



Land Rights in Gabon

# Facing Up to the Past – and Present

Liz Alden Wily

with contributions from Nathalie Faure

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Produced by FERN. FERN works to achieve greater environmental and social justice, focusing on forests and forest peoples' rights in the policies and practices of the EU. FERN's aim is to work with partners to improve forest governance and strengthen tenure rights of local communities by using the EU FLEGT process, which also aims to control the import of illegal timber in the EU.

Around half of the tropical timber and 20 per cent of timber from boreal forests imported into the EU is illegally sourced. Illegal logging destroys forests and damages communities, but it is hard to tackle because it is often an integral part of a nation's economy, giving financial support to political parties and companies. FERN believes the challenge is to address the root causes of illegal operations: lack of good governance, including corruption, unjust tenure regimes and government policies that marginalise local people.

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## Overview

The central African state of Gabon faces many challenges. For over a century the people have endured dispossession of their lands and resources, both in law and in practice. This began in 1899 when France declared itself owner of the soil. Virtually the entire country was then allocated to French logging companies. As well as making money for themselves and the colonial administration, these companies served as the state in remote areas, helping collect taxes and control waterways. Thus began the long association of aligned state and private business which still characterizes Gabon today.

These events also put an end to nearly two centuries of one of the most highly developed African trading regimes of the time, in which local clans serviced international slave and commodity trading. Their participation had crucial effects on land relations. First, social polarization and the emergence of wealthy 'big men' and elite classes developed. Second, fierce competition to control resources and trading routes in the interior heightened clan-based territoriality and the sense of land as property. When the French established their first colony around the Libreville estuary in the 1840s, they did not question that the land in the colony was already owned and merely introduced a law (1849) to regulate how Africans sold their lands to immigrants. Pretence that Gabon was 'empty of owners' only came later, when France sought to expand its control to the entire area, now known as Gabon, and did not want to pay for the vast lands it then handed over to its own enterprises, with itself as landlord.

With local elites increasingly party to the benefits and integral to political dominance, it is perhaps not surprising that Independence in 1960 did not bring with it liberation of majority land rights. Then and now the only way land ownership may be secured (outside of transactions within the tiny private sector) is through grant or sale of parcels by the government. The process is sufficiently inaccessible, politically-advantaged, complex, expensive, and demanding of demonstrated development that only a minority of urban and even fewer rural inhabitants have completed it since 1902. Only 40,000 private titles exist, mainly for urban plots. Those without title – the vast majority – remain technically landless occupants on state property, from which they may be evicted at any time. Compensation for other than titled plots is only available at the erratic discretion of the state.

Little change to land and property law has been made since 1910. Changes that have been made have focused on periodic improvement of allocation procedures (but with little impact) and are now proposed again – without the intention to alter the fundamentals of dispossession – which retain the government as majority owner and partisan regulator at the expense of its own citizens.

Forests represent a major land resource covering 85% of the country and laws of 1982 and 2001 have more explicitly entrenched these as government property. While customary use of these areas is upheld, no family or community can secure ownership of its traditional forests, arguably its most precious livelihood and capital asset. The government has been either unaware of, or unwilling to explore economic growth models, which include rather than exclude customary landholders as accepted landowners, and thence partners or even lessors of lands to entrepreneurs.

The state has meanwhile demonstrated extreme bad faith by failing to deliver on the limited legal improvements it has made since 2001. The most severe omission has been failure to demarcate the Rural Forest Domain. Although this would not have made rural populations the legal owners of their lands, it would have at least helped them to secure rights of occupancy and use and give them a stronger hand in dealing with invasive concessions. Assurances made to populations evicted by the much-praised move to give protected status to ten percent of Gabon's area have also not been backed up with essential enabling decrees. Nor has a promise to better regulate the logging sector itself been significantly realized.

Despite the rise of permitted concession areas from 200,000 ha to 600,000 ha per company in 2001 – this continues to be exceeded – the export ban on round logs is periodically ignored, concession plans or social agreements with local communities are only occasionally forthcoming, and without the promised boundary demarcation of often overlapping mining, logging and now agri-business concessions. Both protected areas and community lands

— **For the majority of citizens rightful security of tenure or even the hope of security of real tenure does not exist in Gabon**



are routinely encroached. Nor have needed changes in governance, which could support a fairer land and resource-based economy, been put in place as legislated for in 1997. No rural community councils or borough councils have been established; these might have given greater say to local populations over land and resource allocation in their areas. Turning laws into hollow promises has encouraged impunity, corruption and loss of faith in the state. Insecurity of tenure is rife.

Gabon is unusual in the fact that 86% or more of the population lives in cities or towns. This has been used to help explain inattention to rural rights. However, the interconnectivity of rural and urban populations in Gabon is underestimated. This study, like others before it, found that rural-urban movement is noticeably fluid, urban dwellers returning routinely to village areas and remaining there when jobs in towns are hard to find. Villagers include urban members in their population figures. Most significantly, even when born in town, urban members of the village are considered by all to be part-owners of family and community lands and resources. With perhaps greater awareness of the implications, they firmly resent involuntary displacement, eviction and loss of traditional resources as their village relatives. Their own troubles in town, often unable to secure formal rights to their homes of many decades, add to discontent.

Overall, it is hard not to draw the conclusion that for the last hundred years or so, it has simply been easier for colonial and post-colonial administrations to hand over rights and resources to big business rather than invest in local initiatives. Commercialization of smallholder farming, wildlife-based and forest enterprise remain starved of investment. Nor have administrations been willing to look to their own populations as logical owner-manager conservators of protected areas, as appearing elsewhere on the continent. Rights-based reforms in land tenure and governance since the 1990s have simply passed Gabon by.

This *modus operandi* is unlikely to change in the near future. Gabon, like other African states, is enjoying a new acceleration of global interest in its lands and resources, largely for the benefit of transnational private enterprises, which show little inclination to even consult with populations affected. The fact that the government is a shareholder in some of the bigger deals is not reassuring. For despite regime change in recent years, the state is yet to demonstrate that it genuinely places public interest above its own substantial private land-holding interests. Historically the line between government and private interests has proven opaque.

These interests, it may need reiteration, incorporate over half the country's land mass and all forests – except those that are protected. The status of local user-occupiers is likely to remain precarious. As in the past there are minimal safeguards, which protect the local population from being evicted or marginalized in favour of private or public-private enterprise. The status quo garners frank support from beneficiary transnationals and supporting foreign governments. Fair access to the courts or even the right to protest remains fragile.

So what is the best way to promote human rights, which in agrarian economies like Gabon are so integral to land rights? Increasing public awareness to enable the public to drive political will seems a necessary course of action. Continuous engagement with not just rural and urban communities and agencies, but with policy makers, among whom there are reformers, is key. Pressurizing the government to at least carry through its longstanding legal commitments

will be practical. Increasing links and solidarity of local NGOs and communities with regional land rights movements will be helpful, as will aiding them to constructively challenge specific injustices. Exposing policy makers to changes made by other African states, which have faced similar constraints, can help reassure power-holders that guaranteeing land and resource security, rather than dispossession, provides a fairer and less conflict-prone route to economic growth.

**Figure 1: Overview of Gabon**





## Preface

This paper arises out of short visit to Gabon in November 2011 as guests of the NGO Brainforest. Discussions were held by the authors with Brainforest staff and with other individuals noted below in Acknowledgements. A very short field visit was made to the northern Province of Woleu-Ntem including two day-long field visits with selected villages. Brainforest staff subsequently complemented the information with data obtained from two villages in the south. A great deal of time was subsequently spent on desk study of legislation and relevant literature.

This mission was undertaken on behalf of FERN, a European agency which is closely involved with supporting the negotiation and implementation of voluntary trade agreements under the FLEGT (Forest Law Enforcement, Governance and Trade) initiative of the European Union, which aims to improve forest governance and ensure that timber imported into the European Union is legally, sustainably and fairly sourced. One of the most important criteria is assurance that commercial and industrial harvesting does not break relevant domestic land and forest laws and that those laws are themselves just. As a facilitating agency, FERN is therefore concerned to assist Gabon to make systemic changes to laws and practices as necessary. This investigation into the status of customary land rights in Gabon was designed to contribute to that task.

- **Land titling exercises are a key first step towards protecting the local population from being evicted or marginalised in favour of private or public enterprises**



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During our short stay in Libreville, these people were also generous with their information: Jean Charles Simobiang, Development and Governance Adviser, UNDP; Quentin Meunier, Assistant Principal Technical Adviser, Development of Community Alternatives to Illegal Exploitation of Forests (DACEFI-2), WWF CARPO programme; Rose Ondo Ntsume, Head of Department, Faculty of Arts and Human Sciences, Department of Sociology, Omar Bongo University; Kialo Paulin of CENEREST; Charles Ndoutoume-Obame, Director of the new Department of Community Forests, Ministry of Water and Forests; August Akomezogho, Director of Land Operations, Ministry of the Economy, Finance and Participation; Michel Delbrah, a former Adviser to the Ministry of Habitat; Eric Benjaminson, the Ambassador of the USA to Gabon; and the Provincial Director of the National Agency for Cadastre in Woleu-Ntem. We are grateful to all these people for their time and information. We are also addressing our thanks to H el ene Blanchard, Wildlife Conservation Society and Sam Nziengui Kassa, GIS and Mapping Participatory Manager, Brainforest, who were helpful in providing geographical data and maps of Gabon.

We are also very grateful to Innocent M'ba Asset, the head of the village of Esassa on the outskirts of Libreville, and to the villagers of Bolossoville and Ogue in Woleu-Ntem Province, and of Tono and Moukoko in Nyanga Province.

## Introduction

This study critically reviews the status of rights to land in Gabon today. As forests constitute up to 85 per cent of Gabon's land area, land and forest rights are considered together. As 85 per cent of the population live in urban areas, urban property issues are also considered. This is helpful for both assessing handling of property rights generally, and for illuminating the relationship of urban and rural populations as affecting landholding.

The founding question of this investigation is straightforward: *what land rights do Gabonese citizens possess today in law and practice, and if these are found to be weak or threatened, what steps can be taken to improve this situation?* Land rights in this context include rights to natural resources above ground, below ground, and water resources.

The assumption underlying this study is straightforward: that recognition of Gabonese as rightful and equitable land and resource owners is critical to sustainable social transformation in agrarian economies. This includes rights to housing land in urban and rural areas. Finding paths to transformation which are explicitly designed to *include rather than exclude the majority poor* is a critical issue confronting modern African states. Risks of famine, physical and social dislocation, irreparable pauperization, and conflict, are better understood today as consequences of socio-political failures to take the interests of poor majorities into account.

Historical and comparative perspectives are used to help tackle the subject. The former has great bearing on how present modern-day land rights are handled in Gabon, looking back to the colonial era. Comparative analysis sets this treatment against contemporary treatment of *property rights and resource governance* in other African states. This is intended to aid identification of possible ways forward.

The uniqueness of Gabon is not forgotten. Specifically, these facts are taken into account —

1. An exceptionally high proportion of Gabon's population lives in cities and towns.
2. The per capita land area is one of the highest in Africa. Gabon is even sometimes described as 'empty'.
3. Most of the land is forested upon which livelihood dependence as well as commercial dependence is high.
4. While the percentage of cultivable land is high, agricultural land use is limited and the proportion of GDP deriving from agriculture is minor, with high imports of basic foodstuffs.

5. While per capita GDP is one of the highest in Africa, poverty levels are high, reflecting significant internal inequality.
6. Gabon's colonial era was marked by high levels of internal migration on the one hand and coerced settlement on the other, with special bearing upon present settlement and land holding patterns.
7. Gabon has retained strong political, military, economic, legal and cultural ties with its former colonizer, France.
8. Out-leasing of resources and thence control over lands has a long history in Gabon and is extensive.
9. Non-government organization is neither well-developed nor encouraged.

In other ways, the situation in Gabon is far from unique on the continent. This is in respect, for example, of the shared colonial past during the 19<sup>th</sup> and 20<sup>th</sup> centuries; the shared history of post-independence dictatorship, delaying and still impeding democratic change in subtle ways; the neo-patrimonial nature of politics, enabling private rather than public interest to determine policy; the strongly polarised nature of its society in terms of wealth and voice; competing interests to land and resources between minority elites and majority poor; and weak devolutionary governance through which popular rights and voice could normally be expected to be channelled. Gabon also shares with many other African states an aggressive policy of out-leasing of its resources at this time to mainly foreign investors.

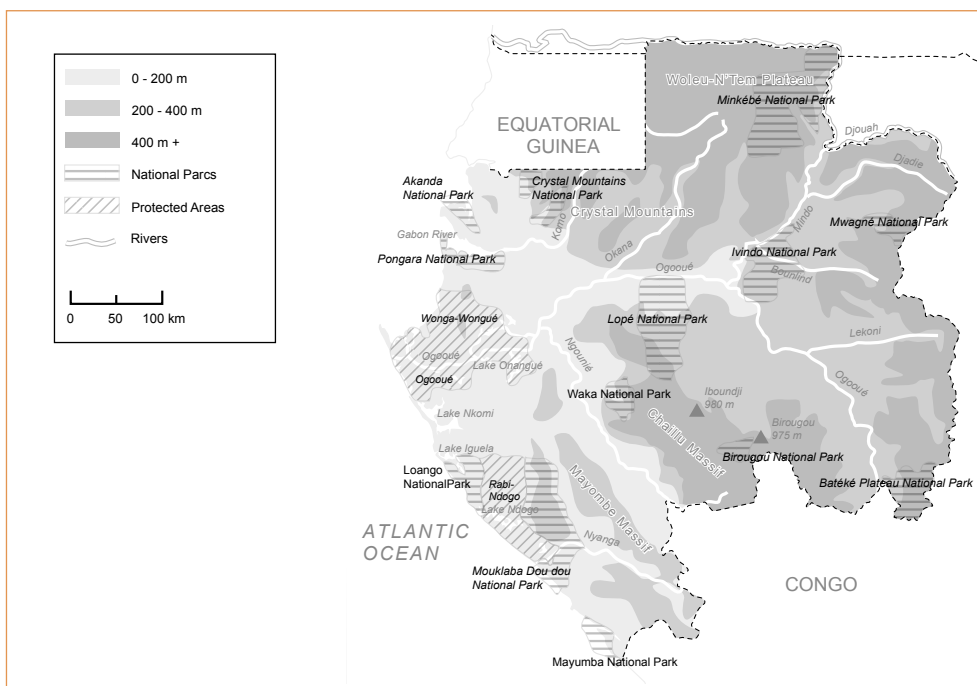
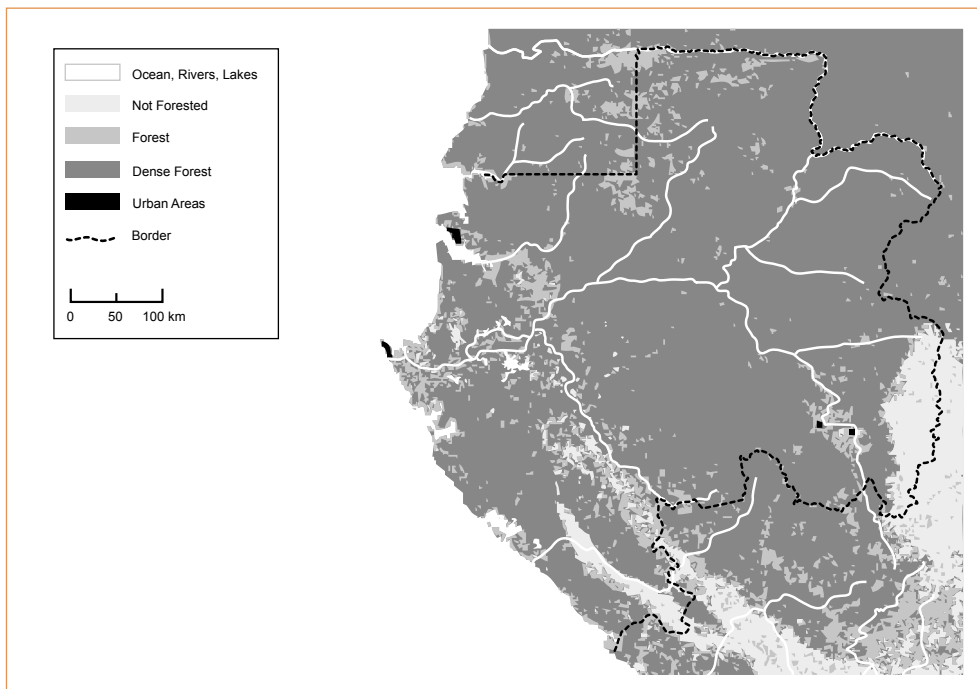
## Presentation

These subjects are covered within the following structure. Chapter One focuses upon what present law says about rights to land and resources in Gabon, and the implications for (rural) populations.

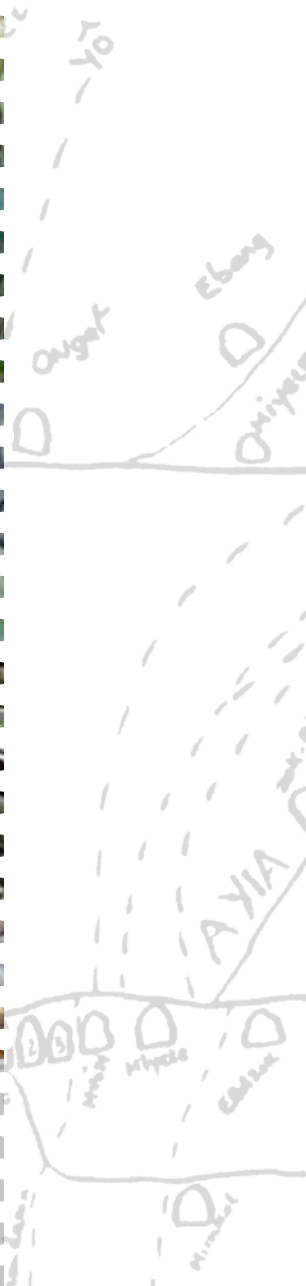
Chapter Two looks back to the early modern history of Gabon as a state to discover how current legal norms as to land ownership have come about. This has several facets; first, the history of settlement in Gabon is reviewed to detect if and how access and rights to land were territorially and internally structured. The impact of the advance of European trading and colonialism upon customary landholding is traced. Special attention is paid to the introduction of formal land and resource law under the French administration and its treatment of indigenous land interests. Together, these legal and socio-political environment windows help us understand what drives present-day land policy in Gabon.

Chapter Three returns to the present. A recap of the status of land rights is given and the implications of current strategies considered. This includes evident strengthening of concession and out-leasing trends. The urban-rural population relationship as affecting land rights is examined. Conclusions are drawn as to where the Gabonese state stands in respect of citizen land and resource rights, and where pro-poor remedial action is required. The chapter then considers how changes could be promoted and delivered. For this it first lends an eye to the positions of other African states on similar issues. Suggested actions arise out of this. These necessarily reach beyond immediate matters of land rights into governance.

**Figure 2: Physical Geography of Gabon**



- Pygmies in Gabon face the same social and economic exclusion and marginalisation as they do almost everywhere in the Congo Basin



réalisé par la communauté du village Oummasbi (Mimbal)

de village en collaboration avec l'équipe des Facilitateurs  
de photographie participative dans le bassin du Congo



## 1 Background

Boxes 1 and 2 provide overview information on Gabon

### Box 1: Snapshot of modern Gabon

Total land area	26,766,800 ha
Land Area (excluding waters)	25,766,700 ha
Inland waters	2,419,000 ha (9.3% of total surface area) The Ogooue Basin = 215,000 sq km
Country size rank	29 <sup>th</sup> in Africa, 76 <sup>th</sup> in world (roughly size of Burkina Faso, New Zealand)
Main eco-physical regions	Coastal plains, central mountains, eastern savannah
Main natural resources	Forest, petroleum, iron ore, manganese, with minor gold, diamonds & niobium
Agricultural land & % country area	5,153,400 ha, 20%
Forest area and % country area	22,000,000 ha, 20 ha per capita, 85.4%
Protected areas in ha and as %	3,414,000 ha excluding waters. This is 15.5% of total country area
Classes of protected areas	Reserve naturelles: 10,000 ha; Reserves présidentielles: 4,055,168 ha or around 15% of total land area; Wildlife Protected Areas and National Parks: 2,924,000 ha (13 National Parks)
Deforestation rate	Less than 1% (one of lowest in Africa)
Main environmental problems	Water pollution (pesticides), improper waste disposal (mining, oil, human, other), bush fires
Forest species	Around 8,000. Only 60 species are commercially exploited. One species, okoume, has always been the main tree exploited, for timber
Wildlife species	977, of which 21 are partly protected and 17 fully protected
GDP per capita	US\$ 10,000 'upper middle income state' (US\$ 8,643, World Bank, 2010)
Annual Growth GDP	5.7% (2010). Negative growth in 2008-09
Government debt	50% (2005) but believed to have declined in 2011
Oil as % of GDP	Oil is the main source of GDP 50%, provides 60% of budget revenues, 80% of export earnings Gabon is 4 <sup>th</sup> largest producer in sub-Saharan Africa
Other minerals as % of GDP	3% (mainly manganese, Gabon is world's 2nd producer), iron ore, gold
Forestry as % of GDP	4.3% contributing 31.3 million Euros in tax earnings, and yet forests cover 85% of country area
Agriculture as % of GDP	3.8% (fall from 15+% in 1960s)
Main policies	New programme Gabon émergent (2009): economic reforms to diversify Gabon's economy, relying on three pillars, industries, services and environment. This includes a focus on minerals, diversification (especially away from oil into timber, fisheries, tourism, mining, construction etc.), services (health, education, research, IT, media) and environmental development
Main policy documents	Poverty Reduction Strategy Paper (2005) Vision 2025 Document (2005) Public Investment Programme (2005) National Forest and Environment Sector Programme (FESP) (2005)
Public investment	16-40% rise planned between 2010-16
Paved roads as % all roads	10% (cf. average of 17% in region)
Administrative organization	9 Provinces, 52 Departments, 26 Districts, 125 Cantons, 50 Communes, 3,304 Villages and Village Clusters (Regroupements)
Population	1,545,255 (est. in 2011, based on extrapolations from the last official census in 1993, and upon and administrative censuses conducted every two years)



Age pattern	41% of population is below 15 years; very high dependency ratio 75% below age of 30 (2010)
Urban/rural population	Urban: 86.4% Rural: 13.6%
Urban/rural density	Urban: 250-300 persons per sq km. Rural: 7.5 persons per sq km
Rural population	The lowest % in Africa. Around 210,000 people only. At 5.4 persons per household could be only 40,000 rural households
Urbanization	In 1960 only 20% were urban. In 1985 up to 73% and to 85% in 1993
Most populated zones	L'Estuaire Province: 43.7%, Haut-Ogooue: 15% (North & South least populated)
Population in Libreville	50% of population lives in Libreville
Male/female population	Male: 57.6% Female: 52.4%
Population growth per annum	1.8 % (UNDP 2011), 1.9% (World Bank 2010)
Human Development Index Ranking	93 of 169 states (0.648 – exceeds global average) (UNDP 2011) 106 <sup>th</sup> (0.674) (World Bank 2011)
Poverty rates	Multidimensional poverty count : 35.4%
Population below \$1.25 per day	4.8%
Income share of richest 20%	Around half the national income
Income share of lowest 20%	6.2% (2005)
Most vulnerable group	Women; 37% suffer from extreme poverty
Rural/urban poverty rates	Rural: 45% Urban: 30% Poorest area of country: South (54%) Least poor area: Libreville (23%) Unemployment rate: 21% (2006)
Life expectancy age (years)	62.7 (UNDP et al. 2011) 61.8 (World Bank, 2010 data)
Fertility rate	3.3 births per woman (2009)
Adult literacy rate % (15+ years)	63.2% (CIA 2011) but 87.7% for 15+ years relevant age groups
Improved water sources	87% of population have access to clean sources (2011)
Primary school enrolment	91% (2005)
Ethnic groups	76 ethnic groups, 47 sub-groups in nine ethnic groups and 11 language groups. Indigenous 'Pygmies': 10-20,000 Baka, Babongo, Bakoya, Bagama, Barimba, Akoula, Akwoa Indigenous Bantu: Fang, Bapounou, Nzebi, Obama, Myene, Kota, Shira, Puru, Kande Non-indigenous Bantu: Nigerian, Beninois, Cameroonians, Senegalese Europeans: mainly French (11,000 French nationals in 2011)
Religions	Christianity 73%; Indigenous religions 10%; Islam 12%

Sources: various: e.g. Habitat et al., 2011, Millennium Development Goals Indicators, 2011, World Bank (2010 data), UNDP ([www.hdstatd.undp.org](http://www.hdstatd.undp.org))

**Box 2: Gabon timeline**

30,000 BP	Gabon could have been sparsely inhabited by hunter-gatherers from this time
2,700 BP	Evidence of settled Bantu farming communities
1100 onwards	Some modern groups trace their entry into the region to 13 <sup>th</sup> century
1472-84	Portuguese traders arrive on Como Estuary, explore coastline and find it occupied. Establish minor outposts including at Cape Lopez (settlement known as Mandji until 1915 at which point it was renamed Port Gentil)
1500	First Portuguese missionaries arrive
1580	Portugal's annexation by Spain causes activity on Gabon coast to sharply decline. English and French traders arrive
1580-1875	Main era of slave trading affecting Gabon. Africans directly involved as providers of slaves and as middlemen for European ship captains. Migrations occur as some flee capture, others expand inland to dominate trade or control routes to the coast
1660-1780	Vili from Loango Kingdom in Angola/Congo dominate slave trading in south/central Gabon creating slave ports of Mayumba and Cap Lopez. Between 1685-1793 one million slaves are transported
1780-1875	Central and northern networks dominate displacing Vili, mainly involving Orungu clans around Cape Lopez and Mpongwe in Como Estuary (Libreville)
1806-1875	British, French & Dutch stop slave trading, giving way to Portuguese, Spanish and Brazilian traders supplying Brazil and Cuba with slaves. Trade increases in ebony, ivory, rubber sap, raffia cloth and leather
1830s -	Industrial Revolution in Europe begins to dramatically increase sale of European goods in Gabon, providing cloth, machetes, bells, flintlock rifles, axes, iron bars, brass wire, copper basins ('neptunes') etc. Fang produce own high quality copper, brass and iron goods but can't compete with imports
1819	First English missionary settled, Edward Bowdich, provides important travel records
1820-40s	King R'Ogouarowe ('King Glass') on the Estuary welcomes English missionaries
1939	Two Opongwe chiefs (King Denis/Rapontchombo and King William) on south side of Estuary sign protection treaties with France ceding lands for military and other developments
1841-42	Two more chiefs on northern side of Estuary (Anguile Dowe (King Louis) and another) cede their land, and agree to give up slave trading
1842-45	First American mission set up in May 1842 in land of R'Ogouarowe (King Glass). Rise in numbers of British, American and German traders settling there
18 June 1843	French establish Fort d'Aumale in King Louis's land
1843-1859	French Gabon administered as part of French West African possessions by Senegal. From 1859 administration was localized in Libreville
1844	French establish Roman Catholic mission, treaty with King Glass to get his land
1845	Missionaries establish first French school in Gabon, St. Marys
1844-59	French establish a cartel (Comptoir du Gabon) to challenge British and German trading and to capture slave ships
1844	Cacao introduced. Later developed commercially by Germans after 1900 when Woleu-Ntem was still part of Cameroon, and revitalized in Gabon as an export crop in 1920s
1846	Treaties signed with another Mpongwe and Seke chief
1846	To increase French dominance in the Estuary, a naval commander from Senegal re-signs a treaty with Estuary chiefs, explicitly ceding sovereignty of entire Estuary area to France. French Colony of Gabon created
1846-85	More treaties signed with inland chiefs
27 Apr 1848	Slavery officially outlawed within all French colonies but continues outside the limits of coastal Colony
1849	Libreville formally established with first slaves taken from 'Elizia' a French ship and settled there; within a year 261 slaves seized from other ships are settled
26 Feb 1859	Gabon made an 'Administrative Area' in its own right as 'French Settlements of the Gold Coast and Gabon'
1856-63	American-French explorer, Paul Du Chaillu, makes the first significant inland journeys, yielding important information about Gabonese at the time
1865-66	Smallpox causes flight and death. Until 1850s only known on coast. Will resurge in 1890s
1869-1930	Gabonese resistance to French military and trading control begins on the coast and near trading areas and over decades continues throughout Gabon in sporadic armed rebellions and attacks

1875-78	More formal French explorations by Pierre Savorgnane de Brazza into the interior (Teke lands)
1879-82	Second exploration by de Brazza, sets up French post in Franceville
1882	De Brazza strongly advocates creation of a larger colony
1883	Control over littoral colony taken over by Ministry of Marine Affairs. Gabon given new name 'French Settlement of the Gulf of Guinea'
1883-85	Third and officially directed exploration by De Brazza ('Mission of West Africa') creates posts in L'Ogooué and Moyen Congo. Reach of the Gabon coastal colony expands
1884-85	Berlin Conference of 13 European Powers and America meet in Berlin to thrash out trading relations in West Africa, mainly because of the onerous duties being charged by France in Gabon and Congo including exorbitant river charges for traders
26 Feb 1885	Act of Berlin agreed, establishing Ogooué and Congo River basins as free trade areas, limiting right of French to charge import and export duties
1885-1900	Scramble for Africa: European states scramble to secure enlarged spheres of trading influence. These trading area monopolies segue quickly into administrative colonies
24 Dec 1885	Boundary agreement in north between German Cameroon and French Gabon re-located (different from earlier 1864 line informally agreed)
29 Jun 1886	Decree creates two autonomous colonies of Moyen Congo and Gabon, both run by de Brazza. Dr. Ballay is appointed Lieutenant Governor of Gabon Colony
26 Jul 1886	Boundary between Moyen Congo and Gabon agreed
11 Nov 1888	Gabon and Moyen Congo re-unified as Gabon-Congo under De Brazza
30 Apr 1891	Modified arrangement with new name of Congo français, administered from Libreville
1900	By this year all of Gabon is explored and chiefs contacted
1903	Two more territories added to Le Congo français (Chad, l'Oubangui-Chari) and the four regions made autonomous colonies
11 Jul 1904	Brazzaville made capital of Congo français
15 Jan 1910	Federation of French Equatorial Africa (AEF) created including four territories, with ultimate administration in Brazzaville and where thereafter all laws are drafted and promulgated for all four territories. Each region headed by a Lieutenant General and a Governing Council
1911	The boundary between German Cameroon and French Gabon is adjusted to give most of Woleu-Ntem to Germany (4 November 1911). Boundary demarcation finalized in 1913
1897-1914	French policy of handing country over to monopolistic concessions causes flight, death and destruction of farming, settlement and existing trade networks. Many clans suffer, some gain. British and German traders squeezed out
1899-1914	Coerced relocations begin to provide easier control of labour for concessions, tax collection, and to increase control over rebellious populations
1890s-1920	Boycotts of European traders periodically launched especially by coastal middlemen losing trade and forced to pay high prices for European goods
1900	Boundary location agreement signed with Spanish Equatorial Guinea
1900	Head taxes introduced to raise revenue to sustain Colony
1911	Famine, caused by men leaving farm for timber camps, coerced labour, resettlements, etc
1914-18	Following the War France recaptures Woleu-Ntem as part of Gabon, formalizes at the Treaty of Versailles in 1919
1918-45	'Exploitation without investment', considered pillage and systematic suppression
1916-1925	Great Famine, killing thousands
1923-28	Railroad to interior developed
1920s	Intensification of forced labour
1927	Timber sales of okoume reach peak
1920s-30s	Revitalized forced resettlements (regroupements), especially in north, focusing on agriculture, religious conversion and improved sanitation
1932	The end of local revolts against French rule, including in Haut-Ogooué and l'Ogooué-Ivindo
1930s	Crisis in timber industry after the Depression hits markets in 1932-33
30 Jun 1934	Gabon loses financial independence and made simply a region in the AEF
1937	Gabon regains its status as an autonomous part of the AEF

1940	French President Charles de Gaulle calls for Africans to support Europe in war
30 Jan 1944	Conference in Brazzaville held at which De Gaulle realizes he must give more power to local populations and promises this
1945	Administration of Gabon reorganized into nine regions each with districts
1946	Despite resistance, Haut-Ogooué reattached to Gabon from Congo
1946	French Community created (l'Union française)
1946	Largest timber factory in the world built, attracting thousands to Port Gentil
1946	With Fifth Republic in France, Gabon and other colonies given extended voting rights, rights to French citizenship expanded, and representatives sent to French parliament
16 Oct 1946	Gabon given 'individual administrative and financial autonomy'
1946-47	Labour unions fight for better conditions
12 Jan 1947	Gabon sends five representatives to the Union meeting which sets up Governing Councils in each state
1947	Borders with Cameroon and Congo re-settled
1931-80	Regroupement campaigns continue. Some will still be ordered to move (especially Pygmies) nearer the road in 1990 for electoral reasons
1940-70	Immense change in settlement distribution, high concentration along roads
1956	Leon M'ba elected as vice President of the Government Council of Gabon
28 Nov 1958	République Gabonaise declared with Prime Minister as head, an autonomous republic within the French Community (along with 42 other states, only excluding French Guinea). Gabon's Constitution of 1958 is a carbon copy of the Constitution of the Fifth French Republic.
18 Feb 1959	Leon M'ba made President under new Constitution. More socialist and anti-French candidate, Aubame, rejected (mainly Fang supported)
17 Aug 1960	Independence from France. Only 87 graduates at French universities. None in Gabon had completed secondary school and there were only 2,036 secondary school students in 1960
1960-67	First President, Leon M'ba, maintains close ties with France with 15 collaborative agreements to sustain presence and support. French military remains
1960-80	Oil boom and surge in urbanization
1964	Rebellion against President M'ba put down by French forces protecting massive oil and other commercial interests
1967	Second President elected, Omar Bongo
1968	One Party state declared, Gabonese Democratic Party (PDG)
1973	Omar Bongo re-elected
1975	The current administrative organization established: the nine prefectures become provinces and sub-prefectures are organized into 37 departments
1979	Omar Bongo re-elected
1982	Movement for National Renewal called for multi-party democracy but suppressed
1986	Omar Bongo re-elected
1980s	Petroleum revenue declines
1990	Strikes, demonstrations and party formation led to a National Conference in April 1990, resulting in multiparty system
1991	New Constitution, most notable for multi-party character
1993	Omar Bongo re-elected
1998	Omar Bongo re-elected
1994	Devaluation of CFA and logging increased, concessions greatly expanded by 2000
2003	Under guidance of Omar Bongo, the Constitution is amended to remove presidential term limits
2005	Violent protests but Omar Bongo again re-elected, despite allegations of fraud and voting irregularities
8 June 2009	Omar Bongo dies, after 49 years of presidency
Sept 2009	Election and civil unrest. Results rejected, poll recount. Ali Bongo Ondimba, the son of Omar Bongo is elected, but with clear evidence of fraud and voting irregularities

Sources: see Chapter Two.

## 1.1 A Legal Lens

This paper adopts a legal lens to identify the status of citizen land rights in Gabon. This is because state policy is most precisely expressed in legal provisions, and because no specific national land policy exists. Additionally, the law offers a concrete platform for challenging political failure to respect majority land interests. The main drawback to a legalistic approach is that it says little about rule of law, or popular access to justice.

## 1.2 Land Interests

'Land interests' is used in this paper as a catch-all phrase for expressing how individual, family, collective and corporate interests or rights to land are defined and treated. This is without saying whether such interests constitute ownership, access, use, or other interests, or how far these are respected as legal rights.

Land interests cover not just interests or rights to the land or soil, but also land-based resources, such as forests and forest products, oils and minerals whether surface mined or subterranean, and coastal and inland waters.

Interests defined in state laws and in indigenous or customary laws may not coincide. In fact, over most of the 120+ years since state laws have been introduced into Africa, provisions have been startlingly contradictory and a source of conflict. As shown in Chapter Three, this has begun to change.

## 1.3 Customary and Statutory Tenure

Customary and indigenous tenure may be taken as the same and used interchangeably.<sup>1</sup> Either refers to the norms and rules which communities devise to define and regulate landholding and resource rights. This system, or regime of regulation, is known as customary tenure in Africa. The actual rules are referred to as customary law. These are generally unwritten. The customary or indigenous tenure and law of different ethnicities or land-using economies vary, most clearly between the land use regimes of hunter-gatherers, pastoralists and settled farmers. Land use is a primary determinant of customary land ownership rules.

The most important difference between customary tenure and statutory tenure is simply that the former is community-based and indigenous to the area, while the latter is nationally-based. Statutory tenure refers to the system of landholding as laid out in national laws. Accordingly, statutory law tends to begin when states are created. These statutes or national laws are usually, but not always, arrived at through decisions of parliaments, and if not by parliaments, by the ruling government of the day (Box 3).

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1 Indigenous tenure should not be confused with indigenous peoples, the latter used mainly in reference to hunter-gatherers and pastoralists.

**Box 3: The legal framework**

Laws in Anglophone and Francophone Africa differ. Under Anglophone (or common law systems as they are known) all laws (acts) are enacted by elected parliaments (which may have one, or two houses through which these laws must pass). Politically- appointed Ministers then have powers to issue regulations or statutory Instruments. Because they are lesser laws, they are more easily cancelled or modified. However a Minister may only issue regulations on matters which the act has authorized the Minister to regulate upon. Law in the Francophone regime (the main source of civil law systems)<sup>2</sup> is organised in the following manner. Legislation comprises an initial law (*loi*) enacted by parliament or an ordinance (*ordonnance*) which begins with the government (within the Council of Ministers) and is subsequently approved by the parliament. Regulations (*règlements*) include decrees and orders. In colonial times in Gabon, the *ordonnances* were approved by the Governing Council, but originally devised in the federal headquarters in Brazzaville after 1910.

Decrees (*décrets*) refer to laws passed by the President or the Prime Minister; these are legal instruments which lay out how a particular law or ordinance will be implemented. The Minister in charge of the subject area, a combination of different Ministers, or other decentralised administrative authorities such as a *préfet* or mayor may also issue orders (*arrêtés*), to give precisions on rules enacted in a law or cecree. An *arrêté* is similar to a common law regulation.

In addition there are administrative acts, such as circulars and directives (*circulaire, directive*) which have legal effect, issued by various administrative bodies to organise relations between the administration and its agents.

**1.4 A Background on the Customary Sector***The customary sector is the largest landholding sector in Africa*

The vast majority of Africans in sub Saharan Africa regulate their land access and tenure through customary norms. Conservatively, it may be estimated that over half a billion rural Africans are customary land holders (and potentially one billion by 2050).

*The customary sector sometimes includes urban areas*

Millions of people in Africa's urban areas follow customary norms. This is because many town and city areas were originally village areas, for which no formal regularization of rights has since been issued, changing the system in use. Residents therefore often fall back upon neighbourhood systems and norms to uphold their occupancy rights. Members of the neighbourhoods uphold these but the state does not, so conflicts routinely result. Because there is frequently an ethnic basis to many urban neighbourhoods, many of these norms may be the same as those followed by those tribesmen/clansmen in home rural areas.

2 The 1804 Napoleonic Code or Code Napoléon (originally, the Code civil des Français) was based on Roman Law and was the most influential in development of other modern civil law systems from the late 18<sup>th</sup> century.

When it is borne in mind that no more than 10 per cent of the total land area of sub Saharan Africa is subject to formal statutory entitlement, and when it is observed that less than 2 per cent of Sub Saharan Africa is in fact covered by city or town areas, then it is not surprising that around 88 per cent of the region may be deemed to be the 'customary sector'.<sup>3</sup>

*Customary tenure traditionally has little support in statutory law – but there are many exceptions*

Neither fact means that community or neighbourhood based norms are given legal force by national laws. Usually, neither rural customary or de facto urban customary systems are given legal force. Changing this situation to recognize existing rights as property rights is a main task of modern land law reform as discussed in Chapter Three.

*What are customary rules?*

Customary rules may be longstanding, passed down by generations and referred to as *traditions*. Or they may be new rules, brought into place by a community in response to changing circumstances. These rules are known as laws because the community upholds these and uses these rules to make judgements on an action, determining whether it is lawful or unlawful, according to those rules.

A common new customary rule in Africa is that a house and permanent farm may be sold by the owner, although the land on which the house or farm is standing often remains the property of the community.

Another new customary rule encountered is that access to unfarmed communal lands within the community's sphere is less openly available to members of neighbouring communities, and now rarely at all to outsiders. Permission has to be sought even to enter those lands, let alone hunt or gather products, graze animals, or collect water. As scarcity of unfarmed lands suitable for new farming increases, permission may often be refused. This in turn has hardened the definition of inter-community boundaries. What may have in the past been defined quite loosely as community territories with vague definitions of perimeter boundaries, are now much more exactly defined and defended as 'our land' by individual communities. This trend is similarly seen in those societies where the entire community territory has been subdivided into family lands. In this instance, families are more protective of their areas.<sup>4</sup>

*Who is the community?*

Communities in Africa vary, from tribes or other formations of ethnicities, to village settlements. In most cases, definition of the community has become more localized. Today 'community' usually means the residents of a particular village/settlement or neighbourhood and their land area. This community may comprise a single hamlet or a cluster of hamlets, which share

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3 For details refer Alden Wily, 2011a & 2011b.

4 See footnote above.

social and spatial area links. The name of the community is usually the name of the settlement. In many countries in Africa it is now normal to give the named community legal personality, that is, to treat it as a legal person without the community having to form a formal association or cooperative or other legal group. Community in this sense means all those people who have that settlement as their primary residence. Depending upon the issue at hand, this may include or exclude all those family members who live most of the time in cities and towns for work purposes.

Although historically communities were ethnically and linguistically homogenous, this is less so the case today. Ethnically, community membership is often quite mixed. A range of social links may extend from one community to many others, and this too may have its own social formation and hierarchy; this is what is commonly meant by the clan. At times, the clan network and the spatial network of adjoining villages may conjoin, so that the village or village cluster at one and the same time is a community and a clan.

In practice, many communities are made up of distinct classes of better off and poorer groups. Often the latter are clients of the former, and may not own land of their own. Polarization among rich and poor classes tends to be strongest in areas where traditional society was built upon unequal relations, such as where slave or serf classes provided labour on the farm or to tend livestock, or where artisanal specialization was significant, and/or where strong hierarchical kingdoms existed.<sup>5</sup> Even without this background, capitalist transformation in the last century has made it usual for a modern rural community to comprise groups of different means, which is directly reflected in unequal rights over resources.<sup>6</sup>

*In most of Africa, arable land is now in very short supply. This is not the case in Gabon*

Therefore, while 100+ years ago, it was assumed that there was no landlessness in Africa, it is now known that many poorer families own no farms of their own and have great difficulty accessing land.<sup>7</sup> It is also known that in such circumstances, retention and access to shared resources in the community (woodlands, forests, marshlands, pastures, etc.) is critically important for poorer households.<sup>8</sup>

*Why does customary tenure survive?*

This may be because —

- non-customary law (i.e. state law or ‘statutory law’) is not relevant to how the community considers local land relations should be framed and regulated;
- state land laws do not have coverage in rural area;
- even where they do, state laws follow expensive and complicated procedures which

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5 Alden Wily, 2011b, Ubink, 2008.

