



# Land Governance in an Interconnected World

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Identifying Community Membership in Collective Land Tenure: Exploring Linkages and Sharing Experiences in the Case of River Cess County in Liberia

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## **Abstract**

Over the past ten years, Liberia has implemented progressive land tenure reforms. The Community Rights Law (CRL) of 2009, the Land Rights Policy (LRP) of 2013, and draft Land Rights Act (LRA) to a varying degree, recognize customary rights to land. These rights include rights of the community as a collective and the rights of individuals, groups, or families within the community. However, the membership of communities has been significantly altered over the years, partly due to the protracted civil war in the country. This has made community definition, membership, and benefit sharing mechanisms precarious. In view of this, the Sustainable Development Institute (SDI), with support from the Interim Land Taskforce of Liberia and the Land Governance Support Activity under the United States Agency for International Development (USAID-LGSA), piloted a project to investigate community membership under the Land Rights Act (LRA). This paper assesses how communities identified as customary land holding units define “community membership” and distinguish between the rights of a community “member” and that of an “outsider.” It provides an analysis on how individuals and groups gain access and benefit to shared land and resources.



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**Key Words:** Customary Land Rights, Common Resources, Community Membership, Gender and Minority Rights, and Community Bylaws

## Introduction

The predominant land tenure system in Liberia, as in other African countries, is customary land tenancy where land holdings are claimed by communities - towns, villages, families, and individuals. A majority of the people in Sub-Saharan Africa live in rural and peri-urban areas, managing land through customary tenure systems (Wily, 2011). Under this system, land is collectively claimed with individuals and families enjoying user rights but often without the concept of “fee – simple” ownership rights.

With the formation of the Liberian state in the mid-1800s, the customary tenure system began to shift, in favor of a more Western legal system of land ownership. Customary tenure rights were transferred from communities to the state (Public Land Law, 1956) and gradually, the government initiated legislations that effectively treated all “un-deeded land” as public land, managed and administered by the State (USAID, Property Rights and Resource Governance). This designation has undermined the land rights of the majority of Liberians, who reside in rural areas and own, access, and manage land based on customary tenure arrangements. At the same time, Liberia’s system of land governance has been largely limited to urban populations, concessions, and large private estates that have access to formal systems.

Over the last decade, Liberia has been undergoing land tenure reforms largely defined by the recognition and formalization of customary land rights. In 2009, the government enacted the Community Rights Law (CRL), recognizing ownership rights of forest resources to community. The CRL also importantly created a legal framework for communities to identify their traditional forest lands, manage, use, and benefit from forest resources on their community lands.

In 2013, the Government adopted a new land policy referred to as the ‘Land Rights Policy (LRP)’. The policy, which has since been translated into a draft bill, the Land Rights Act (LRA), outlines several recommendations for addressing land tenure in post-conflict Liberia. Importantly, the policy recognizes



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customary land rights, granting equal protection to customary land rights as private land rights. Among other things, the Policy:

- Empowers communities to self-identify and define their geographical boundaries through participatory methods
- Vests management authority over customary lands and natural resources with local communities

These reforms seek to ensure land tenure security for communities as a collective and the rights of individuals, groups or families within the community. The draft bill further empowers communities to self-identify and define the area of their customary land in keeping with customs, history, and norms. “A community may thus define itself to be a single village, town, clan, or Chiefdom, or a group of villages, towns or clans” LRP, 2013.

However, land reforms have largely failed to deal with the intricacies of community membership, especially the land rights of women and ethnic minorities. Nonetheless, most communities in Liberia have significant minority and disadvantaged groups some of which may have different cultural practices and norms than the dominant group(s) within the community. Furthermore, during the civil war years (1989 to 2003), many Liberians – mainly youth – moved between and within communities, creating significant pockets of minority groups in many areas in the country. At the same time, concession and artisanal mining enclaves within self-identified customary communities have attracted a diverse group of people. This paper seeks to build on evidence collected during a pilot exercise documenting community membership within six communities seeking collective customary tenure in River Cess. Findings from the work can contribute to awareness on the land rights of minority and traditionally margined groups, including ethnic minorities, children, and women.

## *Problem Statement*

Across Liberia, a large percentage of the land is managed under customary tenure system; a system that has a lot of variations defined by socio-political and material particularities of the community: kinship, inheritance rules, settlement patterns, and farming practices. This means different authorities and cultural practices may regulate land tenure and natural resource rights in the same territory, resulting in overlapping rights, contradictory rules and competing authorities. Such competing rights over common land and natural resources have contributed to the marginalization of groups; instigating identity based communal violence in Liberia (Levitt, 2005)



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Furthermore, Liberia is mostly rural with limited state presence and services in many communities, leaving marginalized groups and individuals vulnerable to exclusion. As noted by a member of a “minority ethnic group” during an informant interview in River Cess: *“we are not allowed to go in the [sacred] bush – [where] most of the major community decisions are made – because we are not from the same culture... And if someone [aggrieved] us, the [nearest] court is more than 8 hours walk.”* This observation could become a vexing issue for many communities in Liberia.

