1) unclear policies and procedures within the government department responsible for land matters; 2) lack of staff and trained personnel; 3) lack of political will to carry out policy changes; 4) conflicts at the community level; and 5) hindrance by bureaucrats implementing the policy.<sup>9</sup>

Liberia, likewise, may face challenges in resolving longstanding land tenure issues and ethnic and class tension. In May 2013, the Liberian Land Commission drafted a landmark land tenure reform policy recognizing the rights of customary landholders.<sup>10</sup> Successful implementation of land tenure reform is essential for stability in Liberia; however, in light of Liberia's complicated history, implementation of new laws may present challenges as landowners and communities seek to formally claim and manage land. The land rights policy and its recommendations may not prevent local elites, chiefs, and bureaucrats from abusing their power by selling, leasing, and transferring land without representative decision by the community, which has been deeply engrained in Liberia's complex history. In order to successfully implement the recommended land tenure reform, thereby lessening internal conflict and class tension, the Government of Liberia must provide the political will for land reform by offering robust and trustworthy government agencies to ensure collective community landowners' rights are protected, eradicate fraud, corruption and abuse of power by the bureaucrats and local community leaders, and provide affordable access to government

institutions and a fair legal system honoring customary rights rather than favoring local elite or foreign investors.

### **Case Study: Liberia**

Liberia is particularly susceptible to land grabs because it contains more than half of the rich Upper Guinean tropical forest left in West Africa (4.4 million ha of ca 8 million ha) and is home to substantial mineral wealth (iron ore, gold, diamonds, manganese and silica) combined with weak land laws to govern them. Studies indicate the Government of Liberia has committed itself to land use rights to foreign investors over an area totaling approximately 75% of the total Liberian land mass.<sup>11</sup> In addition to the communities displaced as a result of land grabs by the government and foreign investors, 500,000 or so people were also displaced by years of civil war. Before one can understand potential challenges facing legal reform, a history of land tenure in Liberia and its effect on ethnic and class relations and internal conflict must be examined. Liberia, the first independent state in Africa, has an entirely unique and complex history of treatment of land tenure and internal conflict. “The complex and largely unresolved issues of ownership and claims over land are in the views of most Liberians the primary source of social tensions in the country.”<sup>12</sup> Even the Liberian Supreme Court recognizes the increasing violence and instability resulting from land disputes:

Land and related disputes are proving to be a constant reminder of the agonizing experiences attendant to acquisition, ownership, sale and transfer of realty in this jurisdiction. Further, these land disputes carry unbearable costs both in time and material resources. But the most troubling is the undeniable reality that land disputes have increasingly become a major source of our nation’s conflict. Violence consequential of land controversies have, in notable instances, witnessed loss of precious and irretrievable lives in Liberia.<sup>13</sup>

### **History of Land Tenure and Internal Conflict in Liberia**

Unlike the other African states colonized by Europeans, Liberia was colonized by freed American slaves in 1821.<sup>14</sup> The settlers did not arrive on uninhabited land, but rather land occupied by communities governed by kinship and common ancestry.<sup>15</sup> Land was held by native Africans based on a socio-spatial organization, meaning each community or village possessed its own discreet land or territory and protected its own domain from raids and intruders.<sup>16</sup> The settlers, who became known as Americo-Liberians, remained initially in the littoral areas of what is now Liberia, resulting in a marked difference in land tenure treatment on the coast and land tenure in the hinterland. Also, uniquely to Liberia, the American settlers did not forcibly take and appropriate the land from the natives. Rather, the settlers bought the land from native Africans, usually through the communities' king or chiefs, though at very exploitive prices.<sup>17</sup> In 1821 the first land deed between the settlers and the native Africans was signed. The King unilaterally signed over the community's land, where Liberia's capital Monrovia now sits, for the equivalent of \$3,000 without approval of the people as a whole.<sup>18</sup> Wealthy settlers could also purchase land from the public land acquired by the government. In purchasing land from natives, the American settlers brought the construct of privatization and individual ownership of land to Liberia.

In 1847, Liberia declared independence and formed a Constitution based on the ideals of democratic government as reflected in the original American Constitution, and embodied such fundamental principles as centralism; popular sovereignty; limited government; separation of powers; and the supremacy of the judiciary.<sup>19</sup> Similarly to the American experience, the embodiment of democratic experience did not necessarily extend to indigenous people. Bringing elements of the antebellum American South, Americo-Liberians "ran the country like a plantation enslaving native people and using them as housemaids and unpaid laborers."<sup>20</sup>



During this early period, the statutory land tenure construct was implemented in the littoral areas while customary land tenure ruled in the hinterland where Americo-Liberians only had minimal control.<sup>21</sup> Initially, the American settlers did not buy or appropriate land in the hinterland. In fact, early in colonization, customary land ownership was acknowledged by the Government of Liberia. It was not until the turn of the century, that the Government of Liberia sought to impose its sovereignty over the hinterland, likely in response to incursions by other colonial nations like Britain and France.<sup>22</sup>

Beginning in 1905, the Government of Liberia allowed allocation of public land to “sufficiently intelligent and civilized” indigenous people.<sup>23</sup> These Aborigine Grant Deeds were completely unique to Liberia and granted deeded land to the indigenous communities in fee simple.<sup>24</sup> However, some of these grants were titled Tribal Certificates, which stated that the land could not be sold, transferred or assigned without the consent of the Government of Liberia despite citing the same 1905 Aborigine Grant law which provided fee simple entitlement.<sup>25</sup> The Government further attempted to gain control over the hinterland by providing common rules for governance over indigenous communities. In 1923, the Government of Liberia called all the chiefs from the hinterland together for a conference to discuss governance of the hinterland.<sup>26</sup> The result was the formalization of tribal authority. According to the Hinterland Land Law, it was the policy of government to administer tribal affairs through tribal chiefs who shall govern freely according to tribal customs and traditions so long as they were not contrary to law.<sup>27</sup> Through formalization, all tribes were divided into clans and ruled by a Clan Chief.<sup>28</sup> These rules applied to all indigenous communities even if such positions as “Paramount Chief” and “Clan Chief” were foreign to the community, like the Southern native people who lived in smaller, more autonomous units who had elders fulfill leadership positions, rather than chiefs.

Land tenure specialist, Liz Alden Wily, suggests in her study of customary tenure in Liberia, that the impetus for the conference and Hinterland Law was the 1919 decision of the Liberian Supreme Court. The Court cited American precedent (Chief Justice John Marshall) in support of Liberian sovereignty over the hinterland, and as a result, justified the degradation of customary land rights. In a criminal case involving whether the Liberian laws applied to those in the hinterland, Liberian Supreme Court Chief Justice Dossen cited nearly 100-year-old legal precedent that declared US sovereignty over Native Americans:

Chief Justice John Marshall of the United States Supreme Court, who in the celebrated case *Johnson v. McIntosh*, decided 1823, held that: "The potentates of the old world found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new, by bestowing on them civilization and Christianity in exchange for unlimited independence...It was a right," he held, "which all asserted for themselves and in the assertion of which by others all assented. Those relations which were to exist between the discoverer and the natives were to be regulated by themselves...In the establishment of these relations the rights of the original inhabitants were in no instance entirely disregarded; but were necessarily to a considerable extent impaired. They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it and to use it according to their own discretion;" but, he declared, "their rights to complete sovereignty as independent nations, were necessarily diminished."<sup>29</sup>

The United States had asserted its sovereignty over indigenous people through the Seven Major Crimes Act of 1885, which brought US criminalization to the reservations with the purpose of "civilizing" the natives.<sup>30</sup> Unfortunately, the Government of Liberia misguidedly modeled their system after the US construct, resulting in similar enduring and detrimental impacts on indigenous communities.

