Forest Peoples Programme

Customary land rights in Liberia:
A legal review series

Community rights and agroindustry concessions in Liberia

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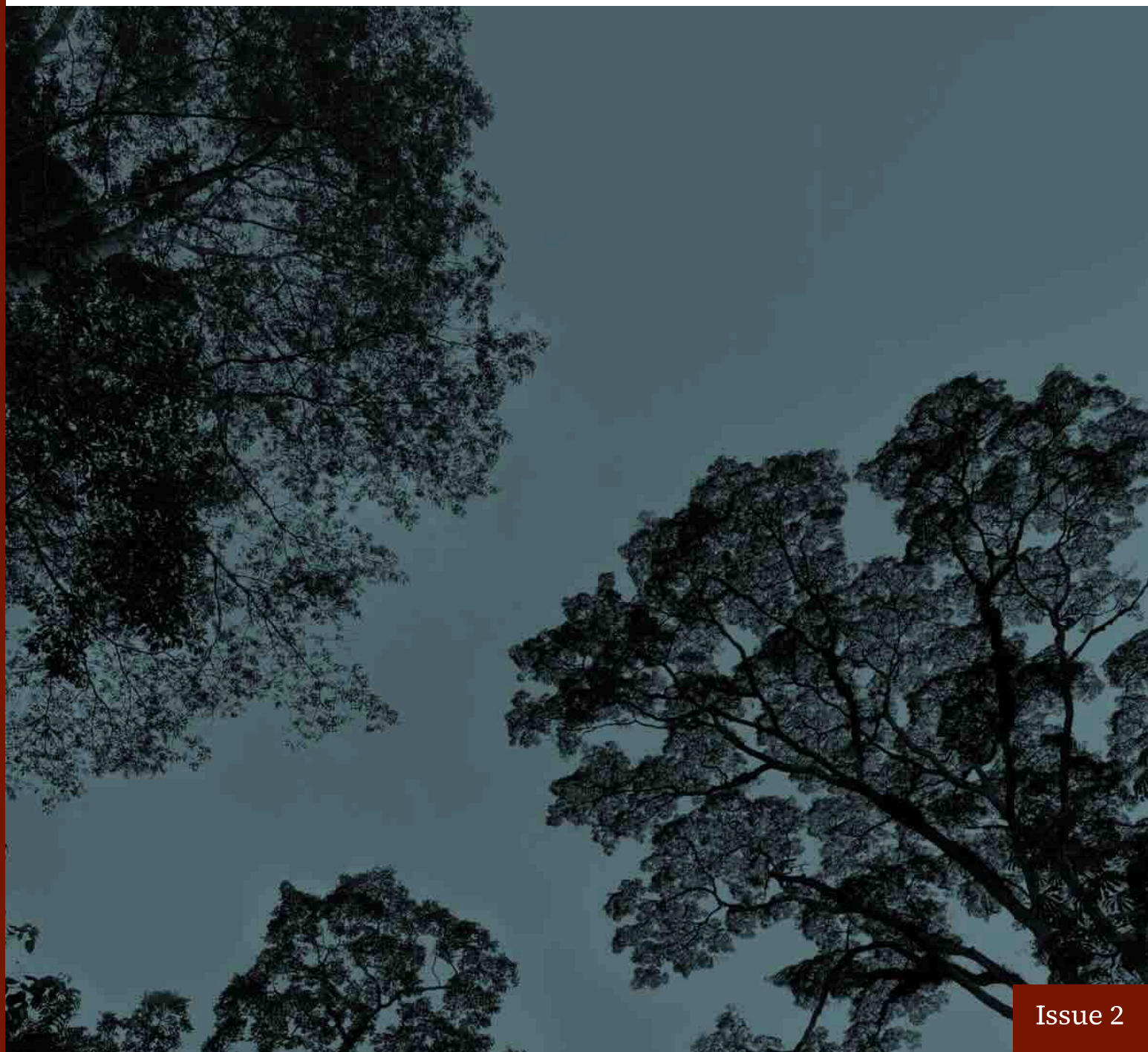

Issue 2

Introduction

This briefing provides legal analysis and guidance for actors working at the interface of land-based investment and community rights in the new context of the 2018 Land Rights Act ("LRA"), with a focus on agroindustry concessions.

The LRA has clarified communities' rights in respect of lands over which they have long-standing ties of possession, use and/or occupation (customary or customarily owned lands), including the right to give or withhold their free, prior and informed consent (FPIC) to the Liberian Government or any third-party use of any portion of such customary lands. The overriding hoped-for benefit of the LRA is to give a framework by which legal certainty can be achieved in respect of land tenure in Liberia, thereby protecting the rights of land-owners (community, private and government), minimizing the scope for land conflict, and embedding the just and clear tenurial foundations needed on which to make sustainable progress on Liberia's development, human rights and environmental public policy objectives.

The analysis and guidance contained in this briefing are intended to assist all stakeholders and rightsholders working at this interface of community rights and land-based investment – including civil society, communities, the private sector and state organs – with a view to avoiding the missteps and injustices of the past and to giving LRA implementation the best possible chance of meeting its vital public policy goals.

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I

Government agroindustry concession allocation in practice pre-LRA

Broadly speaking agroindustry concessions in Liberia have for at least a century taken the form of leases directly between private corporations and the Government, with rent payable to the state, and little or no regard for the pre-existing customary rights and interests of local communities over those same lands. The Firestone rubber plantation is perhaps the best known early example, which took the form of a 99-year lease for a million acres of land (over 400,000 hectares) granted in 1926, making it the largest contiguous rubber plantation in the world. More recently, the term "concession agreement" has been used to reflect a broader grant of right not only for use of land, but to construct power plants, maintain security guard services, and also enjoy varying exemptions from laws of general application concerning employment, tax and other laws. Such concession agreements are commonly enacted by the legislature, and therefore have the force of law and/or the status of private/special legislation.

One peculiarity of concession agreements granting right to use of land for agriculture, mining and related projects in Liberia is that they largely do not specify the precise locations, metes and bounds of the lands they concern, leaving the concessionaire to incrementally identify exact land areas for plantation development only after the concession agreements have been signed[i]. In contrast, commercial leases of private land are (not surprisingly) normally predicated on identifying exactly the location, size and boundaries of the land that is the subject of the lease[ii]. To illustrate the point (setting aside differences in practice between the greater Monrovia area and rural areas) a business person wanting to lease land for a new hotel in Monrovia would not normally sign a lease and agree on the value of the rent and all the other terms and conditions without establishing first where the land is located, including whether it was in West Point or Mamba Point.[iii]

The agreements often do specify the counties concerned, but as counties are large and agreements often cite multiple counties this is not much help in giving legal certainty to where the resulting plantation area/s will be located. For example, in describing the concession area, the concession agreement of Golden Veroleum Liberia ("GVL") cited Sinoe, Grand Kru, Maryland, River Cess and River Gee – which covers the vast majority of Liberia's south-east, with Article 4.1 (d) stating that "within twenty-four (24) months of the Effective Date, Investor shall conduct an initial survey, with the cooperation of the Ministry of Lands, Mines and Energy, but at the sole expense of the Investor, to identify an area of land equal to approximately 350,000 hectares of land in the counties of Maryland, Grand Kru, Sinoe, River Cess, and River Gee (the "Gross Concession Area").

