

Land and Forest Tenure Reforms in Central and West Africa

Preliminary Assessment of Progress Made since Yaoundé 2009

**Robinson Djeukam, Phil René Oyono and
Boubacar Diarra, with the collaboration of
François Tiayon and Hortense Ngonu**

MARCH 2013



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.

PARTNERS



SUPPORTERS



The views presented here are those of the authors and are not necessarily shared by the agencies that have generously supported this work or all of the Partners of the Coalition.

Cite as: Djeukam, Robinson, Phil René Oyono and Boubacar Diarra. 2013. Land and Forest Tenure Reforms in Central and West Africa: Preliminary Assessment of Progress Made since Yaoundé 2009. Washington, DC: Rights and Resources Initiative.

Translator: David-Marc Newman.

Land and Forest Tenure Reforms in Central and West Africa

Preliminary Assessment of Progress Made since Yaoundé 2009

Robinson Djeukam, Phil René Oyono and Boubacar Diarra,
with the collaboration of François Tiayon and Hortense Ngon

Rights and Resources Initiative (RRI)

Yaoundé, March 2013

ABOUT THE REPORT

For the past few decades, statutory tenure systems in African countries were subjected to small legal changes whose main feature was the devolution of rights and responsibilities to peripheral actors; local communities, in particular. In countries in other sub-continent (Latin America, South-East Asia, and the Far East) more decisive and substantive changes have significantly affected the structure of land and forest tenure rights by recognizing and allocating property rights to local and indigenous communities.

In order to lay the foundation for more relevant legal developments and to seek a common vision, West and Central African countries organized an international conference on “Forest Tenure, Governance, and Enterprise” which took place in Yaoundé in 2009. New challenges - such as those related to large-scale land acquisitions - were discussed and recommendations were proposed. This report provides a preliminary assessment of their implementation. Major emphasis was put on two bold recommendations: that Central and West African countries take steps, by 2015, to fundamentally reform their tenure systems, in order to legally recognize community owned forests and to double the land area under community ownership within that timeframe and that sub-regional and continental organizations develop tools that promote community tenure rights and harmonize national legal frameworks.

Results

1. We have identified semantic and political challenges to a single unambiguous definition of “tenure reform.” This concept does not have the same semantic and political meaning for decision-makers, experts, advocacy professionals, and local communities. Differences in understanding and interpretation have been the source of inaction at the legal, political, and decision-making level.
2. Both regional organizations and sub-regional organizations have made undeniable progress. Guidelines on Land Policy in Africa have been drawn up and the Policy Framework on Pastoralism in Africa has been reaffirmed. In Central Africa two guidelines were created: (i) the Directives on Sustainable Use of Non-Timber Forest Products; and (ii) the Sub-Regional Directives on the Participation of Local and Indigenous Populations in the Management of Forests. In West Africa, a Sub-Regional Land Charter was developed and adopted.
3. We have found that at both the regional and sub-regional levels, about a dozen declarations, plans, strategies, and indicative frameworks related to land management and the allocation of tenure rights have been established.
4. The assessment shows that 13 out of 26 Central and West African countries have developed or reviewed one or more instruments related to the statutory structure of tenure rights since the 2009 Yaoundé Conference.
5. In the 13 countries showing “innovation,” we can identify 39 transformative innovations that have already been achieved (67 percent) or that are progressing (33 percent). About 35 percent of these initiatives consolidated pre-existing rights, while 65 percent recognized new community rights.
6. The institutional arrangements, established to recognize and strengthen community tenure rights, included the ratification of local land charters, signing of management conventions, granting of concessions, delivery of occupancy permits, and development of agreements for the joint management of national forests.

7. Like in many other countries, the implementation of Benin and Nigeria's land reforms are still in their preliminary stages. It is important to note, however, that these two countries have both adopted a kind of Land White Paper and have each established presidential technical commissions charged with finding solutions to land governance issues. Gabon, on the other hand, has enacted a new land law in February 2012, but it has mostly made the licensing system even more flexible in order to facilitate commercial access to land, rather than reviewing the statutory structure of land tenure rights.
8. We have found that national efforts undertaken in the past three years were related to specific themes and well-defined categories of rights. These include: community forestry, community conservation, joint management, zoning, access to benefits and compensation, and citizenship. There has been no notable progress towards joint ownership or land registration for the benefit of local communities. Furthermore, in no country have more advanced property rights, such as exclusion or alienation rights, been legalized to benefit local communities.
9. As regional and sub-regional instruments are non-binding, the promise of reform lies with national instruments. We have found that the progress being made did not actually constitute tenure reform, as it did not really alter the statutory structure of property rights. In this respect, the recommendations of the Yaoundé Conference to convert customary ownership into formal ownership and double the area of forests under community management and control have not been followed up by action. Essentially, there are no clear indications that, given the efforts undertaken up to now, the principal goals of tenure reform, as defined by the 2009 Yaoundé Conference, will be met by 2015.

LESSONS LEARNED

As this report focuses on a very short period (three years), there wasn't enough substantial or consistent database to calculate progress and changes in land and forest policies. This is because tenure changes take time. That being said, evaluating the recommendations from the 2009 Yaoundé Conference has, in light of the above-mentioned results, allowed us to learn lessons which will be presented below by category.

Relevance

In terms of legal recognition of local community rights to forest lands, resources, and benefits, the report tells us that the relevance (in terms of added value) of advances made since the 2009 Yaoundé Conference varies, depending on which qualitative scale is used. Even if efforts by institutions at the continental and sub-regional level are, essentially, only policy directives and guidelines, we found them to be relevant and valuable, despite the series of constraints created by national differences.

On the other hand, we have learned that, assessed globally, national efforts lack relevance when measured against the Conference's recommendations. For one, they are not, for the most part, actually tenure reforms, but innovations that closely or remotely relate to community rights, without addressing the issue head on. Secondly, despite the ongoing review of land and forest laws in countries in both sub-regions, the current prevalent policy and legal provisions do not show any political will on the part of legislators or decision-makers to legally and fully recognize customary community rights.

Efficiency

Our assessment demonstrates that since institutional efforts at the continental and sub-regional level are non-binding, their efficiency is not proved. At the national level, some of the advances made are efficient: they respond to given sectorial challenges that, in one way or another, relate to the legal quality and status of local community rights. However, the instruments examined only secure land under public or individual ownership, not land and forests under communal ownership (the Commons), belonging to lineages, clans, or villages. Thus, we have learned that, overall, the progress made is not efficient when compared to securing and legally converting community rights to commonly-owned resources.

Durability

Regional and sub-regional charters and guidelines tend to take a long-term view, and may therefore be enduring. Evaluating progress made at the national level tells us, however, that except for usage rights, which are constantly being reaffirmed by law – and only represent, in effect, small compensation – other bundles of rights are not entirely secured and are therefore not durable. This is the case for withdrawal, management, and commercialization rights, which are not even so-called strong rights, like exclusion or transfer rights.

Future instruments can easily extinguish or disqualify rights that are today being recognized through advances made since the 2009 Yaoundé Conference. The provisions that cover suspension, by the state, of community forests in Central Africa due to mismanagement illustrate the changing and precarious nature of certain bundles of rights. Evaluating the implementation of the most advanced laws, such as Liberia's Community Rights Law, tells us that distortions in practice can cancel out some of the benefits of reforms undertaken in that country and relegate existing rights.

Impact

If we look at things with a view on concrete effects and results, it is still too early to judge the impact of advances made since Yaoundé 2009. However, taking an institutional, policy and methodological perspective, we have learned that due to the contagion effect, and mutual and social learning, mechanisms that reproduce innovations or experiences were able to have a positive impact in spreading and generalizing efforts from one country to the other. The economic impact, in terms of markets, has not yet been proved, nor has the impact on local democracy and equity.

FUTURE SCENARIOS FOR 2010-2030

Scenario 1: Deepened land crisis and radicalization of tenure relationships. As populations explode and poverty amplifies on one hand, and large-scale land deals and investment proliferate on the other, central governments continue to leave the recognition of legal community rights to the commons unaddressed. Externalities trump internalities. Sub-regional social forces transform into huge social movements which interfere with all forms of land governance and threaten investment. Central governments lose hold of their agrarian “governability,” while local communities go without land or forests. Land investors are threatened by the inflation of “presence costs” due to progressively more violent social environments. The land tenure and resource management crisis is compounded by a social and political crisis.

Scenario 2: Negative compromise. Local communities are given some room through the allocation of weak rights and by the constant reaffirming of subordinate rights such as usage rights. On the other hand, central governments are increasingly open to externalities, especially large-scale land investments, by signing more or less ambiguous contracts. Civil societies choose paths leading to other challenges and new horizons, failing in their role as watchdogs.

At the end of the day, states do not benefit from much added value from these deals. Local communities remain static, faced with the legal expedients they have been granted (such as community forestry); transnational corporations and national agrarian elites, however, make huge profits on their investments. One part of the current debate gets diluted while the other remains focused on issues related to social and economic transfers to local communities once they have been dispossessed of customary lands (low-level jobs, specifications, residual financial compensations, material aid, etc.). The status quo is maintained.

