
Traditional land “rights” in West and Central Africa

In West and Central Africa, the many radically different ways in time and space of how people relate to and manage land reflects the many forms of customary tenure that interact and overlap between themselves as well as with statutory law. This article highlights the reflections of four activists from West and Central Africa.

“On the one hand, communities claim they own the lands they have traditionally used and acquired through custom. On the other, states claim ownership over all lands located within their respective territories and simply grant usage rights to communities, when these communities need to control and own especially the land they have used for generations”, explains Nina Kiyindou on the situation in the Republic of Congo, in Central Africa. Nina also remarks that the Republic of Congo is one of the few countries that recognizes customary ownership and this has thus created the possibility for communities to assert their customary land tenure rights.

Customary land tenure generally refers to the systems established by communities which usually have passed from one generation to the other. These systems seek to express ownership, management, inter-connections among human and non-human beings, use and access towards land and commons. Unlike externally imposed land tenure regimes, customary tenure derives from and is sustained by the community itself. It is therefore a social system rather than a legal one and acquires an enormous capacity to persist and be flexible.

In order to reflect deeper on these issues, the WRM Secretariat contacted four activists from West and Central Africa to reflect on some questions: Nina Kiyindou from the Republic of Congo and Abass Kamara from Sierra Leone in West Africa, and Michele Ongbassomben and Biyoa Léon from Cameroon in Central Africa.

We could not include their replies in full due to space constraints, but full interviews can be found on the WRM website, under the post of this article.

WRM: Could you please explain, according to your experience, how customary laws in relation to land and forests use are mostly enforced among communities, and please tell us why you think that such customary systems are so important

Biyoa Léon about the situation in Cameroon

Customary law is a right based on the practices of our ancestors. Custom is a rule that is not prescribed as a command of the public powers, but rather originates from its general and extended use, together with believing in the existence of a punishment if this use is not followed. It is a source of law.

Customary land tenure law is applied in the communities in different ways according to their customs, since no two communities have exactly the same customs. There are two general types of customary land management: dependent land management and independent land management.

In dependent land management, the community chief or land chief has control over all the land, and the owners' land rights are limited. For example, they cannot sell or transfer their land to someone who is not from the community without first obtaining the chief's authorization. Also, when logging and industrial plantation companies settle in a location, it is the chief who grants them his authorization. If the chief refuses to do so, no activity can be carried out on the site.

In the case of independent land management, the owner is not required to ask for an authorization to use his land. He can cultivate as much land as he wants, except for undivided plots, since everyone needs to know what activities are carried out on these plots. While subsistence crops aren't a source of problems, cash crops might cause some, mainly because of the duration of their cycle. In other words, the management system is far more collective than individual. Everything is important. The simple fact of having been born in a family gives one access to land. Land use is monitored not only by the family chief, but also by the community chief.

Customary land tenure laws organized in this way necessarily involve responsibilities. This is why the land chief is responsible for the community's land. No plot of land can be transferred without informing the chief. Next to the land chief, there are also lineage chiefs, insofar as the land belongs to each lineage with a common ancestor. It is therefore their chief who must respond for everything related to the land.

Nina Kiyindou about the situation in Republic of Congo

Customary tenure rights are prerogatives held by local communities, especially indigenous populations. One cannot talk about local communities and indigenous populations without also making the link with land access, control and ownership. Access is more and more guaranteed through use or "usufruct" rights. Indeed, these communities and populations enjoy the land through numerous activities.

The laws and regulations currently in force [in the Republic of Congo] assign the ownership of land to the State (rural and urban land domain). However, rural inhabitants who had established constructions, installations or developments that have permanently increased the value of such land, before these laws entered into force, have the right to request the registration of this land in their name.

An opening has thus been made for individuals, local communities and indigenous populations to acquire land that has undergone increases in value through their work. Indeed, this is an opportunity for communities to obtain title for land they have traditionally used for a long time with their buildings, through the planting of fruit trees, and the maintenance of sacred sites. This is an acquisitive prescription that can be achieved only through a registration process. The law requires that all persons and groups that fulfil the criteria register their land in order for that land not to be considered any longer directly on the domain of the State.

