

Land Rights Policy



**Approved by the
Land Commission, Republic of Liberia
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1.0. EXECUTIVE SUMMARY

This Land Rights Policy concerns four land rights categories (Public Land, Government Land, Customary Land, and Private Land), and a cross-cutting sub-category called Protected Areas, which must be conserved for the benefit of all Liberians. For Public Land and Government Land, the Policy sets forth critical policy recommendations regarding: how the Government transfers such land, and how the Government acquires land, especially through the exercise of eminent domain (i.e. forced acquisition). With respect to the new category of Customary Land, there are several significant recommendations: Customary Land and Private Land are equally protected; and communities will self-define, be issued a deed, establish a legal entity, and strengthen their governance arrangements to make them fully representative and accountable. The Government also undertakes to support communities in implementing these recommendations. Finally, several Private Land issues are detailed, which include loss of ownership, leases, easements, and adverse possession.

2.0. INTRODUCTION

This document provides the Land Commission's policy recommendations for land rights in Liberia, centered on four basic types of rights: Public Land, Government Land, Customary Land, and Private Land. In addition, a Protected Area is land which may fall under the Government Land, Customary Land, or Private Land categories but which must be conserved for the benefit of all Liberians. This Policy is a vision statement of where Liberians want to go with their land sector; none of the below principles or recommendations will be applied retroactively to change prior actions by the Government. Rather, this Policy will help ensure that in the future Liberia's land sector is orderly, just, and contributes to economic growth and development for all Liberians.

As the foundation for reforming Liberia's land sector, this Policy will form the basis of a new land rights law, and will require substantial changes to the existing legal framework. The formulation process was guided by the below overriding principles.

- 2.1.** *Secure Land Rights.* The most important principle guiding the Land Commission's policy recommendations is ensuring that all communities, families, individuals, and legal entities enjoy secure land rights free of fear that their land will be taken from them, except in accordance with legal due process. By creating secure land rights people expect those rights to be stable and secure in the future, which promotes long-term decision making.
- 2.2.** *Economic Growth.* Tenure security is a means for Liberia to enjoy sustained economic growth by contributing to a stable investment environment and food security; because investors and landowners know there will be enough time to recover

the benefit of their investment. The principles of economic growth and tenure security are not in conflict with one another but are complementary. Exploiting weak land rights to acquire commercial use of land is damaging to both tenure security and economic growth.

- 2.3. *Equitable Benefits.* The Land Commission's policy recommendations aim to ensure that the benefits of economic growth are equitably distributed by creating wealth for all Liberians. This too is complementary to economic growth, for growth will be stable and long-lasting only by ensuring that its benefits are spread to all parts of Liberian society.
- 2.4. *Equal Access.* The Constitution gives all Liberians "the right to own property alone as well as in association with others," which means land ownership is permitted for all Liberians regardless of their identity, whether based on custom, ethnicity, tribe, language, gender, or otherwise. This is a fundamental constitutional principle that has informed every part of the Land Commission's policy recommendations.
- 2.5. *Equal Protection.* The Constitution guarantees that "all persons, irrespective of ethnic background, race, sex, creed, place of origin or political opinion, are entitled to the fundamental rights and freedoms of the individual," including land rights. However, since the founding of Liberia the lands of customary communities have been less secure than private lands. This policy must end such that lands under customary practice and norms are given protection equal to that of private lands. Moreover, women's land rights are often less protected than those of men. This policy aims to give equal protection to the land rights of men and women.
- 2.6. *Environmental Protection.* Land is a precious resource that must be used, managed, and administered in a sustainable manner in order to ensure environmental protection and long-term economic growth.
- 2.7. *Clarity.* Every effort was made to ensure that the recommendations and the future laws and policies for which they advocate will be publicly available and clearly understood by all Liberians regardless of background. Policies and laws can be successfully implemented only when they are clearly understood and publicly available.
- 2.8. *Participation.* The recommendations were created with extensive participation by the Government, civil society, and communities to ensure that there was broad consensus regarding policy and legal reform. Policy and legal reform must be brought into the open and subject to debate and criticism.

- 2.9.** *Evidence-Based.* Sound policy must respond to the realities of the Liberian context and draw upon the experiences of other countries. Therefore, the policy recommendations are based on numerous country-specific and comparative studies, reports, study tours, interviews, and workshops and are, consequently, firmly rooted in the challenges facing Liberians today.

3.0. BACKGROUND: THE NEED FOR A LAND RIGHTS POLICY

Never in its history has Liberia had a clearly defined land rights policy. Every Liberian feels on a daily basis its absence. The experiences and difficulties vary, whether it is a government official unable to secure land for government programs, a customary community fearful that a company will use its land without getting its approval or providing just compensation, an urban resident caught up in a bitter and expensive land dispute or evicted without notice, or entrepreneurs uncertain that their investments are reasonably protected. The goal of this Policy is to improve the daily lives of all Liberians—to eliminate the anxiety and uncertainty they feel over land rights.

