

# ITTO Tropical Forest UPDATE

A newsletter from the International Tropical Timber Organization to promote the conservation and sustainable development of tropical forests



## Owning Africa's forests

In West and Central Africa, forest ownership is a source of many problems. Disputes over it cause conflict; among other things, a lack of it causes poverty. In most countries the state has claimed legal title since the colonial period. Yet the customary ownership of the same areas dates back centuries, perhaps millennia. The disconnection between the legal and customary systems results in confusion, misery and lost opportunity.

In May 2009, ITTO, the Rights and Resources Initiative (RRI), and the Cameroon Government combined to host, in Yaoundé, Cameroon, the *International Conference on Forest Tenure, Governance and Enterprise: New Opportunities*

for Central and West Africa. The aim was to catalyze new, wide-ranging actions by governments and civil-society organizations towards securing land and forest tenure in Central and West Africa. This special edition of the *TFU* reports on the conference: its key messages, discussions, conclusions, and recommendations. All conference presentations and working-group notes are available at [www.rightsandresources.org](http://www.rightsandresources.org).

The conference was organized in response to a request by the African participants of the

**Special edition** ▶ *International Conference on Forest Tenure, Governance and Enterprise: New Opportunities for Central and West Africa*





Photo: J. Blaser

# Contents ▶

<b>Owning Africa's forests</b> . . . . .	<b>1</b>
<b>Forest tenure reform 'too slow'</b> . . . . .	<b>3</b>
<b>The opening session</b> . . . . .	<b>4</b>
<b>Daring to hope</b> . . . . .	<b>6</b>
<b>Land and development</b> . . . . .	<b>8</b>
<b>Africa's big question</b> . . . . .	<b>10</b>
<b>Another look at the law</b> . . . . .	<b>13</b>
<b>Legal dimensions to providing customary rights</b> . . . . .	<b>14</b>
<b>Lessons from other regions</b> . . . . .	<b>16</b>
<b>Roundtable: perspectives of forest communities</b> . . . . .	<b>19</b>
<b>Roundtable: mapping rights</b> . . . . .	<b>22</b>
<b>Roundtable: tenure and climate change</b> . . . . .	<b>25</b>
<b>Declaration of African women</b> . . . . .	<b>28</b>
<b>Yaoundé statement</b> . . . . .	<b>29</b>

*International Conference on Community Forest Management and Enterprise*, which was convened in Acre, Brazil, in July 2007 by ITTO, RRI, IUCN, the Global Alliance of Forest Communities (GAFC), and the Government of Brazil (as reported in *TFU* 17/4). In that meeting, African delegates proposed a follow-up conference that would set out a time-bound plan for systematically expanding community forest tenure, management and enterprise in Africa to agreed, achievable targets by 2015.

At the Yaoundé conference, participants agreed that, in Central and West Africa, weak governance and insecure tenure rights, inequity in allocation, overlapping or conflicting claims, and a lack of recognition of customary ownership undermine the contributions of forestry to local, national and regional livelihoods and economies and to the health of the global environment. Moreover, in most of Central and West Africa, national policies and laws limit the development of community forest enterprises (CFEs). Even where CFEs are permitted, neither the public nor private sectors are equipped to provide the support that CFEs need to develop and thrive.

Clarifying and recognizing tenure rights and access will open up many opportunities for forest communities to invest in and strive for the sustainable use of forests. Across the world, communities have demonstrated an ability to develop globally competitive enterprises that provide creative and dignified employment in ecological services, the extraction of timber and non-timber forest products, and value addition. Moreover, unlike the dominant forest management and industry models, CFEs tend to reinvest locally generated wealth into productive and social infrastructure.

Climate change presents all countries with an enormous additional challenge. Forests are both a source of emissions and a biome affected by climate change; they are therefore important to both mitigation and adaptation strategies. Clear and secure forest tenure is needed to ensure equity and the effectiveness of adaptation efforts and to reduce new emissions from deforestation and forest degradation.

The Yaoundé conference was attended by about 250 people from Angola, Benin, Burkina Faso, Burundi, Cameroon, the Central African Republic, Congo, Côte d'Ivoire, the Democratic Republic of the Congo, Gabon, Ghana, Kenya, Liberia, Mali, Nigeria, Togo, Rwanda, Senegal, Sierra Leone, Tanzania and Zimbabwe as well as from Europe, Asia, and North and

Latin America. Participants included representatives of governments, civil society, local communities, traditional authorities, regional and other international organizations, and donors. They were able to draw on a background paper prepared by ITTO and RRI that explored the global forest-tenure situation (see article next page), and they heard presentations from a wide range of people, including community leaders in Africa, Latin America and Asia; academics; and representatives of ministries in charge of land and forestry matters and of civil-society and international organizations. Through panels and working groups, participants shared experiences in the struggle for tenure rights and explored the relationship between tenure rights and other goals such as improving livelihoods, securing investment, spurring small-scale enterprises, and addressing climate change.

Participants concluded the conference by discussing and agreeing on a time-bound set of activities. This 'Objective 2015' is presented towards the end of this special edition of the *TFU*.

This report of the Yaoundé conference is timely given that ITTO recently launched a new thematic program on Community Forest Management and Enterprises (CFME) which received initial funding of US\$1 million at the International Tropical Timber Council's session in November 2009. The first call for proposals to be funded under this thematic program will be announced soon on [www.itto.int](http://www.itto.int). It is hoped that communities, countries and donors will combine efforts under ITTO's CFME program to address many of the challenges facing community forestry in Africa and elsewhere.

**Alastair Sarre, Steve Johnson  
and Eduardo Mansur  
Co-editors**

## Common acronyms

CFE	community forest enterprise
COMIFAC	Central African Forests Commission
FAO	Food and Agriculture Organization of the United Nations
GAFC	Global Alliance of Forest Communities
ITTO	International Tropical Timber Organization
IUCN	International Union for Conservation of Nature
PES	payment(s) for environmental services
REDD	reduced emissions from deforestation and forest degradation
RRI	Rights and Resources Initiative

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Cover image Photo: J. Blaser

# Forest-tenure reform ‘too slow’

**The conference background paper found that Africa lags behind other tropical forest regions in forest-tenure reform**



**On your bike:** The slow pace of tenure reform in Africa is suppressing opportunities for poverty reduction *Photo: J. Blaser*

**A** lack of progress in forest-tenure reform is hindering action to stop deforestation and alleviate poverty among some of the world’s poorest rural peoples, according to a background report prepared for the *International Conference on Forest Tenure, Governance and Enterprise*.

The report found that Africa is moving much more slowly on tenure reform than other regions: less than 2% of Africa’s tropical forests are legally owned or designated for use by forest communities or Indigenous groups, compared to nearly one-third of all forests in Latin America and Asia and the Pacific. Civil conflicts, inadequate governance and a lack of action on land reform put much of the continent’s forest at risk.

“Inaction on land reform and the separation of forests into national parks or industrial concessions exacerbate civil strife and limit community development and conservation efforts,” said Andy White, RRI’s coordinator.

Unless addressed urgently, the report concluded, the failure to ensure land rights for local communities—particularly Indigenous people and women—in the forests of Central and West Africa will impede efforts to stop deforestation.

***The failure to ensure land rights for local communities—particularly Indigenous peoples and women—in the forests of Central and West Africa will impede efforts to stop deforestation.***

“There are signs that some governments are starting to move to correct the forest-tenure imbalance and some good examples are emerging. It is now urgent to learn from these and to quickly scale up the level of effort,” said Jeffrey Hatcher, lead author of the report.

“The slowness of reform is suppressing a whole range of opportunities to reduce poverty and improve livelihoods,” said Emmanuel Ze Meka, ITTO’s Executive Director. “Africa’s forest communities already generate millions of jobs and dollars in domestic and regional trade, and in Indigenous livelihoods, but current laws keep some of these activities illegal and also undermine opportunities to improve forest management.”

According to the ITTO-RRI report, several African countries, including Angola, Cameroon, Democratic Republic of the Congo, the Gambia, Mali, Mozambique, Niger, Sudan and Tanzania, have all introduced or amended laws to strengthen the land rights of local communities. Cameroon, for example, is beginning a process to develop a new forest law, which gives it an opportunity to clarify and secure its local ownership rights.

“Recognizing local land rights alone doesn’t solve all the problems, but it is a necessary first step, so these are certainly positive developments,” said White. “Experience in other countries shows that governments need to follow up by supporting local management and enterprises.”

Many people worry that the pace of change will be too slow for it to have a significant impact on the current generation of Africa’s rural people. “Big shifts take a long time, and governments will not change overnight,” warned Kyeretwie Opoku of Civic Response, a Ghanaian non-governmental organization.

Ze Meka also worried about the magnitude of the task. “African countries must move quickly to reform tenure,” he said. “Otherwise they will miss out on potential billions in climate-change mitigation funding for avoided deforestation that might otherwise all be directed to Latin America and Asia.”

*This article is based on a press release prepared for the Yaoundé conference. The background paper, Tropical forest tenure assessment: trends, challenges and opportunities, is available on the ITTO and RRI websites.*

# The opening session

**The conference was an unprecedented opportunity for the sharing of experiences between countries in Africa**



**Cécile Ndjébet**

Cameroon Ecology and N'gonga Community Forest



**Emmanuel Ze Meka**

Executive Director, ITTO

The Cameroon forest sector has undergone a number of reforms. One of the most important, in 1994, was the adoption of the forest law, which strengthened efforts to pursue sustainable forest management (SFM) and stipulated that communities should be able to participate in forest management in order to improve their lives. Since 2000 there has been an increased push for the recognition of community rights.

Despite such efforts, however, there are many obstacles to community forestry in Cameroon. For example:

- the legal framework does not encourage CFES;
- Cameroon's zoning plan does not reflect the realities of land use, thus creating conflict between communities;
- several UFAs (concessions) are still unclassified. This lack of certainty about resource allocation exposes forests to illegal exploitation and deprives communities of development opportunities;
- conflicts over natural resource management are often the result of an inequitable allocation of forest concessions, which marginalizes the people and reduces their access to forests;
- forest governance is poor;
- forest communities have insufficient access to funds to develop their CFES, which would generate significant employment opportunities;
- there is no program to create an effective industry based on non-wood forest products; and
- capacity building is needed in all forest communities across the country.

***It is not possible to arrive at sustainable development without security of tenure, or if people are disempowered or feel unsafe.***

This conference is a major opportunity to share experiences and learning. It is also a chance for us to highlight the problems that impede the sustainable development of forest-dwelling people and the sustainable management of the forests and to put these on the agenda of ITTO and other organizations. It is not possible to arrive at sustainable development without security of tenure, or if people are disempowered or feel unsafe. Local communities are convinced that the move to reformulate the forest law in Cameroon is an opportunity for them to improve their lives.

Notwithstanding the huge influence of regional and global economic forces, deforestation ultimately happens at ground level and can only be contained by those who do it. In most countries in the region, the political system grants local communities only a minute role in the decision-making process relating to the management of forests. Yet, in many places, local communities are the custodians of the forests, manage it on a daily basis, and derive a major portion of their livelihoods from them. Actions aimed at bringing forests under sustainable management will remain doomed as long as the rights and duties of these local communities as managers of forests are insufficiently recognized.

***I am inspired by examples that are emerging in which the clarification of forest land tenure, especially when done for the benefit of local communities, has made a substantial difference to efforts to achieve SFM ...***

Although the obstacles are many, I am inspired by examples that are emerging in which the clarification of forest land tenure, especially when done for the benefit of local communities, has made a substantial difference to efforts to achieve SFM and, ultimately, has led to a reduction in local poverty and an increase in social harmony. During this conference we will draw from these positive cases and share our views on the conditions that have enabled their emergence. Particularly now, when new options for funding SFM—such as through climate-change mitigation—are opening up, it is critical to address the issue of land tenure and to thus clear a path (without clearing the forest!) towards truly sustainable development.



Illustration: Agni Boedhihartono (Intu)



### **Dr Raymond Mbitikon**

Executive Secretary, Central African Forests Commission (COMIFAC)



### **His Excellency Dr Elvis Ngolle Ngolle**

Cameroon Minister of Forestry and Wildlife

The rights of communities have not really been taken into account in the Central African region. Many communities do not have access to resources. Consistent with this, COMIFAC has developed a short- and long-term convergence plan that encourages, across the region, the recognition of community rights and the securing of tenure rights. Legislative reform processes to protect the rights and livelihoods of communities are under way in several countries in the region. COMIFAC is delighted that this conference is being held and hopes that it will strengthen reform initiatives.

The question of land reform is a prime concern in our country. We are conscious of the need to establish the rights of the various actors in the management of the land. Cameroon law distinguishes between permanent and non-permanent forest land. Nevertheless, the law is open enough to accommodate a new tenure system and, in this sense, this conference will make a difference. Moreover, it is impossible to address human rights and climate change without addressing the issues of this conference.

