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Compensations and Customary Rights in the Context of the Concessionaire Companies

An Economic Approach

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The present report deals with the question of how to compensate rural communities affected by the operations of concessionaire companies in Liberia. Addressing this concern requires that we successively look at the three following issues: (1) how communities are being informed and involved in the process of negotiation leading to concession agreements; (2) how to design the concession agreements so that affected communities are effectively compensated and share in the benefits thereby generated; and (3) how customary land rights need to be adjusted and formalised to provide as much efficiency and equity as possible. The first three sections of this report address each of these issues. A final section summarises our main recommendations.

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1. The decision-making process regarding concessions: the role of communities

There is an inherent tension between two key objectives or commitments made by the GoL (Government of Liberia). On the one hand, GoL is determined to attract Foreign Direct Investment with the intention of leveraging financial resources and obtaining technologies and know-how needed to better exploit the rich natural resources of the country. One favorite way to achieve these objectives is through license agreements that provide foreign commercial companies with long-term access rights over vast areas (whether agricultural lands, forests, or mining sites) in return for their expertise. At the same time, the GoL is committed to a decentralized approach to development and inclusive growth which involves granting more rights and devolving more powers to local entities, rural communities in particular. This second priority is equally justified, because there has been excessive centralization in Liberia, and because many problems have actually arisen from dysfunctionings at the central level, in particular from blatant coordination failures among various Ministries and official agencies.

The tension prevails because the government is eager to move forward as quickly as possible to attract foreign investments, which it badly needs to raise the level of its revenues and to enhance the standard of living of its notoriously poor population. Yet at the same time, it is keen on an inclusive pattern of development given the tough legacy born of a devastating civil war and the consequent need for strengthened national integration. The outcome has two resulting characteristics. First, the central government tends to rush toward signing agreements with foreign companies without prior consultation with the communities liable to bear the consequences. These agreements involve large areas of land for long periods of time (running from 25 to 65 years in many cases). Second, GoL's policy orientation emphasizes the rights of local communities over their customary lands. These rights, as they emerge from the *Land Rights Policy Statement* (which, at the time of writing of this report, has not yet been turned into law), are intended to be equivalent to full ownership rights and, therefore, to private property rights formally titled. Communities would be transformed into legal entities that are entitled, whether their present rights are deeded or not, to exercise all the prerogatives generally accompanying full ownership status.

This second policy orientation emerged because of the shortcomings of the previous top-down approach to concessions which led to the expression of deep frustrations and feelings of anger, sometimes resulting in mass demonstrations and violent outbursts (or threats of them), on the part of the communities. However, the current proposal, at least regarding agricultural concessions, is an

imperfect compromise between the two aforementioned objectives. The proposal to abandon the earlier notion of Public Lands (over which the state exerts a bare ownership right) and to instead grant full ownership rights to rural communities over customary lands creates the impression that these communities can actually exercise the whole range of such rights. Such rights should obviously include the right to say yes or no to any proposal of land concession in favour of foreign commercial companies, under the 'free prior information consent' principle. In actual practice, however, the latter principle cannot be exercised insofar as concession agreements are still decided at the central government level. In other words, a mixed signal has been sent to communities that proves false when concessionary agreements are being discussed and signed.

1.1 The Agricultural Concessions

Under the current practice, it is only after an agreement has been signed with the government that the concessionaire companies are required to negotiate with the communities concerned and reach with them a so-called Memorandum of Understanding (MoU). Once these negotiations have concluded, concessionaires will know the precise nature of their prerogatives and obligations and only then will they be able to start their operations. There is thus a two-step process. In the first step, the company which won the bidding negotiates with only the central government, and the two parties sign a so-called "social agreement". This process excludes the affected communities, which remain uninformed. The area of operation earmarked for the company is called the "area of interest".

In the second step, the communities, once identified, are expected to discuss with the concessionaire the precise terms of a sort of operational agreement. This agreement is made within the framework of the "social agreement", yet may end up outlining areas of actual operation that are significantly different (much smaller than) from the "area of interest". It is not hard to understand why companies are likely to feel deeply uneasy about such a procedure. Not only may the actual final agreement be very different from the initial one, but the time-intensive process may cause a considerable waste of resources (see De Witt, 2012a and b). Furthermore, when there is no proper prior mapping of the lands of the affected communities, there is a risk that the concessionaire company arbitrarily [or deliberately] excludes some of the communities as its interest is to minimise negotiation costs and compensation expenditures.

