

REPORT

THE LIBERIA LAND RIGHTS ACT: AN ONLINE DIALOGUE

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WHY DISCUSS THE LIBERIA LAND RIGHTS BILL?

THE LAND PORTAL FOUNDATION, LANDESA AND THE SUSTAINABLE DEVELOPMENT INSTITUTE (SDI) CO-FACILITATED A DISCUSSION ON LIBERIA'S LAND RIGHTS BILL BETWEEN JULY 18 AND AUGUST 8, 2018. THE DISCUSSION TOOK PLACE IN COLLABORATION WITH THE RIGHTS & RICE FOUNDATION, HABITAT FOR HUMANITY, AND THE LAND RIGHTS NOW CAMPAIGN.

The full dialogue can be read [here](#).

The discussion was part of a broader effort to support the passage of the Liberia Land Rights Bill. It brought together the perspectives of researchers, particularly those associated with land reforms in developing countries, international organizations, government officials, elders, practitioners and local Civil Society Organizations (CSOs) on the Bill.

The Land Rights Bill (LRB) of Liberia was first developed in 2014 but lingered in the corridors of the legislature for more than four years and underwent several changes. Over the mentioned period, the Legislators conducted multiple private and public consultations and held a couple of public hearings. These interventions resulted into significant changes to the LRB and in 2017 a version of the Bill was passed by the House of Representatives.

However, according to Liberian Civil Society and community members, the version of the Bill passed by the House was a dramatic departure from the Land Rights Policy (LRP) and significantly waters down provisions designed to protect customary land rights. At the international level, the Land Rights Now campaign and local CSOs published an issue brief with several recommendations for reforming the LRB.

In an attempt to address the impasse, the discussion focused on key contentious provisions of the Bill.

Fifty seven people participated in the discussion that resulted into 77 comments, including those from the two facilitators. A majority of the participants were Liberians. Since the beginning of the July 2018, more than 1080 people had visited the discussion, and there have been more than 1,700 page views.

GUIDING QUESTIONS AND OBJECTIVES

The overarching questions that guided the dialogue were how to address gaps in Bill and how to promote the passage of the Bill:

1. Recognition of Customary Land Rights for All: What do you think about entitlement of one acre in fee simple (deeded land in customary residential area) for each member of a community? Should Customary land be sold?
2. Issues with Tribal Certificate: How should the law deal with Tribal Certificate in Customary Land?
3. Protecting women and minority land rights in Customary Land Tenure: How should the law protect women, minority and vulnerable people in customary land tenure system?
4. Protected Land: how should the government reconcile customary land rights in protected areas?
5. Existing Concessions and other land grants: With a large land area in the country (mostly Customary Land) already granted into concessions, what should be the role of communities in the renegotiation of concessions?

As described above, the Land Rights Bill had complex issues that required concerted efforts to address.

Therefore, the overall objectives of the online discussion were:

- » To share relevant information in support of the passage of a Land Rights Bill.
- » To protect the collective land rights of rural/customary communities in the Bill.
- » To contribute ideas to the on-going land reform process in Liberia.

The Dialogue was conducted through an online platform discussion, email exchanges, one on one in person interviews, phone call discussions with national and local officials, civil society actors, community members, and international actors associated with related work.

To initiate the dialogue, the facilitators conducted social media outreach, posting the dialogue in various Liberian based social media sites and attending CSO meetings. The team also reached out to national and international stakeholders via emails, contacting individuals and institutions. National groups like the CSO Working Group on Land Reform, CENTAL, WHH, CAFOD, SDI, FCI, and the VGGT Working Group were targeted.

KEY TAKE-AWAY MESSAGES

Ultimately, only the first three of the five questions were discussed by participants. Hence, the analysis of this survey is around the first three questions:

- » What do you think about entitlement of one acre in fee simple (deeded land in customary residential area) for each member of a community? Should customary land be sold?
- » How should the law deal with Tribal Certificate in Customary Land?
- » How should the law protect women, minority and vulnerable people in customary land tenure system?

