

I. Introduction

When a country emerges from violent periods of civil war, the mood is usually euphoric and optimistic. People are grateful for peace and eager to reestablish their families, homes, and work. But all too often, the destruction brought on by fighting leaves chaos and disorder. In particular, land disputes are often one of the first sources of post-conflict violence. Residents return to their home and find others living in them. Or, individuals, eager to start a new farm or build a new home, find that their deed no longer exists or that the landmark designating their boundary line was destroyed. Individual's frustration and the inability of weak governments to address disputes leads people to resolve the matters themselves – often reigniting violence.

This paper examines land reform approaches taken in post-conflict settings to assess the land reform needs of Liberia as the nation recovers from its fourteen years of civil war. It begins with an historical review of international land rights and guidelines, followed by a review of scholarly analysis of approaches to land reform in other post-conflict countries. The paper will then look at issues facing Liberia specifically – land rights particular to Liberia, the current state of land rights, followed by recommendations based on stakeholder interviews and stated policy.

This paper aims to support the efforts of the Liberian Land Reform Commission by providing recommendations for reform based on stakeholder and policy analysis.

Recommendations for the Land Reform Commission center on a comprehensive approach to land tenure reform focused on stakeholder participation and equal accessibility. Particular attention should be paid to methods that will best communicate information to this largely illiterate population. The main recommendation by all stakeholders was for a clear procedure to obtain title to land which would begin locally and provide for an appeals process.

a. Background on Liberian Land Tenure

Freed American Slaves settled Liberia's west coast in the mid-1800s. With the settlers' introduction of American statutory law, property rights developed alongside traditional customary law. This created a "dual system of land tenure," where statutory law governed the land of the settlers and customary law controlled in the land occupied by indigenous Liberians.¹

Legal dualism brought on by colonization poses a challenge in land reforms for much of Africa.² One scholar suggests that today's current problems with despotism in Africa stem from the "proxy" approach to rule implemented during colonialism. Foreign nations put the power of law making and enforcement into the hands of chiefs. Where before a chief sought to protect his clan and provide for their welfare, they were now being supported by foreign governments and many grew into despots. The concentration of power in rural African villages has remained unchecked.³

Land reform traditionally refers to the redistribution of land for the benefit of the poor or landless.⁴ This paper uses the broader definition which includes land *tenure* reform.⁵ The term land reform will be used because that is the term used by the Liberian government when referring to land tenure reform. While a great deal has been written on land reform in developing countries, this paper is specific to land tenure reform in post-conflict countries where preventing a return to violence and expediency is of supreme importance.

¹ GOVERNANCE REFORM COMMISSION, CONCEPT PAPER: THE WAY FORWARD: LAND & PROPERTY RIGHTS ISSUES IN THE REPUBLIC OF LIBERIA, 2 (2007).

² VIVEK MARU, THE CHALLENGES OF AFRICAN LEGAL DUALISM: AN EXPERIMENT IN SIERRA LEONE, Open Society Justice Initiative 18, 18 (Feb. 2005).

³ VIVEK MARU, THE CHALLENGES OF AFRICAN LEGAL DUALISM: AN EXPERIMENT IN SIERRA LEONE, Open Society Justice Initiative 18, 19 (Feb. 2005).

⁴ Russell King, LAND REFORM: A WORLD SURVEY 6 (1977).

⁵ *Id.*

Land and property rights must be addressed to ensure “Liberia’s stability, recovery, growth and development.”⁶ Since the peace agreement in 2003, Liberia has successfully maintained its security; however, increasing disputes over land and property rights pose a serious risk.⁷ The many land and property disputes are overwhelming court dockets, and investors cite uncertainty about property rights as a key factor in development choices.⁸ The illegal development of Liberia’s natural resources coupled with communities not receiving compensation for this exploitation creates another source of conflict.⁹ A recent survey of 6,000 Liberians reported that their greatest concern for future peace was boundary disputes.¹⁰

The Liberian government acknowledges the severity of this issue, and in response, President Johnson Sirleaf created the Liberian Land Reform Commission which officially launched March 11, 2010.¹¹ Unfortunately, the majority of other countries which have attempted to reform land laws post-conflict have failed, resulting in broken peace.

II. International Human Rights Standards relating to Refugees and Displaced Persons

a. Basic Human Rights

⁶ Governance Reform Commission, CONCEPT PAPER: THE WAY FORWARD: LAND & PROPERTY RIGHTS ISSUES IN THE REPUBLIC OF LIBERIA 2 (2007); *see also*, Amos Sawyer, *Social Capital, Survival Strategies and Their Implications for Post-Conflict Governance in Liberia*, Workshop in Political Theory and Policy Analysis Indiana University 13 (2004).

⁷ REPUBLIC OF LIBERIA, PRIORITY PLAN FOR PEACEBUILDING FUND (PBF): LIBERIA 1 (2008); BBC News, “Land Disputes Threaten Liberia,” (2008) <http://news.bbc.co.uk/2/hi/africa/7669444.stm>.

⁸ Governance Reform Commission, CONCEPT PAPER: THE WAY FORWARD: LAND & PROPERTY RIGHTS ISSUES IN THE REPUBLIC OF LIBERIA 2 (2007).

⁹ REPUBLIC OF LIBERIA, PRIORITY PLAN FOR PEACEBUILDING FUND (PBF): LIBERIA 2 (2008).

¹⁰ Associated Press, “Report Says Land Disputes Threaten Liberia’s Peace,” (2008) HTTP://AP.GOOGLE.COM/ARTICLE/ALEQM5GB_O7T27Y3JYKSiMVmYKw5AGY4zQD93PRFBG1.

¹¹ Governance Reform Commission, CONCEPT PAPER: THE WAY FORWARD: LAND & PROPERTY RIGHTS ISSUES IN THE REPUBLIC OF LIBERIA 2 (2007).

The recognition of universal human rights came in the wake of World War II as nations realized the importance of expressly identifying the minimum standards of acceptable human treatment. The United Nations' *Universal Declaration of Human Rights*, adopted in 1948, provides for the right to own property, the right to live where you choose, and the right to be free from arbitrary interference with privacy and the home.¹² These basic concepts were reinforced and applied specifically to refugees in the 1951 UN *Convention Relating to the Status of Refugees*.¹³ Liberian refugees thus have these basic rights under international law protecting their claims to land and settlement location.

b. Definition of Refugee

In 1969, African countries adopted the *Convention Governing the Specific Aspects of Refugee Problems in Africa*. This document expanded the 1951 UN Convention by including in the definition of refugee those who fled from “events seriously disturbing public order.”¹⁴ This means that the internal violence in and around the civil wars is enough for Liberians to invoke refugee status and the subsequent rights such status provides. Within reasonable limitations for national security and public health concerns, Liberians refugees have the right to choose where they live.

c. Internally Displaced Persons

Two international documents provide guidelines as to how displaced persons, both domestically and internationally, should be treated by home and host nations. These guidelines clarify the basic human rights relating to settlement by *detailing* how those rights would look in

¹² United Nations, UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR), Art. 12, 13, 17 (1948).

¹³ United Nations, CONVENTION RELATING TO THE STATUS OF REFUGEES (1951).

¹⁴ African Union, CONVENTION GOVERNING THE SPECIFIC ASPECTS OF REFUGEE PROBLEMS IN AFRICA Art. 7. (1969).

practice. While these documents are not international law, they do carry the weight of the UN and the international community. In Liberia, 1.5 million people were displaced by the end of the war with tens of thousands still displaced today.¹⁵

The UN's 1998 *Guiding Principles on Internal Displacement* (GPID) limits its scope to displacement within national borders, providing for protection against arbitrary displacement and setting guidelines for resettlement.¹⁶ Nations are to assist internally displaced persons (IDPs) with resettlement and reintegration.¹⁷ An IDP is a person who is displaced within his home nation. This group is often considered separately from refugees, as only a domestic concern. IDPs are initially placed in camps similar to refugee camps. Confusion arises as to IDP status once these camps are disbanded. However, the GPID makes no distinction based on temporary settlements – a person remains an IDP until settled in a place of his or her choosing, within reasonable limitations. Liberians who were once in IDP camps but were never resettled still fall under IDP protections.

d. Restitution

Logistically, refugees and IDPs will not have full freedom concerning where they resettle. In such circumstances, restitution can provide a fair remedy to deprivation of property. Restitution rights were not specifically addressed until 2005 in the UN's *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, more commonly known as *Pinheiro's Principles* after the author. Principles 2-10 apply the concept of housing and property

¹⁵ Advocates for Human Rights, *A HOUSE WITH TWO ROOMS* 19 (2009).