6 Bernstein, 2010, Patnaik & Moyo, 2011.

7 For example, research in 2005 showed that inequality in customary farm ownership in Rwanda, Mozambique, Ethiopia, Zambia and Zimbabwe included landlessness and land shortages equal to the feudal situation of land ownership found in Asia in the 1960s and 1970s before land reforms (Jayne et al., 2005).

8 Emerton, 2010.



- poorer people cannot use to secure their rights to land;
- state laws do not give the same rights as customary law does;
- Or it may be because communities believe their land customs are special to themselves and well-aligned to their wishes. They make rules and use them, while state laws are made by outsiders and managed by remote governments, and may seem irrelevant to local needs.

## 1.5 Land and Property

Land interests and *property* are not necessarily the same. Under European-derived laws in Africa, property tends to be acknowledged only when the right to land is formally registered (and for which a document, or title deed, is usually issued). This tenure is classified as 'private property'. The owner is usually a single person or entity, and private property tends to be treated as synonymous with individual ownership. This is particularly so because derived European laws tend to provide poorly for family or group ownership.

The nature of a statutory private property right may vary; it may be absolute, qualified or possessory. An implication of a land right being entrenched as a statutory right is that it may be traded freely in the open market-place; that is, it may be bought or sold as an autonomous commodity.

Within the customary regime it is usual for similar distinctions to be drawn; a customary right may be absolute, qualified or possessory. Often, the only absolute owner of land is the community, considered to own the soil, and able to issue qualified rights to the land, such as permanent or temporary usufructs to farm areas, or use rights to the remaining unallocated community lands. It may delegate the function of issuing rights to an appointed or elected leader, such as a chief.

However, it is not often the case that the community may sell its land outright, although it may be able to sell *access* to its land (such as by what is sometimes called a customary 'lease'. Families or individuals may also be able to sell their use rights (usufructs to their houses and farms), or even sell the house and farmland outright and absolutely.

For most Africans around the continent, all these different rights are considered *to have the force of property* within the customary regime, irrespective of whether this property right can be sold outright or not.

However, many national land laws do not agree. This means that customary interests in land may or may not be given legal force as property even though customary land holders consider themselves to be owners and their lands to be property. Legal recognition (i.e. national law support) for customary land interests as amounting to real property is therefore crucial; without this, customary rights may languish. Many agrarian economies around the world including in Africa have for some time now done away with the discrimination of not recognizing customary landholders as real owners, which reduced millions to 'legal landlessness'.

## 2 What Gabon Law Says About Land Rights

Table 1 lists the legislation through which land interests in Gabon are currently defined. As noted in Box 3, these instruments include principal laws, ordinances and ministerial decrees and orders, circulars and instructions.

Although Gabon (like other Francophone states) has retained the Civil Code of 1804 in its legal canons as updated in France in 1960, it has so far only confirmed reception of two parts of that Code, neither of which are directly relevant to land tenure matters, other than in matters of inheritance.<sup>9</sup> In addition, the original Bill of Rights in the French Civil Code has been adopted into Gabonese law (see below).

The laws listed below cover rural and urban lands. Not all are land laws. Laws relating to mining, forests, water, agriculture and national parks are included as relevant. Many orders, circulars and verbal instructions (in the form of a minute on what was agreed) issued under land or forest laws are also not included as being not immediately significant.

**Table 1: Post-independence legislation relating to land rights**

No. Of law	Date enacted	Main legislation	Additions & amendments
6/61	10 May 1961	Law regulating expropriation for public purpose and establishing easements for the execution of public works	Ordinance 7/65 of 23 Feb 1965 Ordinance 2/76 of 6 Jan 1976
14/63	8 May 1963	Law establishing the composition of state property and the rules determining the methods of management and transfer	Order No. 37/67 of 2 Aug 1967
15/63	8 May 1963	Law establishing the land ownership system	Law No. 15/74 of 21 Jan 1975 Law No. 12/78 of 7 Dec 1978
00077/PR-MF-DE	6 Feb 1967	Decree regulating the granting of concessions and leasing of state-owned lands	Decree 524/PR-MFB-DE of 12 June 1969 Decree 782/PR-MFB-DE of 24 Aug 1971 Decree 1187/PR-MEF-DE of 15 Dec 1972 Decree 1308/PR-MINDECF-DGDE of 25 Oct 1974 Decree 1111/PR-MINDECF-DGDE of 21 Jan 1978 Decree 996/PR-MINECF-HUC 26 Oct 1979
14/68	9 Nov 1968	Decree authorising the amicable transfer of state-owned buildings or property rights	
00869/PR-SEMERH-DGMG	14 Nov 1968	Decree concerning regulation of quarries in Gabon	2441/PR-MMERH-DMG of 30 Dec 1975 00905/PR-2e VP-MMH-DGMG of 17 June 1983
	10 Jun 1970	Instruction on formation of Commission charged with fixing annual land rental charges	
50/70/PR-MFB-DE	13 Sept 1970	Ordinance regulating emphyteutic leases conferring a right on land forming part of its private domain	
51/70	1 Oct 1970	Ordinance concerning the added value of undeveloped land	

<sup>9</sup> The first adopted part covers 645 articles in respect of application of laws, rights of foreigners, and international relations (adopted into Gabonese law by No. 15/72 of 29 July 1972). The second adopted part covers articles 646-908 of the Civil Code and deals with family matters including inheritance norms (adopted into Gabonese law by No. 19/89 of 30 December 1989).

52/PR	12 Oct 1970	Ordinance relating to expropriation of lands not brought under use	
98/1976	23 Jan 1976	Letter of the President prohibiting disposal of buildings belonging to the state for housing	
1394/PR-MI	28 Dec 1977	Decree concerning the organization and functions of administrative territorial units	
846/PR-MAEDR	8 Aug 1979	Decree laying down the compensation payable in case of compulsory destruction of crops	
1136/PR-MINDECFHUC	3 Oct 1980	Decree temporarily banning rural grants and concessions on the outskirts of Libreville	
000001/R	15 Feb 1980	Circular on compliance with housing regulations	
3/81	8 Jun 1981	Law establishing the Plan for Urban Planning	
24/83/PR	18 Apr 1983	Ordinance concerning the creation and award of special urban construction brigades	
4/84	12 July 1984	Law on annulment of land titles for forest and agricultural property	
192/PR-MEFCR	4 Mar 1987	Decree on the exercise of the rights of customary usage	
80/PR-MHUC	2 Feb 1989	Decree concerning regulation of construction permits	
3/91	26 Mar 1991	The Constitution of the Republic of Gabon	No. 1/94, 18 Mar 1994 No 18/95, 29 Sept 1995 No. 1/97, 22 Apr 1997 No. 14/2000, 11 Oct 2000 No. 13/2003, 19 Aug 2003 28 Dec 2010
16/93	26 Aug 1993	Law relating to the protection and improvement of the environment	
15/96	6 June 1996	Law relating to decentralization	
15/98	23 July 1998	Law instituting the charter of investment in the Republic of Gabon	
05/02	12 Oct 2000	Mining Code (law)	Ordinance No. 003/2002/PR of 26 Feb 2002 Law of Ratification No. 007/2002 of 22 Aug 2002 Law No. 008/2005
016/2001 04/2009	31 Dec 2001 2009	Forest Code(law) Law concerning the creation, organization and functions of national forestry foundations	Decree No. 1746/PR of 29 Jan 1983 concerning organization of the Ministry of Water & Forests.* Decree No. 1031/PR-MEFEPEPN of 31 Dec 2004 determining the composition and functions of the Industrial Forestry Committee. Decree No. 666/PR of 9 Aug. 2004 regarding provisional suspension of award of new forest permits. Ordinance 25 July 2008, amending and refining certain provisions of Law No. 16/01 of 2001. Instruction 00640.08 of 8 Oct 2008: Instruction establishing the procedures for awarding forest concessions by adjudication. Decree 1028/PR-MEFEPERN drafted, fixing conditions for creating Community Forests.
003/2007	27 Aug 2007	Law on National Parks	Decree No. 00019/PR-MEF of 9 January 2008 establishing the National Parks Agency
022/2008	10 Dec 2008	Agricultural Code(law)	Decree No. 01087/PR Promulgating the Law Decree No. 0935/PR-MAEPDR creating the delivery commission on the technical agreement to exploit agriculture, and creating Committee for the Issue of Agricultural Approvals

\* Altogether three Ordinances, fifteen Decrees, and nine Orders have been enacted on the subject of forest other than the new Code of 2001 and the implementation code of 2009. Listing and analysis of these are available in Essima, Milendji and Ntougou for Brainforest, October 2010. Ten other Decrees were pending at the time.

## 2.1 The Constitution

The first place to discover how land interests are treated in Gabon is the National Constitution, with which other legislation must conform. The current Constitution was enacted in 1991, since amended.<sup>10</sup> The constitution's commitments to human rights and liberties are enshrined in four adopted pledges. These are the —

- Declaration of the Rights of Man and of the Citizen (1789) arising out of the French Revolution
- the UN-devised Universal Declaration of Human Rights (1948)
- the African Charter of Human and Peoples Rights (1981), and
- the National Charter of Freedoms (1990), a domestic pledge.

### Box 4: Human Rights Instruments in the Gabon Constitution

#### *The Declaration of the Rights of Man and of the Citizen (1789)*

This was an enlightened document of 17 articles arising out of the French Revolution and borrowing significantly from the American Constitution of 1776. The right to property was made one of four key human rights (Article 2).<sup>11</sup> The principle was established that property comes into being through registration and that no one may be deprived of this property unless public necessity demands it. Public purpose itself had to be legally defined and only used in conditions which are just and with provision of compensation for loss of property taken (Article 17).

#### *The Universal Declaration of Human Rights (1948)*

This descendent UN document of 30 articles established the basis of modern international human rights law (currently delivered in more than 80 international and regional human rights treaties and declarations). Holding or not holding property is not permitted as a reason for discrimination (Article 2). Everyone has the right to own property alone as well as in association with others and no one shall be arbitrarily deprived of his property (Article 17).

#### *The African Charter on Human and Peoples' Rights (1981)*

This Organisation of African Unity (OAU) Charter reiterated the above Article 17 as its Article 14, guaranteeing the protection of property unless required for public purpose. However Article 21 of the Charter allows all peoples to freely dispose of their wealth and natural resources and where unlawfully dispossessed, gives them the right to lawful recovery as well as adequate compensation.



10 Amendments have created a Senate (1994), reorganized the Constitutional Court (1995), created the position of Vice-President (1997), created an independent electoral commission, abolished the term limit for Presidents (2003) and most recently and controversially, granted the Head of State immunity after the end of his term of office (2010).

11 While revolutionary at the time, until its amendment in 1795, the Code's commitment to rights excluded women, slaves, children and foreigners, that is, roughly 85% of the French population. Even after this date the right to vote was limited to the minority group of substantial property owners.



The Charter also established the African Commission on Human and Peoples' Rights, mandated, *inter alia*, to investigate human rights violations and to make recommendations to concerned states or as necessary, to bring the matter to the attention of the Assembly of Heads of State (Chapter III).<sup>12</sup>

*The National Charter of Freedoms (1990)*

This had its origins in a multi-party pledge, and was entrenched as law by Law No.2 of 1990. It elaborates human rights, thereafter included in the main text of the National Constitution. This enshrines freedoms including equality between citizens and the equality of all before the law.

The main text of Gabon's Constitution does not diverge from provisions in the above declarations. On matters of property, it provides that —

- Each person, whether individually or collectively, has the right to property. No person may be deprived of his or her property except when required for public purpose in accordance with law and on payment of fair and advance compensation. Nevertheless, expropriation of property with respect to registered ownership rights, and undertaken for public purpose, land needs or development, is governed by law (Article 10).

Article 47 includes 'the system of property ownership, real property rights, and civil and commercial obligations' as a subject for which laws are to be enacted.

Compared to newer Constitutions on the continent, within which whole chapters on land and property matters are provided, Gabon's Constitution covers the subject poorly.

It restricts itself to classical and minimal provisions (as already entrenched in the centuries old French Declaration). Landed property is obliquely defined as including only property as in the form of registered rights. The constitutional right to hold property collectively is misleading; land or other laws may make it difficult for a community or other group to be recognized as an owner without forming a legal association.

The Constitution's reference to international laws is also misleading. None of the international instruments referred to protect property in ways which binds the state to consider *unregistered* (untitled) lands or house plots (together always the majority in agrarian states) as real property. These assets are therefore not due constitutional protection. Accordingly, compensation is also not necessarily paid for untitled lands when taken for public purpose, unless acquisition laws provide for this (see below). It may be surmised that Gabon only acceded to the

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<sup>12</sup> The creation of the African Court on Human and People's Rights in 2004 also provides for a judiciary settlement of human rights disputes in the region. The Court came into being through an additional protocol to the African Charter (25 January 2004) and is competent to judge human rights abuses on the basis of the Charter and relevant international human rights treaties. Gabon has not ratified this protocol to this date.

three international instruments because they do *not* require that unregistered land interests be considered as property.

## 2.2 International Instruments

Under the Constitution, which has legal supremacy, treaties that are ratified by the head of state are directly applicable and do not need to be transformed by a law to have full effect (conversely to dualist countries, mainly found in common law systems, whereby an incorporation law ‘transforms’ treaties into national law). This has important implications, as international obligations that the state commits to follow the law are immediately valid in the national legal order and therefore immediately claimable by parties who are beneficiaries of rights enshrined in those international instruments. One limit, however is the actual ratification of the texts by the President and the publication at the Official Journal. Obligations will stay void if signature of the agreement/convention is not followed by ratification.

Gabon has signed and ratified a number of environmental, human rights and other international treaties that are relevant to land and natural resources rights, other than those noted in the Constitution, such as —

- the International Covenant on Political and Civil Rights (1966)<sup>13</sup> which reasserts the rights to self-determination (article 1), legal remedies (article 2) and the rights for people to benefit freely from their natural wealth and resources (article 1.2)
- the International Covenant of Economic, Cultural and Political Rights (1966):<sup>14</sup> the right to self-determination (article 1) and the right to adequate housing (article 11) are some of the most relevant provisions with regards to property and peoples’ rights, and
- the Convention on Biological Diversity (1992)<sup>15</sup> which adopts a state-based and exclusive approach to conservation (in turn having an impact on land use and ownership) and provides for conservation measures, sustainable use and benefit-sharing of natural resources. Its article 8 (j) provides for the preservation of knowledge, innovations and practices of indigenous peoples and encourages the sharing of benefits from utilization of those.
- Gabon has *not* ratified ILO 169 which does recognize customary land rights as rights of property which must be upheld as protected.

A number of regional and international remedies are also provided for in those instruments which Gabon has ratified, such as the right to present a case for a violation of the above-mentioned rights before the Human Rights Committee of the United Nations or the African Commission of Human and Peoples’ Rights. Such a case was presented by the pastoralist Enderois tribe in Kenya in 2010.<sup>16</sup> The Commission ruled that the Government of Kenya had not met the test of true public interest in setting the ancestral and livelihood rights of a group

13 General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976. Accession by Gabon on 21 January 1983.

14 General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976

15 Convention on Biological Diversity, 5 June 1992, entered into force on 29 December 1993.

16 Centre for Minority Rights Development (Kenya) & Minority Rights Group International on behalf of the Endorois Welfare Council v The Republic of Kenya, Communication 276/2003. 2 February 2010.

of citizens aside, to create a National Wildlife Reserve, and from which, as well as losing their livelihood, they gained no new benefits. This landmark case in Africa has implications for states which deny that customary lands deserve protection as property rights.

### Land and property laws

Land and property law in Gabon is limited, and outdated. It is found in laws promulgated shortly after Independence, half a century ago. The three key instruments are —

- Law No. 6/1961 on compulsory acquisition (expropriation)
- Law No. 14/1963 which defines the state domain and how the state will alienate or allocate use rights to areas within this domain, and under this law, especially Decree No. 77 of 1967 regulated the granting of concession and leases for urban and rural lands, and Decree No.192 of 1987 regulated the exercise of customary use rights
- Law No. 15/63 defining lawful forms of landholding (land tenure).

All have been amended since their initial enactment (Table 1). However, the fundamental provisions are not significantly altered. A summary of each of the main laws is given below.

### 2.3 Law on Expropriation No. 6 of 1961

In summary, the law provides for land takings by the state due to non-development of the land or to use the land for a declared public purpose. The law has positive attributes —

- a. Compensation is payable for the value of the land and for improvements to it. Compensation may be in cash or in new lands or premises, in which case compensation is also paid for movement costs (Articles 10, 20, 21, 22 & 52).
- b. Where formal settlements are interfered with relocation is to be planned and paid for including relocation of utilities. Those affected may take cash in lieu of resettlement (Articles 42 & 43).
- c. Court orders are required for expropriation; officials cannot implement expropriation or evictions without this (Articles 1 & 2).
- d. Those holding ‘confirmed customary rights’ are also eligible for compensation when forced to leave their homes or farms, along with those who are legal tenants in buildings or who hold emphyteutic title<sup>17</sup> (Articles 9, 17, 61). This applies, for example, in cases where the state has encouraged people to live in aggregated settlements. In this instance, the holders will be compensated with new house and farm plots when their allocations are required for another purpose.
- e. In accordance with the Constitution, evictions cannot be effected until compensation is paid (Article 31).

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17 Emphyteusis means formal rights of occupation, use and development of properties ultimately belonging to another, usually the state.

Less positively —

- f. Rates of compensation vary, favouring those with formal absolute title (Article 17).
- g. As unrecognized owners, those with customary rights are ineligible for compensation. This is unless they hold formal permits of occupancy such as in settlement schemes, but where permits are mostly now out of date. In practice, discretion is used, so that it is likely that when customary land holders are forced to leave their homes and farms, some compensation is paid. A decree passed in 1979 (No. 846 of August 1979) makes it obligatory that compensation for lost crops is due when public purpose requires these crops to be destroyed, and to be paid even when the owner/possessor has no occupancy permit or land title (articles 1, 4, 5, 6).
- h. The law is vague concerning the limits of public purpose. 'Development' is noted as a public purpose, along with 'forest conservation'. The lack of definition (other than defined for the purposes of creating easements to private land, Article 46) opens the way for private purposes to be categorized as public purposes, such as being seen in Gabon at this time in land clearances for creating private housing estates.
- i. The time provided to lodge compensation claims is unusually short; only eight days are allowed from the day of announcement. Those who do not make claims lose all rights to compensation. (Article 9).
- j. Victims of expropriation have limited means and rights to challenge the decision. Right to remedy is restricted, with the possibility to challenge an ordinance of expropriation only on the ground of a procedural irregularity rather than on the content and rationale of the decision (Article 29). Right to appeal to a higher court does not delay expropriation which may continue even as the appeal is underway (Article 30).

#### **2.4 Law on the Domain of the State, No. 14 of 1963**

This law is crucial to understanding the land rights of ordinary citizens, given that such a tiny proportion of the total country area is subject to private entitlement (see later). Virtually all of Gabon is accordingly State Domain.

The means through which this is arrived at are draconian. All vacant properties and those which have no owners belong to the state (Article 23). This may be taken as meaning all rural lands which are not occupied with houses or farmed, and all lands for which no formal entitlements are held. Together these cover almost all the country area. As if this were not sufficient dispossession on its own, the law also deems forest as State Domain. This covers 85 per cent of the country area.

The law becomes more complex when sub-divisions of the State Domain are considered. This is divided into State Public Property and State Private Property. The difference between the two is that while the Public Property of the state may not be alienated (i.e. granted or sold in absolute title), this is possible for the Private Property of the state. Disposal of Private State Property may be through public auction, the land going to the highest bidder, or just as suspect, by 'amicable agreement', for which Cabinet fixes the price (Law No. 145 of 1968).



Although Public Property cannot be alienated, occupation permits and other rights may be obtained and a Public Property may be leased. Because such rights are renewable, rights given or bought could amount in effect to ownership other than in the fact that the state remains the ultimate owner (Article 110). More critical for ordinary Gabonese, Public Property is not prescriptible (Article 65); this means claims of ownership may not be made on Public Property on the basis of long and uninterrupted use or by custom.

The law does not specify which lands fall into which class. Lands included as the state's Private Property are ambiguously defined as those which are 'not appropriate to the system of registration' and lands and properties which 'have not been granted under definite title' (Article 2). The former is contradictory because the state may in fact alienate or lease these lands for which registration confirms the rights of the grantee or buyer.

On balance, most of the State Domain falls within the category of Private State Property, and is alienable or leasable. This is because Public Property appears to be genuinely limited to public service, such as in lands or buildings for public utilities, public use dedicated to a specific public service (Article 2). All waters are included (Article 109) along with land reserves within 100 metres of the high tide mark or 25 metres of waterways, lakes and ponds (Article 104).

However, marshlands, the silt of rivers and streams, many state-owned buildings including those which have been donated or bequeathed to the state, abandoned by government, and private buildings for which there are no heirs, as well as islands, forts, barracks, and decommissioned military buildings are among those assets described as the Private Property of the state and able to be sold to individuals, corporations and housing societies among others (Articles 12-18, 20-22, 77).

The status of forests with the State Domain is unclear in this law. The law only says that woods and national forests are inalienable but then qualifies this by saying this is possible through the adoption of a law (Article 80).

Movement of forest lands between the Private and Public categories is also possible. Under the earlier forest law (1982)<sup>18</sup> once a forest area was gazetted, it became the Private Property of the state and was able to be leased out, or even alienated. While the new forest law is silent on this, determination of whether forest falls within Public or Private State Property is at the discretion of Cabinet and/or the Department of State Domain. The Director of Land Operations in the Ministry of Economy, Finance and Participation assured the study that all but protected forests fall within the Private Property of the state and are therefore able to be leased in concessions. In practice, the lack of demarcation on the ground means even concessionaires are not entirely sure of their boundaries. Obviously local populations are affected by this shortfall.

Most of this 1963 law is devoted to detailing procedures for the disposal of State Domain under leases or concessions. Some of the focus is on Public Buildings and how they may be sold or rented out. Terms of leases and rental rates and other charges are set by the Department of

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18 Law 1/82 of 22 July 1982 Guidance Law relating to Water and Forests, abrogated by Law 16/01 Forest code

State Domain, also responsible for collecting these dues along with royalties and taxes (Articles 4, 32, 35-38, 60). Technical conditions for issuing leases, concessions, or other rights to Public Property are determined by the relevant sector ministry.

#### **2.4.1 Decree governing the grant of concessions and leases on state-owned lands, no. 77 of 1967**

Four years after passage of the above law, a further law was enacted elaborating how State Domain could be privatized through outright sale or lease and concessions. This was followed by five further laws by 1978, making the disposal of State Domain the most recurrent land subject.

In summary, the founding 1963 law together with its subsequent amendments —

- a. Attempts to regularize existing mass occupancy in towns and rural areas, by permitting Gabonese to apply for title over parcels within Private State Property. Although not compulsory, the law encouraged Gabonese to apply for up to 2,000 square metres in urban areas or 10 hectares in rural areas for their permanent settlement (Articles 1 & 2). Peaceful, continuous, public and unequivocal occupancy of at least five years had to be shown by the applicant (Decree 77 of 6 February 1967). Proof of occupation may be by any means, thus including verbal testimony.
- b. Initially only non-citizens who had lived in Gabon for at least a decade could apply. The limitation of prior residence was removed by Decree 524 of 12 June 1969.
- c. Citizens may assign their right to a rural plot to rural communities with the aim of establishing village-based agricultural areas in their name; this means that urban residents may lawfully apply for lands in their home village or aggregated settlement schemes.
- d. Land available for title must be limited to the area ‘actually occupied’. This means that no unfarmed areas outside settlements could be included.
- e. The term of title was defined as of unlimited term in the form of renewable concessions or occupation permits (Article 71).
- f. Provision was also made in the 1967 and subsequent amendments for larger areas than 10 ha to be titled, with several different categories including parcels of more than 2,500 ha. Each required different scale mapping, and requirements (Article 45).
- g. Payment of rental for leases or concessions must be in advance but is free for Gabonese when the concession is 10 ha or less, or where the concessionaire is a public institution including local authorities, as long as the land is not used for commercial purposes (Article 53-55).
- h. The intention to limit accumulation and land hoarding is indicated through the imposition of development conditions and limiting the number of contiguous lots which an individual may hold (Article 71). Development conditions are specified as requiring that half the parcel be developed if the holder is Gabonese and the parcel is less than 60 ha, or three quarters to be developed if the holder is non-Gabonese.
- i. The law lays out how concessions are cancelled should no development be undertaken within the specified time limit for the category of land size (Article 70).
- j. Rural concessions may be granted ‘at the discretion of the administration’ (Article 44).

- k. Each application must be accompanied by several document including a map or plan of the parcel sought (Article 45).
- l. Application and delivery is decentralised to districts (Article 45).
- m. Award of a right is through issue of a provisional then final decree of concession by the Council of Ministers, or, if the concessionaire is Gabonese, by prefectural decree (Article 51);
- n. Pledge is made to speed up the issuing of titles for commercial purposes (Article 61).
- o. Issue of rights excludes the right to exploit quarries or forests in rural provisionally-granted concessions but the concession holder has a pre-emptive right to apply for such exploitation (a preferential right), which can only be refused if the administration wishes to exploit the quarries itself (Article 64).

#### **2.4.2 Ordinance on emphyteutic leases, no. 50 of 1970**

One of the additional laws provided elaborated the issue of emphyteutic leases. Emphyteusis refers to the Roman/French civil law practice of a tenant having all but ultimate ownership of the land, for a long period or even in perpetuity, and who is required to look after and develop the property, such as by erecting buildings, and which s/he may sell, but not selling the land on which the structure stand.<sup>19</sup>

The 1970 law in Gabon makes issue of emphyteutic leases a main mechanism for leasing out lands or buildings within the State Domain. The law establishes their term as 50 years, extendable for another 49 years (Article 13). These leases may be mortgaged, ceded, transferred at death and are due compensation if taken for public purpose (Article 3). The rent is a modest flat annual fee (Article 7).

The tenant is free to develop the property including changing its use so long as s/he does not reduce the value of the property (Article 4).

The ownership of the property, along with all improvements, construction, and other investments made by the lessee, revert to the state at the end of the lease without compensation (Article 5).

The law makes clear that emphyteusis does not apply to state property which has already been allocated absolutely or in freehold, or where developers have invested 150 million francs or more (Article 18). However since this law in 1970, all state properties which had been granted free or in return for provisional payment, or were subject to rent conditions were reclassified as *emphyteutic leases*.

#### **2.4.3 Subsequent legal instruments**

Other decrees, orders, and circulars have been issued since the 1970s on the subject of entitle-

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19 Emphyteutic leases are common in American, French, Quebecois, and other civil law jurisdictions, as a mechanism for maximizing ownership of an apartment or office within a building otherwise owned by someone else.

ment or lease from the State Domain. As example, a circular issued on 15 February 1980 by President Omar Bongo ordered the Minister in Charge of State Property to inform him of any persons 'and especially celebrities' found to be helping themselves to lands for construction in Libreville and its surrounds. Later that year (3 October 1980) a decree was issued banning rural grants and concessions on the outskirts of Libreville (Decree No. 1136/PR-MINDECFHUC). This was designed to support town planning of Libreville.

In July 1984, using powers granted under the State Domain Law, a law was passed which annulled 22 land titles held by companies for forest and agricultural concessions, covering 59,000 hectares. Although the law did not give the reason, the dates of the titles (from 1909 to 1955) suggest that they were cancelled due to abandonment or failure to fulfil conditions.

## **2.5 Law on Property Ownership, No. 15 of 1963**

Despite the name of the law, this is a land registration law, not a tenure law. Accordingly, the law has nothing to say on the status of unregistered rights, the situation of most landholding by Gabonese.

Registration is defined as ownership of rights as recorded in a land register from which it cannot be subsequently removed. Rights which are registrable include ownership, usufruct, use, residence, long lease and lifetime pledges of land (Article 5). The law applies to registration within the private sector (alienated lands) and registration of lesser rights such as concessions and leases on state Land over which the state remains the land owner.

Although rights may be registered as held by an individual or in common, provision for the latter implies several joint owners, rather than a community (Article 8). Applications for registration of rights are published and a survey date set. Survey includes on-site adjudication (Article 17). Beacons are installed, a boundary map produced, and objections called for, to be made within two months (Article 18). These are recorded in a local Register of Objections (Article 20). Where there are no objections, the Regional Court gives the go-ahead or otherwise rules on the objections (Articles 25-26). No appeals are permitted other than on points of law (Article 27).

Registration follows, and a title deed is issued, given a unique number. Changes to ownership may henceforth be recorded on that deed (Articles 29-31). The effect of registration is unchallengeable. Title cannot be subject to any form of prescription (claims by occupants, on the basis of custom) (Articles 39-40). In any event, registration cancels all previously existing rights over that parcel. Personal action may only be instigated in the case of fraud (Article 41). Leases have no legal effect after three years, if they are not formally registered (Article 45). Voluntary agreements also have no legal effect until registered (Article 44).

Any person may obtain information entered in the land registers or maps (Article 86). The Registrar is personally responsible for any loss resulting from omission of information, wording, etc. or any irregularities, and may be fined (Article 99-100).

### 2.5.1 Land titling in practice

The limited extent of land privatization in Gabon suggests that the above procedures are inappropriate or insufficiently facilitated. The result is that the *Private Domain* of Gabon – that is, areas where the state is *not* the landlord – is tiny. Most of Gabon remains State Domain. The Private Domain may be calculated by the fact that there are reputedly only 14,000 private property titles in Gabon.<sup>20</sup> Informants<sup>21</sup> indicate that the vast majority are for house and building plots in urban areas. This was clear in Woleu-Ntem Province where the cadastral office said it had not a single rural entitlement on its books.

The area embraced by these 14,000 titles is likely to be tiny. In most agrarian economies and notably in Africa, the space taken by cities and towns is limited despite the concentration of population. Urban areas today account for only 2 per cent of the total land area of sub Saharan Africa, despite holding 40 per cent of its population.<sup>22</sup> This is similarly the case in Gabon, despite even greater concentration of population in urban areas. In 2000 urban areas covered only 0.05 per cent of the country area (987,961 ha).<sup>23</sup> It is unlikely to have more than doubled in area since. We may therefore assume the urban areas of Gabon to be no more than one per cent of the land area despite most of the population living in towns and cities.

Some of the 14,000 formal ownership titles are located in rural areas. While these are few in number, they could be large in size. Information on this important subject was not obtainable from any sources.

The 14,000 titles mentioned above are outside of the State Domain. Concessions and leases have been issued expansively on the State Domain. The state remains the owner, no matter how often the concession or lease is reissued. It will be recalled from above that emphyteutic leases are renewable up to 99 years and could be issued afresh after that. Concessions have no limitation on how many times they are reissued.

The private entitlements in this State Domain sector numbered 5,000 in 2011 according to the Land Operations Department. These include mining, agricultural and forest concessions. While up to date information was not available, it is known that in 2005 forest concessions covered 59 per cent of forests (i.e. 13.4 million ha). If the urban domain is taken as one per cent of the country area (assuming that all of this is privately titled, which is nowhere near the real case), and the protected areas sector absorbs an estimated 15.5 per cent of the total land area at most, then this leaves potentially 21 million hectares which could be subject to concessions or private lease; that is, around 80-85 per cent of the total country area. Without pre-emptive definition of non-commercial rural community lands, much of this area could well be quickly absorbed by large-scale private and commercial holdings.

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20 As indicated by Habitat et al., 2011 and in personal communication with the Director of Land Operations, Libreville.

21 Including a previous adviser to the Ministry of Habitat and the current Director of Land Operations interviewed in late November 2011.

22 Less than two per cent of the area of sub Saharan Africa is within urban domains, despite over 40% of the region's population living in cities; refer Alden Wily, 2011a for details.

23 Angel et al., 2010.

This exposes current occupants to enormous insecurity. It also places them in an extraordinary position in 2012, of being technically illegal holders, as they have no certification of their rights to be on the land. Not only is the state their landlord in urban and rural areas, the law itself is not sufficient in explicating their legal position. Poor rule of law presents other problems; this is meant in the sense of access to justice and the behaviour of the courts once a case is presented.

The entire land law of Gabon is geared around issue of formal titles to land, and with a focus on urban areas. Titling is crucial for the entire population of Gabon given that this is the only legal mechanism through which land rights may be acquired and legally upheld.

However the procedures for this are antiquated, slow, bureaucratic, inappropriate, complex, inaccessible and expensive. The three stage procedure is maintained, which basically requires initial survey of the plot, determination that it is not already owned, and issue of a provisional title. Once conditions are fulfilled, generally involving construction of agricultural development, then further inspections are made and a final title may be issued. However, this only becomes a fungible title (able to be sold) at registration, which is a complex procedure, involving both the court and political actors, given that the instrument confirming registration is in the form of a decree.

Within each stage are a host of steps, many of them requiring payment of fees. Administrative capacity remains very limited, surveys are expensive and time-consuming. Such reasons are usually offered (from 1995 to the present) for limited formalization of rights to urban or rural lands.<sup>24</sup> Several different agencies are involved in the process. According to Habitat et al. 2011, up to 134 steps may be involved between first application and final issue of title, but this could be out-of-date given that the same claim was made in 1995.<sup>25</sup> Alternatively, repetition of this fact could mean that there has been limited improvement in procedures. An official from the National Agency of Cadastre estimated that in the 1980s, the maximum time for issuance of a title did not exceed one year from date of application until the delivery of the title. This already long timeframe has in fact increased since, he says, due to a lack of investment in modern equipments and renewal of retired staff since 1990.<sup>26</sup>

These sources contradict the website claim by the World Bank Doing Business Group that only seven steps are involved which only take one month.<sup>27</sup> The intention of the site is to encourage investors, although the site also mentions that Gabon has fallen from 131 to 134 in ranking as an easy place to do business, quite low indeed. Additionally, the Bank's guide shows that it is only considering purchases from within the existing private sector. This indeed involves fewer steps, and charges. Acquiring rights on the State Domain is much more difficult and time-consuming.

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24 For example, see Comby, 1995, Obiang & Puepi, 2011, Habitat et al., 2011.

25 Comby, 1995.

26 Provincial Cadastre Office, Woleu-Ntem.

27 <http://www.doingbusiness.org/data/exploreeconomies/gabon/#registering-property>

**Figure 3: Official procedure for acquiring private land title in Gabon**

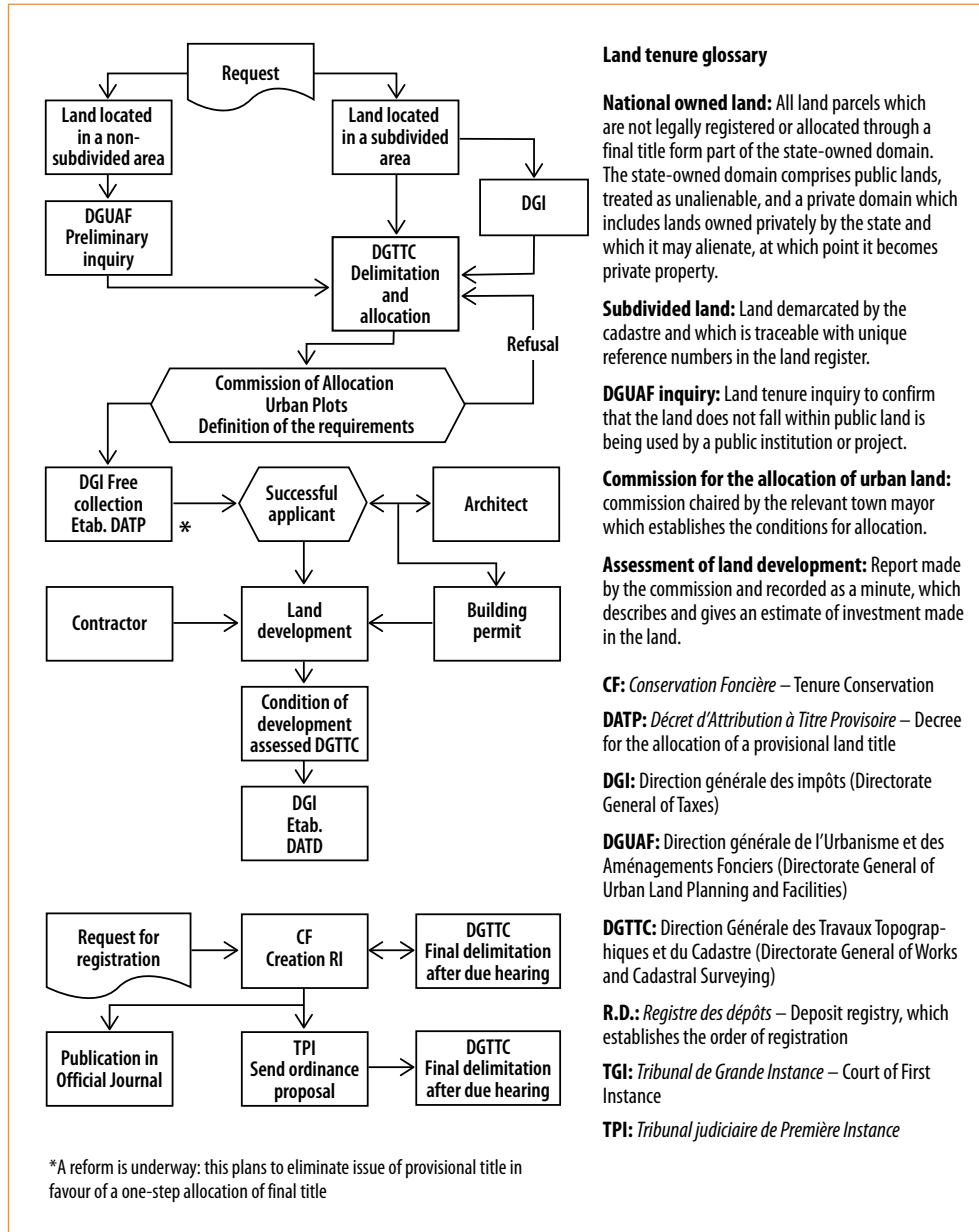


Figure 3 reproduces the guideline being issued by the Directorate of Domains and Land Operations, for acquisition of a land title. This looks straightforward but in fact applicants experience a plethora of difficulties and delays. There is little evidence that decentralization of procedures to districts and the keeping of (official) fees to fairly reasonable levels have made a difference.<sup>28</sup> Practices apparently vary from province to province adding to difficulties.<sup>29</sup>

28 In Oyem, for example, urban parcels cost between 250 to 1,000 CFA per square metre and rural parcels 250-500 CFA per metre.

29 Regional Director Cadastre, Oyem, personal communication, 2011.

Other disincentives to formalizing occupation in provisional and then absolute title must be noted. These include widespread lack of knowledge as to the opportunity, and alleged placement of obstacles in the way of those with least means – such as alleged compulsion to pay bribes – to expedite the application. The exercise is irrelevant for many who live on lands which are not alienable, and who are aware they may only secure formal rights to lands which they immediately occupy and farm. The Cadastre, the central agency issuing modern formal and map-based entitlement is effectively restricted to urban areas.

In light of the fact that wealthy Gabonese apparently do manage to secure title fairly easily,<sup>30</sup> it must also be concluded that the procedure is not structured with mass entitlement in mind, periodic encouragement towards titling aside (such as was reputedly the case in the 1950s and again in the 1960s).

The lack of a legal land market in untitled land makes the situation worse. Practices to by-pass this include private and informally recorded purchase of an advertised land plot without title and then proceeding to secure it legally through the granting of a formal title, converting a de facto situation (*situation de fait*) into a legal one (*situation de droit*). As one land holder described:

‘The legal route is slow when one expresses wish to purchase a plot. I had to resort to the route leading to a *droit de fait* (de facto right). I learned through someone that a person was willing to sell his plots in the periphery of Libreville. I went there and quickly bought the land, and I secured it later by obtaining a land title, after going through the cadastre. Many people today, no matter their social level, opt for this strategy, even if it means a double purchase.’<sup>31</sup>

Officials from the Cadastre also admit that the procedure for land acquisition is the reverse of what is expected, with individuals ‘following up’ on the administration rather than the contrary.<sup>32</sup> Let us not turn a blind eye to this, although there is a Cadastre management plan, we know there is no follow up.<sup>33</sup>

An additional constraint to acquisition of title is that it is difficult for others than well-off persons to meet the development and building structure requirements attached to grant of provisional rights, leading many to let these lapse after the passage of the two to three years for which these are held, or not to undertake the formalization process at all. The result is that many seeking lands to live on, mainly affecting urban and peri-urban areas, turn to relatives and friends for space. A thriving informal market in land also exists.

Plans to simplify the title issuance procedure and decentralize some of the functions of the National Cadastre got slowly under way in 2010 but were handicapped by the firing of many

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30 Personal communication: K. Paulin (CENEREST), 29 Nov. 2011; M. Delbrah (former adviser to Ministry of Habitat), 6 December 2011; Director of Provincial Cadastre Office, Woleu-Ntem (1 December 2011).

31 Massala-Mandongault, 2011 : 101.

32 Massala-Mandongault, 2011 :106.

33 See footnote above.



technical staff in the Ministry.<sup>34</sup> The recent closure of the Ministry of Habitat (September 2011) and within which cadastral services are located, now presents a further impediment to change. Urban land use planning and housing developments came to a halt, which paved the way for unregulated evictions of urban occupants along roadsides in November 2011. It also brought promised mapping at last of a potential Rural Domain by the National Institute of Mapping to a halt. The President announced the creation of a new National Agency for Settlements and Public Works under his personal direction. This was not in place by the end of 2011. Involved officials continue to say however that they remain committed to streamlining parcel allocation and decentralizing functions to more local levels.

## Other Laws Affecting Property Rights

### 2.6 Forestry Law, 2001: Sealing the Loss of Forests by Communities

As most of Gabon is forest land, forest tenure and governance arrangements are critical. The post-Independence Forestry Code of 22 July 1982 (Law No. 1/82) was repealed in favour of a new forest law in 2001 (No. 16/2001 of 31 December 2001). Much of the 1982 law was retained in the 2001 law, but with important changes.