In addition, researchers, field practitioners, and policymakers have observed that customary tenure rights in Liberia – like many African countries – are biased against women. For example, Scalise and Hannay observed: *“Generally, a widow may remain on her husband’s lineage land and continue to use land there if she has children who tie her to her husband’s lineage. Without children, the rights of a widow to remain on her husband’s land depend on good relations with her in-laws.”* A Liberian based gender rights advocate further noted: *“as a patrilineal society, there are several structural barriers to gender parity in our society. For example, community leadership, and in particular ‘land issues’ are left with chiefs and elders, mostly men.”* Sentiments echoed by the Foundation for Community Initiative (FCI), a women group Civil Society organization (CSO): *“[W]omen in Liberia are particularly vulnerable, as they remain the largest marginalized group in their access to land rights and ownership due to traditional norms.”*

And finally, there is limited experience of documenting and formalizing collective tenure in Liberia, leading to information, capacity, technical, and policy gap. Unfortunately, thus far current reforms have failed to address these gaps. Not surprisingly, land ownership, access, and management remain a leading cause of communal violent conflicts in the country.

## *Objective*

The overall objective of the report is to enhance knowledge of “community membership in collective customary land tenure registrations.” That is, the paper seeks to examine how communities will go about distinguishing between a community “member” and an “outsider” within a self-identified customary tenure unit, and also the rights afforded to women – married, divorced and single – based on their membership status. Findings from the report can contribute to the development of adequate regulatory, implementation safeguards, and conflict sensitive measures to protect individual and subgroups’ land



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rights within collective customary land tenure formalization in regions of Liberia with similar demographic and cultural characteristics as those in River Cess.

## *Organization of Research*

The paper is divided into five interrelated sections. The first section describes the methodology and scope of the study. The second section provides an overview of the tenure system in Liberia broadly, and River Cess in particular. In section III, an overview of the legal and regulatory framework that defines community tenure rights will be provided. This section is divided into two parts. Part one focuses on national legal instruments (constitution, laws, and policies) that address community land and resource rights. Part two is an analytical description of community produced by-laws concerning the management of community land and natural resources. In section four, the results of the field assessment will be presented and the final section provides a summary of key recommendations based on the findings and a general observation on tenure rights, with implications on the proposed Land Rights Act.

## **Section I: Methodology and Scope**

This paper is a result of a pilot project intended to investigate community membership under the draft Land Rights Act (LRA), implemented by the Sustainable Development Institute (SDI), a local civil society organization; with the support of the Liberia Governance Support Activity under the United States Aid for International Development (USAID-LGSA). The paper is essentially a mix of desk review, semi structured interviews (FDGs and Key Informant Interviews), and field observations. The first method was to review relevant literature on land tenure in Liberia, including a brief over of the Liberian Constitution, the Community Rights Law (CRL), the Land Rights Policy, and individual community by-laws and norms. Second, key informants and experts were interviewed, including Chiefs, Elders, and youth and women leaders. As part of this process, the team conducted focus group discussion with women, youth, and elder groups. Finally, the research team utilized field observations and project team reports from work done on membership and by-laws creation by communities. The research focused on customary land management and community membership in River Cess County – one of fifteen counties in Liberia.

*Research Scope:* After much consideration, including the generally incendiary nature of land rights in Liberia, SDI decided that for the purposes of this research, it was best to select a county that had a



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relatively homogenous population (in terms of ethnic group) and a generally low-density residential pattern. The pilot was conducted in six communities (Dorbor, Siahn, Zialue, Central Monweh, Bar, Zarque) in River Cess County, located in the central, forested regions of the country. The county is comprised of mostly ethnic Bassa (95%), with a low population density of 33 people per square mile (LISGIS, 2008).

SDI also deemed it prudent to select a county where it had worked for many years and therefore had established a degree of trust with community members and local leaders. Most importantly, SDI had previously worked with the six pilot communities to go through a process of community self-identification; a process that included defining the geographical scope of the community, developing sketch maps to identify boundary points and common resources, and community by-laws that defines the management of the land and natural resource of the community and a Land Managing Committee (LMC) to help manage the community's customary land and natural resources (see Knight, et al, 2013).

## **Section II. River Cess in Context**

River Cess County is located in an important forest corridor, holding a portion of West Africa's largest remaining rainforest. The land area supports agriculture activities upon which 70% of Liberians depend on for food security and serves as a social security function to most people. The land generates revenue through artisanal mining, smallholder farms, animal husbandry, and trading in non-timber forest products like fish and game (hunting), medicinal plants, resins, bamboo, rattans, and a host of other palm products. Importantly, land (territory) forms parts of a community's identity and claim (citizenship) to the state (see Kuba, R. and Lentz, C., 2006).

The predominant land tenure system in the county is customary, where territories, lands, and resources are claimed by communities – towns, villages, and families. The tenure system is tied into traditional community governance, with chiefs and elders exercising authority over the land. Though not formally written, most communities in River Cess have rules to manage common resources, including family holdings. These resources are accessed through agreements between members of the family, community, and between the community and its neighbors.



