Can We Really Own the Forest?
A Critical Examination of Tenure Development in Community Forestry in Africa[1]

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Abstract

As in most parts of the world, community based forest management is emerging as popular strategy towards forest conservation in Africa. This is being widely embedded in new forestry legislation. As implementation gets under way communities and governments increasingly debate the incentives needed to support community roles in management. One of the more fundamental of these is the right to own the forest itself, an incentive that may be expected to increase local powers to manage and afford the needed long-term horizon for decision-making. This paper looks at how far new forest policies are permitting communities to found their management roles on resource ownership and the support this is gaining from the land sector. The conclusion drawn is positive; that significant opportunities for communities to secure common tenure are emerging, primarily through improvement in the legal status of customary land rights. Community forestry is serving as the main activator of these opportunities, signalling an unusual symbiosis of reform between the land and forestry sectors. The benefits to community rights and to forest conservation are considerable. Nonetheless the trend is still new and uncertain, the mechanisms awkward, and even where attained, formalised common property rights are not always accompanied by sufficient devolution of forest management authority to trigger local commitment to forest conservation.

Key Words
Common property rights, customary land tenure, land reform, community based forest management, forest-local community

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INTRODUCTION

Community forest management

As in most parts of the world, public participation in forest management has emerged as a popular strategy towards forest conservation in Africa (FAO 2001, 2002).[3] This is being driven by acknowledgement that the centralised regimes of the 20th century have not prevented forest loss and by wider socio-political commitments towards more devolved governance of society and its resources.[4] Within the forestry sector, frequent features are actions to broaden public roles in policy making at national level and decentralization of operational authority to local governments.[5] There is little dispute however that the key target for forest governance reform is the forest-local community, generally poor rural households who live within or next to forests, and who could number 250 million people continent-wide.[6]

Local participation in forest management and related institutional and strategic changes are being very widely entrenched in law, an important support in light of the contention that changing power relations over resources may be expected to generate. As elsewhere around the world, forest legislation is under a great deal of amendment in Africa with an astounding 41 states among 56 mainland and island states having enacted or at least drafted new forest laws since 1990.[7]

In practice, progress towards community participation is impressive given that almost no activity was underway a mere decade past; today more than 30 countries have launched at least one significant ground initiative towards community participation in local forest management and over half of these have a number of projects underway.[8] Progress is particularly advanced in The Gambia, Tanzania and Cameroon, where together several thousand rural communities already manage or co-manage nearly two million hectares of forests.[9]

Unlike South Asian community forestry, where development is restricted to off-Reserve and usually degraded forest areas, many of these developments are located within

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[3] 'Forest' is used here in its generic sense to cover all forest classes from moist montane to dry woodlands.
[4] This is being most publicly articulated in some twenty or more new National Constitutions across the continent, the most recent of which is Rwanda's 2003 Constitution and Kenya's (Draft) Constitution 2004.
[5] For example, the National Forests Act 1998 of South Africa has installed a new Advisory Council of which 70 percent of members are appointed through public application. Decentralization of powers to formal local governments has been more common in Sahelian States than in Eastern and Southern Africa; for these and other cases see Alden Wily & Mbaya 2001.
[6] Calculated as half the total rural population of Africa, currently around 500 million.
[7] For details see Alden Wily 2003a.
[8] Rwanda, Sudan, Benin, Togo, Ivory Coast, Ghana, Guinea Bissau, DRC, Gabon, Somaliland and Botswana are among those with one (or possibly two or three) projects underway. More development is in place in South Africa, Namibia, Lesotho, Zimbabwe, Mozambique, Zambia, Malawi, Uganda, Kenya, Ethiopia, Nigeria, Mali, Niger, Chad, Senegal, Guinea and Morocco. Most widespread action exists in The Gambia, Cameroon, Tanzania, Burkina Faso and Madagascar. Refer Alden Wily 2003a for details.
[9] See Alden Wily 2000a, 2003a for Tanzania, Gambia German Forestry Project, 2002 for Gambia Adeleke 2003 for Cameroon.

