Land rights in Gabon: Confronting the past and the present

Les droits fonciers au Gabon : Faire face au passé et au présent

Land Rights in Gabon Facing the Past – and the Present Liz Alden Wily with contributions from Nathalie Faure A publication by FERN April 2012

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Produced by FERN. FERN works towards achieving greater social and environmental justice, focusing on forests and the rights of forest peoples within the policies and practices of the European Union. Its aim is to collaborate with partners to improve forest governance and strengthen land rights of local communities by utilizing the EU's FLEGT program, which also aims to control the import of illegal timber into the EU. About half of the tropical timber and 20% of the timber from boreal forests imported into the EU is of illegal origin. Illegal logging destroys forests and harms communities, but it is difficult to address as it often forms an integral part of a nation's economy, providing financial support to political parties and commercial companies. FERN believes the challenge is to tackle the underlying factors driving illegal activities, namely: lack of good governance, including corruption, unjust land tenure systems, and inequitable government policies that marginalize local populations. Author: Liz Alden Wily Design: Daan van Beek, Netherlands Printer: Redlin, United Kingdom Photography: Rainforest Foundation Produced by FERN, Brussels, Belgium / Moreton in Marsh, United Kingdom Keywords: Gabon, customary land tenure, forests, forest reform ISBN: 978-1-906607-22-7 FERN UK office, 1C Fosseway Business Centre, Stratford Road, Moreton in Marsh, GL56 9NQ, United Kingdom FERN Brussels office, 26 Rue d'Edimbourg, 1050 Brussels, Belgium www.fern.org This publication was made possible with financial support from SwedBio/CBM, as well as from the Directorate-General for Development and Cooperation and the Directorate-General for Environment of the European Commission and ICCO. The opinions expressed in this report are those of the author and do not necessarily represent the position of FERN or its donors. April 2012

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Land Rights in Gabon Facing the Past – and the Present 5 Summary The Central African state of Gabon faces many challenges. Since 1899, when France proclaimed itself the owner of the land, and for over a century, the population has endured the dispossession of its lands and resources, both in law and in fact. Practically the entire country was then allocated to logging concessions, which effectively behaved like the state, collecting taxes and controlling waterways. This ended nearly two centuries of localized and sustainable exploitation of extractive resources by the Gabonese people themselves, which was part of what was then one of the most elaborate exchange systems in Africa (though initiated by the slave trade). Gabon gained independence in 1960, but the Gabonese people remained precarious occupants of land declared as belonging to the state, with lands continuing to be allocated primarily to large companies. In fact, successive administrations, dominated by the Bongo dynasty, have reinforced the process of dispossession, with land and forestry legislations that are practically indistinguishable from the old colonial laws. Since the 1990s, there has been much talk of introducing fairer new legislation, as well as ambitious projects for better resource management and rights, but the essential instruments to enable this have not materialized. One of the most serious gaps has been the failure to delineate the Rural Forest Domain, as had been promised. Although this would not have made rural populations the legal owners of their lands, it would at least have helped them obtain rights of occupancy and use. There has also been no progress regarding a long-standing legal commitment to greater decentralization, which would have allowed the poor in rural and urban areas to organize community administrations and given them more weight in the allocation and management of land and resources in their areas. It had been assured that assistance would be provided to those who had been physically expelled or whose access to their lands had been restricted by the much-lauded measure of granting protected status to 10% of Gabon's territory. Nevertheless, in this area as well, the legislation allowing park authorities to initiate formal consultations with these populations, and perhaps even to reach social agreements regarding compensations, has not materialized. Similarly, there has been no legislation supporting the promise to compel logging and mining concession owners to negotiate with the communities whose lands and resources they benefit from. Regulation of the logging sector has not respected the legal commitments made a decade ago (for example, to develop basic concession plans, refrain from exporting raw materials, and not cut certain species), and rampant illegal activities in these areas have been reported.

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Land Rights in Gabon Facing the Past – and the Present 6 The majority of the urban population is also affected by these failures. Commitments made to regulate illegal occupation of plots and houses, even when it dates back several decades, have never materialized into a viable solution. On the contrary, there have been massive evictions without reasonable notice, without adequate compensation, without providing agricultural and residential areas in return, and without facilitating access to the courts. What happens to the majority rural population matters greatly to the rural people. As is beginning to be understood within the continent, the urban-rural sphere is much more integrated than previously thought, not only culturally and socially, but

also in terms of living conditions, economy, and land tenure. In Gabon, as in several African states, customary ownership of rural lands (including largely unexploited forest lands, which families depend on so heavily) affects family members living in the city, as they are customary co-owners of these rural lands, resulting from family or clan property rights. Their expectations regarding their living conditions and participation in Gabon depend on their long-term possession of these lands. For even if secure rural occupancy is compromised by the allocation of unexploited lands to agricultural industry or logging or mining concessions, the impact on the Gabonese population is felt much more widely (and in the urban sphere) than policies seem to recognize. In other words, the assumption that the rural population in Gabon is so small that what is done regarding customary land rights will not provoke conflict and matters little is unfounded. Overall, it is difficult to conclude that over the last hundred years, it has been easier for colonial and postcolonial administrations to transfer rights and — For the majority of Gabonese citizens, legitimate land security or even the hope of real tenure security does not exist

 resources to large industries, rather than investing in more local initiatives, in areas such as promoting community-based commercial agriculture or smallholder-based agriculture, the commercial use of timber and non-timber forest products, and wildlife-focused developments. Similarly, these administrations have not been able or willing to consider their own population (as many other governments in Africa are now doing) as the logical source of preservation and management of forest resources. It is unlikely that this modus operandi will change in the near future. Gabon, like other African states, is currently enjoying increased international interest in acquiring vast lands and resources, largely to the benefit of private companies (from China and elsewhere), which are reluctant to consult the populations whose assets they are seizing. The fact that the Gabonese government itself is a shareholder in some of the largest land transactions is not reassuring. Despite the political change promised since 2009, the Gabonese government still needs to demonstrate that it truly places the public interest above its own substantial private interests in land ownership. These interests, it may need to be repeated, include half of the territory and all forests (except those that are protected). The status of local land user-occupants is likely to remain precarious in the near future. As in the past, there are no safeguards that would protect the local population from eviction or marginalization in favor of a private or public-private enterprise. Similarly, Gabonese people cannot hope to see the promotion of an innovative community or local enterprise, including local populations as shareholders in territorial developments. Such inclusion strategies for more stable economic growth are beginning to mark new approaches to social transformation in agrarian economies, including in some African states. Gabon has so far shown no interest in adopting such a strategy. What then is the best way to promote human rights, which are so closely linked to land rights in agrarian economies such as Gabon? Chapter 2 of this work provides some detailed suggestions. Generally speaking, there is a need to establish better consultation among ordinary people, local organizations, national policymakers, as well as multinational companies and donors, who have a strong influence on policies regarding land and resources. There should also be an emphasis on realizing the government’s promises. A concrete measure could be to create a forum on land rights, which could involve all stakeholders (whether state or non-state). Gabon is far from being the only African state to have suffered dispossession, but the wave of reform in land administration and property rights observed in other parts of the continent has bypassed Gabon. It is therefore important for Gabon to learn now from experiences elsewhere regarding changes made to the legal and political framework. Knowledge of such changes would reassure policymakers that guaranteeing land and resource security, rather than dispossession, can provide the best foundation, not only for a more equitable society but also for greater stability and a lower risk of conflict, which is the surest way

to achieve rapid economic growth.

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Land rights in Gabon Facing the past – and the present 8 Illustration 1: Overview of Gabon CAMEROON CONGO EQUATORIAL GUINEA Libreville Libreville Mayumba Gamba Nyanga Omboué Port-Gentil Kango Alàmbé Lalara Mizic Bifoun Oyem Lambaréné Franceville (Masuku) Mouila Koulamoutou Latoursville Makokou Ndindi Voungou Ndendé Moabi Guietsou Mandji Fougamou Sindara Tchibanga Mbigou Malinga Mimongo Moanda Bakoumba Pana Boumango Bongoville Aboumi Akiéni Okondja Ndjounou Mékanbo Ékata Batoula Ovan Mvadi Yeno Ngoumby Ékéte Médouneu Song Bitam Minvoul Avem Boué Cocobeach Ntoum Foulenzem Batanga NYANGA NGOUNIÉ OGOOUÉ-MARITIME MOYEN-OGOOUÉ ESTUAIRE HAUT-OGOOUÉ OGOOUÉ-IVINDO WOLEU-NTEM OGOOUÉ-LOLO NYANGA NGOUNIÉ OGOOUÉ-MARITIME MOYEN-OGOOUÉ ESTUAIRE HAUT-OGOOUÉ OGOOUÉ-IVINDO WOLEU-NTEM OGOOUÉ-LOLO NYANGA NGOUNIÉ OGOOUÉ-MARITIME MOYEN-OGOOUÉ ESTUAIRE HAUT-OGOOUÉ OGOOUÉ-IVINDO WOLEU-NTEM OGOOUÉ-LOLO Lake Ogogoué Lake Nkomi Ivinda Djouah Como Ogooué Ngounié Gabon Estuary Ogooué Ogooué Nyanga Provinces Main roads Cities River 100 km 0 50

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Land rights in Gabon Facing the past – and the present 9 Preface This document is the result of a short visit to Gabon, made in November 2011 at the invitation of the NGO Brainforest. Numerous interviews were conducted with the Brainforest team, as well as with other individuals mentioned below in the Acknowledgments. A very short field visit was made in the Woleu-Ntem province (located in the north of the country), including two days of field visits to selected villages. The Brainforest team subsequently supplemented the information obtained from two villages in the south. Considerable time was then devoted to documentary studies on the legislation and literature related to the subject. The mission was carried out under the mandate of FERN, a European organization closely involved in supporting the negotiation and implementation of voluntary trade agreements, as part of the EU FLEGT initiative (Forest Law Enforcement, Governance and Trade). FLEGT aims to improve forest governance and ensure that wood imported into the European Union is of legal, sustainable, and fair origin. One of the most important criteria is to ensure that commercial or industrial harvesting does not violate existing national and forestry laws and that these laws are themselves fair. As a facilitation agency, FERN is therefore concerned with helping Gabon make systemic and substantial changes to laws and practices, if necessary. This inquiry into the status of customary land rights in Gabon aimed to contribute to that. — Land registration exercises are a key first step to protect the local population from evictions or marginalization, to the benefit of private or public enterprises

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Land rights in Gabon Facing the past – and the present 10 Acknowledgments We must especially thank Marc Ona Essangui, Richelieu Zue Obame, and Olivier Meye Obiang from Brainforest, Gabon. Marc, Executive Secretary of Brainforest and world-renowned for his work in promoting and defending human rights, invited us to work with Brainforest. He trained and encouraged us, and provided us with many contacts and practical guidance. Richelieu, having responsibilities in the APV/FLEGT programs, also provided highly informative input. Along with Olivier, a legal assistant active at Brainforest, Richelieu accompanied us in the field and served as our guide and interpreter. Richelieu also undertook to conduct some more comprehensive field studies on our behalf. During our short stay in Libreville, the following individuals generously provided us with information: Jean Charles Simobiang, Development and Governance Advisor, UNDP; Quentin Meunier, Senior Technical Advisor, Community Alternatives to Illegal Prospecting Development (DACEFI-2), WWF CARPO program; Rose Ondo Ntsume, Head of Department, Faculty of Arts and

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Land Rights in Gabon Facing the Past – and the Present 11 Introduction This study conducts a critical examination of the status of land rights in today's Gabon. With forests making up nearly 85% of Gabon's territory, land and forest rights are studied together. Given that 85% of the population lives in urban areas, urban property issues are also considered. This is useful both for assessing the treatment of property rights in general and for illuminating the relationship between urban and rural populations as it affects land ownership. The foundational question of this inquiry is simple: what land rights do Gabonese citizens possess according to the law and in practice, and if they are deemed weak or threatened, what measures can be taken to improve the situation? In this context, land rights include rights to surface and underground natural resources, as well as water resources. The hypothesis underlying this study is straightforward: recognizing Gabonese people as the true legitimate owners of land and resources is crucial for sustainable social transformation in agrarian economies. This includes rights to buildable land in urban and rural areas. Finding pathways for social transformation that explicitly aim to include, rather than exclude, the poor majority is a crucial issue that modern African states must confront. The risks of famine, physical and social dislocation, irreparable impoverishment, and conflict are now better understood as resulting from socio-political failures to account for the interests of poor majorities. Historical and comparative perspectives are used to help address the topic. The past has had a significant impact on how contemporary land rights are treated in Gabon, dating back to the colonial period. A comparative analysis contrasts this treatment with the contemporary handling of property rights and resource management in other African states. This aims to assist in identifying possible advancements. A primarily legal perspective is employed in both analyses. The specificity of Gabon is not overlooked. More specifically, the following facts are taken into account: 1. An exceptionally high proportion of the Gabonese population lives in cities; 2. The population density is one of the lowest in all of Africa. Gabon is sometimes described as "empty"; 3. Most of the territory is covered by forests, and dependence on livelihoods such as commercial dependence is high; 4. While the percentage of arable land is high, agricultural land use is limited and the share of GDP from agriculture is minor, with significant imports of staple food products; 5. While GDP per capita is one of the highest in Africa, the poverty level is significant, reflecting considerable internal inequalities; 6. The colonial era in Gabon was marked, on one hand, by high rates of internal migration, and on the other, by forced sedentarization, with particular incidence on current patterns of settlement and land ownership; 7. Gabon has maintained close political, military, economic, legal, and cultural ties with its former colonizer, France; 8. The leasing of resources, and the control of land that results from it, has long existed in Gabon and is considerable; 9. Non-governmental organizations are neither well-developed nor encouraged there. In another way, the situation in Gabon is far from unique on the continent. This concerns, for example, the shared colonial past during the 19th

and 20th centuries, the common history of postcolonial dictatorship (which still subtly delays and hinders democratic change), the neo-patrimonial nature of politics (which favors private interests over public interest in policy decisions), the highly polarized nature of society in terms of wealth and voice, divergent interests between minority elites and the poor majority regarding land and resources, and weak devolved governance, whose presence should allow for popular rights and voices to be echoed. Currently, Gabon also shares with many other African

states an aggressive policy of leasing its resources to foreign investors, primarily. Presentation All the topics mentioned above will be addressed in the following structure: Chapter One focuses on the current law regarding land and resource rights in Gabon, as well as the implications for (rural) populations. Chapter Two revisits the beginnings of Gabon's modern history as a state, to discover how current legal norms (as well as land ownership) came into being. This encompasses several aspects. First, the history of settlement in Gabon is reviewed to detect if and how access and rights to territories were structured territorially and internally. The effect of European trade supremacy and colonialism on customary land ownership is traced. Particular attention is paid to the introduction, under French administration, of formal laws regarding territories and resources, as well as how these laws address the land interests of indigenous populations. Together, these windows into the legal and sociopolitical environment help us understand what drives current land policy in Gabon. Chapter Three brings us back to the present. A reminder of the status of land rights is provided, and the implications of current strategies are examined. This includes a manifest strengthening of concessions and leasing trends. The relationship between urban and rural populations, as it affects land rights, is examined. Conclusions are drawn regarding the Gabonese state’s positions on land and resource rights, as well as on the corrective actions required for the poor. In this chapter, it is then considered how changes could be encouraged and realized. To this end, the positions of other African states regarding such issues will be examined. The proposed actions will necessarily go beyond immediate land rights issues to encompass governance. Illustration 2: Physical Geography of Gabon Lake Onangué Lake Nkomi Lake Iguela Lake Ndogo Mindo Bounlind Lekoni Djouah Djadie Komo Okana Ogooué Ngounié Estuary of Gabon Ogooué Ogooué Nyanga Woleu-N’Tem Plateau Woleu-N’Tem Plateau Crystal Mountains Chaillu Massif Mayombe Massif Crystal Mountains Chaillu Massif Mayombe Massif CONGO Atlantic Ocean EQUATORIAL GUINEA Loango National Park Waka National Park Mouklaba Dou dou National Park Lopé National Park Birougou National Park Batéké Plateau National Park Ivindo National Park Mwagné National Park Minkébé National Park Crystal Mountains National Park Akanda National Park Pongara National Park Loango National Park Rabi- Ndogo Ogooué Wonga-Wongué Waka National Park Mouklaba Dou dou National Park Lopé National Park Birougou National Park Batéké Plateau National Park Ivindo National Park Mwagné National Park Minkébé National Park Crystal Mountains National Park Akanda National Park Pongara National Park 980 m Birougou 975 m Mayumba National Park 0 - 200 m Rivers 200 - 400 m 400 m + National Parks Protected Areas 100 km 0 50 Ocean, Rivers, Lakes Border Not Forested Forest Dense Forest Urban Areas 100 km 0 50 ocean, river, lake border non-forested forested dense forest urban area 100 km 0 50 0 - 200 m river 200 - 400 m 400 m + national park protected areas 100 km 0 50 ocean, river, lake border non-forested forested dense forest urban area 100 km 0 50 0 - 200 m river 200 - 400 m 400 m + national park protected areas 100 km 0 50

Land Rights in Gabon Facing the Past – and the Present 14 — The Pygmies of Gabon face the same social and economic exclusion and marginalization as in almost the entire Congo Basin

Land Rights in Gabon Facing the Past – and the Present 15 Chapter 1 The Status of Land and Resource Rights in Gabon

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Land Rights in Gabon Facing the Past – and the Present 16 1 Context Boxes 1 and 2 provide general information about Gabon. Box 1: Snapshot of Modern Gabon Total land area 26,766,800 ha Land area (excluding water) 25,766,700 ha Inland waters 2,419,000 ha (9.3% of total area) The Ogooué Basin = 215,000 km² Country's position relative to its area 29th in Africa, 76th in the world (approximately the size of Burkina Faso and New Zealand) Main eco-geographical regions Coastal plains, central mountains, eastern savanna Main natural resources Forest, oil, iron ore, manganese, as well as small quantities of gold, diamonds, and niobium Agricultural land and % of land area 5,153,400 ha, 20% Forest areas and % of land area 22,000,000 ha, 20 ha per inhabitant, 85.4% Protected areas in ha and % 3,414,000 ha excluding water. This represents 12.7% of the total land area Categories of protected areas Nature reserves: 10,000 ha. Presidential reserves: 4,065,168 ha or about 15% of the total national territory Wildlife reserves and national parks: 2,924,000 ha (13 national parks) Deforestation rate Less than 1% (one of the lowest in Africa) Main environmental issues Water pollution (pesticides), poor waste disposal (mining, oil, domestic, others), bushfires Forest species Around 8,000. Only 60 species are commercially exploited. One species, okoumé, has always been the main tree exploited for timber. Wildlife species 977, of which 21 receive partial protection and 17 total protection GDP per capita $10,000 (US) “upper middle-income country” ($8,643, World Bank, 2010) Annual GDP growth 5.7% (2010). Negative growth in 2008-09 Public debt 50% (2005), but estimated to be declining in 2011 Oil as % of GDP Oil accounts for 50% of GDP, 60% of state revenue, and 80% of exports. Gabon is the 4th largest producer in sub-Saharan Africa. Other minerals as % of GDP 3% (mainly manganese, of which Gabon is the 2nd largest producer in the world), iron ore, gold Forestry as % of GDP 4.3% contributing €31.3 million in taxes, and forests cover 85% of the country's area. Agriculture as % of GDP 3.8% (compared to 15% in the 1960s) Main policies New Gabon Emerging Program (2009): economic reform aimed at diversifying Gabon's economy based on three pillars: industries, services, and the environment. This specifically targets minerals, diversification (especially outside oil, in favor of wood, fishing, tourism, mining, construction, etc.), services (health, education, research, information technology, media) and environmental development Main policy documents Poverty Reduction Strategy Paper (2005) Vision 2025 Document (2005) Public Investment Program (2005) Forest-Environment Sector Program (PSFE) (2005)

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Land Rights in Gabon Facing the Past – and the Present 17 Public Investment 16-40% expected increase between 2010 and 2016 Paved roads as % of total roads 10% (cf. average of 17% in the region) Administrative organization 9 provinces, 52 departments, 26 districts, 125 cantons, 50 municipalities, 3,304 villages and village groupings Population 1,545,255 (2011 estimate, based on extrapolations from the last official census of 1993 and administrative censuses conducted every two years) Age distribution 41% of the population is under 15 years old. Very high dependency ratio 75% are under 30 years old Urban/rural population Urban: 86.4%. Rural: 13.6% Urban/rural density Urban: 250-300 people per km². Rural: 7.5 people per km² Rural population The lowest percentage in all of Africa. Only around 210,000 people. At 5.4 people per household, this would represent only 40,000 rural households Urbanization In 1960, there was only 20% urban population. This increased to 73% in 1985, then 85% in 1993 Most populated areas Estuaire Province: 43.7%, Haut-Ogooué: 15% (north and south less populated) Population in Libreville 50% of the population lives in Libreville Male and female population Men: 57.6%. Women: 52.4% Annual population growth 1.8% (UNDP 2011), 1.9% (World Bank 2010) Rank on the Human Development Index 93rd out of 169 countries (0.648 - above the world average) (UNDP 2011) 106th (0.674) (World Bank 2011) Poverty rate Multidimensional poverty rate 35.4%

Population living on less than $1.25 per day 4.8% Share of income of the richest 20% Around half of national income Share of income of the poorest 20% 6.2% (2005) Most vulnerable group Women, of whom 37% live in extreme poverty Rural/urban poverty rate Rural: 45%. Urban: 30% Poorest area of the country: south (54%) Least poor area: Libreville (23%) Unemployment rate 21% 2006 Life expectancy (age) 62.7 years (UNDP et al. 2011) 61.8 years (World Bank, 2010 data) Fertility rate 3.3 births per woman (2009) Adult literacy rate in % (15 years and older) 63.2% (CIA 2011), but 87.7% for the age group of those over 15 years Water source treatment 87% of the population has access to drinking water sources (2011) Primary education enrollment rate 91% (2005) Ethnic groups 76 ethnic groups, 47 sub-groups in nine ethnic groups and 11 linguistic groups. Indigenous “Pygmies”: 10 to 20,000 Baka, Babongo, Bakoya, Bagama, Barimba, Akoula, and Akwoa. Indigenous Bantus: Fang, Bapounou, Nzebi, Obama, Myene, Kota, Shira, Puru, and Kande. Non-indigenous Bantus: Nigerians, Beninese, Cameroonians, and Senegalese Europeans: mainly French (11,000 French nationals in 2011) Religions Christianity: 73%. Indigenous religions: 10%. Islam: 12% Sources: various, such as for example Habitat et al., 2011, Indicators Related to the Millennium Development Goals, 2011, World Bank (2010 data) and UNDP (www.hdstatd.undp.org).

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Land Rights in Gabon Facing the Past – and the Present 18 Box 2: Timeline of Gabon 30,000 BP (before present) Gabon is believed to have been sparsely populated by hunter-gatherers from this time 2700 BP Evidence of established Bantu agricultural communities Year 1100 Some modern groups enter the region until the 13th century 1472-84 Traders land in the Komo Estuary, explore the coast and find it already occupied. Creation of minor outposts at Cap Lopez (village known as Mandji until 1915, the year it took the name Port-Gentil) 1500 Arrival of the first Portuguese missionaries 1580 The annexation of Portugal by Spain leads to a significant decline in activity on the Gabon coast. Arrival of English and French traders 1580-1875 Main period of the slave trade affecting Gabon. Africans are directly involved as slave suppliers and as intermediaries for European ship captains. Migrations occur with the flight of some wanting to avoid capture. Others develop the interior to dominate trade or control the routes leading to the coast 1660-1780 The Vili, from the Kingdom of Loango in Angola and Congo dominate the slave trade in southern and central Gabon, creating the slave ports of Mayumba and Cap Lopez. One million slaves were transported between 1685 and 1793 1780-1875 Networks in the center and north dominate Vili movement, primarily involving the Orungu clans around Cap Lopez and Mpongwe in the Komo Estuary (Libreville) 1806-1875 The British, French, and Dutch cease the slave trade, paving the way for Portuguese, Spanish, and Brazilian traders who supply slaves to Brazil and Cuba. Increase in the trade of ebony, ivory, rubber sap, fabrics made of raffia, and leather From the 1830s The Industrial Revolution in Europe begins to significantly increase the sale of European products in Gabon, bringing fabrics, machetes, bells, flintlock rifles, axes, steel bars, brass wire, copper basins (“neptunes”), etc. The Fang ethnic group produces its own high-quality copper, brass, and iron, but cannot compete with imports 1819 The first English missionaries settle. Edward Bowdich provides important travel journals 1820-40s King R’Ogouarowe (“King Glass”) on the Estuary welcomes English missionaries 1939 Two Opongwe chiefs (King Denis/Rapontchombo and King William) on the southern bank of the Estuary sign treaties of protection with France, ceding territories for military and other developments 1841-42 Two other chiefs on the bank of the Estuary (Anguile Dowe (King Louis) and another) cede their territory and agree to renounce the slave trade 1842-45 The first American mission is founded in May 1842 on the lands of R’Ogouarowe (King Glass). Increase in the number of British, American, and German traders settling there June 18, 1843 The French create Fort Aumale on the territory of King Louis 1843-1859 French Gabon is managed by Senegal as part of the possessions of French West Africa. From 1859, the administration was localized in Libreville

1844 The French establish the Catholic mission. Treaty with King Glass to obtain his territory 1845 The missionaries create the first French school in Gabon, Sainte-Marie 1844-59 The French form a cartel (Comptoir du Gabon) to compete with British and German trade and to intercept slave ships 1844 Introduction of cocoa, later commercially exploited by the Germans after 1900, when Woleu-Ntem was still part of Cameroon, and relaunched in Gabon as an export product in the 1920s 1846 Treaties signed with another Mpongwe chief and Seke 1846 To increase French dominance in the Estuary, a naval commander re-signs a treaty with the chiefs of the Estuary, explicitly ceding to France the sovereignty of the entire Estuary area. Foundation of the French colony of Gabon 1846-85 Other treaties are signed with interior chiefs April 27, 1848 Slavery is officially prohibited by law in all French colonies, but persists outside the boundaries of the coastal colony 1849 Libreville officially founded by

freed slaves from “Elizia,” a French ship, and settled at this location. Within a year, 261 freed slaves from other ships settled February 26, 1859 Gabon constitutes a full “administrative unit”: the “French Establishments of the Côte d’Or and Gabon”

Land rights in Gabon Facing the past – and the present 19 1856-63 French-American explorer Paul du Chaillu makes his first significant journey inland, providing valuable information about Gabon at the time 1865-66 Smallpox leads to flight and death. The disease only affects the coast until the 1850s. It reappears in the 1890s 1869-1930 Gabonese resistance to French military and commercial control begins on the coast and in nearby trading areas, then spreads throughout Gabon, taking the form of rebellions and sporadic armed attacks 1875-78 New official explorations led by Pierre Savorgnane de Brazza inland (Téké territories) 1879-82 Second exploration conducted by de Brazza, establishment of the French post at Franceville 1882 De Brazza vigorously advocates for the creation of a larger colony 1883 Control of the coastal colony is taken over by the Ministry of Maritime Affairs. The new name for Gabon is "French Establishments of the Gulf of Guinea" 1883-85 The third official exploration led by De Brazza ("West African Mission") creates posts in the Ogooué and Moyen-Congo. Expansion of the coastal colony of Gabon 1884-85 The Berlin Conference brings together 13 European Powers and America to discuss trade relations in West Africa, mainly due to the onerous rights imposed by France in Gabon and Congo, including exorbitant fees charged to traders for crossing waterways February 26, 1885 Signing of the Berlin Act establishing Ogooué and the Congo basin as free trade zones and limiting France's right to demand import and export duties 1885-1900 Partition of Africa: European states proceed with a division to secure extensive spheres of commercial influence. These monopolies on trading areas quickly transform into administrative colonies December 24, 1885 Agreement on the relocation of borders to the north between German Cameroon and French Cameroon (different from the previous 1864 line, unofficially accepted) June 29, 1886 A decree creates the two autonomous colonies of Moyen-Congo and Gabon, both led by De Brazza. Dr. Ballay is appointed Lieutenant Governor of the Gabon colony July 26, 1886 Convention signed between Moyen-Congo and Gabon November 11, 1888 Gabon and Moyen-Congo are reunified under the name Gabon-Congo under de Brazza April 30, 1891 Modified arrangement with the new name of French Congo, administered from Libreville 1900 That year, all of Gabon is explored and chiefs are contacted 1903 Two more territories are added to French Congo (Chad and Oubangui-Chari) and the four regions constitute autonomous colonies July 11, 1904 Brazzaville becomes the capital of French Congo January 15, 1910 Creation of the Federation of French Equatorial Africa (AEF), including four territories, with a centralized administration in Brazzaville that drafts and promulgates all laws for all four territories. Each region is governed by a Lieutenant General and a Council of Governors 1911 The convention between German Cameroon and French Gabon is adjusted to give most of Woleu-Ntem to

Germany (November 4, 1911). The border demarcation is finalized in 1913 1897-1914 The French policy of handing the country over to monopolistic concessions leads to exoduses, deaths, and the destruction of farms, villages, and existing trade networks. Many clans suffer, but a few benefit. British and German traders are ousted 1899-1914 Forced relocations begin to facilitate labor control for concessions, tax collection, and to increase control over rebellious populations. Years 1890-1920 Boycotts of European traders are periodically launched, particularly by coastal intermediaries losing their trade and forced to pay high prices for European goods 1900 Signing with Spanish Equatorial Guinea of the convention on border delineation 1900 Implementation of a head tax to increase revenues aimed at supporting the Colony 1911 Famine caused by farmers leaving to work in logging camps, forced labor, relocation, etc. 1914-18 After the War, France

reclaims Woleu-Ntem as part of Gabon, which is formalized by the Treaty of Versailles in 1919 1918-45 "Exploitation without investment," takes into account looting and systematic suppression 1916-1925 Great famine, which causes thousands of deaths 1923-28 Development of the railway inland

Land rights in Gabon Facing the past – and the present 20 1920s Intensification of forced labor 1927 Sales of okoumé wood reach their peak Years 1920-1930 Forced relocations resume (groupings), particularly in the north, focusing on agriculture, religious conversion, and improvement of sanitary facilities 1932 End of local revolts against French authority, including in Haut-Ogooué and Ogooué-Ivindo 1930s Crisis in the timber industry after the Depression affects markets in 1932-33 June 30, 1934 Gabon loses its financial independence and becomes a mere region of the AEF 1937 Gabon regains its status as an autonomous entity of the AEF 1940 French President Charles de Gaulle calls on Africans to support Europe in war January 30, 1944 A conference is held in Brazzaville, during which de Gaulle realizes he must give more power to local populations and makes that promise 1945 The administration of Gabon is reorganized into nine regions, each divided into districts 1946 Despite resistance, Haut-Ogooué is attached to Gabon and no longer to Congo 1946 A French Community is created (the French Union) 1946 Construction of the largest wood factory in the world, attracting thousands of people to Port-Gentil 1946 With the adoption of the Fifth Republic in France, Gabon and other colonies were granted the right to vote, the right to French citizenship, and the possibility of sending representatives to the French Parliament October 16, 1946 "Administrative and financial autonomy" was conferred to Gabon 1946-47 Workers' unions fight for better conditions January 12, 1947 Gabon sends five representatives to the Union assembly that establishes Government Councils in each State 1947 Borders with Cameroon and Congo are moved 1931-80 Relocation campaigns continue. Some will be ordered, in 1990, to move closer to roads (the Pygmies, in particular) 1940-70 Massive change in population distribution, strong concentration along roads 1956 Leon M’ba is elected Vice President of the Gabon Government Council November 28, 1958 Proclamation of the Gabonese Republic with the Prime Minister as leader, an autonomous republic within the French Community (as well as 42 other states, with the sole exception of French Guinea). The Gabon Constitution of 1958 is a carbon copy of the Constitution of the Fifth French Republic. February 18, 1959 Leon M’ba becomes President under the new Constitution. Rejection of Aubame, a more socialist and anti-French candidate (mainly supported by the Fangs) August 17, 1960 Independence from France. Only 87 graduates from French universities. No one in Gabon has completed secondary school and there were only 2,036 secondary school students in 1960 1960-67 The first President, Leon M’ba, maintains close relations with France, with 15 cooperation agreements to extend its presence and support. Maintenance of French military presence 1960-80 Oil boom and increasing urbanization 1964 The rebellion against President

M’ba is suppressed by French forces, who protect massive oil interests and other commercial interests 1967 Second elected President: Omar Bongo 1968 Establishment of the single party: the Gabonese Democratic Party (PDG) 1973 Re-election of Omar Bongo 1975 Establishment of the current administrative organization: the nine prefectures become provinces and the sub-prefectures are organized into 37 departments 1979 Re-election of Omar Bongo 1982 The Movement for National Renewal calls for a multiparty democracy but is suppressed 1986 Re-election of Omar Bongo 1980s Decline in oil revenues 1990 Strikes, protests, and the formation of parties lead to a National Conference in April 1990, which results in a multiparty system.

