

# Legal empowerment in practice

Using legal tools to secure land rights in Africa



Edited by Lorenzo Cotula and Paul Mathieu



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Highlights from the international workshop  
“Legal empowerment for securing land rights”  
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Edited by Lorenzo Cotula and Paul Mathieu

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# LEGAL EMPOWERMENT IN PRACTICE USING LEGAL TOOLS TO SECURE LAND RIGHTS IN AFRICA

Edited by Lorenzo Cotula and Paul Mathieu

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*Cover photos: Top left: Ahansonyewodea Village, Nr. Obuasi, Ashanti region, Ghana. A cautionary sign, erected by the AngloGold Ashanti gold mining corporation, warns local people that the water around the Jimiso dam is contaminated. Top right: Training of paralegals and pastoral organisations in Mali, organised by EVEIL © Boubacar Ba. Main: Women's co-operative community meeting, North Cameroon © Giacomo Pirozzi / Panos Pictures.*

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sharing their experiences and ideas during workshop discussions and in their aftermath. We very much hope that coming together in this way will be the first step in a continued process of sharing lessons and exchanging experiences among people who are working towards the same goal in different corners of Africa.

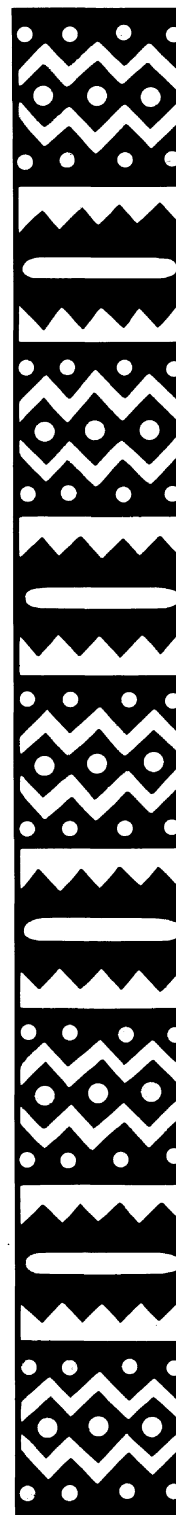
# LIST OF ABBREVIATIONS

APIX	Agence Nationale Chargée de la Promotion de l'Investissement et des Grands Travaux, Senegal
CBO	Community-based organisation
CED	Centre pour l'Environnement et le Développement, Cameroon
CEPIL	Centre for Public Interest Law, Ghana
CFA	Currency of the West African Economic and Monetary Union
CFJJ	Centre for Legal and Judicial Training, Mozambique
CHIEHA	Chibhememe Earth Healing Association, Zimbabwe
CIDA	Canadian International Development Agency, Canada
CLFW	Community Legal Field Worker, Cameroon
CLRA	Communal Land Rights Act, South Africa
CLRB	Communal Land Rights Bill, South Africa
COB	Community Oversight Board, Timap for Justice, Sierra Leone
COPE	Coordination des Organisations Professionnelles d'Eleveurs, Mali
COSATU	Congress of South African Trade Unions
CPA	Communal Property Association, South Africa
CRAC-GRN	Cellule de Recherche Action Concertée sur la Gestion des Ressources Naturelles, Niger
CTV	Centro Terra Viva, Mozambique
DFID	Department for International Development, UK
EIA	Environmental Impact Assessment
EU	European Union
FAO	Food and Agriculture Organization of the UN
FIELD	Foundation for International Environmental Law and Development, UK

FOI	Freedom of Information
FOIA	Freedom of Information Act
FPP	Forest Peoples Programme
GERSDA	Groupe d'Etude et de Recherche en Sociologie et Droit Appliqué, Mali
GLTN	Global Land Tools Network
GLTP	Great Limpopo Transfrontier Park (Zimbabwe, Mozambique and South Africa)
IED Afrique	Innovations Environnement et Développement en Afrique, Senegal
IIED	International Institute for Environment and Development, UK
IPP	Indigenous Peoples Plan
LAC	Legal Assistance Centre, Namibia
LEAT	Lawyers Environmental Action Team, Tanzania
LOA	Loi d'Orientation Agricole, Mali
LRC	Legal Resources Centre, South Africa
LRIC	Land Rights Information Centre, Uganda
NGO	Non-governmental organisation
NLC	National Land Committee, South Africa
OECD	Organisation for Economic Cooperation and Development
PAR	Participatory Action Research
PLAAS	Programme for Land and Agrarian Studies, South Africa
RDC	Rural district council, Zimbabwe
SAPCO	Société d'Aménagement de la Petite Côte, Senegal
TLGFA	Traditional Leadership and Governance Framework Act, South Africa
UK	United Kingdom
ULA	Uganda Land Alliance, Uganda
UN	United Nations
WILDAF	Women in Law and Development in Africa
ZELA	Zimbabwean Environmental Law Association, Zimbabwe

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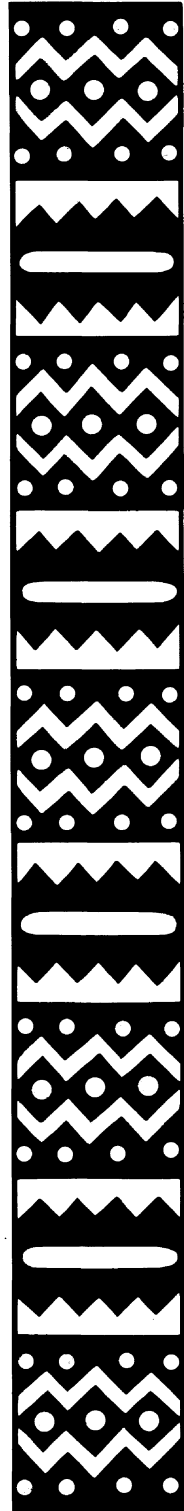




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# 1. INTRODUCTION

Lorenzo Cotula, Paul Mathieu and  
Dominic Ayine



Land lies at the heart of social, political and economic life in much of rural Africa. It provides a major source of livelihoods, income and employment; a basis for social and political relations; and has major historical, cultural and spiritual significance. In many places, rapid socio-economic changes are undermining the security of land access for poorer and more vulnerable groups – particularly in high-value lands such as peri-urban areas, irrigated schemes and fertile lands. Securing land access for these groups is important in providing economic opportunities and/or social safety nets, as well as addressing broader issues of governance, equity, environmental sustainability and social identity.

Recent years have witnessed growing interest and debates about legal empowerment as a strategy for securing land rights in Africa. Legal empowerment has featured high on the international development agenda – as evidenced by the establishment of a UN-hosted Commission on Legal Empowerment of the Poor. Yet different people talk about legal empowerment in different ways, and the various approaches to conceptualising legal empowerment have varying implications for the design and implementation of policies and programmes.

Meanwhile, on the ground, many legal services organisations (e.g. development agencies, public interest law firms, legal clinics attached to academic institutions, community-based organisations) have developed innovative ways of putting legal empowerment into practice. The approaches, tools and methods used vary widely across contexts. They range from developing, testing and implementing legal literacy training and awareness-raising radio programmes; to supporting community-based paralegals who help with local conflict resolution and/or defending local rights against powerful outside interests; participatory methodologies to identify, demarcate and register community lands or support local groups in their negotiations with government or the private sector; and legal representation and strategic use of public interest litigation.

While some of this experience has been documented, much of it has not, and only a very limited part of it has fed into international debates on legal empowerment. In addition, while some of the people involved have known each other and exchanged ideas and experiences among themselves for a long time, others have had more limited opportunities for lesson-sharing and cross-fertilisation.

In order to respond to these challenges, IIED, FAO and the Law Faculty of the University of Ghana jointly organised an international workshop to allow practitioners to exchange their experience and share the lessons learned, and to feed insights from the wealth of innovation on the ground into international processes. The workshop took place in Accra on the 13th and 14th of March 2008, bringing together some 25 practitioners from different parts of Africa, as well as a few practitioners and researchers from international institutions and Europe.

Workshop participants shared a broad range of approaches, tools and methods for legal empowerment. In Ghana, for instance, CEPIL supports communities affected by mining through paralegal training and public interest litigation, while WiLDAF builds legal awareness on gender issues and women's rights, and Civic Response has contributed to civil society engagement on the intergovernmental negotiations for a Ghana-EU Voluntary Partnership Agreement on timber trade.

Eveil in Mali, Timap for Justice in Sierra Leone and CED in Cameroon have developed different types of paralegals programmes, while CED also implements a "junior lawyers" programme that brings law graduates to rural areas for three-year placements with NGOs or CBOs.

Awareness raising and local capacity building were a recurring theme in the experiences shared at the workshop. In Uganda, for example, the Uganda Land Alliance supports Land Rights Information Centres (LRICs) that raise awareness about land rights and support alternative dispute resolution. In Mali, GERSDA is experimenting with "legal caravans", whereby academic lawyers travel to villages to hold legal awareness-raising sessions; while in Senegal IED Afrique is developing legal literacy training for elected councillors and local citizen groups. Building local awareness and capacity is also a key activity of LAC in Namibia.

In addition to awareness raising and capacity building, several workshop participants shared their experiences in accompanying disadvantaged groups through legal procedures. For instance, in Mozambique, CTV supports local communities in the consultation process that outside investors are required to follow when applying for resource rights from the central government. In Zimbabwe, ZELA helps local groups set up legally recognised associations, while in Tanzania CORDS accompanies pastoral



*The workshop brought together participants from different parts of Africa*

groups through the process of obtaining legal certificates for land rights. In Niger, CRAC-GRN supports implementation of the Rural Code by developing innovative arrangements for sustainable and equitable access to agro-pastoral resources.

Public interest litigation is used as a strategic tool in a wide range of contexts: from supporting communities affected by mining in Tanzania (LEAT) or Ghana (CEPIL) and forest communities in Congo-Brazzaville (Comptoir Juridique Junior), to challenging the constitutionality of land legislation that adversely affects disadvantaged groups in South Africa (LRC).

In order to promote lesson sharing and exchanges about their experiences among those involved in such diverse initiatives, the workshop format focused on informal but fruitful discussions rather than formal presentations (see workshop programme for more details).

The morning of the first day was devoted to developing a shared concept of legal empowerment and setting the scene for workshop discussions through four presentations on different routes to legal empowerment. These ranged from paralegals and/or “junior lawyers” programmes in Cameroon and Mali, to accompanying local groups through the process of obtaining certificates for



van de Meene

*A moment of workshop discussions*

collective land rights in Tanzania, and public interest litigation to defend local groups affected by mining in Ghana. The presentations from Cameroon, Mali and Tanzania built on case studies commissioned in the run-up to the workshop.

After this first session, participants broke into two working groups to allow them to share their experience in a more informal setting. The emphasis of these discussions was on the practical approaches, tools and methods used, the key steps taken and the results achieved. The working groups also enabled participants to undertake collective analysis of the factors that positively or negatively affected the implementation and outcomes of the legal empowerment initiatives they were involved in, and the strategies used to tackle constraints.

Workshop participants reconvened in plenary on the afternoon of the second day so that the two groups could report back on their respective work and together identify key lessons, their implications for policy and practice, and the next steps.

This report captures the highlights of our discussions at the workshop, presenting contributions on the concept of legal empowerment discussed at the workshop, a summary of the case studies prepared for and presented at the workshop, and short pieces contributed by some of the participants in



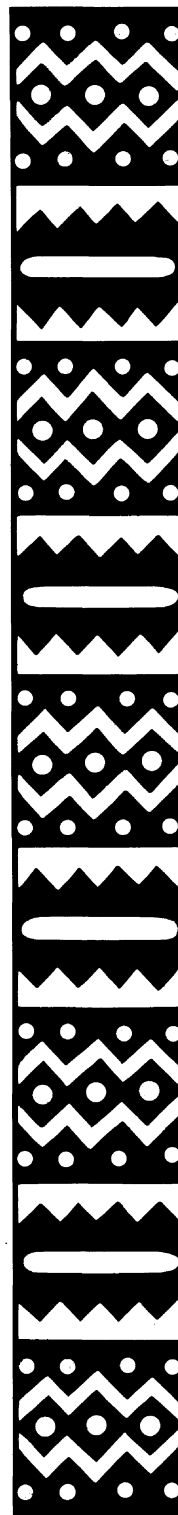
Cotula,

*Participants present their experiences on legal empowerment*

order to share their experiences beyond the workshop. It is important to note that workshop discussions built on many more contributions and practical experiences than it was possible to include in this report. We are also delighted to include a contribution by Carlos Serra Jr and Chris Tanner, who were unable to attend the workshop, but sent a written paper. The final chapter mainly draws on the discussions we had in break-out groups and on the afternoon of the second day, identifying the common threads and key lessons learned from the wealth of experience discussed at the workshop.

## **2. LEGAL EMPOWERMENT TO SECURE LAND RIGHTS – DEFINING THE CONCEPT**

Lorenzo Cotula





## LOCAL LAND RIGHTS IN A CHANGING CONTEXT

In much of Africa, land is the main source of many people's livelihoods, as it provides the basis for both subsistence and market-oriented agricultural activities. It is also much more than a production factor – it is a source of political power, a basis for complex relations of alliance and reciprocity, and a central component of social identity.

Population pressures and other factors have resulted in greater competition for land in many parts of Africa, while socio-economic change has eroded the customary rules and institutions that traditionally administered land and managed conflict. Urban settlements are growing fast, encroaching on agricultural land and attracting youths from rural areas. Livelihoods are changing, in many places towards greater diversification – with many rural households increasingly reliant on income from urban areas as well as a range of off-farm activities in rural areas.<sup>1</sup>

Local production systems are becoming more integrated into the global economy as export crops expand into areas previously used for locally consumed products. Countries like Mali, Mozambique, Senegal and Tanzania, which received limited foreign investment until the early 1990s, now host sizeable stocks of foreign investment.<sup>2</sup> Much of this investment is in the natural resources sector – in areas such as agribusiness (which increasingly includes biofuels), mining, petroleum, forestry and tourism. Many African governments see agricultural “modernisation” centred on large-scale, capital-intensive production as the main engine for poverty reduction in rural areas, and have established policies, laws and institutions to attract private investment.<sup>3</sup>

International migration generates major financial flows (remittances), which may affect local land relations in the home country as remittances are used for land purchases, rentals, titling and other processes (Cotula and Toulmin, 2004). Socio-cultural change, facilitated by communication technologies and other mechanisms, is affecting the way that “tradition” is interpreted.

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1. For data and examples of these trends, see Cotula with Neves (2007).

2. For data on investment flows and stocks, see Cotula (2007).

3. For more information on the role of investment promotion agencies, see Cotula and Toulmin (2008).

These processes of profound social and economic change have important implications for access to land. These implications vary according to context, but generally tend to involve more intense competition for access to land (e.g. between herders and farmers, “migrants” and “indigenous” groups, local groups and large investors), particularly in higher value areas; greater individualisation of land rights that were previously held in common; and greater commercialisation of land access arrangements that were traditionally governed by non-monetarised relations.

## **POWER IMBALANCES AND THE CONCEPT OF EMPOWERMENT**

Changes in land access do not occur on level playing fields, but take place in contexts characterised by asymmetries in negotiating power. At the local level, unequal power relations between competing interests are determined according to status, wealth, age, gender, socio-professional position and other factors.

For instance, research from the Inner Niger Delta in Mali shows how significant changes in local tenure systems are occurring in contexts characterised by profound socio-economic change (demographic growth, monetarisation of the economy, fragmentation of the extended family), the competing interests of different resource management institutions (customary chiefs, local governments) and users (herders, farmers, fishermen, urban elites), and by power imbalances between these institutions and users (Cotula and Cissé, 2006).

Similarly, research from Maradi and Zinder in Niger reveals that women are losing out due to growing pressure on the land (linked with demographic growth), lack of off-farm livelihood opportunities and evolving power relations within families (Diarra and Monimart, 2006).

Power asymmetries are not solely confined to local relations, but also affect relations between local groups and outsiders such as the central government and the private sector. For example, several factors contribute to power imbalances between local groups and large investors in the mining, timber or biofuels sectors, usually giving the investors a stronger negotiating position than local groups.

These factors include differences in the capacity to influence decision-makers and opinion formers, draw power from other negotiating tables and mobilise “powerful” actors (such as home and host state governments, international financial institutions and others); differences in access to financial and other valuable resources (money, technology), as well as knowledge (e.g. legal expertise) and skills (e.g. negotiation skills); differences in social status, in access to information (about the existence, location and value of subsoil resources, for example) and in contacts and social relations (e.g. with politicians and the government administration); and differences in the degree of internal cohesion, for instance where local groups are divided in their position on proposed investment projects – internal divisions that may be exacerbated as the stakes are raised by such projects (Cotula, 2007).

As a result of power imbalances in local, national and transnational relations, changes in land access tend to bring about new opportunities for the better off, and may further marginalise disadvantaged groups. Fishers, farmers and herders in the Inner Niger Delta of Mali are facing steep increases in the fees charged by customary chiefs, and groups less able to secure financial resources are seeing their access to farming and grazing land eroded (Cotula and Cissé, 2006). Women in Maradi and Zinder are losing access to land as a result of the “reinvention” of customary practices and difficulties in implementing land legislation (Diarra and Monimart, 2006); and local groups in contexts as diverse as Tanzania, Mozambique, Mali and Ghana are losing access to the land on which they depend as a result of outside interests in agribusiness, mining, forestry, tourism and infrastructure development.<sup>4</sup>

“Empowerment” means enabling individuals or groups to have greater control over decisions and processes that affect their lives. It is a precondition for allowing disadvantaged groups to benefit from ongoing changes in economies and societies, rather than losing out from them.<sup>5</sup>

Empowerment entails tackling power asymmetries at local, national and international levels. Because of this, it is not a blueprint technical fix, but involves tackling the context-specific sources of power imbalances. It is not

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4. For more information on the implications of the spread of biofuels for land access, see Cotula *et al.* (forthcoming).

5. On the concept of empowerment, see Alsop *et al.* (2006).

necessarily a win-win process, and is likely to be resisted by vested interests that stand to lose out from disadvantaged groups acquiring greater control.

Promoting the empowerment of disadvantaged groups may involve a range of different approaches, tools and methods – from collective action to training through to policy reform. The focus here is on those tools, approaches and methods that involve strengthening capacity to use the law as a route to empowerment.

## **A FRESH LOOK AT THE LAW**

In the eyes of many, the law is associated with expensive lawyers, inaccessible courts, rules and institutions inspired by “Western” models alien to local practice, and arrangements that best serve the interests of the more powerful. It may therefore seem surprising to find it discussed as a tool for empowerment. However, this is only a partial picture of the law. A few words about what law is, how it works and why it matters may be useful.

Legal theorists have defined law as “institutional normative order” (MacCormick, 2008): in a nutshell, the rules governing human behaviour, assisted by institutions and processes for their enactment, application and enforcement. Although legal scholarship mainly focuses on national legal systems and the Western legal tradition (see Twining, 2000), this broad definition of the concept of law not only applies to the legal systems of nation-states; it also covers local resource tenure systems (“customary” but continuously evolving) that feature rules, institutions and processes.

“Legal pluralism”, the co-existence of different legal systems (state, customary and combinations of these) in the same territory, is a well-documented characteristic of law in Africa, and a well-established conceptual framework in the academic literature (e.g. Falk Moore, 1978; Griffiths, 1986). Several legal empowerment interventions in Africa have developed pragmatic and effective ways of working with both state law and customary systems (see for example Maru, 2006 on a paralegals programme in Sierra Leone).

Using the law does not necessarily mean involving professional lawyers. We are all norm users: in our daily lives we conclude legal transactions every

time we buy something from a shop or at the market, buy, rent or borrow land or take public transport. The provision of legal services does not necessarily require professional lawyers either. A growing body of experience with paralegals and community legal literacy trainers is emerging in several African countries, such as Cameroon, Mali, Mozambique and Sierra Leone (described in several contributions below).

The work of professional lawyers is far from limited to, or even focused on, court litigation. While some lawyers do indeed specialise in litigation, most of the work of the worldwide legal profession involves diverse activities such as providing legal advice, helping draft legal acts, interacting with government or supporting negotiations between parties, and seeking to conclude deals or other transactions.

Nor is litigation necessarily an alternative to negotiation, whose central role in settling disputes has been documented by socio-legal research in Africa (e.g. Oomen, 2005). Despite widespread perceptions to the contrary, most disputes are settled out of court, even in the “West”. This includes cases where litigation has already started and a binding decision been reached.<sup>6</sup>

The relative strength of legal claims in the litigation process is used to back up the protagonists’ negotiating power. This process is aptly captured in the concept of “bargaining in the shadow of the law”, first developed in relation to family law disputes in the US (Mnookin and Kornhauser, 1979).

So, broadly defined, the law matters because it helps shape access to land, whether it is state-enacted, customary law or combinations of these; whether it is used as a basis for negotiation, litigation or combinations of these; and whether it is used by lawyers, other professionals or citizens themselves.

Land access is affected by social relations, which include control over markets, capital and technology; relations of power, authority and social identity; and relations of reciprocity, kinship and friendship. Although having a legal *right* to use land may not result in being *able* to claim and enjoy that right in practice (Ribot and Peluso, 2003), claims based on recognised legal

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6. This not only applies to private law disputes, but also to criminal proceedings involving minor offences, where negotiations may occur between the defence and the prosecution (for instance, see the “patteggiamento” under Italian law).

systems (state, customary or combinations of these) influence access to resources and other factors that may in turn affect such access.

## **THE ROLE OF LAW IN DEVELOPMENT: SEVERAL DECADES OF THINKING AND DOING**

There have been discussions and interventions on the role of law in development for decades. In the 1960s, certain development agencies supported law reform as a tool for promoting development (the so-called “Law and Development movement”), focusing on state law reform as a means of social engineering, tackling technical issues, mobilising outside expertise and promoting “legal transplants”.

The Law and Development movement generated a vast body of academic literature but had largely disappointing results on the ground (Trubek and Galanter, 1974; Merryman, 1977). The significant limits of law reform as the sole tool for social change have been well documented (e.g. Allott, 1980), and it is now widely accepted that changing the law is not enough, that it is equally important to build on local contexts and acknowledge politics and power relations too.

The movement subsided in the 1970s, but interest in the role of law in development processes revived in the 1990s. Two strands of thinking and doing have played a role in this revival: a renewed commitment to human rights, and an interest in establishing legal frameworks that promote economic development.

The end of the Cold War created new opportunities to pursue the realisation of human rights, including economic, social and cultural rights. International obligations with regard to fundamental human rights, such as the right to food, have important implications for securing disadvantaged groups’ access to land (Cotula (Ed), forthcoming). Over the past few years, human rights language has been used to support land claims in a range of different contexts, and international tribunals have been prepared to use human rights instruments in cases relating to land and natural resources.<sup>7</sup>

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7. For a discussion of recent international case law, see Cotula (Ed) (forthcoming). For a critical reflection on human rights approaches, see Kennedy (2002).

Several development agencies have sought to mainstream a rights-based approach in their work, including their resource access programmes (such as Sida, 2007).

A second set of forces underpinning the renewed interest in law relates to economic research showing the importance of legal and institutional frameworks for economic development (North, 1995; Posner, 1998). Linked to this thinking, several development agencies have paid greater attention to concepts like good governance and the rule of law; and a “formalisation” agenda has emerged in response to claims that titling programmes establishing individual land ownership can unlock “dead capital” by enabling landholders to access credit by using titles as collateral (claims that build on the work of de Soto, 2000).

However, “rule of law” programmes have tended to focus on law reform and administrative/judicial mainstreaming, paying little attention to civil society or building citizens’ capacities (Golub, 2005). The effectiveness of some of these programmes has also been undermined by the conceptual difficulties of defining the “rule of law” and the incentive structures of development agencies and consulting lawyers (Carothers, 2004). Claims about collateralisation in Africa have yet to be backed by credible evidence, while the failures of earlier experiences with titling programmes have been well documented (as in the huge amount of literature on Kenya’s experience; see Coldham, 1978 and 1979).

Despite the fact that power relations are central to the processes of change, the importance of implementing law in order to make a difference, and the role of civil society in helping disadvantaged groups make the law work for them (and despite significant variations in emphasis), the different waves of thinking and action on law in development have tended to address technical issues rather than tackle power imbalances, support law reform rather than build capacity at local and national levels, and focus on state institutions rather than work with civil society.

## **RULE OF POWER AND POWER OF RULES:<sup>8</sup> THE CONCEPT OF LEGAL EMPOWERMENT IN SECURING LAND RIGHTS**

The concept of legal empowerment as it is used here aims to fill this gap. Building on Golub and McQuay (2001) and Golub (2005), legal empowerment is defined as the use of legal tools to tackle power asymmetries and help disadvantaged groups have greater control over decisions and processes that affect their lives.

While it acknowledged the importance of law reform, the workshop focused on building the capacity of disadvantaged groups so that they are better able to seize the opportunities offered by *existing* law. Similarly, this report recognises the importance of effective and accountable government, but is mainly concerned with the role of civil society in providing checks and balances and in supporting disadvantaged groups.

Thematically, the focus is on legal empowerment as a strategy for securing local land rights. Land rights security refers to the extent to which people can be confident that they will not be arbitrarily deprived of their land rights and/or the benefits deriving from them. This confidence includes subjective elements (people's perception of the security of their rights) and objective elements, both substantive (nature, content, clarity and duration of rights) and procedural (certainty of enforcement, voice in decision-making affecting rights).

The extent to which legal tools can be used to tackle power imbalances deserves closer attention. On the one hand, the law is shaped by power relations. Law-making is an inherently political process, as laws are the outcome of negotiations between competing interests in society, and reflect power imbalances between those interests. What is "legal" and what is "illegal", which claims are legally protected and which are not, which protected claims entail access to effective redress mechanisms and which do not – these are all legal policy decisions that are shaped by power relations.

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8. This heading paraphrases expressions used by Byers (1995) and Simpson (2000).



There are many examples of how the law has served the more powerful at the expense of the weak, from the spoliation of land rights engendered by the imposition of colonial law in Africa to the patriarchal norms of family law in force in many countries until recently, and still holding sway in others.

Recent law reforms in some African countries have emphasised securing access to resources and rights for large-scale investment, as part of efforts to promote agricultural “modernisation” that have included signing up to investment treaties, enacting investment codes, establishing investment promotion agencies and reforming sectoral legislation. While this legislation can play a role in attracting investment, differentiated protection of rights may also reflect power imbalances between large-scale investors and local groups involved in or affected by investment projects (Cotula, 2007).

But legal claims can also influence power relations, by defining leverage in decision-making and access to valuable assets. The groundbreaking work of Mnookin and Kornhauser (1979) on family law in the US showed how family law rules create “bargaining endowments” that divorcing couples rely upon their negotiations for out-of-court settlement. Similarly, writing on the resurgence of customary chiefs in South Africa, Oomen (2005) describes how negotiations shaped by power relations inform the work of legal institutions on the one hand, while on the other, legal rules (together with other sources of authority) are invoked in those negotiations and affect their outcome.

Thus, linkages between law and power are bi-directional, as the law both reflects and shapes power relations. To capture this notion, Tuori (1997) developed a conceptual framework that isolates three interlinked aspects:

- Power *on* the law: how power relations in society affect the content and implementation of the law.
- Power *in* the law: power relations within the legal professions (e.g. between legislators, judges and scholars), and between legal professionals and “laymen” (e.g. between lawyers and their clients).
- Power *by* the law: how the law helps shape power relations through legal claims that create, strengthen, limit and/or legitimise power, and through legal services that help different groups to use their claims.

