



Large-Scale Acquisition of Rights on Forest Lands in Africa

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INTRODUCTION

What are we talking about?

The main question is whether timber concessions allocated in Central Africa can be considered as part of the large-scale land acquisition (LSLA) process that is currently the subject of international debate, and mainly targets arable lands. What criteria can we use to answer this question?

Time. Allocation of large-scale timber concessions is by no means new in Africa, since it began at the end of the 19th century. LSLA of arable lands is also quite an old story, since it was in 1882 that the United Fruit Company inaugurated the first swap of “infrastructure against lands” on 300,000 ha of land and a 99-year concession with the government of Costa-Rica, to establish banana plantations whose fruit would eventually be exported thanks to the building of a railroad in exchange for the land. In that respect, time precedence is not a relevant criterion.

Scale. Forest concessions can be very large, and currently concessions of more than 1 million hectares (in a single block) can be found in Congo (Brazzaville) and DR Congo. If one considers the cumulated area a group can have in the same country, this goes up to 5 million hectares (DRC). However, recent LSLA for arable lands are generally on a smaller scale, and rarely go beyond ten thousand hectares. The widely commented Daewoo deal that fell through in Madagascar covered 1.2 million hectares and its size is one explanation of its failure. The announcement by some media (Reuters) of a 10-million ha deal between Congo-Brazzaville and (white) South-African farmers was simply misinformation: the deal is actually for 200,000 ha of arable land in the Niari department with degraded infrastructures, which was conceded to foreign agricultural companies in the 1980s and abandoned due to the civil war and the resulting insecurity. Forest concessions are larger since the land use is different from agricultural land: low extraction rates on large areas are common. Scale is therefore one criterion that characterizes the difference between the LSLA and timber concessions, even though not a key one.

Status. LSLA for agriculture purposes can receive various statuses. Purchases are rare, long-term leases are more frequent, sometimes under a land concession regime (concession implies specifications and a different fiscal regime). For industrial timber, the concession regime is the only one prevailing in Africa. Concessions are granted for periods ranging from 15 years (renewable) in Cameroon to 99 years (the maximum legal life span of a company) in Central African Republic. Specifications appear to be more constraining for timber concessions (silvicultural rules, local wood processing obligations, etc.) than for agricultural LSLA (even though information is still limited regarding the specifications that apply in the latter). But again, status does not appear to be a key difference.

Exclusivity. This is probably the major difference between a forest concession and LSLA for farming. Only the right to collect (authorized) timber is conceded and local use rights have to be respected (providing they are not against the law, especially concerning hunting). The way agricultural lands are used generally prevents other productive activity. Admittedly, local use rights are generally not clearly defined and customary use rights entail activities that are often prohibited by law (such as hunting of certain species, charcoal making without authorization, etc.). Timber production disturbs several local practices (while on the other hand, opening various opportunities) but does not prevent most practices from being applied. In addition, a high-standard logging activity (such as those that are certified or to be certified by FSC) pays attention to the use rights but also to the tenure rights of the local population, with marked trees excluded from exploitation (e.g. CIB for the Pygmies in Northern Congo), and uses maps of customary territories that overlap the concessions for money redistribution purposes.

The capacity to combine different activities on forested land is specific to forest concessions: this is due both to selective logging (highly selective in Central African hinterlands) and the low population density of densely forested areas. However, because all activities cannot be combined since artisanal loggers target the very same high-value species industrial loggers want, these rights have to be exclusive. Actually, when the populations concerned live close to the logging and wood processing sites, much of the domestic timber needs of local populations are satisfied by abandoned logs and declassified sawn or peeled timber. Charcoal making may also be compatible with selective logging, as long as it does not take on industrial proportions. Even agriculture is, to a certain extent, compatible with logging, providing valuable trees are left standing during slash and burn. But the extent of agricultural activities within a forest concession should be limited or it can compromise timber regeneration.

Finally, although not yet explored, theoretically opportunities exist to develop certain business activities on the forest concession area already or not yet exploited (felling cycles are of 25-30 years, meaning only 1/25th or 1/30th of the forest is in productive use each year): hunting could be organized and be of direct benefit to the communities. The enforcement of forest management plans is quite recent (and sometimes limited) and no such initiative has yet been developed.

On the other hand, presenting large-scale foreign investments in agriculture as incompatible with other uses would be misleading. Many investors prefer to contract farmers on their own land rather than face the difficulties and 'transaction costs' associated with a mere spoliation operation, importation of foreign laborers, etc. Hence, one can hypothesize that contract-based outsourcing for agricultural production will be the prevailing model of LSLA in the near future. But if LSLA is applied on forested lands with the aim of converting it into oil palm plantations or large ranch farms, there is no room for combined uses. This leads us to conclude that **LSLA on forested lands is probably not only the main threat to the forests, but is also the least socially acceptable type of practice.**

1

LEGAL FRAMEWORKS AND FOREST CONCESSION IN CENTRAL AFRICA

In most West and Central Africa countries, forested lands fall into the “domanial” regime, a legacy of colonial times by which the new European power took over the former local kingdoms and acquired their political attributes including the political control of populations and their lands. The concept of “*Terres vacantes et sans maîtres*” (empty land without a master), becoming the property of the State has been extensively used for forested lands, perceived as “empty” (or characterized by the mobility of inhabitants) and as a reservoir of timber and valuable natural products such as rubber.

But at the end of the former French colonial empire, some changes in the concept of “domain” took place, notably in Western Africa. Traditionally, the domain is split into two categories, the public domain (that should remain at the disposal of the public) and the private domain (belonging to the State or the local public collectivities) that is the private property of the State and can be used for economic and financial concessions (by allocating concessions on it, for example). Under French law, the private domain should be materialized in

the field and gazetted to be legally established. For forest lands, the colonial administration used to consider that as the “indigenous people” were unable to prove their ownership by showing legal titles, gazetting could take place without real consultations about tenure rights that could have been opposed to the State’s claims regarding ownership.

From 1955 on, new regulations stipulated that the burden of the proof fell on the administration, who had to demonstrate that no competing claims of tenure should prevent lands from being gazetted to the State, thereby implicitly recognizing the strength of customary rights. For that reason, in Côte d’Ivoire, the bulk of the gazetted forests were established before 1955, and few forests have been gazetted since. The new regulations have not been widely enforced in the former French colonial empire, and independence came shortly after, interrupting a process that would resume only half a century later.

Directly after independence, many African countries were tempted by the “socialist” system in which all land belongs to the State, and the promising principles of 1955 were not pursued.

1.1

THE INNOVATION OF THE “NATIONAL DOMAIN”

Around a decade after independence, a handful of French-speaking African countries (Togo, Senegal and Cameroon) introduced a new land category, the “national domain”, alongside the traditional categories of public and private domains.