 1991 New Constitution, primarily marked by its multipartite nature 1993 Re-election of Omar Bongo 1998 Re-election of Omar Bongo 1994 Devaluation of the CFA and acceleration of logging, considerable extension of concessions around the year 2000 2003 Under the leadership of Omar Bongo, the Constitution is amended to extend the presidential term 2005 Violent protests, but Omar Bongo is re-elected again, despite accusations of fraud and electoral irregularities June 8, 2009 Death of Omar Bongo, ending 49 years of presidency September 2009 Election and civil unrest. Rejection of results, recount of ballots Ali Bongo Ondimba, the son of Omar Bongo is elected, but with clear evidence of fraud and electoral irregularities Sources: see chapter two. 1.1 A Legal Angle This document adopts a legal angle to identify the status of land rights of citizens in Gabon. This is due both to the fact that state policy is more precisely expressed in legal provisions and to the absence of a specific national land policy. Furthermore, the law provides a platform to contest the political failure to respect the land interests of the majority. The main drawback of a legalistic approach is that it offers little indication of the rule of law or of the population's access to justice. 1.2 Land Interests The term "land interests" is used here as a catch-all expression to convey how individual, family, collective, or corporate land interests or rights are defined and treated. This does not specify whether such interests pertain to ownership, access, use, or other interests, or the extent to which these are respected as legal rights. Land interests cover not only interests or rights to land or soil but also land resources such as forests and forest products, oils, and minerals from open-pit or underground exploitation, and coastal and inland waters. The interests defined in state laws and in indigenous or customary laws may not coincide. In fact, over the more than 120 years since the introduction of state laws in Africa, the provisions of these laws have shown a remarkable contradiction and have been a source of conflict. As demonstrated in chapter three below, such a situation is set to change. 1.3 Customary Tenure and Statutory Tenure First, the terms customary tenure and indigenous tenure can be considered similar and used interchangeably. They refer to the norms and rules developed by communities to define and regulate land holding and rights over resources. In Africa, this system, or regulatory regime, is known as customary tenure. Current rules are referred to as customary law. These are generally unwritten. The legislation and customary or indigenous tenure of several ethnicities or land-using economies differ, more obviously between the regimes of hunter-gatherers, pastoralists, and sedentary farmers. Land use is a key determining factor of customary land ownership rules. The most important difference between customary tenure and statutory tenure is simply that the former is community-based and indigenous to the region, while the latter is national. Statutory tenure refers to the system of land ownership as defined in national laws. Therefore, statutory law tends to emerge when states are created. These statutes or national laws are generally, but not always, established following decisions adopted by Parliaments, and if not by Parliaments, by the government in place (box 3). Box 3: The Legal Framework Laws in Francophone and Anglophone Africa differ in this regard. For Anglophone systems (also known as Common Law systems), all laws (acts) are enacted by elected Parliaments (which must have one or even two chambers through which these laws must be approved).

Ministers whose appointment followed a political process are then empowered to issue regulations or regulatory texts. These being secondary legislative acts, they are more easily annulled or modified. However, a Minister cannot

promulgate regulations concerning matters that the law has explicitly mentioned. The law under the Francophone regime (the main source of civil law systems) is organized as follows: legislation includes an initial law adopted by Parliament or an ordinance initiated by the government (within the Council of Ministers), then approved by Parliament. Regulations include decrees and orders. During the colonial era in Gabon, ordinances were approved by the Government Council but were drafted in the federal capital Brazzaville after 1910. Decrees refer to laws promulgated by the President or the Prime Minister. These are the legal instruments that outline how a law or ordinance in particular will be applied. The Minister in charge of the relevant area, an association of different Ministers, or other decentralized administrative authorities, such as a prefect or mayor, can also issue orders to provide clarifications regarding the rules promulgated in a law or decree. An order is similar to a common law regulation. Additionally, there are administrative acts, such as circulars and directives, which have legal effect and are adopted by various administrative bodies to organize relations between the administration and its agents. 2 The Napoleonic Code of 1804 (originally, the Civil Code of the French) was based on Roman law and has most influenced the development of modern civil law systems since the late 18th century.

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Land Rights in Gabon Facing the Past – and the Present 23 1.4 Context Regarding the Customary Sector The customary sector is the most important land ownership sector in Africa The vast majority of states in sub-Saharan Africa regulate access to land and land tenure through customary norms. A conservative estimate suggests that more than half a billion rural Africans would be customary landholders (potentially one billion by around 2050). The customary sector sometimes includes urban areas In Africa, millions of people living in urban areas follow customary norms. This is due to the fact that many cities and urban areas were originally village areas, for which no formal regularization of rights has been enacted to change the system used. Residents therefore often rely on neighborhood systems and norms to defend their occupancy rights. Unlike the state, neighborhood members defend these rights, which usually leads to conflicts. Since many urban neighborhoods are often ethnically marked, many of these norms may be identical to those observed by members of tribes or clans in rural home areas. Considering that barely 10% of the total land area of sub-Saharan Africa is subject to official statutory law, and noting that less than 2% of sub-Saharan Africa is actually populated by cities and urban areas, it is not surprising that about 88% of the region is considered a "customary sector". Customary tenure usually receives little support in statutory law - but there are many exceptions No data indicates that community or neighborhood norms have legal value compared to national laws. Generally, neither the rural customary system nor, in fact, the urban customary system has the force of law. Changing this situation, to recognize existing rights as property rights, is an essential task of modern land law reform, as addressed in chapter three below. What is a customary rule? Customary rules are ancient, passed down from generation to generation, and are also called traditions. Or they are new rules, established by a community to adapt to changing realities. These rules are called laws because the community enforces them and uses them to pronounce on an action, determining its legality or illegality according to these rules. A new common customary rule in Africa is that a house and a permanent farm can be sold by the owner, although the land on which the house or farm is located often remains the property of the community. 3 For more details, see Alden Wily, 2011a and 2011 b.

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Land Rights in Gabon Facing the Past – and the Present 24 Another customary rule encountered

is that access to uncultivated communal lands within the community sphere is less accessible for members of neighboring communities, and currently rarely possible for foreigners. Permission must be requested even to enter these territories, let alone when it comes to hunting or harvesting products, grazing animals, or sourcing water. As the scarcity of potentially cultivable uncultivated land increases, permission may often be denied. This, in turn, has led to a hardening of the definition of boundaries between communities. What could previously be defined quite vaguely as community territories with an imprecise definition of perimeter boundaries is now defined more precisely and defended as "our lands" by the different communities. This trend is also observed in societies where the community territory as a whole has been subdivided into family lands. In these cases, families protect their areas more. What is a community? In Africa, communities vary from tribes or other ethnic groups to villages. In most cases, the definition of community has become more localized. Today, "community" generally means the residents of a particular village or neighborhood and their territory. This community may consist of a single hamlet or a group of hamlets sharing social and territorial ties. The name of the community is generally that of the village. In many African countries, it is now common to grant the named community legal personality, meaning treating it as a legal person without the community needing to form an official association or cooperative or another legal group. In this sense, the term community means all people who have their primary residence in that village. Although historically, communities were ethnically and linguistically homogeneous, this is less the case today. Ethnically, membership in a community is often quite mixed. A range of social ties can extend from one community to several others, and this community may also have its own composition and social hierarchy; this is commonly referred to as the clan. Sometimes, the clan network and the geographical network of neighboring villages can overlap, so that the village or group of villages constitutes both a community and a clan. In practice, many communities are composed of distinct classes of wealthier and poorer groups. The latter often depend on the former and cannot own their own land. The polarization between the rich and poor classes tends to be stronger in areas where traditional society has been built on unequal relationships, such as where slaves or serfs provided labor on farms or tended livestock, or where artisanal specialization was marked, and/or where there were highly hierarchical kingdoms. Even outside this context, capitalist transformation in the last century has made it normal for a modern rural community to include groups with different means, which directly reflects in the inequalities of rights over resources. 4 See footnote above. 5 Alden Wily, 2011b, Ubink, 2008. 6 Bernstein, 2010, Patnaik and Moyo, 2011.

Land Rights in Gabon Facing the Past – and the Present 25 In most African countries, arable land is now very scarce. This is not the case in Gabon. Consequently, while over 100 years ago it was considered that Africa was not lacking in land, it is now acknowledged that many poor families do not own a farm and face great difficulties accessing land. It is known that in such circumstances, retention and access to common resources in the community (forests, woodlands, wetlands, pastures, etc.) are of paramount importance for poor households. Why does customary tenure survive? This could be due to the fact that: — the non-customary law (state law or "statutory law") is not relevant to how the community believes local land relations should be very framed and regulated; — state land laws are not enforced in rural areas; — even if they are, they follow costly and complicated procedures that poor populations cannot resort to in order to obtain their land rights; — state laws do not confer the same rights as customary law; — or also to the fact that communities believe their land customs are specific to them and meet their expectations. They develop rules and apply them, while state laws are developed by outsiders and administered by distant authorities (and may otherwise appear unrelated to local needs). 1.5 Lands and Ownership Land interests and ownership are not necessarily the same

thing. In Africa, under laws stemming from European laws, ownership tends to be recognized only when the right to land is officially registered (for which a document or land title is generally issued). This tenure is considered as "private property." The owner is always a single person or entity, and private property tends to be treated as synonymous with individual ownership. This is particularly true given that laws stemming from European laws tend to provide little insight into family or collective ownership. The nature of a statutory private property right can vary. It can be absolute, limited, or usufructuary. The fact that a land right is registered as a statutory right means that the right in question can be freely negotiated on the public market, that is to say, it can be bought or sold as a full property. Within the customary regime, it is common to make such distinctions. A customary right can be absolute, limited, or usufructuary. Often, the only absolute owner of the land is the community, considered as the owner of the soil, and able to grant rights over the land, such as permanent or temporary usufruct on agricultural areas, or usage rights over the rest of the unallocated communal lands. The burden of granting rights may be delegated to a designated or elected leader, such as a chief. However, it is not often the case that the community can simply sell its land ownership, although it can sell access to its lands (notably what is sometimes called a "customary lease"). Families and individuals may also be able to sell usage rights (usufructs) on their homes and farms, or even sell the entire and absolute ownership of their home and agricultural lands. For most Africans on the continent, all these different rights are considered to have property value within the customary regime, whether this property right can be sold unconditionally or not. However, many national land laws contest such a state of affairs. This means that customary interests in land may or may not be conferred legal property status, even if customary landholders consider themselves as owners and regard their lands as property. Legal recognition (that is to say, supported by national law) granted to community land interests as equivalent to real property is therefore crucial; without it, customary rights risk withering away. For some time now, many agrarian economies around the world, including in Africa, have ended the discrimination of not recognizing customary landholders as true owners, which has led to officially considering millions of people as "landless."

Land rights in Gabon Facing the past – and the present 27 2 What Gabonese law provides regarding land rights Table 1 lists the legislations through which land interests are currently defined in Gabon. As indicated in box 3, these instruments include laws, ordinances, decrees, ministerial orders, circulars, and main instructions. Although Gabon (like other Francophone states) has retained the Civil Code of 1804 in its legal canon, as updated in France in 1960, it has so far only approved the recognition of two parts of this Code, neither of which directly relates to land tenure issues, apart from those concerning succession matters 9. Furthermore, the original charter of rights and duties of the citizen from the French Civil Code has been adopted into Gabonese law (see below). The laws mentioned below apply to land in rural and urban areas. Not all of them are land laws. Laws related to mines, forests, water, agriculture, and national parks are included as being relevant. Many orders, circulars, and verbal instructions (in the form of a report on what has been agreed) issued under land and forestry laws have not been included in the list, as they were considered less relevant for this work. Table 1: Postcolonial legislation regarding land rights Law No. Date of adoption Main legislation Additions and amendments 6/61 May 10, 1961 Law regulating expropriation for public utility and establishing easements for the execution of public works Ordinance No. 7/65 of February 23, 1965 Ordinance No. 2/76 of January 6, 1976 14/63 May 8, 1963 Law setting the composition of the state domain and the rules determining its management and alienation Ordinance No. 37/67 of August 2, 1967 15/63 May 8, 1963 Law setting the regime of land ownership Law No. 15/74 of January 21, 1975 Law No. 12/78 of December 7, 1978 00077/PR-MF-DE February 6, 1967 Decree regulating the

granting of concessions and leases of state lands Decree 524/PR-MFB-DE of June 12, 1969 Decree 782/PR-MFB-DE of August 24, 1971 Decree 1187/PR-MEF-DE of December 15, 1972 Decree 1308/ PR-MINDECF-DGDE of October 25, 1974 Decree 1111/PR-MINDECF-DGDE of January 21, 1978 Decree 996/PR-MINECF-HUC October 26, 1979 14/68 November 9, 1968 Decree authorizing the amicable transfer of real estate or real rights belonging to the state 00869/ PR-SEMERH- DGMG November 14, 1968 Decree relating to the regulation of quarries in Gabon 2441/PR-MMERH-DMG of December 30, 1975 00905/PR-2nd VP-MMH-DGMG of June 17, 1983 9 The first adopted part includes 645 articles concerning the application of laws, the rights of foreigners, and international relations (adopted by Gabonese law No. 15/72, of July 29, 1972). The second adopted part covers articles 646 to 908 of the Civil Code and deals with family issues, including succession standards (adopted by Gabonese law No. 19/89, of December 30, 1989).

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Land rights in Gabon Facing the past – and the present 28 June 10, 1970 Instruction on the formation of a Commission to set the annual rental fees for land 50/70/ PR-MFB-DE September 13, 1970 Ordinance regulating emphyteutic leases granted by the state on lands that are part of its private domain 51/70 October 1, 1970 Ordinance on the increase in value of undeveloped land 52/PR October 12, 1970 Ordinance relating to the expropriation of inadequately developed land 98/1976 January 23, 1976 Letter from the President of the Republic prohibiting the transfer of real estate for housing purposes, belonging to the state 1394/PR-MI December 28, 1977 Decree on the organization and functioning of administrative and local units 846/PR/MAEDR August 8, 1979 Decree setting the compensation to be paid in case of mandatory destruction of crops 1136/ PR-MINDECFHUC October 3, 1980 Decree temporarily prohibiting the granting of rural concessions near Libreville 0000001/R February 15, 1980 Circular on compliance with housing regulations 3/81 June 8, 1981 Law setting the framework for urban planning regulations 24/83/PR April 18, 1983 Ordinance creating and assigning special urbanism and construction brigades (B.S.U.C.) 4/84 July 12, 1984 Law annulling land titles of forest and agricultural properties. 192/PR-MEFCR March 4, 1987 Decree regulating the exercise of customary usage rights 80/PR-MHUL February 2, 1989 Decree regulating the building permit 3/91 March 26, 1991 Constitution of the Gabonese Republic n° 1/94, March 18, 1994 n° 18/95, September 29, 1995 n° 1/97, April 22, 1997 n° 14/2000, October 11, 2000 n° 13/2003, August 19, 2003 December 28, 2010 16/93 August 26, 1993 Law relating to the protection and improvement of the environment. 15/96 June 6, 1996 Law relating to decentralization 15/98 July 23, 1998 Law establishing the Charter of Investments in the Gabonese Republic 05/02 October 12, 2000 Mining Code (law) Ordinance No. 003/2002/PR of February 26, 2002 Ratification law No. 007/2002 of August 22, 2002 Law No. 008/2005 016/2001 04/2009 December 31, 2001 2009 Forestry Code (law) Law creating, organizing, and functioning of the National Forestry Fund Decree No. 1746/PR of January 29, 1983 determining the attributions and organization of the Ministry of Water and Forests.* Decree No. 1031/PR-MEFEPEPN of December 31, 2004 determining the composition and functioning of the Committee for the industrialization of the Wood Sector. Decree No. 666/PR of August 9, 2004 setting the halt to the granting of new forestry permits Ordinance of July 25, 2008, amending and supplementing certain provisions of Law No. 16/01 of 2001. Order No. 00640.08 of October 8, 2008: Order relating to the granting of forestry concessions by auction. Decree 1028/PR-MEFEPERN drafted, setting the conditions for the creation of community forests.

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Land rights in Gabon Facing the past – and the present 29 003/2007 August 27, 2007 Law relating to national parks Decree No. 00019/PR/MEF of January 9, 2008, setting the statutes of the National Parks Agency 022/2008 December 10, 2008 Agricultural Code (law) Decree No.

01087/PR promulgating the Law Decree No. 0935/PR-MAEPDR creating the Technical Approval Commission for Agricultural Operators * In total, three ordinances, fifteen decrees, and nine orders have been promulgated regarding forests, apart from the new Code of 2001 and the implementing law of 2009. A list and analysis of these are available in the report by Essima, Milendji, and Ntougou for Brainforest, October 2010. Ten other decrees were then in progress. 2.1 The Constitution The first document allowing us to discover how land interests are treated in Gabon is the national Constitution, to which other legislations must conform. The current Constitution was adopted in 1991 and has been amended since then10. The constitutional promises regarding human rights and personal freedoms are enshrined in four adopted commitments. These are: — the Declaration of the Rights of Man and of the Citizen (1789) resulting from the French Revolution; — the Universal Declaration of Human Rights developed by the UN (1948); — the African Charter on Human and Peoples' Rights (1981), and — the National Charter of Liberties (1990), an internal commitment. The main text of the Constitution of the Gabonese Republic does not deviate from the provisions of the above declarations. Regarding property, it provides the following: "Everyone, whether alone or collectively, has the right to property. No one may be deprived of their property, except when public utility, legally established, requires it and under the condition of just and prior compensation. However, real estate expropriations undertaken for public utility, for insufficiency or lack of development, and targeting registered properties are governed by law" (tenth paragraph of Article 1). Article 47 of the Constitution includes "the regime of property, real rights, and civil and commercial obligations" among the areas subject to rules set by law. Compared to more recent constitutions on the continent, which contain entire chapters dedicated to land and real estate issues, the Gabonese Constitution covers the subject weakly. 10 Amendments created a Senate (1994), reorganized the Constitutional Court (1995), created the position of Vice-President (1997), established an independent electoral commission, abolished the limitation on the duration of the President's term (2003), and, more recently and controversially, granted immunity to the Head of State after the end of their term (2010).

 Box 4: Instruments for the Protection of Human Rights in the Gabonese Constitution The Declaration of the Rights of Man and of the Citizen (1789) An enlightened document resulting from the French Revolution, it contained 17 articles strongly inspired by the United States Constitution of 1776. The right to property became one of the four key elements of human rights (article 2) 11. It was established as a principle that property comes into being through registration and that no one can be deprived of it, except when public necessity obviously requires it. Public necessity must, in turn, be legally established, and it can only be invoked on the condition of just and prior compensation for the loss of confiscated property (article 17). The Universal Declaration of Human Rights (1948) This UN document contains 30 articles and lays the foundations of contemporary international law regarding human rights (currently included in more than 80 international and regional treaties and declarations related to human rights). It is prohibited to establish discrimination based on wealth (article 2). Every person, whether alone or in community, has the right to property, and no one can be arbitrarily deprived of their property (article 17). The African Charter on Human and Peoples' Rights (1981) This charter of the Organization of African Unity (OAU) reiterates, in its article 14, article 17 of the above Universal Declaration of Human Rights, thus guaranteeing the protection of the right to property, except for requisition for public utility (see box 5 for an indication of public utility). However, article 21 of the Charter allows all peoples to freely dispose of their wealth and natural resources and, in the event of dispossession, grants them the right to legitimate recovery of their property, as well as adequate compensation. The Charter also established the African Commission on Human Rights, which has the mission, among other

things, to investigate human rights violations and make recommendations to the concerned states or, if necessary, to bring the matter before the Assembly of Heads of State (Chapter III)12. The National Charter of Liberties (1990) This document has its origins in a multipartite commitment and was enshrined in law by law n°2 of 1990. It elaborates on individual rights (later incorporated into the main text of the national Constitution) and enshrines freedoms, including equality among all citizens and equality before the law. 11 Although considered revolutionary at the time, the commitments of the Code regarding rights excluded women, slaves, children, and foreigners, which meant about 85% of the French population, until the Code was amended in 1795. Even after this date, the right to vote was limited to the minority group of property-owning notables. 12 The establishment of the African Court on Human and Peoples' Rights in 2004 provides for judicial resolution of disputes concerning human rights in the region. The Court was created through an additional protocol to the African Charter (January 25, 2004) and is competent to hear violations of human rights, based on the Charter and the international treaties relating to human rights in force. To date, Gabon has not ratified this protocol.

Land Rights in Gabon Facing the Past – and the Present 31 The reference made by the Constitution to international laws is also misleading. None of the international instruments speak of protecting property in such a way as to compel the State to consider housing plots or unregistered land (without title) (which still represent the majority in agricultural states) as real properties. These properties are therefore not constitutionally protected. Consequently, there is not necessarily any compensation for untitled lands when they are seized for public utility reasons, unless acquisition laws provide for it (see below). It can be assumed that Gabon has adhered to these three international instruments only because they do not require that unregistered land interests be considered as properties. 2.2 International Instruments According to the Constitution, endowed with legal supremacy, treaties ratified by the head of state are immediately applicable and do not require transformation by law to be fully effective (unlike in dualist countries, which are mainly found in common law systems, where an establishment law "transforms" treaties into national law). This has significant implications when the international obligations to which the State commits itself are immediately applicable in the national legal order and therefore immediately enforceable for the beneficiaries of the rights enshrined by these international instruments. However, there is a limit: the actual ratification of the texts by the President and publication in the Official Journal. The obligations will remain void if the signature of the agreement or convention does not lead to ratification. Gabon has signed and ratified a number of international treaties concerning the environment and human rights, as well as other relevant international treaties regarding land rights and rights over natural resources, in addition to those enshrined in the Constitution, such as: — the International Covenant on Civil and Political Rights (1966)13, which reaffirms the right of all peoples to self-determination (article 1), the right to an effective remedy (article 2), and the rights of all peoples to freely dispose of their wealth and natural resources (article 1.2); — the International Covenant on Economic, Social and Cultural Rights (1966)14: the right of all peoples to self-determination (article 1) and the right to adequate housing (article 11) are among the most important provisions regarding property rights and peoples' rights, and — the United Nations Convention on Biological Diversity (1992)15, which adopts a state-centric and exclusive approach to preservation (which in turn affects the use and ownership of land) and provides measures for the preservation, sustainable use, and fair sharing of benefits arising from natural resources. It provides, in its article 8 (j), for the preservation of the knowledge, innovations, and practices of indigenous communities and encourages the fair sharing of benefits arising from their use. — Gabon has not ratified ILO Convention No. 169 (International Labour Organization), which recognizes property and possession rights over land as property rights that must be respected

and protected. A number of regional and international remedies are also provided within these instruments ratified by Gabon, such as the right to bring a case before the UN Human Rights Committee or the African Commission on Human and Peoples' Rights regarding any matter of violation of the rights mentioned above. A case of this kind was brought in 2010 by the pastoral tribe of the Endorois in Kenya 16. The Commission ruled that the Kenyan government had not met the genuine public interest criterion by sidelining the ancestral and fundamental rights of a group of citizens to create a national wildlife reserve, from which they had not derived any new benefit, in addition to losing their livelihoods. In Africa, such a case has implications for states that deny that customary

lands deserve to be protected as property rights. Land and Property Legislation Land and property legislation in Gabon is limited and outdated. This is evident in the laws enacted shortly after Independence, half a century ago. The three key instruments are as follows: — law n° 6/1961 regulating expropriation for public utility; — law n° 14/1963, which defines the domain of the State and how the State will alienate or allocate usage rights over areas within this domain, as well as, within the framework of this law, decree n° 77 of 1967 regulating the granting of concessions and leases for land in urban and rural areas and decree n° 192 of 1987 regulating the exercise of customary usage rights; — law n° 15/63 establishing the regime of land ownership (land tenure). All of these laws have been amended since their initial adoption (Table 1). However, the fundamental provisions have not been significantly altered. A summary of each of these laws is provided in the developments that follow. 2.3 Law n° 6 of 1961 regulating expropriation for public utility In summary, this law provides for confiscation by the State for insufficient development or for declared public utility. It has the positive attributes listed below: a. Compensation is payable for the value of the land and for its improvement. Compensation may be paid in cash or in the form of new land or new premises, in which case compensation is also paid for moving expenses (articles 10, 20, 21, 22, and 52). 16 Development Rights Centre (Kenya) & International Minority Rights Group acting on behalf of the Endorois Community against the Republic of Kenya, Communication 276/2003. February 2, 2010.

 b. Where official regulations interfere with resettlement, planning and payment must be made, including for the relocation of services. Those affected may accept cash instead of resettlement (articles 42 and 43). c. Judicial decisions are required for expropriation. In the absence of such decisions, agents cannot carry out expropriations or evictions (articles 1 and 2). d. Those holding "duly recognized customary use rights" are also entitled to compensation when forced to leave their homes or farms, as are those who are legal tenants in buildings or hold a long-term lease title 17 (articles 9, 17, and 61). This applies, for example, in situations where the State has encouraged people to live in village groupings. In this case, holders will be compensated with a new house and agricultural plots when those allocated to them are required for other purposes. e. According to the Constitution, evictions cannot take place until compensation has been paid (article 31). On the other hand, there are points that appear less positive: f. Compensation rates vary and favor those with an official full ownership title (article 17). g. As unrecognized owners, those holding customary rights cannot claim any compensation unless they have official occupation permits, as is the case in resettlement programs, knowing that most of these are now expired. In practice, it is customary to exercise discretion, so it is likely that when customary landholders are forced to leave their homes and farms, some compensation will be paid. A decree adopted in 1979 (decree no. 846 of August 1979) mandates that compensation for crop losses is due when public utility requires that these crops be destroyed, and that it be paid even when the owner/holder has no occupation permit or land title (articles 1, 4, 5, and 6). h. The law is vague regarding the limits of

public utility. "Development" is mentioned as being of public utility, as is "forest preservation". The lack of definition (other than that given for cases of creating easements related to private lands, in article 46) opens the door to categorizing private objectives as being of public utility, as can currently be seen in Gabon in the cases of deforestation, to create private residential neighborhoods. i. The time allowed to submit compensation claims is unusually short: only eight days maximum from the day of notification. Those who do not make a claim within such a timeframe lose all rights to compensation (article 9). j. Victims of expropriation have limited means and rights to contest the decision. The right to appeal is restricted, with the possibility of contesting an expropriation order only on the basis of a procedural irregularity, rather than on the merits and logic of the decision (article 29). The right to appeal to a higher court does not suspend the expropriation, which can continue even if an appeal is pending (article 30). 17 Long-term lease is an official right of occupation, use, and improvement of real estate benefiting, ultimately, a third party, which is generally the State.