¹⁶ *Guiding Principles on Internal Displacement*, U.N. Doc. E/CN.4/1998/53/Add.2 (1998), <http://www1.umn.edu/humanrts/instree/GuidingPrinciplesonInternalDisplacement.htm>.

¹⁷ *Id.*

restitution to existing human rights standards. Principles 11-22 focus on the practical aspects of recognizing and enforcing restitution rights.

Pinheiro's Principles is the most detailed international guideline regarding resettlement. It states that restitution policies should apply to refugees and displaced persons equally regardless of what caused individual displacements.¹⁸ Such persons have a right to have their property returned to them. The preferred method of remedy is restitution, but should the property no longer exist, compensation in money or in kind is the alternative remedy. Even if the home has been destroyed, people should be given the option of rebuilding rather than forcing upon them compensation. However, compensation is an adequate remedy if the displaced person so chooses and can give informed consent.¹⁹ Refugees and displaced persons, who choose not to return to their prior homes, should not have to forfeit their rights to restitution.²⁰

Equality: *Pinheiro's Principles* emphasize equality in restitution claims. All refugees and displaced persons are equal before the law and cannot be subjected to discriminatory practices.²¹ Men and women, as well as boys and girls, must be treated equally regarding property restitution, inheritance, and use, control and access to property. Restitution programs should take a gender-sensitive approach and not disadvantage women and girls.²² Post-conflict countries need to consider gender equality when implementing new land law. For many countries, such emphasis on equality will be a radical shift from historical practices.

¹⁸ United Nations, PRINCIPLES ON HOUSING AND PROPERTY RESTITUTION FOR REFUGEES AND DISPLACED PERSONS Principle 1 (2005).

¹⁹ *Id.* at Principles 2, 21.

²⁰ *Id.* at Principle 10.

²¹ *Id.* at Principle 3.

²² *Id.* at Principle 4.

Restitution Procedure: *Pinheiro's Principles* details procedural methods of restitution.

All restitution programs should be conducted in a timely manner to guarantee due process.²³ Any person “arbitrarily or unlawfully deprived” of their property should be able:

- (1) “to submit a claim for restitution and/or compensation to an independent and impartial body,”
- (2) “to have a determination made on their claim”
- (3) “and to receive notice of such determination.”²⁴

This section calls for a form of judicial or administrative oversight. Nations would need to create a system of filing claiming, adjudication, and communication. In rural settings, travel constraints could cause delays. The particular needs of each community need to be weighed when designing this program so as to best serve affected parties.

Pinheiro's Principles goes on to state that such filings should not be subject to preconditions or a prohibitive fee. The government should ensure that the process is accessible to all people regardless of age or gender. Children should have representatives appointed for them to make sure their restitution rights are protected, and people who have chosen not to return should have adequate access to the process as well. Furthermore, tenants and other users of housing should be able to file for restitution.²⁵ Keeping the adjudication process open to everyone ensures fairness and thoroughness. Again, governments must carefully analyze the specific constraints of each community to make sure this process is not overly burdensome.

²³ *Id.* at Principle 12.

²⁴ *Id.* at Principle 13.

²⁵ *Id.* at Principles 13, 16, 19.

Registration Systems: Additionally, *Pinheiro's Principles* addresses land titling and registration systems as a means to promote clarity and prevent future confusion. Property registration systems must be re-established and designed to protect such information in future conflicts; digital formatting is recommended. In countries where a great number of people have been displaced and records are severely limited, the government should “adopt the conclusive presumption that persons fleeing their homes during a given period marked by violence or disaster have done so for reasons related to violence or disaster and are therefore entitled to housing, land and property restitution,” and that the government shall not recognize any property transfer that was made under duress or by coercion.²⁶ For Liberians, this has widespread applications as nearly every Liberian was displaced. However, the presumption only applies to situations where records are severely limited. The first step would be to sort through and organize remaining property records.

Land Registration Limitations: Digitizing land deeds is one way for governments to simplify property registries. However, digital storage comes with its own security problems that countries coming out of post-conflict settings might not have the finances to address. By first assuming that all persons who fled did so because of violence or disaster, governments remove the initial hurdle to bringing a court claim – judicial standing. At some point, such a presumption will need to be removed. There is no clear way to estimate at which point this should happen as every conflict has its own unique circumstances.

Secondary Occupants: *Pinheiro's Principles* recognizes the additional difficulties imposed by secondary occupants who experienced similar displacement and violence as the

²⁶ *Id.* at Principle 15.

original property owners. Secondary occupants should be “protected against arbitrary or unlawful forced eviction” and be afforded due process. However, secondary occupants’ due process rights may not infringe on the rights of the legitimate owners’. If secondary occupants must justifiably be evicted, they should be protected against homelessness. If a third party acting in good faith purchased property from a secondary occupant, the government should consider compensating that third party. In some cases, the cause of the original owners displacement will be so obvious that the secondary occupant or third-party purchasers should have known that the occupancy or purchase was illegal which would nullify any claims to compensation.²⁷ Secondary occupants in such post-conflict settings “moved in” to the property for the same reason the owners fled – violence. When the owners return home, often after many years, they arrive to find people illegally living in their property. Secondary occupants, in many cases, have lived, worked, and raised their families on such property and feel strong connections to the land. Additionally, they were victims of the same violence. These guidelines attempt to respect the circumstances of both parties by affording the secondary occupants due process and requiring protections against homelessness. In reality, few post-conflict countries will have the resources to address this issue beyond adjudication. If secondary occupants are evicted, they will be in the same position as the owners were before adjudication. The gain in adjudication is clarity of legal title.

Legislative Reform: The *Pinheiro’s Principle’s* recommendations for the implementation of legislative reform require that laws comply with existing peace agreements and international law. Such laws should not prejudice the restitution process by prohibitively

²⁷ *Id.* at Principle 17.

lowering the statute of limitations or by harshly enforcing abandonment laws.²⁸ Public agencies need to enforce restitution decisions, and public awareness campaigns should be implemented to notify secondary occupants of their rights and the consequences of not complying with restitution laws.²⁹ These guidelines serve to remind nations of the complexity of resettlement. Heavy handed tactics like forced evictions will not improve resettlement efforts. Educating secondary occupants of their rights and the rights of the owners can help smooth the transition, but the challenge of resettling both parties is significant. Resettlement programs will need to provide a framework, rather than specific relocation instructions, to comply with all of these guidelines.

III. Liberian Treaties and Rights

Beyond basic and refugee-specific international human rights standards, Liberia has ratified several international treaties including the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the International Covenant on Civil and Political Rights (CCPR), the Convention on the Elimination of all forms of discrimination against Women (CEDAW) and several African Union treaties which provide additional rights. The Liberian Constitution provides further support for these rights and protections. Paramount in enforcing all other rights is the right to be free from discrimination.³⁰

²⁸ *Id.* at Principles 18, 19.

²⁹ *Id.* at Principle 20.

³⁰United Nations, INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (CERD) Art. 5(a) (1969) ; African Union, AFRICAN CHARTER ON DEMOCRACY, ELECTION AND GOVERNANCE (signatory) Art. 8.1 (2005).

Right to Own Property: Liberians have a right to own property³¹, with equal protection for women's right to own property.³² A married woman also has a right to own property separately or equally with her husband.³³ Women have additional protections for equal access to housing and acceptable living conditions.³⁴ If property is expropriated by the Liberian government, the government must give a reason for the taking, must provide just compensation, and must give the original owner the first right to reacquire.³⁵ For example, if the government needs a parcel of land for development, it cannot merely confiscate the land. The owner must be fairly compensated as if he willingly sold the property. Additionally, should the government no longer need the property, the original owner should be afforded the first opportunity to purchase the land back.

Right to Inherit: Liberians also have a right to inherit property from their parents, with equal rights for men and women³⁶ and special protection for the rights of youth³⁷ and widows to inherit.³⁸ While this right is clearly articulated, the ability of these groups to enforce their rights is limited. The government needs to afford additional safe-guards for women, widows and children to ensure adequate protection of their property rights.

³¹ CERD Art. 5(d) (1969); *see also*, African Union, AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS Art. 14 (1981), African Union, AFRICAN YOUTH CHARTER (signatory) Art. 9.1 (2004), LIBERIAN CONSTITUTION Art. 20a, 22a, and 24a.

³² United Nations, CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) Art. 15 (1979), African Union, PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA Art. 6(j), Art. 19c (2003).

³³ CEDAW Art. 16.1(h).

³⁴ African Union, PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA Art. 16 LC 23a (2003).

