Note on Tribal Reserves and Formal Transfer Rights for Customary Land

Information for this note comes from a memorandum on the History of Community Land under Liberian Law, submitted to the Commission on February 3, 2012.

The Aborigines Law (1956) is likely the origin of Tribal Reserves, although it does not use the term. It indicates that indigenous lands are public land with merely a use and possession right.[1] The law states, "Each tribe is entitled to the *use* of as much of the *public land* in the area inhabited by it as is required . . . ."[2] The law continues, "The omission of a tribe to have its territory [] delimited shall not . . . affect . . . its right to the *use of the land*."[3] Upon request of the Tribal Authority the Government was empowered to survey and demarcate tribal land.[4] The Supreme Court interpreted this first section of the statute to mean that tribes are entitled to "only beneficial occupancy to lands publicly owned."[5] There is no mention of restrictions on transfer or transfer rights generally. However, because the land covered by the Tribal Reserve is public land, the drafters probably thought there was no need for such a provision.

As mentioned above, neither the Aborigines Law (1956) nor its predecessors use the term Tribal Reserve. Only three statutes refer to Tribal Reserves: the Registered Land Law (1974),[6] and the Public Lands Laws of 1956 and 1973.[7] The Public Lands Laws require the Land Commissioner to certify that the land proposed for sale is not part of a Tribal Reserve.[8] The Registered Land Law provides for the surveying and registration of Tribal Reserves, suggesting that they are an encumbrance on otherwise public land.[9] Only four Supreme Court cases refer to Tribal Reserves[10] and none of them explain its meaning or discuss transfer rights.[11] The term may have arisen to describe the use and possession right under either the Aborigines Law (1956) or the Hinterland Regulations (1949). However, it is curious that neither of the possible originating laws use the term.

With regards to transfer rights, a 1924 law barred any transfer ("grant, bargain, sell or otherwise") of "communal lands" to a non-community member. This might have been passed in response to problems created by a 1905 law that permitted the President to issue deeds to "aboriginal townships" (i.e. rural customary communities). The law suggests the land right is for use and possession only.

[1] Aborigines Law, ch. 11, Code of Laws (1956).
[2] *Id.* at Sec. 270 (emphasis added).
[3] *Id.* (emphasis added).
[4] Aborigines Law at Sec. 270.
[5] *Lartey v. Corneh*, 17 LLR 403 (1966).
[6] Property Law, Title 29, ch. 8, Sections 8.52, 8.123 Liberian Codes Revised (2004) [hereinafter Registered Land Law].
[7] Public Lands Law, Sec. 30, Code of Laws (1956); Public Lands Law, Sec. 30, Liberian Codes Revised (2004).
[8] *Id.*
[9] Registered Land Law at Sec. 8.52, 8.123.
[10] *Fallah v. Kollie*, 42 LLR 545 (2005); *Kaba v. Gardnersville*, 39 LLR 549 (1999); *Richardson v. Gbassie*, 15 LLR 50 (1962); *Freeman v. Webster*, 14 LLR 493 (1961).
[11] *E.g. Fallah.*

However, another provision of the same law grants fee simple ownership to aborigines who became 'sufficiently civilized.' We know from Paul De Wit's study that the first type of deed (for use and possession) was called Public Land Grant Deed/Tribal Territory Deed and the second type (for fee simple ownership) was called Aboriginal Land Grant Deed. More importantly, this latter deed type was used for collective land ownership when in fact the language of the 1905 law clearly indicates it was intended for individualized land ownership. Perhaps communities sought to obtain the stronger protections of fee simple deeds through creative interpretation of the 1905 law—the individualized restriction was ignored to allow for collective ownership. If so, this would be similar to what we have seen with the Public Land Sale Deed. Originally, this law was almost certainly intended for individuals or companies purchasing land in rural areas. However, communities interpreted the law to increase their rights and therefore obtained Public Land Sale Deeds for themselves.

Although speculative, the 1924 law may have been enacted to prevent transfers of collectively-owned land covered by fee simple deeds. It is perhaps telling that the 1924 law barring sales was directed at chiefs ("It shall be unlawful for any chief or chiefs including the Paramount Chief . . ."). Chiefs selling community land appears to be an old problem. We have no way of knowing for sure what motivated passage of the 1924 law, but the point is communities obtaining fee simple deeds for their land, including the right to sell part of their land, is a practice dating back to at least 1905.