#### *The main objectives of the forest law are commercial*

Broadly, the objectives of the Forest Code were to (i) introduce a new regime for allocating concessions using an auction process to increase transparency, (ii) expand the area under concessions but with less time to harvest so as to hasten exploitation, (iii) reform the tax system relating to concessions and wood processing, (iv) stimulate local processing capacity so that at least 75 per cent of wood would be processed before export by January 2012, and (v) assign production quotas to individual companies.<sup>35</sup> In fact, in law, all wood exports must now be processed.<sup>36</sup>

#### *The state owns all Gabon's forests and rights are limited to use rights*

In both laws the ownership of all forests by the state is unambiguous, confirming the terms of Law No. 14 of 1963. Article 13 of the 2001 law states that '*all forests are within the national forest domain (Domaine Forestier) and this domain is made the exclusive property of the state*'. Therefore all other rights to forests are lesser, comprising rights of access and use. These are exercisable only under authorized permits.

As was already established in 1982 and elaborated in a decree of 1987, an exception is made for customary forest and natural resource users. They do not require permits to use the forest

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34 Most technical staff in the Ministry were fired and those selected by the President to take their place were, 'entirely without the skills required' as told to the study by a senior official.

35 Kaplinsky et al. 2010.

36 President Decision, Council of Ministers, 5 November 2009

so long as they use it in strictly customary ways, and within the bounds of limitations established by the law or subsequent regulation (Article 13 -14, 2001).

*It is unlikely that rural communities can ever own forested land*

The law does not clearly state whether all forests or only some forests are within the class of Private State Domain or Public State Domain. This contrasts with the 1982 law which stated that *classified forests* (such as would correspond today with the *permanent* forest estate and including both protected and production forests) were the *private property* of the state (1982; Article 10) and therefore in principle, alienable, including to communities. In practice, it does seem that protected areas do now fall in the Public Domain and cannot (easily) be leased or made subject to concessions. However, surrender of state ownership to other forest areas now seems more remote than ever.

This fact is concealed by the intention of the 2001 law to provide a residual forest zone for communities. The 2001 law divides the entire forest of Gabon into a Permanent Forest Estate (*Domaine Forestier Permanent de l'Etat*) and a Rural Forest Domain (*Domaine Forestier Rural*) (Article 5). The latter is strictly reserved for the use of village communities, in accordance with regulations to be established (Article 12). Technically, due to the lack of clarity as to whether forests fall within the Private or Public Property of the state, communities could be allocated these lands as their property. However the more general tenor of the 2001 law suggests that this is unlikely, and that the purpose of the Rural Forest Domain is to provide for local use, not ownership of forest land.

There is, moreover, *no delimitation* of the Permanent Forest Estate and the Rural Forest Domain, which causes confusion as to where these domains can be found in practice. This leads to overlaps. First, there are overlaps in that commercial concessions are being allocated in lands which might be more properly considered part of the Rural Forest Domain. Second, logging concessions and mining concessions overlap, contrary to the dictates of both the forest (Article 141) and mining codes (Article 21). Third, there are overlaps in that areas which might be rightfully considered in the Public Domain and reserved for conservation and scientific uses only, are included in commercial logging and mining concession areas. No allocation plan (*Plan national d'affectation des terres*) to solve the conflicting allocations of logging and mining activity has been developed.

The Permanent Forest Estate is subdivided into National Classified Forests (*Forêts Domaniales Classées*) and Registered Productive National Forests (*Forêts Domaniales Productives Enregistrées*) (Articles 6-7). The former are for conservation purposes (Article 7) located in one or other of eight listed sub classes and which include National Parks (Article 8).

Productive forests include Allocated Forests (*Forêts Attribuées*) and non-classified Production Forest Reserves (*Réserves Forestières de Production*) (Article 11). Both classes are to be utilized and harvested in accordance with a management plan, which aims at rationalising the use of forest resources, including by taking into account sustainable development practices and socio-economic studies, as well as keeping a record and assessing the forest concession. This

was the major innovation of the 2001 law and some 50 articles are devoted to describing the plan's required content and procedure.

The law provides for three regimes of exploitation, all available on renewable terms —

- a. Forest Concession under Sustainable Management (*Concession Forestière sous Aménagement Durable* (CFAD)); this may be awarded to nationals and foreigners for areas between 50,000 and 200,000 ha. On signing, the concessionaire enters a provisional convention of management, exploitation and transformation (CPAET) and is bound to provide a management plan within three years of signing (Article 23).
- b. Associate Forest Permit (*Permis Forestier Associé* (PFA)); this is available to nationals only and allows exploitation outside protected forests up to 50,000 ha. These Permits may be issued for areas already under concession as above, in agreement with the concession holder. This is designed to enable concessionaires to sub-contract exploitation (and which they frequently). A management plan is required; and
- c. Permit by Mutual Agreement (*Permis de Gré à Gré* (PGG)); this is awarded to individuals in the Rural Forest Domain. It grants the right to harvest up to 50 trees. No management plan is required.

**Box 5: Forest Classification in Gabon under the 2001 law**

National forest domain ( <i>Domaine forestier national</i> )		
Permanent Forest Estate ( <i>Domaine forestier permanent de l'Etat</i> )		Rural Forest Domain ( <i>Domaine forestier rural</i> )
National Classified Forests ( <i>Forêts domaniales classées</i> )	Registered Productive National Forests ( <i>Forêts domaniales productives enregistrées</i> )	
Comprises (article 8) : – Conservation forests – Recreation forests – Botanical and zoological gardens – Arboretum – Protected areas – Forests for scientific use – Areas for reforestation – Forests for production particularly sensitive or close to the rural forest domain	Comprises (article 11): – Allocated forests – Non-classified Production forest reserves	Comprises (articles 12 and 156): – Land and forests which use is reserved for village population – Community forests

***The commercial sector is largely unregulated***

The 2001 Code did not cancel existing concessions or other permits under the 1982 system. This is problematic as old logging permits, which do not require plans and are therefore not subject to plan-based inspection, are only slowly being replaced with new permits.

A key change made by the 2001 Code was that the previously limited total holding by any one concessionaire was increased from 200,000 to 600,000 hectares. In practice, even this limitation is not observed; it was reported in 2005 that 20 per cent of the total forest area was

under concession to only 5 per cent of holders, some 12 companies.<sup>37</sup> In 2011, CIFOR reported that Chinese private companies alone hold rights to 25 per cent of Gabon's forests, half of which have been allocated to just five Chinese companies.<sup>38</sup> This was through issue of 121 permits for a total of 2.67 million ha. Chinese companies ship more than one million cubic metres of timber a year, accounting for 70 per cent of timber exports. OLAM/Gabon, the state-OLAM International partnership company, also has concessions totally more than two million ha. Supposedly all of these companies should have management plans, social responsibility clauses as laid out in the *Cahier des Charges*, but few have been prepared. On an informal basis, many concessions do permit local communities to use their concession areas, including the Chinese.<sup>39</sup>

### 2.6.1 The Rural Forest Domain: a mirage

Identification of the Rural Forest Domain is not provided in the law and has not since been made. Therefore while the limited nature of customary rights in the law is known,<sup>40</sup> the area where these may be practised is unknown.

#### *A residual forest class which only provides certain use rights not ownership*

The Rural Forest Domain may be understood as a residual category referring to forested areas which are local to settlements and which are not under Concessions or Permits as above. The failure to define the Rural Forest Domain exposes rural populations to commercial encroachment of their local forest areas.

Under the previous forest law (No. 1 of 1982)<sup>41</sup> communities at least were guaranteed protection against logging within five km of tracks, roads, and rivers (Article 22 of 1982 Law). In addition, Buffer Zones were to be created in State Forests (for both Production and Protected Forests), instructed to make 'the greatest possible allowance for the communities affected and the traditional areas of influence' (Article 5 of 1982 Law).

The Rural Forest Domain replaces such provisions but for as long as the Domain remains undefined communities are left without even recourse to protection through the narrow 5 km barrier. Concessions even include settlements in their midst.

There is provision for local state forestry authorities to work with representatives of adjoining villages to define local parts of the Rural Forest Domain, suggesting that originally a case by case approach was intended (Article 90), rather than an overall zoning exercise. Occasions of this occurring are few and triggered only by complaints of concessions being awarded deep into settled and adjacent forest areas. Information is ambivalent as to whether any of these

37 Rainforest Foundation UK, 2005.

38 Putzel et al. 2011.

39 Putzel et al., 2011:21.

40 The rights attached to the areas as those described by Decree 692 (article 2 and 3) and in the Forest code (articles 252 and 253), all limited to use rights.

41 Amending decree of 1993, No. 1205/PR/MEFPE.

cases have resulted in contractual change to the concession area although some concessions do alter their practices, when villagers complain.<sup>42</sup>

Permitted use rights in this undefined Rural Forest Domain are listed in the 2001 law. These are limited to satisfying individual or collective subsistence needs including wood needs for construction, dead wood for fuel, collection of bark, rubber, mushrooms, edible or medicinal plants, stones and vines, traditional hunting and fishing, grazing in grasslands or clearings and using plant material for fodder, carrying out subsistence agriculture, and using waters (Article 252).

As already the case under the 1982 forest law, no fees for these uses are charged (Article 253). Limitations on uses or areas of use may be specified by the local offices of the Ministry (Article 254). No use may be made of protected areas (Article 259). Only specified weapons and methods for hunting and fishing are allowed (Articles 258-261).

### *Provisions for local logging permits are divisive and not community-based*

Community members may also apply for the above-mentioned Permits of Mutual Agreement (*Permis de Gré à Gré* (PGG)), local logging permits, or individual coupe permits, allowing the exploitation of 50 trees. These replace what were referred to as household permits under the 1982 law. The procedure for their grant does not require community consultation. In practice, outsiders have been able to approach and pay a villager to secure the Permit. This is known as *fermage* and is reportedly widespread. The recent *Ministerial Order 136 of 10 October 2011* proposes to amend this practice, to be implemented in 2012. Under this instruction, the PGG is to be granted for only one year at a time, and to be collectively managed through a committee comprising the Prefect of the area, the forest operator and five members of the community. Allocation is to be preceded by a feasibility study.<sup>43</sup> Progress on this is unknown.

*Fermage* is even more widespread in the larger Concession and Associate Forest Permit sector. Elites including politicians allegedly acquire logging rights to thousands of hectares; not having the expertise or funds to log, they then sub-lease their rights out, including to foreign companies. Putzel et al. 2011 note that many Chinese companies access additional forest areas to those over which they are the concession holder in this manner. This means as sub-lessors they are not technically responsible for providing management plans, social contracts or even to log sustainably.

### **2.6.2 Community Forests: tokenism to stifle land claims?**

The 2001 law also introduced the right of communities to establish Community Forests within the Rural Forest Domain (Sub Section 5). Community Forests are to be assigned to a particular community for carrying out specific activities (Article 156). As all forest belongs to the state, this assignment can only be for use or management purposes. A village, group of villages, or a canton may request to have a Community Forest declared, submitting a report and a location

<sup>42</sup> Personal communication, Quentin Meunier (DACEFI-2), Rose Ondo Ntsume (Omar Bongo University).

<sup>43</sup> Information on this Order provided by C. Ndoutoume, Director of Community Forests.

plan of the forest to the head of the local inspection office of the Water and Forests Authority (Articles 157 & 162). Costs of demarcation and management planning are to be borne by this Authority (Article 159).

### *Community Forests as a mechanism meant for limited local logging by the poor*

Exploitation of the Community Forest is permissible only under the terms of a Simple Management Plan, or under the terms of a supply contract agreed with 'one or more local transformation companies' (logging companies) (Article 158). Arrangements may also be made whereby the state itself exploits the forest (Article 160).

*Ordinance No. 011/PR/2008* added to the above. The definition of 'local communities' was expanded to ensure it included both village settlements and indigenous communities. Customarily-acquired products may also be sold, defined as arising from 'economic use rights'. This allows community members to sell part of the products they collect under customary use rights, as long as sales are local and do not use intermediaries (revised Article 252). This is 'to facilitate subsistence and the fight against poverty' (Article 14). Regulations promised by this Ordinance to structure customary commercial use have not been introduced, leaving likely significant levels of local sale of forest products in uncertain legal territory.

However, since 2001 there has not been a single Community Forest created. Even basic decrees of application have not been drafted. This has potentially been remedied by the recent creation of a special Directorate for Community Forests (2011). Its new Director says he will be supervising the drafting of necessary instruments, with assistance from a non-government project (DACEFI). However, given past performance by the Government of Gabon, institution of this Directorate could be a means to waylay criticism while doing nothing to advance community rights to forests.

### *Non-government facilitation has been relatively weak but has opened up Community Forests as not necessarily just for logging*

Various non-governmental preparatory initiatives were launched from 2001 onwards in anticipation of the enabling instruments and meaningful state support.<sup>44</sup> Lack of necessary legal instruments or state commitment is probably the main reason for the limited effect of these. Lack of awareness of viable routes as can be learned from other African states also seems to have been a factor. Piloting of a handful of initiatives continues after a number of years with unclear paradigmatic development or significant policy influence. This could change with the

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44 A consortium project funded and run by WWF, Nature, and a Belgian university and known as WWF-CARPO, has carried out community forest use mapping initiatives for some years, as part of piloting the development of community forests, but so far limited to two village clusters in l'Ogooue Ivindo Province, one next to the Minkebe National Park (Sully-Thyde, 2008, Boldrini, 2008). ITTO funded similar initiatives in three test sites: in the Woleu Ntem, Estuaire and Ngounié provinces. Both projects purposely explore community forest use other than logging, such as agro-forestry and non-timber forest product development. The Wildlife Conservation Society, the logging company Rougier, which obtained FSC certification in 2008, and several donor-funded programme planning initiatives working with the Ministry of Forests have also conducted community forest use mapping. In the case of Rougier, as reported by Ter Heedge, 2009, this has led to permitted local exploitation zones and exemption of quite a number of local areas from logging, based on community rights and use considerations. A certain amount of forest use mapping was also undertaken by Rainforest Foundation UK in conjunction with Brainforest, the findings of which could be applied to creation of Community Forests.

creation of the Community Forestry Service but even non-government actors involved are not entirely optimistic.

Moreover, fall-back onto the models of logging-centric arrangements as developed in neighbouring Cameroon, looks likely at this point. The newly-appointed Director of Community Forests confirmed that in his view that Community Forests should be for a limited 15 year term, subject to logging plans reviewed every five years, and limited to 5,000 ha. Communities should, he said, be able to sub-contract to state-owned companies. This does not necessarily preclude the non-logging focus of the handful of ITTO and WWF-CARPO initiatives begun in earlier years, but certainly handicaps this eventuality.

The logging emphasis is reinforced by the content of an undated and unapproved draft Forest Decree (No. 1028) designed to apply the *Forest Law in respect of Community Forests*. This requires members of the interested community to form a formal but seemingly simple association (Article 3). Its application for a Community Forest must specify the uses intended, and a plan of the proposed area sought, with maps at 1:50,000 or 1:10,000 scales (Article 4). If accepted, a Simple Management Plan is to be prepared by the local Water and Forest Office with the community, and at no cost to the community (Articles 6 & 7). The Plan must comprise information on the community concerned, the location and description of the area and the priority uses intended, suggesting that not just logging is contemplated (Article 8). The duration of the approval will be specified in the resulting agreement (Article 9). The community is to be responsible for managing the Community Forest, under the supervision of the local Water and Forest Authority.

As noted above, not a single Community Forest has been declared since 2001 in Gabon, any more than the Rural Forest Domain as a whole has been demarcated, or management planning seriously pursued.

In the meantime, the 2001 law and the ordinance of 2008, extended the means through which communities may lose routes for securing forests for themselves. This was through introduction of two more sub-categories of protected areas (Biosphere Reserves and Global Heritage Sites), amending Article 70 of the 2001 law. Communities and community forest land/product rights therefore continue to be squeezed on the one hand by the dominant focus of the Code on timber harvesting and the demands of conservation.

### **2.6.3 Focus on industrial logging: a law for loggers**

The most important provision of the 2008 Amendment (Ordinance 001) was alteration in Article 10 of the 2001 law to establish that production forests must constitute 40% of the total National Forest Domain. This compares sharply with provisions of the 1982 Code which dictated that State Forests – at the time including protected forests as well as production forests – should cover 40% of the domain. Now production forests alone must constitute this area, reflecting the revitalized emphasis given to increase timber exploitation. More positively, through a Presidential Decision of 5 November 2009, all exports were to be in the form of sawn or processed timber, not raw logs, from 1st January 2010. However, this too is not being adhered to (see below).

The focus of forest law and policy upon industrial extraction is evident, shaping the original 2001 law and subsequent decrees and orders.<sup>45</sup> The fact that many senior political figures hold concessions and permits is frequently observed as a driver and cause of slow reform in the sector. The same shortfalls have been iterated for a decade or more, including persistent exceeding of the legally-stated rate of annual timber off-take, the sustained failure of all but a minority of logging companies to operate on the basis of state-approved management plans, the failure to define the Rural Forest Domain, and the failure to pursue detailed forest zoning and allocation planning, and all this despite what appears to have been significant international assistance.

### *Expanding logging but not governance of logging*

The 1982 Code provided that the Permanent Forest Estate should be divided into two harvesting zones. Planning activity in the early 1990s classified Zone 1, a coastal zone, as comprising nearly five million hectares, of which 1.29 million hectares were made available for exploitation. The much larger area under exploitation is in the inland Zone 2, estimated as involving another 9.5 million hectares, exploitation of which continually expands.<sup>46</sup> At least half of Gabon is therefore now subject to commercial logging rights, and likely much more.<sup>47</sup> As concessions expand – and expand – it is difficult to see where periodic reference to a potential Rural Forest Domain of eight million hectares will derive from.<sup>48</sup>

The stronger objectives of the revised forest law in 2001 remain, in the intention to dramatically extend timber extraction to supplement declining oil revenues. While the production of swan and processed veneer sheets and plywood has grown significantly since 2001, raw logs still comprised the 87 per cent of wood exports in 2007.<sup>49</sup> Expansion of area and intensity of harvesting is evident. The planned significant improvement in transparency in the sector and in efficient royalty and tax collection has not eventuated.<sup>50</sup> Forest tenure concerns remain very low on the agenda. In sum, on almost all fronts the 2001 forest law is hollow in all but its rampant commercialization objectives.

## **2.7 Law on National Parks, 2007: An Improved but still Out-dated Protection Area Paradigm in Respect of Community Rights**

This law supersedes provisions on national parks in the 2001 Forest Code. It marks the culmination of steady pressure for protecting forest and related natural resources in Gabon (Box 6).

45 E.g. Karsenty, 2010, PAFC Gabon, 2008, WRI, 2009, Rainforest Foundation, 2005, Ter Heedge, 2011.

46 Figures for 2008 identify a total of 48 Concessions (CFAD/CPAET) covering 10.292 million ha, 212 other permits, covering 3.1 million ha (WRI, 2009). Putzel et al. cite 'issue of 579 permits, of which 73 were under review and inactive' (2011:19).

47 For maps see: [http://pdf.wri.org/gfw\\_gabon.pdf](http://pdf.wri.org/gfw_gabon.pdf)

48 This figure was still given as the intended area in late 2011 such as in interviews with the Director of Community Forestry and Director of Land Operations in the Ministry of Economy.

49 Kaplinsky et al., 2010.

50 Kaplinsky et al., 2010.



**Box 6: Evolution of conservation policy in Gabon**

DATE	MARKER
1946	First National Park created: Okanda (now Lope)
1954	International Convention for the Protection of Fauna and Flora in Africa
1956	Hunting regulations introduced in some areas
1960s	Several protected areas declared
1982	New Forest Code
1990s	Emerging environmental action NGOs including Brainforest exert pressure
1992	Convention on Biological Diversity, ratified by President in 1993
1994	Tropical Action Plan formulated (FAO, World Bank & UNDP)
1999	National Biodiversity Strategy and Action Plan formulated
1999	Yaoundé Declaration, creating six-nation regional partnership, COMIFAC
2000	Each of the six states agrees to set aside 10% of country for conservation
Aug 30 2002	13 National Parks created, (8 new); logging and mineral extraction forbidden
2003-05	COMIFAC Convergence Plan including respect for customary forest use
2001	New Forest Code excluding customary rights in protected areas
2004	Presidential Address L'Union 4th June 2004 pledging support to conservation and also for Pygmy rights
2005	FESP/PSFE (Forest Environment Sector Program) launched
2005	Indigenous Peoples Plan agreed (part of the above Programme)
2007	National Parks Law and creation of special National Parks Agency
2007	UN Declaration on the Rights of Indigenous Peoples voted for by Gabon

While the 2007 law certainly secured large areas of land against concessions, its provisions were only tokenly supportive of local land interests. Superficially, this is belied by provision that 'national parks are created, classified or declassified, in totality or in part, by law, with *due regard for the customary rights of the local communities*' (Article 4) (our emphasis). Article 10 repeats the conditionality of conservation of natural and cultural heritage and *customary rights of use* in carrying out of activities (our emphasis).

However, customary rights, it will by now be clear, are in Gabon's laws considered no more than use rights, without the attributes of land ownership. As with the entire Permanent Forest Estate, National Parks may therefore be simply created at will by the state with no reference at all to the possibility that these lands are already owned under customary norms, or could and should become community-owned protected areas.

Within the confines of considering customary use rights, proposals to classify or declassify a National Park are subject to local community consultation (Article 4) as are proposals to change its boundaries (Article 7). Management plans are also to be drawn up in consultation with communities (Article 21) and local consultative committees are to be created by park management (Article 45).

However, unlike many new resource-based laws elsewhere on the continent, there is nothing in the act to suggest that the state is bound to take the findings of community consultation into account. Park-adjacent communities may also be more directly involved in management

by entering a contract with the park authorities (*contrat de gestion de terroir*). Such contracts are intended to be to the economic benefit of communities as well as to aid conservation (Articles 3, 13 & 19). They are to cover 'the monitoring, management, maintenance, cultural and touristic conservation of the surrounding area' (Article 19). However, it is apparent from the law that such contracts may only be signed in relation to peripheral zones, not in relation to the Park as a whole. It is not clear that single contract has been agreed. Even the facilitating legal instrument for this is not in place.

### *Parks as just another land grab from communities?*

Creation of these peripheral zones significantly extends threats to community land interests. This is because these zones are outside the Park, along its boundary. This means that communities lose not only land rights to the Park itself but their activities are constrained in the peripheral zone (Article 13).

Within the peripheral zone, customary use is permissible, specified as including fishing, hunting, the killing and capture of wildlife, farming and forestry activities, gathering of plants, collection of minerals or fossils, providing these activities observe the law or, as applicable, comply with stipulations of land management contracts (Article 16). This confirms the 1980s buffer zone approach of wildlife conservation (retained by conservative wildlife agencies) in which customary ownership and use rights are extinguished within the park, and supposed to be compensated for by permission to harvest products traditionally in adjacent areas – on conditions.<sup>51</sup> This was already the position in respect of such areas in the Forest Code 2001.

Around 15,000 people were identified as affected by 2005.<sup>52</sup> Many are Pygmy customary land holders in areas now covered by Birougou, Ivindo, Lope, Minkebe and Moukalaba National Parks. Nzebi are also directly affected by the establishment of Birougou National Park, a main site of traditional habitation before their removal to roadside settlements.<sup>53</sup>

More positively, the law provides that environmental organizations including NGOs may serve as plaintiff in any process which defeats the interests of the law (Article 72). Even within the limitations of the Park law, this could prove an opportunity for challenging the establishment and management of the park on grounds of a failure to follow due process. This may be useful in respect of the failure to deliver on implementation law towards management planning and within which at least local use rights and benefits could be specified. It will not help in securing local land and resource ownership rights, which the law precludes.

## **2.8 Mining Law, 2000: Sealing Dismissal of Even Minor Mineral Rights**

Gabon is known to have significant mineral potential in yet undeveloped areas. Historically, vast concessions for exploration and extraction have been issued.

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51 Alden Wily and Mbaya 2001, Nelson (ed.) 2010.

52 Ter Heedge (undated) after Schmidt-Soltau for MEFEPERN 2005.

53 Knight, 2003.

Other than offshore oil, Gabon is the world's second largest manganese dioxide producer, with substantial reserves.<sup>54</sup> Gabon also has the potential to produce up to 15 per cent of global niobium (specifically, from a mine near Mabounie). Iron ore is another significant resource (see below). Gold has been mined in Gabon for several centuries and commercially viable gold production continues in the Eteke region, along with diamonds produced near the Congo border, but at low levels. Gabon used to be a main producer of uranium but deposits are depleted. This was not without cost. It is reported that uranium mining in the 1950s at Mounana by the French company, COMUF, has left a terrible legacy of rapacious cancer among workers over its 40 year mining period.<sup>55</sup>

Revisions to mining legislation were made with a new Mining Code in 2000 (Law No. 5 of July 2000).<sup>56</sup> This maintains the position that all useful mineral substances in the soil and under the soil in Gabon are the property of the state (Article 4). Article 21 gives precedence to mining concessions, although the holder of a mining concession may agree to other mining, oil or timber concessions being developed within the concession area granted to it. Four types of mining concession are granted; for prospecting/reconnaissance (two year permits); for exploration (three years, renewable for a further three years); for mining within a specified concession area; and for mining without a concession for extraction of construction materials and related minerals.

Extractive concessions are allocated initially for 25 years (Article 77) with renewal for a further 10 years, and renewable again as many times as required (Article 80). The award of the concession area is distinct from the mining permit, which is granted for five years and renewable also for as many times as required. Allocation of mining concessions is permissible only after a public inquiry or study (Article 77).

The law reminds concession holders that their right does not include ownership of the soil or sub-soils; their right is to the mineral only (Article 79). Following a public inquiry and environmental and social impact assessment (Article 73), a mining concession may be granted exclusive entry and use of part or all of its area (Articles 114 & 115). Given the potential large size of concessions, numbers of local people must be affected. There are no provisions in the law concerning local rights of access to these mining concession areas, or rights of use.

Up to date information on the number of mining concessions existing today and the total area they absorb was not available to this study. Maps published by other agencies suggest most of Gabon is under exploratory or extractive mining concession.<sup>57</sup>

It is known that Chinese interests have been prominent over recent years. Comibel (*Compagnie minière Belinga*), a Gabon State-Chinese joint venture, was awarded a large iron ore mining

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54 <http://www.mbendi.com/indy/ming/af/ga/p0005.htm>

55 Gehriger, 2004.

56 Earlier mining laws include Law No 15/62 (1962), Decree No 981/PR (1970), modified under Ordinance 45/73 (1973). The oil and gas sector is governed now under a separate Hydrocarbons Code, 2011.

57 [http://pdf.wri.org/gfw\\_gabon.pdf](http://pdf.wri.org/gfw_gabon.pdf)

concession in the Belinga mountains in northeast Gabon in 2006. This included infrastructural support for the mine including development of a shipping port, railway and hydroelectric dam. The deal became more and more expensive for the Government of Gabon. Environment protests, led by Brainforest, concerning the effects of mining on the Ivindo National Parks raised further concerns in 2009. The Gabon Government began to renegotiate the deal in 2010.<sup>58</sup> This failed and resulted in the eviction of Comibel in the area in December 2011. Reuters then reported in February 2012 that a new deal to develop the iron ore had been reached with the Australian-based mining giant, BHP Billiton (4 February 2012).<sup>59</sup> Details on the deal are not available.

## **2.9 Local Government Law, 1996: Democratization Not Really Intended to be Applied**

Legal commitment to devolutionary decentralization has existed since 1996 but like so much in Gabonese law, remains on paper. Decree No. 1394-PR/MI of 28 December 1977 was amended by *An Organic Law No. 15 of 6th June 1996, Relating to Decentralization*.

This is a substantial law of 267 articles providing for significant power-sharing with institutions down to the urban borough and rural village. These agencies are to be in the form of a hierarchy of elected councils at village and county (district) level in rural areas and at city, municipal and borough levels in urban areas.

The transfer of powers to these bodies is to be significant. Powers include: land use planning, health, welfare, education, land registration, housing and habitat matters, environment and sanitation, urban planning, culture, tourism, rural water supply, equipment, roads, urban transport, major and minor water development, youth, sports, agriculture, fisheries, stock breeding (Article 237). Additional responsibilities may be devolved (Article 238).

The agencies reflect a modern vision of combined socio-spatial authority, that is, that each 'collectivity' has authority over a specific discrete area. These are designed to be financially independent, drawing upon a range of local taxes on personal income, profits, value added goods, and duties, and including a land tax (Articles 157). The state may supplement this income, through block grants.

Definition of where and how these councils will be located is to be based upon territorial and demographic considerations (Article 12). Each council/commune will be governed by a legislative and executive body (Article 21). The legislature is a fully elected council, following secret ballot and first-past-the-post procedures, and empowered to regulate and in ways which must be upheld in the relevant area. The executive is a board, itself made up some of the elected members, and charged with implementing the decisions and duties of the council. In all cases, elected persons serve for five years. In rural areas each department will comprise a number

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58 Putzel et al., 2011:28.

59 <http://af.reuters.com/article/investingNews/idAFJ0E81301X20120204>

of County Councils (district councils) and Rural Community Councils at village level (Articles 22-23, 42-43).

**Figure 4: Provinces in Gabon today**



For a rural settlement to be gazetted as a ‘collectivity’, and to be able to elect a council, there must be at least 100 inhabitants (Article 8). Its board will be led by a mayor and assistant from among the elected councillors (Articles 69-70).

The level of devolution of power to village level is imprecise. The law endows County Council with considerable powers and responsibilities (Article 80). The Rural Community Council is bound to implement the County Council’s decisions (Article 96). The village mayor is addi-

tionally responsible for 19 specified tasks ranging from responsibility for ensuring burials take place to proposing a development plan and budget to the council bard, implementing community work, and notably, for 'maintaining and administering the common properties of the community' (Article 98).

MPs, Senators, heads of health units and other service leaders in the civil administration of the state may attend rural community councils meetings in an advisory capacity (Article 47).

The law is indisputably disposed towards devolutionary governance to at least the District level in rural areas. Rural Community Councils may in practice serve more as implementing bodies for District and higher decision-making (e.g. Articles 233 & 264).

Nevertheless such concerns are meaningless at this point. The law has simply not been put into effect. Even the most basic enabling decrees have not been issued in the 16 years since its enactment. Some warning that this might be the case is found in ample provision that transfer of powers and transfer of skills will be 'implemented gradually', that powers will be delegated in different spheres at different times, and may vary in different areas (Articles 235-64). Moreover, all powers delegated are concurrent with powers vested in higher levels of government, suggesting devolution of real authority will be at the discretion of the state (Article 233, 264).

## **2.10 The Investment Charter, 1998: Attracting Land Based Investors**

In 1998 Gabon enacted Law No. 15 of July 23, 1998 to encourage and protect investors. The Charter reinforces and encourages the longstanding trend of handing over land and resources to private enterprise.

The Charter makes the private sector 'a partner of the state in promoting social and economic development through private sector expansion'. Foreign persons are welcomed and free to undertake any trade and production activity (Article 1). Ownership rights linked to lands, buildings, exploitation materials and those tied up to personal property goods are guaranteed (Article 1).

Investors are assured that Gabon is a member of the World Trade Organization and follows its international commercial rules (Article 2). Bilateral agreements, membership of multilateral treaties and international commercial arbitration bodies are also cited as sources of investment guarantees.

The establishment of an investment promotion agency is noted (Article 6). Tax advantages are laid out including possible suspension of custom duties, a null rate on the VAT of exported products, tax exemption on companies in their first three years of life, postponements in payments to improve company cash flows in their stage of profit improvement, implementation of a tax credit system favouring research, vocational training and environmental protection measures and compensating investors for investing in social services in rural areas, and with adjustment to real estate taxes to correspond with the level of local authority services provided (Article 14).

### 2.11 Agricultural Law, 2008: A Law for Investors not Farming Families

This enactment is not a generic sector law but designed to promote large-scale private investment in farming and ‘a favourable investment environment’ (Article 2). The law is prefaced by reference to no fewer than 27 decrees relating to agricultural investment and receipt of loans such as from Citibank, Eximbank of China, *Banco Bilbao Vizcaya Argentaria* and the Islamic Development Bank (BID). Investment is instructed to protect the environment, improve the structures of agricultural exploitation including making this more competitive, and have the effect of diversifying activity and promoting employment, improving conditions in rural areas, and encourages farm forestry, irrigation and seed production, and establishment of pasture and forest plantations. Agricultural investment zones are to be defined (Articles 2-6).

The law pledges secure legal conditions for investors, facilitates access to credit and provides for viable investment to receive grants, bonuses and allowances and tax and customs exemption incentives. It also pledges to see procedures towards private entitlement simplified and accelerated.

Agreements prompted by the agricultural and investment laws are multiple. One of the more notable is the Order for the Creation of the Special Economic Zone of Nkok (undated) providing 1,423 ha to OLAM International to serve as Technical Partner in the development of this area, as discussed in Chapter Three. Another is provision of 35,354 ha to OLAM Palm Gabon to develop the very first stage of a 300,000 ha commitment by the Government of Gabon to provide land for oil palm plantations and processing, Licence No. 74/11 of October 2011.

### 3 Conclusions

It is difficult to conclude that contemporary land and related resource laws in Gabon are sound, fair, or sustainable. For the majority of citizens rightful security of tenure or even the hope of security of real tenure other than use rights simply does not exist.

The laws are elderly, largely dating from 1963, and opaque in key provisions, particularly as relating to the nature and sub-categorization of the State Domain, which is critical for understanding where the rights of rural occupants stand.

Worse, the failure to follow up key laws or parts of laws with necessary enabling instruments makes key policies embedded in the law hollow. As well as undermining the function of law, this bespeaks a dismissive political attitude to the rights of citizens, especially given that these failures most affect the definable rural and urban poor. This abuse is most apparent in respect of the forest, parks, and decentralization legislation, mocking boldly pronounced provisions in these laws.

Most damaging are (i) legal failure to deliver upon the promise of delimitation of a rural domain within which communities can secure tenure; (ii) to protect urban occupants from wilful eviction; (iii) to provide the mechanisms through which forest concessions and national park administration must assure practical access and benefit to those who have, in effect, been forced to hand over their resources to logging or park causes; and (iv) to make real the 1990s promise of more devolved and democratic governance.

Whether applied or not, the substance of some of the key land and resource laws also leave a great deal to be desired. From the Constitution onwards, the fundamental failure is to respect existing customary and other longstanding occupancy of land and use of resources as having the force of real property in the modern world. Only lands for which there is registered entitlement are held to be property and accordingly protected from undue loss.

Remarkably few Gabonese have the formal titles which could assure them of such protection, if only in the form of reasonable compensation for lands taken by government for other purposes. Only 14,000 titles exist in the private sector. The 5000 or so formal rights granted over state lands are for commercial purposes, and in themselves entirely supersede and effectively displace and extinguish any opportunity for rural populations to secure those lands themselves.

The very notion of deeming untitled land as therefore unowned in the eyes of the law and undeserving of protection is outdated. It is premised on a retained colonial presumption that Africa was without owners and remains so. It turns most of the urban and rural population today into technically landless, permissive tenants of the state.

This would be of less concern if the nature of the state as operationally the nation, not just government, were effective, but there is no evidence that this is the case. Instead the Government of day is the state, and landlord over at least 85 per cent of Gabon. This exposes the



country, the resources and the population, to unusually high vulnerability to political caprice, manipulation and rent-seeking. That is, people's security of tenure is dependent upon the political will of current leaders, not upon the assurances of law.

This kind of situation historically has more in common with dictatorships than modern agrarian democracies. Provisions and remedy against unfair decisions by the state are scant. It is fair to say that the only surety given to Gabonese in 2012 is that they may use land and resources – but only so long as this does not interfere with other preferential uses as determined by politicians of the day.

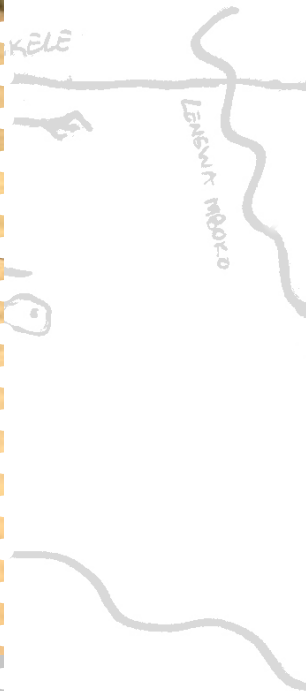
Use is actually quite favoured in Gabon's land laws. These are structured to make land and resources widely available through lease or concession, and on terms which are lasting. The problem is that such provisions are almost entirely geared to commercial exploitation of those lands. Therefore, the majority urban and rural poor are defeated on both sides; on the one hand their longstanding and/or customary ownership of lands is not provided for. On the other, provision for land use is limited to the handful of Gabonese who have the capital to exploit lands commercially.

Nor could the poor even meet the conditions of development such as the law demands, again the privilege of the rich. For example, a poor occupant in Libreville (and *most* are poor) cannot meet the building conditions which entitlement requires. Nor can a humble rural family or community succeed in providing the investment in land clearing and development needed to secure its traditional territory as, for example, a commercial agricultural concession of repeatedly renewable term.

In these ways, the land and resources laws are intrinsically unjust. And as noted above, various palliative measures such as setting aside a certain area for village use, requiring concessionaires and national parks to prepare management plans which permit local use of some parts of what have become their areas, or the institutional governance mechanisms needed to facilitate community or neighbourhood level claim against abuses, have not materialized. These do however have a long echo, which will be taken up in Chapter Three. First, Chapter Two takes a step back, aiming to discover how these extraordinary conditions in 2012 have come about.



— Women play a vital role in customary forest management regimes, but this is unrecognised in the law



Ki'i

## Chapter Two

# Looking Back to Better Understand the Present



## Introduction

Chapter One established that modern Gabonese have very limited land rights. The state is the majority land owner, its domain covering up to nine-tenths of the country. Only a quarter of this land is national property in the true sense, as public lands dedicated to public purpose. The remainder of the State Domain is deemed to be the private property of the state. This allows the government of the day to operate, in effect, as a private person, and landlord. Determination of access and issue of rights to these private state lands is through laws which are premised on a presumption of Gabon as a land without owners (*terra nullius*), both past and present.

Recognition that ownership exists ('property') is only through registration and only registered properties are protected. Opportunities to register properties are however themselves very limited; either the urban house owner is not able to meet the costs of the procedure or building requirements laid down in towns, or the rural family or community is unable to secure its traditional or contemporary properties for lack of information or means, or because only cultivated lands are eligible, or because allocation options are so preferentially structured to privilege extractive, transformative (clearing and farming), and commercial land use.

Modern Gabon law not only denies its citizens due protection of customary and other long-standing property rights, but also favours the capture of these presumed 'unowned' lands by commercial enterprises and associated elites.

The objective of this chapter to trace how such land policies and the legal paradigms which embed them evolved. This requires looking back to the colonial era. For it was in this era that formal property law was introduced. It may also have been the era in which fine words were pronounced and new laws laid down but where habits of failing to make provisions workable were also formed. Or this may turn out to be a more modern failing, limited to post-Independence governments.

This chapter also has another objective: it wants to discover if Gabonese historically arranged their land relations in ways that justify modern denial that lands and resources in Gabon today are owned, or were owned. This means exploring the territoriality and land use systems of the indigenous population. Indigenous, it may need reiterating, includes all inhabitants of the country who have strong economic, cultural and spiritual ties with the land and resources; that is, not just Pygmies but other Africans.

## 1 Early Settlement of Gabon

### *Long occupation by hunter-gatherers – and cultivators*

What we do know about Gabon was that it was anciently occupied. Archaeological works, including stone tools and inhabited rock shelters (notably in Lopé) show habitation from 30,000 years ago and continuous – if low density – hunter-gatherer occupation since.<sup>60</sup> Ceramic and iron artefacts suggest that hunter-gatherers were joined by more settled communities up to 4,500 years ago and more definitively, from 2,700 years past. Some evidence of early cultivation in northern Gabon also dates from this era. Strong diversity in ceramic styles in Gabon sites indicates that these farming communities were isolated from one another.<sup>61</sup>

### *Migration as a historical constant in and around Gabon*

Exactly who these ancient hunter-gatherer and cultivator inhabitants were is less clear in terms of their relations to modern-day Gabonese. This is because migration within and around the Congo Basin region has been substantial for millennia. The earliest occupants, Pygmy hunter-gatherers, themselves have ancient origins further to the east of Gabon. Migration also characterized the establishment of Bantu societies. The Great Bantu Migration into what is now Gabon seems pivotal although there were non-hunter-gatherers in Gabon before this. That Migration saw Congo-Niger speakers (Bantu) migrate from Cameroon, Central African Republic and DRC more than two thousand years ago, expanding into east and southern Africa over the next 1750 years.<sup>62</sup>

Of surviving non-hunter-gatherer populations in Gabon, the Myene may have been the earliest arrivals, settling along the Gabonese coast as fishing communities before the 13<sup>th</sup> century. Other groups followed, most recently the Fang, who first arrived in the north in the late 18<sup>th</sup> century and moved south and coast-wards in the mid 19<sup>th</sup> century.<sup>63</sup>

### *Hunter-gatherers and cultivators were originally a single population*

Culturally and economically Pygmies and Bantu in Gabon are quite distinct peoples. However genetic and linguistic tracking show these groups were one population 60,000 years ago. Nor is it incidental that there is no separate Pygmy linguistic family. All Pygmies speak Niger-Kordofanian and Nilo-Saharan languages confirming ancient social integration with other Africans. This remains the case until the present. Modern-day Pygmies speak the same or a variant version of the language of the farming community they live among. There are three exceptions among the 20 or so groups in Central Africa. One is the Baka, who live among the Fang in northern Gabon but speak an unrelated language.

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60 Bahuchet, 2012 collates rich sources of archaeological and genetic evidence along with his own extensive linguistic studies.

61 Bahuchet, 2012.

62 This migration ended quite recently; as well as Arab traders recording that Bantu had not reached as far as Mozambique by the year 1000, early European settlers observed the Bantu expansion into South Africa by Zulu and other groups in the 18<sup>th</sup> century.

