

# FOCUS ON LAND IN AFRICA BRIEF

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## Liberia



A woman holds her tribal certificate. Its acquisition is the first step in a long process to gain a deed to the land. While many have acquired the certificate, few have completed the deeding process, and their rights to the land remain tenuous.

## Lesson 1:

### *Threats to Land Tenure Security in Rural Liberia*

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## INTRODUCTION

*Rural Liberians rely on land for their livelihoods and cultural heritage, yet the vast majority is highly tenure insecure. Land issues contributed to the devastating Liberian Civil War and, though the conflict ended in 2003, security of tenure has not been achieved for most rural dwellers. Identifying the sources of tenure insecurity and finding ways to strengthen customary claims is critical to rural Liberians' livelihoods, as well as to the avoidance of further conflict. Here, we provide a short history of land tenure in Liberia, describe the main sources of tenure insecurity, and discuss ongoing initiatives and opportunities designed to protect the rights of rural Liberians.*

## THE IMPORTANCE OF TENURE SECURITY

Customary land tenure systems based on community or collective rights involving shifting and overlapping claims and managed by local governance institutions dominate in rural Liberia. However, the state has not endowed traditional leaders with the authority to govern land, nor does it recognize communities' primary claims to the land unless they have a deed. Historically, the state has considered Liberians claiming land under customary tenure to be "occupants" or even "squatters," with negative implications for their land tenure security (Unruh 2007). In some communities, particularly those located near to urban centers, well-connected by roads or with high-value resources, the state has utilized its dominion over the land to grant concessions to mining, logging, and agricultural companies, and has claimed other land for national parks and reserves. In other areas, local authorities have sold land to outside buyers without the agreement of those who claim the land under customary tenure. The contested nature of land tenure also has negative impacts within and between rural communities. Some community members utilize the lack of clarity over governance of land tenure to advance their own claims under custom by planting "life trees" (trees like rubber, palm and coffee that have economic value and endure for many years) on others' land, knowing that the traditional rules prohibiting such actions cannot be enforced. Under customary law, planting these trees enables the planter to assert a permanent claim to the land.

## THE BASIS OF TENURE INSECURITY: HISTORY OF LAND TENURE IN LIBERIA

Liberia has a dual land tenure system based on written law derived from statutes and case law, and customary laws, which derive from local lineage-based systems. Statutory laws were introduced into Liberia in the 1820s by Americo-Liberian, "Congo", and Caribbean settlers – freed slaves who moved to Liberia under the auspices of American-based resettlement societies. In areas under their dominion, these settlers purchased land from local chiefs and established a Western system of land tenure based on fee simple ownership, evidenced by deeds (Wily 2007).



Eighty percent of Liberians live on land that is held under customary rights. They depend on the land and farming to feed their families.

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In the majority of the country, however, customary tenure systems prevailed. Though the customary rules governing land and natural resources vary, there are commonalities. According to USAID (2011, pg. xiv):

"Access to land ... is governed by a set of rules shared by one or more lineages that settled in the area and first cleared the land. Claims to land are highly nested, typically ranging from claims held by the lineage-based chieftaincy or clan to claims held by towns, extended families, and households and individuals. At the household level, claims can be temporary, as with seasonal upland rice and vegetable crops, or they can be permanent as with tree crops and house plots."

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Under the customary tenure system, the primary basis for accessing land is through group claims held by families, quarters, or towns. Individuals within the group gain seasonal or permanent rights to shares of land within the larger claim (USAID 2011).

Though the majority of rural Liberians continue to claim land under customary tenure, statutory tenure has altered the tenure structure of many communities. As the Liberian state expanded from coastal areas into territory in the south and east, the government began to consider land that was not converted into fee simple ownership as "public land". The 1956 Public Lands Law introduced the basic legal framework governing public land. Provisions in this and other laws indicate that the Liberian government has full authority over Public Land, though it might have been claimed by a particular community for generations (Unruh 2009).

The law provides a process for individuals and communities to purchase public land and thereby convert it to private ownership in the form of a public land sale deed. The process begins with the acquisition of a Tribal Certificate. The Tribal Certificate provides the consent of the Clan Chief or Paramount Chief to have the parcel of land deeded to the applicant by the government. After the chief signs the document, the District Commissioner should confirm that the land in question is not already owned or occupied by another person and sign his agreement that the land may be deeded to the applicant. After acquiring the Tribal Certificate, the claimant has seven years to complete the next steps and obtain a public land sale deed. First, the applicant must visit the Bureau of Revenues with the Tribal Certificate to pay for the land (a



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Very few rural people have formal documentation to their land. However, a new Land Policy under review in 2013 would help to change this by officially recognizing customary land rights.

minimum of 50 cents per acre) and obtain an official receipt which the applicant must then submit to the President of Liberia, along with the application. If the application is approved, the President will order a survey of the land. After the survey has been completed, the Land Commissioner will write and authenticate the deed. Finally, the applicant must submit the deed and "all accompanying certificates" to the President for signature. Only after each of these steps has been taken will the deed be valid (Public Lands Law 1956).

