

# The Republic of Liberia



## A policy brief: Integration of Gender and FPIC Principles in the Concession Contracting Legislation



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## EXECUTIVE SUMMARY

*This policy brief provides an overview of the law relating to concessions awarding and implementation laws as well as related institutional legal frameworks indicating gender-sensitive and gender blind laws. It also introduces FPIC as an additional tool for gender inclusion and conflict resolution/mitigation. Additionally, the policy brief provides gender mainstreaming principles and a framework for mainstreaming gender in the on-going concessions law review. The brief suggests ways to revise discriminatory laws using gender-sensitive domestic, regional, and international norms relating to responsible land-based investments.*

## PURPOSE

This policy brief (PB) was commissioned by the Office of the Legal Advisor to the President and UN Women under the project “**Sustaining Peace and Reconciliation through Strengthening Land Governance and Dispute Resolution Mechanisms**” funded by the Liberia Multi-Partner Trust Fund (LMPTF). It provides key recommendations for mainstreaming gender dynamics into Liberian laws regulating concessions contracting and implementation. The recommendations provided in this PB are mainly drawn from studies conducted under this joint project<sup>1</sup>, as well as the domestic, regional, and international norms and guidelines relating to large-scale land-based investments (LSLBI). It provides the key steps and principles for transformative gender integration into LSLBI legislation, focusing on the design, contracting, implementation and monitoring and evaluation phases of concessions.

The PB is built in both the developmental (instrumental) and human rights (intrinsic) approaches to gender equality. It is grounded in the gender mainstreaming definition by the Economic, Social & Cultural Council (ECOSOCAC)<sup>2</sup> quoted on the right. This comprehensive definition requires that women and men’s specific interests be integrated at all stages of any initiative, covering both gender equality and women’s empowerment. It is consistent with SDG 5.a.1 which requires reforms to give women equal rights to economic resources and access to ownership and control over land<sup>3</sup>. It also draws from the Principles for Responsible Investment in Agriculture and Food System (PRAI) which fosters gender equality and

### Box 1: State Commitment

For states to comply with international and regional guidelines on land tenure requires improved governance in the form of laws, policies, institutional reforms and awareness raising for all parties especially state officials and private sector companies.

(<https://assets.publishing.service.gov.uk/media/57a089c940f0b6497400027a/FA-PB77.pdf>)

### Box 2: Gender Mainstreaming

Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.

(<https://www.un.org/womenwatch/osagi/pdf/ECOSOCAC1997.2.PDF>)

<sup>1</sup> Particularly Uvuza and Bodger (2020) Assessment of Concessions Awarding and Dispute Resolution Processes Report, UN Women, Liberia; Sam, R. (2020) Coordinating Mechanisms: Ministries and Agencies involved in Monitoring Concessions Report, UN Women, and Liberia; Andrea (2020) Baseline Study: Sustaining Peace and Reconciliation through strengthening Land Governance and Dispute Resolution, UN Women, Liberia

<sup>2</sup> <https://www.un.org/womenwatch/osagi/pdf/ECOSOCAC1997.2.PDF>

<sup>3</sup> SDG Goal 5.a.1



women's empowerment by advancing women's equal tenure rights and adopting processes to enhance women's meaningful participation in decision-making and leadership roles.<sup>4</sup> Similarly, the Government of Liberia (GoL)'s Revised National Gender Policy of 2017 (NGP) obligates all government entities to address gender disparities and ensure gender-responsive outcomes. The NGP states that women's rights are human rights and goes on to commit the GoL to take a human rights approach to gender equality. Women's rights as human rights are further strengthened by the Liberia Land Rights Act of 2018, which calls on gender equality to land and land governance (Articles 2, 28, 32–38). To attain this commitment around LSLBI, it is imperative to harmonize respective related laws policies and administrative tools more particularly to ensure that the concessions awarding laws explicitly provide for women's equal participation and gains in the concession life cycle.

Mainstreaming gender into the concessions awarding and implementation process is critical due to the growing surge in large-scale land acquisition in Africa by local and foreign investors for commercial food, livestock, oil palm, minerals, and carbon trading purposes (Wily, 2011).<sup>5</sup> Research (Uvuza and Bodger, 2020,<sup>6</sup> Sam, 2020,<sup>7</sup> USAID, 2018<sup>8</sup>) has found that this results in communities and/or individuals involuntarily losing land and livelihoods, and distortion of the social fabric; this loss disproportionately affects women more than men because men are perceived as land and property owners. The commodification of land and property as well as agriculture commercialization without substantive gender mainstreaming is highly likely to hurt women smallholder farmers who depend on subsistence farming for food and nutrition security, as well as income. For instance, USAID (2018) found that where compensation is awarded to landholders following a concession contracting, women's crops were not compensated as they are usually food crops and not considered to have an economic value.<sup>9</sup>

### **Box 3: FPIC is about Results as well as Process**

FPIC requires ensuring that communities can meaningfully participate in decision-making processes and that their concerns, priorities and preferences are accommodated in project designs, indicators and outcomes. In short, and as stated by the United Nations Expert Mechanism on the Rights of Indigenous Peoples: "The duty of the State to obtain indigenous peoples' free, prior and informed consent entitles indigenous peoples to effectively determine the outcome of decision-making that affects them, not merely a right to be involved in such processes." FPIC thus additionally requires that communities can negotiate fair and enforceable outcomes and withhold their consent to a project if their needs, priorities and concerns are not adequately addressed. Consultations and negotiations that do not resolve a community's reasons for opposition or achieve consent will provide little assurance against potentially costly and disruptive conflict. FAO, (2014:10) Respecting free, prior and informed consent., <http://www.fao.org/publications/card/en/c/e5e9c08e-ff02-5509-8929-6f6537883f7b/>

Similarly, the integration of the principles of Free, Prior and Informed Consent (FPIC) in the concession process improves cooperation between the community and the concessionaire, thereby reducing the risk of conflicts. In addition, International human rights law requires that there must be

<sup>4</sup> Principles for Responsible Investment in Agriculture and Food System, Principle 3iii and IV – Foster Gender Equality

<sup>5</sup>Wily, L.A. (2011) 'The Law is to Blame': The Vulnerable Status of Common Property Rights in Sub-Saharan Africa. *Development and Change*, 42: 733-757. <https://doi.org/10.1111/j.1467-7660.2011.01712.x>

<sup>6</sup> Uvuza and Bodger, supra note 1.

