

# Clarifying Forest Ownership in Liberia

## The way forward to integrate economic growth with social justice in the forest sector

*'You are experts,' said a group of youths in Rivercess County, Liberia. 'So you tell us – what happened to our forests? All we know is that the forests belonged to our fathers and our fathers' fathers but Government gave them to logging companies before the war. We don't know if the law says we own the forests or not ... but we will not let FDA give away our forests again.'*



An agro-forestry system outside Konia, Lofa County. Forests remain a critical local asset. SDI, 2006

### 1. Introduction

Relations between the Liberian state and its people over the issue of the country's forests are at a crucial point. The formal decisions that are made in the near future will determine whether these relations degenerate into crisis or move into constructive reform.

This briefing note summarizes key findings and recommendations of a land tenure study commissioned by the Sustainable Development Institute (SDI) in Liberia, with a focus upon the customary rights to the country's forests<sup>1</sup>. The study was given urgency by the Liberian government's commitment to put a Community Rights Law relating to forests to the national legislature before the end of 2007, and its recognition that this should include more thorough treatment of forest tenure issues.

To find out the facts, the study investigated the realities of customary property norms today in 37 rural communities in five of Liberia's fifteen administrative counties. It scrutinized the legal and political treatment of majority land interests over the century-long process of forming the modern Liberian state; and it carefully considered the implications of the National Forestry Reform Law, 2006.

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The **Sustainable Development Institute (SDI)** is working to transform the decision-making processes relative to natural resources and promote equity in the sharing of benefits derived from natural resource exploitation in Liberia. The organization's vision is a Liberia in which natural resource management is guided by the principles of sustainability and good governance and benefits all Liberians.

Its activities cover a range of cross-cutting issues including governance and management, environment, state and corporate social responsibility, economic and social justice for rural populations and the democratic participation of ordinary people in how government manages their natural resources.

The organization was founded in 2002 and received the Goldman Environmental Prize for outstanding environmental achievements in Africa in 2006. The Goldman Environmental Prize is the world's largest prize honoring grassroots environmentalists.

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Forests are critical to local people's livelihood. A partial view of the Wonigizi mountain range, captured from Zigida, Lofa County. SDI, 2006

The overall findings were unexpected. In summary, the study found that policy on indigenous land interests has been uncharacteristically benign in comparison with the situation in much of the rest of Africa until recently, as has been the treatment of tribal authority. This has left a legacy upon which more democratic land relations affecting forests may be easily rebuilt. There is also genuine vibrancy in collective norms of customary tenure. This stems from a continuing founding role of forestlands in the peasant economy. Interference in customary property interests was found to be relatively recent, not fully intentional and without firm judicial foundation.

*The handling of customary property rights has never been ideal, but until 1956 it was better in Liberia than almost anywhere else in Africa*

Along with other positive factors, the study concluded that favourable conditions exist for adopting a more modern and developmentally sound approach to the issues. Remedial, rather than radical, surgery is required. The chances for uptake are improved by the willingness of the post-conflict administration to rectify previous injustices, and to set aside unfounded fears that good governance, resource conservation, economic growth, and honouring majority land rights cannot be compatible.

## **2. Forests: a vital national and livelihood resource**

Although there has been increasing damage to the quality and extent of forest land in Liberia since 1980, an area of nearly six million hectares – or over half of Liberia's land mass – is still covered by forests. Around

a million people, or a third of Liberia's population, live on forestland, within village ('town') and larger formations. These are surprisingly well defined by intercommunity agreement and often bounded by permanent features (e.g. rivers and creeks).

Forested areas are an indisputable part of each community land area. Ownership of this area is vested collectively. Access is by a simple regime of usufruct by member families to different parts of the community property. Formal ('legal') land entitlements are few in Liberia and mainly relate to urban parcels. However, around fifty very large entitlements embrace nearly one third of rural land. Around 90% of these are collective entitlements to tribal, clan or town communities and include much of the forested land area. Most titles were issued between the 1920s and 1960s, and pre-date the declaration of National Forests. There is little evidence of the legal extinction of these interests through constitutionally required compensation procedures.

Forests have always been an integral part of the livelihood of Liberia's people. Over the last half century, forests have been a growing source of revenue for the government and for commercial harvesters. Revenue has also come from the transformation of forestland into industrial plantations (mainly rubber). A sharp rise in the loss of customary control over forested lands has accompanied these developments, especially in recent decades. In 2002 this culminated in a situation wherein the entire forest resource was under commercial concession, over which local communities had no control or rights, and from which they derived no benefit. Rural populations became acutely aware that their customary ownership was no longer respected.