Everybody would gain if the procedure could be simplified into a single step of tripartite negotiations involving the central government, the communities concerned, and the concessionaire company. First, the company's exposure to uncertainty between the two steps of the current procedure will be erased. Second, the frustrations of the communities for not having been consulted

from the beginning will be removed. Third, the operations of the company will begin earlier for the benefit of each party (the profits of the company, the tax proceeds for the government, and the economic gains for the communities).

The adherence of the GoL to the odd prevailing two-step procedure seems to have arisen from a fear that consulting and applying for consent from the communities involved jeopardises concessions negotiations. Yet, various experiences of sensitisation and consultation of communities reveal that this risk is clearly over-estimated: once properly informed, communities are rather quick to understand the potential benefits that may accrue to them as a result of concessions. Since the simplified procedure would be much more in line with the land rights' approach of the government, it seems to be in the general interest of Liberia's people.

The proposal of a one step tripartite approach to the negotiation of agricultural concessions obviously requires the proper identification of the 'affected communities' in the area of interest. This itself requires preliminary efforts to map the resources over which these communities have traditional rights of use.[1]

An alternative, more radical approach that appears more consistent with the current Land Rights Policy proposal would see the communities as the only stakeholders allowed to deal with concessionaire companies. Communities would then be entitled to exert the full range of their property rights, including the right to negotiate long term leases with third parties. This approach raises two important issues, however. First, this approach bypasses any consideration of national or public interest, which is especially worrying given the sheer size of the concessions. In particular, the concessions give rise to large externalities affecting population groups that do not belong to the stakeholder communities (road access, power generation, railways, labor markets, …). Some public regulation by the State is therefore required to take proper account of the public interest. Second, communities have no experience in negotiating directly with large multinational companies, and it is therefore naïve to think that they would acquire the necessary capacity in a rather short span of time. The presence of experienced state authorities in the negotiations should lend more bargaining strength to the communities and thereby ensure fair and mutually satisfying agreements. In light of these two arguments, we do not believe that this more radical approach is advisable.

1.2 The Forestry Sector

[1] This leaves open the question as to whether the mapping process should be initiated at the community level towards the resources to which they have traditional access, or should start on the level of the resource area concerned by the concession to identify the communities with legitimate rights to that area.

The forestry sector has undergone an evolution that goes even further than that described above for agricultural concessions. The sector has shifted from a top-down two step process to a more integrated and inclusive one step process that resembles the mechanism recommended above.

The former approach, based on the so-called Community Forest Development Committees (CFDCs), relies on the notion of 'Affected Communities'. Communities so defined do not have a traditional right on forest land, but have livelihoods affected by any forest management plan decided by the Central Government. More specifically, they are located within a 3 km distance from the forest for which a contract has been made. For each forest, a single CFDC is typically established (except when the forest overlaps two different counties, in which case two CFDCs with proportional interests are created).

The compensations involved are defined by strict state regulations. The CFDC, acting on behalf of all the 'Affected Communities', is entitled to directly receive a cubic meter fee on timber. In addition, the affected communities accrue thirty percent of the land rental fees paid by the logging companies, but only indirectly and subject to conditions. More precisely, these sums are collected and managed by a National Trust Fund, whose Board includes representatives of the CFDCs as well as of the government and the civil society. The Fund's main function is to review the project proposals that the CFDCs must submit for approval before being named eligible to receive their share in the revenues collected from their respective forests.

This system suffers from a number of difficulties. First, little attention has been given to the communities' capacity to propose projects within realistic budgets and timeframes. This is particularly true for remote or less educated communities, for which obvious communication problems may hamper the whole process. Second, within the CFDC, the decision process and the representation rule for the selection and formulation of projects are not clearly described. In addition, the criteria for project approval by the Board are not completely transparent. Finally, although a number of these projects are ongoing in the affected communities, the Trust Board has not yet received the fees collected by the Ministry of Finance from the commercial companies that should have been subsequently transferred to the Board . Understandably, this situation has caused frustration and distrust among the potential beneficiaries.