The idea was, in contrast to the colonial concept of “*terres vacantes et sans maîtres*”, to designate a legal category of land outside the public domain, not gazetted (and therefore not included in the private domain) and not privately owned by indi-

viduals. It was a category “by default” from which the State could take land to constitute its private domain (through gazetting) and where various type of rights were practiced with no formal titling. Private property and titling could also be claimed on those lands, creating conditions for investments and continuing occupation (10 years). **It is important to note that the State is not the owner of the national domain;** in Cameroon, the State is the “keeper” of the land (1974 law) and “manages” (*administre*) the land to ensure its “rational use”. Land transactions are not allowed on the national domain, even though land sales are common on agricultural land in Cameroon and are acknowledged by decentralized courts of law.

In Côte d'Ivoire, the “rural domain” (*domaine foncier rural*) is somewhat similar. Customary rights are explicitly recognized (art. 6 & 7 of the *Code foncier* 1998) but within ten years their holders must ask for a “*Certificat Foncier*” (which can be individual or collective) granting legal personality and allowing for subsequent land titling. If this is not done within the time limit, the land is declared to be State property and should be gazetted. But changes in land tenure have been undermined by the land conflict between native Ivorians and migrants, which is still unresolved.

However, there is often a gap between the lawmakers’ intentions and administrative practices.

In Cameroon, the 1974 law concerning the national domain was understood by local populations to be the “nationalization” of customary lands, and they reacted by clearing as much forested land as they could to prove their occupancy of the lands and prevent reallocation for industrial use. Such a reaction denoted as much defiance vis-à-vis the Cameroonian administration as anything else, and does not mean the concept of national domain is flawed. Its success depends on how it is used by the public authority and also by the stakeholders themselves (which we will be discussing later on).

In Cameroon, community forests (CFs) are designated only as national domain. CFs are not granted the ownership of lands by the forestry law, only exclusive rights of use and responsibility for management. But, according to the 1994 land tenure law, there is no obstacle to giving a CF the status of “*concession foncière permanente*” (since CFs are regarded by the land tenure law as “*dépendances de première catégorie*”), and titled in the name of the collectivity. So far, such a procedure has not been followed by any community, and one can imagine that the forestry administration would try to prevent this process from being completed, since it would mean the administration would have less influence over the forests the forest service still supervises through the preparation and the agreements of the “simplified management plans”.

FRAMEWORK SHOWING FOREST LAND STATUS IN CAMEROON

Land use as suggested by the zoning plan	Permanent Forest Estate (Gazetted forests or forest waiting to be gazetted)		Non Permanent Forests (“agro forestry mosaic strip,” part of the National Estate)	
	Domain Forests	Local Council Forest	Community Forest	Other Forests
Administrative name	Domain Forests	Local Council Forest	Community Forest	Other Forests
Legal status	Private property of the state	Private property of the local council	Sub-division of the National Estate	(National Estate, private forests)
Allotment	Production forests, protection forests, etc.	Production forests, protection forests, etc.	Local management under the supervision of the Forest Service	Allotted forests (private properties) or awaiting allotment

Source: Author

FRAMEWORK SHOWING FOREST LAND STATUS IN DRC

Ecological definition	Forests			
	Conservation (target of 15% of the national territory)	Permanent and non permanent production?	Sustainable production	Conservation through contractual delegation
Allotment	Public Domain	Private domain of the State	Private domain of the State	Private domain of the State
Domanial classification	“Forêts Classées”	“Forêts Protégées” (Protected Forests)	“Forêts de Production Permanente” (Sustainable production forests)	“Concessions de conservation” (Conservation concessions)
Legal name	Only research and tourism	Customary rights +Community concessions	Forest concessions (industrial)	Only research and tourism REDD/Carbon payments?
Permitted use of resources	Management plan	Management plan for the community concession	Management plan	Management plan
Management instrument	Government	Administration and local community for the community concession	Company	Organisation/ Conservation investor
Responsibility for management	Limited	Recognized	Cancelled ?	Cancelled or limited ?
Customary land use rights				

Note: Note: it is still unclear if once the planned “community concessions” are legally created, they will remain in the category “forêts protégées” (as it is the case for the forests “regularly owned under customary uses”) or will be considered as belonging to the “forêts de production permanente” like the industrial concessions

Source: Author

GABON AND CONGO

In Gabon and Congo, countries with low density population, the law does not give customary rights the same importance as it does in Cameroon or Côte d’Ivoire. Forests --and land in general- if not privately titled, are considered as private domain of the State, even though most of them (usually except parks and some protected areas) have not been gazetted.

The category “rural forest domain” in Gabon could pave the way for similar opportunities for communities like the National domain in Cameroon, if the regulatory texts organizing its management and stating the rights of the communities, announced by the 2002 forest law had been published. The possibility granted to individuals to obtain

family permits to remove timber close to roads and rivers might explain why this issue has not yet been raised by stakeholders.

In Congo, the law does not include a provision for community management and tends to consider that all forest is the private property of the State. In Congo, almost the entire country is divided into Forest Management Units (UFA) including all land uses and even including small towns. The only existing provision is the possibility to create “community series” within the attributed industrial concessions, which allows villagers to obtain supplies of timber and to grow crops.

But in each of these countries, there is growing internal and external pressure to progress toward more democracy and to establish the rule of law regarding the status of land. In 2009 the Congolese

government agreed, under the HIPC agreement with the World Bank to undertake the gazetting of the UFA throughout the country. It is quite unlikely the government will simply gazette the existing UFA, and there is already an agreement with concessionaires, distinguishing productive and non-productive areas for fiscal purposes (between 15 to 30% difference) that will certainly be used to create more realistic UFA. In addition, the effort made by the Congolese government concerning indigenous people³ indicates there is room for greater recognition of community land rights during the forthcoming gazetting process.

In Gabon, zoning has been completed only for a limited portion of the forest and might be resumed in the coming years. The gazetting of the UFA – yet to be undertaken – will call for clarification of the area not gazetted as private domain of the State. In Cameroon, this “residual” category is the national domain, but unfortunately such a category does not exist in Gabon and Congo.

THE CASE OF DR CONGO

In DRC, the forest land tenure system is characterized by a compromise between the 1973 land tenure law (“Bakajika law”) under Mobutu’s rule, which nationalized all land in the former Zaïre, and the pragmatism of lawmakers who are well aware of the prevalence of customary rights and the power of traditional chiefs throughout the territory. According to the 1973 land tenure law (which is still in force), the land occupied by local communities and exploited “*individually or collectively, in accordance with customs and local usages*” has been included in the State domain (art. 385 and 386) but there was also a provision stating that the rights of use will be regulated by an official text, which has not yet been published. Consequently, the local land rights are ruled by uncertainty, depending on the relationships between the different levels of authority, economic forces and the traditional chiefs.