 2.4 Law No. 14/63 of 1963 establishing the composition of the State domain This law is essential for understanding the land rights of ordinary citizens, given that such a tiny proportion of the total area of the country is subject to private law (see below). Practically all of Gabon therefore belongs to the State domain. The means by which this has occurred are draconian. All vacant real estate and those without an owner belong to the State (article 23). This can mean all rural lands that are not cultivated or occupied by houses, as well as all lands on which no official rights are held. Together, these lands cover almost the entire area of the country. As if this were not enough in terms of dispossession, the law also considers forests as part of the State Domain. This covers 85% of the area of the country. The law becomes more complex when taking into account the subdivisions of the State domain. It is divided into Public real estate and Private real estate. The difference between the two lies in the fact that public real estate cannot be alienated (that is, transferred or sold in full ownership), while private real estate can. The transfer of elements belonging to private real estate can be done through public auctions, the land going to the highest bidder, or more dubious means, through "friendly agreement," for which the Cabinet sets the price (Law No. 145 of 1968). Although public real estate cannot be alienated, domain concessions and other rights can be granted, and public property can be leased. Because such rights are renewable, the rights granted or acquired can equate to a property right, apart from the fact that the State remains the ultimate owner (article 110). More critically for ordinary Gabonese, public real estate is inalienable (article 65). This means that no claim of ownership can be made on public real estate based on prolonged and uninterrupted use, or custom. By omission, private real estate is subject to prescription. Thus, it is important to know whether the lands on which communities live and unoccupied forest lands fall under public real estate or private real estate of the State. The law is unfortunately vague on this point. It does not specify which lands fall under each of the categories. Lands included in the private real estate of the State are ambiguously defined as those that "are not appropriated under the registration regime," as well as those that "have not been granted definitively" (article 2). The first element is contradictory, as the State can actually alienate or lease these lands for which registration confirms the rights of the beneficiary or acquirer. All things considered, most of the State domain falls into the category of private real estate of the State, and is inalienable or leasable. This is due to the fact that public real estate appears to be truly restricted to public service, such as lands or buildings of public utility, for public use and for specific public service purposes (article 2). All waters are included (article 109), as well as the so-called "hundred-meter" domain reserve, consisting of a strip of land one hundred meters wide measured from the limit of the highest tides, and the so-called "twenty-five-meter" domain reserve, consisting of a strip of land twenty-five meters wide, measured from

the limit of the highest waters before overflowing navigable and floating watercourses, lakes, and ponds (article 104).

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Land Rights in Gabon Facing the Past – and the Present 35 However, marshy lands, river and stream silt, many properties owned by the State, including those that have been given or bequeathed to the State, abandoned by the administration, as well as private properties for which there are no heirs, in addition to islands, forts, barracks, and dismantled military buildings, are among these properties described as private real estate of the State, and are therefore likely to be sold, among others, to individuals, companies, and housing corporations (articles 12 to 18, 20 to 22, and 77). The status of forests in relation to the State domain remains unclear in this law. The law simply states that state-owned woods and forests can only be alienated by virtue of a law (article 80). The transfer of forest lands between categories, from public to private, is also possible. Under previous forestry legislation (1982) 18, once a forest area was published, it belonged to the private domain of the State and was likely to be leased or even alienated. While the new forestry legislation remains silent on this subject, the decision that a forest falls into the public or private domain of the State is at the discretion of the Council of Ministers and/or the Department of the State domain. The Director of land operations at the Ministry of Economy, Finance, and Participations conducted a study showing that all forests, except protected forests, fall into the private domain of the State and are therefore likely to be leased in the form of concessions. In practice, the lack of demarcation on the ground means that even concessionaires are not completely sure of their boundaries. Local populations are obviously affected by this inadequacy. The essence of this 1963 law describes in detail the procedures for the transfer of State domain, in the form of leases or concessions. It particularly focuses on public buildings and how they can be sold or leased. The financial conditions applicable to concessions and leases, as well as any other charges, are established by the Land Service, which is also responsible for collecting these fees, as well as taxes and levies (articles 4, 32, 35 to 38, and 60). The technical conditions for granting leases, concessions, or other rights on public real estate are set by the relevant supervising Ministry. 2.4.1 Decree No. 77/PR/MF.DE of 1967 regulating the granting of concessions and leases of state lands Four years after the above law was adopted, a new law was enacted, describing how State domain could be privatized through a simple sale or lease or concession. This was followed by five other laws in 1978, making the transfer of State domain the most recurring theme in land issues. Here is a summary of the founding law of 1963 and its subsequent amendments: a. Attempts to regularize the existing mass occupation in urban and rural areas, enabling Gabonese to apply for a title on parcels that are part of the private real estate domain of the State. Although this is not mandatory, the law encourages Gabonese to apply for up to 2,000 m2 in urban areas and 10 hectares in rural areas for their permanent settlement (articles 1 and 2). The applicant must provide proof that their occupation of the land in question has been peaceful, continuous, public, and not 18 Law No. 1/82 of Orientation on Water and Forests, of July 22, 1982, repealed by Law No. 16/01 on the Forestry Code.

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Land Rights in Gabon Facing the Past – and the Present 36 ambiguous, and this has been the case for at least five years (decree no. 77 of February 6, 1967). Proof of occupation can be established by any means, including oral testimonies. b. Initially, only non-citizens living in Gabon for at least a decade could apply. The prior residency restriction was removed with decree no. 524 of June 12, 1969. c. Citizens can subrogate their right to land to rural communities, in order to establish, in their name, village farming areas. This means that urban residents can legally apply for land in their village of origin or for village regrouping programs. d. The plots

that could be allocated were limited to the area of the land "actually occupied." This means that uncultivated areas outside the villages could not be included. e. The duration of ownership was defined as unlimited, in the form of renewable concessions or occupancy permits (article 71). f. A provision was also included in the 1967 text and its subsequent amendments to establish properties larger than 10 hectares, with several categories including plots over 2,500 ha. Each requires mapping at various scales and meets different requirements (article 45). g. Rent payments for leases or concessions must be made in advance, but are free for Gabonese when the concession is 10 ha or less, or when the concessionaire is a public entity (including local authorities), as long as the land is not used for commercial purposes (articles 53 to 55). h. The intention to restrict land accumulation is indicated by the imposition of cultivation conditions and limitations on the number of contiguous plots that an individual can hold (article 71). The cultivation conditions require that half of the plot be cultivated if the holder is Gabonese and the plot is less than 60 ha, or three-quarters if the holder is not Gabonese. i. The law determines how concessions are canceled in cases where the land has not been cultivated during the specified duration for the category of land area in question (article 70). j. Rural concessions can be granted "at the discretion of the administration" (article 44). k. Each application must be accompanied by several documents, including a map or a plan of the sold plot (article 45). l. The application and issuance are decentralized and entrusted to the districts (article 45). m. The granting of a right is done through a provisional decree, then definitive, granting the concession. This decree comes from the Council of Ministers. If the concessionaire is Gabonese, the granting is done by prefectural order (article 51). n. A promise is made to expedite the issuance of titles for commercial purposes (article 61). o. The provisional concession of rural land does not confer any exploitation rights on quarries and forest products to its holder. However, a right of preference is recognized for this holder, a right that can only be refused if the administration wishes to undertake these exploitations itself (article 64). 2.4.2 Ordinance No. 50 of 1970 on emphyteutic leases One of the additional laws established the granting of emphyteutic leases. Emphyteusis refers to Roman/French civil law, in which it is customary for an emphyteutic tenant to have everything except the real ownership of the land, for a prolonged or even perpetual period, and is required to take care of the real estate and develop it (by erecting buildings, for example) - and can sell, without being able to sell the land on which the structure rests19. The 1970 legislation in Gabon makes the issuance of emphyteutic leases an important mechanism regarding the rental of lands or buildings in the state domain. The law sets their duration at 50 years, renewable for an additional 49 years (article 13). These rentals are subject to mortgages, are transferable upon death, and entitle the holder to compensation in case of requisition for public utility (article 3). The rent is a modest flat annual fee

(article 7). The emphyteutic tenant is free to develop the real estate, including changing its use, provided that the value of the land is not diminished (article 4). Ownership of the land, as well as all improvements, constructions, and other investments made by the tenant, remains with the state at the end of the lease, and this without compensation (article 5). The legislation clearly indicates that emphyteusis does not apply to state lands that have already been definitively allocated in full ownership, or to lands on which promoters have made an investment of 150 million francs or more (article 18). However, since this 1970 law, all state lands that were granted for free or in exchange for a provisional payment, or that were subject to rental conditions, have been reclassified as emphyteutic leases. 2.4.3 Subsequent Legal Instruments Other decrees, orders, and circulars have been adopted since the 1970s regarding rights or leases from the state domain. For example, a circular published on February 15, 1980 by President Omar Bongo ordered the Minister in charge of state lands to inform him if it was recognized that any person ("and in particular celebrities") was monopolizing buildable land in Libreville and its surroundings for their own benefit. Later that year (October 3, 1980), a decree was published to

prohibit leases and rural concessions on the outskirts of Libreville (decree no. 1136/PR-MINDECFHUC). This aimed to support urban planning in Libreville. In July 1984, using the powers conferred by the law on state domain, a law was adopted, which annulled 22 land titles on forest and agricultural concessions held by companies, covering an area of 59,000 hectares. Although the law does not provide a reason, the dates of the titles (from 1909 to 1955) suggest that their annulment was due to abandonment or non-compliance with conditions. 2.5 Law No. 15/65 of 1965 establishing the regime of land ownership Despite the name of the law, this is a land registration law, not a land ownership law. Therefore, the law says nothing about the status of unregistered rights, which concern most of the land held by Gabonese. 19 Emphyteutic leases are common in American, French, Quebec, and other civil law systems, and constitute a mechanism for optimizing the ownership of an apartment or office in a building otherwise owned by another person.

Land Rights in Gabon Facing the Past – and the Present 38 Registration is defined as the holding of rights recorded in a land registry and that can be subsequently removed. Rights that can be registered include ownership, usufruct, use, habitation, emphyteusis, and antichresis (article 5). The law applies to registration in the private sector (alienated lands) and to the registration of less extensive rights, such as concessions and leases on state-owned lands for which the state remains the owner of the land. Although rights can be registered as being held individually or collectively, provisions regarding collective holding assume several co-owners, rather than a community (article 8). Applications for registration of rights are published and a boundary date is set. The boundary requires the presence of the applicant (article 17). Boundaries are marked, a boundary plan is established, and objections to the registration can be presented within a two-month period (article 18). These objections are received at the land property registry (article 20). If there are no objections, the President of the High Court gives the green light, and if there are, this last jurisdiction rules on the objections (articles 25 and 26). Decisions regarding registration are not subject to appeal but can be subject to a cassation appeal (article 27). Registration follows, and a land title is issued. This title bears a serial number and a specific name. Changes in ownership can now be recorded on this act (articles 29 and 31). The title of ownership is definitive and unassailable. Ownership cannot be subject to any form of prescription (claim by the occupant, based on a custom) (articles 39 and 40). In any case, registration cancels all previously existing rights on this plot. A personal action for damages can only be initiated in cases of fraud (article 41). Leases that have not been made public by a registration in the land registry are not enforceable against third parties for any duration exceeding three years (article 45). Similarly, notes and voluntary agreements have no legal effect unless they have been registered (article 44). Anyone can obtain information recorded in the land registry or appearing on the plans of registered properties (article 86). The Registrar is personally responsible for damages resulting from the omission on the registers of a registration, mention, etc., or from irregularities and nullities of registrations, mentions, etc., recorded in the land registry, under penalty of a fine (articles 99 and 100). 2.5.1 Property Titles in Practice The low degree of land privatization in Gabon suggests that the previous procedures are inappropriate or insufficiently facilitated. The result is that the private domain of Gabon (i.e., areas not owned by the state) is tiny. The bulk of Gabon remains state domain. The private domain can be calculated by the fact that there are, apparently, only 14,000 private property titles in Gabon 20. Informants 21 indicate that the vast majority is intended for houses and buildable land in urban areas. This is evident in the Province of Woleu-Ntem, where the cadastre office claims not to have a single registered property right in its records. 20 As noted by Habitat et al., 2011 and in a personal communication with the Director of land operations, Libreville. 21 Including a former advisor to the Ministry of Housing and the current Director of land operations, interviewed in late

November 2011.

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Land Rights in Gabon Facing the Past – and the Present 39 The area covered by these 14,000 titles is likely minuscule. In most agrarian economies, particularly in Africa, the space occupied by cities is limited despite population concentration. Urban areas today represent only 2% of the total land area of sub-Saharan Africa, despite the fact that they house 40% of its population 22. This is also true in Gabon, despite a greater concentration of the population in urban areas. In 2000, urban areas covered only 0.05% of the country's land area (987,961 ha) 23. It is unlikely that this has more than doubled in area since then. It is therefore possible to assume that urban areas in Gabon represent no more than one percent of the area, even though the majority of the population lives in cities. Some of the aforementioned 14,000 official property titles are located in rural areas. Although these are limited in number, they may cover considerable areas. Information regarding this important subject could not be obtained from any source. The 14,000 properties mentioned above are outside the state domain. Concessions and leases have been issued extensively on state land. The state remains the owner, regardless of how many times the concessions or leases have been reissued. In this regard, it is noted that emphyteutic leases are renewable for 99 years and can then be reissued. There is no restriction on the number of times concessions can be reissued. The number of private property titles in this sector of state land amounted to 5,000 in 2011, according to the Department of Land Operations. These include mining, agricultural, and forestry concessions. Even though no updated information was available, it is established that forestry concessions covered 59% of forests in 2005 (or 13.4 million hectares). If urban land is considered to represent one percent of the country's area (assuming that all of it is private property, which is far from the case in reality), and the protected areas sector absorbs at best 15.5% of the total land area of the country, this leaves 21 million hectares that could be subject to private concessions or leases, which is around 80 to 85% of the total land area of the country. In the absence of a preventive definition of non-commercial rural community lands, much of this area could be quickly absorbed by large-scale private and commercial enterprises. This exposes current occupants to enormous insecurity, and also places them in an extraordinary situation in 2012, technically making them illegal occupants if they do not have a certificate attesting to their rights to remain on the land. Not only is the state the owner of urban and rural areas, but the law itself does not suffice to explain their legal position. Poor law enforcement presents other problems, particularly regarding access to justice and the court's attitude once the case is presented. Land legislation in Gabon is, overall, articulated around official land property titles, with an emphasis on urban areas. The establishment of land titles 22 Less than two percent of the area of sub-Saharan Africa is located in urban areas, despite the fact that more than 40% of the regional population lives in cities. See Alden Wily, 2011a, for more details. 23 Angel et al., 2010.

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Land Rights in Gabon Facing the Past – and the Present 40 is crucial for the entire population of Gabon, as it is the only legal mechanism by which rights to land can be acquired and held legally. However, the procedures for this are outdated, slow, bureaucratic, inappropriate, complex, inaccessible, and costly. The three-step procedure is maintained, which in fact requires an initial survey of the plot, certainty that it is not already owned by someone, and the issuance of a provisional title. Once the conditions are met, generally involving construction or agricultural exploitation, several inspections are then carried out, and a definitive title can subsequently be issued. However, it is only once registered that it becomes a fungible title (which can be sold), which constitutes a complex procedure involving both the court and political actors, given that the instrument confirming the registration takes the form of a decree. At each level, there are a

multitude of steps, most of which require the payment of fees. Administrative competence remains very limited, surveys are costly and time-consuming. These reasons are usually cited (from 1995 to the present) for the limited formalization of land rights in urban or rural areas 24. Several different offices are involved in the process. According to Habitat et al. 2011, there could be up to 134 steps between the initial application and the final issuance of a title, but this may no longer be the case, given that the application in question was made in 1995 25. Otherwise, the repetition of this fact could mean that improvements to the procedures were minimal. An agent from the National Cadastre Agency estimated that in the 1980s, the maximum time for issuing a title did not exceed one year from the date of application submission to the issuance of the title. This already long timeframe has in fact increased since then, he says, due to a lack of investment in modern equipment and the renewal of personnel who have retired since 1990 26. These sources contradict the claim made on the World Bank Doing Business Group website that there are only seven steps to complete, which would only take a month 27. The intention of the site is to encourage investors, although it also mentions that Gabon has fallen from 131st to 134th place in the ranking of economies where it is easy to do business, which is indeed rather low. Furthermore, the Bank's guide shows that only purchases made within the existing private sector are considered. This indeed implies a smaller number of steps and fees. Acquiring rights to state land is much more difficult and takes much longer. Illustration 3 reproduces the guideline from the Directorate of Domains and Land Operations for acquiring a land title. This seems simple, but applicants actually encounter a plethora of difficulties and delays. It is not easy to prove that the decentralization of procedures in favor of districts and the maintenance of (official) fees at reasonable levels have improved matters 28. Practices apparently vary from province to province, which adds to the difficulties 29. 24 See for example Comby, 1995, Obiang and Puepi, 2011, Habitat et al., 2011. 25 Comby, 1995. 26 Bureau of the Cadastre of the Woleu-Ntem Province. 27 http://www.doingbusiness.org/data/exploreeconomies/gabon/#registering-property 28 In Oyem, for example, urban plots cost between 250 and 1,000 CFA per square meter and rural plots between 250 and 500 CFA per m2. 29 Regional Director of the Cadastre, Oyem, personal communication, 2011.

 Illustration 3: Official Procedure for Acquiring a Land Title in Gabon Other sources of demotivation for the formalization of occupation through provisional, then definitive titles include a great lack of awareness of the possibilities, the presumed placement of obstacles in the way of those with the least means (such as the presumed obligation to pay bribes) to expedite the application. The exercise is not relevant for many people living on unalienable lands, and aware that they can only obtain official rights to the land when they occupy and cultivate it immediately. The Cadastre, the central agency issuing official titles and based on mapping, is in fact limited to urban areas. Land located in unplanned areas DGI Collection of fees Estab. DATP DGUAF Preliminary survey Architect Development Report Development DGTTC DGI Estab. DATD Building permit Contractor Awardee Urban Land Allocation Commission Setting specifications Land located in planned areas DGI Refusal * Application DGTTC Demarcation and allocation instruction CF Creation RI TPI Sending project ordinance Publication J.O. DGTTC Final demarcation contradictory Application for registration DGTTC Final demarcation contradictory Land lexicon State lands: All lands not regularly registered or allocated definitively are part of the state domain, which includes an inalienable public domain and a private domain. Planned land: Land demarcated by the cadastre that has cadastral references. DGUAF Survey: Land survey to verify that the land is not located within the scope of a public project or in a public development area. Urban land allocation commission: Commission chaired by the Mayor of the concerned Municipality that sets the conditions for allocation. Report on development: Report drawn up by the Commission and

recorded in minutes, which describes and estimates the investments made on the land. CF: Land Conservation DATP: DATD Decree of Allocation for Definitive Title DGI: General Directorate of Taxes DGUAF: General Directorate of Urbanism and Land Development DGTTC: General Directorate of Topographical Works and Cadastre R.D.: Register of deposits TGI: High Court TPI: Court of First Instance * A reform is underway: it consists notably of the elimination of the provisional allocation phase and the institution of a single phase of transfer of full ownership.

 Wealthy Gabonese apparently manage to obtain a title rather easily30, it is also worth noting that the procedure is not structured for a massive allocation of rights, apart from periodic encouragements regarding the issuance of titles (as seems to have been the case in the 1950s and again in the 1960s). The absence of a legal land market concerning untitled land exacerbates the situation. Derivation practices include the informal private purchase of reported untitled land and subsequently implementing a procedure to obtain it legally, through the issuance of an official title, thus transforming a de facto situation into a de jure situation. As described by an owner: "The legal pathway is slow when someone expresses the desire to buy land. I had to resort to using the path leading to a de facto right. I learned from someone that a person wanted to sell their land on the outskirts of Libreville. I went there and quickly bought the land, and I secured it later by obtaining a title of ownership, after going to the cadastre. Many people today, regardless of their social level, opt for this strategy, even if it amounts to a double purchase"31. Cadastre agents also acknowledge that the land acquisition procedure is the opposite of what was envisioned, with people following up with the administration instead of the other way around32. "Let’s not close our eyes to this situation: although there is a Cadastre management plan, we know that there is no follow-up"33. An additional constraint imposed for the acquisition of titles is that it is difficult for people who are not wealthy to meet the development and construction requirements attached to the issuance of provisional rights, which leads many people to let them expire after the two or three-year period for which these rights were granted, or to not undertake the officialization process at all. As a result, many are those who, in search of land to live on, particularly in urban and peri-urban areas, turn to their families and friends for a place. A thriving informal market also exists regarding land. Projects to simplify the issuance procedure and decentralize some of the roles of the national Cadastre have been slowly implemented since 2010, but were hampered by the layoff of many technical team members within the Ministry34. The recent closure of the Ministry of Housing (September 2011), which housed the cadastre services, now constitutes an additional obstacle to change. Urban planning and housing developments have been interrupted, paving the way for unregulated evictions of urban occupants along the roads in November 2011. This ultimately also led to the halt of the promised mapping of a potential rural domain by the National Institute of Cartography. The President announced the creation of a new National Agency for Settlements and Public Works, placed under his personal direction. 30 Personal communication: K. Paulin (CENEREST), November 29, 2011; M. Delbrah (former advisor to the Minister of Housing), December 6, 2011; Director of the Cadastre Office of the Woleu-Ntem province (December 1, 2011). 31 Massala-Mandongault, 2011: 101. 32 Massala-Mandongault, 2011:106. 33 See footnote above. 34 Most of the technical team from the Ministry was laid off and those chosen by the President to take their place were "totally lacking the required skills," as recounted by a senior official.

 This was not yet in place by the end of 2011. However, involved agents continue to assert that they remain determined to streamline the allocation of plots and decentralize their functions for the benefit of local institutions. Other

Laws Affecting Property Rights 2.6 The Forestry Code of 2001: the ratification of the loss of forests by communities Most of Gabon consists of forested land, so forest tenure and governance arrangements are of crucial importance. The postcolonial Forestry Code of July 22, 1982 (law n° 1/82) has been repealed in favor of a new forestry code in 2001 (law n° 16/2001, of December 31, 2001). Much of the 1982 legislation has been retained in the 2001 legislation, but with significant modifications. The main objectives of the Forestry Code are commercial in nature. Generally, the objectives of the Forestry Code were (1) to introduce a new concession allocation regime by following an auction process for greater transparency, (2) to expand the area under concession, but with less time for harvesting, in order to accelerate exploitation, (3) to reform the tax system related to concessions and timber processing, (4) to stimulate local processing capacity, so that at least 75% of the timber is processed before export by January 2012, and (5) to allocate production quotas to different companies35. In fact, now, all exported timber must be processed36. The state owns all forests in Gabon and rights are limited to usage rights. In both laws, ownership of all state forests is unambiguous, confirming the provisions of law n° 14 of 1963. Article 13 of the 2001 Code states that "(a)ll forests fall under the national forest domain and are the exclusive property of the state." Consequently, all other rights to forests are lesser, including access and enjoyment rights. These can only be exercised if authorized by the administration. As already established in 1982 and detailed in a decree of 1987, an exception is made for customary forests and natural resource users. The latter do not need to have a permit to use the forest as long as their use remains strictly customary and confined within the boundaries set by law or subsequent regulation (articles 13 and 14, 2001). It is unlikely that rural communities will ever own forested land. The law does not clearly establish whether all forests (or only certain forests) fall 35 Kaplinsky et al. 2010. 36 Presidential Decision, Council of Ministers, November 5, 2009.

 into the category of state private domain or state public domain. This differs from the solution provided by the 1982 legislation, which stated that classified forests (which would today correspond to the permanent state forest domain, including both protected forests and productive forests) were part of the state private domain (1982; article 10) and were therefore, in principle, alienable, including to communities. In practice, it seems that protected areas now fall under the public domain and cannot be (easily) leased or subject to concessions. However, the transfer of state ownership regarding other forest areas now seems further away than ever. This is concealed by the intention of the 2011 Forestry Code to provide for a residual forest area for communities. The 2001 legislation divides the entire forest of Gabon into a permanent state forest domain and a rural forest domain (article 5). Enjoyment of the latter is strictly reserved for village communities, in accordance with the terms determined by regulation (article 12). Technically, due to the lack of clarity on whether forests fall under the state private domain or the state public domain, communities could claim these lands as property. Nevertheless, the general content of the 2001 legislation suggests that this would be unlikely, and that the purpose of the rural forest domain would be to ensure local use, rather than to grant ownership of forested land. Furthermore, there is no delineation between the permanent state forest domain and the rural forest domain, which causes confusion regarding the actual location of these domains. This leads to overlaps. First, there are overlaps resulting from the fact that commercial concessions are allocated on lands that could be more accurately considered as part of the rural forest domain. Second, logging concessions and mining concessions overlap, contrary to what is provided by the Forestry Code (article 141) and the Mining Code (article 21). Third, there are overlaps in areas that could rightly be considered as part of the public domain and reserved, therefore, for educational and scientific uses only, but which are included in commercial logging concession areas and mining concessions. No National

Land Allocation Plan has been developed to resolve the conflicting allocations of logging and mining activities. The permanent forest domain is subdivided into classified state forests and registered productive state forests (articles 6 and 7). The latter are those that meet a preservation objective (article 7) and fall under one or another of the eight listed subcategories, which include national parks (article 8). Productive forests include allocated forests and unclassified production forest reserves (article 11). The forests of both categories must be used and exploited in accordance with a management plan aimed at streamlining the use of forest resources, taking into account sustainable development practices and socio-economic studies, in addition to maintaining a record and evaluating the forest concession. This constituted the major innovation of the 2001 legislation, and about 50 articles are dedicated to describing the content of the plan and the related procedure. The law provides for three renewable exploitation regimes, namely: a. A Sustainable Management Forest Concession (CFAD) can be allocated to both nationals and foreigners, on areas ranging from 50,000 to 200,000 hectares.