So-called 'gross concession areas' and areas of interest (identified subsequent to the enactment of concession agreements) from which a net concession area would be gradually identified (step-by-step) typically refer to a very large land area. This leaves communities and other land-owners within those gross concession areas/areas of interest entirely in the dark over whether their lands will be incorporated in the plantation or not (as they have for more than a decade in the vicinity of GVL ever since the agreement was concluded in 2010). This assumes customary and other land-owners are even aware of being within those areas, an awareness which from the author's experience is highly unlikely especially in remoter areas.

A further central aspect of commercial property leases is that at a minimum they are contracts between two parties: the party wanting a time-bound right to use the property in question (the lessee) and the party with the pre-existing right to grant a lease over that property (the lessor). A lease of property cannot therefore be lawfully executed unless the underlying property-owner has authorized it, and a lessee will generally ascertain the title of the lessor, although the common law rule is that a lessor makes an implied warranty that they have bona fide title to the land.

In contrast to commercial land leases, concession agreements in Liberia are predicated on the assumption that the state is legally entitled to grant the lease, and that there are no competing property rights or interests.

However, there is no clear legal justification for this assumption. This issue relates to the previous point of course because if the precise subject matter of the lease (the land) is not sufficiently well identified at the point of signing the lease, the person or community holding the bona fide title to grant a lease would be impossible to accurately identify at that point either. This factor also undermines the legal status of a lease granted by such concession agreements, since at common law, a lease which does not identify the property concerned (the 'demise' in legal parlance) is void *ab initio* (i.e. of no legal standing from the outset). This is reflected in Liberian case law which emphasizes that the subject of a lease must be properly identified by the lease, since it must be possible for the lease contract to be enforced by the courts, which they cannot do if the lease does not adequately define the land area in question.

This '*lease first-land later*' approach, coupled with the assumed marketable title of the Government (and non-identification of underlying land-rightsholders), has been the root cause of the tensions, conflicts, and costs that have plagued Liberia's agroindustry concession system. For companies and the Government, those costs have been principally economic, though also reputational. For communities, however, those costs have been significant socio-economic and cultural damage consisting of the loss and destruction of farmlands, forests, wetlands and other cultural areas (burial grounds and religious or ceremonial sites).

Since the end of the civil conflict, especially via a cluster of concession agreements signed and enacted in the late 2000s/early 2010s, large tracts of Liberia's land and forests have been made subject to state-granted agro-industrial concessions, especially oil palm and rubber. Much of this agroindustrial expansion came in the form of concession agreements involving foreign direct investment led by major global palm oil industry corporations.[iv] Many of those were centred on old plantations – for example those of Guthrie, LIBINC, Decoris, and Cavalla Rubber – that had been abandoned during the war, albeit often expanding significantly beyond those old plantation limits. On the ground however, local communities often aggrieved by the encroachment onto their customary lands by those companies (e.g. by BF Goodrich from the late 1950s onwards –

subsequently the Guthrie rubber plantation) had resumed occupation and use of those lands following their abandonment or disuse as a result of the civil conflict. Those communities were therefore doubly-aggrieved to face dispossession of the same land twice, made worse by significant expansion beyond those old plantation limits and encroaching even further onto community customary lands previously untouched by concessions, in some cases to only metres away from the doorsteps of village homes.

Sime Darby's 2009 investment is one such example of the acquisition and expansion of an old plantation, as it incorporated the former Guthrie rubber concession, on top of which it was granted a further 100,000 hectares to bring the total concession area to 220,000 hectares. This concession in theory concerned a huge area – amounting to nearly 2% of Liberia's entire land area – and yet following significant push-back by communities and civil society concerned with encroachment onto community lands and potential forest loss, the company reported having planted only in the region of 10,300 hectares by the time it sold its loss-making concession to Mano Manufacturing Company (MANCO) in early 2020.

Similar push-back by communities and civil society has occurred in respect of other concessions, including GVL, Equatorial Palm Oil (EPO) and Maryland Oil Palm Plantation (MOPP), resulting in low levels of plantation development. GVL is understood to have been unable to develop more than around 10% of its 220,000 hectare concessions.

The consequences of the "lease-first-land-later" approach have included conflicts, and in some cases violence, related to delimiting and/or possession and use of communities' customary lands in the "concession areas". However, the magnitude and reach of such impacts are symptomatic of the fundamental legal problem of the Government assuming title to grant those concessions (without legal justification), and the consequent disregard for the pre-existing land rights and interests of communities that this assumption entails. The essence of the LRA is to rectify that mistaken assumption, but that begs the question of where communities stand in relation to concessions granted prior to the LRA's enactment, which is a key question this paper seeks to address.

Indeed, to the extent that concession agreements to date have acknowledged communities' presence within proposed concession areas at all, it has mainly been in ways that imply that the communities present on the lands have no rights

or interests in the lands that they have used and occupied for as long as anyone can remember. Provisions in these concession agreements include warranting the concession areas to be free of encumbrances (i.e. a contractual assurance that there are no other/competing property rights or interests in the land of any sort); making provisions on resettling communities and offsetting the financial costs of doing so; and providing for modest contributions by concessionaires to local development funds.[v] The mere fact of the government granting a lease over the lands is an implied assertion of title, as are the warranties of nonencumbrance and the taking of a rent from the concessionaire for the land.

The assertion of title by the government is therefore – by the letter of the Agreements and practice on the ground – an affirmative denial and/or disregard for community property rights in the land. This is also exemplified by the common practice of requiring companies to compensate communities only for standing crops and fruiting trees lost in plantation development, but not compensating them for the loss of the land itself. Even then crop compensation rates have been derisory, in no way satisfying the fair and just compensation standard established by the Liberian Constitution for expropriation of private properties. Legally, this means that in signing the Concession Agreements and making the leases included therein, the Government makes a categorical assertion of ownership of the land since in the absence of such ownership the concession agreements and the leases would clearly constitute an expropriation of non-public land for which, among other things, it would be incumbent on the grantor of the lease (the government) to pay compensation, not the grantee (the concessionaire).

A more generous interpretation of the Concession Agreements would be that since even a modicum of due diligence would highlight the many towns, villages and surrounding lands under active community use within the subject land, the warranty of non-encumbrance was subject to an implied caveat that it applied only to those land areas outside of community use, occupation and possession. Under this interpretation the clearing and planting of community lands without their consent could be cast as a casualty of failing to ensure sufficient clarity on this caveat in the Concession Agreement (including whether it applied only to settlements or also to cultivated and non-cultivated areas under active community use and possession). This interpretation does not seem credible given the common clause providing for resettlement of communities to minimise the number of community enclaves within the concession.