Scenario 3: Positive and adaptive compromise. Sustainable legal and political solutions are found to address current stalemates. A win-win scenario is adopted in all sub-regions and among the states, investors, and local and indigenous populations. The states keep legal control and authority over public lands. At the local level, reforms lead to profound legal transformations. Property rights are granted to local communities, including indigenous populations over forest lands on their customary territories, by, as a first step, granting them deed titles. The internal arrangements of land redistribution – conducted according to customs and regulated by local elected and administrative authorities – are, then, developed contextually in each local territory. Finally, all signed contracts between states and land investors are concluded outside secured and titled customary lands.

1.0 INTRODUCTION

1. In Sub-Saharan Africa, pre-colonial customary law recognizes local and indigenous communities' property rights over forest lands and resources. Usually informal and unwritten, customary law exists in the same space as formal and written law, introduced by colonial authorities, which has laid down the principle of absolute state ownership of land and forests. This leads to an asymmetrical relationship marked by the disqualification or marginalization of customary land and forest law by formal and written law.
2. This state of affairs constitutes the main source of community land insecurity, and most of all, favors the systematization of large-scale land acquisitions, which completely deny customary land and forest rights. Yet, more than three-fourths of rural populations in Sub-Saharan Africa practice customary forest management and governance. To this day, the challenges faced by states and local and indigenous communities clearly demonstrate the need for profound reforms of statutory tenure systems, with the explicit goal of recognizing and legalizing community ownership and forest rights.
3. The main messages of the 2009 Yaoundé International Conference on Forest Tenure, Governance, and Enterprise also express the need for reform. They affirm the urgency of implementing clear national forest policies and launching legislative and regulatory tenure reforms. These reforms must include all stakeholders and actors and must keep social equity, gender and the harmonization of forest and land policies/laws in mind.

TABLE 1: Selected reference data.

Geographic Area	Coverage (km ²)	Forest area (thousands ha)	Population (millions)
West Africa	6 140 178	73 234	313
Central Africa	6 640 600	254 854	131
Total	12 780 778	328 088	444
Total for Africa	30 353 212	674 419	1 075

Sources : Adapted from <http://www.statistiques-mondiales.com/afrique.htm>;
<http://www.fao.org/docrep/013/i1757f/i1757f02.pdf>;
http://www.prb.org/pdf11/2011population-data-sheet_en.pdf.

4. A little over three years after Yaoundé 2009, this report outlines the preliminary results of the recommendations proposed at the conference in order to evaluate and give substance to the progress that has been made. The report also presents lessons that have been learned, develops possible scenarios of the future, and explores the opportunities of and the threats to effective tenure reforms.
5. This assessment has used a slew of methods and/or methodologies, including the (i) review and evaluation of legal and policy instruments; (ii) review of experts' documents; (iii) outcome mapping; (iv) analysis of limiting factors; (v) analysis of enabling factors; (vi) individual consultation with key informers; (vii) keeping in mind the differences in administrative and legal cultures found in English-, Portuguese-, and French-speaking countries.

2.0 A CRITICAL GLANCE BACK ON THE 2000S

“In Mali and Burkina Faso, local conventions on natural resource management and local land charters are implemented in frameworks shaped by decentralization. At the same time, campaigns seeking their legal recognition as legitimate modes of resource management demonstrate the potential of local practices to exert influence on policy and legal reforms related to land and forests.” F. Tiayon (personal correspondence)

6. At the end of the 1990s, Sub-Saharan Africa was targeted by a whirlpool of demands to democratize and liberalize public space, dictated by both internal and external constraints.¹ In order to pacify socio-political effervescence on the one hand, and introduce system-transforming elements on the other, central governments have undertaken political reforms. This wave of reforms, which can be called foundational reforms, only consisted of establishing institutions to guarantee multiparty political pluralism. In fact, in most cases they consisted of constitution revisions.

These measures establishing multiparty systems however are symptomatic of other types of reforms, such as administrative decentralization reforms, which redefine the fundamental nature of the state and its territorial deployment. In some cases, the administrative decentralization reforms have touched on issues related to land and forest tenure. In other cases, there is no notable correlation. Nonetheless, in all cases, citizenship was a central issue in the reconfiguration of the relationship between the state and local communities (see *Box 1*).²

7. The above-mentioned reforms also triggered other kinds of reforms: sectoral and technical reforms.³ Under structural adjustment programs and the standard of governance⁴ – and in the context of a deep economic recession – all Central and West African countries sought to review the institutional

BOX 1: POLITICAL REFORMS AND NATURAL RESOURCES

Among the outstanding issues related to citizenship over the three post-independence decades, is the issue of access and control of resources. Natural resources – forests or land, for example – are part of those resources on which political centralization has, over nearly a century, consolidated both the ideological and legal hegemony of the central state and the denial of community rights. The political regulatory apparatus at the time, in the case of forest management, was represented by legal tools which have not significantly changed since the colonial era.

Source: Oyono (2008)⁵

framework for the management of natural resources, including forest lands. The decentralization of forest management has, among other things, significantly changed the landscape of sectoral reforms in many countries in these sub-regions, such as Ghana, Senegal, Gambia, Mali, Nigeria, the Democratic Republic of the Congo (DRC), Liberia and Cameroon.

8. This set of decentralizations also ushered new interactions with tenure issues.⁶ Not only did new frameworks for the central state emerge, but responsibility and power were transferred to peripheral actors, such as local communities. It is true that these transfer processes are not, in and of themselves, tenure reforms, but in many countries – such as Liberia, Cameroon, Gambia, Mali, Ghana, or the DRC (still on paper) – they raise the question of community rights to forest lands and to the associated benefits from the commercial exploitation of forests.
9. Following the 1990s, the 2000s ultimately represent the golden age of sectoral reforms in Sub-Saharan Africa. Actual tenure reforms – a concept mired in semantic ambiguity (see further below) – were introduced in many countries in Western and Central Africa over the course of the decade and are methodologically supported by land management approaches (such as rural land planning),⁷ territorial land management, rights-based livelihood, or community forestry (Gambia, Ghana, DRC, Liberia).
10. If the decentralization of forest management and the underlying transfer of powers to local communities are considered to be rarely-seen legal innovations, these reforms most often occur when the attractiveness of the current global reform wave, donor directives, and government hesitation with regards to land – and specifically forest – ownership converge. Unlike French-, Portuguese-, and Spanish-speaking regions, the English-speaking regions have distinguished themselves by introducing land issues into the public debate.⁸
11. In other words, whether they came from administrative decentralization (Burkina Faso, Niger Mali, etc.), forest management decentralization (Guinea-Bissau, Cameroon, Ghana, DRC, Senegal, Gambia, etc.) or from truly autonomous constraints – which has rarely been the case – the tenure reforms that have taken place in West and Central Africa in the 2000s all have a common denominator.
12. That common denominator is that land and forest rights were acquired through customary representations, social models and cadastral practices on the one hand, and a minimal weakening of statutory tenure systems inherited from the colonial era on the other (see *Box 1* above). The resilience of local customs – and their social imperatives⁹ – is among the prime instigators of these changes.

13. Spread out over time and perpetually overlapping with other issues, the non-linear process of combining reforms that transfer management powers to local communities and more complex reforms that modify the structure of land and forest rights in certain countries represents a historical gain. The “golden decade,” covered in this section, precedes opportunities to secularize the issue tenure rights for local communities. On the other hand, however, it also threatens dark times ahead: a new scramble for African lands, expansion of extraction concessions, voluntarist domestic options on large infrastructure projects with high social costs, proliferation of protected areas, etc.
14. Finally, the 2000s were also the decade in which the seeds of a strategic reflection and advocacy methodologies were planted to promote the recognition of secured tenure rights for the poor.¹⁰ Similarly, ultimately two schools of thought had to find their place: the paradigm of individualized land ownership and land markets and the paradigm of common land ownership.¹¹ All these challenges, opportunities and analyses will leave their mark on the following decade, as will be shown in the sections following this overview.

3.0 RRI'S STRATEGIC NICHE IN AFRICA

15. Due to their vast amount of land and forests, their specificities, and their strategic importance, Central and West African countries serve as real-world laboratories in which we can study the development, testing, implementation, and follow-up evaluation of governance reforms related to natural resources; land and forest resources, in particular.
16. Resources in both sub-regions, however, are threatened by a combination of factors, including the proliferation of extraction industries and large infrastructure projects, large-scale land transfers and acquisitions, weak governance, and the aggregate effects of armed conflicts.

Related to natural resources, land and forest tenure is of central importance in both sub-regions. For, despite the resilience and strong presence of customary land and forest law – practiced by more than three-fifths of Sub-Saharan Africans – the available data shows that 98 percent of forest lands are legally under state ownership and administration.

17. RRI's mission is to support the demands of local communities and so-called indigenous populations to counter poverty and marginalization by promoting engagement and action at all levels in favor of policy, legal, and market reforms. These reforms must secure these communities' rights to own, control, and benefit from natural resources, particularly land and forests.