Since its creation in 2009 the Land Commission has undertaken projects reviewing and analyzing: Liberia's land laws; Liberian legal history; comparative best practices; customary tenure; women's land rights; public land sale deeds, aboriginal land grant deeds, public land grant deeds, and tribal certificates; and land use rights, including commercial use rights. In March 2011 the Land Commission adopted the World Bank-funded report *Reform of Liberia's Civil Law Concerning Land* ("Land Law Report"), which lays out a process for transforming the information gleaned from these projects into policy recommendations and draft laws.

In accordance with the Land Law Report, the Land Commission has proceeded with policy and legal reform in clusters, with each cluster covering one of the following areas: Land Rights, Land Administration, and Land Use/Management. After adopting the Report the Land Commission decided to include a fourth cluster, Land Dispute Resolution. These clusters were charged with moving from a policy to proposed draft laws in each of their areas. The Land Rights Cluster includes the following land rights categories: Public Land, Government Land, Customary Land, and Private Land. The end product of the Land Rights Cluster will be a proposed Land Rights Law, addressing Public Land, Government Land, Customary Land, Private Land, and Protected Areas. Later, the Land Administration and Land Use/Management Clusters will provide detailed policy recommendations and draft laws addressing how these land rights categories should be used, managed, and administered.

The Land Rights Cluster was organized into a Policy Task Force and Legal Drafting Team. The Policy Task Force, made up of officials from the Land Commission and key government

ministries and agencies, debated the various policy issues surrounding a new land rights law and presented its policy recommendations to the Land Commission for approval. Once approved, the policy will be given to the Land Rights Legal Drafting Team, which is charged with transforming the policy decisions in this Policy into draft laws for presentation to the Executive and Legislature. The Legal Drafting Team includes members of the Liberian Bar as well as other key government ministries and agencies. Representatives from the Executive and Legislature have been consulted at each stage of the process.

Along with its policy and legal reform work through the cluster process, the Land Commission, in cooperation with relevant Government institutions and donor partners, is undertaking studies of the most complex and pressing issues facing the land sector. Fundamentally, these issues relate to land rights, for example: who has legal authority to grant concessions (individuals, communities, or groups), who is entitled to land rights, and what is the nature of these rights. All of these issues require, in line with the above principles, data collection and analyses prior to recommending needed reforms. When the studies are completed policies and laws will be proposed that respond to the realities of the Liberian context, balance competing interests, strengthen the rule of law, and further Liberia's development goals.

4.0. LAND RIGHTS PRINCIPLES

The Government of Liberia has treated all land that is not deeded as public. This practice dates from around 1824 when all land acquired by the American Colonization Society from indigenous peoples became public land and was allotted to citizens as private deeded land. However, there has never been a clear definition of public land nor a clear relationship to preexisting customary land rights. The practice has become the law and policy, rather than the law and policy guiding the practice. The result has weakened the Government of Liberia's ability to effectively manage and use land as well as creating insecurity for customary and private land rights. Therefore, the recommendations that follow are in accordance with these basic land rights principles:

- 4.1.** The Government is responsible for administering and managing land within the territory of Liberia in the public interest.
- 4.2.** The Government recognizes and protects the land rights of communities, groups, families, and individuals who own, use, and manage their land in accordance with customary practices and norms, as equal to Private Land rights.
- 4.3.** The Government recognizes and protects Private Land rights.
- 4.4.** The Government recognizes and protects the right of the Government to own land.

5.0. GOVERNMENT LAND AND PUBLIC LAND

This section discusses the following issues surrounding Public Land and Government Land and makes policy recommendations for each:

- Definitions
- Transfers
- Government Acquisition
- Failure to Pay Applicable Land Taxes

These recommendations that follow are the product of an intensive two year process, which began with the identification of numerous problems in the public land sale process and the imposition of a moratorium on public land sales to give the Land Commission sufficient time to address them. The result was the Interim Guidelines and Procedures for the Sale of Public Land (2011) which sought to remedy the problems in the public land sale process but as far as possible within the existing statutory framework of the 1973 Public Lands Law.

During internal policy discussions and after the issuance of the Land Law Report, it became clear that a new policy on public land was needed. Also informing this conclusion and the following policy recommendations were studies of past Liberian laws and policies regarding public land as well as best practices in other African countries. These studies revealed three startling facts: (1) there has never been a clear policy governing public land, (2) the laws governing public land have not been significantly changed for 150 years, and (3) the public land laws of Liberia are inconsistent with comparative best practices.

5.1. Definitions

Historically, all land under Government control was treated as public land without any distinction based on how the land should be managed, used, and transferred. This has contributed to mismanagement of land under Government control and ineffective land administration. The below recommendations address this issue by distinguishing between Public Land and Government Land based, not on ownership, but on how the land is managed, used, and transferred. The Republic of Liberia owns both types of land.

Policy Recommendations:

- 5.1.1.** All Government Land and Public Land is owned by the Republic of Liberia and used or managed by government entities on behalf of the Republic and the people of Liberia.