 Upon signing, the concessionaire must present a Provisional Convention for development-exploitation-transformation (CPAET) and is required to produce a management plan within three years from the date of signing (article 23); b. an Associated Forest Permit (PFA), reserved for nationals only. It allows exploitation outside protected forests of up to 50,000 hectares. These permits can be issued for areas already under concession, as mentioned above, in agreement with the concession holder. This aims to allow concessionaires to subcontract the exploitation (which they often do). A management plan is required; c. a Gré à Gré Permit (PGG), which is issued to individuals in rural forest areas. It grants the right to exploit up to 50 trees. No management plan is required. Box 5: forest classification in Gabon according to the 2001 legislation National forest domain Permanent state forest domain Rural forest domain Classified state forests Registered productive state forests Includes (article 8): – protection forests – recreational forests – botanical and zoological gardens – arboretum – protected areas – forests for educational and scientific use – reforestation perimeter – particularly sensitive or bordering productive forests of the rural forest domain Includes (article 11): – allocated forests – unclassified production forest reserves Includes (articles 12 and 156): – lands and forests whose enjoyment is reserved for village communities – community forests The commercial sector is largely unregulated The 2001 Code did not annul existing concessions or other permits dating back to the 1982 system. This poses a problem regarding old logging permits (which do not require plans and are therefore not subject to verification based on plans), which are slowly being replaced by new permits. A key change brought by the 2001 Code is that the maximum total area held by any concessionaire has been increased from 200,000 to 600,000 hectares. In practice, even this restriction is not respected. It has been reported that 20% of the entire forest space is held by only 5% of the holders, namely about 12 commercial companies 37. In 2011, CIFOR noted that Chinese private companies alone hold rights to 25% of Gabon's forests, half of which have been allocated to only five Chinese companies 38. This consisted of the issuance of 121 permits for a total of 2.67 million hectares. Chinese companies export more than one million cubic meters of wood per year, accounting for 70% of wood exports. OLAM/Gabon, the partnership between the Gabonese state and OLAM International, also has concessions totaling more than two million hectares. All these companies are supposed to have a management plan and social responsibility clauses (as specified in the Terms of Reference), but few have been implemented. On an informal basis, many concessions allow local communities to use their concession, including those held by Chinese companies39. 2.6.1 The rural forest domain: a mirage The identification of the rural forest domain is not provided for by law and has not been done since the adoption of the latter. However, while the limited nature of customary rights in the law is known40, this is not the case for the area in

which they can be exercised. A residual forest category that only provides for certain usage rights, not ownership. The rural forest domain can be understood as a residual category referring to forest areas located near villages for which no Concession or Permit has been issued. The absence of a definition of the rural forest domain exposes rural populations to commercial encroachment on their local forest areas. Under the previous law (n° 1 of 1982) 41, communities obtained at least guaranteed protection against logging within a perimeter of 5 km from paths, roads, and rivers (article 22 of the 1982 law). Furthermore, buffer zones were to be created in state forests (productive forests and

protected forests), requiring

Land rights in Gabon Facing the past – and the present 48 Community forests as a mechanism to limit local logging by the poor The exploitation of community forests is only permitted under the terms of a simple management plan or under a supply contract with "one or more local processing companies" (logging companies) (Article 158). There may be an agreement for the exploitation of community forests to be carried out in-house (Article 160). Ordinance No. 011/ PR/2008 added elements to the above law. The definition of "local communities" was expanded to ensure it includes both village communities and indigenous communities. Products acquired under customary law can also be sold, as they are defined as coming from "economic use rights." This allows community members to sell part of the products they harvest according to their customary use rights, provided that the sales are local and do not involve intermediaries (revised Article 252). This is to ensure their subsistence and combat poverty (Article 14). The regulations promised by this ordinance aimed at structuring customary commercial use have not been introduced, and as a result, local sales of forest products, which likely represent significant volumes, have an uncertain legal basis. However, since 2001, no community forest has been created. Even the basic implementing decrees have not been drafted. This situation has potentially been remedied by the recent creation of a special directorate, the Directorate of Community Forests (2011). Its new director stated that he will oversee the drafting of the necessary instruments, assisted by a non-governmental project (DACEFI). Nevertheless, given the lack of action from the Gabonese government so far, the establishment of this directorate could be a way to dissipate criticism while doing nothing for the advancement of community rights related to forests. Non-governmental facilitation has been relatively weak but has allowed for the opening of community forests for uses that are not necessarily logging. Various non-governmental preparatory initiatives have been launched since 2001 in anticipation of enabling instruments and significant state support. The fact that the necessary legal instruments and state commitment are lacking is likely the main reason for the limited impact of these initiatives. The lack of knowledge of viable paths to take, which could have relied on the paths chosen by other African states, also seems to be a factor. The testing of some initiatives continues after a number of years, but the development of the paradigm is unclear and the influence on policies is not significant. This could change with the creation of a community forestry service, but even the non-governmental actors involved are not very optimistic. Moreover, it is likely at this stage that Gabon will resort to forestry-centered agreement models, such as those developed by its neighboring country, Cameroon. The newly appointed Director of Community Forests confirmed that in his opinion, these should be allocated for a limited period of 15 years, subject to a review of logging plans every five years, and that their area should not exceed 5,000 hectares. He added that communities should be able to subcontract the forests to state companies. This does not necessarily prevent the few initiatives undertaken by ITTO and WWF-CARPO in recent years from focusing on activities other than logging, but it puts this possibility to the test. The emphasis on logging is reinforced by the content of an undated and unapproved draft decree on community forests (No. 1028), which is designed to implement the forestry code regarding community forests. This requires interested community members to form an official but apparently simple

association (Article 3). The request to create a community forest must specify the intended uses and a plan for the proposed area requested, which will include maps at a scale of 1:50,000 or 1:10,000 (Article 4). If the request is

accepted, a simple management plan must be prepared by the local Water and Forests office, in conjunction with the community, and its cost will not be borne by the community (Articles 6 and 7). The plan must include information about the concerned community, the location and description of the area, and the intended priority uses, which suggests that other uses than logging are considered (Article 8). The duration of the authorization will be specified in the resulting agreement (Article 9). The community will be responsible for managing the community forest, under the direction of the local Water and Forests administration. As mentioned earlier, no community forest has been created since 2001 in Gabon. Furthermore, the entire rural forest domain has not been delineated and no serious management planning has been conducted. In the meantime, the 2001 law and the 2008 ordinance have increased mechanisms that risk affecting the paths taken by communities to obtain forests. Indeed, the 2008 ordinance amends Article 70 of the 2001 law by introducing two additional subcategories of protected areas (biosphere reserves and world heritage sites). Consequently, the rights of communities and the lands/products of community forests continue to be diminished, on the one hand, by a strong insistence on the Forestry Code, and, on the other hand, by conservation requirements. 2.6.3 Spotlight on industrial logging: a law for logging entrepreneurs The most important provision of the 2008 amendment (Ordinance 001) was the modification of Article 10 of the 2001 law to establish that production forests must constitute 40% of the national forest domain. This is a stark contrast to the provisions of the 1982 Forestry Code, which required that state forests (which in 1982 included both protected forests and production forests) cover 40% of the domain. Nowadays, production forests must represent this percentage on their own, reflecting the new emphasis

 focused on the increase in logging activities. One more positive aspect, thanks to a presidential decision on November 5, 2009, is that, since January 1, 2010, all exports are supposed to be in the form of sawn wood or processed wood, and not in raw logs. However, this decision has not been implemented either (see below). The priority that forestry legislation and policy give to industrial exploitation is evident and has influenced the original law of 2001, as well as the decrees and orders that followed45. It has been frequently observed that the fact that many high-ranking political figures hold concessions and permits is a contributing factor to the slow reform of the forestry sector. The same shortcomings have been repeating for over ten years, including a persistent exceeding of the legal annual logging rate, as well as the fact that a large majority of logging companies continue to operate ignoring the management plans approved by the State, that the rural forest domain has not yet been defined, and that there has been no detailed planning for zoning and allocation of forests, despite apparently significant international aid. Expanding logging, but no governance of this exploitation The 1982 Forestry Code provided that the permanent forest domain be divided into two exploitation zones. During planning activities in the early 1990s, zone 1, a coastal area, was classified as comprising almost five million hectares, of which 1.29 million were made available for logging. A much larger exploitation zone is found in zone 2, an inland area, its area estimated at 9.5 million hectares and its exploitation only increasing46. Consequently, at least half of Gabon is subject to commercial logging rights, and probably much more47. As concessions keep increasing, it is difficult to understand what the concept of the rural forest domain of eight million hectares, to which reference is periodically made, could mean48. The strongest objectives of the revised 2001 Forestry Code remain unchanged, namely,

the intention to significantly increase logging to supplement declining oil revenues. Although the production of sawn and processed veneer sheets and plywood has increased significantly since 2001, raw logs still represented 87% of wood exports in 200749. The expansion of the logging area and the intensity of exploitation are evident. It was expected that there would be a significant improvement in transparency in the sector and in the efficiency of tax and royalty collection, but this has not occurred50. Issues related to the land tenure of forests have a very low priority. In summary, on almost all fronts (apart from its objectives of rampant commercialization), the 2001 Forestry Code is laughable. 45 For example, Karsenty, 2010, PAFC Gabon, 2008, WRI, 2009, Rainforest Foundation, 2005, Ter Heedge, 2011. 46 Figures for 2008 identify a total of 48 concessions (CFAD/CPAET) covering 10.292 million hectares and 212 other permits covering 3.1 million hectares (WRI, 2009). Putzel et al. cite "the issuance of 579 permits, of which 73 are under review and inactive" (2011: 19). 47 For maps, see http://pdf.wri.org/gfw_gabon.pdf. 48 This figure has continued to be given as representing the area planned by the end of 2011, notably in interviews with the Director of community forestry and the Director of land operations of the Ministry of Economy. 49 Kaplinsky et al., 2010. 50 Kaplinsky et al., 2010.

 2.7 The 2007 National Parks Law: an improved paradigm of protected areas, but still outdated regarding community rights This law replaces and annuls the provisions regarding national parks found in the 2001 Forestry Code. It represents the culmination of constant pressure for the protection of Gabon's forests and the natural resources within them (Box 6). Box 6: Evolution of Conservation Policy in Gabon DATE SIGNIFICANT EVENT 1946 Creation of the first national park: Okanda National Park (now Lopé National Park) 1954 International Convention for the Protection of Fauna and Flora in Africa 1956 Introduction of regulations regarding hunting in certain areas 1960s Creation of several protected areas 1982 New Forestry Code 1990s Emerging environmental action NGOs, including Brainforest, exert pressure 1992 Convention on Biological Diversity, ratified by the President in 1993 1994 Formulation of the Tropical Forestry Action Plan (FAO, World Bank, and UNDP) 1999 Formulation of the National Strategy and Action Plan for Biodiversity 1999 Yaoundé Declaration, creating a regional partnership of six nations, COMIFAC 2000 The six states agree to set aside 10% of their respective countries' areas for conservation August 30, 2002 Creation of 13 national parks (8 are new); logging and mineral extraction prohibited 2003-05 The COMIFAC convergence plan includes respect for customary use of forests 2001 The new forestry code excludes customary rights in protected areas 2004 Presidential speech in the newspaper l'Union on June 4, 2004 promises support for conservation and the rights of Pygmies 2005 Launch of the Forest and Environment Sector Program (PSFE) 2005 Agreement regarding the Indigenous Peoples Development Plan (which is part of the above program) 2007 National Parks Law and creation of a special agency, the National Parks Agency 2007 The United Nations Declaration on the Rights of Indigenous Peoples was voted by Gabon Although the 2007 law has certainly protected important territories from the granting of concessions, its provisions in favor of local land interests were only symbolic. Superficially, this is denied by the provision that "national parks are created, classified, or declassified, totally or partially, by a law, taking into account the customary rights of local communities" (Article 4) (we emphasize). Article 10 again expresses the conditionality of the conservation of natural and cultural heritage and customary use rights during the execution of activities (we emphasize). However, it should now be clear that, under Gabonese law, customary rights are only considered as use rights and do not have the attributes of land ownership rights. Therefore, as with the entire permanent forest domain, the State can simply create national parks at will, without mentioning in any way the possibility that these lands may already belong to communities under customary norms, or that they may or should become protected areas belonging to the community.

Land Rights in Gabon Facing the Past – and the Present 52 As the law provides for taking into account customary use rights, proposals to classify or declassify a national park must be subject to consultation with local communities (Article 4), as must proposals to modify the boundaries of a national park (Article 7). Management plans must be developed in consultation with communities (Article 21) and local management advisory committees must be created by the park management (Article 45). However, unlike many resource laws in other African countries, there is nothing in the 2007 law to suggest that the State would be obliged to take into account the results of community consultation. Communities in the peripheral area of a park may also be more directly involved in the park's management by entering into a contract with the park administration (land management contract). Such contracts are intended to promote economic benefits for communities, as well as to encourage conservation (Articles 3, 13, and 19). They aim to cover "monitoring, management, maintenance, cultural and tourism activities of the park or its peripheral area" (Article 19). Nevertheless, it is evident in this law that such contracts can only be signed for peripheral areas, and not for the entire park. Moreover, it is unclear whether such contracts have already been negotiated. The legal instruments that would facilitate these contracts are, furthermore, not yet in place. Are national parks another way to seize land from local communities? The creation of these peripheral zones significantly increases the threats to the land interests of communities. Indeed, these zones are outside the park, along its boundaries. This means not only that communities lose their land rights in the park itself, but also that their activities are restricted in the peripheral zones (Article 13). In the peripheral zones, the exercise of customary use rights, including fishing, hunting, logging, wildlife capture, agricultural and forestry activities, plant gathering, and collection of minerals or fossils is free, subject to compliance with applicable laws and, where applicable, the stipulations of land management contracts (Article 16). This article confirms the conservation approach of wildlife and flora, through buffer zones, which is typical of the 1980s (and which wildlife conservation organizations have retained), whereby property and customary use rights are removed in the park and are supposed to be compensated by a permission to harvest products traditionally in adjacent areas, under specific conditions51. This was already the position of the 2001 Forestry Code regarding these zones. As early as 2005, it was identified that approximately 15,000 people were affected by this position52. Many of them are Pygmy landholders under customary tenure in areas now encompassed within the national parks of Birougou, Ivindo, Lopé, Minkébé, and Moukalaba. The Nzebis are also directly affected by the creation of Birougou National Park, which was traditionally their main place of residence, before they were displaced into settlements along the roads53. 51 Alden Wily and Mbaya, 2001, Nelson (ed.). 2010. 52 Ter Heedge (undated) based on Schmidt-Soltau for MEFEPERN 2005. 53 Knight, 2003.

Land Rights in Gabon Facing the Past – and the Present 53 A more positive point is that the law provides for environmental organizations, including NGOs, to be able to join as civil parties in any proceedings related to violations of the legislation (Article 72). Despite the limitations of the national parks law, this article could be an opportunity to challenge the creation and management of the park on the grounds of legal violations. This could be useful regarding the lack of implementation of the law concerning management planning, knowing that within it, at least the rights of use and local benefits could be specified. However, this will not allow for obtaining local land ownership rights and rights over resources, as these rights are excluded by law. 2.8 The 2000 Mining Code Law: Confirmation of the Abolition of Mining Rights, Even Minor Ones It is known that Gabon has significant mining potential in areas that have not yet been exploited. Historically, vast concessions for exploration and extraction have been granted. In

addition to its offshore oil, Gabon is the second-largest producer of manganese dioxide in the world and holds considerable reserves 54. Gabon also has the potential to produce up to 15% of global niobium (specifically from a mine near Mabounié). Iron ore is also a significant resource (see below). Gabon has been mining gold for several centuries and continues to have commercially viable gold production in the Étéké region, as well as diamond production near the Congolese border, but both are at low levels. Gabon was one of the main producers of uranium, but now the deposits are depleted. This uranium production has cost Gabon. Indeed, it has been reported that following uranium mining in Mounana by the company COMUF, from the 1950s to the 1990s, workers suffered from severe cancers 55. Mining legislation has been revised under a new 2000 Mining Code Law (Law No. 5 of July 2000)56. This law maintains the position that all useful mineral substances contained in the soil and subsoil of Gabon are the property of the State (Article 4). Article 21 prioritizes mining concessions, although the holder of a mining concession may consent to other mining, oil, or forestry titles being granted within the concession area they hold. Four types of mining rights are granted: right for prospecting (authorization for two years), right for research (renewable research permit twice), right for exploitation in a specified concession area, and right for exploitation without concession, to extract construction materials and minerals. Mining concessions are initially granted for 25 years (Article 77) and can be renewed for one or more periods of ten years (Article 80). The granting of the concession is distinct from the operating permit, which is granted for ten years and renewable as needed for five years (Article 73). The granting of mining concessions is only permitted after a public inquiry and impact study (Article 77). 54 http://www.mbendi.com/indy/ming/af/ga/p0005.htm 55 Gehriger, 2004. 56 Previous mining laws include Law No. 15/62 (1962) and Decree No. 981/PR (1970) amended by Ordinance No. 45/73 (1973). The oil and natural gas sector is now governed by a separate Hydrocarbons Code (2011).

 The law reminds concession holders that their right is only mining and does not include ownership of the land or subsoil (Article 78). Following a public inquiry and an assessment of the impact of exploitation on the environment and local populations (Article 73), a mining concession may receive exclusive access and use of part or all of the area (Articles 114 and 115). Given that concessions can potentially be large, a significant portion of the local population must be affected. There are no provisions in the law regarding local access rights to these mining concession areas, or usage rights. This study did not have up-to-date information on the number of existing mining concessions and the total area that these concessions represent. Maps published by other agencies suggest that most of Gabon is subject to mining rights for exploration or exploitation57. It is known that Chinese interests have recently dominated. Comibel (Belinga Mining Company), a joint venture between the Gabonese state and China, was granted a large iron ore mining concession in 2006 in the Bélinga Mountains, northeast Gabon. The agreement included support for mine infrastructure, including the development of a shipping port, a railway, and a hydroelectric dam. The agreement became increasingly costly for the Gabonese government. Environmental protests organized by Brainforest in 2009 regarding the effects of mining on the Ivindo National Park raised additional concerns. The Gabonese government began renegotiating the agreement in 201158. The renegotiation did not succeed, resulting in Comibel's expulsion from the area in December 2011. Reuters reported in February 2012 that a new iron ore development agreement had been made with the giant Australian mining company, BHP Billiton (February 4, 2012)59. The details of this agreement are not available. 2.9 The 1996 Decentralization Law: A Democratization, but No Real Intention to Implement It A legal commitment to decentralization has existed since 1996 but, like most Gabonese laws, it is not implemented. Decree No. 1394-PR/MI of December 28, 1977, was amended by Organic Law No. 15/96 of June 6, 1996, relating to decentralization. This is a lengthy

law of 267 articles, which provides for a significant sharing of power with institutions, including local institutions, such as urban and rural municipalities. These localities take the form of a hierarchy of councils elected at the village and departmental levels in rural areas, and councils elected at the city or district level in urban areas. The transfer of powers to these localities must be significant. The powers include: land use planning, health, social action, cadastre, housing and habitat, environment and sanitation, urban planning, culture, tourism, village hydraulics, equipment, roads, urban, interurban and interdepartmental transport, water, youth, sports, agriculture, fishing, livestock, and quarries (Article 235). Additional responsibilities may be decentralized (Article 235). 57 http://pdf.wri.org/gfw_gabon.pdf 58 Putzel et al., 2011: 28. 59 http://af.reuters.com/article/investingNews/idAFJOE81301X20120204

 55 The localities reflect a modern vision of a combined socio-spatial authority, in that each locality has authority over a specific individual area. It is expected that the resources of local communities will consist of own resources and state allocations (Article 151). Own resources include shares related to personal income taxes, profits, value-added taxes, and property taxes (Articles 152 and 160). The state allocation is a global operating allocation (Article 151). The determination of the location of these localities is based on territorial and demographic criteria (Article 12). Each local community will be governed by a deliberative body and an executive body (Article 21). The deliberative body is a Council composed entirely of elected members, whose election is carried out by a majority voting system in a single round by secret ballot. Councillors have the competence to regulate, and their regulations must be respected in the relevant area. The executive body is an office, composed of some of the elected members and responsible for implementing the decisions and functions of the Council. In all cases, Councillors are elected for five years. In rural areas, each department will include a departmental council and there will be rural municipality councils at the village level (Articles 22-23, 42-43). For a rural settlement to be officially designated as a "locality" and be able to elect a Council, it must have at least 100 inhabitants (Article 8). Its office will be led by a mayor and a deputy, elected from among the elected Councillors (Articles 69-70). The degree of decentralization of power at the village level is not precise. The law grants local community council offices considerable powers and responsibilities (Article 80). The office of the rural municipality council is responsible for executing the deliberations referred to in Article 80 (Article 96). The Mayor of the rural municipality is also responsible for 19 specific tasks, including ensuring the conduct of funerals, proposing a development plan and budget to the council office, overseeing the execution of municipal works, and especially "preserving and managing the properties of the municipality" (Article 98). Members of Parliament, Senators, Heads of health units, and other Heads of civil state administration services may participate in sessions of the rural municipality council with a consultative voice (Article 47). The law is undoubtedly well-disposed towards decentralized governance, at least at the departmental level in rural areas. In practice, rural community councils may often be implementing bodies for decisions from the Department and higher instances (for example, Articles 233 and 264). Nevertheless, such concerns are meaningless at this stage. Indeed, the law has simply not been enforced. Even the most basic enabling decrees have not been issued in the 16 years since the law was enacted. One could suspect the situation due to the numerous provisions aimed at ensuring that the transfer of powers and competencies is implemented gradually, that powers are delegated in different spheres at different times, and that these powers may vary from one area to another (Articles 235-264). Furthermore, all delegated powers compete with powers assigned to higher levels of government, suggesting that the decentralization of true authority will be at the discretion of the State (Articles 233 and 264).

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Land rights in Gabon Facing the past – and the present 56 Illustration 4: Gabonese provinces today 2.10 The 1988 law establishing the Investment Charter: attracting land investors In 1998, Gabon enacted law no. 15 of July 23, 1998, to encourage and protect investors. The Charter strengthens and encourages the long-standing trend of transferring land and resources to private companies. The Charter makes the private sector a partner of the State to promote a "strategy of economic and social development based on the flourishing of the private sector" (preamble). Foreign natural or legal persons are welcome and are free to undertake any commercial and production activity (Article 1 of Title 1). Property rights NYANGA NGOUNIÉ OGOOUÉ-MARITIME MOYEN-OGOOUÉ ESTUAIRE OGOOUÉ-LOLO HAUT-OGOOUÉ OGOOUÉ-IVINDO WOLEU-NTEM CAMEROON CONGO EQUATORIAL GUINEA Libreville Libreville Port-Gentil Kango Oyem Lambaréné Masuku Mouila Koulamoutou Makokou Tchibanga Provinces National capital and regional capital 100 km 0 50

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Land rights in Gabon Facing the past – and the present 57 attached to land, buildings, operating equipment, and those attached to movable property are guaranteed (Article 1 of Title 1). It is guaranteed to investors that Gabon is a member of the World Trade Organization and follows its international trade rules (Article 2 of Title 2). Bilateral agreements and adherence to multilateral treaties and international arbitration bodies are also cited as sources of investment guarantees (Article 2 of Title 2). The law notes the establishment of an Investment Promotion Agency (Article 6). The described tax benefits include the possibility of suspending customs duties, applying a zero VAT rate on exported productions, exemption from corporate tax during the first three years of operation, payment deferrals to improve cash flow for companies in their ramp-up phase, the application of tax credit mechanisms aimed at promoting technological research, vocational training, and environmental protection, and aimed at compensating investors when they invest in social services in rural areas, and maintaining property taxes at a level corresponding to the service rendered by local authorities (Article 14). 2.11 The 2008 law on the Agricultural Code: a law for investors and not for farming families This law is not a generic sector law. It is designed to promote large-scale private investments in the agricultural sector and to "foster (...) an investment aid policy" (Article 2). The preface of the law contains no less than 27 decrees relating to agricultural investment and the receipt of loans from Citibank, Eximbank China, Banco Bilbao Vizcaya Argentaria, and the Islamic Development Bank (IDB). Investments must protect the environment, improve the structures of agricultural operations and the competitiveness of products, stimulate the diversification of economic activities and the promotion of jobs, improve conditions in rural areas, and encourage forestry, irrigation, seed production, and the creation of pastures and forest plantations (Article 6). Articles 2 to 6 aim to define the scope of investment. The law guarantees safe legal conditions for investors, facilitates their access to credit, and provides for the granting of bonuses and allowances and tax (Article 3) and customs incentives (in the form of exemption from customs duties). The law also promises that the procedures for granting private property titles will be simplified and expedited (Article 8). The agreements arising from agricultural and investment laws are numerous. One of the most notable agreements is the ordinance creating the special economic zone of Nkok (undated) which provides 1,423 hectares to OLAM International for this company to serve as a technical partner in the development of this zone, as will be explained in Chapter Three. Another agreement relates to the granting of 35,354 hectares to OLAM Palm Gabon, so that this company develops the first phase of a project, as part of a commitment by the Gabonese government to provide 300,000 hectares of land for plantations and palm oil refining sites (license no. 74/11 of October 2011).

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Land rights in Gabon Facing the past – and the present 58 3 Conclusions It is difficult to conclude that the current land and resource laws in Gabon are sensible, fair, or sustainable. For the majority of citizens, there is no legitimate land security or even the hope of such security, only usage rights. The laws are old, mostly dating back to 1963 originally, and they are opaque regarding key provisions, particularly those relating to the nature and sub-categorization of state domain, concepts that are crucial for understanding the rights of rural inhabitants. Worse still, the fact that key laws or parts of them have not been followed by the necessary instruments for their implementation means that the fundamental policies incorporated in the legislation are in vain. Not only does this diminish the function of law, but it also reflects a dismissive political attitude towards the rights of citizens, particularly since these shortcomings predominantly affect those who could be defined as the poor in rural and urban areas. This abuse is most apparent regarding legislation related to forests, parks, and decentralization, mocking the bold provisions that had been expressed in these laws. Most damaging is the fact that the legislation: (i) has not kept its promise to delineate a rural domain within which communities can obtain land ownership; (ii) does not protect urban inhabitants from deliberate eviction; (iii) does not provide mechanisms to ensure that logging concessions and the management of national parks guarantee concrete access and benefits to those who have, in fact, been forced to cede their resources for the benefit of logging or national park objectives; and (iv) has not fulfilled the promises of the 1990s for more decentralized and democratic governance. The substance of some key laws regarding land and resources, whether or not applied, leaves much to be desired. Whether it is the constitution or the subsequent legislation, there is a fundamental lack of respect for the fact that customary and long-standing land occupation and resource use confer real land rights in today’s world. Only land attached to registered property titles is considered property and is, consequently, protected from excessive loss. Extremely few Gabonese have official property titles that could guarantee them such protection, even if it were only reasonable compensation for land seized by the government for other purposes. There are only 14,000 property titles in the private sector. The approximately 5,000 official rights granted on state land are for commercial reasons and, in themselves, completely override the right of rural populations to obtain this land and, in fact, terminate that right. The very notion that land without a property title is not owned under the law and therefore does not deserve protection is outdated. It is based on an ongoing colonial presumption that Africa had no owners and still does not. As a result, most of the current urban and rural population is technically landless and thus a tenant of the State.

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Land rights in Gabon Facing the past – and the present 59 This would not be so concerning if the State, operating as a nation and not just as a government, were effective, but there is no evidence that this is the case. Instead, the current government is the State and owns at least 85% of Gabon. As a result, the country, its resources, and its population are highly and abnormally vulnerable to the whims, manipulation, and profit-seeking of the political class. This means that the land security of the population depends on the political will of current leaders, not on the assurances of the law. This type of situation is more characteristic of dictatorships, historically, than of modern agrarian democracies. The provisions and remedies against unjust decisions by the State are very insufficient. It is fair to say that the only security granted to Gabonese in 2012 is that they can use the land and resources, as long as it does not interfere with other preferential uses, as determined by the politicians of the day. Gabon’s land laws clearly favor land use. They are structured so that land and resources are widely available through lease contracts or concessions, and under sustainable terms. The problem is that such provisions are

almost exclusively designed for the commercial exploitation of these lands. Consequently, the majority of the poor in urban and rural areas are losers regardless: on one hand, the provisions do not provide land rights for their customary and/or long-standing occupation, and on the other hand, the provisions regarding land use are effectively limited to the few Gabonese who have the capital to exploit land commercially. The poor also cannot meet the development conditions required by the legislation, which are again the privilege of the rich. For example, a poor resident of Libreville (and most of them are poor) cannot meet the construction requirements imposed by property rights. A low-income rural family or community also cannot succeed in providing the investment for clearing and development that is necessary to have its traditional territory be, for example, a commercially renewable agricultural concession. Land and resource laws are therefore intrinsically unjust. As noted above, various remedial measures, such as reserving a certain area for village use, the requirement that concessionaires and national parks prepare management plans that allow local use of certain parts of the areas assigned to them, or the institutional governance mechanisms required to facilitate claims from a community or neighborhood in cases of abuse, have not materialized. However, these measures have long-term repercussions, which we will explore in Chapter Three below. But first, in the following Chapter Two, we will take a step back to discover how the extraordinary conditions existing in 2012 came about.