The concept of legal empowerment is underpinned by that of “power *by* the law” with regard to asymmetric power relations in society, and by “power *in* the law” with regard to relations between providers of legal services and their clients.

Disadvantaged groups may benefit from legal processes if they can rely on favourable legal arrangements and if they have adequate capacity to use them. Therefore, the legal empowerment of disadvantaged groups may require:

- Legislative interventions to shape the nature and content of legal claims (who has what right over what and towards whom) in a way that favours disadvantaged groups; and
- Efforts to strengthen the capacity of disadvantaged groups to make more effective use of those legal claims (“capacity to claim”). Building on Giovarelli and Scalise (2007), “capacity to claim” is defined here as encompassing basic awareness of available rights; know-how to navigate the legal institutions and procedures for using and enforcing those rights; the confidence, resources, information and social relations to use/enforce rights in practice.

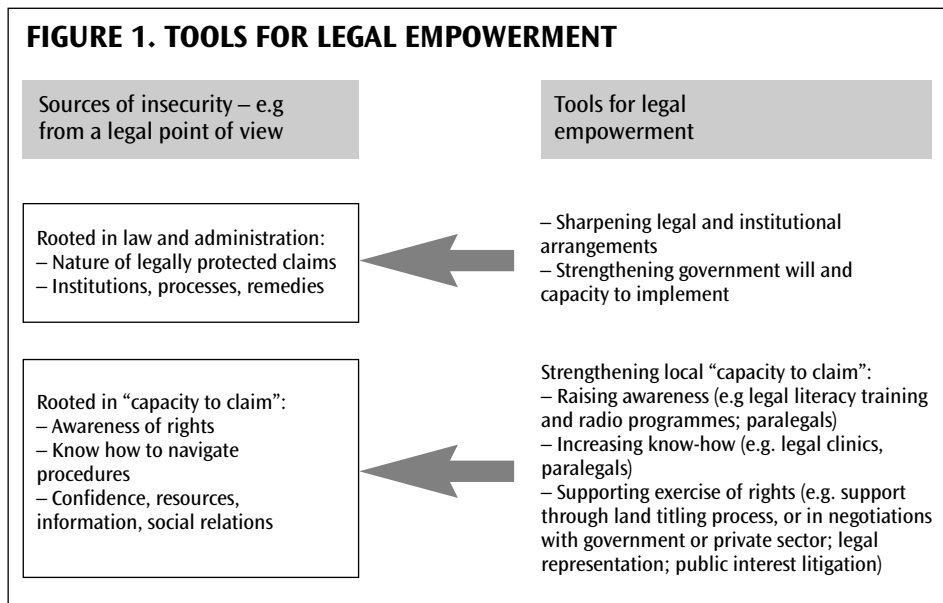
As for legislative interventions, some recent law reforms have established or improved opportunities for securing local land rights – for instance, through greater recognition of customary land rights, collective land registration and mandatory consultation processes, or through decentralisation of land management responsibilities. In several cases, the outcomes of these reforms have fallen short of expectations due to shortcomings in their design (gaps, inconsistencies and loopholes) and, more importantly, problems in implementation (Cotula, 2007).

With regard to capacity-building efforts, legal services organisations (such as development agencies, public interest law firms, legal clinics attached to academic institutions, and CBOs) in many parts of Africa have developed pragmatic and effective ways of strengthening legal awareness on available rights, increasing knowledge about the opportunities and mechanisms for using those rights, and providing the resources and support needed to use rights and opportunities in practice. Workshop discussions focused on this aspect, and several contributions to this report provide examples of what is being done.

## SHARING TOOLS FOR LEGAL EMPOWERMENT

Legal empowerment initiatives rely on practical tools: the “instruments, approaches, schemes, devices and methods” that “help people get from a problem to a solution” (Vermeulen, 2005). Tools respond to the question “How to?”<sup>9</sup> and the notion of “power tools” was developed to describe “policy tools that address power asymmetries” (Vermeulen, 2005). The focus here is on a specific type of power tool: those aimed at strengthening the “capacity to claim” of disadvantaged groups.

Legal services organisations have developed a wide range of tools, from awareness-raising tools such as legal literacy training and radio programmes, to tools for helping disadvantaged groups better use their legal claims to their advantage. These can involve support for community-based paralegals working on local dispute settlement and/or defending local rights against powerful outside interests; participatory methodologies to identify, demarcate and register community lands or support local groups in their negotiations with government or the private sector; legal representation and strategic use of public interest litigation; and strategies



<sup>9</sup> As clarified by UN-Habitat in their work on the Global Land Tools Network (GLTN).

that combine the use of legal processes with advocacy through media engagement and social mobilisation (see Figure 1).

While the development of these legal empowerment tools is embedded in specific legal traditions and historical socio-political contexts, the tools themselves may be adapted and replicated in different contexts characterised by similar challenges – for instance, similar sources of power asymmetries or similar threats to security of land rights.

The relevance of tools is shaped by local contexts, by factors such as the varying sources of power imbalances or context-specific threats to security of land rights. Therefore, tools that are useful in securing land rights within families or in relation to local boundary disputes may not be effective in securing local rights in a context of large-scale investment projects.

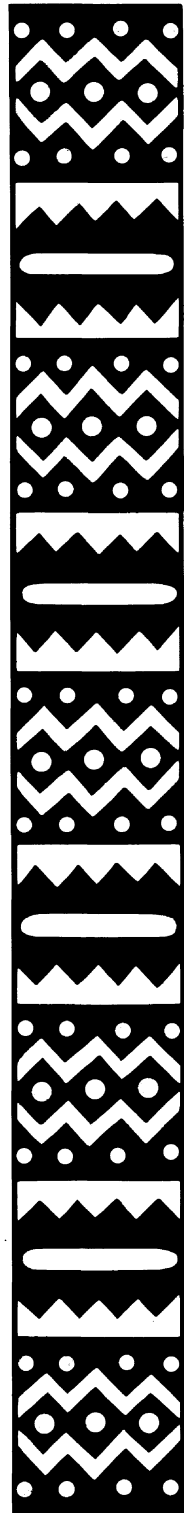
Similarly, legal empowerment tools are likely to differ in contexts characterised by enabling legal frameworks and implementation challenges, where tools for strengthening government will and capacity to implement and for building citizens’ “capacity to claim” are likely to be a priority; and in contexts where state law does not provide adequate opportunities for securing local land rights, where local-level interventions alone can only go so far in the absence of law reform.

The range of tools developed in different parts of Africa means that legal services organisations need to share the lessons learned and exchange their experiences, which should be disseminated to a wider audience. This is what our workshop aimed to do. This report documents various experiences with legal empowerment in practice, demonstrating the diversity of routes to legal empowerment and highlighting the need for continued mutual learning among practitioners and the wider public.



### **3. LEGAL EMPOWERMENT IN PRACTICE TO SECURE THE LAND RIGHTS OF THE POOR – A SHORT CONCEPT NOTE**

Paul Mathieu



## **ACCESS TO LEGAL INFORMATION AND LEGAL CAPACITIES TO SECURE LAND RIGHTS FOR THE POOR IN THE WORK OF FAO**

As part of its work programme for 2006-2009, the Land Tenure and Management Unit of FAO identified access to land information and land institutions in order to secure the land rights of the poor as an important issue that needs to be addressed. A number of studies were commissioned in 2006 and 2007 to document experiences and analyse the lessons learned. The workshop co-organised with IIED and the Law Faculty of the University of Ghana in Accra in March 2008 is another step in this work, which provided an opportunity to present new practical experiences from Africa and the convergent processes developed in both FAO and IIED.

The various studies produced in 2006 and 2007 for the Land Tenure and Management Unit of FAO will, we hope, become available through a resource CD to be published later in 2008 under the title *“Legal empowerment in practice to secure the land rights of the poor – Experiences, lessons and ways forward”*.<sup>10</sup>

This contribution is a slightly expanded version of the conceptual framework developed to inform and produce these studies and guide the partnership between IIED and FAO in preparing for the Accra workshop. It cuts across and converges with much of the work that IIED was doing at the same time (which is partly summarised and referenced in Lorenzo Cotula’s introduction above).

## **WHY LEGAL EMPOWERMENT IS IMPORTANT IN SECURING LAND TENURE FOR THE RURAL POOR**

The land rights of the poor are under threat in many parts of the world today, and are becoming increasingly vulnerable as a result of several major trends and factors. These include the following processes:

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10. More information about this will be available from [http://www.fao.org/nr/lt/en/lt\\_en.htm](http://www.fao.org/nr/lt/en/lt_en.htm), or by contacting: [NRLA-chief@fao.org](mailto:NRLA-chief@fao.org); [Land-Tenure@fao.org](mailto:Land-Tenure@fao.org).

1. Growing populations and changing ecological conditions tend to make good land increasingly scarce and valuable. This makes land more coveted, more likely to exchange hands through financial transactions (“commoditisation”) and/or the object of competition and sometimes violent conflict.
2. In order to make agriculture profitable, more financial capital is needed to increase the productivity of the land: this often intensifies competition between local people and investors from outside rural communities for land in the most fertile areas.
3. In many regions (particularly in Africa), the customary mechanisms regulating land allocation are challenged by competition among individuals and by the changing attitudes of traditional chiefs, who are often tempted to take advantage of the accelerated commoditisation of land for their own profit.
4. More and more individuals from different social groups are becoming involved in land transfers and competing for scarce land (farmers vs. pastoralists; indigenous vs. migrants; local landholders vs. external investors). These groups may also be involved in conflicts as collective entities, bringing a high risk of escalating conflicts and levels of violence when social communication breaks down and structured social interaction gives way to unchecked struggles by all available means.
5. Competition for land and transfers of land are characterised by “asymmetrical relationships” between actors with unequal levels of power, wealth, information and knowledge of legal procedures.
6. Many countries (in Africa) have recently attempted to put in place systems allowing the legal registration of customary rights (Ghana, Niger, Ethiopia, Madagascar, Uganda, Côte d’Ivoire, Tanzania and Namibia, to name just a few), while increasing the responsibilities and roles of decentralised administrative entities and government technical services.
7. New legislation drafted in many countries is supposed to promote the legal formalisation of land rights for all citizens, but so far its implementation has been difficult and limited.



In the context of this new legislation and the increasing scarcity and competition for land, it is becoming more important for rural households and individuals to be able to **legally assert and secure their land rights**. It is and will be increasingly difficult to protect land rights that are not clearly established and documented in writing in accordance with legal procedures.

As most of the rural poor find it difficult to establish and document their rights in this way, many are dispossessed of their land by powerful, richer or more astute actors. Therefore, relying on land laws and legally defined procedures to secure land rights is both an important step and a major difficulty for many of the rural poor.

### **Using legal empowerment to legally secure the land rights of the poor**

The rural poor have little or no capacity to use the law and legal procedures to assert their land rights. There are various reasons for this:

- Modern laws are complex, and are often poorly disseminated by the State and ignored by the poor.
- Very often, these laws do not effectively (or legally) protect existing land rights (based on custom and local practice) that are not legally documented in writing; nor do they make it easy to convert and formalise customary rights into legally documented rights that are protected by statutory law.
- Land administrations and professionals who could facilitate the formalisation of rights and make legal procedures “usable” by all citizens tend to be rare, remote, expensive and not easily accessible.
- The rural poor have little or no knowledge of land laws and how to make them work to secure their land rights; most are unaware of “how to concretely deal” with complex legal procedures, land administrations and the individuals who handle them.

Because of this, many poor people do not even consider dealing with state institutions (land administrations). Their interactions with these bodies are often difficult and may even appear impossible, leaving many, especially the rural poor who are illiterate and live far from cities, feeling that the law is for the rich and not for them.

## WHAT IS LEGAL EMPOWERMENT IN ORDER TO SECURE THE LAND RIGHTS OF THE POOR?

Legal empowerment of the poor could be defined as encompassing the multiple processes and actions by which people become more skilled, more powerful and eventually more able to use legal institutions and procedures to assert, document and defend their land rights. When existing regulations and procedures are so complex that they cannot be used by the poor, legal empowerment may also include legal and institutional changes that make procedures simpler and less costly, and the administrations in charge more accountable, “usable” and accessible.

Some of the core elements of legal empowerment to secure land rights are identified below. These elements are linked, and are therefore presented as a bundle or sequence of conditions and actions that we can call *the continuum of legal empowerment* to secure land rights. This continuum includes the following elements:

- **Being informed** about the law, **understanding** what it means, its concrete implications and “utility” for oneself; understanding how it works.
- **Being aware** of one’s **rights**, particularly the right to use laws and legal institutions to assert and defend one’s land rights.
- **Knowing how to navigate** through the complex, regulated and sometimes rigid sequences of actions required to use legal procedures.
- **Knowing how (and being able in practice) to use the language** and meanings of complex words designating specific actions, things, rights and/or relationships.
- **Knowing how to interact with state institutions** and the individuals within them, given that they often have specific social bias, habits, conceptions and ways of working (rent-seeking, political patronage, client-patron relationships etc.).
- **Daring and being able:** feeling and being skilled and strong enough to assert rights in an effective way when facing competing claims or organisations that are neither easy or cheap to deal with, nor spontaneously willing to deliver equal and affordable public services to all citizens.

## SOME INITIAL THOUGHTS AND HYPOTHESES

### **The continuum of legal empowerment as a means of securing land rights**

As defined above, this concept is central to legal empowerment. To summarise it in another way, we could say that a continuum of actions is necessary to legally secure land rights where the poor are illiterate and far removed from the State and the law in many ways. If we focus on the importance of accessible legal information and genuinely usable legal institutions in securing the land rights of the poor, we can see that a continuum of actions and conditions is involved:

- **Appropriate legal information** (understanding the law, its procedures and how they can be used by and for the poor).
- **Awareness of rights** and willingness to legally assert rights through legal procedures.
- **Capacities** (legal, social, financial) to follow procedures and successfully interact with state agents in legal land institutions.

### **A dynamic and pluralistic perspective: the complementarities of projects, local actions and social processes**

There are several social dimensions and timescales to consider in legal empowerment, such as “projects” (actions that are limited in time and space, usually with external funding) or social processes. These aspects are not mutually exclusive and may be complementary in the medium or long term.

*Legal empowerment happens in practice.* It is enacted and supported by people, groups and projects in many ways. It is not radically new as a social practice, nor is it “something” that the poor can or should receive from above as passive beneficiaries. Numerous actors are involved in various ways, and struggle to make it happen step by step.

*An interactive perspective: users and suppliers of public services and public institutions.* Security of land tenure (as an individual legal entitlement and as a public good) can be seen as resulting from the interactions between land users and the suppliers of public services and administrations, whose function is to legally document and protect land rights.

*Users* are citizens, land users and rights holders. For them, legal empowerment as defined above involves the following elements: awareness (knowledge and understanding); capacities (to interact, claim, assert, mobilise and use services, navigate procedures, pay); daring; power, citizenship and political awareness (knowing one's rights as a citizen and aiming to receive fair and appropriate services from state administrations).

*The suppliers of public services* are the members of state institutions who deal with land adjudication, land administration and land conflicts. Public services are the services provided by government to its citizens. One of the aims of legal empowerment is to enable all members of the public (citizens) to use the law and administrations; another is to make these state institutions (and their members) genuinely accessible, affordable and accountable to the public (accountability to the State representing citizens' public and common interest).

The concrete interactions between the users of public institutions and the providers of public services (i.e. the public servants in land administrations) are an important component in the provision of legally secure rights and legal empowerment processes. Improving these interactions is an important part of legal empowerment to secure land rights.

### **The actors' perspectives**

It is important to understand how all the actors involved (including state land institutions and the individuals within them) perceive and understand the processes of providing land tenure security, and their motivations for acting in specific ways.

The real actors involved (individuals, groups and administrations) should be the starting point for analysing the processes and designing legal empowerment projects and actions: it is important to understand their perceptions, incentives and perspectives, what appears important and feasible to local actors, and how they proceed when they see the need and opportunity to legally protect their land rights.

### **A procedural and pragmatic approach**

What matters is how rights can be legally asserted, adjudicated and protected in practice. This generally depends on the actual functioning of procedures rather than the mere existence of laws, no matter how well worded or well intended they are. The real functioning of procedures involves the “social working of law” and the concrete interactions between individuals and groups: on one side, the users (or potential users) of laws and public institutions, and on the other side, the individuals in the public (state) institutions that implement legal procedures.

To a great extent, legal empowerment is a process that occurs through the concrete interactions between the users of public institutions and the providers of public services (public servants in land administration institutions).

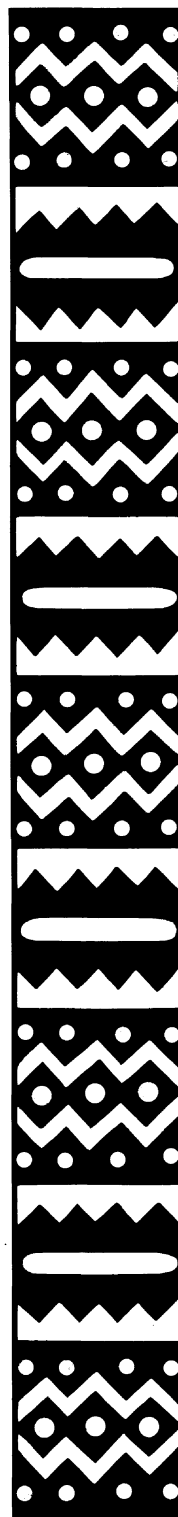
### **Legal empowerment is about power and social relationships**

The term “legal empowerment” is fairly self-evident: empowerment is about power and power relationships. Land tenure practices are embedded in social relationships; therefore, legal empowerment to secure land rights is inevitably embedded in social processes and social relationships between different groups with unequal assets and unequal levels of education and power.

Thus, legal empowerment cannot be separated from social empowerment. It is sometimes also linked to the social conflict and violence that still afflict many parts of the world despite hopes of eventually alleviating vulnerability and conflict. While you read this document, people in certain countries may be dying or risking their lives in the struggle for legal empowerment to secure land rights. The overarching aim (and hope) of more effective and widespread legal empowerment for land rights, combined with good governance in land tenure, is ultimately to banish all forms of vulnerability and violence related to land rights.

## **4. USING THE LAW AS A TOOL TO SECURE THE LAND RIGHTS OF INDIGENOUS COMMUNITIES IN SOUTHERN CAMEROON**

Samuel Nguiffo and Robinson  
Djeukam



## THE OPPORTUNITIES AND CHALLENGES

Cameroon is a country of such biodiversity that it is often presented as “Africa in miniature”. Its ecosystems range from vast expanses of wooded savannah in the north to mountain forests in the coastal zone and about 20 million hectares of dense rainforests in the south. The country’s forests are characterised by the richness of their diversity and the large number of species they support that are not found elsewhere (Trollaldalen, 1992).

They also sustain a wide range of actors, from economic operators involved in industrial timber production (particularly for export) to hunting companies and big game specialists, all of whom are directly reliant on forest resources. These actors have been joined by other companies whose operations are damaging forest biodiversity – especially the industrial oil-palm and rubber plantations, and mining and infrastructure projects. Finally, there are the conservation agencies working in protected areas whose rich flora and fauna constitute the national ecological heritage. All these actors have different, sometimes contradictory and even conflicting interests and stakes in the land and its resources.

There is a large local population in the forests of Cameroon too: nearly 2.5 million people from the indigenous “Pygmy” and Bantu groups. According to their ancestral customs, they have ownership rights over the natural resources on which they depend (to varying degrees) for their daily survival.

These ancestral customs have been under threat since the beginning of the colonial period, when the German administration introduced written norms using the questionable concept of “vacant and ownerless lands” to make the State the principal owner of land and forest resources. Thus, all lands that local people were unable to establish customary ownership rights to immediately passed under the jurisdiction of the German throne. Subsequent colonial laws (first passed by the Germans and then, after 1919, under the mandate and trusteeship of the French and the English) established a distinction between the State’s private and public domains: the former as its private property, and the latter as land that it is merely responsible for managing.

The State's intrusion into land tenure marked the beginning of indigenous peoples' marginalisation. Because their hunter-gatherer lifestyle has little impact on the forest cover, it is difficult to provide evidence of their presence on the land or use of its resources. The large areas they covered in search of food and other resources were consequently declared vacant by the colonial administrations and taken under its control – a practice that would be perpetuated under the mandate and trusteeship system and reinforced after Independence.<sup>11</sup>

The Bantu are mainly sedentary farmers with various customary rights to land and resources, ranging from individual private ownership in its strictest sense to a kind of collective ownership by community members. Like other indigenous communities in the area, they depend on forest products for their subsistence, and their quality of life is closely related to the quality of the forest and its ability to provide the goods and services they need.

Various conservation agencies and projects started operating in Cameroon in the early 1990s in response to the intensification of forest use and ensuing rapid reduction in biodiversity. However, their approaches conflicted with the development aspirations of the forest communities, sometimes leading to violent clashes between local people and eco-guards. In the meantime, aggressive government policies to attract foreign investors into sectors using land and natural resources has increased pressure on resources and contributed to their scarcity.

Cameroon is a country of legal pluralism, with a multitude of customary laws as well as the written law derived from colonial regimes. These customary rights were relegated to second place since soon after Independence, when a Supreme Court ruling on the case of *Bessala Awona v. Bidzogo Géneviève* held that "...in all matters pertaining to the custom where legislation has been passed, the law prevails over custom".

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11. See Nguiffo, Kenfack and Mballa (2008).



## THE CHAD-CAMEROON PIPELINE PROJECT

In 1996 civil society groups and local communities were informed of the imminent construction of a pipeline to transport oil more than 1,000 km from the Doba oilfields in southern Chad to Kribi on the Atlantic coast of Cameroon. With total construction costs estimated at 3.7 billion dollars, this was the biggest direct foreign investment project south of the Sahara, backed by some of the world's largest corporations: Exxon, Chevron and Petronas.<sup>12</sup>

The World Bank was asked to provide financial support for the project, and in June 2000 it agreed to contribute around 200 million euros to the project on the grounds that it would make a lasting contribution to poverty reduction in Chad. Its financial involvement meant that the project would have to abide by World Bank operational policies and directives, including those relating to compensation and indigenous peoples.<sup>13</sup> World Bank regulations regarding compensation state that anyone adversely affected by a project that it has funded should receive fair prior compensation; the rationale being that no one should be impoverished by such initiatives.

The aim of Operational Directive 4.20 is to better protect indigenous peoples through World Bank-supported projects whose implementation may affect them. It is supposed to prevent or reduce any negative impacts that such projects might have on local communities, and to put in place genuine development plans designed to improve indigenous peoples' living conditions in a coherent and sustainable manner. According to World Bank criteria, the Bagyeli communities on the Atlantic coast of Cameroon qualify as indigenous people, which means that World Bank staff should, among other things, pay particular attention to their land rights. Operational Directive 4.20 states that, "When local legislation needs strengthening, the Bank should offer to advise and assist the borrower in establishing legal recognition of the customary or traditional land tenure systems of indigenous people".<sup>14</sup>

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12. The original consortium constituted of Exxon, Shell and Elf, but the two latter companies withdrew from the project in 1999.

13. Operational Directive 4.20, which was subsequently amended.

14. See OD 4.20 paragraph 15.c. It is interesting to note that Cameroon, like many African countries, has not ratified ILO Convention No. 169, and does not recognise any of the ethnic communities found in Cameroon as indigenous. However, in the context of projects financed by the World Bank, it does allow communities that fulfil the criteria established by relevant World Bank policies to benefit from the advantages pertaining to indigenous peoples.

World Bank representatives made promises to this effect, and the World Bank regional Director for Central Africa wrote to NGOs with assurances that, “If anything, the quality of life of the Bakola is likely to be improved by the attention they will receive under the project”.<sup>15</sup>

Despite the precarious nature of indigenous people’s land rights and the uncertainty surrounding land tenure in Cameroon, the World Bank did not offer to help its government amend the land rights legislation, but set about implementing an IPP. Since a major component of this plan involved promoting agriculture, land was clearly an issue that needed to be addressed.

Under the terms of Directive OD 4.20, the consortium duly prepared an IPP and a compensation plan, which included (in accordance with Cameroonian land law) provisions for owners without land title to be compensated for lands that they have put to productive use (built on, cultivated, etc.).

Under Cameroonian law, compensation is paid for productive use of expropriated land belonging to the State, so local people living along the pipeline were surveyed several times, from the beginning of the preparatory phase right up to construction, in order to identify everyone using national lands. Customary Bantu land law in southern Cameroon allows people to borrow land provided the beneficiary does not plant perennial crops, as this makes it difficult for the customary owner to take back the land at the beginning of the next growing season. At the time of the surveys, the main food crops grown by coastal Bagyeli communities were cassava and maize. When the compensation was paid, the Bantu landowners realised that the consortium was paying the Bagyeli who were farming the land, so some of the Bantu used their customary land rights and various forms of intimidation to get the compensation paid back to them. Many Bagyeli were thrown off the land they were cultivating as a result of misunderstandings over management of the compensation: the Bantus thought that the Bagyeli had usurped the titles of the land they were cultivating, and that the compensation was for the land rather than the crops, as it was now reserved for use by the consortium.

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15. Correspondence of Serge Michailof, quoted by Centre for Environment and Development in *Traversing Peoples’ Lives*, Yaoundé, 2002.

In order to offset the environmental impact of the project, the World Bank asked the Government of Cameroon and the consortium to create two protected areas. The Mbam Djerem and the Campo-Ma'an national parks were duly established – the latter, which is located in a region inhabited by indigenous communities, by decision N° 372/D/MINEF/DAJ of March 12th 1999, to satisfy World Bank conditions for approval of the pipeline project.

The Forestry Department drew up the boundaries of the national park without consulting any of the local communities, and the park's new management then set about “protecting” it from its intermittent and regular users. Many indigenous homes were destroyed simply because they now lay within the park, and the game caught by indigenous subsistence hunters was confiscated by the park's managers. Despite their protests, the consortium and the Government appointed the Worldwide Fund for Nature (WWF Cameroon) to provide technical assistance in preparing the management plan for the park, which severely restricted the rights of the communities using the land within its boundaries.

