

Land Rights, Private Use Permits and Forest Communities

Land Commission of Liberia

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1. Context

The Land Commission (LC) is undertaking inventory work on land tenure and land use rights that have been acquired, granted or issued by the state over time. It is also assessing the use and management of these rights by its holders, local government structures and public institutions. This work is foundation laying to underpin a number of land sector processes for which the LC has direct responsibility, including: (i) the development of a coherent and holistic future land use policy which may culminate in a national land use plan, (ii) a concession land rights and land use policy as part of an overall concession policy, (iii) the drafting of new property rights legislation to deal with private, public and community land.

The inventory work focuses on the following categories:

Land use rights

1. Agricultural, Mining and Forest Concessions; the latter include Forest Management Contracts – FMC, and Timber Sales Contracts – TSC;
2. Private Use Permits -PUP;
3. Community Forests Management Agreements - CFMA;
4. Protected Areas.

Property rights

5. Aborigine Land Grants and Collective Public Land Grants;
6. Collective Public Land Sales.

1.1 Land Use Rights

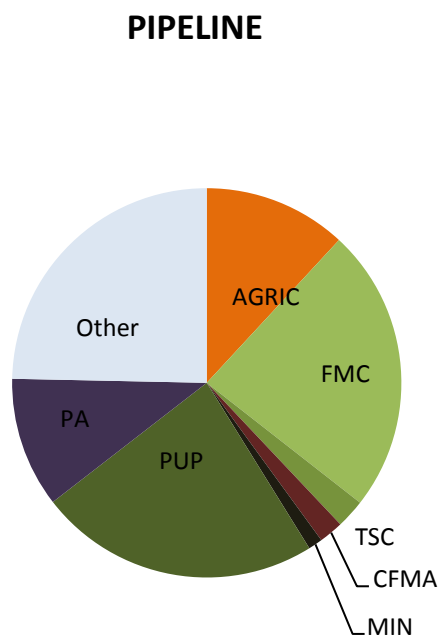
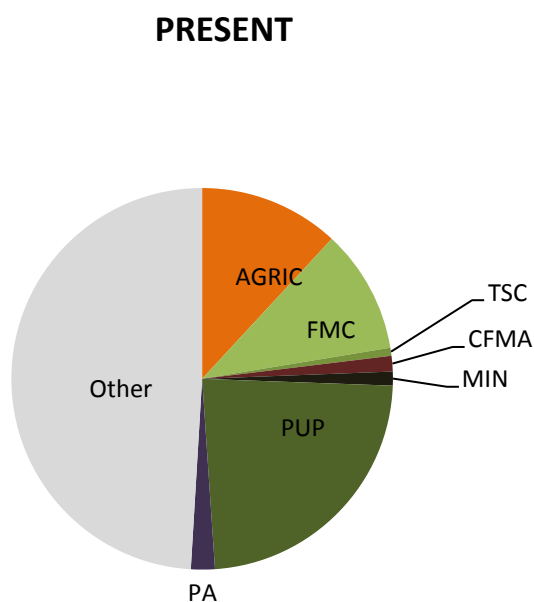
Preliminary results indicate that the different land use rights categories issued by the State to mainly commercial entrepreneurs, to communitiesⁱ, or to itself (in the case of protected areas) represent in excess of 50% of the total land area of Liberia (see Table 1). In fact they will determine land use patterns for many years to come, as most of these use rights have been issued for a period of 25 years or more.

The situation of longer term committed land use becomes more problematic when consideration is given to pipeline land use rights allocations, ie. these that are already planned by the Government of Liberia (GoL), but still need to be formalized. These include up to another six Forest Management Contracts, in excess of 30 Timber Sales Contracts, six Community Forest Management Agreements, eight Protected Areas. The situation in the mining sector is less clear. The total area under exploration licenses is close to an eightfold of the present production areas. Existing Agricultural Concessions contracts such as Golden Veroleum and Sime Darby provide opportunities for an extension of contractually agreed areas.

Conservative projections indicate that the State has committed itself to issue longer term land use rights over an area that corresponds with some 75% of the total Liberian land mass. Even taking into account that some of these land use rights are not necessarily mutually exclusive, it remains a major challenge to manage this situation.

Table 1 - Present and Pipeline land use right issuance

PRESENT		PIPELINE	
Land Use Right	Actually issued (hectares)	Land Use Right	Potentially to be issued (has)
Agricultural Concessions – AGRIC	1.140.408,00	Agricultural Concessions – AGRIC	1.140.408,00
Forest Management Concessions - FMC	1.007.266,00	Forest Management Concessions - FMC	2.270.097,00
Timber Sale Contracts - TSC	65.000,00	Timber Sale Contracts - TSC	230.000,00
Community Forest Management Agreements – CFMA	126.785,00	Community Forest Management Agreements – CFMA	194.102,00
Mining Concessions - MIN	113.256,00	Mining Concessions – MIN	113.256,00
Private Use Permits - PUP	2.239.630,00	Private Use Permits – PUP	2.239.630,00
Protected Areas - PA	193.932,00	Protected Areas – PA	1.037.865,00
Total	4.886.277,00	Total	7.225.358,00
% of Liberian Land Mass	50,95%	% of Liberian Land Mass	75,33%



1.2 Land tenure rights

Estimates on the coverage of the different categories of collective property rights (categories 5 and 6) are more difficult to make at the early stages of the inventory. The inventory work has so far focused on different sources of information including:

- FDA inventory work in 2007, when the Authority launched a campaign for collective entities providing evidence of their land ownership entitlements (aborigine land grants and collective public land sales). This important database seems to have disappeared, with some information only made available in a published research work;
- Evidence of collective private land ownership provided as part of the requests for requesting a PUP contract. This information is however not publicly available; the LC is still in a process to compile documentation;
- LC field work as part of the inventory under the EU FED/2011/270957 project;
- Archival research at CNDRA and the Ministry of Foreign Affairs by the same project.

There is already evidence that collective property rights, in fact deeded community land rights, cover at least one third of the total land mass. Or should we say “covered”, as these rights have eroded over time under different processes.

The major reason for these community lands having been reduced in size is poor land governance. In the case FDA allocates *land use rights* to third parties under forest concessions, or to the state as protected areas, it just subtracts the corresponding area of the land use right from the area covered under the private ownership right without due process. There is thus a misunderstanding on the conceptual difference between *land use rights* and *land ownership rights*. This practice is further assessed in this note.

Communities themselves, or rather the local institutions that manage the collective land right, “de-annex” gradually individually owned private land from the collective tenure shell. The issuance of Tribal Land Certificates on collectively deeded land appears to be a normal practiceⁱⁱ. The LC is actually implementing pilot exercises to better understand the issuance of these certificates. The practice of individual or household de-annexation of deeded community land may present some legal and land administrative challenges in the present land framework. It corresponds however with a need, so far social rather than economic, expressed by several categories of rural stakeholders, including the youth, to have more individual forms of tenure security. This practice needs to be supported in the future community land law.

Land use and property rights categories are not mutually exclusive, on the contrary; specific land use rights can be issued over specific property rights. For instance, FMCs and TSCs can only be established, by law, on land that does not include private land. Does this then correspond with public land only? Private Use Permits can only be agreed on privately owned land.

In contractual agreements with agricultural concession holders (Sime Darby, Golden Veroleum) the GoL warrants that the granted concession area is free and clear of all encumbrances including rights over land, leases, titles, claims, rights of way. Practice shows however that it is extremely difficult for the GoL to exercise these warrants, in the

absence of inventories, updated cadastral information and registers of formal rights, let alone by ignoring a rich bundle of legitimate customary rights and informal claims. Overlaps between different rights and claims become of course a major source of conflict.

1.3 Importance of PUP issuance

Since 2010, the single most important land use category promoted by the GoL is commercial forest logging on private land under the form of PUPs. Over a period of two years, the PUPs have extended over an estimated area of more than 22,000 km², in excess of 23% of Liberia's land massⁱⁱⁱ, and twice the area under FMCs and TSC combined.

Table 2 – County PUP distribution

County	Number of PUP	Area under PUP (hectares)	County	Number of PUP	Area under PUP (hectares)
Bong	5	105.587,00	Margibi	2	22.366,00
Cape Mount	2	78.564,00	Maryland	3	28.847,00
Gbarpolu	7	627.657,00	Nimba	1	79.263,00
Grand Bassa	8	123.114,00	River Gee	6	171.615,00
Grand Gedeh	5	199.701,00	Rivercess	4	145.891,00
Grand Kru	3	66.202,00	Sinoe	11	319.546,00
Lofa	5	271.277,00	Total	62	2.239.630,00

Hence the Land Commission has prioritized the assessment of these land use rights. It specifically focuses on two aspects that fall within its mandate and that feed into ongoing processes which it is taking forward as part of its 5-year program:

- Procedures for the issuance of land use rights, permits and licenses on private and community land.** The assessment of PUPs is complementary to its work on the issuance of land use entitlements on public land like the agricultural, forest and mining concessions. As it turns out, most PUPs are however issued over deeded rights of a collective nature, ie. on one or the other form of community land. The assessment of the PUPs contributes thus in fact more to a better understanding of how the GoL handles the issuance of land use rights on community land, rather than on individual land. Any learning from this must feed into the drafting of regulations to issue and manage PUPs, which is still an important missing part of the Liberian forestry regulatory framework. The LC is proposing a special inter-sector task force to deal with these issues – the Concession Land Use and Tenure task force or CLUT.

- **The governance and management of collective private land ownership entitlements by rights holder.** As most PUPs are issued over underlying private rights of a collective nature, the PUP inventory turns out to be a significant and rich sample to learn from for the drafting of the community land law. Its assessment sheds light on how communities themselves have acquired and formalized land. In fact there is a sample that represents some 20% of the country area over which communities, in different forms, have legalized, exercised and managed rights since the early 20th century. The assessment also provides insight on how the GoL perceives these rights in a contemporary setting and how it has interfered with these over time. This and further assessments of the PUPs are thus complementary to more research driven initiatives on community land^{iv}.