The DRC 2002 forestry code states both that “forests are State property” (article 7-1) (« Les

forêts constituent la propriété de l’Etat») and that a local community can, on request, obtain as a forest concession all or a fraction of the protected forest amongst the forests regularly owned under customary rules” (Art.22 : *Une communauté locale peut, à sa demande, obtenir à titre de concession forestière une partie ou la totalité des forêts protégées parmi les forêts régulièrement possédées en vertu de la coutume*). This article recognizes customary property land rights as a matter of fact, but the preeminent right of the State over the whole forest is also mentioned. But without field inquiries and subsequent public mapping of rights, it is difficult to see how this recognition of a well-known social reality can be transformed into geographic and consequently political terms.

LOCAL LAND TENURE PRACTICES

The local land tenure practices in Africa are, by definition, diverse and difficult to summarize in a single pattern. But there are some significant common features that are worth recalling here. In forested lands, property rights are strictly determined by the nature of the productive activity carried out on the land. Axis and burning rights are the two main means of establishing rights, but those rights might not be definitive if the land is not used for a period of many years. The system is “topocentric”, meaning control is established through locations rather than defined by boundaries. Permanent agriculture around settlements is typically the area where family property rights are established. Recent forest fallows are still under family control and older fallows tend to be claimed by larger groups (lineages). Old-growth forests beyond fallow are preferentially allocated to families, lineages or clans, depending on the development pattern of cropping. As villages often moved from their initial location (or were resettled along roads by the colonial authorities), graves at the site of their former villages are sometimes considered as rights markers that can be activated under certain circumstances.

In some cases, lineages have strong authority over the forest territory they claim, access is well

codified and boundaries are precisely known. But more frequently, villages are subject to internal conflicts, precluding collective action and resulting in open access or similar situations in which some individuals who claim authority try to squeeze money out of candidates for land. Most often, land and resource tenures are complex combinations of individual/family/lineage/clan rights that interact and vary depending on the conditions. In eastern DRC, during a Forest Monitor partners' meeting, it was reported that the customary chiefs were giving forest access to artisanal loggers in exchange for direct personal payments, at the expense of the rest of the community. A similar situation can be observed in Bas-Congo and Bateke Plateau. On the other hand, it is very common to see individual customary owners selling one or more trees to small-scale loggers without the authorization of the village chief or family elders.

Between these two extremes, a range of situations exists in which the capacity for collective

action varies and depends to a great extent - among other things - on the dynamics of the fluid boundaries of the "customary collective land".

Indeed, these boundaries are not always identified for the whole forest, and/or are not known by all the members. Where the population density is low, some land rights are often elusive, as mentioned by Pourtier (1986) for Gabon. Takforyan (2001), Karsenty and Marie (1998) and Vermeulen (2000) reported similar situations in eastern Cameroon. In addition, forest claim dynamics may go beyond community forest limits, as observed by Pourtier (1986) in the case of a mismatch between clan ownership and settlement, especially in matrilineal societies. The same situation was also observed by Pierre et al. (2001), who mentioned that the lineages who claim land rights are spread out over several villages. But national legislations tend to incorporate communities with villages in the case of community forests.

1.2

DEVOLUTION UNDER THE "COMMUNITY FOREST" SYSTEM IN CAMEROON AND "LOCAL COMMUNITY CONCESSIONS" IN DR CONGO

The process of institutionalization would benefit from considering the dual reality of community forestry in each country from the outset.

In Cameroon, community forests are being officialized within a relatively precise framework of forest land status (see table). CFs should be designated within the national domain, in which the non-permanent forest estate is located. But this could have been done differently. The first document concerning forest policy prepared by the Government of Cameroon during the preparation of the 1994 forest law located the planned CFs in the permanent forest estate, normally implying they would be gazetted, like the forests of the local councils. Lobbying by the Ministry of Forestry, who wanted to extend its territorial competence by pushing future CFs towards the forest frontier,

changed the orientation of what will become the 1994 law.

In DRC, where institutionalization is the subject of heated debate amongst the stakeholders of forest reform, with disagreement between the supporters of the formula "*concessions des communautés locales*" mentioned by the 2002 Forest Code, and those who advocate its rewording as "*forêts des communautés locales*". What is at stake? First, the word "concession" means that land ownership will remain in the hands of the State, whereas some stakeholders would like to move toward community ownership. Second, there is the power of customary chiefs, whose power would be increased if "*forêts des communautés locales*" were chosen, while the introduction of the "concession" concept would call for a more open decision-making pro-

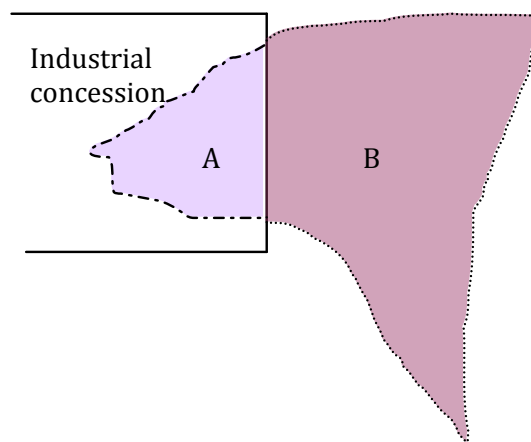
cess, possibly entailing election. Currently, the Ministry of Forests, through the draft of implementation texts, appears to favor the option that gives strong powers to the customary chiefs.

A compromise would be possible if instead of opposing the two dimensions, the stakeholders integrate both the customary land tenure (the “forest of the local communities” which is, in Gabon, called the “*finage*” and in Cameroon, the “*terroir*”), a category that could overlap with other tenures such as the industrial forest concession and protected areas, and the institutional innovation proposed by the Forest Code, the community concession.

Except for provisions to avoid private appropriation of the collective heritage by the customary Chiefs, there is no need to regulate the customary land tenure (A + B, in the figure is the *finage*), but a political interest in mapping and recognizing it, notably for co-management of shared resources and benefit sharing – as in Gabon and other countries. On the other hand, **the community concession would be an exclusive tenure** (B would be its maximum size²), designated within the *finage*. Its productive nature would call for an elected body, accountable to those who have entrusted them with the management of a collective enterprise.

Including all the categories of tenure on the same flat plan leads to dead-end discussions and conflicting in-the-field outcomes, in which the possibility of viable community forestry entails a more or less complete dismantling of the industrial concession system; an option which is unlikely to be accepted by governments looking for fiscal receipts, exporting industries and structured employment. Such a difficulty is reflected in the issue of the maximum area also under discussion in DRC.

Currently, the Ministry wishes to cap the area of the “*forêts des communautés locales*” between 10,000 to 50,000 ha. Where the limit should be fuels



several debates in DRC. Here again, the debate would be much easier if the stakeholders could agree on the dual dimension rather than thinking of the community forestry on a single plan: as the *finages* overlap with other categories of tenure, there is no need to cap them; on the other hand, the community concessions would be limited by the boundaries of the other legal tenure entities, such as industrial concessions. The boundaries of the latter could be deemed misplaced and considered as impediments to a viable community concession; in such a case, negotiations could be organised by the forest administration and the provincial authorities to reshape the existing or planned boundaries of the industrial concession. Such a reshaping process took place in Cameroon during with the gazetting process aiming at designating the permanent forest estate (which, in Cameroon, is also the private domain of the State or of the local councils), when the extent of several concessions was reduced (Topa et al, 2009). DRC, Gabon and other countries in the Congo Basin would like to take advantage of undertaking zoning and a gazetting process to clarify the legal status of categories of administrative tenure, such as concessions: it would be a matter of open debate between the stakeholders on the balance that should be given to different categories of tenure.

