

LAND POLICY REFORM FOR WOMEN IN LIBERIA

Liberia



➔ The Liberian government's current efforts to address land issues through legal reforms and policy development are a positive step, but in order to be effective they must address the significant inconsistencies in the body of law and custom that governs women's property rights. Photo: ©Together Liberia/Cameron Zohoori

By Elisa Scalise and Leslie Hannay

INTRODUCTION

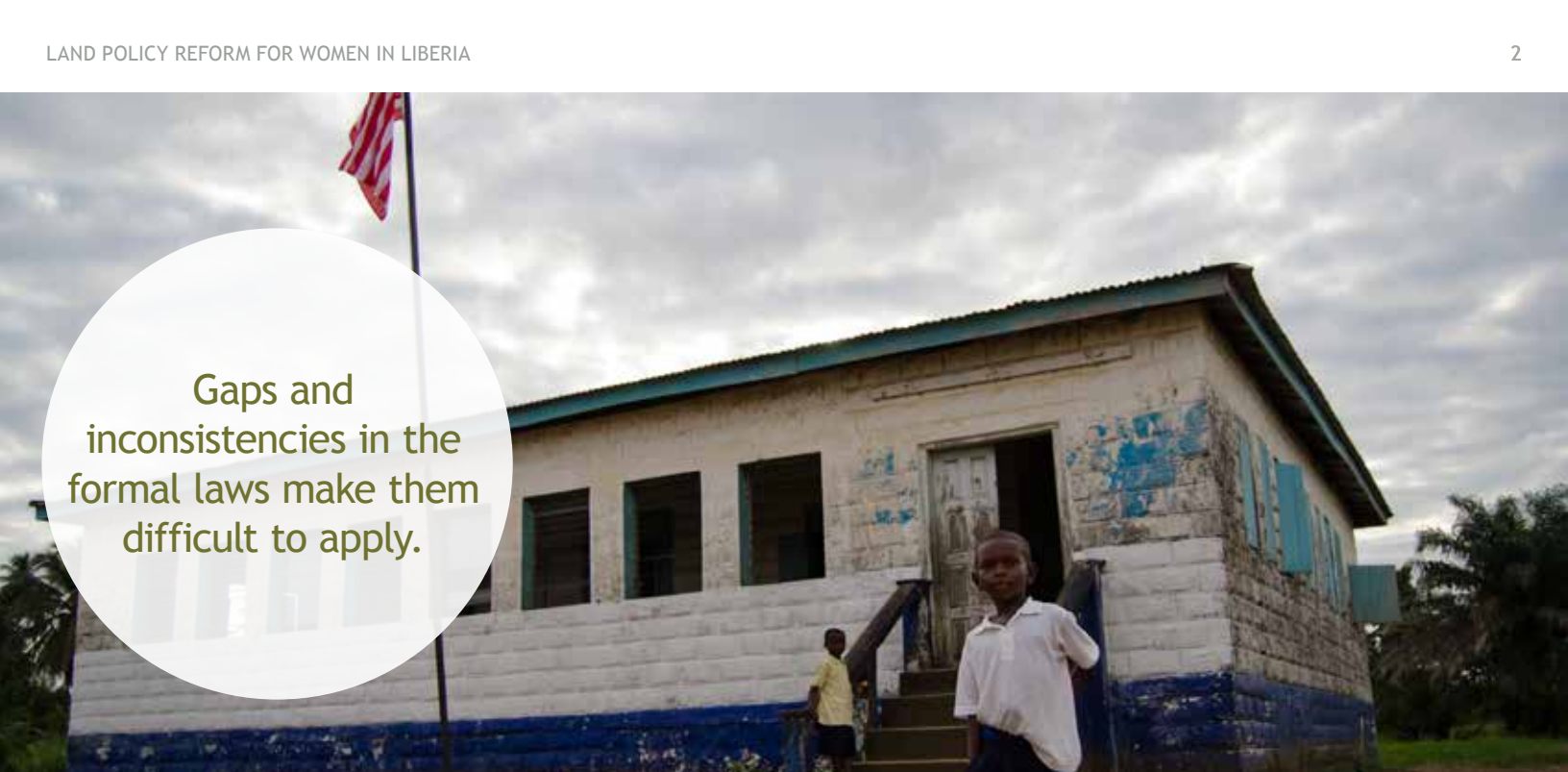
In Liberia, addressing the land issue is a central part of rebuilding the country after over a decade of civil conflict. Recognizing the critical role of land tenure in the country's prospects for peace and prosperity, the government is undertaking comprehensive reforms in the land sector. In 2009, it established the Land Commission to examine land issues and prepare needed policy and legal changes. In addition, the Land Commission is focusing on improving land administration, enhancing the rule of law, and addressing land disputes (GOL 2011).