2. Background to Private Use Permits

The GoL through the Forest Development Authority (FDA), issues five types of licenses to carry out activities over forested land, as follows:

- FMC: license for forest exploitation issued land areas over land between 50.000 and 400.000 hectares that does not include private land^v, generally for a period of 25 years;
- TSC: license issued over a land area smaller than 5000 hectares that does not include private land, for a period of 3 years.
- FUP: a license issued for small scale forest exploitation, research, NTFP activities or other uses with no detail on land size or land ownership type. The first three license categories are regulated by the Ten Core Forest Regulations;
- CFMA: license issued to communities for the purpose of community based forest management, smaller than 50.000 hectares. This license is regulated by the CRL and its Regulations;
- PUP: a license issued to private land owners (individual, group, community) to extract wood. There is no specific regulation for handling PUPs.

The concept of PUPs is roughly defined in Law (National Forest Reform Law, section 5.6) but lacks further detail on several key issues such as maximum land areas, guiding principles on possible license periods. It is puzzling to note that some regulations seem to exist for a Public Use Permit, a sixth forest license category which is not even included in the Forest law, whereas the legally defined private use permit is void of such regulations. The maximum area of the public use permit is limited to 1000 hectares. Such a limit seems also to respond to the spirit of private use permits. There is indeed some common agreement that PUPs were created to allow smaller scale extraction of commercial timber standing on private, individual land. In fact the first few issued PUPs respond to this objective.

Procedures for issuing PUPs are simple and include in fact two phases. First, the FDA establishes a contract with the landowner, at the request of the latter. This is preceded by due diligence of the FDA to validate the necessary pre-requisites for such a contract. The Ministry of Lands, Mines and Energy (MLM&E) takes on the responsibility to validate the underlying land rights. Second, the landowner engages with a commercial forest

operator under some sort of contractual agreement to explore the forest resources on the basis of a management plan^{vi}.

None of the landowners have, so far, considered logging themselves; all activities are contracted out to commercial logging companies. The establishment of these contractual partnerships between land/forest owners and these companies is in fact a sound principle, and sought after in different countries. It unlocks the natural resources capital on collective and individually held land of people who lack skill, technology and (often) means to exploit these, and brings in technology, capital and knowledge from commercial operators. A third benefitting party is the state who receives certain tax revenues of logging activities.

Present practice on the management of PUPs still needs research, but it is clear from the present dynamics that the objectives and possible benefits that can be derived from the use of PUPs diverge from their initial conception. The underlying spirit of PUPs was similar to that of TSCs but then on private land; selective logging of some timber as part of a controlled (degraded) forest land cover transformation to agriculture. In reality, PUPs seem to have become an easy alternative and bypass to much better regulated forest concessions. Commercial operators pursue a partnership with FDA to identify possibilities for commercial forest logging. The latter engages in an active search for existing, large scale, private land rights situated close to areas where commercial operators have already established other activities, sometimes under FMCs. Consequently larger landowners, often communities, are “sensitized” to engage in commercial logging. One of the real objectives is to facilitate the extension of existing operations on public land to private land, with as a major driving force the easiness to obtain such PUP licenses (in the absence of regulations) and the lower costs that this form of logging involves (significant reduction of payments to communities). It is not necessarily a balanced partnership between two partners, but rather an exploitative agreement, with communities losing out^{vii}.

3. Inventory and assessment of PUPs

The LC has so far identified a possible 62 PUPs, of which it has accessed 25 documented contracts; a list is attached in Annex 1. It has requested FDA to make available the remaining files and as well to update the present PUP inventory. Each documented PUP is given a unique index number that is used for the national inventory of issued land use rights.

3.1 Legal nature of underlying land rights

PUPs are issued over private land which is understood to be land for which the owner holds a registered title. The private land owner may be an individual, family, group, community, corporation or any other form of entity. Private land that underpins PUPs is established under different laws using different procedures, as follows.

3.1.1 Public Land Sale Deed

Land can be bought from the GoL under the Public Lands Law which is part of the 1972-73 Liberian Codes Revised under Title 34. The sale of public land finds its origin in the 1850 *Act Regulating the Sale of Public Land, which was reissued in 1857 and 1879, with the public land sale procedures undergoing significant revision in 1904*. Public land sale deeds are issued in the name of individuals, a number of individuals, groups such as chiefdoms and clans, or communities. The GoL has put a moratorium on the sale of public land at the request of the LC in early 2010. The LC has drafted *Interim Guidelines and Procedures for the Sale of Public Land*. These will function from the date the moratorium is lifted and until the current *Public Lands Law* is amended or a new law is enacted. All cases of public land sale deeds that underpin the PUPs of the present inventory seem to be legally valid ^{viii}. It is noted that over time, a standard purchase cost of 0,5US\$ per acre of rural land has been maintained.

3.1.2 Aborigine Land Grant Deed

Under the 1905 *Act for the Government of a District in the Republic inhabited by Aborigines*, the State started allocating public land to aborigines who had become “*sufficiently intelligent and civilized*”.^{ix} Over time this law was followed by a series of other legal tools to grant land to individuals and communities in the Liberian hinterland as deeded land. The communal holding is vested in the chiefs, elders and citizens of the group.

Aborigine land grant deeds included in the present inventory refer all to groups of people, communities, that qualified be allocated land under this law. The major qualification criterion was that these people were to be recognized as “*having adopted civilization to become loyal citizens*.” All cases refer that indeed “*these people have been showing themselves to be fit trusted with said rights*” against this “civilization” pre-requisite. The right itself is a land grant held in fee simple; as the grantor, the different presidents declare that “*I, the said , President as aforesaid by virtue of my office had good right and authority to convey the aforesaid premises in fee simple*”.

3.1.3 Public Land Grant – Tribal Territory Deed

This entitlement grants public land to tribal entities. All cases encountered in the inventory refer to the 1905 Act as the legal instrument to materialize this. The available documentation does however not make specific mention that the land is granted in fee simple. The grants indicate that the land is to be used for agricultural purposes, with one fourth to be maintained as forest reserved. The granted land cannot be sold, transferred or assigned without the consent of the GoL. This is consistent with the 1905 Act and a 1924 Law which prohibited the sale of community land^x.

3.1.4 Other legal tools

There are two other legal mechanisms that are used to establish private ownership rights over which PUP contracts are signed. The Tribal Land Certificate is not an entitlement but one of the first procedural steps for the sale of public land. It is the result of a local consultation process with authorities, elders and in principle other community members

that certify that the parcel is “free” for purchase. In practice, it is however considered by many as a proof of private ownership. It is common knowledge that handling of TLCs is a source of poor land governance; it is abused by some to illegally sell and acquire public land held under customary tenure. Land under a TLC does thus not correspond with privately owned land; it remains public until the sales procedure is completed.

On one occasion, a PUP contract was issued on the basis of the existence of a community forest, established according to the CRL and its regulations. This tool does not provide private ownership over land on which the forest stands.

3.1.5 Conclusion on the legality of private ownership entitlements

Public Land Sale Deeds and Aborigine Land Grant Deeds that underpin the present PUPs result in *full ownership rights held in fee simple*. These rights qualify thus for a PUP contract between the landowner and the FDA. The Public Land Grant Deed seems to correspond more with a right of land use, with some land use conditions included in the deed, thus a *conditional land use right*. This right is perpetual, as “*the grantees shall have and hold the granted premises together with all improvements, forever*”. The land cannot be transferred without the consent of the GoL. This land grant is thus fundamentally different from the former two categories. In its strict legal context it does not qualify for the issuance of a PUP. Other legal mechanisms that are used to establish private ownership over land for PUP issuance are not legally valid.

Table 3 provides an overview on the status of land rights that underlie PUPs in the assessed sample.

Table 3 – Land rights used for formalizing private use permits

Nature Underlying Land Right	Number PUPs	Issued PUP contract area (has)	Underlying Land Right area (has)
Public Land Sale Deed (collective)	4	67.067	251.623
Public Land Sale Deed (individual)	1	5.564	486
Aborigine Land Grant Deed	12	377.562	589.863
Public Land Grant – Tribal Territory Deed	5	187.570	360.103
Tribal Land Certificate	2	39.467	NA
Community forest	1	958	NA
TOTAL	25	678.198 hectares	1.202.075 hectares

All but one underlying land right are of a collective character, ie. all are some kind of community land. Land owners are denominated as “Chief, elders and citizens of (i) Chiefdoms, (ii) districts, (iii) chiefs, (iv) chief(s) and their people, (v) clan chief and his people. Aborigine land deeds are by far the most prominent legal entitlement on which

PUPs are established. A significant number of PUPs have doubtful (5) or invalid (3) underlying private ownership rights.

3.1.6 Issuance date of private ownership rights

The issuance date of the granted land rights is assessed as to have more clarity on the legality of these rights. Legal provisions can only be used as long as the law under consideration remains enacted.

The Aborigine Land Grant Deeds are issued under the 1905 Aborigines Law. The Hinterland Regulations enacted into law in 1949 incorporated the 1905 Aborigines Law provisions dealing with deeds in fee simple (Aboriginal Land Grant Deeds). The 1905 law was not in conflict with the 1949 Hinterland Regulations. The 1956 Aborigines Law drops this incorporation of the 1905 Aborigines Law and thus expressly repeals the 1905 law.

This means that all Aborigine Land Deeds issued before the enactment of the 1956 Aborigines Law are valid^{xi}. As all deeds in the present PUP sample were issued before 1956 (with one in 1956), they are all valid beyond any legal doubt and correspond with one important pre-requisite for the issuance of PUPs – an underlying land right of private ownership.

Table 4 - Dates of land grant deed issuance

Nature Underlying Land Right	Issue date
Aborigine Land Grant Deed	1934; 1918; 1929; 1953; 1955; 1955; 1953; 1954; 1953; 1956; 1924; 1952
Public Land Grant – Tribal Territory Deed	1944; 1944; 1944; 1949; 1986

The Public Land Grant Deeds were similarly issued under the 1905 Aborigines Law. The 1949 Hinterland Regulations do NOT incorporate the section on the 1905 Aborigines Law providing for public land grants for use and possession, and thus this provision was explicitly repealed.