National Forest Reserves, and accordingly are largely shaped around State-people co-management agreements (Gibbon & Alden Wily 2001). Much more development is occurring however off-Reserve and through the construct of 'Community Forests' and through which considerably more power-sharing is potentially afforded. At least 21 new forest laws in Africa make provision for the construct of Community Forest and which carries with it an implication of mainly locally-regulate use and protective management.[10] Whilst in some instances, Community Forests are in fact created within State Land of various types (e.g. Cameroon), most Community Forests are created off-Reserve and on land which is loosely acknowledged as under the custodianship of the community, if not precisely or statutorily owned by it. Clarifying the tenure of such spheres and off-Reserve forestland in general, has become an important task.

A subject that has been of related interest to this author is the extent to which African Governments seek to genuinely devolve authority to these potential forest owner-managers, examination of which has shown marked diversity in policy, legal provision and practice.[11] Perhaps still the majority of states seek less to share controlling powers with these populations than to secure their cooperation to continuing Government management regimes, and by providing 'benefits'. These are being delivered in the form of buffer zone developments designed to lessen forest dependence,[12] job opportunities,[13] legalised access to certain products or (peripheral) areas of the forest,[14] and preferential contracts for harvesting fuelwood[15] or in some cases, timber.[16] Communities are also often being availed a proportion of income benefit from licensing of timber or wildlife-related enterprises, usually channelled through local government programmes.[17]

In these benefit-sharing paradigms, communities usually serve less as decision-makers than those consulted, less as regulators than rule-followers, less as licensing authorities than licensees and less as enforcers than reporters of offences to still-dominant Government actors. As most recently explored by this author, even so-called joint forest management approaches have tended to allocate community partners high operational responsibilities but minor powers to determine, for example, who may use and not use the forest, under what conditions, and to licence and enforce accordingly (Alden Wily 2003c). Multi-stakeholder approaches in particular show signs of having the reverse of their intended effect; so diffusing and confusing management responsibilities and powers that management itself is disempowered to non one's gain (ibid).

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[10] These states make clear legal provision for one or other form of Community Forest: The Gambia, Tanzania, Uganda, Namibia, South Africa, Mozambique, Malawi, Ethiopia, Burkina Faso, Mali, Niger, Senegal, Chad, Morocco, Guinea, Lesotho, Madagascar, Benin, Togo, Cameroon, Sudan; details in Alden Wily 2003a.

[11] Alden Wily 1999, 2000b, 2003a, 2003c.

[12] For example, common in Rwanda, Zimbabwe, Zambia, Burkina Faso and Kenya community forestry.

[13] For example, provided in Ghana in the form of boundary-clearing and tree planting contracts.

[14] For example, a key underpinning of many projects in Zimbabwe, Mozambique, Ethiopia and Malawi.

[15] Most developed in Niger, Mali and Burkina Faso.

[16] Most developed in Cameroon, with cases in Cross River State, Nigeria.

[17] Provided for in law in Mozambique, Madagascar, and Cameroon and in regulations in Ghana. For documentation of these and other examples in footnotes 10-14 above, see Alden Wily 2003a.

Such problems tend to dissolve in those cases where communities are located firmly as the governing power of the forest, albeit advised technically advised by Government and legally bound to adhere to the regulations relating to forest use and management that they themselves entrench. Such cases, this author has offered, fall into categories of designated management (especially developed in the case of National Forests in The Gambia and Tanzania) (Alden Wily 2003a). Autonomous and locally effective and sustained community based forest management has the best chance of developing however within the context of off-Reserve 'Community Forests' (ibid). Self-evidently, formal recognition of community ownership of the forest itself will greatly enhance this development.

The role of tenure security in sustainable community forest management

It is in this context, as an adjunct to power-sharing that the crucial question of local forest tenure arises. The arguments towards founding community forest management upon secure ownership of the resource are straightforward. *First,* lasting local *custodianship* may logically be expected to be more easily rooted where ownership of the resource is legally clear and secure. That is, as formally acknowledged owners, the community will be able to secure more authority over how the forest is used, regulated and protected.