## **THE PROBLEMS**

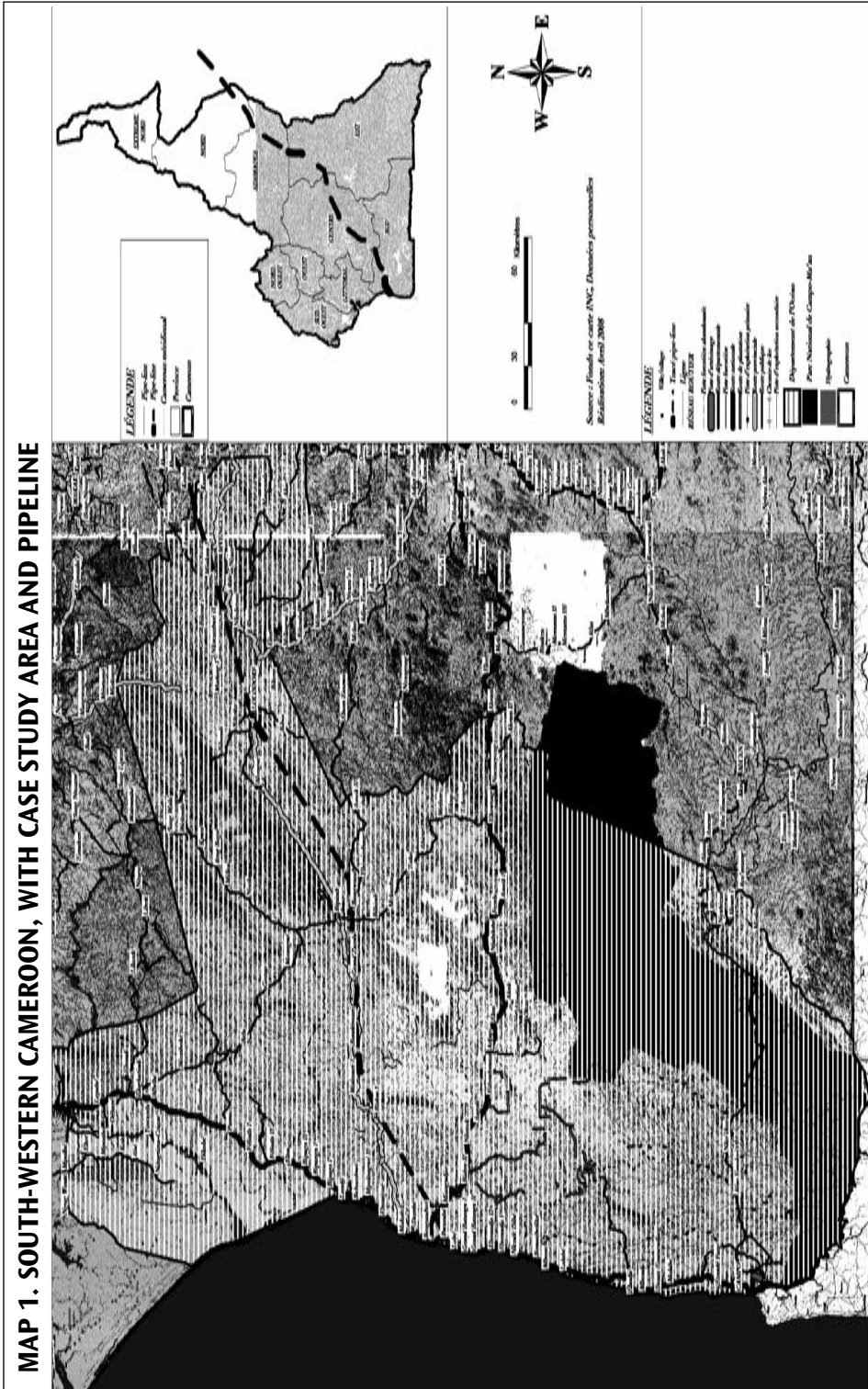
Land is a crucial issue in the forested areas of southern Cameroon, and two problems are causing particular concern among the local populations: getting the customary land rights of indigenous peoples along the pipeline recognised, and access to natural resources in protected areas.

### **Recognising the customary land rights of indigenous peoples along the pipeline**

The culture of indigenous peoples reflects both their traditional nomadic roots and the sedentary characteristics of the neighbouring Bantu. Indigenous communities are still highly dependent on the forest and its resources, and mainly survive by hunting and gathering (wild fruits, leaves, roots, bark, etc.), which keeps them on the move. They have an ambiguous relationship with the land: believing that it cannot be owned in the modern sense of ownership laws, yet claiming rights to the forests whose resources they use – which can cover vast areas.

Their settlement along the roads has distanced them from their traditional territory and made them guests on the lands of their new neighbours. The combined effects of population growth, gradual erosion of forest biodiversity

**MAP 1. SOUTH-WESTERN CAMEROON, WITH CASE STUDY AREA AND PIPELINE**



and the resulting impoverishment of indigenous communities has gradually transformed the relationship between the “Pygmies” and their Bantu neighbours into one of master and slave: the Bantu see themselves as “owning” the “Pygmies”, who are now part of a legacy that can be passed down from one generation to the next. This dependent relationship is perpetuated by a complex system of indebtedness that keeps the “Pygmies” permanently in the Bantu’s thrall.

Gaining access to land is a major problem for “Pygmies” living along the roads who want to break with their tradition and get into agricultural activities. They used to borrow land from the Bantu for fixed periods, but had no security of tenure and found that they often lost their harvest to their landowner. The main issue for the lawyers, paralegals and CED technicians working in the coastal arrondissements of Bipindi, Lolodorf and Akom II (see attached map) is how to get the Bantu to recognise the “Pygmies” land requirements and help resolve the problem by granting them rights to lands that traditionally belonged to the sedentary Bantu.

### **Access to natural resources in protected areas**

Cameroonian law is ambiguous on the issue of communities’ rights in protected areas. Park managers usually take a hardline, authoritarian approach to conservation, and the eco-guards they employ have established a reputation for brutality. Like the State, these projects base their approach on a misinterpretation of the law and have refused to compromise, despite attempts since the early 2000s to improve dialogue between resident indigenous communities and park managers. The indigenous communities feel that they are the victims of a double injustice: not only were they not consulted over the creation of these protected areas, whose borders were autocratically delineated on purely ecological grounds and with no consideration for social issues, but the restrictions associated with protected areas also severely limit their access to resources within the boundaries of the new parks. Paradoxically, these indigenous groups generally seem to prefer to be close to timber concessions rather than parks, despite the fact that they are particularly destructive of the forest: their access to resources in the timber concession is less regulated than their access to the parks, and they can earn some money from them, even if it doesn’t compensate for what has been lost due to the forest’s deteriorating biodiversity (Nguiffo and Bigombe, 2007).

## **OUR RESPONSE TO THE CHALLENGES**

CED has always had at least one lawyer on the team since it was set up in the mid-1990s, even when it didn't have a legal programme. It could be said that the need for legal services was initially underestimated and that the programme tended to focus on technical issues (forestry, agriculture, anthropology), but over time our dealings with forest communities has improved our understanding of the nature and extent of the legal challenges they face regarding the management of forest lands and resources.

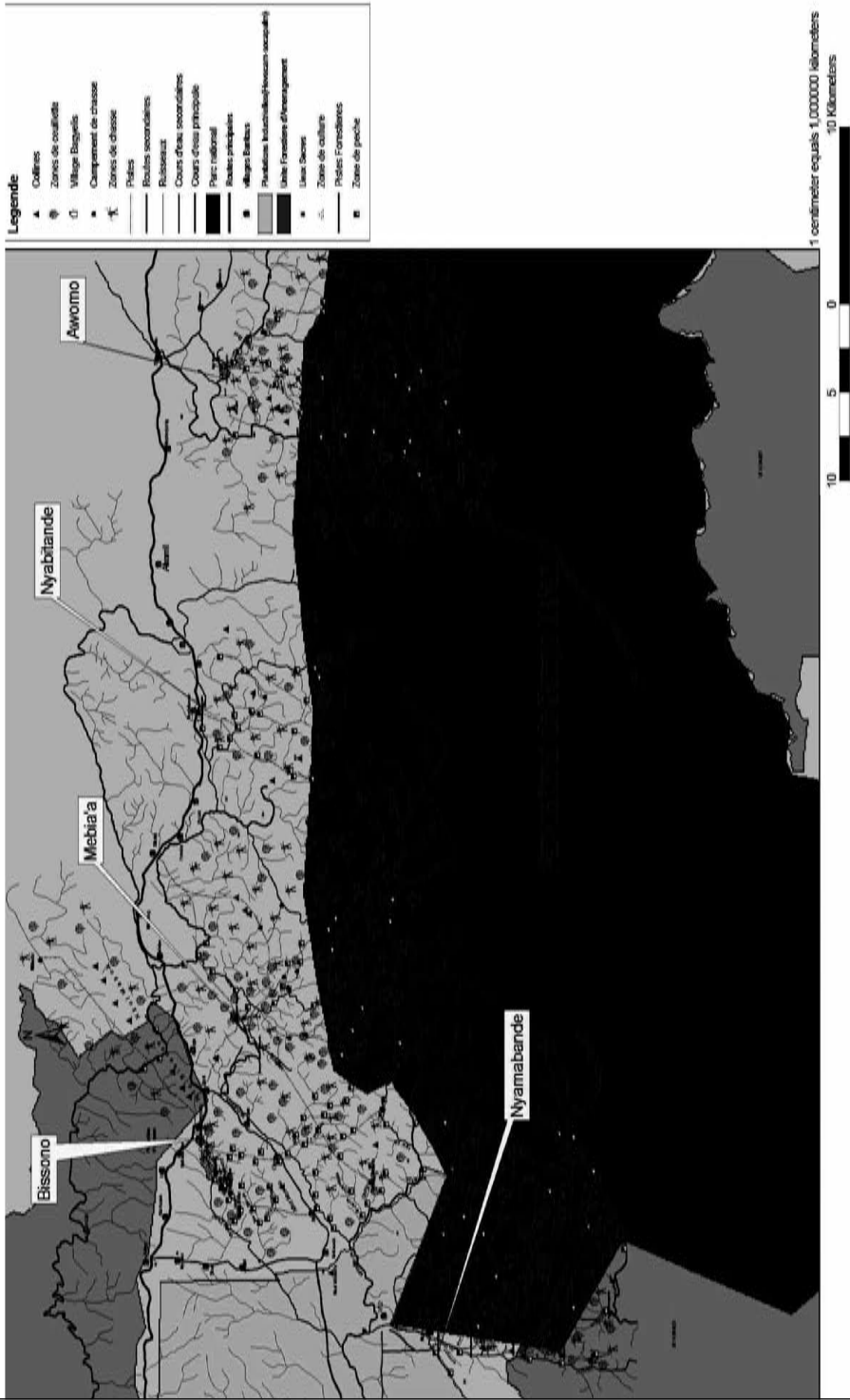
In order to respond to this challenge, CED staff began disseminating legal information among communities in the areas where they worked, distributing full versions of legal and regulatory texts on the forestry sector, and then producing and disseminating brochures explaining their content in basic French and English. When it started doing this in 1994, CED was one of the first organisations to get involved in disseminating texts resulting from the reform of Cameroon's forestry law.

Faced with growing and increasingly specific demand from local communities and other NGOs (including international ones) that were starting to seek legal advice from CED staff, it was decided that the best way of dealing with the problem would be to train paralegals. This was done as part of the CIDA-funded APEC project (Support for Environmental Protection in Cameroon), in which CED was a partner. A total of 120 paralegals from all over the southern forested province of Cameroon received three months' training spread out over two years (1996-1998). The programme focused on forestry law and regulations and the benefits and opportunities they offer local communities, with detailed work around means of accessing community forests and the portion of logging taxes allocated to communities.

The most obvious impact of this phase was to significantly improve local people's self-confidence in their dealings with the local administration and private companies.

Paralegal training for members of the communities living along the pipeline began in 2001, in order to help local people monitor the environmental and socio-economic impacts of its construction. The training programme covers issues related to the content of the various World Bank-approved plans for the project, mainly focusing on the Compensation Plan and the IPP.

**MAP 2. BAGYELIS' LAND USE INSIDE THE CAMPO-MA'AN NATIONAL PARK**



The task of the ten paralegals trained in the area covered by CED is to gather information on alleged violations of these plans so that its lawyers can decide on what can be done to remedy the situation.

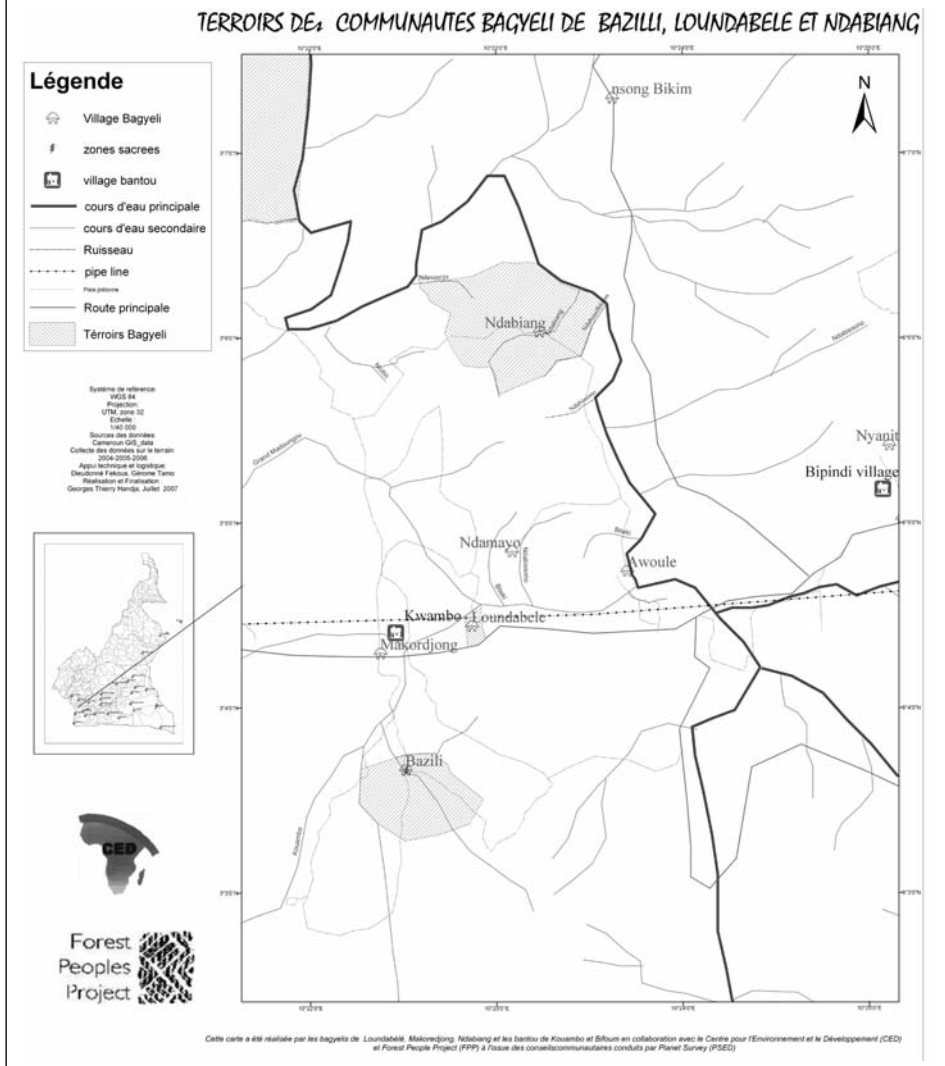
The main challenges facing the programme arose from the complexity of the forestry laws and regulations and their links with other branches of legislation in Cameroon, and the rapid development of illegal logging at the end of the 1990s, which increased conflict between local communities and the loggers and their protectors within the administration. As the paralegals lacked the capacity to deal with such complex problems and their associated risks, a “junior lawyers” training programme was set up in partnership with the Rainforest Foundation: the Community Legal Field Workers (CLFW) project, which is now in its second phase.

Its aim is to train young, inexperienced lawyers who have recently graduated from the Faculty of Law. The posts are widely advertised, and in the first, pre-selection stage of the process, particularly close attention is paid to the applicants’ motivation for working in rural areas – an unusual environment for lawyers. Candidates who pass this first test are invited for a month-long initial training session to familiarise them with the rural setting, forestry legislation and indigenous peoples’ law, and to enable the team to get to know them. At the end of the training successful candidates are split into two groups: those in the first, larger group are allocated to a partner NGO with a contract until the end of the project; while the smaller group stay in the CED office in Yaoundé, where they operate as a mobile team going into areas not covered by project partners. The programme has ten paralegals at the moment, three of whom are in the mobile team.

The junior lawyers in Yaoundé are supported by two more experienced lawyers, who organise documentary research and assist them in their activities. Every month, one of the senior lawyers spends a day in the field with a legal field worker, reviewing what has been done in the past month, what is planned for the near future and offering legal and strategic advice. The junior lawyers get together for a week once every three months to discuss their experiences and get advice from the senior lawyers. They are sometimes joined by people from outside the team.



### MAP 3. TRADITIONAL LANDS OF BAGYELI INDIGENOUS COMMUNITIES



At the beginning of their contract it is impressed upon junior lawyers that they are: (i) at the service of the local NGO that employs them, and that they work for the local communities; (ii) that they should see themselves as community lawyers, and as such, are bound to act in the interests of the community (their client). They receive a salary, which is paid by the project through the local NGO.

The project has been going for five years now, and is considered a success. A total of 16 lawyers have been trained and have gained experience in

supporting forest communities. Getting the junior lawyers to work with the paralegals has proved very successful in identifying and characterising problems. The paralegals have a good knowledge of the context, while the junior lawyers know more about the law and therefore command greater respect from the local administration and industrial operators.

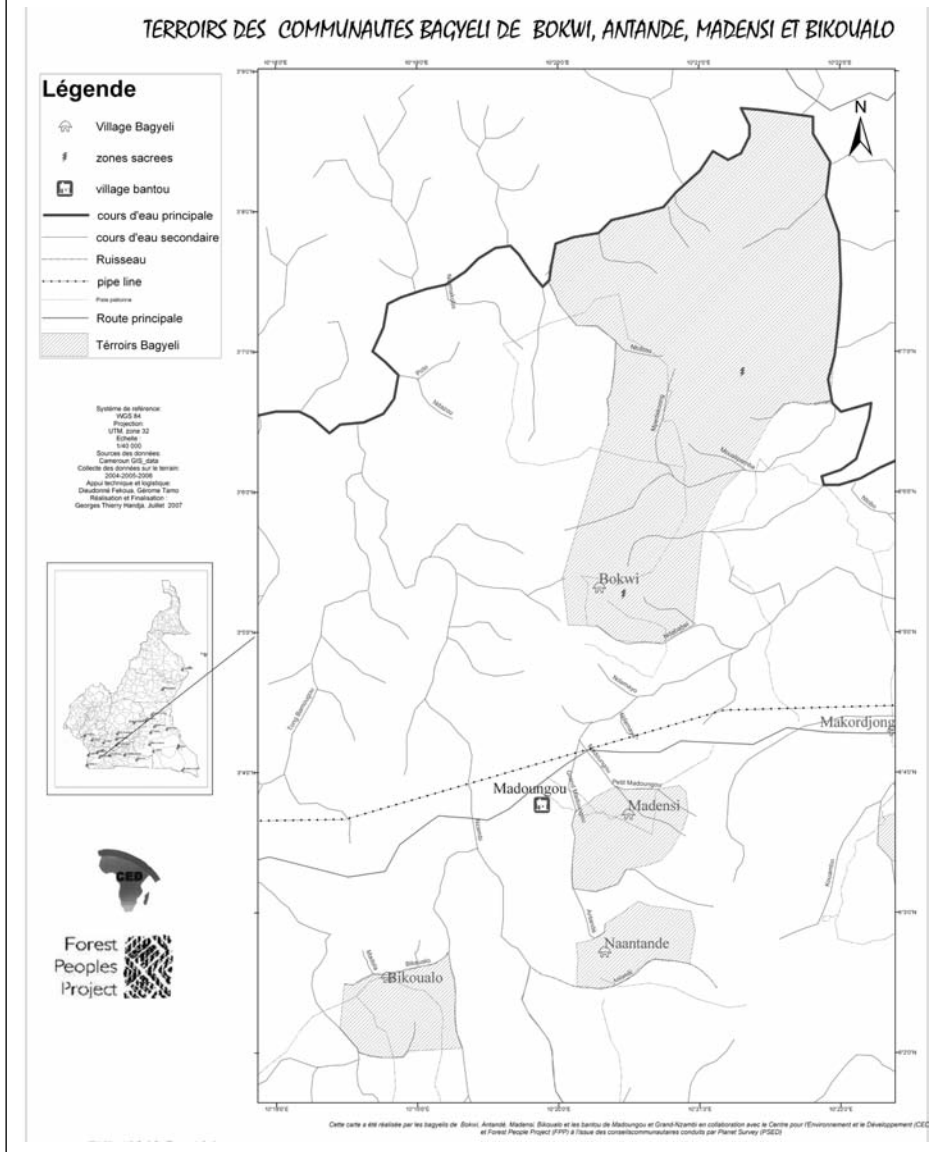
Recent training (formal and informal) for junior lawyers focused on the following issues:

- Evaluating the likely outcome of cases brought to their attention
  - When should the law be used?
  - When should they consider other means of putting pressure on those who infringe communities' rights?
- The voluntary norms applicable to companies and conservation agencies (various codes of conduct to which certain companies operating in Cameroon subscribe; conservation agencies' internal policies, especially regarding social matters)
- Alternative modes of recourse over violations of rights (the World Bank Inspection Panel, OECD complaints procedure, means of recourse offered by timber certification bodies)

Lawyers working with communities along the pipeline have helped identify the two main problems discussed in the case study. They started publicising land issues along the pipeline back in 2000 when construction began (as noted in a study conducted in 2001 by the British NGO Forest People Programme, FPP). In 2003, a project was jointly set up by three NGOs – FPP, Planet Survey and CED – to look into land issues with indigenous communities. The first phase consisted of mapping their lands and traditional land uses in what used to be Bantu lands. This involved training individual members of the community to use global positioning system (GPS) so that they could gather the data themselves and then pass them on to CED's professional cartographers to be presented on a map.

Once the maps had been drawn, project teams drawn from the three partner organisations facilitated negotiations between Bantu villages and indigenous communities. After several months of negotiation, an agreement was reached whereby the Bantu villages transferred their customary ownership rights to the

## MAP 4. TRADITIONAL LANDS OF BAGYELI INDIGENOUS COMMUNITIES



indigenous communities that they shelter, and agreements were signed and ratified by the local administrative authority. This is the first time that any indigenous groups in the Congo Basin have been granted land rights, free of charge, through a consensual process involving Bantu and the local administration. The process has been documented and will be replicated elsewhere in Cameroon and neighbouring countries.

Regarding the rights of access to land and resources in the national Park of Campo-Ma'an, it should be noted that the management plan was prepared without taking account of the rights and interest of indigenous communities, in contravention of the 1994 forestry law. Despite consultations between WWF and the Park conservation services on the one hand, and the indigenous communities concerned on the other, the management plan was not modified. Faced with the management's reluctance to take account of the indigenous communities' particular circumstances, a participatory mapping exercise was undertaken to identify their traditional land uses within the Park. When this failed to change the park managers' stance, CED lawyers petitioned the World Bank to get it to enforce its operational directive OD 4.20. The management plan had already been approved by the Minister of Forestry when the petition was filed with the World Bank, which then had to remind the administration and its partners of the need to respect the government's contractual obligations when it approved the pipeline project in June 2000. The management plan was subsequently reviewed, and now includes provisions allowing indigenous communities to pursue their activities up to 5 km into the Park.

This map shows the total area used by indigenous communities in and around the Campo-Ma'an National Park. The original management plan clearly banned human activities inside the Park, but was amended on the basis of the map and now recognises indigenous people's rights. This the first time that communities have been allowed to carry out activities in any national park in the Congo Basin, in what CED hopes is a precedent that will be followed in other locations.

## **LESSONS LEARNED**

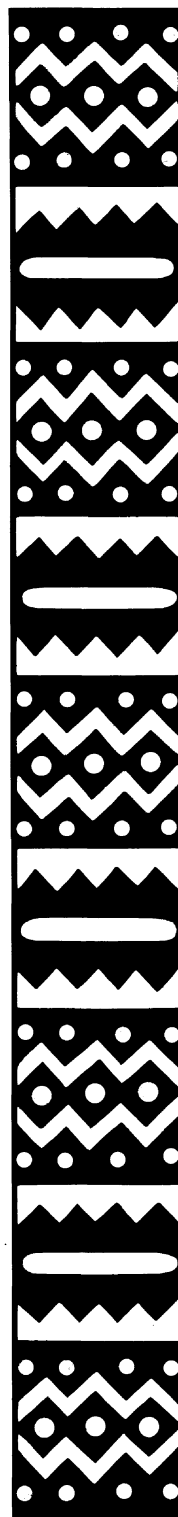
The lessons learned from these experiences using the law as a means of promoting and securing indigenous communities' land rights in southern Cameroon are summarised below:

- There is a proven need for local legal services in the forest communities of Cameroon, especially in areas that are rich in natural resources. The presence of foreign investors and conservation agencies in these areas has significantly restricted local communities' rights of access to land and resources.

- Paralegals can often deal with the legal problems facing these communities, which tend to relate to simple procedures or information about their rights and responsibilities (birth and death certificates, weddings, ID cards, applications for community forests, registering associations and cooperatives, information on communities' and individuals' rights and duties under various laws and regulations). The paralegals' knowledge of the context is often an asset, and can considerably reduce intervention costs.
- The complexity of some of the situations involving local communities and external actors calls for jurists with a solid legal background, who are also better able to resist threats by companies and local administrations as they can be transferred to other project sites.
- Junior lawyers and their senior supervisors are better equipped than paralegals to find the best way to win a case, which may involve using non-legal tools such as negotiations or campaigns.
- The cost of hiring a lawyer (even a junior one) is still high by rural communities' standards, making this a luxury they cannot afford without support from a project. The inaccessibility of legal services reinforces local power imbalances between the communities on one side, and all the external actors on the other (the local administration, mining and logging companies, conservation agencies, industrial plantations).
- Mapping is an important tool in identifying local and indigenous people's land rights. Maps provide evidence of traditional land uses and rights, and are difficult to contest. Private companies and conservation agencies sometimes have maps, but these only show the resources that they are interested in, and are not prepared in a participatory manner. Furthermore, they cannot provide a satisfactory response to the injustices revealed by certain community maps. Community mapping increases local people's self-confidence, as they are proud of what they have achieved (it is their map), and command more respect from the local administration, private companies and international NGOs when they have these maps.

## **5. PARALEGALS AS AGENTS OF LEGAL EMPOWERMENT IN THE BANKASS AREA OF MALI**

Boubacar Ba



## **INTRODUCTION**

This chapter describes the experience of a capacity-building programme in the Bankass district of Mali, whose objective was to secure herders' access to pastoral resources by training paralegals to work on the legal empowerment of social groups such as pastoralists.

The aim of the programme was to redefine relations between political and social actors by helping pastoral communities improve their basic knowledge of pastoralism, increasing their understanding and ability to claim their civil, political, economic and social rights, and promoting the pastoral production systems on which their livelihoods depend.

## **CONTEXT OF THE INTERVENTION**

Bankass is one of eight districts in the region of Mopti, the fifth region of Mali. Located south east of the town of Mopti, between the Bandiagara escarpments and the Burkina Faso border, Bankass covers some 9,504 km<sup>2</sup> and includes 280 official villages. With a population of 203,600 inhabitants (average density 21 hab/km<sup>2</sup>), the main ethnic groups in this district are the Fulani, Dogon, Dafing, Bobo, Samogo, Tamashek and Bozo. Bankass covers three agro-ecological zones: the Plateau, the Seno and the Samori.

Livestock rearing is a key element of local livelihoods. It requires access to pastoral resources, but this is becoming increasingly problematic due to the growing amount of land under cultivation. The situation is aggravated by (i) a food security policy based on agricultural expansion, which is visibly reducing the amount of useful and usable land available for pastoralists; (ii) local power relations that are generally unsympathetic to livestock rearing; (iii) a growing number of conflicts, which tend to be resolved in ways that are unfavourable to pastoralists; and (iv) herders' limited access to justice, due to the fact that there is only one court of law for the whole district of Bankass.