- 5.1.2.** Government Land is defined as land owned by the Government and used for the buildings, projects, or activities of the Government, including, but not limited to, lands on which are located: the offices of ministries, agencies, and parastatal bodies; military bases; roads; public schools and public universities; public hospitals and public clinics; public libraries and public museums; public utilities; and airports. Government Land leased to an individual or private entity remains Government Land even if during the lease period the land is not used for the buildings, projects, or activities of the Government. Land leased by the Government from an individual or private entity, including a community, is not Government Land because it is not owned by the Government.
- 5.1.3.** Government Land may be leased to government entities, sold or leased to an individual, or a private entity, including a community, only if the transfer process follows the strict protections designed to prevent fraud and abuse set forth in this policy. Government Land may not be granted as a concession.
- 5.1.4.** Government Land includes Government Protected Areas which are owned by the Republic of Liberia and must be conserved and managed for the benefit of all Liberians. Government Protected Areas will not be sold, leased, or granted as a concession, and any attempt at such a transfer is prohibited. A Government Protected Area will only be converted to Private Land, Customary Land, or Public Land in accordance with a law passed by the Legislature. Government Protected Areas include, but are not limited to: national parks, such as Sapo National Park; and lands on which are located national monuments or memorials.
- 5.1.5.** Beaches from the low watermark to the high watermark and the coasts of major waterways are Government Protected Areas. Any statute or regulation issued pursuant to this rule must take into consideration commercial and residential development and use as well as customary use or management rights in existence as of the date this Policy comes into effect.
- 5.1.6.** Limited use rights may be granted over Government Protected Areas to individuals, private entities, or government entities only if the use is consistent with the land's conservation and management for the benefit of all Liberians, including, but not limited to, licenses for eco-tourism and permits for scientific research.
- 5.1.7.** Public Land is defined as land: designated for future use; managed in the public interest; and which is not Government Land, owned by a community and used or

managed in accordance with customary practices and norms, or owned as Private Land.

- 5.1.8.** Public Land may be sold, leased, granted as a concession, or otherwise transferred to the Government, an individual, or a private entity, including a community. Public Land may be converted to Private Land, Customary Land, or Government Land. The Government is responsible for managing concessions on Public Land in the public interest.

5.2. Transfers

In the past the Public Land sale process has been a source of weak land governance, corruption, political patronage, and discriminatory treatment. In addition, there is no existing legal framework governing the process by which the Government of Liberia leases Public Land. The following policy recommendations are designed to correct these flaws and, in addition, address how the Government's land rights in the newly created category of Government Land, including Government Protected Areas, are transferred.

5.2.1. Sales and Leases of Public Land and Government Land

Policy Recommendations:

- 5.2.1.1.** The Government may sell or lease Government Land or Public Land.
- 5.2.1.2.** Sales and long-term leases of Public Land and Government Land must be done through a public, competitive bidding process overseen by the government entity which manages the land. Automatic renewal of long-term leases is prohibited.
- 5.2.1.3.** Short-term leases of Public Land and Government Land are not required to submit to public, competitive bidding. Automatic renewal of short-term leases is prohibited.
- 5.2.1.4.** Before the sale or lease of Public Land or Government Land is final the Government must inform individuals, private entities, and communities likely to be affected such that they are given a reasonable period of time to review the sale or lease and the following must be advertised to the public for a reasonable period of time: the sale or lease agreement, including the individual or legal entity acquiring the land, as well as any subsidiaries or parent companies; the exact size and location of the land along with a survey plan; and any payments to be made to the Government and the payment schedule. Any sale or lease that contravenes this rule is prohibited.

- 5.2.1.5. Before the sale or lease of Public Land or Government Land is final, the sale must be reviewed by the government entity responsible for coordinating the management of Public Land and Government Land. The entity must provide a public report detailing any irregularities, misconduct, or violations of any law regarding the sale or lease. In reviewing the sale or lease, the government entity may consult such other relevant government entities as it deems necessary and appropriate.
- 5.2.1.6. Reports regarding sales and long-term leases prepared by the government entity responsible for coordinating Public Land and Government Land must be advertised to the public in its entirety for a reasonable period of time before the sale or lease is final, especially in the area where the land to be leased or sold is located. Reports regarding short-term leases prepared by the government entity responsible for coordinating Public Land and Government Land must be publicly available in their entirety for a reasonable period of time before the lease is final.
- 5.2.1.7. Any Liberian citizen or legal entity, including any government entity, may seek to cancel, prevent, or challenge the sale or lease of Public Land or Government Land.

5.2.2. Transfers of Government Protected Areas

Policy Recommendations:

- 5.2.2.1. Transfers of Government Protected Areas are only permitted in the form of a limited use right consistent with the land's conservation and management for the benefit of all Liberians.
- 5.2.2.2. Transfers of Government Protected Areas for commercial use must be through a public, competitive bidding process overseen by the government entity which manages the land.
- 5.2.2.3. An individual or legal entity seeking limited use of a Government Protected Area must provide to the government entity which manages the land a plan describing the following: the individual or legal entity acquiring the land; the purpose of the use; the proposed methods for achieving the purpose of the use; the exact size and location of the area over which use is sought, with supporting maps; the length of time of the use; and the benefits to be received by the Government and the Liberian public, including any payments and a payment schedule. Before the

transfer is final, the Government must provide the above plan to individuals, private entities, and communities likely to be affected such that they are given a reasonable period of time to review the plan. The plan must be advertised to the public for a reasonable period of time.

