



# Land and Forest Tenure Reforms in West and Central Africa: A Preliminary Assessment of Progress Made since the Yaoundé 2009 Conference

Rights and Resources Initiative

Supporting forest tenure, policy, and market reforms

## SUMMARY

This policy brief examines land and forest tenure reforms in West and Central Africa (CWA). It uses the recommendations from the 2009 International Conference in Yaoundé on *Forest Tenure, Governance, and Enterprise* as benchmarks for CWA states, regional and sub-regional institutions. In particular, it assesses progress on the objectives agreed upon at the Conference to initiate or accelerate statutory tenure reforms aimed at the “legal recognition of community owned forests” and the “doubling of land areas under community ownership” by 2015. It summarizes the results of an analytical review of the policy, legal and regulatory instruments that were implemented, since 2009, and draws some conclusions for the way forward.

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## Main Results

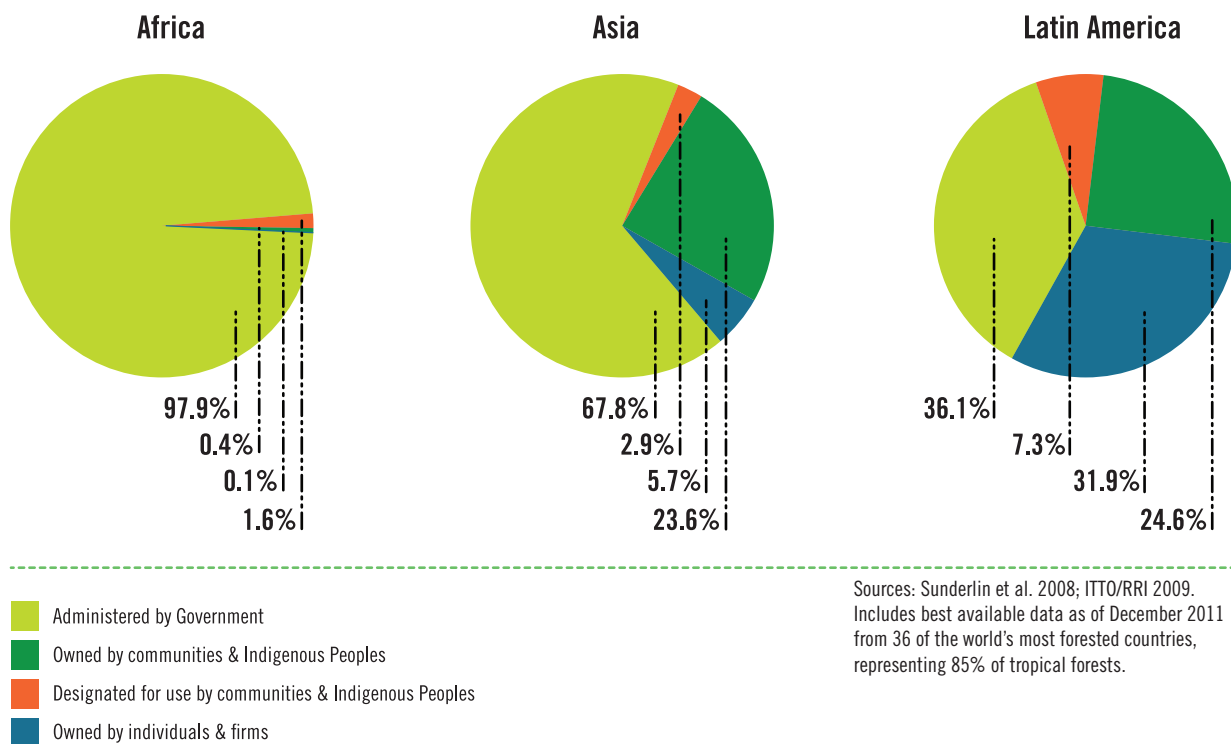
- While customary systems legitimately govern land and forest tenure, many governments of CWA countries continue to exercise direct ownership and control rights. There is a long way to go before all the principal recommendations of the 2009 Yaoundé Conference will be fully implemented.
- Reforms instituted since 2009 have, for the most part, not led to the legal recognition of community-owned forests, nor the doubling of forest areas under community ownership. At best, weak and often revocable rights, including access, management, and exploitation rights were transferred to people who continue to consider themselves legitimate owners of these resources.
- Thirteen out of twenty six CWA countries (50 percent) have developed or amended one or more statutory tenure instruments. In these 13 “responsive” countries, a total of 39 specific reform initiatives were produced of which 67 percent are completed. These include tools to formally establish new community rights or to secure or strengthen existing rights. Many countries have also created institutional arrangements to recognize and secure

community rights such as local land charters, communal land certification, and joint state forest management agreements.