³⁵ LIBERIAN CONSTITUTION Art. 24a; *see also*, African Union, AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS Articles 21.1-21.2 (1981).

³⁶ CERD Art.5(d)vi. *See also*, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa Art. 21.2, Liberian Constitution Art. 23b.

³⁷ Liberian Constitution Art. 23b ; African Youth Charter (signatory) Art. 9.1 and 9.3.

³⁸ Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa Art. 21.1.

Children: All judicial or administrative actions involving children must be based on the “best interests of the child.”³⁹ Children have a specific right to express their views in court and administrative hearings.⁴⁰ These rights will require additional efforts by the government and may require independent third parties, such as non-profits, to ensure children are afforded their rights.

Equal access to courts and Equal Protection: All Liberians are equal before the law, including in courts and administrative hearings and are entitled to equal protection by the law.⁴¹ Any court and administrative ruling can be appealed except rulings issued by the Liberian Supreme Court.⁴² Women have the right to equal treatment by tribunals.⁴³ While equal treatment is the standard, more resources may be necessary to achieve this standard as women continue to be underrepresented in the government and justice system.

Freedom of Movement: Law abiding individuals have a right to leave one’s country and return⁴⁴, with equal rights for women⁴⁵ and children.⁴⁶ Liberians also have a right to choose their place of residence, subject to legitimate public health and safety concerns.⁴⁷ This is particularly important in the case of densely populated Monrovia where overcrowding has led to sanitation and health concerns. The government can only place limitations on the right to choose where one lives based on significant public safety issues. In Monrovia, this might be the form of zoning

³⁹ African Charter on the Rights and Welfare of the Child Art. 4.1.

⁴⁰ African Charter on the Rights and Welfare of the Child, UN Convention on the Rights of the Child.

⁴¹ CCPR Art. 14.1, CERD Art. 5a, African Charter on Human and People’s Rights Art. 3.1-3.2, Liberian Constitution Art. 11, African Charter on Democracy, Election and Governance (signatory) Art 10.3.

⁴² Liberian Constitution Art. 20b.

⁴³ CEDAW Art. 15.

⁴⁴ CERD Art. 5(d)ii, African Charter on Human and People’s Rights Art. 12.2, OAU Convention Governing the Specific Aspects of Refugee Problems in African Art. 5, Liberian Constitution Art. 13b.

⁴⁵ CEDAW Art. 15.

⁴⁶ African Youth Charter Art. 3.1.

⁴⁷ CCPR Art. 12, African Charter on Human and People’s Rights Art 12.2, Liberian Constitution Art. 13a.

laws or density restrictions, but such limitations would need to be enforced equally and with respect to each individual's right to choose where he lives.

Refugees: Liberia shall assist refugees who are living outside of the country in resettlement and ensure they receive full protection of the same rights that Liberians are entitled to.⁴⁸ Refugees shall not be penalized for having left their country, and Liberia, their asylum country and aid organizations must work together to assist in their return.⁴⁹ Furthermore, Liberia shall “co-operate with the Office of the UN High Commissioner for Refugees.”⁵⁰ The Peace and Security Council for the African Union has a responsibility to help with the “resettlement and reintegration of refugees and internally displaced persons.”⁵¹ These standards require a cooperative approach to resettlement.

Women and Land Reform: Women have a specific right to equal treatment in land reform programs and the government has an obligation to insure that women in rural areas equally participate in rural development.⁵² Liberia has an obligation to increase women's participation in “all aspects of planning, formulation and implementation of post-conflict reconstruction and rehabilitation.”⁵³

Environment and Local Participation in Land Use Planning: The *Revised African Convention on the Conservation of Nature and Natural Resources* states that “parties shall take

⁴⁸ OAU Convention Governing the Specific Aspects of Refugee Problems in African Art. 5.3.

⁴⁹ *Id.* at Art. 5.5.

⁵⁰ *Id.* at Art. 8.1.

⁵¹ OAU Protocol Relating to the Establishment of the Peace and Security Council of the AU Art. 14.3d.

⁵² CEDAW 14.2(g).

⁵³ Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa Art 10.2e.

effective measures to prevent land degradation, and to that effect shall develop long-term integrated strategies for the conservation and sustainable management of land resources.”⁵⁴

Parties are also required to develop land tenure policies to implement these standards, and must take the rights of local communities into account.⁵⁵ Local communities shall actively participate in managing natural resources as a means of promoting local conservation and sustainable use.⁵⁶ The right to land use is limited by the Liberian Constitution to exclude mineral resources, which are owned by the Republic and are to be used for the benefit of all Liberians.⁵⁷

Anti-Corruption: Liberia must work for fair and transparent government⁵⁸ and may require public officials to declare their assets prior to taking office as a means to prevent corruption.⁵⁹ The government shall work to “eliminate all forms of foreign economic exploitation” so that Liberians may benefit from the state’s resources.⁶⁰

This overview of rights for the Liberian people sets the initial framework for any new land management system. Liberia’s treaty obligations and Constitutional provisions provide a progressive platform for the protection of traditionally vulnerable populations such as women, children, and refugees. Women have the same rights to property and judicial review as men as well as special provisions for their inclusion in land reform commissions. Children have a right to inherit property and a right to be heard in court. Refugees have general protections that the

⁵⁴ Revised African Convention on the Conservation of Nature and Natural Resources (signatory) Art. 6.1.

⁵⁵ *Id.* at Art. 6.4.

⁵⁶ *Id.* at Art. 17.3.

⁵⁷ Liberian Constitution Art. 22b

⁵⁸ African Charter on Democracy, Election and Governance (signatory) Art. 3.8-3.9.

⁵⁹ African Convention on Preventing and Combating Corruption Art. 7.

⁶⁰ African Charter on Human and People’s Rights Art. 21.5.

government will work to facilitate their resettlement and protect the right to freedom of movement.

Liberia also recognizes the importance of community participation in managing local natural resources, eliminating foreign exploitation, and improving transparency in government. Provided Liberia faithfully incorporates these rights and standards, the land management policies should adequately protect all aspects of the Liberian population while promoting stability of land tenure.

IV. A Historical Review of Land Reform Models in Post-Conflict Countries

There are several land reform models that have been implemented or attempted in post-conflict countries including: land reform commissions, land dispute courts, customary dispute reconciliation, land registration systems, legislative reform of land laws, and land distribution.

COMMISSION

A land commission typically serves as a neutral review committee of land disputes. The membership of such committees can vary but should be so constituted as to promote fair access to all persons. An effective Land Claims Commission has proven very difficult for other countries to successfully administer. Problems include coordinating international involvement, accessibility, cohesive land management policies, and inadequate resources. Uganda, Kosovo, and Rwanda have all attempted this method to handle land disputes.

Uganda: Uganda's 1998 Land Act created District Land Boards to administer land as well as 4,500 local land committees to support the Boards and handle local land registration and

disputes.⁶¹ The Act's purpose was to develop a land tenure system through decentralized administration. Uganda's 1998 Land Act guarantees considerable rights for women regarding their ability to own and control their land. There was particular attention paid to the rights of rural women. The Act made customary laws null and void if they prevent women and children from inheriting land. The land committees are specifically charged with the protecting "the interests of women, children and persons with disabilities." To ensure this duty is carried out, women are allotted at least 25% of the positions on the land committees and tribunals. Furthermore, in order to transfer land on which a family lives or farms to produce their own food, both the husband and wife must provide written consent.⁶² This commission system actively implemented gender equality standards several years before such guidelines were embodied in *Pinheiro's Principles*. Uganda thoughtfully created procedural safeguards for gender equality, such as the 25% membership quota and joint approval for land transfers.

Kosovo: Kosovo has had tremendous success addressing filed housing restitution claims, with 28,000 out of 29,000 settled and almost half of them already enforced. Their Housing and Property Directorate is administered by the UN Mission to Kosovo. Although the filed applications have been addressed, as of 2006, over 200,000 people remain displaced.⁶³ With its institutional capabilities, the UN has been able to handle the caseload, but opening up the process to the great number of remaining individuals has been unsuccessful because of distrust and cultural barriers. Kosovo took a very different approach than Uganda by relying on international

⁶¹ Aili Mari Tripp, *Women's Movements, Customary Law and Land Rights in Africa: the Case of Uganda*, Africa Studies Quarterly 2 available at <http://www.africa.ufl.edu/asq/v7/v7i4a1.htm>.

⁶² *Id.*

⁶³ CENTRE ON HOUSING RIGHTS AND EVICTIONS, *THE PINHEIRO PRINCIPLES: UNITED NATIONS PRINCIPLES ON HOUSING AND PROPERTY RESTITUTION FOR REFUGEES AND DISPLACED PERSONS* 23 (2006).

oversight and administration rather than localized control. Additionally, international intervention creates its own political problems and may not be a practical solution for many post-conflict countries.