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While customary land is not traditionally sold, user rights to land is allocated by “first settlers” –to individual male members (and their households) of the community. The original founders or “first settlers” become the host or stranger father from whom other people can access land and natural resources. Such rights may change hands from one family unit to another or absorbed back into the community, according to specified traditional practices and norms. It is in this light that an attempt is made to examine community membership within Liberia’s land reform initiatives.

## **Section III: Literature Review**

### *Part I: Legal Analysis of Community Land Rights in Liberia*

Land rights in Liberia is largely built within the Constitution (1847), revised in 1986, which provides broad rights to Liberians to own land. Along with the Constitution, the state has promulgated a number of laws and regulations governing land ownership, land use and national development. Legislations and regulations like the 1850 Act Regulating the Sale of Public Land, the Hinterland Act (1949), and the Public Land Sale Act of 1973 made unregistered land public land, a property of the Government. The National Forestry Reform Law of 2006 and Community Rights Law (CRL) of 2009 grant communities the right to manage their communal forest land and resources. In addition, the government has a Land Rights Policy (LRP, 3013) that was translated into the draft Land Rights Act (LRA). The Bill is currently being deliberated upon (since 2014) by the legislature, passed in 2016 by the House of Representatives. Against this background, the section below examines provisions within the constitution, relevant legislations, and community produced bylaws, as related to community membership within customary land rights.

### *The Constitutional Provisions Related to Collective Tenure and Membership*

The Constitution is the overall controlling document that defines and protects the land rights of all Liberians. Article 22 (a) of the Constitution sets the framework and condition on the right to own real property. It states: “*Every person shall have the right to own property alone as well as in association with others; provided that only Liberian citizens shall have the right to own real property within the Republic*”. Article 11 states that all citizens have the fundamental rights to possess and protect their properties; and that all persons are entitled to equal protections. The focus of these provisions is about



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exercising and protecting citizens' right to choose to either own real property individually or within a group.

*The Protective Shield for Women's land Rights in Marriage:* The government has also put in place family and inheritance laws that regulate how men, women and children enjoy property rights including land. These documents **include** the Decedents Estate Law (DEL) of 1992 and Equal Rights of Customary Marriage (ERCM) Law of 1998. The DEL applies to statutory wives and has an urban bias. The ERCM was adopted to rectify this limitation by recognizing the land rights of customary wives. In addition, an amendment to the law was passed in October 2003 that established equal inheritance rights for widowed women of customary as well as statutory marriages.

*Post-War Legislative Reforms on Collective Tenure:* Since the early 2000s, there has been a renewed effort to legally transform the land tenure system of Liberia. A 2000 law, the National Forestry Act (NFA), recognized collective tenure of communities, though the law fell short of giving communities collective tenure rights to own land under statutory law. In 2006, the Government passed the *National Forestry Reform Law (NFRL)*. Under this law, communities are granted the right to manage their communal forest resources and own all non-timber forest resources within their lands.

Importantly, the *Community Rights Law (CRL)* of 2009 defines communities' rights and responsibilities concerning the management, use and benefits arising from income-generating activities carried out on community forest lands. The CRL designates "communities" as those holding common interest and shared rules that are self-identified and publicly recognized widely-recognized coherent social group or groups, who share common customs and traditions, irrespective of administrative and social subdivisions, residing in a particular area of land over which members exercise jurisdiction, communally by agreement, custom, or law."

The CRL also lays out protective provisions for women and minority groups. For instance, section 3.2 (c) *states that communities have the responsibility of ensuring full membership participation in the management of community forest resources.* The CRL calls for the establishment of a Community Forest Management Body (CFMB) – a body established to manage community forest resources. The CFMB



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require the inclusion of one woman which reflects an attempt – though an under-represented – to include women in forest governance.

While the above provisions in the CRL significantly help to clarify the rights of communities to manage their land, and provide general guidance on what is a community, they do not address some significant questions about community membership. In contrast, as shown below, the Land Rights Policy/Land Rights Act seeks to provide further clarification and protection to individuals and groups' land rights within a self-identified community.

*The Land Rights Policy/Act:* The draft Land Rights Act (LRA) expands the definition of community membership from that in the CRL. It defines community as:

*“A self-identifying coherent social group or groups comprising people of all ages, gender, beliefs, and other backgrounds who share common customs and traditions and reside in a particular land area over which members exercise jurisdiction communally by agreement, custom or law, and manage their land in accordance with customary practices and norms. A community may thus define itself to be a single village, clan, town, or chiefdom or a group of villages or towns or clans” (Article 2:7, LRP, 2013).*

Article 34 of the LRA gives the right and responsibility to land-owning communities to identify their members. It states: *“Each community shall have the right and responsibility to identify its members; except that no Resident of the community may be excluded from membership of the community”* (Article 34:2). The inclusion of the word *“shall”* in this provision has an imperative and mandatory connotation on the role of the community to determine its members, although the added clause *“except that no Resident of the community may be excluded from membership of the community”* presents a dilemma that deserves further analysis.