In the same opinion, Chief Justice Dossen also praised the creation of Paramount and Clan Chiefs to further establish Liberian sovereignty over the hinterland.<sup>31</sup> The imposition of

formalized tribal authority and politically representative organization was similarly directed in Native American communities in the United States by the Indian Reorganization Act of 1934 in communities that never contemplated formal tribal organization before, and as such, remains controversial today.<sup>32</sup> As a result of the formalization of tribal organization, chiefs in the Liberian hinterland, in essence, became servants of the state and an arm of the Government of Liberia to maintain control over the hinterland.<sup>33</sup> They acted as tax collectors for the Government of Liberia and, at the same time, governed the community in customary ways and in accordance with customary rules. This form of indirect rule over the interior was a source of revenue and wealth for the elite in Monrovia, while local administrators and chiefs also received a share of the wealth.<sup>34</sup>

In 1926, following the government's declaration of sovereignty over the hinterland, the Government of Liberia leased a million acres of land to the American company Firestone Tyre and Rubber Company for a period of 99 years.<sup>35</sup> Then beginning in the 1950s, customary land ownership was further degraded when the treatment of customary ownership legally changed from one of legal entitlement to merely possession. In 1956, the Hinterland Law was amended to The Aborigines Law wherein the words regarding land ownership changed from the 'right and title to the land' to 'right of use and possession of the land.'<sup>36</sup> Though the change in wording may seem insignificant, the change resulted in all of the hinterland becoming public property and customary land owners became merely occupants. Additionally, the Government of Liberia's Open Door Policy, at its height in the 1970's, promoted foreign investment in Liberian resources and offered concessions with extremely long leases. By 1970, Firestone and the Liberian Iron Mining Company were providing the Government of Liberia with 50 percent of its revenues.<sup>37</sup> These types of government concessions to foreign investors can be a source of social conflict

because they create forms of patronage that can replace or delegitimize the authority of state agencies, and may align ethnic rivalries at local levels with those at national levels causing instability.<sup>38</sup> Additionally, concessions “enable companies to enjoy ‘unrivalled dominance’ and patron–client connections with persons able to take advantage of the state’s fragmentation.”<sup>39</sup>

From 1877 to 1980, Liberia was governed by one party under the control of the same elite group which held power continuously during that period.<sup>40</sup> “Essentially, Liberia remained as an oligarchy where 1 percent of the population controlled the rest.”<sup>41</sup> Liberia is particularly unique because when colonial rule ended in Africa in the 1960’s, Liberia’s system of government remained largely the same.<sup>42</sup> Most native Africans were excluded from legislature and government positions and were paid next to nothing by multinational companies extracting resources from their land.<sup>43</sup> The last Americo-Liberian President, William Tolbert, amassed a personal fortune and implemented nepotism throughout the government.<sup>44</sup> The disparity between the elite and the impoverished indigenous Africans was stark.

This backdrop provided the ideal environment for Master Sergeant Samuel K. Doe’s coup in 1980. Doe was a native African from the Krahn tribe, described as a country boy, whose actions were fueled by long-standing resentment over oligarchical rule of the elite.<sup>45</sup> Doe’s tribe sat at the bottom of the social hierarchy and was considered backward by others.<sup>46</sup> A member of the impoverished rural indigenous community, Doe promised to liberate the masses from corruption.<sup>47</sup> Unfortunately, Doe failed to live up to promises and perpetuated corruption and oppression, particularly by promoting his own tribal group which fueled tribal animosities. This opened the door for the civil war that followed.<sup>48</sup> In addition, Doe implemented a law requiring foreign investors to pay an annual ground rent to the government, instead of paying the rent due to customary owners.<sup>49</sup>

Access to land and its resources was a factor in, and arguably the impetus for, conflict in Liberia in both the 1980s and 1990s. This idea was explored by anthropologist Paul Richards who “argues that the conflict in Liberia was the result of tensions over access to land.”<sup>50</sup> Richards asserts that the internal conflicts in Liberia were a product of domestic labor exploitation and abuse, especially of young people, which prevailed in the countryside in Liberia.<sup>51</sup> Arguably, the exploitation of young rural people occurred as a result of the indirect rule imposed by the settler elite in Liberia.<sup>52</sup> Chiefs had imposed heavy and unjust fines and abused of rural customs, particularly regarding marriage and land rights. This abuse of power left young people susceptible to recruitment into militias. Additionally, under Charles Taylor’s regime, displacement of local communities persisted with more or less every tract of forest in Liberia under active government concessions.<sup>53</sup>

After the civil wars, the ousting of Charles Taylor, and the establishment of the new Government of Liberia, the degradation of customary land rights continued. New laws, like the National Forestry Reform Law of 2006, declared all forest resources in Liberia to be “held in trust by the Republic for the benefit of the People.”<sup>54</sup> The management of all forest land was moved under the Forestry Development Authority and prevented local communities from managing their own forest land.

### **Customary Land Tenure in Liberia**

The classification of tribes by the Liberian state is based on kinship relations and divided into sixteen groups: Bassa, Belle, Dey, Gbandi, Gio, Gola, Grebo, Kissi, Kpelle, Krahn, Kru, Loma, Mandingo, Mano, Mende and Vai.<sup>55</sup> Though the communities have variances, the customary traditions governing land are generally similar, at least enough for the purposes of understanding the customary system in Liberia. Among all tribes, land is considered to belong to extended families, towns, or cluster of towns rather than to individuals or households.<sup>56</sup>

“Communities trace their rights to live, farm, and govern a particular area to the clearing of primary forest and settlement on the land by their forefathers.”<sup>57</sup> Individuals and households typically gain seasonal or permanent rights to shares of that land through one of the following: 1) allocation by those administering rights in community; 2) gifts of land from parents to children or from town citizens to strangers; 3) inheritance; 4) marriage; 5) borrowing land; and 6) planting trees.<sup>58</sup>

Authorities used client-patron relations or intermarriages to confer land rights to others and to increase their power; land was not scarce; land access and settlement were flexible; individuals controlled farms; farmers were concerned with the control of crops and trees on their land but did not raise land ownership questions; farmers could claim any land not already marked by another farmer for that year’s swidden, any forest contiguous to their previous season’s rice field, and any land that they had improved (e.g., by planting trees).<sup>59</sup>

Under the customary system, access to land is generally governed by a set of rules shared by the lineage that settled in the area and first cleared the land.<sup>60</sup> Claims to land are highly nested, ranging from claims held by the lineage-based chieftaincy or clan to claims held by towns, extended families, and households and individuals.<sup>61</sup> Village and town chiefs play an important role in resolving disputes that may arise between customary landowners.<sup>62</sup>

According to customary rules, a stranger can come and use the community’s land if they go through the appropriate community leadership and secure the permission of the community.<sup>63</sup> But even under this customary construct, the community has the fundamental right to say yes or no.<sup>64</sup> Adherence to this system, however, has declined as a result of the interest of outsiders and politically influential local elites in rural land. Foreign investors and the government have not conformed to customary practice by obtaining community permission. Over time, indigenous

customary landholders lost their claim to land, and land became increasingly governed by statutory tenure as a result of land grabs.

Despite the predominance of the customary land tenure system, the prevalence of statutory claims to land and resources is widespread.<sup>65</sup> The coveting of natural resources has increased the desire for statutory recognition of land rights. The desire for statutory title derives from both members of communities seeking protection of customary land rights and outsiders who seek individualized ownership.<sup>66</sup> A degradation of customary land tenure practices by young Liberians has also been noted by researchers. Many tribes have noted some decrease in compliance with traditional rules in large part due to the civil war and challenges arising from youth.<sup>67</sup> And for some tribes, the introduction of statutory authorities and the Forestry Reform Law has undermined the effectiveness and legitimacy of customary authorities in regards to local land and resource governance.<sup>68</sup>

United States Agency for International Development (USAID) researchers found that another possible contributor to waning compliance with customary rules is the increased legitimacy ascribed to statutory evidence of tenure over customary evidence.<sup>69</sup> In light of the Government of Liberia's adherence to statutory tenure, many communities and individuals find written statutory ownership more and more necessary to protect ownership interests. Several types of statutory land tenure exist in Liberia to protect ownership rights: 1) Tribal Certificates (TCs), which legally authorize a land survey but do not confer fee simple rights; 2) deeds, which legally certify land rights; 3) rights granted to companies or organizations, including concessions, licenses, permits, and other contracts granting private companies and organizations rights to land and natural resources; and 4) government land, which are holdings designated for use or control by the Government of Liberia.<sup>70</sup>

## **Types of Land Tenure Issues in Liberia**

Land disputes in Liberia stem from several sources, originating from Liberia's unique and complicated history. Many of the urban land disputes are the result of years of civil war. During the peak of the internal conflict, as many as 500,000 people were displaced. The influx of "returnees" and their access to land are regularly portrayed by media and development agencies as a potential source of disputes in Liberia. These land disputes are the major source of litigation clogging up Liberian courts. For example, the riot I observed occurred following the legal attempt by a post-conflict returnee to assert statutory ownership over the rights of squatters who had been living on the land for many years.