On the whole, the legal framework in Mali is not designed to protect pastoral groups' rights to resources. The 2000 Land Law is mainly geared towards agricultural lands and the notion of "productive" land use, which creates a number of problems for pastoralists. Nevertheless, recent developments have given them new cause for hope, for with the adoption

of the Pastoral Charter in 2001 and its decree in 2006, Malian legislation recognised the importance of livestock mobility and the concept of “productive pastoral land use”.

In a parallel development, the framework law on agricultural land use (LOA) adopted in 2006 recognises transhumance as essential to the exploitation of natural grazing lands, and the need for local land management plans to take it into account. Furthermore, the decentralisation process that began in 1992 gives rural populations the opportunity to influence local development initiatives, claim their rights and defend their interests.

The Pastoral Charter, the LOA and decentralisation represent three promising developments for pastoral communities. Legislation that recognises the interdependence between agriculture and livestock rearing opens the way for development plans that take account of pastoralist systems. However, pastoralists often know next to nothing about their rights and have very little control over decisions about the development of pastoral areas – largely because so many pastoralists are not literate and therefore do not get involved in the actions led by associations and cooperatives. Pastoral communities and other disadvantaged groups are poorly represented within decentralised institutions, and are rarely consulted on policy and local development planning issues.

## **THE INTERVENTION**

This chapter is an account of an attempt to address these challenges, which began with a “pilot” collaboration in 1999-2000 between two Malian NGOs, Sahel Eco and Eveil. Eveil was initially approached and asked to train ten paralegals in the district of Bankass. The pilot scheme was scaled up in 2003, when the two structures entered a partnership agreement to implement a longer-term programme, with Eveil managing a component focusing on literacy training and civic education. This broader, longer-term programme was supported by Comic Relief in the UK.

The programme objective was to strengthen the capacities of pastoral communities and civil society organisations in the Mopti and Bankass districts, to enable them to play an active role in the process of decentralised development and make sustainable improvements to their livelihoods, by:



- Improving local people's basic knowledge.
- Increasing their understanding of and ability to claim their civil, political, economic and social rights.
- Strengthening their capacity to defend and promote the pastoral production systems on which their livelihoods depend.

The main strategy for achieving the second aim was through the literacy training and civic education component, which centred around training paralegals from pastoral communities.

Paralegals are local people who have learned about legal concepts and citizenship, and work on a voluntary basis for the communities in which they live. While they have an understanding and grasp of the basic tenets of the law, they are not professional lawyers. The concept of paralegals is not (yet) accepted and legally recognised by positive law in Mali.

The training is designed to ensure that paralegals have the writing skills and knowledge of pastoralism and civic rights and responsibilities to enable them to disseminate information on legal concepts and notions of citizenship, advise citizens on which routes and legal procedures to follow when the need arises, and help village chiefs resolve and/or prevent legal conflicts. Their intervention methods mainly entail careful listening, situational analysis, consultation, interaction and seeking consensual solutions to difficult situations: in short, modes of alternative conflict resolution. The paralegals working in the Bankass area have been asked to help find amicable solutions to conflicts over land, damaged crops and agricultural use of pastoral land, as well as marital, succession and inheritance disputes.

The practical methods used to implement this programme are described below.

## **TOOLS AND METHODS**

### **Training: on awareness raising through literacy training**

The first stage consists of training paralegals in an approach that combines awareness raising with literacy training, helping them acquire a critical awareness of their rights and the values established by society, and the capacity to manage difficult situations.

Eveil was inspired by the methodology of the Brazilian educationalist Paulo Freire, who believes that teaching skills and education are a means of liberating and educating the oppressed. Eveil has taken this learning process and vision, which respect humans as active and creative beings rather than passive subjects, and adapted them to an intervention zone where the main target group are pastoralists.

The training on awareness raising through literacy training is built around 14-day modules delivered in the local language, Fulfulde. Training manuals and a range of tools are employed, particularly participatory action research (PAR) tools like Venn diagrams, participatory calendars and illustrations. The training themes include practical knowledge of the law (access to justice, learning about local authorities, the role and functions of paralegals, alternative conflict management) and pastoral systems (issues, herds, pastoral resources).

Trainee paralegals are selected according to precise criteria that are designed to include, engage and motivate all social groups (youth, women, etc.). The training is based on a number of principles:

- A structure that is capable of delivering a high quality, flexible system of informal education that can accommodate diversity and is adapted to a context of social democratisation.
- Incorporating a professional qualification component in the youth and women's education programme.
- Using a system that includes alternative training methods to take account of different levels of learning.

- Reinforcing the best innovative teaching practices to address local people's concerns, through recourse to increasingly autonomous local training resource persons (known as *ya npinal*).
- Establishing new informal, community-based teaching methods that take account of alternative educational models.

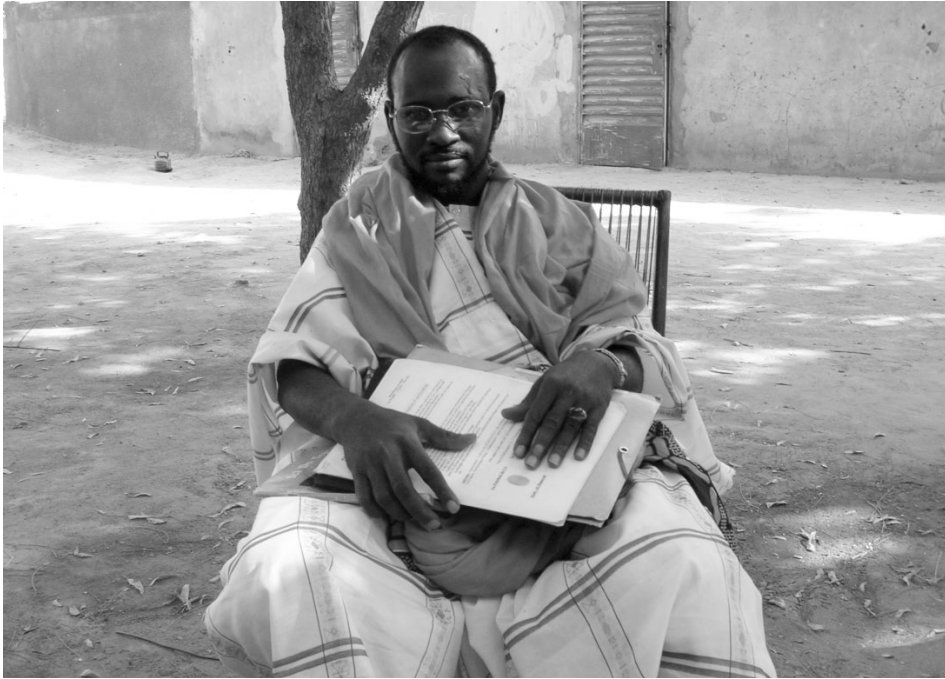
Having attended several training sessions over three or four years, the paralegals have opened learning centres in their respective villages and documented their knowledge in Fulfulde. They have also gained from sharing their experiences with paralegals from other areas and benefited from advice from the judiciary services.

Eveil is now gradually disengaging from the training process and the paralegals are becoming increasingly involved in community and village structures, assuming the role of trainers within their communities. Eveil is responsible for supervising them through a code of conduct agreed at the outset of the process. With the advancing process of democratisation, the paralegals are doing more and more for their communities, particularly the village chiefs, who will be responsible for monitoring their actions on the ground.

### **Support for community organisations**

Although the training described above is very important, another key element of the programme is supporting the emergence of community-based herder organisations that are able to defend the interests of livestock rearing and support lobbying at the local level. This is vitally important for the future of pastoralists, who need to be able to respond to ongoing changes in the way that herders are represented on the structures that support and defend collective interests.

New pastoral organisations are emerging as a direct result of the process of civic education facilitated by Eveil. In an iterative process that demonstrates the pastoralists' capacity to adapt and innovate, the paralegals have proved their ability to support new initiatives by pastoralist groups: assimilating the knowledge acquired through the training and awareness raising, establishing working relations with community leaders through discussions and dialogue, and now acting to support emergent pastoralist organisations in the area.



Eveil

*Paralegal Mody Diagayété*

In November 2005, the predominantly pastoralist participants in the awareness raising through literacy trainings held a general assembly for herders, which was attended by representatives and officials from 22 associations. With support from the Chamber of Agriculture, Sahel Eco, Eveil, representatives of the technical agricultural and livestock rearing services, the administration, the security services and elected municipal officials, the Bankass district herders' committee COPE was born.

COPE was set up by like-minded pastoralists who understood that the fight to protect their rights and defend pastoralism requires concerted action, and that this can only be achieved if herders actively address the challenges to pastoral development in the Bankass area rather than passively submitting to them. At present it is the only genuine, recognised herders' committee in the Mopti region with a proper structure, statutes and internal regulations, and elected officials.

It has four working commissions dealing with animal health and nutrition, problems related to pastures, integrated agriculture and livestock rearing, and inter-communal and trans-border transhumance.

In 2006 COPE held a meeting with its partners to formulate a four-point action plan that included:

- Training and education for pastoralists.
- Pastoralist production, with support from the municipality in identifying and managing transhumance routes and camping areas in pastoral zones.
- Animal production (raising herders' awareness of livestock treatments, including tackling parasites; municipal support in constructing and equipping animal production infrastructures such as livestock markets, vaccination pens, milk production and processing units, a poultry market; support in supplying herders with livestock feed; cattle and sheep conditioning).
- Advice and support; measures to prevent livestock thefts, brush fires and illicit pounds, and to encourage payment of land taxes.

Several initiatives are now under way to implement this plan, such as:

- Community-based training, using the same tools and methods as those employed by Eveil in its training of trainers. In 2006 COPE officials received training on their roles and responsibilities and sessions were run for paralegals and village chiefs.
- Organising periodic meetings of pastoralist groups to promote collective reflection on the challenges they face, and formulate strategies to improve their situation.
- Encouraging consultation between different actors, particularly herders and farmers, to find ways of intermediation and cohabitation. This was mainly done via local agreements on natural resources (notably through an intervention in the rural municipality of Baye in 2006). In partnership with the municipalities of Diallassagou, Bankass and Baye, COPE also worked on the restoration of transhumance routes that had been colonised for agricultural purposes.

### **Conflict resolution and mediation**

The conflicts recorded in the Bankass area illustrate the thorny problem of cohabitation between two communities (pastoralists and farmers) with

different visions of how agro-pastoral lands should be exploited. Pastoralists here invariably end up on the losing side in the many disputes that flare up over resources.

Analysis of the issue shows that the two groups' production systems are based on completely different underlying logics. The literature on the subject tends to concentrate on the sequential analysis and sociological implications of conflicts between herders and farmers, with no real debate about recent changes in the way that the two groups exploit pastoral and agricultural resources.

This focus on the social aspects of the crisis ignores the real danger created by the lack of consensual intermediation processes in the institutions responsible for regulating the management of agro-pastoral resources. Conflicts typically involve various actors: agents from the technical livestock-rearing and agricultural services, the administration, the judiciary and sometimes politicians. With corruption rife, the real actors are often overlooked, and disputes relating to the interpretation of local customs that are brought before the administration or the courts are rarely resolved equitably.<sup>16</sup>

Conflict resolution is one of the main priorities for the paralegals supported by Eveil. Between 2005 and 2007, around 40 conflicts were resolved with the help of 20 paralegals (13 men and seven women). An important entry point for this aspect of their work is the village chiefs' powers of conciliation and mediation in civil and commercial disputes (divorce and customary land disputes, conflicts between herders and farmers).<sup>17</sup> These powers require the village chiefs to attempt to find an amicable solution to every conflict that is brought before them. When a solution is found, it can be documented and then ratified by the judicial authority.

Paralegals act as counsellors to the village chiefs, giving them the advice and support they need to deal with the cases brought before them. There is a certain complementarity between the paralegals, whose training equips

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16. See Benjaminsen and Ba (forthcoming).

17. Article 63 of the local government code specifies that village chiefs "are responsible for enforcing laws, regulations and decisions of the municipal authorities". Article 65 of the same text adds, "they are responsible for maintaining peace, public order and civil protection in their community", and Article 68 stipulates that "they are invested with the power of conciliation in civil and commercial matters according to customary rules".

them with basic knowledge of the law, conflict resolution and various pedagogical tools, and the village chiefs, whose legal and social legitimacy give them an important role in resolving local conflicts.

In addition to supporting village chiefs in their role as conciliators, the work on conflict resolution also involves collaboration between the paralegals, COPE and other local institutions that play a role in mediation – particularly the municipalities and the Chamber of Agriculture. The three examples below illustrate the role that paralegals and COPE have played in conflict resolution.

In 2006, COPE helped resolve a conflict between some brothers in the municipality of Dimbal (Bankass district), with support from Bankass District Council, the Chamber of Agriculture and various opinion leaders. These brothers had farmed a plot of land together amicably enough until one of them tried to expropriate the others' share. The matter had already gone to court when COPE and the Bankass Chamber of Agriculture organised a meeting so that all the protagonists could get together and try to resolve their differences. An amicable solution was reached, a memorandum of understanding drawn up in Fulfulde was presented to the court, and it was agreed that the family units and CBOs would negotiate a settlement. Thus, the matter was resolved and peace re-established within the families.

Another conflict had arisen after the mayor of Bankass allocated a parcel of land to local butchers so that they could build an abattoir. As it was located on a livestock corridor, herders protested that it obstructed their passage, ignored their rights and did not constitute consensual management of pastoral resources. In this case, COPE set up a dialogue with the butchers' association and the mayor of Bankass, and after several meetings to discuss the location of the site, it was agreed that the mayor would allocate the butchers' association another plot off the livestock corridor. The conciliation was minuted and signed by the various parties concerned (representatives from COPE and the butchers' association, and the mayor of the municipality of Bankass).

A third example of conflict involved damaged fields in Ogodiré, in the district of Bankass. Two herders from the village of Jiwagou had let their animals graze in a field belonging to a farmer from Ogodiré, who caught the animals and took them to the Bankass pound several kilometres out of the village. The two herders got in touch with COPE through a paralegal,



Eveil

*Paralegal Boubou Tall*



Eveil

*Paralegal Fatoumata Diallo*

who assessed the situation and asked the mayor to meet with all concerned to seek a consensual solution. The farmer whose field had been damaged was asking for 200,000 francs CFA in compensation; COPE's representative suggested 50,000 francs CFA as a more proportionate figure, and an amicable solution was reached after various exchanges between the farmer, the two herders, COPE's representative and the mayor of Bankass. This was minuted in Fulfulde to endorse the agreement.

## **ACHIEVEMENTS AND CHALLENGES**

The literacy training and civic education activities have had a profound effect on the pastoral community in the area. Some participants who were reticent at the start of the training developed an aptitude for public speaking and have gone on to play a much more active role in decisions affecting the life of their community. The changes in social roles and attitudes are particularly striking among the women trainees, who are now respected members of health and well management committees or associations for the parents of schoolchildren. One such example is Fatoumata Diallo from Bankass, who has not only become a paralegal, but is also responsible for managing the solar energy platform in the town of Bankass, monitoring street lamps and collecting subscriptions.

By discussing and explaining the logic behind mobile pastoral production systems, the training module on pastoralism has not only helped restore herders' confidence in practices that they had increasingly come to



## **BOX 1: TESTIMONIES**

**Fatoumata Diallo**, a paralegal in Bankass, helped set up the Sudu Kossam milk producers' association in 2000. She recalls, "After the training on legal and pastoral issues, I helped convert the association into a 65-member milk production cooperative. Only two members could read and write in Fulfulde when the group was set up, but seven women in the co-op can read and write now (...). Since then, there have been fewer internal arguments over leadership and management. The cooperative has helped us increase milk production and sell our produce." Fatoumata has also taken up community health work, which includes vaccinating children, and helps raise other women's awareness about registering birth certificates, educating girls and early marriage.

**Mody Diagayété** is a member of COPE. "I started going on transhumance when I was 17 and I've been every year for the last 13 years. Some say I'm one of the best herd owners (...). Transhumance is really tough, because the wealthiest pastoralists who are protected by the security forces and the administration can drive the weaker ones off the pastures. There's a lot of rivalry between herders over matters of honour and prestige. It's every man for himself. We used to be really disorganised, constantly fighting with farmers and losing out to them. When one of my cousins was killed following an incident with some farmers in 2002 (...) I decided that something had to be done. I realised that I had to learn so that I could understand my relationship with this hostile environment and act to change my situation. I tried to set up a herders' association called Waldé, but it didn't come to anything because I didn't know enough to make it work. That made me determined to find a way through. The paralegal training and my knowledge of the issues surrounding pastoralism in the Sahel gave me the strength and ideas to act, and things have really developed from there."

**Boubou Tall** is a member of the Bankass herders' cooperative. He explained his commitment to the cause. "Pastoralism is in my blood. I'm 37 now, but I started following in my ancestors' footsteps when I was 11. Like them I raised livestock the traditional way, knew nothing about my rights and suffered all kinds of harassment. I didn't know how to get organised. I used to take my livestock on transhumance (...) in Burkina Faso and the Delta. In 1991 we were on transhumance in the district of Douentza. We were watering our cattle at a pool there and some of them wandered off and grazed on a few rice stalks left over after the harvest. The owners of the field told some passing policemen and they waded in and tried to arrest us. They tied up the herder who resisted most, took him off to Sevaré and made us pay a 150,000 francs CFA fine without giving us a receipt. It's very hard to live alongside the farmers, and we get picked on by the administration and the

security forces too. I kept thinking that there must be a solution, and decided that the time had come to learn about pastoralism – it's always been my livelihood, but I actually knew nothing about it. I also understood that I had to learn about my rights, because the only difference between me and the people that were oppressing me was that they were educated and knew how to read and write.”

question, but also legitimised their way of life in the eyes of local officials (herders or otherwise), who are often very critical of the supposed consequences of livestock mobility. Bringing together these two target groups in a setting where they can learn about and come to understand each other is the best way of getting pastoral issues higher up the local governance and natural resource management agendas.

The three years of training on citizenship and pastoralism in the Sahel has also significantly increased the self-confidence and self-esteem of the trainees, and raised their standing in their communities. All report that they are no longer afraid of standing up to the authorities with which they work, and that they wish to participate in the decision-making bodies of community-based organisations and the deliberative organs of rural municipalities such as Baye, Diallassagou and Ouenkoro. The process of group learning has fostered a spirit of critical analysis and initiative among these pastoralists, which translates into a willingness to get involved in activities to improve their production and living conditions.

The dynamic created by the number and diversity of trainees has encouraged the emergence of various umbrella organisations, which are better able to coordinate efforts and represent herders on local and higher-level decision-making bodies. The aim is to build their capacities before the end of the project cycle, as in the medium- and long-term they should be the main interface between the technical and administrative authorities on all aspects of local governance and resource management. This will go a long way towards reducing the stigmatisation of herders (particularly mobile herders) and ensuring that decisions about the economic and social life of their community better reflect their specific concerns.

The authorities and local leaders that have been able to attend the training now have a better understanding of the issues involved in extensive livestock rearing systems, and are more sensitive to the problems associated with

mobility and access to pastoral resources. As a result, some of them have become the herders' strategic allies, pleading their cause on decision-making bodies and sometimes even supporting their efforts to resolve their problems.

The forty recorded cases of conflicts resolved through this programme (including the examples cited above) show that it is having a significant impact and contributing to the start of more peaceful co-existence between herders and farmers.

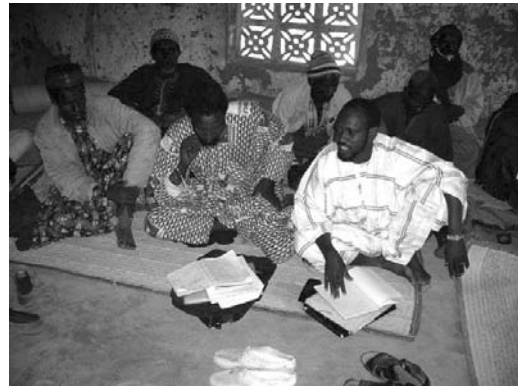
After several years of intervention, herders' organisations are becoming increasingly active and communities are waking up to the need to defend their interests within a legal framework. The paralegals have established their credibility with the local authorities, and now have the capacity to develop tools that can be applied on the ground and start lobbying to address the weaknesses of the pastoral system at the national level.

There have also been major changes at the organisational and institutional levels. As emerging actors in civil society, the paralegals' actions have shown that progress is being made in securing legal protection for citizens' rights and pastoral resources. Their work has helped improve knowledge about pastoralism, defend pastoralists' rights in a changing world and disseminate knowledge about legal texts (the Pastoral Charter, the framework law for agricultural land use, alternative conflict resolution, inter-community consultation, community-based pastoral organisations, etc.). The programme has also helped promote a lobbying strategy for herders' groups involved in pastoral resource management, and reinforce teaching through literacy training and a strategy of encouraging paralegals to become autonomous agents acting within and on behalf of the pastoral community.

However, while considerable progress has been made, a number of challenges still need to be addressed. First, there is the paralegals' lack of capacity: despite their training and the experience they have gained in the field, they are herders whose education is generally limited. Furthermore, their ability to influence local decision-making processes is restricted by the fact that decisions made at both local and national levels still tend to favour agriculture over livestock rearing.

The second challenge relates to the way that certain village chiefs view the paralegals working within their communities. Some feel undermined by

this initiative to train selected herders as paralegals, suspecting that their traditional power base and position as local authority figures are being eroded. In the municipality of Ouenkoro, for example, the chief of one Fulani village initially felt threatened by the paralegal and made it difficult for him to do his job. The paralegal went to see if the mayor could help,



Boubacar Ba

*Training of paralegals and pastoral organisations in Mali, organised by EVEIL*

and once it had been explained to the village chief that the paralegal was working with him rather than against him, he was able to take up his role in the village. The municipality subsequently organised training with the paralegals for all the village chiefs in the municipality. This covered the village chiefs' role in decentralisation and helped clarify the roles and responsibilities of village chiefs and paralegals in conflict resolution, opening the way for more collaborative relations between them.

## **LESSONS LEARNED**

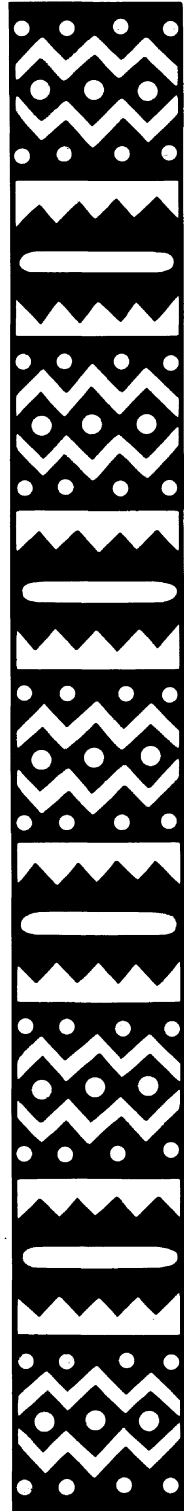
Several lessons learned from this programme could have broader relevance. The first is recognising that legal empowerment is a long-term process, requiring sustained investment over an extended period. The programme started as a “pilot” in 1999-2000, was expanded in 2003 and only saw the first meeting of COPE in 2006, after several training sessions and a significant amount of time and energy had been invested in developing training tools. Most of the concrete work on conflict resolution began in 2005, and the outcomes described here are only preliminary results, since the concrete impacts of the increased capacities and confidence generated by the programme can only be assessed in the long term.

Second, the programme demonstrates the importance of a holistic approach. The training is important, but not sufficient in itself: it must be accompanied by other actions, such as organisational capacity building for

the associations representing herders' interests, and by concrete actions like support for conflict resolution. Similarly, stand-alone training on legal topics is of limited value in contexts characterised by low levels of literacy and limited capacity – hence the importance of combining civic education with literacy training and training on pastoralism. This holistic approach requires motivated paralegals on the one hand, and backstopping by support structures such as Eveil and Sahel Eco on the other; not forgetting, of course, acceptance by community leaders and the local communities themselves.

## **6. LEGAL EMPOWERMENT TO SECURE AND USE LAND AND RESOURCE RIGHTS IN MOZAMBIQUE**

Carlos Serra Jr and Christopher Tanner



## INTRODUCTION

An innovative training programme implemented by the Centre for Legal and Judicial Training (CFJJ)<sup>18</sup> in Maputo with technical assistance from FAO is redressing the profound lack of knowledge amongst ordinary Mozambicans about how to use their legal rights to land and natural resources, and how to access the formal legal and judicial system to defend these rights when they are threatened.

The project grew out of FAO support for the Interministerial Commission for Revision of Land Legislation (“the Land Commission”). After the new Land Law was approved, it was clear that most public administrators and land managers were poorly equipped to deal with a community rights approach. Training the judiciary would provide some guarantee that the new laws would be correctly implemented, but in the meantime, implementation of the Land Law was failing to address key areas of the law, notably the community rights aspects. CFJJ-FAO research into conflicts over land and resources showed that local people did not know how to use and defend their rights in practice, and that the mandatory “community consultations” designed to protect local rights were failing to do so, and were of little benefit to communities that cede their rights to investors. In fact, as rapid economic growth increases the demand for land, *consultas* are often used by executive agencies to provide a cosmetic screen for land grabbing.<sup>19</sup>

Local people also have little idea of how to use the legal system and the courts to protect their rights when threatened. By training paralegals, the project provides civic education and legal support to communities and ordinary citizens so that they can exercise and defend basic rights over land and resources. It also conducts seminars to promote new attitudes and thinking amongst public office holders, many of whom know little about the laws they are trying to implement or, more importantly, how to use them to secure their own development objectives.

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18. The CFJJ comes under the Mozambican Ministry of Justice and has two broad mandates: to provide high quality professional vocational training for new judges and public prosecutors; and to promote access to justice in the broader sense.

19. See Tanner and Baleira (2007); and Tanner (2005).

## THE CFJJ-FAO PROGRAMME

Since 2001, FAO has helped the CFJJ create an environment and natural resources programme and build a national reputation as a respected point of reference in the field of environmental and related natural resources legislation. The first CFJJ project (Support to the Judiciary in the Area of Land, Environment, and Forest and Wildlife Legislation) informed existing judges and public prosecutors about new laws that had been approved in the mid-to-late 1990s, which introduced several innovative legal instruments into resources management. A total of 191 district and provincial judges and prosecutors were trained, around 25 percent of whom were women. The project also produced and published manuals and legal commentaries to help legal professionals implement the laws in a practical context.

Impact evaluations concluded that the project had succeeded in providing “practically every judge and prosecutor in the country with the raw material they need ... to work more effectively in practice”.<sup>20</sup> However, it was also necessary to ensure that “judges and prosecutors understand that they have an enormous social responsibility, that they must act proactively to establish new forms of conflict resolution, guaranteeing an application of the laws that can bring into being and maximize the expected results”. This led to a recommendation to invest in training that would “change existing paradigms ... to encourage a change in behaviour in each member of the judiciary and the Public Ministry<sup>21</sup> and thus promote institutional change”.<sup>22</sup>

A study in 2004 confirmed the need for this kind of programme.<sup>23</sup> Case studies of conflicts between communities and the outside world (notably new investors) revealed the dominant role of local and provincial administrations as both causes of conflict and (often ineffective) resolution mechanisms. Administrators and politicians assume a judicial role, applying their own interpretations of laws that they do not fully understand, while public officials and civil servants in general violate basic constitutional

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20. Quote from the 2005 impact study. See Tanner (2005:14).