Furthermore, this interpretation bears no resemblance to the reality on the ground, in which government and concessionaires alike clearly act as though the only accommodation they need to make in relation to communities is on a voluntary, *ex gratia* basis, not 'as of right'.

This is as good an indication as any of both parties' intentions and understanding of the Concession Agreement, put bluntly: that the Government is within its rights to grant the land to the concessionaire over the heads of communities. In practice many concessionaires have avoided settlement areas (villages and houses) for clearing and planting, and at least one concessionaire (GVL) has verbally committed not to resettle communities. In practice concessions have in many cases encroached on areas of land to such an extent that those towns are

barely viable. A verbal commitment to refrain from resettling communities is cold comfort to communities that are (by a company's own actions) likely to become ghost towns for want of land to sustain them (especially as jobs with the company are comparatively few, largely casual, and often taken by migrants from other counties).

In practice the only way communities have been able to demand higher respect for their rights and interests from companies has been through community protests/direct actions, civil society campaigns, and advocacy targeted at holding companies to standards they have committed to (whether in company-own policies, or through membership of commodity certification schemes such as the Roundtable on Sustainable Palm Oil, the "RSPO"). That has in some cases led companies to leaving larger buffer areas around settlements, greater engagement with communities (albeit far short of best practice), and the development of memoranda of understanding (MOUs). Again however, these accommodations have an exclusively voluntary/ex gratia flavour, given that: (a) the MOUs fall well short of being the equivalent of a legally binding lease; and, (b) no attempt has been made to amend the Concession Agreements to recognise communities as rightsholders.

II

A brief history of land rights law in Liberia prior to the LRA

Central to whether and under what circumstances above-soil land-based investment can take place in Liberia is the legal situation of who owns the land in the first place, who is therefore in a position to lease or sell that land to an interested agroindustrial company, and the legal position and role of the Liberian state in relation to the same.

Until American settlement societies arrived at what is today Liberia, the land was of course occupied, owned and managed in accordance with customary laws, which are said to have been relatively homogenous in Liberia (due to the consistent vegetation types). A recognition of the ownership of and right/title to the land being held by native populations was evidenced by the "Ducor Contract" by which the settlers were granted some land on which present-day central Monrovia is situated.[vi] The recognition of pre-existing customary land rights and title was a notable aspect of settlement, and led to the enactment and content of the public domain laws under which land purchased from tribes became 'public land' from which allocations were made to 'Americo-Liberian' settlers. This was concentrated on the coastal (littoral) regions, leaving the interior (hinterland) subject to customary law. This implied an unusual legal respect for the rights of communities resident pre-settlement, in comparison to the colonial histories of most other African countries.[vii]

The 'Hinterlands Law' of 1949 attempted to give statutory effect to customary law by recognising 'right and title' of tribes over tribal lands, irrespective of whether they had an official (government granted) deed.[viii] According to the law tribes had the option – but not an obligation – to convert those property rights into formal communal land holdings (called 'Aborigines Land Deeds'). It is worth emphasizing how much of a special case Liberia is in this respect in comparison to other African countries, preceding other independent African states by half a century or more in making statutory provision for protecting and titling customary land rights.

A later 'Aborigines Law' (present in the Liberian Code of Laws of 1956) reproduced much of the wording of the Hinterlands Law, though using the words 'rights to use and possession' in place of 'right and title', alongside an option to have this right delimited.[ix] It is thought likely that government officials did not consider that the change in language marked any substantive change in the legal framework, and also unlikely that the legislature was alerted to the difference in language between the two laws when the new Liberian Code of Laws, which included the Aborigines Law, was approved.[x] In fact it seems the Hinterlands Law continued to have legal effect regardless of the subsequent enactment of the Aborigines law, with the most recent version of the

former dated 2001.[xi] In any case were it to be argued that the Aborigines Law or other such pre-LRA statutory laws had weakened the customary property rights of communities it is doubtful this would be legally valid under Liberian Constitutional law as the constitution protected all property rights.

The option of the state leasing rights to investors over public land stems from Liberia's Public Lands Law[xii], on which basis the President is authorized to issue leases of public land to foreigners or foreign companies for periods of up to fifty years. The law also provides a procedure by which citizens can have public land deeded to them, so long as the desired land is not tribal land.

Public Land is left undefined by the Public Lands Law, and has arguably never been defined in Liberian law prior to the LRA (which itself defines it as a residual land class). It has been suggested that this lack of definition was (by accident or design) a useful ambiguity for central government;[xiii] stemming from the fact that it enabled the government to avoid explicitly negating or extinguishing customary rights in law (which would have been politically highly provocative), while at the same time assuming in practice (mistakenly and unlawfully perhaps, but with rural communities unable to mount a legal challenge in any case) that areas of land were public land available to be cheaply acquired by well-connected individuals or granted as resource concessions.[xiv]

The Land Registration Law of 1974 provides a process by which land can be designated as public land[xv] and also states that "all unclaimed land shall be deemed to be public land until the contrary is proved".[xvi] It is left unclear what it means for land to be 'unclaimed', but long-standing customary ownership, possession, occupation and use of an area of land by a community in accordance with its customary laws and practices could hardly be said to give scope for the land to be considered unclaimed. Therefore it would be wrong to deem such land to be Public Land.[xvii]

On the basis of the preceding, the prevalent pre-LRA practice by the government in claiming ownership of much of Liberia's land (as Public Land) and the reliance on such assertion of title arguably lacked any legal foundation, and furthermore, was unconstitutional to the extent that it failed to respect the customary property rights of communities as demanded by the 1847[xviii] and 1986[xix] Constitutions of the Republic of Liberia.

An important argument in support of the contention that the property rights and interests of communities over customary lands had legal protection even prior to the LRA stems from the legal commitments made by Liberia in regional and international human rights law. Liberia has for example since 1992 been a state party of the African Charter on Human and Peoples' Rights, whose jurisprudence has held that possession of land by highly land-connected communities gives rise to a right of property protected by the Charter.[xx] The African Charter – applied by the African Court – has also confirmed that property rights can only be extinguished if: in accordance with the law; necessary in a democratic society; and proportionate to achieving a legitimate public interest objective. Those conditions provide important safeguards against arbitrary, unnecessary or disproportionate interference with customary property rights, including interferences that benefit well-resourced *private* interests at the expense of vulnerable rural communities (which would thereby by definition fail the *public* interest condition).