The frustrations with the current CFDC system will be reduced in the new approach now advocated by the Forest Department Authority (FDA) for uniform adoption across Liberia. This approach involves a clear recognition of customary rights over forest resources. According to the 2009 Community Rights Law, any community which has traditionally owned or used village forests

is invited to set up an 'Authorized Forest Community'. With the assistance and under the supervision of the FDA, the Authorised Forest Community would be responsible for demarcating the forest area over which the Forest Community will be allowed to exercise management and use rights. It is strictly regulated and formalized, in that, among other requirements, it must establish a Community Assembly. Furthermore, the Community Assembly must appoint an Executive Committee and a Community Management Body in charge of the daily management of the forest.

Unlike in the previous approach, the Authorized Forest Community is entitled not only to direct receipts of all transfers made by the logging company (which correspond to 55% of the bid premium and land rental fees), but also the administrative authority over the allocation of transfer revenues under standard accounting procedures (for which technical assistance would be provided by the FDA). Any expenses are detailed in a budget prepared by the Management Body and approved by the Executive Committee of the General Assembly. This strategy is new: so far, only 10 communities have applied and only one is actually functioning along these lines. The adoption process across the country will admittedly be long and gradual, because the FDA must train the forest communities to carry out the prescribed tasks.

Under the new approach, the establishment of Forest Communities hinges upon the sustained administrative integrity and capacity of the Forest Development Authority required to establish, advise, support and manage those communities. This is particularly true for the creation of the Forest Communities, for which no objective criteria has been specified (why select a particular community?).[2] In addition, important direct responsibilities still rest with FDA. Indeed, most decisions and strategic orientations of the communities must be approved by the FDA; in particular, the FDA must approve their Management Plans, including the harvesting plans. In the absence of clear guidelines and criteria, the FDA remains the final authority and enjoys considerable discretionary power in Community Forestry.

At this stage, there is some uncertainty about the transition to the 'Authorized Forest Community' model. Until greater clarity is achieved regarding that particular model's generalisability, a dual system will persist. Moreover, while it is stipulated in the regulation that existing CFDCs with a direct interest in the forest may be integrated or subsumed within the Authorised Forest Community, some additional difficulties might be created. In particular, since a CFDC is a common institution involving all communities affected by a particular forest concession,

[2] With the development of customary rights on land and forests, the demarcation of community forests will solve the question of identifying the communities concerned.

it may not directly coincide with a particular community to which customary land rights and forest rights are granted under the Authorised Forest Community policy.

Presumably, under the system of Authorised Forest Communities, the rural communities participate in the logging concession-granting process from the very beginning. Yet we should emphasise that both the bidding process by the logging companies and the terms of the agreement, particularly the sharing of the revenues generated, are strictly set by the GoL. Such limitations are to be understood in the light of the important stakes involved and the lack of experience of the forest communities.

1.3 The Mining Sector

In contrast to the agricultural and forestry sectors, the mining sector involves a resource that unambiguously belongs to the State. Yet, to the extent that open mining prevails in many cases, concessions may result in the encroachment of community lands. Moreover, communities may suffer from a number of negative consequences caused by the mining activities. Here the negotiation process is entirely in the hands of the Central Government and the Affected Communities only have the possibility to discuss compensations for possible adverse effects. It is noticeable that the government places great emphasis on the corporate social responsibility of the foreign mining companies, implying their support for the development of surrounding communities.

2. Transfer payments to communities affected by agricultural concessions

2.1 A Preliminary Clarification

According to the *Land Rights Policy Statement*, communities are to receive more complete ownership rights over their customary land resources. A direct implication of this strategy is that communities have a right to be compensated whenever a concession is granted that limits those rights.

It is noteworthy that, in both official documents and expert reports, the word ‘compensation’ is used in a rather loose manner that confounds distinct realities. More precisely, a distinction has to be made between ‘compensation’ (stricto sensu) and ‘revenue sharing’. The first refers to transfers paid to households for the damages or losses caused to them by a concession agreement. The general principle of compensation is that the transfer amounts are such that the well-being of the household

(or communities) is ultimately unaffected by the agreement. Damages or losses include both the incomes and well-being lost as a result of reduced access to resources as well as the negative effects (externalities) caused by the activities of the concessionaire company. The concept of revenue sharing, on the other hand, refers to the participation of the households (or communities) in the new incomes generated by these activities. The distinction is important, because once understood, it may justify different approaches and policy instruments.

The issue of compensation is especially tricky because the valuation of damages and losses may be difficult. There are two reasons for this: first, the absence of an active land market prevents the use of a benchmark price to assess any foregone incomes. Second, some negative externalities are particularly difficult to quantify due to their subjective nature (e.g., the disappearance of a traditional burial ground).

