



LAND RIGHTS IN GABON: FACING UP TO THE PAST – AND THE PRESENT

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This Brief outlines **main findings** of an analysis of land tenure in Gabon, prepared for FERN in consultation with Brainforest in Libreville. The full report is available at <http://www.fern.org/landrightsingabon>

1 PURPOSE

The objective of the study was to identify constraints to lawful ownership of land and resources by communities to help focus practical action for improvements. Evidence of fair and protected rights of rural dwellers has become a growing demand of some resource trading partners (such as the EU in respect of timber) and is a growing concern of African populations generally. In Gabon the issue is gaining sharper pertinence as the state engages in a renewed surge of large-scale land and resource allocation to private and international enterprise.

2 OVERVIEW

In summary, the ten main findings of the study are –

1. **Most of the population has limited tenure security.** Traditional rights to land and resources are not upheld and yet formal routes to secure tenure are narrow in their scope and inaccessible to the majority in their procedure. Urban and peri-urban populations are especially vulnerable to state-led evictions without fair compensation and for questionable ‘public purpose’ at times. Rural populations are routinely displaced to make way for concession activities.
2. **Land and resource law is flawed, backward and unjust in key elements, and weakly upheld.** Land law is especially out-dated, undemocratic, discriminatory against poor majorities, ambiguous in critical issues including powers of State. More liberal elements of resource laws have consistently failed to be applied. Rule of law is lax, especially on matters concerning commercial exploitation.
3. **Key sources of injustice** include denial that customary or other longstanding rights to land and resource are more than casual occupancy and use rights and which may be ignored at will by the state; related rigid retention of colonial norms which specify that real property only exists where the state has issued a formal entitlement for the land (and yet unworkable mechanisms for these to be issued at scale); and exclusion of forests, a primary source of rural livelihood and customary asset-holding from family or communal ownership.
4. These conditions leave the State as the major land owner in Gabon with up to 90% of its area not just under its control but largely defined as ‘private government land’. Most of the population is **technically landless**, existing as mere occupiers and users of government property.
5. Gabon represents an **extreme case of colonial continuity in land relations**. Laws first instituted in 1899 deemed obviously long-occupied Gabon as nevertheless ‘a land without owners’ (*terra nullius*) precisely so that the French State could at no cost, and lawfully (in accordance with French law), take, and allocate the country at will to its own sponsored enterprises. This it achieved by 1900 with most of the country under (French) conglomerates. Gabon’s independent

governments since 1960 have determinedly retained these dispossessory norms to similar State and private aligned advantage.

6. While the situation in Gabon was not unique, tenure reforms from the 1990s in Africa have passed Gabon by.

This could now be detrimental to stability and growth. The current surge in transnational exploitation of forestlands, minerals, and agricultural potential, which entrench dispossession in practice rather than involve local populations as respected land owners, may bring the implications of deprivation of rights forcefully to the fore.

7. The **interconnectedness of the majority urban population with rural land rights is not sufficiently taken into account** in national strategies. There are signs that it is mistakenly assumed that urban dwellers have no vested interest in seeing family and community tenure respected. On the contrary, many urban dwellers consider themselves **part-owners of family and community land and resources in their home rural communities**. Urban insecurity of tenure also affects rural perceptions and demands. Customary clan claim is materializing with each involuntary eviction or resource loss.
8. Over the last two decades the Gabon State has **demonstrated extreme bad faith** in failing to implement the more liberal elements of its laws, including those relating to decentralized governance and empowerment of rural and urban communities in land decision-making. This has contributed to a culture of impunity, corruption, and low confidence in the State.
9. **Tenure reform faces an uphill challenge in Gabon.** This is not least because the current regime of tenure favours privileged elites and privatized transnational interests and which enjoy support from participating foreign governments. At the same time, the risks of this strategy are more clearly coming to light, the need for more inclusive routes to resource-based economic growth is beginning to be understood, and demand for change among a new generation of state and non-state actors is emerging.
10. Limiting reform to streamlining procedures of private entitlement to lands and resource access, such as recommended by some advising international agencies, will be cosmetic without significant change to the basis upon which secure tenure is recognized. Ideally, the Government of Gabon will be actively assisted to adopt strategies which cease to pursue growth through primitive accumulation by dispossession of the poor of their rights and resources but by recognizing those customary landowners as legally-approved owners, and thence potential partners or lessors of lands to commercial enterprise, not end-of-line beneficiaries who may/may not get a few jobs.