63 The Fang speak an Ubangian language in the Nilo-Saharan group.

While hunter-gatherer occupation of Gabon is ancient, it is less certain that modern Gabonese Pygmies are their direct descendants. It is possible that some may have migrated with incoming societies during the last one thousand years. While Baka Pygmies are known to be recent immigrants into northern Gabon, Bakola (or Bakoya) Pygmies of north eastern Gabon, and especially Barimba and Bagama Pygmies of south western Gabon claim much older origins in their current locations. Oral traditions suggest that arriving cultivator societies always met with Pygmies on arrival who served as their guides of the area.<sup>64</sup>

*Territoriality is ancient in Gabon and among Pygmies possibly continuous over millennia*

Globally, hunter-gatherer societies are known to operate in very large territories, within which they move around. A territory may cover hundreds of square kilometres. This, along with the linguistic and genetic isolation of Pygmy groups suggests territories were very large. Internal environmental or social pressures could easily force a group to relocate its use-centred camps to a more remote part of its domain. This appears to have been the case with both Baka and Bakola whose territories respectively spread widely beyond Cameroon-Gabon and Congo-Gabon boundaries. Even though some of these groups have arrived recently in Gabon (even 1960 in the case of Baka) the areas they have chosen to settle in could well lie within their original greater territories. Whether this is shown to be so or not, the fact remains that Pygmies and other hunter-gatherers in Africa are rigorously territorial and nomadic only in so far as they move frequently *within* territories, which are agreed among different groups as belonging to each respectively.

What may be concluded is that Gabon has been long occupied and settled, no matter how sparsely. Both the territorial nature of hunter-gatherer society and the nature of land-clearing farming societies suggest that notions of territoriality go back a long way.

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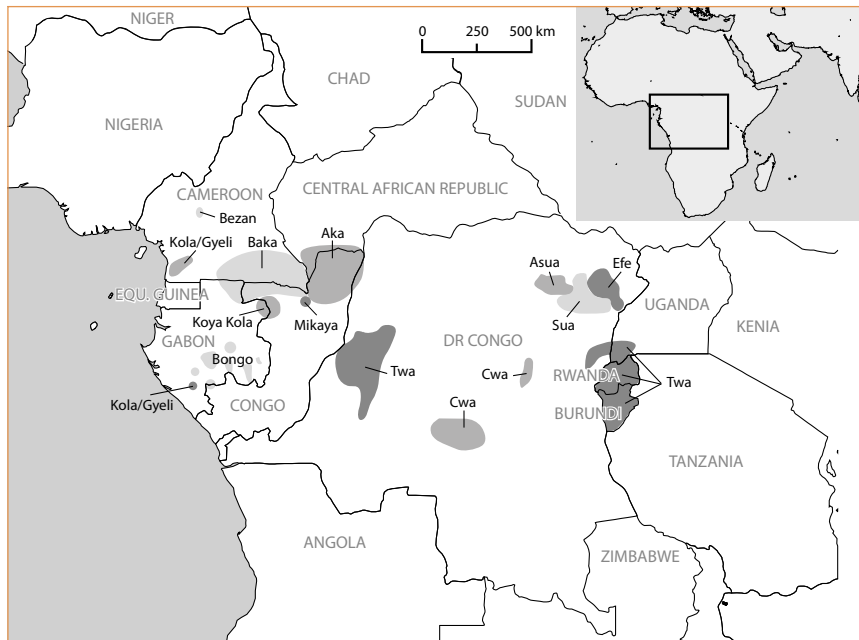
64 Knight, 2003, Bahuchet, 2012.

**Box 7: Hunter-gatherers in Gabon**

Hunter-gatherers represent around 2% of the total African population. Hunter-gatherers are similarly a minority population in Gabon. Estimates range from 10-20,000 persons or around 1%.<sup>65</sup>

Members of this minority are broadly referred to as Pygmies and have ethno-linguistic and historical links with other Pygmy groups in eight other Central and East African states. While Pygmy is not a name they apply to themselves, it remains in use as a convenient means of expressing their collective hunter-gatherer identity.<sup>66</sup>

**Figure 5: Location of Pygmies in Central Africa** [source: Bahuchet 2012:62]



Pygmies share no common language or even a language group. They speak the languages of patron non-Pygmy groups and have done for many centuries.

Self-identified groups in Gabon today are Baka, Babongo, Gakoya, Baghame, Barimba, Akoula and Akwoa. None are numerous. Baka, living in the northern Woleu-Ntem and Ogooue-Ivindo Provinces, are one of the larger groups but comprise only 500 people. They maintain links however with some 40,000 Baka in Cameroon and Congo.



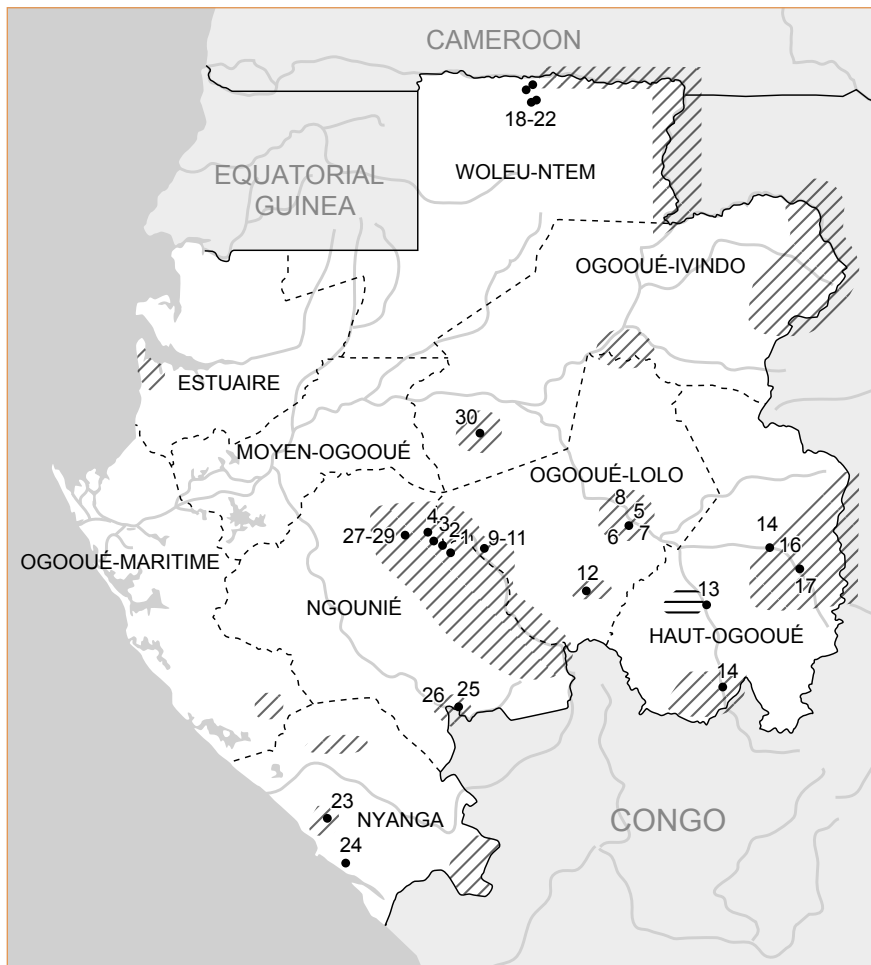
65 IWGIA, 2011, Schmidt-Soltau, 2005, Knight, 2006. Most figures derive from the calculations of the Association for the Development of Pygmy Peoples (ADCPPG), headed by D. Massande, which compiled a census in 2005.

66 At least one hunter-gatherer NGO in Gabon retains the term on grounds that it is not the word but the meaning which needs to change (Oosting, 2011).



Hunter-gatherer/Pygmy occupation in the area now known as Gabon reaches back 30,000 years, coinciding with known occupation of Southern Africa by other hunter-gatherers, the San/Bushmen, known to be living in the south for 50,000 years. Pygmies in Southern and Central Gabon (Babongo, Barimba and Bagama) are the oldest Pygmies in Gabon. Northern Baka and eastern Bakola (Bakoya) arrived later.

**Figure 6: Location of Pygmy Groups in Gabon Today** [Source: Knight 2003:1]





## 2 The Mercantile Era: 1472-1842

A more precise indication of settlement patterns is obtained from recent history as recorded since Europeans visited, settled and then captured control of the area. It is useful to divide this modern era into the first trading era (1473-1842), a littoral colony era (1843-1886) and then the expanded colonial era, extending until Gabon was liberated from French control in 1960.

### *Slave-trading did more to shape local territoriality and land ownership in Gabon than any other factor*

Background on the slave trading era is necessary, as this provoked change in the location of many groups/peoples living within what is now Gabon. Portuguese traders first arrived in the Komo River Estuary in 1472/3 and called it Gabao (the shape of a hooded cloak). They explored the coast. They did not settle, preferring the islands of Bioko, Sao Tome and Principe for creating sugar plantations. But they did set up a trading post in the Port Gentil area (Mandji) and in several other points. These gradually multiplied. Over the next century, English, Dutch and French traders slowly joined them, particularly after the Portuguese lost power due to its annexation by Spain a century later (1580).<sup>67</sup>

### *Europeans found Gabon occupied and owned no matter what later laws would suggest*

There is nothing to suggest that traders found the region unpopulated. Instead reference is made to meetings, dealings, and sometimes decimation of local coastal populations.<sup>68</sup> Broadly, Pygmies, Ndiwa, Seke or Asheriani are reported as coastal communities in the 15<sup>th</sup> century. Over time more peoples moved coastward. By 1790, Mpongwe, Orungu, Nkomi and Galwa dominated.<sup>69</sup> Benga, with origins in Cameroon, and Nombakele, with origins in the east, also arrived. Central areas (*le massif central du Gabon*) were inhabited by Tsogo, Pindji, Nzabi and Puntu, claiming origins from further south. Fang from Cameroon had also begun moving into northern Gabon by 1780. At the same time, local population was sparse enough on the coast to require increasing reach inland to effect trading; not least because the main commodity was people (slaves).

From early on, Portuguese in Fernando Po needed cheap labour, and the capture or purchase of slaves along the coast began. Ivory, hardwoods, and wild rubber were also bought from natives. By 1660 slave trading dominated and affected the entire coast and inland trading networks. However, it is important to note that Portuguese or other European entry into the interior, beyond near coastal areas, was extremely limited. Africans continued to control the interior.<sup>70</sup> Du Chaillu, travelling in Gabon in 1855-1859 frequently remarked in his diary that Europeans did not extend beyond a few miles from the coast.<sup>71</sup>

67 De Saint-Paul, 1989, Weinstein & Gardinier, undated.

68 Ratanga-Atoz, 1985.

69 Gray, 2002.

70 De Saint-Paul, 1989.

71 Du Chaillu, 1861.

### *Gabonese were profoundly involved in slave and then commodity trading from the outset*

Thereby, Africans, not just Europeans, were involved from early on as traders. Africans did the slave-finding and transporting and brought them to European ships. Caravan leaders (*mubiri*) in turn did not necessarily conduct raids themselves but relied upon the clan leaders they established contacts with to do this for them, goods changing hands in payment.<sup>72</sup> Furthermore, to bring slaves successfully to the coast to be sold, the *mubiri* had to negotiate safe passage with other local leaders in the lands through which they passed. Finally, local coastal leaders fairly quickly established control over contacts to ship captains. Du Chaillu described the layers of African trading in detail and which was marked by long chains of advances, inland suppliers often only obtaining returns several years after the initial transaction was made (1861:9-10).

In this way many Gabonese were integrated early into early commodity capitalism, their 'products' (slaves) reaching not just Europe but the Americas. Subsistence farming and fishing would quite early on decline among leading families on the coast.<sup>73</sup>

Initially, the slave trading network derived from outside Gabon, run by Vili clans of the Kingdom of Loango in modern-day Congo. Vili extended their trade northwards into south and central Gabon. They sold their human cargo to Portuguese, Dutch and newer French and English traders setting up shop in the bustling Loango, Malemba and Cabinda ports. "All told, nearly one million slaves were exported from this Loango coast between 1660 and 1793".<sup>74</sup>

By 1770, Vili suppliers were being replaced by more local suppliers, including Bamwele, Orungu control of the Ogooue River and stations at Cape Lopez and Fernan Vaz, with Mpongwe dominance of the Gabon Estuary trade. A figure produced by Gray 2002, itself based on Vansina (1990) is reproduced below to illustrate the expansion of the slave trade in Gabon before 1830 and the rough location of key trade routes.

## **2.1 Promoting Territorial Possession**

From a tenure standpoint, the intimate involvement of Africans in slave and other trading is important. For their up-river and inland exploits demonstrated a great deal of social organization and that related territoriality existed.

### *Slave trading revealed land relations and heightened territoriality*

Evidence of this is found in the fact that there were plenty of local leaders to deal with and who largely took charge of raids for slaves in the areas they controlled or began to control as 'their lands'. This included resettling some of their people in remoter areas to protect their interests. Second, as noted above, traders had to negotiate with those whose lands they passed through,

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72 Gray, 2002.

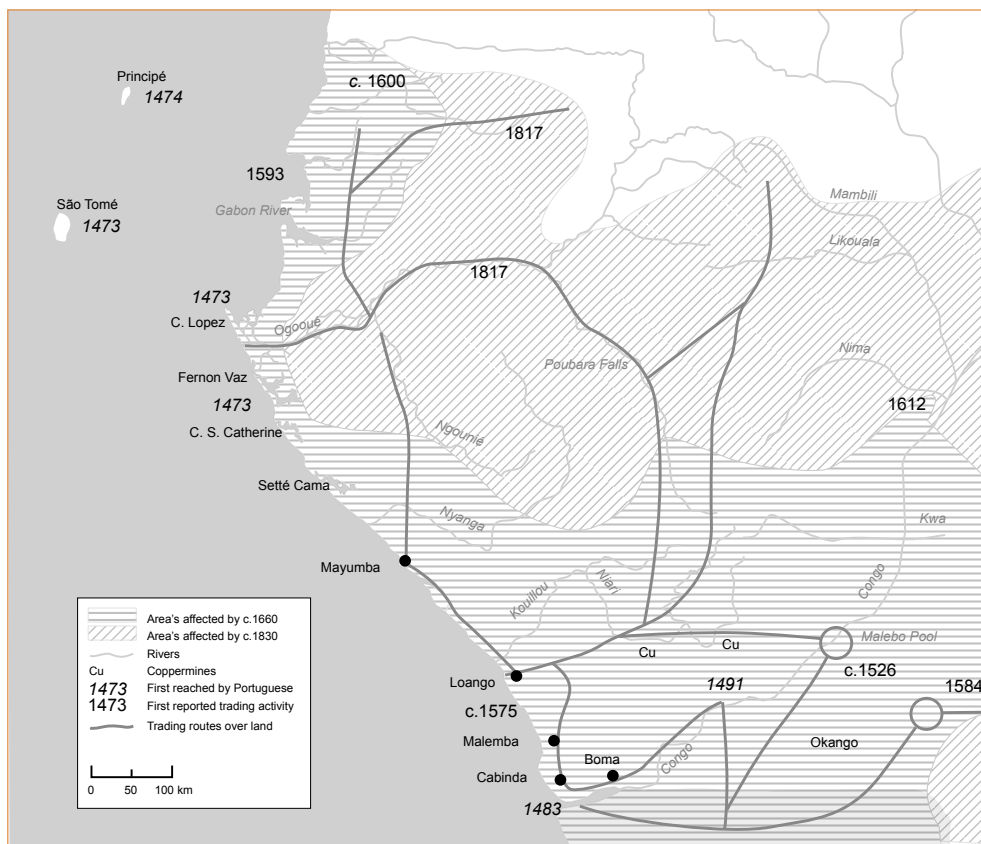
73 Rich, 2010.

74 Gray, 2002:28.

or more usually, whose rivers they controlled. Third, when they brought their human purchases to the coast, traders had to deal with local populations such as Mpongwe and Orungu who as the possessors of those areas set themselves up as the conduits to the European buyers through which traders had to pass.<sup>75</sup> Where not just slaves were the commodity being traded but ebony, ivory, wild rubber sap and raffia, clans controlling areas with these resources were even more possessive. If a sense of territoriality already existed, then trading brought this to new heights. At times, who controlled which area and route could be a matter of life or death – or enslavement.

**Figure 7: The extent of the slave trade in Gabon in 1830**

[Source: Gray 2002:28]



## 2.2 Traditional Territoriality

It is wise to pause here and review what has been said about local organization of Gabonese society in this era. The general view from the literature is that territories were not precise in the sense of having absolute boundaries. Settlements were remote from each other. Expansive areas between them could exist, which du Chaillu, the great explorer, would a century later

75 Vansina, 1990 as cited by Gray, 2002, Gray and Ngolet, 1999, Gray, 2002, Bernault, 2005, Chamberlin, 1978, Du Chaillu, 1861.

(1861) describe as 'dead zones'. That is, significant areas of no-man's land existed. Nevertheless, this in itself reinforces the obverse existence of 'our areas' or owned lands.

At the same time, historiography in Africa has come to learn the dangers of presuming that just because an area is not visibly settled or harvested, let alone farmed, that it is therefore not under the control of one or other group. There is some evidence that Du Chaillu, for example, did not sufficiently observe how much territoriality existed among the tribal lands he passed, although he admits he always had to negotiate when he entered new lands.

Moreover, the areas controlled by one or other settlement could be within or overlaid by much larger ideas of territory, as maintained by hunter-gatherer groups. This was clearest when Bantu clans expanded their territories or removed themselves to new areas to capture ivory or slave trading opportunities. Gray gives examples from several authors of Pygmies guiding their patron clans into areas and defining the limits of its area by reference to limits of their own domains in relation to other Pygmy groups.<sup>76</sup> He cites du Chaillu's conclusion in 1867 that "It is the pygmies who fix the territorial boundaries of peoples and this according to both ethnic groups and clans". Pygmies themselves were deemed well fixed to the land and did not move beyond 'their areas' (*ibid*).

### 2.3 Social Definition of Space

What were these Bantu territories which overlaid Pygmy territories? Vansina, says Gray (2002) laid out an analysis which placed the village as the anchor of society, each of which had controlling rights over a defined area. The village, he said, comprised Houses. Each of these was an extended household, including associated client families providing artisanal specialties and labour/slaves.<sup>77</sup> The village was the root of organization. It is interesting to read in Du Chaillu's report of his travels that many of these villages comprised well-organized streets, with houses laid out on either side (1861: 143). It might or might not constitute a clan or part of a clan. Villages would not necessarily constitute one ethnic group or language. Most often the clan existed as a complex of associated villages in the area. Together these formed what Vansina referred to as a district. One clan would dominate in that district but other clans were also inhabitants. These clan areas or districts could be large or small, not often more than 500 square kilometres in area.<sup>78</sup>

#### *The village, past and present, as the core of land rights*

Many researchers have emphasised that villages and districts were not spatially defined but socially-defined, that they only came about through complex clan relationships and were governed by clan-based institutions. That is, the reach of a district was only so far as kin relations extended. Much of Gray's famous research in Gabon was to demonstrate that pre-colonial society was in fact a-territorial, and that it was only with trading and colonialism

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76 Gray, 2002:51-52.

77 Gray, 2002:11.

78 Gray, 2002:107.

that the typical transition from *social definition of territory towards territorial definition of society* evolved.<sup>79</sup>

Ownership of the territory in either case was collective.

“Each clan had a domain. This was collective property and individuals of the clan had rights to build and exploit resources freely. Members of other clans were able to use those resources only with the authorization of the clan which owned the area” (N’Nah, 1979:60).

### *Classical communalism: the soil is owned by the collective, the rights to use it owned by families*

Land use was not collective. Plantations (farms) were private to the family or house. Hunting, fishing and commerce were undertaken in groups, but as trading evolved, commercial transactions selling ebony or ivory were individual. Ownership of the land itself was collective. Rights granted to families or villages were usufructs —

“... this is why the clan leader can by himself decide the granting of these rights and delegate his powers to the lineage or village heads ... When it came to the transfer of land ownership a clan head could not act alone but was obligated to consult a clan council” (Gray, 2002:75).<sup>80</sup>

Shifting cultivation was the norm in settled communities, with farms and sometimes settlements moving every 15 or so years. There were also many different social reasons for moving from a site, including disease. In the process there could be some reformation of villages with adjustments made in the component Houses, some hiving off to join or form other villages. In normal circumstances such movement was restricted to the known territory.<sup>81</sup>

## **2.4 Class Formation**

### *Early incorporation into capitalism and creation of elites*

The incentives of goods and wealth which could be generated through participation in trading makes it unsurprising that territoriality was enhanced. It is similarly unsurprising that engagement with trading also promoted class formation. Society was by no means egalitarian in the mercantile era, long divided into free and un-free men, with an intermediate class of persons who were children of unions between free and un-free members, and who under the right conditions could become free.<sup>82</sup> Various degrees of serfdom, clientage, and slavery existed.

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79 Gray, 2002:18-22.

80 Gray, 2002, including a citation by Agondji-Okawe, 1973:75.

81 Vansina, 1990 as cited by Gray, 2002. Gray & Ngolet, 1999.

82 Ratanga-Atoz, 1985, Gray, 2002. Du Chaillu, 1861 (142ff).

The rise of 'big men' in villages and clans was discernible by 1830.<sup>83</sup> They in turn created chains of alliances and deals with other 'big men' stretching from the coast to the hinterlands. Thus while notions of 'our lands' consolidated on the ground, this was cross-cut vertically by the early beginnings of wealth-based social polarization, laying the basis for the rise of local elites during the colonial era.

## 2.5 Displacement

At the same time the Atlantic slave trade induced an opposite effect to strengthening of territorial possession by clans and villages. First, weaker groups routinely had to flee slaving raids, moving into more inaccessible areas. Second, there were signs of planned migration for the sake of trade by 1800, entrepreneurial clans seeking to control aspects of the slave, ivory or ebony trade. Both trends would increase during the 19<sup>th</sup> century.

— **An engraved print, giving idealized view of Africans with trade goods greeting Europeans**

Source: Louis Freret, *Arrivée des Européens en Afrique* (Paris, 1795)



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83 Gray, 2002.

### 3 The Enclave Colony: 1846-1886

By 1800 European purchase of slaves began to be more equally complemented by purchases of ebony, ivory, rubber sap, and raffia cloth. This was due to rising disapproval of slavery in Europe, which would take most of the 19<sup>th</sup> century to end. Broadly, the pattern which accrued was for slaves in Europe to be liberated (initially by the French Revolution in 1793), then slave-trading by nationals outlawed (as made law in France, Britain and Holland in the 1800s), and only later for slavery within colonies to be prohibited (e.g. 1848 in French colonies, 1874 in Gold Coast). British warships patrolled the Atlantic Coast from 1807, fining captains of English ships £120 per slave transported and increasing this to imprisonment in 1811, a more effective disincentive. However, Portuguese, Spanish and Brazilian traders replaced the departing British, French and Dutch slave ships, seeking to supply slaves for Cuba and Brazil. The Sao Tome slave markets would not close until 1870. Du Chaillu described at some length how slave trading was continuing at the time in Cape Lopez and observes 600 slaves being boarded on a ship (1861;141-48). This was despite some 60 or so British, French and American ships guarding the coast against slave ships. 'But with all this force to hinder, the slave trade was never more prosperous' (p. 146).

#### *Moving out of human cargo into commodity trading*

From especially 1830 onwards there was new incentive for trading in Africa: selling the multiple manufactures being produced by the Industrial Revolution.<sup>84</sup> Industry in Europe also needed raw materials, and this included rubber and timber from Gabon. For European companies, securing trading privileges in as many areas as possible was a priority, backed by home governments. Added incentives for incursion were humanitarian concerns accompanying the ending of slavery and missionary zeal 'to convert and civilize Africans'.

#### 3.1 Ceding Sovereignty for Promised Advantages in Trading

These ambitions led to competitive agreements all along the Atlantic Coast to set up trading houses and curry influence with local chiefs. Still by 1830, European incursion into the interior was minimal. The British dominated in the Gulf of Guinea. The French sought to increase their trading opportunities from around 1815. By then, there were several trading enclaves along the Gabonese coast. The lands of King Glass (as Chief R'Ogouarowe was nicknamed, whose lands would become a suburb of Libreville) were already a major trading centre for British, American and German companies.

Between 1839 and 1946 the French Government stepped in and signed treaties with four chiefs in the Estuary to Cape Esterias. All agreed to stop slave trading in return for the privileges of French protection. What was that 'protection'? The agreement does not say but it is highly

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84 Common goods imported into Africa during the 19<sup>th</sup> century were cotton cloth, machetes, bells, flintlock rifles, axes, iron bars, brass wire and copper basins known as 'neptunes', along with a rising number of items like top hats, fine cloth, shoes, glassware and plate ware for emergent local elites in coastal enclave. Refer Hobsbawn, 1987 for detailed treatment of the Industrial Revolution.

likely that local Gabonese leading clans thought signing treaties would privilege their position in trading; it was that which would be protected. This would be the reality – but only for a while.

The French navy established Fort d'Aumale in King Louis's land on the north of the Estuary in 1844. It also responded to the establishment of an American mission in the lands of King Glass in 1842 by sponsoring a Roman Catholic mission in King Louis's lands in 1844. A *Comptoir du Gabon* (1845-59) was established, a public-private syndicate, mandated with both capturing slave ships and challenging British and German dominance in trading.

### Box 8: Ceding sovereignty of the estuary

Division navale des cotes occidentales d'Afrique

Treaty concluded in 1846

Between Vessel Captain E. Bouet-Willaumez, Commander of the Frigate 'Caraibe' and the Kings and Chiefs of Gabon

The kings and chiefs who were signatories of the treaty of 1st April 1844 concluded with the Governor of Senegal, E. Bouet-Willaumez, Commander of the frigate, Cairabe, have received through this officer the new mark of generosity on the part of the French Government, are eager to know in writing the natural consequences of this treaty, consequent to the cession of their sovereignty to France, which they have already accepted verbally and with sincerity.

All the lands, capes, mountains, peninsulas, and isles or locations which seem suitable for the French Government to create military or agricultural establishments are conceded in full right, without rentals which exceed the agreed annual endowment to legal chiefs.

In consequence, King Quaben knows that since 1844 it is for this reason that he has given his sovereignty through Governor Bouet into the hands of France, the mountain known as Mont-Bouet and a kilometre on each of the points of Clara and Esterias which he possessed in full right and by customary law was fully authorized by the people of Corisco to cede.

He equally ceded today the land which extends between fort d'Aumale and the village of Glass to the depth of eight kilometres within the interior, for building and developing a second military and agricultural establishment on the order of the French Government. The four points of the island of Orleans or Koniquet are also known since 1844 as the property of France, given by King Francoisto to build fortifications as France wishes. The points of d'Abinda, of King Georges of Pongara, etc. are equally free for France, if it desires, to build military installations as needed.

Made on board the 'L'Aube' in the area of Fort d'Aumale on the 1st of August 1846 and on the signature of the French officers and the Gabonese Kings and Chiefs whose names follow —

- King Denis, King Georges, King Quaben, King Francois and Chief Boulabene
- Commander E. Bouet-Willaumez, Captain of the vessel 'Caraibe'
- Engineer Moquet, Lt. of the Vessel Cdt 'L'Aube'
- Commander of the Naval Division of West African Coast, E. Bouet-Willaumez



In 1846 the French Government felt the need to tighten the implications of the treaties which had been signed with local leaders. It sent the Governor of Senegal, Bouet-Willamez, to re-treaty with the chiefs in his capacity of Captain of the Frigate *Caraibe*. In the process French sovereignty was frankly declared over all lands between and including Cape Esterias and the Estuary. This slim agreement is translated above. This established the French Littoral Colony of Gabon.

Although Britain and Germany were not pleased, especially when it was clear that King Glass's lands were included, the former was preoccupied with developing Freetown in Sierra Leone and failed to object to the establishment of a French military post in Glass's area. The French established their own Libreville at the head of the Estuary in 1849, settling slaves taken from French slaving ships. As each group of freed slaves arrived over the ensuing 25 years, they were allocated their own area, the origin of many central Libreville suburbs.

During the same era more treaties were signed with leaders living slightly further inland. This brought new 'districts' under French sovereignty.<sup>85</sup> This did not mean much, as right up until 1890, German, British and American trading interests and investments continued to dominate. De Saint-Paul (1989) notes that the French failed between 1844 and 1874 to explore as far into central Africa from Gabon as they intended, and their authority beyond the coast was quite limited.

### 3.2 The Meaning of Sovereignty

It is important to note that the original treaty of 1846 involved a transfer of political sovereignty, not ownership of the lands within the ceded area, with the exception of sites for agricultural and military installations. Local inhabitants were neither to be evicted nor their rights to the lands they lived on denied. However by 1846 globally there had been significant changes in legal attitudes to indigenous populations and their rights. A range of legal decisions around the world and in European capitals were designed to precisely deny that indigenous populations owned their traditional territories in any substantive sense, and had been applied in places as far afield as India, Australia, Latin America and South Africa and in 1823 even by the Supreme Court of the new United States of America.<sup>86</sup>

Cumulatively, these meant that before the Gabon Colony was created that sovereignty over colonies meant: *first*, that the new possessor's laws now applied, in this case French civil law; *second*, that political sovereignty over an area could include cession of root ownership of the soil; *and third*, that this did not necessarily displace existing rights to the land within the ceded territory, that current occupants with locally-recognized rights could continue to occupy those lands – until needed for public purposes.

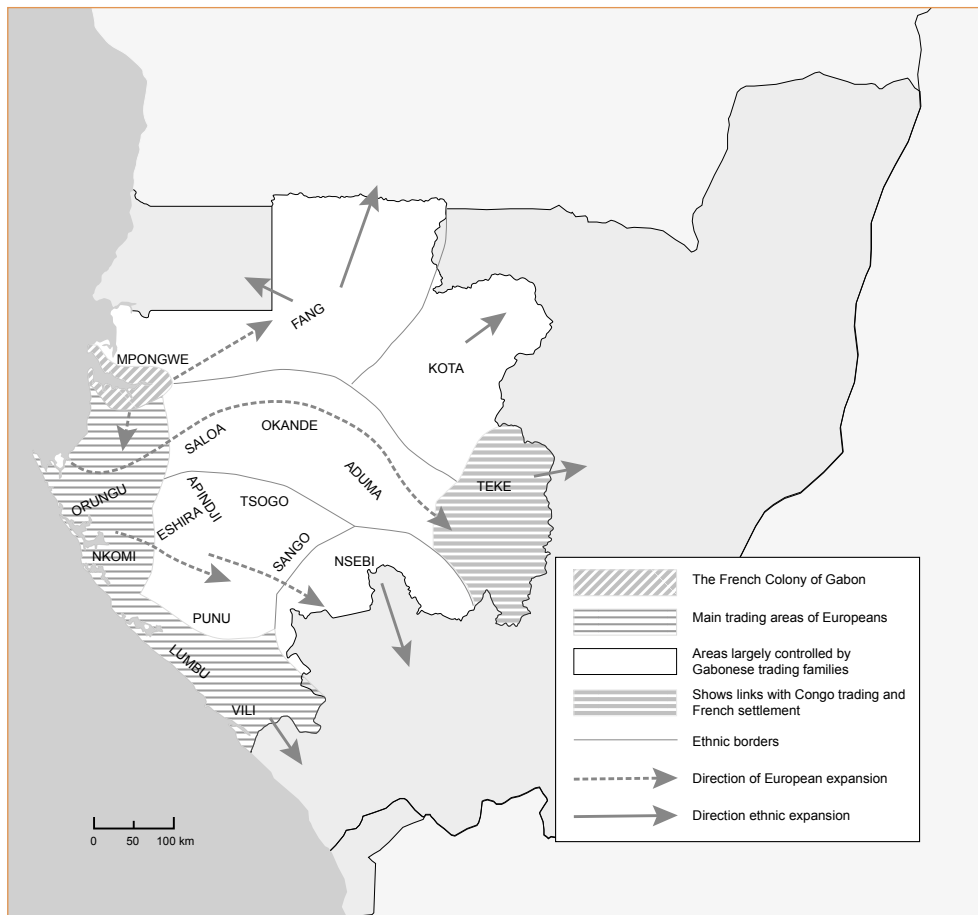
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85 For example, in 1848, Naval Officer Roger signed a treaty with the Bakele Chief Kiamlowin. In 1852 a treaty was signed with chiefs of the Cape Esterias and Corisco area who had not already signed over their sovereignty. In 1853 Baudin attempted but failed to establish a treaty with the Fang in the Como area. In 1862 a treaty was signed with the Orungu Chief Ndebulia and a series of other treaties signed in Lower Ogooue with Orungu, Vili, and Bakele chiefs. In 1856 and again in 1873 Fang areas in the Cristal Mountains were visited but they resisted signature. Main sources: Western and Gardinier (undated) and de Saint-Paul, 1989.

86 See Alden Wily, 2011b and 2012a for details.

In this way native populations around the world could legally lose ownership of their lands but retain occupancy and use. It was up to that sovereign power to determine through its own laws how much security of tenure it would give those occupants.

**Figure 8: The coastal enclave colony of Gabon ( 1846-1886) and trading expansion**



### 3.3 The First Land Law of Gabon

For the moment in Gabon, French control was almost exclusively for the purpose of trade, not land takings. Given the implication of ‘colony’ today, it might be better to refer to the Estuary French initiative as more typical of other trading enclaves along the West Coast of Africa at the time. This is evident in the disinterest of the Governor of Senegal in co-opting the land at the time so much as regulating sales so that it could control what went on in the enclave.

Therefore three years after the signing of the treaty in 1846 the Governor of Senegal issued an order relating to land sales made by indigenous people (*Arrêté du Gouverneur du Sénégal sur les concessions pour ventes de terrains appartenant aux indigènes, Ile de Saint-Louis, 12 July 1849*). This Order confirmed that the treaty was for the *cession of sovereignty only*; that rights to lands

within the ceded area still belonged to natives. They could sell those rights. A century later (1950) the by-then true colonial administration would be confronted by Opongwe claiming compensation on the grounds that they had *not* sold their lands to British, German and French traders, only rented these and received payments, and that they had only ceded their political power, not their lands to the French in 1846.<sup>87</sup>

On their part, many Europeans buying parcels along the west coast of Africa considered they had purchased parcels outright. In Liberia, ship captains bringing freed slaves from America between 1821 and 1847 considered that it was only a concession to natives that they were permitted to continue to live on the lands they had bought from the chiefs.<sup>88</sup> It took little time for the chiefs to disabuse the colonizers of this fact, insisting they had only sold access to their territories in Liberia, not the land itself. From 1826 new treaties included specific description of who *owned* the lands. In other cases, such as in Ghana where the British Government established a treaty with Ghanaian chiefs along the Gold Coast in 1840, the treaty agreed that chiefs/communities continued to own the land. Under the aegis of this treaty more than 400 concessions and land sales would be made by chiefs to British companies between 1840 and 1896.<sup>89</sup>

### *Respecting local land ownership – for the time being*

The key provisions of the 1849 land law in Gabon were that —

1. Indigenous chiefs were permitted to sell or give lands which they owned as individuals or on behalf of their communities within the Gabon Colony to French or other foreigners.
2. However this could only be undertaken with the permission of and in the presence of the local French authority, which would open a register to record those transfers.
3. Foreigners were to abide by French law when seeking lands, and no commercial establishment could be built without the permission of the local French authority.
4. The local French authority reserved the right, after discussion with indigenous chiefs or those who had acquired land from them, to compulsorily acquire land within the enclave for public purposes, for which owners were to be compensated.

In short, the law was clear; French sovereignty did not interfere with customary ownership.

On 6<sup>th</sup> October 1849 the Governor in Senegal then issued a Regulation (*Règlement particulier pour indiquer aux chefs indigènes les conditions auxquelles les concessions ou ventes de terrains doivent se faire*). This reminded chiefs that they could not sell any lands which were marked out for public purposes; that buyers of land must clear at least half the area within one or two years of purchase; and that sales of plots which exceeded 100 ha were subject to the permission of the Commander (the Commander being the Governor of Senegal, Gabon being treated as one of the 'French West African settlements'). On 20<sup>th</sup> December 1849, another Order was issued, establishing a dispute resolution commission to deal with disputes over land deals.

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<sup>87</sup> Personal communication: M. Delbrah, former adviser to Ministry of Habitat.

<sup>88</sup> Refer Alden Wily, 2007: 65-72 for details of contracts made by the seven colonies which would combine as Liberia in 1847.

<sup>89</sup> Amanor, 2008.

These instruments assured Gabonese in the Littoral Colony of their land rights. They also evidence the fact that the French at the time considered Africa to be owned and occupied, not the *terra nullius* they would in due course adopt as their position. Moreover, customary interests were treated as real property, and *disposable* property at that. They could *sell* their lands. Even the French state in the form of the local authority could not help itself to indigenous lands. If these were required for public purposes, it could coerce *sale* of those lands (public acquisition).

### 3.4 Social Transformation

The impact of French control was less from the garrisons than from the involvement of Gabonese in commerce and for some decades was not significantly interfered with. African trading grew along with extractive demand and middlemen opportunities after 1846. A great deal of movement resulted. Some coastal clans sent their people inland to capture pivotal trading sites along rivers, and/or to secure slaves, ivory, redwood and raffia cloth themselves. Contrarily, some other clans moved coast-wards. All had trading and money-making in mind.<sup>90</sup> For example, by 1840 Kele speaking clans were acting as middlemen for the Mpongwe leader King Denis on the coast. Kele would also establish settlements on the edge of rural clan areas (districts), taking over many 'dead zones' and building up their own trading links deeper inland. This expansion explains their dispersed locations today.<sup>91</sup> Bumwele, Orungu and Nkomi would also move significant distances inland during the 19<sup>th</sup> century.

In contrast, Fang began extending their occupation from the Woleu and Ntem Rivers, moving down to the Ogooue and into the Gabon Estuary. Although not participating in slave trading themselves, the Fang saw opportunities and advantages in providing timber and ivory. In 1848 "... the American missionary William Walker ... reported that the Fang were quite forthright in admitting their intention of driving the indigenous Bakale off the rivers and establishing direct contact with the Mpongwe traders on the coast. Walker said that the Fang had learned that they received not one tenth of the goods paid at the coast for their ivory".<sup>92</sup> Their fierce invasions drove many a settled community ahead of them into the arms of African slave traders.<sup>93</sup>

#### *Growing differences among unequal groups in Gabon society*

Not all Gabonese were involved in commerce. Only the most successful clans were capable of participating in the networks of long distance trade. Some became specialists, carving out niche activities or markets for themselves. Bakele (Bakalai), not hunter-gatherers but historically mobile, became forest specialists in rubber, ivory and ebony trading, working closely with Pygmies under their protection, and expanding through much of southern Gabon. 'They never stay long in one place' (Du Chaillu, 1861: 384).<sup>94</sup> Pygmies themselves continued to stick

90 Gray, 2002:32.

91 Gray, 2002, Ratanga-Atoz, 1985.

92 Chamberlin, 1978:448

93 Geschiere after Rich, 2010.

94 See Du Chaillu, 1861: Chapter XXII on the Bakalai (p. 483-447).

close to their own territories, although co-opted by their patrons to gather wild rubber and hunt elephants. Others focused on the slave trade, taking people from the Du Chaillu Massif. As recorded earlier, although slave-trading became clandestine it continued through Spanish and Portuguese intermediaries away from the Estuary and French control. Slaves continued to be sent to tend coffee, tea and sugar plantations in Brazil, Cuba, Sao Tome and Principe until the 1870s. As other goods both incoming and outgoing increased in volume, the number of canoes in expeditions multiplied.

The dominance of Omyene speaking clans on the coast also consolidated during the enclave era. Throughout the 19<sup>th</sup> century Omyene regulated trade and foreigners living in their domains. They also controlled the Ogooue River, the main trade route, from its entrance to Lambarene 100 miles inland. Rich records that Omyene comprised 30,000 people at the time, “making their fortunes by acting as commercial intermediaries between Europeans and other Gabonese”.<sup>95</sup>

This vibrant participation in commercial trade took its toll. People and their lands were encroached and squeezed. Some departed altogether for remoter zones. While by no means everyone moved, the mid-19<sup>th</sup> century in Gabon is marked down as an era of significant internal migration and displacement along with a good deal of inter-clan conflicts and killings.<sup>96</sup> In the process, lands were lost – and gained. Under pressure, notions of communal territory hardened.

#### *Stimulating more organized land-based social organization*

By mid-century Gabon’s society was described by traders and travellers as made up of either village states, confederations or kingdoms in a clearly definable mosaic, but one which was still unpopulated enough to contain unoccupied areas between territories.<sup>97</sup> Each polity was fairly settled, had political autonomy and a definable territory. *Village states* were governed by chiefs, elected from among elite families, assisted by councils of elders from those same families. Fan, Alele, Seke, Benga and Galwa followed this mode. *Confederations* comprised a number of clan-linked villages headed by a paramount chief (Mpongwe, Gisir, Punu and Obama). *Kingdoms* were similar except that the king exerted authority over all inhabitants, irrespective of their clan affiliation. Kings usually retained a sophisticated council of ministers, each with a different portfolio, such as one in charge of religious matters, another to receive grievances from subjects, and another responsible for transmitting messages from the king to heads of villages. The Kingdoms of Nkomi, Orungu, Okande and Teke were vibrant in this era.<sup>98</sup>

Internal social polarization also heightened during this era. The more slaves one owned the more one could farm and engage in expeditions and trade. Slaves represented at least half the population of Mpongwe in 1850.<sup>99</sup> Social differentiation among the Mpongwe reached such heights that some classes, including women, stopped farming altogether, the wealthiest

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95 Rich, 2010:208.

96 Gray, 2002:52-60.

97 Du Chaillu, 1862, Gray, 2002, N’Nah, 1979.

98 N’Nah, 1979.

99 N’nah, 1979.

of whom mimicked the lifestyle of European traders and increasingly intermarried with Europeans.<sup>100</sup> In his diaries of the 1950s, Du Chaillu distinguished between domestic servants and tradable slaves. He noted that although there was a preference not to sell one's own people, "debtors, sorcerers, adulterers and cheats are either sold or killed" (1861:331-32).

### 3.5 The Great European Take-Over of African Trade from 1860

#### *Losing patience with African dominance of raw materials and markets*

Gabonese control of markets and society could not last forever. European traders sought to take control of inland trading themselves. They wanted to get African goods more cheaply, counteract the rising costs of French duties in the Estuary Colony, through which most of this trade passed, and relieve themselves of the burdensome arrangements and charges which Gabonese middlemen made, and go up-river themselves and make their own arrangements. They also wanted to control the sale of the thousands of European commodities they were bringing to sell to Africans. Europeans were not alone in these objectives. Senegalese had arrived with the French garrison in 1843 and a rising number were attaching themselves to trading companies or setting up trading initiatives of their own.

Initially, these traders found it difficult to cut through the Gabonese-controlled networks. They had to negotiate with local communities to establish themselves in a village or to set up a collection or processing point (e.g. for rubber sap and ebony) known as 'factories', or to establish a trading post, through which they could sell imported European goods. "They might have wanted to do away with the practice of giving advances or avoid the endless palavers but were not in a position to do so".<sup>101</sup> They, like the new French colonial administration, were particularly "infuriated by the ability of Mpongwe middlemen to determine the value of trade goods and natural products like ivory".<sup>102</sup>

#### *Disease and river steamers as facilitators of demise in African roles*

From the 1860s European capture of African trading networks began to be possible. Forty years later (1900) these had been turned into a European-controlled network. African trading still existed but in subordinate positions. By then the region was flooded with European goods, and the inland landscape dotted with 'factories' run by Europeans and their African agents.