<sup>7</sup> Sam, supra note 2.

<sup>8</sup> USAID, (2018) Women's Land Rights in Liberia in Law, Practice, and Future Reforms: LGSA Women's Land Rights Study. Washington, DC and Monrovia: USAID, available at [https://www.land-links.org/wp-content/uploads/2018/03/USAID\\_Land\\_Tenure\\_LGSA\\_WLR\\_Study\\_Mar-16-2018.pdf](https://www.land-links.org/wp-content/uploads/2018/03/USAID_Land_Tenure_LGSA_WLR_Study_Mar-16-2018.pdf), accessed on May 29, 2019

<sup>9</sup> Id.

good faith, informed consultations with all affected persons, including women<sup>10</sup>. FPIC principles are in the Community Rights Law of 2009, the Land Rights Act and recognized in many international documents UN Declaration on the Rights of Indigenous People, Voluntary Guidelines on Responsible Governance of Tenure of land, Fisheries and Forest (VGGTs), RSOP, to which Liberia is signatories. When implemented effectively. FPIC represents a critical tool in the realization to indigenous self-determination, promoting community participation in decision-making and mitigating the risk of social conflict around natural resources projects.

Liberia has a strong legal framework that protect women's equal rights to property and other development opportunities. However, when the specific laws applicable to an issue are not gender-responsive, they usually overshadow gender-sensitive laws. For example, the Public Procurement and Concession Act (PPCA) is likely to overshadow the LRA if the PPCA is not revised to adapt to the LRA. To attain gender-responsive LSLBI policy and law revision, it is important that land rights are treated as a bundle of rights (Article 5 of the LRA). It is also important to take into consideration that several laws combine to form legal land rights and regulate business associated with land and, thus, there is an urgent need to harmonize these laws for a full realization of community land rights, and in a gender-responsive manner, as inscribed in the LRA and Constitution of Liberia.

Increasing women's access to development opportunities and land can be a powerful tool to fight poverty and hunger. However, supporting measures need to ensure that women can also effectively use the land. Women's access to productive resources, such as financial, technological and extension services, as well as markets, must be guaranteed by business laws and related implementing structures. Mainstreaming gender perspectives in the legal reform process is not just a matter of adding the word woman to a line or just providing for numbers for women's participation; it is also important that the law provides remedies when the women's rights to productive resources and their participation in governance structure provisions are not respected. In other words, due to gender power and stereotypes, gender-sensitive laws must be accompanied by penalties for gender discrimination, coupled with measures to enable women's voices.

#### Box 3: Gender Impacts

Gender equality is not only a fundamental human right, but a necessary foundation for a peaceful, prosperous and sustainable world. (<https://sdg-tracker.org/gender-equality>)

### **Gender- and social-insensitive concessions awarding and implementation breach land and property rights; women are disproportionately impacted.**

The 2018 USAID study on *Women's Land Rights in Liberia in Law, Practice, and Future Reforms*<sup>11</sup> concluded that large-scale concessions have historically and recently caused displacement, loss of livelihood, and conflict in Liberia. The majority of the concessions were awarded when customary land was still considered public land, allowing the government to grant companies long-term leases, frequently without adequate consultation with local communities (e.g., see Uvuza and Bodger 2020<sup>12</sup>; Sam, 2020<sup>13</sup>). Communities have often lost land, and not been offered new land or granted employment because of investments. Women are especially disadvantaged since they experience increased food

<sup>10</sup> UNHRC, 2007: annex 1, paras 38-39

<sup>11</sup> USAID, supra note 8.

<sup>12</sup> Uvuza and Bodge, supra note 1

<sup>13</sup> Sam, supra note 1

scarcity, limited access to traditional forest products and medicines, loss of access to commons (including firewood, roads, and water resources, thus increasing their workload), and the social disintegration of their communities due to displacement and loss of livelihood. Women are unlikely to be included in consultations if they do occur or be given employment in out-grower schemes. When provided, compensation often went to male household heads, and often does not account fairly for land value or women's crops.

Similar studies, such as Green Advocates International (2017), show that LSLBI in Liberia has further eroded women's land rights due to communities losing land and pressure on the remaining land occupied by the enterprises' neighboring communities.<sup>14</sup> LSLBI awarding processes must ensure that land rights, as enshrined in the LRA, family laws, regulations and development policies, are respected. Concessions are large investments of long duration which have expansive impact on the lives of the communities. The key question for the actors to ask themselves throughout the consultations, FPIC and implementation of LSLBI is *how to ensure women's equal participation and benefit from the concessions awarding and implementation process?* This question can be partially answered by mainstreaming gender aspects in the concessions related laws and institutional regulations on-going reform, followed by effective monitoring to ensure that concession contracts are fully respected.

