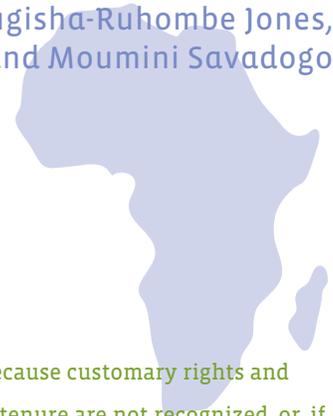




Customary Practices and Forest Tenure Reforms in Africa—Status, Issues and Lessons

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KEY FINDINGS

- Africa has strong systems of customary land and forest rights with complex social systems of use and management rights. Improvements require legally pluralistic governance regimes and better defined administrative boundaries of agriculture, urban, and forest agencies.
- Over 98% of Africa’s forests are designated as state-owned, although there has been an increase in community ownership in some countries, e.g. Tanzania.
- Decentralization is advanced in many countries, but has not yet really resulted in local governments and communities being empowered to manage their forest resources; or pastoralists, forest-dwelling groups and women being permitted to take on their rights in forests.
- While Africa’s rural population is heavily dependent on forests and while there are important informal economies of use and trade in Non-Timber Forest Products (NTFPs), wood and wood fuels, official statistics only include industrial-scale timber production and processing, and so miss a large informal value chain.
- Community forest management (being implemented in 35 countries in sub-Saharan Africa) and informal agroforestry-based enterprises do not receive the necessary regulatory, technical or capacity-building support, and many cannot

operate legally because customary rights and uses in statutory tenure are not recognized, or, if recognized, are undervalued.

- Government agencies tend to mistrust local elites and view communities as politically and technically unprepared to play a serious role in forest management, which presents an important challenge to tenure security.

■ State authorities continue to exert control over decentralized forest management through the use of complex management plans, restrictions on use of certain resources, as well as through the ability to revoke agreements. There are also many policy, cess and economic disincentives for rural people to engage with the market.

- Despite the establishment of community forests, some increases in forest revenue, and the transfer of some forest fees to local communities, there has been limited monetary improvement at the household level. There is a need to enable communities to produce high-value products from both intact and less valuable forests so that they can bring about meaningful changes in people’s livelihoods.

Securing communities’ rights to land and resources is important, but not enough to improve livelihoods and conserve natural resources. Rural

communities need to sustainably manage their lands and forests and competitively enter the market place for forest products and services either on their own or in partnership, and will require institutional and policy support to do so. This moves the debate beyond tenure and forest management plans to sustainable forest management as business for rural communities.

General Context

From 2007 until 2009, RRI Partners carried out a scoping study¹ to assess the status of forest tenure reform and decentralization in Africa, identify opportunities for further recognition and support of local rights and management initiatives, and assess emerging threats and new pressures.

Africa has 650 million ha of forest lands –17% of the world’s total – which contain about 25% of the world’s tropical rainforests. These tropical forests are amongst the most biodiversity-rich and support 50-70% of the world’s terrestrial species. While in Africa, the population density relative to forest area is close to the world’s average (0.185 ha/person), the deforestation rate is 4 times the world’s average at nearly 1% per annum.

Africa has the highest percentage of forest land officially administered by the state (98.1%). Overall, forest tenure in Africa is shifting towards greater decentralization and recognition of underlying customary and traditional forest tenure and rights of forest dwellers and other rural people. However, there are regional differences that create different outcomes and future opportunities. Central and West Africa, for example, are only beginning to define reforms in terms of tenure and rights; by

contrast, in Southern Africa, restitution has long been the objective of land reform, and in Tanzania village level ownership of community forests is extensively recognized.

Throughout Africa, diverse histories and differences between colonial and post-colonial regimes had a significant bearing on tenure and rights reforms with respect to land and forests. In forestry, such regimes were usually based on timber extraction (export and national use). Rights to timber were alienated, but colonial administrations usually allowed communities access to less valuable forest resources (NTFPs, fuel wood from dead trees, water) for subsistence use.