1.3

THE “NEW” SOCIAL POLICIES OF CONCESSIONAIRES SEEKING FSC CERTIFICATION

Almost 4.5 million hectares of production forests are currently certified in Central Africa (industrial concessions in Gabon, Congo and Cameroon). This dynamic has largely contributed to the improvement in workers' conditions in concessions and local populations have also benefited from social expenditure and achievements (see Karsenty, Jégou and Singer, 2008 for details). Regarding land tenure, surveys showing the forest resources used by local populations are now mandatory for FSC certification. Some companies have drawn maps showing the overlapping between the concession area and the “finages” (or “terroirs”) of the riparian villages and use this information to channel a share of the proceeds of timber sales (proportional to the size of the finage included in the concession area) to communities in the form of in-kind investments and transfers (see also Karsenty *et al*, 2008). In Cameroon, this practice (by Wijma, at least) does not

prevent communities from applying for community forests in the national domain. But in Gabon, where the population density is lowest and the “communities” are often elusive, it seems that this type of arrangement is, so far, favored by local populations over the difficult process of claiming forests for the community allowed by the 2002 law (but not yet organized by implementation decrees).

In Congo, in collaboration with the indigenous people, the CIB has mapped trees of interest for Pygmies to prevent them from being cut during logging operations (see Karsenty *et al*, 2008).

Since our 2008 report, the industrial sector has been severely hit by the economic crisis and we can safely assume that no new social achievements have been made. On the other hand, it is likely that social transfers have been contracted due to the freezing of forest industrial activities in 2009 and the temporary closure of several mills and logging sites.

1.4

NATURAL RENT CAPTURE AND POST-CRISIS SITUATION IN THE TIMBER INDUSTRY

It is now becoming clearer for most analysts that in Africa “forest economic rent” (i.e. profits exceeding the minimum required by the capital holder to remain in the business) is slim and can easily vanish with a downturn in business.

MARKET COLLAPSE

From the second half of 2008, the African timber market, like those of other tropical timber-exporting countries, began experiencing a crisis of exceptional magnitude. Market players were hoping against hope until after the summer break, but from the last quarter of 2008, they realised the full extent of the crisis and stopped buying goods. The

market all but vanished. First, prices were very difficult to ascertain, then plunged sharply, dropping between 15% and 30% over a few weeks. Sapele lumber price lost between 25% and 30% in a couple of weeks. The collapse of the housing market in Southern Europe and in the United Kingdom and the marked drop in construction start-ups in France sent a red signal to timber buyers who stopped placing orders. The priority of buyers has been to de-stock, and this situation lasted until the spring of 2009, when some European buyers gradually resumed their purchase of African timber.

Exports of wood products fell dramatically. In Cameroon, the difference in volume between the first quarter of 2009 and the first quarter of 2008

was -42%. In CAR between 2008 and 2009, the log production volume decreased by 40% and sawn timber by 17%. According to observers, the figure of -30 to -40% of exported volume roughly reflects the situation in Central African countries which still export most of their timber to Europe, the exceptions being Gabon – which exports roughly 50% of its timber (roundwood equivalent) to Europe plus the USA – and Equatorial Guinea, which exports most of its logs to China. The timber crisis also had a serious impact on Central African governments, with a significant decrease in the forest tax revenues, 48% for instance in CAR from 2008 to 2009.

SOCIAL IMPACT

As a consequence of this brutal contraction of orders, logging companies reduced their activities and some closed down some of their logging sites and mills. In Cameroon, around 3,500 workers have been laid off, temporarily or not, about one third of the total employees of the formal sector. In CAR, in six companies, 428 workers were fired and an additional 1,335 were laid off with almost no salary. In DRC, the largest companies decided to focus only on a few, highly profitable logging sites, and closed down the others. There is no information available on the number of jobs lost in the sub-region of Central Africa; in addition to announcements by large companies, jobs have been lost in subcontracting activities (the small and medium African enterprises that supply the timber industry) and in road transport, a sector that is extremely sensitive

to the level of activity in the timber sector. The total number of jobs lost in the timber sector due to the crisis can be estimated at around 25,000 - 30,000 at least in Central Africa. One of the main questions is to know how many of these jobs are only lost temporarily and how many are lost permanently. In Cameroon, recovery appears to be faster than in Congo, and many workers are now reemployed in the factories.

There is little news about the situation in West Africa. In Côte d'Ivoire, a country which exports 60% of its timber to Europe and 20% to the USA, the Ministry announced in April 2009 that 6,000 workers had been fired and an additional 6,000 temporarily laid off, out of an estimated 15,600 workers in the formal sector. Some companies operating in several countries decided to concentrate their operations in one country and to temporarily close their other sites. At the end of 2008, Rougier decided to stop one site in Congo (Mokabi) and another in southern Gabon, but kept their Cameroonian mills open. Vicwood-Thany did the same, temporarily closing its CAR and Congo sites and concentrating on Cameroon.

In Gabon, where Asian demand for okoumé somehow acted as a buffer and where recovery should have been fast due to exports to emerging countries, the decision of the new-elected president, Ali Bongo, to ban export of logs starting in January 2010, has extended the crisis situation, with new workers laid off at logging sites (due to the insufficient absorption capacity of the wood processing industry) and many companies are planning for a contraction of business.

1.5

THE UNCERTAIN FUTURE OF CONCESSIONS IN CENTRAL AFRICA: "BAD MONEY DRIVES OUT GOOD"

THE CONSEQUENCES OF THE 2008-2009 CRISIS

Almost all the companies concerned experienced severe financial losses in 2008 and 2009, and if the prospects look better for 2010, some large

groups are nevertheless considering selling their timber business in Africa. This is the case of the Danish DLH-Group which notably owns the CIB (*Congolaise Industrielle du Bois*) in northern Congo. This large FSC-certified company (concession cover-

ing more than one million hectares) is well known for its social achievements. Originally French, then German from 1968 until it was taken over by the Danish DLH in 2006, CIB has been sold to the Singapore based firm Olam International (controlled by Indian investors) by the end of 2010,³ after having fired 680 out of 1600 employees (and 50% of its foreign staff). DLH has faced major financial losses and wanted to refocus its activity on trading. The other timber company controlled by DLH in the sub-region, GIB-CIB and CFA (*Compagnie Forestière des Abeilles*) in Gabon, has been also bought back by Olam. Emerging countries have taken over several western companies implanted in Africa for decades, as it has been also the case with Leroy-Gabon (once French, then Portuguese, 550,000 ha), which was taken over by Chinese interests in the first quarter of 2009.