**Liberia has a strong legal framework that, if implemented and used to amend laws that are either gender discriminatory or absent, can enhance gender equal and equitable gains from concessions awarding and implementation processes.**

These laws include national, regional, and global instruments that regulate/guide land rights, LSLBI, and gender equality, and require holistic and people-based legislative processes. The Public Procurement and Concession Commission should ensure that concession granting entities abide by the mandatory requirement of holding public stakeholder consultations in consonance with PPCA Section 90 prior to finalization of bidding documents to reflect existing needs. A participatory action-oriented policy and law making is key to altering gender bias and discriminatory norms, as it is highly likely to gain legitimacy from the participating communities.

Vainio et al. (2019: 3), basing their study in Europe, argue that “[l]egitimacy is important for a policy because it encourages actors to follow the policy voluntarily”.<sup>15</sup> Basing law on real-life experiences enhances the realization of justice and fairness at the grassroot-level. However, studies on Liberia's concessions awarding processes indicate that both the concessions and the laws and institutional frameworks that regulate them are not based on consultations with affected citizens; instead, they were negotiated between government concession entities and the concessionaires. Resultantly, the concessions became alien to community affected community (CAC), leading to violent conflicts between the concessions and the communities, and citizens' distrust in their government.

Such top-down office-based policy and law making has been criticized for not addressing practical issues and, regarding social and gender issues, top-down lawyering can cause unintended harm to communities including women and other vulnerable groups. Legal and policy measures intended to

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<sup>14</sup> Green Advocates International (2017) 'Gender-differentiated impacts of Large-scale Land Acquisitions in Liberia, A Case Study based on the publication of the report titled: "Women: The Least secure Tenure".

<sup>15</sup> Vainio, A., Tienhaara, A., Haltia, E., Hyvönen, T., Pyysiäinen, J., & Pouta, E. (2019) 'The legitimacy of result-oriented and action-oriented agri-environmental schemes: A comparison of farmers' and citizens' perceptions.' *Land Use Policy*, 104358.

address legal barriers to women's access, ownership and control of land and land products, and their meaningful participation in land-related transactions and governance, are best achieved if all stakeholders have a stake in the process. A social- and gender-inclusive inclusive awarding process can lead to a reduction of conflict between concessionaries and communities.

The Public Procurement and Concession Commission can play a very instrumental part by enforcing that concessions granting entities, to ensure that gender issues are cogently addressed in the outcomes of concessions awarding processes, through comprehensive training with entities on the importance of be cognizant of gender issues in concession awarding. In their study *Securing community land and resource rights in Africa: A guide to legal reform and best practices* of 2013 (11), Pritchard, et al. argue that “by securing community land tenure rights, the GoL can:

- reduce conflict and the risk of conflict;
- improve resource security including for food, water and land;
- secure and maintain natural resource wealth and biodiversity for future generations through sustainable resource management;
- attract investment that benefits communities and the country at the same time;
- fulfil rule of law and international legal commitments;
- improve international reputation with trading partners, donors, potential tourists and multinational agencies such as the World Bank, UN etc.”

## **PRINCIPLES FOR MAINSTREAMING GENDER IN THE CONCESSIONS LAW REVIEW**

The following principles were developed from the above list of laws and the literature quoted in this PB, and can be used for legislation, program design and the implementation of concessions:

- *Women's rights are human rights.* A human rights-based approach is a prerequisite for attaining gender equality lasting impacts.
- *Women are both contributors and beneficiaries of the development agenda.* Gender equality to concessions benefits and women's meaningful participation in concessions decision-making is a constitutional and LRA obligation, and thus it is a prime responsibility of the Liberian Government. Therefore, LSLBI-related laws and the respective institutional frameworks must adhere to these laws (and the respective international and regional norms).
- *Leadership commitment is key to gender and social inclusion fulfillment.* Institutionalizing and systematizing gender mainstreaming requires the commitment and support of senior leaders and managers. Concessions government-line entities must recognize this responsibility and hold themselves and their staff accountable to adopt specific measures towards redressing gender-based discrimination and inequalities throughout the concession life cycle.
- *Concessions should respect land rights.* Promoting and protecting women's land and property rights and their empowerment is foundational for achieving sustainable economic development, social harmony and peace.
- *Gender inequalities are rooted in social norms and gender power.* Changing social norms, attitudes and behaviors and transforming gender relations more broadly requires the understanding and participation of both the female and male members of the society.
- *Addressing gender disparities and differentials requires gender budgeting* - the allocation of resources to women's empowerment and specific needs relating to barriers associated with

gender inequality and reproductive roles. It is important to allocate resources to addressing both inter- and intra-gender differentials. Diversity can be due to age, language, ethnicity, culture, religion, disability, family and socio-economic status, and rural or urban background; all these features can create additional barriers to gender equality.

- *Do no harm.* Programs for gender mainstreaming should pay attention to cultural relevance and avoid worsening and/or leading to the mutation of patriarchal-based and male-power discriminatory attitude and practices. It is important to ensure that interventions center on safeguarding the human rights of women and a gender relational approach to gender equality, informed by women's experiences and experts in the field, i.e., a holistic approach to human rights —*respect, protect, and fulfil*. Gender transformation at scale requires altering negative power and cultural gender bias and discrimination.
- *The triple gender roles* (reproduction, production and community) impede women's equal participation in public spheres, access to information and productive resources. Access to services and the participation of women and men in development initiatives must be assessed by their differing impacts on women and men. The concessions should not make women's access to natural resources, such as water and farmland more complicated, instead, concessions should improve the infrastructure and bring services closer to the people. This will free some hours from women's domestic workloads.