Forest tenure shifts in Africa are taking place through legitimizing and recognizing traditional and customary tenure systems vis-a-vis statutory tenure and ongoing decentralization processes that support “democratic decentralization” (or devolution). In the former settler economies, land policy reform and related forest reform was skewed towards restitution and redistribution of lands alienated before and after independence. New land and forestry policies and laws attempt to integrate the two systems while overlaying them with contemporary concepts of equity. At a local level a ‘forest’ may be managed as part of a customary regime (de facto or customary rights), yet in statutory terms be under the purview of the Forest Department, or a “trust land category”, as in Kenya, and held in trust on behalf of the people. Such pluralism creates complexity (overlaying differential rights) and the potential for conflict (customary-statutory, traditional-modern); it also creates great variability and possible disputes in forest management on the ground. Even where reform is legislated, implementation has been slow, in worst cases leading to land invasions and subsequent economic and political instability, as in Zimbabwe, with negative consequences for long-term conservation or human well-being.

1. The full-length annotated study, “Barrow, E., Jones, K-R., Nhantumbo, I., Oyono, R. and S. Moumini (2008), Governments are Devolving Responsibility for Forest Management in Africa, but are Rural People able to take on their Rights? can be obtained from <http://www.rightsandresources.org>. This brief has not been referenced as a full set of references can be found in the full length annotated study.

The broad tenure categories in Africa affecting forested lands include:

- a. state land held in trust for citizens,
- b. public land managed by government agencies, including leases to commercial companies for production, protection, or future development;
- c. private land including: (i) leasehold land for specific uses; (ii) freehold land; and (iii) privately-owned (and registered) community or communal land; and
- d. communal land under customary governance and authority with varying security of tenure and rights.

Regional Contexts

Central Africa embodies the “rich forests - poor people” paradox. In addition, there are conflicts over forest ownership and access to resources between local communities and the state. New forest policies and laws in Cameroon, Democratic Republic of Congo, Gabon, Equatorial Guinea, the Central Africa Republic, and the Republic of Congo are more respectful of the rights of local communities in forest management, but many are still being formulated and few really improve on colonial-era legislation. There is a focus on decentralization, but this has yet to be fully implemented.

West Africa's forests were influenced by both French (e.g. Sahel, Côte d'Ivoire) and English (e.g. Ghana, Nigeria) tenure and forest management regimes which recognize state, private and community-owned forests. But legal reforms to facilitate natural resource management by communities have been limited. Forest codes have been critiqued for not providing an adequate legal basis for community forestry and for undermining incentives for tree-planting on-farm. In Ghana, land is vested mainly in recognized customary institutions, but valuable natural resources, such as high-value hardwood trees, are under state control.

Eastern Africa's forests cover an estimated of 131.6 million ha, but much of this is woodland (e.g. Miombo in Tanzania). Most high-potential forests are found where population densities and competition with agriculture are high. Forest tenure reform is most advanced in Tanzania where community rights over forests have moved to the recognition of community and village forests, where 4.1 million ha are classified under participatory forest management.

Southern Africa's post-independence policies were shaped by different tenure legacies. In countries with a history of seizure of land (for agriculture, forestry, and wildlife resources), this skewed land distribution to freehold for a minority of white farmers, and ‘native’ reserves for the majority. The former Portuguese colonies (Angola, Mozambique) inherited a system where large concessions were given to investors, while the local people were given very small areas of land. The governments’ post-independence policies focused on nationalization of assets and strengthening state ownership of public goods, although some maintained customary ownership.

Multiple Waves of “Community” Dislocation in the Forests

1. In a first wave of tenure transition in forest management, the original inhabitants of the vast forests and rangelands – forest dwellers and hunter-gatherers, for example the Batwa in Central Africa, the San in southern Africa, or forest dwelling peoples of East Africa – were deprived of their forest tenure as a result of the migrations of more powerful Bantu and Nilotic peoples.
2. Colonialism introduced “modern” tenure into “customary” tenure and the State became the master of land and forest. For example, the French Colonial Decree (1935) introduced the public forest estate and divided forests into ‘reserved’ and ‘protected forests’. Similar approaches to forest management were adopted in both English and

Portuguese colonies. Colonial land and forestry policies and laws were based on (i) expropriation of customary lands; (ii) introduction of land registration; (iii) emphasis on agro-industrial and private-sector plantations; and (iv) support for commercial logging.

3. With Independence, many systems did not change much. Gabonese forests were managed under Decree No. 46-1161 of 1946 up to 1983, and until 2002, the forests of the DR Congo were managed under Colonial Belgian Forestry Code of 1949. Mali, Mauritania and Burkina Faso first revised their forest codes in 1997. Niger adopted its first new forest law in 1998. The policy conditions of post-independence years exacerbated the exclusion of local communities, which fostered degradation and encroachment while focusing on commercial timber.