Second, security of tenure logically provides the most profound incentive of all towards sustainable forest conservation, allowing the community to adopt a *long-term horizon* to management decisions and therefore more cautious conservation measures. Where security of tenure has been provided, it is not uncommon for the community to close off degraded or threatened areas to all use, in order to allow the forest to recover.[18] They may also have the luxury of limiting commercial extraction for the immediately future, providing a breathing space to acquire the skills and confidence to regulate such activities safely.[19] In addition, a more *holistic* approach to use management is generally availed. In contrast, where tenure is not assured, such as where the focus of local management is product-centred (e.g. timber of fuelwood harvesting rights) or where the terms of the agreement may be comprehensive but limited in term (such as in the contracts signed by communities in Cameroon, Madagascar, Botswana, etc.), the ability to adopt long-term strategies is obviously truncated.

A *third* crucial benefit is less tangible but just as important; once consciously and formally owned, the forest moves from being a relatively open-access resource to exploit (and particularly where it is owned by the State) to one that gains status as a primary *capital* asset, and which, as capital must be protected at all costs in order to allow a sustainable stream of benefits ('interest') to proceed. In contrast, where ownership is not assured, or is vaguely en-framed in law and on-the-ground, the community may be expected to focus upon the exploitation of the forest for benefit, not its security as their own asset.

[18] This has particularly been recorded in The Gambia, Tanzania, Madagascar and Ethiopia; see country papers in FAO 2000 and FAO 2003.
[19] See footnote above.

Fourth, is the impact that recognition of common tenure may have upon both the rights of the majority and thence the retention of the area forested. As a formally established shared community asset, the opportunity arises for majority interests to prevail over those of leaders or economic elites within the community. Whilst it does not necessarily follow that the poor are less willing than the rich to see the forest converted to agriculture, over-extracted or sold off, this formal positioning of inclusiveness does tend to force the community to make decisions that are in the interest of the whole community, not just sub-sectors, leaders or elites. Not surprisingly, the existence value of the forest and its related functions in supporting soil and water conservation for all and providing products of use to all, gain stronger consideration, helping to pre-empt co-option of the resource by smaller but generally powerful interest groups, at the expense of the community as a whole. Practical experiences in community forestry thus far confirms this trend; in Tanzania for example, it has been noted that poorer majorities in villages actively use the creation of Village Forest Reserves to inhibit not only capture of commons by the State but to limit encroachment by powerful groups within the community or outsiders with connections. It is such elites which have the clout and means to take most advantage of an insecurely tenured forest; they have for example, the equipment and labour to illegally harvest, build new homesteads, clear new fields or establish mining activity in the forest. Policies and legislation which clarify and embed common tenure as a common interest asset and one that is equally co-owned among all members seems to do a great deal towards limiting casual or more directed encroachment and subdivision of the forest.[20]

Of course, several corollary conditions are required to realise this positioning and which space allows only the most cursory of elaboration. The *first* is the need for the local management regime to be inclusive of poorer interest-holders, an issue which on its own is provoking interesting discussion in the sector.[21] *Second*, is the need for legal entrenchment of management planning by the community which does indeed bias the forest's use regulation towards sustainable use. Related, is the need for this plan of action to dedicate the area to forestry, not as a temporarily set-aside common estate that will in due course be made available for conversion to agriculture or other uses. Legal provision for community forests to be registered or gazetted as a new class of 'Forest Reserve' is thus a very important development, provided for by many new forest acts.

[20] Alden Wily 1997, Alden Wily & Dewees op cit. and see Gardiner 2003 for Cameroon and Kubsa 2003 for Ethiopia.
[21] FAO 2003.