- Achievements to secure rights in the Sahelo-Saharan zone clearly indicate that solutions to handle complex tenure situations under conditions of high mobility, transhumance, resettlement and immigration do exist.
- Land law revisions were contemplated or launched in 30 percent of the countries. Some countries established intersectoral commissions to address land governance issues. Progress in other countries confirms that new legislation can be developed, with genuine participation of civil society, over a realistic time horizon of 5 years or less. Decentralization has expanded to some extent and become a catalyst for local land and natural resources management.
- Principles of equity, gender, inclusive management and citizenship, and profit sharing are increasingly adopted by governments as stated goals. Increasingly, rights bundles recognize rights of women, marginalized and vulnerable groups, and youth.
- Efforts to promote community forestry, including community-driven conservation initiatives remain a much more common approach than unconditional land and forest ownership. Further, these initiatives often are not designed to recognize rights, but rather as a means to compensate for the negative impacts of traditional nature conservation and expansion of industrial scale forestry as well as to facilitate royalty payments, compensation and benefit sharing. Therefore recognizing community rights must be fully integrated prior to zoning, land use planning or territorial development.
- Beyond a doubt, regional agreements that emerged since 2009 have supported countries to better engage in tenure reform processes. The African Union (AU) Land Policy Initiative (LPI) and the Guidelines on Land Policy are of a particular interest as they originate from the highest decision making body on the continent. These tools fully support recommendations, including the 2015 Objective made at the Yaoundé Conference and are a strong guiding and supporting reform platform. Other AU initiatives, including the Policy Framework for Pastoralism in Africa (PFPA), are equally supportive of genuine tenure reform.
- In Central Africa, the COMIFAC's 2010 Directives on non timber forest products (NTFPs) call for the recognition and securing of local rights to land and forest resources, participatory forest management and compensation when access rights are restricted or extinguished.
- These regional instruments can provide direction and leadership, but the fact that they are not binding is a major weakness. It must also be avoided that these initiatives result in blue prints, which ignore the rich pallet of tenure and land governance realities on the continent.

## INTRODUCTION

In Sub-Saharan Africa, pre-colonial customary law recognizes local community and indigenous-owned lands. Modern written law, instituted by colonial regimes disqualifies customary land and forest law and grants the state absolute ownership over land and forests. In practice, however, three-fourths of African rural inhabitants maintain and use customary modes of land and forest management. The failure to respect and incorporate these rights increases land insecurity and facilitates illegal, large-scale land acquisitions (LSLAs), challenging natural resource governance for both governments and local

**FIGURE 1:** Statutory distribution of Forest Tenure in three regions

communities. The recommendations made at the 2009 International Conference in Yaoundé, calling for reforms that legally recognize community and customarily-owned land and forests in CWA countries, share this view. This policy brief gives an overview of the implementation of the recommendations by these countries<sup>1</sup> and their main regional and sub-regional institutions. It underlines lessons learned, future scenarios, opportunities, and threats to the adopted reforms. It is largely based on a study (Djeukam, Oyono and Diarra, 2013)<sup>2</sup> that assesses the legal and policy instruments through document reviews, consultations with experts, and analyses.

## REFERENCE POINT: THE 2009 INTERNATIONAL CONFERENCE IN YAOUNDÉ

The key message of the Conference was a call for tenure reforms by 2015 in CWA countries which would recognize and legalize community owned forests and/or allow for the doubling of forest areas under community ownership. These recommendations are based on a number of facts: 1) the existence of a historical injustice and the lack of legal recognition of customary rights in many African states and/or the refusal to grant new community rights over forest lands; 2) the recognition of some advances related to tenure reform in developing countries in general and African countries in particular (particularly during the 1990s and the 2000s); 3) Latin America and Asia hold, on this issue, a significant advance over Africa (see *Figure 1*); 4) in CWA countries overall, national policies and laws continue to limit the genuine recognition and securing of local and indigenous community rights.

