

07 Practical potential conflict and implementation challenges for the CRL and the LRL

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1. ABSTRACT / EXECUTIVE SUMMARY

Peace building efforts by Liberian legislators and their international partners have recognized the significance of forest governance in sustaining peace over the past 15 years. But whereas last year's Land Rights Law¹ (LRL) was heralded as an improvement also for community forest governance, some provisions of the new law may become problematic for community forestry when implemented.

The aim of this paper is not an exhaustive legal opinion on the contents of the new law, as this lies in the domain of Liberia's many apt legal practitioners to provide. Rather this paper will present an analysis of both laws and, highlight practical challenges that will very likely emerge when both laws are implemented in the same community concomitantly.

As a consequence, and perhaps most crucially, there may arise implementation challenges from the roles and responsibilities of communities legally delegated between the LRL and the Community Rights Law (CRL). Considering that these issues will likely become more acute when the existing Community Forest Management Agreements (CFMAs) expire, this brief closes with recommendations aimed at forestalling these challenges.

2. INTRODUCTION

The 2009 CRL and its subsequent regulatory supplements modified and updated some provisions of the 2006 National Forestry Reform Law. For example, Chapter 10.1a of the National Forestry Reform Law of 2006 states:

'To manage natural resources based on principles of Conservation, Community, and Commercial Forestry, and to ensure that local communities are fully engaged in the sustainable management of the forests of Liberia, the Authority shall by Regulation grant to local communities user and management rights, transfer to them control of forest use, and build their capacity for sustainable forest management''.

In many respects, the most critical element of the CRL is the introduction of an inclusive and participatory community forest management framework. It provides that communities may enter into an agreement with the Forestry Development Authority or FDA, which would grant them self-governance² of communally owned "forested or partially forested"² land.

Successful completion of the process of securing 'Authorized Forest Community'³ status would ensure that the authority over decisions about forest use and, the right to a portion of the associated financial benefits would be transferred from central government to the forest communities. To this effect the CRL states that:

- *All forest resources in Liberia, regardless of the land proprietorship, shall be regulated by the [Forestry Development] Authority for the benefit of the people, except forest resources located in community forests*
- *Any decision, agreement, or activity affecting the status or use of community forest resources shall not proceed without the prior, free, informed consent of the said community*⁴

The LRL that was enacted on September 19, 2018, like the CRL puts special emphasis on the devolution⁵ of (forest) land use decisions from national government to community-level self-governance. As the name suggest, the LRL is concerned with and defines several kinds of community land other than forest land. To that end the LRL provides for the establishment of a community body i.e. Community Land Development Management Committee or CLDMC that would handle land governance and land administration matters at the community level. But, in the particular case of community forests the Land Rights Law reverts all regulatory power back to the CRL. The LRL says "A Community may use its forest lands and harvest all timber and non-timber products thereon, directly or indirectly in keeping with the provisions of the Community Rights Law of Liberia and the National Reforms Forestry Law of 2006"⁶. This concerns land henceforth designated as community forest land as defined by the LRL, or an area already operated by the

FOOTNOTES

¹ GoL, 2018, An Act to establish the Land Rights Law of 2018, Republic of Liberia, <http://redd-lr.org/wp-content/uploads/2018/10/Signed-Land-Rights-Act.pdf>.

² FDA, 2017, Amended regulation to the Community Rights Law of 2009 with Respect to Forest Lands, (CRL, reg. 2017), chapter 1.2c., www.documents.clientearth.org/wp-content/uploads/library/2017-05-17-regulation-2017-forestry-development-authority-regulations-to-the-community-rights-law-with-respect-to-forest-lands-liberia-ext-en.pdf.

³ CRL reg. 2017 Chapter 1.2c.

⁴ GoL, 2009, An Act to establish the Community Rights Law of 2009 with respect to forest lands, (CRL), Chapter 2.2 (b & c), www.fda.gov.lr/wp-content/uploads/2015/07/Community-Rights-Law-of-2009-with-Respect-to-Forest-Lands.pdf.