But land issues involving the hinterland were the primary focus of the Government of Liberia's decision to implement land tenure reform. Two of the major rural land tenure issues that prompted the need for land tenure reform were: government concessions and Private Use Permits (PUPs). As described earlier, government concessions involve the government appropriation and leasing of land to investors without community consent. A recent example is the case of a Malaysian company, Sime Darby, and the Vai people of Grand Cape Mount. The people of Grand Cape Mount first suffered when BF Goodrich took the community's farmland in the early 1950s through a government concession for a rubber plantation.<sup>71</sup> Much of that land, primarily undeeded customary land, was then rolled into the 2009 concession with Sime Darby for palm oil extraction.<sup>72</sup> The Vai people have many complaints about the Sime Darby concession, including that: the company did not receive approval from the community as required by customary rules; the destruction of the forest left the people without hunting ground and sacred territory; and the company did not provide the employment opportunities the people expected.<sup>73</sup>



Piling on resentment over concessions, the Government's issuance of Private Use Permits exacerbated the cry for land tenure reform. Private Use Permits are licenses issued by private land owners, either by individuals, groups, or communities, to investors or companies for extraction of wood. In two years from their inception, PUPs covered 23% of Liberia's land mass.<sup>74</sup> A study of PUPs indicates that many of contracts were based on illegal administrative actions and inappropriate use of official authority.<sup>75</sup> Many of the issued PUPs had irregularities, particularly regarding the metes and bounds of the contracted land, and a significant number of PUPs had doubtful or invalid underlying private ownership rights.<sup>76</sup> In many cases the contracts were signed by community leaders or minority groups acting unilaterally who would obtain powers of attorney or would be purposely vague in explanation to the community so the communities in essence signed their own land away.<sup>77</sup> This was possible because local elites tend to dominate the management of land resources in the name of the community members.<sup>78</sup> The PUP program illustrated that local officials with access to government and the means to do so were involved in exploitation of community land.

The USAID researchers found several sources of land tenure insecurity with regards to the hinterland. The sources of insecurity include: 1) improper transfers of land held under custom to elites, often improperly facilitated by local authorities; 2) lack of appropriate documentation to prove and protect claims to land, often arising from the cost and complexity of pursuing formal documentation of rights; 3) distrust of or uncertainty about individuals and institutions who hold deeds; 4) lack of community consultation when granting land or other resources to outsiders, including private investors and government, sometimes coupled with negative experiences with companies or government agencies; 5) government acquisitions of land claimed under customary tenure and the historical precedent of undocumented land

belonging to the government; 6) the risk that the descendants of those who acquired deeds and Tribal Certificates could assert individual claims to the land and remove it from the realm of customary tenure; and 7) unclear and contested land boundaries which are sometimes disregarded.<sup>79</sup>

As a result of these land tenure insecurities, land disputes have arisen between clans and landowners over farmland and access to resources. Many disputes occur between those people claiming customary ownership and those individuals claiming statutory ownership. And finally, disputes exist between landowners and companies who are exploiting land for development and resource extraction purposes. The source of most of these land disputes is the same: many land transactions were done informally without legal instruments or resulted from irregular or fraudulent land sales.

### **The Government of Liberia's Efforts to Resolve Land Tenure Issues: Liberia Land Reform Policy**

The Government of Liberia recently acknowledged the destabilizing effect of land tenure disputes and has taken strides to effect change. The Liberia Land Commission was formed in 2009 to address land issues and develop policy, particularly to protect customary landholders and protect forest land. The government also took steps to prevent future land disputes by imposing a moratorium on concessions and PUPs. A number of studies were conducted by the Liberian Land Commission, USAID, and Non-Governmental Organizations in order to investigate the ongoing land tenure issues and provide potential solutions, many of which are cited in this paper.

In May 2013, the Land Commission completed the first-ever draft land tenure reform policy with recommendations for implementation. The draft policy is an important first step in protecting the rights of customary land owners, and is a promising move towards providing stability and righting the wrongs of the past. The policy states that its goal "is to improve the

daily lives of all Liberians—to eliminate the anxiety and uncertainty they feel over land rights.’’<sup>80</sup> Implementing the land reform policy will affect many different laws and agencies, so change will take time.

The main purpose of the new policy is to protect the land rights of communities to manage their land in accordance with customary practices, including defining membership through a process that is fully representative of the community.<sup>81</sup> The policy also recommends that customary ownership be equally protected as private ownership in fee simple where the land can be transferred by sale, lease, concession, gift, donation, or will.<sup>82</sup> Customary landowners can also choose to apply to designate their land as a protected area.<sup>83</sup> Before exercising eminent domain over private or customary land, the government should make a reasonable effort to acquire mutual agreement, should give notice to the affected community, and provide just compensation.<sup>84</sup> The new policy would not assist people like the Vai of Grand Cape Mount, however, because the recommended law is not retroactive.

The policy acknowledges that the Government of Liberia maintains a dual legal system where customary law is exercised pursuant to both formal law and customary norms and private land is solely pursuant to formal law.<sup>85</sup> Though the policy recommends recognizing customary land rights regardless of deeded ownership, the policy places a strong emphasis on formalization. Customary communities must be self-identified, legal entities, and acquire a deed to their land in order to sell the land to an individual or private entity, enter into contracts or participate in court actions.<sup>86</sup> The community will own the natural resources on the land, and has the right to transfer some or all of its ownership rights by sale, lease, concession, gift, or donation.<sup>87</sup>

In light of Liberia’s dark history of colonization and internal conflict, it remains unclear whether the new recommended law will be effective in eradicating years of class tension and

resentment over government abuse of power. Due to the complexity of the issues, like other sub-Saharan African countries, Liberia may face challenges in implementation of reform.

### **Requirements for Successful Implementation of the Land Tenure Reform Policy in Liberia**

Many other sub-Saharan states have tried to implement land tenure reform, but have run into challenges. For instance, in 2011, the government of Uganda found it necessary to revise the land reforms after the 1995 Constitution and 1998 Land Act failed to deal with historical complexities or resolve fundamental issues.

The land administration system is inadequately resourced and performing poorly below expected standards with tendencies of fraud and corruption. The dual system of land administration (the formal/statutory and informal/customary) breeds conflict, confusion and overlaps in institutional mandates. For the greater percentage of Uganda, where customary tenure still abounds, the roles of traditional institutions of land management, dispute resolution and land governance have not been legally accepted, integrated and mandated to execute their functions. Some elements of political interference have severely hindered progress in public delivery of land services, making it slow, cumbersome, frustrating and too costly to the public. Decentralized services are very thin on the ground and have failed to perform to expectations.<sup>88</sup>

Uganda's problems with implementation of land reform are consistent with the aforementioned list of challenges described by Ambreena Manji,<sup>89</sup> including: unclear procedures; lack of political will; and implementors themselves hindering progress. As stated previously, in order to avoid similar problems, the Government of Liberia must provide the political will for land reform by offering robust and trustworthy government agencies to ensure collective community landowners' rights are protected, eradicate fraud, corruption and abuse of power by bureaucrats and local community leaders, and provide affordable access to a fair legal system honoring customary rights rather than favoring local elite or foreign investors.

### **The Government must have the political will for reform**

By drafting the first-ever Land Policy in an attempt to protect the rights of customary landowners, the Government of Liberia took the first step in demonstrating the political will for reform. In fact, the policy states the “Government must therefore demonstrate the political will and provide the resources necessary to implement this Policy.”<sup>90</sup> Creating a new land policy is symbolic in itself, however, examples from other African states indicate “little attention on the part of the government actors to ensure compliance” contribute to failure.<sup>91</sup> Finding the political will to reform land policies is difficult considering the benefits the government receives from land appropriation and concessions. Pauline Peters highlights the benefits to the government from loan and aid packages that accompany land leasing, and the political gains for leaders with the power to allocate land.<sup>92</sup> Additionally, states like the Government of Liberia are dependent on foreign funding for infrastructure development.<sup>93</sup> The Government of Liberia will have to shift focus from development through large-scale foreign investment to encouraging local development through communities. Political leaders must begin to appreciate the possibilities for economic growth by releasing power and control of land to the local level.