Article 34:6 presents an opportunity to address issues around inclusion and exclusion. The Article lays out the framework for promulgating rules in determining members and their rights and responsibilities. It states: *“Each community shall promulgate rules for the determination of its members and the rights and responsibilities of membership to the extent not inconsistent with the provision and objective of this Act”*. However, this provision appears to be weak in terms of holding communities accountable in promulgating rules that will not violate the rights of members who are also citizens of Liberia. The



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language would have been made stronger if it was stated that rules promulgated do not contravene provisions of the Constitution bordering on fundamental rights.

However, the draft Land Rights Act (LRA) specifically defines who is considered to be a community member. It states: “*A community member means a Liberian citizen irrespective of age, gender, beliefs, or religious backgrounds who is (i) a Resident of the community; or (ii) a descendant of the Community and has satisfied all the requirements established by Residents for being member of the Community*” (Article 2:9). Article 34, Section 4 of the draft LRA went further: “*All Residents of a community are members of the community with equal rights to the Customary Land and participation in the use and management of the community's land, regardless of age, ethnicity, religion, disability and identity.*” The LRA seems to focus its attention on residency, providing protection to individuals living in the community. However, there is a need to set-up regulatory framework for women and other key (minority) sub-groups.

*Organization of land-owning community:* An important aspect of collective customary land management and community membership is governance. Article 35:1(a), (b) and (c) of the LRA provides the organizational framework for how communities can organize themselves and put into place structures and processes for the use and management of Customary Land. This includes the establishment of a Community Land Development and Management Association (CLDMA) and formulating of by-laws and electing members of the governing body of the CLDMA inclusive of a fair number of women, youth, men and other stakeholders who are not named. However, it worth noting that exiting governing structures on land (like customary authority and CFMBs) is heavily dominated by men. This does not assure that women will benefit equitably from the management of community resources. This can equally be said of those considered to be strangers.

## *Part 2. Community By-laws Analysis*

The concept of community by-laws or land use and management plan has become a mainstay of land reforms and sustainable resource management in Liberia. A community by-law is a legislative requirement under the community forest management system within the *Community Rights Law (CRL)* and the Land Rights Policy (LRP). In both cases, the by-laws aims to strike a balance between collective tenure rights and individual tenure security, allows for equity and sustainability in the management of resources and benefits, and serve as a tool to help resolve community conflicts. Below, focusing on



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community norms and provisions that address 1) community membership, 2) stranger, 3) minors, and 4) women, the next section looks at membership in community produced bylaws.

As part of a previous research project in River Cess, the six project communities had developed initial community by-laws. The by-laws highlight the following broad issues related to land and natural resources:

- Rules about community land and natural resources management. As part of the process of documenting and managing community lands and natural resources, a community must make a land and natural resources management plan and use and management by-laws.
- Rules about how a community land will be governed – leaders’ roles, responsibilities, and rules for election/selection of leaders, how leaders will be held accountable for their actions, and other rules related to leadership must be created. The rules do not say how many persons shall make up the leadership structure as the CRL did.

At present there is a limited understanding of how these by-laws protect the rights of women and other marginalized groups, individuals and different sub-groups (i.e. those born or married into the community in comparison to those who have entered the community to live and work but were not

## *1. What is Community Membership?*

Under customary law and systems, community membership is the most important factor used to determine and protect individual tenure rights, because access to land and natural resources is governed by customary rules of membership. In all six communities’ bylaws, community membership is open to all Liberians, irrespective of gender, religion, or ethnicity. In Central Monweh, for example, community membership has three key criteria:

- a. A Liberian Citizen born in Central Monweh Clan Community
- b. A Liberian citizen who is married to a born citizen of Central Monweh Clan Community
- c. Liberian citizen who declared his/her membership to the community and who has been formally accepted by the Central Monweh Clan Community

While provision (a) seems to borrow from Articles 27(a) and Article 28 of the Constitution as a precondition of land ownership in Liberia, provisions (b) and (c) of the bylaws add additional conditions to distinguish membership from citizenship. Furthermore, provision (b) ties membership to marriage. There is no legal basis for tying membership to marriage; however, it could be one of many entry points into a community, and securing membership. In addition, provision (c) has no complications in terms of legality and it is featured in all of the 6 community by-laws, “the [community] must accept a request for membership” as reflected in the Community by-laws of Zarque and Dorbor Communities. The intention



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is to leave the decision of membership to the community, which promotes social cohesion in communities and serves as a protective shield around community land and natural resources.

However, without clarity or detailed information on the steps and procedures of Provision (c), the right to membership could be denied. Indeed, it is not known how this Provision would play out in communities with an enclave minority or what would be the legality of excluding someone (a native born person) from enjoying rights to his/her family inherited plot and the common resources necessary for survival. In the absence of clear procedures for gaining membership, it may be possible to exclude “strangers” or a disadvantaged group would not be allowed to gain membership. Women in several categories may constitute a disadvantaged group. For instance, a woman married into a community who has been widowed or any woman married into a community who has not yet been married for 15 years. The concern here is that some communities are already dealing with tension between groups, and in the absence of a clear language that defines what the process for membership is, this provision may legitimize exclusion.