Another major player is the Swiss group Precious Wood, which owns CEB (*Compagnie Equatoriale des Bois*, 616,700 ha, formerly owned by the French family company Thanry) and has invested more than 7 million USD in Nordsüdtimber Company, based in Vaduz (Liechtenstein). Nordsüdtimber holds majority participations in four important forestry companies in DRC (notably SODEFOR and SOFORMA, groups run by two Portuguese brothers who, together, control through their respective companies up to 5 million hectares in DRC). Precious Wood also faced significant financial losses (28.1 million USD in 2009, 15.5 million in 2008) and provisioned 1.3 million USD with regard to the log export ban (above all for severance payments, pension provision) in 2010 (a recent company's press release estimates the cost of this log ban up to 2.3 million).

CIB (DLH) and CEB (Precious Wood) were pioneers in certification and are referred to as examples of "socially advanced companies", but both have lost money since they entered the African timber sector in the second half of the 2000s. The FSC certification gives the timber a price premium that varies with the client, but can be estimated at around 15-25%. However, such premiums have vanished with the economic downturn, even though

the sales of FSC-certified timber have resisted better on Western markets. DLH decided to withdraw and to focus on trade only, its original core business. So far, Precious Wood is not following suit, but its shareholders are concerned about the lack of profitability of this Africa timber business: the group lost again 8.9 million USD for the first half of 2010.

ESCALATING COSTS

This reduced profitability is also linked with escalating costs associated with high standard logging operations, high quality management plans, verification of legality (and related chain of custody) and all the investments (including social ones) required for FSC certification have a cost. Large Western companies have little choice but to proceed in this way to remain in the European market. Other companies are targeting markets in emerging countries or in Africa, and do not face comparable costs. Malaysian, Chinese and Indian companies (Olam group) are consolidating their positions at the expense of FSC-certified companies. In Gabon, companies originating from these three countries now exploit 45% of the forested area. None is certified and only a few are preparing management plans, even though some companies in the Rimbunan Hijau group (Bordamur) and Olam-Gabon have contracts with forest management consulting firms and have hired forest engineers to handle this issue. Such companies also have a clear preference for log exports, even though Malaysian companies have made some large investment in ply mills in Gabon and Congo, in order to comply at least a minimum with the law.

The impact of the log export ban in Gabon is still unclear. According to J. Jansson (2010) "*The Chinese private entrepreneurs who were active in log trading (négoce) and who did not have their own concessions have already relocated to neighbouring Cameroon, the Republic of Congo and the Democratic Republic of Congo. A representative of a Chinese forestry company estimated that since the ban came into effect, only 7-8 large Chinese*

forestry companies remain in the country, of which 2-3 are private” (p. 4). But since many observers feel it is likely that the log export ban will be somehow relaxed in the coming months, most such companies are adopting a wait-and-see attitude.

In southern Congo, where okoumé is abundant, reports from the independent observer (*Resources Extraction Monitoring*) show a sector largely dominated by Asian companies, subcontracting small Congolese companies, and acting without complying with basic legal requirements regarding management plans and share of locally processed timber.

THE CASE OF DRC AND LIBERIA

In DRC, after a long process, a commission including various stakeholders, decided to convert 65 forest titles, totaling 9.7 million ha (but estimated at 12 million ha by Global Forest Watch using a GIS system). This has meant the cancellation of millions of hectares of concessions illegally attributed by a former minister. However, as public control is still almost non-existent, it is almost impossible to know whether cancelled concessions have really been abandoned or are still operating, especially in the eastern provinces where there is a significant flow of timber to Uganda, Rwanda and Kenya. The appointment of an independent observer of the forests infractions in the near future could help obtain more precise information about the situation in the field.

In Liberia, after the cancellation of all concessions in 2006, sanctions on commercial logging were lifted the same year. A new forest law was prepared under the supervision of the World Bank and passed in 2006. It is inspired by the 1994 Cameroon law and, according to Global Witness, “Liberia’s forest reform process was lauded as an example of international best practice”⁴.

Regarding forest land tenure, the law indicates: “All Forest Resources in Liberia, except as provided in Subsection (b) of this Section, are held in trust by the Republic for the benefit of the People.

(b) The following types of Forests Resources are neither owned nor held in trust by the

Republic:

(i) Forest Resources located in Communal Forests; and

(ii) Forest Resources that have been developed on private or deeded land through artificial regeneration”

The allocation of concessions has resumed in Liberia. They are allocated by competitive bidding. An area of between 50,000 and 100,000 ha is reserved for Liberians (at least 51% of company shares). As stated by Shearman (2009) “As of July 2009, a total of 7 Forestry Management Concessions (FMCs) have formally been designated, and 3 awarded (...) The FDA Development Strategy (FDA, 2007) for the resurgence of the commercial forest sector envisages that 2.5 million hectares will be allocated to concessionaires over the next 4-5 years” (pp. 5-6).

However, The Community Rights Law (CRL), passed in October of 2009, amended the National Forestry Reform Law, stating that “Forest land areas ranging between 5,001 to 49,999 ha may be designated as Community Forest land” and communities can grant companies logging rights without competitive bidding. According to Global Witness, “The CRL has amended the National Forestry Reform Law in ways that weaken controls on the allocation and management of logging concessions:

- Concessions of up to 49,999 ha will be awarded without the open bidding process necessary to separate those who might meet their obligations from those that cannot; and

- Concessions between 5,000 and 49,999 ha, called Medium-Scale concessions, may allow very large areas of Liberia’s forest to be clear cut” (p. 1)⁵.

Such a breach in the principles of transparency associated with competitive bidding allocation recalls the way local players (i.e. the forest administration and various types of loggers) have used the so-called “small titles” and some community

forests in Cameroon to escape both high forest fees and forest management obligations, and could be a glimpse of what is very likely to happen in DRC in the near future. In DRC, one of the versions of the draft *arrêté* on community forestry increases (compared to previous versions) the limit of the area that can be allocated as a “community concession” from 10,000 to 50,000 ha, such a change being strongly

advocated by most NGOs. Since the independent exploitation of timber over such a large area is very unlikely,⁶ it means that the community will contract logging on large areas to various partners who will benefit from tax exemptions, avoid competitive bidding and will not have to respect the stricter regulations that apply to industrial concessions.

1.6 DEVELOPMENT AND REASSESSMENT OF INFORMAL TIMBER PRODUCTION

As timber production on industrial concessions declines (it was severely reduced in 2008 and 2009 due to the crisis, although for a confirmation of this trend one should wait for the 2010 statistics), the so-called informal sector is developing.