Implementing land reform will require change in several government agencies and administrative policies. Consequently, the Government of Liberia must provide sufficient staff and a reliable and stable bureaucracy to ensure compliance with land reform. A shortage of government staff and cumbersome bureaucracy hindered the land management agency from implementing reform in South Africa.<sup>94</sup> In the landmark policy, the Liberia Land Commission recommended that the government “provide sufficient resources and undertake the necessary activities to support communities in self-defining, obtaining deeds for their Customary Land, establishing the community as a legal entity, determining community boundaries, and ensuring community governance and management consistent with this Policy.”<sup>95</sup> This requires a robust

bureaucracy able to conduct land surveys to clear up boundary discrepancies and train and monitor the customary land management system. Cited by the Liberia Institute of Public Opinion's analysis of the 2013-2014 national budget, most of the Government of Liberia's revenue comes from donor support, totaling 709,926,448 USD primarily in grants.<sup>96</sup> The report notes that 897,220 USD of donor funding was allocated to the Land Commission.<sup>97</sup> Out of 26 agencies listed, the Land Commission is second to last in donor funding allocated. On a positive note, however, 9,183,393 USD of donor funding was dedicated to the Forestry Development Authority.<sup>98</sup> With regards to the national budget, 500,000 USD was allocated to the Land Commission for processing Tribal Certificates and 52,500 for vetting public land deeds.<sup>99</sup> It is unclear from the report what specific funds, if any, were allocated to or adjusted in anticipation of land reform, like increased land surveying and hiring and training of new personnel. While the budget is not a clear indicator of political will, it does exemplify land tenure reform's place in priority, at least as far as donor projects in the area of land reform. This is a promising sign, but only time will tell if the resources allocated will be enough to achieve success of land tenure reform.

### **The Government Must Eradicate Fraud, Corruption, and Abuse of Power**

Like many developing democracies, particularly in Africa, Liberia struggles with issues of fraud and corruption. Not surprisingly, with vast resources with potentially significant income, land management has also fallen victim to fraudulent and corrupt acts and abuse of power by government officials. Even the Liberian Supreme Court has recently recognized the violations of integrity and credibility of government institutions charged with maintaining documents of title in its opinions:

Like many of the recent actions of ejectment brought before and disposed of by our circuit courts of competent jurisdiction for the adjudication of claims to ownership, title and/or possession to

parcels of land in dispute, the actions brought by the contending parties in these ejectment proceedings, now before us on appeal, challenged the credibility, integrity and genuineness of documents and records being issued by the Center for National Documents and Records and the Ministry of Foreign Affairs, a matter that continues to generate increasing serious concern by this Court of infringement on the rights of protection of property by certain persons with the connivance of certain personnel of the government institutions charged with the statutory responsibility to ensure the integrity, credibility and protection of the public records. Much of the allegations asserted against the two government entities mentioned above have centered on fraud said to have been perpetrated by one of the parties, under a conspiratorial scheme with certain personnel and/or authorities within those institutions, in which they have issued or caused to be issued certain title documents to property and which either defy the public historical facts of the nation or are riddled with such enormous inconsistencies that they cannot be given legal credence, genuineness or credibility or by such inconsistencies show circumstantial evidence of fraud.<sup>100</sup>

The lack of reliability and genuineness of documents prepared by a government agency calls into question the government's ability to affect change in reformation of land tenure law and indicates a much larger problem with the evident instability of the bureaucratic system. The effects of fraud, corruption, and abuse of power by officials and agencies are felt not only in urban areas where squatters are disputing land rights against displaced "returnees," but are also strongly felt in the hinterland.

A study by the Land Commission noted several issues with fraud and abuse of power involving Private Use Permits in the hinterland. Not only did fraud exist at the federal level in approval of PUP contracts, but the Land Commission's study also found that local elites, who dominated land management in the name of the community, had taken personal advantage.<sup>101</sup> For example, the study noted a case where historic community land ownership over a large area was transferred to one minor group of individuals.<sup>102</sup> The minor group excluded other groups from ownership and decision making on land use, resulting in the organization representing

communities and land that expanded well beyond the group's original territorial jurisdiction.<sup>103</sup> Additionally, some PUP contracts were signed by District Forest Management Committees asserting to be representative of the landowners, but without evidence of incorporation, selection or nomination of that committee.<sup>104</sup> Finally, in some cases, individuals obtained suspicious powers of attorney to represent the community in PUP contracts.<sup>105</sup>

The fraud, corruption, and abuse of power at the local level derive from the historic role of chiefs and historic government treatment of land tenure and resource management in Liberia. When the tribal authority was formalized and indirect rule imposed, the Government of Liberia licensed local chiefs to maintain the customary order and did not necessarily inquire into the chiefs' means of doing so.<sup>106</sup> The Land Commission recently noted the remnants of the indirect rule system, stating:

A significant number of contracts, mainly under grant deeds, are underwritten by a number of local administration and customary leadership representatives, including district commissioner, paramount, clan and town chiefs. In these cases it is difficult to distinguish between state and customary authority. Paramount and clan chiefs are salaried public functions; it is not always clear whether these authorities represent the interests of the people, or those of the state if these two interests diverge.<sup>107</sup>

Chiefdoms, which were formalized as government tools to enhance control over hinterland populations, fostered the dominance and unilateral action by local elites.<sup>108</sup> The same type of unilateral action still continues, and was noted by USAID researchers:

Some of the statutory leaders in these clans have reportedly sold or bought large expanses of clan land without consulting clan members. Some clan members accused statutory authorities of having adopted imperialistic-like positions with regard to land in that they have allocated large parcels of land to themselves, their associates, and/or clan outsiders, and have unilaterally made decisions about land without knowledge of community members. We encountered many unresolved conflicts in clans where malfeasance was prominent. Unfortunately, there are no



institutions in place to promote accountability or transparency within the clans.<sup>109</sup>

Under the current land law, chiefs may withdraw portions of community-owned land and turn them into private land by issuing Tribal Certificates. Liz Alden Wily cited one extreme case where eleven rich and educated people in Totaquelleh Town (a town of 242 households) received consent to survey their farms, resulting in removal these parcels entirely from community ownership or jurisdiction.<sup>110</sup> Additionally, USAID researchers noted prevalent acts of malfeasance in certain clans, namely Ylan, Dobl, and Ding Clans.<sup>111</sup> In the Ding clan, members assert that local government officials are known to be complicit in irregular sales of “public land” to outsiders and forge signatures.<sup>112</sup> In some instances, Tribal Certificates held by local authorities are dedicated to the exclusive use of certain elites, and some cases exist where wealthier and more educated clan citizens converted family land to a deed in their own names.<sup>113</sup> Without holding local authorities accountable to the communities, abuse of power issues will continue to hinder progress.

Abuse of power by local leaders was evident even during the initial colonization where chiefs and kings often sold land to settlers without approval of the community.<sup>114</sup> Unilateral sale of community land continues to occur in contemporary Liberia, and has resulted in years of litigation. One example involves community land owned by Chief Bah Bai and the people of Gboveh Town since 1908.<sup>115</sup> After reviewing several cases involving the same acres of land, the Supreme Court of Liberia noted its awareness that the administrators of Chief Bah Bai were claiming and selling vacant land under the aborigine deed any and everywhere in Sinkor (a neighborhood in Monrovia), even as far as New Airfield Road and beyond.<sup>116</sup> The grant to Chief Bah Bai and the People of Gboveh Town was said to have comprised thirty heads of families, but the families never petitioned the Government of Liberia for deeds granting them the land in fee

simple leaving the land vulnerable to sale by the Chief's administrators or others acting unilaterally.

The new land tenure laws will not be effective if abuse of power by local officials endures. In an effort to combat the dominance of elite, the Land Policy recommends that customary land management should be “decided by the community in a way that is fully representative and accountable to all community members.”<sup>117</sup> But this idea is not entirely novel. The current law requires that Town Chiefs, Clan Chiefs, and Paramount Chiefs should be elected by community members. But this has not prevented leaders from achieving positions by favoritism or custom. In fact, as of the USAID study conducted in February 2012, no elections had been held since 1987, and some Clan and Paramount Chiefs had been in power for over 30 years.<sup>118</sup> The disregard for legally required elections for the last 30 years indicates that enforcing elections under the new law may require significant oversight by the Government of Liberia, particularly to prevent malfeasance by local leaders.

Under the new policy recommendations, customary land may remain susceptible to local authorities' malfeasance by providing customary owners “the full bundle of land rights.”<sup>119</sup> Offering fee simple ownership to customary landowners is important for recognizing customary rights and protecting community members who privatize portions of land, but at the same time, fee simple title opens the opportunity for elite actors to act unilaterally and fraudulently by selling, leasing or transferring land. Possession by fee simple is part and parcel of the concept of individualization and “civilization” imposed by the colonial construct. As stated by controversial US Secretary of the Interior Carl Schurz at the end of the nineteenth-century regarding the assimilation of Native Americans:

To fit the Indians for their ultimate absorption in the great body of American citizenship, three things are suggested by common sense as well as philanthropy...