- 5.2.2.4. The proposed methods for achieving the purpose of the use, the area over which use is sought, and the length of time of the use must be absolutely necessary for achieving the purpose of the use.
- 5.2.2.5. Before the transfer is final, it must be reviewed by the government entity responsible for coordinating the management of Public Land and Government Land, which must provide a public report detailing any irregularities, misconduct, or violations of any law regarding the transfer. The report must be advertised to the public in its entirety for a reasonable period of time before the transfer is final, especially in the area where the Government Protected Area is located.
- 5.2.2.6. Any Liberian citizen or legal entity, including any government entity, may seek to cancel, prevent, or change the transfer of a Government Protected Area.

5.3. Government Acquisition

This section addresses the four ways in which the Government may acquire land. The Government may acquire Private Land and Customary Land through mutual agreement, eminent domain, or donation. In addition, the Government may acquire Private Land, but not Customary Land, through reversion. Many of the below recommendations add much needed detail to powers and rights set forth in the Constitution.

5.3.1 Mutual Agreement and Eminent Domain

The current law on eminent domain (i.e. forced acquisition) in Liberia is inadequate. The Constitution allows for the use of the eminent domain power for “public purposes” and imposes certain requirements, but landowners require additional protections. The below policy recommendations are designed to ensure the Government exercises eminent domain consistent with international best practices and in a manner that balances the Government’s constitutional powers with the fundamental constitutional right of Private Land and Customary Land ownership.

Principles:

- 5.3.1.1. Owners of Private Land and Customary Land will be provided just and prompt compensation such that, as much as possible, they are put in the same position they were in before the decision to expropriate.
- 5.3.1.2. Just compensation for the land will be calculated based on fair market value assuming a willing buyer and a willing seller. Any change in fair market value as a result of the decision to expropriate will not be considered.

Policy Recommendations:

- 5.3.1.3. According to the Constitution, the Government may expropriate Private Land and Customary Land only for the security of the nation in the event of armed conflict, where the public health and safety are endangered, or for any other public purposes.
- 5.3.1.4. In the context of the Government's exercise of its eminent domain power, 'public purpose' means a purpose beneficial to the public but for which no private entity has been willing to use its resources.
- 5.3.1.5. Before exercising its eminent domain power the Government must make a reasonable effort to acquire Private Land or Customary Land through mutual agreement that provides just compensation in accordance with fair market value and the principles and recommendations set forth in this section.
- 5.3.1.6. The Government must issue a notice to individuals, private entities, and communities likely to be affected such that they are given a reasonable period of time to review the notice, and advertise the notice to the public for a reasonable period of time. The notice must include: the Government's reasons for expropriating; the exact location of the land including a survey plan; the landowner's right to negotiate the Government's access to the land for the purpose of evaluating fair market value; and the landowner's right to be present at all times when the Government enters the land. If the Government changes its reasons for expropriating then the Government must inform individuals, private entities, and communities likely to be affected and advertise the change to the public for a reasonable period of time. Under no circumstances will the above notice transfer ownership of the land or be used by any government employee or their agents to claim ownership of the land.

- 5.3.1.7.** During the notice period the Government must make a good faith effort to locate the landowner and reach an agreement regarding access to the land for the purpose of evaluating its fair market value. If at the conclusion of the notice period the landowner refuses to grant access, the Government may enter onto the land for the sole purpose of evaluating its fair market value without the landowner's consent. The landowner will have the right to be present at all times when the Government enters the land.
- 5.3.1.8.** The valuation of just compensation must be based on the land's fair market value assuming a willing buyer and a willing seller and excluding any changes in value as a result of the decision to expropriate. In addition, just compensation must include temporary costs reasonably incurred by the landowner as a direct result of the expropriation, including, but not limited to: legal fees; and relocation costs, such as transportation to new land and compensation and projects to restore the natural resources and economic base of those relocated.
- 5.3.1.9.** If only a portion of the land is expropriated and as a result the landowner's remaining land loses value, the Government must either compensate the landowner for the loss in value or expropriate the remaining land, whichever the landowner prefers.
- 5.3.1.10.** Owners of Private Land or Customary Land must be given a minimum of six (6) months notice before they are required to relocate.
- 5.3.1.11.** The Government must provide payment of just compensation to the owner of Private Land or Customary Land before they are required to surrender their land to the Government.
- 5.3.1.12.** If Private Land or Customary Land acquired through the exercise of eminent domain after a certain date is not used for a public purpose within five (5) year of its acquisition, then the previous owner or their heir(s) will have the right of first refusal (i.e. the right to buy back the land from the Government before any other prospective buyers). The Government must make a good faith effort to locate the previous owner or their heir(s).
- 5.3.1.13.** If after a certain date the buildings, projects, or activities of the Government are located on Private Land or Customary Land, the Government must either continue to lease the land or purchase the land through mutual agreement or eminent domain.