## IMPLEMENTING FPIC PRINCIPLES IN THE CONCESSIONS LAW REVIEW

FPIC involves a negotiation process between project proponents and communities whose rights may be affected. The process aims to ensure the active 6 See for example Resolution 224 by the African Commission on Human & Peoples Rights, stating that 'all necessary measures must be taken by the State to ensure participation, including the free, prior and informed consent of communities, in decision making related to natural resources governance' participation of affected communities so that they can ultimately decide, on a fair and equitable basis, whether to give their approval to the project. The process by which communities will give their consent or not is an ongoing process and cannot be satisfied through a mere one-off meeting or gathering of community observations and opinions. Accordingly, FPIC requires significant investments of time and resources from all the parties. These investments should include studies to determine social and environmental impacts and the development of benefit sharing agreements that truly benefit communities. Janet Pritchard, Feja Lesniewska, Tom Lomax, Saskia Ozinga and Cynthia Morel (2013:29-30) Securing community land and resource rights in Africa: A guide to legal reform and best practices.

The following is step by step process for implementing FPIC for engagement of indigenous people and local communities.<sup>16</sup>

- *Identify rights holders and their rights through engagement..* Determine who have these rights and what rights they have. Conduct a review of rights holders and their claimed rights and aspirations. Did the affected communities participate in identifying their members and their rights, resources, land, etc.?
- *Prepare for further engagement and agree on the scope of the FPIC process.* Engage with the communities and agree on the FPIC process and a roadmap on the scope. Is there

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<sup>16</sup> Implementing free, prior and informed consent (FPIC): A Forest Stewardship Council Discussion Paper, FCS-DIS-003



agreement with the affected communities on the FPIC process and scope, including third-party verifier, observers, or facilitator?

➤ *Undertake participatory mapping and impact assessments.* Conduct participatory mapping by employing sufficient community capacity for mapping and assessment. Facilitate conflicting claims between communities. Do the communities confirm that there are no outstanding conflicts related to the rights affected by the planned activities?

➤ *Inform affected rights holders.* Fully inform communities about the proposed activities and let the communities decide whether they want to enter negotiations. Did all the community members fully understand the potential benefits and costs of the proposed operations?

➤ *Negotiate and allow rights holders to decide on an FPIC proposal.* Negotiate mitigation, compensation, restoration, and benefit-sharing. Establish monitoring and dispute resolution mechanism. Did all the community members fully understand all aspects of the proposed consent agreement, including their right to say “no” to the proposal?

➤ *Verify and formalize the FPIC agreement.* Was the agreement verified and formalized in a way that satisfied the communities and makes it binding on all parties involved. Is the agreement publicly available in languages locally relevant?

➤ *Implement and monitor the FPIC agreement.* Implement and jointly monitor the FPIC agreement. Do the communities participate in the management, planning and monitoring of the activities to the extent that it affects them? Are the communities satisfied with the way the agreement is implemented?

In the following table, we list the key laws relating to land-based businesses, showing both those that are positive laws and those which require amendment to ensure gender-responsive outcomes for the on-going concessions policy and legal reform. We also provide recommendations for improving existing LSLBI laws.

Gender Positive Law	Provision	Gender Gap
<b>Gender Equality and Women Legal Right</b>		
<b>Liberia Constitution, 1996</b>	<p><b>Article 7</b> The Republic shall, consistent with the principles of individual freedom and social justice enshrined in this Constitution, manage the national economy and the natural resources of Liberia in such manner as shall ensure the maximum feasible participation of Liberian citizens under conditions of equality as to advance the general welfare of the Liberian people and the economic development of Liberia.</p> <p><b>Article 8</b> states that the Republic shall direct its policy towards ensuring for all citizens, without discrimination, opportunities for employment and livelihood under just and humane conditions, and towards promoting safety, health, and welfare facilities in employment.</p> <p><b>Article 11 (b)</b> all persons irrespective of ethnic background, race, sex, creed, place of origin or political opinion, are entitled to the fundamental rights and freedoms of the individual..., (c) All persons are born equal before the law and therefore entitled to the equal protection of the law.</p>	<p><b>Article 79</b> should be repealed to add a paragraph that mandates the government to include a certain number of women (quota) at all levels of governance, including land governance structures and political positions. Political parties should be mandated to adopt laws and to provide political candidates with an equal representation of women and men.</p> <p>Additionally, intra-gender inequality created by the historically binary legal, political and economic system, such as “civilized” and “native”, has led to differentiated treatment within genders. If reviewed, the Constitution should not only provide for intergender equality but must also provide equity within genders to ensure that women and men of all categories have equal opportunities.</p>



	<p><b>Article 22 (a)</b> Every person shall have the right to own property alone as well as in association with others...</p> <p><b>Article 23 (a)</b> The property which a person possesses at the time of marriage or which may afterwards be acquired as a result of one's own labors shall not be held for or otherwise applied to the liquidation of the debts or other obligations of the spouse, whether contracted before or after marriage; nor shall the property which by law is to be secured to a man or a woman be alienated or be controlled by that person's spouse save by free and voluntary consent.</p> <p><b>Article 24</b> While the inviolability of private property shall be guaranteed by the Republic, expropriation may be authorized for the security of the nation in the event of armed conflict or where the public health and safety are endangered or for any other public purposes, provided:</p> <ol style="list-style-type: none"> <li>i. that reasons for such expropriation are given;</li> <li>ii. that there is prompt payment of just compensation;</li> <li>iii. that such expropriation or the compensation offered may be challenged freely by the owner of the property in a court of law with no penalty for having brought such action; and</li> <li>iv. that when property taken for public use ceases to be so used, the Republic shall accord the former owner or those entitled to the property through such owner, the right of first refusal to reacquire the property.</li> </ol>	
<p><b>Land Rights Act, 2018</b></p>	<p><b>Article 2: Definitions:</b></p> <ul style="list-style-type: none"> <li>• <b>Community Member:</b> Means a Liberian citizen irrespective of age, gender, belief or religious backgrounds who was (i) born in the Community or (ii) parent(s) was born within a Community; or (iii) who has lived continuously within the Community for at least seven years; or (iv) a spouse of a Community Member both of whom re-side in the Community.</li> <li>• <b>Concession:</b> The grant of an interest in Government Land, Public Land or Customary Land by the Government to a Person for a specified period under such terms and conditions as are provided in a written agreement. A Concession granted on any Customary Land reverts automatically to the Community upon the expiration of the specified term of the Concession.</li> </ul> <p><b>Article 3: Purpose:</b></p> <p>(4) To confirm, declare and ensure equal access and equal protection with respect to land ownership, use and management, including ensuring that Customary Land and Private Land are given equal legal protection and that land ownership is provided for all Liberian, regardless of identity, custom, ethnicity, tribe, language, gender or otherwise.</p> <p><b>Article 5: Nature of Land Owners:</b></p> <p>1. Subject to Section 2 of this Article 5, Land Ownership consists of the following rights:</p> <ul style="list-style-type: none"> <li>• The right to possess;</li> </ul>	