Smallpox was a factor in the decline of Gabonese control. As Europeans multiplied so did smallpox, with a first major outbreak in 1864. Although smallpox had been known from at least the 16<sup>th</sup> century, the localized control of trading beyond the coast had limited its spread.<sup>103</sup> Periodic outbreaks occurred up until the 1890s. This in turn caused dislocation as people fled the epidemics, as important local leaders died and hierarchies collapsed, whole clans disap-

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100 Rich, 2010.

101 Gray, 2002:135.

102 Rich, 2010:218.

103 Gray, 2002:94-95.

peared, and as invading clans stepped in to take advantage. Gray describes for example weakened Vili clans suffering terrorising raids for women and slaves by Kele speaking clans.<sup>104</sup> Similar events occurred in more central and northern areas where Fang took advantage of new vulnerabilities and breaks in the chain of trading control. By 1870 Fang and Kele had fully expanded their ability to control or interfere with European trade, as had Mpongwe traders.

The introduction of small river steamers by Europeans from 1862 was also instrumental in the decline of African control of trading. This enabled Europeans (mainly British and German) to construct trading posts and factories in the interior.<sup>105</sup> Their expansion was not plain-sailing. For the corollary consolidating arm of French authority made it more difficult to avoid expensive duties on goods entering from Europe and goods leaving through the Littoral Colony.

### *Fighting back*

Gabonese trading families and clans did not take European invasion of their trading monopolies lying down. From the 1850s onwards the strongest coastal kingdoms, notably Orungu and Nkomi clans, began to appoint French missionaries, German traders and Americans as officials and even chiefs of their clans. This included the American-French explorer and naturalist, Paul Belloni du Chaillu, whose explorer diaries have been frequently cited above. He was appointed as a clan official in 1858 during his travels (Du Chaillu, 1861: 242). The intention of these appointments was to buy influence, play off one European trader against the other.<sup>106</sup> As French control and custom duties expanded, these alliances were also designed to deflect rising French authority in the area. By appointing foreigners they were voting with their feet, showing they did not “fully accept absolute French sovereignty”.<sup>107</sup> A measure of their frustration is seen in the appointment of a German merchant as King of an important Orungu clan close to Port Gentil in 1874.

In 1876 the first boycott against European stores was launched by Mpongwe, Galwa and Nkomi.<sup>108</sup> The boycotts were both against buying goods from and selling food to European traders and missions. In Lambarene, Galwa announced that they would only break the boycott once traders accepted rubber, ebony and ivory for much higher prices. Nkomi people also took action, as early in 1879, their King defying French duties on the grounds that *“This is my land. The French ought to pay me”*.<sup>109</sup>

104 Gray, 2002:97.

105 Few of the inland factories were French. The British company Hatton and Cookson established its first factory in 1867 at the confluence of the Ngounie and Ogooue Rivers and was followed by other British and German firms, usually facilitated by influential outsiders, such as the Galwa chief, Nkombe.

106 Gray, 2002, de Saint-Paul, 1989, Rich, 2010.

107 Rich, 2010:217.

108 Rich, 2010: 217-18.

109 Boycotts continued into the 1890s, with major boycotts organized by Omyene and Galwa in Libreville, Fernan Vaz and Lambarene. Rich, 2010:220.

### Competition and conflict for markets

European exports multiplied fourfold between 1848 and 1875, and the value of world trade rose in real terms at an annual rate of five percent.<sup>110</sup> Trade but also turmoil and conflict increased in the foreign outposts and enclaves. The introduction of guns and gunpowder on a new scale in Gabon contributed, as did the ruthless behaviour of some European agents.<sup>111</sup> Senegalese traders became famous for aggressive tactics such as taking pirogues and hostages to force payment of debts by clan leaders. Along with Europeans, they also felt increasingly free to burn down entire villages in pursuit of their interests rather than engage in long palavers.<sup>112</sup> Such practices spread among some local clans. Local systems, including those relating to control of resources and areas, were everywhere undermined.

This included lands within the Gabon Colony itself. In 1880 foreigners were reminded by an *Order of The Resident Concerning the Concession Regime* that purchase of native lands required the authority of the local Resident (Article 1), that the buyer had to commit in writing and the deal had to be formally registered in Libreville (Article 11). The law also provided for *Reserves au profit de l'Etat* (Article 12). Minerals and quarries in all concessions were the property of the French State (Article 12). Gabon was ripe for both more forceful European expansion beyond the Littoral and for more forceful French control.

#### — Du Chaillu being paddled by Africans in a canoe

Source: Paul B. Du Chaillu, *Explorations & adventures in equatorial Africa* (London, 1861)



<sup>110</sup> Hobsbawn, 1987:62 and Koponen, 1993:122.

<sup>111</sup> Gray, 2002:98.

<sup>112</sup> Gray, 2002:100.



## 4 The Greater Colony of Gabon: 1886-1960

The vision of France controlling much more than the Estuary crystallized, hints of which were already seen in the writings of Du Chaillu in 1859, reporting on his three journeys between 1855 and 1859.<sup>113</sup>

Turning this into an idea of an expanded colony was left to the official French explorer, Pierre Savorgnan de Brazza, who himself made three long journeys into the Gabon interior and into Congo between 1875 and 1885. On those travels he signed deals with chiefs and created physical outposts of the coastal colony. These were in Franceville (1882) and Lambarene (1883), a post built on a hill at the head of the island where river traffic could be easily surveyed. De Brazza also encouraged a Roman Catholic mission to build a church in Lambarene (1884). He developed similar outposts comprising trading houses and churches in Moyen Congo (Congo).

A new thrust to assert French domination in the Gabon coastal trade began in 1883. Gabon was given a new name, as the 'French Settlement of the Gulf of Guinea' and a naval lieutenant was appointed to be in charge in Libreville. He revitalized an old French law of 27 August 1799 which declared all shipping trade between French ports illegal unless it occurred under the French flag.<sup>114</sup> This was designed to handicap still-dominant British and German trading. In addition, French firms were favoured from 1883, four French companies given vast areas in the near interior in which to trade.<sup>115</sup>

Finally in 1885-86 the enlarged French Colony of Congo français was declared. This combined French-controlled areas of Congo, the Littoral Colony of Gabon and all areas over which de Brazza had secured treaties. Due to its immense importance as a trading enclave and French determination to suppress the interests of other Europeans, Gabon had in 1859 been placed under the direct control of Marine Ministry in Paris, administered as an administrative area in its own right.<sup>116</sup> De Brazza was made Governor of the new Congo français, based in Brazzaville in 1886. De Brazza would remain Commissioner-General of the French Congo until 1898. Throughout, the objective was commercial, to establish French control over trade in the region.

### 4.1 The Free Trade Conference in Berlin, 1884-85

#### *Trade not politics*

De Brazza was neither out of sync with the times nor without political support. During 1884-85 representatives of Europe and America met to thrash out a new free trade regime in Africa. A main agenda was to challenge French protectionism on the Atlantic Coast. The Gabon and

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113 Du Chaillu, 1861.

114 De Saint-Paul, 1989.

115 Such as Daumas and Beraud and the Compagnie Coloniale.

116 De Saint-Paul, 1989.

Congo enclaves were perceived by other Europeans as unduly squeezing traders trying to work through their ports and increasing duties, taxes and regulations.

As a consequence, the Berlin Conference, and the agreement which came out of it, were about trade, not about political expansion or the creation of colonies.<sup>117 118</sup>

What the Powers (as they called themselves) wanted was free trade which would allow each country to compete in the African market, able to buy up raw materials and be free to sell the millions of manufactured goods lying unsold in hundreds of factories in Europe. Europe was in the middle of The Great Depression (1873-1896).<sup>119</sup> Characteristic of such depressions, this Depression had an agrarian crisis at home (insufficient food production), surplus and often homeless labour looking for jobs (and for which Poor Houses were being built in England), financial and international debt crises,<sup>120</sup> and yet a multitude of winners who had money burning holes in their pockets, looking for lucrative new horizons to invest in.<sup>121</sup>

The Powers also needed freer access to raw materials to kick-start their industry which had flagged after a good start in earlier decades, including Gabon's natural rubber and timber. There were also home consumption demands to consider. Consumption of tea, coffee, cacao, sugar and vegetable oils (palm oil) and other 'colonial goods' had grown exponentially over the 19<sup>th</sup> century. They also wanted to expand plantations in tropical territories. Missionaries wanted to extend more deeply into hinterlands to bring their civilizing mission.<sup>122</sup>

Hence the Berlin Act of 1885, the first international trade law. Its pivot was free access and trade in priority areas. Through this, the irksome custom duties of the French were reined in. King Leopold of Belgium was only permitted to create his enormous personal fiefdom because he agreed that this would be a free-trade zone, hence named the Congo Free State.

Established European coastal enclaves would be retained (Lagos Island, Freetown, Gabon, etc.) as "... jumping-off points for regional business penetration".<sup>123</sup> If any expansions were needed, the Power was to consult with other Powers before doing so to make sure any contrary claims were first dealt with (Box 9).

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117 Hobsbawn, 1987:67.

118 In fact, the lead actors including France had more than enough expensive colonies to manage. America was also not keen to become a colonial power; its 1823 Monroe Doctrine had since been watered down and it was focusing on controlling trade from Latin America (Hobsbawn, 1987).

119 Hobsbawn, 1987: 56-83.

120 E.g. Barings Banking House suffered its first failure in 1890 because of this, when it could not cover the defaults of Argentinean railway builders.

121 Hobsbawn, 1987:56-83.

122 Whereas between 1816 and 1845 they had, inter alia, produced 71 Bible translations in Africa, this would rise to 117 new translations between 1876 and 1902 (Hobsbawn, 1987).

123 Hobsbawn, 1987:67.

**Box 9: The General Act of the Berlin conference on West Africa, 1885**

Signed by the representatives of the United Kingdom, France, Germany, Austria, Belgium, Denmark, Spain, the United States of America, Italy, the Netherlands, Portugal, Russia, Sweden-Norway, and Turkey (Ottoman Empire).

The Act stated its objectives as: to regulate conditions ‘most favourable to the development of trade and civilization in certain parts of Africa’ and to assure to all nations the advantages of free navigation on the two chief rivers of Africa flowing into the Atlantic Ocean’ (Preamble).

The Act constituted six declarations on: free trade in the Congo Basin, the slave trade, neutrality of territories in the Congo Basin, custom-free navigation of the Congo and Niger Rivers, their tributaries and related waters in those systems, and a declaration concerning future coastal occupation by the signatory Powers.

*The Declaration on Free Trade* in the Congo Basin explicitly included the Ogooué (as well as the Nile, Lake Tanganyika and the Zambesi River (Article 1).

All transit was to be free and permits were to be facilitated for travel where these waters were within the area of a sovereign (European) state (Article 3). Imports, of whatever origin or under whatsoever flag, and however transported, were to be subject to *no import and transit duties*, and only the minimum taxes charged as to compensate administration of their arrival (Articles 3 & 4). No differences in charges among vessel type, merchandise, or owners of different nationalities could be levied (Articles 3 & 4). No monopolies as to goods or areas could be granted by Powers with sovereign rights in those lands (Article 5). The free trade agreement would be reviewed after 20 years (Article 4).

*On slavery*, given that each Signatory Power is (already) forbidden to engage in slave trading, each ‘binds itself to employ all the means at its disposal for putting an end to this trade and for punishing those who engage in it’ (Article 9).

The Powers also bound themselves to ‘watch over the preservation of the native tribes, and to care for the improvements of the condition of their moral and material well-being, and to help in suppressing slavery, and especially the slave trade. They shall, without distinction of creed or nation, protect and favour all religious, scientific or charitable institutions and undertakings created and organized for the above ends, or which aim at instructing the natives and bringing home to them the blessings of civilization’ (Article 6).

*Expansion of Colonies:* Article 34 required Powers to notify the other Signatory Powers when they ‘take possession of a tract of land on the coasts of the African continent outside of its present possessions’. The purpose was enable those other Powers, ‘if need be to make good any claims of their own’.

## 4.2 The Scramble for Africa

The Powers left the Conference in 1885 determined to capture as large areas as possible under their trading control. This confronted problems immediately. First, inter-European competition was so intense that free trade commitments began to crumble almost at once. Second, it became clear that expanded market zones could not be protected without expanding political protection over these areas. Expansion of commercial influence therefore segued rapidly into formal creation of colonies despite the military and administrative expenses and staffing involved. “If you were not such persistent protectionists, the British premier told the French ambassador in 1897, you would not find us so keen to annex territories” records Hobsbawn.<sup>124</sup>

What became known as social imperialism also played a part. Indigenous populations were not nearly as pliant as anticipated and a multitude of conflicts and rebellions (and in Gabon, boycotts of European trade) multiplied. As well as Africans needing to be ‘civilized’, they needed to be ‘controlled’ if commerce were to thrive.<sup>125</sup>

## 4.3 Securing the Boundaries

De Brazza’s vision for Gabon needs to be seen in the above context. His travel accounts, maps and reports to Paris during the late 1870s promised untold wealth and power should the French be able to secure a monopoly of trade over still largely unexploited Gabon.<sup>126</sup> Securing the boundaries of this imagined space was critical. The border with German interests in Cameroon was finalized in 1885 but it took five more years for the Spanish in Equatorial Guinea to agree (1900). Congo’s boundaries were unproblematic as De Brazza was also in control of this area. Haute-Ogooué remained in Moyen-Congo until 1947.

In 1891 De Brazza issued a new land law, Order of 26 September 1891. This elaborated the Order of 1849. Some of its principles were unchanged from those of 1849, with the effect that —

- It continued to be implicit that Gabon was not vacant but already subject to land rights, and that Gabonese held these rights under clan arrangements.
- As in 1849, Gabonese could sell lands, but only with the permission of the French authority for this sale to be legal –
  - “Natives may sell or exchange lands which they possess on condition that the acquirer has the purchase or exchange registered within six months of signature of the agreement. This agreement must be subject to the approval of the administration and which alone can determine the value of the property and deliver definitive title” (Article 18).

124 Hobsbawn, 1987:67.

125 Cecil Rhodes expressed this well in 1895 in his view that if civil wars in Africa were to be avoided, Europe must become imperialist.

126 On his third and most official mission for the French Government (‘The West Africa Mission’, 1883-85) he was charged to ‘break up the complex network of trade relations that controlled commerce on the Ogooué so as to clear space for the unhindered long distance trade of the recently established European factories’. In the process he was also to correct cartographical errors on the maps of du Chaillu and to fill in the gaps where du Chaillu had written ‘unknown’ (Gray, 2002:104-105).

However there were also changes.

- As above, France made itself the sole determiner of rights in land. It also laid down new conditions under which rights to land within Gabon could be bought, sold, exchanged or granted by the administration, including by traders and other Europeans. This favoured the controlling hand of the colonial authority. The register was also refined for the recording of rights. The Official Gazette for *Congo français* thereafter carried notification of applications for lands and grants or approvals of sales.
- The Order also introduced a new category of land, *les terrains vagues* (unknown lands). However the law still did not at this time explicitly state that these were therefore unowned.
- This is the first land law which refers to the much-enlarged Gabon not just the Littoral.

In practice, Gabonese sold a lot of land during 1886-96, including in the hinterland where more factories were established. At this point, these traders were still mainly German and British. Nor was the control of local trading rights yet fully suppressed; Fang, operating from Ndjole from 1885 and in Samba were not yet superseded. Traders were still obliged to accommodate themselves to these powerful groups. It would take the mass creation of concessions in the next few years to change this.

#### 4.4 Concessionaires as Colonizers from 1898

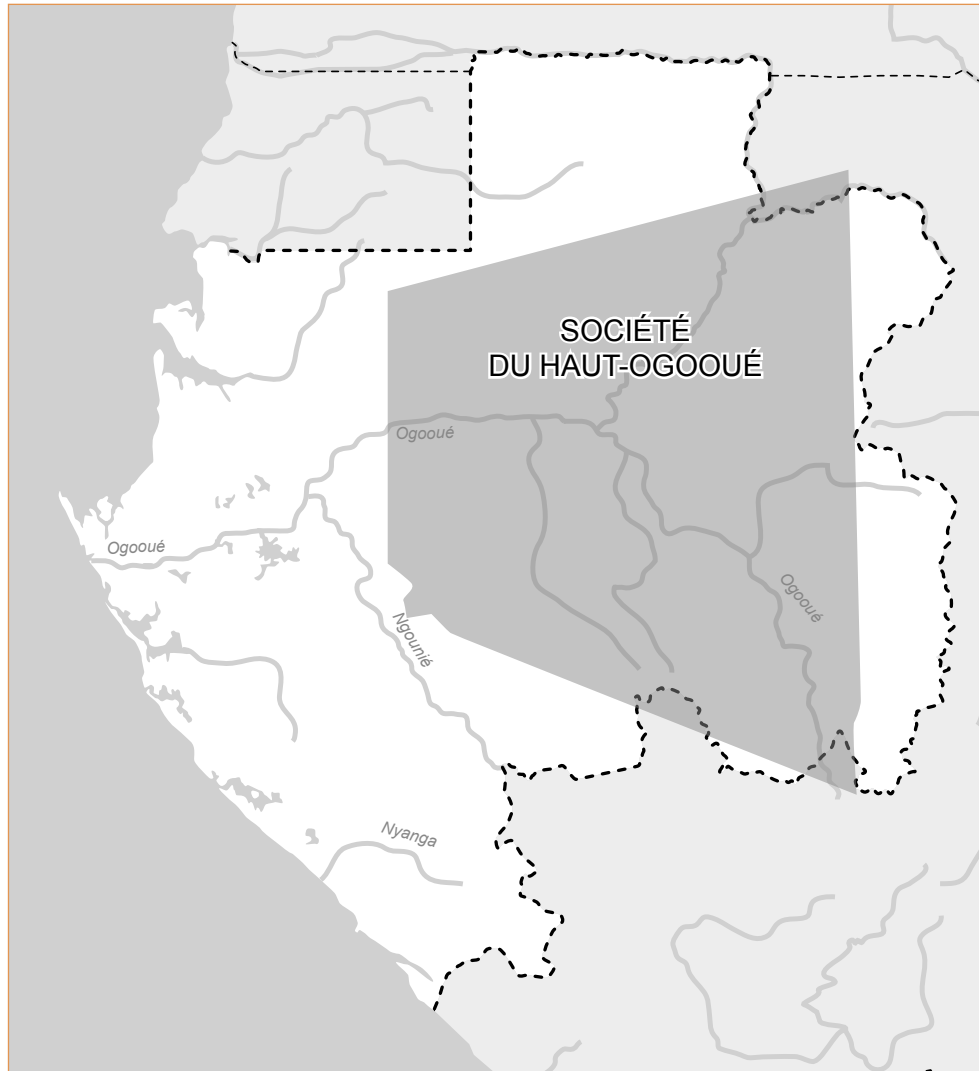
##### *Turning to private enterprise to do the work of managing the colony*

In 1898 De Brazza was recalled to Paris, blamed for failing to fully capture the British and German dominated trade, and for not collecting enough revenue to run *Congo français*. It was his suggestion to swamp the Gabon and Congo with French controlled concessions to squeeze out other European and American traders. Expansion of military and civil authority was expensive. French companies would do the task of establishing commercial dominance for France. De Brazza modelled his approach on King Leopold's Free State, allocating vast areas of Gabon (and Congo) to commercial exploiters and profiteers, binding them to certain duties and productive activities.

Issuing vast areas of Gabon and Congo to French companies was seen as an easy means to help with revenue collection, extend French authority, develop roads and river ports, provide protection for Catholic missions, and bring recalcitrant natives under control; coastal clans were quite nuisance enough with their periodic boycotts to force up prices for ebony, rubber and ivory and to keep the costs of imported goods down.

By 1900 three quarters of the French Congo was under 42 different concessions. The *Société du Haute Ogooué* (SHO) was the largest, a consortium of French companies. Most of eastern Gabon was given into its care and exploitation, so long as it provided abundant revenue through royalties, taxes and duties. Figure 9 reproduces a figure in Gray 2002, illustrating the immense area over which SHO gained controlling rights to timber and other products.

**Figure 9: The area granted to Société du Haut-Ogooué (SHO)** [Source: Gray 2002:144]



#### 4.5 Denying Customary Tenure Delivers Property Rights

##### *Changing the terms of engagement: pretending Africa is unowned after all*

It is at this time that a shift in the French legal positioning as to native land rights crystallized, laying down a purposively dispossessory foundation which carries on until the present. We can see De Brazza's personal hand in this very well. By 1895 he has decided that natives did not actually own the land after all. He wrote a letter to another colonizer which the anthropologist, Coquery-Vidrovitch, cites —

‘There is no individual property in the countries of the blacks but only temporary usage, and collective property in no case leads to a rental tax for temporary or permanent

usage, either within the collectivity or outside of it, nor can it be sold by either one or several members of the collectivity. In law all sales made by the natives are fictive. None are legally valid.<sup>127</sup>

This resonated with other European positions as to native tenure. By the time of the Berlin Conference, the British Government had begun to buy up prominent trading companies with expansive resource interests (e.g. the Royal Niger Company) and was not about to get itself in the position of having to pay for more lands acquired.<sup>128</sup> When the American representative in Berlin in 1884 had suggested that expansion of African coastal enclave possessions should be through purchases of land from natives, French, German, Portuguese and British representatives had persuaded the diplomatic meeting otherwise; better to pretend that Africa was unowned and Africans mere users of lands, not real owners.<sup>129</sup>

It logically followed, that if Gabon was unowned after all, then the French State would by default be the primary land owner, and be able to determine, issue and register rights to land.

There was also the problem that having approved a clutch of coastal land sales by natives; under the laws of 1849, 1880 and 1891, the new owners believed they had acquired absolute rights to land and resources. With the riches of the hinterland becoming annually more apparent, De Brazza and Paris thought it essential to claw back ultimate and controlling rights. In particular, any lands which had not already been alienated to French and other traders should be deemed to be *public domain*; this term meant in effect, the property of the French state.

These positions were entrenched in a flurry of new laws. In 1897 Paris issued decrees reorganizing both the political and administrative organization of French Congo and establishing a judicial regime.<sup>130</sup> In 1898 a commission was set up by the Minister in charge of Colonies to promote and regulate the issue of concessions rather than alienation of land in the colonies. In 1899 three land laws were promulgated.

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127 Les idées économiques de De Brazza, by Catherine Coquery-Vidrovitch, 1965: 71 referring to correspondence in 1895 between De Brazza and A. Le Chatelier, a key figure in the initial efforts to establish concessions; as cited by Gray, 2002:142.

128 For elaboration of these positions, refer Alden Wily, 2011a, 2012a, 2012b.

129 Alden Wily, 2007:78-82.

130 Décret du 28 septembre 1897 réglant l'organisation politique et administrative du Congo français, et décret des 28 septembre 1897 et 9 avril 1898 réglant l'organisation de la justice au Congo.

## 5 Founding Land Laws Of Modern Gabon

### 5.1 Land Acquisition Law 1899

#### *Making public purpose the instrument for land takings for free*

The first law concerned public acquisition of land (*Décret du 8 février 1899 portant fixation et organisation du Domain public et des servitudes d'utilité publique au Congo français*). This 11 article law specified public property as —

1. The beach up until the limit of high tide plus 100 metres
2. Navigable rivers within the limits of high tide plus 25 metres on either side
3. Non-navigable rivers within the limits of high tide
4. Lakes, dams and lagoons, within the limits of high tide plus 25 metres
5. Navigation canals and their side paths, irrigation canals, or dry beds and aqueducts constructed for public use
6. Roads, railways, and other communication systems of all types including ports, piers on the sea or rivers, radio stations, telegraph lines
7. Public works, military works.

And, most importantly of all —

8. Also including 'in general all things of a nature which the French Code and French laws declare are not eligible for private ownership' (Article 1(k)). This opened the door to all sorts of resources being claimed by the French state.

The law provided that just compensation would be payable to any *registered* owner if their lands were needed for public purpose, and that the compensation had to be agreed between the administration and the owner (Article 10). However, the law was now clear that this only applied to those who possess these lands under definite title. Indigenous people could therefore not expect compensation when their lands were taken for public purpose.<sup>131</sup>

#### *Taking over all waters in the process*

A further point must be made here. The focus on water is indicative of the extreme importance placed in Gabon on control of waterways, the lifeblood of trade. Under French law only waters specifically required for public purpose were defined as public domain, that is, only those defined as fully navigable or floatable. In this case, Paris took all waters in Gabon as state property. This became the norm in colonies of France.<sup>132</sup>

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131 A Council for Administrative Disputes comprising three persons could be set up to hear appeals by the owner should he not accept the compensation offered. Should he fail to appoint his representative to that Council within three months, the Chief of the Judicial Service of the Colony would appoint a representative to act on his behalf (Article 10).

132 Caponera, 1992.



## 5.2 Land Tenure Law, 1899

A month later two more precise laws were enacted. One was a Land Tenure Law (*Décret du 28 mars 1899 sur le régime de la propriété foncière*). This was modified by decrees of 13 March 1918, 12 December 1920 and 9 June 1935, and again in the 1950s. Over this period, this 100 article law would lay out the procedure for land administration including the obligations and responsibilities of the Registrar.

### *Devising a means of controlling land ownership*

The procedure adopted was the Torrens cadastral titling system through which property would be recognized and formalized. This had been developed by Sir Robert Richard Torrens in colonial Australia (Torrens Act of 2nd July 1858). The system was innovative and moved recording of properties out of the deeds system, through which property was recorded by bills of sale then registered. This could make it difficult to trace a property, as the bill of sale did not necessarily specify the property, just the deal, and also might be filed under the seller or buyer's name, making tracing what had happened to that property difficult. In contrast the titling system made description of the property the key information, including exact details of its location and size, and gave it a unique folio number. Any transaction to do with that property was then attached to that file. In practice, no mapping of parcels would be undertaken until 1950, but in the meantime a file for each property sold was established.<sup>133</sup>

## 5.3 State Land Law, 1899

### *Quietly dispossessing Africans*

The fundamental changes occurred with the National Domain Law, 1899 (*Décret du 28 mars 1899 fixant le régime des terres domaniales*). This law would be replicated in other Francophone states as they too found the need to capture vast resource rich areas for the state, in expanding beyond their coastal enclaves.<sup>134</sup> Modifications would be made to the Gabon law, beginning in 1904 and 1910.

This established as law the notion that France owned the entire area, and that rights to land thereafter were secondary to that principle entitlement and only available through its decision.

In presenting the law to the French President, the Minister in charge of Colonies made clear the purposes of new land law —

“The importance which French Congo will have in colonization means we have to determine the conditions, alienation mode, and mode of allocation of resources,

133 The authors have been unable to confirm that the introduction of Torrens cadastral titling was intended from 1899; it is possible that this was introduced much later, but the version of the law available is unclear on this point.

134 As per laws in Senegal and Cote d'Ivoire on July 20th 1900, a law of 5th August 1900 in Dahomey, and a law on 24th March 1901 in French Guinea. Decrees of 15th October 1904, 12th December 1920, 5th June 1925 and 20th May 1955 would modify this basic new land law spread through French possessions, and also in the French Congo. First amendments in Gabon were made on 10th and 19th June 1904.

either by providing for full property or a temporary right of use. ... The draft affirms the superior right of the state on public land in the French Congo, all towards providing the means through which funds can be obtained to provide funds for local colonial budgets, to determine the conditions under which land may be alienated or considered a temporary right of use, either by the local authority or by the central authority”.

The law then provided that —

1. Vacant lands and lands without owners in the French Congo are part of the state domain (Article 1).
2. Unless otherwise directed by legislation, revenue derived from land transactions in the French Congo will revert to the colony budget to cover the costs of colonization, ranging from creating ports and railways to maintaining police forces, encouragement for colonists and immigration of workers (Article 2).
3. Alienation of land in French Congo will be by three means; (a) by court order; (b) by mutual agreement (*gré à gré*) of lots of less than 1,000 ha; and (c) by issue of concessions for temporary use with conditions. If the land is greater than 10,000 ha, then allocation may only be by a decree with conditions attached (*cahier des charges*) and on the recommendation of the Colonial Concessions Commission (Articles 3-5).

For the next 60 years amendments would periodically be made to this law, and many orders issued under its aegis. The first amendment made was on 10 June 1901 empowering the Lieutenant Governor of Gabon to issue concessions of 200 ha or less.<sup>135</sup> Only the Governor (based in Brazzaville) could sign off on larger concessions. A more substantial Decree was issued on 19th June 1904 to prescribe how concessions of less than 10,000 ha were to be allocated throughout French Equatorial Africa. This followed the making of l’Oubangui-Chari (Central African Republic), Chad, Congo and Gabon as autonomous regions in 1903. Further amendments or Orders were issued in 1907 and 1910.

The basic procedure for allocation under the land law of 28 March 1899 was embedded in a 29 article Order on June 19th 1904 and modified on 6 October 1910 as *Arrêté fixant le régime des concessions domaniales de 10.000 hectares et au-dessous*. By 1910 the law contained the following —

1. It introduces sub-categorization of the state domain. The term ‘private domain of the state’ was invoked to distinguish this from the public domain of the state (Article 1). The public domain, it will be recalled from the law of public domain law of February 1899, was limited to waterways and other communication and public service assets but with a loophole, which might cover other ‘naturally public assets’ some of which would from now on become the ‘private domain of the state’.
2. The law established a distinction between urban and rural domains (Articles 1 & 2).
3. Urban allotments or rural concessions could be issued by the French administration

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<sup>135</sup> Other early orders were issued on 16 October 1900 and 28 April 1903 to fix systems for plan and boundary fees and registration and an order of 14 April 1900 gave more instructions on large concessions.

- from both sectors, the former in accordance with a plan. This plan was to create different quarters for European and indigenous people (Article 3).
4. Town planning was established, with provision that plots in towns had to be laid out, including public spaces (Article 3).
  5. Europeans were to pay for their urban plots, implying that Africans did not have to pay and/or had no need of plots (Article 4).
  6. The practice of issuing title in two stages was established. First allocation is provisional, subject to development conditions. Final rights were only to be awarded after fulfilment of conditions and which may include building specifications (Article 4).
  7. Rural lands could be conceded by the colonial administration in rural areas for the purposes of agricultural or livestock exploitation. But these were not to exceed 200 ha in area (Article 7). That is, gone were the days whereby native land rights were accepted as existing; recognition now only occurred through allocations by the colonial authority.
  8. Above this size, only the Governing Council of the Government of the Governor could approve allocation (Article 8).
  9. A rural concession only applies to the surface area. With the exception of stone quarries, products under the land are excluded (Article 9).
  10. Concessions of more than 10 ha which are bounded by waterways were to be developed along one quarter of that perimeter (Article 10).
  11. Rural concessions were divided into two categories according to whether their use is for ranching or plantations (farming). Fees were adjusted accordingly (Article 11).
  12. Applications for concessions were to be directed to the Lieutenant-Governor (from 1903 Governor). Name, forenames, place of birth, and current domicile had to be provided, along with indication of the area and the intentions for its development. The application was to be submitted for publication in the official Journal of French Congo (later the Federation of Equatorial Africa - AEF), and if no opposition were raised within two months, the Lieutenant-Governor was to approve the application. If an objection were raised, then adjudication of competing applications must follow (Article 12).
  13. Costs of survey and registration were laid out as half a franc per ha to be borne by the applicant (Article 13).
  14. From the date of the issue of an order issuing the provisional concession, the holder had six months to start exploiting the land. If he defaults the title is withdrawn with no compensation for fees which have already been paid (Article 16).
  15. Only the Council is able to decide to issue a final entitlement, pending meeting of conditions. This included a minimum number of livestock and the area managed for ranching for a minimum of three years, or cultivation of at least a quarter of the area with adoption of commercial or well managed subsistence techniques. This had to be undertaken for a minimum of six years. In exceptional circumstances a longer grace period could be granted (Article 17).
  16. After three years of exploitation following the issue of final rights, the owner could apply once for another area of up to four times the size of his existing parcel, on condition he develops at least one eighth of the total (Article 18).
  17. Compulsory acquisition is provided for, for public purposes. Compensation was made payable only for private property (registered parcels under provisional or final allocation (Article 22).

The above articles were implicitly applicable to foreigners. The last articles of the law maintain existing provisions allowing indigenous persons to be allocated concessions up to a limit of 50 hectares. Allocation could either be made to an individual or a collective (Article 27). Payment of fees could be exempted on the decision of the Lieutenant Governor.

After meeting development conditions, the indigenous person may apply to have this allocation formally titled. However, this entitlement may not be sold for a period of 25 years, and then only to persons as approved by the Lieutenant Governor. In addition, an area of five hectares must be reserved against sale, is deemed inalienable, and constitutes ‘the indigenous homestead’ (*le homestead indigène*) (Article 27).<sup>136</sup>

The law therefore grants a usufruct for 25 years, and which, except for five hectares, can thereafter be sold on. The law closes with provision that those who hold temporary concessions may, if they so desire, apply for a new title with the conditions laid out above, but which will not have retroactive effect (Article 28).

A model of a *Cahier des Charges* was then attached to the Order along with a model for a *Procès-verbal d’adjudication*. This was in effect a contract, to which conditions could be added.

#### 5.4 The First Forest Law, 1899

As timber was the key product which the French had their eyes on, it is not surprising that issue of this decree was accompanied by another decree specifically dealing with forests (*Décret du 28 mars fixant le régime forestier*). This too would provide the basic law until the present although as shown in Chapter One with alterations enhancing commercialism in 2001 and 2008.

In his Introduction to the *Décret du 28 mars 1899 fixant le régime forestier*, the Minister in charge of Colonies in Paris observes that it is obligatory “to give legal operators protection against arbitrary actions by local agents”. This probably refers to native middlemen in both Gabon and Moyen Congo. The Minister also declares that this law will “allow rational exploitation”.

The law in 25 articles then lays out how concessions to harvest forests will be awarded. These include limitations on cutting trees in watersheds or on steep slopes, or trees of less than one metre in height, not cutting natural rubber trees, etc. Logging concessions are strictly by permit and authorization of the Commissionaire General or his delegate. Concessions are deemed temporary and do not imply ownership of the forest (Article 2). However, individuals have property rights to timber within their allocated concessions (Article 19). If exploiters carry out replanting themselves they will receive seeds and seedlings free (Article 21).

136 ‘Des concessions de terrains ruraux, d’une superficie de 50 hectares au maximum et d’un seul tenant, peuvent être octroyées gratuitement aux indigènes à titre individuel ou collectif. Les bénéficiaires de ces concessions peuvent, par décision spéciale du Lieutenant-Gouverneur, être exonérés du paiement des frais spécifiés à l’article 13. Les terrains ainsi concédés aux indigènes peuvent, après mise en valeur et suivant les conditions générales du présent arrêté, être attribués aux ayants droit. Ceux-ci, toutefois, ne pourront vendre lesdits terrains pendant un délai de 25 ans à compter de l’acquisition, qu’à des personnes agréées par le Lieutenant-Gouverneur et sous réserve d’une superficie de 5 hectares qui, en aucun cas, est inaliénable et constitue le homestead indigène’ (article 28).

In addition —

“Indigenous people will continue to exercise their rights of use (mushroom collection, grazing, hunting, etc.) for their enjoyment in forests which fall within the national domain or in the forests of individuals. However, this may exclude the right to fell and use timber on the advice of the Commissioner General” (Article 23).

Forest fires were a main concern. Article 25 threatened punishment of chiefs plus imposition of a collective fine on communities, and removal of villages which contravene rules as to fires in grasslands and forests. This was added to by decrees on 9th September 1899<sup>137</sup> and 10th March 1904<sup>138</sup>. The Preamble to the law implies that fires were being started deliberately (*Rapport au Président de la République française suivi d'un décret portant addition au décret du 28 mars 1899 sur le régime forestier au Congo français, et Décret*). By 1904 the law read that —

“Those who through bush fires or burning grasslands which spread to oil or rubber trees, to plantations, or which damage immovable or immovable property forests will be punished with imprisonment of six days to six months and a fine of five hundred francs, or one of these two punishments, without affecting the claims which individuals can levy on the culprits. The village chiefs may be punished with a collective fine and their authority over villages removed” (Articles 102).

The first of many amendments made to the Forest Code was only a few months after its promulgation, on 9<sup>th</sup> September 1899. This reinforced disciplinary action against chiefs, punishment through collective fines, and removal of villages or groups of villages which continued to ignore the provisions of Orders.

## 5.5 Mining Law 1899

A Mining Law was also adopted by Congo français on 6 July 1899 (and modified by decree on 19 March 1905). Judged by the content, this law was originally drafted for French Guinea; *Décret portant réglementation sur la recherche et l'exploitation des mines dans les colonies ou pays de protectorat de l'Afrique continentale, autre que l'Algérie et la Tunisie*.

This law permitted natives to retain their customary right to exploit surface gold and salt to the depth which their traditional processes allow (Article 9). Where commercial exploitation or explorations interferes with these diggings, compensation is to be paid through agreement with those whose rights have been affected, and if they fail to agree, by decision of the authority and with compensation equal to or double the value of the harm caused. No exploration could fall within 50 metres of habitation and permission was to be sought from owners to pass through their lands.

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137 Décret du 9 septembre 1899 portant addition au décret du 28 mars 1899 sur le régime forestier au Congo français.

138 Rapport au Président de la République française suivi d'un décret interdisant l'incendie des savanes herbacées, Paris, 10 mars 1904.

## 6 The Concession Era: 1899-1919

This era was one of immense transition in Gabon. By 1914, settlement patterns, trading rights, good relations between local and foreign traders, and agriculture were devastated. On the one hand French military and civil presence increased as colonial administration was established. On the other hand, responsibilities for imposing control and creating revenue was largely delegated (or co-opted) by the new mega-concessions. The Society of Haute Ogooue for example (SHO) appointed village chiefs, levied fines, put together militias and became the main authority in half the country.<sup>139</sup>

### *Companies as proto-colonizers*

The commercial *modus operandi* of the new concessions was different from earlier concessions which worked with and within the existing trading networks run by Gabonese. The new concessions actively exercised monopoly rights over all products collected from within the vast domains they were allocated. These overlaid many of the smaller and often British and German concessions. Gray records cases in 1899 in which British and German products were seized by SHO on these grounds. As was the intention, such seizures along with increasingly punitive duties caused the three oldest non-French companies to pull out in 1905.

The concession law was revised in 1910, and again 1926, making it obligatory that the concessions contributed revenue, and helped establish custom and police posts. They were also directed to organize and manage river transport and develop the lands conceded.

Initially the concessionaires were also bound to respect the customary land use of natives. There is not a lot of record that this occurred.<sup>140</sup> Instead, as well as the new land laws now denying that natives (indigenes) possessed land and resource rights, their labour rapidly became the focus of intensely exploitive policies.

### *The old remedy: tax to secure and control labour*

A host of new regulations were introduced to regulate local resource use, trading activity and residence, along with imposition of taxes and then forced labour. The head tax was introduced in 1900 to produce the revenue needed to sustain the colony. This caused thousands to flee their homes for remoter areas. The more natives resisted tax and coerced labour works (and the Fang and Kele reputedly did resist, along with rising numbers of boycotts by coastal communities), the more Orders were issued, taxes imposed and coercion including violence used. This was mainly applied in the rural areas. In April 1904, African residents in Libreville were required to obtain certificates to settle in the growing town. In May 1904, Gabonese were forbidden from leaving the French Congo for other countries. Engagement in the timber camps grew,

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139 Gray, 2002:145.

140 As in Weinstein & Gardinier (undated), Gray, 2002.

Gabonese raising money to pay taxes by collecting wild rubber, ivory and ebony and felling and moving timber for the concessionaires.

## 6.1 Territorial Change

To backtrack a little, the above changes were against a backdrop of changing control over Gabon. Until 5 July 1902 l'Oubangui-Chari (now Central African Republic) and Chad had been treated as part of Moyen Congo. A *Décret portant organisation nouvelle de la colonie du Congo français* in July 1902 made each autonomous and placed the four regions under the ultimate authority of the Commissioner General.<sup>141</sup> In 1909 the new Commissioner General in Brazzaville wrote to the Lieutenant-Governors advising them how to systematically occupy each region and pointing out the dangers of hesitation (*Circulaire aux Lieutenants-Gouverneurs relative à l'occupation de la Colonie*).

### *Changing the political context: centralization with costs to local relevance*

Finally in 1910 the four territories formally became part of the Federation of Equatorial Africa (AEF). All laws were reissued to bring governance in the four territories into line with each other and to reinforce the position that now all decrees emanated from Brazzaville. Land, forest, mining, administration, customs, territorial organization and other matters were all from this date the same throughout the AEF, as were their amendments.

The creation of more French posts in the interior was part of heightened control. By 1904 there were seven distinct French posts in different parts of Gabon.<sup>142</sup> In 1905 Gabon was divided into five administrative regions. These became 'circonscriptions' (circumscriptions) or 16 administrative wards in 1909, along with four distinct military units.<sup>143</sup> Figure 10 shows these circonscriptions. By 1916 all of Gabon was under one or other of the civilian posts. SHO and other large companies considered the circonscriptions an intrusion on their own territorial divisions and governance. The circonscriptions gave way to departments by a law of 15 November 1934, and changed the designation of Gabon from being a Region to become a Colony. By 1936 these circonscriptions/departments had become the basis of the nine modern-day provinces.<sup>144</sup>

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141 Initially to be located in Libreville but by a further decree a year later (29 December 1903) the residence of the Commissioner-General was returned to Brazzaville.

142 By 1904 in Gabon administrative centres had been created in Chinchoua, Lambarene and Angouma, adding to earlier established posts in Cap Lopez, Sette Cama and Mayumba.

143 De Sainte-Paul, 1989.

144 De Sainte-Paul, 1989.

**Figure 10: Circumscriptions (administrative divisions of Gabon in 1916**

[Source: Gray 2002:147]



## 6.2 Organizing Courts in Gabon

### *Bringing locals and foreigners more firmly under French law*

The justice system was also overhauled as part of the new federal regime (*Décret portant réorganisation de la justice en Afrique Equatoriale française, Paris le 12 mai 1910*). Justice was organised according to the 'nationality' of the parties: the *Justice française* was competent to hear cases involving (i) French citizens, (ii) foreigners from a country recognised as a nation or having diplomatic relations with France, and (iii) indigenous people from French or foreign



colonies who were beneficiaries of metropolitan French status in their country of origin (article 3). *Justice indigène* applies to all other groups of people.