Regional institutions such as the African Union (AU) the African Development Bank (AfDB), and the African Economic Community (AEC), were called upon to integrate, or better integrate, community forest

tenure rights into the Land Policy Initiative in Africa (LPI, launched in 2006). The Central African Forest Commission (COMIFAC) through its Convergence Plan for the Sustainable Use of Forests, and the Economic Community of West African States (ECOWAS) were also participants in the the Yaoundé Conference.

Nearly four years after the Conference, it is time to stop and assess.

## ASSESSMENT OF PROGRESS MADE SINCE 2009

At the Regional level, two major instruments related to the LPI have been established since 2009 under the auspices of the AU: 1) the July 2009 Declaration on Land Issues and Challenges in Africa and 2) the Policy Framework for Pastoralism in Africa (PFPA). These instruments call for tenure reforms that include gender and equity issues, and recognize and protect the rights of pastoral peoples and other vulnerable groups.

In Central Africa, the 2010 COMIFAC Directives on NTFPs and local and Indigenous Peoples call on Central African states to recognize the customary modes of land and resource allocation, and to delimitate community usage and activity areas in land use plans, keeping both current and future needs in mind.

In West Africa, a process was initiated in 2010 by the Inter-State Permanent Committee for Drought Prevention in the Sahel, and the West-African Economic and Monetary Union to establish a coherent set of land policies. A Land Observatory is currently being created with a mandate to correct abuses in land deals. A Sub-regional land charter has been developed in order to promote the harmonization and coherence of national land policies as regards to issues such as equity, economic growth, good governance, sustainable management of the environment, solutions to problems related to, and conflict management.

At the country level, the following advances have been observed after the 2009 Conference:

- 13 out of 26 Central and West African countries have developed or amended one or more instruments related to the statutory structure of tenure rights. In these 26 countries, 39 reform initiatives have been completed (67 percent) or are ongoing (33 percent); 65 percent of these initiatives recognize new community rights, while 35 percent strengthen or secure existing community rights.
- In the Sahelo-Saharan zone, nearly 50 percent of instruments have been developed and implemented since the end of 2009. These include instruments that recognize community rights to: mobility and transhumance; agro-sylvo-pastoral integration; manage benefits from the exploitation of forest and wildlife resources; articulate citizen demands during forest classification and ensure fair compensation in the event community rights are extinguished.
- In three-fourths of countries, the systematic recognition of the bundle of rights mentioned above and, usually, of usage rights has been observed.
- In 30 percent of countries, land legislation reviews are being considered or have already been launched.
- Various institutional arrangements to recognize/secure community tenure rights have been established: local land charters, land certificates, management conventions, concessions, occupancy permits, and agreements for the joint management of national forests.

## BOX 1: REPRESENTATIVE EXAMPLES OF ADVANCES IN PRO-COMMUNITY REFORMS IN CWA COUNTRIES

Some countries in both sub-regions have done particularly well with reforms related to equity, and the recognition and securing of community rights. For example, in Liberia, the Republic of the Congo, the Central African Republic (CAR), Niger, Burundi and Burkina Faso, the customary property rights of local and/or indigenous communities have been recognized.

In the last three countries listed, this involves issuing official documents acting as deed titles. In Liberia, the Community Rights Law (CRL) of 2009 (with regards to forests) appears, despite difficulties in its implementation, to be a major innovation for both sub-regions in that it recognizes customary rights over forests and establishes procedures to secure them. In Benin, Burkina Faso, Mali, the CAR, and the Democratic Republic of Congo (DRC), regulatory provisions prescribe positive discrimination to favor access to land and/or natural resources for women and other disadvantaged groups.