Siahn’s bylaws offer an interesting middle ground; it says a member is a “[Liberian] who has agreed to live under the bylaws of the community provided it does not contradict the Constitution or the draft LRA in protecting the tenure rights of all Liberians.” The by-laws of Siahn Community seek to lay down what a person needs to do in order to maintain membership within the Community:

- a. The person who agrees to be under the rule and by-law of the community is the one who can be member of the Community
- b. The individual who refuses to be under the rule and by-law of the Community can be denied rights to live in the community
- c. The duties of a community member is to know your land boundaries and take good care of your land so that companies or a person or persons will not take away the land or use it freely.

## 2. *Who is a Stranger?*

At the same time, the by-laws set conditions under which a person can be considered a stranger. According to Bars Clan Community’s bylaws, a stranger is:

- a. A Liberian Citizen who is not born in Bars Clan Community
- b. A Liberian citizen who is not a member of Bar Clan Community
- c. A Liberian citizen who is not married to any citizen of Bar Clan Community



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These provisions appear in many of the other by-laws. In fact, Central Monweh's by-laws define a stranger within the same lens as Bar Community:

- a. A Liberian citizen who is not born in Central Monweh Clan Community
- b. A Liberian citizen who is not a member of any town in Central Monweh Clan Community
- c. A Liberian citizen who is not married to any citizen of Central Monweh Clan Community

Provisions (a) and (c) listed above tie membership to birth and marriage. There is no legal basis for this, and presents a challenge to the definition of community membership in the draft LRA. Furthermore, Provision (c) runs the risk of having a negative effect on women. For example, a woman may lose her membership status if her marriage is dissolved. There is a need for clarity, both within the LRA and regulations guiding the creation of community by-laws.

### *3. Minor Rights*

Another set of challenges the by-laws present are provisions to define the right of children of a community member, not born in the community. This is referring to children born by strangers who are not eligible to obtain or inherit land. Some of the by-laws seek to exclude this category of people from enjoying tenure rights, including the rights to inherit land belonging to their parents. For example, children born of a marriage involving a man who is considered to be a stranger do not enjoy full rights as children born between men and women from the same community. Indeed, other than a non-native community member, it is interesting to imagine how these provisions would be applied against native community members versus non-native community members. It is however possible that Provision (b), which subject membership to a town, provides conditions to offset provisions (a) and (c).

### *4. Gender*

While the by-laws try to define membership from an inclusive perspective, there are certain provisions in the majority of by-laws that are not gender sensitive. For example, under the Governance section of Monweh's community by-laws, conditions required to become the Chairperson of the Land Governing Council generally exclude women because of their socio-economic status in communities. For instance, to become a Chairperson, one must demonstrate an ability to read and write. The By-law further states that to become the Chairperson, one must have not less than US\$25,000.00, a house and the ability to call and attend meetings. While this may not be a realistic provision in itself, tying leadership to a monetary



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value or ownership of property could affect women in rural places. Most women cannot meet these requirements and thus are precluded from becoming the Chair of the Governing Council.

## **Section IV: Analysis of Field Data**

This section is comprised of three parts and is based on data collected in the field. The first addresses communities' understandings of the definitions of a community, membership, and requirements for membership. The second describes the benefits of being a member of a community and the limitations of being a stranger. The third part looks at women land rights within the research communities and the final section reviews and analysis women's ownership rights.

### Part I: Understanding the definition of a Community and Requirements of Membership:

*What is a Community?* The overall picture that emerged from the interviews is that a community is a people that shares common norms, engages in joint community-based initiatives like attending community meetings, participates in roadside brushing, and provides material support for community development projects. This does not include domestic work and caretaking. The physical limit of a community is generally determined by the boundary of a clan or town (how the community identifies itself geographically), with the actual land space of neighboring communities and boundaries commonly understood and negotiated by people who live there and/or understood by or negotiated with neighboring communities.

Respondents (both men and women) from all six communities stated that their community is composed of different ethnic and social groups, with the Bassa ethnic group being the largest in number. Respondents from the Bar Clan community defined their community as follows: "We are one community, with one people that do things together, respect the rules of the community and live in peace with each other." This sentiment was shared by all 6 communities, and between men and women with a convergence on the importance of "respecting community norms and rules" as an important requirement for community membership. The essence of this definition presents an opportunity to create inclusive regulations because the emphasis is not based on ethnicity, gender, or other social profiles, and allows any Liberian living in these six communities the opportunity to become part of the community. However, the push for "social cohesion" and insistent on "norms and following community rules" needs further



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investigations particularly around gender norms and traditional rules to see if they disproportionately impact women and ethnic minorities adversely.

Respondents' definition of a community seems to be consistent with all six targeted communities. The dynamics and composition of communities, however, are always changing. Therefore its definition may constantly be in flux. However, based on these ideas of what defines a customary, collective land owning unit, land owning communities in River Cess can be tied to: 1) a collection of towns or villages or 2) a clan. Each of these units has their own legitimacy making community definition a delicate challenge. More often than not these units are established on ethnic or co-ethnic group lines, with each ethnic group occupying a particular geographical location.