1. RECOGNITION OF CUSTOMARY LAND RIGHTS FOR ALL: WHAT DO YOU THINK ABOUT ENTITLEMENT OF ONE ACRE IN FEE SIMPLE (DEEDED LAND IN CUSTOMARY RESIDENTIAL AREA) FOR EACH MEMBER OF A COMMUNITY? SHOULD CUSTOMARY LAND BE SOLD?

The land Rights Bill (LRB) provides that each resident of a customary land community shall, irrespective of gender, be entitled to not more than one acre of land for their exclusive possession and use as a residence. This provision on the size of land offered for community member is being debated.

Overall, this question attracted the most attention from discussants. Broadly, respondents fear that one acre per an adult is too much land that a community may not have. Others argue that such land, even if available leaves none for future generations. For example, **Liz Alden Wily of Landmark** wrote that residential lands should be restricted to a quarter acre of land or less to accommodate for possible future population growth, adding that the root title to land be held in common with the community and that the community plays a key role in the decision on the sale of the land, giving priority to adult member who has no residential plot of their own. To further this point, the **Commissioner of Zorzor District in Lofa County** added, saying: "... we need to put some measure in place regarding the selling of customary land. Customary land should not be sold without consultation with the entire community".

Wily further suggests that if a family to whom title is to be entrusted decides to sell their land or a portion of their land, priority should first be given to that adult who has no residential plot of their own. **Jennifer Duncan of LANDESA** conveyed similar point, "[one acre residential rights] must be scrutinized closely in the Act to be sure that they do not further entrench existing inequalities in access and control over land within communities..." Whether the right size is 1/4 acre, as **Liz Alden Wily** suggests, or 1 acre, as was in previous versions of the Bill, it seems very important for the Bill to name some maximum amount to ensure that the land transferred is really for residential use, and to prevent significant disparity in the amount allocated to residents. The question that comes to mind is, assuming that there is no adult who has no residential plot of their own or no one in the community is interested in buying a piece of residential land, should the community sell their land to outsiders who are not members of the community?

To address this question, most of the respondents at the national level cautioned against the very principle of selling customary land. They insisted that customary land should be held in common within the community and “transferred to succeeding generations.”

Alphonso Henries of Liberia Reform Movement (LRM) fears that privatizing customary land would destroy the “very concept” of customary land as it leaves room and incentives to commercialize customary land. **Marie Blaise of the Rights and Rice Foundation** agreed that the notion of “selling customary land” should be discouraged as the people depend largely on the land for farming and other sources of livelihood. She added, “in order to ensure sustainability, the rights of communities to have access to land must be secure and if a community decides to lease their land, then there must be an inclusive decision involving all community members along with the community land management committee. And importantly, such decision must reflect the customs, traditions and practices of the Community as per Article 36 of the Land Rights Bill.”

Similarly, **Paul Larry George, the Chairman for Alliance for Rural Democracy (ARD)**, warned that granting an acre of land to each member or family may create a problem if not well handled, as people will start coming to the communities and claiming to be community members in order to get land. Paul believes that it will lead to a rush of elites and influential families to communities to grab the lands.

Other respondents suggested that the one acre residential area should be restricted to a family. **Alex Mulbah of the Ministry of Agriculture** stated: “I totally advise against one acre per community member. From my experiencing working in rural communities in Liberia, I have seen places where one family has over 20 children and some of the family members are in Monrovia and other places. If you go with this provision, it is possible for one family to dominate the community and use the community land as their private land. Those families will end up owning the whole community land. To address this, we can restrict this right to a family and make sure no one family has more than 25% of the residential land area.”

Izatta Nagbe, a Gender and Land Rights Specialist working with the Land Governance Support Activity (LGSA) under the United States Agency for International Development (USAID), agrees with this point: the one acre residential land right should be restricted to a family unit because giving each member an acre will leave none for future generations. She added that no family should sell such a right, but rather transfer it from one generation to another.