Instruments that specifically relate to the protection and promotion of indigenous rights have been enacted in the Republic of the Congo and initiated in the CAR. In Cameroon, a 2012 ministerial decision recognized the declassification and transfer of forest reserves, covering a total area of 218,286 hectares, in response to community demands. The transferred reserves will become, after three years, the property of the relevant communities, as long as they abide by legal management plans. The local communities' status as rights-holders over these forests has been officially recognized in the ministerial decision, as has their right to benefit from 10 percent of revenues from lumber operations.

- While not strictly speaking tenure reforms, decentralization frameworks have become, in certain countries (e.g. Ghana, Senegal, Gambia, Mali, Nigeria, the Democratic Republic of the Congo (DRC), Liberia, and Cameroon), an effective mechanism for devolving responsibilities and powers related to land and forest management to local institutions.

## THEMATIC ASSESSMENT

Post-2009 Yaoundé Conference tenure reforms have focused on specific themes.

### Community Forestry

Community forestry is an important approach through which community tenure rights can be promoted, and is representative of the increase in forest areas under local community management and control. There have been community forestry experiments in Gambia, Gabon, Liberia, Guinea-Bissau, and Cameroon. In Cameroon's case, there were 272 community forests, covering 940,000 hectares in 2009 and 301 community forests covering 1,015,536 hectares in 2011.

### Community Conservation

There have been community conservation experiments after the recognition of the rights of local communities. This has been the case in countries such as the DRC, Rwanda, Burundi, Senegal, Gambia, and others.

## Access to Benefits and Compensation

These are reforms that promote mechanisms to redistribute benefits from the industrial exploitation of natural resources and compensate communities in the event that rights are extinguished. Senegal, Ghana, Liberia, Cameroon, Congo, Chad, and Gabon are in the process of institutionalizing such mechanisms.

## Land Use, Zoning/Macro-Zoning and Land Classification

Mechanisms related to land use planning are increasingly making use of participatory mapping and respecting community documentation of their resource-use. More than three-fourths of countries in CWA have allowed for the use of participatory mapping in the zoning and classification of their forests.

## Joint Conservation Management

Joint management has become a common form of management for conservation in many ecosystems in CWA countries. While customary and community ownership has yet to be recognized in the conservation of these ecosystems, experiments with community forestry provide a potential basis for such rights, provided the necessary political will and enabling environment exist.

## Community Land Registration

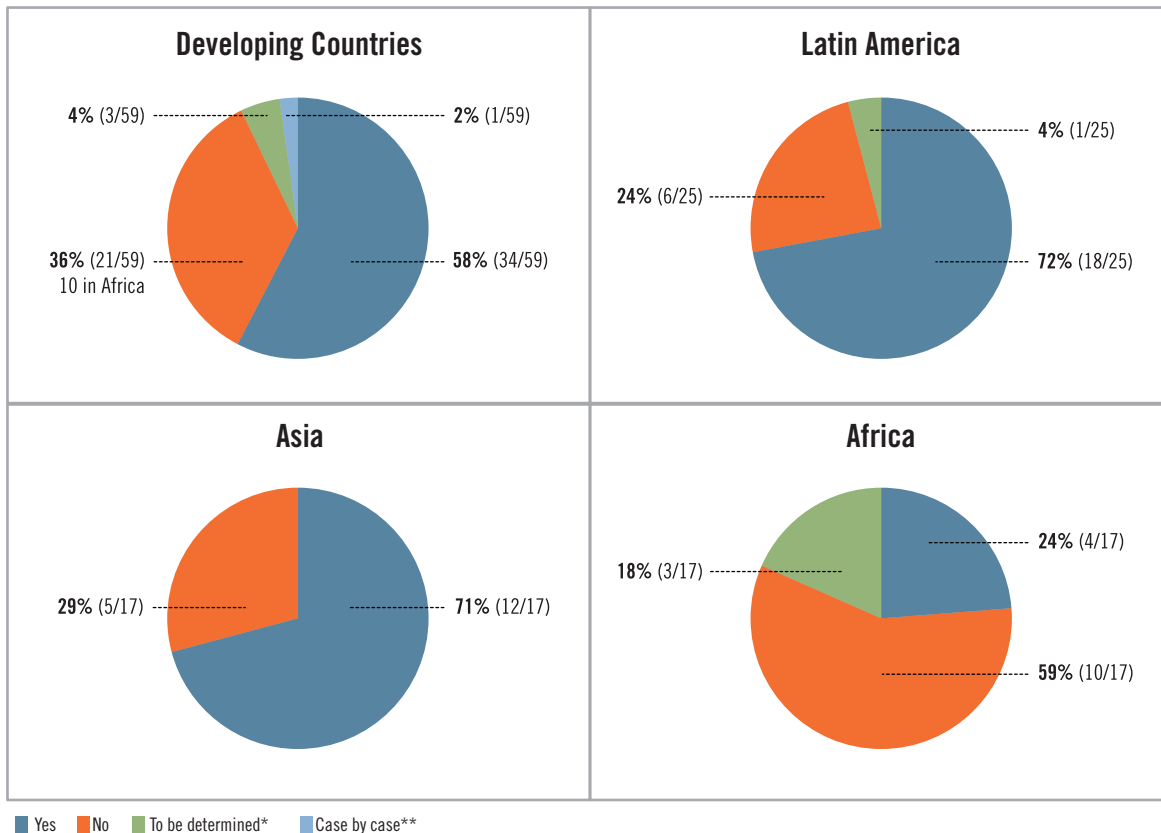
Mechanisms to register community lands have been in development since the beginning of the 2000s throughout CWA. Securing community lands requires an elaborate and usually cumbersome process of document and registration of these rights.