Rwanda: Rwanda established a Land Centre that maintains all land data and provides technical and administrative support to the National Land Commission. The legislature also established land commissions at various levels of government and have a land office in each district to survey land and register titles.⁶⁴ However, this land commission was created in conjunction with new land laws that largely ignored several issues facing the refugee population. Having a good structure is not alone sufficient for effective resettlement. Governments must work to make sure all elements of their land management policies work together for the benefit of all residents.

Analysis: Uganda's localized approach seems to be working as far as protecting the land rights of the most vulnerable population. Kosovo's commission is structured very differently with a centralized international group administering claims. The difference in populations and geography is important to note. Uganda's localized approach is working in an under-developed country with large rural and tribal populations. Kosovo's dense population and proximity to international institutions in Europe might make centralized administration a better choice.

Liberia's needs parallel Uganda's with its large rural population and large number of disputes. However, the dense population concentration in Monrovia might be better served with

⁶⁴ Herman Musahara and Chris Huggins, FROM THE GROUND UP: LAND USE, MANAGEMENT AND TENURE SYSTEMS IN RWANDA 307-09 (2005); *see also*, EUGENE RURANGWA, LAND ADMINISTRATION DEVELOPMENTS IN RWANDA, Expert Group Meeting on Secure Land Tenure: "New Legal Frameworks and Tools," Page 5, UN-Gigiri in Nairobi, Kenya, Nov. 10-12, 2004.

strong international assistance like in Kosovo. Perhaps a combination of the two approaches, rather than an all-or-none approach, would best meet Liberia's needs.

COURT

Using courts to address land disputes at first appears to be a practical method. For most countries, the long-term goal is for land disputes to be integrated into the larger legal system and be adjudicated in courts. However, courts are often weak in post-conflict situations and lack adequate resources for oversight and fairness. Enforcement is a key component of land tenure reform. Similar to land commissions, court adjudication of land claims can bring legitimacy and long-term oversight to disputes while hopefully improving the rule of law. Sierra Leone took a unique approach to using courts to settle land disputes.

Sierra Leone: Sierra Leone continues to support customary law and started a land reform program that places community-based paralegals in chiefdoms because lawyers are not allowed to appear in customary courts. The presence of these paralegals is often enough to curb corruption in the courts, but they also serve as an ear to report serious problems that can then be appealed in the customary court. Paralegals also identify potential internal advocates among the chiefs and elders and can serve as cost-free mediators implementing traditional and modern practices. They also create a link between the two legal systems. Crimes, such as rape, that do not fall under customary jurisdiction can be reported with the help of these paralegals. They also report failures to pay teachers to the Ministry of Education.⁶⁵

⁶⁵ VIVEK MARU, THE CHALLENGES OF AFRICAN LEGAL DUALISM: AN EXPERIMENT IN SIERRA LEONE, *Open Society* 18, 20-22 (Year).

Sierra Leone's innovative approach to judicial enforcement provides an inexpensive means to address the basic issues at a local level. Absent enforcement, tenure systems collapse and can result in more conflict. A separate court system to address land claims would be very costly and make it difficult for poor individuals to get their claims heard. Sierra Leone's system opens up access and helps prevent corruption.

Analysis: In Liberia's rural areas, this approach might assist in communication between government courts and indigenous leaders who resolve land disputes. It could increase education by having a constant source for information.

CUSTOMARY DISPUTE RECONCILIATION

Customary dispute reconciliation is an ongoing method in indigenous communities. However, there is little evidence of countries turning to customary dispute reconciliation during land reform. This may be due to the tendency of national legislation to unify programs and the incompatibility of solidifying property rights with an informal resolution method. The only documented case of traditional mediation is in the Ivory Coast. The government had never planned to include chiefs in mediation, but rather, tribal leaders stepped in when the national reform failed.

Ivory Coast: The purpose of the Ivory Coast's 1998 Rural Land Law was to legalize customary land rights. However, this reform also led to post-2002 conflicts. The government has little control over much of the country, but local chiefs provide land mediation in many cases. This instability associated with the land laws has resulted in very little tenure security. The 1998

Act denied non-citizens the right to own land, thus discriminating against most of the rural poor.⁶⁶

Particular to the Ivory Coast is the lack of control the national government has over many areas of the country. Other post-conflict countries need to assess which regions they can affectively administer and which ones would be better served by increased responsibility for local governments. Ignoring the weak authority of the national government to locally enforce land laws will only lead to more conflict, like Ivory Coast experienced in 2002. Increasing local government involvement, tribal or otherwise, can create a bridge between the two arms of government during the transition out of conflict.

Analysis: Liberian tribal leaders are typically supportive of the national government and also maintain considerable influence over their villages. The Liberian government does not have the same problems with control over rural areas as Ivory Coast, but including tribal leaders in dispute resolutions could be an additional safeguard to peace.

REGISTRATION SYSTEM

Often in conflicts, land registries get destroyed amid the chaos. Additionally, the registry might not have been complete in the first place. Sri Lanka, Guatemala and Cambodia all instituted land registration systems in slightly different forms. In the long-run, every government needs a registry system, but the approach can lead to very different results.

Sri Lanka: Sri Lanka has successfully achieved a strong tenure system, except in the remaining conflict areas. The government has worked to provide fair access to land.⁶⁷ What Sri

⁶⁶ Jean Daudelin, *Land and Violence in Post-Conflict Situations* 16-17 (2003).

⁶⁷ *Id.* at 20-21.

Land Reform in Post-Conflict Developing Countries:
Case Study of Liberia
Alisha Hilde

Lanka has done well is create a clear registry of the land that can be easily surveyed and titled. While the conflict zone remains unregistered, once the country achieves peace, it will have the infrastructure in place to expand its already successful registration system. Additionally, the government has been able to spread out the process over several years rather than being faced with an entire country in need of a registry at once.

Guatemala: Guatemala's land is very fragmented with a large percentage of landless poor. The commercial plots are surveyed and titled, but the same opportunity is unavailable to small plot owners, resulting in extreme inequality. Refugees returning from the 1980s violence added to land insecurity. There is a plural legal regime in Guatemala with regard to land tenure, but the formal side preempts any dispute between the two systems. The Guatemalan government has a sufficient framework for land registry, but its disregard for equal access has kept poor and indigenous groups from securing tenure. Without title, they have very few rights to the land and can be further marginalized. This shows the importance of a cohesive approach to land management.

Cambodia: Cambodia provides an example of what happens when governments do not implement clear registration systems. Most of Cambodia's land records were destroyed during periods of conflict. In 1989 Cambodia had a period of land grabbing with titles readily given to whoever claimed the land. However, as of 2000, only 10% of parcels of land had titles. The 2001 Land Law tried to restore land title but in reality only froze land ownership based on occupancy. Much of this freeze is due to the government's disinterest in enforcing the 2001 Act. As many as 10,000 land dispute claims are clogging the court system, with many more not even brought to the courts. The few land plots with titles are often very small. Poor, female-headed households

have all but been left out of land access. Much of the tenure instability is due to weak governance. There is effectively no land registry system and only a weak judiciary. Disputes are left up to corrupt local authorities to resolve.⁶⁸ Cambodia's approach to land registry follows the idea that every country should have a land registry, but the planning did not go beyond that basic concept. Incomplete registries do not improve stability. Residents are left wondering about ownership with no incentive to bring their dispute to court. The ineffective registry increases frustration and does nothing to resolve disputes.

Analysis: Sri Lanka seems to have the most successful program. However, the success is concentrated in densely populated areas without conflict. Whether this success is a product of a well-designed system rather than ideal conditions is undetermined. Guatemala's registration system failed to ensure protection for the marginalized population and to provide access to title services, the costs of which are prohibitively high. The problem in Cambodia is the lack of enforcement and support of the national government. An act creating a registration system without enforcement resulted in no system at all. Other post-conflict countries should take the interests of the poor, women, and children into account and work to keep access costs low to ensure equal participation. A key factor in a successful registration system is a strong national government that can back up the title claims. Liberia should implement a clear method of registering land and then perhaps take Sri Lanka's approach by implementing it first in areas where success can be readily achieved. Inserting protections for minorities and vulnerable persons will promote justice and compliance with international human rights standards.

LEGISLATIVE REFORM

⁶⁸ *Id.* at 19-20.

