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## Gabon: Plans to market carbon, biodiversity, ecosystems and community "capital"

In 2014, the Gabonese government passed a new "Sustainable Development" Law, which authorizes companies to compensate for the destruction they cause in forests or traditional lands by buying offset credits. These are divided into four different kinds of credits: carbon credits, biodiversity credits, ecosystem credits and community capital. The latter is defined as "the sum of natural and cultural assets belonging to a community."

This market system would allow the different kinds of credits to be fully interchangeable, so that it would be possible to exchange "community capital" for other components, such as carbon or biodiversity. However, the text of the law is not clear, and gives rise to various interpretations.

In order to understand the implications of this law and the current situation, we interview **Protet J. Essono Ondo**, coordinator of the Gabonese platform, *Gabon Ma Terre Mon Droit*, and former Program Coordinator of the Gabonese NGO, Brainforest.

### **Why is this kind of law so detrimental to advancing environmental and social justice?**

In its position statement from January 24, 2015, the Gabon Ma Terre Mon Droit platform (GMTMD) pointed out the damage this law could cause to the advancement of social and environmental justice, and it described a series of repercussions the law could have on communities and the environment. It is a very troubling law; the lack of definition of various points mentioned in the text suggests the creation of a system which would authorize exchanging communities' rights for other "sustainable development" elements.

One of the immediate concerns is regarding ownership of "community capital," a concept which is included in the law but which is in itself very confusing; because nowhere does it specify who owns this capital. The law defines "community capital" as "the sum of natural and cultural assets belonging to a community" (author's emphasis), and "community heritage" as the "sum of natural and cultural assets and values which constitute the capital of a community" (author's emphasis). These two definitions suggest that "community capital" belongs to a community—as would be expected in any recognition of communities' rights—and that "community capital" would therefore not be determined nationally as the sum of all communities' assets in the country. Yet, the fact that it is considered as a kind of "sustainable development credit," and part of Gabon's sustainable development heritage accounted for in the national registry, suggests that community capital can be calculated at the national level instead of at the community level. Hence, such community capital would be managed by the State, and not by the communities themselves. This would be a first step toward dispossessing communities.

Another worrisome aspect is that by including community heritage under the logic of the Sustainable Development Law—suggesting that sustainable development would be created by activities carried out within the framework of a "sustainable development concession"—could the concessionaire also lay claim to this heritage? This would be detrimental to communities, and there could potentially be

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conflicts. This is even more worrisome given that the law does not include any kind of representation or consultation process with the communities when it mentions the "management bodies," which would measure and supervise the trading of sustainable development credits.

Even more disturbing is that the "sustainable development impact study"—through which the sustainable development "credits" of each project would be calculated—does not include any criteria related to communities' rights. The only criterion which could have any impact on community members is the creation of jobs. Thus, if "community capital" is exchanged for other credits within the national sustainable development registry, this means that the government would make decisions about the "value" of a community's rights, lands and resources behind closed doors. Furthermore, it would use a method of calculation which does not even include community assets. This clearly goes against the very notion of rights.

Equally disturbing is the apparent proposal to make sustainable development credits—including community credits—tradeable throughout the country. Indeed, the creation of a national sustainable development registry suggests this. This would mean that, for example, a company could take over and degrade a community's traditional lands; and then "offset" that degradation by purchasing or producing credits by building a school for another community 300 kilometers away. As long as the law does not specify whether these kinds of credits are qualitatively or geographically interchangeable, this would be possible. Regarding geographic interchangeability, it is also unclear whether this refers to regions within the same country or between different countries; meaning that forest degradation taking place in Gabon could be offset, for example, in Cameroon.

Worse yet, this law suggests that one kind of "credit" could be exchanged for another kind,—given that community credits, and carbon, ecosystem or biodiversity credits are all sustainable development credits. Thus, both the calculations and exchanges would occur within the same national sustainable development registry. Incredibly, this means that a community could lose their lands, and that this loss could be "offset" by buying "carbon credits"—that is, using the limited requirement of maintaining a certain amount of forest cover as a carbon sink (again, this could end up being in another part of the country).