This means that Public Land Grant Deeds issued under the 1905 law after 1949 are unlawful. Four such deeds of the sample appear to be lawful, although major questions remain on the nature of the right (a land use and possession right rather than an ownership right). The 1986-issued deed is invalid^{xiii}.

Of note is that the 1986 deed document was certified by CNDRA in 2000 as being a true and correct copy of a Public Land Grant – Tribal Territory. Documentation presented by FDA for review to the Department of Lands, Surveys & Cartography (DLS&C) in 2011 was authenticated as to the metes and bounds and technical descriptions. The DLS&C recommends on this basis that the “*FDA should proceed in granting a PUP to the people the above communities in fostering their goals*”. Similar cases of public land grant deeds, issued and probated in the 1980s, are encountered in the CNDRA archives.

It remains puzzling that whereas the authenticity of copies and technical context of deeds is validated, the legal validity of these deeds, issued in the 1980s, is not assessed. This may indicate an institutional vacuum that can be filled by the LC.

3.2 Areas covered by PUP contracts and underlying land rights

The possible size of a PUP is limited by the underlying land rights area; a permit is in principle contained within the area of the right upon which this permit is issued. Table 4 compares areas of PUPs with these of the underlying deeds, as these latter appear in the original deed documents. It uses the ratio of the PUP contract area divided by the land rights area and disaggregates this based on the nature of the different underlying land rights.

Table 5 – PUP rights area as compared to underlying deed rights area

PUP index	PUP contract area (has) A	Land right area (has)(a) B	Ratio A/B	PUP index	PUP contract area (has) A	Land right area (has)(a) B	Ratio A/B
Public Land Sale Deeds				Aborigine Land Grant Deeds			
PUP20	4.503	1.033	4,36	PUP14	21.549	89.354	0,24
PUP49	5.564	486	11,45	PUP50	18.779	45.344	0,41
PUP56	35.685	136.032	0,26	PUP18	51.472	179.028	0,29
PUP48	4.058	13.343	0,30	PUP15	38.956	17.646	2,21
PUP01	22.831	101.215	0,23	PUP57	23.459	23.468	1,00
Public Land Grant Deeds				PUP12	36.509	36.509	1,00
PUP07	8.078	935	8,64	PUP22	22.162	26.504	0,84
PUP09	23.306	2.497	9,33	PUP02a	12.549	12.555	1,00
PUP10	13.636	1.450	9,40	PUP02b	16.298	16.304	1,00
PUP13	79.263	80.170	0,99	PUP24	23.432	23.441	1,00
PUP17	63.287	275.049	0,23	PUP16	49.394	56.680	0,87
				PUP25	63.002	63.028	1,00

(a) as stipulated in the original deed

The analysis of the ratio values results in three different scenarios which are described below.

3.2.1 Land area under a PUP contract is smaller than the underlying land rights area

3.2.1.1 Communities, FDA and land use planning

Cases where the PUP contract area is smaller than the land rights area are normal, and are indicated by a ratio smaller than one (ratio A/B <1)

This situation reflects in principle a landowner, a community, who has decided to allocate part of its forested land to logging activities. This may be a deliberate choice, sometimes being the result of an exercise of community based land use planning. In Liberia, and specifically referring to the present sample, there is little direct evidence that community land use planning is being used to identify specific PUP areas.

An exception however are some communities that fall under PUP16 ^{xiii} which, indeed, have developed a land and natural resources management plan. One such plan includes the following:

- Every citizen residing in Central Morweh clan shall have the right to own three acres of residential land and thirteen acres of farm land;
- Any company wishing to operate within Central Morweh clan, should meet the land management committee;
- Thirty percent of the forest is agreed upon to be reserved;
- The forest is to be reserved for thirty years;
- Any company doing logging in the clan shall pay 30% per cube to the Council.

It is thus doubtful that in this specific case, the community has followed its own management plan when it engaged in logging over the community area. The PUP area covers 87% of the underlying deeded land area which challenges the reservation of 30% of the forest. There may be different explanations for this that require further research.

The reporting on the development of this management plan does not leave doubts about the inclusive and participatory fashion of the process, reaching out to many towns and sectors located in the clan area^{xiv}.

One possible scenario is that some members of the community or people who have identified themselves as being from the community have devised an alternative plan, ie. logging of the entire area under a PUP. It is noted that the PUP contract was signed approximately at the same moment that the management plan was adopted. Is this a sign of different dynamics occurring simultaneously in the same communities, but with different supporting platforms and facilitating institutions?

As a direct observer of this process states: “Although the community had agreed these land and natural resources management rules in 2010 and established their governance council, there is no evidence that the group purporting to act on behalf of the community in the PUP application covering forest in the area actually had the permission from a similar inclusive and transparent process. This PUP is currently the subject of dispute within the community and thus show how small groups of elites can easily act together to undermine local efforts to strengthen internal community governance”.

There is other evidence that the FDA, rather than the community, uses some forms of planning to localize specific areas on community land for commercial logging. Under PUP 50, the FDA states that the PUP area was reduced as compared to the land rights

area in the deed “ *technically because of the land designation and suitability of the area; the area was reduced to accommodate other land uses* “. This seems logical as forest based communities embrace different land use for their livelihoods, not only logging. In another case (PUP48), the PUP area is rather small because of the limited presence of forest for logging; it is thus the presence of the resource that determines the area, which is fine.

3.2.1.2 Erosion of community property rights

Of more concern are the cases where significantly less land is actually available for PUP issuance as compared to the land area included in the original deed. A main reason for this is that the rights allotted to communities under aborigine or public land grant deeds have eroded over time. Registered land ownership rights have been taken away. Boxes 1 and 2 illustrate this.

Box 1 – Case study of the collective public land sale deed of the Geetroh Chiefdom in Sinoe County

In 1952, the Geetroh Chiefdom purchased 250,000 acres of land under the Public Land Sales Act (1850) at a cost of 0,5US\$/acre, for the total sum of US\$ 125,000 (see figure left below).

When, on 16/10/2009 a logging company requests the FDA to authenticate Geetroh’s public land sale deed and the location of the land, the authority responds positively to this and includes in its report the following:

“ From the total area that the Geetroh clan purchased:

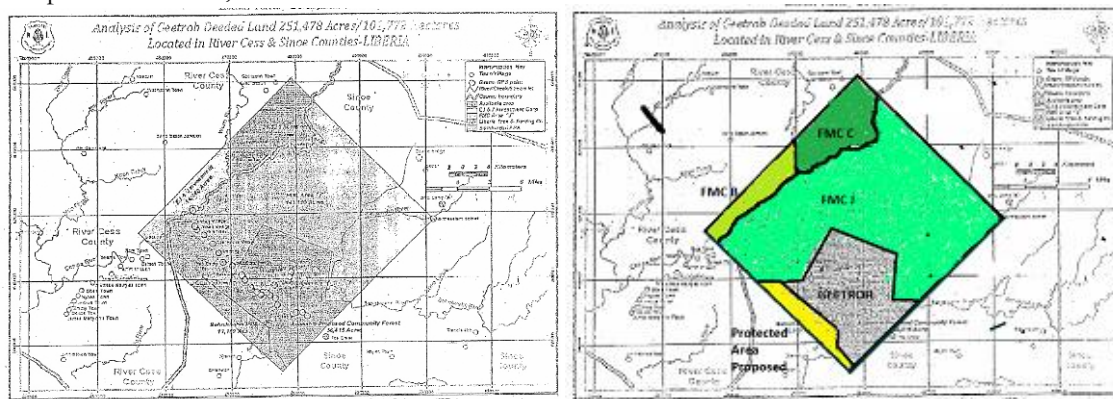
- 26.524 acres of Geetroh’s property overlapped with FMC-C;
- 14.240 acres of Geetroh’s property overlapped with FMC-B;
- 143.240 acres of Geetroh’s property overlapped with FMC-J;
- 11.189 acres of Geetroh’s property overlapped with Sehnkwehn proposed protected area.
- 56.415 acres of Geetroh property is free from all protected and proposed protected areas, Forest management contracts and timber sales contracts”

These overlaps are illustrated in the figure below right.

The Authority recommends that the area of Geetroh’s land which overlapped with FMC areas B, C, J and Sehnkwehn proposed protected area should be subtracted from the total area and a new technical description metes&bounds be re-written on behalf of Geetroh’s district.

It also requests Geetroh district (!) to demarcate their deed land property boundary lines to avoid possible trespass cases from FMC area ”J” and Sehnkwehn proposed protected area.

It is not clear under which conditions these land alienations occurred, whether alienated land was compensated or not, which mechanisms were used and when alienation occurred.



Box 2 – Case study of the public land grant deed of the Tienpo Chiefdom in Grand Gedeh county

The Public Land Grant Deed – Tribal Territory supporting PUP17 reads that “The people of Tienpo Chiefdom and the tribal people of Tienpo, District #2 of Grand Gedeh county and the inhabitants of said Tienpo Chiefdom are granted public land for agricultural purposes over an area of 679.373 acres (see PUP17). The people will cultivate the land by the planting of agricultural products. One fourth of the land will be maintained as forest reserved.”

This grant is signed in 1986, under law 1905 and is thus illegal^{xv} (see above). The document is certified as being a true and correct copy of a Public Land Grant – Tribal Territory by the CNDRA in 2000. The Department of Lands, Surveys & Cartography reviews the grant’s documentation in 2011, and concludes that it is authentic as to metes and bounds and technical descriptions.