TABLE 2: Origin of reforms in the 2000s for selected countries (adapted from L. Alden Wily)¹²

Country	Constitution	Territorial Management	Land Management	Forest Management
Gambia		×		
Mali			×	
DR Congo	×			×
Sierra Leone		×	×	
Burkina Faso			×	
Central African Republic			×	×
Rwanda	×	×	×	

18. Given the complexity of land and forest tenure issues in general, and the critical status of local community rights in particular, RRI has encouraged mobilization in both sub-regions over the past five years that can promote and increase local ownership and administration of lands and forests through secured rights. These efforts seek to identify tenure and market models that allow progress on rights and government issues, rather than regression.
19. Several activities are included in this effort: (i) conducting global, regional, sub-regional, and national analyses and reflection in order to generate reproducible cycles of public and strategic knowledge; (ii) organizing support action in favor reforms to policies, markets, laws, and regulatory frameworks related to land and resource tenure ; (iii) developing networks of strategic actors in order to accelerate transversal learning and advocacy actions at all levels; (iv) strategically supporting current reforms and policy discussions with decision-makers and central governments.
20. Think tanks bringing various institutions together, led by civil society organizations, are joining RRI's efforts, and are benefiting from increased support from sub-regional initiatives. Dozens of workshops and meetings with various actors are organized in both sub-regions every year; the recognition of local communities and Indigenous Peoples' rights serving as a backdrop.

4.0 REFERENCE POINT: THE 2009 INTERNATIONAL CONFERENCE IN YAOUNDÉ

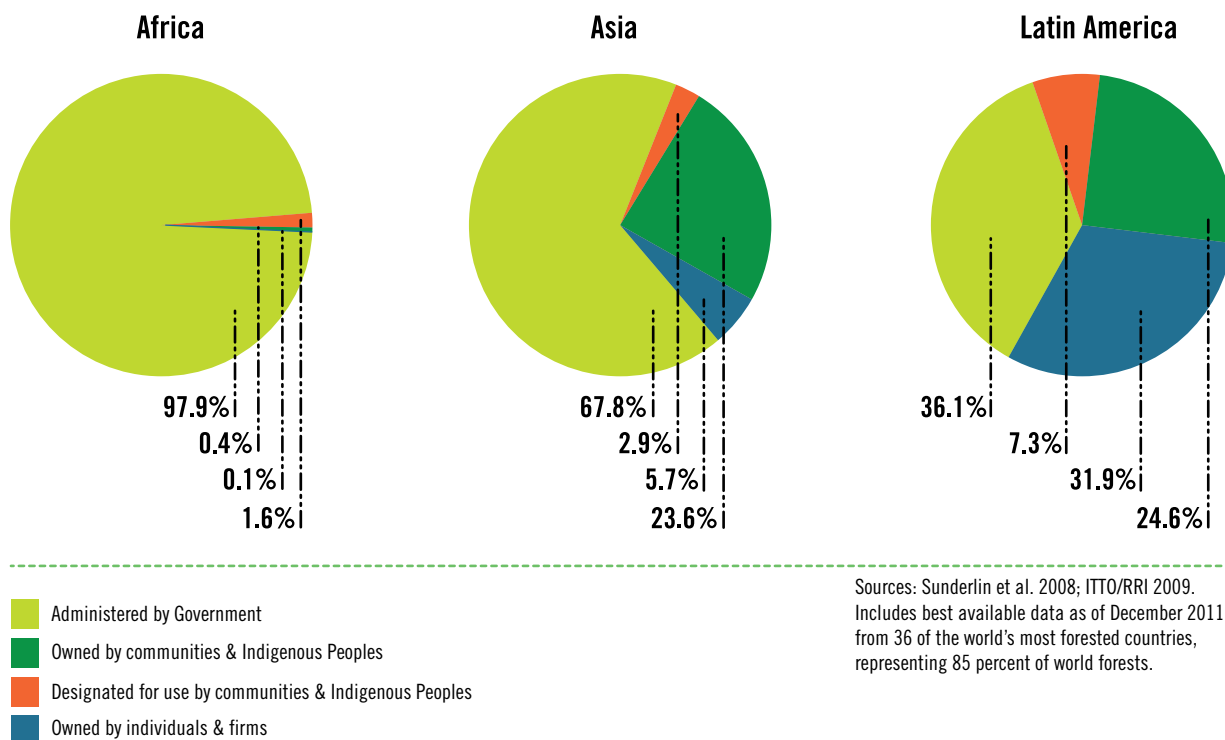
21. It is universally acknowledged that, for centuries, local and indigenous communities lived in harmony with forests.¹³ Unfortunately, since the colonial era, the state has often refused to adopt legislative provisions that recognize pre-existing customary rights or allocate new community rights over forest lands.¹⁴
22. Of course, this situation has evolved: over the past two decades, many reforms have recognized, or will soon recognize, local and indigenous tenure rights, but often, not strongly enough.¹⁵ For example, between 2002 and 2012, the forest area used or controlled by these communities in developing countries went from 21 to 31 percent.¹⁶

BOX 2: TENURE AND TENURE REFORM

Tenure: in its Latin form, *tenere*, it is more explicit. The Oxford English Dictionary defines tenure as the action or *legal fact of holding* anything material or non-material. Often confused with more “despotic” (Ellsworth 2004) property rights, tenure rights are weaker.

Tenure Rights: the various rights associated with the fact of holding something. Tenure Theory, however, has a more holistic approach to tenure rights. It ultimately sees a hierarchical spectrum of rights, from *weak rights* (access, usage/withdrawal, and management rights) to *strong rights* (exclusion and alienation/transfer rights).

Tenure Reform: Tenure reforms can therefore be qualified as weak or strong, depending on which type of rights they grant. Weak tenure reforms are more prevalent. In RRI's perspective, substantive tenure reforms would mean legally converting customary ownership into legal ownership, by granting enduring, clear and strong rights over legally recognized village and indigenous territories.

FIGURE 1: Forest tenure distribution in three regions

23. Unlike the substantial progress made in Latin America,¹⁷ for example, Sub-Saharan states continue to single themselves out as the sole proprietors and administrators of national land and forests¹⁸ (see also *Figure 1*). In fact, national policies and legislations have imposed legal limits on the substantive recognition and the progressive – but definitive – securing of local and indigenous community rights.¹⁹
24. These limits stunt the ability of local and indigenous communities to manage their forest resources and to develop enterprises that could reduce their vulnerability to poverty. Yet, it is widely acknowledged that weak governance systems, insecurity of tenure rights, and the non-recognition of customary tenure rights prevent forestry from contributing to their means of subsistence and to national, regional and global economies. They also increase the endogenous factors linked to the degradation of forests. We also cannot forget local conflicts and wars that result from this lack of recognition. Challenges continue to multiply and the states find themselves urgently needing to take clear and decisive action.
25. With a view of initiating a process for change, African delegates at the 2007 international conference on community forest management and enterprise²⁰ in Brazil called for a similar event to be organized in Africa. The goal of this request was to create a discursive, social, and political space in which Africans could chart a specific, time-bound plan in order to reach agreed and achievable goals by 2015.²¹ Organizing the International Conference on Forest Tenure, Governance, and Enterprise, held in Yaoundé in May 2009, was a response to that request – at least for the Central and West African regions.
26. The conference generated important recommendations that targeted different categories of actors,²² including those who are able to initiate tenure reforms and make decisions with similar ends. These

are the three continental institutions that promote the Land Policy Initiative in Africa (i.e. the African Union (AU), the African Development Bank (AfDB), and the African Economic Community (AEC)), the Central African Forest Commission (COMIFAC), the Economic Community of West African States (ECOWAS) and the national governments from both sub-regions.

27. Continental and sub-regional institutions were asked to integrate (or better integrate) community forest tenure rights in the Land Policy Initiative in Africa,²³ COMIFAC's Convergence Plan, and ECOWAS' Land Charter.
28. For their part, the national governments in Central and West Africa were asked to acknowledge that land and forest tenure reforms that take into account human and customary rights, including property rights, are essential for sustainable development. They were recommended to initiate and accelerate these reforms by 2015, and to have them legally recognize community-owned forests.
29. This kind of change becomes increasingly urgent, as various threats to both state sovereignty and community tenure rights are on the rise. Among these threats: large-scale land acquisition, expansion of extraction concessions, and the tendency of central governments to carry out large infrastructure projects with potentially high social costs.
30. This is why, more than three years later, it is important to verify that recommendations have been followed, and also to evaluate the tenure reform initiatives that the previously-mentioned actors have put in place after the 2009 Conference in Yaoundé; especially their potential to restrain or minimize land acquisitions that do not respect the rights of rural populations.

5.0 POST-2009 PROGRESS

31. This report on progresses made since the 2009 Yaoundé Conference looks at reform instruments that were developed by the continental and sub-regional actors and Central and West African national governments one by one. When one or the other of these actors have not instituted any reforms, or have adopted initiatives that are considered regressive when compared to the previous tenure systems, we shall look at the reasons for this inaction or regression.

Comprehensive Assessment

32. The principle objects being evaluated are policy, legal or simple decision-making instruments. In order to relate them to the actors whose decisions and action were called upon to move them forward, we have organized the report according to organizational level. Instruments at each level are judged according to the added value they provide to the recognition and legalization of community rights to resources and their associated benefits.