While the above suggestion tried to address equity in land distribution it missed a thorny issue - exiting traditional land use practices and systems. It is known that in some communities, residential lands are owned by one of several land owning families – often based on “a quarter system” – in the town. How can such a family have the same right as a new comer in the community? Furthermore, **Sarh Nowah (of Welthungerhilfe)** and others believe decisions to allot or sell customary land should be left with individual communities. He said, “Concerning the entitlement of one acre in fee simple (deeded land in customary residential area) for each member of a community, I personally think it should be left with the community themselves to decide who is entitled to whatever portion of they want to give out and how such a land should be described.” **J. Vanjah Kollie of the Liberia Land Authority** added a twist to this position. Although he agreed that the decision to manage customary land should be left with the community to make, however, added that that

the Government should develop the necessary safeguards and regulations to make sure individual community members' rights are protected.

Nentarkpor Leeway, a field Facilitator working with Sustainable Development Institute (SDI), invited the discussants to look deeper into the question. He said: "In my work as a community facilitator working with rural communities to protect their land rights, I have seen community members already applying a sense of [direct ownership] over community land areas, separate from the whole community, usually through quarters. So I think there should be a room to formalize such land management system but I also share the fear that such a land should not be sold otherwise it could be a way for communities to speculate on their residential land by selling the residential areas and end up leasing from one or two families."

At the community level, **Henry Zayzay, a Paramount Chief from Zorzor District in Lofa County** says: "As for the one acre, we don't have enough land for everyone to have one acre. Even if we think about this, we will have people claiming to be a member of a community because they want share of the land and other people will not agree which will cause trouble. My suggestion is we go back to the community to decide how they want to manage their land not have any suggestions from outside."

Notwithstanding the views of holding land in common and not selling, there are other respondents who agreed with the proposed provision to allocate residential land to individual community members. **Joseph Charles, a graduate student with a focus on Natural Resource Management and Earth Sciences**, writes: "This proposition provides an opportunity for protection of community members and promotion of economic activities as a member may mortgage his land and undertake meaningful agriculture development. On the other hand, it could mean the end of customary communities, as a whole community could be bought."

Florenace M. Dorley of the VGGT Secretariat assured her co-discussants that there are principles in place that can be utilized in protecting against bad faith transaction. She writes: "When the bill is passed and rural communities have the rights to usage, exclusion, and alienation, including selling of their lands, the principle of Free Prior Informed Consent (FPIC) will be critically significant in helping to safeguard and protecting rural communities from the purchase of their land by large scale land based investors." **Daniel C. Keh, the Clan Chief Krosoken, Chedepo District in River Gee County**, added "... the one acre per community member is good and protects present community members against those who will come in later just to win the land from the community people."

2. ISSUES WITH TRIBAL CERTIFICATE: HOW SHOULD THE LAW DEAL WITH TRIBAL CERTIFICATE (TC) IN CUSTOMARY LAND?

The 2017 Land Rights Bill (LRB) passed by the Lower House allows for owners of land by TC to be given the land that is developed as well as 50% of undeveloped, leaving the affected community with 50% of the undeveloped portion. The Bill specifically states:

1. The holder of a valid Tribal Certificate (TC) issued prior to the Effective Date of this Act for which a Public Land Sale Deed was not obtained is granted a maximum of twenty four (24) months to finalize and complete all the steps necessary to obtain a Public Land Sale

Deed. Appropriate and sufficient notification will be provided by the LLA to the holders of Tribal Certificates to enable them to complete the required steps. If the holder of a Tribal Certificate does not obtain a valid Public Land Sale Deed within twenty four (24) months the Land, subject matter of the Tribal Certificate, shall revert to the Community and become Customary Land.

2. Notwithstanding previous sub-articles in Articles 46 and 47, the Public Land Sale Deed obtained by the holder of a Tribal Certificate with the approval of the community concerned, shall, unless reasons for otherwise prevail, entitle the holder to one hundred percent (100%) of the developed portion of the Land, subject matter of the Tribal Certificate, and fifty percent (50%) of the undeveloped portion of the Land. The underdeveloped remaining fifty percent (50%) of the Land shall revert to the Community and become Customary Land.