International human rights law also provides legal protection for the rights of Liberian communities to own lands, territories and resources they have

traditionally used, occupied, possessed and/or otherwise acquired. Two relevant instruments of international law in this respect are the International Covenant on Civil and Political Rights (ICCPR)[xxi], and the International Convention on the Elimination of all forms of Racial Discriminations (ICERD); Liberia being a state party to both. In relation to the latter, Article 5(d)(v) of ICERD guarantees, without discrimination, "*the right to own property alone* ***as well as in association with others***" (emphasis added) which would protect the right of communities, clans or other tribal groupings to seek protection for customary collective property rights derived from custom, and which as a result face (or have faced) less favourable treatment than property rights derived from state grant.[xxii] Cognisant of the particular risks to local communities from concessions and similar large-scale investments, the UN Special Rapporteur on the right to food's '*minimum principles and measures to address the human rights challenge*' of '*[l]arge-scale land acquisitions and leases*' included in recommendation 2 that "*any shifts in land use can only take place with the free, prior and informed consent of the local communities concerned.*"[xxiii]

The contention that constitutionally protected property rights and interests of communities over their customary lands existed even prior to the LRA would arguably also derive support from the common law doctrine of 'native title' (sometimes called 'aboriginal title').[xxiv] In summary the underlying jurisprudence of native title is concerned with how rights in respect of land which preexisted the emergence of modern statehood (and those states' first constitutions), are coexistent with (not extinguished by) the emergence of those sovereign states, and thereby deserving of constitutional protection as a property right. It matters not that those rights were often rooted in customary law and practice, and that they were often collective in nature.

In essence the doctrine of native title recognises that in law, the customary property rights that existed before/at the time of a change in sovereignty, are not affected by that change, and therefore continue in law.[xxv] As outlined in P.G. McHugh's recent biography of the legal development of the doctrine in the common law: 'imperium *(the self-claimed right to govern), did not simultaneously exclude pre-existing property rights or* dominium. *Sovereignty and ownership were not to be conflated.*'[xxvi] In other words, the pre-existing property rights of communities (derived from custom or otherwise) survived the creation of the Liberian republic and deserved full protection of its constitution henceforth. The Republic of Liberia's territorial sovereignty

over the hinterland was dealt with in the Liberian Supreme Court case of *Karmo et al v. Morris* (1919).[xxvii] That case was principally concerned with whether the judicial function of the state had jurisdiction over members of 'native tribes' living in the hinterland (or just the littoral). It therefore concerned the extent of state sovereignty but importantly did not conflate that with land ownership.[xxviii]

While the native title doctrine acknowledges that it is in theory possible for a state to extinguish the native title rights of a particular individual or community through legislation, it must satisfy the "clear and plain" test, as established in the US Supreme Court (or at least give a legal basis for why the underlying logic of that case should not also apply to Liberia).[xxix]

This test requires evidence that the Government actually considered the conflict between its intended action on the one hand and native rights on the other, and chose to resolve the conflict by abrogating native rights. Applying this test to Liberia's Aborigines Law, and Public Lands Law, it is far from clear and plain that in the development of those laws the existence of native title rights was acknowledged at all by the legislature, let alone that lawmakers considered any conflict between the relevant provisions of those laws on the one hand and native rights on the other (and thereupon chose to resolve the conflict by abrogating native rights). On that basis alone native title rights survived those laws and have deserved continuous constitutional protection since Liberia's first (1847) constitution.

Detail aside, the legal implications of the preceding section are that:

i. large tracts of land in Liberia have legitimately and continually been the constitutionally protected property of those lands' successive customary possessors, users and owners since independence, even prior to the LRA coming into force in 2018;

ii. such land areas did not therefore constitute public land and were therefore not available for government grant to third party agroindustrial concessionaires at the exclusion of, and without regard to the rights of, their customary owners and possessors, and certainly not with the warrantee that those lands were free of encumbrance (i.e. other land interests);

iii. many of the pre-2018 concessions (or large areas of land thereof) and pre-LRA Government agroindustry concession allocation practice more broadly (described in Section II) are therefore arguably without sufficient legal (including constitutional) foundation; and,

iv. the present and future continued operation of those concessions (or large areas of land thereof) is therefore legally in the gift of those lands' rightful customary owners.

III

A summary of the post-LRA land rights context

In force since its publication on the 10th of October 2018, 'The Land Rights Law of the Republic of Liberia' (the LRA) is a watershed development in terms of clarifying land tenure law in Liberia. The LRA repealed previous anachronistic and contradictory laws dating back to the 1950s and 1970s, including the Public Lands Laws of 1958 and 1973, and the Aborigines Law of 1956. Rooted in the 2013 Land Rights Policy, the LRA also follows a raft of other laws bearing on land and natural resources that have been enacted since the end of Liberia's civil conflict in 2003. Those laws include acts and regulations governing forestry, community rights with respect to forest land, mining, public procurement and concessions, and environmental protection. Until 2018 the positive impact of that sequence of land-related reforms has arguably been hampered by the lack of legal certainty on underlying land rights, a situation which it is hoped the LRA can finally address. While the foundations are only now being laid after some of the house has already been built, this is obviously far better than leaving the house with no foundations at all. The opportunities presented by the LRA are therefore far-reaching, which makes the quality of the Act's implementation especially important.

The first part of the Act confirms four categories of land ownership: Private, Customary, Public and Government Land:

- Customary Land is land collectively owned by a self-identifying community according to customary practices and norms, and including but not limited to residential, farmland, forest and fallow areas.
- Private Land is land owned by private persons (including citizens and corporations).
- Government Land is land owned by the Government including land used for roads, government buildings, public schools, hospitals and other serves/utilities.
- Public Land is a catch-all category of land held by Government (but not necessarily currently used by Government) and that is neither Customary, Private nor Government Land.

By comparison with the other categories of land ownership, Customary Land is not evidenced by deed, but instead by competent evidence which can include oral testimony demonstrating a longstanding relationship by a community with the land it is claiming. A lack of documentary evidence is expressly not a barrier to ownership of Customary Land; the ownership of Customary Land typically arises not by acquisition (e.g. by purchase or inheritance via a will) but by operation of law based on the proven longstanding relationship between an individual Community and its Land. Providing such competent evidence can be adduced, the existence and enforceability of Customary Land does not depend on registration, though Customary Land is required to be registered.

While identification of private and government land is likely to be relatively straightforward, the process of identifying Customary Land is inevitably much more complex and time-consuming. The LRA is clear that the community itself has a right to define the area of its Customary Land and may agree its boundary with

the adjoining Customary land-owning community or communities.[xxx] However, the responsibility for conducting the Confirmatory Survey lies with the Government via the Liberian Land Authority (LLA). As made clear in the LRA's transitional provisions, "until the Confirmatory Survey is completed in respect of Customary Land or if the neighbouring Communities have agree to their respective boundaries…no action shall be taken to establish the boundaries of Customary Land, Public Land or Government Land".

The preceding very clearly means that the whatever the legal rights or wrongs of pre-LRA government practice, new (post-LRA) concessions can only be lawfully granted after first ascertaining the boundaries of Customary Land and, by extension, any residual Public Land. A plantation on Customary Lands would therefore have to be predicated on a lease granted by the associated Community/Communities and could not be granted by the Government.