21. A watchdog and oversight function of the Attorney General's office, overseeing the application of all laws.

22. Zelia Maria Mendonça, quoted in Tanner (2005:14).

23. Baleira and Tanner (2004).



principles on an almost daily basis as they do not appreciate the importance of the Constitution in a country that is building democracy and the rule of law.

The study also showed that most people know nothing about the Constitution, and that despite admirable efforts by NGOs, their understanding of legal rights is very weak. Citizens have serious problems accessing justice, especially in rural communities. Very few know how to find support to resolve conflicts, and most people make no distinction between the State, government, the courts and the Public Ministry/Attorney General. They rarely choose the judicial path to defend their legally protected rights and interests. This huge vacuum in ordinary people's perceptions of their basic rights results in an inability to exercise rights acquired through the land and other laws, or defend them through legal action.

## **DECENTRALISED LEGAL SUPPORT AND TRAINING**

The current CFJJ-FAO programme has two key components:<sup>24</sup>

- Training paralegals to provide civic education, legal advice and practical support at community level.
- Seminars for district officers from different branches of the State (administrators, judges, public prosecutors, police chiefs and directors of economic affairs).

These two components address the issues identified in the 2004 study from two angles. At the local level, trained paralegals tell people about their rights and how to use them to improve their daily lives. They also explain what prosecutors and judges can do to uphold and protect local rights, *creating demand for a better response from the judiciary and administrators alike*. At district level, seminars look at the role of each branch of the State and the constitutional rights of citizens, and clarify grey areas of the land and natural resources laws, creating a *better capacity to*

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24. Other components are discussed briefly below.

*respond to the new demand created by the paralegal support.* The objective is not simply to resolve conflicts, but also to show people how to use these new laws to promote *equitable and sustainable development*. Mechanisms like community consultation can be far more effective if local people know that they have real choices and some degree of control over the process.

### **Paralegals**

Paralegals trained by the project have a role similar to those in South Africa, where they work with communities to “both fill the gap regarding legal education of the population and to help communities access justice” (Hill, 2008). Most trainees are “middle technicians” (*técnico médio*) with secondary education and practical experience of working on rural and community development. The courses are run at provincial level and cover the whole country. As well as dealing with land and resources issues, they have an important governance aspect, addressing the issue of basic rights and how to use and defend them. Paralegals completing the course should be able to carry out four functions:

- Mobilisation and advocacy
- Civic education
- Giving practical legal advice
- Providing legal support.

The course methodology is based on previous FAO Land Commission experience. Each course has one week of intensive classroom training followed by a week of fieldwork in selected communities and an interactive “lessons learned” assessment. Classroom training opens with a discussion of the State, the Constitution and citizens’ rights, before moving on to the main features of the principal natural resources laws. A module on rural citizenship looks at how to exercise rights to achieve equitable and sustainable development. The course then considers what happens when things go wrong, looking at constitutional and juridical guarantees and examining strategies for dealing with conflict. These start with extra-judicial options like mediation, and end with the role of the judiciary and how to defend natural resources rights in court.

The class is then split into small groups that are accompanied by a CFJJ trainer. Each group visits a community where there is real or potential conflict and works with local people, explaining their rights and discussing what strategies are available to address the problem. They also explain how they, as paralegals, might be able to help. These cases are analysed back in the classroom, ending with an intensive interactive assessment of the lessons learned. By the end of 2007, 152 paralegals from NGOs and provincial and district public sectors had been trained, and 32 communities visited.

The course specifically looks the way that customary law treats women, and how the Constitution and formal laws guarantee equal rights for women. Rural women mainly have use rights only, obtained through their relationships with men (husbands, extended family or lineage heads, etc.). Women's rights are particularly vulnerable due to HIV-AIDS, as customary rules that take care of older widows with grown children no longer work in communities where men are dying prematurely. This makes having recourse to overarching formal principles especially important, and the course discusses what options are open to women who want to secure the rights they have acquired through their customary systems.

### **District Officer seminars**

The District Officer seminars counterbalance the paralegal training. Reinforcing capacity at this level is doubly significant as the district is also the focus of government development efforts in the current five-year programme. Each seminar brings together the District Administrator, the Director of Economic Affairs (responsible for land and resources issues), the district judge and public prosecutor, and the District Police Chief, from districts where there are, or are likely to be resource conflicts. These include coastal tourist areas or places where new investment projects are planned.

The seminars address the lack of knowledge about existing legal instruments, and discuss how these “frontline” officers should react when they get requests from their superiors to “implement” laws in ways that are actually illegal. They also look at how to achieve better coordination between the main branches of the State at local level – those implementing laws on the one hand, and those who are responsible for upholding them on the other (judges and public prosecutors). Police chiefs, who are often at the front line of land and resource conflicts, also gain greater

understanding of what the laws really say, and how they should respond to legitimate grievances without immediately arresting and jailing people.

The programme defines the “outcome objective” of each seminar as “implementing the laws that regulate access to and use of natural resources, as a source of local income, and as an essential resource for development and investment projects, whether from the public or private sectors”. The ultimate goal is a process of equitable and harmonious development at the local level, and greater understanding of the powers and roles of each actor. Three seminars had been conducted by the end of 2007, covering 18 districts and working with 77 district officers from the various sectors. Three more are planned for 2008.

The seminar programme resembles the paralegal courses, but is far more interactive and does not include a field component. Participants bring real cases to the meeting, which are then discussed in group sessions. These seminars have marked the beginning of a process of genuine change in participants’ attitudes, and appear to have had a particular impact on the police, who now appreciate that breaking the law is not just a question of “crime”, but is also something that happens when institutions act outside the legal frameworks approved by the Assembly and other competent bodies. They are also beginning to understand their role in defending citizens’ rights and being a frontline source of information for local people.

### **Seminars for national park and conservation area managers**

A similar approach is taken in the seminars on community rights and the application of natural resources laws within national parks and conservation areas. These are aimed at senior conservation area managers, in order to promote sustainable social and economic development based on the sustainable exploitation and conservation of natural resources. Like the District Officer seminars, these meetings help park managers and other senior staff to apply the relevant laws correctly, and thus carry out their jobs more effectively.

A similar range of issues is covered, paying particular attention to the rights of the communities living inside parks, and issues like illegal hunting. The CFJJ team encourages participants to use the law to find ways for communities and park managers to work and live together, using their rights to achieve common development objectives and avoid conflict.

## **Methods and materials**

All activities use a range of participatory methodologies, including debate, case studies, group work and theatre simulations. The wide range of materials used includes formal texts produced by the first project, a manual on community land rights produced by the Land Commission project (Land Commission, 2000) and a CFJJ booklet on community natural resources rights produced for IUCN (Serra and Almeida, 2006). The paralegal courses will ultimately have their own manual, with a CD-ROM containing the text and visual and Powerpoint material. A guidebook for the seminars is also being produced. It is hoped that this material will subsequently be used by other organisations, under CFJJ supervision to ensure quality and a common approach.

## **OTHER ASPECTS**

### **Cooperation with Brazil**

Study visits with the Brazilian judiciary and public ministry are a small but important part of the programme. Visits by Mozambican public prosecutors, judges and trainers have focused on the role of the Brazilian public ministry in defending “diffuse” rights at all levels, and learning how the Brazilians use alternative conflict resolution methods. This part of the programme also contributes to the upper strategic level, with a longer-term objective of seeding future change, especially in the Mozambican public ministry as it takes on a stronger role upholding the law and defending civil rights.

### **Case study research and the conflict database**

A research and evaluation component with five provincial field officers identifies conflicts and carries out in-depth studies of selected cases. They assess the performance of local administrators and the judiciary on one hand, and the way that communities are using and defending their rights on the other. Field data is entered into a computer database that will be accessible via the CFJJ website, which is being developed with FAO support.

### **Resources**

The overall programme has been supported by The Netherlands since 2001. It has a total budget of US\$ 4.3 million, with most operational funds spent

on training (the average cost of each course and seminar is around US\$ 25,000-30,000, including internal flights, accommodation, meals and fieldwork costs). The CFJJ assigns senior staff to the programme, who are supported by national consultants and provincial field officers; while the project employs an administrative and logistics assistant, and a researcher to maintain the conflict database and cover provinces without a resident field officer. The international technical assistant also teaches on courses.

## **IMPACT**

The programme has instilled greater legal awareness among rural communities. This high-profile, national-level institution is reaching right down to the village level, where it is sowing new awareness about the existence of the judiciary and what it does among local people. Paralegals and communities alike see that instead of simply putting people in prison, judges and prosecutors can be of real assistance in defending rights and supporting a more open and equitable development model. The paralegals provide an important link between communities and the agencies offering legal support.

The programme has also given various judges and prosecutors a rare opportunity to see what is happening at the local level, and to appreciate how they can help bring together the vastly different world views of peasant farmers or illegal hunters, government officers and investors. This does not necessarily make their work easier, and it is too early to say whether they are achieving better results, but anecdotal evidence indicates that the courses and seminars are fostering an important process of attitudinal change.

The twin-track approach seems to work well, empowering people at the grassroots level and changing attitudes within the front-line services. A purely bottom-up process is not enough, as district officers and senior conservation managers also need to understand citizens' basic rights and how they can exercise them more effectively. They see that their role is not just to apply laws, but to use them together with local people to develop strategies for achieving common development and conservation goals.

Looking to the future, the lessons learned and case study data are strengthening both this specific programme and the core programme of training for new judges and prosecutors. The programme is highlighting the

need to clarify the formal status of paralegals in Mozambique, while in the case of the district seminars, the high profile and reputation of the CFJJ encourages senior executive officers to listen and take the courses and seminars seriously. This activity needs to continue so that the change in attitudes and growing awareness of fundamental rights can bear fruit as these junior officers rise up through their organisations.

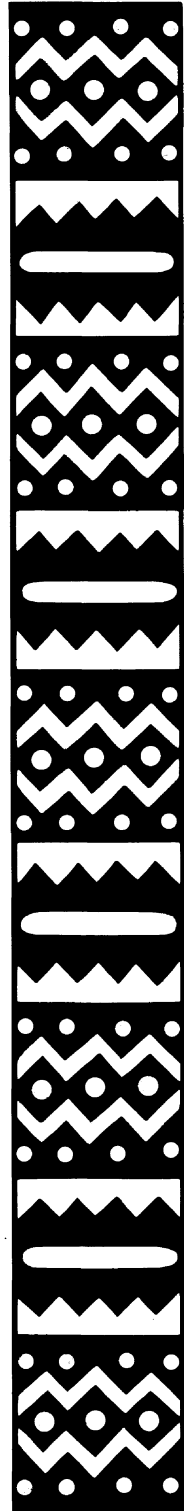
With an impact assessment pending in late 2008, anecdotal evidence is showing that some communities have begun to look for legal and judicial solutions to long-running conflicts. The first case of a community successfully defending itself in court with support from CFJJ-trained paralegals was reported in late 2007. Ways to support these actions need to be investigated, but follow-up action is difficult for many reasons: lack of funding, reluctance among certain organisations to confront powerful interests, and the paralegals' lack of officially recognised status and profile. In this context, the focus on promoting partnerships and a shared development process between locals and outsiders is perhaps more important than concentrating on situations of conflict.

A final point concerns the importance of building and maintaining good partnerships with a range of actors at all levels. This programme only works because of the excellent partnerships it has developed with a wide range of institutions in the public sector and civil society. The paralegal courses in particular have created new relationships between the CFJJ and a host of NGO and public sector partners at the provincial and local levels.

These partnerships are not created overnight. Some go back a long way, to the Land Commission era, but the CFJJ itself, with its strong support for the principles of legal pluralism and interactive action-research and training, has also built on its own experience with NGOs and local leaders to gain a wide and important network of new partners through this programme. The programme shows how acquired experience provides a rich reservoir of knowledge and practice that can help develop effective new approaches to training, at both the community and higher, more formal levels.

# **7. LAND RIGHTS INFORMATION CENTRES IN UGANDA**

Rita H. Aciro-Lakor





## **THE PROBLEM**

On the 2nd of July 1998 the Government of Uganda passed the Land Act (Cap 227). One of the most important changes this brought about was the introduction of Land Tribunals, which were supposed to deal with the many land disputes across the country that often culminate in acts of criminality. Three years after they began operating in 2002, however, they were found to be ineffective and inefficient in their delivery of land justice, and were subsequently suspended in 2007.

Many people found it difficult to access justice through this system, and numerous land disputes never made it to the tribunals because most people in rural areas do not have the time or money to go through the formal court system. Nevertheless, the suspension of the tribunals left a large gap in the land justice system, with very few opportunities to resolve land-related conflicts at the community level. Since then, various actors who are not qualified or legally mandated to do so have stepped in to try and fill this gap.

## **LAND RIGHTS INFORMATION CENTRES**

To try to address the shortcomings in the delivery of land justice and deal with the growing number of land disputes, the Uganda Land Alliance and its member organisations operate district-level Land Rights Information Centres (LRICs) in five districts of Uganda: Kibaale, Mbale, Kapchorwa, Apac and Luweero.

The Uganda Land Alliance (ULA) is a consortium of national and international NGOs that lobby and advocate for fair land laws and policies that support the land rights of poor, disadvantaged and vulnerable groups and individuals in Uganda. Set up in 1995 as an independent non-governmental legal entity, ULA's vision for Uganda is a society of equitable access to and control over land, where poor women, men and children actively participate in eradicating poverty.

The LRICs are grassroots land justice structures run by qualified and trained personnel. They provide a range of accessible services to community members free of charge.

These include alternative conflict resolution and legal advice on land and related matters. Alternative conflict resolution aims to resolve disputes in an amicable way, directly meeting the needs of people at grass-roots level and avoiding time-consuming and expensive formal litigation. It encompasses mediation, negotiation, arbitration and conciliation, and may involve a variety of actors, including community leaders and government and traditional authorities. While some disputes are handled directly by the centres, others are referred to relevant authorities – in which case community members are informed of their rights and obligations and told about the relevant procedures.

The centres also provide information and education on land law, policies and rights for rural communities. Raising awareness about land rights is seen as a way of reducing land-related conflicts, through sensitisation workshops, music, dance and drama, radio programmes, and the production and dissemination of information, education and communication (IEC) materials.

In recent years the centres have developed an innovative tool that may be of particular interest here: theatre plays and village debates, which involve participatory identification of particularly pressing issues through community-level discussions where people can talk about their day-to-day problems relating to land.

Staff from the land rights centre then help develop a script for a theatre play dealing with the matters raised during these discussions (gender issues or women's land rights, for example). The play is tested with and performed for the community, and community members are given the opportunity to debate, discuss and comment on the issues it raises. A recorded version of the play is then broadcast on the local radio station. These plays and village debates serve as entertainment, but also provide a forum for awareness raising and local debate around land issues.

The Uganda Land Alliance also supports paralegals through a community volunteer programme based in the centres. Paralegals are members of the community who are chosen for the job by their peers. After being trained in basic human rights, they work as volunteers with desk officers at the land rights centres, helping out with conflict resolution and information and education initiatives. They play a crucial role in community outreach, and

go on follow-up field visits to talk to members of the community about disputes filed at the centre.

The work done by the centres provides the ULA with crucial information about land disputes on the ground, enabling it to identify cases with significant constitutional and policy implications and to undertake strategic litigation where useful. For instance, after the Government established a forest reserve in Kapchorwa district, the Benet people (a minority mountain-dwelling group who live in the forests of Mount Elgon) were deprived of access to a forest on which they depend for their livelihoods. The Land Rights Centre enabled the Alliance to identify the problem, mobilise the community and bring a legal case against the Government. In 2005, after two years of court proceedings, the Government agreed to reach a Consensus Judgment with the Uganda Land Alliance on behalf of the Benet people, whose land rights were restored. The next challenge is to ensure that the judgment is implemented.

## **OUTCOMES AND ENABLING/CONSTRAINING FACTORS**

The work of the LRICs has contributed to the prevention and management of land disputes, and helped create greater awareness of land rights in rural areas. Land disputes have been settled amicably through mechanisms that emphasise harmony and trust rather than confrontation between community members, more and more of whom are seeking to exercise and enforce their rights as they find out about them. For instance, tenants are using what they have learned to defend their land rights; women, especially widows, appear more confident and better able to protect their land rights (as in Luweero, for example); and communities involved in the Benet litigation have seen their land rights secured.

A number of enabling factors have made this work possible. First, the fact that beneficiary communities saw land conflicts as an urgent and important issue made it easier for the centres to obtain their cooperation. Local ownership and support for the initiative was crucial.

Furthermore, the impartiality and perceived good quality of the services provided by the centres helped build local trust and gain respect from both national and local governments.

The geographic and economic accessibility of the Centres' services are also valued aspects that have helped build local support for the initiative. Geographic accessibility is achieved through a district-level structure (rather than the regional-level Land Tribunals) and the paralegals' work facilitating contact between the centres and local groups; while not charging for services that enable beneficiaries to avoid costly litigation in court makes them economically accessible to all concerned.

However, there are constraints to the operation of the LRICs. They are wholly reliant on donor funding, and funding for this type of work has reduced over the past two years in Uganda, compromising the centres' ability to cope with growing local demand for their services. Tight budgets and rising demand are making it increasingly hard for them to deliver their services.

In addition to this, some local leaders felt threatened by the creation of the centres, and particularly by the work of paralegals. Certain local council leaders believed that their role in conflict resolution was being eroded by the paralegals, and there were several cases where this created tensions between the centres and local leadership – which were sometimes eased by encouraging dialogue between the relevant parties.

More generally, the centres are constrained by the overall context in which they operate, given that implementation of the Land Act is slow and curtailed by lack of funds, and the widespread ignorance and misinterpretation of the law.

Using strategic litigation to protect the land rights of poorer groups has proved expensive and time-consuming. In the Benet case, it was useful as it led to a favourable outcome, but this does not necessarily signify that the matter is closed, as more time and energy will be required to monitor implementation of the agreement for it to make a difference in practice.

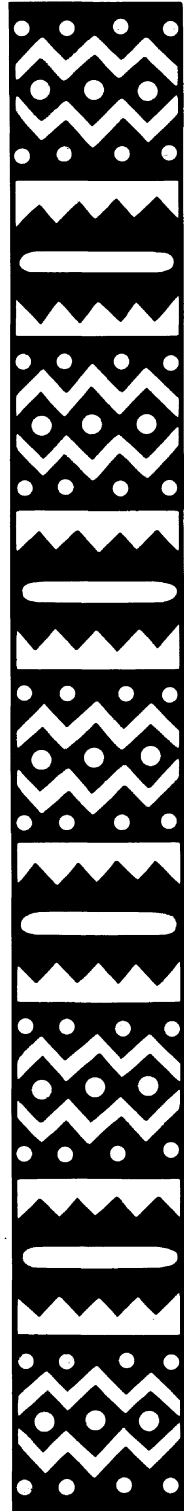
## **CONCLUSION**

The work of the LRICs and community-based volunteers associated with them provides a replicable model for improving access to land justice for poorer groups. It brings together men and women, traditional rulers and religious and opinion leaders, government officials and civil society groups

with a strong desire to help manage conflict in their communities. Its success depends on the local ownership, trust and cooperation that have made the centres a powerful force in mobilising local communities to secure their land rights, mainly by reducing and managing conflict, but also, where necessary, through strategic use of litigation.

## **8. PARALEGALS AND COMMUNITY OVERSIGHT BOARDS IN SIERRA LEONE**

Simeon Koroma



Kaniya Village in northern Sierra Leone is a worried community. Half of its youth are either in police custody or in hiding. The reason? A police crackdown following a report of arson made by a group of cattle herders. Until very recently (nine years ago, to be exact), the inhabitants of this small village community were predominantly small-scale farmers whose main crops were swamp rice, cassava, palm oil and vegetables. But then a group of cattle herders came along and the village authorities (chiefs) allocated a vast area for them to settle. The herd flourished and grew so that the land originally given to them was insufficient. Then they started encroaching on adjacent and neighbouring lands, relying on the “permission” from the chiefs instead of that of the farm (land) owners. The landowners made several complaints to the chiefs and the local police, but these fell on deaf ears because, according to the landowners, the herders had “bribed” the chiefs and the police. Out of desperation at the authorities’ inaction, and after losing their entire season’s harvest to the invading cattle, these farmers then took the law into their own hands and burned down the herders’ stalls, bringing us to the present problem. Those arrested in the crackdown must now pay the police a hefty sum to secure bail, even though according to the law, bail is free.

In what ways can these simple villagers assert their rights and make their authorities accountable? Or, to put it differently, what initiatives will deliver a fair solution and legal empowerment in each case, considering the power imbalances in rural Sierra Leone?

The story above resonates in many parts of the country. Obviously, there are justice and human rights issues involved, and somehow, it is the responsibility of some mechanism – whether state-controlled or not – to find a judicious solution to this problem. This might seem straightforward, but with distinctly dysfunctional state institutions, particularly outside the capital, and with corruption and incompetence rife, the situation is much more complicated in Sierra Leone.

To answer the questions posed above, one can consider different programmes within the realm of “legal empowerment”. This term is used very loosely here to include both legal aid and education on rights. My colleague has argued elsewhere<sup>25</sup> that, given the limitations of conventional

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25. For an interesting discussion on this and the role of community-based paralegals within the continuum of legal empowerment discourse, see Maru (2006).

legal empowerment initiatives, the introduction of community-based paralegals like those with Timap for Justice<sup>26</sup> offers a promising methodology that sits well with the notion of legal empowerment, and offers the possibility of concrete solutions through mechanisms that ordinary people can relate to. This contribution examines one such tool: community dialogue meetings. In particular, I will argue that the flexible methodology of the community-based paralegal programmes is far more effective in empowering local people than legal aid and education services.

Timap for Justice is a pioneering effort that aims to provide basic justice services to indigenous Sierra Leoneans, and help them navigate formal government and traditional institutions through a network of community-based paralegals. Sierra Leone has a dual legal structure comprising a formal stratum inspired by colonial legal structures, and an informal stratum embodying customary practices applied in local courts. Over two thirds of the population follow this law in their personal lives, and local courts and traditional institutions serve as courts of first instance. However, lawyers do not operate in these courts. Furthermore, there are only about 100-150 practising lawyers serving a nation of about five million people, and less than a dozen lawyers based outside the capital, Freetown. This means that even a robust legal aid scheme will become unmanageable and burn out, which is why Timap's frontline agents are community-based paralegals rather than lawyers. These paralegals are recruited from the communities they serve in an open, participatory process involving local authorities and interest groups.

In itself, however, this does not guarantee accountability to host communities, or instant success. There is still the matter of acceptance by community members, a gradual process for which the right notes need to be struck. To deal with this issue, Timap has created Community Oversight Boards (COBs) in each of the chiefdoms where we operate. COB members are appointed after consultations with paramount chiefs, other chiefs and local organisations. Each COB has four members drawn from the traditional leadership (chiefdom speaker, adviser or elder) and heads of women's and youth groups. Education is not a criterion for membership of these boards, although at least one member can read and write.

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26. Timap is a krio word meaning "stand up".



The COBs have a dual role. On the one hand, they act as a cushion between the community and Timap, serving as a rallying point and support when unavoidable conflicts arise between Timap and certain traditional practices (and leaders), and helping focus our work through community needs assessment. On the other hand, they ensure continued, rigorous supervision of community-based paralegals by considering questions such as: a) are the paralegals putting in the requisite time? b) are they serving clients professionally, effectively and ethically? c) are they making sound efforts to address community-level problems? These COBs meet regularly with programme directors to feed back on the paralegals' work.

Timap considers the following goals, among others, as essential to our work: a) empowering the individuals and communities with whom we work to enhance their capacity to confront injustice and engage with public institutions; b) increasing the accountability and fairness of both traditional and formal government institutions; c) reducing the prevalence of injustice; d) empowering our paralegals to be knowledgeable and effective advocates for justice in their communities. One of the various tools our paralegals use to achieve these goals is community dialogue.

Community dialogues are organised monthly, in the form of a forum where ordinary residents and their leaders are given the opportunity to meet face-to-face and discuss the problems affecting the community in an open environment. These meetings also serve as grassroots experience-sharing exercises. Their most significant role is probably holding community leaders to account for their activities, and empowering community members to demand justice.

These community meetings begin with a needs assessment conducted by the paralegals, with assistance from COB members from that particular community. The aim of this assessment is to identify what we refer to as "community-level problems": for example, if early marriage is prevalent in the community or a mining company has unlawfully acquired villagers' farmlands. The next stage is to identify the stakeholders – decision-makers whose conduct has (and will have) a bearing on the subject of the community meeting – and make sure they attend. This category includes formal government authorities, local government representatives, chiefs and other traditional figures, NGOs and relevant officials.

On the agreed day of the meeting, Timap's role is to moderate the proceedings so that everybody feels free to contribute, lay down the outlines of the law and ensure that certain pertinent issues are not overshadowed by unnecessary rhetoric. Towards the end of the meeting, Timap makes sure that there is some general consensus among participants (drawing up a list of agreed issues), a firm statement on the next steps and a date for a follow-up meeting.

Now let us return to the case of Kaniya Village mentioned at the beginning of this section, and see how this tool works. In an outreach session held in the immediate aftermath of the incident, our paralegals spoke with residents, most of whom had relatives in police detention. The paralegals, with support from COB members, then conducted further investigations and interviewed the local chiefs, herdsmen, landowners and police. Each of these groups was looking for a solution outside what was on offer: criminal prosecution that would result in further bad blood in the community. Arson is a serious offence in Sierra Leone: it is governed by the Malicious Damage Act of 1861 and carries a maximum sentence of life imprisonment. Interestingly, although the herdsmen were distraught, they were looking for more peaceful coexistence with their hosts and neighbours. A criminal case would, if anything, exacerbate the situation and make their long-term stay untenable.

For their part, the landowners (farmers) acknowledged that they might have over-reacted, but insisted that they were being punished now because they were poor. Police action would almost certainly breed further animosity and undermine the prospects for lasting peace in the community; and if the accusation of bribery were true, the farmers should be prepared for a rough ride.

The paralegals succeeded in fixing a date for the dialogue meeting. In circumstances where it may be difficult to agree on the topic of a meeting, paralegals suggest a neutral subject and hope that the intended topic is brought to the fore through their moderation. In this case, all parties, including the police and the traditional authorities, were willing to discuss the recent events. But to reach this point, the paralegals needed to win the hearts of the parties themselves. The farmers wanted the people who had been arrested but had played no part in the incident to be released.

Although this was tricky, it was technically not difficult to achieve as most of those arrested had already exceeded the constitutional limit for detention, so it was easy to secure their release on police bail.