⁵ Contingent upon the successful completion of a centrally supervised legal process by the community, this devolution differs from deconcentration in that it does not merely delegate administrative tasks but places real decision making power over forest uses in the hands of downward accountable community-level governance bodies. SOURCE: Ribot C.J., 'Governing Africa's forests in a globalized world', in German AL, Karsenty A. & AM Tiani (Eds.), *Governing Africa's Forests in a Globalized World*, NYC: Earthscan, 2010, p. 31.

community under an existing CFMA with the FDA. There is a concern that this could potentially cause serious land conflicts in the future, if clarifying and

rectifying regulation should not be forthcoming. In the following section, each of the mentioned issues will be explained in more detail.

3.COMPARATIVE ANALYSIS OF THE CRL AND THE LAND RIGHTS LAW

Community Rights Law	Land Rights Law	Issues and challenges that may arise
<p>FDA conducts socio-economic survey & participatory resource mapping of forest land, post results and resolve any disputes, CFMB signs CFMA with FDA.</p>	<p>Demarcation of communal land done by the Liberia Land Authority (LLA), Community conducts land identification/Categorization , designating for example land as communal forest land. The LLA registers community's deed thereby concluding its land documentation process.</p>	<p>There are 36 CFMAs that precede the LLA and many more may commence before the LLA is fully in effect. Thus the significant difference in the definition of community forest land between LRL and CRL might lead to conflict. This concerns the CRL/ FDA definition of forestland and the associated CFMA may conflict with the land boundaries of a 'community' as established under the LRL.</p>
<p>The CRL mandates the FDA to resolve disputes between communities.</p>	<p>The LLA conducts confirmatory survey including confirming that neighbors accept the boundaries and is mandated to resolve disputes.</p>	<p>In theory the LRL places responsibility for dispute resolution between communities with the LLA. Thereby, in theory, the CRL mandate for dispute resolution granted to the FDA becomes redundant. However, in practice the co-existence of both mandates and the LRL delegation of all community forest matters to the CRL mandated authorities, may lead to inaction of both FDA and LRL authorities, if either agency pushes responsibility to the other. Here a regulatory clarification that could foresee interagency collaboration would be helpful. Otherwise intercommunal conflict might be enhanced.</p>
<p>Community establishes governance structure including Community Assembly (CA) and Community Forest Management Body (CFMB) and governance instruments including constitution & by-laws</p>	<p>Community establishes governance instruments (by-laws) and structures, i.e. CLDMC</p>	<p>Both laws propose governance structures and instruments on the community level that should in theory complement one-another. However, differences between the laws about who is a community member and who is eligible for administrative office might lead to conflicts. Another issue here is the potential for power struggle between the CA & CFMB on the one hand and the CLDMC on the other. Also, conflicting provisions in the two bylaws may exacerbate the situation.</p>
<p>Foresees paid community forestry management positions and regulates benefit sharing.</p>	<p>Prohibits salaries for communal land governance bodies and obliges higher government levels to carry costs incurred by communal land administration.</p>	<p>The differences in funding and remuneration might exasperate vulnerability to lobbyism and protectionism within the two communal administrations, while the LLA might become chronically starved of funds and overwhelmed by its tasks.</p>
<p>Defines unrealistic financial and technical requirements for communities.</p>	<p>Makes its full implementation contingent upon unrealistic steps by central government - without deadline, while freezing land disputes in the meanwhile.</p>	<p>Unrealistic CFMA conditions have been found to expose communities to undue influence from the private sector and political elites. The LRL has tasked the National Government with funding and carrying out a very expensive and lengthy country-wide demarcation process that may decrease the amount of communal land available to commercial exploitation. This conflict of interest may both delay the coming into effect of the LRL and leave land conflicts unresolved.</p>

FOOTNOTES

⁶ LRL Chapter 10, Article 43,

4. POTENTIAL CONFLICT THAT MAY BE CAUSED BY DEFINITIONAL MISMATCHES

The LRL explicitly excludes some land formerly included under the CRL as community forest land and categorizes community forest land as an area which “has timber as its primary cover”.⁷ This provision runs contrary to the definition of Community forest land as being “forested or partially forested.....”.⁸ Granted, this restriction does not apply to already existing CFMA between the FDA and communities which “shall be in effect for a period of 15 years”.⁹ With this variation, if both the LRL and CRL are being implemented side-by-side it may lead to problems. The CRL has been implemented for seven years already, and at present the FDA has awarded 36 CFMAs with a total size of over 700,000 hectares of forest land. When in future the CRL mandated community forest governance bodies put up their CFMAs for renewal, they will find that the LRL reduces the size of land under their authority.