IV

Implications of the LRA for new agroindustry leases of Customary Land

Customary Land cannot be sold until fifty years has elapsed from the date the LRA came into force, so for the time being there is no question of communities selling land to agroindustry corporations; it would have to be the subject of a lease.[xxxi] Customary Land ownership includes the right to exclude others and the right to grant leases,[xxxii] which are in effect a temporary user right over a portion of land granted by the Community land-owner to the land-user. In Liberian law leases must be for a defined period and a defined rent, signatures to leases must be witnessed, and the leases must then be probated and registered.

The LRA provides a number of legal requirements in relation to leases of Customary Land:[xxxiii]

- For areas of land under fifty acres the decision to grant a lease can be made by a community's Community Land Development and Management Committee (CLDMC).
- For areas of land over fifty acres the decision to grant a lease must be made instead by approval of at least two-thirds of all Community members.
- Total period of any lease of Customary Land must not exceed fifty years.
- A lease agreement relating to any Customary Land must include payment of rent and equitable benefits to the Community; an agreed payment schedule and a mechanism to ensure full and timely payment of rent and the performance of other obligations stated in the lease.
- No lease of Customary Land can be made to anyone until the Community has established its CLDMC, and in accordance with the community's rules for conduct of the CLDMC, the community's by-laws and its land-use management plan.

V

Implications of the LRA for previously-granted concession agreements

While the LRA states that any interference with Customary Land would require the Free, Prior and Informed Consent (FPIC) of the Community concerned, it also lists two exceptions:[xxxiv] a) Where concessions, contracts, permits and other rights had been "previously granted in" Customary Land by the Government prior to 10th October 2018; and b) In relation to the Government's constitutional right to extract sub-surface mineral resources.

The first of these is most relevant to the issue of how agroindustrial concessions granted pre-LRA now stand. The implications for communities, concessionaires and the government are significant because several of the concession agreements signed before 2018 ostensibly concern thousands of square kilometres. The LRA deals specifically with concession areas within Customary Land in Article 48 (see Box 1).

Box 1
Article 48: Concession Area within a Customary Land

1. All portions of a Customary Land covered by any Concession(s) issued by the Government prior to the Effective Date of this Act [10th October 2018] shall remain subject to such concession, contract, permit or documented license for the entire period of their existing terms and conditions.
2. During any review of any Concession located on Customary Land after the Effective Date, the inputs and concerns of the Community shall be presented through the CLDMC to ensure that the rights and interest of the Community are safeguarded and protected.
3. Communities on which Concessions are located, after the Effective Date, including mineral Concessions, shall at all times collectively maintain a minimum of five percent (5%) undiluted carried interest in the rights of the Concession, license or permit, in addition to any other benefits which the Community shall be entitled to receive.
4. At the expiration or sooner determination of Concession(s) located on Customary Land, the Concession Area(s) shall revert to the Community and shall become Customary Land.

However, as described above in section I, many of these agreements typically do not delimit the land area/s concerned, including at the time they are enacted by the legislature. All they do is list the number of hectares of land permitted for development, and the counties where that land is to be (subsequently) identified. From the point of view of rural communities in those counties, they have no idea from the concession agreement whether their customary land will or will not be considered for inclusion in the plantation. The agreement as approved by the legislature simply does not contain that information.

The only precise indication of the location of some of the plantation lands is in relation to previously abandoned concessions said to be incorporated into those concessions. However most concessions concern land areas that are much greater than those. Further, even the question of previously abandoned concessions is not straightforward, (a) because those plantations may in turn have been granted without due regard for (and lawful extinguishment of) pre-existing community land rights –which therefore continue; and (b) pursuant to those pre-existing customary rights many communities resumed use, possession and/or occupation of those plantations following their abandonment.

Not surprisingly, when the companies began clearing land this inevitably led to significant resistance on the part of communities. In response to that significant community push-back, concessionaires have only been able to proceed to accumulate land areas for their plantations by entering into MOUs on a community-by-community basis. High profile statements by then-President Ellen Johnson Sirleaf made clear that plantations could only proceed with community approval.[xxxv]

So what are the implications of *pre-existing* concession agreements 'granted in' or which 'cover' Customary Land in this context and in light of Liberian law (past and present)? On the face of it, LRA Article 48 provides that 'pre-existing concessions' shall continue uninterrupted, with communities enjoying only a right to participate in any concession review, only entitled to enjoy those lands fully on expiry of the concession (which it may not do if the concessions are extended) and to receive a 5% profit share in the interim.

However, it is arguable that legally, such concession agreements could not properly be said to have been 'previously granted in' or 'cover' Customary Land because they did not describe any specific land area/s.

In practice, often only a small percentage of those land areas had actually been identified by the time the LRA came into force. *As a result, the legal implication is that communities would retain their right to give or withhold their consent to the continued use of Customary Land, even in relation to concession agreements that pre-date the LRA.*

Further support for this legal position – if it were needed – could be drawn from the additional argument (outlined above in section II) that many concessions (or lands therein) were not lawfully granted by the state in the first place, granted as they were without respect for communities' pre-existing, underlying and constitutionally protected property rights and interests.

By this interpretation the legal effect of those concession agreements in relation to Customary Land or Private Land for that matter (if they survive legal and constitutional scrutiny at all) is to merely grant companies permission to negotiate time-bound user rights in land with the Community whose land they want to use, and where that happens, imposing terms and conditions between the concessionaire and the Government that are not binding on the communities. Even then, such user rights would have to take the form of lawfully constructed leases granted by the communities concerned, according to their Free, Prior and Informed Consent (*FPIC*), and not on the basis of legally dubious MOUs.

Coincidentally, this legal position as clarified by the LRA (but arguably equally valid prior to it) is consistent with the voluntary obligations committed to by palm oil companies operating in Liberia who are members of the RSPO and have therefore committed to respecting the customary rights of communities (whether they are protected in national law or not) and to only develop lands with the FPIC of those communities. See also equivalent best practice standards in other sectors including forestry (see Forestry Stewardship Council), as well as cross-sectoral standards rooted in regional and international human rights and environmental law (see for example the 'Accountability Framework Initiative')[xxxvi]. Full compliance with those standards by companies has arguably been held back by a lack of clarity on the legal rights of communities and the implications of those rights for how concessionaires can operate. Analysis of Liberia's legal trajectory up to and including the LRA presents a major opportunity to see those standards as fully aligned with the domestic legal framework.

This interpretation may be contested, including by concession holders and their political allies who think that the LRA should preclude all and any right of consent for the land use by concessionaires whose concession agreements preceded the LRA. However, that view would be inconsistent with the Constitution as it would entail arbitrary deprivation of communities' property rights that predated the LRA and which at all material times were protected by the Constitution, notably by Article 22 (the right to own property) and Article 24 (protection from expropriation). It would matter not that some concession agreements were enacted by the legislature, owing to the legal superiority of the Constitution. Were a concession holder or the Government to contest this interpretation, it would also have the perverse outcome of making it impossible for companies to comply with the best practice standards they have committed to, and thereby cutting them off from valuable access to international markets. In the circumstances where concession agreements were void on the basis of the Government's false assertion of title, the concessionaires may have a legal claim of detrimental reliance, but this would be a compensation claim against the Government, and not one it could enforce against communities if they had not acquiesced to the Government's assertion of title.