4. Post-1990s' forestry reforms and decentralization are strengthening community rights. Malawi and South Africa enacted Forest Policies in 1996; Madagascar, Mozambique and Lesotho in 1997; Namibia in 2001; Zambia and Tanzania in 1998; Swaziland in 2002; and Zimbabwe in 2001. Kenya and Uganda transformed their Forestry Departments into Forestry Authorities. Since the 1990s, some Central African countries have restructured their forest policies to (i) recognize the rights of local communities to resources; and (ii) transfer or delegate powers over forest resources and financial benefits accruing from commercial exploitation to local communities. Such a shift, already in place in Cameroon, is being planned in a number of other countries, and a number of laws and policies have been passed including Cameroon's Forestry Legislation of 1994; Democratic Republic of Congo's Forestry Code of 2002; Republic of Congo's Forestry Code of 2000; Central Africa Republic Forestry Code of 2001; Gabon's Forestry Code of 2001; and Equatorial Guinea's Forestry Code of 2002. However, while these policies foster a sharing of rights, they do not change ownership status.

Decentralization and Institutions

Transitions from central control of forest resources to one of increased decentralization and devolution are complex due to the interplay of local and national incentives, the political economy, and administrative systems. It is important to remember that decentralization is ultimately a power shift to different levels of governance and needs to have representation as a core condition to create downward accountability and responsiveness. Democratic decentralization is rare in Africa. It is encouraged for forest resources of lower economic value (herbs, fruits etc.), but is strongly resisted for the more valuable forest resources. Also, rights to the resource have been granted, but rights to land, pasturage or livestock, and hunting and gathering systems in many productive and most wildlife management areas have not been conferred.

Decentralization has often devolved power to lower levels of statutory government rather than building on and adapting existing community institutions. This fosters conflict where customary and statutory governance systems pursue different interests and may undermine the incentives for sustainable forest management. In other instances, decentralization has been implemented without measures to strengthen local institutional capacity. As a result, the capacity of local actors to assume responsibility continues to be a major concern for future reforms.

The robustness and legitimacy of local institutions in charge of forest management are crucial to the success of decentralization, together with the ability of local people to negotiate for and take on their rights to both land and forests. However, existing community institutions face challenges such as defining community boundaries which can lead to a resurgence of otherwise dormant conflicts. In addition, introducing democratic systems can conflict with the recognition of traditional authorities.

A multiplicity of community-level structures have emerged at village, tribal authority or district level, often driven by the participatory ideologies of rural development and distinct, and often uncoordinated, agendas of sector agencies, NGOs, and large donors. Some local community-based organizations may have similar functions, but may be linked to different authority structures or government agencies, and may therefore compete with one another. Most of these new structures have taken on land issues, but have rarely actively addressed resource management responsibilities (e.g. in Kenya the fight against illegal allocation of Karua forest). One consequence can be an institutional vacuum at the local level regarding the regulation and control of natural resource use.

The shortcomings of the decentralization process, e.g. transparency, accountability, local sanction, elite capture, intergenerational conflicts, degradation of community forests, and community-managed hunting zones are used as pretexts by decision-makers to disqualify local people's rights to resources and benefits accruing from commercial exploitation. The inherent prejudices of customary laws, norms and practices are still present, and define inheritance of assets and influence the type of institutions and norms that have to be put in place to facilitate effective participation and management of forests.

African Indigenous Peoples have suffered more than most in having their land rights expropriated, often without compensation. Land has been taken for forest reserves and national parks (e.g. Bwindi, Mghinga and Echuya in Uganda, Kahuzi-Biega forest in the Democratic Republic of Congo, the Central Kalahari Game Reserve, the various national parks in East Africa), and for conversion into other forms of land use. Such dispossession threatens Indigenous Peoples' very existence; it stems from the tendency for written law to supersede customary law, as customary laws on

land tenure and access and usufruct rights are not recognized. As a result, there are often weak juridical frameworks for indigenous peoples to fight their marginalization or exclusion, as well as limited measures for benefit-sharing in favor of indigenous communities.

Gender and Equity

Gender equity in access and security of tenure over forest resources is yet to be achieved. Most countries embrace gender equity, at least at policy and legal levels, but it still needs to be reconciled with cultural customs and attitudes where male dominance is still pervasive. Often, women's rights to forests are ignored or hidden, as women's rights of access and ownership to land and forests is still viewed in traditional religious and cultural terms.