Cameroon is embarking on a new forestry law. The process put in place involves all stakeholders, and rights are clearly addressed. Cameroon guarantees all companies and people the right to own lands, except in areas of strategic interest. Cameroon undertakes to defend the rights of Indigenous people, including in the forest; for example, we have just signed a memorandum of understanding with the Ministry of Social Affairs in the implementation of a development plan for the Pygmy people within the framework of the forest and environment sectoral program.

***Cameroon is embarking on a new forestry law. The process put in place involves all stakeholders, and rights are clearly addressed.***

Cameroon is convinced that ITTO should be a meeting point for dialogue. Cameroon's concern is to see that this meeting ends with practical and concrete solutions. I appeal to all forested countries to develop a synergy with regard to the sharing of experiences. I hope that ITTO consumer countries will continue to accompany us in our initiatives.



**Stakeholder interest:** The conference was attended by a wide range of people *Photo: A. Sarre*



*Illustration: Agni Boedhihartono (Intu)*

# Daring to hope

## **Africa must set ambitious goals for land-tenure reform**

by **Kyeretwie Opoku**

Coordinator of Civic Response  
and RRI Facilitator in Africa  
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**Kyeretwie Opoku:** More than any other issue, the resource question divides and undermines democratic development in Africa *Photo: A. Sarre*

**F**ifty years ago, Africa's founding fathers dared to hope for resource justice as the basis of continental peace and prosperity. Somehow, in the ensuing period, Africa's political and economic elite appears to have lost the courage to believe in this future. We have cynically allowed and even promoted the perpetuation of oppressive and essentially colonial resource relations.

***The racial oppression in Southern Africa should not have blinded us to the more grinding everyday oppression that continues today to distort and retard development in every single African nation ... [t]he instability, insecurity and violence that plagues our continent is fundamentally an expression of a people's quest for justice distorted and turned against them by global and national power structures ...***

Of course, Africa has faced many constraints over its first 40 years, including a struggle against the truly spectacular injustices of the settler states. But the racial oppression in Southern Africa should not have blinded us to the more grinding everyday oppression that continues today to distort and retard development in every single African nation.

Now that we have achieved political independence across the continent we have no excuse to ignore the resource rights agenda. Indeed, we have no choice. Today, we know that, more than any other issue, the resource question divides and undermines democratic development in Africa. We know that the instability, insecurity and violence that plagues our continent is fundamentally an expression of a people's quest for justice distorted and turned against them by global and national power structures that, for the time being, appear resolute. As Africans we have urgent unfinished business

and it is this unfinished business that, in its own small way, this meeting is about.

It is in this context that I turn to the more immediate roots of this meeting. These lie in another meeting that took place in mid July 2007, hosted by the Government of Brazil in Rio Branco, Acre. ITTO, RRI, GAFC and IUCN organized a hugely successful international conference on community forest management and enterprises. Twenty-six African forest stakeholders—forestry officials, community forest entrepreneurs and civil-society activists—from twelve African nations participated in the conference. We took the opportunity to meet to discuss the state of forestry and development in Africa and the potential of and challenges facing community forest management and CFES. I am glad that many of those people are also here today.

***Now that we have achieved political independence across the continent we have no excuse to ignore the resource rights agenda.***

We agreed that the weight of the evidence presented at the conference, including several case studies from Africa, demonstrated that, with sufficient support, our communities, too, could manage forest resources to effectively address environmental, economic and social development needs. We agreed that our communities, too, could develop globally competitive enterprises that provide creative and dignified employment in agroforestry, ecological services, and the extraction, processing and manufacturing of timber and non-timber forest products. To this list we must also add the synergistic potential of carbon sequestration under a post-Kyoto climate-change mitigation regime. Crucially, we agreed that, compared to industrial concessions, our communities

would retain and reinvest their wealth locally in productive and social infrastructure or even consumption, thereby initiating a virtuous cycle of economic and social development. We also recognized that, in Tanzania, Cameroon, Mozambique, Gambia and several other countries, real progress was occurring and that Africa as a whole could build on this.

The African environment for community forest management and CFES remains particularly challenging, however. Just as corporate investors require conducive tenure, legal and regulatory regimes and the development of appropriate organizational, technical, marketing and financial support services, so too do CFES. Yet, throughout Africa, national policies and laws continue to ignore these entities. Neither public nor private sectors have the capacity or the focus to support them. CFE pioneers face unfounded prejudice from officials, who pride themselves on their responsiveness to the needs and even the whims of corporate foreign investors. Unsurprisingly, therefore, many of our communities lack the collective self-confidence to take on the challenge of CFES; as a result, our forest sectors are performing sub-optimally and in some cases are disappearing altogether.

### ***CFE pioneers face unfounded prejudice from officials ...***

The African participants at Rio Branco urged ITTO and its partners to support Africa in accelerating the recognition and realization of community rights in forestry. We specifically asked them to support a meeting in Africa where we could discuss community rights, community tenure, community management and community enterprise. In the closing minutes of that conference, the organizers responded positively.

We are here today because the Government of the Republic of Cameroon, an established leader in this area, had the vision and commitment to champion this conference and to co-organize and host it. We remain grateful to Cameroon for its continued leadership and impressive hospitality. ITTO, RRI, GACF and IUCN, too, have kept faith with Africa. In the two years since the Acre meeting they have supported additional country, thematic and case studies across Central and West Africa. They have analyzed global, southern and African trends in forest-tenure management and exploitation. They have supported specific historical and legal analyses that identify strategies for making concrete progress. They have facilitated several meetings in Africa, where many of us have been able to reflect on these issues. They have networked tirelessly to bring all the stakeholders and especially our communities into a constructive dialogue. Finally, today, they offer us this exciting platform for learning, thinking and, above all, stimulating action. We salute them and assure them that we will make good use of this opportunity.

As a result of all the analytical work we now have a fuller measure of the dangers and opportunities that confront us. We know now, for example, that if we adopt a business-as-

usual approach we will take 260 years to catch up with the rest of the world. We know that even if we adopt a progressive Latin American model of rights recognition we will need another 16 years to catch up to where they are now. This means that we in Africa have to radically increase and surpass the reform tempo achieved in other southern continents just to stay afloat. This is a challenging thought. In Brazil, however, the Africans who first called for this meeting had, like modern Africa's founders, big dreams. We dared to hope that this meeting would set concrete targets for expanding tenure, management and enterprise reforms tied to the 2015 deadline for the Millennium Development Goals (that is, in six years, not 16!).

### ***The Africans who first called for this meeting had, like modern Africa's founders, big dreams. We dared to hope that this meeting would set concrete targets for expanding tenure, management and enterprise reforms tied to the 2015 deadline for the Millennium Development Goals ...***

The facilitator of this conference, James Gasana, is concerned to ensure that we remain realistic in our hopes. I must say, however, that many of us, at least in civil society, have not surrendered our Brazilian dreams. Africa does not have 260 or even 16 years. Indeed, with the wealthy countries preoccupied with the financial crisis, many African countries and communities are in danger of missing the targets of the Millennium Development Goals (MDGs). For many, community tenure, management and enterprise reform is probably the most realistic route to the MDGs. And, while the challenges have grown, so too has the African response.

This conference rightly focuses on opportunity. Certainly, African civil society is considerably more organized, networked and coherent than it was even two years ago. In several African countries, policy and legislative reform processes addressing the community rights agenda are under way or in the pipeline. There is progress, and there is hope.

I wish us all a fruitful conference and I hope that today, Africa Liberation Day 2009, will be remembered as the platform from which we launched our final assault on the land question.

*This is an edited version of the speech delivered by Kyeretwie Opoku at the start of the conference.*

## ***Africa's land-tenure problems are complex and deep-rooted***

by Paul Tchawa

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**Conflicting claims:** Unclear tenure leads to forest degradation and the loss of environmental services *Photo: E. Mansur*

**I**n Africa, perhaps more than elsewhere, land has dimensions that go beyond production—such as cultural and anthropological dimensions. The issue of land must be mastered if we are to understand the conflicts that have occurred in the past and if we are to resolve the conflicts that are occurring today or might occur tomorrow.

The way in which land is dealt with can create conditions for the conservation of resources, or it can lead to their degradation. It can be inclusive, or it can be used to create exclusion. Efforts are being made to draw up appropriate land policies. Some sectors are more advanced than others.

The African Union recently coordinated a study of experiences of land policies in Africa and the development of a framework document. The framework document is to be validated by the Conference of Ministers and, by the end of the year, presented to a summit of the heads of state. I had the opportunity to be part of the group that edited this document and I take the floor now to share this experience.

***Perhaps the most common element between countries in Africa is that the state has authority over land. The other common characteristic is a sense of legal pluralism—modern law, customary law, and sometimes Islamic law. Somehow these different systems of law have to be integrated.***

Perhaps the most common element between countries in Africa is that the state has authority over land. The other common characteristic is a sense of legal pluralism—modern law, customary law, and sometimes Islamic law. Somehow these different systems of law have to be integrated.

There is also insecurity of land tenure. In Cameroon, people with land titles are being threatened with eviction; the minister is going into the field to try to solve these types of problems directly. The rights of women and Indigenous people are often unrecognized. The patriarchal system does not favor women, who cannot inherit property. An important issue is the question of indigenism—some people feel they are more indigenous than others.

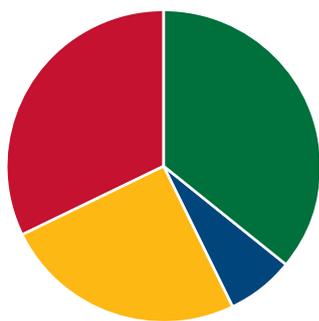
Despite the commonalities there are also very wide disparities in Africa. Some countries have new policies; in others, new policies are being drawn up. Countries that have not yet started the reform process are mostly in Central Africa.

In West Africa we are seeing regional tensions linked to cross-border migration and land problems concerning regional integration. There are latent conflicts in the Sahel related to the degradation of and disputes over pastoral resources. Urban land is coming under pressure as immigrants return to their countries after conflicts.

In East Africa, foreign investment in sensitive coastal areas is creating environmental problems. Kenya is experiencing internal conflicts over land that are exacerbated by historical and ethnic grievances. In Southern Africa a major issue is the redistribution of land, and another is the exclusion of the poor from the ownership of urban land.

In Central Africa, land tenure is strongly linked to rights to natural resources. Forest concessions often threaten the livelihoods of local communities. The exploitation of resources leads to degradation and the marginalization of Indigenous people, which is a serious problem of human rights.

**Figure 1:** Forest-tenure distribution in Latin America, 2008



- Administered by government
- Owned by communities & Indigenous groups
- Owned by individuals & firms
- Designated for use by communities & Indigenous groups

Source: ITTO/RRI (2009)

Figure 1 shows the distribution of land tenure in Latin America—there is a balance between what the state owns and what the private sector and communities own. But Figure 2 shows that, in Africa, the state is almost the sole manager of lands. Moreover, the table shows that the exploitation of forests in Central Africa is heavily skewed towards large-scale commercial interests. This should really make us think.

**Imbalance in the control of forests in Central Africa**

Country	Area under concessions (million hectares)	Area dedicated to communities (million hectares)
Democratic Republic of the Congo	33.5	0
Central African Republic	5.4	0
Congo	8.6	0.46
Gabon	18.7	0
Cameroon	7.3	1.14
<b>Total</b>	<b>73.5</b>	<b>1.60</b>

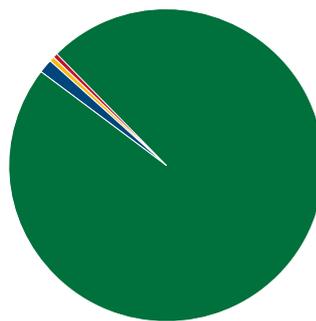
Source: ITTO/RRI (2009)

**Emerging challenges**

Several emerging challenges make land-tenure and forest-tenure reform even more urgent in Africa. One of these is the world energy crisis, which is resulting in a scramble for African land. Bioenergy production might help to solve the energy crisis but it will lead to severe pressure on land-tenure systems. In Cameroon, for example, planned oil-palm plantations could cause major problems if land tenure is not resolved.

*Dr Tchawa dedicated his presentation to the memory of Professor Okoth Ogenjo, lead expert of the core drafting team of the framework document on land policies in Africa.*

**Figure 2:** Forest-tenure distribution in Africa, 2008



- Administered by government
- Owned by communities & Indigenous groups
- Owned by individuals & firms
- Designated for use by communities & Indigenous groups

Source: ITTO/RRI (2009)

I agree that it is important to reduce asymmetry in knowledge and information. People need to have the same access to information and I feel that is a major challenge. We cannot expect people who cannot read or write to understand the extent to which they can defend their rights.

**Dr Tchawa’s response to a question from the floor**

**Reference**

ITTO/RRI. 2009. *Tropical forest tenure assessment: trends, challenges and opportunities*. ITTO and RRI, Yokohama and Washington, D.C.

Land tenure in Cameroon

**Vincent Nkou Owona**

Ministry of State Property and Land Tenure

In Cameroon the law recognizes four categories of land title: privately owned land (*domaine privé des particuliers*); land belonging to the state (*domaine privé de l’Etat*); public land (*domaine public*), such as roadways and traditional markets, etc; and, of most interest to this conference, *domaine national*—‘national’ land, which is land that does not belong to any of the first three categories. National land is divided into two categories: the first comprises land developed before 5 August 1974 and the second to land developed after that date.