Regional Instruments

33. At the regional level, the process of integrating community forest tenure rights into the African Union, the African Development Bank, and the Economic Commission for Africa's Land Policy Initiative in Africa (LPI)²⁴ began a month before the 2009 Yaoundé Conference, particularly after the ministerial²⁵ approval of the Framework and Guidelines on Land Policy in Africa, or Guidelines on Land Policy in Africa, in April 2009.

34. As this instrument demonstrates, national land policies need to be inspired by (or must even improve upon) endogenous land practices. They must also recognize the role of local and community structures and institutions in land management and administration as a complimentary one to that of the state.
35. While the LPI and the Guidelines on Land Policy were adopted around the same time as deliberations began at the 2009 Yaoundé Conference, and while we cannot say for certain that the adopted motions inspired the instruments created by the AU-AEC-AfDB consortium after May 2009, we can say that these instruments share the goals of the Yaoundé Conference recommendations.
36. After the Yaoundé Conference, two instruments designed to push the process forward were adopted by the AU's Assembly of Heads of State and Government in July 2009 and October 2010 respectively. These instruments were the Declaration on Land issues and Challenges in Africa²⁶ and the Policy Framework for Pastoralism in Africa (PFPA).²⁷
37. The Declaration on Land issues and Challenges in Africa commits heads of states to ensure that new land laws “provide for equitable access to land and related resources among all land users including the youth and other landless and vulnerable groups such as displaced persons.” These laws should also “strengthen security of land tenure for women which merits special attention.”
38. As for the PFPA, it is an instrument that underlines the need to develop and enforce laws that recognize pastoralism and its specificities as a production system and a livelihood strategy. These laws should recognize the rights of pastoral communities to an adequate share of resources and secure their property rights, in a manner that guarantees equitable access to water, land, and pastures.
39. Despite the slow progress during their development, the Guidelines on Land Policy are already available and in Central Africa's case, have been presented at the Sub-Regional Workshop on Land Governance in Africa, which took place in Yaoundé in December 2012.

Strengths

40. The fact that they come from the highest decision-making body of the UA is the greatest strength of continental instruments. They have the political and institutional approval of the “most authoritative” voices. These instruments also reflect the fact that the continent – faced with pressing current issues (including land grabbing and the cyclical effects of climate change) – is able to propose forest and land policies that subscribe to a common vision.
41. These instruments suggest that land issues are an important problem, and demonstrate the political will to initiate or continue tenure reforms that agree with the recommendations of the 2009 Yaoundé Conference. The Guidelines on Land Policy, for example, can be a relevant starting point for instituting sustainable land and governance mechanisms.
42. Continental commitments have some moral sway. These guidelines and frameworks guide civil society actions within each country. Strategic information, advocacy and social learning actions can be organized, strategized and carried out using these guidelines.

Weaknesses

43. Still, these instruments are only guidelines and their operational purview is limited. They are limited by the fact that they are non-binding, that they impose no legal obligations on participating

states. History shows that continental commitments are rarely followed by concrete effects due to the weight of bureaucracy. The process is long, tortuous and subject to the uncertainties of each country's internal policies.

44. The continental instruments that we identified are often very general. Regional disparities and specificities are only marginally taken into account and some countries are unable to relate to them. Land issues are not the same; they don't have the same meaning or the same social, political, or economic importance in Rwanda, the Équateur province of the DRC, the Malian Sahel or the Gambian coastal region. There are huge differences that instruments like these guidelines don't sufficiently take into account.
45. There is an elevated risk in not taking regional specificities and disparities into account. Often very relevant guidelines and frameworks developed for other issues on the African continent have gone over 10 years without seeing a single legal or political follow-up at the national level. There is a lot of work to be done in order to achieve concrete regional commitments. We must ensure that, at least, work has begun at the sub-regional and national level.

Combined Sub-Regional Efforts

46. At the Central and West African sub-regional level, the two institutions targeted by the 2009 Yaoundé Conference's recommendations, the COMIFAC and the ECOWAS, have since begun to implement initiatives that harmonize tenure policies in their respective areas.
47. Other sectoral or multi-sectoral tools have been developed in one sub-region or the other by institutions such as the Inter-State Permanent Committee for Drought Prevention in the Sahel (CILSS), the Senegal River Commission, the International Commission for the Congo-Oubangui-Sangha Bassin, the Lake Chad Basin Commission, the Economic Community of the Great Lakes Countries, etc.

Central Africa

48. During the implementation of its Convergence Plan's 2009-2011 Operational Plan,²⁸ the COMIFAC adopted, in June and November 2010, two legal instruments : (i) the Sub-Regional Directives for Sustainable Use of Non-Timber Forest Products (NTFP) of plant origin; and (ii) the Sub-Regional Guidelines on the Participation of Local and Indigenous Populations and of NGOs on Sustainable Management of Forests.
49. The Directives on NTFPs offer a vision and structure for tenure rights, including community access, exploitation and management rights. The states are encouraged to recognize community access and usage rights and authorize the commercialization of products created as a result of the exercise of those rights. (Directive 3). They are requested to implement the necessary measures to allow those usage rights to peacefully cohabit with the recognized rights of concession owners (Directives 7.4).
50. States must also allow for traditional hunting, and define it with care in order that it reflects the current realities and lifestyles of local and indigenous communities (Directive 15). It also demands that states implement exploitation titles that are accessible to the poor and management conventions which guarantee for-profit collective access to forest products to communities who ask for it. (Directives 8.4c and 9.1).

51. Management rights are guaranteed by Directive 9. Their recognition is promoted by simple management plans to be implemented by communities that wish to use NTFPs, and a management convention signed by local communities and the state. Directive 9 also demands that local and indigenous participation in the creation of land distribution plans, forest classification and declassification, and forest management be introduced and/or strengthened.
52. The directives on participation in forest management encourage states to recognize and provide the means for customary ownership of forests and resources, and to delimitate forest areas for use by local and indigenous communities in every national land use plan, taking care to consider the needs of both present-day and future generations.
53. This instrument promotes reparations and compensation in the event that local and indigenous property or customary rights to forests and resources are suspended, restricted, limited, alienated, or violated for the public good on the one hand, and securing forests areas specifically allocated to indigenous populations on the other. (Directives 4 and 10)
54. The third sub-regional reform is the ongoing incorporation and institutionalization of Free, Prior, and Informed Consent (FPIC) in land and forest management in Central Africa. While it is not, strictly speaking, a legal policy or decision-making instrument, the FPIC, a methodological and social instrument, introduces added value to the structures of community rights to land and forests: it is the right to “say yes or no” to concessions (e.g. forestry or mining concessions) on forest lands based on prior knowledge.
55. The Post-Yaoundé period has seen the systematic application of Land Use Planning (LUP), or zoning plans. This approach, less focused on the territorial perspective adopted by conventional conservation efforts, promotes the use, around protected areas, of community management zones, whose recognition commits all stakeholders to the management of a given conservation landscape. This cannot be attributed to the recommendations proposed at the conference. It is a collaterally-secured advance, on which reformists and reformers can build legal and political momentum around protected areas.

West Africa

56. During the implementation of its Regional Agricultural Investment Plan, ECOWAS began, in 2010, the process of developing and implementing convergent land policies in the ECOWAS zone.²⁹ This process was launched by a regional taskforce on rural land issues. Sub-regional actors such as the Inter-State Permanent Committee for Drought Prevention (CILSS) and the West African Economic and Monetary Union (UEMOA) act as catalysts in this process.³⁰ In this spirit, a Land Observatory is being established with, amongst other things, the mandate to watch for and correct abuse in land deals.
57. Based on the African Union’s Framework and Guidelines and the Land Policy Initiative in Africa, the Sub-Regional Land Charter – a sort of convergence plan for West-African land legislation³¹ – is attempting to imitate regional efforts mentioned earlier at the sub-regional level.
58. The harmonization, through the charter of West African land legislation seeks to ensure West African appropriation and institute “a strategy to promote consensus and the convergence of national land policies around basic values and principles, notably economic growth, equity, good governance and sustainable environmental management.”³² It also seeks to confront emerging land

issues in the sub-region, including land conflicts, degradation, land insecurity and inequitable access, large-scale land acquisitions, climate change, coastal pollution, deforestation and cross-border transhumance.³³

59. Since the Yaoundé Conference, the coastal West African countries have developed a Sub-Regional Marine and Coastal Conservation Strategy. This instrument builds the foundation for the convergence of national efforts related to the conservation and sustainable management of coastal and marine ecosystems. At numerous times, it affirms the effective rights of communities to resources and reminds states of the need to institutionalize community conservation areas (community reserves) and sacred natural sites.³⁴
60. Monitoring mechanisms to improve the agricultural and pastoral land use and management frameworks have been developed since the Yaoundé Conference, including the sub-regional mechanisms related to Rural Land Plans and National Action Plans to combat climate change.