In Cameroon, according to Cerutti *et al.*: “Timber sold on the market and sourced directly from chainsaw milling operations in the Cameroonians’ [non-permanent forest estate] is thus estimated at about 662,000 cubic meters. This suggests a twofold increase from 2002 values (300,000 m³ of sawn timber) estimated by Plouvier *et al.* (2002) for the entire country. Most notably, domestic timber sales larger than the industrial production and exports of sawn timber which has been decreasing in recent years, from 580,000 m³ in 2008 to 360,00 m³ in 2009” (p. 9). This suggests an equivalent of 1.8 to 2 million logs removed by chainsaw loggers, almost as much as official industrial production figures in Cameroon before the crisis. Domestic consumption, either formal or informal, tends to outweigh production

for export. These authors suggest that the total number of people employed by chainsaw milling is about 45,000, about four times the number of direct jobs provided by the industrial timber sector.

In Gabon, the same authors estimate that “the informal sector production (...) represents about 23% of the industrial production”. The share is much more modest in Congo (78,000 m³ of sawn timber, i.e. less than 18% of industrial log production). As for the DRC, the authors indicate that “preliminary estimates (...) show that the city of Kinshasa alone could consume a volume of informal sawn wood of about 350,000 m³” while official figures mention only 30,000 m³ of industrial sawn timber exported in 2007.

Such estimates simply confirm that the timber sector in the most populated countries in Central Africa tends to follow the path already taken in Ghana and Côte d’Ivoire, with a dual sector in which “informal” (chainsaw operators) are tending to progressively overtake the “formal industrial” operators.

2

THE THREAT OF LAND ACQUISITION FOR OIL PALM

2.1

NOT A NEW PHENOMENON IN THE FOREST SECTOR

In the forestry sector, LSLA is not at all a new phenomenon. Conversion of natural forests for cattle ranching, rubber, fast growing tree monoculture for paper pulp and oil palm has been common and practiced on a large scale in Asia and in Latin America, but on a smaller scale in Africa. Somehow former Zaire has been an exception, a legacy of the Belgian colony when Congo was a leading world palm oil and natural rubber producer. By 1922, more than 50,000 hectares of palm plantations were being exploited. At the beginning of the 1950s, there were around a hundred industrial and semi-industrial palm oil producers in the colony who relied on these natural palm forests, of which 50,000 hectares had been 'cleared' of other plants to make their exploitation more efficient.⁷ But after three decades of dictatorship and a decade of war, not much is left of the once thriving plantations. The "Zairianisation" turned out to be a disaster. *"All foreign enterprises were nationalised, except Unilever's plantations. Mobutu struck a deal with Unilever, because it was one of the most powerful forces in the country, em-*

ploying tens of thousands of people. For the other agro-industrial companies, the Zairianisation simply meant that Mobutu's own friends took over the sector, and basically looted it".

Liberia also has a history of large-scale plantations, mainly for rubber production, which started in the 1930s. Rubber produced by the Firestone Plantation Company was the dominant cash crop. In the early 1980s, rubber accounted for around 70% of the value of all agricultural exports, and the industry employed almost 30% of all Liberian wage earners.⁸ In 1984, rubber concessions in Liberia were dominated by American companies. The most important of these was the Firestone Plantation Company, which held concessions covering more than 50,000 ha at Harbel, east of Monrovia, and another of 8,000 ha near Harper, in southern Liberia; altogether, Firestone concessions covered about 34,000 ha.⁹

In other West African countries such as Côte d'Ivoire and Ghana, forest conversion has been essentially driven by small and medium-scale farmers establishing cocoa fields on wooded land.

2.2

CHANGING CONDITIONS IN CENTRAL AFRICA

One of the reasons for the singularity of Central Africa regarding limited current LSLA on natural forest has been political instability, the lack of secure property rights for foreign investors and

the high costs of doing business, due to degraded or lacking infrastructure (roads, rail networks, river transport facilities, etc.).²⁰ But this situation is now changing. The international community, led by the

World Bank, is investing massively in rebuilding road infrastructure in DRC; Liberia is now pacified and, above all, emerging countries, China at the head, are concluding deals that exchange “access to natural resources for infrastructure”. Targeted natural resources are mainly minerals and oil, not land so far. But the impact of these activities can be not only directly destructive but also indirectly destructive for the forests, since the road construction required by the contracts encourages private investors to establish new large scale plantations of cash crops, especially oil palm.

Gabon is a good illustration of this phenomenon. The Belinga Dam is one of two planned dams that would generate power for the Belinga Iron Ore Project, which is located 500 kilometers east of Libreville. The mining project is expected to produce some 30 million tons of iron ore annually. It is the country’s largest investment and includes the Belinga iron ore facility, two hydropower projects to power the facility, 560 kilometers of railroad track from Belinga to Santa Clara, and a deep-water port in Santa Clara that will allow the ore to be shipped to China.³¹ The proposed Belinga Dam would be located in Ivindo National Park. According to Brainforest (<http://www.brain-forest.org>, an organization led by Marc Ona, who was imprisoned for several weeks for his environmental advocacy activities) the contracting conditions between the Gabonese government and the Chinese company are characterized by opacity. “Environmental groups are demanding that the con-

tract between CMEC and the government be made accessible for public input, that the government provide adequate accountability over issues related to transparency, anti-corruption, and environmental social protections, that the project comply with relevant national laws, and that the dam at Kongou Falls be re-sited to the Tsengué-Lélédi Falls, a site that was recommended by a feasibility study in the 1960s for its cost-effectiveness and greater potential benefits to local communities.”³²

According to Brainforest, the new President, Ali Bongo, who was elected in 2009, has decided to take a second look at the project, which is currently suspended. But a new “affair” recently took place in Gabon: the de-gazetting of a large part of the National Park Mokalaba Doudou for an Indian mining company. According to Brainforest (23/07/2010), *Taurian*, the Indian mining company proposed to pay 6 months wages of the civil servants in Gabon.

With the escalating prices of minerals, mining appears to be a major threat to protected areas and forest concessions in West and Central Africa. Cobalt, nickel and manganese reserves are going to be exploited in the vicinity of the Dja forest reserve (Nkamouna project). A 2007 UNEP document reports “*The Reserve was recently explored for oil and gas and the existence of calcareous bodies on the south-east border of the Reserve could lead to open-cast mining for cement production. There are deposits of cobalt, nickel and manganese within 40 km of the borders to be developed by the GEOVIC company.*”³³

2.3 NATIONAL STRATEGIES

In Central Africa, agriculture used to cover roughly 20 million ha out of a potential 550 million ha (5%). If there is no increase in land productivity, in 2050 there would be a need to cultivate 20 to 50% of available land (mainly forest) corresponding to 120 to 240 million ha. Migrations from highly populated regions (Rwanda, Burundi, highlands of Kenya,

Uganda and Malawi) where, even without major public investment in irrigation, yields could be tripled by using all the land available, are very likely.