	<ul style="list-style-type: none"> <li>• The right to use;</li> <li>• The right to include or exclude; and</li> <li>• The right to transfer singly or jointly by sale, devise, gift or otherwise.</li> </ul> <p>2. The right to restrict the exercise of any of the rights listed in Article 5 (1) of this Act.</p> <p>3. Ownership of Land does not extend to Mineral Resources on or below the surface of the Land.</p> <p>4. Land ownership may be held singly or jointly by individuals, or collectively by a Community as communal property or by the Government.</p> <p><b>Article 6: Rights in Lands Other than Ownership:</b></p> <p>I. A Person not having title to Land may enjoy the right to possess and/or use of the Land pursuant to: (I) an agreement of lease; (ii) an easement; or (iii) a license. The Government may also grant a Concession on or over Government Land and Public Land.</p> <p>2, The nature and conditions attendant to acquiring and enjoying each of the rights in Land other than ownership are set forth in Part 5 of this Act.</p> <p><b>Article 33 (3)</b> Save for Concessions, contracts, permits and other rights previously granted in Customary Land by the Government prior to the Effective Date of this Act, and subject to the Government's Constitutional right to extract all Mineral Resources found below the surface of the Land, any interference with or use of the surface of Customary Land require the <b>Free, Prior and Informed Consent (FPIC)</b> of the Community.</p> <p><b>Article 34 (3)</b> All Community Members of a Community are members of the Community and have equal rights to the use and management of the Community Land, regardless of age, gender ethnicity, religion and disability.</p> <p><b>Article 36 (6)</b> The membership of the CLDMC shall consist of equal representation of the following three stakeholders' groups men, women and youths. Except for chiefs of the Community who shall be ex-officio members of the CLDMC, the representatives of the three stakeholder groups shall be democratically elected.</p> <p><b>Article 48 (2):</b> During any review of any Concession located on Customary Land after the Effective Date, the inputs and concerns of the Community shall be presented through the CLDMC to ensure that the rights and interest of the Community are safeguarded and protected.</p> <p><b>Article 39: Residential Area:</b></p> <p>1. Residential Areas shall include a portion of a Customary Land set aside by the Community and used exclusively for residential purposes.</p> <p>2. A Community Member, irrespective of gender, shall be entitled to Residential Area for his or her exclusive possession and use as a residence.</p>	
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	3. Every Residential Area assigned to a Community Member shall have the same legal status as Private Land.	
Maputo Protocol	Article 2: Elimination of Discrimination against Women  (1) States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures . . .	
AU Guidelines for LSLBI	More particularly Principles:  3) Decisions on LSLBI and their implementation are based on good governance, including transparency, subsidiarity, inclusiveness, prior informed participation, and social acceptance by affected communities.  4) LSLBI respect the land rights of women, recognise their voice, generate meaningful opportunities for women alongside men, and do not exacerbate the marginalisation of women.	
Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)	Article 2 Discrimination: “State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women . . .” and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women”.	
Sustainable Development Goals (SDGs)	<b>SDG 1: End poverty in all its forms everywhere.</b>  <b>SDG 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture.</b>  Target 5.a: Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.  <b>SDG 5 calls on governments to “[a]chieve gender equality and empower all women and girls”. While SDG 5 is relevant in its entirety, for LSLBI particular attention should be paid on the following targets:</b>  Target 5.4: Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate.  Target 5.5: Ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life & lt;br>  Target 5.c: Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.	
Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT)	This provides two standards for acceptable engagement with communities: (1) Consultation and Participation, and (2) Free, Prior, and Informed Consent (FPIC).  Paragraph 3B.4: Ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary. States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status.	
Unclear Laws Impact Women Negatively in Practice: Laws to be Amended/Gaps		
Public Procurement and Concessions Act (PPCA), 2010	<b>Section 45. Margin of Preference</b>  (1) A Procuring Entity may grant a Margin of Preference to Domestic Businesses, or Liberian Businesses, or Solely-Liberian Owned Businesses, Women-owned Business as	The PPCA is gender-neutral/blind in all its contents.  The Commission plans on amendment of the PPCA inclusive of the below purposes;  1. To facilitate transparency in the concession granting processes through monitoring and