3 FINDINGS

1. **Gabon has no national land policy.** The nearest document to land policy remains an explanation of colonial land policy in 1911, and whose 1909-1910 legal provisions still provide basis of modern land law in Gabon.
2. **Nevertheless, the law itself amply embodies formal strategy.** This is founded on principles which ignore and undermine African norms of land ownership and administration, discriminate against the poor, and in one fell sweep dispossess the majority. This is because the law -
 - a) Fails to recognize customary land rights as more than casual *occupation and use rights* on State-owned lands. This denies that customary rights have attributes of property (ownership) and should be upheld as such. This follows out-dated, unfair, and inequitable practices (and which many other African states have done away with).

Not only rural communities are affected. This dispossession also affects those on whose lands cities and towns have evolved and are multiplying, and other urban dwellers who have occupied untitled lands for decades or sometimes a century or more.
 - b) The law also establishes that property, and therefore its protection, comes about only through acquisition of land from the State and issue of formal title for those parcels.
 - c) It adopts a procedure for such formalization which has proven inaccessible or irrelevant to the majority urban and rural population, as witnessed in the tiny scale of the private property sector.
 - d) It makes the State the majority owner of lands and which should not be misunderstood as public lands under the trusteeship of an elected government. There is no binding requirement that the state act in this capacity, or procedures which make it duly accountable to the population. Only a quarter of State Land is designated as Public Land where this trusteeship could be said to apply. The remainder is held as the Private State Property, which the government of the day may dispose of at will.
 - e) Additionally, because issue of title is through procedures founded on limited adjudication of existing rights, and where only customary use rights are taken into account, injustice compounds unaccountability in privatization by the State.
3. This legal *modus operandi* is doubly concerning given that the Gabon State has not consistently demonstrated over the last 60 years that it places public interest firmly above private interest in its land and resource dealings, nor even freely permitted protest at its dealings.
4. Dispossession of rural dwellers is exacerbated by **declaration that all forests belong to the State** in a country where 85% of the land area is forested and where these resources form an integral part of customary land right ownership.
5. The State also owns **all waters** (one million sq. km in addition to the land area), retaining the colonially-re-engineered principle of French law that only navigable and floatable rivers belong

to the State to encompass effectively all water). More characteristically and acceptably, the Government of Gabon also owns **all minerals** (whether historically surface-mined by communities or not). It also owns **all protected areas** (around 15% of the land area, including a great deal of forest). The last suggests that Gabon has not yet caught up with modern conservation policies which recognize that communities are usually the best source of conservation when their ownership rights to nationally-important areas are recognized, producing community-owned and managed National Parks and Reserves.

6. In these circumstances it is not surprising that rural dwellers have a semblance of security **only for the houses and farms they actively occupy and use**. Very few have formal entitlement protecting those rights and occupancy permits have largely expired. This is also the case for many urban dwellers who have been unable to secure final title due to the onerous development conditions, costs or time-consuming procedures involved.
7. The consequences of the above findings are that -
 - a) **at least 85% of Gabon's area (and possibly 95% or more) is legally owned by the State** even though much of this is customarily owned, used and occupied or subject to urban occupation of longstanding. Much of this land is also subject to concession or lease holding (see below);
 - b) **most of the population is technically landless**. Rural families live on, use, and depend upon lands and resources for which they have no legal documents of ownership or even the possibility of obtaining such. Thousands of urban dwellers are also technically only permissive occupants on State Land, and who can (are periodically are) evicted at will; and that
 - c) **the private sector is tiny, and in agrarian circumstances where one would expect to see many private titles in the form of family and community entitlements**. Few (if any?) community land titles exist (even though this is provided for by the Constitution and land law).
8. **Only 14,000 private land titles appear to have been registered in Gabon**. Most refer to tiny urban parcels. The urban area as a whole in Gabon constitutes no more than one per cent of the total land area. Registration began in 1902 but had reached only 1,100 lots at Independence (1960). This multiplied ten times by 1994 through a special campaign in especially the two cities of Libreville and Port Gentil. Titling was reported by UNDP and Ministry of Habitat in 2011 to have fallen to an average of 100 new titles a year. Very few titles exist in rural areas. In any event, the cadaster where the register is maintained, in practice operates in only urban areas.
9. **A significant share of State Land has been allocated to mainly global enterprises**. The level of local shareholding by wealthy Gabonese is not known. The mechanism of this allocation is award of some 5,000 concession entitlements of State Private Property to mining, logging and recently, agribusiness companies. These cover millions of hectares. Since 2001, a single logging company

may hold rights to 600,000 ha. In 2011 CIFOR reported that Chinese companies now hold rights to one quarter of all Gabon's forests (over five million ha). While the State retains ultimate ownership of the land and charges rent, royalties and taxes, concessionaires own the timber, minerals or products they extract, under terms which are renewable. The study was unable to find laws which bind the State to return a percentage of revenue to affected communities.