To obtain title to land in the first category the procedure is simple—and has been further simplified recently. A person may submit an application to a competent officer within the Ministry of State Property and Land Tenure (MINDAF), who creates a file and sets a date to go to the field to delimit the land and settle disputes. The file is forwarded to a prefectural commission on land tenure, which establishes the validity of the claim; it also publishes the application in the regional journal. If, after 30 days, there is no objection, title may be awarded.

To obtain title to the second category of national land a claimant must submit a land-use plan and other documents. These are reviewed by a committee; if appropriate, the file is forwarded to the Minister of Land Tenure for an order, which gives the applicant provisional ownership of the land.

# Africa's big question

**Can the continent find solutions to its colonial land-ownership legacy?**

by Liz Alden Wily

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**Inheritance:** Africa's colonial past is still affecting the lives of ordinary people *Photo: E. Mansur*

**W**hat is happening to forest ownership in Africa? Something is happening, but not nearly fast enough.

The change being seen is a steady devolution of forest ownership from state to people. This change is of profound importance to every rural community in Africa—irrespective of whether it defines itself as an autonomous nationality, as a tribe or part thereof, or as a village community. For the trend relates not just to forest and woodland resources but to any property which a community traditionally owns in common, be it a pasture, a wetland, or a mountain top.

The shift in forest tenure is not confined to Africa: it is a global trend that started in Latin America in the 1980s. Table 1 shows that change on this front has been under way in Africa for some time.

Globally, the transition from state ownership is occurring through Indigenous land claims (mainly in Latin America); through legal change in the status of customary rights (mainly in Africa); and through the restitution of state-captured

rights to private-property collectives in former nationalized regimes (eg Angola and Armenia).

Despite considerable progress, changes in the status of customary rights, including those affecting forest tenure, are not happening very rapidly, in Africa or elsewhere. Three-quarters of the world's forests and over 95% of Africa's forests and woodlands are still owned—legally or *de facto*—by governments. Moreover, the devolutionary trend is most strongly expressed in increasing ownership in the private sector rather than by rural communities.

In Africa, most of the change that has occurred so far has been in eastern and southern Africa. Curiously, the Congo Basin region is farthest behind—or perhaps not so curiously given the high commercial values of the Basin's forests and the rent-seeking this engenders. Yet it is precisely those high values that make it desirable for timber-rich states to now take the lead.

Tanzania has made most progress in adopting a workable legal regime for customary rights—inclusive of collectively

**Table 1:** Recognition of customary rights in policies and laws, Africa

Extent of rights	Country, and date of law or policy
Recognize customary rights as property rights in constitution and/or land law	Botswana (1968); Ghana (1986, 1992); Niger (1993, 1997); Mali (1996, 2002) Mozambique (1997); Uganda (1995, 1998); Tanzania (1999); Côte d'Ivoire (1998, 1999); Namibia (2002); Angola (2004); Southern Sudan (2009)
Proposed in policy or draft law	Malawi (2002, 2003 draft law); Lesotho (2003 policy); Sierra Leone (2005 policy); Benin (1994, 2005 draft law); Burkina Faso (2007, 2009 draft law); Kenya (draft constitution and land policy)
Mixed or ambivalent provision	Zambia (2008 policy); Swaziland (2006); The Gambia (1990); Togo (1964); South Africa (1996, 2004); Sudan (2005); Burkina Faso (1996, 1997); Senegal (1972); Liberia (1949 and 2008, 2009 through forest legislation)
Abolished customary rights but replaced with village community rights	Ethiopia (1997—now about 6 million entitlements including community forests lands as collective property in Amhara state); Eritrea (1994); Rwanda (2004); Senegal (1972)
State retains ownership of customary property and retains colonial provisions for no more than permissive occupancy and use of public/government lands	Mauritania (1983); Chad (1967); Democratic Republic of the Congo (1967, 1973, 1980, 2006); Cameroon (1974); Egypt (1992); Nigeria (1978); Zimbabwe (1982); (Greater) Sudan (1970, 1984, 1995)
Insufficient information	Guinea; Guinea Bissau; Equatorial Guinea; Central African Republic; Republic of the Congo (1983, new law?); Gabon (1963, 1982, 1987, new law?)

held property rights, such as over woodlands and pastures. Most countries have more mixed provisions, limiting, for example, the recognition of customary rights as property to houses and farms and retaining state ownership of even unreserved forest lands, or acknowledging customary ownership only at registration, which is difficult for the majority to achieve. Few countries include forest parks and reserves in their reforms, retaining the unnecessary idea that a forest can only be protected if it is removed from local jurisdiction. Experience has shown that there is no reason why a community cannot be an owner of a national park or a reserve, or even of a biosphere reserve, subject to protection regulation.

The issue is not only between state and people. Within communities, customary norms may be or—over the last century—have become undemocratically structured. We have seen, for example, chiefs subverting the notion of trusteeship for their people to outright ownership and then behaving more as landlords than as trustees or managers of communal properties.

The shift from state ownership to ownership by people does not exist in isolation; it is central to democratization, inclusive governance and citizen empowerment. The shift has implications for how the state itself is constructed: it is widely recognized today that many governments have become almost states unto themselves, rather than servants of the people.

While the forest sector can go some distance alone in transforming forest governance, eventually it must join hands with the land sector in reform. Why? Because, ultimately, good forest governance depends on the single question: ‘Who owns the forest?’

Therefore the story of what is happening to forest tenure and good governance of forests in Africa (and the world) is primarily a land story. It is a process of giving national law acknowledgement to customary rights as property rights so that the possession by rural families and communities of the lands they have lived on and used for a very long time is secure and is given the equivalent legal support given to rights acquired under imported tenure regimes, such as English freehold tenure.

But it is a story that is taking too long to unfold. I say this because a failure to acknowledge customary rights as property rights:

- *sustains* an increasingly intolerable abuse of human rights and particularly of the poor;
- *tests* too far the tolerance of citizens to continuing mal-governance by their governments, who generally shy away from such reforms for out-dated reasons and in service of state rent-seeking interests. We have already seen the Madagascar government overturned partially because of wrongful proposals to lease out vast lands which are rightfully the property of communities. We will see more such uprisings;
- *keeps the door open* to yet further wrongful theft of especially communal properties such as pastures, woodlands and forests. This now has a sharper edge because some of the leases being proposed are ‘state to state’ leases and, to

an extent, will be protected by international law. Communal properties throughout Africa are at great risk, such as the many millions of hectares of Sudanese community lands allocated to Middle Eastern governments and China (a similar process is under way in Ethiopia and Democratic Republic of the Congo). Such a process damages efforts to restructure governance in ways in which citizen rights are upheld; and

- *removes* a prime opportunity for governments to deal with climate change in the forest sector. They could start by acknowledging that, until community forest-tenure rights are properly acknowledged in forest governance, we cannot expect forests to play their full role in contributing to carbon emission reductions. There is simply not the incentive. We also know that a forest controlled and managed by a community has a greater chance of being sustainably conserved than it has in the hands of remote government officials or logging companies.

Most of all, however, the transition in national law recognition of customary rights as property rights needs to be much faster to put an end to the great public lands scandal of Africa. The scandal began in formal terms in 1885 with the agreed refusal of colonial representatives in Berlin to acknowledge that the Africa they wanted to carve up was already occupied and owned. It was much cheaper for them to deny this. Thus, in subsequent state laws Africa became an un-owned continent and millions of Africans became, in effect, squatters on their own lands, tenants of the state. The fact that every village owned its own area, some of which it shared with neighboring villages or permitted nomads with animals to use in certain seasons, was suppressed. Not just tribal sovereignty but also territorial, communal and family tenures were rendered no more than *permissive occupancy and use* on lands which, now ‘ownerless’, fell to government control and often legal ownership as ‘public lands’.

***Arguably, the even greater tragedy was that post-colonial governments sustained these norms, treating all unregistered lands as un-owned and thus falling to the state.***

## Clarifying customary and Indigenous rights

How do customary rights differ from Indigenous rights? They do not. Both are community-based systems where land rights are defined and upheld by local rules and consensus, not national laws. Often these rights are rooted in long-held traditions, although such traditions may change over time in accordance with changing needs, and particularly in respect of permanent farms and homes. There are always variations in the way in which modern communities hold land, but many share:

- a village-based operational framework and authority;
- family ownership of houses and farms (usufruct or permanent customary freehold);
- collective ownership of resources used in common, like forests, pasture & wetlands
- root ownership of the soil—‘our land’, ‘our place’; and
- nuanced distinctions between the rights of members of the community and the often seasonal access rights of outsiders, such as nomadic pastoralists.



**Changing relationships:** Community forest ownership has many benefits, including for women and class relations *Photo: A. Sarre*

**Table 2:** The benefits of community forest ownership

Conservation	'If it is ours we will look after it'
Management	On-site; communities know who is using what; cheap, and therefore sustainable protection and management
Empowerment	Helps the rural poor get organized
Governance	Encourages inclusive governance
State reconstruction	Helps forest departments restructure roles to be more democratic and more advisory, rather than landlordist and rent-seeking
Poverty reduction	Owners have more control over benefits
Social relations	Women play a key role in forest committees and ensure subsistence and family interests. Class relations are also altered: an inclusive tenure approach includes those who are most poor and whose only property may be their shareholding in the community's common properties

Arguably, the even greater tragedy was that post-colonial governments sustained these norms, treating all unregistered lands as un-owned and thus falling to the state. The best evidence of this is that, in many countries, when government acquires land today it does not pay for the property but only for the loss of houses and crops. Rights to communal resources—forests, pastures and wetlands—are ignored. Continuing to deny ownership of rural citizens to their lands and especially to their common properties is convenient and cheap and enables governments and elites to capture these areas for their own purposes.

Once customary rights are recognized as property rights, the security of tenure of communities over their commons, and the need for governments to purchase those lands at open market rates, come into play. This is the case, for example, in Tanzania. Such change not only helps to address longstanding injustices, it also has a wide range of benefits for communities and for the wider society (Table 2).

Best-practice attempts at tenure-based forest reform (e.g. in Mexico, Tanzania, Sabah and Sarawak, and The Gambia) tend to build on the following three legs:

- recognize ownership as the foundation;
- build on existing/new democratic community institutions; and
- fully empower the community as manager, including by granting the right to issue commercial-use licences, fine offenders, enter contracts and limit concession interests. The community should also be able to lease out the forest, or part of it—even back to government.

***Use rights are not enough; management authority is not enough; buffer zones and benefit-sharing are not enough; joint forest management is not enough.***

The key lesson from experiences so far in devolving land back to communities is this: use-rights are *not* enough; management authority is *not* enough; buffer zones and benefit-sharing are *not* enough; joint forest management is *not* enough. Community ownership should provide all the rights of ownership—such as the right to license and fine and to decide use in the first place, the right to be the primary beneficiary, and the right to be compensated properly when land is taken for public purpose. Ownership protects interests.

In principle 'Indigenous land rights' and 'customary land rights' are generally the same—the ownership of pre-state communities of their territories and their right to administer its allocation and use themselves. 'Indigenous' is, however, not an easy term on the African continent, for all Africans are Indigenous, although some groups have a much longer history in a particular area, and today their rights are frequently suppressed or overlaid with the interests of incoming groups who have settled there. These institutionally weaker groups need and deserve special assistance to ensure that their rights are not done away with in the process, and restored as necessary. Compromise is necessary.

**Liz Alden Wily's response to a question from the floor**

## **The Cameroon government is embarking on a process to revise Cameroon's forest law**

by **Denis Koulagna Koutou**

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**F**ifteen years after the enactment of Cameroon's 1994 Forest Law, a process has been put in place to revise it. A revision is needed for several reasons, including: problems in the community management of resources (the rules are not well codified); repercussions from the decentralization of taxation; the vagueness of property rights in the field and in the distinction between permanent and non-permanent forest; the need to improve policy measures to encourage sustainable forest management; the livelihood impacts experienced by people living in or near protected areas; and the need to increase the contribution of the forest sector to sustainable development nationally. Moreover, there have been several national and regional developments since proclamation of the law that, to some extent, render it obsolete. Perhaps the most significant of these was the Yaoundé Declaration, which committed COMIFAC countries to a range of measures aimed at improving forest management in the region.

The revision aims to:

- address the observed flaws in the practice of the law;
- integrate the regional dimension in the management of our forest resources;
- integrate the commitments entered into by the country at the national level and under regional and international agreements;
- address the concerns of climate change: forests are part of the global solution;
- take more account of the real capacities of forests in development;
- reinforce transparency and governance in the sector;
- encourage a timber-processing industry that assists the country to develop sustainably; and
- encourage the full adherence of forest users to the sustainable management of the resource.