This erosion of land rights gained some legal support through a shift in the legal description of tribal land rights in 1956. The new legal description was of doubtful legitimacy, and was effectively abandoned in 1973; but there remained a desire to redefine customary property rights as amounting to no more than occupancy and use rights on national lands, and extending only to house and farm lands. Ironically, these positions echoed 19th-century colonial treatments of land rights by the British, French and others in their rush to capture valuable resources in much of the African continent, which Liberia had managed to avoid up until that point. Loss of real property rights became a harsh reality in 2000 with the passage of a new forestry law, which separated the forests from the forest land. Forests became a separate asset from the land they grew on. This seems

to have been designed to enable Government to claim ownership.

*There is no basis in the constitution or property law to render forest resources the property of the state*

The physical looting of forests and misappropriation of revenue that accompanied these changes led in 2003 to the imposition of UN sanctions against international purchase of Liberian timber. These were lifted after President Ellen Johnson Sirleaf introduced radical measures, including the cancellation of all logging concessions and the adoption of the new forestry law in 2006.

Without sufficient tenure information to guide it, the new forest law retains the unfortunate (and constitutionally dubious) separation of forests from the lands they grow upon ('forestland'). Additionally, its new procedures are shaped around an assumption that most of the forest resource is on 'un-owned' and therefore de facto government land ('public land'). Meanwhile, the post-conflict population is a good deal more aware and demanding of its rights than before the civil war. The issue of forest ownership threatens to become a source of conflict between people and the state. These conditions explain why it is so crucial that there is a focus upon tenure in the upcoming Community Rights Law, and why the Forestry Development Authority needs to exercise caution against the issue of new concessions ahead of its resolution.

*One effect of recent changes is that collective identity and the desire for action are strengthening, not declining. This is typical of customary regimes today where naturally collective resources like forests or pastures are a central asset of the community*

### 3. Securing majority customary land interests

When Liberia's first colonizers arrived on the West African coast in 1821, they found a population which already had its own legal system – 'customary law'. Each tribe lived in accordance with established practices ('customs') and rules. An important element of this law related and still relates to how respective community territories are defined, and how the use of resources within those domains is regulated. This is customary land tenure, and its rules amount to customary land law.

This system has endured due to its considerable strengths and advantages – and not just in Liberia. One third of the world's population administer their property interests through customary tenure, and with increasing national law support. Whereas in the mid-20th century it was assumed that these would disappear with capitalist transformation, modern agrarian governments recognize that this will not and need not occur. On the contrary, the community-based nature of these systems and their deep roots in active land use patterns provide an excellent foundation upon which to build modern democratic land and resource governance systems. The system is cheap to run, self-regulated by the landholders themselves, and naturally inclusive of collective property assets like forests. Imported individual-centric systems have tended to ignore this need. They also have the potential for genuine accountability. This was found to be particularly so in Liberia, where chiefs have not sought to claim community lands as their own property, and where the fifty-year-old practice of electing community leaders provides a useful start to more inclusive decision-making.

*Customary land tenure is alive and well in Liberia, and responding well to the demands of modernisation*

Customary regimes fall into one of several distinct paradigms depending upon the pattern of land use. In Liberia, where shifting cultivation still dominates and where substantial parts of community land areas are unfarmed forests, the characteristic paradigm is one in which the land area as a whole is collectively owned in undivided shares by all members of the community ('root title'). Access by these members to specific parts of the collective property is through a usufruct system. The study found important transitions currently under way. Many communities are beginning to limit the duration of food crop land usufruct, to increase the usufruct term for houses and tree crops, and to limit random expansion of farming into old forest areas. This represents a community-driven form of simple land use planning.

When the study examined recent trends, for instance with regard to land disputes, it found that insecurity of tenure is quite limited within community and even intercommunity land relations, but that it is high in respect of the state, 'notables' and commercial enterprise. One widespread response has been to try and gain formal entitlement to the land. Most applications were found

to be collective. This is because communities feel their collective forest assets (rather than current house or farm lands) are most at risk of being wrongfully allocated by government. Many communities resent the fact that the only way they can formalize their rights today is by buying their own land back from the government through 'public land purchases'. Some are also concerned that the only way a member family may formalize its right to an acknowledged part of the community estate is by removing this entirely from community ownership and jurisdiction, through fee simple entitlement. Others, including some chiefs, are not aware that formalization has this effect, and incorrectly think they will be able to recall the parcel into the common pool should the owner fail to develop the land, or hoard the land for profitable sale. The greatest fear of communities in all five counties visited is the power of the state to reallocate its customary lands (including for medium-term concessions), and the power of influential individuals to persuade chiefs to issue consent for this. Post-conflict conditions have heightened insecurity, and also the awareness of what is at stake.

