

# Memo

To: All Commissioners; Director MacArthur Pay-Bayee; Stanley Toe; Arthur Tucker; Bernard Waritay; Dr. Jeanette Carter; Dr. Mark Marquardt; Laurie Cooper; Dr. Adarkwah Antwi; Beth Moore-Smith; Feston Zambezi; Gmasonah Aboah; Nmah Bropleh

From: Caleb Stevens

CC:

Date: 3/14/13

Re: Summary of Issues Raised During Land Rights Policy Consultations

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Attached is a matrix of issues raised during the Land Rights Policy consultations. There are some qualifications. First, the matrix concerns group recommendations to the plenary only. The transcripts of group discussions completed so far, while informative, are not easily summarized. The issues discussed and the comprehension of the participants (i.e. sometimes a group's tangent reveals a lack of understanding) are too varied, albeit useful in its own right for pointing out the need to clarify part of the policy or make some other adjustment, as well as simply letting us know about people's diverse views with respect to land.

Second, even among the group recommendations the issues discussed were wide ranging; many of them beyond the scope of the Land Rights Policy, expressive of a particular grievance, or concerning specific issues intentionally left to the communities to work-out amongst themselves (e.g. community membership). These too are informative, especially for later reform efforts, but not necessarily to be included in a summary of the dominant issues raised.

A perusal of the matrix reveals a few themes. There is no issue that every group in every consultation raised. This means the consultation did well to ask open-ended questions designed to elicit priority problems of a particular group or locality. But this presents a challenge for comparisons. As a corollary, the priority problems, those concerns at the forefront of one's mind, vary considerably from group to group, and area to area. This was expected, and supports the Commission's decision to allow for diversity within a national land policy, at least with respect to Customary Land.

Many groups/counties want Public Land removed as a separate land rights category. Their rationale, in general, is that no Public Land remains, as the Policy defines it. Thus providing for Public Land will only allow the Government to expropriate Customary Land by declaring

it Public Land. This is an interesting finding, and should be considered carefully by the Commission. On the one hand, concerns about manipulation of the Public Land category are real and historically well justified. Providing more detail about identification and demarcation of Public Land will allay some of these concerns, but is beyond the scope of the Policy. On the other hand, at this point we simply cannot say for sure there is no Public Land left anywhere, and it may be wise to provide the Government with a rational basis for dealing with land under its control depending on how the land is used, managed, and transferred. Lumping all such land under a single category, whether called Public Land or Government Land, in some ways will be a continuation of the prior practice and risk the attendant mismanagement that occurred. The definition of Public Land could be revised to make it less susceptible to manipulation.

*There is strong support for recognizing customary ownership, even before the issuance of a deed.* This is expected but important confirmation of the Commission's thinking on the subject.

*Community representatives should be elected/selected and should include women and youth representatives.* The precise nature of this selection/election was not made clear in the recommendations, but will probably vary to some degree between communities. The complication arises when this recommendation is compared with other, less inclusive ones. For example, the Gbarpolu group (comprised mostly of traditional leaders) supported women and youth representatives, but want boundaries to be decided only by traditional leaders. They also want land records to be kept only by the Paramount Chief or Senior Elder and the government, with limited access by community members. How to reconcile these seemingly conflicting recommendations? It may be that the traditional leaders in Gbarpolu are willing to support some change, but see boundaries and record-keeping as a means to ensure that they have greater authority than newcomers.

*Bomi and Grand Cape Mount traditional leaders are the sole holdouts to the creation of a community legal entity.* This will affect implementation of the policy and future law, but can be addressed through more outreach to assuage their concerns that the legal entities will be manipulated (their ostensible reason for opposition) or erode their authority (perhaps the real reason). The obverse to this finding of course is all other groups support the creation of community legal entities. Sometimes this support was lukewarm, with the recommendation stating that the proposal was "acceptable." Nonetheless, most groups see the legal entity as a way to meaningfully engage with external actors, especially concessionaires.

*There were divergent views on transfers of Customary Land.* Some groups wanted all community members to participate in the decision making. Most did not state their position one way or another. Groups seemed especially split on leases versus sales, and the conditions of each. This supports the Policy's recognition of full transfer rights with the community deciding the type of transfer in any given case.

*Concerns about insufficient women's land rights in the Policy were raised by many groups, not just women.* Women's groups especially were concerned that pegging customary land rights to "customary norms and practices" is inherently conservative and exclusionary. They

wanted the Policy to be revised to spell out more clearly that community governance must be subject to women's land rights in accordance with Liberian statutory law and international legal obligations. This revision can be done without any real substantive change to the Policy, the current version of which recognizes the primacy of statutory law over customary law in the case of conflict.

Generally, communities want more details in the Policy with respect to wetlands. On balance, support is for wetlands to be squarely placed within Customary Land or Private Land, depending on the underlying land right at issue. This is consistent with the Policy as written, but the Policy needs to clearly state that wetlands within a community's Customary Land are owned by the community.