It should be noted that this process poses problems especially for indigenous populations whose notion of development is quite different from that of the land tenure law. Indeed, **the type of development described in the law is practically inapplicable in the case of indigenous peoples because they don't build the long lasting structures [as described in the law]**. They use short-lived forest materials; they are nomadic/semi-nomadic; they maintain beehives, medicinal plants and caterpillar trees. But "development" is a key component of the statement and recognition of customary land rights, according to Article 7 of Decree 2006-256 of June 28, 2006, on the establishment, attribution, composition, and operation of an ad hoc customary land rights

documentation entity. Specific measures need to be taken regarding indigenous populations as provided by Article 32 of the Law on the promotion and protection of the indigenous populations of the Republic of the Congo: "The state facilitates the delimitation of these lands based on their customary land tenure rights in order to ensure their recognition. In the absence of land titles, indigenous populations keep their pre-existing customary land tenure rights."

Michele Ongbassomben about the situation in Cameroon

Collective ownership is the main feature of customary land tenure systems. In customary law, access to land has been secured through its occupation since generations. It is an ancient mode of occupation based on the right to fell its trees. Furthermore, in customary law, land is distributed by lineage, the members of a given lineage have common spaces that are later divided between families. Everyone in the village knows and accepts the areas' boundaries. The village community and the family community are therefore the two axes of customary land management. The traditional system is important because it helps protect the community's heritage. Indeed, since land tenure is collective in customary law, land is inalienable.

WRM: Can you please describe how the communities you are familiar with organize the "right" to use land under customary law? Does this right come with certain responsibilities?

Abass Kamara about the situation in Sierra Leone

Under customary law regarding land use, no person in the community has the right to allocate his family land to a stranger for farming purposes without informing the chief of the village. Though the land in question might not belong to him (chief) yet, he should be informed about it because all land disputes are first sent to the traditional leaders before taking them to the formal courts. This is because, in the event that the land user wants to claim the said land given to him as his, the traditional leader would be a very key witness and arbitrator to pass judgement in such matters at his own level.

It is important for both, the landowner and user, to understand the need for each other's right to the land at any point in time. Sometimes, the land user is required to pay rent on an annual basis to the owner in order for the user to be informed about the ownership right being in someone else's hands. It is also true that some landowners do not ask for a single cent from land users with the view that it is a Godly thing to do. It is also the responsibility of the land user to take care of the said land while it is in his custody.

Biyoa Léon on the situation in Cameroon

The application of customary law has several characteristics and involves different methods of acquiring land. There are several customary land tenure law systems:

- The private system, which takes into consideration groups of individuals and family units created by couples. Thus, within a community, different families can have exclusive rights over plots. For example, a catechist settles with his family outside of his village and becomes the owner of a plot of land in his host village;
- The community system, in which each member of the group has the right to independently use the goods held by the community;

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- The open access system, in which no specific right is assigned to anyone and no one can be excluded. The difference between open access and a community system is that in the latter case, individuals who don't belong to the community are not allowed to use the common land;
 - The public system, in which property rights, for example rights to use community pastures, community forests, sacred forests or agricultural lands, are assigned to a public sector entity. This arrangement is justified by the concentration of cash crop plantations, such as cocoa, in a single area. Such areas are held by the chief on behalf of all citizens.

In addition to these different systems, the other major feature of customary land tenure law is that of the person empowered to manage the land. This is why a distinction is made between the religious role and the legal role. Others prefer to talk of the animist spiritual concept of the world and the social requirement of solidarity between all men.

The religious role and the animist spiritual role have the same goal and are played by the same person, i.e. the land chief, because there is a divine relationship between the land and men. It is therefore this land chief who is in charge of the prayers and sacrifices in order that the gods of the land grant a bountiful production.

The village chief plays the legal role and/or ensures the social existence of solidarity and is responsible for resolving all conflicts within his community and care for the well being of all of his men. He ensures peace between the men. However, sometimes the same person, the village chief, plays both the religious and legal roles. This is determined by the customary land tenure law.

What about the acquisition of land? To hold land, that is to become its owner, one must acquire it. There are two main ways of acquiring land, the violent appropriation of land and the non-violent appropriation of land. The non-violent appropriation of land is expressed by the right to fell trees or right of the axe and the right to slash and burn. This right is given to the first person to clear a plot of undeveloped forest. The stronger a peasant is, the larger the area he can clear. The right to slash and burn is an agricultural corollary of the felling right, since agriculture is practiced on land that has been slashed and burned. All one needs to do to become the owner of a plot of land is to cultivate it. However, physical strength can also be used not in order to become the first to develop a plot of land but to seize land that is already developed. This is violent appropriation. In violent appropriation, a group, a village, a clan or a tribe attacks another group or community in order to evict them and take over their land. This is land conquest. The land becomes a war trophy.