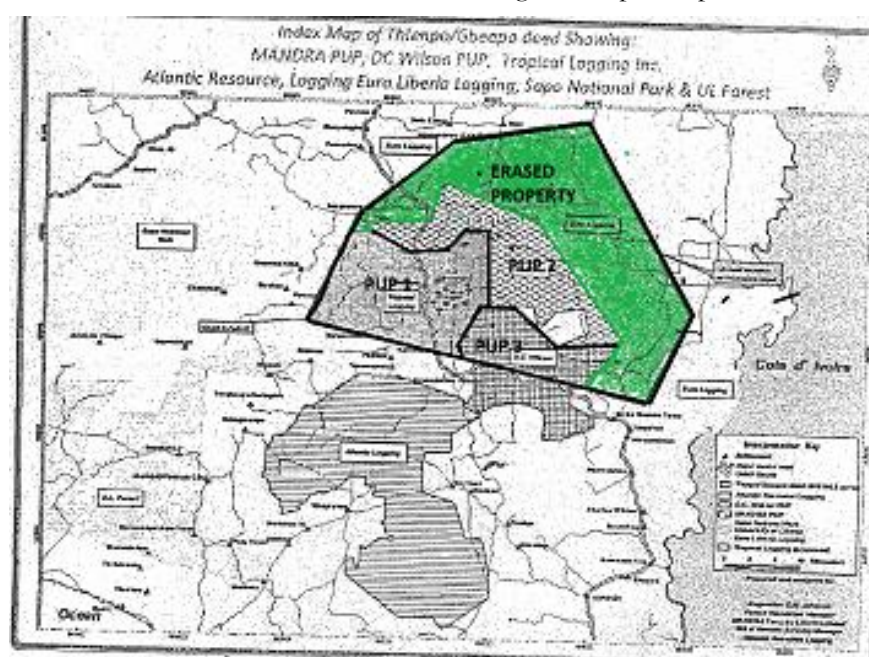
After this validation, an FDA field team authenticates that:

- 254.574 acres of Thienpo’s deeded land falls into FMC “F” which has already been granted by the GoL;
- The total available land mass for commercial logging within the chiefdom is 415.590 acres;
- The recomputed deed from the FDA is 670.164 acres.

It recommends that:

- the deed be validated by the MLM&E with new field geographic coordinates to enable FDA conduct a cadastral survey;
- the overlapped area in FMC “F” be subtracted or erased from Thienpo’s deed land property to avoid conflict or overlap.

Consequently three PUPs are considered over the remaining area as per map below.



The alienation of community land rights by the state occurs both on granted and purchased land. The exact conditions under which this has happened are not yet fully understood. Issues of local consultation between communities and the state through its agencies and possible involvement of local authorities are not known. The LC is researching some of the cases in more detail.

These case studies illustrate the following:

- The state imposes, through its institutions, different types of land uses over collective private property rights. This results not only in a long term loss of land use for the land owner, but it transfers these overlapping parcels back to the domain of public land. This occurs even when communities have purchased their land against cash payments under the Public Land Sale Act. This is an illegal practice.
- Institutional responsibility for handling land ownership rights is blurred. Institutions that are mainly responsible for the issuance and management of rights over natural resources interfere at will in landownership matters over which they have no mandate. This does not contribute to good land and natural resources governance.
- Bad land governance and acting against the law puts the GoL in a delicate position and exposes it to possible major compensation claims from private landowners whose rights have been violated and who have lost land without due process.

3.2.2 Land area under a PUP contract is larger than the underlying land rights area

All cases which have an issued PUP area that is larger than the underlying land right (ratio $A/B > 1$) are suspect for having irregularities, as follows.

3.2.2.1 Revision of the deeded area

FDA teams validate deeded private land in the field as part of the PUP contract issuance process. It is sometimes not clear however what is validated: “*the forest map of AAA clan*”, or the “*BBB deeded land*” or the “*CCC deeded land forest*”, or the “*deed land map of DDD’s property*”.

The lay-out of deeded land parcels captured in the original deed documents is textually described as *metes and bounds*; the corresponding area is calculated accordingly. The description of historic metes and bounds of the rural parcels included in the present inventory often resulted in a “regular” shaped parcel, rectangular or similar. This left little doubt on both its description and the calculated area. In addition, there is no reason to believe that the 1940s and 1950s surveyors were not qualified to come to clear and well measured metes & bounds and calculated (or surveyed) areas; on the contrary the quality of the surveying profession was beyond doubt of a respected standard.

On six occasions however, the field validation of deeds resulted in a description of metes and bounds that was significantly different from the original. As a result of these modifications, the original area of the deeded land increases multifold, on four occasions close to a tenfold.

Sometimes these changes are captured in a “*Certification of Correction*”, issued by the County Surveyor. It is not clear whether this certification is a legal tool, or just an ad hoc procedure. On other occasions, original metes & bounds descriptions and corresponding areas are just replaced by new information and transcribed in the PUP contract documentation.

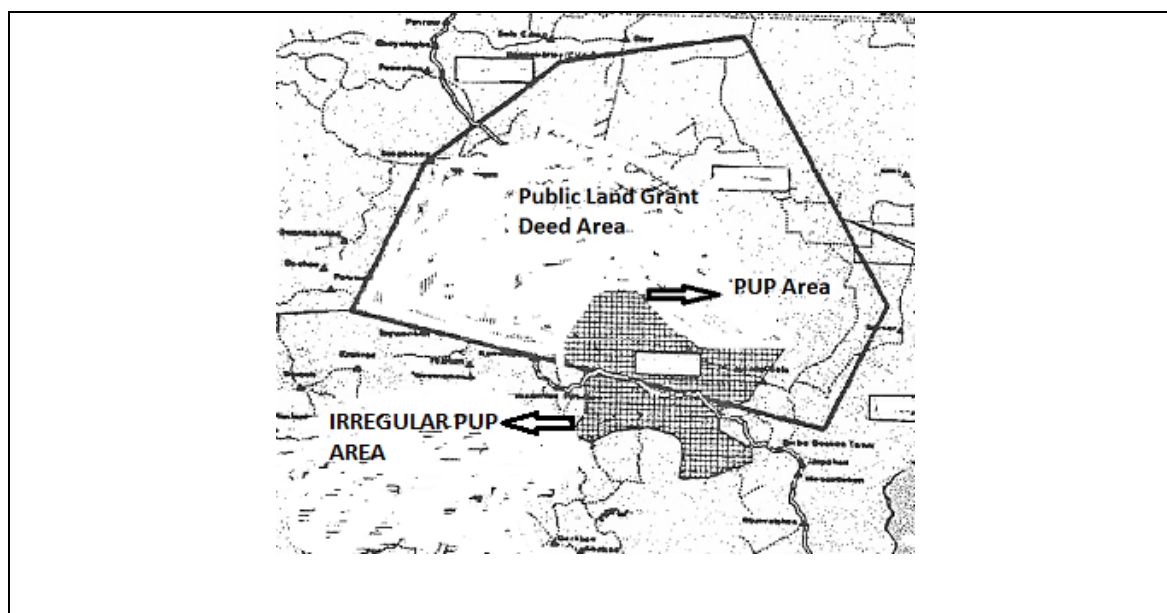
These practices seem to lean close to illegality and are the result of poor land governance. Of particular concern is that such corrections, certified or not, constitute a tool to acquire extra land without following the necessary procedures. There is anecdotal evidence that in at least one case the certification of correction was issued over public land. Public land has been alienated without due procedure. The correction can also be regarded as a bypass of the moratorium on the sale of public land if it occurred after this moratorium was put into place^{xvi}.

The reasons for having such discrepancies between original parcel lay-outs and areas on the one hand and the results of present re-surveys on the other are not fully clear and require further research. Is it a question of technical erring either at the time of issuance or present ground truthing, ie. verification of metes and bounds and field surveying? Do landowners or their heirs claim more land than they actually hold under the title deed? Do public institutions play a role for these incongruities to occur?

3.2.2.2 Issues of extending land use beyond the right

On one occasion, the area of the PUP contract extends significantly beyond the actual boundary of the underlying land right. This is an irregular situation.

Box 3 – Irregular situation of a PUP issued over and beyond a public land grant deed



3.2.3 Land area under a PUP contract corresponds with the underlying land rights area

A significant number of PUP contracts extend over an area that is roughly equivalent to the underlying land rights area. In law, this is a regular situation but it raises some questions as to the present and future livelihoods of the landowners.

Many rural households depend on a mix of activities to sustain livelihoods. They use different land parcels, scattered in space, with different soil characteristics for agricultural purposes. Shifting cultivation remains a predominant land use, with farmers exploring upland fields for rice cultivation, transferring these into tree crop fields, and maintaining

access to low and wetlands, when these are present, for other crops. Forest cover is used for domestic and artisanal wood extraction, eventually some hunting, non timber forest product activities (NTFP). Rural households rely on diversified and often opportunistic land uses in time and space, with risk avoiding strategies being intertwined with labour allocation options and production maximization. These strategies are clearly demonstrated in future land use management visioning of forest communities as indicated under section 3.2.1.1 above.

The possible impact of logging on these systems will largely depend on the prevailing practices and the areas covered by the activities.

Present logging seems to be highly selective, focusing on a few species for the export market, with low impact on land cover conversion. This is possible under conditions of relative high stock supply. It is stressed that a management system based on low impact and highly selective commercial logging on well identified parts of community land under a balanced partnership with the commercial sector are an opportunity that needs to be explored. Local land use planning, community capacity building, a good regulatory framework and appropriate forest management practices are however an integral part of such an approach. Land use planning will need to be addressed in a holistic framework, looking at comparative physical, socio-economic and cultural advantages of different sectors.

This is different from a single forest sector planning exercise which has only resulted so far in choosing options between commercial, conservation and community forestry with a focus on the former. Low impact, highly selective logging creates opportunities for farmers to open up new agricultural fields and probably improve livelihoods. This gradual, well managed conversion of land cover on certain forested lands is in fact the reason for having TSCs in place. These are however much better regulated than the PUPs.

In an environment of stock depletion and real demand rather than speculation, logging practices may change rapidly. When vast areas of forest cover are converted as the result of high impact unselective logging, the asset base of forest communities is undermined. These changes are possible within the 25 year period which corresponds with the timeframe of a majority of PUP contracts. Livelihood strategies and production systems that have evolved over time, that are accessible and that farmers skillfully master will need to change fast and drastically.