## Citizenship and the Protection of Minority Rights

There are policy instruments and specially written laws in CWA countries that recognize the citizenship rights of minorities and other vulnerable groups. The laws relating to the Indigenous Peoples in the Republic of Congo and the Central African Republic have become points of reference on this issue for all of Central Africa.

## STRENGTHS AND WEAKNESSES OF REFORM INITIATIVES

- The greatest strength of African instruments lies in the fact that they come from the AU, the highest decision making body on the continent, and demonstrate the ability of this institution to proactively engage when faced with emerging challenges (e.g. land grabbing, climate change).
- Regional and sub-regional instruments are still only general directives for reforms and are non-binding. They are, among other things, very broad and land issues do not have the same meaning or political, social, and economic importance in Rwanda, the Équateur province (DRC), the Malian Sahel, and the Gambian coastal zone.
- The West African Land Charter (ECOWAS) remains vague on how customary land rights should be treated. While acknowledging the importance of recognition, the new COMIFAC Directives do not propose any mechanisms for their legalization.

**FIGURE 2:** Comparison of exclusion rights in Africa and other regions

- In some countries and in some ministries, there is a will on the part of decision-makers to undertake tenure reforms that guarantee at least a minimal bundle of rights to local and indigenous communities. In some cases, successful country reform processes are reproduced or adapted in other countries. Civil society has consolidated its role as watchdog and as a participant.
- Despite advances, there still remain a number of limitations: 1) there is no notable progress toward either joint ownership or clear community ownership; 2) legal security is mostly guaranteed for land under individual or public ownership, not for land and forests belonging to lineages, clans or villages; 3) fair compensation is not guaranteed when these rights are revoked; 4) these reforms do not include the effective transfer of land/forest ownership to communities, but generally provide a weaker or revocable bundle of rights (e.g., access, usage, management and extraction rights).

A recent RRI study<sup>3</sup> shows that in Africa, rights of exclusion (by the community) are more of an exception than the norm. Considering this and the more general issue of securing and recognizing community rights, Africa lags far behind other developing regions (see *Figure 2*).

In sum, land and forest initiatives proposed since 2009 look less like tenure reforms and more like minor adjustments to community management. The state remains the main legal forest and landowner. We are still very far from meeting the goals of the 2009 Yaoundé Declaration.

## OPPORTUNITIES AND CONSTRAINTS

The advances, stagnation or setbacks, with regard to recognizing or securing community tenure rights have been influenced by a number of constraints and opportunities.