Michele Ongbassomben about the situation in Cameroon

Land is sacred in customary societies. The main way to access land remains customary inheritance. Customary law also recognizes individual rights as a mode of land appropriation. It also recognizes the collective ownership of property at the village level. Here, the village chief manages the land, but he does not control it. In some regions, land is sometimes divided in agricultural and pastoral areas.

WRM: According to you, what are the main benefits and problems of using customary law? Why do you think there are so many differences between the "rights" of men and women for accessing land under the customary system?

Nina Kiyindou about the situation in Republic of Congo

[The Republic of Congo is one of the few countries that legally recognizes customary ownership] The

main benefit of the law on customary tenure rights is the recognition that this type of right represents an undeniable guarantee. The law has created entities in charge of documenting and recognizing these rights in every department. This phase makes it possible for communities to go from a situation in which their land rights are non-existent to a situation with rights. Indeed, documentation and recognition already confer a legal status to customary land rights.

The current issue is that of informing local communities and Indigenous populations and raising their awareness. Communities are unaware of the existence of entities whose task it is to document and recognize customary land tenure rights and carry out all of the processes. They are using less and less this mechanism, which is nevertheless guaranteed. The process to convert customary lands into legal lands involves expenses that are often beyond the reach of communities.

The law does not make any distinction between human rights and women's rights in customary tenure rights because the principle of legal equality between genders is promoted. But in practice, the weight of many traditional social norms maintains women in the position of victim with respect to customary tenure rights. These include:

- The culture of masculinity that results in the exclusion of women;
- Beliefs;
- and Stereotypes.

Abass Kamara about the situation in Sierra Leone:

The main benefit for keeping customary law is that, until now, land is still in the hands of local community people and not in those of wealthy foreigners who have all it takes to purchase the land from poor people in the provinces of Sierra Leone.

On the other hand, customary law has been used to deny women of their right to access, control and own land. Men had fears that land ownership by women could be transferred to their husband's families in the future. This is a very bad practice that could be changed without any negative repercussions. It is all about men being greedy in the east and northern provinces of Sierra Leone where this is prevalent.

WRM: Currently, many state agencies, NGOs and international agencies programmes attempt to replace customary law with the “official” western legal system (mostly by providing individual land tenures). How could this affect community organization?

Michele Ongbassomben about the situation in Cameroon

If land tenure became an individual right, the number of land title sales in local communities would explode. Investors would benefit the most from this.

Nina Kiyindou about the situation in Republic of Congo

I think that when communities remain under a traditional system that does not provide any legal guarantee, they continue in a well-known state of land tenure insecurity. Today, we are witnessing numerous cases of land-grabbing related to current economic challenges in which multinationals are relentlessly pursuing the development of rubber, oil palm, corn, soya, among other monoculture

plantations. More and more communities are surprised by the establishment of large plantations on land they have traditionally held for generations without having been informed or consulted. They are robbed and have no available recourse. To ensure land security, all customary tenure rights should be documented and recognized. A report would be proof and the registration would give access to the land title, which is definite and unassailable according to Article 13 of Law n°17/2000 of December 30, 2000 on the land tenure system. This law stipulates: “The land title is definitive and unassailable except for the cases set out in Articles 15 and 32 hereunder. Before Congolese courts, it constitutes the sole starting point of all real rights and existing property easements, and developments or investments at the time of registration, including all other non-registered rights.” The major challenge here remains the exorbitant cost of land registration operations. Incentive measures need to be taken in order to encourage the effective enjoyment of customary tenure rights by local communities and indigenous populations.

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** To read further about the situation of women in relation to land and customary laws in Cameroon, you can read an article written by Michèle Ongbassomben for WRM Bulletin 224, May/June 2016, titled “Women and Property in Cameroon: Laws and Reality”.

<http://wrm.org.uy/articles-from-the-wrm-bulletin/section1/women-and-property-in-cameroon-laws-and-reality/>

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