Such a scenario may also result, if not well regulated, in a land cover conversion that is likely to bring along new forms of land use that may not be friendly to smallholders. The clearance of vast areas creates an enabling environment for large scale, concession-type agricultural farms. This in itself may bring along changes in landownership. Large concession holders prefer having direct control over land assets, rather than relying on more complex tenure arrangements with communities, groups and households as, for instance, under an out-grower scheme. This land cover conversion leading to eventual land ownership changes in a poorly regulated environment, may thus result in major negative consequences for a majority of Liberian farmers. As long as viable alternatives to a diversified use of land and natural resources are not available, the Liberian rural households will continue to rely on present production systems, which are still far away from an African Green Revolution model.

It is highlighted that any kind of logging brings along the opening of access roads, more permanent settlement along these tracks, extension of agricultural activities. These processes all lead to more pressure on the land and need to be well managed to avoid land grabbing.

3.3 Who are the people? Land holding communities; their representations and community dynamics

As most of the land owners and PUP contract signatories are parties of a collective nature, it is important to have a better understanding on the nature and composition of these entities, and how they are represented to articulate with the state and third party interests.

First, we compare the entity that acquired the original land deed with the one that has signed the PUP contract as a landowner with the FDA. This is not an easy task as most of the valid deeds were issued at least 50 years back in history, before 1956. Since that period many social, governance and administrative changes have occurred. Districts, chiefdoms, clans do not necessarily have the same connotation over the two periods. This comparison may indicate to some extent patterns of the social and administrative evolution of the “community” and put the perception of “land holding community” in a contemporary setting.

Some practical questions that need answers (and further research) for this assessment include: Do the communities that were allotted or bought land correspond with the entities that have signed the present PUP contracts? Are there groups of landowners (sections, clans, for instance) that are left out of the present contracts? Did newcomers with no historic linkages to landowners manage to be part of present contracts? The basic question is thus: Who is left out and who eventually came in when comparing deed holders and contract signatories?

One assessment tool is to compare the historic deeded land area with the present spatial units that correspond with local social and administrative divisions such as clan, administrative and chiefdom territories. Clan and district maps are available; present day chiefdom maps have not been encountered. An example of such an assessment is presented in Box 6 below.

Second, it is investigated how land holding communities are represented as signatories of PUP contracts. Challenges of collective representation and their use for achieving more personalized benefits are not new in Liberia. In fact, the risk of narrow representations of a few people making decisions over large land areas and that negatively impact on many thousands of people must be well managed. The exercise also includes an assessment of the (legal) tools that are used to establish this representation.

A third dimension that requires analysis is the relationship between the community PUP contract signatories as landholders and community contract signatories with the logging company. Do these coincide or are these different? This is not yet addressed in the absence of the logging contracts.

The analysis of the available documentation establishes a basis for finding answers to these questions. Field work is however imperative to check in situ on how the processes

were conducted that led to this documentation. The LC has initiated this with work in Sinoe district. Similar visits to other counties need to be programmed.

The results of this assessment are presented in table form in Annex 2; preliminary findings are briefly discussed below.

3.3.1 Historic and present community land owners

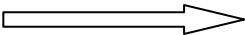
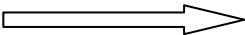



The original holders of granted and purchased collective land rights that underlie present PUP contracts can be categorized on the basis of the nature of the right, as follows.

- **Public Land Sale Deeds.** The deed owners include (i) an individual, (ii) a number of individuals (family members or not), (iii) a chiefdom and (iv) a less accurately defined group, generally a chief and his people.
- **Public Land Grant Deeds.** The poor quality of the available documentation does not allow a confident analysis. There are some indications that the deeds are issued in the name of specific chiefs who represent a chiefdom. One case refers to the people of a chiefdom without indicating its chief.
- **Aborigine Land Grant Deeds.** Most cases refer to the “Chief” (singular and unspecified), elders and citizens of a specific district or chiefdom, as well as to its heirs, executors, administrators or assigns. On two occasions specific chiefs are named.

It is acknowledged that chiefdoms, “a chief and his people” and districts were created as government tools to enhance control over hinterland populations^{xvii}. The former two were customary based institutions that operated in the private rather than in the public sphere of society. It is not clear whether the unit “district” can be treated in the same way; it may have operated more as a public institution. The clans are known to be the only local political and administrative jurisdictions constructed upon formations previously organized by the people themselves^{xviii}; grassroots institutions.

Matching the original collective land holder’s denomination with the present PUP land owner signatories results in situations as follows:

Table 6 – Collective land owners original deeds compared to collective landowners as PUP signatories

Land owners original deeds		Land owners under PUP
CHIEFDOM		INCORPORATED INSTITUTION
CHIEFDOM		DISTRICT
CHIEFDOM		CLAN
DISTRICT		DISTRICT
CHIEFDOM		CHIEFDOM

Land owners of the original deeds were mainly denominated as “chiefdoms”, ie. a chief and his people. In present days land owning communities identify themselves much less

as chiefdoms. This is in contrast with the importance that paramount chiefs continue to play in land administration^{xix}. It is not clear whether an increased expression as “clan” points in the direction of communities exploring, to some extent, more prominently avenues to self-identify them on the basis of genuine local organization. It is noted that clans are also considered as an administrative unit, with clan chiefs being on the state’s payroll. The distinction between genuine customary based institutions and public institutions is probably more blurred than in the past. Present day districts are beyond too much doubt to be considered as public administrative units. An exception remains the last case where the chiefdom as a collective landowning unit has persisted over time. This case refers specifically to Bopolu district in Gbarpolu where the chiefdom continues to function as a strong collective land owning entity and land manager; in fact it operates parallel to the existing local governance structures and seems more influential^{xx}.

Based on the above there is a temptation to outline the dynamics of collective landownership institutions as follows:

- A customary based land owning institution develops in a modern corporate institution;
- A customary land owning institution operating in the private sphere becomes a public institution;
- A public land owning institution remains public but under a contemporary administrative setting;
- A customary land owning institution converts into a different customary based institution, arguably more community driven but which at the same time has a public expression.
- A customary land owning institution continues to operate as it did 50 years ago, with little involvement of local public institutions and local government.

3.3.2 Community land owner representation and representation tools

An assessment of the signatories of PUP contracts with the FDA provides information on who represents land owning communities^{xxi}. The tools that are used to establish this representation are identified and provide information on how this representation is established. Some of these tools are supported in law while others are of an informal character. The following cases occur, with details provided in Annex 2.

District Forest Management Committee. Several contracts underpinned by an aborigine land grant deed are issued in the name of a District Forest Management Committee (DFMC) as a representative of the landowner (a district or clan) and the PUP contract party (the people of...). It is not clear how these DFMCs were created. A number of individual names appear as members but *there is no evidence of possible incorporation, (s)election or nomination procedures, statutes*. On one occasion the DFMC seems to be represented by one individual.

It is interesting to note that the creation of DFMCs as representatives of land owning communities does not make any reference to the CRL. The CRL’s Chapter 4 lays out a solid basis for communities to establish democratic local structures for community forest matters. These include Community Assembly, Executive Committee, Community

Management Body. Similar provisions could be very useful for establishing modern day democratic community land ownership structures.

Community Forest Management Committee. On two occasions Community Forest Management Committees (CFMC) are created and incorporated to represent the community in the PUP contract. One case refers for its incorporation specifically to the *2006 Forest Law Chapter 10.1*, which deals with community empowerment. This concept was further developed in the CRL and its Regulations. The other case uses the *Liberia Business Corporation Act* from 1977 to establish itself as a not-for-profit corporation. Copies of statutes and membership are available in the documentation.

Incorporation of a community based committee seems to be good practice, and presents an official, transparent form of representation that is in principle the result of an inclusive process. As part of the LC's systematic field assessment, it has identified other PUP cases where communities have adopted similar practices to establish representation. It becomes clear that CFMCs as landholding entities are exposed to interesting dynamics, which in fact reflect well "democracy at work" in Liberia. Box 5 gives some flavors on this and underlines the need for further research to assess the functioning of these committees.

Box 4 – Institutional community dynamics at work

This case presents a community that incorporates itself as a Community Forest Management Organization to mainly deal with forest management over their deeded community land purchased under a public land sale. The Organization is also recognized as the landowner. Its headquarters are established in rural town located on the deeded land. It establishes a 9-people board of directors, mainly staffed by the 11 incorporators. A bank account is opened in Monrovia with one account holder. The Organization signs a PUP contract with FDA and contracts a commercial logger to execute the contract.

Following salient issues arise on this case:

- Six incorporators reside in Monrovia, one in the USA, and 4 on the deeded land;
- At least 4 incorporators are recruited by the logging company, three of whom reside in Monrovia; total local recruitment remains restricted to 25-30 people;
- The original deed document is kept by an incorporator resident in Monrovia;
- Local resident incorporators perceive that there is growing gap between them and the "Monrovia group"; they suggest that a workshop needs to be organized for the Monrovia base "to talk to us" and to iron out differences;
- The incorporation statutes seem to have changed since the Organization's inception; the Board is reduced to one person (Monrovia based); there is a general assembly of 22 people, two for each quarter/kinship; there is also an executive committee of 11 members, each representing a quarter;

The latter seems to be the result of a strong awareness by local people that the leadership needs to live on the land they manage. It also reflects a sense for inclusivity, with participation in decision making based on equal kinship representation. The local resident representation also insists that there is a need for three bank account holders, two of whom are local residents. There is a proposal for having two signatures for each bank transfer: expenditure must be decided locally and target local development. The local residents are proposing a statutory change to accommodate these proposals.

Local administration and customary authorities. A significant number of contracts, mainly under grant deeds, are underwritten by a number of local administration and customary leadership representatives, including district commissioner, paramount, clan and town chiefs. In these cases it is difficult to distinguish between state and customary authority. Paramount and clan chiefs are salaried public functions; it is not always clear whether these authorities represent the interests of the people, or those of the state if these two interests diverge. A youth leader or a specific women representative can be included in the representative body. *There is no evidence of incorporation, (s)election procedures, statutes.*

It appears thus that ownership of land (in fee simple under the aborigine land grant deed) by “chief, elders and citizens” is transferred to present day “administrators” of the administrative territory on which the land is located. Is this an indication that these community lands are alleged to be public lands^{xxii}? This contrasts with community lands over which a privately incorporated body was established; these lands are clearly perceived as community lands in the private sphere.