However, women play crucial roles as producers and providers of food. For example, 27% of the small holdings in Kenya are managed by women, while another 47% of the holdings are managed by women in the absence of their husbands. But lack of control over land and resources limits women's ability to make management decisions. Even if there is decentralization and communities have clear rights, intra-community inequity may be compromised in that elites can marginalize weaker stakeholder groups (e.g. women, landless, poor).

As a result, rural women's responsibilities are disproportionately related to their legal status and their formal rights to land, trees, and products. As tenure policies are being revised, factors that need to be taken into account include the bundling of rights to include women's rights and access and a clarification of women's legal status in customary and statutory laws and practice.

Poverty Reduction and Forests

Most people in Africa live in rural areas and depend to a large degree on their natural resources. They are also heavily dependent on forests and Non

Timber Forest Products (NTFPs) – medicines, fruits, fuel, fibers, and construction materials – which contribute to household income generation. Securing community rights to forests and improved use of products can foster more sustainable management and constitute an important component of livelihoods and poverty alleviation. Forestry can provide value and additional livelihood income sources, as well as safety net functions, but only if communities have secure rights to forests and forest land and are able to add value.

The contribution of forestry to Gross Domestic Product (GDP) and employment is nearly negligible, the main reason being that the representation of forestry in national accounting is inadequate. A revision of accounting methods could improve the understanding of the value of forestry to economic growth, its sustainability, and its contribution to poverty reduction. For example, the herbal remedy trade (mostly from woodlands) in KwaZulu Natal in South Africa involves approximately 16,000 collectors and is worth over \$10 million annually. And high-value NTFPs are traded in Central and West Africa, such as bush mango, gnetum leaves, African cherry fruits and medicinal bark, and cola nut, which generate millions of dollars in regional trade and high-value export to immigrants in Europe. This shows that there are opportunities for community engagement in the NTFP trade through processing and value addition, and a stronger engagement in the market chain, but this is predicated on secure rights to forests and sustainable management. More recently, in Ghana, Tanzania, and South Africa communities are starting to engage with the high-value timber trade, even if only at a pilot stage, which can further enhance the contribution of forests to livelihood improvement.

Opportunities and Challenges for Advancing Forest Tenure Security

Community forest management is being officially sanctioned and implemented in over 35 countries

in Africa, with 20 countries having enabling policy frameworks in place. Different countries in Africa are in different phases of decentralized forest management and have different abilities to enter the market. There are various forms of community involvement in forest management from permit-based access to minor forest products, collaborative (or joint) forest management of state-owned forests, to community-owned and -managed forests. Some of these examples of community management could be entry points for promoting tenure security, e.g. community forests in Cameroon, and community-based hunting grounds. However, there still is a widespread need to undertake concrete actions to promote access rights and to empower local and indigenous populations as stakeholders and decision-makers.

Opportunities exist to harmonize decentralized forest management with land law, as Tanzania and Mozambique have done, and to support growing demands for community and co-managed forests. There are also opportunities for different forms of rights (community ownership, co-management, use rights), but the communities' own ability to negotiate and defend such rights is a challenge.

Public forest management has gradually shifted to private sector forest management, e.g. in South Africa, Uganda, and Kenya, and there are opportunities for private sector-community partnerships (timber and non-wood products), as well as for sustainable, fair trade, and organic labeling. The challenge is to use innovative technologies to process, add value to, and market both NTFPs and timber, which can provide alternative incomes that make a wider economic contribution.

Some Threats and Constraints

Governments in most of Africa have laid the foundation for land, forestry and conservation policy and legal reforms that enable a greater participation

of local communities in sustainable management and most countries have started implementing institutional changes for decentralized forest management within the past decade. In spite of the progress with regards to policy and law reforms, implementation has been difficult and slow, often due to institutional reluctance.

Because of a general reluctance to implement laws and policies that support community forest tenure and decentralization, many forest authorities impose complex conditions on communities, including community organization, detailed management plans, complex processes of approval, systems of royalties and other payments. The government also often retains the ability to revoke agreements. As a result, the transaction costs of such reforms can be very high and may outweigh potential benefits.