	<p>defined under this Act, in accordance with regulations adopted by the Commissioners.</p> <p>(2) The Margin of Preference shall be subject to the provisions of subsection 4 of this Section and shall be reflected in the record of the procurement.</p> <p><b>Section 90(1)</b> A Concession Entity shall undertake public stakeholder consultations with respect to each proposed Concession prior to the finalization of the bid documents to be included in the invitation to bid.</p> <p>Requires public consultations to be carried out by the Concession Entity before finalization of bid documents.</p> <p><b>Section 119</b> Land is not listed among the concessions goods for public procurement and concessions. However, the generally all the concessions are on land leading to mass evacuation of land users. The law should revised to include land on the list so that it receives due attention and compensation.</p> <p><b>Section 117</b> provides in general terms for a legal opinion from the Ministry of Justice; this could conceivably include assurances from Government that the land concerned is in fact public land and unencumbered by other rights, but the provision is in general terms and does not mention land.</p>	<p>feasibility studies, as well as stakeholder's engagements, environmental, human rights issues and conflicts, concession areas' dwellers rights, community development, etc. that could come up upon contract signings;</p> <ol style="list-style-type: none"> <li>2. To create a basis for Liberians to have a margin of preference in areas of extractive sector concession they can easily be empower to handle in the short run so as to give some level of ownership to citizens who are capable of creating value in the economy;</li> <li>3. Gender Equity and Access, people with disabilities, integration in the concession granting processes, given the challenges and limited opportunities, and as a basis for realizing equality relating to the benefits of concessions activities.</li> </ol> <p>The PPCA was adopted before the LRA and appears to have followed the Public Lands Law (Vol. V, Title 34, Liberia Codes Revised) of 1959, which gave the government ownership of land that is not private land, and thus it regulates "public assets" (Section 73.1). Thus, the PPCA should be amended to include private customary land per the LRA.</p> <p>Per LRA Article 33 (3), the PPCA should broaden Article 90 (1) requiring the concession entity to conduct consultations with communities, and should explicitly condition the FPIC process on gender representation.</p> <p>The PPCA does not list land among the "variants" and negotiation issues (Section 75.1b). The law should be amended to add land to the variables for negotiations. In this case, the law should explicitly include equal protections for women and men's interests in land and property in land during concessions negotiations and contracting.</p> <p>Section 90 (1) should be revised to obligate the Concession Entity to ensure informed gender-equitable participation in consultations.</p> <p>There is a need to explicitly provide for women's representation in consultations, both on the technical team and as respondents, coupled with detailing the how and where of the consultations. For example, the law can include the how, when and where of the public notice for easier access by all community members (men, women, the elderly, the disabled, etc.).</p> <p>As women's land rights under customary tenure are generally considered informal, it is important that laws regulating land-based business avoid using the term "landowner". This should be replaced by "land user" to protect rights to land as per the LRA (Articles 5 and 6).</p> <p>When identifying property for compensation, is important to include women's property and those crops which are traditionally women's, in order to, as a minimum, give</p>
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<p><b>Public Procurement and Concession Commission Act, 2010</b></p>	<p><b>PART I – PRELIMINARY OBJECTIVES OF THE LAW</b></p> <p>THIS ACT regulates all forms of public procurement and Concessions, establishes the Public Procurement and Concessions Commission, provides for institutional structures for public procurement and Concessions, and stipulates methods and procedures for public procurement and Concessions and for purposes related thereto.</p> <p>This Act is intended to:</p> <ul style="list-style-type: none"> <li>(a) Maximize economy and efficiency in procurement and Concessions, and obtain best value for public expenditures;</li> <li>(b) Promote economic development of Liberia;</li> <li>(c) Build capacity of officials and institutions in public procurement;</li> <li>(d) Promote competition and foster participation in procurement proceedings and Concession agreements by qualified suppliers, contractors and consultants;</li> <li>(e) Provide equal access without discrimination to all eligible and qualified providers of goods, works and services and fair and equitable treatment of all bidders;</li> <li>(f) Promote integrity, fairness, accountability;</li> </ul> <p>10. Complaints, Appeals and Review Panel;</p> <p>(2) The Complaints, Appeals and Review Panel shall consist of five (5) persons, with at least one woman;</p> <p>(a) Three (3) of such persons shall be qualified and licensed lawyers.</p>	<p>The PPCC should explicitly provide a quota for women's representation in the FPIC process and in all governance structures, including on the Complaints, Appeals and Review Panel, as well as mandating the commission to ensure that their work is gender-responsive in its outcomes.</p> <p>The Commission is already cognizant of gender issues and work operations are thus targeting gender responsive outcomes. There's also a technical team on Gender set up at the Commission. It should be noted that the Commission endeavors to strengthen its mandates on gender content.</p>
<p><b>Investment Act, 2010</b></p>	<p><b>Section 7: Guarantee against Expropriation</b></p> <p>The only provision that seems relevant to LSLBI is Section 7 which strictly obligates the government to provide fair and timely compensation to any property owner prior to expropriation.</p>	<p>The Investment Act is gender-neutral and so does not provide for gender-equitable participation in investment-awarding processes or implementation.</p> <p>This law should be revised to allow fair compensation for women's crops, and their interests in land in LSLBI.</p>