Currently, widespread confusion exists on a range of legal, administrative, boundary, and ownership issues related to land, which are perhaps being stimulated by rising land value triggered by outside investors (Unruh 2009). These issues differ considerably between rural, urban, and peri-urban areas, and between different regions, religious affiliations and cultural groups.



Elisa Scalise is the director of the Landesa Center for Women's Land Rights.

Leslie Hannay is a land tenure specialist at Landesa.



Gaps and inconsistencies in the formal laws make them difficult to apply.



There are two legal systems of rights in Liberia: statutory and customary. They overlap in significant ways to shape the property rights of women.

Photo: ©Together Liberia/Cameron Zohoori

They also vary considerably between men and women, who have different rights to land in the statutory and customary land governance systems, and for whom cultural norms govern their ability to access land, their ability to participate in decisions being made about how land is used and transferred, and their ability to seek recourse over a land-related dispute.

In May 2013, the Land Commission completed Liberia's first ever Land Rights Policy, which contains positive provisions that, if implemented, could lead to significant improvements in land governance in the country. For Liberian women, the Land Commission's process of legal and policy reform could lead to meaningful positive change, provided that it addresses the significant disparities and inconsistencies in the body of law and custom that governs women's property rights.

THE LEGAL FRAMEWORK FOR WOMEN'S LAND RIGHTS

Former American slaves settled Liberia's coastal regions in the 19th century, while the indigenous lands of the country's interior were left largely intact. This unique settlement history gave rise to

dual land tenure regimes: "statutory" and "customary" (Unruh 2009). While these two regimes use separate rules and processes of governance, they often overlap in practice. To illustrate, in some areas land rights have been documented using an instrument provided by statutory law, but those rights are governed by customary tenure rules.

Within the statutory tenure regime, the most common rights are those conferred by deed of transfer to individuals, and the land over which such rights exist is referred to as privately held land. Privately held land exists in urban, peri-urban, and some rural coastal areas. On this land, women and men rely on deeds as the primary—or only—source of evidence of a right to property (USAID 2012). Within the statutory tenure regime, the law states that men and women have property rights in their roles as spouses and by inheritance (as an heir or a surviving spouse). In practice, however, these rights are rarely applied, especially for women (USAID 2012).