Angola, DRC and Sudan lead the continent in terms of available cultivable land. The case of Angola is worth mentioning. Thirty years ago, the former Portuguese colony was a food exporter;

nowadays, it imports almost half of its food needs and only 10% of the around 35 million ha of arable land is under cultivation. To revive food production, the Angolan government launched a \$6 billion 5-year development plan, calling for major foreign investment. According to the press, it is with the UK *Group Lonrho*, already very active in Africa, that the discussions are the most advanced. At stake is a 50-year lease of the rice fields in the Uige province of Angola, which were abandoned during the country's long civil war that ended in 2002. But it could be only a first step for this company whose president, Dave Lenigas, has declared that its aim is to lease up to 2 million hectares in Africa. *Chiquita Brands*, the first banana producer worldwide, has also announced its intention to invest massively in Angola to facilitate its exports in Europe.

Even if rice investments are not implemented on forest land, with bananas, the story could be different. And what about oil palm? In 2010, the Angolan parliament approved a law intended to support biofuel production. But threats to forests are not obvious. According to a 2007 post on Biopact.org, “Even after all the needs for food, fiber, feed and fuel wood have been satisfied for the rapidly growing local population, by 2050 Angola will still have one of the largest areas of non-forest agricultural land available for other purposes, notably for the cultivation of energy crops.”¹⁴ However, such a statistical statement cannot guarantee forests will not be converted to oil palm: in Indonesia, there is also a lot of uncultivated land outside forests that could be used for oil palm, but the operators target forests since they can take advantage of the timber resource (even degraded) they can sell to mills and to the pulp and paper industry.

In Gabon, Olam International has concluded an agreement with the government to establish up to 200,000 ha oil Palm plantation on secondary forests (forests selectively harvested in the past) 50-60 km south-east from Libreville. A first block of around 40,000 ha is planned to start in 2011. Olam, a large conglomerate having both forestry and agro-industry activities in its portfolio, is already a major player in the logging industry in Gabon. The

land strategy of such conglomerates, characterized by their geographical but also sectoral mobility of capital, has been established more than a decades ago in South-East Asia: fast accumulation of financial assets through (unregulated) logging, than conversion of the logged-over forest to other land-use, notably oil palm. The key point is to influence the public authorities for allowing turning degraded forestland into croplands. In Gabon, a zoning plan has started on a small portion of the territory in the 90's but has never been completed, creating room for the conversion strategy of conglomerates.

In Liberia, the *Sime Darby* company, which recently took over Liberia's second largest rubber plantation, which was previously operated by the Malaysia-based Guthrie Company, began planting the first of 40 million oil palm seeds in their plantation located about 45 km west of the capital Monrovia. “According to the concession agreement the Liberian government signed with Sime Darby, the company is to cultivate 220,000 hectares of oil palm and rubber plantation in Bomi, Gbarpolu, Grand Cape Mount and Bong counties, and is expected to create 20,000 jobs. About 20 percent of the plantation will be rubber, while 80 percent will be oil palm.”¹⁵

OIL PALM IN DRC: BETWEEN RUMORS AND HIDDEN AGENDA

“China secured 2.8 m hectares for a biofuel oil palm plantation in the Democratic Republic of Congo”. This news has been widely repeated by the press and appears to have originally been posted on the Web on <http://news.mongabay.com/bioenergy/2007/07/dr-congo-chinese-company-to-invest-1.html>. According to this post, the deal was for 3 million hectares. The post was relaying a Congolese newspapers article published in *Le Potentiel* of July 10th, 2007. The article stated: “D’un coût d’un milliard de dollars américains, ce projet va s’étendre sur trois millions d’hectares, dans les provinces de l’Equateur et de Bandundu, dans la province Orientale et dans une partie de la province du Kasai Occidental ».

The contract with the Chinese ZTE Agribusiness Company Ltd is presented as “signed”. Zhang Peng, ZTE’s regional manager, told Xinhua Agency that the plantation could yield up to 5 million tons of palm oil per year, 90% of which could be converted to biodiesel. Xinhua did not specify whether production would be for local consumption or export, nor did it specify the location of the plantation. However, a Xinhua Press release on July 10th, 2007, mentioned one million hectares, not 3 million.³⁶ We do not know how one million morphed to 3 million, then into exactly 2.8 million, but interesting information is provided by Deborah Brautigam under the heading “China and the African “land grab”: The DRC Oil Palm Deal”³⁷

In August 2007, the DRC Council of Ministers approved the proposed project, at 100,000 hectares. A November 3, 2007 report in La Prospérité said that the project would be 100,000 hectares when fully developed. However, in a January 14, 2008 interview with Le Potential, the Chinese ambassador in the DRC said that the ZTE project would cover “300,000 hectares” of oil palm. In May 2008, an Associated Press report gave a figure of 2.8 million hectares. (...) In a July 2009 interview with China’s news agency Xinhua, ZTE’s regional manager Zhang Peng said that the planned project in the DRC would be 1 million hectares and provide thousands of local jobs. The project was still being described in the future tense.

But in February 2010, Africa-Asia Confidential reported that in 2008, Congo had offered the modest sum of 250 hectares to ZTE. Delegations from ZTE seem to have visited Congo’s Ministry of Agriculture at least twice to discuss the project, but “three years after the MOU nothing has been done and according to the Ministry of Agriculture ‘nobody talks about it anymore.’ (...) This is, so far, the only really large Chinese land investment in Africa

for which there is robust evidence. As I wrote in The Dragon’s Gift, the figure of 100,000 hectares seems most plausible, with a possibility of expansion. This is big, but it’s not 3 million hectares. And it still might not go anywhere”.

What is confirmed is that the company did on-the-field surveys in the Equateur province in 2008, around the town of Basankusu (Father John Kirwan, pers. com.). But these surveys have stopped and it is rumored that the plantations will be established around Mbandaka. But so far, no one has seen any land planted with oil palm in the area.

It is also interesting to see how the government pretends not to see any contradiction between such negotiations for large scale oil palm investments and the commitments they are supposed to make with a view to REDD implementation.

An illustration of such pretence can be found in the recent DRC’s REDD + strategy (MECNT, 2009) drafted by a McKinsey consulting team. The report estimates that between 1.6 to 3 million hectares of forested lands in the DRC could be converted to industrial oil palm production in the near future (but no mention is made of any contract already signed). The report thus indicates a “potential mitigation lever” of 80 million TCO₂ (i.e. 19% of the total potential) in the implementation of the plantation in savannah areas instead of in forested areas (“new [oil palm] plantations that **would have been** established on primary forests leading to 1.6 to 3 million hectares deforested in the baseline scenario). Yet, a deliberate threat on the forest organized by the government will in this REDD + strategy become a “potential lever of mitigation” whose amount is the opportunity cost (to be paid to the oil palm investors) linked to the establishment of the plantations in savannah areas.

TEN MILLION HECTARES, THE “BIGGEST DEAL IN THE WORLD” OF SA IN CONGO: A LANGUAGE MISUNDERSTANDING!