DISCUSSION

The objective of this paper is however less to debate the relative values to forest conservation of entrenching community tenure over common pool resources, than to critically asset whether or not this facility is in fact being afforded local communities in the first instance. Focus of this discussion must mainly be upon that proportion of forests in Africa referred to above as 'off-reserve'; those forests which have not already been drawn under State jurisdiction (and *de facto* tenure) in the form of classified forests, reserves or parks. These areas could amount to 400 million hectares or 60 percent of the total forest resource in Africa.[22]

Land reform in Africa

It is in these off-reserve spheres that customary and other unregistered forms of tenure dominate, and where accordingly common properties may be more definitively found. It is also to these domains that most substantial legal change in land relations is being targeted in current land reform developments in Africa. This body of reform is neither as expansive as in the forestry sector, nor being as actively implemented. Nonetheless, around 24 African states have pledged in policy and/or new laws to reform land relations.[23] Triggers to this are diverse but broadly (save the cases of South Africa, Zimbabwe and Namibia) have less to do with classical redistributive reforms than with frustration with the inadequacies of colonial derived law, weak administrative systems in the land sector and private sector demand for easier routes to land-based investment. Resulting dominant objectives centre on *land administration reform*, in many cases devolving these functions to more local levels (Alden Wily 2003b). It has generally been the case however that even the more modest of administrative objectives are resulting in (or being driven by) an overhaul of the legal treatment of land rights themselves. Majority rural land rights are everywhere being affected, and particularly those in the dominant customary sector.

It is this focus which has such central relevance to the status of those millions of hectares of forest which are currently held informal common properties. Below, five facets of this development are examined, using factual legal developments as main example.

1 New state law respect for customary land rights

Less than one percent of sub-Saharan Africa is under cadastral survey based formal entitlement or deeds registration and most of that area falls within South Africa and urban

[22] For example, in the East Africa states of Tanzania, Kenya and Uganda, the proportion of off-reserve forests is 60 percent of nearly 47 million hectares. This rises to 75 percent if the forests of three southern African states (Zimbabwe, Malawi and Zambia) are included; see Alden Wily & Mbaya op cit; 41-42.

[23] These countries have new land laws in place (i.e. since 1990) which affect customary and other informally held rights in land: South Africa, Namibia, Zambia, Mozambique, Uganda, Tanzania, Ethiopia, Mauritania, Mali, Senegal, Burkina Faso, Ivory Coast and Niger. These countries have new laws in draft or new national land policies with clear intentions in this sphere: Botswana, Angola, Swaziland, Lesotho, Malawi, Rwanda, DRC, Ghana, Togo, Kenya and Zimbabwe. See Toulmin & Quan (eds) 2000, Alden Wily & Mbaya op cit. and Alden Wily 2003b for reviews of land reform in Africa.

areas (Augustinus 2003). Virtually all rural occupants and a significant proportion of urban dwellers continue to occupy land under entitlements that are not recorded, nor registered in statutorily defined deeds or titles. Until the current reform, the only means to gain statutory recognition of land ownership was through a process which had the effect of converting the land right into a European-derived tenure form (freehold, leasehold, right of occupancy, ownership right, etc.). In some states, a main thrust of the new land legislation has been to accelerate this conversionary process, much as were the landmark reforms of Kenya and Senegal in earlier decades.[24] This is the broad intent for example of current land reform in countries as diverse as Zambia, Ivory Coast and Eritrea.[25]

A more innovative strategy is however gathering pace. This halts century-long efforts to replace customary regimes and instead improves their legal standing and support for their operation. Thus, to examine the case in East Africa, Uganda's new Constitution (1995) and Land Act (1998) list customary tenure as one of four equally legal systems through which land interests may be acquired and sustained.[26] In Tanzania, the Land Act (1999) puts paid to the idea that a right acquired customarily is of lesser value than a right issued and registered by the State; both are deemed to be property and accordingly to be protected.[27] The sister Village Land Act (1999) under which customary tenure in Tanzania is to be administered, reiterates that a customary right of occupancy 'is in every respect of equal status and effect to a granted right'.[28] In Ethiopia, where customary tenure was effectively abolished in 1975, the new federal land law of 1997 nonetheless now provides for 'existing holding rights' to be fully recognised and protected. Many of these rights (but by no means all) have origins in customary holding. Even in Kenya, the status of customary land interests will dramatically change should the draft new National Constitution enter law as is expected; this supreme law pledges to liberate customarily held land from tenancy under the trusteeship of State or its agent County Councils into a new class of landholding named 'Community Land'.[29] For the first time in more than a century, rights in these lands would be vested in and controlled by communities themselves. Significantly, lands that would be affected are cited as including 'forests, water sources, grazing areas or shrines'.