Strengths

61. The level at which local communities have been taken into account in Central African instruments developed after the Yaoundé Conference have visibly increased. The directives examined in this assessment prove it. They strengthen access rights and establish exploitation and commercialization rights. These guidelines and the FPIC strengthen each other.
62. Central Africa and its resources are at a crossroads. Land ownership and management issues are increasing and the issue of poverty is still very present. Confronted by the combination of these factors, to which we can add chronic armed conflicts, we see a palpable will to systematize political and strategic reflection and institutionalize sub-regional solutions to these present and future challenges.
63. Land use resulting from the LUP, also called zoning, can be used as a starting point for the geographic delimitation of community rights to land and resources. This “new mapping” may become, in the future, a framework for the legalization of community rights.
64. West Africa is ahead of Central Africa when it comes to building sub-regional synergies and implementing integration mechanisms. There is also greater attention on the rights of coastal communities in West Africa, which are threatened by the fragility of their livelihoods, caused by pollution and oil industries.
65. The development of a land management convergence plan in West Africa demonstrates a real political will in the sub-region to establish consistent laws, codes, and decision-making processes at the national level. This convergence plan is West Africa’s version of Central Africa’s forest convergence plan. It is also influenced by synergies in various sub-regional organizations, including ECOWAS, UEMOA, and CILSS.

Weaknesses

66. First of all, not being laws, these sub-regional instruments are all only guidelines for action and are non-binding. Their adoption and implementation nationally remains uncertain.

- 67.** In this view, the directives and guidelines developed in Central Africa cannot be considered as tools for land and forest tenure reform. While these instruments express the need to recognize and exercise customary land rights, they do not propose any mechanisms to legalize them. And still, the vast majority of Africans living in rural areas holds and manages land according to customary norms.³⁵
- 68.** It is unfortunate that the Sub-Regional Land Charter is vague on the fate of customary land rights and on how they should be treated (both presently and in the future). With this sort of instrument, the issue of securing community land rights is postponed. However, as mentioned earlier, ECOWAS' sub-regional framework on land policies proposes solutions, among others, to the problems of inequitable access, land insecurity, and large-scale land acquisitions; problems rural communities are confronted with.

Combined National Efforts

- 69.** First, there must be systemic differentiation based on country and ecological zone. With regards to land and forest tenure issues, the West African countries are divided into two: the forests zones, whose problems relate both to space and resources, and the Sahel zone, whose problems are primarily related to space.
- 70.** If sub-regional instruments are non-binding, national laws and domestic policy are, on the contrary, prescriptive, and are to be implemented according to specific provisions. Therefore, the national level is, virtually, the most proactive level at which to implement the 2009 Yaoundé recommendations. The indicative advances made at the national level so far will be presented below.
- 71.** Since the 2009 Yaoundé Conference, 13 out of 26 countries in the Central and West Africa sub-regions³⁶ have developed or reviewed one or more instruments related to the statutory structure of tenure rights. These instruments are multi-functional (political, legal, and decision-making functionalities).
- 72.** While land laws and codes, and forest laws and codes are both being revised in many of these countries, legal progress on the status of community rights to resources and associated benefits are much more the result of recurring sectoral reforms (land, forest and wildlife, land management, agriculture, pastoralism).
- 73.** About 39 transformative initiatives, related to land and resources rights, have been identified in the 13 “innovative” countries. A large part of these sectoral reforms (about 67 percent) have already

BOX 3: A POLITICAL DEAD END?

In 2002 it is estimated that only between 1 and 3 percent of West Africa were held by title. This low percentage demonstrates the failure of the registration system, and the sublimation of individual property, as the only legal path to land security for over a century. This system is emblematic of the land tenure crisis. Bold reforms must be urgently defined and applied by West African countries, starting with new land policies.

Source: Basserie and Ouédraogo (2011)

been translated into policy, legal or decision-making instruments that have been adopted and/or implemented, while the other 33 percent are still works in progress.

74. A large majority (about 65 percent) of the developed or revised instruments formally establishes new community rights, including land access rights, withdrawal rights, and resource management rights, including commercialization. 35 percent are related to the consolidation of pre-existing rights, including the more or less tangible securing of usage rights. New innovative instruments, such as Liberia's October 2009 Community Rights Law with Regard to Forest Lands have been enacted.
75. In the Sahelo-Saharan zone, nearly 50 percent of instruments developed or implemented at the national level since the end of 2009 recognize community access rights, rights to mobility and transhumance, rights to agro-sylvo-pastoral integration, rights to access and manage benefits from the exploitation of forest and wildlife resources, the right to make claims during forest classification procedures, and to compensation in the event community rights are extinguished.
76. Many countries in both sub-regions have created institutional arrangements to recognize, strengthen, and secure community tenure rights. These arrangements include the ratification of local land charters, land security instruments, titles and other land certificates, management conventions, occupancy permits, and agreements for the joint management of state forests. We may also mention the recognition of the inalienable and inviolable character of these rights, unless extinguished for the public good with just and equitable compensation and mechanisms for conflict management and prevention.
77. In three-fourths of countries in both sub-regions, there has been an increasingly systematic recognition of certain bundle of rights – however weak – which has contributed to securing community tenure rights and ensure the enjoyment of these rights. These rights are: (i) the rights to mobility and transhumance, and to agro-sylvo-pastoral integration; (ii) access and management of benefits from the exploitation of forest and wildlife resources; (iii) rights to articulate demands during forest classification procedures and to compensation if community rights are extinguished.
78. In 30 percent of countries in both sub-regions, the review of land legislation has begun or is being considered. Benin and Nigeria are unique as they have both published white papers on land issues and established presidential technical commissions mandated to find solutions to land governance issues. Land reforms initiated in Gabon after the 2009 Conference in Yaoundé have led to the adoption, in February 2012, of a new land law, which proves that it doesn't need to take more than five years to enact new legislation. This law, however, has been criticized as it focuses more on making the registration system more flexible in order to facilitate commercial access to lands than to revise the statutory structure of tenure rights.
79. The customary property rights of local and/or indigenous communities have been recognized in Liberia, the Republic of the Congo, the Central African Republic, Niger, Burundi, and Burkina Faso. In these last three countries, official documents acting as deed titles are to be issued. Five countries (Benin, Burkina Faso, Mali, CAR, and DRC) have, in instruments that apply to their entire national populations, mandated positive discriminations to improve access to land and/or natural resources by women and other underprivileged groups.
80. In Benin, for example, specific rules on the types of positive actions to be taken at the local level in favor of women and other vulnerable groups have been included in land charters. Special programs

for the individual or collective allocation of rural state lands and territorial communities to underprivileged rural producers, including women, have also been organized. In two Central African countries (Republic of the Congo, and the CAR) instruments related to the protection and promotion of indigenous rights have been respectively enacted and implemented.

81. In Cameroon, an August 21, 2012, ministerial decision³⁷ lists a number of forest reserves, covering 218,286 hectares, whose management could be transferred to relevant local communities if they expressed interest to the Minister in charge of forests and fauna. Transferred reserves would become the property of the relevant communities after three years, as long as they abide by the 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.

Strengths

82. We are still far from effective legal recognition of community tenure rights. But faced with increasing challenges and growing risks, national governments are more inclined to launch reforms. These efforts have been detected since the 2009 Yaoundé Conference.
83. Changes in the countries so far, have touched on their promising aspects such as the institutionalization of public debate and community participation in reforms in the small group of countries mentioned earlier. The Liberian law is, with all its understandable imperfections, highly representative of the political will of certain governments to address the issue of tenure.
84. The contributions of civil societies are more and more important. Their engagement in the public sphere is becoming systematic and their role as challengers to decision-makers is beginning to be consolidated.

Weaknesses

85. Overall, states only partially control the factors that allow the question of land, forest land in particular, to move forward because of weak governance and the progressively stronger hold of international financial capitalism over land and resources. In the meanwhile, this lack of control could lead to the definite postponement of the legal recognition of community tenure rights.
86. Despite the rhetoric and good intentions, the instruments adopted that legally recognize community rights to customary lands are weak and marginal. Even in the Liberian situation, we see more and more limits as time goes on. The type of substantive recognition that is needed in African countries would no longer consist of usage, management, and commercialization rights but of transfer and alienation rights – in other words: property rights.
87. Despite progress at the national level, the statutory tenure systems continue to hide problems related to identity and citizenship. And yet, these two factors (or their absence) strongly determine tenure rights and are the driving force behind ongoing conflicts in the two sub-regions. Who has rights to the land and to resources? Where? Under what conditions? These are questions too often left unanswered by decision-makers.
88. The content of legislations – both adopted and in the process of being adopted – is generally questionable, given the many obstacles to the full, effective and sustainable enjoyment of recognized

or strengthened rights. Among them, the openness to the possibility of extinguishing entrenched rights,³⁸ time limitations on certain rights, the submission of compensation to expropriation systems when rights are extinguished for the public good,³⁹ the obligation to submit to the requirements of management plans or to specifications, and the restrictive and anachronistic regulation of non-commercial exploitation rights.