Legislative reform of land laws has been tried in several African countries with varying degrees of success. Government leaders often turn to legislative reform as a way to appease constituents looking for results. But legislative reform takes time, and how it is designed can drastically influence its effectiveness. Tanzania, Rwanda, Mozambique, Eritrea, Burundi, and Kenya have all instituted land reform legislation, and while this is ultimately an important element in promoting peaceful dispute resolutions, overemphasis on this method at the expense of other approaches can lead to inadequate results.

Tanzania: Tanzania instituted rather extreme land reform measures in the 1999 Land Act. The goal was to make land control a local issue so as to prevent the “appropriation of customary land by wealthier outsiders.”⁶⁹ Land administration is controlled by each village’s elected government. This includes adjudicating disputes, registering and issuing title to land, as well as dispute resolution. This highly decentralized system is comprised of 9,225 administrations that control all but government owned property.⁷⁰

The 1999 Land Act as well as the 1999 Village Land Act provided rights for women to “acquire, use and deal with land.”⁷¹ Women are also guaranteed positions within land administrations and tribunals. Furthermore, if customary law denies women property rights, such as the rights to use, transfer or own land, the custom is overridden by the federal legislation.

⁶⁹ Aili Mari Tripp, *Women’s Movements, Customary Law and Land Rights in Africa: the Case of Uganda*, Africa Studies Quarterly 2 available at <http://www.africa.ufl.edu/asq/v7/v7i4a1.htm>

⁷⁰ *Id.*

⁷¹ *Id.* at 4.

Land Reform in Post-Conflict Developing Countries:
Case Study of Liberia
Alisha Hilde

Women are also protected in their right to co-occupancy.⁷² Tanzania and South Africa are the only African countries that require co-ownership of land for husband and wives.⁷³

This legislation closely mirrors the commissions in Uganda. Both have safeguards of gender equality and both rely on decentralized systems of management. Tanzania went further by fully decentralizing land and making it a purely local issue. The problem this may lead to is lack of uniformity across the country.

Rwanda: Important aspects of Rwanda's 2005 land reform policy include: "1) consolidation of land, 2) access to land for the landless, 3) land registration, 4) abolition of customary systems, 5) addressing inequalities in land ownership, 6) villagization, and 7) land use and environmental protection."⁷⁴

Consolidation of land is designed for families who own small parts of land to unify their land and work it collectively. New land laws abolished the customary system along with customary inheritance rights that created these small, portioned plots.⁷⁵ The goal is to make land plots not less than 1 hectare. Unfortunately, this new inheritance law has led to an increase in land disputes within families.⁷⁶ The government is also working to address housing needs to avoid the creation of more "slums" as land consolidation moves the poor into urban areas.⁷⁷

⁷² *Id.*

⁷³ *Id.* at 6.

⁷⁴ Herman Musahara and Chris Huggins, FROM THE GROUND UP: LAND USE, MANAGEMENT AND TENURE SYSTEMS IN RWANDA 311 (2005).

⁷⁵ *Id.* at 321.

⁷⁶ *Id.* at 316.

⁷⁷ *Id.* at 309.

The land policy defines the landless only as “Rwandans who fled the country after 1959 or later and stayed outside the country for more than ten years.”⁷⁸ This appears to primarily benefit the Tutsis, and the ten-year time minimum may violate international law. There is no specific mention of the refugees who fled the genocide and have since returned.⁷⁹ It does say that the “land of genocide survivors and orphans will be leased out for them.”⁸⁰ This is supposed to promote an efficient use of the land because the owners in many cases cannot cultivate their property.⁸¹

Land is also allocated to individuals who make an application accompanied by a development plan. In 1999, Rwanda changed statutory inheritance laws to elevate female children to the status of males and ensure equal rights of property inheritance. However, this right actually only applies to married women, with unmarried women excluded. Many women are prevented from marrying because of the expense and instead opt for long-term cohabitation. The actual legal rule is very ambiguous.⁸² One scholar recommended that Rwanda’s land reform policies should first be tested in smaller areas to better understand the effects on the poor.⁸³

The addition of women into the land market has put pressure on land administrators in rural areas, and the law prohibiting plots less than 1 ha. is difficult to enforce. Rwanda has attempted group settlements known as villagization. Whether this is a successful method is still

⁷⁸ *Id.* at 317.

⁷⁹ *Id.* at 317-18.

⁸⁰ *Id.* at 317.

⁸¹ *Id.*

⁸² *Id.* at 324-25.

⁸³ *Id.* at 330.

unknown.⁸⁴ The capital Kigali has an effective title program run by a Kenyan company called GeoMaps, but registration of all 1.5 million land plots poses difficult problems. The question of who will pay for the surveys remains unanswered.⁸⁵

Mozambique: Mozambique has accomplished very little in land administration as far as surveying, registering, and drawing boundary lines is concerned. There is no comprehensive national administration. A major problem is the growing number of foreign investors who take over lands where the owners have no titles, most often the poor. Furthermore, these wealthy investors can afford to have their land surveyed and titled, while those whose land is taken have no means of redress. Drastic changes in land laws make determining ownership all the more difficult. Community rule was codified in 1997 requiring community approval before land disputes can be appealed. This works to protect the authority of the local leaders and customary law.⁸⁶ While relying on customary rule in hard to regulate areas has its benefits, the inability of the government to resolve land disputes weakens its authority. However, there does not appear to be any movement toward violence.⁸⁷ In Mozambique, the government has created land laws but not with a comprehensive approach or long-term goals. This ad-hoc approach does not seem to be making things worse, but other post-conflict countries might not be as fortunate.

Eritrea: Following thirty years of war, the newly formed Eritrean government amended its Civil Code to include the 1994 Land Proclamation. Included in this were many rights for women, such as the right to own and inherit land. It also prohibited “discrimination based on sex,

⁸⁴ Herman Musahara & C. Huggins, Land Reform, Land Scarcity and Post Conflict Reconstruction: A Case Study of Rwanda, *ECO-CONFLICTS*, Oct. 2004, at 1,1-3.

⁸⁵ *Id.* at 319-20.

⁸⁶ JEAN DAUDELIN, *LAND AND VIOLENCE IN POST-CONFLICT SITUATIONS*, 17 (2003).

⁸⁷ *Id.* at 17-18.

ethnicity, or religion.”⁸⁸ Despite these legal rights, women are still denied ownership of their land.⁸⁹ Eritrea made a bold statement and set up fundamental rights for equality in land ownership. However, there was no follow-up or comprehensive approach to implementing these new rights. Putting rights into law is a good first step but does little for the practical aspects of how the government will run its land management system.

Burundi: In Burundi, the main threat to security of land tenure is returning refugees. Once the 500,000 refugees fled from the civil war in the 1970s, others moved onto their land. The government has yet to successfully address the land rights of what amounts to 10% of the current population. In many cases, the secondary occupants have already passed down the land to the next generation. Burundi does have a successful plural regime where the formal laws apply to state government and urban and commercial areas and customary laws govern rural lands. The main problem with the customary rule is that because it is unwritten, people are unable to have definite boundary lines. Vague inheritance laws as well as denied inheritance rights to women also pose a threat to tenure security.

Kenya: Kenyan women cannot register property unless their husbands provide written consent nor are they represented on land tribunals⁹⁰ Kenya’s failure to include women in its land management system not only violates their individual rights to own property but also leaves them open to increased marginalization if their husbands die, if their husbands are cruel, or if their husbands are poor managers of their estate. A woman bringing a claim before a land tribunal is not likely to receive fair treatment in a system where her rights to own land are ignored.

⁸⁸ Aili Mari Tripp, *Women’s Movements, Customary Law and Land Rights in Africa: the Case of Uganda*, *Africa Studies Quarterly* 4 available at <http://www.africa.ufl.edu/asq/v7/v7i4a1.htm>.

⁸⁹ *Id.*

⁹⁰ *Id.*

Analysis: Tanzania took the most drastic approach by localizing land control. Like Uganda, there are thousands of local land commissions. Women received considerable protections in the reforms as well. Rwanda would appear to be a good model for largely rural post-conflict countries; however, the great failure of Rwanda's land reform is that it specifically did not address the 1990s genocide refugees. Rwanda's reform addresses important problems but does not address the problems in connection with one another and leaves out significant issues. Eritrea's reforms protect the marginalized on paper, but their rights are still denied. Any land legislation Liberia adopts needs to be part of a comprehensive plan that considers all aspects of a country's land management needs.

LAND REDISTRIBUTION

Land redistribution occurs when the government takes control of land, usually from wealthy land-owners, and parcels it out to others, usually the poor or minorities. Zambia and Zimbabwe attempted land redistribution with widely different results, but redistribution might succeed with a cooperative approach involving all stakeholders.