2.2 Two First-Best Systems of Concession Contracts

Given the above difficulties, it is always advisable to use a system through which individuals or communities voluntarily choose their preferred outcome. In such cases, the thorny problem of determining compensations is avoided altogether. To illustrate this path, one could consider the possibility of replacing the plantation system by a generalised outgrowers' scheme or contract farming system. Under this alternative arrangement, the concessionaire company would only be granted the land required for demonstration plots, storage and processing facilities and the production of seedlings. The actual cropland (for the growing of rubber, coffee or palm oil, for example) would continue to belong exclusively to the local households who would be left free to engage themselves or not in the production scheme initiated by the company and to designate the plots earmarked for the scheme. The company would be responsible for providing the farmers with modern inputs, seedlings, technical know-how and training as well as credit and marketing outlets.

This arrangement is especially appropriate when tenure rights over farmland have become essentially individualised, as seems to be the case in highly populated areas of the country. Indeed, adopting this method would systematise the valuation of compensations as well as their distribution by the community, in the event of population displacement or changes in land use patterns. One possible argument in favor of the current system which combines a core plantation with surrounding outgrowers is that the concession company needs a critical quantity of produce to make its processing and marketing operations profitable. However, this forgets that community members have the options of either hiring migrant or temporary workers or leasing out part of their land. This

second solution would amount to a nascent land lease market, liable to allocate production opportunities in an efficient and transparent way.

Still another scenario in which community members will not be dispossessed of their customary land rights is to let them directly enter into a long term land lease contract with the concessionaire company. In exchange for its use of the land, the company is required to pay a land rental fee on a yearly basis to the households or the community. This option faces an inherent coordination problem: for the company to get access to a compact land area, there must be an agreement among community members about the leasing decision or a sufficiently strong community decisionmaking mechanism to reach a collective agreement. In principle, the Land Rights Policy framework proposed by the Land Commission could enable and empower communities to directly lease out duly recognised customary land to foreign companies.

It is worth emphasising that, being intrinsically voluntary, all these arrangements automatically imply that the communities feel that they are not only fully compensated against potential losses but also that they get a fair share in the new income opportunities brought about by the concession. Being based on the free will of community members, these arrangements embody the principle of 'free prior and informed consent' stated in the Land Rights Policy proposal.

Equally noteworthy is that the aforementioned system of Authorised Forest Communities is a significant step in that direction. Indeed, community members receive a portion of the land rental fees and of the bidding premium paid by the logging companies to the government. Under the Management Plan system, in so far as they are allowed to specify the parcels earmarked for the concessions, the mechanism is actually very similar to a system of free contracts.

2.3 Valuing Compensations in a Second-Best World

If the ideal type of arrangements discussed above turns out to be fraught with important difficulties, the issue of valuing the compensations must be prioritised. The existence of an active land market is often alleged to yield sufficient information to assess the economic value of the land transferred to the concession. There are several reasons why these prices do not constitute a proper benchmark for the purpose of assessing compensations and why they actually under-estimate the true value attached to the land. First, when a significant number of farmers sell or lease out their land under distressed conditions because of urgent needs for cash, the ruling market price is bound to be below what it would be if these urgent needs could be met through a well-functioning credit or insurance market. Second, land market prices may also be depressed because many sellers are

actually absentee landowners who do not confer a high value on an asset that they have accumulated for speculative reasons. More fundamentally, the plots of land offered for sale have a lower value for the average seller than those that do not enter the land sale market. Therefore, the resulting price necessarily underestimates the true value of the land that is not offered for sale: it constitutes, at best, a lower benchmark on its true value.[3]

The problem becomes more complicated when the land market is absent or not very active. Presumably, this is the case in customary areas where the sale of land was traditionally forbidden, and in land-abundant areas where everybody had easy access to the land. In such circumstances, we need to apply a rule-of-thumb to solve the compensation valuation problem. In Liberia, the rule that is often implemented in the case of resettlement consists of granting the dispossessed household an amount equal to the value of the crop grown during an agricultural season. This is obviously a huge underestimation of the damage caused by a loss of access to land.