89. At the intraspecific level, three-fourths of new policy, legal and decision-making instruments ignore the issue of minority rights and those of vulnerable groups (women, indigenous peoples, youth and, often, migrants and war or climate refugees).
90. The thorough applicability of these new instruments, in favor of better recognition of community rights, remains difficult to foresee. In nearly all cases, regulatory measures still need to be developed or finalized in order to launch or facilitate the implementation of guaranteed community rights and to establish processes and adequate compensation in the event that the state extinguishes recognized bundles of rights.
91. Even when new legislation was adopted after 2009 (as in Gabon, for example), some questions must be asked. The new Gabonese law – like preceding laws in other countries – does not challenge the disqualification of customary rights to land established in previous legislation. At the same time, it weakens the licensing system in order to facilitate commercial access to land⁴⁰ for individuals and groups with sufficient means. In this view, there are chances that large-scale land deals will increase.⁴¹
92. As many transformative initiatives are sectoral in nature, countries in both sub-regions are faced with legal contradictions on land use, due to the lack of harmonization of legislation pertaining to forest lands (forest, land, and mining laws, agriculture codes, etc.)
93. In many cases, the efforts allowed in one sector are challenged, or undone, by initiatives launched in other sectors. In Central Africa, mining concessions encroach on protected areas; forest concessions encroach on community management zones; agricultural concessions swallow up forest and hunting reserves, etc.

Thematic Assessment

94. While the tenure rights issue is socially and politically complex, it is difficult to give substance to so-called weak rights. This is why the greatest advocates of common/community ownership believe that property rights are the most advanced tenure rights (with exclusion and transfer rights).
95. For decision-makers and legislators, however, tenure rights may often be consubstantial with usage or access rights.⁴² Reforms to land and forest rights since, and anterior to, Yaoundé 2009 are emblematic of this difference in understanding and the variability of tenure rights on the ground.
96. The thematic assessment below allows us to evaluate the different national efforts by theme and measure the scope of the exercise of community rights within each thematic axis.

Gains

97. We have identified themes around which local community rights are exercised. Some of these themes are also land use schemes. The efforts made in the promotion of community tenure rights⁴³ since 2009 can be organized in the following way:

Community Forestry

98. Notable progress has been made in the promotion of community tenure rights with community forestry. The implementation of community forests in Gambia, Gabon, Cameroon, Liberia or in Guinea-Bissau, among others, have increased the forest area under local community control and management.
99. In Cameroon, for example, there were 272 community forests covering a total area of 940,000 hectares in 2009. By the end of 2011, the country had 301 community forests covering 1,015,536 hectares.⁴⁴ Forest area under local community control and management in the country has thus increased by 8.1 percent in two years. In Liberia, community forests have increased their coverage to 10,000 hectares.
100. Tools and methodologies that make the exercise of rights to management and commercialization of forest products easier have been systematized. The Community Rights Law in Liberia is the reference on which community forests have been based in the country. A sub-policy on local community forests has been developed in the DRC and waits only to be adopted.

Community Conservation

101. While there is no proven link with the Yaoundé Conference, some rights have been transferred to communities through the institutionalization of community conservation in several countries (DRC, Rwanda, Burundi, Senegal, Gambia, etc.). Community conservation in the Maiko-Tayna-Kahuzi-Beiga conservation landscape in North Kivu (DRC), where village communities have established community reserves to protect Gorillas, has become a reference tool in the entire Great Lakes zone.
102. As a pioneer experiment, the Tayna Nature Reserve has been recognized by the state. It has been formally classified in 2006, many years after local communities had delimited it as a community reserve. This kind of experiment is starting to spread in the DRC and local attempts were initiated in the past three years, anticipating official legislation.
103. Other community conservation experiments have been developed and implemented in Gambia, Guinea-Bissau, Ghana, Sierra Leone, and Liberia after the Yaoundé Conference in 2009. In West Africa,⁴⁵ progress has been made in the institutionalization of community areas (e.g. Senegal), Community nature reserves (Guinea), sacred natural sites (Coastal West Africa) and sacred forests (in the Sahel, in Togo, Benin and Ghana).

Access to Benefits and Compensation

104. Many countries have developed and implemented legal tools and mechanisms for the redistribution of benefits from natural resource exploitation and compensation for land occupancy. In this manner, these gains recognize local community rights to land and resources.
105. In Senegal, Ghana, Liberia, Cameroon, Congo, Chad, Gabon, this type of profit sharing has been significantly institutionalized. Even though these piecemeal operations have been criticized, offering compensation to local communities for mining (and oil drilling) has been ongoing in both sub-regions since 2009. The issue of security in the Delta Region, in Nigeria, has decreased in importance over the past three years due to greater will on the part of the central government to redistribute and to recognize community land rights.

Land-Use Planning, Zoning, and Classification

- 106.** Over the past three years, rural land plans in many West African countries were redeveloped to varying degrees. These legal and administrative changes consolidated local community rights in national land and forest management schemes.
- 107.** Land use planning policies were adopted in nearly a quarter of the countries (evaluated in this report) since 2009. Without resolving the issue of tenure, these tools emphasize the importance of customary law in the management of land and local territories. In the DRC, for example, the land use policy required that the free, prior, informed consent of local communities be obtained.
- 108.** Formal macro-zoning and forest classification approaches – without going as far as recognizing or increasing the scope of community rights – make reference to participatory mapping and respect for community resource-use zones.
- 109.** We have seen, earlier, the potential of the land use planning approach and that it had been systematized in Central Africa over the past three years. Conservation landscapes in Congo, the DRC, the CAR, Cameroon, and Gabon, among others, have completed their macro-zoning, and community management zones have been delimited around protected areas.
- 110.** Forest land classification initiatives have been established in three-fourths of countries in both sub-regions, often along with participatory mapping exercises. Without saying that community rights have been recognized during these various land and forest classification operations, their existence has always been affirmed.

Join Ownership/Joint Management

- 111.** In all countries evaluated in this report, the management of many ecosystems is done collaboratively (joint management). On the other hand, joint ownership, as a legal category, does not exist in any country. It is a concept used in NGO rhetoric that has never been translated into policy or law.
- 112.** However, it could be said that ongoing community forestry in some countries may be a precursor to joint ownership. Each of these experiments has its legal foundation and it is possible to improve the structures of local management and create, with real political will and genuine forms of joint ownership.
- 113.** Many classified forests and forest reserves inherited from colonial regimes in these countries, were more or less abandoned since the 1990s by forest administrations lacking the required financial resources. Now especially threatened by land deals, they could assume that legal status de facto, since due to encroachment by local communities, they are almost a form of joint ownership. Cameroon, with the partial declassification of reserves, can develop a legal transfer approach that returns these lands directly to local communities.

Registration

- 114.** Registration is, with titling and licensing, one way to recognize land and resource ownership. The policy horizon for advocates of community tenure and property rights recognition will relate to legally transferring customary lands under community ownership. Communities or families need to have deed titles. Specialized advocacy organizations have concentrated on such postulates since the beginning of the 2000s.

Citizenship and Benefits of Social Difference

- 115. Specific policy instruments have been developed and implemented in favor of minorities and so-called vulnerable groups. These instruments are organized around the recognition of the rights of these minorities and groups, and citizenship.
- 116. It is acknowledged in both sub-regions that these groups have the same recognized rights to resources as so-called dominant groups. The enactment of specific laws related to the Indigenous Pygmy Peoples in the Congo and in the CAR is generally considered a reference for all of Central Africa, in terms of legal innovations related to community rights. It is simply a matter of restructuring the relationship between human groups with regards to land.

Limits

- 117. Of course, the gains presented above include bundles of rights (usage, access and management rights, for example), but they are both narrow and fragile.
- 118. Despite rare promises made in the Liberian instruments, the local and indigenous communities in both sub-regions still do not have forest lands registered in their name or secured by titles. Over the past three years, no legal provision has been seen in either sub-region to recognize such changes.
- 119. Overall, none of these gains have led to the transfer of exclusion or transfer rights, the most advanced property rights. In this view, none of the advances described in this section transfer property rights, except in the case of Liberian forests. The rights behind these gains are fragile and are not provided with even minimal security.
- 120. With very few exceptions, these gains do not demonstrate the political will of central governments to legalize community tenure rights. If we dig deeper, we find that some of these advances can even constitute threats to the broadening of community rights or the legalization of customary rights, like land use planning and pro-state zoning. In this view, these gains change very little in the tenure relationships between governments and local communities.

Opportunities and Constraints

- 121. Analysis of the scope and celerity of reforms recommended by the 2009 Yaoundé Conference exposes many similarities between institutions at the sub-regional level and at the national level in Central and West African countries. These similarities also appear with regards to factors that have pushed the recognition and securing of community tenure rights forward on the one hand, and the reasons for stagnation and threats to expected reforms on the other.

Opportunities

- 122. *An enabling international environment.* The progress made has benefited from an international environment open to tenure reforms. A growing consensus has emerged that recognizes that securing community rights to resources plays a central role in the promotion of sustainable development and the reduction of poverty and vulnerability. Several recent global instruments⁴⁶ reflect this consensus.