Nor is it only in East Africa where customary rights are now gaining new status; this is also the case in South Africa, Mozambique, Mali, Niger and Namibia and with policy commitments to deliver the same in Swaziland, and Zimbabwe and in most advanced planning, in Malawi.[30]

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[24] See Bruce & Migot-Adholla 1994 for Kenya and Golan 1994 for Senegal.
[25] As delivered in Zambia Land Act, 1995, Ivory Coast Land Law, 1998 and the Eritrea Land Proclamation, 1994. This is also effectively the case under a clutch of legislation in Zanzibar between 1989 and 1994 and the intention of Rwanda's Draft Land Law, 2003.
[26] Article 237 (3) of Constitution and section 5-10 Land Act 1998. The other regimes are freehold, leasehold and *mailo*, the last unique to Uganda.
[27] Land Act 1999; section 4 (3).
[28] Village Land Act 1999; section 18 (1).
[29] Draft Bill on Kenya National Constitution, 2002; Articles 234-235.
[30] Often expressed in new Constitutions but directly provided for in these land laws: South Africa's Protection of Informal Land Rights Act, 1996, Mozambique's Land Law, 1997, Niger's Rural Land Code, 1993, Namibia's Communal Land Reform Act, 2002, and the Malawi National Land Policy, 2001.

2 Providing for customary rights as registrable land interests

Many of these laws go further by enabling these customary or informal rights to be formally registered and titled 'as is', retaining the attributes that are implied in those land interests as established by their referees - the communities which uphold these rights. Only in Ghana and Botswana, has this possibility been substantially afforded previously.[31]

Thus to continue the East African examples, Uganda's new law enables customary owners to acquire Certificates of Customary Ownership and which will be governed 'by rules generally considered binding and authoritative by the persons to whom they apply'.[32] An estimated 24 million rural Tanzanians may now also acquire a Customary Right of Occupancy, the adjudication and issue of which is made a main purpose of the new Village Land Act 1999. Moreover, in line with customary norms, the law declares that this land right may be held in perpetuity, an incident not available to those who have secured their land interests under non-customary regimes and who are limited to 99 year terms. In Ethiopia, where decentralization to regional states means that each state is making its own operational land laws, both Tigray and Amhara States have begun to register and title existing arable and residential land interests, signalling the end to several decades of periodic coerced redistribution.[33] In the case of Amhara, this registration additionally permits that 'communal lands may be managed and used by customary laws'.[34]

Whilst provision of new routes for the certification of customary land rights is a clear objective of most of these and similar new laws, registration is in fact of necessity often being made voluntary.[35] This is crucial for the many millions of remote rural occupants who do not currently have the means to have their rights recorded, or who do not see the necessity of this, even where the institutional arrangements have been directly localised to community level, such as in Tanzania, Burkina Faso and Niger. Thus, whilst both encourage registration, the Ugandan and Tanzanian land laws limit uncertainty as to the legal effect of failing to register a customary interest, by making it clear that customary rights are held to legally exist irrespective of whether or not they are recorded. This improves the chance for these interests to be upheld in the courts, should they face challenge. As shown below, this is of as much relevance to common properties like forests as to individual farm or other interests.

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[31] Ghana, through the Land Title Registration Law, 1986 and in Botswana, through the Tribal Land Act, Cap. 32:02 enacted in 1968, with most significant amendments in 1991 and 1993.
[32] Land Act 1998; sections 8 & 4.
[33] Tigray Land Law No. 23 of 1997, Amhara Rural Land Administration Proclamation No. 46 of 2000 and Environmental Protection, Land Administration and Use Authority Establishment Proclamation, No. 47 of 2000.
[34] No. 47 of 2000, Article 14 (3).
[35] A significant exception is Ivory Coast, where the new rural land of 1998 stipulates that all properties that are not registered within three (now ten) years will be deemed state property and subject to reallocation (Art. 6); see Stamm 2000.