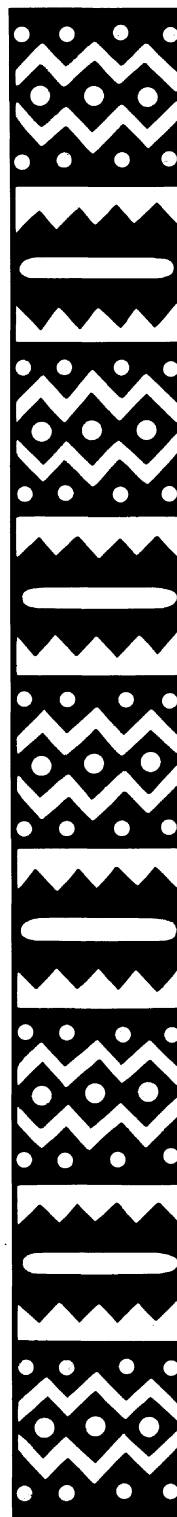
The meeting itself had a very conciliatory tone to it. Among those invited were the commanding officer of the local police station, the chiefs, local government officials and the head of the landowners' committee. The beauty of this tool is that it gets answers to the questions posed by ordinary people – like Pa Alpha, whose son had just been released. There was general consternation when he asked what the bail would cost, but the police officer had to tell the truth because the paralegals were there. There was murmuring all over the place when he answered that bail was free, and the embarrassed police chief then asked community members to report to him, Timap paralegals or their local chiefs if they were asked to pay anything at the police station, or if anyone was detained beyond the constitutional limits. This was greeted with a round of applause from community members. The rest of the meeting followed this pattern, and at the end the opposing parties agreed to build a fence to prevent the cattle from escaping, with the herders providing the resources and the landowners the manpower.

In the minutes of the follow-up meeting held a month later, the paralegals stated that community members had reported four incidents where they had been asked to pay money (including withdrawing cases from court).

Education, legal representation and other legal empowerment tools might not have achieved similar results. The impact of community dialogue transcends cosmetic solutions, building a forum where people can be both enlightened and encouraged to demand their rights, and leaders have an opportunity to meet their constituents.

# **9. LEGAL LITERACY TRAINING IN THE THIÈS REGION OF SENEGAL**

Yahya Kane



## CONTEXT

Senegal seems to have been ahead of many other African countries in starting the process of democratisation and decentralisation, as the first seeds of rural decentralisation were contained in the national land law of 1964. This gave local communities certain powers over access to land, with the authority to allocate land to people who could put it to productive use. Further developments saw the formal creation of rural communities in 1972, followed by their elevation to legally autonomous local governments. The laws of 1996 represented a significant qualitative leap forward: first, by making the regions a level of local government; and second, with the law transferring nine areas of competence to the regions, municipalities and rural communities. In parallel with this, the power of the territorial administration was considerably reduced with the switch from a priori to retrospective legal approval of local government decisions.

Another marked shift was the increasing use of public and private investment to fund the major works and infrastructures deemed essential for Senegal's role as an "emerging nation". Key elements of the government's strategy for attracting donors and investors included:

- An investment code offering foreign investors numerous incentives, facilities and opportunities.
- Revising labour legislation in the employers' favour (removing the need for administrative authorisation for dismissal on financial grounds, more fixed-term contracts).
- The creation of SAPCO (Société d'Aménagement de la Petite Côte) to promote tourism, initially on the Petite Côte, and then nationwide.
- APIX, the agency promoting major government works, which recently became APIX-SA to permit greater participation and involvement by private operators. Functioning as a "one-stop shop" to facilitate and centralise procedures, APIX has proved very effective in creating businesses and supporting investors.

Tourism is one of the cornerstones of the national economy, particularly business and up-market tourism. The sector is second only to fishing, with an annual turnover of around 300 billion francs CFA, 75,000 direct employees, more than 700 km of beaches and over 3,000 hours of sunshine. Directly or indirectly, it is central to major government investments and projects, through the future Blaise Diagne international airport and the special economic zone of Dias (which takes its name from the rural community most affected by the development, along with its neighbours Yenn and Sindia).

While there is no doubt about the importance of investments in general, and tourism in particular, there is growing concern among certain local governments and their constituents about the procedure that the State and its organs are using to promote them.

Blaise Diagne international airport in Dakar and the Dias special economic zone will occupy large tracts of decentralised rural land, including forests and areas of considerable ecological diversity. The special economic zone alone is scheduled to cover over 150,000 hectares of rural land that had passed from State to local government control.

The local governments and populations concerned rely on this land and its natural resources (forests, water courses, etc.) for their income and livelihoods (rural taxes and agriculture, fisheries, pastoralism). Despite lengthy assurances about the expected benefits and outcomes of these developments (jobs, more accessible services, etc.), these local communities and their governments have a number of serious concerns about the legal mechanisms deployed by the State (registration, expropriation) and, by association, the measures for dealing with those whose rights are affected by such initiatives.

These two projects (the international airport and the special economic zone) are sited in the area known as “la petite côte”, in rural communities known to have considerable potential for tourism. Most of the tourist developments in the area planned or strongly encouraged by the State involve massive investment in up-market or business tourism, which not only consume large amounts of land and natural resources, but are also run by and for external operators and consumers.

This is the paradoxical nature of decentralisation and local natural resource governance in Senegal today. As land and natural resources seem to be increasingly beyond the reach of those with the most legitimate long-term rights to access and exploit these resources, there are a growing number of questions about the scope of the legal and institutional measures employed by the government, and its willingness to support democracy and genuine local governance.

Although decentralisation offers local people opportunities to secure their rights to resources and play a greater role in decision-making processes, they often lack the knowledge, capacities and resources required to make the most of these opportunities. IED Afrique is involved in a programme of action-research, capacity building and policy debate in four African countries, including Senegal, where this question has served as an entry point for the crucial issue of securing local people's and local governments' rights to their resources.

The programme was launched in September 2006, and activities in Senegal got under way in 2007, mainly in the communities of Dias, Yenne and Sindia. As a consequence, the experience of legal empowerment described below is very recent and in its earliest stages. It is also part of a broader and more established process of backstopping by IED Afrique in these three municipalities.

In his capacity as IED Afrique's legal consultant on this project, the author of this chapter conducted a study on current legislation and is closely involved in producing a training manual (see below). This section will briefly summarise the project procedure and structure, look at what it has achieved so far, consider its strengths, weaknesses and threats, and conclude with the lessons learned.

## ACTIVITIES TO DATE

- Identifying the opportunities for securing rights to resources offered by current legislation

The first stage in this activity was to assess the legal and institutional framework for investment in decentralised areas. This was done through a study to identify the opportunities that the law offers local communities to secure their rights to resources, starting in early 2007 with analysis of the legislation relating to decentralisation, land and natural resource management, investment and other matters. At the end of 2007 the study was reviewed and finalised following meetings with local actors in the three communities (rural councillors, administrative authorities, operators in the tourist industry and local people). This second phase of the study allowed us to meet local actors, identify their concerns and questions and determine how they can benefit from better understanding their rights to the resources that are still available (land, natural resources and the environment).

- Evaluating demand for legal tools

In March 2007, the preliminary results of the legislative analysis were presented in local languages to between 20 and 25 members of the three communities. This was an opportunity to review the main entry points for securing rights to natural resources and answer the questions raised by participants.

The objective of this meeting was to determine local interest in training sessions covering legislation on land, decentralisation and investment. Local knowledge and understanding of legislation was clearly very limited, and participants showed a keen interest in more systematic training on their rights in relation to land, decentralisation and investment.

- Presenting the study on the legal and institutional framework

The completed study on the legal and institutional framework was presented at the Centre Mampuya in Toubab Dialao, at a workshop attended by all local, departmental and even national actors involved in land and investment issues (from the territorial administration, cadastral services, tax and treasury departments, trade unions, etc.).



This workshop provided an opportunity to validate the study findings and open a debate on policies that will help secure access to natural resources in areas where private investment is being promoted, particularly in tourism.

The participatory approach used during the study played a large part in engaging everyone that had been involved in the preparatory phase, and generating useful exchange and debate. It also facilitated the start of the next, ongoing phase of work.

- Producing a training manual

The training manual for members of the three rural communities draws on the final version of the study and discussions at the workshop to present the study findings. It carries on from the training session held in March 2007, and constitutes the first step in a series of training sessions for members of the three communities.

The manual covers key legal issues relating to land, decentralisation and mechanisms for recourse against decisions taken by sub-prefects, in a context where rights to natural resources are threatened by increasing investment in the area.

The first draft was completed in February 2008, and will now go through an iterative process of test training sessions and revision before being finalised and published. The manual will then be made available to local governments, for use in training and lobbying activities to help secure local people's rights of access to and control of natural resources.

## **RESULTS AND PERSPECTIVES**

It is not possible to evaluate the impact or effectiveness of the manual as it is still awaiting presentation and has not yet been put to practical use. However, insofar as it reflects the concerns and questions expressed by future beneficiaries, the legal explanations contained in the manual will certainly help address some of their real and often urgent needs.



Marie Jaecy

*Legal literacy training in Toubab Dialao*

The study on the legal and institutional framework for investment in decentralised areas does seem to have fulfilled its purpose. Some of the issues have already been addressed separately in other studies, but this is the first time that all these elements (land, decentralisation, investment law) have been considered together. The best indicators of the interest it has generated are local people's active and constructive participation in discussions at the workshop to present the study findings, and the positive feedback in the press.

This work will mainly continue through testing and implementation of the training manual, with training sessions for elected local officials and local people from all walks of life in the three rural communities concerned.

## **ENABLING FACTORS**

Many factors have helped facilitate the activities undertaken so far, such as:

- The overall framework of democratic freedoms in Senegal and the role of the media

While it is not ideal, the framework of democratic freedoms in Senegal is generally satisfactory, in that citizens, legally constituted groups and the media have the opportunity to air their views without putting themselves in

danger. Local people and local elected officials express themselves in “real time” (often with the help of the media), drawing attention to any actions or schemes that threaten their rights, liberties or resources. Public opinion is generally reasonably well informed, and thus more easily sensitised and mobilised.

- The expertise and commitment of IED Afrique

With its considerable specialist experience in issues related to decentralisation and natural resources, IED Afrique brings to the project its expertise, a critical mass of data and a network of resource persons and partners (local and international, institutional and otherwise).

- The involvement, commitment and availability of the study’s beneficiaries and targets

The targets and final beneficiaries of the study have been involved since the outset of the project, and their active participation has enabled us to identify and review the most critical issues and key themes in accordance with our original objectives. Another positive factor was the generally good standard of most of the rural councillors in the area, and their growing awareness of current land dynamics.

## **CONSTRAINTS**

Two particular constraints are worth mentioning here:

- Availability of funding to continue the project

As the programme is funded externally, it is dependent on donors having the funding and commitment to continue the initiative. This objective limitation is a major constraint in countries like Senegal where a limited number of NGOs are working on the important issue of land and natural resources, partly because of its complexity and partly because of funding.

- An un-coordinated and sometimes inconsistent legal framework

Although this paper is too short to include a review of the legal framework for land and natural resources or the mechanism for decentralisation in

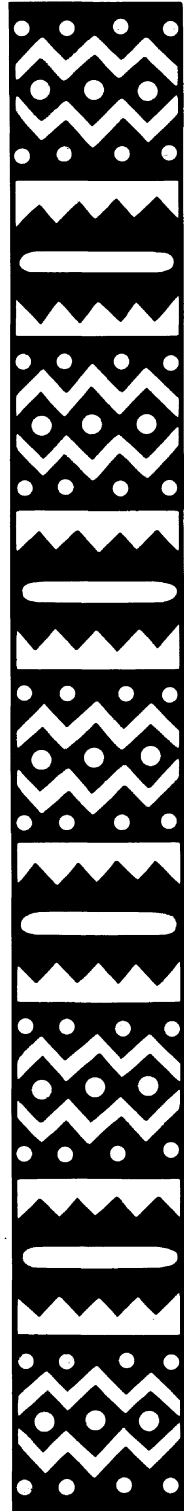
Senegal, it is worth noting that there is little consistency between the various texts that do exist. The inter-related issues of land and resources are often dealt with separately through specific legislation; and the State remains in charge of land management despite legislation on decentralisation and the transfer of competences – even in decentralised areas it is legally empowered to intervene over access to or management of natural resources.

The best response to this situation is a pragmatic approach that takes advantage of all the arrangements, facilities and opportunities the law has to offer. Thus, local governments and their citizens can exploit the mechanisms for challenging sub-prefects' judgements on the legality of local government decisions – although this can only be done under certain, often prohibitive, conditions. The same applies to local agreements, which we have identified as possible frameworks for consultation or shared resource management. Often presented as “legal minefields” because they raise so many unanswered questions (Djiré, 2004), their vagueness paradoxically offers enough room to manoeuvre to allow local people to secure and exercise their rights to resources.



# **10. AWARENESS-RAISING AND PUBLIC INTEREST LITIGATION FOR MINING COMMUNITIES IN TANZANIA**

Ednah Mndeme



## THE PROBLEM

Between April and June 2006, Shanta Gold Exploration Company Ltd,<sup>27</sup> an exploration company with prospecting licences for over 2945 km<sup>2</sup> of land, illegally trespassed on community land and farms in Singida, Central Tanzania, building an airstrip and camps for its staff. Villagers asked government officials to take action on the company's illegal acts, but without success. People lost their livelihoods as they were prevented from farming their land, their crops were destroyed and their houses searched without their consent. They did not know where to go and what to do, and their lives became extremely difficult and harsh.

Local government leaders insisted that the Government could use its land, since no one in Tanzania owns land as an individual. It is true that Tanzania's land is public, and that any right of occupancy can be revoked in the public interest, but there are procedures for disposing of land in the public interest that entail paying compensation and respecting human rights.

The company claimed to have received permission from government leaders at all levels, and allowed its security guards to trespass on people's land, destroy their properties and stop them from carrying out their activities.

Local groups asked various authorities to help them get clarification from government leaders on what was happening, but their efforts were unsuccessful. First of all, they wrote a letter to the village leaders requesting a village meeting to hear their complaints. A village meeting was held on the 29th May 2006, but no clear answers were given to local people.

After this meeting, the victims asked other authorities to get involved in their case. They wrote a letter to the Regional Commissioner in June 2006, and then to the Member of Parliament for Singida North in July 2006. He wrote to the Minister for Energy and Minerals, the Honorable J.Z. Chiligati, but once again, all this was in vain.

In order to fight for their rights, the villagers met with community elders, the parish priest and an attorney, but some village-level government

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27. See [www.shantagold.com](http://www.shantagold.com).

officials interrupted this discussion and threatened to arrest the people involved, causing chaos. Between 24th and 28th of July 2006, everyone who had spoken out during that discussion was arrested for unlawful assembly by the Singida District police, accompanied by staff from the Shanta Exploration Company. These people were denied bail until they were charged in court with the offence of unlawful assembly,<sup>28</sup> and then were not allowed bail even after being charged.

It is worth noting that, in addition to violating the land rights of local groups, the mining project did not adhere to the mining laws of Tanzania. Shanta Gold Exploration Company owned over 26 primary prospecting licenses, and the Company has five directors, most of whom are South Africans. Section 8(2) of the Mining Act stipulates that “No primary prospecting license may be granted to an individual, partnership or cooperate body unless in the case of this individual being the citizen of Tanzania, in case of a partnership composed exclusively of citizens of Tanzania or in case of a cooperate body that is company whose membership is composed exclusively of citizens of Tanzania, its Directors are all citizens of Tanzania and control of the company, both direct and indirect is exercised from within Tanzania by persons that are citizens of Tanzania”. It is difficult not to think that corruption of government leaders was involved.

## **WHAT WE HAVE DONE**

Four people from the Lawyers Environmental Action Team (LEAT) (Tundu Lissu, Ednah Mndeme, Shen Narayanasamy and an international reporter, Souza Jamba) visited Singida on 1st-6th October 2006. The aim of this first visit was to educate people about the violation of their land rights by the Shanta Exploration Company, and offer the support they needed. One of the objectives of the visit was also to explain how government agents had supported the company through their decision to give it prospecting mining licenses illegally, and how the Government was continuing to support the company’s activities to the detriment of local people.

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<sup>28</sup>. *Republic v. Andrea Andalu and Four Other Parties*, Singida District Court Criminal Case No. 243 of 2006.



During the field visit, the team held various discussions with villagers in Mang'onyi District. They discussed the unlawful assembly case filed against local residents by the District Commissioner (*Republic v. Andrea Andalu and Four Other Parties*, see above) following their attempt to talk to their lawyer. Despite this experience, local residents instructed a LEAT staff attorney to represent them in filing a prosecution case. Once they found out that the charges against the accused were malicious, LEAT staff decided to take the case and opened a malicious prosecution case, which involves five plaintiffs – residents of Mang'onyi and Mwau villages – and ten defendants.<sup>29</sup>

## OUTCOMES/IMPACTS

The plaintiffs' application for bail was reconsidered and granted on 31st July, and the charges were dismissed and plaintiffs discharged on 31st August, due to the non-existence of the cause implicating the plaintiffs in the alleged offence of unlawful assembly.

The process of going through litigation achieved additional outcomes too: consultative meetings were held with all local people and leaders, using indigenous knowledge and focal discussions. Seven villages in the area benefited from the team's work with training manuals on land laws, and communities in the affected area are now more aware of their land rights and better able to defend them against corrupt leaders and big investors. Finally, the company agreed to negotiate with local people on compensation issues.

## ENABLING FACTORS

- Financial support from donors.
- Determination of LEAT to assist the suffering people.
- After the capacity-building activities the victims were ready to cooperate, which made the work easier.

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29. *Andrea Andalu and Four Other Parties v. Captain James Yamungu*, Case No. 3 of 2006. Plaintiffs: Andrea Andalu, Emil Jonh Mjengi, Charles John Muna, Waziri Yusuph Waziri, Ally Husein Ngadu. Defendants: Capt. James Charles Yamungu, Vicent Shinogile, Inyasi Paulo Msaru, Shanta Mining Co. Ltd, Ajay Patel, Richard Chacha Muniko, Abrahamani Ikaka, Pascal Stephano Kilimbida, Juma Athumani Mwibidi, Herman Killu.

- Although some government leaders are not willing to support the community or work for its benefit, there are others who are willing to assist in the process (such as the magistrate in charge of the prosecution case).
- LEAT's collaboration with local and international organisations that deal with land issues.

## **CONSTRAINTS**

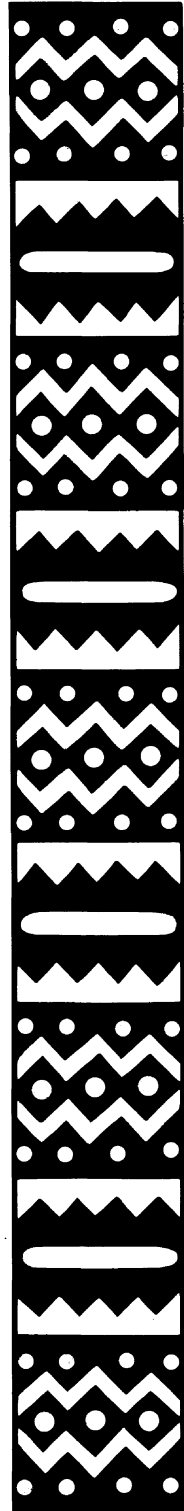
- Land reforms do not take proper account of the livelihoods and survival of rural communities, let alone the use of land resources as potential capital for development.
- Legal reforms in the land and natural resources sectors are undertaken in isolation, and do not address critical issues in land tenure regimes, namely the close relationship between land and resource tenure.
- The complexity of the legal process for implementing community-based natural resource management, and the need for legal support to enable communities to follow the required procedures for securing rights of access to and ownership of resources under the relevant laws.
- Government leaders at the local level are not willing to act in the interests of the community, and are often silenced by bribes from large investors instead of holding out for the community's interests.
- Communities are often apathetic, lacking trust in the system due to their leaders' corruption, inefficiency and waste of resources.
- Communities are unconfident about claiming their rights due to their lack of legal education.
- Lack of financial resources.
- Cut-throat antagonism – we are struggling to defend the community against major investors that have huge resources, hire experienced lawyers and bribe top leaders.

## **LESSONS LEARNED**

- Communities can make their government work if they know their rights: information can empower people.
- Capacity building, awareness raising and education on land rights can bring about remarkable changes in land and resource management, altering perceptions and improving local people's livelihoods.

# **11. HELPING COMMUNITIES GAIN RECOGNITION AS LEGAL ENTITIES: THE EXPERIENCE OF THE CHIBHEMEME EARTH HEALING ASSOCIATION IN ZIMBABWE**

Mutuso Dhliwayo



## INTRODUCTION

This chapter is about a legal empowerment initiative implemented in south eastern Zimbabwe by the Chibhememe Earth Healing Association (CHIEHA), in collaboration with the Zimbabwe Environmental Law Association (ZELA).<sup>30</sup> Legal empowerment, which is both a process and a goal, refers to the use of law by disadvantaged communities or populations to increase control over their lives (Golub and McQuay, 2001). Legal empowerment contributes to good governance, poverty alleviation and sustainable development. This chapter begins by identifying the problem and describing the activities taken to address it. It then looks at the outcomes and impacts, before analysing the enabling and constraining factors for implementation and concluding by sharing the lessons learned from this experience.

## BACKGROUND

The Chibhememe community is located in the Sangwe Communal Lands, 80 km north east of Chiredzi town in south eastern Zimbabwe. It is bordered by the Save Valley Conservancy to the north, the Chiredzi River Conservancy to the west, and the Malilangwe Conservancy and Gonarezhou National Park to the south. In 1988 the community established CHIEHA, an environmental conservation and development organisation, in order to manage the looming environmental crisis in the area. The Association is made up of 17 households from the village. Its aim is to promote the conservation of the cultural and natural heritage on the Sangwe Communal lands, while forming a focal point for community participation in benefit-driven and sustainable use of natural resources. The trust manages a community conservancy, the Chibhememe Tourism and Cultural Village, which includes the Zivembeva Island Forest, Chiso Pools and Ndongo ruins, and a Natural Resources and Information Centre.

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30. The Zimbabwe Environmental Law Association (ZELA) seeks to provide strategic environmental law advice, training, research services and public interest litigation to disadvantaged communities (<http://www.zela.org>).

## THE PROBLEM

One of the common challenges that communities face in participating in natural resource governance is their lack of legal personality. Coupled with weak and limited decision-making powers, this affects their ability to make binding decisions regarding natural resources; while the fact that they are not established as legal entities makes it difficult for the State and the private sector to deal with them.

Although constitution as a legal entity is not a precondition for community participation in natural resource governance, it does facilitate engagement and empowerment, and is regarded as an indicator that communities are confident about participating in the conservation process. As legal entities that are recognised by the law, they will be able to challenge land laws, policies and decisions that do not promote their interests. For, as Griffin (1999) notes, “Until communities are organised and formally recognised through the setting up of their own community-based organisations, they cannot effectively engage governments, the private sector and other stakeholders”. When they are constituted into legal entities recognised by the law, communities gain the confidence to engage with other stakeholders.

The community of CHIEHA was keen to participate in natural resource governance in the context of the Great Limpopo Transfrontier Park (GLTP), but was not constituted as a legal entity.<sup>31</sup> In 2003, ZELA was approached by a member of the Chibhememe community to assess the community’s need for capacity building to enable it to engage effectively in land and natural resources management and benefit from the GLTP.

## APPROACHES TO EMPOWERMENT

In addition to training, the key approach used to empower CHIEHA was formal registration as a trust. Zimbabwe does not have a law specifically designed to regulate CBOs or NGOs. The rules applicable to such institutions are scattered in various pieces of legislation and uncodified law, which is as much a part of Zimbabwean law as the law made by Parliament.

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31. The GLTP is a conservation initiative involving Zimbabwe, Mozambique and South Africa. It was established through a treaty in 2002.

Under common law, a CBO may be constituted as a trust. This involves the founders and trustees signing a Deed of Trust outlining the trust's management and objectives before a notary public. The trust does not have to be registered, as the act of signing the deed before a notary public brings it into existence. However, the deed may be registered at the Deeds Office if members of the trust wish to do so.

According to Zimbabwean law, communities do not own the land and natural resources in their locality. Most communities live on communal land that is, strictly speaking, state land that has been designated as such. Therefore, land and resources are owned by the State, which grants usufructuary rights to them through the Rural District Councils (RDCs). In other words, RDCs have management authority (legal authority) over the land and natural resources located in communal areas. Once they are registered as legal entities, communities like Chibhememe can engage with the RDCs in order to obtain management authority over the natural resources within their area. This is the main objective of registering such communities as legal entities.

One of the reasons why ZELA used registration as a form of legal empowerment was to enable CHIEHA to enjoy the expected benefits of the GLTP on an equal footing with its counterparts in Mozambique and South Africa.<sup>32</sup>

## **STEPS IN COMMUNITY LEGAL EMPOWERMENT**

A number of activities were carried out in the empowerment process. They are as follows:

### **a) Consultations**

Consultative meetings were held with interested and affected stakeholders: the Ministry of Environment and Tourism, the Environmental Management Agency, the Forestry Department, the Chiredzi Rural District Council, the Ministry of Youth, Gender and Employment Creation, other ministries

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32. Both South Africa and Mozambique have laws enabling communities to constitute themselves into legal entities: South Africa has the Communal Property Associations Act, while Mozambique has the Land Law.

operating in the area and donors like CESVI and the Africa 2000 Network. In addition, NGOs like the Africa Resources Trust and Southern Alliance for Indigenous Resources were involved, together with the traditional leadership figures like chiefs, *kraal* heads and village heads. Traditional leaders were consulted because their considerable authority at the local level could be harnessed to empower communities to secure their rights over land.

Most importantly, the Chibhememe community was at the centre of the consultation exercise. Following the request for registration from a member of the community, the consultation meetings were an opportunity for ZELA to establish whether this reflected the will of other community members.

#### **b) Drafting the Deed of Trust**

This was a participatory process with input from members of the Chibhememe community. ZELA deliberately chose to involve local people in the drafting process, which was tedious and at times frustrating, but definitely worthwhile.

#### **c) Signing the deed**

The members chosen as trustees and settlers signed the Deed of Trust before a notary public.

#### **d) Lodging the Deed of Trust**

After signature, the Deed of Trust was lodged with the Registrar of Deeds for registration. It was registered in 2005.

#### **e) Community training on how to manage a trust**

After registration, ZELA trained the trustees on how to manage a trust. Their training mainly focused on governance issues, including financial management and fundraising.

## **OUTCOMES**

- CHIEHA now manages the natural resources found in the locality in its own right, instead of doing it through the RDC.
- CHIEHA is now able to influence, engage and negotiate effectively with other partners, such as the State and the private sector.



- CHIEHA has applied to manage land in neighbouring conservancies under the Wildlife Based Land Reform Policy.
- CHIEHA is now applying for donor funding and support under its own name instead of going through third parties like NGOs and RDCs.
- CHIEHA's voice is amplified in the policy and decision-making process, as it has been consulted by the Ministry of Environment and Tourism in developing the Wildlife Based Land Reform Policy and the National Environmental Policy.
- CHIEHA is recognised as a leader of communities. It coordinates communities living in and near the GLTP, known as the Transfrontier and Protected Areas Rural Communities Network (TRANSPROARUCONET).
- CHIEHA is contributing to the development of access and benefit-sharing mechanisms at the regional level.

## **ENABLING AND CONSTRAINING FACTORS**

ZELA faced both enabling and constraining factors in the process of empowering CHIEHA. Firstly, the registration was a response to a request from a member of the Chibhememe community, and the project was not seen as conceived by elitist office-based organisations without input from the communities. This is really helpful in the Zimbabwean context, where development work is viewed with suspicion, as it is very easy for well-intended work to be misinterpreted as part of the alleged regime-change agenda that the Zimbabwean government claims is being spearheaded by the West. In this case we had the support of the community and were able to do our work without fear.