The traditional approach for asset valuation involves computing the present actualised value of expected crops over a lifetime period (and, indeed, a well-functioning land market should actually be based on that valuation). Of course in addition to values so computed, one must include the quantifiable costs caused by the resettlement of the farmers concerned, plus an imputed price (or a mark-up) for those costs that are impossible to estimate (e.g., the cost of losing access to an ancestor land).

The question of which discount rates should be used in computing the present value of future incomes is especially complex in poor countries where undeveloped financial markets have prevailing interest rates (on riskless assets) that do not adequately reflect inter-temporal preferences. Even if somewhat arbitrary, it seems reasonable to use a rate of about 5% (which, by all means, constitutes an upper benchmark on a rate of actualisation). Applying the standard formula for actualisation of all future incomes, a discount rate of 5% implies that the yearly income from a land plot must be multiplied by a factor of 20 to arrive at the estimate of the present value of the land. Such compensation far exceeds that of the rule currently applied. This said, its use is only legitimate when the land is continuously cultivated (if fallowing is practiced, this factor must be reduced in proportion to the inverse of the actual cropping intensity) and the farmer has no access to an

[3] It is worth noting in this context that, in West Bengal (India), the law provides that the compensation to farmers who lost their land as a result of public expropriation is equal to twice the current market price in rural areas and four times in urban areas. In spite of this generous valuation method, policy makers and economic advisers still find that it does not go far enough towards truly compensating the expropriated farmers (Ghatak and Ghosh, 2011; Ghatak and Mookherjee, 2013).

alternative plot of land at relatively little cost.[4] Given the diversity of agricultural practices and the variability in land supply throughout Liberia, it makes no sense to propose a uniform compensation schedule. Each compensation should be tailored to the specific characteristics of a given agricultural setting.

Computing compensations as the present value of future incomes over a lifetime period makes sense when the duration of the land lease to the concession is long (e.g. 65 years); or when it is rather short (e.g., 25 years), but the ownership rights revert to the state after the contract expires. It is therefore important that, from the very beginning, the GoL clarifies whether the rights over customary lands leased to a concessionaire company will return to the community or accrue to the State at the end of the concession.

2.4 An Intermediate Approach

We can imagine an intermediate approach to compensations in agricultural concessions. This approach applies to situations in which a concession agreement includes the obligation for the company to establish an outgrower scheme on a portion of the concession area, which is the current practice in Liberia. (In the case of a recent concession with Sime Daby, this stipulated portion is 20% of the plantation area.) The idea is that the costs of clearing and developing the land by outgrowers to make it suitable for cultivation correspond to a de facto rent paid by the company to the community for access to the plantation area. Unlike in the previous proposals where communities are left free to lease their land to the companies, the land use contract would be embedded in the 'social agreement' signed at the end of the tripartite negotiation of the concession.

If that approach is followed, the ratio of the outgrower scheme's area to the plantation area would be determined by the cost of land development and the value of land per unit of area. Its enormous advantage lies in the fact that the transfer from the company to the community by way of a compensation is in kind and therefore avoids any problem arising from spendthrift behavior on the part of people unaccustomed to receive and manage windfall amounts of cash money.[5] It is also a guarantee that the compensations paid by the company entirely accrue to the outgrowers and do not go through various intermediaries. Moreover, it takes place at the very beginning of the concession's operations, thereby acting as an assurance to the local people that they will benefit from the

[4] It is worth noting that, even if concessions are granted over uncultivated customary lands, compensations need to be paid because those lands have potential future uses and anticipated returns which is of some value to the community members.

[5] This argument also applies to outgrower schemes.

concession. In the current situation, the company is required to seek financial support for land development in the outgrower scheme from international organisations such as the World Bank, the International Finance Corporation or the European Union. This odd obligation would disappear under the above-suggested approach.

In the same line, requiring commercial companies to undertake and bear the expenses of investments that match their technical expertise is much more reasonable than asking them to pay compensations through the construction of, for example, schools or health facilities. Building schools and clinics is the responsibility of the state and not of concessionaire companies invited to make long term agricultural investments. Moreover, there is not much sense in asking companies to build infrastructure when they do not bear the responsibility of financing the recurrent expenditures needed for their daily functioning. Finally, since the state must provide schools or health facilities to rural areas regardless of whether a concession exists or not in the vicinity, it is hard to see in what sense the obligation imposed on concessionaire companies to provide them is a compensation made to the affected communities. It is actually a direct transfer from the communities to the State budget.