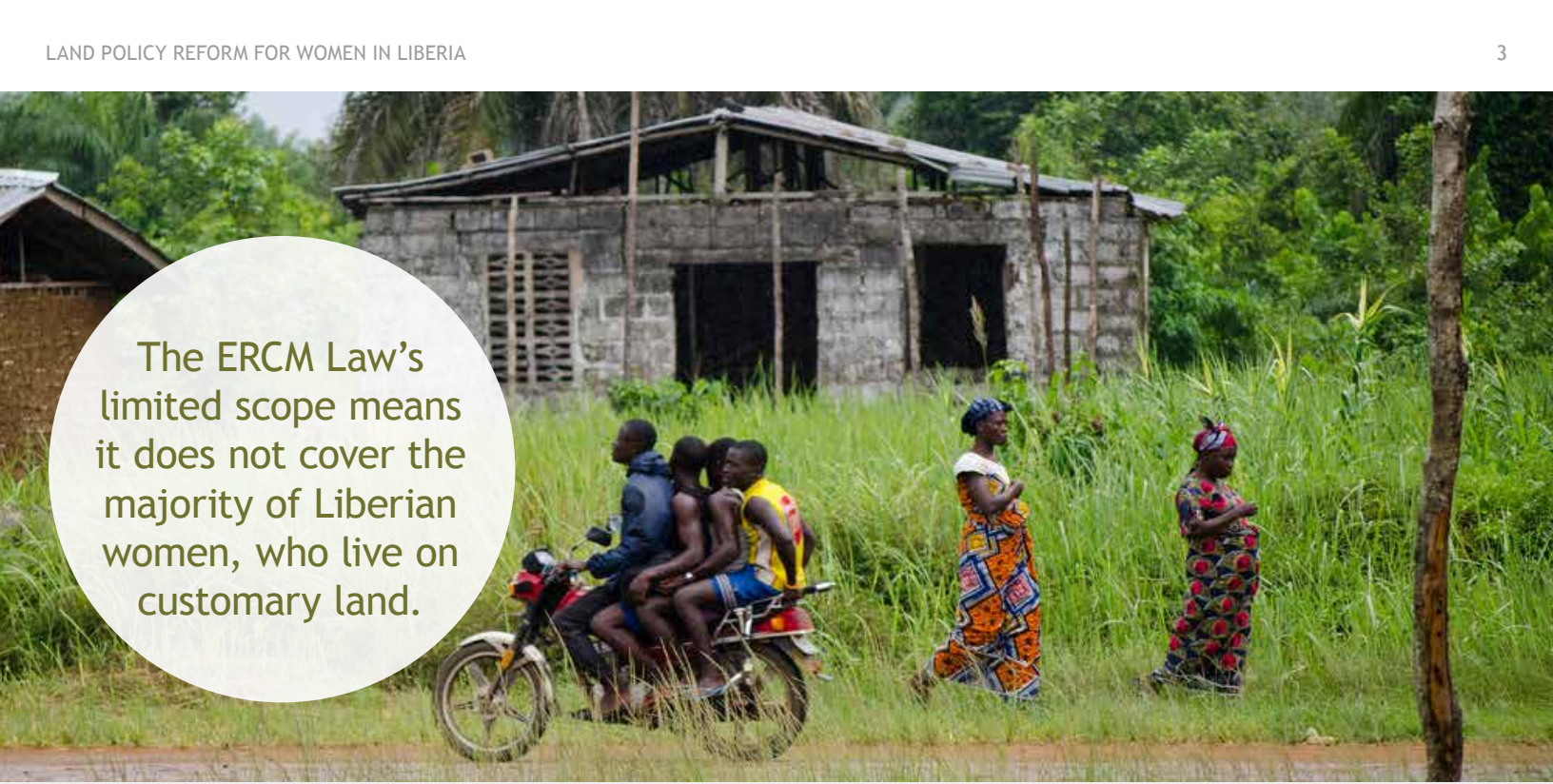
By contrast, a different land tenure regime generally prevails in the country's interior. Covering the majority of Liberia's land mass, property rights to this land arise by membership in or affiliation with a lineage (sometimes

called a clan), and are governed by rules of customary tenure (Wily 2007).

In both of Liberia's statutory and customary tenure regimes, women and men have property rights in land. However, the rights of men and women differ in origin, duration and scope, and are significantly influenced by the legal rules and social norms related to marriage and other family relationships. Thus, the property rights that a woman has in Liberia are determined by the interplay of the land tenure regime (statutory or customary), her marital status, and the type of marriage she is in. This is described in more detail below.

WOMEN'S PROPERTY RIGHTS UNDER STATUTORY LAW

In the statutory law framework, women acquire property rights upon marriage, divorce, death of a spouse, or as a non-spousal heir. Also, women may purchase land or receive it by gift, and they may do so alone or in common as joint tenants, tenants in common, or as tenants by the entirety. These rights are governed by the Constitution, the Domestic Relations Law, the Decedent Estates Law, and the Equal Rights for Customary Marriages Law.



The ERCM Law's limited scope means it does not cover the majority of Liberian women, who live on customary land.



Different laws cover the property rights for spouses in civil marriages and customary marriages. Customary marriages were not recognized in formal law until passage of the Equal Rights for Customary Marriages Law in 1998. Photo: ©Together Liberia/Cameron Zohoori

Liberia's Constitution is the supreme and fundamental law of the land (Constitution, art. 2). The Constitution recognizes the right of all Liberians to own property "alone as well as in association with others" (arts. 11, 22), and contains the principle that the Republic will manage natural resources "under conditions of equality" (art. 7). The Constitution also protects a person's personal property from being alienated by his or her spouse without free and voluntary consent (art. 23). While the Constitution provides that any laws, treaties, statutes, decrees, customs, and regulations found to be inconsistent with the Constitution are void and without legal effect, it also states that the Republic is charged with preserving, protecting and promoting "positive Liberian culture, ensuring that traditional values which are compatible with public policy and national progress are adapted and developed as an integral part of the growing needs of Liberian society" (art. 5(b)).