Some rural families and even entire communities acquired Tribal Certificates to their land, usually in the name of the head-of-household or a community representative, but few took the required steps to receive a deed. For many, the Tribal Certificate came to represent a primary claim to the land. Potential reasons for why many did not acquire deeds are varied, but include a possible lack of clear information on the process, the relatively high cost involved in each step, and the

inconvenience of the procedure, which required the applicant to travel regularly to Monrovia to submit paperwork. The Liberian Land Commission provided insight into the difficulty and confusion around the process of acquiring a public land sale deed, which they described as "a source of weak land governance, corruption, political patronage, and discriminatory treatment" (USAID 2011; Liberian Land Commission 2012a, pg. 9).

As statutory tenure made inroads into rural areas, claims to the land came to be layered, with the state claiming dominion over all land not held under deed and communities claiming land under customary tenure. Within communities, families continued to use traditional boundaries and historical knowledge and rules to distinguish their claims. In some areas, these traditional claims were bolstered by Tribal Certificates. Very rarely, families and communities acquired public land sale deeds. In most cases, however, communities did not acquire any official documentation to their land.

## SOURCES OF RURAL TENURE INSECURITY

Sources of tenure insecurity for rural Liberians are complex and varied, but the majority may be linked to the historical lack of recognition and documentation of customary claims, as well as the lack of transparency and clarity around statutory claims. Here, we describe the sources of tenure insecurity that may be included within this broader theme.

A 2011 USAID report on customary land tenure in 11 clans identified the following sources of tenure insecurity in Liberia.

**1) Improper transfers of land held under customary tenure to elites, often facilitated by local authorities.** In areas where demand for land is rapidly increasing, particularly in communities near to urban areas, local authorities (statutory and traditional) have capitalized on the lack of recognition for customary claims and transferred large portions of community land to elites coming from outside the community. Despite a moratorium on the sale of public land, corruption throughout the government has enabled more recent claims to be pushed through and in some cases deeds have been issued to these outsiders with no recognition of the community's claims. Such deeds are then used to exclude community members from the land.

**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.** As previously mentioned, very few communities or rural individuals have formal documentation to their land. While communities are increasingly coming to know that it is necessary to acquire a deed in order to protect their claims, the process is too expensive and complex to be achievable for most rural dwellers. Even when rural citizens have documentation, it is often outdated, faulty or not recognized by the government as proof of their claim, as is the case with Tribal Certificates. Without formal documentation, communities are vulnerable to claims being asserted by outsiders.

- 3) Where official documentation exists, distrust of or uncertainty about individuals and institutions in which rights are vested.** Deeds for land in rural Liberia are often held by individuals from outside the community or well-connected local elites who have acquired the land through non-transparent processes. Community members question the veracity of these claims. In other cases, rural citizens and even entire communities acquired Tribal Certificates, which were long believed to provide security of tenure. However, it is increasingly understood by rural people that Tribal Certificates do not provide proof of ownership, and respect for former community boundaries has decreased accordingly. For example, individuals from Yeanawoun Clan in Bong County planted rubber trees on land claimed by a woman in Gbanshay Clan under Tribal Certificate, knowing that the woman's claim would not be recognized in court (USAID 2011).
- 4) Large-scale concessions of land claimed under customary tenure granted to outsiders, including private investors, with limited community**

**consultation.** According to the Public Lands Act, the President has the authority to lease public lands not appropriated for other purposes to individuals, corporations or companies for agriculture or mining for up to 50 years, with a potential 50-year extension (Knight et al. 2012). One study found that rural Liberians usually do not know about concessions before the agreements are signed, that legally mandated stakeholder consultations are not conducted, and that concession negotiations prioritize the government's claims to land over community's claims under customary tenure (CICR 2012).

- 5) Government acquisitions of land claimed under customary tenure and the historical precedent of undocumented land belonging to the government.** The historical precedent of the government claiming land held under customary tenure has negatively impacted many rural Liberians' sense of tenure security. In parts of Sinoe County, the government acquired large tracts of land claimed under customary tenure to establish and expand the

Sapo National Park, limiting locals' access to land for farming, hunting, and the collection of non-timber forest products. In Ding Clan, located in Montserrado County, the government is allegedly planning to redevelop a military academy which claims 10,000 acres of land currently being used by local communities. As with concessions, communities are rarely consulted prior to the land acquisition and have little power to intervene (USAID 2011).