10. **Rural communities are profoundly affected by these concessions.** Without clear demarcation of their boundaries, mega-concessions (and which may overlay mining and logging rights) routinely impinge upon local areas. Mining concessions may exclude occupation and use from their vast areas. In addition, communities have lost around 15% of the country area to National Parks from which they are also excluded. Further, their traditional rights to buffer zones around the Parks are circumscribed depending upon Parks Authority decisions. Recently, residents in several parts of the country have discovered that parts of their traditional lands have been allocated to large-scale rubber and oil palm developments. Formal consultation and agreement with affected communities is legally handicapped as the State does not consider their rights to be more than adjustable use rights of its own land. Rural communities therefore have to contend with not only being legally unrecognized as customary land and resource owners but repeatedly squeezed by concessionaires with clear rights entitlement. These often interfere with settlements and farms, but mostly deprive communities of access to forestlands and other traditional resources.

11. **Poor and weakly applied forest law adds to dispossession and encroachment.** Although the new Forest Law (2001) was designed to better regulate logging and relations with local communities while expanding the area under commercial exploitation, it has only achieved the latter. Allegedly, limitation on area held by any one company is unevenly observed, royalties and tax are still poorly and un-transparently collected, required management plans are not forcibly produced, social responsibility agreements with communities are only occasionally developed, stipulated off-takes are exceeded, protected areas invaded by loggers, undersize species felled, and banned export of round logs erratically upheld.

Demarcation of a Rural Forest Domain to assure communities access to at least some of their forests has not been undertaken, and is the most grievous failure. While this legal provision represented a poor second to acknowledging local forest ownership, its implementation would have provided some protection for at least use rights and given communities slightly better standing with invasive concessionaires and other securing private title on their lands.

12. **Title-less families cannot look to the Constitution for relief and remedy.** This 21 year old law has been regularly amended since for political benefit (such as removing Presidential term limits or giving retired Presidents immunity) but has seen no improvement in rights protection. Its protection of private property relies upon definition of property as existing only when formally registered. The Constitution's reference to the Declaration of French Revolution's Rights of Man and the Citizen (1789) and to two international Declarations (1948 and 1981) is deceptive. The former in fact was the original code establishing that property exists only through registration.

The latter do protect property, but leaving definition of property up to the signatory state. Gabon's ratification of other international covenants is similarly misleading. Gabon has not ratified either ILO 169 or the UN Declaration on the Rights of Indigenous Peoples 2007 which would oblige the State to respect customary land and on-land resource ownership, and protect housing rights.

13. **Securing private title is difficult as evidenced in the tiny private sector.** As noted above, collective entitlement is available but not taken up as the key collective resource, forests, is not ownable by rural communities. Although private to private transfers of already registered properties is relatively straightforward, acquiring first title from the State involves multiple agencies with conflicting jurisdiction, multiple steps (some reports still refer to 134 steps and with around 70 signatures required), and is allegedly vulnerable to rent seeking at every stage. Acquisition and formalization of entitlement is in three stages, with a first stage of parcel identification, weakly regulated adjudication, then survey and demarcation, followed by issue of provisional, then absolute title, after two to three years in which specified development conditions are to be fulfilled. Many applicants fail to complete due to onerous construction conditions or costs. Award of final title is a political rather than administrative decision, exposing rights to political influence, and the dual civil-judicial titling procedure creates other delays. UNDP and the Ministry of Habitat record that only 121 new urban parcels were defined and sold between 2004 and 2008.
14. **A crucial feature of Gabon's property law is that it is little different from the law established in 1899.** In addition to aspects noted above, the law –
 - a) Disallows prescription (long and uninterrupted occupancy) as a basis of recognized land ownership, depriving rural and urban dwellers of due rights;
 - b) Favours industrial/commercial use of land at the expense of subsistence and housing rights of ordinary members of the population, including making lands available to the highest bidder and awarding full title to those who invest significant funds in lands; and
 - c) Weakly prescribed public purpose allows pursuit of compulsory acquisition with limited advance notification of eviction or time for lodging protests, limited right of appeal to courts for other than administrative details and with payment of compensation to other than those holding formal title up to the erratic discretion of government.
15. **History matters.** Review of land relations in Gabon over the 150 years shows that –
 - a) Prior to 1899, occupants of Gabon demonstrated **extremely high levels of territoriality and real property ownership and even commoditized transactions in coastal areas.** This was immensely heightened from the 17th century by slave and commodity trading (ivory, redwood, wild rubber, raffia, etc., then later imported colonial goods like calico, guns, iron