Different laws govern property rights for spouses in civil marriages versus customary marriages. Property rights of women in civil marriages are covered by the Domestic Relations Law (DRL) and the Decedents Estates Law (DEL),

while property rights of women in customary marriages are covered by the Equal Rights of the Customary Marriage Law of 1998 ('ERCM Law'). Customary marriages were not recognized in formal law until the passage of the ERCM Law, which was intended to extend the same property rights protections of spouses married under civil law to spouses married under custom.

In practice, adjudicators treat a marriage as civil if it is registered and treat a marriage as customary if certain customary rites have been followed (USAID 2012). While the law does not provide an explicit definition of customary marriage that will receive legal recognition, in practice customary marriages are understood to include a "dowry" payment and can include polygamy. A Muslim marriage may be either civil or customary depending on whether it is registered, and whether dowry was paid. Relationships that do not qualify as civil or customary are not considered marriages, even if the couple puts themselves forward as married and purchases property together.

A number of issues within the existing statutory land tenure regime should be addressed by the legal and policy reform process that is underway in Liberia.

Laws which give women property rights in marriage are limited, leaving many women without statutory protections. Though not explicitly stated, statutory rules governing property rights for civilly married couples and customarily married couples only apply to privately held land, not to land governed by customary rules. Even though statutory law provides for property rights for spouses in customary marriage, these statutory rules of marital property do not apply to customary land. This means that the ERCM Law, which explicitly intends to give women in customary marriages the same rights to property as women in civil marriages, has limited effect; it only applies to the property rights of women married under custom on privately held land and thereby does not cover the majority of Liberian women who live on land governed by customary tenure.

Also, the DRL, DEL and ERCM Law have significant gaps and inconsistencies which make them difficult to apply. These laws, for instance, do not provide for marital property regimes which ordinarily define the marital estate and prescribe property division when the marriage ends in death of one spouse or dissolution. Instead they make only partial reference to different categories of property which make up the marital estate, and do not

provide for how the estate is created. For example, the DRL provides that a woman's "sole property" is the property that she brings to the marriage. It does not state whether that property becomes part of the marital estate or if it remains her separate property once she marries, and it is silent regarding property that a man brings to the marriage. Likewise, under the DEL a surviving spouse is entitled to "\$5000 outright," but the DEL does not explain whether the \$5000 is from property jointly acquired, from the decedent's share of the joint property, from the deceased spouse's sole property, or from some other characterization of the property estate. In addition, the DRL requires the consent of spouses for the partition of joint property, but does not provide for how joint property rights in marriage arise (i.e. automatically applied to all property brought to the marriage, applied just to property acquired during the marriage or some other configuration). If these and other gaps in the law are not addressed, systematic documentation of land rights—as envisioned in the land policy reform process—would be very difficult, if not impossible.

The ERCM Law also fails to achieve its intended goal of making the property rights of women married under custom equal to those of women married under civil law. The Domestic Relations Law, the Decedents Estates Law and the ERCM Law treat property rights for civil married women and customary married women differently. For example, a surviving spouse in a civil marriage is entitled to one-half of her deceased husband's property for her lifetime, while a surviving spouse in a customary marriage is entitled to one-third of her deceased husband's property—to be shared with other wives—only until she remarries. Also, under these laws, a woman in a customary marriage must get consent from her husband before she acquires property from a third party, while a woman in a civil marriage need not.

WHERE THE LAW IS SILENT

In addition, the law is silent on how to treat property rights of women and men in long-term consensual unions.

+ FACT

Where formal laws are silent or unclear, customary norms on marriage and property are typically used to fill the gaps, often to the disadvantage of women.

Consensual unions (non-married, cohabiting couples) are especially common in urban and peri-urban areas of Liberia. The property rights of a woman in a consensual union or incomplete customary marriage (i.e. where dowry was not paid) are not protected by either the DRL or the ERCM Law, even when the couple live and act as spouses (for example, the woman assumes the man's name), are presumed to be married by others, and they acquire property together (USAID 2012). This gap in the law leaves women in consensual unions without any formal protection of their property rights because property is assumed to belong to men in Liberia and because property rights are commonly deeded in a man's names even when his partner contributed to its purchase.