Secondly, ZELA has a very good working relationship with the Ministry of Environment and Tourism and the Environmental Management Agency, which is responsible for implementing government policies and laws relating to natural resources management. Thirdly, Zimbabwe has a framework enabling CBOs to be registered as legal entities. Without this enabling framework, ZELA would not have been able to register CHIEHA as a legal entity.

Suspicion and mistrust from the Chiredzi Rural District Council was and still is one of the main constraining factors. As indicated earlier, RDCs have the legal authority to manage the natural resources within their locality. They rely heavily on these natural resources as a source of revenue, and therefore have every reason to continue marginalising local communities. Empowered communities like CHIEHA are seen as a threat to the RDCs' income, so Chiredzi Rural District Council was not very happy with a project that aimed to empower communities, and accused ZELA of undermining its relationship with the community.

Limited financial resources were another constraint. ZELA is based in Harare, the capital city, which is several hundred kilometres from the project site. The consultation process involved a lot of meetings that put a strain on ZELA's budget, and was also very long – it began in 2003, and CHIEHA was not registered as a trust until 2005.

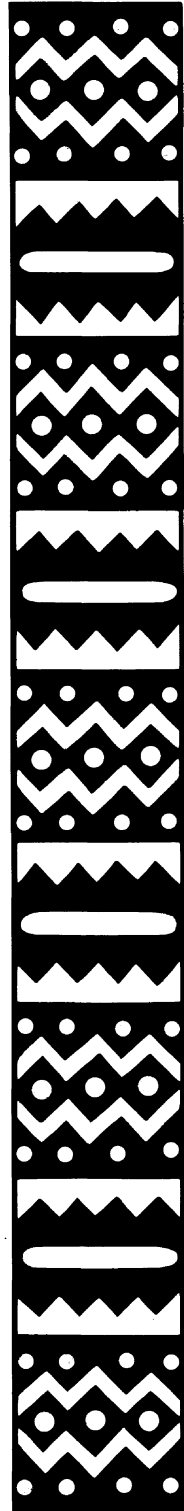
## **CONCLUSION**

The CHIEHA case study shows that registration as a legal entity is one way of empowering communities. Legal registration has opened up a lot of opportunities for CHIEHA to participate in natural resource governance, and it now plays a leading role in issues related to community participation in natural resource management – something it was unable to do before registration. CHIEHA has also managed to raise significant funding for its activities, money that comes directly to it instead of going through third parties like NGOs and RDCs. The complaints from the RDC testify that local people have been empowered and are now demanding transparency and accountability in its operations – again, something they were not able to do before registration. However, empowerment is a process, not a one-off activity, and registration is only the beginning of this process. Once registered, these communities needed training to enable them to understand what it takes to manage a trust, and appreciate that it is not personal property, as some trustees thought before the training.



## **12. CHALLENGING THE CONSTITUTIONALITY OF LAND LEGISLATION IN SOUTH AFRICA**

Aninka Claasens



## OVERVIEW

Four groups of rural people are challenging the constitutionality of the 2004 Communal Land Rights Act (CLRA) in South Africa. They come from Kalkfontein and Dixie (both in Mpumalanga Province), Makuleke (Limpopo Province) and Makgobistad (North West Province). Representatives from three of the four groups were part of a large contingent of rural groups and NGOs who rushed to Parliament to oppose the Bill in November 2003. The Bill had been substantially changed in October 2003, and Parliament gave only two weeks' notice when calling for submissions. The last-minute changes were politically controversial because they replaced elected land administration committees with imposed traditional councils derived from apartheid-era tribal authorities. The dramatic changes to the Bill and the rushed parliamentary process were widely perceived as signifying a pre-election deal with the Zulu King and the traditional leadership lobby.

Organisations that opposed the Bill in Parliament included the statutory Human Rights Commission, the Commission on Gender Equality and the Joint Monitoring Committee on the Status of Women in Parliament. The trade union federation COSATU also opposed it, as did the South African Council of Churches, the National Land Committee (NLC), the Women's Legal Centre, the Centre of Applied Legal Studies at Wits, PLAAS at the University of Western Cape (UWC) and the Legal Resources Centre. The Government was widely criticised for failing properly to inform ordinary rural people and civil society organisations about the Bill. The only organisations to support it were those representing traditional leaders. Most of the rural spokespeople who went to Parliament had been involved in an NGO consultation project convened by the NLC and PLAAS. Despite strong objections, the Bill was rushed through Parliament in record time. Some amendments were made, but these were mainly to head off criticism that it was unconstitutional.

The rural delegates who had tried to explain the negative consequences of the Bill were taken aback by the hostile response they received from Department of Land Affairs and certain members of Parliament. Many groups wanted to challenge the constitutionality of the process, and of the Bill itself, but there were problems finding funding to support such an ambitious case, mainly because of the need for empirical research and the

far-flung areas involved. The NGO consultation project had used its entire remaining budget to cover the travel costs of getting rural people to Parliament in time to make submissions

In the end, money was raised for a legal challenge. However, only a limited number of applicants could be accommodated, and they all had to fall within the jurisdiction of one High Court as the application would have to be launched at High Court level before it could be appealed in the Constitutional Court. The lawyers involved in the case come from the Legal Resources Centre, a legal NGO, and the human rights division of a large corporate firm, Webber Wentzel Bowens. They were keen for applicants to include some of their existing clients, partly because it would be easier to get the relevant background information, and partly because they had built up good relationships over many years and the applicants were likely to be robust enough to withstand the inevitable pressure that would be put on them. It was also important for the applicants to represent a range of different contexts, including, for example, people living under ordinary “communal tenure regimes” on state or “tribal” land, as well as groups with stronger legal rights derived from purchases or restitution awards. Because of the political nature of the case, it was also considered advisable to include applicants who are not opposed to traditional leaders and who support customary institutions.

In the end, four applicants were selected from the many groupings that wanted to participate in the legal challenge. They all came from the north, falling under the Transvaal Provincial Division of the High Court in Pretoria.

The applicants argue that far from securing their land rights, the CLRA makes them and other key groups (such as single women) less secure. This is because, together with the Traditional Leadership and Governance Framework Act (TLGFA) of 2003, it imposes apartheid-era boundaries and structures on their areas. The Act proposes to transfer title to ‘communities’ that will be represented by imposed land administration committees based on old tribal authorities. The applicants argue that this undermines their ability to control and manage their land at different levels of social organisation – for example, at the family, user group or village level. Some argue that they were put under wrong administration or apartheid-created tribal authorities during apartheid.

Another key complaint is that the Act will reinforce the patriarchal power relations that contribute to the problems women face in trying to access land and in being evicted from their homes if their marriage ends.

### **The people and issues affected by the CLRA**

The Department of Land Affairs estimates that the Act will apply to over 21 million people, most of whom live in ex-homeland areas. The areas covered by the Act are the poorest parts of South Africa, where land is a critically important asset and source of livelihood.

Although these areas are densely settled, few people have legally enforceable rights to the land due to the legacy of the old apartheid permit system. Women are particularly vulnerable because the permit system was restricted to male heads of household, and colonial and apartheid distortions exacerbated the patriarchal features of customary systems. Single mothers struggle to access land, and women's organisations report a high incidence of women being evicted from their homes when their husband dies or their marriage breaks down.

In the past many people lost their fields or residential sites to Bantustan "development" schemes without receiving compensation. Nowadays they are vulnerable to unilateral mining and tourism deals struck by traditional leaders or people purporting to be traditional leaders. Lack of clarity about the status of land rights delays and obstructs development initiatives, while overcrowding and conflicted rights also contribute to chronic disputes and instability in certain areas.

### **Tenure security in the Constitution**

Section 25(6) of the South African Constitution states that:

*A person or community whose tenure of land is insecure as a result of past racially discriminatory laws or practices is entitled to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.*

Section 25(6) recognises the discrepancy between established tenure practice and occupation on the one hand, and the legal insecurity of much land tenure as a result of past discriminatory laws and practices on the other. Forced overcrowding makes it impossible to secure all existing land

rights in situ. The reference to comparable redress facilitates the provision of additional resources to “unpack” severe overcrowding and situations of contested and overlapping land rights.

### **Controversies surrounding the CLRB and the parliamentary process**

The Communal Land Rights Bill (CLRБ) was controversial because of the last-minute changes made in October 2003, which allowed Traditional Councils to become Land Administration Committees. The TLGFA deems existing tribal authorities to be Traditional Councils provided they comply with new composition requirements. The CLRA says that where Traditional Councils exist, they will represent communities “as owners of communal land” and have the power to allocate and register “new order” rights on communal land.

Tribal authorities exist virtually wall-to-wall in ex-homeland areas. They were the building blocks of the Bantustan political system, and their boundaries were drawn to elicit cooperation from traditional leaders and punish those who refused to cooperate with “separate development”. Some tribal authorities are more legitimate than others and coincide with historical community boundaries and identities; others are hotly disputed or dysfunctional. Many cover large areas of land supporting discrete communities with separate identities and relatively independent systems of land rights.

## **WHO ARE THE APPLICANTS, AND WHY ARE THEY CHALLENGING THE ACT?**

### **Kalkfontein**

Kalkfontein is in Mpumalanga. People from diverse ethnic groups clubbed together to buy land in 1922, and farmed it peacefully until the previous government incorporated it into the “homeland” of Kwa Ndebele. A tribal authority and traditional leader were created and imposed on them and a neighbouring farm that was also owned by black purchasers. The traditional leader treated the land as his private property, bringing in outside people and selling stands, development “rights” and natural resources. The Kalkfontein co-purchasers called for a Commission of Enquiry, which found a host of irregularities and recommended that the



Tribal Authority be disbanded. Its recommendations were never implemented, and the dispute escalated to the point that property was damaged and people injured. The community finally went to court and obtained an order stating that the tribal authority must stop interfering with their property rights, and that title must be transferred to a legal entity representing the descendants of the original purchasers.

The Kalkfontein community is concerned that the CLRA and the TLGFA together entrench the disputed tribal authority's status and power over land that they purchased early in the last century. Under the terms of the CLRA, title deeds held by Trusts and Communal Property Associations may be endorsed to reflect the "community" as the owner of the land. This enables larger "traditional communities" to take over the land and land administration of smaller landowning trusts and Community Property Associations (CPAs) that exist within their boundaries.

### **Makuleke**

The Makuleke community live in the far north-east of South Africa, near the top of the Kruger Park. They were forcibly and brutally removed from their land in the 1960s when it was incorporated into the Park, but after a long battle it was agreed that restituted land within the Park would be transferred to their CPA and that they would continue to reside in the resettlement area of Ntlaveni.

What they did not know was that their enforced relocation placed them within the boundaries of the Mhinga Tribal Authority. They assert that they are, and always have been, a separate community with their own traditional leader. Recently, there have been problems in Ntlaveni caused by a headman under the Mhinga Tribal Authority "selling" allocations of Makuleke land to outsiders and undermining the Makuleke community's land rights, which has led to violence and serious disputes. The Makuleke community is concerned that the CLRA is entrenching and expanding the Mhinga Tribal Authority's power over their land in Ntlaveni and within the Park. Moreover, the Act allows the Minister to transfer the title held by the Makuleke CPA to "the community", which would enable the Mhinga Tribal Authority to exercise control over their restituted land.

### **Makgobistad – Mayaeyane**

The clients from Makgobistad do not dispute the legitimacy of the tribal authority, or its boundaries. However, they do dispute its right to make unilateral decisions that deprive families of fields that they have inherited over generations in an agricultural area called Mayaeyane. The Makgobistad case illustrates the argument that different types and functions of land use are controlled at different levels under customary law. Investing the tribal authority with control over land distorts customary systems and undermines decision-making and accountability at other, more decentralised levels of society.

### **Dixie**

Dixie village is located on extremely valuable state-owned land bordering the Kruger Park. However, the villagers are very poor, having been evicted from the Park and neighbouring private game reserves over the last 40 years. A neighbouring tribal authority entered into a secret lease agreement involving the Dixie land with an outside tourism operator without the villagers' knowledge. Community leaders argue that decisions about this land have always been taken by the Dixie villagers, and that the tribal authority has no right to make unilateral decisions on their behalf. They managed to reverse the tourism agreement, but then found that the tribal authority had lodged a restitution claim to Dixie and entered into a series of corrupt arrangements that would see Dixie villagers dispossessed of their land rights. The villagers fear that the CLRA gives the tribal authority (converted into a Traditional Council) legal powers to act unilaterally and undermine existing customary arrangements of decentralised control. As a result of the CLRA, they run the risk of being in a perpetual minority in making decisions that affect their land.

## **LEGAL GROUNDS FOR CHALLENGING THE ACT**

### **Procedural challenge**

The Act has a major impact on customary law and the powers of traditional leaders, both of which are functions of provincial government under the terms of the Constitution. Therefore, it should have followed the Section 76 parliamentary procedure that allows for input by the provinces, but was instead rushed through Parliament using section 75 procedure. The Act is invalid because the wrong parliamentary procedure was followed.

## **Section 25 – Tenure and property rights**

An intrinsic feature of property rights systems is the ability to make decisions about the property. Under customary systems of property rights, decisions are taken at different levels of social organisation, including the family level. By transferring ownership at the level of the “community”, the CLRA undermines decision-making power and control at other levels. This is particularly serious when disputed tribal authority boundaries are imposed as the “default” boundaries of communities. The end result will be that the CLRA will undermine security of tenure in breach of Section 25(6) of the Constitution.

Within the boundaries of existing tribal authorities are groups of people with property rights to the land. They are deprived of these property rights when ownership of their land is taken from existing structures and vested by the CLRA in imposed Traditional Council structures or other structures that it has created.

### **Equality**

The Act conflicts with the equality clause in relation both to gender and race. It does not provide substantive equality for rural women because it entrenches the patriarchal power relations that render women vulnerable. Although the Bill was amended to address some of the problems confronting married women, it undermines the tenure rights of single women, who are particularly vulnerable.

The Act also treats black landowners differently from white landowners, who are not subjected to the regulatory regime imposed by the CLRA. Moreover, Section 28(1-4) of the TLGFA entrenches the power of controversial apartheid-era institutions that were imposed only on black South Africans.

### **Fourth tier of government**

The Constitution only provides for three levels of government: national, provincial and local. The powers given to land administration committees, including traditional councils acting as land administration committees, make them a fourth tier of government, in conflict with the Constitution.

## **THE CLRA AND CUSTOMARY LAW**

One of the key issues highlighted by the legal challenge is the status of land rights derived from customary law. Academic experts argue that the CLRA entrenches key distortions arising from colonialism and apartheid, which downplay the strength of individual land rights, including those held by women, and exaggerate the powers of traditional leaders. They argue that far from being consistent with the subtle systems of shared and vested rights that exist in rural areas, the Act imposes a grid of Western-style exclusive ownership on layered systems of relative rights. Moreover, it centralises power with traditional leaders and undermines indigenous mechanisms for accountability.

Historically, the authority of traditional leaders depended on the support they enjoyed, and their power was mediated by decentralised decision-making processes and competing seats of power. The Act follows the colonial tradition of making traditional leaders accountable upwards to the State rather than downwards to the people who they are authorised to “represent”. Decision-making processes regarding land delineation, allocation, use and management are centralised away from users and user groups and lodged with the Minister and traditional leaders.

Most of the applicants favour customary law, and describe their land rights as being primarily derived from customary entitlements. However, the applicants from Kalkfontein, Makgobistad and Dixie say that the form of power claimed and exercised by traditional leaders breaches past precedents from consultative decision-making processes and undermines their land rights. In these areas, as in many others, the content of customary law is being contested.

## **THE SITUATION AS AT APRIL 2008**

It is four years since the CLRA was passed by Parliament, but it has not yet been brought into operation. In part this reflects ambivalence within the African National Congress about the new law, but it is also a consequence of the limited capacity of the Department of Land Affairs to implement such an ambitious, resource-hungry approach. It is widely recognised that the

transfer process will ignite latent boundary disputes in many areas once the Act is implemented.

The TLGFA, however, is fully functional, and most provinces have now passed provincial traditional leadership laws under the terms of the national Framework Act. Some traditional leaders have already reverted to the apartheid practice of demanding excessive tribal levies and banning meetings. The South African government recently announced that a new separate government Department of Traditional Affairs will be created, and introduced a new Traditional Courts Bill.

The legal challenge to the CLRA is under way, but has been very slow and time-consuming. The application required empirical research to prove the content of “living” customary law (as opposed to distorted apartheid versions) in the applicant communities, and called for a range of expert witnesses. The State then took over a year to submit answering affidavits, which in turn required responding affidavits from the applicants and their experts. A court date has finally been set for October 2008, but the outcome of that hearing will not be the end of the matter, as whichever party loses in Pretoria will then appeal to the Constitutional Court. There is also a possibility that the appeal may have to go via the Bloemfontein Appeal Court.

## **SOME REFLECTIONS ON THE PROCESS**

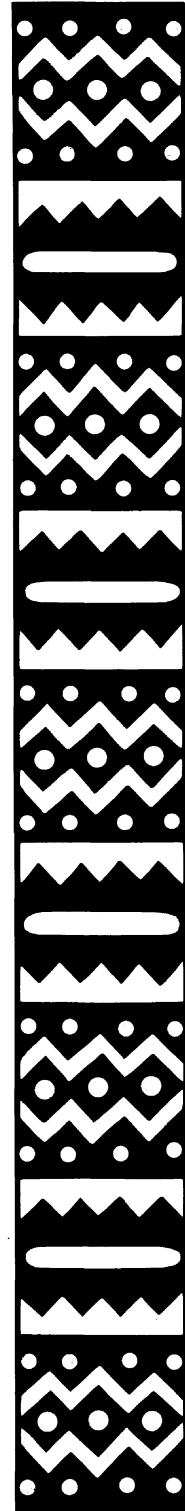
These are the drawbacks of relying on a legal challenge of this nature to deal with a controversial law. However, there were few options once the law had been rubber-stamped by Parliament and all efforts to engage with the Department of Land Affairs and Parliament had come to nothing. The only alternative would have been for each community to challenge the Act as it was implemented in their area. Given the isolation and poverty of most rural areas it would be difficult for leaders to muster lawyers, let alone research and expert witnesses. Most importantly, the new laws make it difficult to challenge abuses of power on a case-by-case basis, because they entrench the already distorted power relations in rural areas and reinforce versions of customary law that are based on authoritarian rule.

Because disputes about the content of customary entitlements to land and the scope of chiefly power over land are endemic in rural areas, the content of customary law is a central issue in the litigation. The South African Constitutional court has found that customary law is not the “official version” set down in old textbooks and apartheid legal precedents, but “living law” that adapts as society changes. The court’s previous nuanced judgements about the interpretation of customary law are an important factor in deciding to pitch the case at this level, despite the delays, resources and complex procedures involved.



# **13. LEGAL CLINICS AND PARTICIPATORY LAW-MAKING FOR INDIGENOUS PEOPLES IN THE REPUBLIC OF CONGO**

Lilian Laurin Barros





## **THE PROBLEM**

The logging industry started to have a major impact in the Republic of Congo in 2004, when foreign (Thai and French) companies with more sophisticated logistical systems began destroying forests in the north and south at an alarming rate, forcing their indigenous inhabitants (“Pygmies”) further and further from their natural environment. Land is primarily a cultural rather than an economic asset for indigenous peoples, forming the basis of their traditions, rules, languages, sacred sites, totems and kinship systems. Therefore, their survival is closely linked to their struggle to retain their land.

## **KEY ACTIVITIES AND STAGES**

In an effort to address the problem, between 2004 and 2006, the Comptoir Juridique Junior brought together a number of associations promoting and defending human rights (Observatoire congolais des droits de l’Homme, Association des femmes juristes du Congo, Association des droits de l’Homme et de l’Univers carcéral, Centre de développement des droits de l’Homme et de la démocratie, etc.) and the Association pour la défense et la protection des peuples autochtones, as part of a legal clinics project. The aim was to provide legal/judicial assistance and mediation in ten conflicts over land between indigenous people and Thai and French logging companies.

The legal clinics are part of a project set up to help the population in general, and impoverished and vulnerable people in particular, gain access to the law and to justice. Run by lawyers and non-lawyers, they provide local people with four services:

- Free legal assistance: legal advice and guidance for victims of crime (violence, injuries, disputes over land and inheritance, fraud, rape, theft, etc.).
- Mediation: helping resolve social and community conflicts amicably (disputes between neighbours, conflicts over inheritance and land, debt recovery, etc.).

- Information and awareness raising: disseminating legal documents written in simple language and illustrated to make them more easily understandable (laws and other legal texts, agreements, etc.). Organising awareness-raising sessions and campaigns (door-to-door, focus groups, seminars, media debates, etc.); establishing a small local library on the law and human rights.
- Training: legal capacity building for local people and organised groups such as associations, the police and gendarmes, women traders, pupils and students; and training paralegals, who are becoming community resource persons with a key role in disseminating information about the law at the grassroots level.

In 2005, this led to a project to draft a specific law to protect indigenous peoples, working with technical and financial support from the Rainforest Foundation (UK) and a British consultant working on the issue of indigenous groups, in collaboration with the Congolese Ministry of Justice and Human Rights.

This participatory project used workshops and fieldwork to enable indigenous people (Pygmies) in southern and northern Congo (the departments of Lékoumou in the south, and Sangha and Likouala in the north) to determine what needed to be done to help them, using problem trees, prioritising needs and jointly preparing a draft bill. In 2005 the bill was discussed with the Government via the Ministry of Justice and Human Rights, and then submitted to Parliament for adoption in early 2006 (it is still at this stage).

## **DIFFICULTIES AND CONSTRAINTS**

The powerful interests of certain major logging companies and politicians are preventing indigenous people from securing their land rights, and may be at the root of the delays in putting this bill to the vote in the national assembly.

## **CHALLENGES**

- Overcoming the fatalism of indigenous peoples who have a long history of being marginalised.
- Raising their awareness of the issues involved in the law on land rights.
- Getting the media closely involved in publicising violations of indigenous people's land rights.
- Involving elected local officials in condemnation of the abuses perpetrated on local people's lands by logging companies.
- Resistance by logging companies, despite the legal ban on any logging activities in areas occupied by indigenous populations.
- Funding a training programme for indigenous people on land law and the legal procedures for dealing with breaches of the law.

## **RESULTS/IMPACTS**

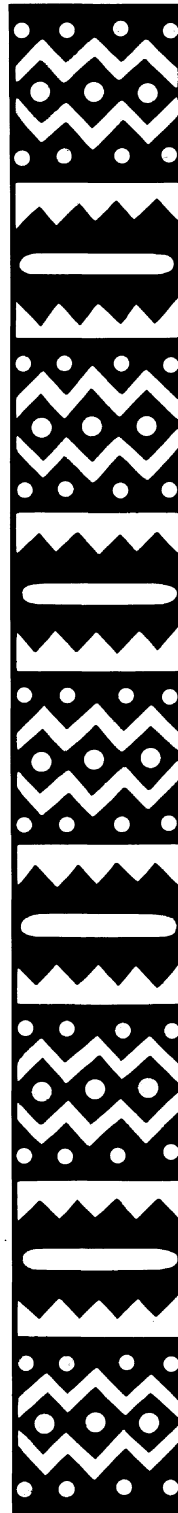
The legal and judicial assistance provided by the clinics, and mediation of the ten cases in hand have helped indigenous people defend themselves and save their living space from imminent destruction. They have also learned the basic elements of law and are able to start legal and judicial procedures to defend themselves when the law is broken. Similarly, the Association pour la défense et la protection des peuples autochtones, which works on securing land rights, has been strengthened by having an office space to work out of and allies to help defend indigenous people's land rights.

## **LESSONS LEARNED**

In practical terms, this experience shows that the law, culture and development are closely linked, and that poor and vulnerable groups can use positive law as a development tool. However, this law is not enough: Congolese jurisprudence and laws on securing land rights need to be tightened up and reinforced with international agreements that will provide greater cohesion and a more stable basis for all concerned.

**14. PROCEDURAL RIGHTS:  
INCLUSION IN DECISION-  
MAKING PROCESSES  
RELATING TO LAND AND  
NATURAL RESOURCES**

Linda Siegele



Government decision-makers generally have the authority to make choices about how the land and natural resource base of a nation or locality is used.<sup>33</sup> Quite often those individuals and communities living on the land and dependent upon the associated natural resources have little or no say in how these choices are made. In fact, the question of who has rights over land and the natural resource base itself is often pre-empted when local community rights-holders are not given a place at the table where the choices are being made.

Procedural rights as they are expressed in international and regional environmental and human rights law require government decision-makers to inform the public that a decision will be made and to provide adequate information about the nature of the choices being made. Procedural rights obligations also require government decision-makers to open the door to the room where decisions are being made, and make a place at the table where they are being discussed. Finally, procedural rights obligations require governments to put in place a procedure for considering the public's complaints and grievances regarding decisions about land and resources, including the manner in which they are made.

The three key pillars upholding the right of the public to be included in decision-making processes – access to information, effective participation and access to justice – can be found in a range of legal instruments.

Some of these instruments are global in nature, some are regional. Some are agreed among states to protect general human rights, others approach the issues from the perspective of a particular group – such as indigenous peoples or children – or a specific environmental issue. Some are legally binding, some are aspirational. Often, they are reflected in domestic laws and practices at the national and local levels.

While they might exist “on paper”, these procedural rights are not always implemented in practice. People may not be aware of their rights, the rights might be too restrictive (for example, in terms of defining what information is “confidential” or who is entitled to rely on the norms), it might be too costly to exercise these rights, access to expert assistance may not be

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33. This section takes forward certain issues and concepts considered in a paper prepared by FIELD lawyers in September 2006.

available, or a corrupt political environment may make exercising these rights extremely difficult, if not impossible.

This chapter will first briefly consider the content and sources of these so-called “procedural rights” to information, participation and justice, by looking at their manifestation in global and regional state-to-state instruments. It will then consider two recent examples of how legal tools that implement these procedural rights have empowered local communities in decision-making processes.

## **INTERGOVERNMENTAL INSTRUMENTS**

### **PRINCIPLE 10 OF THE 1992 RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT**

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Principle 10 of the 1992 Rio Declaration on Environment and Development recognises the value of giving people access to information, an opportunity to participate in decision-making processes and effective access to justice in respect of environmental issues (see Box above). Principle 10 is not the first or the last time governments have recognised the importance of procedural norms. It is, nevertheless, a helpful marker in the evolution of procedural norms in intergovernmental instruments that link the environment with people’s welfare – especially in the South.

The 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was negotiated with the express purpose of implementing Principle 10 of the Rio Convention. While the Aarhus Convention was negotiated among European states (UNECE), it is open to ratification by all

UN members.<sup>34</sup> The 1968 African Convention on the Conservation of Nature and Natural Resources<sup>35</sup> is another regional-level environmental agreement that contains procedural norms.

The procedural rights contained in intergovernmental environmental instruments have also been expressed in intergovernmental instruments on human rights. Some are generally applicable human rights – such as the right to freedom of expression, the right to political participation or the right to effective remedy – while others are procedural rights applied to specific groups such as indigenous peoples. The rights to a private life and home, to health and life and to property, and the rights of minorities in a range of human rights instruments have been found to have been violated by environmental pollution or the exploitation of natural resources.<sup>36</sup> Conflicts can arise, however, when the governmental pursuit of environmental aims threatens the enjoyment of another right – such as the right to property or the right to work.<sup>37</sup>

General international human rights instruments containing norms relevant to access to information, participation and justice include the 1948 Universal Declaration of Human Rights,<sup>38</sup> the 1966 UN International Covenant on Civil and Political Rights (ICCPR)<sup>39</sup> and the 1966 UN International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>40</sup> International human rights instruments addressing procedural norms relevant to specific groups include the 1989 Convention on the Rights of the Child<sup>41</sup> and the 1989 ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention 169).<sup>42</sup>

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34. Article 19 UNECE, Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters Aarhus, Denmark, adopted 25th June 1998, in force 30th October 2001. <http://www.unece.org/env/pp/documents/cep43e.pdf>.