and copper basins). Control over resources – and thence territory is in fact, that outstanding marker of how Gabonese involvement in trading was demarcated. Much of the disputes between clans and their ‘big men’ were over controlling territory, or ‘our lands’.

- b) The first French colonizers, establishing the Estuary Enclave Colony in 1846 through agreement with local chiefdoms **fully accepted that Gabon was owned through customary clan and family based arrangements**. In their first laws (1846-1849) the French authorities merely sought to regulate how local populations *sold* lands to immigrants, so that such purchases would be lawful for the buyers in accordance with French law.
- c) Formal dispossession of local populations through denial of their ownership came about much later, as a **deliberate strategy of the expanded Colony to protect and expand uncompetitive French trading interests**. This was advanced in several laws in 1899 both to enable the French to avoid paying for lands acquired and to be able to lawfully allocate most of the country by 1900 to French conglomerate logging and trading companies, some in fact only formed for that purpose.
- d) The role and support of local elites or what were originally termed ‘big men’ in the 18th and 19th century has been critical to this development, and probably explains why the opportunity was not taken at Independence or since, to liberate Gabonese from colonial land right tenets. While countless Gabonese were victims of enslavement and international slave trading, others became profoundly engaged in this early globalized capitalism and continued to be part of non-slave trading enterprise. Elites emerged quickly, in a stratification of society which has continuity with the existence of economic-political elites today.
- e) The close involvement of international capital and companies can also be identified as a factor in political resistance to liberation of land rights in 1960 and since. External control of lands and resources was in place by 1900 and although with different actors remains until the present, although with likely increased participation of local elites in shareholding and benefits. It is such attributes which suggest to some historians that Gabon was and remains in many ways a rentier state.

16. **Failure to liberate majority land rights has persisted since the most recent change in governments**. In fact, important changes promised in laws since 1996 have not been delivered. Many concern the forest sector, not surprising given that it absorbs 85% of the land area. For example, the Government of Gabon has failed –

- a) To provide enabling legislation and practical mapping and demarcation for the identification and protection of a **Rural Forest Domain** as provided for in the Forest Law (2001); this would have given communities priority rights over traditionally held local lands, inclusive of forests, yet still leaving millions of hectares outside this zone available to non-local commercial exploitation and use;

- b) In the absence of the above, to at least **maintain the five km exclusion zone** along roads provided for in the former Forest Law (1982) to protect villages from encroachment by concessionaires;
- c) To undertake the promised demarcation of the **Permanent Forest Estate** and boundaries of issued concessions to place limits on industrial exploitation;
- d) To provide enabling legislation to allow the **creation of Community Forests**; although these too would not have involved transfer of ownership they would have provided another route for communities to secure at least some forest lands;
- e) To provide enabling directives and enforcement to require concessionaires (mining, logging, and oil palm and rubber plantations) to **at least negotiate and agree rights of access and concrete and sustained benefits**;

Even the above, it should be noted, is **meagre compensation** for displacement, interference in farming and forest use, and removal of any opportunity that they themselves might have become owners of their customary lands and resources;

- f) To institute the enabling legislation requiring Park authorities to work with the communities whose lands they have taken, or interfered with as adjacent buffer zones over which the park also has control; to bring to fruition promise in the main law (2007) that such affected communities would also be party to management decisions;
- g) To provide enabling legislation and progress on **decentralization** as provided for amply in a stagnant law of 1996 and which included establishment of Rural Community Councils and Urban Borough Councils, with significant powers of authority over their respective domains; such formations would have helped empower communities and provided a logical focus for identification of 'community land areas' in rural areas; or
- h) To institute the long promised improvements in how formal registration is obtained to enable urgently needed regularization of existing occupancy and use to be formally entrenched and protected.