3. The Role of Communities

The key idea behind the proposed Land Rights Policy is to assert that the rights of the communities over their customary lands are not inferior to those granted to private owners through deeds or full-fledged titles. This is a significant move,as these customary lands previously belonged to the category of 'Public Lands' of which the State is the sole owner. Whether these lands are deeded or not, they would be legally recognised as fully belonging to the communities, which would become legal entities. Given the context in individual persons who appropriated and had public lands entitled under their names, it is essential to minimise the risks of any further misappropriation of customary land.

The key issue is how a community is to be defined. The notion of a 'self-identifying group' as it is found in the last version of the Land Rights Policy proposal is obviously not an adequate answer to the question, and many members of the Land Commission themselves are aware of this. It appears that the situation on the ground is quite varied and complex for two reasons. First, having gone through a long period of civil war, Liberia has witnessed massive movements of its population which have disturbed traditional land occupation patterns and communities. Second, there are important variations across the country in population densities, social and authority structures, and cultivation

patterns that determine huge differences in the extent of individualisation of land tenure rights. At one end of the spectrum, we find homogeneous, socially cohesive communities which have not been deeply disturbed by migratory movements and which still enjoy ample access to land and natural resources. At the other end, communities exist that are quite heterogeneous in terms of clan and tribal identities, do not have strongly legitimate chiefly structures, and are currently subject to rapidly increasing land pressure. While the conferring of collective titles on the former type of communities makes obvious sense, it is much more problematic in the case of the latter type. For the system of collective titles to be effective, what ultimately matters is the existence of a strong decision making structure at community level. This condition is often fulfilled when a community has access to rather vast areas of 'reserve' land, that is, land that is presently unused, either because it lies fallow for long periods of time or because it is made of forests or bushes (possibly earmarked for traditional rituals and ancestors' cults under the supervision of 'mask societies'). A collective title condition is much less likely to be fulfilled when most of the customary lands have actually been allocated to the households forming the community for the purpose of continuous cultivation and exclusive possession. In the case of exclusive possession, most agricultural lands are inherited and there is little common property land left for the community to manage.

In the light of the above complexity, we think that instead of a single uniform system, communities should be offered a range of options regarding certification/legalisation of their land rights over customary lands. One option corresponds to the proposition in the Land Rights Policy framework, namely to grant collective deeds or titles to validate the legal rights of the community over the entire customary area. A second possibility, however, is that the collective title covers only a portion of the customary area, typically that which is not allocated among member households (families restricted to parents and children, or extended families organised as quarters or otherwise) for continuous cultivation. The parcels individualised at the family level (which are typically bequeathed to children) should receive due legal recognition through the issuing of private ownership deeds or titles. The last option, when collective spaces are rare or generate many conflicts, consists in only offering private ownership rights to all the member households of the community. This implies that the remaining customary land collectively held will be partitioned among them.

On the other hand, since social, economic, demographic and environmental conditions are bound to evolve rapidly in Liberia, it is essential that whatever option is chosen, it is not frozen for an indefinite period of time. In other words, a community must have the option to ask for a change in the legal status of its land. In particular, it must be possible to start with a fully collective titling and later evolve towards a system in which at least a portion of the community land is not only held and

possessed individually but also legally recognised as such. When the community does not function anymore as a 'single voice' because of pervasive conflicts around customary land, the transformation of the nature of the deeds or titles could happen at the request of a number of community members. It is therefore essential that local level dispute-resolution institutions exist to hear complaints, settle land disputes, and facilitate the required changes in the system of legal recognition of land rights. The same institutions should be able to hear complaints about undue private appropriation of collectively deeded or titled lands by unscrupulous individuals or authorities.

The immediate implication of the above-suggested approach in regard of agricultural concessions is contractual flexibility. Currently, a serious problem faced by concessionaire companies when it comes to establishing an outgrower scheme is the lack of firm and binding commitment on the part of community members. This problem must be solved because investment in cash crops is long maturing, and a company will not agree to undertake long term investments without a guarantee that the developed land will be cultivated over a sufficient time period.[6] What we propose is that the company makes its farming contracts with the legitimate title or deed holder. More precisely, if the community holds ownership rights over the area earmarked for the outgrower scheme and is ready to operate it as a collective, the farming contract should be signed with the community acting as a guarantor of the agreement. In order that the community commitment is binding, the farming contracts signed with the company must carry legal force. If, on the other hand, community members have a preference for individualised farming contracts and they hold appropriate private deeds or titles, the agreement between the company and the community will be based on individual contracts. They should also have a legal force. The most blatant violation of a farming contract would happen if the land on which the company's fixed investment has been made remains idle. A more debatable situation arises when the productivity of the land under contract farming falls below initial expectations. It is evident here that the company's technical support should play a key role in ensuring an optimal and flexible use of the land.