### OPPORTUNITIES

- An enabling international environment marked by a growing consensus that securing community rights is an essential part of sustainable development and poverty reduction.
- Several regional institutional initiatives to recognize local community rights.
- Decentralization is a catalyst for the devolution of land and natural resource management.
- Strong civil society mobilization for the recognition of community tenure rights.
- Better understanding of the strengths and weaknesses of possible policy and legal innovations.

### CONSTRAINTS

- Lack of appreciation of the social, economic, and political issues related to the recognition of community tenure rights.
- A new emphasis on industrial-scale land development, based on a plantation model, as the best to development. This creates a major political obstacle to the substantive recognition of community tenure rights and local land management.
- Major infrastructure development leading to a simultaneous increase in land value and the marginalization of poor local communities in the absence of adequate safeguards.
- Development of REDD+ projects (e.g. the creation of forestry and agro-forestry plantations for carbon stocking or the creation of new public protected areas) which lead to the loss or restriction of community rights.
- Poor land and resource governance (corruption, bureaucratic red-tape, etc.).

## CONCLUSION

The Yaoundé *International Conference on Forest Tenure, Governance and Enterprise* resulted in a set of ambitious but sound recommendations to progress upon forest and land tenure reform, with the aim to increase African communities' direct control and ownership over their resources.

While many developing countries in Latin American and a number in Asia have made significant advances in reforming their legal systems to recognize and secure customary tenure rights as ownership rights, African countries, and especially their governments, remain more tentative. This assessment of the progress four years after the 2009 agreement indicates that a significant number of CWA countries have developed legal and regulatory tools to recognize and secure community rights, but often these are of an lesser value and are more restrictive than real property rights. Advocacy and efforts must continue to ensure that communities obtain stronger rights, as much of CWA remains fully mired in a tenure crisis.



The socioeconomic environment in 2013 is more threatening to community rights, forests and development goals than 2009. Large land acquisitions, massive infrastructure development, expanding protected area networks, carbon market speculations, and green energy challenges, all put more pressure on the resource base and their legitimate owners, the African communities. At the same time, many of these threats also constitute opportunities to progress a stronger citizen and rights-based land and forest tenure agenda.

Progress over the last 15 years or so has identified workable solutions to bring the formal, legal statutory system closer to the informal but legitimate, customary realities that continue to prevail for more than 95 percent of African people. Hesitation by governments to roll out action out on a national scale remains a major challenge.

Although many African governments promote decentralization efforts, the possible role of rural communities continues to be uncertain. Some governments consider a real devolution of power to communities as an impediment to investment, rather than as an opportunity to put into place a land and forest governance system built upon local responsibility.

The 2010-2020 decade will be a critical period for the present and future state of community rights in Africa. Tentative reflections and limited commitments by some governments need to be challenged with creative, operable and bankable alternatives. Civil society advocates, decision-makers and legislators, along with commercial sector operators and the international community, must strengthen platforms for transparency and negotiation. Some countries have achieved this by instituting cross sector bodies, including independent land commissions. This approach is fully supported by the AU, whose LPI framework remains a good framework for change.

## ENDNOTES

- <sup>1</sup> For Central Africa, it is the following countries: Angola, Burundi, Cameroon, Central African Republic, Chad, Congo, Democratic Republic of the Congo, Equatorial Guinea, Gabon, and Sao Tome and Principe. For West Africa : Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo. This conforms to the African Union's classification.
- <sup>2</sup> Djeukam R., R. Oyono and B. Diarra, 2013. Land and Forest Tenure Reforms in West and Central Africa: A Preliminary Assessment of Progresses since the Yaoundé 2009 Conference 2009. Rights and Resources Initiative, Washington D.C.
- <sup>3</sup> Rights and Resources Initiative. 2012. What Rights? A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights. Washington DC.

## THE RIGHTS AND RESOURCES INITIATIVE

RRI is a global coalition of 14 Partners and over 120 international, regional, and community organizations advancing forest tenure, policy and market reforms. RRI leverages the strategic collaboration and investment of its Partners and Collaborators around the world by working together on research, advocacy and convening strategic actors to catalyze change on the ground.

RRI is coordinated by the Rights and Resources Group, a non-profit organization based in Washington, D.C. For more information, please visit [www.rightsandresources.org](http://www.rightsandresources.org).

## PARTNERS



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