- 5.3.1.14.** Any Liberian citizen or legal entity, including any government entity, may seek to cancel, prevent, or challenge the expropriation of Private Land or Customary Land.

5.3.2. Donation

Policy Recommendations:

- 5.3.2.1.** Private Land and Customary Land may be donated to the Government as Government Land for a specific public purpose, including, but not limited to: housing, schools, hospitals or clinics, and roads.
- 5.3.2.2.** If the land is not used for the specific public purpose for which it was donated within five (5) years of the donation, the previous owner or his/her heir(s) will have the right of reacquire the land without payment of compensation to the Government. The Government must make a good faith effort to locate the previous owner or his/her heir(s).

5.3.3. Reversion

Policy Recommendations:

- 5.3.3.1.** In accordance with the Constitution, land used by a foreign government for its diplomatic activities will revert to the Government “in the event of a cessation of diplomatic relations” only if the land is owned by the Government.
- 5.3.3.2.** In accordance with the Constitution, Private Land owned by a non-citizen missionary, educational, or other benevolent institution will revert to the Government if the land ceases to be used for the purpose for which it was acquired.
- 5.3.3.3.** In accordance with the Constitution, Private Land owned by a person whose certificate of naturalization has been cancelled and who does not have a Liberian spouse or heir will revert to the Government.
- 5.3.3.4.** In accordance with the Constitution, Private Land owned by a person who dies without Liberian heirs will revert to the Government. Before the Private Land reverts to the Government, the Government must fully investigate the rights and interests in the land and make a good faith effort to find a Liberian heir of the deceased owner.

- 5.3.3.5.** Any Liberian citizen or legal entity, including any government entity, may seek to cancel, prevent, or challenge the Government's acquisition and sale of Private Land due to loss of citizenship or failure to locate Liberian heirs.

5.4. Failure to Pay Applicable Land Taxes

Policy Recommendations:

- 5.4.1.** If the owner of Private Land repeatedly fails to pay applicable land taxes, the Government may begin proceedings in court or an appropriate administrative body to sell the land to satisfy any unpaid taxes, unless the failure is due to an armed conflict or genuine fear of severe injury or loss of life. The sale must be through a public, competitive bidding process. After deducting unpaid taxes and administrative costs, any remaining revenues from the sale will be given to the owner.
- 5.4.2.** Prior to beginning sale proceedings, the Government must give the owner at least six (6) months notice, a reasonable opportunity to satisfy any unpaid taxes, and challenge the Government's allegations in accordance with due process.

6.0. CUSTOMARY LAND

This section discusses the following issues surrounding Customary Land and makes policy recommendations for each:

- Definitions
- Nature of the Land Right
- Community Governance and Management
- Boundaries

Rights to Customary Land, including ownership rights, must be secured by ensuring that these rights are equally protected as private land rights. Rights to Customary Land include rights of the community as a collective land owner and rights of groups, families, and individuals within the community. However, the nature of communities varies greatly throughout Liberia. The below policy recommendations recognize this diversity such that communities may define themselves and determine how their land is managed, used, and allocated but within a framework of transparency, accountability, inclusiveness, and shared responsibility with the Government of Liberia.

Strong customary land rights produce many benefits: increasing investment in land and the benefits to communities from natural resource use, reducing the growth of the urban poor,

improving local governance, fostering a sense of nationhood among rural Liberians by demonstrating respect for their rights and local values, and promoting legal certainty for businesses. The reason for Private Land and Customary Land as distinct categories is not because one is inferior to the other but because the different ways in which the land rights are exercised. For Customary Land, it is exercised pursuant to formal law and customary norms and practices. For Private Land, it is solely pursuant to formal law.

6.1. Principles:

- 6.1.1.** Equal Protection: Customary Land rights are equally protected as Private Land rights.
- 6.1.2.** Local Control: Decisions about Customary Land will be made at the most local level consistent with sound policy and shared responsibilities between the Government, communities and their members.
- 6.1.3.** Minimal Impact: National policy and laws will have as minimal an impact on the customary practices and norms of communities as is consistent with the requirements of the Constitution, sound policy, shared responsibilities between the Government and communities, and Liberia's international legal obligations, including women's land rights.
- 6.1.4.** Integration: Customary practices and norms not in conflict with national land laws, the Constitution, and international legal obligations, including women's land rights, will be integrated into the national formal legal framework.
- 6.1.5.** Institutionalization: Communities must establish themselves as legal entities with management institutions that are fully representative and accountable to all community members, including women, youth, and minorities.

6.2. Definitions

In the past, Liberia adopted an ad-hoc approach to land used or managed in accordance with customary practices and norms. The various legal arrangements which applied to such land were often vaguely set out in statutory law or regulations. The below recommendations create a single land rights category for all land used or managed in accordance with customary practices and norms.