- 123.** *Pro-active sub-regional institutions.* Several initiatives that have influenced the articulation and implementation of advances that recognize local community rights in both sub-regions have emerged or are about to be institutionalized.
- 124.** *Decentralization efforts.* The dynamics of decentralization, generally, and the decentralization of forest and land management, in particular, have played a positive role in the recorded advances. Jurisdiction, responsibilities and powers have continued to be transferred to local communities through decentralization, even if there is still much that can be improved.
- 125.** *Increased mobilization by civil societies.* Civil societies in the countries of both sub-regions have increased the mobilization potential around the recognition of community tenure rights, the evolution of greater equality rights, and more just redistribution. Many so-called civil society organizations insist upon a step-by-step approach that includes social recognition, securing rights, and legal recognition.
- 126.** *A better understanding of the limiting and enabling factors of policy and legal innovation.* Science and research have increased public knowledge and strategic knowledge of tenure in general, and of alternative solutions to present-day situations, which are characterized by a legal “monism” which only recognizes the legal value of statutory tenure. Qualitative research on tenure in the social sciences is also beginning to produce shareable results.

Constraints

- 127.** *Poor understanding of social, economic, and political issues.* Decision-makers and legislators have still not fully understood the issues related to the recognition of community tenure rights. And it is not always because they lack the will: the actors who have the relevant information have not always found the right channels or the most useful tactics to share it in the most strategic way.
- 128.** *Continued political timidity with regards to land grabbing.* Land grabs have continued, and even intensified, since 2009. Central governments have been unable to find relevant political solutions to this phenomenon, which is a major obstacle to the substantial recognition of community tenure rights and local land management. The legal land transfer systems in both sub-regions (new land capitalization) do not enable or secure community rights.
- 129.** *Often unrestricted infrastructure development.* Under the standard of growth and investment, countries in both sub-regions have accelerated the implementation of mega-projects (resource extraction, ports, roads, railways, dams, etc.). The expansion of massive investments (current and future) has brought about a similar increase in land value and the progressive marginalization of poor local communities from the recent competition for land.⁴⁷
- 130.** *The dangers of REDD+.* Over the past three years, there has been an increase in the implementation of REDD+ pilot projects in Central Africa, in the Gulf of Guinea forest countries, and in some Sahel countries. The creation of forestry and agro-forestry plantations to restore carbon stocks has required vast areas of land that public authorities and investors have obtained from local communities. This has seriously threatened their usage and access rights.
- 131.** *Weak resource governance, including land and forest governance.* Despite the efforts mentioned earlier and the opportunities available, resource governance in general, and land governance in particular, remain weak in both sub-regions. The persistent weaknesses in forest and natural resource

governance in most countries in West and Central Africa – mostly due to corruption and bureaucracy – have limited the enjoyment of rights guaranteed by the law.⁴⁸

6.0 CONCLUSION

- 132.** While many developing countries in Latin American and Asia were slowly but surely able to find adequate solutions to (legitimate) challenges created by the legal recognition of community tenure rights, African countries are fully involved in a tenure crisis.
- 133.** As Comby states (and quoted by Basserie and Ouedraogo),⁴⁹ “the modern land law, inherited from the colonial era has never been in force in any developed country.” This is why previous and current tenure systems have generally been policy, social, and economic failures, at least in part. Disengagement has been attempted; hesitant ideas for harmonization have been proposed by experts⁵⁰ - yet have been unable to convince decision-makers and legislators. Innovations have been introduced, over the past three years and earlier, but the problem remains completely unresolved, or nearly so.
- 134.** Seeing current tenure systems in Sub-Saharan Africa as being “at war” with one another is an outdated view. While they are legal and ideological opposites, these systems have always cohabited and, on closer look, it is the political procrastination of central governments that have made the situation explosive. It is no longer possible to consider replacing one system with the other. These normative regimes can interact and overlap in a positive way. The modern system can exist in a “neo-customary” framework and the customary norms can continue on within the constraints demanded by development and growth.
- 135.** There is no doubt: the 2010-2020 decade will be a critical period for the present and future state of community rights in Africa. And “one step forwards, two steps back” scenarios cannot be ruled out. During the rest of this decade, reinvigorated reflections must follow any regression at the global, sub-regional and national level.
- 136.** The knowledge community and advocacy specialists must adopt adaptive thinking and action learning processes with qualitative, but measurable, strategic and analytical inputs. Decision-makers and legislators, as well as the international community, must accept the helping hand of the knowledge and advocacy communities in supporting decision-making and the development of legislation.

ENDNOTES

- ¹ See Bratton, M. and N. van de Walle, N., 1997. *Democratic Experiments in Africa: Regimes Transitions in Comparative Perspective*. Cambridge: Cambridge University Press.
- ² These decentralizations also attempt to solve the issue of access to resources and benefits, as well as the issue of control over public space and resources, read Le Meur, P-Y., 2001. « Etat et Développement Local. Espace Public, Légitimité et Contrôle des Ressources ». *Les Cahiers du Gemdev* 27: 75-90.
- ³ For an analytical overview, see Ribot, J.C., 2003. “Democratic Decentralization of Natural Resources: Institutional Choice and Discretionary Power Transfers in Sub-Saharan Africa”. *Public Administration and Development* 23(1): 53-65.
- ⁴ Those who promote the [good] governance paradigm insist that natural resource management must be one of its main areas of jurisdiction, see UNDP, 2002. *Global Report on Human Development*. New York: UNDP.
- ⁵ Oyono, P.R., 2008. *Etat, Transitions Démocratiques et Ressources Naturelles. Une Economie Politique des Décentralisations en Afrique Centrale*. Document de Travail, Ouagadougou: CIFOR.

- ⁶ For a case study on Niger, read Ouedraogo, H., 2003. Foncier et Décentralisation au Niger : comment intégrer le processus de décentralisation dans les pratiques de gestion du foncier et des ressources naturelles. Niamey: UNDP/UNCDF. For the effects the decentralization of forest management had on community rights, read Ribot, J.C. and P.R. Oyono (eds), 2006. Decentralization and Livelihoods in Africa. Special Volume, Africa Development 31(2), Dakar: CODESRIA.
- ⁷ For Burkina Faso, e.g., read Dewitt, P., C. Tanner et S. Norfolk, 2009. Land policy development in Africa. Lessons learned from selected experiences. Land Tenure Working Paper 14, Rome: FAO.
- ⁸ Read Alden Wily, L., 2012. Putting 20th-Century Land Policies in Perspective. Rights to Resources in Crisis: Reviewing the Fate of Customary Tenure in Africa. Brief 2, Washington, DC: Rights and Resources Initiative.
- ⁹ On the need for tenure reform to take customary tenures into account, see Alden Wily, L., 2012. Customary Land Tenure in the Modern World. Rights to Resources in Crisis : Reviewing the Fate of Customary Tenure in Africa. Brief 1, Washington, DC: Rights and Resources Initiative.
- ¹⁰ Read White, A. and A. Martin, 2002. Who owns the world's forests? Forest tenure and public forests in transition. Washington, D.C.: Forest Trends & Center for International Law; see also Sunderlin, W., J. Hatcher and M. Liddle, 2008. From Exclusion to Ownership? Challenges and Opportunities in Advancing Forest Tenure Reform. Washington, D.C.: Rights and Resources Initiative.
- ¹¹ A school of thought represented by E. Ostrom, who, in the context of this work, is largely echoed by A. White and A. Martin (Note 10, above), and L. Alden Wily (Notes 9 and 12).
- ¹² See Alden Wily, L., 2012. Land Reform in Africa: A Reappraisal. Rights to Resources in Crisis: Reviewing the Fate of Customary Tenure in Africa. Brief 3, Washington, DC : Rights and Resources Initiative.
- ¹³ It is also acknowledged that they are their best protectors.
- ¹⁴ See Note 9, above.
- ¹⁵ Research has measure the depth of these reforms and has concluded that recognized rights are fragile, see, on this point, Ribot and Oyono (Note 6, above) ; for the situation in Ghana, see Marfo , E. Acheampong, E. and Opuni-Frimpong, E., 2012. "Fracture Tenure, Unaccountable Authority, and Benefit Capture: Constraints to Improving Community Benefits Under Climate Change Mitigation Scheme in Ghana". Conservation and Society 10(2), pp. 161-172 ; for Cameroon, read Oyono, P.R., M.B. Biyong and S. Kombo, 2012. "Beyond the Decade of Policy and Community Euphoria: The State of Livelihoods Under New Local Rights to Forests in Cameroon". Conservation and Society 10(2): 173-181.
- ¹⁶ 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: RRI.
- ¹⁷ See Note above.
- ¹⁸ See White and Martin (Note 10, above).
- ¹⁹ Read Alden Wily, L., 2011. Whose Land is it? The Status of Customary Land Tenure in Cameroon. Rainforest Foundation: London.
- ²⁰ This conference was jointly organized by the International Tropical Timber Organization (ITTO), the Rights and Resources Initiative (RRI), the IUCN, the Global Alliance of Community Forestry and the Government of Brazil.
- ²¹ RRI and IUCN, 2009. Programme-Conférence internationale sur la tenure forestière, gouvernance et entreprise (http://www.rightsandresources.org/documents/files/doc_1118.pdf).
- ²² See Gasana, J. K. and P. Galega, 2009. International Conference on Forest Tenure, Governance and Entreprise. New Opportunities for Central and West Africa, Yaounde, Cameroon, 25-29 May 2009. Report presented to Rights and Resources Initiative.
- ²³ It sets up a process for establishing frameworks and guidelines on land policies and reforms in Africa and was initiated jointly by the AUC, the AEC, and the AfDB in 2006, in order to secure land rights, improve productivity and living conditions for the majority of people on the continent.
- ²⁴ This initiative was launched in 2006, in order to promote the participative development and implementation of global and inter-sectoral land policies that help secure and strengthen land rights, increase productivity and improve the living conditions of local actors.
- ²⁵ Particularly during the Joint Conference of African Ministers of Agriculture, Land, and Livestock held in Addis Ababa (Ethiopia).
- ²⁶ http://new.uneca.org/portals/lpi/Documents/AU-Declaration-on-Land-Issues_ENG.Pdf.
- ²⁷ African Union: Department of Rural Economy and Agriculture, 2010. Policy Framework for Pastoralism in Africa, Addis-Ababa.