French justice (i.e. for Europeans) was through ordinary tribunals (*Justices de paix ordinaires*) set up in each departmental country town, and an extended competencies tribunal (*justices de paix à compétence étendue*) in each colony<sup>145</sup> to judge commercial and civil matters. This structure was replicated among French Equatorial Africa (articles 1 & 10). A Criminal Court and a Court of Appeal were also set up in Brazzaville, accessible by all AEF colonies. Tribunals with extended competency acted as a first level jurisdiction for civil and commercial matters of up to a certain value and minor penal offences (articles 13 & 14). Ordinary tribunals intervened in smaller civil and commercial matters, established at the local level. Trouillot's letter to the French President, explaining the rationale of a new justice system, emphasises the commercial requirements to develop this regime.<sup>146</sup>

French tribunals could also intervene at the request of indigenous people. In those cases, the tribunal was to apply local customs unless parties stated otherwise, i.e. that they agree to be judged under French law (Article 3).

As to Indigenous Justice, it was rendered through an indigenous tribunal set up in each *circonscription* (administrative division or later department). It was presided over by the administrative agent in charge of the division and comprised a European and an indigenous assessor (article 40). However, they only had a consultative role, as judgment was made by the tribunal's president. Assessors were nominated on an annual basis by the Lieutenant-Governor of the particular Colony (articles 41 & 43). Only in 1927 would the Gabon Colony make concessions to indirect rule and formally incorporate African chiefs in the tribunal as competent to make decisions.<sup>147</sup>

According to the law of 1910, indigenous tribunals applied in all matters, local customs, so long as they did not contravene to the principles of French civilization (article 47). The tribunals were competent to deal with commercial, civil and criminal matters (and could order up to two years imprisonment). For more severe sentences, an Approval Chamber, a newly created special chamber within the Court of Appeal in Brazzaville, was to confirm the tribunal's judgement (articles 48, 49 & 50). The Chamber was directed to verify in particular if the indigenous tribunal had exceeded its power by dealing with a matter which was under French tribunals' competence.

For both indigenous and French justice, the procedure was established as public through open hearings (unless declared dangerous for public order or morals for French tribunals), examination was inquisitorial, and decisions rendered were to be based on reasons given, without which the tribunal's findings would be null and void.

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145 Those are replacing inferior courts that were based in Brazzaville and Libreville. The *justices de paix à compétence étendue* are now also established in Bangui, Ouesso, N'Djolé, Loango and Madingou.

146 Trouillot was Minister of the Colonies at the time. The letter is attached to the Decree in question and states that: 'European colons and traders will be able to rely in each main departmental town, on a tribunal with the same competence than French jurisdictions in cantons' (at the time).

147 R. Jean-Baptiste, 2008:222.

### 6.3 Ensuring Indigenous Occupancy Does Not Interfere with Enterprise

The policy to penetrate the colony more thoroughly administratively was complemented by a determination to regulate land allocated to or used by indigenes more actively. On 24 July 1911, as new Governor of the AEF, M. Merlin, issued a Circular to the Lieutenant-Governors, fixing the details of application of an Order of the previous year (6 October 1910) *relating to concessions of 10,000 ha and below*.

#### *Adopting a racist stance to steal the land and resources of natives*

His views, sampled below, mirror attitudes to customary tenure at the time. On grounds that natives were 'backward' and their land use regimes 'primitive', their use of land 'vague and unproductive', the Commissioner General launched coerced settlement and conditional land use, which would lead to the issue of more permanent title to natives who produced well on their plantations or livestock farms. Titles would be limited in area and exclude all those areas which investors – the concessionaires – were 'in every way better equipped to use'. This was most of the country by then. It was actually wrong, Merlin asserted, 'to leave African lands entirely in the hands of natives' (M. Merlin, *Principes Qui Régissent la Constitution de la Propriété en Afrique Equatoriale Française*, Brazzaville, le 24 juillet 1911).

Reflecting De Brazza's views of a decade or so earlier, Merlin wrote that —

"The notion of property is still not conceptualized by primitive peoples of Congo. Often the word is lacking in the language to express the idea. As to the soil, the idea of property is understood in most places as direct use of the fruits of the soil with no thought of planning for the future in these primitive minds. Even then, the idea of possession of the fruits of the soil mostly relates to subsistence food either cultivated by the concerned person or of which he can dispose from the environs of his habitat.

However this habitat is changing. A great number of peoples are not permanently attached to the soil. They remain not nomads in the literal sense of the word used in respect to pastoralists with cattle which roam in different areas but their movement as wanderers. Living in forest huts without value of which the construction elements are found equally in the whole surface area of the forest, they occupy more than they settle. At any accident or frivolous state of mind, they abandoned this primitive residence and livelihood to settle somewhere else. In certain regions, either because Islam is a factor, or through transformation following contact with our civilization, the idea of property is starting to get through, along with the idea of possession as attached to the soil itself and not only to the fruits of the soil. This is through property or through effective and permanent occupation".

He goes on —

"The duty of the sovereign nation at the beginning of its occupation facing such a confusing situation is to bring necessary order. It has to promote the evolution of the idea of property by indigenous people by relating it to the soil and facilitating access

to property to activate the development of this land and to ensure its possession. Lacking any other regime than force, of a notion of fixed prices for property in even the most developed population, or of any precise notion of property among others, it is inevitable that to proceed systematically we first undertake the original management of this vast untouched domain ourselves.

If the nation can't allocate property exclusively without abusing the indigenous people it has found primitively settled there as uncertain as these installations may be, it also cannot abandon exclusive possession to these indigenous people, who show themselves unable to develop the land, and therefore cannot appreciate the concept in their primitive brains of rights, and which they will not even know what to do with other than to give away the lands to any speculator.

(To fail to act would) ... we would be guilty of perpetrating shifting cultivation, and failing to exploit the richness of these lands as should be done by any civilized nation. Or it would put these indigenous people in such a situation that they give the land to speculators.

An informed sovereign nation has to protect itself from these risks by organizing this unorganized domain, by actively ensuring the progressive appropriation of property and to the benefit of indigenous people as well as immigrants. It is on this basis that the only legitimate property is one which a civilized national applies in these barbarian countries where rules and even ideas of property are so primitive”.

Merlin then lays down the following rules —

“Here are the principles which must guide the sovereign nation if it wishes to lay down clear rules for the domain of the colonies that are robust, certain, and fair:

1. Consolidate matters as to possession and develop a concession title but under conditions of effective development of the land; give certain rights to indigenous people on the land they occupy, cultivate and which they effectively exploit, and confirm these rights by a formal title of property, after development has been demonstrated;
2. Put at the disposal of immigrants parcels of land as necessary for agricultural, forest or industrial exploitation, under titles but which are provisional, able to be transformed into definitive property, after developing the land;
3. Allocate to each of them only what they can really develop, prevent people who are unable or negligent to exploit vast areas of land; prevent indigenous people to concentrate possession with the intention to speculate; actively pursue progressive development of property through a legal regime and systematic procedure – these are the actions required”.

Merlin rationalized this —

“These are the principles which will henceforth govern the allocation of small

concessions in French Equatorial Africa for all who want to develop any parcel of territory, European or indigenous, and which will constitute property for indigenous people to guarantee them a homestead; *which aims to prevent a wrongdoing as has been suffered in most of the colonies by immobilizing lands in the hands of indigenes who are ignorant or who do not want to do anything with the land, or within the hands of colonists who will wait for the hour of speculation*” (our emphasis).<sup>148</sup>

The Commissioner-General then describes the procedures he had instituted in his Order of 6 October 1910, including distinctions between rural and urban areas and between European and native quarters in urban areas. Occupation permits for the latter were obligatory, to be issued by administrators, mayors or heads of circonscriptions in accordance with a model appended. Conditions would apply, such as relating to construction of houses, sanitation, and security measures. Authorization could be revoked for failure to comply, and resulting in eviction. Implementation was to be up to the individual Lieutenant Governors.

#### *Giving natives token access*

In the section on rural lands, the Commissioner General established the limit of 200 hectares for non-indigenes – and as touched upon earlier – 50 hectares for indigenes, able to be allocated on an individual or collective basis. These allocations would be subject to the same requirements for development, and could mature into definitive entitlement upon meeting those conditions. These provisions were already in place in Gabon. A form for issue of occupation permits (*Autorisation d’Occuper*) was appended to his Order.

It is of note that in all the annually gazetted applications and awards of lands and requests for registration right up until 1959, it was routinely noted that “the applicants declare that to the best of their knowledge there are no real rights existing on the lands they have applied for”. In reality, without exception, these lands would have had customary clan or family owners.

## **6.4 Regulating Concessions**

The same Circular of 1910 appended requirements relating to issue of concessions larger than 10,000 ha (*Grandes Concessions*) based on the model provided for in 1899-1900, and which each member colony of the new federation was to apply. This included a model decree and also a model revised *Cahier des Charges*, the document of entitlement, including conditions.

#### *Establishing once and for all that natives only use the land, not own it*

The model decree laid down a format through which a society may be formed to exploit the concession and conditions imposed on the concessionaire. The model *Cahier des Charges* listed standard conditions related to how natural resources were exploited and again noted that the

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148 M. Merlin, *Principes Qui Régissent la Constitution de la Propriété en Afrique Equatoriale Française*, Brazzaville, le 24 juillet 1911.

concessionaire must provide boats and water services in relevant cases, and establish customs posts for collecting taxes to be sent to the treasury on the demand of the Governor (Article 19). It was also specified that concessionaires must “respect the right of indigenous users of the forest for subsistence use and production of traditional goods”. As example, a decree issued in Paris on 20th June 1910 modifying a concession issued to the *Société Coloniale du Baniembe* in Moyen Congo includes such a condition, and notes that —

“Settlement areas upon which indigenes are dependent in accordance with custom constitute indigenous reserves. All the products of these reserves, without exception, are freely available to indigenes. The Society is authorised to pass all contracts for the exploitation of the forest to these settlements. Moreover, indigenes settled on lands preserve the right to live on the land which they currently occupy and for which they may in future request individual or collective property titles” (Article 10).

The Company could also not request compensation from the colony for damages which might occur either as a result of insecurity in the country, riots, or rebellion by indigenes or by illegal competition by them, or as result of conflict with a foreign power (Article 12).

Various decrees in subsequent decades added to the land and concession laws in various ways but without radically changing the principles.<sup>149</sup>

## 6.5 More Displacement

Despite the will of the Commissioner General to see natives settled and abandon shifting cultivation in favour of single permanent plots, French occupation itself made this impossible. The 1900-32 era was characterised by massive movement throughout Gabon.

### *Creating chaos and proving that natives are not linked to the land*

We have seen earlier how thousands of people were attracted to commercial opportunities during especially the late 19<sup>th</sup> century, causing old settlements to be abandoned and new settlements to be created. The impact of smallpox epidemics aside, much of this movement was self-driven and strategic, such as when Opungwe deliberately moved inland up the Ogooue River to trade for themselves, or when Fang or Kele speakers as purposively moved coastward and southward to capture trading opportunities.

Mobility from 1900 appears to have been more individual, panic-stricken and random. In part this was to escape the forays of increasingly brutal French colonial forces and less formal militia and the tax-seeking with which the administration became obsessed to make ends meet for running the colony. This forced entire villages off the main trading routes to which many communities had gravitated and sent them back to remoter and temporary camps. Social

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149 Decrees on 13th March 1918, 12th December 1920 and 9th June, 1925 modified the basic decree of 28 March 1899 on Land Tenure. The Order of 13 September 1926, establishing the regime for concessions of 10,000 ha and less was modified by orders in 18 October 1926 and 13th April 1932. The last increased access to rural concessions by indigenes to 200 ha.

relations were also fragmented as each family fended for itself. Trade also changed, with incentives becoming more individual than clan-based.

### *Turning land holders into workers for colonial enterprise*

But most of it all, writers appear to agree that movement in the 1910s was in response to the emergence of the logging industry, focused on the famed okoumé species. Okoumé is found in up to 80% of Gabon's forests and exists in only small volumes in neighbouring Congo, Equatorial Guinea and Cameroon. From the outset, okoumé was favoured due to its easy peeling quality. It began to dominate commerce from around 1905, export rising from a few logs in 1889 to 7,000 tons in 1905 to 91,000 tons in 1911.<sup>150</sup> Its dominance of trade would continue until the present.<sup>151</sup> In the 1910s thousands of wood cutters were attracted to camps. Although these had been initially organized by clan leaders, this shifted to direct labour hire from around 1910. Labour camps were transient, and payment in rum made them often lawless. At the same time large road-building projects were launched to enable logs to be brought out by road not river.

## **6.6 Changing Social Land Relations**

With men away at labour camps in concessions, women lost their source of clearing new lands. Shifting cultivation was handicapped. Women focused on gardens, producing staples like manioc (cassava). Patterns of village settlement and land use were severely disrupted. Food shortages multiplied. This was exacerbated from 1908 by the ban on sale of gunpowder, decreasing hunting and food and increasing crop damage.

Localised famines grew in number during the 1910s and reached epidemic proportions by 1916. An additional trigger was the collapse of the okoumé market in 1914 (Germany had been the main export destination). Revenue for the colonial administration plummeted along with family incomes and survival. Thousands of timber workers were forced to return to their villages in the interior. By 1915, the administration was using its Regional Guard, long characterized by being well-staffed by Senegalese, to force Gabonese to harvest natural rubber or palm kernels to pay their head taxes. In addition, Gabonese men were forcibly recruited to serve as porters in the French campaign in German Cameroon. This coercion was officially justified on the grounds that the Gabonese needed to earn money to pay their taxes. As they returned from Cameroon, many men brought new diseases, such as sleeping sickness. Many women were forcibly engaged in constructing paths, making palm-frond tiles, and the like. Failure of the rains in 1916 brought matters to a head with widespread famine, lasting in many areas until 1919, made worse by the Spanish flu epidemic and a fungi affecting cassava.

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<sup>150</sup> De Sainte-Paul, 1989, Gray, 2002.

<sup>151</sup> Between 1987 and 1996 okoume accounted for 70% of log exports but since then has fallen to half of total wood exports (Kaplinsky et al., 2010).

### *Inventing coerced settlement as a mechanism to secure labour and contain resistance*

Nevertheless, tax collection continued and the Regional Guard was permitted to use brutal methods to collect taxes from the local population. All in all, agriculture, settlement and society suffered badly.<sup>152</sup>

Such conditions drove French determination to stabilise and bring order to settlements within Gabon. Within this, definition of populations by ethnicity became pivotal. Censuses, first conducted in the 1910s and with a major census in 1916, and periodically conducted thereafter were key instruments. According to Gray (2002), the censuses undermined clan association by forcing individuals to give their name, tribe and language. Clan affiliation more and more represented trading affiliations and network rather than a social or socio-territorial network. Rich describes how the Nkomi kingdom was the last to lose its adhesion as a social entity, the last Omyene community to crown foreigners and make a foreign Roman Catholic priest their king, in a futile bid to find an ally against French colonial government.<sup>153</sup>

## **6.7 Resistance**

### *Once again, fighting back*

The Gabonese did not readily hand over their lands, resources, traditional authority, or trading rights to the militarized French administration. From the 1860s to 1930s, flight was accompanied by mobilization of local forces, often using the muskets bought from Europeans, and resulting in periodic rebellions and attacks. While boycotts as noted earlier were a favoured tactic of trading clans, outright pillaging of ships and rebellious attacks by Fang, Kele and Seke traders had occurred during the 1869-74 period.<sup>154</sup> During the 1880s the Awandji actually refused entry of Europeans into their territories and this resistance had been largely effective until the death of their leader in 1896. Vili had also resisted incursions during the 1890s.

Deepening French control revitalized resistance after 1900. The Mitsogo rebelled in 1903 and with hundreds of warriors harassed French troops right until 1913, as did the Bayaka between 1907 and 1910. Fang had significantly military might with ten battalions of 500 men each. Civil conflicts revitalized during the late 1920s.<sup>155</sup> As late as 1922 at least one Bawandji clan successfully denied access to traders and French military personnel.

Initially much of the resistance was to do with trading, taxes, and prices, such when new duties were imposed on alcohol, cloth, salt, tobacco and other commodities.<sup>156</sup> However, strikes against forced labour, bad conditions in camps, and bad pay also multiplied from the 1910s and revived in the 1920s. By then the conflict was more against the very idea of French civil and

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152 Gray and Ngolet, 1999: 87.

153 Rich, 2010:215.

154 De Saint-Paul, 1989.

155 Most of the above information derives from de Saint-Paul, 1989.

156 Rich, 2010:219.

military control and fury at the gross loss of land and resources and benefits to foreigners. 'It was only in 1930 that one can consider Gabon pacified and totally under French domination.'<sup>157</sup>

### *Getting the elites on side*

By then, Gabonese 'big men' and clans were entirely excluded from the timber trade, other than as workers. The permit and concession system was entirely geared to Europeans and to large-scale enterprise.<sup>158</sup>

On the other hand, many local 'big men' had emerged as members of the French administration or its henchmen. By the early 20<sup>th</sup> century there was a definable elite class around Libreville which could be relied upon to support the colonial forces. Reno describes characteristic co-option of local notables well:

"Most colonial governments in Africa relied heavily on cooperation from local strongmen. The essence of imperialism was ... the incorporation of elites into administrative structures. In some cases elite groups managed to transform the administrative positions they occupied into their own private patrimony, in the sense that they could personally determine how those positions would be used and would occupy them..." (Reno, 2000:438).

When the okoumé market revived after 1918, a flood of new French-led companies entered Gabon. Ratanga-Atoz records that there were 348 *permis de coupe* covering 10,450 sq km in 1927.<sup>159</sup> One French consortium had a concession area of 750 sq km, employed 40 Europeans and 1,500 Gabonese, exported 36,000 tons of wood and annually from 18,000 sawmills. The 1931 Depression pushed the okoumé industry into crisis again. But this time, workers did not want to return to their villages, and many strikes by unpaid workers occurred.<sup>160</sup> Over 25,000 men were employed in the timber industry in 1929. 'Floating populations' became an issue.

## **6.8 Settling Gabonese Down and Bringing in other African Labour**

Already in 1911 the first resettlements (*regroupements*) were undertaken in Southern Gabon to facilitate the recruitment of labour for timber and colonial projects, and tax collection, and in the 1920s in central areas. *Regroupement* became a major colonial policy and project in the 1930s, including creation of model villages. So-called 'vagabonds' were an early target, grouped ethnically into 23 villages in the southern lakes areas.<sup>161</sup> Some 53 other settlements were formed by 1935, based on layouts of roadside plots and plantations. Chiefs were appointed by the administration. Early developments were supervised by the hated Regional Guard.

<sup>157</sup> Ratanga-Atoz, 1985:17

<sup>158</sup> The system of 'free cutters' had been undermined in 1914 by introduction of requirements for registration, payment of tax and plans and maps for where trees would be felled. This proved the death-knell to clan-organized labour and trading arrangements, leaving the field free for capital-backed Europeans.

<sup>159</sup> Ratanga-Atoz, 1985:29.

<sup>160</sup> Gray, 2002

<sup>161</sup> Gray, 2002



Meanwhile, foreign workers were encouraged in the 1930s, Chadians providing road building labour. The great Congo-Ocean railways development of 1924-34 was described as begun with forced labour and finished with volunteer labour. By the 1940s a free market in labour was well established.

President Charles de Gaulle called Gabonese to arms in support of France in 1940. Following the Second World War, tolerance of French colonialism was at breaking point. Rebellions and strikes were constant. De Gaulle read the times and in 1946 launched a process designed to increase autonomy of each colony but linking it with others in an African French Community (*l'Union française*). Gabon sent five representatives to its Council in 1947.

For most Gabonese in this late colonial era, *lawful* access to land was only through the semi-coerced settlements (*regroupements*) in what in other states would later be described as 'villagization'.<sup>162</sup> Boxes 10 and 11 describe the creation of villages in the north, and the reduction of rights in the process. They also illustrate other facets requiring note. First, these cases suggest that many aggregations were established in or adjacent to the present living places of the settlers, that people were not moved tens of kilometres. Second, members of *regroupements* were not randomly selected but involved whole hamlets. Third, there was a considerable degree of volunteerism to move to be nearer services. Fourth, occupation of those areas by some clans may have extended back into the previous century. Not all Gabonese had migrated or been forced to flee their traditional areas during the 1888-1950 era and many others eventually returned to those areas. It is also evident that customary possession had been formally denied for half a century and most of the land area was under concession to still mainly commercial enterprises. Customary forest use rights were acknowledged but not encouraged. Finally, care should be taken to presume that street-like settlements were entirely untraditional. On the contrary, Du Chaillu had described a number of villages in the 1850s as comprising a single street.

#### **Box 10: An Example of Villagization in Gabon- Bolossoville**

**Bolossoville is 10 km outside Oyem town, the capital of Woleu-Ntem Province, in the far north of the country bordering Equatorial Guinea and Cameroon. The aggregated settlement (*regroupement*) settlement comprises seven villages, each largely comprising members of the same clan and closely related. These are Fang clans.**

**The population is estimated at around 2,000 but with only 300 permanently resident, most of whom are very young or elderly. For example, in one family, only the grandmother lives in the village with 15 other members in Libreville. They return at least once a year. They could open farms of their own on family land and sometimes do. The opportunity to build new houses behind the existing house is available, with farms extending behind or in old family land areas more distant from the settlement.**



162 E.g. in the 1970s in Tanzania, Ethiopia and Mozambique.



In another family, the father lives alone in the village, two sons are in Libreville and a third bought a plot on the edge of Oyem town, for which he has a title deed. He moved there to be near facilities not available in Bolossoville. However he also has a house in Bolossoville.

All 25 men attending the meeting had most of their families living in Oyem, Libreville, or other towns. Some of these men were young. They were home because of not finding work in the cities. All participants insisted for themselves and their family members the village of Bolossoville is their home. All relatives return to Bolossoville at least once a year, even though it takes 10 hours to reach there from Libreville.

The area was traditionally known as Akaktane and comprises land partly owned by Akaktane but mainly owned by Nkiè, both of which are now living in the regroupement. Bolossoville was a planned roadside settlement in 1949 to which settlers first moved in 1952, on the instruction of the colonial Chef du Canton. A main purpose was to aggregate labour for road building and to ease head tax collection on all persons of 18+ years. Workers were paid 25-30 francs per month. Although villagization was not compulsory by 1950, officials were firmly encouraging, and said if they did not resettle, they would 'look like Pygmies'. Many wanted to move to the settlement because of work, and the establishment of a school and dispensary.

It helped that the settlement was established within the local area, not involving removal to unknown zones. Until this time all villagers were living in forest villages within 20 km of Bolossoville. Nkiè and Evés came from the east, Bolo from the north-east, Bifoulane, Meleme and Mengang from the south-east. Akaktane and a sub-group, Nsendjou, came from the area adjoining Bolossoville on the north-west. The Nkié clan owned the entire area on which the roadside housing settlement is located, and the area to the south, and gave permission for the other clans to aggregate there. This includes an important river. Farms are located immediately behind each roadside house plot. Additional farms are often within the nearest zones of the traditional areas of each clan. Many villagers are still using their traditional areas for hunting, fishing and forest product collection. Bolossoville is considered to have a village range of around 2 km. However the above traditional clan areas extend much further, together comprising roughly 50 km by 20 km (1,000 sq km). The elders believe it would be fully possible for each clan to define its traditional land area, still well known until the present, and largely bounded by permanent rivers and streams. Many sites within each of the clan areas are named and periodically used. They would be used more if younger people still lived in the village. Delimitation of the area to at least a radius of 5 km has been requested of the authorities in Oyem, but not undertaken.

Fang did not traditionally own land collectively, only as families. However families are extended and may be large, at times virtually equivalent to a clan. Nor was collective property created at the time of *regroupement* in 1949-52. Settlement was planned around private house plots and farms. Settlers were granted Rural Occupation Permits when they first settled, but these are out of date and second generation families hold no permits for their house plots or farms. Additional farms in remote areas are all within traditional family lands.





The village is governed by a government-approved/appointed village chief (*Chef du Village*) advised by a Council of Elders which includes representatives of each sub-village/ clan. This has power to make rules. Each sub-village has its own family council. A *Comité des sages* resolves conflicts. Some problems arise when women fish and hunt in areas not traditionally their own. The family council sends a letter of complaint to the next village. One of the problems faced by villagers is problems with elites. For example, it has occurred in the province that an elite member of a family acquires formal rights which is greater than his share and makes other members of the family angry. Elites may also be found negotiating with concessionaires, such as has occurred in the next village. The Bolossoville council has made a rule saying no one may negotiate directly with OLAM, the concessionaire on land, harvesting or employment matters.

OLAM runs a concession which it has sought and been allocated with no consultation with the community. Its area includes much of the traditional lands of the different clans and extends within five km of Bolossoville settlement. So far harvesting of trees has not been undertaken close to the settlement. No member of Bolossoville has sought or secured a forest exploitation permit, which is available for up to 10 ha.

An association was established to assist rural families to exploit the forest commercially (*Société des Techniques forestières de l'Okoumé* (STFO). The family receives 60% of the benefits, the harvester with the machines gets 40%. Elites and military are those seeking these Gré à Gré Permits, and make contacts in villages to secure lands for this purpose. Another route to local exploitation is *le fermage* which is sub-leasing of the permit; this is now legal. The owner is responsible and pays the tax but the harvester ends up with most benefit.

### Box 11: Ngou – a small village in the north

This Fang village is 10 km to the west of Oyem. It is a roadside settlement formed from an earlier settlement which was located on Ngou Hill, 2.5 km to the north. Movement to this site was not forcefully compulsory but made difficult if one did not move. Relocation took place in 1952. The site was determined by the fact of a track existing there. However, within a few years another road was made which passed by Ngou Hill, making villagers regret that they had not held out against removal for a few years more. This is especially because another village in the area has been settled there.

The villagers were used to moving down to this road throughout the 20<sup>th</sup> century. The German administration before 1914 established a school in a village nearer to Oyem, and to which the extended family in Ngou Hill sent their children, and which they continued to attend until 1952. The Ngou village comprised two extended families. Only the larger extended family moved here. The other family (Abeng) went elsewhere. They were around 50 people at the time when they moved. Today the village comprises at least 300 people (perhaps 500) but many no longer live here.

The regrets at moving from their traditional lands on Ngou Hill are palpable. The hill was considered unique, 'a paradise', and where —





*“we ate well, we had good game, we were able to use all the products of the forest, and we had a good climate. Here we have faced sicknesses, and suffer floods from being surrounded on three sides by rivers. Hunting is difficult and far away. There we could fish and get many fish; here the river is deep and we need pirogues to go up river to find fish. There we had much more space to farm and the soils were better. We could follow the fertility, moving to get the best crops. Fallows were only two years, here they are four years. That place was chosen because it was good. We did not choose this place. It was chosen for us. The only advantage was the road. Yet the road brings problems also. We had peace in the other place, not here.”*

Yet that site was not their home before 1929. Their grandfathers moved there from Mbindo in Bissok Canton in 1929 to flee famine. If one walks through the forest their original home is only 20 km away but it takes 60km by road to get there. Some of the original Mbindo clan scattered further than Ngou Hill, moving north into Equatorial Guinea.

A Malaysian company was given their original land of Mbindo a few years ago. The part of the family which remained in Mbindo is deeply aggrieved. However, they have no choice but to accept the concession, which is powerful and also because one member of the family encouraged the concession, for personal payment.

Farming in Ogue is not developing.

*“The young are absent and there are no young men to open new farms in the forest. Many farms here are fallow. Few of those who have left to work in towns have built houses here, but they believe this is their home and they return once a year. Some return often, but that is because they have work up here. One or two have built houses in Oyem, not here, to be nearer transport and services”*

And another:

*“For the last ten years we have farmed here with help of paid labour. Poor people from Burkina Faso were the first to come and now also from Equatorial Guinea, Cameroon and Mali. They do not come in groups but as individuals looking for farm land. They rent the land from us. They leave after a year or even six months at the end of the harvest. This is the same situation in all the villages in Woleu-Ntem. Our own people leave for the towns and foreigners come and farm our lands”*

The current land area of the village is not large, not much more than two square kilometres. Rivers make the boundary on three sides (Abeng, Wele and Mbalenzok rivers), and the road on the fourth. Land within the village is owned by individual families. There is no shared land. There is no traditional chef de famille, nor any form of village government. Four villages make up the cluster and there is sometimes a meeting among them, for political or social reasons (weddings or funerals). Each of the four communities comprises in effect an extended household or clan, with a number of nuclear family units. All agreed that a land title should be a single family title for the whole area. The family would then allocate formal usufruct over specific parts of the family land. This is already the practice under customary norms.

No concession has been granted land encompassing this village – yet. The signs are that all this land may have already been allocated to OLAM to produce commercial oil palm and rubber, as described in the next chapter.

In 1950 the colonial administration passed new regulations relating to native occupancy. By this time *regroupement* or *villagization* was posed as entirely for the benefit of those affected. The new aggregated villages were designed to settle and formalize family *occupancy* with the intention that long term *occupancy* titles would be issued to heads of households for house and farm plots. Some were, but as in the above examples, rarely followed up after provisional periods, leaving rights in limbo. State ownership of most of the Rural Domain was re-emphasised, to limit claims by communities or clans to traditional areas. It is likely that earlier-mentioned claims of coastal Opongwe in the 1950s to lands which they felt had been wrongly taken from them were a main catalyst to this. They were adamant that they should be compensated for all the lands taken by the state and foreigners, on grounds that they had from the outset only rented these lands to immigrants, not alienated them absolutely.<sup>163</sup> For the late French administration in Gabon, this was dangerous ground, which had it been supported, would open the floodgates to land claims by communities/clans.

### *Realizing something has to be done to limit ill-feeling*

The late colonial administration was more liberal in regard to urban plots. For the first time Gabonese in Libreville were permitted to turn longstanding rental rights of occupancy to the state into absolute entitlements should they meet building conditions. Many were unable to do this. A Cadastre was established in which all formal entitlements were regarded based on formal survey. This followed the long-advocated Torrens system of linking title to a specific and mapped parcel, which in principle the French administration had supported in law since 1899 but not implemented. Urban land use planning got underway in the 1950s, each department required to plan their towns and lay out lots.

Still, through all this one fact had remained intact from 1899; natives to the territory, whether Pygmies or Bantu were denied any recognition that they owned the lands they had long lived on for varying periods, or that such lands included unfarmed forested lands. The only way they could legally become even lawful occupants and users of land was through application and award of settlement and use rights from the state. In this respect the colonial – and as we have seen – the post-colonial administration remained steadfast from 1899 until the present.

This is all the more ironical given that between the first legislation affecting the coastal colony of Gabon in 1846 until 1899 native land rights were fairly well respected as existing, and recognized as having the principle attribute of real property in being able to be sold, and as having to be taken into account should the colonial authority itself seek to possess those lands for genuine public purpose.

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163 Personal communication, M. Delbrah.

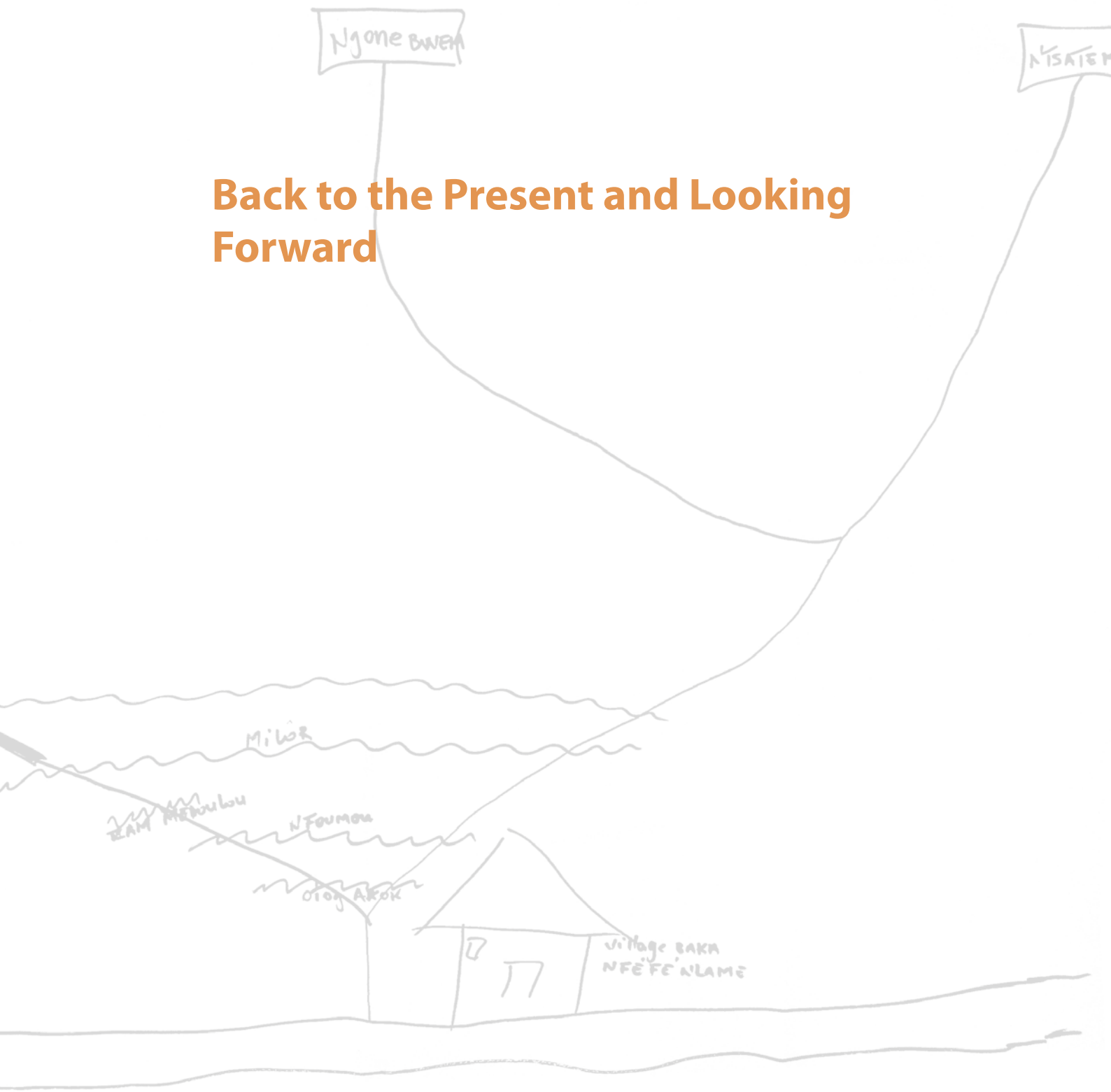
NKOLE  
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- Titling is crucial for the entire population of Gabon given that it is the only legal mechanism through which rights to land and resources may be acquired and legally upheld



# Chapter Three

## Back to the Present and Looking Forward



## 1 Putting The Past into Context

Chapter Two tells us important things about land rights in Gabon. In summary —

1. Most of the fundamentals in Gabon’s current land law derive directly from colonial laws. No attempt at independence in 1960 or since has been made to remove these injustices.  
The most basic legal sources of problems include:
  - a. Sustained legal failure to accord customary land interests more than acknowledgement as the right to use land (i.e. not to own it as real property);
  - b. Sustained legal failure to recognize other than physical settlement (houses, buildings), farming (plantations), or commercial/industrial use of land as *a basis for application for real property rights*; this means that rural Gabonese (both minority hunter-gatherers and farmers) may only become legally recognized owners of limited parts of their customary properties;
  - c. Imposition of procedures and development conditions which place access to real property beyond the means of the majority in both urban and rural settings;
  - d. Establishment of the state as original owner of the land in a territory which was clearly owned and occupied prior to the establishment of the state (and in the first days of colonization recognized as such).
  - e. Gabonese did not only lose their land. They lost all customary rights to waters, surface minerals and land cover including forests.
  - d. They retain use rights only, and these are proscribed by area and use according to the decision of the state. Acknowledgement of land and resource ownership is not on the basis of real occupancy or use but at the state’s discretion. This has led, and continues to lead, to a high level of elite capture. As well as the above producing gross injustice, it is an unsound strategy for a government to serve as both landlord and land administrator. It cannot be a neutral arbiter.
2. The colony legacy was not static. *It became more unjust over time*. Therefore what Gabonese inherited in 1960 was colonial tenure at its worst. It is this which is sustained.

The critical break point in this was the 1899-1910 era. From 1849 until 1899 the area now known as Gabon was recognized by France as owned and *occupied by indigenous populations*, and that they had an organized clan-based regime for creating and holding territorial dominion and for distributing rights within those domains.

Accordingly the right of indigenes to lease, lend or sell lands and resources attached to the land was acknowledged. Their ownership was protected when the French colony needed their lands for public developments. This lasted from 1846 until 1899.

Since then, acknowledgement of rights steadily declined. For example, in the event of compulsory acquisition of land for public purposes, the situation for those with no formal title to their lands had worsened. While in the past compensation was payable to even those without formal title, although to lesser degree than payable to owners holding formal deeds, no compensation is payable to evicted informal occupants today.



Many negative constraints on local rights were put in place after Independence, including in the last decade.

3. The single most important driver to dispossession of the indigenous population of Gabon and which has been maintained until the present is commercial enterprise. First, capturing of land-based resources (timber, rubber sap, ivory, minerals) then the land itself to secure private ownership of those was always the objective. The aim was and remains to make money from the land.

Initially indigenous populations participated in, and even dominated critical aspects of commodity trade, until their competition could not be tolerated by stronger, European interests.

4. The engagement of Gabonese in early capitalism was an important shaper of strategies after 1960. Gabonese society was already hierarchical and stratified internally prior to European arrival, and this was the basis for increasingly unequal society, in which 'big men' became a privileged group whose interests still drive land policy. Because of their socio-economic alliance with politicians and senior civil servants, private interests continue to limit political will to remedy these injustices.
5. Foreigners, including originally Senegalese and other non-local Africans as well as Europeans characterised colonial enterprise from early on and helped shape land law and policy. This remains a factor in treatment of land rights today. On the one hand the state is increasingly keen to assure foreign investors ready access to Gabon's lands. On the other, it seems to not want to regularize existing occupation of lands (especially in urban areas) for fear that foreign workers will secure immovable rights.
6. A combination of commercial opportunities, conflict, fearsome taxes and military force, disease and famine, and villagization during the colonial era caused significant displacement and adjustments in rural settlement patterns. Some ethnicities greatly expanded their locations during the 19<sup>th</sup> and 20<sup>th</sup> centuries, notably including the majority Fang.

And yet it is likely that the extent of permanent movement is exaggerated. Many populations appeared to have moved temporarily in response to crises, returning eventually to their home areas. Others seem to have moved within their large domains rather than fleeing altogether to other ends of the country. Many but not all of the roadside settlements created by 20<sup>th</sup> century *regroupement* or villagization policies were located within traditional clan lands.

7. Current policy towards customary rights shows signs of being justified on the basis that Gabonese were by Independence largely without links to lands which their forefathers owned and used. However, the facts of changing settlement patterns do not suggest total dismantlement of customary arrangements.

## 2 Urbanization And What It Means For Land Rights

Three demographic facts stand out in respect of Gabon; (i) its low population density; (ii) the high proportion of foreigners; and (iii) the high proportion of the population which is urban. Gabon is also known for not having conducted a formal census since 1993 (and before that in 1969).

### *Unusual patterns of growth and settlement*

The most often used data derives from 2003, when extrapolations from the 1993 data assisted by the findings of administrative surveys were formally published. Each of the 37 departments in the nine provinces does such a census biannually, so the figures need not necessarily be seriously inaccurate if it were not for the fact that the state itself has periodically contested official results on grounds and then issued revised figures.<sup>164</sup> This is said to have roots in non-demographic imperatives, such as relating to alleged manipulations of electoral rolls.<sup>165</sup>

Figures produced in 2011 remain unpublished, with popular claims that the Government does not want to be seen to have such a high proportion of foreigners in its population, referring more to people from Nigeria, Burkina Faso, Benin, etc. than to the French European population. Estimates of the non-citizen sector of the population vary widely from 10% to the published 35% in the disputed 2003 data.<sup>166</sup> It is known that cities include large numbers of Nigerians, Congolese and other African nationalities. As Box 10 illustrated, seasonal labour from Equatorial Guinea, Burkina Faso and other West African countries is also common.

### *Tiny population and high per capita land areas*

With such caveats it is nevertheless certain that Gabon has a small population. It is the 9<sup>th</sup> least populated country in Africa (less populated states are almost all island countries) at around only 1.5 million people, or more precisely 1,576,665 persons in July 2011, as estimated by the World Bank when adjusting for known excess mortality due to AIDS resulting in lower life expectancy, higher infant mortality, higher death rates and lower population growth.<sup>167</sup>

Gabon also has the 5<sup>th</sup> smallest population density in Africa at 5.89 persons per square kilometre. Estuaire Province is predictably the most populated, at 31.9 persons per square kilometre. Libreville, the original colonial settlement area and the capital today, is located there and

164 The figures from the 2003 calculations (based on department figures, as well as extrapolating from the last official census of 1993) were released in the *Journal Officiel de la République Gabonaise*. When Government contested the figures the Constitutional Court was directed to issue new figures and did so in Decision No. 003/CC, 17<sup>th</sup> February 2005.

165 For example, to boost numbers on the electoral register with claims for example that the 2009 election result of 800,000 votes for the incumbent party must have been falsified in a country where 60% of the country are under 18 years old producing at most 750,000 voters and assuming all voted.

166 See footnote above.

167 Data provided in this section variously derives from the Population Reference Bureau, 2012, figures from the World Bank, International Monetary Fund's World Economic Outlook, 2011, the USA CIA Fact book, census data from the Government of Gabon for released census data of 6<sup>th</sup> January 1969, 3<sup>rd</sup> July 1993, 1st December, 2003, and extrapolated figures including sample censuses, as produced by the Population Division of the United Nations Secretariat. All the above make their data available on the internet.

contains around a third of the country's inhabitants. The coastal Ogooué-Maritime Province is also well populated at 5.6 persons per square kilometre and including the city of Port-Gentil. Haut-Ogooué on the Congo border is the third most populated region, including Masuku city, established by De Brazza in the early 1880s as Franceville. The least densely populated province is Ogooué-Ivindo in the north-east with only 1.3 inhabitants per square kilometre.

Although population figures and therefore growth rates are disputed, and remarkably uneven in various statistics, growth continues, rising (in one set of figures) to an annual growth of 0.748 per cent in 1980 to a peak of 3.23 per cent in 1991, to a current low of 1.42 per cent in 2010.<sup>168</sup> It is usually claimed that the population has doubled its size over the last 30 years (789,978 persons in 1980).<sup>169</sup> Compared to other African states, Gabon's population growth at 1.8 per cent per year, even if exaggerated, is much lower than the Africa-wide average of 2.6 per cent.<sup>170</sup> Gabon is usually ranked globally as around only 80<sup>th</sup> of 195 states in population growth.