3. That they be *individualized* in the possession of property by settlement in severalty with a *fee simple title*, after which the lands they do not use may be disposed of for general settlement and enterprise without danger and with profit to the Indians.<sup>120</sup>

In the American experience, the idea of fee simple title was also intended to break up tribal relations and create individuality, responsibility, and a desire to accumulate property.<sup>121</sup> The progressive American argument for privatization of titles was short-lived as it was implemented with many flaws and left the indigenous land susceptible to corruption and crooks. Likewise, in Liberia, individualization may tend to promote greed and leave communities susceptible to corruption if not implemented properly.

The shift to individuality and the desire to accumulate property in Liberia, in face of high land competition, has also induced class formation and class tension. Arguably, the stress on security of individual rights, and dominance of the wealthy and powerful, has had a permanent effect on the way the people view the meaning and necessity of ownership. “The research shows that as land becomes a property or a commodity, so we see developing ‘a very different sense of “belonging”’ – from someone belonging to a place to a property belonging to someone; in short, a shift from inclusion to exclusion.”<sup>122</sup> In resource-rich states like Liberia, where a great divide exists between the have and have-nots and land is a source of power and wealth, it is not surprising that communities and individuals are competing to obtain or protect their own piece of pie. Providing customary landowners the same rights as private owners should, in theory, give communities security and the ability to benefit from extraction of resources on their land.

Liz Alden Wily warns against the privatization of customary land in Liberia through the imported fee simple construct.<sup>123</sup> Under the new policy, communities may divide and sell their

land to individuals or families in fee simple. The fee simple construct also allows the community or individuals who obtain title to sell the land to outsiders and investors. If this occurs, the community cannot revoke the title if the land is used in a manner that is damaging to the community. The fee simple construct, ie. the right to sell, lease, concede, gift, or donate the land, as recommended in the policy, does not necessarily provide the protection of community land because it does not prevent malfeasance by local officials nor does it prevent the potential for loss of community land to private individuals who may not use the land in the best interest of community. Wily rightfully suggests utilizing a “non-transferable Customary Right of Collective Ownership”<sup>124</sup> which would protect the alienation of customary land. This construct would provide the community with fee simple ownership, protecting its ownership against all others including the state, but also preventing its susceptibility from corrupt officials or individual greed by restricting transfer.

Even though communities are capable and willing to manage land through customary principles, the colonial history and longstanding history of malfeasance by local and federal government leaders may hinder a smooth transition to customary land self-management. And a pure fee simple construct could leave customary land susceptible to continued malfeasance or misuse. When drafting laws based on the land policy, the Government of Liberia must consider the complexity of monitoring and ensuring that communities are managing land in a representative manner. Additionally, fraudulent and corrupt actors must be held accountable to the community for their actions. Lastly, in light of Liberia’s history of land tenure law and indirect rule, community landowners may still feel the pressure to secure land rights by obtaining formal deeds despite formal recognition of un-deeded customary rights in the new law.

### **The Government Must Provide a Fair Legal System Honoring Customary Rights in Land Disputes**

In Liberia today, land and resources are governed by layers of traditional customary and statutory authority.<sup>125</sup> These two systems are intrinsically diametrically opposed in nature, one being informal and collective and the other being formal and individualistic. In a dual system, land disputes between customary landowners are resolved by chiefs and elders according to the traditional customary system, while disputes between two owners with written deeds will likely settle their case in court in the formal statutory system of land tenure. The dual system becomes complicated as those practicing customary traditions try to maintain those traditions in a Western-centric statutory system and as disputes between customary land owners and statutory landowners increase. During their study, USAID researchers found an increasing number of disputes between customary and statutory landowners:

Disputes over competing customary and statutory claims to land are increasing in some clans, including Ding, Dobi, Mana, and Ylan. In Mana, disputes between local communities and companies seeking land for mining or logging highlight the tensions between customary and statutory claims. These companies allegedly extract local resources, damage clan infrastructure, and renege on promises of service provisions and improvements to clan infrastructure. Disputes over competing customary and statutory claims also exist among clan citizens. In Dobi and Ylan, both outsiders and clan members attest to having deeds and TCs for huge parcels of land.<sup>126</sup>

Adding to the challenges of a dual system, land disputes are generally the most difficult type of dispute to resolve. “While over four out of five non-land disputes experienced since the war had been resolved (83%), just half the farm land-grabbing cases had been solved (53%).”<sup>127</sup>

Moreover, resolving these types of disputes also often involves the payment of money, which contributes to their prolonged and difficult resolution.

The incompatibility of customary land tenure law and the statutory form of land tenure will be difficult to overcome. As previously mentioned, the Government of Uganda found out

through attempted reform: “the dual system of land administration (the formal/statutory and informal/customary) breeds conflict, confusion and overlaps in institutional mandates.”<sup>128</sup> The new land policy does not describe how the overlap in institutions will be accomplished, it only states, “For Customary Land, it is exercised pursuant to formal law and customary norms and practices. For Private Land, it is solely pursuant to formal law.”<sup>129</sup> Unfortunately, the policy does not provide further guidance on resolution of disputes.

Studies show village and town chiefs have a prominent role in resolving customary land disputes. Since the end of the war, only 9% and 4% of land-grabbing cases were taken to magistrate and circuit courts, respectively, compared to 39% brought to village chiefs, 22% to elders, and 23% to no one.<sup>130</sup> The Human Rights Center at University of California-Berkeley, also conducted research of the peoples’ perceptions of the courts, which were decidedly negative. “Most agreed with the claim that “going to court is too expensive” (75%), and just a minority agreed that “judgments are the same for everyone” (23%), or that “judges treat everyone equally” (28%). The results suggest an overall lack of trust in judges, and more broadly in the justice system.”<sup>131</sup> As the number of disputes between customary and statutory landowners increase, these perceptions must be changed.

The Liberian justice system is founded upon a common law system similar to the United States, many times citing American Supreme Court cases in early decisions. This foundation of statutory authority and legal enforcement of written deeds emboldens Liberian citizens to believe their land rights will only be secure by acquiring written title. Relying on legal precedent originating from the common law American system, the Liberian Supreme Court has found with regards to proving ownership that the “plaintiff must recover upon the strength of his own title and not upon the weakness of the defendant’s title”<sup>132</sup> and in ejectment cases, “the plaintiff must

show a legal and not merely an equitable title to the property in dispute.”<sup>133</sup> “Where a plaintiff in an ejectment action has shown *valid* and *legal* title to property, he or she is rightfully entitled to recover the said property upon the strength of the title.”<sup>134</sup> In Liberian courts, the plaintiff must prove their deed is clear, genuine and free from suspicion or doubt, and sufficiently descriptive to demonstrate entitlement to the land.

Further supporting the necessity for obtaining formal statutory title, the Supreme Court of Liberia has rejected other forms of title other than a deed to prove ownership. For example, in 2012 the Court stated:

A tribal certificate is *not* a deed, and hence, under no circumstance can it be a basis for contesting a deed validly executed in favour of a party. A tribal certificate, the Public Land Law states, is only the first step in an attempt to secure title to real property; it only evidences that a person seeking to secure a piece of property in an area in the interior of Liberia has secured the permission from the chiefs and people of the area. It must be followed by a certificate from the Land commissioner, payment must be made to the Revenue for the land, and finally the President must execute a public land sale deed in the person's favour.<sup>135</sup>

This type of legal precedent results in the implicit requirement that landowners must conform to the formal statutory system to protect their rights. This desperation for formal documentation likely encourages the fraudulent acts noted by the Supreme Court of Liberia in recent cases. This legal precedent also likely contributes to the distrust and weariness people have with the court system.

The new land tenure laws should eradicate the requirement of obtaining a public land sale deed from the President and the mindset that only a genuine written deed can prove ownership. But if communities have become accustomed to a system where a Tribal Certificate cannot even assert title, how can or will they trust the government's new policy that asserts customary land, deeded or not, will receive equal protection as private ownership? The Court will have to

establish new precedent recognizing evidence other than written formal documentation to provide proof of ownership if cases involving customary ownership are presented.