Importantly, even if community members show a preference for holding private deeds or titles over lands earmarked for the outgrower scheme, this does not prevent them from organising collectively for the purpose of dealing with the concessionaire company in all matters, including identification of suitable land plots, provision of seedlings and other modern inputs, marketing and pricing, setting the dates of delivery, norms of quality control, technical support, etc… Such types of

[6] In the case of palm trees, companies apparently need as many as 20 years of operations to break even and cover the initial fixed costs of land development and the mandatory social investments (schools,…) required as compensation.

organisation, it must be emphasised, results from a bottom up process and, in that sense, represent a more modern form of collective action than a traditional community ruled by erstwhile authorities (chiefs, paramount chiefs, secret societies, elders' councils,…). They would offer a better guarantee that the compensations or benefits derived from the concession are equitably shared or apportioned among members. By contrast, we cannot rule out the possibility that traditional communal authorities may not always distribute these compensations and benefits on the basis of a fair rule. For example, the above discussed system of calculating ex post compensations on a per area unit basis would imply that, for privately cultivated land, households receive compensations in proportion to their landholdings. When payments of compensations are made to the community, there is no way to control whether and to what extent this particular principle is actually followed. A similar problem arises in regard of collectively held land, for which the manner in which the community decides to distribute the compensations or benefits is even more opaque.

The mechanisms highlighted above cannot be effective unless the GoL assumes clear responsibilities for a number of tasks and assists concessionaire companies when they struggle to devise solutions to tricky problems. Among the most important prerequisites for a smooth working of the concession system is a detailed mapping of the land affected by the operations of commercial companies, which should be executed before the concession agreement is signed. This implies not only that the structure of rights is clarified at the community level but also that the territories of all adjacent communities are duly identified and all possible inter-community border conflicts are duly settled. Moreover, in some well-documented cases, overlapping rights over land have been granted to several concessionaire companies at the same time (De Witt, 2012 a and b). Here again, a proper surveying and mapping of the land concerned would have avoided the awkward problems arising from such a confusion.

4. Research Avenues

There are, in our view, three related research questions left untouched by this report. To begin with, given that contract farming appears to be prevalent in some areas of Liberia, one would like to investigate and evaluate those experiences. A first aspect that deserves scrutiny is the determinants of the take-up rates: to what extent do people respond to a supply of farming contracts by concessionaire companies, and which are the characteristics of those who enter into these contracts? A second aspect concerns the incentive problems that may arise in subcontracting, in particular, price renegotiation or commitment issues by farmers to deliver the required quantity at the required time

and by companies to provide enough technical support to the producers. Here, again, it would be interesting to know the characteristics of the farmers who are more vulnerable to incentive problems and their motivations. The third aspect emerges only where community rights are still important. The question is then about the role of the communities in the framing and the enforcement of these contracts..

Second, little is known about the actual functioning of the rural communities of Liberia and the way land is allocated among its users. This suggests another research avenue which would document the various forms of land tenure practices in Liberia and the underlying individualization processes. In particular, one would need to understand the various degrees of existing tenure security, how use rights are transferred between generations, what type of rental agreements are feasible, what type of land markets exist, the processes through which land is allocated to families or clans and to sub-units within these, the type of services the community provides to the households, the incidence of absentee landownership,... The general research question here is to analyze the determinants of the individualization of land rights in its many dimensions, exploiting the rich variety of these rights within Liberia.

A related issue is to identify exclusionary processes in the rural areas, as a function of the prevailing property rights system. Which segments of the population are excluded from access to land under community land ownership or which segments are excluded under more individualized tenure systems? This is particularly important in the current post-war context in which several family structures have been deeply affected by the war and in which important internal population movements have taken place. Relatedly, under community land, the degree of inclusiveness of community leadership has to be seriously investigated. Indeed, the leadership may be the outcome of a traditional authority structure, which may give advantage to some dominant clans, but it may also, in other contexts, be more inclusive or enjoy a large democratic basis.