3 Recognition of customary rights means recognition of customary systems of administering these rights

A logical corollary of recognising customary land rights means enabling customary regimes of land administration to operate, and which in turns means allowing this to occur at local levels. After all, customary tenure regimes are by nature community based systems, not easily operated from afar. The extent to which this has been fully taken up in new land administration regimes is various, so far most developed in Tanzania, where State authority over administration has been formally devolved to 11,000+ already existing Village Governments. Still, save the cases of Ghana and most recently, South Africa,[36] few land proposals retain the level of State authority over customary interests as has existed to date. Nor however, do they reinstate traditional authorities as land administrators for this purpose; most relocate powers to district or commune level bodies (Uganda, Tanzania, Ivory Coast, Burkina Faso, Niger, Lesotho, Senegal, Benin) and/or curtail the powers of chiefs through laying down new 'democratic' procedures (Namibia, Mozambique and as proposed in Swaziland and Malawi).[37] Devolution of control over land dispute resolution from formal courts to community based institutions is also widely occurring.[38] These trends promise to enhance the role community members will play in defining and securing local land rights, including those relating to common properties.

4 New status for communal property rights

Improved legal support for customary rights also suggests that customary *patterns* of landholding must be given legal force. As is widely known, African customary law generally provides for rights to be held not only by individuals but also by families, clans, groups or whole communities. Where recognition of this fact is entered into new statutes, the shared property rights of communities or groups over many millions of hectares of forests, pasture and wildlife range areas, comes into new focus as essentially private rights.

In this respect it is worth recalling that many of those forests which are now under national or State tenure as Reserves or Parks were in fact originally the common property of communities but were able to appropriated by colonial and post-Independence Governments with relative ease for the very reason that state law did not recognise *communal* tenure as having the incidents of private property. For the purposes of the State, such lands were advantageously considered un-owned or *terres sans maitre.* Without the legal and practical support needed to entrench group-based ownership in the face of rapidly changing conditions, open access tragedies did indeed materialise in many places, confirming for many administrators the belief that commons were un-owned.[39]

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[36] The last draft of the South African Communal Land Rights Bill, October 8 2003 has introduced a surprising late addition which gives chiefs primary powers over communal land (section 22 (2)).
[37] See Alden Wily 2003b for precise details and commentary.
[38] See footnote above.
[39] See Alden Wily & Mbaya op cit; Ch. 3.

Putting a break on this development by providing for common property registration gives many threatened forest commons welcome respite. It also gives urgently needed new definition to common property, through providing an incentive for the perimeter boundary of the estate and membership of the community to be defined, and for these owners to establish a conscious management regime for the estate. The constructs being provided are several, ranging from a simple delimitation procedure in Mozambique and Ivory Coast to the complex creation of new legal entities in which group-owned property may be vested in Uganda and South Africa. The former collective land titles have the disadvantage of including not just common properties but individual properties owned by members, and are in practice less entitlement than confirmation of community jurisdiction.[40] The latter are also imperfect, in requiring considerable resources and enterprise in order for the institution in which ownership will be vested, to be put in place. The most straightforward mechanism has been to make blanket provision for land to be held 'by a person, a family unit or a group of persons recognised in the community as capable of being a landholder', and providing for recordation and certification of this fact as a single process, irrespective of the nature of the owner. This route has been most recently provided in the new land laws of Tanzania, Uganda and Ethiopia.[41] Several other countries (e.g. Namibia, Botswana) also provide widely for customary land registration but to the exclusion of common property areas.