Land Rights in Gabon Facing the Past – and the Present 60 — Women play a vital role in customary forest management regimes, but this is not recognized by law

Land Rights in Gabon Facing the Past – and the Present 61 Chapter 2 Looking Back to Better Understand the Present

Land Rights in Gabon Facing the Past – and the Present 62 Introduction Chapter one established that modern Gabonese have very limited land rights. The state is the main landowner, its domain covering up to 90% of the country. Only 25% of this land is considered national property in the strict sense, as public land intended for public purposes, and the majority of it consists of national parks from which communities have been excluded. The rest of the state domain is considered the private property of the state. This allows the government of the day to operate, in fact, as a private person and as an owner. The laws that determine access and the issue of rights to these private state lands are based on the presumption that Gabon is a land without owners (terra nullius) and that it was so in the past as well. Recognition of the existence of property rights (“ownership”) is made solely through registration, and only registered properties are protected. However, the possibilities for registering properties are very limited: either the owner of an urban house is unable to bear the costs of the procedure or the real estate requirements established in cities, or the family or rural community is unable to obtain its traditional or current properties due to a lack of information or means, or because only cultivated lands meet the criteria, or because allocation options are structured preferentially to favor extractive, transformational (clearing and agriculture), and commercial use of the land. Not only does modern Gabonese land property legislation deprive its citizens of the protection of customary and/or long-standing property rights, but it also promotes the grabbing of these presumed “unowned” lands by commercial enterprises and the related elites. The objective of this chapter is to find out how these land policies and the legal paradigms in which they are incorporated have evolved. This requires looking back at the colonial era. Indeed, it was during this era that an official property right was introduced. It is likely that it was also at this time that beautiful words

were spoken and new laws were established, but it became a habit not to succeed in implementing viable provisions. Alternatively, this failure may be more modern and limited to post-independence governments. This chapter also has another objective: to discover whether Gabonese have historically organized their relationships to land in a way that justifies the modern denial of land and resource ownership in Gabon today and in the past. This means exploring the territoriality and land use systems of the indigenous population. The term "indigenous," as we have seen, includes all inhabitants of the country who have strong economic, cultural, and spiritual ties to the land and resources, meaning not only the Pygmies, but also other Africans.

Land Rights in Gabon Facing the Past – and the Present 63 1 Early Settlements in Gabon A long occupation by hunter-gatherers and farmers. We know that the lands of Gabon have been inhabited for a very long time. Archaeological excavations, revealing stone tools and inhabited rock shelters (notably at Lopé), show that the lands have been continuously inhabited for 30,000 years by low-density hunter-gatherer populations60. Ceramic and iron artifacts suggest that hunter-gatherers were joined by more sedentary communities as early as 4,500 years ago and certainly from 2,700 years ago. There is evidence of agricultural cultures in northern Gabon dating back to this time. A strong diversity of ceramic styles found in Gabonese sites indicates that these agricultural communities were isolated from one another61. Migration as a historical constant in Gabon and around the country It is unclear who these ancient hunter-gatherers and farmers exactly were and the links that bind them to modern Gabonese. Indeed, there have been significant migrations within and around the Congo basin for millennia. The first inhabitants of Gabon, the pygmy hunter-gatherers, have ancient origins in eastern Gabon. The establishment of Bantu societies was also characterized by migrations. The great Bantu migration in the area of present-day Gabon seems central, even though there were migrations of non-hunter-gatherers to Gabon before this. This migration saw Bantu-speaking populations (which are part of the Niger-Congo language family) migrate from Cameroon, the Central African Republic, and the Democratic Republic of the Congo more than 2,000 years ago, and then spread into eastern and southern Africa in the 1,750 years that followed62. Among the populations of non-hunter-gatherers that survive in Gabon, it is possible that the Myènès were the first to arrive, settling along the Gabonese coast before the 13th century and founding fishing communities. Other groups followed, and more recently the Fangs, who arrived in the north at the end of the 18th century and migrated south and to the coasts in the mid-19th century63. Hunter-gatherers and farmers originally constituted a single population Culturally and economically, the Pygmies and Bantu of Gabon are distinct peoples. However, genetic and linguistic tracking research shows that 60,000 years ago these groups constituted only one population. It is also not accidental that there is no separate pygmy language family. All Pygmies speak Niger-Kordofanian and Nilo-Saharan languages, confirming an ancient social integration with other African populations. This is still the case today. Modern Pygmies speak the same language as the agricultural community with which they live, or a variant of that language. There are three exceptions among the twenty Central African groups. One of the groups is the Bakas, who live among the Fangs in northern Gabon but speak a language with no relatives. Although it is known that there have been long-standing hunter-gatherer inhabitants in Gabon, it is less certain that modern Gabonese Pygmies are their direct descendants. It is possible that some migrated with the societies that arrived over the last thousand years. Indeed, it is known that the Bakas Pygmies are recent immigrants in northern Gabon. The Bakola Pygmies (or Bakoyas) from northeastern Gabon, and particularly the Barimba and Bagama Pygmies from southwestern Gabon, claim much older origins in these parts of Gabon. Oral traditions suggest that when agricultural societies arrived in new places, they always encountered Pygmies who served as

guides64. Territoriality goes back a long way in Gabon and, in the case of Pygmies, it is likely continuous for millennia It is known that hunter-gatherer societies around the world operate within very vast territories, within which they move. A territory can cover hundreds of square kilometers. This fact, along with linguistic and genetic isolation within pygmy groups, suggests that the

territories of Pygmies were very vast. Environmental or social pressures could easily force a group to move its camps (around which they hunted and gathered) to a more distant location within its territory. It seems that this was the case for the Bakas and Bakolas, whose territories extended well beyond the border with Cameroon and that with Congo. Although some of these groups arrived recently in Gabon (even in the 1960s, in the case of the Bakas), it is quite possible that the areas they chose to settle were part of their vast original territories. Whether this turns out to be the case or not, it remains that Pygmies and other hunter-gatherers in Africa are strictly territorial and are only nomadic in the sense that they frequently move within their territories, the different groups agreeing on their respective territories. What can be concluded from this is that Gabon has been inhabited for a long time, regardless of the population density. Both the territorial nature of hunter-gatherer societies and that of agricultural societies practicing clearing suggest that notions of territoriality go back a long way. 64 Knight, 2003, Bahuchet, 2012.

Land Rights in Gabon Facing the Past – and the Present 65 Box 7: The Hunter-Gatherers of Gabon Hunter-gatherers represent about 2% of the total African population. Hunter-gatherers also form a minority population in Gabon. It is estimated that their number ranges from 10,000 to 20,000, or about 1% of the population65. Members of this minority are generally referred to as Pygmies and they have ethnolinguistic and historical ties with other Pygmy groups in eight other Central and Eastern African countries. Although the term "Pygmy" is not a term they apply to themselves, it is still used as a convenient way to express their collective identity as hunter-gatherers66. Illustration 5: Location of Pygmies in Central Africa [source: Bahuchet 2012: 62] Pygmies do not share a common language or even a linguistic group. They speak the languages of the non-Pygmy groups that protect them, as has been the case for centuries. The groups that identify as Pygmies today are the Bakas, Babongos, Bakoyas, Baghames, Barimbas, Akoulas, and Akwoas. None of these groups has many individuals. The Bakas, who live in the northern provinces of Gabon, Woleu-Ntem and Ogooué-Ivindo, represent one of the largest groups, but consist of only 500 individuals. However, they 65 IWGIA, 2011, Schmidt-Soltau, 2005, Knight, 2006. Most of the figures come from calculations by the Association for the Development of the Culture of Pygmy Peoples of Gabon (ADCPPG), led by Dr. Massande, who compiled a census in 2005. 66 At least one hunter-gatherer NGO in Gabon retains the term because it is not the word that needs to change, but the meaning (Oosting, 2011). 500 km Twa Twa Cwa Cwa Asua Sua Efe Baka Aka Koya Kola Bongo Bezan Kola/Gyeli Kola/Gyeli Mikaya CHAD SUDAN THE CENTRAL AFRICAN REPUBLIC CAMEROON GABON EQUATORIAL GUINEA CONGO DR CONGO ANGOLA ZIMBABWE UGANDA KENYA TANZANIA BURUNDI RWANDA NIGERIA NIGER 250 0 BURUNDI RWANDA □

Land Rights in Gabon Facing the Past – and the Present 66 maintain ties with about 40,000 Bakas in Cameroon and Congo. The occupation of hunter-gatherers/Pygmies in the area corresponding to present-day Gabon dates back 30,000 years and coincides with the occupation of other hunter-gatherers in Southern Africa, the San (or Bushmen), known to date back 50,000 years. The Pygmies of southern and central Gabon (the Babongos, Barimbas, and Bagamas) are the oldest Pygmies in Gabon. The northern Pygmies (the Bakas) and eastern Pygmies (the Bakolas/

Bakoyas) of Gabon arrived later. Illustration 6: Location of Pygmy Groups in Gabon Today [source: Knight 2003: 1] NGOUNIÉ NYANGA MOYEN-OGOOUÉ OGOOUÉ-MARITIME ESTUARY OGOOUÉ-LOLO HAUT-OGOOUÉ OGOOUÉ-IVINDO WOLEU-NTEM CAMEROON CONGO EQUATORIAL GUINEA 12 13 14 1416 17 18-22 30 27-29 4321 9-11 26 24 23 25 8 5 7 6 12 13 14 1416 17 18-22 30 27-29 4321 9-11 26 24 23 25 8 5 7 6

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Land Rights in Gabon Facing the Past – and the Present 67 2 The Mercantile Era: 1472-1842 A more precise indication of settlement trends can be obtained from recent historical archives, which have been compiled since the visits, settlement, and takeover by Europeans. It is useful to divide this modern era into several periods: first, the mercantile era (1473-1842), then a coastal colonization era (1843-1886), and finally an increased colonial era, extending until Gabon freed itself from French control in 1960. The slave trade is the factor that most strongly influenced local territoriality and land ownership in Gabon. It is necessary to examine the context of the slave trade as it is responsible for the displacement of many groups/peoples within the area of present-day Gabon. Portuguese traders first arrived at the estuary of the Komo River in 1472/3 and named it Gabao (due to its hooded cape shape). They explored the coast. They did not settle there, preferring the islands of Bioko, São Tomé, and Príncipe to establish sugar plantations. However, they founded a trading post in the area of Port Gentil (Mandji) and others in several other locations. These trading posts gradually multiplied. In the following century, English, Dutch, and French traders gradually joined them, particularly after the Portuguese lost power due to the annexation of Portugal by Spain a century later (1580)67. Europeans found Gabon inhabited and belonging to the Gabonese, although the laws that followed say otherwise. Nothing suggests that the traders found the region uninhabited. On the contrary, there are references to gatherings, transactions, and sometimes to the decimation of local coastal populations68. Generally, it is reported in the 15th century that coastal communities were composed of Pygmies, Ndiwas, Sékés, and Asherianis. Over time, more peoples settled on the coasts. By 1790, the Mpongwès, Orungus, Nkomis, and Galwas dominated69. Then came the Bengas, from Cameroon, and the Akélés, from the east. The central areas (the central massif of Gabon) were inhabited by the Tsogos, Pindjis, Nzebis, and Puntus, who claim to originate from areas further south. The Fangs from Cameroon had also begun to arrive in northern Gabon as early as 1780. Despite this, the local population density was low enough on the coast that traders needed to go inland to conduct their trade, partly because their main product was human beings (slaves). From the beginning, the Portuguese at Fernando Pó (now called Bioko) needed cheap labor, which led to the capture or purchase of slaves along the coast. Ivory, hardwoods, and wild rubber were other products purchased from the locals. By 1660, the slave trade dominated and affected the entire coast and trade networks inland. However, it is important to note that the penetration of the Portuguese and other Europeans inland, beyond the coastal areas, was extremely limited. Africans continued to control the interior70. Du Chaillu, who traveled to Gabon between 1855 and 1859, frequently noted in his journal that Europeans did not settle more than a few kilometers from the coast71. From the start, Gabonese were deeply involved in the slave trade, and then in the trade of products. As a result, Africans were involved as merchants from the beginning, not just Europeans. Africans found the slaves and transported them to European ships. Caravan leaders (mubiris) did not necessarily conduct the raids themselves, but relied on clan leaders with whom they had contacts to do so, in exchange for goods72. Furthermore, in order to successfully bring the slaves to the coast for sale, the mubiris had to negotiate the protection of their movements with other local chiefs in the areas they traversed. Finally, local coastal chiefs quickly established control over contacts with ship captains. Du Chaillu, who described the different layers of African trade in detail, noted that it was marked by long advances of costs, with returns on investment

often received years after the initial transaction by inland suppliers73. Thus, many Gabonese were early integrated into the nascent product capitalism, their "products" (the slaves) going not only to Europe but also to the Americas. Subsistence agriculture and fishing quickly declined among important coastal families74. Initially, the slave trade network came from countries outside Gabon and was led by the vilis clans of the Kingdom of Loango, in the area of present-day Congo. The Vilis expanded their trade north into southern and central Gabon. They sold their human merchandise to Portuguese and Dutch traders, as well as to the new French and English traders who had settled in the bustling ports of Loango, Malemba, and Cabinda. "In total, nearly a million slaves were exported from the Loango coast between 1660 and 179375. By 1770, the vilis suppliers were replaced by more local suppliers, knowing that the Bamwélés and Orungus controlled the Ogooué River and the stations at Cap Lopez and Fernan Vaz, while the Mpongwès dominated trade in the Gabon estuary. A figure produced by Gray (2002) and based on a figure by Vansina (1990) is reproduced below to illustrate the expansion of the slave trade in Gabon before 1830 and the approximate location of the main trade routes. 70 Saint-Paul, 1989. 71 Du Chaillu, 1861. 72 Gray, 2002. 73 Du Chaillu, 1861:9-10 74 Rich, 2010. 75 Gray, 2002: 28.

 2.1 Promoting Land Ownership From the perspective of land ownership, the intimate involvement of Africans in the slave trade and other types of commerce is significant. Indeed, their exploits upstream of rivers and in the hinterland demonstrated that there was a great social organization among Africans and consequently a strong sense of territoriality. The slave trade revealed relationships to land and an increased territoriality. Evidence of this is found in the fact that Europeans had no trouble finding local leaders to deal with, who took charge of the majority of raids to obtain slaves in the areas they controlled or were beginning to control as “their lands.” Local leaders also relocated some of their subjects to more remote areas to protect their interests. Secondly, as noted above, merchants had to negotiate with Africans when they crossed their lands or, more often, when they controlled their rivers. Thirdly, when merchants brought their human purchases to the coast, they had to deal with local populations, such as the Mpongwès and the Orungus, who, as owners of these areas, had established themselves as intermediaries between European buyers and merchants76. When the exchanged products were not only slaves but also ebony, ivory, wild rubber sap, and raffia, the clans controlling the areas with these resources were even more possessive. If the notion of territoriality already existed, trade brought it to its peak. Sometimes, the fact that an area or a route was controlled by one person/ethnicity or another could be a matter of life or death, or of slavery. 2.2 Traditional Territoriality It is worth pausing now to review what has been said about the local organization of Gabonese society at that time. According to the view of most documents on the issue, territories did not have absolute boundaries. Settlements were far apart from one another. There could be vast stretches between settlements, described as “dead zones” by the great explorer Du Chaillu a century later (1861). In other words, there were significant unoccupied areas. This reinforces the corresponding existence of “our areas” or owned territories. At the same time, historiography in Africa has come to learn that there are risks in assuming that if an area is not visibly populated or harvested, or moreover, cultivated, it implies that it is not under the control of one group or another. There are indications, however, that Du Chaillu, for example, did not sufficiently observe the sense of territoriality that existed on the tribal lands he visited, although he admits that he always had to negotiate when entering new territory. 77 Moreover, areas controlled by one settlement or another could integrate into notions of much broader territories, such as those maintained by hunter-gatherer groups. This was clearly seen when Bantu clans extended their territories or moved to new areas to take advantage of trading opportunities related to ivory or slaves. Gray 76 Vansina, 1990 as cited by Gray, 2002, Gray and Ngolet, 1999, Gray, 2002, Bernault, 2005,

Chamberlin, 1978, Du Chaillu, 1861. 77 Du Chaillu, 1861.

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Land Rights in Gabon Facing the Past – and the Present 70 gives examples, from several authors, of Pygmies guiding their protective clans in areas and defining the boundaries of these areas in relation to the boundaries of their domains and those of other Pygmy groups 78. He cites Du Chaillu's conclusion in 1867: “It is the Pygmies who set the territorial limits of peoples, based on ethnic groups and clans.” It was believed that the Pygmies themselves were attached to a certain territory and did not go beyond “their areas” (ibid.). Illustration 7: The Extent of the Slave Trade in Gabon in 1830 [Source: Gray 2002: 28] 2.3 The Social Definition of Space What were these Bantu territories that covered the Pygmy territories? According to Gray (2002), Vansina arrived at an analysis that placed the village at the center of society, each village having control rights over a defined area. The village included houses. Each house had an extended household, including associated client families providing artisanal specialties and labor/slaves 79. The village was the base of organization. It is interesting to read in the reports of Du Chaillu's travel accounts that many villages were made up of well-organized streets, with houses arranged on either side (1861: 143). It could consist of a clan or part of a clan. The villages did not necessarily consist of a single ethnic group or a single language. More often, the clan lived in a set of associated villages in a given area. These villages formed what Vansina calls a district. One clan dominated in a given district, but other clans lived there. These districts could be large or small, but rarely exceeded 500 square kilometers80. The village, once and today, as the base of land rights Many researchers have emphasized that villages and districts were not defined spatially but socially, that they existed only through complex clan relationships and were governed by clan institutions. In other words, the extent of a district did not go beyond family relationships. Much of Gray's famous research in Gabon has consisted of demonstrating that pre-colonial society was actually “aterrestrial” and that it was only with trade and colonialism that the typical transition from the social definition of territory to the territorial definition of society occurred81. The possession of territory, in either case, was collective. “Each clan had a domain. It was a collective property, and individuals of the clan had the right to build and exploit the resources as they wished. Members of other clans could use these resources, but only with the permission of the clan that owned that area” (N’Nah, 1979: 60). Classic Communitarianism: lands belong to the community, usage rights belong to families The use of land was not collective. The family or household had private use of plantations (farms). Hunting, fishing, and trade were undertaken in groups, but as trade evolved, commercial transactions for selling ebony or ivory became individual. The lands belonged to the community. The rights attributed to families or villages were usufruct rights: “(...) this is why the clan chief could decide on his own to allocate these rights and delegate his powers to family members or village chiefs (...). When it came to ceding land ownership, a clan chief could not act alone but was obliged to consult a Clan Council” (Gray, 2002: 75) 82. Shifting cultivation was the norm in established communities, with farms and sometimes settlements changing locations approximately every 15 years. There were also many social reasons for moving from a particular site, including illness. In doing so, there could be a restructuring of villages, including changes in the households that composed them, some households swarming to join other villages or form new ones. Normally, such movements were restricted to known territory 83. 80 Gray, 2002: 107. 81 Gray, 2002: 18-22. 82 Gray, 2002, including a quote by Agondji-Okawe, 1973: 75. 83 Vansina, 1990, as

cited by Gray, 2002. Gray and Ngolet, 1999.

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Land Rights in Gabon Facing the Past – and the Present 72 2.4 The Formation of Social Classes Early Incorporation into Capitalism and the Creation of Elites Participation in trade that could

generate goods and wealth, it is not surprising that territoriality was increased. It is also not surprising that participation in trade encouraged the formation of social classes. Society was far from egalitarian during the mercantile era: it had long been divided between free people and unfree people, with an intermediate class of people who were the children of unions between free and unfree members and who, under the right conditions, could become free84. Various degrees of servitude, clientelism, and slavery existed. The rise of “big men” in villages and clans was noticeable as early as 183085. These “big men” in turn created chains of alliances and agreements with other “big men,” extending from the coast to the hinterland. Thus, although the notions of “our lands” consolidated locally, a vertical dimension was added, due to the beginning of social polarization based on wealth, this polarization laying the foundations for the rise of local elites during the colonial era. 2.5 Displacement At the same time, the transatlantic slave trade induced an opposite effect on the strengthening of territorial possession by clans and villages. Firstly, more vulnerable groups had to regularly flee slave raids, moving to more inaccessible areas. Secondly, by 1800, there were signs of planned migration for the purpose of trade, with enterprising clans seeking to control aspects of the slave, ivory, and ebony trade. Both trends increased during the 19th century. 84 Ratanga-Atoz, 1985, Gray, 2002, Du Chaillu, 1861 (142ff). 85 Gray, 2002. — An engraved impression, offering an idealized view of Africans with commercial goods greeting Europeans Source: Louis Freret, Arrival of Europeans in Africa (Paris, 1795)

 3 The Enclosed Colony: 1846-1886 As early as 1800, the purchase of slaves by Europeans began to be more clearly rivaled by the acquisition of ebony, ivory, rubber sap, and raffia fabric. This stemmed from the growing disapproval of slavery in Europe, which did not end until the twilight of the 19th century. Generally, the typical scenario that occurred was as follows: slaves in Europe were freed (initially by the French Revolution in 1793), then the slave trade by European nationals was prohibited (by laws in France, the United Kingdom, and the Netherlands in the 19th century), and finally, slavery within the colonies was banned (for example, in 1848 in French colonies, in 1874 on the Gold Coast). British ships patrolled the Atlantic coast from 1807, condemning English ship captains to a fine of 120 pounds per slave transported. By 1811, the penalty became incarceration, which had a much more deterrent effect. However, when the slave ships of the British, French, and Dutch departed, Portuguese, Spanish, and Brazilian merchants arrived, seeking slaves for Cuba and Brazil. The slave markets of São Tomé would not close until 1870. Du Chaillu extensively described how the slave trade continued at that time at Cape Lopez, and he himself witnessed the boarding of 600 slaves onto a ship.86 This was despite some 60 English, French, and American ships that were nonetheless guarding the coasts against the slave trade. 'But with all this force to hinder, the slave trade was never more prosperous.' 87 Transitioning from the Slave Trade to Trade in Goods Especially from 1830 onwards, the new motivation for trading with Africa was to sell the various manufactured goods that emerged during the industrial revolution88. Furthermore, European industry needed raw materials, including rubber and timber from Gabon. For European companies, obtaining trading privileges in as many regions as possible was the priority, with the support of their national governments. The incursions into Africa were also motivated by humanitarian concerns following the end of slavery, and by missionary zeal aimed at 'converting and civilizing Africans'. 3.1 Ceding Sovereignty for Promises of Trade Benefits These ambitions led to competitive agreements along the entire Atlantic coast, in order to establish trading houses and win the favor of local chiefs. Despite this, by 1830, European incursions inland were minimal. The British dominated in the Gulf of Guinea. The French, for their part, tried to increase their trading opportunities from 1815. By this date, there were several trading enclaves along the Gabonese coast. The lands of King Glass (the nickname

of chief R'Ogoua-rowe, whose lands later became a suburb of Libreville) already constituted a major trading center for British, American, and German companies. Between 1839 and 1846, the French government intervened and signed treaties with four chiefs of the Cap Esterias estuary. They all agreed to stop the slave trade in exchange for the privileges of French protection. What about this 'protection'? The agreements do not say, but it is very likely that the main Gabonese clans in the region thought that signing treaties would give them a privileged trading position: it was this position that would be protected. And this was indeed the case... but only for a time. The French military navy established Fort d'Aumale in 1844, on the lands of King Louis (Anguile Dowe) north of the estuary. Additionally, in response to the founding of an American mission on the lands of King Glass in 1842, it sponsored a Catholic mission on the lands of King Louis in 1844. The Comptoir du Gabon (1845-59) was created: it was a public-private organization whose mandate was to seize slave ships and challenge British and German dominance in trade. In 1846, the French government felt the need to reinforce the implications of the treaties that had been signed with local chiefs. It sent

the Governor of Senegal, Bouet-Willaumez, to renegotiate the treaties with the chiefs, in his capacity as captain of the frigate Caraïbe. In doing so, French sovereignty was starkly declared over Cap Esterias and the estuary, as well as over all lands between these areas. The brief agreement establishing the French coastal colony of Gabon is found below. Although the United Kingdom and Germany were unhappy with this agreement, particularly when it turned out that the lands of King Glass were included, the British were concerned about the development of Freetown in Sierra Leone and did not raise objections to the establishment of a French military post in the area of King Glass. The French founded their own Libreville in 1849, at the head of the estuary, by settling captured slaves from French slave ships there. As each group of freedmen arrived over the 25 years that followed, they were assigned their own area; this allocation is the origin of many of the neighborhoods in central Libreville. At the same time, other treaties were signed with chiefs living a bit further inland. Thus, the sovereignty of new districts passed to France89. This did not mean much because until 1890, German, British, and American commercial interests and investments continued to dominate. Saint-Paul (1989) notes that between 1844 and 1874, the French failed to explore Central Africa from Gabon as deeply as they had planned and that their authority beyond the coast was rather limited. 89 For example, in 1848, naval officer Roger signed a treaty with the bakèlè chief Kiamlowin. In 1852, a treaty was signed with the chiefs of the Cap Esterias and Corisco area who had not yet ceded their sovereignty in writing. In 1853, Baudin tried to establish a treaty with the Fangs in the Como area, but he was unsuccessful. In 1862, a treaty was signed with the orungu chief Ndebulia and a series of other treaties were signed in the Bas-Ogooué with the orungu, vilis, and bakèlès chiefs. In 1856, and again in 1873, the fang areas in the Crystal Mountains were visited, but the Fangs refused to sign. Main sources: Western and Gardinier (undated) and Saint-Paul, 1989.