In some cases the difference may reach significant proportions. This may become especially contentious for those employed in the CRL governance structure, where certain positions are salaried as “the Executive Committee of the Community Assembly shall decide the compensation and benefits for Community Forest Management Body officers”,¹⁰ while the LRL administration strictly foresees only unpaid positions at the community level. What's more, at times the FDA has in practice proven to be interested in community timber production. If the LRL definition of forest land is going to be enforced by the LLA, it may lead to conflict between the two government agencies, too. On the community level, such a situation may exploit the vulnerability to lobbying and protectionism regarding positions and authority over forest land, which may be exacerbated by the issue of salaried CRL and non-salaried LLA positions.

Another problem that may cause conflict between the two administrative structures of the LRL and CRL - and which will continue to curtail the effectiveness of the CRL - concerns community membership and with it suffrage during community decision making or elections on the one hand, and eligibility for community administrative office on the other. The CRL of 2009 and even its most recent regulatory amendment of 2017, do treat the two issues very generously, once the person is a Liberian. It states that “Representatives to the Community Assembly shall be Liberians, at least 18 years of age, residing within the Authorized Forest Community. The Community Assembly shall be comprised of representatives from all groups within the Authorized Forest Community, including men, women, youth and members of the various ethnicities”,¹¹ and in one particular case requiring that “No member of the National Legislature shall be a member of a Community

Forest Management Body”.¹² However, the LRL is much more restrictive of community membership and eligibility and only allowing for a “Liberian.... who was (i) born in the Community or (ii) parent(s) was born within a Community, or (iii) who has lived continuously within the Community for at least seven years, or (iv) a spouse of a Community Member both of whom reside in the Community”.¹³

But since it delegates all governance matters regarding community forests to the administrative structure mandated and regulated by the CRL, the much more comprehensive solution of the LRL does not affect community forestry. Eventually, community land management bodies may thus come to view their forest management colleagues with suspicion, especially when they comprise outsiders. On the other hand, paid community forest management officials may view their unpaid land management counterpart as easily compromised, too. Of course, whether this becomes a cause for conflict in one place or another, eventually hinges on the trust built or strengthened between community members by the responsible national agencies and civil society.

5. UNREALISTIC CONDITIONS AND PROVISIONS OF THE LRL AND CRL

Experience shows that the CRL has effectively made communities reliant on logging companies or partisan elites for financial and logistical support as well as expertise from the very beginning of the CFMA application process.¹⁴ Likewise, the LRL places a host of administrative responsibilities on the elected CLDMC, perhaps more so than the two governance bodies of the CRL have to manage. But the LRL not only prohibits any payments to office holders of the CLDMCs and its sub-committees. In an utmost vague manner, the LRL states that Government shall provide “adequate”, “sufficient” and “timely” resources for the implementation of the act and for the work it mandates the CLDMCs to carry out.¹⁵ Any Liberian would recognize such wording to be a paper tiger.

The problem already starts with the provision that the community “acting collectively” is “the highest decision making body of the Community” as provided in the LRL,¹⁶ and votes for or against actions to be taken with a 2/3 majority threshold. But forest communities can comprise more than a dozen villages and towns, which in all likelihood are poorly connected by infrastructure. In addition, organizing collective action would require reimbursing people for their transportation costs and providing obligatory meals, as is custom in Liberia. It is very unlikely that government is going to provide for even that basic expenditure ‘timely’ and ‘adequately’. A matter potentially affected by this issue is also intercommunal dispute resolution. In theory the LRL

⁷ LRL Chapter 10 Article 43

⁸ CRL Chapter 1.3

⁹ CRL reg 2017, Chapter 7.6

¹⁰ CRL reg 2017, Chapter 4.8

¹¹ CRL, reg 2017, Chapter 3.3.

¹² CRL, reg 2017, Chapter 4.1.

¹³ LRL Chapter 1, Article 2

places responsibility for dispute resolution between communities with the LLA. Thereby, in theory, the CRL mandate for dispute resolution granted to the FDA, becomes redundant. However, in practice the co-existence of both mandates may lead to inaction of both FDA and LLA authorities, if either agency pushes responsibility over to the other.