*Who is a Member?* Generally, community membership is recognized by kinship, social and historical ties to people who resides in the geographic confines of a community. Community membership, however, may be expanded to include people who live beyond a community's physical boundaries, such "as a son of our land who is always a member of our community." Similarly, offspring of a community member is also entitled to community membership, expanding the definition of community in time and space. On the other hand, "daughters of the community's land" do not enjoy the same rights as "sons of the community" once they (daughters of the community) are married to men from different communities.

Interestingly, according to discussants in all 6 communities, this definition of membership applies equally to women and men, and includes individuals and groups from different ethnic and religious backgrounds. However, a newcomer into the community is restricted to a position of stranger until "he [or she] can show that he is willing to live with us in peace," reported a Town Chief in Dorbor. This qualification is recognized within each community as a whole, if not by every community member. The procedures, however, for accepting a stranger as a community member differs between communities.

Women from other communities who marry men from another community or clan are considered to be members of their husband's community but for a man to marry a woman from a different community and move to her community is rare. This view was shared by both men and women discussants. The reason they gave is that the men are members of their respective communities so a woman automatically becomes a member by virtue of marriage. If the marriage dissolves or is separated, "the woman goes back



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to her original community.” In the event of a widowhood, the woman can remarry and the man is most likely to come from the family of the deceased husband but if the woman dies, the man is at liberty to choose who he wants to get remarried to.

At the same time, there are varying views on the status and rights of children of a woman who is married to a man considered to be a stranger in a community. Community participants in four Focus Group Discussions (FGDs) in Siahn, Bar, and Zarque noted that children in this category do not enjoy equal rights as compared to children born from a marriage between a man and a woman from the same community. The rationale for this is that if a man considered to be a stranger decides to leave the community, “he will take the children.” He is recognized as having more rights and claims over the children than his ex-wife. Discussants from other communities (i.e. Central Monweh) hold a contrary view; children born by a man who is considered to be a stranger and a woman who is a member of a community enjoy equal rights as children born by a man and woman who are both members of the community.

Despite the relatively open standards and criteria for community membership in River Cess, overall responses of respondents in interviews indicate that men who are members of a community have greater status and rights than women and members with external kinship. For example, in all six communities studied, women’s land rights are linked to their relationship to their husband or a male member of her family who is a community member whereas men’s rights to land are linked to their inheritance from a male member of their family who is a member of the community.

Similarly, some community members expressed that if a female community member who is a woman marries outside of the community, she has to access land through “her father or brother,” further linking a woman’s tenure rights to a male relative. To offset this, discussants in five of the six communities indicated that a woman can claim the right to a late husband’s land, including cultivated land with tree crops (rubber, coffee, etc.).

*Who is “a Stranger”?* During interviews with community leaders, “strangers” are broadly defined as individuals or a group without a host family who are members of a community, or who live in a



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community on a short-term basis. Strangers commonly do not participate in communal work. They may also be persons who refuse to live by the rules and regulations of a community.

When asked if strangers could have title to land, the response from four of the six communities was “no”. “Strangers cannot own land, but can secure land use rights which are non-transferable, said a Community Leader in Zarque Clan Community. At the same time, widows can only inherit land use rights from their husbands’ land and cannot transfer or pass it on.

Views of respondents were mixed regarding whether and how strangers could be accepted as members of a community. Three of the six communities stated that the chiefs and elders had the authority to make decisions to accept strangers as members. The other three communities indicated that acceptance of strangers as members had to be approved by all members of a community. In all six communities, discussants reported that the process for moving from being a stranger to a community member is initiated by a “stranger father”, a land owning host and resident of the community. The standards and criteria to accept strangers as community members are generally based on the candidate’s demonstrated long term commitment “to invest in the life and livelihood of the community.”

*Requirements and Procedures of Becoming a Community Member:* With regards to becoming a member of the communities, respondents from all six communities mentioned several inter-related standards and criteria that needs to be met by either men or women to qualify for membership. First, the candidate has to actively participate in communal work undertaken by the community, such as cleaning and brushing roads. Second, he or she has to marry a member of the community, as this creates a bond between the candidate and the community. It also serves as a way for he/she to assimilate into the culture of the host community. Third, the applicant has to build a house to demonstrate a long term dedication and commitment to the community. Fourth, the candidate has to be engaged in farming, particularly the planting of cash crops but on land provided by the community on a user right basis. Lastly, the applicant has to respect and obey the rules, regulations or by-laws established by the community.

Respondents from two communities, Dorbor and Central Monweh, have specific requirements for a candidate to meet to become a member of their communities. Some common ones include:



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- Participation in communal work: Strangers have demonstrated a commitment to their host communities by actively participating in communal work, which helps integrate them into their host community.
- Financial contributions to community efforts: Strangers have over the time made generous financial contributions to the implementation of community development efforts.
- Participation in community development projects: Strangers participate in the implementation of community development projects.
- Participation in community meetings: Strangers participate in community meetings and are a part of decision-making processes. (As evidence to this, the chairperson of the development committee of one of the target communities is from one of the minority ethnic groups considered to be strangers.)

These conditions appear to be biased toward men because they might have more ability to make generous financial contributions and to be able to participate in decision-making.