VI

Conclusion and recommendations

In conclusion, the LRA presents Liberia with an immense opportunity to put its economic development on a just and stable footing. Liberia's rural communities have tremendous social and environmental capital embodied in their lands, resources, and the relationships with those lands and each other. However, to realise the economic, social and environmental potential of that capital, it is crucial that customary land rights are not only respected by new (post-LRA) developments, but also that the LRA is not used to 'paper over the cracks' of historical injustices endemic in many instances of pre-LRA concession allocation.

The Government – via the relevant Ministries and LLA and other agencies – clearly has a vital role to play in this respect, with donor support, but private sector actors must also play their part in the transition to rights-based development, bringing their financiers and investors with them. Communities – with the support of civil society – need to also ensure that their rights are exercised and enjoyed, and that the LRA provisions on pre-existing concessions are not misused so as to sweep their rights away (especially in the context of pre-LRA concessions). In particular this briefing proposes the following necessary and urgent courses of action requiring support from all stakeholders to ensure meaningful realisation of the objectives of the LRA:

1. **Ensure that communities receive the necessary capacity support to strengthen and consolidate good community land governance** (including via their establishment of CLDMCs, bylaws and sustainable land-use planning to balance the imperatives for food security, increasing incomes, reserving lands for future generations, and protecting biodiversity). This will include supporting community capacity (including with the necessary independent legal advice and tools) to develop their local economies. Having the capacity to successfully negotiate leases with third parties in a manner that delivers fair and equitable benefits to the whole community is only one option, but should not be privileged above other options including seeking development partners and funding arrangements to develop their own agriculture and livelihoods.
2. **Where concession companies ostensibly hold (or are considering using) areas of land that contain previously developed concession areas (e.g. areas abandoned by or transferred from other concessionaires), all actors – especially the companies and the Government – should assume that the land may in fact be encumbered by community property rights** that were abused but not extinguished by the grant of previous concessions. In order not to become complicit in perpetuating a historical land injustice, a process

would be needed to ascertain the community successors in title to those lands, and to only use land subject to those communities' FPIC and the negotiation of a just and equitable lease with the community. Such negotiated leases must be entirely unconstrained by any previous concession agreements or MOUs that did not respect the pre-existing and continuing community property rights and interests in the land.

3. ***Pre*-LRA concessions *not* fully compliant with the law – including where the original concession agreements failed to respect the constitutionally protected property rights of communities – urgently require a process to bring those concessions into legal compliance.** This will need to involve the relevant company, government agencies, communities, and civil society, to navigate a path forward that remedies non-compliance. For such concessions the process would need at least three stages:

    a) **Review and amendment of concession agreements.** This would be necessary to ensure those agreements are fully respectful of community land rights. For instance, any reference to those agreements being leases between the government and the concessionaire would need to be removed, along with warrantees that the land is free of encumbrances etc. In effect those agreements should be reduced to being framework agreements that permit the concessionaire to develop just, equitable and lawful commercial relationships with communities and other land-owners.

    b) **For areas of customary land that have already been cleared and planted pursuant to such concession agreements,** a mediated process will be necessary to ensure that those plantation areas (in part or in full) either have the FPIC of the respective community, or are returned to full community control and possession where consent is withheld (and thereby excised from the concession area).

    It must be clear to communities that they have the right to make either decision, including a compromise agreement allowing some of their land to continue being used by the concessionaire, and for the rest to be returned for community possession and use (which they can either maintain in its current state or change to other uses).

    For lands that the community is agreeable to continue being used by the concessionaire, the terms of that use must no longer be constrained by the concession agreement originally agreed with the government nor by legally dubious MOUs, but must be made subject to a fair and lawful lease agreement negotiated by the community according to rules of engagement it has decided on, and with access to prior independent legal and technical advice.

    For damage done by company activities taking place on community lands without their FPIC, restoration must be provided and/or compensation given where restoration is physically impossible or which may take time to achieve. As the government almost certainly shares fault it should make a fair contribution. Restoration may often be possible for certain types of damage though it will often take time, e.g. forests replanted or waterways and swamps reconstructed by the filling of culverts and other groundworks. For intangible community assets damaged irreparably, or for tangible assets that will take time to restore, compensation will be a necessary complement in addition to restoration action.

c) **For areas of customary land of interest to the concessionaire but which have not previously cleared or planted**, the route forward would simply be one of negotiation to see if an agreeable commercial relationship can be agreed between the company and the community rightsholders. Again, this would have to be negotiated according to rules of engagement the community has decided on, and with access to independent legal and technical advice. Negotiation may lead to the community consenting to an agreement whereby the concessionaire may lease land from the community, or another arrangement may be reached (e.g. the sale of agricultural products to the company). Again all options should be on the table as the bargaining power of the community must not be constrained by the original concession agreement.

Footnotes

i One example of such broad description of the lease area can be found in Article II of the Salala Concession Agreement which grants a concession area comprising a total of 100,000 acres of Public Land to be selected from Yangwele-Po (Gibi Mountain), Woung-Gligba and Borlorlah River, all in present day Margibi County and in the Zorzor, Voinjama and Kolahun District of present day Lofa County.

ii Admittedly, it is common for leases in Liberia (whether on private or public land) to not include a precise description of the leased property, tending instead to reference notable monuments or landmarks and some coordinates, but the lessee of private land almost always ensures a physical identification and delimiting of the land (including insisting on actual "delivery") *before* conclusion of the lease or payment of the first rental.

iii The difference in practice between the *prior* identification of the land for commercial leases on private land compared with the *post facto* identification of the land for leases of public land has no basis in any law. Instead it seems to have been a response to the practical challenges of identifying large areas of land by survey, coupled with the continuing assumption by government officials that the acts of government cannot and/or should not be challenged. That assumption has always been incorrect. Government officials/agencies are perfectly capable of making mistakes or acting outside of their powers (ultra vires), and it is perfectly legitimate for those to be challenged and rectified – indeed that is what the rule of law demands. In terms of the practicalities, remote surveying technology has advanced signficantly, and large areas of land can be mapped quickly and cheaply, which removes the practical excuse for not identifying land as part of the *pre*-contract due diligence by companies and government. While remote surveying cannot of course identify land rights, it can identify the locations of villages, cultivated areas, wetlands and forests, which can form the base map for a more fine-grained land survey to ascertain the potential existence of rights and interests over land areas that should not therefore be the subject of a government concession grant.