What's more, the actual coming into full effect of the LRL is to be preceded by "a nation-wide confirmatory survey to confirm boundaries"¹⁷ of all community lands including forest land, residential areas, agriculture area, commercial area, cultural shrines, etc. But if or when such an extensive and thus expensive survey should take place is not stipulated by the new law itself. Rather, "within 24 months" after coming into effect of the LRL the survey "shall commence"¹⁸, so no later than September 2020 at most. However, not only does the LRL fail to set a deadline, it also places full responsibility of initiating and carrying out the national survey with central government.

Thus, whether it will actually be carried out through a public report, "validated, published and registered with the Liberia Land Authority"¹⁹ thereafter is contingent on considerable investment at the national government level. In other words, the communities in who's interest the LRL is designed, and who are supposed to administer community land under the LRL have no way of influencing its coming into effect. As a result, it can be asserted that the same people who stand to lose from the full implementation of the LRL and its more restrictive understanding of community forests, may now be able to delay the precondition for its application indefinitely. This is not to suggest that such a scenario may become a reality but is worth noting so that the National Legislators and colleagues from civil society may be aware and work towards actions to prevent them.

CONCLUSION

Like many civil society actors, the Sustainable Development Institute welcomes the passage of the LRL, for the many clarifications and improvements it holds for community land governance and administration. Notwithstanding there appears to be room for improvement, especially as concerns



The Sustainable Development Institute (SDI) works to transform decision-making processes in relation to natural resources and to promote equity in the sharing of benefits derived from natural resource management 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 crosscutting issues including governance and management, the environment, state and corporate social responsibility, economic and social justice for rural populations, and the democratic participation of ordinary people in government management of natural resources. The organization received the Goldman Environmental Prize (the world's largest prize honouring grassroots environmentalists for outstanding environmental achievements) in 2006

community forestry. Contrary to much public enthusiasm, the LRL is not meant or equipped to actually rectify the most contentious drawbacks of the CRL, such as conflicts of interests and undue exposure to commercial interests. In this regard, implementing the two laws side-by-side may be problematic.

The LRL recognizes forest use decisions already undertaken under the CRL, but carries with it definitions that may make the renewal of these difficult, if not impossible. While not an issue in itself it is up to the different parts of the community to decide whether they want to either reaffirm their desire to stay together, in which case they use the LRL to formalize their land claims and by extension secure their forest ownership (which is better than the CFMA arrangement) or break up and different segments establish themselves individually as 'communities' under the LRL. Sharing these early perspectives is hoped will notify policy makers and implementers to act appropriately.

POLICY RECOMMENDATIONS

The following recommendations are targeted at the National Legislature and Executive, FDA and LLA in consideration of necessary actions for the LRL concerning forest land:

For the National Legislature and the Executive

- Provide funding through budgetary allocation or solicit support from the donor community to ensure adherence to the deadline for the national confirmatory survey that is demanded by the LRL
- Ensure streamlining of definitions between the CRL and LRL by either updating the former or passing an amendment to the latter, which clarifies terms of definitions.

For the LLA and the FDA:

- LLA should develop a clear procedure by which communities can publicly request financial, legal, technical, logistical, and knowledge support from the LLA to enable them to discharge their duties independently of third party support, as required by the LRL.
- LLA should create a clear legal process organizing the funding of LRL mandating community governance activities and publicize a commensurate financial plan.
- LLA and the FDA should work together in preparation for the expiration of current CFMAs to provide communities an opportunity to either (1) reaffirm their desire to stay together, in which case it uses the LRL to formalize its land claims and by extension secure its forest ownership or (2) break up and in different segments establish themselves individually as 'communities' under the LRL.

¹⁴SDI, 2018, The Sewacajua Community Forest: The need to strengthen rule of law in the community forestry sector in Liberia, <https://loggingoff.info/wp-content/uploads/2018/04/FINAL-SDI-briefing-05.pdf>.

¹⁵LRL, Chapter 9, Article 36, § 13, p. 19.

¹⁶LRL, Chapter 9, Article 36, § 2, p. 18.

¹⁷LRL Chapter 10 Article 37

¹⁸LRL Chapter 10 Article 37

¹⁹LRL Chapter 10 Article 37