There was a general consensus among respondents that a person may lose his or her membership in a community if the following occurs:

- Violation of the community's traditional norms and practices;
- Breaking rules and regulations set by the community;
- Commission of a criminal offence, such as murder; and
- Commission of adultery.

These views were shared by both men and women discussants. While community cohesion, trust and harmony can be enhanced by requiring candidates for community membership to adhere to its traditions, norms and rules participate in common activities and engage in house building or farming activities; using these as exclusive criteria for membership can be problematic.

There is the potential conflict between the minimal standard of residency for membership in the draft LRA and actual practices in communities. For example, if an individual or group deviates from traditions and norms of the majority of community members due to differences in customary or religious practices, he or she may be discriminated against and denied community membership. Also, given the social norms in many communities, and particularly since men are usually in positions of power and able to make decisions on family and community issues, women (and in particular "stranger" women) may be unfairly



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targeted under the fidelity clause which may lead to their exclusion from a community or membership.

Under the fidelity clause, women are held to a higher standard to be faithful to their husbands but this same standard does not apply to men.

Finally, the Constitution assures basic rights and entitlements to citizens. The criteria that require an individual who wants to become a community member to build a house or establish a farm undermines the fundamental right of freedom of choice.

## Part II: Benefits: Access to Resources and Livelihood:

*Benefits of Community Membership:* Benefits of community membership can take a variety of forms. It may involve access to seasonal farmland allocated to each family for planting food crops; and access to permanent farmland for the production of cash crops, mainly rubber. It may also grant the right for house/hut spot or other intangible benefits. More broadly, community membership gives members the right to participate in the establishment of governing structures and engage in decisions over the management of community lands.

The enjoyment of the above benefits also involves responsibilities and obligations. Some of these include respect for the rules and by-laws of communities, participation in community meetings and engagement in development activities.

Membership in a community provides access to the different resources on land. With the exception of one clan, there was no significant difference in the views of respondents, males and females from the target clans involved in the Key Informant Interviews (KIIs), regarding benefits that individuals and families enjoy as a result of holding membership in communities.

While discussants report no significant difference in benefits, family heads usually men, enjoy the benefit of management power over land that has been allocated to communities. Additionally, male chiefs and elders enjoy the power to allocate land to people and to make decisions about the commons and in some cases women must be married to access land and might not be able to plant cash crops; also mining of



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gold and pit-sawing in all six communities are restricted to men. Discussants highlighted that some of the benefits enjoyed by members include:

- *Right to a House/Hut-spot:* According to respondents in four communities, only community members are allowed a hut-spot. Upon building a house/hut, the owner(s) is allowed to transfer use and purchase rights to a third party. What is unclear is whether the rights to transfer must be approved by the whole family (wife and husband), the general community body or its leaders, and whether the third party who is the beneficiary of the transfer must be a member of the community. Interestingly, two communities indicated that a stranger could be allowed to build a house/hut.
- *Farming:* Male and female members of communities have access to land for farming for diverse crops. Men are more likely to secure land to engage in tree (cash) crops farming than women. Planting tree crop provides added tenure security in the absence of a documented tenure right. Both male and female members of communities have access to land for other farming activities, principally, small scale rice and cassava planting. This right is often assigned to a family head. Subsistence farming right is managed at the household level. There are no significant differences between women and strangers in the enjoyment of this right. Respondents overwhelmingly reported that allocation of plots for farming is done by the senior elders and chiefs in consultation with the local leaders. These positions are generally occupied by men. One discussion group observed that if a particular plot allocated to a family is to be used by a specific family member, that plot is allocated by the family head. Some discussants stated that women who are single or widowed can receive plots of land for farming. Other discussants said that only women who are married could access plots of land.
- *Planting of Cash Crops:* Community members also enjoy land use rights for planting cash crops, mainly rubber. Respondents noted that this right is enjoyed equally by men and women, but in Siahn Clan, women discussants mentioned that their use of land does not include planting cash crops and is limited to fishing and planting of food crops. Strangers are also barred from engaging in cash crop activities. In Siahn Community, discussants irrespective of men or women said that rights of strangers are limited to food crop production because cash crop production is a sign of land ownership and strangers are not allowed to own land.
- *Mining:* Gold mining is another benefit that community members believe they have and may exercise. This is in spite of the fact that the Constitution and mineral laws restrict the rights of communities of mineral extraction since all mineral resources on or beneath any land or to any lands under the seas and waterways belong to the Republic (Article 22 b of the Liberian Constitution). Regardless of national laws, discussants from several target communities stated that men and women can equally access land for gold mining. Youth discussants from Siahn



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Clan who were all males, highlighted that mining of gold is restricted to men. Similar to restrictions on strangers on not being allowed to plant cash crops, the extractive sector is also limited to those who are considered to be “owners” of the land. At the same time, “original community members” can engage in mining.