- 6) The risk that those holding deeds to land that is used by communities could assert individual claims to the land and remove it from the realm of customary tenure.** In some areas, residents access land that is claimed by someone else – either a well-connected local or an outsider – under deed. In certain cases, deeds were acquired by individuals on behalf of communities, such that communities access and use the land. In other cases, individuals acquired deeds for themselves, but either abandoned their land during the war or never occupied it, and communities continue to use the land to which they typically have a



The government has used its dominion over land to grant concessions to mining, logging and agricultural companies, and has claimed other land for national parks and reserves. Local people rarely have a say in how this land is used.

customary claim. These communities could face eviction should the deed-holder or their descendants choose to assert an individual claim to the land and exclude community members from access. As the situation in Liberia stabilizes, deed-holders are more frequently beginning to assert their claims. In Ding Clan in Montserrado County, community members were prevented from accessing community land that an outside elite laid claim to under a deed dating back to the 1970s (USAID 2011). Most rural Liberians do not have access to formal courts and thus have little legal recourse in such situations.

**7) Unclear and contested land boundaries which are sometimes disregarded, especially by people planting life trees.** Traditional boundaries are marked by geographic features, trees and footpaths; knowledge of these boundaries is passed down through generations. Yet, these traditional boundaries are increasingly being contested with neighbors crossing boundaries to cultivate on others' land. To make their claims more durable, encroachers will plant "life trees" on the land they have usurped. Under customary law, planting life trees asserts a permanent claim to land. In some cases, customary authorities will favor the claim of the usurper because they have planted trees, causing the original claimant to lose their land rights (USAID 2011).

The customary practice of claiming land by planting life trees has also affected borrower-lender relationships. Lending and borrowing land for one or two years is common under customary tenure systems. But, in areas where life trees are proliferating due to the increasing profitability of these trees, borrowing has become fraught with tension and insecurity as landholders begin to fear that borrowers will plant life trees and assert a permanent claim to the land. For example, in Gbanshay Clan in Bong County borrowers have begun planting rubber trees on land that was given for seasonal use and then made permanent claims to that land. In turn, this has led to a diminished willingness to lend and a rush to acquire documentation for the land (USAID 2011).

In addition to these seven sources of tenure insecurity, several studies have shown that the return of thousands of IDPs, refugees, and former combatants to their places of origin has resulted in conflicts and contributed to wide-spread tenure insecurity. Throughout Liberia, waves of displacement altered the composition of rural communities. Approximately 500,000 citizens fled their homes and land. In some places, this land came to be occupied by persons who were fleeing their own homes. Many IDPs and refugees returned at the end of the war to find their homes occupied by others. In such situations, both the occupiers and returnees are insecure. While the former might have no home or land to return to, the latter might have no documentation with which to prove their claims to the land (Munive Rincon 2010).

## WAYS FORWARD

In regards to increasing security of tenure for rural Liberians, a thorough reform of laws governing rural land, the recognition of customary governance authorities, the implementation of effective legal protections for customary claims, and the employment of simple, clear processes for documenting those claims are paramount. Toward this end, the Liberian Land Commission (established in 2009), which is responsible for proposing, advocating and coordinating reforms of land policy and laws, has endorsed a strategy to reform the country's civil laws governing land. The suggested legal changes would harmonize customary and statutory rights to land, such that customary rights and authorities are recognized, given legal parity with statutory rights and provided with equivalent legal protection. The recommended changes would also include the development and implementation of a new Public Land Law which would distinguish between public land and land held under customary tenure, and which would also provide explicit recognition of customary rights to land (Bruce and Kanneh 2011).

If customary rights to land are recognized, enabling community land documentation could be a next step toward protecting the claims and customary governance systems of rural Liberians. Communities are both an important source from which customary rights are derived and the basis for resource governance institutions. Under

such an approach, communities would register their lands as a whole rather than as individual claims, which would implicitly extend legitimacy to the customary governance institutions that support these complex tenure systems (A. Knox, external review, December 25 2012). This could protect communal, overlapping, and secondary rights (non-definitive transfers of use rights, such as in rental arrangements) to community-held land and resources.

Concurrently, communities should be empowered to manage their land themselves. Providing communities with stronger management rights over land in addition to equipping them with the tools they need to engage in community land-use planning has the potential to not only improve natural resource management, but also to open the door for community investments that generate income and increase productivity (Knight et al. 2012).

It is also important to develop an inclusive process for adjudicating disputes, such as those between lessors and renters, in a manner that reflects local norms and values. The Land Commission is utilizing Alternative Dispute Resolution in a pilot project focused on addressing community-level land disputes. Another project implemented by the International Development Law Organization (IDLO) and the Sustainable Development Institute (SDI) found that community-led boundary harmonization exercises between and within communities had the potential to resolve long-running disputes and clarify previously unknown borders (Knight et al. 2012).

It is important to document customary claims to land, to provide legal recognition of customary land tenure and accessible systems of recourse for communities to protect their rights, and to safeguard rural communities from further challenges to their customary claims. Ensuring security of tenure for rural Liberians will facilitate their continued access to the productive resources on which they depend for their livelihoods and cultural heritage, as well as reduce conflict and instability in the long-term.



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Community leaders in Kpayequelle, Gbarpolu County, gather to discuss their concerns about a new logging concession at a meeting organized by civil society organizations. At one point, the government had allocated 75 percent of the country's land to concessions.

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