### *The most urbanized country on the sub-continent*

Less disputed is one of the more significant statistics; the fact that Gabon has proportionately more people living in towns and cities than any other country on the continent. Some 84-86 per cent of the population is urban, depending upon sources.<sup>171</sup> This leaves a tiny rural population of 14 per cent or around 220,733 people, or only 45,000 rural households if the (also disputed) rural mean of five persons is used or 27,940 rural households if the alternative highest offered family size rate of 7.9 persons per household is used.<sup>172</sup> The urbanization rate remains high, with an estimated 2.41 per cent urban growth annually, and claims that 88.9 per cent of Gabon's population will be urban in 2015. This will make Gabon the 23<sup>rd</sup> most urbanized country in the world out of 164 countries in 2015. However, it is also important to note that urbanization in Gabon seems to have slowed from an all-time high of 1985-1990 created by rapid growth in the oil industry.

Rates of urbanization are not exaggerated. Africa is correctly known as currently enjoying the highest urbanization rate for continents, ranging from the least urbanized country (Rwanda) to the most rapidly urbanizing (Malawi). Today 38% of sub-Saharan Africans live in cities and towns. This is expected to rise to 54 per cent in 2030, or 1.4 billion people. However rates of urbanization are calculated to level out within the next 25 years. Moreover, rural fertility rates are higher than urban fertility rates, and no decline or slow-down in rural growth rates is anticipated.<sup>173</sup> Should Gabon in 2050 have a population which is 1.8 times larger than today at 2.8 million people, as predicted, at least half a million people will still be in the rural areas.<sup>174</sup>

168 World Economic Outlook 2011 (IMF).

169 Accuracy is again in doubt, as the Britannica Encyclopaedia in 1984 gave 950,007 persons in 1969 suggesting either a marked decline in the intervening nine years or possibly, discounting in official data of the foreign population.

170 [http://www.prb.org/pdf11/2011population-data-sheet\\_eng.pdf](http://www.prb.org/pdf11/2011population-data-sheet_eng.pdf)

171 Although UN-Habitat places the urban population as only around two thirds of the total population; see <http://ww2.unhabitat.org/habrd/conditions/midafrika/gabon.html>

172 <http://ww2.unhabitat.org/habrd/conditions/midafrika/gabon.html>

173 Shapiro, 2009.

174 Again, there are significant contradictions in data from different sources. UN-Habitat says there are already half a million rural dwellers while other agencies place this as 250,000 to 300,000 people.

The absence of censuses in Gabon or uncontested administrative survey data, along with an uncertain economic outlook in respect of oil and other urban-related sectors, casts a doubt over population projections.<sup>175</sup> It could even be possible that the rural population is even lower than it presently appears to be. Or it could be much higher. Knowing the number of rural families is critical in a context where politicians and civil servants justify their inattention to rural land rights because of the low number of people affected. The failure of the Gabonese State to even demarcate the long promised Rural Domain may be symptomatic of this.

## 2.1 Rural-Urban Linkages: Challenging Stereotypes

Undue reliance may also be placed on figures given a likely more nuanced reality more nuanced reality of the rural-urban interface. Over the last 20 years a great deal of research has been devoted to discovering the dynamics of what is called ‘the new rurality’ or by others, ‘rurbanization’.<sup>176</sup>

The shifts in perspective have diverse origins, for example deriving from studies attempting to understand why cities routinely multiply five or ten times in size following conflicts or civil wars;<sup>177</sup> from spatial analyses of the dynamics of physically expanding cities;<sup>178</sup> or from complex analysis of class formation;<sup>179</sup> and analysis of production itself and how it is being continually transformed and globalized.<sup>180</sup> Work in the latter areas has been especially helpful.

### *Rural and urban life and rights is more integrated than appreciated*

The result is that the distinction drawn in development economics between rural and urban areas as largely autonomous spheres is now set aside.

Instead, the focus is upon the multiple social and economic synergies which conjoin the urban and rural sphere. This occurs and/or is reflected in all facets from environmental and resource flows to sectoral flows (e.g. rural demand for fertilizers, inputs and farm equipment), consumption of goods, expansion of services, with some decline in urban bias, and the facilitating paths of communication routes and more and more powerfully, of information and technology development including the internet. The majority view now adopted in academia, development economics and political economy, is that no social or production sector including the subsistence farm is self-contained today. They are not only intricately linked within a state but within the global economy.<sup>181</sup>

175 In-migration complicates the picture. The US Population Reference Bureau places this at minus 9% which contradicts other data suggesting high in-migration data.

176 Tostensen, 2004, von Braun, 2007, Kay, 2009, Borras, 2009, Bernstein, 2010.

177 E.g. Pantuliano (ed) 2008.

178 E.g. von Braun, 2007.

179 This was most famously triggered by Michael Lipton's thesis of urban bias of 1977, which inter alia, mixed up rural and urban spheres by relocating the rich landlord farmer into the urban sphere and the poor urban worker in the rural sphere, as if to confirm that rural areas are always poor. See Kay, 2009.

180 Von Braun, 2007, Kay, 2009, Bernstein, 2004, 2010.

181 Kay, 2009.

“Rural-urban borders have become more permeable making it plausible to speak of the ruralisation or rurification of the urban and the urbanisation of the rural in less development countries. It is becoming more common, especially in times of food crisis, for agricultural activities to take place in urban areas and the term ‘urban agriculture’ is used to indicate this. Peri-urban areas and towns are springing up which act as transmission belts between larger cities and the rural hinterlands. In sum, rural and urban spaces are being reconfigured.” (Kay, 2009:122)

Integral to this is the change in the nature of the rural household economy – and the urban household economy. It has in fact been some time since rural and urban livelihoods were autonomous. Agriculture and agricultural society is itself less agricultural with a much wider source base including significant off-farm enterprise and at the other extreme including industrial agriculture managed by other countries, and the farming household itself is less autonomous in its livelihood (‘de-agrarianization’). Accelerated globalization of economies since the 1960s has seen escalating interaction and fluidity between urban and rural areas in terms of capital, commodities and labour, and along with this, marked acceleration in the polarization of socio-economic classes, and widening of the gap between rich and poor.<sup>182</sup> To cite Kay again, who draws upon substantial empirical research by others —

“... rural households have increasingly constructed their livelihoods across different sites, crossing the rural-urban divide and engaged in agricultural and non-agricultural activities. Straddling the rural-urban divide is a survival strategy for the richer peasantry (‘distress migration’) or part of an accumulation strategy for the richer peasantry. Rural household incomes are increasingly made up from rural non-farm activities arising from outside agriculture (wage or salary employment... self-employment; urban to rural and international remittances, and pension payments from retirees to other urban to rural transfers) and off-farm activities which generally arise from wage employment on other farms or enterprise... Hence an increased source of employment and income for rural people is derived from non-agricultural and urban sources. Multi-locational and multi-spatial households that cut across the rural-urban divide ... are increasingly frequent...”

Geographic mobility is at levels hitherto unknown.

“In addition, rural labour and urban labour straddle the rural-urban divide through migration, often of a circular kind ... Roberts and Long (1979) already three decades ago employed the concept of ‘confederation of households’ to highlight the interaction between rural and urban livelihoods through kinship ties largely of indigenous people. Members of peasant communities migrate to urban areas establishing a foothold there and they act as transmission belt for subsequent migrants from that community. The exchange of goods and services, which flows in both directions, cements the ties of solidarity and cooperation between family and community members” (Kay, 2009: 122-123).

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<sup>182</sup> Kay, 2009:122 and Borras, 2009:8.

The above resonates directly with the situation in Gabon. This is however not an issue on which significant research or even development reports in Gabon could be found. Habitat et al. 2011 echo elements in their recent analysis of the urban sector. This shows high flow of people, goods and enterprise between cities and between urban and rural spheres, and not one way -

“In the opposite direction, urban populations from the rural exodus rarely rupture with their land of origin, which still represents for them a social reference difficult to give up despite the new lifestyle that gives them the wage. They still live in duality, in that despite their urban life, they remain fundamentally attached to their land, where they often invest to build a second home (in the home village). As they preserve the customs of their village, their return in this environment does not pose much of a problem. They often return to spend the holidays and late career, to enjoy their retirement and to be buried there after. Their urban lifestyle, apparently easy to abandon completely, often brings imitation among rural youth who become potential candidates for the rural exodus. City life including economic, social, cultural and development of political voice, is also a vehicle for new lifestyles in the hinterland and mediate between the two spheres, creating one single continuum, in which success in one is success in the other” (Para. 3.3.5.3).

*‘We are one people. Some of us live in towns, other in the village. But the village is always home’*

Most of the above was reflected in the four village reviews conducted by this study Boxes 10 and 11 on respectively Bolossoville and Oguo villages in Woleu-Ntem Province iterated the close economic and social links between families and family members. Family members living in Libreville or other towns regularly return to the village despite the immense distances and costs. Employment is not so high or constant in towns to keep people in towns and where the cost of living is high. Many claim they intend to build homes in the village. In practice only the better off can afford to do so. These same individuals tend to additionally build a house in the provincial capital, Oyem, to be nearer services. Both town and village interviewees were clear that they consider the village their primary home, and that they believe they rightfully own a share of the family land.

Findings were similar in more cursory interviews held by Brainforest staff in two villages in the southern province of Nyanga. In one case, Moukoko Village in the Department of Douigny, only five households were resident in the village with an estimated 200 family members living in cities and towns. The community had been established in 1968 but was within the territory of the clan. Most of that territory had been lost to the creation of Moukalaba Park, and access rights denied and/or limited. Nevertheless, all present members confirmed that they considered the local area their home and that this applied to all those who were living in towns, and who returned to the home area whenever they could. Although not recognized by Gabonese law, they considered themselves owners of the land under customary norms, and allocated use (usufruct rights) to individual households within the group. The group itself is a cluster of socially cohesive inter-related families. Their ancestors had lived within the Loango Kingdom which had stretched from Congo to Cabinda in the 17<sup>th</sup> century. They and others had fled to this inland area of the Kingdom to escape the slave trade.

The villages of *Tono*, in Lower Banio Department in Nyanga Province also comprised mainly members living in towns. Some of the city members of the village had built new houses in Tono. The village had been established in the 1920s on order of the colonial government. They too had since lost almost all their unfarmed forest lands to the Moukalaba Park. Villagers considered the area their home, and confirmed that absentee members in town and cities also consider this their home.

The above four village case studies are too small to draw conclusions as to land relations between urban dwellers and rural dwellers. Nevertheless, combined with known continent-wide (and global) trends in less developed countries and informal commentary by agencies such as UNDP in Libreville, it is reasonable to conclude that cultural, economic and social ties between urban and rural communities are strong and run into land tenure relations.

As shareholders in family property and members of wider communities, which aggregate those family based land rights, they are affected by state decisions as to their customary lands. This means that the rural population in terms of landholders may not be nearly as slight in numbers as low permanent residential rates in rural villages superficially suggests. This has implications for land tenure policy in Gabon.

#### *Urban dwellers characteristically support the land rights of their home villages*

It is also worth recalling that urban populations have been historically at the forefront of popular resistance and conflict on matters of rural land rights. Even in the 19<sup>th</sup> and early 20<sup>th</sup> century in Britain, much of the anger of the new urban working class was about what had happened to their rural lands during the 1760-1830 enclosures, which forced millions of untitled landholders off the land into cities to find all too-scarce jobs. Thompson, one of Britain's most famous historians, describes it thus —

“ ... the grievances of the labourers [in rural areas were] twisted with the other strands which made up the consciousness of the urban working class. Although unlike France or Ireland it never gave rise to a coherent national agitation, the ground-swell of rural grievance came back always to access to the land ... Land always carries associations – of status, security, rights – more profound than the value of the crop” (Thompson, 1963:253-54).

The reference to France and Ireland is sobering; while in France rural land dispossession was a major force – dispossession by the state in Ireland and the handing over of millions of hectares to elites for the sake of ‘industrial plantations’ gave rise to several centuries of civil war which is still not fully resolved.<sup>183</sup>

#### *Recognizing that land grievances can generate conflict and even civil war*

In Africa it is well to remember that virtually all the rebellions and conflicts, which marked

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183 Morrissey, 2004. Also see Alden Wily forthcoming on the legal dispossession of the rural Irish in the early 17<sup>th</sup> century.

the first decades of colonial capture of lands rights, including various bouts of genocide - such as in German South West Africa<sup>184</sup> as well as in Gabon - were in resistance to land and taxation policies. Under these policies local ownership of land was not recognized and instead it was handed to big enterprise, while at the same time squeezing revenue from dispossessed Africans, who were forced to become workers for these new enterprises to pay the head or hut taxes levied upon them.<sup>185</sup>

It is worth remembering that most civil wars, both globally and in Africa have maltreatment of indigenous land and resource rights as a core driver.<sup>186</sup> This is topically evident in Sudan. In effect, five armed civil rebellions rage within Sudan, quite aside the resource-based conflict between Sudan and South Sudan. The local rebellions within Sudan are all primarily in response to state-engineered dispossession.<sup>187</sup> Most topically, Nuba and Funj tribes in the two states of Southern Kordofan and Blue Nile have returned to war with Khartoum precisely because of the Government's failure to restitute millions of hectares handed out to private investors in the 1970s and 1980s, as promised under the January 2005 Comprehensive Peace Agreement. Khartoum has since allocated yet more millions of hectares of traditional lands to private investors (mainly from Saudi Arabia, Qatar and China) which traditionally belong to those tribes/clans.<sup>188</sup>

## 2.2 Treatment of Urban Land Rights

If what happens in the rural areas to land rights by the hand of the State in Gabon matters to a wider population then so too what transpires in respect of peri-urban and urban land and property interests is widely relevant to rural Gabonese.

Two pertinent aspects are: *first*, how far urban and peri-urban occupants are afforded security of tenure, and *second*, how far these rights may be lawfully disturbed by the state, and for what purposes.

It was noted in Chapter One that whilst over a million people live in urban areas in Gabon, only 14,000 land titles have been issued, most of which are for small urban housing lots. This suggests that under one tenth of Gabon's 170,000-200,000 urban households<sup>189</sup> have secured rights to their parcels.

The reasons for this were elaborated in Chapter One. These include:

1. the complex, time-consuming and expensive nature of securing title, including a series of different tax requirements;

184 Werner, 1993.

185 Alden Wily, 2011b; Brief No. 2 and also Alden Wily forthcoming.

186 Alden Wily, 2009, De Waal, 2009.

187 This includes Darfur, Beja areas and areas in the far north, where dam development has dispossessed indigenous land owners, as well as the rebellions in Southern Kordofan and the south of Blue Nile States.

188 Alden Wily, 2010.

189 <http://ww2.unhabitat.org/habrdd/conditions/midafrika/gabon.html>



2. the high demands of conditions which have to be met prior to finalization of title following a short provisional period (two years, renewable by one year);
3. the involvement of court procedures to secure final title, slowing down processes, and also opening proceedings to challenge, so that a very high proportion of cases pending in the courts are related to plot matters;
4. the making of final and absolute title a political and judicial rather than administrative matter, exposing rights to political malfeasance and favouritism;
5. the multiplicity of state agencies involved in urban land and housing development and acquisition, each of which has to be satisfied or involved in one way or another, and which also encourages conflicts in jurisdiction relating to urban land plot definition, servicing, and entitlement;<sup>190</sup>
6. low funding and capacity in all departments; and
7. almost total failure to deliver on long-proposed (1996) decentralization to city (and rural) authorities.

The only legal developer of urban parcels is the State. This, says UNDP, produced only 121 new urban parcels between 2004 and 2008, although the known applicants at the time were for at least 460 new parcels annually.<sup>191</sup> The only national real estate developer is the National Building Society, a public corporation, which has produced only 167 dwellings annually since 1961.<sup>192</sup> The National Social Security Fund and several private real estate firms operating mainly in Libreville do produce some high cost luxury units, but these are inaccessible to majority low-income households. Mortgage facilities, information and facilitation are all scarce. Only 191 provisional or absolute titles were issued each year between 2004 and 2008, even with significant external programme assistance.<sup>193</sup>

Overall, the Ministry of Habitat, Housing, Urbanization, Environment and Sustainable Development itself acknowledges that securing title in Gabon's urban areas is 'an obstacle course', and unfavourable to the majority.<sup>194</sup> To add insult to injury, those without formal title or expired provisional title are at risk of eviction without compensation for living in flimsy houses or living there 'illegally'.

Regularization of occupancy in urban areas has been slow to non-existent, despite recurrent plans towards this. This was intended in the late colonial era, at which time it was made possible for all Gabonese to secure other than temporary occupancy rights through meeting of building conditions and making various statutory payments. The Cadastre was also created at that time to facilitate formal allocation procedures and lock these into a hoped-for indefeasible land titling system. This has proved ineffective for everyone other than elites who can afford the procedures.

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190 Habitat et al. 2011 note for example that the Prime Minister's office plays a role, along with numerous departments of the Ministry of Housing, Urbanization, Environment and Sustainable Development, the Cadastre, Cartography Services, Ministry of Equipment, Infrastructure and Regional Planning, the Ministry of Economy, Industry, Trade and Tourism, the Ministry of Interior and Public Security, the Ministry of Health, Social Affairs and Family.

191 Habitat et al., 2011:2.1.3

192 As above footnote.

193 Habitat et al., 2011:2.2.1

194 As above footnote.

### *Abusing the meaning of public purpose acquisition and the procedures*

Compulsory acquisition has been applied innumerable times to secure land for public services in Libreville and other cities and towns, although often with limited compensation. A former adviser to the Ministry of Habitat observed that adherence to legal requirements has steadily declined. During a road-widening programme in Libreville in 1975-77, all occupants of affected areas were informed in advance, compensation was negotiated, and relocation opportunities provided. This, it will be recalled from Chapter One, are requirements of the law (Law No. 6 of 1961 *Regulating expropriation for public purpose and establishment easements for the execution of public works*). These procedures were also broadly followed in a similar exercise in 2005-06. Those without formal provisional or absolute rights of occupancy were of course not eligible for compensation, the majority. Descriptions of lawful occupancy as provided for in the 1891, 1899 and 1910 legislation have steadily been diluted. It will be recalled from Chapter One that the 1961 and 1963 laws are ambiguous on the payment of compensation at public purpose for those who hold no title to land, in effect, leaving decisions up to the Government of the day.

Recent mass evictions in and around Libreville illustrate this well. Purposes appear to be a genuine mix of public purpose requirements such as road building, and private housing developments. Road-widening, retaking of informally occupied lands to construct privately-funded high rise buildings and apartments, and land takings for development of public areas, special economic zones, and probably private developments masquerading as 'good for the public' are characteristic. These are all taking their toll on those who live in properties which are not subject to formal entitlement. While this includes many roadside developments which do indeed fall within road reserves and should not have been built on, many other occupants, some of whom have lived in their houses for many decades, were in late 2011 losing their houses summarily, without due notice, receiving no or minimal compensation, and no provided opportunities for orderly relocation, under the Operation 'free the sidewalks' ('libérez les trottoirs'). Some evictions were being undertaken within a week of first notice, according to a couple of local persons interviewed on the roadside. Even those who hold legal deeds to these houses have been unable to reach the courts to seek injunctions or provided time to negotiate compensation. The view was several times expressed by interviewees that the reason why the President closed the Ministry of Habitat in September 2011 was precisely to make way for such evictions under his direction. It is alleged that the President and a number of Ministers have personal interests in these private enterprises. This could not be verified. Box 12 below provides a snapshot of one effected peri-urban settlement.

### Box 12: Onslaught on Essassa

Essassa is a settlement of five villages located south of Libreville. It is a Fang community with origins in the north, but moving into this area a century ago. The main village comprises 1,500 residents and the settlement overall some 5,000 people. Villagers live by a combination of temporary employment in Libreville and farming. Each household depends upon the manioc and bananas they produce for basic subsistence.

Three related projects are in the process of taking most of the community land area including farms and forest and many of the houses. The first project is a road widening project which has removed many roadside homes. The second is the Special Economic Zone (SEZ) at Nkok and which has taken some 500 hectares of the community's land (BOX 13). The third project is a housing development with intentions to build 5,000 homes. Although a Minister visiting the village informed villagers it was a public housing scheme, the scheme is more accurately a private high cost housing scheme (including a heliport) which government ministers support. The development is expected to be heavily subscribed being close to the SEZ.

Villagers from the *regroupement* of Essassa, Bissobinam and Nzogmintang villages have constituted an action group to enter into a dialogue with the administration. In October 2011, they signified by writing to the Ministry of Habitat their opposition to the building of housing on their land. As of late November 2011, at least three meetings had been held by villagers with government officials, including the Minister for Habitat, where they reiterated their position. This has done little to change the situation. Technicians have started, since April 2012, collecting data and taking measurement to go forward in the process.<sup>195</sup>

The villagers have moreover learnt recently that an order had been issued for the building of the 'new town of Essassa' and that therefore no new transaction could be envisaged, confirming that their strong opposition to the building of new homes on their lands has been entirely ignored.

Although the villagers reluctantly assented to free lands from the construction of the extension of the road and the establishment of new industries, they have so far only been given a small amount of compensation for the road development. Owners of clearly developed farms also received compensation. No compensation has been paid for their forest lands or the appropriation of their land for the SEZ, and at no point were concessions made to their interests or land rights.

Through a letter dated May 7<sup>th</sup> 2012 and written by the action group to the Director of Brainforest, the villagers seek help and postpone the decision made by the administration in order to find an appropriate alternative to the new housing developments and to avoid their expropriation. Their proposition is to relocate the building of new housing in such a way that the village is preserved. Their message is clear as the letter ending shows: "Do the vision and the legitimate ambition of Gabon to develop itself justify erasing a village on the map? Would that not lead to the scheduled



195 Letter from the action group of inhabitants from the villages of Essassa-Bissobuinam-Nzogmintang to Marc Ona Essanguï, dated May 7<sup>th</sup> 2012, seeking to defer the projects.



and organised death of our Mothers and Fathers, many of them of eight years to a century old?"

Where and how the villagers will live and survive is still unknown.

### **Box 13: The Gabon Special Economic Zone**

This first SEZ is being developed by OLAM/GABON, a joint venture of the Republic of Gabon and OLAM International, a Singaporean-based commodity trading giant. The purpose of the SEZ is to concentrate local timber processing through partnerships with foreign firms. The carrot to establishing processing in the SEZ is availability of forest concessions of between 50,000 and 200,000 ha (and bearing in mind that a single logging company may hold up to 600,000 ha). The website says that two million hectares of accessible forestland has been dedicated for this purpose and that an additional two million hectares is being allotted. In practice the SEZ will also be a magnet for other industrial developments by the companies which invest in it, and may trigger development of further SEZ.

The SEZ itself absorbs 1,126 hectares.

For investors establishing units in the SEZ for log processing, the SEZ will provide a water treatment plant, sewerage and effluent treatment plants, a common log park, a common dry kiln facility, and electricity. The SEZ is strategically located at Nkok with close connections to the highway being built to connect it to Libreville and Port Owendo 30 km away, which has always been the main point of export for timber. The fiscal incentives being offered to those investing in Gabon's processing industry include an income tax holiday for a decade, a 10% tax waiver on their concessions for five years, exemption of duty on imports and exports and exemption of Value Added Tax. They also gain 50% relief on power costs, may repatriate 100% of their funds, and enjoy 'relaxed labour laws'. The SEZ will obtain all regulatory and statutory clearances for setting up industrial units and will ensure that all other clearances and approvals are granted speedily.

Source: <http://www.gabonadvance.com/HTML-Website/advantage-gabon-sez.html>

### 3 The New Land Grab in Gabon

Loss of land for real or so-called public purpose is not limited to urban or peri-urban areas. Gabon has long been a site of large-scale rural land grabbing. Although off-shore oil has been a major income-earner in recent decades,<sup>196</sup> foreign enterprise, from the earliest allocations of vast logging concessions to French firms a century ago (of which SHO was the largest conglomerate) has always underwritten the investment pattern.

Since the coming to power of Ali Bongo in 2009, there has been a massive expansion in land allocations, for mining and timber extraction and latterly, for industrial scale oil palm and rubber plantations. Given the size of allocations involved, vast areas of customary occupancy are directly affected.

This acceleration is not unique to Gabon but typical of a wider surge in agrarian states, particularly in sub-Saharan Africa. Since 2008/09 some 200 million hectares are likely to have been allocated, with dominance in Sudan, Ethiopia, Mozambique, DRC and Tanzania, and probably many more millions of hectares are in the pipeline.<sup>197</sup> This trend is being referred to as a 'land grab' or 'land rush', and equated with the original 'scramble for Africa' of the 1880s-1914 era as described in Chapter Two.

The scramble and current surge indeed share commonalities such as a competitive scramble to secure resources for ailing or expanding home industries. They also share drivers in a combination of agrarian crisis/food supply shortages in developed states, an industrial crisis requiring raw materials to sustain enormous growth in industry – among China, India, Brazil and Russia the newest accelerating industrial economies – and fears of shortages in supply of fuels. The combination of a financial crisis and failing banks on the one hand, and massive profiteering and a search for new lucrative investment opportunities on the other, also echoes of the original scramble for Africa.<sup>198</sup> A similar mix of both taking resources and expanding markets *into* Africa, and further integration of poor agrarian economies in the global capital market, are also evident. This is a trend with which the Gabonese perhaps more than many African populations, are familiar with, having been integrated in global pre-industrial trade since the 17<sup>th</sup> century. Box 14 provides a snapshot of main features of the land rush as affecting Africa at this time.

196 Off-shore oil investment has been the main foreign exchange earner since the 1970s. Despite a decline in potential oil revenues, 45% of the country's GDP and 77% of exports still derive from oil. Around 40 companies are active in the petroleum sector with USA and French companies dominant.

197 Key resources on this land rush include: Deininger et al., 2010; Anseeuw et al. 2012. Also see [http://www.alimenterre.org/sites/www.cfsi.asso.fr/files/land\\_rights\\_and\\_the\\_rush\\_for\\_land.pdf](http://www.alimenterre.org/sites/www.cfsi.asso.fr/files/land_rights_and_the_rush_for_land.pdf). Journal of Peasant Studies, Volume 38, No. 2 March 2011; and Oxfam International, 2011, <http://policy-practice.oxfam.org.uk/publications/download?id=437467&dl=>. <http://oxfamilibrary.openrepository.com/oxfam/bitstream/10546/142858/32/bp151-land-power-rights-acquisitions-220911-en.pdf>. Specifically on land matters also refer Alden Wily, 2011a, 2011b and 2011d.

198 Details in Alden Wily, 2011d and forthcoming.

#### Box 14: Features of the current land rush in Africa

1. Accurate figures of how much land is allocated are hard to come by. Most contracts are kept secret, in defiance of international trade law requirements. Conditions are particularly opaque. Often the local partners to key international agribusiness, foreign states or their parastatals, are also unknown.
2. Africa has seen investment in agriculture and rural enterprise plummet in recent decades. Such investment is greatly needed. However in the current surge it is difficult to determine which deals reflect genuine FDI (foreign direct investment) with productive and revenue-sharing intentions and how much is speculative, or unbalanced in terms of benefits to host countries and to affected local populations, on the other.
3. The land rush is global with significant transfers occurring in Indonesia and Cambodia, for example. However two thirds of the large acquisitions are in sub-Saharan Africa and this dominance is rising annually. The focus on Africa correlates with these factors —
  - a. the region has immense areas of under-utilized land from an industrial cultivation perspective, although most of this land is locally utilized forests, woodlands, and drylands, critical to local livelihood and water and soil conservation values, and much of it is served by very fragile water sources;
  - b. African governments have been slothful in investing in smallholder agriculture over the last three decades and presumably see handing over of large lands to external investors as a short-cut to production growth;
  - c. governance in Africa is poor, with greatest opportunity for deals (and probably bribes) to be kept secret, for contracts to exclude real demands upon investors, and separation of economic participation and civil service or political roles least developed and scrutinized;
  - d. low rule of law or accessibility of affected populations to courts; and
  - e. most of all, land tenure regimes which deem most of the country area of many African states as in law the property of the state.
4. The large-scale land transfers only minimally involve the titled private land sector in Africa states. Governments are the major lessor. In addition, most of the deals are not outright sales of lands but leases of varying term. Most are renewable, even if of limited term in the first instance.
5. Virtually all transfers of land by African governments derive from the customary sector. As the legal owner of these lands, governments are lawfully leasing or selling out these lands. In some cases, such as in the Republic of Congo or Nigeria, the first lands to be leased to investors are ailing state farms. These are lands which were taken from communities some decades ago. In countries like Gabon where the State has already made itself owner of all unregistered properties, hand over of occupied lands to entrepreneurs is legal, if usually wrongful.
6. In countries where customary land rights are acknowledged legally as property and where governments accordingly cannot sell these lands to investors, governments have become recently well known for persuading local communities that it is in their interest to lease these lands, even though in most cases so far, there have been no





returns, minimal jobs created as promised, and often lands far in excess of those which communities think they are allocating, being taken over.

7. In addition, the vast irrigation schemes which some genuine investors create are causing local waters to be drained. Local communities are also not usually made aware that lease of their lands even by consent to private enterprise results in the original title of those lands being held by Governments. That is, should the enterprise fail and/or the lease reach its end those lands do not revert to the community but to the Government as its private property. Significant cases of this or above features are being reported in Ethiopia, South Sudan, Sierra Leone, Mali, Niger, Liberia, Rwanda, Tanzania and Mozambique.
8. Most of the largest acquisitions of African land are by international agri-business firms, by sovereign wealth funds or parastatals of foreign governments or by fully private companies which they support.
9. There is also evidence of both foreign and local speculation; both international hedge funds and private individuals are buying up tracts of land with the intention of selling leases on with profit in a few years.
10. Local participation in enterprises is usually key; many partnerships including known politicians, senior civil servants, military personnel or local entrepreneurs. Some deals are vesting huge amounts of land into state-private sector partnerships such as the case with OLAM in Gabon.
11. The real returns to governments from leasing so much land to investors are opaque. Through prominent guidance by the World Bank Doing Business sector, almost every African country has set up investor friendly legislation which provides not only very cheap land to investors but alleviates the investor of most normal taxes and conditions. National Treasuries can expect very little revenue in the first decade of development. There is speculation in almost all African countries that leading politicians and other actors are sacrificing returns to the State for the sake of private benefits which they may be gaining through 'facilitation fees' or by privately partnering enterprise.
12. It is rarely the case that water deals are being made within large-scale land deals, resulting in some dangerous degrading practices in especially drier states.
13. The activation of deals disposing of millions of hectares of land to investors is limiting land tenure reform developments which were underway or being considered. Governments are finding it too lucrative to move forward on the basic reform begun in the 1990s towards recognizing ordinary rural communities as legal owners of their respective land areas.
14. The land rush is not being ignored by affected poor populations. Protests are increasing in number across the continent (e.g. Sierra Leone, Liberia, Niger, Senegal), sometimes causing the fall of governments (e.g. Madagascar), and becoming increasingly violent (e.g. Sudan).

### 3.1 Failure to Respect Customary Land Ownership as the Key Enabler of the Land Rush

What most makes the current surge rightly defined as a 'land grab' or 'land rush' is the fact that it is so uniformly enabled by the sustained refusal of some agrarian economies to acknowledge that the lands, which their citizens own customarily are already owned and that therefore large-scale land investors need to negotiate directly with and lease from local citizens.

Instead, many agrarian governments (especially in Africa) have found it convenient to maintain the fiction that most of their land areas are unowned, on grounds that they are customarily owned and not subject to formal entitlement; this allows the state to claim ownership of these lands and to dispose of these lands at will to persons or companies of its choice. The *principal enabler* of the land rush is therefore a failure of legal protection of land rights and to this extent a human rights failure.

As we have seen, these exact conditions were manufactured in Gabon to make allocation of most of the country to concessionaires lawful in the 1899 legislation. This same situation is retained today in Gabon.

### 3.2 The Helping Hand of Poor Governance

The weakness of the modern African state comes into view. This is seen in the failure of land policies to protect legitimate if untitled majority interests (and often environmental sustainability) and in allowing strategies to be dictated by barely-concealed private interest dovetailing with vested transnational land acquisition interests.

#### *Good governance – and bad governance – can make all the difference*

Analyses of neopatrimonialism help explain contradictions. Chabal and Daloz (and Bayart) aptly describe how personalized state institutions and decision-making are widely sustained on the continent, through married political, economic and social hegemony. As often as not this builds upon long-standing traditional hierarchies and exploitation.<sup>199</sup>

Analyses of shadow states, meaning the controlling authority of economic elites in illegitimate if not strictly illegal ways add to understanding, with clear pertinence to Gabon.<sup>200</sup> As Reno explains it —

“A closer examination of systems of personal rule in Africa illuminates a relationship between political authority and clandestine economies that exhibit a clear political strategy rather than inflated corruption and bureaucratic decay. First, the relative lack of popular acceptance of specific regimes in certain countries tends to render rule

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199 Chabal and Daloz, 1999. Also see Bayart, 1989.

200 Reno, 2000, Funke and Solomon, 2002.



through bureaucracies unattractive to high officials. Some rulers even jettison the pretences of seeking legitimacy or building bureaucratic agencies to supply services to citizens. Instead they manipulate markets and the laws regulating them to enhance their own power and wealth, and to control others. This creates informal, commercially oriented networks – Shadow States – that operate alongside remaining bureaucracies. Second, such rulers rely upon the willingness of outsiders to recognize the facade of formal sovereignty. This allows rulers to use government power as a tool to ensure their own private enrichment and to control economic markets to increase their own power and control over people’s access to resources. Shadow States incorporate other external actors as well, since markets in which rulers operate often extend beyond the formal frontiers of their countries. Global recognition of sovereignty also helps create entrepreneurial opportunities that rulers can exploit for personal profit and for the benefit of favoured associates” (Reno, 2000:436-437).

Others, and prominently Sklair, have focused upon the links with the emergent transnational capitalist class as sharing and supporting interests of local elites.<sup>201</sup> These add analytical understanding of how state investment in popular needs and demands remains so consistently secondary to buying the loyalty of at least compliance of powerful individuals and groups.<sup>202</sup> As well as under-funding health, education, agricultural extension needs, such classes find it essential to their interests that they retain control over as much land and natural resources as possible.

In exploring the point at which elites find it more profitable to allow themselves and their competitors to be regulated by genuinely public accountability, North et al. observe how remote this is in most of Africa and Asia. In property matters these elites want to secure their own rights but not “see rights so uniformly secure that their manoeuvrability in structuring socio-economic relations to their own advantage is constrained” (2009:77).

While different in their paths of analysis, Marxist perspectives concur when it comes to performance of the state as primarily an instrument of accumulation wielded by a dominant social class, a thesis prominently developed in respect of African states by Bernstein (2004, 2010).<sup>203</sup>

What all such theses suggest is that matters related to land and resource rights cannot be seen without reference to the prevailing governance situation.

### *Gabon does poorly on key good governance indicators*

Development agencies prefer to look at output indicators of governance conditions. While this does not tell the whole story, assessment by indicators is highly useful. In September 2010 the World Bank developed six primary indicators of good governance.<sup>204</sup> They are widely used, along with assessments by Transparency International on corruption matters. The six indi-

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201 Sklair, 2008.

202 Sklair, 2008 and also see Reno, 2000.

203 Also see Shivji, 2011 and Patnaik and Moyo, 2011.

204 Kaufmann et al. 2010.

cators are: voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law, and control of corruption. Control of corruption, along with local voice and accountability to citizens, and transparency, as in the issuing of land contracts and related deals, are proving especially pertinent in the current land rush.

In the case of Gabon, the World Bank's report on Country Governance Indicators shows that performance on all six indicators have fallen or not improved over the last decade.<sup>205</sup> All had either fallen or remained low since 1996. Gabon also does very poorly on Transparency International's more recent Perception of Corruption Index, coming 100<sup>th</sup> out of 183 countries.<sup>206</sup> Broadly, international agencies concur with these assessments and routinely cite them. In its 2011 review of the urban sector, UN-Habitat, UNDP and the Government itself acknowledged concerns as to the quality of urban governance, and particularly flagged failure to decentralize land and property governance, poor accountability, poor transparency, evidence of corruption and lack of public participation in urban planning decisions, along with grave insufficiencies in the legal and judicial regime relating to land and urban development matters.<sup>207</sup>

#### *Poor rule of law also constraints land rights*

Poor rule of law may need special note. This may seem irrelevant when the law itself is flawed. However, even when the law has only few protections for untitled land owners or simply those without the means to manipulate the system, lack of avenues to challenge the law, or financial and other accessibility to the courts, doubles vulnerability. This is tripled when the courts themselves cannot be relied upon to rule without political bias.

### **3.3 The Land Rush as Facilitator of Bad Governance**

While the land rush is hardly novel in Africa, it does appear to be bringing many of the legal and governance ills of countries like Gabon more forcefully to the forefront. Taking Africa as a whole, these three basic questions are being asked, and generally without satisfactory response —

1. Do these land-based investments represent genuine foreign direct investment (FDI) or speculative land grabbing?
2. What will be Gabon's benefit share, and more especially, how much of this will directly reach poor Gabonese in terms of sustained new employment opportunities, infrastructural development, with positive trigger effect on local economies from household farming to processing and new industries? and
3. Of most importance to our subject here, whose lands are being given to investors and on what terms?

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205 <http://info.worldbank.org/governance/wgi/pdf/c79.pdf>

206 <http://cpi.transparency.org/cpi2011/results/>

207 Habitat et al., 2011:2.2

### *Probably less for speculation than rent-seeking*

In response to the first question, so far the signs are that large-scale land investments are definitely for productive land use and designed to significantly increase revenue for the developers. Active new concessions for mining, timber harvesting, and for palm oil and rubber plantations are scheduled or underway. No one can doubt the intentions of the Special Economic Zone as described in Box 13 to perform towards large-scale processing of logs. Just as fast as timber concessions have been cancelled where these are deemed to be non-operational or failing to pay royalties and taxes, these and other new forested areas are being handed over to new concessionaires or earmarked for clearance for oil palm and rubber plantations. This is despite the presidential decree of 9 August 2004<sup>208</sup> which suspended allocation of new forest permits to test the new system of adjudication. Allocation of new permits was to resume following issue of a new decree, not yet forthcoming. In any event, concessions continue to be allocated.

It is quite possible that the famous maps of concessions compiled only a few years ago<sup>209</sup> are quite out of date. As recorded in Chapter One there has also been recent expansion in the mining sector, albeit with hiccups especially in respect of the award of iron ore mining rights in Belinga, from which the Chinese company Comibel has withdrawn. This has recently been re-allocated to one of the world's largest mining companies, the Australian-based BHP Billiton.<sup>210</sup>

### *FDI is not the issue; the extent of inclusion of ordinary citizens is*

Having failed to invest in rural agriculture for local populations over the last five decades, it now seems easier to hand over precious (and occupied or used) lands to large-scale investors to prompt growth. The need for massive injections of financial and technical investment is not in doubt. What is most troubling to observers is that current trends ride roughshod over local rights and isolate local participation in growth further. Development is then premised on the hope that somehow poor populations will benefit indirectly from these investments. Job provision is the keystone to this hope. So far job creation in most large-scale agribusiness enterprises has been limited.

In short, production and growth is not neutral; it all depends upon who are the beneficiaries and at what social and environmental cost. Given the high profile of local investors as partners in many of the developments and most notably OLAM (see below), there is rising concern, for example, that the intention of forest concession cancellations was not to improve forest development but to make large areas available to local elites. Beneficiaries are various, and include many French companies, which have been operational in Gabon for up to a century in some cases, but in terms of value of investment and volume of trade now prominently include major international mining, timber harvesting and processing and commodity supply companies.

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208 Décret n 666-PR du 9 août 2004 portant suspension provisoire d'attribution de nouveaux permis forestiers.

209 <http://www.globalforestwatch.org/common/gabon/english/report.pdf>

210 Reuters, 4<sup>th</sup> February, 2012.

*Is China aiding malfeasance and bad governance in Gabon?*

China has been a prominent investor in recent years. While its demand for timber has grown rapidly so too has its home capacity to process woods, and this explains the continuing very high level of export of raw logs from Gabon.<sup>211</sup> By 2007 China was the major importer of Gabon's logs. France remains the major importer of processed wood from Gabon. In 2010 the World Bank outlined a dire fall in producer standards as a result of China's dominance in the Gabon market. "Gabonese timber suppliers can basically sell any timber product to China, irrespective of the quality of cutting, sawing or finishing, so long as the prices is low and the volumes are large".<sup>212</sup>

Environmental standards relating to health and safety, sustainability of forests at logging, maintenance of biodiversity, low wages and lax regulations in the Chinese timber sector were all observed. CIFOR told a similar story in 2011, with evidence of illegal logging by Chinese companies in national parks, logging of trees below the minimum diameter, improper documentation of timber, absence of required hammer marks, incorrect listing of volumes on waybills, and an absence of social responsibility agreements with local communities as one of the requirements of management plans.<sup>213</sup> State requirements for Chinese adherence to the Forest Code 2001 are also known to be lax. Nor is there much sign that private Chinese investors intend to change.<sup>214</sup>

In real terms the rise of Chinese enterprise is significant; by 2010 Chinese companies owned 121 concession permits to manage and log 2.67 million ha of forest land, more than 10 per cent of Gabon's total forest area.<sup>215</sup> Investment grows annually with trading values at around US\$1.8 billion in 2010.<sup>216</sup> Much of this was initially presidentially-driven, Chinese aid "targeted to projects identified by the Head of State and it is often also the executive branch which negotiates with China for large deals".<sup>217</sup> Even without state support, Chinese companies use diverse ways to obtain logging rights, including through legal loopholes in the issue of Forestry Associates permits (PFA), supposed to be limited to nationals, but then with these nationals sub-leasing their rights to smaller Chinese companies.<sup>218</sup> China also has growing mining interests, the above-mentioned cancelled Belinga iron ore concession, and a second Sino-Gabonese joint venture concerning manganese mining in Ndjole, which begun in 2008, and for which an exploitation deal was agreed in October 2010.

211 Kaplinsky et al., 2010 and Putzel et al., 2011.

212 Kaplinsky et al., 2010:25.

213 Putzel et al., 2011:19-21, after Bilogo Bi Ndong & Banioguila, 2010.

214 For example, when pressed by a Brainforest representative on these issues, Chen Yong, Deputy Director of the Centre for Forest Products Trade in China in a meeting in early December 2011 was reported as more concerned with establishing how much Chinese industry could get away with than meeting legal requirements; "What are the limits of illegality tolerated here?" was his main question.