- *Pit-sawing and the Extraction of Planks:* Access to forest resources for sawing timber is another benefit community members enjoy. Like the restriction women face in Siahn Clan in terms of planting cash crops, they are also not allowed to engage in sawing planks, nor do they benefit from resources generated for the community by this economic activity of male counterparts.
- *Management of the Commons:* Community members enjoy both tangible and intangible benefits associated with the management of community land. A non-tangible benefit is the opportunity to share knowledge with other community members and participate in community decision-making processes concerning community land and resources. With respect to how community members can access these benefits, discussants were unanimous in their responses: They can be accessed through the elders and chiefs, who are largely men. This procedure applies to both male and female members. Responses were mixed concerning whether strangers can access these benefits equally. A woman leader respondent asserted that a stranger may enjoy benefits from the land or forest resources, but he or she does not enjoy inheritance rights. An all-male discussant group mentioned that strangers can benefit from the community’s assets but there are guidelines and procedures for how strangers can participate and access these benefits. Two other groups, one male and the other female asserted that while strangers can enjoy benefits from the community, they do not have equal rights as community members in accessing benefits.

When asked if community members are satisfied with the way the rules are being enforced, people interviewed overwhelming responded in the affirmative. Discussants could not identify aspects of the rules and regulations that needed to be changed. The rules or by-laws, however, are fairly new, developed over the past year and implementation has not been at a full scale so this could be a reason why community members could not pinpoint portions of the regulations that required changes.

## Part III: Gender Analysis

*Women and Land Ownership:* When it comes to women and land ownership, women that participated in five FGDs and men participating in two FGDs reported that women can own land the same as men. Other respondents said that land used over time by family members to make farms can also be owned by women. Women who have the ability or capacity to plant cash crops can own the parcel of land that the



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cash crops are planted on. Those who asserted that women can own land said they can do so only through inheritance from male figures such as father, brother, husband or uncle.

On the other hand, men from three FGDs and women from two FGDs said that women are not allowed to own land. Respondents that said that women cannot own land mentioned that women only have land use rights, and because of this, they cannot transfer land. Key informant interviewees provided similar mixed responses. On the issue of whether a man leaves a community for a period of time and returns, he can enjoy the same rights and entitlements as before leaving, respondents irrespective of sex and location, responded in the positive. The reason given is that “He is a member of the community and every family has a portion of the communal land”, so he cannot be denied rights to his family’s portion of land.

Another group of discussants, however, stated that if a man leaves the community for another place, he will be treated as a stranger and the laws in the host community could make it difficult for him to return, claim his entitlement and farm.

A similar question was asked with reference to women who had left the community. Respondents also affirmed that it was possible to reclaim an entitlement. One community discussant group, however, comprised of only men, stated that her rights and entitlements could not be enjoyed upon return unless the women in question consulted with community members to seek and secure their approval.

When asked if a woman could exercise a right to transfer land to whomever she chose, there was no significant difference in the views of most respondents. They overwhelmingly said yes. They said that a woman can transfer her property because it is her right, and another group said it can be done if the chiefs and elders are consulted. However, some other community discussion groups composed exclusively of males said a woman did not have the right to transfer land.

Asked whether a woman with or without children who divorces can have a share of the property of the ex-husband, the discussants replied in the affirmative. An all men FGD in Zialue and an all women FGD in Dorbor, however, asserted that the woman could have a share of the ex-husband’s property if they both work for it.



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When asked further if a woman who is divorced can transfer inherited property from her ex-husband to another person, the general view among discussants cutting across gender and communities is that she can.

## **Section V: Conclusion and Recommendations**

In recent times, the Liberian government has taken some positive steps to recognize the rights of communities to manage their land and resources. In particular, through the enactment of the Community Rights Law (CRL) and a nationwide consultation that culminated in the Land Rights Policy (LRP), and now the draft Land Rights Act, communities may now have the opportunity to legally own, occupy and use their customary land and its resources once the bill is passed into law. It is important however that policymakers pay attention to the rights of individual and marginalized groups within collective tenure arrangements. Identifying community membership is going to be a sensitive step in collective tenure registration in Liberia and many African nations with a similar background.

Regulations can be informed from the results of this rapid assessment and avoid the emergence of identity based conflict between local communities and minority groups as well as a growing recognition that women could be further marginalized. However, while women are often disadvantaged, there is room to maneuver gender sensitive instruments within collective tenure framework, allowing for women to fully participate in the creation of a community land use and management plan without offsetting the social capital of the community. Suitable lessons emerges from this work, especially the presence of provisions within the draft Land Rights Act (LRA) and community by-laws that are inclusive and recognize the rights of women and strangers. In this regard, future studies can benefit from further ethnographic reflections regarding the evolution and transformation of individual and communal rights within these societies.

Finally, while a lot of resources and efforts have been invested by the government and its partners into developing new land policies and laws, especially when commercial interests are involved, there have not been corresponding investments in furthering a broader understanding of individual rights within community land and the community governance structures to implement these laws. The new Liberia Land Authority (LLA) must draw on lessons from the implementation of the Community Rights Law (CRL) and pay special attention to the fact that the risk of marginalizing minority groups is high and



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exclusion can be a source of conflict. Rather, trained and sensitive facilitators are needed to play a supporting role in assisting communities and local government officials to navigate the self-identification process to define territories and membership. By working to address these internal challenges, communities can use and manage their land for sustainable livelihood while respecting and promoting the rights of all members.

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