Jon Unruh suggests that it is important to incorporate formal laws with customary ones, but “it is extremely difficult for formal law to incorporate diverse customary rights and laws while creating a law that is predictable and equally open to all citizens.”<sup>136</sup> He asserts that this can be overcome by combining landscape-based evidence and cultural geography with Western-based evidence law.<sup>137</sup> Examples of landscape-based evidence include, planting economically valuable trees, clearing trees or brush, or locating family graves.<sup>138</sup> Specifically, in Liberia, the planting of sacred trees, sacred sites, and graveyards may be landscape-based evidence. Unruh rightfully suggests that getting the courts to adhere to the Western traditions of the treatment of evidence, which would include accepting landscape-based evidence, is more effective than incorporating customary law into formal law or enforcing titling of customary land.

The new Liberian land policy encourages communities to become legal entities, thereby allowing communities to enter into contracts and participate in court actions. This encouragement supports the historical precedent that written formal documentation is the only valid evidence of ownership. As written, the policy recommendations do not appear to support landscape-based evidence to prove ownership, as asserted by Jon Unruh. The conflict and tension between customary law and formal statutory law will continue to exist under the new land tenure reform unless the legal system departs from historical legal precedent and holds customary evidence of land ownership as legal and valid as the written deed.

### **The Government Must Provide Affordable and Fair Access to Government Institutions**

“Unfortunately, statutory authorities and courts are seen by some as favoring the wealthy and powerful, who they see as able to use the formal system to their advantage.”<sup>139</sup> Most Liberians, particularly in the hinterland, may not have the means to access government



institutions or courts. Most likely rely on local officials or local elite to handle land-related matters because their services are free and they have the means and contacts with the federal government. The current land tenure system contributes to and presents opportunities for the wealthy and powerful to take advantage.

In order for the land tenure reform in Liberia to be successful and keep local and government officials accountable, all Liberians must have the opportunity to utilize government institutions. Many communities did not take the required steps to obtain public land sale deeds because they were unaware that Tribal Certificates do not confer statutory ownership in Liberia. Lack of knowledge, heavy bureaucratic requirements and the hefty cost of securing land ownership continues to leave customary land vulnerable.<sup>140</sup> A Gbanshay Clan Chief noted, “Poverty is preventing people from securing deeds.”<sup>141</sup> The land tenure reform policy states that customary land will be protected whether or not the community has been issued a deed; however, the policy also recommends that formalizing customary ownership by deed is necessary to end the practice of treating customary land as less than private land.<sup>142</sup> Communities will still be discouraged and prevented from securing deeds without a less cumbersome bureaucratic process and reduction in cost.

Not only must obtaining title become more affordable, the government must also invest in educating individuals and communities on land management and the methods of navigating the bureaucracy. Most Liberians have little or no knowledge of the formal court system and, as stated earlier, most believe the cost of going to court is too expensive.<sup>143</sup> The same is likely regarding the cumbersome bureaucratic process of acquiring a deed. Though the additional training and information dissemination will increase the size of the government, at least in personnel, and thus may increase bureaucracy, it is necessary to inform the people of the rights

and the proper process for securing their rights. As previously stated, the Government of Liberia must invest in personnel, training, and education for communities and individuals regarding the new land tenure system to ensure the process for securing land rights is affordable and free from malfeasance.

### **Conclusion**

Land tenure issues in sub-Saharan Africa probably seem completely inconsequential to American strategists and military leaders, however, an understanding of the impact of the global competition for resources on a developing states' stability is critical. The historical treatment of land tenure by colonists, and by contemporary governments, has a significant impact on a state's economic development, stability of the government, and ethnic and class tension. American political leaders should be aware of the complexity of land tenure issues when engaging developing countries and should invest in assisting reform implementation.

Liberia is still trying to mitigate the effects of colonization, class tension, and years of exploitive land grabs by foreign investors. The Government of Liberia has taken a groundbreaking first step in drafting the new land tenure policy to be enacted into law. But a complex history of land tenure, and complicated dual legal system, will not resolve the problems overnight. The Government of Liberia must be prepared for a protracted effort to implement reform as many other sub-Saharan African states have faced, including acknowledging customary traditions within the statutory system. Most importantly, the Government of Liberia must eradicate fraud, corruption and abuse of power by the bureaucrats and local community leaders, and provide affordable access to government institutions and a fair court system honoring customary rights rather than favoring local elite or foreign investors. Land reform is necessary to maintain security and social stability. But no efforts to implement land reform will

be successful without protecting communities from the greed and corruption surrounding the global competition for scarce natural resources.

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1. Ali Diackity Kaba, "The Coopers vs. the ELWA Tenants – Beyond Justice, Impact of High Court Ruling," *All Africa*, 16 May 2013. <http://allafrica.com/stories/201305161095.html>.
  2. Patrick Vinck, Phuong Pham, and Tino Kreutzer, "Talking Peace: A Population-Based Survey on Attitudes about Security, Dispute Resolution, and Post-Conflict Reconstruction." Human Rights Center, University of California, Berkeley - School of Law, June 2011, 47.
  3. Fred Magdoff. "Twenty-first Century Land Grabs: Accumulation by Agricultural Dispossession," *Monthly Review*, November 2013, 9.
  4. Liz Alden Wily, "Reconstructing the African Commons," *Africa Today* 48 (1): 76-99 (Spring 2001), 78.
  5. Sara Berry, "Property, Authority and Citizenship: Land Claims, Politics and the Dynamics of Social Division in West Africa," *Development and Change* 40(1): 23–45 (2009), 24.
  6. Pauline Peters, "Conflicts Over Land and Threats to Customary Tenure in Africa," *African Affairs* 112/449: 543-562 (August 2013), 547.
  7. Pauline E. Peters, "Inequality and Social Conflict Over Land in Africa," *Journal of Agrarian Change* 4(3):269-314 (July 2004), 281.
  8. Wily, "Reconstructing the African Commons," 82.
  9. Ambreena Manji, "Land Reform in the shadow of the state: the implementation of new land laws in Sub-Saharan Africa," *Third World Quarterly* 33 (3): 327-342 (2001), 335.
  10. Land Rights Policy. Land Commission of Liberia. Republic of Liberia, 21 May 2013. [http://usaidlandtenure.net/sites/default/files/Land%20Rights%20Policy\\_%20Draft\\_4.14.13\\_Version%20for%20Pres%20%26%20Cabinet%20May%2017\\_0.pdf](http://usaidlandtenure.net/sites/default/files/Land%20Rights%20Policy_%20Draft_4.14.13_Version%20for%20Pres%20%26%20Cabinet%20May%2017_0.pdf). As of 8 March 2014, the land reform policy is currently being reviewed by Liberia's internal vetting committee. ("As New Land Law in Liberia Moves towards Finalization, Women from Across Africa Call for Equal Protection to Land Ownership Rights." <http://africanbrains.net/2014/03/12/new-land-law-liberia-moves-towards-finalization-women-across-africa-call-equal-protection-land-ownership-rights/>.)
  11. Paul De Wit, "Land Rights, Private Use Permits and Forest Communities," Land Commission of Liberia, April 2012. [http://www.rightsandresources.org/documents/files/doc\\_6346.pdf](http://www.rightsandresources.org/documents/files/doc_6346.pdf).1.
  12. Evelyn L. Namubiru-Mwaura, Anna Knox and Ailey Kaiser Hughes, *Liberia Land Policy and Institutional Support Project: Customary Land Tenure In Liberia: Findings And Implications Drawn From 11 Case Studies* (United States Agency for International Development (USAID), February 2012), 79.
  13. *Paye, et al. v. Fahnbulleh*, LRSC 28 (2008). <http://www.liberlii.org/lr/cases/LRSC/2008/28.html>.
  14. Jairo Munive, "A Political Economic History of the Liberian State, Forced Labour and Armed Mobilization," *Journal of Agrarian Change* 11(3): 357-376 (July 2011), 358; Liz Alden Wily, "So Who Owns the Forest? An Investigation into Forest Ownership and Customary Land Rights in Liberia." *Sustainable Development Institute/FERN*, November 2007, 62.
  15. Munive, "A Political Economic History of the Liberian State, Forced Labour and Armed Mobilization," 358.
  16. Wily, "So Who Owns the Forest?," 64.
  17. *Ibid.*, 68-69.
  18. *Ibid.*, 67-68, "Some of the subordinate chiefs and people were infuriated by the sale of their land to the Americans. Historians record that their complaint was that 'no one, not even the King, has the right to sell the land which belongs to all of us'. They rebelled, supported by some neighbouring chiefdoms." (*Ibid.*).
  19. Liberian Constitution of 1847. [http://www.onliberia.org/con\\_1847.htm](http://www.onliberia.org/con_1847.htm).
  20. Pade Badru, "Ethnic Conflict And State Formation In Post-Colonial Africa: A Comparative Study

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Of Ethnic Genocide In The Congo, Liberia, Nigeria, and Rwanda-Burundi,” *Journal of Third World Studies* XXVII (2): 149-169 (Fall 2010), 154.