***Forests are a renewable resource, but to ensure that they are managed sustainably it is necessary to establish a mechanism that is transparent and understood by all actors.***

Forests are a renewable resource, but to ensure that they are managed sustainably it is necessary to establish a mechanism that is transparent and understood by all actors. The process of revising the law is a delicate and iterative process. It is the first revision to take place after the Yaoundé Declaration and the installation of COMIFAC. We are proud to unroll this process. I ask and challenge all the partners present here to accompany us in the process. We believe this initiative will enable Cameroon to hasten towards achieving the Millennium Development Goals.

We are not revising the law for the sake of it. We are doing it to solve problems. People in the field can propose solutions so we can move faster. We should take into account the experiences we have had in Cameroon. In 1994 we put forward a reform that was too advanced for the rest of the system: we gave resources to communities that did not have the governance systems to manage the forests adequately. It is only now that governance is following ...

The forestry law is based on the land law, which dates back to 1994 and has also had two revisions. The land law has not changed. MINFOF cannot carry out zoning and land reforms. These are political issues and I hope that in the following days we will take a note of these so we can move forward faster.

**Denis Koulagna Koutou in response to a question from the floor.**



**Invitation:** The Cameroon government wants all partners to participate in the process of revising its forest law *Photo: A. Sarre*

After colonization, people who had customary rights quickly ended up not having rights because there were written laws that didn't take into account existing unwritten laws. We kept these mechanisms after independence and there was acknowledgement of customary rights but on a very limited basis. We had to prove that we had developed the land, which didn't mean much because, in many places, to do management was to do very little. I don't think we are talking about solutions, we are talking about processes to arrive at local solutions adapted to our particular conditions. In revising the law we are going to involve all the players. Have we done that in the past? No. Will we find a national consensus? Probably not, but everyone will be heard.

**Samuel Nguiffo, Cameroon Center for Environment and Development, in response to a question from the floor.**

# Legal dimensions to providing customary rights

**Tanzania has introduced a legal approach to forest ownership that builds on the customary system**

by Patrick McAuslan

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**Coping with pluralism:** Professor McAuslan makes a point during a conference break-out session *Photo: A. Sarre*

Before I talk about the process of developing Tanzania's 2002 forest law it is necessary to say something about the co-existence of two or more legal systems in one country—legal pluralism. The issue that must be addressed in developing a forest law is how to give customary forest-tenure rights a role in forest management that is equal to statutory rights—regardless of whether the legal system is based on common law, Roman-Dutch law, civil law, customary law, or, in some countries, Shari'a law.

There are ten principles to a modern approach to legal pluralism:

1. there should be equality of tenure and legal systems;
2. there should be recognition of communal rights in land: in too many judicial systems, customary tenure is not treated equally;
3. all sets of legal rules must respond to constitutional principles;
4. there should be provisions to opt for one system or another: the system tends to be hierarchical but there is no reason why a state should opt for a single system or why people should be forced down a single legal route;
5. customary dispute-resolution mechanisms should be used;
6. the judicial system should be empowered to fuse systems;
7. land should be administered at the local level within the framework of the constitution—local decisions about land may differ between localities, and that is nothing to worry about. Customary tenure and law are essentially local: local land management systems have a better chance of being kept up to the mark by local knowledge;
8. in land adjudication, all customary interests should be recorded—one of the worst aspects of colonial systems was the way in which they failed to report customary

rights. Women in particular have lost out to this loss of customary rights;

9. there needs to be clarity: the system of land law must not be confusing. There must be a clear set of rules, decided in a transparent manner and properly regulated. Private-sector institutions such as banks must adapt their practices; and
10. customary institutions should be brought on board (others must adopt their approaches).

Under Tanzania's colonial Forest Act, which was enacted in 1957, customary rights were derived from and understood by local communities. If proved, they were converted to statutory permissions that derived their authority from central government. This was based on the belief that the common-property forest resources under customary law operated on 'unregulated open access use'—because the customary system lacked institutions or mechanisms to enforce rules that would have limited use.

The 1998 national forest policy of Tanzania made a decisive break from this approach. It accepted that, rather than replace existing rights, the government should build on and adapt existing rights and authorities. This idea was applied in the development of Tanzania's 2002 Forest Act. The tenure principles of that Act followed the principles of the Land Act and the Village Land Act, which were based on national land policy. These were the breakthrough laws in the recognition of customary tenure, and they gave village councils considerable powers.

Under the Forest Act, the first step is to find out and record existing forest rights that local communities claim in a forest that is, or is proposed to be, a forest reserve. An investigator is appointed to investigate claims to customary rights; the investigator assists people to make claims and is given wide

powers to get the information needed to make recommendations on forest-tenure rights.

The investigator has five options:

1. a continuation of the existing rights;
2. a continuation of existing rights with modification(s);
3. to not declare a forest reserve because of the effect on existing rights;
4. to end rights because of the importance of the forest reserve. In this case, rights would be replaced by licenses; and
5. to create a village or community forest reserve as the best way of preserving existing rights and the forest.

Any proposal that deprives people of their customary tenure rights involves the payment of compensation.

## Lessons learned

The following lessons can be learned from the Tanzanian experience:

- a national policy must be in place before a law can be drafted. Laws cannot be a substitute for policy but must follow and apply policy;
- a national policy of recognizing customary forest tenure as an equal tenure to statutory forest tenure must be adopted. Forests cannot be managed as if customary tenure did not exist;
- a participatory approach should be used to find out what customary forest rights people have. This is needed to develop forest management laws incorporating such customary rules; and
- a participatory approach to developing community forest reserves should be adopted, with reserves being recognized on the basis of practice on the ground.

**Comment from the floor:** It is an illusion to think that there can be a simple legal transfer. We are in a complicated world. Land conflicts are often not just between one community and another but also within communities and even within families. The existing system is unfair and has to be reformed but we should take into account the complexities of the world. I would warn speakers against a tendency to show that these things are very easy to do.

**Professor McAuslan's response:** Some 10 000 villages now have power over land and therefore over the management of forest reserves. That is not a simple system; it is a democratic system. The simplistic solution would be to centralize everything, but it would not be simpler.

**Comment from the floor:** We should not forget that most countries are made up of villages and tribes and that for years we've been working to overcome problems of national cohesion. We must reflect on the best legal and organizational framework and the impact it will have on human development. Reform depends on the country situation; some countries run the risk of tribal problems. The treatment of the land problem is not just a legal problem, it is also a social and economic one.

**Professor McAuslan's response:** There is no suggestion that Tanzania's model is the solution to problems of forest management throughout Africa. This is one model. There are lessons to be learned from it. Every country must develop its own solution but presumably it's worth looking to see what is happening elsewhere in Africa. It would be presumptuous of me to comment too much on the situation in Central Africa. But it is worth making the point that an awful lot of countries have been trying to abolish customary tenure on the assumption that it would improve development. This doesn't work, so the alternative is to recognize it and to work with it rather than against it.



**Debatable:** Conference participants debate issues surrounding legal pluralism during a break-out session *Photo: A. Sarre*



**Searching:** The lessons learnt in other regions can be put to use in Africa Photo: J. McAlpine

## **Global trends in forest tenure** by Francesca Romano

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Globally, the majority of forests are still publicly owned; for most of these forests, management is conducted completely by the state or limited user rights have been granted. In all regions, a higher percentage of user rights to these forests are granted to private entities than to communities.

When it happens with a proper process, tenure reform offers many advantages and can have positive impacts on the achievement of sustainable forest management (SFM) and poverty alleviation; good examples exist, for example, in Tanzania, Central Asia (Mongolia), and Vietnam. In most cases, however, the forest sector is still very static and the majority of forest is managed by the state. Moreover, case studies in our global study reveal that when the reform process is inappropriate it does not achieve successful outcomes.

***In all regions, a higher percentage of user rights to these forests are granted to private entities than to communities***

There are some common issues across the regions. Quite often there is resistance from the state to change. This is particularly valid in high-value forests in countries where forests represent a real source of income for the state.

Another common issue is the availability of data. Many countries do not have complete data on the status of forest ownership. In FAO's 2005 global forest resources assessment, for example, neither Brazil nor Argentina were able to provide data on how much of their forest estate was public and private. Reliability and consistency are also issues: we try to use common definitions but this is not always possible; care needs to be taken,

therefore, when attempting to merge data and to compare between countries and regions.

Many countries face the problem of contradictory and un-harmonized policies; in particular, land and forest policies are often in contradiction or produce contradictory results on the ground. Also, in many cases a legal framework has been put in place but the incentive for people to go into this framework is limited. For example, the value of the resources made available to local people is often marginal, and agreements can be costly and time-consuming. Few people make the effort to go through the process when the benefits are unclear. So even when the legislation is in place there may be little change on the ground. The process used for tenure reform is as important as the tenure system chosen. It should be based on globally agreed principles and mechanisms; guidelines for such a process would be helpful.

## **Progress in Brazil** by Manoel Sobral Filho

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There are 227 Indigenous societies in Brazil—about 600 000 people. These people have rights to 107 million hectares of land, which is 13% of the national land area. The land rights of Indigenous people are recognized in the Constitution; the land titles of others are invalid if there are Indigenous people on the land. Indigenous land affords the highest level of forest protection in the Amazon. Demarcation of the land is very slow, however, which leads to encroachment and conflict. There is also insufficient support for economic development, so the people remain poor. There are many problems, even though they have legal entitlement to the land.

The Quilombolas—descendants of African slaves who escaped to form their own communities—are another marginalized group with land rights: the government recognizes their right to the land where they live but, again, the process is very slow.

The Amazon region covers 473 million hectares. Almost half (46%) of it is in conservation reserves or on Indigenous land. Theoretically, that leaves 54% for development. But there is a law that allows only 20% of a landholding to be developed for non-forest uses, so only about 10% of the Amazon is legally available for clearing. But there is plenty of illegal deforestation; moreover, there is a lack of security of tenure, and a lack of support for sustainable forest use. Thus, in Brazil we have good policies but poor implementation—good intentions and poor results.

The lack of economic development is leading directly to forest clearing. The 1-million-hectare Chico Mendes Extractive Reserve, for example, is supposed to be a model of sustainable development. Two thousand families there have the right to extract rubber, Brazil nut and other non-wood products in the reserve, but this does not generate enough money. So what are the people doing? They are raising cattle. It is ironic: Chico Mendes was murdered fighting ranchers; now the people there are ranching. Remember, there is very little legal land available for ranching in the Amazon, but already 70 million cattle are being raised there and numbers are growing twice as fast as they are in the rest of the country.

The problem in the Amazon is that there is no forest-based development, which leads to non-forest-based development and illegal deforestation. Some of the recommendations made at the Rio Branco conference, which are yet to be implemented, could help change the situation. They include:

- reducing or modifying regulations, including tax mechanisms, that impede the formation of CFES or make them uncompetitive;
- providing secure tenure and access to forest resources, including authority to make key decisions;
- building the capacity of the decentralized authority legally responsible for overseeing CFES; and
- establishing a fund to support SFM in the Amazon.

## **Collective forest reform in China**

by Li Shuxin

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There are two forest land ownership types in China: state-owned forest land, which accounts for 42.45% of the forest area, and collectively owned land, which accounts for 57.55%. China's forest cover was 8.6% in 1949; now it is 18.21%. Since the formation of the People's Republic of China, economic development can be divided into two phases. From 1949 to 1978, China adopted a planned economy in which government played a dominant role. In the second phase, since 1978, we have tried to establish a socialist market economy with

Chinese characteristics. In the first 30 years, forest cover grew from 8% to 12%. In the second phase—another 30 years—cover increased further, to 18.21%.

In 1998, there were huge floods, caused in part by deforestation. Also at that time, rapid economic development meant that China faced a timber-supply challenge because domestic production could not meet demand. In response, China launched six national forestry projects with the aims of protecting forests and increasing forest resources. This had an impressive effect, but many systemic problems were still evident in collectively-run forests, and farmers showed little interest in forests.

To address this, collective forest-tenure reform was initiated in 2004 in some southern provinces. The outcome has been quite positive: the reform has increased the enthusiasm of farmers for the forest and led to an increase in forest area and improved forest quality. In 2008, the Central Committee of the Communist Party of China and the State Council of the People's Republic of China issued a document on advancing forest-tenure reform across the country. Forest-tenure reform has become a top priority of all government (not just of the Forestry Department). The core content of the reform is to authorize land-use rights and tree ownership by farmers. The goals of the reform are to increase forest resources and increase farmers' income, ensure a good environment, and contribute to a harmonious society.

*The outcome has also been quite positive: the reform has increased the enthusiasm of farmers for the forest and led to an increase in forest area and improved forest quality*

To date, 28 provinces have issued documents that set out this reform, 30 provinces have designated organizations responsible for the reform, five provinces have finished the first-step reform, and 15 provinces are advancing towards this goal after successful piloting.

The elements of success include: government support; a process that respects the people's will; a reform process based on law; careful design of the reform; tailoring the reform process in light of the realities of specific regions; and the timeliness of the reform.