 Box 8: Cession of Sovereignty over the Estuary Naval Division of the Western Coasts of Africa Treaty concluded in 1846 between Captain E. Bouët-Willaumez, Commander of the Frigate 'Caraibe' and The Kings and Chiefs of Gabon The kings and chiefs signatories of the treaty of April 1, 1844, concluded between them and the Governor of Senegal E. Bouët-Willaumez currently commanding the Frigate 'Caraibe', having received through this officer new marks of generosity from the French Government hasten to recognize in writing the natural consequences of this treaty, consequences that they had moreover accepted verbally and in good faith regarding the realization of their sovereignty to France. Thus all lands, capes, mountains, peninsulas, islands or positions that may seem suitable to the French Government for creating military or agricultural establishments will be granted to

it by right, without any other dues on its part than those it deems appropriate to give annually to the chief owners. Consequently, King Quaben acknowledges that as of 1844, he made for this purpose an abandonment to Governor Bouët, while he was resigning his sovereignty into the hands of France, of the mountain known as Mont-Bouët and one square kilometer on each of the points Clara and Estérias that he possesses by full right and by inheritance although he had allowed people from Corisco to settle there. He also cedes today the land that extends between Fort d'Aumale and the village of Glass up to a depth of 8 kilometers inland to build and develop the second military and agricultural establishment that the French Government wishes to create. The 4 points of the island of Orléans or Koniquet are also recognized by King François, as belonging since 1844 to the property of France to build such fortifications as it pleases. Furthermore, King François, at the request of Commander Bouët, cedes a land of 4 kilometers to Missionary Bessieux on his island to establish a settlement. The points of Abinda, King Georges, Pongara, etc. would also be delivered to France if it desired to raise its military buildings there as needed. Done in duplicate aboard 'l'Aube' in the harbor of Fort-d'Aumale this August 1, 1846 and signed by the French officers, kings or Gabonese chiefs whose names follow: King Denis, King Georges, King Quaben, King François and Chief Boulabène Commander E. Bouët-Willaumez, Captain of the Frigate 'Caraibe' Eug. Moquet, Lieutenant of the Frigate 'l'Aube' The Commander of the Frigate, Commander of the Naval Division of the Western Coasts of Africa E. Bouët-Willaumez 3.2 The Meaning of Sovereignty It is important to note that the original treaty of 1846 involved a transfer of political sovereignty in the ceded area, and not a transfer of ownership of the lands, except for sites for agricultural and military installations. The inhabitants of the ceded area were not to be expelled and their rights to the lands in which they lived were also not to be denied to them. However, prior to 1846, there had already been, overall, significant changes in legal attitudes towards indigenous populations and their rights. Various decisions

Land rights in Gabon Facing the past – and the present 76 legal frameworks, in the world and in European capitals, were specifically designed to deny that indigenous populations substantially owned their traditional territories. They were applied in places as far away as India, Australia, Latin America, and South Africa, and even by the Supreme Court of the new United States of America in 182390. Cumulatively, these decisions meant that before the creation of the Gabon colony, the sovereignty over the colonies represented the following: first, henceforth the laws of the new owner applied, and in this case, French civil law; second, the political sovereignty over an area could include the cession of the original property right over the lands; and third, this did not necessarily supplant existing land rights within the ceded territory, meaning that current occupants with locally recognized rights could continue to occupy these lands ..., until they were required for public utility. Thus, indigenous populations around the world could legally lose their property rights over their lands, but retain their rights of occupation and use. It was up to the sovereign power to determine, through its own laws, what degree of land security it would grant to these occupants. Illustration 8: The colony of the coastal enclave of Gabon (1846-1886) and the expansion of trade 90 See Alden Wily, 2011b and 2012a, for more details. Centralized Socio-political organization Decentralized Dependent on a large kingdom Inter-ethnic boundary Direction of European expansion Direction of ethnic extension OKANDE KOTA TEKE TSOGO NKOMI LUMBU MPONGWE NSEBI PUNU VILI SANGO ESHIRA SALOA FANG APINDJI ORUNGU ADUMA 100 km 0 50

Land rights in Gabon Facing the past – and the present 77 3.3 The first land law in Gabon At that time in Gabon, French control was almost exclusively focused on trade and not on land acquisition. Given the connotation of the word "colony" today, it might be preferable to refer to

the French initiative in the estuary as being more typical of other trading enclaves of the time along the west coast of Africa. This is evident in the fact that at the time the Governor of Senegal was more interested in regulating sales than in reclaiming land, in order to control what was happening in the enclave. Consequently, three years after the signing of the 1846 treaty, the Governor of Senegal issued a decree on land sales made by indigenous people (decree of the Governor of Senegal on concessions for sales of land belonging to indigenous people, Isle of Saint-Louis, 12 July 1849). The decree confirmed that the treaty only concerned the cession of sovereignty and that the rights to land within the ceded area still belonged to the indigenous people. The latter could sell these rights. A century later (1950), the colonial administration, which was now a true colonial administration, faced the demand for compensation from the Mpongwe on the grounds that they had not sold their lands to British, German, and French merchants, but had only leased them and received payments in exchange, and on the grounds that in 1846 they had only ceded their political power and not their lands91. On their part, many Europeans who had purchased plots along the west coast of Africa believed they were full owners of these plots. In Liberia, the captains of ships bringing the freedmen from the United States between 1821 and 1847 believed that a concession had only been made to the indigenous people, allowing them to inhabit the lands that they (the captains) had purchased from the chiefs92. It did not take long for the chiefs to disabuse the colonizers of this fact, insisting that they had only sold access to their territories in Liberia, and not the lands as such. From 1826, new treaties specifically described who owned the lands. In other cases, such as in Ghana, where in 1840 the British government established a treaty with the Ghanaian chiefs along the Gold Coast, the treaty agreed that the chiefs/communities continued to own the lands. Under the auspices of this treaty, there were more than 400 concessions and land sales from the chiefs to British enterprises between 1840 and 189693. Respecting local land ownership ... for the moment The key provisions of the land law of 1849 in Gabon were as follows: 1. the indigenous chiefs had the right to sell or give away lands they owned (as individuals or on behalf of their communities), which were located within the Gabonese colony, to French or other foreigners; 2. however, these transfers could only take place with the permission of the local French authority and in its presence, the authority opening a register to record these transfers; 3. foreigners had to comply with French law when seeking land, and no commercial establishment could be built without the permission of the local French authority; 4. the local French authority reserved the right, after discussion with the indigenous chiefs or with those who had purchased land from them, to expropriate them from lands within the enclave for public utility, in which case they had to be compensated. In summary, the law was clear: French sovereignty did not interfere with customary property rights. On October 6, 1849, the Governor of Senegal then issued a regulation (specific regulation to inform indigenous chiefs of the conditions under which concessions or sales of land should take place). This reminded the chiefs that they could not sell lands that were designated for public utility, that land buyers had to clear at least half of the area within the year or the two years following the purchase, and that land sales exceeding 100 hectares were subject to the

permission of the commander (who was the Governor of Senegal, knowing that Gabon was considered one of the French colonies in West Africa). On December 20, 1849, another decree was issued, establishing a dispute resolution commission to address disputes related to land agreements. These instruments guaranteed the land rights of Gabonese in the coastal colony. They also testify to the fact that at the time the French considered Africa to be owned and occupied, and not a terra nullius, contrary to what would be their later position. Moreover, customary interests were considered real property and especially alienable property. Gabonese could sell their lands. Even the French state, in the form of the local authority, could not appropriate indigenous lands. If these lands were required for public purposes, it could force

their sale (expropriation for public utility). 3.4 Social transformation The impact of French control did not come so much from the garrisons as from the participation of Gabonese in trade, and for several decades this control did not significantly change. After 1846, African trade expanded, as demand for resource extraction increased and prospects for intermediaries grew. This led to much back and forth. Some coastal clans sent their members inland to seize key trading locations along the rivers and/or to procure slaves, ivory, redwood, and raffia cloth for themselves. Other clans, on the contrary, moved towards the coast. All were concerned with trading and making money94. For example, as early as 1840, Kélé-speaking clans acted as intermediaries for King Denis, the Mpongwe chief, on the coast. The Kélés also established settlements along the edges of rural clan areas (districts), taking possession of many "dead zones" and establishing their own trade links further inland. This expansion explains why they inhabit dispersed locations today 95. The Bumwélés, the Orungus, and the Nkomis also moved great distances inland in the 19th century. 94 Gray, 2002 : 32. 95 Gray, 2002, Ratanga-Atoz, 1985.

 The Fangs, on the other hand, began to expand their territories from the Woleu and Ntem rivers towards the Ogooué river and the estuary of Gabon. Although they did not participate in the slave trade themselves, the Fangs found opportunities and advantages in the timber and ivory trade. In 1848, "the American missionary William Walker (...) reported that the Fangs openly admitted that they planned to drive the indigenous Bakèlès from the rivers and establish direct contacts with the mpongwè traders on the coast. Walker stated that the Fangs had learned that they received less than one-tenth of the goods provided in payment for their ivory"96. The violent invasions they engaged in pushed many established communities along their path into the arms of African slave traders97. Growing differences among unequal groups in Gabonese society Not all Gabonese were involved in trade. Only the most prosperous clans were able to participate in long-distance trade networks. Some clans specialized by finding niche activities or markets. The Bakèlès (Bakalais), who were not hunter-gatherers but were historically mobile, became forest specialists in the trade of rubber, ivory, and ebony, working closely with the Pygmies who were under their protection and extending into a large part of southern Gabon. They never stayed long in any given place.98 The Pygmies themselves continued to remain in their territories or nearby, although their protectors co-opted them to harvest wild rubber sap and hunt elephants. Other clans specialized in the slave trade, capturing individuals from the Chaillu Massif. Although the slave trade became clandestine, it continued through Spanish and Portuguese intermediaries, far from the estuary and French control. Slaves continued to be sent to work on coffee, tea, and sugar plantations in Brazil, Cuba, São Tomé, and Príncipe until the 1870s. As the volume of other merchandise increased, whether arriving or departing, the number of canoes used for expeditions multiplied. The dominance of the omyènè-speaking clans on the coast also consolidated during the enclave period. Throughout the 19th century, the Omyènès regulated trade and the presence of foreigners living in their territories. They also controlled the Ogooué river, which was the main trade route, from its estuary to Lambaréné, 160 km inland. Rich notes that the Omyènès numbered 30,000 people at the time and that they "made a fortune as commercial intermediaries between Europeans and other Gabonese".99 The active participation of all these clans in commercial exchanges had detrimental effects. It encroached upon and put pressure on peoples and their lands. Some simply moved to more remote areas. Although some Gabonese did not move, the mid-19th century in Gabon was a time of significant migration and internal displacement, as well as numerous conflicts and killings between clans100. Thus, lands were lost ... and gained. Under this pressure, notions of communal territory became more firmly established. 96 Chamberlin, 1978: 448 97 Geschiere after Rich, 2010. 98 Du Chaillu, 1861: 384. See also Du Chaillu, 1861: Chapter XXII on the Bakalais (pp. 483-447). 99 Rich, 2010: 208. 100

Gray, 2002: 52-60.

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Land Rights in Gabon Facing the Past – and the Present 80 Stimulating a social organization based on better-ordered lands By the mid-19th century, merchants and travelers described Gabon as a society composed of either village states, confederations, or kingdoms, in a clearly definable mosaic but which, due to its low population density, still included unoccupied areas between territories101. Each political entity was rather stable, had political autonomy, and a definable territory. Village states were governed by chiefs, elected from the elite families, assisted by councils of elders from those same families. The Fangs, the Akélés, the Sékés, the Bengas, and the Galwas used this type of political system. Confederations included a number of villages linked by their clan and led by a main chief (the Mpongwès, the Gisirs, the Punus, and the Obambas). The kingdoms were similar, except that the king exercised authority over all inhabitants, regardless of their clan affiliation. Kings usually had a sophisticated council of ministers, each minister having a different portfolio, such as a minister in charge of religious affairs, another in charge of receiving subjects' grievances, and another in charge of conveying the king's messages to village chiefs. The kingdoms of the Nkomis, the Orungus, the Okandés, and the Tékés were dynamic at that time102. Internal social polarization also increased during this time. Indeed, the more slaves one owned, the more labor one had for agricultural work, as well as for expeditions and trade. Slaves represented at least half of the Mpongwès population in 1850103. Social differentiation among the Mpongwès was so marked that some social classes, including their women, completely stopped agricultural work, with the wealthiest individuals imitating the lifestyle of European merchants and increasingly marrying Europeans104. In his accounts from the 1950s, Du Chaillu distinguished between domestic servants and commercial slaves. He noted that although there was a preference not to sell one's own people, "debtors, sorcerers, adulterers, and cheats were either brought in or killed".105 3.5 The strong takeover of African trade by Europeans starting in 1860 Impatience with African dominance over raw materials and markets Gabonese control of markets and society could not last forever. European merchants sought to control trade themselves in the lands. They wanted to obtain African goods at lower prices, neutralize the rising costs of French customs duties in the estuary colony (through which most goods passed), and rid themselves of burdensome agreements and fees in favor of Gabonese intermediaries, by going up the rivers themselves and concluding their own agreements. They also wanted to control the marketing of the thousands of European goods they came to sell to Africans. Europeans were not the only ones with these objectives. Senegalese arrived with the French garrison in 1843 and increasingly joined import-export companies or launched their own import-export initiatives. Initially, these merchants struggled to avoid going through networks controlled by Gabonese. They had to negotiate with local communities to establish themselves in a village, or to set up a collection or processing point (for example, for rubber sap and ebony) called a "factory", or to found a trading post through which they could sell imported European goods. "They may have wanted to get rid of the practice of advance payments or avoid endless discussions, but they were not in a position to do so"106. Like the new French colonial administration, they were particularly "exasperated by the fact that Mpongwè intermediaries had the power to determine the value of goods and natural products such as ivory".107 Diseases and river steamers as facilitating factors in the end of African roles Starting in the 1860s, it began to become possible for Europeans to seize African trade networks. Forty years later (1900), trade networks were controlled

by Europeans. African trade still existed, but African merchants had subordinate roles. The region was now flooded with European goods and the interior landscape was dotted with "factories" run by Europeans and their African agents. Smallpox was a factor in the decline of

Gabonese control. As Europeans multiplied, smallpox increased, with the first major epidemic occurring in 1864. Although there had been cases of smallpox since at least the 16th century, the fact that trade was locally controlled beyond the coasts had limited its spread108. Periodic epidemics occurred until the 1890s. These epidemics caused upheavals as inhabitants fled them, important local chiefs died, hierarchies collapsed, and entire clans disappeared, and invading clans arrived to take advantage of the situation. Gray describes, for example, weakened vili clans suffering from the terrifying raids of kélé-speaking clans to capture women and slaves109. Similar events occurred in more central and northern areas, where the Fangs took advantage of the new vulnerabilities and breakdowns in the trade control chain. By 1870, the Fangs and the Kélés had fully developed their capacity to control or counter European trade, as the Mpongwè merchants had done. The introduction of small river steamers by Europeans starting in 1862 was also decisive in the decline of African control of trade. This allowed Europeans (especially the British and Germans) to build trading posts and factories deep inland110. This commercial expansion was not easy. Indeed, due to the grouping branch of the French authority's expeditions, it became more difficult to avoid high customs fees on goods arriving from Europe and those departing from the coastal colony. 106 Gray, 2002: 135. 107 Rich, 2010: 218. 108 Gray, 2002: 94-95. 109 Gray, 2002: 97. 110 Few factories inland were French. The British company Hatton and Cookson established its first factory in 1867, at the confluence of the Ngounié and Ogooué rivers. It was followed by other British and German companies, this process usually being facilitated by influential third parties, such as the galwa chief, Nkombe.

 82 The Resistance of the Gabonese Faced with European encroachment on their commercial monopolies, Gabonese families and merchant clans did not back down. Starting in the 1850s, the most powerful coastal kingdoms, particularly those of the Orungu and Nkomi clans, began appointing French missionaries, German merchants, and Americans to official representative positions, or even as chiefs of their clans. Among them is the case of the Franco-American explorer and naturalist Paul Belloni du Chaillu, whose explorer accounts have been frequently cited above. He was appointed as an official clan representative in 1858 during his travels. These appointments aimed to buy influence and play one European merchant against another. As French control and customs fees increased, these alliances were also designed to counter the growing French authority in the region. By appointing foreigners, these Gabonese showed their discontent and that they "did not fully accept absolute French sovereignty." Their frustration was evident when they appointed a German merchant as king of an important Orungu clan near Port Gentil in 1874. In 1876, the Mpongwès, Galwas, and Nkomis launched the first boycott against European stores. The boycotts were both against purchasing goods from European merchants and missions and against selling food to them. In Lambaréné, the Galwas announced that they would not end the boycott until the merchants accepted rubber, ebony, and ivory at much higher prices. The Nkomis also acted as early as 1879, their king defying French customs fees by declaring: "This is my land. The French should pay me." Competition and Market Conflicts European exports quadrupled between 1848 and 1875, and the value of global trade increased in real terms at an annual rate of 5%. Alongside the growth of trade, there was an increase in unrest and conflicts in foreign outposts and enclaves. The introduction of firearms and gunpowder on a larger scale in Gabon and the ruthless behavior of some European agents were triggering factors. Senegalese merchants became notorious for their aggressive tactics, such as taking canoes and hostages to force clan chiefs to pay their debts. Like the Europeans, they increasingly did not hesitate to burn entire villages in pursuit of their interests, rather than engage in lengthy discussions. Such practices spread among certain local clans. Everywhere, local systems, including those related to resource control and areas, were weakened. This phenomenon also applied to the lands of the

Gabonese colony itself. In 1880, foreigners were reminded by a decree from the Resident regarding the concession regime that the purchase of indigenous lands required the authority of the local Resident (Article 1), that the buyer had to commit in writing, and that the agreement had to be officially registered in Libreville (Article 11). The decree also provided for "reserves for the benefit of the State" (Article 12). Minerals and quarries in all concessions were the property of the French State (Article 12). Gabon was ripe for both a more vigorous European expansion beyond the coast and a stronger French control. — Du Chaillu paddled by Africans Source: Paul B. Du Chaillu, Explorations & adventures in equatorial Africa (London, 1861)

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Land Rights in Gabon Facing the Past – and the Present 84 4 The Great Colony of Gabon: 1886-1960 A vision of France controlling a much larger area than the estuary crystallized at this time, with early signs of this already visible in du Chaillu's writings in 1861, which reported on his travels between 1855 and 1859. Realizing this idea into an expanded colony was the role of the official French explorer, Pierre Savorgnan de Brazza, who himself made three long journeys into Gabon and Congo between 1875 and 1885. During these journeys, he signed agreements with chiefs and founded outposts of the coastal colony. These outposts were located in Franceville (1882) and Lambaréné (1883), the latter being built on a hill at the head of the island, from which river traffic could be easily monitored. Brazza also encouraged a Catholic mission to build a church in Lambaréné (1884). He developed similar outposts, including trading houses and churches, in Middle Congo (Congo). A new central objective aimed at imposing French dominance over Gabon's coastal trade was set in 1883. Gabon was given the new name "French Establishments of the Gulf of Guinea," and a naval lieutenant was appointed in charge of Libreville. This individual revived an old French law from August 27, 1799, which declared that all maritime trade between French ports was illegal unless it occurred under the French flag. This law was designed to handicap British and German trade, which was still dominant. Furthermore, French companies were favored starting in 1883, four of which received vast areas in the interior lands near the coast where they could trade. Finally, in 1885-1886, the expanded French colony of French Congo was declared. This combined the following areas controlled by the French: the Congo, the coastal colony of Gabon, and all areas for which de Brazza had managed to obtain treaties. Due to its immense importance as a commercial enclave and the determination of the French to end the interests of other Europeans, Gabon had been placed under the direct control of the Ministry of the Navy in Paris in 1859 and was managed as a fully-fledged administrative area. De Brazza was appointed Governor of the new French Congo in 1886, based in Brazzaville. He remained the Commissioner General of French Congo until 1898. Throughout this time, the colony's objective was commercial: to establish French control over the region's trade exchanges. 4.1 The Berlin Conference on Free Trade (1884-1885) Trade and not Politics De Brazza was a man of his time and had political support. In 1884-1885, representatives from European countries and the United States gathered to formulate a new regime of free trade in Africa. One of the priorities of this conference was to challenge French protectionism on the Atlantic coast. The enclaves of Gabon and Congo were perceived by other Europeans as places that unduly restricted merchants trying to work in their ports, and whose customs fees, taxes, and regulations only increased. Consequently, the Berlin Conference and the resulting agreement concerned trade and not political expansion or the creation of colonies. What the "powers" (as the countries at the conference called themselves) wanted was free trade, which would allow each country to compete in the African market, to be able to buy raw materials, and to be free to sell the millions of manufactured goods that were piling up unsold in European factories. Europe was in the midst of the Great Depression (1873-1896). As was characteristic of such depressions, this depression involved an agricultural crisis in Europe (insufficient food production), an excess of labor often homeless seeking jobs (it was during this time that poorhouses were built in

England), international and financial debt crises, and yet, a large number of winners who had money in their pockets and were looking for new lucrative horizons in which to invest. The powers also needed freer access to raw materials, including

natural rubber and timber from Gabon, to revive their industries, which had stalled after a good start in previous decades. Domestic consumption also had to be taken into account. The consumption of tea, coffee, cocoa, sugar, and vegetable oils (palm oil) and other "colonial products" had increased exponentially during the 19th century. The powers also wanted to increase plantations in tropical territories. Missionaries, for their part, wanted to penetrate deeper into the hinterland to civilize Africans. From the Berlin Conference came the General Act of 1885, the first international trade law. This act was based on free access and free trade in priority areas. In doing so, the annoying customs fees of the French were restricted. King Leopold of Belgium was allowed to create his enormous personal fief only because he consented that it be a free trade zone. That is why this zone was called the Independent State of Congo. The established European coastal enclaves would be retained (the island of Lagos, Freetown, Gabon, etc.) as "stepping stones for commercial penetration into the regions." If a power considered expansions necessary, it had to consult the other powers beforehand to ensure that all conflicting claims were first addressed.

Land rights in Gabon Facing the past – and the present 86 Box 9: The general act of the Berlin conference on West Africa, 1885 It was signed by representatives of the United Kingdom, France, Germany, Austria, Belgium, Denmark, Spain, the United States of America, Italy, the Netherlands, Portugal, Russia, Sweden, Norway, and Turkey (Ottoman Empire). The Act declared its objectives as being to regulate the conditions "most favorable to the development of trade and civilization in certain regions of Africa, and to ensure that all peoples benefit from free navigation on the two main african rivers that flow into the Atlantic Ocean" (preamble). The Act consisted of six declarations on the freedom of trade in the Congo basin, the slave trade, the neutrality of territories in the Congo basin, duty-free navigation of the Niger and Congo rivers, their tributaries and waters assimilated to them, and a declaration on occupations that may take place in the future on the coasts by the signatory Powers. The Declaration on the freedom of trade in the Congo basin explicitly included the Ogooué (as well as the Nile, Lake Tanganyika, and the Zambezi) (article 1). All transit was to be free of access and permits were to be issued for journeys on waters located in the zone of a sovereign European state (article 2). Imports, from any source and under any flag and regardless of how they were transported, were not to be subject to entry and transit duties and were only to pay the minimal taxes collected as a fair compensation for their arrival (articles 3 and 4). Any differential treatment in duties regarding ships, goods, or owners of different nationalities was prohibited (articles 3 and 4). No monopoly concerning goods or areas could be granted by Powers having sovereignty rights in these territories (article 5). The free trade agreement would be reviewed after 20 years (article 4). Regarding the slave trade and given that each signatory Power had (already) the prohibition of participating in the slave trade, it "commits to employ all means in its power to put an end to this trade and to punish those who engage in it" (article 9). The Powers committed to "ensure the preservation of indigenous populations and the improvement of their moral and material living conditions and to contribute to the abolition of slavery and especially the slave trade; they will protect and promote, without distinction of nationalities or religions, all institutions and religious, scientific, or charitable enterprises created and organized for these purposes or aimed at educating the indigenous peoples and making them understand and appreciate the benefits of civilization" (article 6). Expansion of colonies. Article 34 required the Powers to notify the other signatory Powers when they took "possession of a territory on the coasts of the African continent located outside their current possessions." The aim was to allow these other Powers to "assert, if necessary, their claims".

Land rights in Gabon Facing the past – and the present 87 4.2 The rush for Africa The powers left the conference in 1885, determined to seize as large areas as possible to bring them under their commercial control. This immediately posed problems. First, inter-European competition was so intense that commitments to free trade began to collapse almost immediately. Then, it became increasingly clear that extensive market areas could not be protected without developing political protection over them. Consequently, the expansion of commercial influence quickly led to the official creation of colonies, despite the military and administrative expenses and personnel that this required. "If you were not such persistent protectionists," the British Prime Minister told the French Ambassador in 1897, "we would not be so eager to annex territories," Hobsbawn recounts130. What was later described as "social imperialism" also played a role. Indigenous populations were far from being as malleable as expected, and conflicts and rebellions multiplied (including, in Gabon, boycotts of trade with Europeans). If trade was to prosper, not only did Africans need to be "civilized," but they also needed to be "controlled"131. 4.3 Border protection De Brazza's vision of Gabon must be placed in the above context. Travel accounts, maps, and reports he sent to Paris during the late 1870s promised unmatched wealth and power, even if the French managed to obtain a monopoly on trade in the still underexploited country of Gabon132. It was therefore crucial to protect the borders of this imagined space. The border with German interests in Cameroon was finalized in 1885, but it took five more years for the Spaniards to accept the border with Equatorial Guinea (1900). The borders of the Congo were not a problem as de Brazza also controlled that area. The Upper Ogooué continued to be part of Middle Congo until 1947. In 1891, de Brazza enacted a new land law, the decree of September 26, 1891. This decree developed the decree of 1849. Some of its principles were the same as in 1849, namely: — it continued to be implicit that Gabon was not unoccupied, but was, on the contrary, subject to land rights, and that Gabonese held such rights according to clan agreements; — as in 1849, Gabonese could sell land, but these sales were only legal with the permission of the French authority. Indigenous peoples could sell or exchange the land they owned provided that the buyer registered the purchase or exchange within six months of signing the agreement. The agreement had to be approved by the administration, which was the only one able to determine the value of the property and to issue the final title (article 18). Nevertheless, changes also occurred: — as seen above, France had declared itself the only authority authorized to determine land rights. The decree also imposed new conditions under which land rights in Gabon could be bought, sold, exchanged, or granted by the administration, including regarding merchants and other Europeans. This favored the grip of colonial authority. The register was also refined to include rights. The official Gazette of French Congo subsequently published notices of land requests and grants or approvals of sales; — the decree also introduced a new category of land, "vacant land" (unknown lands). However, the law did not yet explicitly state at that time that these lands were therefore unowned; — it was the first land law that related to expanded Gabon and not just the coastline. In practice, Gabonese sold many lands in 1886-1896, including in the hinterland, where more factories were created. At this stage, the merchants in question were still mainly German and British. Moreover, the decree did not yet put an end to local control of local trade rights. For example, the Fangs, who operated from Ndjolé from 1885 and in Samba, had still not been supplanted. Merchants remained constrained to accommodate these powerful groups. It was only with the

massive creation of territorial concessions in the following years that the situation changed. 4.4 Concessionaires as colonizers from 1898 Turning to private enterprises for the management of the colony In 1898, de Brazza was recalled to Paris because he was accused of failing to fully seize control of trade, which remained dominated by the British and Germans, and of not collecting enough revenue to manage French Congo. He was the one who suggested flooding

Gabon and Congo with concessions controlled by the French, in order to push back merchants from other European countries and Americans. The expansion of military and civil authority was expensive. French companies were therefore entrusted with the task of establishing France's commercial dominance. De Brazza drew inspiration for his approach from the Congo Free State of King Leopold, assigning vast areas of Gabon (and Congo) to exploiters and commercial profiteers, and compelling them to certain taxes and productive activities. The distribution of vast areas of Gabon and Congo to French companies was seen as an easy way to recover revenue, extend French authority, develop roads and river ports, provide protection to Catholic missions, and control recalcitrant natives; indeed, coastal clans were really very annoying, with their periodic boycotts to raise prices for ebony, rubber, and ivory and to prevent the costs of imported goods from rising.

Land Rights in Gabon Facing the Past – and the Present 89 As early as 1900, three-quarters of French Congo were covered by 42 concessions. The Haut-Ogooué Company (SHO) was the largest consortium of French companies. Most of eastern Gabon was subjected to the exploitation of the SHO, as it provided significant revenues to the French state through royalties, taxes, and duties. Illustration 9 reproduces a figure found in Gray (2002), which illustrates the vast area in which the SHO obtained control rights over timber and other products.

Illustration 9: The area allocated to the Haut-Ogooué Company (SHO) [Source: Gray 2002: 144]
4.5 The denial of customary land ownership allows for the acquisition of property rights
Changing the terms of engagement: claiming that Africa is ultimately unowned It was at this time that a shift in the French legal positioning towards indigenous land rights crystallized, establishing foundations that were deliberately designed to dispossess and have continued to this day. One can clearly see the personal influence of De Brazza in all of this. As early as 1895, he had decided that, ultimately, the indigenous people did not truly own the land. He wrote a letter to another colonizer that is quoted by the anthropologist Coquery-Vidrovitch: "There is no individual property in black countries but only temporary usages, and collective property, which in no case gives rise to a fee for temporary or permanent use, either within the community or outside, cannot be sold by one or several members of the community. Legally, all sales made by indigenous people are fictitious. None are valid." This position echoed other European stances towards indigenous land ownership. Even before the Berlin Conference took place, the British government had begun purchasing prominent commercial enterprises with extensive resource interests (for example, the Royal Niger Company) and certainly did not want to find itself in a position of having to pay for the acquisition of additional lands. When the American representative at the Berlin Conference in 1884 suggested that the expansion of coastal African enclaves should occur through the acquisition of land from the indigenous people, the French, German, Portuguese, and British representatives persuaded the diplomatic meeting otherwise; it was better to pretend that Africa belonged to no one and that Africans were mere users of the land and not true owners. It logically followed that if, ultimately, Gabon belonged to no one, then the French state would be the principal owner by default and could determine, establish, and register land rights. However, the problem was that a handful of coastal land sales by indigenous people had been approved. According to the laws of 1849, 1880, and 1891, the new owners believed they had acquired absolute rights to the land and resources. As the wealth of the hinterland became more apparent year by year, De Brazza and Paris believed it was essential to reclaim ultimate control rights. In particular, any land that had not yet been alienated to French merchants or others was considered to belong to the public domain, which meant, in reality, the property of the French state. These positions were rooted in a wave of new laws. In 1897, Paris issued decrees reorganizing both the political and administrative organization of French Congo,

and establishing a legal regime. In 1898, a commission was created by the Minister of Colonies to promote and regulate the issue of concessions in these areas, rather than the alienation of land. In 1899, three land laws were enacted. 133 The economic ideas of De Brazza, by Catherine Coquery-Vidrovitch, 1965: 71, referring to the correspondence in 1895 between De Brazza and A. Le Chatelier, a key figure in the initial efforts to create concessions, cited by Gray, 2002: 142. 134 For more detailed information on these positions, see Alden Wily, 2011a, 2012a, and 2012b. 135 Alden Wily, 2007: 78-82. 136 Decree of September 28, 1897 regulating the political and administrative organization of French Congo, and decrees of September 28, 1897, and April 9, 1898 regulating the organization of justice in Congo.

 5 Establishment of modern land laws in Gabon 5.1 The land acquisition decree of 1899 Public utility, an instrument for the confiscation of land at no cost The first law dealt with the public acquisition of land (decree of February 8, 1899 establishing and organizing the public domain and public utility easements in French Congo). This law, consisting of 11 articles, defines the public domain as follows: 1. the shoreline of the sea, up to the limit of the highest tides, as well as a zone of 100 meters; 2. navigable waterways within the limits of the water height plus 25 meters wide on each bank; 3. non-navigable waterways within the limits of the water height; 4. lakes, ponds, and lagoons within the limits of the water height plus 25 meters; 5. navigation canals and their towpaths, irrigation or drainage canals, and aqueducts, executed for public utility purposes; 6. roads, railways, and other communication routes of any kind, including ports, maritime or river dikes, radio stations, telegraph lines; 7. public works and military works, and, most importantly: 8. the public domain also includes "generally, goods of any nature that the Civil Code and French laws declare not susceptible to private ownership" (article 1(k)). This led to the claim of all kinds of resources by the French state. The decree provided that just compensation would be paid to any registered owner if their land was required for public utility, and that such compensation would be agreed upon between the administration and the owner (article 10). However, under the terms of the decree, it is clear that this only applied to holders possessing these lands under a definitive title. Indigenous peoples could therefore expect no compensation whatsoever when their lands were confiscated for public utility. 137 A Council of Administrative Litigation comprising three members could be established to hear appeals brought by the owner in case of refusal of the proposed compensation. If they failed to appoint their representative to this Council within three months, the head of the judicial service of the colony could appoint a representative to act on their behalf (article 10). The takeover of all waters involved in the process It is worth making another observation on this matter. The attention given to water is indicative of the extreme importance placed on controlling waterways, crucial for trade, in Gabon. Under French law, only waters specifically necessary for public utility purposes were included in the public domain, namely waters defined as being fully navigable or floatable. In this case, Paris took possession of all waters in Gabon as state property. This became the rule in French colonies. 138 Caponera, 1992.