Zambia: The Zambian government has committed to enforcing the provision in their National Lands Policy that provides for 30% land ownership for women. The government tries to negotiate with tribal leaders to more equitably allocate the land.⁹¹ Zambia's approach seems to be a good model. It sets a realistic goal for women's land ownership and is working with tribal leaders to reach this goal.

Zimbabwe: Zimbabwe's 2000 accelerated Land Reform and Resettlement Implementation Plan (the "fast-track" program) provided a 20% land allocation quota for

⁹¹ *Id.*

women, however, women were largely left out of the reform process and only small percentage of women were allotted land during the resettlement.⁹²

Additionally, the 1998 Draft Land Policy provided married women the right to register their land jointly with their husband. Despite this right of joint ownership, married women are routinely asked to only register under the husband's name.⁹³ A 1999 Supreme Court ruling further diminished women's rights to land inheritance and held that women were "minors" and because of cultural norms, were not to be treated equal to men.⁹⁴ The political problems plaguing Zimbabwe make analysis difficult. What could have been effective policy was corrupted by ineffectual leadership. Whether such policies would work in other post-conflict countries is unknown.

Analysis: In Liberia, it would be prudent to limit any redistribution programs to the community based method employed in Zambia. This might be particularly effective in rural villages as a guide to tribal leaders when allocating land.

V. Factors Specific to Liberia affecting Land Reform

a. *Current state of land management*

Liberia's dual land tenure system complicates development because it "seriously restricts land ownership by both Liberians and foreigners."⁹⁵ Companies are unwilling to invest in land where the law is complicated by two competing legal systems, the customary law of indigenous

⁹²*Id.* at 3.

⁹³ *Id.*

⁹⁴ *Id.* at 3-4.

⁹⁵ AFRICAN ECONOMIC OUTLOOK, LIBERIA 364 (2008).

Liberians and the statutory tenure brought by American settlers.⁹⁶ The Ministry of Lands, Mines & Energy reports receiving one hundred new complaints each day. The three main areas affected by the tenure system are mining, forestry, and private property. Improving the tenure system is a necessary prerequisite to long-term economic growth and stability.

i. Mining

Before the civil war, mining made up 25% of the GDP, but now, it comprises almost no share in GDP. With the UN lifting of the diamond export embargo in 2007, the potential for increased production is very high.⁹⁷ However, mining claims are confusing because many concessions encompass the same land. Some of these claims even extend to nature reserves.⁹⁸ Also, the diamond industry has not undergone any reform and the same complaints communities had before the war, about not receiving any of the profits, remain.⁹⁹

ii. Forestry

After the Forestry Concession Review Committee determined that every concession and claim to Liberian public forests was illegal, President Johnson-Sirleaf voided all agreements in 2006. This effectively cleared the way for reform. However, this reform has not been carried out with a clear, national policy but rather with an ad-hoc approach, based on the preferences of individual ministries. The Forest Development Authority wants to transfer more control to local communities, but this is still in the planning stages.¹⁰⁰

⁹⁶ THE HUMAN SECURITY PROJECT, LAND GRABBING AND LAND REFORM 15 (2007).

⁹⁷ AFRICAN ECONOMIC OUTLOOK, LIBERIA 365 (2008).

⁹⁸ GOVERNANCE REFORM COMMISSION, CONCEPT PAPER: THE WAY FORWARD: LAND & PROPERTY RIGHTS ISSUES IN THE REPUBLIC OF LIBERIA, 4(2007).

⁹⁹ THE HUMAN SECURITY PROJECT, LAND GRABBING AND LAND REFORM 3 (2007).

¹⁰⁰ *Id.*

The U.N Security Council's timber sanctions were lifted only after these new forestry laws were created in October 2006. These laws removed the need for competitive bidding for logging on private land, but the definition of "private land" is vague. Logging companies are quickly working to take advantage of this ambiguity at the expense of public forests.¹⁰¹ The National Reform Forestry Law of 2006 provides that local communities will receive some of the revenue from forestry production. However, the weight of communities' forestry rights remains unclear.¹⁰² With forty-five percent of Liberia's land covered in forest,¹⁰³ citizens expect President Johnson-Sirleaf to make good on her promise that local communities and civil society would have a large role in forestry management.¹⁰⁴

iii. Private and Community Property

After land owners fled during the war, their land was often sold with little regard as to the rights of the original owner. Hurdles to reconciling these land claims include overworked judicial and administrative systems, the destruction of records during the war, the lack of qualified officials to oversee the complaints, and corrupt surveyors who are taking advantage of the ambiguous laws. Land disputes currently make up about 90% of all civil cases, while the resolution of land disputes under customary law overseen by elders and commissioners is relatively unknown. Some larger rural land claims are being heard by legislative representatives.¹⁰⁵

¹⁰¹ GOVERNANCE REFORM COMMISSION, CONCEPT PAPER: THE WAY FORWARD: LAND & PROPERTY RIGHTS ISSUES IN THE REPUBLIC OF LIBERIA, 4 (2007).

¹⁰² THE HUMAN SECURITY PROJECT, LAND GRABBING AND LAND REFORM 9 (2007).

¹⁰³ *Id.* at 8.

¹⁰⁴ *Id.* at 9.

¹⁰⁵ GOVERNANCE REFORM COMMISSION, CONCEPT PAPER: THE WAY FORWARD: LAND & PROPERTY RIGHTS ISSUES IN THE REPUBLIC OF LIBERIA, 3 (2007).

The war led to an increase in jurisdictional units with no regard for overlapping boundary lines. State-supported customary law still governs clans and chieftaincies, but the lines of where those areas stop and where the statutorily governed cities and towns begins creates jurisdictional chaos. Other disputes arise where communities and homes were completely destroyed during the war. Delineating property lines is very difficult when the house is no longer there. Rural communities can no longer see their borders and so, the courts are inundated by requests for boundary line settlements. Also, concerns over the legal authority of city officials to sell land or grant secondary occupants' rights further contention.¹⁰⁶

Customary law is based on usufruct rights, and many rural youth are frustrated that chiefs can sell community land, similarly to a feudal system where “the deeded owner can exclude the local population from any use of the land.”¹⁰⁷ Unemployed youth turn to “illegal mining, chainsaw logging, hunting, illegal rubber tapping and sale and organized, gang-style crime.”¹⁰⁸ While sometimes lucrative, illegal work is not stable, leaving young people more susceptible to recruitment by future rebel groups.¹⁰⁹

The inability of current land management laws to prevent further conflicts supports the need for changes in Liberia's land management system. However, any laws must fit within Liberia's commitments to international and regional treaties as well as comply with basic international human rights standards.

VI. Recommendations for Liberia

¹⁰⁶ *Id.* at 4.

¹⁰⁷ *Id.* at 5.

¹⁰⁸ REPUBLIC OF LIBERIA, PRIORITY PLAN FOR PEACEBUILDING FUND (PBF): LIBERIA 5 (2008).

¹⁰⁹ *Id.*

a. Stakeholder Recommendations

Land reform discussions should include multiple sectors “coordinated under a single governmental umbrella.”¹¹⁰ Stakeholders include government agencies, civil society, the private sector, communities, and international partners.¹¹¹ I interviewed three types of stakeholders experienced in land management in June 2009 – tribal leaders, government officials, and non-governmental organization (NGO) leaders in Monrovia and Nimba County – to gather their recommendations on how Liberia should address land reform and how the Land Reform Commission should proceed. The following sections summarize each stakeholder group’s assessment of the current state of land management and the frequently mentioned recommendations.

i. Tribal Leader Recommendations

According to the tribal leaders, prior to the war people purchased land from them through a “gentleman’s agreement.” However, they stated that many witnesses to these transactions have since passed away and the transaction might not have been documented. Tribal leaders feel that the lack of a record of ownership is one of the root causes of land disputes in Liberia. These stakeholders did not feel that land disputes could properly be settled by the government because that singular avenue of intervention lacks follow-up.

Tribal leaders report that land disputes decrease when development projects begin and residents understand what the land will be used for. They believe agricultural and vocational education is especially important for those people born between 1990 and 2004 because they

¹¹⁰ GOVERNANCE REFORM COMMISSION, CONCEPT PAPER: THE WAY FORWARD: LAND & PROPERTY RIGHTS ISSUES IN THE REPUBLIC OF LIBERIA, 5 (2007).

¹¹¹ *Id.* at 6.

Land Reform in Post-Conflict Developing Countries:
Case Study of Liberia
Alisha Hilde

missed a significant amount of education. Additionally, they think planning programs should be targeted wisely and that if a particular population is primarily elderly, then programs should be geared toward the short-term.