## **Forest and tribal tenure reform in India**

by Arvind Khare

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India has 300 million poor people, including most of its 90 million tribal people. Most tribal people live in or near forests; in many areas, poverty, forests, mineral resources and internal conflicts overlap. The fifth and sixth schedules of the Indian Constitution provide protection to tribal people from the alienation of their land and natural resources; the Constitution also provides social, economic, educational and political safeguards. Nevertheless, over many decades the

rights of tribal people to the forests were progressively weakened. Incremental, ad hoc responses such as joint forest management were ineffective. The creation of protected areas, and the exclusion of people from these areas, led to the loss of rights of many people. I was a complete violation of rights that were guaranteed by the Constitution.

In many districts, a mass movement of tribal people against this loss of rights resulted in violent conflicts. Civil-society organizations and tribal movements joined forces and started working together. In an affidavit to the Supreme Court on 21 June 2004, the Government of India admitted that: “the historical injustice done to the tribal forest dwellers through non-recognition of their traditional rights must be finally rectified”. This opened up political space and led to the enactment, in 2006, of the Forest Rights Act.

This is unfinished business, however. Most of the forest area is subject to claims. Therefore, the tenure must be clarified for the entire forest estate. There is also a need to streamline—to remove regulations so that people can use their resources.

The Indian experience has produced many lessons that are probably useful elsewhere. Conflicts are inevitable in the absences of rights. Law enforcement alone will not solve the problem and, eventually, an uneven distribution of power amongst stakeholders will find violent expression. Civil society can play a vital role: social organizers and civil-society organizations can help in finding more equitable solutions.

There are people in the forests in Asia, as there are in Africa. You cannot change that reality. Any tenure or management regime that excludes people will fail; I predict that carbon market initiatives that ignore people will also fail. If you exclude people you will only generate conflict and poverty and degrade human beings.

**Romano, in response to a question from the floor:** A major problem in implementing forest reform is that the legislation is often not designed for less-advantaged people, and some of the advantages of the reform are captured by the elite. The other one is capacity-building, which will vary according to the level. In central governments it is about getting them used to thinking about tenure reform; there are some signs that progress is being made, because such discussions would not have happened ten years ago. At the local level it is more a matter of building capacity to implement the legislation. Local communities often need help to respond to legal requirements such as the titling process. These are all aspects of capacity-building.

**Query from the floor to Sobral and Khare:** I have the impression you are portraying these communities as if everyone likes everyone else. Can you give some insight into the complexity between communities that hinder the simple transfer of rights?

**Sobral's response:** You say I have presented a picture of land reform in Brazil that is too rosy. But we are lucky because we have enough land for everybody. In the Amazon there are more than 450 million hectares of forest and only 20 million people, so there is enough land. It's true that, every year, a few dozen people are killed in land conflicts. But compare that with the number of people killed in criminal activity in São Paulo—it's many more. Governments have recognized the rights to land but they are not helping people to improve their livelihoods based on forests. So, more and more, these people are reverting to economic activities that lead to deforestation, and this causes conflict between the people and the government. We have to create conditions in which people can make money from the forests.

**Khare's response:** Unlike Brazil we don't have too much land in India. There are many problems. There is also a huge amount of work. But even if giving the tribal people rights to the land does not solve some of these problems, at least it gives them the right to the resource and a sense of belonging. Just from a purely human rights' perspective it is very much worthwhile.



Photo: J. McAlpine

# Roundtable: perspectives of forest communities



**Slice of good fortune:** A community forest enterprise at work in Mexico *Photo: Forest Trends*

## **Community forestry in Mexico** by Adolfo Chavez

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In Mexico, 13–15 million people live in forested regions, 55% of them in extreme poverty. Approximately 44 million hectares of forest are owned by about 9000 *ejidos* (communes) and local communities. More than 2400 of these *ejidos* have forest management and harvesting rights approved by the government, and more than 500 000 hectares of the community forests are certified by the Forest Stewardship Council. One of the problems the communities with certified forests face is selling their products for prices that make certification worthwhile; the majority of communities sell to local and regional markets and only a few have access to international markets.

### **One of the problems the communities with certified forests face is selling their products for prices that make certification worthwhile**

Over the last eight years, the Secretariat for the Environment and Natural Resources, through the National Forestry Commission, has allocated significant financial resources through programs such as ProArbol, the Community Forest Development Programme (PROCYAMAF), and the COINBIO Programme.

Community forests can be divided into five types based on the extent to which they have been able to use their resources. They range from communities with little organization that, because of their very nature, have not yet developed their forest management plan or begun to benefit from their resources ('level 1' of development), to producers with the necessary infrastructure for the secondary processing, value-adding and marketing of their forest products ('level 5').

An example of the latter is the Nuevo San Juan Parangaricutiro community in Michoacán in the southwest of the country.

This community owns land covering about 18 000 hectares, including 10 000 hectares of natural production forest, 578 hectares of protection forest, and 1300 hectares of plantation forest. In 1981 the community had no money, no equipment and no level of organization. Now there is a strong enterprise organization (under the political eye of the local governance system and its general assembly) and a thriving industry, including a highly productive sawmill, a resin-production operation, a wood-processing facility that produces furniture and mouldings, and a water-bottling facility.

Some of the issues faced by the community in developing its thriving operation included the community's initial lack of confidence in its leaders; difficulty in obtaining finance from banks; and product quality control.

Success depended on good organization for the management and harvesting of resources and the development of dialogue spaces within the community, with support from outside. There are certainly problems in the running of the community, but when people come together they are always able to reach a consensus. It is important that the management of resources is transparent and done in a responsible manner. In Mexico we want to all communities to attain level 5 development, whether through timber production or a creative blend of varied forest-based enterprises.

## **Community forest user groups in Nepal** by Ghan Shyam Pandey

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Forests in Nepal were nationalized in the 1960s and the Forest Department was established to manage them. Nevertheless, the government failed to protect forests: local people were

evicted and then treated as encroachers on the forest; the rate of deforestation was high; corruption was widespread in the sector; and landslides and flooding were common. The government and forest-dependent people were virtually enemies.

When the forest policy shifted towards community forestry it was, in effect, a shift towards green hills and reforestation. Community forestry user groups (CFUGs) were created to manage more than 1 million hectares of forest; this area could potentially be expanded to more than 3 million hectares (more than 60% of the forest area). Among many achievements has been a reduction in the deforestation rate from 10.6% to 1.7% nationally. The message from this forest reform is clear: people can protect and manage forest in a better way than can the forest bureaucracy alone.

CFUGs have realized the benefits of networking to exchange experience, knowledge, skills and learning. The Federation of Community Forestry Users, Nepal (FECOFUN) was founded in 1995 to help the CFUGs to organize; it is involved in policy dialogues, helps build capacity for community leadership, and performs an advocacy role.

CFUGs have become a basic foundation of rural development in Nepal. But there are still many issues to confront. For example, who owns forest land? The government has handed over the forest resources, but communities are asking government to hand over ownership of the land. Who has the right to the carbon? These are questions we are trying to resolve now.

### Cameroon's community waste by Patrice Pa'ah

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There is a vicious circle: we exploit the resources in the forest to survive, but because of a lack of infrastructure and appropriate technology the act of exploitation degrades the forests,



**Fine point:** Producing high-value products—such as these Cameroonian pens—from wood waste can create thousands of jobs *Photo: P. Pa'ah*

reducing our capacity to survive and thrive. We have abundant resources but neither the harvesting model nor the economic model have changed since the 1960s. The challenges are huge: the sustainable development of resources requires new approaches. A lack of access to production capital severely limits the community development of forest resources and the alleviation of poverty.

At the moment, community forestry in Cameroon creates a lot of waste; we need to be more efficient. Recently there was a transfer of technology from Quebec, Canada, that has enabled us to use residual timber scraps to produce pens. Small-scale enterprises based on this sort of technology can create thousands of jobs. Everyone can make a contribution to improve the competitiveness of enterprises. But we need to facilitate community access to capital and technology. Community forestry doesn't need to re-invent the wheel. But support is needed to expose people to inspiring ideas and to support the transfer of technology.

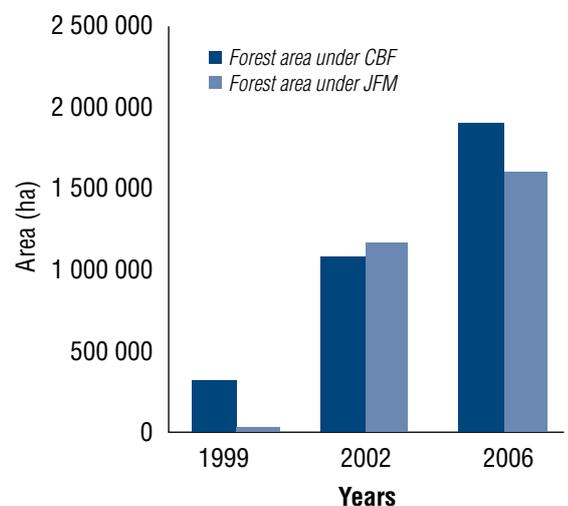
### Community-based forest management in Tanzania

by Charles Meshack

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In Tanzania, participatory forest management approaches are operating in more than 60 districts (out of a total of 104), with varying levels of support. To date, about 1.9 million hectares of forest are under community-based forest management (CBFM) in around 1500 villages, and joint forest management (JFM) between the state and 530 villages is being applied across about 1.6 million hectares. Figure 1 shows the growth in both these approaches since 1999.

**Figure 1:** Change in forest area under CBFM and JFM, Tanzania, 1999–2006



Both CBFM and JFM are spreading rapidly and now cover more than 10% of the total forest area of mainland Tanzania. Both devolve management responsibility to a more local level and produce better outcomes than open-access management regimes.

**Table 1:** The decentralization continuum

Issue	Management regime		
	State	JFM	CBFM
Who initiates?	Not applicable	State	Village/district
Who signs/formalizes?	Not applicable	State + village	Village/district
Who terminates?	No applicable	State	Village/district
Who decides allowable benefits from harvesting?	State	State	Village
Who decides harvesting levels?	State	State	Village
Who has overall management responsibility?	State	State + village	Village
Who enforces the rules?	State	State + village	Village
Who keeps the money?	State	State (some village)	Village

There are significant problems associated with JFM, however. Early on, many donor funds were directed towards catchment forests with high biodiversity values—with limited use-potential under prevailing laws. The government has provided little guidance on the sharing of costs and benefits between the state and communities and within villages; elite capture is a significant issue. The management costs to communities often exceed the minimal benefits they receive. In addition, increases in wildlife populations have led to increased crop damage, which is causing conflicts.

CBFM promises greater returns for local people: some areas are generating revenues from their forests that are sufficient to maintain the participatory forest process and to produce a surplus for community development. In other cases, however, the benefits are yet to materialize. Table 1 shows the differences between state management, JFM and CBFM that might point out the reasons for the relative success of CBFM.

There is evidence of massive increases in the efficiency of forest revenue collection when responsibilities devolve from district to village. The single most effective mechanism for improving local forest governance is civic education and legal literacy around the rights and responsibilities of and returns from CBFM.

## Community forest associations in Kenya

by Michael Gachanja

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Prior to European settlement, all forests in Kenya were managed by local communities, and there were substantially more closed forests than there are today. In 1962 the area of closed forests was 1.68 million hectares, which was 2.7% of the total land area. Today, closed forests cover 1.7% of the land area and the percentage continues to decline. Under the old forest law, timber production was the key driver of forest management, which was operated largely on a command-and-control basis by the Forest Department (now the Kenya Forest Service). Among the shortcomings of the law was the

lack of a comprehensive mechanism for involving local communities in forest management.