In addition, while previous laws were ambiguous as to whether a community could sell its land and to whom, the below recommendations provide for the full bundle of rights for Customary Land. Studies and consultations undertaken by the Commission show: an existing active

informal market in Customary Land, a strong desire for some community members to claim individual ownership rights, and that some communities want the option to sell part of their land if they chose, same as any Private Land owner. However, there is the real risk that Customary Land will be sold in a way that harms the livelihood of communities. The below policy recommendations balance these realities and risks by ensuring that markets in Customary Land develop in a way that is accountable, transparent, and inclusive.

Policy Recommendations:

- 6.2.1.** Customary Land, whether or not the community has self-identified, established a legal entity, or been issued a deed, is defined as land owned by a community and used or managed in accordance with customary practices and norms, and may include, but is not limited to: wetlands, communal forestlands, and fallow lands. Customary Land rights, including the rights of ownership, use or management, are equally protected as Private Land rights, whether or not the community has self-identified, established a legal entity, or been issued a deed in accordance with the below recommendations.
- 6.2.2.** Ownership of Customary Land is equally protected as private ownership, such that the community and its members, groups, families, and individuals within the community are entitled to the full bundle of land rights. These rights include, but are not limited to, the right to: exclude all others, use and possession, own natural resources on the land (e.g. forests), and to transfer all or some of the rights through sale, lease, concession, gift, donation, will, or any other lawful means consistent with this Policy and the community's customary norms and practices. The Government is responsible for managing concessions on Customary Land in the public interest and in a manner that fully recognizes and protects the Customary Land rights of communities.
- 6.2.3.** A community is a self-identifying group that uses and manages its land in accordance with customary practices and norms.
- 6.2.4.** Each community will be responsible for identifying its own membership in accordance with a process that is fully representative and accountable to all community members, including women, youth, and minorities.
- 6.2.5.** Customary Land includes Customary Protected Areas which are owned by the community and must be conserved and managed by the community for the benefit of the community and all Liberians. Customary Protected Areas may be established by the Government upon request of the community or on initiative of the Government in collaboration with the community. Customary Protected Areas

may include, but are not limited to: wetlands, major water sources, forest set aside by a community for eco-tourism, areas used by secret societies, and land upon which is located a sacred plant, tree, or other object with special ancestral significance.

- 6.2.6.** Customary Protected Areas will not be sold, leased, or granted as a concession. Limited use rights may be granted over Customary Protected Areas to individuals, private entities, or the Government only if the use is consistent with the land's conservation and management for the benefit of the community and all Liberians.

6.3. Nature of Customary Land Rights

Historically, customary land ownership rights either have not been recognized or have been treated as less than private deeded land. The below recommendations intend to end this practice such that Customary Land is equally protected as Private Land.

Policy Recommendations:

- 6.3.1.** Community ownership of Customary Land will be formalized by the issuance of a deed to a legal entity, bearing the name of the community. The name of the community will be decided by a process that is fully representative and accountable to all community members, including women, youth, and minorities. The community, as a legal entity, will have legal personality and may therefore enter into contracts, own land, and participate in court actions or proceedings before alternative dispute resolution bodies. The deed will provide for private ownership by the community, so long as any decisions regarding management, use, and transfer are fully representative and accountable to all community members, including women, youth, and minorities. Any decision or action that contravenes this rule is prohibited.
- 6.3.2.** Ownership of Customary Land includes ownership of natural resources on the land, such as forests, including carbon credits, and water. In accordance with the Constitution, the Government has exclusive ownership rights over “any mineral resources on or beneath any land or . . . any lands under the seas and waterways.” The Government will have authority to regulate natural resource use and access, consistent with customary ownership rights and legal due process.
- 6.3.3** The Customary Land rights of groups, families, and individuals within the community will be decided by the community in a way that is fully representative and accountable to all community members, including women, youth, and minorities.

6.4. Community Governance and Management

Consistent with decentralization and in recognition of the diversity of customary communities the following recommends Customary Land management, use, and allocation decisions be made by communities within a framework of shared responsibility with the Government.

Policy Recommendations:

- 6.4.1.** Management authority over Customary Land will be vested in community members and their representatives. Community representatives must be selected in a manner that is fully representative and accountable to all community members, including women, youth, and minorities. Management authority includes, but is not limited to: sales, leases, or the granting of commercial use rights to individuals, families, or groups within the community or outside the community; allocation of customary land rights to community members and non-members; and access to and use of land and natural resources as commons.
- 6.4.2.** Decisions regarding formal transfer of Customary Land to community members or non-members, including sales, leases, concessions, commercial use rights, or any other formal transfer, must be made in a manner that is fully representative and accountable to all community members, including women, youth, and minorities. Such formal transfers are barred until the community has self-defined, been issued a deed, and established a legal entity in accordance with this Policy. Any decision or action that contravenes this rule is prohibited.

6.5. Boundaries of Customary Land

The uncertainty of many Customary Land boundaries has been a major contributor to land disputes, low land investments, and a weak rural land market. Investing the time and resources necessary to work with communities and their members to establish Customary Land boundaries will address these issues.

Policy Recommendation:

- 6.5.1.** The boundaries of a community's Customary Land will be determined through active participation by the community and neighboring communities, including: elders, chiefs, youth, women, minorities, and local authorities.