215 This in fact contradicts the Brainforest report which was submitted to CIFOR (Bilogo Bi Ndong & Banioguila, 2010) and is reported upon by Putzel et al., 2011, which states that Chinese-owned companies directly hold rights to not 10% but 25% of Gabon's forests, more than half of which belong to just five companies; see Putzel et al., 2011:19.

216 Putzel et al., 2011:1.

217 Putzel et al., 2011:2.

218 As reported by the Brainforest scoping survey by Bilogo Bi Ndong and R. Banioguila, 2010, and cited by Putzel et al., 2011:19.

Public and private foreign enterprise from other countries is also rising, illustrated by reports of contracts being signed with TATU, the Indian agro-industry giant.<sup>219</sup>

### *OLAM as the focus of popular discontent*

Most popular attention however focuses on OLAM, given the suspected personal involvement of the presidential family in its activities along with other senior figures, but which has not so far been systematically demonstrated or proven. Even without this personalized interest, the OLAM developments are highly critical for Gabonese at this time, given the vastness of land and resource capture under its aegis and which appears to be still growing.

Much of the two million hectares plus the further two million hectares said to be earmarked for future expansion of industrial timber harvesting as attached to the Special Economic Zone (Box 13) are lands which rural communities could rightfully claim under customary tenure but which for the failure of identification of the promised Rural Domain, are not protected from state allocation. OLAM Oil Gabon, a subsidiary of OLAM International, entered a 70:30 partnership with the Government of Gabon to establish oil palm plantations and processing. Phase I will see 50,000 ha brought under these plantations, with a pledge by the Government of Gabon that a total of 300,000 ha will be provided for this purpose.

These lands will directly impinge on local community areas. So far, OLAM Oil Gabon has carried out assessments to identify primary forest, areas of high conservation or biodiversity requirements and 'local people's land' in some areas within the first granted 35,354 ha for development for the purposes of establishing nurseries.<sup>220</sup> Its report showed that local communities use these areas for mainly hunting and fishing. The report also seems to think that enabling access to these areas would remove conflict,<sup>221</sup> sidestepping, as predictable, consideration that these lands might be already owned by local communities.

Public criticism of the oil palm land deals has not altered the course of the Joint Venture Agreement. The most recent enterprise of OLAM has again provoked comment. This concerns the announced agreement in March 2012 between OLAM International Limited and the Government of Gabon to partner the development of 50,000 hectares of rubber plantations on a respectively 80:20 ratio<sup>222</sup> This area falls within the 300,000 ha promised to OLAM for oil and rubber developments. In a You-Tube interview,<sup>223</sup> the manager of the enterprise contests claims made by another agro-industry specialising in rubber development that OLAM International Limited has no capacity to plant rubber at the rapid rate scheduled.<sup>224</sup> Many critics have been aroused by the fact that the first tranche of earmarked land lies in Woleu-Ntem Province in the north, and where there are already resentments of allocations of customary lands to

219 <http://news.indiamart.com/story/tata-chemicals-pre-construction-agreement-technip-gabon-based-urea-fertiliser-pl-146>

220 As granted under Licence No. 74/11 of October 2011. The area is located 60 km west of Waka National Park and 140 km east of Moukalaba Doudou National Park. A final Social and Environmental Impact Analysis is due in 2012.

221 OLAM International, 2011.

222 <http://www.foxbusiness.com/news/2012/03/18/OLAM-partners-gabon-government-in-us183-million-rubber-plantation-jv/print#> and <http://www.fditracker.com/2012/03/singapores-OLAM-international-and.html>

223 <http://www.youtube.com/watch?v=lgVaSTmMMQs>

224 'Economie/Industrie agro-alimentaire SIAT Gabon emet des doutes sure les projets d'OLAM'. ECHOS DU NORD, No. 12 du Lundi 2 April 2012.

timber concessions. The 28,000 ha scheduled for the first Phase will remove untitled customary estate from local communities. Additionally, these lands will revert to Government on completion (for reallocation), not to local communities. Brainforest is among those protesting the allocation.<sup>225</sup>

Doubts also surround employment provisions. A total of 6,000 direct jobs have been promised and 5,000 indirect jobs created in this latest OLAM venture. If the terms of such deals are true to form, these commitments are unlikely to be integrated into signed contracts, and failure to deliver jobs will accordingly not be easily challenged in the courts. Local populations may have no more success in altering the course of these plans than they have had in the past in regard to concessions, park developments or mining developments on their lands. The state is a partner in both OLAM enterprises. There are also (unproven) suspicions that Gabonese notables including the President's family are shareholders in these ventures. The potential for conflict is not excluded.<sup>226</sup>

— **Industrial logging concessions represent by far the biggest land-use designation in Gabon**



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225 'Le maillage du pays par OLAM en si peu de temps est inquiétant', déclare Marc Ona Essangui, Prix Goldman 2009. Secrétaire exécutif de Brainforest, in an interview given for the national newspaper Echos du nord section Société/Politique/Economie, 2 April 2012

226 Anseeuw et al., 2012, Da Via, 2011, and for a recent case see <http://www.guardian.co.uk/global-development/poverty-matters/2012/apr/11/sierra-leone-local-resistance-land-deals>. Also see Shivji, 2011:11.

## 4 Conclusions

1. Overall, the issue confronting ordinary Gabonese in land matters is straightforward: national law simply does not recognize rights to land and resources which are not embedded in formal entitlements as issued by the state.
2. These introduced entitlements themselves are highly circumscribed and remain structured in ways which are irrelevant to the local situation as evidenced by the very low level of their uptake. Their form and conditions derive entirely from imported notions of what constitutes property, how it can be established, and when it should be protected.
3. Worse, these notions were originally established for the very purpose of mass dispossession by a profit-seeking, resource hungry colonizer. To make money out of the lucrative resource values of Gabon, it could not afford to allow indigenous populations to retain ownership – and thence rights and privileges – deriving from the land and its resources.
4. Worst of all is the fact that the modern Gabonese State has not seen fit to liberate its citizenry from this bondage. Instead it has steadfastly maintained this colonial tenure paradigm. Even the most limited of hints of remedy, such as offered in demarcation of a rural domain, have not been put into practice. This failure to follow through has been sufficiently consistent over the last decade to suggest such provisions were not seriously intended.
5. The fact that the Gabonese State has been able to avoid liberating its people's rights to land from colonialism says a great deal about the status of Gabonese society, its capture by an elite which has inherited the mantle of colonizers and in whose interest it has been to retain dispossession of the majority in urban and rural domains. Support by the former colonizer, France, other foreign governments with commercial investment interests, private enterprise and enterprise-supporting international agencies, have also played their role. This has been through failing to exhort or demand of the Government that it abandon its exploitative positions and adopt more inclusive modes of national growth and development. It is disappointing, for example, that donors and especially conservation agencies, did not directly challenge the Government of Gabon at the time of formulation of the Forest Sector Plan in which they played such a large hand, to insist that forest use was premised upon recognition of existing local ownership of forest. This could have led to secure tenure for local populations, community forests, and also to community-based out-leasing of forests to commercial users. This would have provided an inclusive new mode of forest enterprise.
6. Instead, there seems to have been a shared if out-dated belief over recent decades that if affected populations are given token benefits from industrial scale land-based enterprise in which they have no shareholding, they will not protest to the loss of their

lands and resources. A tipping point could emerge fairly quickly should even those token benefits and especially jobs not be forthcoming.

7. Similarly, it seems that there is a shared position that it is strategic to allow the tiny hunter-gatherer minority some measure of acknowledgement of special support, as manifest in the social plan of 2005. This is doubtless in response to international approbation as to the poor status of hunter-gatherers around the continent and particularly in the Congo Basin. This strategy too may imminently face its limits.
8. The situation facing untitled urban and rural land owners in Gabon would be less deleterious if recognition of customary land rights as even use rights were given real substance. This has not occurred. Instead, even technically acknowledged rights to occupy and use land have been upheld only in a passive manner, ignored as soon as the state wants those occupied and used lands for other purposes. Various initiatives (and latterly by OLAM as outlined above) to discover and protect rural land uses have proven to be weak. That is, the company or the state itself permits continuance of those rights only at its own convenience. It is therefore wrong to describe access and use practices as rights in the true sense of the word. They are not treated as rights which must be respected and protected, or compensated for if those lands are required for other more public purpose.
9. The same shortfalls affect the standing occupancy rights of urban dwellers. They too enjoy no security of tenure without previous certificates of entitlement but which are beyond their reach. Both the urban and rural arms of society are at the mercy of the land grabbing State.
10. Gabon is, of course, not alone in the discriminatory land and resource ownership norms it pursues. Its immediate neighbours pursue similar positions. Still, elsewhere on the continent there have been important reforms in precisely the tenure matters which affect the modern population of Gabon today. The next section looks briefly at some of these developments.



## 5 Looking to Other Africa States for New Approaches to Old Problems

### 5.1 Common Colonial Suppression of African Land Rights

While each country is unique, African nations share similar socio-cultures, and have confronted similar historical and social transformation forces. They also share a common agrarian base; that is, they are economies which are rooted in farming and other land-based productivity and in which rights to land and resources are crucial to survival, social change and growth. In tenure terms, they have also endured a similar colonial legacy whether mediated through Francophone, Lusophone, German, Anglophone, Anglo-American or Roman-Dutch strategies. Legally, these in turn share roots in Roman law notions of what constitutes property.

With one or two notable exceptions (Ghana, and in Liberia until the 1950s) African land rights were uniformly suppressed, deemed no more than rights of access and use, and even in this form only exercisable at the will (whim) of the colonial state.<sup>227</sup> Ownership of minerals including surface or river minerals extracted traditionally, sometimes for centuries, all waters, seafronts, wildlife and sometimes forest resources were also co-opted by colonial states as their personal property although invariably described as public property. By the late 1940s and 1950s as colonialism came to an end, land tenure policies continued to be structured around globally-fashioned commercial interests which by then were heartily supported by local national elites.<sup>228</sup>

### 5.2 Common Post-Colonial Adherence to Colonial Tenure Norms

Just as pertinent, many African states share a similar *post-colonial* political history. The 1960-1990 era was characterised in Africa by extreme centralization of state powers,<sup>229</sup> one-party politics, dictatorship or effective dictatorship, and aligned elite capture by a small class of persons who combined capture of political and social power with economic hegemony. This was underwritten by purposefully sustaining colonial resource ownership norms, which vested ultimate ownership of all land and resources in the state. For example, in the 1970s Sudan, Malawi, Uganda, and Somalia all passed laws which made rural populations more definitely tenants of the state. Similar trends occurred in Francophone and Lusophone Africa.<sup>230</sup> Similar legislation throughout the continent during the 1960s-80s narrowed the scope of even where customary access and use rights were acknowledged. Building upon colonial tendencies to exclude all but house and farm lands as customarily occupied and used, it now became more certain that access to forest, water and rangeland resources was even more strictly only at the will of the state.

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227 Alden Wily, 2011b, Brief No. 2. [http://www.rightsandresources.org/documents/files/doc\\_4699.pdf](http://www.rightsandresources.org/documents/files/doc_4699.pdf)

228 As above footnote.

229 Although in lead cases benignly justified as essential to new forms of African socialism and communalism, risen to state levels, the case in Senegal, Guinea, Tanzania, Ethiopia and Mozambique.

230 For details see Alden Wily, 2011d and Alden Wily 2011b, Brief No.2

Moreover, this was in circumstances where the state was not the people but virtually a private corporation of interests, and which for much of the time in decision-making and investment of national budgets placed its own, largely personalized rent-seeking powers over and above the interests and rights of national populations.<sup>231</sup>

Once again, international actors, from bilateral donors (the former colonizers) to the rising prominence of UN agencies including FAO, UNDP, IFAD and especially the influential World Bank, endorsed and encouraged national land policies which sought to do away with the troublesome communalism of customary land access and governance, in favour of the individualization of property, to be embedded in European derived tenure forms. In practice, conversionary titling initiatives met failure after failure through lack of relevance to the operating land use regime, costs which poor farmers could not afford, lack of finance and sound programming, and were any event entirely focused upon the limited house and farm plots of millions of rural Africans, a tiny proportion of the customary estate.<sup>232</sup> Failure of conversionary programmes meant that as well as being located in a position of tenancy to the state, interests derived from majority customary regimes were made yet more uncertain. Even access and use rights were barely recognized and no real opportunities for securing more solid tenure were available. In any event, the proffered titling exercises had a limited range; they were to be applied to that tiny proportion of family and community lands which were physically and visibly used, in the form of house plots and permanent farms.

### 5.3 African Land Reform from the 1990s

Through a combination of forces now termed democratization because of the pivotal (but not only) shift towards multi-party politics, this situation began to change from the early 1990s. Global neoliberalism from the 1980s played a role, especially through the demands placed upon African states in structural adjustment programmes, including significant governance reforms.<sup>233</sup> This has proved a double-edged sword for both host countries and lenders. On the one hand, there is little doubt that structural adjustment policies (SAP) helped provoke governance change. They also, ironically, whilst demanding land privatization, caused matters of land tenure in agrarian states to come under the microscope (see below).

Transformation in governance is far from complete. 'Imperial presidencies' remain, electoral malfeasance, ruling party domination and corruption throughout governments and politics are still rife.<sup>234</sup> As described earlier, most African states still perform poorly on governance indicators. Nevertheless, formation of civil society organization and voice, freedom of the press, and average 'freedom levels' continue to rise, along with public demand for greater accountability and transparency.<sup>235</sup> There has also been a steady rise in constitutionalism, acknowl-

231 Diamond, 2009, Herbst, 2009.

232 Bruce & Migot-Adholla (eds.), 1994, Alden Wily, 2011d and 2011b, Brief No. 3.

233 Patnaik and Moyo, 2011. In 1990 only Mauritius, The Gambia and Botswana were routinely classified as democracies. By 2007 Freedom House designated 47 African states as democracies, although with many caveats.

234 Prempeh, 2009, Diamond, 2009.

235 Such as measured annually by Freedom House; see <http://www.freedomhouse.org/report/freedom-world-2012/full-report-essay>. Note that this reports on a decline since 2011 in freedoms in sub Saharan Africa following a decade of positive change.

edgement of the role of human rights in governance and judicial reform.<sup>236</sup> More than half of all African states have enacted entirely new constitutions since 1990. In most cases, this event has been underwritten by public consultation and sometimes plebiscites.<sup>237</sup>

For matters of land rights, these new constitutions are proving important. Mostly (but not always, Gabon being one of the exceptions), new African constitutions belong to the new generation of constitutional law, which sees a much wider range of subjects detailed, and even whole chapters on land and natural resources now included. An early landmark example of this was the Constitution of Uganda in 1995 and a recent example, the Constitution of Kenya (2010). These and other modern new Constitutions give unambiguous support to African systems of land tenure ('indigenous or customary tenure'). They declare that these are perfectly lawful regimes for people to secure real interests over land. They also note that customary land rights have equal force and effect as property with rights obtained from the government under national law provisions ('statutory tenure').

Such declamatory provisions do not stand alone. A wave of land policy and law reform also took grip of the continent from the mid-1990s. To some extent this has echoes with reforms in many agrarian states around the world, where discriminatory and dispossessory norms are being challenged, whether stemming from redress of land grievances of minorities in industrial states,<sup>238</sup> the result of the break-up of the USSR affecting 22 states and the ending of state land collectives,<sup>239</sup> or as a result of the ending of civil wars.<sup>240</sup> In Africa, this was and often remains a noticeable driver of land reforms in Namibia, Zimbabwe, South Africa, Mozambique, Rwanda, Liberia, Sierra Leone, Cote d'Ivoire, Ethiopia, Eritrea, Sudan and South Sudan. This reinforces the importance of land issues in all aspects of civil conflict, from prompting this to reforms helping nations to recover from wars.

It would be incorrect to presume that land reforms have been entirely pro-majority or fashioned entirely around the need to liberate either customary rights or the rights of now millions living in city areas for decades but without security. On the contrary, it has often been the case that legal and policy changes in both these spheres have only come about tangentially in the process of administrations designed other reforms. Most of these 'other land reforms' have been firmly in the arena of improving land administration systems and with objectives to also extend formal entitlement opportunities to more of the population.

Yet again, the role of the international community and the demands of investors have been leading drivers. As mentioned above, structural adjustment programmes routinely laid out requirements for land reform in the 1990s. However what they meant by this was improvement in land administration to facilitate titling and restore the promised sanctity of title deeds,

236 Herbst, 2009, Ndulo, 2009.

237 Alden Wily, 2011, Ndulo, 2009.

238 Such rights-based reforms improving indigenous rights in Australia, New Zealand, Norway, and most widely in Latin America, where 18 states have changed their laws to acknowledge the existence and authority of indigenous people and bringing several hundred million hectares of native territories under native title.

239 Such as in Armenia and Belarus but also in China, Vietnam and Mongolia, where former communist defined arrangements have been significantly reconstructed, broadly towards privatization of family properties.

240 As in as diverse economies as Afghanistan, Balkan states, East Timor, El Salvador and Guatemala.

relaxation of limits upon foreign access to land, the simplifying and speeding up of procedures for privatization, removal of constraints upon nationals acquiring large areas of land for investment purposes, and relaxation of conditions seen as inhibiting commercialization of land use generally including limits of land sizes.<sup>241</sup>

In the process of designing such reforms, the poor legal status of customary land rights for rural majorities and the reality that millions of urban dwellers also have no security of occupancy have come to the forefront as matters needing redress. Popular democratization and mass communication, declining tolerance of legal abuse and bureaucratic interference in local land occupancy, growing awareness of injustices and resentment of land losses to private commercial interests, all help prompt land policy and land law change. The surge in large-scale allocations described earlier increases awareness and pressure further.

In many African states, results have already been seen. Whereas in 1990 the vast majority of rural Africans were “squatters on their own land” (as a Tanzanian Court of Appeal judge described it in 1994) around half this sector was by 2011 assured levels of tenure security it had not enjoyed since before the 1880s scramble for Africa.

The most tangible evidence of reform is seen when changes are rooted in new land laws. Sub-Saharan Africa comprises 43 mainland states and eight island states. At least 32 of these states (63 per cent) have changed their land laws since 1990 or have changes in draft legislation or in policies designed to preface new laws.

Provisions are not uniform, or uniformly transformational.<sup>242</sup> Some laws limit changes to improvements in land titling procedures and barely alter the rights of urban and rural poor to secure the lands they already occupy. Now with the surge in opportunities to sell vast land areas to wealthy foreign countries and companies, and with marked encouragement by international agencies to hand over these lands to such enterprise, for the sake of overall growth, the will to ensure majority populations are included in these land developments through respecting their tenure, could be flagging. This is seen in a slow-down in bringing new laws into draft or in front of parliaments, and in the very long time it is taking investigatory national land commissions to report their findings and recommendations (e.g. Liberia, Mauritania, Nigeria).

All the same, it is not easy to suppress public will for land tenure reforms. Public demand continues to spread across the continent. The Heads of State of the African Union were forced to acknowledge as much in July 2009 when they found themselves unable to avoid endorsing the Framework and Principles for African Land Policy, drafted by the Economic Commission of Africa. This affirmed that land rights reform is a prerequisite for poverty eradication and socio-economic growth. A main objective is expressed as the need to enact new laws which “provide for equitable access to land and related resources to landless and other vulnerable groups”. The Framework stops short of requiring that customary land rights be given the force of property, but is nevertheless an implicit agenda.

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241 Alden Wily, 2011b, Brief No. 3. [http://www.rightsandresources.org/documents/files/doc\\_4699.pdf](http://www.rightsandresources.org/documents/files/doc_4699.pdf)

242 For an up-to-date overview of land reform in Africa, refer Alden Wily, 2011b, Brief No. 3.

Many good examples of positive changes exist on the African continent. Best practices are observed in Tanzania, Uganda, South Sudan, South Africa, with arising improvements in Malawi, Namibia. Mozambique and Angola have also made significant changes to the status of customary land rights. Burkina Faso and Benin are among the most progressive Francophone states in terms of land tenure and land administration reform. Space does not allow this to be illustrated here, but a series of Briefs produced by the author of this report provides details. The table of Brief 4 of a Rights and Resources Initiative publication is recommended to those interested in comparative land law around sub Saharan Africa.<sup>243</sup>

Results from that work show that around 9 of the 35 countries reviewed are ranked as most positive in their treatment of customary rights. A further 11-13 (about 37 per cent) are mixed – that is, neither all bad nor all good. Such ambivalence has three main sources:

- a. Protection of customary rights may be now provided but still applies to only lands which are obviously *occupied and used*. This leaves most of the customary land resource involving forests, rangelands, marshlands and other traditionally collectively owned lands without protection;
- b. Customary rights may be protected but only if they are made subject to formal *survey, registration and titling*, and under the non-customary system, so they are in effect removed from the customary sector in the process; or
- c. New policies are in the process of being formulated with indications that positive improvements *might* be made.

The remaining 13 states, including Gabon, have not changed their laws to recognize customary interests as having force as real property rights, or in some cases, have passed new laws but retained denial of rural land interests as anything due more legal support than as permissive rights of occupancy and use on national/state or government lands. The 22 more progressive countries suggests a strongly pro-majority reformist trend, and it is anticipated that, the dissuading factor of the current land rush aside, that such changes will continue.

Many lessons arise out of such studies. Among the most important are —

1. Generality in law is to be avoided where possible. Even where new land law is most refined, resource capture is so rife that every loophole will be legally exploited, especially by governments themselves.
2. Land law reform is not enough on its own. Governance reform is crucial to help populations know about and make the most of land reforms. Most critically these need to be structured to empower rural and urban populations, to increase their legal and administrative control over lands and resources in their vicinity. Delivering genuine devolutionary local government reforms is the obvious vehicle for this. Basic awareness-raising is as obviously urgent, so that ordinary populations are much more critically aware of what allocation of ‘their’ lands or removal of their occupancy means in practice.

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243 Refer Alden Wily, 2011 for RRI: [http://www.rightsandresources.org/documents/files/doc\\_4699.pdf](http://www.rightsandresources.org/documents/files/doc_4699.pdf)

3. A third important lesson has been that reform in the rights of urban communities has a tremendous carry-over effect upon rural reforms, and vice versa. Populations in the urban and rural sphere are so interconnected in a social, political and economic sense, that reforms generally do better when both urban and rural issues are tackled.
4. Finally, community titling has fast emerged since the 1990s as a critical way forward for helping rural and poor urban neighbourhood communities to secure rights quickly and cheaply. Even though individualized titling has been revitalized in many states, it has proved just as slow and limited as in the 1960-80 era. Enabling a community to join together to secure a single title, and for this title to cover all its land assets, not just houses and farms, is proving to be the most expedient way forward for tenure security in agrarian situations. Collectives in slum and low-cost housing areas in cities are also benefitting from this approach.

— **An exceptionally high proportion of Gabon's population lives in cities and town, creating the perception of an 'empty' country**



## 6 Moving Forward in Gabon

### 6.1 Ideal Remedies

In an ideal world, political decisions would be made in Gabon to —

#### 1. Liberate customary land tenure in Gabon from its colonial constraints

1. By recognizing customary land rights *as having the force of property* and *whether registered or not* (that is: abandoning the position that customary rights are no more than access and use rights);
2. By including *settlement-adjacent forests and rangelands within the above*, as considered owned by a family or clan or community, even where these are not occupied permanently or farmed (that is: abandoning the colonial/European derived notion that property only comes into existence when it is developed/transformed);
3. By therefore making allocation of all forms of commercial concession, creation of national parks or other non-customary uses involving rural lands *fully conditional upon a process of discovery and adjudication of rights prior to allocation*, and establishing mechanisms for those lands to be either —
  - a. *purchased outright by the state* on the basis of public interest, payment being made at commercial rates and prior to eviction of the sellers, including assistance to those displaced to resettle in other areas; or
  - b. *sustained as lawfully acknowledged family, clan or community ownership* and through which the community would therefore have the option to lease or rent those lands to the interested investor, although in accordance with procedures and conditions which are upheld by the state as facilitator to ensure a fair deal, including as relevant, a situation in which the land owners are given shareholding in the enterprise, and/or paid rental and a share of profits of the enterprise. The owners could pass their lands over to the state as their trustee administrator and which would receive a share of rental, royalties or profits in this capacity; and
4. By gradually moving away from the above ad hoc arrangements in which customary rights are identified on a case by case basis, over time, a complete register of community lands can be compiled and serve as the primary reference point concerning local ownership. This would need to be advanced by a programme of systematic identification of community land areas by communities together with local state authorities, and comprising steps which (a) help the family/clan/community identify the limits of their respective community land areas; (b) help these groups to *agree the boundaries* of their respective community land areas with neighbouring communities; and (c) assist communities to *resolve competing interests* with each other where these exist, including for example, with hunter-gatherer communities. The objective of such definition would not be to make registration a prerequisite to the acknowledgement of customary rights (which as above, should be protected irrespective of registration) but to

bring clarity to which lands are affected by such rights and over time to enable a complete register of customary lands to be compiled. More immediately, given the favoured position of formally titled properties, such procedures will help rural communities to better entrench their rights as a form of double security;

5. Adopt the modern construction of customary land tenure as community-based tenure, which means lands which an existing community of persons (as families or clans or settlements) considers to be its own as individuals, families or other groups on the basis of either tradition or *by more recent resettlement and other mechanisms* which have not been induced entirely voluntarily. This is especially crucial in Gabon where there is such a long history of involuntary flight and resettlement;
6. Structure acknowledgement of customary property rights as lawful in such a way that a family, clan, settlement or other grouping is known by name and location and may include members of the community who are largely absent from the community;
7. Amend forest and national parks legislation to ensure that where concessions for logging or agribusiness purposes and parks are already instituted, that affected inhabitants and customary owners of those lands are afforded specific shareholding rights and/or benefits concerning any revenue generating activity, as well as the right to participate as appropriate in management and/or designate an agency to do so on their behalf, and that the resource use interests of those land owners are subject to agreements which cannot be finalized without the full partnership of those communities; and
8. Broaden the notion of Community Forests to enable a community to establish these as either a class of protected area or sustainable commercial exploitation area, and for there to be no limit upon the size of such areas provided these fall within the agreed boundaries of that community (or clan, or clan cluster, or settlement, as appropriate).

And by all the above, thereby set in process the *systematic divestment of relevant public lands to rural communities*, to be formalized as (collectively-owned) private property at registration but where shown to exist prior to this, upheld in all processes and in the courts as having the force of private property.

**2. Promptly launch regularization programmes in urban areas —**

which aim to ensure that every longstanding occupant of parcels within cities and towns obtains a registered certificate of lawful occupancy, irrespective of the condition of the housing.

**3. Promptly enact eviction regulations of international standards —**

designed to limit eviction of urban or rural occupants of five or more years standing on both public and private lands including legal obligation to (a) give a minimum of well-publicised three months notice; (b) to be conducted thorough consultation and negotiation with those affected to minimize eviction where avoidable or to agree



terms of eviction including rates of compensation, locations of resettlement, etc ; (c) take measures to limit the effects of eviction including providing a resettlement plan, financial assistance, and compensation to a degree which genuinely compensates the evictees for loss of housing, land and livelihood; (d) providing practical opportunities for appeal in the courts against decisions; (e) implement evictions in the presence of monitors as agreed by the two parties, carried out during the day, and where both violence to persons or property is subject to arrest; and (f) where all costs related to evictions are directly borne by the evicting agency or private owner where the property is not public land or public property.

**4. Act to bring existing allocations of concessions or land rights into fairer relations by —**

requiring all current commercial/industrial land users of rural land a limited period within which they are legally obligated to (a) review the local land tenure situation affecting their concession or grant area; (b) to consult with local land owners and land users as to preferred arrangements, including compulsory identification of areas or resources which should be excluded from commercial/industrial use, areas where affected land owners and users may reside; and (c) present a plan for how shareholding in the enterprise will be portioned and delivered in accordance with guidelines to be decreed, and how land rental will be paid.

**5. Enact detailed procedural regulation through which all the above will be legally obliged to be implemented.**

**6. Mobilize genuinely devolved governance to rural community/settlement level and to neighbourhood level in urban areas —**

in order to enhance public participation, accountability of the state, and security of human rights and development; arrangements should include the right of rural communities to define their territories as community land areas as above, and to have rights to regulate land use within those areas, and to be party to all land and resource decisions which affect those areas.

## **6.2 Practical Remedies**

Two factors come to the forefront in the above.

### **6.2.1 The likelihood of fundamental change to land rights is slight**

First, the denial of indigenous/customary land rights as more than occupancy and use rights is deeply entrenched in Gabon, and upon which a century of private enterprise and elite formation has relied. Additionally, an unusually high proportion of the country is already under significant concession arrangements. That is, this is not a situation as found in many African states where the majority of rural lands and resources are not under private enterprise agree-

ments. The arrangement has proved enormously beneficial to both the concessionaires and to the Government of Gabon.

Resistance to altering such arrangements is high. This has been repeatedly demonstrated in the failure of the state to even pursue the few pro-poor, pro-majority and pro-rights land tenure measures which have been articulated in what turn out to be paper laws. Main reference is made here to the failure to deliver on identification of the Rural Domain, on models for community agreements in respect of National Parks, decentralized governance, and Community Forests. The current surge in demand by commercial investors including public-private partnerships makes susceptibility to such changes more remote. Nor, of interest, have rural populations been latterly particularly vociferous in their demands for this. No march for land rights, for example, appears to have ever occurred. Nor have aid agencies or investors shown strong signs of demanding change. The commercial interests of bilateral donors in particular appear to override misgivings on the side of human rights or equity within the state.

### **6.2.2 Useful groundwork has been laid**

At the same time, a legal platform from which fairer and sounder land law may be arrived at has already been laid. The principle vehicles for this have been noted above in —

1. The content of compulsory land acquisition for public purposes law which does provide some protection of occupants of state land;
2. The provision for urban occupants to be eligible for securing permanent tenure;
3. A history of periodic attempts to regularize at least some urban occupancy;
4. The commitment to identify a Rural Forest Domain to be dedicated to, and exclusive to, local community use;
5. Recent requirement for private harvesting of village-adjacent timber to be subject to community consultation;
6. Provisions for Community Forests to be established, although mainly geared to commercial extraction, and creation of a special Directorate in the Ministry in charge of forests to develop and promote this programme;
7. Recognition that customary owners do at least have rights of access and use, providing a basis of sorts to build upon;
8. A new wave of public-private investment which does at least commit in words to taking rural occupancy and land and resource rights into account in the creation of new concessions;
9. Requirement that national parks authorities work with locally affected communities to assure at least some access to the park and are involved to at least some degree in park management;
10. Ministerial recognition (although by Habitat, a ministry currently in suspension and placed under more direct political jurisdiction) that the links between rural and urban communities are such that the latter possess significant right-holding within their original rural home areas;
11. Modifications to forest concession law requiring management planning and of which negotiating with communities on social contract provisions is required;
12. Enactment of a local government law designed to devolve at least some authority to

- grassroots bodies in rural and urban domains;
13. A 2005 policy which recognizes that the hunter-gatherer minority needs special protection of land use rights;
  14. Official commitment to launch 'land reform', although with suggestions that its objective is not to reform the status of customary land tenure or the status of untitled rights but to speed up administrative procedures to facilitate investor access to land; and
  15. Growing voice on the part of civil society, and signs of awareness that not all those challenging the state or its decisions can be imprisoned, suggesting rising freedom of expression and demonstration.

The above are insufficient in themselves to change the current dispossession of so many ordinary Gabonese or other non-Gabonese long-term residents. However, they do provide something to build upon.

Even if the focus would be confined to drafting, promoting and ensuring passage of missing enabling instruments of existing laws and policies, this would be an enormous step. It would be even better if local actors could then pursue demand for on the ground implementation of those enactments.

### 6.3 Moving Forward in Practice

It is logical that the above two actions (i.e. ensuring passage of long-awaited enabling instruments, and popular mobilization) centre a focused 'land rights initiative' by local and international supporting agencies. However, the reality is that legal change is unlikely to materialize without first taking actions to increase the receptivity of state actors to making changes on the land and resource law front. Heightening receptivity through direct engagement and awareness-raising of policy makers is therefore suggested.

#### 6.3.1 Tackling low political will for change

As indicated throughout this report, a main constraint facing ordinary poor members of Gabon society lies in the evident reluctance of political decision-making to carry through on changes which might, in their eyes, jeopardize private sector interests, and in which many policy-makers may be assumed to have some personal interest. Ultimately, political change tends to be necessary to make inroads into the subtle but powerful wall of resistance to equitable social change. Passive obstructionism, in the form of failing to produce enabling legal instruments which could help advance changes, is a typical symptom of this malaise.

Nevertheless, *heightened engagement with state actors* and initiatives which increase *the awareness of those policy makers of public rights and needs*, and illuminate the consequences of failing to provide for this, can be helpful in counteracting this failure of good governance.

This is in addition to the need for public interest actors to maintain challenge to the failures of the state in matters of public interest and rights, including to land, resources – and informa-

tion. Some NGOs already are very active in the crucial areas of (i) *engaging with government, donor and other parties* on matters of good governance and (ii) *challenging state failures* (and often courageously so, given the draconian responses this can still generate in Gabon).

### 6.3.2 Making awareness raising a priority

It is suggested that local and supporting international agencies and programmes invest significantly in the third key arm of challenge; that is, specifically working to *increase the knowledge of policy makers* on matters of land rights and resources reform. Although this study was unable to hold discussions with more than a handful of representatives of policy making agencies (Ministries) or projects directly supporting their programmes, it was found that their awareness on land reform and community-based approaches to resource governance was strikingly limited. This in turn feeds upon fear that awarding basic rights is incompatible with the rapid private-sector driven economic growth they seek.

Showing decision-makers and those influential in policy making, that this need not be so is key; that on the contrary an approach which *includes* ordinary populations in growth strategies from the outset *as partners*, not as end-of-the line possible minor beneficiaries, is a critical path to sustainable growth, as well as peace and security.

With the above in mind, these actions are suggested for the attention of NGOs, and supporting funding programmes whose assistance is needed to underwrite promotion of social change affecting land and resource rights and governance —

#### 1. Engage directly with the Government of Gabon on land reform issues

in particular with the Directorate of State Lands and Operations which says it is leading on the design of reforms, along with the Ministry of Habitat and its agencies like the Cadastre; with the objective to ensuring that planned reforms do not focus exclusively upon facilitating investor access or improving procedures of formal entitlement, but address the fundamental problems associated with failures to endow indigenous tenure regimes with force as rights which cannot be overridden without just due process.

#### 2. Require the formal involvement of public representation

in all land development processes and assist the state by working with provincial and district and urban neighbourhood authorities to create local forums for this.

#### 3. Increase state awareness of options: through

- a. making available to the Government of Gabon, NGOs and assisting external actors, a *Land Series Briefs* along with discussion opportunities (workshops) which provide short analysis of the land issues facing poorer people in Gabon; give clear examples of how other states have dealt with similar problems; and make available examples of best practice legal and policy text;
- b. identifying and finding funding for focal actors in local policy making agencies

along with NGO representatives and community representatives to be able to *participate in regional and continental forums* which tackle land rights issues directly or as part of their agenda (e.g. the case with meetings on REDD+, timber exploitation, etc) including those which examine the effects of large-scale land allocations upon local populations on the continent and the implications this is having upon peace and security and environmental protection;

- c. involving such actors along with key NGO actors in *study tours to relevant African states* to see for themselves more equitable options for
  - (i) including communities as partners in agri-business ventures;
  - (ii) creating Community Forests on a lasting basis at scale, for both sustainable extraction and maintenance of the resource, premised on community based tenure and management, but with opportunities for the community to contract the state or private companies to exploit on their behalf;
  - (iii) to see how new land policy processes have been launched and sustained through public national commissions of inquiry into land rights and land administration; and
  - (iv) to see how local village government (such as proposed on paper in Gabon in the form of Rural Community Councils) can viably operate and in a cost-effective manner.

#### **4. Enhance the fact base of advocacy**

This could include the following investigatory projects, either undertaken by NGOs, university departments, and/or with state parties as necessary through demand that such reviews be undertaken by state parties themselves, including

- (i) a status review of all concessions in the timber and agri-business sector to identify exactly how many communities are affected and with what results so far, including if possible review of the contractual terms of concessions and other agreements;
- (ii) review of the occupancy status of all residents within selected poor urban neighbourhoods with a view to working through with those residents who endure insecure tenure exactly what is required to improve their security;
- (iii) socio-demographic analysis which more thoroughly investigates and documents the interwoven livelihood and land tenure linkages between urban and rural families to help drive the necessity to take this in to account in policy making.
- (iv) Establish an OLAM Watch initiative to gather accurate information on its initiatives and the impacts on local communities, ideally with cooperation from OLAM authorities itself, given the objective to improve its modus operandi in respect of how land areas are selected and negotiations with communities conducted.
- (v) Join the International Land Coalition and regional land advocacy partnerships to enable sustained contact, growing knowledge, and solidarity with advocacy on these matters; consider establishing a focal advocacy group within Gabon as a Land Rights Alliance, and which can benefit from association with West African land rights alliances and also represent a first step towards a Congo Basin Land Rights Alliance.

**5. Build local capacity:**

with reference to the local government code and the paradigms it proposes for village and urban neighbourhood levels, work directly with strategically-selected communities to set up such bodies (e.g. Rural Community Councils), even without the assistance of the law. This will

- (i) test the viability of those long proposed constructs at grassroots levels;
- (ii) enable local agencies to be able to recommend changes to government;
- (iii) represent a breakthrough in the deadlock over decentralization which appears to have arisen, and through this lessen state resistance to actually developing what its laws promise.

And, for the longer term —

**6 Take legal action**

It may be in the interest of agencies to give consideration to submitting a formal complaint to the African Human Rights Commission of the AU on the failure of the Government of Gabon to carry through on legal commitments towards development of a Rural Domain to better define and protect untitled rural land interests, to deliver legal instruments towards legally committed decentralization, and to fail to follow the spirit of the law in respect of evictions to make way for public purposes. This could carry due notice that legal action will be considered should the Government of Gabon continue to fail to act.

**7 Share lesson learning in the region**

Participate in the sharing of lessons between regional civil society organisations on advocacy strategies and best practices used to advance land rights, as well as make use of networks and communication means already in place, such as the African Community Rights Network to make their voices heard

**8 Use existing channels for change**

Make use of ongoing processes, such as FLEGT VPAs and REDD+, which provide for an opportunity to keep/include land reforms on the agenda and take into account civil society and communities concerns

**9 Focus on legal instruments**

To focus all the above, *identify the legal instruments are required, including providing examples of required substance*, to facilitate action in these specific priority areas:

- a. As a matter of priority, the demarcation of a *Rural Domain/Rural Forest Domain* specifying

- (i) that access and use rights to communities within this sector are *fully protected by the law* and cannot be wilfully interfered with in any manner by public or private interests, including by allocation of concessions other than for mining, without a specifically laid out and legally entrenched consultative procedure which must rely upon free, prior and informed consent; only clear exceptions for genuine public purpose can override the need for free, prior and informed consent;
  - (ii) establishing the criteria and procedures for defining the Rural Domain, to be founded upon *community-based processes of inter-community consultation, agreement and demarcation* of respective 'community land areas';
  - (iii) the essentiality of significant areas of forested lands being included in this domain, to be founded upon past and current reach of customary land and resource use;
  - (iv) the community based norms which should be applied to guide the establishment of *community-by-community governance* of respective parts of the Rural Domain (the 'community land areas' which would exist as a mosaic of territories making up the Rural Domain);
  - (iv) the conditions for future non-community access to the Rural Forest Domain; and
  - (v) the procedures which will be followed to address the (many) instances in which logging or agri-business concessions have been allocated over lands more properly belonging to the Rural Domain. These concessions do not need to be cancelled but modified as to arrangements affecting those rights, which overlap the Rural Domain.
- b. Drafting model enabling instrument for *Community Forests* which builds upon best practice for these on the continent, and which includes procedures, conditions, governance, etc. In addition, a model draft enabling instrument for Community Managed National Protected areas for consideration in respect of National Parks, to improve the opportunities for communities to be more than token beneficiaries of minor access and use rights;
  - c. drafting a model *social clause between agri-business and logging enterprise* with local communities, specifying training and employment opportunities, benefits, rental, and shareholding options, and creation of Community Trust Funds for investment of benefits in an accountable entity;
  - d. drafting a guidance material for inclusive and quality participation of local communities and indigenous people to processes that affect them and touch upon their land and/or resources, with special attention turned to the issue of representation, to avoid elite capture
  - e. establishment of a model draft enabling instrument for *creation of village level governance bodies*, building upon best practices for these, in order to encourage the Government of Gabon to more actively pursue decentralization;
  - f. establishment of a model draft enabling instrument which combines *the regularization of untitled but longstanding occupancy in urban areas* with introduction of detailed *fair eviction procedures* to limit human rights/land rights abuses; and

The drafting of these instruments will be important contributions to land and resource policy development. NGOs and assisting agencies could work with certain selected institutions, like UN-Habitat (or in practice, experienced legal consultations hired by it) to develop these models, through a participatory process.

And finally —

#### **10 Promote local land rights advocacy at community level, through**

- a. direct pilot assistance as outlined above towards definition of rural Community Land Areas inclusive of substantial forest lands in accordance with current resource use patterns;
- b. in the same process, assisting these rural communities to form pilot 'Rural Community Councils' as laid out in the Decentralization law in whom community members vest decision-making and implementation responsibilities, and who can also serve as focal points for advocacy;
- c. raising local awareness in these communities through issue and widespread dissemination of a series of Land Briefs (similar to those mentioned for government and central levels) but written directly from the perspective of rural populations who have no secure rights to settlements or to unfarmed forest areas which they believe are rightfully in their customary domains. First Briefs could include —

*Brief No. 1: What happened to our land rights? The history of dispossession in Gabon*

*Brief No. 2: What the law says about our land and resource ownership - and what the law should say*

*Brief No. 3: The land rush in Gabon: what is it, and what does it mean for rural communities?*

*Brief No. 4: Community Forests in Africa: Examples of Best Practices*

*Brief No. 5: What our Constitution should say about land rights*

And preparing several Briefs focused on urban tenure issues for dissemination in urban neighbourhoods to both give information and provoke discussion and demand for improved legal and administrative procedures; these could include —

*Brief 1: How to secure your plot as your property: what the law now says, and what the law should say*

*Brief 2: When the state wants our lands: best practice procedures to limit human rights abuses at eviction.*

- d. Consider radio programmes and TV as a means of disseminating important messages and discussion; and
- e. develop tailored access to justice initiatives such as by providing legal assistance to communities facing specific challenges to their land rights.



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