Moreover, where the law is silent or unclear, customary norms related to property are used to fill the gaps, often to the disadvantage of women. For instance, property acquired in a customary marriage is, in practice, considered to be owned by the husband (unless deeded to both husband and wife) even if both parties contributed to its purchase. This application of the law closely resembles customary practices governing property ownership and is not aligned with the intent of the ERCM Law, which is to ensure that the property rights of women in customary marriages are treated equally to those of women in civil marriages (USAID 2012).

Property rights of women to customary land are not protected by statutory law. It is probably true that the statutory provisions of the DEL, DRL and ERCM Laws are a poor fit with

customary tenure systems, based as they are on rights for a lineage rather than individuals. That being so, that women who live on customary land are not protected by those laws, while women who live on privately held land are, arguably infringes on the constitutional promises of equality before the law and equal protection by the law (Constitution arts. 8 and 23).

A further complication arises in the context of Islamic property laws, which are commonly applied to determine marital property rights for Liberia's sizable Muslim population, but which are not consistent with statutory rules for inheritance and division of property upon divorce. In practice, Muslims are more likely to apply customary laws or, less often, Islamic law, than formal laws for property matters arising during marriage, divorce, or death of a spouse. Islamic law lays out specific rules for the division of marital property, and is only applied in the explicit context of Islamic dispute resolution, a process that is separate from customary and statutory institutions, though the same leaders in a given community may be called upon to adjudicate both types of matters (USAID 2012).

WOMEN'S PROPERTY RIGHTS UNDER CUSTOMARY LAW

In Liberia's customary tenure regimes women are granted a right to use land by virtue of membership in or affiliation with a customary group (USAID 2011). Overwhelmingly, land rights are transferred by patrilineal inheritance (i.e. along the male blood line) and marriage practices are patrilocal, with women moving to their husband's household at marriage. In general, land

¹ An estimated 12% of the population practices Islam and Muslims are the majority in some parts of the country (IDLO 2010).

rights within customary tenure fall into three categories:

1. Land rights held by a lineage group where use rights are temporarily allocated to individual households for seasonal cropping;
2. Land rights which were once held by a lineage group but have been allocated to households or individuals in perpetuity. This includes rights to house plots, land planted in tree crops, and occasionally parcels for improved lowland cultivation; and
3. Land rights held by a lineage group that are used communally, mainly for harvesting natural resources.

In each case, a woman's land rights are dependent on her relationship with a lineage member and the rights held by that member. For example, when a woman's father has been allocated a seasonal household plot, she has the

right to use that plot with her family if she is unmarried and residing with her natal family. If she is married then it is expected that she use land which has been allocated for a season to her husband.

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. In some clans, a widow may marry a male relative of her deceased husband (often his brother) to protect her right to continue to use land within her husband's community (USAID 2011). A widow also has the right to return to her natal lineage or to marry someone else from a different lineage. In so doing, a widow waives any use rights to her deceased husband's land and the proceeds therefrom: instead, she will

access land of her lineage (if she returns) or from her new husband's lineage if she remarries. Children of a widow who returns to her natal land remain with their mother while they are young, and can claim land in their father's lineage when they come of age (USAID 2011).

If a marriage ends in divorce, a woman generally has the right to return to her natal lineage's land and use land for subsistence farming. She may require the assistance of a brother or male family member to intercede on her behalf, and may need to rely on her natal family to contribute labor or help mobilize labor for her subsistence farming. If she returns with children, the children are generally not entitled to inherit rights to use natal lineage land from their mothers, and it is expected that they will inherit rights to use land held by their father's lineage (USAID 2011).



Reforms that expand community land rights on customary land hold great potential for rural Liberians generally, but risk harming women because their rights to customary land are still subordinate to those of men. Photo: ©Emmanuel K. Urey



REFORMING WOMEN'S LAND RIGHTS

In the land tenure reform process, the Liberian Land Commission is working sequentially through issue clusters covering: (1) Land Rights, (2) Land Administration, (3) Land Use & Management, and (4) Land Dispute Resolution (GOL 2012). The question of women's land rights cuts across each of these clusters. While the Commission has identified and examined the major land issues facing the country, it is still in the process of determining the appropriate policy responses; the Land Rights Policy is the first among several anticipated policies to be completed by the Land Commission, and constitutes the first step in the legislative and regulatory reform process (GOL 2012). This process represents an important opportunity to correct problems with the current legal framework described above and strengthen women's property rights in Liberia.