*No one has yet gone to war over this issue. This is not said lightly, given the role of deprivation of land rights in so many civil wars and conflicts this last century, including Sudan and South Africa*

Five founding actions anchor a series of tenure recommendations of the study:

- 1 Limit new public land sales to individuals in the hinterland until communities have had a chance to secure their collective properties in legal entitlements; critique the procedure through which the consent of chiefs is given for releasing tribal land for sale by Government.
- 2 Establish, as a matter of urgency, a presidentially directed three-part title review process, including (i) the re-identification and ordering of archived entitlements, and the revalidation of those deemed problematic; (ii) validation of the fifty or so entitlements sent to the Forestry Development Authority as affecting forested lands; and (iii) a review of pending title applications, with a view to identifying an improved process for securing local consent and conducting formal survey. The resulting experiential recommendations will contribute to the overall new national land policy development;
- 3 Make a cornerstone of this new policy the clarified recognition of customary land interests as property, entitled to the support of the courts irrespective of whether or not these interests have been already registered or whether or not they are held collectively;
- 4 Reconstruct the formalization procedure to enable customary property rights to be registrable 'as is' without conversion into the Anglo-American fee simple. The new tenure form should, for example, be able to provide security of tenure for families seeking more permanent rights to parts of the collective estate without jeopardizing collective root title or administration. A form of customary leasehold is suggested;
- 5 Launch a programme of collective rural entitlement. It is considered that this could be achieved relatively quickly, given the positive conditions that exist. There is already a background of collective registration, which requires modification rather than total overhaul, and apparent in the rural community. This includes a logical focus upon the importance of boundary definition to prevent overlaps, and the activation of what are basically adjudicatory and intercommunity dispute resolution practices. As a senior official expressed it, it is the government, not communities who need to catch up; and
- 6 Integral to the above, there should be a thoughtful facilitation towards local-level formalization and modernization of traditional land administration, in a manner which dovetails usefully with governance decentralization to community level.



Paramount Chief Nora Gaye (female) and elders at village meeting in Garpu Town, Rivercess County. Photo: SDI

#### 4. Forest rights and the forest law

The issue of 'who owns the forest' is the single most important rural tenure issue needing clear resolution. This is deservedly being made a key component of the upcoming Community Rights Law. These general shifts underpin a series of specific recommendations made by the study:

- 1 Removal of the distinction introduced in 2000, and retained in the 2006 law, that forests as a resource are distinct from the land they grow on
- 2 Reconstruction of procedures to reflect the fact that the forest resource is largely already privately owned on a customary basis by communities (and much of which has been formally titled as such), and to pay proper attention to the natural and constitutional rights of landowners; for example, provision needs to be made to enable community landowners to enter agreements for industrial, commercial or other use of their forests, with conditions and procedures clearly specified
- 3 The role and powers of the Forestry Development Authority as facilitator, technical adviser and watchdog needs to be adjusted accordingly; for example, the legal opportunity for issue of concessions or other use rights in the absence of free prior and informed consent by forest owners needs to be removed. Arrangements as to the share of benefit of forest-owning communities in forest utilization need to be revisited and revised
- 4 De-linking the implication that creation of a protected area necessarily implies national or government ownership; as many countries now demonstrate, it is perfectly possible for a community-owned forest asset to be made subject to protection regulation without extinguishing that ownership, in much the same way that urban properties are subject to planning legislation; and
- 5 Much greater advantage needs to be taken regarding the potential and duties of communities as forest resource conservators and managers. Plenty of experience now exists on the continent for the kind of powers, mechanisms and checks required to

ensure that rural communities become the major force of forest conservation and management.

*The choice is not between meeting social rights or serving the needs of investment and growth, but in the restructuring of resource tenure and governance to allow the two to serve each other*

Again the study finds that useful conditions abound in Liberia to allow the above to be realized in practice. For example, due to the cancellation of commercial logging concessions, Liberia has no long-term leaseholds to revoke with massive compensation costs payable as a result of changes in arrangements. Liberia also has a small but unusually aware and active population to work with at this point, following the exigencies of the conflict years. While the logging sector itself is obviously anxious to begin felling as soon as possible, it too is fully aware that a return to 'business as usual' would result in instability. There is a real opportunity to reconstruct the treatment of forest governance in such a way that, for the first time in Liberia's history, communities may be partners in economic growth and development, not merely its possible beneficiaries. This may be achieved with relatively little radical alteration to the norms that already exist, and which have functioned well in the past. Every encouragement should be given the new administration to take advantage of this unusual opportunity. For, as is always the case, the advantageous conditions will not last forever.

SDI hopes that this brief, and the substantial analysis to be found in the full report, will contribute to a practical indication of just how this may be achieved.

#### Notes

- 1 Forests and Forest Land Rights in Liberia: Finding a Route towards Development with Growth, L. Alden Wily, Sustainable Development Institute, October 2007.

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