And while decentralization can create the space for shared agreement on forests at the local level and where responsibilities may be devolved, it may be difficult for rural people to benefit from their rights in forests, aside from less valuable NTFPs. There can be problems with elite capture, marginalization of the poor, misuse of power, the mis-treatment of customary rights including the eviction of local people, and fast-track mechanisms to accelerate land allocation to the private sector without similar mechanisms for local communities. In addition, the success of decentralization is put at risk by a lack of adequate support and as well as technical, financial, managerial capacity-building of communities.

Another problem is that the notion of “local community” can be fraught with difficulty. In south-west Cameroon present-day forest settlements are social formations resulting from different peoples coalescing to convert forest into agricultural land and projects are proliferating that build their own forms of ‘community participation’. Therefore, the social construct of “community” with respect to community forest management may be more

important to address than technical issues with regards to natural resource and forest management.

More general threats to community forest management include population growth – resulting in encroachment for agricultural land, deforestation for fuel wood, and hunting for animal protein – increased demands for forest products, and the effects of climate change. These opportunities and threats demonstrate that the issues at hand are complex and require integrated adaptive management approaches that acknowledge that different sites and countries may require different approaches.

Tenure, Equity and Market Access

Overall decentralization of forest resources has been mainly applied to low-value forests. The state in Africa has retained control of high-value forests and high-value timber concessions are earmarked for the private sector which has made it difficult for communities to market high-value timber. Income flows from timber concessions go to the state, and there is a lack of willingness to decentralize such forest lands to either co-management or community ownership regimes. In addition, it is difficult for rural communities to engage in the high-value timber trade due to a lack of capacity (timber processing), an inability to enter the market (privatized in the timber trade), and governmental restrictions (royalties, taxes, management plans, etc.).

Most African countries see poverty reduction as the basis for development, and have subscribed to the Millennium Development Goals (MDGs). Decentralization of rights to natural resources, as well as their use and management pose major policy opportunities for accelerating economic growth and bringing communities to the mainstream of the economy. Some governments recognize the importance of forestry in this context and have encouraged forest-based enterprises, but most underrate the importance of forestry to as a means

to create wealth. While greater security of resource tenure will be important to make these efforts successful, it is unclear as to whether security of tenure over forest resources translates into improved wellbeing, particularly of communities dependent on the resources and living in poverty. Factors that play an important role in this context include the nature of the resources being devolved and the support systems available for the community to add value and establish viable businesses. Where security of tenure has been strengthened, communities have actively participated in forest management. Where land is controlled by the state, communities may participate in forest management activities, but do not invest. Further conclusions are difficult to reach, as the quantity and quality of official statistics about decentralization of forest rights and responsibilities is poor (except for Tanzania), even in terms of basic statistics referring to coverage and losses due to deforestation and degradation. This makes it impossible to measure the degree of reform on the ground.

It has become clear that security of forest tenure rights should be complemented by enabling measures to build technical, financial, managerial capacities, access to technology and markets. Some NTFPs and small-scale timber enterprises can provide alternative economic activities, contributing

to the rural economy and employment. Yet research, product development and marketing of wood and NTFPs needs to be scaled up, and communities need enterprise capacity-building support and linkages with the formal processing and the export sector.

One reason for the limited success of enterprises based on NTFPs is that external support by governments, donors and NGOs is often of short duration. This problem is compounded by a lack of analysis of the viability of such enterprises which are long-term by nature. Economic growth, private investment, and poverty alleviation should complement each other and cannot be achieved merely through decentralized rights and responsibilities, and “managing” the forest. Rather, the ability and capacity of rural communities to invest and enter the market on a fair and competitive basis will lay the foundation for success.

Civil society organizations are key players in this context as they can help deliver and facilitate policy provisions to local communities, and improve governance, transparency, environmental management, and human rights. They influence the actions of governments, the private sector and other actors. This in turn can provide mechanisms for better decentralization, enable rural communities to enter the market place, and create wealth for sustainable forest management.

Barrow, E., K. Ruhombe, I. Nhantumbo, R. Oyono, and M. Savadogo. *Customary Practices and Forest Tenure Reforms in Africa-Status, Issues and Lessons*. Washington: Rights and Resources Initiative, 2009.

The Rights and Resources Initiative is a global coalition to advance forest tenure, policy, and market reforms. RRI is composed of international, regional, and community organizations engaged in conservation, research, and development. For more information, visit www.rightsandresources.org.

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