21. Munive, “A Political Economic History of the Liberian State, Forced Labour and Armed Mobilization,” 359.

22. Wily, “So Who Owns the Forest?,” 75.

23. De Wit, “Land Rights, Private Use Permits and Forest Communities,” 7.

24. A fee simple is “one in which the owner is entitled to the entire property, with unconditional power of disposition during his life, and descending to his heirs and legal representatives upon his death intestate.” (Black's Law Dictionary.)

25. De Wit, “Land Rights, Private Use Permits and Forest Communities,” 7.

26. Wily, “So Who Owns the Forest?,” 77.

27. *Ibid.*, 249, citing The Hinterland Law, article 29.

28. *Ibid.*, 301, citing The Hinterland Law, article 21(b).

29. *Karmo et al v. Morris*, LRSC 2 (1919). <http://www.liberlii.org/lr/cases/LRSC/1919/2.html>.

30. Eric N. Olund, “From savage space to governable space: the extension of United States judicial sovereignty over Indian Country in the nineteenth century,” *Cultural Geographies* 9: 129-157 (2002), 133-34.

31. *Karmo et al v. Morris*, LRSC 2 (1919).

32. Justin B. Richland, “Hopi Tradition as Jurisdiction: On the Potentializing Limits of Hopi Sovereignty,” *Law & Social Inquiry*. 36 (1): 201-234 (Winter 2011), 211.

33. Wily, “So Who Owns the Forest?,” 85.

34. Munive, “A Political Economic History of the Liberian State, Forced Labour and Armed Mobilization,” 360.

35. Martin Meredith, *The Fate of Africa: From the Hopes of Freedom to the Heart of Despair: A History of Fifty Years of Independence* (Public Affairs: New York, 2005), 547.

36. Wily, “So Who Owns the Forest?,” 85.

37. Meredith, *The Fate of Africa*, 547.

38. Peters, “Inequality and Social Conflict Over Land in Africa,” 287 (citing Rebecca Hardin, “Concessionary Politics in the Western Congo Basin: History and Culture in Forest Use Practices.” *Working Paper No. 6, Environmental Governance in Africa Working Paper Series*, World Resources Institute, November 2002.

39. *Ibid.*

40. Meredith, *The Fate of Africa*, 545.

41. *Ibid.*, 546. Americo-Liberians made up approximately 2.5% of the population with another 2.5% made up of the Congo people (freed slaves from Brazil and the Caribbean) while the remaining 95% were native people. (Badru, “Ethnic Conflict and State Formation in Post-Colonial Africa,” 154.)

42. *Ibid.*, 546.

43. Badru, “Ethnic Conflict and State Formation in Post-Colonial Africa,” 154-155.

44. Meredith, *The Fate of Africa*, 547.

45. *Ibid.*, 548.

46. *Ibid.*, 549.

47. *Ibid.*

48. *Ibid.*, 550.

49. Wily, “So Who Owns the Forest,” 234.

50. Munive, “A Political Economic History of the Liberian State, Forced Labour and Armed Mobilization,” 357, citing Paul Richards, “To Fight or to Farm: Agrarian Dimensions of the Mano River Conflicts (Liberia and Sierra Leone),” *African Affairs* 104 (417) (October 2005), 571.

51. *Ibid.*

52. Richards, “To Fight or to Farm: Agrarian Dimensions of the Mano River Conflicts,” 582, “‘Indirect rule’...[the Liberian government] licensed local chiefs to maintain a ‘customary’ order without enquiring too closely into the means.”

53. Wily, “So Who Owns the Forest,” 234.

54. The National Forestry Reform Law of 2006.

<http://www.fao.org/forestry/1615105fd47b845599b5d3a594a9b0240dacff.pdf>.

55. Munive, “A Political Economic History of the Liberian State, Forced Labour and Armed Mobilization,” 358.

56. Namubiru-Mwaura, *Liberia Land Policy and Institutional Support Project*, 4.

57. *Ibid.*, xiv.

58. *Ibid.*, xiv.

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59. Ibid., 8.
60. Ibid., 37.
61. Ibid.
62. Vinck, "Talking Peace," 61. "39% of those who had experienced land grabbing since the war had consulted village or town chiefs to resolve the dispute." (Ibid.)
63. *We Who Live Here Own The Land: Customary Land Tenure in Grand Cape Mount, and Community Recommendations for Reform of Liberia's Land Policy and Law* (Green Advocates and Forest Peoples Programme, December 2012), 6.
64. Ibid.
65. Namubiru-Mwaura, *Liberia Land Policy and Institutional Support Project*, 4.
66. Ibid.
67. Ibid., xvii.
68. Ibid., 74.
69. Ibid., xvii.
70. Ibid., xvii.
71. *We Who Live Here Own the Land*, 5.
72. Ibid., 4.
73. Ibid., 11-12.
74. De Wit, "Land Rights, Private Use Permits and Forest Communities," 4.
75. Ibid., 26.
76. Ibid., 9, 26.
77. Ibid., 24.
78. Ibid., 24.
79. Namubiru-Mwaura, *Liberia Land Policy and Institutional Support Project*, xxi.
80. Liberian Land Rights Policy, 5.
81. Ibid., 16-17.
82. Ibid., 17.
83. Ibid.
84. Ibid., 9.
85. Ibid., 16.
86. Ibid., 18, 22.
87. Ibid., 17.
88. Uganda National Land Policy. Ministry of Lands, Housing, and Urban Development. Republic of Uganda, March 2011, 7.
89. See note 8.
90. Liberian Land Rights Policy, 20.
91. Manji, "Land Reform in the shadow of the state: the implementation of new land laws in Sub-Saharan Africa," 335.
92. Peters, "Conflicts Over Land and Threats to Customary Tenure in Africa," 556.
93. Ibid.
94. Ibid.
95. Liberian Land Rights Policy, 20.
96. *Liberia 2013-2014 Draft National Budget Analysis Public Sector Investment Plan* (PSIP), Liberia Institute of Public Opinion (LIPO), 23 June 2013, 4.
97. Ibid., 27.
98. Ibid., 27.
99. Ibid., 12.
100. *Watamal, et. al. v. Kieta, et. al.*, LRSC 1 (2013). <http://www.liberlii.org/lr/cases/LRSC/2013/1.html>.
101. De Wit, "Land Rights, Private Use Permits and Forest Communities," 27.
102. Ibid., 23.
103. Ibid.
104. Ibid., 19.
105. Ibid., 21-22.
106. Richards, "To Fight or to Farm: Agrarian Dimensions of the Mano River Conflicts," 582.