CSOs and land rights campaigners frown on these provisions, arguing that someone with about 1,000 acres of undeveloped land will still benefit from 500 acres, which is still a large area. Other views oppose TCs on ground that it has been abused by government officials and other people of influence who go to the rural communities to buy lands. **Ali Kaba of SDI**, a lead campaigner for land reform in Liberia describes TCs as “an instrument without uniform standard or measurement; it is rather the random donation of huge areas of land, a system which has allowed local and national elites to captured large areas of land that is yet to be deeded. [Importantly], given that TCs were issued without proper instruments, transparency, or measurement – no inventory of Tribal Certificate issued, what happens if a land claim encroaches on available community farm land?”

There were varying views from the discussion. While some of the respondents favored out rightly formalization of TCs into deed, most discussants thought TCs should be vetted and validated by the community before formalization. Importantly, there was a consensus that TCs have to be handled with care.

Alphoso Henries of the CSO Working Group commented: “Tribal Certificates need to be vetted properly by each community. In fact I think all “un-deeded” land claim should return to the community and each Tribal Certificate holder can work with the community and appropriate national and local authorities to retrieve their land claim from the community. The decision must ultimately rest with the community otherwise we are back to square one, whereby few people will privatize customary land and control rural communities...”

Mr. Mosses Kollie of the New Generation of Africa Agricultural Organization was more expressive: “My opinion is a tribal certificate is not a deed and should not be given credence. If we try to make TCs with deed it could lead to serious problems in customary communities. Some of the TC owners are not from these communities and really do not have any thing in common with the community, and most of them are really powerful. If you say any part of the TC is legitimate is opening a big hole in customary land. i am against it!”

Ms. Musu Kama, a Program Officer at the Organization for Women and Children, added, “Tribal certificates have been a serious problem and they have led under development. It is common to hear ‘dont touch my land.’ And most of the times, it is TC land. They have intimidated communities for too long. TCs should not be [taken] as a deed. Each TC holder must go back to the community to legitimate their claim.” **David Howard, an officer at the Ministry of Internal Affairs** concurred, however adding that vetting TCs should include the government’s regulatory role.

On the other hand, some contributors reminded the discussion that TCs have been in use for a long period of time and has been the traditionally acceptable tool for land transactions in many rural areas, and therefore, holders of land from TC should be recognized and afforded the opportunity to have their lands deeded. According to some of these discussants, the TCs were obtained in the 60s and 70s, and have been transferred from one generation to another. This group believes that TC of the 60s and 70s are to some extent good and can be accepted; however, those “TCs obtained during and after the conflict periods (1980 to 2018)” of Liberia are unclear and should be canceled. According to **Daniel Wayhee, a field facilitator working with rural communities in Northern Liberia**, “TC has been the modus-operandi in some communities and cannot be undone but rather accepted.” He added, “TC processed before the war, the 1970s and 80s should be discussed with the community. That way, a community and TC holder can agree on a limit based on the TC and the current need of the community. All other certificates received between 1990 and 2018 should be cancelled! We had several years of war during which communities were displaced and people were being placed in position of power in the community without the community’s consent.”

M. Sahr Nouwah, the National Head of Projects- Land Rights for Liberia & Land for Life at Welthungerhilfe.de: “With Tribal Certificate (TC), I think if the land has already been developed, to minimize conflicts it should go to whoever has developed it, but all undeveloped lands with tribal certificate holders should go back to the community and be renegotiated. This is the only way to deal with TC.

According to **Jackson Sando, a field facilitator with the Sustainable Development Institute (SDI)**, “... all Tribal Certificates, developed or otherwise should be reviewed by each community and determination made on the legitimacy of the TC. Such a review should be done in an inclusive, and transparent way, including women, youth, and elders. If the TC is seen as legitimate by the community as a whole than TC should be able to stand as it and turn into deed. Otherwise if the TC is seen as illegitimate, the TC holder forfeits the land.”

Josiah Messer, the Clan Chief of Siahn, a County in South East of Liberia, River Cess County, agreed: “We have had Tribal Certificates for a long time and some people in the community have TCs. I think it will be hard not to deed TC so better they work with communities to legitimate the certificates but there should be a time line and cut off period. But I also think government needs to place a hold on TCs; people are still issuing TCs.”