iv Golden Veroleum Liberia (*GVL*) with Golden Agri-Resources (*GAR*); Sime Darby (concession since transferred to MANCO); Maryland Oil Palm Plantation (*MOPP*) with SIFCA, Wilmar and Olam; Equatorial Palm Oil (EPO) acquired by Kuala Lumpur Kepong Berhad (*KLK*).

v See for example analysis of the Sime Darby and Golden Veroleum Liberia concession agreements in: Lomax, T. '*Human rights-based analysis of the agricultural concession agreements between Sime Darby and Golden Veroleum and the Government of Liberia*' (FPP, 2012).

vi Guanau, Dr. Joseph S. *Liberia History up to 1847* (3rd Edition) 1997. According to Dr. Guanau, secret meetings between the Americans and the Africans ended on December 15, 1821 when a contract called the Ducor Contract was signed for a piece of land that started the process that led to the creation of the Republic of Liberia, and that in terms of price the Americans paid "about three hundred dollars" with a promise to pay the remainder at a later date, which they might not have done. Significantly, Dr. Guanau also said that the settlers found it difficult to take possession of the "purchased" land because the chiefs who signed the contract were accused by their people of unlawfully selling lands to foreigners. The Africans were saying that according to their customary law, no one, not even the king, had the right to sell the land, which belonged to the entire Community. Ibid.

vii In practice these transactions appear exploitative as prices paid were not representative of the true value of the land, and that elites (such as the 'kings', 'princes' and 'headmen' mentioned in the 1821 Deed of Mesurado) benefited most without being equitably shared with the wider communities concerned. If those notables did not in fact have authority to make deals on the land, and/or if customary title was in fact not vested in them but in communities themselves, such "contracts" were presumably null and void in law. Furthermore, since the land was inalienable under customary law, agreements such as the Ducor Contract should actually have been perceived by the settlers as

agreements to let them *use* the land, not to permanently alienate (sell) the land to them, but in practice *"settlers interacting with indigenous communities pursued alienation of land (instead of use) made possible by a mix of violent conflict and alliance-making"* (per Unruh, J.D. *Land rights in postwar Liberia: The volatile part of the peace process* (2009), Land Use Policy 26, at page 427.

viii Article 66, *Revised Laws and Regulations of the Hinterland 1949*

ix Title 1 of the Liberian Code of Law, 1956-1958

x There is no evidence of any consultation taking place on a proposed new Aborigines Law of those who would be potentially affected by it. The change in language may just be a symptom of the fact that the legal 'lens' through which the legislative architects of the Aborigines Law viewed land ownership was from the perspective of the littoral, neglecting the fact that even in the littoral areas the public land made available for state grant had been purchased from the tribes, not taken from them. Wiley 2007, p.121-123.

xi For a more detailed explanation on the continuing legal effect and status of the Hinterlands Law (and subsequent Regulation) see: World Bank, Report No. 46134-LR '*Liberia - Insecurity of Land Tenure, Land Law and Land Registration in Liberia*' (2008) at paragraph 61.

xii Title 32 of the Liberian Code of Laws of 1956

xiii Stevens, Caleb J, *The Legal History of Public Land in Liberia*, Journal of African Law, 58, 2 (2014), 250-265, SOAS, University of London.

xiv *Ibid*, see pages 263-265

xv Section 8.44

xvi Section 8.53

xvii It is also worth noting that to the extent that historical Liberian legislation such as the Public Lands Law and Aborigines Law contain anachronistic 'hangovers' from the days of early settlement in the littoral and thereby provided differential treatment of 'immigrants', 'aborigines', 'citizens' and/or 'aborigines who become civilised' to the disadvantage of some of those groups, they very arguably fell short of the equality provisions that have featured in Liberia's Constitution ever since Liberia's first Constitution of 1847.

xviii The 1847 Constitution of the Republic of Liberia protects the rights of property in the 'Declaration of rights' at Article 1 (which includes in a list of "*natural, inherent and unalienable rights*" the right "*of acquiring, possessing and protecting property*"); Article 8 (which includes the right of persons not to be deprived of property); and Article 13 (which states that "*Private property shall not be taken for public use without just compensation*").

The 1847 Constitution also recognises the customary property rights and interests over land including in the preambular reference to "*acquisition of land by honorable purchase from the natives of the country*" and in Miscellaneous Provisions Article 14 recognising 'aborigine' property rights in land at a time when the only legal basis for that property right was customary law ("*The purchase of any land by any citizen or citizens from the aborigines of this country for his or their own use, or for the benefit of others, or estates or estate in fee simple, shall be considered null and void to all intents and purposes*", thus establishing the state's exclusive right to acquire aborigines land which would only then be available for grant to such 'citizens').

xviii The 1986 Constitution of the Republic of Liberia provides for respect for the right to property (and/or nondeprivation of property) in Articles 11 (as an inherent and inalienable right), 20 and 22. The latter also allows for collective ownership in the segment providing for the ownership of property "*alone as well as in association with others*". Article 24 guarantees the constitutional safeguards/due processes that must be observed for an expropriation of private property in the public interest to be lawful.

On customary law generally Article 65 deals with judicial power and states that "*the courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature*".

xx Charter Article 14 states that '*The right to property shall be guaranteed*'. See *CEMRIDE and MRG (on Behalf of the Endorois Welfare Council) v. Kenya*, Communication 276/2003, ACHPR (2010), (the "*Endorois*" case) *inter alia* at paras 149 and 150) and *ACHPR v. Republic of Kenya*, Judgment 26 May 2017, No. 006/2012. *The Treaty of the Economic Community of West African States (the ECOWAS Treaty)* as revised pays special attention to the 'recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights' at Article 4(g).

xxi Article 1 of ICCPR provides inter alia for the right of peoples not to be denied of their own means of subsistence, and Article 27 persons belonging to minorities "shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." The UN Human Rights Committee has stated (General Comment 23, Article 27, 1994), "*that with regard to the exercise of the cultural rights protected under Article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources… . That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.*"

xxii Of the relevant jurisprudence of ICERD's authoritative body, the Committee on the Elimination of Racial Discrimination, see for example the Committee's Concluding Observations on Yemen (19/10/2006, CERD/C/YEM/CO/16), in which they note "*with concern*", at para. 16 "*reports it has received that indicate that members of the Al-Akhdam community allegedly face difficulties in, if not outright barriers to, effectively exercising their right to own property (art. 5(d)(v))*" and requesting that the state "*provide further information regarding the right of all persons within its territory, including members of marginalized or vulnerable groups to obtain and own property*".