6.6 Government Support to Communities

Communities do not currently have the required resources and capacity to implement on their own the above policy recommendations and principles. Government must therefore demonstrate the political will and provide the resources necessary to implement this Policy.

- 6.6.1.** The Government with the consent and cooperation of communities, will provide sufficient resources and undertake the necessary activities to support communities in self-defining, obtaining deeds for their Customary Land, establishing the community as a legal entity, determining community boundaries, and ensuring community governance and management consistent with this Policy.

7.0. PRIVATE LAND

This section discusses the following issues surrounding Private Land and makes policy recommendations for each:

- Definition
- Private Owners
- Obligations of Private Owners
- Acquisition
- Loss of Ownership
- Leases
- Easements
- Adverse Possession

Current law regarding Private Land is found in court decisions with limited statutory law. This presents challenges for accessibility and uniform application of the law. The below policy recommendations do not, in general, propose significant changes to Liberia's law on Private Land but will form the basis of new statutory law that will improve access for all Liberians.

7.1. Definition

There has never been a clear definition of Private Land in Liberia. Almost all Liberians regard private land as equal to deeded land and deeded land as equal to land held in fee simple, an archaic term from the Anglo-American legal tradition. It is therefore important to provide a clear statement on the definition of Private Land. In addition, some Private Land contains buildings or other structures that are a significant part of Liberia's national history and culture. Balancing private land rights and the national interest is furthered by designating Private Land as a Private Protected Area in appropriate cases in accordance with legal due process.

Policy Recommendations:

- 7.1.1.** Private Land is land owned by an individual or private entity, in which management and use decisions are based solely on formal law (i.e. statutes, regulations, executive orders, and court decisions), where the owner enjoys the full bundle of land rights, which include, but are not limited to, the right to: exclude all others, use and possession, own natural resources on the land (e.g. forest), and to transfer all or some of the rights through sale, lease, concession, gift, donation, will, or any other lawful means. In accordance with the Constitution, the Government owns mineral resources “on or beneath” Private Land (e.g. gold, diamonds, oil, iron ore).
- 7.1.2.** Private Land may be designated by the Government as a Private Protected Area in accordance with due process of law because of its significant historical, cultural, or ecological value. In the case of Private Protected Areas the full bundle of rights is limited because: the land must be conserved and managed for the benefit of all Liberians; and all or some of the rights may be transferred only if the transfer is consistent with the land’s conservation and management for the benefit of all Liberians. Some examples are buildings from the Nineteenth Century, such as churches or former government buildings.

7.2. Private Owners

The below recommendations restate and clarify the Constitution’s provisions on who may own Private Land in a way that does not unduly restrict future economic activity in Liberia’s emerging private land market, and clearly distinguishes between ownership of Private Land and Customary Land.

Policy Recommendations:

- 7.2.1.** In accordance with the Constitution, only Liberian citizens may own Private Land, either individually or jointly.
- 7.2.2.** Liberian non-profit organizations, religious organizations, businesses, or any other Liberian private entity established in accordance with Liberian law may own Private Land as Liberian citizens.

7.3. Obligations of Private Owners

Although Private Land owners enjoy the full bundle of rights, these rights are subject to the Government's authority to administer and manage land in the public interest by, for example, collecting taxes, requiring the registration of deeds, and issuing building codes and zoning laws.

Policy Recommendations:

- 7.3.1.** Private owners must comply with all applicable policies and laws, including those regarding land rights, administration, and use, including, but not limited to: tax payments, any applicable fees, deeds registration, building codes, and zoning laws.

7.4. Acquisition

It is important to specify how Private Land may be acquired, especially with respect to the privatization of Customary Land. The latter issue is critical because of the real risk that Customary Land will be sold in a way that is not transparent, inclusive, and accountable, and therefore harmful to the interests of the community.

Policy Recommendations:

- 7.4.1.** Private Land may be acquired: through purchase from the Government, an individual, or a private entity; sale; lease; concession; gift, donation; will; upon marriage, divorce or the death of a spouse; or any other lawful means.
- 7.4.2.** Ownership of Private Land may be acquired through sale of Customary Land to an individual or private entity only if: the sale is fully representative and accountable to all community members, including women, youth, and minorities; and the sale occurs after the community has self-defined, been issued a deed, and established a legal entity in accordance with this Policy. Any decision or action that contravenes this rule is prohibited.
- 7.4.3.** Acquisition of Private Land must treat men and women equally, especially regarding acquisition upon marriage, divorce, or the death of a spouse.

7.5. Loss of Ownership

In the past Liberian policy and law stipulated that failure to comply with building requirements and agricultural development resulted in reversion of land to the Government. Future policy and

law must be more comprehensive, flexible, and specific with regard to loss of land ownership rights while clearly incorporating constitutional requirements.