Overall, the view is that if TCs have to be processed into deed, “Such deeding should be preceded by a vetting and validation process, which should include the youth, women, men, elder, and local leadership. Those owners who pass such validation and have developed their lands should be deeded while undeveloped lands and those lands with faults should be taken by the communities. The validation process is necessary because it is likely that some of the TCs are not signed by the rightful persons and therefore become questionable.”

According to the practices of most rural communities, as suggested by **Jonnie Norrine, the Clan Chief of Cherboken in Potuppo District, Maryland County**, a genuine TC is signed by the following traditional chiefs and local officials: Quarter Chief, Town Chief, General Town Chief, Clan Chief, Paramount Chief, Chief Elder, and endorsed by the District Commissioner to give it legitimacy. This observation presents an opportunity for government and development partners to provide support to the communities in the validation of Tribal Certificates, and institute a system to address grievances that may arise from the process.

3. PROTECTING WOMEN AND MINORITY LAND RIGHTS IN CUSTOMARY LAND TENURE: HOW SHOULD THE LAW PROTECT WOMEN, MINORITY AND VULNERABLE PEOPLE IN CUSTOMARY LAND TENURE SYSTEM?

Protecting women and minority rights in customary land tenure was the least discussed, but all of the contributors to this point were in accord of the need for regulations and systems to protect and encourage the participation of vulnerable people in the customary land tenure system. All of the responses received were positively supportive of women and minority groups' rights to land ownership. One of the responses expressed that the present definition of Community resident to include any spouse who lives in the same community where her husband is a resident, against the earlier definitions of having resided there for 7 and 15 years respectively, provides safeguard for women and needs to be protected.

Many respondents feared that the time limit for residence earlier conditioned for women to be qualified for resident title was unhelpful. They maintained that women are usually taken to or brought into a community or the home of the male spouse and therefore are likely to move from one community to another, "therefore to place a time limit to female residency" could undermine women land rights. Participants shared the view that an inclusive Land Rights Law that provides open and protected corridor for land tenure's rights for women, youth, and minority groups is a good step in the right direction.

Another key concern stressed by a discussant is gender safeguards around TC validation and formalization. "Validating TCs should be sensitive to women land ownership," the discussant added. The conversion of TC needs to be scrutinized carefully so as to avoid deepening the "existing inequalities in access and control over land in communities." This narrative seems to be suggesting or resonating with the view that some if not few of the TC land owners may likely be women or shared ownership with a male counterpart, and if the conversion process is not handled carefully, it may be a ground used by the male dominant society to take away the lands that the few lucky women might have had difficulty acquiring and maintaining. This is an important observation that can be applied to minority communities, too.

A similar view was expressed by another discussant: "TC over the years was largely done under a system that favored men, and hence, converting land acquired under such a male favored and dominant system could likely lead to the marginalization of women under varying conditions."

Jennifer Duncan of Landesa, a gender land rights expert agreed, advising, "it will thus be very important for conversion of TCs to include a rigorous review to explore and address gender biases. This could be stipulated in the current Bill (best), or could be addressed through implementing regulations."

Alongside the increasing attention given to women's access and right to land, discussants drew attention to gender equality with respect to land governance. Mainly, it was observed that in rural traditional communities, men are usually the manager and administrator of land, and ownership of land in these communities is more of a subject for male conversation. Disputes over land are held between or amongst men and are usually decided by men. Hence, some respondents insist that land tenure rights should pay attention women's rights to land ownership and deeding such land for private ownership should be a key provision of the bill. For example, A. **Pope- Kai, the Director of Programs at Foundation for Community Initiatives (FCI)** – a women rights

CSO, said: “To make the LRB equitable, women need direct benefits or rights to land for multiple reasons – food security, health, family welfare, protection from sexual violence and other forms of physical abuse, and land rights can be used to combat abject poverty, and more. The LRB must make sure women have the right to gain property rights upon marriage, divorce, death of a spouse, or as an heir as provided for under DRL 3.4 and 8.7. Equal Rights of the Customary Marriage Law of 1998. The language in the bill should protect women’s land rights.”