- 
107. Ibid., 21.
108. De Wit, "Land Rights, Private Use Permits and Forest Communities," 18.
109. Namubiru-Mwaura, *Liberia Land Policy and Institutional Support Project*, 76-77.
110. Wily, "So Who Owns the Forest," 170.
111. Namubiru-Mwaura, *Liberia Land Policy and Institutional Support Project*, 76.
112. Ibid., xix.
113. Ibid., 59.
114. See note 17.
115. *Sheriff v. Mulbah*, LRSC 22 (2011). <http://www.liberlii.org/lr/cases/LRSC/2011/22.html>.
116. Ibid.
117. Liberian Land Rights Policy, 18.
118. Namubiru-Mwaura, *Liberia Land Policy and Institutional Support Project*, 75.
119. Liberian Land Rights Policy, 17. The policy recommends entitling the community to a bundle of rights including the right to: "exclude all others, use and possession, own natural resources on the land, and to transfer all or some of the rights through sale, lease, concession, gift, donation, will, or any other lawful means consistent with this Policy and the community's customary norms and practices." (Ibid.)
120. Olund, "From savage space to governable space: the extension of United States judicial sovereignty over Indian Country in the nineteenth century," 139.
121. Olund, "From savage space to governable space: the extension of United States judicial sovereignty over Indian Country in the nineteenth century," 141. The Indian Reorganization Act of 1934 ended the allotment experiment of severalty/fee simple ownership and placed Native land under federal trust as well as instituted tribal governments. Private property was found not to be the savior it was supposed to be for assimilating Native Americans. (Ibid. at 147)
122. Peters, "Inequality and Social Conflict Over Land in Africa," 305.
123. Wily, "So Who Owns the Forest," 170.
124. Ibid.
125. Namubiru-Mwaura, *Liberia Land Policy and Institutional Support Project*, 73
126. Ibid., xix.
127. Vinck, "Talking Peace," 61.
128. See note 83.
129. Liberia Land Policy, 16.
130. Vinck, "Talking Peace," 63.
131. Ibid., 65.
132. *Bingham v. Oliver*, LRSC 1 (1870). <http://www.liberlii.org/lr/cases/LRSC/1870/1.html>.
133. *Birch v. Quinn*, LRSC 8 (1897). <http://www.liberlii.org/lr/cases/LRSC/1897/8.html>.
134. *Watamal, et. al. v. Kieta, et. al.*, LRSC 1, 4 January 2013 (citing *Cooper-King v. Cooper-Scott*. LRSC 38 (1963) (emphasis added).
135. *Mananaai v. Momo*, LRSC 3 (5 July 2012).
136. Jon D. Unruh, "Land Tenure and the 'Evidence Landscape' in Developing Countries," *Annals of the Association of American Geographers* 96 (4) (December 2006), 754.
137. Ibid., 755.
138. Ibid., 756.
139. Namubiru-Mwaura, *Liberia Land Policy and Institutional Support Project*, xvii.
140. Ibid., 60.
141. Quoted in Ibid.
142. Liberia Land Policy, 18.
143. Vinck, "Talking Peace," 63.

## BIBLIOGRAPHY

- 
- Askew, Kelly, Faustin Maganga, and Rie Odgaard. "Of Land and Legitimacy: A Tale of Two Lawsuits." *Africa: The Journal of the International African Institute* 83, no. 1: 120-141 (February 2013).
- Berry, Sara. "Property, Authority and Citizenship: Land Claims, Politics and the Dynamics of Social Division in West Africa." *Development and Change* 40(1): 23–45 (2009).
- Boone, Catherine and Christian Lund. "Introduction: Land politics in Africa – Constituting Authority Over Territory, Property and Persons" *Africa: The Journal of the International African Institute* 83(1): 1-13 (February 2013).
- Constitution of the Republic of Liberia. <http://www.liberianlegal.com/constitution1986.htm>.
- De Wit, Paul. "Land Rights, Private Use Permits and Forest Communities." Land Commission of Liberia, April 2012. [http://www.rightsandresources.org/documents/files/doc\\_6346.pdf](http://www.rightsandresources.org/documents/files/doc_6346.pdf).
- Hughes, Ailey Kaiser, Anna Knox and Evelyn L. Namubiru-Mwaura. "Customary Land Tenure in Liberia: Findings and Implications Drawn From 11 Case Studies." Liberia Land Policy and Institutional Support Project, February 2012. [http://usaidlandtenure.net/sites/default/files/USAID\\_Land\\_Tenure\\_Liberia\\_LPIS\\_Synthesis\\_Report.pdf](http://usaidlandtenure.net/sites/default/files/USAID_Land_Tenure_Liberia_LPIS_Synthesis_Report.pdf).
- Kaba, Ali Diackity. "The Coopers vs. the ELWA Tenants – Beyond Justice, Impact of High Court Ruling." *All Africa*, 16 May 2013. <http://allafrica.com/stories/201305161095.html>
- Land Rights Policy*. Land Commission of Liberia. Republic of Liberia, 21 May 2013. [http://usaidlandtenure.net/sites/default/files/Land%20Rights%20Policy\\_%20Draft\\_4.14.13\\_Version%20for%20Pres%20%26%20Cabinet%20May%2017\\_0.pdf](http://usaidlandtenure.net/sites/default/files/Land%20Rights%20Policy_%20Draft_4.14.13_Version%20for%20Pres%20%26%20Cabinet%20May%2017_0.pdf).
- Liberia 2013-2014 Draft National Budget Analysis Public Sector Investment Plan (PSIP)*, Liberia Institute of Public Opinion (LIPO), 23 June 2013. <http://view.officeapps.live.com/op/view.aspx?src=http%3A%2F%2Fthenewdispensation.files.wordpress.com%2F2013%2F10%2Fbudget2013.doc>
- The Liberian National Forestry Reform Law of 2006*. <http://www.fao.org/forestry/1615105fd47b845599b5d3a594a9b0240dacff.pdf>.
- Manji, Ambreena. "Land reform in the shadow of the state: the implementation of new land laws in Sub-Saharan Africa." *Third World Quarterly* 33, no. 3: 327-342 (2001).
- Magdoff, Fred. "Twenty-first Century Land Grabs: Accumulation by Agricultural Dispossession." *Monthly Review*, November 2013.

---

Meredith, Martin. *The Fate of Africa: From the Hopes of Freedom to the Heart of Despair: A History of Fifty Years of Independence*. Public Affairs: New York, 2005.

Namubiru-Mwaura, Evelyn L., Anna Knox and Ailey Kaiser Hughes. *Liberia Land Policy and Institutional Support Project: Customary Land Tenure In Liberia: Findings And Implications Drawn From 11 Case Studies*. United States Agency for International Development (USAID), February 2012.

Olund, Eric N. "From savage space to governable space: the extension of United States judicial sovereignty over Indian Country in the nineteenth century." *Cultural Geographies* 9: 129-157 (2002).

Peters, Pauline E. "Conflicts Over Land and Threats to Customary Tenure in Africa." *African Affairs* 112/449: 543-562 (August 2013).

Peters, Pauline E. "Inequality and Social Conflict Over Land in Africa." *Journal of Agrarian Change* 4(3):269-314 (July 2004).

Richland, Justin B. "Hopi Tradition as Jurisdiction: On the Potentializing Limits of Hopi Sovereignty." *Law & Social Inquiry* 36 (1): 201-234 (Winter 2011).

Richards, Paul. "To Fight or to Farm? Agrarian Dimensions of the Mano River Conflicts (Liberia and Sierra Leone)." *African Affairs* 104 (417) (October 2005).

*Uganda National Land Policy*. Ministry of Lands, Housing, and Urban Development. Republic of Uganda, March 2011.

Unruh, Jon D. "Land Tenure and the 'Evidence Landscape' in Developing Countries." *Annals of the Association of American Geographers* 96(4) (December 2006).

Vinck, Patrick, Phuong Pham, and Tino Kreutzer. *Talking Peace: A Population-Based Survey on Attitudes about Security, Dispute Resolution, and Post-Conflict Reconstruction*. Human Rights Center, University of California, Berkeley - School of Law, June 2011.

*We Who Live Here Own The Land: Customary Land Tenure in Grand Cape Mount, and Community Recommendations for Reform of Liberia's Land Policy and Law*. Green Advocates and Forest Peoples Programme, December 2012.

Wily, Liz Alden. "Reconstructing the African Commons." *Africa Today* 48(1) (Spring 2001).

Wily, Liz Alden. "The Law is to Blame: The Vulnerable Status of Common Property Rights in Sub-Saharan Africa." *Development and Change* 42(3): 733-757 (2011).



---

Wily, Liz Alden. "So Who Owns the Forest?: An Investigation into Forest Ownership and Customary Land Rights in Liberia." *Sustainable Development Institute/FERN*, November 2007.

---

Liberian Supreme Court cases:

*Bingham v. Oliver*, LRSC 1 (1870). <http://www.liberlii.org/lr/cases/LRSC/1870/1.html>.

*Birch v. Quinn*, LRSC 8 (1897). <http://www.liberlii.org/lr/cases/LRSC/1897/8.html>.

*Karmo et al v. Morris*, LRSC 2 (1919). <http://www.liberlii.org/lr/cases/LRSC/1919/2.html>.

*Paye, et. al.v. Fahnbulleh*, LRSC 28, 19 December 2008.  
<http://www.liberlii.org/lr/cases/LRSC/2008/28.html>.

*Sheriff v. Mulbah, et. al.*, LRSC 22, 22 July 2011.  
<http://www.liberlii.org/lr/cases/LRSC/2011/22.html>.

*Watamal, et. al. v. Kieta, et. al.*, LRSC 1, 4 January 2013.  
<http://www.liberlii.org/lr/cases/LRSC/2013/1.html>.