Statutory laws governing women's land rights are incomplete and unclear and should be amended. The law must provide better guidance on marital property rights, including provisions related to separate property and joint or common property. Also, the current statutory framework does not help the majority of women who live in Liberia's interior and only have access to land via customary rules, and provides no guidance on property rights for couples in long-term consensual unions that are not classified as marriages in either the civil or customary sense.

In addition, statutory property rights should be made equal for all women no matter the nature of their marital relationship. For example, the ERCM Law was intended to provide women in customary marriages with the same statutory protections to marital property as women in civil marriages. However, at face value, the Domestic Relations

Law, the Decedents Estates Law and the ERCM Law treat property rights for civil married women and customary married women differently, resulting in unequal protections.

Also, more attention should be paid to the needs of women on customary land. The Land Rights Policy and other laws and policies developed through the current reform of Liberia's land sector will strengthen customary tenure, expanding land rights held by communities on customary land. This process holds great potential for Liberians living on customary land, but there is a risk that women will lose out because women's rights to customary land are subordinate to those of men. While customary tenure regimes can protect women's property interests, those protections may not always be adequate. For example, when a husband dies, the dominant customary norm is to grant the widow lifetime rights to



Statutory property rights should be made equal for all women no matter the nature of their marital relationship.

Photo: ©Emmanuel K. Urey



his land, including her right to manage it (USAID 2011), but this arrangement leaves a woman vulnerable, because maintenance of these lifetime rights is dependent upon the woman having children of the lineage and maintaining a good relationship with her deceased husband's family. The Land Rights Policy does not provide clear guidance on this issue, and it remains unclear how stronger customary tenure as envisaged under the reforms will deal with its various impacts on women and men so as to ensure compliance with

constitutional promises of equality before the law.

CONCLUSION

The land policy and law reform process in Liberia will be stronger and more durable if it can reach the right balance between equity, fairness, feasibility, and practicality (GOL 2010). It is also important that rights can be exercised equally by all. In Liberia's plural legal system for land tenure, it is perhaps too simplistic to view the property

rights of women as either "statutory" or "customary" since there are many examples of overlap. At the same time, there are two legal systems of rights, and women and men are treated differently in each. From a land policy perspective, it is critical that confusion, gaps, and inconsistencies in the law are addressed to help create a land governance system that both women and men, no matter their marital status and no matter what category of land, can enjoy equally.

SOURCES

Government of Liberia (GOL). 1986. Constitution of the Republic of Liberia.

Government of Liberia (GOL). 2010. Land Commission Liberia. Annual Report 2010. Available online. URL: <http://www.lc.gov.lr/doc/AnnuaReport2010.pdf>.

Government of Liberia (GOL). 2011. Land Commission Liberia. Annual Report 2011. Available online. URL: <http://www.lc.gov.lr/doc/AnnuaReport2011.pdf>.

Government of Liberia (GOL). 2012. Land Commission Liberia. Draft Land Rights Policy Statement.

IDLO. 2010. Liberia Country Report: Strengthening the Legal Protection Framework for Girls in India, Bangladesh, Kenya and Liberia.

Unruh, John. 2009. Land Rights in Postwar Liberia: The Volatile Part of the Peace Process, Land Use Policy 26, 425-433

USAID. 2011. Liberia Land Policy and Institutional Support (LPIS). Customary Land Tenure in Liberia: Findings and Implications Drawn from 11 Case Studies.

USAID. 2012. Liberia Land Policy and Institutional Support (LPIS). Women's Land Rights Study.

Wily, L., 2007. So Who Owns the Forest? An Investigation into Forest Ownership and Customary Land Rights in Liberia. The Sustainable Development Institute, Monrovia.

World Bank. Gender and Development Group. 2010. Liberia: Gender-aware programs and women's roles in agricultural value chains. Available online. URL: <http://siteresources.worldbank.org/EXTGENDER/Resources/LibGenAgrPolicyMem-Web-fin2.pdf>.

The views presented in this brief do not necessarily represent those of any FOLA partners, but rather reflect the views of individual authors.