It is the Tanzanian law that is so far most mindful of the need to include common property assets in this process. The Village Land Act 1999 goes so far as to disallow adjudication and entitlement of *individual* holdings until the community has identified and registered its common properties first.[42] The law also requires the community to develop a management plan for each registered area – a procedure which directly facilitates the declaration and management of Community Forests. Although these began to be declared as early as 1994 and number around 1,500, now with the support of new land law, these areas are more definitely acknowledged as not only community controlled areas, but community-owned.[43] Even without registration, community tenure over defined properties can be assured. It is therefore not surprising that more and more communities in those countries where common property developments are also proceeding apace, are rushing to declare 'Community Forests' – a clear route to securing local properties – and in the process, 'saving' forest. Botswana is the latest in a small but growing number of states to advocate such community based property rights, in order to secure dwindling commons, and in the hands of local communities (NRS 2003). Even where land reform is not underway, such as in The Gambia, the need to embed local tenure has become so pressing that new procedures for this have had to be developed (Bojang 2003). Those communities not yet afforded opportunities to secure these

[40] Mozambique's Land Law 1997 provides for groups or communities to hold a joint title, in a name they choose (Art. 7(2), 9 (a) and 10 (4)). A land tenure certificate in Ivory Coast may be drawn up in the name of an individual or a collective, the latter explicitly comprising a village, clan or family (Law Relating to Rural Land, 1998; Art. 10).

[41] Tanzania Village Land Act, 1999 s.22. Also see Uganda Land Act, 1998; s. 4 (1g) and Amhara Land Proclamation, No. 46 of 2000, Art. 6.

[42] Village Land Act, 1999; section 13.

[43] Data in Alden Wily et al. 2000.

Community Forests as private group owned property, such as in Cameroon, are beginning to query why not (Adeleke 2003).

5 Putting new limits on the appropriation of commons

There is a final aspect of emerging support for common property developments in law that needs elaboration. This is that as an emergent form of private property, where the State seeks to appropriate those properties, common property must be paid for at the same rates of compensation as it is obliged to pay for an individual's private land. This necessity is occurring at the same time as many new land laws improve the terms upon which expropriation is implemented, designed to reduce wilful and unnecessary expropriation and to coerce payment by Governments that have been all too recalcitrant in this regard.[44]

The mechanisms for this have been taken to a fine art in South Africa and Tanzania (and proposed in Lesotho and Ghana). The Tanzania Village Land Act for example specifies in great detail how compensation for rural lands including commons is to be calculated and paid in respect of not only the market value of the land and its un-exhausted improvements, but additional payments for the costs of transport, disturbance and loss of profits incurred through the loss of the land.[45] As Tanzania's Forestry Division has already found to its cost in attempting to remove villagers to make way for an expanded National Forest Reserve, it is a good deal cheaper to drop plans for expanding Government Reserves and to instead assist communities to bring these same areas under Village Forest Reserves.[46] The later Forest Act 2002 wisely took these cautions into account, firmly advising Ministers seeking to bring more forests under reserved status to consider carefully if the area might not be as well protected under community jurisdiction and tenure.[47] In addition, the Minister may, if necessary, alter the status of a national reserve to become a local government, village or community forest reserve in order to meet this end.[48]

[44] Alden Wily & Mbaya op cit; Ch. 3.
[45] Village Land Act Regulations 2001; Part III.
[46] Reference is made here to the Derema Forest and Wildlife Corridor to be created out of 800 ha of village land separating the Amani Nature Reserve and Kambai Forest Reserve in Muheza District, Tanga Region. The compensation costs proved prohibitive and the plan was planned with the four affected villages instead encouraged to create their own Village Forest Reserves (Widagri 2001). The earliest 13 Village Forest Reserves in fact came about in similar circumstances; see Alden Wily 1997.
[47] Forest Act 2002; sections 24-25.
[48] Forest Act 2002; section 29 (1).