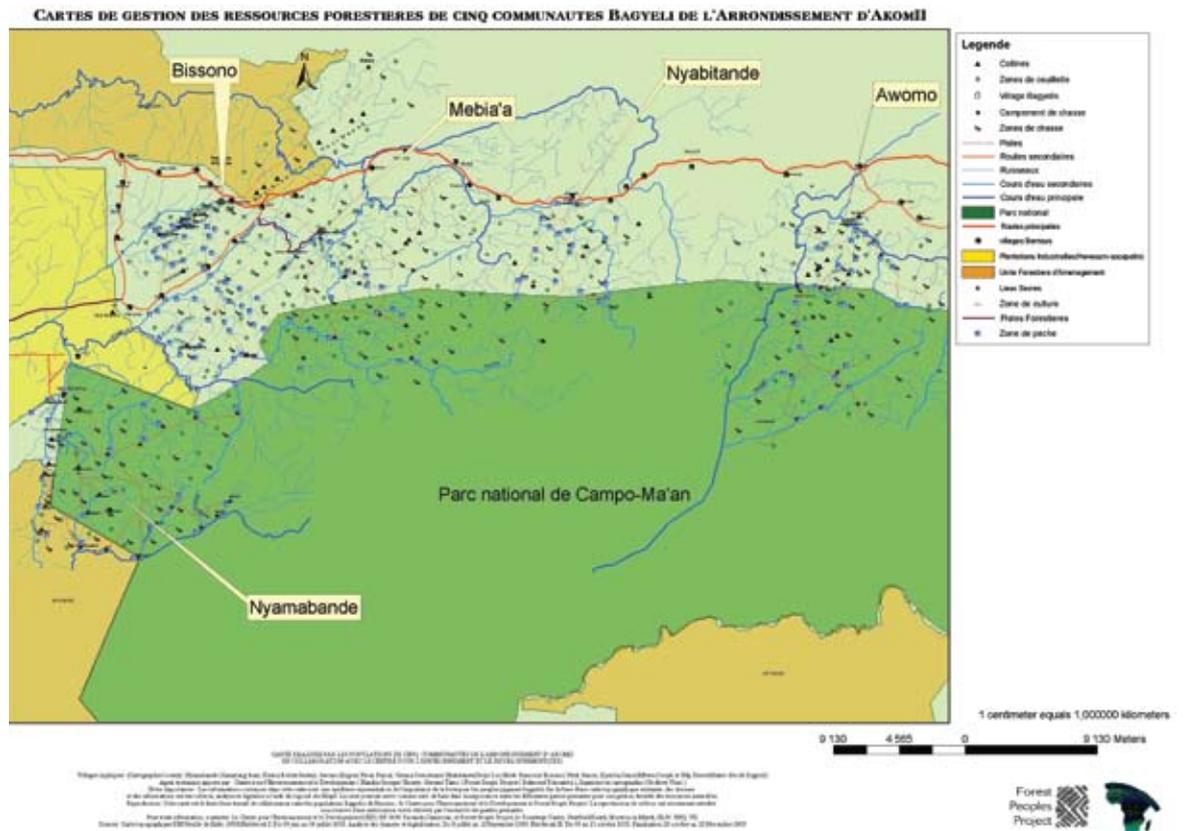
Clamor for change resulted in a review of the legislation and, ultimately, the enactment of a new forest act, which came into force on 1 February 2007. The Act upholds the principle of public participation in forest management. Under it, forest communities are able to register as community forest associations (CFAs) with an accompanying management plan for protecting, conserving and managing the forests consistent with traditional forest-user rights. Forest management agreements between the Kenya Forest Service and a CFA can confer a range of rights on the CFA, including the right to harvest timber and non-timber forest products and to engage in grazing, ecotourism and plantation establishment.

To date, however, there has been little change on the ground. Many CFAs have been formed, mostly on an ad hoc basis. Nine forest management plans have been prepared, all with donor support, but no forest management agreement has been signed. Legislation to support forest management agreements has not been gazetted, although it was finalized more than a year ago. Kenya's political situation following post-election violence in 2007 and the formation of a grand coalition government, which is slowly unifying Kenyans, is contributing to the slow pace of forest-sector reform.

The requirement that applications by CFAs should be accompanied by a forest management plan has made the process beyond the capacity of local communities. Moreover, inadequate advice during the formation of CFAs has led to the formation of associations that may not be appropriate for forest management.

Another issue is that the forest-user rights being conferred to communities are limited and inadequate; most of the forests are owned by the central government. The state doesn't want to cede rights, although it is keen to use communities to control illegal activities.

To address such issues, a key action would be for government, NGOs, grassroots organizations and the private sector to boost the financial, marketing and technical capacity of CFAs. In addition, the government should ensure that the model established by the new Act provides CFAs with tangible benefits.



**Figure 1:** Result of a participatory mapping process showing forest management activities by five communities living near the Campo-Ma'an National Park, Cameroon *Image: Forest Peoples Programme*

## Participatory mapping by the Forest Peoples Programme

by John Nelson

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and Belmond Tchoumba

Friends of the Earth

Participatory mapping has emerged as a tool for reclaiming rights and resources. It is a process in which local communities document their way of using land and resources. The main objective is to recognize the land rights of the communities. The methodology has evolved a lot over the last ten years: we have moved rapidly from map sketches, to manual maps involving professional cartographers, to, today, geographic information systems and geographic positioning systems (GPS) to help communities document their methods of forest use and their rights.

Figure 1 shows the results of a specific mapping exercise carried out by communities living in or near national parks on how they use an area for their traditional activities; they go beyond the borders of the national park as defined by decision-makers. Similar exercises have been carried out in timber concessions and industrial plantations; they showed that many of these concessions are in traditional areas that belong to communities.

We have also mapped around other protected areas in Cameroon in collaboration with other actors. These maps are produced by the communities, especially the Baka communities in the southeast, who receive training in the use of GPS and then

go to the forest to use them. Such maps show an overlap between the customary rights of communities and the rights conferred to others, especially protected areas, industry users, and timber concessions. These maps increase the ability to monitor industrial activities and provide a tool to show the impact of such activities on the area and on local people's lives.

These maps are very important for showing how communities use areas and how there are conflicts between modern and customary rights. They have helped us to open dialogues with some users in the area, especially timber companies, to clarify forests and demarcate borders. The maps help us to negotiate access by the community to protected areas. We are also assisting mapping exercises in the Republic of the Congo, the Central African Republic, and Liberia.

## Cartography of community spaces in the Congo Basin

by Martijn Ter Heegde

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I will draw on mapping experiences in the Central African Republic, Gabon and the Republic of the Congo. In those three countries the few participatory forest mapping exercises that have so far taken place have been promoted by three main actors: conservation NGOs, those promoting certification, and research projects.

Participatory mapping has been used in several initiatives in pursuit of Forest Stewardship Council (FSC) certification. We know that the FSC principles go beyond what is written in

the legal texts in each of the three countries. The benefits of the mapping process to loggers within the framework of certification are very clear, but they are less clear to communities. There are almost no cases in the three countries where the communities have rejected logging during FSC consultative processes. This certainly raises questions about the effectiveness of FSC-style consultations in the above-mentioned countries.

Conservation NGOs tend to work near national parks: for communities the benefits of participating in mapping exercises in this context are not always very clear. They may, for example, be threatened with sanctions if they show that they are carrying out activities within a national park. Mapping carried out by conservation players is often preceded by the sensitization of communities to illegal activities, which can influence their involvement.

What can we note in summary? Very few initiatives in the three countries have sought to influence the law of a country using some form of participatory mapping. We have seen cases where the participation of the communities was limited and passive. There is a lack of legal instruments to allow governments to benefit from mapping processes and many problems with the methodologies and the ways in which results are interpreted and understood. Communities are most often very passive participants and not aware of the purpose of the mapping exercises. In most cases, however, the mapping did reveal conflicts around tenure, highlighting the importance of participatory mapping for land and forest tenure.

How can we make progress? First, we can draw lessons from the participatory mapping that has taken place and use international bodies to promote these. We need to develop political instruments to promote and guide the use of participatory mapping and use mapping to address tenure.

We need to provide more training to communities, because the tool will work best when it is mastered by the communities themselves.

### **Community mapping as a tool for negotiation: case of Ngonga-Kopongo, littoral, Cameroon**

**by Peter Mbile**

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In this business of access to land, nobody is neutral. There are many agendas, lots of symbolism, many interests; we need to bear that in mind.

Before the rule of law becomes respected there must be evidence that people have participated in decision-making and have handed over some of their rights or interests for the common good.

This is the biggest weakness of many efforts. We have land where government has tried to integrate the needs of the local people into the management plan. In the case of Ngonga-Kopongo in southwest Cameroon, there is a crunch between private interests and communities that is very uncomfortable for government. The government promised enclaves but retracted the offer after a submission from a company, so there is a deadlock. It is not a question of right or wrong, it is a question of process.

### **The story of Koko Chepnuk**

**by Ed Barrow**

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This is the story of Koko Chepnuk from the area around Mount Elgon National Park in Kenya, which shows how participatory mapping can be a tool for empowerment.



**Seating arrangements:** One of the aims of community mapping is to give local people a seat at the negotiating table *Photo: A. Sarre*

Mount Elgon National Park was alienated from local people a long time ago, although some local rights have been restored. The process is started by talking about it; people in the village start a conversation. Then, in groups, they map the present situation and discuss the maps in front of everyone. Then they map what they would like to do and how they would like the village area to look in the future, and they present that back to the village, too. This helps to visualize problems and identify solutions.

In some societies it is difficult for women to present back to men—so it is an empowerment tool on its own. We have present-situation maps, as well as a vision for what the land will look like in ten years. We can help the villagers translate hand-drawn maps into ‘smarter’, computer-based maps, but they keep the original.

Koko Chepnuk had never presented in public before to a large group of men and women and was able to do it. The village identified a whole series of simple problems and came up with simple solutions. One of the issues they identified was the lack of trees. They said, ‘we have been planting trees for years, so why are there no trees?’ They realized that in the dry season livestock wander around freely and end up eating the seedlings. So they lobbied the district government to introduce a bylaw that would allow them to sanction people who allowed their livestock to wander onto other people’s farms. This bylaw has since been passed and acted upon, much to Koko Chepnuk’s delight.

“I’m so glad I participated,” she said. “And I look forward to the enactment of the bylaw so that we can move forward to improve our situation.”

So these sorts of processes can be very empowering, provided there is real ownership at the village level and that it is not used as an extractive exercise by outsiders.

**Comment from the floor:** I appreciate the extensive mapping that partners are doing. But maps should not be used as instruments of war between protagonists. With the increase in democracy, people cannot continue without the regulation of forest spaces.

**Ter Heegde’s response:** A lot of the mapping process is about empowerment and to help people in small communities become better negotiators. So I don’t see mapping as a conflictive tool. It is a tool for resolving conflicts. The aim of the Rainforest Foundation is to help communities with limited rights to express their rights. It is an opportunity to start a dialogue.

**Mbile’s response:** We started mapping because there were conflicts. Mapping has helped to resolve conflict over the Chad-Cameroon pipeline, for example. The same applies to national parks—there are often serious conflicts because the local people didn’t understand why they were being denied access to the land. So we have come in to help them reduce conflict.

**Barrow’s response:** Mapping is a photograph in time; it can be historical or it can represent the present or the future. It is just a tool: it’s how the tool is used, and by whom, that becomes an empowerment process. In Somalia we mapped land-use systems in an environment where people were carrying serious guns. We mapped where they accessed resources during the dry season, and this helped to reduce conflict in the area. Fundamentally, participatory mapping should be a tool for empowerment.

**Comment from the floor:** Is it possible to map mining resources? The problem we have in Cameroon’s forests also concerns mining exploitation. When we build a national highway the company that constructs the road takes road-base from the forest and farmlands, leaving the people without anywhere to grow their crops. They are told that Article 6 says the property of mines is distinct from that of the soil; you don’t own the subsoil resources.

**Comment from the floor:** There is a very serious risk concerning the preservation of conservation of our sacred sites. My question is: now that we are moving toward reforms have you thought about measures to make recommendations to protect sacred sites within these areas that would otherwise be destroyed by forest exploitation? In our area, the ancestors of our clans were placed in trees, and these are areas of very strong rights. If there is a problem in the community, people go to these places, spend the night and come back with a solution. That’s a tradition that will be destroyed unless these sites are mapped and protected.

**Tchoumba’s response:** With mapping, communities will be better able to protect their rights and to draw the attention of others to the importance of certain sites and the impacts of activities on them. Mapping can help us to visualize rights.

**Comment from the floor:** Very few countries have implemented their land laws, and those that have, have real constraints. I have the impression that we are recognizing the facts of resource use but there is no legal recognition. Have these maps been officially validated?

**Ter Heegde’s response:** This is an important observation. Maps have a value if they are validated. First of all the community itself has to validate the map; that is an important part of the process. It is a very complex process; various institutions of the state can contribute to it. We encourage the authorities to take these maps and use them. It’s a question of method: developing good technique so that these maps will be validated.

Everyone has a part to play: we invite states to join the process. Some states have been very active and open; many countries have shown interest in this method. Mapping is part of the vision that has changed how we see the forest and its users.

**Comment from the floor:** I have the impression that these maps are static. What was the situation 20 years ago, what are they today, and what will they be tomorrow? How far are you going to go to finish what you started? Why limit people in their vision?

**Tchoumba’s response:** It is important not to look so much at the final product but at the process by which the map is produced. The final product depends on the objective: if it’s a planning objective then, yes, it can include future scenarios. Many communities realize that regarding the law their customary rights are not respected—they feel like foreigners in their own territory. The question people are asking is, how can I suddenly be excluded from the space where I have always lived? I don’t feel that mapping causes these problems, they are problems that exist, but mapping can help provide solutions.

**Comment from the floor:** I get the impression that you are focusing on mapping resource use. Was that deliberate? Why didn’t you go into the identification of boundaries? That’s really the primary issue.

**Mbile’s response:** We have looked at what others have done and why they used the mapping methods they used. The good thing that came out of this is that we were able to compare methodologies and what they got as a result. In terms of territory, other people might have a view as to why Pygmies don’t really talk about boundaries, whereas the first thing the Bantu do is mark boundaries.

We are not mapping to prove anything. It is a communication tool that enables the communication of rights. Many people are not doing mapping because of the way it has been done in the past; there is no single way and it depends on the objective of the mapping. The lesson we want to convey is that it is very clear that community forestry works best when high-level officials are in the same boat as the local people, when they are working for a common purpose.

# Roundtable: tenure and climate change



**Bioenergy production:** An emerging challenge in Africa *Photo: E. Mansur*

## Bioenergy markets

by Don Roberts

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Four key variables drive the economics of biofuel production:

1. the price of oil (the main substitute);
2. the cost of the feedstock (50–80% of the variable cost);
3. the conversion technology; and
4. regulations, which stimulate demand.