Tribal leaders assert that communication between stakeholders can be improved by inviting them to visit, and by holding community meetings in which they can explain a particular situation and villagers can ask questions and give their opinion. They believe public forums, town meetings, and dramas are helpful because they allow for illiterate individuals to participate in the process. Tribal leaders think other stakeholders should be interested in the well-being of the people and that NGO and government officials should be frank in telling villagers what is possible with any proposed interactions. They think communication will be improved if food is provided to the villagers at meetings as they would have to travel to attend or alternatively, if NGOs and government officials came to the villages. If an NGO is going to help settle a dispute, the tribal leaders request that they use their traditional methods and get the elders involved.

Most of the tribal leaders reported lack of infrastructure as the primary barrier to cooperation. They explained that villagers lack the financial resources and transportation necessary to travel but if there were a good road, the villagers or the other stakeholders could visit more freely and subsequently, communicate their goals more clearly, thus reducing conflict. The tribal leaders asserted that different cultural (or tribal) backgrounds can make cooperation difficult as well.

The tribal leaders expressed their opinion that the best way to deal with indigenous people is through family heads and through the chief system and that it is better to let people resolve their conflict among themselves. Only if parties are then not satisfied do tribal leaders

think disputes should be taken to the county level or district officers who would then take the dispute to the Ministry of Internal Affairs.

Tribal leaders think that there should be specific procedures to follow to establish ownership and that what belongs to the community should be specified in clear terms. They recommend first obtaining a clear history of the land at the center of a dispute and then having all concerned parties brought to a forum to sit down and talk.

The tribal leaders recommend that the Land Reform Commission wait to intervene in indigenous land disputes until invited by the tribe and that when invited, the Commission should first go to the tribal people to determine the tribal boundary and give all parties to have an opportunity to speak and be heard.

ii. NGO Recommendations

NGO officials report that the majority of land disputes occur when the same land is sold to several people and that fraudulent sellers of land deeds are going unpunished. They state that these “sellers” will create a fake deed, back-date it, and then sell it to another person with the seller suffering no repercussions. NGO officials consider the fraudulent seller to be the one corrupting the system and that the seller should be punished twice as much as any other party.

NGO officials report that the majority of disputes are intratribal disputes where a tribal certificate exists but that problems arise because land issued under tribal certificates, unlike government issued deeds, was not surveyed. Additionally, they assert that widows are not receiving adequate protections of their land inheritance rights nor are widows aware of their rights and are thus susceptible to unscrupulous individuals trying to take their land.

Land Reform in Post-Conflict Developing Countries:
Case Study of Liberia
Alisha Hilde

According to the NGO officials, disputes arise frequently when farmland is at issue and when development programs bring amenities (e.g. schools, roads) as people begin fighting for places that are more accessible to these amenities. However, they think that if there were a good road network, farmers could live in one area and easily travel to their farm in the bush. They also attest to a great need for skills training because without education, villagers will continue to misconstrue and misinterpret information. Once new land legislation is in place, NGO officials emphasize the importance of educating all the stakeholders on the new policies because villagers believe that because they were born in a certain place, they automatically own the land.

NGO officials state that consistent dialogue through meetings and activity-oriented interaction (e.g. workshops) will improve communication between stakeholders and that visual programs, like brochures, are necessary because most people are illiterate. They state that videos, brochures, and leaflets should be in Liberian English and simple enough for even a child to understand.

When the Commission arrives in a village, the NGO officials think the Commission should send someone out who knows how to communicate in the local dialect to explain the nature of the program and tell the villagers to pass the information on to their households. The NGO officials assert that negotiation unites people and that disputes must always be solved at the root, with the legal arena being the last avenue of resolution. They recommend that the national government not get involved in local land disputes without first learning about the history of that piece of land from the community and that land disputes should be resolved as close to the local level as possible with an appeals process. They are also concerned that the Commission be aware of the rights of vulnerable populations like women and indigenous people.

The NGO leaders explained that once land tenure is established, people will need grants to start developing that land. Additionally, they think asking people to pay taxes on inherited land when they have no money is unfair. Once tenure is secured, the NGO officials predict that people will invest more in their property, they will not waste time and money settling disputes, and externally-financed development programs will be more willing to enter a community where tenure is established and disputes are limited.

iii. Government Officials

Liberian federal government officials report that in every locality, there is a committee set up to resolve land disputes and that this is good because lawyers are not necessary and disputes can be settled traditionally. The officials agree with the other stakeholder groups in that disputes should first be handled by the community, and only if not resolved, should the courts be involved. They state that most conflicts occur where there is no boundary and parties lack a proper deed; however, there is not enough manpower to survey all the land. These officials like the work that some NGOs do in investigating traditional boundaries and guiding the parties through the process of making the boundary legitimate. They also think group farming is good at bringing people from different backgrounds together but that cash crops such as rubber incite disputes.

Government officials state that education is very important and that people need to know that if they do not have a deed, then they do not own the land. Additionally, they think that all stakeholders should be included in decision-making including youths and women. And as the other stakeholder groups reported, government officials agree that the radio, role playing and dramatizations in Liberian-English will best communicate the new land dispute procedures

because most people are illiterate. They recognize that the Land Reform Commission should be sensitive to and respect the traditional people's dispute resolution practices but think there should be a special court to try land dispute cases quickly. However, they also think that these courts should look further than the "date" of the deeds presented because these are often back-dated fraudulently. Additionally, they assert that defense attorneys should be provided, and money should not be a precondition to justice.

b. Stated Policy Objectives

i. Urgent Issues

The Governance Reform Commission (GRC) emphasizes the need for immediate interim procedures so that land transactions and stability can improve even while the final land reform decisions are still being debated. They list several urgent issues that must be addressed: boundary line disputes between clans and towns; resistance from residents when attempting to survey urban lands; and the saturated court logs dealing with very similar disputes.¹¹²

ii. Workshops/Education

The GRC suggests that national and regional workshops could help educate the public on the work being done toward land reform.¹¹³ This policy objective stems from a negative experience when the GRC failed to seek the input of and educate the miners and trade associations on one of its projects. The Land and Mines Ministry tried to survey a diamond camp, nicknamed Paris, in March 2007. However, the survey team failed to get the local Tassu elders' permission. The elders have traditional claims to the land and were enraged by what

¹¹² GOVERNANCE REFORM COMMISSION, CONCEPT PAPER: THE WAY FORWARD: LAND & PROPERTY RIGHTS ISSUES IN THE REPUBLIC OF LIBERIA, 5, 7 (2007).

¹¹³ *Id.* at 5-6.

appeared to be the Ministry validating the mine operator's claim to Tassu lands. The survey team belatedly tried to engage the miners and elders in talks but ultimately called in police back-up. The Tassu people and miners drove the police and ministry department away from camp Paris at machete point. The failure of the police to enforce government authority reinforces the importance of working with local communities and receiving their input and partnership on land reforms.¹¹⁴

The GRC has several groups working on information workshops to educate citizens on the land reform process. These groups are also looking for potential members for a Land Reform Congress that will decide the details of reform.¹¹⁵ According to the Liberian Priority Plan for Peacebuilding Fund (PBF), part of this process should include education on how a citizen can ultimately obtain his own land. It states that it a critical component is having a clear process for allocating land.¹¹⁶ The PBF also asserts that communicating the time-table for reform is critical to maintaining realistic community expectations and to preventing uprisings.¹¹⁷ Additionally, the GRC's stated goals of speedy reform and public participation will require increased investment in public outreach.¹¹⁸

The PBF plan includes institutionalizing conflict management by training government officials in conflict sensitivity and human rights to promote reconciliation. It asserts that promoting sensitive approaches to debates between political leaders will promote healing as

¹¹⁴ THE HUMAN SECURITY PROJECT, LAND GRABBING AND LAND REFORM 7-8 (2007).

¹¹⁵ *Id.* at 16.

¹¹⁶ REPUBLIC OF LIBERIA, PRIORITY PLAN FOR PEACEBUILDING FUND (PBF): LIBERIA 5 (2008).