35. Concluded in Algiers on 15th September 1968, [http://untreaty.un.org/English/UNEP/african\\_nature\\_english.pdf](http://untreaty.un.org/English/UNEP/african_nature_english.pdf).

36. See, for example, *Chief Bernard Ominayak and the Lubicon Band v. Canada*, Communication No. 167/1984, Decisions of the Human Rights Committee, U.N. Doc. CCPR/C/38/D/167/1984 (1990) <http://www1.umn.edu/humanrts/undocs/session38/167-1984.html>.

37. ECHR cases where measures to protect the environment (as opposed to enforcement of the 'right to environment') were found not to violate right to property: *Fredin v. Sweden* 12033/86 [1991] ECHR 2 (18th February 1991) and *Pine Valley Development v. Ireland* 12742/87 [1991] ECHR 55 (29th November 1991).

38. Adopted 10th December 1948, G.A. Res. 217A (III), UN Doc A/810, at 71 (1948).

39. <http://www.ohchr.org/english/law/index.htm>.

40. *Id.*

41. *Id.*

42. <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>.

At regional level, the African Commission on Human Rights considers complaints from individuals concerning the rights contained in the 1981 African Charter on Human and Peoples' Rights.<sup>43</sup> The newly established African Court on Human and Peoples' Rights is also poised to hear matters initiated by non-state actors.<sup>44</sup>

### **PROCEDURAL NORMS IN THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS**

#### **Article 7**

1. Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force.

#### **Article 9**

1. Every individual shall have the right to receive information.

#### **Article 13**

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

## **LEGAL TOOLS: IMPLEMENTING PROCEDURAL RIGHTS**

Citizens' general rights to access information, participate in decision-making processes and access justice are often set out in the country's constitution. Constitutional rights and duties are then often developed through laws and regulations, with some countries implementing constitutional or international rights to information through Freedom of Information legislation. Access to information, participation and access to justice in environmental matters is generally reflected in framework environmental laws or laws and regulations dealing specifically with environmental impact assessment. Specific rights to information, participation and justice may also be reflected in sectoral laws and regulations.

Environmental impact assessments (EIAs) and freedom of information acts (FOIAs) are two examples of legal tools that implement the procedural rights being considered here. A brief discussion of the nature of these legal tools is

43. American Declaration of the Rights and Duties of Man, available at <http://cidh.org/basic.eng.htm>.

44. <http://www.interights.org/page.php?dir=News#Inauguration>.



followed by a concrete example of how they have been used to empower local communities in the face of decisions regarding land and natural resource use.

## **ENVIRONMENTAL IMPACT ASSESSMENTS**

EIA is a common mechanism for providing information and consulting the public about governmental decisions on proposed activities that might have an adverse impact on the environment. Sands (2003) describes EIA as “a process which produces a written statement to be used to guide decision-making, with several related functions. First, it should provide decision-makers with information on the environmental consequences of proposed activities and, in some cases, programmes and policies and their alternatives. Secondly, it requires decisions to be influenced by that information. And, thirdly, it provides a mechanism for ensuring the participation of potentially affected persons in the decision-making process”. EIAs are often mandated by national laws on the basis of obligations agreed to under international and regional instruments (e.g. Principle 17 of the Rio Declaration, 1991 Espoo Convention).

### **Case study – Titanium mining in the Kwale District of Kenya**

The Canadian company Tiomin Resources Incorporated discovered titanium in the Kwale District of Kenya, and in 2000 applied for a licence to begin mining operations. The Kwale District is on the Kenyan coast in an area deemed to be one of the world’s megadiverse biodiversity “hot spots”. It is home to the indigenous Digo and Kamba peoples, who would need to be relocated during the mining operations. In Kenya all proposed projects must be assessed for their environmental impact and, if it is judged necessary by the National Environmental Management Agency (NEMA), an EIA should be submitted prior to licensing. EIAs must be conducted by independent, NEMA-approved experts, and national law grants all persons the right to participate in the EIA process (Kameri-Mbote, 2000).

The Coast Mining Rights Forum, a coalition of NGOs and other community groups set up to challenge Tiomin’s activities, pointed out irregularities in the procedure that Tiomin had followed in preparing its EIA. Reports showed that Tiomin’s EIA for the Kwale mining project was not prepared by

an independent organisation with the requisite expertise, and that local residents were not consulted in the process until after the EIA had been prepared. Moreover, agreements were signed and mining activities commenced before the EIA was approved.

Through the Coast Mining Rights Forum, local residents demanded a new EIA and commissioned professors at Kenyatta University to conduct an independent one. “Appreciable amounts” of radioactive uranium and thorium were discovered in the titanium deposits, and the independent EIA warned that titanium mining would cause erosion and siltation of rivers and coastal waters, damaging coral reefs and mangrove ecosystems. The small but developing local eco-tourism sector was also likely to be affected.<sup>45</sup>

Members of the Kwale District petitioned the Kenyan High Court for an injunction against Tiomin to halt their mining activities. The independent EIA conducted by Kenyatta University was presented as evidence and provided much of the support for the Court’s decision to grant the injunction. The Court also highlighted the company’s failure to follow proper procedure in preparing and filing its EIA, noting that this could be considered a criminal act under Kenyan law.<sup>46</sup>

Following a number of other lawsuits lodged by local individuals, generally around the issues of relocation and compensation, the Kenyan government granted Tiomin a licence to operate the mine in early 2005 (Kithi, 2005). However, by the last quarter of 2007, Tiomin had cancelled all engineering contracts and stopped looking for further funding for its mining activities in Kwale (Onyango, 2007).

## **FREEDOM OF INFORMATION ACTS**

Freedom of information (FOI) includes the right to access information and the right to free expression of opinions, i.e. the right to freedom of speech and freedom to publish. Both of these notions are included in Article 19 of the Universal Declaration of Human Rights, which describes this right as that of

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45. Global Response Environmental Action and Education Network, available at <http://www.globalresponse.org/gra.php?i=4/00>.

46. *Rodgers Muema Nzioka & Two Others v. Tiomin Kenya Limited*, High Court of Kenya at Mombasa, Civil Case No. 97 (2001).

“freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.<sup>47</sup>

FOI laws focus on the right of citizens to seek information, and generally provide a process by which government information is made available to the public. The burden of proof in most of these laws lies with the government, with a requirement to give a valid reason for not providing information requested by the public.

Only a handful of the seventy-plus FOI laws existing in the world are in place in African countries. In September 2006, a coalition of African NGOs convened a regional workshop to discuss ways of sharing experiences and strategies for advancing the adoption of laws that fully protect this right, endorsing the Lagos Declaration on the Right of Access to Information.<sup>48</sup> Among the provisions of this declaration was the creation of a Freedom of Information Centre in Africa, where experiences could be pooled and shared, and technical assistance provided to organisations involved in advocacy or freedom of information activities. Thus, the Africa Freedom of Information Centre (AFIC) was launched in September 2007 in Lagos, Nigeria.<sup>49</sup>

The Centre will maintain a library and a bilingual virtual resources centre that will provide up-to-date information about access to information in all countries in the region. It will also contain the texts of freedom of information bills and laws in various African countries, as well as the texts of standard-setting documents in Africa and other regions and nations.

### **Case study – *Marcel Claude Reyes and Others v. Chile* – Chile**

In 1998 the Terram Foundation requested information from the Chilean Foreign Investment Committee regarding the Chilean government’s approval of a major logging project in Tierra del Fuego. The Committee failed to reply to this and other repeated requests for information, without giving any reason for doing so. As a result, Marcel Claude Reyes (the director of Terram) and his colleagues filed three constitutional appeals against the Committee in the domestic courts, protesting the effective denial of their request and claiming a

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47. Seyoum Hameso, *Politics of Freedom of Information in Africa, Focus on International and Comparative Librarianship*, Vol. 26. No. 3. pp. 156-164, 1995, available at [http://website.lineone.net/~hameso/freedom\\_of\\_information.htm](http://website.lineone.net/~hameso/freedom_of_information.htm).

48. Available at, <http://www.mediarightsagenda.org/right%20to%20foi.html>.

49. Africa Freedom of Information Centre Launched, Freedom of Information Coalition, Press Release, 27th September 2007, available at, [http://www.foicoalition.org/press\\_release/2007/pr0907\\_03.htm](http://www.foicoalition.org/press_release/2007/pr0907_03.htm).

violation of their right to information under the Chilean Constitution and the Inter-American Convention on Human Rights (Convention). All appeals were dismissed, including those lodged with the Chilean Supreme Court.<sup>50</sup>

The plaintiffs then filed a petition with the Inter-American Commission on Human Rights (Commission), which concluded that Chile had violated their right to information under the Convention, and suggested remedies to be taken by the State. The Commission deemed Chile's response to its conclusions to be unsatisfactory, and referred the case to the Inter-American Court on Human Rights (Court).<sup>51</sup>

In October 2006 the Court ruled that there is a general right of access to information held by government, in the first ruling of this kind to come from an international tribunal. The judgment also stipulates that states must adopt legal and other provisions to ensure that the right to information can be exercised effectively, and must define limited exemptions in order to minimise restrictions of this right. The Court further required Chile to train public officials on the right to information and the international standards for exemptions.<sup>52</sup>

Although this case was not decided by a court with jurisdiction in Africa, it has the potential to influence outcomes in African courts (especially the newly formed African Court on Human and Peoples' Rights) because it was decided by one of only three regional human rights courts in the world. The African Court has the most expansive approach to subject matter jurisdiction of the three regional human rights courts. The Inter-American Court and European Court are bound to implement and interpret their governing conventions and protocols, while the African Court can apply any instrument or source of law concerning human rights that is ratified by all the states involved in a particular case.<sup>53</sup> Insofar as the Inter-American Court's ruling can be seen as applicable to an international human rights

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50. See Inter-American Court of Human Rights Case of *Claude-Reyes and Others v. Chile*, Judgment of September 19th 2006, (Merits, Reparations and Costs); see also in the Inter-American court of Human Rights, Case No. 12.108, *Marcel Claude Reyes and Others v. Chile*, written comments of: Open Society Justice Initiative, Article 19 Global Campaign for Free Expression, Libertad de Informacion Mexico, Instituto Prensa y Sociedad, Access Info Europe, March 2006.

51. *Id.*

52. See Inter-American Court of Human Rights Case of *Claude-Reyes and Others v. Chile*, Judgment of September 19th 2006, (Merits, Reparations and Costs); see also Council of Europe, Steering Committee for Human Rights, Group of Specialists on Access to Official Documents, Information note on the decision of the Inter-American Court of Human Rights in the case of *Claude Reyes and Others v. Chile* (DH-S-AC(2006)010bil).

53. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights ("Protocol for Establishment of an African Court"), CAB/LEG/665, adopted June 9th 1998 and entered into force January 1st 2004. [http://www.achpr.org/english/\\_info/court\\_en.html](http://www.achpr.org/english/_info/court_en.html).

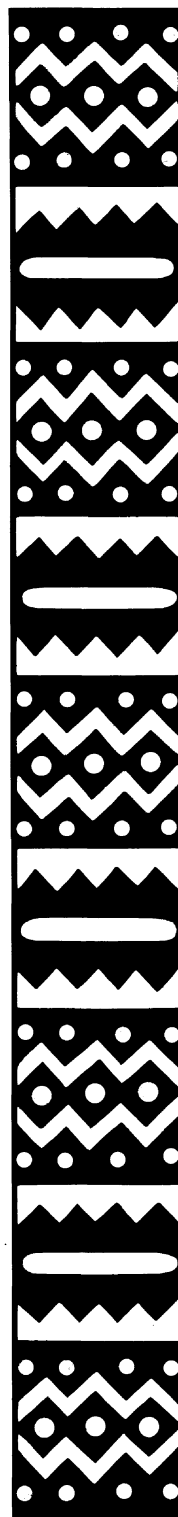
convention such as the International Covenant on Civil and Political Rights, it could be introduced into African jurisprudence.

## **CONCLUSION**

There are many international and regional instruments that require access to information and justice and public participation in the use of land and natural resources. Those rights expressed in international instruments are reflected in national-level constitutions and laws. Some are linked to specific land and resource uses, while others are generally applicable. They are invariably founded on basic human rights and are fundamental to the enjoyment of other human rights. To ensure that procedural rights are effective legal tools, communities need to be aware that they exist and have the capacity to use them in their favour. The criteria for those eligible to invoke the rules should preferably allow for representative actions without having to show direct harm, and communities should also have access to independent assistance from agencies such as NGOs with specialist expertise.

## **15. HIGHLIGHTS OF THE WORKSHOP DISCUSSIONS**

Lorenzo Cotula, Paul Mathieu, Jeffrey  
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Meene



Over the two days of workshop discussions, participants shared a wealth of innovative experiences regarding legal empowerment to secure land rights. Some have been written up and included in previous chapters of this report, others have not – partly because some are still at an early stage of the process.

Overall, the experiences shared and discussed at the workshop highlight the great diversity of possible routes to legal empowerment, which can involve a range of approaches, tools and methods (from legal literacy training to litigation) as well as target groups (pastoralists, indigenous peoples, women and others). This diversity of tools and target groups is the natural consequence of the variety of contexts concerned. There is no blueprint approach to legal empowerment, as different local problems and needs require different solutions.

Despite this diversity, a common characteristic of successful legal empowerment initiatives is the ability to work creatively with the opportunities offered by applicable law. Although much remains to be done in many countries to establish national legal frameworks that facilitate secure land rights for poorer groups, recent waves of law reform in several countries have created or improved opportunities for securing local land rights.

Creative use of legal pluralism can expand these opportunities. Where national land legislation is lacking, it may be possible to rely on constitutional provisions or international standards. These standards may include international human rights and environmental treaties (see the work on “procedural rights” carried out by FIELD), or the social and environmental standards applied by lending institutions involved in large-scale projects (such as the World Bank in the Chad-Cameroon oil pipeline project, and the work spearheaded by CED to defend indigenous peoples’ resource rights in Cameroon).

Similarly, while reliance on “customary” systems may be effective in resolving local disputes where such systems are perceived as legitimate on the ground, reliance on constitutional norms can provide a legal entry point to challenge discriminatory or unaccountable customary systems or national legislation entrenching them (see, for instance, the constitutionality challenge brought by the Legal Resources Centre in South Africa).

However, disadvantaged groups tend to be unaware of the opportunities offered by national law or international frameworks. Raising citizens' awareness of their rights and the procedures for securing them is therefore a necessary first step in legal empowerment processes. Most, if not all, of the experiences discussed at the workshop had an element of legal awareness raising. The tools used to do this vary greatly – from the radio programmes, theatre plays and village debates organised by the Land Rights Information Centres in Uganda, to the development and implementation of legal literacy trainings targeting elected local councillors and the local population at large in Senegal, through to working with paralegals in contexts as diverse as Sierra Leone, Namibia, Congo Brazzaville, Mozambique, Mali, Ghana, Cameroon and Uganda.

Awareness of rights and how to use them can increase social self-confidence and capacity, leading to more assertive claims and the enforcement and protection of rights. Information is power, and awareness raising is a necessary part of legal empowerment. Yet simply providing information may not be sufficient to promote legal empowerment. Even where people are aware of their rights, they may lack the know-how and resources to go through the procedures provided by the law to exercise and enforce those rights. They may also find it difficult to counter abuses of the law or inadequate implementation by other parties, such as government officials and private companies.

This means that other types of support are needed too. This may include helping local groups establish legal entities to engage with government and the private sector (see, for instance, the work of ZELA in Zimbabwe and Centro Terra Viva in Mozambique); helping local groups obtain certificates of village land rights, as illustrated by the work of the NGO CORDS in Tanzania; providing legal assistance to local groups in the consultation processes required by Mozambican law as a precondition for allocating resource rights to investors (see the work of Centro Terra Viva); and different forms of public interest litigation – from the court litigation used by the Centre for Public Interest Law to challenge uncompensated loss of land rights among local groups affected by mining in Ghana, to the constitutionality challenge against land legislation that undermines poorer groups' security of tenure brought by the Legal Resources Centre in South Africa.



Producing and providing evidence of rights can also be an effective strategy. In some respects, new technologies have facilitated this task, as with the low-cost and easy-to-use technology employed by CED to map local resource rights in Cameroon. However, resource rights are embedded in complex contexts: who has which rights over what can be hotly contested, and as the Legal Resources Centre in South Africa found, producing evidence (on the content of customary law and rights, for example) can be a major challenge.

Legal empowerment is more than “legal work” – it is about tackling power asymmetries between competing land claims and authorities. Nor is it necessarily a win-win process. Some groups may see their power base eroded as weaker groups acquire greater voice, and are therefore likely to resist legal empowerment initiatives. Eveil’s paralegal programme in Mali and the Land Rights Information Centres supported by the Uganda Land Alliance in Uganda both had to grapple with resistance from vested interests among village chiefs in Mali and certain government officials in Uganda. While creative use of “legal entry points” is important, it needs to be accompanied by social mobilisation, savvy identification and use of non-legal “pressure points”, and other ways of getting round resistance from vested interests. Strategic thinking and allocation of resources is necessary to ensure that actions leverage their efforts for maximum effect.

Among other things, effective social mobilisation is a function of the stakes involved and their implications for the community at large. Thus, the importance of land access and the widespread nature of land disputes were central in promoting local ownership of the Land Rights Information Centres in Uganda, while the existence of a common and immediate threat of eviction provided the basis for mobilising indigenous groups in Cameroon when a natural park was established in the context of the Chad-Cameroon oil pipeline project. Even the frustrating experience of challenging encroachment on pastoral lands in Tanzania showed that failed court litigation can act as a catalyst for social mobilisation.

However, it is also important to recognise the differentiation within local groups, which are not homogeneous and may have different interests and powers of negotiation. Several organisations are setting up community consultations (such as the Comptoir Juridique Junior in Congo-Brazzaville) or platforms for local debate (like CRAC-GRN in Niger) to help create common

understanding, visions and solutions. These processes have increased local capacity by enlarging the space for negotiation with other parties and promoting greater cohesion and more effective regulation of intra-group relations.

Making effective use of non-legal pressure points is crucial in tackling power imbalances. For instance, understanding what motivates government officials and other actors, and making use of this incentive structure can be powerful tools. As a workshop participant from Mozambique noted, government officials tend not to like being “named and shamed” – so this can be used as a pressure point in legal empowerment processes.

Some of the experiences shared at the workshop show the importance of thinking “outside the box” to identify pressure points. Local problems may have international solutions, and the creative use of pressure points at different levels (local to national and international) can be an effective strategy.

For example, in the case from Cameroon, strategic action that made the most of the World Bank’s involvement in the Chad-Cameroon pipeline project led to a park management plan that respected indigenous peoples’ resource rights. This action involved putting pressure on the World Bank to pressure the government of Cameroon.

Similarly, the fact that the EU market accounts for a significant share of Ghanaian timber exports provided a pressure point for Civic Response and other NGOs pushing for an EU-Ghana Voluntary Partnership Agreement that respects local resource rights in international timber trade relations.

Dealing with vested interests does not necessarily mean taking a confrontational stance, as fostering better mutual understanding and dialogue can also play a crucial role. Strategies used by both Eveil and the Uganda Land Alliance to overcome resistance from local vested interests involved clarifying the nature and aims of their initiatives and promoting dialogue with their opponents. Depending on the sensitivity of the issues and the local political context, showing the government that actions are being taken to improve the system (rather than threaten or overthrow it) can also be a wise strategy – as exemplified by the work to get local communities recognised as legal entities carried out by ZELA in Zimbabwe.

All the legal empowerment initiatives discussed at the workshop involved some form of external support from legal services organisations. While involving external actors can bring essential support to the empowerment process, it is the engagement of local groups that is the real driving force for change. Long-term commitment by legal services organisations and clear and effective communication between local groups and external actors are vital in building the level of trust needed for such initiatives to work; as is managing local expectations about what these initiatives can achieve, and respecting local sensitivities.

The Community Oversight Boards set up by Timap for Justice in Sierra Leone serve as a permanent buffer between Timap and the local communities, and have increased the transparency and accountability of Timap's paralegal programme. In the initiative spearheaded by CED in Cameroon, discussions about using mapping to secure local resource rights within a newly established natural park initially sparked concerns about boundary demarcation and related resource conflict; concerns that were resolved as the aim and focus of the exercise was clarified. Facilitating exchange visits and sharing real-life experiences with other groups that have already been through the proposed process may also help build trust and self-confidence – again, a strategy that was used in the case from Cameroon.

The experience from Uganda also shows that letting local groups themselves identify members to be trained as paralegals builds local ownership of the programme and trust in the impartiality and quality of the paralegals' work.

Beyond the trust established between local groups and legal services organisations, relations with other actors, particularly the government administration, are also important for the success of legal empowerment initiatives. In Uganda, the services provided by the Land Rights Information Centres are now appreciated and used by government officials. Similarly, winning over the government administration and/or customary authorities played an important role in the implementation of legal empowerment initiatives in Zimbabwe (ZELA) and Mali (with regard to the work of Eveil). On the other hand, obstruction by central or local government can raise important challenges for legal empowerment interventions (as with the LRC in South Africa).



Moussa Djiré

### *Legal caravans in Mali*

A continuous local presence is important in building and maintaining trust, as is understanding the local context. This local presence may take a range of different forms – from the district-level Land Rights Information Centres in Uganda to “junior lawyers” in Cameroon and village-level paralegals in Mali. And when limited resources constrain the capacity to establish a local presence, innovative approaches such as the “legal caravans” being developed by GERSDA in Mali provide another way of raising local legal awareness. These caravans consult local groups to identify local capacity building needs, and hold awareness-raising sessions in affected villages. The sessions are spread over a few days, led by academic lawyers with support from their students. Rural radio is another way of reaching a broad and distant audience when resources are strained.

Legal empowerment is inevitably a long-term process. Most initiatives depend on external funding from development agencies, which is typically tied to (relatively short-term) project funding cycles. This can undermine the sustainability of the initiatives, and the situation is exacerbated by the fact that successful legal empowerment initiatives tend to attract overwhelming local demand – which puts a strain on the limited staff and resources available.

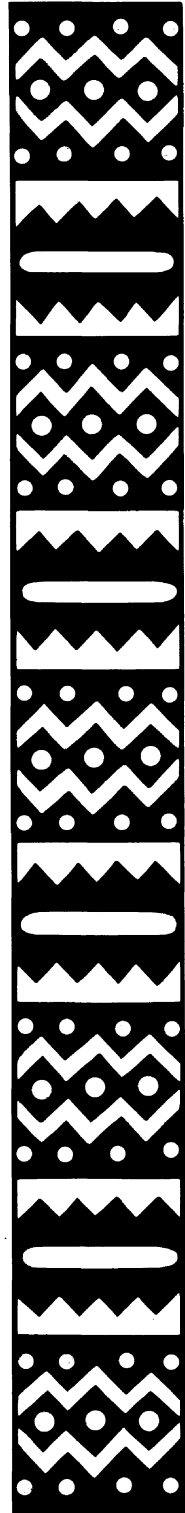
Workshop discussions regarding the introduction of cost recovery as a way of measuring real local demand and ensuring longer-term sustainability highlighted the risk that this could make such initiatives inaccessible to poorer groups who cannot afford fees. Implementing means testing to differentiate between those who are able to pay and those who are not would be a challenge, and could lead to paying customers being prioritised and receiving better services.

It is important to be aware of the limits of these interventions in order to better tailor them to local needs and manage local expectations. Training community paralegals seems to be a particularly effective method of raising local people’s awareness of their rights, helping with the procedural elements of securing land rights and monitoring changes and threats. However, it is also important not to create unrealistic expectations about what the paralegals can achieve on their own. As community members with only basic training in law, paralegals can face significant capacity challenges when called upon to handle complex issues or disputes.

Timap for Justice’s experience of working with paralegals in Sierra Leone shows the need to provide regular support and supervision for community-based paralegals, and for their training and work to focus on advising which other institutions and actors (including professional lawyers) to approach for particularly complex issues and situations.

Facilitating the exchange of experiences and lesson sharing among the legal services organisations and local groups involved in legal empowerment initiatives can help strengthen local self-confidence and capacity to engage in such initiatives, as well as sharpening the tools, approaches and methods used by legal services organisations. Lesson-sharing workshops, Internet-based “communities of practice”, exchange visits and other mechanisms for exchange and mutual learning can all provide valuable support for local initiatives.

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# WORKSHOP PROGRAMME

## Objectives

- 1) Facilitate exchange of experiences and lesson-sharing among practitioners.
- 2) Generate lessons from innovative local initiatives, to be fed into international processes.

## *Day 1. Thursday 13 March*

9.00	<b>Introduction</b> Welcome Getting to know each other: mapping and expectations exercises 'Housekeeping': practical information
10.00	<b>Morning session: Setting the scene</b> Workshop objectives and programme Developing a shared understanding of legal empowerment: Presentation and discussion
11.00	Coffee break
11.20	Panel presentations: Four different routes to legal empowerment Discussion
13.00	Lunch
14.00	<b>Afternoon session: Documenting experiences</b> In two working groups, participants share their legal empowerment experiences, highlighting why (what was the problem/goal), what and how (key activities and approaches), who (initiated, led, participated, benefited), when (length, milestones), so what (results/outcomes/impacts).
17.30	<b>Close</b>

## **Day 2. Friday 14 March**

8.30	<b>Morning session: Analysing the experiences</b> In the same working groups, and building on the discussions from Day 1, participants analyse and compare approaches, tools and methods. For each approach, tool or method used, the analysis focuses on results achieved; enabling factors – what made it possible; constraining factors and ways they were tackled; lessons learned.
13.00	Lunch
14.00	<b>Afternoon session: Moving forward</b> Back in plenary, rapporteurs present the results of working group discussions  In plenary, discussions on: - Key lessons and implications for policy and practice - Beyond the workshop: mechanisms for continued exchange of experience and lesson sharing  Workshop evaluation exercise
17.00	<b>Final remarks, close</b>

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# Legal empowerment in practice

## Using legal tools to secure land rights in Africa

Edited by Lorenzo Cotula and Paul Mathieu

In recent years, many legal services organisations have developed innovative ways of using legal processes to help disadvantaged groups gain more secure rights over their land. The approaches, tools and methods used vary widely across contexts – from legal literacy training to paralegal programmes; and from participatory methodologies to help local groups register their lands or negotiate with government or the private sector, through to legal representation and strategic use of public interest litigation.

While some of this experience has been documented, much of it has not. Very little of it has fed into international debates, and there have been few opportunities for lesson-sharing and cross-fertilisation among practitioners.

In March 2008, the International Institute for Environment and Development, the Food and Agriculture Organization of the UN, and the Faculty of Law of the University of Ghana jointly organised an international workshop to promote the exchange of experiences among practitioners. Over the two days of the workshop, some 25 practitioners from different parts of Africa, and a few practitioners and researchers from international institutions and Europe shared lessons and learned from each other's experiences with legal empowerment. This report captures the highlights of the workshop discussions.

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