CONCLUSION

Provisions outlined above suggest that community forestry in Africa is getting to grips with tenurial issues. This takes forest management paradigms at the periphery well beyond those developed in the landmark developments of Nepal and India, and where community ownership of locally managed forests remains elusive (Shrestha 2001, Gibbon & Alden Wily op cit.). There may be no doubt that on the African continent, reformist land strategies are contributing enormously to the potential security of local forest guardians. Conversely, it may be the case that community forestry is helping to catalyse land reform; this is arguably the case in several Sahelian states (Toulmin et al. 2002). Exactly which sector is driving which is not always clear. Whatever the case, the inter-relationship is close, and modern African communities are likely to be decreasingly willing or able to extend their authority and efforts over forests at risk, without new land law guaranteeing them a stronger foundation for their tenure in common.

The main conclusion of the paper is positive, with practical opportunities for communities to become not just managers but owner-managers of local forests beginning to take shape in a number of countries, through an unusual symbiosis of reform in forestry and land developments. The benefits to community rights, to localised and self-reliant forms of forest management and to the establishment of lasting foundations for conservationist management are already proving considerable; this is well illustrated in the rapid expansion of Community Forests in Tanzania and The Gambia, both lead states in offering communities not only full authority over the forest but the chance to embed this certified community ownership. It has also been suggested that the very notion of common property is gaining clearer and firmer form, including possibly gaining boundaries and substance which in many cases it may not have in fact previously possessed but which are nonetheless to local community benefit.[49]

It would be incorrect however to exaggerate the case, given that a number of states are not pursuing strategies which either afford communities ownership of local forests or which provide for formalised common tenure in general. Policies and laws in Eritrea and Rwanda for example, tend to centralize both authority and tenure over commons,[50] and whilst new laws in Namibia, Zambia and Ivory Coast acknowledge customary rights, they specifically do not provide for common rights to be registered as private group property.[51] Cameroon and Niger are among those states unwilling to recognise Community Forests as formally community-owned. Moreover, we have seen, the mechanisms towards this new commonhold tenure are still new, often complex and all too rarely yet being used; it is noticeable for instance, that not a single Communal Land Association has been formed in Uganda or indeed even a Communal Certificate of Occupancy issued.

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[49] Alden Wily & Mbaya op cit. elaborate this as 'communitization', involving the modernization of customary norms.
[50] Eritrea Land Proclamation 1997 and Rwanda Draft Land Bill 2003.
[51] Namibia Communal Lands Reform Act 2002 and Zambia Land Act 1995.

There are also cases which demonstrate the recognition of community tenure does not always precipitate devolution of significant authority to manage the forest. Many forests in both Nigeria and Ghana are for example, already acknowledged as community property, but controlled respectively by State Forestry Departments and the Forestry Commission. Communities in these states are less concerned to secure formalised tenure than to secure more control over their own forests (CRSCRP 2001). In Ghana, the case is especially complicated, in that the sphere of dispute is not only between the Forestry Commission and community, but between Chiefs and their people, as many of the former use their status as land trustees to co-opt rights and benefits to themselves (Alden Wily & Hammond 2001). A somewhat different case is illustrated in South Africa, where several national forests have been restore to community tenure through the land restitution process but without corollary jurisdiction. In line with the provisions of the National Forests Act 1998, this remains principally vested in State authorities, and who have chosen complex multi-stakeholder routes through which local interests may be expressed. As Grundy et al. (2003) recount in the case of Dwesa Cwebe Forest, this multi-stakeholder approach has not afforded divested sufficient or clear enough authority to the community to trigger local commitment to conservation.

This and related cases around the continent suggest that whilst tenure may indeed serve as a pivotal incentive to effective community based management, it requires empowerment to manage to activate the advantages. In sum, ideal underpinnings for community forestry appear to be both entrenchment of local tenure *and* jurisdiction. The much longer experience of Mexican community forests over the last century would have suggested as much; whilst millions of hectares of forest were returned to community ownership under the Mexican land reforms of the 1920s, it has only been since power to regulate and manage these properties has been released to communities over the last decade that sustainable and conservationist community based forest management has emerged (Bray et al. 2003). Clearly, there is still some distance to move along this route of integrated devolution of powers and property that so many African communities – and their Governments – have begun to set themselves.

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