Logging Company. On one occasion, a commercial logging company represents a community as a PUP contract signatory. This relationship is established as part of the *Social Agreement* between the community and company. The community agrees to “*turn over their tribal forest reserved areas to the company for business operation*”. The land elders “*agreed that the company shall have the permit to conduct logging, reforestation, agricultural farming, and as well mineral mining in the areas referred to herein in this agreement*”. The respective area referred to is 18.779 hectares out of a total of 45.344 hectares covered by the aborigine land grant deed. The agreement is signed off by representatives of nine towns/sections. It remains puzzling that the chiefdom over which these lands extend (Teemor – Grand Bassa) cannot be traced on recent administrative maps.

This case does not explicit transfer land ownership of the community to the company but rather long term land use rights. These are however so comprehensive that in reality there may be little difference between the two.

Individuals. The assessed sample also includes a number of individual land owners that have signed a PUP contract. This category sheds some light on how individuals perceive they should engage in PUP agreements. Several cases of public land sale deeds occur with one individual signing the contract. These cases are however substantially different, with one being legally proof while the others demonstrate flaws and irregularities.

- One case is a legal individual landowner of a public land sale deed who incorporates a development corporation which then signs the FDA contract.
- Another case is an individual who seems to make an effort to appropriate himself of a collective aborigine land grant deed through an unidentified company (no documentation available; no trace of incorporation). County and district administration, paramount town and clan chiefs as well as some individuals give *written consent*.
- A third case is based on legal flaws and bad practice. A relative of absent landowners designates herself as (absentee) landowner. She obtains under suspicious conditions a power of attorney from five members of a clan which she represents in the PUP contract^{xxiii}.

- A fourth case deals with three individuals which have obtained Limited Power of Attorney from four individuals pertaining to a specific clan section to act in the name of the entire clan. This requires examination whether only this specific section represents the clan and the land owner, or whether there are other stakeholders that need to be involved.

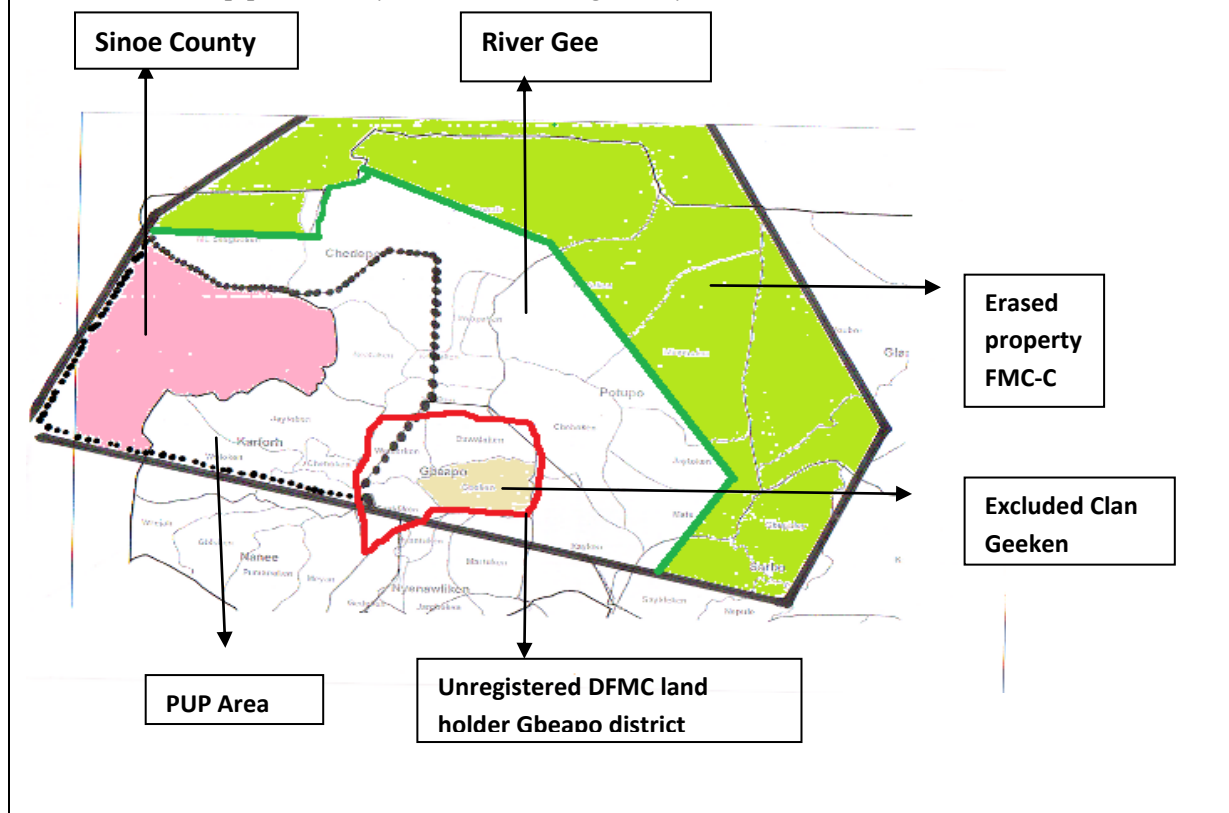
3.3.3 Community identity, land ownership dynamics and representation issues at work under PUP contracts

The LC has started a process to systematically assess a number of PUPs situations to learn lessons for their future handling. One such case study is presented below. It attempts to match the area of an issued deed with the present socio-administrative territorial reality. This exercise indicates some present dynamics on collective land ownership and community land holding representation.

Box 5 – Matching granted deeded and signed PUP areas with administrative/community territories

The Public Land Grant deed issued to the Tienpo Chiefdom, located in Gbeapo district #2, River Gee county (according to the deed's description) covers an area of 679.373 acres. Three PUPs and a FMC are granted over the area. The Gbeapo-Jarkaken people, represented by a DFMC sign one such PUP contract with FDA covering an area of 63.287 hectares (approximately 156.319 acres). The DFMC members include the Gbeapo district commissioner, two paramount chiefs and three citizens. The contract stipulates that Gbeapo administrative district encompasses 17 clan subunits as follows: Woloken, Jehdubu, Surwoloh, Chealoatorch, Bio-Sockkan, Jayloken, Cheboken, Kanweaken, Saukliken, Walkerken, Duwalaken, Jedliken, Krosoken, Neataken, Mt. Pennah, Wropaken and Katorken.

The figure below presents an overlay of (i) the deeded area, (ii) the PUP contract area and the administrative map produced by LISGIS indicating county, district and clan boundaries.



Following observations are made for this case study:

- The PUP contract area covers only a minor part of Gbeapo district; it extends well into Chedepo administrative district, covers most of Karforh district (both River Gee county) and expands into Sinoe county where it overlays 4 clan areas (Jehdubu, Surwoloh, Chealoatorch, Bio-Sockkan). The PUP contract recognizes this expansion but landownership and contract signing is restricted to a representation of Gbeapo district only. This raises questions on the exclusion of the other districts as part of the land holding representation under the PUP contract. In fact Chedepo and Karforh district cover much more area of the PUP contract.
- It is puzzling that the contract is signed by one District Commissioner only, representing a district that covers only a minor part of the contract area. An inclusive process would certainly seek the consent and participation of two other district representations of River Gee county and another one in Sinoe county. As the area extends over two counties, and the land in question seems to be treated as “public” community land rather than as “private” community land, it is probably wise to involve a representation of the two counties.
- Gbeapo district includes 4 clans (Saukliken, Walkerken, Duwalaken and Geeken) of which three appear in the PUP contract, with a fourth, Geeken, left out. There is no clear reason for this to happen.

This case illustrates how historic community land ownership expanding over a large area has been transferred to a minor group that once constituted this community. It excludes other groups from ownership and decision making on land use. Representation issues are problematic here, with one public institution taking on responsibilities that expand well beyond its territorial jurisdiction.

3.3.4 Preliminary conclusions on land owning community institutions and their representation

There is no doubt that the institutions representing land owning communities have been subject to many dynamics over the years. These changes are the outcome of different processes, and may have shaped different in various part of the country. Social variation, especially the role of customary leadership, is considerably different in North- West Liberia as compared to the Southeastern part. War, continuous administrative and local governance reform, opportunism created in conflict and post conflict situations for controlling land and especially natural resources, are but a few of these processes. For ongoing policy and law development purposes, it is however more important to identify and acknowledge the outcome of these dynamics than to attempt analysing and understanding in detail their fabric. It is essential to devise responsive policy, legal and regulatory tools to support workable and good practice outcomes. Liberia needs tools to both add value to desired situations and to curb unwanted practices.

The PUP institutional analysis highlights a few issues that merit attention in the community land legislation that is presently being developed under the auspices of the LC.

A major concern is present practices and mechanisms to establish fair, transparent and inclusive representation. Most land holding institutions operate on a narrow platform of participation and inclusion. Local elites tend to dominate the management of the land resource base in the name of the many community members. This often results in poor land governance with this elite taking personal advantage. The community is at risk losing its asset base, at least for longer periods if not forever.

Recent CRL legislation provides a good basis to extend the representation platform and make it more inclusive and democratic. The incorporation of the land holding community is an essential element of this and must be considered as a first safeguard to cut back on poor land governance. Presently this legal tool is not widespread used. On the contrary, other mechanisms of representation are used such as written consent, (limited) power of attorney, social agreement. These are weak and do not result in broader and more genuine forms of representation. On the contrary they are being misused by smaller groups of people to acquire rights of representation from a few community individuals over the entire community area. Future policy and law reform should expressly prohibit the use of these, including the power of attorney.

4 Preliminary conclusions

The assessment of the issuance of PUPs results in two sets of preliminary conclusions and recommendations, responding to the objectives set out in section 1 of this note.