- ²⁸ COMIFAC, 2008, Opérationnalisation du plan de convergence de la COMIFAC, Plan d'opérations 2009-2001, Sub-Regional Operational Files.
- ²⁹ See the report of the Regional Task Force on rural land issues' first meeting, which took place in Dakar from October 4-6, 2010, http://www.hubrural.org/IMG/pdf/CR_task_force_ECOWAS_foncier_3__ANGLAIS__FINAL.pdf.
- ³⁰ With the ECOWAS.
- ³¹ In particular the CILSS's Regional Land Charter and the UEMOA's Regional Land Observatory.
- ³² Ibid.
- ³³ See www.ipar.sn/Note-de-synthese-no7-cadre-d.html.
- ³⁴ Read Oyono, P.R., S.M. Fall, C. K. Said, A.R. Said, L. Sidibeh and M. Sow. Les Sites Naturels Sacrés de l'Ecorégion Côtière et Marine Ouest-Africaine. Une Exploration et des Options de Reconnaissance Institutionnelle. Dakar: FIBA.
- ³⁵ See Alden Wily, L., 2012. Land Reform in Africa: A Reappraisal. Rights to Resources in Crisis: Reviewing the Fate of Customary Tenure in Africa. Brief 3, Washington, DC : Rights and Resources Initiative.
- ³⁶ For the sub-regions the selected countries are those classified by the African Union. These countries are: Angola, Burundi, Cameroon, Central African Republic, Chad, Congo, Democratic Republic of the Congo, Equatorial Guinea, Gabon, and Sao Tome and Principe in Central Africa; Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo in West Africa.
- ³⁷ The Décision n° 2002/D/MINFOF/SG/DF/CSRRVS du 21 août 2012 fixant la liste et les modalités de transfert de la gestion de certaines réserves forestières.
- ³⁸ History shows that the notion of public good is very large and some states will have it include whatever they want.
- ³⁹ While the communities are not always legally the owners of the land and resources over which the state extinguishes their tenure rights.
- ⁴⁰ See Alden Wily, L., 2012. Land Rights in Gabon, Facing UP to the Past – and Present. London: FERN.
- ⁴¹ For example, land acquisitions by the Singaporean OLAM group and the Belgian SIAT group.
- ⁴² This is why usage rights (a subordinate category of rights) and management rights are often taken to be tenure rights.
- ⁴³ Once again, subject to an unambiguous definition of community tenure rights.
- ⁴⁴ See World Resources Institute, 2012. Interactive Forest Atlas of Cameroon. Overview Report, Washington DC: World Resources Institute.
- ⁴⁵ See Note 37, above.
- ⁴⁶ These legal instruments include the United Nations Declaration on the Rights of Indigenous Peoples (September 2007), the African Union's Framework and Guidelines on Land Policies (July 2009) and the FAO's Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries, and Forests (March 2012).
- ⁴⁷ See related recent study published by CIBC World Markets, available at: http://www.irei.com/uploads/marketresearch/123/marketResearchFile/Infrastructure_Goes_Global10-08.pdf.
- ⁴⁸ Particularly with regards to administrative and financial red-tape bogging down the exercise of community rights and delaying the text of application.
- ⁴⁹ See Basserie, V. and H. Ouedraogo, 2011. « La sécurisation foncière : un des défis majeurs du nouveau siècle ». Grain de Sel 224, pp. 4-6.
- ⁵⁰ Read, among others, Lavigne Delville, P., 1998. Comment articuler législation nationale et droits fonciers locaux ? : expériences en Afrique de l'Ouest francophone. Paris : GRET.

West Africa

Benin

- projet de livre blanc du foncier au Benin, May 2010.

Burkina Faso

- Loi n° 034-2009/AN du 16 juin 2009 portant régime foncier rural au Burkina Faso ;

- Loi n° 003-2011/AN du 05 avril 2011 portant Code Forestier du Burkina Faso.

Guinea

- Projet de Code minier de la République de Guinée.

Liberia

- Community Rights Law of 2009 with respect to Forest Lands.

Mali

- Loi n° 10- 028 du 12 juillet 2010 déterminant les principes de gestion des ressources du domaine forestier de l'Etat ;

- Décret n°10- 388 / P-RM du 26 juillet 2010 fixant les taux des redevances perçues à l'occasion de l'exploitation des forestiers dans le domaine forestier de l'Etat ;

- Avant-projet de loi portant sur les conventions locales.

Niger

- Ordonnance 2010-029 du 20 mai 2010 relative au pastoralisme ;

- Ordonnance n° 2010-09 du 1er avril 2010 portant Code de l'Eau au Niger ;

- Projet de loi modifiant les dispositions de l'ordonnance n° 93-015 du 2 mars 1993 portant principes d'orientation du Code Rural ;

- Projet de décret déterminant les conditions d'octroi des autorisations de mise en valeur des ressources foncières pastorales ;

- Projet de décret déterminant les normes applicables aux pistes de transhumance et aux couloirs de passage ;

- Projet de décret réglementant la concession rurale ;

- Projet de décret modifiant le décret n° 97-006/PRN/MAG/EL du 10 janvier 1997, portant réglementation de la mise en valeur des ressources naturelles rurales ;

- Projet de décret fixant les conditions de ramassage de stockage et de commercialisation de la paille ;

- Projet de décret déterminant les conditions d'autorisations de mise en valeur des ressources foncières pastorales.

Senegal

- loi n° 06/2011 du 22 février 2011 portant régime de la propriété foncière ;
- loi n° 07/2011 du 22 février 2011 portant transformation des permis d'habiter et titres similaires en titres fonciers.

Central Africa

Burundi

- Loi n°1/13 du 09 août 2011 portant révision du Code Foncier du Burundi.

Cameroon

- Loi n° 201/008 du 06 mai 2011 d'orientation pour l'aménagement et le développement durable du territoire du Cameroun ;
- Arrêté conjoint n° 0000076 MINATD/MINFI/MINFOF du 26 juin 2012 fixant les modalités de planification, d'emploi et de suivi de la gestion des revenus provenant de l'exploitation des ressources forestières et fauniques, destinés aux communes et aux communautés villageoises riveraines ;
- Avant-projet de loi régissant le pastoralisme au Cameroun.

Gabon

- Ordonnance n° 00000005/PR/2012 du 13 février 2012 fixant le régime de la propriété foncière en République Gabonaise ;
- Décret n°1016/PR/MAEPDR du 24 août 2011 fixant le barème d'indemnisation à verser en cas de destruction volontaire de cultures, de bétail, de bâtiments d'élevage, d'étangs piscicoles ou de ressources halieutiques.

CAR

- Projet de loi portant gestion des espèces et des aires protégées ;
- Projet de manuel de procédures d'attribution des forêts communautaires ;
- Projet de code domanial et foncier ;
- Projet de loi portant code foncier agropastoral ;
- Projet de loi portant promotion et protection des peuples autochtones.

DR Congo

- Loi n° 11/022 du 24 décembre 2011 portant principes fondamentaux relatifs à l'agriculture ;
- Arrêté ministériel n°103/CAB/MIN/ECN-T/15/JEB/09 du 16 juin 2009 portant organisation et fonctionnement de la commission de règlement des différends forestiers ;
- Arrêté ministériel n°023/CAB/MIN/ECN-T/28/JEB/10 du 07 juin 2010 fixant le modèle d'accord constituant la clause sociale du cahier des charges du contrat de concessionnaire forestier ;
- Projet de décret fixant les modalités d'attribution des concessions forestières aux communautés locales ;

- Projet d'arrêté ministériel portant sur les dispositions relatives à la gestion des forêts des communautés locales et à la tenure des forêts villageoises.

Republic of the Congo

- Loi n° 5-2011 du 25 février 2011 portant promotion et protection des droits des populations autochtones ;

- Arrêté n° 6509/MEF/MATD du 19 août 2009 précisant les modalités de classement et de déclassement des forêts ;

- Projet de décret déterminant les modalités de protection des biens culturels et sites sacrés ou spirituels des populations autochtones ;

- Projet de décret portant création, organisation et fonctionnement du comité interministériel de suivi et d'évaluation de la promotion et de la protection des droits des populations autochtones.



1238 Wisconsin Avenue NW
Suite 300
Washington, DC 20007
www.rightsandresources.org