On April 15th, 2009, a Reuters’ telegram reported “*South African farmers have been offered 10 million hectares of farm land to grow maize, soya beans as well as poultry and dairy farming in the Republic of Congo*”. Once again, this information was repeated in many publications (even by IFPRI) and is still posted on several websites. Actually, a couple of weeks after this Reuters release, *Les dépêches de Brazzaville* indicated that the figure of 10 M ha was formally denied by Congolese authorities. The

Congolese government said it is really looking for SA investments in farming but says no figure was mentioned during the stay of SA representatives. It seems it was simply a language misunderstanding: 10 M ha is roughly the total area of arable land in Congo not covered by dense forests.

After the visit of the Congolese Minister of Agriculture in SA, in October 2009, it was announced that the deal was actually for 200,000 ha of arable land in the Niari department, with degraded infrastructures, which, in the 1980s, were conceded to foreign agricultural companies and abandoned due to the civil war and the subsequent insecurity.

3

CONCLUSION: THE PROGRESSIVE DECLINE OF THE FOREST CONCESSION SYSTEM AND THE POLICY PRIORITY FOR REFORMERS

We propose the hypothesis that the current forest concession system in Africa is declining due to several factors detailed briefly below:

The concession system is currently characterized by trends toward concentration (at the center) and fragmentation (at its periphery). The shrinking economic rents, the “resource transition” (from primary-like forest to modified ones) and more demanding legal and commercial standards are leading to the restructuring and concentration of the remaining companies. Such a shift favors companies positioned on emerging markets, especially in Asia.

The evolution of the relative prices and the low purchase power of the local consumers discourages the industry from supplying the domestic markets; the informal sector (chainsaw lumber, small scale mobile enterprises) fills this gap, especially in the most populated countries (Ghana, Côte d’Ivoire, DRC, Cameroon) and/or in countries in crisis (Liberia); the development of a dual sector, yet with connections, will increase, as recent data on domestic consumption and the importance of the informal sector shows.

A new pattern is emerging: escalating costs and growing land needs by rural populations are pushing companies to disengage from logging operations. Outsourcing timber is the alternative for the industry. This strategy of (vertical) “disintegration” is already practiced by SE Asian companies with their myriad “contractors”, and has started in southern Congo; the “Community forests” and local African enterprises are to be the contractors for supplying

the industry; institutional arrangements in such a contracting system (*progressive* payment indexed on the quantity of wood supplied, a system practiced by Asian companies and progressively being imported into Africa) is contrary to sustainable forest management, and not suitable for certification.

The decline of the concession system seems likely, but will take time. It will be resilient in “empty” countries such as Gabon and Congo-Brazzaville. The coming logging regime is likely to be composite and more informal. Industry and the large companies will be in position of power vis-à-vis their numerous “contractors”. It will allow little room for self-managed community forestry; most CFs are likely to become “contractors” of the reorganized industry. Collective organization of CFs to set remunerative purchase prices looks difficult: who knows if communities will be better off in the new system?

LSLA on forested land is a real threat to African forest, but deals concerning very large areas are unlikely. There is a genuine potential for the development of bioenergy (oil palm and sugar cane) on today’s forested areas of the Congo Basin, and this potential will certainly be at least partially seized by investors. It is not realistic to think that REDD will significantly alter this trend. However, medium-scale operations will probably be favored over massive land deals: mobilizing hundreds of thousands of hectares for agriculture is much more difficult than for timber, without appropriate road infrastructure and with the political difficulty involved in securing huge tracts

of lands in countries where the State has limited capacities to guarantee property rights to the investors. Opposition from communities and local land users will be also serious hurdles for vast operations, and investors would not want to put their investment at risk.

A policy priority for reformers: abolishing the presumption of “domanialité” on forest lands. As we have seen at the beginning of this report, too many African countries are still living with some legacies of the colonial era regarding forest land status. Even though the laws give more room to community and family property rights than generally believed, the administration still commonly considers the forest as the “private domain” of the State, even though legal procedures such as gazet-

ing have not been started or completed. The notion of “national domain” in force in Cameroon is a good asset for a smooth transition of the land tenure regimes, but it cannot be endorsed by countries that have taken different legal pathways.

As was the case in Madagascar in 2008, a policy priority would be to introduce the abolition of the “presumption of domanialité” (except for already gazetted forests) in the legislation in favor of a general recognition of the property rights of local users meanwhile defining such rights through participatory mapping and tenure surveys. Such a shift would – to a certain extent – prevent governments from allocating forested lands to agricultural investors in the name of their property rights obtained under the presumption of domanialité.

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ENDNOTES

- ¹ See the 2007 Impfondo declaration www.infosplusgabon.com/article.php?id_article=1368
- ² This maximum size could increase after the gazetting of the forest concession (see box below) which can lead to a change in the forest concession boundaries allowing for a larger area of exclusive tenure on which the community concession can be established
- ³ http://www.olamonline.com/newsroom_details/view/0/4d096935-7ec4-43ec-a9cf-0c607c3410df
- ⁴ www.globalwitness.org/media_library_detail.php/914/en/proposed_changes_to_liberian_forest_laws_would_open_way_for_devastating_logging_and_slash_government_revenues
- ⁵ “Proposed changes to Liberian forestry laws threaten government revenue and risk logging company interference in forest policy”, Global Witness briefing, 15 January 2010
- ⁶ A report on artisanal logging in Ituri prepared by G. Lescuyer for the project “Forêts des communautés locales en RDC” coordinated by Forests Monitor expressed serious doubts about the capacity of the communities to self-manage 10,000 ha (the initial figure cited in the first draft texts)
- ⁷ Fadjay Kindela and Laurens Rademakers, “Recycling the past: rehabilitating Congo’s colonial palm and rubber plantations”, retrieved on <http://news.mongabay.com/bioenergy/2006/09/recycling-past-rehabilitating-congos.html>
- ⁸ www.globalsecurity.org/military/library/report/1985/liberia_3_commercialcrops.htm
- ⁹ Idem
- ¹⁰ Which is portrayed by African negotiators on REDD as “early efforts to conserve forests”.
- ¹¹ www.internationalrivers.org/africa/belinga-dam-gabon. Also: “China’s involvement in the project has been all-encompassing: the China National Machinery and Equipment Import and Export Corporation (CMEC) is building the mine, China Exim Bank is funding the entire project, and China’s growing construction industry is the sole recipient of the ore extracts”.
- ¹² www.internationalrivers.org/africa/belinga-dam-gabon
- ¹³ www.unep-wcmc.org/sites/wh/pdf/Dja.pdf
- ¹⁴ <http://news.mongabay.com/bioenergy/2007/01/biofuels-superpower-angola-soon-to-be.html>
- ¹⁵ www.afriqueavenir.org/en/2010/04/05/new-rubber-company-commences-oil-palm-plantation-in-liberia/ The website reported also that Sime Darby operates the world’s largest oil palm plantation producing 2.4 million tons (6 %) of the world’s crude palm oil output annually.
- ¹⁶ http://news.xinhuanet.com/english/2009-07/10/content_11686244.htm
- ¹⁷ www.chinaafricarealstory.com/2010/03/china-and-african-land-grab-drc-oil.html



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