CONCLUSIONS

17. **Secure and equitable tenure *does* matter in modern agrarian economies.** The study found that Gabon amply illustrates realities encountered in most other agrarian states where a significant proportion of the population depends upon land to survive or indirectly on land-based enterprise. Who owns and control land matters a great deal in these economies and can mean wealth or poverty. Despite a high per capita GDP, most Gabonese are poor. They are deprived of their only capital assets – land and forests – upon which they can build greater wealth. Governance and economic strategies continue to fall back on belief that the provision of jobs will be sufficient to compensate for this, but with little evidence thus far that this is so (unemployment has not declined in the last 20 years).

18. **A more nuanced approach to the exceptionalities of Gabon is required.** Gabon is unusual in Africa in several respects and which may help explain the inattention over the last century to securing especially rural land rights -
- a. Gabon is (and always has been) lightly populated, with one of the lowest population densities on the mainland of Africa (around 6 persons per sq. km). Land may have accordingly been regarded as plentiful and tenure less of an issue.
 - a) More exceptionally, most of the population lives in cities and towns (around 86%) leaving a small rural population of an estimated 210-221,000 people or 40-45,000 households. As a minority group, rural rights may seem less significant.
 - b) A high proportion of the population are technically foreigners, deriving from other West African states and including an estimated 11,000 French nationals. This has been the case since the mid-19th century, when external labour was encouraged. Estimates of numbers of foreigners vary from 10% to 35% (the latter published in 2003 but hastily withdrawn by Government). Particularly in urban areas there could be an inherent xenophobic reluctance to expand regularization of tenure.
 - c) Migration has long been a feature of occupation in Gabon, caused by inter-clan competition for resources and trading privileges, and flight from enslavement, smallpox and famine in the 19th century, compounded by harsh taxation, forced labour and military recruitment, coerced settlement and other ills in the colonial 20th century. From documents as early as 1909, local mobility was used as grounds for presuming 'natives' did not own land.

However, using the above as justifications for denying recognition of long occupied lands as owned is flawed.

- (i) First, not just the tiny hunter-gatherer ('Pygmy') population but *all* rural indigenous Gabonese were and remain significantly dependent upon wide-ranging but low density land use inclusive of immense forestlands. Presumption that lands which are turned into settlements or farms means they are unowned must be avoided.
- (ii) Second, shifting cultivation, a logical land use system, should also not be misunderstood as random mobility. On the contrary, most shifting cultivation was and remains practiced within clearly known, bounded and 'owned' localities.
- (iii) Third, high mobility did not involve all occupants of Gabon in the distance or near past. Many did not move and many others moved but returned to their homelands when conditions were better.
- (iv) Finally, conventional partitioning of urban and rural society, drawing upon the industrial city model of the North, needs to give way to clearer understanding of how modern agrarian societies operate. One of the repeated findings of the study was that residence between urban and rural home villages is fluid. Younger generations depart to work, returning not

just for holidays but when employment is hard to find in town. When asked their population, villages include their members living in towns. Most significant for this study was the finding that rural and urban members consider the latter to be part-owners of family and community lands in the village. Although few urban relatives were interviewed, without exception they demonstrate much stronger concern at involuntary land and resource losses in their home areas than rural residents, likely because they better understand the implications.

19. At this point the elitist interests of the Gabon State are being reinforced by a surge in international producer demands for land and natural resources and raw materials. New industrial economies such as China, India, and Singaporean/Malaysian interests are key actors in this. The millions of francs which can be made from these developments for limited groups in the society are so enticing that the will for reform may be less in 2012 than even in 2009 at the change of regime. It therefore does not seem practical for Gabonese to rely unduly upon political will to see change in land rights.
20. Much more popular awareness-raising on the issues and mobilization for action is required to drive political will by public will. This should not be confined to rural or urban communities but from the outset engage with policy makers. Structurally, these decision-makers need to be alerted to the fact that facilitating improved entitlement is not sufficient to meet both local and international standards of human land rights justice, and thence stability. Facilitating familiarity with legal changes made by countries with similar histories as Gabon will be helpful. This can also reassure uncertain policy makers that assurance of land and resource security, not dispossession, lays a fairer and less conflict-prone platform for rapid economic growth.

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