 5.2 Decree on land ownership of 1899 A month later, two more specific texts were adopted, including the decree on land ownership (decree of March 28, 1899 on the regime of land ownership), which was amended by the decrees of March 13, 1918, December 12, 1920, and June 9, 1935, and again during the 1950s. During this period, this decree, consisting of 100 articles, would set the procedure for land administration, including the obligations and responsibilities of the registrar. The search for a means of controlling land ownership The adopted procedure was the Torrens cadastral

registration system, allowing for the recognition and officialization of ownership, developed by Sir Robert Richard Torrens in colonial Australia (Torrens Act of July 2, 1858). This innovative system moved property registration out of the deed system, whereby ownership was registered through deeds of sale and then recorded. This made it difficult to trace ownership, as the deed of sale did not necessarily specify the property, but only the transaction, and could also be filed in the name of the seller or buyer, making it difficult to track events related to it. In contrast, the registration system made the description of the property the key information, including exact details regarding its location and size, and assigned it a unique folio number. Any transaction involving a given property was then annexed to the corresponding file. In practice, no mapping of parcels was undertaken until 1950, but in the meantime, a file was created for each sold property. 139 5.3 Decree on land law of 1899 The quiet dispossession of Africans Fundamental changes occurred following the enactment of the national domain decree of 1899 (decree of March 28, 1899 establishing the regime of domain lands). This text would be adopted in other Francophone states, which also felt the need to seize vast areas rich in resources for the benefit of the state, extending beyond their coastal enclaves. Amendments would be made to Gabonese law, starting in 1904 and 1910. This legalized the principle that France owned the entire region, and that rights to land were a corollary of such ownership and were only available by French decision. In presenting the decree to the French President, the Minister in charge of colonies outlined the purposes of the new land law as follows: "The importance that colonization of French Congo seems destined to take today necessitates determining exactly the condition of domain lands, their mode 139 The authors could not confirm that the introduction of the Torrens registration system was planned from 1899; it is thus possible that this system was introduced much later; the available law on the subject remains unclear on this point. 140 Under the decrees of July 20, 1900 in Senegal and Côte d'Ivoire, the decree of August 5, 1900 in Dahomey, and the decree of March 24, 1901 in French Guinea. The decrees of October 15, 1904, December 12, 1920, June 5, 1925, and May 20, 1955 amended this new widespread land law in French possessions, and also in French Congo. The first amendments in Gabon were made on June 10 and 19, 1904.

 of alienation, the allocation to finally give to the resources resulting from their abandonment, whether in full ownership or temporary enjoyment (...). Overall, this project affirms the superior right of the State over state lands in French Congo, while nonetheless allocating the state revenues to the local budget, unless otherwise provided by subsequent legislative provisions and as a subsidy for the expenses of colonization; it determines under what conditions these lands may be alienated, and within what limits they may finally be granted for temporary enjoyment, either by the local authority or by the central power ». The decree thus provided the following: 1. vacant and ownerless lands in French Congo are part of the State domain (article 1); 2. unless otherwise ordered by subsequent legislative provisions, the state revenues of French Congo will remain allocated to the colony's budget to cover costs related to colonization, ranging from the creation of ports and railways to maintaining police forces, encouraging settlers, and the immigration of workers (article 2); 3. state lands in French Congo may be alienated in three ways: (a) by judicial order, (b) by mutual agreement, in lots of less than 1,000 hectares, and (c) by granting temporary enjoyment concessions, under certain conditions. When the area exceeds 10,000 hectares, the allocation is made by a decree accompanied by a specifications document, after advice from the colonial concessions commission (articles 3 to 5). Over the next 60 years, modifications were periodically made to this law, and many ordinances were adopted under its aegis. The first amendment made on June 10, 1901, empowered the Lieutenant Governor of Gabon to grant concessions of 200 ha or less 141. Only the Governor (based in Brazzaville) could approve large

concessions. A more substantial decree, published on June 19, 1904, prescribed how concessions of less than 10,000 ha were to be allocated throughout French Equatorial Africa. This followed the accession of Oubangui-Chari (Central African Republic), Chad, Congo, and Gabon to the status of autonomous regions in 1903. Other amendments or orders were adopted in 1907 and 1910. The basic allocation procedure under the land decree of March 28, 1899, was integrated into an order, composed of 29 articles, of June 19, 1904, modified on October 6, 1910, setting the regime for state concessions of 10,000 hectares and below. In 1910, the text contained the following elements: 1. introduction of a sub-categorization of the State domain. The term "private domain of the State" was used to distinguish it from the public domain of the State (article 1). The public domain, as recalled by the decree on the right of the public domain of February 1899, was limited to navigable waterways and other means of communication and public service assets, but with a loophole, which could cover other "naturally public assets" some of which could then become the "private domain of the State"; 2. the decree established a distinction between urban and rural domains (articles 1 and 2); 3. urban or rural allocations of concessions could be decided by 141 Other orders were adopted earlier, on October 16, 1900, and April 28, 1903, to establish systems for planning and delimitation fees and registration, and an order of April 14, 1900, provided additional instructions on large concessions.

 the French administration in both sectors, the former according to a plan. This plan consisted of creating different neighborhoods for Europeans and for natives (article 3); 4. an urban development was created, stipulating that plots must be developed in cities, including public spaces (article 3); 5. Europeans were to pay for urban plots, which almost implied that Africans did not have to pay and/or did not need plots (article 4); 6. a two-step title issuance practice was established. The first allocation was provisional, subject to development conditions. Definitive rights could only be granted after certain conditions had been met, including construction conditions (article 4); 7. rural lands could be granted in concession by the colonial administration in rural areas for agricultural or livestock exploitation. However, these could not exceed 200 ha in the area (article 7). This marked the end of the time when the existence of indigenous land rights was recognized. Recognition could no longer take place, from that moment, except under allocations made by the colonial authority; 8. the Governor's government council could approve the allocation (article 8); 9. a rural concession only applied to an area. Except for stone quarries, subsoil products were excluded (article 9); 10. concessions of more than 10 hectares bordering navigable waterways had to be developed along a quarter of this perimeter (article 10); 11. rural concessions were divided into two categories, depending on whether they were intended for livestock or plantation use (agriculture). Fees were adjusted accordingly (article 11); 12. applications for concessions had to be addressed to the Lieutenant Governor (and from 1903, to the Governor). The name, first names, place of birth, and current residence had to be provided, as well as the indication of the area and intentions regarding development. The application had to be submitted for publication in the Official Journal of French Congo (subsequently Federation of Equatorial Africa - AEF), and if no objection was raised within two months, the Lieutenant Governor approved the application. In case of objection, the adjudication of competing applications had to follow (article 12); 13. the costs of investigation and registration, set at one franc per hectare, had to be borne by the applicant (article 13); 14. from the date of issuance of an order granting a provisional concession, the holder had to begin exploiting the land within six months. Otherwise, the title was withdrawn without compensation for the costs already incurred (article 16); 15. only the Council could decide to issue a definitive title, pending the conditions being met. A minimum number of heads of cattle was required, and a livestock operation had to be carried out on the area for at least three years, or crops on at least a quarter of the area,

using commercially viable or well-managed subsistence techniques. This had to be undertaken for a minimum of six years. In exceptional circumstances, a longer grace period could be granted (article 17); 16. afters three years of exploitation after the issuance of definitive rights, the owner could once request another area of a size up to four times that of their existing plot, provided that they develop at least one eighth of the total (article 18);

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Land Rights in Gabon Facing the Past – and the Present 95 17. forced acquisition was provided for reasons of public utility. Compensation was only due for private property (plots registered under a provisional or definitive allocation (article 22). The above articles were implicitly applicable to foreigners. The last articles of the decree maintained the provisions previously in force allowing indigenous people to be allocated concessions up to a limit of 50 hectares. The allocation could be made either individually or collectively (article 27). Payment of fees could be extended at the discretion of the Lieutenant Governor. Once the development conditions were met, the indigenous person could request that this allocation be formally authorized. However, this right could not be sold for a period of 25 years, and then only to persons approved by the Lieutenant Governor. Furthermore, an area of five hectares had to be constituted, deemed inalienable, forming "the indigenous homestead" (article 27) »142. The law thus granted a usufruct for 25 years, which, except for five hectares, could then be resold. The decree concluded with the possibility granted to those who held temporary concessions, if they wished, to request a new title under the conditions stated above, but without retroactive effect (article 28). A model of the specifications document was then annexed to the order, as well as a model of the minutes of the adjudication. This actually constituted a contract, to which conditions may be added. 5.4 The First Forestry Decree of 1899 As timber was the key product on which the French had their eyes set, it is not surprising that the adoption of this decree was accompanied by another decree specifically on forests (decree of March 28 establishing the forestry regime). This also constituted the fundamental law to date, although, as noted in the first chapter, improvements regarding marketing were made in 2001 and 2008. In his introduction to the decree of March 28, 1899, establishing the forestry regime, the Minister in charge of the colonies in Paris observed that it was mandatory "to grant legal operators protection against the arbitrary actions of local agents". This probably referred to the indigenous intermediaries of Gabon and Middle Congo. The Minister also stated that this decree "would allow for rational exploitation". The decree, composed of 25 articles, then outlined how concessions for the exploitation of forest resources would be allocated. This included limitations on tree cutting in watersheds or on steep slopes, or trees less than one meter in height, the prohibition of cutting rubber trees, etc. 142 "Concessions of rural land, with a maximum area of 50 hectares and in one piece, may be granted free of charge to indigenous people either individually or collectively. The beneficiaries of these concessions may, by special decision of the Lieutenant Governor, be exempted from paying the fees specified in article 13. The land thus granted to indigenous people may, after development and according to the general conditions of this order, be allocated to the rightful claimants. However, they may not sell said land for a period of 25 years from acquisition, except to persons approved by the Lieutenant Governor and subject to an area of 5 hectares which, in no case, is inalienable and constitutes the indigenous homestead' (article 28).

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Land Rights in Gabon Facing the Past – and the Present 96 Forest concessions were strictly granted under a permit and authorization from the General Commissioner or his delegate. The concessions were deemed temporary and did not imply ownership of the forest (Article 2). However, individuals held property rights over the timber within the concessions that had been allocated to them (Article 19). If operators carried out replanting themselves, they received free

seeds and seedlings (Article 21). Furthermore: "Indigenous peoples will continue to exercise their rights of enjoyment (collecting mushrooms, grazing, hunting, etc.) for their pleasure in forests belonging to the national domain or in private forests. However, this may exclude the right to fell and use wood upon the advice of the general commissioner" (Article 23). Forest fires were the main concern. Article 25 threatened sanctions against chiefs, a collective fine against communities, and the removal of villages violating the rules regarding fires in meadows and forests. This addition was made by decrees of September 9, 1899, and March 10, 1904. The preamble of the decree indicated that fires had been set (Report to the President of the French Republic followed by a decree adding to the decree of March 28, 1899, on the forestry regime in French Congo, and decree). In 1904, under the decree: "Anyone, by bush fires or prairie fires that extend over palm trees or rubber trees, plantations, or that cause damage to forest properties, shall be punished by imprisonment from six days to six months and a fine of five hundred francs or one of these two penalties only, without prejudice to the compensations that individuals may claim from the guilty parties. Village chiefs may be punished with a collective fine and have their authority over the villages withdrawn" (Article 102). The first of many amendments to the Forestry Code was introduced a few months after its promulgation, on September 9, 1899. It aimed to strengthen disciplinary action against chiefs, collective fines, and the withdrawal of villages or groups of villages that continued to ignore the provisions of the decrees. 5.5 The Mining Decree of 1899 A mining decree was also adopted by French Congo on July 6, 1899 (amended by decree on March 19, 1905). Judging by its content, this law had originally been drafted for French Guinea (Decree regulating the search and exploitation of mines in the colonies or protectorate countries of continental Africa, other than Algeria and Tunisia). This decree allowed indigenous people to retain their customary right to exploit gold and surface salt to the depth permitted by traditional methods (Article 9). When commercial exploitation or exploration interfered with these diggings, compensation had to be paid under an agreement made with the affected parties, and in the absence of an agreement, by decision of the authority and with compensation equal to or double the value of the damage suffered. No exploration could take place within 50 meters of a dwelling, and permission to cross their lands must be requested from the owners.

 6 The Concession Period: 1899-1919 This period constituted a significant transition in Gabon. By 1914, the types of settlement, rights related to trade, good relations between local and foreign traders, and agriculture had been devastated. On one hand, the French military and civilian presence increased due to the establishment of colonial administration. On the other hand, the powers of domination and revenue generation were largely delegated (or co-opted) by the new mega-concessions. The Société de la Haute Ogooué, for example (SHO), appointed village chiefs, imposed fines, set up militias, and became the main authority in half of the country143. The role played by trading companies as proto-colonizers The normal way of operating the new concessions was different from that of previous concessions, which worked with and within existing trade networks managed by Gabonese. The new concessions actively exercised their monopoly rights over all products collected within the vast domains allocated to them. They took over most of the smaller concessions, often British and German. Gray reports cases in 1899 where British and German products were seized by SHO for these reasons. As intended, these seizures, along with increasingly punitive rights, led to the withdrawal of the three oldest non-French companies in 1905. Legislation regarding concessions was revised in 1910, and again in 1926, to make it mandatory for concessions to generate revenue and to assist in establishing customs and police posts. They were also tasked with organizing and managing river transport and developing the granted lands. Initially, concessionaires were also required to respect the customary land use of

indigenous peoples. Few cases have been documented144. Instead, given that the new land laws now denied indigenous people (natives) land rights and rights over resources, their labor quickly became subject to intensive exploitation policies. An old remedy: tax as a tool for guaranteeing and controlling labor A host of new regulations were adopted to organize the use of local resources, as well as exchange and residency activities, the imposition of taxes, and forced labor. An entry tax was introduced in 1900 to generate revenue to support the colony. This drove thousands of people to flee their homes to more remote areas. More indigenous people resisted taxes and forced labor (the Fang and Kele are reputed to have resisted, along with an increasing number of boycotts by coastal communities), more ordinances were adopted, more taxes were imposed, and coercion, even violence, was used. This was primarily applied in rural areas. In April 1904, African residents in Libreville had to obtain certificates to settle in the growing city. In May 1904, Gabonese were prohibited from leaving French Congo for other countries. Recruitment in logging camps increased, with Gabonese raising funds to pay taxes through the wild collection of rubber, ivory, and ebony, as well as the felling and moving of wood for the benefit of concessionaires. 6.1 Territorial Change Looking back a bit, the above changes occurred in a context of changing control over Gabon. Until July 5, 1902, Oubangui-Chari (now the Central African Republic) and Chad had been considered part of Middle Congo. A decree for the new organization of the French Congo colony in July 1902 made the four regions autonomous and placed them under the ultimate authority of the General Commissioner145. In 1909, the new General Commissioner in Brazzaville wrote to the Lieutenant Governors advising them on how to systematically occupy each region and highlighting the dangers of hesitation (circular to the Lieutenant Governors regarding the occupation of the Colony). Change in political context: centralization of locally significant costs Finally, in 1910, the four territories officially became part of the Federation of Equatorial Africa (AEF). All legislation was

revised to align governance in the four territories with one another and to strengthen the situation that now all decrees would be adopted in Brazzaville. Lands, forests, mines, administration, customs, territorial organization, and other areas would, from this date, all be the same throughout the AEF, as would their amendments. The creation of additional French posts within the country was part of strengthening control. In 1904, there were seven distinct French posts in different parts of Gabon146. In 1905, Gabon was divided into five administrative regions. They became districts or 16 administrative quarters in 1909, with four distinct military units147. Illustration 10 shows these districts. By 1916, all of Gabon was under the authority of one or another of these civil posts. SHO and other large companies viewed the districts as intrusions into their own territorial divisions and governance. The districts were replaced by departments by the law of November 15, 1934, and changed the designation of Gabon, which from region became a colony. In 1936, these districts/departments became the basis for the nine modern provinces148. 145 Initially, the residence of the General Commissioner was to be located in Libreville, but a year later, by another decree (December 29, 1903), it returned to Brazzaville. 146 In 1904, administrative centers were created in Chinchoua, Lambarene, and Angouma, in addition to posts established previously at Cap Lopez, Sette Cama, and Mayumba. 147 De Sainte-Paul, 1989. 148 De Sainte-Paul, 1989.

 Illustration 10: Electoral districts (administrative divisions of Gabon in 1916) [Source: Gray 2002:147] 6.2 Judicial organization of Gabon Strengthening cohesion between nationals and foreigners through French law The judicial system was also revised under the new federal regime (decree reorganizing justice in French Equatorial Africa of May 12, 1910). Justice was organized based on the "nationality" of the parties: French justice was competent to hear cases involving: (i) French citizens, (ii) foreigners

from a country recognized as a nation or maintaining diplomatic relations with France, and (iii) indigenous peoples of French or foreign colonies who benefited from French metropolitan status in their country of origin (Article 3). Indigenous justice applied to all other groups of people. French justice (i.e., for Europeans) was established through ordinary courts (ordinary justices of the peace) set up in each departmental capital, and an extended jurisdiction court (extended jurisdiction justices of the peace) in each colony149, to judge commercial and civil matters. This structure was replicated in French Equatorial Africa (Articles 1 and 10). A criminal court and an appellate court were also established in Brazzaville, accessible to all colonies of AEF. The extended jurisdiction courts served as first-instance jurisdiction for civil and commercial matters (up to a certain amount) and minor criminal offenses (Articles 13 and 14). Ordinary courts were competent to hear minor civil and commercial matters and sat at the local level. Trouillot, in his letter to the French President explaining the reasons for the new judicial system, emphasized the commercial demands that led to the development of this regime150. French courts could also intervene at the request of indigenous populations. In these cases, the court had to apply local customs unless otherwise indicated by the parties, meaning they agreed to be judged according to French law (Article 3). As for indigenous justice, it was rendered by an indigenous court established in each district (administrative division, or later, department). This court was presided over by the administrative officer in charge of the division and included a European and an indigenous assessor (Article 40). However, this officer had only an advisory role, with the judgment being rendered by the President of the court. Assessors were appointed for one year by the Lieutenant Governor of the colony in particular (Articles 41 and 43). It was not until 1927 that the colony of Gabon granted concessions to indirectly control and officially integrate African chiefs within the court competent to make decisions151. According to the 1910 law, indigenous courts applied local customs in all matters, as long as they did not contravene the principles of French civilization (Article 47). The courts were competent to deal with commercial, civil, and criminal matters (and could impose up to two years of imprisonment). For more severe penalties, a chamber of approval, a newly created special chamber within the Court of Appeal of Brazzaville, had to confirm the judgment rendered in first instance (Articles 48, 49, and 50). This Court was intended, in particular, to verify whether the indigenous court had (or had not) exceeded its powers by dealing with a matter falling under the jurisdiction of French courts. For both indigenous and French justice, the procedure provided for the publicity of hearings (unless these were deemed dangerous to public order or the morality of French courts), was inquisitorial in nature, and the decisions rendered had to be based on the reasons invoked; otherwise, the conclusions of the court would be null and void. 6.3 Ensuring that indigenous occupation does not interfere with business activities The policy of deep-rootedness, from an administrative perspective, was complemented by a decision to more actively organize the lands

allocated to indigenous peoples (or used by them). On July 24, 1911, as the new Governor of AEF, Mr. Merlin published a circular aimed at the Lieutenant Governors, setting the terms for the application of a decree from the previous year (October 6, 1910) regarding concessions of 10,000 hectares and less. Adopting a racist stance to steal land and resources from indigenous peoples His viewpoint, in the excerpt below, reflects the attitude adopted towards customary land ownership at the time. Based on the idea that indigenous peoples were "backward" and that their land use regime was "primitive" and their use of land "vague and unproductive," the Commissioner General introduced regulation under duress and conditional use of land, which would lead to granting more permanent titles to indigenous peoples who achieved good production on their plantations or in their livestock farms. The titles were limited in area and excluded all areas that investors - the concessionaires - were "in every way better equipped to use." This constituted the largest part of the country at that time. It was, in fact, erroneous, Merlin claimed, "to leave African lands entirely in the hands of indigenous peoples" (Mr. Merlin,

Principles Governing the Constitution of Property in French Equatorial Africa, Brazzaville, July 24, 1911). Reflecting the opinions of de Brazza from about ten years earlier, Merlin wrote that: "The notion of property is not yet conceptualized by the primitive peoples of the Congo. Often, the word is lacking in the language to express the idea. Regarding the soil, the idea of property is understood in most places as the direct use of the fruits of the land, without concern for planning for the future, in these primitive minds. Even then, the idea of possession of the fruits of the land relates mainly to subsistence foods, cultivated by the person concerned or which they can dispose of in the vicinity of their habitat. This habitat, however, is in flux. Many peoples are not permanently attached to the land. They are not nomads in the literal sense of the term used regarding cattle herders, who move between different domains, but in their movements as vagabonds. Living in worthless forest huts whose construction elements are collected equally from all over the forest, they occupy more than they settle. Following any accident, or if their state of mind is frivolous, they abandon this primitive residence and their means of subsistence to settle elsewhere. In some regions, either because Islam is a factor, or due to the transformation resulting from contact with our civilization, the idea of property progresses along with that of possession as it is attached to the land itself and not just to the fruits of the land. It is through property or through effective and permanent occupation." He continued as follows: "The duty of the sovereign nation, at the beginning of its occupation, in the face of such a confused situation, is to establish the necessary order. It must promote the evolution of the idea of property among indigenous populations by linking it to the land and facilitating access to property in order to accelerate the development of this country and ensure its possession. In the absence of any other regime than that of force, of a notion of price

 fixes of property, even among the most developed population, or any precise notion of property, among others, it is inevitable, in order to proceed systematically, that we manage from the beginning this vast untouched domain for ourselves. If the nation cannot assign ownership exclusively without abusing the indigenous peoples it found primitively settled, as uncertain as these settlements may be, it cannot abandon exclusive possession to these indigenous populations, who show themselves incapable of developing the land, and consequently cannot appreciate the concept of rights, in their primitive minds, and who will do nothing but give their land to any speculator. (If we did not act) ... we would be guilty of having perpetrated shifting agriculture, and of not exploiting the wealth of these lands as any civilized nation should. Or it would put these indigenous peoples in a situation where they would give their land to speculators. An enlightened sovereign nation must protect itself against these risks by organizing this unorganized domain, actively ensuring the gradual appropriation of property and for the benefit of both indigenous populations and immigrants. It is on this basis that the only legitimate ownership is that which a civilized nation applies in these barbaric countries where the rules and even the ideas of property are so primitive." Merlin then stated the following rules: "Here are the principles that must guide the sovereign nation if it wants to establish clear, strong, certain, and just rules for the domain of the colonies: 1. Consolidate issues related to possession and develop a concession title, but under conditions of effective land development; grant certain rights to indigenous peoples on the lands they occupy, cultivate, and effectively exploit, and confirm these rights through official property titles, after demonstrating development; 2. Make available to immigrants parcels of land necessary for agricultural, forestry, or industrial exploitation, under titles but of a provisional nature, capable of being converted into permanent ownership, after having developed the land; 3. Assign to each of them only what they can truly develop, prevent people who are unable or negligent from exploiting vast areas of land; prevent indigenous populations from concentrating possession with the intention to speculate; actively pursue the progressive development of

property through a legal regime and a systematic procedure - such are the actions required." Merlin justified his position as follows: "These are the principles that now govern the granting of small concessions in French Equatorial Africa for all those who want to develop a parcel of territory, European or indigenous, and which constitute assets for indigenous populations to guarantee them family ownership; aimed at preventing a reprehensible act as has been suffered in most colonies by the immobilization of land in the hands of ignorant indigenous people or those who want to do nothing with the land,

 or in the hands of colonists who wait for the hour of speculation" (it is us who emphasize)152. The General Commissioner then described the procedures he had instituted by his order of October 6, 1910, including distinctions between rural areas and urban areas and between European neighborhoods and indigenous ones in urban areas. For the latter, occupation permits were mandatory and had to be issued by administrators, mayors, or district chiefs, in accordance with the attached model. Conditions were applicable, such as in terms of house construction, sanitation, and safety measures. The authorization could be revoked in case of non-compliance with such conditions, leading to expulsion. The implementation was the responsibility of the different Lieutenant Governors. Granting indigenous peoples symbolic access In the section concerning rural lands, the General Commissioner set the threshold of 200 hectares for non-indigenous and 50 hectares for indigenous peoples, which were likely to be assigned on an individual or collective basis. These allocations were subject to the same development requirements and could evolve into permanent rights if the conditions were met. These provisions were already in force in Gabon. A form intended for the issuance of occupation permits was attached. It should be noted that in all land requests and allocations, published annually in the Official Journal, and in registration requests until 1959, it was regularly observed that "applicants declared that, according to their best information, there were no real rights existing on the lands they had requested." In reality and without exception, these lands belonged to clans or families, customary owners. 6.4 Regulation of concessions The same circular of 1910 set the requirements for granting concessions of more than 10,000 hectares (Large concessions) based on the model provided in 1899-1900, and that each colony member of the new federation had to apply. This included a model of a standard decree, as well as a revised model of specifications and the title of ownership (including the conditions). Final statement of the principle that indigenous peoples could only use the land, but not own it The model of the standard decree set the framework within which a company could be created to exploit the concession, as well as the conditions imposed on the concessionaire. The model of Specifications listed the usual conditions related to how natural resources were exploited and again indicated that the concessionaire had to provide boats and water service in relevant cases, as well as establish customs posts for the collection of taxes to be sent to the treasury at the request of the Governor (article 19). It was also specified that concessionaires had to "respect the rights of indigenous users to the forest for subsistence and the production of traditional goods." As an example, an order published in Paris on June 20, 1910, modifying a concession granted to the Colonial Company of Baniembe in Middle Congo included such a condition, and noted the following: "The populated areas on which the indigenous peoples depend according to custom constitute indigenous reserves. All products from these reserves, without exception, are freely accessible to the indigenous peoples. The Company is authorized to enter into all contracts for the exploitation of the forest with its populations. Furthermore, the indigenous peoples settled on the lands retain the right to live on the land they currently occupy and for which they may in the future request individual or collective property titles" (article 10). The Company could also not claim compensation from the colony for damages that may occur from insecurity in the country, riots, or rebellion from the

indigenous peoples or their illegal competition, or as a result of a conflict with a foreign power (article 12). Different decrees, over the following decades, added to

land rights and concessions, in various ways, but without radically changing the principles153. 6.5 The intensification of displacements Despite the General Commissioner's desire to see indigenous peoples settled and shifting agriculture abandoned in favor of simple permanent plots, this was made impossible by French occupation. The period from 1900 to 1932 was characterized by massive displacements across Gabon. Creating a chaotic situation and proof that indigenous peoples are not tied to the land We have previously seen how thousands of people were attracted by commercial opportunities, especially at the end of the 19th century, leading to the abandonment of old colonies and the creation of new settlements. Regardless of the impact of smallpox epidemics, much of this displacement was motivated and strategic, as when the Opungwe deliberately moved inland to the Ogooué River to trade for themselves, or when Fang or Kele speakers deliberately moved toward the coast and south to seize commercial opportunities. From 1900, mobility seemed to be more individual, linked to panic and random. This was partly aimed at escaping the increasingly brutal incursions of French colonial forces and less official militias, as well as the tax collections that obsessed the administration, in order to make ends meet to run the colony. This drove entire villages outside the main trade routes around which many communities gravitated and pushed them back into more remote and temporary camps. 153 Decrees of March 13, 1918, December 12, 1920, and June 9, 1925, amending the fundamental decree of March 28, 1899 on land ownership. The order of September 13, 1926, establishing the regime for concessions of 10,000 hectares and less, was modified by orders of October 18, 1926, and April 13, 1932. The latter extended access to rural concessions for indigenous peoples up to 200 hectares.

 raires. Social relations have also fragmented, as each family has taken care of itself. Trade has also changed, with incentives being more given to individuals than to the clan. The transformation of landowners into workers for the colonial enterprise But above all, the authors agree that the movement of the 1910s was a response to the emergence of the timber industry, focused on the renowned okoumé species. Okoumé exists in 80% of Gabon's forests and in small volumes only in neighboring countries (Congo, Equatorial Guinea, and Cameroon). From the start, okoumé was favored due to its easy peeling quality. It began to occupy a dominant share of the trade starting in 1905, with its export rising from a few logs in 1889 to 7,000 tons in 1905 and to 91,000 tons in 1911.154. Its predominance in trade has continued to this day 155. In the 1910s, thousands of woodcutters were attracted to camps. Although these were initially organized by clan chiefs, this became direct labor leasing around 1910. The labor camps were transient, and payment in rum often made them illegal. At the same time, large road construction projects were launched to allow logs to be exported by road rather than by river. 6.6 The evolution of social land relations With men being away in labor camps from the concessions, women lost their source of clearing new lands. Shifting cultivation was hindered. Women focused on gardens, producing staple foods such as cassava. The patterns of village settlement and land use were severely disrupted. Food shortages multiplied. This situation worsened from 1908 with the prohibition of gunpowder sales, due to decreased hunting and food and increased crop damage. Localized famines increased in number during the 1910s and reached epidemic proportions in 1916. An additional trigger was the collapse of the okoumé market in 1914 (Germany was the main destination for export). Revenues from the colonial administration fell, along with family incomes and livelihoods. Thousands of woodworkers were forced to return to their villages inland. In 1915, the administration called upon the Regional Guard, long characterized by the presence of many

Senegalese, to force Gabonese to harvest natural rubber or palm nuts to pay their entry taxes. Furthermore, Gabonese men were forcibly recruited to serve as porters in the French campaign in German Cameroon. This coercion was officially justified by the need for Gabonese to earn money to pay their taxes. When they returned from Cameroon, many brought back new diseases, such as sleeping sickness. Many women were forcibly engaged in road construction, making palm leaf tiles, etc. The lack of rain in 1916 brought these problems to a climax, with widespread famine (which persisted in many places until 1919), exacerbated by the Spanish flu epidemic and the cassava being attacked by fungi. The institution of forced settlements as a mechanism to ensure work and stem resistance Nevertheless, tax collection continued, and the Regional Guard was authorized to use brutal methods for its collection from the local population. Overall, agriculture, settlements, and society suffered greatly156. Such conditions led France to decide to stabilize and impose order on the settlements in Gabon. In this context, the definition of populations according to ethnic affiliation became crucial. Censuses, first conducted in the 1910s, with a major census in 1916, and periodically thereafter, became essential instruments. According to Gray (2002), the censuses undermined clan association by forcing people to provide their name, tribe, and language. Clan affiliation increasingly corresponded to commercial affiliations and networks rather than social or socio-territorial networks. Rich describes how the Nkomi kingdom was the last to lose its recognition as a social entity, the last Omyene community to crown foreigners and make a foreign Catholic priest the king, in a futile

attempt to find an ally against the French colonial government157. 6.7 The resistance Still responses Gabonese did not easily relinquish their lands, resources, traditional authority, or trading rights to the militarized French administration. From the 1860s to the 1930s, this flight was accompanied by the mobilization of local forces, often using rifles purchased from Europeans, resulting in periodic rebellions and attacks. While boycotts, as previously noted, were a preferred tactic of trading clans, outright looting of ships and rebel attacks by the Fang, Kele, and Seke traders occurred during the period 1869-1874158. During the 1880s, the Awandjis even refused entry to Europeans into their territories, and this resistance was very effective until the death of their chief in 1896. Vili also resisted incursions in the 1890s. The intensification of French control revitalized resistance after 1900. The Mitsogo rebelled in 1903 and, with the help of hundreds of warriors, harassed French troops until 1913, as did the Bayaka between 1907 and 1910. The Fang held significant military power with ten battalions of 500 men each. Civil conflicts were rekindled at the end of the 1920159. Even in 1922, at least one Bawandji clan successfully refused access to French traders and military. 156 Gray and Ngolet, 1999: 87. 157 Rich, 2010:215. 158 De Saint-Paul, 1989. 159 Most of this information is drawn from Saint-Paul, 1989.