5. Summary Policy Recommendations

Our recommendations can be summed up as follows.

1. Communities liable to be affected by operations of concessionaire companies ought to take an active part in the initial discussions and negotiations between the GoL and the concessionaire companies involved. In this way, they will be duly informed about the possible content of the agreement and will therefore be able to point to problems easily

overlooked at a higher-than-community level and make suggestions that orient the agreement in a way acceptable to them. At the end of the discussions and negotiations, their formal consent should be sought so that the resulting concession agreement is signed by three parties, the Government of Liberia, the affected communities, and the concessionaire company.

2. A critical role of the state is to carry out a detailed surveying and mapping of the areas involved in the concessionaire operations. This aims to avoid the eruption of potential conflicts over boundaries between adjacent communities, on the one hand, and between competing commercial companies, on the other.
3. The status of the communities as signatories of the concession agreements implies that the situation regarding land rights inside a community is duly assessed and legalised before a concessionaire company can undertake its operations. In this matter, maximum flexibility should be provided, and collective deeds or titles over customary land should appear as only one option instead of the uniform solution enforced by the state. Flexibility should also be understood in a dynamic sense: the allocation of land deeds and titles at community level should have the possibility to evolve in a more individualised direction so that they can be adjusted to the changing conditions in the economic, social and demographic environment.
4. The present approach to compensations in concession agreements is both confusing and fraught with practical difficulties. We recommend that serious attention be given to approaches that minimise the need of ex post compensations. One of these approaches consists in establishing outgrower schemes on the largest part of the concession areas since, in this case, affected farmers and communities remain on their customary lands and have no need to be relocated and/or compensated. In addition, this solution has the merit of allowing communities to share the benefits of land development on their territory. Obviously, conflict-prone situations in which a community is suddenly expropriated from a huge chunk of its traditional territory would be automatically avoided. An optimal mode of operation would make the commercial companies responsible for undertaking and financing the land development costs covered by the outgrower scheme as well as providing the necessary technical support. However, this approach is feasible only if land rights over customary land are duly clarified and legalised so as to allow binding long term commitments on the part of the affected farmers. Alternatively, once such rights are well established, affected farmers and communities could be enabled to enter into long term land lease agreements with the concessionaire companies.

5. In so far as compensations remain in place, using the value of a one season harvest to assess the loss incurred by affected communities is clearly an under-estimation of this loss. We recommend a more satisfactory formula based on the actualised value of all future incomes associated with a particular land plot. On the other hand, we suggest that the current policy requiring that concessionaire companies build social infrastructures in affected communities be abandoned. It is hard to see, indeed, how such infrastructures are proper compensations of the affected households.
6. The above recommendation regarding agricultural concessions actually goes in the direction that the Government of Liberia apparently wants to apply to the forestry sector, under the Authorised Forest Community model. Yet, there remains a lot of uncertainty about not only the path of transition to the new system but also the question of whether the previous system will be allowed to persist. In equal need of clarification is the precise division of decision-making responsibilities between the communities and the Forest Department Authority.
7. For the mining sector, the main problem lies in compensating local communities for externalities that do not chiefly relate to the appropriation of community land. Because many of these externalities have a highly subjective component or are not easily quantifiable, it is impossible to propose a single formula, and the negotiation of the required compensations with the communities must be based on the specifics of each situation.

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Mr. Fole Sherman	Program Officer (Land Use Mang.)	Land Commission	Aug. 26, 2013
Mr. Stanley Toe	Sr. Program Officer	Land Commission	Aug. 27, 2013
Dr. Charles N. McClain	Dept. Minister, Admin. MOA	Min. Agriculture	Aug. 27, 2013
Lawrence Greene	Tech. Manager, Comm. Forest Management	Forest Development Authority	Aug. 27, 2013
	Act. Director, research officer	Public Procurement Concession Commission	Aug. 28, 2013
Ali Kaba	Program Officer (land rights)	Sustainable Development Institute	Aug. 28, 2013
Mrs Ciata Bishop	Executive Director	National Investment Commission	Aug. 29, 2013
Mrs Jeanette Carter	Advisor	Land Commission	Aug. 29, 2013
Mr. Rosli Mohamed Taib	Official	Sime Darby	Aug. 30, 2013
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Alfred Quayaandii	Spokeperson	Madina (Sime Darby affected community)	Aug. 30, 2013
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