¹¹⁷ *Id.*

¹¹⁸ THE HUMAN SECURITY PROJECT, LAND GRABBING AND LAND REFORM 16 (2007).

well.¹¹⁹ The GRC recommends implementing many of these programs by using the University of Liberia as a non-partisan training-ground.¹²⁰

iii. Legal Reform

If multiple systems of laws are clearly articulated, they can co-exist effectively, particularly where customary law meets the needs in areas that the state-run system cannot effectively enforce its decisions.¹²¹ The PBF recognizes this possibility and recommends reconciling the statutory and customary legal codes.¹²²

The GRC plans to research customary law and how it is currently being executed.¹²³ It cites the lack of access for women who are traditionally shut-out of control over their clans' land as one problem with customary law. However, the GRC recognizes that formalizing all customary lands to tenured status would require an increased incidence of literacy to prevent abuse. Jean Daudelin, a scholar in land post-conflict land issues, asserts that in many societies, the poor are often shut out of the legal system, and that customary legal traditions might actually better protect the rights of poor clan members because of the close family connections and community relationships.¹²⁴ The GRC expands on this by recognizing that people who traditionally would have obtained land through customary rights might not be able to meet the financial requirements of statutorily deeded land.¹²⁵

¹¹⁹ REPUBLIC OF LIBERIA, PRIORITY PLAN FOR PEACEBUILDING FUND (PBF): LIBERIA 4 (2008).

¹²⁰ GOVERNANCE REFORM COMMISSION, CONCEPT PAPER: THE WAY FORWARD: LAND & PROPERTY RIGHTS ISSUES IN THE REPUBLIC OF LIBERIA, 6 (2007).

¹²¹ JEAN DAUDELIN, LAND AND VIOLENCE IN POST-CONFLICT SITUATIONS, 4-5 (2003).

¹²² REPUBLIC OF LIBERIA, PRIORITY PLAN FOR PEACEBUILDING FUND (PBF): LIBERIA 6 (2008).

¹²³ GOVERNANCE REFORM COMMISSION, CONCEPT PAPER: THE WAY FORWARD: LAND & PROPERTY RIGHTS ISSUES IN THE REPUBLIC OF LIBERIA, 5 (2007).

¹²⁴ JEAN DAUDELIN, LAND AND VIOLENCE IN POST-CONFLICT SITUATIONS, 6, 8 (2003).

¹²⁵ GOVERNANCE REFORM COMMISSION, CONCEPT PAPER: THE WAY FORWARD: LAND & PROPERTY RIGHTS ISSUES IN THE REPUBLIC OF LIBERIA, 4(2007).

The GRC's policy recommendations include research and judicial determinations of contentious issues such as "adverse possession," the granting of land title to someone who has occupied it without complaint by the actual owner, and "aboriginal deeds," the title certificates issued by tribal leaders.¹²⁶ This will reduce the court's docket and encourage immediate settlement of multiple land disputes.

The Human Security Project, a research center focused on political violence, identified other problems stemming from lands abandoned during the violence. Their report details how new residents have made abandoned land claims, but as former refugees return, conflict over what constitutes "abandonment" will surely arise. They assert that the destruction of archives of land titles during the violence further complicates the problem and that a legal rule addressing this broad and sensitive category of disputes would help mitigate frustrations.¹²⁷

iv. Subsurface mineral rights

According to the Human Security Project, all subsurface mineral rights belong entirely to the Liberian government.¹²⁸ However, when natural resources are found under customary lands, the Human Security Project speculates that the government will face extreme opposition to a forced relinquishment of those subsurface rights. They believe this issue needs to be resolved with input from all stakeholders before conflict erupts. The Human Security Project also asserts that, unlike in forestry reform where civil society has a clear role in oversight, the diamond

¹²⁶ *Id.* at 5.

¹²⁷ The Human Security Project, LAND GRABBING AND LAND REFORM 16 (2007).

¹²⁸ *Id.* at 15.

sector has not sought any community input in legislative changes and that ignoring key actors in an attempt to quickly maximize profits does not promote long-term stability.¹²⁹

v. Community-based efforts

Current Liberian Land Reform Commissioner Amos Sawyer documented an interesting community-based solution to a conflict in the Nimba region of Northern Liberia. He reports that the Manos and Gios claimed to have revoked the Mandingos' customary use rights to their traditionally shared land while the Mandingos claimed that the government granted them rights to the land through licensing. Comr. Sawyer states that educated children of a Mano/Gio father and Mandingo mother served as a tool of communication and conflict resolution for the groups. He attests that the ultimate resolution held that any land sold or given to Mandingos in urban areas belongs to Mandingos, and since 2000, mining claims through the Ministry of Lands, Mines and Energy are unofficially considered on an alternating basis between the various groups. Additionally, he notes that many of these discussions occurred in Monrovia, where emotional bias is less strong.¹³⁰

Cmmr. Sawyer reports that southeastern Liberia does not benefit from the same elder system in Northern Liberia that more readily allows for community conflict resolution and that the Kru and Sap0 rely exclusively on their educated sons living in Monrovia to deal with reconciliation and disputes. He points out that these external actors are influencing development in their rural homelands as well as organizing meetings between the ethnic groups when disagreements arise. Because these actors are not local, he asserts that reconciliation has not

¹²⁹ *Id.* at 6.

¹³⁰ Amos Sawyer, *Social Capital, Survival Strategies and Their Implications for Post-Conflict Governance in Liberia*, Workshop in Political Theory and Policy Analysis Indiana University 13 (2004).

happened as quickly as elsewhere. He also states that, while other areas of the country began reconciliation before the war ended, the location of community leaders in Monrovia meant that Charles Taylor had a large influence on their “decisions” up until he lost power in 2003.¹³¹

Cmmr. Sawyer reports another significant problem in that the government has focused on reconciliation in perceived ethnic inequalities in government positions as opposed to reconciling the grave harms groups committed against one another. He states that when decisions about government positions are irreconcilable, the communities respond by asking for a separate district rather than have someone from another tribal group be in authority over them.¹³² This practice cannot continue because it increases bureaucracy and ignores ethnic tensions.

The GRC calls for a “shared national vision of what land and property rights should be in Liberia.”¹³³ Mr. Daudelin expands on this by asserting that Reforms should not be based solely on a desire for peace but rather on policies that will promote “access, secure tenure and fair distribution of land holdings.”¹³⁴

VII. Conclusion

While the remnants of war can make rebuilding a nation very difficult, the consequences of not taking immediate and meaningful action can have long-term consequences. As seen in countries where governments merely wrote new land laws without enforcement mechanism, those countries have continued conflict. But even in countries where reform has been sidelined and peace exists, development has not taken root. Property rights are an essential element to

¹³¹ *Id.*

¹³² *Id.* at 14.

¹³³ GOVERNANCE REFORM COMMISSION, CONCEPT PAPER: THE WAY FORWARD: LAND & PROPERTY RIGHTS ISSUES IN THE REPUBLIC OF LIBERIA, 5 (2007).

¹³⁴ JEAN DAUDELIN, LAND AND VIOLENCE IN POST-CONFLICT SITUATIONS, 26 (2003).

Land Reform in Post-Conflict Developing Countries:
Case Study of Liberia
Alisha Hilde

economic development, and economic development is a key way to ensure lasting peace. When people are not confident in the legitimacy of their titles, they are reluctant to invest money and labor into improving that land.

Liberia should capitalize on the optimism of citizens post-conflict and provide clear mechanisms for property dispute resolution. By engaging communities in the development of the process, “buy-in” increase. More importantly, community engagement ensures that whatever process is ultimately decided upon will actually meet the needs of citizens. People in post-conflict want peace above all. Once fighting stops, people are eager to keep it at bay. They have energy and community will.

Sending out representatives to communities around the nation to determine what types of disputes communities are facing will help create an overview of the issue. If those same national representatives are sent out to answer specific objectives of dispute resolution, then the overall land policy will have a more uniform implementation. Specific objectives would include 1) How does one bring a dispute, 2) To whom, 3) What must be proven, 4) How can you appeal. This simple framework, combined with the recommendations of communities around the nation will allow national policymakers to craft useful legislation in a fairly expedited manner.

Communicating with citizens about the process and expected implementation of new policies will help reduce violence over land. All three stakeholders groups emphasized the importance of effectively communicating any new policies to the predominately illiterate population. By presenting information and requests for participation in a multi-media or graphic format, a significantly larger share of the population will be included. People will have hope and feel engaged in the process. They are also more likely to support the process once implemented.

Land Reform in Post-Conflict Developing Countries:
Case Study of Liberia
Alisha Hilde

Most importantly, Liberia should have a comprehensive plan. There is no evidence that any one set of actions is the best method. What works for different nations will depend on cultural values, and those values need to be included in any policy reforms. However, ad hoc measures to address land policy have proven ineffective. Policy makers must weigh all elements in formulating policy, including land acquisition and title registry, dispute resolution, community involvement, and any other country-specific issues. Taking a positive and comprehensive approach to reforming land policy will not only strengthen land laws, but will strengthen Liberia's legitimacy as a government and promote lasting peace.