 Initially, much of the resistance focused on trade, taxes, and prices, for example when new duties were imposed on alcohol, fabrics, salt, tobacco, and other basic goods 160. However, strikes against forced labor, poor conditions in the camps, and low wages multiplied from the 1910s and were reignited in the 1920s. By that time, the conflict was more aimed at the very idea of French civil and military control and the fury resulting from the gross loss of land, resources, and benefits to the advantage of foreigners. "It was not until 1930 that one can consider Gabon to be pacified and fully subjected to French domination".161 The sidelining of elites At that time, the "strong men" and Gabonese clans were completely excluded from the timber trade, except as workers. The permit and concession system was entirely oriented in favor of Europeans and large-scale enterprises162. On the other hand, many local "strong men" had emerged as members or henchmen of the French administration. By the early 20th century, there was a class that could

be defined as elite around Libreville, on whose support the colonial forces could rely. Reno describes the characteristic co-optations of local notables for the following reason: "Most colonial governments in Africa relied heavily on the cooperation of local strong men. The essence of imperialism was (...) the integration of elites into administrative structures. In some cases, elite groups managed to transform the administrative posts they held into their private heritage, in the sense that they could personally determine how these posts would be used and who would occupy them (...)" (Reno, 2000:438). When the okoumé market was revived after 1918, a flood of new French-led enterprises arrived in Gabon. Ratanga-Atoz recalls that 348 cutting permits covered 10,450 km² in 1927.163. A French consortium had a concession area of 750 km², employed 40 Europeans and 1,500 Gabonese, and exported 36,000 tons of wood per year from 18,000 sawmills. The depression of 1931 plunged the okoumé industry back into crisis that same year. But this time, workers did not want to return to their villages, and many strikes of unpaid workers occurred164. More than 25,000 men worked in the timber industry in 1929. The "floating populations" became a problem. 6.8 The settlement of Gabonese and the recourse to labor from other African countries As early as 1911, the first population displacements (regroupings) were undertaken 160 Rich, 2010:219. 161 Ratanga-Atoz, 1985:17 162 The free cutters system was affected in 1914 by the introduction of registration conditions, tax payments, and plans and maps indicating where trees would be felled. This sounded the death knell for clan-organized labor and trade agreements, leaving the field open for Europeans holding capital. 163 Ratanga-Atoz, 1985:29. 164 Gray, 2002

 in southern Gabon, in order to facilitate the recruitment of labor for timber and colonial projects, as well as for tax collection, and in the 1920s in the central areas. The regrouping became a key colonial policy and project during the 1930s, notably through the creation of model villages. One of the first targets was the so-called vagrants, grouped by ethnicity into 23 villages in the lake region to the south 165. About 53 other settlements were founded in 1935, based on the establishment of plots and plantations along the road. Chiefs were appointed by the administration. The first developments were supervised by the much-despised Regional Guard. Meanwhile, foreign workers were encouraged in the 1930s, particularly Chadians who worked on road construction. The major development of the Congo-Ocean railway from 1924 to 1934 was described as having begun with forced labor to be completed through voluntary work. In the 1940s, a free labor market was instituted. President Charles de Gaulle called on Gabonese to arms to support France in 1940. After World War II, tolerance for French colonialism had reached a breaking point. Rebellions and strikes were constant. De Gaulle understood the signs of the times, and in 1946 he launched a process aimed at increasing the autonomy of each colony, but linking it to others, within a Community of French Africa (the French Union). Gabon sent five representatives to its Council in 1947. For most Gabonese, at the end of the colonial period, legal access to land was only possible through semi-forced arrangements (regroupings), in what would later be described in other states as "villagization" 166. Boxes 10 and 11 describe the creation of villages in the north and the reduction of rights that occurred during this process. They also illustrate other facets that need to be commented on. First, these cases suggest that many regroupings were established in or near the living areas of the colonists, and that people were not displaced tens of kilometers away. Second, the members of regroupings were not chosen at random, but involved entire hamlets. Third, there was a high level of volunteering aimed at getting closer to services. Fourth, the occupation of these areas by certain clans led to a return to the previous century. Not all Gabonese emigrated or were forced to flee their traditional areas during the period 1888-1950, and many others eventually returned to these areas. It is also evident that customary ownership was formally denied for half a century and most of the land area was

granted in concession to companies that were still primarily commercial. Customary rights to use forests were recognized but not encouraged. Finally, care must be taken to assume that regroupings organized around several streets were entirely non-traditional. Du Chaillu described, conversely, a number of villages in the 1850s as consisting of a single street. 165 Gray, 2002 166 For example, in the 1970s, in Tanzania, Ethiopia, and Mozambique.

 Box 10: An Example of Villagization in Gabon - Bolossoville Bolossoville is located 10 km from the city of Oyem, the capital of the Woleu-Ntem province, in the far north of the country, on the border with Equatorial Guinea and Cameroon. The regrouping includes seven villages, each largely comprising members of the same clan and closely related. These are Fang clans. The population is estimated at around 2,000 people (but only 300 permanent residents), most of whom are very young or elderly. For example, in one family, only the grandmother lives in the village and 15 other members are in Libreville. They return at least once a year. They could establish farms themselves on family land and sometimes do. The possibility of building new houses behind the existing house is offered, and farms extend to the back or on former family lands, further away from the colony. In another family, the father lives alone in the village, two sons are in Libreville, and a third has bought a plot on the outskirts of Oyem, for which he holds a title deed. He moved there to be close to facilities that do not exist in Bolossoville. However, he also owns a house in Bolossoville. All 25 men present at the meeting have most of their families living in Oyem, Libreville, or other towns. Some of these men were young. They were home because they could not find work in the cities. All participants insisted that for themselves and their family members, the village of Bolossoville is their home. All relatives return to Bolossoville at least once a year, even if it takes 10 hours to get there from Libreville. The area traditionally called Akaktane included lands partly owned by Akaktane, but mostly held by Nkiè, both of whom now live in the regrouping. Bolossoville was a planned colony along the road in 1949, where the first settlers settled in 1952, on the instruction of the chief of the colonial canton. The main objective was to work together for road construction and to facilitate the collection of entry taxes from all persons aged 18 and over. Workers were paid 25-30 francs per month. Although villagization was not mandatory in 1950, representatives were strongly encouraged to do so, and were told that if they did not resettle, they would have "looked like Pygmies". Many wanted to transfer to the settlement due to work, and the establishment of a school and a dispensary. It was helpful that the settlement was established in the region, without being pushed back to unknown areas. Until that time, all villagers lived in forest villages less than 20 km from Bolossoville. Nkiè and Evés came from the east, Bolo from the northeast, Bifoulane, Meleme, and Mengang from the southeast. Akaktane and a subgroup, Nsendjou, came from the border area of Bolossoville to the northwest. The Nkié clan owned the entire area on which the roadside settlement is located, as well as the area to the south, and allowed other clans to regroup there. This includes a significant river. The farms are located immediately behind each house plot along the road. Additional farms are often found within the areas closest to the traditional territories of each clan. Many villagers still use their traditional areas for gathering products from hunting, fishing, and the forest. The village of Bolossoville is considered to have an extent of about 2 km. However, the domains of the above traditional clans extend much further, covering together about 50 km by 20 km (1,000 km^2). Elders estimate that it would be quite possible for each clan to define its traditional land area, still well known to this day, and largely delimited by rivers and permanent streams. Many sites in each clan's domains bear a name and are used regularly. They would be used more if young people still lived in the village. The delimitation of the area within a radius of at least 5 km has been requested from the authorities in Oyem, but not engaged. The Fang did not

traditionally own their land collectively, but only as families. However, families are extended and can be large, and at times be roughly equivalent to a clan. Furthermore, collective ownership had not yet been created at the time of regrouping in 1949-1952. The settlement was organized around private house plots and farms. The settlers initially obtained rural occupation permits when they settled, but these became obsolete and second-generation families no longer hold any permits for their house plots or farms. Additional farms in remote areas are all within traditional family lands. The village is governed by a village chief approved or designated by the government, advised by a Council of Elders that includes representatives from each sub-village or clan. He has the power to enact rules. Each sub-village has its own family council. A committee of elders resolves conflicts. Some problems arise when women fish and hunt in areas that are not traditionally theirs. The family council sends a complaint by mail to the neighboring village. One of the problems faced by villagers is the issue of relations with elites. For example, it has happened in the province that a member of an elite family acquires official rights superior to his share, which angers other family members. Elites can also be found negotiating with concessionaires, as happened for example in the neighboring village. The council of Bolossoville has enacted a rule that no one can negotiate directly with Olam, the concessionaire of this area, regarding issues related to crops or employment. OLAM runs a concession that it requested and was granted without any consultation with the community. Its domain includes a large part of the traditional lands of the various clans and extends less than five kilometers from the settlement of Bolossoville. So far, tree harvesting has not begun near the settlement. No member of Bolossoville has requested or obtained a logging permit, which is available for a maximum of 10 ha. An association has been created to help rural families exploit the forest from a point

Land rights in Gabon Facing the past – and the present 111 commercial view (Société des Techniques forestières de l'Okoumé (STFO). The family receives 60% of the profits and the harvester with the machines gets 40%. Elites and military personnel seek these negotiated permits, establishing contacts in the villages to protect the land for this purpose. Another form of local exploitation is leasing, which consists of sub-leasing the permit; this is now legal. The owner is responsible and pays the corresponding taxes, but the harvester receives a higher profit. Box 11: Ngou - a small village in the north This Fang village is located 10 km west of Oyem. It is a settlement along the road, formed from an older settlement that was located on the hill of Ngou, 2.5 km to the north. The move to this site was not mandatory, but it was made difficult if no one moved. The resettlement took place in 1952. The site was chosen due to an existing path there. However, a few years later, another road was traced, passing through the hill of Ngou, making the villagers regret not having resisted the move for a few more years. This is mainly due to the fact that another village was established in the area. Villagers had been accustomed to going down to this road throughout the 20th century. The German administration, before 1914, created a school in a village closer to Oyem, to which the extended family from the hill of Ngou sent its children, who attended until 1952. The village consists of two extended families Ngou. Only the larger extended family moved here. The other family (Abeng) went elsewhere. They were about 50 people when they moved. Today, the village includes at least 300 people (perhaps 500), but many no longer live here. The regrets related to leaving the traditional lands on the hill of Ngou are palpable. The hill was considered unique, a "paradise," a place where: "(w)e ate well, we could play well, we were able to use all the products of the forest, and we had a good climate. Here, we have been faced with diseases, and we have suffered from floods, since we were surrounded on three sides by rivers. Hunting is difficult and far away. There, we could fish and catch a lot of fish; here, the river is deep and we need canoes to go up the river to find fish. We had much more space to cultivate and the soils were better. We could follow the fertility, move to get better harvests. The fallow periods were only two years, here they are four years. This place

was chosen because it was good. We did not choose this place. Here, the place was chosen for us. The only advantage was the road. Yet, the road also brings problems. We had peace there, not here." However, before 1929, they were not at home on this site. Their grandfathers had moved there from Mbindo in the Bissok canton in 1929 to escape famine. By walking through the forest, their original home is only 20 km away, but it takes 60 km by road to get there. Some members of the original Mbindo clan have been dispersed beyond the hill of Ngou, to the north, in Equatorial Guinea. A Malaysian company received the original lands of Mbindo a few years ago. The part of the family that remained in Mbindo has been significantly disadvantaged. However, they had no choice but to accept the concession, because it is powerful and also because a family member encouraged the concession, in view of a reward. Agriculture in Ngou is not developing. "The youth are absent and there are no young men to create new farms in the forest. Many farms are here in fallow. Few of those who left to work in the cities have built houses here, but for them it is their home and they return once a year. Some return often, but it's because they have to work here. One or two have built houses in Oyem, but not here, to be closer to transport and services." Another states: "Over the last ten years, we have cultivated here with the help of paid workers. Poor populations from Burkina Faso were the first to come, followed by those

from Equatorial Guinea, Cameroon, and Mali. They do not come collectively, but individually, in search of agricultural land. They rent the land from us. They leave after a year or even six months at the end of the harvest. The same situation exists in all the villages of Woleu-Ntem. Our populations leave for the cities and foreigners come to cultivate our lands." The current area of the village is not extensive, just over two square kilometers. The rivers delimit it on three sides (the Abeng, Wele, and Mbalenzok rivers), and the road on the fourth side. The lands within the village are owned by individual families. There is no shared land. There is no traditional family head, nor any form of village government. Four villages form this set and sometimes come together for political or social reasons (weddings or funerals). Each of these four communities indeed includes an extended family or clan, with a number of nuclear families. All have agreed that a land title must be the title of a single family for the entire area. The family could then officially grant a usufruct right on specific parts of the family land. This already constitutes the practice under customary rules. No concession has been granted on the lands surrounding this village (for the moment). Signs indicate that these lands may have already been allocated to OLAM for the commercial production of palm oil and rubber, as described in the next chapter.

Land rights in Gabon Facing the past – and the present 113 In 1950, the colonial administration adopted new regulations regarding indigenous occupation. At that time, regrouping or villagization was planned solely for the benefit of the aggrieved. The new aggregated villages were designed to settle and officialize family occupation, with the intention that long-term occupancy titles would be issued to heads of families for plots with houses and farms. There were some, but as in the examples above, they were rarely followed beyond temporary periods, leaving these rights in limbo. State ownership of most of the rural domain was again reinforced, in order to limit claims from communities or clans in traditional areas. It is likely that the claims mentioned above regarding the coastal area of Opongwe in the 1950s, on lands that were perceived as having been wrongfully confiscated, constituted the main catalyst in this regard. They insisted on being compensated for all lands taken by the State and foreigners, on the grounds that they had only rented these lands to immigrants from the beginning, but had not alienated them absolutely167. For the end of the French administration in Gabon, this constituted a dangerous choice, which, if supported, would have opened the door to territorial claims from communities and clans. Awareness of the need to act to limit resentments The late

colonial administration was more liberal regarding urban plots. For the first time, Gabonese in Libreville were allowed to convert occupancy rights under leases to the State into absolute rights when certain construction conditions were met. Many were unable to do so. A cadastre was instituted, in which all formal property rights were examined based on an official survey. This followed the long-advocated Torrens system, which consisted of linking the title of property to a specific and mapped plot, which the French administration had in principle transposed into law since 1899, without applying it. Urban land use planning began in the 1950s, with each department responsible for planning its cities and subdividing the land. Yet, throughout all this, one fact remained unchanged since 1899: the natives, on the territory, whether Pygmies or Bantus, had been denied any recognition of their status as owners of the lands on which they had long lived for varying periods, or because these lands included uncultivated wooded lands. The only way for them to legally become the occupants and legitimate users of the lands was to request and be granted, from the State, establishment and usage rights. In this regard, the colonial administration (and also, as we have seen, the post- colonial one), has remained frozen from 1899 to this day. This is all the more ironic that between the first legislation affecting the coastal colony of Gabon in 1846 and 1899, indigenous land rights had been quite well respected and recognized as endowed with the main attribute of real property, namely alienability, and as needing to be taken into account, if the colonial authority itself sought to take possession of these lands in the name of a real public interest. 167 Personal communication, Mr. Delbrah.

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Land rights in Gabon Facing the past – and the present 114 — Registration is crucial for the entire population in Gabon as it is the only legal mechanism by which rights to land and resources can be acquired and legally maintained

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Land rights in Gabon Facing the past – and the present 115 Chapter 3 Back to the present and looking to the future

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Land Rights in Gabon Facing the Past – and the Present 116 1 Context of the Past Chapter two above reveals important information about land rights in Gabon. To summarize: 1. Most of the fundamental principles of land law in Gabon stem directly from colonial laws. At the time of independence in 1960 or since then, no attempts have been made to eliminate these injustices; The main legal sources of the problems are as follows: a. Prolonged legal vacuum regarding the granting of traditional land rights, rather than the recognition of the right to exploit land ownership (i.e., not owning it as true real estate); b. Prolonged absence of legal recognition other than physical settlements (houses, buildings), agriculture (plantations), or commercial/ industrial use of land as a basis for the application of real property rights, meaning that rural Gabonese (both hunter-gatherer and farmer minorities) cannot become legally recognized owners of limited parts of their usage properties; c. Imposition of procedures and development conditions placing access to real estate beyond the means of most people, both in urban and rural areas; d. Establishment of the State as the initial owner of the land in a territory that was clearly owned and occupied before the creation of the State (and recognized as such in the early days of colonization). e. Gabonese people have not only lost their lands. They have lost all customary rights over water, surface minerals, and land surface, including forests. f. They retain only usage rights, which are prescribed by area and by use according to the State's decision. The recognition of land ownership and resources does not depend on actual occupation or use, but on the discretionary power of the State. This has led, and continues to lead, to significant appropriation by the elite. This not only generates gross injustice but also constitutes, for a

government, an unprecedented strategy of being both the owner and the administrator of the land. It cannot be a neutral arbiter. 2 The colonial legacy was not static. It has become more unjust over time. Consequently, what Gabonese people inherited in 1960 was colonial rule at its peak. This is what remains in place. The critical breaking point in this regard was the period 1899-1910. From 1849 to 1899, the region now known as Gabon was recognized by France as owned and occupied by indigenous populations, who had an organized clan system for territorial creation and domination, as well as for the distribution of rights within these domains. As a result, indigenous people were recognized as having the right to lease, lend, or sell land and resources attached to the land. Their ownership was protected when the French colony needed their land for public works. This lasted from 1846 until 1899.

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Land Rights in Gabon Facing the Past – and the Present 117 Since then, the recognition of rights has steadily declined. For example, in the case of compulsory land acquisition for public purposes, the situation for those without official title to their land has worsened. While in the past, compensation was paid even to those without official title, but to a lesser degree compared to owners holding formal deeds, no compensation is due to informal occupants evicted today. Many negative constraints on local rights have been put in place after independence, including during the last decade. 3. The most important tool for dispossessing the indigenous population of Gabon (which has been maintained to this day) is commercial enterprise. First, the appropriation of land resources (timber, rubber tree sap, ivory, minerals), then of the land itself to ensure private ownership of these resources, has always been the goal. The aim was and remains to make money from the land. Initially, indigenous populations participated, and even dominated essential aspects of product trade, until their competition could no longer be tolerated by stronger European interests. 4 The engagement of Gabonese people in the early days of capitalism allowed for the forging of strategies from 1960. Gabonese society was already hierarchical and stratified within itself, before the arrival of Europeans, and this formed the basis of an increasingly unequal society, in which the "strong men" became a privileged group, whose interests continue to drive land policy. Due to their socio-economic alliance with politicians and high-ranking officials, private interests continued to limit the political will to remedy these injustices. 5 Foreigners, including those of Senegalese origin and other non-local Africans, as well as Europeans, characterized the colonial enterprise from its beginnings and helped forge land law and policy. This remains a factor in the treatment of land rights today. On the one hand, the State is increasingly inclined to ensure foreign investors easy access to land in Gabon. On the other hand, it does not seem willing to regularize existing land occupation (especially in urban areas), for fear that foreign workers will acquire guarantees on property rights. 6 A combination of commercial opportunities, conflicts, taxes, and a formidable military force, disease and famine, and return to the village during the colonial era, caused significant displacements and adjustments in rural settlement patterns. Some ethnic groups significantly expanded their locations during the 19th and 20th centuries, notably the Fang. And yet, it is likely that the extent of permanent movement is exaggerated. Many populations seem to have temporarily moved in response to crises, with a return, ultimately, to their original regions. Others appear to have moved within their large domains, rather than fleeing to the ends of other regions of the country. Most of the roadside settlements created by regroupings in the 20th century or return-to-village policies occurred within the traditional clan territories.

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Land Rights in Gabon Facing the Past – and the Present 118 7 Current policy in favor of customary rights shows signs of justification, on the grounds that Gabonese people, due to independence, have found themselves largely without any connection to the lands their

ancestors held and used. However, the facts related to the evolution of settlement patterns do not suggest the total dismantling of customary provisions.

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Land Rights in Gabon Facing the Past – and the Present 119 2 Urbanization and Its Impact on Land Rights Three demographic elements stand out regarding Gabon: (i) its low population density, (ii) the high proportion of foreigners, and (iii) the high proportion of urban population. Gabon is also known for not having conducted an official census since 1993 (and before that, in 1969). Unusual Patterns of Growth and Settlement The most frequently used data dates back to 2003, while extrapolations made from the 1993 data, supported by the results of administrative surveys, have been officially published. Each of the 37 departments in the nine provinces conducts a census every two years, so the figures should not necessarily be very inaccurate, except for the fact that the State itself has regularly contested the official results and revisions of figures 168. This would not be based on non-demographic imperatives, such as those related to alleged manipulations of electoral rolls169. The figures produced in 2011 are not published. It is said that the government does not want to be seen as welcoming such a high proportion of foreigners in its population, referring more to people from Nigeria, Burkina Faso, Benin, etc., than to the European French part of the population. Estimates of the share of non-nationals in the population vary widely from 10% compared to the published figure of 35% in the contested 2003170 data. It is known that cities include a large number of Nigerians, Congolese, and nationals of other African nationalities. As shown in illustration 10, seasonal workers from Equatorial Guinea, Burkina Faso, and other West African countries are also common. A Small Population and a High Share of Land per Inhabitant With these reservations, it is nevertheless certain that Gabon has a small population. It is the 9th least populated country in all of Africa (the even less populated states are almost all island countries), with only about 1.5 million inhabitants, or more precisely 1,576,665 inhabitants in July 2011, according to World Bank estimates, after adjusting for known over-mortality due to AIDS, leading to a lower life expectancy, higher infant mortality, higher mortality rates, and slower population growth171. 168 Figures calculated from 2003 (based on figures from the Ministry, as well as those extrapolated from the last official census of 1993) were published in the Official Journal of the Gabonese Republic. When the government contested the figures, it was asked to the Constitutional Court to provide new figures, which it did in its decision No. 003/CC, of February 17, 2005. 169 For example, to increase the number on the electoral register of claims, for instance, by indicating that the result of the 2009 elections, involving 800,000 votes, was falsified in favor of the ruling party, to the extent that 60% of the population is under 18 years old, producing at most 750,000 voters and assuming that all voted. 170 See footnote above. 171 The data provided in this section are extracted from Population Reference Bureau, 2012, World Bank figures, Global Economic Outlook of the International Monetary Fund, 2011, the Factbook of the United States and the CIA, census data from the Gabonese government published on January 6, 1969, July 3, 1993, and December 1, 2003, and extrapolated figures, including sample censuses, as produced by the Population Division of the United Nations Secretariat. All the data mentioned above are available online.

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Land rights in Gabon Facing the past – and the present 120 Gabon also has the lowest population density, ranking fifth in Africa, with 5.89 people per square kilometer. As one might expect, the Estuaire province is the most populated, with 31.9 people per square kilometer. Libreville, the originally colonial settlement and now the capital, is located there and contains about a third of the country's inhabitants. The coastal province of Ogooué-Maritime is also well populated with 5.6 people per square kilometer and includes the city of Port-Gentil. Haut-

Ogooué, on the border with Congo, is the third most populated region and includes Masuku city, established by Brazza in the early 1880s, under the name Franceville. The least densely populated province is Ogooué-Ivindo in the northeast, with only 1.3 inhabitants per square kilometer. Although population figures and growth rates are contested and very uneven across different statistics, growth continues, trending upwards (in a series of figures), with an annual growth of 0.748% in 1980, peaking at 3.23% in 1991, and a more recent decline of 1.42% in 2010 172. It is generally claimed that the population has doubled in size over the last 30 years (789,978 people in 1980) 173. Compared to other African states, Gabon's estimated population growth of 1.8% per year, even if this figure is exaggerated, is much lower than the average for all of Africa at 2.6% 174. Gabon is ranked 80th globally out of 195 states in terms of population growth. The most urbanized country in the subcontinent One of the most important statistics is less controversial: the fact that Gabon has proportionally more people living in cities than any other country on the continent. Almost between 84 and 86% of the population is urban, according to sources 175. This leaves a small rural population of 14%, which is about 220,733 people, or only 45,000 rural households if the contested rural average of five people is used, or 27,940 rural households if the higher alternative rate for family size of 7.9 people per household is applied176. The urbanization rate remains high, with an estimated growth of 2.41% in urban areas each year, and shows that 88.9% of Gabon's population will be urban by 2015. This would place Gabon 23rd among the most urbanized countries in the world out of 164 countries in 2015. However, it is also important to note that urbanization in Gabon seems to have slowed from a record level recorded between 1985-1990, resulting from rapid growth in the oil industry. The urbanization rate is not exaggerated. Africa currently has the highest urbanization rate among continents, ranging from the least urbanized country (Rwanda) to the fastest urbanization (Malawi). Today, 38% of sub-Saharan Africans live in cities and villages. This is expected to rise to 54% by 2030, or 1.4 billion people. However, estimated urbanization rates tend to stabilize over the next 25 years. Furthermore, fertility rates in rural areas are higher than those in urban areas, and no decline or slowdown 172 World Economic Outlook 2011 (IMF). 173 Accuracy is again questioned, as the Encyclopaedia Britannica indicated in 1984 a figure of 950,007 people in 1969, suggesting a marked decline over the nine years, or perhaps the updating of official foreign population data. 174 http://www.prb.org/pdf11/2011population-data-sheet_eng.pdf 175 Although UN-Habitat estimates the urban population at only about two-thirds of the total population, see: http://ww2.unhabitat. org/habrdd/conditions/midafrica/gabon.html 176 http://ww2.unhabitat.org/habrdd/conditions/midafrica/gabon.html