At present, all four of these variables are in a state of flux.

The global financial crisis—the credit crunch and the fact that the price of oil went through the floor—has had a dramatic effect on global biomass financing. Almost no bioenergy investment makes sense unless oil is US\$70 per barrel. We think it will go back up there so we will see investments coming back.

Europe has adopted aggressive renewable energy targets—20% of its energy needs must be met from renewables by 2020, of which two-thirds is likely to come from biomass. To meet this objective, Europe could have a wood deficit of 320–450 million m<sup>3</sup> per year; to put this in perspective, Canada harvests about 200 million m<sup>3</sup> per year.

Right now, Europe is a large wood vacuum. Pellets are coming in from Canada and to a lesser extent from Australia and the United States; there are huge, untapped sources in Brazil, Asia and Africa.

Convergence of the markets for fuel, food and fiber is likely to continue. By convergence we mean that feedstocks will come together and will trade on the basis of their energy equivalency. The expected rise in fuel, food and fiber prices will trigger changes in land-use patterns.

Historically, land has been kept under forests for two main reasons:

- owners want the production of some non-market good or service; or
- the land can't make it in agriculture.

Convergence is expected to have the largest impact in southern-hemisphere countries because they enjoy higher crop yields and have lower land and labor costs. It is already occurring, for example, in Southeast Asia for palm oil, but also in the conversion of forests to food production. Given land scarcity, we expect greater land-use conflicts in these areas.

The rural poor with no property rights will be most threatened by this trend. Increases in land prices could be good news or bad news for the poor, depending on whether they get property rights.

## Payments for carbon sequestration

by Alain Karsenty

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The question of who owns, or who *will* own, carbon is getting increasing attention. There are four possible architectures for REDD:

1. a market-based and centralized system, which would credit countries for national results against a baseline;
2. a centralized international fund that would be used to reward countries (the Brazilian proposal);
3. a market-based and decentralized system, under which certified projects and, secondarily, countries, would get direct carbon credits (a nested approach); and
4. an international fund for financing (sectoral and extra-sectoral) policies and measures, and country-wide payment-for-environmental-services (PES) schemes. This fund would invest in changes in agriculture and land tenure and provide land-use incentives for farmers.

The first three of these possibilities are about rewarding reductions in deforestation and the fourth is about financing changes in policies and economic structures.

Whatever the architecture that is ultimately decided, PES can be applied. In reality, however, PES is not about selling environmental services but is, in most cases, a compensation for the freezing of some local use rights (e.g. the customary right to clear land). The compensation is supposed to be set at the opportunity cost, although this is an unrealistic supposition. Such use rights are associated with land/resources tenure rights, which need to be mapped, registered and recognized if they are to lead to compensation. We are talking about a major evolution but not a revolution. If such a process is to work, however, many African countries will need to modify their concept of the 'state domain' to take into account tenure rights.

PES presents a dilemma because it implies payments for complying with the law, something that, in its barest form, would mean the end of the rule of law. It's a very complicated problem. One possibility would be to identify those areas or territories where *administrative regulation* (command and control) will be used and those where *incentives* (i.e. economic instruments such as PES) might be favored. PES could be used as an instrument to encourage farmers to keep forest on land they are legally entitled to clear. Many African countries, however, consider that all land is state land and such legal entitlement might not be recognized.

PES is a useful tool, but paying farmers to stop clearing forests without providing them with long-term revenue alternatives and new economic models is unsustainable. Looming problems include:

- an escalation of opportunity costs with growing land needs;
- high transaction costs to control moral hazard;
- a growing numbers of PES candidates; and
- an infinite time-horizon for payments.

## **Land tenure and carbon sequestration in Africa**

by Arthur Green

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In debate over the links between forest tenure and reduced emissions from deforestation and forest degradation (REDD), there are a few points of agreement:

- clarifying the rights and responsibilities of local resource tenure regimes is essential for establishing PES;
- while there are good arguments for establishing a uniform national legal code for land, however, there are fundamental difficulties (sometimes incompatibilities) in transitioning informal, local tenure regimes to national, statutory law; and
- until recently, REDD has focused on the state, has been top-down, and has not confronted situations where the state is weak, corrupt or illegitimate.



**Carbon trade:** The extent to which Africa's poor might benefit from carbon sequestration projects remains unclear Photo: P. Pa'ah

There are also a number of contentious issues and questions. For example:

- informal land tenure in Africa could serve as a prohibitive obstacle to carbon sequestration projects and REDD;
- land-tenure regimes will not transition fast enough to function within the timeframe specified for REDD (2012) or to have a viable impact on the critical period of large-scale carbon sequestration (next decades); and
- if land tenure is a prohibitive obstacle (at least in the short term), what other options do we have for facilitating REDD and carbon sequestration?

There are also several tenurial constraints to REDD in Africa. For example, the legal pluralism of land-tenure systems is complex. Tree tenure—the ownership rights associated with trees—is also difficult.

Are there ways around such complexities? For example, perhaps states could recognize informal tenure zones (community forestry) and funders and communities could implement projects that rely primarily on voluntary payments and secondarily on carbon markets. Another option could be to treat carbon rights separately to land rights. This might involve the re-evaluation of temporary certified emission reductions, crediting periods and non-permanence so that the legal framework can commoditize flexible local management that captures carbon or avoids degradation. This system could function without clear tenure, recognizing and commoditizing higher-risk scenarios for avoided degradation/deforestation or temporary carbon sequestration projects.

## **Adaptation: what matters—forest access or ownership?**

by Fobissie Kalame and Johnson Nkem  
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In West Africa, existing forest policies do not take into account climate change. Forest management can improve the adaptive capacity of forests but, if done poorly, can also leave them more degraded and less able to respond to change. Forest management practices can help forest to adapt to climate change, but policy instruments are also needed to ensure that management can adapt as conditions change.

Access to the forest is an essential element for community adaptation to climate change. Households already use the forest as part of their adaptation strategies. Fodder for livestock can be very scarce during drought, for example: in such times, the forest provides resources to keep the herd alive. When villages are hit by strong winds they turn to the forest for construction materials.

Although both are important, neither forest access nor forest ownership is a silver-bullet solution for increasing the adaptation of socio-ecological systems. Finding the right incentives for forest policy and governance reforms for promoting adaptation requires flexibility rather than a focus on only one type of reform. Ensuring resource access is important in the short and medium terms; securing ownership to the resource could help ensure the sustainability of adaptation strategies over the longer term.



**Women's role:** In the discussion on climate change, conference facilitator Prudence Galega called on the women present to organize themselves (see statement on page 28) *Photo: A. Sarre*

**Question from the floor:** With the current land-tenure system in Africa, is it likely that Indigenous people in Africa will receive any benefits from REDD?

**Karsenty's response:** it is true that there is a risk that communities will not get much out of REDD because the simplest way to get credits from REDD will be to do conservation projects: from a narrow carbon perspective, they bring more carbon credits than community-based activities. In any case, the fight against deforestation cannot be limited to payments; it is also necessary to solve the underlying problems.

**Chair's response:** payments must be made—we are all agreed on that. Some of us in tropical countries want to go beyond payments for reduced deforestation and forest degradation to payments for good forest management. Natural forests are not very competitive as a land use if they only produce timber but they are very good at protecting biodiversity. Generating additional funds for good forest management through REDD would be a way of compensating landowners for the opportunity they forgo in not clearing their forests for agriculture. There is evidence that good forest management will reduce emissions. The question here is how to make these payments, and to whom? I don't think we should be discussing if payments have to be made—they must be. Another question is, who should pay? The answer to that is clear: the rich—worldwide—have to pay. We cannot ask the poor to pay, and most of the people living in and around the forests are poor. The rich people have to pay, and the payments should accrue mostly to local people.

**Question from the floor:** The REDD mechanism talks about emissions from deforestation and forest degradation. In Nepal, 15 000 community forests have already reduced deforestation and we have a large carbon stock in our forests. What will be the benefit to them of the REDD mechanism? Will all communities benefit from this, particularly those already conserving their forests?

**Green's response:** In climate-change negotiations three things keep coming up: additionality, leakage and permanence. Should we count your forests, which are already there and well-managed? People are arguing about that.

**Question from the floor:** What is the role of women in the whole process of climate-change mitigation and adaptation? Why worry about women? Because we are at the center of poverty, at the center of all the problems faced by society because we take care of everybody else. If you trust women's groups you will start to see effective results in the field because women are not here to mess about with your money.

**Chair's response:** I think we all know the value of women in forests. We have talked about land conflict; if we gave a greater role to women we would have much less violence. There are many ways to improve the status of women, but education is a starting point.

**Facilitator's response:** It is becoming evident that we are forgetting an important actor group; I challenge the women at this conference to organize themselves.

**Green's response:** I'm not an expert in women's rights, but I would love to see women making proposals for projects through the Clean Development Mechanism or REDD or any other sort of environmental payments. That would be worthwhile as an experiment in women's rights.

# Declaration of African women

**The African Women's Network for Community Management of Forests, formed during the conference, made this declaration on the conference's final day.**

Organized by the International Tropical Timber Organization and its partners, the conference took place under the auspices of the Ministry of Forestry and Wildlife of the Republic of Cameroon. The objective of the conference was to determine strategies for accelerating forest-tenure reforms while guaranteeing recognition of rights, sustainable forest management, and socioeconomic development.

Conference participants included 45 women hailing from Burkina Faso, Burundi, Cameroon, Central African Republic, Democratic Republic of the Congo, Gabon, Nigeria, Rwanda and Senegal. These African women, gathered on this day, 27 May 2009, in the MEFOU Room in the Hotel Mont Fébé in Yaoundé,

#### *Recognized:*

- the essential and central role of women in development in general, and in the sustainable management of resources specifically; the discrimination against women in terms of access to land and forest property to develop economic activities; and
- the discrimination against women in terms of access to necessary capital for developing economic activities.

#### *Evaluated:*

The institutional, financial, legal and regulatory state of affairs with regard to forest tenure, governance and enterprise.

#### *Identified:*

The following problems:

- Women's rights to tenure, in both customary systems and in modern law, remain unrecognized; this persistent disregard for women impedes international policies, laws and programming from addressing women's tenure rights.
- Although women are leaders in generating income from non-timber forest products and agroforestry products, and despite women's participation in local economies, efforts to support women's roles in community forest management remain inadequate.
- Limited access to technology, capital, and national and international markets for non-timber forest products.
- In certain countries, regulations restrict the development of forest enterprises administered by women.

#### *Proposed:*

The following:

1. involving women in the forest and land reform processes underway in West and Central Africa;
2. advocating better access for women to forest lands and resources;
3. reforming customary systems that prevent women from owning customary lands and limit them to usufruct;
4. recognizing the role of women in the production, processing and commerce of non-timber forest products and agroforestry products;
5. encouraging and supporting women's forest enterprises, especially those focused on non-timber forest products;
6. strengthening support to the women's NGOs and women's development organizations working within community forest management to expand technical, technological, organizational, financial, economic, and institutional capacity;
7. mobilizing funding from governments and donors to help women develop community enterprises;

#### 8. that ITTO:

- incorporates into its agenda a thematic programme on gender equity, tenure, and recognizing women's rights
- develops funding mechanisms for women's community forest enterprises
- appeals to national governments to facilitate the effective participation of women in their countries' land-tenure and forest-tenure reform processes
- undertakes a global review of the contribution of women to the forestry sector, and organize an international conference to identify strategic courses of action for its involvement in development
- ensures women's representation in all of the International Tropical Timber Council summit meetings and all other decision-making bodies.

To redress the general lack of organization in women's forest management and in community forest enterprise development, and in the African context specifically, the African women meeting in the MEFOU room in the Hotel Mont Fébé,

#### *Are committed:*

- to acting collectively to confront the social, political, legislative and economic challenges surrounding forest management in Africa.

#### *Decided:*

- to create the African Women's Network for Community Management of Forests.

The specificity and distinctiveness of this network stems from the collective nature of its activities with regard to land-tenure and forest-tenure rights.

Given persistent gender inequality in legal, institutional and traditional spheres, in acting collectively women will gain more opportunities within the framework of community forestry and decentralization. Such collective action will enable women to access property and to focus on the promotion of NTFPs and agroforestry products.

The mission of the African Women's Network for Community Management of Forests is:

To lobby governments and international organizations to recognize, in their policy reforms and agendas, women's specific needs, interests, and constraints, as well as women's rights to own land and forest resources.

This network aims to gather together women managers of community forests and women interested in land and forest issues, along with women involved in the exploitation and trade of timber and non-timber forest products in Central and West Africa.

Therefore a provisional committee was established according to the following structure:

- **President:** Cécile Ndjébet, Cameroon
- **Vice President:** Marceline Ouedraogo, Burkina Faso
- **Secretary:** Solange Bandiak, Senegal
- **Focal points:**
  - Burkina Faso: Clarisse Honadia
  - Burundi: Liberate Nicayenzi
  - Cameroon: Antoinette Pa'ah
  - Central African Republic: Sylvie Chantal Sekola
  - Democratic Republic of the Congo: Jeanette Amanakou
  - Nigeria: Apeh Egbe.