If these scenarios came to pass, they would have frightening consequences. The idea of "community offsets" that are undifferentiated geographically and qualitatively tramples human rights, and it treats one person's basic human needs as commodities that can be traded for another's. Indeed, this idea could even jeopardize sustainable development as understood in Article 2 of the law in question, which defines it as: "development that meets the needs of the present without compromising the ability of future generations to meet their own needs...It integrates economic, social and environmental objectives in a balanced manner."

**When the law was adopted, there was still a lot of content open to interpretation. Has there been any progress since then, in terms of regulations or policies to implement it?**

Immediately after adopting the law in 2014, with the financial support of PAGOS, a consortium of consultants was contracted to carry out technical studies related to both the Sustainable Development Impact Study (EIDD, by its French acronym) and the Gabonese Sustainable Development Registry (RGDD, by its French acronym). The consortium was composed of Group Ecocert, a French certification multinational; ADETEF, the group in charge of international cooperation within the French government; Carbone 4, a French consulting firm; and the French environmental consulting firm, AQUATERRE. The EIDD and RGDD were two tools prior to implementing the Sustainable Development Guidance Act (LODD, by its French acronym).

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Aside from two leaflets published with the help of consultants and presented in the international climate negotiations in Lima in December 2014, (1 – Gabon's Sustainable Development Guidance Act Implementation Program; and 2 - Sustainable Development in Gabon: From environmental awareness to the Gabon Emergent Strategic Plan) there has been no official progress on regulations or other text to implement the law in question.

Up to April 2015, when the GMTMD platform was last in contact with the consulting consortium, the consultants were facing a number of problems that they were unable to contextualize or even understand, such as:

- The definitions given in Article 2 of the Sustainable Development Guidance Act (LODD): The consultants continued to call on civil society organizations (CSOs) to suggest points that needed further attention and elements needed to clarify these definitions.

- With regard to the Principles, Criteria and Indicators to Evaluate Sustainable Development Impact: The 19 basic principles of sustainable development, articulated in Article 3 of the LODD, should be described so that they can be understood: this description should include the national context, origin and scope of each principle. Once again, the consultants requested contributions from civil society, given that each of the 19 principles of the LODD must be associated with one or more verifiable and quantifiable criteria and indicators (either quantifiable in a strict sense, or by attributing a rating after applying a scale). According to this logic, it would be necessary to specify a range of sustainability values for each indicator. Furthermore, thresholds should be established for each indicator, in order to define when a project would not be acceptable, and when a project could receive sustainable development credits.

- There was also the matter of which criteria should be taken into account in deciding whether to submit projects for a Sustainable Development Impact Study (Article 6 of the LODD), and what the corresponding thresholds for those criteria should be: Which contextual elements (project economic sector, project location, current practices, best practices within the sector, etc.) should be proposed in order to adapt the list of criteria and the value of associated thresholds?

However, since then, there has been no official communication about this process.

### **In your opinion, why has the law not yet been implemented?**

While the law was, indeed, passed—and since it is a framework law, certain legislative texts and sectoral laws passed since 2014 have referenced it—the fact remains that the LODD is still not in effect. This is because definitions in Article 2 still need clarification. Furthermore, the different mechanisms (EIDD, RGDD, etc.) which would help implement the law have not yet been developed or established. It is also important to note that:

- The financial mechanisms and instruments which would allow for "implementation of projects that conform to the national sustainable development strategy" have not yet been defined. (Title IV of the law)

- The institutional framework needed to apply the law (Title VI of the law) does not yet exist, because the National Council on Sustainable Development, the National Council on Land Use, the Sustainable Development Fund, and most importantly, the corresponding Administrative Organization, have not yet been created.

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For all the reasons listed, among others, the law remains inapplicable to date.