The right "to own property alone as well as in association with others" contained in Article 17 of the Universal Declaration of Human Rights is also considered customary international law and therefore of universal application. See for example Golay & I. Cismas, *Legal Opinion: The Right to Property from a Human Rights Perspective* (ADH Geneva & Rights and Democracy 2010) highlighting at p. 10, that "*The review of provisions of international instruments, regional treaties and national constitutions reveal the universal recognition of the human right to property. It appears that generalized and consistent State practice and* opinio juris *reflect the customary nature of the first paragraph of Article 17 of the [Universal Declaration of Human Rights] '[e]veryone has the right to own property alone as well as in association with others'*", at http://www.genevaacademy.ch/docs/publications/ESCR/humanright-en.pdf.

xxiii *Report of the Special Rapporteur on the right to food, Olivier De Schutter, Addendum, Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge,* A/HRC/13/33/Add.2, 28 December 2009. *The United Nations Guiding Principles on Internal Displacement,* UN Doc. E/CN.4/1998/53/Add.2 (11 February 1998) provide that "States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands".

xxiv Common law jurisdictions where the doctrine of native/aboriginal title has been recognised and affirmed include the US, Canada, New Zealand, Australia, Botswana, South Africa, Tanzania, Malaysia and Belize. See seminal work on the doctrine of native/aboriginal title by McNeil, K., Common Law Aboriginal Title (Oxford, Clarendon Press: 1989), and see also: Lindley, M.F., *The Acquisition and Government of Backward Territory in International Law: Being a Treatise on the Law and Practice Relating to Colonial Expansion* (Longmans, Green and Company: London, 1926), Roberts-Wray, K. *Commonwealth and Colonial Law* (F.A. Praeger, Westport US: 1966), O' Connell, D.P., *State Succession in Municipal and International Law* in Cambridge Studies in International and Comparative Law Vol. I, (Cambridge University Press, 1967). For a summary of Aboriginal Title jurisprudence see: MacKay, F. in Colchester, M. (ed.) *A Survey of Indigenous Land Tenure* (A report to the Land Tenure Service of FAO. FAO, Rome, 2001), and for a recent 'biography' of the doctrine's development see McHugh, P.G. *Aboriginal Title: The Modern Jurisprudence of Tribal Land Rights* (Oxford University Press, 2011).

xxv As well as being the subject of repeated affirmation in the common law jurisdictions (including those listed in note xxiv) native title's continued legal survival (despite changes in sovereignty) originated in early international law rooted in 16th century Dutch and Spanish authorities (See Cohen, F.S., *Handbook of Federal Indian Law* (Washington: United States Government Printing Office, 1941) and Bartlett, R., *Native Title in Australia* (Butterworths: Sidney, 2000), now reflected in international human rights law. US Supreme Court authorities for the doctrine from the 1820s and 30s include *Johnson & Graham's Lessee v. McIntosh*, 21 U.S. 543 (1823), *Cherokee Nation v. Georgia*, 5 Pet. 1 (1831) and *Worcester v. Georgia*, 6 Pet. 515 (1832). Citing those authorities the New Zealand Supreme Court stated in 1847 that "*Whatever may be the opinion of jurists as to the strength or weakness of the Native title, whatsoever may have been the past vague notions of the Natives of the country, whatever may be their present clearer and still growing conception of their dominion over land, it cannot be too solemnly asserted that it is entitled to be respected, that it cannot be extinguished (at least in times of peace) otherwise than by the free consent of the Native occupiers.*" (see *R. v. Symonds* (1847) NZPCC 387 SC(NZ), at 390).

The doctrine has also been the subject of repeated affirmation and application by the Judicial Committee of the Privy Council (the court of final appeal for UK overseas territories and Crown dependencies), including in cases concerning the legal continuity of customary property rights in Africa. See for example *Te Teira Te Paea v. Te Roera Tareha*, 1902, A.C. 56; *Re Southern Rhodesia* [1919] AC 211; *Adeyinka Oyekan v. Mussendiku Adele*, 1957, 1 WLR 876, per Lord Denning; Amodu Tijani v. Secretary, Southern Nigeria, 1921, 2A.C. 399, per Viscount Haldane. See also *Elias*, T.O., *British Colonial Law: A Comparative Study of the Interaction between English and Local Laws in British Dependencies*. (Stevens & Sons: London, 1962), at 223-25, stating at 223- 24, that "*[t]he administrative right of supervision and control*" (consequent on state acquisition of sovereignty over new territories) "*is qualified by the customary right of the indigenous people over their land*".

As explained by the US Supreme Court in 1835 (in *Mitchel v. United States* (1935) 9 Pet. 711 (USSC), at 746), and on several occasions since, including in 1938 in *United States v. Shoshone Tribe* (1938) 304 US 11, at 117 where the Supreme Court confirmed that native title is "*as sacred and as securely guarded as is fee simple absolute title*" (see also, *Oneida County v. Oneida Indian Nation* 470 US 226 (1985), at 235-36).

Mitchel v. United States (supra) also gives authority for native title extending over not just the more obviously occupied and possessed lands containing homes and cultivated fields, but also wider hunting grounds, finding that "*…hunting grounds were as much in their actual possession as the cleared fields…; and their rights to its exclusive enjoyment in their own way and for their own purposes were as much respected, until they abandoned them, made a cession to the government, or authorized sale to individuals*" (at 746). Native title does not just extend over "*areas where the tribe had permanent villages, but also includes seasonal or hunting areas over which the Indians had control even though the areas were used only intermittently*" – per *Confederated Tribes of Warm Springs v. United States* 177 Ct Cl 184, at 194 (1966); with native title demonstrated by "*seasonal rounds of fishing, hunting, gathering and trading expeditions*" (per *Tinglit and Haida Indians of Alaska v. United States* 177 F Supp 452, at 457 (1959). See also *United States v. Seminole Indians* 180 Ct Cl 375, at 384 (1967)).

xxvi *Supra* (note xxiv).

xxvii *Karmo et al v. Morris* 2 LLR 317 (1919)

xxviii This same principle applies to statutory references affirming Liberia's territorial sovereignty, such as Article 66 of the Hinterlands Regulations, which states (at Article 66) that '*Title to the territory of the Republic of Liberia vests in the sovereign state*'. That is clearly a statement of Liberian state sovereignty, not to be interpreted as nationalizing land ownership, as made clear by the later text of Article 66 which refers to hinterland tribes having the title to their land 'against any person or persons whatsoever' and 'whether or not they have procured deeds from the Government'. Per the analysis in World Bank report No. 46134-LR *Insecurity of Land Tenure, Land Law and Land Registration in Liberia* (2008) 'As such it is a property right and constitutionally protected'.

[xxix] *United States v. Dion*, 476 U.S. 734 (1986), at pp. 739-40

[xxx] See Article 34(1)

[xxxi] See Article 33(2)(i) and (iv)

[xxxii] Article 33(2)

[xxxiii] See Articles 49(4)-(6), 35 and 26.

[xxxiv] See Articles 33(3) and 48.

[xxxv] See for example as reported by Liberian newspaper, FrontPageAfrica in March 2014 in relation to the resistance to expansion onto Jogbhan Clan customary land by Equatorial Palm Oil (EPO) in their Grand Bassa County operations.

[xxxvi] For more information on the AFI see: https://accountability-framework.org/