The African Women's Network for Community Management of Forests calls on the Rights and Resources Initiative to strengthen the network's capacities, and seeks to be an independent member of ITTO's Civil Society Advisory Group.

Yaoundé, 27 May 2009

**Statement made by participants at the International Conference on Forest Tenure, Governance and Enterprise: New Opportunities for Central and West Africa, convened in Yaoundé, Cameroon, 25–29 May 2009**

Conference participants identified a number of key issues, lessons and challenges and made recommendations for governments, international organizations, communities, NGOs, and regional African organizations. They also agreed on a time-bound set of activities they called ‘Objective 2015’.

## **Key issues on forest tenure, governance and community enterprise in Africa**

- Insecure forest tenure experienced by African communities in many countries slows social and economic development, hampers sustainable forest management and leads to resource conflicts.
- Over the past 400 years the African continent has experienced extreme trauma as colonial rule refused to recognize customary law and tenure rights in order to establish state control over natural resources and to pursue economic goals.
- The legacy of colonial control over resources passed over to the post-independence African states, who have maintained the state claim of ownership over forest lands.
- There is a legal pluralism of tenure in most of Africa in which the formal law dominates over varied customary systems and limits the rights of communities to access and own what they consider to be their natural resources.
- Reforms are taking place throughout the world and in several African countries in response to a growing movement of communities claiming rights to participate in the processes regarding resource use and conservation, but where these reforms have taken place their implementation has been slow.



Photo: E. Mansur

- Women’s tenure rights under customary and formal laws remain largely unrecognized; their rights are insufficiently considered in policy and law reforms and in the related international agenda.
- Similarly, socially disadvantaged ethnic groups that depend on forests for their livelihoods continue to live with insecure resource tenure and unrecognized human rights.
- The institutional orientation of forest agencies does not address rights-based development and tenure; institutional capacity is therefore inadequate for the effective use of tools for rights-based development and to respond to tenure issues.
- Government institutions have been structured in a manner that separates the regulation and management of agricultural land from that of valuable natural resources such as timber and minerals.
- In many African countries several barriers block the creation of small and medium forest enterprises (SMFES) and CFES in particular. A lack of support for financing, technology, and the integrated use of timber and non-timber forest products restricts the economic possibilities for local communities.
- Due to a lack of appropriate channels and tools, communities have difficulty expressing and documenting their customary rights in order to interact with formal legal systems.
- Support for forest-tenure reform, forest governance and community forestry enterprise development has been neglected by international donors and funding institutions.
- New and evolving global issues such as climate change and potential mitigation initiatives, biofuels production, initiatives such as voluntary partnership agreements/ forest law enforcement, governance and trade, and the global economic crisis will have an impact on forest tenure.

## **Key lessons**

Forest-tenure policy and law reform processes are necessary in many countries in Africa. The conference identified the following lessons.

- **Multi-stakeholder processes to reform policy and law are key:** the wide and organized participation of stakeholders is an essential element in the development of natural resources policy and legislation. Processes that are biased or that have not been built on consensus among all stakeholders will inevitably lead to conflict and the depletion of resources. There is a need to build mechanisms to guarantee the equal participation of dis-empowered groups, particularly women and minorities.
- **A clear policy should be set before laws are drafted:** legal and regulatory instruments are far more effective when they are based on sound policies that have been developed in a participatory and consultative way and established on the basis of experience. Forest-tenure policies and laws should be sufficiently flexible to accommodate locally adapted approaches to the

sustainable use of natural resources. In the development of the law, field experience is essential and the mechanisms for applying the law must be simple to guarantee its success.

- **Forest policies and laws should be consistent with or build on land laws:** the elements of forest ownership and access rights cannot be dissociated from land tenure. Forest-tenure reform is therefore dependent on a transparent underlying approach to land rights, including clear land-tenure legislation and implementation mechanisms.
- **Forest policies and laws should accommodate differences within communities:** individuals and households within a community often have different positions and perspectives on forest use and ownership. These differences must be identified and adequately accommodated in the development of forest-tenure policies and laws.
- **Respect for and recognition of customary systems are keys to success:** the most successful examples of forest-tenure reform, especially in Africa, are those in which the rights established by customary systems have been understood and recognized by the statutory legal systems for land and forest tenure. Such understanding and recognition are essential elements for promoting consensus building, the equitable distribution of benefits, and sustainable development.
- **National policies must recognize the legality of the customary rights:** a balance between the statutory and customary systems is a prerequisite for success.
- **The state plays a key role in the reform process:** the state, which is at the center of all reform processes, should aim to facilitate such processes by providing sufficient political space, political stability, and resources. Commitment and political will are essential for the initiation, development and implementation of reform processes.
- **Participatory mapping is a tool for empowering communities to negotiate and claim rights:** participatory mapping at the community level is increasingly used to support local empowerment and the formal recognition of community rights to land and forests. It can be an important tool for negotiation and communication and to support decision-making on forest tenure. It can also be used to facilitate dialogue among stakeholders interested in the use and conservation of forest areas.
- **International support and funding can have a significant impact on forest-tenure policy and law reform.**

Small and medium forest enterprises, including CFES, are an excellent vehicle for promoting the conservation and sustainable use of forest resources and can contribute significantly to livelihoods and to local and national development. The conference identified the following basic conditions for SMFE and CFE development.

- **CFEs cannot grow without clear tenure:** moreover, guaranteed access to resources is a necessary condition for the development of SMFES, and of CFES in particular.

Such access must be legally recognized and enforced by the relevant authorities.

- **Access to markets is essential:** SMFE development is hampered by a lack of information and access to local, national and international markets. Experience has shown that support for product and market development significantly improves the performance of SMFES.
- **SMFES are potentially powerful economic actors:** in many countries, especially in Africa, SMFES make a significant contribution to local economies through the informal markets. In Ghana, for example, SMFES contribute an estimated 5% of GDP, while the formal forest industry sector contributes 2%. Recognizing this contribution and supporting the formalization of SMFES and their access to formal markets improves their sustainability and their contribution to national development.
- **Women are leaders in income generation from NTFPs:** women play an important role in the development and running of SMFES, especially those related to non-timber forest products and wood energy, with major benefits for local economies. Insufficient effort is being made, however, to support the role of women in forest management.
- **The state plays a key role in supporting or hindering development of SMFES:** in spite of their socioeconomic importance, SMFES, and CFES in particular, are far from achieving their full potential for contributing to local and national economies. The state plays an important role in encouraging SMFES, including by providing incentives and technical support.

## Key challenges

- **Attitudes and ways of thinking:** it is difficult if not impossible to empower local ownership and local communities if governments are still using colonial legislation, institutions and thinking. A key challenge is to change attitudes in government and civil society, and their supporters, towards models involving greater participation.
- **Participatory and multi-stakeholder processes:** participatory and multi-stakeholder processes for forest-tenure reform are needed that enable all stakeholders to participate equitably.
- **Institutional reforms:** processes are needed to decentralize decision-making and to provide support and resources to locally based institutions such as councils, village-based organizations and CFES, and to integrate traditional and representative rural institutions.
- **Corruption:** corruption in forest management and institutions must be overcome.
- **Recognizing and addressing the gender dimensions of tenure:** women face particular challenges due to a lack of property ownership; a lack of access to finance, markets and technology; unfavorable laws relative to access and ownership; and a lack of information on laws and regulations.

- **Poverty alleviation:** reforms should address the needs of the poor and of minorities.
  - **Enabling conditions for SMFES:** strong, clear legal tenure systems are needed that ensure access to capital and markets for SMFES, and CFES in particular; create a level playing field by providing institutional and technical support at least equal to that provided to the private sector; and a fair and equitable tax regime.
- g) Make available tools, such as participatory mapping, for empowering communities to claim their rights, and to facilitate dialogue and negotiation with governments
  - h) Support CFES to certify their production processes in order to increase their access to markets.

## Recommendations

1. Governments should:
  - a) Acknowledge that land-tenure and forest-tenure reforms that take into account human rights, and to customary land rights of forest communities and Indigenous peoples are essential for sustainable development
  - b) Through a multi-stakeholder process, set ambitious targets for community ownership of forest lands (e.g. a percentage to be reached by 2015) and develop a strategy and plan to achieve those targets
  - c) Accelerate forest-tenure, trade and market policy reforms, with particular attention to the rights of communities, women, minorities, and marginalized groups
  - d) Carry out such reforms using a participatory and multi-stakeholder process (especially including women, minorities, and marginalized groups, including Indigenous peoples) within a land-use policy reform/development process
  - e) Ensure that forest-tenure reforms are aligned with broader land-tenure reforms, informed by the AU, AfDB, ECA Land Policy Initiative
  - f) Learn from other country experiences in the development of forest-tenure policies and law and the development of CFES
  - g) Create an enabling environment for the development and success of CFES and provide funding mechanisms accessible to women, minorities and marginalized groups
  - h) Review poverty-reduction strategy papers (PRSPs), with particular attention to forest tenure and CFES.
2. NGOs should:
  - a) Put forest-tenure reforms at the center of their campaigns
  - b) Ensure the provision of legal advice to communities on the establishment of SMFES
  - c) Support communities in the development of transparent partnerships with financial and technical bodies
  - d) Work to develop minimum standards for participation and consultation in tenure reform processes
  - e) Monitor the status of follow-up on the Rio Branco and Yaoundé conference recommendations
  - f) Work to clarify language and concepts around rights and tenure, and engage government agencies, civil society and others in discussions around recognizing and realizing rights and obligations
3. Communities should:
  - a) Organize and network to effectively participate in reform processes and to express their opinions and claims of rights to forest tenure
  - b) Seek out links with government services and organizations that can assist to document their tenure rights.
4. ITTO and other international organizations should:
  - a) Collaborate on the development of guidelines for forest-tenure reform
  - b) Undertake the necessary efforts to implement the ITTO Thematic Program on Community Forest Management and Enterprises
  - c) Develop an agenda to promote gender equity within tenure and forest enterprises
  - d) Support the organization of a workshop on the same themes as the Yaoundé Conference for a group of Asian countries to share experiences and learn from each other.
5. Donors should:
  - a) Provide funding to support appropriate land-tenure and forest-tenure reform processes and their implementation
  - b) Finance the ITTO Thematic Program on Community Forest Management and Enterprises
  - c) In cooperation programs for the forest and social sectors, support partner countries in the implementation of forest-tenure reforms and CFES at the community level.
6. Regional African institutions should:
  - a) In COMIFAC's convergence plan, sufficiently take into account community rights to forest tenure
  - b) Include community forest-tenure rights in the ECOWAS Land Charter and the AU, AfDB and ECA Land Policy Initiative.

## The Way Forward: Objective 2015

The participants recommend the following actions by governments and social actors to catalyze reforms in Central and West Africa:

1. Prioritize forest-tenure reform as a national development issue in all African countries by 2015; based on the necessity to ensure respect of human and historical rights of ownership and access to land and resources, by strengthening political will, and engaging parliamentarians and land, and other relevant ministries and agencies in the reform processes;



**Greater clarity:** Yaoundé emerges from an early-morning mist *Photo: A. Sarre*

***(Continued from previous page)***

2. Reverse the assumption that all lands are state-owned and perform an inventory of the lands that are actually under state ownership and management;
3. Fully recognize the human rights of all ethnic and minority peoples by 2015, including their rights to land and access to resources;
4. Empower communities to claim their rights by expanding participatory mapping of community land rights, and only then develop land-use plans and zoning;
5. Through multi-stakeholder processes, set ambitious targets for community ownership of forest lands (e.g. a percentage to be reached by 2015) and develop strategies and plans to achieve those targets. In countries where no forest lands are under community ownership, establish an ambitious target for 2015 for the legal recognition of community-owned forest lands. In countries where communities already own some percentage of forest land, set a target of at least doubling areas under community ownership by 2015;
6. Address constraints to community and small-scale enterprises, markets and trade, and increase the percentage of benefits shared from all commercial activities on their lands, towards at least quadrupling community incomes from all forest operations by 2015;

7. Strengthen political will and action to advance forest-tenure reforms by regional forest, land and governance institutions, ITTO and donors, by encouraging their adoption and support for these recommendations and this Objective 2015;
8. Set up mechanisms to monitor and ensure the follow-up of the Yaoundé recommendations and this Objective 2015.

The participants thank the government and people of Cameroon for the warm hospitality and facilities that made the conference a success. They also thank the Ministry of Forest and Wildlife, RRI and ITTO for their initiative in convening this conference, the co-organizers FAO, CIFOR, IUCN, ICRAF, Intercooperation and GACF, and the donors SDF, SECO, DFID, the Netherlands, Norad, Sida, US Department of State, and the Ford Foundation. The African participants wish to thank those who came from other continents—Asia, Latin America and North America—to share their experiences.

**Yaoundé, 29 May 2009**

The Participants

*For more information on the conference (including a complete list of participants) contact [rfm@itto.int](mailto:rfm@itto.int).*