	<p>2) There shall not be any expropriation of an enterprise to which this Act applies by the State unless the expropriation is in the national interest for a public purpose, is the least burdensome available means to satisfy that overriding public purpose, is made on a non-discriminatory basis, in accordance with due process of law, and is under a law which makes provision for:</p> <p>a. Payment of fair and adequate compensation; and</p> <p>b. A right of access to the Civil Law Court or any court of competent jurisdiction for the determination of the investor's interest or right and the amount of compensation to which he is entitled, which compensation shall be fair market value.</p> <p>3) Any compensation payable under this section shall be paid without undue delay and, in the event of any currency exchange controls, authorization for its repatriation in freely convertible currency, where applicable, shall be issued.</p> <p>4) Compensation payable for any expropriation shall be equal to the fair market value of the property that is the subject of such action, taken as a whole. Fair market value shall be determined:</p> <p>a. Without regard to the proposed action on the value of the property that is the subject of such action, and</p> <p>b. Just prior to the time that the proposed action was announced or became generally anticipated in the marketplace, whichever is earlier.</p> <p>5) The Government and the person whose property is lawfully designated for expropriation may determine fair market value of the expropriated property by other agreed means.</p>	<p>This law should emulate the "Margin of Preference" to foster gender equality and women's empowerment.</p> <p>This law should be revised to engender language, for example, the statement in Section 7 (2): "...is made on non-discriminatory basis..." can be revised to add: based on sex, ...</p>
<b>National Investment Commission Act of 2010</b>	<p><b>Section 4: Structure and Personnel of the National Investment Commission</b></p> <p>4.1 The National Investment Commission (the "Commission") shall comprise the Chairman of the National Investment Commission, the Minister of Finance, the Minister of Planning, the Minister of Justice, the Minister of Commerce, the Minister of State for Economic Affairs in the office of the President and one other professional person from the private sector who shall be appointed by the president. The Commission must have at least one woman at all times. Cabinet members serving on the commission shall not receive remuneration for their work on the commission.</p>	
<b>National Bureau of Concessions Act (NBCA), 2011</b>	<p><b>Section 4 (1)</b> The principal purposes of the NBC shall be two-fold:</p> <p>(a) To monitor and evaluate compliance with concession agreements in collaboration with concession entities;</p> <p>(b) To provide technical assistance to concession entities and other organs of Government involved with the implementation of concessions in compliance with the PPCA.</p> <p><b>Section 5 (1)</b> The National Bureau of Concessions shall provide technical assistance to ministries and other agencies, departments or bureaux of the Government responsible for planning, bidding, negotiating and administering concession agreements. Such assistance shall be provided when and in the manner provided for in the Public Procurement and</p>	<p>The NBCA is gender-neutral/blind in all its contents and thus contradictory to LRA and the NGP.</p> <p>The emphasis on gender-responsive FPIC is crucial to attaining social- and gender-responsive LSLBI and requires the NBC to follow FPIC to support the Concession Entities to follow the latter in a gender-responsive way.</p> <p>Thus, the NBC is obligated by law and the NGP to adopt/adapt measures for concessions gender-responsive land rights and sustainable development impacts.</p> <p>The NBC should ensure that Articles 34 (4) and 39 regarding a Residential Area, and Article 40 pertaining to</p>



	<p>Concessions Act or in other applicable laws, and may also be provided with respect to any aspect of the creation or administration of concessions when called for by any agency of the Government having jurisdiction.</p> <p><b>Section 7 (1)</b> Concession Agreement Monitoring and Compliance.</p> <p>The National Bureau of Concessions shall work with government entities party to concession agreements and governmental agencies responsible for economic or social matters significantly affected by the performance of concession agreements, such as the Ministry of Finance, the Environmental Protection Agency, agencies responsible for rural community development, the Ministry of Health, the Ministry of Labor and the Ministry of Public Works, to coordinate the development of criteria, guidelines, specifications, templates and standards for monitoring and evaluating the compliance of concession holders with the terms of their concession agreements.</p>	<p>an Agricultural Area, are fully complied with during concessions review, awarding and implementation.</p> <p>The law should be reviewed to add the ministry charged with gender and social issues so as to provide social and gender technical expertise throughout the concession's life cycle, alongside those government entities outlined in Section 7 (1).</p>
<b>An Act Adopting the National Forestry Reform of 2006</b>	<p><b>Section 4.2</b> Forestry Management Advisory Committee</p> <p>a. The Authority shall appoint at least seven and no more than twelve people to constitute a Forestry Management Advisory Committee that shall advise the Authority on forestry policy.</p> <p>b. Unless the Authority adopts Regulations setting forth other provisions, the following requirements apply:</p> <p>(i) In making appointments to the Committee, the Authority shall:</p> <p>(A) Select at least one member from among nominees advanced by each of the following types of stakeholders within the Republic:</p> <ul style="list-style-type: none"> <li>- registered civil society organizations (local, regional, or national);</li> <li>- professional forester associations; forest labor organizations; logger associations; universities or other academic institutions; and the Environmental Protection Agency; and</li> </ul> <p>(B) Ensure that the interests of women and youth are fairly represented.</p>	<p><i>Comment:</i> (B) (left) is valuable but vague. As already suggested, it is important that the law provides gender quotas than just a number as numbers can change. This will affirm GoL's commitment to gender equality.</p>
<b>An Act Creating the Environment Protection Agency of the Republic of Liberia of 2002.</b>	<p>An Act to establish a monitoring, coordinating and supervisory authority for the sustainable management of the environment in partnership with regulated Ministries and organizations and in a close and responsive relationship with the people of Liberia; and to provide high quality information and advice on the state of the environment and for matters connected therewith.</p>	<p>Gender-biased language needs to be revised, for example, the use of "chairman" (e.g., see Section 7).<sup>17</sup></p> <p>Although the law recognizes women's participation in the preamble, reference to the constitutional and LRA provision for gender equality will provide stronger safeguards for gender-outcomes.</p> <p>In the list of definitions (Section 3), the law should include gender equality.</p> <p>The law should provide a minimum percentage of women participating on governance bodies, such as the "National Environment Policy Council" (Section 7).</p>
<b>Overarching Issues</b>		

<sup>17</sup> For more information about gender-inclusive language, visit: <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/gender-inclusive%20language/guidelines-on-gender-inclusive-language-en.pdf?la=en&vs=2633>