Policy Recommendations:

- 7.5.1. An owner of Private Land may lose their ownership right in favor of the Government if the Government exercises eminent domain (i.e. forced acquisition) in a manner consistent with this Policy.
- 7.5.2. In accordance with the Constitution, a non-citizen missionary, educational, or other benevolent institution that owns Private Land loses their ownership right in favor of the Government if the land ceases to be used for the purpose for which it was acquired.
- 7.5.3. In accordance with the Constitution, an owner of Private Land whose certificate of naturalization has been cancelled will lose their ownership right in favor of the Government if he/she does not have a Liberian spouse or heir.

7.6. Joint Ownership

Joint ownership of Private Land must be addressed in order to maximize the ability of individuals and private entities to provide for their ownership arrangements.

Policy Recommendations:

- 7.6.1. Joint ownership of Private Land may be in any form provided for by court decisions, statutory law, or regulations.

7.7. Leases

Leases are an integral part of Liberia's private land sector, and have been since the country's founding, but the policies governing leases should be clearly laid out to ensure uniform understanding and application of the law.

Policy Recommendations:

- 7.7.1. Leases may be to any individual or private entity, whether Liberian or foreign, or the Government, for any lawful purpose.
- 7.7.2. Foreign citizens may obtain leases for a reasonable length of time.

7.8. Easements

Easements are a basic feature of any private property system. The below recommendations state that easements may be in any form recognized by court decisions, statutory law, or regulations.

Policy Recommendations:

- 7.8.1** Private Land may be subject to such easements as are recognized in court decisions, statutory law, or regulations. Easements are a legal relationship between two pieces of Private Land that allows one person to use and enjoy a part of another's land (e.g. easement by necessity).

7.9 Adverse Possession

The below policy recommendations define adverse possession in accordance with Liberian court decisions, but makes two important changes: (1) an adverse possessor may bring a claim in court to assert ownership, rather than only raise adverse possession as a defense against being ejected from the land; and (2) an individual or private entity may challenge adverse possession on the grounds that an armed conflict or a genuine fear of severe injury or loss of life prevented them from taking action to protect their lawful ownership interest.

Policy Recommendations:

- 7.9.1.** Adverse possession is a legal basis for bringing a claim in court to assert ownership over Private Land or Customary Land if an individual has been openly and continuously in possession of the land for at least twenty years and an individual or private entity, including a community, failed to take any steps to protect their otherwise lawful ownership interest within the twenty year period.
- 7.9.2.** Adverse possession may be challenged if an individual or private entity, including a community, proves they failed to take any steps to protect their lawful ownership interest because of an armed conflict or genuine fear of severe injury or loss of life.
- 7.9.3.** Adverse possession is prohibited on Government Land and Public Land.

APPENDIX: DEFINITIONS

- 1.0. *Alternative Dispute Resolution Body*: Any entity, whether a private or government entity, the purpose of which is to resolve, or facilitate the resolution of, disputes outside of court.
- 1.1. *Community/Customary Community*: A self-identifying group which owns land used or managed in accordance with customary practices and norms.
- 1.2. *Concession*: A commercial use right granted by the Government to an individual or private entity and managed in collaboration between the individual or private entity and the Government in accordance with a written agreement.
- 1.3. *Good Faith*: A sincere intention to deal honestly with others.
- 1.4. *Government*: The State as the sovereign Republic of Liberia or government entities acting as the representative or agent of the State.
- 1.5. *Government Entities*: A legal entity that is owned, managed, or controlled by the State, including all branches of Government, or by persons in their capacity as government employees, including parastatal bodies. A government entity is the representative or agent of the State or Republic of Liberia.
- 1.6. *Legal Entity*: A private entity or government entity. Legal entities have legal personality and may therefore enter into contracts, own land, and participate in court actions or proceedings before alternative dispute resolution bodies.
- 1.7. *Mineral Resources*: All nonliving, natural nonrenewable resources, including, but not limited to: fossil fuels such as coal, petroleum, and natural gas; diamonds; gold; iron ore; cobalt; lead; manganese; nickel; tin; dolerite; granite; ilmenite; kyanite; phosphate rock; rutile; and sulfur.
- 1.8. *Natural Resources*: All living or nonliving natural renewable resources, including, but not limited to: water, soil, trees, plants, animals, and microorganisms.
- 1.9. *Parastatal Body*: A legal entity owned, managed, or controlled by the Government and created to undertake commercial activities on behalf of the Government.

- 1.10.** *Private Entity:* A legal entity that is not owned, managed, or controlled by the Government although it may receive assistance from the Government (e.g. loans or grants). Examples of private entities include, but are not limited to: corporations, partnerships, sole proprietorships, non-profit organizations, churches, and a community which has formed a legal entity.
- 1.11.** *Public Interest:* The welfare of the general public.
- 1.12.** *Public Purpose:* A purpose beneficial to the public but for which no private entity has been willing to use its resources.
- 1.13.** *Public Use:* The possession, occupation, ownership, and enjoyment of the land by the general public or by the Government.
- 1.14.** *Tribal Certificate:* Legal document signed by the Tribal Authority and issued by the County Land Commissioner under the 1956 and 1973 Public Lands Laws certifying that the local community consents to the land being sold as public land and that the land is not part of a Tribal Reserve and not otherwise owned or occupied.