Garmai Gbelle, a female City Mayor for Zorzor District in Lofa County, acknowledged that “traditionally the man is the head of the home,” but quickly clarified, “that doesn’t necessarily mean that the woman don’t have rights when it comes to decision making especially about land... even most of our traditional leaders today are getting aware now about women rights. Women think more about their children future, so I think they should be given full rights and equal access to land. We need to start with leadership on land management committees. So I recommend that the Land Rights Bill place in strong [concrete] gender sensitive provision to include women in all related land management committees and protect women access and right to land.”

While a majority of respondents reported support to women’s participation in customary land governance, there were few instances in which participants conceded that there are challenges. For example, **Oretha Klay of the National Charcoal Union of Liberia** agreed with Garmai Gbelle, but with a caution: “I am not sure how traditional communities should be organized or governed, but if a woman’s husband passes on she should have the right to inherit her husband properties, including land. This has to be straightened in the law.” **Edward Suloe, as Program Officer working with the Forest Governance Program in the Sustainable Development Institute (SDI)** also acknowledged the sensitivity around women land rights. He said: “This is a sensitive issue and because of how families are structured and the nature of our culture, so it will take time. Most of the challenge is around ‘what to do with the rights of children in a family.’ In my culture, the children belong to the man. The offspring of the woman (our sisters) will always be seen as less than that of the brother’s children. I don’t agree with this thinking but this is the culture. The best way to fight against this is through more awareness, training, and capacity development opportunities for women, and sensitization training for community leadership. So, we need to invest in more training, awareness, and capacity development activities aligned with the implementing the LRP.” Even more clearly, **Felecia Weah, the Youth Chair of Saykliken Clan, River Gee**, added. “In the Grebo cultural men have more rights to land than women, therefore the land governance component women don’t have any part to play. Normally, we discuss land when men meet at the society ground and women are not part of.”

The comments in this section highlight the complex role culture plays in helping to shape women’s land rights in Liberia. Participants acknowledged that women are not provided full protection in access and ownership of land, and importantly, land governance is traditionally an exclusive sphere for men. Addressing these challenges should be central not only to the land rights bill, but also across the different sectors dealing with land. To this this, additional views stressed that more education, awareness, and empowerment initiatives are needed for women at national, local, and family levels to empower women and promote gender equality in land ownership and management.

The Land Rights Bill will substantially contribute to undoing the practice of restricting land discussion only to men, and to establish a culture where land discussions can be more of collective discussion for all facets of the community: men, women, youth, elders, and the physically challenged. All of the respondents applauded the idea of women’s representation on the Land Management Committee.

CONCLUSIONS

Overall, the online discussion provided a useful space for diverse stakeholders, community members, government agents, international land tenure experts, Civil Society actors, and ordinary Liberians to exchange views and experiences on sticky issues that had been holding back the passage of the Land Rights Bill. This space helped build mutual understanding and relationship between communities, a key gap that had existed in policy and legal reform.

More specifically, the dialogue showed that there are diverse views and important areas of convergence around some of the key issues: the recognition of private holding in customary Land, formalizing Tribal Certificates, and protecting the land rights of women and minority groups. While the land rights bill has now been passed, these views can help inform the regulatory framework and implementation process. Moreover, we learned that the potential to address contentious issues around land reform and related issues through a national dialogue with stakeholders is possible, and with minimum external supports.

To this end, the Land Rights Bill passed by the legislature and signed into law by the President incorporated most of the concerns raised in the discussion.

“While we did not get 100% of what we wanted, we are comfortable to say that the Bill passed into law by the President addressed most of CSOs concerns,” conveyed a CSO leader and a senior member of the Civil Society Working Group on Land reform.

KEY OUTCOMES

- » Tribal Certificates were limited to developed land.
- » Adjustments were made in the Bill to account for women’s participation in land ownership and management.
- » Residency was open to spouses of community men and women were protected with land rights in their homegrown community.
- » Women were guaranteed “at least 30%” of leadership roles in community management.
- » The one acre deeded land to adult community members was maintained in the land law.



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