4.1 A way forward for handling PUPs

The general mandate of the LC is to propose, advocate and coordinate reform of land policy, laws and programs in Liberia. It has no adjudicatory or implementation role. In this well defined function, it proposes that the following is considered as part of a roadmap for the handling of PUPs under the present moratorium.

- *Extend the present moratorium on the issuance of new PUP contracts into a moratorium on the actual logging under these contracts.* Few PUPs have actually seen logging, so the moratorium would not be very disruptive at this time. It would prevent land holding communities from being further disenfranchised on their own land, while allowing the Government to put into place safeguards. The National Forestry Reform Law implicitly permits this by empowering the FDA to terminate PUPs in the case of illegality. If the FDA may terminate the PUPs at issue then it may also take less intrusive action to ensure sound forest management.
- *Enact specific PUP regulations.* The development of this regulatory tool must be an inter-sector responsibility, and not be confined to the FDA only. It deals with several issues over which other public sector institutions have a much clearer mandate.
- *Validate the land ownership rights supporting current PUP contracts.* As a cross cutting institution it is the LC's task to coordinate the development of criteria for these validation exercises. The LC has already proposed a Concession Land Use and Tenure (CLUT) task force to handle these issues. This task force needs to be officially approved and activated as a matter of urgency.

- *Re-issue and make public validated collective deeds.* Once deeds are vetted they can be re-issued in a renewed format to substitute old documentation. This will control the use of the many copies and sometimes forged documentation that circulates. One original can be publicly displayed at the local institution's headquarters;
- *Restrict PUP contract agreements with the commercial sector to incorporated collective landowners only.* This will manage to some extent bad practice on representation issues.
- *Work with the EU on the Verification Procedures under the Voluntary Partnership Agreement (VPA).* PUPs are included under the VPA recently signed between the Government and the EU. The Legality Definition under this agreement provides a mechanism to monitor whether timber products have been legally produced. Verification procedures referring specifically to PUPs include the need to validate the underlying land deed. The VPA can thus secure compliance of good practices to validate private ownership rights that underpin PUPs.
- *Explore ways to make the issuance of PUPs part of a good mix of local and national land use planning.* This planning must cover different sectors, and not be restricted to the forest sector only. Commercial timber extraction under PUPs is only one of the several land use options available to unlock the capital of the rural communities' land asset base.
- *Extend assessment of PUPs to the assessment of Community Forest Management Agreements (CFMA) issuance.* Once PUPs are better regulated, there remains a risk of similar poor practices leaking into unregistered customary land over which communities have not yet established a tenure security safety net.

4.2 Community Land Policy Issues

A significant land area of Liberia is deeded as collective or community land. It can be stated at this stage of the inventory, that an area of at least 1/3 of the total Liberian land mass is covered. Further work is required to complete the inventory of the deeded community land. On the basis of the present sample a significant part of the deeds seems to be legally valid but this requires further assessment by the LC.

Many other communities have established long standing customary rights over land that still needs to be recognized by the State in statutory law and be formalized in one or the other way. Presently there are no legal tools to do this, but the new community land law will address this. This law needs to address should however also deal with community lands that have already deeded their land. Some specific issues on these lands need further attention, such as the nature of the land holding institution, its recognition and specific representation challenges of the institution. Good practice for the latter is included in the CRL law and its Regulations.

The state confirms through the FDA and the signing of PUP contracts that the deeded community land is private in nature, and needs to be dealt with as such. This supports the vision that community lands are to be regarded as private ownership rights, and not as some sort of possession, right to occupy or land use right.

Community land owners themselves restate with passion that their deeded lands are privately owned by the community. The state needs to recognize this and act accordingly when it intends to intervene, for instance, for allocating land use rights to itself (protected

areas; expropriation for public use)) or to third parties (concessions, licenses, land use permits).

There is no doubt that the state and its institutions have unlawfully interfered with collective private landownership rights. Deeded community rights have been eroded over time under conditions that still need further investigation. There are several indicators of poor land governance, including administrative actions that are illegal, blurred institutional mandates, inappropriate use of the law and official authority.

Past and present poor land governance may result in serious challenges for the present government. Possible compensation claims for lost privately owned community land or for such land that was “damaged” by third parties may amount in the millions of US\$. Future policy and law should expressly provide for a cause of action for land holding communities whose rights have been violated by different actions including: the use of eminent domain without compensation, fraudulent transactions, public institutions exceeding legal authority.

It is important for the LC to realize that a significant number of communities and their representatives - legal, legitimate, alleged or imposed – have defined their own terms on the significance of community land ownership, the functioning of local land management institutions, group’s representation and decision making on land (use) rights allocation. These dynamics must be recognized by the LC as a rich informative platform to feed into the community land law drafting process. Workable and acceptable outcomes must constitute the basis for community land law development.

ANNEX 1 Inventory of existing PUP contracts signed between land owners and FDA

INDEX	County	PUP Contract Beneficiary	Area PUP contract (ha)	Underlying Land Right Type	Area underlying Land Right
	Bong	The People of Zota District	39.018,00		
PUP07	Bong	The People of Dobli Clan	8.078,00	Public Land Grant - Tribal Territory Deed 1944	2.310 acres
PUP09	Bong	The People of Zulo Clan	23.306,00	Public Land Grant - Tribal Territory Deed 1944	6.170 acres
PUP10	Bong	The People of Lorla Clan	13.636,00	Public Land Grant - Tribal Territory Deed 1944	3.583 acres?
PUP14	Bong	The People of Kokoyah	21.549,00	Aborigine Land Grant Deed 1934	220.705,52 acres
PUP08	Cape Mount	The People of Zodua Section	11.324,00	Tribal Land Certificate 1973	20.000 acres
	Cape Mount	The People of Gola-Konneh District	67.240,00		
	Gbarpolu	The People of Gbarma District	35.028,00		
	Gbarpolu	The People Kongba District	122.972,00		
	Gbarpolu	The People of Bopolu District	45.014,00		
	Gbarpolu	The People of Bade Clan	83.709,00		
	Gbarpolu	The People of Bella Yellah District	130.569,00		
	Gbarpolu	The People of Foya ???District	121.834,00		
	Gbarpolu	Bondi Madingo Chiefdom, Bopolu District	88.531,00		
PUP20	Grand Bassa	The People of Deekpeh Section	4.503,00	Public Land Sale Deed 1981	2.552,6 acres
	Grand Bassa	The People of Deegba Clan	4.735,00		
PUP49	Grand Bassa	The People of Zaye Town, Doe Clan Dist. #1	5.564,27	Public Land Sale Deed 1979	1.200 acres
PUP50	Grand Bassa	The People of Teemor Section	18.779,00	Aborigine Land Grant Deed 1918	112.000 Acres
	Grand Bassa	The People of Neekren District 3	1.188,00		
PUP18	Grand Bassa	The People of Campwood-Gheegbahn District	51.472,00	Aborigine Land Grant Deed 1929	442.200 acres
	Grand Bassa	The People of Neekren District #3	1.188,00		

PUP56	Grand Bassa	The People of Marblee Clan	35.685,00	Public Land Sale Deed 1968 (probated 1968)	336.000 acres
PUP15	Grand Gedeh	The People of Cavalla District	38.956,00	Aborigine Land Grant Deed 1953	43.586 Acres
PUP19	Grand Gedeh	The People of Zleh Town, Gbao Administrative District	28.143,00	Tribal Land Certificate 2007	125.000 acres
	Grand Gedeh	The People Marbo Clan	88.409,00		
	Grand Gedeh	The People of Tchien District	20.734,00		
PUP57	Grand Gedeh	The People of Webbo & Nyenebo	23.459,00	Aborigine Land Grant Deed 1955	57.967 acres?
	Grand Kru	The People of Bolloh, Dorbor and Fenetoe	15.604,00		
PUP12	Grand Kru	Lower & Upper Jloh District	36.509,00	Aborigine Land Grant Deed 1955?	90.177 acres
	Grand Kru	People of Trenbo District	14.089,00		
	Lofa	The People of Zorzor District	139.392,00		
	Lofa	The People of Voinjama District	72.360,00		
	Lofa	The People of Vahun District	22.889,00		
	Lofa	The People of Kolahun District	32.578,00		
PUP48	Lofa	Kolahun Dist.(Mary Kpoto)	4.058,00	Public Land Sale Deed 1964	32.957,5 acres
	Margibi	Monica Cooper /Margibi County	203,20		
PUP22	Margibi	The People of Gibi District	22.162,80	Aborigine Land Grant Deed 1953	65.465 acres
PUP02a	Maryland	The People of Karluway #1	12.549,00	Aborigine Land Grant Deed 1954 Karluway 1;	31.010 acres
PUP02b	Maryland	The People of Karluway #1&2	16.298,00	Aborigine Land Grant Deed 1953 Karluway 1&2	40.272 acres
	Maryland	Barrobo			
PUP13	Nimba	The People of Doe's Chiefdom	79.263,00	Public Land Grant 1949 Deed (probated 1950)	198.220 acres
PUP17	River Gee	The People of Gbeapo-Thiepo District	63.287,00	Public Land Grant - Tribal Territory Deed 1986	679.373 acres
	River Gee	The People of Thiene District/Tiehnpo Community	11.193,00		
	River Gee	The People of Chedepo and Potupo Districts	51.262,00		
	River Gee	The People Gbeapo, Potupo & Sarbo	45.873,00		