<b>Dispute Resolution Policy/Law</b>	Legislation in progress. A copy could not be obtained.	Consider women's access to justice (time, cost, social acceptance, distance, power dynamics, information, knowledge).  Consider having a quorum of women on justice structures.
<b>Women's Representation</b>	No specific law but, as discussed earlier, several laws, including the LRA and development policies such as the NGP and Pro-poor, call for gender equality in decision-making structures.	Rather than stating that at least one woman should be on the committee, we suggest that the law provides a percentage. This is significant because some laws and regulations are uncertain of the committee numbers
<b>Principle on non-discrimination</b>	Article 2 (b) of the Constitution, CEDAW, Maputo Protocol	a) Need to adopt a law that defines discrimination, with a specific section defining and providing for elements regarding gender-based discrimination in different areas (omission and commission): i) Under customary law and practices. ii) Discrimination in law and in judicial/court decisions.  b) Need to provide penalties for any legal personal and administrative and customary leaders who apply gender-based discriminatory norms and practices instead of written law.
<b>Law Harmonization</b>	Set up an inter-government committee to plan how to harmonize the law.	The key laws to be harmonized include: LRA, Community Rights Laws, the Forestry reform law, the Gender and Development Act of 2001, Local Government Act, NBCA, PPCA and the Investment Law.
<b>Concessions Agencies/Commissions</b>	The Acts establishing the majority of these entities have no provision for a gender unit	All concessions-related bodies must have a gender department that is efficiently staffed and funded to enable systematic gender mainstreaming.

## FRAMEWORK FOR INTEGRATING GENDER PERSPECTIVES IN THE CONCESSION-RELATED LAW REVIEW

Concession awarding, implementation, monitoring and evaluation will require gender assessment of women's rights and their equal and informed participation grounded in the principles of FPIC (Article 3 (3) of the LRA). As Liberia embarks on reviewing the LSLBI laws to recognize the customary land rights of Customary Communities, it is a propitious time to legislate gender-responsive laws and access to justice. The land-based business law review process must ensure that women are involved at all stages of the legal process. Safeguards for women's participation should cover all levels of society, including at the household level, with safety nets for women's voices in a friendly environment. Below, we outline the major steps for **mainstreaming gender dimensions in the legal review process**.

- Hire a gender expert on the legislative and consultation team/s.
- Evidence-based legislation. Conduct a thorough gender analysis of LSLBI, juxtaposed with international, regional and national legislation and guidelines on the same. Any gender-sensitive legislation requires thorough gender analysis as a prerequisite to ensuring that every step of the design, planning, implementation, and monitoring and evaluation of laws and policies considers existing gender disparities. This creates the opportunity to identify and address gender needs throughout the life cycle of a legal intervention and allows users to

evaluate the way in which interventions will impact gender roles, relations or responsibilities.

- All research geared towards law review must be conducted in a gender-sensitive manner, by consulting men and women and vulnerable groups, and ensuring that safeguards, such as women specific interviews, are in place to solicit women's perspectives freely.
- Ensure that the law elaborates in a gender-responsive way the standards for engagement with the community: 1) Consultation and Participation, and 2) FPIC<sup>18</sup>.
- Address gender gaps in the law and provide for quotas for women's representation in decision-making provisions.
- In communities where women's public engagement is controlled by men and/or women are not well informed of the issues for discussion, it is important to prepare the communities and the women before the actual consultations take place.
- Ensure that the institutions, and the individuals within those institutions, responsible for implementing and enforcing community land tenure are accessible, accountable, incentivized and competent to deliver gender-responsive transformative impacts.
- Provide gender training on relevant topics for the legislative and research teams.
- Ensure that data is disaggregated by gender and other sub-groups, such as youths.
- Hold consultations with major stakeholders, including government and non-government actors.
- Ensure Environmental Impact Assessment is conducted in a participatory manner.

#### Gender-responsive Lawmaking Should include the Following questions:

- How can the law ensure that communities and community members have meaningful access to information about actions of government or investors that might affect their land and resource rights?
- How can the law ensure that community members are able to participate in decisions taken by the government or customary authorities that affect their land and resource rights?
- Where a community or community member feels that their land and resource rights have been violated (whether by the government, by investors, or by another community or community member), how can the law ensure that they can bring a complaint through an accessible (in terms of both location and procedure) and legitimate complaint mechanism?
- How can the law ensure that complaints of land and resource rights violations are fully heard and promptly and fairly resolved?
- How can the law ensure that core principles (e.g., equal treatment for women, protection of marginalized communities) are upheld by those implementing and enforcing the law?

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<sup>18</sup> Janet Pritchard, et al. (2013) in their study: "*Securing community land and resource rights in Africa: A guide to legal reform and best practices*" argue that "Free, prior and informed consent (FPIC) provides that a community may give or withhold consent to any proposed project that may have an impact on the land and natural resources it possesses, occupies, or otherwise uses. FPIC is a right of communities with which governments and project proponents are required to comply"



## CONCLUSION

Gender-responsive legislation can only be attained if gender aspects are integrated into all the components of the legislative process or legal reform stages —consultations, drafting, implementation, enforcement, monitoring and evaluation. Additionally, good laws must be accompanied by law implementation and enforcement. Policy and law are fundamental to securing rights, but these are only a partial approach to the meaningful realization of women’s land rights. Most women in rural Liberia, and more especially women living in the CAC, lack sufficient economic and social incentives and legal literacy to pursue their rights. As in other gender mainstreaming initiatives, gender-responsive legislation is not a goal, but a means to achieving transformative equality between men and women, boys and girls, and between different categories of women and of men.

Women’s rights to land and property are multidimensional and sprawl across domestic relations laws such as those for marriage and inheritance, business, and land and property, and are inhibited by both latent/taken for granted and more visible facets. Customary norms are still prevalent in the larger part of Liberia, and this is highly likely to hamper women’s rights in the case of concessions and concession-related disputes. For most women, especially due to exogamous marriage, it is a huge sacrifice to challenge male power-oriented property access, use and control, and so the burden to respect, protect and fulfil women’s land rights must be carried by the government. The law should not only provide for gender equality but also outlaw gender-based discrimination by punishing and/or reversing gender-biased decisions.

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