	River Gee	Tuobo			
	River Gee	Zota			
PUP24	Rivercess	The People of Sam Gbalor District	23.432,00	Aborigine Land Grant Deed 1956	57.900 acres
	Rivercess	The People of Beawor District	42.390,00		
	Rivercess	The People Jo-River District	30.675,00		
PUP16	Rivercess	The People of Doedian District	49.394,00	Aborigine Land Grant Deed 1924	140.000 acres
PUP01	Sinoe	Geetroh Community Forest Management Organization	22.831,00	Public Land Sale Deed 1952 (probated 1958)	250.000 acres
PUP25	Sinoe	The People of Tarsue District	63.002,00	Aborigine Land Grant Deed 1952	155.678 acres
PUP26	Sinoe	The People of Nitrian Community, Kpanyan	958,00		
PUP30	Sinoe	The People of Kulu Shaw - Boe district	20.193,00	no evidence attached	
	Sinoe	The People of Kulu Shaw - Boe district	44.133,00		
	Sinoe	The People of Dugbeh River District	29.396,00		
	Sinoe	The People Jeadea District	28.892,00		
	Sinoe	The People of Seekon District	49.434,00		
	Sinoe	The People of Kpayan District	20.402,00		
	Sinoe	Tartweh-Drapoh Management and Development Committee	33.162,00		
	Sinoe	The People of Jeadebo District	7.143,00		
Total (ha)			2.239.630,27		

ANNEX 2 Overview of details on land owners, PUP signatories, their representatives and tools of representation

Index	Deed owners	PUP Contract Party	Representation PUP Contract Party	Contract Party Representation Tool
Public Land Sale Deeds				
PUP20	James P.B. Smith, D.G. Dee-Kpeh; Wruheh-poo Garflay, Goe Voh Vene Dormie	The People of Deekpeh Section	Deekpeh (town) represented by 3 individuals; Kuzu town 1 person; Karyah town 1 person;	Limited power of attorney to nominate representatives but signed by three representatives of towns/section each
PUP49	Plato, Ella, Elwood and Amada Autridge	The People of Zaye Town, Doe Clan Dist. 1	Sarah Miller in name of Doe clan	Power of Attorney from 5 Doe clan members
PUP56	Chief James K. Johnson and his people	The People of Marblee Clan	Three individuals	Limited Power of Attorney from Zueh section (4 people) to three individuals
PUP48	Keikura Kpoto	Lofa Development Corporation	Mary Kpoto in the name of Lofa Development Corporation	Incorporation but no docs attached
PUP01	Geetroh Chiefdom	Geetroh Community Forest Management Organization	GECFMO	Incorporation
Public Land Grant Deeds				
PUP07	unreadable	The People of Dobli Clan	Paramount Chief; Town Chief, Youth Leader	
PUP09	unreadable	The People of Zulo Clan	Paramount Chief; Clan Chief (Zulo); Youth Leader	
PUP10	unreadable	The People of Lorla Clan	Paramount Chief; Clan Chief; Youth Leader	
PUP13	Chief Siaway and the inhabitants of Doe Clan	Doe Chiefdom Community Forest Management Committee referred to as Doe Chiefdom	CFMC	Incorporation
PUP17	The People of Tienpo Chiefdom and the tribal people of Tienpo	The People of Gbeapo District referred to as Gbeapo-Jarkaken	Gbeapo district Commissioner; Paramount Chief; Senior elder	

Aborigine Land Grant Deeds				
PUP14	Chief, elders and citizens of Kokoyah district	The People of Kokoyah	One individual representing the Group of Forestry Experts Company (GOFEC)	Written consent of paramount chief, superintendent; 3 town chiefs, 2 clan chiefs, paramount chief, district commissioner, 6 others; no incorporation documents
PUP50	Chiefs Kpoxweh, Saygboin, Betto and their people	The People of Teemor Section	Lonestar Global Trade and Investment Incorporated represented by 1 individual	Social agreement Lonestar and Tribal People of Teemor Chiefdom and Doe clan signed by representatives of 9 towns
PUP18	Chief, elders and citizens of Campwood Chiefdom	The People of Campwood-Gheegbahn District	Development Chairman GHEDA (Gheegbrahn); Paramount Chief; 4 elders	
PUP15	Chief, elders and citizens of Gboa Chiefdom	The People of Tchien Admin District referred to as Cavalla	DFMC ; 1 senior citizen	
PUP57	Chief, elders and citizens of Tuobo and Nyenebo Chiefdom	The People of Webbo & Nyenebo	Paramount Chief; Clan Chief	
PUP12	Chief, elders and citizens of Lower and Upper Jloh district	The People of Lower & Upper Jloh District	Two Paramount Chiefs	
PUP22	Chief Watson Vorvor, elders and citizens of Gibi Chiefdom	The People of Whorhn (Gibi district)	People of Whorhn through District Commissioner; Paramount Chief; Women Chairlady; Youth Leader	
PUP02a	Chief, elders and citizens of Karluway#1 district	The People of Karluway 1	Paramount Chief; General Town Chief	
PUP02b	Chief, elders and citizens of Karluway1&2 district	The People of Karluway #1&2	Paramount Chief; General Town Chief	
PUP24	Chief, elders and citizens of Sam Gbalor Chiefdom	The People of Sam Gbalor Admin. District	DFMC	
PUP16	Chiefs Gbarr-Teay and Kparr Sayuo and their people of Dolay,	The People of Doedian District	DFMC	
PUP25	Chief, elders and citizens of Sanquin district	The People of Tarsue District	DFMC and 7 senior citizens	

ⁱ Land use rights issued to communities are often exploited by the commercial sector under contract; this refers to PUPs, which are the subject of this note, as well as to CFMA. In fact communities themselves rarely use the issued land use right.

ⁱⁱ The issuance of a Tribal Land Certificate is one of the first steps in the process of a public land sale. It is not an entitlement although many rural Liberians consider it as such.

ⁱⁱⁱ The total stock of land is calculated at 9,591,008 hectares by Chris Toe in “Overview of Natural Resource Concessions in Liberia”; report prepared for the Land Commission, February 2011.

^{iv} Landesa under the MCC threshold compact; SDI-IDLO work in Rivercess; the LRCFP project in Nimba and Sinoe counties, just to name the most prominent.

^v The law stipulates that land over which this license is issued does not include private land; the FDA turns this condition often in a license issued on “public land”.

^{vi} The National Forest Reform Law includes a number of additional conditions for an applicant to obtain a PUP license, including: (i) a business plan; (ii) a 5-year management plan that includes (iii) proof of compliance with all legal requirements for Environmental Impact Assessment, and (iv) a social agreement between applicant that defines benefits and access rights for local forest-dependent communities. None of these requirements have been identified in the available documentation.

^{vii} Payments to the State are similar to these under FMCs and TSCs, including stumpage taxes, export taxes and chain of custody fees. Payments to communities (the landowners) are significantly reduced as compared to FMC and TSC. Annual bid premiums are not payable; area-based fees (annual land rental fee) and production-based payments are to be negotiated directly between the landowner and the logger. In the absence of minimum tariffs, and considering the significant negotiation power imbalance between the stakeholders, there is little chance that communities get a fair deal.

^{viii} The present assessment uses copied documentation and refers to the contents of the documents as they are. It does not deal with issues of authenticity of copies and/or original documents, which on many occasions have been validated by CNDRA or the Ministry of Foreign Affairs.

^{ix} Interestingly, the law indicates that these aboriginal land grant deeds were to be for individual, fee simple ownership. However, the practice developed whereby they were issued for collective fee simple ownership. See *Kamara v. Kindi*, 34 LLR 203 (1986) (holding that aboriginal land grant deed from 1916 issued in the name of a chief was for collective ownership).

^x An Act Regulating the Methods by which Members of One Tribe May Farm and Settle Within the Territorial Limits of Another Tribe, Sec. 1, Jan. 25, 1924. The 1905 Act provided for the issuance of a deed for community land for agricultural purposes and for use and possession only. As previously noted, only if a tribe became sufficiently intelligent and civilized were they granted a deed in fee simple.

^{xi} The exact enactment day of the 1956 Aborigine Law is not known.

^{xii} It is noted that the Public Land Grant deed to the People of the Tienpo Chiefdom was issued and probated in 1986. It does not correspond with a re-issue of a lost deed or a belated probation.

^{xiii} The SDI – IDLO research project “Community Land Titling Initiative” targeted twenty communities in Rivercess county to support activities of tenure securitisation, local institutional development, land and natural resources management.

^{xiv} See IDLO-SDI, 2011 “The community land titling initiative: Liberia Report”

^{xv} The illegality of this PUP does not take away the evidence based value it presents to illustrate ongoing practices in PUP issuance in particular and land and natural resources governance in general.

^{xvi} These cases also bring along technical challenges for the LC to handle. There is a case of a landowner having acquired 1,200 acres of land through the sale of public land at a cost of 600US\$. The deeded area is re-validated as being 13,743 acres. Is there a need to pay for the extra land? How is this articulated under the present moratorium on the sale of public land?

^{xvii} A. Sawyer, 2005 “Beyond Plunder: Toward Democratic Governance in Liberia”

^{xviii} Id.

^{xix} The future status of paramount chiefs seems still to be subject to debate and decision making. While some prominent local government thinkers are proposing that paramount chieftaincies should be abolished (Sawyer, 2005), the Chinese government has agreed to support the GoL with the construction of new office infrastructure for these same paramount chiefs.

^{xx} An interview with a Bopolu chiefdom representative indicates that the paramount chief (deceased in 2011) together with 6-7 chiefs have complete control over the land that falls under the 790,982 acres Aborigine Land Deed issued in 1949. This small group of people issues Tribal Land Certificates (estimated at covering an area of up to 20% of the total area), engages with FDA for PUP and with commercial operators.

^{xxi} The Forest Law stipulates under 5.6.D.i that the PUP applicant is the Land Owner or someone who has written permission from the Land Owner to undertake the Commercial Use on the land. In all investigated cases it is the landowner who qualifies as being the applicant, and thus the signatory of the contract with FDA.

^{xxii} The representatives of the Bopolu Chieftdom do not hesitate however on the status of their aborigine land deed: “*this is our private land where we make decisions and not the state*”

^{xxiii} There is anecdotal evidence in this specific case that that the Power of Attorney was not obtained in the spirit of free, prior and informed consent. A few rural dwellers were rather coerced to sign *a* paper which is happened to be the power of attorney. being misused by smaller groups of people to acquire rights of representation from a few community individuals over the entire community area. Power of Attorney is a weak legal tool to establish representation. Future policy and law reform should expressly prohibit the use of power of attorney under these or similar circumstances.